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Transcript of Administrative Hearing

Date: March 19, 2021
Case: The Primrose School

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1 Hearing in re The Primrose School, Applicant, held
2 virtually.

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9 Pursuant to agreement, before Jesse Greer, Notary
10 Public in and for the State of Maryland.

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A P P E A R A N C E S

FOR MONTGOMERY COUNTY OFFICE OF ZONING AND ADMINISTRATIVE
HEARINGS:

LYNN ROBESON HANNAN, HEARING EXAMINER

FOR THE APPLICANT:

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Also Present: Nana Johnson, OZAH Staff

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1 P R O C E E D I N G S

2 (Exhibits marked prior to proceedings.)

3 HEARING EXAMINER ROBESON HANNAN: CU 18-08,
4 Primrose School, 7430 Needwood Avenue, an application for a
5 child daycare center of up to 195 children.

6 One thing I would like to do is first thank the
7 parties, and especially Nana, for assisting with getting
8 the exhibits together. Let us -- it's almost a year to the
9 last hearing, and we were non-digital completely. So I --
10 I think everybody's gone above and beyond, and I do want to
11 thank everybody for that.

12 What a long, strange year it's been. So welcome
13 back.

14 Couple of things for those who have not
15 participated in our remote hearings. We do have a few
16 rules related to the use of this platform.

17 We do not interrupt each other. If you have to
18 object, you know, please do so because you have to stop the
19 witness from speaking. But if you want to -- at the top of
20 your screen will be a hand. If you want to be recognized,
21 if there's a citizen testimony or if you want to be
22 recognized and it's not an objection, please use the hand
23 function. I can monitor the hands. So we would appreciate
24 your doing that, and that cuts down on the back and forth
25 because the court reporter has a difficult time -- a more

1 difficult time in this format getting the clarity.

2 Do not use the chat function. That is -- I do not
3 -- I cannot monitor it during the hearing, and we do not
4 want people to -- to have ex parte communications, or, you
5 know, we're going to miss something if you use the chat
6 function, so do not use that as a means to communicate.

7 I am recording this hearing in Microsoft Teams.
8 It's also being recorded obviously by a court reporter.
9 The Microsoft Teams recording is not official. It has some
10 issues, but we do record it for the court reporter as a
11 backup. So I will let you know that.

12 And, with that, are -- I hesitate to ask -- are
13 there preliminary matters?

14 Oh, no. First, please will the parties identify
15 themselves for the record.

16 MR. KLINE: Good morning. For the record, my name
17 is Jody Kline. I'm an attorney with the law firm of
18 Miller, Miller & Canby with offices at 200-B Monroe Street
19 in Rockville, representing the Petitioner in this case.

20 HEARING EXAMINER ROBESON HANNAN: Thank you.

21 MR. CHEN: Good morning, Madam Examiner. This is
22 Bill Chen, and I'm an attorney also in Rockville, at 200-A
23 Monroe Street, and I represent Carol Kosary, Paul Posey,
24 and C.C. English.

25 HEARING EXAMINER ROBESON HANNAN: Thank you. With

1 that, are there any preliminary matters?

2 MR. CHEN: If I may, Madam Examiner.

3 HEARING EXAMINER ROBESON HANNAN: Um-hmm.

4 MR. CHEN: I just have a question. I guess it was
5 months ago when we were talking about different hearing
6 dates.

7 HEARING EXAMINER ROBESON HANNAN: Um-hmm.

8 MR. CHEN: One of the dates that I had down was
9 Monday, April 5, but I note from your -- your office's
10 calendar --

11 HEARING EXAMINER ROBESON HANNAN: Um-hmm.

12 MR. CHEN: -- it doesn't list that. Is that off
13 now, or -- I just want to inquire what is the situation
14 with the possibility of a hearing, if we need it. I'm not
15 proposing that we will. I'm just saying it was one of the
16 dates that -- when we last talked about hearing dates.

17 HEARING EXAMINER ROBESON HANNAN: Yes, I remembered
18 that because you raised the issue about it being Easter
19 Monday or --

20 MR. CHEN: Yes. I think you're correct about that.

21 HEARING EXAMINER ROBESON HANNAN: I think that it
22 is still on, so we'll correct our calendar.

23 MR. CHEN: Okay. Great.

24 MR. KLINE: Madam Chairman, you say correct the
25 calendar, you mean delete it?

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1 HEARING EXAMINER ROBESON HANNAN: No, add it.

2 MR. KLINE: Yes. Thank you. Thank you. Then --
3 and I'll jump in maybe because I -- I wasn't sure about the
4 22nd, but in preparing for today, I did find your email
5 where you did cancel the 22nd. So we would not be meeting
6 again until the 29th; is that correct?

7 HEARING EXAMINER ROBESON HANNAN: Correct.

8 MR. KLINE: Thank you.

9 FEMALE SPEAKER: All right.

10 MR. KLINE: I'm sorry, 26th, rather.

11 HEARING EXAMINER ROBESON HANNAN: Now we do have --
12 I saw Nana jump in. We have some logistical problems with
13 the hearing on -- a different hearing on the 29th. Is
14 there a possibility of moving -- it just has to do with the
15 posting of exhibits and things like that. And we had a
16 hearing scheduled for the -- the Friday before the 29th.

17 FEMALE SPEAKER: The 26th or something?

18 MR. KLINE: Correct.

19 HEARING EXAMINER ROBESON HANNAN: And the question
20 is, and I know we've had -- the 26th -- and the question
21 is, is there a possibility of meeting another day that
22 week, any day other than the 26th? And I know this has
23 been pending for a long time, but we did have -- we did
24 have some issues in another hearing.

25 MR. CHEN: So, if I may.

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1 HEARING EXAMINER ROBESON HANNAN: Um-hmm.

2 MR. CHEN: The inquiry is rather than convene on
3 the 26th, Friday the 26th, is there an open date that same
4 week?

5 HEARING EXAMINER ROBESON HANNAN: Correct.

6 MR. CHEN: Okay.

7 FEMALE SPEAKER: We gave her the 24th.

8 MR. CHEN: I've had -- at this end, I've got -- the
9 24th is bad.

10 (Sotto voce speaking.)

11 MR. CHEN: What's Thursday the 25th look like on
12 everybody -- if we're going to move --

13 HEARING EXAMINER ROBESON HANNAN: Fine. That --
14 and, you know, I know -- if you want to take some time and
15 not answer -- let -- if you want to give a tentative date
16 and check with your witnesses, but the 25th is fine. Now
17 that's a Thursday, so I don't know what the Planning Board
18 has.

19 MR. CHEN: Would the 29th be possible?

20 HEARING EXAMINER ROBESON HANNAN: No, that's the --
21 that's the logistical issue. That's -- that's -- I can do
22 the 30th, the 31st --

23 MR. CHEN: The 30th, I can tell you right now is --
24 I'm wiped out. I've got a hearing on the 30th in another
25 matter.

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1 HEARING EXAMINER ROBESON HANNAN: The 1st, April
2 1st, April 5th? Well --

3 MR. KLINE: I -- I do have a -- I do have a
4 Planning Board hearing that day, but if -- I could have
5 someone cover for me if I had to.

6 HEARING EXAMINER ROBESON HANNAN: Let's do this.
7 I'm going to -- you know, I sprang this on you. We didn't
8 -- we were not aware of this logistical problem, without
9 going into the technical details, so let's do this. If --
10 let's try and revisit this maybe after lunch, and you can
11 have a little more time to go through your calendars and
12 check with witnesses and things like that.

13 Now, if needed, we will go forward. I will tell
14 you that. But it's -- it's difficult.

15 MR. KLINE: Well, if I could just add this. Since
16 I -- I -- from Mr. Chen's comments to me, we won't probably
17 -- well, let me rephrase. He'll still be having witnesses
18 testify on that day, so I would suggest Mr. Chen probably
19 is the one that's got the bigger problem. So I -- maybe
20 during a break somehow we can -- he can check in with Mr.
21 Davis to see when he's available because my people can
22 monitor it from off-site, and we wouldn't likely be getting
23 to our witnesses by the 26th.

24 HEARING EXAMINER ROBESON HANNAN: Okay. All right.
25 Let's -- then let's proceed, and --

1 MR. CHEN: Is -- if I may, Madam Examiner.

2 HEARING EXAMINER ROBESON HANNAN: Um-hmm.

3 MR. CHEN: Is -- Jody, were you saying that the
4 25th was bad for you?

5 MR. KLINE: I -- I do have something penciled in.
6 Well, I do have a Planning Board scheduled hearing, but I
7 think that's going to get bumped is what's going to happen,
8 but I just don't know that yet.

9 MR. CHEN: Okay. My -- just from my own personal
10 observation, not checking with people, I like the 25th only
11 -- only because I want to -- let's -- you know, let's
12 activate this hearing process and get -- get through it.
13 That's where I'm coming from. That's my sole motivation.

14 HEARING EXAMINER ROBESON HANNAN: I'm -- I'm with
15 you on that one. And, you know, the Teams platform is very
16 good, but it -- it does -- I won't go into it, but it -- it
17 also has some downsides. So let's tentatively say the
18 25th, and we'll reconvene on that issue maybe later --
19 after lunch.

20 MR. KLINE: Fine with the Applicant.

21 MR. CHEN: Yeah, that's fine on my end also.

22 HEARING EXAMINER ROBESON HANNAN: I truly
23 appreciate it. Okay. So anything else?

24 MR. CHEN: Not at my end, Madam Examiner.

25 HEARING EXAMINER ROBESON HANNAN: Okay. Now I did

1 get -- get a digital copy of Exhibit 148, if you wish to
2 use that. It is posted on the website.

3 We also were able to get 149, which is the large
4 vicinity map.

5 I have re-reviewed in detail all five -- the
6 transcripts of all five days of hearings. So, with that,
7 Mr. Chen, do you want to call your first witness? And it
8 helps if you could give a heads up in advance of what
9 exhibit you wish to use --

10 MR. CHEN: Okay.

11 HEARING EXAMINER ROBESON HANNAN: -- before the
12 witness starts testifying.

13 MR. CHEN: Okay. My first witness would be C.C.
14 English, and she's just heard your comment about exhibits.

15 Ms. English, are you able to accommodate the
16 Hearing Examiner and identify --

17 MS. ENGLISH: I can. Mine are all at the end, 227,
18 and they're starting with triple F -- I'm sorry, five Fs.

19 HEARING EXAMINER ROBESON HANNAN: Okay. Let me do
20 this.

21 MS. ENGLISH: I'm curious, while you're doing, do
22 you have the capability of rotating? I noticed one of my
23 pictures needs a rotation.

24 HEARING EXAMINER ROBESON HANNAN: I will see.

25 MS. ENGLISH: Okay.

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1 HEARING EXAMINER ROBESON HANNAN: Okay. 225-F.
2 Are you talking 227 or 225?

3 MS. ENGLISH: 227. It's the very last file on the
4 list.

5 HEARING EXAMINER ROBESON HANNAN: I apologize.

6 MS. ENGLISH: I thought I would be in a favorable
7 spot being the last one there, that I would be easy to
8 find.

9 HEARING EXAMINER ROBESON HANNAN: No. No.

10 MS. ENGLISH: No?

11 HEARING EXAMINER ROBESON HANNAN: It's -- no. I
12 mean, it's not you. Okay? It's -- it's -- okay. Let's go
13 off the record.

14 (Pause in proceedings.)

15 HEARING EXAMINER ROBESON HANNAN: Ms. Kosary [sic],
16 is this what you wanted? This is the last exhibit I have
17 listed.

18 MS. ENGLISH: Mine are coming up. Oh, no, they're
19 -- keep going.

20 HEARING EXAMINER ROBESON HANNAN: Can you tell me,
21 what is the thing again? Because we're at SSSS.

22 MS. ENGLISH: We're going to five Fs. Five, FFFFF.

23 HEARING EXAMINER ROBESON HANNAN: Okay. Well, I
24 apologize.

25 MS. ENGLISH: You're on your way. You're getting

1 close. Well, there we are. Back up. Did you see the one
2 that needed rotating?

3 HEARING EXAMINER ROBESON HANNAN: Yes, I did.

4 MS. ENGLISH: Okay.

5 HEARING EXAMINER ROBESON HANNAN: Okay. This is
6 FFFF.

7 MS. ENGLISH: Not five Fs?

8 HEARING EXAMINER ROBESON HANNAN: Five Fs. FFFFF.
9 See -- can you see it?

10 MS. ENGLISH: I can.

11 HEARING EXAMINER ROBESON HANNAN: So that's --
12 that's --

13 MS. ENGLISH: Five?

14 HEARING EXAMINER ROBESON HANNAN: -- FFFF. What
15 are you -- what exhibit are you trying to get to?

16 MS. ENGLISH: The one that is right in front of me
17 now.

18 HEARING EXAMINER ROBESON HANNAN: Okay.

19 MS. ENGLISH: We're good.

20 HEARING EXAMINER ROBESON HANNAN: So please raise
21 your right hand. Do you solemnly affirm under penalties of
22 perjury that the statements you're about to make are the
23 truth, the whole truth, and nothing but the truth?

24 MS. ENGLISH: They are.

25 HEARING EXAMINER ROBESON HANNAN: Okay. Mr. Chen.

1 Mr. Chen.

2 MS. ENGLISH: His must be muted.

3 TESTIMONY OF CECELIA ENGLISH

4 MR. CHEN: Ms. English.

5 MS. ENGLISH: Yes.

6 MR. CHEN: You have a statement you'd like to
7 submit to the Hearing Examiner; is that correct?

8 MS. ENGLISH: I don't understand the question.
9 What statement?

10 MR. CHEN: Your oral statement right now.

11 MS. ENGLISH: I do. I have quite a bit to say,
12 yes.

13 MR. CHEN: Okay. Please present it to the Hearing
14 Examiner.

15 MS. ENGLISH: Yes, sir.

16 Good morning. I'm Dr. Cecelia English. Most
17 people know me as C.C. I'm a mathematician. I've --

18 HEARING EXAMINER ROBESON HANNAN: Okay. Please
19 state your name and -- please state your address for the
20 record.

21 MS. ENGLISH: Okay. I live at 7419 Needwood Road,
22 Derwood, Maryland 20855.

23 MR. CHEN: Where is that property in relationship
24 to the proposed site of the Primrose School?

25 MS. ENGLISH: You're going to see -- see it coming

1 up in my tour of the neighborhood.

2 MR. CHEN: Okay. But --

3 MS. ENGLISH: And --

4 MR. CHEN: -- before we see it, can you please just
5 say, where is your property in relationship to the Primrose
6 property?

7 MS. ENGLISH: I am a confronting property owner.

8 MR. CHEN: Across the street?

9 MS. ENGLISH: Yes.

10 MR. CHEN: Thank you. Continue.

11 MS. ENGLISH: Okay. I'm a mathematician that has
12 worked in a variety of settings. I've done a lot of
13 corporate work in Maryland. I've worked for the Maryland
14 State Department of Education, for Maryland Public
15 Television, for NSA. I have national exposure at
16 conferences for professional women, equipping them to take
17 their place in the workforce.

18 It's my hope this morning, along with the support
19 of 300 other community signatories, to convince you, Madam
20 -- Madam Examiner, that the proposed Primrose operation is
21 just too big to fit into the 7430 parcel of land. There
22 are just so many things that make our neighborhood
23 desirable, and I can see why Primrose would want this
24 location; however, we've seen the quality of traffic,
25 safety, pedestrian safety, and worse things happen with the

1 arrival of many non-residential conditional use properties
2 coming into our -- trying to come into our neighborhood.

3 As awful as COVID has been, we have noticed the
4 significant decrease in traffic, noise, stress -- it's just
5 a whole different neighborhood without two operations in
6 particular within sight of my home.

7 In this session, I'd like to address three main
8 points. Number one, the ways in which the theoretical site
9 operations proposed by Primrose are incompatible with the
10 realistic constraints of the site as evidenced by first-
11 hand experience of myself and my neighbors. Second, I want
12 to take you through the neighborhood history with
13 conditional uses. And, third, I would hope to refute the
14 Primrose claim that this site is unfit for other uses.

15 (Exhibit 227-FFFFF introduced.)

16 MS. ENGLISH: So here we are at Exhibit FFFFF.
17 This is a picture facing north at the intersection of
18 Redland and Needwood Roads. It's a noteworthy intersection
19 because it separates two sectors of organizing of
20 neighborhoods. So west of this intersection is the greater
21 Shady Grove section, and we are the Upper Rock Creek wedge,
22 and the characteristics of the two are very, very
23 different. I sort of think of them as city mouse and
24 country mouse, that the greater Shady Grove sector is
25 developed, it has a great many commercial enterprises; our

1 Rock -- Upper Rock Creek one, the master plan is an
2 emphasis on the environment.

3 We have two major commitments in the Upper Rock
4 Creek, and that's to mitigate the environmental impact of
5 change and to preserve low density. Notably, the plan does
6 not include expansion of commercial or industrial zoning.
7 The plan's intent and allowances are clear in this regard.

8 Before leaving this picture, I want to point out
9 two important factors. You notice there there's a bus
10 stop, and also notice that the sidewalk has not been
11 cleared. I've been -- this corner property is that of the
12 culture center to which I have been a member of the
13 community liaison for -- community liaison council for 14
14 years, and we have consistently through 14 years brought up
15 at meetings that residents are responsible for keeping
16 their sidewalks clear of snow in the winter. I commend
17 Primrose in that that property has been cleaned
18 beautifully, the last -- the last two snowstorms that we've
19 gone through.

20 If you'll pull up GGGGG.

21 (Exhibit 227-GGGGG introduced.)

22 MS. ENGLISH: This is another shot of the corner
23 property. And you notice it is --

24 HEARING EXAMINER ROBESON HANNAN: The corner
25 property is what?

1 MS. ENGLISH: Of the --

2 HEARING EXAMINER ROBESON HANNAN: Taiwanese?

3 MS. ENGLISH: Of the culture center. And I want to
4 point out the building on the right is their -- is the
5 facility. And they were permitted to come into the
6 residential neighborhood by the fact that they had such an
7 inconspicuous presence, that it's a small building that
8 fits in, nothing that's going to catch anybody's eye as
9 they drive by.

10 So it came into our neighborhood with a terrible
11 record that I'll talk more about as we go on here, but just
12 what I wanted to make note of right now is the size of the
13 building and the lack of concern about meeting the
14 obligations of keeping your sidewalk clear. This
15 organization was given the conditional use -- back there
16 called a special exception -- in the early 2000s, based on
17 the fact that they would be a community service
18 organization. And this picture, I think, is a total
19 contradiction of the mission that they used to gain
20 entrance into our neighborhood.

21 Let me see. I think that's all we have to see
22 about that one.

23 If you'll bring up HHHHH please.

24 (Exhibit 227-HHHHH introduced.)

25 MS. ENGLISH: After taking those two pictures, I

1 walked back home and wanted to accentuate the difference
2 between the responsible members of the committee -- of the
3 community and this group that claims to be of service to
4 our community.

5 You may remember Sarah Newens, testified last year.
6 She was very pregnant when she came.

7 HEARING EXAMINER ROBESON HANNAN: I -- I -- I don't
8 remember that, but I -- I remember her testimony.

9 MS. ENGLISH: I'm just amazed that you can bring
10 this all to memory at all. I could --

11 HEARING EXAMINER ROBESON HANNAN: Well, I just
12 reread everything.

13 MS. ENGLISH: So did I, 14 years' worth of files
14 that I went through.

15 HEARING EXAMINER ROBESON HANNAN: Ah, okay.

16 MS. ENGLISH: It was laborious. But I had a whole
17 year, didn't I?

18 So one of the things I wanted to point out, Sarah
19 has four babies. She's got the perfect family -- two boys
20 and two girls. But she and I were both seen out clearing
21 these sidewalks, and I think that's so interesting that
22 others in the neighborhood, such as the -- everybody else
23 is very good. And if you see, it's cleared all the way
24 down to the next intersection of Deer Lake Lane -- Deer
25 Lake Road. We've got Deer Lake Lane, we've got Deer Lake

1 Road, and we've got Deer Point Court. We've got a lot of
2 "deer" in this neighborhood.

3 (Exhibit 227-IIIII introduced.)

4 MS. ENGLISH: Moving right along, can we go to --
5 this one, I guess we'll just have to change our -- just
6 crook our necks a little bit to look at this. It's not --
7 oh, fabulous.

8 HEARING EXAMINER ROBESON HANNAN: Oh, whoops. I --
9 there.

10 MS. ENGLISH: Great. Thank you. Right there it
11 works.

12 So one of the things to illustrate in this picture
13 is another glance at the culture center's building and that
14 it fits nicely into the neighborhood.

15 The other issue here is that the culture center had
16 a mandate to create a six-foot evergreen buffer between
17 their property and the neighbors here at 7505. This is
18 Enitza's property -- Enitza Rodriguez. And this is what
19 you see -- she also -- that property -- those property
20 owners were also told that they would have this buffer to
21 mitigate the fumes from cars and the glaring headlights at
22 night, so this is what you see after 14 years of that
23 having been promised to them as adjacent property owners to
24 the culture center.

25 Dr. Carol Kosary and her husband Paul Posey are

1 being asked to tolerate an outrageous grab of a strip of
2 their property with the same assurance that they'll get a
3 dense buffer that will be planted to replace what was given
4 away to the Primrose property. Is the best -- is this the
5 best they could expect to see after 14 years?

6 Please, as you make your decision about this case,
7 will you consider seriously why Primrose should benefit at
8 the expense of people in the community? And Carol and Paul
9 in particular will suffer the double whammy of being
10 sandwiched between two conditional uses.

11 Enitza testified to the challenge of getting out of
12 her parking lot. In particular --

13 HEARING EXAMINER ROBESON HANNAN: Is that Ms.
14 Rodriguez?

15 MS. ENGLISH: It is, yes.

16 HEARING EXAMINER ROBESON HANNAN: Enitza?

17 MS. ENGLISH: I beg your pardon?

18 HEARING EXAMINER ROBESON HANNAN: I just wasn't
19 sure from the first name. It's my recollection that's Ms.
20 Rodriguez.

21 MS. ENGLISH: Okay. It's spelled E-N-I-T-Z-A.
22 Enitza.

23 HEARING EXAMINER ROBESON HANNAN: (Inaudible.)

24 MS. ENGLISH: She's -- she's from Panama.

25 I have sat in traffic watching her pull out of her

1 driveway, and I know she couldn't hear me, but I have
2 screamed at her, "Enitza, Enitza, don't" -- "no, not yet."
3 I have seen close calls so often making that left-hand turn
4 out of the two-lane -- onto a two-lane highway to head down
5 to Magruder High School. It is very scary. I would never
6 make a left-hand turn in most hours of the day out of my
7 driveway. I would just turn right and go all the way
8 around to get where I want to -- want to go.

9 You may remember that Enitza told us that her dog,
10 a birthday gift, was killed on Needwood Road in front of
11 their home.

12 We have an abundance of wildlife in this
13 neighborhood. Foxes are the greatest annoyance to my
14 family because they roam at night, and our very good
15 watchdog lets us know every time they are on the property.
16 One of the things I think about that are not necessarily
17 related to any legal issues, but I wonder where all these
18 animals are going to go. We really -- the Primrose would
19 be put on this property, it is practically a natural -- a
20 wildlife refuge. I wonder where they're all going to go if
21 their habitat was destroyed by -- and replaced by a big
22 building.

23 Can we go now to JJJJJ.

24 (Exhibit 227-JJJJJ introduced.)

25 MS. ENGLISH: Oh. Oh, I -- I know what happens

1 here. You have to do the same thing -- okay. Thank you.

2 This is the infamous Carnegie Avenue. I've taken
3 this picture right outside the home of the Tapscotts. And
4 Rosemary Tapscott did a fine presentation last year telling
5 us about the challenge of getting out of this driveway.
6 And she told us that she often has to wait for two or three
7 cycles of the light at Needwood and Redland to make her
8 left-hand turn.

9 And Jennifer testified also. She and her husband
10 Eric own that house on the left there at the corner of
11 Needwood and --

12 HEARING EXAMINER ROBESON HANNAN: Right.

13 MS. ENGLISH: No, no. Needwood and Carnegie.

14 HEARING EXAMINER ROBESON HANNAN: 7500 Needwood.

15 MS. ENGLISH: That's it, yes. Uh-huh. She told of
16 how she desperately tried to find out something about the
17 7430 property across from her before that -- they bought
18 that house, and she should've talked to some of the
19 neighbors. She -- they have a lovely home, and I hope they
20 get to enjoy it for a long time.

21 If you look straight across Needwood Road, you'll
22 see Olga's house. Olga was a charming lady.

23 HEARING EXAMINER ROBESON HANNAN: Okay. You have
24 to give me a last name.

25 MS. ENGLISH: I'm sorry. Saban [sic], S-A-B-A-N.

1 So that's the property of Olga and Josh Saban, and her --
2 her parents live with them also.

3 There's been some discussion whether or not they
4 are confronting property owners, and I think this picture
5 illustrates well that their eastern property line, I think,
6 lines up with the western property line of the Lasko
7 property, the 75 -- 7430.

8 What else do we have to talk about on this?

9 Unfortunately, this road really figures into my
10 personal history because Rosemary Tapscott came to me in
11 2007 with a picture of cars parked up all along both sides
12 of this road. And she said, "My mother's in her 80s.
13 She's in poor health. What would I do if an emergency
14 vehicle had to get into this road? Because there would
15 just be no way with cars parked on both sides of people who
16 were going over to the Taiwan Culture Center."

17 I went to the Greater Shady Grove Civic Alliance
18 head. That organization's been in existence for 30 years
19 under the leadership of one very capable woman. The
20 Needwood Road Citizens Association has only been around for
21 about ten years now, and we were formed to prepare to
22 refute several conditional uses that have attempted to
23 creep into our neighborhood. Paul Posey will give you a
24 history of those in a few minutes.

25 The final point to take note of on this road -- oh,

1 well, I -- tell you more of that story. So the head of the
2 Greater Shady Grove Civic Alliance took me to a hearing
3 with the Hearing Examiner Françoise Carrier at the time in
4 2007, and the result of that complaint was that I got
5 appointed -- note I did not volunteer, I got appointed --
6 to be a member of the community liaison committee of the
7 culture center, and I've served faithfully for 14 years
8 now. It has been a very frustrating experience. It has --
9 I wish I had back the hours that I put in because of that,
10 and on my computer I had 751 emails and Word documents just
11 searching Taiwan Culture Center.

12 One more significant thing about this intersection
13 of Needwood and Carnegie Avenues, it is the bus stop for
14 three different groups. Both the Mitchell's -- Jennifer's
15 family has a preschooler who gets picked up by the
16 Candlewood bus heading eastward, and then Josh and Olga
17 have a son Nicholas who gets picked up in front of their
18 house in the Candlewood bus heading westward, and then the
19 third thing is that the middle schoolers all wait at the
20 end of Carnegie for their bus, so three significant traffic
21 items at that intersection.

22 May we see Exhibit KKKKK please.

23 (Exhibit 227-KKKKK introduced.)

24 MS. ENGLISH: There is a lot to see in this photo.
25 The first thing is the blue car. It is at the peak of the

1 road. There will be a little -- lot of discussion about
2 line of sight and such. If you look at the poles beyond
3 where the blue car is, you will see that it is a high point
4 and that it quickly -- the road quickly declines on both
5 sides of where that car is at the moment.

6 HEARING EXAMINER ROBESON HANNAN: May -- may I ask
7 you, are you looking -- you're looking westbound on
8 Needwood?

9 MS. ENGLISH: You know, I am coming from Carol --
10 Carol and Paul's property.

11 HEARING EXAMINER ROBESON HANNAN: Okay.

12 MS. ENGLISH: Okay?

13 HEARING EXAMINER ROBESON HANNAN: Are you heading
14 -- okay. Is -- is this car -- this blue car heading toward
15 the intersection of Redland and Needwood?

16 MS. ENGLISH: It is. It's heading westward.

17 HEARING EXAMINER ROBESON HANNAN: Okay.

18 MS. ENGLISH: Okay. And the biggest point to be
19 made here is that we are talking about a two-lane country
20 road. And I don't know what I was doing at Carol and
21 Paul's that I had a vehicle; I would usually walk across.
22 But you see the -- the evergreen on the right-hand side?
23 That's the boundary of our property. I have -- I usually
24 go almost to the pole there before I would ever walk across
25 the street to Carol and Paul's because it's the first spot

1 at which I can see that it's safe, that there's nothing
2 coming eastward.

3 It's a very difficult maneuver to pull out of Carol
4 and Paul's driveway and immediately turn -- make a right-
5 hand turn into my driveway. I've got to have my wits about
6 me to be able to execute that one.

7 Do you remember we had -- we call him Derwood Mike.
8 His last name is P-R-A-K-Y-A, I believe. I don't pronounce
9 it because I'm afraid of fracturing it.

10 HEARING EXAMINER ROBESON HANNAN: I think it's
11 P-R-A-H-K-E, but go ahead.

12 MS. ENGLISH: (Inaudible.)

13 HEARING EXAMINER ROBESON HANNAN: He submitted
14 photographs.

15 MS. ENGLISH: Right. That's what -- the point I
16 wanted to make, that he was sitting at the foot of my
17 driveway when he sent you photographs in the pouring down
18 rain. And, in the meantime, the Primrose traffic people
19 have told us that 95 percent of the time traffic would not
20 be backed up beyond Carnegie Avenue. So I think we have a
21 lot of evidence to rebut that proposition because that's
22 not consistent with our daily experience on Needwood Road.

23 The other point to make, when I'm coming out of my
24 parking -- out of my driveway and turning right, I have to
25 come over into the oncoming lane to make my turn usually.

1 The other alternative is to bounce my right, left, and my
2 right rear tire off of the curb and -- and risk a blowout
3 of the tire. If I'm coming eastward and want to turn left
4 into my property -- see that utility pole on the left part
5 of the --

6 HEARING EXAMINER ROBESON HANNAN: Wait --

7 MS. ENGLISH: -- left half of the picture?

8 HEARING EXAMINER ROBESON HANNAN: Yes.

9 MS. ENGLISH: That is going to have to be removed
10 because that's where the proposed driveway will be for the
11 Primrose operation. When I'm coming home and making a
12 left, I have a particular point in front of that utility
13 pole that I hold up so that my brake lights would be
14 clearer to anybody barreling along behind me.

15 And I have to -- see the gravel park -- driveway
16 right there? It's a big, wide arc that comes out on the
17 other side just a few feet east of the utility pole, and I
18 park just a little bit west of the other side of the gravel
19 driveway so that if I had to disappear real quickly off of
20 Needwood Road, I could pull into there and let a fast
21 driver go by me until I could get a clearer lane to do the
22 turn into my home.

23 What else to tell you here?

24 Oh, something very significant. If you look in my
25 rearview mirror -- this is just by dumb luck. I didn't,

1 you know, look for the right day and right climate. I just
2 happened to take this picture. And, once I looked at it, I
3 thought, well, how much talkable information there is here.

4 If you look in my rearview mirror, you'll see a
5 pipestem driveway to Carol and Paul's house, and it is a
6 design that would make some possible alternate uses of the
7 property at 7430. I think that a case has been built for
8 the fact that there are limited things that might happen
9 with that property. And I think the truth is that with a
10 pipestem driveway, it would be feasible to put two
11 residence in there.

12 Let me see what else I have to talk about on this
13 one.

14 Oh. So many of the examples that have been quoted
15 as being very much like Primrose, Needwood, three in
16 particular that were mentioned -- Layhill, Gambrills, and
17 Bethesda -- they don't take note of the fact that this is a
18 two-lane country road, and the others are all either
19 divided four-lane highways or they're in commercial
20 districts.

21 And that seems to be one of the lost facts in this
22 whole discussion, that the -- I get very apprehensive when
23 I hear "very, very," when somebody says, "It's very, very
24 like Layhill." When I took technical writing courses, you
25 got a point off for using the word "very" and a warning

1 that anytime somebody uses "very, very," you should be very
2 cautious of what they're -- very -- you should be cautious
3 of what they're saying.

4 This is a very common commute route for people
5 coming from Olney and from Laytonsville.

6 I think there are -- oh, another thing is the bike
7 path. You'll see right above my rearview mirror there,
8 there's a beautiful bike path that is very well used. Our
9 neighborhood is one of walkers and bikers, and mostly dog
10 walkers. Every hour of the day, there are pedestrians out
11 and about.

12 The bike path is interesting because many people
13 come from Shady Grove Metro, bike up to Needwood, go all
14 the way down to Needwood Park, and there they have two
15 options. They can join the path in the Needwood Park and
16 go all the way to Mount Vernon in Virginia, or they can
17 continue on a little bit further and join a bike path that
18 runs along the -- Route 200, the Intercounty Connector.

19 Why is this -- I want to say monstrosity -- this
20 very big proposed daycare center, why is it incompatible
21 with our neighborhood?

