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Transcript of Administrative Hearing

Date: January 3, 2020
Case: Kingsview Station

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Transcript of Administrative Hearing
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1 (1 to 4)

1	OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS	1	C O N T E N T S	3
2	FOR MONTGOMERY COUNTY, MARYLAND	2	PAGE	
3	-----x	3	OPENING STATEMENTS	10
4	In Re: :	4	TESTIMONY OF CLARK WAGNER	12
5	APPLICATION OF KINGSVIEW : Case No. LMA H-131	5	TESTIMONY OF KEVIN FOSTER	6
6	STATION :	6	TESTIMONY OF TIMOTHY MIKE LONGFELLOW	100
7	-----x	7	TESTIMONY OF MICHAEL LENHART	123
8		8		
9	HEARING	9	E X H I B I T S	
10	Before Hearing Examiner Lynn A. Robeson	10	PAGE	
11	Rockville, Maryland	11	Exhibit 50 CD - revised floating zone plan	5
12	Friday, January 3, 2020	12	Exhibit 51 Affidavit of Posting	5
13	9:35 a.m.	13	Exhibit 52 CD of revised covenants	5
14		14	Exhibit 53 Hard copy of revised covenants	6
15		15	Exhibit 54 AG questions	7
16		16	Exhibit 55 Clopper Village concept diagram	29
17		17	Exhibit 56 Color Analysis of CL6	35
18		18	Exhibit 57 Planning Board draft resolution	55
19		19	Exhibit 58 Analysis of CL5	69
20		20	Exhibit 59 Kingsview Station Right-of-way	102
21		21	Exhibit 61 Stormwater Strategy Updated Plan	116
22		22	Exhibit 62 Revised Traffic Impact Analysis	124
23	Job: 280671	23	Exhibit 63A SHA letter 5/17/19	129
24	Pages: 1 - 141	24	Exhibit 63B Email Woodruff - Lenhart 4/5/19	129
25	Transcribed by: Molly Bugher	25		
1	A P P E A R A N C E S	2	P R O C E E D I N G S	4
2	ON BEHALF OF APPLICANT:	2	HEARING EXAMINER ROBESON: This is a public hearing in	
3	ELIZABETH ROGERS, ESQUIRE	3	local map amendment H-131, the application of Kingsview	
4	LERCH, EARLY & BREWER, CHTD. ATTORNEYS	4	Station Joint Venture requesting a local map amendment to	
5	7600 Wisconsin Avenue	5	rezone several properties from the R200, R200 TDR6 zones to	
6	Suite 700	6	the CRNF zone. And I'm not going to repeat all the numbers.	
7	Bethesda, MD 20814	7	The subject properties are identified as N210, P220, P274,	
8	Phone: 301.987.1300	8	part parcel 322, part parcel 330, and parcel 356, in the	
9		9	Liberty Mill right-of-way, which are located in the	
10		10	southeast quadrant of the intersection of Maryland 118 and	
11		11	Marilyn 117. Good morning. I'm Lynn Robeson, I will be the	
12		12	Hearing Examiner in the case. Is there anyone that wishes	
13		13	to testify here today that will not be called by the	
14		14	Applicant? Okay. Seeing none, I have some preliminary	
15		15	matters, but if -- before I get to those, do you want to	
16		16	identify yourself for the record?	
17		17	MS. ROGERS: Good morning Elizabeth Rogers with Lerch,	
18		18	Early & Brewer.	
19		19	HEARING EXAMINER ROBESON: For the Applicant.	
20		20	MS. ROGERS: I'm here on behalf of the Applicant.	
21		21	HEARING EXAMINER ROBESON: Okay. And do you have any	
22		22	preliminary matters?	
23		23	MS. ROGERS: We do have a few preliminary matters. I	
24		24	have the requested electronic copy of the Floating Zone	
25		25	plan.	

Transcript of Administrative Hearing
Conducted on January 3, 2020

2 (5 to 8)

<p>5</p> <p>1 HEARING EXAMINER ROBESON: Thank you.</p> <p>2 MS. ROGERS: As well as the affidavit of posting. And</p> <p>3 we have a revised declaration of covenant that reflects the</p> <p>4 binding elements that are on the most recent floating zone</p> <p>5 plan.</p> <p>6 HEARING EXAMINER ROBESON: Okay. That is helpful. So</p> <p>7 I'm going to make the disc, the CD, 48. CD of most -- of --</p> <p>8 I guess the most recent floating zone plan is 37-C.</p> <p>9 MS. ROGERS: 37-C. And the exhibit list I received</p> <p>10 yesterday had exhibits through 49. Because that --</p> <p>11 HEARING EXAMINER ROBESON: Yes.</p> <p>12 MS. ROGERS: Planning Board recommendation and</p> <p>13 technical staff report -- but those weren't reflected on</p> <p>14 the exhibit list right outside.</p> <p>15 HEARING EXAMINER ROBESON: No, you're right. You're</p> <p>16 right. Hold on one second. You're right. 48 is Planning</p> <p>17 Board recommendation. Let me use this one because this is</p> <p>18 correct. Unfortunately, the staff that usually handles</p> <p>19 these is out today. So, okay. So it does go up to 49. So</p> <p>20 the CD will be 50. And that the affidavit of posting will</p> <p>21 be 51. And then the revised covenants will be 52. Okay. So</p> <p>22 if you want to bring those up. Thank you.</p> <p>23 (Exhibits 50, 51 and 52 were received into the</p> <p>24 record.)</p> <p>25 MS. ROGERS: It's a CD with three hard copies. We</p>	<p>7</p> <p>1 or --</p> <p>2 (Exhibit 54 was received into the record.)</p> <p>3 MS. ROGERS: 10.</p> <p>4 HEARING EXAMINER ROBESON: Yes. Okay, that's right.</p> <p>5 Here is an additional copy if you want one.</p> <p>6 MS. ROGERS: Thank you.</p> <p>7 HEARING EXAMINER ROBESON: And I guess a lot of the</p> <p>8 questions have to do with the environmental stuff, because</p> <p>9 one thing I have to say to the Council is it meets all the</p> <p>10 environmental standards and staff's report was highly</p> <p>11 conclusory. For some reason it just says, generally it</p> <p>12 does. And then I see the staff recommendation on the</p> <p>13 preliminary forest conservation plan and that says, well,</p> <p>14 it really doesn't do this and it doesn't do that. And there</p> <p>15 is a finding I have to make; a couple of things. The master</p> <p>16 plan says this is a sensitive area because it's in the</p> <p>17 headwaters of the Great Seneca something. It also stresses</p> <p>18 preservation of environmental features. You've got</p> <p>19 stormwater in the stream valley buffers. Normally when we</p> <p>20 get these applications we have a concept -- at least a</p> <p>21 concept plan approved by -- or an email saying -- from the</p> <p>22 County saying, yeah, it all works conceptually. You don't</p> <p>23 have to engineer it, but it all works, but I don't -- it</p> <p>24 doesn't all work based on what I've got in front of me</p> <p>25 because -- so I'm confused as to why this isn't worked out</p>
<p>6</p> <p>1 didn't know how much we needed.</p> <p>2 HEARING EXAMINER ROBESON: I see that.</p> <p>3 MS. ROGERS: Okay.</p> <p>4 HEARING EXAMINER ROBESON: Now I'm going to have to</p> <p>5 mark the CD of -- oh, I see. You got all the property</p> <p>6 owners.</p> <p>7 MS. ROGERS: Actually, it's just one affidavit of</p> <p>8 posting. I just gave you three copies. But I can take the</p> <p>9 copies back if you don't need them.</p> <p>10 HEARING EXAMINER ROBESON: Oh, okay. No, I don't need</p> <p>11 them.</p> <p>12 MS. ROGERS: Okay.</p> <p>13 HEARING EXAMINER ROBESON: But it's okay. Just -- I</p> <p>14 will put them to the side. And then 52 is the covenants.</p> <p>15 And then the hard copies of the covenants is 53, CD of</p> <p>16 covenants and affidavit of posting. Anything else?</p> <p>17 (Exhibit 53 was received into the record.)</p> <p>18 MS. ROGERS: Those are all of the procedural matters.</p> <p>19 HEARING EXAMINER ROBESON: Okay. My -- when I went</p> <p>20 through this in the last couple of days, I noticed it kind</p> <p>21 of left me -- some of the items left me with more questions</p> <p>22 than answers. And I did write down my questions if you want</p> <p>23 them. And I guess I should mark this as an exhibit. 54 will</p> <p>24 be AG questions. You can -- here's another copy. And</p> <p>25 another copy. No, that's -- did yours have 11 questions</p>	<p>8</p> <p>1 and how can I make -- how can I make the master plan</p> <p>2 finding that this is in conformance with the master plan</p> <p>3 recommendation to preserve the environmental features. Two,</p> <p>4 how can I say that public facilities will be adequate</p> <p>5 because you don't have stormwater that meets even a concept</p> <p>6 that meets the environmental requirement. I don't</p> <p>7 understand what is going on with this stream. I mean, I</p> <p>8 understand that you say it's ephemeral and they say it's</p> <p>9 not ephemeral, it's intermittent. That's another issue that</p> <p>10 typically is -- you don't have -- it doesn't have to be</p> <p>11 engineered at this stage. You know, and you don't need the</p> <p>12 details, but even the Planning Board's staff report -- I</p> <p>13 don't have their recommendation or their resolution yet</p> <p>14 approving the preliminary forest conservation plan. But it</p> <p>15 just seems like all of this was pushed off. And normally we</p> <p>16 have it, at least some level of it, by now. So that's one</p> <p>17 set of questions. The other set of questions I have are</p> <p>18 about the transmission lines. Staff keeps saying there are</p> <p>19 safety issues. They don't say what they are. So, you</p> <p>20 know -- and why can't you put them underground? And I don't</p> <p>21 know what these -- I looked them up on the NRIFSD. So I</p> <p>22 know where they are. I don't know if they are just</p> <p>23 telephone poles, you know, wooden utility poles, or whether</p> <p>24 they are -- you know, what -- so that's another thing. And</p> <p>25 I may refer these back to staff because I still don't</p>

Transcript of Administrative Hearing
Conducted on January 3, 2020

3 (9 to 12)

<p>9</p> <p>1 understand why everybody is arguing about -- normally what 2 the stream is would be resolved by now. So that's another 3 thing. The staff report, again I just found very 4 conclusory. It says there is changing economic trends that 5 justified townhouses. But it doesn't say any -- it doesn't 6 justify it. So what is that? It says the scale of the 7 development blends well with the surrounding area. It 8 doesn't say why. Your surrounding area, your immediate 9 surrounding area is commercial and institutional. You've 10 got a fire station across the street. You've got a park and 11 ride. You know, I'm confused about that. I just found the 12 staff report seemed to skip over a lot of issues that are 13 normally addressed. And I also want to know how the Liberty 14 Mill intersection with Clopper is going to operate because 15 it's really close to Clopper and 118. So if you have 16 somebody to address that, that would be good. And that's 17 it.</p> <p>18 MS. ROGERS: Okay. Thank you. I think through our 19 testimony today we can provide a lot of clarity that wasn't 20 provided in the staff report.</p> <p>21 HEARING EXAMINER ROBESON: Yeah, I don't know why it 22 wasn't provided. Normally it is, but hey -- okay. So with 23 that, do you want to have an opening statement? Or do you 24 want to get right into testimony?</p> <p>25 MS. ROGERS: I will make a brief opening statement if</p>	<p>11</p> <p>1 requirements, that this application and this development is 2 appropriate for the site and insubstantial conformance with 3 the recommendations of the master plan, and that the 4 individual findings for a local map amendment in division 5 7.2.1 can be met, and that the district council can make 6 those findings for this application. In total, we were 7 planning to call four witnesses. And we also have an 8 additional environmental expert here who in light of your 9 questions we will likely call as well to help provide 10 additional clarity. So we will be calling Mr. Clark Wagner 11 who is the vice president of acquisitions and entitlement 12 at Pleasant Development here on behalf of the Applicant, 13 Joint Venture, Mr. Kevin Foster with Gutschick, Little & 14 Weber. He's a plan planner and landscape architect. Mr. 15 Timothy Longfellow, a civil engineer with Gutschick, Little 16 & Weber. Mr. Mike Lenhart, traffic engineer with Lenhart 17 traffic consulting. And then Mr. Mike Chlebowsky who is a 18 professional wetland scientist with Wetland Studies & 19 Solutions.</p> <p>20 HEARING EXAMINER ROBESON: Okay. You know what? 21 Before -- maybe I should disclose -- this is like -- I 22 don't want to tell you how many years ago, but at a prior 23 phase of my life I worked for Lindhurst & Blocker 24 (phonetic) and I worked on the development of the Kingsview 25 Village Center. But I don't remember any of it. But I'm</p>
<p>10</p> <p>1 that's okay.</p> <p>2 HEARING EXAMINER ROBESON: Okay.</p> <p>3 MS. ROGERS: So again, good morning. Elizabeth Rogers 4 with Lerch, Early & Brewer. It's a pleasure to be here 5 today. The property as you mentioned, is comprised of six 6 individual parcels that total about 10.28 acres located in 7 the southeast quadrant of Germantown and Clopper. It is -- 8 the property is currently vacant and surrounded by various 9 residential, commercial, and institutional uses as noted. 10 We view it really as the hole that's missing in the donut. 11 And there's a variety of reasons for the property still 12 remaining undeveloped, which the Applicant can testify and 13 provide some background on momentarily. But we view this 14 application as a great opportunity to provide needed mixed- 15 use in a predominantly residential infield development of 16 the site. The -- as you noted, the staff report and 17 Planning Board recommendation recommend approval of the 18 local map amendment. We've heard your questions and are 19 happy to provide some additional clarity that maybe was 20 missing from the staff report. The Applicant I just want to 21 also note held a voluntary community meeting prior to 22 submitting this. And to this date we've received no 23 opposition or any communication from the community on the 24 application. And through our witnesses we plan to 25 demonstrate that the application meets the floating zone</p>	<p>12</p> <p>1 just disclosing that.</p> <p>2 MS. ROGERS: Sure.</p> <p>3 HEARING EXAMINER ROBESON: So go ahead.</p> <p>4 MS. ROGERS: Thank you. And that is all for my opening 5 statement. So unless you have any additional questions, I 6 think we can --</p> <p>7 HEARING EXAMINER ROBESON: No, I -- I gave you mine.</p> <p>8 MS. ROGERS: Great. Thank you. So we will start with 9 Mr. Clark Wagner.</p> <p>10 MR. WAGNER: Should I move over here?</p> <p>11 MS. ROGERS: You will to move over here, yes.</p> <p>12 HEARING EXAMINER ROBESON: Please raise your right 13 hand. Do you solemnly affirm under penalties of perjury 14 that the statements you're about to make are the truth, the 15 whole truth and nothing but the truth?</p> <p>16 MR. WAGNER: Yes.</p> <p>17 HEARING EXAMINER ROBESON: Okay, go ahead.</p> <p>18 MS. ROGERS: Thank you. Please state your name and 19 primary occupation for the record.</p> <p>20 MR. WAGNER: It's Clark Wagner, vice president with 21 land acquisition and entitlements for Pleasants 22 Development.</p> <p>23 MS. ROGERS: And can you please just provide a brief 24 description of your educational and professional 25 background?</p>

Transcript of Administrative Hearing
Conducted on January 3, 2020

4 (13 to 16)

<p>13</p> <p>1 MR. WAGNER: Sure. I have a bachelor's degree from 2 Towson University and a masters from University of Virginia 3 School of Architecture. And then I worked for the city of 4 Gaithersburg for -- 5 HEARING EXAMINER ROBESON: Before you go there, are you 6 trying to qualify him as an expert? 7 MS. ROGERS: No, I just think his background can 8 provide some -- 9 HEARING EXAMINER ROBESON: For the weight of the 10 testimony? 11 MS. ROGERS: Exactly. 12 HEARING EXAMINER ROBESON: Okay. Because we don't 13 usually have the client act as an expert. So this is why I 14 was checking. Go ahead. I'm sorry to interrupt. 15 MR. WAGNER: That's okay. So following the city of 16 Gaithersburg, I worked for Bozzuto, a residential -- 17 regional residential developer for many years. Left there 18 in 2012 and went to Pleasants. So I've been at Pleasants 19 for about seven years and been working one of the -- on 20 this project as well as many other since that time. 21 HEARING EXAMINER ROBESON: Okay, thank you. 22 MS. ROGERS: Great. And if you wouldn't mind, could you 23 just provide a brief background also on Pleasants and their 24 relevant experience in the area? 25 MR. WAGNER: Sure. Pleasants Development Company is a</p>	<p>15</p> <p>1 MS. ROGERS: Okay. And can you provide a little 2 background on existing conditions and kind of the diligence 3 you done to date on the transmission lines for example that 4 run to the property? 5 MR. WAGNER: Sure. A couple of things about the 6 property, the 118 went right to the middle and it was 7 relocated many years ago and sort of left the transmission 8 lines that ran long old 118 as well as what is now called 9 Liberty Mill Road. Liberty Mill Road was -- a cul-de-sac 10 was installed, but the transmission lines were left there 11 because they are -- they have a lot of different carriers, 12 including Pepco, Comcast, Montgomery County. 13 HEARING EXAMINER ROBESON: Who -- are they -- who 14 owns -- well, I guess it's a utility. 15 MR. WAGNER: They are Pepco. 16 HEARING EXAMINER ROBESON: They are Pepco lines? 17 MR. WAGNER: Yes, they are Pepco poles. 18 HEARING EXAMINER ROBESON: Poles, I mean. 19 MR. WAGNER: Correct. 20 HEARING EXAMINER ROBESON: And you've got a Pepco piece 21 kind of in the middle of the northern part of the 22 application. 23 MR. WAGNER: I was going to get to that. So -- 24 HEARING EXAMINER ROBESON: Keep going. 25 MR. WEBSTER: The utility lines are there and then</p>
<p>14</p> <p>1 land development company that does some apartment and hotel 2 development. But for the most part, we are a land 3 development company. One company out of several in the 4 Pleasants group of companies, related construction 5 companies. And so we are in Virginia and Maryland 6 regionally, doing about 300 to 350 lots per year in terms 7 of volume. 8 MS. ROGERS: Okay. And can you please describe the 9 ownership structure of the property and some of the 10 existing features and why, in your belief, the property 11 still remains undeveloped? 12 MR. WAGNER: Sure. So this property dates back before 13 my time at Pleasants, but I started working on it when I 14 got there in 2012. It was proposed to be rezoned in the -- 15 I think it was 2006 or '07. And that was withdrawn because 16 the economy had undergone a huge downturn. And so it's been 17 sitting there. And since that time, the Mona (phonetic) and 18 Phillips family who owns about half, and the Pleasants 19 group owns the other half, had been working for many years 20 trying to come to an agreement on how to develop the 21 property together. There was some efforts on the Mona and 22 Phillips part to sell off their piece and nobody really 23 wanted to purchase their property without our property. So 24 we finally came to an agreement and formed a joint venture 25 which brings us here today.</p>	<p>16</p> <p>1 Pepco owns a piece of property for future use as a 2 substation. And we've been talking with Pepco over the 3 years -- talking about would they sell the property and 4 they flat out said no over and over again. We talked about 5 a land swap. 6 HEARING EXAMINER ROBESON: They're famous, Pepco for 7 being -- well, anyway. I digress. Go ahead. 8 MR. WAGNER: I agree with your statement. So we talked 9 about a land swap. And it just -- the bureaucracy of 10 Pepco -- it wasn't going to be conducive to us to get 11 anything done with them in a reasonable amount of time. So 12 we kind of threw our hands up and said we're going to have 13 to go about this without Pepco. 14 HEARING EXAMINER ROBESON: What is -- what do you mean 15 a reasonable period of time? 16 MR. WAGNER: Well, their process to do any kind of real 17 estate transaction takes literally years and it didn't make 18 sense for us to go to that process. It would've pushed the 19 whole process of entitling the property out another two 20 years. And so we just made a business decision that that 21 didn't make sense. 22 HEARING EXAMINER ROBESON: Okay. Go ahead. 23 MS. ROGERS: Thank you. And Mr. Wagner, can you please 24 also just briefly -- I know you mentioned the various 25 ownerships of this property. Can you explain a little</p>

Transcript of Administrative Hearing
Conducted on January 3, 2020

5 (17 to 20)

<p>17</p> <p>1 further what legal interest Pleasants has in this 2 application and the property? 3 MR. WAGNER: So we own -- 4 HEARING EXAMINER ROBESON: Well, wait. Does he need to 5 testify to this? Because it's all -- I have read through 6 the various contracts in the record. 7 MS. ROGERS: The joint venture agreement? Okay. 8 HEARING EXAMINER ROBESON: So I do understand all the 9 trusts and the -- so is there a reason we need to -- 10 because that's not really related to zoning and -- 11 MS. ROGERS: Yeah. No, that's fine. I was just making 12 sure to understand -- make sure the record was clear in 13 terms of the joint venture agreement contracts. 14 HEARING EXAMINER ROBESON: No, I think what's in the 15 record keeps it clear. 16 MS. ROGERS: Okay, perfect. And then can you also 17 explain why you believe this site is so well situated for 18 the proposed mixed-use predominantly residential townhouse 19 development? 20 MR. WAGNER: Sure. We came to the conclusion that 21 townhomes being in high demand in Montgomery County right 22 now is the best way to go. And we didn't feel they were 23 appropriate up along Clopper Road and at the intersection. 24 HEARING EXAMINER ROBESON: Why did you think it was the 25 best way to go?</p>	<p>19</p> <p>1 HEARING EXAMINER ROBESON: You are busy. 2 MR. FOSTER: Yes. 3 HEARING EXAMINER ROBESON: Please, raise your right 4 hand. Do you solemnly affirm under penalties of perjury 5 that the statements you're about to make are the truth, the 6 whole truth and nothing but the truth? 7 MR. FOSTER: I do. 8 HEARING EXAMINER ROBESON: Thank you, go ahead. 9 MS. ROGERS: Thank you. Can you please state your name 10 and occupation for the record? 11 MR. FOSTER: Kevin Foster. I'm a certified planner and 12 landscape architect. 13 MS. ROGERS: And how long have you been employed as a 14 professional land planner and landscaper? 15 HEARING EXAMINER ROBESON: Okay. Let me just say, what 16 are you going to -- are you qualifying him as an expert? 17 Because he's qualified so many times and there is no 18 opposition, that I think -- what are you proposing him as 19 an expert in? 20 MS. ROGERS: In land planning. 21 HEARING EXAMINER ROBESON: Land planning. For the 22 record, Mr. Foster has already qualified numerous times. I 23 can probably recite his resume before us as an expert in 24 land planning. So to expedite this I'm going to accept him 25 as an expert in land planning.</p>
<p>18</p> <p>1 MR. WAGNER: Well, the other options being multifamily 2 are limited because of the master plan limitation on 3 density at 11 units per acre. And so to do 110 or so 4 apartments doesn't make sense from an apartment operations 5 standpoint because it's too small to support the amenities. 6 And the layout, trying to get around the environmental 7 features with apartments is not as easily done as it is 8 with townhomes. 9 HEARING EXAMINER ROBESON: So it's a business decision? 10 MR. WAGNER: Correct. 11 HEARING EXAMINER ROBESON: Go ahead. 12 MS. ROGERS: And lastly, just after the local map 13 amendment what can you explain what the next steps are that 14 you all will be pursuing in the development process? 15 MR. WAGNER: We will be filing a combined preliminary 16 final site plan after the rezoning. 17 MS. ROGERS: Thank you. And that concludes my questions 18 for Mr. Wagner. 19 HEARING EXAMINER ROBESON: Thank you. 20 MR. WAGNER: You're welcome. 21 MS. ROGERS: Next, I would like to call Mr. Kevin 22 Foster. 23 HEARING EXAMINER ROBESON: Mr. Foster -- 24 MR. WAGNER: Should I stay here or leave? 25 MS. ROGERS: Yeah.</p>	<p>20</p> <p>1 MS. ROGERS: Wonderful, thank you. 2 MR. FOSTER: Thank you. 3 HEARING EXAMINER ROBESON: So go ahead. 4 MS. ROGERS: Mr. Foster, are you familiar with the 5 local map amendment application that is before us today? 6 MR. FOSTER: Yes, I am. 7 MS. ROGERS: And can you briefly describe your 8 responsibilities for the local map amendment application? 9 MR. FOSTER: The responsibilities for my firm, 10 Gutschick, Little & Weber were to undertake the original 11 feasibility analysis, creating the NRIFSD, natural 12 resources inventory in forest stand delineation, conceptual 13 planning, and developing the floating zone plan itself. 14 MS. ROGERS: Great. And did you prepare a written 15 report this for the record? 16 MR. FOSTER: Yes. 17 MS. ROGERS: And is that the land-use report that's 18 identified as Exhibit 45 in the record? 19 MR. FOSTER: Yes, it is. 20 MS. ROGERS: Thank you. And have you made a personal 21 inspection of the site? 22 MR. FOSTER: I've been to the site many times. 23 MS. ROGERS: And did you prepare the natural resource 24 forest stand delineation? 25 MR. FOSTER: Yes, we did.</p>

Transcript of Administrative Hearing
Conducted on January 3, 2020

6 (21 to 24)

<p>21</p> <p>1 MS. ROGERS: And can you please briefly describe the 2 characteristics of the property that would also show up on 3 the natural resource forest stand delineation? 4 MR. FOSTER: Sure. What exhibit is that? I'm going to 5 refer to a copy of Exhibit 21, which is the natural 6 resources inventory and forest stand delineation, which was 7 approved back on July 24, 2018. To generally describe the 8 property the exhibit across the top of the property is -- 9 HEARING EXAMINER ROBESON: The north. 10 MR. FOSTER: The north. East to west is Clopper Road 11 across the top of the property. North and south along the 12 left side of the exhibit is Maryland Route 118. And along 13 the bottom of the property also going east to west is 14 Leaman Farm Road. The center of the property contains what 15 is left of old 118, old Germantown Road that was abandoned. 16 Not abandoned, was basically terminated when 118 was 17 relocated years ago. So now it is currently a road with no 18 activity on it and a cul-de-sac. There is currently a lot 19 of dumping activity at the end of the cul-de-sac because 20 there was no eyes on that road. The property itself is 21 vacant. Some of it is wooded. The center of it is an open 22 field that gets mowed every year and there are two stream 23 valleys, one that comes up basically at the intersection of 24 Leaman Farm Road and 118. And then there is another segment 25 of a stream valley that comes up between the subject</p>	<p>23</p> <p>1 MR. FOSTER: Where -- 2 HEARING EXAMINER ROBESON: Better than the one -- oh, 3 you didn't do the one we had the other day. Okay. Go ahead. 4 They had north -- it's a long story. Go ahead. 5 MR. FOSTER: North is generally up with Clopper Road 6 moving from right to left and 118 moving north and south in 7 the middle of the property. The subject property is in 8 yellow. And the surrounding neighborhood is in red. 9 Typically, surrounding neighborhoods aren't quite this 10 large. 11 HEARING EXAMINER ROBESON: Yeah, I was wondering that. 12 MR. FOSTER: Right. And I think staff was concerned 13 about using very discernible boundaries and not cutting 14 neighborhoods in half, just because if you look at the road 15 pattern, it didn't really give them a lot of options. But 16 the roads like Schaeffer road coming all the way down to 17 Richter Farm, you would have had to really just cut a 18 neighborhood in half. 19 HEARING EXAMINER ROBESON: Exactly. 20 MR. FOSTER: And, you know, there were similar 21 situations as you go up Great Seneca Highway with the 22 neighborhood to the north, that there was no good place to 23 cut without just arbitrarily cutting a neighborhood in 24 half. So as these areas all still are affected or somewhat 25 influenced by the activities really at 118 and Clopper</p>
<p>22</p> <p>1 property and Kingsview Village Center itself. The property 2 is currently zoned a mix of R200 for the majority of the 3 property. The lower southwest corner is R200 TDR. And I can 4 get into why that zoning occurred as we talk about the site 5 further. 6 MS. ROGERS: Thank you. And are you familiar with the 7 surrounding area boundaries that are identified by staff in 8 their staff report? 9 MR. FOSTER: Yes, I am. 10 MS. ROGERS: And in your professional opinion, do you 11 agree with the delineation of the neighborhood? 12 MR. FOSTER: I do. 13 MS. ROGERS: And in your professional opinion, is this 14 boundary typical of a neighborhood boundary? 15 MR. FOSTER: Staff report was exhibit -- 16 MS. ROGERS: Exhibit 44 and 49. 17 MR. FOSTER: This is -- I'm going to refer to a copy of 18 the surrounding neighborhood exhibit that was in the staff 19 report as figure 3 from the staff report, which depicts the 20 surrounding neighborhood, that staff -- the Department of 21 Planning staff had established as part of their analysis of 22 the subject property. And again, the exhibit east to west, 23 it's not quite the same orientation as the NRI, but is 24 pretty close -- 25 HEARING EXAMINER ROBESON: It's okay.</p>	<p>24</p> <p>1 Road, so they are part of the surrounding neighborhood, 2 it's just a larger reach then typically you would see in a 3 project. 4 HEARING EXAMINER ROBESON: I did wonder that. 5 MR. FOSTER: Yes. 6 HEARING EXAMINER ROBESON: Now, how would you 7 characterize the neighborhood? 8 MR. FOSTER: Well, the neighborhood is -- 9 HEARING EXAMINER ROBESON: And before you answer, it 10 seems to me, with that large a neighborhood, and it is 11 predominantly residential because you've gone so far out. 12 MR. FOSTER: Right. 13 HEARING EXAMINER ROBESON: Closer to the property, you 14 have the fire station, the village center, the park and 15 ride. So you can say it's predominantly residential, but 16 the immediate environs -- I would like to hear what you say 17 about that. 18 MR. FOSTER: Right. I think you're right. In total, the 19 surrounding neighborhood is very residential in character. 20 And when you really zoom into more of the central core of 21 that surrounding neighborhood, the closer effects of the 22 subject property. Yet the village center directly to the 23 southeast, I guess. And then you also have the Kingsview 24 Village Center Apartments to the southeast. Directly across 25 the street we have Kings Mill Apartments. Across --</p>

Transcript of Administrative Hearing
Conducted on January 3, 2020

7 (25 to 28)

<p>25</p> <p>1 directly across 118 we have the fire station and then a 2 larger vacant area that is eventually going to be a school 3 site. The Board of Education owns the site off of Schaeffer 4 Road. 5 HEARING EXAMINER ROBESON: Okay. And what is north 6 on -- north -- down -- I didn't bring my pointer. The 7 one -- I guess it would be north across Clopper. 8 MR. FOSTER: Okay. 9 HEARING EXAMINER ROBESON: That, that right there. 10 MR. FOSTER: So this is the other -- the old 118 going 11 the other direction, going north. And there is -- on the 12 east side there is a small retail strip and a gas station. 13 And on the west side of old 118, it's residential. 14 HEARING EXAMINER ROBESON: Is there a community center 15 somewhere there? I thought I saw -- 16 MR. FOSTER: The community center is on the northeast 17 corner of 118 and Clopper Road. There is a community center 18 and the middle school together. 19 HEARING EXAMINER ROBESON: So can you give me a 20 character of the neighborhood that accounts for more -- 21 instead of predominantly residential, that accounts more 22 for some of the -- 23 MR. FOSTER: Well, I think it's more of a mix. It's 24 more of a mix that you would expect to see in any village 25 center where it is a larger predominance of commercial with</p>	<p>27</p> <p>1 townhouses on the opposite side of Clopper Road. So there's 2 currently a mix of apartments, towns, and really commercial 3 in this area. And what we are planning to do is really add 4 to that with a similar density with what is across Clopper 5 Road providing a little more of a diversity of housing 6 types for what's on the south side of Clopper Road. 7 HEARING EXAMINER ROBESON: What's the density across 8 Clopper Road? 9 MR. FOSTER: Well, the density across Clopper Road, I 10 would have to pull the zoning map out. Let me see here. 11 HEARING EXAMINER ROBESON: So you're saying this adds 12 to the existing mix? 13 MR. FOSTER: Yes. 14 HEARING EXAMINER ROBESON: Okay. Go ahead. 15 MR. FOSTER: The existing zoning map was exhibit -- 16 MS. ROGERS: 13. 17 MR. FOSTER: 13. So I'm now referring to a copy of 18 Exhibit 13. And if you examine the zoning of properties 19 directly across Clopper Road, the townhouses right on the 20 corner are RT8. So 8 dwelling units to the acre. And the 21 larger area just to the east of the gas station where the 22 other townhouses are located is R200 6.4. So 6.4 dwelling 23 units an acre. 24 HEARING EXAMINER ROBESON: What are you per acre? 25 MR. FOSTER: Well, we have 10 point --</p>
<p>26</p> <p>1 residential mixed in. 2 HEARING EXAMINER ROBESON: Okay. 3 MR. FOSTER: I think you have to -- it really gets back 4 into, which we will get into, the master plan, and where 5 that original village center was supposed to be. 6 HEARING EXAMINER ROBESON: Right. 7 MR. FOSTER: And I think that has influenced some of 8 the development here and why this piece is still vacant. 9 HEARING EXAMINER ROBESON: Thank you. 10 MS. ROGERS: And Mr. Foster, while we are focusing on 11 the surrounding area, I think it might be a good 12 opportunity to address one of the Hearing Examiner's 13 questions about -- if you can just briefly describe why you 14 believe the scale of this development will blend into the 15 surrounding area. 16 MR. FOSTER: Sure. So as we get back into a little 17 further into the discussion that we just started about, 18 what is the character of this area. And looking at this 19 more in total, our site is not really isolated on its own. 20 It's obviously part of a bigger neighborhood. Maybe not 21 necessarily as big as staff has originally delineated. But 22 if you look at more of the core area, it's a mix of 23 commercial and residential. Right now it's a mix of 24 commercial with the village center, apartment residential. 25 There is a little bit of multi -- not multifamily --</p>	<p>28</p> <p>1 HEARING EXAMINER ROBESON: I'm trying to get the 2 apples -- I was trying to get to apples to apples and I 3 couldn't. And I guess it depends on whether you segregate 4 out the residential portion or you use the whole tract. 5 MR. FOSTER: Well, if you consider the whole, we have 6 10.28 acres and 60 townhouses. 7 HEARING EXAMINER ROBESON: So your six -- so you are 8 six to use -- 9 MR. FOSTER: Roughly. 10 HEARING EXAMINER ROBESON: Okay. 11 MR. FOSTER: So we are clearly within the range. Even 12 if you were to take the commercial out, we are still not 13 out of the range of similar townhouses in the area. 14 HEARING EXAMINER ROBESON: Okay, thanks. 15 MS. ROGERS: And Mr. Foster, is there any other 16 additional testimony relevant that you would like to add to 17 Mr. Wagner's testimony as far as why you believe this 18 property remains undeveloped? 19 MR. FOSTER: Sure. And I guess I can probably get into 20 it now that the -- there's a couple of reasons why this 21 piece remains a hole in the donut, as you would say. And a 22 lot of it has to do with the, obviously the fragmented 23 property ownership. This is a copy of the ID plat which is 24 exhibit -- 25 MS. ROGERS: Is that the partnership breakdown?</p>

Transcript of Administrative Hearing
Conducted on January 3, 2020

8 (29 to 32)

<p>29</p> <p>1</p> <p>2 MR. FOSTER: No, there is an ID -- identification --</p> <p>3 UNIDENTIFIED SPEAKER: (inaudible).</p> <p>4 MR. FOSTER: And it should've been in the records.</p> <p>5 MS. ROGERS: Oh, yes, Exhibit 14.</p> <p>6 MR. FOSTER: Exhibit 14, okay. As you know, you say</p> <p>7 that you had seen the relationships between all of the</p> <p>8 families and the investment partnerships, you know, with</p> <p>9 six, basically six properties and right of ways. It's a</p> <p>10 very complicated piece. And if you go back to the master</p> <p>11 plan, which we're going to get into, you will see that --</p> <p>12 and I would like to introduce this as a -- what's the next</p> <p>13 exhibit number?</p> <p>14 HEARING EXAMINER ROBESON: It's --</p> <p>15 MS. ROGERS: 55.</p> <p>16 HEARING EXAMINER ROBESON: 55.</p> <p>17 MR. FOSTER: 55.</p> <p>18 HEARING EXAMINER ROBESON: Clopper Village -- oh, how</p> <p>19 would you describe it?</p> <p>20 MR. FOSTER: This is the Clopper Village concept</p> <p>21 diagram from the Germantown master plan.</p> <p>22 HEARING EXAMINER ROBESON: Thank you.</p> <p>23 (Exhibit 55 was introduced into the record.)</p> <p>24 MR. FOSTER: And not to get too complicated, they were</p> <p>25 talking about village -- Kingsview Village Center that's</p>	<p>31</p> <p>1 be just east of that we could actually have one ownership,</p> <p>2 get it built. You had enough intersections facing to have a</p> <p>3 traffic light away from these two traffic lights basically</p> <p>4 in the middle for the volume of traffic for a village</p> <p>5 center. You know, because that's different than the volume</p> <p>6 of traffic for 60 townhouses. And you know, with the</p> <p>7 village center volume of traffic they had to put a traffic</p> <p>8 light in there. So it kind of dictated with this</p> <p>9 development had to be. So having said all of that, I think</p> <p>10 that had a major effect on why this piece never was</p> <p>11 developed. Given that it was recommended originally for</p> <p>12 PD11 I think everybody looked at these pieces of land and</p> <p>13 said that's great, it's got the density. But how do we get</p> <p>14 all of these little pieces of land to come together and</p> <p>15 make it work.</p> <p>16 MS. ROGERS: Thank you. And so with that, I think it's</p> <p>17 a nice segment into discussing the master plan in greater</p> <p>18 detail. Can you, for the record, just identify what the</p> <p>19 relevant master plan is for this property?</p> <p>20 MR. FOSTER: The 2000 -- excuse me. The 1989 Germantown</p> <p>21 master plan.</p> <p>22 MS. ROGERS: Thank you. And have you reviewed the 1989</p> <p>23 Germantown master plan?</p> <p>24 MR. FOSTER: I have.</p> <p>25 MS. ROGERS: And based on your review of the master</p>
<p>30</p> <p>1 not actually in the Kingsview Village Planning area.</p> <p>2 HEARING EXAMINER ROBESON: I know.</p> <p>3 MR. FOSTER: It's in the Clopper Village planning area.</p> <p>4 But there were a number of -- I don't know whether you</p> <p>5 would classify them as errors or in-depth analysis that I</p> <p>6 don't think was done back when this original master plan</p> <p>7 was put together. The village center, the Kingsview Village</p> <p>8 Center was shown at the intersection of Clopper Road and</p> <p>9 Germantown Road, basically at the location of the subject</p> <p>10 property.</p> <p>11 HEARING EXAMINER ROBESON: Right.</p> <p>12 MR. FOSTER: But if you look at what it really takes to</p> <p>13 get a village center to be built and the amount of land and</p> <p>14 intersections facing and a lot of technical things that</p> <p>15 would make a village center work here, between the stream</p> <p>16 valleys and where the intersections were, it would be very</p> <p>17 difficult to get enough area to put an entire village</p> <p>18 center at the corner. So even though in the plan it looks</p> <p>19 great because of the big open area, if you overlaid the</p> <p>20 stream valleys, it dramatically reduced the development</p> <p>21 area in the corner. And put on top of that the road rights-</p> <p>22 of-way, splitting it in half, and multiple ownership, I</p> <p>23 think everybody realized not too long after that, that that</p> <p>24 was not really going to be the place that worked. They had</p> <p>25 to find a larger buildable piece of land, which ended up to</p>	<p>32</p> <p>1 plan, in your professional opinion, is the proposed</p> <p>2 development in substantial conformance with the master</p> <p>3 plan?</p> <p>4 MR. FOSTER: Yes, it is.</p> <p>5 MS. ROGERS: And can you please provide some</p> <p>6 explanation as to how the proposed development and subject</p> <p>7 application meets the goals and recommendation of the</p> <p>8 master plan?</p> <p>9 MR. FOSTER: Sure. So I'm now referencing the German --</p> <p>10 the 1989 Germantown master plan. In the very beginning, the</p> <p>11 plan highlights which are the overviews of the master plan.</p> <p>12 They provide a number then that are directly relevant to</p> <p>13 the subject property. On page 1; providing opportunities</p> <p>14 for employment land for a variety of businesses and</p> <p>15 enterprises, or providing commercial area for business</p> <p>16 enterprises that are going to serve this neighborhood,</p> <p>17 increasing the County's total housing stock and</p> <p>18 concurrently providing an appropriate mix of housing types.</p> <p>19 Well, we are certainly adding to the total housing stock.</p> <p>20 This master plan called for an additional 5,000 units in</p> <p>21 just the Germantown area. Providing safe and efficient, and</p> <p>22 adequate transportation system. We're providing basically a</p> <p>23 public interconnection that is not there today. Currently</p> <p>24 the Liberty Mill Road is cul-de-saced and doesn't really</p> <p>25 serve the neighborhood. And our plan today is really to</p>

Transcript of Administrative Hearing
Conducted on January 3, 2020

9 (33 to 36)

<p>33</p> <p>1 interconnect that and make it more of an interconnected 2 part of the neighborhood and part of the community and 3 provide better pedestrian and vehicle access to the 4 community. Increasing transit serviceability; this is a 5 perfect transit site when it -- if you consider that part 6 of the Kingsview Village Center was a county parking lot 7 and that's directly adjacent to the site where they have 8 bus service. You can pick up a bus and head directly to the 9 Metro. The residents here will be able to live in these 10 houses, not have to get in their car, and get on the bus, 11 go to work, come home, walk to the grocery store, walk 12 home, and really embodies the vision of service -- transit 13 serviceability in the master plan. Encouraging the 14 preservation of natural resources; I think we do that. And 15 we are going to get into the discussion about the natural 16 resources as we get further into the discussion of the 17 plan. If you look in the land-use section of the three -- 18 page 3, the objective to provide a wide range of housing 19 and employment opportunities for the community. We are 20 providing townhouses, which is one of the housing types 21 that are in this area. And the master plan as I mentioned 22 previously does recommend on this page -- recommends 23 increasing the total number of housing units from 32,000 to 24 37,000. So an increase of 5,000 townhouses. Excuse me, 25 dwelling units. But at the same time, and I wanted to</p>	<p>35</p> <p>1 it to be, closer to the village center. If you look -- and 2 this would be exhibit -- what's going to be the next 3 Exhibit 50 -- 4 MS. ROGERS: 56. 5 MR. FOSTER: 56. This is a -- this is a color analysis 6 of CL6, which is the analysis area in the Clopper Village 7 of the -- 8 HEARING EXAMINER ROBESON: Okay. Can you do me a favor? 9 MR. FOSTER: Sure. 10 HEARING EXAMINER ROBESON: We're cheap. Could you write 11 56 on that? 12 (Exhibit 56 was introduced into the record.) 13 MR. FOSTER: Sure. 14 HEARING EXAMINER ROBESON: And you know what? I 15 neglected to ask you to write 55 on the Clopper -- 16 MR. FOSTER: We got it here. 17 HEARING EXAMINER ROBESON: Oh, you do? 18 MR. FOSTER: Yes. 19 HEARING EXAMINER ROBESON: Okay. So this is a color 20 analysis of CL6? 21 MR. FOSTER: Yes, a color analysis of CL6. To make it a 22 little visually easier to identify the land-use as they 23 currently exist in CL6 -- now CL6 was one of the sub 24 analysis areas in the Clopper Village and it happened to 25 encompass the subject property. So this exhibit, again,</p>
<p>34</p> <p>1 address this, the master plan also recommends a decrease in 2 the proportion of single-family detached units from 50 3 percent -- 4 HEARING EXAMINER ROBESON: What page is that? 5 MR. FOSTER: Page 3. And there was a number of other 6 references to that through the master plan. And I wanted to 7 address that because we are proposing townhouses. So I 8 think it's directly relevant to our site. But the master 9 plan itself, it's not telling everyone not to build 10 townhouses. It was looking for a better balance in housing 11 types. When this master plan was written, half of the units 12 in the Germantown area were townhouses. And the master 13 plan's goal, this master plan's goal, was to try to get 14 that down closer to 30. So to -- so how that affects our 15 site, I think we can look at two things. One, the broader 16 surrounding neighborhood. If you look at the housing types 17 in this broader surrounding neighborhood, townhouses make 18 up about 20 percent of the total unit mix between multi- 19 families and the single families. Townhouses are about 20 20 percent. If you're adding in 60 new townhouses, that barely 21 has an effect on that number. So we are clearly, as this 22 neighborhood has developed, it has fulfilled the vision of 23 the master plan, where this area is not predominantly 24 townhouses. It's clearly a mix of multifamily, single 25 family. And most of that multifamily where you would expect</p>	<p>36</p> <p>1 Clopper Road east/west on the top of the exhibit, 2 Germantown Road, north/south to the left side. Subject 3 property are in the pink colors. And then the other land 4 uses in CL6, the village center, commercial is yellow. 5 There is a public future park at the corner of Maryland 6 Route 119 and 117 that was part of the village center. The 7 blue are multifamily. And then the tan are single-family 8 detached and single-family attached are the orange. So if 9 you look at just this, really drilling down into the 10 details looking at just this area, there is a total of 634 11 dwelling units already in place in this area. 7 percent of 12 those are townhouses today; 11 percent single-family 13 detached and 82 percent multifamily. So for a village 14 center area, that mix is not -- 15 HEARING EXAMINER ROBESON: I'm sorry. I apologize. 16 MR. FOSTER: Sure. 17 HEARING EXAMINER ROBESON: What was the -- can you do 18 the percentages again? 19 MR. FOSTER: Sure. The townhouses, there are currently 20 43 townhouses. And that makes up 70 percent of the total 21 housing types. 22 HEARING EXAMINER ROBESON: Okay. 23 MR. FOSTER: There are 70 single family detached, which 24 makes up 11 percent. And there are 521 multifamily units, 25 which makes up 82 percent.</p>

