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Transcript of Hearing

Date: April 2, 2021

Case: The Primrose School

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Conducted on April 2, 2021

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1 A P P E A R A N C E S	1 P R O C E E D I N G S
2 ON BEHALF OF APPLICANT THE PRIMROSE SCHOOL:	2 HEARING EXAMINER ROBESON HANAN: Thank you. Good
3 JODY KLINE, ESQUIRE	3 morning. I'm calling the case of CU18-08, Application of
4 MILLER, MILLER & CANBY	4 Primrose School for a daycare center located at 7430
5 200-B Monroe Street	5 Needwood Road.
6 Rockville, Maryland 20850	6 Would the parties identify themselves for the
7 Phone: (301) 762-5212	7 record?
8	8 MR. KLINE: Good morning. For the record, Jody
9 ON BEHALF OF CAROL KOSARY, PAUL POSEY and CC ENGLISH:	9 Kline, attorney for the Applicant in this case, Primrose
10 WILLIAM J. CHEN, JR., ESQUIRE	10 School. Thank you.
11 CHEN, WALSH, TECLER & MCCABE	11 MR. CHEN: Good morning, Madam Examiner. My name
12 200A Monroe Street	12 is Bill Chen, and I'm legal counsel for Carol Kosary, Paul
13 Suite 300	13 Posey and C.C. English.
14 Rockville, Maryland 20850	14 HEARING EXAMINER ROBESON HANAN: All right. So I
15 Phone: (301) 279-9500	15 understand that we're going to have Mr. Davis testify this
16	16 morning as to the traffic issues. Is there any -- are there
17	17 any other preliminary matters?
18	18 MR. CHEN: As I understand based upon -- excuse
19	19 me, Madam Examiner, this is Bill Chen. My understanding
20	20 based upon the various email exchanges that (inaudible) is
21	21 that in light of we called Mr. Cook and his availability,
22	22 what we will do today is we're going to take Mr. Davis out a
23	23 turn and he is going to testify to traffic matters
24	24 identified in the email that I believe I sent to the
25	25 Examiner and Mr. Kline.

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2 (5 to 8)

5	7
1 HEARING EXAMINER ROBESON HANAN: Right.	1 (Discussion off the record; technical
2 MR. CHEN: Then he will be finished. At that --	2 difficulty.)
3 HEARING EXAMINER ROBESON HANAN: Okay.	3 MR. CHEN: Can we go off the record for second?
4 MR. CHEN: After Mr. Davis is done, I think we	4 HEARING EXAMINER ROBESON HANAN: Yeah.
5 then get into the matters involving Mr. Cook, if I'm correct	5 (Off the record at 9:33 a.m., resuming at 9:40
6 on that.	6 a.m.)
7 HEARING EXAMINER ROBESON HANAN: Yeah.	7 HEARING EXAMINER ROBESON HANAN: Oh, yes.
8 MR. CHEN: I'm going to have something to say	8 Do you solemnly affirm, under penalties of
9 that point in time. But procedurally as I understand the	9 perjury that the statements you're about to make are the
10 proceedings today, we will start with Mr. Davis as I've	10 truth, the whole truth and nothing but the truth?
11 described.	11 MR. DAVIS: Yes.
12 HEARING EXAMINER ROBESON HANAN: Right. Now Mr.	12 HEARING EXAMINER ROBESON HANAN: Go ahead, Mr.
13 Cook is going to be rebuttal. Just so everyone understands,	13 Chen.
14 Mr. Cook's testimony is going to be rebuttal testimony.	14 MR. CHEN: Thank you. Mr. Davis, could you
15 MR. CHEN: Yes.	15 please identify yourself for the record?
16 HEARING EXAMINER ROBESON HANAN: Yeah, do I hear	16 MR. DAVIS: Yes, I'm Joseph R. Davis.
17 an argument?	17 MR. CHEN: Mr. Davis, I'm showing you -- Madam
18 MR. CHEN: Well, I was going to raise a	18 Examiner, could we have exhibit --
19 preliminary matter, yes, about Mr. Cook. Technically he has	19 HEARING EXAMINER ROBESON HANAN: We need his
20 amended the Applicant's traffic report. He's not a rebuttal	20 business address.
21 witness in the fullest sense. What has happened is that he	21 MR. CHEN: Oh, yes.
22 has submitted new material to augment, I guess, or amend his	22 MR. DAVIS: Yes. My home address is 172 Tuckers
23 client's traffic report. In that context is not merely a	23 Road, which is in Pawley's Island, South Carolina 29585 is
24 rebuttal witness.	24 the ZIP.
25 And my clients take the position that they should	25 HEARING EXAMINER ROBESON HANAN: Okay. I hope
6	8
1 be permitted to respond to that new traffic report	1 you traveled safely.
2 information. And what I was going to offer his we could do	2 MR. DAVIS: I did.
3 that one of two ways. I would call -- after he would	3 HEARING EXAMINER ROBESON HANAN: Okay. Now go
4 testify about his new information --	4 ahead Mr. Chen.
5 HEARING EXAMINER ROBESON HANAN: Who? Mr. Cook?	5 MR. CHEN: Thank you. Madam Examiner, could you
6 MR. CHEN: Mr. Cook. Mr. Cook would testify	6 put up Exhibit 115, document A?
7 about his new information from his report. I would recall	7 HEARING EXAMINER ROBESON HANAN: I am getting
8 Dr. Kosary to testify about that and he could then rebut her	8 there. 115-A?
9 testimony.	9 MR. CHEN: Yes.
10 HEARING EXAMINER ROBESON HANAN: I understand.	10 HEARING EXAMINER ROBESON HANAN: Is that a
11 Mr. Kline, do you want to weigh in?	11 letter?
12 MR. KLINE: I -- yeah, I guess. I mean certainly	12 MR. CHEN: It's a resume, a CV.
13 the opposition should have an opportunity to critique what	13 HEARING EXAMINER ROBESON HANAN: Well, I have
14 Mr. Cook is going to say. I didn't think it probably was	14 115-A -- sorry. That was my bad. I went to the wrong one.
15 needed to be done, but if they feel it does then I don't	15 I have 115-AA. Oh --
16 object to them having their fair opportunity to say what	16 MR. CHEN: Single capital A. It should be just a
17 they feel about his changes to his report. So I'm okay with	17 single capital A.
18 what Mr. Chen has recommended.	18 HEARING EXAMINER ROBESON HANAN: Let me do this.
19 HEARING EXAMINER ROBESON HANAN: All right.	19 MR. CHEN: On the exhibit list and I've got it
20 Thank you. That was easy. All right. With that we will	20 does have it as 115-A.
21 take Mr. Davis.	21 HEARING EXAMINER ROBESON HANAN: Every time I go
22 MR. CHEN: If I may just switch seats with Mr.	22 to one -- oh, I --
23 Davis.	23 MR. CHEN: (inaudible).
24 HEARING EXAMINER ROBESON HANAN: Okay. Can you	24 HEARING EXAMINER ROBESON HANAN: That was -- that
25 turn your camera on? I'm not getting your camera.	25 sigh was not frustration at the parties. It was

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3 (9 to 12)

<p>9</p> <p>1 frustration -- well, maybe it was just frustration. I don't 2 know. But let me see what I can do here. 3 MR. CHEN: This was filed on November 4 of -- 4 HEARING EXAMINER ROBESON HANAN: No, I have it 5 up. It's a matter of trying to share it. That is my issue 6 at the moment. So, okay. Now how -- I -- okay. For some 7 reason that one -- let's go off the record for just a few 8 minutes. 9 (Off the record at 9:44 a.m., resuming at 9:45 10 a.m.) 11 HEARING EXAMINER ROBESON HANAN: What you're 12 looking for? 13 MR. CHEN: Yes. 14 HEARING EXAMINER ROBESON HANAN: Oh, okay. Go 15 ahead. 16 MR. CHEN: Thank you, very much. Mr. Davis, 17 could you please give us your occupation? 18 MR. DAVIS: Yes, I'm a land planner. 19 MR. CHEN: And what is the range of your 20 experience as a land planner? 21 MR. DAVIS: I have expertise in terms of 22 planning, zoning, subdivision, growth management, which 23 includes working with the adequate public facilities 24 ordinance in Montgomery County and other counties as well, 25 and jurisdictions. I also have experience in terms of</p>	<p>11</p> <p>1 evidence Exhibit 115-A if it's not already in evidence. 2 HEARING EXAMINER ROBESON HANAN: No, I will -- it 3 is in evidence, but I will accept it anyway. Do you have an 4 objection Mr. Klein? 5 MR. KLINE: No objection. 6 HEARING EXAMINER ROBESON HANAN: Okay, go ahead 7 Mr. Chen. 8 MR. CHEN: Thank you. Mr. Davis, have you 9 testify previously as an expert witness? 10 MR. DAVIS: Yes, I have. 11 MR. CHEN: In what area? 12 MR. DAVIS: In land planning. 13 MR. CHEN: And recognizing your many years as a 14 land planner, could you summarize what courts, or agencies, 15 tribunals have recognized you as an expert land planner? 16 MR. DAVIS: Yes, I've been recognized as an 17 expert in land planning by the Montgomery County Board of 18 Appeals, Frederick County Board of Appeals, Montgomery 19 County Circuit Court, Frederick County Circuit Court. I've 20 also been identified as an expert land planner by number of 21 hearing examiners in Montgomery County as well. 22 And basically these are cases that have involved 23 my expert testimony, zoning cases, special exceptions, 24 conditional use applications, and also a highway 25 condemnation case that I worked with. I've also been</p>
<p>10</p> <p>1 regulatory review of various development plans as well as 2 processing applications that involve public procedures for 3 land planning and community development. In addition, I 4 have land planning and management experience in the same 5 areas. 6 MR. CHEN: And does that experience involve 7 review of applications for what are now -- it used to be 8 called special exceptions, currently called conditional use 9 applications? 10 MR. DAVIS: Yes. 11 MR. CHEN: And how long have you been a land 12 planner? 13 MR. DAVIS: 48 years. 14 MR. CHEN: And direct your attention to Exhibit 15 115-A. Can you identify it, sir? 16 (Exhibit 115-A was introduced.) 17 MR. DAVIS: Yes, this is the amended summary 18 statement. You want me to wait for? 19 MR. CHEN: No, 115-A. 20 MR. DAVIS: Oh, 115-A. Yes, it is my curriculum 21 vitae, resume. 22 MR. CHEN: Okay. And does it accurately 23 summarize your background as a land planner? 24 MR. DAVIS: Yes. 25 MR. CHEN: Madam Examiner, I would offer into</p>	<p>12</p> <p>1 recognized as an expert in land planning by the Montgomery 2 County Property Review Board. Do I need to explain in terms 3 of what that board's function -- 4 MR. CHEN: Madam Examiner are you familiar with 5 that agency? 6 HEARING EXAMINER ROBESON HANAN: Yes, I am. 7 MR. DAVIS: And that was -- 8 MR. CHEN: Just on that agency. Can you just 9 state the area that you were involved in before the agency? 10 MR. DAVIS: As a land planner. 11 MR. CHEN: Yes, sir. 12 MR. DAVIS: Finally I've been recognized by 13 the -- 14 MR. CHEN: Excuse me. I mean before the property 15 review board. What area have you been recognized? 16 MR. DAVIS: Oh, excuse me. That was for highest 17 and best use analysis. These were -- basically these were 18 highway condemnation case. This one case with the property 19 review board. And I testified as to highest and best use of 20 the property that was involved in condemnation. 21 MR. CHEN: How often have you testified as an 22 expert relative to highest and best use? 23 MR. DAVIS: The -- in Montgomery County Circuit 24 Court I was involved in a case there representing a property 25 owner. And with regard to the one time with the property</p>

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13	<p>1 review board. Then I've been involved in probably, in terms</p> <p>2 of highest and best use, probably 30 separate cases</p> <p>3 involving State Highway Administration where I provided</p> <p>4 analysis for them on highest and best use for properties.</p> <p>5 MR. CHEN: Okay. And have you been recognized as</p> <p>6 an expert by the Maryland Attorney General's office?</p> <p>7 MR. DAVIS: Yes, I have. And that was for</p> <p>8 purposes of consulting with the State Highway</p> <p>9 Administration's general counsel, their legal staff, and</p> <p>10 planners, transportation planners. And again, my work there</p> <p>11 was highest and best use.</p> <p>12 MR. CHEN: Okay. And during your public-sector</p> <p>13 career, what agencies did you advise?</p> <p>14 MR. DAVIS: I was involved in advising planning</p> <p>15 boards in both Prince Georges and Montgomery counties about</p> <p>16 a variety of planning, zoning, subdivision issues, and</p> <p>17 testified with the Montgomery County councils, Prince</p> <p>18 Georges County Council. But basically in those situations</p> <p>19 we didn't have to be recognized as an expert. I was a staff</p> <p>20 member. So I had to basically -- each time I was before</p> <p>21 them had to make sure they had confidence in my testimony.</p> <p>22 MR. CHEN: Are you familiar with the requirements</p> <p>23 of the Montgomery County Zoning ordinance as well as the</p> <p>24 Montgomery County Subdivision Regulations?</p> <p>25 MR. DAVIS: Yes, I am</p>	15
14	<p>1 MR. CHEN: That would be chapters 59 and 50 of</p> <p>2 the County code?</p> <p>3 MR. DAVIS: That's correct.</p> <p>4 MR. CHEN: Are you familiar with the requirements</p> <p>5 of the zoning regs pertaining to conditional uses including</p> <p>6 daycare centers?</p> <p>7 MR. DAVIS: Yes.</p> <p>8 MR. CHEN: Does your expertise include expressing</p> <p>9 your professional opinion as to whether land-use proposal</p> <p>10 such as a conditional use complies with the requirements of</p> <p>11 County law including in particular to the zoning ordinance?</p> <p>12 MR. DAVIS: Yes.</p> <p>13 MR. CHEN: And is the evaluation of the land-use</p> <p>14 proposal for compliance with governmental development</p> <p>15 regulations a normal and usual that's part of your expert --</p> <p>16 your experience as a land planner both now and public sector</p> <p>17 and private sector?</p> <p>18 MR. DAVIS: Correct. Yes, it is.</p> <p>19 MR. CHEN: Okay. And Madam Examiner, I would</p> <p>20 offer Mr. Davis as an expert witness as a land planner.</p> <p>21 HEARING EXAMINER ROBESON HANAN: Mr. Kline, do</p> <p>22 you have an objection?</p> <p>23 MR. KLINE: No objection.</p> <p>24 MR. CHEN: Thank you.</p> <p>25 HEARING EXAMINER ROBESON HANAN: Okay. I will</p>	16
	<p>1 qualify him.</p> <p>2 MR. CHEN: Thank you.</p> <p>3 HEARING EXAMINER ROBESON HANAN: As an expert in</p> <p>4 land planning.</p> <p>5 MR. CHEN: Thank you. Have you reviewed the</p> <p>6 application, Mr. Davis, for the child daycare center that is</p> <p>7 being -- that has been filed by the Primrose School</p> <p>8 Financing Corporation?</p> <p>9 MR. DAVIS: Yes.</p> <p>10 MR. CHEN: What type of activity does the</p> <p>11 application propose?</p> <p>12 MR. DAVIS: This is a child daycare center that</p> <p>13 would involve facilities for up to 195 children and there</p> <p>14 will also be -- the adult staff would be 32.</p> <p>15 MR. CHEN: Thank you. Madam Examiner, could you</p> <p>16 give us now Exhibit 176-VV?</p> <p>17 HEARING EXAMINER ROBESON HANAN: Is it two Vs?</p> <p>18 MR. CHEN: Correct.</p> <p>19 HEARING EXAMINER ROBESON HANAN: For the record,</p> <p>20 I'm just scrolling through this exhibit. It's at the very</p> <p>21 end. So there we go. Okay, go ahead.</p> <p>22 MR. CHEN: Thank you, very much. Mr. Davis --</p> <p>23 Did I hear somebody else? Okay.</p> <p>24 Mr. Davis, can you please identify Exhibit 176-</p> <p>25 VV?</p> <p>1 (Exhibit 176-VV was introduced.)</p> <p>2 MR. DAVIS: Yes, is the -- my amended summary</p> <p>3 statement for my testimony involved in this application.</p> <p>4 MR. CHEN: Okay. Madam Examiner, I would offer</p> <p>5 Exhibit 176-VV.</p> <p>6 HEARING EXAMINER ROBESON HANAN: Any objection</p> <p>7 Mr. Klein?</p> <p>8 MR. KLINE: Only to ask in what way does it</p> <p>9 deviate I guess from the original one that I can get my</p> <p>10 hands on, Exhibit B. Could Mr. Davis kind of explain the</p> <p>11 difference between the two? I'm sorry, I just haven't</p> <p>12 reviewed VV and had reviewed B.</p> <p>13 MR. DAVIS: That's a good question, because this</p> <p>14 was submitted a year ago. The other one is a few months</p> <p>15 before that. To me it was a minor change. Let me see if I</p> <p>16 can just quickly spot it here.</p> <p>17 I believe that it was -- if you look at the top</p> <p>18 of page 2 and it talks about -- and I will provide</p> <p>19 professional planning opinions resulting from review of --</p> <p>20 and this is referring to the appraisal reports that were</p> <p>21 submitted concerning highest and best use planning and</p> <p>22 analysis, also talk about the Maryland Smart Growth program</p> <p>23 and nature of infill development, redevelopment from both</p> <p>24 the zoning and mess up in perspective.</p> <p>25 MR. KLINE: That's adequate. Thank you, very</p>	

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<p>17</p> <p>1 much.</p> <p>2 HEARING EXAMINER ROBESON HANAN: Okay, it's</p> <p>3 accepted. Go ahead, Mr. Chen.</p> <p>4 MR. CHEN: Thank you. Madam Examiner, at this</p> <p>5 point I'm going to depart from my planned presentation to</p> <p>6 shift to the traffic related matters that we have exchanged</p> <p>7 in the emails over the last several days.</p> <p>8 HEARING EXAMINER ROBESON HANAN: That's fine.</p> <p>9 MR. CHEN: Thank you, very much.</p> <p>10 Mr. Davis, have you had an opportunity to</p> <p>11 evaluate or review the proposed conditional use that is</p> <p>12 before the hearing examiner?</p> <p>13 MR. DAVIS: Yes, I have.</p> <p>14 MR. CHEN: Okay. And particularly with regard to</p> <p>15 section 7.3.1.E.1f1, yes or no on this point?</p> <p>16 MR. DAVIS: Yes.</p> <p>17 MR. CHEN: Okay. And what has your conclusion or</p> <p>18 analysis been as to the compliance of the proposed</p> <p>19 conditional use with regard to that subsection involving</p> <p>20 traffic of public school or public roads?</p> <p>21 MR. DAVIS: Yes, I have --</p> <p>22 MR. CHEN: And limit it to that part of it.</p> <p>23 MR. DAVIS: Just of that part of it, just to</p> <p>24 traffic and what my comment would be, that I listened very</p> <p>25 closely to the testimony that was provided back -- and this</p>	<p>19</p> <p>1 case -- if the application will be going forward based on a</p> <p>2 preliminary plan, then planning board would make the</p> <p>3 findings dealing with adequate public facilities. And if</p> <p>4 the application will not be subject to a later preliminary</p> <p>5 plan review, then the hearing examiner must make the</p> <p>6 findings relative to adequate public facilities.</p> <p>7 MR. CHEN: And if I may, what is the situation in</p> <p>8 this particular case?</p> <p>9 MR. DAVIS: The planning staff and the planning</p> <p>10 board have stated that the -- there will be no preliminary</p> <p>11 plan involved with this in the future. So then therefore it</p> <p>12 comes under the subsection I or subsection Roman one.</p> <p>13 MR. CHEN: It's a lowercase i.</p> <p>14 MR. DAVIS: I, yes. It comes under -- this will,</p> <p>15 under the review authority of the hearing examiner.</p> <p>16 MR. CHEN: Okay. Go ahead.</p> <p>17 MR. DAVIS: We're talking about the public roads</p> <p>18 component for it. And I testified about the testimony that</p> <p>19 was received. And basically the number of persons who spoke</p> <p>20 what I saw is consistency between the commons that they made</p> <p>21 that I felt that they had compelling testimony. In</p> <p>22 addition, I've listened very carefully to the testimony by</p> <p>23 Ms. Kosary and I also believe that she has identified</p> <p>24 problems associated with the review that, in my opinion as a</p> <p>25 planner, caused me to have pause in terms of their ability</p>
<p>18</p> <p>1 would go back now to March of last year where we had --</p> <p>2 where there were community -- residents in the community who</p> <p>3 came and testified concerning their problems that they</p> <p>4 experience on a day-to-day basis with attempting to exit</p> <p>5 their properties in the morning to be able to access</p> <p>6 Needwood Road.</p> <p>7 MR. CHEN: May I interrupt you for just one</p> <p>8 second?</p> <p>9 MR. DAVIS: Yeah.</p> <p>10 MR. CHEN: Madam Examiner, Mr. Klein. That</p> <p>11 should be lowercase f then lowercase I. If I said something</p> <p>12 else --</p> <p>13 HEARING EXAMINER ROBESON HANAN: Right, I wrote</p> <p>14 it that way.</p> <p>15 MR. CHEN: Mr. Klein, did you get that? Hello?</p> <p>16 MR. KLINE: Is that not the provision talking</p> <p>17 about preliminary subdivision plan though?</p> <p>18 MR. CHEN: Yes.</p> <p>19 MR. DAVIS: It's really dealing --</p> <p>20 MR. KLINE: Oh, okay. I'm sorry. Sorry to</p> <p>21 interrupt.</p> <p>22 MR. DAVIS: This is dealing with the adequate</p> <p>23 public facilities ordinance.</p> <p>24 MR. KLINE: Yes.</p> <p>25 MR. DAVIS: And it deals with the issue of if the</p>	<p>20</p> <p>1 to demonstrate, the ability of the Applicant to demonstrate</p> <p>2 that there is a -- that a finding of adequate public</p> <p>3 facilities can be made as it relates to roads.</p> <p>4 MR. CHEN: If I could, well let me just at this</p> <p>5 point -- would you explain to the Examiner your background I</p> <p>6 assume in the public sector relative to adequate public</p> <p>7 facilities?</p> <p>8 MR. DAVIS: I was the subdivision supervisor</p> <p>9 beginning in 1979 and I was 7-1/2 years dealing on a daily</p> <p>10 basis with the adequate public facilities ordinance. When I</p> <p>11 was the chief of the development review division for a</p> <p>12 period of six or so years, I also followed up with it. I</p> <p>13 was involved each year with the County Council and planning</p> <p>14 board on the annual growth policy and I was dealing with it</p> <p>15 on a daily basis with applications primarily subdivision</p> <p>16 applications in terms of how this should be administered.</p> <p>17 In addition, back in the early 2000s, I'm</p> <p>18 thinking probably around 2002, I had -- I was asked by then</p> <p>19 chairman of the board of appeals, Don Spence, he's a local</p> <p>20 attorney, if I would assist the board of appeals in terms of</p> <p>21 providing them with some additional background in training</p> <p>22 in the adequate public facilities ordinance.</p> <p>23 And I had several sessions. As I recall there</p> <p>24 were two or three sessions where the board of appeals came</p> <p>25 down to the park and planning offices in Silver Spring. And</p>

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<p>21</p> <p>1 I was able to talk with them generally about how the public 2 facilities ordinance works. We had staff. We had 3 transportation staff. We had staff from DPS. All those 4 were involved in the various facets of it, school staff, to 5 come in and to help explain to the board of appeals, because 6 they were quite concerned that this is really fairly recent 7 for them to have to deal with the adequate public facilities 8 ordinance.</p> <p>9 MR. CHEN: And when you say you used to work 10 twice now dealing with the adequate public facilities 11 ordinance, what was your involvement? And what do you mean 12 by when you say dealing with?</p> <p>13 MR. DAVIS: You mean in terms of my personal 14 involvement?</p> <p>15 MR. CHEN: Yes. Yes, sir.</p> <p>16 MR. DAVIS: I would be -- as a packager of 17 reports, I would be the one who would be receiving the 18 technical reports dealing with various aspects of it.</p> <p>19 MR. CHEN: Aspects of public facilities?</p> <p>20 MR. DAVIS: Public facilities. And then it would 21 be my job to build to review, fully understand how they 22 satisfied the requirements and then make sure that they 23 were --</p> <p>24 MR. CHEN: When you say satisfy requirements, you 25 mean --</p>	<p>23</p> <p>1 MR. DAVIS: Yes.</p> <p>2 MR. CHEN: Okay. And do you have an opinion as 3 to whether the proposed conditional use is compliant with 4 that section of the zoning ordinance limiting, at this 5 point, your testimony relative to the subsection ii where it 6 says traffic?</p> <p>7 MR. DAVIS: Yes. It is my opinion that this 8 application fails to adequately address the issue of traffic 9 in this case. And again, I base that on the testimony that 10 has been provided by the residents of the area as well as 11 Ms. Kosary. And I believe that it is in fact the burden -- 12 proof rests with the Applicant. And I believe there is 13 serious question as to whether or not the Applicant has been 14 able to demonstrate that. For my opinion, I believe that it 15 has not been demonstrated.</p> <p>16 MR. CHEN: So your testimony in large part from 17 what you just said is based upon the testimony of area 18 residents including Dr. Kosary?</p> <p>19 MR. DAVIS: That is correct. Also I want to make 20 it clear that I'm looking at this really from the standpoint 21 of the entrance to the site, looking at egress, ingress, 22 egress for the property as well as the -- what's happening. 23 What we were being given as a picture of what's happening on 24 Needwood Road today. And I thought it was quite compelling.</p> <p>25 MR. CHEN: You accept the veracity of that</p>
<p>22</p> <p>1 MR. DAVIS: The zoning ordinance requirements 2 relative to the adequacy of public facilities.</p> <p>3 MR. CHEN: Continue.</p> <p>4 MR. DAVIS: And then the reports that we would 5 sent to the planning board or to the hearing examiner if it 6 was a zoning case, because sometimes that would be adequate 7 public facilities issues associated with that, to make sure 8 that at fully addressed the findings that had to be made by 9 those bodies.</p> <p>10 And then as I say, latter when I was a division 11 chief, I was still involved in it more as a supervisor for 12 staff and also in terms of training staff, in terms of 13 planning staff and other staff who were involved in these 14 different plan review processes, zoning cases, conditional 15 use cases, and how they should conduct the reviews.</p> <p>16 MR. CHEN: Okay. And you've expressed your 17 observations and opinions relative to this particular 18 subsection of the zoning ordinance; is that correct?</p> <p>19 MR. DAVIS: Yes.</p> <p>20 MR. CHEN: Okay. Anything more on that?</p> <p>21 MR. DAVIS: No, I think I'm done with that one.</p> <p>22 MR. CHEN: Okay. I now want to direct your 23 attention to section -- and I hope I've got these numbers 24 correct again. It would be 7.3.1.E.1.g.ii. Do you see that 25 section, sir?</p>	<p>24</p> <p>1 testimony? The accuracy of that testimony?</p> <p>2 MR. DAVIS: I do because of the number of people 3 who spoke in what I saw as a consistent pattern of 4 discussion of what they saw as a problem for their road.</p> <p>5 MR. CHEN: There are also as I recollect, 6 photographs that were submitted by those witnesses. Is that 7 right, sir?</p> <p>8 MR. DAVIS: That's correct.</p> <p>9 MR. CHEN: Okay.</p> <p>10 MR. DAVIS: Now also had opportunity to see in 11 the mornings traffic along Needwood Road. And there's been 12 two occasions -- and now in terms of (inaudible) I would 13 have to really go back and look at my notes. But I was -- I 14 saw the traffic was backing up to Carnegie and I said -- and 15 I just felt that was significant.</p> <p>16 MR. CHEN: I have no further questions of Mr. 17 Davis in this area Madam Examiner.</p> <p>18 HEARING EXAMINER ROBESON HANAN: All right. 19 Cross-examination?</p> <p>20 MR. KLINE: I couldn't quite hear that, but I 21 believe you are probably turning it over to me Ms. -- 22 Hearing Examiner.</p> <p>23 HEARING EXAMINER ROBESON HANAN: I was.</p> <p>24 MR. KLINE: Yeah. It just got broken up a touch. 25 Mr. Davis, I'm correct that you've put no weight to the</p>

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<p>25</p> <p>1 technical staff report or any recommendations from the 2 department -- County department of transportation in terms 3 of how this project complies with the adequate public 4 facilities ordinance? 5 MR. DAVIS: No actually I did see the technical 6 staff report and I read the report there. And I -- it 7 didn't raise any major concerns at that point when I was 8 reviewing it simply because I generally would accept the 9 analysis that's done by the transportation planning staff 10 and parking planning. And I felt that the packager had 11 taken that -- the report and place it in there. Again, I 12 was not -- my job is not to verify numbers or any of that. 13 I'm not a transportation planner. But I felt that, based on 14 what I saw in the technical staff report, that I did not see 15 where there was adequate public facility (inaudible). 16 MR. KLINE: Mr. Davis, I kind of lost something. 17 HEARING EXAMINER ROBESON HANAN: Yeah, I couldn't 18 hear. Someone is turning pages. 19 MR. KLINE: Yes. 20 HEARING EXAMINER ROBESON HANAN: So if that can 21 be -- that breaks up -- I couldn't hear all of Mr. Davis' 22 answer. 23 MR. KLINE: That was me, and I didn't do it 24 intentionally and I apologize. I will make sure -- 25 HEARING EXAMINER ROBESON HANAN: I know.</p>	<p>27</p> <p>1 them. Do you have any reason to doubt that the traffic, the 2 PIS, and the gap study were prepared in accordance with the 3 regulation -- the LATR guidelines and the regulations of 4 parking planning commission? 5 MR. CHEN: Excuse me, I think that goes beyond 6 the scope of the direct examination. In fact the email 7 (inaudible). And Mr. Davis (inaudible) directing his 8 attention to those studies, the gap study and I forget the 9 other one that Mr. Kline mentioned. 10 HEARING EXAMINER ROBESON HANAN: I don't 11 understand your objection. Beyond the scope of the 12 testimony? 13 MR. CHEN: Yes, he did not present any testimony 14 relative to the gap study or the others (inaudible). 15 HEARING EXAMINER ROBESON HANAN: That's true. 16 MR. CHEN: And please, if I may, let's go back to 17 the email exchange. I expressly (inaudible) because the 18 issue came up about Mr. Cook's testimony. I responded to 19 the hearing examiner expressly stating that Mr. Davis would 20 not be addressing the matters that Mr. Cook would be 21 testifying about. And that included the gap study. 22 HEARING EXAMINER ROBESON HANAN: Yeah, I'm -- I 23 will sustain that. 24 MR. KLINE: Then I would phrase the question this 25 way. Mr. Davis, is there anything that you can find that</p>
<p>26</p> <p>1 MR. DAVIS: Do I need to repeat -- 2 HEARING EXAMINER ROBESON HANAN: I think the 3 question was, why not give weight -- why didn't you give 4 weight to the staff report. Is that what you were asking 5 Mr. Klein? 6 MR. KLINE: That's correct. 7 HEARING EXAMINER ROBESON HANAN: Okay. Can 8 you -- do you mind just answering again? 9 MR. DAVIS: No problem. When I reviewed the 10 technical staff report, I did not see any issues with the 11 traffic analysis at that time. And so I did not see it as 12 an issue that I would be involved in. Now I will -- I think 13 in the question you also asked about Montgomery County 14 Department of Transportation. And in that regard, the only 15 thing that I saw from Montgomery County Department of 16 Transportation were comments that they provided for a 17 development review committee meeting that was held on 18 January 30th of 2018 when the conditional use application 19 was presented to them. 20 And with that, there were certainly issues 21 associated with Carnegie Avenue, but that was basically an 22 earlier version of the application. I'm not aware of 23 anything else that's come in for this application from the 24 department, County's department of transportation. 25 MR. KLINE: Well, let me go back to the basics</p>	<p>28</p> <p>1 would critique the reports that you referred to in terms of 2 their deficiencies? Because what I'm leading up to is 3 asking you to explain why you feel that the empirical 4 analysis is so different than what the anecdotal testimony 5 is. 6 MR. CHEN: Again, Mr. Davis has not critiqued any 7 reports. 8 MR. KLINE: How about if we -- 9 HEARING EXAMINER ROBESON HANAN: (inaudible). 10 MR. KLINE: How about if I offer a stipulation 11 that Mr. Davis's testimony and conclusions are based on what 12 he heard, not on what he read or what is in the record from 13 a technical point of view. 14 MR. CHEN: I will let Mr. Davis respond to that. 15 MR. DAVIS: My review -- again, I was not 16 reviewing this as a transportation planner because I do not 17 have expertise in terms of -- I would just call it getting 18 into the weeds with the numbers and that sort of thing. 19 It's a technical review. 20 In my career I relied on the technical input from 21 our transportation planning staff that they were doing their 22 job properly, correctly. And by that I mean that they 23 reviewed traffic studies that were submitted and that they 24 provided the rigor of analysis that was required and that 25 they were able to identify issues if there were issues, or</p>

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<p style="text-align: right;">29</p> <p>1 to otherwise make a -- make findings and conclusions based 2 on their analysis that the adequate public facilities 3 requirement in so far as roads were handled adequately. 4 In this particular case I think that I was -- as 5 a land planner, I'm very -- I am -- I want to be sure that 6 you understand that my analysis would go to the entrance 7 location, the proper ingress, egress leaving the site. 8 Certainly I depend on the input from transportation planners 9 for that, but I also want to take into account if there is 10 information that says there is a problem there, then there 11 needs to be a determination, is that a problem or not a 12 problem. 13 And I think that based on my review of the 14 application as well is my listing at the public hearings, I 15 believe that there is a problem with the amount of traffic 16 along Needwood Road. And I believe that there could be 17 problems associated with this application if it were to 18 approve and develop at the size it has been proposed with 19 the number of trips associated with it. 20 HEARING EXAMINER ROBESON HANAN: I have found 21 that you based it on your personal observations as well. 22 MR. DAVIS: Uh-huh. 23 MR. CHEN: You have to respond. You have to say 24 yes or no. You can't uh-huh. 25 MR. DAVIS: Yes, personal observations as well.</p>	<p style="text-align: right;">31</p> <p>1 the road to support the anecdotal evidence you heard? 2 MR. DAVIS: I am familiar. The opposition in 3 this case did have an engineering firm conduct line of sight 4 analysis. And I am aware of that analysis and I was 5 (inaudible). 6 MR. CHEN: Is this the time to testify about 7 that? 8 MR. DAVIS: Well, I'm just trying to remain 9 within the envelope of what I'm supposed to be talking 10 about. 11 MR. CHEN: Yeah, Mr. Kline, to respond to I guess 12 your question, the question you raised about line of sight 13 is going to be part of Mr. Davis's testimony. But -- 14 MR. KLINE: Fine, it can be answered later. And 15 I will sort of withdraw it and just say, do you have any 16 accident data for Needwood Road to support the concerns 17 about volume of traffic, and speed, and danger? 18 MR. DAVIS: No. 19 MR. KLINE: Thank you. That's all my cross- 20 examination questions for this part of the testimony. 21 MR. CHEN: Madam Examiner, I've got a very short 22 rebuttal. I think it's very short. 23 HEARING EXAMINER ROBESON HANAN: Redirect. 24 MR. CHEN: Redirect, excuse me. Did I say 25 rebuttal? I apologize. It's redirect.</p>
<p style="text-align: right;">30</p> <p>1 MR. KLINE: And your personal -- I'm sorry. 2 HEARING EXAMINER ROBESON HANAN: Go ahead Mr. 3 Kline. 4 MR. KLINE: No, go ahead ma'am. Well, I 5 (inaudible). 6 HEARING EXAMINER ROBESON HANAN: Well, I'm going 7 to -- rather than spend more time on it, I'm going to let it 8 in for the weight it deserves. 9 MR. KLINE: And I would only ask for 10 clarification. You made site visits. I gather more than 11 one. And you did on occasion see traffic backing up to 12 Carnegie? 13 MR. DAVIS: I did. (inaudible). 14 MR. KLINE: In the testimony that you've heard so 15 far, is it not true that the Applicant acknowledges that 16 that may occur on occasion? 17 MR. DAVIS: I do believe that the Applicant did 18 say that it can occur on occasions. 19 MR. KLINE: Okay. 20 MR. DAVIS: And I happened to see it on occasion. 21 MR. KLINE: Last question, Mr. Davis. Did you 22 take the extra step to -- I heard Mr. Chen's question to you 23 about the veracity, credibility of the testimony. Did you 24 do any independent investigation to determine whether there 25 are any lines of sight or safety issues or volume issues on</p>	<p style="text-align: right;">32</p> <p>1 HEARING EXAMINER ROBESON HANAN: I'm just trying 2 to keep the line straight. 3 MR. CHEN: Yeah, I apologize. Mr. Davis, in 4 response to Mr. Kline's inquiry of you about your review of 5 the staff report and the DOT information, you said that you 6 accept it -- I believe you said that you accepted the staff 7 report at that time. I have that in quotes, at that time; 8 is that correct? 9 MR. DAVIS: Correct. That's correct. 10 MR. CHEN: When was that time? 11 MR. DAVIS: That time was when I was reviewing 12 the application up to the public hearing. 13 MR. CHEN: So -- and up to that point you were 14 accepting of the staff report? 15 MR. DAVIS: That's correct. 16 MR. CHEN: Okay. And subsequently you testified 17 about what you've heard during the course of the hearing; is 18 that right? 19 MR. DAVIS: That's correct. 20 MR. CHEN: As a consequence of hearing that 21 information, Mr. Kline refers to I think part of it as 22 anecdotal. And I will accept that characterization. Do you 23 still now this point in time except the staff report? 24 MR. DAVIS: No, I don't. 25 MR. CHEN: Why?</p>

