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Transcript of Hearing

Date: April 6, 2021

Case: The Primrose School

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Conducted on April 6, 2021

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1 OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS	1 A P P E A R A N C E S
2 FOR MONTGOMERY COUNTY, MARYLAND	2
3 -----X	3 FOR MONTGOMERY COUNTY OFFICE OF ZONING AND ADMINISTRATIVE
4 THE PRIMROSE SCHOOL, :	4 HEARINGS:
5 Applicant. : Case No.: CU 18-08	5 LYNN ROBESON HANNAN, HEARING EXAMINER
6 -----X	6
7	7 FOR THE APPLICANT:
8	8 JODY S. KLINE, ESQUIRE
9 HEARING	9 MILLER, MILLER & CANBY
10 BEFORE HEARING EXAMINER LYNN A. ROBESON HANNAN	10 200-B Monroe Street
11 Conducted Virtually	11 Rockville, MD 20850
12 Tuesday, April 6, 2021	12 (301) 762-5212
13 9:29 a.m. EDT	13
14	14 FOR CAROL KOSARY, PAUL POSEY, CECELIA ENGLISH:
15	15 WILLIAM J. CHEN, JR., ESQUIRE
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21	21 Also Present:
22	22 Jon Frey, OZAH IT Staff
23 Job No. 365320	23 Jeff Knight, Planet Depos
24 Pages: 1-239	24
25 Transcribed by: Megan Wunsch, AAERT CET	25
2	4
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2 (5 to 8)

5	7
1 PROCEEDINGS	1 HEARING EXAMINER ROBESON HANNAN: Okay. We'll --
2 (Exhibit marked prior to proceedings.)	2 you know, we'll see where we are in testimony, and if it's
3 HEARING EXAMINER ROBESON HANNAN: Primrose School,	3 a good time to break a little before that, we'll do that
4 an application for a conditional use at 7430 Needwood Road,	4 too.
5 and the conditional use is for a daycare center of up to	5 MR. CHEN: Yeah.
6 195 children.	6 MR. KLINE: That would be great.
7 Will the parties identify themselves for the	7 MR. CHEN: Madam Examiner.
8 record, if you have not already done so.	8 HEARING EXAMINER ROBESON HANNAN: Okay?
9 MR. KLINE: Good morning. Speaking is Jody Kline,	9 MR. CHEN: On behalf of my clients, I agree with
10 Attorney with the law firm of Miller, Miller & Canby with	10 the Examiner. I -- I think 4:45 is optimistic at -- at
11 offices at 200-B Monroe Street in Rockville, representing	11 that hour to get to Falls Road, but we'll play it by ear,
12 the Applicant in this case.	12 as the Examiner says, and -- and -- and, far as I'm
13 HEARING EXAMINER ROBESON HANNAN: Okay.	13 concerned and my clients are concerned, we'll -- we'll end
14 MR. CHEN: Good morning, Madam Examiner. This is	14 the day in time for Mr. Kline to get to the services.
15 Bil Chen, and I represent Carol Kosary, Paul Posey, and CC	15 HEARING EXAMINER ROBESON HANNAN: All right.
16 English.	16 That's -- okay. That's --
17 HEARING EXAMINER ROBESON HANNAN: All right. Thank	17 MR. CHEN: Or the shiva. Excuse me. The shiva.
18 you. Are there any preliminary -- I believe we're starting	18 HEARING EXAMINER ROBESON HANNAN: Yeah.
19 with Mr. Davis' testimony today.	19 MR. KLINE: Thank you very much.
20 MR. CHEN: Correct.	20 HEARING EXAMINER ROBESON HANNAN: Okay. Is -- so
21 HEARING EXAMINER ROBESON HANNAN: Is -- are there	21 is that the only preliminary matter?
22 any preliminary matters?	22 MR. KLINE: I had nothing else.
23 MR. KLINE: Only prospectively, and I did send you	23 HEARING EXAMINER ROBESON HANNAN: Okay. With that,
24 and Mr. Chen and email this morning, hoping that we could	24 can -- I'm going to -- do you want to call -- ask Mr. Davis
25 finish at a time early enough today I could attend an	25 to come back --
6	8
1 unfortunate event. I don't know if you saw the email or	1 MR. CHEN: Yes.
2 not.	2 HEARING EXAMINER ROBESON HANNAN: -- and testify?
3 MR. CHEN: I saw --	3 MR. CHEN: We're ready to proceed. He'll take the
4 HEARING EXAMINER ROBESON HANNAN: No, I did not.	4 hot seat and testify.
5 MR. KLINE: Yeah, I'm sorry. I'm sorry. I sent	5 HEARING EXAMINER ROBESON HANNAN: Okay.
6 you an email earlier this morning. When I got home last	6 MR. CHEN: Great.
7 night, I learned that a very good friend died suddenly and	7 DIRECT EXAMINATION OF JOSEPH DAVIS
8 unexpectedly over the weekend, and they are going to have a	8 HEARING EXAMINER ROBESON HANNAN: Mr. Davis, you're
9 shiva for him at five o'clock today, and I'd like to	9 still under oath, as you know.
10 attend, and I just hope that maybe, if the record permits,	10 MR. DAVIS: Yes, Madam Examiner. Good morning.
11 if we could close up by 4:45 or or five o'clock today so	11 HEARING EXAMINER ROBESON HANNAN: Good morning.
12 that I could attend that event please.	12 MR. CHEN: Mr. Davis, you are -- you've heard
13 MR. CHEN: I have no objection to that.	13 testimony, you've seen the minutes of the DRC meeting of
14 HEARING EXAMINER ROBESON HANNAN: Yeah, I -- I have	14 January 30, 2018; is that correct?
15 no objection.	15 MR. DAVIS: That's correct.
16 MR. KLINE: Thank you.	16 MR. CHEN: For the record, Madam Examiner, I don't
17 HEARING EXAMINER ROBESON HANNAN: Wait a minute. I	17 know that we need to show it, but I just referred to
18 don't have -- I don't object, but I have no problem with	18 Exhibit 115-Y, single Y.
19 it, so that's -- that's fine. And I'm sorry for your loss.	19 HEARING EXAMINER ROBESON HANNAN: Okay.
20 MR. KLINE: Thank you.	20 MR. CHEN: Mr. Davis, what was the position of the
21 HEARING EXAMINER ROBESON HANNAN: Okay. With that,	21 technical staff for the Park and Planning Commission at
22 anything -- so what was your cutoff date, 4:45?	22 that DRC meeting relative to the application?
23 MR. KLINE: It is a five o'clock shiva on Falls	23 MR. DAVIS: All right. Well, Madam Hearing
24 Road, easy to reach, so -- so if we could finish at 4:45,	24 Examiner, as you know, the Development Review Committee is
25 that would be perfect for me.	25 an interagency committee that meets to deal with

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3 (9 to 12)

<p style="text-align: right;">9</p> <p>1 preliminary plans of subdivision, also to deal with various 2 types of development plans, site plans, as well as 3 sometimes they'll -- they even do conditional use plans. 4 And on January 30th, 2018, the Development Review 5 Committee did meet to discuss the subject conditional use 6 application. Now this meeting was looking at what would've 7 been one -- a prior -- the prior plan, which was showing 8 access to Carnegie Avenue; however, that was the only 9 Development Review Committee meeting that was held 10 concerning this -- this application. And I wanted to draw 11 attention to comments that were made by Ms. Tesfaye, who is 12 the -- who is the planner at Park and Planning who was 13 assigned the application for review. 14 Now the copy I -- 15 HEARING EXAMINER ROBESON HANNAN: Now I do have -- 16 sorry to interrupt. I do have Exhibit 115-Y up on the -- 17 you should be seeing it. 18 MR. DAVIS: Yes, I do see it. And we'd need to go 19 -- 20 HEARING EXAMINER ROBESON HANNAN: Okay. 21 MR. DAVIS: -- to about the -- page -- fourth page. 22 One more. 23 MR. CHEN: Or scroll down. 24 MR. DAVIS: Here we go. That's it. There's 25 several pages -- pages were not numbered, but, at any rate,</p>	<p style="text-align: right;">11</p> <p>1 -- and I wanted to highlight that. 2 Now other the -- under the Other Comments, it 3 states there that the use is proposed to be -- appears to 4 be too intense for the property and in the subject area, 5 not harmonious with the character of the surrounding area, 6 does not appear to be compatible with the character of the 7 residential neighborhood, compatibility with surrounding 8 area must be demonstrated in terms of design and layout, 9 architectural features. 10 Then this next bulleted item is, The design of the 11 parking area along the western property line -- again, it 12 was -- at that time it was proposed along that side -- 13 overstates the non-residential influence of the proposed 14 development. Alternative design options should be 15 entertained to lessen the impact of the non-residential use 16 on the neighborhood. 17 And I believe that those are two very important 18 comments that were made from a planning perspective 19 concerning the size of the use and, again, the effects that 20 this particular use could have on the surrounding area. 21 MR. CHEN: Explain that for the Examiner please. 22 MR. KLINE: Hey, Mr. Chen. Could I just interject 23 for a second? Could the Hearing Examiner just scroll down, 24 so we could see the agenda sheet itself, just so I can make 25 sure I understand -- it'd be the other direction, Madam</p>
<p style="text-align: right;">10</p> <p>1 I think -- I just want to highlight a couple of the 2 comments Ms. Tesfaye had about this application that I 3 think are relevant even though it was for a prior proposal 4 where the access was to Carnegie as opposed to the current 5 proposal which shows it coming out to Needwood Road. And 6 the comments -- 7 MR. CHEN: But the proposal for the conditional 8 use, the size of the use still -- 9 MR. DAVIS: Yes. 10 MR. CHEN: -- remained the same. I mean -- 11 MR. DAVIS: That's exactly right. 12 MR. CHEN: -- it was only the access issue that was 13 different. 14 MR. DAVIS: That's correct. Only the access 15 changed. The program size, development, as it's been 16 described previously, has not changed. 17 Now the other -- at the bottom of the page, Other 18 Comments, Ms. Tesfaye had seven comments that really dealt 19 more specifically with the proposal as it existed at that 20 time, you know, noting particularly under, like, number 21 four, Parking in the west side of the property does not 22 appear to meet the parking requirements. That was 23 identifying the need for the same setback waiver that is 24 subject to the application at this time, but it was for 25 setback, I believe, associated with Carnegie Avenue. And</p>	<p style="text-align: right;">12</p> <p>1 Hearing Examiner. It's at the first page you had on there. 2 I just want to get to the labeling. 3 So it was item number two; correct? 4 MR. DAVIS: Yes, that's correct. It was item 5 number two on the agenda for the January 30th, 2018, 6 Development Review Committee. 7 MR. KLINE: Thank you. I apologize for 8 interrupting. 9 MR. CHEN: Go ahead. 10 MR. DAVIS: I think that this -- what this 11 demonstrates is that staff at the -- at Park and Planning 12 did have concern about the program size of this particular 13 project, and I would just note that in the course of the 14 review and course of the -- of amendments that have 15 happened with the case, the program size has remained the 16 same. So, in other words, it's the same building size, 17 it's the same playground area, it's the same parking area. 18 All that has really changed in terms of the -- of the 19 conditional use application has been the location of the 20 access point, location of the -- of the driveway. 21 MR. CHEN: Can you recall any other information 22 concerning staff discussion about reducing the size of the 23 conditional use? 24 MR. DAVIS: I do. And -- and what I -- I do recall 25 that there was a meeting that the -- my clients, the</p>

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4 (13 to 16)

<p>13</p> <p>1 neighbors involved in the case, had -- they had a number of 2 questions that they felt that they would like to meet with 3 staff, and so there was a meeting with Park and Parking 4 staff. The meeting was held on July -- I believe it was 5 July 15th of 2019. This was a meeting that was held at 6 Park and Planning's offices in Silver Spring. And the -- I 7 think that -- that what was -- the -- the -- the neighbors 8 had specific comments about -- 9 MR. KLINE: Could -- could I -- could I raise a 10 question? Was Mr. Davis in attendance at the meeting? 11 MR. DAVIS: Yes, I was at the meeting. 12 MR. KLINE: Thank you. 13 MR. DAVIS: Okay. The -- 14 MR. CHEN: To get to the point, was the issue about 15 the program size of the proposed conditional use a part of 16 that discussion? 17 MR. DAVIS: Yes, thank you. 18 MR. CHEN: Okay. 19 MR. DAVIS: The -- the discussion was focusing on 20 the changes to the plan where the access was now being 21 shown from Needwood Road extending along the eastern 22 boundary of the property, 12 feet from the property 23 boundary line. And the -- the neighbors were quite 24 concerned about this, and they wanted to talk to the Park 25 and Planning staff about their thoughts at the time as to</p>	<p>15</p> <p>1 provision. 2 MR. CHEN: Oh, okay. I'm sorry. 3 MR. DAVIS: That's okay. I'll just pull it up 4 here. I have a lot of papers, so I'm looking now for -- 5 I'll be right back here. Here it is. I have a number of 6 zoning sections that I will be referring to this morning, 7 so I do need to have this handy. Okay. 8 All right. This would 59.6.2.5.K, that's capital 9 K, .2, which are setbacks. And I would highlight 10 subsection b, The minimum side parking setback equals two 11 times the minimum side setback required for detached -- for 12 a detached house. 13 Now the -- the heading, subsection K, is that, Any 14 off-street parking facility for a conditional use that is 15 located in a residential zone where three or more parking 16 spaces must -- are provided must satisfy the following 17 standards. 18 So the typical RE-1 side yard setback of 17 feet 19 has to be doubled. And so for this conditional use 20 application, the side yard requirement, stipulated in the 21 Zoning Ordinance, is 34 feet, and the Applicants has -- as 22 has been noted previously in testimony, is requesting a 23 waiver of that particular standard, and -- and the 24 residents of the area at the meeting with the Park and 25 Planning Commission staff was trying to determine whether</p>
<p>14</p> <p>1 whether this was appropriate and whether it was not 2 appropriate. 3 The -- they were -- the -- they were specifically 4 asked, that being that staff was asked, to provide their 5 answer to the neighbors. The staff responded basically to 6 the question that the -- the Applicant had not changed the 7 program size of the building, and the reason that they had 8 not changed it was because of economic concerns that they 9 -- that they had. They felt that there were economic 10 reasons that the -- that the Applicant felt that they could 11 not reduce the size of their project. 12 So staff reported at that time that the Applicant 13 would be pursuing a waiver of the setback, and this is the 14 waiver of the setback contained in the parking section of 15 the Zoning Ordinance for reducing the 34-foot setback 16 that's required for the RE zone -- RE-1 zone, excuse me, 17 and -- and the request was being made in accordance with 18 Section 59.6.2.10 of the Zoning Ordinance requirements. 19 Now the -- this setback that we have been 20 discussing, and I'm just trying to grasp the section number 21 in terms of 59.6., I believe it's 2.5 -- 22 MR. CHEN: Is it 6.2.10? 23 MR. DAVIS: That's the waiver provision. 24 MR. CHEN: Right. 25 MR. DAVIS: So if I'm talking about the setback</p>	<p>16</p> <p>1 they supported that, didn't support it, what the status was 2 concerning that. And -- 3 MR. CHEN: So that, as I see your testimony, the 4 setback issue there, you previously testified at the last 5 -- last hearing, it's not merely along the driveway area 6 but extends also into the parking area? 7 MR. DAVIS: That's correct. 8 MR. CHEN: Okay. 9 MR. DAVIS: In fact, the way that the Zoning 10 Ordinance works with the parking area is the driveway areas 11 from the access point, and that is considered to be part of 12 the parking facility. 13 MR. CHEN: By the way, I just got a note that -- 14 that the meeting with the staff in July of 2019 -- 15 MR. DAVIS: Yes. 16 MR. CHEN: -- could it have been on July 16 rather 17 than July 15? 18 MR. DAVIS: It's possible. 19 MR. CHEN: Okay. Now what was the discussion or 20 the -- of the staff relative to the size of the proposed 21 conditional use? 22 MR. DAVIS: During the meeting when we were, you 23 know, discussing the Applicant's amended plan to show the 24 current conditional use layout, Dr. Kosary asked staff why 25 they -- why they seemed to favor the layout that was being</p>

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5 (17 to 20)

<p>17</p> <p>1 proposed encroaching into the side yard setback area. 2 Mr. Boyd, who I believe has now retired from Park 3 and Parking, he was the coordinator for the Area 3 staff, 4 and he responded that the Applicants had made several 5 changes to their plan to address concerns that staff had 6 proposed, and they seemed to think that the -- that the -- 7 the plan that was currently being reviewed at that time was 8 sort of the best layout possible. 9 Now I was somewhat surprised by this statement when 10 it was made because it seemed to me that Mr. Boyd was 11 implying that staff somehow felt obligated to recommend 12 approval of plans if the Applicant had tried their best to 13 address -- to address staff and community concerns. 14 After Mr. Boyd made his comments about the role of 15 staff in reviewing these plans, I became concerned that 16 staff may not be aware of the legislative history involving 17 the importance of analyzing the inherent adverse effects 18 and the noninherent adverse effects, and this goes to Text 19 Amendment ZTA 99004, which I described in my testimony on 20 Friday as providing, you know, I thought, important 21 legislative history associated with the conditional uses 22 and dealing with the issues of adverse effects. 23 At this meeting with the staff, I also asked if 24 they were aware of the legislative history, and basically I 25 didn't get an answer to the question, and I was asking it</p>	<p>19</p> <p>1 MR. CHEN: You mean the size, the program? 2 MR. DAVIS: The size of -- size of the project as 3 well as in terms of what was described as the program for 4 the 195 students. 5 And -- and the question was posed to staff, you 6 know, "Well, why was this" -- "why was this done?" 7 And basically the answer was, "It was for" -- 8 excuse me -- "It was for economic reasons." 9 And so this question was then posed to staff, would 10 they -- when doing their technical staff report, would they 11 note that they had asked for reductions in the size of the 12 proposal and that the Applicant had responded that they 13 could not do that based on economic issues? And we had 14 asked if they would include that, and staff said, yes, they 15 would put that in the staff report. 16 MR. CHEN: Were -- were those comments included in 17 the staff report? 18 MR. DAVIS: No, there was no comments in the report 19 concerning their question. 20 MR. CHEN: Okay. By the way, sticking with the 21 report and the comments of Ms. Tesfaye at the DRC meeting 22 in -- 23 MR. DAVIS: Um-hmm. 24 MR. CHEN: -- I think January of 2018, where you -- 25 you went to those minutes and the minutes report her</p>
<p>18</p> <p>1 in the context of the importance of determining whether 2 there are -- what the inherent adverse effects are and what 3 possible noninherent adverse effects could be associated 4 with a particular conditional use. 5 My purpose was to sort of inform them in what I 6 would call a subtle way that I felt that they needed to 7 understand better or be better able to explain how 8 noninherent adverse effects as well as inherent adverse 9 effects that would be of concern to the community, how they 10 are addressed and dealt with. So that was the purpose of 11 that. 12 MR. CHEN: Okay. Now during the -- and you were 13 part of the discussion at this meeting at the Park and 14 Planning Commission offices in July of 2019? 15 MR. DAVIS: That's correct. 16 MR. CHEN: And were the -- were the staff requested 17 to include some of that discussion in their comments about 18 the appropriate and the project within the staff report? 19 MR. DAVIS: Yes, they were. 20 MR. CHEN: What were they? 21 MR. DAVIS: Fact, a -- they were asked specifically 22 -- well, what -- what had transpired was that the -- the 23 staff had noted that the Applicant had refused to make 24 changes to the plan in terms of reducing aspects of the 25 proposal. And --</p>	<p>20</p> <p>1 comments. 2 MR. DAVIS: Um-hmm. 3 MR. CHEN: Was there any resolution in the staff 4 report of the concerns that she had raised at the January 5 2018 DRC meeting? 6 MR. DAVIS: No. There was no real discussion of 7 that. Let me just state that a little differently. They 8 did not -- they did not bring up any issues associated with 9 the project -- 10 MR. CHEN: Fine. 11 MR. DAVIS: -- "they" being staff. 12 MR. CHEN: Now you said that during this July 2019 13 meeting, you raised the issue and the legislative history 14 of inherent adverse effects and noninherent adverse effects 15 with the staff; correct? 16 MR. DAVIS: Correct. 17 MR. CHEN: Was that the only time that you raised 18 this issue with the staff? 19 MR. DAVIS: No. There was -- there was another 20 meeting with staff. It was arranged for an on-site 21 meeting, and this was to really go over some environmental 22 issues associated with the tree -- tree stand delineation 23 for the property as well as some questions about the 24 preliminary forest conservation plan associated with it. 25 That meeting was held in middle of August of 2018, so it --</p>

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6 (21 to 24)