Transcript of Administrative Hearing
Conducted on January 3, 2020

10 (37 to 40)

<p>37</p> <p>1 HEARING EXAMINER ROBESON: Okay. Okay, thank you.</p> <p>2 MR. FOSTER: Okay. So for an analysis area that</p> <p>3 includes a village center, which is supposed to be the most</p> <p>4 intense developed areas in the master plan, higher</p> <p>5 multifamily would be expected for sure. And detached and</p> <p>6 townhouses are also included for that mix. So our proposal</p> <p>7 is to add 60 into that, which would bring up the single-</p> <p>8 family -- the detached -- excuse me -- the single family</p> <p>9 attached number to 15 percent. So it's still a -- it's half</p> <p>10 of what the overall master plan recommended, but certainly</p> <p>11 within the realm of what you expect to see in a village</p> <p>12 center, that would probably have a higher percentage of</p> <p>13 multifamily. Okay. So back to the discussion then of</p> <p>14 townhouses in the master plan. That was part of the answer</p> <p>15 as to why or how we -- everybody, if the whole development</p> <p>16 industry has really respondent to the master plan, then</p> <p>17 clearly than this area has fulfilled the master plan. The</p> <p>18 other issue with townhouses, especially back in the '80s,</p> <p>19 was townhouses themselves. They had a lesser connotation</p> <p>20 than they do today. And I think that's because of the</p> <p>21 majority of townhouses that were built back in the '80s</p> <p>22 were front garage units or units that face parking lots.</p> <p>23 And so consequently, that vision didn't lend itself -- that</p> <p>24 type of townhouse didn't lend itself to community building.</p> <p>25 As planning has evolved over the last 30 years, the</p>	<p>39</p> <p>1 townhouses --</p> <p>2 MR. FOSTER: Yes.</p> <p>3 HEARING EXAMINER ROBESON: Would that be one of the --</p> <p>4 in the intent clauses of the -- I forget whether it's the</p> <p>5 floating seven or the purpose of the CRMF. It says response</p> <p>6 to changing economic and planning development. Would that</p> <p>7 fit within that criteria that you --</p> <p>8 MR. FOSTER: Yes, it would. Clearly it would.</p> <p>9 HEARING EXAMINER ROBESON: Okay. I'm just trying to</p> <p>10 cover all the dots.</p> <p>11 MR. FOSTER: Sure.</p> <p>12 HEARING EXAMINER ROBESON: So now let's get to the --</p> <p>13 I -- or do you want water before you get to the</p> <p>14 environment?</p> <p>15 MR. FOSTER: I'll take you up on that.</p> <p>16 HEARING EXAMINER ROBESON: Okay. The environment.</p> <p>17 MR. FOSTER: Okay. I'm now referring back to the</p> <p>18 natural resources inventory. We have a copy of it in our</p> <p>19 NRIFSD to begin to try to explain the environmental issues</p> <p>20 on the site. We undertook the job of putting together the</p> <p>21 natural resources inventory and forest delineation. And as</p> <p>22 part of that we also used wetland consultants to analyze</p> <p>23 and delineate waters of the U.S. and weapons. So we take</p> <p>24 the information from our weapons consultants, put it</p> <p>25 together with our information on the trees, and the soils</p>
<p>38</p> <p>1 planners have really begun to use townhouses as a tool to</p> <p>2 build communities. But that's using rear garage townhouses.</p> <p>3 They can create a rich streetscape --</p> <p>4 HEARING EXAMINER ROBESON: With open space and there is</p> <p>5 something in the fun of it?</p> <p>6 MR. FOSTER: Correct. You can create a real pedestrian</p> <p>7 scale to the street and really a good neighborhood feel.</p> <p>8 And that's what we are trying to do using the same type of</p> <p>9 unit in our planning here with the subject property. So</p> <p>10 moving on. On page 4, transportation. To provide roadway</p> <p>11 and transit systems that adequately serve the planned land-</p> <p>12 use anticipated levels of service. Again, we are at a</p> <p>13 transit location next to a park and ride. We are providing</p> <p>14 new interconnectivity in the neighborhood. I think we are</p> <p>15 providing that roadway and transit system and really</p> <p>16 playing up that transit system by adding more density where</p> <p>17 it can be used next to a transit element. Environment; to</p> <p>18 protect natural resources while permitting intense</p> <p>19 development. And I suppose we can get into the environment</p> <p>20 a little bit now, since that is one of your questions and</p> <p>21 it also is one of the findings of the master plan that we</p> <p>22 have to really talk about.</p> <p>23 HEARING EXAMINER ROBESON: Before you go there --</p> <p>24 MR. FOSTER: Sure.</p> <p>25 HEARING EXAMINER ROBESON: Your testimony about the</p>	<p>40</p> <p>1 and all of the other elements required for forest</p> <p>2 delineation, submit that to Park and Planning. They review</p> <p>3 all the information and then approve what they agree are</p> <p>4 the stream valley buffers, the forest stands, specimen</p> <p>5 trees here they said, okay. This is your starting point. We</p> <p>6 all agree this is it. Here, it's approved. So we had this</p> <p>7 approved back on July 24 of '18. Just a little history;</p> <p>8 right prior to this getting approved was the beginning of</p> <p>9 basically a year worth of rain that set an all-time record</p> <p>10 for rainfall in this region for year. And living on a farm</p> <p>11 I see it all the time. The biggest impact is that raises</p> <p>12 the groundwater level. With that much rain, the</p> <p>13 groundwater -- water soaks into the ground, but it</p> <p>14 basically recharges the groundwater system. And as you keep</p> <p>15 getting more rain, and more rain, and more rain, the</p> <p>16 groundwater system rises and you can go back and look at</p> <p>17 historical data from a lot of monitoring stations in this</p> <p>18 region and see that there was yes, a dramatic rise in</p> <p>19 groundwater level. Well, the effects of raising the</p> <p>20 groundwater level is water comes out of new places in the</p> <p>21 ground. And in our case, we had intermittent streams to a</p> <p>22 certain point. And those -- just a little historical data.</p> <p>23 Those points were actually mapped originally when Kingsview</p> <p>24 Village Center was done because the stream valley buffer on</p> <p>25 the east side was shown on the Kingsview Village NRI. And</p>

Transcript of Administrative Hearing
Conducted on January 3, 2020

11 (41 to 44)

<p>41</p> <p>1 the end of the stream was in the exact same place we 2 originally showed it. That hasn't changed over however many 3 years. 4 HEARING EXAMINER ROBESON: Can -- just for the 5 record -- 6 MR. FOSTER: Yes. 7 HEARING EXAMINER ROBESON: Sometimes the Council looks 8 at environmental issues pretty closely. Can you just 9 explain what an intermittent stream and what an ephemeral 10 stream is? 11 MR. FOSTER: An ephemeral stream is a channel -- a 12 channel in a swale or wherever that only response to a rain 13 event, where the only time there would be any water in that 14 channel is after it rains. Just basically sending the water 15 downhill. An intermittent stream is a stream where 16 intermittently there will be water in that stream channel 17 that is not just responding to a rain event, but is in fact 18 responding to groundwater, or the depth of the groundwater. 19 So that's really the difference. 20 HEARING EXAMINER ROBESON: Thank you. 21 MR. FOSTER: Okay. So on this NRI we had an 22 intermittent stream. And then above that intermittent 23 stream was an ephemeral channel. And that ephemeral channel 24 led up to a storm drain outfall further into the site that 25 is connected to storm drains up on Clopper Road and Liberty</p>	<p>43</p> <p>1 of these ephemeral channels. And they are concerned that 2 these are actually streams, they are not ephemeral 3 channels. Our position on that was this was a one-time 4 event that was not an actually long-term event. It was a 5 short-term blip and does not really demonstrate what an 6 intermittent stream is over time. It may demonstrate it for 7 a month or two or however long that groundwater was very 8 high, out of a non-normal rain situation, but as things 9 settle back to what has been historically been shown to be 10 normal, if you look back to the history to 20 years ago 11 what was normal, we think what we had shown originally was 12 correct. Park and Planning wanting to be as cautious as 13 possible said, no, we want you to show expanded buffers for 14 these areas that are questionable at the moment and case 15 sometime in the future whatever, that my continued to be 16 the case. So typically, the reason you do an NRI is that 17 everybody starts from the same playing field. 18 HEARING EXAMINER ROBESON: I understand that. 19 MR. FOSTER: Right. 20 HEARING EXAMINER ROBESON: I understand that. 21 MR. FOSTER: And so now we were -- we submitted all 22 these plans and done all this work and we were being caught 23 by an event that didn't really seem to be what historically 24 was out there, but Park and Planning wanting to protect as 25 much of the environment as they can and being cautious</p>
<p>42</p> <p>1 Mill. 2 HEARING EXAMINER ROBESON: Which way does this property 3 slope? 4 MR. FOSTER: The property slopes generally from Clopper 5 Road down to Leaman Farm Road generally. Okay. 6 HEARING EXAMINER ROBESON: Okay. 7 MR. FOSTER: A little bit -- some of it -- 8 HEARING EXAMINER ROBESON: Drains to the west. 9 MR. FOSTER: Drains over to 118, but even most of that 10 eventually comes down along the street and down to one of 11 the two stream valleys along Leaman Farm Road. 12 HEARING EXAMINER ROBESON: Okay. 13 MR. FOSTER: Okay. And then there was a second stream 14 that comes out of a culvert on Leaman Farm where it used to 15 be a continuous stream valley, the main stream valley in 16 this area. But that was put in a pipe when Leaman Farm Road 17 came through. And so there is still a piece of it 18 remaining. Then it goes into a pipe, goes across 118, and 19 there is a large wetland area on the west side of 118 that 20 really feeds that stream. Okay. So long story short, we had 21 disapproved in July. We start the planning process later in 22 '18, and in '19 submit the plans to Park and Planning. And 23 this is now after a year of rain that we've had that the 24 plans got submitted. Park and Planning goes out to the site 25 and now with the groundwater so high there is water in some</p>	<p>44</p> <p>1 about it, like they should, said no, we want you to try to 2 protect as much environment as possible. But at the same 3 time, they were very cognizant of this parcel's place in 4 the neighborhood next to a village center and not wanting 5 to overly impact the development and the value of that 6 development for things like transit, and helping this 7 neighborhood fill the hole in the middle here. So there was 8 a balance I think, trying to be -- 9 HEARING EXAMINER ROBESON: Well, I don't know if it's a 10 balance. It's just not addressed. So you know, what I read 11 into the staff report is they decided to punt it to later. 12 Maybe that's too colloquial, but -- 13 MR. FOSTER: I mean -- 14 HEARING EXAMINER ROBESON: Are the stream valleys you 15 are showing right now, do they include -- do they -- just 16 for argument's sake, say it is an intermittent stream. Do 17 your stream valley buffers -- are they based on as if that 18 was an intermittent stream? Or are they based on whether 19 it's an ephemeral stream? 20 MR. FOSTER: Well, ephemeral streams don't have any 21 stream valley buffer to -- ephemeral channels. 22 HEARING EXAMINER ROBESON: No, I mean -- okay. Are -- 23 okay. Okay, you are right. Do your stream valleys -- are 24 they based on having it be an intermittent stream on the 25 FCP? Or on the -- are they based on whether it's -- that</p>

Transcript of Administrative Hearing
Conducted on January 3, 2020

12 (45 to 48)

<p>45</p> <p>1 it's an intermittent stream?</p> <p>2 MR. FOSTER: Okay. I'm now referring to a copy of the</p> <p>3 preliminary forest conservation plan, which is exhibit --</p> <p>4 MS. ROGERS: 22.</p> <p>5 MR. FOSTER: 22. The buffers shown on this --</p> <p>6 MS. ROGERS: Oh, I'm sorry. It was revised. It's</p> <p>7 Exhibit 37-A.</p> <p>8 MR. FOSTER: 37-A. I will write that down so I won't</p> <p>9 forget it. The buffers are shown on the current flooding</p> <p>10 zone plan and preliminary forest conservation plan assume</p> <p>11 that the ephemeral channels are intermittent streams. Yes,</p> <p>12 so it has --</p> <p>13 HEARING EXAMINER ROBESON: Why do you have storm water</p> <p>14 in the buffers?</p> <p>15 MR. FOSTER: Well, we were trying to, again, find that</p> <p>16 balance of being able to develop the site and protect the</p> <p>17 environment itself. These are ESD stream water management</p> <p>18 features.</p> <p>19 HEARING EXAMINER ROBESON: I know.</p> <p>20 MR. FOSTER: So -- I mean, typically --</p> <p>21 HEARING EXAMINER ROBESON: Wait. Wait. I shouldn't say</p> <p>22 I know, because you need to explain it for the record.</p> <p>23 MR. FOSTER: Right. Okay. So unforested buffer areas,</p> <p>24 you typically -- you can -- Park and Planning in the past</p> <p>25 has allowed you to grade into those as long as you mitigate</p>	<p>47</p> <p>1 about the streams themselves.</p> <p>2 MS. ROGERS: Okay. And Mr. Foster, while we're speaking</p> <p>3 about the environmental features on-site, can you please</p> <p>4 provide some background on the Planning Board's action on</p> <p>5 the preliminary forest conservation plan as it relates to</p> <p>6 the buffers?</p> <p>7 HEARING EXAMINER ROBESON: I'm looking for the --</p> <p>8 excuse me. I'm looking for that. You sent -- you forwarded</p> <p>9 it to us. Can you give me one moment and just -- I'm going</p> <p>10 to -- I have some questions on it and -- well, let's go</p> <p>11 ahead. I don't want to hold things up. So go ahead.</p> <p>12 MR. FOSTER: The -- you know, as part of the local map</p> <p>13 amendment, we did file a preliminary forest conservation</p> <p>14 plan.</p> <p>15 HEARING EXAMINER ROBESON: Right.</p> <p>16 MR. FOSTER: And that was approved with the --</p> <p>17 MS. ROGERS: This is the --</p> <p>18 HEARING EXAMINER ROBESON: I don't have the Planning</p> <p>19 Board's written -- do you have the Planning Board's written</p> <p>20 resolution approving --</p> <p>21 MS. ROGERS: I don't think it's been mailed yet because</p> <p>22 they didn't adopt the resolution on the same day. They were</p> <p>23 going to adopted at their next Planning Board hearing.</p> <p>24 HEARING EXAMINER ROBESON: Okay. I have that. Somewhere</p> <p>25 I have the staff report. Oh, here it is. Okay. This is on</p>
<p>46</p> <p>1 or re-forest that area is always you're not building</p> <p>2 buildings in those areas, not putting parking lots. But</p> <p>3 they have allowed encroachments on other sites. They've</p> <p>4 done it right across the street where you have</p> <p>5 encroachments into stream valleys and you mitigate for it;</p> <p>6 you replant it and you provide additional buffers,</p> <p>7 whatever. But that's not -- this is not a -- this is not a</p> <p>8 new thing to stream valley buffers, forest conservation.</p> <p>9 Here we are trying to use very low impact stormwater</p> <p>10 management areas and just trying, on the edges, to use that</p> <p>11 area and provide what we feel is protection for -- in our</p> <p>12 opinion it is more protection for really the streams out</p> <p>13 there. Even being ultra-cautious and saying, okay, even if</p> <p>14 this ephemeral channel has some water in it today, we will</p> <p>15 provide the buffer that is basically going to create a</p> <p>16 stream buffer out of it even if it's not really a stream.</p> <p>17 And still being able to develop the site. So I think</p> <p>18 that's --</p> <p>19 HEARING EXAMINER ROBESON: Well, you can develop the</p> <p>20 site. Why can't you -- well, I guess you would lose units.</p> <p>21 MR. FOSTER: Right.</p> <p>22 HEARING EXAMINER ROBESON: Okay.</p> <p>23 MR. FOSTER: So that's where the plan is today with the</p> <p>24 stream valley buffers and how they got to that point.</p> <p>25 Michael Basco (phonetic) is here and he can actually talk</p>	<p>48</p> <p>1 page 2 of this, of the forest -- on the staff report for</p> <p>2 the forest conservation plan.</p> <p>3 MR. FOSTER: Right.</p> <p>4 HEARING EXAMINER ROBESON: Are you on page 2?</p> <p>5 MR. FOSTER: Yes.</p> <p>6 HEARING EXAMINER ROBESON: CA?</p> <p>7 MR. FOSTER: Yes.</p> <p>8 HEARING EXAMINER ROBESON: What's all that about? If</p> <p>9 you can answer. If you want your environmental expert to</p> <p>10 answer, that's fine. But --</p> <p>11 MR. FOSTER: Do you have a copy of the final</p> <p>12 conditions?</p> <p>13 MS. ROGERS: I do somewhere. I'm looking for it.</p> <p>14 HEARING EXAMINER ROBESON: Well, why don't you tell me</p> <p>15 what they are saying here, because I don't understand. You</p> <p>16 are saying everything is fine and you set the stream valley</p> <p>17 back and they are saying no. So let's go through the staff</p> <p>18 report first and then you can tell me about the Planning</p> <p>19 Board's recommendations, which I haven't even seen. So go</p> <p>20 ahead.</p> <p>21 MR. FOSTER: Well, I don't -- the -- as far as I</p> <p>22 understand it, the first is, exact details regarding</p> <p>23 locations of storm water management has to do with --</p> <p>24 HEARING EXAMINER ROBESON: No, I'm talking about -- I'm</p> <p>25 looking at the staff report for the preliminary forest</p>

Transcript of Administrative Hearing
Conducted on January 3, 2020

13 (49 to 52)

<p>49</p> <p>1 conservation plan. And capital A says corrected --</p> <p>2 MR. FOSTER: Oh, sorry. You are looking at the</p> <p>3 actual -- I was looking at -- in their staff report. Sorry.</p> <p>4 HEARING EXAMINER ROBESON: Oh, it's okay.</p> <p>5 MR. FOSTER: Well, the final --</p> <p>6 HEARING EXAMINER ROBESON: If you want to do for</p> <p>7 this -- if you are not the person to ask, just tell me.</p> <p>8 MR. FOSTER: I can certainly answer this.</p> <p>9 HEARING EXAMINER ROBESON: Okay.</p> <p>10 MR. FOSTER: Now, so were these the -- what was</p> <p>11 actually --</p> <p>12 MS. ROGERS: Those are the final conditions.</p> <p>13 MR. FOSTER: Right.</p> <p>14 MS. ROGERS: Just to make sure we have the right staff</p> <p>15 report.</p> <p>16 MR. FOSTER: Okay. The final approved conditions --</p> <p>17 HEARING EXAMINER ROBESON: No, I don't want that. I</p> <p>18 want you to tell me about what staff is talking about here.</p> <p>19 MR. FOSTER: Okay.</p> <p>20 HEARING EXAMINER ROBESON: In 1-A.</p> <p>21 MR. FOSTER: Okay. All right. Well they were --</p> <p>22 HEARING EXAMINER ROBESON: Do you need a copy?</p> <p>23 MR. FOSTER: Well, I'm just looking --</p> <p>24 HEARING EXAMINER ROBESON: Here.</p> <p>25 MR. FOSTER: I just want to make sure I'm --</p>	<p>51</p> <p>1 law.</p> <p>2 MR. FOSTER: Right. But the issue was -- you know, we</p> <p>3 relied on information from our experts who is going to be</p> <p>4 testifying. So he's a wetland scientist and very well</p> <p>5 known.</p> <p>6 HEARING EXAMINER ROBESON: Okay. So you believe one</p> <p>7 thing.</p> <p>8 MR. FOSTER: Right.</p> <p>9 HEARING EXAMINER ROBESON: They believe another.</p> <p>10 MR. FOSTER: Well, I don't know that they believe</p> <p>11 another. They just -- I don't think certain staff had the</p> <p>12 opportunity to go out there and verify it. We, based on our</p> <p>13 information, whether it's from the NRI or from our experts,</p> <p>14 we are confident that we have covered every possibility of</p> <p>15 what could be included in that stream valley buffer.</p> <p>16 HEARING EXAMINER ROBESON: Okay. Well, go through those</p> <p>17 items if you could.</p> <p>18 MR. FOSTER: Okay. The second one is correct excluded</p> <p>19 areas -- excluded --</p> <p>20 HEARING EXAMINER ROBESON: No, corrected delineation of</p> <p>21 streams, wetlands, and their buffers.</p> <p>22 MR. FOSTER: That was eliminated from what was approved</p> <p>23 by the board.</p> <p>24 HEARING EXAMINER ROBESON: Just tell me why it's in</p> <p>25 there.</p>
<p>50</p> <p>1 HEARING EXAMINER ROBESON: You can take mine.</p> <p>2 MR. FOSTER: Right. Okay. So I'm looking at the same</p> <p>3 thing. So the Applicant must submit and obtained approval</p> <p>4 of a final forest conservation plan with (inaudible). So</p> <p>5 that's very typical. The A1 was eliminated from the</p> <p>6 approved conditions.</p> <p>7 HEARING EXAMINER ROBESON: But tell me why staff put it</p> <p>8 in there.</p> <p>9 MR. FOSTER: I think there was something --</p> <p>10 HEARING EXAMINER ROBESON: Or I can ask staff. I may</p> <p>11 ask staff on some of this because I'm not sure staff is in</p> <p>12 total agreement with what you are saying. So go ahead.</p> <p>13 MR. FOSTER: I think there was some concern with staff</p> <p>14 about the fact that just -- typically, the forest -- the</p> <p>15 NRI is approved by staff and --</p> <p>16 HEARING EXAMINER ROBESON: So this is all about a</p> <p>17 potential change condition that occurred after the NRIFSD</p> <p>18 was approved?</p> <p>19 MR. FOSTER: Correct.</p> <p>20 HEARING EXAMINER ROBESON: But how do you answer that?</p> <p>21 I mean, the environmental regulations are the environmental</p> <p>22 regulations. The NRIFSD is a stage of approval. But you</p> <p>23 still -- that doesn't give you an out to --</p> <p>24 MR. FOSTER: Well no, it doesn't. But --</p> <p>25 HEARING EXAMINER ROBESON: Complying with the current</p>	<p>52</p> <p>1 MR. FOSTER: Well, I think the issue was staff really</p> <p>2 didn't know if their opinion was where that stream ended.</p> <p>3 And they hadn't gone out there and flagged it.</p> <p>4 HEARING EXAMINER ROBESON: Okay. And then corrected the</p> <p>5 areas excluded from that tract area.</p> <p>6 MR. FOSTER: That has to do with the PUEs down here</p> <p>7 that were previously dedicated. Typically, you can deduct</p> <p>8 previously dedicated areas, but staff's opinion was you</p> <p>9 might be using those PUEs and you might be disturbing</p> <p>10 those. So you need to include them. You can't deduct them</p> <p>11 out of a no tract area.</p> <p>12 HEARING EXAMINER ROBESON: Okay.</p> <p>13 MR. FOSTER: So that was that. Corrected forest</p> <p>14 planting; so it kind of goes back to that exact area as if</p> <p>15 we are taking that out of the net tract area and we have to</p> <p>16 include that in either clearing or planting. So if --</p> <p>17 HEARING EXAMINER ROBESON: Forestation, yeah.</p> <p>18 MR. FOSTER: Right.</p> <p>19 HEARING EXAMINER ROBESON: Okay.</p> <p>20 MR. FOSTER: Correct areas of existing forest. It all</p> <p>21 really ties back to all these utilities that when we deduct</p> <p>22 these from the net tract area they also get deducted from</p> <p>23 the existing forest area.</p> <p>24 HEARING EXAMINER ROBESON: Okay.</p> <p>25 MR. FOSTER: So in your chart you have the net tract</p>

Transcript of Administrative Hearing
Conducted on January 3, 2020

14 (53 to 56)

<p>53</p> <p>1 area, but you also have an existing forest area. 2 HEARING EXAMINER ROBESON: Right. 3 MR. FOSTER: So if you have had one back in, yet at the 4 other back in. 5 HEARING EXAMINER ROBESON: Right. 6 MR. FOSTER: So that's really what that has to do with. 7 Six; storm water management grading to be removed from the 8 environmental buffers to the extent practical. So that was 9 staff's effort to say we might be okay with some impact 10 here, but we want you to get as much of it out of there as 11 possible. And -- 12 HEARING EXAMINER ROBESON: Keep going. 13 MR. FOSTER: Easement approach meant mitigation may be 14 located within corrected environmental buffers. Okay. So 15 one thing we haven't covered is an existing forest 16 conversation easement that's on site. 17 HEARING EXAMINER ROBESON: Yes. 18 MR. FOSTER: Okay. 19 HEARING EXAMINER ROBESON: .54 acres, is that it? 20 MR. FOSTER: Right. That was an existing easement that 21 was put on this site for mitigation for impacts across the 22 street in the town that's when the apartments were built 23 years ago. So there was an easement recorded. But when they 24 recorded that easement, now it seems that a lot of thought 25 wasn't put into if this site was ever developed, how --</p>	<p>55</p> <p>1 the written recommendation -- written resolution, which is 2 what I need anyway. You know, we will hold the record open 3 for it. So if you don't have an objection, I can take it in 4 just so we know what we are talking about. 5 MR. FOSTER: Okay. 6 HEARING EXAMINER ROBESON: Do you need a -- is this 7 your only copy? 8 MS. ROGERS: We have other copies. Not with us, but 9 yeah. 10 HEARING EXAMINER ROBESON: Okay. So this would be 57, 11 57, Planning Board's -- 12 (Exhibit 57 was introduced into the record.) 13 MS. ROGERS: And just to clarify for the record, the 14 Planning Board has on their January 9 hearing, the adoption 15 of the resolution. It should be mailed shortly thereafter. 16 HEARING EXAMINER ROBESON: So it was provided by staff. 17 I will just say staff. So why did they take away the 18 corrected delineation of the stream valley buffer? Or the 19 streams, wetlands, and their buffers? 20 MR. FOSTER: Well, there was significant, I think, 21 discussion before the board hearing with staff. And our 22 position is that we stand behind the buffers that were 23 shown here. Our experts, they are experts in the field and 24 they stand behind the stream valley buffers we have shown 25 here and we are confident they are not going to change. And</p>
<p>54</p> <p>1 where were you going to access the site. And typically, we 2 are required to access directly across from other 3 driveways. So the only place we could bring a public road 4 in was directly across from the apartments for safety and 5 for intersection spacing. But that impacted that existing 6 easement. 7 HEARING EXAMINER ROBESON: Right. 8 MR. FOSTER: So in approving of this plan, the board 9 said yes, you can abandon part of that easement, but it has 10 to be mitigated somewhere. And they are allowing us to 11 mitigate it on site. 12 HEARING EXAMINER ROBESON: Okay. 13 MR. FOSTER: Okay. So that's what all of those things 14 were about. 15 HEARING EXAMINER ROBESON: Okay. Now, why don't we -- I 16 have never seen the Planning Board's conditions of 17 approval. So do you have -- are these your notes of their 18 conditions of approval? Or -- 19 MS. ROGERS: These -- this is a red line of the 20 condition of approval that was given to us by the division 21 chief at the Planning Board hearing. It reflects what the 22 Planning Board voted on -- in approving the preliminary 23 forest conservation plan. 24 HEARING EXAMINER ROBESON: Well, I will take it in and 25 give it the weight it deserves and hopefully we will get</p>	<p>56</p> <p>1 we had that discussion with staff and I think we convinced 2 them that that was the case and that's why that was taken 3 off of the board. 4 MS. ROGERS: And if I can ask a question of Mr. Foster, 5 did -- 6 HEARING EXAMINER ROBESON: Did staff recommend deleting 7 that at the board? 8 MR. FOSTER: Yes. I mean, it was done prior to the 9 board. So, yes. 10 HEARING EXAMINER ROBESON: Wait, it was done prior to 11 the board? 12 MR. FOSTER: Right, prior to the board hearing. 13 HEARING EXAMINER ROBESON: So staff amended their staff 14 report? 15 MR. FOSTER: Well, they amended their conditions. 16 HEARING EXAMINER ROBESON: And they never told us about 17 it? 18 MS. ROGERS: They didn't amend the staff report. They 19 presented at the board hearing, revised conditions to the 20 board with these changes recommended. 21 HEARING EXAMINER ROBESON: Okay. 22 MS. ROGERS: Which will then be reflected in the 23 resolution when it comes out after next week's board 24 hearing. 25 HEARING EXAMINER ROBESON: Okay. It's nice to have the</p>

Transcript of Administrative Hearing
Conducted on January 3, 2020

15 (57 to 60)

<p>57</p> <p>1 latest. Go ahead.</p> <p>2 MS. ROGERS: Mr. Foster, I --</p> <p>3 HEARING EXAMINER ROBESON: Wait. Am I going to get a</p> <p>4 copy of their recommended -- what did they present to the</p> <p>5 board? Did they have a PowerPoint showing their changed</p> <p>6 conditions?</p> <p>7 MS. ROGERS: I believe these revised conditions were</p> <p>8 handed out in hard copy and were in the PowerPoint.</p> <p>9 HEARING EXAMINER ROBESON: Can I get a copy of those?</p> <p>10 The PowerPoint or anything that has -- and so I don't just</p> <p>11 have a piece of paper from somebody? So I have a record of</p> <p>12 what occurred?</p> <p>13 MS. ROGERS: Yeah, and when -- (inaudible) had sent</p> <p>14 over what she did into the record, which includes the</p> <p>15 Planning Board recommendation and staff report, she noted</p> <p>16 that as soon as the resolution is approved by the Planning</p> <p>17 Board on the January 9th hearing that they will for the</p> <p>18 actual resolution to the Hearing Examiner for the record.</p> <p>19 But we can also request that staff provide you --</p> <p>20 HEARING EXAMINER ROBESON: Well, I will request it.</p> <p>21 MS. ROGERS: In the interim.</p> <p>22 HEARING EXAMINER ROBESON: Go ahead.</p> <p>23 MS. ROGERS: Mr. Foster, I was just going to ask, in</p> <p>24 response to the Hearing Examiner's question about why</p> <p>25 condition 1B was eliminated, if the revised buffers that</p>	<p>59</p> <p>1 HEARING EXAMINER ROBESON: Is there a waiver for storm</p> <p>2 water management in the -- is there some waiver process</p> <p>3 that you have to go through?</p> <p>4 MR. FOSTER: I could probably let my -- Tim Longfellow</p> <p>5 testify to that.</p> <p>6 HEARING EXAMINER ROBESON: Okay. That's fine.</p> <p>7 MR. FOSTER: He would probably be the better person to</p> <p>8 answer that question for you.</p> <p>9 HEARING EXAMINER ROBESON: And you -- they eliminated</p> <p>10 the mitigation trees for the variance trees?</p> <p>11 MR. FOSTER: Yes, that -- so there are three variance</p> <p>12 trees on site. And policy by Park and Planning staff is</p> <p>13 that whenever you have a variance tree within a forest and</p> <p>14 you are paying the penalty for clearing that forest, you</p> <p>15 have already paid the penalty for clearing those variance</p> <p>16 trees. The only time you're mitigating for variance trees</p> <p>17 is when they are standalone trees out in the middle of</p> <p>18 greenfield and not in a forest. In this case, these were</p> <p>19 part of a forest. So that was just something that was</p> <p>20 incorrect in the staff report in the conditions.</p> <p>21 HEARING EXAMINER ROBESON: Okay.</p> <p>22 MS. ROGERS: So circling back I guess to the master</p> <p>23 plan, Mr. Foster, based on the information that you just</p> <p>24 presented, in your professional opinion, can you explain</p> <p>25 how the proposed development -- or summarize how the</p>
<p>58</p> <p>1 are shown on our preliminary forest conservation plan</p> <p>2 reflect the revised buffers that staff had asked us to show</p> <p>3 in our meetings with staff.</p> <p>4 MR. FOSTER: Yes, they do.</p> <p>5 MS. ROGERS: And based on your discussions with staff,</p> <p>6 is it your understanding that the -- and based on the</p> <p>7 revised conditions, that the revised buffers shown on the</p> <p>8 preliminary forest conservation plan align with staff's</p> <p>9 understanding of the environmental features on site?</p> <p>10 MR. FOSTER: They do.</p> <p>11 HEARING EXAMINER ROBESON: What is staff's</p> <p>12 understanding of the environmental features on site?</p> <p>13 MS. ROGERS: I think Mr. Foster is best able to answer</p> <p>14 that. But staff's understanding of the revised</p> <p>15 environmental features on site would be what the -- Mr.</p> <p>16 Foster testified to in terms of the expanded --</p> <p>17 HEARING EXAMINER ROBESON: That there is an</p> <p>18 intermittent stream --</p> <p>19 (Crosstalk)</p> <p>20 MS. ROGERS: Buffers to accommodate --</p> <p>21 HEARING EXAMINER ROBESON: Stream valley buffer.</p> <p>22 MS. ROGERS: A potential intermittent stream.</p> <p>23 HEARING EXAMINER ROBESON: Is there any environmental</p> <p>24 guidelines? I know it's ESD to the MEP.</p> <p>25 MR. FOSTER: Yes.</p>	<p>60</p> <p>1 proposed development meets the master plan's</p> <p>2 recommendations regarding environmental preservation?</p> <p>3 MR. FOSTER: Okay. So circling back to what we</p> <p>4 discussed about creating of these additional buffers and</p> <p>5 for areas that, for argument's sake, assume that they are</p> <p>6 intermittent streams, we have created stream valley buffers</p> <p>7 to the county standards and -- as if was an intermittent</p> <p>8 stream. Although we are, in some cases, having some storm</p> <p>9 water management in those buffers, but we are providing</p> <p>10 protection to the environmental features by creating that</p> <p>11 additional storm water management, I mean additional stream</p> <p>12 valley buffer area. We are not building parking lots in</p> <p>13 there. We are not putting play structures in there.</p> <p>14 Basically, we are adding plant material in there and</p> <p>15 grading and then we are mitigating for all of that, any</p> <p>16 impacts that might be there by additional planning,</p> <p>17 whatever it takes to mitigate for those encroachments so</p> <p>18 that the environment will be ultimately protected.</p> <p>19 HEARING EXAMINER ROBESON: And what is your mitigation?</p> <p>20 MR. FOSTER: Well, the areas that -- any areas that we</p> <p>21 are grading or clearing, we're going to have to replant</p> <p>22 those areas with trees. And with the ESD storm water</p> <p>23 management --</p> <p>24 HEARING EXAMINER ROBESON: Is that on-site?</p> <p>25 MR. FOSTER: Yes.</p>

Transcript of Administrative Hearing
Conducted on January 3, 2020

16 (61 to 64)

<p>61</p> <p>1 MS. ROGERS: Can I ask a point of clarification with 2 your question list? 3 HEARING EXAMINER ROBESON: Uh-huh. 4 MS. ROGERS: On -- because I just want to -- 5 HEARING EXAMINER ROBESON: That's a yes. I shouldn't go 6 mm-hm. Go ahead. 7 MS. ROGERS: Thank you. It was question six on the list 8 that you provided to us about what staff refers to when 9 they say additional environmental issues. I just wanted to 10 understand what that was coming from so I could make sure 11 that the correct -- 12 HEARING EXAMINER ROBESON: That's what they say in 13 their staff report. 14 MS. ROGERS: That's in the staff report? 15 HEARING EXAMINER ROBESON: Yeah. Yeah. I should have 16 given you pin sites. 17 MS. ROGERS: I just want to make sure the correct 18 witness can respond to that question. 19 HEARING EXAMINER ROBESON: You know what? I can take a 20 break -- we can take like a 10 minute break and I can -- I 21 can go through and find exactly where -- you know, do a 22 word search and find where exactly where I lifted the 23 language from if that helps, rather than leafing through. I 24 know it's in there, but I can't tell you at the moment 25 where it is.</p>	<p>63</p> <p>1 in conformance with applicable environmental laws. Usually 2 I get a -- these are just what drove my concerns. Generally 3 in conformance and then there is a paragraph on page 17, 4 the last paragraph regarding their safety concerns on the 5 electronic transmission line. Then on 18 the last sentence 6 of the last full paragraph; "however, the design and layout 7 of the project may undergo further modifications of 8 preliminary plan and site plan to address environmental and 9 right-of-way issues as well as other issues." That was a 10 question. And then again on page 19 it says, is generally 11 in conformance. I usually don't get language like that. I 12 usually get, is in conformance. So generally in conformance 13 with applicable -- although the issue of stream valley 14 buffering closurement and conservation easements circulation 15 number of units. So that is -- that language is what 16 generated my concerns because usually I -- usually there is 17 an approved storm water management concept plan, typically. 18 Or at least a letter from -- or an email from the County 19 saying, yeah, it looks good and there is -- and then I have 20 this thing saying it's generally in conformance. So that's 21 what generated my concern. 22 MS. ROGERS: Okay. Thank you for the clarification. 23 HEARING EXAMINER ROBESON: So are you ready with -- for 24 Mr. Foster to continue? 25 MS. ROGERS: Yes, we are.</p>
<p>62</p> <p>1 MS. ROGERS: I think that would be helpful. Or if you 2 remember kind of in what contexts it was mentioned. I just 3 want to make sure that I understand the context and no that 4 we are adequately -- 5 HEARING EXAMINER ROBESON: Yes, I understand. 6 MS. ROGERS: So however you feel is -- 7 HEARING EXAMINER ROBESON: Well, let me do this. Let me 8 take a break. You may need a break. Let me take a break and 9 I can word search it. It is an exact quote. 10 MS. ROGERS: Okay. 11 HEARING EXAMINER ROBESON: And so -- and your question 12 is a good one. So let me -- let's take a 10 minute break. 13 We will be back at 11:10 and we will continue our grilling 14 of Mr. Foster. 15 MS. ROGERS: Thank you. 16 HEARING EXAMINER ROBESON: Okay, thank you. And here 17 and pin sites those two. Okay. Now we are off the record. 18 Thank you. 19 (A short recess was taken.) 20 MS. ROGERS: Okay. Is everyone ready? We are back on 21 the record. Let me give you the pages. I did go through it 22 and find them. I think it's 17, page 17. That's one. 23 MS. ROGERS: Of the LMA staff report? 24 HEARING EXAMINER ROBESON: Yes. It says at the end of 25 the last full paragraph, staff says the site is a generally</p>	<p>64</p> <p>1 HEARING EXAMINER ROBESON: Okay. 2 MS. ROGERS: I think that it would be helpful to just 3 respond, Mr. Foster, to a few these points of 4 clarification. And then we can move back into the master 5 plan conformance. 6 MR. FOSTER: Okay. 7 MS. ROGERS: So Mr. Foster, as the Hearing Examiner has 8 pointed out, the staff report talks about general 9 conformance with the environmental laws and notes the 10 subsequent regulatory reviews. Can you please explain your 11 experience with Planning Board practice in terms of 12 deferring certain site-specific issues to subsequent 13 revelatory reviews? 14 MR. FOSTER: Okay. Well, typically, or in many cases, 15 staff will write the report and then they will have 16 conditions that are reflective of that report. In this case 17 they wrote the report, had conditions that were reflective 18 of that and that were modified at the hearing, or prior to 19 the hearing, based on discussions with staff. And after 20 review of that, the Planning Board approved the preliminary 21 forest conservation plan, which to me signified their 22 approval that we are providing the protections to the 23 environment based on the regulations of the county. I mean, 24 that's the job. 25 HEARING EXAMINER ROBESON: But that doesn't -- that</p>

Transcript of Administrative Hearing
Conducted on January 3, 2020

17 (65 to 68)

<p>65</p> <p>1 doesn't deal with the stormwater management. That's 2 approved by -- not by Park and Planning. 3 MR. FOSTER: Right, but their approval is -- 4 HEARING EXAMINER ROBESON: That deals with the PFCP. 5 MR. FOSTER: Right. 6 HEARING EXAMINER ROBESON: I'm -- 7 MR. FOSTER: Now typically, you know -- 8 HEARING EXAMINER ROBESON: And usually at this time I 9 at least have something. 10 MR. FOSTER: Well, I have had cases, and some recently, 11 which required as far as the submission for an LMA, is the 12 stormwater strategy, not an approved stormwater concept. 13 HEARING EXAMINER ROBESON: Usually there is a blessing 14 from the county on the stormwater management strategy. 15 MR. FOSTER: Well, I -- 16 HEARING EXAMINER ROBESON: That's been my experience. 17 MR. FOSTER: Okay. Well -- 18 HEARING EXAMINER ROBESON: Even if it's just an email 19 that says, hey, we looked it over. We think you can do it. 20 And that's what I don't have. 21 MR. FOSTER: You know, we are confident in our analysis 22 of the site and that we can provide the stormwater 23 management required for the site. 24 MS. ROGERS: And I think Mr. Longfellow can maybe 25 answer some of your questions on stormwater management in a</p>	<p>67</p> <p>1 Clopper Road, 118, Leaman Farm Road, the -- if you're 2 looking at the townscape design on page 13, primary 3 objective townscape design is twofold; to facilitate 4 development of an improved community identity, sense of 5 place for Germantown. And the second is to provide 6 necessary guidelines for transitions between larger scale 7 master plans and individual analysis areas at area 8 guidelines for specific areas. So in looking at this master 9 plan requirements, we took that into account in our -- and 10 the subject property by really filling in this hole in this 11 doughnut, really finalizing the final phase of the 12 Kingsview Village Center's gateway corner when you're 13 coming from Germantown itself and providing that community 14 identity and those linkages was an important part of the 15 design and part of compliance with the master plan. There 16 are specific recommendations on page 17 about Kingsview 17 Village Center which are not that stringent or they get 18 into more details when we get into the specific analysis 19 area. On page 17 it says, "Adjacent land uses and road 20 improvement should provide for adequate pedestrian access 21 to Kingsview Village Center." We are -- as part of the 22 subject property, the layout provides the interconnectivity 23 of the block, it provides direct pedestrian connection, 24 walkable connections through the sidewalks down to the 25 village center as required in the master plan. Under the</p>
<p>66</p> <p>1 little bit more detail. 2 HEARING EXAMINER ROBESON: Okay. 3 MS. ROGERS: Because I hear the questions. And Mr. 4 Foster, in your professional opinion, can the layout of the 5 site as currently shown on the floating zone plan -- or 6 does the layout of the site shown on the floating zone plan 7 submitted into the record address the environmental issues 8 that have been raised by planning staff today? 9 MR. FOSTER: Yes. 10 MS. ROGERS: I think I would like to go back to now 11 digging into the master plan in greater detail, the 12 projects conformance with that. 13 MR. FOSTER: Okay. 14 MS. ROGERS: And resume -- 15 MR. FOSTER: So getting back into -- 16 MS. ROGERS: Oh, go ahead. 17 MR. FOSTER: -- the detail of the master plan. The next 18 section is townscape design, which is an effort in the 19 Germantown master plan to look at the village centers, 20 which is one of the major components of this master plan 21 was the town center and then the associated village centers 22 and how they were designed and the linkages to those 23 designs. So in this case, we are adjacent to a village 24 center, Kingsview Village Center. And we are also adjacent 25 to some of the major linkages in this area, which were</p>	<p>68</p> <p>1 linkages, under townscape design, it says, "provide a 2 roadway network that enhances the character of the existing 3 and new development and a roadway design that -- elements 4 that respect the existing natural environment, provide 5 rights-of-ways that are sufficiently wide to prevent visual 6 and acoustical buffers, both man-made and natural." The 7 subject property that's providing those roadway networks as 8 we discussed with the connection of Liberty Mill Road from 9 Clopper Road down to Leaman Farm, it provided a road, where 10 we could provide it, based on safety standards and 11 protecting the environment by providing buffers. It also is 12 where dedicated right-of-way of the master plan standards 13 on Clopper Road where it's 150 foot right-of-way. There 14 will be some right-of-way dedication. 118, which is a 120 15 foot right-of-way already has sufficient right-of-way to 16 meet the master plan standards. Under the specific area 17 analysis, which we discussed earlier as we are in Clopper 18 Village, not actually Kingsview Village is CL6 and in 19 that -- in the paragraphs describing analysis area CL6, it 20 talks about two major portions of the analysis area. And 21 there separated by a stream valley and publicly owned land. 22 It says, "the eastern portion is located adjacent to 23 Clopper Road and extends from Great Seneca highway to 24 existing (inaudible) on 118." There has been a little bit 25 of misunderstanding along the way about what is the eastern</p>