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<p style="text-align: right;">33</p> <p>1 MR. DAVIS: Well, because I believe that there 2 were errors in the report when it was prepared and I don't 3 believe that those were spotted by the staff. 4 MR. CHEN: Is that based upon the anecdotal 5 testimony that you heard? 6 MR. DAVIS: I would say that when I heard that 7 anecdotal testimony I became concerned that there is -- 8 there may be a traffic issue on Needwood Road that has not 9 yet been recognized. And so that had me not in a quandary 10 so much as thinking the Applicant's burden of proof has to 11 be made and I don't -- I don't see where it's been 12 substantiated. 13 And particularly when I heard the testimony of 14 Ms. Kosary I felt that they are in fact mistakes. Or I 15 don't want to say mistakes. I guess the word would be 16 errors. I believe that Mr. Cook had indicated that in the 17 report. So I would say where I am right now is trying to 18 see how this ends up in terms of once we've figured out how 19 the data and analysis and what it's supposed to be, whether 20 the findings as demonstrated by the Applicant will change or 21 just where this goes. 22 MR. CHEN: Okay. And just one final. Are you 23 aware -- Mr. Kline also posited to you a question asking you 24 to recollect the testimony, I believe it was testimony, of 25 the Applicant about the occasional back up to Carnegie. Is</p>	<p style="text-align: right;">35</p> <p>1 indicate that the 95th percentile queue of eastbound traffic 2 along Needwood Road will not extend to Carnegie Avenue and 3 block the intersection which is 500 feet away." You see 4 that? 5 MR. DAVIS: Yes. 6 MR. CHEN: Okay. Now that doesn't seem to match 7 with Mr. Kline's question to you. So can you explain the 8 disparity based upon Mr. Kline's questioning? 9 MR. DAVIS: No, other than I don't recall seeing 10 this because this was part of the analysis. 11 MR. CHEN: Okay. 12 MR. DAVIS: To be very blunt about it, I didn't 13 get involved in it because I'm not the transportation 14 planner. 15 MR. CHEN: Okay. 16 MR. DAVIS: But I do recall something being said 17 by one of the Applicant's witnesses that there could be the 18 occasional backup. I can't remember who said it. 19 MR. CHEN: And I said you certainly abide by this 20 excerpt from the Applicant's traffic report; is that 21 correct? 22 MR. DAVIS: I think that that's a definitive 23 statement that they believe based on their review that it 24 will not occur. 25 MR. CHEN: Thank you. I've no further questions.</p>
<p style="text-align: right;">34</p> <p>1 that right? 2 MR. DAVIS: Yes. 3 MR. CHEN: Okay. Let me read something from the 4 staff -- from the report to see if you are familiar with 5 this. 6 MR. KLINE: Mr. Chen, could you please cite a 7 page or something we are looking at? 8 MR. CHEN: It's Exhibit 66. 9 HEARING EXAMINER ROBESON HANAN: 63. 10 MR. CHEN: 63, excuse me. 11 (Exhibit 63 was introduced.) 12 HEARING EXAMINER ROBESON HANAN: Page? 13 MR. CHEN: Page 18. 14 MR. KLINE: And that's the staff report? 15 MR. CHEN: This is your draft report is my 16 understanding. 17 MR. KLINE: Oh, I'm sorry. I thought you were 18 told about the staff report. 19 HEARING EXAMINER ROBESON HANAN: That's what I 20 thought too. Okay, go ahead. Page 16? 21 MR. CHEN: 18. 22 HEARING EXAMINER ROBESON HANAN: 18, okay. Go 23 ahead. 24 MR. CHEN: Mr. Davis, the Applicant's report at 25 that page, and I quote, "the results of the analysis also</p>	<p style="text-align: right;">36</p> <p>1 HEARING EXAMINER ROBESON HANAN: All right. 2 Thank you, Mr. Davis. You may be temporarily excused. 3 MR. DAVIS: Okay. 4 HEARING EXAMINER ROBESON HANAN: And Mr. -- is 5 this our time for Mr. Cook? 6 MR. KLINE: Mr. Cook is on the line and I believe 7 that was the arrangement we all agreed upon. So I will call 8 him to rebut previous testimony and anything he heard Mr. 9 Davis's testimony that he feels he would like to comment on. 10 Can you please give me one second to get a little organized 11 here? 12 HEARING EXAMINER ROBESON HANAN: Yeah, we can. 13 Yes. Do you want to take a five-minute break? 14 MR. KLINE: That would be helpful, thank you. 15 HEARING EXAMINER ROBESON HANAN: Okay, let's do 16 that. Let's go off the record for five minutes. We will 17 get back at 10:26. 18 (Off the record at 10:21 a.m., resuming at 10:26 19 a.m.) 20 HEARING EXAMINER ROBESON HANAN: All right. Go 21 ahead. I think Mr. Cook is up. 22 MR. KLINE: Mr. Cook, would you please state your 23 name and address? And remember that your under oath from 24 previous swearing. 25 MR. COOK: Sure. My name is Glenn Cook. Our</p>

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<p>37</p> <p>1 offices are located at 9900 Franklin Square Drive, 2 Baltimore, Maryland 21234. 3 MR. KLINE: And your profession is what, Mr. 4 Cook? 5 MR. COOK: Traffic engineering and transportation 6 planning. 7 MR. KLINE: And in this case you have been 8 accepted as an expert in those fields? 9 MR. COOK: That's correct. 10 MR. KLINE: All right. Let me start by asking 11 you a question. I don't want to mischaracterize Dr. 12 Kosary's comments. So correct me if my phrasing is wrong 13 Mr. Chen. But I believe I recall Dr. Kosary say that there 14 is no standard methodology for the preparation of a queuing 15 analysis; is that correct? 16 MR. COOK: There are different ways of doing gap 17 studies, but there is a common practice that we use when 18 dealing with the County and the State Highway 19 Administration. 20 MR. KLINE: And that's in accordance with 21 standard traffic engineering practices and principles? 22 MR. COOK: Yes. 23 MR. KLINE: Okay. Did Dr. Kosary's testimony 24 critiquing the gap analysis cause you to check the figures 25 that were contained in this study we had submitted in the</p>	<p>39</p> <p>1 direction to really call the roadway. 2 The difference -- and what Ms. Kosary was 3 pointing out correctly was that we described it one way in 4 the text of the report, but in our data sheets for our 5 analysis, we had reversed the directions for the two 6 roadways. When -- so we went back and we reran our numbers 7 based on the other directions. And what we found was it 8 makes absolutely no difference because we rotated the 9 volumes and we also rotated the lane use, which is the major 10 factors that are involved in this, so that the results of 11 the analysis that we showed in our traffic study are still 12 the same as what we found by reversing the direction. 13 MR. KLINE: Oh, I'm sorry. I was on mute. I 14 apologize. Mr. Cook, you provided me corrected sheets or 15 revised sheets of four sheets and those have been submitted 16 in the record and the Hearing Examiner properly put them up 17 as Exhibit 233. And could you briefly describe the changes 18 that are shown on the sheets? 19 (Exhibit 233-A was introduced.) 20 MR. COOK: Sure. On the sheet that's up on the 21 screen as we speak, the eastbound and westbound traffic on 22 these revised sheets reflect the Needwood Road traffic. The 23 north-south traffic reflects the Redland Road traffic. So 24 at the top of the page will see where the volumes on these 25 revised sheets are assigned to different columns than what</p>
<p>38</p> <p>1 record originally? 2 MR. COOK: Ms. Kosary did question the time 3 limits of the gaps and headways that we used to do our gap 4 study. But that information was taken directly from the 5 highway capacity manual, which is a tool that we have to use 6 to compute capacity gaps and things of that nature. 7 MR. KLINE: Okay. So you used an established 8 reference document terms of preparing the gap analysis? 9 MR. COOK: Yes, we did. 10 MR. KLINE: Okay. All right. Well, going back 11 to the testimony from Dr. Kosary indicating that some 12 numbers had been mis-entered in your analysis, could you 13 explain what you found when you went back and looked into 14 that? 15 MR. COOK: Sure. We -- I had noted the capacity 16 worksheet that Ms. Kosary was referring to. And there 17 was -- I don't know if we call it an error or a mix up, but 18 basically what had happened was the person who wrote the 19 text of the report referred to the direction of the roadways 20 a particular way. Redland Road I believe was originally 21 identified as East and West. Needwood was North and South. 22 When we went back and looked at it, it's one of those 23 intersections that's kind of an X and the roads run in a 24 northeast to southwest direction and a southeast to a 25 northwest direction. So it often gets confused as to what</p>	<p>40</p> <p>1 was shown in the original traffic study. 2 MR. KLINE: Then I would take you -- are there 3 any comments you would think you should make on any of the 4 other sheets? Or are these just indicative of what the 5 revisions are? 6 MR. COOK: Now I reran the analysis for the 7 existing a.m. and p.m. volumes and the total a.m. and p.m. 8 volumes just to make sure that I wasn't mistaken and that 9 everything turned out the same. And if you look on the line 10 towards the bottom of the sheet you'll see a line that says 11 intersection delay. And yes, where it's being circle. And 12 if you look at those results and compare them to what we 13 reported in our original study, you will find that they are 14 the same. 15 MR. KLINE: Thank you. So could you repeat your 16 conclusion based on your evaluation of the corrected or 17 revised sheets that are Exhibit 233? 18 MR. COOK: Well, we still feel that based on the 19 revisions we made to this exhibit, that all of the 20 intersections will still work within the standards 21 established by Montgomery County. 22 MR. KLINE: Thank you. There was testimony about 23 your use of certain Institute of Traffic Engineers trip 24 generation rates. And I think I heard you allude to the 25 second ago. But could you respond to Dr. Kosary's critique</p>

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<p>41</p> <p>1 of that subject?</p> <p>2 MR. COOK: Sure. The (inaudible) traffic</p> <p>3 generated --</p> <p>4 MR. KLINE: Mr. Cook, I've lost you. Is anyone</p> <p>5 else having that problem?</p> <p>6 HEARING EXAMINER ROBESON HANAN: I --</p> <p>7 COURT REPORTER: This is the court reporter. I</p> <p>8 was going to say the same thing. I can't hear him here at</p> <p>9 all.</p> <p>10 HEARING EXAMINER ROBESON HANAN: His volume is</p> <p>11 turned down very, very low.</p> <p>12 MR. COOK: That any better?</p> <p>13 MR. KLINE: Yeah, can you start over again?</p> <p>14 MR. COOK: Sure.</p> <p>15 MR. KLINE: Thank you.</p> <p>16 MR. COOK: The question was in reference to the</p> <p>17 trip generation data that we used for our study. The</p> <p>18 Institute of Transportation Engineers trip generation report</p> <p>19 as a document that provides data for hundreds of different</p> <p>20 types of land uses for a property. And as part of each of</p> <p>21 those uses they look at a -- you have options. Some of them</p> <p>22 are based on a fitted curve equation and others are based on</p> <p>23 strictly trip rates.</p> <p>24 And a lot of them -- to determine which one of</p> <p>25 the two you use, while for the most part there are</p>	<p>43</p> <p>1 MR. KLINE: When you're ready, Mr. Cook. Let me</p> <p>2 know.</p> <p>3 MR. COOK: I'm ready when you can hear me.</p> <p>4 MR. KLINE: Okay. Well, I'm going to ask a</p> <p>5 question and I don't even know what I'm asking. But it goes</p> <p>6 back to other earlier questions. So let me try anyway. And</p> <p>7 that is, have you ever been asked to perform a linear</p> <p>8 regression analysis in doing the study that you just</p> <p>9 described?</p> <p>10 MR. COOK: We use the -- the preference by most</p> <p>11 government agencies including Montgomery County is to use</p> <p>12 the linear equation. We don't compute that. That's</p> <p>13 actually part of the printouts and the backup documentation</p> <p>14 contained in the Institute of Transportation Engineers trip</p> <p>15 generation report. But yes, we have used the equation on</p> <p>16 the majority of the cases that we build.</p> <p>17 MR. KLINE: Thank you. So a couple of cleanup</p> <p>18 questions. You heard Mr. Chen's question of Mr. Davis about</p> <p>19 can you reconcile what I believe is -- and I also don't</p> <p>20 recall what would you said on occasions traffic will</p> <p>21 possibly backup to Carnegie. And your 95 percentile. Can</p> <p>22 you reconcile those two statements?</p> <p>23 MR. COOK: Certainly. I mean, we had -- in my</p> <p>24 prior testimony and the results of our study do show that on</p> <p>25 equation and approximately 5 percent of the time traffic may</p>
<p>42</p> <p>1 guidelines, but they really have to be examined because they</p> <p>2 are not always applicable to one another. But in this</p> <p>3 particular case, the requirement tells you you have to have</p> <p>4 a certain number of study points that are included in</p> <p>5 establishing the equation.</p> <p>6 And if you meet that criteria and there is an</p> <p>7 equation that's available, then most agencies request that</p> <p>8 you use the equation as opposed to the rate. There is</p> <p>9 something that refers to the R squared that appears on the</p> <p>10 printouts. And you would like that number to be above .70</p> <p>11 or .75. It's a reliability factor. But the counties and</p> <p>12 particularly Montgomery County who reviewed this project</p> <p>13 often ignored that if you have a sufficient number of points</p> <p>14 in your study and wants you to use the equation.</p> <p>15 In this particular point we prepared a scoping</p> <p>16 agreement. And based on discussions back and forth with the</p> <p>17 staff we were instructed to use the fitted curve equation as</p> <p>18 a basis for the trip generation.</p> <p>19 HEARING EXAMINER ROBESON HANAN: Mr. Klein?</p> <p>20 MR. KLINE: I'm sorry. Yeah. Mr. Cook,</p> <p>21 (inaudible). I'm getting a (inaudible). Is that a problem</p> <p>22 for others?</p> <p>23 HEARING EXAMINER ROBESON HANAN: If anyone has a</p> <p>24 device that is on, like a cell phone or something in</p> <p>25 addition to this hearing, you should turn it off.</p>	<p>44</p> <p>1 extend back to Carnegie. But 95 percent of the time the</p> <p>2 queues along Needwood Road would not extend all the way back</p> <p>3 to Carnegie Avenue.</p> <p>4 MR. KLINE: Thank you. You are also asked the</p> <p>5 question -- I'm sorry. There was also a statement that your</p> <p>6 gap analysis, three quarters of the gaps that you had</p> <p>7 identified were actually not usable. Would you concur in</p> <p>8 the comment?</p> <p>9 MR. COOK: No, I would not agree with that. The</p> <p>10 gap study that we performed and was part of the letter -- I</p> <p>11 don't know the exhibit number. But the gap study that was</p> <p>12 dated December 17, 2019 breaks it down and shows the number</p> <p>13 of available gaps that would be present based on the traffic</p> <p>14 along Needwood Road. And that number of gaps well exceeded</p> <p>15 the necessary number of gaps to be able to clear out the</p> <p>16 driveway from the daycare center.</p> <p>17 MR. KLINE: Sort of going to that question of the</p> <p>18 intersection operation. Is there anything in our studies to</p> <p>19 date that indicates the -- well, how many cars can be</p> <p>20 cleared through a light? Or maybe as they it a more common</p> <p>21 way of asking. What is a normal -- what is the -- how many</p> <p>22 light cycles does it take to clear the intersection for</p> <p>23 people waiting? Do we have that information?</p> <p>24 MR. COOK: That particular number can't be</p> <p>25 defined. It can be -- the results of the analysis that we</p>

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<p style="text-align: right;">45</p> <p>1 do results in levels of service, which are A through F. 2 Sort of like school grades. A through D is acceptable. E 3 through F are undesirable. When you get to the level of 4 service high Ds low Es, you can expect that not all of the 5 Carson going to necessarily make it through on the first 6 cycle of the light. But there is really no way to determine 7 exactly how many times that's going to occur. 8 MR. KLINE: The -- your studies show the levels 9 of service at the critical intersection at all time periods 10 to be at least a D and higher in most cases; my correct? 11 MR. COOK: For the overall intersection delay, 12 yes, that's correct. 13 MR. KLINE: I believe you would've heard the 14 comment that the left-hand turns at the intersection of 15 Needwood and Redland road from westbound Needwood to 16 southbound Redland are a tight or tough turn. Would you 17 concur that characterization? 18 MR. COOK: Could you repeat the directions again, 19 please? 20 MR. KLINE: Yeah, sure. Westbound Needwood to 21 southbound Redland was commented -- described as being a 22 tough turn because of the curve of the road at that point. 23 Would you concur with that observation? 24 MR. COOK: I recall hearing testimony that the 25 right turn from Redland Road onto Needwood Road was</p>	<p style="text-align: right;">47</p> <p>1 assistance in trying to address that problem? 2 MR. COOK: In my opinion there are, yes. 3 MR. KLINE: All right, thank you. You heard 4 testimony about the lines of sight study. Would you explain 5 from a traffic engineering point of view why the driveway 6 shown on the Primrose plan is in the optimum location from a 7 traffic engineering point of view? 8 MR. COOK: Okay. And actually there is a couple 9 of reasons. When we first started this project, of course, 10 we were considering using Carnegie Road as the access to the 11 property. And what we found was there was a -- an over 12 vertical to the east along Needwood Road that caused the 13 visibility of cars coming out of Carnegie to be able to see 14 the desired distance to oncoming traffic. 15 MR. KLINE: Mr. Cook, can I interrupt you for a 16 second? Consistent with the testimony he's making right 17 now, Mme. hearing examiner, could you pull up Exhibit KKKK? 18 That was a photograph provided by Ms. English taken from 19 further west -- further east rather, of the driveway. And I 20 think it would be good at that as a backdrop for Mr. Cook's 21 testimony. 22 HEARING EXAMINER ROBESON HANAN: Okay. Is it 23 227-KKKK? 24 MR. KLINE: Yes, ma'am. 25 HEARING EXAMINER ROBESON HANAN: Okay. Four K's?</p>
<p style="text-align: right;">46</p> <p>1 difficult to make. And I believe that was the testimony 2 that we have previously discussed. 3 MR. KLINE: And if I recall, you talked about 4 measures that could be taken to try and improve that 5 movement. Am I correct? 6 MR. COOK: That's correct. 7 MR. KLINE: And could you repeat what those -- 8 describe what those improvements would be and what the 9 effect would be? 10 MR. COOK: There's two things that can be done 11 relatively easily. The first one, the problem with the cars 12 turning right from Redland onto Needwood is with a swing 13 around the radius, they actually cross over the existing 14 stop bar. So if a car is pulled up and goes beyond that 15 stop bar, it makes it very difficult if not impossible for a 16 car to be able to make that right turn there. So one of the 17 easy, quick fixes would be -- is to move that stop bar back 18 a little distance so that there's more space there for cars 19 to be able to make that swing to proceed on to Needwood 20 Road. The second possibility would be to enlarge the radius 21 of that corner so the car can make a wider turn there and 22 not need to swing in to the other lanes at the 23 intersections. 24 MR. KLINE: So there are solutions that are 25 within the control of the Applicant with the DOT's</p>	<p style="text-align: right;">48</p> <p>1 MR. KLINE: Five I believe actually. 2 HEARING EXAMINER ROBESON HANAN: Five K's, okay. 3 Wait, I have that here, I'll show you what I have. And I'm 4 not sure it's what you want. This is 227-KKKK. And it's 5 the letter regarding the landscape plan. 6 MR. KLINE: Sure, it's actually five K's is the 7 one I'm looking for. So it's one more K. 8 HEARING EXAMINER ROBESON HANAN: Oh, I apologize. 9 That's OOOO. I'm getting there. I'm getting there. 10 Five K's. Do you know which packet of 227 this 11 is in? No, okay. I'll look. 12 MR. CHEN: Madam Examiner, this is Bill Chen. 13 You might try D. 14 (Crosstalk) 15 HEARING EXAMINER ROBESON HANAN: Is that Ms. 16 Kosary? Doctor -- 17 DR. ENGLISH: This is Dr. English. If you keep 18 going you are getting close. 19 HEARING EXAMINER ROBESON HANAN: Oh, I'm sorry. 20 Someday I will get the -- how many letters there are 21 straight. I'm looking for the five K's. 22 DR. ENGLISH: Correct. 23 HEARING EXAMINER ROBESON HANAN: And I'm in the 24 four. For the record, I'm scrolling through this exhibit to 25 find KK -- 227 to find KKKK.</p>

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<p>49</p> <p>1 DR. ENGLISH: Go slow. It's coming up. Go back, 2 back, back. Three more. One more. 3 HEARING EXAMINER ROBESON HANAN: Okay. 4 DR. ENGLISH: Keep going. 5 HEARING EXAMINER ROBESON HANAN: This says KKKK. 6 DR. ENGLISH: Oh, okay. Is that -- I think 7 that's -- 8 Mr. Kline, do you want the Carnegie? 9 MR. KLINE: No, this is the photograph I was 10 looking for. 11 (Exhibit 227-KKKKK was introduced.) 12 DR. ENGLISH: Okay. 13 MR. KLINE: Thank you for the help Ms. English. 14 Mr. Cook, I'm not sure I know the exact location -- 15 HEARING EXAMINER ROBESON HANAN: Mr. Kline, there 16 is feedback coming from -- 17 MR. KLINE: Okay. I won't touch anything other 18 than my on and off button in. 19 HEARING EXAMINER ROBESON HANAN: No. No. There 20 is -- try talking out. 21 MR. KLINE: Mr. Cook -- 22 (Discussion off the record; technical 23 difficulties.) 24 MR. KLINE: I've taken Mr. Frey's advice and 25 reduced the volume on my end. Is that any better?</p>	<p>51</p> <p>1 MR. COOK: Yes. 2 MR. KLINE: I'm not sure I know the location of 3 where the car is parked, but could you explain what one can 4 see in the distance to the -- in the center of the 5 photograph? 6 MR. COOK: What this picture shows, I believe is 7 coming out of one of the driveways that is on the south side 8 of Needwood Road adjacent to our property and not on our 9 property. If you look to -- if you imagine you are sitting 10 in the driver seat and you look to your left, you see the 11 over vertical in the roadway, which limits or restricts the 12 available site distance that exists at that location. 13 That's same issue that we had a further to the west. 14 At this location, if this is in the same 15 direction where we were proposing or it was proposed that 16 the driveway be moot, not down as far as his property, but 17 in that direction. And what that did was it takes that over 18 vertical out of the equation and no longer would restrict 19 the site distance. Yeah, it was still restrict the site 20 distance to a point, but it would improve the distance that 21 you can see as well as providing acceptable site distance to 22 the east. 23 So the relocation of the driveway to the daycare 24 center to the east from its original site entrance location 25 improves the site distance along Needwood Road in both</p>
<p>50</p> <p>1 HEARING EXAMINER ROBESON HANAN: No. You were 2 coming through fine before. 3 MR. KLINE: Yeah, I have no idea what the problem 4 is. And we need somebody in my firm to help me because this 5 is beyond my limited technological abilities. 6 HEARING EXAMINER ROBESON HANAN: Well, if people 7 are okay with it, we can continue. 8 MR. KLINE: And tell me what you are hearing so I 9 will try to modulate my phrasing better. 10 HEARING EXAMINER ROBESON HANAN: I don't know how 11 to describe it. It's like -- it's like a -- I don't know. 12 Mr. Cook, you're on -- Mr. Cook, you're on mute. 13 MR. COOK: Okay. Now I'm okay? 14 HEARING EXAMINER ROBESON HANAN: Yeah. 15 MR. COOK: Okay. I was going to say -- possibly 16 suggest that if Mr. Kline, because of the reverb that we're 17 getting, if he talked just a little bit slower and there was 18 more time between the words I would be able to understand 19 what he is saying I think. 20 HEARING EXAMINER ROBESON HANAN: Okay. 21 MR. COOK: We can try that. 22 MR. KLINE: I need to practice for -- to talk to 23 my granddaughter on Easter. So this will be good practice. 24 Mr. Cook, you're looking at exhibit five Ks. Or 25 that's on the screen.</p>	<p>52</p> <p>1 directions. 2 MR. KLINE: Excuse me. Does this photograph 3 demonstrate the premise that the Prinrose driveway is 4 located in the optimum position for line of visibility and 5 line of sight? 6 MR. COOK: Yes, the further to the east it is 7 located on our property the greater the site distance in 8 both directions along Needwood Road. 9 MR. CHEN: Madam Examiner, I would like to object 10 and strike that. The Applicant has not done a gap study. 11 There is -- sight distance space, excuse me. Thank you. 12 They have not submitted a sight distance study and 13 accordingly I object to any testimony about an optimum sight 14 distance. And I moved to strike this testimony. 15 MR. KLINE: I understand the point and I concede 16 that there is not been a line of sight study provided by the 17 Applicant. But the opposition to provide one. But the 18 point I'm trying to make is this photograph, exhibit KKKK, 19 visually demonstrates why the driveway to the Prinrose site 20 is in the best location. It gives the best line of sight in 21 all directions. 22 MR. CHEN: Whatever this photograph shows -- 23 HEARING EXAMINER ROBESON HANAN: Yeah, I will 24 take it in for the weight it deserves, but I am not 25 convinced that this photograph does what he wishes it to do.</p>

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<p>53</p> <p>1 So go ahead.</p> <p>2 MR. KLINE: Thank you. Mr. Cook, there was</p> <p>3 testimony classifying on this -- I'm sorry -- noting that</p> <p>4 Needwood Road was classified as a primary residential</p> <p>5 collector, I think is the term. With that is actual volume</p> <p>6 of traffic. And the way that it's being used by the</p> <p>7 community is something in excess of what its intended</p> <p>8 purpose would be from a transportation classification. Can</p> <p>9 you please provide your comments on that observation?</p> <p>10 MR. COOK: Sure. Needwood Road is classified as</p> <p>11 a primary residential roadway. There was an exhibit that</p> <p>12 was submitted by the opposition in reference to a County</p> <p>13 Council bill. It's document JJJ.6.</p> <p>14 HEARING EXAMINER ROBESON HANAN: Three Js?</p> <p>15 MR. COOK: Yes.</p> <p>16 HEARING EXAMINER ROBESON HANAN: Is that the</p> <p>17 executive regulation?</p> <p>18 MR. COOK: Yes, it is. Yes. Dated 1994.</p> <p>19 HEARING EXAMINER ROBESON HANAN: This document?</p> <p>20 (Exhibit 227-JJJ was introduced.)</p> <p>21 MR. COOK: Yes. Yes, ma'am. That's it. And --</p> <p>22 HEARING EXAMINER ROBESON HANAN: And what do you</p> <p>23 want to say about it?</p> <p>24 MR. COOK: Okay. This document talks about the</p> <p>25 percent of cut through traffic along residential roadways.</p>	<p>55</p> <p>1 petition from 15 percent of the households in an area being</p> <p>2 proposed for traffic restrictions. The Department of</p> <p>3 Transportation will provide a standard application form for</p> <p>4 this purpose. Neighborhoods would have submitted written</p> <p>5 request for volume restrictions prior to adoption of this</p> <p>6 regulation.</p> <p>7 And it goes on to say that even if an application</p> <p>8 is filed the County still has the right not to implement</p> <p>9 those improvements or require meeting those goals if it's</p> <p>10 going to have an impact. And I'm trying to find the exact</p> <p>11 words here. But it's on more major roadways such as</p> <p>12 Muncaster Mill Road or Redland Road which certainly, if cut</p> <p>13 through traffic wasn't allowed on Redland road it would have</p> <p>14 an impact on other major streets in the area.</p> <p>15 So the 50 percent analysis that was done, while</p> <p>16 it was done correctly, doesn't automatically mean that the</p> <p>17 County is going to come in and restrict movements by putting</p> <p>18 in one way streets or barricades and things of that nature,</p> <p>19 and that the County has the right to make the determination</p> <p>20 that this road serves another purpose other than just to</p> <p>21 accommodate the local residents in the area.</p> <p>22 MR. KLINE: And in fact, has the County made any</p> <p>23 traffic coming or improvements to Needwood consistent with</p> <p>24 the executive regulation?</p> <p>25 MR. COOK: I don't know if it was related to the</p>
<p>54</p> <p>1 And the bill discusses 50 percent or more cut through</p> <p>2 traffic means measures should be or could be taken by</p> <p>3 government to restrict in some manner the amount of cut</p> <p>4 through traffic along that roadway.</p> <p>5 In prior testimony volumes were developed to show</p> <p>6 that the amount of cut through traffic between Muncaster</p> <p>7 Mill Road and Redland Road along Needwood Road likely</p> <p>8 exceeded that 50 percent. And we have -- I have no</p> <p>9 objections to the calculations that were on the sheet. They</p> <p>10 look like they were prepared properly. The problem is</p> <p>11 the -- this particular document primarily deals with smaller</p> <p>12 residential roadways that don't impact arterial roadways or</p> <p>13 higher.</p> <p>14 The -- in this case, on page 4 of that document,</p> <p>15 the last paragraph, the -- this program is a program that is</p> <p>16 to be initiated by the local residents. They have to obtain</p> <p>17 a certain number of signatures, go to the County, ask the</p> <p>18 County if this is a feasible solution for them. And the</p> <p>19 County then can make a decision based on many factors</p> <p>20 whether other steps need to be taken to regulate through</p> <p>21 traffic along this roadway.</p> <p>22 On page 4, the last paragraph states that a</p> <p>23 request from the neighborhood through traffic volume</p> <p>24 restrictions may be made by local citizens association which</p> <p>25 represents a significant number of residents whereby a</p>	<p>56</p> <p>1 regulation itself, but yes, speed bumps have been built</p> <p>2 along a portion of Needwood Road, particularly in the area</p> <p>3 that we've been talking about for this application.</p> <p>4 MR. KLINE: And is Needwood --</p> <p>5 HEARING EXAMINER ROBESON HANAN: I'm sorry.</p> <p>6 Speed bumps on which road?</p> <p>7 MR. COOK: On Needwood Road.</p> <p>8 HEARING EXAMINER ROBESON HANAN: And where are</p> <p>9 they exactly?</p> <p>10 MR. COOK: I don't have a plan that shows the</p> <p>11 exact location, but I believe there's 3 to 4 speed bumps</p> <p>12 located along the roadway. And common practice is speed</p> <p>13 bumps have to be at least 200 feet apart. That's normal</p> <p>14 design preference. But they do directly impact the frontage</p> <p>15 along these properties that we are talking about from the</p> <p>16 church up to Redland Road.</p> <p>17 MR. KLINE: Mr. Cook, your comment, or at least</p> <p>18 the use of the phrase 200 feet, reminded me that I think I</p> <p>19 probably took you out of something else you wanted to say</p> <p>20 when I was talking about the location of the driveway to the</p> <p>21 Primrose site and pulled you into the 5K photograph. When I</p> <p>22 was asking you why is the driveway in the right location</p> <p>23 there had -- a question have been raised about testimony you</p> <p>24 presented indicating that it's appropriate to have</p> <p>25 driveways -- well, let me rephrase it this way. Separation</p>

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<p>57</p> <p>1 of 200 feet. Can you please explain what you were thinking 2 when you said that? 3 MR. COOK: Well, the local government and 4 different agencies have different criteria. I was unable to 5 locate any directly related to Montgomery County, but when 6 we were originally looking at Carnegie Street as a roadway, 7 which obviously a great deal of discussion took place with 8 the County staff about what was going to happen with that 9 road, we said that we should try to keep the driveway 10 outside of what they referred to as the influence of an 11 intersection, because of turning vehicles in and out of that 12 driveway. 13 And I suggested that it was common practice by 14 many jurisdictions to try to be 200 -- a minimum of 200 feet 15 away from a corner of an intersection like that. That 200 16 feet again is just a preference. That's a distance that we 17 try to keep. But in many cases you can't do that. And as a 18 point of reference I would say on a corner where you have 19 gas stations there is no way you can have your driveways 200 20 feet away from an intersection. So the 200 is just a 21 general rule of thumb, but it varies based on the existing 22 conditions in the field. 23 MR. KLINE: And is the -- and is the width of the 24 subject property 200 feet along its frontage on Needwood 25 Road? If you know.</p>	<p>59</p> <p>1 that type of a conclusion. 2 HEARING EXAMINER ROBESON HANAN: Well, I think 3 that's a matter for cross-examination. 4 MR. CHEN: Okay. 5 MR. KLINE: Mr. Cook, you heard Mr. Davis's 6 testimony. And can you help us understand why the empirical 7 evidence seems to suggest one conclusion and the neighbors, 8 and I won't even classify them as anecdotal, but the 9 neighbor's testimony paints a different picture? Why do we 10 have this gap between the two positions? 11 MR. COOK: Well, I'm not sure that there is a 12 gap. We have stated that at times the blockage would extend 13 back to Carnegie Street as part of the empirical data that 14 we submitted. That's consistent with what the neighbors say 15 they observe from time to time and that's consistent with 16 Mr. Davis's testimony as I heard it. So I'm not sure there 17 is a difference. 18 MR. KLINE: There was testimony, I can remember 19 the phrase about Ms. Tapscott having to actually stick her 20 car out into Needwood Road in order to be able to make 21 attorney movement off of Needwood and being concerned about 22 the safety issue. I mean, do we have any evidence of any 23 accident records along that stretch of road to support the 24 safety issue related to the road? 25 MR. COOK: I do have accident information that I</p>
<p>58</p> <p>1 MR. COOK: I don't know the exact length of it, 2 but I believe it exceeds 200 feet slightly. 3 MR. KLINE: Thank you. Going back to Needwood 4 Road -- 5 HEARING EXAMINER ROBESON HANAN: I'm sorry. What 6 did you say you think exceeds 200 feet, Mr. Cook? A 7 proposed driveway? 8 MR. COOK: The length of the frontage of the 9 property along Needwood Road. 10 HEARING EXAMINER ROBESON HANAN: Okay. Go ahead. 11 MR. KLINE: So Mr. Cook, I guess my simple wrap 12 up question on Needwood Road is, it may not be operating in 13 the manner of a classic primary residential street. But is 14 the road capable of handling the volume of traffic presently 15 there or pre-Covid there and with the Primrose facility on 16 the road? 17 MR. COOK: In my opinion yes, it is. 18 MR. KLINE: And then, can you try and bring some 19 clarity to the different -- 20 MR. CHEN: Pardon me, Mr. Kline. I'm trying to 21 not interfere with the presentation. But I object to that 22 last answer that there is no basis that The Traffic Group 23 has provided in its data for that type of a conclusion. 24 They have provided intersection analysis, which we have 25 talked about, but they have not provided any data to support</p>	<p>60</p> <p>1 had obtained from the Maryland database for all accidents 2 that are reported. And it did not identify any accidents 3 over a three-year period between the church itself and a 4 little bit further to the east, actually almost to the golf 5 course and Needwood Road. 6 MR. KLINE: You said Needwood. Do you mean 7 Redland? 8 MR. COOK: I mean Redland. Yes, sir. Thank you. 9 MR. KLINE: All right. So from the stretch 10 from -- the intersection of Redland and Needwood to 11 somewhere east of the subject property there is no evidence 12 of any accidents reported to the State during what time 13 period? 14 MR. COOK: Over the -- from the past three years. 15 The only accidents identified was I believe there were two 16 or three identified at the intersection of Redland and 17 Needwood, but not along Needwood. 18 MR. KLINE: Thank you. I have no further 19 questions of Mr. Cook at this time. 20 HEARING EXAMINER ROBESON HANAN: I have one. I'm 21 going to take you back to 233, if I can get it. Okay. This 22 is your corrected report. I'm looking at page -- let's see 23 if I'm on the right page. 24 MR. COOK: Three. 25 HEARING EXAMINER ROBESON HANAN: Page 3.</p>

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16 (61 to 64)