22 If we continue down Needwood Road eastward, just
23 four houses beyond the intersection of Deer Lake Road,
24 there is a daycare center called Little Hands. And it's
25 been there 25 years. I've lived here 40 years, and I've

1 always known there was a daycare center, but I -- I didn't
2 have any reason to find it, that our children are grown.
3 And in soliciting people to sign petitions, I visited many
4 homes.

5 And when I got to Little Hands, I was really
6 surprised. Here it is just three doors away from me and so
7 inconspicuous that after 25 years I didn't even know it was
8 there. That is the ideal for daycare in residential areas,
9 that they don't -- they don't create any additional
10 traffic, they -- we don't see delivery trucks coming or
11 going. We often see strollers being pushed, and I assume
12 in most cases that's probably where they're going.

13 It was startling to me when we went to the Planning
14 Board meeting in November of 2019 that the board chairman
15 could see no difference between Primrose and a local
16 neighborhood elementary school. He said, "Oh, I just don't
17 get it." He just -- he said, "You know, my children walked
18 to our neighborhood elementary school. It was no problem.
19 There was no traffic issues."

20 I wonder if the man knows our system of government,
21 that the State is responsible for educating its citizens.
22 I wonder if he knows that kids arrive at our -- our local
23 elementary school, Candlewood, by bus, so they come 30, 40,
24 50 at a time. The Primrose traffic guy told us that their
25 clients typically come one child per car, so obviously it

1 was disturbing to me that a man who was going to make a
2 decision that would have tremendous impact on our
3 community, and all the commuters who come through our
4 community, that he saw no difference there, that he just
5 drew those as parallels, that Primrose should be considered
6 just like another neighborhood elementary school.

7 The vice chair of the Planning Board insisted that
8 she was so in awe of her local neighborhood daycare to
9 which she said everybody walks or bicycles their children
10 to daycare, that, again, the point was missed that her
11 daycare at a Y -- I don't know if it was YM- or YWCA in
12 Silver Spring is in a commercial district. It's not on a
13 two-lane country road.

14 If there are any heroes in this story, Mr. Cichy of
15 the Planning Board was my hero that day. I don't know how
16 much of that you would be interested in, but if you look at
17 the segment between four minutes and six minutes, there is
18 an incredible exchange. I do a lot of communication
19 seminars and corporations. I did a professional
20 development video tape for the association --

21 MR. KLINE: Ms. Robeson Hannan. I'm sorry to
22 interrupt, but apparently my hand up isn't getting any
23 recognition.

24 HEARING EXAMINER ROBESON HANNAN: I apologize. Go
25 ahead.

1 MR. KLINE: I believe that Ms. English is -- is --
2 it's okay for her to point out discrepancies in a Planning
3 Board recommendation that might be different than what the
4 presentation is, but I don't think the board -- or, I'm
5 sorry, I don't think the Hearing Examiner normally dwells
6 into the motives and the rationale of each of the members
7 of the board and their vote.

8 I think that the transcript and the conversation
9 before the board is not necessary for you to make your
10 decision and that she be restricted to commenting only on
11 the letter from the chairman to the Hearing Examiner
12 because motive or the rationale is not -- of individual
13 board members -- just all that matters is the cumulative
14 vote of the board members.

15 MR. CHEN: If I may --

16 MR. KLINE: Thank you.

17 MR. CHEN: If I may respond to that, Madam
18 Examiner.

19 HEARING EXAMINER ROBESON HANNAN: Yes.

20 MR. CHEN: Thank you. The witness is testifying
21 about the public record. That is what she is presenting to
22 you. And I certainly feel that that is not only merely
23 relevant to your consideration, that your consideration of
24 the Planning Board decision is not limited to a letter that
25 is sent from the agency, but that you are entitled -- in

1 fact, this witness is presenting to you, and I think you
2 are obligated to hear the comments made by the board
3 members at the time that they made that decision. I don't
4 think there's a problem.

5 I don't think this is -- is a motivation-type
6 concern. And, in fact, in this type of proceeding, I don't
7 think an objection to motivation is even valid.

8 But, nonetheless, I think that the witness is
9 entitled to present to the Hearing Examiner the rationale
10 for the planning (inaudible). That -- that's what she's
11 trying to do.

12 HEARING EXAMINER ROBESON HANNAN: Mr. Kline, I --

13 MR. KLINE: Ms. -- may -- may I further respond?

14 HEARING EXAMINER ROBESON HANNAN: Yeah.

15 MR. KLINE: First of all, what was being read to
16 you is not in the record of this case. It may be in some
17 public record, but it is not part of the record that was
18 transmitted to you by --

19 MS. ENGLISH: Oh, it is.

20 MR. KLINE: -- the Planning Board after just --

21 HEARING EXAMINER ROBESON HANNAN: Don't interrupt,
22 Ms. --

23 MS. ENGLISH: I'm sorry.

24 HEARING EXAMINER ROBESON HANNAN: -- English. Go
25 ahead, Mr. Kline.

1 MR. KLINE: Right. Yeah. Yeah. I'm sorry.

2 HEARING EXAMINER ROBESON HANNAN: So I agree with
3 you, Mr. Kline. It is not. It's -- at this point, it may
4 be in the recording of the video, but that hasn't been
5 introduced in the record of this case, so at this point
6 it's hearsay. Whether -- whether individual motivations of
7 the different planning members, if that's -- I -- I wasn't
8 -- wouldn't characterize it quite that way. She -- I think
9 she was trying to summarize their positions, but that isn't
10 going -- it's not in the record, and it doesn't really sway
11 me very much.

12 But -- but, you know, it's hearsay. We do let
13 hearsay in. I'm going to let her continue and give it the
14 weight it -- it -- it deserves.

15 I understand your point, and I agree with you, Mr.
16 Kline, that this is not in the record. This is really
17 hearsay at this point. It may have been said in public,
18 but it's not in our record.

19 MR. KLINE: Well, I -- let me suggest this in the
20 alternative. I -- I -- if -- you've seen letters from the
21 Planning Board in which they've said, "And Commissioner So-
22 And-So said something," and that's something that they
23 wanted to communicate to you that I think is within the
24 scope of their recommendation. So I would suggest that her
25 testimony be limited to anything that any of the

1 commissioners said that were noted in the transmittal
2 letter to you, and keep it to that, rather than even taking
3 in hearsay evidence.

4 MR. CHEN: I object to that. I mean, it is hearsay
5 -- hearsay. I appreciate the Examiner's observation that
6 the weight to which she will give hearsay testimony is
7 certainly within the province of her discretion. And --
8 and I understand that, and I agree with that observation.

9 But, circling back, she is -- the witness is
10 certainly entitled to report to the Hearing Examiner what
11 transpired during the course of that hearing.

12 HEARING EXAMINER ROBESON HANNAN: Well, what I'm
13 going to do is let her testify not as to individual
14 motivations of the board members but what in her
15 recollection they actually said. And I'm going to give it
16 -- because it is hearsay, I will give it the weight it
17 deserves.

18 MS. ENGLISH: May I respond?

19 HEARING EXAMINER ROBESON HANNAN: Well, no.

20 MS. ENGLISH: Okay.

21 HEARING EXAMINER ROBESON HANNAN: You can -- what
22 I'm saying is you can say what you believe you heard them
23 say, and limit it to that.

24 MS. ENGLISH: Okay. Well, then I'll proceed and
25 say Mr. Cichy asks, "Well, what do the people over on

1 Ottenbrook think about the impact this might have on their
2 neighborhood?"

3 And they also -- my point I want to make here is
4 it's a differentiation between ignorance and malice. I --
5 I -- I --

6 HEARING EXAMINER ROBESON HANNAN: No. You -- that
7 is the kind of stuff -- I don't know what you're talking
8 about there. You can testify what you heard them say, but
9 I'm not going to allow something in our record about
10 malice.

11 MS. ENGLISH: Well, the reason I felt comfortable
12 --

13 HEARING EXAMINER ROBESON HANNAN: You disagree,
14 clearly. You -- you know, you cannot say that it was a
15 malicious comment.

16 MS. ENGLISH: I'm not saying that, and I debated
17 that in even bringing this up, that I just want to bring to
18 the -- your attention in particular that the decision to
19 let this go forward was based on erroneous assumptions on
20 the two people whose decision will impact hundreds of
21 people in our community and thousands who pass through
22 Needwood Road each day.

23 HEARING EXAMINER ROBESON HANNAN: All right.

24 MS. ENGLISH: So that's the point I'm trying to
25 make. And I -- I did believe it was in the record. I

1 thought it was one of the exhibits. So I apologize on
2 that. I would not have --

3 HEARING EXAMINER ROBESON HANNAN: It's fine.

4 MS. ENGLISH: Okay. So I want to move on and talk
5 about -- well --

6 MR. CHEN: If I may. If I may, Ms. English.

7 Madam Examiner, if you'd just give me patience for
8 a moment. Quickly, while you're still in your exhibits,
9 Exhibits JJJJJ, IIIII, KKKKK do not have dates on them. Do
10 you know the dates when those three photographs were taken?

11 MS. ENGLISH: I do. They're on the bottom of the
12 photograph.

13 MR. CHEN: They're not on my copies. I --

14 HEARING EXAMINER ROBESON HANNAN: They're not on
15 the -- in the record.

16 MR. CHEN: So what I --

17 MS. ENGLISH: Okay. Well, I -- can I -- they are
18 easy to get. Can I --

19 MR. CHEN: Can you --

20 MS. ENGLISH: -- still --

21 MR. CHEN: Can you --

22 MS. ENGLISH: They're on my cell phone, so it'd be
23 easy to give you the dates.

24 HEARING EXAMINER ROBESON HANNAN: Well, why don't
25 you do -- do this. Rather than take the time now, can you

1 -- you can come back and testify as to the dates.

2 MS. ENGLISH: I want to say, clearing -- out of the
3 clear blue sky, I believe it was February 4th. That was
4 the --

5 MR. CHEN: What year?

6 MS. ENGLISH: -- snowfall --

7 MR. CHEN: Year, what year?

8 MS. ENGLISH: Oh. Oh, absolutely. 2021.

9 HEARING EXAMINER ROBESON HANNAN: Okay. If that is
10 incorrect, please let us know, so the record can be
11 corrected.

12 MS. ENGLISH: Okay. Do you know -- I -- I can
13 answer this precisely on the buffer growth. That one was
14 exactly last March.

15 HEARING EXAMINER ROBESON HANNAN: Okay.

16 MS. ENGLISH: That -- that --

17 HEARING EXAMINER ROBESON HANNAN: Buffer growth is
18 IIIII.

19 MS. ENGLISH: Yes. This one was March 27th of
20 2020. And I -- I thought it was interesting that it's just
21 about where we are in the growth year right now.

22 MR. CHEN: JJJJJ --- JJJJJ and KKKKK, what's the
23 date on those two? Could you know it right now?

24 MS. ENGLISH: I don't, but I can get them because I
25 walk our dog every day on -- on Carnegie Avenue.

1 MR. CHEN: Okay. Fine. Thank you. Thank you,
2 Madam Examiner. I appreciate your patience.

3 HEARING EXAMINER ROBESON HANNAN: Okay. Go ahead.

4 MS. ENGLISH: Okay. I want to just quickly comment
5 a little bit more on going down Needwood Road further
6 heading eastward.

7 Save LLLLL. I'll be back to that in a few minutes.
8 I want to tell you -- after finishing our commentary on
9 Needwood Road, I'd like to come back and tell you a little
10 bit about my experience with the culture center over 14
11 years.

12 HEARING EXAMINER ROBESON HANNAN: Okay.

13 MS. ENGLISH: Is that agreeable? Are you getting
14 time-concerned?

15 HEARING EXAMINER ROBESON HANNAN: So what -- no.
16 I'm trying to figure out what exhibit you want me to show.

17 MS. ENGLISH: Just hold up for now because I want
18 to take you -- I want to impress upon you how much more
19 activity there is on Needwood Road as we proceed further
20 eastward. So we got as far as Little Hands.

21 HEARING EXAMINER ROBESON HANNAN: Further East
22 Wood?

23 MS. ENGLISH: Eastward.

24 HEARING EXAMINER ROBESON HANNAN: Okay.

25 MS. ENGLISH: Okay. We're coming from Redland Road

1 to Muncaster Mill Road on the other side of Needwood.

2 HEARING EXAMINER ROBESON HANNAN: Okay.

3 MS. ENGLISH: Okay. So as we pass Little Hands on
4 the left, there is a group home maybe five or six doors
5 further. Proceeding further down the road, we come to a
6 Needwood Mansion where there's a very large summer program,
7 an archeological dig program. Then you come to the
8 Needwood Golf Course. Then eventually you get to the --

9 HEARING EXAMINER ROBESON HANNAN: Just stop one --
10 can you stop one second? What I want to do is pull up -- I
11 did get Exhibit 149.

12 MS. ENGLISH: The ideal way to do this would've
13 been with Google Maps street view, but we don't have that
14 option today.

15 HEARING EXAMINER ROBESON HANNAN: Okay. Now this
16 is Exhibit 149. Because I don't know where Little Hands
17 is, and so I don't know where you're speaking of, so if you
18 can -- let me see if I can --

19 MS. ENGLISH: Okay. I'm at 7419. Little Hands is
20 four doors east of me.

21 HEARING EXAMINER ROBESON HANNAN: Okay. Just a
22 second, and I'm going to orient this. Okay. So you're
23 directly across the street; correct?

24 MS. ENGLISH: Correct.

25 HEARING EXAMINER ROBESON HANNAN: Okay. So we're

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1 moving eastbound toward -- I don't know what this first --

2 MS. ENGLISH: That's --

3 HEARING EXAMINER ROBESON HANNAN: -- intersection

4 --

5 MS. ENGLISH: -- that's Deer Lake Road.

6 HEARING EXAMINER ROBESON HANNAN: Deer Lake Road.

7 MS. ENGLISH: So it's the second house eastward of
8 Deer Lake Road.

9 HEARING EXAMINER ROBESON HANNAN: Okay. So now
10 we're progressing beyond that.

11 MS. ENGLISH: Correct.

12 HEARING EXAMINER ROBESON HANNAN: And where are you
13 speaking of now?

14 MS. ENGLISH: Okay. Keep going eastward. There
15 are two cul-de-sacs on the left of very expensive homes,
16 then the golf course. You see the golf course in the lower
17 right-hand corner?

18 HEARING EXAMINER ROBESON HANNAN: Right. Yes.

19 MS. ENGLISH: Now --

20 HEARING EXAMINER ROBESON HANNAN: So you said --
21 what's the name of that golf course?

22 MS. ENGLISH: It doesn't -- oh, it's named --

23 HEARING EXAMINER ROBESON HANNAN: Well --

24 MS. ENGLISH: -- Needwood Golf Course.

25 HEARING EXAMINER ROBESON HANNAN: Okay. So keep

1 going. Now I'm oriented, so keep going.

2 MS. ENGLISH: Okay. So then when we get to the
3 lake, there's a lot of activity there.

4 HEARING EXAMINER ROBESON HANNAN: Now which light?
5 Which light?

6 MS. ENGLISH: Lake Needwood.

7 HEARING EXAMINER ROBESON HANNAN: And where is that
8 on this exhibit? Is it shown on this exhibit?

9 MS. ENGLISH: It should be beyond the golf course,
10 so we'd need to get a little bit further east.

11 HEARING EXAMINER ROBESON HANNAN: Okay. That's --
12 that's all I can go to.

13 MS. ENGLISH: Oh, okay.

14 HEARING EXAMINER ROBESON HANNAN: Okay. So it's
15 east of the golf course?

16 MS. ENGLISH: East of the golf course is the lake,
17 and then beyond that we come to a solar farm built into the
18 hillside. Then we have a bridge over the ICC. We dead-end
19 at a -- an assisted living facility, and then there's an
20 interesting light there because it's a light -- a right-
21 hand turn will take you to Magruder High School, a left
22 turn will take you to Redland Middle School. And it --

23 HEARING EXAMINER ROBESON HANNAN: And do you know
24 what that intersection is?

25 MS. ENGLISH: Yes. Muncaster Mill Road at

1 Needwood.

2 HEARING EXAMINER ROBESON HANNAN: Okay. Okay.

3 MS. ENGLISH: And, again, traffic for both of those
4 schools and all of those activities that exist along the
5 way there.

6 HEARING EXAMINER ROBESON HANNAN: Okay.

7 MS. ENGLISH: Okay. Can I quickly try to describe
8 to you 14 years of association with the community liaison
9 committee of the --

10 HEARING EXAMINER ROBESON HANNAN: Well, let me --

11 MS. ENGLISH: -- of --

12 HEARING EXAMINER ROBESON HANNAN: -- ask you, what
13 does this have to do with this conditional use?

14 MS. ENGLISH: Because we have experience in what
15 happens after special exceptions, continuous -- continual
16 conditional uses are granted. Then the community is left
17 to deal with the situation. And I brought the same thing
18 up at the meetings about the Greater Shady Grove Master
19 Plan that's being rewritten right now. I asked -- you
20 know, we've had an experience of 14 years of -- oh, I tried
21 to count how many times I've been inside --

22 HEARING EXAMINER ROBESON HANNAN: Mr. Kline. Just
23 a sec. Mr. Kline, is your hand up?

24 MR. KLINE: Oh, it is. It is. But you asked the
25 question I would've asked, so I'll just let you proceed

1 with that answer.

2 HEARING EXAMINER ROBESON HANNAN: Okay.

3 MS. ENGLISH: So I -- I -- I know you can't predict
4 what's going to happen, but I think based on experience you
5 know what to be looking out for, that if, you know -- if a
6 -- an evergreen buffer is promised, that's different from
7 being able to say here's an evergreen buffer 14 years
8 later.

9 HEARING EXAMINER ROBESON HANNAN: But how is that
10 -- I -- I -- it sounds like you believe that this Taiwan
11 Culture Center has been a bad actor. What --

12 MS. ENGLISH: Well, those --

13 HEARING EXAMINER ROBESON HANNAN: -- is (inaudible)
14 basis for saying that Primrose will be a bad actor?

15 MS. ENGLISH: I don't know that. But if you'll go
16 two more slides ahead, two more pictures ahead --

17 HEARING EXAMINER ROBESON HANNAN: Okay.

18 (Exhibit 227-MMMMM introduced.)

19 MS. ENGLISH: The upper picture is the current --

20 MR. CHEN: What exhibit --

21 MS. ENGLISH: -- culture center.

22 MR. CHEN: -- what exhibit is this please?

23 HEARING EXAMINER ROBESON HANNAN: Five M's.

24 227-MMMMM.

25 MS. ENGLISH: So the culture center was given

1 permission in 2007 to move into this -- in fact, from 2003,
2 the --

3 HEARING EXAMINER ROBESON HANNAN: Well, wait, I
4 haven't -- Mr. Kline, do you want to weigh in on this?

5 MS. ENGLISH: Oh.

6 MR. KLINE: Thank you for asking, but I'm not quite
7 sure where it's going yet, so that's why I hadn't raised my
8 hand.

9 HEARING EXAMINER ROBESON HANNAN: Okay. I'll let
10 her proceed then. Go ahead --

11 MS. ENGLISH: Okay.

12 HEARING EXAMINER ROBESON HANNAN: -- Ms. English.

13 MS. ENGLISH: The organization had a bad record
14 from the start. They operated there from 2003 to 2006
15 without a conditional use, without a special exception, as
16 a community service organization, tax exempt. They did a
17 half dozen projects. They paved a driveway and a parking
18 facility in the back of the building without a permit. So,
19 finally in 2006, they went through the formalities of
20 becoming a -- well, the -- the processes started in 2006.

21 By the time I was on board in 2007 -- because
22 Rosemary Tapscott had given me the picture of all the cars
23 on Carnegie -- by then, there was -- I don't think the word
24 is investigation, but the hearing examiner studied what was
25 happening and gave them 19 conditions on which they could

1 be operating. And I counted at one point 21 times that she
2 used the word limited or modest or residential. So 21
3 conditions on which they could operate there.

4 And she -- if you go back up to the colorful
5 brochure, right there -- I don't know if I can read it from
6 there, or I'll read it -- do you want to read it? I have a
7 separate copy here. But, anyway, it basically says our
8 long-term plan is to expand.

9 And the hearing examiner warned them, saying,
10 "Don't put a lot in that basket. Don't put all your
11 resources in that basket because you're going to have to go
12 through a major process to expand that" -- "your building,
13 and it might be a futile endeavor." She said, "You know,
14 I'm giving you very limited ability to operate here because
15 you're only allowed to have 16 cars, you're only allowed to
16 have 30 people, and so on. You'll" -- "very limited
17 meeting hours."

18 So incrementally -- and the other big thing, that
19 she created a community liaison committee, and I was a
20 member as was the -- Martin Klauber, the people's advocate
21 was the position formally funded by Montgomery County, and
22 by then we had a Needwood Road Citizens Association, so the
23 president of that organization, so there were -- we were
24 the three basics.

25 So the conditions were that you had to have at

1 least three to six members of the community invited to be
2 on your council. I went through 14 years of records, and
3 less than 45 percent of the time did they ever have three
4 or more representatives of our community. And very
5 schemingly -- for example, Sarah Newens --

6 HEARING EXAMINER ROBESON HANNAN: Wait, wait.
7 Schemingly?

8 MS. ENGLISH: (Inaudible.)

9 HEARING EXAMINER ROBESON HANNAN: I'm not going to
10 -- did you say schemingly?

11 MS. ENGLISH: I did, and I apologize. That's a
12 loaded -- well, let me tell --

13 HEARING EXAMINER ROBESON HANNAN: And --

14 MS. ENGLISH: -- you the scheming though.

15 HEARING EXAMINER ROBESON HANNAN: -- and -- and I
16 really --

17 MS. ENGLISH: I wish I could convince you.

18 HEARING EXAMINER ROBESON HANNAN: Unless you --
19 convince me of what? What are you trying to convince me
20 of? That the Taiwanese Cultural Center has done bad things
21 or that Primrose isn't going to abide by its conditions?

22 MS. ENGLISH: I don't know that, but I know from
23 experience how much of my life has been dominated by this
24 organization for 14 years.

25 Sarah Newens was appointed to -- volunteered. You

1 know, I've been giving names for 14 years. Here are people
2 who are interested in serving. There were neighbors who
3 were invited and couldn't or wouldn't serve, and -- for
4 example, 94-year-old Billy Burroughs right across the
5 street from --

6 HEARING EXAMINER ROBESON HANNAN: Okay, okay.

7 MS. ENGLISH: He -- he -- he would --

8 HEARING EXAMINER ROBESON HANNAN: I'm -- I'm going
9 to cut this off because I do not understand -- I -- I'm not
10 getting enough of a connection. It sounds to me that the
11 community -- what your point is, and I think you've
12 demonstrated it, is that you have -- the community has had
13 a burden dealing with the Taiwanese Culture Center. That's
14 what I'm hearing from you.

15 Now what I'm not hearing, and I -- I have not
16 decided this case one way or the other, but the relevance
17 of -- you know, I -- you've made the point, we've got the
18 exhibits in the record, that there's been a tremendous
19 amount of effort in this. I don't get -- what I'm not
20 hearing is the relevance of this to whether Primrose would
21 comply.

22 MS. ENGLISH: Okay. Could we look at the two
23 buildings then on the next two slides?

24 HEARING EXAMINER ROBESON HANNAN: And I'm looking
25 at MMMMM.

1 MS. ENGLISH: Yeah. Different views.

2 HEARING EXAMINER ROBESON HANNAN: Yes. But the
3 same point. Why does this say that Primrose is going to be
4 a problem?

5 MS. ENGLISH: We don't know that, but we know that
6 Montgomery County Board of Appeals gave permission for this
7 huge expansion from a thousand square feet to 12,000 square
8 feet, was given the go-ahead.

9 HEARING EXAMINER ROBESON HANNAN: But this
10 (inaudible) not go to the Board of Appeals.

11 MS. ENGLISH: Okay.

12 HEARING EXAMINER ROBESON HANNAN: (Inaudible) go
13 through us, the OZAH.

14 MS. ENGLISH: Okay.

15 HEARING EXAMINER ROBESON HANNAN: Now it could be
16 appealed to the Board of Appeals. So are you saying that
17 the Board of Appeals is the issue?

18 MS. ENGLISH: Well, they're part of it because they
19 ruled in favor of the community to stop the -- the
20 construction of this building.

21 HEARING EXAMINER ROBESON HANNAN: Okay.

22 MS. ENGLISH: And within two -- within two weeks of
23 our prevailing there, they in private session reversed
24 their vote, and we ended up going to circuit court.

25 HEARING EXAMINER ROBESON HANNAN: Mr. Chen.

1 MR. CHEN: Yes.

2 HEARING EXAMINER ROBESON HANNAN: I'm going to ask
3 you to tell me -- this is a lot of time on the Taiwanese
4 Culture Center. I'm going to ask you to tell me why we
5 should keep going. I think she's made the point that it's
6 -- it's been burdensome to the community. Is there some
7 other reason we should continue this?

8 MR. CHEN: My understanding is that Ms. English
9 wanted to express her concerns to you, and that's what
10 she's doing. I understand your observation. I understand
11 Mr. Kline's observation.

12 And, you know, basically, as you've accurately, I
13 think, pinpointed, Ms. English has concerns, and she has
14 spent some time expressing those concerns about the
15 Taiwanese Culture Center. And, you know, that is a concern
16 that she has, and she relates that to a concern that for
17 another conditional use in the neighborhood -- I think what
18 she's trying to say is that that is a matter of concern
19 that she has.

20 HEARING EXAMINER ROBESON HANNAN: All right.

21 MS. ENGLISH: So --

22 HEARING EXAMINER ROBESON HANNAN: Ms. English, I
23 think actually -- you may not think so, but I think you've
24 done an excellent job of pointing out your concerns, which
25 include the time spent monitoring the lack of compliance

1 with the conditional use, the lack of maintenance, so I do
2 understand those concerns. I'd like to move on to another
3 topic at this point.

4 MS. ENGLISH: I know I need to be wrapping it up
5 because we'd like to be on schedule to have Paul testify
6 yet this morning. Let me scrap my pages of Taiwan center.

7 I ask you, Madam Examiner, is the community
8 supposed to just roll over and accept whatever Montgomery
9 County decides and say, "Well, there goes our
10 neighborhood"? The latest iteration of the culture center
11 is they're -- they're going now through a major
12 modification, including an underground parking garage. Now
13 compare that to their mandate in 2007 to have a modest
14 presence. So is the community just supposed to stand by
15 and let these people come in and without monitoring in any
16 way their behaviors to the community once they've gotten
17 permission as a conditional use?

18 HEARING EXAMINER ROBESON HANNAN: I understand. I
19 understand your concern.

20 MS. ENGLISH: Okay. I'm still at -- look at all
21 these pages you were spared.

22 HEARING EXAMINER ROBESON HANNAN: Well, there is --

23 MS. ENGLISH: Okay.

24 HEARING EXAMINER ROBESON HANNAN: -- a record, and
25 I do review them. I have already reviewed them. And I --

1 so maybe that's why I got the gist of where you were going
2 on this.

3 MS. ENGLISH: I didn't want to keep -- you know, we
4 get all these, "Attention Citizens, the County Executive
5 wants to hear from you." I don't know where the voice of
6 the community is heard in this process, you know, that we
7 have the petitions that people signed. We have the County
8 Executive and the Council saying, "We want to hear from
9 you, come to our meetings." We hear the advocates for
10 development. But what recourse do citizens have to have an
11 impact on decisions?

12 You know, it's an expensive process to go to
13 circuit court. It's time-consuming. I wish I had the
14 hours that I had spent on -- I think I have a couple
15 hundred Primrose emails at this point too.

16 We are contributors, and -- you know, the two
17 previous presidents of the Needwood Road Citizens
18 Association have moved out of state. The former owners of
19 Olga and Josh's property have moved out of state. You're
20 going to hear from Joe Davis who moved out of state.

21 In the meantime, our governor has movements to try
22 to retain senior citizens. How can we get people to stay
23 here? Well, how could anybody want to live here when they
24 see -- I love living here. I love being able to go to
25 Kennedy Center or Strathmore or Fitzgerald Theatre on Super

1 Bowl Sunday. I love -- I love my book group. I love my
2 church. I love everything about living here except the
3 lack of a voice for citizens.

4 So I will not let Primrose or anyone else dictate
5 where I spend my rest of my life, but I think anybody who's
6 dealt with something like the culture center just feels
7 very frustrated that the government's going to roll over
8 you, don't waste your time, don't waste your money, don't
9 spend any emotional energy on this.

10 You've had a chance to hear from Primrose a year
11 ago. And this is really a David and Goliath situation,
12 where there's this well-funded -- one billion, with a B,
13 dollar, blatantly commercial franchise masquerading as
14 another community service organization. This doesn't fit
15 into our community. It's not in harmony with the
16 neighborhood. It's not compatible with the plot on which
17 it hopes to exist. There are numerous inconsistencies
18 which are being claimed against community sensitive
19 solutions that can be realized on the site.

20 People in this neighborhood have -- have a real-
21 life experience with conditional uses and have raised our
22 bar for what compatibility with our community looks like.
23 We're not opposed to development, just like Little Hands,
24 which is the kind of childcare center -- childcare that is
25 appropriate to a residential neighborhood. You have

1 testimony from all the citizens that you heard from last
2 year. You have the weight of the voice of the community
3 and the occupancy-driven, compatibility concerns.

4 I beg you to please see the other part of living
5 with the decisions that are made. Would you want to live
6 across the street from the Primrose facility? I yield my
7 time. Thank you.

8 HEARING EXAMINER ROBESON HANNAN: Thank you very
9 much. And I do understand your concerns.

10 Mr. Kline, do you -- or, Mr. Chen, do you have any
11 questions of Ms. English?

12 MR. CHEN: No. Thank you very much though, Madam
13 Examiner.

14 HEARING EXAMINER ROBESON HANNAN: Mr. Kline, do you
15 have cross-examination?

16 MR. KLINE: I do, ma'am, but I wondered if we could
17 just take a five-minute break for a second, just so I can
18 get my couple a little better organized and go through them
19 faster.

20 HEARING EXAMINER ROBESON HANNAN: That's fine.
21 We'll go off the record for five minutes.

22 MS. ENGLISH: May I ask you a question as we
23 depart?

24 HEARING EXAMINER ROBESON HANNAN: We're not off the
25 record yet. Go ahead. No, go ahead.

1 MS. ENGLISH: I really honestly thought the
2 Planning Board meeting was in the exhibits, if I can --
3 I'll spend the five minutes looking for it. If I find it
4 --

5 HEARING EXAMINER ROBESON HANNAN: No, it's not
6 there.

7 MS. ENGLISH: It's not? Oh --

8 HEARING EXAMINER ROBESON HANNAN: I know it's not
9 there.

10 MS. ENGLISH: Okay. I lost track (inaudible).

11 HEARING EXAMINER ROBESON HANNAN: Their transmittal
12 letter is there.

13 MS. ENGLISH: Say it again.

14 HEARING EXAMINER ROBESON HANNAN: Their transmittal
15 letter, I can see if I can find the transmittal letter.

16 MR. KLINE: It is Exhibit 119, and I will ask Ms.
17 English to review it and talk about it later on.

18 HEARING EXAMINER ROBESON HANNAN: Okay. So we will
19 go to -- Ms. English, did you hear that? Because you will
20 have time to -- if Mr. Chen wants any redirect, you will
21 have time to -- if -- if Mr. Kline will let us do that on
22 redirect, you can follow up.

23 MS. ENGLISH: Okay. Thank you.

24 HEARING EXAMINER ROBESON HANNAN: Or he may ask you
25 about it. Okay. With that, we're going to go off the

1 record for five minutes. Thank you.

2 (Pause in proceedings.)

3 HEARING EXAMINER ROBESON HANNAN: We're back on the
4 record.

5 THE REPORTER: We are back on the record.

6 HEARING EXAMINER ROBESON HANNAN: Thank you. Are
7 the parties ready?

8 MR. KLINE: I'm prepared, Madam Examiner.

9 HEARING EXAMINER ROBESON HANNAN: And, Mr. Kline,
10 have you organized yourself?

11 MR. KLINE: Probably not as well as I'd like, but,
12 fortunately Ms. English was organized, so I'm just going to
13 just go through chronologically, hope I can remember the
14 questions I want to ask.

15 CROSS-EXAMINATION OF CECELIA ENGLISH

16 MR. KLINE: But probably the first one I'd start
17 with is the one that we probably spent the most -- the max
18 amount of our time talking about it, and -- and I'd say it
19 this way. Using the term that somebody threw out about
20 Primrose, is it a bad actor, do you have any evidence that
21 you can provide us indicating that Primrose, either locally
22 or nationally, has -- has a record or a history of failing
23 to comply with approvals and regulations applicable to its
24 facilities by which it would then, therefore, be defined to
25 be a bad actor? Have you been able to find any such

1 information?

2 MS. ENGLISH: I don't know -- I don't have any
3 reason to know of their record in any other city or -- I
4 know about the scandal in Georgia, but I don't think that's
5 relevant to the discussion. I don't know what their
6 process has been of any of their other 420-some locations.
7 How would any citizen be aware, you know, unless you had
8 stock in the company?

