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Transcript of Administrative Hearing - Day 7

Date: March 25, 2021

Case: The Primrose School

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Transcript of Administrative Hearing - Day 7
March 25, 2021

1 (1 to 4)

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2	FOR MONTGOMERY COUNTY, MARYLAND	2	
3	-----x	3	FOR MONTGOMERY COUNTY OFFICE OF ZONING AND ADMINISTRATIVE
4	THE PRIMROSE SCHOOL, :	4	HEARINGS:
5	Applicant. : Case No.: CU 18-08	5	LYNN ROBESON HANNAN, HEARING EXAMINER
6	-----x	6	
7		7	FOR THE APPLICANT:
8		8	JODY S. KLINE, ESQUIRE
9	HEARING	9	MILLER, MILLER & CANBY
10	BEFORE HEARING EXAMINER LYNN A. ROBESON HANNAN	10	200-B Monroe Street
11	Conducted Virtually	11	Rockville, MD 20850
12	Thursday, March 25, 2021	12	(301) 762-5212
13	9:50 a.m. EDT	13	
14		14	FOR CAROL KOSARY, PAUL POSEY, CECELIA ENGLISH:
15		15	WILLIAM J. CHEN, JR., ESQUIRE
16		16	THE LAW OFFICES OF WILLIAM J. CHEN, JR., LLC
17		17	200-A Monroe Street, Suite 300
18		18	Rockville, MD 20850
19		19	(301) 279-9500
20		20	
21		21	Also Present: Nana Johnson, OZAH Staff
22		22	
23	Job No.: 363154	23	
24	Pages: 1-244	24	
25	Transcribed by: Megan Wunsch, AAERT CET	25	
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7		6	(Retained.)
8		7	HEARING EXHIBITS PAGE
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<p style="text-align: right;">9</p> <p>1 HEARING EXAMINER ROBESON HANNAN: -- beat mine --</p> <p>2 MS. KOSARY: Yeah.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: -- a mile.</p> <p>4 MS. KOSARY: By -- by just a couple months, I'm</p> <p>5 sure.</p> <p>6 (Laughter.)</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Yeah. Okay.</p> <p>8 MS. KOSARY: Okay. So, Madam Examiner, you asked</p> <p>9 for a couple of measurements on day six of this hearing.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: Yes. Um-hmm.</p> <p>11 MS. KOSARY: So correct me if I'm incorrect, but I</p> <p>12 believe you asked about the distance to the property line</p> <p>13 from Paul's vantage point in the kitchen and the distance</p> <p>14 from the back of our water feature to the property line.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Yes.</p> <p>16 (Exhibit 227-BBBBB introduced.)</p> <p>17 MS. KOSARY: Okay. These locations are depicted in</p> <p>18 OZAH Exhibit 227 --</p> <p>19 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>20 MS. KOSARY: -- document BB --</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Do you know if</p> <p>22 it's A -- do you want me to pull up the exhibit?</p> <p>23 MS. KOSARY: No. No, I don't. I'm just -- just</p> <p>24 establishing --</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Okay.</p>	<p style="text-align: right;">11</p> <p>1 MS. KOSARY: Approximately 75 feet.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Okay. All right.</p> <p>3 MS. KOSARY: Okay. Moving on.</p> <p>4 In testimony, the Applicant has had little to say</p> <p>5 about the master plan. In fact, the Applicant has been a</p> <p>6 bit confused regarding the applicable master plan.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Dr. Kosary, could</p> <p>8 you turn your camera on please?</p> <p>9 MS. KOSARY: Oh, my camera is on. You're not</p> <p>10 seeing me?</p> <p>11 HEARING EXAMINER ROBESON HANNAN: No, I'm not.</p> <p>12 MS. KOSARY: Do I have -- and my camera is showing</p> <p>13 as on. Did that help?</p> <p>14 HEARING EXAMINER ROBESON HANNAN: Okay. That's --</p> <p>15 MS. KOSARY: Can you see me now?</p> <p>16 HEARING EXAMINER ROBESON HANNAN: Yes.</p> <p>17 MS. KOSARY: Okay. Great. I'm waving.</p> <p>18 (Laughter.)</p> <p>19 MS. KOSARY: Okay. Where was I? Okay.</p> <p>20 On page 7 of the Applicant's Statement of</p> <p>21 Justification, which is OZAH Exhibit 10, in page 6 of the</p> <p>22 Applicant's Amended Statement of Justification, which is</p> <p>23 OZAH Exhibit 62, it states that the applicable master plan</p> <p>24 is the 1985 Gaithersburg Vicinity Master Plan. On page 7</p> <p>25 of OZAH Exhibit 62, it states that the Applicant was</p>
<p style="text-align: right;">10</p> <p>1 MS. KOSARY: -- where they were. That's five Bs.</p> <p>2 So using OZAH Exhibit 199-D, the distance to the</p> <p>3 property line from Paul's kitchen vantage point is</p> <p>4 approximately 75 feet. The distance from the back of our</p> <p>5 water feature to the property line is approximately 23</p> <p>6 feet. So I want to point out that our home sits pretty</p> <p>7 much dead center widthwise on our property. So the</p> <p>8 distance actually from our master bedroom to our property</p> <p>9 line with the church is -- is about 75 feet. And the</p> <p>10 distance from my office to our property line with the</p> <p>11 church is approximately 80 feet. And we looked at these</p> <p>12 locations in OZAH Exhibit 227, document YY.</p> <p>13 (Exhibit 227-YY introduced.)</p> <p>14 MS. KOSARY: Okay. So getting --</p> <p>15 HEARING EXAMINER ROBESON HANNAN: I'm sorry. Could</p> <p>16 you just give me the distance from the church? Is the</p> <p>17 church distances -- can you just give me the distance from</p> <p>18 your -- the two locations to the church's property line?</p> <p>19 MS. KOSARY: Okay. From our master bedroom to the</p> <p>20 church's property line is about 75 feet. And the distance</p> <p>21 from my office to our property line with the church is</p> <p>22 approximately 80 feet.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: And then the</p> <p>24 distance from your kitchen window to the subject property</p> <p>25 property line is what? I got the water feature.</p>	<p style="text-align: right;">12</p> <p>1 certain that, quote, The proposal substantially conforms</p> <p>2 with the recommendations of the master plan and isn't -- is</p> <p>3 not inconsistent with the plan's purposes, unquote.</p> <p>4 It was the wrong master plan the Applicant was</p> <p>5 discussing. When the Transportation Impact Study Scope of</p> <p>6 Work Agreement, which can be located on page 8 of Appendix</p> <p>7 A of OZAH Exhibit 63, was established, the Applicant seems</p> <p>8 to have thought that they were in the Shady Grove Sector</p> <p>9 Plan, which they actually referred to as the Sandy Grove</p> <p>10 Sector Plan.</p> <p>11 Even the technical staff could not get their master</p> <p>12 plans correct when on page 4 of the technical staff report,</p> <p>13 in OZAH Exhibit 106, they indicate in their description of</p> <p>14 the defined neighborhood that, quote, The area north of</p> <p>15 Needwood Road is located in the Gaithersburg Master Plan</p> <p>16 area, unquote, when in fact the area north of Needwood and</p> <p>17 east of Redland is in the Upper Rock Creek Master Plan, and</p> <p>18 the area west of Redland is in the Shady Grove Sector Plan.</p> <p>19 On page 3 of this report, staff also seemed to</p> <p>20 think that a Montgomery County Parks Department maintenance</p> <p>21 depot is in the middle of Crabbs Branch upstream stormwater</p> <p>22 pond. Obviously this must be where the parks department</p> <p>23 maintains the county's fleet of submarines.</p> <p>24 7430 Needwood, the proposed Derwood site, is in the</p> <p>25 2004 Upper Rock Creek Master Plan. The master plan area</p>

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<p style="text-align: right;">13</p> <p>1 encompasses the upper reaches and headwaters of Rock Creek, 2 a tributary of the Potomac River. Sixty percent of the 3 Upper Rock Creek watershed lies within the master plan 4 area. The remainder, consisting of the northwest branch, 5 lies within the only master plan. 6 The main streams and their tributaries within this 7 watershed in the Upper Rock Creek Master Plan area are 8 State of Maryland Department of the Environment designated 9 use class three or four, both non-tidal cold water habitats 10 with the difference between the two being use class three 11 will support growth of propagation of trout while use class 12 four will support adult trout. 13 Almost immediately past the southern boundary of 14 this master plan, south of Maryland 28, Rock Creek and its 15 watershed deteriorate to a use class one level, suitable 16 for water contact recreation but incapable of supporting 17 cold water habitat. 18 Preservation of the Upper Rock Creek headwaters has 19 been a county policy since 1956, with the extension of Rock 20 Creek Park first established by Congress through the 21 Capper-Cramton Act in 1935, into the sensitive headwaters 22 area and the creation of Lakes Needwood and Bernard Frank 23 to mitigate downstream flooding, erosion, and sediment. 24 The Upper Rock Creek Master Plan is vital to the 25 health of Rock Creek and has been since the first master</p>	<p style="text-align: right;">15</p> <p>1 and improvement of water quality and the preservation of 2 sensitive or ecologically unusual areas. These land use 3 and environmental goals and objectives are the backbone of 4 planning in Upper Rock Creek, unquote. 5 The 1993 General Plan Refinement being referred to 6 confirmed that all one- and two-acre residential zones in 7 Montgomery County were in residential wedge areas. The 8 relevant pages are included in OZAH Exhibit 227, Document 9 EEE, so that's three Es. 10 (Exhibit 227-EEE introduced.) 11 MS. KOSARY: 7430 Needwood, zoned RE-1, is in a 12 residential wedge area. As confirmed by the 1993 General 13 Plan Refinement, all one- and two-acre residentially zoned 14 properties within the master plan area are residential 15 wedge, whether they are inside or outside of the watershed, 16 special protection area north of Maryland 115. 17 The Upper Rock Creek Master Plan further 18 articulates its goal for all residential wedge areas in the 19 master plan area to, quote, Keep the Upper Rock Creek 20 watershed as a low-density housing resource compatible with 21 the existing community, unquote, on page 12. 22 The proposed Primrose daycare center is in no way a 23 low-density use and is incongruent with the low-density 24 residential wedge concept which forms one of the two 25 (indiscernible) goals of the Upper Rock Creek Master Plan.</p>
<p style="text-align: right;">14</p> <p>1 plan for the Upper Rock Creek area was approved in 1968, 2 over 50 years ago. The Upper Rock Creek Master Plan 3 basically has had two (indiscernible) goals throughout its 4 three iterations: in 1968, 1985, and 2004. 5 The first is to protect environmental resources and 6 maintain stream -- and maintain stream quality by keeping 7 streams, forests, and wetlands in a natural state 8 throughout the entirety of the master plan area. 9 The second is to preserve residential character by 10 keeping the residential wedge areas within the master plan 11 at a low density and keeping with the wedges and corridors 12 concept outlined in the general plan. 13 You can find these goals on page 7 of the 2004 14 Upper Rock Creek Master Plan. 15 The residential wedge concept goes back to 16 Montgomery County's General Plan on wedges and corridors 17 approved and adopted in 1964 and updated in 1969 and 1993. 18 The General Plan remains the foundation of planning for 19 Montgomery County to this day. 20 On page 35 of the Upper Rock Creek Master Plan, it 21 states that, quote, the General Plan Refinement places much 22 of Upper Rock Creek in the residential wedge where low 23 densities are recommended to protect environmental 24 resources and to provide housing on large lots. The 25 refinement's environmental objectives include protection</p>	<p style="text-align: right;">16</p> <p>1 The proposed use has a 44-car parking lot. The 2 13,000-square-foot building has 18 exterior doors, 21 3 toilets, and 38 sinks, according to the floor plan, which 4 is OZAH Exhibit 79. I do not even know if our sewer 5 network designed in the late 1980s for a low-density 6 residential use can even handle a use with 21 toilets and 7 38 sinks, especially if they are frequently used. We are a 8 low-density residential wedge neighborhood. We do not have 9 commercial-level infrastructure. 10 There will be 15 bright exterior wall-mounted 11 lights around the building. Most homes in our neighborhood 12 generally maintain little or no exterior evening lighting. 13 And, when they do, it is low wattage, rather dim, and does 14 not involve a 360-degree illumination of a home. 15 There will be eight 20-foot-tall pole-mounted 16 lights in the parking lot. There are only five 17 streetlights on Needwood between the Redland-Needwood 18 intersection and this site. There will be more pole- 19 mounted lights in this parking lot than we have on our 20 street. 21 The exterior building lights and the parking lot 22 lights are both commercial in nature and incompatible with 23 the low-density residential wedge neighborhood. 24 The nearly 15,000 square feet of impervious surface 25 playground area is larger than the lot size of many single-</p>

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<p style="text-align: right;">17</p> <p>1 family homes in Montgomery County. This proposed use is 2 totally incompatible with the existing Needwood Road 3 neighborhood and totally incompatible with the 2004 Upper 4 Rock Creek Master Plan's goal of preserving residential 5 character by keeping the residential wedge areas within the 6 master plan at a low density. Approval would have a 7 devastatingly transformative impact on the low-density 8 residential wedge character of my neighborhood. 9 As previously mentioned in testimony, the site will 10 approach 50 percent impervious, not the 33.6 percent 11 indicated by Mr. Intriago in his testimony on day four, 12 page 76, line 25, or the 36 to 38 percent discussed on page 13 8 of the technical staff report, OZAH Exhibit 106. 14 Although Mr. Intriago testified on day four, page 15 77, lines 12 through 16, that the staff report included the 16 artificial turf playground in their calculation of 17 imperviousness, you only need to look at figure 6 on page 8 18 of the technical staff report, OZAH Exhibit 106, to note 19 that the staff report failed to include the nearly 15,000 20 square feet of playground area identified by DPS in their 21 third stormwater concept denial letter as impervious. You 22 can find this letter in OZAH Exhibit 115, document S.1. 23 I have no idea where Mr. Intriago came up with this 24 33.6 percent number. He offered no documentation or 25 explanation. However, his number is so close to the</p>	<p style="text-align: right;">19</p> <p>1 15 through 17, of the day two transcript, that, quote, Oh, 2 yeah. That's a big project, and it's going to be deep. 3 Some of these pipes are going to be 8, 9, 10 feet in the 4 ground, unquote. 5 Can I please get OZAH Exhibit 196-G, which is 6 marked as PROW-7? 7 HEARING EXAMINER ROBESON HANNAN: I'm going there. 8 MS. KOSARY: I know. I know. You should have some 9 music that you can play while (inaudible). 10 (Laughter.) 11 MS. KOSARY: Or your cat, your cat can sing, and 12 then I'll bring my cat out. 13 HEARING EXAMINER ROBESON HANNAN: Well, she -- no. 14 She already sings. 15 (Laughter.) 16 MS. KOSARY: I've got -- I've got cats who talk. 17 HEARING EXAMINER ROBESON HANNAN: Okay. Hold on 18 one second. I apologize. 19 MS. KOSARY: No, no, it's nothing to apologize for. 20 HEARING EXAMINER ROBESON HANNAN: Now are you 21 seeing it now? 22 MS. KOSARY: No. 23 HEARING EXAMINER ROBESON HANNAN: Okay. I -- I do 24 apologize. 25 MS. KOSARY: Oh, your sheet -- your screen isn't</p>
<p style="text-align: right;">18</p> <p>1 technical staff's estimate, it is likely that Mr. 2 Intriago's estimate of 33.6 percent also does not include 3 the artificial turf playground. 4 Our expert in land surveying and development, Mr. 5 Russell Reese, however, provided extensive explanation 6 during his day five -- day five testimony, starting on page 7 126, and did include the impervious playground in his 8 estimate. You can find his result in OZAH Exhibit 176, 9 document HH, and in OZAH Exhibit 198. 10 When Mr. Intriago was asked to review the results 11 presented in Mr. Reese's exhibits during cross-examination 12 by Mr. Chen on day four, page 125, line 23, Mr. Intriago 13 stated that, quote, It seems about accurate, unquote. 14 MR. CHEN: What is Reese's percentage again? 15 MS. KOSARY: His was, like, 47.8 percent. 16 MR. CHEN: Thank you. 17 MS. KOSARY: The proposed site cannot handle its 18 stormwater requirements on site and will require the 19 construction of about 500 feet of new storm drain and the 20 replacement of about 600 feet of existing storm drain that 21 is currently incapable of servicing this proposed site's 22 stormwater needs. 23 When the opposition's expert in stormwater 24 management, Mr. Vince Berg, was asked whether this was a 25 major infrastructure project, he stated on page 189, lines</p>	<p style="text-align: right;">20</p> <p>1 sharing. 2 HEARING EXAMINER ROBESON HANNAN: It should be. 3 MS. KOSARY: Your picture just got bigger. 4 HEARING EXAMINER ROBESON HANNAN: Well, that's not 5 good. 6 (Laughter.) 7 HEARING EXAMINER ROBESON HANNAN: Okay. How's 8 this? 9 MS. KOSARY: Yay, yes. 10 HEARING EXAMINER ROBESON HANNAN: I apologize. 11 MS. KOSARY: It's not -- it's not the right 12 exhibit. 13 HEARING EXAMINER ROBESON HANNAN: Oh. This is 14 196-D. 15 MS. KOSARY: I want 196-G, G as in George. 16 HEARING EXAMINER ROBESON HANNAN: Ah. Oh, boy. 17 MS. KOSARY: Do you want me just to discuss it? 18 HEARING EXAMINER ROBESON HANNAN: No. I mean, no, 19 I can do this. 20 MS. KOSARY: Okay. 21 HEARING EXAMINER ROBESON HANNAN: I'm just saying. 22 MS. KOSARY: Yes, that's it. 23 HEARING EXAMINER ROBESON HANNAN: Okay. 24 MS. KOSARY: Okay. Okay. Before I continue my 25 discussion, I just want to note that all pages of OZAH</p>

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<p>21</p> <p>1 Exhibit 196 are marked as being a storm drain analysis 2 exhibit for the Primrose-Layhill Applicant, Primrose 3 Property, LLC. I just have to ask, isn't it Mr. Intriago 4 checking off -- checking before he signs off on his plans? 5 Okay. Anyway, though -- 6 HEARING EXAMINER ROBESON HANNAN: Yeah. Don't -- 7 MS. KOSARY: I know. 8 HEARING EXAMINER ROBESON HANNAN: -- (inaudible). 9 MS. KOSARY: Yeah, that's fine. 10 Anyway, if you look at this exhibit, you'll observe 11 that two sections between manholes EX3 and EX4, they're 12 marked across the top -- across the top of the exhibit, EX3 13 to EX4, and those little, like -- those little, like -- 14 like -- like -- I forgot what those symbols are. Not quite 15 circles -- circles with angles -- you're almost -- you're 16 there. Up -- up a little higher with your mouse. You're 17 there. Okay. 18 EX3 to EX4 and manholes A2 to A3 actually reach a 19 depth of about 15 feet, so they're even deeper than Mr. 20 Berg indicated. 21 And I just want you to note that the final leg of 22 this proposed rebuild between manholes EX2 -- 23 HEARING EXAMINER ROBESON HANNAN: Wait. Can you go 24 back -- I was writing. Can you go back and tell me what 25 the depth is again?</p>	<p>23</p> <p>1 the three Fs, but -- 2 MS. KOSARY: Okay. 227-FFF, which I think should 3 be the first group of the -- yeah, yeah. First group. 4 (Sotto voce speaking.) 5 MS. KOSARY: Down -- down -- that's down a couple 6 more. Okay. No, up one. 7 (Exhibit 227-FFF introduced.) 8 MS. KOSARY: Okay. The Occupational Safety and 9 Health Administration considers trenching to be among the 10 most hazardous construction operations and requires that a 11 trench box must be used for all trenching 5 feet or greater 12 in depth. All the trenching needed to install or replace 13 the storm drain upgrade within the South Riding 14 neighborhood between manholes A4 to EX2 will be at a depth 15 of 5 feet or greater. 16 And, again, you can refer to something like Exhibit 17 199-G for these locations. 18 This photo is an example of a trench box. It was 19 taken in the spring of 2020. 20 MR. CHEN: Is this FF? 21 MS. KOSARY: This is FFF. This is OZAH Exhibit 22 276, document FFF. 23 MR. CHEN: 26? 24 MS. KOSARY: 227. It was taken in the spring of 25 2020 on the I-370 metro access route at a location</p>
<p>22</p> <p>1 MS. KOSARY: They're about 15 feet. 2 HEARING EXAMINER ROBESON HANNAN: Okay. Thank you. 3 Go ahead. 4 MS. KOSARY: Each one of those little blocks is 5 actually 5 feet. 6 HEARING EXAMINER ROBESON HANNAN: Right. 7 MS. KOSARY: Yeah. 8 MR. CHEN: And that's -- that's reading off the 9 exhibit. 10 MS. KOSARY: That's reading off the exhibit. 11 HEARING EXAMINER ROBESON HANNAN: Right. 12 MS. KOSARY: That's between EX3 and EX4 and A2 and 13 A3. 14 And that the final leg of this proposed rebuild, 15 which is between EX2 and EX3, is located within Crabbs 16 Branch Stream Valley Park and that they're going to have to 17 remove a substantial number of trees in order to do this. 18 Okay. Done with that exhibit. 19 I'm going to -- I'm going to need OZAH Exhibit 276, 20 document FFF next. 21 HEARING EXAMINER ROBESON HANNAN: Okay. 22 MR. CHEN: How many Fs? 23 MS. KOSARY: Three Fs. 24 HEARING EXAMINER ROBESON HANNAN: I'm sorry. Which 25 -- which -- what was the number of the exhibit? I've got</p>	<p>24</p> <p>1 northwest of its intersection with Redland Road and across 2 from the Shady Grove metro station where they were 3 extending the sewer main for the new development at Shady 4 Grove Westside. 5 Before the COVID pandemic closed our gym in the 6 spring of 2020, Paul and I started walking, and we passed 7 this area several times a week. The trench box is 16 feet 8 deep, information we obtained from one of the project 9 engineers who we spoke to on one of our walks. 10 OZAH Exhibit 199-G indicates that the Applicant 11 thinks they can construct this project within a limit of 12 disturbance with the width of about 10 feet. So in many 13 places, the width of the limits of disturbance is less than 14 the depth of the required trench. The Applicant failed to 15 mention that the large construction vehicles needed for 16 this project will operate outside of the limits of 17 disturbance. They will be in the road, and, in several 18 instances where the limits of disturbance are up to the 19 property lines of several homes, it will probably require 20 construction easements on private property. 21 Can I get OZAH Exhibit 227, document GGG? It's 22 just one more down. 23 (Exhibit 227-GGG introduced.) 24 MS. KOSARY: This is just an example of a large 25 excavator, like what will be needed to complete this</p>

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<p style="text-align: right;">25</p> <p>1 project. The Applicant has also failed to indicate the 2 large volume of dirt which will need to be excavated and 3 where this dirt will go while work is being done. 4 If you want to go down one more to OZAH Exhibit 5 227, document HHH, and rotate it. We need -- we need 6 rotation. Okay. 7 (Exhibit 227-HHH introduced.) 8 MS. KOSARY: This is just a photo of a similar 9 large excavator next to a pile of dirt excavated for an 10 additional 16-foot-deep trench for the Shady Grove Westside 11 sewer upgrade project. 12 The Applicant also failed to disclose that 13 trenching at depths of well over 5 feet, so depths require 14 a trench box will cross Deer Point Court, Carnegie Avenue, 15 Ottenbrook Terrace, and the driveway and front door 16 sidewalk entranceway of the home at 7401 Deer Point Court 17 and will block access to homeowners whose only access are 18 these roads or this driveway and sidewalk. 19 MR. CHEN: What do you mean by their only access? 20 MS. KOSARY: It's the only way they can get to 21 their homes, Bill. And there are no sidewalks. There are 22 no sidewalks, I will point out, in this neighborhood. So 23 people are going to have to -- people who are blocked are 24 going to have to park, you know, down the street from their 25 home, and they're going to have to walk to their home, you</p>	<p style="text-align: right;">27</p> <p>1 development, before homes and roads are built. This is 2 just one of the many examples of how this proposed 3 application is incompatible with what under its master plan 4 is supposed to be a low-density residential wedge 5 neighborhood. 6 This work is also going to constitute a safety 7 concern. 8 The addition of the stormwater runoff to the 9 existing storm drain network put in place in the late 1980s 10 to support the low-density residential wedge South Riding 11 subdivision threatens Crabbs Branch Stream, a use class 12 four tributary of Rock Creek. Crabbs Branch is in the 13 Upper Rock -- Upper -- Upper Rock Creek main stem watershed 14 portion of the Upper Rock Creek watershed, as indicated on 15 page 43 of the master plan. It is in a regular level 16 watershed protection area, as indicated on page 50 of the 17 master plan. Crabbs Branch joins Rock Creek immediately 18 downstream from Lake Needwood, making it the headwaters for 19 the free-flowing portion of Rock Creek. 20 Mr. Berg testified on day two about the impacts 21 this proposal would have on Crabbs Branch. As he indicated 22 in his testimony on page 187, lines 8 to 9, Mr. Berg, who 23 holds a master's in engineering and is a P.E., was the 24 engineer in charge of designing and building the large 25 Crabbs Branch upstream stormwater facility.</p>
<p style="text-align: right;">26</p> <p>1 know, probably on somebody else's lawn. 2 The sidewalk along the boundary of 7401 Deer Point 3 Court, between manholes A2 and A3, which is along Carnegie 4 Avenue, is one of those going to a depth of 15 feet. The 5 residents of 7401 Deer Point Court will literally have to 6 walk across their lawn to access their home during 7 construction. 8 MR. CHEN: How are they going to traverse the 9 trench? 10 MS. KOSARY: Because -- because of the -- with a -- 11 with a bridge or something. Bill. They're not going to. 12 It's going to be 15 feet deep. 13 And they're literally -- if they can even get to 14 their homes, they're going to have to walk across their 15 lawn to access their home during construction because, 16 although -- although they have a Deer Point Court address, 17 all their access, including the sidewalk to their front 18 door, is off Carnegie Avenue. 19 Many of my neighbors also walk and bike through 20 this area and will not be able to continue their activities 21 safely given the depth of the required trenching as well as 22 the movement of large excavating vehicles. 23 As Mr. Berg noted, this is a big, major 24 infrastructure project. This is the type of project which 25 is normally done at the beginning of a subdivision's</p>	<p style="text-align: right;">28</p> <p>1 Mr. Berg observed further on the page in lines 10 2 through 15 that the quality of Crabbs Branch, which had 3 been good for many years, has recently shown signs of 4 decline. When asked what impact this proposed application 5 would have on these conditions, starting on line 19, Mr. 6 Berg stated that it, quote, Will continue that exacerbation 7 of water quality within the Crabbs Branch stream system, 8 unquote. 9 When asked by the Hearing Examiner whether even 10 with the proposed on-site stormwater facilities the water 11 in Crabbs Branch would get better or worse, Mr. Berg stated 12 on page 192, beginning on line 21, that, quote, Storm 13 drains in general always make things worse, unquote. 14 And further, on page 193, beginning on line 5, that 15 if, quote, You normally have sheet flow and you're putting 16 a storm drain and all the water is going into storm drains 17 and inlets, and the outfalls very quickly at the outlet, 18 that's going to erode the area around it, and it's going to 19 increase the peaks within the major stream -- this one 20 being Crabbs Branch, unquote. 21 At least one Planning Department staff member who 22 reviewed this application also realized the potential 23 environmental issues. On page 6 of Appendix A of OZAH 24 Exhibit 63, there's a copy of an email dated August 3rd, 25 2018, from Laura Hodgson, that's H-O-D-G-S-O-N, the</p>

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<p style="text-align: right;">29</p> <p>1 original Area 3 transportation planner to Elsabet Tesfaye, 2 I'd inform this email notes that the, quote, Applicant must 3 provide a justification for designing Carnegie Avenue as a 4 closed section road since it is located in an 5 environmentally sensitive watershed area, unquote. 6 As stated on page 7 of the Upper Rock Creek Master 7 Plan, quote, Maintaining low densities also contributes to 8 stream quality by limiting imperviousness, which in turn 9 reduces the amount of warm water that flows into the 10 streams and contributes to stream quality, unquote. 11 Protection of use class three and four stream 12 systems is essential to the health of the cold water 13 habitat. Minimizing imperviousness is one of the best 14 methods for assuring protection of water resources. This 15 proposed use is totally incompatible with the 2004 Upper 16 Rock Creek Master Plan's goal of protecting environmental 17 resources and maintaining stream quality. 18 As part of the review and recommendation, technical 19 staff from the Montgomery County Planning Department are 20 required to conduct a rigorous analysis of a proposed 21 conditional use's compatibility with the pertinent master 22 plan. To state the technical staff did so in this case 23 would be about as truthful as stating that the sun rises in 24 the north. 25 HEARING EXAMINER ROBESON HANNAN: Okay. Can -- I</p>	<p style="text-align: right;">31</p> <p>1 the street and less than 250 feet closest property line to 2 closest property line west of the Primrose site. The 3 Taiwan Cultural Center application was for a very small 4 use. 5 In terms of the technical staff report for the 6 Taiwan Cultural Center, it was stated on page 10 of the 7 Hearing Examiner's Report and Recommendations dated 8 November 21st, 2006, that, quote, Staff concludes that the 9 low-intensity uses proposed for the center are in keeping 10 with a primary objective of the master plan: maintaining 11 residential wedge character of this portion of Montgomery 12 County. Staff notes that the use of an existing 13 residential structure with limited external alterations 14 also contributes to retaining the residential character of 15 the area, unquote. 16 On page 19, the hearing examiner stated that she, 17 quote, Finds that the proposed special exception could be 18 considered compatible with the neighborhood only if the 19 level and intensity of the on-site activities are kept at a 20 modest level, in terms of both the frequency of events and 21 the number of people involved, unquote. 22 And, finally, on page 47, the hearing examiner 23 concluded that, quote, With strict adherence to the 24 recommended conditions of approval, the proposed use would 25 be in harmony with the general character of the</p>
<p style="text-align: right;">30</p> <p>1 just have one question -- 2 MS. KOSARY: Yeah. 3 HEARING EXAMINER ROBESON HANNAN: -- or not a 4 question. Can we eliminate these types of statements? I 5 understand your feelings -- 6 MS. KOSARY: Okay. 7 HEARING EXAMINER ROBESON HANNAN: -- but they're -- 8 they're a little pejorative, so please don't -- if -- I 9 understand what you're saying, but let's keep it to the 10 facts. Okay? 11 MS. KOSARY: Okay. I understand, and I will. You 12 promptly chastised. 13 HEARING EXAMINER ROBESON HANNAN: No, it's -- well, 14 whatever. 15 MS. KOSARY: Yeah. 16 HEARING EXAMINER ROBESON HANNAN: Okay. 17 MS. KOSARY: This is my cat coming to sit on my 18 lap. 19 (Laughter.) 20 MS. KOSARY: Okay. This technical staff report 21 must be contrasted to the review and recommendations for 22 the Taiwan Cultural Center, which was S-2668, which is also 23 located in the Upper Rock Creek Master Plan. Portions of 24 this report are in document OO of Exhibit 176. The Taiwan 25 Cultural Center is located at 7509 Needwood Road, across</p>	<p style="text-align: right;">32</p> <p>1 neighborhood. As noted earlier, this conclusion depends 2 heavily on strict adherence to the recommended conditions 3 of approval, unquote. 4 The contrasts are stark. On one hand, you have a 5 special exception, now referred to as a conditional use, 6 which was deemed to only be compatible with our 7 neighborhood if the level in intensity of use were modest 8 and that it would take strict adherence to the conditions 9 of approval for the special exception to be in harmony with 10 the general character of our neighborhood. On the other 11 hand, in the case of the Primrose application, you have 12 recommendations for an application which has an extremely 13 high level of use and intensity on a piece of property 14 literally almost next door to the first. Nothing has 15 changed in terms of the master plan or the character of my 16 neighborhood. 17 Let me have a drink of water. 18 MR. CHEN: Madam Examiner, Ms. Kosary had her 19 second COVID shot yesterday. 20 (Crosstalk.) 21 HEARING EXAMINER ROBESON HANNAN: Well, 22 congratulations, but not congratulations, so -- 23 MS. KOSARY: So if I fall over, you know, just 24 that's what's happened. 25 Moving on to traffic. I have lived in my home</p>

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<p style="text-align: right;">33</p> <p>1 almost 25 years. During this time, before I retired three 2 years ago, I worked in Rockville and then in Gaithersburg, 3 so I drove to work each morning. I changed my departure 4 time to miss rush-hour traffic in the morning. I became 5 one of those people who showed up in the office shortly 6 after 7 a.m.</p> <p>7 Over the years, I have found it really frightening 8 to exit my driveway on occasions during the height of a.m. 9 rush hour and have almost been hit on many occasions 10 because eastbound traffic, which is so much -- somewhat 11 lighter than westbound traffic in the morning, tends to 12 speed up the small ridge at Carnegie Avenue. So I can be 13 waiting for well over 20, 30 or more cars to pass in the 14 westbound direction until there is a gap in traffic only to 15 have someone come up the slight ridge eastbound with their 16 foot on the accelerator.</p> <p>17 Because of where my driveway sits at the top of the 18 ridge, I can observe all the westbound traffic coming from 19 the east and Maryland 115. There's a lot of cut-through 20 traffic on Needwood. By the time you get to this location 21 around my home and around the proposed Primrose location, 22 any gaps which have been created by the speed bumps further 23 east have all closed. Also, the cut-through traffic from 24 Maryland 115 is equally as heavy from vehicles turning left 25 or right onto westbound Needwood, so there really is not</p>	<p style="text-align: right;">35</p> <p>1 maneuvers to get onto Needwood in the morning -- westbound 2 Needwood in the morning. I swear sometimes I think they 3 just close their eyes, hit the accelerator, maybe say a 4 prayer, and hope for the best. It's probably just a matter 5 of time before Ms. Mitchell at 7500, Ms. Rodriguez at 7505, 6 Mr. Davidson at 7508, Mr. Burroughs at 7512, or Ms. Smith 7 trying to get off Carnegie onto Needwood have an accident 8 in the morning. And I particularly worry about Mr. 9 Burroughs because he rides a motorcycle, although he does 10 wear his helmet.</p> <p>11 The Master Plan of Highways and Transitways 12 identifies Needwood Road as a primary residential street. 13 On page 28 of document AA, in OZAH Exhibit 115, which was a 14 portion of the technical supplement for this master plan, a 15 primary residential street is defined as, quote, A road 16 meant primarily for circulation in residential 17 neighborhoods, although some through traffic is expected, 18 unquote.</p> <p>19 Table 6 on page 32 of the same document indicates 20 the percent of through traffic that should be expected on a 21 primary residential street is no more than 50 percent. 22 Above this point, through traffic restrictions --</p> <p>23 HEARING EXAMINER ROBESON HANNAN: Wait, I'm sorry, 24 Dr. Kosary. What did you just -- what was the 50 percent 25 statistic?</p>
<p style="text-align: right;">34</p> <p>1 much in terms of gaps created by the traffic light cycle.</p> <p>2 Several of my neighbors have submitted some photo 3 evidence, which can be found in OZAH Exhibits 206 and 210, 4 and others have -- have testified how difficult it can be 5 turning onto westbound Needwood from their driveways or 6 connecting streets during the morning rush hour because of 7 the traffic congestion.</p> <p>8 I'm obviously speaking pre-pandemic, but now that 9 I'm retired, there are days when I leave the house during 10 morning rush hour, generally around 8 a.m. I'm a 11 Montgomery County master gardener and sit on their board of 12 directors, so I frequently -- frequently head over to the 13 fairgrounds in Gaithersburg or the Ag History Park in 14 Derwood for early morning meetings. I also go to the gym 15 to swim. It's not uncommon to find westbound traffic 16 backed up to Dr. English's driveway, although on occasion 17 I've found westbound traffic backed up past my driveway 18 which is two to three car lengths' further east in -- on 19 the other side of Needwood. These backups would've blocked 20 the proposed Prinrose driveway.</p> <p>21 You know, I really love my neighborhood, but I 22 really sometimes hate the traffic, especially in the 23 morning.</p> <p>24 Also I've observed my neighbors who left of the 25 Needwood-Carnegie intersection making some rather dangerous</p>	<p style="text-align: right;">36</p> <p>1 MS. KOSARY: Fifty percent.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Of what?</p> <p>3 MS. KOSARY: Table 6 on page 32 of the document 4 indicates that the percent of through traffic that should 5 be expected on a primary residential street is no more than 6 50 percent.</p> <p>7 MR. CHEN: What's the exhibit number of the 8 document?</p> <p>9 MS. KOSARY: That is -- that is OZAH Exhibit 115, 10 document AA.</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Okay. Thank you.</p> <p>12 MS. KOSARY: Okay. And above the 50 percent point, 13 the neighborhood could ask for through traffic 14 restrictions.</p> <p>15 So the question is whether we have data which we 16 can use that can give us an indication as to the amount of 17 through traffic on Needwood Road, and what can the 18 Applicant's traffic count data say about through traffic?</p> <p>19 Can I please get OZAH Exhibit 227, document III. 20 Great. You didn't need to flip it. (Exhibit 227-III introduced.)</p> <p>21 MS. KOSARY: According to item eight of the 22 Transportation Impact Study Scope of Work Agreement, which 23 is on page 9 of Appendix A in OZAH Exhibit 63, the 24 Applicant collected traffic data, count data, at three 25</p>

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<p>37</p> <p>1 locations. The first is the intersection of Needwood Road 2 and Redland Road. The second is at the intersection of 3 Needwood Road and Carnegie Avenue. The third is the 4 intersection of Needwood Road and Maryland 115, which is 5 also referred to as Muncaster Mill Road at this location. 6 These counts can be found in OZAH Exhibit 63, the 7 Applicant's Traffic Impact Analysis document, and Appendix 8 A on page 19 for the Redland-Needwood counts, page 22 for 9 the Maryland 115-Needwood counts, and page 25 for the 10 Needwood-Carnegie counts. 11 For the purpose of this analysis, I'm only going to 12 look at the three-hour a.m. and p.m. traffic counts and 13 only the counts at the Maryland 115-Needwood intersection 14 compared to the Needwood-Carnegie -- compared to the 15 Needwood-Carnegie intersection. As less than 500 feet 16 separates the Needwood-Carnegie and Redland-Needwood 17 intersections, these counts should be nearly identical. 18 Can I please get OZAH Exhibit 227, document JJJ. 19 Specifically, we're looking first at document JJJ.1. 20 HEARING EXAMINER ROBESON HANNAN: It's coming. I'm 21 rotating. 22 MS. KOSARY: I know. I know. Rotation takes -- 23 takes a while. 24 HEARING EXAMINER ROBESON HANNAN: Okay. That 25 should be correct.</p>	<p>39</p> <p>1 intersection, an unmanned solar farm, a small park 2 maintenance facility, a small parks department office for 3 archeologists at Needwood Mansion, as well as a small 4 parking lot with a trailhead of the Westside Trail, and the 5 Needwood Golf Course. 6 The largest point of diversion, however, which I 7 actually did in pink, so you could see where it was, may 8 come from complaints from neighbors who live in Grande 9 Vista, who have noted that they experience cut-through 10 traffic on their street. It should further be noted that 11 this is happening in both directions: vehicles traveling 12 on Redland who are using Grande Vista as a cut through to 13 eastbound Needwood and onward to Maryland 115 and vehicles 14 on westbound Needwood using Grande Vista as a cut through 15 to Redland in order to bypass the congestion on Needwood at 16 the Redland-Needwood intersection. 17 Okay. I'm making it difficult on you again because 18 I'm going to ask you to go back up to OZAH Exhibit 227, 19 document JJJ.1. 20 Keep going. There, almost there. Okay. 21 Although through traffic on westbound Needwood 22 originating from Maryland 115 is not the 94 -- 90.4 percent 23 indicated -- that's one line down from the -- the 24 highlighted pink line -- I would consider this an upper 25 bound. It is inconceivable to imagine that there is enough</p>
<p>38</p> <p>1 (Exhibit 227-JJJ introduced.) 2 MS. KOSARY: Okay. That is correct. This first 3 table, labeled page 1 and document JJJ.1 at the bottom, 4 looks at through traffic on westbound Needwood for the 5 three-hour a.m. traffic counts taken between 6:30 and 9:30 6 a.m. As you can see on line three of the table, which I 7 have highlighted in yellow, the total count for both right- 8 hand and left-hand turns from Maryland 115 onto westbound 9 Needwood during this period was 1,069 vehicles. During the 10 same three-hour period, which I have highlighted in pink, 11 we see that 1,183 vehicles were counted westbound on 12 Needwood at the Needwood-Carnegie intersection. 13 Okay. I'm going to make this difficult on you 14 because I'm going to ask you to please go to OZAH Exhibit 15 227, document KKK, which you're going to have to scroll 16 through multiple pages to get there. 17 There you go. 18 (Exhibit 227-KKK introduced.) 19 MS. KOSARY: Okay. There are a few places along 20 Needwood Road between Maryland 115 and the Needwood- 21 Carnegie intersection where traffic originating from 22 Maryland 115 could have diverted before it reached the 23 Needwood-Carnegie intersection. There's AlfredHouse, a 24 small elder care facility with 34 beds and a maximum staff 25 of 12, on Needwood right after the Maryland 115-Needwood</p>	<p>40</p> <p>1 diverted traffic between Maryland 115 and the Needwood- 2 Carnegie intersection to bring this percent below the 50 3 percent standard in the Master Plan of Highways and 4 Transitways for a road classified as a primary residential 5 street. 6 Can I please have the next page? 7 You see the reverse pattern in the p.m., which is 8 labeled page 2 and document JJJ.2. Yep, at the bottom. 9 This table is looking at traffic on eastbound 10 Needwood during the three-hour p.m. traffic period of 4 to 11 7 p.m. Here you observe 1,335 vehicles at the Needwood- 12 Carnegie intersection, highlighted in pink, and 1,142 13 vehicles from eastbound Needwood turning either right or 14 left onto Maryland 115 highlighted in yellow. Again, it's 15 evident that a high proportion of this traffic turning from 16 eastbound Needwood represents through traffic. 17 Basically, you are just seeing a reverse of what 18 was observed westbound in the a.m. Again the percent of 19 through traffic is probably lower than the 85.5 percent 20 indicated as the upper bound; however, the suspicion is 21 again that this level does not fall below the 50 percent 22 standard in the master plan. 23 Going to the next table, labeled page 3 and 24 document JJJ.3 at the bottom, you actually -- yep. You 25 actually see this in reverses where we also observe a</p>