<p>21</p> <p>1 MR. CHEN: '18? 2 MR. DAVIS: -- was about a month later. 2018. 3 MR. CHEN: '18 or '19? 4 MR. DAVIS: Oh, excuse me. 2019. 5 MR. CHEN: Okay. 6 MR. DAVIS: I think we were working on this in 7 2018. But, yes, the meetings were 2019 meetings: July 8 meeting and an August meeting. 9 MR. CHEN: And then what was your intersection with 10 the staff during the site visit in August of 2019? 11 MR. DAVIS: Okay. Mr. Berg, who has testified for 12 the case on behalf of the residents, nearby residents, he 13 was going over the tree information with the -- Katherine 14 Nelson, who is the staff coordinator, the environmental 15 coordinator on the staff level for the case, and they were 16 looking at trees. 17 Primary purpose was to -- for Ms. Kosary to 18 identify and show trees that were not included in the 19 forest stand delineation, including -- as I recall, there 20 was a specimen tree that was actually located in the rear 21 -- in the yard of the -- of the Kosary property, and they 22 had not identified that location. 23 While that discussion was going on, Mr. Posey and I 24 were kind of walking around the site with Ms. Tesfaye. And 25 we were -- and I wanted to ask her, I wanted to follow up</p>	<p>23</p> <p>1 about it. 2 I was just trying in a subtle way to sort of say, 3 you know, I'm a little bit concerned as to whether or not 4 you all fully appreciate what -- what constitutes 5 noninherent adverse effects, but more importantly what 6 constitutes the noninherent adverse effects, and that was 7 sort of where I left it. 8 MR. CHEN: In that context, do you have an opinion 9 as to whether a waiver in the parking setback as proposed 10 complies with the Zoning Ordinance? 11 MR. DAVIS: The waiver that's being requested is 12 something that certainly they can ask for, in terms of 13 getting relief from a standard. 14 However, I believe that the problem with this in 15 this case is that, in effect, the granting of the waiver, 16 as well as the approval of the variance for the removal of 17 a specimen tree in the driveway by the Planning Board, they 18 -- they lead to -- are leading down a path where if this 19 case were approved, in effect, I would be very concerned 20 that, in my opinion, it would be a creation of a 21 noninherent adverse effect by virtue of the driveway being 22 too close to the adjacent properties on the east side and 23 creating a compatibility problem. So -- 24 MR. CHEN: That's just from a physical point of 25 view?</p>
<p>22</p> <p>1 with her, on the question that I had posed to Mr. Boyd at 2 the prior meeting about whether or not they -- they were 3 checking into sort of some of the legislative background 4 associated with inherent adverse effects and noninherent 5 adverse effects. And she did recall -- I asked her if she 6 recalled the comments and discussion I'd had with Mr. Boyd. 7 She said she did, and she really didn't say anything else 8 about it. 9 And but I did say to her, I said, "You know, you 10 can talk to Mr. Boyd about it. If he has any questions for 11 me about the history, I'd be happy to speak with him." 12 And after the meeting occurred, I never heard from 13 Mr. Boyd about -- about the issue of the legislative 14 history associated with inherent adverse effects, 15 noninherent adverse effects. 16 You know, I also did suggest to Ms. Tesfaye that I 17 felt that Mr. Boyd's comments appeared to me to, again, 18 indicate that somehow staff felt that they were obligated 19 to support the Applicant's new plan when in fact it may not 20 have addressed fully issues that they had or potentially 21 could've raised new problems or concerns with the 22 particular application. And -- and again she really didn't 23 comment on that, and that was also one of the reasons I 24 wanted her to kind of maybe mention to Mr. Boyd that she'd 25 had that conversation with me to see if he had any concern</p>	<p>24</p> <p>1 MR. DAVIS: Yes, but also operationally. Again, 2 you know, when we were talking about -- 3 MR. CHEN: Yeah. 4 MR. DAVIS: -- physical and operational 5 characteristics, I think the driveway itself is physical. 6 I mean, it's put on the property. But there's also 7 operational characteristics associated with the use of the 8 driveway that I also believe would be problematic for this 9 case. 10 MR. CHEN: Yeah. And I don't want to go back -- 11 you dealt with that on Friday at the last hearing; correct? 12 MR. DAVIS: Correct. 13 MR. CHEN: Okay. Now other than what you've 14 already identified and discussed relative to the staff 15 report, are there any other sections -- have I adequately 16 covered your analysis or your view of the staff report? 17 MR. DAVIS: I believe so. 18 MR. CHEN: Okay. Just sticking on that just for a 19 moment, and you may have addressed this already this 20 morning, but I don't recollect. I take it then you do not 21 agree with the staff analysis relative to the justification 22 for the parking setback waiver? 23 MR. DAVIS: No, I do not agree with the technical 24 staff report's findings in that regard. 25 MR. CHEN: Okay. And is that for the reasons that</p>

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<p>25</p> <p>1 you've previously identified this morning?</p> <p>2 MR. DAVIS: Yes.</p> <p>3 MR. CHEN: Okay. You've covered that?</p> <p>4 MR. DAVIS: I believe so. You know, I think that I</p> <p>5 would like to comment at this point in terms of the -- I'd</p> <p>6 also testified relative to the access point --</p> <p>7 MR. CHEN: Yes.</p> <p>8 MR. DAVIS: -- and the availability for about 135</p> <p>9 feet of the frontage along Needwood Road. There is -- you</p> <p>10 have good sight distance that works. And -- and I'm -- and</p> <p>11 I'm very concerned that the basis for the waiver is the</p> <p>12 fact that the Applicant has said the access point has to be</p> <p>13 in the northeast corner of the property, and there's no</p> <p>14 other location where it can be accommodated. And, to me,</p> <p>15 that's just false.</p> <p>16 MR. CHEN: Why?</p> <p>17 MR. DAVIS: It's false because there's 135 feet in</p> <p>18 which the driveway could be shifted farther to the west</p> <p>19 along Needwood Road and still allow for satisfaction or</p> <p>20 satisfying of the County's sight distance requirements.</p> <p>21 MR. CHEN: Would -- would it also satisfy the</p> <p>22 Applicant's program of number of pupils?</p> <p>23 MR. DAVIS: I believe that the problem is that the</p> <p>24 Applicant does not want to reduce its program size, and the</p> <p>25 reason I say reduce it is because if you move the access</p>	<p>27</p> <p>1 you, but part of what they're proposing also includes the</p> <p>2 installation of a fence; isn't that right?</p> <p>3 MR. DAVIS: That's correct.</p> <p>4 MR. CHEN: Okay. How does that play into your</p> <p>5 opinion or relative to the adequacy of the buffer that's</p> <p>6 being proposed?</p> <p>7 MR. DAVIS: Well, my concern is that the fence, and</p> <p>8 I believe it's a six-foot fence that's being proposed, I</p> <p>9 think -- as I recall it being discussed at the public</p> <p>10 hearing over a year ago, was that the major benefit it</p> <p>11 provided was to deal with headlight glare coming in from</p> <p>12 vehicles. And while I think that, yes, in fact that --</p> <p>13 that type of screening's necessary, I think that there's</p> <p>14 been testimony provided by both Mr. Posey and Dr. Kosary to</p> <p>15 the effects of the lighting in general. You have the car</p> <p>16 lights as well as the parking lights, and I don't believe</p> <p>17 that the -- in my opinion, the six-foot fence is not going</p> <p>18 to address any of that.</p> <p>19 And there's also, you know, the noise issues that</p> <p>20 potentially could be coming from the -- from the</p> <p>21 conditional use due to the amount of activity that is</p> <p>22 associated with it. I don't think that the fence is</p> <p>23 necessarily going to help with that.</p> <p>24 There's also testimony that the -- the Kosary/Posey</p> <p>25 property has existing six-foot fence on the other side,</p>
<p>26</p> <p>1 farther to the west, it creates better ability to enter the</p> <p>2 site and also to adhere to the 34-foot setback requirement.</p> <p>3 So, in my view, there's nothing about the access to the</p> <p>4 property that necessitates the need for a waiver of the</p> <p>5 side yard setback provision, the parking setback.</p> <p>6 I believe that the 34 feet, and that's the minimum</p> <p>7 setback required by the Zoning Ordinance, is extremely</p> <p>8 important in this particular case given the fact that you</p> <p>9 have existing residential one-family homes immediately</p> <p>10 adjacent to that driveway that are going to be adversely</p> <p>11 affected by the application.</p> <p>12 MR. CHEN: Sticking with that area, the application</p> <p>13 also proposes a buffer and removal of trees. Do you have</p> <p>14 an opinion as to whether or not the proposal adequately</p> <p>15 provides for buffer?</p> <p>16 MR. DAVIS: I believe that the buffer that's been</p> <p>17 proposed, and we're talking about the 12-foot landscaping</p> <p>18 strip, so in other words the setback area of 12 feet, will</p> <p>19 be entirely used for a landscaping area, which -- and I</p> <p>20 believe that a proposal to do that does not make up for the</p> <p>21 loss of what's existing tree cover. We have existing</p> <p>22 mature trees and a variety of trees that would be</p> <p>23 beneficial in terms of helping to provide the buffer that I</p> <p>24 believe is necessary for this site.</p> <p>25 MR. CHEN: How about -- apologize for interrupting</p>	<p>28</p> <p>1 which would be the east side of the -- of their property,</p> <p>2 between the church, the existing church and now -- they</p> <p>3 have, you know, the experience of -- of that six-foot fence</p> <p>4 is not -- has not been helpful to reduce the adverse</p> <p>5 effects associated with the church parking lot and -- and</p> <p>6 assorted activities there that were testified to.</p> <p>7 MR. CHEN: Accordingly, have you -- do you have an</p> <p>8 opinion as to whether or not there has been a basis as</p> <p>9 recognizing the Zoning Ordinance for reducing the 34-foot</p> <p>10 setback requirement?</p> <p>11 MR. DAVIS: I don't believe that there's any</p> <p>12 justification that's been provided that would in any way</p> <p>13 justify the approval of a -- of the setback waiver. In</p> <p>14 fact, the staff noted that in approving the waiver, there's</p> <p>15 a finding, and I believe it's the finding that's associated</p> <p>16 with the -- you have to meet the intent of the parking</p> <p>17 standards. That's Section 6.2.1 of the Zoning Ordinance,</p> <p>18 and it's called -- it's the parking, queueing, loading --</p> <p>19 it says, Intent. The intent of the vehicle and bicycle</p> <p>20 parking, queueing and loading requirements is to ensure</p> <p>21 that adequate parking is provided in a safe and efficient</p> <p>22 manner.</p> <p>23 And they concluded that with the waiver, parking</p> <p>24 would be provided in a safe and efficient manner, and I</p> <p>25 would suggest that even if they had adhered to the -- to</p>

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<p style="text-align: right;">29</p> <p>1 the 34-foot setback, parking could be accommodated in a 2 safe and efficient manner. 3 To me, the primary purpose for the waiver is to 4 reduce the amount of setback so that they can provide 5 access to enable them to adhere to the very large size 6 scope associated with the -- their development program for 7 the property. 8 MR. CHEN: Okay. Now aside from the Zoning 9 Ordinance provisions related to the setback, are there 10 other provisions of the Zoning Ordinance that, in your 11 opinion, are not satisfied by the application? This -- 12 this one, it's yes or no. Your answer to this question is 13 just yes or no. 14 MR. DAVIS: I think I was -- 15 HEARING EXAMINER ROBESON HANNAN: (Inaudible) 16 looking at it. 17 MR. DAVIS: -- looking at something when you were 18 saying -- 19 MR. CHEN: Okay. 20 MR. DAVIS: Ask me again please. 21 MR. CHEN: Okay. 22 MR. DAVIS: I'm sorry. 23 MR. CHEN: Okay. Aside from the setback waiver 24 issue and the -- and 34-foot setback, are there any other 25 provisions of the Zoning Ordinance that this application,</p>	<p style="text-align: right;">31</p> <p>1 because I think that -- I don't see a particular issue with 2 that section. So that was just to highlight that -- note 3 that that is an applicable provision, and I don't see a 4 problem with that. 5 MR. CHEN: Okay. 6 MR. DAVIS: Then the next provision I'd like to go 7 to deals with Section 4.4.6, which is -- are the standards 8 associated with the residential estate, one -- one-acre 9 zone. 10 MR. CHEN: RE-1? 11 MR. DAVIS: Yes. The RE-1 zone. And I want to 12 just note the intent of the zone. There's an -- there's a 13 statement under subsection A, capital A, stating that the 14 intent of the RE-1 zone is to provide designated areas of 15 the county for large-lot residential uses. The predominant 16 use is residential in a -- residential in a detached house. 17 Now in terms of the standards, the RE-1 zone 18 standard method of development standards, it notes that the 19 minimum lot area is 40,000 square feet. This property is 20 2.94 acres. So, depending on the amount of dedication that 21 would be associated with it, we're talking about the 22 potential of two to three homes that could be developed on 23 the property. 24 The lot width at the front building line has to be 25 a minimum of 125 feet. This site certainly satisfies that.</p>
<p style="text-align: right;">30</p> <p>1 in your opinion, does not comply with? 2 MR. DAVIS: Yes. And -- and I -- when I was going 3 to move through various standards in the Zoning Ordinance, 4 the screening, the landscaping -- 5 MR. CHEN: Okay. 6 MR. DAVIS: -- standards -- 7 MR. CHEN: Fine. Do it. 8 MR. DAVIS: Okay. Now I have a whole packet of the 9 various zoning standards I want to refer to here. I'd 10 actually -- I'd like to begin with Section 3.4.4.F.2.b. -- 11 HEARING EXAMINER ROBESON HANNAN: Wait, wait. 12 MR. DAVIS: -- lowercase i. 13 HEARING EXAMINER ROBESON HANNAN: (Inaudible.) Can 14 you say that again? 15 MR. DAVIS: Yes. 16 HEARING EXAMINER ROBESON HANNAN: 3.4.4 -- 17 MR. DAVIS: .F, capital F, .2.b.i. 18 MR. CHEN: Can you read that? 19 HEARING EXAMINER ROBESON HANNAN: I got it. 20 MR. DAVIS: Okay. 21 MR. CHEN: You got it? Okay. 22 MR. DAVIS: Yeah. Now the only thing I just want 23 to note is that this contains the daycare -- the 24 requirements for a daycare center for over 30 persons, and 25 -- and really I have nothing to really say about that</p>	<p style="text-align: right;">32</p> <p>1 And then the lot width at the front lot line, which is the 2 street line, that has to be a minimum of 25 feet. But I 3 would note for this particular case that the frontage along 4 Needwood Road is on the order of about 206, 207 feet. 5 So it's -- and -- and the depth of the lot is also 6 sufficient, that this is not a small lot in the RE-1 zone. 7 This is -- this is a large lot frontage on public street, 8 being Needwood Road, and also has frontage on Carnegie 9 Avenue, which doesn't provide much in the way of benefit 10 for them. 11 The density associated with this zone is -- is 1.09 12 dwelling units per acre, and that would represent a maximum 13 density. And it also notes under -- under subsection 2, 14 Placement, that the side yard setback is 17 feet. And, as 15 we've discussed as part of the waiver request, they have to 16 double that to 34 feet for a conditional use to be able to 17 set back from adjacent property for a parking area, which 18 includes driveway. 19 MR. CHEN: And you've already addressed that in 20 your testimony? 21 MR. DAVIS: Correct. 22 MR. CHEN: Okay. What about the -- you mentioned a 23 moment ago the screening requirements in 6.5. 24 MR. DAVIS: Yes. 25 MR. CHEN: Want to address that please.</p>

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<p>33</p> <p>1 MR. DAVIS: Did you want me to address 6.2 which 2 comes first? 3 MR. CHEN: Yes. 4 MR. DAVIS: That's the -- 5 MR. CHEN: (Inaudible.) 6 MR. DAVIS: -- that's the parking regulation. And 7 -- 8 MR. CHEN: Oh, okay. 9 MR. DAVIS: -- and I would say that, for the most 10 part, we have addressed that. I wanted to highlight the 11 intent of the parking regulations, which I did say parking 12 -- providing for parking in a safe and efficient manner, 13 and then I would note in Section 6.2.3 -- no, that's not 14 it. I've already highlighted. 15 It's the very long subsection, K, the very long 16 heading, and it deals with the setback provisions. This is 17 59.6.2.5.K.2.b, the minimum side yard -- side parking 18 setback equals two times the minimum side setback required 19 for the detached house. 20 And then the last provision I wanted to -- well, I 21 also wanted to note that Section 6.2.9 contains the 22 parking, landscaping, and outdoor lighting requirements. 23 And, in fact, this -- these provisions are applicable to 24 the driveway. 25 When I -- I'm going to -- once I complete this 6.2,</p>	<p>35</p> <p>1 Now Section 6.5.1, which again is the intent 2 associated with this section of Zoning Ordinance, and 3 notice that the intent of 6.5 is to ensure appropriate 4 screening between different building types and uses. And, 5 in this case, in the case of this conditional use, we're 6 dealing with a -- a child daycare building, a commercial 7 building, adjacent to one-family detached homes. Okay? 8 MR. CHEN: Do you have an opinion as to whether or 9 not this section, therefore, is being complied with or 10 satisfied by the proposal? 11 MR. DAVIS: It is not being satisfied. 12 MR. CHEN: Why? 13 MR. DAVIS: And there was -- there was testimony at 14 one of the earlier hearings, and I think this might've been 15 the third day of testimony. We had both Mr. -- the 16 engineer for the project, Intriago, Mr. Intriago, and Mr. 17 Jolley, who is the landscape architect for the project, and 18 the question came up concerning the amount of setback 19 that's required -- or, excuse me, the size of land -- of 20 the screening strips, landscape strips associated with the 21 project. 22 And Mr. Intriago on drawing CUP-4 had showed a 23 couple of different dimensions, including -- in terms of 24 the size or the width of the landscape strips. There was 25 first along the east side of the building -- okay. So this</p>
<p>34</p> <p>1 I wanted to note for -- note the requirements of 6.4 and 2 6.5, which deal with landscaping and also deal with 3 screening. 4 And but to complete this section, I just wanted to 5 note that there is the waiver provision of 6.2.10, and -- 6 and, again, it has to satisfy the intent of 6.2.1, but also 7 note that Section 6.2.9, Parking Lot, Landscaping, and 8 Outdoor Lighting, also figures in on the discussions that 9 we're -- I'm now going to enter into that concern 10 landscaping and buffering. Okay? 11 6.4.3 are the general landscaping requirements. 12 HEARING EXAMINER ROBESON HANNAN: Wait. Oh, 6.4. 13 6.4.3? 14 MR. DAVIS: Yes. 15 HEARING EXAMINER ROBESON HANNAN: Okay. Now I do 16 have it on the screen, if that helps. 17 MR. DAVIS: Yes. And what I want to note with that 18 is that the -- yeah. I'm not really -- I'm not -- I just 19 wanted to note that that's the general landscaping 20 requirements -- 21 HEARING EXAMINER ROBESON HANNAN: Oh. 22 MR. DAVIS: -- and it identifies the type of plant 23 materials and things like that. So we could actually move 24 on to 6.5, which is the screening requirements. 25 Okay. Now -- that's it.</p>	<p>36</p> <p>1 is -- this is the driveway extending 12 feet from the 2 property line, and then to the west of the driveway is the 3 building itself. There was notice of an eight-foot 4 landscape strip. 5 And then as you move farther south into the 6 property, where the parking -- more of the parking -- the 7 main parking lot is located, they were showing a ten-foot 8 setback, and but yet in terms of the testimony and also in 9 terms of measuring the dimension from the property line to 10 the -- to the back edge of the curb, it was 12 feet. 11 So Mr. Chen had -- had inquired as to what's the 12 right answer. Is it eight feet and ten feet? Is it 12 13 feet? What is it? And the answer was that it was 12 feet. 14 So that -- and what they were citing for that was basically 15 the screening requirements of 6.5. 16 And I felt -- I think it's important for this to 17 really get a better understanding of the screening 18 requirements in terms of what various provisions we have 19 with that. 20 Section 6.5.2, and just generally, contains the 21 minimum screening requirements that are applicable to the 22 different types of development zoning types. 23 Section 6.5.2.B provides that the specific minimum 24 screening requirements, as contained in Section 6.5.3 apply 25 to situations where a proposed conditional use building,</p>

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<p>37</p> <p>1 other than single-family detached house, in a residential 2 zone will be -- will abut the land. Okay? 3 And .5.3.2.B, and that provision reads that, In the 4 agricultural, rural residential, residential detached 5 zones, a conditional use in any building type except a 6 single-family detached house must provide screening under 7 Section 6.5.3 if the subject lot abuts property in an 8 agricultural, rural residential, or residential detached 9 zone that is vacant or improved with an agricultural or 10 residential use. All conditional uses must have screening 11 that ensures compatibility with the surrounding 12 neighborhood. 13 That's a very important standard in the landscaping 14 provisions, and that was something that was never mentioned 15 or highlighted. It's not mentioned in the technical staff 16 report nor was it highlighted in testimony or reports from 17 the Applicant. 18 MR. CHEN: And do you have an opinion as to whether 19 or not that standard has been satisfied by this proposal? 20 MR. DAVIS: In my opinion, it has not. 21 MR. CHEN: Could you explain? 22 MR. DAVIS: Yes. I believe that the Zoning 23 Ordinance provision for additional setback for parking 24 areas as part of the -- part of a conditional use is done 25 to ensure that there is space available to be able to</p>	<p>39</p> <p>1 screening and the landscaping? 2 MR. DAVIS: Correct. And I think that might be -- 3 might finish up what I wanted to say about 6.5. It does. 4 So, moving forward, it brings us to Division 7.3, 5 which are the regulatory approvals. And I'd like to focus 6 attention on 7. -- 7.3.1, Conditional Use, actually moving 7 into Section E -- 8 MR. CHEN: Before you -- 9 MR. DAVIS: -- Necessary Findings. 10 MR. CHEN: -- before you do that, I just want -- 11 while you were talking about the landscaping -- 12 HEARING EXAMINER ROBESON HANNAN: Mr. Chen, I 13 couldn't understand what you just said. While you were 14 talking about the what? 15 MR. CHEN: Okay. Thank you. Before you move on, I 16 just want a follow-up question relative to the landscape 17 requirements. The -- again, the technical staff does 18 identify the landscape requirements at pages 15 through 18 19 of the report. 20 MR. DAVIS: Correct. 21 MR. CHEN: Now does the staff report have any 22 explanation relative to the actual landscaping requirements 23 or analysis of how they relate to the application? 24 MR. DAVIS: No. I mean, it's interesting because 25 they state the various sections that apply, and they note</p>
<p>38</p> <p>1 address compatibility and compatibility of the conditional 2 use with the adjacent residential properties. 3 And the -- in my opinion, the 12 feet that has been 4 proffered by the Applicant and -- and the granting of the 5 waiver is insufficient to address the issue of 6 compatibility. And I think that the 34 feet, in my 7 opinion, is a minimum. I think it gets to the heart of how 8 will that space be used and in terms of -- for purposes of 9 creating buffer and screening versus how the space could be 10 used for a driveway that creates the adverse effect. So 11 that was why I thought it was important to point that out 12 as part of this. 13 There was another point I wanted to make -- let me 14 look through here -- under Section 6.5.3, Screening 15 Requirements, A -- there's A, one through four. And I 16 would point out that number four says that, Screening is 17 not required between a lot line and the subject structure 18 or use if the structure or use is separated from the lot 19 line by a surface parking lot. Instead, landscaping must 20 be provided under Section 6.2.9. 21 That's the reference that says that you go to the 22 parking standards to be able to determine, you know, what 23 the minimum requirements are for the landscaping. And -- 24 MR. CHEN: That goes to -- that goes to the point 25 that you -- you expressed relative to the setback and the</p>	<p>40</p> <p>1 that there was a landscape plan submitted just maybe a 2 couple of weeks before the Planning Board meeting, but it 3 didn't go into any details of the plan, and it certainly 4 did not note the -- what I think is the important standard, 5 which is that regardless of what the minimum requirement 6 is, you're going to have to design screening in such a way 7 as to help in the achievement of compatibility with the 8 proposal. 9 MR. CHEN: Based -- 10 MR. DAVIS: That was not cited at all. 11 MR. CHEN: No. Now based upon your review of the 12 staff report and the application and the staff's 13 recommendation relative to landscaping and screening, has 14 there been any definitive and rational support for this 15 application by those standards? 16 MR. DAVIS: No, I don't believe so. 17 MR. CHEN: Okay. 18 MR. DAVIS: And, you know, again, they satisfy the 19 minimum requirement. The minimum requirement is a ten-foot 20 landscaping strip; they're showing 12 feet. And I also 21 find it's interesting that in order to provide the extra 22 two feet, they took two feet off of the driveway width, 23 which is interesting considering the large number of -- of 24 vehicle trips that'll be associated with that driveway 25 through the course of the day, Monday through Friday. So</p>