Transcript of Administrative Hearing
Conducted on January 3, 2020

18 (69 to 72)

<p>69</p> <p>1 and western portions of this analysis area. And I thought I 2 would try to give a little clarity to that through a quick 3 exhibit that we put together back when we were working with 4 staff originally. And it would be Exhibit 57, now. 5 MS. ROGERS: 58. 6 MR. FOSTER: 58. 7 (Exhibit 58 was introduced into the record.) 8 HEARING EXAMINER ROBESON: And what do you call that? 9 MR. FOSTER: This is the analysis of area CL6. 10 HEARING EXAMINER ROBESON: I already have -- oh, that's 11 covering the -- 12 MR. FOSTER: It seems that the writer of the master 13 plan had to decide how they were going to deal with 14 describing this area and its directional orientation. 15 Because the stream valley they came to the site originally 16 came through on a 45° angle from southeast to northwest. 17 And if -- the eastern study area is clearly defined as an 18 area parallel to Clopper Road running from 118 to Great 19 Seneca Highway. So that's clearly the eastern area. The 20 problem is, when most people look at the plan, they are 21 looking at plan north as opposed to how it's described in 22 the master plan. 23 HEARING EXAMINER ROBESON: I see. Okay. 24 MR. FOSTER: It seems because the writer of the master 25 plan either had to -- you either it was going to be</p>	<p>71</p> <p>1 zoning map, the zoning lines are parallel as well. They 2 were anticipating when it was rezoned that Leaman Farm Road 3 as shown in the concepts would be parallel to 118. In fact, 4 if you actually lay a ruler from this intersection to the 5 other extent of Leaman Farm Road, it's a straight line. So 6 originally Leaman Farm Road was anticipated to go straight 7 across 118. And that's how the zoning was laid out. The 8 problem with that is, the realities of intersection spacing 9 and this intersection was too close to Clopper and 118 and 10 had to slide south. So the ultimate alignment for Leaman 11 Farm Road got pushed down. But that was after the zoning 12 was already in place. So that's why there is a little 13 corner of -- 14 HEARING EXAMINER ROBESON: TDR? 15 MR. FOSTER: TDR200, TDR in the corner, which seemed to 16 be an error of planning staff's original analysis of how 17 that road could get built. 18 MS. ROGERS: Mr. Foster, just to clarify, the master 19 plan specifically -- did the master plan specifically 20 recommend the TDR zone to be south of Leaman Farm Road? 21 MR. FOSTER: Yes. Everything to the east of Leaman Farm 22 where the stream valley was going to be PD11. 23 MS. ROGERS: Thank you. 24 MR. FOSTER: The -- you know, the second recommendation 25 in the master plan was that all of that PD11 area that's</p>
<p>70</p> <p>1 north/south or east/west because of this diagonal cut. And 2 he chose east/west even though it's a little off, but the 3 eastern area is clearly defined in the master plan. So we 4 know that is clearly the eastern area. And that area was 5 one designated for the village center originally at the 6 corner of Clopper in 118 and eventually made its way into 7 the middle of the site. And the second recommendation in 8 the master plan was all the remaining area in the eastern 9 study area was recommended for PD11, floating zone PD11. 10 So -- and it was also recommended for multifamily. So those 11 were the recommendations. And I just wanted to clarify what 12 areas were -- 13 HEARING EXAMINER ROBESON: That is helpful. 14 MR. FOSTER: Okay. Now the other issue that I just want 15 to point out, and I think going back to Exhibit 55, which 16 was the Clopper Village concept diagram, conceptually when 17 they laid this out using these concepts, Clopper Road was a 18 streamlined running southeastern to northwest. Leaman Farm 19 Road was envisioned as a parallel road to that. And looking 20 through other master-plan diagrams, these roads were always 21 parallel. And in the zoning, where did the zoning map go 22 to. 23 MS. ROGERS: It's on the opposite side of the storm 24 water management. 25 MR. FOSTER: It is. If you look at the copy of the</p>	<p>72</p> <p>1 remaining from the master plan be multifamily. And I just 2 wanted to go into a quick look at that and looking back at 3 Exhibit 56, which was the color analysis of the existing 4 conditions in the CL6 area, it shows the village center and 5 yellow, the blue, which is the multifamily that was rezoned 6 to PD11, which in fact really did include everything that 7 was -- well, it actually includes a little bit of the area 8 that was on the south side of that stream valley at one 9 time. But what it does show is that the area that remained 10 are 10.28 acres. You know, by the time you take out the 11 stream valley areas, the road dedication that now has 12 through the middle the site in order to get a public road 13 to standards where it has to meet, it's been subdivided 14 into three smaller areas that make it very difficult to 15 build what is typically multifamily, which takes much 16 larger plates and larger building areas that made this 17 configuration the property was left with, makes it somewhat 18 problematic and was one other factor that led into the 19 townhouse design as opposed to apartments on the site 20 because they are more flexible. The building footprints are 21 smaller. You can make them react better to very irregular 22 shaped pieces of property as we have here. I'm just looking 23 to see if there was any other major recommendations. Most 24 of the remaining recommendations have to do with -- there 25 was previously a gas station on the site, which was</p>

Transcript of Administrative Hearing
Conducted on January 3, 2020

19 (73 to 76)

<p style="text-align: right;">73</p> <p>1 eliminated. The master plan talked about there was still 2 possibly an area for -- it was appropriate for C-3 zoning, 3 which there was basically in the area where a gas station 4 used to set. In this case, it's still appropriate for 5 commercial. We felt that this site did lend itself to 6 mixed-use with both commercial and residential. The impacts 7 of noise and activity on Clopper Road where they are not 8 very conducive for single-family homes, they do work well 9 for commercial. They need the visibility. They can deal 10 with all the traffic. And in fact, one of those sites was 11 recommended for commercial in the last report. So again, I 12 think this plan goes a long way to fulfilling that vision 13 of what CL6 ultimately wanted to do. As far as highways and 14 transportation, I think I covered it a little bit. The 15 master plan rights-of-ways for Clopper Road is 150 foot 16 from 75 feet from centerline. So we will be designated 17 roughly 25 feet along Clopper Road. 118 is 820 foot right- 18 of-way, which was fully built out when the road was built. 19 The same with Leaman Farm Road come 100 foot right-of-way 20 that was fully dedicated at the time that it was 21 constructed. So currently there are no issues with 22 conformance to the master plan as far as highways go. And I 23 think that was about it. 24 MS. ROGERS: And Mr. Foster, just one final note on the 25 master plan. You provided a lot of testimony in terms of</p>	<p style="text-align: right;">75</p> <p>1 MR. FOSTER: Yes. 2 HEARING EXAMINER ROBESON: Does it have -- in the very 3 first page there is usually language like this -- 4 MS. ROGERS: That's what I was going to -- 5 HEARING EXAMINER ROBESON: Changes over time or 6 something like that. 7 MR. FOSTER: Yes, there is. Where did that end up? 8 HEARING EXAMINER ROBESON: Does that -- does this plan 9 have that? I can look it up if you can't put your finger on 10 it. 11 MR. FOSTER: Yes, here it is. It says, "master plans 12 generally look ahead to a time horizon of about 20 years 13 from date of adoption. Although it is intended that they 14 update and revise every 10 years. It is recognized that the 15 original circumstances at the time the plant or adoption 16 will change over time. And the specifics of the master plan 17 may become less relevant as time goes on." 18 HEARING EXAMINER ROBESON: So it does have that? 19 MR. FOSTER: Yes. 20 HEARING EXAMINER ROBESON: Okay. I just wanted to 21 double check. Go ahead. 22 MS. ROGERS: That was my question. Thank you. That 23 concludes my questions for the master plan unless the 24 Hearing Examiner had any other specific questions. 25 HEARING EXAMINER ROBESON: That's fine.</p>
<p style="text-align: right;">74</p> <p>1 how the project meets both the general intent and specific 2 intense contained in the master plan. Could you also 3 briefly discussed the age of the master plan and its 4 relevance to those findings? 5 MR. FOSTER: Right. And I talked about a little bit in 6 the beginning about a lot of issues in master plans. They 7 do evolve, but they are still the master plans and they 8 have to, I think, take that into consideration. But when we 9 were discussing the use of townhouses and how back in the 10 '80s there was a -- less of a reliance or a want to use 11 townhouses. But today it's a much more popular product 12 because of how it helps planners create communities. It 13 creates a much better streetscape, much better open space, 14 relationship with the units. You don't have big parking 15 lots. Your street are not covered by garages. We have a 16 very good scale on the street and we can move these units 17 up to the street as we are proposing, and have a very 18 walkable community with interspersed open spaces to be part 19 of that community and really create an identity. So that I 20 think is one of the times when you see a master plan change 21 would be like this. 22 MS. ROGERS: And is the -- I'm sorry. Did you have a 23 question? 24 HEARING EXAMINER ROBESON: I'm sorry. Does the -- you 25 have the full plan in front of you, don't you?</p>	<p style="text-align: right;">76</p> <p>1 MS. ROGERS: Okay. Mr. Foster, have you reviewed the 2 official zoning map for the property? 3 HEARING EXAMINER ROBESON: I have. 4 MS. ROGERS: And what is the current zoning 5 classification? 6 MR. FOSTER: It is a combination of R200 and R200 TDR. 7 And you just provided testimony as to why the TDR6 overlay 8 zone is mapped on the small portion of the property. Are 9 the proposed residential townhouse and commercial uses 10 permitted in the commercial residential neighborhood 11 floating zone? 12 MR. FOSTER: Yes. Townhouses are permitted by right in 13 the CRNF zone along with retail under 5,000 square feet. 14 Retail over 5,000 square feet is a limited use and we meet 15 the requirements for the limited use on this site because 16 we are having -- we are going to site plan and we will not 17 be having any retail over 15,000 square feet. 18 MS. ROGERS: Thank you. So those two standards that you 19 just referenced are the standards for the limited use in 20 the zoning ordinance in section 3.5.11.B2A? 21 MR. FOSTER: Yes. 22 MS. ROGERS: Thank you. Can you please briefly explain 23 the overall planning concept that we are proposing on the 24 floating zone plan? 25 MR. FOSTER: Sure. So I'm referring to a copy of the</p>

Transcript of Administrative Hearing
Conducted on January 3, 2020

20 (77 to 80)

<p>77</p> <p>1 floating zone plan that's currently in the record. And the 2 layout itself as we've discussed already, the general 3 layout of the property with Clopper Road, basically east 4 west and north of the site and 118 north/south on the west 5 of the site, the plan is to extend Liberty Mill Road to a 6 point probably midway of the site connecting to Leaman Farm 7 Road and across from Kingsville Apartments will be 8 abandoning part of Leaman Farm Road where the cul-de-sac in 9 existing prescriptive rights-of-way exist today. And that's 10 why the rights of ways were included in this rezoning. 11 Because of the time -- 12 HEARING EXAMINER ROBESON: Well, it will be abandoning 13 Liberty Mill Road. 14 MR. FOSTER: Parts of Liberty Mill Road, yes. 15 HEARING EXAMINER ROBESON: I thought you said Leaman 16 Farm. 17 MR. FOSTER: Sorry, Liberty Mill. 18 HEARING EXAMINER ROBESON: No, it's okay. 19 MR. FOSTER: Parts of Liberty Mill Road where the cul- 20 de-sac exists today will be abandoned. And then there will 21 be new dedications of parts of Liberty Mill Road plus 22 Public Road A which connects Liberty Mill Road to 118. The 23 idea was then to create a pedestrian friendly community 24 with street front townhouses interspersed with open spaces 25 throughout the site. We didn't want to really create any</p>	<p>79</p> <p>1 MR. FOSTER: One issue is that whole term transmission 2 line. These are not 250 KVV lines like you see running 3 across -- 4 HEARING EXAMINER ROBESON: The high ridge line or 5 whatever. 6 MR. FOSTER: Right. 7 HEARING EXAMINER ROBESON: Okay. 8 MR. FOSTER: These are -- 9 HEARING EXAMINER ROBESON: I did have that question. 10 MR. FOSTER: Right. I think that word is very deceptive 11 because these are telephone poles with lines you see on 12 many public streets all over the place. They are not 13 serving these individual houses. So they are not at the 14 lowest voltage, but they are not -- and so these lines that 15 are here are serving the community in general. They are not 16 just -- 17 HEARING EXAMINER ROBESON: What voltage are they? Do 18 you know? 19 MR. FOSTER: I -- 20 HEARING EXAMINER ROBESON: It's okay. 21 MR. FOSTER: Tim Longfellow might be able to, but I -- 22 HEARING EXAMINER ROBESON: Okay. That's okay. 23 MR. FOSTER: I don't know off the top of my head. So 24 the issue is these lines are not different than any other 25 lines you typically see whether it's lines down Clopper</p>
<p>78</p> <p>1 big grid here because it was really going to chop the site 2 of too much. 3 HEARING EXAMINER ROBESON: It's too constrained. 4 MR. FOSTER: Right. So we used the townhouses 5 themselves to create smaller blocks. So there's basically 6 three blocks contained within the site that have their own 7 types of identities and their own frontages, but they all 8 link together along Liberty Mill Road and then out to 9 Clopper and Leaman Farm to connect to the village center 10 and the park and ride lot. We also have two commercial 11 parcels up along Clopper Road with the buildings up against 12 the street really creating that street front. It has that 13 street identity. That's really the idea so that when you're 14 up along Clopper Road you are really interacting with the 15 buildings, not big parking lots and parking behind them to 16 some degree to really create that streetscape and really 17 that image as you come off of -- come off of 118, turn to 18 Clopper, come into the village center, that we have those 19 architectural elements along that edge leading into the 20 village center. So that was really the crux of what the 21 design was about. 22 MS. ROGERS: Thank you. And I know Mr. Wagner also 23 already touched on this. But could you also briefly discuss 24 the location of the transmission line and how the project 25 has been designed to ensure safety?</p>	<p>80</p> <p>1 Road or any place else. The issue with safety is you have 2 to be at least 10 feet back horizontally from any wires. So 3 if we have a transmission line, the face of our building 4 has to be at least 10 feet back from those arms on the 5 wires. That's the requirement that Pepco has and that the 6 safety requirement. And we have an even greater setback 7 along the lines that -- along the units that parallel this 8 frontage. We intentionally moved them back even further. 9 HEARING EXAMINER ROBESON: What is your setback along 10 those lines? 11 MR. FOSTER: We have about 20 feet from the face of the 12 units to the lines themselves, at a minimum, to provide 13 that additional setback. 14 HEARING EXAMINER ROBESON: Okay. 15 MR. FOSTER: Because there is a couple of things going 16 on down through here. One of the old -- one of the 17 transmission lines or electric lines, I think is a better 18 terminology. There is also a water line down there that 19 used to run down the bed of old 118 that's still there. So 20 this electric lines in the water lines running down through 21 the site, kind of bisecting it, which was one of the other 22 design elements that we had to really deal with. 23 HEARING EXAMINER ROBESON: Do those polls have 24 loading -- wind loading fall radiuses? 25 MR. FOSTER: As far as fall radiuses, I'm not aware</p>

Transcript of Administrative Hearing
Conducted on January 3, 2020

21 (81 to 84)

<p>81</p> <p>1 that there is a requirement for a fall radius for a 2 telephone pole. Not like you would have for cell tower, 3 something that's very, very tall. 4 HEARING EXAMINER ROBESON: Okay. 5 MS. ROGERS: And Mr. Foster, can you please I guess 6 describe, based on your history with similar projects in 7 the county in our discussions we've had with staff, the 8 discussions that have been had to date on the transmission 9 lines, have they focus more on safety or design aesthetics? 10 MR. FOSTER: A lot of it has been design aesthetics and 11 some safety, but mostly the design aesthetics but that's 12 really, I think the element that staff wanted to put these 13 underground. But the problem is the cost for undergrounding 14 power lines is quite prohibitive. And that's why there has 15 still been ongoing discussion about undergrounding these 16 lines. 17 MS. ROGERS: And Mr. Foster, just a few more points of 18 clarification. Is this an optional or standard method of 19 development project? 20 MR. FOSTER: It's a standard method development 21 project. And typically under standard method, you are not 22 required to underground utilities like you would on an 23 optional method project like in a CBD or a town center. 24 MS. ROGERS: And is the underground, the issue of 25 undergrounding utilities something that's typically</p>	<p>83</p> <p>1 and requirements of division 59-5, there are specific 2 intents and purposes that are set forth for a commercial 3 residential neighborhood. 4 HEARING EXAMINER ROBESON: I think it's 59.1.2. And 5 then 59.5.3.2. 6 MS. ROGERS: 59, yeah, 1.2? 7 THE WITNESS: There it is. 8 HEARING EXAMINER ROBESON: I just, for the record. The 9 numbers are tough. I have to say it's like the building 10 code and the fire code, but go ahead. 11 MS. ROGERS: I agree. 12 HEARING EXAMINER ROBESON: What is the intent of all 13 floating zones, 5.1.2. 14 MS. ROGERS: 5.1.2, correct. Thank you. So there the 15 ordinance outlines three intents for the floating zones, 16 the first of which is to implement comprehensive planning 17 objectives. I know we've touched on this, but in your 18 professional opinion can you please just summarize how the 19 proposed project would further the intents of all of the 20 applicable plans? 21 THE WITNESS: Sure. Well, there is -- under 5.1.2A 22 there are three intents that have to do with implementing 23 comprehensive planning objectives. One is furthering the 24 goals of the general plan, applicable master plan, 25 functional master-planned. Two is ensuring that the</p>
<p>82</p> <p>1 addressed at the time of floating zone plan or is it 2 addressed with a later plan? 3 MR. FOSTER: It's usually addressed at a more detailed 4 later plan because it's all about the details of the 5 engineering as to whether it's possible or not. 6 MS. ROGERS: All right. Thank you. And just -- I know 7 we briefly touched on this, but just for the record, does 8 an LMA require the preparation of a preliminary forest 9 conservation plan? 10 MR. FOSTER: Technically the LMA doesn't require it. 11 But if you look in the forest conservation regulations, it 12 does require it. 13 MS. ROGERS: Okay. And was a forest conservation plan 14 submitted to the board? 15 MR. FOSTER: Yes, it was. 16 MS. ROGERS: And was the forest conservation -- 17 preliminary forest conservation plan approved by the board? 18 MR. FOSTER: Yes. 19 MS. ROGERS: And do the -- does the preliminary forest 20 conservation plan that's in the record for the LMA reflect 21 the plan that was approved by the planning board? 22 MR. FOSTER: Yes, it does. 23 MS. ROGERS: Thank you. Now, I'm going to ask you a 24 series of questions based on your expertise and moving to 25 the zoning ordinance. So for the floating zone standards</p>	<p>84</p> <p>1 proposed uses are in balance with and supported by the 2 existing planned infrastructure in the general plan, master 3 plan, or functional plans. And allowing design flexibility 4 to integrate development into circulation networks, land- 5 use patterns, and natural features within, and connected to 6 the property. In my opinion, the subject property fulfills 7 these. It certainly meets the goals of the Germantown 8 master plan as I have gone through. It certainly of uses 9 here that are supported by the infrastructure that we're 10 putting in, the new road that we are building, the existing 11 roads and the capacity of those roads. And it is helping to 12 fulfill the intent of the master plans for providing 13 additional housing, and additional housing types, and 14 providing additional commercial employment uses and really 15 adding on to the commercial that is part of the Kingsview 16 Village Center. The Kingsview Village Center was originally 17 planned, or in the master plan, it was allowed to be up to 18 170,000 square feet. Right now, they are at about 110, so 19 there is still clearly a need for some additional 20 commercial in this area based on the master plan, and we 21 are also providing that. The zone certainly allows us the 22 flexibility to integrate this development into this a very 23 fractured piece of property by being able to bring in the 24 town houses, create the road network, create the open 25 spaces. It has a circulation network and a pattern that</p>

Transcript of Administrative Hearing
Conducted on January 3, 2020

22 (85 to 88)

<p>85</p> <p>1 fits well into this community and it will be compatible 2 with the surrounding neighborhoods. 3 MS. ROGERS: Thank you. The second intent is to 4 encourage the appropriate use of land. And can you briefly 5 describe how, in your professional opinion, this project 6 promotes that? 7 THE WITNESS: Well, there is encouraging appropriate 8 use of land there's three sections to that. Providing 9 flexible applicable bill it the to respond to changing 10 economics, demographics, planning trends that occur between 11 comprehensive district and sectional map amendments, 12 allowing various uses, building types, densities, as 13 determined by the property's size and base to serve a 14 diverse and evolving population, ensure that the 15 development satisfies the basic sustainable requirements. I 16 think as we talked earlier about how this development 17 proposal is responding to a changing planning trend, 18 economics of the site through the use of townhouses as 19 opposed to multifamily fulfills that portion of the 20 intents. By allowing different varying building types, it 21 allows us -- and densities, it allows us to deal with this 22 property size and the configuration to allow for different 23 housing types for you know, clearly and evolving 24 population. And from a sustainability perspective we are 25 using one, land where there is already the infrastructure</p>	<p>87</p> <p>1 THE WITNESS: Sure. The intent in establishing 2 compatible relationships between new and existing 3 neighborhoods, providing development standards and 4 compatibility standards to protect the character of 5 existing neighborhoods, allow design for flexibility, 6 provide mitigation for any negative impacts found to be 7 caused by the new use. In this case, we are putting in a 8 use that is very similar in density to other townhouse 9 developments within the community. It is providing similar 10 commercial along Clopper Road. It is the same character as 11 in the village center where all though the general 12 development standards will be establish a floating zone 13 plan the perimeter setbacks in the building height are 14 established at the floating zone plan, and are going to be 15 compatible with the surrounding neighborhood. 16 MS. ROGERS: Just to clarify what you said. The general 17 standards will be set at (inaudible) site plan? 18 THE WITNESS: Oh. Sorry. They will be set at site plan, 19 where the building height and perimeter standards are set 20 at floating zone plan. And what we had proposed with 21 building height and the setbacks will be, certainly 22 adequate and will be very similar character to the adjacent 23 neighborhoods. And allowing design flexibility, providing 24 mitigation against any negative impacts. In this case, I 25 don't really see negative impacts since we are really</p>
<p>86</p> <p>1 in place. There is already water, sewer; there is already 2 road access and utilities so we are not having to extend 3 the public infrastructure. We are building directly 4 adjacent to a park and ride which is going to provide a 5 transit friendly, low carbon footprint development which is 6 exactly what the master plans envisioned. 7 MS. ROGERS: Thank you. And then the last -- 8 HEARING EXAMINER ROBESON: I'm sorry. What was your 9 last point? That it is providing a low -- 10 THE WITNESS: Well, it is providing a carbon footprint 11 that will be lower because people don't have to drive their 12 cars. They can walk to the -- 13 HEARING EXAMINER ROBESON: I see. I see. 14 THE WITNESS: They can walk to the transit stop. 15 HEARING EXAMINER ROBESON: Transit. 16 THE WITNESS: Walk to the grocery store. This is a very 17 walkable community, which was envisioned for the village 18 center, and this is really part of that village center as 19 we develop all the way to the corner of 118 and Clopper 20 Road. 21 HEARING EXAMINER ROBESON: Thank you. 22 MS. ROGERS: Again part, and then the last intent is to 23 protect established neighborhoods. Can you briefly 24 summarize and can you provide us some testimony that 25 summarizes how this project accomplishes that?</p>	<p>88</p> <p>1 integrating with the in the neighborhood and provide a very 2 similar character with what's already there so that there 3 really won't be negative impacts for what we are proposing 4 to any of the community around us. 5 MS. ROGERS: Thank you. And then the purpose for the 6 CRN floating zone is outlined in 5.3.2 as the Hearing 7 Examiner noted. Can you please briefly describe how the 8 project meets the three purposes that are outlined in the 9 zoning ordinance? 10 THE WITNESS: The three purposes, allow development of 11 mixed-use centers and communities, a range of densities and 12 height flexible enough to respond to various settings, 13 allow flexibility and use for the site and provide mixed- 14 use development that is compatible with adjacent 15 developments. You know, as I previously discussed this site 16 really intends to be an extension of the village center, 17 which was already a mixed use development and we are really 18 just adding to that. Providing residential and commercial 19 at an appropriate density, and an appropriate layout. And 20 certainly, allowing a flexibility of uses for a very 21 fragmented site that has its and development challenges, 22 but using the right product and the right scale you can 23 provide a development that is extremely compatible with the 24 adjacent communities, and adjacent developments. 25 MS. ROGERS: Thank you. Next, I want to move into some</p>

Transcript of Administrative Hearing
Conducted on January 3, 2020

23 (89 to 92)

<p style="text-align: right;">89</p> <p>1 questions regarding the applicability of the commercial, 2 residential floating zone to this property. So in the 3 zoning ordinance 5.1.3.A prohibits a floating zone from 4 being approved on a property that is located in an 5 agricultural or rural residential zone. Is this property in 6 either an agricultural or rural residential zone? 7 THE WITNESS: No, it is not. The property is in R200 8 and R200 TDR overlay zone so it is not in either of those. 9 MS. ROGERS: Thank you. And if a floating zone is 10 recommended and a master plan no prerequisites are required 11 per section 5.1.3.B; is a floating zone recommended for 12 this property in the Germantown master plan? 13 THE WITNESS: In this case, the floating zone was 14 recommended in the master plan. It was PD11. 15 HEARING EXAMINER ROBESON: For the eastern portion of 16 the area, right? 17 THE WITNESS: Correct. For the eastern portion of the 18 area which would pretty much include this site. Especially 19 if you took into account the ultimate road alignment and 20 not the road alignment out of the concept. 21 HEARING EXAMINER ROBESON: Right. 22 MS. ROGERS: And can an application be made to rezone a 23 property to the PD zone? 24 THE WITNESS: In 2014 the zoning -- there was a new 25 zoning code approved in Montgomery County so PD11 zone can</p>	<p style="text-align: right;">91</p> <p>1 what a floating zone versus subsequent site plan. 2 THE WITNESS: Yeah. 3 MS. ROGERS: Section 35.3B provides that if a floating 4 zone is recommended in the master plan height must not 5 exceed that recommendation. Can you please, in your 6 professional opinion, explain what the height allowance was 7 in the PD zone and what the height is proposed by this 8 application? 9 THE WITNESS: Right. Well the height in the underlying 10 zone is 50 feet, the R200 zone. So that is just a basis. 11 But in the master plan it was recommended for PD11, there 12 were no specific recommendations in the master plan itself 13 for height. But there is a chart in the old zoning code 14 under the PD zone that described PD developments of certain 15 sizes, and one shows PD11 of less than a certain number of 16 units, which this parcel would fall into, which allows only 17 four stories or less. It didn't allow -- you had to have a 18 higher PD zone to go over four stories. So that's really 19 the only height requirement was in the previous zone. And 20 ultimately, and discussions with staff and what we felt was 21 appropriate the 50 feet would still allow that four stories 22 given a gable roof and, you know, whatever else is built, 23 and was of a scale that was compatible with this area so 24 that is how we came upon the 50 foot building height. 25 HEARING EXAMINER ROBESON: Are the garages underneath</p>
<p style="text-align: right;">90</p> <p>1 no longer be used. In the new zoning code there is an 2 opportunity to pick an appropriate sound that is similar to 3 the PD zone and the code gives you the option of picking 4 either the CRNF or the apartment floating sounds. It gives 5 you the choice of either. 6 MS. ROGERS: And in your professional opinion, can you 7 please explain why the commercial residential neighborhood 8 CRNF floating zone is more appropriate out of the two 9 options? 10 THE WITNESS: Well, in our opinion the site, given its 11 location at the corner of Clopper and 118 had -- really was 12 asking for, and had the need for some commercial because it 13 really seemed to be, you know, as the master plan and 14 vision, the whole village center was going to be at this 15 intersection at one time. But at this point it's an 16 appropriate spot for some commercial. The apartment 17 floating zone at this density, less than 20 dwelling units 18 an acre and less than 150 dwelling units total commercial 19 is not allowed. So really that really eliminated apartment 20 floating from a choice for what seemed to be a site that 21 really wanted to continue to be a mixed use site, have 22 commercial and residential. So that really led us to the 23 CRNF zone. 24 MS. ROGERS: Thank you. And I know you just mentioned 25 how development standards are handled on the CRNF zone, and</p>	<p style="text-align: right;">92</p> <p>1 the units? 2 THE WITNESS: Yes they are at the lower level. 3 HEARING EXAMINER ROBESON: Yeah. 4 THE WITNESS: Yes. 5 HEARING EXAMINER ROBESON: Okay. 6 MS. ROGERS: And the 50 foot height, is that in the 7 binding element on the floating zone plan? 8 THE WITNESS: Yes, it is. 9 MS. ROGERS: I think you briefly touched on the open 10 space requirements, but can you please, kind of walk 11 through a little bit more specific detail of how this 12 project will meet the open space requirements of the CRNF 13 zone? 14 THE WITNESS: Sure. There is actually two open space 15 requirements because we have two uses on the site. The 16 residential, the usual requirement is for, and open space 17 which is really the recreational open space, the usable 18 recreation open space around the buildings, where you have 19 sitting areas, (inaudible). Usable area is where people can 20 gather, really giving the community its character. For the 21 residential portion of the site you are required 10 percent 22 open space. The current plan shows roughly 12 percent. 23 There is a similar open space requirement for the 24 commercial portion. It is also 10 percent but it is public 25 open space. So it is open space that is really designed to</p>

Transcript of Administrative Hearing
Conducted on January 3, 2020

24 (93 to 96)

<p style="text-align: right;">93</p> <p>1 be adjacent to public rights of ways, part of the public</p> <p>2</p> <p>3 realm, and we have -- we are required to have 10 percent</p> <p>4 minimum, and we will meet that minimum. Those open spaces</p> <p>5 will be --</p> <p>6 HEARING EXAMINER ROBESON: Is that along the sidewalk</p> <p>7 at the front? The frontage on Clopper and Germantown roads?</p> <p>8 THE WITNESS: Yes.</p> <p>9 HEARING EXAMINER ROBESON: Yeah.</p> <p>10 MS. ROGERS: And will be final location and design of</p> <p>11 the open space be finalized at site plan?</p> <p>12 THE WITNESS: Yes, it will.</p> <p>13 MS. ROGERS: And will adequate parking be provided on</p> <p>14 site to accommodate development?</p> <p>15 THE WITNESS: Yes, we will be required to meet the</p> <p>16 parking requirements of the zoning code. Currently all of</p> <p>17 these townhouses have two car garage so they will be</p> <p>18 basically self-parked inside the garage.</p> <p>19 HEARING EXAMINER ROBESON: Right.</p> <p>20 THE WITNESS: We have additional on street parking</p> <p>21 along Liberty Mill Road, and we have some -- and the</p> <p>22 commercial will meet their own parking requirements based</p> <p>23 on use, what the ultimate commercial use is on each of the</p> <p>24 commercial portions.</p> <p>25 MS. ROGERS: Thank you. And are any public benefit</p>	<p style="text-align: right;">95</p> <p>1 them and -- I think he has already addressed compliance</p> <p>2 with the master plan.</p> <p>3 THE WITNESS: Right.</p> <p>4 HEARING EXAMINER ROBESON: And that was very helpful,</p> <p>5 actually. So you don't have to go through -- I think that's</p> <p>6 A.</p> <p>7 THE WITNESS: Okay.</p> <p>8 HEARING EXAMINER ROBESON: 7.2.1A. B is compatibility.</p> <p>9 THE WITNESS: Public interest.</p> <p>10 HEARING EXAMINER ROBESON: Oh, B is public interest,</p> <p>11 okay.</p> <p>12 THE WITNESS: Right. So the 7.2.1A B, furthering the</p> <p>13 public interest. In my opinion this project will further</p> <p>14 the public interest by transforming currently a vacant</p> <p>15 unused, underutilized site, really the hole in the doughnut</p> <p>16 of the village center into a pedestrian friendly</p> <p>17 sustainable community that complements the surrounding</p> <p>18 neighborhood and implements the County's land use</p> <p>19 objectives and the master plan. The project will contribute</p> <p>20 to the diversity of housing, providing additional</p> <p>21 townhouses in this area, and will provide some additional</p> <p>22 commercial serving the development and the close in</p> <p>23 community.</p> <p>24 HEARING EXAMINER ROBESON: Now, we've always</p> <p>25 interpreted public interest that comes out of state law,</p>
<p style="text-align: right;">94</p> <p>1 points required for this project?</p> <p>2 THE WITNESS: A CRNF zone does not require public</p> <p>3 benefit points.</p> <p>4 MS. ROGERS: Next, I was going to move to the specific</p> <p>5 findings of the local map amendment, unless there is any</p> <p>6 more questions from the Hearing Examiner?</p> <p>7 HEARING EXAMINER ROBESON: The 7.2.1?</p> <p>8 MS. ROGERS: 7.2.1.</p> <p>9 HEARING EXAMINER ROBESON: Okay.</p> <p>10 MS. ROGERS: So the district council in order to</p> <p>11 approve a local map amendment must make specific findings</p> <p>12 contained in 7.2.1E of the zoning ordinance. Have you had</p> <p>13 an opportunity to review those findings?</p> <p>14 THE WITNESS: Yes, I have.</p> <p>15 MS. ROGERS: So moving into --</p> <p>16 HEARING EXAMINER ROBESON: Which are somewhat</p> <p>17 redundant --</p> <p>18 THE WITNESS: They are.</p> <p>19 HEARING EXAMINER ROBESON: -- of what you have already</p> <p>20 gone through, but that is okay. Well, go ahead.</p> <p>21 MS. ROGERS: Well, I was going to ask if (inaudible)</p> <p>22 the questions, but if the Hearing Examiner would prefer</p> <p>23 where there would be redundancy perhaps Mr. Foster can note</p> <p>24 that.</p> <p>25 HEARING EXAMINER ROBESON: Yeah, we can start through</p>	<p style="text-align: right;">96</p> <p>1 that it is in conformance with the systematic growth and</p> <p>2 development of the regional district. And that is a long</p> <p>3 way how it is still in there. So I am just say that I don't</p> <p>4 know if you are -- well, the only adequate public facility,</p> <p>5 the only public facility that is still in my mind, is a</p> <p>6 little up in the air is the stormwater. And we have other</p> <p>7 experts who I believe will address the others.</p> <p>8 MS. ROGERS: That's right.</p> <p>9 THE WITNESS: Correct.</p> <p>10 HEARING EXAMINER ROBESON: Okay. So I'm just saying</p> <p>11 that so you know that's been the interpretation. Okay. So C</p> <p>12 is compatibility. No?</p> <p>13 THE WITNESS: Actually, no. C is satisfies the intent,</p> <p>14 purposes, and standards of the proposed zone. So I me, as</p> <p>15 I've covered previously, that this project will satisfy the</p> <p>16 intent, purposes, and standards and specifications of the</p> <p>17 CRNF floating zone and the zoning ordinance.</p> <p>18 HEARING EXAMINER ROBESON: Okay.</p> <p>19 THE WITNESS: Okay D. Be compatible with existing and</p> <p>20 approved adjacent developments. In my opinion, this project</p> <p>21 will be compatible both architecturally in scale and</p> <p>22 complementary to the adjacent developments both</p> <p>23 commercially and residentially with the surrounding</p> <p>24 community. It contributes to the diversity of housing in</p> <p>25 the village center by providing townhomes where the</p>

Transcript of Administrative Hearing
Conducted on January 3, 2020

25 (97 to 100)

<p style="text-align: right;">97</p> <p>1 majority of the residential development is multifamily, and</p> <p>2 will help provide additional residents to support the</p> <p>3 existing commercial that is already out there. There will</p> <p>4 be a modest amount of commercial as part of this site, but</p> <p>5 it will, I think, complement the village center itself.</p> <p>6 MS. ROGERS: And then finding E our traffic engineer</p> <p>7 will address.</p> <p>8 HEARING EXAMINER ROBESON: Okay.</p> <p>9 MS. ROGERS: And then F, it requires a finding that the</p> <p>10 proposed floating zone will not adversely affect the</p> <p>11 character of the surrounding neighborhood.</p> <p>12 THE WITNESS: I think I have talked about that quite a</p> <p>13 bit about how this proposal, given the scale, the housing</p> <p>14 type, the scale of the commercial that it is -- will not</p> <p>15 adversely affect the character of the surrounding</p> <p>16 neighborhood and will, since they are really filling the</p> <p>17 hole in the doughnut is, I think, going to be the final</p> <p>18 piece that this community needs to have a whole community</p> <p>19 character, and will really add to the community character</p> <p>20 of this village center.</p> <p>21 MS. ROGERS: And so in summary is it your professional</p> <p>22 opinion that the floating zone plan permits the Council to</p> <p>23 make the necessary findings outlined in 7.2.1A?</p> <p>24 MR. FOSTER: Yes.</p> <p>25 MS. ROGERS: Thank you.</p>	<p style="text-align: right;">99</p> <p>1 like to add?</p> <p>2 MR. FOSTER: No, thank you.</p> <p>3 HEARING EXAMINER ROBESON: All right. It's 12:15. How</p> <p>4 many more witnesses do you have? We can keep going, or --</p> <p>5 unfortunately, we have no -- you have to drive either to</p> <p>6 the shopping center on Norbeck or Veirs Mill to get</p> <p>7 something to eat. I'll defer to you whether you want to</p> <p>8 break for lunch.</p> <p>9 MS. ROGERS: Mr. Foster's testimony really was the</p> <p>10 majority of our testimony. We have three additional</p> <p>11 witnesses for today, but their testimony is much --</p> <p>12 HEARING EXAMINER ROBESON: Not as --</p> <p>13 MS. ROGERS: Less detail, or lengthy as Mr. Foster's</p> <p>14 was.</p> <p>15 HEARING EXAMINER ROBESON: All right. Then let's --</p> <p>16 MS. ROGERS: I would say we could stay for a little bit</p> <p>17 more.</p> <p>18 HEARING EXAMINER ROBESON: I feel bad that we starve</p> <p>19 people here.</p> <p>20 MS. ROGERS: And if the Hearing Examiner would like to</p> <p>21 take a break as well, I mean we will -- if you would</p> <p>22 prefer.</p> <p>23 HEARING EXAMINER ROBESON: No, let's get -- who's next</p> <p>24 in line?</p> <p>25 MS. ROGERS: Mr. Longfellow, our civil engineer, would</p>
<p style="text-align: right;">98</p> <p>1 MS. ROGERS: Just a few final miscellaneous questions</p> <p>2 for you. Touching on adequate public facilities, which</p> <p>3 then, our civil engineer will touch on a little bit more,</p> <p>4 have you had an opportunity to review the floating zone</p> <p>5 plan in connection with its impact on public facilities,</p> <p>6 and in your professional opinion are there adequate</p> <p>7 facilities to support the proposed development?</p> <p>8 MR. FOSTER: Yes, there are.</p> <p>9 MS. ROGERS: And can you provide a little bit of</p> <p>10 explanation in terms of how this proposal will address</p> <p>11 adequate school capacity?</p> <p>12 MR. FOSTER: This property is served by Germantown</p> <p>13 Elementary School, Roberto Clemente Middle School, and</p> <p>14 Northwest High School. Under the 2020 subdivision staging</p> <p>15 policy, tests indicate that the Northwest High School</p> <p>16 cluster is open, conditionally based on approved CID</p> <p>17 project will reassign students to Seneca Valley High</p> <p>18 School. Based on projected student enrollment in 2024/2025</p> <p>19 all of the schools will be adequate and have available</p> <p>20 capacity at all levels.</p> <p>21 MS. ROGERS: Thank you. And, in your professional</p> <p>22 opinion, does the floating zone plan satisfy all of the</p> <p>23 applicable code requirements?</p> <p>24 MR. FOSTER: Yes, it does.</p> <p>25 MS. ROGERS: And is there anything else that you would</p>	<p style="text-align: right;">100</p> <p>1 be next.</p> <p>2 HEARING EXAMINER ROBESON: Okay. Let's keep going. I</p> <p>3 may need to go get a rice cake at some point, but let's go</p> <p>4 for Mr. Longfellow. Please raise your right hand. Do you</p> <p>5 solemnly affirm under penalties of perjury that the</p> <p>6 statements you are about to make are the truth, the whole</p> <p>7 truth, and nothing but the truth? Okay.</p> <p>8 MS. ROGERS: Can you please state your full name and</p> <p>9 occupation for the record?</p> <p>10 MR. LONGFELLOW: Sure. Timothy Michael Longfellow,</p> <p>11 civil engineer.</p> <p>12 MS. ROGERS: And as with Mr. Foster, I know Mr.</p> <p>13 Longfellow has recently appeared before this body.</p> <p>14 HEARING EXAMINER ROBESON: And for the record, Mr.</p> <p>15 Longfellow has qualified as an expert in civil engineering</p> <p>16 on, I think, several occasions. So I am going to accept him</p> <p>17 as an expert in civil engineering.</p> <p>18 MS. ROGERS: Thank you. Mr. Longfellow, are you</p> <p>19 familiar with the local map amendment that's before us</p> <p>20 today?</p> <p>21 MR. LONGFELLOW: Yes, I am.</p> <p>22 MS. ROGERS: And you can you please describe the scope</p> <p>23 of services that you and Gutschick, Little, & Weber have</p> <p>24 provided civil engineering services for this application?</p> <p>25 MR. LONGFELLOW: Sure. Mr. Foster pretty much covered</p>

Transcript of Administrative Hearing
Conducted on January 3, 2020

26 (101 to 104)