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<p style="text-align: right;">41</p> <p>1 potentially high amount of through traffic eastbound, 2 vehicles turning from Redland and using Needwood as a cut 3 through to locations east of Maryland 115 during the three- 4 hour a.m. time period. 5 And if you go to the next page, and on this -- it's 6 -- it's just the same thing in reverse. This is table -- 7 page 4, labeled document JJJ.4, and again you just see a 8 reverse pattern westbound during the p.m. time frame. 9 All this is consistent with testimony from 10 neighbors concerning the high amount of through traffic 11 that we see on Needwood Road. 12 These observations are also consistent with 13 observations made in the Upper Rock Creek Master Plan where 14 on pages 63 and 64, it states that, quote, A majority of 15 travel demand will be generated by additional development 16 outside the Upper Rock Creek master planning area. 17 Currently, approximately 75 percent of the traffic that 18 crosses the Upper Rock Creek platting area boundary is 19 through traffic; only about 25 percent is generated by 20 local land uses. This ratio is forecast to stay relatively 21 constant as planned development occurs in both Upper Rock 22 Creek, the remainder of Montgomery County, and the rest of 23 the Washington region, unquote. 24 Can I please get the next page, which is OZAH 25 Exhibit 227, document JJJ.5.</p>	<p style="text-align: right;">43</p> <p>1 to mitigate neighborhood complaints about traffic speed. 2 And this might be something my neighborhood will decide to 3 pursue after COVID. 4 On page 11 of the Applicant's Amended Statement of 5 Justification, which is OZAH Exhibit 62, the Applicant 6 states that the proposed facility is located on a major 7 commuter route. 8 As the data shows, as the neighborhood has 9 testified and as the Upper Rock Creek Master Plan observes, 10 the proposed facility is on a primary residential street 11 operating far outside its expected through traffic 12 standards in both the a.m. and p.m. rush hour. 13 Moving on. The 2017 Local Area Transportation 14 Review Guidelines -- somebody -- somebody's moving papers 15 in the background. 16 HEARING EXAMINER ROBESON HANNAN: That's me. 17 That's me. Go ahead. 18 MS. KOSARY: Okay. Was the first time Highway 19 Capacity Manual delay-based methods were applied to traffic 20 studies of signalized intersections in red and orange 21 policy areas in Montgomery County. Basically, the Highway 22 Capacity Manual delay-based methods are a queuing analysis. 23 And I'm not going to get into a detailed lecture on 24 methods, but queuing analysis is the mathematical study of 25 waiting lines or queues. A queuing model is constructed</p>
<p style="text-align: right;">42</p> <p>1 It's actually reasonable to ask whether my 2 neighborhood could request some type of through traffic 3 mitigation on Needwood under Montgomery County Executive 4 Regulation 17-94AM, which provides a means for through 5 traffic volume access restrictions in residential areas. A 6 copy of this regulation is included in Exhibit 227, 7 document JJJ.6. 8 Needwood Road, as previously established, is a 9 master plan two-lane primary residential street. One of 10 the qualifiers in Executive Regulation 17-94, and as you 11 can see from the exhibit currently on the screen -- 12 MR. CHEN: Which -- what's its number? 13 MS. KOSARY: What? 14 MR. CHEN: What -- what is exhibit number -- 15 HEARING EXAMINER ROBESON HANNAN: Oh, whoops. I -- 16 hold on. It's JJJ.5. 17 MS. KOSARY: And as you can see from the exhibit 18 currently on the screen, which is marked document JJJ.5, 19 both the a.m. and p.m. peak two-directional traffic on 20 Needwood at Carnegie, highlighted in pink, far exceeds the 21 400 vehicles per hour required for eligibility for this 22 assessment. 23 To my knowledge, there has never been a request for 24 through traffic mitigation on Needwood. The only 25 mitigation currently deployed, the speed bumps, were done</p>	<p style="text-align: right;">44</p> <p>1 and analyzed so that queue lengths and waiting times can be 2 estimated. Queuing analysis is generally considered a 3 branch of operations research. 4 And before anybody asks, I've taken one graduate 5 level introduction to operations research methods class -- 6 way, way, way in the -- way, way, way in the past. 7 The signalized intersection results for the 8 Redland-Needwood intersection for a.m. and p.m. peak hour 9 traffic are located on pages 4 to 9 of Appendix B in OZAH 10 Exhibit 63, the Applicant's Traffic Analysis Report. There 11 are several companies which have developed software to 12 implement Highway Capacity Manual procedures. 13 Everything in these worksheets located on pages 4 14 to 9 of Appendix B in OZAH Exhibit 63 is coming from an 15 application referred to as the HCS7, short for Highway 16 Capacity Software, Release 7, developed by McTrans; that's 17 M-C, capital T, R-A-N-S, and they're part of the University 18 of Florida's Transportation Institute. 19 There are data entry errors in all of the 20 signalized intersection results for the Redland-Needwood 21 intersection analysis tables. I'm just going to discuss 22 one page, page 4; however, the errors are the same across 23 pages 4 through 9. 24 HEARING EXAMINER ROBESON HANNAN: Okay. Can -- can 25 I ask, what -- when you were referring to page 4, is that</p>

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<p style="text-align: right;">45</p> <p>1 what we're looking at, or --</p> <p>2 MS. KOSARY: No. No, no, no.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: What exhibit is</p> <p>4 page 4 from? You probably said it, but --</p> <p>5 MS. KOSARY: No. We --</p> <p>6 HEARING EXAMINER ROBESON HANNAN: -- I just --</p> <p>7 MS. KOSARY: -- we haven't gotten there yet.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: Oh, I'm sorry.</p> <p>9 Okay.</p> <p>10 MS. KOSARY: Yeah. Okay. I want OZAH Exhibit 227,</p> <p>11 document LLL.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Okay. Let me --</p> <p>13 let me open the next --</p> <p>14 MS. KOSARY: Okay. Oh, it's in the next one.</p> <p>15 Okay.</p> <p>16 HEARING EXAMINER ROBESON HANNAN: Well, this is the</p> <p>17 end of this, so it must be --</p> <p>18 MS. KOSARY: (Inaudible.)</p> <p>19 HEARING EXAMINER ROBESON HANNAN: -- 227(b).</p> <p>20 MS. KOSARY: Right.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: So LLL?</p> <p>22 MS. KOSARY: Yes, LLL.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: Let me just make</p> <p>24 it so you can see the entire --</p> <p>25 (Exhibit 227-LLL introduced.)</p>	<p style="text-align: right;">47</p> <p>1 MR. KLINE: And -- and the annotations in yellow</p> <p>2 are the only change from what was submitted in the traffic</p> <p>3 engineer's report. Am I correct on that?</p> <p>4 MS. KOSARY: That and I've put a footnote at the</p> <p>5 bottom that I will get to.</p> <p>6 MR. KLINE: Well, is -- was my statement correct?</p> <p>7 Is -- is your alterations of this document only the</p> <p>8 coloring?</p> <p>9 MS. KOSARY: No. I told you I've also put a</p> <p>10 footnote at the bottom --</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Okay. Okay.</p> <p>12 MS. KOSARY: -- that I am getting to.</p> <p>13 HEARING EXAMINER ROBESON HANNAN: Any other -- any</p> <p>14 other edits or changes?</p> <p>15 MS. KOSARY: No.</p> <p>16 MR. KLINE: Well, could -- could Dr. Kosary please</p> <p>17 read the footnote? Because I'm afraid my eyes aren't good</p> <p>18 enough to read it on the screen.</p> <p>19 MS. KOSARY: No, I'm -- no, I haven't -- I haven't</p> <p>20 gotten to the footnote yet. I will read it.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Well, no. Let --</p> <p>22 let's get the foot -- here, I'm pulling --</p> <p>23 MS. KOSARY: Okay.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: Mr. Kline, are</p> <p>25 you able to read that?</p>
<p style="text-align: right;">46</p> <p>1 MS. KOSARY: Okay. This is page 4 --</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>3 MS. KOSARY: -- of Appendix --</p> <p>4 MR. KLINE: Ms. -- I'm sorry, could I interrupt and</p> <p>5 just -- I'm in the position as the Hearing Examiner. Could</p> <p>6 you just take me back and tell me where this is coming</p> <p>7 from? I see the exhibit referenced, but is it an</p> <p>8 attachment to the Applicant's traffic engineer's queuing</p> <p>9 study?</p> <p>10 MS. KOSARY: This is page 4 of Appendix B, as in</p> <p>11 boy, of OZAH Exhibit 63.</p> <p>12 MR. KLINE: And what is that exhibit?</p> <p>13 MS. KOSARY: This is page 4 -- oh, this is OZAH</p> <p>14 Exhibit 227, document --</p> <p>15 HEARING EXAMINER ROBESON HANNAN: No, I -- he's</p> <p>16 asking what is --</p> <p>17 MR. CHEN: What is the document.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: -- OZAH Exhibit</p> <p>19 Number --</p> <p>20 MS. KOSARY: 63.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Yeah. What --</p> <p>22 what is that?</p> <p>23 MS. KOSARY: Oh, that is the -- that's the traffic</p> <p>24 -- that's the Applicant's traffic analysis.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Okay.</p>	<p style="text-align: right;">48</p> <p>1 MR. KLINE: Even at these ages, eyes, yes. Thank</p> <p>2 you very much.</p> <p>3 MS. KOSARY: Okay.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: Now I've -- there</p> <p>5 we go.</p> <p>6 MS. KOSARY: Okay. No. You're -- you're -- you're</p> <p>7 on NN.1. Okay.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: No, this is LLL.</p> <p>9 Were we on --</p> <p>10 MS. KOSARY: Right. That's what we're discussing,</p> <p>11 LLL.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Yeah. Okay. Got</p> <p>13 you.</p> <p>14 MS. KOSARY: This is page 4 of Appendix B of OZAH</p> <p>15 Exhibit 63. It's an analysis of the Redland-Needwood</p> <p>16 intersection for a.m. peak existing traffic. If you look</p> <p>17 at the top of the page, you will see a row labeled demand.</p> <p>18 This row refers to the traffic counts at the Redland-</p> <p>19 Needwood intersection for the a.m. peak hour, highlighted</p> <p>20 in yellow.</p> <p>21 You can find these traffic counts -- oh. Can I --</p> <p>22 can I -- can I get 227, document MMM, which is the next</p> <p>23 page.</p> <p>24 (Exhibit 227-MMM introduced.)</p> <p>25 MS. KOSARY: Okay. You can find these --</p>

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<p style="text-align: right;">49</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Okay. My eyes 2 can't read that. 3 (Laughter.) 4 MS. KOSARY: Not even my eyes can read that. 5 HEARING EXAMINER ROBESON HANNAN: Let me try -- 6 it's hard to fit on the screen, but -- okay. 7 Mr. Kline, can you see that note at the bottom? 8 Mr. -- 9 MR. KLINE: Sorry. 10 HEARING EXAMINER ROBESON HANNAN: -- Kline. 11 MR. KLINE: Yes, ma'am. Thank you. 12 MS. KOSARY: Okay. 13 HEARING EXAMINER ROBESON HANNAN: Okay. Go ahead. 14 MS. KOSARY: Okay. You can find these traffic 15 counts on -- on page 19 of Appendix A in OZAH Exhibit 63. 16 I mean, and this is what's on the screen. And I've 17 highlighted the counts for the a.m. peak hour in yellow. 18 Note at the very top of the table that the Redland Road 19 traffic is north-south, and the Needwood Road traffic is 20 east-west. 21 This also -- this also corresponds to the 22 description of these roads when the existing road network 23 is described on page 3 of OZAH Exhibit 63. 24 The labels are actually a little confusing, but 25 just note that traffic from the north is southbound</p>	<p style="text-align: right;">51</p> <p>1 southbound Redland traffic counts have been entered in the 2 WB column. And I have placed a note at the bottom of the 3 copy of page 4, which is on the screen, explaining this 4 issue. 5 MR. CHEN: The bottom line is the wrong data was 6 entered. 7 MS. KOSARY: Right. The wrong data was -- they 8 switched -- they switched the directions. Probably not -- 9 this is actually a profound error. 10 As mentioned previously, the Applicant describes 11 the existing road network on page 3 of OZAH Exhibit 63, 12 which is their -- their traffic study, clearly stating that 13 Needwood Road is a two-lane east-west roadway and that 14 Redland Road is a four-lane north-south roadway at its 15 intersection with Needwood. Anyone looking at the results 16 found on pages 4 to 9 in Appendix B and relying on the 17 description of the existing road network is going to come 18 away with an incorrect interpretation of the results. 19 MR. CHEN: Because of what? 20 MS. KOSARY: Because they're -- the roads are 21 switched, and east is west -- east is north, and west is 22 south, and up -- down is up. 23 MR. CHEN: That's because of their erroneous data? 24 MS. KOSARY: That's because of the erroneous data, 25 and -- and I'm just going to say that. And I'm speaking</p>
<p style="text-align: right;">50</p> <p>1 Redland, traffic from the south is northbound Redland, 2 traffic from the east is westbound Redland -- is westbound 3 Needwood, and traffic from the west is eastbound Needwood. 4 And I've -- I've placed the note at the bottom of this 5 document indicating this. 6 So the results table we looked at previously, that 7 was OZAH Exhibit 227, document LLL, on that table, for 8 example, southbound Redland traffic should be in the column 9 labeled SB, obviously for southbound. We should have an 10 entry of eight for right-hand turns, 1,228 for through, and 11 19 for left-hand turns. 12 And if I can please get OZAH Exhibit 227, document 13 LLL again, so if you'd go up one page. 14 So going back to the results table, however, we see 15 that this data has been entered in the WB column. W -- 16 MR. CHEN: Is that the correct column? 17 MS. KOSARY: No, it's not. WB, as mentioned 18 previously, should be the westbound Needwood Road traffic 19 counts. 20 What has happened for all these tables -- page 4 21 through page 9 in Appendix B of OZAH Exhibit 63 -- is that 22 westbound Needwood traffic counts have been entered in the 23 NB column for northbound, eastbound Needwood traffic counts 24 have been entered in the SB column, the northbound Redland 25 traffic counts have been entered in the EB column, and the</p>	<p style="text-align: right;">52</p> <p>1 from the perspective of someone who has peer reviewed many 2 papers and quality checked many reports before they're 3 released, and this type of check should just be standard 4 operating procedure. It only takes a few minutes to do 5 this type of check and, you know, just -- 6 HEARING EXAMINER ROBESON HANNAN: Okay. Well, I 7 understand -- 8 MS. KOSARY: Yep. 9 HEARING EXAMINER ROBESON HANNAN: -- that. 10 MS. KOSARY: Yep, yep, yep. I'm going to move on. 11 You know. 12 So on page 18 of OZAH Exhibit 63, the Applicant 13 states that -- 14 MR. CHEN: Do you want that up? 15 MS. KOSARY: -- quote -- no, I don't -- that, 16 quote, The results of the analysis also indicate that the 17 95th -- that the 95th percentile queue of eastbound traffic 18 along Needwood Road will not extend to Carnegie Avenue and 19 block the intersection which is 500 feet away, unquote. 20 Number -- 21 MR. CHEN: Madam Examiner, do you have that -- that 22 page cite? 23 MS. KOSARY: Page 18 -- 24 HEARING EXAMINER ROBESON HANNAN: 63, page 18. Do 25 you want me to show it or --</p>

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<p style="text-align: right;">53</p> <p>1 MS. KOSARY: No, no.</p> <p>2 MR. CHEN: No.</p> <p>3 MS. KOSARY: Just -- I'm just giving you the page</p> <p>4 quote.</p> <p>5 MR. CHEN: No.</p> <p>6 MS. KOSARY: Now I'm going to give the Applicant</p> <p>7 the benefit of the doubt and assume that they're really</p> <p>8 talking about westbound traffic. If they are really</p> <p>9 talking about eastbound traffic on Needwood, you would need</p> <p>10 a backup almost two miles long originating at Maryland 115</p> <p>11 before you blocked Carnegie. I mean, traffic is bad on</p> <p>12 Needwood, but it's not this bad.</p> <p>13 We now know, however, that the results in the</p> <p>14 westbound columns are the results for southbound Redland.</p> <p>15 Westbound Needwood is in the northbound columns.</p> <p>16 Now I want to get OZAH Exhibit 115, document I.</p> <p>17 Oh. Oh, you've got the wrong one. We -- we -- we</p> <p>18 posted better copies online.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>20 MS. KOSARY: With the online exhibit. But we can</p> <p>21 work with this one if you want. It's just -- it just makes</p> <p>22 it really -- the exhibit you've got on screen just --</p> <p>23 HEARING EXAMINER ROBESON HANNAN: So 115-I?</p> <p>24 MS. KOSARY: Yeah, 115-I. There's a better copy of</p> <p>25 this that -- that posted online.</p>	<p style="text-align: right;">55</p> <p>1 MS. KOSARY: Oh, really? What it's showing --</p> <p>2 HEARING EXAMINER ROBESON HANNAN: (Inaudible)</p> <p>3 looking at?</p> <p>4 MS. KOSARY: What -- what -- what is showing on the</p> <p>5 screen is in black -- is in horrible black and white.</p> <p>6 HEARING EXAMINER ROBESON HANNAN: Okay. Hold on.</p> <p>7 MS. KOSARY: Okay.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: Hold on.</p> <p>9 MR. CHEN: Okay.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: How's that?</p> <p>11 MS. KOSARY: Much better. Yes, yes.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: So this is the</p> <p>13 one that you -- can you -- just for the record, can you say</p> <p>14 what this is and why it's different from what we originally</p> <p>15 had as Exhibit 115-I?</p> <p>16 MS. KOSARY: Okay. For some --</p> <p>17 HEARING EXAMINER ROBESON HANNAN: Just for the</p> <p>18 record.</p> <p>19 MS. KOSARY: Okay. Just for the record, for some</p> <p>20 reason what you had for Exhibit 115, document I, which we</p> <p>21 sent in color, somehow it turned into black and white.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: It was probably</p> <p>23 just she failed to scan it in --</p> <p>24 MS. KOSARY: Yeah, yeah. I think it just -- these</p> <p>25 things just don't scan right sometimes.</p>
<p style="text-align: right;">54</p> <p>1 HEARING EXAMINER ROBESON HANNAN: How's that? Can</p> <p>2 you see that?</p> <p>3 MS. KOSARY: No, I'm just saying that you've got to</p> <p>4 -- we gave Nana a better --</p> <p>5 HEARING EXAMINER ROBESON HANNAN: I know. What I'm</p> <p>6 -- what I'm saying is it should be up on your screen.</p> <p>7 MS. KOSARY: Right. But I'm saying that it's not</p> <p>8 what we gave Nana to replace this one with.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Oh.</p> <p>10 MS. KOSARY: But I'm going to work with this</p> <p>11 anyway.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>13 MS. KOSARY: Okay.</p> <p>14 MR. CHEN: Just for the record, what is --</p> <p>15 MS. KOSARY: Just -- just --</p> <p>16 MR. CHEN: -- the -- what is the improved depiction</p> <p>17 exhibit number?</p> <p>18 MS. KOSARY: It's -- it's also Exhibit 115,</p> <p>19 document I. It's just a better -- a better copy of it.</p> <p>20 MR. CHEN: Okay.</p> <p>21 MS. KOSARY: Something seemed to have happened with</p> <p>22 this one. I mean, it's in -- it's in color. It's -- it's</p> <p>23 clearer to read.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: When you say</p> <p>25 "this one," this -- what I'm looking at is in color.</p>	<p style="text-align: right;">56</p> <p>1 HEARING EXAMINER ROBESON HANNAN: But this is the</p> <p>2 same exhibit?</p> <p>3 MS. KOSARY: This is the same exhibit. It's just a</p> <p>4 color -- it's just the -- the original color version.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Okay. Go ahead.</p> <p>6 MS. KOSARY: Okay. From this exhibit, I just want</p> <p>7 you to note that the west -- the westbound left-hand turn</p> <p>8 lane on Needwood is about 425 feet long. Specifically, I</p> <p>9 think it's down as 423 point something, but we're just</p> <p>10 going to call it about 425 feet long. And I want you to</p> <p>11 note that this often referred to as a queue storage length.</p> <p>12 Beyond this point, you're actually into an area of</p> <p>13 the road referred to as a taper; it's T-A-P-E-R, and it's</p> <p>14 the area marked with the yellow lines.</p> <p>15 Now this particular taper helps to split the one</p> <p>16 lane of westbound Needwood into two lanes as you approach</p> <p>17 the Redland-Needwood intersection.</p> <p>18 So I just want you to go to OZAH Exhibit 115,</p> <p>19 document G, which is the next one -- just the next one.</p> <p>20 HEARING EXAMINER ROBESON HANNAN: Well, I -- okay.</p> <p>21 Give me a moment --</p> <p>22 MS. KOSARY: Yes.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: -- because I</p> <p>24 pulled this from the web, so --</p> <p>25 MS. KOSARY: You should pull the --</p>

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<p style="text-align: right;">57</p> <p>1 HEARING EXAMINER ROBESON HANNAN: What's the --</p> <p>2 MS. KOSARY: -- you should pull -- you should pull</p> <p>3 the next one from the web also because --</p> <p>4 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>5 MS. KOSARY: -- it had -- it has the same issues.</p> <p>6 HEARING EXAMINER ROBESON HANNAN: Okay. So what</p> <p>7 was the exhibit?</p> <p>8 MS. KOSARY: It's 115, document G as in George.</p> <p>9 Okay. And that's just showing that the distance from</p> <p>10 Redland to the western edge of Carnegie is about 475 feet.</p> <p>11 And if you go to document H, also on the web, this</p> <p>12 just shows the distance from Redland to the eastern edge of</p> <p>13 Carnegie is about 500 feet.</p> <p>14 And just note that the difference between these two</p> <p>15 measurements is about 25 feet; it's about a car length.</p> <p>16 And I just want you to note that all these measurements</p> <p>17 were from the Google Maps measurement tool, and they're all</p> <p>18 taken from the stop bar location at the various points.</p> <p>19 The left-hand turn lane measures up to the last lane divide</p> <p>20 dashed line. So that indicates where the lane starts. And</p> <p>21 the Carnegie measurements just used, basically the limits</p> <p>22 of the gravel lane.</p> <p>23 Okay. If I can get OZAH Exhibit 227, document NNN.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: Is this -- does</p> <p>25 this need to be from the web, or --</p>	<p style="text-align: right;">59</p> <p>1 understand the -- you're working with technology --</p> <p>2 sometimes good, sometimes bad. We're going to --</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Now is this N.2?</p> <p>4 MS. KOSARY: NNN -- NNN.1.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Okay. That</p> <p>6 should be this.</p> <p>7 MS. KOSARY: That's that -- that's what we've got.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>9 (Exhibit 227-NNN introduced.)</p> <p>10 MS. KOSARY: Now, as we've previously mentioned,</p> <p>11 just to reorient ourselves, this is page 4 and Appendix B</p> <p>12 of OZAH Exhibit 63, which is the Applicant's traffic</p> <p>13 analysis, and these are the signalized intersection results</p> <p>14 for existing traffic at the Redland-Needwood intersection</p> <p>15 during the a.m. peak hour.</p> <p>16 The results highlighted in yellow is the length to</p> <p>17 the back of the queue for the left-hand turn lane. The</p> <p>18 result for the left-hand turn lane is 437.7 feet, and I</p> <p>19 want you to note that this is -- is longer than the</p> <p>20 approximately 425-foot length of this lane.</p> <p>21 So basically what's happening is existing traffic</p> <p>22 can back up past the queue storage in the left-hand turn</p> <p>23 lane and into that taper area, and if you know anything --</p> <p>24 if you've observed any tapers while you're -- you're --</p> <p>25 you're driving, this taper has a decreasing lane width.</p>
<p style="text-align: right;">58</p> <p>1 MS. KOSARY: No. It can be anywhere that you want</p> <p>2 to take it from.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Is this 115?</p> <p>4 MS. KOSARY: This is 227-NNN.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Three Ns;</p> <p>6 correct?</p> <p>7 MS. KOSARY: Three Ns.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: Okay. This</p> <p>9 should be it. No?</p> <p>10 MS. KOSARY: Your -- your screen's taking a while</p> <p>11 to react.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Ah.</p> <p>13 MS. KOSARY: We're still looking at the exhibit</p> <p>14 before.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Okay. Let me --</p> <p>16 well, let me do this.</p> <p>17 MS. KOSARY: Take it from the web?</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Yes.</p> <p>19 MS. KOSARY: Yes.</p> <p>20 HEARING EXAMINER ROBESON HANNAN: This Teams is a</p> <p>21 little interesting.</p> <p>22 MS. KOSARY: Yeah, I know. I know.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: Can you give --</p> <p>24 I'm sorry. I do apologize.</p> <p>25 MS. KOSARY: I know. No need to apologize. I</p>	<p style="text-align: right;">60</p> <p>1 And I want you to note that this is actually a -- a safety</p> <p>2 issue. You're actually in a situation where you could be</p> <p>3 -- you'd be forcing cars into a narrower and narrower lane</p> <p>4 in this situation.</p> <p>5 And these results also reinforce what Rosemary</p> <p>6 Tapscott Smith testified about on day one, beginning on</p> <p>7 page 225, line 9, where she stated, quote, I go out</p> <p>8 Carnegie Avenue almost on a daily basis, sometimes five or</p> <p>9 six times a day. Two mornings a week, I go out during rush</p> <p>10 hour because I babysit my granddaughters that are on the</p> <p>11 side of Shady Grove Road.</p> <p>12 There are times sitting on Carnegie Avenue, trying</p> <p>13 to make a left, I have to wait for two or three changes of</p> <p>14 the light before I can get a break in the traffic on</p> <p>15 Needwood Road to make that left. Some mornings I actually</p> <p>16 have to block the eastbound traffic on Needwood Road, which</p> <p>17 I know could get me a ticket, but I can't get out unless I</p> <p>18 block the traffic and somebody coming westbound is kind</p> <p>19 enough to let me in, unquote.</p> <p>20 This also reinforces the testimony of Jennifer</p> <p>21 Mitchell, Enitza Rodriguez, and Olga Sabran, all of whom</p> <p>22 live on Needwood Road west of the Needwood-Carnegie</p> <p>23 intersection and all of whom testified about traffic backup</p> <p>24 issues on Needwood between the Needwood-Redland</p> <p>25 intersection and Carnegie Avenue, especially during the</p>

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<p style="text-align: right;">61</p> <p>1 morning.</p> <p>2 And can I please have the next page, which is OZAH</p> <p>3 Exhibit 222 -- 27, document NNN.2, and this second page on</p> <p>4 the screen is --</p> <p>5 MR. CHEN: Is it up? Is it correct?</p> <p>6 MS. KOSARY: It's up. You've got NNN.2. Mr. Chen</p> <p>7 is here worried.</p> <p>8 Okay. The second page is actually page 8 of</p> <p>9 Appendix B in OZAH Exhibit 63, which contains the result of</p> <p>10 total traffic when the estimates for background traffic and</p> <p>11 the projected Primrose traffic are added to the current</p> <p>12 existing traffic counts. And I've highlighted the length</p> <p>13 to the back of the queue for the left-hand turn lane and</p> <p>14 the through lane in yellow.</p> <p>15 The results of the left-hand turn lane is 441.9</p> <p>16 feet and for the through lane it's 575.3 feet.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: Wait. I -- I see</p> <p>18 that as 475.3.</p> <p>19 MS. KOSARY: 475.3</p> <p>20 HEARING EXAMINER ROBESON HANNAN: Oh, I thought you</p> <p>21 said 575.</p> <p>22 MS. KOSARY: No.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: Okay. Go ahead.</p> <p>24 I'm sorry.</p> <p>25 MS. KOSARY: It's long -- it's long, but it's not</p>	<p style="text-align: right;">63</p> <p>1 Local Area Review Guidelines or the LATR -- do you refer to</p> <p>2 it as the LATR or as the L-A-T-R?</p> <p>3 HEARING EXAMINER ROBESON HANNAN: L-A-T-R.</p> <p>4 MS. KOSARY: Okay. It's the LATR. I mean, and you</p> <p>5 can find these in document MM of Exhibit 176.</p> <p>6 HEARING EXAMINER ROBESON HANNAN: Do you want me to</p> <p>7 pull that exhibit up, or --</p> <p>8 MS. KOSARY: That's just telling you where I'm --</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>10 MS. KOSARY: -- I'm just telling you where I'm</p> <p>11 talking from.</p> <p>12 Now I want to point out that before the 2017 letter</p> <p>13 implementation -- LATR implementation, intersection</p> <p>14 congestion for all Montgomery County signalized</p> <p>15 intersections were evaluated using the critical lane value</p> <p>16 level of standard. For the 2017 LATR, intersections</p> <p>17 located in red and orange policy areas are now using the</p> <p>18 Highway Capacity Manual delay-based level of service</p> <p>19 standard. Primrose, Derwood is in the Derwood policy area,</p> <p>20 an orange area, and the 2017 LATR has set an HCM average</p> <p>21 vehicle delay standard for the Derwood policy area of 59</p> <p>22 seconds. And you can find all of this on page 13 and page</p> <p>23 31 of the 2017 LATR.</p> <p>24 And I want to note --</p> <p>25 MR. CHEN: L-A-T-R, you mean.</p>
<p style="text-align: right;">62</p> <p>1 quite that long.</p> <p>2 Again the left-hand turn lane is queueing past the</p> <p>3 length of the -- of the left-hand turn lane and into the</p> <p>4 taper and probably the through lane. And the through lane</p> <p>5 results bring it to the edge of the intersection of</p> <p>6 Carnegie and Needwood.</p> <p>7 I just want to say that Rosemary, Jennifer, Enitza,</p> <p>8 and Olga are already having problems getting onto Needwood</p> <p>9 during morning rush. Approve this application and they're</p> <p>10 going to find it even more difficult.</p> <p>11 And for some reason the Applicant has resubmitted</p> <p>12 their queueing study in OZAH Exhibit 161-A. In this</p> <p>13 queueing study, the Applicant's traffic expert reports the</p> <p>14 queue results for northbound Needwood in their table and</p> <p>15 westbound Needwood in their text description of this same</p> <p>16 table. And, as I mentioned previously, the Applicant</p> <p>17 describes the existing road network on page 3 of OZAH</p> <p>18 Exhibit 63 clearly stating that Needwood Road is a two-lane</p> <p>19 east-west roadway and that Redland Road is a four-lane</p> <p>20 north-south roadway at its intersection with Needwood.</p> <p>21 And that's all I'm going to say, and we're going to</p> <p>22 move along to actually the intersection capacity analysis</p> <p>23 results, which are presented in Exhibit 13 on page 23 of</p> <p>24 OZAH Exhibit 63.</p> <p>25 Now we included some relevant pages from the 2017</p>	<p style="text-align: right;">64</p> <p>1 MS. KOSARY: L-A-T-R. I'm sorry. It's always</p> <p>2 going to be LATR to me. And I just want to note that this</p> <p>3 -- these -- we're talking about intersection level</p> <p>4 standards here. Okay.</p> <p>5 Can I have OZAH Exhibit 227, document OOO? OOO,</p> <p>6 with a lot of pretty colors on it.</p> <p>7 (Exhibit 227-OOO introduced.)</p> <p>8 MS. KOSARY: The results of the Redland-Needwood</p> <p>9 intersection are included in worksheets -- in the</p> <p>10 worksheets on page 4 to 9 in Appendix B of OZAH Exhibit 63.</p> <p>11 You know, I've included a copy of page 4 and have</p> <p>12 highlighted the results in the intersection delay row in</p> <p>13 yellow. That's what you're looking at. And --</p> <p>14 MR. CHEN: What's the exhibit number?</p> <p>15 MS. KOSARY: That's Exhibit 227, document OOO.</p> <p>16 MR. CHEN: Thank you.</p> <p>17 MS. KOSARY: Can I please have the next exhibit,</p> <p>18 which is OZAH Exhibit 227, document PPP.</p> <p>19 (Exhibit 227-PPP introduced.)</p> <p>20 MS. KOSARY: And I just want you to note that the</p> <p>21 23.2 seconds in this exhibit corresponds to the 23.2</p> <p>22 seconds on the page before. So that's just -- just telling</p> <p>23 you where it came from.</p> <p>24 This is -- and this is OZAH Exhibit -- this is</p> <p>25 Exhibit 13 of OZAH Exhibit 63, and I've highlighted that in</p>

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<p style="text-align: right;">65</p> <p>1 yellow.</p> <p>2 If you want to go back to OZAH Exhibit 227,</p> <p>3 document OOO. Okay.</p> <p>4 Intersection delay is nothing more than the</p> <p>5 weighted average of approach delay, the delay for each</p> <p>6 intersection -- each of the intersection approaches from</p> <p>7 the north, south, east, and west, which I've highlighted in</p> <p>8 pink.</p> <p>9 And before anybody asks how I know this, I'm -- I'm</p> <p>10 a statistician. Obviously I've been through the equations</p> <p>11 in the Highway Capacity Manual. And I also opened an Excel</p> <p>12 spreadsheet, and I did the calculations and confirmed the</p> <p>13 results.</p> <p>14 So for a simple example, if traffic counts for all</p> <p>15 four approaches was 25 vehicles per approach, each approach</p> <p>16 would receive a weight of 0.25, which is 25 divided by the</p> <p>17 total of 100. Each of the four approach delays would be</p> <p>18 multiplied by their weight, and the results would be added</p> <p>19 together to arrive at the intersection delay.</p> <p>20 Approach delay is nothing more than the weighted</p> <p>21 average of control delay, the delay for each lane within an</p> <p>22 approach, which I've highlighted in blue. Intersection</p> <p>23 delay should give a relatively good indication of what is</p> <p>24 going on at an intersection in terms of delay provided all</p> <p>25 approaches have similar delays. This is not the case with</p>	<p style="text-align: right;">67</p> <p>1 break?</p> <p>2 MS. KOSARY: Oh, Mr. Chen needs a comfort break.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: I think we all</p> <p>4 need a comfort break.</p> <p>5 MR. CHEN: Thank you, (inaudible).</p> <p>6 HEARING EXAMINER ROBESON HANNAN: Certainly. Is 15</p> <p>7 minutes enough?</p> <p>8 MR. CHEN: Ten minutes is fine by me.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Ten minutes.</p> <p>10 Okay. So we'll come -- we're going to go off the record,</p> <p>11 and we'll come back at 11:30.</p> <p>12 (Pause in proceedings.)</p> <p>13 MS. KOSARY: Okay. Can I please get OZAH Exhibit</p> <p>14 227, document OOO again. Okay.</p> <p>15 Again, I remind you that this is page 4 of Appendix</p> <p>16 B of OZAH Exhibit 63. And I just wanted to on this -- at</p> <p>17 this time to note that besides the estimated control</p> <p>18 approach and intersection delays, the results also give the</p> <p>19 associated level of service, which is abbreviated LOS,</p> <p>20 which I have highlighted in green.</p> <p>21 The Highway Capacity Manual level of service table</p> <p>22 -- this is just for your reference -- is document M in OZAH</p> <p>23 Exhibit 115. The Needwood approaches have an LOS of E,</p> <p>24 which equates to unstable flow, intolerable delay, for the</p> <p>25 westbound approach or F, forced flow, congested and queues</p>
<p style="text-align: right;">66</p> <p>1 the Redland-Needwood intersection.</p> <p>2 Think of it as a class where half the students are</p> <p>3 getting an A, and the other half are close to failing. The</p> <p>4 class average is around a C.</p> <p>5 Can I please have OZAH Exhibit 227, document QQQ,</p> <p>6 which should be the next -- right there.</p> <p>7 (Exhibit 227-QQQ introduced.)</p> <p>8 MS. KOSARY: Okay. As summarized on this table, in</p> <p>9 the case of the Redland-Needwood intersection, the Redland</p> <p>10 approaches are more than meeting the LATR congestion</p> <p>11 standards at 59 seconds for the Derwood policy area, while</p> <p>12 the Needwood approaches are failing the standard.</p> <p>13 It goes back to my example of the class average</p> <p>14 when half the class is getting an A and half are failing.</p> <p>15 The intersection delay results for the Redland-Needwood</p> <p>16 intersection look okay because the two Redland approaches</p> <p>17 are the A students; the Needwood approaches are the F</p> <p>18 students. This is just nothing more than numerical</p> <p>19 confirmation of testimony from the neighborhood on the</p> <p>20 congestion they observe on Needwood Road, especially at its</p> <p>21 intersection with Redland.</p> <p>22 (Sotto voce speaking.)</p> <p>23 MS. KOSARY: Yeah. Yeah, sure.</p> <p>24 MR. CHEN: Madam Examiner, could -- we've been</p> <p>25 going for almost an hour and a half. Can we take a comfort</p>	<p style="text-align: right;">68</p> <p>1 fail to clear, for the eastbound approach across Redland in</p> <p>2 the Park Overlook neighborhood.</p> <p>3 This data, the results from examining the through</p> <p>4 traffic on Needwood originating from Maryland 115, the</p> <p>5 queue backups on Needwood at the Redland-Needwood</p> <p>6 intersection during the a.m. peak hour and the intersection</p> <p>7 congestion at the Needwood approaches of the Redland-</p> <p>8 Needwood intersection demonstrate the issues with Needwood</p> <p>9 Road and reinforce the testimony of the community.</p> <p>10 Needwood is a primary residential street operating far</p> <p>11 outside of which should be expected of a road in this</p> <p>12 category.</p> <p>13 This also corresponds with the observation made on</p> <p>14 page 76 of the Upper Rock Creek Master Plan, which states</p> <p>15 that, quote, Travel forecasts indicate that the Upper Rock</p> <p>16 Creek Planning Area will become increasingly congested in</p> <p>17 the next 20 years, but a primary goal of this plan is to</p> <p>18 preserve the area's low-density residential character,</p> <p>19 unquote.</p> <p>20 Okay.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Dr. Kosary, may I</p> <p>22 ask a question for a moment?</p> <p>23 MS. KOSARY: Oh, sure. Sure.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: Now this -- what</p> <p>25 you're showing here with the approach delay, is that based</p>