<p>61</p> <p>1 MR. COOK: The bottom.</p> <p>2 HEARING EXAMINER ROBESON HANAN: Yes. So the</p> <p>3 intersection delay there, is that -- does that equation</p> <p>4 incorporate all approaches?</p> <p>5 MR. COOK: Yes (inaudible).</p> <p>6 HEARING EXAMINER ROBESON HANAN: You give it a</p> <p>7 level of service C, all right; correct?</p> <p>8 MR. COOK: That's what it calculated to be, yes.</p> <p>9 HEARING EXAMINER ROBESON HANAN: Okay. So that's</p> <p>10 why the result doesn't change. Is that what you are saying?</p> <p>11 MR. COOK: No, the --</p> <p>12 HEARING EXAMINER ROBESON HANAN: Because no</p> <p>13 matter what approach, you are still averaging -- or I --</p> <p>14 what is the equation to get the intersection delay?</p> <p>15 MR. COOK: The intersection delay is the average</p> <p>16 of all the vehicles and the amount of delay that they</p> <p>17 experience going through the intersection. You don't --</p> <p>18 HEARING EXAMINER ROBESON HANAN: From every</p> <p>19 approach?</p> <p>20 MR. COOK: Yes, ma'am.</p> <p>21 HEARING EXAMINER ROBESON HANAN: So that's why</p> <p>22 the numbers -- you put the right volumes back, or the right</p> <p>23 delays or the right queues back into the right approaches,</p> <p>24 but that's why it doesn't change the overall equation?</p> <p>25 MR. COOK: Well, we put in the volumes on the</p>	<p>63</p> <p>1 car plus the gap in a queue? How long? How many feet do</p> <p>2 you attribute to each car?</p> <p>3 MR. COOK: Normally it's 25 feet.</p> <p>4 HEARING EXAMINER ROBESON HANAN: Okay.</p> <p>5 MR. COOK: I might add that the results of the</p> <p>6 analysis that are shown on those worksheets, the County is</p> <p>7 responsible for putting the timing on the traffic signals at</p> <p>8 signalized intersections in Montgomery County. When we</p> <p>9 enter this data, we utilized the timing that was given to us</p> <p>10 by Montgomery County. The results that you are referring to</p> <p>11 of the Es and the Fs, the Es along Needwood, but then the As</p> <p>12 along Redland, timing can be adjusted so that we would add a</p> <p>13 little more delay to the Redland Road which would improve</p> <p>14 the operation of the Needwood Road.</p> <p>15 HEARING EXAMINER ROBESON HANAN: Well, I had a</p> <p>16 case once, and is not an easy thing to get MCDOT -- you</p> <p>17 don't control the timing. That's MCDOT, correct?</p> <p>18 MR. COOK: That's my -- that was my exact point.</p> <p>19 HEARING EXAMINER ROBESON HANAN: And they --</p> <p>20 MR. COOK: That's where I was going, yes.</p> <p>21 Montgomery County and the State Highway administration both,</p> <p>22 their priority is always to their major roadway through an</p> <p>23 intersection because that's where most of the traffic is.</p> <p>24 So they try to minimize the amount of delay to the heavier</p> <p>25 movements at the intersection.</p>
<p>62</p> <p>1 right approaches and the software reran the analysis and the</p> <p>2 answer doesn't change. We did not mess with any of the --</p> <p>3 HEARING EXAMINER ROBESON HANAN: So is the</p> <p>4 acceptable level of service all of the -- it includes all of</p> <p>5 the approaches?</p> <p>6 MR. COOK: That's correct. Based on the county</p> <p>7 local area transportation review guidelines, the standard --</p> <p>8 HEARING EXAMINER ROBESON HANAN: You've got a F</p> <p>9 and two Es --</p> <p>10 MR. COOK: Yes.</p> <p>11 HEARING EXAMINER ROBESON HANAN: On eastbound --</p> <p>12 so this looks like if you -- I'm circling the timer results.</p> <p>13 No, I'm sorry. I'm circling movement group results. Okay.</p> <p>14 The first eastbound -- I just want to make sure I understand</p> <p>15 this. The first eastbound, is that Needwood or is that</p> <p>16 Redland? That's Needwood, correct?</p> <p>17 MR. COOK: That's correct.</p> <p>18 HEARING EXAMINER ROBESON HANAN: And westbound is</p> <p>19 also Needwood?</p> <p>20 MR. COOK: Correct.</p> <p>21 HEARING EXAMINER ROBESON HANAN: So without the</p> <p>22 Redland two approaches Needwood is failing, correct?</p> <p>23 MR. COOK: It has a poor level service delay,</p> <p>24 yes.</p> <p>25 HEARING EXAMINER ROBESON HANAN: How long is a</p>	<p>64</p> <p>1 HEARING EXAMINER ROBESON HANAN: Right.</p> <p>2 MR. COOK: So that's where I was going when you</p> <p>3 raised that point. This could be adjusted and we could</p> <p>4 probably have a lower overall intersection delay and a</p> <p>5 better approach delay on the minor streets, but that</p> <p>6 something that's beyond our control, but doesn't mean we</p> <p>7 can't go back to the County at some point and say can you</p> <p>8 re-examine the timing at this intersection. But that's a</p> <p>9 given when we do our analysis to get that from them.</p> <p>10 MR. KLINE: Mr. Cook, isn't it a fact that there</p> <p>11 is somewhere over the executive office building somebody</p> <p>12 sitting in front of a bunch of computer screens with cameras</p> <p>13 on each of these intersections and has the capability of</p> <p>14 adjusting the signal timing at that very point in time if</p> <p>15 they observe a problem or if requested to do so?</p> <p>16 MR. COOK: That is correct.</p> <p>17 HEARING EXAMINER ROBESON HANAN: Yeah, but</p> <p>18 there's many factors they consider as I understand it. And</p> <p>19 maybe I'm wrong. There's many factors that they consider in</p> <p>20 that. But I will -- now where in this exhibit</p> <p>21 (inaudible) --</p> <p>22 MR. KLINE: And before you do that, can I ask one</p> <p>23 more question, Mr. Cook? Because I think you're changing</p> <p>24 subjects.</p> <p>25 HEARING EXAMINER ROBESON HANAN: Oh.</p>

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17 (65 to 68)

<p>65</p> <p>1 MR. KLINE: In my question Mr. Cook was going to 2 be, because legitimately we all would like to see the 3 intersection work better. So what's the policy of basically 4 tolerating -- so excuse me -- having the adequate public 5 facilities under LATR guidelines operate in a manner that 6 allows some impact on one and as much as E to A and E and F 7 to an A on another one. Why is that considered to be an 8 acceptable public policy?</p> <p>9 MR. CHEN: Objection. You know, we are talking 10 about, as I understand it, it's a question asking if there 11 is a public policy or governmental policy on something. 12 I've seen nothing that this particular witness or The 13 Traffic Group is in a position to document and articulate 14 what is government policy.</p> <p>15 MR. KLINE: Sure.</p> <p>16 HEARING EXAMINER ROBESON HANAN: On this one I 17 would prefer to hear from MCDOT rather than the hearsay.</p> <p>18 MR. KLINE: Sure. Then I will just make it very 19 simple and we can make our own assumptions about why 20 government does what they do. And that is, does the traffic 21 materials we have submitted to the County meet all of the 22 County's regulations and comply with APF and other 23 regulations?</p> <p>24 MR. CHEN: If he knows.</p> <p>25 MR. COOK: Yes, they do.</p>	<p>67</p> <p>1 MR. COOK: Yes, it is.</p> <p>2 MR. CHEN: And so we've got a level of service 3 eastbound on -- I apologize. Can you scroll me down a 4 little bit further? Down. You went up. There you go. 5 Thank you. Okay. Where showing -- what does the L and the 6 T at the top of the column, sir?</p> <p>7 MR. COOK: The L represents the left turns. The 8 T represents the through movements. And the R represents 9 the right turns at the intersection.</p> <p>10 MR. CHEN: Okay. So as I understand it, the 11 information that is being (inaudible) at this time the level 12 of service for left turns on eastbound Needwood is E and 13 through traffic eastbound on (inaudible) is F. Is that 14 correct, sir?</p> <p>15 MR. COOK: The through and the right turn volume 16 is F, yes.</p> <p>17 MR. CHEN: Yes, thank you. And then when we get 18 to westbound just moving further to the right, the level of 19 service is E left bound, E through, and E right turn. Is 20 that correct, sir?</p> <p>21 MR. COOK: Actually the middle column under the 22 westbound, the one to your left with the L is a left turn. 23 The second column is the left through an (inaudible) 24 movement because left turns are allowed to be made from the 25 second lane at this intersection.</p>
<p>66</p> <p>1 HEARING EXAMINER ROBESON HANAN: Okay. I think 2 I've got my -- well, I'm going to let Mr. Chen go. Mr. 3 Chen?</p> <p>4 MR. CHEN: Let's go back to that page 3 just for 5 a minute, Madam Examiner. I'm going to try to jump around 6 little bit obviously but try to follow the most recent. Mr. 7 Cook?</p> <p>8 MR. COOK: Yes.</p> <p>9 MR. CHEN: Directing your attention to the bottom 10 part of page 3, you see where the Examiner had the line 11 level of service LOS?</p> <p>12 MR. COOK: Yes.</p> <p>13 MR. CHEN: And that is, as I understand it, we're 14 talking about Needwood; is that correct, sir?</p> <p>15 MR. COOK: The line that says level of service, 16 I'm assuming you are referring to the one that's the third 17 line up from the shaded area.</p> <p>18 MR. CHEN: My bar -- I think it's the third line. 19 It says -- thank you. It says level of service, LOS. And 20 then it has two columns. What happened there?</p> <p>21 HEARING EXAMINER ROBESON HANAN: I did that to 22 make it easier to read.</p> <p>23 MR. CHEN: Okay, thank you very much. As I 24 understand it, is talking about eastbound and westbound on 25 Needwood. Is that correct, sir?</p>	<p>68</p> <p>1 MR. CHEN: Okay, but it's still at LOS E?</p> <p>2 MR. COOK: Yes.</p> <p>3 MR. CHEN: And that empirical information I guess 4 corroborates the testimony that the area residents describe. 5 Isn't that right, sir?</p> <p>6 MR. COOK: Certainly. That level of delay can 7 result in queueing, yes.</p> <p>8 MR. CHEN: And by the way, did you hear any of 9 that anecdotal -- that's Mr. Kline's word, but I will accept 10 it. Did you find that any of that anecdotal testimony of 11 area residents describing the traffic on Needwood to be 12 inaccurate in any way?</p> <p>13 MR. COOK: No, and I believe I've testified that 14 we will -- we do have, even with the empirical data, we do 15 show that at some times there could be a queue back to 16 Carnegie.</p> <p>17 MR. CHEN: Well, your traffic report on page 18 18 states, "the results of the analysis also indicate that the 19 95th percentile queue of eastbound traffic along Needwood 20 would not extend to Carnegie Avenue and block the 21 intersection which is 500 feet away." Is that statement 22 still accurate in light of your testimony today?</p> <p>23 MR. COOK: I -- could you read that again, 24 please?</p> <p>25 MR. CHEN: Sure. It's on page 18 of The Traffic</p>

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18 (69 to 72)

<p>69</p> <p>1 Group report. If you have it in you want to get to it --</p> <p>2 MR. COOK: Okay, yes. Give me one second please.</p> <p>3 Okay.</p> <p>4 MR. CHEN: And again I quote the sentence. I</p> <p>5 can't tell you exactly where it is on the page, but it's on</p> <p>6 that page.</p> <p>7 MR. COOK: It's on the top of the page.</p> <p>8 MR. CHEN: It states -- do you see the sentence,</p> <p>9 sir?</p> <p>10 MR. COOK: Yes, I do.</p> <p>11 MR. CHEN: Are you today in any way backing off</p> <p>12 that statement?</p> <p>13 MR. COOK: The statement on page 18 that I</p> <p>14 believe you're referring to say the results of the analysis</p> <p>15 also indicate that the 95th percentile queue of eastbound</p> <p>16 traffic along Needwood Road, it should really be westbound</p> <p>17 traffic along Needwood Road, will not extend to Carnegie</p> <p>18 Avenue and block the intersection, which is 500 feet away.</p> <p>19 I do -- that's consistent with what I've been testifying is</p> <p>20 that 95 percent of the time you won't have a queue, but 5</p> <p>21 percent of the time is what this is saying, traffic could</p> <p>22 block Carnegie Avenue. So it's consistent with all my prior</p> <p>23 testimony and our analysis.</p> <p>24 MR. CHEN: Okay. And it should be westbound?</p> <p>25 MR. COOK: Yes, I'm sorry.</p>	<p>71</p> <p>1 MR. COOK: And to observe traffic while they are</p> <p>2 there, yes.</p> <p>3 MR. CHEN: Okay. Do you -- I didn't see anything</p> <p>4 in your reports about your personal observations.</p> <p>5 MR. COOK: That's just -- we don't normally</p> <p>6 report that unless there is a problem. And if there was a</p> <p>7 problem, we wouldn't've had the cameras in operation.</p> <p>8 MR. CHEN: Okay. So as I understand it, we're</p> <p>9 not talking about people who are literally out there sitting</p> <p>10 to document what is going on on the road. It's people going</p> <p>11 up, setting up cameras?</p> <p>12 MR. COOK: Right. They do observe traffic while</p> <p>13 they are there so that we know that what they see is</p> <p>14 consistent with what the video shows. But these are people</p> <p>15 that do this every day and observe traffic at the</p> <p>16 intersections.</p> <p>17 HEARING EXAMINER ROBESON HANAN: Well, how long</p> <p>18 are they there I guess is what I'm wondering.</p> <p>19 MR. COOK: Normally in order to set up a camera</p> <p>20 and sit there and observe, I would -- it varies.</p> <p>21 HEARING EXAMINER ROBESON HANAN: If you know. If</p> <p>22 you know.</p> <p>23 MR. COOK: I'm going to say 15 minutes to half an</p> <p>24 hour.</p> <p>25 HEARING EXAMINER ROBESON HANAN: How long is the</p>
<p>70</p> <p>1 MR. CHEN: Okay. Now how many times did traffic</p> <p>2 have somebody out along the roadway of Needwood between, for</p> <p>3 instance the subject property and its intersection with</p> <p>4 Redmond to either observe traffic, count traffic, document</p> <p>5 traffic?</p> <p>6 MR. COOK: I would say I don't know the exact</p> <p>7 number, but in all likelihood it would've been 10 occasions.</p> <p>8 MR. CHEN: Okay. Now as I recollect though,</p> <p>9 there was testimony that information was taken from cameras</p> <p>10 that were set up. Is that right, sir?</p> <p>11 MR. COOK: That's correct, yes.</p> <p>12 MR. CHEN: So am I correct when you say 10</p> <p>13 times, you haven't reported that in any of your reports or</p> <p>14 evidence. Is that right, sir?</p> <p>15 MR. COOK: No, we don't report that. But I --</p> <p>16 the 10 -- since I stated that I didn't know the exact</p> <p>17 number, the 10 came from when we go out and install cameras.</p> <p>18 Our technicians observe the intersection to make sure it</p> <p>19 works okay. They go back out, pick them up, and we counted</p> <p>20 all these locations in excess of two times. And then I've</p> <p>21 made two trips to the intersection myself. So that's how I</p> <p>22 came up with the 10 occasions.</p> <p>23 MR. CHEN: So those 10 occasions I understand</p> <p>24 your testimony, when staff were not the set up, or maintain,</p> <p>25 or remove cameras?</p>	<p>72</p> <p>1 camera there?</p> <p>2 MR. COOK: The camera is usually there. We take</p> <p>3 it out and -- for instance if we were counting on a Tuesday,</p> <p>4 we would go out on Monday and install the camera. It would</p> <p>5 be in operation all day Tuesday. Then we would go back out</p> <p>6 on Wednesday and remove the camera and bring it back to the</p> <p>7 office.</p> <p>8 HEARING EXAMINER ROBESON HANAN: Okay.</p> <p>9 MR. CHEN: And Madam Examiner, I didn't want to</p> <p>10 interrupt you. I'm not done.</p> <p>11 HEARING EXAMINER ROBESON HANAN: I've got more</p> <p>12 questions, but not on this subject, topic.</p> <p>13 MR. CHEN: So Mr. Cook, I did not see in your</p> <p>14 organization's report, traffic group, and reports of</p> <p>15 observations made by any of the staff when they were out</p> <p>16 setting up or maintaining or removing cameras.</p> <p>17 MR. COOK: We did not -- we do not normally note</p> <p>18 that unless there is an incident in the area.</p> <p>19 MR. CHEN: Okay. Okay. But as I also understand</p> <p>20 there is no dispute about the accuracy of the first-hand</p> <p>21 testimony given by the area residents.</p> <p>22 MR. COOK: And what was that testimony consisting</p> <p>23 of?</p> <p>24 MR. CHEN: Well, you had a fair number of people.</p> <p>25 You were present during the hearing when people testified</p>

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19 (73 to 76)

<p style="text-align: right;">73</p> <p>1 where they live and what their experience was on Needwood.</p> <p>2 I think there were a couple of people including one I</p> <p>3 recollect to add photographs of backups. As I understand it</p> <p>4 there is no dispute with any of that testimony. Isn't that</p> <p>5 right, sir?</p> <p>6 MR. COOK: No, I believe is consistent with what</p> <p>7 we found to some degree.</p> <p>8 MR. CHEN: Okay, but it is firsthand information?</p> <p>9 MR. COOK: I agree.</p> <p>10 MR. CHEN: By the way, you made a reference</p> <p>11 during your testimony about the 200 feet situation to County</p> <p>12 staff. What you mean by that?</p> <p>13 MR. COOK: I did a -- I research County documents</p> <p>14 to that's normally the counties or governing agencies have</p> <p>15 standards that they issue for telling you -- giving you</p> <p>16 examples in certain areas. You know, how much -- what the</p> <p>17 distances between intersections is preferred, how you would</p> <p>18 set up a maintenance of traffic area. And we did a -- we</p> <p>19 did a research effort on the internet for Montgomery County.</p> <p>20 MR. CHEN: So that's the basis of your</p> <p>21 representation about County staff?</p> <p>22 MR. COOK: I'm not sure so much about County</p> <p>23 staff other than that the 200 feet I testified is common</p> <p>24 among many government agencies, but I did not find any</p> <p>25 specific information relating to Montgomery County.</p>	<p style="text-align: right;">75</p> <p>1 onto Needwood, when you first testified sir, your testimony</p> <p>2 was -- I can't give you the page, but I remember this</p> <p>3 clearly because we got into the Primrose program. Are you</p> <p>4 still taking the approach or understanding that the location</p> <p>5 that you have established as best for the application is</p> <p>6 based upon the Primrose program? Is that correct sir?</p> <p>7 MR. COOK: I'm not sure that I related it to the</p> <p>8 Primrose program. As far as the location of the driveway I</p> <p>9 do remember testifying that the further the driveway is</p> <p>10 located to the east along the Primrose property, the better,</p> <p>11 based on my field observations, the better sight distances.</p> <p>12 But I don't remember relating it to the Primrose program.</p> <p>13 MR. CHEN: Okay. So I take it your testimony</p> <p>14 today is that regardless of the program that Primrose wishes</p> <p>15 to have on the subject property, the access point that you</p> <p>16 are showing is the best access point regardless of the</p> <p>17 program?</p> <p>18 MR. COOK: Based on the number of students that</p> <p>19 are proposed, yes.</p> <p>20 MR. CHEN: Okay, thank you. Also, you did</p> <p>21 mention that there were things that the County could do to</p> <p>22 improve the circumstance. You just gave us one a little bit</p> <p>23 ago about speed bumps. You also said that the bar could be</p> <p>24 moved. You also said that timing could be changed and you</p> <p>25 also said that the radius could be enlarged. Do you</p>
<p style="text-align: right;">74</p> <p>1 MR. CHEN: Thank you. You also testified about</p> <p>2 speed bumps. Isn't that right?</p> <p>3 MR. COOK: Yes.</p> <p>4 MR. CHEN: But on Needwood from the church to the</p> <p>5 east to Redlands, the intersection with Redland, how many</p> <p>6 speed bumps are there? If you know.</p> <p>7 MR. COOK: From the church to the west of</p> <p>8 Needwood (inaudible)?</p> <p>9 MR. CHEN: Going -- from the church going west to</p> <p>10 Redland.</p> <p>11 MR. COOK: Okay. I don't know exactly. I</p> <p>12 believe it to be three or four.</p> <p>13 MR. CHEN: So your testimony today is between the</p> <p>14 church and Redland on Needwood, there's 3 to 4 speed bumps?</p> <p>15 MR. COOK: There are --</p> <p>16 MR. KLINE: Objection, asked and answered.</p> <p>17 MR. CHEN: Okay. I'll accept it. That's the</p> <p>18 gentleman's testimony. I'll accept it, Mr. Klein. And your</p> <p>19 testimony also was that these volume or controls can be</p> <p>20 requested by the community, but under all circumstances the</p> <p>21 ultimate decision is to be made by the local government</p> <p>22 itself. Is that right?</p> <p>23 MR. COOK: Yes, by the director of Montgomery</p> <p>24 County DOT, yes.</p> <p>25 MR. CHEN: Okay. And with regard to the access</p>	<p style="text-align: right;">76</p> <p>1 remember all that?</p> <p>2 MR. COOK: Yes, I do.</p> <p>3 MR. CHEN: And how long has The Traffic Group</p> <p>4 been working on this project?</p> <p>5 MR. COOK: On this project?</p> <p>6 MR. CHEN: Yes.</p> <p>7 MR. COOK: Prior to the pandemic, I would say --</p> <p>8 I don't know the exact date, but probably 2 to 3 years.</p> <p>9 MR. CHEN: And during that 2 to 3 year period of</p> <p>10 time, has either The Traffic Group or its client gone to the</p> <p>11 County requesting any of these government controls that</p> <p>12 you've identified? Specifically the four that you've</p> <p>13 identified?</p> <p>14 MR. COOK: We have not gone to the County asking</p> <p>15 them about them. We have proffered them, if I'm not</p> <p>16 mistaken, at the planning board hearing. But we don't</p> <p>17 normally go to the County to get confirmation on making an</p> <p>18 improvement until we realize we have a legitimate project.</p> <p>19 So we're not putting the County through enough -- a review</p> <p>20 effort and analysis effort when we don't even know if our</p> <p>21 project will be approved or not.</p> <p>22 MR. CHEN: Okay. So that -- as I understand then</p> <p>23 your testimony, given the existing conditions, the four</p> <p>24 areas of, I guess improvements, that's the right word, that</p> <p>25 could be requested of the government, are the four that</p>

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20 (77 to 80)

<p>77</p> <p>1 you've identified? And again, I don't want to mislead you. 2 That's the timing. It's the moving the bar. It's the speed 3 bumps and enlarging the radius. Is that right, sir? 4 MR. COOK: They are all remedies that could be 5 suggested to improve the operation of that area, yes. 6 MR. CHEN: Madam Examiner, give me one minute. I 7 may be close. 8 That's all I've got, Madam Examiner. Thank you 9 very much, Mr. Cook. 10 MR. COOK: Okay, thank you. 11 HEARING EXAMINER ROBESON HANAN: I just had one 12 other question. And I'm going to take you back to Exhibit 13 233. And there is a line that says queue storage ratio. 14 MR. COOK: Yes. 15 MR. CHEN: What exhibit are we on Madam Examiner? 16 I'm sorry. 17 HEARING EXAMINER ROBESON HANAN: 233. It should 18 be up on the screen. Is it up on the screen? 19 MR. CHEN: Yes, it is. Yes. 20 HEARING EXAMINER ROBESON HANAN: Okay. How do 21 you figure out the queue storage ratio? 22 MR. COOK: The queue storage ratio is a 23 computation that's made within the functioning of the 24 software program. The queue storage ratio essentially tells 25 you whether you've got sufficient storage space in the left</p>	<p>79</p> <p>1 those cars pulling into the yellow tapered areas, if you 2 remember that testimony. 3 HEARING EXAMINER ROBESON HANAN: Right 4 (inaudible). 5 MR. COOK: Right. And in this area, there are 6 two things here that make this a little different. One, 7 that yellow arrow area, to store one or two cars, there is 8 sufficient that cars should pull in there. But that's 9 against the law based on the pavement markings on the 10 roadway. But the biggest factor here is this is not the 11 only left turn lane. So any car that can't fit into that 12 lane should stay in the right-hand most lane, which is also 13 allowed to make a left turn down at Redlands Road. So he 14 can still be in a turn lane and make that turn. He doesn't 15 particularly have to be in that lane. But that's one of the 16 limitations of the software package. It doesn't identify 17 that when you have joint use lanes like that. 18 HEARING EXAMINER ROBESON HANAN: Now why is there 19 (inaudible) calculation in the right turn lane? Or is it 20 because the through lane is the right turn lane? 21 MR. COOK: Yes, the second -- the right hand most 22 (inaudible) around -- 23 HEARING EXAMINER ROBESON HANAN: Wait, go ahead. 24 You cut out for a minute. 25 MR. COOK: Okay. In this particular case there</p>
<p>78</p> <p>1 turn lane to accommodate the number of left turns. What you 2 enter into the program is the length of the full width of 3 storage for the left turn. And then when the program 4 determines what the back of the queue is, it determines 5 whether you've got sufficient storage space. In this 6 particular case they are saying that we are 1.03 short on 7 some occasions during the entire hour that the light is 8 operating. On this particular case -- 9 HEARING EXAMINER ROBESON HANAN: 1.03 short, what 10 does that mean? 11 MR. COOK: In other words, if the -- above 12 that -- 13 HEARING EXAMINER ROBESON HANAN: Short of what? 14 MR. COOK: Okay. The line above the 1.03 says 15 the backup queue, 17.3 vehicles. 16 HEARING EXAMINER ROBESON HANAN: Right. 17 MR. COOK: Okay. The queue ratio is saying that 18 and that's equated to the 441.9 feet on the line above that. 19 HEARING EXAMINER ROBESON HANAN: (inaudible). 20 MR. COOK: Okay. Actually we have approximately 21 400 feet, I believe the number was, of full width storage 22 there. So it's a 3 percent increase that on all cycles you 23 are going to have enough storage. That 3 percent of the 24 time you may have a car that cannot get in to the left turn 25 lane. And there was testimony the other day in reference to</p>	<p>80</p> <p>1 is nothing in the right turn lane because the right-hand 2 most lane, not the exclusive left turn lane was bound, but 3 the lane next to it, you can turn left, go straight, or go 4 right from that lane. And that's called a shared lane. So 5 when you have a shared lane, they don't show anything in 6 that box with the R because that has to go in with the 7 through lane traffic. Does that work? 8 HEARING EXAMINER ROBESON HANAN: Well yeah, I get 9 that. I guess I'm wondering then if I move over (inaudible) 10 ratio to the through lane, that's zero. 11 MR. COOK: Correct. 12 HEARING EXAMINER ROBESON HANAN: Can this be that 13 I see is a little longer, like 30 feet longer. 14 MR. COOK: Right. 15 HEARING EXAMINER ROBESON HANAN: But it seems to 16 me it shouldn't be zero. It should be 90 -- you know, under 17 one, maybe. But why is that zero there? 18 MR. COOK: Well, the zero is because that's not a 19 storage bay. That's the through lane that extends all the 20 way back to Muncaster Mill. So there is unlimited storage 21 area in that particular lane. This -- the queue ratio 22 really applies to when you have turn lanes, exclusive turn 23 lanes where you've only got 150 feet say to store left turn 24 traffic. Those cars, when they going to the lane next to 25 it, in this case where it's a shared lane, the queuing space</p>

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21 (81 to 84)

<p>81</p> <p>1 is unlimited in that lane. So it's zero.</p> <p>2 HEARING EXAMINER ROBESON HANAN: Okay. Now</p> <p>3 you're all going to get questions in response to my</p> <p>4 questions. And I guess Mr. Chen, do you have any questions</p> <p>5 based on my questions?</p> <p>6 MR. CHEN: No.</p> <p>7 HEARING EXAMINER ROBESON HANAN: Okay. Mr.</p> <p>8 Klein, do you have any questions based on my questions?</p> <p>9 MR. KLINE: Only two -- Mr. Cook, would be</p> <p>10 accurate to say that there will -- there seems to be a</p> <p>11 disagreement between the Applicant and the neighborhood</p> <p>12 that -- and we agree that backups to Carnegie could occur,</p> <p>13 but the frequency seems to be in dispute; accurate?</p> <p>14 MR. COOK: Accurate.</p> <p>15 MR. KLINE: Thank you. And then going back to</p> <p>16 the Hearing Examiner's very analytical analysis of the</p> <p>17 lanes, if the middle lane is right, though, and left and you</p> <p>18 only have 3 percent of the time that the dedicated left turn</p> <p>19 lane is -- doesn't have enough capacity, theoretically</p> <p>20 there's enough capacity at the intersection so everybody</p> <p>21 wants to make a left turn should always be able to make a</p> <p>22 left turn through a light cycle?</p> <p>23 MR. COOK: The only correction is that's not the</p> <p>24 middle lane. It's a two lane approach.</p> <p>25 MR. KLINE: Okay.</p>	<p>83</p> <p>1 something about that. And Bill, isn't that what you wanted</p> <p>2 to do?</p> <p>3 MR. CHEN: Yes. Yes, but we need to take a short</p> <p>4 break.</p> <p>5 MR. KLINE: Sure.</p> <p>6 HEARING EXAMINER ROBESON HANAN: Well, it's</p> <p>7 11:46. We can take a lunch and then come back.</p> <p>8 MR. CHEN: Works for us.</p> <p>9 HEARING EXAMINER ROBESON HANAN: Okay.</p> <p>10 MR. KLINE: Yeah, that's okay. Can we just make</p> <p>11 it an hour and 15 minutes? Because something I've got to do</p> <p>12 up here.</p> <p>13 MR. CHEN: Sure.</p> <p>14 MR. KLINE: Make it a 1:00 start?</p> <p>15 HEARING EXAMINER ROBESON HANAN: Yeah.</p> <p>16 MR. KLINE: Okay.</p> <p>17 HEARING EXAMINER ROBESON HANAN: 1:00 start.</p> <p>18 MR. KLINE: And are we in agreement where we go</p> <p>19 next?</p> <p>20 MR. CHEN: Yes.</p> <p>21 MR. KLINE: I guess is --</p> <p>22 MR. CHEN: Yes.</p> <p>23 HEARING EXAMINER ROBESON HANAN: We're going to</p> <p>24 Doctor --</p> <p>25 MR. KLINE: (inaudible).</p>
<p>82</p> <p>1 MR. COOK: That one --</p> <p>2 MR. KLINE: I see what you're saying. So it</p> <p>3 depends on how many people want to go through and how many</p> <p>4 people want to go right. But there will be occasions that</p> <p>5 there will be capacity in the second right-hand lane to make</p> <p>6 a left turn, and therefore reduce the ratio on the dedicated</p> <p>7 left turn to 1.0?</p> <p>8 MR. COOK: Exactly.</p> <p>9 MR. KLINE: Thank you. No further questions.</p> <p>10 HEARING EXAMINER ROBESON HANAN: Let's see. I</p> <p>11 guess I have to get -- Mr. Chen, do you have any questions</p> <p>12 based on that?</p> <p>13 MR. CHEN: Well, Mr. Kline --</p> <p>14 HEARING EXAMINER ROBESON HANAN: Are we all</p> <p>15 confused now?</p> <p>16 MR. CHEN: No. No. I just -- your information</p> <p>17 sir, and your conclusions are based on software; isn't that</p> <p>18 right?</p> <p>19 MR. COOK: That's correct.</p> <p>20 MR. CHEN: Okay. That's all I've got.</p> <p>21 HEARING EXAMINER ROBESON HANAN: All right. With</p> <p>22 that, Mr. Cook, you may be excused.</p> <p>23 MR. COOK: Thank you, very much.</p> <p>24 MR. KLINE: May I -- I believe the arrangement</p> <p>25 was that we wanted to give Dr. Kosary an opportunity to do</p>	<p>84</p> <p>1 HEARING EXAMINER ROBESON HANAN: Is it Kosary or</p> <p>2 Kosary?</p> <p>3 DR. KOSARY: I answer to of both. It's</p> <p>4 (inaudible). It's Kosary.</p> <p>5 HEARING EXAMINER ROBESON HANAN: Okay.</p> <p>6 MR. CHEN: It's like Bill with one L or two L's.</p> <p>7 DR. KOSARY: (inaudible) two L's. It's Kosary</p> <p>8 rhymes with rosemary. Yeah, Bill with one L (inaudible).</p> <p>9 (Crosstalk)</p> <p>10 HEARING EXAMINER ROBESON HANAN: Okay. We're</p> <p>11 going to take a break. And then Dr. Kosary is coming back.</p> <p>12 And then we're going to finish Mr. Davis. Is that where</p> <p>13 we're going?</p> <p>14 MR. CHEN: We're going to go Kosary, Cook, and</p> <p>15 Davis.</p> <p>16 HEARING EXAMINER ROBESON HANAN: Okay.</p> <p>17 MR. CHEN: Oh, excuse me. That's wrong.</p> <p>18 Because Mr. Kline has not had an opportunity to</p> <p>19 cross-examine Dr. Kosary, and that's next.</p> <p>20 HEARING EXAMINER ROBESON HANAN: Okay.</p> <p>21 MR. KLINE: If I might, I believe the Hearing</p> <p>22 Examiner's letter said that we would do for Dr. Kosary's</p> <p>23 cross-examination to try to dispose of Mr. Davis. And I</p> <p>24 assumed that was so he could go back to South Carolina.</p> <p>25 Because at the rate we're going if we do Dr. Kosary's cross-</p>

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22 (85 to 88)

<p>85</p> <p>1 examine, we may not get back to Mr. Davis. So my 2 suggestion, and I think it's consistent with the Hearing 3 Examiner's, one of her emails, is that we would do Mr. Davis 4 before we get to the cross-examination. And I'm comfortable 5 with that.</p> <p>6 MR. CHEN: That was not my understanding at all.</p> <p>7 MR. KLINE: Yeah.</p> <p>8 MR. CHEN: Mr. Davis had made a limited 9 appearance for traffic.</p> <p>10 HEARING EXAMINER ROBESON HANAN: Well, let's do 11 this then. It's up to you if you want Mr. Davis to have to 12 come back. We can do Dr. Kosary and clear her and get back 13 in some kind of order. So we can do that, okay?</p> <p>14 MR. KLINE: And while we are on break, maybe 15 everyone would like to take a look at the Hearing Examiner's 16 memorandum email of Wednesday the 21st, 9:44. We will 17 proceed with Mr. Cook's rebuttal testimony. And then Mr. 18 Davis will continue with his direct testimony on non-traffic 19 manners. And I'm comfortable deferring the cross- 20 examination of Dr. Kosary until we dispose of Mr. Davis.</p> <p>21 MR. CHEN: Well, that was just not my 22 understanding at all. I mean, that -- I don't --</p> <p>23 HEARING EXAMINER ROBESON HANAN: Okay, it doesn't 24 matter? I mean, we're going to get everything done. As I 25 guess I'm wondering why this would be an argument.</p>	<p>87</p> <p>1 HEARING EXAMINER ROBESON HANAN: What I'm going 2 to do is this. I did have the opportunity to double check. 3 And I did say that I guess I wasn't thinking that much about 4 it. I just made an assumption and that obviously was 5 incorrect, that Mr. Davis would testify. But I don't want 6 to penalize Mr. Kline, but I will say Mr. Kline, can we be 7 ready for -- I know you've got a lot of cases because some 8 of them are in front of me. But -- and Ms. Kosary -- or Mr. 9 Kline, do you have your camera on?</p> <p>10 MR. KLINE: Coming. Madam Hearing Examiner, let 11 me make it easier for you. Over lunch I said let's all work 12 to get this over with as efficiently as possible.</p> <p>13 HEARING EXAMINER ROBESON HANAN: Thank you.</p> <p>14 MR. KLINE: If Mr. Chen thinks things would roll 15 better if he did the way he did it as compared to what you 16 had written, let's just do it that way. And I thought I was 17 doing Mr. Davis a favor, but if that's not the case, let's 18 try -- or let me rephrase that. I will let you decide what 19 you think is the most efficient way of handling it.</p> <p>20 HEARING EXAMINER ROBESON HANAN: I would like -- 21 well, Mr. Chen, is Ms. Kosary ready to go?</p> <p>22 MR. CHEN: Yes.</p> <p>23 HEARING EXAMINER ROBESON HANAN: Is Mr. Davis 24 going to -- if for some reason we go over, is Mr. Davis 25 going to be available?</p>
<p>86</p> <p>1 MR. KLINE: Well, from my point of view, I didn't 2 mean to make it an argument. I just had done (inaudible).</p> <p>3 HEARING EXAMINER ROBESON HANAN: No, I didn't 4 mean to use a pejorative.</p> <p>5 MR. KLINE: No. No, and I didn't take it that 6 way. The point I wanted to make is, in my prepping for this 7 afternoon, I had prepared to basically listen to Mr. Davis's 8 testimony and cross-examine him. I didn't prepare for my 9 cross-examination of Dr. Kosary figuring it wasn't likely to 10 occur today.</p> <p>11 MR. CHEN: Well, I don't --</p> <p>12 MR. KLINE: And I thought we were doing you a 13 favor by letting Mr. Davis get this out of the way and go 14 home.</p> <p>15 MR. CHEN: No, he is here, here for the night.</p> <p>16 HEARING EXAMINER ROBESON HANAN: Let's do this. 17 I'm going to -- you know, I can't see -- I understand what 18 you are saying. Let's do this. Let's take a lunch break 19 and Mr. Kline, you can -- we will reconvene when we get back 20 from lunch.</p> <p>21 MR. KLINE: Okay.</p> <p>22 HEARING EXAMINER ROBESON HANAN: So we're going 23 to go off the record now and we will be back at 1:00. 24 (Off the record at 11:51 a.m., resuming at 1:04 25 p.m.)</p>	<p>88</p> <p>1 MR. CHEN: Yes.</p> <p>2 HEARING EXAMINER ROBESON HANAN: Okay. Let's go 3 with Dr. Kosary. You are still under oath.</p> <p>4 DR. KOSARY: It's my understanding that I'm here 5 to give my comments on what the Applicant had --</p> <p>6 MR. CHEN: Mr. Cook.</p> <p>7 DR. KOSARY: Mr. Cook, what Mr. Cook --</p> <p>8 HEARING EXAMINER ROBESON HANAN: And then cross- 9 examination.</p> <p>10 DR. KOSARY: And cross-examination.</p> <p>11 HEARING EXAMINER ROBESON HANAN: And then cross- 12 examination. I believe we still have cross-examination on 13 her main testimony still outstanding. Am I wrong in that?</p> <p>14 MR. CHEN: No, you're correct.</p> <p>15 HEARING EXAMINER ROBESON HANAN: Okay. So let's 16 go.</p> <p>17 DR. KOSARY: Okay.</p> <p>18 MR. KLINE: Oh, and maybe -- I knew that was 19 always coming. Maybe I was -- maybe I didn't make myself 20 clear Bill. So this is a fine process. I'm okay with this.</p> <p>21 MR. CHEN: I thought you wanted to waive your 22 cross-examination of Dr. Kosary.</p> <p>23 MR. KLINE: I might end up wanting that to 24 happen, but we will do it when the Hearing Examiner says is 25 timely to do it.</p>