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<p>1 --</p> <p>2 MR. CHEN: Does that conclude your -- excuse me --</p> <p>3 your testimony relative to Section 6.5?</p> <p>4 MR. DAVIS: Correct.</p> <p>5 MR. CHEN: And you wanted to move on then to</p> <p>6 7.3.1.E; is that right?</p> <p>7 MR. DAVIS: Yes. And this is -- this concerns the</p> <p>8 necessary findings for conditional use approval.</p> <p>9 MR. CHEN: Madam Examiner -- if I may interrupt</p> <p>10 you. Are you hearing me clearly, Madam Examiner?</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Now I am. It was</p> <p>12 just that one word I couldn't understand, so go ahead.</p> <p>13 MR. CHEN: Go ahead.</p> <p>14 MR. DAVIS: Okay. And, as you know, there's a</p> <p>15 listing of the various findings that the Hearing Examiner</p> <p>16 must make in approving the conditional use application.</p> <p>17 And to approve a conditional use application -- this is</p> <p>18 Necessary Findings, subsection 1 -- To approve a</p> <p>19 conditional use application, the Hearing Examiner must find</p> <p>20 that the proposed development satisfies, and then it goes a</p> <p>21 through g that I would like to discuss.</p> <p>22 MR. CHEN: Some of this you've already touched on;</p> <p>23 isn't that right?</p> <p>24 MR. DAVIS: That's correct. For example, some of</p> <p>25 it I've already touched on, and some -- couple of the -- I</p>	<p>1 as being Lot 8. And Carnegie Avenue shows to the west</p> <p>2 side, and that connects up to a county road that didn't</p> <p>3 have -- wasn't named Needwood Road at that time, I take it.</p> <p>4 That's -- so that's the last approval that we had.</p> <p>5 MR. CHEN: In your opinion, that's not really an</p> <p>6 issue under this subsection?</p> <p>7 MR. DAVIS: No, I don't think it is. The Planning</p> <p>8 Board has basically decided that this project does not have</p> <p>9 to go through a preliminary plan of subdivision, so,</p> <p>10 therefore, a re-subdivision would not be required, and also</p> <p>11 that's -- we did speak on Friday -- that's part of the</p> <p>12 reason why the Hearing Examiner's making the findings</p> <p>13 associated with adequate public facilities for this case,</p> <p>14 because there will not be a re-subdivision of it. So</p> <p>15 that's subsection a.</p> <p>16 Subsection b talks about that the conditional use</p> <p>17 has to satisfy requirements of the zone use standards under</p> <p>18 59.3 to the extent the Hearing Examiner finds necessary to</p> <p>19 ensure compatibility meets applicable general requirements.</p> <p>20 So I'm back -- I think I'm done with the plat and</p> <p>21 back to 7.3.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: Are you -- you</p> <p>23 should be seeing 7.3.</p> <p>24 MR. DAVIS: No, I see the record plat.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Okay. Now you</p>
42	44
<p>1 don't believe apply or are a problem.</p> <p>2 MR. CHEN: Okay.</p> <p>3 MR. DAVIS: Such as subsection a, Satisfies any</p> <p>4 applicable previous approval on the subject site or, if</p> <p>5 not, that the previous approval must be amended, and the</p> <p>6 only prior approval I'm aware of for this site was a</p> <p>7 subdivision plan that was done -- that was created back in</p> <p>8 1946 -- I have it sitting here next to me -- 1946, and this</p> <p>9 is the Derwood Heights subdivision. And --</p> <p>10 MR. CHEN: Is there an exhibit on that? Is that in</p> <p>11 the record?</p> <p>12 MR. DAVIS: It is, but what I have does not show an</p> <p>13 exhibit number.</p> <p>14 FEMALE SPEAKER: I think it's W.</p> <p>15 MR. CHEN: W.</p> <p>16 FEMALE SPEAKER: 115-W.</p> <p>17 MR. CHEN: 115-W, Madam Examiner, can you pull that</p> <p>18 up?</p> <p>19 HEARING EXAMINER ROBESON HANNAN: I will. You can</p> <p>20 give me a moment. You should be seeing it.</p> <p>21 MR. CHEN: Joe.</p> <p>22 MR. DAVIS: Yes, that's it. Yes, this is the</p> <p>23 Derwood Heights subdivision approved in -- in 1946. The</p> <p>24 subject property is located in Section A. In fact, the</p> <p>25 letter A is located on the property, and it is identified</p>	<p>1 should be seeing it.</p> <p>2 MR. DAVIS: Yes. And now I have to find my copy</p> <p>3 because I have notes. And -- that's okay. I can work --</p> <p>4 HEARING EXAMINER ROBESON HANNAN: Do you want a</p> <p>5 five-minute break?</p> <p>6 MR. DAVIS: That might -- yeah, I think that might</p> <p>7 be helpful because I -- because I'll be grabbing some other</p> <p>8 papers too.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Okay. Well,</p> <p>10 we'll go off the record for five minutes. We'll come back</p> <p>11 at 10:30.</p> <p>12 (Pause in proceedings.)</p> <p>13 MR. DAVIS: All right. So we were leaving off with</p> <p>14 -- with -- with b and basically --</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Whoops.</p> <p>16 MR. DAVIS: -- I believe -- this is subsection b,</p> <p>17 the Necessary Findings, 1.b. Okay? The --</p> <p>18 HEARING EXAMINER ROBESON HANNAN: No, wait. I -- I</p> <p>19 apologize. I'm not sure why -- let me do this. Now we</p> <p>20 should be back.</p> <p>21 MR. DAVIS: Yes. And the exhibit's shown there as</p> <p>22 well.</p> <p>23 MR. CHEN: Just for the record, we're at</p> <p>24 59.7.3.1.E.1.b.</p> <p>25 MR. DAVIS: Correct.</p>

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12 (45 to 48)

<p>45</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Can -- okay. Are 2 you seeing the Code? I mean the Zoning Ordinance -- 3 MR. DAVIS: Yes. 4 HEARING EXAMINER ROBESON HANNAN: -- on the screen? 5 Okay. I just wanted to make sure. So we're at 6 7.3.1.E.1.d, is what you're going to testify on? 7 MR. DAVIS: B, b as in boy. 8 HEARING EXAMINER ROBESON HANNAN: Oh, b. Okay. 9 MR. DAVIS: And that is does it -- does it satisfy 10 the requirements of the zone use standards under Article 11 59.3 and to the extent the Hearing Examiner finds necessary 12 to ensure compatibility meets applicable general 13 requirements under 59.6. 14 And I believe that my testimony to date would 15 support my conclusion that they have -- the Applicant has 16 not satisfied this particular requirement. 17 MR. CHEN: Without -- without repeating your 18 testimony, could you just give the Examiner some 19 highlighted on those parts -- 20 MR. DAVIS: Yes. 21 MR. CHEN: -- of your testimony that deal with 22 this? 23 MR. DAVIS: I believe -- I believe that the subject 24 application with the waiver that has been requested of the 25 parking setback provision along the east side will result</p>	<p>47</p> <p>1 to comment that in fact I do believe that this is part of 2 the residential wedge in the larger context of this 3 particular master plan and how it addresses development 4 within the planning area. 5 And I would note for the -- for the Hearing 6 Examiner that the technical staff report, on page 7, it had 7 also noted, as part of the master plan area map showing 8 zoning, the location of RE-1 zoning, and the RE-1 zoning is 9 located both in the special protection area of the master 10 plan area, which is the area north of Muncaster Mill Road, 11 and there's also RE-1 zone land in the south -- south of 12 that area, which is also, I think, part of what would be 13 the upper watershed area that the master plan's attempting 14 to protect. 15 Also, as part of my testimony on Friday, we noted 16 the state's map of the priority funding areas, and we noted 17 that the subject property is shown as not being located 18 within the state's designated priority funding area. And I 19 think that's also indicative of the fact that in the 20 county, in this particular area, the R-200, RE-1 zones can 21 be considered part of the wedge for purposes of considering 22 development. So I just wanted to point that out to sort of 23 complete the record with regard to the master plan 24 discussion. 25 MR. CHEN: And I think the next subsection would be</p>
<p>46</p> <p>1 -- will result in a noninherent adverse effect at this 2 location in terms of compatibility with the adjacent 3 properties, the adjacent residential properties to the 4 east. 5 Now subsection c is that it substantially conforms 6 with the recommendations of the applicable master plan. 7 I do not believe that this application conforms to 8 that requirement, and I testified -- 9 MR. CHEN: Thank you. Go ahead. 10 MR. DAVIS: -- with the master plan last Friday in 11 terms of the recommendations that I was able to identify 12 that I think have application to the subject property and 13 that -- and that I believe that it demonstrates that the 14 subject application does not -- it is not in -- it's not 15 consistent or does not conform with the recommendations of 16 the applicable master plan. 17 I would note that there's a -- in terms of my 18 master plan testimony, there has been some discussion, and 19 there -- this involved, I believe, Ms. Kosary and questions 20 that Mr. Kline had for her in terms of his cross- 21 examination, and there was discussion -- a question was 22 posed about the -- whether the RE-1 zone at this location 23 is part of the residential wedge, and I would -- I would 24 just note -- I'm not sure that I specifically addressed 25 that in terms of my testimony on Friday, but I would like</p>	<p>48</p> <p>1 d. 2 MR. DAVIS: D, Is harmonious with and will not 3 alter the character of the surrounding neighborhood in a 4 manner inconsistent with the plan. 5 And I believe that this -- this subsection is not 6 satisfied by the application. Again, I don't want to 7 repeat what I've been saying in terms of, you know, master 8 plan or the compatibility, but -- but being harmonious with 9 and not altering the character in a manner inconsistent 10 with the plan, I believe that it will. 11 And I -- to give you an example, would be think of 12 all of the effort that's going to have to go into upgrading 13 the storm drain system. That not only affects this 14 property, in terms of -- of putting that infrastructure in 15 as it would develop, which is normal to the process, and 16 then looking at the effects that this has on the South 17 Riding neighborhood immediately to the south, in terms of 18 having to replace all the strain -- storm drain pipes to 19 bigger -- to larger pipes to be able to accommodate the 20 stormwater flow from this rather large conditional use 21 application. 22 So I, again, conclude that I do not believe that 23 subsection d is met. I believe that this proposed project 24 will not be harmonious with or alter the character of the 25 surrounding area.</p>

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13 (49 to 52)

<p style="text-align: right;">49</p> <p>1 And -- and that goes beyond just the fact of the 2 construction. I think that there are other issues that 3 deal with compatibility that also fall into this grouping 4 of harmonious effect. Okay?</p> <p>5 MR. CHEN: And under subsection d, it also talks 6 about being inconsistent with the plan. I assume, again, 7 you're -- you're --</p> <p>8 MR. DAVIS: Yeah. I think that, you know, looking 9 at the environmental recommendations of the plan, as well 10 as land use recommendations, I believe that this is not 11 consistent with the -- with the master plan.</p> <p>12 MR. CHEN: We don't need to go all over that again. 13 Thank you.</p> <p>14 MR. DAVIS: All right. Then we move on to 15 subsection e, Will not, when evaluated in conjunction with 16 existing and approved conditional uses in any neighboring 17 residential detached zone, increase the number, intensity, 18 scope of conditional uses.</p> <p>19 And I don't believe that that really comes into 20 play here. We have noted, and there's been testimony 21 concerning, the location of the Taiwanese Cultural Center, 22 which is a -- an existing special exception use located on 23 the northeast corner of Redland Road and Needwood Road. 24 There's also a -- a small child daycare center that's 25 located just to the east on the north side of Needwood Road</p>	<p style="text-align: right;">51</p> <p>1 planner, so I didn't want to go into the realm of local 2 area transportation review, but, as you know, there was 3 considerable testimony by Dr. Kosary that -- pointing out 4 problems, data errors, things like that, methodology 5 concerns, with the traffic study that was done.</p> <p>6 So I would just point out that -- that, as part of 7 the decision the Hearing Examiner will be making with this 8 case, there will have to be a finding made that there are 9 adequate public roads associated with this development. 10 And the problem is that I think the testimony in the record 11 indicates that there are some problems associated with 12 that.</p> <p>13 In addition, I have talked about the storm drainage 14 concerns, and but I would just note that storm drainage, in 15 this case, for the offsite portion of it, this is going to 16 have -- this is a very significant project, and there's 17 nothing in the capital improvements program that addresses 18 this, so it's not like there's a project out there that we 19 can say, "Oh, they can take advantage of the project and be 20 able to do this."</p> <p>21 In addition, it's not located in a priority funding 22 area, so the County is really not going to be looking 23 towards doing capital improvements projects to expand 24 development in -- in a community such as this portion of 25 Needwood Road.</p>
<p style="text-align: right;">50</p> <p>1 that's also been mentioned. Then I believe that there's 2 also -- you know, there is, I think, a towing service that 3 is -- well, that's a nonconforming use, so that doesn't fit 4 in under this.</p> <p>5 So I don't believe that we have any issue with 6 subsection e.</p> <p>7 Subsection f is actually an important standard that 8 deals with the adequate public facilities and services, and 9 that -- and requires a finding that there will be adequate 10 public services and facilities. And then it identifies 11 here in this section schools, police, fire protection, 12 water, sanitary sewer, public roads, storm drainage, and 13 other public facilities.</p> <p>14 Now this has a -- has a subsection, small i, lower 15 case i and lowercase ii, and lowercase i applies here 16 because, as I just mentioned a few moments ago, this will 17 not be going to the Planning Board in the future as a 18 preliminary plan of subdivision; therefore, the Hearing 19 Examiner will be -- have to make the findings for adequate 20 public facilities for this particular application.</p> <p>21 And I have provided testimony already, including 22 the traffic associated with the public roads, and that was 23 in the context of comments that I had relative to how I 24 believe that this conditional use is affected by -- by the 25 public roads. And I think that -- I'm not a transportation</p>	<p style="text-align: right;">52</p> <p>1 Another factor, you know, that I think needs to be 2 considered here is the fact that the -- again, it's going 3 to be the very intrusive nature, the work that has to be 4 done in terms of the trenching, the pipe replacement, it's 5 going to be disruptive to the community, in terms of their 6 access -- vehicular access to their homes, pedestrian 7 traffic through the neighborhood -- we don't know how long 8 this is going to be going on.</p> <p>9 The Applicant has indicated that they would be 10 willing to pay for these improvements, but I believe the 11 only costs that were provided by both the Applicant and by 12 Maddox associates in the hearings last March of a year ago 13 were -- I think were basically a cost of the pipe, kind of 14 on a linear foot basis, and I believe that the numbers were 15 somewhere in the range of \$200,000. And I believe that 16 this project, based on my experience in terms of working 17 with plans and working with project development plans, 18 probably grossly underestimates what the costs associated 19 with doing this project would actually be.</p> <p>20 So I'm -- I -- I conclude that the -- with the need 21 for the off-site storm drainage upgrades for this 22 development that it does not satisfy the adequate public 23 facilities test in that regard.</p> <p>24 MR. CHEN: How about sewer capacity analysis?</p> <p>25 MR. DAVIS: Yes. There was testimony -- Dr. Kosary</p>

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14 (53 to 56)

<p>53</p> <p>1 had identified where there is an existing sewer manhole --</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Can I interrupt</p> <p>3 you for one moment --</p> <p>4 MR. DAVIS: Sure.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: -- Mr. Davis?</p> <p>6 This would have to be in the capital improvements program.</p> <p>7 Is -- am I correct in that?</p> <p>8 MR. DAVIS: I believe you are correct. Yes, I</p> <p>9 believe that there may be an issue of shared payment or</p> <p>10 payment coming from it, but I believe that this is dealing</p> <p>11 with public right-of-way, it's public infrastructure, it</p> <p>12 would have to -- it would have to be done basically by the</p> <p>13 County, very similar to what you have with WSSC. They take</p> <p>14 care of all the improvements that are required, you know,</p> <p>15 off-site and then -- and then the developer has to pick up</p> <p>16 as it comes on-site.</p> <p>17 But, in this case, I'm not aware of any -- any</p> <p>18 project that's available for them to be able to utilize for</p> <p>19 this. I didn't do an exhaustive research trying to find</p> <p>20 where there's some --</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Generic --</p> <p>22 MR. DAVIS: -- project fund -- some project fund</p> <p>23 sitting somewhere for a rainy day or something like that.</p> <p>24 I -- I didn't do that. So I'm just not aware of anything</p> <p>25 that would enable this very important public infrastructure</p>	<p>55</p> <p>1 testimony, identified that there's potentially a very</p> <p>2 serious issue in terms of how to get sewer service to this</p> <p>3 property. And she had noted in her testimony that there is</p> <p>4 a sewer manhole that's actually located in front of the</p> <p>5 Kosary/Posey property that is listed or identified as being</p> <p>6 inaccessible.</p> <p>7 So I think that part of the problem here again is</p> <p>8 if this was going through the subdivision process, then</p> <p>9 there probably would've been -- would've been an</p> <p>10 opportunity for WSSC to sort of come in to identify if --</p> <p>11 from the standpoint of their information, if there was a</p> <p>12 problem associated with this -- with -- with bringing sewer</p> <p>13 service to the property. And I'm not aware of any comments</p> <p>14 from WSSC even looking back to the -- you know, the</p> <p>15 Development Review Committee notes from the --</p> <p>16 MR. CHEN: January --</p> <p>17 MR. DAVIS: -- January 30th, 2019 --</p> <p>18 MR. CHEN: '19 or '18?</p> <p>19 MR. DAVIS: '19 Development Review Committee.</p> <p>20 MR. CHEN: I thought that was in 2018.</p> <p>21 MR. DAVIS: You're right. No, no, no, wait a</p> <p>22 second. Let me -- because I think I misspoke when I first</p> <p>23 set up. Remember, you had come up with the meeting --</p> <p>24 MR. CHEN: Yeah. I thought that the Development</p> <p>25 Review Committee with the minutes was January of 2018. You</p>
<p>54</p> <p>1 to be accommodated in any kind of a reasonable fashion.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: All right. Thank</p> <p>3 you.</p> <p>4 MR. DAVIS: Okay. With regard to the sanitary</p> <p>5 sewer, that's another public facility that needs to be</p> <p>6 provided for.</p> <p>7 Now the technical staff in their staff report had</p> <p>8 -- had reported that there -- there are existing water</p> <p>9 sewer service for the property, in other words, that, in</p> <p>10 effect, the -- the infrastructure -- sewer infrastructure,</p> <p>11 water infrastructure is in place.</p> <p>12 And to my knowledge, with regard to water, I</p> <p>13 believe that that is the case.</p> <p>14 But, with sewer, I -- I believe that this -- this</p> <p>15 area, this property is located in sewer category three,</p> <p>16 which means that facilities would be available within,</p> <p>17 like, a three-year time frame. And I also note that being</p> <p>18 in category three, it's considered tier two area for</p> <p>19 provision of septic facilities, so you could still have</p> <p>20 septic facilities within this area.</p> <p>21 But and -- and normally, when you're in category</p> <p>22 three, that is considered sort of as a prima facie that --</p> <p>23 evidence that it meets the adequate public facilities</p> <p>24 requirement.</p> <p>25 But, in this case, we have, through Dr. Kosary's</p>	<p>56</p> <p>1 had a copy of the minutes.</p> <p>2 MR. DAVIS: Yeah. I did have a copy of the</p> <p>3 minutes, but I believe that it was 2000- --</p> <p>4 MR. CHEN: '19?</p> <p>5 MR. DAVIS: -- nine -- nine -- I'm getting</p> <p>6 discombooberated here.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Well, the</p> <p>8 application --</p> <p>9 MR. DAVIS: I can look at it.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: -- was filed in</p> <p>11 2018.</p> <p>12 MR. DAVIS: Correct. Could we bring that back up,</p> <p>13 that exhibit? I think it was 115-Y.</p> <p>14 MR. CHEN: Yeah, that sounds right.</p> <p>15 MR. DAVIS: Then we can get the date off of it. I</p> <p>16 -- I apologize for not recalling that.</p> <p>17 Yes, that's it. And it was 2018.</p> <p>18 MR. CHEN: So Bil was right on this occasion.</p> <p>19 MR. DAVIS: January 30, 2018.</p> <p>20 MR. CHEN: Yeah, Bil was right.</p> <p>21 MR. DAVIS: So it shows -- so it is written.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: Bil was right.</p> <p>23 It's not --</p> <p>24 (Laughter.)</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Go ahead, Mr.</p>

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15 (57 to 60)