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<p style="text-align: right;">69</p> <p>1 on the incorrect -- is -- this document, according to you, 2 is based on incorrect numbers? 3 MS. KOSARY: You just -- you just -- 4 HEARING EXAMINER ROBESON HANNAN: Am I 5 understanding your testimony right? 6 MS. KOSARY: Correct numbers, incorrect columns. 7 So you just need to know -- I mean, and you've got -- 8 that's why you've got the footnote. You just need to know 9 that -- I mean, this is especially important if you knew -- 10 if you really knew the area and you knew that Needwood was 11 east-west. You need to know that the Needwood results are 12 not in the east, the EB and the WB columns, that the data 13 was actually transposed, and that the Needwood -- the 14 Needwood Road results are actually in the NB and the SB 15 columns. 16 HEARING EXAMINER ROBESON HANNAN: Okay. That's -- 17 that's what I wanted -- 18 MS. KOSARY: Yeah. 19 HEARING EXAMINER ROBESON HANNAN: -- to know. 20 Okay. 21 MS. KOSARY: Right. Besides that -- 22 HEARING EXAMINER ROBESON HANNAN: Can you give me a 23 moment just to write that down? 24 MS. KOSARY: Sure, sure. 25 HEARING EXAMINER ROBESON HANNAN: So the Needwood</p>	<p style="text-align: right;">71</p> <p>1 okay. Never mind. 2 MS. KOSARY: Okay. 3 (Laughter.) 4 MS. KOSARY: This is a really important issue, 5 however. So -- you know, so if I -- if I get complicated, 6 I'm going to try not to get complicated. 7 HEARING EXAMINER ROBESON HANNAN: Yeah. 8 MS. KOSARY: But let me know, you know, so that we 9 can -- 10 HEARING EXAMINER ROBESON HANNAN: Right. 11 MS. KOSARY: Okay. I want OZAH Exhibit 227, 12 document RRR. 13 MR. CHEN: How many Rs? 14 MS. KOSARY: RRR, three Rs. Q, R, next one. 15 HEARING EXAMINER ROBESON HANNAN: Oh. 16 (Exhibit 227-RRR introduced.) 17 MS. KOSARY: Okay. Again, just to place us back 18 again. 19 This is page 4 of Appendix B of OZAH Exhibit 63. 20 Now I mentioned the queue storage length, in this case the 21 length of the left-hand turn lane, earlier. 22 HEARING EXAMINER ROBESON HANNAN: Right. 23 MS. KOSARY: There's a result in this table called 24 the queue storage ratio, and I've highlighted that in 25 yellow. The queue storage ratio is nothing more than the</p>
<p style="text-align: right;">70</p> <p>1 results are in the NB and SB columns. 2 MS. KOSARY: Right. 3 HEARING EXAMINER ROBESON HANNAN: Okay. 4 MS. KOSARY: And you've got a footnote at the 5 bottom on that document. 6 HEARING EXAMINER ROBESON HANNAN: Yeah. It just -- 7 MS. KOSARY: Yeah, I know. 8 HEARING EXAMINER ROBESON HANNAN: Okay. Thank you. 9 Go ahead. 10 MS. KOSARY: Now I really debated about getting 11 into this next issue because we're now going to be making a 12 bit of a dumpster dive into methods, but this is a really 13 important issue. 14 HEARING EXAMINER ROBESON HANNAN: Okay. Stay away 15 from pejorative -- 16 MS. KOSARY: Okay. Oh, okay. 17 HEARING EXAMINER ROBESON HANNAN: If it's wrong, 18 you can tell me why. 19 MS. KOSARY: Okay. I'm sorry. Dumpster dive, it's 20 a statistical term. 21 (Laughter.) 22 HEARING EXAMINER ROBESON HANNAN: Oh. Is it 23 really? 24 MS. KOSARY: Yeah, I don't know. 25 HEARING EXAMINER ROBESON HANNAN: My kids used --</p>	<p style="text-align: right;">72</p> <p>1 back of queue divided by the queue storage length. Again, 2 I know this because I looked up the equation. 3 In this case, the application is showing a result 4 of 0.00. Well, assuming the back of queue length of 437.7 5 feet, as we have in this case, you would need a left-hand 6 turn lane with a length of about 87,500 feet to get a queue 7 storage ratio which rounds to 0.00. This is about 16.5 8 miles. The length of Needwood Road from Redland to 9 Maryland 115 is only about two miles. 10 And before anybody asks how I arrived at this 11 number, I mean, it's -- it's -- it's algebra. It's solving 12 for the unknown. 13 In fact, looking at all of the results for all the 14 queue storage ratios on this page, I must wonder whether 15 the analyst either turned off this part of the output and 16 turned an exceptionally large number in their input for 17 queue storage length or even if this part of the software 18 is working correctly. Whatever the cause, you're going to 19 analyze data, you should always ask questions when your 20 analysis software comes back with a wacky result. That's 21 another statistical term. We use that a lot, "wacky 22 result." 23 Can I please get OZAH Exhibit 227, document SSS. 24 (Exhibit 227-SSS introduced.) 25 MS. KOSARY: Okay. So the queue storage ratio</p>

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<p style="text-align: right;">73</p> <p>1 result, however, is important because as McTrans points out</p> <p>2 in their tips and frequently asked questions for the</p> <p>3 software application, which is OZAH Exhibit 227, document</p> <p>4 SSS, on page 3 -- if you just want to go through a couple</p> <p>5 of pages.</p> <p>6 HEARING EXAMINER ROBESON HANNAN: Oh, I'm sorry.</p> <p>7 MS. KOSARY: On page 3 of this exhibit, which I've</p> <p>8 highlighted in yellow --</p> <p>9 HEARING EXAMINER ROBESON HANNAN: I'm writing at</p> <p>10 the same time.</p> <p>11 MS. KOSARY: Oh, I'm sorry. I'm sorry --</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Go ahead.</p> <p>13 MS. KOSARY: -- if this is hard for you.</p> <p>14 HEARING EXAMINER ROBESON HANNAN: Go ahead.</p> <p>15 MS. KOSARY: Which -- which I've highlighted in</p> <p>16 yellow, it states that if this ratio goes above --</p> <p>17 (Technical interruption.)</p> <p>18 MS. KOSARY: -- the computation of both delay and</p> <p>19 queue length because the calculations do not account for</p> <p>20 what is called spillback.</p> <p>21 THE REPORTER: I'm sorry. You cut out there for a</p> <p>22 second for me.</p> <p>23 MS. KOSARY: Oh.</p> <p>24 THE REPORTER: Could you -- could you just repeat</p> <p>25 the last two sentences just to make sure it's on the</p>	<p style="text-align: right;">75</p> <p>1 MR. CHEN: Is that it?</p> <p>2 MS. KOSARY: Yes. The back of queue result for the</p> <p>3 current traffic on westbound Needwood --</p> <p>4 MR. CHEN: Excuse me. I apologize. What is this</p> <p>5 exhibit now you're --</p> <p>6 MS. KOSARY: This is OZAH Exhibit 227, document</p> <p>7 RRR, again.</p> <p>8 MR. CHEN: Thank you.</p> <p>9 MS. KOSARY: The back of queue result for the</p> <p>10 current traffic on westbound Needwood is 437.7 feet, which</p> <p>11 I have highlighted in pink. The queue storage length is</p> <p>12 around 425 feet, as previously discussed from OZAH Exhibit</p> <p>13 115, document I. The queue storage ratio, back of queue</p> <p>14 divided by queue storage length, is not 0.00; it is over</p> <p>15 one.</p> <p>16 The queue lengths have been underestimated because</p> <p>17 the calculations implemented in the software being used</p> <p>18 cannot handle the spillback of vehicles into other lanes.</p> <p>19 The delays calculated for the westbound Redland-Needwood</p> <p>20 intersection approach, which are already above the Derwood</p> <p>21 policy area standards and already are indicated as the</p> <p>22 Highway Capacity Manual level of service E, are even worse.</p> <p>23 And this is for the a.m. westbound Needwood traffic as it</p> <p>24 currently exists.</p> <p>25 Rosemary Smith has testified that it can take her</p>
<p style="text-align: right;">74</p> <p>1 record?</p> <p>2 MS. KOSARY: The queue storage ratio result,</p> <p>3 however, is important because, as McTrans points out in</p> <p>4 their tips and frequently asked questions for the software</p> <p>5 application, which is OZAH Exhibit 227, document SSS, on</p> <p>6 page 3, which I've highlighted in yellow, it states that if</p> <p>7 this ratio goes above one, you should not be using this</p> <p>8 software application. It will underestimate the</p> <p>9 computation of both delay and queue length because the</p> <p>10 calculations do not account for what is called spillback,</p> <p>11 when a queue goes past its storage length and starts</p> <p>12 interfering with or blocking neighboring lanes.</p> <p>13 McTrans has a different application called CORSIM,</p> <p>14 C-O-R-S-I-M, short for Corridor Simulation, which utilizes</p> <p>15 microsimulation to compute delay and queue storage</p> <p>16 estimates in these situations.</p> <p>17 I just want to say it always amazes me how many</p> <p>18 people use software and don't read the frequently asked</p> <p>19 questions. Okay.</p> <p>20 HEARING EXAMINER ROBESON HANNAN: Okay. All right.</p> <p>21 MS. KOSARY: Can I please -- can I please have OZAH</p> <p>22 Exhibit 227, document RRR, again.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: Oh, I'm sorry.</p> <p>24 MS. KOSARY: Q, R.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Q --</p>	<p style="text-align: right;">76</p> <p>1 multiple light cycles to get onto westbound Needwood during</p> <p>2 the morning -- so have Jennifer Mitchell and Olga Sabran.</p> <p>3 The westbound queue on Needwood does not always clear the</p> <p>4 intersection during a light cycle, which only leads to</p> <p>5 backing up the westbound queue even more. C.C. English,</p> <p>6 Alana Chamoun, and I have all testified that we frequently</p> <p>7 find westbound Needwood backed up far east of the Needwood-</p> <p>8 Carnegie intersection, sometimes as far back as the church</p> <p>9 during -- during the morning, queues which would definitely</p> <p>10 block the entrance of this proposed daycare center.</p> <p>11 Just want to say, as Charles Wheelan, author of</p> <p>12 Naked Statistics said, quote, Statistics is like a high-</p> <p>13 caliber weapon: helpful when used correctly and</p> <p>14 potentially disastrous in the wrong hands, unquote.</p> <p>15 Numerous neighbors have testified about the</p> <p>16 congestion on Needwood Road in the vicinity of the proposed</p> <p>17 Prinrose daycare site, especially during the morning rush</p> <p>18 hour at the Redland-Needwood intersection. Neighbors have</p> <p>19 testified about traffic backups on westbound Needwood which</p> <p>20 extend past Carnegie Avenue and would block the entrance to</p> <p>21 the proposed Prinrose driveway during morning rush hour.</p> <p>22 Neighbors have testified about the large amount of cut-</p> <p>23 through traffic on Needwood.</p> <p>24 You know, I'm sorry, the --</p> <p>25 MR. CHEN: If I may just take you back for a</p>

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<p style="text-align: right;">77</p> <p>1 minute.</p> <p>2 MS. KOSARY: Okay.</p> <p>3 MR. CHEN: Your report on the LOS at E --</p> <p>4 MS. KOSARY: Right, level of service.</p> <p>5 MR. CHEN: Yes. What does that mean based upon the</p> <p>6 report data? E?</p> <p>7 MS. KOSARY: What?</p> <p>8 MR. CHEN: Level of service E, what does --</p> <p>9 MS. KOSARY: Level of service?</p> <p>10 MR. CHEN: Yes. What does that mean?</p> <p>11 MS. KOSARY: Level of service, it's kind of a way</p> <p>12 that the Highway Capacity Manual tries to equate in words</p> <p>13 what -- what you're observing in delay.</p> <p>14 MR. CHEN: And what does -- what does E mean?</p> <p>15 MS. KOSARY: Oh, E. I have to -- let me go back,</p> <p>16 try to find E. E means unstable flow, intolerable delay.</p> <p>17 MR. CHEN: Okay. Thank you.</p> <p>18 MS. KOSARY: Okay. Okay. I think I've said enough</p> <p>19 about this part, except for I think that the Applicant has</p> <p>20 utterly failed to demonstrate that the proposed Primrose</p> <p>21 daycare center will not have an impact on the already</p> <p>22 highly congested Needwood Road.</p> <p>23 And from this point, I want to move on, and I want</p> <p>24 to talk about -- on page 9 of the Applicant's Amended</p> <p>25 Statement of Justification, which can be found in OZAH</p>	<p style="text-align: right;">79</p> <p>1 found to satisfy the zoning ordinance's parking facilities</p> <p>2 plan objectives.</p> <p>3 This finding, however, is dependent on</p> <p>4 implementation of all of the recommended conditions of</p> <p>5 approval, and especially the limitations on the number,</p> <p>6 timing and intensity of events. If the special exception</p> <p>7 is granted but the petitioner fails to comply with these</p> <p>8 limitations, more frequent or more intensive use of the</p> <p>9 parking lot can lead to adverse impacts sufficient to</p> <p>10 warrant revocation of the special exception, unquote.</p> <p>11 To determine the impact in the case of this</p> <p>12 application, we must ask the question, how many vehicle</p> <p>13 movements in and out of the Primrose proposed parking lot</p> <p>14 are there going to be daily? The 2017 LATR provides</p> <p>15 guidance for estimating the generation of vehicle trips.</p> <p>16 Pages 39 and 40 of the 2017 LATR state that, quote,</p> <p>17 Trips projected to be generated by the proposed development</p> <p>18 and background traffic should be determined in accordance</p> <p>19 with the latest edition of the Institute of Transportation</p> <p>20 Engineering, or ITE, Trip Generation Manual and the Trip</p> <p>21 Generation Handbook, unquote.</p> <p>22 According to the 2017 LATR guidance, on page 40,</p> <p>23 once estimated, the ITE trip generation results are then</p> <p>24 adjusted using the policy area adjustment factors found in</p> <p>25 table 1a on pages 53 through 56. In this case, the</p>
<p style="text-align: right;">78</p> <p>1 Exhibit 62, it was noted that the Board of Appeals approved</p> <p>2 -- when the Board of Appeals approved the special exception</p> <p>3 for the Taiwan Cultural Center, which was S-2668, they also</p> <p>4 granted a parking waiver. Excerpts of this report can be</p> <p>5 found in document OO of OZAH Exhibit 176.</p> <p>6 In terms of the waiver in the TCC case, the hearing</p> <p>7 examiner stated on page 42 of the Hearing Examiner's Report</p> <p>8 and Recommendation, which was dated November 21st, 2006,</p> <p>9 that the, quote, Need for substantial waivers of the site</p> <p>10 setback requirements for the driveway and parking lot is</p> <p>11 neither typical nor to be expected and, therefore, must be</p> <p>12 considered a non-inherent characteristic.</p> <p>13 In the case of the Taiwan Cultural Center, because</p> <p>14 the use was so small and the hearing examiner did not think</p> <p>15 that this unusual characteristic rose to the level of being</p> <p>16 a non-inherent adverse effect -- although the hearing</p> <p>17 examiner did note on page 22 that, quote, For compatibility</p> <p>18 purposes, the parking lot should've been built farther from</p> <p>19 the eastern property line. As a small, non-profit</p> <p>20 organization, the petitioner is reluctant to move the</p> <p>21 parking lot and driveway now.</p> <p>22 The hearing examiner agrees with staff that if all</p> <p>23 of the proposed conditions of approval are implemented,</p> <p>24 including the limitations on the number of vehicles and</p> <p>25 people on site at one time, the parking facility can be</p>	<p style="text-align: right;">80</p> <p>1 adjustment factor for the other use type in the Deerwood</p> <p>2 policy area is 94 percent.</p> <p>3 And can I please have OZAH Exhibit 227, document</p> <p>4 TTT.</p> <p>5 (Exhibit 227-TTT introduced.)</p> <p>6 MS. KOSARY: Okay. You're looking at Exhibit 10 of</p> <p>7 OZAH Exhibit 63, and the only change that's been made is</p> <p>8 just the highlighting.</p> <p>9 And I just want you to see that according to the</p> <p>10 estimated vehicle trips generated from the ITE manual and</p> <p>11 adjusted by the policy area factor, there will be 252</p> <p>12 vehicle trips, either into or out of the proposed parking</p> <p>13 facility during the a.m. and p.m. peak hours. This is the</p> <p>14 sum of the 129 vehicle trips for total a.m. peak hour and</p> <p>15 123 vehicle trips fro the total p.m. peak hour, both</p> <p>16 highlighted in yellow. This is the number of trips over</p> <p>17 two one-hour time periods during a weekday.</p> <p>18 Page 3 of the Applicant's Amended Statement of</p> <p>19 Justification, OZAH Exhibit 62 --</p> <p>20 MR. CHEN: Do you want that up?</p> <p>21 MS. KOSARY: No, I don't. However, it's just</p> <p>22 referencing it.</p> <p>23 However, indicates a much longer drop-off and</p> <p>24 pickup period: three hours in the a.m. and three hours in</p> <p>25 the p.m. So these numbers are just for two of those six</p>

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<p>1 hours.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: What was the</p> <p>3 exhibit that you just referenced for the --</p> <p>4 MS. KOSARY: It's page 3 of the Applicant's Amended</p> <p>5 Statement of Justification, which is OZAH Exhibit 62.</p> <p>6 HEARING EXAMINER ROBESON HANNAN: Okay. Go ahead.</p> <p>7 MS. KOSARY: Okay. And again the Applicant's</p> <p>8 traffic expert has an issue with their analysis. The ITE</p> <p>9 Trip Generation Manual provides two methods for calculating</p> <p>10 estimated trips: the linear regression equation and the</p> <p>11 average rate. Both the ITE and the LATR provide criteria</p> <p>12 selecting which method to use.</p> <p>13 The ITE criteria presented in Exhibit 115, document</p> <p>14 K -- this is just for your reference --</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Right.</p> <p>16 MS. KOSARY: -- states that if there are over 20</p> <p>17 data points used to estimate, the linear regression</p> <p>18 equation should be used regardless of the R-squared.</p> <p>19 R-squared measures the goodness of fit of the equation to</p> <p>20 the data, with one being a perfect fit.</p> <p>21 The 2017 LATR, however, states in footnote 12, at</p> <p>22 the bottom of page 40, that the linear regression equation</p> <p>23 should be used unless the R-squared for this equation is</p> <p>24 less than 0.75, without mention of the number of data</p> <p>25 points used to estimate.</p>	<p>81</p> <p>83</p> <p>1 MR. CHEN: And which exhibit is it?</p> <p>2 MS. KOSARY: It's OZAH Exhibit 227, document VVV.1</p> <p>3 for a.m. and VVV.2 for p.m. Okay.</p> <p>4 I've highlighted both R-squareds.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: And how have you</p> <p>6 -- oh, the 152 and the 137 -- is -- are you saying when</p> <p>7 you've highlighted, that's the red?</p> <p>8 MS. KOSARY: No. What I've highlighted, that's</p> <p>9 down at the bottom.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: Oh, oh. I'm</p> <p>11 sorry.</p> <p>12 MS. KOSARY: That's fine. That's fine. I've</p> <p>13 highlighted both R-squareds. And as you can see --</p> <p>14 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>15 MS. KOSARY: -- both -- both are less than 0.75.</p> <p>16 So the average rate, not the linear regression equation --</p> <p>17 equation should've been used for both the a.m. and p.m.</p> <p>18 estimates. They just used the wrong method.</p> <p>19 So after applying the Derwood policy adjustment,</p> <p>20 you actually have 143 vehicle trips for total p.m. peak</p> <p>21 hour and 145 vehicle trips for total p.m. peak hour or a</p> <p>22 total of 288 vehicle trips, movements either into or out of</p> <p>23 the proposed parking facility during the a.m. and p.m. peak</p> <p>24 hours.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Okay. Let me --</p>
<p>82</p> <p>1 The 2017 LATR criteria should've been used as this</p> <p>2 is the required -- this is a required analysis described by</p> <p>3 this document making the 2017 LATR the controlling</p> <p>4 document.</p> <p>5 And I just want to point out that, just for your</p> <p>6 reference, this portion of the LATR is OZAH Exhibit 227,</p> <p>7 document UUU.</p> <p>8 (Exhibit 227-UUU introduced.)</p> <p>9 MS. KOSARY: And can I please get OZAH Exhibit 227,</p> <p>10 document VVV.</p> <p>11 (Exhibit 227-VVV introduced.)</p> <p>12 MS. KOSARY: Okay. There's actually two pages of</p> <p>13 VVV. Oh, you've marked -- actually marked them VVV.1 and</p> <p>14 VVV.2. Okay.</p> <p>15 These are the ITETripGen web-based app results for</p> <p>16 a.m. and p.m. peak hour trip estimates for a daycare center</p> <p>17 of 195 children.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Okay. You've got</p> <p>19 to tell me what this is again.</p> <p>20 MS. KOSARY: Okay. It's the ITETripGen. it's all</p> <p>21 one word for your -- for -- for Mr. Jesse.</p> <p>22 I-T-E-T-R-I-P-G-E-N.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>24 MS. KOSARY: It's just the web-based app for this</p> <p>25 manual.</p>	<p>84</p> <p>1 let me just ask you, on this Exhibit VVV.1, 227-VVV.1, what</p> <p>2 are the red --</p> <p>3 MS. KOSARY: Okay.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: Can you just go</p> <p>5 through this? I see the ratio.</p> <p>6 MS. KOSARY: Right.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: What do the red</p> <p>8 --</p> <p>9 MS. KOSARY: You've got -- you've got -- notice</p> <p>10 that you've got two lines. One is -- one is solid, one is</p> <p>11 dashed --</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Now you're</p> <p>13 talking about --</p> <p>14 MS. KOSARY: The lines --</p> <p>15 (Crosstalk.)</p> <p>16 HEARING EXAMINER ROBESON HANNAN: Diagonal lines?</p> <p>17 MS. KOSARY: Right. The lines -- the lines going</p> <p>18 through the data.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>20 MS. KOSARY: The straight line and the -- the</p> <p>21 dotted line.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: I see, yes.</p> <p>23 MS. KOSARY: Those are -- those are the fits</p> <p>24 through the data.</p> <p>25 MR. CHEN: Again, just for the record, what exhibit</p>

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<p style="text-align: right;">85</p> <p>1 are we --</p> <p>2 MS. KOSARY: We're on OZAH Exhibit 227. This is</p> <p>3 document VVV.1.</p> <p>4 MR. CHEN: Thank you.</p> <p>5 MS. KOSARY: Those are the fit lines through the --</p> <p>6 through the data.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Wait. What's a</p> <p>8 fit line?</p> <p>9 MS. KOSARY: Oh, it's -- it's just the line that --</p> <p>10 that -- that fits the data.</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>12 MS. KOSARY: Either -- either based on the equation</p> <p>13 for what's referred to as the fitted curve or based on the</p> <p>14 average rate, which is -- is the dashed line.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Okay. So you're</p> <p>16 saying the average rate, which is the dashed diagonal line</p> <p>17 on this exhibit, should've been used --</p> <p>18 MS. KOSARY: Should've been used.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: -- rather than</p> <p>20 the -- what was the other form of --</p> <p>21 MS. KOSARY: It's -- it's -- they're referring to</p> <p>22 it as fitted curve.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>24 MS. KOSARY: But it's just -- it's just the result</p> <p>25 of running a linear regression.</p>	<p style="text-align: right;">87</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Got you.</p> <p>2 MS. KOSARY: Okay.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: And let me just</p> <p>4 get one other thing. VVV.1, is that the morning peak hour?</p> <p>5 MS. KOSARY: VVV.1 is the morning peak hour.</p> <p>6 HEARING EXAMINER ROBESON HANNAN: And then VVV.2 is</p> <p>7 the evening peak hour?</p> <p>8 MS. KOSARY: Is the evening peak hour.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Okay. I see it</p> <p>10 at the top. I just --</p> <p>11 MS. KOSARY: Right. It should be --</p> <p>12 HEARING EXAMINER ROBESON HANNAN: -- wanted to make</p> <p>13 sure I understood. Okay.</p> <p>14 MS. KOSARY: Okay.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Thank you.</p> <p>16 MS. KOSARY: You're welcome. Okay. I'm going to</p> <p>17 ask for OZAH Exhibit 115, document L as in Larry. Okay.</p> <p>18 The question we now have is whether the ITE Trip</p> <p>19 Generation Manual also includes a way to estimate total</p> <p>20 weekday site trip -- site traffic. And the answer's</p> <p>21 obviously yes. ITE Trip Generation Manual does also</p> <p>22 provide a means for estimating total weekday trips and</p> <p>23 document L of Exhibit 115, you have the results from the</p> <p>24 ITE Trip -- the ITETripGen web-based app for total weekday</p> <p>25 trips for a daycare center serving 195 children.</p>
<p style="text-align: right;">86</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Okay. So what do</p> <p>2 the red lines represent?</p> <p>3 MS. KOSARY: Okay. The red -- the one red line</p> <p>4 running vertical --</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Yeah.</p> <p>6 MS. KOSARY: -- down to the 195 --</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Yes.</p> <p>8 MS. KOSARY: -- that's just indicating, you know,</p> <p>9 the -- the number of children, 195.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>11 MS. KOSARY: It's just running up so that you can</p> <p>12 see where it -- where it intersects, the two lines --</p> <p>13 HEARING EXAMINER ROBESON HANNAN: Yes.</p> <p>14 MS. KOSARY: -- where the two lines --</p> <p>15 HEARING EXAMINER ROBESON HANNAN: But just explain</p> <p>16 for me, because I'm not a statistician, what are the</p> <p>17 horizontal red lines?</p> <p>18 MS. KOSARY: Right. The horizontal red lines are</p> <p>19 just the -- the point where the -- the vertical line</p> <p>20 intersects.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: But what does 152</p> <p>22 -- what is that quantity? Number of trips?</p> <p>23 MS. KOSARY: That's number of trips.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>25 MS. KOSARY: Versus 137.</p>	<p style="text-align: right;">88</p> <p>1 So I'm going to use the average rate because the</p> <p>2 R-squared again is less than the 2017 LATR guidance for use</p> <p>3 of the linear regression equation. And the results</p> <p>4 indicate 798 -- you can see that up there at the top -- 798</p> <p>5 daily vehicle trips.</p> <p>6 Can I get OZAH Exhibit 227, document XXX.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Whoops. I messed</p> <p>8 up.</p> <p>9 MS. KOSARY: That's fine.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: I'm sorry. How</p> <p>11 many Xs?</p> <p>12 MS. KOSARY: Three Xs. Keep going.</p> <p>13 (Exhibit 227-XXX introduced.)</p> <p>14 MS. KOSARY: Okay.</p> <p>15 MR. CHEN: Now what exhibit are we on now?</p> <p>16 MS. KOSARY: We're on OZAH Exhibit 227, document</p> <p>17 XXX, so that's triple X.</p> <p>18 So after taking the ITE estimate of 798 daily</p> <p>19 vehicle trips and applying the Derwood other adjustment</p> <p>20 factor from the 2017 --</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Oh, I'm sorry.</p> <p>22 MS. KOSARY: I liked that.</p> <p>23 (Laughter.)</p> <p>24 MS. KOSARY: All tables --</p> <p>25 HEARING EXAMINER ROBESON HANNAN: I'm handing my --</p>

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<p style="text-align: right;">89</p> <p>1 there. Go ahead.</p> <p>2 MS. KOSARY: All tables should look like that.</p> <p>3 (Laughter.)</p> <p>4 MS. KOSARY: The Derwood other adjustment factor</p> <p>5 from the 2017 LATR of 94 percent. You find that this use</p> <p>6 would generate 750 vehicle trips in or out of Primrose's --</p> <p>7 Primrose's proposed parking facility. And, I remind you,</p> <p>8 this is a parking facility located 12 feet off of our</p> <p>9 property line.</p> <p>10 And I must briefly discuss Mr. Cook's estimate of</p> <p>11 800 to 850 vehicle trips and say I was a bit surprised how</p> <p>12 quickly he gave the response until I remembered that we</p> <p>13 pre-filed document L of Exhibit 115, which is the ITE</p> <p>14 estimate for total daily vehicle trips for a 195-child</p> <p>15 daycare center. And I'm just assuming that Mr. Cook saw</p> <p>16 this pre-filing and just got his estimate slightly wrong.</p> <p>17 But, in the end, it really doesn't matter. Any way</p> <p>18 you look at it, this is a very large number of individual</p> <p>19 trips up and down a driveway 12 feet from our property</p> <p>20 line. But I'm sure the Applicant's going to jump up and</p> <p>21 say that, oh, but they're keeping the parking spaces 34</p> <p>22 feet away from our property line. All I can say to this is</p> <p>23 I think the Applicant must live in some other branch of the</p> <p>24 multiverse. Okay.</p> <p>25 MR. CHEN: Pejoratives.</p>	<p style="text-align: right;">91</p> <p>1 In this case, it's 750 individual vehicle trucks</p> <p>2 coming or going within 12 feet of our property line year-</p> <p>3 round, which again is narrow when compared to its length,</p> <p>4 and a use which is so large and intense that it requires a</p> <p>5 parking setback waiver on its east side and is shoehorned</p> <p>6 in right up to the utility easement on its west side,</p> <p>7 preventing any semblance of screening for what would be a</p> <p>8 large intensively utilized playground.</p> <p>9 All of this will significantly impact the use and</p> <p>10 peaceful enjoyment and the economic value of the</p> <p>11 neighboring properties. This is an extremely high-</p> <p>12 intensity use, and if all of this does not rise to the</p> <p>13 level of a non-inherent adverse effect, I don't know what</p> <p>14 would.</p> <p>15 But getting back to traffic, can I please have OZAH</p> <p>16 Exhibit 227, document YYY. Why, why, why? That's three</p> <p>17 Ys.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Just three Ys;</p> <p>19 right?</p> <p>20 MS. KOSARY: Three Ys. Why, why, why?</p> <p>21 (Laughter.)</p> <p>22 (Exhibit 227-YYY introduced.)</p> <p>23 HEARING EXAMINER ROBESON HANNAN: Okay. Go ahead.</p> <p>24 MS. KOSARY: Okay. Okay. You can take the total</p> <p>25 daily trip estimate a few steps further. The first</p>
<p style="text-align: right;">90</p> <p>1 MS. KOSARY: Oh, Mr. Kline [sic] tells me that's</p> <p>2 it's pejorative.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Thank you, Mr. --</p> <p>4 thank you.</p> <p>5 MS. KOSARY: Okay. I will -- he can smack me.</p> <p>6 He's my lawyer.</p> <p>7 (Laughter.)</p> <p>8 MS. KOSARY: No. I said previously that I had read</p> <p>9 the Brandywine decision. That was a -- I've also read</p> <p>10 Butler. There was as many as 24 individual vehicle trips</p> <p>11 coming or going within 22 feet of Cora Weeks' property line</p> <p>12 during Melody Butler's busy season.</p> <p>13 In that case, the hearing examiner determined that</p> <p>14 the proximity of Butler's driveway to Weeks' lot, the</p> <p>15 narrowness of Butler's lot when compared to its length, the</p> <p>16 configuration of the commercial use on the lot and the</p> <p>17 closeness of the commercial use to the neighboring</p> <p>18 properties all created non-inherent adverse effects which</p> <p>19 significantly impacted the peaceful enjoyment, and</p> <p>20 potentially the economic value, of the neighboring</p> <p>21 properties, and the application was denied.</p> <p>22 In Butler, the Maryland Court of Appeals upheld</p> <p>23 Montgomery County's authority to deny a special exception</p> <p>24 for a conditional use application based on the non-inherent</p> <p>25 adverse effect framework.</p>	<p style="text-align: right;">92</p> <p>1 question should be whether we can determine how many of</p> <p>2 these are going to be new trips on Needwood Road. This is</p> <p>3 -- this is actually really easy to calculate. The</p> <p>4 Applicant's Exhibit 10 --</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Well, tell us --</p> <p>6 are you going to tell us what we're looking at?</p> <p>7 MS. KOSARY: Oh. Well, we're looking at -- what</p> <p>8 are we looking at? We're looking at the Applicant's</p> <p>9 Exhibit 10 --</p> <p>10 MR. CHEN: What exhibit number is this?</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Exhibit 63?</p> <p>12 MS. KOSARY: Applicant's Exhibit 10, on page 19 of</p> <p>13 OZAH Exhibit 63.</p> <p>14 HEARING EXAMINER ROBESON HANNAN: Okay. Thank you.</p> <p>15 MS. KOSARY: And it indicates that the percent of</p> <p>16 pass-by trips in the a.m. is 27 percent and in the p.m. is</p> <p>17 12 percent, and I've highlighted this in yellow.</p> <p>18 These numbers represent what was agreed to in the</p> <p>19 Transportation Impact Study Scope of Work Agreement, which</p> <p>20 can be found starting on page 8 of Appendix A of OZAH</p> <p>21 Exhibit 63. It is item number ten on page 10.</p> <p>22 Pass-by trips are vehicle trips that are already on</p> <p>23 the road network; they are just making an additional stop</p> <p>24 during a trip which had already put them on the road for a</p> <p>25 different purpose. Trips that are not pass-by trips are</p>

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<p style="text-align: right;">93</p> <p>1 new trips.</p> <p>2 Note that for just the a.m. and p.m. peak hour that</p> <p>3 there are 203 new trips generated by this proposed use: 95</p> <p>4 in the a.m. hour and 108 in the p.m. hour. I've</p> <p>5 highlighted this in pink. Again, this represents just two</p> <p>6 out of the six total hours the Applicant has indicated that</p> <p>7 pickup and drop-off of students will occur.</p> <p>8 And, again, as we discussed, you know, these</p> <p>9 estimates are incorrect because they should've used the</p> <p>10 average rate. Using the average rate and applying the</p> <p>11 policy area adjustment and the agreed-to percent of pass-by</p> <p>12 trips, you're talking 232 new trips generated: 104 in the</p> <p>13 a.m. peak hour, 128 in the p.m. peak hour. And, again --</p> <p>14 HEARING EXAMINER ROBESON HANNAN: Can you -- let me</p> <p>15 -- give me a chance to -- to --</p> <p>16 MS. KOSARY: Yes.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: So using the</p> <p>18 average rate and the policy area adjustment, what --</p> <p>19 MS. KOSARY: And -- and -- and the -- and the</p> <p>20 agreed-to percent of pass-by trips.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Okay. So what is</p> <p>22 your calculation?</p> <p>23 MS. KOSARY: 232 new trips total: 140 -- 104,</p> <p>24 1-0-4, in the a.m. peak and 1-2-8, 128, in the p.m. peak</p> <p>25 hour.</p>	<p style="text-align: right;">95</p> <p>1 Traffic Impact Analysis report can give us some answers.</p> <p>2 This time we're looking at the Transportation Impact Study</p> <p>3 Scope of Work Agreement, which can be found starting on</p> <p>4 page 8 of Appendix A of OZAH Exhibit 63.</p> <p>5 MR. CHEN: Is there an exhibit number for this?</p> <p>6 MS. KOSARY: We haven't gotten there yet.</p> <p>7 MR. CHEN: Okay.</p> <p>8 MS. KOSARY: It's an item -- it is item number --</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Mr. Chen, you're</p> <p>10 moving too fast.</p> <p>11 MS. KOSARY: Yes.</p> <p>12 MR. CHEN: I apologize.</p> <p>13 MS. KOSARY: I slap him for you. Yes.</p> <p>14 HEARING EXAMINER ROBESON HANNAN: Go ahead. I'm</p> <p>15 sorry.</p> <p>16 MS. KOSARY: It's item number 11 on page 10 of</p> <p>17 Exhibit 4 on page 15, and --</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>19 MS. KOSARY: -- can I please have OZAH Exhibit 227,</p> <p>20 document AAAA.</p> <p>21 (Exhibit 227-AAAA introduced.)</p> <p>22 MS. KOSARY: And this is what I was talking about.</p> <p>23 This is the map from -- from the Transportation Impact</p> <p>24 Study Scope of Work Agreement. And from this map, it's</p> <p>25 Exhibit 4 from the Scope of Work Agreement, you can see</p>
<p style="text-align: right;">94</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>2 MS. KOSARY: Okay. Can I have OZAH Exhibit 227,</p> <p>3 document ZZZ? ZZ Top, ZZZ.</p> <p>4 (Exhibit 227-ZZZ introduced.)</p> <p>5 MS. KOSARY: So, basically --</p> <p>6 MR. CHEN: Is this -- is this ZZZ?</p> <p>7 MS. KOSARY: This is ZZZ, yes. This is OZAH</p> <p>8 Exhibit 227, document ZZZ.</p> <p>9 So, basically, if you look at how many of the</p> <p>10 totals, 750 weekday trips are new trips, you need an</p> <p>11 assumption as to what percent of these trips -- these 750</p> <p>12 trips are in the a.m. and what are in the p.m., and so for</p> <p>13 this table I'm using a 50-50 split. This would give you</p> <p>14 274 new trips in the morning and 330 new trips in the</p> <p>15 afternoon for a total of 604 new trips per day. I must</p> <p>16 tell you, in my opinion, this is a large number of new</p> <p>17 trips on an already congested road and for an area which,</p> <p>18 according to its master plan, is supposed to be low density</p> <p>19 residential.</p> <p>20 MR. CHEN: Where does this Exhibit ZZZ come from?</p> <p>21 MS. KOSARY: I created it.</p> <p>22 MR. CHEN: Okay. Thank you.</p> <p>23 MS. KOSARY: Yes. This is my work.</p> <p>24 The final question is where the 604 new trips are</p> <p>25 going to be coming from. And, again, the Applicant's</p>	<p style="text-align: right;">96</p> <p>1 that the Applicant is estimating that 10 percent of these</p> <p>2 new trips are going to be coming from the Needwood</p> <p>3 neighborhood itself, 15 percent are going to be coming from</p> <p>4 the Needwood-Maryland 115 intersection area, and 75 percent</p> <p>5 of these trips -- so that is actually the 40 percent coming</p> <p>6 southbound from Redland, the 30 percent coming northbound</p> <p>7 from Redland and the 5 percent coming from the Park</p> <p>8 Overlook community -- 75 percent of the trips are going to</p> <p>9 be coming from the Redland-Needwood intersection area.</p> <p>10 Can I please have OZAH Exhibit 227, document BBBB?</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Okay. I'm going</p> <p>12 to -- I need to get that down. 75 percent are coming from</p> <p>13 the Redland --</p> <p>14 MS. KOSARY: Are coming from the Redland-Needwood</p> <p>15 intersection area -- 40 percent from southbound Redland, 30</p> <p>16 percent from northbound Redland, and 5 percent coming in</p> <p>17 from the east, which is -- this is the Park -- the Park</p> <p>18 Overlook Community.</p> <p>19 MR. CHEN: That's 75 percent are going to be</p> <p>20 traffic passing through the intersection --</p> <p>21 MS. KOSARY: Right. They're going to be --</p> <p>22 MR. CHEN: -- of Redland and Needwood?</p> <p>23 MS. KOSARY: -- they're going to be passing through</p> <p>24 the intersection of Redland and Needwood.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Just one minute.</p>