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23 (89 to 92)

<p style="text-align: right;">89</p> <p>1 MR. CHEN: Okay.</p> <p>2 HEARING EXAMINER ROBESON HANAN: All right. Go</p> <p>3 ahead.</p> <p>4 DR. KOSARY: I'm just commenting on Mr. Cook's</p> <p>5 (inaudible).</p> <p>6 MR. KLINE: Understand. Sorry about the</p> <p>7 confusion.</p> <p>8 DR. KOSARY: Oh, no, that's fine. We're all</p> <p>9 confused. But before I begin Madam Examiner, I just want to</p> <p>10 do a quick clarification and correction regarding the speed</p> <p>11 bumps on Needwood. All speed bumps on Needwood are on --</p> <p>12 are east of the church at 7410 Needwood. There are no speed</p> <p>13 bumps on Needwood between the church and Redland. There are</p> <p>14 actually three speed bumps on Needwood and they are between</p> <p>15 Deer Lake Road and (inaudible) Drive.</p> <p>16 HEARING EXAMINER ROBESON HANAN: Okay.</p> <p>17 DR. KOSARY: Now just a few comments on the</p> <p>18 Applicant's recently submitted correction pages. So that</p> <p>19 was Exhibit 33. If I could actually also get this up -- get</p> <p>20 them up on the screen.</p> <p>21 COURT REPORTER: This is the reporter. I'm sorry</p> <p>22 to interrupt. We just have an (inaudible) I'm sorry. Dr.</p> <p>23 Kosary has testified previously. But we just have her spell</p> <p>24 her name quickly for the record?</p> <p>25 DR. KOSARY: Oh, sure. It's Carol; C-A-R-O-L,</p>	<p style="text-align: right;">91</p> <p>1 Underlying these equations are assumptions about the</p> <p>2 characteristics of this data (inaudible).</p> <p>3 Some of these assumptions and characteristics are</p> <p>4 mathematically complex. However, one of the most basic is</p> <p>5 that each vehicle in the queue remains in its lane. If you</p> <p>6 run out of length in the turn lane as has happened in this</p> <p>7 case, the equations are not designed to handle this. It</p> <p>8 violates the assumptions and data characteristics upon which</p> <p>9 these equations are built. This makes for a cascading</p> <p>10 series of impacts on the results, some of which are</p> <p>11 highlighted in red.</p> <p>12 I mean, note that there are values that are now</p> <p>13 highlighted red on both pages 1 and 3. The software is</p> <p>14 highlighting these results in red as a heads up to the</p> <p>15 endless that there is an issue. Basically, the left-hand</p> <p>16 turn lane has a finite capacity. When you reach it,</p> <p>17 vehicles move into the through lane increasing its queue</p> <p>18 lane. However, this is not accounted for in the questions.</p> <p>19 This in turn increases control delay.</p> <p>20 HEARING EXAMINER ROBESON HANAN: Wait. Say that</p> <p>21 again. I have to ask you to go slow because last time when</p> <p>22 I looked at my notes, they were kind of crawled all over the</p> <p>23 place. So I'm going to ask you to speak slowly for my pea</p> <p>24 brain so I make sure I understand this, okay.</p> <p>25 DR. KOSARY: (inaudible). Basically the left and</p>
<p style="text-align: right;">90</p> <p>1 Kosary; K-O-S-A-R-Y.</p> <p>2 COURT REPORTER: Thank you.</p> <p>3 DR. KOSARY: I just want to say that it should be</p> <p>4 noted that these are corrections to OZHA Exhibit 63,</p> <p>5 appendix B, pages 4, 5, 8, 9, and that pages 6 and 7</p> <p>6 actually remain uncorrected. As noted, these corrected</p> <p>7 pages do not make it easy to observe the congestion at</p> <p>8 westbound Needwood at the westbound Needwood approach.</p> <p>9 We're not having to do the mental shuffling of the incorrect</p> <p>10 columns. The results themselves haven't changed. Only the</p> <p>11 columns where they are presented have changed.</p> <p>12 Also, as you noted Madam Examiner, the queue</p> <p>13 storage ratio result back of -- which is actually the back</p> <p>14 of queue divided by the length of the left hand turn lane</p> <p>15 actually has also been updated and is now over 1. This now</p> <p>16 reflects the thing on page 1 which of got up on the screen</p> <p>17 that during the a.m. rush hour traffic -- during the a.m.</p> <p>18 rush hour traffic can in fact does back up beyond the</p> <p>19 capacity of the left in turn lane for westbound Needwood.</p> <p>20 The queue storage ratio also indicates that the</p> <p>21 analysis being used cannot accurately analyze the data.</p> <p>22 This is the purpose of the queue storage ratio. It's a</p> <p>23 heads up to the analyst. And I want to say basically at its</p> <p>24 most fundamental level, the analysis on these pages are just</p> <p>25 the results of data flowing through a series of equations.</p>	<p style="text-align: right;">92</p> <p>1 turn lane has a finite capacity.</p> <p>2 HEARING EXAMINER ROBESON HANAN: Right.</p> <p>3 DR. KOSARY: And when you reach it, vehicles move</p> <p>4 into the through lane.</p> <p>5 HEARING EXAMINER ROBESON HANAN: Which</p> <p>6 theoretically has an infinite capacity?</p> <p>7 DR. KOSARY: Right, but when you do that you are</p> <p>8 increasing the length of the queue in the through lane.</p> <p>9 HEARING EXAMINER ROBESON HANAN: Correct.</p> <p>10 DR. KOSARY: However, this is an accounted for in</p> <p>11 the equations.</p> <p>12 HEARING EXAMINER ROBESON HANAN: And why not?</p> <p>13 Just go down to basics for me.</p> <p>14 DR. KOSARY: Basically because these equations</p> <p>15 are built on the assumption that the vehicles stay in their</p> <p>16 lanes.</p> <p>17 HEARING EXAMINER ROBESON HANAN: I don't</p> <p>18 understand that. I'm sorry.</p> <p>19 DR. KOSARY: Oh, it's --</p> <p>20 HEARING EXAMINER ROBESON HANAN: What I see is</p> <p>21 that you're getting that there may be part of the backup is</p> <p>22 left bound traffic.</p> <p>23 DR. KOSARY: Right, it's just not part of the</p> <p>24 equation.</p> <p>25 HEARING EXAMINER ROBESON HANAN: What isn't?</p>

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24 (93 to 96)

<p>93</p> <p>1 DR. KOSARY: Moving one vehicle from one lane to 2 the other. 3 MR. CHEN: When you say question, what do you 4 mean? That's what you are not being clear on. 5 DR. KOSARY: Oh. 6 MR. CHEN: What isn't part of the equation? 7 DR. KOSARY: These are -- all of these results 8 are just coming out of a series of equations. 9 MR. CHEN: Where? 10 DR. KOSARY: Within the software. 11 HEARING EXAMINER ROBESON HANAN: Yes, but I don't 12 understand. When you say vehicles, what am I missing? What 13 is this missing? When you say vehicles stay in their lanes, 14 I don't get that. 15 DR. KOSARY: Oh, that -- 16 HEARING EXAMINER ROBESON HANAN: When they move 17 to the right turn -- I mean the left turn lane? 18 DR. KOSARY: The equation is assuming that when 19 you're in the left hand turn lane, you're going to stay in 20 the left hand turn lane. 21 HEARING EXAMINER ROBESON HANAN: And you don't 22 make a mistake and want to get back in the right hand turn 23 lane? 24 DR. KOSARY: Right. The equation can't account 25 for that. That you can't stay in the lane because you've</p>	<p>95</p> <p>1 that. It's not adding them to the next lane. 2 HEARING EXAMINER ROBESON HANAN: It's not adding 3 them to the queue that's the through lane? 4 DR. KOSARY: That's the through lane, correct. 5 HEARING EXAMINER ROBESON HANAN: But he says -- 6 what I heard Mr. Cook say, is that the through lane can back 7 up as far as it wants to. 8 DR. KOSARY: It can back up as far as it wants 9 to, but you're actually showing a result of how far it's 10 backing up. 11 HEARING EXAMINER ROBESON HANAN: Right. Are you 12 saying it's backing up more than -- 13 (Crosstalk) 14 DR. KOSARY: It's backing up more than the 473. 15 And the equation can't account for that. 16 HEARING EXAMINER ROBESON HANAN: And you are 17 saying the way the equation works it doesn't account for the 18 storage, the impact on the through right turn lane for cars 19 turning left because they can turn left from either lane? 20 DR. KOSARY: (inaudible) correct. 21 HEARING EXAMINER ROBESON HANAN: (inaudible). 22 DR. KOSARY: Yeah, I know. 23 HEARING EXAMINER ROBESON HANAN: Okay. I 24 understand that. Nowhere in this -- how do you know that 25 it's not accounting for that?</p>
<p>94</p> <p>1 run out of road, so you're going to move into the next lane, 2 thus making that queue actually longer than it actually is. 3 MR. CHEN: What's the basis for your statement 4 that cars and that left lane will move into the next lane 5 over? What do you say that? 6 DR. KOSARY: They've run out of space in the 7 lane. 8 HEARING EXAMINER ROBESON HANAN: Wait. Okay. I 9 don't know why I'm having such problems with this. And I'm 10 sorry to delay this hearing. But we are talking about the 11 westbound approach? 12 DR. KOSARY: Right. 13 HEARING EXAMINER ROBESON HANAN: On Needwood Road 14 to the intersection of -- so you've got -- is so you've got 15 a single lane that becomes -- 16 DR. KOSARY: Two lanes. 17 HEARING EXAMINER ROBESON HANAN: Two lanes, one 18 of which is left turn and one of which is through, left, and 19 right. Okay. What is it in the movement toward the 20 intersection, what isn't that equation accounting for? 21 DR. KOSARY: It isn't accounting for the cars 22 running out of room to go in the left in turn lane. 23 HEARING EXAMINER ROBESON HANAN: So when they 24 exceed -- when they go back to the taper -- 25 DR. KOSARY: Right. It's not accounting for</p>	<p>96</p> <p>1 DR. KOSARY: Because I know the equation -- 2 HEARING EXAMINER ROBESON HANAN: (inaudible) 3 zero. 4 DR. KOSARY: Yeah. 5 HEARING EXAMINER ROBESON HANAN: So it's not 6 accounting for what's behind the taper essentially is what 7 you're saying? 8 DR. KOSARY: Right, just that the 473 is actually 9 longer than the 473. 10 HEARING EXAMINER ROBESON HANAN: Now why do you 11 think the 473 is -- oh, he's just listing the 90 -- he's 12 just missing the 95th percentile in linear feet there? 13 DR. KOSARY: Right. 14 HEARING EXAMINER ROBESON HANAN: So when he 15 doesn't count that, he's not counting the overflow of people 16 waiting to turn left? 17 DR. KOSARY: Right, the overflow of the people 18 who couldn't make it into the left hand turn lane who now 19 have to go somewhere else. 20 HEARING EXAMINER ROBESON HANAN: Right. Okay. 21 DR. KOSARY: Okay. 22 HEARING EXAMINER ROBESON HANAN: That took a long 23 time, but I do appreciate it. 24 DR. KOSARY: No, and it's really complex. So I 25 appreciate that I was able to distill this. I mean, which</p>

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25 (97 to 100)

<p>97</p> <p>1 is always --</p> <p>2 HEARING EXAMINER ROBESON HANAN: Is there</p> <p>3 anything in here that shows the number of cars at the</p> <p>4 approach? I guess not. There really isn't. There is</p> <p>5 movements.</p> <p>6 DR. KOSARY: You've got -- you've got -- if you</p> <p>7 look at back of queue, not the feet, but back of queue,</p> <p>8 you're almost on it. It's VBH/LN. Yeah.</p> <p>9 (Crosstalk)</p> <p>10 DR. KOSARY: 17.3 vehicles in the left. 18. --</p> <p>11 your cursor is --</p> <p>12 HEARING EXAMINER ROBESON HANAN: But that's the</p> <p>13 95th percentile. That's not saying what's actually there.</p> <p>14 DR. KOSARY: Right. That's not saying what's</p> <p>15 actually there.</p> <p>16 HEARING EXAMINER ROBESON HANAN: Gotcha.</p> <p>17 DR. KOSARY: So remember, this is --</p> <p>18 HEARING EXAMINER ROBESON HANAN: That saying that</p> <p>19 18.6 vehicles would be the 95th percentile?</p> <p>20 DR. KOSARY: Correct.</p> <p>21 HEARING EXAMINER ROBESON HANAN: But it -- okay.</p> <p>22 I got you. I do understand.</p> <p>23 DR. KOSARY: Right.</p> <p>24 HEARING EXAMINER ROBESON HANAN: Okay.</p> <p>25 DR. KOSARY: And that control delay that</p>	<p>99</p> <p>1 DR. KOSARY: This is HCS. This is the other big</p> <p>2 package.</p> <p>3 HEARING EXAMINER ROBESON HANAN: Oh, I see it. I</p> <p>4 see it. You're right.</p> <p>5 DR. KOSARY: Yeah. And it's from a (inaudible).</p> <p>6 It's more -- it's a tool. It's a heads up for the analyst</p> <p>7 telling them that they should have been doing a -- actually</p> <p>8 looking at a simulation on this using the trans -- this</p> <p>9 other tool, the core sim.</p> <p>10 HEARING EXAMINER ROBESON HANAN: Okay.</p> <p>11 DR. KOSARY: You use -- you get issues with</p> <p>12 selective tools analysis all the time. And that's basically</p> <p>13 all I wanted to say. Mostly just the importance of finding</p> <p>14 out why those numbers are highlighted in red.</p> <p>15 HEARING EXAMINER ROBESON HANAN: Well, that could</p> <p>16 be him just highlighting. We didn't ask that.</p> <p>17 DR. KOSARY: No, the software did that.</p> <p>18 HEARING EXAMINER ROBESON HANAN: Oh, the software</p> <p>19 did that.</p> <p>20 DR. KOSARY: The software did that, yes.</p> <p>21 HEARING EXAMINER ROBESON HANAN: Because you're</p> <p>22 awfully close to the -- okay. So, okay. I have to ask one</p> <p>23 more time. I will get this. If it's 1.03 percent, that</p> <p>24 means that 95 percent of the time -- oh, I get it.</p> <p>25 DR. KOSARY: No, the only thing that the over 1</p>
<p>98</p> <p>1 highlighted in red. Level of service is highlighted in red.</p> <p>2 Approach delay is all highlighted in red. And intersection</p> <p>3 delay is highlighted in red. It's basically just a heads up</p> <p>4 to the analyst that though those -- those estimates are off.</p> <p>5 HEARING EXAMINER ROBESON HANAN: Well, let me ask</p> <p>6 you something. See this 1.03 here?</p> <p>7 DR. KOSARY: Right.</p> <p>8 HEARING EXAMINER ROBESON HANAN: If that means</p> <p>9 the storage is overflowing --</p> <p>10 (Crosstalk)</p> <p>11 HEARING EXAMINER ROBESON HANAN: -- modify the</p> <p>12 impact on the right lane because 3 percent of the time --</p> <p>13 DR. KOSARY: No, Mr., Mr. --</p> <p>14 MR. CHEN: Cook.</p> <p>15 HEARING EXAMINER ROBESON HANAN: Cook.</p> <p>16 DR. KOSARY: Cook I don't think assessed that</p> <p>17 correctly. It's basically a heads up. It should be a heads</p> <p>18 up to the analysts that they are not using the right</p> <p>19 software.</p> <p>20 HEARING EXAMINER ROBESON HANAN: Well, this is I</p> <p>21 think is this Synchro?</p> <p>22 DR. KOSARY: No, this is HCS. Synchro is</p> <p>23 trafficware. I think you're familiar with Synchro from -- I</p> <p>24 think the French School is using Synchro.</p> <p>25 HEARING EXAMINER ROBESON HANAN: Right.</p>	<p>100</p> <p>1 means is that it's a heads up to the person doing the data</p> <p>2 analysis that you should be seriously thinking about using a</p> <p>3 different piece of software.</p> <p>4 HEARING EXAMINER ROBESON HANAN: Okay. All</p> <p>5 right. Thank you. Now are we moving to the rest of your</p> <p>6 cross?</p> <p>7 Or that's all you wanted to say about the traffic</p> <p>8 study?</p> <p>9 DR. KOSARY: Right, that's all I wanted to say</p> <p>10 about the traffic study.</p> <p>11 MR. CHEN: And I believe at this point, Madame</p> <p>12 Examiner, Mr. Klein has the right to recall Mr. Cook to</p> <p>13 respond, to rebut what you just earned from Dr. Kosary.</p> <p>14 HEARING EXAMINER ROBESON HANAN: That's fine.</p> <p>15 MR. KLINE: Thank you Mr. Chen. I project that.</p> <p>16 I'm actually not sure Mr. Cook is still with us.</p> <p>17 So could I ask, are you out there Glenn?</p> <p>18 HEARING EXAMINER ROBESON HANAN: I don't see him</p> <p>19 in the meeting.</p> <p>20 MR. CHEN: Yeah, I don't see his initials.</p> <p>21 MR. KLINE: Right. I anticipated that was the</p> <p>22 case. Let me just ask a couple of simple preliminary</p> <p>23 questions and then maybe offer a stipulation that we might</p> <p>24 be able to agree to, because I sure as heck don't want to</p> <p>25 have to go find him and try and get him back.</p>

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26 (101 to 104)

<p>101</p> <p>1 So let me just ask a couple of questions. And by</p> <p>2 the way, am I easier here now than before?</p> <p>3 HEARING EXAMINER ROBESON HANAN: Yeah.</p> <p>4 MR. KLINE: Okay, great. I've no idea. I didn't</p> <p>5 do anything. I don't know what it is. Maybe it was the</p> <p>6 lunch that did it for me.</p> <p>7 MR. CHEN: We will hold it against you. Don't</p> <p>8 worry about it.</p> <p>9 MR. KLINE: Okay. Easy question, Dr. Kosary.</p> <p>10 The speed bumps and everything, I knew you would have an</p> <p>11 answer of how many there were. Where they put there at the</p> <p>12 instigation of the neighborhood in accordance to that</p> <p>13 executive regulation that was talked about earlier? Or did</p> <p>14 the County just do it voluntarily?</p> <p>15 DR. KOSARY: Actually I testified about this Mr.</p> <p>16 Klein.</p> <p>17 MR. KLINE: Thank you for refreshing my memory.</p> <p>18 DR. KOSARY: And no, they were put there because</p> <p>19 we had neighbors who complained about speeding on the road.</p> <p>20 During the times when it is not an (inaudible). It is</p> <p>21 straight. The road runs faster than it's done for. The</p> <p>22 County actually came out and did a speed study.</p> <p>23 MR. KLINE: Okay. Madam Hearing Examiner, can</p> <p>24 you help me out? Because I want to understand this here.</p> <p>25 Can you pull up Exhibit 106, which is the technical staff</p>	<p>103</p> <p>1 located between there and Muncaster Mill Road?</p> <p>2 DR. KOSARY: No, they're actually -- do you see</p> <p>3 where we are actually -- you've got Needwood Road spelled</p> <p>4 out?</p> <p>5 MR. KLINE: Yes.</p> <p>6 DR. KOSARY: You get to the area like where the</p> <p>7 Es are N-E-E. That road that cuts through the Es.</p> <p>8 MR. KLINE: So between Grand Vista and whatever</p> <p>9 is the road to the left?</p> <p>10 DR. KOSARY: That is Deer Lake. That is Deer</p> <p>11 Lake Road.</p> <p>12 MR. KLINE: Okay.</p> <p>13 DR. KOSARY: Next read that intersects to the</p> <p>14 east is Grand Vista.</p> <p>15 MR. KLINE: Oh, okay.</p> <p>16 DR. KOSARY: Next road that intersects is -- oh,</p> <p>17 that's (inaudible).</p> <p>18 MR. KLINE: Okay. So --</p> <p>19 DR. KOSARY: (inaudible) or whatever.</p> <p>20 MR. KLINE: (inaudible). We know where they're</p> <p>21 located now. And those were there. And I guess I can</p> <p>22 understand because of the straightness that's shown on the</p> <p>23 drawing. They were just speeding because there is not as</p> <p>24 much side friction I guess in those locations?</p> <p>25 MR. CHEN: Side friction?</p>
<p>102</p> <p>1 report?</p> <p>2 (Exhibit 106 was introduced.)</p> <p>3 HEARING EXAMINER ROBESON HANAN: You should have</p> <p>4 it up.</p> <p>5 MR. KLINE: I have two attractive faces right</p> <p>6 now, and that's all.</p> <p>7 HEARING EXAMINER ROBESON HANAN: Oh.</p> <p>8 DR. KOSARY: Oh, you flatter us, Mr. Klein.</p> <p>9 MR. CHEN: He wasn't talking to me.</p> <p>10 (Crosstalk)</p> <p>11 DR. KOSARY: You were talking about Bill with one</p> <p>12 L.</p> <p>13 HEARING EXAMINER ROBESON HANAN: Okay. Now you</p> <p>14 should have it.</p> <p>15 MR. KLINE: Thank you. Page 4.</p> <p>16 HEARING EXAMINER ROBESON HANAN: Okay, this is</p> <p>17 page 4.</p> <p>18 MR. KLINE: Fine.</p> <p>19 HEARING EXAMINER ROBESON HANAN: (inaudible).</p> <p>20 MR. KLINE: And so the Hearing Examiner's cursor</p> <p>21 is going to be very helpful for me to ask the question. So</p> <p>22 if I understand what you are saying is, if you go to the</p> <p>23 right-hand side, we see Needwood Road running horizontally,</p> <p>24 simply across the -- this exhibit. And in the lighter</p> <p>25 yellow, that's where you are telling us the speed bumps are</p>	<p>104</p> <p>1 HEARING EXAMINER ROBESON HANAN: Side friction?</p> <p>2 MR. KLINE: Driveways.</p> <p>3 DR. KOSARY: Oh, no. There are numerous</p> <p>4 driveways but there is no on street parking anywhere on</p> <p>5 Needwood.</p> <p>6 MR. KLINE: Okay. What I'm leading up to is I</p> <p>7 would have thought this would have provided an opportunity</p> <p>8 to try to get some speed bumps between Deer Park, Deer</p> <p>9 Point, whatever it is, and Redland to try to control the</p> <p>10 traffic within that area. So why didn't that occur?</p> <p>11 DR. KOSARY: Because during rush hour, traffic is</p> <p>12 not very fast in that area. Nobody has complained. It's in</p> <p>13 that area just because people who lived on that section of</p> <p>14 the road were the one to complaint, Mr. Kline.</p> <p>15 MR. KLINE: Well, Dr. Kosary, you said no one has</p> <p>16 complained and yet there were a number of witnesses who</p> <p>17 talked about their concern about getting out of the</p> <p>18 driveways because of the speed of the traffic on Needwood</p> <p>19 Road.</p> <p>20 DR. KOSARY: No, they testified that they had</p> <p>21 trouble getting out of their driveways because of the</p> <p>22 congestion on the road, Mr. Kline.</p> <p>23 MR. KLINE: Well, there were people who testified</p> <p>24 about safety concerns and that's not a congestion issue,</p> <p>25 that's a speed issue.</p>

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27 (105 to 108)

<p>105</p> <p>1 DR. KOSARY: That is -- no, Mr. Kline. I would</p> <p>2 disagree with you. That is also a safety concern if you're</p> <p>3 talking about trying to make gaps that are probably not</p> <p>4 appropriate for making.</p> <p>5 MR. KLINE: The Hearing Examiner will be able to</p> <p>6 read the record. And I think she will decide which one of</p> <p>7 us are correct on that.</p> <p>8 DR. KOSARY: Okay.</p> <p>9 MR. KLINE: Here's what I'm concerned about in</p> <p>10 terms of the comment about the 1.3, because -- and if Mr.</p> <p>11 Chen will allow me, and absence of Mr. Cook, I would like to</p> <p>12 see if we could reach an agreement about what he said and</p> <p>13 what Dr. Kosary said. I understood that the 1.3 number</p> <p>14 meant that 3 percent of the time vehicles who wanted to make</p> <p>15 a left turn from the dedicated left turn lane would not be</p> <p>16 able to get into that lane because it was already full.</p> <p>17 And I asked a question of him, well then doesn't</p> <p>18 somebody look at the middle lane and just move into the</p> <p>19 middle lane because they know they can still make a left</p> <p>20 turn lane and then and therefore does not effectively</p> <p>21 increase the capacity of the left turn movements. I</p> <p>22 understand there is a mathematical issue that the Doctor's</p> <p>23 pointed out, but is -- can we all agree that it's only 3</p> <p>24 percent of the time that the left turn storage lane is</p> <p>25 filled up and people have to get in the through, right, left</p>	<p>107</p> <p>1 Kline. Honestly I don't. I just don't know. And I would</p> <p>2 defer to Dr. Kosary on that point. And just going back to</p> <p>3 something the Hearing Examiner said, I thought Mr. Cook was</p> <p>4 told that he would be able to respond to Dr. Kosary's</p> <p>5 testimony. I mean, that was before the luncheon break.</p> <p>6 (Crosstalk)</p> <p>7 HEARING EXAMINER ROBESON HANAN: This is what I</p> <p>8 want to know, because I want to get the this. If -- this is</p> <p>9 the conundrum I'm in logically, and I want to make sure I</p> <p>10 understand. I really do. I'm not trying to be difficult.</p> <p>11 I want to make sure I understand your answer. If the left-</p> <p>12 hand turn runs out of capacity more than 3 percent, only 3</p> <p>13 percent of the time, why doesn't that mean that the overflow</p> <p>14 of left-hand turners in the single -- in the through lane is</p> <p>15 increased? You follow what I'm saying?</p> <p>16 DR. KOSARY: I want to refer you back to OZHA</p> <p>17 Exhibit 227, document SSS, which I presented in testimony.</p> <p>18 Let me just very simple --</p> <p>19 HEARING EXAMINER ROBESON HANAN: Three S's?</p> <p>20 DR. KOSARY: Three S's.</p> <p>21 HEARING EXAMINER ROBESON HANAN: Here, let me do</p> <p>22 this. Okay.</p> <p>23 DR. KOSARY: Right, it's tips and frequently</p> <p>24 asked questions for this piece of software.</p> <p>25 HEARING EXAMINER ROBESON HANAN: Yeah.</p>
<p>106</p> <p>1 turn lane to go forward? Is that something we can all agree</p> <p>2 to?</p> <p>3 DR. KOSARY: No, Mr. Kline it will --</p> <p>4 (inaudible).</p> <p>5 MR. KLINE: I'm sorry. I'm really not asking you</p> <p>6 a question. I'm asking Mr. Chen and the Hearing Examiner.</p> <p>7 MR. CHEN: I --</p> <p>8 HEARING EXAMINER ROBESON HANAN: Well, I would</p> <p>9 like to hear -- I'm still struggling with that issue.</p> <p>10 That's the issue that I'm shuttling with. So I want to hear</p> <p>11 Dr. Kosary's response.</p> <p>12 MR. KLINE: Sure. And I agree that you should</p> <p>13 hear it. I'm just left without having the guy here I need</p> <p>14 in order to be able to respond to what she says.</p> <p>15 HEARING EXAMINER ROBESON HANAN: Well, you know,</p> <p>16 I don't know what to tell you. This is --</p> <p>17 MR. CHEN: We spoke --</p> <p>18 HEARING EXAMINER ROBESON HANAN: We discussed</p> <p>19 what was going to happen. We discussed that she was going</p> <p>20 back to address these. So I don't know what to tell you.</p> <p>21 MR. KLINE: All right. How about if I do it this</p> <p>22 way. Can we all agreed that what I just described is what</p> <p>23 Mr. Cook said was the importance of the 1.3 number and leave</p> <p>24 it at that?</p> <p>25 MR. CHEN: I don't mean to be difficult, Mr.</p>	<p>108</p> <p>1 DR. KOSARY: Third page, what is the queue</p> <p>2 storage ratio and why it's important.</p> <p>3 HEARING EXAMINER ROBESON HANAN: Okay.</p> <p>4 DR. KOSARY: If the queue storage ratio is equal</p> <p>5 or greater than one, blockage will occur. The highway</p> <p>6 capacity manual procedures do not account for this blockage</p> <p>7 in the computation of delay. Queue storage ratio is nothing</p> <p>8 more than I just said, just a heads up to the data analyst</p> <p>9 that they need to use a different piece of software.</p> <p>10 HEARING EXAMINER ROBESON HANAN: Okay. I don't</p> <p>11 think she agrees with -- so do you agree or not with Mr.</p> <p>12 Kline's proposition that it's going to increase the queue</p> <p>13 only 3 percent of the time? Do you agree with that or not?</p> <p>14 DR. KOSARY: I disagree.</p> <p>15 HEARING EXAMINER ROBESON HANAN: Okay.</p> <p>16 DR. KOSARY: It's only an indicator that you are</p> <p>17 in the correct ballpark in terms of whether your software</p> <p>18 can handle the data that you are giving it.</p> <p>19 HEARING EXAMINER ROBESON HANAN: All right. Mr.</p> <p>20 Kline?</p> <p>21 MR. KLINE: Yes, ma'am.</p> <p>22 HEARING EXAMINER ROBESON HANAN: I'm turning the</p> <p>23 floor back over to you.</p> <p>24 MR. KLINE: I have no further questions of Dr.</p> <p>25 Kosary on cross-examination of her responses to Mr. Cook's</p>

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28 (109 to 112)

109	1 testimony. 2 HEARING EXAMINER ROBESON HANAN: All right. Go 3 ahead. So do you want to proceed with cross-examination of 4 the rest of her testimony? 5 MR. KLINE: If that is the Hearing Examiner's 6 preference, other than after alternatively going to Mr. 7 Davis, sure, I will do that. 8 HEARING EXAMINER ROBESON HANAN: Okay, let's 9 proceed while we have Dr. Kosary. 10 MR. KLINE: Very good. Dr. Kosary, you testified 11 that your residence and the subject property are located in 12 the residential wedge of the Upper Rock Creek master 13 planning area? 14 DR. KOSARY: That is absolutely correct. 15 HEARING EXAMINER ROBESON HANAN: And you defined 16 your neighborhood as being a low density, large lot 17 neighborhood? 18 DR. KOSARY: Yes, I did. 19 MR. KLINE: Okay. Madam Hearing Examiner, could 20 I take you back to the staff report again? Same exhibit you 21 had a minute ago, exhibit number 4. 22 HEARING EXAMINER ROBESON HANAN: Are you seeing 23 it? 24 MR. KLINE: Yes, ma'am. I'm okay. 25 HEARING EXAMINER ROBESON HANAN: Okay.	111	1 DR. KOSARY: Between Redmond and Deer Lake. 2 Remember that that -- these properties were actually 3 subdivided back in 1946. They are large, most of them. 4 Though they are zoned now to R-200, they're basically all 5 over an acre. You know, Dr. English's home I think is 6 almost 2.4 acres or something like that. So although they 7 are R-200, these are (inaudible). 8 Would that technically qualify as residential 9 wedge? Yeah, but that's a matter of debate. But they are 10 big. You know, that's up to the master plan to decide. 11 What they -- as I said, they are basically big lots. They 12 are lots that were subdivided decades ago. Some of them are 13 still on septic (inaudible). 14 MR. KLINE: Madam Hearing Examiner, can I ask 15 you -- well, let me put it this way. When we did the 2004 16 master plan -- delete that question. 17 You don't disagree that all the zoning north of 18 Needwood Road east of Redmond Road is R-200 until you get 19 over to the far right-hand side of this general area north 20 of your property, agreed? 21 DR. KOSARY: That's agreed. 22 MR. KLINE: Okay. Madam Hearing Examiner, could 23 you pull up exhibit number XXXX? Four X's? 24 HEARING EXAMINER ROBESON HANAN: 227-XXXX? 25 MR. KLINE: Yes, ma'am. Thank you.
110	1 MR. KLINE: So Dr. Kosary, the subject property 2 is outlined in red and what I will call the lower left-hand 3 corner. 4 DR. KOSARY: Yes. 5 MR. KLINE: Correct. 6 HEARING EXAMINER ROBESON HANAN: We are on page 4 7 of the staff report. 8 DR. KOSARY: Yes. 9 MR. KLINE: And the zoning surrounding the 10 property on its east, south, and West is RE-1 as shown on 11 the drawing, correct? 12 DR. KOSARY: That is absolutely correct. 13 HEARING EXAMINER ROBESON HANAN: Okay. So north 14 of Needwood Road this only looks pretty much exclusively at 15 least within the mid-yellow color R-200. Would you call 16 that a low density, large lot density classification? 17 DR. KOSARY: Interesting question. I would for 18 parts of it, specifically the area between Needwood and Dear 19 Lake. Remember that this -- these are all lots that were 20 basically subdivided with Deerwood Heights. 21 HEARING EXAMINER ROBESON HANAN: Now, before 22 you -- just one second. Deerwood Lake, is that the first 23 intersection east of the subject property with Needwood? 24 DR. KOSARY: Correct. 25 HEARING EXAMINER ROBESON HANAN: Okay.	112	1 HEARING EXAMINER ROBESON HANAN: I'm sorry, Four 2 X's? 3 MR. KLINE: Yes, ma'am. 4 HEARING EXAMINER ROBESON HANAN: That's five. 5 That's five X's. Okay. Are you seeing it? 6 (Exhibit 227-XXXX was introduced.) 7 MR. KLINE: Yes, ma'am. And Ms. English's 8 property is what, 7505? 9 DR. KOSARY: No, she 7419. 10 MR. KLINE: 7419, I see. Okay. And that clearly 11 is a large lot, I would agree. But it's immediately to the 12 north or lots that probably are developed in accordance to 13 the underlying R-200 zoning, correct? 14 DR. KOSARY: That's correct. 15 MR. KLINE: Okay. All right. You made the 16 comment about that as well, I guess that's it. Do you feel 17 you are in the residential wedge? 18 DR. KOSARY: Mr. Kline, I know that I'm in the 19 residential wedge. 20 MR. KLINE: And you say that because why? 21 DR. KOSARY: Because that's what the general 22 plan -- that's how the general plan to find the residential 23 wedge. The general plan (inaudible) 1 and 2 acre parcels in 24 the residential wedge. 25 MR. KLINE: And how does the 2004 master plan