<p>57</p> <p>1 Davis.</p> <p>2 MR. DAVIS: Thank you.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Mr. Chen has had</p> <p>4 his pound of flesh there. Go ahead.</p> <p>5 (Laughter.)</p> <p>6 MR. DAVIS: I think so. Okay.</p> <p>7 We move on then to -- I believe I have touched on</p> <p>8 public roads, storm drainage, sanitary sewer -- well, my</p> <p>9 concern is the sanitary sewer. They haven't demonstrated</p> <p>10 how they can actually get sewer service to the property,</p> <p>11 and I think that probably would've been worthwhile if they</p> <p>12 had taken a visit down to WSSC to seek that information to</p> <p>13 see if they had a problem or don't have a problem.</p> <p>14 Schools, police, fire protection don't come into</p> <p>15 play here; they're adequate.</p> <p>16 And so then move on to subsection g, which is</p> <p>17 finding that it, Will not -- the application, Will not</p> <p>18 cause undue harm to the neighborhood as a result of a</p> <p>19 noninherent adverse effect alone or the combination of a</p> <p>20 inherent and a noninherent adverse effect in any of the</p> <p>21 following categories:</p> <p>22 And i states, The use, peaceful enjoyment, economic</p> <p>23 value or development potential of abutting and confronting</p> <p>24 properties or the general neighborhood.</p> <p>25 And I believe, Madam Hearing Examiner, that the</p>	<p>59</p> <p>1 that were discussed in testimony last week.</p> <p>2 There's been testimony as to noise and particularly</p> <p>3 -- it's not just noise of children. We all know that</p> <p>4 children, they do make noise, but does it go from inherent</p> <p>5 to a noninherent status? I'm not a noise expert, I can't</p> <p>6 answer that, but you do have testimony of concerns about</p> <p>7 noise.</p> <p>8 And illumination was another area for which there</p> <p>9 was testimony -- and testimony from Mr. Posey as well as</p> <p>10 from Dr. Kosary -- identifying issues that they found with</p> <p>11 the proposed lamps and the light and glare that would be</p> <p>12 associated with that use. So I -- I do believe that in</p> <p>13 terms of traffic and illumination, there would be -- that's</p> <p>14 a problem area. And with traffic, I believe that the</p> <p>15 driveway and the amount of traffic associated with that</p> <p>16 would be a noninherent adverse effect.</p> <p>17 Now then section iii, Health, safety, welfare of</p> <p>18 neighboring residents, visitors, or employees, I -- the</p> <p>19 only safety issue that I can think of would be dealing</p> <p>20 again with traffic in terms of ingress/egress, but I -- I'm</p> <p>21 -- I don't think that I'm the person to make the comment on</p> <p>22 terms of that -- that particular finding, but I do conclude</p> <p>23 that with -- with regard to i and ii, I believe that their</p> <p>24 -- they fail -- the Applicant fails to meet those</p> <p>25 subsections.</p>
<p>58</p> <p>1 subject application does not satisfy that particular</p> <p>2 requirement, and that's in terms of the use, peaceful</p> <p>3 enjoyment, economic value, primarily, in terms of the</p> <p>4 effects that this will have, what I consider to be</p> <p>5 noninherent adverse effects on the abutting properties and</p> <p>6 also on the general neighborhood.</p> <p>7 MR. CHEN: You've discussed the -- this aspect</p> <p>8 previously in conjunction with the reports that have been</p> <p>9 submitted into the record by both the Applicant, and I</p> <p>10 think the Applicants was merit, the report --</p> <p>11 MR. DAVIS: Correct.</p> <p>12 MR. CHEN: -- and also by the opposition, the</p> <p>13 report.</p> <p>14 MR. DAVIS: Yes. McPherson report.</p> <p>15 MR. CHEN: Yeah.</p> <p>16 MR. DAVIS: That's correct. I -- I did speak to</p> <p>17 those on Friday in my testimony.</p> <p>18 MR. CHEN: Fine, okay.</p> <p>19 MR. DAVIS: Okay. With regard to traffic under</p> <p>20 subsection ii, Traffic, noise, odors, dust, illumination,</p> <p>21 or a lack of parking, I believe that the problem in this</p> <p>22 case is with the very significant amount of on-site traffic</p> <p>23 and also the concerns about being able to have proper</p> <p>24 ingress/egress from the property to Needwood Road, taking</p> <p>25 into account some of the -- you know, the traffic issues</p>	<p>60</p> <p>1 MR. CHEN: And is that your opinion relative to the</p> <p>2 provisions under the Necessary Findings section,</p> <p>3 59.7.3.1.E. --</p> <p>4 MR. DAVIS: One.</p> <p>5 MR. CHEN: -- 1?</p> <p>6 MR. DAVIS: Yes.</p> <p>7 MR. CHEN: Yes.</p> <p>8 MR. DAVIS: And then we move on to then subsection</p> <p>9 2 of that -- of the --</p> <p>10 MR. CHEN: Correct.</p> <p>11 MR. DAVIS: -- Necessary Findings. And it's, Any</p> <p>12 structure to be constructed, reconstructed, or altered</p> <p>13 under a conditional use in a residential detached zone must</p> <p>14 be compatible with the character of the residential</p> <p>15 neighborhood.</p> <p>16 And I conclude, or it's my opinion, that this --</p> <p>17 this application fails to meet that criteria. I've</p> <p>18 discussed a lot about the east side of the property in</p> <p>19 terms of the effects, what I consider to be noninherent</p> <p>20 adverse effects, associated with the waiver and the</p> <p>21 location of a driveway on the east side.</p> <p>22 But I believe that also on the west side of the</p> <p>23 property, and there's been testimony from other -- other</p> <p>24 residents of the area -- notably, Ms. Mitchell, I believe</p> <p>25 her name is, who has the -- the property that adjoins on</p>

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16 (61 to 64)

<p>61</p> <p>1 the west side of Carnegie Avenue, south side of Needwood 2 Road -- 3 MR. CHEN: Is that 7500 Needwood? 4 MR. DAVIS: I believe it's 7500 Needwood. And that 5 -- I believe that that -- I believe that there is a problem 6 in terms of, as -- as you see this particular property, 7 this property is up on the hill, it's going to be very 8 obvious -- 9 HEARING EXAMINER ROBESON HANNAN: Wait. Are you 10 saying the subject property, not 7500? 11 MR. DAVIS: Correct. The subject property as a -- 12 is a very prominent location within the community. As 13 you're driving east along Needwood Road, as you -- as 14 you're coming up from the Redland Road intersection, you -- 15 it's a very noticeable property, and I believe that the 16 size, scale of the building will have an adverse effect in 17 terms of the surrounding area. 18 Again, I see this building as being -- being 19 primarily a commercial building. I understand that, you 20 know, they're -- they're wanting to do the architecture and 21 design to make it appear residential, but this is -- this 22 is clearly going to be a very dominant feature in the -- in 23 the community, and I don't think that it's really 24 compatible with a large lot RE-1 zoned neighborhood where 25 this becomes the -- the major focal point for the</p>	<p>63</p> <p>1 noninherent adverse effects. 2 And I believe I provided discussion in terms of the 3 compatibility and my -- my position that I believe that 4 this particular conditional use is not compatible with the 5 surrounding neighborhood and -- and particularly the 6 adjoining properties at this location. 7 MR. CHEN: If I may just interrupt you for a 8 moment. 9 Madam Examiner, as a footnote, this specific 10 subsection was the lion's share of the discussion and 11 analysis of the Court of Appeals in the Butler decision. 12 You've heard fair mention of the Butler decision several 13 times. 14 MR. KLINE: Could -- could we defer that to a 15 closing argument or something? I think this is unnecessary 16 at this point in time. 17 MR. CHEN: I'm not making an argument. Just 18 pointing out that this section was -- 19 HEARING EXAMINER ROBESON HANNAN: No. I -- I -- 20 okay. Let me stop you. I am familiar with the Butler 21 decision, and -- and so you don't need to explain it. I do 22 know that that was dealing with whether there was a 23 presumption of compatibility, and, as I -- as Mr. Kline 24 said, it goes to the legal requirements, but I -- I have 25 read Butler several times.</p>
<p>62</p> <p>1 community. 2 I think that the emphasis should be on maintaining 3 a residential character with this area, and I think that 4 this is a departure from that character. All right. 5 MR. CHEN: And, as you testified, this property is 6 -- has a prominent location given its elevation; is that 7 right? 8 MR. DAVIS: Yes. And it also will be viewed, you 9 -- from coming from the west as well. This is -- again, we 10 have the problem on the street with the -- you know, with 11 the sight distance. That's because it's near the top of 12 the hill. 13 All right. Subsection 3, The fact that a proposed 14 use satisfies all specific requirements to approve a 15 conditional use does not create a presumption that the use 16 is compatible with nearby properties and, in itself, is not 17 sufficient to require conditional use approval. 18 This also -- I believe this standard derives, and 19 maybe even preceded, Zoning Text Amendment 99004, but it 20 was also part of that. And I think it's a very important 21 finding because it means, once again, compatibility becomes 22 sort of the main feature that we're trying to achieve in 23 terms of the review of a conditional use. Will the 24 conditional use be compatible at the location it's proposed 25 taking into account the inherent adverse effects and the</p>	<p>64</p> <p>1 MR. CHEN: Thank you. (Inaudible.) 2 MR. KLINE: And -- and since our law firm was 3 involved in it, I obviously am familiar with it as well. 4 HEARING EXAMINER ROBESON HANNAN: So I -- I agree 5 with Mr. Kline. We'll -- we'll go on. 6 Are you finished with number 3, Mr. Davis, or is 7 there -- 8 MR. DAVIS: Yes. 9 HEARING EXAMINER ROBESON HANNAN: -- more you want 10 to say? 11 MR. DAVIS: No. Actually, this completes what I 12 wanted to say about 7.3 and it -- and with regard to the 13 zoning standards that I wanted to -- to reference. That 14 completes my -- my -- 15 MR. CHEN: On that part? 16 MR. DAVIS: On that part. 17 MR. CHEN: Okay. Now I'd like to take you back to 18 the issue of the smart growth planning and development in 19 Montgomery County. What is your background and experience 20 with that program? 21 MR. DAVIS: Well, first of all, I think I stated on 22 Friday that Montgomery County's actually been a strong 23 proponent of smart growth since the early '90s. And you 24 see elements of smart growth in just about, you know, 25 anything that we do in the county from the standpoint of --</p>

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17 (65 to 68)

<p style="text-align: right;">65</p> <p>1 of -- of a development concern. It's a fundamentally -- 2 it's part of new master plans. 3 I believe that the current -- that the current 4 Upper Rock Creek Master Plan, the 2004 plan, is a product 5 of smart growth planning, as well as the Zoning Ordinance, 6 the new ordinance that came out in 2014; I can see the 7 smart growth aspects associated with that. The subdivision 8 regulations were redone in 2016. That also incorporates 9 smart growth nuances, and -- and I think that all of our 10 infrastructure planning in the county for, like, the last 11 20 years or so has also incorporated the concept of 12 priority funding areas for public -- for financing public 13 facilities. So I think that the County has been practicing 14 smart growth for a long time. 15 And in terms of my experience around the state of 16 Maryland and other areas, I would say that the County's 17 done a good job in terms of trying to embrace smart growth 18 and make it part of the -- the basic framework of planning 19 and development in the county. 20 MR. CHEN: All right. On this next question, and, 21 I apologize, you may have also hit on this on Friday, but I 22 don't have notes on that or a good memory, but you also 23 mentioned that the subject property is not within a 24 priority funding area; correct? 25 MR. DAVIS: That's correct.</p>	<p style="text-align: right;">67</p> <p>1 procedural requirement. 2 I believe that the conditional use is not 3 compatible with the adjoining development or compatible 4 with the surrounding area, and I believe that -- that this 5 lack of compatibility is also -- is evidenced through the 6 driveway, you know, the reduction in the waiver to allow 7 the driveway to be located where proposed. I believe that 8 that is a noninherent adverse effect at this location. I 9 believe that it's both a physical and operational 10 characteristic that is a problem. 11 Another noninherent adverse effect, I believe, 12 would deal with the -- the peaceful enjoyment, economic 13 value of the adjoining properties on each side. 14 In terms of the economic value and how that fits 15 into the decision process, again, the merit report and the 16 McPherson report went into sort of the dynamics of numbers, 17 but I was looking at it from the standpoint of what's the 18 planning implication associated with this, and -- and I 19 conclude that there is -- this -- there's going to be 20 hardship provided, or shall I say a -- a -- a noninherent 21 adverse effect associated with economic value, and I'm -- 22 I'm not even getting into numbers. I'm just saying that as 23 a planner looking at this, this is not a good situation to 24 have -- have a -- have residential properties with -- with 25 -- with one hand, a church on one side and a conditional</p>
<p style="text-align: right;">66</p> <p>1 MR. CHEN: Okay. Have you adequately addressed 2 that in your testimony? 3 MR. DAVIS: I believe so. 4 MR. CHEN: Okay. Where's the map? Let's see. 5 Where am I? Okay. Okay. 6 Now by way of, I guess, conclusion, have I covered 7 and examined you with regard to all of the issues that you 8 wanted to raise relative to this application? 9 MR. DAVIS: I believe so. 10 MR. CHEN: Is there any summary statement you want 11 to give the Examiner or any conclusion you want to give? 12 MR. DAVIS: All right. In terms of a quick summary 13 of where we are -- 14 MR. CHEN: You don't have to. Seriously, I'm -- 15 MR. DAVIS: Well, I think it'll help me just to 16 have it clear in my mind that I've touched on what I -- 17 MR. CHEN: Okay. 18 MR. DAVIS: -- conclusions. I believe that this 19 application does not meet the proven requirements of 20 7.3.1.E as I've just testified to. 21 I also believe that this -- that this application 22 is not consistent with the recommendations of the Upper 23 Rock Creek Master Plan. I believe it is not consistent 24 with the plan, and that is a major finding that has to be 25 made in regard to this application; it's an important</p>	<p style="text-align: right;">68</p> <p>1 use on the other side. It would have such dramatic effect 2 upon them. 3 I believe that the storm drain problem that we -- 4 I've testified about today, I think -- and some on Friday, 5 I believe that this also represents a noninherent adverse 6 effect on the surrounding community. 7 And, as a final point, I would just say that I 8 think that the very significant number of traffic movements 9 and -- or vehicle movements associated with this site and 10 this use at this location also, I believe, is a noninherent 11 adverse effect. The testimony, provided by I believe Mr. 12 Posey and Dr. Kosary, is very significant here in terms of 13 -- of describing how -- how it affects their particular 14 property, and it's not an insignificant number at all. 15 Compare that to what you'd see if it had two or three 16 dwelling units on it. 17 That concludes my -- 18 MR. CHEN: Thank you. 19 MR. DAVIS: -- testimony. 20 HEARING EXAMINER ROBESON HANNAN: All right. Mr. 21 Kline, are you ready for cross-examination? 22 MR. KLINE: Yes, ma'am. Normally I'd probably ask 23 for a break to try and get organized, but I think I'm going 24 to maybe do it in two ways. One, try and ask some 25 questions based on what I heard today and, depending on</p>

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18 (69 to 72)

<p>69</p> <p>1 where that takes us, maybe take a break, and then come 2 back, and go back to the earlier days for which I had other 3 notes. 4 Can I -- can I start off with asking you to pull up 5 115-Y again, which was that DRC agenda? 6 HEARING EXAMINER ROBESON HANNAN: Okay. You should 7 be seeing it. 8 MR. KLINE: Yes, ma'am. Thank you. 9 CROSS-EXAMINATION OF JOSEPH DAVIS 10 MR. KLINE: Mr. Davis, Item No. 2 is the Primrose 11 School. You said that the Applicant appeared before DRC in 12 conjunction with a conditional use application? 13 MR. DAVIS: Yes. 14 MR. KLINE: Okay. Take a look at the code number. 15 What is the prefix of 5, before the 2018, which is the way 16 we log it in? What does that stand for? 17 MR. DAVIS: That is -- it's almost like a 18 preliminary plan. I don't know the exact terminology for 19 it, but it is a -- sort of a pre-submission, I -- I -- I 20 think. 21 MR. KLINE: It's commonly called a concept plan 22 application; correct? 23 MR. DAVIS: Yes, that is it. A concept plan. 24 MR. KLINE: So it was not before the DRC in the 25 context of the conditional use. It was there for other</p>	<p>71</p> <p>1 MR. KLINE: Yeah. And I'm -- thank you. That's 2 good enough on that. And I apologize for jumping around a 3 bit (inaudible) -- 4 HEARING EXAMINER ROBESON HANNAN: Mr. Kline. 5 MR. KLINE: Yes, ma'am. 6 HEARING EXAMINER ROBESON HANNAN: Mr. Kline, 7 whatever you just did, I'm getting the reverberation again. 8 MR. KLINE: All right. So -- 9 HEARING EXAMINER ROBESON HANNAN: Analyze is down. 10 I don't know what causes it. But once in a while, your 11 voice starts reverberating. 12 MR. KLINE: Sure. Can you hear me clear -- 13 HEARING EXAMINER ROBESON HANNAN: (Inaudible.) 14 MR. KLINE: -- can you hear me clearly now? 15 HEARING EXAMINER ROBESON HANNAN: No. 16 MR. KLINE: Huh. 17 HEARING EXAMINER ROBESON HANNAN: Did you do any -- 18 do you know what you might -- did -- 19 MR. KLINE: Well, yeah. Let me -- let me try and 20 slow down. So you're getting a reverberation as I speak 21 right now? 22 HEARING EXAMINER ROBESON HANNAN: Yes. 23 MR. KLINE: Okay. 24 HEARING EXAMINER ROBESON HANNAN: And it's -- it's 25 very difficult to make out what you're saying.</p>
<p>70</p> <p>1 reasons related to something of a concept idea; correct? 2 MR. DAVIS: I would imagine that that's why it was 3 submitted. I -- I -- I see -- I agree with what you said. 4 It was not a conditional use per se. It was -- it was 5 dealing with a conditional use application that hadn't been 6 filed, was about to be filed. 7 MR. KLINE: And the e-plan notes that precede that, 8 did you see anything in those notes that gave you a better 9 indication of what was the stimulus for going to DRC with 10 the questions to be asked under a concept plan, if you -- 11 if you -- if you recall? 12 MR. DAVIS: You're talking about the notes? You're 13 talking about the -- the minutes or the -- 14 MR. KLINE: Yeah. Well, if -- if -- I don't want 15 the Hearing Examiner -- well, if she could scroll up just 16 to show the -- what I'm talking about, the various notes. 17 I'm not asking you to read all of them. I just wondered, 18 if you did read them, did you see any of the reasons why 19 the application was brought to DRC? If you don't recall, 20 I'm not going to belabor it and ask you to read everything. 21 Just if you -- 22 MR. DAVIS: No, I (inaudible) it, but nothing 23 caught my eye as to a purpose other than they wanted to get 24 comments associated with the -- what would be a conditional 25 use application for child daycare center.</p>	<p>72</p> <p>1 MR. KLINE: Well, I -- I thought that possibly 2 because I was shuffling some paper and I was going to ask 3 for your permission if you could take a second and try and 4 lift my notes off so that I can just slide them rather than 5 flip them back and forth, but -- but that -- 6 HEARING EXAMINER ROBESON HANNAN: No, it isn't the 7 paper shuffling. I -- I'm -- I'm familiar with the paper 8 shuffling. This is -- this is some kind of feedback or -- 9 and you were fine until just a moment ago. 10 MR. KLINE: Yeah. And I don't know what's doing 11 that. Would you like to take a break for a second and see 12 if I can get someone smarter than myself to see if I can -- 13 MR. CHEN: (Inaudible.) 14 HEARING EXAMINER ROBESON HANNAN: Wait, you're -- 15 you're -- let's take a break. Now, suddenly, whatever you 16 did, your voice is good again, I think. 17 MR. KLINE: Okay. Good. Well, bear with me one 18 second. Maybe it is the rustling of the papers somehow 19 creates an extended reverberation. So if you'll allow me 20 to move away from the speaker or turn the speaker off, I'll 21 -- I'll break out my notes in a way that hopefully I won't 22 be making shuffling in the background -- 23 HEARING EXAMINER ROBESON HANNAN: Okay. Let's do 24 -- 25 MR. KLINE: -- and see if that's the problem.</p>

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19 (73 to 76)

<p>73</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Okay. You do 2 that, and let's just make a -- take a five-minute break, so 3 we'll be back at 11:12. 4 MR. KLINE: Thank you very much. 5 HEARING EXAMINER ROBESON HANNAN: Okay. 6 MR. KLINE: Sorry about the inconvenience. 7 HEARING EXAMINER ROBESON HANNAN: No worries. 8 (Pause in proceedings.) 9 HEARING EXAMINER ROBESON HANNAN: All right. Go 10 ahead, Mr. Kline. 11 MR. KLINE: Mr. Davis, how am I -- how am I coming 12 through? Can you hear me? 13 MR. DAVIS: Yes, I can. 14 MR. KLINE: Okay. I think, Madam Hearing Examiner, 15 in the future what I'll do is when I go to shuffle papers, 16 I'll -- I'll go offline and because I'm thinking that's 17 probably what's causing the problem. 18 HEARING EXAMINER ROBESON HANNAN: Okay. 19 MR. KLINE: Okay. Mr. Davis, you did spend a lot 20 of time about -- talking about the -- your clients and your 21 conversations with staff at Park and Planning Commission. 22 Let me -- let me kind of put it in this way. Maybe it's a 23 reverse chronological order of the sequence of events you 24 described, but when the Montgomery County -- rephrase that. 25 When you got your hands on the staff report and it</p>	<p>75</p> <p>1 MR. KLINE: So the opposition had an adequate 2 opportunity based on the meetings with staff and an 3 opportunity to speak to the Planning Board to convey its 4 concerns; am I correct? 5 MR. CHEN: Objection. I don't know what the 6 relevancy of -- of the opposition presenting a position to 7 the Planning Board. Quite frankly, why? Given the 8 Planning Board and the interaction with the staff, why 9 would the opposition go to the Planning Board? And it's 10 not relevant in any event. 11 MR. KLINE: I'm -- I'm just -- 12 HEARING EXAMINER ROBESON HANNAN: Yeah. 13 MR. KLINE: -- I just wanted to basically get a 14 confirmation that the opposition had an opportunity to make 15 its points known to the people making recommendations to 16 the Hearing Examiner. 17 MR. CHEN: I think -- well, I'll -- I'll abide by 18 -- if that's (inaudible) -- 19 HEARING EXAMINER ROBESON HANNAN: I'm going to let 20 him answer. 21 MR. CHEN: I think he has answered it. 22 HEARING EXAMINER ROBESON HANNAN: Did you have an 23 opportunity to make points to the Planning Board? 24 MR. DAVIS: There was time certainly where it 25 could've been made. You have -- I think it was, like,</p>
<p>74</p> <p>1 didn't contain some of the things you had hoped it would 2 have, did the opposition write a letter to the Planning 3 Board to make those points, so the board would be aware of 4 it before they conducted a public hearing? 5 MR. DAVIS: My -- my recollection of the matter of 6 the Planning Board meeting was that Dr. Kosary went to the 7 (inaudible) -- 8 MR. KLINE: Joe, just -- just -- did you write a 9 letter to the Planning Board -- 10 MR. DAVIS: No. 11 MR. KLINE: -- in advance there? Okay. Fine. 12 MR. DAVIS: No. 13 MR. KLINE: Did you or Mr. Chen testify at the 14 public hearing about the things you have talked about 15 today? 16 MR. DAVIS: No. 17 MR. KLINE: Now would be the time to answer the 18 question I interrupted you on. What was the opposition's 19 presentation at the time of the Planning Board hearing? 20 MR. DAVIS: As I recall it, it was dealing 21 primarily with the tree variance issue that was before the 22 Planning Board. They were considering the preliminary 23 forest conservation plan for the project, and Dr. Kosary 24 had concerns about information shown on that plan, and I 25 believe she felt that it was not ready to be approved.</p>	<p>76</p> <p>1 three minutes with the Planning Board, so I -- you know, I 2 was never -- I was never requested to go to the Planning 3 Board to do it. Three minutes wouldn't have helped. 4 HEARING EXAMINER ROBESON HANNAN: Okay. 5 MR. KLINE: Mr. Davis, going to your comments about 6 the staff's attention to the opposition's concerns, and I 7 think the phrase was the staff did not thoroughly analyze 8 the impacts of the use or of what you considered to be the 9 objections to the property. Why is it then in light of -- 10 you pointed out the DRC, the notes in the DRC 11 recommendations and then the ultimate staff recommendation, 12 why do you feel that the staff changed its mind or didn't 13 agree with you? 14 MR. DAVIS: I'm not sure. I -- I -- I don't have 15 an answer for you in terms of that. I just noted what 16 their comments were at the time of the -- of the 17 Development Review Committee meeting and then, you know, 18 when you compare that to the staff report, I didn't see 19 that same thought flow coming through in the technical 20 staff report. 21 MR. KLINE: But you, better than any other land 22 planner that I've heard testify, would agree that the 23 technical staff of Park and Planning Commission does not 24 make land use recommendations on pending applications 25 because they feel an obligation to an applicant? That's</p>