9 MR. KLINE: Well, I think the Hearing Examiner's
10 question kind of goes to that, and that is, you can't say
11 that the Taiwanese Culture Center is necessarily emblematic
12 of what all conditional use holders are going to do. I
13 think it is valid if you can say, "Well, these people have
14 a record or a history of not abiding by regulations in the
15 past, and that's a reason not to approve them now."

16 MS. ENGLISH: I --

17 MR. KLINE: But you're not aware of any such thing?

18 MS. ENGLISH: I don't think that's relevant. I
19 think the facility, the size, the waivers, the traffic -- I
20 think what you're bringing up is irrelevant, that just
21 because --

22 MR. KLINE: Well --

23 MS. ENGLISH: -- even if there were bad actors out
24 of 425 --

25 HEARING EXAMINER ROBESON HANNAN: Okay. Ms.

1 Kosary, this is just your time to answer his questions and
2 not --

3 MR. CHEN: Madam Examiner, this is Ms. English, not
4 Ms. Kosary.

5 HEARING EXAMINER ROBESON HANNAN: Oh, I'm -- oh, I
6 apologize. I've been reading transcripts from -- yes.
7 Okay.

8 Go ahead. Go ahead, Mr. Kline.

9 MR. KLINE: Sure. Well, I'll try and wrap it up
10 then with a simple statement. Do you have any reason to
11 believe that Primrose would not abide by the conditions
12 that may be imposed by the Hearing Examiner if this
13 conditional use were granted?

14 MS. ENGLISH: I have only my experience with the
15 only conditional use I've ever had to interact with in my
16 life. So are you saying that if this -- if Primrose was so
17 successful and pleased with their presence on Needwood Road
18 and they decided to build a second story because it was
19 such a success that the neighbors should just accept it?

20 MR. KLINE: Sure. Well, actually, let me come back
21 to that because that was something you were kind of
22 pointing out at the end of your testimony, and I wanted to
23 get to that separately.

24 You were kind enough to note that Mr. Mandava, the
25 owner of the property -- or I'll rephrase that, I think you

1 used the word Primrose -- but the property today, am I not
2 correct, it is -- it's well-maintained, the --

3 MS. ENGLISH: Yes.

4 MR. KLINE: -- signs have been posted, and the snow
5 removal was taken care of. So to the -- I'm overstretching
6 a little bit, but isn't that an indication to you that the
7 potential ultimate user is a responsible person who will
8 abide by the conditions of the conditional use if granted?

9 MS. ENGLISH: We had the absolute same experience
10 with the Taiwan center, that they complied with the hearing
11 examiner's requisites until they had permission, and then
12 they totally had no use for the community.

13 MR. KLINE: Okay. You were talking about your
14 experience with the cultural center as you're dealing with
15 a -- dealing with conditional use. You mentioned the -- I
16 guess it's called the Taiwanese Presbyterian Church at 7410
17 Needwood Road. And you talked about it being a conditional
18 use. Do you want to correct your testimony on that? Is
19 that a conditional use?

20 MS. ENGLISH: It's a permitted use. I -- I don't
21 remember talking about that. Did I?

22 MR. KLINE: Well, you specifically said it's a
23 conditional use.

24 MS. ENGLISH: No. I know churches are permitted
25 uses.

1 MR. KLINE: All right, okay. That's fine. I just
2 wanted to make sure that you did understand they didn't get
3 there by a conditional use process.

4 MS. ENGLISH: I -- I do. Maybe I used a --

5 MR. KLINE: Sure.

6 MS. ENGLISH: Was I -- was the context that I was
7 talking about Carol and Paul being sandwiched between two
8 conditional uses? Was that the context?

9 MR. KLINE: Double whopper was, I think, your
10 phrase.

11 MS. ENGLISH: Oh, right. I -- I --

12 MR. KLINE: Okay. Or double whammy, I'm sorry.
13 Yeah.

14 MS. ENGLISH: -- I used a bad term, but the fact
15 still remains that they are going to be sandwiched between
16 two facilities that will diminish the value of their
17 property.

18 MR. KLINE: I acknowledge that they will be
19 sandwiched between two non-single family residential
20 facilities. I understand your point.

21 Would -- would the neighborhood be interested --
22 rephrase that. Would you like to see the Hearing Examiner
23 impose a condition that the Applicant would conduct a
24 wildlife retrieval program, which happens regularly when
25 heavily treed properties are taken down, and basically

1 capture any native animals or birds living on the property
2 and remove them to a better locale for them? Would that be
3 a condition that would be of interest to the community?

4 MS. ENGLISH: Would foxes be included?

5 MR. KLINE: Yeah. No, I mean, if you're going to
6 basically relocate, it's tortoises, it's foxes, it's birds,
7 it's -- the wildlife management program that the State
8 promotes, and I've done it before. You basically go in and
9 you capture everything, and you take it to a better
10 environment. Would that be of interest to the community?

11 MS. ENGLISH: Would that be consistent with the
12 Upper Rock Creek relationship protection of the
13 environment? Seems to me environmental concerns are very
14 much a part of their mandate.

15 MR. KLINE: Yeah, valid -- valid point. I don't
16 recall in the master plan there being any language that
17 encourages or requires such a program. I've just seen it
18 done in other places because it does have an environmental
19 benefit, and I think that would be consistent with the
20 master plan. So I just wondered if you thought that would
21 be a good idea for the Hearing Examiner to consider such a
22 condition.

23 MS. ENGLISH: Well, I don't think I can speak for
24 the community on that. I think -- I sure would love to
25 have the deer not having to be dragged off of Needwood Road

1 and onto my lawn or the ones that make it to my lawn --

2 MR. KLINE: Yeah. Yeah, I -- unfortunately, the
3 wildlife relocation program's only good just so far because
4 deer do migrate, but that's -- that's an aside.

5 The pictures -- well, actually -- yeah, I guess it
6 was the picture you were showing us of Carnegie, and you
7 gave us an explanation of how there were bus stops in close
8 proximity to the intersection of Carnegie and Needwood.

9 MS. ENGLISH: Um-hmm.

10 MR. KLINE: One westbound, two eastbound, I think
11 it was.

12 MS. ENGLISH: Two -- no, no. One and one and then
13 the middle school. One westbound, one eastbound to
14 Candlewood.

15 MR. KLINE: Okay. Well, let me try it again.
16 There were -- you said three bus stops?

17 MS. ENGLISH: Correct.

18 MR. KLINE: Yeah. And can you give a -- one going
19 in the westbound direction and two going in the eastbound
20 direction?

21 MS. ENGLISH: They -- yes.

22 MR. KLINE: Okay. Great.

23 MS. ENGLISH: Two going eastbound, to Redland
24 Middle School and to Carnegie picking up elementary school
25 children who live on the south side of Needwood Road.

1 MR. KLINE: All right. So I presume that for the
2 children who are going on the eastbound routed buses, they
3 cross over Needwood and stand on the front of our -- our
4 subject property or the property at 7500 and wait for the
5 bus to come. Is that what's happening?

6 MS. ENGLISH: Are you talking middle school
7 students?

8 MR. KLINE: Well, I'm talking about any -- any
9 student taking an eastbound bus. Where do they get picked
10 up?

11 MS. ENGLISH: The middle school students at the
12 intersection of Carnegie and Needwood. The high school
13 students at the intersection of Deer Lake Road and
14 Needwood.

15 MR. KLINE: Got you. I -- I think I must've
16 misunderstood. So there's only two stops at the
17 intersection of Needwood and Carnegie?

18 MS. ENGLISH: Three.

19 MR. KLINE: Three?

20 MS. ENGLISH: There's one for Olga and Josh's child
21 who's on the north --

22 MR. KLINE: North, north side.

23 MS. ENGLISH: -- side of Needwood Road.

24 MR. KLINE: Understand. Right.

25 MS. ENGLISH: So elementary children don't cross

1 the street. They're picked up at their door.

2 MR. KLINE: So let me -- let me -- I'm having
3 trouble sorting that all out. But let's just say there are
4 buses heading in both directions that stop to pick up
5 children at that location; correct?

6 MS. ENGLISH: Correct.

7 MR. KLINE: Okay. So --

8 MS. ENGLISH: Two heading to the elementary school
9 and one heading to the middle school.

10 MR. KLINE: All right. So doesn't that function
11 have a traffic calming effect during the periods when the
12 buses are traveling so that there isn't speeding on the
13 road during those time periods?

14 MS. ENGLISH: I don't know that I got into
15 speeding, but it -- it causes a backup.

16 MR. KLINE: Okay. And that would be -- that could
17 be classified as a traffic calming mechanism then, couldn't
18 it?

19 MS. ENGLISH: I would call it a bottleneck. I know
20 your traffic guy said this was going to be opportunities
21 for people to pull out from the side streets when -- when
22 the buses create an opening.

23 MR. KLINE: I understand. And you concur that
24 that's true?

25 MS. ENGLISH: I haven't had to deal with buses for

1 a long, long time. I don't want to go on record on that
2 one. I -- I --

3 MR. KLINE: Okay.

4 MS. ENGLISH: -- I don't have an --

5 MR. KLINE: That's fine.

6 MS. ENGLISH: -- educated guess.

7 MR. KLINE: All right. Well, since you were --

8 MS. ENGLISH: I know I don't like to --

9 MR. KLINE: Go ahead. I'm sorry.

10 MS. ENGLISH: -- I don't like to be behind one.

11 MR. KLINE: Yeah. But you did mention the queuing,
12 and though I don't remember it specifically, Mr. Cook
13 apparently did testify that 95 percent of the time the
14 queue would not go all the way back to Carnegie, and you
15 said that you have done -- have lots of evidence that
16 that's not true. But did anybody go out and do count --
17 not counts -- but measurements and say, "Hey, I stood out
18 there five days in a row, and here's what the longest queue
19 back was," or is the evidence you're relying on the
20 testimony we heard by speakers rather than something
21 empirical or tangible?

22 MS. ENGLISH: I know about all the studies that
23 have been done, and they're inconsistent with what my
24 experience is on a daily basis.

25 MR. KLINE: And my question is, did your

1 neighborhood decide to go out and do your own studies and
2 basically do the measurements of the queues yourself?

3 MS. ENGLISH: No. People don't have time -- people
4 -- to be a community activist is a responsibility that most
5 people cannot bear because it's -- retired people have the
6 privilege of doing that as a service to the community where
7 people raising children can barely get to school meetings
8 and community liaison committee meetings.

9 MR. KLINE: Well, you're a mathematician by
10 training and profession, so probably you more than any of
11 us knows the reliance on hard data and numbers. So why
12 didn't you go out and stand out there with a clipboard --

13 MS. ENGLISH: Because --

14 MR. KLINE: -- and say, "Hey, on such-and-such a
15 day, it backed up this far," or commission somebody else in
16 the neighborhood to do it.

17 MS. ENGLISH: I didn't give to -- get to tell a
18 story on that, but on -- two days before the hearing -- the
19 Planning Board meeting, so I believe that would've been
20 November 3rd -- two days apart -- it was either 3rd and 5th
21 or 5th and 7th -- I was taking my garbage out to the corner
22 at exactly 7:15 on that Tuesday morning, and I looked and
23 thought, Look at this traffic. And I know it was 7:15
24 because that garbage was supposed to be out there at seven
25 o'clock, and I was feeling I hadn't met the challenge of

1 life because I was running late on that already.

2 But Carol and Paul were sitting in their driveway
3 trying to get on to make a left-hand turn onto Needwood.
4 And by the time I got to park my garbage, I thought, I'm
5 just going to stand here and count. So cars had gone by me
6 on my side of the road, the north side of Needwood, and
7 from the moment I started to count, 20 cars, three
8 bicycles, and one stroller went by. And as Carol and Paul
9 pulled out, I went like this to tell them I had counted 20
10 people before they had their -- 20 cars before they had
11 their chance.

12 Are you suggesting we should hire people to do
13 studies?

14 MR. KLINE: I'm --

15 MS. ENGLISH: Who's going to (inaudible) --

16 MR. KLINE: Yeah. I'm simply asking if you had any
17 empirical evidence to demonstrate that the 95 percent queue
18 number that Mr. Cook used is not accurate. And other than
19 personal experience with no statistical backup, you do not
20 have anything; correct?

21 MR. CHEN: Excuse me. Madam Examiner, if I may.

22 HEARING EXAMINER ROBESON HANNAN: Yes.

23 MR. CHEN: I object to the characterization of the
24 testimony because, indeed and in fact, Ms. English gave
25 firsthand experience, statistical information, about cars

1 that were passing by. So, you know, my problem is the
2 characterization of the testimony. I don't -- I don't
3 think it's accurate. I don't object to cross-examination
4 of the testimony obviously, but the characterization, I
5 think, is inaccurate.

6 HEARING EXAMINER ROBESON HANNAN: Mr. Kline, can
7 you ask her what you're getting at in another way?

8 MR. KLINE: Sure. Do you have anything that saw --
9 written on paper that lists the lengths of the queues back
10 from the light at Redland and Needwood over an extended
11 period of time?

12 MS. ENGLISH: I know there's not --

13 MR. KLINE: Yes or no? Yes or no please.

14 MS. ENGLISH: Repeat the question please.

15 MR. KLINE: Yes. Do you have anything that you can
16 put into the record that shows the length of the queues
17 back from the light at Redland and Needwood on -- on a
18 number of days, more than just one day, several days?

19 MS. ENGLISH: I'm trying to think what all we've
20 read in preparation.

21 MR. KLINE: I'm asking you if you have something
22 you can put in the record. Yes or no?

23 MS. ENGLISH: I would have to review the hundreds
24 of emails and studies that we've put into preparation for
25 this, that we did many drills.

1 MR. KLINE: Can you -- I'm sorry. That -- I'm not
2 sure I understand that term. So what is it you're telling
3 me?

4 MS. ENGLISH: I think you need to ask this question
5 of the experts this afternoon who are part of the
6 quantification of items relating to this.

7 MR. KLINE: And is Mr. Chen calling an expert
8 traffic engineer this afternoon?

9 MS. ENGLISH: I think the two people on tap this
10 afternoon are Mr. Davis and Dr. Kosary.

11 MR. KLINE: And obviously neither one of them are
12 traffic engineers; correct?

13 MS. ENGLISH: But we have more days of testimony,
14 don't we?

15 MR. CHEN: Madam Examiner, just for the record, I
16 have accurately disclosed our witnesses. We're not
17 presenting any testimony of a traffic engineer.

18 HEARING EXAMINER ROBESON HANNAN: Okay. Thank you.

19 MR. KLINE: Yeah. I withdraw the question. I'm
20 sorry, Ms. English. I -- I think Mr. Chen's acknowledged
21 there's not going to be an expert traffic engineer, and I'm
22 just looking for something statistical, and I'm going to --
23 I'm going to conclude your testimony is that you don't have
24 anything. There may be something provided by somebody
25 else.

1 MS. ENGLISH: Are you implying that the community
2 should've hired statistical studies, and at whose expense?

3 HEARING EXAMINER ROBESON HANNAN: Ms. Kosary [sic],
4 it --

5 MR. KLINE: Yeah.

6 HEARING EXAMINER ROBESON HANNAN: -- I don't think
7 he's implying anything. I think he's just trying to
8 understand your evidence. Okay? What evidence is there?
9 So --

10 MR. KLINE: Taking -- taking Mr. Chen's cue, you
11 said Mr. Cook testified that 95 percent of the time, the
12 queue would never get to Carnegie. You said we have lots
13 of evidence that says that's not correct. And I'm just
14 asking you, is it written and statistical, or is it just
15 people's testimony that we've heard?

16 MS. ENGLISH: I think it's anecdotal, personal --

17 MR. KLINE: Thank you.

18 MS. ENGLISH: -- (inaudible).

19 MR. KLINE: Thank you. That's all I wanted to
20 hear.

21 MS. ENGLISH: I did mention Derwood Mike whose
22 rainy day photos were submitted.

23 MR. KLINE: I mentioned, Ms. Robeson Hannan, that I
24 wanted to talk to Ms. English about Exhibit 119, if you
25 could pull it up please.

1 HEARING EXAMINER ROBESON HANNAN: I do not have
2 that one on the list. What is that one?

3 MR. KLINE: That is the -- that's the letter from
4 the Planning Board dated November 13, 2019. Oh, I --
5 that's right. That -- that probably was not asked to be
6 put into your call-up quickly. You know what, why don't I
7 just -- I'll just -- I'll just delete that question.
8 Because I -- we -- unless it's simple enough to go find it
9 in the rest of the record, but if it's not, it's -- I --
10 I'd be belaboring a point, I think, we probably worked out
11 earlier.

12 HEARING EXAMINER ROBESON HANNAN: Okay. I -- it's
13 complicated, but I would have to sign into my VPN to get
14 it.

15 MR. KLINE: All right. Sure.

16 HEARING EXAMINER ROBESON HANNAN: Unless, if Nana's
17 listening, Nana, if you have the capability of retrieving
18 it.

19 MR. KLINE: Sure. Well, I'll ask Ms. English a
20 question, but I believe I know the answer, and that is,
21 what I'm talking about, Ms. English, is, after the Planning
22 Board listened to both the Applicant and the neighbors,
23 they went ahead and voted, and their vote was transmitted
24 to the Hearing Examiner in a letter dated November 13,
25 2019, which is in the record as Exhibit 119. Do you have

1 any recollection of the contents of that letter or any
2 familiarity with it?

3 MS. ENGLISH: Are you asking me or the Hearing
4 Examiner?

5 MR. KLINE: No, I'm asking you if you -- if you
6 have any familiarity with it. If you don't --

7 HEARING EXAMINER ROBESON HANNAN: He's asking you.

8 MR. KLINE: Yeah. If you -- right.

9 MS. ENGLISH: I'm very confused. Are you asking me
10 the contents of a letter that was written to somebody else?

11 MR. KLINE: Yes. It was a letter --

12 MS. ENGLISH: Or are you asking me --

13 MR. KLINE: -- from the Planning --

14 MS. ENGLISH: -- the outcome of the vote on that
15 day?

16 MR. KLINE: No. I'm asking you if you are familiar
17 with the contents of the letter of November 13. And if the
18 answer's no, then I'm --

19 MS. ENGLISH: No. I --

20 MR. KLINE: -- not going to pursue it anymore.

21 MS. ENGLISH: I don't know anything about that
22 letter, I don't think.

23 MR. KLINE: Fine. No further questions on that
24 subject then.

25 HEARING EXAMINER ROBESON HANNAN: Okay. Mr. Chen

1 -- oh, on that subject. I'm sorry. I thought you said no
2 further questions.

3 MR. KLINE: Yeah. No, just on that one.

4 HEARING EXAMINER ROBESON HANNAN: Go ahead, Mr.
5 Kline.

6 MR. KLINE: So, Ms. English, going to your
7 neighborhood description where you were talking about the
8 uses further to the east all the way over to -- was that
9 Muncaster or Muncaster Mill Road?

10 MS. ENGLISH: Muncaster Mill.

11 MR. KLINE: Okay. And you referenced the golf
12 course, a solar farm, an assisted living facility, and in
13 the realm of which Mr. Chen and Ms. Robeson Hannan and I
14 deal, those are not generally considered heavy traffic
15 generators. So why do you cite them, or why did you
16 mention them at all? Because I assume you were talking
17 about people are traveling on the road to get to those
18 uses.

19 MS. ENGLISH: I had about 20 on my list and decided
20 to pick a variety. There are so many in the park. There
21 -- the people who come fishing. There -- the volleyball
22 court. There's a soccer court. My husband and I walked
23 around Lake Needwood every morning at 6 a.m. There are
24 pavilions that politicians rent to have an outdoor
25 gathering. What else is there? There's a bait shop.

1 There's an apes -- Go Ape's course, a ropes course.

2 There's a -- did I mention the Needwood queen and the
3 school bus trips, the school -- preschools coming to watch
4 the changing seasons on a ride with homecoming queen?

5 MR. KLINE: Sure. Well, would you agree with me
6 that golf courses and solar farms and assisted living
7 facilities are not typically heavy traffic generators,
8 probably generate less trips than could have been -- would
9 have been generated by single-family houses built on the
10 same property?

11 MS. ENGLISH: Well, I was giving a sampling of the
12 multitude of people who are already using Needwood Road who
13 are not residents, that they are people going somewhere
14 else by way of Needwood Road.

15 MR. KLINE: And would those uses typically have any
16 traffic at all during peak hours, which is when we have our
17 biggest crunches out there?

18 MS. ENGLISH: I know the golfers are out early in
19 the morning. The archeological summer programs are usually
20 coming in the morning. What other ones? Fishermen are
21 always out early in the morning.

22 MR. KLINE: Ms. English, did -- did you take a look
23 at the technical staff report that was written by the staff
24 and presented to the Planning Board?

25 MS. ENGLISH: I believe I was at the meeting in

1 which we met them. That was the first meeting I think that
2 I went to regarding Primrose.

3 MR. KLINE: Are you familiar with the concept of
4 the neighbors -- the zoning neighborhood that's analyzed in
5 the staff report in terms of what was the area that would
6 be most heavily impacted or influenced by the proposed use?

7 MS. ENGLISH: I did not.

8 MR. KLINE: Do you have any recollection of that?

9 MS. ENGLISH: No, I don't.

10 MR. KLINE: If I -- if I told you then that all --
11 most of the facilities you mentioned to the east of the
12 subject property are outside of the zoning neighborhood for
13 purposes of analysis of this application, would that
14 surprise you?

15 MS. ENGLISH: Outside of the zoning -- where is the
16 inside? Where is the boundary? What's -- what's the
17 boundary that we're talking about?

18 MR. KLINE: On the east -- I'd have to get the
19 staff report out myself -- but it probably was either Deer
20 Lake Road or the next road to the east. I just don't have
21 that in front of me right now. But it would not have gone
22 so far as the golf course, for instance.

23 MS. ENGLISH: So you're saying just our block?
24 From Redland to Deer Lake?

25 MR. KLINE: I am sure that it extended all the way

1 down to Redland, yes.

2 MR. CHEN: If I may. I don't have an objection to
3 the cross-examination of the proposed affected
4 neighborhood, but we don't have that. Mr. Kline does not
5 know what is the neighborhood.

6 MR. KLINE: Fine. Then let me get the staff report
7 then.

8 MR. CHEN: And that's fine.

9 MS. ENGLISH: Is it -- is it in the record? Is it
10 in the exhibits?

11 HEARING EXAMINER ROBESON HANNAN: They're not
12 posted. I'm looking for it now.

13 MR. KLINE: It -- it would have come at the same
14 time as the letter, 119, so it's probably in the same area.

15 MS. ENGLISH: Are you asking me if I've read all
16 the exhibits?

17 MR. KLINE: No, ma'am. Just let me get organized
18 here, and I'll be -- give you a precise question.

19 MS. ENGLISH: If you're asking if I read those
20 reports, the answer is no.

21 MR. KLINE: Oh, okay. All right. Then you cannot
22 tell us whether all of the uses you described are located
23 within the zoning neighborhood and lies in the staff report
24 then; correct?

25 MR. CHEN: Well, object -- I'll -- I'll -- I have

1 to --

2 MR. KLINE: Fine. That's a -- that's a yes or no
3 question, factual question.

4 MR. CHEN: No. You predicate the question by the
5 zoning neighborhood. In fairness to the witness -- and she
6 may not know about it --

7 MR. KLINE: I don't disagree with that.

8 MR. CHEN: And -- well, you've got to identify the
9 neighborhood.

10 MR. KLINE: Well, yeah, I -- I --

11 HEARING EXAMINER ROBESON HANNAN: Well, if you want
12 -- let me -- let me do this. I can try and pull up the
13 staff report with the neighborhood defined.

14 MR. KLINE: Yeah. I can't even find the number on
15 it, Ms. Hannan.

16 HEARING EXAMINER ROBESON HANNAN: Yeah. That would
17 --

18 MR. KLINE: It should've been around 119, but I
19 don't see it.

20 HEARING EXAMINER ROBESON HANNAN: What -- you don't
21 see it on the --

22 MR. KLINE: I'm looking through the exhibit list
23 right now, trying to find it.

24 HEARING EXAMINER ROBESON HANNAN: All right.

25 MR. KLINE: Yeah. As a backup, if you want to try

1 122, which is the technical staff PowerPoint presentation,
2 that probably would have that -- a definition of what is
3 the zoning neighborhood on it.

4 HEARING EXAMINER ROBESON HANNAN: Well, I have the
5 transcripts summarized, and I can tell you what -- I think
6 it was Mr. Wolford explained. What's the exhibit number
7 that you just referenced?

8 MR. KLINE: 122, which is the PowerPoint that Ms.
9 Tesfaye presented the Planning Board. And it came in at
10 the same time as Exhibit 119 that I mentioned.

11 HEARING EXAMINER ROBESON HANNAN: I have it right
12 here in non-electronic format. If you want, I can scan it
13 in, and I don't see it in our F drive as, say, digitally.

14 MR. KLINE: Sure. Well, Mr. Chen's point is -- is
15 because --

16 HEARING EXAMINER ROBESON HANNAN: Oh, wait. I've
17 got the staff report.

18 MR. KLINE: Okay.

19 HEARING EXAMINER ROBESON HANNAN: Okay. I've got
20 the Planning Board letter. So let me see what computer I'm
21 in. I can't use the V -- the remote computer because the
22 audio and video goes to my work.

23 MS. JOHNSON: Excuse me. Sorry. Are you going to
24 (inaudible) --

25 MS. ENGLISH: Can I ask where we're going with

1 this? What is the ultimate --

2 HEARING EXAMINER ROBESON HANNAN: No, don't -- only
3 Nana can talk right now.

4 MS. ENGLISH: I'm sorry.

5 MS. JOHNSON: If you're looking for the staff
6 report, that's Exhibit 106 on the website, and it should be
7 up with the attachments, and the attachment is 106-A.

8 MR. CHEN: Madam Examiner, maybe I can help on
9 this. If -- if Mr. Kline or anybody knows what is the
10 neighborhood that is identified in the staff report, can
11 orally present that information and ask the witness if the
12 witness agrees that would be the affected neighborhood. I
13 mean, to me, that's pretty straightforward.

14 MS. ENGLISH: The block from --

15 MR. KLINE: Okay.

16 MS. ENGLISH: -- Redland to Deer Lake.

17 MR. CHEN: So, Mr. Kline, do you know that -- just
18 give the witness the boundaries of the neighborhood, and
19 that works for me. And I won't object to that if you have
20 --

21 MR. KLINE: Sure. Well, I can -- yeah. I really
22 don't want to belabor it because I want to just have her
23 acknowledge that some of the places she identified were
24 outside of the defined neighborhood.

25 So, Ms. Robeson Hannan, page 3 of the technical

1 staff report has a figure 2 called "the surrounding area."
2 Would you be able to call that up?

3 HEARING EXAMINER ROBESON HANNAN: And that's 106,
4 did I hear?

5 MS. JOHNSON: Yes.

6 MR. KLINE: I think that's --

7 MS. JOHNSON: It's 106.

8 MR. KLINE: -- what Ms. -- yes --

9 MS. JOHNSON: Exhibit 106.

10 MR. KLINE: -- that's what Ms. Johnson reports.

11 HEARING EXAMINER ROBESON HANNAN: And is it part of
12 the attachment, or is it the report itself?

13 MR. KLINE: It's page 3 of the report itself.

14 HEARING EXAMINER ROBESON HANNAN: Okay.

15 MS. ENGLISH: Are we going for a yes or no answer
16 here? Is that what we're -- where we're going?

17 MR. KLINE: It'll be a little -- it'll be a little
18 bit more nuance than that, but it will be a simple answer
19 for you.

20 HEARING EXAMINER ROBESON HANNAN: Okay.

21 MR. KLINE: Thank you. So, Ms. English, the area
22 that's outlined in red is descriptive of what the
23 Applicant, and concurred in by the staff is my
24 recollection, defined as being a zoning neighborhood, which
25 is basically a fiction we use for trying to analyze what

1 properties are going to be most affected by a proposed
2 conditional use application. And my question to you is,
3 were some of the properties that you described as
4 contributing to the traffic on Needwood Road outside of
5 that red line?

6 MR. CHEN: May I just -- I'm not --

7 MR. KLINE: Go ahead, Bill. Go ahead.

8 MR. CHEN: Okay. So the representation is that the
9 -- what exhibit numbers? Do we have this, Madam Examiner?

10 HEARING EXAMINER ROBESON HANNAN: This is 106, the
11 staff report.

12 MR. CHEN: Okay. Thank you very much. My
13 understanding from the question is that the area that is
14 outlined in red is -- Mr. Kline is telling us is the
15 neighborhood that the Applicant as well as the technical
16 staff for Department of Planning Commission have agreed
17 upon as the affected neighborhood. Is that right, Mr.
18 Kline?

19 MR. KLINE: Correct. And should be the same as
20 what Mr. Wolford testified to.

21 MR. CHEN: Okay.

22 MS. ENGLISH: So are you saying the people driving
23 to the Needwood Golf Course do or do not add to the traffic
24 on Needwood Road? Is that the point?

25 MR. KLINE: No. I'm just asking you, did you cite

1 properties that are outside of the zoning neighborhood
2 defined in the staff report?

3 MS. ENGLISH: For example, the Needwood Golf
4 Course?

5 MR. KLINE: That's a good example.

6 MS. ENGLISH: That they -- to get to the Needwood
7 Golf Course, you've got to be within the red line to the
8 parking garage -- to the parking area.

9 HEARING EXAMINER ROBESON HANNAN: Well, Ms. -- Ms.
10 English, you have an attorney that's going to -- if you
11 could just answer yes or no, your attorney is going to
12 follow up with questions.

13 MALE SPEAKER: Well --

14 MS. ENGLISH: Is going to -- say it -- I'm sorry.
15 Is going to what? I had interference. I didn't hear you.

16 HEARING EXAMINER ROBESON HANNAN: Your attorney is
17 going to -- if you can just answer yes or no, your attorney
18 -- I just am trying to move this along. Your attorney's
19 going to follow up with questions.

20 MR. CHEN: If I may. The question did not call for
21 a yes or no, and the answer was -- was responsive to the
22 question.

23 HEARING EXAMINER ROBESON HANNAN: Well, okay.
24 Let's move on. The property is outside of the boundary, so
25 --

1 MALE SPEAKER: Right.

2 HEARING EXAMINER ROBESON HANNAN: -- that was the
3 question, and it's yes or no, but she answered the traffic
4 has to go through the neighborhood.

5 So, Mr. Kline, do you have follow-up?

6 MR. KLINE: No. She answered the question I asked,
7 and that's all I wanted to get on the record.

8 HEARING EXAMINER ROBESON HANNAN: Okay. Keep
9 going.

10 MR. KLINE: Without belaboring the conversation we
11 had earlier about the Taiwanese Cultural Center, there were
12 pictures that we didn't get to, the second and third pages
13 of, I guess it was MMMMM, showing the expansion of the
14 Taiwanese Cultural Center. Are you familiar with the
15 distinction between the process that Primrose is going
16 through as compared to the process that the Taiwanese
17 Cultural Center went through? Are you aware of the
18 differences of how it operates?

19 MS. ENGLISH: So the Taiwan center went before the
20 hearing examiner at the request of the complaint about the
21 parking that was not permitted on Carnegie Road as compared
22 to --

23 MR. KLINE: Well --

24 MS. ENGLISH: -- the process --

25 MR. KLINE: -- let --

1 MS. ENGLISH: -- that --

2 MR. KLINE: Yeah. Let me -- let me be more
3 specific then.

4 Madam Hearing Examiner, could you go to the next
5 two sheets rather than the two that are up there now? And
6 actually even the next two beyond that please.

7 I -- does the -- the representation at the bottom
8 of what's on the screen right now, is that typically -- is
9 that representative of what is out on the property today?

10 MS. ENGLISH: The upper one is -- is today.

11 MR. KLINE: Today?

12 MS. ENGLISH: The lower one is the 12 time
13 expansion of -- 12 --

14 MR. KLINE: Right. Okay.

15 MS. ENGLISH: -- times the square footage of the --

16 MR. KLINE: And -- and is it correct that that was
17 proposed by the Taiwanese Cultural Center and applied for
18 to the Board of Appeals who granted it as an administrative
19 modification?

20 MS. ENGLISH: That is correct.

21 MR. KLINE: Okay. And then how did the hearing
22 examiner get involved?

23 HEARING EXAMINER ROBESON HANNAN: Wait. That was
24 an administrative modification?

25 MS. ENGLISH: Yes. Can you believe?

1 HEARING EXAMINER ROBESON HANNAN: Okay. Stop.
2 Okay. Just keep going, Mr. Kline.

3 MR. KLINE: Sure. So how did the hearing examiner
4 get involved in this then, Ms. English?

5 MS. ENGLISH: Okay. I'm thinking of the sequence
6 of things that -- my first --

7 HEARING EXAMINER ROBESON HANNAN: Was it an --

8 MR. KLINE: Okay.

9 HEARING EXAMINER ROBESON HANNAN: -- enforcement
10 case?

11 MR. KLINE: Ms. -- Ms. English, let me do it -- let
12 me make it easier. These are not intended to be trick
13 questions.