<p style="text-align: right;">101</p> <p>1 most of them, but my role in that was portions of the land 2 use report that regarded civil engineering, adequate public 3 4 facilities, things of that nature. Stormwater strategy, we 5 also worked on fire access, circulation exhibits, and 6 things of that nature. 7 MS. ROGERS: Thank you. And have you made a personal 8 inspection of the site? 9 MR. LONGFELLOW: Yes, I have. 10 MS. ROGERS: Can you please provide an overview of the 11 existing and proposed vehicular access to the property? 12 MR. LONGFELLOW: Sure. I think Mr. Foster generally 13 described most of it already. I'm sure I hit most of the 14 highlights. Again, currently there is access provided 15 through Liberty Mill Road as it exists today, and it will 16 be modified in the future with the future development 17 plans. The current alignment of Liberty Mill Road will be 18 realigned and extended to connect down to Leaman Farm Road, 19 and then there will be a right in and right out access 20 point off of Germantown Road as well, to provide access 21 through the site there to the public street mapper. 22 MS. ROGERS: And I think you just said it, but just to 23 clarify, are the internal roads public or private? 24 MR. LONGFELLOW: They will all be public. 25 MS. ROGERS: And this has been touched on in testimony</p>	<p style="text-align: right;">103</p> <p>1 highlighted here in the magenta lines the existing right- 2 of-way will be extended all the way down to Leaman Farm 3 Road. And that will be a 60 foot right-of-way from Clopper 4 all the way down to Leaman Farm. Of off that extended road 5 we also have Public Road A coming in off of Germantown 6 Road, and that will be a tertiary 44 foot right-of-way. 7 HEARING EXAMINER ROBESON: Okay. 8 MR. LONGFELLOW: As currently planned. 9 MS. ROGERS: And will the Applicant be seeking a 10 subsequent abandonment for portions of Liberty Mill Road? 11 MR. LONGFELLOW: Yes, we will. 12 MS. ROGERS: And when will the Applicant seek that? 13 MR. LONGFELLOW: Well, most likely that will get 14 handled with the prelim and site plan so that we can, you 15 know, better defined the exact limits of that abandonment. 16 MS. ROGERS: And I know Mr. Foster briefly touched on 17 this, but if the Applicant dedicates the right-of-way along 18 Clopper Road as recommended in the staff report, will it 19 affect the design or efficiency of the site? 20 MR. LONGFELLOW: No, those dedications have already 21 been taken into account, so our plan would still be valid. 22 MS. ROGERS: And I think this will help address one of 23 the questions that the Hearing Examiner has had. Can you 24 please explain, and provide some detail on, in your 25 professional opinion, there will be adequate public</p>
<p style="text-align: right;">102</p> <p>1 so far, but I thought it would be helpful to provide a 2 little extra clarification. I know we mentioned that 3 Liberty Mill Road basically bifurcate the site. Can you 4 please explain how this right of way, in a little bit more 5 detail, will relate to the proposed project and design? 6 MR. LONGFELLOW: Sure. Again, it will -- 7 MS. ROGERS: I think we have an exhibit. 8 HEARING EXAMINER ROBESON: Is that a new exhibit? 9 MR. LONGFELLOW: Do you have this one already in there? 10 MR. FOSTER: No. 11 MR. LONGFELLOW: This is Kingsview Station right-of-way 12 exhibit. 13 HEARING EXAMINER ROBESON: Okay. 14 MS. ROGERS: So Exhibit 59. 15 HEARING EXAMINER ROBESON: 59. Do you mind writing 59 16 on that, please? 17 (Exhibit 59 was introduced into the record.) 18 MR. LONGFELLOW: Again, as Mr. Foster already 19 testified, you've got certain portions of Liberty Mill Road 20 that are currently in right-of-way, and those are generally 21 highlighted in blue on Exhibit 59 here. Additionally, there 22 are some other areas of the cul-de-sac that was installed, 23 it's generally highlighted in green here, and then the 24 connection between the two. Portions of Liberty Mill Road 25 will be abandoned as we go through the process, and then as</p>	<p style="text-align: right;">104</p> <p>1 facilities in terms of water, sewer, and gas to serve the 2 proposed development? 3 MR. LONGFELLOW: Sure. The property is currently in the 4 appropriate water and sewer categories and there are -- 5 HEARING EXAMINER ROBESON: I thought there were two 6 that weren't -- that were still W5. 7 MS. ROGERS: W5, S5? 8 HEARING EXAMINER ROBESON: Yeah. 9 MR. LONGFELLOW: And those were modified to be brought 10 into, you know -- 11 HEARING EXAMINER ROBESON: So they've been -- 12 MR. LONGFELLOW: -- W1 and S3. 13 HEARING EXAMINER ROBESON: So their applications are 14 approved? 15 MR. LONGFELLOW: That is my understanding, yes. 16 HEARING EXAMINER ROBESON: Okay. I'm going to take 17 something out of order. I'm going to have your first 18 witness just verify, you're still under oath. Can you 19 confirm that the water and sewer applications for all are 20 in the W1, or at least a 3? 21 MR. WAGNER: Yes. 22 HEARING EXAMINER ROBESON: Okay. Thank you. 23 MS. ROGERS: And for the record, that was approved by 24 the Montgomery County Department of Environmental 25 Protection on January 2, 2019, Case Number AD-2018-4.</p>

Transcript of Administrative Hearing
Conducted on January 3, 2020

27 (105 to 108)

<p>105</p> <p>1 HEARING EXAMINER ROBESON: Okay. Thank you. Okay. Go 2 ahead, Mr. Longfellow. 3 MR. LONGFELLOW: So the property is in the appropriate 4 categories. There, as Mr. Foster pointed out earlier, 5 there's already an existing water line that runs through 6 the property, that extends from Leaman Farm up to Clopper 7 Road. It's generally denoted on this right-of-way exhibit 8 by this highlighted area. That's the general path there. 9 And I think Mr. Foster described that earlier. There is 10 also public sewer in the vicinity along Leaman Farm Road 11 that will be adequate, in our opinion, to serve the 12 property. WSSC will be the final approving agency on that, 13 when we submit our hydraulic planning analysis and that 14 will go in as part of the preliminary plan and site plan 15 package as required. There are already existing electric, 16 telephone, and other, you know, lines running through the 17 property, and gas, telephone, and everything else is 18 already adequate in serving this area. So we believe that 19 will all be fine. 20 HEARING EXAMINER ROBESON: Okay. 21 MS. ROGERS: So I think then that leads nicely into 22 another one of the questions regarding stormwater 23 management. Can you please explain if a stormwater 24 management plan will be required for this proposed 25 development, and the timing for those plans?</p>	<p>107</p> <p>1 floating zone plan at the time of DRC was entirely 2 different -- 3 HEARING EXAMINER ROBESON: Oh, it's different. 4 5 MS. ROGERS: -- than what show now so the DRC comments 6 won't be particularly relevant. 7 HEARING EXAMINER ROBESON: The other option is I can 8 refer it over, just as a preliminary strategy and have them 9 just say it preliminarily, you know, as I said it's not -- 10 you don't have to engineer it. You don't have to have the 11 exact approval, I just need to know if it's something that 12 is likely to be approved. 13 MS. ROGERS: Well, and maybe, I think what might be 14 helpful is perhaps, Mr. Longfellow, if you can just talk 15 about the stormwater strategy a little bit of detail and 16 how this meets the standard. 17 MR. LONGFELLOW: Sure. 18 HEARING EXAMINER ROBESON: Well, that's -- I'm not -- 19 I'm sure he can. It's just that there are discretionary -- 20 I don't know if it's waivers or whatever because of the 21 stream valley. And I just, I'm looking for something that 22 will say we think we can do -- from the County saying we 23 think this is doable. 24 MS. ROGERS: Well -- 25 MR. LONGFELLOW: I could offer up something that might</p>
<p>106</p> <p>1 MR. LONGFELLOW: Sure. The stormwater management 2 concept plan will be required as part of the preliminary 3 plan process. And in this case, you know, I guess it will 4 get reviewed, currently with prelim and site plan since it 5 will be a joint application. But it is not required as part 6 of the local map amendment process, although we were 7 required to provide a stormwater strategy so that we could 8 be sure that it would be adequate, you know, when it came 9 time. 10 HEARING EXAMINER ROBESON: And has DEP looked at that 11 strategy? 12 MR. LONGFELLOW: I don't know if DEP has actually 13 looked at it. DPS should have been subject to it as part of 14 the application that was submitted. The strategy plan gets 15 submitted with the application but -- 16 HEARING EXAMINER ROBESON: Yeah. Did you go -- the 17 Applicant went to DRC, correct? 18 MS. ROGERS: That's correct, we did. 19 HEARING EXAMINER ROBESON: Do you have the DRC note 20 saying -- I'm just looking for something that says it's 21 possible to do this, and that's basically at the rezoning 22 stage, it's a soft test. 23 MR. LONGFELLOW: Sure. 24 HEARING EXAMINER ROBESON: But you do have to show it. 25 MS. ROGERS: We could provide the DRC comments. Our</p>	<p>108</p> <p>1 be supportive. And we're working on another property that 2 is up at Clarksburg Town Center. Currently that is in a 3 special protection area. It's been under construction and 4 through the pipeline since the '90s. And we have approved 5 stormwater concept plans, approved sediment control permits 6 to provide stormwater management facilities in the stream 7 valley buffer for that project. 8 HEARING EXAMINER ROBESON: Well, let me ask. How long 9 would -- I can ask DEP how long it would take them just to 10 review it. 11 MR. LONGFELLOW: DP -- so just for clarity. Permitting 12 services would review it so it would fall under the water 13 resources division. 14 HEARING EXAMINER ROBESON: Is that still Rick Brush? 15 MR. LONGFELLOW: It's right now that division's run by 16 Mark Etheridge. 17 HEARING EXAMINER ROBESON: Oh, okay. 18 MR. LONGFELLOW: And quite honestly, depending on which 19 staff member reviews it would determine how quickly you 20 could get feedback from them. But again, like Ms. Rogers 21 has pointed out, we've gone through; we've looked at all 22 the criteria that are needed. We've determined what our 23 target goals are for these ESD facilities. And right now, 24 based on the strategy plan that we have developed, and I 25 can walk you through it if you like, it's achievable.</p>

Transcript of Administrative Hearing
Conducted on January 3, 2020

28 (109 to 112)

<p>109</p> <p>1 HEARING EXAMINER ROBESON: Is your strategy plan shown 2 on any of the plans submitted in the record? The FCP or -- 3 MR. LONGFELLOW: I think it's shown -- 4 MS. ROGERS: It's somewhat revised. 5 MR. LONGFELLOW: And we have a separate exhibit, but 6 there are, as part of the floating zone plan, we have areas 7 designated as proposed stormwater management facilities, so 8 we are showing where those are. I think some of your 9 question gets into this conversation about the extended 10 buffer conversation, and I think the -- I guess the path 11 forward basically, is that Staff is asking us -- 12 HEARING EXAMINER ROBESON: Staff of? 13 MR. LONGFELLOW: Park and Planning, is asking us to 14 minimize the impacts of stormwater facilities into these 15 extended buffers. You know, previous testimony has already 16 talked about where we stand with the buffers and things of 17 that nature. But based on that you are talking about two 18 areas that get impacted, this area along, I guess the 19 southwest, or western corner of the site that's bordered by 20 Germantown Road, and Leaman Farm Road and then this area 21 here on the eastern edge of the site that's bordered to the 22 east by the park and ride facility and by Public Road A, 23 the Liberty Mill Road extended. So these are the two areas 24 that would fall into question. And based on what we've 25 looked at so far, we feel like we can minimize the</p>	<p>111</p> <p>1 MS. ROGERS: And to clarify your last statement, is it 2 correct that you were saying that they could find, or 3 approve that, eliminating stormwater facilities in the 4 buffer without requiring you to provide additional 5 facilities elsewhere on the site, while finding you met the 6 MEP? 7 MR. LONGFELLOW: It's in their purview to do that. 8 MR. LONGFELLOW: The Planning Board's revised 9 conditions, which unfortunately, are not -- I know we have 10 the draft set, but not the final set because the resolution 11 hasn't been approved yet, did that specifically allow for 12 stormwater facilities to be within the buffer subject to 13 final review and approval at the time of subsequent 14 development plan? 15 MR. LONGFELLOW: Yes, it did. 16 MS. ROGERS: And so in your professional experience and 17 history will these specific issues regarding stormwater 18 management design, location, extent, be finalized at the 19 time of subsequent preliminary and site plan? 20 MR. LONGFELLOW: Yes, they will. We will -- 21 HEARING EXAMINER ROBESON: You started to talk about a 22 project in Clarksburg that allowed this in the buffer? 23 MR. LONGFELLOW: That's correct. 24 HEARING EXAMINER ROBESON: Okay. 25 MR. LONGFELLOW: It's in the Clarksburg --</p>
<p>110</p> <p>1 intrusion into these extended buffers and still meet the 2 goals. You know, through a variety of things we've got, you 3 know, some micro bio retention facilities, there are some 4 permeable pavement features in either sidewalk or bike 5 paths and then potentially a stormwater submerged gravel 6 wetland area down in this area. And again, in terms of 7 waivers and variances DPS can provide a waiver or variance. 8 But honestly, I'm not familiar with any formal 9 documentation of that other than through the process where 10 in our stormwater concept application and our narratives we 11 would ask for relief for things where we needed it. There's 12 no additional documentation other than that that I've ever 13 had to provide. Things that, I guess, that come to mind 14 that might resolve it, I mean through a combination of 15 collaboration with DPS and Park and Planning, DPS could 16 reach the finding that we provided ESD to the MEP, and 17 decide that they would, in that finding, like to eliminate 18 some of these features that are within these extended 19 buffers. That's in their purview. So, you know, if it's a 20 concern of that that stuff will get worked out at the 21 concept stage. 22 MS. ROGERS: Just to clarify that last statement, can 23 you please one, what is MEP? Can you, please -- 24 MR. LONGFELLOW: Sure to the maximum extent 25 practicable.</p>	<p>112</p> <p>1 HEARING EXAMINER ROBESON: What's the project? 2 MR. LONGFELLOW: It's the Clarksburg Town Center. It's 3 a project that Elm Street's completing the construction on. 4 You've got several different builders in there active right 5 now. We have facilities that are conceptually approved, 6 technically approved, and now they are actually built and 7 installed. And we are, quite honestly, probably next week 8 will be submitting as built plans for those. So it has been 9 allowed in the past and in this case I don't see where it 10 would be an issue to continue to move forward with these. 11 HEARING EXAMINER ROBESON: I guess I asked the question 12 because that stronger staff language, believe it or not, 13 than I typically see. 14 MS. ROGERS: The staff language being the draft 15 conditions that you saw or? 16 HEARING EXAMINER ROBESON: They weren't draft 17 conditions. The staff report conditions. And in the staff 18 report they wouldn't commit that it met the environmental 19 criteria or even say, you know, it's -- I need something to 20 say it's capable of meeting the environmental criteria, 21 this particular plan. 22 MS. ROGERS: And what -- 23 HEARING EXAMINER ROBESON: Yeah. 24 MS. ROGERS: I was just going to offer that perhaps 25 right now all we have is Exhibit 57 that has the revised</p>

Transcript of Administrative Hearing
Conducted on January 3, 2020

29 (113 to 116)

<p>113</p> <p>1 conditions that will be reflected on the resolution that</p> <p>2 actually gets mailed out.</p> <p>3 HEARING EXAMINER ROBESON: But that's the PFCP. That's</p> <p>4 not the stormwater concept.</p> <p>5 MS. ROGERS: But that is -- those are the conditions</p> <p>6 that deal specifically with stormwater in the buffers.</p> <p>7 HEARING EXAMINER ROBESON: Right. But DPS gets a say in</p> <p>8 it too.</p> <p>9 MS. ROGERS: DPS will -- right, will ultimately approve</p> <p>10 the stormwater.</p> <p>11 MR. LONGFELLOW: They will, yes.</p> <p>12 HEARING EXAMINER ROBESON: Yes. That's the link I'm</p> <p>13 looking for. Now, you said it's been -- so your testimony</p> <p>14 is it's been done in the past.</p> <p>15 MR. LONGFELLOW: We're doing it right now.</p> <p>16 HEARING EXAMINER ROBESON: And there is no reason that</p> <p>17 it can't be done for this site, although we really don't</p> <p>18 know what they are going to say?</p> <p>19 MR. LONGFELLOW: I am, in my professional opinion, I'm</p> <p>20 confident that we will get those facilities approved within</p> <p>21 the stream valley buffer.</p> <p>22 HEARING EXAMINER ROBESON: Okay.</p> <p>23 MS. ROGERS: And, Mr. Longfellow, the floating zone</p> <p>24 plan, and the binding elements approved up to a maximum</p> <p>25 number of units, and the design of this project will</p>	<p>115</p> <p>1 little bit with the Hearing Examiner. Would you like Mr.</p> <p>2 Longfellow to walk into any more detail regarding the</p> <p>3 stormwater strategy as it's shown on the plan?</p> <p>4 HEARING EXAMINER ROBESON: Do I want him to? Let's --</p> <p>5 are you about to finish your testimony with him?</p> <p>6 MS. ROGERS: I just have a few more questions, yeah,</p> <p>7 and then we're --</p> <p>8 HEARING EXAMINER ROBESON: I'll tell you what. Why</p> <p>9 don't you do this. Why don't you tell me just the various</p> <p>10 ways that you see, on this site, not in general, but on</p> <p>11 this site, where you can put additional bio retention, or</p> <p>12 otherwise mitigate to the -- now, you may not be prepared</p> <p>13 to do this, but mitigate to the ESD, to the MEP.</p> <p>14 MR. LONGFELLOW: Sure. I can take a stab at it.</p> <p>15 HEARING EXAMINER ROBESON: Give me a picture of where</p> <p>16 you -- a preliminary picture. I'm not asking you to</p> <p>17 engineer it.</p> <p>18 MR. LONGFELLOW: Sure.</p> <p>19 HEARING EXAMINER ROBESON: Just a preliminary picture</p> <p>20 of what can be done on this site to minimize the impacts in</p> <p>21 the buffer area.</p> <p>22 MR. LONGFELLOW: Sure. A lot of --</p> <p>23 MS. ROGERS: Sorry, Mr. Longfellow.</p> <p>24 UNIDENTIFIED SPEAKER: Do you want to use it?</p> <p>25 MS. ROGERS: It might be easier to see on that.</p>
<p>114</p> <p>1 involve as they move forward into preliminary and site</p> <p>2 plan. So even taking that into account if the design were</p> <p>3 required to change slightly, are you confident that this</p> <p>4 project can meet the stormwater requirements on site?</p> <p>5 MR. LONGFELLOW: Yes, I am confident.</p> <p>6 HEARING EXAMINER ROBESON: Okay. Go ahead.</p> <p>7 MS. ROGERS: Will a sediment erosion control plan be</p> <p>8 required for this project?</p> <p>9 MR. LONGFELLOW: Yes, it will.</p> <p>10 MS. ROGERS: And can you just briefly address the</p> <p>11 timing for that?</p> <p>12 MR. LONGFELLOW: Sure. The actual sediment control plan</p> <p>13 will get submitted with -- well, I guess, a conceptual</p> <p>14 settlement control plan will get submitted with the site</p> <p>15 plan application, and then the final technical plans get</p> <p>16 submitted really at any time. Typically we see most of our</p> <p>17 clients, once we get through the DRC process and site plan</p> <p>18 there is some level of confidence there that the plan, as</p> <p>19 submitted, is going to move forward. And then we get</p> <p>20 released to do the full engineering, and we will start to</p> <p>21 submit it at that point. It can't be officially approved</p> <p>22 until we can provide the certified site plan and</p> <p>23 resolution, and then the other appropriate documents. But</p> <p>24 that way we overlap some timeline.</p> <p>25 MS. ROGERS: And just to clarify before I move on a</p>	<p>116</p> <p>1 MR. LONGFELLOW: Okay. I don't know if this -- is this</p> <p>2 on the Exhibit list or do I need to --</p> <p>3 HEARING EXAMINER ROBESON: Let me see it. I don't know</p> <p>4 if it's -- oh, that is helpful. I don't know if it's on the</p> <p>5 exhibit list.</p> <p>6 MS. ROGERS: We had an original one, but I'm not sure</p> <p>7 that this updated one, which shows -- this shows the</p> <p>8 expanded buffers, correct?</p> <p>9 MR. LONGFELLOW: Yes, it does.</p> <p>10 MS. ROGERS: I believe we could put it --</p> <p>11 HEARING EXAMINER ROBESON: Okay. Let's put it on as 61.</p> <p>12 And what plan is that?</p> <p>13 MR. LONGFELLOW: Stormwater management strategy.</p> <p>14 MS. ROGERS: Is it 60 or 61.</p> <p>15 HEARING EXAMINER ROBESON: 61.</p> <p>16 (Exhibit 61 was introduced into the record.)</p> <p>17 MR. LONGFELLOW: So what we've --</p> <p>18 HEARING EXAMINER ROBESON: Before you start, is this</p> <p>19 different than what's shown on the 37-C, which is the</p> <p>20 floating zone plan?</p> <p>21 MR. LONGFELLOW: No these -- they should match.</p> <p>22 HEARING EXAMINER ROBESON: Okay.</p> <p>23 MR. LONGFELLOW: Let me be sure. There may be just some</p> <p>24 differences in where we've shown some micro bio retention</p> <p>25 boxes may be the only difference that I can think of right</p>

Transcript of Administrative Hearing
Conducted on January 3, 2020

30 (117 to 120)

<p>117</p> <p>1 now. So in green we show -- and that's one of the other 2 strategies that we can provide, you know, where we have 3 some areas here where the fronts of these units, we can't 4 get them to another facility. We now are able to construct, 5 basically, planter boxes that would provide bio retention. 6 HEARING EXAMINER ROBESON: Provide bio retention, okay. 7 MR. LONGFELLOW: So I think where you're heading is, if 8 we had to eliminate some of these facilities along the 9 extended buffer, you know, we could evaluate, and provide 10 boxes at the front of each of the townhouse units and, you 11 know, that would be one element that would help to offset 12 some of the these. There is some additional room in some 13 other areas where we could look to reconfigure some things 14 and maybe push some of these stormwater facilities a little 15 bit further up. So they are just -- 16 HEARING EXAMINER ROBESON: When you say further up 17 your -- how many to one south on the western side south of 18 the stick of townhouses on the west -- next to Germantown 19 Road? 20 MR. LONGFELLOW: Correct. 21 HEARING EXAMINER ROBESON: Okay. 22 MR. LONGFELLOW: So there are some -- 23 HEARING EXAMINER ROBESON: Can they be counted as open 24 space or no? 25 MR. LONGFELLOW: We would have to be sure that we kept</p>	<p>119</p> <p>1 MR. LONGFELLOW: Is there a potential to pick up more 2 stormwater credit? 3 HEARING EXAMINER ROBESON: Yeah. 4 MR. LONGFELLOW: We've generally already treated all of 5 6 that impervious area, so it would almost -- 7 HEARING EXAMINER ROBESON: So I see so that's 8 already -- 9 MR. LONGFELLOW: -- trading one feature for another. 10 HEARING EXAMINER ROBESON: Yeah. 11 MR. LONGFELLOW: So I think those are generally 12 covered. 13 HEARING EXAMINER ROBESON: So you're really looking to 14 pick it up for the residential? 15 MS. ROGERS: Yes. 16 MR. LONGFELLOW: Again, we've strategically stayed out 17 of here because of open space. 18 HEARING EXAMINER ROBESON: Right. 19 MR. LONGFELLOW: So it's -- 20 HEARING EXAMINER ROBESON: So in your expert opinion by 21 making some of the changes, can you minimize the impact 22 into the stream valley buffer, in a manner that would, in 23 your opinion, would be approved by DPS? 24 MR. LONGFELLOW: Yes. 25 HEARING EXAMINER ROBESON: Okay. All right.</p>
<p>118</p> <p>1 them out of the open space. 2 HEARING EXAMINER ROBESON: Common space. 3 MR. LONGFELLOW: We would be looking to keep them out 4 of the open space. 5 HEARING EXAMINER ROBESON: Okay. So it is a constrained 6 site. Okay. So you might be able to push them a little 7 closer to the townhouses? 8 MR. LONGFELLOW: Might be able to reconfigure them to 9 some extent to do some of that. You know, provide some 10 boxes at the fronts of these units. A lot of the sites now 11 that are getting denser and denser, that's what we've had 12 to do. We've got a couple of projects now that are going to 13 construction where we've had to provide those boxes at the 14 front of the unit to pick up the roof runoff to get as much 15 credit as we can. There's additional sidewalk areas that if 16 we needed to try to reconfigure things that we could look 17 at converting typical concrete sidewalks into pervious 18 concrete sidewalks. You see here there are sections of -- 19 along Germantown Road where there is an existing sidewalk 20 and we've got to go to a 8-foot-wide running path. We're 21 looking to take advantage of that as permeable as one of 22 the things were already looking at. Those would be the 23 types of things we would start to look at. 24 HEARING EXAMINER ROBESON: What about the commercial 25 area? Is there a potential there?</p>	<p>120</p> <p>1 MS. ROGERS: And Mr. Longfellow, just, I think it might 2 be helpful for clarification for the record, to the extent 3 that there was -- it's already been stated in the record 4 that DPS and Park and Planning have allowed for grading 5 within a storm buffers as long as there is kind of 6 replanting and mitigation provided. Could you just briefly 7 explain how, if we did put stormwater facilities and had 8 grading in those buffers how you would accomplish that 9 mitigation? 10 MR. LONGFELLOW: Sure. So the micro bio retention 11 facilities get heavily planted. We can plant trees, other 12 vegetation there, and then once areas adjacent to those 13 facilities have been graded and stabilized, we can 14 absolutely come in and plant other trees, you know, outside 15 of those areas as well. So, you know, the micro bio 16 retention facilities are heavily landscaped. And any 17 disturbed areas along there would easily be able to be 18 replanted as well. 19 MS. ROGERS: Thank you. Just a few other questions. To 20 clarify for the record, is the property located in a 21 special protection area? 22 MR. LONGFELLOW: No, it is not. 23 MS. ROGERS: So are any additional water quality 24 measures required? 25 MR. LONGFELLOW: None beyond what we've discussed.</p>

Transcript of Administrative Hearing
Conducted on January 3, 2020

31 (121 to 124)

<p>121</p> <p>1 MS. ROGERS: And I'd like to address the point that we</p> <p>2 raised earlier regarding the local map limit finding B,</p> <p>3 regarding the public interest 7.2.1 E2B. Can you please</p> <p>4 explain how the proposed project where there is a public</p> <p>5 interest in terms of adequate public facilities and</p> <p>6 stormwater, water, sewer, which you just discussed?</p> <p>7 MR. LONGFELLOW: Sure. You know, this site has had some</p> <p>8 previous development on it. It's, you know, currently has</p> <p>9 portions of Liberty Mill Road on it. There are no existing</p> <p>10 stormwater management facilities that are treating those</p> <p>11 areas. So this project is going to, while it brings</p> <p>12 development, would also would bring additional stormwater</p> <p>13 management measures that aren't there. In terms of other</p> <p>14 public benefits, the site will basically, be sustained from</p> <p>15 utilities and things of that. It's not dependent on</p> <p>16 anything from other adjacent developments.</p> <p>17 MS. ROGERS: So --</p> <p>18 MR. LONGFELLOW: You know, will extend the necessary</p> <p>19 utilities and be self-sufficient.</p> <p>20 MS. ROGERS: So is it your professional opinion that</p> <p>21 the district council can make that finding?</p> <p>22 MR. LONGFELLOW: Yes.</p> <p>23 MS. ROGERS: And does the proposed floating zone plan</p> <p>24 conflict in any way with the capital improvement program?</p> <p>25 MR. LONGFELLOW: No. We're not relying on anything in</p>	<p>123</p> <p>1 (A brief recess was taken.)</p> <p>2 HEARING EXAMINER ROBESON: Okay. We are back on the</p> <p>3 record. Do you need a moment?</p> <p>4 MS. ROGERS: Yeah, thank you.</p> <p>5 HEARING EXAMINER ROBESON: Okay.</p> <p>6 MS. ROGERS: So after further consultation with our</p> <p>7 environmental consultant during the break we've determined</p> <p>8 that all of the evidence that he would be presenting is</p> <p>9 already in the record through the other expert witnesses.</p> <p>10 And that we feel like we've addressed all the questions</p> <p>11 that the Hearing Examiner raised at the outset of the</p> <p>12 hearing.</p> <p>13 HEARING EXAMINER ROBESON: Okay.</p> <p>14 MS. ROGERS: And so unless you had other specific</p> <p>15 questions we don't believe that he needs to testify.</p> <p>16 HEARING EXAMINER ROBESON: I didn't think that Mr.</p> <p>17 Lenhart was an environmental planner.</p> <p>18 MS. ROGERS: So our last witness will be Mike Lenhart.</p> <p>19 HEARING EXAMINER ROBESON: Okay. Please raise your</p> <p>20 right hand. Do you solemnly affirm under penalties of</p> <p>21 perjury that the statements you are about to make are the</p> <p>22 truth, the whole truth, and nothing but the truth?</p> <p>23 MR. LENHART: I do.</p> <p>24 HEARING EXAMINER ROBESON: Okay. Go ahead.</p> <p>25 MS. ROGERS: Okay. Can you please state your name and</p>
<p>122</p> <p>1 the CIP program for this project to move forward.</p> <p>2 MS. ROGERS: And in your professional opinion, does the</p> <p>3 floating zone plan satisfy all applicable code provisions?</p> <p>4 MR. LONGFELLOW: Yes, it does.</p> <p>5 MS. ROGERS: I just wanted to quickly make sure we were</p> <p>6 addressing all the Hearing Examiner's questions. Is there</p> <p>7 anything else you would like to add?</p> <p>8 MR. LONGFELLOW: No.</p> <p>9 MS. ROGERS: Okay. No further questions for Mr.</p> <p>10 Longfellow.</p> <p>11 HEARING EXAMINER ROBESON: Okay. Thank you. You may be</p> <p>12 excused. Do I need to hear from the environmental -- do I</p> <p>13 care -- if you have drawn the stream valleys as if the</p> <p>14 entire stream were intermittent, do I care what the</p> <p>15 environmental specialist says?</p> <p>16 MS. ROGERS: I think that his testimony, I think, would</p> <p>17 be pretty short. I think he could provide a little bit of</p> <p>18 additional background on the environmental features and</p> <p>19 that discrepancy. But you're correct, our floating zone</p> <p>20 plan does assume that they will be intermittent streams.</p> <p>21 HEARING EXAMINER ROBESON: Okay. Let's take a 15-minute</p> <p>22 break and so we have your environmental expert and I see</p> <p>23 Mr. Lenhart in the back, okay. All right. We will take a 15</p> <p>24 minute break.</p> <p>25 MS. ROGERS: Okay.</p>	<p>124</p> <p>1 occupation for the record?</p> <p>2 MR. LENHART: Michael Lenhart, traffic engineer,</p> <p>3 transportation planner.</p> <p>4 MS. ROGERS: And Mr. Lenhart I know has appeared</p> <p>5 before.</p> <p>6 HEARING EXAMINER ROBESON: Yes. And I think he was</p> <p>7 qualified as a traffic engineer, and transportation</p> <p>8 planner. So you can -- I'll qualify him as that.</p> <p>9 MS. ROGERS: Perfect, thank you. Are you familiar with</p> <p>10 the floating zone plan and local map amendment application?</p> <p>11 MR. LENHART: Yes, I am.</p> <p>12 MS. ROGERS: As a preliminary matter, I would like to</p> <p>13 introduce a revised traffic impact analysis into the record</p> <p>14 that reflects the 61 units, the latest floating zone plan.</p> <p>15 It doesn't look like it's in the Hearing Examiner's record,</p> <p>16 but Staff did use this in writing their staff report.</p> <p>17 HEARING EXAMINER ROBESON: Let me just check one thing</p> <p>18 because I thought I got -- maybe I did not get one. Okay.</p> <p>19 Mine is Exhibit 17, which is probably old.</p> <p>20 MS. ROGERS: That's the 60 unit.</p> <p>21 HEARING EXAMINER ROBESON: Okay.</p> <p>22 MS. ROGERS: I think that will be Exhibit 62.</p> <p>23 HEARING EXAMINER ROBESON: So Exhibit 62 is a revised</p> <p>24 traffic impact analysis.</p> <p>25 (Exhibit 62 was introduced into the record)</p>

Transcript of Administrative Hearing
Conducted on January 3, 2020

32 (125 to 128)

<p>125</p> <p>1 MS. ROGERS: Correct.</p> <p>2 HEARING EXAMINER ROBESON: Okay.</p> <p>3 MS. ROGERS: Great. Have you made a personal inspection</p> <p>4 of the site?</p> <p>5 MR. LENHART: Yes, I have.</p> <p>6 MS. ROGERS: I think for purposes of -- being</p> <p>7 respectful of everyone's time, all of our other witnesses</p> <p>8 have pretty much done a good job of explaining the</p> <p>9 vehicular access and circulation to the site. The one thing</p> <p>10 I would like Mr. Lenhart to testify to is the Hearing</p> <p>11 Examiner's question 7 about how the intersection of Liberty</p> <p>12 Mill Road and Clopper Road will operate.</p> <p>13 HEARING EXAMINER ROBESON: That would be helpful.</p> <p>14 MR. LENHART: Sure.</p> <p>15 HEARING EXAMINER ROBESON: I saw some rather lengthy</p> <p>16 comments from DOT, but it looks like you have -- well, go</p> <p>17 ahead. How will it operate?</p> <p>18 MR. LENHART: So the traffic study, and we looked at</p> <p>19 eight intersections. And one of the intersections was</p> <p>20 Clopper at Liberty Mill Road. The LATR thresholds require a</p> <p>21 CLV, or critical lane volume, of 1350 or better. And that</p> <p>22 intersection actually under existing morning peak hour is a</p> <p>23 620. Evening peak hour is a 550 and with this development</p> <p>24 and background developments it goes to a 645 in the morning</p> <p>25 from a 620. And it goes to a 586 in the evening, which is a</p>	<p>127</p> <p>1 access permits, for access to Clopper Road and Germantown</p> <p>2 Road. The state has reviewed and concurred with our report,</p> <p>3 and our plan.</p> <p>4 HEARING EXAMINER ROBESON: How far is Liberty Mill</p> <p>5 access on the north, and I think you call it Road A, access</p> <p>6 on the east. How far are they from the intersection of</p> <p>7 Clopper and Germantown Road? Do you know?</p> <p>8 MR. LENHART: Liberty Mill Road is approximately 600</p> <p>9 and -- no, 450 feet?</p> <p>10 UNIDENTIFIED SPEAKER: About 450 feet.</p> <p>11 MR. LENHART: 450 to 460 feet centerline to centerline</p> <p>12 from Clopper Mill -- I'm sorry. From Germantown Road to</p> <p>13 Liberty Mill --</p> <p>14 HEARING EXAMINER ROBESON: Okay.</p> <p>15 MR. LENHART: -- along Clopper Road. The access from</p> <p>16 Road A on Germantown Road --</p> <p>17 HEARING EXAMINER ROBESON: Well, I guess my bottom line</p> <p>18 is do you see any problems getting an access permit -- I</p> <p>19 guess it would be, you already have an access point.</p> <p>20 MR. LENHART: Yes.</p> <p>21 HEARING EXAMINER ROBESON: You need an access point</p> <p>22 down on -- but that's further from the intersection. What</p> <p>23 about Road A?</p> <p>24 MR. LENHART: Road A, that's the right --</p> <p>25 HEARING EXAMINER ROBESON: I think that's the one.</p>
<p>126</p> <p>1 550. Those are both -- all of those numbers equate with a</p> <p>2 level of service A. and in fact, that is a very good level</p> <p>3 of service A. Level of service -- sorry, go ahead.</p> <p>4 HEARING EXAMINER ROBESON: Are there traffic -- is it a</p> <p>5 stop sign there?</p> <p>6 MR. LENHART: It's a stop controlled intersection.</p> <p>7 HEARING EXAMINER ROBESON: But not four way?</p> <p>8 MR. LENHART: Not four way. Clopper Road is free flow.</p> <p>9 Liberty Mill Road on the north leg and the south leg would</p> <p>10 both be stop controlled. And there are traffic signals on</p> <p>11 both sides of the intersection. To the west there is one at</p> <p>12 Route 118, which is Germantown Road. To the east it's at</p> <p>13 Kingsview Village Avenue, there's a traffic signal. Both of</p> <p>14 those signals create gaps in traffic --</p> <p>15 HEARING EXAMINER ROBESON: I got you.</p> <p>16 MR. LENHART: -- that can be used by people in and out</p> <p>17 of Liberty Mills.</p> <p>18 HEARING EXAMINER ROBESON: That was my question.</p> <p>19 MR. LENHART: Yes. And so the intersection operates at</p> <p>20 very good levels of service. It's less than half of what</p> <p>21 the allowable threshold is, congestion threshold. And it</p> <p>22 operates very well, and again, it was submitted to the</p> <p>23 agencies. It was referred out to the State Highway</p> <p>24 Administration. They reviewed it. They -- State Highway is</p> <p>25 the operating agency that we will need to approach for</p>	<p>128</p> <p>1 MR. LENHART: -- right in and right out on Germantown</p> <p>2 Road.</p> <p>3 HEARING EXAMINER ROBESON: Oh, that's right in --</p> <p>4 MR. LENHART: Is that what you're referring to?</p> <p>5 HEARING EXAMINER ROBESON: I see that now. Okay.</p> <p>6 MR. LENHART: So it's a right in and right out only. We</p> <p>7 approached State Highway Administration in the spring of</p> <p>8 2019 specifically to ask them about that right in and right</p> <p>9 out.</p> <p>10 HEARING EXAMINER ROBESON: Right.</p> <p>11 MR. LENHART: We have an email that I have received</p> <p>12 from them dated April 5th of 2019. And I sent that them a</p> <p>13 request basically saying here's what the details are about</p> <p>14 the right in, right out access. Are you guys going to be in</p> <p>15 a position to support this? And Quasey (phonetic) Woodruff</p> <p>16 at the State Highway Administration replied and stated, "I</p> <p>17 am in support of the right in and right out access point</p> <p>18 subject to any recommendations that may come out of the</p> <p>19 traffic impact study." And that traffic to MOX study</p> <p>20 subsequently was submitted to State Highway and they have</p> <p>21 reviewed and approved it.</p> <p>22 HEARING EXAMINER ROBESON: Okay. All right. That was my</p> <p>23 question.</p> <p>24 MR. LENHART: And I have been handed a piece of paper</p> <p>25 telling me that that distance is 380 feet from Road A to</p>

Transcript of Administrative Hearing
Conducted on January 3, 2020

33 (129 to 132)

<p>129</p> <p>1 Clopper Road along Germantown, about 380 feet roughly. 2 HEARING EXAMINER ROBESON: But you don't see an 3 issue -- I didn't realize it was right in, right out when I 4 asked that question. 5 MR. LENHART: No, that exceeds state highway -- 6 7 HEARING EXAMINER ROBESON: I didn't know it was a 8 limited movement entrance. 9 MR. LENHART: Right. That exceeds the State's corner 10 clearance guidelines which is the separation from Clopper 11 Road to the proposed access point. So no, we will have no 12 problems getting that access. 13 MS. ROGERS: And would it be helpful to the Hearing 14 Examiner to have that correspondence in the record from 15 State Highway Administration? 16 HEARING EXAMINER ROBESON: Why don't we do it. 17 MS. ROGERS: Okay. We have an email, and then a follow- 18 up, more formal letter. 19 HEARING EXAMINER ROBESON: That's fine. I'll make them 20 Exhibits 63, correspondence with SHA, or SHA 21 correspondence. Thank you. 22 (Exhibit 63A and 63B were introduced into the record.) 23 HEARING EXAMINER ROBESON: Well, I'll make 63A is the 24 letter from SHA, dated 5/17/19. And B is the email from Mr. 25 Woodruff to Mr. Lenhart dated April 5, 2019. Okay.</p>	<p>131</p> <p>1 the proposed rezoning development plan in terms of traffic? 2 I think you just answered that. 3 MR. LENHART: Yes, Park and Planning staff and State 4 Highway Administration both reviewed it and concurred with 5 our findings. 6 MS. ROGERS: And is there anything else that you would 7 like to add? 8 MR. LENHART: No. 9 MS. ROGERS: I think I have no further questions, 10 unless the Hearing Examiner has anything. 11 UNIDENTIFIED SPEAKER: That was easy. 12 HEARING EXAMINER ROBESON: No, that's fine. 13 MR. WAGNER: Easier than -- 14 HEARING EXAMINER ROBESON: Before we break, I have one 15 more thought on the environmental. Is it your -- is what 16 you're going to do -- to go back, and I put this 17 colloquially, argue with Park and Planning whether you can 18 have reduced stream valley buffers? 19 MS. ROGERS: No. 20 MR. WAGNER: Can I -- 21 HEARING EXAMINER ROBESON: Yeah. Then why don't you 22 come, I have to ask you to move closer to the mic. 23 MR. WAGNER: Clark Wagner, Applicant. 24 HEARING EXAMINER ROBESON: Thank you. And you're still 25 under oath.</p>
<p>130</p> <p>1 MS. ROGERS: Great. And Mr. Lenhart, is it your 2 professional opinion that vehicular access will be safe, 3 adequate, and efficient? 4 MR. LENHART: Yes. 5 MS. ROGERS: Are you familiar with Montgomery County's 6 local area transportation review? 7 MR. LENHART: Yes. 8 MS. ROGERS: And is the proposed rezoning and project 9 subject to the local area transportation review guidelines? 10 MR. LENHART: Yes, it is because it generates more than 11 50 peak person trips. That requires a full traffic impact 12 study. 13 MS. ROGERS: And can you please quantify the 14 anticipated traffic impacts that the proposal will have on 15 the surrounding area? 16 MR. LENHART: Certainly. The residential uses would 17 generate 46 morning peak hour trips and 58 evening peak 18 hour trips. Those are person trips. And the commercial uses 19 would generate 15 morning person trips and 157 evening 20 person trips. Those commercial numbers include pass-by 21 trips, which is a large percentage of the traffic. And 22 again, it has a minor impact on the level of service, and 23 the LAT are thresholds, which would all remain below the 24 1350 threshold. 25 MS. ROGERS: Thank you. And has anyone else reviewed</p>	<p>132</p> <p>1 MR. WAGNER: So just to give you a little bit more 2 background and maybe some foresight into how this would 3 play out. When we met with Park and Planning, we had the 4 whole staff almost in the room. From the planning director 5 down to the project reviewer. We specifically requested 6 that we be allowed to put ESD -- these little stormwater 7 bio retention structures in the expanded buffer as a form 8 of compromise because we had these issues at play about, 9 you know -- 10 HEARING EXAMINER ROBESON: The NRI and SD approval. 11 MR. WAGNER: Correct. Correct. And it was stated by the 12 planning director, and I think everyone in the room agreed 13 that we were going to be allowed to do that. 14 HEARING EXAMINER ROBESON: Don't -- okay. All right. 15 Don't tell me that. Was DPS in the room? 16 MR. WAGNER: No. And that's what I was going to say 17 next, is that typically when you file a site plan -- 18 HEARING EXAMINER ROBESON: Oh, please. Okay. Go ahead. 19 MR. WAGNER: I mean there is literally hundreds of 20 issues that DPS and Park and Planning -- 21 HEARING EXAMINER ROBESON: Yes, I know. 22 MR. WAGNER: -- disagree over. And this could be one of 23 them and so we'll just have to work through it. That's just 24 what we do. 25 MS. ROGERS: But in terms of your question about the</p>

Transcript of Administrative Hearing
Conducted on January 3, 2020

34 (133 to 136)