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20 (77 to 80)

<p>77</p> <p>1 just not a accurate statement, is it?</p> <p>2 MR. DAVIS: It's not my experience when I was with</p> <p>3 the Planning Board. That's -- that's certain. I was very</p> <p>4 concerned with the comments that were made by both Mr.</p> <p>5 Weaver and by Mr. Boyd in terms of their -- their feeling</p> <p>6 -- again, it came across to me that they were saying, well,</p> <p>7 they've done about all they could do, and we're -- we're</p> <p>8 okay with it now.</p> <p>9 But I wasn't really aware that they did much other</p> <p>10 than to move the driveway location.</p> <p>11 MR. KLINE: Mr. Davis, you were -- you were candid</p> <p>12 to mention that you thought the fence would have -- I'm</p> <p>13 sorry, the fence would be located along the east, the</p> <p>14 common property line between the two properties. You were</p> <p>15 candid enough to acknowledge that that fence would have</p> <p>16 some benefits. You started talking about blocking car</p> <p>17 headlights. That's -- you still believe that'll be the</p> <p>18 case; correct?</p> <p>19 MR. DAVIS: I believe that that would be the</p> <p>20 primary purpose of it, would be to deal with the vehicle</p> <p>21 lights.</p> <p>22 MR. KLINE: Okay. And the six-foot fence would</p> <p>23 probably block the view of most of the vehicles themselves,</p> <p>24 maybe not the roofs but a lot of the other parts of the</p> <p>25 cars?</p>	<p>79</p> <p>1 MR. KLINE: -- Posey -- you're --</p> <p>2 HEARING EXAMINER ROBESON HANNAN: -- is there a</p> <p>3 question here, Mr. --</p> <p>4 MR. KLINE: Yes, ma'am.</p> <p>5 You're sitting in the -- in the Posey's house right</p> <p>6 -- or Kosary house right now; right?</p> <p>7 MR. DAVIS: Correct.</p> <p>8 MR. KLINE: Okay. So if you look out the window at</p> <p>9 the subject property with a six-foot fence interposed</p> <p>10 between that, what do you think you're going to see?</p> <p>11 MR. DAVIS: Well, I'm trying to picture it without</p> <p>12 the trees, and then I could probably give you a better</p> <p>13 answer.</p> <p>14 MR. KLINE: All right. But there are certainly</p> <p>15 trees on the Kosary/Posey property that will remain that</p> <p>16 will give you filtered views of the property, aren't there?</p> <p>17 MR. DAVIS: I don't -- I don't have a real opinion</p> <p>18 on that. So --</p> <p>19 MR. KLINE: Can -- can you -- from where you're</p> <p>20 sitting, can you see Carnegie Avenue?</p> <p>21 MR. CHEN: Hold -- hold on a minute. Mr. Davis is</p> <p>22 going --</p> <p>23 MR. DAVIS: Yeah, I see it.</p> <p>24 (Crosstalk.)</p> <p>25 MR. DAVIS: Okay. What was the question?</p>
<p>78</p> <p>1 MR. DAVIS: That, I -- that, I don't know. Again,</p> <p>2 it's -- we saw the pictures of the church that's adjacent</p> <p>3 to it, and they're -- the -- the porch area, I think were</p> <p>4 -- from where the pictures were taken, it was a little bit</p> <p>5 more elevated above that, so you could see a lot of the</p> <p>6 cars in the -- within the church parking lot, for example.</p> <p>7 When we were looking at what potentially could be</p> <p>8 the view that they would have, I believe the testimony was</p> <p>9 that they would be able to see into the property and that</p> <p>10 they would be able to see some of -- some of the cars, but</p> <p>11 I don't think it would -- my own impression was that it</p> <p>12 would not be the same level of intensity of view that you</p> <p>13 would've had to the church, but still I believe that there</p> <p>14 would've been visibility. The building would be visible,</p> <p>15 the light poles, and there was a lot of testimony about the</p> <p>16 effects of the lights that way, and -- and --</p> <p>17 MR. KLINE: Okay. Okay. No, and thank -- thank</p> <p>18 you for your candor because I was going to ask the Hearing</p> <p>19 Examiner to pull up the exhibit of the church parking lot</p> <p>20 that Mr. Posey used in his earlier testimony, and I'm</p> <p>21 pleased we all agree that that's a different situation.</p> <p>22 And -- and actually I was going to ask the question</p> <p>23 of you anyway, and you got into it, but and that is you've</p> <p>24 been in the --</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Is there --</p>	<p>80</p> <p>1 MR. KLINE: Yeah. From looking out the window, can</p> <p>2 you see Carnegie Avenue?</p> <p>3 MR. DAVIS: Well, at ground level. I think with</p> <p>4 the number of trees that will be coming down, it's going to</p> <p>5 be visible. With a six-foot fence, now I'm trying to</p> <p>6 imagine that where the property line is, and I, as I'm</p> <p>7 standing here, I --</p> <p>8 MR. KLINE: Mr. Davis, one thing at a time. Right</p> <p>9 now, I guess you can't see Carnegie Avenue right now;</p> <p>10 right?</p> <p>11 MR. DAVIS: I can see through to Carnegie Avenue.</p> <p>12 Yes.</p> <p>13 MR. KLINE: So you can see the road itself?</p> <p>14 MR. DAVIS: I -- I can see above the road, but it's</p> <p>15 -- yes, I can see the road.</p> <p>16 MR. KLINE: Okay. So the six-foot fence would --</p> <p>17 would probably block that view though?</p> <p>18 MR. DAVIS: I don't think so. Because where I see</p> <p>19 the road, where the fence would be would probably be -- I</p> <p>20 think -- I think with a six-foot fence, I would be able to</p> <p>21 see the road, Carnegie Avenue, because I think that the --</p> <p>22 I'm just looking at the trees, figuring six feet up on a</p> <p>23 tree, and it comes close to where we see the road.</p> <p>24 MR. KLINE: Well, the -- do you have a sense of the</p> <p>25 topographical differences between the level of where you</p>

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21 (81 to 84)

<p style="text-align: right;">81</p> <p>1 are and the level of the backyard of the Kosary house and 2 the level of Carnegie Avenue? 3 MR. DAVIS: Yes. They're similar elevations. You 4 know, the area begins to slope heading south, you know, 5 towards Crabbs Branch. But, generally, it's -- generally, 6 it's flat. 7 MR. KLINE: Okay. I think probably before I even 8 interrupted, you were saying that someone in the 9 Kosary/Posey residence will probably see the upper floor or 10 the upper level of the roof of the building and the lights. 11 You did say that? 12 MR. DAVIS: No, I didn't say -- well, I think that 13 they would see the lights. They would see -- there's not a 14 -- it's a -- 15 MR. KLINE: The pole lights. 16 MR. DAVIS: -- one-story building. Yeah, they'll 17 see the pole lights. 18 MR. KLINE: Right. 19 MR. DAVIS: The -- and they could see the -- I -- I 20 believe they would see the lights on the building. Is that 21 what you're talking about? 22 MR. KLINE: No. I -- well, you said lights. I 23 assumed you meant the pole lights, but if -- 24 MR. DAVIS: I think I was talking about the pole 25 lights.</p>	<p style="text-align: right;">83</p> <p>1 certainly have effects on the community as well. 2 MR. KLINE: Um-hmm. But all of that is 3 speculative; correct? I mean, you don't -- you're -- 4 you're -- you're speculating on what could go wrong or what 5 might not occur? 6 MR. DAVIS: That -- that is speculative, but I 7 think what is factual is the fact that they will have to 8 improve the storm drainage system by replacing pipes with 9 larger pipes. I think that that's -- that's -- that's 10 almost -- that's a given. 11 MR. KLINE: Okay. Well, does the compatibility 12 standard or the harmonious standard in the Zoning Ordinance 13 take into account or contemplate the disruption that you 14 said basically affects those two issues? 15 MR. DAVIS: I see the point that you're making. I 16 think that in terms of the overall project, I think that 17 the -- this -- this becomes another example of the 18 excessive size, I believe, of what's being proposed at this 19 particular location. The fact that the -- the size of this 20 project is driving the need for the amount of additional 21 stormwater management improvement, in terms of the drain 22 pipes -- 23 MR. KLINE: Can I be heard? 24 MR. DAVIS: Yes. 25 MR. KLINE: Oh, now --</p>
<p style="text-align: right;">82</p> <p>1 MR. KLINE: Yeah, fine. Okay. Thank you. 2 Sorry, I'm just trying to read my notes. I'll be 3 -- and I'm going offline to do it. I'll be right back. 4 Mr. Davis, you were talking about -- well, let me 5 put it this way. How is it that a subterranean 6 infrastructure improvement changes the character of a 7 neighborhood? 8 MR. DAVIS: I think that the -- the change in the 9 character of the neighborhood, there's going to be a period 10 of time when the construction is ongoing through that area. 11 That -- that's one factor to take into account. There's 12 going to be probably several months involved in -- in doing 13 this. Now I haven't sat there to try and scope it out, but 14 I think that's a significant intrusion into -- into the 15 lives and to the properties of these people. 16 The other thing is, what if you can't get all of 17 the easements that you're going to need, you know? I mean, 18 I think that there's going to be the need for securing 19 easements. I didn't mention that in my testimony, but I -- 20 I think that there's a number of issues that call into 21 question the ability of -- of the improvements to be 22 actually possibly accomplished as envisioned. And, if not, 23 and this -- this use is somehow allowed to go forward with 24 the either partial product or -- or not completed product, 25 in terms of storm -- proper storm drainage, that could</p>	<p style="text-align: right;">84</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Now we can. 2 MR. KLINE: Okay. Now for some reason -- I'm 3 sorry. For some reason, Mr. Davis, I just lost the last 4 couple sentences. I -- it just went mute for some reason. 5 MR. DAVIS: Okay. We were -- we were talking about 6 the storm drains and how that -- how this contributes to 7 what would be a noninherent adverse effect, and I would say 8 it probably joins in with other factors. I see this as an 9 intrusion into the community that's really not necessary 10 because it's going to affect that community. Now, granted, 11 once the work's all done, that may be a different story, 12 but I think this is going to be a very intrusive and -- 13 project, and -- and, again, you know, as to whether or not 14 that even goes forward or not, I see as an APF problem as 15 well as a harmonious relationship with the community. 16 MR. KLINE: Can you all hear me now? 17 MR. DAVIS: Yes, I can. 18 MR. KLINE: Yeah. Okay. Well, let -- I -- I'd 19 like to kind of probe that a little bit. And it's -- and 20 so I'll give you a -- admittedly a theoretical question, 21 but it will test out what you're saying, and that is, what 22 if Primrose had said money is no issue. We will go out and 23 we will go ahead and lower the level of the ridge on 24 Needwood Road and -- so there is no longer any height 25 issues and that Carnegie Avenue would then be considered</p>

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22 (85 to 88)

<p style="text-align: right;">85</p> <p>1 appropriate for use, and Carnegie Road would become the 2 main entrance into the property, which is where we started, 3 but it didn't work out that way. That would basically be a 4 disruption to the public road network but would be 5 beneficial to the flow of traffic. 6 And I'm not asking you to comment on Primrose. I'm 7 just saying that would be basically disruptive and yet 8 would be beneficial. 9 Wouldn't that be a valid undertaking to -- to do? 10 MR. DAVIS: Again, you know, focusing on what you 11 suggested as a theoretical road improvement, I think that 12 if the County were willing to do that type of a project at 13 this location, that certainly would be disruptive, as would 14 the -- the -- comparing that to the storm drain pipes, 15 could be done, but, again, at what cost and would the 16 County do it, and, you know, you just get into a whole 17 aspect of is -- is this really in the realm of what you 18 should be doing for public improvements in a non-priority 19 funding area. 20 MR. KLINE: Well, don't you agree that it would be 21 beneficial to go ahead and fix the -- fix Needwood Road and 22 eliminate that -- that elevation and make Carnegie a street 23 that is usable and buildable to connect the South Riding 24 with the road? I mean, when you were at Park and Planning 25 Commission, how many times did you tell me, "Jody,</p>	<p style="text-align: right;">87</p> <p>1 built is by whoever develops the subject property at some 2 point in time in the future, and the County will not be 3 stepping in to do that? 4 MR. DAVIS: I can't see the County stepping in to 5 do it, but also I think it would be -- I don't know that 6 the County -- I can't really see the County allowing even a 7 private group to come in and do it because of, you know, 8 what would be the purpose for it, why the disruption? It'd 9 be a big project to come in to kind of scrape off the top 10 of that hill. 11 MR. KLINE: Yeah. Well, my -- my -- my question 12 only referred to just building Carnegie Avenue, but -- but 13 I understand your point. But what -- the dichotomy that's 14 bothering me the most is that when I heard the concerns 15 from -- expressed by various people about the condition of 16 the storm drain system as it exists today, and do I 17 understand you to be saying that you don't believe that 18 Primrose can voluntarily make those storm drain 19 improvements without the permission of Montgomery County or 20 the participation of Montgomery County? 21 MR. DAVIS: Oh. I believe that the only way they 22 could do it is -- is with somehow being part of -- of a 23 public project associated with Montgomery County. This is 24 -- this is existing public infrastructure, and for that to 25 be modified or changed, I think, would probably require the</p>
<p style="text-align: right;">86</p> <p>1 connectivity is important in subdivision"? 2 So isn't that a valid public exercise? 3 MR. DAVIS: I believe that in the future, if the 4 County wanted to connect Carnegie through from South Riding 5 to Needwood Road, and they determined that that was in the 6 public interest to do that, then I think that that would be 7 something that would provide connectivity. And I've -- I 8 have viewed Carnegie as potentially a connective road in 9 this situation. 10 MR. KLINE: From the record you've looked at so 11 far, do you have any sense that the public sector expects 12 to build Carnegie in order to improve traffic circulation 13 in the area? 14 MR. DAVIS: There's no plans to do that, but, you 15 know, again, Carnegie Avenue is a public road, albeit not 16 built to county standards, and it does provide access for, 17 you know, the Tapscott family, and so I see it remaining 18 there pretty much as is. As to whether it's modified in 19 the future, I think, would have to be based on -- on a 20 decision made at that time. 21 MR. KLINE: Sure. You may recall the testimony of 22 the previous owners of the property in talking about 23 various attempts to find someone to develop the property. 24 Based on your experience in the subdivision review process, 25 isn't it reasonable that the only way it's going to get</p>	<p style="text-align: right;">88</p> <p>1 County to do it through a project that maybe would be 2 contributed to by a property owner. 3 This is -- this is -- this is too significant an 4 issue, I think, for the County to -- to just say, "Oh, 5 we'll let someone come in and go through the neighborhood 6 and start digging it up and changing pipes." 7 MR. KLINE: Well, I'd like -- I'd like you to 8 distinguish between the permitting process where the County 9 would review what's going to be done and the funding of it, 10 and what you have been mentioning many times is priority 11 funding. As long as the County is not going to have to 12 spend a dollar to fix it up, why would they not go ahead 13 and give the permits to allow it to be done? 14 MR. DAVIS: I -- I really don't have an answer for 15 you on that one, Mr. Kline, because I think that this -- 16 there would be pretty significant public policy issues 17 associated with that -- with that type of a project, in my 18 opinion. 19 MR. KLINE: Well, and why do you say that? What -- 20 what does this suddenly open up -- that goes back to your 21 character issue, but suddenly is an incentive for other 22 people to do more redevelopment? Why does -- why does that 23 flow? 24 MR. CHEN: Objection. He's already answered that. 25 It's going to have to be part of a capital improvement</p>

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23 (89 to 92)

<p style="text-align: right;">89</p> <p>1 project because you're going into an existing public 2 facility. He's already testified to that, a couple of 3 times actually. 4 MR. KLINE: Okay. Well, now -- 5 HEARING EXAMINER ROBESON HANNAN: I agree. I do 6 think he did. 7 MR. KLINE: Okay. Fine. I will -- we'll take -- 8 take care of through other testimony then. 9 Madam Hearing Examiner, I've actually finished the 10 questions that came out of today, but I had organized some 11 questions from previous days. Could I just have five 12 minutes to get those organized and come back for that? 13 MR. CHEN: Do you want to take a break? It's 14 quarter of now, Mr. Kline. Would that work, or Madam 15 Examiner? 16 HEARING EXAMINER ROBESON HANNAN: Yeah, we could 17 take our lunch break now, and give you plenty of time to 18 come back. 19 MR. CHEN: Whatever (inaudible), Mr. Kline. I'm 20 not trying to cause a problem. 21 MR. KLINE: Yeah, no, I understand. I'm just 22 trying to decide. Part of -- part of what I'm thinking 23 about right now is I have people on the line listening to 24 all this, probably wondering when they're going to get a 25 chance to testify. If we took a lunch break, we'd be back</p>	<p style="text-align: right;">91</p> <p>1 I think -- well, maybe I should get clarification. 2 My understanding is we complete with Mr. Davis, Mr. Chen, 3 then I will be having to call any rebuttal witnesses. 4 MR. CHEN: That's -- 5 MR. KLINE: Am I correct on that? 6 MR. CHEN: That's my understanding too, Mr. Kline. 7 MR. KLINE: Very good. Okay. 8 HEARING EXAMINER ROBESON HANNAN: All right. All 9 right. With that, we'll reconvene at 12:45. 10 (Pause in proceedings.) 11 MR. CHEN: Madam Examiner, as a preliminary matter 12 real quick, during the luncheon break, Mr. Davis was able 13 to go to the windows and look over to Carnegie. Mr. Posey 14 is six-foot, and Mr. Posey went out and stood on the 15 property line, so if Mr. Kline would like to resume that 16 line of questioning of Mr. Davis, he's welcome to do that 17 because Mr. Davis has had a chance to look out the window 18 towards Carnegie and the property line and the trees and 19 whatnot. 20 HEARING EXAMINER ROBESON HANNAN: All right. Well, 21 regardless of Mr. Kline, why don't you tell me what you 22 saw? 23 MR. DAVIS: Yes, ma'am. 24 HEARING EXAMINER ROBESON HANNAN: And, Mr. Kline, 25 you'll be able to cross-examination -- cross-examine on his</p>
<p style="text-align: right;">90</p> <p>1 at, what? One o'clock probably? 2 HEARING EXAMINER ROBESON HANNAN: Quarter to one. 3 MR. KLINE: Quarter to one. Okay. Okay. Let's 4 take a break now. That'll give me enough time, and I'll be 5 back at quarter to one with hopefully a organized set of 6 questions for Mr. Davis. 7 HEARING EXAMINER ROBESON HANNAN: Well, when are we 8 going to get to the cross-examination of Ms. -- Dr. Kosary? 9 Because that's outstanding too. 10 MS. KOSARY: No, no, no. I got cross -- 11 MR. KLINE: I don't think so. I think we've done 12 that. 13 MR. CHEN: Yeah. I -- 14 HEARING EXAMINER ROBESON HANNAN: Oh. 15 MR. CHEN: That's my recollection as well. 16 MR. KLINE: Yeah. Her -- I'm -- I'm sure she -- 17 HEARING EXAMINER ROBESON HANNAN: I thought it was 18 just on traffic. I -- I apologize for that. 19 MR. KLINE: Yeah. Right. 20 HEARING EXAMINER ROBESON HANNAN: Okay. 21 MR. KLINE: No, I -- I understood that Dr. Kosary 22 had her chance to critique Mr. Cook's. Mr. Chen may want 23 to bring her back as a witness, as a surrebuttal, redirect 24 or whatever it is later on, but I think right now we're 25 okay with that.</p>	<p style="text-align: right;">92</p> <p>1 answers to my questions. 2 MR. DAVIS: All right. We were observing from the 3 windows, standing, and Mr. Posey was positioned at the 4 property line. Again, Mr. Posey is six feet tall, so that 5 I was able to see a very good reference in terms of where 6 the top of the fence would be, and, looking at it, it would 7 be that -- at the property line, you would be able to see 8 just sort of the -- the pavement. It gets to -- to the 9 ground level at Carnegie. So with a car going by, you 10 would be able see the vehicle over the fence. 11 And then with other areas, it was a little 12 difficult in the sense that, you know, there's existing 13 tree buffer there now, but imagining it without the tree 14 buffer, I think that as you move a little bit -- as you 15 move more to the north and looking at the line, you're 16 still -- I believe that you're still going to be able to 17 see cars in the parking lot over the fence because of their 18 height above the ground level. 19 HEARING EXAMINER ROBESON HANNAN: All right. Any 20 questions based on my questions, Mr. Kline? 21 MR. KLINE: No, thank you. 22 HEARING EXAMINER ROBESON HANNAN: Okay. Go ahead. 23 Mr. Kline, do you have more cross-examination of Mr. Davis? 24 MR. KLINE: Yes, ma'am, if I could continue for a 25 bit longer.</p>