14 MS. ENGLISH: Okay. I'm thinking of 14 years of
15 history, and --

16 MR. KLINE: I understand.

17 HEARING EXAMINER ROBESON HANNAN: All right. You
18 know what, Ms. English, I'm going to tell you, please just
19 answer the question.

20 MS. ENGLISH: Okay. And the question once more was
21 --

22 HEARING EXAMINER ROBESON HANNAN: I've got --

23 MR. KLINE: Sure.

24 HEARING EXAMINER ROBESON HANNAN: -- to get this
25 hearing -- I'm not --

1 MR. KLINE: Okay.

2 HEARING EXAMINER ROBESON HANNAN: I don't want to

3 --

4 MR. KLINE: Sure.

5 HEARING EXAMINER ROBESON HANNAN: Go ahead. And,
6 Mr. Kline, reask the question.

7 MR. KLINE: All right. Ms. English, let me -- let
8 me do it this way. Are you aware of the fact that the
9 Board of Appeals -- I don't want to go there yet. Too
10 early. Are you aware of the -- that the process that
11 Primrose is going through, you could not get a 12 times
12 expansion of the Primrose facility presently proposed
13 without going through this process again through Ms.
14 Robeson Hannan or her designee or successor? Are you aware
15 of that, that the Board of Appeals would not have a role in
16 any expansions of the Primrose facility?

17 MR. CHEN: Objection. Is that -- if -- if Mr.
18 Kline is presenting that as a hypothetical, I -- and makes
19 that clear to the witness, I have no problems with it.

20 MR. KLINE: Well, yeah. I mean, to be candid, what
21 I'm trying to do is make sure that she understands what
22 happened in the Taiwanese Cultural case would not happen
23 without the Hearing Examiner having a hand in it and making
24 the ultimate decision.

25 MR. CHEN: Ask her if she knows that.

1 MS. ENGLISH: I've never been --

2 MR. KLINE: Ms. English.

3 MS. ENGLISH: -- clear -- I've never been clear on
4 the relationship of the domain of the technical staff to
5 the Planning Board to the Hearing Examiner to the Board of
6 Appeals. I'm -- I'm not familiar with the --

7 MR. KLINE: Sure.

8 HEARING EXAMINER ROBESON HANNAN: So your answer is
9 no?

10 MS. ENGLISH: Pardon?

11 HEARING EXAMINER ROBESON HANNAN: You're not -- you
12 don't --

13 MS. ENGLISH: I don't.

14 HEARING EXAMINER ROBESON HANNAN: -- know is your
15 answer.

16 MR. KLINE: Yeah. And I -- and I think even the
17 Hearing Examiner said some of your distrust of government
18 has come about because of the hearing -- the Board of
19 Appeals' decision to consider the expansion shown on that
20 lower photograph as being administrative and could be
21 granted without a public hearing; correct?

22 MS. ENGLISH: That is correct.

23 MR. KLINE: Right.

24 MS. ENGLISH: But we waged a protest and had 20-
25 some people from the neighborhood --

1 HEARING EXAMINER ROBESON HANNAN: Just answer his
2 -- the answer is he's correct; right?

3 MS. ENGLISH: Yes.

4 HEARING EXAMINER ROBESON HANNAN: Okay.

5 MR. KLINE: And -- and are you familiar with the
6 fact that that could not occur on the Primrose property
7 without a repeat of the process we're going through today?

8 MR. CHEN: If she knows.

9 MR. KLINE: Correct.

10 MS. ENGLISH: I don't.

11 MR. KLINE: Okay. Okay. That's good. Well,
12 without me -- well, okay. Then you don't know. But I'm
13 trying to get you a level of comfort that the process is
14 much more protective of your interests than you've seen in
15 the past.

16 HEARING EXAMINER ROBESON HANNAN: Well, maybe
17 cross-examination isn't the way to do that, Mr. Kline.

18 MR. KLINE: Fine. Thank you.

19 HEARING EXAMINER ROBESON HANNAN: You need to --

20 MR. KLINE: Good point.

21 HEARING EXAMINER ROBESON HANNAN: -- have a witness
22 --

23 MR. KLINE: Sure.

24 HEARING EXAMINER ROBESON HANNAN: -- come on
25 rebuttal.

1 MR. KLINE: Fine. Thank you very much. And I --

2 MS. ENGLISH: Am I allowed to say that before the
3 Board of Appeals, the community won, and then the decision
4 was reversed two weeks later, that the --

5 HEARING EXAMINER ROBESON HANNAN: Well, you know
6 what, you're in the mode now where you just respond to
7 questions, and I think you did say that in your testimony.

8 MR. KLINE: And sort of a tangential question to
9 the one I just asked, and that is I think you've been
10 concerned that the -- there has not been adequate
11 governmental monitoring of the activities of the Taiwanese
12 Cultural Center. Don't you agree that the conditions
13 recommended by the staff that could be imposed by the
14 Hearing Examiner, if not more, would be -- put in place
15 adequate monitoring to make sure that everything that is
16 promised to the community is delivered?

17 MR. CHEN: Objection on two grounds. One, it calls
18 for, I think, a legal conclusion. And, two, it's beyond
19 the scope of the direct testimony.

20 HEARING EXAMINER ROBESON HANNAN: I agree with
21 that. Move on to another question, Mr. Kline.

22 MR. KLINE: Last question is, I'm surprised to hear
23 you say that you feel that the community might be -- just
24 get rolled over. I mean, I -- this is day six of public
25 hearings. Why do you feel the community's concerns have

1 not been adequately heard by the County?

2 MS. ENGLISH: Because this building that we see in
3 front of us was given the go-ahead. If we hadn't by luck a
4 day before the deadline found out that we had to -- we had
5 30 days to protest, that building might be built by now.

6 MR. KLINE: No further questions, Ms. English.

7 HEARING EXAMINER ROBESON HANNAN: Okay. Mr. Chen.

8 MR. CHEN: No questions.

9 HEARING EXAMINER ROBESON HANNAN: All right. Ms.
10 English, thank you for taking the time. I do understand
11 your concerns.

12 Okay. Mr. Chen, do you want to call your next
13 witness?

14 MR. CHEN: Yes and no. What I mean by that --
15 (Laughter.)

16 HEARING EXAMINER ROBESON HANNAN: Wait. It's a yes
17 or no question.

18 (Laughter.)

19 MR. CHEN: Yes, yes.

20 MS. ENGLISH: We want this in the record. Yes or
21 no?

22 MR. CHEN: Madam Examiner, we're at -- by my
23 looking at the clock, 11:53. My next witness is Mr. Posey.
24 He, I'm sure, will not be taking up as much time as we have
25 thus far this morning, but are you going to take a luncheon

1 break?

2 HEARING EXAMINER ROBESON HANNAN: We can break now
3 if this is a good break in your presentation.

4 MR. CHEN: I think it makes sense, but I'll defer
5 to the Examiner and Mr. Kline, frankly.

6 HEARING EXAMINER ROBESON HANNAN: Mr. Kline, do you
7 have an objection if we take an hour's lunch and come back
8 at 1 p.m.?

9 MR. KLINE: No objection, but I would ask, since
10 Mr. Posey has testified before, what's the scope of his
11 reappearance?

12 MR. CHEN: He hasn't testified.

13 HEARING EXAMINER ROBESON HANNAN: Yeah, I don't --

14 MR. KLINE: Yes, he did.

15 MR. CHEN: No, he didn't.

16 HEARING EXAMINER ROBESON HANNAN: I don't --

17 MR. KLINE: He -- he --

18 HEARING EXAMINER ROBESON HANNAN: -- have him --

19 MR. KLINE: I thought that we had him put in
20 information about the -- the tax appeal on his property.

21 HEARING EXAMINER ROBESON HANNAN: No, that's -- no.
22 You can tell I just went through this transcript. That was
23 mentioned in Mr. McPherson's testimony.

24 MR. CHEN: Yes.

25 HEARING EXAMINER ROBESON HANNAN: And they said he

1 -- Mr. Posary -- I'm sorry -- Ms. Posey will be testifying
2 as to that later.

3 MR. CHEN: That's correct.

4 MR. KLINE: Okay. Thank you. I haven't had the
5 pleasure of reading all five days of transcripts, so thank
6 you for that correction.

7 HEARING EXAMINER ROBESON HANNAN: Well, I have.
8 No. It -- they -- it was in Mr. -- it was mentioned in --

9 MR. CHEN: Yeah.

10 HEARING EXAMINER ROBESON HANNAN: -- Mr.
11 McPherson's testimony, and then they said, "And Mr. Posey
12 is going to be testifying to that in more detail."

13 MR. CHEN: Mr. Kline, my recollection is identical,
14 that there was an exhibit or papers that Mr. McPherson
15 utilized in the course of his testimony. A question came
16 up about the documents, and the representation was made at
17 that time that those were documents that Mr. Posey would be
18 addressing. And I think at that point, the Examiner said,
19 "I'll let it in recognizing down the road the documents are
20 going to be addressed by the appropriate" --

21 MR. KLINE: Yeah.

22 HEARING EXAMINER ROBESON HANNAN: The foundation --
23 we deferred admittance until he could -- Dr. Posey could
24 lay a foundation.

25 MR. KLINE: Thank you for the correction. And,

1 going back to your initial question, sure. I'm -- I'm
2 ready for a break now until, say, one o'clock.

3 HEARING EXAMINER ROBESON HANNAN: Okay. Thank you
4 very much, everyone. We'll reconvene at one o'clock.

5 (Pause in proceedings.)

6 THE REPORTER: We are back on the record.

7 MR. CHEN: Thank you. For the record, our next
8 witness will be Mr. Paul Posey. He's one of my clients,
9 and he has a statement to present to the Hearing Examiner.

10 HEARING EXAMINER ROBESON HANNAN: Okay. Just in
11 the lunch break, we do have the staff report and the
12 Planning Board transmittal on the web now.

13 MR. CHEN: Okay.

14 HEARING EXAMINER ROBESON HANNAN: Just in case you
15 want to -- okay. Go ahead.

16 HEARING EXAMINER ROBESON HANNAN: Mr. Posary?

17 MR. POSEY: Posey.

18 HEARING EXAMINER ROBESON HANNAN: Posey. I
19 apologize. Is it Dr. Posey?

20 MR. POSEY: No. It's just Mr. Posey.

21 HEARING EXAMINER ROBESON HANNAN: Okay. Please
22 raise your right hand.

23 MR. POSEY: I need to get myself centered under the
24 camera.

25 HEARING EXAMINER ROBESON HANNAN: That's fine. Do

1 you solemnly affirm under penalties of perjury that the
2 statement you're about to make are the truth, the whole
3 truth, and nothing but the truth?

4 MR. POSEY: I (inaudible).

5 MR. CHEN: Mr. Posey.

6 HEARING EXAMINER ROBESON HANNAN: Thank you.

7 TESTIMONY OF PAUL POSEY

8 MR. CHEN: Thank you. Mr. Posey, would you please
9 give the Examiner your full name and your residence
10 address?

11 MR. POSEY: Full name is Paul Stevenson Posey.
12 Last name is P-O-S-E-Y, and I live at 7416 Needwood Road in
13 Derwood, Maryland.

14 MR. CHEN: Where is that property in relationship
15 to the property that is the subject of these conditional
16 use proceedings?

17 MR. POSEY: We're an abutting neighbor. We are
18 directly east of the Primrose property.

19 MR. CHEN: Okay. And you have a statement that you
20 would like to present to the Examiner; is that right?

21 MR. POSEY: Yes, I do.

22 MR. CHEN: Go right ahead, sir.

23 MR. POSEY: Okay. Little background about me and
24 our house here before -- get into other things. I'm
25 retired now. Before I was retired, I was an economist at

1 the Association of American Railroads in DC for 33 straight
2 years. Been retired for about six years now. My wife
3 Carol Kosary has been retired for about three years. We're
4 mostly home all day, every day.

5 Like I told Bill, we're abutting neighbors on
6 Primrose's east side. Our property lines abut for about
7 270 feet.

8 Little history on our location in this spot. Our
9 house at 7416 Needwood is the only house we've ever owned
10 and the only one we ever expect to own. Last year -- last
11 month, I should say, was our 24th year in the house. Our
12 house was custom built to our design. I have included an
13 article from The Washington Post from 1995 on what went
14 into our design.

15 MR. CHEN: What exhibit is that, sir?

16 (Exhibit 227-WWWW introduced.)

17 MR. POSEY: That is Exhibit 227, document WWWW,
18 four Ws. Really no need to bring it up. That is something
19 that -- bring it up on the screen. That is something that
20 you can read at your leisure.

21 Carol and I grew up in Chicago, and we wanted a
22 Frank Lloyd Wright inspired Prairie-style house. Among the
23 other Prairie-style features, we have lots and lots of
24 windows facing in every direction. House only has one
25 floor; there is no second floor. We spent a full year

1 looking all over Montgomery County for an appropriate piece
2 of land to build our house. We settled on an unimproved
3 1.35-acre lot in Derwood because it was convenient and
4 because it was a secluded pipestem lot, away from busy
5 Needwood Road. But we bought it (inaudible) lot was filled
6 with mature tall trees.

7 Picking up some static there. No comments? Okay.

8 Carol and I are tree people. We bought our house
9 -- we built our house at an odd angle in order not to have
10 to cut down any of the trees already in the lot. In other
11 words, we built the house to fit the trees and not vice
12 versa. In fact, we've installed 14 trees in the last year
13 alone.

14 The front of the house faces southeast toward the
15 Taiwanese Presbyterian Church parking lot, although you can
16 easily see the church building itself from inside the
17 house. The back of the house faces northwest in the
18 direction of where Primrose plans to build their parking
19 lot.

20 MR. CHEN: Let me interject. You say you face the
21 Taiwanese Presbyterian Church?

22 MR. POSEY: Right, right.

23 MR. CHEN: Who was -- who was first between your
24 house and the church?

25 MR. POSEY: Oh. We were there by -- years and

1 years. The church wasn't finished construction -- I've got
2 the exact date -- a little later on --

3 MR. CHEN: Okay.

4 MR. POSEY: -- in the early 2000s.

5 So we even had the foresight before we bought the
6 land to check the zoning code 27 years ago when we knew
7 very little about land use. We were RE-1 to our east side,
8 and we were RE-1 to our west side. We were expecting to
9 live in a residential neighborhood. So what could go
10 wrong?

11 Now I hope you think -- hope you won't think I'm
12 using hyperbole when I say that I feel like our
13 neighborhood is under siege. It's been pretty much a
14 nonstop fight for the last 18 years to keep our piece of
15 our residential detached zone residential.

16 HEARING EXAMINER ROBESON HANNAN: Mr. Posey, do you
17 mind stopping one minute? I pulled up, and you should be
18 able to see it, Exhibit 148.

19 MR. POSEY: Yes.

20 HEARING EXAMINER ROBESON HANNAN: Okay. Can you go
21 through the orientation of your house again? You said side
22 of the -- the front yard -- just tell me where we are on
23 this exhibit as far as, you know --

24 MALE SPEAKER: (Inaudible.)

25 HEARING EXAMINER ROBESON HANNAN: -- east, west,

1 north --

2 MR. POSEY: Oh. Okay. Can --

3 HEARING EXAMINER ROBESON HANNAN: Well, actually,
4 this is another one where north -- hold on.

5 MR. POSEY: Right. North is to the left on this
6 page.

7 HEARING EXAMINER ROBESON HANNAN: Right. Okay.
8 Can you just tell me which parts of your house view -- you
9 mentioned viewing the church, which is at the top of this
10 148. Can you go through that one more time?

11 MR. POSEY: Sure. Can you see my cursor?

12 HEARING EXAMINER ROBESON HANNAN: No.

13 MR. POSEY: Oh, okay. All right. The little house
14 that you had your cursor over is 7420 Needwood. That's not
15 our house. We are behind them. We are sort of the
16 L-shaped house quite a few feet back. You can tell our
17 house -- we've got, like, 133 solar panels on the roof.

18 HEARING EXAMINER ROBESON HANNAN: Wait. Do you see
19 my screen?

20 MR. POSEY: I see your cursor.

21 HEARING EXAMINER ROBESON HANNAN: And that is not
22 your house?

23 MR. POSEY: That is not our house. That is 7420.

24 HEARING EXAMINER ROBESON HANNAN: Okay. So --

25 MR. POSEY: We are 7416, so we are the big L-shaped

1 thing to the right of that little house.

2 HEARING EXAMINER ROBESON HANNAN: This?

3 MR. POSEY: That thing. There you go.

4 HEARING EXAMINER ROBESON HANNAN: Okay.

5 MR. POSEY: That's -- that's --

6 HEARING EXAMINER ROBESON HANNAN: Now -- oh, I see.
7 Okay. Now can you tell me your orientation as far as front
8 yard, backyard, etcetera?

9 MR. POSEY: Okay. The front yard is facing to the
10 northeast from the center of the house.

11 HEARING EXAMINER ROBESON HANNAN: Okay. So it's
12 facing the church. I see. Okay.

13 MR. POSEY: Right. It's facing the church parking
14 lot. There are windows on the northwest side that face the
15 church building itself.

16 HEARING EXAMINER ROBESON HANNAN: Okay. And this
17 is -- how many stories is this?

18 MR. POSEY: It's just one story. It's a ranch-
19 style house.

20 HEARING EXAMINER ROBESON HANNAN: Okay. And then
21 can you just describe -- you see this -- I guess this is
22 the west side. There's a -- it looks like there's some
23 cement or something, or what is your -- what -- what do you
24 view on your west side?

25 MR. POSEY: Oh. Actually, I've got an exhibit that

1 covers exactly that coming up in a little.

2 HEARING EXAMINER ROBESON HANNAN: Okay. Okay.
3 Well, then I'll let you continue. I just wanted to make
4 sure I understood what you were saying about the
5 orientation, so go ahead.

6 MR. POSEY: Okay. Just wanted to point out that
7 our little corner of Derwood is busier than you might
8 think. The intensity of use is something that you don't
9 see on the surface. So let me give you a little
10 neighborhood history. I prepared a map of the area with
11 the significant landmarks, plus places that --

12 MR. CHEN: What is the exhibit number?

13 MR. POSEY: -- people have referred to before now.
14 (Exhibit 227-XXXX introduced.)

15 MR. POSEY: This is Exhibit 227, document XXXX,
16 that's four Xs.

17 MR. CHEN: Can that be brought up, Madam Examiner?

18 HEARING EXAMINER ROBESON HANNAN: Now you should
19 have it.

20 MR. POSEY: I do not have it.

21 HEARING EXAMINER ROBESON HANNAN: Okay.

22 MR. POSEY: There we go. Okay. Now I've got it.
23 Hang on. Let me move this around on my screen here, so
24 it's a little easier to see. Hang on two seconds. Okay.
25 There we go. That's good.

1 Let me sort of take you on a quick tour of the
2 neighborhood, just a couple of sentences on each of the
3 things going on here. I want to start with my house, which
4 is in the -- just a little lower than the center of the
5 exhibit, 7416. That's a pipestem lot, should be able to
6 see that.

7 HEARING EXAMINER ROBESON HANNAN: Right.

8 MR. POSEY: And I'm going to go clockwise from
9 there.

10 Let me give you a little history about Primrose's
11 property, the nearly 3 acres of 7430 Needwood Road.
12 There's one small house there now. It's been vacant since
13 at least 2006, maybe longer.

14 In late 2007, this property was under contract to
15 Lancaster Landscaping. Their proposal went forward as
16 special exception 27-18. The purchase of the land was
17 pending approval of the special exception. Lancaster
18 Landscaping has been around since 1962. They serve
19 Maryland, the District, and Virginia, and they have a
20 number of locations in the region.

21 Lancaster listed themselves as a landscaping
22 contractor on their application, but what they wanted to
23 use the land for better fit the County's definition of a
24 trucking terminal. They proposed having 45 employees
25 loading 11 trucks with forklifts and Bobcats starting at

1 6:30 a.m., Monday through Saturday. Most of the employees
2 would leave with the trucks. They'd also be sending out
3 trucks on Sunday if there was snow.

4 The delivery of landscaping supplies would arrive
5 in four full-sized semi-trailers or dump trucks throughout
6 the day. Thousands of cubic feet of mulch and other
7 landscaping materials would be stored onsite, including
8 fuel. They planned three 10,000-cubic-foot storage
9 containers for various aggregates, plus two 1,400-foot --
10 cubic-foot bins for a salt-sand combination. And their
11 submitted plan did not include a sewer hookup. Apparently
12 they planned on one toilet for their 45 employees on a
13 septic.

14 MR. KLINE: Ms. Robeson, I'm sorry to interrupt,
15 but (inaudible) had a chance to see my hand, but if this
16 has somehow been adjudicated, that would be one thing, but
17 it wasn't, and so I wonder of testimony's relevance.

18 HEARING EXAMINER ROBESON HANNAN: Mr. Kline, I get
19 a really bad feedback when you speak.

20 MR. KLINE: What I'm saying or what I sound like?
21 (Laughter.)

22 HEARING EXAMINER ROBESON HANNAN: No, there's,
23 like, a buzzing. Do you have any other device on?

24 MR. KLINE: No, ma'am. All I do is hit the on --
25 on and off button.

1 HEARING EXAMINER ROBESON HANNAN: All right. Well,
2 I can -- so I -- okay. Was your -- is your objection to
3 relevance?

4 MR. KLINE: That -- yeah, that would be a good way
5 of saying it. Yes, ma'am.

6 HEARING EXAMINER ROBESON HANNAN: Okay. Mr. Chen,
7 do you have a comment?

8 MR. CHEN: Yes. I think that it's certainly within
9 the realm of relevancy to describe the neighborhood and the
10 history of development in the neighborhood, and that's all
11 that is happening here.

12 HEARING EXAMINER ROBESON HANNAN: Okay. I'm going
13 to let him -- you know, I'm not sure a hundred percent
14 where he's going. So let's -- I'm going to let him
15 continue. Okay?

16 Go ahead, Mr. Posey.

17 MR. POSEY: Okay. The co-owner of the land at the
18 time, Mr. Lasko, testified on day five starting on page
19 105. He felt a use like Lancaster would be the highest and
20 best use for the land. This attitude completely disregards
21 the neighbors. There was a big community involvement to
22 stop Lancaster, but we never got to a hearing.

23 Apparently planning staff told Lancaster that if
24 they wanted to run all these trucks up and down unimproved
25 Carnegie Avenue, they'd have to improve Carnegie with their

1 own money. That put the project out of the price range,
2 the special exception never went forward, the land wasn't
3 sold, and the land sat dormant until the Mandavas purchased
4 it.

5 Just for the record, from the day we bought our own
6 land, my wife and I have always expected 7430 to be
7 developed with one or two houses. It's walking distance
8 from the Metro and has lots of large, mature trees. It
9 was, and is, a prime property for residential development,
10 just like 7500 Needwood was to Primrose's west and just
11 like my own property was to Primrose's east.

12 Now to Primrose's west is 7500 Needwood. This was
13 an unimproved property, owned for decades by Pearl Pollen's
14 family. The lot is about 1.7 acres. In 2017, it was sold
15 to the Abebes who constructed a house in early 2018. It
16 was finished in fall of 2018, but the Abebes never lived in
17 the house. The house was sold to the Mitchells in November
18 of 2019. The Mitchells live there now.

19 As a confronting neighbor, Jennifer Mitchell
20 testified on day two, starting at page 240, with concerns
21 about traffic, property value, and especially the parking
22 lot lights shining in her kitchen window.

23 Mr. McPherson, the appraiser, also discussed 7500
24 at some length on day two, starting at page 20.

25 And for the record here, my wife and I always

1 expected 7500 to be developed as a residence, and we were
2 glad to see it when it happened.

3 Now to the south of 7500 Needwood is another
4 confronting neighbor at 16200 Carnegie Avenue. Rosemary
5 Tapscott Smith lives there with her 99-year-old mother.
6 Ms. Smith testified on day one, starting with page 219,
7 with concerns about traffic.

8 Next to the west is Davidson's Landscaping at 7508
9 Needwood Road. This is another small, home-based business,
10 sitting on 1.35 acres. There's very little traffic, and
11 there's no bulk storage of landscaping materials onsite.
12 Driving or walking by, you can't even tell that a business
13 is based there.

14 Little farther west, labeled, is Charles Reece Hair
15 Salon at 16231 Redland Road. This is a one-man operation
16 working out of a residence, by appointment only. It has
17 very little traffic.

18 Now Morton's Towing & Storage consists of three
19 abutting properties at 16223, 16227, and 16231 Redland
20 Road. And for the record 16231 Redland is sometimes
21 described as 16233. It's listed both ways in official
22 documents. All three are about one acre each, and all are
23 zoned RE-1. A nonconforming use agreement between the
24 owner, (inaudible) Jefferson Romanchock, and the County was
25 established in November 2000.

1 MR. CHEN: Is that relative to the Morton's Towing
2 & Storage operation? Is that what you're talking about the
3 nonconforming use?

4 MR. POSEY: Yes, yes. And let me give you the
5 details of that there. The first two properties, 16223 and
6 16227, are a part of the agreement, and the numbers
7 increase as you go from south to north, so 16223 is the
8 southwest of those three properties where the big green
9 splotch for Morton's Towing & Storage is.

10 The third property, 16231, is not under the
11 agreement and was only supposed to be used as
12 ingress/egress into the other two properties, but all three
13 properties are now in full use for vehicle parking and
14 commercial storage. Morton's Towing operates out of this
15 location, and a number of contractors store vehicles and
16 equipment there. The facility generates a decent amount of
17 traffic, mostly in the morning and late afternoon.

18 The site has been in violation of this
19 nonconforming use agreement for more than a decade.
20 Members of the community have tried to get DPS to bring
21 this property into conformance with no success.

22 And, just for the record, so it's clear, the
23 Charles Reece Hair Salon is sitting on one of Morton's
24 three properties.

25 All right. Moving around clockwise. Cecelia

1 English discussed a little bit about the Taiwan Culture
2 Center at 7509 Needwood. I think, very briefly, the point
3 we're trying to make here is the intensity of use that this
4 neighborhood is getting. The culture center is 1,100
5 square feet. It's limited to something like 25 people at a
6 time on weekdays. They want to multiply it into a building
7 12 times as big that has the capacity of something like 300
8 people at a time.

9 There's a -- my lawyer says I'm not out of line
10 bringing this subject up, Madam Examiner.

11 (Laughter.)

12 MR. POSEY: Primrose is 13,000 square feet with 21
13 toilets or what they -- yes, 21 toilets. What the culture
14 center wants to build is 12,500 square feet with 24
15 toilets. These two locations are only 240 feet apart, just
16 across the street and three doors down from each other.

17 Should you approve Primrose, Madam Examiner, the
18 neighborhood would have very little defense against a 12
19 times larger culture center. Hearing Examiner Françoise
20 Carrier said that any expansion of the culture center must
21 remain modest to be compatible with the neighborhood.
22 Should you allow something as immodest as Primrose in our
23 residential neighborhood, well, forget Ms. Carrier, I think
24 the door will be open to the expansion of the culture
25 center.

1 Okay. So enough of the culture center.

2 (Laughter.)

3 MR. POSEY: Continuing to the east, 7509 Needwood,
4 Enitza Rodriguez lives there. She testified on day one,
5 page 268.

6 One over, 7501 Needwood, Olga Sabran lives there,
7 testified on day two, page 262, with concerns about
8 property value and morning traffic.

9 Cecelia English mentioned this briefly. I was
10 looking over my notes and, according to Primrose's original
11 application, yes, the Sabrans are confronting neighbors.
12 Nobody mentioned this on day two, and I don't think Olga
13 herself knew that she was a confronting neighbor. Just
14 stating that for the record.

15 HEARING EXAMINER ROBESON HANNAN: That's 7501?

16 MR. POSEY: That's 7501. Primrose's western border
17 is in exact line with the Sabran's eastern border. It's a
18 straight line between the two.

19 Okay. One door east, 7425 Needwood, Mr. Jakkampudi
20 lives there. He's directly across from Primrose. He
21 testified on day four, starting on page 207. Mr.
22 Jakkampudi is the resident agent of Needwood Schools, LLC,
23 and Needwood Developers, LLC, some of the partners in the
24 Primrose operation here.

25 And one more door east, 7419 Needwood, Cecelia

1 English lives there. She's also a confronting neighbor.

2 And still one more door east, 7405 Needwood,
3 Cecelia English already mentioned Sarah Newens and family.
4 She testified on day five, starting with page 8, about
5 concerns with traffic.

6 Okay. On this map, a little further to the right,
7 you can see a spot that Cecelia mentioned, the green spot
8 for Little Hands daycare. This is 7309 Needwood. Little
9 Hands is a one-to-eleven child daycare, a limited use,
10 working out of a residence. It's for children age zero to
11 five. It's been in operation since 1996, and traffic in
12 and out of the house is minimal. Presumably Little Hands
13 is covering local neighborhood daycare needs. One of the
14 Little Hands family members, Alana Chamoun, testified on
15 day two, page 231, on problems with current rush-hour
16 traffic.

17 And now let me talk about my neighbor, the church.
18 The Taiwanese Presbyterian Church is at 7410 Needwood.
19 They are our abutting neighbor to the east. Our property
20 lines abut for about 585 feet, and the church sits on 2.44
21 acres. Benjamin and Pauline Harrison -- Hamilton, I'm
22 sorry, not Harrison, Hamiltons -- had been living on that
23 property for decades, but they were getting old and seemed
24 to be having trouble looking after themselves in their
25 equally tiny, old, little house, so they decided to move

1 and sold the land to the church in 2002. The church was
2 built by 2010.

3 It's actually kind of sad. Before we saw the plans
4 for the church, my wife and I discussed what kind of gift
5 to get them to welcome them to the neighborhood. We were
6 naively expecting the new church and parking lot to be
7 compatible with the space available, but the plans we saw
8 were something else entirely. The church was 11,500 square
9 feet and had an 82-car parking lot. Parking lot was later
10 expanded to 111 cars. You have to give it to the church
11 for making use of all of their space. Pretty much every
12 square foot of the property is now either church, parking
13 lot, required setback, or stormwater management easement.

14 It was a heavily wooded lot when the Hamiltons
15 owned it. Every tree whose trunk was fully on their
16 property was cut down for church construction. Obviously,
17 Montgomery County, churches and their parking lots are
18 permitted uses. Nothing you can do about that. But the
19 pre-2014 zoning code says that parking lots in residential
20 neighborhoods must be, quote, Effectively screened,
21 unquote. However, the word "effectively" is not further
22 defined or described. In addition, there seem to be no
23 previous land use cases in Montgomery County that hinged on
24 the quote/unquote effective screening for us to use as
25 guidance.

1 The church built a 6-foot fence along our property
2 line. They claim this constituted effective screening.
3 The problem is the land dips along the property line where
4 our two properties meet.

5 MR. CHEN: You have -- you have an exhibit now?

6 (Exhibit 227-YYYY introduced.)

7 MR. POSEY: Yes. Let's bring this up now. This is
8 Exhibit 227, Exhibit YYYY.

9 MR. POSEY: Oh, okay. That's -- sideways, whoops.

10 HEARING EXAMINER ROBESON HANNAN: Whoops. No, it's
11 actually upside down. Give me a moment. All right.

12 MR. POSEY: There we go. Okay. The fence was at
13 the bottom of the dip. Their fence only effectively
14 screened the bottom half of the first row of cars in the
15 parking lot.

16 MR. CHEN: The view from this is from what portion
17 of your house?

18 MR. POSEY: This view is from the front door, on a
19 sunny afternoon.

20 At this point, we hired a lawyer, not Mr. Chen, and
21 took the case to the Montgomery County Zoning Board of
22 Appeals. The case basically hinged on one word,
23 "effectively," and our evidence was basically this one
24 photograph.

25 Just a few words on the exhibit itself. This

1 photograph pops up in a lot of places. In the official
2 record, there should be one copy of this photograph. It's
3 11 by 32. It --

4 MR. CHEN: What's its number?

5 MR. POSEY: -- it folds out -- this is -- this is
6 still Exhibit 227, Exhibit YYYY. What we're looking at on
7 the screen here is the electronic version. It's a PDF.
8 It's still --

9 HEARING EXAMINER ROBESON HANNAN: Could you hold
10 that up a little? Okay. I get that. Okay. And this is
11 from your front yard?

12 MR. POSEY: This is from the front door. Because
13 it's from the front door, that also means it's pretty much
14 the same view from our living room, the master bedroom, the
15 second bedroom, and the master bath. But, no, this is just
16 right by the front door.

17 And, as I was saying, there should be one of the
18 foldouts in the official record because this particular
19 picture comes up later on for other purposes. And in all
20 those other purposes, everyone has gotten the big, foldout
21 version instead of the little one we're looking at the
22 screen here.