<p>133</p> <p>1 environmental buffers we are not going to go back to --</p> <p>2 HEARING EXAMINER ROBESON: Well, I guess what I was</p> <p>3 wondering is would you agree to a binding element that says</p> <p>4 the stormwater management buffer stays where it's shown on</p> <p>5 the FCP?</p> <p>6 MS. ROGERS: The stormwater buffer?</p> <p>7 HEARING EXAMINER ROBESON: Not the stormwater buffer.</p> <p>8 The stream valley.</p> <p>9 MS. ROGERS: The stream valley buffer must remain as</p> <p>10 currently shown on the FCP?</p> <p>11 MR. WAGNER: That sounds fine. I mean --</p> <p>12 HEARING EXAMINER ROBESON: Well, think about it.</p> <p>13 Because I am eliminating -- what I am doing is I</p> <p>14 eliminated -- because the stream valley buffer is drawn as</p> <p>15 if --</p> <p>16 MS. ROGERS: It is an intermittent --</p> <p>17 HEARING EXAMINER ROBESON: -- is an intermittent</p> <p>18 stream, you guys can duke it out, whatever you want to do,</p> <p>19 later about the bio retention. But unless I -- I don't want</p> <p>20 to have to make a finding whether it's an ephemeral or an</p> <p>21 intermittent stream. Do you follow what I'm saying? I have</p> <p>22 to make a finding that it meets all the environmental</p> <p>23 requirements. And I'm trying to eliminate that. And if you</p> <p>24 need time to think it over, I'm just trying to -- I</p> <p>25 understand what happened to you in the process. I do</p>	<p>135</p> <p>1 MS. ROGERS: And then --</p> <p>2 HEARING EXAMINER ROBESON: Because what I'm thinking is</p> <p>3 that I've got enough from the engineer but I don't feel</p> <p>4 comfortable getting into the argument about whether it's an</p> <p>5 ephemeral stream or an intermittent stream. So if you</p> <p>6 really believe it's doable based on what I'm looking at --</p> <p>7 so that's -- now, I can give you -- again, I apologize. I</p> <p>8 could give you --</p> <p>9 MR. WAGNER: Yeah, let's take a couple of minutes.</p> <p>10 HEARING EXAMINER ROBESON: Take a couple of minutes and</p> <p>11 think it through and, you know, I don't -- next time we'll</p> <p>12 have to supply power bars or something. But take a few</p> <p>13 minutes and think it through. If you think I'm off base</p> <p>14 tell me.</p> <p>15 MS. ROGERS: Thank you.</p> <p>16 (A brief recess was taken.)</p> <p>17 HEARING EXAMINER ROBESON: Okay, we are back on the</p> <p>18 record. Are the parties ready?</p> <p>19 MS. ROGERS: We are.</p> <p>20 HEARING EXAMINER ROBESON: I had -- and this is what</p> <p>21 I'm going to do. I have to tell the Council that it meets</p> <p>22 the requirements. I can't recommend a quid -- I don't have</p> <p>23 a basis if Park and Planning made a mistake in your</p> <p>24 process, I understand why you are upset. But I am not going</p> <p>25 to recommend to the Council that it meets all the</p>
<p>134</p> <p>1 understand. My job is to make sure that I can say to the</p> <p>2 Council, yes -- you know, Park and Planning is one entity.</p> <p>3 They are their own entity. But my job is to say to the</p> <p>4 Council yes, it is going to meet all the applicable</p> <p>5 requirements and so they can say what they want, but, you</p> <p>6 know. So I guess I was wondering that. I've been struggling</p> <p>7 with the stormwater, how to get this -- well, I'm not going</p> <p>8 to comment on what I think of the application at this</p> <p>9 point. But the major issue I'm struggling with is the</p> <p>10 stormwater, particularly, as I don't have anything from DPS</p> <p>11 saying, blessing even the concept. So you can make an</p> <p>12 agreement with the Planning Board but that doesn't mean DPS</p> <p>13 is going to go along. And we're not even -- we are just</p> <p>14 ignoring the meeting. So anyway, if you need a minute to</p> <p>15 monitor this, I have some crackers. If you need a minute to</p> <p>16 think about this, you know, I know -- it's just, I've been</p> <p>17 struggling through. What I get the sense is that you want</p> <p>18 to get this going obviously, and I'm struggling through in</p> <p>19 my mind how to do that and still feel comfortable saying</p> <p>20 yes, this is going to meet the environmental standards.</p> <p>21 MS. ROGERS: And just to clarify, the request is to add</p> <p>22 a binding element, not dealing with stormwater, but dealing</p> <p>23 with the environmental buffers?</p> <p>24 HEARING EXAMINER ROBESON: You can duke it out on the</p> <p>25 stormwater.</p>	<p>136</p> <p>1 environmental requirements because they messed up. So what</p> <p>2 I am going to do is I'm going to refer it to DPS. I'm going</p> <p>3 to give DPS two weeks. They generally do what we say. And I</p> <p>4 want to know if it's an acceptable stormwater management</p> <p>5 strategy, not a plan, not anything like that, just an</p> <p>6 acceptable stormwater management strategy. I'm going to</p> <p>7 refer it back to Park and Planning. And given the testimony</p> <p>8 I'm going to say I want to know, unrelated to the fact, the</p> <p>9 procedural difficulties, I want to know whether you feel</p> <p>10 to -- I think your staff was Cathie Nelson; whether you</p> <p>11 feel this is accomplishable and whether it meets the</p> <p>12 environmental requirements. But I can't be in the position</p> <p>13 of, in some meeting somewhere, this deal was struck that to</p> <p>14 accommodate their mistake they're going to be more lenient</p> <p>15 than they otherwise would be. So that's where I'm headed on</p> <p>16 it. I'm going to give DPS two weeks to look at it. Whatever</p> <p>17 plan you want me to send DPS, I'll send DPS. Usually, if I</p> <p>18 set a deadline there is no messing around, they will get it</p> <p>19 back to me. And I think that's how I'm going to handle it.</p> <p>20 I apologize for the additional delay, but that's how I'm</p> <p>21 going to handle it. So what plan would you like me to send</p> <p>22 to DPS?</p> <p>23 MR. LONGFELLOW: I've not had this come up before so in</p> <p>24 terms of an application to DPS, are we just sending them</p> <p>25 the --</p>

Transcript of Administrative Hearing
Conducted on January 3, 2020

35 (137 to 140)

<p>137</p> <p>1 HEARING EXAMINER ROBESON: It's not a --</p> <p>2 MR. LONGFELLOW: -- plan?</p> <p>3 HEARING EXAMINER ROBESON: Usually there's a thing.</p> <p>4 They call it a stormwater management strategy. And they</p> <p>5 send it to DPS and DPS will -- well, Mr. Foster, you</p> <p>6 mentioned it. DPS sends it back and says on a conceptual</p> <p>7</p> <p>8 level we think it's doable.</p> <p>9 MR. LONGFELLOW: Okay. So we just want to send the</p> <p>10 plan?</p> <p>11 HEARING EXAMINER ROBESON: Well, you can send what you</p> <p>12 just showed me, the last exhibit.</p> <p>13 MR. LONGFELLOW: Yeah, I just wanted to be sure that</p> <p>14 that's kind of where we were heading. That would be</p> <p>15 generally, this Exhibit 61 would probably be the one we --</p> <p>16 HEARING EXAMINER ROBESON: So do I have that in</p> <p>17 electronic format?</p> <p>18 MR. LONGFELLOW: I think it's on the CD now.</p> <p>19 MS. ROGERS: I don't think you do with the expanded</p> <p>20 buffer shown on it. But we can get you a CD with that on</p> <p>21 it.</p> <p>22 HEARING EXAMINER ROBESON: That would be great. And</p> <p>23 then, I will give you an opportunity to respond to any</p> <p>24 comments that come in, either from the Planning Department</p> <p>25 or from DPS. How long would you like to respond?</p>	<p>139</p> <p>1 HEARING EXAMINER ROBESON: Then they wouldn't have --</p> <p>2 they can't pre-promise you that they are going to approve</p> <p>3 something. But that's a whole 'nother story.</p> <p>4 MS. ROGERS: In terms of if you're reaching out</p> <p>5 Planning Staff, that they would be the ones that --</p> <p>6 HEARING EXAMINER ROBESON: They're the ones that know.</p> <p>7 MS. ROGERS: -- have the best knowledge of all aspects</p> <p>8 of this case and that they perhaps would be the best to</p> <p>9 submit it to.</p> <p>10 HEARING EXAMINER ROBESON: Well, I'll send it to Cathie</p> <p>11 Nelson and she can send it to whoever she deems</p> <p>12 appropriate. Well, I'll send it to Rich Weaver --</p> <p>13 MS. ROGERS: Okay.</p> <p>14 HEARING EXAMINER ROBESON: -- and they can do what</p> <p>15 they do.</p> <p>16 MR. WAGNER: Is that the same time frame as DPS?</p> <p>17 HEARING EXAMINER ROBESON: Yes. They can -- if they are</p> <p>18 that familiar with it I'm sure they can get it back to</p> <p>19 me -- and then everybody is covered. Not that it needs</p> <p>20 covering, I'm just saying. So with that, I'm going to --</p> <p>21 are there any other matters?</p> <p>22 MS. ROGERS: Just as a preliminary matter I just wanted</p> <p>23 to make sure, for the record, that all the exhibits had</p> <p>24 been admitted. When we came prior to today's hearing there</p> <p>25 was -- I had showed 49 exhibits, and had additional. I want</p>
<p>138</p> <p>1 MR. LONGFELLOW: I would say just give us a week. I</p> <p>2 don't think we will need that much, we will respond as soon</p> <p>3 as we get it.</p> <p>4 HEARING EXAMINER ROBESON: I mean it is covering</p> <p>5 everybody -- that came -- it's -- I think it's appropriate</p> <p>6 to have an independent blessing on this, in this case. So I</p> <p>7 will refer it to DPS. I will give them -- today is 1/3 so I</p> <p>8</p> <p>9 will give them to 1/17 to respond. Is it Mark Etheridge</p> <p>10 now?</p> <p>11 MR. LONGFELLOW: Mark Etheridge is the --</p> <p>12 HEARING EXAMINER ROBESON: Chief?</p> <p>13 MR. LONGFELLOW: Chief of the --</p> <p>14 HEARING EXAMINER ROBESON: He'll respond.</p> <p>15 MR. LONGFELLOW: -- water resources division.</p> <p>16 HEARING EXAMINER ROBESON: And I'm going to send a</p> <p>17 similar email to the Planning Department and I need them to</p> <p>18 tell me that yes, this is the best -- this is</p> <p>19 accomplishable absent any mistake in the application</p> <p>20 process. This is the best way to do the plan.</p> <p>21 MR. LONGFELLOW: Okay.</p> <p>22 MS. ROGERS: And I, for your information, either the</p> <p>23 deputy director, Robert Cronin or the area chief Rich</p> <p>24 Weaver have been intricately involved in this application</p> <p>25 from the very beginning, even prior to submitting.</p>	<p>140</p> <p>1 to make sure exhibits 1 through 63B were admitted into the</p> <p>2 record before we close today's hearing.</p> <p>3 HEARING EXAMINER ROBESON: Yes. They are admitted.</p> <p>4 Everything is in there.</p> <p>5 MS. ROGERS: Okay.</p> <p>6 HEARING EXAMINER ROBESON: What you originally got --</p> <p>7 our normal administrative specialist that handles this is</p> <p>8 out for a month. So the other woman must have printed the</p> <p>9 old exhibit list.</p> <p>10 MS. ROGERS: Okay.</p> <p>11 HEARING EXAMINER ROBESON: All right.</p> <p>12 MS. ROGERS: And just to clarify, in terms of the</p> <p>13 record, the record will remain open for us to come -- for</p> <p>14 you to get the planning resolution on the (inaudible) plan?</p> <p>15 HEARING EXAMINER ROBESON: I'm going to ask for the</p> <p>16 planning -- the two agencies to respond by 1/17. You want a</p> <p>17 week so that will be 1/24, correct?</p> <p>18 MS. ROGERS: Uh-huh.</p> <p>19 HEARING EXAMINER ROBESON: So 1/24 would be your</p> <p>20 response date, and barring anything else that -- if you</p> <p>21 want the record held, you know, not knowing what's coming,</p> <p>22 the record will close after that. Now, I don't think it's</p> <p>23 going to delay the decision too much because what I do is I</p> <p>24 start the decision, except for outstanding matters. So I'm</p> <p>25 hoping I get -- it sounds like you've been through a long</p>

Transcript of Administrative Hearing
Conducted on January 3, 2020

36 (141 to 144)

141

1 process. I'm hoping that this is not going to delay the
2 decision. It's just this one issue outstanding. All right.
3 So I'll try to do the decision as diligently as possible.
4 All right?

5 MS. ROGERS: Thank you, we appreciate that.

6 HEARING EXAMINER ROBESON: Thank you.

7 MS. ROGERS: Thank you.

8 (The recording was concluded.)

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142

1 CERTIFICATE OF TRANSCRIBER

2 I, Molly Bugher, do hereby certify that the foregoing

3

4 transcript is a true and correct record of the recorded
5 proceedings; that said proceedings were transcribed to the
6 best of my ability from the audio recording as provided;
7 and that I am neither counsel for, related to, nor employed
8 by and of the parties to this case and have no interest,
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13 Molly Bugher

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Transcript of Administrative Hearing
Conducted on January 3, 2020

37

A			
<p>a1 50:5 abandon 54:9 abandoned 21:15, 21:16, 77:20, 102:25 abandoning 77:8, 77:12 abandonment 103:10, 103:15 ability 142:6 able 33:9, 45:16, 46:17, 58:13, 79:21, 84:23, 117:4, 118:6, 118:8, 120:17 about 8:18, 9:1, 9:11, 10:6, 12:14, 13:19, 14:6, 14:18, 15:5, 16:3, 16:4, 16:9, 16:13, 19:5, 22:4, 23:13, 24:17, 26:13, 26:17, 29:25, 33:15, 34:18, 34:19, 38:22, 38:25, 44:1, 47:1, 47:3, 48:8, 48:18, 48:24, 49:18, 50:14, 50:16, 54:14, 55:4, 56:16, 57:24, 60:4, 61:8, 64:8, 67:16, 68:20, 68:25, 73:1, 73:23, 74:5, 74:6, 75:12, 78:21, 80:11, 81:15,</p>	<p>82:4, 84:18, 85:16, 97:12, 97:13, 100:6, 107:15, 109:9, 109:16, 109:17, 111:21, 115:5, 118:24, 123:21, 125:11, 127:10, 127:23, 128:8, 128:13, 129:1, 132:8, 132:25, 133:12, 133:19, 134:16, 135:4 above 41:22 absent 138:19 absolutely 120:14 accept 19:24, 100:16 acceptable 136:4, 136:6 access 33:3, 54:1, 54:2, 67:20, 86:2, 101:5, 101:11, 101:14, 101:19, 101:20, 125:9, 127:1, 127:5, 127:15, 127:18, 127:19, 127:21, 128:14, 128:17, 129:11, 129:12, 130:2 accommodate 58:20, 93:14, 136:14 accomplish 120:8 accomplishable 136:11, 138:19 accomplishes 86:25 account 67:9, 89:19, 103:21, 114:2 accounts 25:20, 25:21</p>	<p>achievable 108:25 acoustical 68:6 acquisition 12:21 acquisitions 11:11 acre 18:3, 27:20, 27:23, 27:24, 90:18 acres 10:6, 28:6, 53:19, 72:10 across 9:10, 21:8, 21:11, 24:24, 24:25, 25:1, 25:7, 27:4, 27:7, 27:9, 27:19, 42:18, 46:4, 53:21, 54:2, 54:4, 71:7, 77:7, 79:3 act 13:13 action 47:4 active 112:4 activities 23:25 activity 21:18, 21:19, 73:7 actual 49:3, 57:18, 114:12 actually 6:7, 30:1, 31:1, 40:23, 43:2, 43:4, 46:25, 49:11, 68:18, 71:4, 72:7, 92:14, 95:5, 96:13, 106:12, 112:6,</p>	<p>113:2, 125:22 ad--4 104:25 add 27:3, 28:16, 37:7, 97:19, 99:1, 122:7, 131:7, 134:21 adding 32:19, 34:20, 38:16, 60:14, 84:15, 88:18 additional 7:5, 10:19, 11:8, 11:10, 12:5, 28:16, 32:20, 46:6, 60:4, 60:11, 60:16, 61:9, 80:13, 84:13, 84:14, 84:19, 93:20, 95:20, 95:21, 97:2, 99:10, 110:12, 111:4, 115:11, 117:12, 118:15, 120:23, 121:12, 122:18, 136:20, 139:25 additionally 102:21 address 9:16, 26:12, 34:1, 34:7, 63:8, 66:7, 96:7, 97:7, 98:10, 103:22, 114:10, 121:1 addressed 9:13, 44:10, 82:1, 82:2, 82:3, 95:1, 123:10 addressing 122:6 adds 27:11 adequate 8:4, 32:22,</p>

Transcript of Administrative Hearing
Conducted on January 3, 2020

38

67:20, 87:22, 93:13, 96:4, 98:2, 98:6, 98:11, 98:19, 101:2, 103:25, 105:11, 105:18, 106:8, 121:5, 130:3 adequately 38:11, 62:4 adjacent 33:7, 66:23, 66:24, 67:19, 68:22, 86:4, 87:22, 88:14, 88:24, 93:1, 96:20, 96:22, 120:12, 121:16 administration 126:24, 128:7, 128:16, 129:15, 131:4 administrative 1:1, 140:7 admitted 139:24, 140:1, 140:3 adopt 47:22 adopted 47:23 adoption 55:14, 75:13, 75:15 advantage 118:21 adversely 97:10, 97:15 aesthetics 81:9, 81:10, 81:11 affect 97:10, 97:15, 103:19 affected 23:24 affects 34:14	affidavit 3:12, 5:2, 5:20, 6:7, 6:16 affirm 12:13, 19:4, 100:5, 123:20 after 18:12, 18:16, 30:23, 41:14, 42:23, 50:17, 56:23, 64:19, 71:11, 123:6, 140:22 ag 3:15, 6:24 again 9:3, 10:3, 16:4, 22:22, 35:25, 36:18, 38:12, 45:15, 63:10, 73:11, 86:22, 101:14, 102:6, 102:18, 108:20, 110:6, 119:16, 126:22, 130:22, 135:7 against 78:11, 87:24 age 74:3 agencies 126:23, 140:16 agency 105:12, 126:25 ago 11:22, 15:7, 21:17, 43:10, 53:23 agree 16:8, 22:11, 40:3, 40:6, 83:11, 133:3 agreed 132:12 agreement 14:20, 14:24, 17:7, 17:13, 50:12, 134:12	agricultural 89:5, 89:6 ahead 12:3, 12:17, 13:14, 16:7, 16:22, 18:11, 19:8, 20:3, 23:3, 23:4, 27:14, 47:11, 48:20, 50:12, 57:1, 57:22, 61:6, 66:16, 75:12, 75:21, 83:10, 94:20, 105:2, 114:6, 123:24, 125:17, 126:3, 132:18 air 96:6 align 58:8 alignment 71:10, 89:19, 89:20, 101:17 all 4:6, 6:5, 6:18, 7:9, 7:22, 7:23, 7:24, 8:15, 12:4, 17:5, 17:8, 18:14, 23:16, 23:24, 29:7, 31:9, 31:14, 39:10, 40:1, 40:3, 40:6, 40:11, 43:21, 43:22, 48:8, 49:21, 50:16, 52:20, 52:21, 54:13, 60:15, 70:8, 71:25, 73:10, 78:7, 79:12, 82:4, 82:6, 83:12, 83:19, 86:19, 87:11, 93:16, 98:19, 98:20, 98:22, 99:3, 99:15,	101:24, 103:2, 103:4, 104:19, 105:19, 108:21, 112:25, 119:4, 119:25, 122:3, 122:6, 122:23, 123:8, 123:10, 125:7, 126:1, 128:22, 130:23, 132:14, 133:22, 134:4, 135:25, 139:7, 139:23, 140:11, 141:2, 141:4 all-time 40:9 allow 85:22, 87:5, 88:10, 88:13, 91:17, 91:21, 111:11 allowable 126:21 allowance 91:6 allowed 45:25, 46:3, 84:17, 90:19, 111:22, 112:9, 120:4, 132:6, 132:13 allowing 54:10, 84:3, 85:12, 85:20, 87:23, 88:20 allows 84:21, 85:21, 91:16 almost 119:6, 132:4 along 17:23, 21:11, 21:12, 42:10, 42:11, 68:25, 73:17, 76:13, 78:8, 78:11, 78:14, 78:19, 80:7, 80:9,
--	--	---	--

Transcript of Administrative Hearing
Conducted on January 3, 2020

39

87:10, 93:6, 93:21, 103:17, 105:10, 109:18, 117:8, 118:19, 120:17, 127:15, 129:1, 134:13 already 19:22, 36:11, 59:15, 68:15, 69:10, 71:12, 77:2, 78:23, 85:25, 86:1, 88:2, 88:17, 94:19, 95:1, 97:3, 101:13, 102:9, 102:18, 103:20, 105:5, 105:15, 105:18, 109:15, 118:22, 119:4, 119:8, 120:3, 123:9, 127:19 also 7:17, 9:13, 10:21, 11:7, 13:23, 16:24, 17:16, 21:2, 21:13, 24:23, 34:1, 37:6, 38:21, 39:22, 52:22, 53:1, 57:19, 66:24, 68:11, 70:10, 74:2, 78:10, 78:22, 78:23, 80:18, 84:21, 92:24, 101:5, 103:5, 105:10, 121:12 although 60:8, 63:13, 75:13, 106:6, 113:17 always 46:1, 70:20, 95:24 amend 56:18	amended 56:13, 56:15 amendment 4:3, 4:4, 10:18, 11:4, 18:13, 20:5, 20:8, 47:13, 94:5, 94:11, 100:19, 106:6, 124:10 amendments 85:11 amenities 18:5 amount 16:11, 30:13, 97:4 analysis 3:17, 3:19, 3:22, 20:11, 22:21, 30:5, 35:5, 35:6, 35:20, 35:21, 35:24, 37:2, 65:21, 67:7, 67:18, 68:17, 68:19, 68:20, 69:1, 69:9, 71:16, 72:3, 105:13, 124:13, 124:24 analyze 39:22 angle 69:16 another 6:24, 6:25, 8:9, 8:24, 9:2, 16:19, 21:24, 51:9, 51:11, 105:22, 108:1, 117:4, 119:9 answer 24:9, 37:14, 48:9, 48:10, 49:8, 50:20, 58:13, 59:8, 65:25	answered 131:2 answers 6:22 anticipated 38:12, 71:6, 130:14 anticipating 71:2 any 4:21, 9:5, 10:23, 11:25, 12:5, 16:16, 25:24, 28:15, 41:13, 44:20, 58:23, 60:15, 60:20, 72:23, 75:24, 76:17, 77:25, 79:24, 80:1, 80:2, 87:6, 87:24, 88:4, 93:25, 94:5, 109:2, 110:8, 114:16, 115:2, 120:16, 120:23, 121:24, 127:18, 128:18, 137:23, 138:19, 139:21 anyone 4:12, 130:25 anything 6:16, 16:11, 57:10, 98:25, 121:16, 121:25, 122:7, 131:6, 131:10, 134:10, 136:5, 140:20 anyway 16:7, 55:2, 134:14 apartment 14:1, 18:4, 26:24, 90:4, 90:16, 90:19 apartments 18:4, 18:7, 24:24, 24:25,	27:2, 53:22, 54:4, 72:19, 77:7 apologize 36:15, 135:7, 136:20 appeared 100:13, 124:4 apples 28:2 applicability 89:1 applicable 63:1, 63:13, 83:20, 83:24, 85:9, 98:23, 122:3, 134:4 applicant 2:2, 4:14, 4:19, 4:20, 10:12, 10:20, 11:12, 50:3, 103:9, 103:12, 103:17, 106:17, 131:23 application 1:5, 4:3, 10:14, 10:24, 10:25, 11:1, 11:6, 15:22, 17:2, 20:5, 20:8, 32:7, 89:22, 91:8, 100:24, 106:5, 106:14, 106:15, 110:10, 114:15, 124:10, 134:8, 136:24, 138:19, 138:24 applications 7:20, 104:13, 104:19 appreciate 141:5 approach 53:13, 126:25 approached 128:7
---	--	---	--

Transcript of Administrative Hearing
Conducted on January 3, 2020

40

<p>appropriate 11:2, 17:23, 32:18, 73:2, 73:4, 85:4, 85:7, 88:19, 90:2, 90:8, 90:16, 91:21, 104:4, 105:3, 114:23, 138:5, 139:12</p> <p>approval 10:17, 50:3, 50:22, 54:17, 54:18, 54:20, 64:22, 65:3, 107:11, 111:13, 132:10</p> <p>approve 40:3, 94:11, 111:3, 113:9, 139:2</p> <p>approved 7:21, 21:7, 40:6, 40:7, 40:8, 47:16, 49:16, 50:6, 50:15, 50:18, 51:22, 57:16, 63:17, 64:20, 65:2, 65:12, 82:17, 82:21, 89:4, 89:25, 96:20, 98:16, 104:14, 104:23, 107:12, 108:4, 108:5, 111:11, 112:5, 112:6, 113:20, 113:24, 114:21, 119:23, 128:21</p> <p>approving 8:14, 47:20, 54:8, 54:22, 105:12</p> <p>approximately 127:8</p> <p>april 128:12, 129:25</p>	<p>arbitrarily 23:23</p> <p>architect 11:14, 19:12</p> <p>architectural 78:19</p> <p>architecturally 96:21</p> <p>architecture 13:3</p> <p>area 7:16, 9:7, 9:8, 9:9, 13:24, 22:7, 25:2, 26:11, 26:15, 26:18, 26:22, 27:3, 27:21, 28:13, 30:1, 30:3, 30:17, 30:19, 30:21, 32:15, 32:21, 33:21, 34:12, 34:23, 35:6, 36:10, 36:11, 36:14, 37:2, 37:17, 42:16, 42:19, 46:1, 46:11, 52:5, 52:11, 52:14, 52:15, 52:22, 52:23, 53:1, 60:12, 66:25, 67:7, 67:19, 68:16, 68:19, 68:20, 69:1, 69:9, 69:14, 69:17, 69:18, 69:19, 70:3, 70:4, 70:8, 70:9, 71:25, 72:4, 72:7, 72:9, 73:2, 73:3, 84:20, 89:16, 89:18, 91:23, 92:19, 95:21, 105:8, 105:18, 108:3, 109:18, 109:20,</p>	<p>110:6, 115:21, 118:25, 119:6, 120:21, 130:6, 130:9, 130:15, 138:23</p> <p>areas 23:24, 35:24, 37:4, 43:14, 45:23, 46:2, 46:10, 51:19, 52:5, 52:8, 52:20, 60:5, 60:20, 60:22, 67:7, 67:8, 70:12, 72:11, 72:14, 72:16, 92:19, 102:22, 109:6, 109:18, 109:23, 117:3, 117:13, 118:15, 120:12, 120:15, 120:17, 121:11</p> <p>aren't 23:9, 121:13</p> <p>argue 131:17</p> <p>arguing 9:1</p> <p>argument 135:4</p> <p>argument's 44:16, 60:5</p> <p>arms 80:4</p> <p>around 18:6, 88:4, 92:18, 136:18</p> <p>asked 58:2, 112:11, 129:4</p> <p>asking 90:12, 109:11, 109:13, 115:16</p> <p>aspects 139:7</p> <p>associated 66:21</p> <p>assume 45:10, 60:5,</p>	<p>122:20</p> <p>attached 36:8, 37:9</p> <p>attorneys 2:4</p> <p>audio 142:6</p> <p>available 98:19</p> <p>avenue 2:5, 126:13</p> <p>aware 80:25</p> <p>away 31:3, 55:17</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>b 89:11</p> <p>b2a 76:20</p> <p>bachelor's 13:1</p> <p>back 6:9, 8:25, 14:12, 21:7, 26:3, 26:16, 29:10, 30:6, 37:13, 37:18, 37:21, 39:17, 40:7, 40:16, 43:9, 43:10, 48:17, 52:14, 52:21, 53:3, 53:4, 59:22, 60:3, 62:13, 62:20, 64:4, 66:10, 66:15, 69:3, 70:15, 72:2, 74:9, 80:2, 80:4, 80:8, 122:23, 123:2, 131:16, 133:1, 135:17, 136:7, 136:19, 137:6, 139:18</p> <p>background 10:13, 12:25,</p>
---	--	--	---

Transcript of Administrative Hearing
Conducted on January 3, 2020

41

<p>13:7, 13:23, 15:2, 47:4, 122:18, 125:24, 132:2 bad 99:18 balance 34:10, 44:8, 44:10, 45:16, 84:1 barely 34:20 barring 140:20 bars 135:12 basco 46:25 base 85:13, 135:13 based 7:24, 31:25, 44:17, 44:18, 44:24, 44:25, 51:12, 58:5, 58:6, 59:23, 64:19, 64:23, 68:10, 81:6, 82:24, 84:20, 93:22, 98:16, 98:18, 108:24, 109:17, 109:24, 135:6 basic 85:15 basically 21:16, 21:23, 29:9, 30:9, 31:3, 32:22, 40:9, 40:14, 41:14, 46:15, 60:14, 73:3, 77:3, 78:5, 93:18, 102:3, 106:21, 109:11, 117:5, 121:14, 128:13 basis 91:10, 135:23</p>	<p>because 5:10, 5:17, 7:8, 7:16, 7:25, 8:5, 8:25, 9:14, 13:12, 14:15, 15:11, 17:5, 17:10, 18:2, 18:5, 19:17, 21:19, 23:14, 24:11, 30:19, 31:5, 34:7, 37:20, 40:24, 45:22, 47:21, 48:15, 50:11, 61:4, 63:16, 66:3, 69:15, 69:24, 70:1, 72:20, 74:12, 76:15, 77:11, 78:1, 79:11, 80:15, 82:4, 86:11, 90:12, 92:15, 107:20, 111:10, 112:12, 119:17, 124:18, 130:10, 132:8, 133:13, 133:14, 135:2, 136:1, 140:23 become 75:17 bed 80:19 been 13:18, 13:19, 14:16, 14:19, 16:2, 19:13, 20:22, 29:4, 43:9, 47:21, 65:16, 66:8, 68:24, 72:13, 78:25, 81:8, 81:10, 81:15, 96:11, 101:25, 103:21, 104:11, 106:13, 108:3, 111:11, 112:8, 113:13, 113:14,</p>	<p>120:3, 120:13, 128:24, 134:6, 134:16, 138:24, 139:24, 140:25 before 1:10, 4:15, 11:21, 13:5, 14:12, 19:23, 20:5, 24:9, 38:23, 39:13, 55:21, 100:13, 100:19, 114:25, 116:18, 124:5, 131:14, 136:23, 140:2 begin 39:19 beginning 32:10, 40:8, 74:6, 138:25 begun 38:1 behalf 2:2, 4:20, 11:12 behind 55:22, 55:24, 78:15 being 16:7, 17:21, 18:1, 43:22, 43:25, 45:16, 46:13, 46:17, 84:23, 89:4, 112:14, 125:6 belief 14:10 believe 17:17, 26:14, 28:17, 51:6, 51:9, 51:10, 57:7, 96:7, 105:18, 112:12, 116:10, 123:15, 135:6 below 130:23 benefit 93:25, 94:3</p>	<p>benefits 121:14 best 17:22, 17:25, 58:13, 138:18, 138:20, 139:7, 139:8, 142:6 bethesda 2:7 better 23:2, 33:3, 34:10, 59:7, 72:21, 74:13, 80:17, 103:15, 125:21 between 21:25, 29:7, 30:15, 34:18, 67:6, 85:10, 87:2, 102:24 beyond 120:25 bifurcate 102:3 big 26:21, 30:19, 74:14, 78:1, 78:15 bigger 26:20 biggest 40:11 bike 110:4 bill 85:9 binding 5:4, 92:7, 113:24, 133:3, 134:22 bio 110:3, 115:11, 116:24, 117:5, 117:6, 120:10, 120:15, 132:7, 133:19 bisecting 80:21</p>
---	---	---	--

<p>bit 26:25, 38:20, 42:7, 66:1, 68:24, 72:7, 73:14, 74:5, 92:11, 97:13, 98:3, 98:9, 99:16, 102:4, 107:15, 115:1, 117:15, 122:17, 132:1 blend 26:14 blends 9:7 blessing 65:13, 134:11, 138:6 blip 43:5 block 67:23 blocker 11:23 blocks 78:5, 78:6 blue 36:7, 72:5, 102:21 board 3:18, 5:12, 5:17, 10:17, 25:3, 47:23, 51:23, 54:8, 54:21, 54:22, 55:14, 55:21, 56:3, 56:7, 56:9, 56:11, 56:12, 56:19, 56:20, 56:23, 57:5, 57:15, 57:17, 64:11, 64:20, 82:14, 82:17, 82:21, 134:12 board's 8:12, 47:4, 47:19, 48:19,</p>	<p>54:16, 55:11, 111:8 body 100:13 bordered 109:19, 109:21 both 68:6, 73:6, 74:1, 96:21, 96:22, 126:1, 126:10, 126:11, 126:13, 131:4 bottom 21:13, 127:17 boundaries 22:7, 23:13 boundary 22:14 boxes 116:25, 117:5, 117:10, 118:10, 118:13 bozzuto 13:16 break 61:20, 62:8, 62:12, 99:8, 99:21, 122:22, 122:24, 123:7, 131:14 breakdown 28:25 brewer 2:4, 4:18, 10:4 brief 9:25, 12:23, 13:23, 123:1, 135:16 briefly 16:24, 20:7, 21:1, 26:13, 74:3, 76:22, 78:23, 82:7, 85:4, 86:23, 88:7, 92:9, 103:16, 114:10, 120:6 bring 5:22, 25:6,</p>	<p>37:7, 54:3, 84:23, 121:12 brings 14:25, 121:11 broader 34:15, 34:17 brought 104:9 brush 108:14 buffer 40:24, 44:21, 45:23, 46:15, 46:16, 51:15, 55:18, 58:21, 60:12, 108:7, 109:10, 111:4, 111:12, 111:22, 113:21, 115:21, 117:9, 119:22, 132:7, 133:4, 133:6, 133:7, 133:9, 133:14, 137:20 buffering 63:14 buffers 7:19, 40:4, 43:13, 44:17, 45:5, 45:9, 45:14, 46:6, 46:8, 46:24, 47:6, 51:21, 53:8, 53:14, 55:19, 55:22, 55:24, 57:25, 58:2, 58:7, 58:20, 60:4, 60:6, 60:9, 68:6, 68:11, 109:15, 109:16, 110:1, 110:19, 113:6, 116:8, 120:5, 120:8, 131:18, 133:1, 134:23 bugher 1:25, 142:2,</p>	<p>142:13 build 34:9, 38:2, 72:15 buildable 30:25 builders 112:4 building 37:24, 46:1, 60:12, 72:16, 72:20, 80:3, 83:9, 84:10, 85:12, 85:20, 86:3, 87:13, 87:19, 87:21, 91:24 buildings 46:2, 78:11, 78:15, 92:18 built 30:13, 31:2, 37:21, 53:22, 71:17, 73:18, 91:22, 112:6, 112:8 bureaucracy 16:9 bus 33:8, 33:10 business 16:20, 18:9, 32:15 businesses 32:14 busy 19:1</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>c 5:8, 5:9, 116:19 c-3 73:2 ca 48:6 cake 100:3</p>
---	--	---	---

Transcript of Administrative Hearing
Conducted on January 3, 2020

43

<p>call 11:7, 11:9, 18:21, 69:8, 127:5, 137:4 called 4:13, 15:8, 32:20 calling 11:10 came 14:24, 17:20, 42:17, 69:15, 69:16, 91:24, 106:8, 138:5, 139:24 can't 8:20, 46:20, 52:10, 61:24, 75:9, 113:17, 114:21, 117:3, 135:22, 136:12, 139:2 capable 112:20 capacity 84:11, 98:11, 98:20 capital 49:1, 121:24 car 33:10, 93:17 carbon 86:5, 86:10 care 122:13, 122:14 carriers 15:11 cars 86:12 case 1:5, 4:12, 40:21, 43:14, 43:16, 56:2, 59:18, 64:16, 66:23, 73:4, 87:7, 87:24, 89:13, 104:25, 106:3, 112:9,</p>	<p>138:6, 139:8, 142:8 cases 60:8, 64:14, 65:10 categories 104:4, 105:4 cathie 136:10, 139:10 caught 43:22 caused 87:7 cautious 43:12, 43:25 cbd 81:23 cd 3:11, 3:13, 5:7, 5:20, 5:25, 6:5, 6:15, 137:18, 137:20 cell 81:2 center 11:25, 21:14, 21:21, 22:1, 24:14, 24:22, 24:24, 25:14, 25:16, 25:17, 25:25, 26:5, 26:24, 29:25, 30:7, 30:8, 30:13, 30:15, 30:18, 31:5, 31:7, 33:6, 35:1, 36:4, 36:6, 36:14, 37:3, 37:12, 40:24, 44:4, 66:21, 66:24, 67:17, 67:21, 67:25, 70:5, 72:4, 78:9, 78:18, 78:20, 81:23, 84:16, 86:18, 87:11, 88:16, 90:14,</p>	<p>95:16, 96:25, 97:5, 97:20, 99:6, 108:2, 112:2 center's 67:12 centerline 73:16, 127:11 centers 66:19, 66:21, 88:11 central 24:20 certain 40:22, 51:11, 64:12, 91:14, 91:15, 102:19 certainly 32:19, 37:10, 49:8, 84:7, 84:8, 84:21, 87:21, 88:20, 130:16 certificate 142:1 certified 19:11, 114:22 certify 142:2 challenges 88:21 change 50:17, 55:25, 74:20, 75:16, 114:3 changed 41:2, 57:5 changes 56:20, 75:5, 119:21 changing 9:4, 39:6, 85:9, 85:17 channel 41:11, 41:12, 41:14, 41:16, 41:23, 46:14 channels 43:1, 43:3,</p>	<p>44:21, 45:11 character 24:19, 25:20, 26:18, 68:2, 87:4, 87:10, 87:22, 88:2, 92:20, 97:11, 97:15, 97:19 characteristics 21:2 characterize 24:7 chart 52:25, 91:13 cheap 35:10 check 75:21, 124:17 checking 13:14 chief 54:21, 138:12, 138:13, 138:23 chlebowski 11:17 choice 90:5, 90:20 chop 78:1 chose 70:2 chtd 2:4 cid 98:16 cip 122:1 circling 59:22, 60:3 circulation 63:14, 84:4, 84:25, 101:5, 125:9 circumstances 75:15 city 13:3, 13:15 civil 11:15, 98:3,</p>
---	--	---	--

Transcript of Administrative Hearing
Conducted on January 3, 2020

44

<p>99:25, 100:11, 100:15, 100:17, 100:24, 101:2 cl5 3:19 cl6 3:17, 35:6, 35:20, 35:21, 35:23, 36:4, 68:18, 68:19, 69:9, 72:4, 73:13 clarification 61:1, 63:22, 64:4, 81:18, 102:2, 120:2 clarify 55:13, 70:11, 71:18, 87:16, 101:23, 110:22, 111:1, 114:25, 120:20, 134:21, 140:12 clarity 9:19, 10:19, 11:10, 69:2, 108:11 clark 3:4, 11:10, 12:9, 12:20, 131:23 clarksburg 108:2, 111:22, 111:25, 112:2 classification 76:5 classify 30:5 clauses 39:4 clear 17:12, 17:15 clearance 129:10 clearing 52:16, 59:14, 59:15, 60:21 clearly 28:11, 34:21,</p>	<p>34:24, 37:17, 39:8, 69:17, 69:19, 70:3, 70:4, 84:19, 85:23 clemente 98:13 client 13:13 clients 114:17 clopper 3:16, 9:14, 9:15, 10:7, 17:23, 21:10, 23:5, 23:25, 25:7, 25:17, 27:1, 27:4, 27:6, 27:8, 27:9, 27:19, 29:18, 29:20, 30:3, 30:8, 35:6, 35:15, 35:24, 36:1, 41:25, 42:4, 67:1, 68:9, 68:13, 68:17, 68:23, 69:18, 70:6, 70:16, 70:17, 71:9, 73:7, 73:15, 73:17, 77:3, 78:9, 78:11, 78:14, 78:18, 79:25, 86:19, 87:10, 90:11, 93:7, 103:3, 103:18, 105:6, 125:12, 125:20, 126:8, 127:1, 127:7, 127:12, 127:15, 129:1, 129:10 close 9:15, 22:24, 71:9, 95:22, 140:2, 140:22 closely 41:8</p>	<p>closement 63:14 closer 24:13, 24:21, 34:14, 35:1, 118:7, 131:22 cluster 98:16 clv 125:21 code 83:10, 89:25, 90:1, 90:3, 91:13, 93:16, 98:23, 122:3 cognizant 44:3 collaboration 110:15 colloquial 44:12 colloquially 131:17 color 3:17, 35:5, 35:19, 35:21, 72:3 colors 36:3 combination 76:6, 110:14 combined 18:15 comcast 15:12 come 14:20, 31:14, 33:11, 73:19, 78:17, 78:18, 110:13, 120:14, 128:18, 131:22, 136:23, 137:24, 140:13 comes 21:23, 21:25, 40:20, 42:10, 42:14, 56:23, 95:25</p>	<p>comfortable 134:19, 135:4 coming 23:16, 61:10, 67:13, 103:5, 140:21 comment 134:8 comments 106:25, 107:5, 125:16, 137:24 commercial 9:9, 10:9, 25:25, 26:23, 26:24, 27:2, 28:12, 32:15, 36:4, 73:5, 73:6, 73:9, 73:11, 76:9, 76:10, 78:10, 83:2, 84:14, 84:15, 84:20, 87:10, 88:18, 89:1, 90:7, 90:12, 90:16, 90:18, 90:22, 92:24, 93:22, 93:23, 93:24, 95:22, 97:3, 97:4, 97:14, 118:24, 130:18, 130:20 commercially 96:23 commit 112:18 common 118:2 communication 10:23 communities 38:2, 74:12, 88:11, 88:24 community 10:21, 10:23, 25:14, 25:16, 25:17, 33:2, 33:4, 33:19,</p>
--	---	---	--

Transcript of Administrative Hearing
Conducted on January 3, 2020

45

<p>37:24, 67:4, 67:13, 74:18, 74:19, 77:23, 79:15, 85:1, 86:17, 87:9, 88:4, 92:20, 95:17, 95:23, 96:24, 97:18, 97:19 companies 14:4, 14:5 company 13:25, 14:1, 14:3 compatibility 87:4, 95:8, 96:12 compatible 85:1, 87:2, 87:15, 88:14, 88:23, 91:23, 96:19, 96:21 complement 97:5 complementary 96:22 complements 95:17 completing 112:3 compliance 67:15, 95:1 complicated 29:10, 29:24 complying 50:25 components 66:20 comprehensive 83:16, 83:23, 85:11 comprised 10:5 compromise 132:8 concept 3:16, 7:20, 7:21, 8:5,</p>	<p>29:20, 63:17, 65:12, 70:16, 76:23, 89:20, 106:2, 108:5, 110:10, 110:21, 113:4, 134:11 concepts 70:17, 71:3 conceptual 20:12, 114:13, 137:6 conceptually 7:22, 70:16, 112:5 concern 50:13, 63:21, 110:20 concerned 23:12, 43:1 concerns 63:2, 63:4, 63:16 concluded 141:8 concludes 18:17, 75:23 conclusion 17:20 conclusory 7:11, 9:4 concrete 118:17, 118:18 concurred 127:2, 131:4 concurrently 32:18 condition 50:17, 54:20, 57:25 conditionally 98:16 conditions 15:2, 48:12, 49:12, 49:16, 50:6, 54:16, 54:18, 56:15, 56:19, 57:6, 57:7, 58:7,</p>	<p>59:20, 64:16, 64:17, 72:4, 111:9, 112:15, 112:17, 113:1, 113:5 conducive 16:10, 73:8 confidence 114:18 confident 51:14, 55:25, 65:21, 113:20, 114:3, 114:5 configuration 72:17, 85:22 confirm 104:19 conflict 121:24 conformance 8:2, 11:2, 32:2, 63:1, 63:3, 63:11, 63:12, 63:20, 64:5, 64:9, 66:12, 73:22, 96:1 confused 7:25, 9:11 congestion 126:21 connect 78:9, 101:18 connected 41:25, 84:5 connecting 77:6 connection 67:23, 68:8, 98:5, 102:24 connections 67:24 connects 77:22 connotation 37:19 consequently 37:23</p>	<p>conservation 7:13, 8:14, 45:3, 45:10, 46:8, 47:5, 47:13, 48:2, 49:1, 50:4, 54:23, 58:1, 58:8, 63:14, 64:21, 82:9, 82:11, 82:13, 82:16, 82:17, 82:20 consider 28:5, 33:5 consideration 74:8 constrained 78:3, 118:5 construct 117:4 constructed 73:21 construction 14:4, 108:3, 112:3, 118:13 consultant 123:7 consultants 39:22, 39:24 consultation 123:6 consulting 11:17 contained 74:2, 78:6, 94:12 contains 21:14 context 62:3 contexts 62:2 continue 62:13, 63:24, 90:21, 112:10 continued 43:15 continuous 42:15</p>
--	--	---	---