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24 (93 to 96)

<p>93</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Sure.</p> <p>2 MR. KLINE: Madam Hearing Examiner, could you pull</p> <p>3 up the staff report, Exhibit 106.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: Okay. You should</p> <p>5 be seeing it.</p> <p>6 MR. KLINE: Yes, ma'am. And could you go to page</p> <p>7 3, Figure 2.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: Okay. You should</p> <p>9 be seeing that now.</p> <p>10 MR. KLINE: Fine. Mr. Davis, you're familiar with</p> <p>11 what this is; right?</p> <p>12 MR. DAVIS: Yes. The surrounding area.</p> <p>13 MR. KLINE: So I'm hoping that this -- my initial</p> <p>14 question will just allow a dialogue between us, and that</p> <p>15 is, I'm having trouble reconciling with what I see on the</p> <p>16 screen right now with your definition of the surrounding</p> <p>17 neighborhood as being basically a low-density, large-lot</p> <p>18 area. Can you -- can you -- can you repeat what you</p> <p>19 probably told me, but try and help me understand it better?</p> <p>20 MR. DAVIS: Yes. First of all, the boundary that I</p> <p>21 defined for the surrounding area is the western boundary --</p> <p>22 MR. KLINE: Joe.</p> <p>23 MR. DAVIS: -- which would be Redland Road --</p> <p>24 MR. KLINE: Joe, Joe. Just I'm -- we're going to</p> <p>25 get there, but I'd like to do it a little more</p>	<p>95</p> <p>1 residential wedge.</p> <p>2 So, from that standpoint, what I see as kind of a</p> <p>3 policy view, I believe that the RE-1 areas and would</p> <p>4 certainly be part of that -- that wedge area. As to R-200,</p> <p>5 there's some older R-200 that's on larger lots, but I</p> <p>6 believe those lots that -- immediately confronting, for</p> <p>7 example, the north side of Needwood Road in the vicinity of</p> <p>8 the subject property, a number of those lots are --</p> <p>9 approach an acre or more in size as well.</p> <p>10 MR. KLINE: So let me -- let me break down the red</p> <p>11 area because I -- and, believe me, I know what you're</p> <p>12 trying to say. But let me break it up into three</p> <p>13 components.</p> <p>14 MR. DAVIS: Okay.</p> <p>15 MR. KLINE: The R -- the -- the land area within</p> <p>16 the surrounding neighborhood south of Needwood, what you've</p> <p>17 been calling South Riding, so that's a cluster subdivision,</p> <p>18 and I think you used the indefinite phrase of large lots.</p> <p>19 What -- what do you -- do you have any knowledge of what</p> <p>20 the typical lot size is?</p> <p>21 MR. DAVIS: In that -- excuse me -- no, I don't --</p> <p>22 I don't recall at this point. It's been --</p> <p>23 HEARING EXAMINER ROBESON HANNAN: May I interrupt?</p> <p>24 I'm not clear on what area you're referring to.</p> <p>25 MR. KLINE: Sure.</p>
<p>94</p> <p>1 sequentially. So just explain why you consider that area</p> <p>2 to be low density, large lots?</p> <p>3 MR. DAVIS: All right. I believe that with the</p> <p>4 RE-1 and the R-200 zoning that we have along Needwood Road,</p> <p>5 a number of those lots were -- were built some time ago,</p> <p>6 and the -- the lots tend to be on the order of one acre and</p> <p>7 larger in the RE-1 zone. With regard to the R-200 areas, I</p> <p>8 believe that -- that they are -- particularly the South</p> <p>9 Riding neighborhood immediately south of the subject site,</p> <p>10 I -- I recall that as being an -- an RE-1 cluster</p> <p>11 development, and those lots are still fairly good sized</p> <p>12 lots, and you also have the open space that was dedicated</p> <p>13 for the Crabbs Branch Park.</p> <p>14 Also, just, you know, noting, again, in terms of</p> <p>15 the master plan, there is the language that identifies as</p> <p>16 RE-1 and R-200 areas, residential areas, are -- can be</p> <p>17 considered as part of -- and I reference a point -- Exhibit</p> <p>18 227, document EEE, which is an excerpt from the General</p> <p>19 Plan Refinement, Goals and Objectives, and there there is</p> <p>20 discussion about the large lot residential wedge, it's</p> <p>21 called, and that's on page 22 of that plan, of the General</p> <p>22 Plan Refinement, Goals and Objectives. And it says, Area</p> <p>23 master plans and functional plans since 1969 have further</p> <p>24 defined the wedge. All master plans since 1969 have</p> <p>25 considered areas zoned for lots of one and two acres as the</p>	<p>96</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Can you try and</p> <p>2 --</p> <p>3 MR. KLINE: What I'm -- where -- where you've got</p> <p>4 the cursor, the -- the quadrant south of Needwood Road,</p> <p>5 sort of circumscribing the subject property on three sides,</p> <p>6 all the way down to the red area or the red line. We</p> <p>7 acknowledge that's RE-1 --</p> <p>8 HEARING EXAMINER ROBESON HANNAN: This area here?</p> <p>9 MR. KLINE: Yes, ma'am.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: The entire area</p> <p>11 south of Needwood and west of -- east of Redland?</p> <p>12 MR. KLINE: Yes, ma'am.</p> <p>13 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>14 MR. KLINE: Because I think we would all agree that</p> <p>15 when you take a look at the zoning maps, there are</p> <p>16 different zoning patterns in these areas though. We have</p> <p>17 the unusual RE-1, then we go to R-200, and then we go back</p> <p>18 to RE-1 again.</p> <p>19 So but what would you say is the typical lot size</p> <p>20 in the area south of Needwood, say east of the subject</p> <p>21 property, if you know?</p> <p>22 MR. DAVIS: I -- I don't recall those specific lot</p> <p>23 sizes. That -- I --</p> <p>24 MR. KLINE: Right.</p> <p>25 MR. DAVIS: -- I looked at the subject plans quite</p>

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25 (97 to 100)

<p style="text-align: right;">97</p> <p>1 a while ago.</p> <p>2 MR. KLINE: Sure. But -- but probably less than</p> <p>3 one acre in size?</p> <p>4 MR. DAVIS: I believe so simply because it is a</p> <p>5 cluster plan.</p> <p>6 MR. KLINE: Okay. I kind of cut you off earlier in</p> <p>7 terms of talking to -- about that area of the surrounding</p> <p>8 -- I'm sorry, of the surrounding area west of Redland Road.</p> <p>9 And I just wanted to give you a chance now to explain why</p> <p>10 you did not include that in your -- in your definition of</p> <p>11 surrounding neighborhood.</p> <p>12 MR. DAVIS: Okay. Basically, with Redland Road,</p> <p>13 you have a -- you have a road -- first, its designation, it</p> <p>14 is -- it is a primary residential street, but in the master</p> <p>15 plan -- in the context of the master plan, it was noted</p> <p>16 that it actually functions at what would be considered a</p> <p>17 high level of through traffic associated with -- with the</p> <p>18 traffic volume on that road. So I see it, number one, as</p> <p>19 the potential for being what I would call almost a natural</p> <p>20 type boundary.</p> <p>21 On the other side of the road, you've got a number</p> <p>22 of properties R-90, PD-5 development, which is, I believe,</p> <p>23 mostly condos, townhouse-type development. And then you</p> <p>24 have R-200 moving up towards the north -- the north area.</p> <p>25 Now, also, it's in the Shady Grove Master Plan</p>	<p style="text-align: right;">99</p> <p>1 defined -- I -- I tend to think of the surrounding area as</p> <p>2 being --</p> <p>3 MR. KLINE: Mr. Davis, do you know why staff might</p> <p>4 have included that area?</p> <p>5 MR. DAVIS: No.</p> <p>6 MR. KLINE: Okay. There were residents who lived</p> <p>7 in that area who showed up at the hearing and said the --</p> <p>8 the Primrose School would affect their --</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Are you -- wait</p> <p>10 just a second. Just a second. Is there a question in</p> <p>11 here?</p> <p>12 MR. KLINE: Yeah, yeah. But I have to -- okay.</p> <p>13 Did anybody appear at the hearing who lived within</p> <p>14 that area west of Redland Road who testified that this was</p> <p>15 their neighborhood and it was going to be affected by the</p> <p>16 Primrose proposal?</p> <p>17 MR. DAVIS: Yes, I did --</p> <p>18 MR. CHEN: Which --</p> <p>19 MR. DAVIS: -- hear that.</p> <p>20 MR. CHEN: Which -- which hearing are we talking</p> <p>21 about?</p> <p>22 MR. KLINE: Well, I guess it would've had to have</p> <p>23 been one of the earlier ones because it was individual</p> <p>24 citizens who came from that community to testify.</p> <p>25 MR. CHEN: I'm not trying to be difficult. You're</p>
<p style="text-align: right;">98</p> <p>1 area, and that's another distinction. So I see more</p> <p>2 intense -- more intensive form of development there. And</p> <p>3 also from the standpoint you have Shady Grove Master Plan,</p> <p>4 which has its own set of goals, objectives, guidelines,</p> <p>5 recommendations for development, and then on the east side</p> <p>6 of Redland Road, you have the Upper Rock Creek Master Plan</p> <p>7 which has its goals, objectives, guidelines, and</p> <p>8 recommendations for development.</p> <p>9 So I see it from the -- the density -- kind of the</p> <p>10 density of development as well as from the policy aspect of</p> <p>11 development in terms of, you know, planning</p> <p>12 recommendations, and that's sort of where I am with the</p> <p>13 surrounding area.</p> <p>14 MR. KLINE: From a planning perspective, you -- you</p> <p>15 could probably understand why staff at Park and Planning</p> <p>16 did include that area though within the surrounding area?</p> <p>17 Would you -- well, would you like to opine on why that</p> <p>18 might have been?</p> <p>19 MR. DAVIS: I -- I -- unless they saw Redland Road</p> <p>20 as functioning as some sort of a -- you know, as a</p> <p>21 connector-type road for the entire community; otherwise, I</p> <p>22 really don't know because --</p> <p>23 MR. KLINE: Okay.</p> <p>24 MR. DAVIS: -- it's a bigger -- it's a bigger</p> <p>25 surrounding area than -- than I would have typically</p>	<p style="text-align: right;">100</p> <p>1 talking about the OZAH hearing?</p> <p>2 MR. KLINE: Yes, sir.</p> <p>3 MR. CHEN: Okay. Thank you. Go ahead.</p> <p>4 MR. DAVIS: Okay.</p> <p>5 MR. KLINE: So -- so, Mr. Davis, you did hear</p> <p>6 residents within that area west of Redland Road testify at</p> <p>7 the hearing that their lives would be affected by the</p> <p>8 Primrose proposal, so they felt it was of importance to</p> <p>9 them?</p> <p>10 MR. DAVIS: I believe that you're correct. I did</p> <p>11 hear that same testimony, but I didn't come to the same</p> <p>12 conclusion that it was part of the -- actually part of the</p> <p>13 surrounding area to be evaluated from the context of -- of,</p> <p>14 you know, the analysis for a conditional use.</p> <p>15 MR. KLINE: But different planners could come to</p> <p>16 different reactions as to whether it should or should not</p> <p>17 be included in the surrounding neighborhood; correct?</p> <p>18 MR. DAVIS: I agree. Concept of --</p> <p>19 MR. KLINE: Thank you. Thank you.</p> <p>20 MR. DAVIS: -- (inaudible) area is flexible.</p> <p>21 MR. KLINE: All right. Then let me take you to the</p> <p>22 third area, and that -- that's --</p> <p>23 MR. CHEN: (Inaudible.)</p> <p>24 MR. KLINE: -- what I will call north of --</p> <p>25 MR. CHEN: Mr. Kline. Excuse me.</p>

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26 (101 to 104)

<p>101</p> <p>1 MR. KLINE: Pardon me.</p> <p>2 MR. CHEN: Mr. Kline.</p> <p>3 MR. KLINE: Yes, sir.</p> <p>4 MR. CHEN: Let the witness finish his answer.</p> <p>5 MR. KLINE: No, not if he's not responding to my</p> <p>6 question.</p> <p>7 MR. CHEN: Well, then, you can --</p> <p>8 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>9 MR. CHEN: -- (inaudible) for the Examiner then. I</p> <p>10 mean, I thought --</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>12 MR. CHEN: -- I thought the witness was responding.</p> <p>13 HEARING EXAMINER ROBESON HANNAN: I -- I -- you</p> <p>14 have redirect, Mr. Chen, so you can follow up with him on</p> <p>15 redirect, but this is cross, and he can be limited to yes</p> <p>16 or no answers.</p> <p>17 MR. KLINE: Sure.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: So go ahead.</p> <p>19 MR. KLINE: Okay. And, Mr. Davis, I'll try and be</p> <p>20 more precise in my questions, so you don't have to go -- go</p> <p>21 beyond what I'm trying to get for an answer, and that way I</p> <p>22 don't have to object.</p> <p>23 And so what I wanted to do is draw your attention</p> <p>24 next to the area north of Needwood Road, east of Redland</p> <p>25 Road, the area from Needwood all the way up to, say,</p>	<p>103</p> <p>1 as -- as low density, in the context of that neighborhood.</p> <p>2 MR. KLINE: But you would not normally classify a</p> <p>3 half-acre lot as being low density development, would you?</p> <p>4 MR. DAVIS: No, I would -- I would not characterize</p> <p>5 it as rural, for example.</p> <p>6 MR. KLINE: Mr. Davis, you gave a -- you gave us a</p> <p>7 good run-through of the -- of the land use and zoning and</p> <p>8 environmental recommendations in the Upper Rock Creek</p> <p>9 Master Plan.</p> <p>10 So could I ask if the Hearing Examiner could pull</p> <p>11 up the Rock Creek Area Master Plan on the screen. I don't</p> <p>12 recall what we named that as the exhibit.</p> <p>13 HEARING EXAMINER ROBESON HANNAN: Okay. This is</p> <p>14 Exhibit 236, I think. Yes.</p> <p>15 MR. KLINE: Thank you. And could you scroll</p> <p>16 forward to page 47.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: Okay. You should</p> <p>18 be seeing it.</p> <p>19 MR. KLINE: Thank you.</p> <p>20 And, Mr. Davis, I believe you used this figure as</p> <p>21 -- as an exhibit in part of your presentation; right?</p> <p>22 MR. DAVIS: I believe -- I do recall seeing that,</p> <p>23 yes.</p> <p>24 MR. KLINE: Okay. So the text that goes along with</p> <p>25 that on page 48, in the third paragraph down says, An</p>
<p>102</p> <p>1 Candlewood Elementary School.</p> <p>2 MR. DAVIS: Okay.</p> <p>3 MR. KLINE: And when I -- when I look -- I know you</p> <p>4 said that there are some large lots in excess of one acre,</p> <p>5 but, to me, that area looks predominantly, if not</p> <p>6 overwhelmingly, R-200 lots -- lots. Do you agree?</p> <p>7 MR. DAVIS: I agree.</p> <p>8 MR. KLINE: Are there cluster subdivisions within</p> <p>9 there that have lots as small as 12,000 square feet?</p> <p>10 MR. DAVIS: I don't -- I don't recall the lot sizes</p> <p>11 in that area, but if it's cluster development, typically</p> <p>12 you could expect smaller lots.</p> <p>13 MR. KLINE: Then to wrap up, with -- with the --</p> <p>14 with the understanding that you don't believe anything west</p> <p>15 of Redland Road should be included in the surrounding</p> <p>16 neighborhood, would you not agree with me that the -- the</p> <p>17 predominant character of everything within the red line is</p> <p>18 not low density, large lots?</p> <p>19 MR. DAVIS: They're -- I guess I don't agree with</p> <p>20 you because I'm looking at it in the context of the master</p> <p>21 plan.</p> <p>22 MR. KLINE: No, but my question simply was lot size</p> <p>23 and does it fit that definition: low density, large lots?</p> <p>24 MR. DAVIS: There are large lots and -- in there,</p> <p>25 and it's one-family residential, so I would contrast that</p>	<p>104</p> <p>1 impervious cap mandates the level of impervious -- I'm</p> <p>2 sorry, let me correct that -- let me try and get the --</p> <p>3 yeah. It's the sentence about halfway down the third</p> <p>4 paragraph on the left-hand -- yeah, about seven or eight</p> <p>5 lines down.</p> <p>6 An impervious cap mandates a level of impervious</p> <p>7 surface coverage to sustain the current quality of the</p> <p>8 streams in the area north of Muncaster Mill Road.</p> <p>9 You see that language?</p> <p>10 MR. DAVIS: Yes.</p> <p>11 MR. KLINE: Okay. From there, you went on and</p> <p>12 basically used the bullet points below that, that the</p> <p>13 Hearing Examiner's got two of them, and then there's some</p> <p>14 more on the following page, and I'll -- you don't -- yeah,</p> <p>15 actually, that's even better. Great. Thank you.</p> <p>16 So this section of the master plan, talking about</p> <p>17 the area that deserves special attention, begins with the</p> <p>18 recommendations at the bottom. Designated special</p> <p>19 protection area for the Upper Rock Creek Watershed within</p> <p>20 the planning area north of Muncaster Mill Road. Do you see</p> <p>21 that, sir?</p> <p>22 MR. DAVIS: Yes.</p> <p>23 MR. KLINE: So my point being, the first four</p> <p>24 bullet points in this section dealing, which is in a</p> <p>25 section called Water Resources, all deal with development</p>

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27 (105 to 108)

<p>105</p> <p>1 in the area north of Muncaster Mill Road. Would you concur 2 in that assessment by looking at those four bullets? 3 MR. DAVIS: Yes. 4 MR. KLINE: And then you went to the last bullet, 5 the six bullet, and basically walked us through all of 6 these design considerations and explained why they were 7 appropriate on the subject property. And the -- I -- I 8 find it hard to understand why you feel these are 9 applicable when they are in a section dealing with only -- 10 only land area north of Muncaster Mill Road. They're not 11 bad design principles generally, but they -- 12 HEARING EXAMINER ROBESON HANNAN: Mr. Kline. 13 MR. KLINE: -- aren't applicable -- yes. I'm -- 14 HEARING EXAMINER ROBESON HANNAN: Is -- 15 MR. KLINE: -- thank you. I'm sorry. Thank you. 16 Yes. Thank you. 17 Mr. Davis, why do you believe that the points in 18 the six bullet are appropriate to the subject property when 19 they are in a section that deals exclusively with the area 20 north of Muncaster Mill Road? 21 MR. DAVIS: I believe -- let me see now. I have to 22 -- I'm trying to think back about my testimony about what 23 appears -- the item on page 49, that final bullet. May I 24 -- may I look through my notes for a minute, back to what 25 my comments for --</p>	<p>107</p> <p>1 MR. KLINE: Oh, I'm sorry. I was muted. 2 I was actually -- did I interrupt Mr. Davis' answer 3 though? 4 MR. DAVIS: No. I think it -- I was -- I commented 5 that -- I think I was highlighting -- I highlighted a 6 couple of sentences on page 48. I don't recall my 7 testimony getting into the -- where it says recommendations 8 in those follow-up bullets. 9 MR. KLINE: And, unfortunately, when I was offline 10 there -- let me ask a question that I think will probably 11 put -- satisfy both of us, and that is, is it a fair 12 characterization of your testimony that the recommendations 13 in the Upper Rock Creek Master Plan apply primarily to the 14 area north of Muncaster Mill Road where there is an 8 15 percent imperviousness limit and, to a lesser extent, 16 through the entire southern half of the planning area south 17 of Muncaster Mill Road, but to a lesser extent? 18 MR. DAVIS: I -- I agree with that. The cap of 8 19 percent in the north area was for the area north of 20 Muncaster Mill Road. 21 MR. KLINE: And that, for instance, the -- the 22 bullets on page 49 that you may or may not have testified 23 from are good planning principles that would be applicable 24 everywhere whereas they might be mandatory north of 25 Muncaster Mill Road but less mandatory south of Muncaster</p>
<p>106</p> <p>1 MR. KLINE: No, of course. It's been a while since 2 you testified. You need the same prep time I needed. 3 MR. DAVIS: Let me see. 4 (Mr. Davis reviewing documents.) 5 MR. DAVIS: I believe my comments were -- okay. 6 Continue down the lower. That's -- okay. I don't need 7 that in my -- actual master plan here for 49. I want to 8 look at the -- all right. 9 I'm not sure that I -- I'm not sure that my 10 testimony went to that last bulleted item under New 11 Development. In my text, I actually have -- of the plan, I 12 did outline -- underline two of them: the second one, 13 locating houses at the front of a building envelope to 14 reduce driveway lengths, and use of shared driveways were 15 feasible in reduction of driveway lengths or design. But I 16 don't recall that being part of my testimony. 17 Now page 48, the previous page, I think I addressed 18 the minimizing imperviousness is one of the best methods 19 and in the residential zones, all types of development -- 20 residential, institution -- should be regulated to achieve 21 the same relatively low levels of imperviousness. I -- I 22 think I saw that as really being something that was 23 applicable throughout the master plan, not just to the -- 24 to the special treatment area plan. 25 (Sotto voce speaking.)</p>	<p>108</p> <p>1 Mill Road? 2 MR. DAVIS: I think that the master plan's more 3 rigorous approach was the area north of Muncaster Mill 4 Road. The area to the south is still part of the 5 watershed, Upper Rock Creek watershed, and I think that 6 it's still important, as -- but it's the difference of, you 7 know, the class three stream -- class three streams north of 8 Muncaster Mill Road versus the class four streams. They're 9 both sensitive, but it's different -- different levels of 10 sensitivity. And I think the master plan was trying to 11 address more forcefully the areas to the north, but it was 12 not to ignore development potential and densities and 13 things south of Muncaster Mill Road. 14 MR. KLINE: Did you -- did you have a chance to 15 look at all about the preliminary plan of subdivision filed 16 for the Taiwanese Presbyterian Church next door? 17 MR. DAVIS: The subdivision plan? No, I have not 18 looked at the -- 19 MR. KLINE: Yeah. 20 MR. DAVIS: -- subdivision plan. 21 MR. KLINE: So don't have any familiarity with what 22 might have been the regulatory recommendations or 23 impositions on the development of that property? What I'm 24 leading up to is, is there -- are you familiar with any of 25 those items in the bullet list that we just talked about</p>