23 So, as I was saying, you can clearly see the
24 parking lot from half the windows in the house. If
25 Primrose is built, I expect you'll be able to see Primrose

1 from the other half of the windows in the house. But this
2 photo shows the cars in all their glaring glory. Car glare
3 is a major problem with having a parking lot in your front
4 yard. Also, this is a view of the parking lot when it was
5 82 cars; it's 111 now.

6 And, just to note, Mr. Kline has seen this
7 photograph before. He was the lawyer for the Taiwanese
8 Presbyterian Church. He has been to our house, and he's
9 stood where this picture was taken, so he knows the
10 situation.

11 We did not consider this fence to be effective
12 screening. We suggested the church install a row of trees
13 inside the fence line. The Zoning Board of Appeals
14 disagreed; to them, the 6-foot fence is effective
15 screening. You can decide for yourself.

16 I've always been surprised by one thing about the
17 church parking lot. Sure, you can hear the cars, and you
18 can hear the doors slam, and you can especially hear the
19 beeps and toots when they lock their doors. And, yes,
20 despite the solid 6-foot fence surrounding pretty much all
21 of the church, just about everybody still locks their
22 doors. But conversations in the parking lot seem to drift
23 in the wind. I can hear talk -- I can hear people talking
24 in the parking lot when I'm in the yard, and I can hear
25 them from inside the house when the windows are open. And

1 I need hearing aids, which I don't wear in the yard or the
2 house. I expect that Primrose's parking lot will work the
3 same way.

4 And I've included another photo, just real briefly
5 here.

6 MR. CHEN: What exhibit are we?

7 (Exhibit 227-ZZZZ introduced.)

8 MR. POSEY: Okay. Next exhibit is Exhibit 227,
9 document ZZZZ, four Zs.

10 MR. CHEN: Can you identify this too?

11 MR. POSEY: Yes. Oh, it's crooked too. There we
12 go. Okay.

13 This shows the church roof on a sunny afternoon
14 from our bedroom. I computed the number once, and I forget
15 how many square feet it is, but I can tell you that this is
16 about one-seventh of an acre of unpainted sheet metal
17 glaring at us. To me, this is downright industrial.

18 The church is busy, and --

19 HEARING EXAMINER ROBESON HANNAN: I'm sorry. What
20 is this view? Where is this?

21 MR. POSEY: This is a --

22 HEARING EXAMINER ROBESON HANNAN: Oh, from your
23 bedroom window. Okay.

24 MR. POSEY: This is the bedroom window. This is
25 looking northeast from the house.

1 HEARING EXAMINER ROBESON HANNAN: Okay.

2 MR. POSEY: So the front of the house faces the
3 parking lot. The side of the house faces -- this side of
4 the house faces the church building itself.

5 Okay. So the church is busy and getting busier.
6 Obviously I wrote that sentence more than a year ago. They
7 were busy and getting busier, and I'm sure they will again.
8 This did not start as a neighborhood church. It started
9 solely as a regional church serving the Taiwanese
10 Presbyterian community of Maryland, DC, and Virginia. Over
11 the years, they've added an English-language ministry.
12 And, recently, the Brazilian Presbyterian Bible Church has
13 started using the facilities for Sunday afternoon services.
14 There are now, or I should say there were, activities at
15 the church seven days a week. The place is getting busy.

16 And let me give one more example of what it's like
17 living next to the church, and I suppose living in
18 Montgomery County. The church wanted to increase their
19 number of parking spaces. They still had a little unused
20 land next to their 82-car parking lot.

21 In 2014, they submitted a parking facility plan to
22 increase parking spaces by 15, from 82 to 97. My wife and
23 I received notice. We went to DPS to get a copy of the
24 plan, had it printed out full size. We went over it with
25 rulers, and everything was fine. Everything was up to

1 code. We didn't submit any comments because we didn't need
2 to.

3 What they actually built in 2017 was something else
4 entirely. Instead of adding 15 spaces, they added 29,
5 going from 82 to 111. Most of the new spaces were
6 undersized by county standards. Some were too short, some
7 were too narrow, and the aisle between the spaces was too
8 narrow. But, really, neither we or the church's abutting
9 neighbors to the east were worried about that. That's a
10 church patron problem. But they also reduced the required
11 setbacks from 17 feet to 9 or 10. Most importantly, they
12 paved over one of their stormwater management easements to
13 put in two more parking spaces. This was worrisome because
14 this easement is right on our property line, and the
15 natural drainage, as I mentioned, for both the church's
16 property and ours is toward the shared property line and
17 away.

18 First thing we did was go to DPS to see what the
19 church had submitted. No new parking facility plan was on
20 their records. DPS' records had no additions after the
21 original 2014 parking facility plan we had seen. We
22 measured a few things, took some photos, and then sent our
23 concerns to DPS. DPS acknowledged receipt of our letter
24 and did nothing.

25 But we did get a detailed letter from Calvin

1 Edmiston, Stormwater Facility Inspector at the Department
2 of Environmental Protection. Mr. Edmiston said that the
3 stormwater management easement was not really an
4 infiltration trench, like every plat said, but instead a
5 groundwater recharge trench, which he says shouldn't be
6 negatively impacted by having the church van parked on top
7 of it most of the time.

8 I'm skeptical that this is correct, and the
9 engineers I've talked to are skeptical, because
10 infiltration trenches are easily damaged by compression,
11 and groundwater recharge trenches might be damaged.

12 But that doesn't excuse the fact that DPS let the
13 church keep the parking spots on the stormwater management
14 easement. I thought that was illegal. I would've thought
15 that it would've been an easy job for DPS just to tell the
16 church to dig out those two parking spaces and put back the
17 grass, but apparently they didn't. I've read the easement
18 conditions, and you can't even put a shrub on that spot.

19 At that point, in 2017, we asked Mr. Chen to talk
20 to DPS' lawyers regarding paving over the stormwater
21 management easement, but Mr. Chen didn't make it to DPS.
22 This is exactly when the Primrose conditional use became an
23 active case, and we told him to forget the church for now.

24 Now, need to talk a little bit more about church
25 drainage because it directly affects Primrose drainage.

1 Story of the church and stormwater doesn't end with paving
2 over the stormwater management easement. When church
3 construction started in 2010, they tied their stormwater
4 containment facility on the south end of the parking lot to
5 the storm drain network. We all watched the construction.
6 It was a deep excavation. This new connection is not shown
7 in the Montgomery County StormNET Map of the South Riding
8 Subdivision Storm Drain Network. We find --

9 MR. CHEN: That's what's been shown in this
10 proceeding; right? That --

11 MR. POSEY: Yes, yes.

12 MR. CHEN: But it doesn't show what you've just
13 described from the church?

14 MR. POSEY: Right, right. Exactly. If you could
15 bring up -- this is an old one -- Exhibit 115, page U.1.

16 HEARING EXAMINER ROBESON HANNAN: I'm sorry.
17 115-K?

18 MR. POSEY: No, 115, document U.1. There we go.

19 HEARING EXAMINER ROBESON HANNAN: Now we got it.

20 MR. POSEY: There we go. Neatly labeled, Missing
21 church connection to network.

22 We became concerned about the impact this might be
23 having on the outfall culvert for the storm drain network.
24 This outfall culvert is in Crabbs Branch Stream Valley
25 Park, a Maryland-National Capital Park and Planning

1 Commission park. Our stormwater engineer, Vince Berg,
2 testified on day two that Crabbs Branch Stream is a use
3 class four.

4 HEARING EXAMINER ROBESON HANNAN: Um-hmm.

5 MR. POSEY: My wife -- my wife and I went out one
6 day in June of 2019 to investigate, wanted to take a look
7 at the outfall culvert itself.

8 Now I certainly don't qualify as a water management
9 expert, but I was in civil engineering before I switched to
10 economics in college. I spent two summers as a civil
11 engineer's aide for the Milwaukee Road Railroad, and I
12 worked on a number of drainage projects, including drainage
13 surveys. There appears to be significant erosion occurring
14 at this outfall culvert.

15 MR. CHEN: Photo?

16 MR. POSEY: I have discussed this with Stormwater
17 Engineer Vince Berg, and he agreed.

18 HEARING EXAMINER ROBESON HANNAN: Is this the
19 Crabbs Branch culvert that he -- is this the -- okay. I'm
20 sorry. Keep going. Where is this outfall? Does it
21 outfall into Crabbs Branch?

22 MR. POSEY: Yes, it does.

23 HEARING EXAMINER ROBESON HANNAN: Okay. I remember
24 that testimony. Okay.

25 MR. POSEY: Okay. And if I could get Exhibit 115,

1 document V.5.

2 HEARING EXAMINER ROBESON HANNAN: V.5.

3 MR. POSEY: V.5, correct. Okay. That looks like
4 maybe V.1 or V.2.

5 HEARING EXAMINER ROBESON HANNAN: Oh, I'm sorry. I
6 didn't see the -- okay. Let me make this one a little
7 bigger. I'm talking -- for the record, I'm talking about
8 the screen share. Okay. Go ahead.

9 MR. POSEY: Okay. That looks good. This is what
10 is called a drop structure. Mr. Intriago also called this
11 a dissipator.

12 HEARING EXAMINER ROBESON HANNAN: Right.

13 MR. POSEY: The drop structure has been seriously
14 undercut, but it hasn't failed yet. It needs maintenance
15 now. From the width and the verticality of the channels we
16 see there -- that are in some of the other photographs, I
17 would say that too large a volume of water is moving
18 through here and too quickly; eroding soil would thus be
19 moving toward Crabbs Branch Stream.

20 On July 2nd, 2019, Carol Kosary, Cecelia English,
21 Vince Berg and I met with Mark Etheridge, Manager of Water
22 Resources Plan Review at DPS. That's E-T-H-E-R-I-D-G-E.

23 HEARING EXAMINER ROBESON HANNAN: I know how to
24 spell it.

25 MR. POSEY: Oh, okay. Michael Geier --

1 HEARING EXAMINER ROBESON HANNAN: But for the court
2 reporter, you can spell it.

3 THE REPORTER: And please do.

4 HEARING EXAMINER ROBESON HANNAN: Go ahead. It's
5 E-T-H-E-R-I-D-G-E.

6 THE REPORTER: Thank you.

7 MR. POSEY: E-T-H-E-R-I-D-G-E.

8 THE REPORTER: Yep.

9 HEARING EXAMINER ROBESON HANNAN: Right. Okay.

10 MR. POSEY: Okay. And Michael Geier, a plan
11 reviewer for the section -- that's G-E-I-E-R, five letters
12 -- and Sam Farhadi, a permit specialist reviewer with the
13 right of way plan review section at DPS -- that's
14 F-A-R-H-A-D-I.

15 When we brought up the church's tie-in with the
16 existing storm drain network, Mr. Etheridge said that this
17 appeared to be an illegal tie-in. Then he shrugged. I got
18 the impression that this might happen frequently. Mr.
19 Etheridge said he'd send us the stormwater management plan
20 for the church, but he never did.

21 Now this is very important because this is the
22 outfall culvert where Primrose stormwater will end up.
23 Primrose has a stormwater management concept approved, but
24 there is a chance the County could be working with
25 seriously flawed data. The church connection doesn't show

1 up in the County's StormNET system. In other words, the
2 County doesn't know it's there. The culvert might already
3 be overburdened by possibly illegal runoff from the church.
4 So far, no one has been able to tell us that it hasn't.

5 But back to living next door to the church. So
6 what do all those glaring cars mean to our property value?
7 My wife and I received our usual house assessment from the
8 State at the end of 2017. We didn't think the generic
9 assessment reflected having 111 cars in our front yard, so
10 this time we decided to appeal. We sent the Montgomery
11 County Assessment Office a seven-sentence letter and a copy
12 of the big foldout photograph we had used before the Zoning
13 Board of Appeals.

14 MR. CHEN: That's the same photograph you've just
15 shown to the Hearing Examiner; is that correct?

16 MR. POSEY: Right. The big foldout one. Again,
17 that was Exhibit 227, document YYYY. And, again, that was
18 the --

19 HEARING EXAMINER ROBESON HANNAN: Is that a cry of
20 help or --

21 (Laughter.)

22 HEARING EXAMINER ROBESON HANNAN: Go ahead.

23 MR. POSEY: A few weeks later, we got back
24 notification from the County that our assessment had been
25 reduced \$52,400, a little more than 7 percent.

1 MR. CHEN: Do you have an exhibit on that, sir?

2 MR. POSEY: Yes, I do. I've got all the pertinent
3 numbers in --

4 MR. CHEN: Okay.

5 MR. POSEY: -- Exhibit 227, document AAAAA, five
6 A's.

7 HEARING EXAMINER ROBESON HANNAN: Okay. Before I
8 get that document up, how much had it been reduced by?

9 MR. POSEY: Been reduced \$52,400.

10 HEARING EXAMINER ROBESON HANNAN: And then what
11 percentage? Did you --

12 MR. POSEY: That is --

13 HEARING EXAMINER ROBESON HANNAN: -- give me a
14 percentage?

15 MR. POSEY: A little more than 7 percent; 7.07
16 percent, if you're going to be fussy.

17 HEARING EXAMINER ROBESON HANNAN: Okay. So I'm
18 sorry. I will pull up 227-AAAA?

19 MR. POSEY: A, five A's.

20 HEARING EXAMINER ROBESON HANNAN: Five A's. So am
21 I in the right -- no, I'm in ZZZ here.

22 (Sotto voce speaking.)

23 HEARING EXAMINER ROBESON HANNAN: Wait. Okay.
24 These are a little difficult to find because we're at the
25 five-letter level. Let me try this one. Is it four A's?

1 MR. POSEY: Five A's.

2 HEARING EXAMINER ROBESON HANNAN: Oh. I'm only on
3 three letters. Now I'm on four letters. See if this --
4 okay. Try this one. Oh, there's KK -- I apologize. I'm
5 trying to -- EE --

6 MR. POSEY: It's a huge exhibit.

7 HEARING EXAMINER ROBESON HANNAN: For the record, I
8 am scrolling through the exhibit that has multiple -- the
9 document -- the digital document that has multiple exhibits
10 in it.

11 MR. CHEN: Madam Examiner, are you in the right
12 file?

13 HEARING EXAMINER ROBESON HANNAN: I don't know. Do
14 you know how it's labeled here? Because all I get when I
15 look at what we posted is the first couple of -- the first
16 series. I want --

17 MR. CHEN: You should be --

18 HEARING EXAMINER ROBESON HANNAN: -- I have JJJJ.

19 MR. CHEN: Are you in D?

20 HEARING EXAMINER ROBESON HANNAN: No. Should I be
21 D?

22 MR. CHEN: Apparently.

23 HEARING EXAMINER ROBESON HANNAN: I'll go to D.

24 MR. CHEN: Yeah, I think it -- I -- I've just been
25 told that it should be in D.

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Conducted on March 19, 2021

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1 HEARING EXAMINER ROBESON HANNAN: See, I thought
2 that D began with OOOO.

3 (Sotto voce speaking.)

4 HEARING EXAMINER ROBESON HANNAN: QQQQ.

5 MR. CHEN: (Inaudible.)

6 HEARING EXAMINER ROBESON HANNAN: Oh, those were
7 only four Qs though.

8 MR. CHEN: Yes, you got it. Yes.

9 HEARING EXAMINER ROBESON HANNAN: Okay. You --
10 okay.

11 MR. POSEY: There we go.

12 HEARING EXAMINER ROBESON HANNAN: Okay. I
13 apologize for that.

14 MR. POSEY: It's --

15 HEARING EXAMINER ROBESON HANNAN: Well.

16 MR. POSEY: It's a big file.

17 (Exhibit 227-AAAAA introduced.)

18 MR. CHEN: Just for clarity for the record, sir,
19 which exhibit are we now viewing?

20 MR. POSEY: This particular page is Exhibit 227,
21 document AAAAA.1.

22 MR. CHEN: Thank you. Just as you go through them,
23 just for the clarity of the record, make sure that you
24 identify the exhibit number.

25 MR. POSEY: Um-hmm. Okay. There we go. Can see

1 the whole page now. Okay.

2 This is pretty much the collection of all the
3 relevant numbers that we're talking about here. The first
4 four lines over there in the right column, where it says
5 value, the \$741,300, that was our original assessment that
6 we decided to appeal, and the number that came back, line
7 2, after the appeal, was 688,900. That's a drop of 52,400,
8 and, as I mentioned, it's a percent drop of 7.07 percent.

9 Just for completeness here, I've added our most
10 current assessment as well. There are versions of this
11 page from last year, I think, that are still floating
12 around, but we included this and made it an actual exhibit
13 just for completeness' sake.

14 MR. CHEN: What does it depict, sir? Could you
15 explain it to the Examiner?

16 MR. POSEY: Yes. The lines 5 through 8, they show
17 the current assessment from December of 2020, shows that we
18 started at the \$688,900 we had before, and for this year
19 the County decided to drop the value an additional \$28,800,
20 an additional 4.18 percent.

21 Now lines 9 through 12, these show the calculation
22 of Mr. McPherson and associates. He gives the current
23 appraised value, \$650,000, in line 9, and his estimate that
24 the value of the house would drop to \$585,000 solely due to
25 the addition of Primrose. That's a \$65,000 drop in

1 property value, a total percentage change of minus 10
2 percent.

3 And just because it's referenced later, I've got
4 line 13 down there. That is the sum of line 3 and line 11.
5 And, again, line 3 is just the value change that we
6 received from the State due to the church parking lot, and
7 line 11 is the value change due to Primrose. Just putting
8 those two together gives a total of \$117,400.

9 While we're here, just let me state that I believe
10 the next page, document AAAAA.2, that is a document that
11 shows our value drop from the church parking lot when we
12 made our appeal. Mr. McPherson has referenced this before,
13 and, as we mentioned this morning, that was just kind of, I
14 guess, kicked down the road to me here, but this is the
15 document that he used.

16 MR. CHEN: This is -- okay. This is the actual
17 copy of the document you received, and it was utilized by
18 Mr. McPherson for his report and during the course of his
19 testimony?

20 MR. POSEY: Yes, exactly.

21 MR. KLINE: Could someone please repeat what
22 exhibit that was?

23 MR. CHEN: AAAAA.2, Jody.

24 MR. KLINE: Thank you.

25 HEARING EXAMINER ROBESON HANNAN: 227-AAAAA.2.

1 MR. KLINE: Thank you.

2 MR. POSEY: Okay. I personally think that the
3 amount the County reduced our assessment in March 2018 is
4 very conservative. The lost value due to the church
5 should've been larger, in my opinion, but the County
6 accepted it without a fight and without an expensive
7 professional assessor's report.

8 And I consider Mr. McPherson's estimated loss of
9 property value due to Primrose to be very conservative
10 also. One of the real estate agents Mr. McPherson
11 interviewed said that Primrose together with the church
12 would cause our property to be sold only at a fire-sale
13 price. These are scary words for a retired homeowner.

14 And on the top of the page, you'll notice how the
15 current state assessment --

16 MR. CHEN: Is that the same exhibit we're on?

17 MR. POSEY: Oh, I'm sorry. I'm sorry. Back up one
18 page to AAAAA.1. There we go.

19 And can also note how the current state assessment
20 from line 6, the \$660,100 is now in line with Mr.
21 McPherson's starting estimate of \$650,000 in line 9. This
22 wasn't the case before the Maryland assessment was reduced
23 in December 2020. This is telling me the Maryland
24 assessment is now more in line with reality.

25 No reasonable person could claim that the church

1 parking lot did not have a significant impact on my
2 property value, and no reasonable person could claim
3 Primrose will not have a significant impact on my property
4 value. But I've got the double whammy. It's a cumulative
5 effect. The church and Primrose together will cut my
6 property value by more than \$117,000. That was line 13 on
7 this page, and that number just kind of takes my breath
8 away. And, just to be clear, that is due only to the
9 reduced assessment from the church and Mr. McPherson's
10 estimate of loss due to Primrose.

11 MR. CHEN: Now this is Exhibit 227-AAAAA.1 that
12 you're referring to?

13 MR. POSEY: Right, right. I'm sorry. I should
14 have mentioned that.

15 MR. CHEN: And the line 13 is where you just have
16 the numbers that you just explained to --

17 MR. POSEY: Right.

18 MR. CHEN: -- to the Examiner?

19 MR. POSEY: Exactly. And let me be very specific
20 about the wording. Nobody better tell me that, quote,
21 "Hey, a loss of \$65,000 may be a burden, but it's only 10
22 percent. It's not an undue burden," unquote. Property
23 loss from Primrose --

24 HEARING EXAMINER ROBESON HANNAN: What are you
25 quoting?

1 MR. POSEY: I am quoting a hypothetical person who
2 is --

3 HEARING EXAMINER ROBESON HANNAN: Oh, oh. Got you.
4 (Laughter.)

5 MR. POSEY: -- who is saying that it's a burden,
6 but it's not an undue burden. And I disagree with that
7 hypothetical person.

8 HEARING EXAMINER ROBESON HANNAN: Got you.

9 MR. POSEY: Property loss from Primrose will be an
10 undue burden for me, but it won't just be an undue burden,
11 it'll hurt.

12 Can look at this another way. I paid \$135,000 for
13 my land in 1994. The cost of the house at finish was
14 \$504,000. The total finished price was \$639,000. And now
15 I hear Primrose will drop my property value to \$585,000.
16 That is 9 percent less than what it cost to buy the land
17 and build the house 23 years ago. Ouch.

18 My wife and I worked for decades and saved, and now
19 apparently strangers from Virginia want to pull \$65,000 out
20 of my pocket. How would you feel if someone walked into
21 the bank and took 10 percent from one of your retirement
22 accounts?

23 Perhaps I should've done this when the map was up.
24 I'm sorry because --

25 MR. CHEN: What exhibit are you --

1 MR. POSEY: The map I'm referring to is Exhibit
2 227, document XXXX.

3 MR. CHEN: Madam Examiner, can you put --

4 HEARING EXAMINER ROBESON HANNAN: Is that four Xs?

5 MR. POSEY: Four Xs. That should hopefully still
6 be up somewhere.

7 (Sotto voce speaking.)

8 HEARING EXAMINER ROBESON HANNAN: It's in -- did I
9 hear someone whisper it's in 227 D?

10 MR. CHEN: Yes. D, D.

11 MR. POSEY: Oh, there we go. Okay. The
12 neighborhood map we've seen before. Exhibit 227, document
13 XXXX.

14 I need to note one of the people who's missing from
15 this proceeding, and that is Lieutenant Colonel Thuya Aung.
16 That's T-H-U-Y-A, A-U-N-G. He owns 7420 Needwood Road, the
17 property to the north of my house and just east of Primrose
18 along Needwood Road. Like myself, he abuts Primrose's east
19 side. We met Mr. Aung only briefly many years ago. He is
20 currently in the service in some foreign country; we don't
21 know which one. We do know from our brief conversation
22 that when he retires from the military, he plans on tearing
23 down the tiny 1,400-square-foot house now on the land and
24 building a new house for himself.

25 The little house there now was built in 1943 and

1 was originally intended as a garage for a much larger house
2 on my current property. The house is now leased out to a
3 family who speaks virtually no English. We've tried to
4 contact Mr. Aung on LinkedIn to no avail, and certified
5 registered U.S. Mail letters with return receipts are not
6 returned. We really don't know what he would think about
7 Primrose.

8 I believe both Mr. McPherson and Ms. Vandermause
9 used the phrase "potential for residential redevelopment"
10 when referring to this property. For the record, this is
11 just what my wife and I have been expecting for years and
12 will be glad to see it when it happens.

13 So that covers my part of the neighborhood tour.
14 Let me move on to a couple of specific problems with
15 Primrose.

16 MR. CHEN: Let me just back you up for a minute.
17 You went through some documents that related to your tax
18 assessment.

19 MR. POSEY: Right.

20 MR. CHEN: Okay. And I may be repeating the
21 question, but I just want to make sure for the record that
22 those are the documents that Mr. McPherson utilized and
23 relied upon for his report?

24 MR. POSEY: Right.

25 MR. CHEN: At least they're part of the material

1 that he relied upon?

2 MR. POSEY: Um-hmm. Yes.

3 MR. CHEN: So you're authenticating that the
4 documents that he utilized are accurate and correct?

5 MR. POSEY: Yes, I'm authenticating that.

6 MR. CHEN: Thank you. Go ahead.

7 MR. POSEY: Okay. Let me talk a little bit about
8 Primrose traffic. First, let me go to a single page. This
9 is Exhibit 277, document TTT, three Ts.

10 (Sotto voce speaking.)

11 MR. CHEN: Should be C, Madam Examiner.

12 HEARING EXAMINER ROBESON HANNAN: Three Ts?

13 MR. POSEY: Three Ts.

14 HEARING EXAMINER ROBESON HANNAN: Pardon me just --
15 I'm trying to scroll through this exhibit. Okay. I
16 believe we're looking at it.

17 MR. POSEY: There we go. That's it.

18 (Exhibit 227-TTT introduced.)

19 MR. CHEN: And what is this exhibit number again,
20 just for the record?

21 MR. POSEY: This is Exhibit 227, document TTT,
22 three Ts.

23 MR. CHEN: Thank you, sir.

24 MR. POSEY: Okay. This was originally part of
25 Primrose's Exhibit 63. The only real difference here is

1 that two of the numbers have been highlighted in yellow.
2 I'm only going to be looking at one of them.

3 The first highlighted yellow number is 129. This
4 is the adjusted trips for Primrose in its A.M. peak hour.
5 Now abstract numbers like this are sometimes hard to
6 visualize. What does this actually look like in the real
7 world? I've got an analogy.

8 But, first, unfortunately, I have to define a new
9 term. Traffic engineers use terms like trip generation and
10 pass-bys. All of their terms have special meaning, and my
11 people tell me I'm just going to confuse things totally if
12 I use one of their terms the wrong way. I wanted to use
13 the term car trip, but apparently that term already has its
14 own definition among traffic engineers.

15 So I'm defining the term vehicle movement. Vehicle
16 movement is just a one-way car trip that starts or stops at
17 Primrose. A car drives into the Primrose parking lot in
18 the early morning with a child and parks; that's one
19 vehicle movement. The child gets checked in, the parent
20 goes back to the car and drives off; that's a second
21 vehicle movement.

22 This exhibit says that Primrose will have 129
23 adjusted trips in its peak A.M. hour. You've got 68 trips
24 in and 61 trips out, total 129 adjusted trips or vehicle
25 movements.

1 Now my wife and I went to our local McDonald's at
2 the Red Mill shopping center at the corner of Redland and
3 Muncaster Mill. It's a full-sized McDonald's. It has a
4 sit-down restaurant area and a drive-through window. We
5 counted cars between the 7:30 a.m. and 8:30 a.m. on an
6 ordinary Tuesday morning during the school year, and this
7 was November 2019, back when they had school.

8 MR. CHEN: Which day in November did you go?

9 MR. POSEY: Oh. In particular, this was Tuesday,
10 November 19th --

11 MR. CHEN: Thank you.

12 MR. POSEY: -- 2019. We counted each drive through
13 as one vehicle movement. We counted people who parked, got
14 out, went inside for a couple of quick minutes, came out
15 again, and drove off as two vehicle movements, just like it
16 would be counted on Exhibit TTTT -- oh, I'm sorry, Exhibit
17 TTT, three Ts, not four Ts. The McDonald's generated 121
18 vehicle movements in an hour compared to Primrose's 129
19 vehicle movements in its peak A.M. hour. Now we would not
20 --

21 HEARING EXAMINER ROBESON HANNAN: This is
22 McDonald's -- I'm sorry. What was your McDonald's vehicle
23 movement count?

24 MR. POSEY: The McDonald's count was 121 vehicle
25 movements in an hour.

1 HEARING EXAMINER ROBESON HANNAN: Go ahead.

2 MR. POSEY: Now we would not be here if someone had
3 proposed putting a McDonald's in the middle of our
4 residential neighborhood with the drive-through window just
5 12 feet off my property line. In the morning hour,
6 McDonald's -- I'm sorry, Primrose will be McDonald's and
7 more. Both of these for-profit commercial uses are just
8 incompatible with our residential neighborhood.

9 And while I'm on the subject of traffic, let me
10 bring up a hole in all of Primrose's filings to date. Not
11 once in any of Primrose's paper submissions do they show
12 the total number of car trips this facility will generate
13 in one day. They talk about peak hour traffic and gaps and
14 intersections, but nowhere did they show the single grand
15 total of car trips per day. But, luckily, Mr. Cook of the
16 traffic group gave us that number in his testimony on day
17 four, page 256. At one point he mentioned 800 car trips,
18 at one point he mentioned 850 car trips; I'm just going to
19 call this 800 car trips plus per day.

20 This kind of traffic is incompatible with a
21 residential neighborhood no matter how it's spread during
22 the day. I can see why Primrose didn't want to advertise
23 this number or put it in their written reports anywhere.
24 But what's appalling to me is that planning apparently
25 never asked for this number or computed it themselves.

1 MR. CHEN: When you say "planning," what are you
2 referring to? The staff, the Park and Planning Commission?

3 MR. POSEY: Yes.

4 MR. CHEN: Okay. That's planning.

5 MR. POSEY: How can planning possibly have claimed
6 to evaluate Primrose's effect on the neighborhood if they
7 don't even know what the total traffic it generates is?
8 How can they possibly recommend a 22-foot driveway waiver
9 when they don't even know how much traffic uses the
10 driveway? This number is in none of their reports.

11 Planning's analysis was inadequate. Planning's
12 driveway waiver recommendation is unsupported. But I'll
13 stop there. I don't want to duplicate. Other witnesses
14 will discuss the inadequacies of planning's analysis later.

15 The location of Primrose's parking lot could not
16 possibly be worse for me personally. If we can go to
17 Exhibit 227, document BBBBB.

18 MR. CHEN: How many B's?

19 MR. POSEY: That's five B's.

20 (Sotto voce speaking.)

21 MR. CHEN: It's in D, Madam Examiner.

22 HEARING EXAMINER ROBESON HANNAN: How come I keep
23 missing it? I keep seeing four O's. Okay. I digress.
24 It's in B -- what is it again?

25 MR. CHEN: D. D.

1 HEARING EXAMINER ROBESON HANNAN: That's where I
2 am.

3 MR. CHEN: D?

4 HEARING EXAMINER ROBESON HANNAN: Yes.

5 MR. CHEN: Okay. And it's --

6 MR. POSEY: And --

7 MR. CHEN: -- five -- five B's.

8 HEARING EXAMINER ROBESON HANNAN: I'm getting the
9 fours and the fives mixed up. I will get this. There's
10 five.

11 (Exhibit 227-BBBBBB introduced.)

12 MR. CHEN: There you go.

13 MR. POSEY: There we go. Okay.

14 MR. CHEN: Okay. Again, just for the record, Mr.
15 Posey, you're addressing Exhibit 227, then five B's.

16 MR. POSEY: Then five B's, that's right.

17 MR. CHEN: Thank you, sir.

18 MR. POSEY: Now this exhibit needs a little bit of
19 explaining. This page started as Primrose Exhibit 72.

20 FEMALE SPEAKER: 72?

21 MR. POSEY: Primrose Exhibit 72 was a color view of
22 the landscaping plan, sheet CUP-9, but Exhibit 72 showed
23 the border plantings around Primrose's property at the
24 20-year level. My wife Carol Kosary put that sheet into
25 Photoshop and replaced the 20-year-tree level with what it

1 will look like right after construction is finished. As
2 Mr. Jolley, the landscape architect, said, "These trees
3 will only be 2 to 2 1/2 inches diameter at planting."
4 She's been a --

5 MR. CHEN: Let me interrupt you just for a second.
6 I think you're not aware of a change in exhibit numbers
7 that you just referred to.

8 MR. POSEY: Uh-oh. Okay.

9 MS. JOHNSON: What used to be 72 --

10 HEARING EXAMINER ROBESON HANNAN: Who's speaking
11 please?

12 MR. CHEN: This is Bill Chen. The -- the number
13 went from what to what?

14 MS. JOHNSON: 72 to 73.

15 MR. POSEY: Oh.

16 MR. CHEN: Madam Examiner, did you hear that? The
17 -- the exhibit went --

18 HEARING EXAMINER ROBESON HANNAN: 72 to -- so he's
19 referring -- the landscape plan that they're referring to
20 prepared by the Applicant with the trees at full maturity
21 is 73. Is --

22 MR. CHEN: That's --

23 HEARING EXAMINER ROBESON HANNAN: -- that what --

24 MR. CHEN: That's my --

25 HEARING EXAMINER ROBESON HANNAN: -- you're saying?

1 This -- take 73 as a basis, and -- and then you tell me
2 what this does, based on Exhibit 73.

3 MR. POSEY: Right. My took -- my wife took that,
4 put it into Photoshop and replaced the 20-year-tree level
5 with what it will look like right after construction is
6 finished. As Mr. Jolley, the landscaper architect, said,
7 "These trees will only be 2 to 2 1/2 inches in diameter."

8 Now she's using that particular graphic in her own
9 testimony later, but I took that graphic from her, cropped
10 it and turned it, so north is up. Then I added the
11 locations of the parking lot lights. Those are the red
12 dots all around the parking lot.