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<p>113</p> <p>1 characterize your property?</p> <p>2 DR. KOSARY: You're talking about the Upper Rock</p> <p>3 Creek?</p> <p>4 MR. KLINE: Yes, ma'am.</p> <p>5 DR. KOSARY: As I believe everybody noted</p> <p>6 (inaudible) the master plan is actually silent on this.</p> <p>7 Though it does -- I take that back. The master plan does</p> <p>8 talk about that. I believe is on page 35 of the master</p> <p>9 plan. It talks about how much of the Upper Rock Creek</p> <p>10 master plan area actually is in the residential wedge as</p> <p>11 defined by the general (inaudible) of 1993. And I stated</p> <p>12 that that plan does place all 1 and 2 acre properties within</p> <p>13 the County within the residential wedge.</p> <p>14 MR. KLINE: Dr. Kosary, apparently this is going</p> <p>15 to be easier than I thought it was going to be because</p> <p>16 apparently you do have access to the master plan. So can I</p> <p>17 draw your attention to the chapter in the Upper Rock Creek</p> <p>18 area master plan of July 20, 2004, entitled residential</p> <p>19 wedge areas? And that would be page 14.</p> <p>20 HEARING EXAMINER ROBESON HANAN: This is the</p> <p>21 Upper Rock Creek plan?</p> <p>22 MR. KLINE: Yes, ma'am.</p> <p>23 DR. KOSARY: Actually, I don't have the Upper</p> <p>24 Rock Creek plan in front of me.</p> <p>25 MR. KLINE: Okay, fine. No, I'm sorry. I</p>	<p>115</p> <p>1 HEARING EXAMINER ROBESON HANAN: Okay. Now, let</p> <p>2 me see if we can at least get this up.</p> <p>3 Are you seeing the properties?</p> <p>4 MR. KLINE: Wonderful. Very good. If you can go</p> <p>5 to page 14 that's perfect.</p> <p>6 DR. KOSARY: And Mr. Davis also gave me a copy of</p> <p>7 the master plan.</p> <p>8 HEARING EXAMINER ROBESON HANAN: Okay.</p> <p>9 MR. KLINE: Very good.</p> <p>10 HEARING EXAMINER ROBESON HANAN: Oh.</p> <p>11 MR. KLINE: Perfect. So Dr. Kosary, so you have</p> <p>12 in your hands and you can see on the screen --</p> <p>13 HEARING EXAMINER ROBESON HANAN: Can I just --</p> <p>14 before you start crossing. Does anyone -- I pulled this up</p> <p>15 from the web under the planning department's official</p> <p>16 website. Does anyone have a problem taking judicial --</p> <p>17 official notice of this? That this is the Upper Rock Creek</p> <p>18 Master Plan?</p> <p>19 (Exhibit 243 introduced.)</p> <p>20 MR. KLINE: That was my hope. And what you've</p> <p>21 been able to do is make it a lot easier and a lot clearer</p> <p>22 for the questions I wanted to ask.</p> <p>23 HEARING EXAMINER ROBESON HANAN: Mr. Chen?</p> <p>24 MR. CHEN: If you say, Madam Examiner that that</p> <p>25 is what this document is that's good enough for me.</p>
<p>114</p> <p>1 thought that's what you were looking at. So on page 14 of</p> <p>2 the Upper Rock Creek plan, we have a section titled</p> <p>3 residential wedge areas. Do you know if that property has</p> <p>4 any reference to any property south of Needwood Road in it;</p> <p>5 in that section of the plan? If you know.</p> <p>6 DR. KOSARY: I don't know. Ask Mr. (inaudible).</p> <p>7 MR. KLINE: So the plan does describe land use</p> <p>8 recommendations for certain properties in the residential</p> <p>9 wedge areas. On page 15, it talks about the Dunnegan</p> <p>10 property, 16 the Casey property.</p> <p>11 HEARING EXAMINER ROBESON HANAN: Well, wait a</p> <p>12 minute. Let me see as oh shoot. I just pulled up the wrong</p> <p>13 thing.</p> <p>14 We don't have -- do we have where you're reading</p> <p>15 from in the record, Mr. Kline?</p> <p>16 MR. KLINE: I don't -- no, the answer is no. I'm</p> <p>17 sure that the staff didn't include those sections in their</p> <p>18 attachments to the staff report. And I can really just do</p> <p>19 this more geographically rather than -- there are</p> <p>20 properties --</p> <p>21 HEARING EXAMINER ROBESON HANAN: Well, I'd like</p> <p>22 for -- if. Hold on.</p> <p>23 MR. KLINE: Sure.</p> <p>24 HEARING EXAMINER ROBESON HANAN: One second.</p> <p>25 MR. KLINE: Okay.</p>	<p>116</p> <p>1 HEARING EXAMINER ROBESON HANAN: Okay.</p> <p>2 THE COURT REPORTER: Sorry, this is the court</p> <p>3 reporter. I just wanted to know, is this an exhibit, does</p> <p>4 it have a number?</p> <p>5 HEARING EXAMINER ROBESON HANAN: Yes, we'll have</p> <p>6 to add it. It's 234.</p> <p>7 THE COURT REPORTER: Thank you.</p> <p>8 HEARING EXAMINER ROBESON HANAN: And I will</p> <p>9 download what I'm looking at. Right now, I will download it</p> <p>10 and add it to the exhibit list.</p> <p>11 THE COURT REPORTER: Perfect, thanks.</p> <p>12 HEARING EXAMINER ROBESON HANAN: Okay. Go ahead,</p> <p>13 Mr. Kline.</p> <p>14 MR. KLINE: So now that we have the paper</p> <p>15 documents in front of us, Dr. Kosary, I'll repeat.</p> <p>16 Do you know if within the residential wedge areas</p> <p>17 there is any reference to your immediate neighborhood south</p> <p>18 of Needwood Road? If you know.</p> <p>19 DR. KOSARY: No. I mean, I will point out that</p> <p>20 as everybody realizes one of the major things that a master</p> <p>21 plan will do --</p> <p>22 MR. KLINE: Dr. Kosary, you can -- just a yes or</p> <p>23 no is fine.</p> <p>24 DR. KOSARY: What?</p> <p>25 HEARING EXAMINER ROBESON HANAN: You can answer</p>

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<p>117</p> <p>1 just yes or no.</p> <p>2 DR. KOSARY: To my property specifically?</p> <p>3 MR. KLINE: Yes, if you know.</p> <p>4 DR. KOSARY: Does it mention my property</p> <p>5 specifically, no, it does not.</p> <p>6 MR. KLINE: Okay. Thank you. On page 14 it does</p> <p>7 describe properties in the residential wedge areas that were</p> <p>8 worthy of reference in the master plan. Page 15, which the</p> <p>9 Hearing Examiner had up on the screen a minute ago is the</p> <p>10 Dunnigan property. Page 16 is the Casey property. Page 21</p> <p>11 is the Freeman property, and page 24 is in the Henry and</p> <p>12 Fraley properties. Are you familiar with those properties?</p> <p>13 DR. KOSARY: I am. And as I was trying to get to</p> <p>14 before --</p> <p>15 MR. KLINE: Are you familiar with those</p> <p>16 properties, and the answer is yes, correct?</p> <p>17 DR. KOSARY: Yes. Yes.</p> <p>18 MR. KLINE: Okay. Okay. Am I not correct that</p> <p>19 all of those properties are north of Muncaster Mill Road?</p> <p>20 DR. KOSARY: That is correct.</p> <p>21 MR. KLINE: And why do you feel the residential</p> <p>22 wedge then extends as far south as your property with zoning</p> <p>23 of R-200 which is not a low density, large lot zoning?</p> <p>24 DR. KOSARY: Because my property is not R-200; my</p> <p>25 property is RA-1.</p>	<p>119</p> <p>1 question. Let me try and make things easier.</p> <p>2 Can I ask of the Hearing Examiner -- well, if</p> <p>3 were all in agreement of where the plan -- let me rephrase</p> <p>4 that.</p> <p>5 There are properties addressed in the residential</p> <p>6 wedge area that are listed in the plan and we all agreed</p> <p>7 they are north of Muncaster Mill Road, correct? Dr.</p> <p>8 Kosary?</p> <p>9 DR. KOSARY: There are actually RA-1 zoned</p> <p>10 properties both north and south of Muncaster Mill Road.</p> <p>11 Actually --</p> <p>12 MR. KLINE: Okay. Well, I'm going to go there</p> <p>13 but that's not the question I asked. So all the properties</p> <p>14 that are addressed in the plan are in -- north of Muncaster</p> <p>15 Mill Road, correct?</p> <p>16 DR. KOSARY: That's correct. That is because</p> <p>17 those are still -- those were properties that were</p> <p>18 undeveloped at the time of the plan.</p> <p>19 MR. KLINE: Fine.</p> <p>20 So could I ask the Hearing Examiner to pull up,</p> <p>21 again, the staff report, Exhibit 106?</p> <p>22 HEARING EXAMINER ROBESON HANAN: You should be</p> <p>23 seeing it.</p> <p>24 MR. KLINE: And could you draw -- or could you</p> <p>25 please bring up the figure 6 on page 7, please? Actually,</p>
<p>118</p> <p>1 MR. KLINE: Okay.</p> <p>2 DR. KOSARY: And as the 1990 general plan</p> <p>3 requirement stated all other 2 acre residential (inaudible).</p> <p>4 MR. KLINE: Okay. But isn't -- since obviously,</p> <p>5 you've got some master planning and background, isn't a 2004</p> <p>6 area master plan --</p> <p>7 MR. CHEN: Mr. Kline --</p> <p>8 MR. KLINE: -- more relevant than a general plan</p> <p>9 recommendation? Because isn't the 2004 plan the refinement</p> <p>10 of the principals of the general plan?</p> <p>11 MR. CHEN: Excuse me --</p> <p>12 DR. KOSARY: I think --</p> <p>13 HEARING EXAMINER ROBESON HANAN: Wait, just a</p> <p>14 second. Don't answer yet.</p> <p>15 Mr. Chen, did you have an objection?</p> <p>16 MR. CHEN: Yes. He jumped in. Mr. Kline and</p> <p>17 jumped in before she finished her answer. That's where I</p> <p>18 jumped in.</p> <p>19 MR. KLINE: Yeah well, because her answers don't</p> <p>20 always -- what I asked her about.</p> <p>21 MR. CHEN: Well, you asked her why wasn't her</p> <p>22 property included and she started to give you an answer and</p> <p>23 then you interrupted and jumped in.</p> <p>24 HEARING EXAMINER ROBESON HANAN: Well --</p> <p>25 MR. KLINE: Well, okay. Maybe back at an earlier</p>	<p>120</p> <p>1 figure 5. Yeah. Thank you.</p> <p>2 So Dr. Kosary, south of Muncaster Mill Road we</p> <p>3 have what I'll call enclaves, two enclaves of RE-1 zoning.</p> <p>4 The exhibit that has been put up here shows a slight -- and</p> <p>5 I'm not -- I guess. Oh yeah, I'm sorry. That is from the</p> <p>6 staff report. So there is an enclaves south of Needwood</p> <p>7 Road, and then another one north of the, would you call it</p> <p>8 the Derwood Heights subdivision, north of you? Is that</p> <p>9 right?</p> <p>10 DR. KOSARY: Where are you at, Mr. Kline?</p> <p>11 MR. KLINE: Well, what I'm doing is I'm trying to</p> <p>12 get an understanding of the zoning pattern as shown on this</p> <p>13 Exhibit 5. And the cursor appears to be on an enclave of</p> <p>14 our E-1 zoning South -- adjacent to land zone PE-2. With R-</p> <p>15 200 north of it, and then RE-1 and R-200 further north of</p> <p>16 it.</p> <p>17 DR. KOSARY: Right. That -- you're looking at</p> <p>18 the Derwood Heights.</p> <p>19 MR. KLINE: Yeah. Okay. Thank you. Thanks for</p> <p>20 explaining that. And my point is, or the point I'm trying</p> <p>21 to get to is no these appear to be enclaves of E-1 that</p> <p>22 preexisted and are distinguishable from the residential</p> <p>23 wedge area that is north of Muncaster Mill Road shown in the</p> <p>24 much more dominant RE-1 and larger lots north of Muncaster</p> <p>25 Mill Road?</p>

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121	1 MR. CHEN: I'm going to object to this line of 2 questioning because I appreciate it, and I think it's more 3 directed to a professional land planner. 4 HEARING EXAMINER ROBESON HANAN: I agree, Mr. 5 Kline. I think if you want to ask Mr. Davis about those. 6 But she is not the expert in this. 7 MR. KLINE: Okay. All right. Well, I -- she 8 hasn't had -- 9 HEARING EXAMINER ROBESON HANAN: I mean -- 10 MR. KLINE: -- she hasn't had a problem 11 describing where she's located and in terms of using master 12 plan references and I thought it was appropriate for me to 13 be able to question whether those references were well- 14 founded. And I'll do -- 15 HEARING EXAMINER ROBESON HANAN: But -- 16 MR. KLINE: -- it one last time and then I'll 17 shut up; if that's okay. 18 Can I ask you to pull up page 63 of the master 19 plan? 20 MR. CHEN: Just for clarification, I think the 21 problem, Mr. Kline, was you were going to certain areas of 22 types of land areas that have a technical understanding 23 within the context of both the master plans and also land 24 planning. And I appreciate that and (inaudible 02:59:44) 25 certainly should be able to handle that. I believe,	123	1 HEARING EXAMINER ROBESON HANAN: -- examining her 2 on it. 3 MR. KLINE: Fine. I understand. As I say, I 4 will try and round off my questions with just factual 5 questions. 6 Could you give us the master plan, page 63? 7 And I believe you have it now, Dr. Kosary in your 8 hands? 9 DR. KOSARY: Yes. 10 MR. KLINE: Okay. 11 HEARING EXAMINER ROBESON HANAN: You should be 12 seeing it. 13 Are you seeing it? 14 DR. KOSARY: No. 15 HEARING EXAMINER ROBESON HANAN: Now, are you 16 seeing it? 17 MR. KLINE: Not quite yet. 18 HEARING EXAMINER ROBESON HANAN: Hold on. Now, 19 I'm going to have to get to page -- 20 MR. KLINE: 63. 21 HEARING EXAMINER ROBESON HANAN: Okay. Okay. It 22 says Transportation Plan. 23 MR. KLINE: Could you scroll down to the bottom 24 other page, please? 25 HEARING EXAMINER ROBESON HANAN: Traffic
122	1 however, that Dr. Kosary's testimony has always been from 2 the perspective of a layman trying to understand what their 3 property is and how it fits into a master plan from that 4 point of view. 5 MR. KLINE: I -- 6 MR. CHEN: I don't think she's ever tried to 7 present herself as someone with any special knowledge about 8 master plan or terminologies. 9 MR. KLINE: Well, consistent with our -- my 10 agreement with all the rest of us, let's try and move this 11 along. I will try and make my questions much more factual 12 rather than analyses. 13 HEARING EXAMINER ROBESON HANAN: No, it's just 14 your putting in things like when everything was subdivided 15 and I just -- you know, I just don't think that -- 16 MR. KLINE: I -- Madam hearing examiner I would 17 have said that if she hadn't given us the history of the 18 subdivision to try and distinguish some of the lots that are 19 the land has been zoned R-200 -- I'm sorry, developed R-200 20 and why they didn't change the zoning on the land that 21 apparently had been zoned before it was R-200. 22 HEARING EXAMINER ROBESON HANAN: Well, I think 23 that's an issue you can get at in your rebuttal testimony 24 rather than -- 25 MR. KLINE: Okay. All right.	124	1 forecasting? 2 MR. KLINE: And I'm going to ask a question about 3 the bottom paragraph if you want to highlight that or 4 increase the font size. Thank you. 5 Dr. Kosary, could you read the first sentence of 6 the last paragraph on page 63? 7 DR. KOSARY: You mean the focus of the land-use 8 recommendations? 9 MR. KLINE: That's correct. 10 HEARING EXAMINER ROBESON HANAN: "In this plan is 11 on the larger portion of land area in the rural policy 12 area." 13 MR. KLINE: Do you know what is the rural policy 14 area boundaries in the Upper Rock Creek Plan? 15 DR. KOSARY: Not off the top of my head, no. 16 MR. KLINE: Okay. Then I will pursue it anymore 17 then. 18 I went off-line there just so you didn't have to 19 hear me shuffling paper, but Madam hearing examiner, this is 20 the last time I think I'm going to have to do this for a 21 while. Could you take us back to the staff report, Exhibit 22 106? 23 HEARING EXAMINER ROBESON HANAN: You should be -- 24 this should be it. 25 DR. KOSARY: Yes, it is.

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<p>125</p> <p>1 MR. KLINE: Yes. And page 3, please, an exhibit 2 we've used before. 3 HEARING EXAMINER ROBESON HANAN: Am I on the 4 right one, figure 2? 5 MR. KLINE: Yes, ma'am. 6 Dr. Kosary, do you understand the significance of 7 the zoning -- in the context of this application? 8 DR. KOSARY: Meaning what? 9 MR. KLINE: Well, just that. Do you understand 10 when the staff report and the Applicant defined an area as 11 called the surrounding area; do you understand what that 12 means? 13 DR. KOSARY: It's the area which the staff is 14 using to do their analysis on impact. 15 MR. KLINE: That's a very simple characterization 16 and that's -- I think that's a very good way to describe it. 17 When one looks at this area that supposedly the most 18 influenced by the proposed application, would you call that 19 area a low density, large lot area? 20 DR. KOSARY: Well, you're getting into whether I 21 actually agree with staff's representation. 22 MR. KLINE: Of the area itself? 23 DR. KOSARY: Of the area that's impacted. 24 MR. KLINE: Okay. Well, I'm asking you to assume 25 that the staff has defined something. All I am asking you</p>	<p>127</p> <p>1 number of R-200 houses located within that area? 2 DR. KOSARY: Correct. 3 MR. KLINE: Okay. I'm trying to -- thank you. 4 I'll get back to that. 5 Doctor, how about just a couple of wrap-up 6 questions? 7 HEARING EXAMINER ROBESON HANAN: I know where 8 you're going, Mr. Kline. I just think it's better for your 9 expert on rebuttal if he wishes to point this out. 10 MR. KLINE: Sure. I understand. 11 Doctor, let me do just a kind of couple of 12 housecleaning things. 13 You mentioned in your testimony that you had read 14 the Brandywine decision, but I didn't understand what the 15 importance of it was to you and to the case itself. Can you 16 elaborate on that, please? 17 DR. KOSARY: It was one of Mr. Chen's cases, in 18 fact. Just that when Brandywine was decided -- Brandywine 19 was only asked to decide whether actually an application 20 could be amended during hearing, which the decision was that 21 yes. And I noted that you made a lot of suggestions for 22 other petitions and things like that. 23 And I basically wanted to point out how many of 24 them may or may not have been appropriate to the conditions 25 that you are proposing.</p>
<p>126</p> <p>1 to do is within the area outlined in red, do you feel that 2 that is -- can be characterized high -- I'm sorry, low 3 density, large lot area? 4 DR. KOSARY: That crosses two master plans, Mr. 5 Kline. 6 MR. KLINE: I understand. But that's not the 7 question I asked. 8 DR. KOSARY: It crosses two master plans, Mr. 9 Kline. 10 HEARING EXAMINER ROBESON HANAN: No, Dr. Kosary, 11 if you don't know say you don't know. But you have to -- 12 MR. CHEN: Answer the question. 13 DR. KOSARY: Oh. 14 HEARING EXAMINER ROBESON HANAN: I think what 15 he's saying just looking at this picture. Okay? 16 MR. KLINE: Doctor, I didn't mean to be curt in 17 my answer I -- 18 DR. KOSARY: (inaudible 03:06:26) Mr. Kline, half 19 of it is low density, half of it is not. 20 MR. KLINE: And the half that you consider to be 21 low density is of that on the right hand side of Redland 22 Road, I guess? 23 DR. KOSARY: That is what would be in the Upper 24 Rock Creek. 25 MR. KLINE: Even though there are substantial</p>	<p>128</p> <p>1 MR. KLINE: So -- well, I'm not sure I understand 2 why the Brandywine decision gives us any guidance as to how 3 to handle anything that the Applicant has offered to do to 4 amend its application. 5 DR. KOSARY: No, it's just that the Brandywine 6 decision actually says that they can. 7 MR. KLINE: Okay. Fine. Thank you. Great. 8 You gave us some interesting photographs. I 9 learned more about trench boxes than I ever thought I was 10 going to learn about. And I understand why they are there, 11 but what I wanted to ask you is; are you aware of any 12 environmental impacts, adverse environmental impacts that 13 occurred as a result of the pictures you showed us, that I 14 wrote down as, I guess, EEE, FFF, and GGG with various 15 pictures, the equipment and the 15 foot hole trench? I 16 mean, did that actually cause a problem that we are aware 17 of? 18 Do you need me to rephrase that? 19 DR. KOSARY: Yeah. I'm trying to figure out what 20 the relevance of it is. 21 HEARING EXAMINER ROBESON HANAN: That's not up to 22 you. That's up to Mr. Chen. 23 DR. KOSARY: Oh, that's up to Mr. Chen. 24 HEARING EXAMINER ROBESON HANAN: Just try and 25 answer.</p>

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33 (129 to 132)

<p style="text-align: right;">129</p> <p>1 DR. KOSARY: Okay. They took down a lot of 2 trees, changed the slope on a couple of slopes. I will 3 point out that it was within the Shady Grove sector plan 4 where this was done. But yes, they made a bit of a mess. 5 And it was -- you know, it was a big excavation. 6 MR. KLINE: Well, I -- I mean I -- well, let me 7 ask it this way. 8 The pictures you showed us, is there something 9 intrinsically, environmentally damaging that occurs when 10 that happens; or is that just a byproduct of a mistake that 11 might happen? 12 MR. CHEN: If you know. 13 DR. KOSARY: I don't know. 14 MR. KLINE: Okay. 15 DR. KOSARY: I would have to speculate. 16 MR. KLINE: Okay. So based on the construction 17 you showed us pictures of, are you aware of there being any 18 environmental problems that flowed from that construction? 19 DR. KOSARY: I have no idea. 20 MR. KLINE: Okay. Thank you. You also used the 21 examples of where we had conflicts between various utility 22 lines and talked about the construction that might have to 23 occur down in front of 7401 Deerpark Court with the 24 construction of the storm drain. Were you trying to tell us 25 that, again, that that intrinsically causes an environmental</p>	<p style="text-align: right;">131</p> <p>1 observation, all the time. 2 MR. KLINE: Would you not agree that the County 3 when the issue permits they expect that there are conditions 4 associated with the implementation of those permits that 5 should prohibit any adverse effects from occurring? 6 DR. KOSARY: No, I would disagree with that. 7 MR. KLINE: And I'm not surprised, but maybe you 8 could explain why. 9 DR. KOSARY: Well, like I said, we -- you know, 10 we lost a tree. Had damage to other trees. Have had issues 11 with a change in the flow of drainage on our lot. I could 12 enumerate these for a long time, Mr. Kline. 13 They actually changed the level of the -- the 14 height of the driveway; brought in dirt when they should 15 have been taking out dirt. 16 MR. KLINE: But would you not agree with me that 17 that's a specific user rather than a type of construction 18 inherently causing an adverse effect? 19 MR. CHEN: Objection. I think the testimony's 20 offered in the context of the personal experience that has 21 happened in this area -- 22 MR. KLINE: Yeah. 23 MR. CHEN: -- of development. Your question, but 24 I think the way you worded it, is what's -- it goes to 25 whether the impact of County approvals have these types of</p>
<p style="text-align: right;">130</p> <p>1 problem, or were you just thinking of the potential 2 inconvenience to the residents when somebody is digging 3 holes in the street in front of their houses? 4 DR. KOSARY: I believe, as I expressed it, it's 5 more of a safety issue than anything. 6 MR. KLINE: Okay. Do you believe that the -- 7 it -- are we -- do we have any knowledge of any construction 8 that's occurred that you're aware of was not done in 9 accordance with County regulations? 10 MR. CHEN: No. 11 DR. KOSARY: Any related to Primrose or related 12 to anything in my neighborhood? 13 MR. KLINE: Well, yeah. In the neighborhood. 14 You're -- I presume you're giving examples of where things 15 might happen to implement an approval of Primrose and bad 16 things could happen and I was asking if you had examples of 17 what those bad things might be. 18 DR. KOSARY: No, I think Paul said it best in his 19 testimony. 20 MR. KLINE: I'm -- 21 DR. KOSARY: With the issues in terms of the 22 church paving over easements with no correction to that. I 23 mean we've had issues with changing grades that had a pretty 24 significant impact for a while in terms of drainage from our 25 lot to their lot. Issues with construction happened, to my</p>	<p style="text-align: right;">132</p> <p>1 adverse effects; I thought that's where you were going, 2 which quite candidly, is not a fair question. 3 MR. KLINE: Sure. I -- and if it came out that 4 way that's not what I meant to say. I was trying to say 5 would you not expect that permits that are issued have 6 regulations applying to the work to be done and conditions 7 of the permit that should prohibit the kind of things that 8 you've had a bad experience with? 9 DR. KOSARY: The bad -- Mr. Kline, the bad 10 experiences that we've had were under those conditions that 11 you just outlined. So no, I would say that in the 12 hypothetical yes, they should be helping to prevent issues 13 on neighboring properties. But no, from what we've 14 experienced another story. 15 MR. KLINE: That's a fair answer because I was 16 asking the question hypothetically. Thank you. 17 If I recall correctly, you gave us a bit of a 18 history of the CIP item dealing with the Redland Road 19 extension, and the improvements to the intersection in 20 Needwood? 21 DR. KOSARY: Yes. 22 MR. KLINE: And I'm -- is it incorrect for me to 23 say that your contention is that those intersection permits 24 were inadequate to correct the problems that were there? Or 25 has time and increase in traffic caused problems out there,</p>

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<p>133</p> <p>1 that were for some duration of time remedied by the 2 improvement?</p> <p>3 DR. KOSARY: The improvement brought down the 4 congestion at the Redland approaches into that intersection. 5 The improvement created the issues with the -- particularly 6 the left-hand turn lane. Both left-hand turns off of 7 Needwood onto southbound Redland. So Mr. Cook was talking 8 about right-hand turns from Redland onto eastbound Needwood. 9 But as I testified, and I believe several other community 10 members testified, it's actually the westbound traffic 11 turning left onto Redland that is more of an issue, 12 particularly when there are lots of cars (inaudible) through 13 the intersection.</p> <p>14 MR. KLINE: You used the phrase that compromises 15 were made. Does that refer to that jog, or something that's 16 out there that's causing a problem today?</p> <p>17 DR. KOSARY: Not just the compromises that they 18 made were just adding the lanes when there really wasn't 19 enough room within the intersection to do it. You have to 20 remember this is a this is an old intersection that was 21 probably designed back in the '60s, or back in the '70s when 22 there was not the traffic that's going through it now. It's 23 a narrow, doesn't have a lot of real estate around it, and 24 you're basically trying to put not just more lanes into this 25 intersection, but also the mixed use paths on both sides.</p>	<p>135</p> <p>1 vegetation and things like that. And that I was hearing it, 2 like I said, inside the house, windows closed.</p> <p>3 MR. KLINE: You were --</p> <p>4 DR. KOSARY: And it wasn't very many kids.</p> <p>5 MR. KLINE: You're pretty good with equipment. 6 You probably had the capability of taking noise readings? 7 Have you done that?</p> <p>8 DR. KOSARY: You're making the assumption that 9 I'm pretty good with equipment.</p> <p>10 HEARING EXAMINER ROBESON HANAN: Well, you do --</p> <p>11 DR. KOSARY: I would have to --</p> <p>12 HEARING EXAMINER ROBESON HANAN: Forget that part 13 of it. Did you take noise readings?</p> <p>14 DR. KOSARY: No. No.</p> <p>15 MR. KLINE: Have you ever considered it -- or 16 I'll rephrase that.</p> <p>17 Have you ever found it bothersome enough you 18 though you should talk to the County and ask them to come 19 out and do tests to see if they are in violation of the 20 County noise ordinance?</p> <p>21 DR. KOSARY: No.</p> <p>22 MR. KLINE: Okay. Last question.</p> <p>23 Madam Hearing Examiner, can you bring up the 24 staff report again, 106?</p> <p>25 HEARING EXAMINER ROBESON HANAN: Okay. It should</p>
<p>134</p> <p>1 They just ran out of real estate, Mr. Kline.</p> <p>2 And it's just an -- it's an awkward, awkward 3 turn. Both lanes, left hand, you know, left-hand turns from 4 west Needwood onto southbound Redland. You know, I drive it 5 many, many times during the week.</p> <p>6 MR. KLINE: Thank you. Last question, kind of 7 a -- more localized, I guess. And that is, what is the 8 objectionable quality of the noise that you're getting from 9 the church kids -- the kids at the church next door and that 10 your translating would be bothersome for you if Primrose 11 would be there?</p> <p>12 Just try and explain that in terms of what it is 13 that's the problem?</p> <p>14 DR. KOSARY: I mean, it was interesting that I 15 was -- started hearing, you know, kids just playing. And 16 that I was hearing that, you know, inside my home with my -- 17 you know, with my windows closed. You know, the air 18 conditioning running. And you know, you've got to start 19 thinking, what in the world is going on here. You know, 20 it's a church why are there -- why am I hearing kids? And 21 why am I hearing them from so far away? And you know where 22 is this noise coming from?</p> <p>23 And like I said, it was just -- it turned out to 24 be just a few kids. It just absolutely amazed me how sound 25 travels even -- you know, even through a fence; even through</p>	<p>136</p> <p>1 be -- oh. Now it should be up. Yes.</p> <p>2 MR. KLINE: Okay. Could you go to page 17?</p> <p>3 So figure 9 is titled the Landscape Plan. Yeah. 4 Probably just scroll down a little bit if you could, please. 5 I want to -- yeah, that's fine there. I want to be able to 6 be able to talk about the Kosary residence relative to the 7 buildings. So if you could just roll it down a little bit 8 so we can get the Kosary residence in the upper right-hand 9 corner.</p> <p>10 HEARING EXAMINER ROBESON HANAN: Upper right?</p> <p>11 MR. KLINE: It is --</p> <p>12 HEARING EXAMINER ROBESON HANAN: Yeha, I see.</p> <p>13 MR. KLINE: Okay. Fine.</p> <p>14 So. Doctor, you see the footprint of the 15 proposed Primrose building.</p> <p>16 DR. KOSARY: Yes.</p> <p>17 MR. KLINE: The shaded areas to the lower level 18 and to the left are -- you understand to be fenced outdoor 19 play areas, correct?</p> <p>20 DR. KOSARY: Correct.</p> <p>21 MR. KLINE: All right. You, or I guess maybe it 22 was your husband who suggested that a fence might give some 23 noise attenuation but my question is; aren't probably 75 24 percent of the outdoor play areas between our -- isn't the 25 building 75 percent of the outdoor play areas and your</p>

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<p>137</p> <p>1 house, and wouldn't that, because of the mass of the 2 building be a substantial noise attenuation feature for the 3 noise from children? 4 DR. KOSARY: No. Interestingly enough -- 5 MR. KLINE: As it relates to your house? 6 DR. KOSARY: No. Interestingly enough, as I 7 think I've stated it's high school physics. Noise is a 8 wave. It bounces off of things that -- it's attenuated, it 9 gets -- gets amplified. It -- you know, it's hard to block. 10 You know, you can't block -- you really can't block traffic 11 noise with those huge 20 foot sound barriers. It actually 12 just does weird things to the noise because of just noise 13 being a wave. It doesn't travel in a straight line. 14 So you really can't say that the mass of the 15 building is going to deaden the noise or -- and you also 16 can't say that the mass of the building is going to amplify 17 and send that wave off in some other direction. You're -- 18 you know, it's a lot of kids in a tight area, close to a lot 19 of homes. I really think you're going to have a noise 20 issue. 21 MR. KLINE: I have no further questions of Dr. 22 Kosary. Thank you. 23 HEARING EXAMINER ROBESON HANAN: Okay. Mr. Chen, 24 redirect? 25 MR. CHEN: Just give me a moment, Madam Examiner.</p>	<p>139</p> <p>1 neighborhood. They showed different activities that were 2 going on. And they showed the proximity of your property to 3 the church property, to the subject property. Can you 4 explain to the Examiner the purpose of those photographs, 5 please? 6 DR. KOSARY: You mean the ones, like, of the 7 trenchbox? 8 MR. CHEN: Yes. That's a good start, please. 9 DR. KOSARY: They were just there as kind of 10 visual documentation of what a major infrastructure project 11 actually putting this storm drain system both putting the 12 new part and updating the old part. You know, actually what 13 it was going to start looking like. This is -- you know, 14 this is a neighborhood. This is going to have 15 foot 15 trenches dug right up to people's boundary lines. And 16 things like that. 17 This is just to help emphasize, you know, as I've 18 stated, I think a couple of times just what a major 19 infrastructure project this is. And noting that this is 20 really the type of stuff that you do before you build roads, 21 before you build houses. Because you obviously don't want 22 to be putting 10 foot deep, 15 foot deep trenches, you know, 23 through people's driveways and across their roads. And 24 things of that nature. 25 MR. CHEN: You also presented a series of</p>
<p>138</p> <p>1 HEARING EXAMINER ROBESON HANAN: Well, we'll do 2 that after -- do you need a five-minute break? 3 MR. CHEN: Yeah. Let me look at this just for a 4 minute. I've got about three pages of scribbles. 5 HEARING EXAMINER ROBESON HANAN: Okay. We'll be 6 back at 2:25. 7 (Recess) 8 MR. CHEN: Thank you. Madam Examiner, just so 9 you know, during the break I did not have any conversations 10 with Dr. Kosary. I went over my notes. I did speak with 11 someone else, but I had no conversations with the witness. 12 HEARING EXAMINER ROBESON HANAN: That's fine. 13 MR. CHEN: Okay. Thank you. 14 Dr. Kosary -- 15 HEARING EXAMINER ROBESON HANAN: Now, I cannot 16 see Dr. Kosary. 17 Now I can. 18 DR. KOSARY: Can you see me? 19 HEARING EXAMINER ROBESON HANAN: Yes, I can. 20 MR. CHEN: I really only have one or two 21 questions. 22 Doctor, during the course of your direct 23 testimony and you were cross-examined by Mr. Kline about a 24 bunch of photographs that you showed during the course of 25 your testimony. And they were of different areas of your</p>	<p>140</p> <p>1 photographs that I recollect that you and your husband took 2 of, I think the description -- are downstream areas from 3 your property and your neighborhood. Do you remember those 4 photographs? 5 DR. KOSARY: The ones that were actually taken 6 from within Crabbs Branch Stream Valley Park? 7 MR. CHEN: Yeah, that area. 8 DR. KOSARY: Yes. 9 MR. CHEN: What were the -- please explain to the 10 Examiner the purpose of those photographs. 11 DR. KOSARY: Just really surprising -- really 12 surprised both Paul and I when we, you know, went into the 13 park to check out the outfall culvert for this storm drain 14 system that's already running through, you know the South 15 Riding neighborhood. Just the impact of that even in its 16 current condition the impact that it's having on, you know, 17 the Crabbs Branch and on the park. 18 The culvert is already getting more water through 19 it, the outfall culvert is already getting more water 20 through it as you can see -- you could observe from the 21 pictures. 22 MR. CHEN: Were those signs of erosion that you 23 were -- 24 DR. KOSARY: Those are definitely signs of 25 erosion. I mean that -- the drop box is being undercut.</p>

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<p>141</p> <p>1 The channel that the water is weaving, you know, through the 2 park on its way down to the stream is probably at my 3 shoulder level in some places. That's a lot of water. 4 That's a lot of erosion. 5 MR. CHEN: You also were questioned by Mr. Kline 6 about the noise from children. Do you recall that 7 testimony? 8 DR. KOSARY: Yes. 9 MR. CHEN: How, he was asking you about the noise 10 being, I think, he was saying 75 percent blocked by the 11 proposed school structure; do you recall that? 12 DR. KOSARY: I recall that. 13 MR. CHEN: Okay. And the play area for the 14 children, is actually, as he implied, on the other side of 15 the proposed building from your property; isn't that right? 16 DR. KOSARY: That's correct. 17 MR. CHEN: Now, the next residential property 18 further to the west on the south side of Needwood -- across 19 the street from Carney. What house -- is that 7500 -- 20 DR. KOSARY: That's 7500 Needwood. 21 MR. CHEN: Okay. IS there anything between that 22 property and the play area of the proposed school? 23 DR. KOSARY: No. 24 MR. CHEN: So it's straight open area? 25 DR. KOSARY: A straight open area.</p>	<p>143</p> <p>1 may be excused. 2 DR. KOSARY: Thank you very much. 3 HEARING EXAMINER ROBESON HANAN: (inaudible). 4 Mr. Chen, are you ready to call your next witness? 5 MR. CHEN: Yes. 6 HEARING EXAMINER ROBESON HANAN: Go ahead. 7 MR. CHEN: That would be Mr. Davis. 8 MR. DAVIS: Yes, just get my file. 9 MR. CHEN: If Mr. Davis can please assume the hot 10 seat and get set up. 11 As a preliminary matter, Madam Examiner, I 12 think -- I just want confirmation that I moved into evidence 13 at the submission by Mr. Davis, Exhibit 176 VV; is that 14 correct? 15 HEARING EXAMINER ROBESON HANAN: Yes. 16 MR. CHEN: Thank you. 17 HEARING EXAMINER ROBESON HANAN: Okay, Mr. Davis, 18 you're still under oath. 19 MR. DAVIS: All right. 20 HEARING EXAMINER ROBESON HANAN: And you're still 21 qualified as an expert. 22 MR. DAVIS: Thank goodness. 23 MR. CHEN: Mr. Davis, can you please, in your 24 opinion, at least, explain why the water the physical and 25 operational characteristics of a day care center the size</p>
<p>142</p> <p>1 MR. CHEN: And I think you mentioned that during 2 the course of your direct testimony; is that right? 3 DR. KOSARY: That's correct. 4 MR. CHEN: And you were presenting that in the 5 context of the overall implications or impact of the 6 activity on your neighborhood, including your neighbors. 7 DR. KOSARY: Including my neighbors. Especially 8 my neighbors. 9 MR. CHEN: One second; I think I'm about done. 10 If I may. 11 By the way, Doctor, you were asked a whole series 12 of questions about the "surrounding area." Do you remember 13 that? 14 DR. KOSARY: I remember that. 15 MR. CHEN: Okay. And you explained to Mr. Kline 16 what your understanding of what was meant by that term; is 17 that correct? 18 DR. KOSARY: That's correct. 19 MR. CHEN: Okay. And that was from your point of 20 view as a layman; isn't that right? 21 DR. KOSARY: That's correct. 22 MR. CHEN: Okay. I have no further questions. 23 HEARING EXAMINER ROBESON HANAN: All right. 24 DR. KOSARY: All right. 25 HEARING EXAMINER ROBESON HANAN: Dr. Kosary, you</p>	<p>144</p> <p>1 that is before the Examiner in this proceeding and have any 2 type of an inherent, adverse effect on the neighborhood. 3 MR. DAVIS: Okay. Basically, the physical 4 characteristics for a child day care center, this would be 5 the large, over 30 children center would be -- the physical 6 characteristics would be things like the buildings that are 7 proposed, the playground equipment that would be utilized, 8 the number of children. You have the on-site access area, 9 the driveway. You have the loading and unloading areas for 10 the children. You have parking spaces. So it's 11 basically -- and maneuvering areas, you can't forget that. 12 And the idea is that we are looking about the physical 13 things that are on this property that could potentially 14 represent an inherent adverse effect on neighboring 15 properties. 16 MR. CHEN: Okay. And is the identity analysis of 17 inherent and non-inherent adverse effects associated with a 18 conditional use at a -- at any particular location a 19 required component of review of the conditional use 20 application? 21 MR. DAVIS: Yes. But you had asked me about the 22 physical? 23 MR. CHEN: Yes. 24 MR. DAVIS: And also the operational 25 characteristics.</p>