Transcript of Administrative Hearing
Conducted on January 3, 2020

46

contracts 17:6, 17:13 contribute 95:19 contributes 96:24 control 108:5, 114:7, 114:12, 114:14 controlled 126:6, 126:10 conversation 53:16, 109:9, 109:10 converting 118:17 convinced 56:1 copies 5:25, 6:8, 6:9, 6:15, 55:8 copy 3:14, 4:24, 6:24, 6:25, 7:5, 21:5, 22:17, 27:17, 28:23, 39:18, 45:2, 48:11, 49:22, 55:7, 57:4, 57:8, 57:9, 70:25, 76:25 core 24:20, 26:22 corner 22:3, 25:17, 27:20, 30:18, 30:21, 36:5, 67:12, 70:6, 71:13, 71:15, 86:19, 90:11, 109:19, 129:9 correct 5:18, 15:19, 18:10, 38:6, 43:12, 50:19, 51:18, 52:20, 61:11, 61:17, 83:14, 89:17,	96:9, 106:17, 106:18, 111:2, 111:23, 116:8, 117:20, 122:19, 125:1, 132:11, 140:17, 142:4 corrected 49:1, 51:20, 52:4, 52:13, 53:14, 55:18 correspondence 129:14, 129:20, 129:21 cost 81:13 could 13:22, 31:1, 35:10, 51:15, 51:17, 54:3, 59:4, 61:10, 68:10, 71:17, 74:2, 78:23, 99:16, 106:7, 106:25, 107:25, 108:20, 110:15, 111:2, 116:10, 117:9, 117:13, 118:16, 120:6, 122:17, 132:22, 135:8 couldn't 28:3 council 7:9, 11:5, 41:7, 94:10, 97:22, 121:21, 134:2, 134:4, 135:21, 135:25 counsel 142:7 counted 117:23 county 1:2, 7:22, 15:12, 17:21, 33:6, 60:7, 63:18, 64:23, 65:14, 81:7,	89:25, 104:24, 107:22 county's 32:17, 95:18, 130:5 couple 6:20, 7:15, 15:5, 28:20, 80:15, 118:12, 135:9, 135:10 covenant 5:3 covenants 3:13, 3:14, 5:21, 6:14, 6:15, 6:16 cover 39:10 covered 51:14, 53:15, 73:14, 74:15, 96:15, 100:25, 119:12, 139:19 covering 69:11, 138:4, 139:20 crackers 134:15 create 38:3, 38:6, 46:15, 74:12, 74:19, 77:23, 77:25, 78:5, 78:16, 84:24, 126:14 created 60:6 creates 74:13 creating 20:11, 60:4, 60:10, 78:12 credit 118:15, 119:2 criteria 39:7, 108:22, 112:19, 112:20 critical 125:21	crmf 39:5 crn 88:6 crnf 4:6, 76:13, 90:4, 90:8, 90:23, 90:25, 92:12, 94:2, 96:17 cronin 138:23 crosstalk 58:19 crux 78:20 cul 77:19 cul-de-sac 15:9, 21:18, 21:19, 77:8, 102:22 cul-de-saced 32:24 culvert 42:14 current 45:9, 50:25, 76:4, 92:22, 101:17 currently 10:8, 21:17, 21:18, 22:2, 27:2, 32:23, 35:23, 36:19, 66:5, 73:21, 77:1, 93:16, 95:14, 101:14, 102:20, 103:8, 104:3, 106:4, 108:2, 121:8, 133:10 cut 23:17, 23:23, 70:1 cutting 23:13, 23:23 <hr/> D <hr/> data 40:17, 40:22
--	---	--	---

Transcript of Administrative Hearing
Conducted on January 3, 2020

47

date 10:22, 15:3, 75:13, 81:8, 140:20 dated 128:12, 129:24, 129:25 dates 14:12 day 23:3, 47:22 days 6:20 de-sac 77:20 deadline 136:18 deal 65:1, 69:13, 73:9, 80:22, 85:21, 113:6, 136:13 dealing 134:22 deals 65:4 deceptive 79:10 decide 69:13, 110:17 decided 44:11 decision 16:20, 18:9, 140:23, 140:24, 141:2, 141:3 declaration 5:3 decrease 34:1 dedicated 52:7, 52:8, 68:12, 73:20 dedicates 103:17 dedication 68:14, 72:11 dedications 77:21, 103:20	deduct 52:7, 52:10, 52:21 deducted 52:22 deems 139:11 defer 99:7 deferring 64:12 defined 69:17, 70:3, 103:15 degree 13:1, 78:16 delay 136:20, 140:23, 141:1 deleting 56:6 delineate 39:23 delineated 26:21 delineation 20:12, 20:24, 21:3, 21:6, 22:11, 39:21, 40:2, 51:20, 55:18 demand 17:21 demographics 85:10 demonstrate 10:25, 43:5, 43:6 denoted 105:7 denser 118:11 densities 85:12, 85:21, 88:11 density 18:3, 27:4, 27:7, 27:9,	31:13, 38:16, 87:8, 88:19, 90:17 dep 106:10, 106:12, 108:9 department 22:20, 104:24, 137:24, 138:17 dependent 121:15 depending 108:18 depends 28:3 depicts 22:19 depth 41:18 deputy 138:23 describe 14:8, 20:7, 21:1, 21:7, 26:13, 29:19, 81:6, 85:5, 88:7, 100:22 described 69:21, 91:14, 101:13, 105:9 describing 68:19, 69:14 description 12:24 deserves 54:25 design 63:6, 66:18, 67:2, 67:3, 67:15, 68:1, 68:3, 72:19, 78:21, 80:22, 81:9, 81:10, 81:11, 84:3, 87:5, 87:23, 93:10, 102:5, 103:19, 111:18, 113:25, 114:2	designated 70:5, 73:16, 109:7 designed 66:22, 78:25, 92:25 designs 66:23 detached 34:2, 36:8, 36:13, 36:23, 37:5, 37:8 detail 31:18, 66:1, 66:11, 66:17, 92:11, 99:13, 102:5, 103:24, 107:15, 115:2 detailed 82:3 details 8:12, 36:10, 48:22, 67:18, 82:4, 128:13 determine 108:19 determined 85:13, 108:22, 123:7 develop 14:20, 45:16, 46:17, 46:19, 86:19 developed 31:11, 34:22, 37:4, 53:25, 108:24 developer 13:17 developing 20:13 development 9:7, 10:15, 11:1, 11:12, 11:24, 12:22, 13:25, 14:1, 14:2, 14:3, 17:19, 18:14,
---	---	---	--

26:8, 26:14, 30:20, 31:9, 32:2, 32:6, 37:15, 38:19, 39:6, 44:5, 44:6, 59:25, 60:1, 67:4, 68:3, 81:19, 81:20, 84:4, 84:22, 85:15, 85:16, 86:5, 87:3, 87:12, 88:10, 88:14, 88:17, 88:21, 88:23, 90:25, 93:14, 95:22, 96:2, 97:1, 98:7, 101:16, 104:2, 105:25, 111:14, 121:8, 121:12, 125:23, 131:1 developments 87:9, 88:15, 88:24, 91:14, 96:20, 96:22, 121:16, 125:24 diagonal 70:1 diagram 3:16, 29:21, 70:16 diagrams 70:20 dictated 31:8 difference 41:19, 116:25 differences 116:24 different 15:11, 31:5, 79:24, 85:20, 85:22, 107:2, 107:3, 112:4, 116:19 difficult 30:17, 72:14	difficulties 136:9 digging 66:11 digress 16:7 diligence 15:2 diligently 141:3 direct 67:23 direction 25:11 directional 69:14 directly 24:22, 24:24, 25:1, 27:19, 32:12, 33:7, 33:8, 34:8, 54:2, 54:4, 86:3 director 132:4, 132:12, 138:23 disagree 132:22 disapproved 42:21 disc 5:7 discernible 23:13 disclose 11:21 disclosing 12:1 discrepancy 122:19 discretionary 107:19 discuss 78:23 discussed 60:4, 68:8, 68:17, 74:3, 77:2, 88:15, 120:25, 121:6	discussing 31:17, 74:9 discussion 26:17, 33:15, 33:16, 37:13, 55:21, 56:1, 81:15 discussions 58:5, 64:19, 81:7, 81:8, 91:20 distance 128:25 district 11:5, 85:11, 94:10, 96:2, 121:21 disturbed 120:17 disturbing 52:9 diverse 85:14 diversity 27:5, 95:20, 96:24 division 11:4, 54:20, 83:1, 108:13, 138:15 division's 108:15 doable 107:23, 135:6, 137:8 documentation 110:9, 110:12 documents 114:23 doing 14:6, 113:15, 133:13 done 15:3, 16:11, 18:7, 30:6, 40:24, 43:22, 46:4, 56:8, 56:10, 113:14,	113:17, 115:20, 125:8 donut 10:10, 28:21 dot 125:16 dots 39:10 double 75:21 doughnut 67:11, 95:15, 97:17 down 6:22, 23:16, 25:6, 34:14, 36:9, 42:5, 42:10, 45:8, 52:6, 67:24, 68:9, 71:11, 79:25, 80:16, 80:18, 80:19, 80:20, 101:18, 103:2, 103:4, 110:6, 127:22, 132:5 downhill 41:15 downturn 14:16 dp 108:11 dps 106:13, 110:7, 110:15, 113:7, 113:9, 119:23, 120:4, 132:15, 132:20, 134:10, 134:12, 136:2, 136:3, 136:16, 136:17, 136:22, 136:24, 137:5, 137:6, 137:25, 138:7, 139:16 draft 3:18, 111:10, 112:14, 112:16 drain 41:24
--	--	--	---

drains 41:25, 42:8, 42:9 dramatic 40:18 dramatically 30:20 drawn 122:13, 133:14 drc 106:17, 106:19, 106:25, 107:1, 107:5, 114:17 drilling 36:9 drive 86:11, 99:5 driveways 54:3 drove 63:2 duke 133:18, 134:24 dumping 21:19 during 123:7 dwelling 27:20, 27:22, 33:25, 36:11, 90:17, 90:18	easements 63:14 easier 35:22, 115:25, 131:13 easily 18:7, 120:17 east 21:10, 21:13, 22:22, 25:12, 27:21, 31:1, 36:1, 40:25, 70:1, 70:2, 71:21, 77:3, 109:22, 126:12, 127:6 eastern 68:22, 68:25, 69:17, 69:19, 70:3, 70:4, 70:8, 89:15, 89:17, 109:21 easy 131:11 eat 99:7 economic 9:4, 39:6 economics 85:10, 85:18 economy 14:16 edge 78:19, 109:21 edges 46:10 education 25:3 educational 12:24 effect 31:10, 34:21 effects 24:21, 40:19 efficiency 103:19 efficient 32:21, 130:3	effort 53:9, 66:18 efforts 14:21 eight 125:19 either 52:16, 69:25, 89:6, 89:8, 90:4, 90:5, 99:5, 110:4, 137:24, 138:22 electric 80:17, 80:20, 105:15 electronic 4:24, 63:5, 137:17 element 38:17, 81:12, 92:7, 117:11, 133:3, 134:22 elementary 98:13 elements 5:4, 40:1, 68:3, 78:19, 80:22, 113:24 eliminate 110:17, 117:8, 133:23 eliminated 50:5, 51:22, 57:25, 59:9, 73:1, 90:19, 133:14 eliminating 111:3, 133:13 elizabeth 2:3, 4:17, 10:3 elm 112:3 else 6:16, 80:1, 91:22, 98:25, 105:17, 122:7, 130:25, 131:6, 140:20	elsewhere 111:5 email 3:24, 7:21, 63:18, 65:18, 128:11, 129:17, 129:24, 138:17 embodies 33:12 employed 19:13, 142:7 employment 32:14, 33:19, 84:14 encompass 35:25 encourage 85:4 encouraging 33:13, 85:7 encroachments 46:3, 46:5, 60:17 end 21:19, 41:1, 62:24, 75:7 ended 30:25, 52:2 engineer 7:23, 11:15, 11:16, 97:6, 98:3, 99:25, 100:11, 107:10, 115:17, 124:2, 124:7, 135:3 engineered 8:11 engineering 82:5, 100:15, 100:17, 100:24, 101:2, 114:20 enhances 68:2 enough 30:17, 31:2, 88:12, 135:3 enrollment 98:18
E			
e2b 121:3 each 93:23, 117:10 earlier 68:17, 85:16, 105:4, 105:9, 121:2 early 2:4, 4:18, 10:4 easement 53:13, 53:16, 53:20, 53:23, 53:24, 54:6, 54:9			

<p>ensure 78:25, 85:14</p> <p>ensuring 83:25</p> <p>enterprises 32:15, 32:16</p> <p>entire 30:17, 122:14</p> <p>entirely 107:1</p> <p>entitlement 11:11</p> <p>entitlements 12:21</p> <p>entitling 16:19</p> <p>entity 134:2, 134:3</p> <p>entrance 129:8</p> <p>environment 38:17, 38:19, 39:14, 39:16, 43:25, 44:2, 45:17, 60:18, 64:23, 68:4, 68:11</p> <p>environmental 7:8, 7:10, 7:18, 8:3, 8:6, 11:8, 18:6, 39:19, 41:8, 47:3, 48:9, 50:21, 53:8, 53:14, 58:9, 58:12, 58:15, 58:23, 60:2, 60:10, 61:9, 63:1, 63:8, 64:9, 66:7, 104:24, 112:18, 112:20, 122:12, 122:15, 122:18, 122:22, 123:7, 123:17, 131:15, 133:1, 133:22, 134:20, 134:23, 136:1, 136:12</p>	<p>environs 24:16</p> <p>envisioned 70:19, 86:6, 86:17</p> <p>ephemeral 8:8, 8:9, 41:9, 41:11, 41:23, 43:1, 43:2, 44:19, 44:20, 44:21, 45:11, 46:14, 133:20, 135:5</p> <p>equate 126:1</p> <p>erosion 114:7</p> <p>error 71:16</p> <p>errors 30:5</p> <p>esd 45:17, 58:24, 60:22, 108:23, 110:16, 115:13, 132:6</p> <p>especially 37:18, 89:18</p> <p>esquire 2:3</p> <p>establish 87:12</p> <p>established 22:21, 86:23, 87:14</p> <p>establishing 87:1</p> <p>estate 16:17</p> <p>etheridge 108:16, 138:9, 138:11</p> <p>evaluate 117:9</p> <p>even 8:5, 8:12, 28:11, 30:18, 42:9, 46:13,</p>	<p>46:16, 48:19, 65:18, 70:2, 80:6, 80:8, 112:19, 114:2, 134:11, 134:13, 138:25</p> <p>evening 125:23, 125:25, 130:17, 130:19</p> <p>event 41:13, 41:17, 43:4, 43:23</p> <p>eventually 25:2, 42:10, 70:6</p> <p>ever 53:25, 110:12</p> <p>every 21:22, 51:14, 75:14</p> <p>everybody 9:1, 30:23, 31:12, 37:15, 43:17, 138:5, 139:19</p> <p>everyone 34:9, 62:20, 132:12</p> <p>everyone's 125:7</p> <p>everything 48:16, 71:21, 72:6, 105:17, 140:4</p> <p>evidence 123:8</p> <p>evolve 74:7</p> <p>evolved 37:25</p> <p>evolving 85:14, 85:23</p> <p>exact 41:1, 48:22, 52:14, 62:9, 103:15, 107:11</p> <p>exactly 13:11, 23:19,</p>	<p>61:21, 61:22, 86:6</p> <p>examine 27:18</p> <p>examiner's 26:12, 57:24, 122:6, 124:15, 125:11</p> <p>example 15:3</p> <p>exceed 91:5</p> <p>exceeds 129:5, 129:9</p> <p>except 140:24</p> <p>excluded 51:18, 51:19, 52:5</p> <p>excuse 31:20, 33:24, 37:8, 47:8</p> <p>excused 122:12</p> <p>exhibit 3:11, 3:12, 3:13, 3:14, 3:15, 3:16, 3:17, 3:18, 3:19, 3:20, 3:21, 3:22, 3:23, 3:24, 5:9, 5:14, 6:17, 6:23, 7:2, 20:18, 21:4, 21:5, 21:8, 21:12, 22:15, 22:16, 22:18, 22:22, 27:15, 27:18, 28:24, 29:5, 29:6, 29:13, 29:23, 35:2, 35:3, 35:12, 35:25, 36:1, 45:3, 45:7, 55:12, 69:3, 69:4, 69:7, 70:15,</p>
---	--	--	--

72:3, 102:7, 102:8, 102:12, 102:14, 102:17, 102:21, 105:7, 109:5, 112:25, 116:2, 116:5, 116:16, 124:19, 124:22, 124:23, 124:25, 129:22, 137:12, 137:15, 140:9 exhibits 5:10, 5:23, 101:5, 129:20, 139:23, 139:25, 140:1 exist 35:23, 77:9 existing 14:10, 15:2, 27:12, 27:15, 52:20, 52:23, 53:1, 53:15, 53:20, 54:5, 68:2, 68:4, 68:24, 72:3, 77:9, 84:2, 84:10, 87:2, 87:5, 96:19, 97:3, 101:11, 103:1, 105:5, 105:15, 118:19, 121:9, 125:22 exists 77:20, 101:15 expanded 43:13, 58:16, 116:8, 132:7, 137:19 expect 25:24, 34:25, 37:11 expected 37:5 expedite 19:24 experience 13:24, 64:11,	65:16, 111:16 expert 11:8, 13:6, 13:13, 19:16, 19:19, 19:23, 19:25, 48:9, 100:15, 100:17, 119:20, 122:22, 123:9 expertise 82:24 experts 51:3, 51:13, 55:23, 96:7 explain 16:25, 17:17, 18:13, 39:19, 41:9, 45:22, 59:24, 64:10, 76:22, 90:7, 91:6, 102:4, 103:24, 105:23, 120:7, 121:4 explaining 125:8 explanation 32:6, 98:10 extend 77:5, 86:2, 121:18 extended 101:18, 103:2, 103:4, 109:9, 109:15, 109:23, 110:1, 110:18, 117:9 extends 68:23, 105:6 extension 88:16 extent 53:8, 71:5, 110:24, 111:18, 118:9, 120:2 extra 102:2 extremely 88:23	eyes 21:20 <hr/> F <hr/> face 37:22, 80:3, 80:11 facilitate 67:3 facilities 8:4, 98:2, 98:5, 98:7, 101:4, 104:1, 108:6, 108:23, 109:7, 109:14, 110:3, 111:3, 111:5, 111:12, 112:5, 113:20, 117:8, 117:14, 120:7, 120:11, 120:13, 120:16, 121:5, 121:10 facility 96:4, 96:5, 109:22, 117:4 facing 30:14, 31:2 fact 41:17, 50:14, 71:3, 72:6, 73:10, 126:2, 136:8 factor 72:18 fall 80:24, 80:25, 81:1, 91:16, 108:12, 109:24 familiar 20:4, 22:6, 100:19, 110:8, 124:9, 130:5, 139:18 families 29:8, 34:19 family 14:18, 34:25, 36:23, 37:8	famous 16:6 far 24:11, 28:17, 48:21, 65:11, 73:13, 73:22, 80:25, 102:1, 109:25, 127:4, 127:6 farm 21:14, 21:24, 23:17, 40:10, 42:5, 42:11, 42:14, 42:16, 67:1, 68:9, 70:18, 71:2, 71:5, 71:6, 71:11, 71:20, 71:21, 73:19, 77:6, 77:8, 77:16, 78:9, 101:18, 103:2, 103:4, 105:6, 105:10, 109:20 favor 35:8 fcp 44:25, 109:2, 133:5, 133:10 feasibility 20:11 feature 119:9 features 7:18, 8:3, 14:10, 18:7, 45:18, 47:3, 58:9, 58:12, 58:15, 60:10, 84:5, 110:4, 110:18, 122:18 feedback 108:20 feeds 42:20 feel 17:22, 38:7, 46:11, 62:6,
--	---	--	---

<p>99:18, 109:25, 123:10, 134:19, 135:3, 136:9, 136:11 feet 73:16, 73:17, 76:13, 76:14, 76:17, 80:2, 80:4, 80:11, 84:18, 91:10, 91:21, 127:9, 127:10, 127:11, 128:25, 129:1 felt 73:5, 91:20 few 4:23, 64:3, 81:17, 98:1, 115:6, 120:19, 135:12 field 21:22, 43:17, 55:23 figure 22:19 file 47:13, 132:17 filing 18:15 fill 44:7 filling 67:10, 97:16 final 18:16, 48:11, 49:5, 49:12, 49:16, 50:4, 67:11, 73:24, 93:10, 97:17, 98:1, 105:12, 111:10, 111:13, 114:15 finalized 93:11, 111:18 finalizing 67:11 finally 14:24</p>	<p>financial 142:9 find 30:25, 45:15, 61:21, 61:22, 62:22, 111:2 finding 7:15, 8:2, 97:6, 97:9, 110:16, 110:17, 111:5, 121:2, 121:21, 133:20, 133:22 findings 11:4, 11:6, 38:21, 74:4, 94:5, 94:11, 94:13, 97:23, 131:5 fine 17:11, 48:10, 48:16, 59:6, 75:25, 105:19, 129:19, 131:12, 133:11 finger 75:9 finish 115:5 fire 9:10, 24:14, 25:1, 83:10, 101:5 firm 20:9 first 48:18, 48:22, 75:3, 83:16, 104:17 fit 39:7 fits 85:1 flagged 52:3 flat 16:4 flexibility 84:3, 84:22,</p>	<p>87:5, 87:23, 88:13, 88:20 flexible 72:20, 85:9, 88:12 floating 3:11, 4:24, 5:4, 5:8, 10:25, 20:13, 39:5, 66:5, 66:6, 70:9, 76:11, 76:24, 77:1, 82:1, 82:25, 83:13, 83:15, 87:12, 87:14, 87:20, 88:6, 89:2, 89:3, 89:9, 89:11, 89:13, 90:4, 90:8, 90:17, 90:20, 91:1, 91:3, 92:7, 96:17, 97:10, 97:22, 98:4, 98:22, 107:1, 109:6, 113:23, 116:20, 121:23, 122:3, 122:19, 124:10, 124:14 flooding 45:9 flow 126:8 focus 81:9 focusing 26:10 follow 129:17, 133:21 following 13:15 foot 68:13, 68:15, 73:15, 73:17, 73:19, 91:24, 92:6, 103:3, 103:6 footprint 86:5, 86:10</p>	<p>footprints 72:20 foregoing 142:2 foresight 132:2 forest 7:13, 8:14, 20:12, 20:24, 21:3, 21:6, 39:21, 40:1, 40:4, 45:3, 45:10, 46:8, 47:5, 47:13, 48:1, 48:2, 48:25, 50:4, 50:14, 52:13, 52:20, 52:23, 53:1, 53:15, 54:23, 58:1, 58:8, 59:13, 59:14, 59:18, 59:19, 64:21, 82:8, 82:11, 82:13, 82:16, 82:17, 82:19 forestation 52:17 forget 39:4, 45:9 form 132:7 formal 110:8, 129:18 format 137:17 formed 14:24 forth 83:2 forward 109:11, 112:10, 114:1, 114:19, 122:1 forwarded 47:8 foster's 99:9, 99:13</p>
--	---	--	--

<p>found 9:3, 9:11, 87:6</p> <p>four 11:7, 91:17, 91:18, 91:21, 126:7, 126:8</p> <p>fractured 84:23</p> <p>fragmented 28:22, 88:21</p> <p>frame 139:16</p> <p>free 126:8</p> <p>friday 1:12</p> <p>friendly 77:23, 86:5, 95:16</p> <p>front 7:24, 37:22, 74:25, 77:24, 78:12, 93:7, 117:10, 118:14</p> <p>frontage 80:8, 93:7</p> <p>frontages 78:7</p> <p>fronts 117:3, 118:10</p> <p>fulfill 84:12</p> <p>fulfilled 34:22, 37:17</p> <p>fulfilling 73:12</p> <p>fulfills 84:6, 85:19</p> <p>full 62:25, 63:6, 74:25, 100:8, 114:20, 130:11</p> <p>fully 73:18, 73:20</p> <p>fun 38:5</p> <p>functional 83:25, 84:3</p>	<p>further 17:1, 22:5, 26:17, 33:16, 41:24, 63:7, 80:8, 83:19, 95:13, 117:15, 117:16, 122:9, 123:6, 127:22, 131:9</p> <p>furthering 83:23, 95:12</p> <p>future 16:1, 36:5, 43:15, 101:16</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>gable 91:22</p> <p>gaithersburg 13:4, 13:16</p> <p>gaps 126:14</p> <p>garage 37:22, 38:2, 93:17, 93:18</p> <p>garages 74:15, 91:25</p> <p>gas 25:12, 27:21, 72:25, 73:3, 104:1, 105:17</p> <p>gateway 67:12</p> <p>gather 92:20</p> <p>gave 6:8, 12:7</p> <p>general 64:8, 74:1, 77:2, 79:15, 83:24, 84:2, 87:11, 87:16, 105:8, 115:10</p> <p>generally 7:11, 21:7, 23:5, 42:4, 42:5, 62:25, 63:2, 63:10,</p>	<p>63:12, 63:20, 75:12, 101:12, 102:20, 102:23, 105:7, 119:4, 119:11, 136:3, 137:15</p> <p>generate 130:17, 130:19</p> <p>generated 63:16, 63:21</p> <p>generates 130:10</p> <p>german 32:9</p> <p>germantown 10:7, 21:15, 29:21, 30:9, 31:20, 31:23, 32:10, 32:21, 34:12, 36:2, 66:19, 67:5, 67:13, 84:7, 89:12, 93:7, 98:12, 101:20, 103:5, 109:20, 117:18, 118:19, 126:12, 127:1, 127:7, 127:12, 127:16, 128:1, 129:1</p> <p>getting 40:8, 40:15, 66:15, 118:11, 127:18, 129:12, 135:4</p> <p>give 23:15, 25:19, 47:9, 50:23, 54:25, 62:21, 69:2, 115:15, 132:1, 135:7, 135:8, 136:3, 136:16, 137:23, 138:1, 138:7, 138:9</p> <p>given 31:11, 54:20, 61:16, 90:10,</p>	<p>91:22, 97:13, 136:7</p> <p>gives 90:3, 90:4</p> <p>giving 92:20</p> <p>go 5:19, 12:3, 12:17, 13:5, 13:14, 16:7, 16:13, 16:18, 16:22, 17:22, 17:25, 18:11, 19:8, 20:3, 23:3, 23:4, 23:21, 27:14, 29:10, 33:11, 38:23, 40:16, 47:10, 47:11, 48:17, 48:19, 50:12, 51:12, 51:16, 57:1, 57:22, 59:3, 61:5, 61:6, 61:21, 62:21, 66:10, 66:16, 70:21, 71:6, 72:2, 73:22, 75:21, 83:10, 91:18, 94:20, 95:5, 100:3, 102:25, 105:1, 105:14, 106:16, 114:6, 118:20, 123:24, 125:16, 126:3, 131:16, 132:18, 133:1, 134:13</p> <p>goal 34:13</p> <p>goals 32:7, 83:24, 84:7, 108:23, 110:2</p> <p>goes 42:18, 42:24, 52:14, 73:12, 75:17, 125:24,</p>
--	---	---	---

Transcript of Administrative Hearing
Conducted on January 3, 2020

54

<p>125:25 going 4:6, 5:7, 6:4, 8:7, 9:14, 15:23, 15:24, 16:10, 16:12, 19:16, 19:24, 21:4, 21:13, 22:17, 25:2, 25:10, 25:11, 29:11, 30:24, 32:16, 33:15, 35:2, 46:15, 47:9, 47:23, 51:3, 53:12, 54:1, 55:25, 57:3, 57:23, 60:21, 69:13, 69:25, 70:15, 71:22, 75:4, 76:16, 78:1, 80:15, 82:23, 86:4, 87:14, 90:14, 94:4, 94:21, 97:17, 99:4, 100:2, 100:16, 104:16, 104:17, 112:24, 113:18, 114:19, 118:12, 121:11, 128:14, 131:16, 132:13, 132:16, 133:1, 134:4, 134:7, 134:13, 134:18, 134:20, 135:21, 135:24, 136:2, 136:6, 136:8, 136:14, 136:16, 136:19, 136:21, 138:16, 139:2, 139:20, 140:15, 140:23, 141:1 gone 24:11, 52:3, 84:8, 94:20, 108:21 good 4:11, 4:17,</p>	<p>9:16, 10:3, 23:22, 26:11, 38:7, 62:12, 63:19, 74:16, 125:8, 126:2, 126:20 grade 45:25 graded 120:13 grading 53:7, 60:15, 60:21, 120:4, 120:8 gravel 110:5 great 7:17, 10:14, 12:8, 13:22, 20:14, 23:21, 30:19, 31:13, 68:23, 69:18, 125:3, 130:1, 137:22 greater 31:17, 66:11, 80:6 green 102:23, 117:1 greenfield 59:18 grid 78:1 grilling 62:13 grocery 33:11, 86:16 ground 40:13, 40:21 groundwater 40:12, 40:13, 40:14, 40:16, 40:19, 40:20, 41:18, 42:25, 43:7 group 14:4, 14:19 growth 96:1</p>	<p>guess 5:8, 6:23, 7:7, 15:14, 24:23, 25:7, 28:3, 28:19, 46:20, 59:22, 81:5, 106:3, 109:10, 109:18, 110:13, 112:11, 114:13, 127:17, 127:19, 133:2, 134:6 guidelines 58:24, 67:6, 67:8, 129:10, 130:9 gutschick 11:13, 11:15, 20:10, 100:23 guys 128:14, 133:18</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>h 1:5, 4:3 half 14:18, 14:19, 23:14, 23:18, 23:24, 30:22, 34:11, 37:9, 126:20 hand 12:13, 19:4, 100:4, 123:20 handed 57:8, 128:24 handle 136:19, 136:21 handled 90:25, 103:14 handles 5:18, 140:7 hands 16:12 happened 35:24, 133:25 happy 10:19 hard 3:14, 5:25,</p>	<p>6:15, 57:8 he'll 138:14 head 33:8, 79:23 headed 136:15 heading 117:7, 137:14 headwaters 7:17 hear 24:16, 66:3, 122:12 heard 10:18 hearings 1:1 heavily 120:11, 120:16 height 87:13, 87:19, 87:21, 88:12, 91:4, 91:6, 91:7, 91:9, 91:13, 91:19, 91:24, 92:6 held 10:21, 140:21 help 11:9, 97:2, 103:22, 117:11 helpful 5:6, 62:1, 64:2, 70:13, 95:4, 102:1, 107:14, 116:4, 120:2, 125:13, 129:13 helping 44:6, 84:11 helps 61:23, 74:12 here 4:13, 4:20, 7:5, 10:4, 11:8, 11:12, 12:10, 12:11, 14:25,</p>
--	---	---	---

18:24, 26:8, 27:10, 30:15, 33:9, 35:16, 38:9, 40:5, 40:6, 44:7, 46:9, 46:25, 47:25, 48:15, 49:18, 49:24, 52:6, 53:10, 55:23, 55:25, 62:16, 72:22, 75:11, 78:1, 79:15, 80:16, 84:9, 99:19, 102:21, 102:23, 103:1, 109:21, 117:3, 118:18, 119:17 here's 6:24, 128:13 hereby 142:2 hey 9:22, 65:19 high 17:21, 42:25, 43:8, 79:4, 98:14, 98:15, 98:17 higher 37:4, 37:12, 91:18 highlighted 102:21, 102:23, 103:1, 105:8 highlights 32:11, 101:14 highly 7:10 highway 23:21, 68:23, 69:19, 126:23, 126:24, 128:7, 128:16, 128:20, 129:5, 129:15, 131:4 highways 73:13, 73:22	historical 40:17, 40:22 historically 43:9, 43:23 history 40:7, 43:10, 81:6, 111:17 hit 101:13 hold 5:16, 47:11, 55:2 hole 10:10, 28:21, 44:7, 67:10, 95:15, 97:17 home 33:11, 33:12 homes 73:8 honestly 108:18, 110:8, 112:7 hopefully 54:25 hoping 140:25, 141:1 horizon 75:12 horizontally 80:2 hotel 14:1 hour 125:22, 125:23, 130:17, 130:18 houses 33:10, 79:13, 84:24 housing 27:5, 32:17, 32:18, 32:19, 33:18, 33:20, 33:23, 34:10, 34:16, 36:21, 84:13, 85:23, 95:20, 96:24, 97:13	however 41:2, 43:7, 62:6, 63:6 huge 14:16 hundreds 132:19 hydraulic 105:13 <hr/> I <hr/> id 28:23, 29:2 idea 77:23, 78:13 identification 29:2 identified 4:7, 20:18, 22:7 identify 4:16, 31:18, 35:22 identities 78:7 identity 67:4, 67:14, 74:19, 78:13 ignoring 134:14 image 78:17 immediate 9:8, 24:16 impact 3:22, 40:11, 44:5, 46:9, 53:9, 98:5, 119:21, 124:13, 124:24, 128:19, 130:11, 130:22 impacted 54:5, 109:18 impacts 53:21, 60:16, 73:6, 87:6, 87:24, 87:25, 88:3, 109:14,	115:20, 130:14 impervious 119:6 implement 83:16 implementing 83:22 implements 95:18 important 67:14 improved 67:4 improvement 67:20, 121:24 in-depth 30:5 include 44:15, 52:10, 52:16, 72:6, 89:18, 130:20 included 37:6, 51:15, 77:10 includes 37:3, 57:14, 72:7 including 15:12 incorrect 59:20 increase 33:24 increasing 32:17, 33:4, 33:23 independent 138:6 indicate 98:15 individual 10:6, 11:4, 67:7, 79:13 industry 37:16 infield 10:15 influenced 23:25, 26:7
--	--	---	---

information 39:24, 39:25, 40:3, 51:3, 51:13, 59:23, 138:22 infrastructure 84:2, 84:9, 85:25, 86:3 inside 93:18 inspection 20:21, 101:8, 125:3 installed 15:10, 102:22, 112:7 instead 25:21 institutional 9:9, 10:9 insubstantial 11:2 integrate 84:4, 84:22 integrating 88:1 intended 75:13 intends 88:16 intense 37:4, 38:18, 74:2 intent 39:4, 74:1, 83:12, 84:12, 85:3, 86:22, 87:1, 96:13, 96:16 intentionally 80:8 intents 83:2, 83:15, 83:19, 83:22, 85:20 interacting 78:14 interconnect 33:1	interconnected 33:1 interconnection 32:23 interconnectivity 38:14, 67:22 interest 17:1, 95:9, 95:10, 95:13, 95:14, 95:25, 121:3, 121:5, 142:8 interim 57:21 intermittent 8:9, 40:21, 41:9, 41:15, 41:22, 43:6, 44:16, 44:18, 44:24, 45:1, 45:11, 58:18, 58:22, 60:6, 60:7, 122:14, 122:20, 133:16, 133:17, 133:21, 135:5 intermittently 41:16 internal 101:23 interpretation 96:11 interpreted 95:25 interrupt 13:14 intersection 4:10, 9:14, 17:23, 21:23, 30:8, 54:5, 71:4, 71:8, 71:9, 90:15, 125:11, 125:22, 126:6, 126:11, 126:19, 127:6, 127:22 intersections 30:14, 30:16,	31:2, 125:19 interspersed 74:18, 77:24 intricately 138:24 introduce 29:12, 124:13 introduced 29:23, 35:12, 55:12, 69:7, 102:17, 116:16, 124:25, 129:22 intrusion 110:1 inventory 20:12, 21:6, 39:18, 39:21 investment 29:8 involve 114:1 involved 138:24 irregular 72:21 isolated 26:19 issue 8:9, 37:18, 51:2, 52:1, 63:13, 70:14, 79:1, 79:24, 80:1, 81:24, 112:10, 129:3, 134:9, 141:2 issues 8:19, 9:12, 39:19, 41:8, 61:9, 63:9, 64:12, 66:7, 73:21, 74:6, 111:17, 132:8, 132:20 items 6:21, 51:17 itself 20:13, 21:20, 22:1, 34:9,	37:23, 37:24, 45:17, 67:13, 73:5, 77:2, 91:12, 97:5 <hr/> J <hr/> january 1:12, 55:14, 57:17, 104:25 job 1:23, 39:20, 64:24, 125:8, 134:1, 134:3 joint 4:4, 11:13, 14:24, 17:7, 17:13, 106:5 july 21:7, 40:7, 42:21 justified 9:5 justify 9:6 <hr/> K <hr/> keep 15:24, 40:14, 53:12, 99:4, 100:2, 118:3 keeps 8:18, 17:15 kept 117:25 kevin 3:5, 11:13, 18:21, 19:11 kind 6:20, 15:2, 15:21, 16:12, 16:16, 31:8, 52:14, 62:2, 80:21, 92:10, 120:5, 137:14 kings 24:25 kingsview 1:5, 3:20, 4:3,
--	---	--	--

Transcript of Administrative Hearing
Conducted on January 3, 2020

57

<p>11:24, 22:1, 24:23, 29:25, 30:1, 30:7, 33:6, 40:23, 40:25, 66:24, 67:12, 67:16, 67:21, 68:18, 84:15, 84:16, 102:11, 126:13 kingsville 77:7 know 6:1, 8:11, 8:20, 8:21, 8:22, 8:23, 8:24, 9:11, 9:13, 9:21, 11:20, 16:24, 23:20, 29:6, 29:8, 30:2, 30:4, 31:5, 31:6, 35:14, 44:9, 44:10, 45:19, 45:22, 47:12, 51:2, 51:10, 52:2, 55:2, 55:4, 58:24, 61:19, 61:21, 61:24, 65:7, 65:21, 70:4, 71:24, 72:10, 78:22, 79:18, 79:23, 82:6, 83:17, 85:23, 88:15, 90:13, 90:24, 91:22, 96:4, 96:11, 100:12, 102:2, 103:15, 103:16, 104:10, 105:16, 106:3, 106:8, 106:12, 107:9, 107:11, 107:20, 109:15, 110:2, 110:3, 110:19, 111:9, 112:19, 113:18, 116:1, 116:3,</p>	<p>116:4, 117:2, 117:9, 117:11, 118:9, 120:14, 120:15, 121:7, 121:8, 121:18, 124:4, 127:7, 129:7, 132:9, 132:21, 134:2, 134:6, 134:16, 135:11, 136:4, 136:8, 136:9, 139:6, 140:21 knowing 140:21 knowledge 139:7 known 51:5 kvw 79:2</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>laid 70:17, 71:7 land 12:21, 14:1, 14:2, 16:5, 16:9, 19:14, 19:20, 19:21, 19:24, 19:25, 30:13, 30:25, 31:12, 31:14, 32:14, 36:3, 38:11, 67:19, 68:21, 84:4, 85:4, 85:8, 85:25, 95:18, 101:1 land-use 20:17, 33:17, 35:22 landscape 11:14, 19:12 landscaped 120:16 landscaper 19:14 lane 125:21</p>	<p>language 61:23, 63:11, 63:15, 75:3, 112:12, 112:14 large 23:10, 24:10, 42:19, 130:21 larger 24:2, 25:2, 25:25, 27:21, 30:25, 67:6, 72:16 last 6:20, 37:25, 62:25, 63:4, 63:5, 63:6, 73:11, 86:7, 86:9, 86:22, 110:22, 111:1, 123:18, 137:12 lastly 18:12 lat 130:23 later 42:21, 44:11, 82:2, 82:4, 133:19 latest 57:1, 124:14 latr 125:20 law 51:1, 95:25 laws 63:1, 64:9 lay 71:4 layout 18:6, 63:6, 66:4, 66:6, 67:22, 77:2, 77:3, 88:19 leading 78:19 leads 105:21 leafing 61:23</p>	<p>leaman 21:14, 21:24, 42:5, 42:11, 42:14, 42:16, 67:1, 68:9, 70:18, 71:2, 71:5, 71:6, 71:10, 71:20, 71:21, 73:19, 77:6, 77:8, 77:15, 78:9, 101:18, 103:2, 103:4, 105:6, 105:10, 109:20 least 7:20, 8:16, 63:18, 65:9, 80:2, 80:4, 104:20 leave 18:24 led 41:24, 72:18, 90:22 left 6:21, 13:17, 15:7, 15:10, 21:12, 21:15, 23:6, 36:2, 72:17 leg 126:9 legal 17:1 lend 37:23, 37:24, 73:5 lengthy 99:13, 125:15 lenhart 3:7, 3:24, 11:16, 122:23, 123:17, 123:18, 123:23, 124:2, 124:4, 124:11, 125:5, 125:10, 125:14, 125:18, 126:6, 126:8,</p>
--	---	---	---

<p>126:16, 126:19, 127:8, 127:11, 127:15, 127:20, 127:24, 128:1, 128:4, 128:6, 128:11, 128:24, 129:5, 129:9, 129:25, 130:1, 130:4, 130:7, 130:10, 130:16, 131:3, 131:8 lenient 136:14 lerch 2:4, 4:17, 10:4 less 74:10, 75:17, 90:17, 90:18, 91:15, 91:17, 99:13, 126:20 lesser 37:19 let's 39:12, 47:10, 48:17, 62:12, 99:15, 99:23, 100:2, 100:3, 115:4, 116:11, 122:21, 135:9 letter 3:23, 63:18, 129:18, 129:24 level 8:16, 40:12, 40:19, 40:20, 92:2, 114:18, 126:2, 126:3, 130:22, 137:8 levels 38:12, 98:20, 126:20 liberty 4:9, 9:13, 15:9, 32:24, 41:25, 68:8, 77:5, 77:13, 77:14, 77:17, 77:19, 77:21,</p>	<p>77:22, 78:8, 93:21, 101:15, 101:17, 102:3, 102:19, 102:24, 103:10, 109:23, 121:9, 125:11, 125:20, 126:9, 126:17, 127:4, 127:8, 127:13 life 11:23 lifted 61:22 light 11:8, 31:3, 31:8 lights 31:3 likely 11:9, 103:13, 107:12 limit 121:2 limitation 18:2 limited 18:2, 76:14, 76:15, 76:19, 129:8 limits 103:15 lindhurst 11:23 line 54:19, 63:5, 71:5, 78:24, 79:2, 79:4, 80:3, 80:18, 99:24, 105:5, 127:17 lines 8:18, 15:3, 15:8, 15:10, 15:16, 15:25, 71:1, 79:2, 79:11, 79:14, 79:24, 79:25, 80:7, 80:10,</p>	<p>80:12, 80:17, 80:20, 81:9, 81:14, 81:16, 103:1, 105:16 link 78:8, 113:12 linkages 66:22, 66:25, 67:14, 68:1 list 5:9, 5:14, 61:2, 61:7, 116:2, 116:5, 140:9 literally 16:17, 132:19 little 11:13, 11:15, 15:1, 16:25, 20:10, 26:16, 26:25, 27:5, 31:14, 35:22, 38:20, 40:7, 40:22, 42:7, 66:1, 68:24, 69:2, 70:2, 71:12, 72:7, 73:14, 74:5, 92:11, 96:6, 98:3, 98:9, 99:16, 100:23, 102:2, 102:4, 107:15, 115:1, 117:14, 118:6, 122:17, 132:1, 132:6 live 33:9 living 40:10 lma 1:5, 62:23, 65:11, 82:8, 82:10, 82:20 loading 80:24 local 4:3, 4:4,</p>	<p>10:18, 11:4, 18:12, 20:5, 20:8, 47:12, 94:5, 94:11, 100:19, 106:6, 121:2, 124:10, 130:6, 130:9 located 4:9, 10:6, 27:22, 53:14, 68:22, 89:4, 120:20 location 30:9, 38:13, 78:24, 90:11, 93:10, 111:18 locations 48:23 long 15:8, 19:13, 23:4, 30:23, 42:20, 43:7, 45:25, 73:12, 96:2, 108:8, 108:9, 120:5, 137:25, 140:25 long-term 43:4 longer 90:1 look 23:14, 26:22, 30:12, 33:17, 34:15, 34:16, 35:1, 36:9, 40:16, 43:10, 66:19, 69:20, 70:25, 72:2, 75:9, 75:12, 82:11, 117:13, 118:16, 118:23, 124:15, 136:16 looked 8:21, 31:12, 65:19, 106:10, 106:13, 108:21, 109:25, 125:18 looking 26:18, 34:10,</p>
---	---	--	---