13 MR. CHEN: Now this is on Exhibit 227-BBBBBB.

14 MR. POSEY: BBBBBB, that's right. Exactly.

15 The little yellow lips labeled water feature is
16 obviously the water feature. For some reason, that usually
17 turns up as some kind of a white splotch on the aerial
18 photographs.

19 MR. CHEN: Let me hold you just one second.
20 Earlier, the Examiner asked you a question about your house
21 and the orientation. She mentioned about something to be
22 concrete. Remember that?

23 MR. POSEY: Right, right.

24 MR. CHEN: Is that -- is that this item that she
25 was referring to?

1 MR. POSEY: Right. This is exactly what I was
2 referring to. This shows the view out the -- the west and
3 north and northwest sides.

4 HEARING EXAMINER ROBESON HANNAN: Okay.

5 MR. POSEY: The -- the --

6 MR. CHEN: What is this -- what is this feature
7 again?

8 MR. POSEY: It's -- it's a water feature. It's
9 what's called a waterless pond. There's a little hill,
10 maybe 3 feet tall, and three little waterfalls coming off
11 the hill, but what would be a pond instead is filled with
12 stones. There are some low wattage lights under the
13 waterfalls. Really, they're not much stronger than
14 flashlights. And there's a little shrub on the top of the
15 hill that has some Christmas tree lights in the branches.
16 We turn on the lights at night.

17 Now my kitchen is where the two red lines intersect
18 at the house. There's a direct line of view between the
19 kitchen, the water feature, and the parking lot. If it was
20 the living room, it wouldn't matter so much, but the chairs
21 in my kitchen counter face out on purpose. I eat breakfast
22 looking out that window, and I read the paper facing in
23 that direction. And when I'm making dinner, I lean against
24 the counter with a glass of wine and look in that
25 direction. I'm spending an awful lot of my retirement

1 looking out that window.

2 There's a big wall of trees behind the water
3 feature now, but all of those trees will be torn down by
4 Primrose. The couple of little green spots you see between
5 the red lines on the diagram in my yard are just shrubs.

6 MR. CHEN: Those are the -- the BBBBB document;
7 right?

8 MR. POSEY: Yes, yes. Still the BBBBB document.

9 I will have a clear view of all of eight of
10 Primrose's parking lot lights. Now I was amazed when I
11 first looked at this document BBBBB. If the center of our
12 house was a clock, we've actually got dense forage coverage
13 from four o'clock to nine o'clock and from 10:30 to one
14 o'clock. There's a gap between nine o'clock and 10:30.
15 That gap gives us the perfect view of all of Primrose's
16 parking lot lights. It's almost as if someone planned it
17 that way. I'm not implying that of course, just a
18 coincidence. Now --

19 MR. CHEN: Also the document -- exhibit also
20 reflects the proposed planting by Primrose.

21 MR. POSEY: Right, right. Exactly. This is what
22 it'd look like after the end of construction. After 20
23 years, when those little twigs grow up, it will probably
24 look a little different.

25 MR. CHEN: How old are you?

1 MR. POSEY: I am 66.

2 MR. CHEN: Thank you. How old is your wife?

3 MR. POSEY: She is 67.

4 MR. CHEN: Thank you. Go ahead.

5 MR. POSEY: Now I've seen the light dispersal
6 pattern from the Cree company, LED lights that Primrose is
7 proposing, and that is C-R-E-E. Like every parking lot
8 light or streetlight, the maximum lighting is directly
9 under the bulbs, but the lighting doesn't go to zero unless
10 you are exactly 90 degrees to the bulb or above it.
11 There's always some side scatter.

12 Now I don't want to go into this too far --

13 MR. CHEN: What do you mean by side scatter?

14 MR. POSEY: The great majority of the light from
15 streetlights and parking lot lights goes straight down. As
16 you go at a larger and larger angle to the streetlight, the
17 amount of light gets less, but it doesn't go to zero unless
18 you are exactly even with the light itself.

19 Now I don't want to get into too much of a fussy
20 deal about Cree lights. Carol Kosary's going to go into
21 more detail on that later on.

22 Now Primrose's parking lot lights are 20 feet tall.
23 I did the math, and standing in my kitchen the eight lights
24 will be 11 feet above my eye level. I expect it will be
25 like someone shining a car headlight at you from a

1 distance. I also expect it to resemble a shopping center
2 parking lot behind my backyard.

3 Now the church parking lot lights on my east are
4 roughly 6 to 11 feet above eye level too and roughly the
5 same distance away as Primrose's. The church -- the
6 church's lights would put out enough side scatter to
7 overpower my pond lights if you put them behind the pond.
8 The church's lights do make it resemble a shopping center
9 parking lot when the lights are on.

10 Primrose's lights will do the same. I'm not
11 speculating here. I know this from my experience with the
12 church.

13 The church occasionally has evening activities that
14 require turning on their parking lot lights, maybe all of
15 four times a year, not very often, and that's okay with me.
16 But unlike the church, Primrose's lights will be turned on
17 every weekday morning and evening. And just to make it
18 clear, Mr. Alt, the architect, said the parking lot lights
19 will be on every weekday until 9 p.m. for the cleaning
20 staff. That was day three, page 290. So we can't avoid it
21 in the evening. And Mr. Mandava said the staff will be
22 arriving at 6 a.m. Presumably the lights will be turned on
23 for them too when it's dark, so we can't really avoid it in
24 the morning either.

25 And this argument works equally well when sitting

1 on the patio, which is about 5 feet northeast of where the
2 red lines meet on Exhibit BBBB.

3 MR. CHEN: Five B's.

4 MR. POSEY: Five B's.

5 MR. CHEN: Right where --

6 HEARING EXAMINER ROBESON HANNAN: Wait. Say that
7 -- I understand the exhibit, but what is -- say the
8 statistic you just gave again. I didn't catch that.
9 Something is where the red lines meet?

10 MR. POSEY: Right. The red lines meet at the
11 kitchen window. The --

12 HEARING EXAMINER ROBESON HANNAN: Oh.

13 MR. POSEY: The patio, it's a little hard to see on
14 the graphic, is 5 feet northeast of that.

15 HEARING EXAMINER ROBESON HANNAN: Okay.

16 MR. POSEY: You can just barely make out that it's
17 a patio. Okay.

18 Now recall that Mr. McPherson said that real estate
19 agents he interviewed said the privacy of the backyard is
20 important to buyers, and it's important to me as well. The
21 Tapscotts at 16200 Carnegie Avenue, and especially the
22 Mitchells at 7500 Needwood, will have these lights shining
23 in their kitchen windows too. And it'll take years,
24 possibly decades, for Primrose's new landscaping to even
25 come close to the 20-foot level of the poles.

1 Now lighting has to be taken into consideration
2 because of compatibility issues. There's no way around it.
3 Primrose's commercial parking lot lighting will certainly
4 alter the predominantly residential nature of the area.

5 Also need to point out that Primrose will alter the
6 residential nature of the area because it will be the
7 defining neighborhood feature. There has been, and there
8 will be, a lot of talk about sight distances for driveways.
9 This is a problem because there's a slight ridge that runs
10 north and south along Primrose's eastern border. In fact,
11 at about 475 feet, Primrose's northeast corner is roughly
12 the highest elevation within about a third of a mile. With
13 Primrose itself having a 21 1/2 foot tall roof and sitting
14 on the ridge, this will make it the prominent landmark for
15 the neighborhood.

16 Mr. Alt mentioned that the Mitchell's house at 7500
17 Needwood could be 12 feet taller than Primrose possibly.
18 Trouble is Primrose is about three times as long, roughly
19 180 feet, and it's higher up the ridge. Now the entire 1.7
20 acres of 7500 Needwood was totally treeless and shrubless
21 until 2019. The Mitchells planted some nice trees along
22 the border, which should mature and be beautiful in maybe
23 30 years. They're just sticks now. Carnegie Avenue is
24 wide open, and Primrose's planting won't be useful for
25 maybe 20 years. This gives you the perfect view of the

1 entire length of Primrose's west side as you drive by
2 eastbound on Needwood.

3 While it sounds like they've tried hard to make
4 Primrose look pretty, no amount of sedate colors and
5 architectural details can make Primrose look residential.
6 Nothing can hide that kind of massing. It's a monolith.

7 If you're driving west on Needwood, there's a
8 slight bend of 10 degrees near Deer Lake Road, roughly a
9 half a mile to the east. You face Primrose's property
10 directly before you turn away. And while there's a decent
11 50-foot setback between the Primrose building and the
12 property line, views of Primrose will be difficult to avoid
13 by anyone driving westbound on Needwood. It's the high
14 point of the neighborhood. And my house is going to be
15 sandwiched between the two monoliths: Primrose and the
16 church.

17 And what could possibly alter the residential
18 neighborhood of the area more than a one-story Primrose? A
19 two-story Primrose. Primrose's people say that a two-story
20 structure will not work as well as a one-story structure,
21 but they've never said that a two-story structure is
22 completely out of the question. But should you deny their
23 current proposal, a two-story building might start looking
24 pretty attractive to them.

25 Now, again, Madam Examiner, my lawyer says I'm not

1 out of line asking you for a specific wording in your
2 decision. Please deny Primrose's application, but also
3 please deny any 195-child daycare center in this location.
4 Such a busy business is incompatible with our residential
5 neighborhood. Should you deny Primrose's current proposal,
6 I don't want to have to spend the rest of my retirement
7 savings refighting exactly this same battle with a two-
8 story Primrose in 18 months.

9 There is so much wrong with this application, and
10 the details will be covered by others with more expertise
11 than me, but there's one part that's just crazy.
12 Primrose's proposed driveway on the east side of their
13 property is just 12 feet from my property line. That's too
14 close. But apparently Primrose thought a waiver cutting
15 the buffer from 34 feet to only 12 feet -- I'm sorry --
16 that wasn't Primrose that thought that. Apparently
17 planning thought a waiver cutting the buffer from 34 feet
18 to only 12 feet was a good idea.

19 No. I consider this a taking of a 22-foot strip of
20 my land. Yes, my lawyer told me this doesn't constitute a
21 taking in the classic legal sense. But here's a definition
22 of taking I found on the web: The seizure of private
23 property or a substantial deprivation of the right to its
24 free use or enjoyment that is caused by government action
25 without appropriate compensation. That sure sounds like a

1 taking to me.

2 And the reason why I should have a 34 buffer is 800
3 vehicle movements per day. If buffers can be negated on a
4 whim because it's inconvenient for the builder, there
5 wasn't any purpose in even having buffers, was there? This
6 level of traffic, I'm sure, is one of the reasons why they
7 invented buffers.

8 Look -- Primrose is trying to shove 6 pounds of
9 trouble into a 5-pound bag. I'm sorry, but the Mandavas
10 bought a piece of land that was too small for what they
11 wanted to do. I applaud their entrepreneurial spirit, but
12 the Mandavas apparently did not do their due diligence
13 before purchasing the land. They can't fit it all in, and
14 they want me to pay for their mistake. By recommending
15 this waiver, Planning apparently wants me to pay for their
16 mistake too.

17 Mr. Wolford testified that the current Primrose
18 plan is somewhere between the 12th and 24th iteration of
19 their plan over the last three years. That was day one,
20 page 175. They don't even seem to know how many versions
21 they've gone through, or, as Mr. Alt said, quote, Up, down,
22 left, right, flipped, flipped, unquote. That's from day
23 three, page 258. And this is the best they can do? It
24 doesn't fit.

25 Oh, and Mr. Jolley, the landscape architect, says

1 all my problems will be solved with his row of plantings in
2 the little 12-foot strip. That's just a Band-Aid on a bad
3 mistake. And as Bill asked just a few seconds ago, I'm 66.
4 I can't wait 20 years for his little twigs to become useful
5 screening.

6 So, Madam Examiner, please deny this application.

7 MR. CHEN: I have no further to Mr. Posey's
8 statement, and certainly Examiner and Mr. Kline are free to
9 cross-examine.

10 EXAMINATION OF PAUL POSEY BY HEARING EXAMINER

11 HEARING EXAMINER ROBESON HANNAN: Well, I -- I have
12 a couple of questions. And then if I can go forward, Mr.
13 Kline, and then you can ask questions based on my questions
14 as well.

15 Mr. Kosary [sic], do you know the -- what is the
16 distance from the closest part of your house to -- to the
17 parking area? Do you know?

18 MR. POSEY: Actually, I never did the distance from
19 the house to the parking lot. I can give you a surrogate
20 number for that. The closest parking lot light in
21 Primrose's parking lot is 135 feet from the house. The
22 farthest parking lot light is 255 feet from the house.

23 HEARING EXAMINER ROBESON HANNAN: Well, I was
24 getting ready to ask you about noise from the parking area,
25 and you testified -- I think you said that you hear car --

1 in the church parking area, you hear car doors slamming and
2 conversations. Is that -- that's what I heard you say.

3 MR. POSEY: Yes, yes. That's exactly right.

4 HEARING EXAMINER ROBESON HANNAN: Okay. So I'm
5 trying to get a sense of whether that is -- I'm trying to
6 get a distance -- for instance, when you hear the
7 conversations, are you standing in this driveway --
8 driveway location here?

9 MR. POSEY: Yes. I can hear them where you've got
10 -- well, where you had your cursor on the driveway just a
11 few seconds ago and also in front of the house, what -- off
12 in the --

13 HEARING EXAMINER ROBESON HANNAN: Is that in the --
14 to the south, this front --

15 MR. POSEY: Yes, yes.

16 HEARING EXAMINER ROBESON HANNAN: Okay.

17 MR. POSEY: Right there. And farther south as
18 well.

19 HEARING EXAMINER ROBESON HANNAN: Oh. In -- in --
20 in the --

21 MR. POSEY: (Inaudible.) Right there. Yes. What
22 -- what we would call the front yard.

23 HEARING EXAMINER ROBESON HANNAN: Okay. And you
24 can hear people talking?

25 MR. POSEY: Yes.

1 HEARING EXAMINER ROBESON HANNAN: Okay. All right.
2 That -- that was just -- and how far is it from your water
3 feature to this fence that will be? Do you know that?

4 MR. POSEY: I don't know that. I don't have a
5 measurement of that.

6 HEARING EXAMINER ROBESON HANNAN: Okay. Those were
7 all my questions.

8 Mr. Kline.

9 MR. KLINE: Sort of like we did this morning, would
10 you mind a quick break to help me get a little organized,
11 five minutes?

12 HEARING EXAMINER ROBESON HANNAN: I don't. Is
13 there an objection to that?

14 MR. CHEN: No, not at all.

15 HEARING EXAMINER ROBESON HANNAN: Okay. Having
16 none, we'll break for five -- we're off the record for five
17 minutes. Thank you.

18 (Pause in proceedings.)

19 HEARING EXAMINER ROBESON HANNAN: Okay. Mr. Kline,
20 you're up.

21 MR. KLINE: Thank you.

22 CROSS-EXAMINATION OF PAUL POSEY

23 MR. KLINE: Mr. Posey, can you just briefly give me
24 a little elaboration on the community's or your complaint
25 about the operations of the Morton's Towing that you feel

1 is not consistent with the agreement with the County?

2 MR. POSEY: As I understand it, only two of the
3 three properties were to be used for contractor storage,
4 and the third property was just to be used for the ingress
5 and egress. But if you take a closer look at -- again,
6 this is back at the documents -- Exhibit 227, document
7 XXXX, that's the one with the colorful map. If you've got
8 that handy, let me --

9 HEARING EXAMINER ROBESON HANNAN: I --

10 MR. KLINE: Yes, sir. Yeah, I've got it here.

11 MR. POSEY: Okay. Okay. You can see the green
12 splotch there, the green polygon. Oh, hang on. There we
13 go. We've got it up on the screen here. The big green
14 polygon is where they've got Morton's, where they've got
15 contractor storage, where the contractors keep their
16 equipment, a lot of other things. And the egress and --
17 ingress and egress is in the middle property instead of
18 pretty much where the Charles Reece Hair Salon is now.
19 That's where we would've expected it.

20 MR. KLINE: So what's the little green strip
21 running out to -- that would've suggested to me a driveway,
22 but that's not the case?

23 MR. POSEY: No, that is -- that is the case. That
24 is --

25 MR. KLINE: Okay. Got you.

1 MR. POSEY: -- ingress and egress. That's the
2 driveway.

3 MR. KLINE: Well, what my question was trying to
4 elicit was, in what way are they operating that's
5 inconsistent with the agreement?

6 MR. POSEY: The big green splotch is -- big green
7 polygon is full of contractor equipment. According to the
8 agreement, they only should've had two out of three
9 properties being used for contractor equipment.

10 MR. KLINE: Okay.

11 HEARING EXAMINER ROBESON HANNAN: Is -- can I ask,
12 is the splotch, as you call it, that crosses -- as I see,
13 that crosses three lots?

14 MR. POSEY: Correct.

15 HEARING EXAMINER ROBESON HANNAN: Is it one of
16 those three kind of pie-shaped lots that is not supposed to
17 have the -- the storage on it?

18 MR. POSEY: Right. Only two of the three lots
19 should be having storage on it.

20 HEARING EXAMINER ROBESON HANNAN: And the Reece
21 Hair Salon, is that a conditional use to your knowledge, or
22 is that a nonconforming use?

23 MR. POSEY: I couldn't tell you the exact
24 terminology. All I can say is it's a home-based business
25 with one person.

1 MR. KLINE: Madam Hearing Examiner, we -- we
2 checked that out as part of our preparation of a
3 justification statement and determined it was a home
4 occupation.

5 HEARING EXAMINER ROBESON HANNAN: Okay. Probably a
6 minor home occupation.

7 MR. KLINE: Low volume, as Mr. Posey pointed out,
8 single operator.

9 HEARING EXAMINER ROBESON HANNAN: Okay. Go ahead.

10 MR. KLINE: Okay. Can I just -- you did a very
11 good job of describing the history of the -- your appeal to
12 the Board of Appeals from the issuance of the permits for
13 the church, but I wanted to just sort of ask you to kind of
14 elaborate a little bit on what you and your wife were
15 looking for as a solution. You wanted the church to
16 install trees that would've had to have been probably in
17 the order of 12-feet tall in order to satisfy your
18 screening requirements. Am I correct?

19 MR. POSEY: Well, the -- the -- I mean, we can't
20 dictate exactly what they need to do for screening, if the
21 Zoning Board of Appeals had said you're going to screen,
22 but we suggested Green Giant arborvitae. These would go in
23 at something, like, maybe 6 or 8 feet, but they are fast
24 growing. And over a decade or so, they would be tall
25 enough to screen the entire parking lot.

1 MR. KLINE: Didn't the church plant some
2 landscaping between the fence and their parking lot on the
3 inside of the fence?

4 MR. POSEY: A couple, yeah.

5 MR. KLINE: Were they arborvitae?

6 MR. POSEY: I don't know that.

7 MR. KLINE: Yeah.

8 MR. POSEY: They could be.

9 MR. KLINE: Right. And -- okay. I'm sorry. Go
10 ahead.

11 MR. POSEY: I can tell you there are so few of them
12 that they're insufficient as screening.

13 MR. KLINE: Sure. In any event, it was the Board
14 of Appeals' decision that the fence was adequate screening
15 in accordance of the ordinance. Is that a correct
16 summation?

17 MR. POSEY: Yes, that's true.

18 MR. KLINE: Thank you. Your -- your picture is
19 very compelling. As you pointed out, I've been in your
20 house. I know exactly what you're looking at. The church
21 -- let's say, the middle of the parking lot is how many
22 feet lower than the steps at your front door, or your best
23 guess?

24 MR. POSEY: I'm trying to think. I know that the
25 church parking lot lights all appear to be 20-footers too,

1 but it's kind of hard to tell because they're on concrete
2 foundations, and the foundations are between 1 and 2 1/2
3 feet tall with the -- seem to be randomly selected there,
4 but --

5 MR. KLINE: Right. Well, my -- my -- my question
6 is, are the cars -- how much lower are they than your front
7 steps? The elevation of the cars, not the lights.

8 MR. POSEY: Can't say I was --

9 MR. KLINE: Okay.

10 MR. POSEY: -- expecting that question. I can't
11 tell you with any authority on it.

12 MR. KLINE: Okay. Fair enough to say looking at
13 the photograph you've given us, they are low -- at a lower
14 level though?

15 MR. POSEY: Yes. Yes, they are.

16 MR. KLINE: Yeah, sure. So the converse or the
17 reverse. So we go out your back door, we're standing on
18 the patio, and we're looking to the west, you pointed out
19 that the subject property, the Primrose property, is one of
20 the higher spots. At least the property closest to your
21 property is at the same grade level?

22 MR. POSEY: When you get farther south on
23 Primrose's property, yes. It's the same grade level as us.

24 MR. KLINE: Okay. So if I went north toward
25 Needwood, it would be going up or down?

1 MR. POSEY: It would be going up.

2 MR. KLINE: Okay, fine. I realize you have, you
3 described as being fairly dense level of trees there now.
4 Can you -- from your backyard, can you see Carnegie Road?

5 MR. POSEY: Yes, I can.

6 MR. KLINE: Filtered views through the trees?

7 MR. POSEY: Exactly. Filtered views through the
8 trees.

9 MR. KLINE: Would -- wouldn't a 6-foot-high fence
10 screen the view of all of those cars?

11 MR. POSEY: It would -- a 6-foot fence along the
12 border there, yes, I believe would screen all the cars on
13 Carnegie.

14 MR. KLINE: Okay. Thank you. Thank you for your
15 candid answer.

16 HEARING EXAMINER ROBESON HANNAN: Wait. I don't
17 understand your answer. They would screen the -- are you
18 saying they would screen the cars on Carnegie Avenue?

19 MR. POSEY: Well, that was the question. Yeah,
20 um-hmm. Yes.

21 HEARING EXAMINER ROBESON HANNAN: All right. Okay.
22 Go ahead.

23 MR. KLINE: Well, okay. Well, the Hearing Examiner
24 -- if I -- if the answer wasn't understood by her, but I
25 guess my question is, will it screen all of the cars or

1 only cars at a lower elevation along Carnegie?

2 MR. POSEY: It will -- I'm fairly certain it will
3 screens the cars on Carnegie in the south half of Carnegie.
4 When you get to the north parts of Carnegie where it meets
5 up with Needwood Road, it starts getting higher, and I'm
6 not sure of the answer there.

7 MR. KLINE: Okay. I understand. But at that
8 point, then we have the vegetation that you talked about
9 that was almost naturalized, and -- I'm -- I'm concerned
10 about, I guess, where the gap -- what you can see through
11 the gap. And what you just described would be something
12 you probably wouldn't be able to see anyway because of the
13 vegetation on your own property. Am I right on that?

14 MR. POSEY: What -- which -- what am I --

15 HEARING EXAMINER ROBESON HANNAN: Wait. I -- I
16 apologize. I'm lost. I don't --

17 MR. KLINE: Okay. Fine.

18 HEARING EXAMINER ROBESON HANNAN: -- (inaudible)
19 gap you're talking about.

20 MR. KLINE: Very good.

21 HEARING EXAMINER ROBESON HANNAN: I'm going to pull
22 up, if I can --

23 MR. KLINE: Yeah. The --

24 HEARING EXAMINER ROBESON HANNAN: -- and I know --
25 this is the one with the landscaping in full maturity, but

1 I just want to understand what -- what gap are you talking
2 about.

3 MR. KLINE: Okay. Unfortunately, can you give me
4 one second here? Because my screen is partly obliterated,
5 so I can't see your exhibit, and I've got to figure out how
6 to get it out of there.

7 HEARING EXAMINER ROBESON HANNAN: Oh.

8 MR. KLINE: Excuse me. Excuse me a second.

9 HEARING EXAMINER ROBESON HANNAN: Were all -- which
10 was 73? Was it -- no. What's the ones that the Kosarys
11 prepared?

12 MR. CHEN: I think you may be -- Madam Examiner, if
13 I may.

14 HEARING EXAMINER ROBESON HANNAN: Yeah.

15 MR. CHEN: You may be referring to Exhibit 227-
16 BBBB. That -- I think we -- didn't we just have it up?

17 MS. PALERMO: We just did.

18 MR. CHEN: I think you just had it up.

19 HEARING EXAMINER ROBESON HANNAN: Okay. Five B's?
20 Well, this is what I -- this is what I just --

21 MR. CHEN: What is -- yeah. Yeah.

22 HEARING EXAMINER ROBESON HANNAN: That's SSS.

23 MR. CHEN: Yeah. That's a different -- I
24 apologize. It's five B's.

25 MR. KLINE: Madam Hearing Examiner, excuse me. I

1 had to leave to get some technical support, and somebody
2 much smarter than I am is about to show me how I can
3 eliminate this box and information that's obscuring part of
4 the screen.

5 FEMALE SPEAKER: Oh, jeez.

6 (Laughter.)

7 MR. KLINE: Not a good thing when the expert says,
8 "Oh, jeez."

9 (Sotto voce speaking.)

10 MR. CHEN: Madam Examiner, if I may. At your end,
11 you're looking for the BBBBB exhibit.

12 MR. POSEY: There you go.

13 MR. CHEN: That's it. There, you got it. You got
14 it.

15 MR. POSEY: Now you've got it.

16 (Sotto voce speaking.)

17 MR. KLINE: Bear with us please.

18 Madam Hearing Examiner, can you -- can you still
19 hear us?

20 HEARING EXAMINER ROBESON HANNAN: I can hear you.

21 MR. KLINE: Okay. We may have to go, re-enter or
22 something.

23 HEARING EXAMINER ROBESON HANNAN: Okay. Do you
24 want to try and leave the meeting and rejoin?

25 MR. KLINE: I'm going to ask the young lady here --

1 okay. Now I have two -- your two views, so I -- I can see
2 the Hearing Examiner, and I can see Mr. Posey. If you
3 could put your exhibit back up, or maybe it's --

4 HEARING EXAMINER ROBESON HANNAN: Is it up?

5 MR. KLINE: -- still there? Unfortunately what we
6 get now is my calendar. That's not the right thing.

7 HEARING EXAMINER ROBESON HANNAN: Okay. Hold on.
8 Hold on. How's that?

9 MR. KLINE: Ah, thank you. Thank you. Thanks.

10 FEMALE SPEAKER: Yep.

11 HEARING EXAMINER ROBESON HANNAN: (Inaudible) like
12 to return in person.

13 MR. KLINE: I guess I'm getting a little bit too
14 old to be doing this. Okay.

15 So to try and elaborate on what I was talking
16 about, the intersection of the two red lines is what Mr.
17 Posey called the gap --

18 HEARING EXAMINER ROBESON HANNAN: Oh, I get it.

19 MR. KLINE: -- that was created between --

20 HEARING EXAMINER ROBESON HANNAN: Okay.

21 MR. KLINE: -- where he's -- yeah. So and what I
22 thought I understood -- and correct me if I'm wrong, Mr.
23 Posey -- with the drive lane along the common property line
24 with your property, when you get closer to Needwood Road,
25 you thought it would be higher. Am I correct in that

1 description of your testimony?

2 MR. POSEY: Correct.

3 MR. KLINE: Okay. And would you think that you
4 would be able to see cars as they approach Needwood Road
5 because of the vegetation on the northwest corner of your
6 property?

7 MR. POSEY: Are you referring to cars going east
8 and west on Needwood?

9 MR. KLINE: No. I'm talking about cars in the
10 driveway.

11 MR. POSEY: Oh, cars in the driveway.

12 HEARING EXAMINER ROBESON HANNAN: I think he's
13 talking about the pipestem and whether this group of trees
14 in front of -- or on the side rear of your house, north
15 side of your house, would block this view.

16 MR. POSEY: Right. I wouldn't expect traffic on
17 the driveway to be that visible from the house.

18 MR. KLINE: Okay. Thank you. That's -- that's a
19 very candid answer. I appreciate it.

20 And I guess this was said for on the driveway when
21 we had this exhibit up, you -- and maybe I've got this
22 wrong -- I think you said it, but maybe it was Mrs. English
23 -- that I -- a solution to the owner's problem is the
24 development of the property using pipestems off of Needwood
25 Road, and so that would necessarily have the driveway in

1 the same location that it is now. So by that, do I read
2 your objection is less to the location of the driveway than
3 it is to the volume of cars and the associated problems
4 that that brings?

5 MR. CHEN: Excuse me. I've got to object, and I
6 apologize. I don't have the browser in my hand, Madam
7 Examiner. But Mr. Posey -- and I -- subject to better
8 recollection than I -- but I don't believe Mr. Posey
9 testified about residential development of the subject
10 site. I -- I recollect Ms. English did, but I don't
11 believe that Mr. Posey did.

12 HEARING EXAMINER ROBESON HANNAN: Yeah. That is my
13 recollection.

14 MR. KLINE: In which case I'll rephrase the
15 question then.

16 Do you envision -- you said you were looking
17 forward to development of the property next door but
18 hopefully as a residential development rather than
19 Primrose. Would you anticipate it would be developed using
20 pipestem drives -- drive lanes off of Needwood Road?

21 MR. POSEY: That is possible. It's not something
22 that we've ever explored. I'm not for certain whether you
23 could do that or not.

24 MR. KLINE: Thank you. Appreciate it. Okay. Let
25 me catch up here.

1 With regard to your discussion of your assessment
2 on your property, you provided us letters that you've
3 received from the State Department of Assessments and
4 Taxation with the initial assessment and then a reduced
5 assessment and then the 2020 assessment. Do you have any
6 paperwork that's associated with that that explains the
7 rationale for why they reduced the amount of the -- the
8 assessed value?

9 MR. POSEY: No. We've never received any rationale
10 whatsoever. It's a --

11 HEARING EXAMINER ROBESON HANNAN: What did you --
12 what did you submit in your appeal?

13 MR. POSEY: Oh, that was --

14 HEARING EXAMINER ROBESON HANNAN: You sent
15 information.

16 MR. POSEY: That was just a regular seven-sentence
17 letter saying that we -- something more or less that we
18 expect that our house is being (inaudible) at the
19 (inaudible) area, but we're an exception to that because
20 we've got a parking lot in our front yard, and here's the
21 picture. Please reduce our assessment please.

22 HEARING EXAMINER ROBESON HANNAN: Okay. So it was
23 the long picture that you submitted to them?

24 MR. POSEY: Right.

25 HEARING EXAMINER ROBESON HANNAN: Okay. But you --

1 MR. KLINE: You --

2 HEARING EXAMINER ROBESON HANNAN: -- don't have a
3 -- go ahead, Mr. Kline.

4 MR. KLINE: Sure. Well, I was going to say, your
5 letter indicated that you had some familiarity with the
6 comparables they used and challenged those comparables. So
7 do you have any of that information available?

8 MR. POSEY: Actually, we didn't do anything with
9 comparables at all. I mean, it's -- we always assumed that
10 our assessment was based on some sort of (inaudible) and
11 square footage and who knows what else goes (inaudible).

12 MR. KLINE: Well --

13 MR. POSEY: But we were -- we were --

14 MR. KLINE: -- Mr. Posey, I'm -- you're breaking up
15 a little on my end. So just -- could you try that again?
16 Or actually let me -- let me ask you a question this way,
17 little bit more direct. I -- I wrote down that you said,
18 The reduction in my assessment is attributable to the
19 location of the church and then Mr. McPherson's estimate of
20 what's going to happen if Primrose comes. And so my
21 question is, is there any paperwork in your possession that
22 justifies that statement, at least as it relates to the
23 actions taken by SDAT in 2018 and 2020?

24 MR. POSEY: Well, since they gave us a new
25 assessment after our appeal, I'm assuming that -- and since

1 our evidence was just one picture, I'm assuming that the --
2 all of the reduction in the assessment from the State was
3 due to just the parking lot. And --

4 MR. KLINE: But I -- but I think I just heard you
5 say that there are other factors they take into account,
6 and so we don't know for sure what it was totally
7 attributed to; correct?

8 MR. POSEY: What they take into account, I'm not
9 real sure.

10 MR. KLINE: I understand. Well, did you -- did you
11 file an appeal of the 2020 assessment, because there was a
12 reduction after that, and what would've triggered that
13 decision?

14 MR. POSEY: No. No, that happened all by itself.

15 MR. KLINE: All right. Ms. Robeson Hannan, here's
16 my dilemma. I would like to cross-examine Mr. Posey to get
17 into more detail about what might have been the rationale
18 and the basis for the decision. The inference in the
19 testimony and the assumption that the witness has made is
20 that all of the change was attributable to the church
21 because that's the only thing they asked for, but we can't
22 say for sure there weren't other factors. The problem is
23 is that I can't do any discovery to be able to come up with
24 cross-examination on that simply because I can't get
25 records of his personal tax matter.

1 So what I'd like to do is ask that I -- we defer my
2 further questioning about the tax appeal information until
3 he applies to SDAT and asks for paperwork to -- that
4 explains the rationale or gives me a consent order so that
5 I can get it from SDAT, so I can come back and say, you're
6 right, this was exclusively done on the church, or they did
7 it for this reason because there's been a general
8 diminution in value in the neighborhood, something like
9 that.