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28 (109 to 112)

<p>109</p> <p>1 that would've been imposed on the church when it was built?</p> <p>2 MR. CHEN: Excuse me. I think this goes beyond the</p> <p>3 scope of this witness' testimony. In fact, he's already</p> <p>4 testified that he has no knowledge about the purported</p> <p>5 subdivision or preliminary plan, so --</p> <p>6 MR. KLINE: And that answered my question. That's</p> <p>7 fine. I'll move on.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: That does --</p> <p>9 yeah, that's beyond the scope of what he testified to. Go</p> <p>10 ahead.</p> <p>11 MR. KLINE: You did testify or did state that there</p> <p>12 are conditional uses that could be placed on this property,</p> <p>13 just not this one?</p> <p>14 MR. DAVIS: That's a question?</p> <p>15 MR. KLINE: That is a question.</p> <p>16 MR. DAVIS: Okay. I did, which -- I did say that,</p> <p>17 but I think that the point is that I didn't -- in terms</p> <p>18 of this -- this conditional use application, I recognize</p> <p>19 it's a conditional use allowed in the zone, but my</p> <p>20 objections to this conditional use are based on the facts</p> <p>21 that apply to this conditional use at this location.</p> <p>22 That's not to say I don't think you could do a</p> <p>23 child daycare, special conditional use, on other areas in</p> <p>24 the RE-1 zone within the master plan area. I mean, that's</p> <p>25 the distinction that I have.</p>	<p>111</p> <p>1 road?</p> <p>2 MR. DAVIS: Yes.</p> <p>3 MR. KLINE: Okay. So if we feel that having a</p> <p>4 daycare center is -- let me rephrase that. Would it not</p> <p>5 make logical sense to establish a daycare center on a road</p> <p>6 that's serving commuter traffic going to southbound</p> <p>7 locations as a matter of convenience to serve those people,</p> <p>8 both residents and commuters?</p> <p>9 MR. DAVIS: Yes, as long as it can meet the</p> <p>10 standards and -- and be found to be -- satisfy the</p> <p>11 requirements of the various policies and regulations that</p> <p>12 apply.</p> <p>13 MR. KLINE: Thank you. But you did testify that</p> <p>14 the testimony that you heard made you think -- made you</p> <p>15 feel that there was a congestion problem or a traffic</p> <p>16 problem that undermined the location of this site to serve</p> <p>17 as a daycare center; correct?</p> <p>18 MR. DAVIS: I -- I don't know that I would</p> <p>19 characterize it that way.</p> <p>20 MR. KLINE: No, no. You say it the way you want to</p> <p>21 say it.</p> <p>22 MR. DAVIS: I -- I'm concerned at this point, or at</p> <p>23 least it's my opinion, that the testimony that's been</p> <p>24 provided with the -- concerning traffic and the local area</p> <p>25 transportation review, I believe, demonstrates that there</p>
<p>110</p> <p>1 MR. KLINE: Would you agree that having child</p> <p>2 daycare uses in residential neighborhoods provides a</p> <p>3 service and benefit to the residents of that neighborhood?</p> <p>4 MR. DAVIS: I agree.</p> <p>5 MR. KLINE: Yeah. And the Hearing Examiner may</p> <p>6 want to go ahead and rule -- let me just find something</p> <p>7 here -- rule -- and I'm asking a question. Madam Hearing</p> <p>8 Examiner, would you turn to page 63 of the master plan.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: You should be</p> <p>10 seeing it.</p> <p>11 MR. KLINE: Yeah. I'm looking at the bottom of</p> <p>12 page 63, and it actually carries over to page 64.</p> <p>13 So, Mr. Davis, if you could see the last sentence,</p> <p>14 reading, Currently, approximately -- and of course this is</p> <p>15 in 2004 -- currently, approximately 75 percent of the</p> <p>16 traffic that crosses the Upper Rock Creek planning area</p> <p>17 boundary is through traffic, and only about 25 percent is</p> <p>18 generated by local land uses.</p> <p>19 See that?</p> <p>20 MR. DAVIS: Yes.</p> <p>21 MR. KLINE: Okay. I won't say you said it, but I</p> <p>22 know I've heard someone say it, that people are using</p> <p>23 Needwood Road to get to either the metro station or to</p> <p>24 points south in the more commercialized area. Would you</p> <p>25 agree that that's probably some of the traffic on that</p>	<p>112</p> <p>1 is at times a problem along Needwood Road with traffic</p> <p>2 backing up. And I'm concerned about the effect that would</p> <p>3 have for people to get, you know, ingress and egress from</p> <p>4 the property at the level of intensity of development that</p> <p>5 is there with 195 children.</p> <p>6 MR. KLINE: If you'll excuse me one second. I have</p> <p>7 to turn on a light, so I can read what I'm looking at.</p> <p>8 Madam Hearing Examiner, do we have -- yeah, we have</p> <p>9 page 64.</p> <p>10 So the sentence that's at the bottom of the</p> <p>11 paragraph headed Streets and Highways, reads, The status of</p> <p>12 the east-west transportation studies and several other</p> <p>13 recommended changes to the remaining street and highway --</p> <p>14 whoops, scratch that.</p> <p>15 The -- I'd like to read the last sentence in the</p> <p>16 paragraph at the top of this section: This Plan</p> <p>17 recommends, where it is consistent with safety and other</p> <p>18 operational issues, such as turning movements or</p> <p>19 acceleration/deceleration lanes, roads retain their</p> <p>20 existing two-lane, open sections.</p> <p>21 Mr. Davis, you're the only land use planner I could</p> <p>22 ask this question of: Isn't this language the equivalent</p> <p>23 of what we commonly call the famous Potomac Subregion</p> <p>24 Master Plan Transportation Road Network Policy? And do you</p> <p>25 know what I'm talking about?</p>

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<p>113</p> <p>1 MR. DAVIS: Well, yes, and but you're getting the</p> <p>2 reverberation, so I almost feel like I need to read the</p> <p>3 paragraph myself, but --</p> <p>4 HEARING EXAMINER ROBESON HANNAN: Which -- well,</p> <p>5 first, which paragraph -- tell me the paragraph again. I'm</p> <p>6 trying to --</p> <p>7 MR. KLINE: Sure, Madam Hearing Examiner. Under</p> <p>8 the title --</p> <p>9 HEARING EXAMINER ROBESON HANNAN: And --</p> <p>10 MR. KLINE: -- under the title --</p> <p>11 HEARING EXAMINER ROBESON HANNAN: -- you have the</p> <p>12 reverberation. I don't know why, but it's there.</p> <p>13 MR. KLINE: Yeah. I -- I'm -- I will -- I know</p> <p>14 what I'm doing. I'm just not shutting my phone off, and</p> <p>15 somehow this rustling of papers causes this reverberation.</p> <p>16 I'll make sure it doesn't happen anymore.</p> <p>17 What I wanted -- in the section titled Streets and</p> <p>18 Highways, the first paragraph, the last sentence basically</p> <p>19 talks about retention of the existing two-lane, open</p> <p>20 section roadways.</p> <p>21 And my question, which I'll reiterate a little bit</p> <p>22 better as a question, Mr. Davis, the Potomac Subregion</p> <p>23 Master Plan has a principle called the Two-Lane Road</p> <p>24 Policy, which essentially says we think there is -- that we</p> <p>25 need more traffic capacity, but you're -- but the residents</p>	<p>115</p> <p>1 you're saying, I do think that there was a -- there's a</p> <p>2 different approach associated with Upper Rock Creek. If</p> <p>3 you -- the language in the master plan was talking about</p> <p>4 the desire to maintain the two-lane roads and also to</p> <p>5 retain the designations as primary residential roads.</p> <p>6 I -- I will note that the -- the draft master plan</p> <p>7 was proposing to change the designation for Redland Road to</p> <p>8 upgrade that to -- to some type of a lower-scale arterial,</p> <p>9 but at the Council level, my understanding is that that</p> <p>10 language was changed.</p> <p>11 So I think that's a little different approach in</p> <p>12 Upper Rock Creek than was done in Potomac. Because in</p> <p>13 Potomac, you're right. It was -- there was almost like a</p> <p>14 quid pro quo in terms of would you be willing to accept</p> <p>15 more congestion in favor of maintaining the two-lane roads.</p> <p>16 So I see that as a distinction between the two, but, be</p> <p>17 that as it may, I think that the emphasis was on retention</p> <p>18 of the primary residential road status and function as much</p> <p>19 as possible in Upper Rock Creek.</p> <p>20 MR. KLINE: Thank you.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Okay. Mr. Kline,</p> <p>22 let me -- I -- I apologize. Is there anything you can do</p> <p>23 to -- whatever you've done before to get rid of the</p> <p>24 reverberation works, but it's very difficult for me to</p> <p>25 understand you when it's there, and it's there right now.</p>
<p>114</p> <p>1 are concerned that their neighborhood character will change</p> <p>2 and, therefore, they'll endure some stress and some</p> <p>3 inconvenience to be able to keep the two-lane roads and,</p> <p>4 therefore, keep the character of their subdivision.</p> <p>5 Is the language in the Upper Rock Creek Plan seem</p> <p>6 to be reiterating that same policy premise?</p> <p>7 MR. DAVIS: Well, I agree with you on the policy</p> <p>8 premise as -- as you explained it with regard to Potomac.</p> <p>9 I -- but I don't have a comparison of the two plans to see</p> <p>10 exactly how they coincide, but I do understand what you're</p> <p>11 saying about the Potomac policy area, and I am familiar</p> <p>12 with the -- with that two-lane, you know, policy approach,</p> <p>13 but I have to -- I guess I'd have to look at the Potomac</p> <p>14 plan again, look at this plan as well, to see if there are</p> <p>15 similarities or -- or -- beyond just, you know, the</p> <p>16 statement.</p> <p>17 MR. KLINE: Well, in -- in the context of your</p> <p>18 testimony of trying to maintain the large-lot residential</p> <p>19 character of the -- of the area by not increasing the roads</p> <p>20 in terms of their width and their capacity to handle</p> <p>21 traffic, I mean, the premises remain the same. They --</p> <p>22 this plan seems to be suggesting we will endure traffic</p> <p>23 congestion in order not to have an adverse effect on the</p> <p>24 character of the area. Isn't that what it's saying?</p> <p>25 MR. DAVIS: I -- yeah, I -- I -- from based on what</p>	<p>116</p> <p>1 MR. KLINE: Is that still true now?</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Yes.</p> <p>3 MR. KLINE: Okay. I -- Madam Hearing Examiner, I</p> <p>4 understand the problem. I'm not sure what it is. I'm</p> <p>5 inclined to think that when I rustle the papers there, you</p> <p>6 can make the distinction that it has some effect, and I</p> <p>7 find that when I shut down and do all my paper movement and</p> <p>8 then go back online or get off mute, it seems to have gone</p> <p>9 away. So I'm trying to do that more, and I think it is the</p> <p>10 shuffling of the papers causing the background, and I will</p> <p>11 try and get better at it.</p> <p>12 Not that the shuffling of the papers is causing the</p> <p>13 problem. It's causing the ultimate reverberation, and I</p> <p>14 guess you're still hearing that.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Yes.</p> <p>16 MR. KLINE: All right. Well, I'll go back to what</p> <p>17 we were (inaudible) --</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Today's something</p> <p>19 is that I have difficulty -- can the court reporter</p> <p>20 understand him?</p> <p>21 THE REPORTER: I can make out --</p> <p>22 HEARING EXAMINER ROBESON HANNAN: Mr. Utterback.</p> <p>23 THE REPORTER: I can make out what he's saying, but</p> <p>24 it is very hard to hear.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Okay. Well, can</p>

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30 (117 to 120)

117	1 you -- what have you done before, Mr. Kline? I apologize, 2 but it -- it's very difficult to hear. 3 MR. KLINE: What I've done before is shut up and 4 not ask questions, go mute myself -- 5 HEARING EXAMINER ROBESON HANNAN: No, you need to 6 do that. No, that's not the issue. The issue -- well, 7 let's try to proceed with the sound and if you'll let me 8 interrupt, you know, when I don't understand what you're 9 saying. 10 MR. FREY: This is Jon Frey. You may want to 11 actually, Mr. Kline, call in, and turn your microphone off 12 on the Teams, and use the telephone as your way of talking. 13 HEARING EXAMINER ROBESON HANNAN: And, for the 14 record, Jon Frey is an employee with the Montgomery County 15 Department of Technology Services who is on this hearing 16 solely to help with technical issues related to the video 17 and the Microsoft Teams platform. 18 MR. KLINE: How -- how am I doing now? 19 HEARING EXAMINER ROBESON HANNAN: Still poor. 20 MR. KLINE: Okay. I -- I don't have your evite; 21 therefore, I don't have your telephone number. If you'll 22 give me the telephone number, Mr. Frey, I will do exactly 23 as you suggest, turn off the -- go mute on the audio, and 24 I'll call in. Can someone give me that telephone number? 25 HEARING EXAMINER ROBESON HANNAN: Oh, yeah, I can.	119	1 MR. KLINE: You can hear me? 2 (Audio feedback.) 3 MR. KLINE: Mr. Frey, I think I need your help 4 again. So I was getting a lot of back feed, and do I have 5 to somehow -- I was muted here, so I'm not sure why that 6 was happening. 7 Can anybody hear me? 8 HEARING EXAMINER ROBESON HANNAN: Yes. Jon Frey. 9 MR. FREY: Yes. What I would suggest to do, Mr. 10 Kline, is turn down your speaker on the Teams along with 11 turning off its microphone and just use your telephone to 12 hear and speak. 13 HEARING EXAMINER ROBESON HANNAN: Okay. That 14 assumes I can find the audio -- 15 MR. FREY: This is if -- Mr. Kline, this is if you 16 called in. You have to call in for that to work. 17 MR. KLINE: Right now, I'm just having difficulty 18 finding the volume button to follow your first piece of 19 instruction. And I can't get rid of the -- what's up on 20 the exhibit list right now. Could you somehow eliminate 21 that, Madam Hearing Examiner? 22 HEARING EXAMINER ROBESON HANNAN: What are you 23 seeing on -- 24 MR. FREY: Mr. Kline, you may just want to leave 25 and rejoin the meeting. That might be the -- the faster
118	1 Hold on one second. Well, I can share it on my screen, and 2 then you can see it, if that helps. Let me -- okay. Mr. 3 Kline, it should be showing up on the right-hand side of 4 your screen along with the phone conference ID. 5 MR. KLINE: Could somebody help me read -- never 6 mind. Let me try again. 7 Madam Hearing Examiner, I'm just going to repeat 8 these numbers I've written down, so you can just check them 9 if you could please. 10 HEARING EXAMINER ROBESON HANNAN: Sure. 11 MR. KLINE: So I'm going -- I'm going to go on 12 mute. I'm going to call 443-692-5768, and then the ID 13 would be 469023526 -- 14 HEARING EXAMINER ROBESON HANNAN: Pound. 15 MR. CHEN: Pound. 16 MR. KLINE: Okay. 17 HEARING EXAMINER ROBESON HANNAN: All right. 18 MR. KLINE: So am I doing that correctly, Mr. Frey? 19 (No response.) 20 MR. KLINE: All right. I'm going to go ahead and 21 try it now. 22 HEARING EXAMINER ROBESON HANNAN: Okay. Thank you. 23 (Sotto voce speaking.) 24 MR. KLINE: Madam Hearing -- Madam -- 25 HEARING EXAMINER ROBESON HANNAN: I hear you.	120	1 way to clear settings out. Just totally leave real quickly 2 and rejoin, if you would. That might just clear it up. 3 MR. KLINE: Okay. If you all will bear with me, I 4 will drop out and do that and maybe try and get a little 5 professional help internally to also -- I'll be back in a 6 couple minutes. 7 HEARING EXAMINER ROBESON HANNAN: Okay. We're off 8 the record for five minutes. 9 (Pause in proceedings.) 10 MR. KLINE: Mr. Davis, you were candid to indicate 11 that the subject property, the proposed Primrose property, 12 could be possibly developed with two or three lots in the 13 future. Based on your -- residential lots in the future -- 14 based on your experience in reviewing subdivision plans, 15 would you expect that the -- how would you expect access to 16 those lots to occur? 17 MR. DAVIS: Probably in a pipestem fashion, I would 18 imagine, coming off of Needwood Road. 19 MR. KLINE: Ms. Robeson Hannan, could you pull up 20 Exhibit -- bear with me here a second -- Exhibit XXXX -- 21 HEARING EXAMINER ROBESON HANNAN: Is that 2-2-7? 22 MR. KLINE: Probably 227, I think. Yeah, yeah. 23 2-2-7, right. 24 HEARING EXAMINER ROBESON HANNAN: Four Xs. Getting 25 there. Okay. You should be seeing it. Is this what you

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<p>121</p> <p>1 wanted? This is 227-XXXX, 227 (d) with four Xs. 2 MR. KLINE: Perfect. Thank you. 3 Mr. Davis, I understood your answer, and would -- 4 so would you think that the alignment of lots on the 5 Primrose property, were it to be developed residentially, 6 would look somewhat like the layout on the lots to the east 7 at 7420 and 7416 -- 8 MR. DAVIS: Yes. I -- I -- 9 MR. KLINE: -- with a -- with a pipestem? 10 MR. DAVIS: Yes. 11 MR. KLINE: Okay. And where would you think the 12 pipestems would connect to Needwood Road? 13 MR. DAVIS: The pipestem could connect, you know, 14 anywhere within 135 feet of the -- of the northeast corner 15 of the property. 16 MR. KLINE: Fine. Can you explain for the Hearing 17 Examiner the -- the sort of premises involved in a flag lot 18 or a pipestem subdivision in terms of the amount of 19 frontage required and how that would be accomplished on 20 this property -- 21 MR. DAVIS: Yes. 22 MR. KLINE: -- of frontage for each lot? 23 MR. DAVIS: Yes. 24 MR. KLINE: And, before you do that, would you 25 agree that it would be likely that the Carnegie Road</p>	<p>123</p> <p>1 MR. DAVIS: -- and that -- 2 MR. KLINE: Okay. So if it was the two-lot 3 configuration, would you presume that you would -- one 4 driveway would serve the -- the lot that fronts on 5 Needwood; correct? 6 MR. DAVIS: Yes. 7 MR. KLINE: Would there be difficulty getting two 8 -- two driveways that close together? 9 MR. DAVIS: It shouldn't be. 10 MR. KLINE: Would it not make more sense to share 11 the driveway and just have two pipestems but a single 12 driveway by cross easements? 13 MR. DAVIS: Certainly you could do that. You're 14 assuming that 7420 -- excuse me. You're assuming that the 15 -- that the lot that actually has the most of the frontage 16 on Needwood Road would be one lot by itself, and it'd be 17 one pipestem, 25-feet wide, extending to a second lot 18 behind, or -- is that the assumption? 19 MR. KLINE: Well, I was asking you if the -- the 20 model to the east is what you would kind of expect to see 21 on -- 22 MR. DAVIS: Oh, I -- 23 MR. KLINE: -- the Primrose property if it was 24 developed with two lots. 25 MR. DAVIS: Yes. I can agree with that.</p>
<p>122</p> <p>1 frontage would not be treated as frontage for -- basically 2 to satisfy the frontage requirement? You'd need to have a 3 pipestem to do that? 4 MR. DAVIS: Well, that's an interesting question. 5 MR. KLINE: It is. It is an interesting question. 6 I would like to hear your opinion. 7 MR. DAVIS: If Carnegie Avenue, for example, was 8 the beltway, and -- and you wanted to utilize the beltway 9 for frontage for the lot and have -- have access coming in 10 off of Needwood Road, I would argue that you don't have 11 frontage on a road that you can -- you have any opportunity 12 for access to. So I would say that you needed to have 13 frontage on Needwood Road, assuming Carnegie were the 14 beltway. That's -- that's an example I would just give 15 you. But -- 16 MR. KLINE: You are correct -- you are correct 17 because I tried it, and it doesn't work. 18 MR. DAVIS: Okay. 19 (Laughter.) 20 MR. DAVIS: So I think that what you probably would 21 be looking at is if -- if it were two lots, you would need 22 one flag-stem lot for frontage on Needwood Road, and that 23 would have to be a minimum of 25 feet wide. And that would 24 -- 25 MR. KLINE: All right.</p>	<p>124</p> <p>1 MR. KLINE: Okay. And -- 2 MR. DAVIS: I think (inaudible) -- 3 MR. KLINE: Well, how -- how would you think three 4 lots would work out and provide access? 5 MR. DAVIS: You would probably need to then have 50 6 feet of frontage along Needwood Road for two pipestem lots: 7 25 feet, 25 feet. And then you would have the 74 -- the 8 subject property, the -- that would be the third lot, the 9 -- in effect, the lot toward -- fronting on -- with most of 10 the frontage on Needwood Road would be the third lot. I 11 think that's your scenario. 12 MR. KLINE: Thank you. You answered the question I 13 was looking for. 14 So the point -- I think you probably see where I'm 15 going is, were you to end up with two- but certainly a 16 three-lot subdivision, you would have a driveway and a 17 pipestem that would extend all the way back to the third 18 lot, the southern most lot, that would be adjacent to the 19 Kosary property, so you would have a drive lane along the 20 property line, would you not? 21 MR. DAVIS: Well, you'd probably have two pipestems 22 continuing along that east side. It's only 50 feet. And 23 that would probably make the most prudent sense to have one 24 driveway located within that 50 feet. 25 MR. KLINE: Right. And that -- because that would</p>