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<p>145</p> <p>1 MR. CHEN: Yes.</p> <p>2 MR. DAVIS: So I wanted to talk a little bit</p> <p>3 about operational characteristics as well.</p> <p>4 MR. CHEN: Okay.</p> <p>5 MR. DAVIS: The operational characteristics would</p> <p>6 be things like the noise that's generated from on-site</p> <p>7 activities and were talking about a child day care center.</p> <p>8 Daily hours of operation, you've got the number of employees</p> <p>9 that you have through the day, you have vehicular trips that</p> <p>10 are entering during the peak hours and also during the day.</p> <p>11 You have the on-site vehicular activity within</p> <p>12 the site where people have to park sign in to the -- for the</p> <p>13 day go back to the car, leave the site. Come back later in</p> <p>14 the day, the afternoon or early evening and pick up the</p> <p>15 child, but the child in the car and leave. So those are --</p> <p>16 each of those represent an operation that needs to be</p> <p>17 considered. And really, I think any other physical --</p> <p>18 excuse me -- any other operational characteristics that</p> <p>19 would be associated with the use.</p> <p>20 So I'm contrasting, there are things that are</p> <p>21 physical, there's things that are operational.</p> <p>22 MR. CHEN: And I know you've answered this, but</p> <p>23 just in summary, these are the physical and operational</p> <p>24 characteristics of the type of conditional use that were</p> <p>25 dealing with in this particular case that need to be</p>	<p>147</p> <p>1 And the County Council in terms of the legislation that they</p> <p>2 have enacted associated with the conditional uses have noted</p> <p>3 that the inherent adverse effects are those things that are</p> <p>4 considered acceptable. It's almost like legislatively</p> <p>5 predetermined, I suppose.</p> <p>6 The non-inherent adverse effects are those things</p> <p>7 that have to be analyzed to determine if it reaches such a</p> <p>8 level of adverse effect that it is -- should be denied. And</p> <p>9 that's the distinction.</p> <p>10 MR. CHEN: And it's written as a zoning</p> <p>11 ordinance?</p> <p>12 MR. DAVIS: That's correct. The definition</p> <p>13 section of the zoning ordinance is section 1.4 does have the</p> <p>14 definition of inherent adverse effect and it also has</p> <p>15 definition of a non-inherent adverse effect. And I would</p> <p>16 just note those for the record, 59, section 59.1.4.2, a</p> <p>17 definition of an inherent adverse effects are adverse</p> <p>18 effects created by physical or operational characteristics</p> <p>19 of a conditional use necessarily associated with a</p> <p>20 particular use regardless of its physical size or scale of</p> <p>21 operation.</p> <p>22 And then, the definition of non-inherent adverse</p> <p>23 effects are those adverse effects created by physical or</p> <p>24 operational characteristics of a conditional use not</p> <p>25 necessarily associated with a particular use or created by</p>
<p>146</p> <p>1 evaluated, correct?</p> <p>2 MR. DAVIS: Correct.</p> <p>3 MR. CHEN: Okay. And why is the analysis of each</p> <p>4 one of these aspects of significance in the approval</p> <p>5 process?</p> <p>6 MR. DAVIS: Okay. First of all you have -- I've</p> <p>7 described, these were the inherent effects associated with</p> <p>8 the use.</p> <p>9 HEARING EXAMINER ROBESON HANAN: Did you describe</p> <p>10 lighting?</p> <p>11 MR. DAVIS: I did not. But lighting could be --</p> <p>12 I would say that that would be an operational characteristic</p> <p>13 because of its --</p> <p>14 HEARING EXAMINER ROBESON HANAN: Okay.</p> <p>15 MR. DAVIS: That's a good point, thank you.</p> <p>16 There are the -- these were identified as being</p> <p>17 inherent aspects of the use. And this means that it's</p> <p>18 normal to the use so there should not be an expectation that</p> <p>19 a conditional use application that has these inherent</p> <p>20 adverse effects would be a problem for the community.</p> <p>21 However, we have the non-inherent adverse</p> <p>22 effects. And again, it would be -- the non-inherent adverse</p> <p>23 effects would be those things that go beyond what would be</p> <p>24 considered normal for the conditional use and these are</p> <p>25 things that result in more adverse effects on the community.</p>	<p>148</p> <p>1 an unusual characteristic of the site.</p> <p>2 MR. CHEN: I'm going to kind of jump around a</p> <p>3 little bit on what thought I was going to be asking you I</p> <p>4 hope you're nimble enough, and I think you are. I want to</p> <p>5 talk about Exhibit 105, item Z.</p> <p>6 HEARING EXAMINER ROBESON HANAN: Item C, did you</p> <p>7 say?</p> <p>8 MR. CHEN: Z as in zoo or zebra. For the record,</p> <p>9 this is ZTA 99004.</p> <p>10 MR. DAVIS: Okay.</p> <p>11 HEARING EXAMINER ROBESON HANAN: Do you want me</p> <p>12 to pull it up or no?</p> <p>13 MR. CHEN: Could you pull it up, please?.</p> <p>14 MR. DAVIS: Do you need it? I'm --</p> <p>15 MR. CHEN: Well, if you don't need it, I you</p> <p>16 don't need it. I think the Examiner or Mr. Kline may need</p> <p>17 it.</p> <p>18 MR. DAVIS: Okay.</p> <p>19 HEARING EXAMINER ROBESON HANAN: Okay. Hold on.</p> <p>20 Wait a minute. 11 --</p> <p>21 MR. CHEN: It's 115-Z; 1 Z.</p> <p>22 MR. DAVIS: Well, I'm not sure.</p> <p>23 MR. CHEN: I think we filed it in November of --</p> <p>24 HEARING EXAMINER ROBESON HANAN: Oh, I'm sure you</p> <p>25 filed it. I'm just not seeing it downloaded. Oh, there it</p>

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<p>149</p> <p>1 is.</p> <p>2 MR. CHEN: I thought it was. I thought it was.</p> <p>3 HEARING EXAMINER ROBESON HANAN: Well, the ZZ</p> <p>4 stuff is -- okay. That's -- I'm getting there. I'm getting</p> <p>5 there.</p> <p>6 MR. CHEN: Mr. Davis just asked, maybe it wasn't</p> <p>7 downloaded or put online?</p> <p>8 HEARING EXAMINER ROBESON HANAN: No, I think --</p> <p>9 MR. CHEN: I thought it was.</p> <p>10 HEARING EXAMINER ROBESON HANAN: No, I know it</p> <p>11 was submitted. I just --</p> <p>12 No, that's your summary statement.</p> <p>13 MR. CHEN: I know I submitted it and I know I - I</p> <p>14 believe I also gave a copy to Mr. Kline.</p> <p>15 HEARING EXAMINER ROBESON HANAN: I'm sorry. Z,</p> <p>16 just one Z?</p> <p>17 MR. CHEN: Yes.</p> <p>18 HEARING EXAMINER ROBESON HANAN: Okay. Here we</p> <p>19 go.</p> <p>20 MR.. CHEN: Yes, that's it. Thank you.</p> <p>21 Mr. Davis, I'd like you to explain to the</p> <p>22 Examiner what is this legislation and your involvement with</p> <p>23 this legislation?</p> <p>24 MR. DAVIS: All right. In 1999 a district</p> <p>25 counsel had -- was very concerned about situations with</p>	<p>151</p> <p>1 Another key feature of this legislation was the</p> <p>2 fact that this is where the provision was added to the</p> <p>3 zoning ordinance and that a special exception, in order to</p> <p>4 be approved, would have to be found to be consistent with</p> <p>5 the area master plan. So this was a fairly significant</p> <p>6 legislation, at least in terms of my view at the time for</p> <p>7 the review of special exceptions in the County.</p> <p>8 MR. CHEN: Okay. Now, as I understand it, the</p> <p>9 analysis that's involved that has resulted from the adoption</p> <p>10 of this legislation as law, local law, has it been the</p> <p>11 consideration of unusual characteristics of the site; is</p> <p>12 that correct?</p> <p>13 MR. DAVIS: That's correct. In the definition of</p> <p>14 the non-inherent adverse effect and there is the phrase</p> <p>15 unusual characteristics is used. I'll just read it one</p> <p>16 more time. "Adverse effects created by physical or</p> <p>17 operational characteristics of the conditional use not</p> <p>18 necessarily associated with a particular use not necessarily</p> <p>19 associated with a particular use or created by an unusual</p> <p>20 characteristic of the site."</p> <p>21 MR. CHEN: So the analysis involves a</p> <p>22 determination or a recognition, certainly, of both non-</p> <p>23 inherent adverse effects and inherent adverse effects,</p> <p>24 correct?</p> <p>25 MR. DAVIS: That's correct.</p>
<p>150</p> <p>1 conditional uses and I think this goes back to the Mossberg</p> <p>2 case back in about 1996; remember there was a fire at a --</p> <p>3 it was a junkyard. I'm pretty sure it was just a junkyard</p> <p>4 but there was a big tire fire there. And I think there was</p> <p>5 a lot of concern because they were not able to -- the</p> <p>6 Council felt that the board of appeals was not able to deal</p> <p>7 with that quite at the level that it should have been in</p> <p>8 terms of recognizing that there were aspects of that use</p> <p>9 that were just clearly not acceptable.</p> <p>10 And so the Council instructed the planning board</p> <p>11 to work with the County attorney in terms of developing</p> <p>12 legislation that would help address that problem, and also</p> <p>13 facilitate what the Council felt was more significant review</p> <p>14 of special exceptions to incorporate the notions of inherent</p> <p>15 adverse effects and non-inherent adverse effects. Another</p> <p>16 feature that was really very important --</p> <p>17 MR. CHEN: Your involvement in this legislation?</p> <p>18 MR. DAVIS: Yes. At that time I was the chief of</p> <p>19 development review and this was a significant text</p> <p>20 amendment. I remember working with the Chairman, Bill</p> <p>21 Hussman, board members were very interested in it. Dennis</p> <p>22 Canavan was our lead staff for working with this</p> <p>23 legislation, and I do recall it as being something that was</p> <p>24 very important for the County, very important for special</p> <p>25 exception review process.</p>	<p>152</p> <p>1 MR. CHEN: And what is the interplay under the</p> <p>2 law of these different types of characteristics?</p> <p>3 MR. DAVIS: Well, if it's found that there are</p> <p>4 non-inherent adverse effects that is a basis for denial of</p> <p>5 the application. In fact, it could be a combination of</p> <p>6 inherent adverse effects and non-inherent adverse effects</p> <p>7 that could lead to a recommendation -- or excuse me a</p> <p>8 decision for denial by -- in this case with a conditional</p> <p>9 use, the hearing examiner -- it was special exceptions at</p> <p>10 that time, and I just don't recall if the hearing examiner</p> <p>11 was actually involved in that type of special exception back</p> <p>12 in 1999.</p> <p>13 MR. CHEN: And this analysis has become one of</p> <p>14 the major aspects proposals for what are now known today as</p> <p>15 conditional uses?</p> <p>16 MR. DAVIS: That's correct.</p> <p>17 MR. CHEN: I mean there are other aspects, master</p> <p>18 plans, compatibility, we understand that.</p> <p>19 MR. DAVIS: Yes.</p> <p>20 MR. CHEN: But this is an aspect, a component of</p> <p>21 the zoning ordinance and that is involved in the necessary</p> <p>22 findings of the hearing examiner?</p> <p>23 MR. DAVIS: And for all intents and purposes it</p> <p>24 was fully carried over in 2014 with the new County zoning</p> <p>25 ordinance. There are a lot of changes that happened to the</p>

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<p>153</p> <p>1 zoning ordinance at that time but basically the concepts and 2 principles associated with Text Amendment 99004 still are in 3 effect today.</p> <p>4 MR. CHEN: Fine. Now, have you read the 5 technical staff report that's been prepared by the staff of 6 the Maryland National Capital Park and Planning Commission 7 in October of '19?</p> <p>8 MR. DAVIS: Yes, I have.</p> <p>9 MR. CHEN: This is, Madam Examiner, and you've 10 heard, I know, Mr. Klein has raised is Exhibit 1 of 6.</p> <p>11 Okay. Now, the technical staff reports and 12 recommends approval; is that correct?</p> <p>13 MR. DAVIS: That's correct.</p> <p>14 MR. CHEN: And it also recommends approval of a 15 parking waiver that is provided for under the zoning 16 ordinance, right?</p> <p>17 MR. DAVIS: That's correct.</p> <p>18 MR. CHEN: And what is that waiver?</p> <p>19 MR. DAVIS: The waiver is in terms of the 20 section, this is a waiver of the parking setback for a 21 conditional uses, a side yard setback, it's section 22 6.2.5.K.2.B of the zoning ordinance.</p> <p>23 MR. CHEN: Okay. Now, I'm going to ask you one 24 question.</p> <p>25 And Madam Examiner, and Mr. Klein, I'm going to</p>	<p>155</p> <p>1 adjacent, nearby properties?</p> <p>2 MR. DAVIS: Yes. I believe that the staff report 3 does not fully analyze the issue of inherent uses, non- 4 inherent uses. And that, to me, is problematic because I 5 think that this is really the nuts and bolts in terms of 6 when you're viewing a conditional use plan you need to 7 determine what about that use is going to represent 8 potentially a non-inherent, adverse effect? The request for 9 this waiver, I don't believe that there's actually a basis 10 for the waiver. But the effect is going to be this non- 11 inherent adverse effect. Primarily because they're going 12 to -- the setback area is actually going to be too small, I 13 believe, to provide for an appropriate area of transition 14 between this conditional use and the adjacent residential 15 properties.</p> <p>16 More to the point, the location of the driveway 17 only 12 feet from the property line involves removal of 18 existing trees and I believe it's been noted that one of 19 them is a specimen tree that would be removed from what 20 would be the driveway area.</p> <p>21 Also, I believe it's important to note that for 22 the east property line the limit of disturbance provided by 23 this plan is at the property line. So where you may have 24 trees on the properties on the east of that line, you may 25 have trees that are right up against the property and these</p>
<p>154</p> <p>1 ask one question but since you know Mr. Davis, I'm going to 2 circle back to this later on. But for right now do you -- 3 because we are in the -- starting out with addressing the 4 technical staff report. Do you agree with this technical 5 staff report?</p> <p>6 MR. DAVIS: No, I do not.</p> <p>7 MR. CHEN: Why is that? Explain that to you -- 8 and I know you're going to do it in a lot of other different 9 areas that are addressed in the staff report further on in 10 your testimony. But as an introduction, please explain 11 where you're coming from to the Hearing Examiner.</p> <p>12 MR. DAVIS: All right. I feel that one of the -- 13 the biggest issue involved in this case from my perspective 14 is in the request for the waiver of the side yard setback 34 15 feet for conditional use in the RE-1 zone down to a waiver 16 request to take it down to 12 feet.</p> <p>17 And I believe that this is a big issue because we 18 have developed one family residential properties located 19 along the east -- the other side of the eastern boundary of 20 the subject site. And these properties adjoin, they abut, 21 and they're going to be very much affected by this 22 conditional use.</p> <p>23 MR. CHEN: Are you in agreement or do you 24 acknowledge of the existence or nonexistence of the staff's 25 analysis of the associated impact of this waiver on the</p>	<p>156</p> <p>1 are some mature trees, their roots are going to be affected 2 by this proposed project.</p> <p>3 And so we have a removal of trees on site, the 4 potential effect of trees dying out on the west side of the 5 adjacent properties. I feel that that's going to have a 6 negative effect adjacent properties.</p> <p>7 MR. CHEN: Indeed, in this particular case that 8 there's been a tree variance approved by the planning board; 9 isn't that correct?</p> <p>10 MR. DAVIS: That's right. Yes.</p> <p>11 MR. CHEN: And that's for a tree that was 12 required to be removed to accommodate the driveway for the 13 setback; is that right, sir?</p> <p>14 MR. DAVIS: That's true. Yes.</p> <p>15 MR. CHEN: Okay. Now, are there other issues 16 that you have with the staff report?</p> <p>17 MR. DAVIS: Yes. I think that there's an issue 18 with the staff report. I don't believe it adequately 19 analyzes all of the zoning requirements applicable to this 20 use.</p> <p>21 MR. CHEN: Does it recognize the appropriate 22 master plan?</p> <p>23 MR. DAVIS: There's issues with that. Well, 24 first, and I believe Ms. Kosary had testified to this 25 earlier. The Applicant's submission, their justification</p>

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157	<p>1 within the Gaithersburg master plan area. The staff, and 2 their review and in preparation for their technical staff 3 report they describe the subject site is being located 4 within the Upper Rock Creek Master Plan area. But then 5 describe the area north of Needwood Road as it being in the 6 Gaithersburg master plan area. 7 So that was problematic. But the staff on, I 8 believe it was page 8 of the technical staff report did have 9 a statement in there -- let me turn to it. 10 HEARING EXAMINER ROBESON HANAN: Where did they 11 describe it as being in the Gaithersburg area? 12 MR. DAVIS: That was on page 2 -- let me pull 13 up -- I have the staff report here. 14 HEARING EXAMINER ROBESON HANAN: I should have it 15 on the screen. Can you see it? 16 MR. DAVIS: Yes, I can see it. But I only see 17 the half a page. I have a copy here that's actually marked 18 so I can find it quicker. 19 And now lost my place in my head. What are we 20 looking for here? 21 MR. CHEN: The reference in the staff report. 22 MR. DAVIS: Oh yes. 23 HEARING EXAMINER ROBESON HANAN: To Gaithersburg. 24 MR. DAVIS: To Gaithersburg. I apologize for 25 that.</p>	159	<p>1 MR. DAVIS: That's correct. 2 HEARING EXAMINER ROBESON HANAN: Okay. 3 MR. DAVIS: The areas west of Derwood Road is in 4 the Shady Grove Master Plan area. So the western part of 5 the surrounding area is defined by staff and it was 6 recognized as well by the Applicant, includes the area 7 that's west of Derwood Road. 8 The Applicant's surrounding area was actually 9 larger. I believe it went up to Muncaster Mill Road 10 originally. But basically, I think it was -- and down to -- 11 it also went down to Gude Road. East Gude Road. 12 But at the hearing they said that they agreed 13 with the surrounding area that staff had recommended. And 14 that's -- yes, that's so the drawing on page 3. And that 15 shows the surrounding area staff has recommended. 16 MR. CHEN: Do you want to get into it now? 17 MR. DAVIS: Sure. 18 MR. CHEN: Okay. Go right ahead. 19 MR. DAVIS: In my examination of area which I 20 thought would be appropriate to consider for surrounding 21 area, I actually felt that the area west of Redland Road 22 should not be included in the surrounding area because it's 23 different. It's different zones, there some PD zones, 24 things like that. It's a different character of development 25 than what we find on the east side of Redland Road. I did</p>
158	<p>1 Okay. On page 6 they identify that the property 2 is located within the 2004 Of her Rock Creek. Master Plan 3 area. Okay. 4 HEARING EXAMINER ROBESON HANAN: On page 4 they 5 say within the defined neighborhood, the area north of 6 Needwood Road is within the Gaithersburg Master -- 7 MR. DAVIS: That's -- yeah, that's where I 8 thought it -- yes, that's it. Thank you, ma'am. 9 HEARING EXAMINER ROBESON HANAN: I did a word 10 search. 11 MR. CHEN: Yes. That is where it was shown. 12 Now, I believe though that in terms of the staff's analysis 13 of the plan they didn't analyze it in the context of the 14 Upper Rock Creek Master Plan. 15 MR. DAVIS: But just pointing out a little bit of 16 history with this that was somewhat confusing, particularly 17 in the early going of the review of the Application; I'd 18 like to take you - 19 HEARING EXAMINER ROBESON HANAN: Well, let me ask 20 you something. Is the area north of Needwood Road in the 21 Gaithersburg Master Plan or is it in the 2004 -- 22 MR. DAVIS: 2004 Upper Rock Creek Master Plan. 23 HEARING EXAMINER ROBESON HANAN: So north of 24 Needwood Road is also in the 2004 Upper Rock Creek Master 25 Plan?</p>	160	<p>1 agree with the rest of the surrounding area recommended by 2 staff which extends up to -- and there's the Rock Creek 3 Regional Park, there's the -- I forget the name of the 4 stream on the north side but Mill Stream, I believe it is. 5 At any rate, there's that. You have the Needwood Golf 6 Course that's sort of to the east. 7 HEARING EXAMINER ROBESON HANAN: What was that 8 Mill Creek? Is it Mill Creek? 9 MR. DAVIS: Mill Creek. That's it, ma'am, thank 10 you. And then it goes down to Crabbs Branch on the south. 11 But I do believe that the area east of Derwood Road is of a 12 different nature than the area across the street. 13 MR. CHEN: What's the road you're saying? 14 MR. DAVIS: Der -- Redland Road. 15 HEARING EXAMINER ROBESON HANAN: Redland. 16 MR. DAVIS: Redland Road is different. I also 17 think it's important to note that Redland Road even though 18 it's a primary residential road it does function at a higher 19 level but it is, you know -- so I think that in effect for 20 the -- it represents a reasonable western boundary for the 21 area. 22 And so that's what I have used as the analysis 23 area that I wanted to look at. 24 MR. CHEN: While we're on the staff report, I'd 25 like you to go to page 30.</p>

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<p>161</p> <p>1 MR. DAVIS: All right.</p> <p>2 MR. CHEN: Madam Examiner, can you go to page 30?</p> <p>3 MR. DAVIS: Okay.</p> <p>4 MR. CHEN: Are you there, Madam Examiner? I'm</p> <p>5 off the --</p> <p>6 HEARING EXAMINER ROBESON HANAN: I should be.</p> <p>7 There's page 30.</p> <p>8 MR. CHEN: Okay. Thank you.</p> <p>9 There's a reference on that page towards the</p> <p>10 bottom of a landscape contractor operation. Do you see</p> <p>11 that?</p> <p>12 MR. DAVIS: Yes, I do. It's the bottom</p> <p>13 paragraph?</p> <p>14 MR. CHEN: Yes. Is that a -- what is your</p> <p>15 understanding of what that is referencing to?</p> <p>16 MR. DAVIS: Well, actually I think that may have</p> <p>17 been either -- either maybe a -- they used a template from a</p> <p>18 previous report or something like that. Because this is not</p> <p>19 a landscape contractor operation --</p> <p>20 HEARING EXAMINER ROBESON HANAN: I agree.</p> <p>21 MR. DAVIS: -- application. Or somehow a typo.</p> <p>22 But that's all I think I need to say about that other than</p> <p>23 the -- there is a -- there's context to the paragraph.</p> <p>24 MR. CHEN: Well, that's where I'm going to.</p> <p>25 The --</p>	<p>163</p> <p>1 MR. DAVIS: No, actually I don't.</p> <p>2 MR. CHEN: Could you please explain to the</p> <p>3 Hearing Examiner where you depart from the position of the</p> <p>4 staff?</p> <p>5 MR. DAVIS: Okay. When they're talking about the</p> <p>6 location of the driveway is restricted by sight distance,</p> <p>7 located at its only viable location I believe that to be</p> <p>8 incorrect. The - there was a, as you know from prior</p> <p>9 testimony, my clients had Maddox and Associates do an actual</p> <p>10 sight distance analysis in accordance with the Montgomery</p> <p>11 County department of transportation's procedures for</p> <p>12 determining acceptable sight distance for access points</p> <p>13 along this site.</p> <p>14 And in fact, that analysis shows that there's</p> <p>15 approximately 135 feet of frontage along Needwood road as</p> <p>16 measured from the northeast corner of the subject site. And</p> <p>17 that that is -- that area has the minimum required sight</p> <p>18 distance of, in this case, 250 feet each way based on it</p> <p>19 being a primary Road with a 35 mph speed limit. This</p> <p>20 analysis that was done is identified as document AAA in</p> <p>21 the -- and this is a blank document.</p> <p>22 And then, there's some -- a couple of photographs</p> <p>23 showing sight distance. This would be DDD.1, DDD.2, DDD.3</p> <p>24 and then finally, there's document CCC, and this is, I</p> <p>25 believe 227 is the CCC document 2. And this shows actually</p>
<p>162</p> <p>1 MR. DAVIS: All right.</p> <p>2 MR. CHEN: I'd like you to get into that.</p> <p>3 MR. DAVIS: All right.</p> <p>4 MR. CHEN: It's a context and continuing on, the</p> <p>5 bottom part of page 30, going on over to 31.</p> <p>6 MR. DAVIS: Yeah. Let me read this paragraph for</p> <p>7 you. "The scale of the proposed daycare center building,</p> <p>8 proposed access point, the internal vehicular circulation</p> <p>9 system and the onsite parking area are operation</p> <p>10 characteristic associated with -- and I believe that what</p> <p>11 they meant to say here was the proposed daycare center use.</p> <p>12 Staff, however, considers that fact that the</p> <p>13 location of proposed driveway is restricted by site distance</p> <p>14 and is located at the only viable access point on the</p> <p>15 property's frontage on Needwood Road to be a non-inherent</p> <p>16 characteristic. However, staff believes that this non</p> <p>17 inherent characteristic does not rise to the level that</p> <p>18 warrants a denial. As noted, the application is requesting</p> <p>19 a waiver from the side yard setback requirement of parking</p> <p>20 facilities to allow the proposed driveway."</p> <p>21 MR. CHEN: Now, I want you to address that.</p> <p>22 We're talking low bit earlier about a setback waiver ae</p> <p>23 zoning requirements that are applicable to this type ,of an</p> <p>24 analysis. Do you agree with staff's analysis in that</p> <p>25 regard?</p>	<p>164</p> <p>1 three points that were -- that Maddox and Associates an</p> <p>2 engineering company, looked at for sight distance.</p> <p>3 The first location that they have is the -- this</p> <p>4 is the location that's at about 135 -- it actually shows on</p> <p>5 here 136.6 feet --</p> <p>6 HEARING EXAMINER ROBESON HANAN: Okay. Let me --</p> <p>7 let me -- I'm sorry. Let me pull that up. What was the</p> <p>8 exhibit?</p> <p>9 MR. DAVIS: It was CCC. The number is -- doesn't</p> <p>10 show.</p> <p>11 MR. CHEN: Is it on the first page possibly?</p> <p>12 MR. DAVIS: No. I have another page here.</p> <p>13 MR. CHEN: Okay.</p> <p>14 MR. DAVIS: With -- I apologize. I have a lot of</p> <p>15 papers here.</p> <p>16 HEARING EXAMINER ROBESON HANAN: Okay. That's</p> <p>17 CCC.</p> <p>18 MR. DAVIS: Here we go. It's just out of my reach</p> <p>19 over here on the right.</p> <p>20 MR. CHEN: Is it 227? Is it the response at 227?</p> <p>21 MR. DAVIS: That's what I had got. No, it shows</p> <p>22 here as -- no, that's a different Maddox. Here we go. 227-</p> <p>23 AAA.</p> <p>24 Yes, I think we're there. Okay. This is the</p> <p>25 blank form AAA, and you see on the form this is the standard</p>

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<p style="text-align: right;">165</p> <p>1 Montgomery County form that is utilized for. And in the 2 middle of the page it has guidelines and it talks about 3 classification for posted speed. And they have a 4 classification that is for primary road, 35 mile an hour 5 speed limit. And the guidelines are a required sight 6 distance in each direction of 250 feet. 7 What now, that at a point -- okay I get -- let's 8 go to the next page which is the as excuse me CCC. Yet, we 9 have the photographs taken here. This is taken from -- it 10 appears to be the existing driveway for the subject property 11 to access the existing home that's on the site. And it's 12 showing that there's over 600 feet of site distance as 13 you're looking to the west towards Redland Road. 14 Next. And that's sideways but -- there we go. 15 This is now looking east from that same point and this 16 demonstrates that is about 350 feet -- approximately 350 17 feet site distance. And also, it talks about 280 feet. 18 MR. CHEN: And that's from the point of the 19 access? 20 MR. DAVIS: The existing driveway. 21 MR. CHEN: The existing driveway? 22 MR. DAVIS: Yes, for the subject property. 23 So this is at a point about 136 feet west of the 24 property line. That's from the northeast corner of the 25 subject site. So let's go to CCC. Okay. This is it. So</p>	<p style="text-align: right;">167</p> <p>1 HEARING EXAMINER ROBESON HANAN: This is CB-2. 2 MR. DAVIS: Yeah. This is -- okay. This is 2. 3 All right. I made a mistake. The first one I described to 4 you is actually the westernmost location where you can have 5 safe sight distance, the 250 feet, to the right; 581 feet to 6 the left. The existing driveway, I had mistaken driveway 24 7 driveway 1. The driveway 2 is the existing driveway for the 8 existing site. And from the existing driveway you have 9 84 -- excuse me -- 840 feet of site distance to the right, 10 and you have 639 feet to the left. 11 And that driveway is at a location, I believe, 12 about 100 -- I would have to look that up. It should show 13 it on a drawing. Do we have CUP-4 handy? 14 MR. CHEN: Which exhibit? 15 MR. DAVIS: The CUP-4. 16 HEARING EXAMINER ROBESON HANAN: That might be 17 199? No. 18 MR. DAVIS: 199(d). 199(d) as in David. 19 HEARING EXAMINER ROBESON HANAN: I thought this 20 was the storm drain divide. 21 MR. DAVIS: Oh. 22 HEARING EXAMINER ROBESON HANAN: That's 93, but 23 that's not the most current. I'm trying to remember the 24 most current. 25 MR. DAVIS: Yes.</p>
<p style="text-align: right;">166</p> <p>1 this is looking at the first street. The first measurement 2 is taken from the site where the pictures -- the 3 photographs -- the previous photographs were shown. 4 This is the existing driveway for the existing 5 home located on the subject property. It shows the 6 distance, the site distance to the right is 250 feet. This 7 coincides with the minimum allowable site -- or minimum 8 required site distance. The distance to the left, which is 9 looking towards Redland Road is 581 feet, which certainly 10 meets the minimum requirement. 11 Then, if you look at the second driveway, 12 driveway number two which is just to the right, so back on 13 that previous page. Yes. CCC. 14 HEARING EXAMINER ROBESON HANAN: Oh, CCC? 15 MR. DAVIS: Yes. CCC, document 2. That's it. 16 HEARING EXAMINER ROBESON HANAN: Wait, that's 17 CCC -- let me see what the -- this one. Let me switch it, 18 rotate it. 19 MR. DAVIS: All right. 20 HEARING EXAMINER ROBESON HANAN: There. 21 MR. DAVIS: All right. Go back one page. 22 MR. CHEN: You have your -- you've got the right 23 access coordinates on your exhibits. 24 HEARING EXAMINER ROBESON HANAN: This one? 25 MR. DAVIS: I believe so.</p>	<p style="text-align: right;">168</p> <p>1 MR. CHEN: We think it's 199(d). 2 HEARING EXAMINER ROBESON HANAN: Okay. How's 3 that? 4 MR. DAVIS: Yes. That works. Of course, now I 5 have to read it. You have a -- there's a drawing in the 6 kitchen. 7 MR. CHEN: We (inaudible) it. 8 MR. DAVIS: Oh good. 9 MR. CHEN: 199(d) right? 10 MR. DAVIS: Yeah. 11 This is actually to the -- all right to the 12 existing driveway, the existing driveway -- this is the plan 13 so it doesn't show it. It's showing the proposed driveway 14 but doesn't show the existing driveway. The existing 15 driveway and I'm just based off my recollection at the 16 moment is somewhere around 100 feet. It's between 85 and 17 100 feet from the northeast corner of the property. 18 HEARING EXAMINER ROBESON HANAN: Wait. This -- 19 does this show it? Here's the house -- 20 MR. DAVIS: Yes, it does. Yes, it does show it. 21 HEARING EXAMINER ROBESON HANAN: Now, what I'm 22 looking at is 199(b). 23 (Exhibit 199(b) introduced.) 24 MR. DAVIS: Okay. Yes, that looks like that's 25 the -- deals with their tree plan. Yeah. Let me see then</p>

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<p>169</p> <p>1 if I can pick up a point on that and then I can measure from 2 that. Be right back. 3 All right. Now there's 209.7 feet of frontage on 4 the property and the existing driveway appears to be on the 5 order of about, oh, 110 feet. 6 HEARING EXAMINER ROBESON HANAN: From which 7 boundary? 8 MR. DAVIS: From the east boundary, it would all 9 be on the order of about 85 to 100 feet. That's about as 10 close as I can pin it down at this point. 11 HEARING EXAMINER ROBESON HANAN: So somewhere in 12 here? 13 MR. DAVIS: Yes. Yes. Exactly. 14 HEARING EXAMINER ROBESON HANAN: And is that the 15 existing driveway? 16 MR. DAVIS: Yes. 17 HEARING EXAMINER ROBESON HANAN: Okay. And which 18 site measurements match up with the existing driveway? Did 19 you get that exhibit? 20 MR. DAVIS: The -- basically the street driveway 21 number 2 that's shown on document CCC. 22 HEARING EXAMINER ROBESON HANAN: Okay. That's 23 what I wanted. 24 MR. DAVIS: And that shows a site distance of 840 25 feet to the right and 639 feet to the left.</p>	<p>171</p> <p>1 MR. DAVIS: I don't believe so. It was a little 2 bit confusing trying to figure out what a non-inherent 3 characteristic was versus a unusual characteristic which is 4 defined in the definition for a non-inherent adverse effect. 5 MR. CHEN: Well, do you have an opinion as to 6 whether or not there are any unusual characteristics about 7 this site? 8 MR. DAVIS: In my opinion, I don't think there's 9 a non-inherent characteristic. I do not believe that there 10 is an unusual characteristic. I believe that there is 11 adequate frontage along Needwood Road to accommodate a 12 conditional use that could also meet the setback standard 13 along the east side which is 34 feet by virtue of the 14 setback standards for conditional uses for parking setbacks. 15 HEARING EXAMINER ROBESON HANAN: Okay. So you're 16 saying there's no site -- there's no physical non -- there's 17 nothing on the property that's unusual? 18 MR. DAVIS: Not that -- in my opinion. 19 HEARING EXAMINER ROBESON HANAN: It'd have to -- 20 I'm guessing where you're going rather it's unusual from the 21 design of the proposed facility? 22 MR. CHEN: You mean consequently from the design 23 of the facility? 24 HEARING EXAMINER ROBESON HANAN: Yeah. What did 25 you mean by there's no non-inherent -- were you saying</p>
<p>170</p> <p>1 Okay. And then on the next page of the document 2 CCC -- okay, one more page. That one, yes. That is from 3 the proposed driveway location. And that shows 800 feet of 4 site distance to the east along Needwood Road looking to the 5 east and the site distance looking west towards Redland Road 6 is 681 feet. So basically, what we're looking at is rather 7 than saying that the only location for access is in that 8 northeast corner of the property as proposed on the plan, is 9 actually on the order of 136 feet of frontage along Needwood 10 Road as measured from the northeast property corner, where 11 acceptable sight distance could be found. 12 HEARING EXAMINER ROBESON HANAN: Okay. And did 13 you say 136? 14 MR. DAVIS: 136 feet, I believe is that number. 15 HEARING EXAMINER ROBESON HANAN: Okay. 16 MR. CHEN: Now, just while we're -- are you done 17 with that aspect of the -- 18 MR. DAVIS: Yes. 19 MR. CHEN: Okay. In the staff report they 20 utilized a term that I want you to focus on. The use the 21 term, "non-inherent characteristic." All right. 22 MR. DAVIS: Yes. That's correct. 23 MR. CHEN: Okay. Do you have an opinion as to 24 whether or not there are any such non-inherent -- or the 25 application of this terminology to the subject application?</p>	<p>172</p> <p>1 physical characteristic of the property? 2 MR. DAVIS: This was saying -- in my view there 3 was no non-inherent characteristic. 4 HEARING EXAMINER ROBESON HANAN: Okay. 5 MR. CHEN: Now that terminology has been used in 6 other applications; isn't that right, sir? 7 MR. DAVIS: That's true. There's two 8 applications I'm aware of that the term has been used. 9 MR. CHEN: Okay. I want you to explain then to 10 the Hearing Examiner, please. 11 MR. DAVIS: Okay. The first case I looked at 12 where there is -- actually the term non-inherent 13 characteristic appears is in a nearby special exception 14 case. It's the Taiwanese Cultural Center application which 15 is located on the northeast corner of Redland Road and 16 Needwood Road. That particular special exception has been 17 discussed previously in testimony by people in the 18 neighborhood. The number for that -- and I'm sort of out of 19 position all my notes -- is I believe it was SE -- excused 20 me -- S-2668. 21 And in that particular case there was an 22 interesting before they went in for their conditional use 23 case. So this was, in effect, a violation, and to fix the 24 violation they submitted an application for a special 25 exception approval. And I believe it was a private club</p>