10 I -- I -- my hands are tied to be able to conduct
11 adequate cross-examination without an ability to get
12 something from SDAT which understandably they're not going
13 to give it to me unless he authorizes it.

14 MR. CHEN: If I may be heard.

15 HEARING EXAMINER ROBESON HANNAN: Yes.

16 MR. CHEN: Couple of points. Number one, the
17 testimony is that one letter was submitted, and we'll
18 supply the letter that was submitted. That's number one.

19 MR. KLINE: You already have. I have it.

20 MR. CHEN: Okay. Fine. You've got the letter
21 then.

22 This has been an issue that was raised during the
23 testimony of Mr. McPherson a year ago. Now my client has
24 told truthfully all that my client submitted to the State.
25 Now how the State gets to that decision, it is not my

1 client's responsibility to ask the State (inaudible),
2 especially something years old. I object to the middle of
3 these proceedings, when this issue has been alive for at
4 least a year, I've never heard of it, asking my client to
5 go to the State to -- for the reasoning why the State made
6 a decision. I don't even know that my clients can get that
7 information, but certainly I don't think the burden should
8 be on my client to go to the State to get their records.

9 HEARING EXAMINER ROBESON HANNAN: Well, I think Mr.
10 Kline's point is he can't go to the State to get the
11 State's records.

12 MR. CHEN: I don't --

13 HEARING EXAMINER ROBESON HANNAN: They won't give
14 it to you.

15 MR. CHEN: Wait a minute. I apologize for
16 interrupting you, if I may. I don't know that that's an
17 accurate statement. Certainly OZAH has the ability to
18 issue a subpoena. Let OZAH issue a subpoena to the State
19 for their file on that assessment determination.

20 MR. KLINE: Well, and I'd be glad to make that
21 request if that was the only solution. Mr. Chen, my -- my
22 -- my point was Exhibit AAAAA basically does state a
23 conclusion that the reduction at least in the 67 -- or the
24 2018 assessment was attributable to the church, and I don't
25 think there's enough backup for that information yet.

1 MR. CHEN: Well, wait a minute. The testimony is
2 that the submission was made by my clients along with the
3 photograph of the church parking lot, so, I mean --

4 HEARING EXAMINER ROBESON HANNAN: So he's -- I
5 think -- Mr. Kline, are you talking about the second
6 reduction?

7 MR. KLINE: Well, frankly, both of them. I mean,
8 the second one is -- is support to my request for more
9 information simply because without even asking they reduced
10 it, and they wouldn't have done that just because there's a
11 church next door. They would've done it because of other
12 features that are going on in that neighborhood which are
13 affecting universally property values.

14 MR. CHEN: This information -- first of all, as to
15 the first -- the appeal, we have provided all the
16 information that we have. And I don't think the burden is
17 on my client to now go back on an assessment that was made
18 a number of years ago to say, "Hey, why did you do this,
19 and give me the documentation as to why you did it."
20 That's number one.

21 Number two, on the second one, which my clients had
22 nothing to do with whatsoever, the issue is fair market
23 value, what is going to be the impact of this application.
24 And my client is reporting to the OZAH what is the State's
25 value on this property, and the implications of this use is

1 based upon accepting what the State has assessed the
2 property for it. That's fair. That's admissible evidence.
3 Any problem with it --

4 HEARING EXAMINER ROBESON HANNAN: I don't think the
5 problem is admissible evidence that he's saying. I think
6 it's clearly admissible. I think -- my issue is this.
7 Having just spent two weeks rereading the transcript, and
8 this issue -- you know, this case has been pending since
9 2018. We knew this was coming because McPherson testified
10 to it.

11 MR. CHEN: Right.

12 HEARING EXAMINER ROBESON HANNAN: And I just don't
13 see -- I do not want to further delay the case, frankly. I
14 think there's been plenty of opportunity. Yes, we could
15 issue a subpoena for it, but there's been plenty of
16 opportunity to do that. I have no idea right now with this
17 -- well, there are many things at the State of Maryland
18 that take a while, and I don't want to -- to delay this
19 case for that reason. The opportunity has been there, and
20 we could've done it at any time.

21 MR. KLINE: Indeed --

22 HEARING EXAMINER ROBESON HANNAN: Now you can bring
23 somebody on, Mr. Kline, in rebuttal and say, well, there's
24 lots of factors, and it may not -- you know, I have --
25 there's lots of factors that could've been.

1 MR. KLINE: Sure.

2 HEARING EXAMINER ROBESON HANNAN: You're more than
3 welcome to do that, but I am not going to delay the case
4 further to get comments from the State where I might have
5 my vaccine before we get the comment.

6 (Laughter.)

7 HEARING EXAMINER ROBESON HANNAN: No offense, but
8 --

9 MR. KLINE: Well, you're not alone in not wanting
10 to postpone the hearing. I -- but I do feel that if -- if
11 I went to get the -- an expert -- in other words, we have
12 an appraiser already to what might -- what might have been
13 attributable to the judgement of SDAT, then of course Mr.
14 Chen's going to want to put on Mr. McPherson to rebut that,
15 so I'm not sure in the end we actually save any time. But
16 I will take your advice and decide whether that -- we're
17 going to bring that up as a rebuttal point or not later on.

18 HEARING EXAMINER ROBESON HANNAN: I mean --

19 MR. KLINE: My -- my -- what bothers me is that
20 there's more than an inference, there's a -- there's a
21 claim that our assessment dropped 7.1 -- 7.7 percent
22 because of what happened next door with the church, and I'm
23 not sure --

24 HEARING EXAMINER ROBESON HANNAN: And the burden is
25 on you if you disagree with that to disprove that claim.

1 MR. KLINE: Fine. And --

2 HEARING EXAMINER ROBESON HANNAN: And we're now
3 here --

4 MR. KLINE: Right. And you actually pointed out my
5 --

6 HEARING EXAMINER ROBESON HANNAN: -- for what,
7 three --

8 MR. KLINE: -- my limited ability to be able to get
9 the information to do that, but I'll see if I can work
10 around it. Okay?

11 HEARING EXAMINER ROBESON HANNAN: Okay.

12 MR. KLINE: Fine.

13 MR. CHEN: If I may. I've just got to reiterate
14 the point I made that there is no -- this was made a year
15 ago. In fact, if you recall, twice today during Mr.
16 Posey's testimony, I interrupted him to make sure that
17 these documents were the ones utilized by Mr. McPherson and
18 that Mr. Posey was authenticating the documents that were
19 utilized by Mr. McPherson.

20 This was an issue a year ago. Mr. -- it's not like
21 these documents today is something that Mr. Kline is seeing
22 for the first time. If he had a problem with these
23 documents, at the very --

24 MR. KLINE: Well, but -- but let's -- let's --

25 MR. CHEN: -- (inaudible).

1 MR. KLINE: -- remember, you also said let's put it
2 off until Mr. Posey testifies.

3 MR. CHEN: No. Excuse me, if I may. If there was
4 an issue to go behind the notice from the State, Mr. Kline
5 has had more than adequate time to try to get that
6 information.

7 HEARING EXAMINER ROBESON HANNAN: I -- I'm going to
8 say what the testimony exactly was -- was, in my
9 recollection, that we would come back for -- for -- we
10 would come back for him to authenticate the document or lay
11 -- my recollection is lay a foundation. They did say that
12 Mr. Posey would be testifying in more detail, but there was
13 no guarantee that he was going to provide the whole file.

14 I think what you're raising, Mr. Kline, is a due
15 process issue. Is it fair when you can't cross-examine
16 because -- due to information that you didn't obtain, and
17 you're saying you couldn't obtain, but you could've asked
18 OZAH for a subpoena, and we could've gotten the documents,
19 and we're now at the point of being -- this case being
20 three years old, and I'm not going to delay the case in
21 order to find SDAT data.

22 For the record, that's S-D-A-T, and it stands for
23 State Department of Assessments and Taxation.

24 I just -- I can't do that. The issue's been there
25 at length. So -- so I'm not going to further delay the

1 case for that.

2 MR. KLINE: I understand your ruling.

3 And I only have one question left, and it's kind of
4 a big question. Mr. Posey, you can almost lean back and
5 answer it. What -- what surprises me about the testimony
6 today, and maybe cumulatively all the testimony we've heard
7 today, is that you're -- you and/or your neighbors have
8 invested so much time in opposing the Primrose proposal but
9 have not seemed to have invested as much time in addressing
10 the problems that seem to occur -- or maybe better stated,
11 you have had little success in addressing the other
12 problems that you have identified in your neighborhood,
13 such as going to visit DPS about the storm drain issues,
14 the Taiwan Culture Center and the Morton's Towing, and why
15 is it that you're not getting any results in those other
16 actions?

17 MR. POSEY: Well, that's a very good question. I
18 can't really say I know.

19 MR. KLINE: Those of us who do this regularly --
20 you heard Ms. Robeson Hannan quickly spell Mr. Etheridge's
21 name because we all know of him and his work, and he's
22 generally considered to be very responsible. And when you
23 said he didn't send you something he asked for, that's
24 surprising because that's not consistent with what I think
25 of. And those of us who do this on a daily basis don't

1 seem to have the County overlooking anything when one of
2 our clients does something wrong. So I'm just not sure why
3 you -- have you been regularly talking to DPS about the --
4 the Morton's Towing issue? That should be pretty
5 straightforward.

6 MR. POSEY: I can say, no, we're not being pests at
7 DPS. Have very few complaints in the long run, put it that
8 way.

9 MR. KLINE: All right. So, I mean, have you
10 written a letter to Mr. Mark Beall and Mr. Ehsan Motazedi
11 saying, in our opinion, what's being -- happening there is
12 contrary to the agreement with County, and we want you to
13 enforce the agreement, and what reaction would you -- did
14 you do that, and did you have any reaction?

15 MR. POSEY: You mean a follow-up to their actual
16 discussion with the county representatives?

17 HEARING EXAMINER ROBESON HANNAN: Are you -- wait.
18 Are you talking about Morton's Towing, or are you talking
19 about the storm drain at the church?

20 MR. KLINE: Yeah. Well, I was asking about
21 Morton's because I thought Mr. Posey did give an answer of
22 what happened when he talked to the DPS -- to my surprise,
23 but I heard an answer there. I hadn't heard an answer
24 about conversations on Morton's.

25 MR. POSEY: That is actually something that Carol

1 Kosary would be able to do in more detail. She's --

2 MR. KLINE: I understand. That's fine. I -- I am
3 -- thank you for your time, Mr. Posey, and I appreciate the
4 candor of your answers. No further questions.

5 HEARING EXAMINER ROBESON HANNAN: Mr. Chen, do you
6 have redirect?

7 MR. CHEN: No.

8 HEARING EXAMINER ROBESON HANNAN: Okay.

9 MS. KOSARY: So I guess me next.

10 MR. CHEN: Yeah.

11 HEARING EXAMINER ROBESON HANNAN: Please raise your
12 right hand.

13 MS. KOSARY: Oh, just a minute. Let me -- well,
14 can I have a second or so to get --

15 HEARING EXAMINER ROBESON HANNAN: Sure.

16 MS. KOSARY: -- (inaudible). Raise my right hand.

17 HEARING EXAMINER ROBESON HANNAN: Do you solemnly
18 affirm under penalties of perjury that the statements
19 you're about to make are the truth, the whole truth, and
20 nothing but the truth?

21 MS. KOSARY: I do.

22 HEARING EXAMINER ROBESON HANNAN: Okay. Go ahead,
23 Mr. Chen.

24 MR. CHEN: Thank you very much.

25 TESTIMONY OF CAROL KOSARY

1 MR. CHEN: Ma'am, could you please give your full
2 name and your residence?

3 MS. KOSARY: I am Carol, C-A-R-O-L, Lynn, L-Y-N-N,
4 Kosary, K-O-S-A-R-Y.

5 MR. CHEN: And you are the wife of Mr. Posey who
6 just testified?

7 MS. KOSARY: I am the wife of Mr. Posey who just
8 testified.

9 MR. CHEN: Okay. And his testimony about the
10 location (inaudible) representation of the (inaudible) --

11 MS. KOSARY: That is correct.

12 MR. CHEN: (Inaudible.)

13 MS. KOSARY: That is correct.

14 MR. CHEN: You have a statement you would --

15 MS. KOSARY: I have a statement that -- I'll give
16 you a heads up there's no way I'm going to be finished
17 today.

18 HEARING EXAMINER ROBESON HANNAN: Is it possible --
19 I hear shuffling of papers.

20 MS. KOSARY: It's not us.

21 MR. CHEN: Not us.

22 MS. KOSARY: Not us.

23 MR. KLINE: I corrected the problem. I'm on mute
24 now.

25 HEARING EXAMINER ROBESON HANNAN: Okay. Well, can

1 you put your hand down too?

2 MS. KOSARY: Oh, yeah. Your hand is up, Mr. Kline.

3 HEARING EXAMINER ROBESON HANNAN: It's okay. Go
4 ahead, Ms. Kosary.

5 MS. KOSARY: Okay. Want to say good afternoon,
6 Madam Examiner. It's really nice to finally see you again.

7 I'm Dr. Carol Kosary. My husband Paul Posey and I
8 reside at 7416 Needwood Road, which directly abuts the
9 proposed Primrose daycare site to our west.

10 I retired in December of 2017 from the federal
11 government. During my three-year career -- 37-year career
12 with the feds, I was a mathematical statistician. And,
13 yes, before anybody asks, as strange as it may seem, the
14 federal government makes a distinction between
15 statisticians and mathematical statisticians. What can I
16 say? It's the federal government.

17 I began my career with the -- with the Army's
18 Operational Test and Evaluation Agency where I was the data
19 analyst on the third operational test of what became the
20 Apache attack helicopter. I spent time at the Bureau of
21 Labor Statistics and the National Center for Health
22 Statistics working on the design and implementation of
23 large, multi-stage national surveys as well as research and
24 survey methods.

25 For the last 25 years of my career, I was with the

1 National Cancer Institute, part of the National Institutes
2 of Health. At the time of my retirement, I was a GS-15 and
3 program manager of a large data-oriented program. I used
4 to joke that I was a NIH scientist whose research area was
5 data, that I was literally a data scientist. That's some
6 statistician humor. Basically, I was, and probably still
7 am, (indiscernible).

8 Before I get into some of the areas I want to
9 address, I must comment on a statement Ms. Vandermause --
10 and, for your court reporter, that's V-A-N-D-E-R-M-O-O-S.

11 HEARING EXAMINER ROBESON HANNAN: I think it's
12 M-A-U-S-E.

13 MS. KOSARY: M-A-U-S-E?

14 HEARING EXAMINER ROBESON HANNAN: (Inaudible.)

15 MS. KOSARY: Oh, I'm sorry. I've got her spelled
16 wrong then.

17 HEARING EXAMINER ROBESON HANNAN: I could be wrong,
18 (inaudible).

19 MS. KOSARY: Okay. One of us is wrong. We'll
20 figure it out.

21 But a comment Ms. Vandermause kept repeatedly
22 making, that Paul and I were just going to have to face the
23 fact, as she stated on page 170 of the day three
24 transcript, starting on line 16, that we, quote, Would have
25 the secluded setting that they have now, unquote.

1 I kept wanting to ask Ms. Vandermause if she
2 realized that our home is facing a 111-car parking lot on
3 our east side and that presently the only screening that my
4 master bath has, which faces the parking lot, is deciduous.
5 So during the months when the leaves are off the trees, I
6 have 111 carloads of parishioners watching me take a bubble
7 bath on Sunday mornings. I have no sense of privacy or
8 seclusion in my home to the east.

9 If the Primrose daycare center is built, I will
10 also have no sense of privacy or seclusion of my home to
11 the west. I should've just decided to live in a high-rise
12 condominium in an urban mixed-use setting rather than a
13 single-family home on a rather large suburban lot.

14 And in terms of Ms. Vandermause's repeated
15 statements that another church could possibly be built at
16 7430 Needwood, I would say that I find this possibility
17 highly unlikely. A church would have the same stormwater
18 issues as Primrose and would also need to build the 1,100
19 feet of new or upgraded storm drain network along with any
20 upgrades to the outfall culvert. DPS is not going to let a
21 church, or for that matter any other large, dense, and
22 highly impervious use, dump their stormwater on the
23 Mitchells and the Tapscotts. Personally, I find it
24 unlikely that a church would want to take on this
25 expensive, major infrastructure upgrade.

1 If this application is denied and the property goes
2 back on the market, anyone doing even a cursory due
3 diligence will have access to all of these records. I also
4 suspect that numerous neighbors would also let the real
5 estate agent know. This would end up having to be part of
6 any disclosure to anyone who is looking at buying this
7 property for a proposed use other than a single-family
8 detached home.

9 MS. KOSARY: Okay. Can I please get OZAH Exhibit
10 227, document WW?

11 HEARING EXAMINER ROBESON HANNAN: Two Ws?

12 MS. KOSARY: Two Ws. It should be your first --
13 your first document. This is the first.

14 (Exhibit 227-WW introduced.)

15 MS. KOSARY: Okay. And speaking of the potential
16 residential development of 7430 Needwood, on page 29 of Ms.
17 Vandermause's report, which is OZAH Exhibit 161-A, she
18 states that, quote, The approximately 3-acre site is most
19 likely to be redeveloped with three dwellings served by a
20 common driveway on the east side of the property, unquote,
21 and offers as an example three homes on Baileys Lane in
22 Silver Spring located on the northeast border of Leisure
23 World.

24 The plat of these homes -- 15416, 15418, and 15420
25 Baileys Lane -- can be found in OZAH Exhibit 227, document

1 WW, which you have on your screen. And, as can be seen on
2 this plat, these homes do in fact share a common driveway
3 created through an ingress-egress easement.

4 Now Montgomery County subdivision regulations found
5 in Chapter 50 require that all lots abut on a public or
6 private road, except that under Chapter 50.4.3.C.1.B.I, a
7 maximum of two lots that do not abut a public or private
8 road can be approved by the Planning Board if they are
9 served by a private driveway that serves no other lots
10 without frontage.

11 Unlike the Baileys Lane homes, however, 7430
12 Needwood has frontage on two public roads, Needwood and
13 Carnegie, and cannot be subdivided into lots served by a
14 common driveway under 54 -- under 50.4.3.C.1.B.I. Due to
15 issues with Carnegie, however, 7430 Needwood would need to
16 use its frontage on Needwood and subdivide through the
17 creation of a pipestem lot like ours.

18 Moving on. I have read the Brandywine decision,
19 and I understand that an application can be amended during
20 a hearing. I have to say, however, that some of the
21 Applicant's proposed new conditions are a little, as they
22 say, over the top. The most preposterous, however, was on
23 day four when in testimony by Mr. Cook, the Applicant's
24 traffic expert, it was stated on page 243, beginning at
25 line 18, that the Applicant would accept a condition to

1 work with -- with MCDOT to correct the issues with the
2 Redland-Needwood intersection.

3 Can I please get OZAH Exhibit 227-XX, which is the
4 next one. I'm -- it's going to be easy for you. I -- I
5 think a lot of these are going to be sequential.

6 (Exhibit 227-XX introduced.)

7 MS. KOSARY: Because the Redland-Needwood
8 intersection was forecast to exceed the Derwood policy area
9 congestion standard in the 2004 Upper Rock Creek Master
10 Plan -- the 2004 Upper Rock Creek Master Plan recommended
11 an intersection capacity improvement project on page 70 of
12 the master plan. The recommendation was to extend a
13 through lane, a through travel lane, on Redland Road from
14 Crabbs Branch to a point north of its intersection with
15 Needwood. This is the summary sheet of that project, which
16 was P-500010.

17 MR. CHEN: When you say "this," you're talking
18 about --

19 MS. KOSARY: Oh, on the screen, what is on the
20 screen.

21 MR. CHEN: 227-XX?

22 MS. KOSARY: 227-XX is the summary sheet for that
23 project, which was P-500010. This was a major project
24 completed by the County in the last decade, which, as
25 recommended by the 2004 Upper Rock Creek Master Plan,

1 widened Redland Road from Crabbs Branch to slightly past
2 the Redland-Needwood intersection. It also involved
3 reconstruction of the Redland intersections at Crabbs
4 Branch and Needwood, adding more lanes to each, and
5 lengthened the left-hand turn lane on Needwood. This was
6 an expensive project with almost \$2 million in planning,
7 design, and supervision alone.

8 The Redland-Needwood intersection was never
9 initially designed for the number of lanes on Redland,
10 which this project added to the intersection, and
11 compromises were made. It is a lot more complicated than
12 just moving the stop bar on Needwood or some signal
13 equipment at the intersection.

14 As Mr. Cook, who I remind you is not an engineer
15 and from his CV appears to have never even finished
16 community college, seems to think our neighborhood had
17 discussions with MCDOT through Phil Andrews, our county
18 councilmember at the time this project was completed, about
19 the projects at the Redland-Needwood intersection.

20 The response was the results are as good as the
21 real civil engineers with bachelor's or master's degrees
22 and P.E.s could make it. Given several constraints, some
23 expensive, others impossible to change, the results of this
24 reconstruction left the Redland-Needwood intersection with
25 awkward turning radiuses for both right-hand turns from

1 northbound Redland onto Needwood and left-hand turns from
2 westbound Needwood onto Redland.

3 These constraints included a huge berm on the west
4 side of Redland on the boundary of the Park Overlook
5 community, a curve in westbound Needwood as it approaches
6 the Redland intersection, and a requirement to not only
7 just add extra road lanes but an 8-foot-wide, mixed-use
8 pedestrian bike lane on the west side of Redland and the
9 south side of Needwood. If there was something they
10 could've done to improve the turning radiuses, they would
11 have; however, adding the lanes to Redland was the most
12 important aspect of this project.

13 And I can attest having driven through this
14 intersection innumerable times since its reconstruction
15 that it is the left-hand turns from westbound Needwood onto
16 Redland which are the more problematic, especially during
17 the A.M. rush hour when there is a large volume of cars
18 making this turn from both lanes on Needwood. It's a tight
19 radius for both westbound lanes on Needwood trying to make
20 these turns. And before anybody asks, I drive a midsize
21 SUV, probably one of the more common vehicles I see on the
22 road.

23 Others have also testified to these issues, such as
24 Ms. Smith on day one, page 226, beginning on line 2, and
25 Mr. Marlowe on day one, page 239, beginning on line 11.

1 And, Madam Examiner, and please take this well, I'm
2 going to say this to you because I think it's something you
3 need to hear. I have also said this to the Board of
4 Appeals and various county councilmembers. You approve
5 these conditional uses, you establish all these conditions,
6 and then you walk away, and it's left to the neighborhood
7 to try to ensure that the conditions are upheld.

8 Now I'm sure that there are conditional uses which
9 cause no issues and are true assets in their neighborhoods.
10 For example, as Paul mentioned earlier, he did not even
11 realize that the Little Hands home-based daycare, which is
12 a limited use in its zone, existed. I can tell you,
13 however, from our experiences with both the Taiwan Culture
14 Center and the nonconforming use on the Romanchock property
15 on Redland that nothing happens when --

16 HEARING EXAMINER ROBESON HANNAN: Is that Morton's
17 Towing?

18 MS. KOSARY: That's Morton's Towing. Yes, that is.

19 HEARING EXAMINER ROBESON HANNAN: Okay.

20 MS. KOSARY: The Romanchock property.

21 That nothing happens when conditions are
22 significantly violated and the community complains to DPS.
23 In fact, after a while, you become the problem in their
24 eyes. You're just a crazy, cranky neighborhood. There's
25 -- I mean, there's no enforcement. I mean, Mr. Kline might

1 get response from them, but they do not -- I can tell you
2 from experience that they do not respond to the community.

3 DPS is like the see no evil, hear no evil, speak no
4 evil monkeys. Their attitude is just live with it, even if
5 we are talking about a conditional use holding open houses
6 which bring in hundreds of attendees or a grandfathered
7 nonconforming use which has been violating its recorded
8 nonconforming use agreement for over a decade.

9 I want to step aside because I've been the one
10 who's been doing a lot of complaining to DPS about the
11 Romanchock property, Morton's Towing. I mean, it's crazy.
12 When I first went to them, they did not even have the
13 nonconforming use in their -- in their records. I had to
14 give them the nonconforming use, which was -- agreement,
15 which was very easy to find. It's online in the land
16 records. They couldn't enforce it because they didn't have
17 it.

18 And it's a little more complicated than just having
19 two pieces of property that they can use and one piece of
20 property that they're not supposed to use. It's -- when --
21 when they're using all three pieces of property, it's also
22 the definition of -- and the agreement and terms of what
23 types of uses were actually really supposed to be being
24 used on the property. It was -- you know, it's a
25 nonconforming use.

1 Ms. -- Ms. Romanchock's father back in the 50s ran
2 -- he was a builder. The use as it went forward was
3 supposed to be just a contractor storage yard, someplace
4 where general contractors could go, you know, and store
5 their forms and store their building equipment. Morton's
6 Towing is not a general contractor. They're a -- you know,
7 they're a towing company. They're a vehicle storage
8 company. They do not even qualify under -- you know, under
9 what the nonconforming use agreement told them they could
10 -- they could be using the property for.

11 And I've gone as far as the head of DPS, and they
12 -- they -- they -- they're like -- you know, like, nice --
13 nice, little -- nice, little community person and pat you
14 on the head, and they never hear from you again -- you
15 never hear from them again.

16 My plan with -- with the Romanchock property after
17 things have settled down with -- with Primrose is that I'm
18 obviously going to be going to my county councilmember and
19 see if -- you know, see if they can take it from there.
20 But what -- the response you may be getting from DPS, the
21 response Mr. Kline may be getting from DPS, the response
22 that Mr. Chen probably gets from DPS is not -- from our
23 experience, is not the response that the community gets
24 when we go to DPS. You know, I'm probably going to be
25 taking this up with my county councilmember also.

1 The -- the other case in point is the Taiwan
2 Cultural Center having open houses that brought in hundreds
3 of people. We videoed it. We presented our video evidence
4 to -- to DPS, and they said, "Oh, this had nothing to do
5 with anything that was going on with the" -- "with the
6 Taiwan Culture Center." It's -- it's just absolutely
7 crazy.

8 So I'm going to -- I'm going to leave off DPS and
9 my issues with them, and I'm going to move on, changing the
10 subject a little bit.

11 I know that the Explorers, the before- and after-
12 school program, was pretty much beaten to death during Mr.
13 Mandava's day five testimony. Mr. Chen to my left here did
14 most of the beating up, I think. I'm going to bring it up
15 again, however, because I do not think Mr. Mandava has done
16 adequate research to determine whether he will even be able
17 to enroll a large enough number of before and after
18 Explorers to justify keeping a classroom devoted to this
19 program.

20 I don't know if Mr. Mandava is even aware that
21 there are already before- and after-school programs on
22 premises at most of the elementary schools in Montgomery
23 County, and I'm speaking obviously before COVID. Although
24 I want to note that some of these programs have expended --
25 have expanded to full-day programs during COVID, and I

1 would imagine that the intent is to restart these programs
2 when schools reopen.

3 The closest elementary school to this proposed site
4 is Candlewood Elementary. Candlewood has a before- and
5 after-school program, before COVID obviously, with a
6 capacity of 60 kids. You might also find it surprising,
7 since the news is full of stories about overcrowded
8 Montgomery County Public Schools, to know that Candlewood
9 was only at 71 -- 71 percent capacity for the 2019-2020
10 school year; 367 kids enrolled with a capacity of 515.

11 The next closest elementary school, Sequoyah
12 Elementary, was at 78 percent capacity and has an on-
13 premises before- and after-school program with the capacity
14 of 40 kids.

15 In his testimony on day one, on page 38, starting
16 at line 1, Mr. Taylor indicated that it has not yet been
17 decided whether there would be an after-school program or
18 summer program at this location.

19 And in his testimony for Primrose's Layhill site,
20 which was CU 2017-16, on page 25 of the May 4th, 2018,
21 transcript, beginning on line 17, Mr. Taylor stated, quote,
22 I'm not familiar right now with what the local schools are
23 offering, but oftentimes there's an -- there -- there is
24 other programs between the Y and local schools that already
25 offer after-school care. Most parents opt to take

1 advantage of that because their kids aren't being
2 transported, but that would be a needs-based thing as we
3 start marketing the reconstruction, unquote.

4 Well, Primrose Layhill just got their building
5 permit issued the end of January of this year, so
6 construction is just getting underway. And I'm guessing
7 that Mr. Taylor has yet to familiarize himself with the
8 local schools and has not yet advised Mr. Mandava on this
9 issue.

10 I'm bringing this up because if Mr. Mandava cannot
11 fill his Explorer program, he has a classroom with a
12 capacity of 30 kids which could be used for full-day care
13 of preschool-aged children. I really do not think Mr.
14 Mandava can give you a truly accurate answer to the
15 question on the maximum number of children there are going
16 to be on the playground at one time because he really has
17 no idea what his full-day capacity is going to be, although
18 I suspect it will be closer to the full 195 children, not
19 the 165 plus the 30 Explorers, because obviously you want
20 to maximize profit. This would only increase the
21 playground impact on the Mitchells.

22 I want to make some comments and observations on
23 playground noise and its potential impact on the Mitchells
24 and others.

25 On day five, page 90, starting on line 12, Mr.

1 Mandava was asked by the Hearing Examiner whether he could
2 provide any information on the impact of the playground
3 areas on Ms. Mitchell's home. Mr. Mandava stated,
4 beginning on line 16, that, quote, The playground facing
5 Ms. Mitchell's house is towards their garage, and there is
6 a road, Carnegie Avenue, in between. I don't need to say
7 that that is enough distance between -- in my opinion,
8 between her house, the garage, and the playground, unquote.

9 Now Mr. Mandava has been here during all days of
10 testimony, so he must've heard that during Ms. Mitchell's
11 testimony on day two, page 243, beginning on line 5, that
12 her master bedroom, kitchen, dining room, her kid's play
13 room, and her walkout basement will all face the building
14 and the playgrounds, so will her brand-new back deck which
15 she just had built this -- this past summer.

16 And I can -- I can also attest that Ms. Mitchell's
17 garage only bumps out a few feet from the east side of her
18 home, and her master bath is above her garage, because
19 everybody in the neighborhood toured Ms. Mitchell's home
20 during one of our -- of its many open houses.

21 I thought two summers ago, so that would be the
22 summer of 2019, so pre-COVID, that the Taiwan Presbyterian
23 Church next to us had started some sort of daycare
24 operation. I kept hearing children playing at various
25 times during the day when I was working in my office, which

1 is on the east/southeast side of our home facing the church
2 parking lot, and from our master bedroom, which is in the
3 northeast side of our home facing the church and the
4 parking lot. And I want to make this clear: I was inside
5 my home, the windows were closed, and I'm talking some very
6 nice custom Pella windows, not cheap, builder-grade
7 windows, and a solid fence and some landscaping are at the
8 boundary between the church parking lot and our home.

9 We did some checking, and all it was were parents
10 who were coming for yoga or choir practice or some other
11 church activity and leaving their kids in the grassy area
12 on the south side of the church to play while they did
13 their thing inside. And it was never more than four to
14 five kids at a time.

15 MS. KOSARY: Can I please get OZAH Exhibit 227-YY,
16 which is the next page? That's -- the one before. No,
17 that's ZZ. YY. That's -- that's good. Right there.

18 (Exhibit 227-YY introduced.)

19 MS. KOSARY: Okay. Before I get into a discussion
20 of this exhibit, I want to touch briefly on the distance
21 measurement tool which is a part of Google Maps. I'm going
22 to use -- use it several times throughout my testimony.
23 Like the navigation system in your car, Google Maps works
24 with the global positioning system satellites to identify
25 the latitude and longitude of each point identified.

1 If you know the latitude and longitude of two
2 points, you can calculate the distance between the points
3 using some variation on what is referred to as the
4 haversine formula. That is H-A-V-E-R-S-I-N-E. The
5 important thing to know about these calculations is that
6 they are highly accurate, generally being off by about 0.5
7 percent, so half a percent, for measurements under about
8 100 miles. It's a little less accurate for longer
9 distances because of assumptions the formula makes about
10 the shape of the earth.

11 Getting back to the exhibit on the screen, which is
12 OZAH Exhibit 227, document YY, using the measurement tool
13 in Google Maps, the distance between my home and the area
14 where the kids were playing was about 200 feet from our
15 master bedroom and 230 feet from my office. You can see
16 those locations are -- are both -- both located where our
17 master bedroom is, where my office is. What this
18 demonstrates is that sound really travels.

19 Can I please get OZAH Exhibit 227, document ZZ,
20 which is the next page.

21 (Exhibit 227-ZZ introduced.)

22 MS. KOSARY: This is further than Ms. Mitchell's
23 home and the closest playgrounds, about 130 feet from the
24 edge of the playground and about 180 feet to the point
25 closest to the building. These measurements obviously came

1 from the full-scale drawing.