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<p style="text-align: right;">97</p> <p>1 MS. KOSARY: Oh, all the time you want.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Well, okay.</p> <p>3 (Exhibit 227-BBBB introduced.)</p> <p>4 MS. KOSARY: Okay. BBBB.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Now can you</p> <p>6 describe what BBBB is?</p> <p>7 MS. KOSARY: Okay. BBBB is just --</p> <p>8 HEARING EXAMINER ROBESON HANNAN: Did you prepare</p> <p>9 it?</p> <p>10 MS. KOSARY: I prepared BBBB. It's just basically</p> <p>11 taking that 604 new trips that we had in OZAH Exhibit 227,</p> <p>12 document AAAA, and distributing them for the a.m. and the</p> <p>13 p.m. based on the percents that were coming from -- from</p> <p>14 the map.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>16 MS. KOSARY: And it's actually kind of indicated in</p> <p>17 the labels, so Needwood neighborhood, 10 percent is coming</p> <p>18 from there, Needwood -- Needwood-Maryland 115 intersection,</p> <p>19 15 percent are coming from there, Needwood-Redland</p> <p>20 intersection area, 75 percent are coming from there.</p> <p>21 MR. CHEN: Again, you're taking the percentages</p> <p>22 based upon the report that the Applicant had supplied --</p> <p>23 MS. KOSARY: The --</p> <p>24 MR. CHEN: -- for their map?</p> <p>25 MS. KOSARY: -- Applicant had -- had supplied for</p>	<p style="text-align: right;">99</p> <p>1 saying. I'm not making any findings.</p> <p>2 MS. KOSARY: Oh, I know. I know.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Yeah. Go ahead.</p> <p>4 MS. KOSARY: Okay. Finally, I just have a few</p> <p>5 comments about the Applicant's gap study, which was</p> <p>6 actually done as an afterthought and can be found in OZAH</p> <p>7 Exhibit 161-B.</p> <p>8 Now, on occasions, technical staff and planning or</p> <p>9 the Planning Board have asked for a quote/unquote gap study</p> <p>10 to be conducted for a conditional use or a preliminary plan</p> <p>11 application. The 2017 LATR, however, gives no guidance on</p> <p>12 the methods to be used in conducting a gap study, as it</p> <p>13 does for intersection capacity analysis where it directs</p> <p>14 applicants to utilize the methods presented in the Highway</p> <p>15 Capacity Manual or a new trip generation where it directs</p> <p>16 applicants to utilize the methods developed by the</p> <p>17 Institute of Traffic Engineers.</p> <p>18 Can I please get OZAH Exhibit 227, document CCCC,</p> <p>19 so that's four Cs.</p> <p>20 (Exhibit 227-CCCC introduced.)</p> <p>21 MS. KOSARY: So, actually, I searched -- I went out</p> <p>22 and I searched the Planning Department's website, and I</p> <p>23 found a total of 27 conditional use or preliminary plan</p> <p>24 applications where a gap study was included. When I</p> <p>25 checked the reports for these, however, it really didn't</p>
<p style="text-align: right;">98</p> <p>1 their map.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: So what you're</p> <p>3 saying is that the bulk of the traffic is coming from</p> <p>4 Needwood-Redland?</p> <p>5 MS. KOSARY: Yes. So obviously the largest percent</p> <p>6 of new trips is going to be on that six to seven hundred</p> <p>7 foot section of Needwood Road between the proposed Primrose</p> <p>8 site and the already congested Needwood-Redland</p> <p>9 intersection. It's -- these -- of the 640 -- 604 estimated</p> <p>10 new trips per day, 453 are going to occur between the</p> <p>11 proposed Primrose site and the Needwood-Redland</p> <p>12 intersection. It's estimated to be 206 new trips in the</p> <p>13 a.m. and 248 in the p.m.</p> <p>14 SPEAKER: (Inaudible.)</p> <p>15 MS. KOSARY: As we pointed out, Needwood at this</p> <p>16 location of the Redland-Needwood intersection is already --</p> <p>17 already extremely congested, especially in the morning. We</p> <p>18 can't handle hundreds of new car trips in this small,</p> <p>19 congested area.</p> <p>20 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>21 MS. KOSARY: Okay.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: I'm saying okay</p> <p>23 because I understand --</p> <p>24 MS. KOSARY: Yes.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: -- what you're</p>	<p style="text-align: right;">100</p> <p>1 surprise me to discover that each gap study appeared to</p> <p>2 follow somewhat different methods, depending on the traffic</p> <p>3 expert, and that it was difficult to determine exactly what</p> <p>4 had been done from the documents provided or even from the</p> <p>5 results.</p> <p>6 However -- this -- this, however, shouldn't have</p> <p>7 been the case. The Manual of Transportation Engineering</p> <p>8 Studies, second edition, published in November of 2010 by</p> <p>9 the Institute of Traffic Engineers includes guidance on</p> <p>10 conducting and presenting the results of a gap study. The</p> <p>11 ITE website describes this manual as kind of a how-to guide</p> <p>12 on conducting various studies using standardized study</p> <p>13 techniques and current technology. And it has a companion</p> <p>14 book, the ITE's Traffic Engineering Handbook, seventh</p> <p>15 edition.</p> <p>16 The relevant pages from both the ITE's Manual of</p> <p>17 Transportation Engineering Studies, second edition, as well</p> <p>18 as the ITE's Traffic Engineering Handbook, seventh edition,</p> <p>19 have been entered into record as OZAH Exhibit 227,</p> <p>20 documents DDDD, four Ds, and EEEE, four Es.</p> <p>21 (Exhibit 227-DDDD and Exhibit 227-EEEE introduced.)</p> <p>22 MS. KOSARY: Now both studies define a gap as,</p> <p>23 quote, The available time in seconds between two successive</p> <p>24 vehicles at the same point in space measured from the rear</p> <p>25 bumper of the lead vehicle to the front bumper of the</p>

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<p style="text-align: right;">101</p> <p>1 following vehicle, unquote.</p> <p>2 So, by definition, a gap is measured within a</p> <p>3 traffic lane between two successive vehicles. For example,</p> <p>4 for Needwood Road, a two-lane east-west street, under this</p> <p>5 definition, you would measure the gaps for the eastbound</p> <p>6 lane as well as the gaps for the westbound lane.</p> <p>7 Both documents define a critical gap as, quote, The</p> <p>8 threshold gap time used to determine whether vehicles,</p> <p>9 pedestrians, or bicyclists at a minor approach enter or</p> <p>10 cross the major traffic stream.</p> <p>11 And traffic flow theory, it is defined as the gap</p> <p>12 time where a major street traffic is equally as likely to</p> <p>13 accept or reject a gap, unquote.</p> <p>14 Drivers differ in their individual reaction to</p> <p>15 gaps. Critical gap times are developed through what's</p> <p>16 called a gap acceptance study, and we're not going to get</p> <p>17 into it because we'd be here for weeks.</p> <p>18 In terms of collecting gap data, the Manual of</p> <p>19 Transportation Engineering Studies, second edition, states</p> <p>20 that, quote, Many electronic counting boards record gap</p> <p>21 data by grouping the gaps into bins or intervals of two</p> <p>22 seconds. The results then -- will then consist of the</p> <p>23 number of gaps between zero and two seconds, two and four</p> <p>24 seconds, and so on. Two-second intervals are crude but</p> <p>25 acceptable for most gap studies, but larger interval --</p>	<p style="text-align: right;">103</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Yeah. Okay. I</p> <p>2 get it.</p> <p>3 MS. KOSARY: Yeah. Because in the -- in -- in</p> <p>4 their description of the April 2019 traffic count in OZAH</p> <p>5 Exhibit 63, the Applicant mentions no other traffic count</p> <p>6 sites beyond these three locations and reports no other</p> <p>7 data from any additional sites.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: Okay. I -- I</p> <p>9 understand now. I just wanted to make sure I understood.</p> <p>10 MS. KOSARY: Yeah.</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Okay. Go ahead.</p> <p>12 MS. KOSARY: As the Applicant states, the gap times</p> <p>13 used were taken from the Highway Capacity Manual; however,</p> <p>14 a so-called gap study is not a method defined by the</p> <p>15 Highway Capacity Manual.</p> <p>16 The critical gap periods, which were taken from</p> <p>17 chapter 20 of the latest Highway Capacity Manual, are</p> <p>18 actually meant to be used in queuing analysis for</p> <p>19 unsignalized intersections, basically the same type of</p> <p>20 analysis as that for signalized intersections presented in</p> <p>21 pages 4 to 9 of OZAH Exhibit B of -- pages 4 through 9 of</p> <p>22 Appendix B of OZAH Exhibit 63. They're just inputs to an</p> <p>23 equation that estimates the potential capacity of a road.</p> <p>24 And before anybody asks how I know, the Applicant</p> <p>25 included these pages from the Highway Capacity Manual in</p>
<p style="text-align: right;">102</p> <p>1 intervals are generally not useful, unquote.</p> <p>2 In terms of analysis, both documents state that,</p> <p>3 quote, The mean gap has only marginal meaning and analysis</p> <p>4 using gap data. Statistics that describe the shape of the</p> <p>5 gap distribution, such as percentiles, are more useful,</p> <p>6 unquote.</p> <p>7 Back to the Applicant's gap study, which was OZAH</p> <p>8 Exhibit 161-B, as indicated in their report, the gaps were</p> <p>9 measured using videos, which were recorded in April of</p> <p>10 2019, which was when the Applicant conducted their traffic</p> <p>11 count studies.</p> <p>12 So the gaps supposedly measured at the site of the</p> <p>13 proposed driveway were possibly instead measured at the</p> <p>14 Needwood-Carnegie intersection, about 180 feet away, one of</p> <p>15 the three sites where traffic counts were collected for the</p> <p>16 April 2019 traffic study and one of the sites where the</p> <p>17 data collection instruments were obviously set up.</p> <p>18 In their description of the April 2019 traffic</p> <p>19 count, in OZAH Exhibit 63 --</p> <p>20 HEARING EXAMINER ROBESON HANNAN: Wait, hold up.</p> <p>21 What you're saying is, was the video located at the</p> <p>22 intersection rather than the site driveway? Is that what</p> <p>23 you're saying?</p> <p>24 MS. KOSARY: That's what I'm -- that's what I'm</p> <p>25 questioning.</p>	<p style="text-align: right;">104</p> <p>1 their exhibit.</p> <p>2 And remember that a critical gap is the time when</p> <p>3 50 percent of drivers would accept the gap and 50 percent</p> <p>4 would reject.</p> <p>5 From the Applicant's report, which is OZAH Exhibit</p> <p>6 161-B, I can't determine how the gaps were counted. Did</p> <p>7 they count gaps in westbound traffic and gaps at eastbound</p> <p>8 traffic and add them together?</p> <p>9 They only stated that, quote, The number of gaps</p> <p>10 that were observed were counted during the peak hours,</p> <p>11 unquote, on page 1 of the text's description.</p> <p>12 The only clue is when discussing Exhibit B on the</p> <p>13 second page of OZAH Exhibit 161-B where it states that,</p> <p>14 quote, For the purposes of this analysis, we have utilized</p> <p>15 the total number of vehicles in both directions, unquote.</p> <p>16 This would leave me to believe that the Applicant</p> <p>17 is using the sum of the gaps in westbound traffic and</p> <p>18 eastbound traffic in their analysis.</p> <p>19 When describing the first table labeled Exhibit A</p> <p>20 -- we're still again in OZAH Exhibit 161-B -- the Applicant</p> <p>21 states in the text description that they are examining,</p> <p>22 quote, Vehicles turning left and/or right from the proposed</p> <p>23 daycare center to westbound Needwood Road, unquote.</p> <p>24 I must say that this -- this -- this statement left</p> <p>25 me scratching my head. When preparing a report on a data</p>

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<p style="text-align: right;">105</p> <p>1 analysis, it should be methods, results, discussion. The</p> <p>2 description of your methods must match the presentation of</p> <p>3 your results, so your discussion of the results can make</p> <p>4 sense to your reader. If you do not, what in the world is</p> <p>5 your audience supposed to believe?</p> <p>6 Westbound Needwood is the traffic heading in the</p> <p>7 direction of Redland Road while eastbound Needwood traffic</p> <p>8 is heading in the direction of Maryland 115. Right-hand</p> <p>9 turns from the proposed daycare center would be onto</p> <p>10 eastbound not westbound Needwood. Left-hand turns from the</p> <p>11 proposed daycare center would cross eastbound Needwood to</p> <p>12 get onto westbound Needwood. Left-hand turns out of the</p> <p>13 proposed Prinrose daycare center onto westbound Needwood</p> <p>14 are the most complicated maneuver because it requires a</p> <p>15 simultaneous gap in both eastbound and westbound traffic.</p> <p>16 The Applicant's approach to this analysis is</p> <p>17 actually a very static look at what is a very dynamic</p> <p>18 system. You have a driver's individual decision-making</p> <p>19 process as to whether to attempt a gap and what are very</p> <p>20 congested as well as opposing traffic streams. On top of</p> <p>21 that, you have vehicles attempting to make left-hand turns</p> <p>22 from westbound Needwood into the daycare center perturbing</p> <p>23 traffic flow in the westbound lane, and you have vehicles</p> <p>24 attempting to make right-hand turns into or out of the</p> <p>25 daycare center perturbing traffic flow in the eastbound</p>	<p style="text-align: right;">107</p> <p>1 present in the traffic stream directly behind one another,</p> <p>2 unquote, and that it was incorrect to assume that a</p> <p>3 following vehicle could use the initial turning vehicle's</p> <p>4 gap in the assumed follow-up time.</p> <p>5 They further noted that turning vehicles could have</p> <p>6 an impact on the through travel lanes, which was not</p> <p>7 accounted for in the analysis.</p> <p>8 And, finally, they recommended a simulation be</p> <p>9 performed to look at potential impacts.</p> <p>10 Can I please have OZAH Exhibit 227, document HHHH.</p> <p>11 Page HHHH. You're still -- I think you want to go down.</p> <p>12 Down, down, down.</p> <p>13 HEARING EXAMINER ROBESON HANNAN: Okay. Here we</p> <p>14 go.</p> <p>15 (Exhibit 227-HHHH introduced.)</p> <p>16 MS. KOSARY: Okay. As both the ITE's Manual of</p> <p>17 Transportation Engineering --</p> <p>18 MR. CHEN: Excuse me. What exhibit?</p> <p>19 MS. KOSARY: Oh. This is -- this is OZAH Exhibit</p> <p>20 227, document HHHH, and I -- I -- I graphed this myself.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>22 MS. KOSARY: As both the ITE's Manual of</p> <p>23 Transportation Engineering Studies, second edition, as well</p> <p>24 as the ITE's Traffic Engineering Handbook, seventh edition,</p> <p>25 state, quote, Statistics that describe the shape of the gap</p>
<p style="text-align: right;">106</p> <p>1 lane of Needwood.</p> <p>2 This last-minute, tacked-on analysis does not</p> <p>3 demonstrate whether drivers will be able to exit the</p> <p>4 proposed Prinrose daycare center easily and safely,</p> <p>5 especially if they want to make a left-hand turn onto</p> <p>6 westbound Needwood Road, which I should add is the way you</p> <p>7 would exit if you wanted to go to the Metro, I-270, or the</p> <p>8 general Rockville area.</p> <p>9 I cannot help thinking to myself that you really</p> <p>10 need to run a microsimulation if you want to evaluate</p> <p>11 vehicle movements.</p> <p>12 And it appears that a reviewer at the Maryland</p> <p>13 State Highway Administration had the same opinion about a</p> <p>14 similar analysis the traffic group did for the Dowden's</p> <p>15 Station Preliminary Plan, which can be found in OZAH</p> <p>16 Exhibit 227, document GGGG.</p> <p>17 (Exhibit 227-GGGG introduced.)</p> <p>18 MS. KOSARY: The State's reviewer's comments relate</p> <p>19 to the situation of a driver turning left from the major</p> <p>20 road to the facility in question; however, the comments are</p> <p>21 also highly relevant to the scenario we're discussing.</p> <p>22 The reviewer noted of the static analysis presented</p> <p>23 that it was, quote, Impractical that such a large volume of</p> <p>24 vehicles could be accommodated. They found it unlikely</p> <p>25 that vehicles desiring to turn, quote, Would always be</p>	<p style="text-align: right;">108</p> <p>1 distribution, such as percentiles, are useful.</p> <p>2 But gap distribution is quite telling and</p> <p>3 demonstrates that three quarters of all the observed gaps</p> <p>4 are unusable in the a.m. They are under the critical gap</p> <p>5 time of 7.1 seconds. And remember that a critical gap</p> <p>6 measures the point at which a driver is equally as likely</p> <p>7 to accept or reject a gap.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: Now can you give</p> <p>9 me that percentage again?</p> <p>10 MS. KOSARY: It's -- it's approximately three</p> <p>11 quarters, 75 percent.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Of?</p> <p>13 MS. KOSARY: Of all the observed gaps are unusable.</p> <p>14 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>15 MS. KOSARY: It's actually those -- it's actually</p> <p>16 those that are -- that are highlighted in red.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>18 MR. CHEN: On Exhibit --</p> <p>19 MS. KOSARY: On Exhibit -- OZAH Exhibit 227,</p> <p>20 document HHHH.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Okay. I didn't</p> <p>22 -- I see what you're saying.</p> <p>23 MS. KOSARY: Yeah, yeah.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: Because the gap</p> <p>25 -- I think he did say this -- the gap would be 7.7 minutes</p>

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<p style="text-align: right;">109</p> <p>1 -- or seconds, seconds.</p> <p>2 MS. KOSARY: Attorney Kline has his hand up.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Mr. Kline.</p> <p>4 MR. KLINE: Excuse me. No. I -- all I meant to</p> <p>5 ask was the preparation, and Dr. Kosary did that at the</p> <p>6 beginning. I'm sorry if my hand was still up.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Oh.</p> <p>8 MS. KOSARY: This is just another demonstration of</p> <p>9 how congested a.m. rush hour is on this stretch of Needwood</p> <p>10 Road. It's also just another confirmation as to why so</p> <p>11 many testified about having such difficulty (inaudible)</p> <p>12 connecting roads onto -- or connecting roads onto westbound</p> <p>13 Needwood during the morning rush hour.</p> <p>14 MR. CHEN: Madam Examiner.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Yes.</p> <p>16 MS. KOSARY: I'm done with traffic.</p> <p>17 MR. CHEN: This may be a good break point for</p> <p>18 lunch.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: All right. Any</p> <p>20 objections, Mr. Kline?</p> <p>21 MR. KLINE: No. I think it's a good idea and good</p> <p>22 -- good idea and good timing.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: Okay. So we will</p> <p>24 reconvene at 1:30, and don't forget to mute your microphone</p> <p>25 or your camera during this time because the recording will</p>	<p style="text-align: right;">111</p> <p>1 over \$100,000. And by Mr. McPherson's estimates, Primrose</p> <p>2 would bring the value of our home below what we paid for</p> <p>3 our land and construction almost a quarter of a century</p> <p>4 ago.</p> <p>5 In Mr. McPherson's testimony, he described the</p> <p>6 issues he had with even locating comparable sites for his</p> <p>7 analysis.</p> <p>8 I believe that the fact that approval of this</p> <p>9 conditional use would trap our home between two uses, which</p> <p>10 have both been demonstrated to have a significant negative</p> <p>11 impact on our home value, is an unusual characteristic of</p> <p>12 the site and rises to a non-inherent adverse effect.</p> <p>13 For most of us, the equity in our homes is the</p> <p>14 largest wealth -- wealth asset we have. For some, it may</p> <p>15 represent an asset we can tap to send a child to college,</p> <p>16 as Olga Sabran testified to on day two. Our equity might</p> <p>17 be used to help keep a parent in a well-staffed and highly</p> <p>18 rated nursing home. We may depend on it to ensure that in</p> <p>19 our old age, we can afford assisted living and not become</p> <p>20 dependent on the State or on our families, or it might be</p> <p>21 passed on to our descendants or our favorite charities.</p> <p>22 Approval of this application, while creating wealth</p> <p>23 for the franchiser Primrose Schools and the franchisee the</p> <p>24 Mandavas and their silent partner Durga Kodali, will cause</p> <p>25 undue harm to my family and my neighbors through the</p>
<p style="text-align: right;">110</p> <p>1 pick it up, whatever is said. Okay?</p> <p>2 Okay. With that, we're adjourned.</p> <p>3 (Pause in proceedings.)</p> <p>4 HEARING EXAMINER ROBESON HANNAN: We're back on the</p> <p>5 record. I believe Dr. Kosary was continuing her direct</p> <p>6 testimony. Dr. Kosary, is there an exhibit -- since we're</p> <p>7 leaving traffic, is there an exhibit that you would like to</p> <p>8 have pulled up?</p> <p>9 MS. KOSARY: Not yet, but thanks.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: Okay. All right.</p> <p>11 MS. KOSARY: Okay. Are you ready?</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Yes. You're</p> <p>13 still under oath.</p> <p>14 MS. KOSARY: I understand that, for the record.</p> <p>15 Okay. You've heard the testimony of our appraiser,</p> <p>16 Mr. McPherson.</p> <p>17 I have no doubt whatsoever that approval in</p> <p>18 construction of the proposed Primrose daycare center would</p> <p>19 have a large, significant impact on the current value of my</p> <p>20 home as well as the homes of my neighbors who also confront</p> <p>21 or about this site.</p> <p>22 For Paul and I, this would be a double whammy, as</p> <p>23 Paul has already testified, that the construction of the</p> <p>24 church has negatively impacted our home value. Between the</p> <p>25 church and Primrose, our loss would be in the six figures,</p>	<p style="text-align: right;">112</p> <p>1 destruction of our wealth in terms of our home value</p> <p>2 losses.</p> <p>3 And this is for findings for approval or a denial</p> <p>4 of a conditional use under the Montgomery County Zoning</p> <p>5 Ordinance. It is supposed to ensure that the neighborhood</p> <p>6 is not made to sacrifice economically so that a conditional</p> <p>7 use applicant can profit.</p> <p>8 As I mentioned previously, this application is</p> <p>9 within the 2004 Upper Rock Creek Master Plan. As detailed</p> <p>10 in the history section of this plan, the first master plan</p> <p>11 for this area was approved in 1968 with subsequent plans</p> <p>12 approved in 1985 and 2004. All these master plans have the</p> <p>13 same goals of protecting stream quality and maintaining the</p> <p>14 low-density residential wedge character of the master plan</p> <p>15 area.</p> <p>16 The homes on the south side of Needwood Road</p> <p>17 between Redland and Deer Lake Road have been an enclave of</p> <p>18 large lot residences since Derwood Heights was subdivided</p> <p>19 in 1946 through plat 1713, which is OZAH Exhibit 115,</p> <p>20 document W as in woman.</p> <p>21 The home at the corner of Needwood and Redland,</p> <p>22 16235 Redland, is three acres, not including the</p> <p>23 dedications to Redland and Needwood which would be required</p> <p>24 if it were further subdivided, probably into no more than</p> <p>25 two lots due to the geometry of this lot.</p>

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<p style="text-align: right;">113</p> <p>1 According to SDAT -- do you pronounce it S-DAT or</p> <p>2 S-D-A-T?</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Either one.</p> <p>4 MS. KOSARY: Either one. According to SDAT, the</p> <p>5 current home on this property was built in 1989.</p> <p>6 HEARING EXAMINER ROBESON HANNAN: When you say</p> <p>7 "this property" --</p> <p>8 MS. KOSARY: Oh, I'm referring to 16235 Redland.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Okay. And what</p> <p>10 property is that?</p> <p>11 MS. KOSARY: That's the -- that's the home at the</p> <p>12 corner of Needwood and Redland on the south side.</p> <p>13 HEARING EXAMINER ROBESON HANNAN: Go ahead.</p> <p>14 MS. KOSARY: Okay. 7412 Needwood is 1.42 acres,</p> <p>15 and 7508 Needwood is 1.35 acres. These lots were created</p> <p>16 through the subdivision of a larger lot, which had been</p> <p>17 created in 1946, probably in the early 1950s when according</p> <p>18 to SDAT these homes were built -- in 1950 for 7412 -- 7512,</p> <p>19 excuse me -- and 1952 for 7508. Although it should be</p> <p>20 noted that 7508 Needwood went through an extensive gut</p> <p>21 renovation which included the addition of a second floor in</p> <p>22 the late 1990s, shortly after we moved into our home.</p> <p>23 7500 Needwood --</p> <p>24 HEARING EXAMINER ROBESON HANNAN: Can -- can I stop</p> <p>25 you for one minute, Dr. Kosary? I'm showing you -- it</p>	<p style="text-align: right;">115</p> <p>1 subdivision of a larger lot which had been created in 1946,</p> <p>2 in this case when, according to SDAT, the Tapscott family</p> <p>3 built their home in 1954.</p> <p>4 7430 Needwood, the subject site, is 2.8 acres after</p> <p>5 dedications are made to Needwood and Carnegie. 7420</p> <p>6 Needwood is 0.95 acres, and 7416 Needwood is 1.38 acres.</p> <p>7 These lots were created through the subdivision of a larger</p> <p>8 lot which had been created in 1946. In this case, this</p> <p>9 happened in 1986. And it should be also noted that</p> <p>10 although the home at 7420 Needwood has a build date of 1943</p> <p>11 in the SDAT, the structure was not converted to residential</p> <p>12 until around 1987.</p> <p>13 HEARING EXAMINER ROBESON HANNAN: Now where is</p> <p>14 seven -- can you give me an idea -- when you refer to</p> <p>15 these, can you give me an idea of where these properties --</p> <p>16 7420 is?</p> <p>17 MS. KOSARY: 7420 Needwood is actually right in</p> <p>18 front of our property. It's --</p> <p>19 HEARING EXAMINER ROBESON HANNAN: Of your property.</p> <p>20 I -- I understand.</p> <p>21 MS. KOSARY: It's the other -- it's the other</p> <p>22 abutting --</p> <p>23 HEARING EXAMINER ROBESON HANNAN: Right.</p> <p>24 MS. KOSARY: It's (inaudible) --</p> <p>25 HEARING EXAMINER ROBESON HANNAN: It's on the pipe</p>
<p style="text-align: right;">114</p> <p>1 should be coming up, it's loading --</p> <p>2 MS. KOSARY: (Inaudible.)</p> <p>3 HEARING EXAMINER ROBESON HANNAN: -- I'm showing</p> <p>4 you Exhibit 148, which -- oh, no -- yes -- this is 149.</p> <p>5 Can you describe on this exhibit, so I understand, where</p> <p>6 16235 Needwood Road is -- or Redland Road is?</p> <p>7 MS. KOSARY: It's at the intersection of Redland</p> <p>8 and Needwood.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Right at the</p> <p>10 intersection?</p> <p>11 MS. KOSARY: Right.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: And what about</p> <p>13 the second property, 7508?</p> <p>14 MS. KOSARY: It's right to the east.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: So that's on</p> <p>16 Needwood?</p> <p>17 MS. KOSARY: That's on Needwood.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Just to the east</p> <p>19 of 16235?</p> <p>20 MS. KOSARY: Correct.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Okay. Thank you.</p> <p>22 Keep going.</p> <p>23 MS. KOSARY: Okay. 7500 Needwood is 1.75 acres,</p> <p>24 and 16200 Carnegie, which is the home of Rosemary Tapscott,</p> <p>25 is one acre. Again, these lots were created through the</p>	<p style="text-align: right;">116</p> <p>1 -- it's -- okay.</p> <p>2 MS. KOSARY: Right. We're on the pipestem there.</p> <p>3 They're the one not on the pipestem.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: Okay. Keep</p> <p>5 going.</p> <p>6 MS. KOSARY: I was going to say, although the</p> <p>7 structure at 7420 has a build date of 1943 in the SDAT, the</p> <p>8 structure was not converted to residential until around</p> <p>9 1987 when what had been a very large garage was upgraded to</p> <p>10 a home, according to DPS records.</p> <p>11 And, finally, 7410 Needwood, the site of the</p> <p>12 church, is 2.44 acres.</p> <p>13 These properties total slightly over 16 acres. All</p> <p>14 are zoned RE-1. Because these lots were developed</p> <p>15 independently, rather than through a plan development, with</p> <p>16 the majority resulting from further subdivisions of the</p> <p>17 larger lots created in the 1946 subdivision of Derwood</p> <p>18 Heights, all are larger than the RE-1 minimum lot size of</p> <p>19 40,000 square feet or 0.2 acres.</p> <p>20 The RE-1 zone placed on this enclave is consistent</p> <p>21 with a long-standing planning vision for this part of the</p> <p>22 Upper Rock Creek watershed. The lots are large to protect</p> <p>23 the Crabbs Branch subwatershed, just as the RE-1 and RE-2</p> <p>24 lots further east on Needwood closer to the lake protect</p> <p>25 the Mill Creek subwatershed, another use class four body of</p>

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<p>117</p> <p>1 water.</p> <p>2 This enclave, along with the remainder of the homes</p> <p>3 south of Needwood, are unique in that it is the only</p> <p>4 location where RE-1 zoned residences exist within walking</p> <p>5 distance to a subway station in Montgomery County. The</p> <p>6 Shady Grove metro station is also unique among all metro</p> <p>7 stations in Montgomery County because it is the only</p> <p>8 station that drains to a State of Maryland Department of</p> <p>9 the Environment use class four watershed, Crabbs Branch</p> <p>10 Stream.</p> <p>11 As indicated in OZAH Exhibits 204 and 205, this</p> <p>12 area is not within a Montgomery County priority funding</p> <p>13 area.</p> <p>14 Further, in the response to the Montgomery -- to</p> <p>15 the Maryland Department of Planning "Plan Maryland</p> <p>16 Initiative," portions of which can be found in OZAH Exhibit</p> <p>17 227, document III -- that's three I's -- this area was</p> <p>18 placed in the large lot developed category. This area is</p> <p>19 not intended for large development or redevelopment.</p> <p>20 So I was surprised that Mr. Lasko and Ms. Crone</p> <p>21 showed up to testify. The Applicant is still insistent on</p> <p>22 making an argument that 7430 Needwood cannot be developed</p> <p>23 residentially, which really makes no sense and is actually</p> <p>24 irrelevant because it has nothing to do with the necessary</p> <p>25 findings for approval or denial for a conditional use.</p>	<p>119</p> <p>1 price for 7430, and this is the type of response you get:</p> <p>2 a commercial, or in this case industrial use, rather than</p> <p>3 residential.</p> <p>4 There's a lot of documentation on the DAIC site at</p> <p>5 planning on this application, including the sales contract</p> <p>6 dated October 26th, 2006, which has been entered as OZAH</p> <p>7 Exhibit 227, document JJJJ.</p> <p>8 (Exhibit 227-JJJJ introduced.)</p> <p>9 MS. KOSARY: Most of this document is heavily</p> <p>10 redacted; however, you can make out that after the down</p> <p>11 payment, Mr. Lasko and Ms. Crone were personally going to</p> <p>12 hold a 30-year mortgage of at least \$800,000 -- much, much</p> <p>13 higher than the approximately 324,000 this property was</p> <p>14 assessed for as an RE-1 zoned residential property in the</p> <p>15 2006 Montgomery County property tax records, as can be seen</p> <p>16 in Exhibit 227, document JJJJ.2.</p> <p>17 And, yes, as Mr. Lasko alluded to, there was large</p> <p>18 community opposition to Lancaster Landscaping, and I guess</p> <p>19 Paul and I were the adjoining neighbors whose campaign, in</p> <p>20 Mr. Lasko's opinion, adversely affected public opinion. It</p> <p>21 was an outrageous application for a large industrial</p> <p>22 operation, as --</p> <p>23 MR. KLINE: Objection. I move to strike that. The</p> <p>24 terms of absurd and ridiculous have been used too many</p> <p>25 times. I don't mind her reading from the document and</p>
<p>118</p> <p>1 Ms. Crone states on page 113 of the day five</p> <p>2 transcript, beginning on line 16, that you could divide</p> <p>3 7430 residentially with a pipestem off Needwood Road, but</p> <p>4 then you are left with only two buildable residential lots,</p> <p>5 both of approximately 1.4 acres, comparable to all the</p> <p>6 other neighboring residential lots.</p> <p>7 And the market had demonstrated what someone would</p> <p>8 pay for a buildable residential lot in our neighborhood.</p> <p>9 We paid \$135,000 for 1.38 acres in 1994. This was \$2,000</p> <p>10 over what this piece of property had sold for in 1989 and</p> <p>11 \$4,000 less than the asking price. The church paid</p> <p>12 \$325,000 for their 2.44 acres in 2002. Had this lot</p> <p>13 developed residentially, it could've been subdivided into</p> <p>14 two lots due to the RE-1 zoning.</p> <p>15 This just didn't seem to be good enough for Mr.</p> <p>16 Lasko and Ms. Crone. As Mr. Lasko discussed on page 107 of</p> <p>17 the day five transcript, he and his sister investigated</p> <p>18 whether the zoning could be changed to allow townhouses in</p> <p>19 the middle of an area of RE-1 zoned lots under a master</p> <p>20 plan where this zoning was part of a long-standing planning</p> <p>21 vision for this part of the Upper Rock Creek watershed.</p> <p>22 I can just say, "wow."</p> <p>23 Paul has testified already about Lancaster</p> <p>24 Landscaping, which was S-2718.</p> <p>25 Mr. Lasko and Ms. Crone were asking an outrageous</p>	<p>120</p> <p>1 describing what's in the document, but the</p> <p>2 characterizations are inappropriate and should not be</p> <p>3 allowed.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: Any response, Mr.</p> <p>5 Chen?</p> <p>6 MR. CHEN: I appreciate the objection.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Okay. I'm going</p> <p>8 to sustain it.</p> <p>9 Ms. -- Ms. -- Dr. Kosary, please refrain from</p> <p>10 characterizing or pejorative adjectives.</p> <p>11 MS. KOSARY: Okay.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: All right? Go</p> <p>13 ahead.</p> <p>14 MS. KOSARY: Okay. Lancaster Landscaping's letter</p> <p>15 withdrawing their application is also up on the DAIC site</p> <p>16 and is OZAH -- OZAH Exhibit 227, document KKKK.</p> <p>17 (Exhibit 227-KKKK introduced.)</p> <p>18 MS. KOSARY: Although the Applicant does mention</p> <p>19 community opposition, they also, however, allude to their</p> <p>20 meeting with technical staff, many of whom had evaluated</p> <p>21 the Taiwan Cultural Center a year previously and found that</p> <p>22 it would only be compatible with our neighborhood if it</p> <p>23 were modest, something Lancaster could not claim to be or</p> <p>24 could not achieve even if they decreased their plan by</p> <p>25 half. It's apparent from this letter that this meeting did</p>

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<p style="text-align: right;">121</p> <p>1 not go well.</p> <p>2 And Carnegie Avenue is a bit of a red herring. Mr.</p> <p>3 Wolford, the Applicant's land planning expert, testified on</p> <p>4 page 117, beginning on line 7 of the day one transcript,</p> <p>5 that the Upper Rock Creek Master Plan recommends that</p> <p>6 Carnegie Avenue be opened all the way from Needwood to the</p> <p>7 South Riding subdivision.</p> <p>8 This statement could not be further from the truth.</p> <p>9 The master plan makes no mention of this. Carnegie Avenue</p> <p>10 is not even mentioned in the Upper Rock Creek Master Plan.</p> <p>11 Paul and I had always found it a little strange</p> <p>12 that a connection was not made when the South Riding</p> <p>13 subdivision was platted and approved in 1987. Why didn't</p> <p>14 planning and the Montgomery County Department of</p> <p>15 Transportation insist that this road be upgraded by the</p> <p>16 developer and connected as a condition of approving the</p> <p>17 subdivision? It would've been an easy condition to make</p> <p>18 since Carnegie was a potential entrance/exit point to the</p> <p>19 subdivision.</p> <p>20 So when the Lancaster Landscaping application was</p> <p>21 filed back in 2007, we did a little bit of work, basically</p> <p>22 asking several of our neighbors who lived in the</p> <p>23 neighborhood when Roger Spencer and Robert Morris of</p> <p>24 Heritage Builders were developing South Riding to see what</p> <p>25 we could find out. And somewhere, in wherever the Board of</p>	<p style="text-align: right;">123</p> <p>1 public hearings on this subdivision.</p> <p>2 And why would Mr. Lasko and Ms. Crone's father have</p> <p>3 been trying to swap land with Mr. Spencer and Mr. Morris to</p> <p>4 put a road through to Needwood, as Mr. Lasko testified to</p> <p>5 on page 110, beginning on line 7, and Ms. Crone testified</p> <p>6 to starting on page 111, line 25. It makes little sense</p> <p>7 unless the Needwood-Carnegie intersection at its current</p> <p>8 location was unworkable.</p> <p>9 Like this current applicant, the County appears to</p> <p>10 have been unwilling to make reducing the grade on Needwood</p> <p>11 Road to alleviate the sight distance constraint at the</p> <p>12 Needwood-Carnegie intersection a condition of approval,</p> <p>13 probably again because it is such a major, expensive, and</p> <p>14 disruptive project, with no real benefit to the community</p> <p>15 or to the county.</p> <p>16 It remains the County Council's decision since they</p> <p>17 approve the budgets for capital improvement projects as to</p> <p>18 whether these improvements to Needwood Road are ever made.</p> <p>19 And I have to say, and I hope you don't find this</p> <p>20 pejorative, but Planning and Montgomery County Department</p> <p>21 of Transportation have some real documentation issues as</p> <p>22 they seem to have no records they can rely on to remind</p> <p>23 them of this issue at the intersection whenever questions</p> <p>24 related to the development of 7430 come up.</p> <p>25 In Ms. Crone's testimony on page 112, starting on</p>
<p style="text-align: right;">122</p> <p>1 Appeals keeps their old files, is a letter Paul and I sent</p> <p>2 dated December 21st, 2007, which addressed this question.</p> <p>3 It is OZAH Exhibit 227, document LLLL, so that's four Ls.</p> <p>4 (Exhibit 227-LLLL introduced.)</p> <p>5 MS. KOSARY: It should come as no surprise that the</p> <p>6 two ends of Carnegie were not connected when the South</p> <p>7 Riding subdivision was developed because of the sight</p> <p>8 distance constraint issues at the Needwood-Carnegie</p> <p>9 intersection. The developers, Roger Spencer and Robert</p> <p>10 Morris of Heritage Builders, knew of this issue, as did</p> <p>11 Montgomery County Planning and Montgomery County DOT.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: This was when the</p> <p>13 southern subdivision --</p> <p>14 MS. KOSARY: The --</p> <p>15 HEARING EXAMINER ROBESON HANNAN: -- was built?</p> <p>16 MS. KOSARY: -- the southern, right. This was when</p> <p>17 the southern subdivision was developed. They knew that</p> <p>18 there was an issue with this intersection. There has</p> <p>19 always been an issue with the intersection, ever since this</p> <p>20 intersection was platted.</p> <p>21 Mr. Lasko and Ms. Crone's father, who Ms. Crone</p> <p>22 testified on page 112 of day five, worked for the Planning</p> <p>23 Board, would've also known, so I'm a bit surprised that</p> <p>24 neither of them mentioned this in their testimony as both</p> <p>25 seem to have had a fairly good recollection about the</p>	<p style="text-align: right;">124</p> <p>1 line 18, stating that she and her husband tried to build a</p> <p>2 house in 1986 but were told that they would have to develop</p> <p>3 Carnegie to county standards actually makes no sense when</p> <p>4 you look at the time frame during which the South Riding</p> <p>5 development was being approved.</p> <p>6 The DA -- the DAIC information on the preliminary</p> <p>7 plan for the South Riding development, number 119862440, is</p> <p>8 OZAH Exhibit 227, document MMMM, so that's four M's.</p> <p>9 (Exhibit 227-MMMM introduced.)</p> <p>10 MS. KOSARY: It was approved on July 9th, 1987, not</p> <p>11 the 1983, '84, Ms. Crone testified to on line 18 of page</p> <p>12 111 of day five.</p> <p>13 This was a development which was obviously making</p> <p>14 its way through planning for a while. It just doesn't add</p> <p>15 up. Why would Planning and Montgomery County Department of</p> <p>16 Transportation be telling Roger Spencer and Robert Morris</p> <p>17 of Heritage Builders one thing about improvements to</p> <p>18 Carnegie while telling Ms. Crone's family something</p> <p>19 entirely opposite during the same time frame.</p> <p>20 HEARING EXAMINER ROBESON HANNAN: Well, wait. I --</p> <p>21 I'm missing something.</p> <p>22 MS. KOSARY: Okay.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: What are you</p> <p>24 saying that either Planning or MCDOT told the southern</p> <p>25 subdivision property owners about approving Carnegie?</p>