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<p>173</p> <p>1 organization, or something like that.</p> <p>2 But they had the -- the use was in place, there</p> <p>3 was already a driveway located on the property providing</p> <p>4 ingress and egress. And that -- and at that time it was</p> <p>5 built under the standards for R-200 zoning and it was on the</p> <p>6 order of about oh, 8 feet. And it was not done under a</p> <p>7 conditional use setback requirement.</p> <p>8 So the hearing examiner --</p> <p>9 MR. CHEN: How did it relate to the minimum side</p> <p>10 yard setback?</p> <p>11 MR. DAVIS: The minimum side yard setback was</p> <p>12 the -- is in the R-200 zone so as I recall it is 12 feet; 2</p> <p>13 two times 12 should have been 24 feet for the setback with</p> <p>14 the conditional use.</p> <p>15 But as I say, this was an existing characteristic</p> <p>16 on the site. The hearing examiner, as I read that report,</p> <p>17 and it's been a little time since I read it, but the hearing</p> <p>18 examiner was -- expressed concern. I think it was something</p> <p>19 that she analyzed very closely because the -- because it was</p> <p>20 there. But yet, she recognized that it was a waiver being</p> <p>21 requested that in effect represented not meeting the</p> <p>22 requirements -- the normal setback requirement in the zone.</p> <p>23 A waiver of the exact same setback provision that</p> <p>24 we are dealing with today was requested in that case. And</p> <p>25 the hearing examiner basically decided that that was -- and</p>	<p>175</p> <p>1 Needwood Road and Redland. So that's the first case.</p> <p>2 The second is actually another Primrose case</p> <p>3 which is the Primrose at Layhill. This was a 2018</p> <p>4 conditional use and the number of that one is CU17-16.</p> <p>5 There we have a situation where there was fairly significant</p> <p>6 amount of wetlands that were located on that property. It</p> <p>7 was desired that the access should be to Queens Guard</p> <p>8 Road -- or Queens Guard Drive which is located on the north</p> <p>9 side of the property.</p> <p>10 But with the wetlands they were forced to try and</p> <p>11 relocate the driveway farther to what would be the east side</p> <p>12 of the property. And they also needed a waiver from the</p> <p>13 same setback provision for the side yard setback for a</p> <p>14 conditional use adjacent to one family zoning. So the</p> <p>15 hearing examiner in that case also identified it as being a</p> <p>16 non-inherent characteristic. And had felt that the facts in</p> <p>17 the case were such that the adjacent use was not a</p> <p>18 residential use. In fact, it's the MidCounty Recreation</p> <p>19 Center.</p> <p>20 And it was parking -- the actual use on the</p> <p>21 adjacent property was part of the parking lot for the</p> <p>22 MidCounty Center. So the hearing examiner in that case felt</p> <p>23 that this -- what was called a non-inherent characteristic</p> <p>24 was okay because it was not adjacent to a residential home</p> <p>25 or residential use and so the waiver was approved as part of</p>
<p>174</p> <p>1 she used the words, she used the words that it was a non-</p> <p>2 inherent characteristic. She felt that it was a very close</p> <p>3 call because -- but she felt that it was a small conditional</p> <p>4 use. It was already there. She had conditions associated</p> <p>5 with the approval that removed some parking associated with</p> <p>6 the driveway along that easement -- property. I think it</p> <p>7 was some parking between the existing house that's now the</p> <p>8 Taiwanese Cultural Center and the adjoining property which</p> <p>9 is residentially developed.</p> <p>10 MR. CHEN: This is a physical feature?</p> <p>11 MR. DAVIS: Yes. As being a -- it's a physical</p> <p>12 feature. This would be something I would have called an</p> <p>13 unusual characteristic. The fact that it was called non-</p> <p>14 inherent characteristic I find interesting. But I think it</p> <p>15 was something that was being considered as does this unusual</p> <p>16 characteristic rise to the level of being an non-inherent</p> <p>17 characteristic? And I believe that the decision by the</p> <p>18 hearing examiner reflected that this was going to be a close</p> <p>19 call but she felt that the activity on the site was</p> <p>20 sufficiently low that it would not -- she felt it would not</p> <p>21 rise to a non-inherent adverse effect.</p> <p>22 In fact, there was a condition for some</p> <p>23 additional landscaping to be provided along that property</p> <p>24 line with the adjacent neighbors. And again, this is</p> <p>25 located to the north side of Needwood Road at the corner of</p>	<p>176</p> <p>1 that application.</p> <p>2 So those are two examples that I've seen but</p> <p>3 what's been sort of a little bit of a dilemma for me is why</p> <p>4 not call it an unusual characteristic rather than a non-</p> <p>5 inherent characteristic? Because I believe the analysis</p> <p>6 would demonstrate either it's non-inherent which means it</p> <p>7 probably should be denied, or that it would be in effect</p> <p>8 inherent or just an unusual characteristic that doesn't rise</p> <p>9 to that level.</p> <p>10 So I don't know if it's a term enough to issue I</p> <p>11 have it in my head or if there's some additional meaning</p> <p>12 associated with the term non-inherent characteristic because</p> <p>13 I don't believe that term should be used in this case in</p> <p>14 this case.</p> <p>15 MR. CHEN: Okay. Now, but the term non-inherent</p> <p>16 characteristics was used in both of those hearing examiner</p> <p>17 cases?</p> <p>18 MR. DAVIS: Correct.</p> <p>19 MR. CHEN: Okay. And you just said you don't</p> <p>20 think it's applicable in this case?</p> <p>21 MR. DAVIS: I do not.</p> <p>22 MR. CHEN: Okay. Explain why.</p> <p>23 MR. DAVIS: Because I believe that in this case</p> <p>24 the Applicants could locate the driveway farther to the west</p> <p>25 at a point where they have fully acceptable sight distance</p>

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<p>177</p> <p>1 for entry 12 Needwood Road, and the driveway could be 2 extended south 34 feet from the east property line and meet 3 what would be the minimum side yard setback requirement. 4 And in doing this you would remove the need, I believe, for 5 removal of all of the trees that were talking about that 6 were affected by the current driveway location. 7 That's the tree variance issue. And in addition, 8 it would provide for the zoning ordinance required minimum 9 side yard setback so that at least the neighbors would have 10 the assurance of a minimum of 34 feet. I'm not saying 34 11 feet because this is an application in which you have to 12 find compatibility with the surrounding uses. Therefore, it 13 could potentially be more depending upon just what the 14 situation is. 15 But certainly, we would not have to entertain a 16 waiver for this. And so adversely affect the neighboring 17 uses. In my opinion, the granting of a waiver to allow the 18 driveway only 12 feet from the east property line will 19 result in an incompatible situation for the adjacent land 20 uses and I believe it is a -- it would be a non-inherent 21 adverse effect to the community. 22 HEARING EXAMINER ROBESON HANAN: In the course of 23 your travels through the cases, are you familiar with 24 Montgomery County vs. Butler? 25 MR. DAVIS: Yes.</p>	<p>179</p> <p>1 MR. CHEN: With regard to the factual 2 circumstances present in that case as it might be relevant 3 in this particular case, are there parallels that you are 4 able to identify and discuss? 5 MR. DAVIS: Between Butler -- 6 MR. CHEN: Yes. 7 MR. DAVIS: -- and this conditional use? 8 MR. CHEN: Yes. 9 MR. DAVIS: I think that the main one that comes 10 to mind was that the issue of the driveway in the Butler 11 case was deemed to be too close to the adjacent property 12 such that the activity level of trucks coming in and out and 13 vehicles coming in and out would have been a nuisance 14 throughout the day for the adjacent property owner. 15 MR. CHEN: This is an unfair question, but I'm 16 going to ask it anyway. Do you remember the number of trips 17 that they were talking about in that case? 18 MR. DAVIS: No, I don't. 19 MR. CHEN: That's not fair. By the way, just a 20 cleanup question. You mentioned that there has been a tree 21 variance approval in this case? 22 MR. DAVIS: Correct. 23 MR. CHEN: The staff considered that; is that 24 right? 25 MR. DAVIS: The staff and Park and planning had</p>
<p>178</p> <p>1 HEARING EXAMINER ROBESON HANAN: That one is -- 2 where does that -- that's one where the driveway was 3 along -- of a landscape contractor was along the side of a 4 long and narrow property, and 22 -- some short distance to a 5 dwelling. 6 MR. DAVIS: Yes. 7 HEARING EXAMINER ROBESON HANAN: Do you feel 8 that -- that's the case that for some reason keeps springing 9 to my mind here. Can you just comment on that or -- 10 MR. CHEN: Yes. That was about to happen but go 11 ahead. Get into it now. 12 MR. DAVIS: First of all, I didn't know about the 13 Butler case until probably 2016, 2017 because I was not in 14 the world of zoning in 2006 when that came about. I was in 15 Wheaton as the County's redevelopment director. So I was 16 immersed in urban issues. 17 But when I saw that case, the court case for that 18 I wasn't rather -- I was surprised, but I was also happy 19 because this basically said that the County did it right. 20 The zoning text amendment 99004 and that this became a very 21 significant case for the -- it established -- it gave it 22 such strong credibility in terms of being legal and being an 23 important aspect of the review. 24 So yes, I was pleasantly surprised when I was 25 made aware of the particular case.</p>	<p>180</p> <p>1 considered that variance request as part of the preliminary 2 forest conservation plan that would accompany the 3 conditional use when it went to the planning board. 4 MR. CHEN: What was the staff position? 5 MR. DAVIS: The environmental planning 6 coordinator who reviewed the application -- 7 MR. CHEN: Who was that? 8 MR. DAVIS: Katherine Nelson. 9 MR. CHEN: Okay. 10 MR. DAVIS: She felt that the Applicant had not 11 justified in the granting of the variance in accordance with 12 requirements of chapter 22. I believe 22 A, which is the 13 forest conservation law. And she had recommended that that 14 variance not be granted. 15 HEARING EXAMINER ROBESON HANAN: Okay. Before 16 you go further, Mr. Klein has his hand up. 17 MR. KLINE: I have (inaudible). I have 18 previously suggested to (inaudible) analysis of the 19 independent staff members because all that matters is the 20 staff report. And I don't believe it's relevant to go into 21 individual staff person's opinions. What matters is what 22 the staff ultimately recommended and what the planning board 23 sent to you. 24 MR. CHEN: I think I understood the objection. 25 HEARING EXAMINER ROBESON HANAN: Mr. Klein, just</p>

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<p>181</p> <p>1 so you know, your voice is reverberating again. I don't 2 know why. But I like the term that Mr. Cook used. But 3 that's what it's doing. So maybe it will disappear on its 4 own.</p> <p>5 MR. KLINE: Hope; fully I won't have to object 6 again. I have previously indicated that I don't think you 7 analyze individual staff person's opinions on matters, you 8 look at the cumulative staff report.</p> <p>9 HEARING EXAMINER ROBESON HANAN: Well, I think 10 that's a matter -- I'm not -- I'm going to let it in because 11 we let hearsay testimony from government officials in but 12 it's a matter for cross-examination.</p> <p>13 MR. CHEN: Thank you, Madam Examiner. I mean, 14 and I won't responded to Mr. Klein, to his objection.</p> <p>15 But the planning --</p> <p>16 HEARING EXAMINER ROBESON HANAN: But I want to 17 follow up with Mr. Davis. So in your opinion, are you 18 saying that the driveway is a non-inherent operational 19 characteristic, or a physical characteristic?</p> <p>20 MR. DAVIS: I'm saying that it is a physical 21 characteristic since it is a physical construction on the 22 site.</p> <p>23 MR. CHEN: How about the traffic going up and 24 down it every day from the parents and the staff and the 25 trucks for school supplies and food? Well, I believe that</p>	<p>183</p> <p>1 Then later in the day when they come back there's 2 two more. They arrived at the site, parked the car, turn 3 off the engine, go into the center, pick up the child, come 4 back to the car, get in, drive away. So that's a lot of 5 activity during the day when were on the order of somewhere 6 between 700 and 800 trips, depending on either Mr. Cook's 7 number or Mr. Posey's number.</p> <p>8 MR. CHEN: By the way, it also -- your 9 description just talks about parents and pupils. There -- 10 the testimony of the Applicant is that there was going to be 11 staff coming in plus deliveries.</p> <p>12 MR. KLINE: Mr. Chen, there is a question mark at 13 the end of that statement; isn't there?</p> <p>14 MR. CHEN: Yes. Do you recall that additional 15 traffic?</p> <p>16 MR. DAVIS: I don't recall that number but yes, 17 there will be additional traffic coming through the day 18 including where you have employees who arrive. They have 19 shifts for the employees, if you remember the testimony by 20 the applicant concerning the operational characteristics of 21 it, there will be some delivery trucks. I don't remember 22 the number though to be honest with you. I think my mind 23 was boggled by the 700 number. But there will be other 24 trips that are occurring; deliveries and things like that 25 that come to the site.</p>
<p>182</p> <p>1 the total trip activity, which I believe Mr. Posey described 2 as a -- I'm trying to remember the term he used in his 3 testimony. I think it was total movement, total trip -- 4 total vehicle movements I believe it was.</p> <p>5 And that number --</p> <p>6 MR. CHEN: Mr. Cook did not dispute that; is that 7 right? Or they were close, the numbers were very close?</p> <p>8 MR. DAVIS: The numbers were close.</p> <p>9 HEARING EXAMINER ROBESON HANAN: It was like 850 10 or something?</p> <p>11 MR. CHEN: Yes.</p> <p>12 HEARING EXAMINER ROBESON HANAN: 830 or --</p> <p>13 MR. DAVIS: Yes. And I think Mr. Posey's was 14 slightly under Mr. Cook's number.</p> <p>15 MR. CHEN: Correct.</p> <p>16 HEARING EXAMINER ROBESON HANAN: Okay.</p> <p>17 MR. DAVIS: What it is, it's a measure of when a 18 parent comes or when someone is coming to drop a child off 19 in the morning they drive onto the property, they come down 20 the driveway, they go in and they parked the car. Turn off 21 the engine, the child is taken from the car, the child is 22 taken into the child day care center and then a few minutes 23 later after they've signed in and done all that they have to 24 do the person will come back out get in the vehicle leave 25 the site. That's two vehicle movements.</p>	<p>184</p> <p>1 MR. CHEN: So that's an operational aspect?</p> <p>2 MR. DAVIS: That's correct. Yes, that's an 3 operational aspect of the use.</p> <p>4 MR. CHEN: Okay. And then going certainly back 5 to the Hearing Examiner's question to you; is it your 6 opinion that the only adverse impact, non-inherent, is a 7 physical presence of the driveway only?</p> <p>8 MR. DAVIS: I believe that it could be taken into 9 account there could be physical characteristics, operational 10 characteristics that would come into play here and I would 11 argue that you've got a physical characteristic and then 12 there's an operational characteristic as well that I think 13 are -- tend to be -- I view them as being all excessive.</p> <p>14 MR. CHEN: You mean based on the physical -- 15 based upon the physical presence of the driveway, correct?</p> <p>16 MR. DAVIS: And the parking in the parking area, 17 but the parking area is s-- that's not the issue of the 18 encroachment into the -- it's the parking area driveway.</p> <p>19 Now, I compare that to what would represent a 20 full residential development on this property, which I 21 believe would be between two and three one-family 22 residential homes. The property is on the order of, I 23 believe 2.94 acres and the minimum lot size in the RE-1 zone 24 is 40,000 square feet. So it would depend on the amount of 25 actual dedication because you're dealing with net lot area</p>

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<p>185</p> <p>1 for the creation of these residential lots.</p> <p>2 You'd be talking about three residences and the</p> <p>3 trips associated with three homes through the course of a</p> <p>4 day would be much, much lower than it would be for 700</p> <p>5 trips. So I would just see this as an important activity</p> <p>6 issue or just -- let's just call it its' an operational</p> <p>7 characteristic of this use that is, I think, a problem.</p> <p>8 MR. CHEN: Madam Examiner, are we done with what</p> <p>9 your question was?</p> <p>10 HEARING EXAMINER ROBESON HANAN: Yes.</p> <p>11 MR. CHEN: Okay. Thank you.</p> <p>12 Mr. Davis, we had talked about the staff report.</p> <p>13 The planning board also made a recommendation in this case</p> <p>14 as well?</p> <p>15 MR. DAVIS: That's correct.</p> <p>16 MR. CHEN: Okay. Do you remember what that was?</p> <p>17 MR. DAVIS: Yes, they had recommended approval of</p> <p>18 the application with the condition that had been proposed by</p> <p>19 staff.</p> <p>20 MR. CHEN: Do you agree with the planning board</p> <p>21 recommendations?</p> <p>22 MR. DAVIS: No, I don't agree with the</p> <p>23 recommendation.</p> <p>24 MR. CHEN: Why is that?</p> <p>25 MR. DAVIS: Because I believe that -- and I did</p>	<p>187</p> <p>1 that on the exhibit list?</p> <p>2 HEARING EXAMINER ROBESON HANAN: Why did they</p> <p>3 eliminate the storm water management concept approval?</p> <p>4 MR. DAVIS: I believe that they were --</p> <p>5 HEARING EXAMINER ROBESON HANAN: Well, you know.</p> <p>6 I shouldn't ask that. Why would they not get a storm water</p> <p>7 concept approval?</p> <p>8 MR. DAVIS: They have subsequently, I believe it</p> <p>9 was when it was at the early part just before the hearings</p> <p>10 began they did get concept approval.</p> <p>11 HEARING EXAMINER ROBESON HANAN: I see.</p> <p>12 MR. CHEN: By the way, Madam Examiner, maybe Mr.</p> <p>13 Kline can double check me, but I think that Mr. Davis was</p> <p>14 referring to Exhibit 106-A.</p> <p>15 HEARING EXAMINER ROBESON HANAN: Yes. It's --</p> <p>16 oh, I didn't share this. I'm looking at it. There you go.</p> <p>17 MR. CHEN: Is that the right one?</p> <p>18 MR. DAVIS: That's with the report and then there</p> <p>19 was a handout sheet when it went to the planning board that</p> <p>20 deleted the number 12 shown there.</p> <p>21 HEARING EXAMINER ROBESON HANAN: Okay.</p> <p>22 MR. DAVIS: And it replaced it with the --</p> <p>23 MR. CHEN: Okay. So we got the right numbers?</p> <p>24 MR. DAVIS: Yes.</p> <p>25 MR. CHEN: Okay. And I'm just going on my</p>
<p>186</p> <p>1 watch the planning board meeting on their website. I</p> <p>2 watched it live. And my feeling was that they were</p> <p>3 accepting the recommendations with -- from the staff not</p> <p>4 really asking a lot of questions in terms of adverse</p> <p>5 effects, things like that. I just came away after hearing</p> <p>6 the meeting concerned that the planning board had pretty</p> <p>7 much merely accepted the recommendations of staff.</p> <p>8 MR. CHEN: Okay.</p> <p>9 MR. DAVIS: Now, there was one recommendation</p> <p>10 that was a change and that was -- if you look at the -- now,</p> <p>11 I don't know if it's with the first page of the technical</p> <p>12 staff report which is -- it was a handout, planning board</p> <p>13 meeting. It was a revision to the conditions and what it</p> <p>14 did was -- okay, it deleted what had been condition number</p> <p>15 12 in the technical staff report which was the applicant</p> <p>16 must obtain a storm water management plan concept approval</p> <p>17 prior to the public hearing before the hearing examiner and</p> <p>18 replaced with right-of-way dedications for Needwood Road,</p> <p>19 Carnegie Avenue and as shown on the conditional use plan to</p> <p>20 be accomplished by deeds of dedication prior to issuance of</p> <p>21 a budling permit.</p> <p>22 So that was the only change and that was actually</p> <p>23 something that had been recommended by staff.</p> <p>24</p> <p>25 MR. CHEN: Madam Examiner, I'm trying to find</p>	<p>188</p> <p>1 outline. The description of the affected neighborhood, I</p> <p>2 think we covered that; is that right Mr. Davis? Did we</p> <p>3 cover that completely?</p> <p>4 MR. DAVIS: Yes. I believe we did. I did</p> <p>5 mention -- I just want to make sure that I did mention for</p> <p>6 the record that Redland Road is a dividing line between the</p> <p>7 upper Rock Creek Master Plan area which is to the east of</p> <p>8 Redland Road and the Shady Grove Master Plan which is to the</p> <p>9 west side. And I think that it's important in a case like</p> <p>10 this where you would have a surrounding area that has --</p> <p>11 that's based on the same planning principles, the same</p> <p>12 guidelines, the same objectives. And I believe that that</p> <p>13 would rightly be the 2004 Upper Rock Creek Master Plan.</p> <p>14 HEARING EXAMINER ROBESON HANAN: So do you</p> <p>15 disagree with the characterization of the area that's -- how</p> <p>16 would you characterize the area?</p> <p>17 MR. DAVIS: I believe that the area to the east</p> <p>18 side is a rather interesting low density residential area.</p> <p>19 The -- as was noted previously the area to the south of</p> <p>20 Needwood Road is in the RE-1 zone, which is a, in effect, a</p> <p>21 one-acre zone, 40,000 square foot minimum lot.</p> <p>22 The north side of the road the existing</p> <p>23 subdivisions there as Ms. Kosary had previously testified</p> <p>24 are -- have been there for some time, probably going back</p> <p>25 into the '50s, and '60s, in the R-200 zone. They're built</p>

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<p>189</p> <p>1 on larger lots. In the sense that the R-200 zone is</p> <p>2 basically half-acre lots, 20,000 square feet and some of</p> <p>3 these lots are as big as 2 acres. Some of them are 1 acre.</p> <p>4 I, at one point had a drawing and I had noted lot sizes on</p> <p>5 it and I was -- I was not totally surprised because being an</p> <p>6 older subdivision a lot of times you would have that type of</p> <p>7 situation where you would have larger lots in the community.</p> <p>8 So -- and you have park land to the north, you</p> <p>9 had the golf course to the east. You had Crabbs Branch Park</p> <p>10 to the side and then Redland Road. I saw that as being</p> <p>11 basically a large lot area. I think that from the</p> <p>12 standpoint of being a residential wedge I don't think that</p> <p>13 it's precluded from being in a residential wedge by virtue</p> <p>14 of the R-200 or the RE zoning. I think that with regard to</p> <p>15 the Upper Rock Creek area the primary concern of the plan</p> <p>16 was for protection of the Upper Rock Creek. And the</p> <p>17 watershed, the upper area of it.</p> <p>18 I know that the master plan had a very strong</p> <p>19 emphasis on the area north of Muncaster Mill Road in terms</p> <p>20 of having additional safeguards. There is a -- they</p> <p>21 provided for a special protection area designation for it.</p> <p>22 There's a cap on impervious surface associated with it. But</p> <p>23 I would note that in this plan there are --</p> <p>24 MR. CHEN: When you say this plan, you're</p> <p>25 talking?</p>	<p>191</p> <p>1 protection of the water shed area and that's important. I</p> <p>2 want to get -- I actually have notes that I wanted to</p> <p>3 utilize later on on the master plan. And let me see if I</p> <p>4 can find them because it helps me maneuver through the</p> <p>5 master plan.</p> <p>6 Okay. The -- I'll begin our little journey here</p> <p>7 on page 7 of the master plan.</p> <p>8 MR. CHEN: Those sheets that you've got that</p> <p>9 you're looking at are part of the master plan?</p> <p>10 MR. DAVIS: Yeah, these are part of the plan.</p> <p>11 MR. CHEN: Okay.</p> <p>12 MR. DAVIS: But I have sheets that I had --</p> <p>13 HEARING EXAMINER ROBESON HANAN: Now, can you see</p> <p>14 it because I have it up on the screen.</p> <p>15 MR. DAVIS: You do. And I have some underlying</p> <p>16 text I want to refer to.</p> <p>17 HEARING EXAMINER ROBESON HANAN: Okay.</p> <p>18 MR. DAVIS: I have it. I wanted to begin with</p> <p>19 page 7. It talks about the plan concept.</p> <p>20 HEARING EXAMINER ROBESON HANAN: Okay.</p> <p>21 MR. DAVIS: And in the first -- I'll wait. Yeah,</p> <p>22 here we go. Okay. At the top of the page in the first</p> <p>23 paragraph, that's it.</p> <p>24 There's a second sentence that says, North of</p> <p>25 Muncaster Mill Road Rock Creek has been classified as a use</p>
<p>190</p> <p>1 MR. DAVIS: I'm talking about the 2004 Upper Rock</p> <p>2 Creek Master Plan. I believe that there are recommendations</p> <p>3 that are applicable to this site and this area at the south</p> <p>4 end of the planning area.</p> <p>5 MR. CHEN: Could you get into that, please?</p> <p>6 Identifying those parts of the plan that would be applicable</p> <p>7 south of Needwood?</p> <p>8 MR. DAVIS: I can do that. Let me see. I have</p> <p>9 to pull out another stack of papers.</p> <p>10 MR. CHEN: I understand. I asked because Mr.</p> <p>11 Kline is going to ask you about this.</p> <p>12 MR. DAVIS: All right. The master plan, we gave</p> <p>13 it an exhibit number today. I think it was like 23 --</p> <p>14 HEARING EXAMINER ROBESON HANAN: 234.</p> <p>15 MR. DAVIS: Yes. Now, I'm going to identify some</p> <p>16 pages in the plan that I found that I thought were key to</p> <p>17 the review of this application. Ms. Kosary when she had</p> <p>18 her -- began her testimony --</p> <p>19 MR. CHEN: You mean Dr. Kosary?</p> <p>20 MR. DAVIS: Dr. Kosary, excuse me. Last week, I</p> <p>21 thought she gave a very good explanation of the plan history</p> <p>22 in terms of what the plans through say from the 1960s</p> <p>23 forward have recommended for this area. And I think that</p> <p>24 the -- and I think it is a very interesting plan, strong</p> <p>25 emphasis on environmental protection. Strong emphasis on</p>	<p>192</p> <p>1 3 watershed, the highest classification in the state. All</p> <p>2 right. Now, keep in mind there's also class 4 streams</p> <p>3 within the Upper Rock Creek watershed area and there's also</p> <p>4 significant recommendations associated for those. It notes</p> <p>5 in the next sentence, A primary goal -- actually it's the</p> <p>6 third sentence. A primary goal of this plan is to protect</p> <p>7 environmental resources, maintain stream quality by keeping</p> <p>8 streams, forests, and wetlands in a natural state. Okay.</p> <p>9 And as Dr. Kosary had previously testified she</p> <p>10 had mentioned it in light of the 1993 general plan of</p> <p>11 refinement. Okay. Of equal importance -- this is the</p> <p>12 second paragraph on page 7 -- is preserving residential</p> <p>13 character. The generally low density nature of the Upper</p> <p>14 Rock Creek watershed is in keeping with the wedges and</p> <p>15 corridors concept outlined in the general plan. Much of the</p> <p>16 watershed is in the residential wedge an area envisioned by</p> <p>17 the general plan refinement to maintain quality by limiting</p> <p>18 imperviousness which in turn reduces the amount of warm</p> <p>19 water that flows into the streams and contributes to stream</p> <p>20 quality. Keeping the existing residential densities is the</p> <p>21 second basic concept for this plan.</p> <p>22 In my view --</p> <p>23 MR. CHEN: What page is that on?</p> <p>24 MR. DAVIS: That is page 7.</p> <p>25 MR. CHEN: Thank you.</p>

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<p>193</p> <p>1 MR. DAVIS: Of the plan text.</p> <p>2 And I think that, again, recognizing that there's</p> <p>3 the area north of Muncaster Mill Road which is in your class</p> <p>4 3 watershed area that it is important to have more -- I</p> <p>5 think more sensitive environmental treatment for that area</p> <p>6 but it doesn't mean that you ignore the rest of the area.</p> <p>7 It means that there are standards that you have to consider</p> <p>8 and there are recommendations and guidelines and objectives</p> <p>9 contained in the master plan that applies to these areas</p> <p>10 that are also south of Muncaster Mill Road.</p> <p>11 The plan concept for the Upper Rock Creek Master</p> <p>12 Plan includes the following. This is also on page 7. And</p> <p>13 there's a couple of bullets there I wanted to emphasize. To</p> <p>14 extend the open space heritage and preserve resources this</p> <p>15 plan directs development away from stream valleys, forests,</p> <p>16 other sensitive areas, establishes low density zones for</p> <p>17 remaining large lot undeveloped properties in the planning</p> <p>18 area to ensure that open space can be preserved.</p> <p>19 I would say that these have direct application to</p> <p>20 the area north of Muncaster Mill Road, but they also have</p> <p>21 application to the area south of Muncaster Mill Road,</p> <p>22 including this area along Needwood Road that we're talking</p> <p>23 about today.</p> <p>24 MR. CHEN: Again, why?</p> <p>25 MR. DAVIS: Because I believe that the area --</p>	<p>195</p> <p>1 Now, moving on to page 41 --</p> <p>2 HEARING EXAMINER ROBESON HANAN: Now why do you</p> <p>3 say that? Because of the water quality? Because Crabbs</p> <p>4 Branch is a class 4?</p> <p>5 MR. DAVIS: Yes. It's part of the watershed.</p> <p>6 And I --</p> <p>7 HEARING EXAMINER ROBESON HANAN: Gotcha.</p> <p>8 MR. DAVIS: I think it's important. It may not</p> <p>9 have the same significance as it does in the special</p> <p>10 protection area but it's not ignored. It's not as if it --</p> <p>11 the master plan doesn't apply to those areas.</p> <p>12 HEARING EXAMINER ROBESON HANAN: This is subject</p> <p>13 to the limits on impervious area, right?</p> <p>14 MR. DAVIS: There's no specific cap. I think</p> <p>15 this is an area where it's recommended that the levels of</p> <p>16 imperviousness should be sort of in the character of --</p> <p>17 HEARING EXAMINER ROBESON HANAN: Right.</p> <p>18 MR. DAVIS: -- the existing developments.</p> <p>19 HEARING EXAMINER ROBESON HANAN: Okay.</p> <p>20 MR. DAVIS: This is just, remembering off the top</p> <p>21 of my head, I believe the cap -- imperviousness cap in the</p> <p>22 special protection area is somewhere around 8 percent, or</p> <p>23 maybe just a little bit --</p> <p>24 HEARING EXAMINER ROBESON HANAN: Right.</p> <p>25 MR. DAVIS: It's very strict. Okay. Page 41 is</p>
<p>194</p> <p>1 the Crabbs Branch is classified as being a category 4, class</p> <p>2 4 stream and I believe that it's important and this plan</p> <p>3 recognizes the importance of also preserving these streams</p> <p>4 because they are part of the watershed. And they also</p> <p>5 require some sensitive treatment. Maybe not to the same</p> <p>6 level and extent as the areas to the north.</p> <p>7 Okay. Page 8 also has some additional</p> <p>8 recommendations concerning -- or shall I say goals to</p> <p>9 preserve residential character. And the top there -- yes,</p> <p>10 where we are now.</p> <p>11 There's five bullets there at the top. To</p> <p>12 preserve residential character this plan encourages further</p> <p>13 development that is consistent with the character of</p> <p>14 neighboring communities, maintains low densities adjacent to</p> <p>15 stream valleys, a low density along ridges, encourages</p> <p>16 integration of new and existing communities with emphasis on</p> <p>17 design, preservation of open space in those area, new and</p> <p>18 existing communities meet.</p> <p>19 Recommends design and preservation methods that</p> <p>20 retain the character of existing local roads and recommends</p> <p>21 protection of significant views and open spaces that</p> <p>22 contribute to community character. I would argue that these</p> <p>23 goals are just as applicable to the area along Needwood Road</p> <p>24 as they are to the more sensitive areas north of Muncaster</p> <p>25 Mill Road.</p>	<p>196</p> <p>1 a man up and it shows forest resources and it shows forest</p> <p>2 priorities. And I'd like to note</p> <p>3 MR. CHEN: What page are you on?</p> <p>4 MR. DAVIS: This is page 41. That's it. Okay.</p> <p>5 The area we're talking about is located -- you</p> <p>6 see where it says Lake Needwood sort of the center of the --</p> <p>7 yes. The green area just to what would be the southwest of</p> <p>8 the Lake Needwood identification, that green area is the</p> <p>9 area that we're talking about here. This is the area</p> <p>10 bounded, basically, by Needwood Road and Crabs Branch.</p> <p>11 MR. CHEN: And that's the geographic area or</p> <p>12 adjoining the geographic area that we are dealing with this</p> <p>13 proposal, or this conditional use application?</p> <p>14 MR. DAVIS: That's correct. That's correct.</p> <p>15 MR. CHEN: Okay. Go ahead.</p> <p>16 MR. DAVIS: Okay. Then, on page 42 there's some</p> <p>17 recommendations. The third bullet down, protect forest</p> <p>18 areas on other developmental properties -- developable</p> <p>19 properties, excuse me -- to prevent fragmentation of upland</p> <p>20 forest, and reserve forest and stream valley buffers.</p> <p>21 Now, I would note with the subject site that</p> <p>22 the -- in terms of the designation of forest on the property</p> <p>23 there's an area of forest that is along the east boundary of</p> <p>24 the property and also on the south side of the subject site.</p> <p>25 My understanding is that it was not designated as forested</p>

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<p>197</p> <p>1 area because there was a small area of separation on the 2 property between those sites. Those forested areas. So in 3 effect, that separation prevented the forested area on this 4 property from, in effect, rising to the level of protection 5 that would have been afforded for forested areas because it 6 didn't meet that threshold figure.</p> <p>7 But nonetheless, there were some significant 8 mature trees in that area. Now, I will also say that the 9 application they are meeting the requirements that they have 10 for additional tree planting and forestation. But this was 11 trying to save what was already there, not waiting for other 12 trees to grow, if at all possible.</p> <p>13 On page 48 --</p> <p>14 HEARING EXAMINER ROBESON HANAN: Okay. This is 15 what I have as 48.</p> <p>16 MR. DAVIS: All right. On the preceding page, 17 page 47 it identifies what is the special protection area, 18 and as you can see, it's generally the area that's kind of 19 north, northeast of Muncaster Mill Road extending up to the 20 Laytonsville area. And that is the area that would be 21 subject to the special protection area requirements. Okay?</p> <p>22 Page -- then 48, the next page. I wanted to note 23 the paragraph number 3 here. Minimizing imperviousness is 24 one of the --</p> <p>25 MR. CHEN: Excuse me, ma'am. Do you see that on</p>	<p>199</p> <p>1 MR. DAVIS: Yes. And I have information on that 2 and this is also a --</p> <p>3 MR. CHEN: What's the exhibit number?</p> <p>4 MR. DAVIS: This is part of Mr. Reese's 5 testimony.</p> <p>6 MR. CHEN: What's the exhibit number?</p> <p>7 MR. DAVIS: The Exhibit number is, Exhibit 227 -- 8 no that's not this one. Excuse me. Oh, here it is. It's 9 Exhibit 176-HH. It's also, I believe, Exhibit 198. 10 (Exhibit 176-HH was introduced.)</p> <p>11 MR. CHEN: What are these exhibits?</p> <p>12 MR. DAVIS: This is a drawing that Maddox 13 Engineering prepared. That shows --</p> <p>14 HEARING EXAMINER ROBESON HANAN: Are you talking 15 about 198 right now?</p> <p>16 MR. CHEN: Well, it's either 176-AA or 198.</p> <p>17 MR. DAVIS: Double H. 176-HH.</p> <p>18 MR. CHEN: Which one do you prefer? Does it 19 matter?</p> <p>20 MR. DAVIS: Well, 176-HH would have been more 21 recent.</p> <p>22 MR. CHEN: Okay. 176-HH, Madam Examiner.</p> <p>23 HEARING EXAMINER ROBESON HANAN: I'm getting 24 there. Let me just --</p> <p>25 MR. DAVIS: That's not it.</p>
<p>198</p> <p>1 the screen?</p> <p>2 HEARING EXAMINER ROBESON HANAN: I do. You 3 should see my cursor moving right next to it</p> <p>4 MR. CHEN: Okay. Thank you.</p> <p>5 MR. DAVIS: Yes. Minimizing imperviousness is 6 one of the best methods for ensuring protection of water 7 resources, especially in headwaters areas. And this is -- 8 this is a headwaters area that we're talking about. And it 9 is part of the headwaters areas for Rock Creek. It's in 10 the -- it drains directly to Crabbs Branch.</p> <p>11 MR. CHEN: You're talking about the area south of 12 Needwood now?</p> <p>13 MR. DAVIS: Correct.</p> <p>14 MR. CHEN: Okay.</p> <p>15 MR. DAVIS: In the residential zones -- again, 16 this is in that same paragraph. It's about the one, two, 17 third sentence.</p> <p>18 HEARING EXAMINER ROBESON HANAN: Yeah.</p> <p>19 MR. DAVIS: In the residential zones all types of 20 development, residential, institutional, or special 21 exception should be regulated to achieve the same relatively 22 low levels of imperviousness. Okay? Now --</p> <p>23 MR. CHEN: What is the, if you recall, the Maddox 24 calculation on the impervious area? I think it's like 49 25 percent? Something like that?</p>	<p>200</p> <p>1 HEARING EXAMINER ROBESON HANAN: Try this. Is 2 this it?</p> <p>3 MR. DAVIS: That's it, yes ma'am.</p> <p>4 HEARING EXAMINER ROBESON HANAN: All right.</p> <p>5 MR. DAVIS: Great.</p> <p>6 MR. CHEN: What is this showing, just to -- I 7 know Reese -- Mr. Reese described it a year ago, but --</p> <p>8 MR. DAVIS: Yes.</p> <p>9 MR. CHEN: But bring us up to speed.</p> <p>10 MR. DAVIS: This exhibit is a drawing. The left- 11 hand side of it is for the existing conditions today. And 12 then the proposed conditions are shown on the right-hand 13 side. So this is a depiction of the existing amount of 14 imperviousness that is found in this area. Okay?</p> <p>15 HEARING EXAMINER ROBESON HANAN: Okay.</p> <p>16 MR. DAVIS: Now, with the technical staff report 17 it was -- they had identified that the imperviousness for 18 the subject property would be on the order of 36 to 38 19 percent. The Applicant, I believe also had identified that 20 the imperviousness level would be on the order of 36, 38 21 percent.</p> <p>22 Mr. Maddox did an evaluation of the subject 23 property and he found that there were areas that had not 24 been measured as impervious surface that should have been. 25 And I know he identified that the staff had not measured the</p>