2 MR. CHEN: Which is further?

3 MS. KOSARY: What?

4 MR. CHEN: You said these are further distances.

5 MS. KOSARY: Oh, oh. The distance -- the distance
6 at which I was hearing the kids at the church is farther
7 away than the Mitchell's home. I was -- I was hearing --

8 MR. CHEN: Are you talking about from the
9 Mitchell's home to the playground?

10 MS. KOSARY: From the Mitchell's --

11 MR. CHEN: So it's --

12 MS. KOSARY: -- home to the playground. Right.
13 Yes, right.

14 MR. CHEN: That was -- trying to get that clear.

15 MS. KOSARY: Yes. I can't -- I cannot imagine what
16 kind of noise the Mitchells are going to have to endure
17 from 60 kids -- 60 or more kids out at once and the solid
18 fence which the Applicant has so graciously offered to
19 replace. The non-solid fence is not going to do a bit of
20 good as I can attest from my experience with the church.
21 With this many kids outside, I strongly suspect that I will
22 also be hearing them from my home from the playgrounds
23 which also face the parking lot, as will the Tapscotts.
24 It's just the way sound works. It is a line of
25 sight rule. If you can see the location of the noise,

1 you'll be able to hear it. A 6-foot-high fence will maybe
2 block sound from ground level with your ear up against the
3 fence if you're standing next to it; however, sound waves
4 will flow over the top. Think about how high traffic sound
5 barriers along roads must be to block sound. They are far
6 taller than 6 feet.

7 And the Applicant has no room left for any
8 additional screening, such as thick evergreens on the
9 Carnegie side, to try to further buffer the playgrounds.
10 They are crammed in right up to the utility easement, and
11 they are prohibited from planting in this easement. People
12 walking back and forth on Needwood during the day are also
13 going to be greeted by the noise because there are
14 playgrounds also facing the street.

15 And please give me a break. These are little kids
16 who have been cooped up indoors for hours; of course
17 they're going to go out and be noisy when they get out.
18 They are not going to go out and take part in Primrose's
19 theater version of A Quiet Place.

20 And, finally, the Applicant's lawyer tries to argue
21 that impacts on Ms. Mitchell's home were not considered
22 because, as he stated on page 84 of day five's transcript,
23 beginning on line 24, quote, The Statement of Justification
24 was written before construction began. That was a vacant
25 lot when that was written, unquote.

1 Well, his statement is incorrect. As Ms. Mitchell
2 stated on day two, page 241, starting at line 21, her home
3 went on the market in October of 2018. I can attest the
4 construction broke ground in the late winter of 2018
5 because I pretty much had a front row seat.

6 The Applicant's Statement of Justification, which
7 is OZAH Exhibit 10, has a revision date of May 14th, 2018,
8 several months after construction began. The Applicant's
9 Amended Statement of Justification, which is OZAH Exhibit
10 62, has an amended date of May 15th, 2019, months after the
11 construction had been finalized and a use and occupancy
12 permit had been issued. This home appeared on OZAH Exhibit
13 65, which was CUP-2, dated May 3rd, 2019, as well as the
14 other CUPs in the May 3rd, 2019, set.

15 The Applicant has known that this new home was
16 there or was going to be there for well over two years.
17 The Applicant just did not bother to update their amended
18 justification to address impacts on this home.

19 And I must remind everyone that the only sight
20 distance studies placed into record have come from
21 opposition, not the Applicant. In testimony on day four,
22 page 130, beginning on line 18, Mr. Intriago, the
23 Applicant's engineer, stated that he only analyzed sight
24 distance for two locations: the proposed driveway location
25 and the intersection at Carnegie. On day four, page 121,

1 line 6, Mr. Intriago stated that a sight distance
2 evaluation report was not submitted to the County because,
3 quote, It was not required, unquote.

4 Despite this, up until opposition pre-filed our
5 sight distance study, there had been numerous statements
6 about sight access, the proposed driveway location, and
7 safe sight distance.

8 On page 10 of the technical staff report, which is
9 OZAH Exhibit 106, it states that, quote, The proposed
10 driveway location and a waiver request from a side yard
11 setback requirement is dictated by sight distance
12 constraints.

13 I'm getting a waffle. Okay.

14 The driveway access point is roughly along a ridge
15 in Needwood Road that falls on either side. The Applicant
16 has stated, and MCDOT confirmed, that this narrow section
17 along the ridge crest is the only viable location for an
18 access point along the frontage of the subject property,
19 unquote.

20 On page 30 of the same report, it states that,
21 quote, Staff, however, considers the fact that the location
22 of proposed driveway is restricted by sight distance and is
23 located at the only viable access point on the property's
24 frontage on Needwood Road to be a non-inherent
25 characteristic.

1 On page 5 of the Applicant's lawyer's September
2 24th, 2019, letter to staff, which can be found in
3 attachment D as in David of the technical staff report in
4 OZAH Exhibit 106-A, in a section titled, quote, A parking
5 waiver is mandatory to provide access to the site, unquote,
6 it states that, quote, In this instance, due to line of
7 sight requirements, the only -- and he even underlined
8 "only" for emphasis -- place for a driveway connection to
9 Needwood Road could be located is as close as possible to
10 the east of the property line of the subject property.

11 In his testimony on day one, on page 122 of the
12 transcript, beginning on line 18, Scott Wolford, the
13 Applicant's expert witness in land planning, stated, quote,
14 In conjunction with Montgomery County Department of
15 Transportation, said move the driveway to a location where
16 you can get safely on and off the property. They can't
17 deny us access to a public right of way, unquote.

18 On page 139, when asked to reiterate why the drive
19 lane had to be where it was located, beginning on line 4,
20 Mr. Wolford stated that, quote, It's safe sight distance
21 for ingress and egress onto the property from Needwood Road
22 for the access driveway, unquote.

23 And on page 172, when questioned by the Hearing
24 Examiner about whether the driveway location was driven by
25 site constraints rather than the size of the building,

1 beginning on line 18, Mr. Wolford stated, quote, It's
2 driven by the access location, which is in the northeast
3 corner of the site, which is where we can get sight
4 distance to the property, unquote.

5 In testimony before the Planning Board on November
6 7th, 2019, portions of which are included in document FFFF
7 of OZAH Exhibit 227, starting on page 24, the Applicant's
8 lawyer stated that, quote, It didn't relate to the use or
9 the size of the use. It related to the property.

10 And how do you get on and off the property because
11 of the features of Needwood Road and Carnegie Avenue?

12 Dr. Kosary is not incorrect that we're dealing with
13 an unusual situation where we have a drive lane onto the
14 property. It's basically abutted up against her property,
15 but it's driven by the fact that if you look at the graphic
16 that's up on the screen right now, the only place where we
17 can get access to the property today or for redevelopment
18 of the property is in that far -- what would be the upper
19 left-hand corner of the property.

20 The point I was trying to make is today there's an
21 existing residence in the center of the property, and
22 there's a driveway in the approximate middle of the
23 property; however, that does not meet the sight distance
24 standards in the County's regulations. So the only way you
25 can access this property now from Needwood Road is where

1 we're showing you here, and there is a limited area in this
2 around here where we have the proper line of sight. That's
3 why we had all the challenge. That's why we actually
4 considered using Carnegie Avenue to get onto the property,
5 but it had the same problems here.

6 So this is the only place that you can come onto
7 the property and get access to it. So, if I was standing
8 here with a two-lot subdivision, I'd be doing the same
9 thing for a driveway because it's the only way we can get
10 access to the property, unquote.

11 On page 40 of this same transcript, when questioned
12 by Chair Anderson as to the reason for such a limited area
13 of safe sight distance, the Applicant's attorney replied
14 that it was due to, quote, A hump in the middle of the
15 property, unquote.

16 Well, I'm sorry, this is Derwood, not the
17 Matterhorn. And there's an old Russian proverb, Doveryai,
18 no proveryai; trust, but verify.

19 Can I please get OZAH Exhibit 227, document AAA?

20 MR. CHEN: Was that three A's?

21 MS. KOSARY: That's three A's. Three A's.

22 The Department of Public Works and Transportation
23 and the Department of Permitting Services jointly used the
24 sight distance evaluation form. The form includes --

25 HEARING EXAMINER ROBESON HANNAN: One second.

1 MR. CHEN: Yeah.

2 MS. KOSARY: Oh, oh.

3 MR. CHEN: Wait until she gets it.

4 MS. KOSARY: Oh. I thought she -- I'm sorry, I
5 thought you had it. No, no. It was -- it was -- no,
6 you're on the wrong --

7 HEARING EXAMINER ROBESON HANNAN: How many A's is
8 it?

9 MR. CHEN: Three.

10 MS. KOSARY: Three. It was right after what you
11 had up on the screen previously.

12 HEARING EXAMINER ROBESON HANNAN: Okay.

13 MS. KOSARY: Oh -- no.

14 (Sotto voce speaking.)

15 HEARING EXAMINER ROBESON HANNAN: You've got to
16 tell me -- either we need to break or you have to tell me
17 how many A's this is.

18 MS. KOSARY: It's --

19 FEMALE SPEAKER: (Inaudible.)

20 MS. KOSARY: -- it's triple A, like the --

21 HEARING EXAMINER ROBESON HANNAN: Okay.

22 MS. KOSARY: So it should be -- it should be in the
23 first document for 227.

24 HEARING EXAMINER ROBESON HANNAN: Okay.

25 MS. KOSARY: Okay. There we go.

1 HEARING EXAMINER ROBESON HANNAN: Apologize.

2 MS. KOSARY: There -- no, no, no. I mean, it's --
3 it's confusing, and I should've told you triple A --

4 HEARING EXAMINER ROBESON HANNAN: (Inaudible.)

5 MS. KOSARY: -- so I apologize.

6 (Exhibit 227-AAA introduced.)

7 MS. KOSARY: The Department of Public Works and
8 Transportation and the Department of Permitting Services
9 jointly use a sight distance evaluation form. The form
10 includes instructions for the collection of sight distance
11 and requires certification by either a professional
12 engineer or a professional land surveyor before it is
13 reviewed by the County.

14 Needwood Road is a primary residential street, as
15 highlighted in yellow, and its minimum sight -- required
16 sight distance is 250 feet in each direction, also as
17 highlighted in yellow.

18 MR. CHEN: This is Exhibit 227-AAA.

19 MS. KOSARY: AAA.

20 MR. CHEN: Thank you.

21 HEARING EXAMINER ROBESON HANNAN: Okay. Thank you.

22 MS. KOSARY: The source of the required sight
23 distance used is the AHSHTO [sic], short for the American
24 Association of State Highway and Transportation Officials,
25 a standard-setting body which publishes specifications,

1 test protocols and guidelines, which are used in highway
2 design and construction throughout the United States.

3 Now anyone who regularly walks the sidewalk on the
4 south side of Needwood Road past this location knows that
5 the -- most of the frontage has a sight -- sight distance
6 to both the west and the east far greater than the required
7 250 feet. The issue is at the Needwood-Carnegie
8 intersection. But once you are over the slight elevation
9 rise, which is literally right to the east of the
10 intersection, you are on the ridge itself.

11 Can I please have OZAH Exhibit 227, document BBB,
12 which is just the next one you've got. One more. One more
13 page. There. Great.

14 (Exhibit 227-BBB introduced.)

15 MS. KOSARY: And what you're looking at actually is
16 OZAH Exhibit 227, document BBB.1. It's one of a set of
17 three. I started out just taking a couple of photos from
18 the location of the current driveway. I tried to get these
19 photos as close to the instructions on the sight distance
20 evaluation form as possible: 3 1/2 feet from the ground, 6
21 feet from the curb, and in the center of the driveway. As
22 you can see from the first photo, which is -- well, as I
23 said, OZAH Exhibit --

24 HEARING EXAMINER ROBESON HANNAN: Where -- what
25 driveway? I -- I think Ms. English had this photo too.

1 What driveway are we --

2 MS. KOSARY: Oh, no.

3 HEARING EXAMINER ROBESON HANNAN: -- looking --

4 MS. KOSARY: Oh, no, she didn't. This is the
5 driveway of 7430 Needwood.

6 HEARING EXAMINER ROBESON HANNAN: Okay. The
7 subject property.

8 MS. KOSARY: The subject property.

9 HEARING EXAMINER ROBESON HANNAN: Okay.

10 MS. KOSARY: I apologize for that.

11 HEARING EXAMINER ROBESON HANNAN: That's okay.

12 MS. KOSARY: As you can see from the first photo,
13 which is a shot to the west, the Redland-Needwood
14 intersection is clearly visible over 600 feet away. That's
15 the area marked in the little -- the little red box on this
16 exhibit.

17 Can I please just get the next page, which is OZAH
18 Exhibit 227 --

19 MR. CHEN: BBB.2.

20 MS. KOSARY: -- BBB.2, and it's going to need to be
21 rotated. I'm sorry.

22 From the next photo, which is a shot again from the
23 subject -- the subject property driveway at 7430 Needwood,
24 it's a shot to the east, and you can see the church sign at
25 approximately 280 feet, and the Newens' mailbox at

1 approximately 360 feet --

2 HEARING EXAMINER ROBESON HANNAN: That's Sarah
3 Newens?

4 MS. KOSARY: That's Sarah Newens. That's where she
5 lives. Yes.

6 Are both clearly visible. And these measurements
7 were taken using the Google Maps measurement tool that I
8 discussed previously.

9 If you want to go to the next page, which is OZAH
10 Exhibit 227, document BBB.3, this is just a Google street
11 view. It's just establishing the location where I took the
12 photos, which, as you can clearly see, is -- you can see
13 the OZAH sign. That is the driveway location for the
14 subject property, 7430 Needwood Road.

15 Paul and I next went out with some crude tools.
16 Paul's crazy like that. Like he -- like he said, he
17 started as a civil engineer. Basically a mailing tube cut
18 to 3.5 feet long and a stick with a 2.75 foot point marked
19 in blue. And using the methods described on the evaluation
20 form did some estimates from the existing driveway
21 location. We focused only on the measurement to the east,
22 which is to the right, since we had clear line of sight to
23 the Redland-Needwood intersection to the west, which is to
24 the left, and stopped at the point when we had estimated at
25 least 450 feet.

1 To settle the issue, I asked Mr. Russell Reese of
2 Maddox Engineering and a professional land surveyor to come
3 out and complete a sight distance evaluation form for three
4 locations: the most western location on the frontage of
5 7430 Needwood with required sight distance, the existing
6 driveway location, and the proposed driveway location.

7 These forms are in OZAH Exhibit 176, document II,
8 so that's double I. We don't need to go to them.

9 Mr. Reese testified to the authenticity earlier on
10 day five, starting on page 18 -- 118.

11 Can I have the next page, which is going to need to
12 be rotated.

13 MR. CHEN: This is BB -- this is --
14 (Exhibit 227-CCC introduced.)

15 MS. KOSARY: This is OZAH Exhibit 227, document
16 CCC. This is what was originally OZAH Exhibit 176,
17 document II.

18 Lot 8 from plat 1713, which is OZAH Exhibit 115,
19 document W, for the Derwood Heights Subdivision has the
20 street address of 7430 Needwood Road.

21 From the first page of the site distance evaluation
22 form on the screen, street/driveway number one, which I've
23 highlighted in yellow, is a location 136.6 feet west of the
24 eastern property line of 7430 Needwood. This location has
25 a sight distance of 250 feet to the right, the minimum

1 required for the primary -- for a primary residential
2 street, and 581 feet to the left.

3 Street/driveway number two, which I've highlighted
4 in pink, is the site of the current driveway. This
5 location has a sight distance of 840 feet to the right and
6 639 feet to the left. This is the same driveway that the
7 Applicant's attorney described to the Planning Board as not
8 meeting, quote, The sight distance standards in the
9 County's regulations. This location in fact exceeds sight
10 distance standards in both directions by hundreds of feet.

11 Further in his testimony on day two, page 35,
12 starting on line 4 --

13 MR. CHEN: His testimony, who is that?

14 MS. KOSARY: I'm getting to it, Bill.

15 MR. CHEN: Oh, okay.

16 MS. KOSARY: Further in his testimony on day two,
17 page 35, starting on line 4, Mr. Intriago, the Applicant's
18 engineer, indicated that the current driveway is in the,
19 quote, Optimum position, unquote, for site access.

20 Can I please just get the next page, which is still
21 OZAH Exhibit 227, document CCC.

22 HEARING EXAMINER ROBESON HANNAN: One -- hold on
23 just --

24 MS. KOSARY: Yeah. It's just a two -- it's a two-
25 pager. Okay.

1 MR. CHEN: Is this the right one? What number?

2 MS. KOSARY: Yeah, this is the right one. It's the
3 same one. It's OZAH Exhibit 227, document CCC. It's just
4 a two-page -- it's a two-pager.

5 HEARING EXAMINER ROBESON HANNAN: Okay.

6 MS. KOSARY: Site/driveway number three, which I've
7 highlighted in blue, is on the second page and is the site
8 of the proposed driveway. This location has a sight
9 distance of over 800 feet to the right and 685 feet to the
10 left.

11 HEARING EXAMINER ROBESON HANNAN: I think it says
12 681.

13 MS. KOSARY: Oh, does it? 681. I said 681. Did I
14 say 681?

15 HEARING EXAMINER ROBESON HANNAN: It doesn't
16 matter.

17 MS. KOSARY: It doesn't matter. It's 681 most
18 definitely, but thank you for bringing that up.

19 According to the project data provided in OZAH
20 Exhibit 199-D, the lot width at the front lot line, that is
21 the length of the frontage on Needwood Road, is 188.49
22 feet. All but 51.89 feet of this frontage meets the
23 required minimum sight distance for a primary residential
24 street of 250 feet in both directions.

25 In other words, truth be told, the proposed

1 driveway location is not where it is because of sight
2 distance constraints. It is there because it is the only
3 place where it fits given the size of the Primrose program,
4 which is 195 children, 30 staff, and two administrators,
5 according to the Amended -- Amended Statement of
6 Justification, OZAH Exhibit 62.

7 Mr. Wolford says it best on page 173 of the day one
8 transcript, starting on line 2, when he states, quote, And
9 then by the time you take the dedicated right of way, the
10 building setback and the requirements from the east side,
11 there is not enough room. Because of the odd shape of the
12 property, narrow and deep, there's not enough room left in
13 there for us to do the early childhood learning center and
14 get the direct access that the students need from the
15 building out the doors in their classroom to the
16 playground.

17 If you just took each of these boxes and you line
18 them up, there's plenty of room on this space, but you'd
19 end up with a playground here and a building here and a
20 parking lot back here, and then it doesn't meet the
21 program. They don't want children walking in halls or
22 having to walk a long distance; they want them to go out
23 and play and then come right back in. So the arrangement
24 is not a building and then a playground. It's a
25 building/playground mass together that has to be

1 accommodated on the site, unquote.

2 Further in his testimony on day four, on page 135,
3 beginning on line 9 and ending on line 25, Mr. Intriago
4 also indicates that the driveway is in its location because
5 it is the only way to fit everything onto the site.

6 You've heard a lot of woe is us from the
7 Applicant's team regarding, as Mr. Wolford called it,
8 quote, The odd shape of the property, narrow and deep.

9 It makes it sound like 7430 Needwood is like city
10 lots I remember from when I was a kid growing up in
11 Chicago, which is definitely not the case.

12 7430 Needwood is zoned RE-1. According to the
13 project data found on OZAH Exhibit 199-D, the lot width at
14 the front building line is 202.71 feet. The required
15 minimum for an RE-1 zoned property is 125 feet, making 7430
16 Needwood 77 feet wider than the minimum required for the
17 zone. Even with the setback requirements of 50 feet to the
18 west along Carnegie Avenue and 17 or 34 feet to the east,
19 depending on whether we're talking a building or a parking
20 facility, you are still left with a building envelope with
21 a width of either 135 feet or 118 feet. This hardly
22 qualifies as narrow.

23 What this does demonstrate is the sheer scale of
24 this development and its lack of character and
25 compatibility with its surrounding neighborhood. The

1 Applicant and their team, however, cannot come to hearing
2 and state that they just cannot jam it all into the
3 available building envelope, so please give us a waiver on
4 the required parking facility setback.

5 And, instead, literally at the last moment, they
6 created this artifice, this false narrative about site
7 access being limited to an impossibly narrow portion of a
8 substantial street frontage due to sight distance
9 constraints and somehow seemed to convince technical staff
10 at the planning department of this deception after several
11 years of working back and forth with technical staff on
12 various plans, showing multiple driveway locations,
13 including one with a driveway about where it is currently
14 located, as can be seen on page 6 of the first traffic
15 study in OZAH Exhibit 29.

16 Despite all of this, technical staff rolled over
17 and without question accepted this new reality without the
18 submission of any sight distance studies and without any
19 evidence that MCDOT had confirmed the Applicant's
20 assertions that, quote, This narrow section along the ridge
21 crest is the only viable location for an access point along
22 the frontage of the subject property, unquote.

23 And rather than coming clean on this deception, the
24 Applicant is now trying to change tactics with a claim from
25 Mr. Cook on day four on page 245, starting on line 18, that

1 the County prefers to have at least 200 feet from a public
2 street and a driveway without presenting any proof to back
3 up this statement, such as a citation from code or a letter
4 from Montgomery County Department of Transportation.

5 Maybe Mr. Cook is confusing Maryland Department of
6 Transportation State Highway Administration preferences or
7 requirements for commercial driveways along state highways,
8 standards presented in the portions of the MDOT SHA Access
9 Manual entered as OZAH Exhibit 227, document triple D, DDD.
10 His statement, however, makes no sense when discussing the
11 spacing of residential driveways along county residential
12 streets and detached single-family residentially zoned
13 neighborhoods along roads classified as residential by the
14 County.

15 MR. CHEN: Let me interrupt you for a minute. I'm
16 sorry. There's a document up. Are you using it?

17 MS. KOSARY: Oh, yes. That is -- that is the
18 document. I'm not using it, but it's there. You can look
19 at it at your leisure.

20 MR. CHEN: Are you going to be using it?

21 MS. KOSARY: I'm not going to be using it.

22 MR. CHEN: At all?

23 MS. KOSARY: At all.

24 MR. CHEN: Well --

25 MS. KOSARY: It's -- it's there.

1 MR. CHEN: Well, why do we have it then?

2 MS. KOSARY: To back up what I just said.

3 HEARING EXAMINER ROBESON HANNAN: I'll move -- I
4 took it off.

5 MS. KOSARY: She took it off.

6 MR. CHEN: Well, excuse me.

7 MS. KOSARY: Do you want to discuss it?

8 MR. CHEN: I want --

9 MS. KOSARY: If you put it back up -- okay.

10 MR. CHEN: I -- if --

11 HEARING EXAMINER ROBESON HANNAN: Let -- let Mr.
12 Chen speak.

13 MR. CHEN: Thank you.

14 MS. KOSARY: I'm sorry.

15 MR. CHEN: If the document is a part of
16 corroborative of your testimony, I want the document up.
17 It's been submitted. I want it in the record.

18 (Exhibit 227-DDD introduced.)

19 HEARING EXAMINER ROBESON HANNAN: Okay. It's on
20 the screen. It is in the record.

21 MR. CHEN: Could you explain please --

22 MS. KOSARY: If you go to --

23 MR. CHEN: -- what is this document, and what's --

24 MS. KOSARY: This is --

25 MR. CHEN: -- what's its purpose?

1 MS. KOSARY: -- this is -- this is a portion --
2 this is excerpts from Chapter 1 of the Maryland Department
3 of Transportation State Highway Administration Access
4 Manual.

5 MR. CHEN: And what's the number of this exhibit?

6 MS. KOSARY: It is OZAH Exhibit 227, document DDD.

7 MR. CHEN: Okay.

8 MS. KOSARY: If you look at commercial spacing, 1.4
9 commercial entrance spacing standards, which I've
10 highlighted in yellow, and you go down one more page, I
11 believe, you will see the various just preferred spacings
12 that MDOT SHA is looking for commercial driveways along
13 state highways.

14 MR. CHEN: And why has this exhibit been submitted?

15 MS. KOSARY: It's been submitted because I have no
16 idea where Mr. Cook is coming up with his 200 feet. He
17 didn't submit any evidence. He didn't submit code. He
18 didn't submit any statement from Montgomery County
19 Department of Transportation.

20 HEARING EXAMINER ROBESON HANNAN: I need you to
21 back up just a little bit. His statement about 200 feet as
22 a measurement of what?

23 MS. KOSARY: From an intersection to a driveway.

24 HEARING EXAMINER ROBESON HANNAN: Got you.

25 MR. CHEN: Do you want to go back to give the

1 Examiner the cite on that testimony?

2 HEARING EXAMINER ROBESON HANNAN: I do remember
3 that. It was -- he was saying that it had to be further
4 east from Carnegie because of that minimum distance.

5 MS. KOSARY: Yes. And I'm saying --

6 HEARING EXAMINER ROBESON HANNAN: Even though
7 Carnegie, according to what we've heard, will never be an
8 intersection because it doesn't have sufficient sight
9 distance. So, anyway.

10 MS. KOSARY: And, anyway, I'm just saying that I
11 have no idea where he came up with this 200 feet.

12 HEARING EXAMINER ROBESON HANNAN: So what are you
13 reading --

14 MS. KOSARY: And -- and --

15 HEARING EXAMINER ROBESON HANNAN: -- based on this?

16 MS. KOSARY: -- and suggesting that maybe he's not
17 talking about County standards, he's talking about State
18 Highway Administration standards for commercial driveways
19 along state highways.

20 MR. CHEN: Is that Exhibit 227-DDD?

21 MS. KOSARY: Right. That is DDD.

22 MR. CHEN: Okay. So your testimony is that in
23 attempting to ascertain the authority for Mr. Cook's
24 testimony, you've looked at this document and are
25 submitting that possibly this is what he's relying upon?

1 MS. KOSARY: That's the only thing I can -- I -- I
2 can imagine. Yes.

3 MR. CHEN: Yes or no?

4 MS. KOSARY: Yes.

5 MR. CHEN: Thank you.

6 MS. KOSARY: Okay.

7 MR. CHEN: You can continue.

8 MS. KOSARY: Okay. And I -- I further want to
9 point out that if you go to Chapter 50.4.3.E.2.F.II, which
10 deals with spacing between intersections --

11 MR. CHEN: Is there an exhibit on this?

12 MS. KOSARY: No, there isn't because it's just
13 Chapter 50.

14 MR. CHEN: Okay.

15 MS. KOSARY: The spacing between intersections
16 during preliminary plan, they don't even require 200 feet
17 between intersections for tertiary residential streets, and
18 a primary residential street, such as Needwood, could have
19 an intersection every three to four hundred feet under
20 Chapter 50 standards.

21 We're talking about road intersections; we're not
22 talking about driveways. So I'm just saying that Mr.
23 Cook's statement is in some respects absurd unless you
24 consider that this is a commercial driveway, which will see
25 heavy daily use, smack dab in the middle of a residential

1 neighborhood along a street categorized by the County as
2 primary residential.

3 The concern about this should really be how close
4 this proposed, highly utilized commercial driveway would be
5 to existing residential driveways. It's around 30 feet
6 from the driveway at 7420 Needwood, about 70 feet from 7425
7 and 7419 Needwood across the street and about 140 feet from
8 my driveway at 7416 Needwood. This is the true safety
9 issue in terms of this driveway, not -- not how close it is
10 to the intersection at Carnegie but how close it is to the
11 other -- to the residential neighborhoods -- the
12 residential driveways around it.

13 In terms of all the statements about sight distance
14 though, I think with the lack of candor from the Applicant,
15 their lawyer, and some of the expert witnesses regarding
16 this issue is jaw-dropping, and I think The Washington Post
17 Fact Checker would give them all four Pinocchios, and
18 that's only because four Pinocchios are the maximum
19 awarded.

20 So it's 4:30.

21 MR. CHEN: Madam Examiner, if I may.

22 HEARING EXAMINER ROBESON HANNAN: Um-hmm.

23 MR. CHEN: How late do you want to go tonight?

24 HEARING EXAMINER ROBESON HANNAN: Five o'clock is
25 fine. Can -- well, how much more do you have, Ms. Kosary?

1 MS. KOSARY: I've got quite a bit. I'm not going
2 to finish today. I think I told you that when I started.

3 MR. CHEN: Yeah.

4 MS. KOSARY: And I'm not going to finish my next
5 section in 30 minutes. So if you only want to go to five,
6 I would suggest that this might be a logical place to stop.

7 MR. CHEN: But we'll do what the Examiner --

8 MS. KOSARY: But we'll do what you --

9 MR. CHEN: -- and what Mr. Kline wants to do.

10 MS. KOSARY: Right. We'll (inaudible).

11 HEARING EXAMINER ROBESON HANNAN: Mr. Kline, do you
12 want to weigh in on this?

13 MR. KLINE: I'm sorry, I was taking a nap, and I --
14 out of exhaustion. I'm -- I'm quite happy with wrapping it
15 up myself. I -- I'm finding this all very interesting, but
16 I've gone through two tablets already, and I think I've had
17 enough.

18 HEARING EXAMINER ROBESON HANNAN: Okay. Let's do
19 this. We were going to talk about March, the -- whoops --
20 we were going to talk about the possibility of March 25th
21 as a hearing date. Has -- does anyone -- Ms. Kosary, you
22 can -- you'll be still on the witness stand at the next
23 hearing.

24 MS. KOSARY: Yes. I understand that I'm still
25 going to be under oath.

1 HEARING EXAMINER ROBESON HANNAN: We were going to
2 talk about the next hearing date, the possibility of doing
3 it on March 25th. I think that's what we were getting
4 ready to do.

5 MR. CHEN: Yes.

6 HEARING EXAMINER ROBESON HANNAN: Has anybody been
7 able to verify whether that's a good date or not?

8 MR. CHEN: At our end, you know, let's go for it.

9 MR. KLINE: From my point of view, the -- over
10 lunch break, I did not have a chance -- well, let me put it
11 this way. If we were going to be progressing with two more
12 witnesses or finishing Ms. Kosary and then having Mr. Davis
13 testify, and if we thought that was going to take all the
14 next hearing, I don't -- I don't have any problem with it
15 because I'm available. But if you said I think we're going
16 to finish up on the 25th early enough to start rebuttal,
17 then I do have to check, and I have not been able to get to
18 anybody today.

19 So I'm -- depending on how long Mr. Chen thinks
20 we're going to take on the 25th, if he thinks he'll be
21 finished that day or before the, say, midafternoon, then I
22 would ask you to wait until Monday until I can check with
23 who would be my next logical rebuttal witness.

24 MR. CHEN: Madam Examiner, may I?

25 HEARING EXAMINER ROBESON HANNAN: Yeah.

1 MR. CHEN: I do not think that Mr. Kline will be
2 needed to put on any of his witnesses on the 25th.

3 HEARING EXAMINER ROBESON HANNAN: Well, even if you
4 can -- even if it goes a substantial amount of the day,
5 then, you know, at least we've gotten a day in. So let's
6 do that. What I'm going to do now then is continue this
7 hearing from today to March 25th at 9:30 a.m.

8 MR. CHEN: I'm -- I apologize. Somebody's mic has
9 been --

10 HEARING EXAMINER ROBESON HANNAN: That's usually --
11 Mr. Kline can be a culprit at that. Mr. Kline, are you
12 scrambling papers?

13 MR. KLINE: I was pulling my calendar out, and I
14 was making the background noise, and I apologize, and I'm
15 going on mute.

16 (Laughter.)

17 HEARING EXAMINER ROBESON HANNAN: You don't -- I --
18 I'm just teasing, that's all.

19 If -- if we're -- I assume that we're in agreement
20 on March 25th at 9:30 then, given that -- we'll go as far
21 -- we will not begin rebuttal. We'll go until rebuttal.

22 MR. CHEN: That works for our side.

23 HEARING EXAMINER ROBESON HANNAN: Are you there,
24 Mr. Kline?

25 MR. KLINE: That is fine for me also.

1 HEARING EXAMINER ROBESON HANNAN: Okay. So, with
2 that, I'm going to continue this hearing until March 25th
3 at 9:30 a.m., and we'll see you all there again. All
4 right?

5 MR. CHEN: Yes.

6 HEARING EXAMINER ROBESON HANNAN: Thank you very
7 much.

8 MR. KLINE: And -- and might I just confirm, so we
9 then -- I should expect to get my witnesses cleared for
10 availability on the 2nd and the 5th of April? That --

11 HEARING EXAMINER ROBESON HANNAN: Correct.

12 MR. KLINE: -- sound right? Very good. Thank you.

13 HEARING EXAMINER ROBESON HANNAN: Okay. Thank you.
14 With that, we'll adjourn.

15 (Off the record at 4:38 p.m.)
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CERTIFICATE OF COURT REPORTER

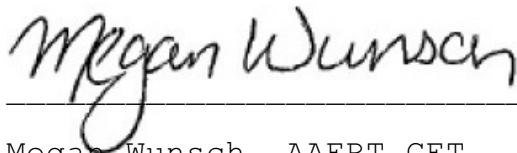
I, Jesse Greer, the officer before whom the foregoing proceedings were taken, do hereby certify that said proceedings were electronically recorded by me; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.



Jesse Greer, Court Reporter

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A handwritten signature in black ink that reads "Megan Wunsch". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

Megan Wunsch, AAERT CET

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