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<p style="text-align: right;">125</p> <p>1 MS. KOSARY: They told them that they didn't have</p> <p>2 to do it because you couldn't remove the impediment.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: And this was in</p> <p>4 the 1987 subdivision of the southern --</p> <p>5 MS. KOSARY: Right, of the southern.</p> <p>6 HEARING EXAMINER ROBESON HANNAN: Southern</p> <p>7 subdivision.</p> <p>8 MS. KOSARY: Which Ms. Crone testified to as</p> <p>9 happening in 1983, '84.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: Well, right. All</p> <p>11 right. Keep going.</p> <p>12 MS. KOSARY: Okay. There's --</p> <p>13 MR. KLINE: May I ask a singular question please?</p> <p>14 HEARING EXAMINER ROBESON HANNAN: Yeah. Yes.</p> <p>15 MR. KLINE: Exhibit LLLL is a letter from the</p> <p>16 speaker to your office.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: Wait. Is this</p> <p>18 227-LLLL?</p> <p>19 MR. KLINE: Yes, ma'am. It was just referenced by</p> <p>20 Dr. Kosary.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Four Ls?</p> <p>22 MR. KLINE: Yes, ma'am.</p> <p>23 (Sotto voce speaking.)</p> <p>24 MS. KOSARY: Yep, I know what that is. And your</p> <p>25 question?</p>	<p style="text-align: right;">127</p> <p>1 MS. KOSARY: No, no.</p> <p>2 MR. KLINE: -- is a -- okay. Then correct me</p> <p>3 please.</p> <p>4 MS. KOSARY: OZAH Exhibit 227, document LLLL, is a</p> <p>5 letter Paul and I sent when S-2718 was actively being</p> <p>6 reviewed, reporting what we knew about the blind</p> <p>7 intersection at Carnegie Avenue. It was sent to the OZAH</p> <p>8 office because the hearing examiner was obviously -- this</p> <p>9 was pre-2014, pre-Zoning Ordinance 2014. The Board of</p> <p>10 Appeals had authority over approval. The OZAH office,</p> <p>11 however, did the review and recommendation. The letter</p> <p>12 went to OZAH. When everything was closed down, it came</p> <p>13 back to BOA, and it's somewhere in their files.</p> <p>14 HEARING EXAMINER ROBESON HANNAN: Okay. But I</p> <p>15 guess -- okay.</p> <p>16 Mr. Kline, did that answer your question?</p> <p>17 MR. KLINE: Not quite because in the middle -- the</p> <p>18 middle of paragraph one says, We have now learned that at</p> <p>19 the time the subdivision development -- I'm sorry,</p> <p>20 developed connecting Carnegie to Needwood Road was</p> <p>21 prohibited because this was a blind intersection.</p> <p>22 And I was wondering -- you -- you've been very good</p> <p>23 about everything else. Do you have the paperwork that</p> <p>24 supports that statement?</p> <p>25 MS. KOSARY: No. As I stated, we did a bit of</p>
<p style="text-align: right;">126</p> <p>1 MR. KLINE: May I ask the question, Madam Examiner?</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Let me get --</p> <p>3 just a second. Let me get -- give me a minute to get to</p> <p>4 the document, so I know what everyone's talking about.</p> <p>5 Okay? I -- I'm on JJJJ.</p> <p>6 Okay. I have the document. You should be seeing</p> <p>7 -- well, here. You should be seeing the document.</p> <p>8 MR. KLINE: Yes.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: It's 227-LLLL;</p> <p>10 correct?</p> <p>11 MS. KOSARY: Correct.</p> <p>12 MR. KLINE: Four -- four Ls, yeah.</p> <p>13 HEARING EXAMINER ROBESON HANNAN: Okay. Go ahead.</p> <p>14 MR. KLINE: Yeah. Dr. Kosary, thank you for</p> <p>15 letting me interrupt. I just wanted to get a</p> <p>16 clarification.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: Mr. Kline,</p> <p>18 something's wrong with your mic. It's got feedback or</p> <p>19 something.</p> <p>20 MR. KLINE: Okay. I'll try not to shift any papers</p> <p>21 at the same time I speak.</p> <p>22 Dr. Kosary, what I thought I heard you saying</p> <p>23 before was that you had seen a letter from the County to</p> <p>24 Mr. Spencer telling him that he didn't have to build a</p> <p>25 road, but Exhibit LLLL --</p>	<p style="text-align: right;">128</p> <p>1 investigation, basically questioning neighbors who lived in</p> <p>2 the area while the South Riding subdivision was being</p> <p>3 developed about what happened with Carnegie, why wasn't it</p> <p>4 connected.</p> <p>5 I mean, we have -- we have people who, like, have</p> <p>6 lived in this neighborhood for decades who actually knew</p> <p>7 Roger Spencer and Robert Morris, who had had numerous</p> <p>8 conversations with them while this was happening, and that</p> <p>9 was what was being, you know, reported back to us when we</p> <p>10 did -- when we did our -- you know, when we did -- did our</p> <p>11 -- you know, going around, asking the neighborhood, in</p> <p>12 terms of what's happening with this road, why wasn't it</p> <p>13 connected.</p> <p>14 MR. KLINE: So you had not heard that from Mr.</p> <p>15 Spencer nor have you seen any paperwork that supports that</p> <p>16 statement?</p> <p>17 MS. KOSARY: As far as I know, these two men might</p> <p>18 be dead.</p> <p>19 MR. KLINE: I repeat my question. Other than</p> <p>20 anecdotal information from residents who bought in this</p> <p>21 subdivision, you don't have any other demonstration of that</p> <p>22 fact; correct?</p> <p>23 MR. CHEN: Objection to the reference of anecdotal.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: I -- it's</p> <p>25 sustained.</p>

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<p style="text-align: right;">129</p> <p>1 Other -- other -- do you want to rephrase the 2 question, Mr. Kline, without the term anecdotal? 3 MR. KLINE: Sure. And I don't want to belabor 4 this. I just wondered if there was anything in writing 5 that supported that statement. 6 MS. KOSARY: No. 7 MR. KLINE: Thank you. 8 HEARING EXAMINER ROBESON HANNAN: All right. 9 MR. KLINE: Sorry to interrupt. 10 MS. KOSARY: So where did we leave off? 11 HEARING EXAMINER ROBESON HANNAN: I think we were 12 leaving off with you testifying that you understood that 13 they were not required to improve Carnegie. 14 MS. KOSARY: Right. 15 HEARING EXAMINER ROBESON HANNAN: Do you want a 16 minute to find your place again? 17 MS. KOSARY: (Inaudible.) 18 HEARING EXAMINER ROBESON HANNAN: I have to say, 19 I'm -- I was curious when I found out why MCDOT continues 20 to insist on a full right-of-way when -- when the -- 21 according to the Applicant, why MCDOT continues to insist 22 on dedication of Carnegie when they know they can't use it, 23 but I'm throwing that out there. You don't have to answer 24 right now. 25 Mr. Kline, do you want to -- is your hand raised?</p>	<p style="text-align: right;">131</p> <p>1 is that your voice is coming through with this 2 reverberation, which makes it extremely difficult to 3 understand what you're saying. And if that helps you, I 4 hope it does. 5 MR. KLINE: Thank you. Because I'm not hearing 6 that on my end, and it is true I do lean over a little bit, 7 and we had two speakers, or I guess intakes, on the desk, 8 and I'll just try and -- is this a little better? 9 MR. CHEN: No. 10 HEARING EXAMINER ROBESON HANNAN: No. 11 MR. KLINE: I'm -- I'm afraid I don't have any tech 12 people in the building today to help me, so I'll just stop 13 asking questions. 14 HEARING EXAMINER ROBESON HANNAN: No, no, no. 15 Don't do that. We'll move on. And if you can figure it 16 out, that's great. 17 All right, Ms. Kosary. 18 MS. KOSARY: All right. And I'm going to move on. 19 HEARING EXAMINER ROBESON HANNAN: Okay. 20 MS. KOSARY: And I'm going to say that you've 21 already heard from my husband Paul Posey about how we 22 bought our property as a vacant lot in 1994. When we 23 bought in 1994, there was actually no sewer main on the 24 portion of Needwood from Redland to Deer Lake Road. Excuse 25 me. All the homes were on septic. Some were also still on</p>
<p style="text-align: right;">130</p> <p>1 MR. KLINE: It is raised, but I got my question 2 answered, so I'll remove it. 3 And I understand your question, and I'll make sure 4 that we address it when we get a chance to speak with them. 5 HEARING EXAMINER ROBESON HANNAN: Okay. While 6 you're still on the line, for some reason when you speak, 7 there's a feedback. It's not papers. There's some other 8 type of feedback. And you may want to turn off your phone 9 or any other device you have near you because sometimes 10 that does that. 11 MR. KLINE: Thank you. Unfortunately, I guess you 12 don't know my habit; my phone is never on. So -- 13 HEARING EXAMINER ROBESON HANNAN: Oh. 14 MR. KLINE: -- it's not the phone, but I think it 15 it is me probably just shuffling things, and I'll try and 16 be more prudent about it. 17 HEARING EXAMINER ROBESON HANNAN: Okay. Go ahead, 18 Ms. Kosary. 19 MR. CHEN: If -- if I may, Madam Examiner. If I -- 20 Mr. Kline, it sounds like your voice -- you're pretty hard 21 to understand anything you're saying, and it sounds like 22 your voice is reverberating, and maybe you're speaking too 23 close to the mic or something like that. 24 MS. KOSARY: Or too far away from the mic. 25 MR. CHEN: You know, what's happening, Mr. Kline,</p>	<p style="text-align: right;">132</p> <p>1 well, even though the water main was installed in 1967. 2 Our sales contract included a contingency which 3 stated that we would not go through with the purchase if 4 WSSC could not confirm that they could extend the sewer 5 main, which at that time ended at the Needwood-Deer Lake 6 intersection further west to our location. 7 We asked WSSC to do what is called a preliminary 8 feasibility review. This review provides information on 9 the most feasible location for the placement of water and 10 sewer lines from a benefit assessment, preliminary 11 hydraulic analysis, and a construction estimate. After 12 looking at the proposed extension, the design division at 13 WSSC informed us that it would be possible to extend the 14 sewer main. 15 We bought our property in September of 1994 and 16 made a formal application for extension of the sewer main. 17 Almost simultaneously, there was -- there was a request 18 from the owner of 7505 Needwood, the current home of Enitza 19 Rodriguez, to extend the main east along Needwood from the 20 Redland-Needwood intersection. 21 WSSC actually combined these two requests, and they 22 did them at the same time, and they extended the sewer main 23 along Needwood eastbound from the Redland-Needwood 24 intersection and westbound from the Needwood-Derwood -- 25 from the Needwood-Deer Lake intersection in 1996. These</p>

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<p style="text-align: right;">133</p> <p>1 extensions, however, do not connect. 2 (Exhibit 227-NNNN introduced.) 3 MS. KOSARY: When finished, all properties along 4 Needwood Road between Redland and Deer Lake abutted the 5 WSSC sewer main, which WSSC defines in their Developmental 6 -- excuse me -- in their Development Services Code, which 7 is OZAH Exhibit 227, document NNNN, as a property having a 8 sewer main which either extends to a property's boundary or 9 lies within a property's boundary line, except for 7501, 10 7430, 7425, and 7420 Needwood. These are pretty much the 11 properties in the middle of the street and those nearest to 12 are on the ridge. 13 I really have no idea why WSSC did not provide for 14 a sewer connection to all the properties on Needwood when 15 this work was designed and completed as this work was 16 financed, as this work is always financed, through WSSC 17 water and sewer bonds with the property owner paying for 18 the improvements through what's referred to as a front foot 19 benefit charge, which are suspended for property until it 20 connects. 21 Can I please get OZAH Exhibit 227, document OOOO.1. 22 HEARING EXAMINER ROBESON HANNAN: For the record, I 23 am scrolling through. I have document NNNN. Is that the 24 last document, or -- 25 MS. KOSARY: Oh, you might be on the next -- in the</p>	<p style="text-align: right;">135</p> <p>1 for over 20 years and will not pay off its front foot 2 benefit charges until 2041, as you can clearly see here. 3 It's highlighted in yellow. 4 Three of the four non-abutting properties -- 7501, 5 7425, and 7430 -- are categorized by Montgomery County as 6 septic tier two, sewer category three. Although 7420 7 Needwood, which is the home right in front of us not on the 8 pipestem, is actually categorized as septic tier one, sewer 9 category one. They are not considered as abutting under 10 WSSC's definition because the sewer main ends within the 11 property boundary of our property, 7416 Needwood. It 12 actually ends within our pipestem but does not extend to 13 our western property boundary with 7420. 14 And if I can please get the next page, which is -- 15 HEARING EXAMINER ROBESON HANNAN: Just give me a 16 minute. Okay? 17 MS. KOSARY: Which is -- okay. 18 HEARING EXAMINER ROBESON HANNAN: For the record, 19 I'm just taking notes. 20 MS. KOSARY: Okay. 21 HEARING EXAMINER ROBESON HANNAN: Okay. Now we're 22 moving to 227-OOOO.2 23 MS. KOSARY: Okay. 24 HEARING EXAMINER ROBESON HANNAN: Can you describe 25 what this is?</p>
<p style="text-align: right;">134</p> <p>1 next group. I think you are. 2 HEARING EXAMINER ROBESON HANNAN: Okay. 3 MS. KOSARY: The next group. 4 (Exhibit 227-OOOO introduced.) 5 HEARING EXAMINER ROBESON HANNAN: Okay. This is 6 four -- 227-OOOO.1. 7 MS. KOSARY: Right. 8 HEARING EXAMINER ROBESON HANNAN: Okay. Can you 9 tell us what this is? 10 MR. CHEN: Can you put it up on the screen? 11 HEARING EXAMINER ROBESON HANNAN: Oh, I thought it 12 -- sorry. 13 MS. KOSARY: This is actually from the WSSC -- 14 MR. CHEN: Excuse me. Can you identify the exhibit 15 please? 16 MS. KOSARY: This is OZAH Exhibit 227, document 17 OOOO.1. 18 MR. CHEN: Thanks. 19 MS. KOSARY: What you're looking at is -- is just 20 information off the WSSC website where you can go and look 21 -- look at front foot benefit charges and actually also 22 connection -- connection charges for water and sewer for 23 any -- any piece of property you enter -- you enter 24 information on. 25 7500 Needwood, Ms. Mitchell's home, was suspended</p>	<p style="text-align: right;">136</p> <p>1 MS. KOSARY: This is the WSSC information -- 2 property information for 7420 Needwood in terms of their 3 front foot benefit charges. As you can see, 7420 Needwood 4 has not been assessed a front foot benefit charge for the 5 1996 sewer main extension. 7420 Needwood is currently on 6 septic but connected to WSSC water. As you can see, 7 they've got information on the front foot benefit charge 8 for water, they've got information on the house connection 9 for water, but nothing -- nothing exists for -- for sewer 10 on this. 11 And if you want to go to OZAH -- the next page, 12 which is OZAH -- OZAH Exhibit 227, document OOOO.3, and 13 this is the -- this is the same thing: the WSSC property 14 information for 7419 Needwood Road, which is -- 15 MR. CHEN: That's the English property? 16 MS. KOSARY: That -- which is the English property. 17 And I want you to note the difference between 7420 that you 18 looked at before and 7419. 7419 actually abuts the main 19 but shows a suspended sewer front foot benefit charge 20 because this property is currently on septic; it's also 21 currently on well. 22 And if you want to go to the next page, which is 23 OZAH Exhibit 227, document zero, zero -- OOOO.4. 24 This is actually same thing: WSSC property 25 information for our property at 7416 Needwood, which shows</p>

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<p style="text-align: right;">137</p> <p>1 obviously that we've got a sewer connection. We've -- you</p> <p>2 know, we've got front foot benefit. We've got, you know,</p> <p>3 water and sewer. We're obviously connected to the sewer</p> <p>4 and the water.</p> <p>5 Can I please have the next page, which is OZAH</p> <p>6 Exhibit OOOO.5.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: And describe what</p> <p>8 this is.</p> <p>9 MS. KOSARY: Okay. This is OZAH Exhibit 227,</p> <p>10 document OOOO.5. This is -- this is looking at the front</p> <p>11 of our pipestem from Needwood Road. It's actually -- it's</p> <p>12 actually taken through Google Maps street view. It's</p> <p>13 looking -- you've got the church at 7410, you've got our</p> <p>14 pipestem, you've got 7420 Needwood. Church is to the --</p> <p>15 church is to the left, we are in the center, 7420 Needwood</p> <p>16 is to the -- is to the right.</p> <p>17 MR. CHEN: So let me interrupt you just for a</p> <p>18 moment. You say this photo is from Google?</p> <p>19 MS. KOSARY: Google street views.</p> <p>20 MR. CHEN: Okay. Nonetheless, is this an accurate</p> <p>21 depiction of --</p> <p>22 MS. KOSARY: This is very much an accurate</p> <p>23 depiction, looks just like it.</p> <p>24 MR. CHEN: Okay.</p> <p>25 MS. KOSARY: Okay. So I just -- I'm putting this</p>	<p style="text-align: right;">139</p> <p>1 Needwood Estates subdivision east of Deer Lake Road and</p> <p>2 north of Redland Road, which was developed actually in the</p> <p>3 late 1960s, sewer, as I said, did not exist until we</p> <p>4 requested it almost 30 years later. So I have no idea</p> <p>5 whether the sewer main and our water -- our water lateral</p> <p>6 are at similar depths since water and sewer infrastructure</p> <p>7 to this portion of Needwood Road was -- was not designed</p> <p>8 together -- I mean, 30 years between when one went in and</p> <p>9 the other went in.</p> <p>10 I just want to point out that it's an open question</p> <p>11 whether the sewer main was built no further west down</p> <p>12 Needwood because it would've prevented us from connecting</p> <p>13 with the water main. This is actually one of the things</p> <p>14 which a WSSC preliminary feasibility review would tell you;</p> <p>15 however, the Applicant appears to have never asked WSSC for</p> <p>16 this review. As I mentioned previously, we made a</p> <p>17 favorable outcome from this report a contingency when we</p> <p>18 purchased our property.</p> <p>19 So I'm a bit surprised that in the technical staff</p> <p>20 report on page 29, it states that, quote, The subject</p> <p>21 property, a platted lot, is served by public water and</p> <p>22 sewer service, unquote.</p> <p>23 A lot with a sewer category three is not served by</p> <p>24 public sewer service, rather it's in an area where</p> <p>25 improvements to or construction of a new community system</p>
<p style="text-align: right;">138</p> <p>1 here because I just want to say that I have no idea why the</p> <p>2 sewer main was built to this point and was not brought to</p> <p>3 our boundary line with 7420 Needwood, which is indicated by</p> <p>4 the dashed yellow lines.</p> <p>5 The sewer main ends literally feet away, as can be</p> <p>6 seen marked in -- marked in red. I've put a red box around</p> <p>7 the end of the main.</p> <p>8 The red line indicates where the main is running</p> <p>9 westbound from Deer Lake Road.</p> <p>10 The dashed red line indicates pretty much where our</p> <p>11 sewer service lateral to our property line at 7416 is</p> <p>12 running. You can't see it because we painted it brown, but</p> <p>13 it's actually running to a -- a wash-out -- you know,</p> <p>14 clean-out -- a clean-out point at that point when you hit</p> <p>15 the property line.</p> <p>16 What I really have to question, however, and it's</p> <p>17 just a question, is whether the location of the main was</p> <p>18 driven by the location of our water service lateral, which</p> <p>19 I've marked in green. You can see where it comes into our</p> <p>20 water vault. That's marked by the arrow.</p> <p>21 The dashed green line shows pretty much where our</p> <p>22 water service lateral is running.</p> <p>23 And I question this because while the water main</p> <p>24 was brought through this section of Needwood Road from</p> <p>25 Redland to Deer Lake in 1967 to provide water for the</p>	<p style="text-align: right;">140</p> <p>1 will be given immediately -- immediate priority and can</p> <p>2 probably be connected in about two years. And a lot</p> <p>3 categorized septic tier two, as this lot is categorized,</p> <p>4 can subdivide and develop on septic.</p> <p>5 As I've said before, this is a low-density</p> <p>6 residential neighborhood, served by an 8-inch sewer main,</p> <p>7 the smallest WSSC will install. The proposed development</p> <p>8 has an exceptionally large number of toilets and sinks, far</p> <p>9 more than any home in the area and far more than the</p> <p>10 church, toilets, and sinks which I can assure you with 195</p> <p>11 children and at least two shifts of 25 to 32 staff members</p> <p>12 is going to see a much greater daily use than any home in</p> <p>13 the area or the church.</p> <p>14 And this is a proposed development which will not</p> <p>15 be required to go through a preliminary plan where under</p> <p>16 regulation an applicant must submit verification from WSSC</p> <p>17 that they have completed a hydraulic planning analysis</p> <p>18 where WSSC basically comes and evaluates the impact of the</p> <p>19 proposed development on existing water and sewer systems</p> <p>20 and determines needed infrastructures and facilities to</p> <p>21 serve the proposed use.</p> <p>22 So I'm surprised, given the sewer category, the</p> <p>23 size of the development and the fact that no preliminary</p> <p>24 plan will be required, that technical staff did not ask to</p> <p>25 see a report or at the very least some documentation from</p>

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<p style="text-align: right;">141</p> <p>1 WSSC, or are they just content to leave it all to the</p> <p>2 construction stage and hope that there are no messy little</p> <p>3 surprises?</p> <p>4 Mr. Intriago stated on day three, on page 68, line</p> <p>5 17, that he had informal discussions with several unnamed</p> <p>6 employees at WSSC, but no formal submission to WSSC was</p> <p>7 made. Mr. Intriago introduced no documentation regarding</p> <p>8 his discussions with WSSC. There's no indication that</p> <p>9 anyone at WSSC has looked at any of Mr. Intriago's plans.</p> <p>10 Further, from his testimony on pages 7 -- 70 and 71</p> <p>11 of day three, the conversations Mr. Intriago had with WSSC</p> <p>12 appear to have centered on the water vault because Mr.</p> <p>13 Intriago had had issues with a water vault in one of his</p> <p>14 previous plans, not the sewer connection.</p> <p>15 This is also evident from Mr. Intriago's cross-</p> <p>16 examination by Mr. Chen on day four, page 184, starting on</p> <p>17 line 17.</p> <p>18 Can I please have OZAH Exhibit 227, document</p> <p>19 PPPP.1.</p> <p>20 MR. CHEN: Is that the next one?</p> <p>21 MS. KOSARY: What?</p> <p>22 MR. CHEN: Is that the next one down?</p> <p>23 MS. KOSARY: That's the -- oh, that's just the next</p> <p>24 one down --</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Oh.</p>	<p style="text-align: right;">143</p> <p>1 That's what's in the red box. It's a -- it's a note</p> <p>2 pointing to the manhole, sewer manhole, marked as</p> <p>3 inaccessible. And can everybody see that?</p> <p>4 HEARING EXAMINER ROBESON HANNAN: Does anyone have</p> <p>5 any problems viewing the term inaccessible inside the red</p> <p>6 box on 227-PPPP.1?</p> <p>7 Can you respond affirmatively, Mr. Kline? Can you</p> <p>8 see it?</p> <p>9 MR. KLINE: My eyes are not -- well, first of all,</p> <p>10 am I doing any better? Can you hear me better?</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Yes, much better.</p> <p>12 MS. KOSARY: Yes, yes.</p> <p>13 MR. KLINE: Okay. No, I can't read it, but I'm</p> <p>14 taking Dr. Kosary's word for it. I understand what she's</p> <p>15 saying.</p> <p>16 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>17 MR. KLINE: Thank you.</p> <p>18 MS. KOSARY: Can I have OZAH Exhibit 227, document</p> <p>19 PPPP.2.</p> <p>20 MR. CHEN: Is that the next one?</p> <p>21 MS. KOSARY: That's the next one.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: And this is</p> <p>23 227-PPPP point --</p> <p>24 MS. KOSARY: Oh, it should be 2. That's a mistake.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Okay. So what I</p>
<p style="text-align: right;">142</p> <p>1 MS. KOSARY: -- from where you were.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Ah. Sorry about</p> <p>3 that.</p> <p>4 MS. KOSARY: Okay. One -- no, no, you've gone --</p> <p>5 one more up. One more -- oh, PPPP.1. Yep.</p> <p>6 HEARING EXAMINER ROBESON HANNAN: This one?</p> <p>7 MS. KOSARY: PPPP.1, that one, and I need a</p> <p>8 rotation.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Right. Let me go</p> <p>10 to this to do that. Whoops. So this is PPP -- PPPP.1,</p> <p>11 Exhibit 227.</p> <p>12 MS. KOSARY: Okay. Can we get this rotated?</p> <p>13 MR. CHEN: She's trying.</p> <p>14 MS. KOSARY: Oh.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Are you seeing</p> <p>16 it?</p> <p>17 MS. KOSARY: I'm seeing that. Okay.</p> <p>18 (Exhibit 227-PPPP introduced.)</p> <p>19 MS. KOSARY: This is OZAH Exhibit 227, document</p> <p>20 PPPP.1, four Ps and a one. It's a -- just a crop of OZAH</p> <p>21 Exhibit 199.B -- 199-B, just so that, you know, we could</p> <p>22 get in close to it.</p> <p>23 If WSSC had looked at OZAH Exhibit 199-B, they</p> <p>24 probably would've asked why the sewer manhole Primrose was</p> <p>25 -- was proposing to connect to was marked inaccessible.</p>	<p style="text-align: right;">144</p> <p>1 -- why don't you describe the title of this exhibit.</p> <p>2 MS. KOSARY: Okay. This is a crop of OZAH Exhibit</p> <p>3 199-F, which is CUP-6, the grading and utility plan.</p> <p>4 Okay. I'm saying that --</p> <p>5 MR. CHEN: Read the next line.</p> <p>6 MS. KOSARY: Okay. Showing note on inaccessible</p> <p>7 sewer manhole deleted but still viewable in the metadata.</p> <p>8 MR. CHEN: Want to explain that to the Examiner?</p> <p>9 MS. KOSARY: So basically --</p> <p>10 HEARING EXAMINER ROBESON HANNAN: I understand what</p> <p>11 that means.</p> <p>12 MS. KOSARY: Yeah, what that means.</p> <p>13 HEARING EXAMINER ROBESON HANNAN: That means that</p> <p>14 on 199-F, the inaccessible was blocked out.</p> <p>15 MS. KOSARY: Correct.</p> <p>16 HEARING EXAMINER ROBESON HANNAN: Okay. Go ahead.</p> <p>17 MS. KOSARY: Can I please have OZAH Exhibit 199-F.</p> <p>18 Or, actually, we can do it -- we can do it from here also.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: Okay. I can do</p> <p>20 either one. Which do you prefer?</p> <p>21 MS. KOSARY: Let's continue to do it from here</p> <p>22 because we're looking at the same thing.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>24 MR. CHEN: Just for the record, clarity, Madam</p> <p>25 Examiner, as I understand it, the document that has just</p>

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<p>145</p> <p>1 been identified, which bears the notation that it's PPPP.1 2 really should be PPPP.2. Is that correct? 3 HEARING EXAMINER ROBESON HANNAN: Correct. 4 MR. CHEN: Thank you. 5 HEARING EXAMINER ROBESON HANNAN: And I will change 6 that. I don't think we went into that level of detail on 7 the exhibit list, but I -- if we did, I -- I will change it 8 on -- change it on the exhibit and on the exhibit list. 9 MR. CHEN: Thank you. Go ahead. 10 MS. KOSARY: Okay. If WSSC had been reviewing 11 these plans, believe me they would've also looked at the 12 over 120 feet of proposed 4-inch sewer lateral connection 13 that is, like, in the middle of the road. 14 MR. CHEN: Is that depicted? 15 MS. KOSARY: That's depicted. 16 MR. CHEN: Where? 17 MS. KOSARY: Exactly where the Hearing Examiner is 18 running her mouse. 19 HEARING EXAMINER ROBESON HANNAN: Well, can you 20 describe -- is it marked by the -- 21 MS. KOSARY: It's marked -- 22 HEARING EXAMINER ROBESON HANNAN: -- the line with 23 the Xs or -- 24 MS. KOSARY: It's -- right. It's marked by the 25 lines with the limits of disturbance around it and above --</p>	<p>147</p> <p>1 Commission 2018 Development Services Code. WSSC would've 2 referred the Applicant to Section 1102 on page 90, which is 3 the third page of the document on your screen. Okay. 4 Section 1102.1.1 lays out the requirements and 5 procedures for non-abutting service connections, which 7430 6 is non-abutting. Under 1102.1.1.a, 7430 Needwood Road 7 would be required to do a sewer main extension from its 8 current terminal point within my -- within my property 9 boundary to at least their property line because more than 10 two non-abutting properties are left to be served: 7420, 11 7430, and 7425, which is directly across Needwood from 12 7430. 13 So there's actually another potential way for both 14 7420 and 7430 to connect to the sewer main at its current 15 location. 16 Under Section 1102.2.c, which is on the next page 17 -- 18 MR. CHEN: What exhibit number? 19 MS. KOSARY: We're still -- we're still at OZAH 20 Exhibit 227 -- 21 MR. CHEN: And the -- 22 MS. KOSARY: -- document NNNN. 23 MR. CHEN: And what page of that is it? 24 MS. KOSARY: Page 91. 25 MR. CHEN: Thank you.</p>
<p>146</p> <p>1 the line about at the level of almost at Dr. English's 2 driveway across the street. It says, Proposed 4-inch 3 sanitary, san. 4 HEARING EXAMINER ROBESON HANNAN: Okay. 5 MS. KOSARY: That's a proposed 4-inch sewer lateral 6 connection running down the middle of Needwood Road in 7 front of 7420 Needwood. WSSC would've looked at this and 8 told the Applicant that they cannot locate their sewer 9 lateral in the middle of the street because, basically, 10 WSSC is responsible for the sewer lateral connection from 11 the sewer main to the point where it hits your property 12 line, so they obviously want to minimize the length of this 13 part of any service -- any sewer service connection. 14 Can I please have OZAH Exhibit 227, document NNNN, 15 so -- 16 (Sotto voce speaking.) 17 MS. KOSARY: Back up. I think you're going to need 18 the document before this one. I -- it would be -- 19 HEARING EXAMINER ROBESON HANNAN: That was four Ns; 20 correct? 21 MS. KOSARY: Four Ns. I think it would -- it's 22 going to be the last -- oh, you're -- you're -- go up. 23 You're right there. Keep going. 24 MS. KOSARY: Okay. NNNN. This is OZAH document 25 227, document NNNN. It is the Washington Suburban Sanitary</p>	<p>148</p> <p>1 MS. KOSARY: We're on page 91. 2 MR. CHEN: Thank you. 3 MS. KOSARY: 7420 Needwood could connect with the 4 existing main within our property boundary because the 5 length of the main extension necessary to reach the 6 property boundary is well under 25 feet. As indicated 7 previously, they only need feet to do it. 8 Further, the referenced figure in Section 1102.2.c, 9 which is figure 13 located on page 105 -- 105. We're still 10 getting there. Okay. 11 This indicates that under -- 12 MR. CHEN: What is on the screen? 13 MS. KOSARY: We're -- this is -- this is figure 14 11.3 out of the WSSC -- 15 MR. CHEN: 11.3 or 11.13? 16 MS. KOSARY: 11.13. Excuse me. From OZAH Exhibit 17 227, document NNNN. It's out of the WSSC Development 18 Services handbook or codebook or whatever. 19 And it indicates that under this scenario, 7430 20 Needwood could possibly connect to the existing sewer main 21 at its current location; however, they would require a 22 private easement from 7420 Needwood. 23 As I said, WSSC does not want to be responsible for 24 these long lateral connections. 25 So I'm extremely surprised that the Applicant is</p>

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<p style="text-align: right;">149</p> <p>1 actually not showing an extension of the sewer main because</p> <p>2 obviously they -- they -- they would not want to show that</p> <p>3 without an extension of the main they would need a private</p> <p>4 easement from 7420. Since the Applicant is not even asking</p> <p>5 -- has not even asked WSSC to conduct a preliminary</p> <p>6 feasibility review -- or if they have, they haven't -- they</p> <p>7 haven't testified about it -- I don't even know if this</p> <p>8 sewer main could be extended further west.</p> <p>9 Now I'm sure that Mr. -- Mr. Intriago would just</p> <p>10 state that what is presented in these plans is going to be</p> <p>11 subject to change when the actual construction plans are</p> <p>12 developed.</p> <p>13 This hearing, however, is the end point for</p> <p>14 approval of this application since it will not be going to</p> <p>15 preliminary plan stage. And I just want to say it's just</p> <p>16 not -- it's -- it's -- it's not a lot of legwork to talk to</p> <p>17 WSSC. It's not a lot of legwork to find this -- this</p> <p>18 document that -- you know, the Development Services Code</p> <p>19 document. It's on the website. I found it.</p> <p>20 And it's not exceedingly difficult to find a</p> <p>21 property's sewer and septic categories. For example, you</p> <p>22 can find it through the Zoning Explorer application on the</p> <p>23 Planning Department's website.</p> <p>24 Despite this, when testifying on adequate public</p> <p>25 facilities during day three -- day three testimony, Mr.</p>	<p style="text-align: right;">151</p> <p>1 MR. CHEN: That's what's being depicted on the --</p> <p>2 MS. KOSARY: That's what's being depicted on this</p> <p>3 exhibit, and you're looking at the storm drain extension,</p> <p>4 and this is actually a new part of the storm drain</p> <p>5 extension through this -- through this development.</p> <p>6 Note that there is a sewer manhole with a red box.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Is it -- is it</p> <p>8 within this red box?</p> <p>9 MS. KOSARY: Right. It's within this red box, that</p> <p>10 the red box is around it, and there are two sewer -- there</p> <p>11 are two 6-inch sewer lateral connections showing -- shown.</p> <p>12 They're -- they're -- they're described as INVIN, both</p> <p>13 6-inch lat -- you can see that, right? Everybody can see</p> <p>14 that?</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Yes. Mr. Kline,</p> <p>16 can you see it?</p> <p>17 MR. KLINE: Well, I see the box. I can't read it,</p> <p>18 but I -- again, I trust everyone's reading.</p> <p>19 MS. KOSARY: Okay. There are two 6-inch sewer</p> <p>20 lateral connections shown. One serves the home at 16105</p> <p>21 Carnegie Avenue. That is up at the top of the screen to</p> <p>22 the right. The other, with the blue oval around it --</p> <p>23 HEARING EXAMINER ROBESON HANNAN: Um-hmm.</p> <p>24 MS. KOSARY: -- it is depicted as a sewer lateral</p> <p>25 to nowhere. It literally is shown ending in the middle of</p>
<p style="text-align: right;">150</p> <p>1 Intriago, the Applicant's engineer, seemed to believe that</p> <p>2 7430 Needwood is sewer category one, as seen on page 69,</p> <p>3 line 1, of day three. And perhaps this explains the issues</p> <p>4 with this sewer connection lateral.</p> <p>5 Can I please have OZAH Exhibit 227, document</p> <p>6 QQQQ.1.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Is this the</p> <p>8 orientation you want?</p> <p>9 MS. KOSARY: That is. Thank you so much.</p> <p>10 (Exhibit 227-QQQQ introduced.)</p> <p>11 MS. KOSARY: This is not the Applicant's only</p> <p>12 sewer-related issue.</p> <p>13 MR. CHEN: Just for the record --</p> <p>14 MS. KOSARY: This -- okay. This --</p> <p>15 MR. CHEN: -- clarify the exhibit --</p> <p>16 MS. KOSARY: -- is -- this is -- this is --</p> <p>17 MR. CHEN: -- what's on the screen.</p> <p>18 MS. KOSARY: -- this is OZAH Exhibit 227, document</p> <p>19 QQQQ.1.</p> <p>20 MR. CHEN: Thank you.</p> <p>21 MS. KOSARY: If you -- if you roll it up a little</p> <p>22 bit, it actually has a title. It's just a cropped and</p> <p>23 rotated portion of OZAH Exhibit 199-G, on -- you're</p> <p>24 actually in the South Riding subdivision. At this moment,</p> <p>25 you are -- you are south of the -- of the site.</p>	<p style="text-align: right;">152</p> <p>1 Carnegie Avenue. It is likely, however, that this is the</p> <p>2 sewer connection lateral to 7401 Deer Point Court, as I've</p> <p>3 depicted by the blue line.</p> <p>4 And back to the red box, just note that both</p> <p>5 laterals are at a depth of 456.69 feet and that the</p> <p>6 proposed storm drain extension in this location is between</p> <p>7 manholes A2 and A3, as indicated on the pink arrows.</p> <p>8 MR. CHEN: What does that mean?</p> <p>9 MS. KOSARY: That the sewer drain extension is</p> <p>10 coming down here between A2 and A3.</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Well, A3 to the</p> <p>12 north, south to A2; correct?</p> <p>13 MS. KOSARY: Correct.</p> <p>14 MR. CHEN: Yeah.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: And then what was</p> <p>16 your depth on the manhole -- or the --</p> <p>17 MS. KOSARY: 456.69.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: And that's a</p> <p>19 depth underground?</p> <p>20 MS. KOSARY: That's the depth underground. Right.</p> <p>21 MR. CHEN: How far underground?</p> <p>22 MS. KOSARY: Oh. That's -- that's the depth, I</p> <p>23 mean. It's not going down 456.69 feet. I mean that is the</p> <p>24 depth of, you know, above sea level.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: I see.</p>

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<p>153</p> <p>1 MR. CHEN: It's the elevation (inaudible) --</p> <p>2 MS. KOSARY: It's the elevation. I think that the</p> <p>3 top --</p> <p>4 HEARING EXAMINER ROBESON HANNAN: (Inaudible.)</p> <p>5 MS. KOSARY: -- the top is, like --</p> <p>6 HEARING EXAMINER ROBESON HANNAN: (Inaudible.)</p> <p>7 MS. KOSARY: -- the top is, like, at, like, 460</p> <p>8 something.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Okay. I</p> <p>10 understand now.</p> <p>11 MS. KOSARY: Right.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: When you said</p> <p>13 depth, I was like that -- yeah, I -- I understand.</p> <p>14 MS. KOSARY: Oh, yeah. Yeah.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: The elevation.</p> <p>16 MS. KOSARY: Yeah, yeah. Like we're digging to</p> <p>17 China.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: And what's the</p> <p>19 elevation of the sewer there?</p> <p>20 MS. KOSARY: (Inaudible.)</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Did you have that</p> <p>22 or not?</p> <p>23 MS. KOSARY: 460 -- it looks like 466.29 or 468.29,</p> <p>24 so this sewer is down either 10 or 12 feet below -- below</p> <p>25 the ground surface.</p>	<p>155</p> <p>1 which is Exhibit 196-G. It's coming out at 456.69.</p> <p>2 You've got some -- you've got some elevations that</p> <p>3 are really pretty close to each other. And this is a</p> <p>4 really important piece of information to know because if</p> <p>5 the sewer lateral is at the same depth or a similar depth</p> <p>6 as the storm drain extension, 7401 Deer Point Court will</p> <p>7 lose its sewer connection, and it will somehow have to be</p> <p>8 relocated. I'm sure the Applicant --</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Deer -- would you</p> <p>10 repeat the Deer --</p> <p>11 MS. KOSARY: It's 7401 Deer Point Court.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Will -- will lose</p> <p>13 the sewer connection?</p> <p>14 MS. KOSARY: Yeah, they're going to -- you really</p> <p>15 -- you really don't know from looking at where this -- this</p> <p>16 lateral is potentially running and looking --</p> <p>17 HEARING EXAMINER ROBESON HANNAN: Right.</p> <p>18 MS. KOSARY: -- and looking at the elevation of</p> <p>19 where their storm drain is going whether this storm -- this</p> <p>20 new storm drain is going to cut off the sewer lateral to</p> <p>21 7401 Deer Point Court.</p> <p>22 Now I'm sure that the Applicant's just going to say</p> <p>23 that this is just something they'll figure out at</p> <p>24 construction; however, if this were my home and my sewer</p> <p>25 connection, I'd be concerned. Basically, I'm not a big fan</p>
<p>154</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>2 MS. KOSARY: Okay. You know, so you're between</p> <p>3 manholes A2 and A3.</p> <p>4 If you want to go to OZAH Exhibit 196-G.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Do you see it?</p> <p>6 MS. KOSARY: I see it. We're between A2 and A3.</p> <p>7 MR. CHEN: What's the exhibit number?</p> <p>8 MS. KOSARY: This is -- this is OZAH Exhibit 196-G,</p> <p>9 which is, like, the profile of -- of -- of this storm</p> <p>10 drain. Okay.</p> <p>11 Just want you to note that the storm drain</p> <p>12 connection between manholes A2 to A3 runs at a depth of</p> <p>13 about 454 to 458 feet.</p> <p>14 MR. CHEN: You mean elevation? You said depth</p> <p>15 again.</p> <p>16 MS. KOSARY: Elevation. With the area where the</p> <p>17 sewer lateral -- the sewer lateral that we were talking</p> <p>18 about before -- would cross, about at the midpoint, about</p> <p>19 455 to 457 feet.</p> <p>20 MR. CHEN: Elevation?</p> <p>21 MS. KOSARY: Elevation. So you really have to ask</p> <p>22 whether the sewer lateral connection at 7401 Deer Point</p> <p>23 Court intersects the proposed storm drain extension at this</p> <p>24 point. We don't know. It's not -- it's not depicted.</p> <p>25 It's not depicted on this -- on this -- on this exhibit,</p>	<p>156</p> <p>1 of porta potties.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Now where on this</p> <p>3 diagram would the connection -- would the intersection</p> <p>4 between (inaudible) --</p> <p>5 MS. KOSARY: It's going to be approximately at the</p> <p>6 midpoint.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Of what?</p> <p>8 MS. KOSARY: Between A2 and A3.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>10 MS. KOSARY: So approximately at the midpoint.</p> <p>11 MR. CHEN: Now this is based on the data,</p> <p>12 information supplied by the Applicant; is that right?</p> <p>13 MS. KOSARY: Correct. They're missing --</p> <p>14 MR. CHEN: Okay.</p> <p>15 MS. KOSARY: -- they -- they appear to be missing</p> <p>16 this lateral.</p> <p>17 MR. CHEN: Is there any explanation as to this</p> <p>18 circumstance that you've described?</p> <p>19 MS. KOSARY: Any explanation?</p> <p>20 MR. CHEN: By the Applicant, yes, as what's going</p> <p>21 to happen at this location.</p> <p>22 MS. KOSARY: I have no idea.</p> <p>23 MR. CHEN: Okay. Have they supplied any</p> <p>24 information?</p> <p>25 MS. KOSARY: No, they haven't. They're not even</p>