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<p style="text-align: right;">201</p> <p>1 outdoor play area, which is a surfaced area, and it counts 2 as impervious surface. The figure that Mr. Reese came up 3 with was on the order of 48 percent. So almost 50 percent 4 imperviousness. Now, in terms of the existing levels of 5 imperviousness he measured RE-1 lots to the south of 6 Needwood Road. He also looked at R-200 lots on the north 7 side of Needwood Road. In the technical staff report the 8 staff had identified that on a Countywide average the -- in 9 the RE-1 zone there was typically about a 23 percent 10 imperviousness and this is for areas served by sewer. 11 What Mr. Reese did was to examine the subject 12 area, properties in the immediate vicinity of the subject 13 site and he determined that the level of imperviousness was 14 somewhere around 15 percent. So he found a number of 15 existing imperviousness less than the average for the County 16 which the staff had used. He also found a higher 17 imperviousness number associated with the proposed project 18 on the order of almost 50 percent at, I believe it was 47.7, 19 48 percent. So this is a significant change in the level of 20 imperviousness in this area. 21 And the master plan is saying that for new 22 development what would be good from the standpoint of 23 helping to protect -- 24 MR. CHEN: What page are you on in the master 25 plan?</p>	<p style="text-align: right;">203</p> <p>1 could adversely affect the stream. 2 MR. CHEN: And that impacts one of the main goals 3 of the master plan, for this drainage area? 4 MR. DAVIS: Right. 5 MR. CHEN: Okay. 6 MR. DAVIS: Okay. 7 MR. CHEN: Next page. 8 MR. DAVIS: On page 49 would be the next page in 9 the master plan. Yes. 10 Okay. Under water sheds and stream valleys the 11 paragraph, the second paragraph that begins at Rock Creek 12 North Branch there's a sentence there at the end of the 13 paragraph which talks about use 4 streams. And it says, use 14 4 includes cold and warm waters that have the potential for 15 or are capable of holding or supporting adult trout for put 16 and take fishing. These streams are managed as special 17 fisheries by periodic stocking, seasonal catching. 18 In the County there has been attempts -- well, 19 though I guess, the 40 years that I've been involved in the 20 County with trying to protect these types of streams because 21 they do have good habitat. Paint Branch comes to mind down 22 it the lower part of the County as one that that is -- it 23 was very -- considered very vital for the health of that 24 stream to try and deal with development around it. 25 So below, so and this particular paragraph notes,</p>
<p style="text-align: right;">202</p> <p>1 MR. DAVIS: This is -- 2 MR. CHEN: We don't need it on the screen Madam 3 Examiner, but -- 4 MR. DAVIS: This was on page 48 that I had read. 5 In the residential zones all types of development, 6 residential, institutional, or special exceptions should be 7 regulated to achieve the same relatively low levels of 8 imperviousness. And this was dealing with, I believe, the 9 existing character. So we have this proposed development is 10 much higher in impervious surface than is the existing 11 development there today. 12 MR. CHEN: And how does that compare to the 13 master plan? 14 MR. DAVIS: Well, the master plan doesn't give 15 you a number. Now in the -- 16 MR. CHEN: I know that. I know that. 17 MR. DAVIS: Okay. But it -- 18 MR. CHEN: Explain what the master plan is 19 saying. 20 MR. DAVIS: The master plan is saying that with 21 new development if you can maintain a similar level of 22 imperviousness that that will be beneficial to the area, 23 rather than increasing imperviousness and increasing the 24 amount of storm water that has to drain towards, in this 25 case, Crabbs Branch and which will be a warmer water and</p>	<p style="text-align: right;">204</p> <p>1 Rock Creek and North Branch are use 3 streams above 2 Muncaster Mill Road. And below Muncaster Mill Road are use 3 4 streams. The use 3 streams are natural trout waters, 4 waters that are capable of supporting natural trout 5 populations including propagation and their associated food 6 organisms. 7 So these levels -- use 3 streams are identified 8 in the plan as being streams of this quality are relatively 9 rare in the County; use 3 areas, one of six such areas. And 10 that area is part of the special protection area. So I 11 would argue that this master plan has application in the 12 subject area with its goals, subjectives, recommendations, 13 because it recognizes that the use 4 streams also need to be 14 protected. 15 May not -- maybe not at the same high level with 16 more restrictive imperviousness and other aspects of 17 development, emphasis on some clustering and things like 18 that. But still, I think it's very important at this 19 location and something that can't be ignore. 20 The next page is page 50 which is a map. Yes. 21 And this shows Upper Rock Creek watershed management 22 categories and there's water shed preservation area which 23 again, you're looking at primarily the area associated with 24 land north of Muncaster Mill Road and you have the area in 25 blue which is a watershed protection area called Regular</p>

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<p>205</p> <p>1 Level.</p> <p>2 And the blue, again, if you look at Lake Needwood</p> <p>3 at the lower central portion of that drawing that blue area</p> <p>4 to the west, to the southwest of the lake that's -- that is</p> <p>5 the area we're talking about Needwood Road and Crabbs Branch</p> <p>6 to the south. That's the dotted pattern below it is Crabbs</p> <p>7 Branch is also the planning area boundary.</p> <p>8 MR. CHEN: So that's there again south of</p> <p>9 Needwood?</p> <p>10 MR. DAVIS: Correct. And part of this</p> <p>11 neighborhood.</p> <p>12 MR. CHEN: Right.</p> <p>13 MR. DAVIS: All right. Page 54 of the master</p> <p>14 plan. Yes. This is a map that shows the Upper Rock Creek</p> <p>15 main stem watershed. And it shows again, the planning area</p> <p>16 boundary. Again, the area that we're dealing with would be</p> <p>17 on -- west of Lake Needwood and it's the area that's in the</p> <p>18 diagonal hatch pattern.</p> <p>19 MR. CHEN: Do you see that Madam Examiner?</p> <p>20 MR. DAVIS: No, excuse me.</p> <p>21 HEARING EXAMINER ROBESON HANAN: Yes.</p> <p>22 MR. DAVIS: It's the area just to the north. Do</p> <p>23 you see where there's the park land designation? That's</p> <p>24 Crabbs Branch Park to the southeast, southwest, excuse me of</p> <p>25 Lake Needwood.</p>	<p>207</p> <p>1 reference to this area?</p> <p>2 MR. DAVIS: To this conditional use.</p> <p>3 MR. CHEN: Area?</p> <p>4 MR. DAVIS: Yes. All right. Then moving on to</p> <p>5 page 61.</p> <p>6 All right. And the first bullet under</p> <p>7 recommendations. Design new development and redevelopment</p> <p>8 to meet appropriate noise guidelines and ordinances to</p> <p>9 prevent conditions that may create local noise impacts. And</p> <p>10 I just point that out because it's demonstrating that in</p> <p>11 terms of the character of the area, I think the master plan</p> <p>12 is trying to -- wants to, in effect, protect the existing</p> <p>13 character of the residential neighborhoods in terms of being</p> <p>14 protected from what would be noise sources that could create</p> <p>15 conflict.</p> <p>16 I'm not a noise analyst so I'm not going to -- I</p> <p>17 didn't evaluate any noise associated with the site. I just</p> <p>18 note that if the master plan questioned it.</p> <p>19 All right. On page 69 of the plan.</p> <p>20 There is -- this is dealing with the Redland Road</p> <p>21 classification. And Redland Road has been previously</p> <p>22 testified to is a primary residential street and it extends</p> <p>23 from Muncaster Mill Road to the plan boundary at Crabbs</p> <p>24 Branch Way. Okay. The -- it has a 70 foot right-of-way</p> <p>25 which is normal for a primary residential road. Then under</p>
<p>206</p> <p>1 HEARING EXAMINER ROBESON HANAN: Yeah.</p> <p>2 MR. DAVIS: Okay. Our area is just to the north</p> <p>3 of that part. Yes. That would be the area of Needwood Road</p> <p>4 and that is identified as being Upper Rock Creek main stem</p> <p>5 watershed.</p> <p>6 MR. CHEN: Again, that's the area south of</p> <p>7 Needwood?</p> <p>8 MR. DAVIS: Yes. Yes. It may -- no, actually it</p> <p>9 includes area north of Needwood Road.</p> <p>10 MR. CHEN: Yeah, I know north. I appreciate</p> <p>11 that, but I'm referencing back to the cross-examination of</p> <p>12 Dr. Kosary before.</p> <p>13 MR. DAVIS: Yes.</p> <p>14 MR. CHEN: Previously by Mr. Kline and the areas</p> <p>15 south of Needwood. That's why I focused on it that way.</p> <p>16 Thank you.</p> <p>17 MR. DAVIS: Yeah. The next page, page 55. Yes.</p> <p>18 And near the top of the page. It's in the first paragraph.</p> <p>19 And it's the next to the last sentence in there. And it</p> <p>20 says, Densities -- you see where -- there we go. Densities</p> <p>21 on properties in the main stem should be consistent with the</p> <p>22 densities on similar properties. And I believe that that is</p> <p>23 again, a recommendation in the plan that has direct</p> <p>24 application to the subject area, and to this property.</p> <p>25 MR. CHEN: When you say application that's a</p>	<p>208</p> <p>1 it is a little two-line sentence there -- or two sentences.</p> <p>2 This two mile section of Redland Road operates</p> <p>3 more as an arterial roadway than as a primary residential</p> <p>4 roadway. And due to several factors. I note that in this</p> <p>5 plan they are recognizing that in some ways Redland Road</p> <p>6 functions as an arterial roadway. But yet, they felt that</p> <p>7 with the recommendations contained in the plan they would</p> <p>8 like to maintain the character of the area with the</p> <p>9 continuation of the primary road but noting that there is --</p> <p>10 it has some stress associated with it.</p> <p>11 Now, there's a -- on page -- there's a</p> <p>12 recommendation in the plan and I guess I'm not on the right</p> <p>13 page for that. But the plan recommended that there would be</p> <p>14 need for some improvements to Redland Road. Maybe that</p> <p>15 was -- yes, page 70. Here we are.</p> <p>16 Under adjacent land uses it says adjacent land</p> <p>17 use on Redland Road is inconsistent with the residential</p> <p>18 road classification. And they're talking about some of the</p> <p>19 uses. Three houses of worship, Shady Grove Presbyterian</p> <p>20 Church, Derwood Alliance Church, Ingelsia Alianza Derwood.</p> <p>21 And the second done is commercial frontage between Muncaster</p> <p>22 Mill Road and Roslyn Avenue.</p> <p>23 And then they note, 40 single family residential</p> <p>24 residences along it. So they see this as kind of a</p> <p>25 transitional situation. But they recommended an improvement</p>

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<p>209</p> <p>1 in the next paragraph the planned intersection capacity 2 improvement. And it was noted that the intersection of 3 Redland Road and Needwood Road is forecast to exceed the 4 Derwood policy area congestion standard. 5 Now, keep in mind, this was from -- reflective of 6 an annual growth policy from many years ago. But the -- 7 there was an improvement done to that intersection. And 8 what they did was to add some lanes to, in effect, improve 9 the approaches on Redland Road both coming from the north 10 and to the south. 11 MR. CHEN: Were those the improvements referenced 12 earlier today? 13 MR. DAVIS: Yes, I believe they were referenced 14 today. And those were -- that was an important improvement 15 to try and reduce the stress associated with Redland Road. 16 Now, I bring this up because Needwood Road is also a primary 17 residential road in the County. And I see in the 2004 18 masters plan the discussions of the stress associated with 19 Redland Road. 20 And my concern would -- my concern as a planner 21 here would be that if we have a redevelopment of properties 22 or new development on properties that in essence, increases 23 the travel associated with the road we could be creating 24 additional problems in terms of the functionality of that 25 intersection insofar as the Needwood Road legs of that.</p>	<p>211</p> <p>1 Cultural Center which also seems to have, in terms of its 2 current size and activity levels, there was testimony 3 concerning the effects of it, but it's not a 9 to 5 all day 4 kind of operation, as I understand it. 5 So I just think that we need to be aware of the 6 fact that Needwood Road potentially could become, in this 7 sort of transition, where is it a primary road; is it some 8 sort of a larger scale connector road, an arterial road? 9 You know, what would it become? So I point that out as 10 being an issue in the master plan. 11 That's all I wanted to say about the master plan. 12 I think in terms of summary of it; I think that this master 13 plan definitely includes goals, objectives, recommendations, 14 policies for the entire planning area. But I do understand 15 that the area north of Muncaster Mill Road has had a greater 16 deal of attention paid to it because of the very sensitive 17 nature of the area from an environmental perspective and for 18 safeguarding the upper area of the Rock Creek watershed. 19 MR. CHEN: Does that attention in any way 20 derogate from the application of the master plan and its 21 goals and objectives to the area that has been identified, 22 at least in this proceeding, as a surrounding area with 23 proposed conditional uses to be located? 24 MR. DAVIS: No. I believe that this is perfectly 25 appropriate. I think that what has happened is that they've</p>
<p>210</p> <p>1 Now, that being said, then I looked at the land 2 uses along Needwood Road. You have the -- some uses that 3 occurred after the master plan. You have the Taiwanese 4 Cultural Center which I've already talked about at the 5 corner of Needwood Road, the northeast corner of Needwood 6 and Redland Road. That is a conditional use that was 7 approved at that location. 8 You also have the Taiwanese Presbyterian Church 9 which has also been noted in the hearing which is 10 immediately adjacent to the Kosary/Posey property on the -- 11 on their east side. So the Kosary/Posey property is 12 actually the wedge between that church and the subject 13 property. 14 And then another conditional use is a small child 15 daycare center that's located just a little farther east of 16 the church, I believe, on the north side of Needwood Road. 17 And I think that's a facility for -- I think it's up to 12 18 children. 19 MR. CHEN: Mr. Posey testified about that. 20 MR. DAVIS: Yes, he did testify about that. 21 Now, so within the area you've had a couple of 22 different uses coming in that in effect, have had effect. 23 In terms of how this road is utilized. One, a permitted use 24 being the church with most of its traffic generally 25 occurring on weekends. And then, you have the Taiwanese</p>	<p>212</p> <p>1 identified the class 3, class 4 areas and I think that this 2 class 4 stream, I believe that there's sufficient guidance 3 in the master plan to be able to review and consider how new 4 development will be -- what effects it could have on the 5 area and it needs to be carefully considered. 6 MR. CHEN: Including drainage? 7 MR. DAVIS: Including drainage, yes. 8 MR. CHEN: And you've gone through for the last 9 bit of time the sections and parts of the master plan that 10 are your examples of that application? 11 MR. DAVIS: Yes. 12 MR. CHEN: Okay. 13 MR. DAVIS: There's one other drawing. And maybe 14 this might be a time to bring it in. 15 MR. CHEN: Please. 16 MR. DAVIS: Are you ready for it? 17 MR. CHEN: No, go right ahead. Let's deal with 18 it. 19 MR. DAVIS: And this I believe is -- 20 MR. CHEN: Let me give you a question on that. 21 Mr. Davis, there was some discussion a year ago with regard 22 to a priority funding; is that correct, sir? 23 MR. DAVIS: That's correct. 24 MR. CHEN: You were present for that testimony? 25 MR. DAVIS: Yes.</p>

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<p>213</p> <p>1 MR. CHEN: And you've done some research on that 2 point; is that correct, sir? 3 MR. DAVIS: Well, what I have done is try and 4 determine that the area involved with this application, how 5 does that -- what is its status in terms of priority funding 6 areas of Montgomery County. 7 MR. CHEN: Okay. What were your findings? 8 MR. DAVIS: Well, and first of all, I want to 9 check if this was -- this was entered as an exhibit but I 10 don't have that exhibit number -- 11 MR. CHEN: Who -- 12 MR. DAVIS: -- on it. 13 MR. CHEN: There's on -- Madam Examiner, give us 14 one minutes. 15 HEARING EXAMINER ROBESON HANAN: All right. 16 MR. DAVIS: I think it may have been in the batch 17 that it was just a number but it didn't have -- 18 MR. CHEN: 204 or 205. 19 MR. DAVIS: Yes. Here is a list. This was a 20 list that I -- 204 is the exhibit number and it's the County 21 wide priority funding map and it's a color print. I think 22 that -- yes. That's the map. So it is an exhibit. Good. 23 All right. 24 (Exhibit 204 was introduced.) 25 MR. DAVIS: Okay. I will just point to it on my</p>	<p>215</p> <p>1 and Needwood Road. 2 HEARING EXAMINER ROBESON HANAN: Okay. For the 3 record. I need you to describe it. I can describe it as 4 we've seen this on some other exhibits where there's lots 5 that are shaped like wedges where Morton's Towing is. 6 MR. DAVIS: Yes. 7 HEARING EXAMINER ROBESON HANAN: And the 8 Taiwanese Cultural Center is across the street. Okay. Go 9 ahead. (inaudible) and the rest is in the priority -- or in 10 yellow. 11 MR. DAVIS: Yes. The area in yellow represents 12 more priority funding area. The area that we're discussing 13 where you identified the land uses and where the subject 14 site is located the south side of Needwood Road extending 15 all the way to Redland Road and extending south down to 16 Crabbs Branch. 17 Then, it extends east incorporating the 18 Enterprise Golf Course; I've lost a lot of golf balls. And 19 to Rock Creek Park. That area is (inaudible) priority one 20 areas. 21 HEARING EXAMINER ROBESON HANAN: So the dark -- 22 are you saying the darker yellow is -- the yellows are 23 priority funding areas? And the grays are not? 24 MR. DAVIS: Correct. 25 MR. CHEN: What is the application to the subject</p>
<p>214</p> <p>1 screen but that's not going to help anybody. I thought we 2 did have a larger scale. 3 HEARING EXAMINER ROBESON HANAN: I think you do. 4 MR. DAVIS: The blowup is 205. 5 MR. CHEN: Is there a 205, Madam Examiner? 6 MR. DAVIS: If you can't get that exhibit I 7 could -- 8 HEARING EXAMINER ROBESON HANAN: No, I got it. 9 Give me one moment to rotate it. Okay. So let me blow this 10 one up. 11 MR. DAVIS: And rotate it, yes. 12 Okay. We're fine. 13 HEARING EXAMINER ROBESON HANAN: This way? 14 MR. DAVIS: No, no. Where you had it was fine. 15 Yes. 16 (Exhibit 205 was introduced.) 17 MR. DAVIS: All right. You see where there's 18 the -- let me see, I'm trying to guide you. Redland Road is 19 just to the -- yes. You're pointing to Redland Road and if 20 you move -- 21 HEARING EXAMINER ROBESON HANAN: Here, or over -- 22 MR. DAVIS: No, come back. Right in -- if you 23 come straight north you're going to come up to the Crabbs -- 24 not Crabbs Branch. Yes. Go directly to your east. That's 25 it. Right there. That is the intersection of Redland Road</p>	<p>216</p> <p>1 property? 2 MR. DAVIS: The subject property and the other 3 properties on the south side of Needwood Road are not 4 included in a priority funding area. And this has 5 significance from the standpoint of the state's Smart Growth 6 program. And I call this the carrot and the stick approach 7 that the state has utilized. And that is that they're 8 discouraging public infrastructure projects located in the 9 non-priority funding areas. In other words, they want to 10 see infrastructure improvements concentrated in the priority 11 funding areas which represent appropriate growth areas in 12 the County. 13 So you know, the fact that this is -- has a 14 subdivision within it it's an RE-1 zoned area and I would 15 say that from the perspective of the state this is an area 16 where they would not be encouraging public capital 17 improvement projects that would in effect be utilized to 18 increase development. 19 MR. CHEN: How did this issue arise during the 20 course of the hearing presentation a year ago? 21 MR. DAVIS: Well, there had been two appraisal 22 reports that had been submitted. The first the opposition 23 had submitted a report called the McPherson report and then 24 the Applicant submitted their own report which I call the 25 merit report. And there was discussion associated with the</p>

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<p>217</p> <p>1 merit report that was talking about smart growth 2 implications for this area as a development area. 3 MR. CHEN: All right. Explain what that report 4 was proposing relative to this piece of it. 5 MR. DAVIS: Yes. These two appraisal reports had 6 been submitted to address the issues contained in Section 7 7.3. -- 8 HEARING EXAMINER ROBESON HANAN: I.E.G or F. G. 9 MR. DAVIS: It would be actually in G. G, small 10 i. The use, peaceful enjoyment, economic value, or 11 development potential of abutting or confronting properties 12 for the (inaudible) neighborhood. These two appraisal 13 reports were prepared to evaluate the Kosary/Posey property 14 from the standpoint of would there be adverse economic 15 impact on the properties by virtue of the -- of this 16 conditional use application. 17 MR. CHEN: And the merit report made an 18 assumption relative to this exhibit that has just been up on 19 the screen; is that correct? 20 MR. DAVIS: Well, not about this exhibit. 21 MR. CHEN: I understand. I'm sorry. 22 MR. DAVIS: The merit report basically was 23 identifying this area as being an infill type area. And 24 that the development it was going -- the development that 25 would occur would be development as allowed as a permitted</p>	<p>219</p> <p>1 MR. DAVIS: Okay. Now, I really need to go to 2 some notes associated with these two appraisal reports. 3 MR. CHEN: By the way, you just mentioned how 4 you've been involved with appraisal reports, could you give 5 the Hearing Examiner your background with that? 6 MR. DAVIS: During my time at park and planning 7 commission, particularly when I was the subdivision 8 supervisor, there were times that we would actually get pre- 9 preliminary plan applications that were submitted by 10 property owners just so they could figure out how many units 11 could figure out how many units could they get on the 12 property because they were going to be -- the properties 13 were proposed for condemnation for whatever public project 14 was wanted. Could be a school site, could be a road, things 15 like that. 16 So sometimes we would get these plans and we 17 would attempt to determine based on the preliminary plan 18 procedures whether or not it would be appropriate -- what 19 would be the appropriate level of land use development. And 20 then, the applicants would then go away and utilize those 21 for work developing the valuations as it were of the 22 property. So that was sort of my introduction to appraiser 23 work. 24 MR. CHEN: How many years were you doing that? 25 MR. DAVIS: Well, during my time as -- about 7, 8</p>
<p>218</p> <p>1 use in the zone or as conditional use in the zone. 2 And that this was appropriate by virtue of the 3 fact that this would seem to be in accordance with the smart 4 growth priorities established in the State of Maryland. And 5 I had looked at this in the context of, I did not feel that 6 in effect this was being identified as a priority funding 7 area. And it's not. So that was the purpose of that 8 drawing. I wanted to show that at this point because of the 9 earlier discussion about low density character of this area. 10 And I would -- what I would point out at this point -- 11 MR. CHEN: Can you go to 104, Madam Examiner? Is 12 that what you want? 13 MR. DAVIS: No, I don't think we really need this 14 anymore. 15 MR. CHEN: Oh, okay. I'm sorry. 16 MR. DAVIS: Well, I guess whatever you want to - 17 -you want me to stay with this? 18 MR. CHEN: Yeah. Why don't you finish up on 19 this. 20 MR. DAVIS: All right. Since we're talking about 21 the two appraisal reports and I emphasize I have no -- I'm 22 not involved in determining value. But I have experience 23 dealing with (inaudible) best use. 24 MR. CHEN: We're losing noise. Somebody's moving 25 papers or something.</p>	<p>220</p> <p>1 years. But it may have only come up 5 to 10 times. You 2 know, it was one of those things. Occasionally, it would 3 come in and we would look at it. And then it was up to -- 4 that was the end of it as far as our review was concerned. 5 And that the end of their ride. And then they would -- they 6 would utilize that to begin their work. 7 Now, after I retired from the County in 2007 I 8 started my own planning business and one of my key clients 9 was the Maryland State Highway Administration. And they 10 would utilize my planning service to help to determine 11 highest and best use for properties that were involved in 12 condemnation proceedings in various circuit courts in the 13 state. 14 And so -- 15 MR. CHEN: How many assignments did you have 16 would you say in that area? 17 MR. DAVIS: With the -- well, they were a pretty 18 good client. I would say it was probably on the order of 19 about, somewhere between 30, 35 different cases I worked on 20 for them. 21 MR. CHEN: Over a period of how long? 22 MR. DAVIS: About seven years. 23 MR. CHEN: Go ahead. 24 MR. DAVIS: And so that -- you know that's sort 25 of my -- the background I bring into the discussion of</p>

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<p>221</p> <p>1 appraisal reports. So I did review the two appraisal 2 reports and I note, and I wanted to look at some of the -- 3 because I did a comparison of the two reports in terms of 4 what their approaches were and what they were trying to do. 5 Again, my purpose wasn't to determine the value 6 so much as just did they properly reflect what could be done 7 with the Kosary/Posey property. Was it at its maximum 8 development? Could there be additional development? Could 9 there be redevelopment? That's where its' at. 10 MR. CHEN: How does that -- 11 HEARING EXAMINER ROBESON HANAN: Wait. Of the 12 Kosary/Posey property, or the subject property? 13 MR. DAVIS: No the -- this was for purposes of 14 making the -- 15 HEARING EXAMINER ROBESON HANAN: To value their 16 property? 17 MR. DAVIS: Yes. 18 HEARING EXAMINER ROBESON HANAN: Okay. 19 MR. DAVIS: In terms of economic value. 20 HEARING EXAMINER ROBESON HANAN: Right. Okay. 21 MR. CHEN: And that was both reports, correct, 22 sir? 23 MR. DAVIS: That's correct. And -- 24 HEARING EXAMINER ROBESON HANAN: Right. I 25 remember.</p>	<p>223</p> <p>1 But I think that one of the -- what is important 2 here is that the -- my conclusion in looking at the two 3 reports is that the McPherson report probably would not find 4 much in the way of comparative data simply because having a 5 residential use wedged between two commercial uses is not 6 really a good planning situation. And I would argue that in 7 Montgomery County it's something that's been discouraged for 8 many years. Not to say it doesn't happen. 9 Even, you know, probably where you would see it 10 more would be in an urban area, like Bethesda, Silver Spring 11 where you have, you know, hold out properties in a block. 12 But I think that's a different situation. So at any rate, I 13 felt that the merit report also then went into a discussion 14 describing the area surrounding the area along Needwood 15 Road, the areas north and south of Needwood Road as 16 basically being an area that could be considered a 17 redevelopment area. 18 And then it sort of went into some explanation 19 basically suggesting that this was part -- this could be 20 considered part of the state's emphasis for smart growth 21 development. And my conclusion based on my experience and I 22 went through the state's program for certification for 23 concerned with smart growth development at the University of 24 Maryland, that this is not an area that is considered 25 appropriate for infill development. And the priority</p>
<p>222</p> <p>1 MR. CHEN: And how does your comparison of the 2 two reports help the Hearing Examiner? 3 MR. DAVIS: Okay. Basically I concluded that the 4 McPherson report which concluded that highest and best use 5 for the Kosary/Posey property was one single family home and 6 in fact, it is developed. So that was looked upon as the -- 7 as what they saw as highest and best use. 8 The merit application looked at the potential for 9 redevelopment of Kosary/Posey property. And -- but really 10 it's maxed out in terms of residential development. So it 11 was -- I think that it was viewed as the one unit would be 12 sort highest and best use; it could be a new unit. It could 13 be added on, whatever. So that, I think got into some 14 valuation with that, but. 15 The McPherson report though concluded that there 16 wasn't a lot of data, comparison data for determining values 17 of situations where you have a detached home with two non- 18 residential or two commercial -- you know, two -- an 19 institutional use, commercial use on either side of it. 20 And the merit report basically said that that was 21 a constraint that really prevents a determination of 22 economic value associated with the subject application for 23 example, being built. The McPherson report noted that there 24 was not a lot of data but yet, they were able to kind of put 25 together what they thought the effect would be.</p>	<p>224</p> <p>1 funding area map, I think, kind of demonstrates that it's 2 not. 3 The next -- 4 HEARING EXAMINER ROBESON HANAN: And why do you 5 say that? Why do you think it's not appropriate for infill 6 development? 7 MR. DAVIS: I believe that in terms of infill 8 development I think it's appropriate that you could have 9 some additional in accordance with the requirements of the 10 RE-1 zone. Could be permitted uses. Could even be some 11 conditional uses. But I think it has to be scaled at a 12 level that doesn't require additional infrastructure 13 improvement. 14 And in this case, we know there's going to be a 15 necessary additional infrastructure improvement. And the 16 most notable would be the extension of the -- redo of the 17 storm drain system in the existing South Riding Subdivision 18 that's located immediately south of the property. 19 The Applicant has identified and shown how the 20 existing draining pipes can be upgraded in terms of taking 21 out the current pipes, adding bigger pipe so it can 22 accommodate the storm drainage associated with the 23 conditional use. But this raises a lot of other issues 24 rather than solving issues. 25 It's -- the Applicant and their testimony said</p>

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<p style="text-align: right;">225</p> <p>1 that they would be responsible for the cost of doing this 2 project. However, I believe that the costs that were 3 utilized wee sort of proforma estimates of how many linear 4 feet of pipe. 5 MR. CHEN: You mean about the testimony that was 6 received? 7 MR. DAVIS: Yes. 8 MR. DAVIS: In terms of there was an estimate of 9 cost and I think it was somewhere around a couple of hundred 10 thousand dollars. And I think that grossly underestimates 11 what needs to be done. I'd point out that you have to go in 12 and replace the pipes in the existing neighborhood. Now, 13 this is going not have a very strange effect on that 14 neighborhood because these -- the drawings that have been 15 submitted the Applicant have shown that there's going to be 16 fairly deep excavation. 17 MR. CHEN: How deep? 18 MR. DAVIS: On the order of 12 feet in some 19 locations. And I believe that this will have an effect. 20 The pictures that were shown by Mrs. -- by Dr. Kosary I 21 think were intended to show that with the depth of these 22 trenches they're going to have to make sure that they 23 support the sides for the safety of the workers. And when 24 you do that, you dig -- it's a bigger trench certainly than 25 the pipe, you're going to have spill over into adjacent</p>	<p style="text-align: right;">227</p> <p>1 to whether or not this represents a piece of public 2 infrastructure -- it's publicly owned infrastructure -- that 3 should be allowed to occur when we don't know really the 4 full extent of what it's going to be, the full cost, the 5 full sizing and all that goes with it. 6 There's a concept approval I understand from the 7 County. I have not really reviewed that in detail because 8 that's not -- I'm not an engineer. But I'm just stating 9 that based on the record that we have in terms of the 10 testimony and what's been proposed I see this as being a 11 fairly significant infrastructure project. 12 MR. CHEN: Does this go back to your experience 13 in -- as not merely a planner but also the services you 14 provided in providing analysis of highest and best use? 15 MR. DAVIS: No, not really. 16 MR. CHEN: Okay. 17 MR. DAVIS: We didn't have to do that. That was 18 more to issues of -- 19 MR. CHEN: Okay. 20 MR. DAVIS: -- growth management for 21 jurisdictions and things like that. According to 22 (inaudible). 23 MR. CHEN: But it goes to your background with 24 park and planning which you -- particularly I guess 25 subdivision control?</p>
<p style="text-align: right;">226</p> <p>1 properties on either side. It's going to create a fairly 2 significant disruption in the existing neighborhood. 3 We don't know the cost of it. The -- I don't 4 know if they need to purchase easements on individual 5 properties to do this. I don't think it's something you 6 could just do in a standard you know, 5 foot utility 7 easement either side of the street. The problem about this 8 is that usually that type of infrastructure you would put in 9 at the beginning of the project. So the subdivision when it 10 was built back in the 1980s did -- you know they sized it 11 appropriately for their development. 12 Now there have been, additions in terms of new 13 development that has been brought into that pipe system. 14 The -- there was testimony concerning the Taiwanese 15 Presbyterian Church, that they have tied into the storm 16 drain and not -- there's questions as to whether it was done 17 properly, not done properly and there's certainly signs of 18 strain for the system in terms of some erosion as it's down 19 near closer to the stream. 20 So this, to me, is on the order of a major 21 infrastructure improvement. I'm not aware of anything in 22 the capital improvements program for it. Keep in mind, it's 23 not in a priority funding area so normally the County would 24 not be looking to do significant infrastructure in this 25 particular area. So it raises a very significant issue as</p>	<p style="text-align: right;">228</p> <p>1 MR. DAVIS: In subdivision we would see, you 2 know, as plans would come in, even at the time of zoning you 3 would see plans would come in and they're planning for the 4 major infrastructure that would be onsite that would be the 5 developer's responsibility and how it ties into existing 6 infrastructure in the nearby community to be affected. And 7 this -- this is sort of a major deal, in my opinion. 8 MR. CHEN: Have we finished one area? 9 MR. DAVIS: I believe so. 10 MR. CHEN: Okay. Madam Examiner, we're not close 11 to done. 12 HEARING EXAMINER ROBESON HANAN: Okay. 13 MR. CHEN: We're at -- I apologize. I don't mean 14 to be glib. But we're at 20 of 5 right now. 15 HEARING EXAMINER ROBESON HANAN: Yeah. 16 MR. CHEN: This is, based on what I just heard 17 from Mr. Davis this is an appropriate, I think, break point 18 in his subject matter of his testimony. You know, and I 19 would suggest that this would be the appropriate time to 20 call it a day. 21 HEARING EXAMINER ROBESON HANAN: Mr. Kline, do 22 you have an objection to calling it a day? 23 MR. KLINE: No. No, ma'am. There's a whole lot 24 of maybe not so humorous responses, but no. I think we're 25 all reached a level of absorption and exhaustion and I've</p>

Transcript of Hearing
Conducted on April 2, 2021

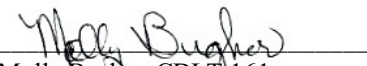
58 (229 to 232)

229

1 still got some Easter eggs I've got to color.
2 HEARING EXAMINER ROBESON HANAN: Mr. Kline, have
3 a nice time. Everyone, if you're celebrating over the
4 holiday, have a wonderful time.
5 I will adjourn this hearing until Tuesday, April
6 6th at 9:30.
7 Or is there anything we need to discuss before we
8 adjourn for today?
9 Okay. Hearing none, enjoy your weekends and I
10 will --
11 (The recording was concluded at 4:42 p.m.)
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1 CERTIFICATE OF TRANSCRIBER
2 I, Molly Bugher, do hereby certify that the foregoing
3 transcript is a true and correct record of the recorded
4 proceedings; that said proceedings were transcribed to the
5 best of my ability from the audio recording as provided; and
6 that I am neither counsel for, related to, nor employed by
7 and of the parties to this case and have no interest,
8 financial or otherwise, in its outcome.
9
10
11
12 Molly Bugher, CDLT 161


Molly Bugher, CDLT 161

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