Transcript of Administrative Hearing
Conducted on January 3, 2020

59

<p>36:10, 47:7, 47:8, 48:13, 48:25, 49:2, 49:3, 49:23, 50:2, 67:2, 67:8, 69:21, 70:19, 72:2, 72:22, 106:20, 107:21, 113:13, 118:3, 118:21, 118:22, 119:13, 135:6 looks 30:18, 41:7, 63:19, 125:16 lose 46:20 lot 7:7, 9:12, 9:19, 15:11, 21:18, 23:15, 28:22, 30:14, 33:6, 40:17, 53:24, 73:25, 74:6, 78:10, 81:10, 115:22, 118:10 lots 14:6, 37:22, 46:2, 60:12, 74:15, 78:15 low 46:9, 86:5, 86:9 lower 22:3, 86:11, 92:2 lowest 79:14 lunch 99:8 lynn 1:10, 4:11</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>made 16:20, 20:20, 70:6, 72:16,</p>	<p>89:22, 101:7, 125:3, 135:23 magenta 103:1 mailed 47:21, 55:15, 113:2 main 42:15 major 31:10, 66:20, 66:25, 68:20, 72:23, 134:9 majority 22:2, 37:21, 97:1, 99:10 make 5:7, 7:15, 8:1, 9:25, 11:5, 12:14, 16:17, 16:21, 17:12, 18:4, 19:5, 30:15, 31:15, 33:1, 34:17, 35:21, 49:14, 49:25, 61:10, 61:17, 62:3, 72:14, 72:21, 94:11, 97:23, 100:6, 121:21, 122:5, 123:21, 129:19, 129:23, 133:20, 133:22, 134:1, 134:11, 139:23, 140:1 makes 36:20, 36:24, 36:25, 72:17 making 17:11, 119:21 man-made 68:6 management 45:17, 46:10, 48:23, 53:7, 59:2, 60:9, 60:11, 60:23, 63:17, 65:1,</p>	<p>65:14, 65:23, 65:25, 70:24, 105:23, 105:24, 106:1, 108:6, 109:7, 111:18, 116:13, 121:10, 121:13, 133:4, 136:4, 136:6, 137:4 manner 119:22 many 11:22, 13:17, 13:20, 14:19, 15:7, 19:17, 20:22, 41:2, 64:14, 79:12, 99:4, 117:17 map 4:3, 4:4, 10:18, 11:4, 18:12, 20:5, 20:8, 27:10, 27:15, 47:12, 70:21, 71:1, 76:2, 85:11, 94:5, 94:11, 100:19, 106:6, 121:2, 124:10 mapped 40:23, 76:8 mapper 101:21 marilyn 4:11 mark 6:5, 6:23, 108:16, 138:9, 138:11 maryland 1:2, 1:11, 4:10, 14:5, 21:12, 36:5 master 7:15, 8:1, 8:2, 11:3, 18:2, 26:4, 29:10, 29:21, 30:6,</p>	<p>31:17, 31:19, 31:21, 31:23, 31:25, 32:2, 32:8, 32:10, 32:11, 32:20, 33:13, 33:21, 34:1, 34:6, 34:8, 34:11, 34:12, 34:13, 34:23, 37:4, 37:10, 37:14, 37:16, 37:17, 38:21, 59:22, 60:1, 64:4, 66:11, 66:17, 66:19, 66:20, 67:7, 67:8, 67:15, 67:25, 68:12, 68:16, 69:12, 69:22, 69:24, 70:3, 70:8, 71:18, 71:19, 71:25, 72:1, 73:1, 73:15, 73:22, 73:25, 74:2, 74:3, 74:6, 74:7, 74:20, 75:11, 75:16, 75:23, 83:24, 84:2, 84:8, 84:12, 84:17, 84:20, 86:6, 89:10, 89:12, 89:14, 90:13, 91:4, 91:11, 91:12, 95:2, 95:19 master-plan 70:20 master-planned 83:25 masters 13:2 match 116:21 material 60:14</p>
--	--	---	--

Transcript of Administrative Hearing
Conducted on January 3, 2020

60

matter 124:12, 139:22 matters 4:15, 4:22, 4:23, 6:18, 139:21, 140:24 maximum 110:24, 113:24 maybe 10:19, 11:21, 26:20, 44:12, 65:24, 107:13, 117:14, 124:18, 132:2 md 2:7 mean 8:7, 15:18, 16:14, 44:13, 44:22, 45:20, 50:21, 56:8, 60:11, 64:23, 99:21, 110:14, 132:19, 133:11, 134:12, 138:4 meant 53:13 measures 120:24, 121:13 meet 68:16, 72:13, 76:14, 92:12, 93:4, 93:15, 93:22, 110:1, 114:4, 134:4, 134:20 meeting 10:21, 112:20, 134:14, 136:13 meetings 58:3 meets 7:9, 8:5, 8:6, 10:25, 32:7, 60:1, 74:1, 84:7, 88:8, 107:16, 133:22, 135:21, 135:25,	136:11 member 108:19 mentioned 10:5, 16:24, 33:21, 62:2, 90:24, 102:2, 137:6 mep 58:24, 110:16, 110:23, 111:6, 115:13 messed 136:1 messaging 136:18 met 11:5, 111:5, 112:18, 132:3 method 81:18, 81:20, 81:21, 81:23 metro 33:9 mic 131:22 michael 3:7, 46:25, 100:10, 124:2 micro 110:3, 116:24, 120:10, 120:15 middle 15:6, 15:21, 23:7, 25:18, 31:4, 44:7, 59:17, 70:7, 72:12, 98:13 midway 77:6 might 26:11, 52:9, 53:9, 60:16, 79:21, 107:13, 107:25, 110:14, 115:25, 118:6, 118:8, 120:1 mike 3:6, 11:16,	11:17, 123:18 mill 4:9, 9:14, 15:9, 24:25, 32:24, 42:1, 68:8, 77:5, 77:13, 77:14, 77:17, 77:19, 77:21, 77:22, 78:8, 93:21, 99:6, 101:15, 101:17, 102:3, 102:19, 102:24, 103:10, 109:23, 121:9, 125:12, 125:20, 126:9, 127:4, 127:8, 127:12, 127:13 mills 126:17 mind 13:22, 96:5, 102:15, 110:13, 134:19 mine 12:7, 50:1, 124:19 minimize 109:14, 109:25, 115:20, 119:21 minimum 80:12, 93:4 minor 130:22 minute 61:20, 62:12, 122:21, 122:24, 134:14, 134:15 minutes 135:9, 135:10, 135:13 miscellaneous 98:1 missing 10:10, 10:20 mistake 135:23, 136:14, 138:19	misunderstanding 68:25 mitigate 45:25, 46:5, 54:11, 60:17, 115:12, 115:13 mitigated 54:10 mitigating 59:16, 60:15 mitigation 53:13, 53:21, 59:10, 60:19, 87:6, 87:24, 120:6, 120:9 mix 22:2, 25:23, 25:24, 26:22, 26:23, 27:2, 27:12, 32:18, 34:18, 34:24, 36:14, 37:6 mixed 10:14, 26:1, 88:13, 88:17, 90:21 mixed-use 17:18, 73:6, 88:11 mm-hm 61:6 modest 97:4 modifications 63:7 modified 64:18, 101:16, 104:9 molly 1:25, 142:2, 142:13 moment 43:14, 47:9, 61:24, 123:3 momentarily 10:13 mona 14:17, 14:21
--	--	---	--

Transcript of Administrative Hearing
Conducted on January 3, 2020

61

monitor 134:15 monitoring 40:17 montgomery 1:2, 15:12, 17:21, 89:25, 104:24, 130:5 month 43:7, 140:8 more 6:21, 24:20, 25:20, 25:21, 25:23, 25:24, 26:19, 26:22, 27:5, 33:1, 38:16, 40:15, 46:12, 66:1, 67:18, 72:20, 74:11, 81:9, 81:17, 82:3, 90:8, 92:11, 94:6, 98:3, 99:4, 99:17, 102:4, 115:2, 115:6, 119:1, 129:18, 130:10, 131:15, 132:1, 136:14 morning 4:11, 4:17, 10:3, 125:22, 125:24, 130:17, 130:19 most 5:4, 5:7, 5:8, 14:2, 34:25, 37:3, 42:9, 69:20, 72:23, 101:1, 101:13, 103:13, 114:16 mostly 81:11 move 12:10, 12:11, 64:4, 74:16, 88:25, 94:4, 112:10, 114:1,	114:19, 114:25, 122:1, 131:22 moved 80:8 movement 129:8 moving 23:6, 38:10, 82:24, 94:15 mowed 21:22 mox 128:19 much 6:1, 40:12, 43:25, 44:2, 53:10, 72:15, 74:11, 74:13, 78:2, 89:18, 99:11, 100:25, 118:14, 125:8, 138:2, 140:23 multi 26:25, 34:18 multifamily 18:1, 26:25, 34:24, 34:25, 36:7, 36:13, 36:24, 37:5, 37:13, 70:10, 72:1, 72:5, 72:15, 85:19, 97:1 multiple 30:22 must 50:3, 91:4, 94:11, 133:9, 140:8 <hr/> <p style="text-align: center;">N</p> <hr/> name 12:18, 19:9, 100:8, 123:25 narratives 110:10 natural 20:11, 20:23,	21:3, 21:5, 33:14, 33:15, 38:18, 39:18, 39:21, 68:4, 68:6, 84:5 nature 101:4, 101:6, 109:17 necessarily 26:21 necessary 67:6, 97:23, 121:18 need 6:9, 6:10, 8:11, 17:4, 17:9, 45:22, 49:22, 52:10, 55:2, 55:6, 62:8, 73:9, 84:19, 90:12, 100:3, 107:11, 112:19, 116:2, 122:12, 123:3, 126:25, 127:21, 133:24, 134:14, 134:15, 138:2, 138:17 needed 6:1, 10:14, 108:22, 110:11, 118:16 needs 97:18, 123:15, 139:19 negative 87:6, 87:24, 87:25, 88:3 neglected 35:15 neighborhood 22:11, 22:14, 22:18, 22:20, 23:8, 23:18, 23:22, 23:23, 24:1, 24:7, 24:8, 24:10, 24:19, 24:21,	25:20, 26:20, 32:16, 32:25, 33:2, 34:16, 34:17, 34:22, 38:7, 38:14, 44:4, 44:7, 76:10, 83:3, 87:15, 88:1, 90:7, 95:18, 97:11, 97:16 neighborhoods 23:9, 23:14, 85:2, 86:23, 87:3, 87:5, 87:23 neither 142:7 nelson 136:10, 139:11 net 52:15, 52:22, 52:25 network 68:2, 84:24, 84:25 networks 68:7, 84:4 never 31:10, 54:16, 56:16 new 34:20, 38:14, 40:20, 46:8, 68:3, 77:21, 84:10, 87:2, 87:7, 89:24, 90:1, 102:8 next 18:13, 18:21, 29:12, 35:2, 38:13, 38:17, 44:4, 47:23, 56:23, 66:17, 88:25, 94:4, 99:23, 100:1, 112:7, 117:18, 132:17, 135:11 nice 31:17, 56:25
--	---	--	--

Transcript of Administrative Hearing
Conducted on January 3, 2020

62

<p>nicely 105:21 nobody 14:22 noise 73:7 non-normal 43:8 none 4:14, 120:25 norbeck 99:6 normal 43:10, 43:11, 140:7 normally 7:19, 8:15, 9:1, 9:13, 9:22 north 21:9, 21:10, 21:11, 23:4, 23:5, 23:6, 23:22, 25:5, 25:6, 25:7, 25:11, 36:2, 69:21, 70:1, 77:4, 126:9, 127:5 northeast 25:16 northern 15:21 northwest 69:16, 70:18, 98:14, 98:15 note 10:21, 73:24, 94:23, 106:19 noted 10:9, 10:16, 57:15, 88:7 notes 54:17, 64:9 nother 139:3 nothing 12:15, 19:6, 100:7, 123:22</p>	<p>noticed 6:20 nri 22:23, 40:25, 41:21, 43:16, 50:15, 51:13, 132:10 nrifsd 8:21, 20:11, 39:19, 50:17, 50:22 number 29:13, 30:4, 32:12, 33:23, 34:5, 34:21, 37:9, 63:15, 91:15, 104:25, 113:25 numbers 4:6, 83:9, 126:1, 130:20 numerous 19:22</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>oath 104:18, 131:25 objection 55:3 objective 33:18, 67:3 objectives 83:17, 83:23, 95:19 obtained 50:3 obviously 26:20, 28:22, 134:18 occasions 100:16 occupation 12:19, 19:10, 100:9, 124:1 occur 85:10 occurred 22:4, 50:17,</p>	<p>57:12 of-way 30:22, 73:18, 103:2 offer 107:25, 112:24 office 1:1 official 76:2 officially 114:21 offset 117:11 oh 6:5, 6:10, 23:2, 29:5, 29:18, 35:17, 45:6, 47:25, 49:2, 49:4, 66:16, 69:10, 87:18, 95:10, 107:3, 108:17, 116:4, 128:3, 132:18 old 15:8, 21:15, 25:10, 25:13, 80:16, 80:19, 91:13, 124:19, 140:9 on-site 47:3, 60:24 once 114:17, 120:12 one 5:16, 5:17, 6:7, 7:5, 7:9, 8:16, 13:19, 14:3, 21:23, 23:2, 23:3, 25:7, 26:12, 31:1, 33:20, 34:15, 35:23, 38:20, 38:21, 39:3, 42:10, 47:9, 51:6, 51:18, 53:3,</p>	<p>53:15, 62:12, 62:22, 66:20, 70:5, 72:8, 72:18, 73:10, 73:24, 74:20, 79:1, 80:16, 80:21, 83:23, 85:25, 90:15, 91:15, 102:9, 103:22, 105:22, 110:23, 116:6, 116:7, 117:1, 117:11, 117:17, 118:21, 119:9, 124:17, 124:18, 125:9, 125:19, 126:11, 127:25, 131:14, 132:22, 134:2, 137:15, 141:2 one-time 43:3 ones 139:5, 139:6 ongoing 81:15 only 41:12, 41:13, 54:3, 55:7, 59:16, 91:16, 91:19, 96:4, 96:5, 116:25, 128:6 open 21:21, 30:19, 38:4, 55:2, 74:13, 74:18, 77:24, 84:24, 92:9, 92:12, 92:14, 92:16, 92:17, 92:18, 92:22, 92:23, 92:25, 93:4, 93:11, 98:16, 117:23, 118:1, 118:4, 119:17, 140:13 opening 3:3, 9:23,</p>
--	---	--	--

Transcript of Administrative Hearing
Conducted on January 3, 2020

63

<p>9:25, 12:4 operate 9:14, 125:12, 125:17 operates 126:19, 126:22 operating 126:25 operations 18:4 opinion 22:10, 22:13, 32:1, 46:12, 52:2, 52:8, 59:24, 66:4, 83:18, 84:6, 85:5, 90:6, 90:10, 91:6, 95:13, 96:20, 97:22, 98:6, 98:22, 103:25, 105:11, 113:19, 119:20, 119:23, 121:20, 122:2, 130:2 opportunities 32:13, 33:19 opportunity 10:14, 26:12, 51:12, 90:2, 94:13, 98:4, 137:23 opposed 69:21, 72:19, 85:19 opposite 27:1, 70:23 opposition 10:23, 19:18 option 90:3, 107:7 optional 81:18, 81:23 options 18:1, 23:15, 90:9 orange 36:8</p>	<p>order 72:12, 94:10, 104:17 ordinance 76:20, 82:25, 83:15, 88:9, 89:3, 94:12, 96:17 orientation 22:23, 69:14 original 20:10, 26:5, 30:6, 71:16, 75:15, 116:6 originally 26:21, 31:11, 40:23, 41:2, 43:11, 69:4, 69:15, 70:5, 71:6, 84:16, 140:6 other 8:17, 13:20, 14:19, 18:1, 23:3, 25:10, 25:11, 27:22, 28:15, 34:5, 36:3, 37:18, 40:1, 46:3, 53:4, 54:2, 55:8, 63:9, 70:14, 70:20, 71:5, 72:18, 72:23, 75:24, 79:24, 80:21, 87:8, 96:6, 102:22, 105:16, 107:7, 110:9, 110:12, 114:23, 117:1, 117:13, 120:11, 120:14, 120:19, 121:13, 121:16, 123:9, 123:14, 125:7, 139:21, 140:8 others 96:7 otherwise 115:12, 136:15,</p>	<p>142:9 out 5:19, 7:25, 14:3, 16:4, 16:19, 24:11, 27:10, 28:4, 28:12, 28:13, 40:20, 42:14, 42:24, 43:8, 43:24, 46:12, 46:16, 50:23, 51:12, 52:3, 52:11, 52:15, 53:10, 56:23, 57:8, 59:17, 64:8, 70:15, 70:17, 71:7, 72:10, 73:18, 78:8, 89:20, 90:8, 95:25, 97:3, 101:19, 104:17, 105:4, 108:21, 110:20, 113:2, 118:1, 118:3, 119:16, 126:16, 126:23, 128:1, 128:6, 128:9, 128:14, 128:17, 128:18, 129:3, 132:3, 133:18, 134:24, 139:4, 140:8 outcome 142:9 outfall 41:24 outlined 88:6, 88:8, 97:23 outlines 83:15 outset 123:11 outside 5:14, 120:14 outstanding 140:24, 141:2 over 9:12, 12:10,</p>	<p>12:11, 16:2, 16:4, 37:25, 41:2, 42:9, 43:6, 57:14, 65:19, 75:5, 75:16, 76:14, 76:17, 79:12, 91:18, 107:8, 132:22, 133:24 overall 37:10, 76:23 overlaid 30:19 overlap 114:24 overlay 76:7, 89:8 overly 44:5 overview 101:10 overviews 32:11 own 17:3, 26:19, 78:6, 78:7, 93:22, 134:3 owned 68:21 owners 6:6 ownership 14:9, 28:23, 30:22, 31:1 ownerships 16:25 owns 14:18, 14:19, 15:14, 16:1, 25:3</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>package 105:15 page 3:2, 3:10, 32:13, 33:18, 33:22, 34:4,</p>
--	--	--	---

Transcript of Administrative Hearing
Conducted on January 3, 2020

64

<p>34:5, 38:10, 48:1, 48:4, 62:22, 63:3, 63:10, 67:2, 67:16, 67:19, 75:3 pages 1:24, 62:21 paid 59:15 paper 57:11, 128:24 paragraph 62:25, 63:3, 63:4, 63:6 paragraphs 68:19 parallel 69:18, 70:19, 70:21, 71:1, 71:3, 80:7 parcel 4:8, 91:16 parcel's 44:3 parcels 10:6, 78:11 park 9:10, 24:14, 36:5, 38:13, 40:2, 42:22, 42:24, 43:12, 43:24, 45:24, 59:12, 65:2, 78:10, 86:4, 109:13, 109:22, 110:15, 120:4, 131:3, 131:17, 132:3, 132:20, 134:2, 135:23, 136:7 parking 33:6, 37:22, 46:2, 60:12, 74:14, 78:15, 93:13, 93:16, 93:20, 93:22 part 4:8, 14:2,</p>	<p>14:22, 15:21, 22:21, 24:1, 26:20, 33:2, 33:5, 36:6, 37:14, 39:22, 47:12, 54:9, 59:19, 67:14, 67:15, 67:21, 74:18, 77:8, 84:15, 86:18, 86:22, 93:1, 97:4, 105:14, 106:2, 106:5, 106:13, 109:6 particular 112:21 particularly 107:6, 134:10 parties 135:18, 142:8 partnership 28:25 partnerships 29:8 parts 77:14, 77:19, 77:21 pass-by 130:20 past 45:24, 112:9, 113:14 path 105:8, 109:10, 118:20 paths 110:5 pattern 23:15, 84:25 patterns 84:5 pavement 110:4 paying 59:14 pd 31:12, 70:9, 71:22, 71:25,</p>	<p>72:6, 89:14, 89:23, 89:25, 90:3, 91:7, 91:11, 91:14, 91:15, 91:18 peak 125:22, 125:23, 130:11, 130:17 pedestrian 33:3, 38:6, 67:20, 67:23, 77:23, 95:16 penalties 12:13, 19:4, 100:5, 123:20 penalty 59:14, 59:15 people 69:20, 86:11, 92:19, 99:19, 126:16 pepco 15:12, 15:15, 15:16, 15:17, 15:20, 16:1, 16:2, 16:6, 16:10, 16:13, 80:5 percent 34:3, 34:18, 34:20, 36:11, 36:12, 36:13, 36:20, 36:24, 36:25, 37:9, 92:21, 92:22, 92:24, 93:3 percentage 37:12, 130:21 percentages 36:18 perfect 17:16, 33:5, 124:9 perhaps 94:23, 107:14, 112:24, 139:8 perimeter 87:13, 87:19</p>	<p>period 16:15 perjury 12:13, 19:4, 100:5, 123:21 permeable 110:4, 118:21 permit 127:18 permits 97:22, 108:5, 127:1 permitted 76:10, 76:12 permitting 38:18, 108:11 person 49:7, 59:7, 130:11, 130:18, 130:19, 130:20 personal 20:20, 101:7, 125:3 perspective 85:24 pervious 118:17 pfcp 65:4, 113:3 phase 11:23, 67:11 phillips 14:18, 14:22 phone 2:8 phonetic 11:24, 14:17, 46:25, 128:15 pick 33:8, 90:2, 118:14, 119:1, 119:14 picking 90:3 picture 115:15, 115:16, 115:19 piece 14:22, 15:20,</p>
--	--	--	---

Transcript of Administrative Hearing
Conducted on January 3, 2020

65

<p>16:1, 26:8, 28:21, 29:10, 30:25, 31:10, 42:17, 57:11, 84:23, 97:18, 128:24 pieces 31:12, 31:14, 72:22 pin 61:16, 62:17 pink 36:3 pipe 42:16, 42:18 pipeline 108:4 place 23:22, 30:24, 36:11, 41:1, 44:3, 54:3, 67:5, 71:12, 79:12, 80:1, 86:1 places 40:20 plan's 34:13, 60:1 planned 38:11, 84:2, 84:17, 103:8 planner 11:14, 19:11, 19:14, 123:17, 124:3, 124:8 planners 38:1, 74:12 planning 3:18, 5:12, 5:16, 8:12, 10:17, 11:7, 19:20, 19:21, 19:24, 19:25, 20:13, 22:21, 27:3, 30:1, 30:3, 37:25, 38:9, 39:6, 40:2, 42:21,</p>	<p>42:22, 42:24, 43:12, 43:24, 45:24, 47:4, 47:18, 47:19, 47:23, 48:18, 54:16, 54:21, 54:22, 55:11, 55:14, 57:15, 57:16, 59:12, 60:16, 64:11, 64:20, 65:2, 66:8, 71:16, 76:23, 82:21, 83:16, 83:23, 85:10, 85:17, 105:13, 109:13, 110:15, 111:8, 120:4, 131:3, 131:17, 132:3, 132:4, 132:12, 132:20, 134:2, 134:12, 135:23, 136:7, 137:24, 138:17, 139:5, 140:14, 140:16 plans 42:22, 42:24, 43:22, 67:7, 74:6, 74:7, 75:11, 83:20, 84:3, 84:12, 86:6, 101:17, 105:25, 108:5, 109:2, 112:8, 114:15 plant 60:14, 75:15, 120:11, 120:14 planted 120:11 planter 117:5 planting 52:14, 52:16 plat 28:23 plates 72:16</p>	<p>play 60:13, 132:3, 132:8 playing 38:16, 43:17 pleasant 11:12 pleasants 12:21, 13:18, 13:23, 13:25, 14:4, 14:13, 14:18, 17:1 please 12:12, 12:18, 12:23, 14:8, 16:23, 19:3, 19:9, 21:1, 32:5, 47:3, 64:10, 76:22, 81:5, 83:18, 88:7, 90:7, 91:5, 92:10, 100:4, 100:8, 100:22, 101:10, 102:4, 102:16, 103:24, 105:23, 110:23, 121:3, 123:19, 123:25, 130:13, 132:18 pleasure 10:4 plus 77:21 point 27:25, 40:5, 40:22, 46:24, 61:1, 70:15, 77:6, 86:9, 90:15, 100:3, 101:20, 114:21, 121:1, 127:19, 127:21, 128:17, 129:11, 134:9 pointed 64:8, 105:4, 108:21 pointer 25:6</p>	<p>points 40:23, 64:3, 81:17, 94:1, 94:3 pole 81:2 poles 8:23, 15:17, 15:18, 79:11 policy 59:12, 98:15 polls 80:23 popular 74:11 population 85:14, 85:24 portion 28:4, 68:22, 76:8, 85:19, 89:15, 89:17, 92:21, 92:24 portions 68:20, 69:1, 93:24, 101:1, 102:19, 102:24, 103:10, 121:9 position 43:3, 55:22, 128:15, 136:12 possibility 51:14 possible 43:13, 44:2, 53:11, 82:5, 106:21, 141:3 possibly 73:2 posting 3:12, 5:2, 5:20, 6:8, 6:16 potential 50:17, 58:22, 118:25, 119:1 potentially 110:5 power 81:14, 135:12</p>
---	---	---	---

Transcript of Administrative Hearing
Conducted on January 3, 2020

66

<p>powerpoint 57:5, 57:8, 57:10 practicable 110:25 practical 53:8 practice 64:11 pre-promise 139:2 predominance 25:25 predominantly 10:15, 17:18, 24:11, 24:15, 25:21, 34:23 prefer 94:22, 99:22 prelim 103:14, 106:4 preliminarily 107:9 preliminary 4:14, 4:22, 4:23, 7:13, 8:14, 18:15, 45:3, 45:10, 47:5, 47:13, 48:25, 54:22, 58:1, 58:8, 63:8, 64:20, 82:8, 82:17, 82:19, 105:14, 106:2, 107:8, 111:19, 114:1, 115:16, 115:19, 124:12, 139:22 preparation 82:8 prepare 20:14, 20:23 prepared 115:12 prerequisites 89:10 prescriptive 77:9</p>	<p>present 57:4 presented 56:19, 59:24 presenting 123:8 preservation 7:18, 33:14, 60:2 preserve 8:3 president 11:11, 12:20 pretty 22:24, 41:8, 89:18, 100:25, 122:17, 125:8 prevent 68:5 previous 91:19, 109:15, 121:8 previously 33:22, 52:7, 52:8, 72:25, 88:15, 96:15 primary 12:19, 67:2 printed 140:8 prior 10:21, 11:22, 40:8, 56:8, 56:10, 56:12, 64:18, 138:25, 139:24 private 101:23 probably 19:23, 28:19, 37:12, 59:4, 59:7, 77:6, 112:7, 124:19, 137:15 problem 69:20, 71:8, 81:13 problematic 72:18</p>	<p>problems 127:18, 129:12 procedural 6:18, 136:9 proceedings 142:5 process 16:16, 16:18, 16:19, 18:14, 42:21, 59:2, 102:25, 106:3, 106:6, 110:9, 114:17, 133:25, 135:24, 138:20, 141:1 product 74:11, 88:22 professional 11:18, 12:24, 19:14, 22:10, 22:13, 32:1, 59:24, 66:4, 83:18, 85:5, 90:6, 91:6, 97:21, 98:6, 98:21, 103:25, 111:16, 113:19, 121:20, 122:2, 130:2 program 121:24, 122:1 prohibitive 81:14 prohibits 89:3 project 13:20, 24:3, 63:7, 74:1, 78:24, 81:19, 81:21, 81:23, 83:19, 85:5, 86:25, 88:8, 92:12, 94:1, 95:13, 95:19, 96:15, 96:20, 98:17, 102:5, 108:7, 111:22, 112:1, 112:3,</p>	<p>113:25, 114:4, 114:8, 121:4, 121:11, 122:1, 130:8, 132:5 projected 98:18 projects 66:12, 81:6, 118:12 promotes 85:6 properties 4:5, 4:7, 27:18, 29:9 property 6:5, 10:5, 10:8, 10:11, 14:9, 14:10, 14:12, 14:21, 14:23, 15:4, 15:6, 16:1, 16:3, 16:19, 16:25, 17:2, 21:2, 21:8, 21:11, 21:13, 21:14, 21:20, 22:1, 22:3, 22:22, 23:7, 24:13, 24:22, 28:18, 28:23, 30:10, 31:19, 32:13, 35:25, 36:3, 38:9, 42:2, 42:4, 67:10, 67:22, 68:7, 72:17, 72:22, 76:2, 76:8, 77:3, 84:6, 84:23, 85:22, 89:2, 89:4, 89:5, 89:7, 89:12, 89:23, 98:12, 101:11, 104:3, 105:3, 105:6, 105:12, 105:17, 108:1, 120:20 property's 85:13</p>
---	---	---	--

Transcript of Administrative Hearing
Conducted on January 3, 2020

67

<p>proportion 34:2</p> <p>proposal 37:6, 85:17, 97:13, 98:10, 130:14</p> <p>proposed 14:14, 17:18, 32:1, 32:6, 59:25, 60:1, 76:9, 83:19, 84:1, 87:20, 91:7, 96:14, 97:10, 98:7, 101:11, 102:5, 104:2, 105:24, 109:7, 121:4, 121:23, 129:11, 130:8, 131:1</p> <p>proposing 19:18, 34:7, 74:17, 76:23, 88:3</p> <p>protect 38:18, 43:24, 44:2, 45:16, 86:23, 87:4</p> <p>protected 60:18</p> <p>protecting 68:11</p> <p>protection 46:11, 46:12, 60:10, 104:25, 108:3, 120:21</p> <p>protections 64:22</p> <p>provide 9:19, 10:13, 10:14, 10:19, 11:9, 12:23, 13:8, 13:23, 15:1, 32:5, 32:12, 33:3, 33:18, 38:10, 46:6, 46:11, 46:15, 47:4, 57:19, 65:22,</p>	<p>67:5, 67:20, 68:1, 68:4, 68:10, 80:12, 86:4, 86:24, 87:6, 88:1, 88:13, 88:23, 95:21, 97:2, 98:9, 101:10, 101:20, 102:1, 103:24, 106:7, 106:25, 108:6, 110:7, 110:13, 111:4, 114:22, 117:2, 117:5, 117:6, 117:9, 118:9, 118:13, 122:17</p> <p>provided 9:20, 9:22, 55:16, 61:8, 68:9, 73:25, 76:7, 93:13, 100:24, 101:14, 110:16, 120:6, 142:6</p> <p>provides 67:22, 67:23, 91:3</p> <p>providing 27:5, 32:13, 32:15, 32:18, 32:21, 32:22, 33:20, 38:13, 38:15, 60:9, 64:22, 67:13, 68:7, 68:11, 84:12, 84:14, 84:21, 85:8, 86:9, 86:10, 87:3, 87:9, 87:23, 88:18, 95:20, 96:25</p> <p>provisions 122:3</p> <p>public 4:2, 8:4, 32:23, 36:5, 54:3, 72:12,</p>	<p>77:22, 79:12, 86:3, 92:24, 93:1, 93:25, 94:2, 95:9, 95:10, 95:13, 95:14, 95:25, 96:4, 96:5, 98:2, 98:5, 101:2, 101:21, 101:23, 101:24, 103:5, 103:25, 105:10, 109:22, 121:3, 121:4, 121:5, 121:14</p> <p>publicly 68:21</p> <p>pues 52:6, 52:9</p> <p>pull 27:10</p> <p>punt 44:11</p> <p>purchase 14:23</p> <p>purpose 39:5, 88:5</p> <p>purposes 83:2, 88:8, 88:10, 96:14, 96:16, 125:6</p> <p>pursuing 18:14</p> <p>purview 110:19, 111:7</p> <p>push 117:14, 118:6</p> <p>pushed 8:15, 16:18, 71:11</p> <p>put 6:14, 8:20, 30:7, 30:17, 30:21, 31:7, 39:24, 42:16, 50:7, 53:21, 53:25, 69:3, 75:9, 81:12, 115:11, 116:10,</p>	<p>116:11, 120:7, 131:16, 132:6</p> <p>putting 39:20, 46:2, 60:13, 84:10, 87:7</p> <hr/> <p>Q</p> <hr/> <p>quadrant 4:10, 10:7</p> <p>qualified 19:17, 19:22, 100:15, 124:7</p> <p>qualify 13:6, 124:8</p> <p>qualifying 19:16</p> <p>quality 120:23</p> <p>quantify 130:13</p> <p>quasey 128:15</p> <p>question 56:4, 57:24, 59:8, 61:2, 61:7, 61:18, 62:11, 63:10, 74:23, 75:22, 79:9, 109:9, 109:24, 112:11, 125:11, 126:18, 128:23, 129:4, 132:25</p> <p>questionable 43:14</p> <p>questions 3:15, 6:21, 6:22, 6:24, 6:25, 7:8, 8:17, 10:18, 11:9, 12:5, 18:17, 26:13, 38:20, 47:10, 65:25, 66:3, 75:23, 75:24, 82:24, 89:1, 94:6, 94:22, 98:1,</p>
---	---	--	---

Transcript of Administrative Hearing
Conducted on January 3, 2020

68

103:23, 105:22, 115:6, 120:19, 122:6, 122:9, 123:10, 123:15, 131:9 quick 69:2, 72:2 quickly 108:19, 122:5 quid 135:22 quite 22:23, 23:9, 81:14, 97:12, 108:18, 112:7 quote 62:9	re-forest 46:1 reach 24:2, 110:16 reaching 139:4 react 72:21 read 17:5, 44:10 ready 62:20, 63:23, 135:18 real 16:16, 38:6 realigned 101:18 realities 71:8 realize 129:3 realized 30:23 really 7:14, 9:15, 10:10, 14:22, 17:10, 23:15, 23:17, 23:25, 24:20, 26:3, 26:19, 27:2, 27:3, 30:12, 30:24, 32:24, 32:25, 33:12, 36:9, 37:16, 38:1, 38:7, 38:15, 38:22, 41:19, 42:20, 43:5, 43:23, 46:12, 46:16, 52:1, 52:21, 53:6, 67:10, 67:11, 72:6, 74:19, 77:25, 78:1, 78:12, 78:13, 78:14, 78:16, 78:20, 80:22, 81:12, 84:14, 86:18,	87:25, 88:3, 88:16, 88:17, 90:11, 90:13, 90:19, 90:21, 90:22, 91:18, 92:17, 92:20, 92:25, 95:15, 97:16, 97:19, 99:9, 113:17, 114:16, 119:13, 135:6 realm 37:11, 93:3 rear 38:2 reason 7:11, 17:9, 43:16, 113:16 reasonable 16:11, 16:15 reasons 10:11, 28:20 reassign 98:17 received 5:9, 5:23, 6:17, 7:2, 10:22, 128:11 recent 5:4, 5:8 recently 65:10, 100:13 recess 62:19, 123:1, 135:16 recharges 40:14 recite 19:23 recognized 75:14 recommend 10:17, 33:22, 56:6, 71:20, 135:22, 135:25 recommendation 5:12, 5:17, 7:12, 8:3, 8:13,	10:17, 32:7, 55:1, 57:15, 70:7, 71:24, 91:5 recommendations 11:3, 48:19, 60:2, 67:16, 70:11, 72:23, 72:24, 91:12, 128:18 recommended 31:11, 37:10, 56:20, 57:4, 70:9, 70:10, 73:11, 89:10, 89:11, 89:14, 91:4, 91:11, 103:18 recommends 33:22, 34:1 reconfigure 117:13, 118:8, 118:16 record 4:16, 5:24, 6:17, 7:2, 12:19, 17:6, 17:12, 17:15, 19:10, 19:22, 20:15, 20:18, 29:23, 31:18, 35:12, 40:9, 41:5, 45:22, 55:2, 55:12, 55:13, 57:11, 57:14, 57:18, 62:17, 62:21, 66:7, 69:7, 77:1, 82:7, 82:20, 83:8, 100:9, 100:14, 102:17, 104:23, 109:2, 116:16, 120:2, 120:3, 120:20, 123:3, 123:9, 124:1, 124:13, 124:15, 124:25, 129:14,
R			
radius 81:1 radiuses 80:24, 80:25 rain 40:9, 40:12, 40:15, 41:12, 41:17, 42:23, 43:8 rainfall 40:10 rains 41:14 raise 12:12, 19:3, 100:4, 123:19 raised 66:8, 121:2, 123:11 raises 40:11 raising 40:19 ran 15:8 range 28:11, 28:13, 33:18, 88:11 rather 61:23, 125:15			

<p>129:22, 135:18, 139:23, 140:2, 140:13, 140:21, 140:22, 142:4 recorded 53:23, 53:24, 142:4 recording 141:8, 142:6 records 29:4 recreation 92:18 recreational 92:17 red 23:8, 54:19 reduced 30:20, 131:18 redundancy 94:23 redundant 94:17 refer 8:25, 21:5, 22:17, 107:8, 136:2, 136:7, 138:7 referenced 76:19 references 34:6 referencing 32:9 referred 126:23 referring 27:17, 39:17, 45:2, 76:25, 128:4 refers 61:8 reflect 58:2, 82:20 reflected 5:13, 56:22, 113:1 reflective 64:16, 64:17</p>	<p>reflects 5:3, 54:21, 124:14 regarded 101:2 regarding 48:22, 60:2, 63:4, 89:1, 105:22, 111:17, 115:2, 121:2, 121:3 region 40:10, 40:18 regional 13:17, 96:2 regionally 14:6 regulations 50:21, 50:22, 64:23, 82:11 regulatory 64:10 relate 102:5 related 14:4, 17:10, 142:7 relates 47:5 relationship 74:14 relationships 29:7, 87:2 released 114:20 relevance 74:4 relevant 13:24, 28:16, 31:19, 32:12, 34:8, 75:17, 107:6 reliance 74:10 relied 51:3 relief 110:11</p>	<p>relocated 15:7, 21:17 relying 121:25 remain 130:23, 133:9, 140:13 remained 72:9 remaining 10:12, 42:18, 70:8, 72:1, 72:24 remains 14:11, 28:18, 28:21 remember 11:25, 62:2 removed 53:7 repeat 4:6 replant 46:6, 60:21 replanted 120:18 replanting 120:6 replied 128:16 report 5:13, 7:10, 8:12, 9:3, 9:12, 9:20, 10:16, 10:20, 20:15, 20:17, 22:8, 22:15, 22:19, 44:11, 47:25, 48:1, 48:18, 48:25, 49:3, 49:15, 56:14, 56:18, 57:15, 59:20, 61:13, 61:14, 62:23, 64:8, 64:15, 64:16, 64:17, 73:11, 101:2, 103:18, 112:17,</p>	<p>112:18, 124:16, 127:2 request 57:19, 57:20, 128:13, 134:21 requested 4:24, 132:5 requesting 4:4 require 82:8, 82:10, 82:12, 94:2, 125:20 required 40:1, 54:2, 65:11, 65:23, 67:25, 81:22, 89:10, 92:21, 93:3, 93:15, 94:1, 105:15, 105:24, 106:2, 106:5, 106:7, 114:3, 114:8, 120:24 requirement 8:6, 80:5, 80:6, 81:1, 91:19, 92:16, 92:23 requirements 11:1, 67:9, 76:15, 83:1, 85:15, 92:10, 92:12, 92:15, 93:16, 93:22, 98:23, 114:4, 133:23, 134:5, 135:22, 136:1, 136:12 requires 97:9, 130:11 requiring 111:4 residential 10:9, 10:15, 13:16, 13:17, 17:18, 24:11, 24:15, 24:19,</p>
--	---	---	--

Transcript of Administrative Hearing
Conducted on January 3, 2020

70

<p>25:13, 25:21, 26:1, 26:23, 26:24, 28:4, 73:6, 76:9, 76:10, 83:3, 88:18, 89:2, 89:5, 89:6, 90:7, 90:22, 92:16, 92:21, 97:1, 119:14, 130:16 residentially 96:23 residents 33:9, 97:2 resolution 3:18, 8:13, 47:20, 47:22, 55:1, 55:15, 56:23, 57:16, 57:18, 111:10, 113:1, 114:23, 140:14 resolve 110:14 resolved 9:2 resource 20:23, 21:3 resources 20:12, 21:6, 33:14, 33:16, 38:18, 39:18, 39:21, 108:13, 138:15 respect 68:4 respectful 125:7 respond 61:18, 64:3, 85:9, 88:12, 137:23, 137:25, 138:2, 138:9, 138:14, 140:16 respondent 37:16 responding 41:17, 41:18,</p>	<p>85:17 response 39:5, 41:12, 57:24, 140:20 responsibilities 20:8, 20:9 resume 19:23, 66:14 retail 25:12, 76:13, 76:14, 76:17 retention 110:3, 115:11, 116:24, 117:5, 117:6, 120:10, 120:16, 132:7, 133:19 revelatory 64:13 review 31:25, 40:2, 64:20, 94:13, 98:4, 108:10, 108:12, 111:13, 130:6, 130:9 reviewed 31:22, 76:1, 106:4, 126:24, 127:2, 128:21, 130:25, 131:4 reviewer 132:5 reviews 64:10, 64:13, 108:19 revise 75:14 revised 3:11, 3:13, 3:14, 3:22, 5:3, 5:21, 45:6, 56:19, 57:7, 57:25, 58:2, 58:7, 58:14, 109:4, 111:8, 112:25, 124:13, 124:23 rezone 4:5, 89:22</p>	<p>rezoned 14:14, 71:2, 72:5 rezoning 18:16, 77:10, 106:21, 130:8, 131:1 rice 100:3 rich 38:3, 138:23, 139:12 richter 23:17 rick 108:14 ride 9:11, 24:15, 38:13, 78:10, 86:4, 109:22 ridge 79:4 right 5:14, 5:15, 5:16, 7:4, 9:24, 12:12, 15:6, 17:21, 19:3, 23:6, 23:12, 24:12, 24:18, 25:9, 26:6, 26:23, 27:19, 29:9, 30:11, 40:8, 43:19, 44:15, 44:23, 45:23, 46:4, 46:21, 47:15, 48:3, 49:13, 49:14, 49:21, 50:2, 51:2, 51:8, 52:18, 53:2, 53:5, 53:20, 54:7, 56:12, 65:3, 65:5, 73:17, 74:5, 76:12, 78:4, 79:6, 79:10, 82:6, 84:18, 88:22,</p>	<p>89:16, 89:21, 91:9, 93:19, 95:3, 95:12, 96:8, 99:3, 99:15, 100:4, 101:19, 102:4, 103:1, 108:15, 108:23, 112:4, 112:25, 113:7, 113:9, 113:15, 116:25, 119:18, 119:25, 122:23, 123:20, 127:24, 128:1, 128:3, 128:6, 128:8, 128:10, 128:14, 128:17, 128:22, 129:3, 129:9, 132:14, 140:11, 141:2, 141:4 right-of-way 3:20, 4:9, 63:9, 68:12, 68:13, 68:14, 68:15, 73:19, 102:11, 102:20, 103:3, 103:6, 103:17, 105:7 rights 30:21, 77:10, 93:1 rights-of-way 77:9 rights-of-ways 68:5, 73:15 rise 40:18 rises 40:16 roads 23:16, 70:20, 84:11, 93:7, 101:23 roadway 38:10, 38:15, 68:2, 68:3, 68:7 robert 138:23</p>
---	--	--	--