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<p style="text-align: right;">157</p> <p>1 indicating that this -- this lateral is probably existing 2 in this area. 3 Have we -- are we -- are we done with this part? 4 MR. CHEN: If you are. 5 MS. KOSARY: Okay. Can I get OZAH Exhibit 227 -- 6 HEARING EXAMINER ROBESON HANNAN: Give me one 7 moment. 8 MS. KOSARY: Okay. 9 HEARING EXAMINER ROBESON HANNAN: All right. I'm 10 sorry. 227 -- 11 MS. KOSARY: QQQQ.1 again. It's the one that we 12 were on before. 13 HEARING EXAMINER ROBESON HANNAN: Yeah. 14 MS. KOSARY: Okay. QQQQ.1. We're on OZAH Exhibit 15 227, document QQQQ, three -- four Qs, QQQQ.1. 16 Another issue is the 8-inch sewer main stub 17 identified by the green arrow. And it's -- it's -- it's 18 discussed in the -- in the box, the red box, also. 19 When the sewer was designed for what became the 20 South Riding neighborhood, it's obvious that care was taken 21 to ensure that the sewer main could eventually be extended 22 just a little further north to the Tapscott property. 23 MR. CHEN: Why do you say that? 24 MS. KOSARY: What? Because they did an 8-inch 25 stub. They did a stub. They didn't just end at a manhole.</p>	<p style="text-align: right;">159</p> <p>1 the vicinity of the Tapscott home. So it's going to be 2 closer to the manhole A4 side than to the A5 side. 3 MR. CHEN: What is the implication of that? 4 MS. KOSARY: So it's really a legitimate question 5 to ask. Remember that the stub is going to be -- is 6 currently at 456.69 -- an elevation of 456.69 feet, so it's 7 just a legitimate question to ask whether this proposed 8 storm drain extension would impact the Tapscott's ability 9 to connect to sewer at this location. 10 MR. CHEN: Has there been any explanation about 11 that? 12 MS. KOSARY: No, there has not. And I want to 13 point out that it's -- if this application is approved and 14 built and sometime later the Tapscott family's septic 15 fails, they could have issues. 16 MR. CHEN: Because of the development (inaudible) 17 -- 18 MS. KOSARY: Because of the development. Because 19 -- because the -- the -- the new storm drain -- storm drain 20 piping is going to be running through at a elevation 21 similar to the elevation that their sewer lateral is going 22 to have to -- have to come in at. 23 MR. CHEN: You mean the storm drain piping from the 24 proposed conditional use? 25 MS. KOSARY: From the proposed conditional use.</p>
<p style="text-align: right;">158</p> <p>1 They -- they included a little bit of a stub so that 2 sometime in the future they -- they could extend the sewer 3 a little further north to the Tapscott property which is 4 currently still to this day on septic. The potential 5 extension is illustrated by the green line. 6 This stub is also at a depth of -- at an elevation 7 of 456.69 feet. 8 And can I please have OZAH Exhibit 196-G again. 9 Okay. 10 The portion of the proposed storm drain -- 11 MR. CHEN: You're looking at 196 -- 12 MS. KOSARY: Oh. You're looking at -- we're now 13 looking at OZAH Exhibit 196-G. 14 Now the portion of the proposed storm drain 15 extension, which would correspond to where a sewer lateral 16 connection to the Tapscott property -- 17 MR. CHEN: The green line. 18 MS. KOSARY: -- the green line -- would have to 19 cross is either going to between manholes A3 to A4, which I 20 want you to note is running at an elevation of 456 to 458 21 feet, or manholes A4 to A5. They could probably take a 22 lateral through any one of these locations, which is at a 23 depth of 457 -- 24 MR. CHEN: Elevation? 25 MS. KOSARY: -- an elevation of 457 to 459 feet in</p>	<p style="text-align: right;">160</p> <p>1 That's correct. 2 Can I please have OZAH Exhibit 227, document 3 QQQQ.2. Okay. 4 Just want to point out that there's -- there's also 5 a sewer -- 6 MR. CHEN: What exhibit are we on? 7 MS. KOSARY: This is -- this is also a crop of OZAH 8 -- of OZAH Exhibit 196-F, which is in this case OZAH 9 Exhibit 227, document QQQQ.2, and this is just showing that 10 there is actually a sewer main down Deer Point Court that 11 crosses the proposed Primrose storm drain connection, and 12 this time it's between manholes A1 and A2. 13 So if we want to go back to -- 14 HEARING EXAMINER ROBESON HANNAN: I'm sorry. What 15 is this showing? It shows points where they cross -- where 16 what crosses? 17 MS. KOSARY: The red lines are just -- are just 18 pointing out that this is a sewer main running -- running 19 from the top of the page where you have the first -- the 20 first red arrow pointing down to that little teeny tiny dot 21 -- 22 HEARING EXAMINER ROBESON HANNAN: Right. 23 MS. KOSARY: -- under what is EX7, manhole EX7 -- 24 HEARING EXAMINER ROBESON HANNAN: Um-hmm. 25 MS. KOSARY: -- and that it's running the length --</p>

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<p>161</p> <p>1 it's actually even running -- it's running further down 2 than my arrows even indicate. It's running -- it's 3 actually even running through that -- that -- that -- that 4 little circle. 5 HEARING EXAMINER ROBESON HANNAN: I see that. 6 Okay. 7 MS. KOSARY: And if I can get OZAH Exhibit 196-G 8 again. And we're talking about manholes A1 to A2. I just 9 want to point out that the sewer main is missing off from 10 OZAH Exhibit 196-G between this point, which is unusual 11 because you've got some other things indicated. You've 12 got, like, where the water -- where the water is running 13 and things like that. They're just missing where the sewer 14 main is running. And it's just going to make it impossible 15 to evaluate the depth of the sewer main in comparison to 16 the depth of the proposed storm drain extension. 17 This is all -- this is all important stuff. 18 The proposed storm drain extension requires that it 19 be built at specific depths and grades. If it is to 20 seamlessly interface with the outfall culvert, if you had 21 to change the depth or grade of one section to avoid 22 previously existing infrastructure, you're talking about 23 potentially having to either redesign the entire storm 24 drain network or pieces of the existing infrastructure. 25 These potential sewer issues are just another reason why --</p>	<p>163</p> <p>1 they -- what they've submitted. 2 MR. CHEN: And is it correct that there has been no 3 explanation as to how these issues that you've identified 4 will be resolved? 5 MS. KOSARY: There have been no -- 6 MR. CHEN: Okay. 7 MS. KOSARY: -- no things. 8 MR. CHEN: Is that the end of this area that you 9 wanted -- 10 MS. KOSARY: Yes. 11 MR. CHEN: -- to go through this? Okay. 12 MS. KOSARY: Yes, there is. 13 MR. CHEN: Move on. 14 MS. KOSARY: I'm moving on. Want to point out 15 that, as Paul previously stated, we bought our property for 16 the trees and sited our home to avoid having to remove any 17 big trees. Since moving into our home in 1997, we've 18 actually planted over 50 additional trees. I mean and 19 these have included all sorts of different types of trees: 20 deciduous trees, evergreen trees, canopy trees, and 21 understory trees. We -- you know, we've -- we've got 22 what's considered a forest, part of a forest in back of us. 23 We're just planting more trees, and our current 24 project is we're actually trying to restore the understory 25 in the portion of our property that's actually classified</p>
<p>162</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Are they sewer 2 issues or storm drain issues or both? 3 MS. KOSARY: They're -- they're -- they're both. I 4 mean, it's the chicken or the egg type of thing. 5 HEARING EXAMINER ROBESON HANNAN: Would this storm 6 drain, do you recall if it's -- no -- is the sewer gravity? 7 MS. KOSARY: The sewer's gravity, but it's -- it's 8 -- it's 8-inch -- it's gravity. You don't -- you know, you 9 don't need to do much of a -- you don't -- you know, you 10 have no idea how -- how quick it's falling, how fast it's 11 falling. It is gravity, yeah. 12 But this is just -- these potential issues, it's 13 just another reason why, as I stated previously, you 14 generally do this type of large infrastructure project at 15 the start of a development, you know, of a subdivision when 16 you can design sewers and water, storm drains and other 17 utilities all together and install them all together. 18 This is just really just piecemeal work. 19 MR. CHEN: Yeah. Have you identified all of them? 20 MS. KOSARY: I've identified all of them. 21 MR. CHEN: And I take it your testimony and the 22 information you are supplying to the Hearing Examiner is 23 based upon the information supplied by the Applicant; is 24 that correct? 25 MS. KOSARY: That's correct. I just looked at what</p>	<p>164</p> <p>1 as being part of a forest. 2 Can I please have OZAH Exhibit 115, document N and 3 O. 4 And this is a -- and this is -- 5 HEARING EXAMINER ROBESON HANNAN: Give me just one 6 second. Let me pull O up. Where is O? Well, let's -- 7 MS. KOSARY: Let's start with N. 8 HEARING EXAMINER ROBESON HANNAN: Yeah. Okay. Can 9 you see it? 10 MS. KOSARY: I can see it. Okay. This is OZAH 11 Exhibit 115, that is actually document N that you've got on 12 the screen, and it's just a cropped down version of OZAH 13 Exhibit 12. 14 I just want to say that I cannot emphasize strongly 15 enough the devastating impact approval of this application 16 would have on the tree cover, and I should note that I'm 17 talking from the perspective of compatibility with the 18 surrounding neighborhood and the undue harm to our 19 property. 20 Now I prepared these Photoshop images of the before 21 and after impact. You've got document N on the screen, 22 OZAH Exhibit 115, document N, which is the before exhibit 23 -- the before, and if you go to document -- 24 MR. CHEN: When you say before, what do you mean by 25 that?</p>

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<p>165</p> <p>1 MS. KOSARY: I probably just misspoke. Oh, oh.</p> <p>2 MR. CHEN: No.</p> <p>3 MS. KOSARY: Before -- before the lot was cleared.</p> <p>4 Before the lot is cleared. It's -- it's the --</p> <p>5 MR. CHEN: So it's --</p> <p>6 HEARING EXAMINER ROBESON HANNAN: You mean existing</p> <p>7 -- existing --</p> <p>8 MS. KOSARY: It's the existing --</p> <p>9 HEARING EXAMINER ROBESON HANNAN: -- conditions.</p> <p>10 Is that what you mean?</p> <p>11 MS. KOSARY: -- conditions. Right. That's what I</p> <p>12 mean.</p> <p>13 MR. CHEN: Is this -- I -- I -- when you said you</p> <p>14 Photoshopped this, nonetheless, is this --</p> <p>15 MS. KOSARY: I did not Photoshop document N.</p> <p>16 MR. CHEN: Okay. So it accurately depicts --</p> <p>17 MS. KOSARY: It accurately --</p> <p>18 MR. CHEN: -- what it purports to show?</p> <p>19 MS. KOSARY: -- depicts what it -- what it purports</p> <p>20 to show.</p> <p>21 MR. CHEN: Thank you. Do you want to go to another</p> <p>22 exhibit?</p> <p>23 MS. KOSARY: Yeah, she's looking for O.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: This is what I</p> <p>25 have as O. Can you see the -- oh. I'm getting there. I'm</p>	<p>167</p> <p>1 MS. KOSARY: It's the Applicant's CUP-2.</p> <p>2 MR. CHEN: So you've taken it from information --</p> <p>3 MS. KOSARY: I've taken it from --</p> <p>4 MR. CHEN: -- supplied from the Applicant?</p> <p>5 MS. KOSARY: Right. I've taken --</p> <p>6 MR. CHEN: Please. You've taken it from</p> <p>7 information supplied by the Applicant?</p> <p>8 MS. KOSARY: Yes, I have. And I've --</p> <p>9 MR. CHEN: And you've just identified the exhibit</p> <p>10 that you utilized?</p> <p>11 MS. KOSARY: I did.</p> <p>12 MR. CHEN: All right.</p> <p>13 MS. KOSARY: And I want to point out that it's --</p> <p>14 it's actually fairly easy to do because it corresponds to</p> <p>15 the southwest corner of our home there at the bottom.</p> <p>16 MR. CHEN: Where the retaining coverage or trees --</p> <p>17 MS. KOSARY: Yeah.</p> <p>18 MR. CHEN: -- or the forest.</p> <p>19 MS. KOSARY: If you -- right. Everything's removed</p> <p>20 up until -- up to that -- that southwest corner.</p> <p>21 MR. CHEN: From Needwood south down to that area;</p> <p>22 is that correct?</p> <p>23 MS. KOSARY: Right. That's correct.</p> <p>24 MR. CHEN: Okay. And you're basing what is</p> <p>25 depicted here on the information supplied by the Applicant</p>
<p>166</p> <p>1 getting there. Okay.</p> <p>2 Can you see that?</p> <p>3 MS. KOSARY: Yes. This is --</p> <p>4 MR. CHEN: What -- excuse me.</p> <p>5 MS. KOSARY: This is --</p> <p>6 MR. CHEN: What exhibit number is it?</p> <p>7 MS. KOSARY: This is OZAH Exhibit 115 --</p> <p>8 MR. CHEN: O?</p> <p>9 MS. KOSARY: -- document O. It is the Photoshop</p> <p>10 that I prepared showing the after impact of the tree</p> <p>11 removal.</p> <p>12 MR. CHEN: Yeah.</p> <p>13 MS. KOSARY: This is everything that's going to be</p> <p>14 removed.</p> <p>15 MR. CHEN: And what is the source of your</p> <p>16 information --</p> <p>17 MS. KOSARY: The source, again --</p> <p>18 MR. CHEN: Excuse me. Let me finish. What is the</p> <p>19 source of the information that you have about removal that</p> <p>20 caused you to prepare this document?</p> <p>21 MS. KOSARY: That caused me to prepare this?</p> <p>22 MR. CHEN: Yeah.</p> <p>23 MS. KOSARY: Basically, it's probably OZAH Exhibit</p> <p>24 199-B.</p> <p>25 MR. CHEN: What is that?</p>	<p>168</p> <p>1 through the exhibit that you've just identified?</p> <p>2 MS. KOSARY: Yes, I -- yes, I did.</p> <p>3 MR. CHEN: Thank you. Go -- you can proceed.</p> <p>4 MS. KOSARY: Okay. The best description, however,</p> <p>5 can be found in Katherine Nelson's report in Appendix B of</p> <p>6 the attachment section of the technical staff report, which</p> <p>7 is OZAH Exhibit 106-A.</p> <p>8 MR. CHEN: Who is Ms. Nelson?</p> <p>9 MS. KOSARY: Ms. Nelson is an MNCPPC staff member</p> <p>10 and the Area 3 expert on matters related to Chapter 22</p> <p>11 entries.</p> <p>12 On page 4 of her report, Ms. Nelson states that,</p> <p>13 quote, Of the seven on-site trees, five, including three</p> <p>14 along the eastern property boundary, will be removed,</p> <p>15 substantially altering the nature of the area. The</p> <p>16 arrangement of these and other smaller trees along the</p> <p>17 property boundary provide them with additional value.</p> <p>18 Grouped nearly continuously along the eastern and southern</p> <p>19 property boundaries are numerous large, medium, and small</p> <p>20 trees. In addition, there is a large group of trees</p> <p>21 located along the western property boundary. All of the</p> <p>22 boundary trees in the front three quarters of the site are</p> <p>23 proposed for removal, unquote.</p> <p>24 And I just want to point out that -- I'm not going</p> <p>25 to say that.</p>

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<p>169</p> <p>1 As can be -- it's just another exhibit. There's</p> <p>2 also some Google 3D views presented in documents Q.1</p> <p>3 through Q.4 of Exhibit 115 that just provide a visual -- a</p> <p>4 visual representation of what Ms. Nelson is talking about.</p> <p>5 MR. CHEN: Who prepared those documents?</p> <p>6 MS. KOSARY: I did. They're just -- they're just</p> <p>7 Google -- they're just, you know, from Google. They're</p> <p>8 just north, south, east, and west views of what -- what</p> <p>9 would --</p> <p>10 HEARING EXAMINER ROBESON HANNAN: Do you see them?</p> <p>11 I'm showing them on your screen.</p> <p>12 MS. KOSARY: I -- I -- we do. We see them. Yes.</p> <p>13 MR. CHEN: Yeah. Again, these are Google. Do</p> <p>14 these views accurately depict that which they purport to</p> <p>15 show?</p> <p>16 MS. KOSARY: Yes, they certainly do. Okay.</p> <p>17 As you can see --</p> <p>18 MR. CHEN: Yeah. By the way --</p> <p>19 MS. KOSARY: What?</p> <p>20 MR. CHEN: -- these views, they're from the</p> <p>21 northeast. Is that correct or --</p> <p>22 MS. KOSARY: One is marked -- they're each. One is</p> <p>23 marked facing the -- well, four views: north, south, east,</p> <p>24 and west.</p> <p>25 MR. CHEN: Okay, okay. Thank you.</p>	<p>171</p> <p>1 MS. KOSARY: This is an Applicant's exhibit. We've</p> <p>2 got a limit of disturbance right up to our western property</p> <p>3 line.</p> <p>4 I know the impact this can have because we</p> <p>5 experienced the same thing on our east side when the church</p> <p>6 started building in the fall of 2010. We suffered damage</p> <p>7 on our east side because the church's limit of disturbance</p> <p>8 went to our property line, so I know what we would be</p> <p>9 facing on the other side.</p> <p>10 In the case of the church's construction, we lost a</p> <p>11 champion tree, a 28.5 inch red pine, so this was also</p> <p>12 nearly a specimen-level tree, which for a while had been</p> <p>13 state champion and was county champion at the time of its</p> <p>14 death. We lost this tree due to a bad root pruning job by</p> <p>15 a so-called arborist, done without our knowledge or</p> <p>16 permission.</p> <p>17 MR. CHEN: On the church property?</p> <p>18 MS. KOSARY: No. It was on our property, Bill.</p> <p>19 MR. CHEN: They came onto your property?</p> <p>20 MS. KOSARY: Oh. Yeah, they came onto our</p> <p>21 property.</p> <p>22 MR. CHEN: With your permission?</p> <p>23 MS. KOSARY: No. Without our permission.</p> <p>24 And we suffered crown dieback, which is a dying</p> <p>25 back of branches and branch tips in the upper and outer</p>
<p>170</p> <p>1 MS. KOSARY: As been -- as can be seen in OZAH</p> <p>2 Exhibit 199-B, if you want to bring that up --</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Okay. It should</p> <p>4 be on your screen.</p> <p>5 MR. CHEN: No.</p> <p>6 MS. KOSARY: I'm sure it's coming.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: It's -- it's when</p> <p>8 I scroll back and forth, and it -- never mind. Okay. Go</p> <p>9 ahead. Now it should be on your screen.</p> <p>10 MS. KOSARY: Okay. As --</p> <p>11 MR. CHEN: What are we looking -- what is the</p> <p>12 exhibit?</p> <p>13 MS. KOSARY: We're looking at OZAH Exhibit 199-B.</p> <p>14 As you can --</p> <p>15 MR. CHEN: What is it -- what is it depicting or</p> <p>16 showing?</p> <p>17 MS. KOSARY: It's the current -- it's CUP-1. It's</p> <p>18 the current conditions on the site as depicted, but we're</p> <p>19 looking at OZAH Exhibit 199-B just to show that the</p> <p>20 Primrose site plan shows a limit of disturbance right up to</p> <p>21 our western property line.</p> <p>22 MR. CHEN: Who's prepared this exhibit?</p> <p>23 MS. KOSARY: The Applicant has prepared it.</p> <p>24 MR. CHEN: Okay. So this is an Applicant's</p> <p>25 exhibit?</p>	<p>172</p> <p>1 portions of the tree crown caused by stressed, to an</p> <p>2 additional four large canopy trees which were close to the</p> <p>3 construction limits of the disturbance, including one very</p> <p>4 large specimen-level red maple.</p> <p>5 MR. CHEN: What, if any, connection does this --</p> <p>6 this damage that you've described relate to the activity on</p> <p>7 the church property?</p> <p>8 MS. KOSARY: The thing with construction damage to</p> <p>9 trees is that most people do not realize that the impacted</p> <p>10 tree does not die immediately but instead dies slowly, over</p> <p>11 a number of years. By the time the tree has died or</p> <p>12 suffered crown dieback, many people do not even know enough</p> <p>13 to associate the tree damage to the construction.</p> <p>14 We have a large specimen-level tree, SP-10, close</p> <p>15 enough to the limits of disturbance on the proposed</p> <p>16 Primrose site that Mr. Jolley acknowledged it's going to</p> <p>17 have an impact on its critical root zone. The Applicant</p> <p>18 would not have even acknowledged this tree's existence if</p> <p>19 we had not pointed out its omission.</p> <p>20 Now there are arboricultural industry standards --</p> <p>21 industry rules of thumb on construction damage to trees.</p> <p>22 However, the probability of construction impact on a given</p> <p>23 tree depends on the species of the tree.</p> <p>24 (Exhibit 227-WWW introduced.)</p> <p>25 MS. KOSARY: This tree, SB 10, is a silver maple, a</p>

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<p style="text-align: right;">173</p> <p>1 species highly susceptible to construction damage, as 2 indicated by the report from Dr. Kim Coder from the 3 University of Georgia Extension Service found in OZAH 4 Exhibit 227, document WWW, which finds that silver maples 5 have -- have poor tolerance and will have difficulty 6 reacting well to construction damage. 7 I would not be surprised if this tree will also 8 suffer crown dieback because I have -- I have observed this 9 in other silver maples which were impacted by the church 10 construction. 11 MR. CHEN: On the other side of your property? 12 MS. KOSARY: On the other side of our property. 13 MR. CHEN: Towards the eastern side? 14 MS. KOSARY: Towards the eastern side. And, note, 15 before the Applicant proposes a condition binding the 16 Applicant to somehow taking care of my tree, I do not find 17 it acceptable that if this application is approved the 18 Applicant would be permitted to damage my property in their 19 pursuit of profit. 20 And, as Mr. Jolley states on page 85 of day two, 21 beginning on line 19, The landscaping strip will need to be 22 tilled to prepare it for the new landscaping. 23 This will require more extensive preparations than 24 Mr. Jolley alluded. The area's currently thick with 25 existing trees, which will not only have to be removed but</p>	<p style="text-align: right;">175</p> <p>1 I believe the SP trees are specimen-level trees and the ST 2 trees are significant trees. They are -- they are below 3 the level of being a specimen-level tree. I believe the 4 cutoff for a significant tree is a diameter of, I want to 5 say 21 or 22 inches. Specimen trees, I think are above 30 6 -- 30-inch-diameter trees. 7 MR. CHEN: Okay. 8 MS. KOSARY: Can I please have OZAH Exhibit 227, 9 document RRRR. It sounds like talk like a pirate. That's 10 four Rs. 11 (Exhibit 227-RRRR introduced.) 12 MS. KOSARY: Okay. And I just -- stay on RRRR.1. 13 Besides SP-10, we have several smaller trees that 14 are literally -- 15 HEARING EXAMINER ROBESON HANNAN: Tell us what 16 we're looking at. 17 MS. KOSARY: Okay. 18 HEARING EXAMINER ROBESON HANNAN: Describe what 19 we're looking at. 20 MS. KOSARY: Looking at -- this is RRRR.1. Can I 21 have the -- you've got a label on it. These are just a 22 series of shots that we shot at the property line. 23 MR. CHEN: Do you know when? 24 MS. KOSARY: No, but I can easily find that out. 25 HEARING EXAMINER ROBESON HANNAN: This is for your</p>
<p style="text-align: right;">174</p> <p>1 also their stumps as well as any existing large roots. 2 This extensive preparation will cause considerable damage 3 to the critical root zones of all the trees and vegetation 4 close to the limits of disturbance on our property. 5 Can I please have OZAH Exhibit 24 -- 6 MR. CHEN: Before you leave, the exhibit on the 7 screen right now -- 8 MS. KOSARY: Oh. 9 MR. CHEN: -- what exhibit number is that again? I 10 have forgotten. 11 MS. KOSARY: That is OZAH Exhibit one hundred and 12 -- 13 HEARING EXAMINER ROBESON HANNAN: 99-B, 199-B. 14 MS. KOSARY: 199-B. 15 MR. CHEN: Oh, thank you. There are a couple -- I 16 see five Xs. Do you know what they are? 17 MS. KOSARY: Yeah. Those are trees that are going 18 to be removed. 19 MR. CHEN: All right. Do you know what the -- what 20 the X signifies? Is it -- is it just an existence of a 21 tree? Know the size or anything like that, if you know? 22 MS. KOSARY: You can -- you can -- you can -- you 23 can tell -- they're marked either SP -- 24 MR. CHEN: Okay. 25 MS. KOSARY: -- with a number. An SP tree is a --</p>	<p style="text-align: right;">176</p> <p>1 property. Which -- the eastern or the western property 2 line? 3 MS. KOSARY: It depends upon which -- which 4 direction we're facing. 5 HEARING EXAMINER ROBESON HANNAN: Okay. Well -- 6 MS. KOSARY: No, it's the western -- it's our 7 western property line. Correct. It's our property line. 8 It's our western property line with 7430. 9 MR. KLINE: I -- I assume the cone is on the 10 property line. 11 MS. KOSARY: The cone is on the property line. And 12 depending where we're facing, I've always labeled where 13 7516 is and where 74 -- where 7416 is and where 7430 is. 14 So you'll see on this it's -- it's facing north at the 15 boundary of 7416 and 7430 Needwood, approximately at the 16 corner of 7416, 7420, and 7430. 17 HEARING EXAMINER ROBESON HANNAN: Okay. 18 MS. KOSARY: Okay. 19 MR. CHEN: Okay. You don't -- 20 MS. KOSARY: Okay. 21 MR. CHEN: Okay. On -- do you have any feel for 22 when these photos were taken? 23 MS. KOSARY: It was before fall, after spring. 24 MR. CHEN: What year? 25 MS. KOSARY: Probably 2019.</p>

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<p style="text-align: right;">177</p> <p>1 MR. CHEN: Okay. Do they accurately depict what</p> <p>2 they purport to show -- all of those series of photos?</p> <p>3 MS. KOSARY: Yes, they do.</p> <p>4 MR. CHEN: Okay. Go ahead. Proceed.</p> <p>5 MS. KOSARY: Okay. You can see examples on the</p> <p>6 first four pages of this exhibit, OZAH Exhibit 227,</p> <p>7 documents RRR.1 to RRR.4, with arrows pointing to some of</p> <p>8 these trees. These are -- these trees are not even</p> <p>9 indicated in any tree inventory because they are not big</p> <p>10 enough to be a significant or a specimen tree.</p> <p>11 MR. KLINE: Excuse me, Dr. Kosary. Are you saying</p> <p>12 the arrows are pointed at trees that don't show up on our</p> <p>13 field surveys?</p> <p>14 MS. KOSARY: That is correct. Because they are not</p> <p>15 big enough to be significant or specimen-level trees.</p> <p>16 MR. KLINE: Thank you.</p> <p>17 MS. KOSARY: However, they are tall, decades' old</p> <p>18 canopy trees, and they will have a significant impact far</p> <p>19 above 30 percent on their critical root zones. Sorry,</p> <p>20 these trees are goners. They're dead trees walking.</p> <p>21 Again, I do not find it acceptable that if this</p> <p>22 application is approved, the Applicant would be permitted</p> <p>23 to damage my property. There is no condition that the</p> <p>24 Applicant could propose to mitigate the actual real damage</p> <p>25 which will be done to our property that is acceptable to my</p>	<p style="text-align: right;">179</p> <p>1 And, again, I don't find it acceptable that if this</p> <p>2 application is approved the Applicant would be permitted to</p> <p>3 damage my property. There is no condition that the</p> <p>4 Applicant could propose to mitigate the actual real damage</p> <p>5 which will be done to my property that is acceptable to my</p> <p>6 husband or me.</p> <p>7 My neighborhood is a neighborhood of large lots.</p> <p>8 The proposed Primrose site is a lot of almost three acres.</p> <p>9 Ours is a lot of over one acre. To be sitting here talking</p> <p>10 about a limit of disturbance at our property line speaks</p> <p>11 volumes in terms of the intensity of this proposed</p> <p>12 development and its utter incompatibility with my</p> <p>13 neighborhood.</p> <p>14 I think Paul expressed it best during his testimony</p> <p>15 when he noted that approval of a waiver for a 12-foot</p> <p>16 substandard setback is a theft of a 22-foot perimeter on</p> <p>17 our property as we will need the additional space to</p> <p>18 increase our buffer. It's not our fault that the Mandavas</p> <p>19 failed to do their due diligence when they bought this --</p> <p>20 when they bought this property.</p> <p>21 According to Mr. Taylor's day one testimony, on</p> <p>22 page 20, beginning on line 1, Mr. Mandava's case is a bit</p> <p>23 unique for Primrose development in that Primrose, the</p> <p>24 franchiser, is typically the purchaser of a property that</p> <p>25 is then assigned to a franchisee at closing.</p>
<p style="text-align: right;">178</p> <p>1 husband or me.</p> <p>2 I next want to call attention to the last two pages</p> <p>3 of this exhibit on the screen, OZAH Exhibit 227, documents</p> <p>4 RRR.5 and RRR.6.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: This is RRR --</p> <p>6 227-RRR.5, I'm showing you on the screen.</p> <p>7 MS. KOSARY: Right. And you'll notice that 7416,</p> <p>8 our property, is to the left; 7430 Needwood is to the</p> <p>9 right.</p> <p>10 MR. CHEN: To the -- to the right --</p> <p>11 MS. KOSARY: To the right, and -- and -- and --</p> <p>12 MR. CHEN: -- when you see that, that -- that's the</p> <p>13 site; right?</p> <p>14 MS. KOSARY: And that's the site. It is facing</p> <p>15 south, and the cone is approximately the -- the property</p> <p>16 boundary.</p> <p>17 This is just an example of a large tree on our</p> <p>18 border. There is just no way that I can see to remove this</p> <p>19 tree as well as others at our property boundary without</p> <p>20 trespassing on our property as well as significantly</p> <p>21 damaging our property. This is going to place us in the</p> <p>22 same position we were in with the church. We're going to</p> <p>23 be scrambling to mitigate the damages to our property as</p> <p>24 well as scrambling to get some sort of additional screening</p> <p>25 up on our side.</p>	<p style="text-align: right;">180</p> <p>1 As Mr. Taylor stated on day one, page 19, beginning</p> <p>2 on line 9, Mr. Mandava bought the property prior to signing</p> <p>3 a franchise agreement.</p> <p>4 According to Mr. Mandava's day four testimony, page</p> <p>5 262, starting at line 14, he thought that a daycare center</p> <p>6 was a permitted use when he purchased the property.</p> <p>7 We should not be made to suffer undue harm because</p> <p>8 the Mandavas made a bad business decision.</p> <p>9 Okay. Can I have OZAH Exhibit 73.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: Okay. Hold on</p> <p>11 one second. Okay. This should be it.</p> <p>12 MS. KOSARY: That's it. Yes. Okay.</p> <p>13 I now want to discuss what started as OZAH Exhibit</p> <p>14 73 and was updated during the day one hearing as OZAH</p> <p>15 Exhibit 148 with landscaping, basically several additional</p> <p>16 parking lot trees from OZAH Exhibits 93-I and 103-A, as</p> <p>17 well as a rearrangement of two stormwater facilities to</p> <p>18 allow for the inclusion of a pathway from Carnegie Avenue</p> <p>19 to the building.</p> <p>20 These two color renderings show the Applicant's</p> <p>21 vision of what their proposed landscaping will look at --</p> <p>22 look like at some hypothetical time in the future, by the</p> <p>23 tree spread depicted, which is 30 feet for each tree, which</p> <p>24 I -- I -- you can get from this exhibit, at least 20 years</p> <p>25 in the future.</p>

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<p>181</p> <p>1 Look, I'm currently 67. I'm probably going to be</p> <p>2 dead by then.</p> <p>3 Can I please have OZAH Exhibit 227, document SSSS.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: Okay. You should</p> <p>5 be able to see it.</p> <p>6 (Exhibit 227-SSSS introduced.)</p> <p>7 MS. KOSARY: I can see it.</p> <p>8 MR. CHEN: Identify the document please.</p> <p>9 MS. KOSARY: This is OZAH Exhibit 227, document</p> <p>10 SSSS.</p> <p>11 MR. CHEN: Can you identify it please?</p> <p>12 MS. KOSARY: What?</p> <p>13 MR. CHEN: What you --</p> <p>14 HEARING EXAMINER ROBESON HANNAN: Describe what it</p> <p>15 is.</p> <p>16 MS. KOSARY: Oh. This is a Photoshop of what began</p> <p>17 as OZAH Exhibit 73. This shows a better depiction of what</p> <p>18 the so-called landscaping will look like shortly after</p> <p>19 planting. This is the landscaping that the technical staff</p> <p>20 report reviews as more than adequate to screen our home,</p> <p>21 mitigate it -- mitigate any adverse effects, and support a</p> <p>22 waiver of the required 34-foot setback -- side yard</p> <p>23 setback.</p> <p>24 Just have to say that tissue paper would screen and</p> <p>25 mitigate better than this so-called solution.</p>	<p>183</p> <p>1 actually has a projected 20-year spread of only 15 to 18</p> <p>2 feet in this document, half of what is depicted in OZAH</p> <p>3 Exhibits 73 and 148. The canopy for the red buds was set</p> <p>4 at approximately 3 feet.</p> <p>5 There are also newly planted shrubs depicted;</p> <p>6 however, they're so incredibly small compared to the space</p> <p>7 that with the resolution they're nearly invisible. You</p> <p>8 really have to get up close and squint. Even that -- you</p> <p>9 know, to -- to see them.</p> <p>10 These shrubs are also probably, more than likely</p> <p>11 just going to end up as deer food. We have a large deer</p> <p>12 presence because we are so close to Crabbs Branch Stream</p> <p>13 Valley Park. And I can attest that they love yews,</p> <p>14 rhododendrons, and inkberry holly because I personally have</p> <p>15 had them devoured when I tried planting them.</p> <p>16 I particularly like this document from Virginia</p> <p>17 Tech because, basically, the trees the Applicant is</p> <p>18 proposing, the trees that will be planted along the</p> <p>19 driveway, as well as the parking lot trees are basically</p> <p>20 going to be street trees, what you would typically find in</p> <p>21 an urban setting planted along streets and parking lots.</p> <p>22 Now I think we've all seen street trees. They live</p> <p>23 a hard life. Their zones are constrained by asphalt.</p> <p>24 Street trees are often under watered and, take it from</p> <p>25 someone who has planted many trees, you must keep them well</p>
<p>182</p> <p>1 MR. CHEN: Well, what have you done --</p> <p>2 MS. KOSARY: It's a Photoshop --</p> <p>3 MR. CHEN: -- to Photoshop? What do you mean by</p> <p>4 that? Have you added the landscaping? Can you point it</p> <p>5 out to me?</p> <p>6 MS. KOSARY: No. I've actually just reduced the</p> <p>7 size of all the trees. We're going to get into that.</p> <p>8 MR. CHEN: Okay.</p> <p>9 MS. KOSARY: The reference for determining tree</p> <p>10 spread at planting that I used when creating this Photoshop</p> <p>11 was the "Tree Canopy Spread & Coverage in Urban Landscapes"</p> <p>12 website from Virginia Tech's Urban Forestry Division. This</p> <p>13 table, submitted as document CC in OZAH Exhibit 115,</p> <p>14 represents data collected by Virginia Tech on trees</p> <p>15 observed in Mid-Atlantic urban environments.</p> <p>16 This website is part of the Urban Forest 2020</p> <p>17 effort, which was a joint effort of Virginia Tech, the</p> <p>18 University of Maryland, Virginia State University, and the</p> <p>19 University of West Virginia.</p> <p>20 When I created this exhibit in Photoshop, the</p> <p>21 canopy trees depicted -- the silver maples, red maples, and</p> <p>22 the willow oaks -- were all set at a spread of</p> <p>23 approximately 7 feet. The upper range at time of planting</p> <p>24 for the red and silver maples, and I must add very generous</p> <p>25 for the willow oak which is a much narrower tree, which</p>	<p>184</p> <p>1 watered for the first year or so, which is nearly</p> <p>2 impossible to do when trees are along a driveway or in a</p> <p>3 parking lot. Because of this, street trees have a high</p> <p>4 mortality rate and generally go through cycles of</p> <p>5 replanting. They never achieve their full growth potential</p> <p>6 because their root system is constrained, and their</p> <p>7 locations place them under increased environmental stress.</p> <p>8 Basically, the Applicant's OZAH Exhibits 73 and 148</p> <p>9 are fiction -- colorful fiction, but fiction nonetheless.</p> <p>10 The Applicant --</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Can you stop</p> <p>12 there one second?</p> <p>13 MS. KOSARY: Sure.</p> <p>14 HEARING EXAMINER ROBESON HANNAN: And I'm just</p> <p>15 going to turn off my --</p> <p>16 MS. KOSARY: Oh.</p> <p>17 MR. CHEN: What's happened?</p> <p>18 MS. KOSARY: I don't know. Attorney Kline has</p> <p>19 raised his hand.</p> <p>20 HEARING EXAMINER ROBESON HANNAN: I -- I had a cat</p> <p>21 issue. Sorry. We're all good.</p> <p>22 MS. KOSARY: I locked mine -- I locked mine --</p> <p>23 HEARING EXAMINER ROBESON HANNAN: (Inaudible.)</p> <p>24 MS. KOSARY: -- I locked mine in the bedroom.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Well, she was --</p>

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<p style="text-align: right;">185</p> <p>1 never mind. I won't go --</p> <p>2 MR. KLINE: Madam -- Madam Speaker, I -- or,</p> <p>3 Hearing Examiner, I didn't prompt the cat to do whatever,</p> <p>4 but could I -- could I just ask for clarification please?</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Yes.</p> <p>6 MR. KLINE: Dr. Kosary, just tell me if I</p> <p>7 understand the drawing, SSSS. I thought what this was was</p> <p>8 basically what the aerial view of the trees would look at</p> <p>9 the time of planting to show that they would not be as</p> <p>10 large and as covering as much as they would after 20 years.</p> <p>11 Do I understand that what you've actually drawn up here has</p> <p>12 changed the spacing and maybe even the species in those</p> <p>13 trees, or are they just the size, what they'll look like</p> <p>14 when you plant them -- or when they are planted rather?</p> <p>15 MS. KOSARY: The spacing has not changed. The</p> <p>16 species have not changed. Only the size of the trees have</p> <p>17 changed.</p> <p>18 MR. KLINE: Fine. Thank you. I appreciate that.</p> <p>19 MR. CHEN: Are these the size trees that are</p> <p>20 proposed to be installed though?</p> <p>21 MS. KOSARY: Yes, they are. They're proposing 2.5</p> <p>22 inches at diameter at time of planting, and this is what</p> <p>23 the database that I was using was saying at the upper limit</p> <p>24 for this size of tree, what size they would be at planting.</p> <p>25 MR. CHEN: So -- so on SSSS, this exhibit on the</p>	<p style="text-align: right;">187</p> <p>1 HEARING EXAMINER ROBESON HANNAN: We're back on the</p> <p>2 record.</p> <p>3 I believe it's up to you. The ball is in your</p> <p>4 court, Dr. Kosary.</p> <p>5 MS. KOSARY: Yes. Okay. I was talking about the</p> <p>6 Applicant's proposed trees and how they're going to be</p> <p>7 dependent on my property in terms of their need for</p> <p>8 unconstrained land to extend their root system. Excuse me.</p> <p>9 These trees will probably be planted midpoint in the 12-</p> <p>10 foot-wide planting strip, so 6 feet from the curb and 6</p> <p>11 feet from our property line.</p> <p>12 Now the rule of thumb on calculating the critical</p> <p>13 root zone for a tree is that for every inch of tree</p> <p>14 diameter, the critical root zone radius increases by 1.5</p> <p>15 feet.</p> <p>16 The proposed trees are indicated to be 2.5 inches</p> <p>17 in diameter at planting. A tree of this size would have a</p> <p>18 critical root zone with a radius of 3.75 feet. A tree with</p> <p>19 a 4-inch diameter would have a critical root zone with a</p> <p>20 radius of 6 feet and would be up against the asphalt limits</p> <p>21 of the drive aisle. At this point, the only place these</p> <p>22 roots can spread is back towards my property. So I'm going</p> <p>23 to have issues with anything I plant on our side as</p> <p>24 potential screening because of the roots, particularly from</p> <p>25 the silver maples which are a very shallow-rooted tree.</p>
<p style="text-align: right;">186</p> <p>1 screen right now, this is at the time of planting?</p> <p>2 MS. KOSARY: This is at the time of planting.</p> <p>3 MR. CHEN: Okay. Assuming the conditional use is</p> <p>4 approved.</p> <p>5 MS. KOSARY: Assuming the conditional use is</p> <p>6 approved.</p> <p>7 MR. CHEN: Thank you.</p> <p>8 MS. KOSARY: The Applicant's proposed trees are</p> <p>9 actually going to be dependent on my property in terms of</p> <p>10 their need for unconstrained land to extend their root</p> <p>11 system. These trees are probably going to be planted</p> <p>12 midpoint in the 12-foot-wide planting strip, so it's going</p> <p>13 to be 6 feet from the curb and 6 feet from the --</p> <p>14 HEARING EXAMINER ROBESON HANNAN: I'm sorry. Can</p> <p>15 you -- can you stop speaking for a minute? I'm going to go</p> <p>16 off the camera. I'm -- I'm not terminating the hearing. I</p> <p>17 just need to take care of something.</p> <p>18 MR. CHEN: Are we taking a break?</p> <p>19 HEARING EXAMINER ROBESON HANNAN: Well, we can take</p> <p>20 -- that might be the best thing.</p> <p>21 MR. KLINE: Good -- good idea.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: We can take a</p> <p>23 ten-minute break and come back at 3:40. All right?</p> <p>24 (Discussion off the record.)</p> <p>25 (Pause in proceedings.)</p>	<p style="text-align: right;">188</p> <p>1 You cannot plant anything around a silver maple,</p> <p>2 including the red buds and the shrubs that are shown on</p> <p>3 this plan, and expect it to live a long life. You do not</p> <p>4 deliberately plant a silver maple, especially in a narrow</p> <p>5 12-foot planting strip. They're brittle and weak-wooded,</p> <p>6 constantly drop limbs, and are highly susceptible to storm</p> <p>7 damage. As mentioned, the root zone is shallow. And if</p> <p>8 these trees are planted too close to a sidewalk or a</p> <p>9 concrete curb, they can cause upheaval. There are actually</p> <p>10 jurisdictions that prohibit planting silver maples as</p> <p>11 street trees.</p> <p>12 Most of these jurisdictions that -- most of these</p> <p>13 are jurisdictions that planted silver maples because of</p> <p>14 their fast growth rate in the 1950s, '60s, and '70s, in an</p> <p>15 attempt to quickly replace elms lost to Dutch Elm Disease.</p> <p>16 They soon -- they soon learned their lesson.</p> <p>17 Montgomery County does not include silver maples on</p> <p>18 their list of approved street trees.</p> <p>19 Moving on. I do not have to speculate about how</p> <p>20 approval of this application would impact my life in terms</p> <p>21 of the impacts from the parking facility. I'm already</p> <p>22 living it on the other side of our property, and this is</p> <p>23 with a fence, with vegetation far more extensive than</p> <p>24 anything which could ever be provided on the Primrose side,</p> <p>25 and a parking facility which is 17 feet off our property</p>

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<p>189</p> <p>1 line, which is what is required for a permitted use.</p> <p>2 And I cannot emphasize enough that the 12-foot</p> <p>3 setback the Applicant is offering is less than what would</p> <p>4 be required of a parking facility for a permitted use in</p> <p>5 the RE-1 zone, which as I previously stated is 17 feet.</p> <p>6 It's one thing that I can't work in my yard without</p> <p>7 the noise of cars entering and exiting, doors slamming,</p> <p>8 people talking, and the beep, beep or honk, honk as people</p> <p>9 lock and unlock their doors. We're talking about hearing</p> <p>10 all of this noise despite a fence and landscaping. It's --</p> <p>11 it's just high school physics. Sound travels in waves, not</p> <p>12 straight lines. Sound can and does go over walls. The</p> <p>13 only medium through which sound cannot travel is a vacuum.</p> <p>14 I also cannot keep the windows open on Sundays</p> <p>15 because of the noise. And, as I mentioned previously, we</p> <p>16 have some rather nice custom windows. It's surprising how</p> <p>17 noisy a parking lot can get, and now I'm going to have</p> <p>18 noisy parking lots seven days a week. I mean, so much for</p> <p>19 the use and peaceful enjoyment of our home.</p> <p>20 I can currently see cars traveling up and down</p> <p>21 Carnegie Avenue. Even with a 6-foot fence at our property</p> <p>22 line, I would still see cars traveling up and down Carnegie</p> <p>23 Avenue. My view perspective from the first floor of my</p> <p>24 home would be above the top of the fence.</p> <p>25 From OZAH Exhibit 199-B --</p>	<p>191</p> <p>1 MS. KOSARY: It's over -- it's -- it's over my view</p> <p>2 perspective. I mean, I'm going to get -- I'm going to get</p> <p>3 to that.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: Okay. I'll --</p> <p>5 I'll let you go.</p> <p>6 MS. KOSARY: Okay. The real surprising issue about</p> <p>7 the church parking lot, however, is the glare of the parked</p> <p>8 cars on a sunny day. This is very evident from the church</p> <p>9 parking lot, even from inside my home. And, like I said,</p> <p>10 I'm not talking about from the second floor because our</p> <p>11 home is one story. Now I'm going to have the same thing on</p> <p>12 the other side. The glare will be a problem, not just for</p> <p>13 us but also for the Mitchells and the Tapscotts.</p> <p>14 And it's not just going to be the glare of the</p> <p>15 parked cars on a sunny day. It's going to be the glare</p> <p>16 from the parking lot lights and the exterior mounted lights</p> <p>17 which will face our property.</p> <p>18 The photometric data results from OZAH Exhibits</p> <p>19 94-A and -B actually do not address issues such as this.</p> <p>20 Lighting installations are typically tested by measuring</p> <p>21 foot-candles per square meter on the ground. This is</p> <p>22 useful for determining the efficiency and evenness of</p> <p>23 lighting installations.</p> <p>24 This method, however, does not consider the human</p> <p>25 biological response to the point source. It's not the</p>
<p>190</p> <p>1 MR. CHEN: By the way, you're a single-story home</p> <p>2 --</p> <p>3 MS. KOSARY: We're a single-story home. I think</p> <p>4 we've mentioned it --</p> <p>5 MR. CHEN: Yeah, I know you did.</p> <p>6 MS. KOSARY: -- on multiple occasions -- multiple</p> <p>7 times.</p> <p>8 From OZAH Exhibit 199-B, you'll notice that tree</p> <p>9 SP-9 is located just north of our boundary with 7420 and is</p> <p>10 slated for removal because of the proposed Primrose drive</p> <p>11 lane.</p> <p>12 In the fall and winter, when the leaves are off the</p> <p>13 trees, I can see SP-9 from several of my kitchen and all of</p> <p>14 my dining room windows on the west side of my home. In</p> <p>15 fact, at this very moment, I am sitting in my dinning room</p> <p>16 and looking out the window. I can see tree SP-9. If I can</p> <p>17 see tree SP-9, I will also be able to not only see the</p> <p>18 Primrose parking lot but also the drive lane leading into</p> <p>19 this parking lot.</p> <p>20 Any tree at our property boundary which would have</p> <p>21 screened my view is either being removed by the Applicant</p> <p>22 or killed on our side due to construction disturbance.</p> <p>23 The real surprising --</p> <p>24 HEARING EXAMINER ROBESON HANNAN: Well, what about</p> <p>25 -- what about the fence?</p>	<p>192</p> <p>1 light which hits the ground as measured by the photometric</p> <p>2 estimates; it's the light that hits your eyes. It is the</p> <p>3 parking lot lights and the exterior lights which hit your</p> <p>4 eyes, and these are LED lights which are much more intense</p> <p>5 light source and -- than the -- than the traditional high-</p> <p>6 pressure sodium vapor lights which until recently were what</p> <p>7 was commonly found in parking lots.</p> <p>8 And it's going to be just as bad on the other side.</p> <p>9 The Mitchell's family home at 7500 Needwood and the</p> <p>10 Tapscott -- and Mrs. Tapscott's home on Carnegie, they're</p> <p>11 going to have the same view of the parking lot lights and</p> <p>12 will also be looking at exterior wall-mounted lights on the</p> <p>13 building.</p> <p>14 When asked whether the proposed plantings and fence</p> <p>15 would obscure the view of the parking lot and cars from our</p> <p>16 home, in his testimony on day four, beginning on line 19 of</p> <p>17 page 124, Mr. Jolley, the Applicant's expert in landscape</p> <p>18 architecture, stated that the intent of his design in terms</p> <p>19 of screening of cars, car headlights, and the parking lot</p> <p>20 was to obscure from a ground-level perspective.</p> <p>21 This is -- this was also stated by Mr. Alt on day</p> <p>22 three at the beginning of page 280 and the beginning of</p> <p>23 page 281.</p> <p>24 The only way the proposed 6-foot fence and so-</p> <p>25 called landscape buffer would mitigate the glare from car</p>

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<p style="text-align: right;">193</p> <p>1 headlights and screen us from the parking lots is if we 2 lived in a tent at ground level. 3 MR. CHEN: Why is that? 4 MS. KOSARY: Our home is one story; however, it's 5 not built on a slab at ground level. It's built on a full 6 basement. Our first floor is 3 feet above -- off the 7 ground level, which is pretty typical for a home with a 8 full basement. Our eye-level view from our home from our 9 first floor will extend over the height and sightline of 10 the fence. We will see the parking lot lights, especially 11 in the fall and winter, because the trees being planted are 12 deciduous -- just the time of year when the parking lot 13 lights will be on for the maximum amount of time. 14 We will see and hear the people and the cars coming 15 and going throughout the parking lot, the same as we do 16 with the church. And the glare from car headlights will 17 shine through our windows. The glare from car headlights 18 from the church parking lot also shine into our windows. 19 Light travels in a straight line; however, lighting 20 fixtures, such as car headlights, have a dispersion 21 pattern. 22 The church's use of the parking lot in the evening 23 is rare. Primrose's use will be five days a week, year- 24 round, from the hours of 6 a.m. until at least 9 p.m., when 25 the cleaning staff leaves, hours during a significant part</p>	<p style="text-align: right;">195</p> <p>1 Thank you. 2 MS. KOSARY: Okay. Now Montgomery County Planning 3 has actually been making use of the Model Lighting 4 Ordinance in setting conditions on lighting for site plans 5 and conditional uses since at least 2014. A search for 6 their website yields numerous instances where adherence to 7 Model Lighting Ordinance recommendations for exterior 8 lighting were included as conditions from various site 9 plans and conditional uses. 10 I want to point out, Madam Examiner, that you may 11 have last seen the use of the Model Lighting Ordinance as 12 part of a recommended condition on CU 2017-15, which was 13 Dr. Boyd's Veterinary Resort on Rockville Pike. Yes. 14 Now the Model Lighting Ordinance utilizes five 15 lighting zones to classify land use and its appropriate 16 lighting levels. Lighting zones were originally developed 17 by the International Commission on Illumination and 18 introduced in the U.S. by the IESNA in 1999. 19 You can find all of the lighting zone 20 classifications and descriptions on page 7 of the User's 21 Guide, which, as I said, was OZAH Exhibit 176, document NN. 22 The Model Lighting Ordinance would classify my 23 neighborhood as lighting zone one or LZ-1 for short. This 24 zone is the default for large density -- for low-density 25 residential areas in single- and two-family homes. The</p>
<p style="text-align: right;">194</p> <p>1 of the year which will either start in darkness, end in 2 darkness, or start and end in darkness. 3 Now if you asked me what my neighborhood was like 4 at night, I would tell you that it's dark, about what would 5 be expected in a low-density residential wedge area with 6 large lots. The amount of lighting being proposed by this 7 application is not at all compatible with my neighborhood. 8 So, as I previously mentioned, I'm a mathematical 9 statistician, and I wondered whether I could quantify this 10 incompatibility. That's what we do; we quantify things. 11 And I decided to turn to the Model Lighting 12 Ordinance. For those who do not know, the Model Lighting 13 Ordinance is a joint effort between the Illuminating 14 Engineering Society of North America, or the IESNA, and the 15 International Dark-Sky Association, or the IDSA. The Model 16 Lighting Ordinance and User's Guide are documents NN of 17 Exhibit 176. Going forward, I'm going to refer to this 18 document as -- as the User's Guide. 19 HEARING EXAMINER ROBESON HANNAN: I'm sorry. Which 20 exhibit was this? 21 MS. KOSARY: It's document NN of Exhibit 176. 22 HEARING EXAMINER ROBESON HANNAN: Okay. Thank you. 23 MR. CHEN: Three Ns? 24 MS. KOSARY: Two Ns. NN. 25 HEARING EXAMINER ROBESON HANNAN: I've got it.</p>	<p style="text-align: right;">196</p> <p>1 concept for the Model Lighting Ordinance is to set limits 2 on the total amount of non-residential artificial nighttime 3 light allowed for a site within a given lighting zone. 4 The light is measured in lumens, described on page 5 37 of the User's Guide as, quote, The unit of measure used 6 to quantify the amount of light produced by a lamp or 7 emitted by a luminaire, unquote. 8 The amount of allowable lumens within a lighting 9 zone for non-residential lighting can be calculated using 10 one of two methods: prescriptive or performance. 11 The prescriptive method is applied -- is applicable 12 to most sites as stated on page 11 of the User's Guide, 13 contains precise and easily verifiable requirements and is 14 extremely easy to calculate. It does not require the 15 services of a lighting professional to use this method. 16 Under the prescriptive method, allowable lumens for 17 a non-residential use can be calculated using either the 18 number of parking spaces, if there are ten or less, or the 19 square feet of hardscape. Since this application is 20 calling for more than ten parking spaces, the total allowed 21 lumens per site for non-residential lighting would use the 22 hardscape method of -- the hardscape area method. 23 As noted on page 11 of the User's Guide, this lumen 24 allowance provides the basic level of lighting for parking 25 lots, doors, and other sensitive areas that is consistent</p>

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<p style="text-align: right;">197</p> <p>1 within any given -- a given lighting zone.</p> <p>2 These levels are periodically reviewed by the IESNA</p> <p>3 and the ISD -- the IDSA experts and are evidence based,</p> <p>4 utilizing the increasing body of research on the impacts of</p> <p>5 outdoor nighttime lighting.</p> <p>6 The base allowance of lumens per square foot of</p> <p>7 hardscape for non-residential outdoor lighting can be found</p> <p>8 in table B as in boy on page 24 of the User's Guide for</p> <p>9 each of the five lighting zones defined by Model -- defined</p> <p>10 by the Model Lighting Ordinance.</p> <p>11 Page 35 of the User's Guide defines hardscape as,</p> <p>12 quote, Improvements to the site, including parking lots,</p> <p>13 drives, entrances, curbs, ramps, stairs, steps, medians,</p> <p>14 walkways, and non-vegetated landscaping that is 10 feet or</p> <p>15 less in width. Materials may include concrete, asphalt,</p> <p>16 stone, gravel, etcetera, unquote.</p> <p>17 The area included as hardscape does not include the</p> <p>18 building footprint. In this case, the playground would</p> <p>19 also not be included obviously. Because although it is an</p> <p>20 impervious surface, it does not meet the definition of</p> <p>21 hardscape on page 35 of the User's Guide.</p> <p>22 Now the square feet of hardscape for this proposed</p> <p>23 use is actually easy to calculate. The project data box on</p> <p>24 Exhibit 199-D as in David indicates that the property is</p> <p>25 121,798 square feet after subtracting the Needwood and</p>	<p style="text-align: right;">199</p> <p>1 And can I please have OZAH Exhibit 94-A.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Okay. You should</p> <p>3 be seeing it.</p> <p>4 MS. KOSARY: Yes, I am. Thank you.</p> <p>5 So, on the screen, we're looking at --</p> <p>6 HEARING EXAMINER ROBESON HANNAN: If you can read</p> <p>7 it is another matter, but --</p> <p>8 MS. KOSARY: Yeah.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: -- let me see if</p> <p>10 I can -- let me try this. Okay.</p> <p>11 MS. KOSARY: Okay.</p> <p>12 MR. CHEN: And, again, what is the exhibit number</p> <p>13 on this?</p> <p>14 MS. KOSARY: This is -- this is -- on the screen,</p> <p>15 we're looking at OZAH Exhibit 94-A.</p> <p>16 MR. CHEN: Photometric plan?</p> <p>17 MS. KOSARY: It's photometric.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: This is 94-B.</p> <p>19 MS. KOSARY: Oh, I need 94-A.</p> <p>20 HEARING EXAMINER ROBESON HANNAN: Okay. Hold on.</p> <p>21 Oh, wait. Hold on. I'm sorry. Okay. Now -- I'll be</p> <p>22 right there. I'm not -- okay. I think I have it.</p> <p>23 MS. KOSARY: Okay.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: This one. Okay.</p> <p>25 Yes, this is -- now this is B again.</p>
<p style="text-align: right;">198</p> <p>1 Carnegie dedications. Document HH of OZAH Exhibit 176 at</p> <p>2 OZAH Exhibit 198 indicates 47.8 percent impervious. OZAH</p> <p>3 Exhibit 199-D indicates that the building footprint is</p> <p>4 13,000 square feet and the playground is 14,960 square</p> <p>5 feet.</p> <p>6 Taken together, the lot area square feet at 121,798</p> <p>7 times the percent impervious of 47.8 percent gives 58,220</p> <p>8 square feet of impervious surface. Subtracting the</p> <p>9 building footprint of 13,000 square feet and the playground</p> <p>10 footprint of 14,960 square feet gives a total hardscape</p> <p>11 area of approximately 30,260 feet.</p> <p>12 For the purpose of the analysis that I am doing,</p> <p>13 I'm actually going to round this up to 35,000 square feet,</p> <p>14 which, believe me, is -- is generous rounding and to the</p> <p>15 Applicant's advantage.</p> <p>16 This is basically the square footage for the</p> <p>17 parking lot, driveway, walkways, and sidewalks.</p> <p>18 Turning to page B -- table B, turning to table B on</p> <p>19 page 24 of the User's Guide, we find that for lighting zone</p> <p>20 one, the base allowance is 1.25 lumens per square foot of</p> <p>21 hardscape. This application does not qualify for any of</p> <p>22 the additional allowances specified in this table, so the</p> <p>23 total allowed lumens for non-residential outdoor lighting</p> <p>24 for this site at the current hardscape square footage is</p> <p>25 43,750 lumens.</p>	<p style="text-align: right;">200</p> <p>1 MS. KOSARY: That's B again.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Okay. Hold on</p> <p>3 one second. Okay. Now this --</p> <p>4 MS. KOSARY: (Inaudible.)</p> <p>5 HEARING EXAMINER ROBESON HANNAN: -- should be it.</p> <p>6 Whoops. This should be -- this is 94-A.</p> <p>7 MS. KOSARY: Right.</p> <p>8 MR. CHEN: On the screen --</p> <p>9 MS. KOSARY: So what's on the screen now is OZAH</p> <p>10 Exhibit 94-A.</p> <p>11 So our question is, what is the Primrose</p> <p>12 application proposing for lighting on this site?</p> <p>13 If you go to the table at the bottom of this</p> <p>14 exhibit, you will note 15 Cree XSPW series wall pack</p> <p>15 luminaires, eight Cree OSQ series area luminaires, and 15</p> <p>16 Eaton Streetwork utility lights.</p> <p>17 MR. CHEN: You following, Madam Examiner?</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Yes. My cursor</p> <p>19 should be on the --</p> <p>20 MS. KOSARY: Her cursor has been on.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: -- the schedule</p> <p>22 of lighting in the lower left of 94-B.</p> <p>23 MS. KOSARY: Yes. The 15 Cree wall pack luminaires</p> <p>24 are exterior wall-mounted light fixtures which will be</p> <p>25 installed on all four sides of the building. The eight</p>

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<p style="text-align: right;">201</p> <p>1 Cree area luminaires will light the parking light. The 2 five Eaton utility lights will be installed on the western 3 boundary of the property inside of the Applicant's property 4 line along Carnegie Avenue. 5 As indicated on the table on OZAH Exhibit 94-A, the 6 15 building wall-mounted light fixtures are 2,673 lumens 7 each, bringing their total to 40,095 lumens. The eight 8 parking lot fixtures are 8,950 lumens each, bringing their 9 total to 71,600 lumens. 10 Can I please get OZAH Exhibit 227, document TTTT. 11 HEARING EXAMINER ROBESON HANNAN: Three Ts? 12 MS. KOSARY: Four Ts. 13 HEARING EXAMINER ROBESON HANNAN: Four Ts. 14 MS. KOSARY: Four Ts. Q, R, S -- okay. 15 (Exhibit 227-TTTT introduced.) 16 MR. CHEN: What's the exhibit on the screen now? 17 MS. KOSARY: This is OZAH Exhibit 227, document 18 TTTT, so -- 19 MR. CHEN: Are you sure? I can't -- 20 MS. KOSARY: -- that's four Ts. 21 MR. CHEN: Okay. 22 MS. KOSARY: Yes, that's correct. The per unit 23 lumens for the Eaton utility lights is impossible to gauge 24 from the table presented in OZAH Exhibit 94-A. For this, 25 you need to turn to what should've been OZAH Exhibit 94-D.</p>	<p style="text-align: right;">203</p> <p>1 MS. KOSARY: We have what I'm now calling Exhibit 2 227, document TTTT. 3 MR. CHEN: Is that correct, Madam Examiner? 4 HEARING EXAMINER ROBESON HANNAN: Yes. And -- 5 okay. So what -- which of the lamps shown on the -- 6 MS. KOSARY: These are the -- 7 HEARING EXAMINER ROBESON HANNAN: -- (inaudible). 8 MS. KOSARY: These are the Eaton utility lights 9 which are -- 10 HEARING EXAMINER ROBESON HANNAN: Yes. 11 MS. KOSARY: -- going to be along Carnegie Avenue. 12 HEARING EXAMINER ROBESON HANNAN: Okay. 13 MS. KOSARY: Okay. 14 MR. CHEN: And what is this exhibit? 15 MS. KOSARY: This is OZAH Exhibit 227 -- 16 MR. CHEN: Other than just -- 17 MS. KOSARY: Oh, oh. This is -- this is just the 18 -- the specification sheet for -- for those lights, for the 19 Eaton Streetworks -- the Eaton Streetworks lights that are 20 going to go along Carnegie Avenue. 21 MR. CHEN: Thank you. Go ahead. 22 MS. KOSARY: Okay. I want you to note -- that is 23 indicated back on the table in OZAH Exhibit 94-A. 24 This light fixture will utilize light engine A6, 25 will be symmetric, and 4,000K.</p>
<p style="text-align: right;">202</p> <p>1 I see -- I actually crossed that out at the top. 2 HEARING EXAMINER ROBESON HANNAN: Wait. Is this a 3 new exhibit that you're -- 4 MS. KOSARY: Yeah, that -- 5 HEARING EXAMINER ROBESON HANNAN: -- introducing? 6 MS. KOSARY: Yeah. 7 HEARING EXAMINER ROBESON HANNAN: Or -- 8 MS. KOSARY: It was -- 9 HEARING EXAMINER ROBESON HANNAN: (Inaudible.) 10 MS. KOSARY: -- it was actually -- it was actually 11 entered into record at the same time -- 12 HEARING EXAMINER ROBESON HANNAN: Okay. 13 MS. KOSARY: -- as OZAH -- 14 HEARING EXAMINER ROBESON HANNAN: Why is -- okay. 15 Why is 94-D crossed off? 16 MS. KOSARY: Because when I was labeling these for 17 myself initially many years ago -- 18 HEARING EXAMINER ROBESON HANNAN: Oh, I'm sorry. 19 Okay. 20 MS. KOSARY: I actually thought it was 94-D because 21 I had it. It was entered into record at the same time as 22 OZAH Exhibits 94-A through -C, and it just seems to have 23 been missed in the exhibit list. 24 MR. CHEN: So what -- what do we have on the 25 screen?</p>	<p style="text-align: right;">204</p> <p>1 If -- I think if you want to pull this exhibit -- 2 HEARING EXAMINER ROBESON HANNAN: Wait. What are 3 -- I don't -- I'm -- 4,000K of what? Can you point me to 4 -- 5 MS. KOSARY: Okay. I think -- I think I've got it 6 -- do I have it highlighted? 7 HEARING EXAMINER ROBESON HANNAN: I don't -- oh. 8 MS. KOSARY: Yes, yes. 9 HEARING EXAMINER ROBESON HANNAN: You want this 10 one. I'm sorry. I missed that. 11 MS. KOSARY: It's just the second page. 12 HEARING EXAMINER ROBESON HANNAN: Okay. 13 MS. KOSARY: There are lots of different 14 configurations, and I'm telling you that the configuration 15 for this light is -- what did I say? Light engine A6. 16 It's symmetric, and it's 4,000K. 17 MR. CHEN: So this is -- 18 MS. KOSARY: So -- 19 MR. CHEN: -- this is the light proposed by the 20 Applicant? 21 MS. KOSARY: This is the light proposed by the 22 Applicant. Each light fixture, therefore, will be 5,951 23 lumens, bringing their total to 29,755 lumens. 24 I also just want to make a note that OZAH Exhibit 25 94-A only shows the location of four of these five</p>

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<p style="text-align: right;">205</p> <p>1 streetlights along Carnegie --</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Um-hmm.</p> <p>3 MS. KOSARY: -- and they seem to have possibly</p> <p>4 misplaced the light, and it looks like it might actually be</p> <p>5 -- accidentally have been put within the building footprint</p> <p>6 in the east corner closest to the Mitchells. Because</p> <p>7 they're only showing four of these five lights at the</p> <p>8 moment.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: And -- and are</p> <p>10 you talking about OZAH Exhibit -- I forgot the number --</p> <p>11 94?</p> <p>12 MS. KOSARY: 94-A. Right.</p> <p>13 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>14 MS. KOSARY: Okay.</p> <p>15 MR. CHEN: Is the record clear on this?</p> <p>16 HEARING EXAMINER ROBESON HANNAN: Yes.</p> <p>17 MS. KOSARY: Yeah.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Well, I am.</p> <p>19 MS. KOSARY: We may be missing a light.</p> <p>20 Now can I please have OZAH Exhibit 227, document</p> <p>21 UUUU.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: Just one moment.</p> <p>23 Okay. Oh.</p> <p>24 (Exhibit 227-UUUU introduced.)</p> <p>25 MS. KOSARY: Okay. This is a table that I put</p>	<p style="text-align: right;">207</p> <p>1 141; correct?</p> <p>2 MS. KOSARY: Correct.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Then you divided</p> <p>4 that by the hard square feet of hardscape; correct?</p> <p>5 MS. KOSARY: (Inaudible.) Right. If you go down</p> <p>6 to where the asterisk is --</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Yeah.</p> <p>8 MS. KOSARY: -- in this table, it's (inaudible).</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Where is the</p> <p>10 asterisk?</p> <p>11 MS. KOSARY: Oh.</p> <p>12 MR. CHEN: Where is the asterisk?</p> <p>13 MS. KOSARY: The asterisk is side --</p> <p>14 HEARING EXAMINER ROBESON HANNAN: (Inaudible.)</p> <p>15 MS. KOSARY: -- side allowed total lumen -- side</p> <p>16 allowed total initial luminaires, lumens. Site</p> <p>17 description, it's low-density residential. Lighting zone,</p> <p>18 we're at LZ-1. Hardscape area: 35,000. Allowed lumens</p> <p>19 per square foot of hardscape, which was taken from table B</p> <p>20 of the User's Guide, of 1.25, and the site allowed total</p> <p>21 initial lumens, which is just lumens times the square feet</p> <p>22 of -- of hardscape area.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>24 MS. KOSARY: So lighting zone one is indicated --</p> <p>25 HEARING EXAMINER ROBESON HANNAN: The difference</p>
<p style="text-align: right;">206</p> <p>1 together.</p> <p>2 MR. CHEN: What is this exhibit number?</p> <p>3 MS. KOSARY: This OZAH Exhibit 227, document UUUU,</p> <p>4 so it's four U's.</p> <p>5 MR. CHEN: Thank you.</p> <p>6 MS. KOSARY: It's an exhibit I put together</p> <p>7 basically putting in a table everything that for the past</p> <p>8 few minutes I talked about verbally.</p> <p>9 So note that this brings the total lumens to</p> <p>10 141,450.</p> <p>11 MR. CHEN: Could you just explain the methodology</p> <p>12 shown on the table?</p> <p>13 MS. KOSARY: Okay. It's -- it's actually basically</p> <p>14 just a simple Excel spreadsheet. You have the lamp</p> <p>15 descriptions that we were talking about, the quantity of</p> <p>16 the lamps, and the -- the -- the luminaire lumens, as we</p> <p>17 discussed, and then their total. We've got the total</p> <p>18 initial luminaire lumens, which is the 141,450.</p> <p>19 And I just want you to note that this is almost</p> <p>20 100,000 lumens more than indicated for the total allotted</p> <p>21 lumens per site for non-residential outdoor lighting for</p> <p>22 lighting zone one under the Model Lighting Ordinance</p> <p>23 recommendations.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: Okay. Just stop</p> <p>25 a minute. You got to total initial luminaire lumens of</p>	<p style="text-align: right;">208</p> <p>1 versus total allowed would be the difference between what</p> <p>2 the user manual states is an acceptable level and the</p> <p>3 actual lumens that are going to be on this site. Is that a</p> <p>4 --</p> <p>5 MS. KOSARY: That is -- that is correct. It would</p> <p>6 be the --</p> <p>7 HEARING EXAMINER ROBESON HANNAN: According to your</p> <p>8 research?</p> <p>9 MS. KOSARY: According to my research.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: Yeah. Okay.</p> <p>11 MS. KOSARY: I want to point out in fact that this</p> <p>12 comes to 5.46 --</p> <p>13 HEARING EXAMINER ROBESON HANNAN: What comes --</p> <p>14 MS. KOSARY: -- which is --</p> <p>15 HEARING EXAMINER ROBESON HANNAN: -- to 5.46?</p> <p>16 MS. KOSARY: The number of lumens per square foot,</p> <p>17 which is the line actual lumens per square feet of</p> <p>18 hardscape, so actually 5.46. It's just that 141,450</p> <p>19 divided by the 35,000.</p> <p>20 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>21 MS. KOSARY: And I just want to point out that 5.46</p> <p>22 lumens per square foot of hardscape is actually at the</p> <p>23 level of LZ-3, as indicated on page B -- table B of page</p> <p>24 24.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: What -- what is</p>

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<p>209</p> <p>1 it?</p> <p>2 MS. KOSARY: It's the table B of page 34 -- page</p> <p>3 24. Table B, page 24 in the User's Guide, which was OZAH</p> <p>4 Exhibit 227 --</p> <p>5 HEARING EXAMINER ROBESON HANNAN: What -- what zone</p> <p>6 would that be in?</p> <p>7 MS. KOSARY: That's LZ-3, lighting zone three.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: Okay. And what</p> <p>9 is lighting zone three?</p> <p>10 MS. KOSARY: Lighting zone three, which you have to</p> <p>11 go to page 7 of the User's Guide --</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Yeah.</p> <p>13 MS. KOSARY: -- to find lighting zone three, it's</p> <p>14 the default zone for business districts in a large city,</p> <p>15 including business zone districts and commercial mixed-use</p> <p>16 areas.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>18 MS. KOSARY: Okay. And before -- because I know</p> <p>19 I'm going to get asked this -- before anybody asks about</p> <p>20 how we light the exterior of our home, let me say that the</p> <p>21 only lights that we have on every evening are the seven</p> <p>22 1-watt LED uplights in our water feature and two strings of</p> <p>23 Christmas lights on the evergreen next to this feature.</p> <p>24 These lights are timed to go on around dusk and turn off</p> <p>25 around 10 p.m. In total, the seven LED lights produce 420</p>	<p>211</p> <p>1 along the driveway or the path from Carnegie Avenue to the</p> <p>2 front entrance. The driveway entrance is not lit.</p> <p>3 And I'm concerned that there is enough -- not</p> <p>4 enough lights in the parking lot for pedestrians to make</p> <p>5 their way from several of the parking spaces on the east</p> <p>6 and the south side around the large stormwater facility in</p> <p>7 the middle while trying -- while trying to get to the front</p> <p>8 door, especially if they're accompanied by small children.</p> <p>9 Any additional lighting will bring the lumen total</p> <p>10 for this site even higher. The characteristics that drive</p> <p>11 good parking lot lighting, good path lighting and</p> <p>12 pedestrian safety, particularly pedestrians with small</p> <p>13 children, for a large 195-child daycare center, it is</p> <p>14 incongruent with compatibility in a single-family zoned</p> <p>15 residential neighborhood. This is a commercial-level</p> <p>16 establishment with commercial-level lighting requirements.</p> <p>17 Finally, I can't leave LED lighting without</p> <p>18 mentioning the B-U-G, or BUG, rating of the five Eaton</p> <p>19 Streetwork lights proposed for the sidewalk along Carnegie</p> <p>20 Avenue and the eight Cree OSQ area luminaires as well as</p> <p>21 the Kelvins proposed for all the luminaires specified.</p> <p>22 BUG is defined on page 34.</p> <p>23 MR. CHEN: What exhibit?</p> <p>24 MS. KOSARY: Of the User's Guide, which was OZAH</p> <p>25 Exhibit --</p>
<p>210</p> <p>1 lumens, which is about equivalent to one 40-watt</p> <p>2 incandescent light bulb.</p> <p>3 Beyond this, we only turn on our exterior lights if</p> <p>4 we're expecting visitors or deliveries after dark. So I</p> <p>5 have to say, if you come over and we're not expecting you,</p> <p>6 I suggest you bring a flashlight. And this is rather</p> <p>7 typical, pretty much of how my neighbors light -- light</p> <p>8 their homes at night in our area. It is just really dark</p> <p>9 here.</p> <p>10 Honestly, the goal of parking lot lighting is</p> <p>11 safety. Parking lots that are not well lit can be</p> <p>12 dangerous for pedestrians. In fact, I don't think that</p> <p>13 there is enough lighting in this parking facility. I live</p> <p>14 in a home that has a similar driveway. It is long, and</p> <p>15 after sunset it is extremely dark. And I only have one</p> <p>16 car, not the multiple of cars which will be traveling up</p> <p>17 and down this driveway in the dark during many months of</p> <p>18 the year. So I strongly suspect that if this application</p> <p>19 is approved, after operations begin, the Applicant will be</p> <p>20 coming back requesting modifications to add lighting along</p> <p>21 the driveway because of safety concerns.</p> <p>22 I also do not see any provisions for path lighting</p> <p>23 from the parking lot to the front entrance, which from OZAH</p> <p>24 Exhibit 94-A appears to be totally in the dark. There's no</p> <p>25 path lighting on the sidewalk leading in from Needwood Road</p>	<p>212</p> <p>1 MR. CHEN: Yeah.</p> <p>2 MS. KOSARY: -- 226 -- 227 -- what was that?</p> <p>3 Document NNN?</p> <p>4 As a quote, Luminaire classification system that</p> <p>5 classifies backlight, uplight, and glare, unquote.</p> <p>6 Can I please have OZAH Exhibit 227, document TTTT,</p> <p>7 again.</p> <p>8 Okay. According to the specification sheet for the</p> <p>9 Eaton Streetwork lights, it rates at U5 for uplight, which</p> <p>10 is indicated on page 27 of the User's Guide as measuring</p> <p>11 light emitted above the 90 degree or horizontal plane.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Now where --</p> <p>13 where are you reading from this --</p> <p>14 MS. KOSARY: It's going to be the second page, and</p> <p>15 it's also highlighted in --</p> <p>16 HEARING EXAMINER ROBESON HANNAN: Oh, BUG rating.</p> <p>17 I see.</p> <p>18 MS. KOSARY: BUG rating, BUG rating. It's a U5.</p> <p>19 Basically, this fixture is directing most of its</p> <p>20 illumination above the horizontal plane. This results in</p> <p>21 what is referred to as sky glow.</p> <p>22 Table C-2 on page 28 of the User's Guide indicates</p> <p>23 that the maximum allowable uplight in the LZ-1 zone is a</p> <p>24 U1. Nowhere in this table is a U5 even permissible.</p> <p>25 Can I please have OZAH Exhibit 94-A.</p>

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<p style="text-align: right;">213</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Okay. You should</p> <p>2 be able to see it.</p> <p>3 MS. KOSARY: Yes, we can.</p> <p>4 MR. CHEN: Is that -- it's 93.</p> <p>5 MS. KOSARY: This is -- on the screen, we have OZAH</p> <p>6 Exhibit 94-A. If you look at OZAH Exhibit 94-A, you'll see</p> <p>7 that this luminaire -- these luminaires, all these four, if</p> <p>8 you can find just one of them, their symbol is a circle.</p> <p>9 There's one almost -- you -- you almost were on it, I</p> <p>10 believe. Right there.</p> <p>11 HEARING EXAMINER ROBESON HANNAN: And when -- when</p> <p>12 -- for the record, we're pointing at a point that is in the</p> <p>13 same line as the northern edge of the parking area on the</p> <p>14 perimeter of the property.</p> <p>15 MS. KOSARY: Okay. If you look at OZAH Exhibit</p> <p>16 94-A, you'll observe that these luminaires put out very few</p> <p>17 foot-candles even right next to the fixture.</p> <p>18 MR. CHEN: Fiction?</p> <p>19 MS. KOSARY: Of the light fixture, the Eaton</p> <p>20 Streetwork light fixture. It's basically wasted light.</p> <p>21 And I can only speculate that this fixture was selected</p> <p>22 because it's the only one which would generate the 0.1</p> <p>23 foot-candles or less at the Mitchell's and Tapscott's</p> <p>24 property lines as required by the zoning --</p> <p>25 HEARING EXAMINER ROBESON HANNAN: (Inaudible) --</p>	<p style="text-align: right;">215</p> <p>1 MS. KOSARY: (Inaudible.)</p> <p>2 HEARING EXAMINER ROBESON HANNAN: -- it's nothing</p> <p>3 -- I'll -- I'll --</p> <p>4 MS. KOSARY: Yeah.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: -- ask the other</p> <p>6 parties to this as well just to say which property line are</p> <p>7 we talking about.</p> <p>8 So go ahead. I'm sorry I -- I digressed.</p> <p>9 MS. KOSARY: Okay. Okay. So I want to go to OZAH</p> <p>10 Exhibit 227, document CCCCC, so that's five Cs.</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Five Cs.</p> <p>12 MS. KOSARY: Five Cs.</p> <p>13 HEARING EXAMINER ROBESON HANNAN: And this is what?</p> <p>14 This is 94-A, so I have to go to -- I'm sorry. Which</p> <p>15 number?</p> <p>16 MS. KOSARY: Five Cs.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: But 227-CCCCC?</p> <p>18 MS. KOSARY: 227-CCCCC.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: No.</p> <p>20 MS. KOSARY: I think it's going to be the last.</p> <p>21 No, five Cs.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: I know. Okay.</p> <p>23 This is -- oh, five Cs.</p> <p>24 MS. KOSARY: Five Cs.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Okay. Sorry.</p>
<p style="text-align: right;">214</p> <p>1 MS. KOSARY: -- (inaudible).</p> <p>2 HEARING EXAMINER ROBESON HANNAN: -- and I'm</p> <p>3 looking at this photometric plan, it says 1.4.</p> <p>4 MS. KOSARY: Yeah, that's not very much. If you go</p> <p>5 and, like, look at -- like at --</p> <p>6 HEARING EXAMINER ROBESON HANNAN: No, I know. But</p> <p>7 it -- I thought the standard was 0.1 at the --</p> <p>8 MS. KOSARY: Right, at the property line. But if</p> <p>9 you look at the property line of, like, where the Mitchells</p> <p>10 are, which would be down where -- where -- probably where</p> <p>11 you're at the 0.1 --</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Right.</p> <p>13 MS. KOSARY: Right. Like I said, it's only my</p> <p>14 speculation that -- that maybe possibly this was the only</p> <p>15 one they could find, the only luminaire they could find</p> <p>16 that would generate that few foot-candles at the property</p> <p>17 line. I don't know why you would be putting a light that</p> <p>18 has just that much punch in --</p> <p>19 HEARING EXAMINER ROBESON HANNAN: Where is the</p> <p>20 property line on this exhibit after dedication?</p> <p>21 MS. KOSARY: Well, the property line for the</p> <p>22 Mitchells and the Tapscotts, I --</p> <p>23 HEARING EXAMINER ROBESON HANNAN: Well, I've never</p> <p>24 heard of using the property line of the neighbor's</p> <p>25 property. I've always heard -- well, anyway --</p>	<p style="text-align: right;">216</p> <p>1 Well, this is the last one I have.</p> <p>2 MS. KOSARY: Yes.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: So there's four.</p> <p>4 Now we're in five.</p> <p>5 MS. KOSARY: There. Okay.</p> <p>6 (Exhibit 227-CCCCC introduced.)</p> <p>7 MS. KOSARY: This is OZAH Exhibit 227, document</p> <p>8 CCCCC, so five Cs. This pertains to the G rating in the</p> <p>9 BUG. The G rating in the BUG rating system stands for</p> <p>10 glare. And I just included this because it's just a nice</p> <p>11 illustration of what is going on in terms of glare from a</p> <p>12 street or parking lot light.</p> <p>13 Page 27 of the User's Guide notes that glare can be</p> <p>14 annoying or visually disabling.</p> <p>15 The G rating looks at the amount of front light and</p> <p>16 backlight in what they refer to as the high zone -- you see</p> <p>17 that marked on this illustration -- which is basically the</p> <p>18 amount of light at the 60- to 80-degree angle, and the very</p> <p>19 high zone, which is the light at the 80 to 90 percent</p> <p>20 angle. As you can see, the high zone -- the high zone</p> <p>21 basically is -- is basically your viewer perspective --</p> <p>22 your pedestrian on the ground perspective and your viewer</p> <p>23 perspective from, like, first floor -- first floors of</p> <p>24 houses.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: All right.</p>