Transcript of Administrative Hearing
Conducted on January 3, 2020

71

roberto 98:13 rockville 1:11 role 101:1 roof 91:22, 118:14 room 117:12, 132:4, 132:12, 132:15 roughly 28:9, 73:17, 92:22, 129:1 route 21:12, 36:6, 126:12 rt8 27:20 ruler 71:4 run 15:4, 80:19, 108:15 running 69:18, 70:18, 79:2, 80:20, 105:16, 118:20 runoff 118:14 runs 105:5 rural 89:5, 89:6	78:25, 80:1, 80:6, 81:9, 81:11 said 16:4, 16:12, 31:9, 31:13, 40:5, 43:13, 44:1, 54:9, 77:15, 87:16, 101:22, 107:9, 113:13, 142:5 sake 44:16, 60:5 same 22:23, 33:25, 38:8, 41:1, 43:17, 44:2, 47:22, 50:2, 73:19, 87:10, 139:16 satisfies 85:15, 96:13 satisfy 96:15, 98:22, 122:3 saw 25:15, 112:15, 125:15 say 7:9, 8:4, 8:8, 8:19, 9:5, 9:8, 19:15, 24:15, 24:16, 28:21, 29:6, 44:16, 45:21, 53:9, 55:17, 61:9, 61:12, 83:9, 96:3, 99:16, 107:9, 107:22, 112:19, 112:20, 113:7, 113:18, 117:16, 132:16, 134:1, 134:3, 134:5, 136:3, 136:8, 138:1 saying 7:21, 7:22, 8:18, 27:11,	46:13, 48:15, 48:16, 48:17, 50:12, 63:19, 63:20, 96:10, 106:20, 107:22, 111:2, 128:13, 133:21, 134:11, 134:19, 139:20 says 7:11, 7:13, 7:16, 9:4, 9:6, 39:5, 49:1, 62:24, 62:25, 63:10, 65:19, 67:19, 68:1, 68:22, 75:11, 106:20, 122:15, 133:3, 137:6 scale 9:6, 26:14, 38:7, 67:6, 74:16, 88:22, 91:23, 96:21, 97:13, 97:14 schaeffer 23:16, 25:3 school 13:3, 25:2, 25:18, 98:11, 98:13, 98:14, 98:15, 98:18 schools 98:19 scientist 11:18, 51:4 scope 100:22 sd 132:10 search 61:22, 62:9 second 5:16, 42:13, 51:18, 67:5, 70:7, 71:24, 85:3 section 33:17, 66:18,	76:20, 89:11, 91:3 sectional 85:11 sections 85:8, 118:18 sediment 108:5, 114:7, 114:12 see 6:2, 6:5, 7:12, 24:2, 25:24, 27:10, 29:11, 37:11, 40:11, 40:18, 69:23, 72:23, 74:20, 79:2, 79:11, 79:25, 86:13, 87:25, 112:9, 112:13, 114:16, 115:10, 115:25, 116:3, 118:18, 119:7, 122:22, 127:18, 128:5, 129:2 seeing 4:14 seek 103:12 seeking 103:9 seem 43:23 seemed 9:12, 71:15, 90:13, 90:20 seems 8:15, 24:10, 53:24, 69:12, 69:24 seen 29:7, 48:19, 54:16 segment 21:24, 31:17 segregate 28:3 self-parked 93:18
S			
s 37:18, 37:21, 74:10, 108:4 s3 104:12 s5 104:7 safe 32:21, 130:2 safety 8:19, 54:4, 63:4, 68:10,			

self-sufficient 121:19 sell 14:22, 16:3 send 136:17, 136:21, 137:5, 137:9, 137:11, 138:16, 139:10, 139:11, 139:12 sending 41:14, 136:24 sends 137:6 seneca 7:17, 23:21, 68:23, 69:19, 98:17 sense 16:18, 16:21, 18:4, 67:4, 134:17 sensitive 7:16 sent 47:8, 57:13, 128:12 sentence 63:5 separate 109:5 separated 68:21 separation 129:10 series 82:24 serve 32:16, 32:25, 38:11, 85:13, 104:1, 105:11 served 98:12 service 33:8, 33:12, 38:12, 126:2, 126:3, 126:20, 130:22	serviceability 33:4, 33:13 services 100:23, 100:24, 108:12 serving 79:13, 79:15, 95:22, 105:18 set 8:17, 40:9, 48:16, 73:4, 83:2, 87:17, 87:18, 87:19, 111:10, 136:18 setback 80:6, 80:9, 80:13 setbacks 87:13, 87:21 settings 88:12 settle 43:9 settlement 114:14 seven 13:19, 39:5 several 4:5, 14:3, 100:16, 112:4 sewer 86:1, 104:1, 104:4, 104:19, 105:10, 121:6 sha 3:23, 129:20, 129:24 shaped 72:22 shopping 99:6 short 42:20, 62:19, 122:17 short-term 43:5 shortly 55:15	should 6:23, 11:21, 12:10, 18:24, 44:1, 55:15, 61:15, 67:20, 106:13, 116:21 should've 29:4 shouldn't 45:21, 61:5 show 21:2, 43:13, 58:2, 72:9, 106:24, 107:5, 117:1 showed 41:2, 137:12, 139:25 showing 44:15, 57:5, 109:8 shown 30:8, 40:25, 43:9, 43:11, 45:5, 45:9, 55:23, 55:24, 58:1, 58:7, 66:5, 66:6, 71:3, 109:1, 109:3, 115:3, 116:19, 116:24, 133:4, 133:10, 137:20 shows 72:4, 91:15, 92:22, 116:7 side 6:14, 21:12, 25:12, 25:13, 27:1, 27:6, 36:2, 40:25, 42:19, 70:23, 72:8, 117:17 sides 126:11 sidewalk 93:6, 110:4, 118:15, 118:19	sidewalks 67:24, 118:17, 118:18 sign 126:5 signal 126:13 signals 126:10, 126:14 signature-mig2k 142:10 significant 55:20 signified 64:21 similar 23:20, 27:4, 28:13, 81:6, 87:8, 87:9, 87:22, 88:2, 90:2, 92:23, 138:17 since 13:20, 14:17, 38:20, 87:25, 97:16, 106:4, 108:4 single 34:19, 34:24, 36:23, 37:7, 37:8 single-family 34:2, 36:7, 36:8, 36:12, 73:8 site 10:16, 11:2, 17:17, 18:16, 20:21, 20:22, 22:4, 25:3, 26:19, 33:5, 33:7, 34:8, 34:15, 39:20, 41:24, 42:24, 45:16, 46:17, 46:20, 53:16, 53:21, 53:25, 54:1, 54:11,
--	---	---	---

58:9, 58:12, 58:15, 59:12, 62:25, 63:8, 65:22, 65:23, 66:5, 66:6, 69:15, 70:7, 72:12, 72:19, 72:25, 73:5, 76:15, 76:16, 77:4, 77:5, 77:6, 77:25, 78:1, 78:6, 80:21, 85:18, 87:17, 87:18, 88:13, 88:15, 88:21, 89:18, 90:10, 90:20, 90:21, 91:1, 92:15, 92:21, 93:11, 93:14, 95:15, 97:4, 101:8, 101:21, 102:3, 103:14, 103:19, 105:14, 106:4, 109:19, 109:21, 111:5, 111:19, 113:17, 114:1, 114:4, 114:14, 114:17, 114:22, 115:10, 115:11, 115:20, 118:6, 121:7, 121:14, 125:4, 125:9, 132:17 site-specific 64:12 sites 46:3, 61:16, 62:17, 73:10, 118:10 sitting 14:17, 92:19 situated 17:17 situation 43:8 situations 23:21	six 10:5, 28:7, 28:8, 29:9, 53:7, 61:7 size 85:13, 85:22 sizes 91:15 skip 9:12 slide 71:10 slightly 114:3 slope 42:3 slopes 42:4 small 18:5, 25:12, 76:8 smaller 72:14, 72:21, 78:5 soaks 40:13 soft 106:22 soils 39:25 solemnly 12:13, 19:4, 100:5, 123:20 solutions 11:19 some 4:14, 6:21, 7:11, 8:16, 10:13, 10:19, 13:8, 14:1, 14:9, 14:21, 21:21, 25:22, 26:7, 32:5, 42:7, 42:25, 46:14, 47:4, 47:10, 50:11, 50:13, 53:9, 59:2, 60:8,	65:10, 65:25, 66:25, 68:14, 78:16, 81:11, 84:19, 86:24, 88:25, 90:12, 90:16, 93:21, 95:21, 100:3, 102:22, 103:24, 109:8, 110:3, 110:18, 114:18, 114:24, 116:23, 116:24, 117:3, 117:8, 117:12, 117:13, 117:14, 117:22, 118:9, 119:21, 121:7, 125:15, 132:2, 134:15, 136:13 somebody 9:16, 57:11 something 7:17, 38:5, 50:9, 59:19, 65:9, 75:6, 81:3, 81:25, 99:7, 104:17, 106:20, 107:11, 107:21, 107:25, 112:19, 135:12, 139:3 sometime 43:15 sometimes 41:7 somewhat 23:24, 72:17, 94:16, 109:4 somewhere 25:15, 47:24, 48:13, 54:10, 136:13 soon 57:16, 138:2 sorry 13:14, 36:15, 45:6, 49:2, 49:3, 74:22, 74:24, 77:17,	86:8, 87:18, 115:23, 126:3, 127:12 sort 15:7 sound 90:2 sounds 90:4, 133:11, 140:25 south 21:11, 23:6, 27:6, 36:2, 70:1, 71:10, 71:20, 72:8, 77:4, 117:17, 126:9 southeast 4:10, 10:7, 24:23, 24:24, 69:16 southeastern 70:18 southwest 22:3, 109:19 space 38:4, 74:13, 92:10, 92:12, 92:14, 92:16, 92:17, 92:18, 92:22, 92:23, 92:25, 93:11, 117:24, 118:1, 118:2, 118:4, 119:17 spaces 74:18, 77:24, 84:25, 93:4 spacing 54:5, 71:8 speaker 29:3, 115:24, 127:10, 131:11 speaking 47:2 special 108:3, 120:21 specialist 122:15, 140:7
--	---	---	---

Transcript of Administrative Hearing
Conducted on January 3, 2020

74

<p>specific 67:8, 67:16, 67:18, 68:16, 74:1, 75:24, 83:1, 91:12, 92:11, 94:4, 94:11, 111:17, 123:14 specifically 71:19, 111:11, 113:6, 128:8, 132:5 specifications 96:16 specifics 75:16 specimen 40:4 splitting 30:22 spot 90:16 spring 128:7 square 76:13, 76:14, 76:17, 84:18 stab 115:14 stabilized 120:13 staff 5:13, 5:18, 7:12, 8:12, 8:18, 8:25, 9:3, 9:12, 9:20, 10:16, 10:20, 22:7, 22:8, 22:15, 22:18, 22:19, 22:20, 22:21, 23:12, 26:21, 44:11, 47:25, 48:1, 48:17, 48:25, 49:3, 49:14, 49:18, 50:7, 50:10, 50:11, 50:13, 50:15,</p>	<p>51:11, 52:1, 55:16, 55:17, 55:21, 56:1, 56:6, 56:13, 56:18, 57:15, 57:19, 58:2, 58:3, 58:5, 59:12, 59:20, 61:8, 61:13, 61:14, 62:23, 62:25, 64:8, 64:15, 64:19, 66:8, 69:4, 81:7, 81:12, 91:20, 103:18, 108:19, 109:11, 109:12, 112:12, 112:14, 112:17, 124:16, 131:3, 132:4, 136:10, 139:5 staff's 7:10, 52:8, 53:9, 58:8, 58:11, 58:14, 71:16 stage 8:11, 50:22, 106:22, 110:21 staging 98:14 stand 20:12, 20:24, 21:3, 21:6, 55:22, 55:24, 109:16 standalone 59:17 standard 81:18, 81:20, 81:21, 107:16 standards 7:10, 60:7, 68:10, 68:12, 68:16, 72:13, 76:18, 76:19, 82:25, 87:3, 87:4, 87:12,</p>	<p>87:17, 87:19, 90:25, 96:14, 96:16, 134:20 standpoint 18:5 stands 40:4 start 12:8, 42:21, 94:25, 114:20, 116:18, 118:23, 140:24 started 14:13, 26:17, 111:21 starting 40:5 starts 43:17 starve 99:18 state 12:18, 19:9, 95:25, 100:8, 123:25, 126:23, 126:24, 127:2, 128:7, 128:16, 128:20, 129:5, 129:15, 131:3 state's 129:9 stated 120:3, 128:16, 132:11 statement 9:23, 9:25, 12:5, 16:8, 110:22, 111:1 statements 3:3, 12:14, 19:5, 100:6, 123:21 station 1:6, 3:20, 4:4, 9:10, 24:14, 25:1, 25:12, 27:21, 72:25, 73:3, 102:11</p>	<p>stations 40:17 stay 18:24, 99:16 stayed 119:16 stays 133:4 steps 18:13 stick 117:18 still 8:25, 10:11, 14:11, 23:24, 26:8, 28:12, 37:9, 42:17, 46:17, 50:23, 73:1, 73:4, 74:7, 80:19, 81:15, 84:19, 91:21, 96:3, 96:5, 103:21, 104:6, 104:18, 108:14, 110:1, 131:24, 134:19 stock 32:17, 32:19 stop 86:14, 126:5, 126:6, 126:10 store 33:11, 86:16 stories 91:17, 91:18, 91:21 storm 41:24, 41:25, 45:13, 48:23, 53:7, 59:1, 60:8, 60:11, 60:22, 63:17, 70:23, 120:5 stormwater 3:21, 7:19, 8:5, 46:9, 65:1, 65:12, 65:14, 65:22, 65:25,</p>
--	--	--	--

Transcript of Administrative Hearing
Conducted on January 3, 2020

75

<p>96:6, 101:4, 105:22, 105:23, 106:1, 106:7, 107:15, 108:5, 108:6, 109:7, 109:14, 110:5, 110:10, 111:3, 111:12, 111:17, 113:4, 113:6, 113:10, 114:4, 115:3, 116:13, 117:14, 119:2, 120:7, 121:6, 121:10, 121:12, 132:6, 133:4, 133:6, 133:7, 134:7, 134:10, 134:22, 134:25, 136:4, 136:6, 137:4 story 23:4, 42:20, 139:3 straight 71:5, 71:6 strategically 119:16 strategies 117:2 strategy 3:21, 65:12, 65:14, 101:4, 106:7, 106:11, 106:14, 107:8, 107:15, 108:24, 109:1, 115:3, 116:13, 136:5, 136:6, 137:4 stream 7:19, 8:7, 9:2, 21:22, 21:25, 30:15, 30:20, 40:4, 40:24, 41:1, 41:9, 41:10, 41:11, 41:15, 41:16, 41:22, 41:23, 42:11, 42:13,</p>	<p>42:15, 42:20, 43:6, 44:14, 44:16, 44:17, 44:18, 44:19, 44:21, 44:23, 44:24, 45:1, 45:17, 46:5, 46:8, 46:16, 46:24, 48:16, 51:15, 52:2, 55:18, 55:24, 58:18, 58:21, 58:22, 60:6, 60:8, 60:11, 63:13, 68:21, 69:15, 71:22, 72:8, 72:11, 107:21, 108:6, 113:21, 119:22, 122:13, 122:14, 131:18, 133:8, 133:9, 133:14, 133:18, 133:21, 135:5 streamlined 70:18 streams 40:21, 43:2, 44:20, 45:11, 46:12, 47:1, 51:21, 55:19, 60:6, 122:20 street 9:10, 24:25, 38:7, 42:10, 46:4, 53:22, 74:15, 74:16, 74:17, 77:24, 78:12, 78:13, 93:20, 101:21 street's 112:3 streets 79:12 streetscape 38:3, 74:13, 78:16 stresses 7:17</p>	<p>stringent 67:17 strip 25:12 stronger 112:12 struck 136:13 structure 14:9 structures 60:13, 132:7 struggling 134:6, 134:9, 134:17, 134:18 student 98:18 students 98:17 studies 11:18 study 69:17, 70:9, 125:18, 128:19, 130:12 stuff 7:8, 110:20 sub 35:23 subdivided 72:13 subdivision 98:14 subject 4:7, 21:25, 22:22, 23:7, 24:22, 30:9, 32:6, 32:13, 35:25, 36:2, 38:9, 67:10, 67:22, 68:7, 84:6, 106:13, 111:12, 128:18, 130:9 submerged 110:5 submission 65:11</p>	<p>submit 40:2, 42:22, 50:3, 105:13, 114:21, 139:9 submitted 42:24, 43:21, 66:7, 82:14, 106:14, 106:15, 109:2, 114:13, 114:14, 114:16, 114:19, 126:22, 128:20 submitting 10:22, 112:8, 138:25 subsequent 64:10, 64:12, 91:1, 103:10, 111:13, 111:19 subsequently 128:20 substantial 32:2 substation 16:2 sufficient 68:15 sufficiently 68:5 suite 2:6 summarize 59:25, 83:18, 86:24 summarizes 86:25 summary 97:21 supply 135:12 support 18:5, 97:2, 98:7, 128:15, 128:17 supported 84:1, 84:9 supportive 108:1</p>
---	---	--	--

<p>suppose 38:19 supposed 26:5, 37:3 sure 12:2, 13:1, 13:25, 14:12, 15:5, 17:12, 17:20, 21:4, 26:16, 28:19, 32:9, 35:9, 35:13, 36:16, 36:19, 37:5, 38:24, 39:11, 49:14, 49:25, 50:11, 61:10, 61:17, 62:3, 76:25, 83:21, 87:1, 92:14, 100:10, 100:25, 101:12, 101:13, 102:6, 104:3, 106:1, 106:8, 106:23, 107:17, 107:19, 110:24, 114:12, 115:14, 115:18, 115:22, 116:6, 116:23, 117:25, 120:10, 121:7, 122:5, 125:14, 134:1, 137:13, 139:18, 139:23, 140:1 surrounded 10:8 surrounding 9:7, 9:8, 9:9, 22:7, 22:18, 22:20, 23:8, 23:9, 24:1, 24:19, 24:21, 26:11, 26:15, 34:16, 34:17, 85:2, 87:15, 95:17, 96:23, 97:11, 97:15, 130:15 sustainability 85:24</p>	<p>sustainable 85:15, 95:17 sustained 121:14 swale 41:12 swap 16:5, 16:9 system 32:22, 38:15, 38:16, 40:14, 40:16 systematic 96:1 systems 38:11</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>take 6:8, 28:12, 39:15, 39:23, 50:1, 54:24, 55:3, 55:17, 61:19, 61:20, 62:8, 62:12, 72:10, 74:8, 99:21, 104:16, 108:9, 115:14, 118:21, 122:21, 122:23, 135:9, 135:10, 135:12 taken 56:2, 62:19, 103:21, 123:1, 135:16 takes 16:17, 30:12, 60:17, 72:15 taking 52:15, 114:2 talk 22:4, 38:22, 46:25, 107:14, 111:21 talked 16:4, 16:8, 73:1, 74:5, 85:16, 97:12,</p>	<p>109:16 talking 16:2, 16:3, 29:25, 48:24, 49:18, 55:4, 109:17 talks 64:8, 68:20 tall 81:3 tan 36:7 target 108:23 tdr 22:3, 71:14, 71:15, 71:20, 76:6, 89:8 tdr6 4:5, 76:7 technical 5:13, 30:14, 114:15 technically 82:10, 112:6 telephone 8:23, 79:11, 81:2, 105:16, 105:17 tell 11:22, 48:14, 48:18, 49:7, 49:18, 50:7, 51:24, 61:24, 115:8, 115:9, 132:15, 135:14, 135:21, 138:18 telling 34:9, 128:25 term 79:1 terminated 21:16 terminology 80:18 terms 14:6, 17:13, 58:16, 64:11,</p>	<p>73:25, 98:10, 104:1, 110:6, 121:5, 121:13, 131:1, 132:25, 136:24, 139:4, 140:12 tertiary 103:6 test 106:22 testified 58:16, 102:19 testify 4:13, 10:12, 17:5, 59:5, 123:15, 125:10 testifying 51:4 testimony 3:4, 3:5, 3:6, 3:7, 9:19, 9:24, 13:10, 28:16, 28:17, 38:25, 73:25, 76:7, 86:24, 99:9, 99:10, 99:11, 101:25, 109:15, 113:13, 115:5, 122:16, 136:7 tests 98:15 thank 5:1, 5:22, 7:6, 9:18, 12:4, 12:8, 12:18, 13:21, 16:23, 18:17, 18:19, 19:8, 19:9, 20:1, 20:2, 20:20, 22:6, 26:9, 29:22, 31:16, 31:22, 37:1, 41:20, 61:7, 62:15, 62:16, 62:18, 63:22, 71:23, 75:22, 76:18, 76:22, 78:22,</p>
--	---	---	---

Transcript of Administrative Hearing
Conducted on January 3, 2020

77

82:6, 82:23, 83:14, 85:3, 86:7, 86:21, 88:5, 88:25, 89:9, 90:24, 93:25, 97:25, 98:21, 99:2, 100:18, 101:7, 104:22, 105:1, 120:19, 122:11, 123:4, 124:9, 129:21, 130:25, 131:24, 135:15, 141:5, 141:6, 141:7 thanks 28:14 themselves 37:19, 47:1, 78:5, 80:12 thereafter 55:15 thing 7:9, 8:24, 9:3, 46:8, 50:3, 51:7, 53:15, 63:20, 124:17, 125:9, 137:3 things 7:15, 15:5, 30:14, 34:15, 43:8, 44:6, 47:11, 54:13, 80:15, 101:4, 101:6, 109:16, 110:2, 110:11, 110:13, 117:13, 118:16, 118:22, 118:23, 121:15 think 9:18, 12:6, 13:7, 14:15, 17:14, 17:24, 19:18, 23:12, 24:18, 25:23, 26:3, 26:7, 26:11, 30:6, 30:23, 31:9,	31:12, 31:16, 33:14, 34:8, 34:15, 37:20, 38:14, 43:11, 44:8, 46:17, 47:21, 50:9, 50:13, 51:11, 52:1, 55:20, 56:1, 58:13, 62:1, 62:22, 64:2, 65:19, 65:24, 66:10, 70:15, 73:12, 73:14, 73:23, 74:8, 74:20, 79:10, 80:17, 81:12, 83:4, 85:16, 92:9, 95:1, 95:5, 97:5, 97:12, 97:17, 100:16, 101:12, 101:22, 102:7, 103:22, 105:9, 105:21, 107:13, 107:22, 107:23, 109:3, 109:8, 109:10, 116:25, 117:7, 119:11, 120:1, 122:16, 122:17, 123:16, 124:6, 124:22, 125:6, 127:5, 127:25, 131:2, 131:9, 132:12, 133:12, 133:24, 134:8, 134:16, 135:11, 135:13, 136:10, 136:19, 137:8, 137:18, 137:19, 138:2, 138:5, 140:22 thinking 135:2 thought 25:15, 53:24, 69:1, 77:15, 102:1, 104:5,	124:18, 131:15 three 5:25, 6:8, 33:17, 59:11, 72:14, 78:6, 83:15, 83:22, 85:8, 88:8, 88:10, 99:10 threshold 126:21, 130:24 thresholds 125:20, 130:23 threw 16:12 through 5:10, 6:20, 9:18, 10:24, 17:5, 34:6, 42:17, 48:17, 51:16, 59:3, 61:21, 61:23, 62:21, 67:24, 69:2, 69:16, 70:20, 72:12, 80:16, 80:20, 84:8, 85:18, 92:11, 94:20, 94:25, 95:5, 101:15, 101:21, 102:25, 105:5, 105:16, 108:4, 108:21, 108:25, 110:2, 110:9, 110:14, 114:17, 123:9, 132:23, 134:17, 134:18, 135:11, 135:13, 140:1, 140:25 throughout 77:25 ties 52:21 tim 59:4, 79:21 time 13:20, 14:13, 14:17, 16:11, 16:15, 33:25,	40:11, 41:13, 43:6, 44:3, 59:16, 65:8, 72:9, 72:10, 73:20, 75:5, 75:12, 75:15, 75:16, 75:17, 77:11, 82:1, 90:15, 106:9, 107:1, 111:13, 111:19, 114:16, 125:7, 133:24, 135:11, 139:16 timeline 114:24 times 19:17, 19:22, 20:22, 74:20 timing 105:25, 114:11 timothy 3:6, 11:15, 100:10 today 4:13, 5:19, 9:19, 10:5, 14:25, 20:5, 32:23, 32:25, 36:12, 37:20, 46:14, 46:23, 66:8, 74:11, 77:9, 77:20, 99:11, 100:20, 101:15, 138:7 today's 139:24, 140:2 together 14:21, 25:18, 30:7, 31:14, 39:20, 39:25, 69:3, 78:8 told 56:16 took 67:9, 89:19 tool 38:1 top 21:8, 21:11,
--	--	---	---

Transcript of Administrative Hearing
Conducted on January 3, 2020

78

<p>30:21, 36:1, 79:23 total 10:6, 11:6, 24:18, 26:19, 32:17, 32:19, 33:23, 34:18, 36:10, 36:20, 50:12, 90:18 touch 98:3 touched 78:23, 82:7, 83:17, 92:9, 101:25, 103:16 touching 98:2 tough 83:9 tower 81:2 town 53:22, 66:21, 81:23, 84:24, 108:2, 112:2 townhomes 17:21, 18:8, 96:25 townhouse 17:18, 37:24, 72:19, 76:9, 87:8, 117:10 townhouses 9:5, 27:1, 27:19, 27:22, 28:6, 28:13, 31:6, 33:20, 33:24, 34:7, 34:10, 34:12, 34:17, 34:19, 34:20, 34:24, 36:12, 36:19, 36:20, 37:6, 37:14, 37:18, 37:19, 37:21, 38:1, 38:2, 39:1, 74:9, 74:11, 76:12,</p>	<p>77:24, 78:4, 85:18, 93:17, 95:21, 117:18, 118:7 towns 27:2 townscape 66:18, 67:2, 67:3, 68:1 towson 13:2 tract 28:4, 52:5, 52:11, 52:15, 52:22, 52:25 trading 119:9 traffic 3:22, 11:16, 11:17, 31:3, 31:4, 31:6, 31:7, 73:10, 97:6, 124:2, 124:7, 124:13, 124:24, 125:18, 126:4, 126:10, 126:13, 126:14, 128:19, 130:11, 130:14, 130:21, 131:1 transaction 16:17 transcribed 1:25, 142:5 transcriber 142:1 transcript 142:4 transforming 95:14 transit 33:4, 33:5, 33:12, 38:11, 38:13, 38:15, 38:16, 38:17, 44:6, 86:5, 86:14, 86:15 transitions 67:6</p>	<p>transmission 8:18, 15:3, 15:7, 15:10, 63:5, 78:24, 79:1, 80:3, 80:17, 81:8 transportation 32:22, 38:10, 73:14, 124:3, 124:7, 130:6, 130:9 treated 119:4 treating 121:10 tree 59:13 trees 39:25, 40:5, 59:10, 59:12, 59:16, 59:17, 60:22, 120:11, 120:14 trend 85:17 trends 9:4, 85:10 trips 130:11, 130:17, 130:18, 130:19, 130:20, 130:21 true 142:4 trusts 17:9 truth 12:14, 12:15, 19:5, 19:6, 100:6, 100:7, 123:22 try 34:13, 39:19, 44:1, 69:2, 118:16, 141:3 trying 13:6, 14:20, 18:6, 28:1, 28:2, 38:8,</p>	<p>39:9, 44:8, 45:15, 46:9, 46:10, 133:23, 133:24 turn 78:17 two 8:3, 16:19, 21:22, 31:3, 34:15, 42:11, 43:7, 62:17, 68:20, 76:18, 78:10, 83:25, 90:8, 92:14, 92:15, 93:17, 102:24, 104:5, 109:17, 109:23, 136:3, 136:16, 140:16 twofold 67:3 type 37:24, 38:8, 97:14 types 27:6, 32:18, 33:20, 34:11, 34:16, 36:21, 78:7, 84:13, 85:12, 85:20, 85:23, 118:23 typical 22:14, 50:5, 118:17 typically 8:10, 23:9, 24:2, 43:16, 45:20, 45:24, 50:14, 52:7, 54:1, 63:17, 64:14, 65:7, 72:15, 79:25, 81:21, 81:25, 112:13, 114:16, 132:17</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>uh-huh 61:3, 140:18</p>
---	---	---	---

<p>ultimate 71:10, 89:19, 93:23 ultimately 60:18, 73:13, 91:20, 113:9 ultra-cautious 46:13 under 12:13, 19:4, 67:25, 68:1, 68:16, 76:13, 81:21, 83:21, 91:14, 98:14, 100:5, 104:18, 108:3, 108:12, 123:20, 125:22, 131:25 undergo 63:7 undergone 14:16 underground 8:20, 81:13, 81:22, 81:24 undergrounding 81:13, 81:15, 81:25 underlying 91:9 underneath 91:25 understand 8:7, 8:8, 9:1, 17:8, 17:12, 43:18, 43:20, 48:15, 48:22, 61:10, 62:3, 62:5, 133:25, 134:1, 135:24 understanding 58:6, 58:9, 58:12, 58:14, 104:15 undertake 20:10 undertook 39:20</p>	<p>underutilized 95:15 undeveloped 10:12, 14:11, 28:18 unforested 45:23 unfortunately 5:18, 99:5, 111:9 unidentified 29:3, 115:24, 127:10, 131:11 unit 34:18, 38:9, 118:14, 124:20 units 18:3, 27:20, 27:23, 32:20, 33:23, 33:25, 34:2, 34:11, 36:11, 36:24, 37:22, 46:20, 63:15, 74:14, 74:16, 80:7, 80:12, 90:17, 90:18, 91:16, 92:1, 113:25, 117:3, 117:10, 118:10, 124:14 university 13:2 unless 12:5, 75:23, 94:5, 123:14, 131:10, 133:19 unrelated 136:8 until 114:22 unused 95:15 update 75:14 updated 3:21, 116:7 upset 135:24</p>	<p>usable 92:17, 92:19 use 5:17, 10:15, 16:1, 28:4, 28:8, 38:1, 38:12, 46:9, 46:10, 74:9, 74:10, 76:14, 76:15, 76:19, 84:5, 85:4, 85:8, 85:18, 87:7, 87:8, 88:13, 88:14, 88:17, 90:21, 93:23, 95:18, 101:2, 115:24, 124:16 uses 10:9, 36:4, 67:19, 76:9, 84:1, 84:8, 84:14, 85:12, 88:20, 92:15, 130:16, 130:18 using 23:13, 38:2, 38:8, 52:9, 70:17, 85:25, 88:22 usual 92:16 usually 5:18, 13:13, 63:1, 63:11, 63:12, 63:16, 65:8, 65:13, 75:3, 82:3, 136:17, 137:3 utilities 52:21, 81:22, 81:25, 86:2, 121:15, 121:19 utility 8:23, 15:14, 15:25 <hr/>V<hr/>vacant 10:8, 21:21,</p>	<p>25:2, 26:8, 95:14 valid 103:21 valley 7:19, 21:25, 40:4, 40:24, 42:15, 44:17, 44:21, 46:8, 46:24, 48:16, 51:15, 55:18, 55:24, 58:21, 60:6, 60:12, 63:13, 68:21, 69:15, 71:22, 72:8, 72:11, 98:17, 107:21, 108:7, 113:21, 119:22, 131:18, 133:8, 133:9, 133:14 valleys 21:23, 30:16, 30:20, 42:11, 44:14, 44:23, 46:5, 122:13 value 44:5 variance 59:10, 59:11, 59:13, 59:15, 59:16, 110:7 variances 110:7 variety 10:11, 32:14, 110:2 various 10:8, 16:24, 17:6, 85:12, 88:12, 115:9 varying 85:20 vegetation 120:12 vehicle 33:3 vehicular 101:11, 125:9,</p>
---	---	---	---

Transcript of Administrative Hearing
Conducted on January 3, 2020

80

<p>130:2 veirs 99:6 venture 4:4, 11:13, 14:24, 17:7, 17:13 verify 51:12, 104:18 versus 91:1 vice 11:11, 12:20 vicinity 105:10 view 10:10, 10:13 village 3:16, 11:25, 22:1, 24:14, 24:22, 24:24, 25:24, 26:5, 26:24, 29:18, 29:20, 29:25, 30:1, 30:3, 30:7, 30:13, 30:15, 30:17, 31:4, 31:7, 33:6, 35:1, 35:6, 35:24, 36:4, 36:6, 36:13, 37:3, 37:11, 40:24, 40:25, 44:4, 66:19, 66:21, 66:23, 66:24, 67:12, 67:17, 67:21, 67:25, 68:18, 70:5, 70:16, 72:4, 78:9, 78:18, 78:20, 84:16, 86:17, 86:18, 87:11, 88:16, 90:14, 95:16, 96:25, 97:5, 97:20, 126:13 virginia 13:2, 14:5</p>	<p>visibility 73:9 vision 33:12, 34:22, 37:23, 73:12, 90:14 visual 68:5 visually 35:22 voltage 79:14, 79:17 volume 14:7, 31:4, 31:5, 31:7, 125:21 voluntary 10:21 voted 54:22</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>w1 104:12, 104:20 w5 104:6, 104:7 wagner 3:4, 11:10, 12:9, 12:10, 12:16, 12:20, 13:1, 13:15, 13:25, 14:12, 15:5, 15:15, 15:17, 15:19, 15:23, 16:8, 16:16, 16:23, 17:3, 17:20, 18:1, 18:10, 18:15, 18:18, 18:20, 18:24, 78:22, 104:21, 131:13, 131:20, 131:23, 132:1, 132:11, 132:16, 132:19, 132:22, 133:11, 135:9, 139:16 wagner's 28:17</p>	<p>wait 17:4, 45:21, 56:10, 57:3 waiver 59:1, 59:2, 110:7 waivers 107:20, 110:7 walk 33:11, 86:12, 86:14, 86:16, 92:10, 108:25, 115:2 walkable 67:24, 74:18, 86:17 want 4:15, 5:22, 6:22, 7:5, 9:13, 9:23, 9:24, 10:20, 11:22, 39:13, 43:13, 44:1, 47:11, 48:9, 49:6, 49:17, 49:18, 49:25, 53:10, 61:4, 61:17, 62:3, 70:14, 74:10, 77:25, 88:25, 99:7, 115:4, 115:24, 133:18, 133:19, 134:5, 134:17, 136:4, 136:8, 136:9, 136:17, 137:9, 139:25, 140:16, 140:21 wanted 14:23, 33:25, 34:6, 61:9, 70:11, 72:2, 73:13, 75:20, 81:12, 90:21, 122:5, 137:13, 139:22 wanting 43:12, 43:24, 44:4</p>	<p>water 39:13, 40:13, 40:20, 41:13, 41:14, 41:16, 42:25, 45:13, 45:17, 46:14, 48:23, 53:7, 59:2, 60:9, 60:11, 60:22, 63:17, 70:24, 80:18, 80:20, 86:1, 104:1, 104:4, 104:19, 105:5, 108:12, 120:23, 121:6, 138:15 waters 39:23 way 17:22, 17:25, 23:16, 42:2, 68:25, 70:6, 73:12, 86:19, 96:3, 102:4, 103:2, 103:4, 114:24, 121:24, 126:7, 126:8, 138:20 ways 29:9, 77:10, 93:1, 115:10 we'll 132:23, 135:11 we're 16:12, 29:11, 32:22, 35:10, 47:2, 60:21, 84:9, 108:1, 113:15, 115:7, 118:20, 121:25, 134:13 we've 10:18, 10:22, 16:2, 42:23, 77:2, 81:7, 83:17, 95:24, 108:21, 108:22, 109:24, 110:2,</p>
---	--	--	--

Transcript of Administrative Hearing
Conducted on January 3, 2020

81

<p>116:17, 116:24, 118:11, 118:12, 118:13, 118:20, 119:4, 119:16, 120:25, 123:7, 123:10 weapons 39:23, 39:24 weaver 138:24, 139:12 weber 11:14, 11:16, 20:10, 100:23 webster 15:25 week 112:7, 138:1, 140:17 week's 56:23 weeks 136:3, 136:16 weight 13:9, 54:25 welcome 18:20 went 6:19, 13:18, 15:6, 106:17 weren't 5:13, 104:6, 112:16 west 21:10, 21:13, 22:22, 25:13, 36:1, 42:8, 42:19, 70:1, 70:2, 77:4, 117:18, 126:11 western 69:1, 109:19, 117:17 wetland 11:18, 39:22, 42:19, 51:4, 110:6 wetlands 51:21, 55:19</p>	<p>whatever 43:15, 46:7, 60:17, 79:5, 91:22, 107:20, 133:18, 136:16 whenever 59:13 wherever 41:12 whether 8:23, 28:3, 30:4, 39:4, 44:18, 44:25, 51:13, 79:25, 82:5, 99:7, 131:17, 133:20, 135:4, 136:9, 136:10, 136:11 whoever 139:11 whole 12:15, 16:19, 19:6, 28:4, 28:5, 37:15, 79:1, 90:14, 97:18, 100:6, 123:22, 132:4, 139:3 wide 33:18, 68:5 wind 80:24 wires 80:2, 80:5 wisconsin 2:5 wishes 4:12 withdrawn 14:15 within 28:11, 37:11, 39:7, 53:14, 59:13, 78:6, 84:5, 87:9, 110:18, 111:12, 113:20, 120:5 without 14:23, 16:13,</p>	<p>23:23, 111:4 witness 61:18, 83:7, 83:21, 85:7, 86:10, 86:14, 86:16, 87:1, 87:18, 88:10, 89:7, 89:13, 89:17, 89:24, 90:10, 91:2, 91:9, 92:2, 92:4, 92:8, 92:14, 93:8, 93:12, 93:15, 93:20, 94:2, 94:14, 94:18, 95:3, 95:7, 95:9, 95:12, 96:9, 96:13, 96:19, 97:12, 104:18, 123:18 witnesses 10:24, 11:7, 99:4, 99:11, 123:9, 125:7 woman 140:8 wonder 24:4 wonderful 20:1 wondering 23:11, 133:3, 134:6 wooded 21:21 wooden 8:23 woodruff 3:24, 128:15, 129:25 word 61:22, 62:9, 79:10 work 7:24, 30:15, 31:15, 33:11, 43:22, 73:8,</p>	<p>132:23 worked 7:25, 11:23, 11:24, 13:3, 13:16, 30:24, 101:5, 110:20 working 13:19, 14:13, 14:19, 69:3, 108:1 works 7:22, 7:23 worth 40:9 would've 16:18 wouldn't 13:22, 112:18, 139:1 write 6:22, 35:10, 35:15, 45:8, 64:15 writer 69:12, 69:24 writing 102:15, 124:16 written 20:14, 34:11, 47:19, 55:1 wrote 64:17 wssc 105:12</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>yeah 7:22, 9:21, 17:11, 18:25, 23:11, 52:17, 55:9, 57:13, 61:15, 63:19, 83:6, 91:2, 92:3, 93:9, 94:25, 104:8, 106:16, 112:23, 115:6, 119:3, 119:10, 123:4,</p>
---	--	--	--

Transcript of Administrative Hearing
Conducted on January 3, 2020

82

131:21, 135:9, 137:13 year 14:6, 21:22, 40:9, 40:10, 42:23 years 11:22, 13:17, 13:19, 14:19, 15:7, 16:3, 16:17, 16:20, 21:17, 37:25, 41:3, 43:10, 53:23, 75:12, 75:14 yellow 23:8, 36:4, 72:5 yesterday 5:10 yourself 4:16	92:13, 94:2, 96:14, 96:17, 97:10, 97:22, 98:4, 98:22, 107:1, 109:6, 113:23, 116:20, 121:23, 122:3, 122:19, 124:10, 124:14 zoned 22:2 zones 4:5, 83:13, 83:15 zoning 1:1, 17:10, 22:4, 27:10, 27:15, 27:18, 70:21, 71:1, 71:7, 71:11, 73:2, 76:2, 76:4, 76:20, 82:25, 88:9, 89:3, 89:24, 89:25, 90:1, 91:13, 93:16, 94:12, 96:17 zoom 24:20	0 07 14:15 1 1 32:13 1-a 49:20 1.2 83:6 10 3:3, 7:3, 27:25, 61:20, 62:12, 62:13, 75:14, 80:2, 80:4, 92:21, 92:24, 93:3 10.28 10:6, 28:6, 72:10 100 3:6, 73:19 102 3:20 11 6:25, 18:3, 31:12, 36:12, 36:24, 62:13, 70:9, 71:22, 71:25, 72:6, 89:14, 89:25, 91:11, 91:15 110 18:3, 84:18 116 3:21 117 4:11, 36:6 118 4:10, 9:15, 15:6, 15:8, 21:12, 21:15, 21:16, 21:24, 23:6, 23:25, 25:1, 25:10, 25:13, 25:17,	42:9, 42:18, 42:19, 67:1, 68:14, 68:24, 69:18, 70:6, 71:3, 71:7, 71:9, 73:17, 77:4, 77:22, 78:17, 80:19, 86:19, 90:11, 126:12 119 36:6 12 3:4, 92:22, 99:3 120 68:14 123 3:7 124 3:22 129 3:23, 3:24 13 27:16, 27:17, 27:18, 67:2 131 1:5, 4:3 1350 125:21, 130:24 14 29:5, 29:6 141 1:24 15 37:9, 99:3, 122:21, 122:23, 130:19 15,000 76:17 150 68:13, 73:15, 90:18 157 130:19 17 3:23, 62:22, 63:3, 67:16,
z zone 3:11, 4:6, 4:24, 5:4, 5:8, 10:25, 20:13, 45:10, 66:5, 66:6, 70:9, 71:20, 76:8, 76:11, 76:13, 76:24, 77:1, 82:1, 82:25, 84:21, 87:12, 87:14, 87:20, 88:6, 89:2, 89:3, 89:5, 89:6, 89:8, 89:9, 89:11, 89:13, 89:23, 89:25, 90:3, 90:8, 90:17, 90:23, 90:25, 91:1, 91:4, 91:7, 91:10, 91:14, 91:18, 91:19, 92:7,	1 11:5, 94:7, 94:8, 94:12, 95:8, 95:12, 97:23, 121:3 .11 76:20 .1300 2:8 .2 83:4, 83:5, 83:13, 83:14, 83:21, 88:6 .3 83:5, 89:3, 89:11 .54 53:19		

Transcript of Administrative Hearing
Conducted on January 3, 2020

83

67:19, 124:19, 129:24, 138:9, 140:16 170,000 84:18 18 40:7, 42:22, 63:5 19 3:23, 42:22, 63:10, 129:24 1989 31:20, 31:22, 32:10 1b 57:25	21 21:5 210 4:7 22 45:4, 45:5 220 4:7 24 21:7, 40:7, 140:17, 140:19 25 73:17 250 79:2 274 4:7 280671 1:23 29 3:16	37,000 33:24 380 128:25, 129:1	52 3:13, 5:21, 5:23, 6:14 521 36:24 53 3:14, 6:15, 6:17 54 3:15, 6:23, 7:2 55 3:16, 3:18, 29:15, 29:16, 29:17, 29:23, 35:15, 70:15 550 125:23, 126:1 56 3:17, 35:4, 35:5, 35:11, 35:12, 72:3 57 3:18, 55:10, 55:11, 55:12, 69:4, 112:25 58 3:19, 69:5, 69:6, 69:7, 130:17 586 125:25 59 3:20, 83:1, 83:6, 102:14, 102:15, 102:17, 102:21 59.1 83:4 59.5 83:5 5th 128:12
2	3	4	5
20 34:18, 34:19, 43:10, 75:12, 80:11, 90:17 200 4:5, 22:2, 22:3, 27:22, 71:15, 76:6, 89:7, 89:8, 91:10 2000 31:20 2006 14:15 2012 13:18, 14:14 2014 89:24 2018 21:7, 104:25 2019 104:25, 128:8, 128:12, 129:25 2020 1:12, 98:14 2024 98:18 2025 98:18 20814 2:7	3.5 76:20 30 34:14, 37:25 300 14:6 301.987 2:8 32,000 33:23 322 4:8 330 4:8 35 1:13, 3:17 35.3 91:3 350 14:6 356 4:8 37 5:8, 5:9, 45:7, 45:8, 116:19	46 130:17 460 127:11 48 5:7, 5:16 49 5:10, 5:19, 22:16, 139:25	51 83:1 5,000 32:20, 33:24, 76:13, 76:14 5.1 83:13, 83:14, 83:21, 89:3, 89:11 5.3 88:6 50 3:11, 5:20, 5:23, 34:2, 35:3, 91:10, 91:21, 91:24, 92:6, 130:11 51 3:12, 5:21, 5:23
		6	6.4 27:22 60 28:6, 31:6,

Transcript of Administrative Hearing
Conducted on January 3, 2020

84

34:20, 37:7, 103:3, 116:14, 124:20 600 127:8 61 3:21, 116:11, 116:14, 116:15, 116:16, 124:14, 137:15 62 3:22, 124:22, 124:23, 124:25 620 125:23, 125:25 63 3:23, 3:24, 129:20, 129:22, 129:23, 140:1 634 36:10 645 125:24 69 3:19	820 73:17 <hr/> 9 <hr/> 9 1:13 90 108:4 9th 57:17	
<hr/> 7 <hr/> 7.2 11:5, 94:7, 94:8, 94:12, 95:8, 95:12, 97:23, 121:3 70 36:20, 36:23 700 2:6 75 73:16 7600 2:5		
<hr/> 8 <hr/> 8-foot-wide 118:20 80 37:18, 37:21, 74:10 82 36:13, 36:25		