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<p style="text-align: right;">217</p> <p>1 MS. KOSARY: Table C-3 from page 28 of the User's</p> <p>2 Guide indicates that the maximum allowable glare in the</p> <p>3 LZ-1 zone is a G1.</p> <p>4 And if I can please get OZAH Exhibit 227, document</p> <p>5 TTTT. Right. Back to the Eaton.</p> <p>6 According to the specification sheet which was</p> <p>7 discussed previously, the Eaton Streetwork lights have a</p> <p>8 glare rating of G3, as highlighted on the exhibit under BUG</p> <p>9 rating.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: Right.</p> <p>11 MS. KOSARY: It's B2, U5, G3.</p> <p>12 Table 3 from page 28 of the User's Guide indicates</p> <p>13 that the maximum allowable glare in the LZ-1 zone is</p> <p>14 actually just a G1.</p> <p>15 Just remind you that these -- these are the lights</p> <p>16 that are going to be shining on the Mitchells and the</p> <p>17 Tapscotts.</p> <p>18 Now according to the table in OZAH Exhibit 94-A,</p> <p>19 the Cree OSQ series area luminaires, these are the eight</p> <p>20 parking lot lights, are actually type four, medium, with</p> <p>21 backlight shield, B input, hard designator, 5,700 Kelvin.</p> <p>22 And can I please get OZAH Exhibit 227, document</p> <p>23 DDDDD, so that's five Ds.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: Wait a minute.</p> <p>25 I'm -- five Ds?</p>	<p style="text-align: right;">219</p> <p>1 EEEEE, which is nothing more than a large version of the</p> <p>2 test report for the Cree OSQ series area luminaires. So I</p> <p>3 just made a larger, more enhanced version to make it easier</p> <p>4 to view and interpret this -- this report.</p> <p>5 MR. CHEN: You haven't changed it?</p> <p>6 MS. KOSARY: I haven't changed it, no, except for</p> <p>7 putting some labels on it and -- and enhancing some stuff,</p> <p>8 like in different colors, to make it easier.</p> <p>9 So when you conduct a test like this, the luminaire</p> <p>10 would be sitting exactly in the middle of the circle where</p> <p>11 the green line comes down and the 90-degree line comes</p> <p>12 across.</p> <p>13 In this case, it would be a Cree OSQ series area</p> <p>14 luminaire -- the parking lot lights. This luminaire is</p> <p>15 very well shielded in terms of uplight, above the 90-degree</p> <p>16 horizontal plane, to see everything that's above that 90-</p> <p>17 degree line running horizontally, both to the front of the</p> <p>18 light, which I've added that label, and the back of the</p> <p>19 light.</p> <p>20 This luminaire is not totally shielded in terms of</p> <p>21 backlight, so we're talking about everything to the left of</p> <p>22 the green line, running vertically through the screen.</p> <p>23 It's actually minimal, but I'll say from my</p> <p>24 experience with the church parking lights, I can tell you</p> <p>25 that it's going to be annoying and even more so than the</p>
<p style="text-align: right;">218</p> <p>1 MS. KOSARY: Five Ds.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Let me --</p> <p>3 MS. KOSARY: Oh. One up. Okay.</p> <p>4 (Exhibit 227-DDDDD introduced.)</p> <p>5 MR. CHEN: What exhibit is this (inaudible)?</p> <p>6 MS. KOSARY: This is OZAH Exhibit 227, document</p> <p>7 DDDDD, so that's five Ds. And this -- this exhibit is the</p> <p>8 specification sheet for this luminaire.</p> <p>9 MR. CHEN: Which luminaire?</p> <p>10 MS. KOSARY: The Cree OSQ series area -- area</p> <p>11 luminaire, which are the eight parking lot lights.</p> <p>12 As indicated, these luminaires rate a G2. It's</p> <p>13 under their -- their column for BUG rating. It's -- it's</p> <p>14 highlighted in yellow.</p> <p>15 As previously stated, table C-3 from page 28 of the</p> <p>16 User's Guide indicates that the maximum allowable glare in</p> <p>17 the LZ-1 zone is a -- is a G1. The manufacturer's results</p> <p>18 on the BUG assessment identified as the CESTL -- it's up --</p> <p>19 you've got it right there. You're pointing -- you're</p> <p>20 pointing to it. Short -- that's short for Cree Engineering</p> <p>21 Services Testing Laboratory. Test report is located above</p> <p>22 the specifications for this luminaire.</p> <p>23 And if I can get the next page.</p> <p>24 (Exhibit 227-EEEEEE introduced.)</p> <p>25 MS. KOSARY: We've got OZAH Exhibit 227, document</p>	<p style="text-align: right;">220</p> <p>1 church because we will be looking at these lights five days</p> <p>2 a week for at least parts of the year.</p> <p>3 It's the front-facing light dispersion, everything</p> <p>4 to the left of the vertical green line, between the 90-</p> <p>5 degree horizontal -- the front-facing light dispersion</p> <p>6 below the 90-degree horizontal plane, which is the real</p> <p>7 issue. These results indicate that it is the front-facing</p> <p>8 high zone results in the 60-to-70-degree -- degree range --</p> <p>9 that's the area marked out by the red -- peaking at</p> <p>10 approximately 65 degrees. This is eye-view range for</p> <p>11 people both on the ground and in the first story of a home.</p> <p>12 From my experience with the church parking lot</p> <p>13 lights, it's going to be like having car headlights</p> <p>14 pointing at you from across a parking lot only at a higher</p> <p>15 point of view.</p> <p>16 Can I please get OZAH Exhibit -- OZAH Exhibit 94-A</p> <p>17 again.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: One second.</p> <p>19 MS. KOSARY: And, actually, we might not even need</p> <p>20 this. Just called for it because it has that box with the</p> <p>21 specifications.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: Oh.</p> <p>23 MS. KOSARY: So we -- but you've got on the screen</p> <p>24 OZAH Exhibit 94-A, and I just want to point out that the</p> <p>25 specified luminaires are either 4,000 Kelvin for the Eaton</p>

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<p style="text-align: right;">221</p> <p>1 or 5,700 Kelvin for both Cree models.</p> <p>2 And LED light emissions are characterized by their</p> <p>3 correlated color temperature, or CCT, index. The Kelvin</p> <p>4 scale reflects the equivalent color of a heated metal</p> <p>5 subjected to that temperature. The CCT associated with</p> <p>6 daylight light levels is equivalent to around 6,500 Kelvin.</p> <p>7 High-pressure sodium lighting has a CCT of around 2,100</p> <p>8 Kelvin. Basically, the higher the Kelvin score, the higher</p> <p>9 the percent of light emitted in the blue range.</p> <p>10 Now in 2017, the American Medical Association</p> <p>11 adopted the guidelines presented in a report by the Council</p> <p>12 on Science & Public Health on the human and environmental</p> <p>13 effects of LED community lighting.</p> <p>14 What brought this issue to a head was that many of</p> <p>15 the initial installations of LED street lighting used 4,000</p> <p>16 Kelvin luminaires, which emitted a large amount of blue</p> <p>17 light, although it appears white to the naked eye, and</p> <p>18 created a worse nighttime glare than conventional high-</p> <p>19 pressure sodium lighting. Many residents in these early</p> <p>20 adopter areas complained of the prison atmosphere created</p> <p>21 by this high-intensity, blue-rich lighting.</p> <p>22 Noting the impact LED lights, which emit high</p> <p>23 levels of blue-rich lights, had both in terms of disability</p> <p>24 glare and on the circadian cycle of humans, animals, and</p> <p>25 insects, the AMA has recommended that LED lighting in</p>	<p style="text-align: right;">223</p> <p>1 document VVVV.</p> <p>2 MR. CHEN: No.</p> <p>3 MS. KOSARY: It's other proposed Primrose Schools</p> <p>4 in northern Virginia.</p> <p>5 MR. CHEN: Excuse me. Could -- Madam Examiner,</p> <p>6 could you scroll it up a little bit, so I can see the</p> <p>7 document? No, down. I'm sorry. It's WW.</p> <p>8 MS. KOSARY: No, it's VVVV.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: No, it's VV --</p> <p>10 it's four Vs.</p> <p>11 MS. KOSARY: It's four Vs.</p> <p>12 MR. CHEN: Oh, okay.</p> <p>13 MS. KOSARY: Mr. Chen.</p> <p>14 MR. CHEN: Two Ws.</p> <p>15 MS. KOSARY: Mr. Chen.</p> <p>16 HEARING EXAMINER ROBESON HANNAN: Here. Did this</p> <p>17 help?</p> <p>18 MR. CHEN: Okay. Don't take another shot at me.</p> <p>19 You really think (inaudible).</p> <p>20 (Laughter.)</p> <p>21 MS. KOSARY: I'm just going to suggest that he</p> <p>22 needs to -- it's time for his -- his eye exam.</p> <p>23 MR. CHEN: Yeah, right.</p> <p>24 MS. KOSARY: Primrose Schools has been aggressively</p> <p>25 expanding into the Maryland/Virginia suburbs of Washington,</p>
<p style="text-align: right;">222</p> <p>1 residential neighborhoods not exceed 3,000 Kelvin.</p> <p>2 And note that the proposed Cree parking lot lights</p> <p>3 and building lights have an even higher Kelvin output than</p> <p>4 the streetlights in the AMA report -- that the -- that the</p> <p>5 -- that this report was examining. The AMA examined 4,000-</p> <p>6 Kelvin lights. These lights are 57 Kelvin. Daylight is</p> <p>7 6,500 Kelvin.</p> <p>8 This parking lot is being lit for pedestrian</p> <p>9 safety; it is not being lit for neighborhood compatibility.</p> <p>10 As I have said previously, this is a commercial -- this is</p> <p>11 commercial lighting designed for a commercial</p> <p>12 establishment. It does not belong in a residential</p> <p>13 neighborhood. It is highly incompatible. And I know this</p> <p>14 from experience. I'm not just spouting off. I have a</p> <p>15 commercial-level parking lot on the other side of my home.</p> <p>16 I'm not speculating; I'm just giving you the facts. Okay.</p> <p>17 Can I have OZAH Exhibit 227, document VVVV. That's</p> <p>18 four Vs.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: Four Vs?</p> <p>20 MS. KOSARY: Four Vs. Oh.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Whoops.</p> <p>22 MS. KOSARY: Yes. Okay.</p> <p>23 (Exhibit 227-VVVV introduced.)</p> <p>24 MR. CHEN: And what is the exhibit on the screen?</p> <p>25 MS. KOSARY: This is -- this is OZAH Exhibit 227,</p>	<p style="text-align: right;">224</p> <p>1 DC, more successfully to date I would say in Virginia than</p> <p>2 in Maryland. There are currently seven franchisee owned</p> <p>3 and operated Primrose schools in the northern Virginia</p> <p>4 suburbs.</p> <p>5 You can see from this exhibit all are in areas</p> <p>6 zoned commercial or some version of their jurisdiction's</p> <p>7 mixed-use type zoning. None are in single-family</p> <p>8 residential zones.</p> <p>9 On day one under questioning regarding Primrose</p> <p>10 sites which are similar in character to the Needwood Road</p> <p>11 site, on page 23, beginning on line 13, Mr. Taylor stated,</p> <p>12 quote, You know, a close example of this would be we have a</p> <p>13 school in Gambrells, which is very similar in neighborhood</p> <p>14 makeup, unquote.</p> <p>15 Can I have OZAH Exhibit 176, document QQ.</p> <p>16 HEARING EXAMINER ROBESON HANNAN: I am scrolling</p> <p>17 through Exhibit 176 to get to QQ just so the record</p> <p>18 understands that.</p> <p>19 MS. KOSARY: Okay. Here we go.</p> <p>20 HEARING EXAMINER ROBESON HANNAN: Oh, no. That</p> <p>21 means I have to do it --</p> <p>22 MS. KOSARY: Oh.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: Hold on, hold on,</p> <p>24 hold on. This is 176-QQ?</p> <p>25 MS. KOSARY: Yeah. We can just, like, stand on our</p>

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<p style="text-align: right;">225</p> <p>1 heads.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: What happened,</p> <p>3 for the record, was that it did not rotate. I could not</p> <p>4 rotate it. I'm sure there's a way, but I was not able to,</p> <p>5 so -- going to another source.</p> <p>6 Okay. Now you should have it oriented correctly.</p> <p>7 MS. KOSARY: Thank you. Okay. On the screen,</p> <p>8 we're looking at OZAH Exhibit 176, document QQ. It's a --</p> <p>9 it's a Google street view of Primrose's Gambrills site.</p> <p>10 It's located at 670 Crain Highway, which is also called</p> <p>11 Maryland 3.</p> <p>12 It's in Anne Arundel County on property zoned C-3,</p> <p>13 defined by the Anne Arundel County Zoning Ordinance as,</p> <p>14 quote, General commercial districts. This district is</p> <p>15 generally intended for larger arterial strip commercial</p> <p>16 development and shopping centers that offer a wide range of</p> <p>17 commercial uses that serve a broad market area. These</p> <p>18 commercial uses typically have larger space and land</p> <p>19 requirements and are located along major roadways, unquote.</p> <p>20 Primrose Gambrills is across the street from a</p> <p>21 Jiffy Lube, Mid-Atlantic Auto Repair, and Gambrills Auto</p> <p>22 Spa. It is 700 feet from a Carvana and 350 feet from a</p> <p>23 Wawa.</p> <p>24 Going by Mr. Taylor's comparison, I never realized</p> <p>25 I lived in such a commercially intense neighborhood.</p>	<p style="text-align: right;">227</p> <p>1 area is not restricted, unquote.</p> <p>2 Prinrose Bethesda is in the Battery Lane district</p> <p>3 of the Bethesda Master Plan, on its southern boundary with</p> <p>4 the Woodmont Triangle district. Most of the Battery Lane</p> <p>5 district is in the CR zone with a very small enclave of</p> <p>6 single-family homes zoned R-60. There are a range of</p> <p>7 housing types included -- including single-family homes and</p> <p>8 low-to-high-rise multi-family buildings.</p> <p>9 The Planning Board recently approved a sketch plan</p> <p>10 to replace six aging mid-rise and garden apartment</p> <p>11 buildings on Battery Lane that currently have a total of</p> <p>12 477 apartments with six new high-rise buildings containing</p> <p>13 a total of 1,530 units and building heights of 120 feet or</p> <p>14 higher. The closest of these new buildings is about 350</p> <p>15 feet from Primrose Bethesda.</p> <p>16 Also, Primrose Bethesda is 100 -- is 1,000 feet</p> <p>17 from the southern border of the NIH campus, 1,000 feet from</p> <p>18 the Bethesda Harris Teeter, and 800 feet from the large</p> <p>19 Bethesda-Chevy Chase Rescue Squad facility.</p> <p>20 For Mr. Taylor to compare this urban, mixed-use</p> <p>21 location to my neighborhood is -- is preposterous.</p> <p>22 On page 24 of day one, beginning on line 11, Mr.</p> <p>23 Taylor stated, quote, So Layhill Road, again, is not</p> <p>24 dissimilar to this site but very similar in that it's on a</p> <p>25 main road, Layhill Road. It's a very similar site to what</p>
<p style="text-align: right;">226</p> <p>1 If my neighbors and I had only known, I'm sure we</p> <p>2 could've entertained ourselves for hours watching the</p> <p>3 Carvana vending machine dispense autos while sipping our</p> <p>4 super size slushies from Wawa.</p> <p>5 On page 23 of day one testimony, beginning on line</p> <p>6 18, Mr. Taylor further stated that, quote, I'm also working</p> <p>7 on a project that's under construction in Bethesda, which</p> <p>8 is more of an urban market but surrounded primarily by</p> <p>9 residential properties as well, unquote.</p> <p>10 Can I have OZAH Exhibit 176, document RRR.</p> <p>11 This is -- on the screen, you're looking at OZAH</p> <p>12 Exhibit 176, document RR.</p> <p>13 HEARING EXAMINER ROBESON HANNAN: Just RR; right?</p> <p>14 MS. KOSARY: This -- this --</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Not three Rs?</p> <p>16 MS. KOSARY: Right. One -- two Rs. RR.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>18 MS. KOSARY: Primrose Bethesda is located at 8101</p> <p>19 Glenbrook Road. A Google area view can be found, like I</p> <p>20 said, in Exhibit 176, document RR.</p> <p>21 It is zoned CR, defined by Montgomery County Zoning</p> <p>22 Ordinance as, quote, Commercial residential. The CR zone</p> <p>23 is intended for larger downtown, mixed-use, and pedestrian-</p> <p>24 oriented areas in close proximity to transit options such</p> <p>25 as Metro, light rail, and bus. Retail tenant gross floor</p>	<p style="text-align: right;">228</p> <p>1 we're trying to get accomplished here. It's actually very,</p> <p>2 very similar, unquote.</p> <p>3 Can I please have OZAH Exhibit 176, document SS.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: You should be</p> <p>5 looking at it.</p> <p>6 MS. KOSARY: Looking at it. On the screen, we're</p> <p>7 looking at OZAH Exhibit 176, document SS. The Primrose</p> <p>8 Layhill site, which was CU 2017-16, is located at 14041</p> <p>9 Layhill Road in the R-20 -- R-200 zone in an area covered</p> <p>10 under the 1994 Aspen Hill Master Plan.</p> <p>11 A Google area view can be found in OZAH Exhibit</p> <p>12 176, document SS. This site abuts the Mid-County</p> <p>13 Recreation Center, which abuts the Layhill Village Local</p> <p>14 Park.</p> <p>15 Unlike the Upper Rock Creek Master Plan, the Aspen</p> <p>16 Hill Master Plan provides strong and pertinent</p> <p>17 recommendations about the importance of providing child</p> <p>18 daycare facilities within the master plan area. Layhill</p> <p>19 Road is a four-lane divided state highway categorized in</p> <p>20 the Master Plan of Highways and Transitways as a major</p> <p>21 highway. Needwood Road is a two-lane road categorized in</p> <p>22 the same master plan as a primary residential street.</p> <p>23 Like the Needwood Road site, the Primrose Layhill</p> <p>24 site is a corner lot. Like the Needwood site, Primrose</p> <p>25 Layhill required a waiver of the minimum parking side yard</p>

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<p style="text-align: right;">229</p> <p>1 setback. In the case of Primrose Layhill, however, the</p> <p>2 proposed parking facility abutted the existing parking</p> <p>3 facility at the Mid-County Recreation Center. In this</p> <p>4 case, the proposed parking facility abuts my home and the</p> <p>5 home of my neighbor at 7420 Needwood.</p> <p>6 In the case of the Primrose Layhill parking waiver,</p> <p>7 I refer you to page 47 of the Hearing Examiner's Report and</p> <p>8 Decision for OZAH Case 2017-16, which can be found in</p> <p>9 document TT of OZAH Exhibit 176, which quotes the technical</p> <p>10 staff report analysis that, quote, The relatively large</p> <p>11 side parking setback typically required serves -- serves to</p> <p>12 buffer a single-family residence that may be located</p> <p>13 adjacent to a parking lot associated with a conditional</p> <p>14 use. Since the property to the east is institutional in</p> <p>15 nature and developed with a similar parking lot, the 24-</p> <p>16 foot parking setback is not necessary, unquote.</p> <p>17 And page 48, where the hearing examiner agrees</p> <p>18 that, quote, Granting the requested side yard parking</p> <p>19 setback waiver would not undercut that intent because the</p> <p>20 east side of the proposed parking lot abuts the existing</p> <p>21 parking lot at the Mid-County Recreation Center, which need</p> <p>22 not be buffered in the same way that single-family</p> <p>23 residences must be buffered to ensure compatibility,</p> <p>24 unquote.</p> <p>25 Contrast this to the technical staff report for</p>	<p style="text-align: right;">231</p> <p>1 MR. KLINE: Absolutely. And the staff's report --</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Now just -- just</p> <p>3 a second.</p> <p>4 MR. KLINE: -- represents the discussion.</p> <p>5 MR. CHEN: No.</p> <p>6 HEARING EXAMINER ROBESON HANNAN: Just a second.</p> <p>7 I'm going to let it in, as I have with the other -- we</p> <p>8 generally let hearsay testimony from government officials</p> <p>9 in as long -- do not characterize it. Just say what you</p> <p>10 believe they said, and I'll give it the weight it deserves.</p> <p>11 MS. KOSARY: Okay. When several of us met with</p> <p>12 technical staff on July 16th, 2019, we asked whether staff</p> <p>13 had discussed reducing the size of the development by</p> <p>14 decreasing the number of children, leading to a decrease in</p> <p>15 the size of the building, play yard, and parking facility.</p> <p>16 We were told by staff that, yes, this issue had</p> <p>17 been brought up with the Applicant; however, the Applicant</p> <p>18 refused to reduce the size of the development for economic</p> <p>19 reasons and would pursue a waiver of the parking setback</p> <p>20 instead.</p> <p>21 We actually requested that staff note this in their</p> <p>22 report. Staff stated that they would provide such a</p> <p>23 comment in the technical staff report; however, they never</p> <p>24 did.</p> <p>25 I'm going to say that things became a little -- a</p>
<p style="text-align: right;">230</p> <p>1 this proposed use, where on page 16 of Exhibit 106</p> <p>2 technical staff state that they support a waiver of the</p> <p>3 required side yard setback, and further state, without any</p> <p>4 analysis supporting their conclusion, that potential</p> <p>5 impacts on adjoining properties can be minimized and</p> <p>6 mitigated to what in actuality is no more than a</p> <p>7 combination of the minimum requirements for parking</p> <p>8 facility perimeter plantings and building perimeter</p> <p>9 landscaping under Montgomery County Zoning Ordinance.</p> <p>10 Staff repeatedly referred to these minimum</p> <p>11 plantings as a buffer; they are not.</p> <p>12 When several of us met with technical staff on July</p> <p>13 16th, 2019, we asked whether staff had discussed --</p> <p>14 MR. KLINE: Objection. The staff report speaks for</p> <p>15 itself.</p> <p>16 MR. CHEN: This does not have anything to do with</p> <p>17 the staff report. It talks --</p> <p>18 MR. KLINE: Talking to the staff, whatever came out</p> <p>19 of that is -- the staff's opinion is expressed in the staff</p> <p>20 report, and I don't believe what was discussed at the time</p> <p>21 of the meeting is relevant.</p> <p>22 MR. CHEN: It is relevant. It goes to the staff's</p> <p>23 position on issues raised by the community. The community</p> <p>24 has a right to meet with the staff and present their</p> <p>25 concerns. (Inaudible) --</p>	<p style="text-align: right;">232</p> <p>1 little bit confrontational during this meeting when Mr.</p> <p>2 Weaver, Area 3 Division Chief, repeatedly pressed our party</p> <p>3 on what side yard setback would be acceptable to us, and we</p> <p>4 repeatedly replied that it would be at least 34 feet, the</p> <p>5 minimum required under the zoning ordinance, because this</p> <p>6 was what was needed to buffer a single-family residence</p> <p>7 from a large parking lot of a conditional use, that it was</p> <p>8 a question of compatibility, particularly since we were</p> <p>9 talking about buffering a parking facility which was going</p> <p>10 to see the large amount of back-and-forth traffic every day</p> <p>11 that this proposed use would generate.</p> <p>12 At no point during this discussion was the alleged</p> <p>13 sight distance issue along Needwood Road and it being the</p> <p>14 reason for the location of the access driveway and the need</p> <p>15 for the waiver mentioned by any of the staff. Had it been,</p> <p>16 we would've probably informed the staff that they were</p> <p>17 mistaken about the sight distance issues and that they</p> <p>18 probably should insist on documentation from the Applicant.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: Okay. Well,</p> <p>20 that's getting a little speculative. Just -- you know, I'm</p> <p>21 not sure I want to go that far afield.</p> <p>22 MS. KOSARY: Okay.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: So I'm -- if --</p> <p>24 you know, we have -- what you've said is that the Applicant</p> <p>25 didn't want -- you know, wanted to keep the size for</p>


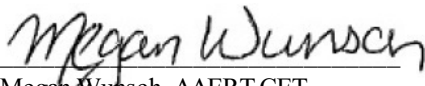
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<p style="text-align: right;">233</p> <p>1 economic reasons, which is perfectly legitimate. So if 2 there's anything else you want to go through -- but I 3 think, you know, what somebody may have done if they had 4 known something, that's a little bit one step too far. 5 MS. KOSARY: Okay. I understand. 6 Can I go on mute for a second? 7 MR. CHEN: Although it's not attempting to 8 represent what a third party would've done. It's 9 representing what the witness here would've done had the 10 staff raised the issue. But we abide by the Examiner's 11 ruling. 12 HEARING EXAMINER ROBESON HANNAN: Yeah. 13 MS. KOSARY: Could I go on mute for a second? 14 HEARING EXAMINER ROBESON HANNAN: Yes. For the 15 record, the -- Dr. Kosary, the witness, is on mute, but we 16 are not off the record. 17 (Sotto voce speaking.) 18 HEARING EXAMINER ROBESON HANNAN: Dr. Kosary, are 19 you back on? 20 MS. KOSARY: I'm back. 21 HEARING EXAMINER ROBESON HANNAN: Okay. 22 MS. KOSARY: And -- and I just -- for the record, I 23 just consulted with my lawyer about whether I could say 24 what I was going to say next. 25 HEARING EXAMINER ROBESON HANNAN: Okay.</p>	<p style="text-align: right;">235</p> <p>1 vehicles were going to be on the road, not how many -- not 2 how many vehicles were going to be back and forth on the -- 3 on the driveway 12 feet from our home. 4 So, finally, I'm going to wrap up here. 5 As early as the Development Review Committee 6 meeting of January 30th, 2018, the minutes for which you 7 can find in document Y of OZAH Exhibit 115, you have 8 technical staff stating that, quote, The use proposed 9 appears to be too intense for the property and in the 10 subject area, not harmonious with the character of the 11 surrounding area, and does not appear to be compatible with 12 the character of the residential neighborhood. 13 And, I'm just asking, you know, how staff can 14 ignore these negative observations and recommend approval 15 without any explanation why these negatives no longer apply 16 or have been overcome? 17 In conclusion, I would state that Primrose Schools' 18 conditional use application CU 2018-08 is incompatible with 19 both primary goals of the Upper Rock Creek Master Plan. 20 Its size and scale of use and need for a waiver of its 21 required side yard setback will create a number of non- 22 inherent adverse effects on our home and the homes of our 23 neighbors. This large, highly intensive use will have a 24 devastating impact on my neighborhood due to its utter lack 25 of compatibility as well as the impact it will have on the</p>
<p style="text-align: right;">234</p> <p>1 (Laughter.) 2 HEARING EXAMINER ROBESON HANNAN: So go ahead, say 3 it, and -- 4 MS. KOSARY: Okay. 5 HEARING EXAMINER ROBESON HANNAN: -- we'll see what 6 happens. 7 MR. CHEN: Candidly, Madam Examiner, my client was 8 concerned about abiding by your instructions. 9 MS. KOSARY: Right. 10 HEARING EXAMINER ROBESON HANNAN: Okay. 11 MS. KOSARY: Okay. Mr. Weaver finally concluded 12 his -- his back and forth with us by stating that he 13 thought that this application had, quote, Merit, unquote, 14 and he was committed to seeing it approved. 15 And I know the staff member, Mr. Boyd, indicated 16 that he thought the Applicant had done about as good as 17 they could. 18 And I want to say that we also tried to get the 19 young man who was reviewing the traffic analysis to discuss 20 how this data would relate to the number of cars which 21 would enter and exit the proposed site in a day and how 22 that would relate to how many cars would be impacting our 23 home in the -- in the inadequate proposed setback, and this 24 didn't go -- this discussion didn't go very far because he 25 kept continually wanting to go back to discussing how many</p>	<p style="text-align: right;">236</p> <p>1 already congested Needwood Road. 2 Thank you. 3 HEARING EXAMINER ROBESON HANNAN: Well, thank you 4 very much. 5 All right. I assume -- Mr. Kline. 6 MR. KLINE: Yes, ma'am. 7 MR. CHEN: Let's have cross-examination. 8 (Laughter.) 9 HEARING EXAMINER ROBESON HANNAN: You can do it in 10 a half an hour. 11 (Laughter.) 12 MR. KLINE: Well, I wasn't sure why you were asking 13 -- calling me out, but -- 14 HEARING EXAMINER ROBESON HANNAN: Well -- 15 MR. KLINE: -- in the past I had asked for a little 16 recess to kind of organize myself. I'm far beyond that 17 now. I'm going to have trouble just remembering the notes 18 I took from a week or so ago. And I guess I'd have to say 19 I'm a bit tired. It's been a fascinating afternoon -- day, 20 but I'm just not ready to start on it because I wouldn't 21 make barely a dent in the situation. 22 MR. CHEN: We have no -- we have no problem with 23 Mr. Kline's (inaudible). 24 HEARING EXAMINER ROBESON HANNAN: Okay. I believe 25 the next date that we had spoken about was April 2nd.</p>

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<p style="text-align: right;">237</p> <p>1 MR. CHEN: Madam Examiner.</p> <p>2 MR. KLINE: Yes, ma'am.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Now -- go ahead,</p> <p>4 Mr. Chen.</p> <p>5 MS. KOSARY: Do you want to trade places?</p> <p>6 MR. CHEN: Thank you. As I understand my notes at</p> <p>7 least and -- and the Examiner's information, we've got</p> <p>8 April 2nd and April 5, I believe.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Right.</p> <p>10 MR. CHEN: I think you need another day.</p> <p>11 HEARING EXAMINER ROBESON HANNAN: How many more</p> <p>12 witnesses do you have?</p> <p>13 MR. CHEN: Mr. -- Mr. Davis. But I'm -- it's not</p> <p>14 Mr. Davis I'm thinking of. I'm thinking that Mr. Kline --</p> <p>15 I don't want --</p> <p>16 HEARING EXAMINER ROBESON HANNAN: Do you have</p> <p>17 rebuttal?</p> <p>18 MR. CHEN: Yes. And I expect Mr. Kline will have</p> <p>19 extensive cross-examination of, you know, Dr. Kosary, and</p> <p>20 I'm sure of Mr. Davis, and I could be mistaken, and I'm not</p> <p>21 trying to put Mr. Kline in any position at all -- please,</p> <p>22 I'm not -- but I'm just thinking that it's going to be very</p> <p>23 difficult to wrap everything up over the next two days of</p> <p>24 hearing on the 2nd and 5th. And better we look for a date</p> <p>25 now or -- I don't have my calendar with me, but if the</p>	<p style="text-align: right;">239</p> <p>1 that.</p> <p>2 (Laughter.)</p> <p>3 HEARING EXAMINER ROBESON HANNAN: So I could --</p> <p>4 let's go with this. I could do the 6th, 7th, or 9th to add</p> <p>5 a day. And why don't you get back to me when -- when you</p> <p>6 get everything -- when you get a chance to check with your</p> <p>7 witnesses and your calendar.</p> <p>8 MR. KLINE: Thank you. I should be able to get</p> <p>9 back to you tomorrow -- tomorrow.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: That's fine.</p> <p>11 MR. CHEN: If I may. I know -- isn't the 7th Board</p> <p>12 of Appeals day, Wednesday. I think it's --</p> <p>13 HEARING EXAMINER ROBESON HANNAN: It's what? I'm</p> <p>14 sorry.</p> <p>15 MR. CHEN: On the 7th is a work session or</p> <p>16 proceeding of the Board of Appeals.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: That's correct.</p> <p>18 That is the Board of Appeals meeting day.</p> <p>19 MR. CHEN: I am on their agenda for that day.</p> <p>20 HEARING EXAMINER ROBESON HANNAN: Okay. How about</p> <p>21 this. I'll give you --</p> <p>22 MR. CHEN: But -- but the other two dates, you know</p> <p>23 --</p> <p>24 HEARING EXAMINER ROBESON HANNAN: Let's try -- I</p> <p>25 can do the 6th, the 9th, and the -- oh, I've got a rezoning</p>
<p style="text-align: right;">238</p> <p>1 Examiner can maybe give us some dates, you know, in the</p> <p>2 next day or so by an email of, you know, what would work.</p> <p>3 The sooner the better, as far as I'm concerned, and I</p> <p>4 suspect Mr. Kline may feel the same.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Well, I don't</p> <p>6 want this --</p> <p>7 MR. CHEN: Yeah.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: -- continuing</p> <p>9 much further than where we are now. Let me just look on my</p> <p>10 -- what I'm doing now is shifting to another computer</p> <p>11 that's actually on my computer. Okay.</p> <p>12 Do I have any takers on -- oh, I can't do that.</p> <p>13 Well, we could go back-to-back days. I could do it on the</p> <p>14 6th or the 7th. I cannot do it on the 8 or the 9th.</p> <p>15 MR. CHEN: I can do it on the 6th, I believe. The</p> <p>16 7th, I've got a conflict.</p> <p>17 (Sotto voce speaking.)</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Mr. Kline.</p> <p>19 MR. KLINE: Excuse me. I'm sorry. I'm embarrassed</p> <p>20 to say I'm working in the basement, and my calendar is up</p> <p>21 in my office, and I believe that I have something on one of</p> <p>22 those days, but I -- I could either --</p> <p>23 HEARING EXAMINER ROBESON HANNAN: Then let's do</p> <p>24 this. Actually, I can move something on the 9th. The 8th</p> <p>25 is my second dose of vaccine, and there's no way I'm moving</p>	<p style="text-align: right;">240</p> <p>1 hearing on the 12th. I can do the 6th and the 9th. Let's</p> <p>2 see whether one of those two -- or I could do the 13th.</p> <p>3 MR. CHEN: Let's -- let's try -- (inaudible)</p> <p>4 something's niggling at me, but I'll get back to you as</p> <p>5 well tomorrow.</p> <p>6 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>7 MR. KLINE: And -- and if I -- and if -- Ms.</p> <p>8 Robeson Hannan, if I can just add this. From my point of</p> <p>9 view, I'd like to have a hearing far enough away that I can</p> <p>10 get the transcripts of the hearing because I know that my</p> <p>11 consultants are listening to all this, but if they're</p> <p>12 having as much trouble writing everything down as I am, you</p> <p>13 just absolutely have to have the transcript to be able to</p> <p>14 track all this, and I'd like to make it far enough out that</p> <p>15 -- ten days from today so that people can digest that and</p> <p>16 be better prepared than what their notes tell them.</p> <p>17 MR. CHEN: Well, I mean, if it was day -- back to</p> <p>18 back, you would have no time.</p> <p>19 MR. KLINE: And I understand that.</p> <p>20 MR. CHEN: And I -- as it is --</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Okay. I have an</p> <p>22 idea, and I don't usually do this because it's not the</p> <p>23 official record, I can send the Microsoft Teams recording.</p> <p>24 MR. CHEN: Fine by me.</p> <p>25 MR. KLINE: Yeah. Yeah. I just -- we just want to</p>

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<p style="text-align: right;">241</p> <p>1 have something that we can hear it directly. I mean, they</p> <p>2 did -- well, yes. That would be helpful.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Because the --</p> <p>4 the transcripts, I don't get for ten days, and I'm really</p> <p>5 not sure I want to delay it that long. I can send you out</p> <p>6 the Teams recording of the Monday -- was it Monday?</p> <p>7 Monday's hearing and today's hearing.</p> <p>8 MR. KLINE: The Petitioner will make that work.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Okay. Otherwise,</p> <p>10 if you -- if I wait ten days, then you're going to need</p> <p>11 some time to review it.</p> <p>12 MR. KLINE: I understand.</p> <p>13 HEARING EXAMINER ROBESON HANNAN: So we're really</p> <p>14 talking two weeks, two --</p> <p>15 MR. KLINE: Yeah.</p> <p>16 HEARING EXAMINER ROBESON HANNAN: -- to three</p> <p>17 weeks. But I'd be -- I'd be happy to send you the Teams</p> <p>18 recording.</p> <p>19 MR. CHEN: Let's go with that.</p> <p>20 MR. KLINE: Yeah. That's -- that's -- that's a</p> <p>21 good compromise.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: Okay. Well, with</p> <p>23 -- with the idea that you are going -- that the parties are</p> <p>24 going to get back to me about a possible third hearing, I'm</p> <p>25 going to continue this hearing to Monday, April 2nd, at</p>	<p style="text-align: right;">243</p> <p>1 CERTIFICATE OF COURT REPORTER</p> <p>2 I, Jesse Greer, the officer before whom the foregoing</p> <p>3 proceedings were taken, do hereby certify that said</p> <p>4 proceedings were electronically recorded by me; and that I</p> <p>5 am neither counsel for, related to, nor employed by any of</p> <p>6 the parties to this case and have no interest, financial or</p> <p>7 otherwise, in its outcome.</p> <p>8</p> <p>9 </p> <p>10 _____</p> <p>11 Jesse Greer, Court Reporter</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">242</p> <p>1 9:30 a.m.</p> <p>2 MR. CHEN: I think that's a Friday.</p> <p>3 (Sotto voce speaking.)</p> <p>4 MR. CHEN: April 2nd is a Friday, I believe.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Oh.</p> <p>6 MR. KLINE: Easter is the 4th because that's when</p> <p>7 I'm getting my COVID shot.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: Really?</p> <p>9 MR. KLINE: Amazing how we all recognize that date.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: Yes. Yes. I'm</p> <p>11 -- I'm sorry. So --</p> <p>12 MR. CHEN: We're adjourning until April 2nd.</p> <p>13 (Sotto voce speaking.)</p> <p>14 HEARING EXAMINER ROBESON HANNAN: I'm sorry.</p> <p>15 You're right. It is April 2nd. So -- so I'm going to</p> <p>16 continue this hearing to Friday, April 2nd, at 9:30 a.m. I</p> <p>17 will try to send you the Microsoft Teams recording tomorrow</p> <p>18 as early as possible, and if you could get me the dates for</p> <p>19 the potential third hearing.</p> <p>20 MR. KLINE: Thank you.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>22 MR. CHEN: Thank you.</p> <p>23 (Off the record at 5:11 p.m.)</p> <p>24</p> <p>25</p>	<p style="text-align: right;">244</p> <p>1 CERTIFICATE OF TRANSCRIBER</p> <p>2 I, Megan Wunsch, do hereby certify that</p> <p>3 the foregoing transcript is a true and correct record of</p> <p>4 the recorded proceedings; that said proceedings were</p> <p>5 transcribed to the best of my ability from the audio</p> <p>6 recording and supporting information; and that I am neither</p> <p>7 counsel for, related to, nor employed by any of the parties</p> <p>8 to this case and have no interest, financial or otherwise,</p> <p>9 in its outcome.</p> <p>10</p> <p>11</p> <p>12</p> <p>13 </p> <p>14 _____</p> <p>15 Megan Wunsch, AAERT CET</p> <p>16 April 5, 2021</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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