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<p>125</p> <p>1 not be a parking facility, you would not have to set back 2 any -- any distance from the right -- the common property 3 line to the east. 4 MR. DAVIS: That's correct, except that somehow -- 5 I'm remembering something about a minimum three feet for -- 6 you know, when you have, like, situation detached home, 7 detached home -- 8 MR. KLINE: Right. 9 MR. DAVIS: -- there would be some minor amount of 10 hedge or something. This is between residence and 11 residence. 12 MR. KLINE: Right. So would it be fair to 13 characterize it as -- is that a two-lot and a three-lot 14 subdivision of the Primrose property will result in a 15 driveway adjacent to the Kosary property, but with the 16 Primrose proposal carrying out much larger volume of 17 traffic than would be generated by two single-family 18 houses? 19 MR. DAVIS: I think so. If I follow your full 20 question, the -- it would be a similar location for the 21 access points, but one being the Primrose proposal has a 22 lot more traffic -- 23 MR. KLINE: Right. 24 MR. DAVIS: -- than two lots. 25 MR. KLINE: And because of that scenario, wouldn't</p>	<p>127</p> <p>1 but, like, a hundred feet of area where sight distance was 2 adequate, so why in this scenario are we assuming that it 3 has to come right down the property line? 4 MR. DAVIS: But you've -- you've introduced a new 5 variable, which is that you could locate the actual -- the 6 access point a little farther to the west. You could bring 7 the driveway in anywhere within that 50 feet. I was 8 looking at it as -- what was suggested as trying to save a 9 specimen tree, but I think that the subdivision -- 10 HEARING EXAMINER ROBESON HANNAN: Well, wouldn't 11 just bringing the driveway in further to the west help the 12 specimen tree? 13 MR. DAVIS: Let me see. It's -- I think it's 14 positioned about 30 feet -- 30 feet from the current 15 property line, somewhere in there. I think -- and, if 16 that's the case -- I don't know. You might have room to go 17 around the west side of it. Depends on how they want to 18 lay it out. I mean, you know, it's not going to be 19 confined. The driveway can take any probable direction or 20 -- or location within the property. It just needs to be 21 prescribed by some sort of an easement or something. 22 From a subdivision standpoint, the important issue 23 would be to have 25 feet of frontage on Needwood Road for 24 each of the lots. The driveway could -- and I'm assuming 25 it would only make sense to do one. You'd -- you'd --</p>
<p>126</p> <p>1 you be likely to lose the specimen tree because it would be 2 within the limits of the driveway within the two 50-foot 3 pipestem -- or the two 25-foot pipestems? 4 MR. DAVIS: Well, that's where you have to look at 5 where the driveway would actually come along there. If 6 it's possible to -- to curve the driveway or maneuver 7 around the tree, that should be the first effort to save 8 the tree. If you can't save the tree, then it becomes 9 another -- that becomes a different issue. 10 MR. KLINE: And would development of a third lot of 11 the southern part of the Primrose property likely result in 12 removal of some of the trees on the Primrose -- on the 13 property at 7430? 14 MR. DAVIS: You know, being -- you're talking about 15 the rear portion of the current lot? 16 MR. KLINE: Yes, sir. 17 MR. DAVIS: Yeah, it could. Again, it would depend 18 on how well you could site the house and -- and how you 19 want to maneuver the driveway through the area. 20 HEARING EXAMINER ROBESON HANNAN: Can -- may I ask 21 a question? I don't -- of Mr. Davis. I don't understand 22 why the driveway has to come right down the property line. 23 MR. DAVIS: It doesn't. 24 HEARING EXAMINER ROBESON HANNAN: You said that 25 there were, you know -- I can't remember the exact amount,</p>	<p>128</p> <p>1 you'd figure the route of the driveway by looking at path 2 of least resistance from the standpoint if you can save 3 trees, save some trees. You know, if you're looking to 4 have more space between the property line and the driveway, 5 then you could do that too. 6 HEARING EXAMINER ROBESON HANNAN: I'm sorry to 7 interrupt, Mr. Kline. I guess what I'm having with is with 8 all these development scenarios -- well, maybe that's what 9 you're going to present on rebuttal. 10 MR. KLINE: Well, I think you surmised it. I was 11 -- I was trying to reach -- get Mr. Davis to confirm that a 12 likely development format -- configuration for the 13 development of the subject property would end up having a 14 driveway along the east side, just a matter of what the 15 impact would be. 16 HEARING EXAMINER ROBESON HANNAN: Well, the 17 question is how close to the east side and what would the 18 impact be. So I guess -- well, I've jumped in. But I -- I 19 just want to make sure I understand some of the argument. 20 So go ahead. 21 MR. KLINE: Well, Mr. Davis, the -- the driveway 22 would not be subject to the 17-foot side yard setback nor 23 the 34-foot increased setback for the conditional use to 24 service two or three lots. Am I correct? 25 MR. DAVIS: I agree with that.</p>

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<p>129</p> <p>1 MR. KLINE: Yeah.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Where'd you get</p> <p>3 the 17-foot?</p> <p>4 MR. KLINE: It's the side yard --</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Is that the --</p> <p>6 MR. KLINE: -- setback -- it is the side yard</p> <p>7 setback in the RE-1 zone.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>9 MR. KLINE: And but it doesn't apply to driveways.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: Okay. Got you.</p> <p>11 MR. KLINE: So, Mr. Davis, let me kind of wrap up</p> <p>12 with this. You're certainly entitled to disagree with the</p> <p>13 staff's analysis and conclusions, but I was surprised that</p> <p>14 the basis for your disagreement was the staff report didn't</p> <p>15 thoroughly review the application, and you -- you did go</p> <p>16 through in your testimony today with questions about it,</p> <p>17 but, by my count, there's pages 6 to 30, 24 pages of</p> <p>18 analysis of why the staff thought this was appropriate, and</p> <p>19 I thought your comment about didn't thoroughly review is</p> <p>20 inconsistent with what the records would seem to suggest.</p> <p>21 MR. CHEN: Is there a question there? Is there a</p> <p>22 question?</p> <p>23 MR. KLINE: I think I probably put my mute button</p> <p>24 on a little too quickly.</p> <p>25 (Laughter.)</p>	<p>131</p> <p>1 MR. KLINE: Madam Hearing Examiner, I think I'm</p> <p>2 going to -- I'm going to quit with that. I don't have any</p> <p>3 more cross-examination questions.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: Thank you, Mr.</p> <p>5 Kline. And thank you for adjusting whatever, calling in or</p> <p>6 whatever you did. That's been very helpful.</p> <p>7 MR. KLINE: Mr. Frey -- Mr. Frey gets the credit.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: Mr. Chen, do you</p> <p>9 have redirect?</p> <p>10 MR. CHEN: Couple. Couple questions.</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Go ahead.</p> <p>12 REDIRECT EXAMINATION OF JOSEPH DAVIS</p> <p>13 MR. CHEN: Just that last point, Mr. Davis. Do you</p> <p>14 agree with the characterization of the proposed location of</p> <p>15 the driveway as the "optimum location"?</p> <p>16 MR. DAVIS: No. I think that you have to -- when</p> <p>17 you're considering the application of what would be called</p> <p>18 the County's sight distance analysis, what the County is</p> <p>19 looking for is the minimum -- satisfying the minimum</p> <p>20 standard of at least 250 feet because the County believes</p> <p>21 that that assures adequate sight distance for entering and</p> <p>22 exiting a site.</p> <p>23 MR. CHEN: Okay.</p> <p>24 MR. DAVIS: So that's why -- to me, optimum, it</p> <p>25 doesn't figure in. I mean, they're -- you know, the way</p>
<p>130</p> <p>1 MR. KLINE: Isn't that correct, Mr. Davis? No, I</p> <p>2 want you to have an opportunity to explain why you disagree</p> <p>3 that the staff's analysis was not complete.</p> <p>4 MR. DAVIS: Okay. I believe that the staff</p> <p>5 accepted a narrative that the -- that the driveway had to</p> <p>6 be in a particular spot, and I disagree with that being the</p> <p>7 case.</p> <p>8 Now then it -- then the next step is that it talks</p> <p>9 about extending -- that this becomes the basis for</p> <p>10 extending the driveway only 12 feet from the property line,</p> <p>11 and I see this, again, as something that's not -- it's not</p> <p>12 justified, and I don't see any analysis in a way that does</p> <p>13 justify it. I know that there are certain statements in</p> <p>14 the staff report, such as, "We believe that it was the</p> <p>15 safest location," but that's not even bolstered by any</p> <p>16 analysis such as a sight -- a safe sight -- excuse me, a</p> <p>17 sight distance analysis form.</p> <p>18 So, you know, I think that -- I think that there's</p> <p>19 statements that are contained in the plan, but I don't see</p> <p>20 where there's a basis for them in terms of analysis.</p> <p>21 MR. KLINE: Do you remember any of the Applicant's</p> <p>22 spokespersons testifying that the driveway location was the</p> <p>23 optimum location, not the only location?</p> <p>24 MR. DAVIS: I did hear the statement that it was</p> <p>25 the optimum location.</p>	<p>132</p> <p>1 life is, you might think it's the most optimum safe</p> <p>2 location, then you pull out and somebody hits you, so --</p> <p>3 who knows.</p> <p>4 MR. CHEN: What is the reason for the location of</p> <p>5 the driveway under this proposal?</p> <p>6 MR. DAVIS: I believe the location of the driveway</p> <p>7 is to maximize the size of the proposed conditional use, or</p> <p>8 the program as the Applicants have called it. I think that</p> <p>9 that's the basis for it. I believe that they know that</p> <p>10 they're intruding into the -- into the parking side yard</p> <p>11 setback, and I believe that they feel that that's what they</p> <p>12 need for the project to go forward, and that's what they</p> <p>13 proposed.</p> <p>14 MR. CHEN: And Mr. Kline said a moment ago that the</p> <p>15 various residential development subdivision of the Primrose</p> <p>16 property was for the "likely" development. Was that your</p> <p>17 understanding of what you were providing in your answers?</p> <p>18 MR. DAVIS: I was looking at it as a hypothetical</p> <p>19 in terms of the potential for a two-to-three-lot</p> <p>20 residential subdivision.</p> <p>21 MR. CHEN: And, also, by the way, his questions all</p> <p>22 went to residential development; is that correct?</p> <p>23 MR. DAVIS: Yes.</p> <p>24 MR. CHEN: And certainly aside from the different</p> <p>25 configurations of the lot -- possible lots and their -- the</p>

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<p>133</p> <p>1 frontage was the driving force for having those number of 2 -- of lots on the -- on the property and subdividing it? 3 MR. DAVIS: Yes. 4 MR. CHEN: I think you said, what, 50 feet to 5 configure that part? 6 MR. DAVIS: Fifty feet for -- well, in terms of the 7 two lots. 8 MR. CHEN: Yes. 9 MR. DAVIS: So you need to have at least 50 feet of 10 frontage, each lot having 25 feet, but then you have 11 flexibility in terms of how you locate the driveway along 12 that frontage. 13 MR. CHEN: That's my point. So that the location 14 of the driveway within that 50-foot area can meander or 15 vary however way the developer wishes to have the driveway, 16 taking into consideration things such as trees. Is that a 17 fair statement? 18 MR. DAVIS: That's correct. In fact, there's three 19 lots. I mean, there's the lot that's farthest to the west. 20 You could even have an access driveway coming into that 21 particular lot and then it could -- it could work its way 22 back to the other two in any number of configurations. 23 MR. CHEN: And certainly in that residential 24 hypothetical development, you would not have the bulk of 25 the size of the building that's being proposed in this</p>	<p>135</p> <p>1 I'll let Mr. Chen answer that question since we're really 2 going through his witnesses. 3 MR. CHEN: We have no further questions, Madam 4 Examiner. 5 HEARING EXAMINER ROBESON HANNAN: Okay. I've got 6 some -- Mr. Kline, before you start your rebuttal, I've 7 been thinking about this. I actually think about these 8 cases while we're not on -- on the clock, but just as your 9 witnesses testify, I'd like to just give you a heads up as 10 to some of the concerns I have. 11 One is the Butler case. This reminds me -- reminds 12 me of the Butler case, the long and narrow lot with the 13 driveway, you know, and right -- very close to the property 14 line, and so you may want to have -- if you can, 15 distinguish that case or not -- that's legal argument, I 16 guess, but you may want to focus questions on that. 17 The other thing is I'm still not sure about the -- 18 well, we've already finished with Mr. Cook. I'm -- I'd 19 like -- I guess I've been debating whether to have him back 20 just to testify on one particular issue, which is that 1.03 21 percent queueing, but I don't know if we're going to -- if 22 we have to do that or not. I'm going to review the case 23 over the next two days before Friday. 24 But my -- I'm not convinced that you couldn't 25 construct an alternate use. What I recall Mr. Intriago</p>
<p>134</p> <p>1 conditional use application. Isn't that accurate -- isn't 2 that also the case? 3 MR. DAVIS: That's -- that's true. 4 MR. CHEN: Okay. That's all. 5 HEARING EXAMINER ROBESON HANNAN: All right. Mr. 6 Kline. 7 MR. KLINE: One -- one redirect. 8 MR. CHEN: Huh? 9 HEARING EXAMINER ROBESON HANNAN: Okay. And, Mr. 10 Chen -- 11 MR. KLINE: Or, actually -- or, actually -- 12 HEARING EXAMINER ROBESON HANNAN: -- (inaudible). 13 MR. KLINE: -- I guess that's something else, not 14 redirect. 15 MR. CHEN: It's recross, I think. 16 HEARING EXAMINER ROBESON HANNAN: Recross. One 17 question, and then Mr. Chen gets redirect. 18 MR. KLINE: Okay. Let's not perpetuate it. I 19 withdraw my request. Thank you. 20 HEARING EXAMINER ROBESON HANNAN: Okay. Mr. Davis, 21 you may be excused. 22 MR. DAVIS: Thank you. 23 HEARING EXAMINER ROBESON HANNAN: So are we on the 24 Applicant's rebuttal case? 25 MR. KLINE: If Mr. Chen agrees, I believe -- well,</p>	<p>136</p> <p>1 saying is the reason for the location of the driveway was 2 that they couldn't fit firetrucks and other larger trucks 3 -- it didn't have the turning radius to come around on the 4 west side. And so I guess my question is, there -- it 5 seems to me that there are other uses that would be less 6 intense that can go on this site. 7 I -- especially, I don't even know why, I guess, 8 the County would want to continue to maintain the right-of- 9 way just in case they ever decide to mill the road, but I 10 don't know if DOT's ever reviewed that in light -- after 11 they found out that the sight distance wasn't adequate. 12 So those are the things -- the compatibility issue 13 under Montgomery County versus Butler and the possibility 14 for a less intense use of this site are the things that 15 I've been hearing that have -- concerns me. 16 MR. KLINE: Madam Hearing Examiner, we'll -- we 17 will be prepared to -- yes. I will make sure the Butler 18 case is -- is either covered in rebuttal or oral argument 19 when we close up. 20 Mr. Cook would love to talk about that 1.03 number. 21 He is, however, unavailable this week. He is out of town. 22 He may even be out of the country for all I know. So I 23 would not be able -- well, let me rephrase that. If you 24 said you wanted an answer, I could probably get somebody 25 else in his office, but he himself was not going to be</p>

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<p>137</p> <p>1 available.</p> <p>2 I -- I would concede that there are other uses that</p> <p>3 can occur on this property, and there are a number of</p> <p>4 reasons why the -- for not only what we're doing but for</p> <p>5 the use we're done, there are limited locations for the</p> <p>6 driveway to go, and that we will address in -- in rebuttal</p> <p>7 testimony.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>9 MR. KLINE: And then the last thing I wanted to say</p> <p>10 is, and if Mr. Chen doesn't want me to do this, I'll shut</p> <p>11 up, but I'd like to proffer what is the status of Carnegie</p> <p>12 Road because I think you just made a statement that</p> <p>13 suggests to me you're -- you're not familiar with what it</p> <p>14 is. And, Mr. Chen, would you indulge me to talk about</p> <p>15 orphan --</p> <p>16 HEARING EXAMINER ROBESON HANNAN: Well, I</p> <p>17 understand what it is. It's a -- it's a -- what -- it's a</p> <p>18 undedicated, or it's a right-of-way, that must've come out</p> <p>19 of the Derwood Heights subdivision that was never built.</p> <p>20 MR. KLINE: You are -- you are --</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Am I correct?</p> <p>22 MR. KLINE: -- partially correct. You're partially</p> <p>23 correct, but for a slight mixture in term. It is a</p> <p>24 dedicated right-of-way. It is dedicated to only 50 feet,</p> <p>25 less than what the master plan recommends for the road</p>	<p>139</p> <p>1 Certainly, I think your questions that you just</p> <p>2 described could've been presented at the beginning of my</p> <p>3 clients' case presentation to address. That's number one.</p> <p>4 So that we're now --</p> <p>5 HEARING EXAMINER ROBESON HANNAN: I didn't think</p> <p>6 about it until your client presented their stuff.</p> <p>7 MR. CHEN: Well, okay. But what -- we now, I</p> <p>8 think, are in the situation that we're in rebuttal, and</p> <p>9 you've asked the Applicant to address certain areas. Now</p> <p>10 I'm concerned about my client being able to deal with those</p> <p>11 areas as well in light of your question, the way you've</p> <p>12 posited the questions.</p> <p>13 And, number two, we are in rebuttal, and this is</p> <p>14 not an opportunity for an applicant to start over again and</p> <p>15 to make a case presentation on the merits or perceived</p> <p>16 merits of the application, so, candidly, I'm concerned</p> <p>17 about the expansiveness of the rebuttal testimony that Mr.</p> <p>18 Kline will be offering.</p> <p>19 And, you know, I guess, thirdly, we've just heard a</p> <p>20 discussion from Mr. Kline about the status of Carnegie, and</p> <p>21 certainly I don't think any information from Mr. Kline is</p> <p>22 legally admissible, even in this proceeding, that I don't</p> <p>23 think --</p> <p>24 HEARING EXAMINER ROBESON HANNAN: Well, okay. Let</p> <p>25 me address your issues. To me, your clients did address</p>
<p>138</p> <p>1 today, and you are correct that it was never built by the</p> <p>2 developer. So it is what the County calls an orphan road</p> <p>3 or in the public roads that they do not maintain and will</p> <p>4 not maintain and will not let anything happen on it until</p> <p>5 somebody builds it to their standards.</p> <p>6 So right now --</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Well, you</p> <p>8 (inaudible) know when you requested abandonment of</p> <p>9 Carnegie, did --</p> <p>10 MR. KLINE: Yes, ma'am.</p> <p>11 HEARING EXAMINER ROBESON HANNAN: -- did MCDOT know</p> <p>12 about the sight distance issue? Because it seems to me</p> <p>13 that came later.</p> <p>14 MR. KLINE: I believe you're correct. The reason</p> <p>15 the road was not recommended for abandonment is simply</p> <p>16 because all the planners think that there should be</p> <p>17 connectivity of South Riding to Needwood using Carnegie, so</p> <p>18 they just didn't want to abandon it because they want to</p> <p>19 maintain that and figured that someday somebody will step</p> <p>20 up and build the road for them to their standards, but I</p> <p>21 believe you're right about the sequence of those events.</p> <p>22 MR. CHEN: Madam Examiner.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: Yes.</p> <p>24 MR. CHEN: If I may. I've intentionally not said</p> <p>25 anything, but I've got two observations.</p>	<p>140</p> <p>1 the developability at least in terms of the location of the</p> <p>2 driveway, alternate uses that could go on this site, and so</p> <p>3 I was rephrasing those issues to Mr. Kline. And maybe it</p> <p>4 sounded like I was coming up with a new issue, but I</p> <p>5 thought that that's -- Mr. Kline is the one that initially</p> <p>6 introduced it. Then your clients responded by saying, no,</p> <p>7 you got sight distance, and, no, it can fit three lots. So</p> <p>8 that was that.</p> <p>9 MR. CHEN: Okay.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: You raised --</p> <p>11 MR. CHEN: I understand that better. I understand</p> <p>12 where you're coming from. It wasn't clear to me. Go -- I</p> <p>13 apologize for interrupting you, but I --</p> <p>14 HEARING EXAMINER ROBESON HANNAN: You raised --</p> <p>15 MR. CHEN: -- get it. I get it.</p> <p>16 HEARING EXAMINER ROBESON HANNAN: Okay. You also</p> <p>17 raised Montgomery County versus Butler in Mr. Davis' --</p> <p>18 MR. CHEN: Yep.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: -- testimony.</p> <p>20 And as far as the history of Needwood, I guess I</p> <p>21 won't ask for more information on that, and I won't -- you</p> <p>22 know, it is what it is, but -- because that's almost</p> <p>23 tangential, which would be is there another way to do this</p> <p>24 project, and that's not relevant. We have what we have.</p> <p>25 So I will not pursue that. All right?</p>

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<p>141</p> <p>1 I'm telling -- I'm trying to give Mr. -- well, I'm 2 going to shut up because I don't want to favor anybody, for 3 sure, and I haven't made up my mind. 4 So, with that, Mr. Kline, call you first witness. 5 DIRECT EXAMINATION OF SRIKANTH MANDAVA 6 MR. KLINE: I'm speaking out into the internet, but 7 you have heard from Mr. Mandava before, and I believe he's 8 listening. And I'd ask, Srikanth, are you there, and would 9 you please reintroduce yourself? 10 MR. MANDAVA: Yes. I'm there, Mr. Kline. Srikanth 11 Mandava. I live at -- 12 HEARING EXAMINER ROBESON HANNAN: Now, Mr. Mandava, 13 I don't have video for you. 14 MR. MANDAVA: Okay. Just one second, ma'am. Yeah. 15 All right. You should be able to see me now. 16 HEARING EXAMINER ROBESON HANNAN: Yes. Go ahead. 17 MR. MANDAVA: Okay. Yeah. I'm Srikanth Mandava. 18 I live at 12609 Winter Wren Court, Oak Hill, Virginia 19 20171. 20 MR. KLINE: Mr. Mandava, you've listened to each of 21 the eight and a half days of hearings -- 22 MR. MANDAVA: Yes. 23 MR. KLINE: -- correct? 24 MR. MANDAVA: Yes, I did. 25 HEARING EXAMINER ROBESON HANNAN: Is that all?</p>	<p>143</p> <p>1 like, are designing to drop -- 2 HEARING EXAMINER ROBESON HANNAN: Wait, wait, wait, 3 wait. Are you dropping the before-school and the after- 4 school or just the after-school? 5 MR. MANDAVA: Both of them. 6 HEARING EXAMINER ROBESON HANNAN: Okay. 7 MR. KLINE: Mr. Mandava, would you accept a 8 condition that would prohibit the -- any program of bussing 9 children from and to elementary schools to the Primrose 10 School facility? 11 MR. MANDAVA: Yes. 12 MR. KLINE: Mr. Mandava, you heard Dr. Kosary and I 13 think Dr. -- or, I'm sorry, Mr. Posey's concerns about the 14 lights being on when only clean-up crews are in the 15 property, meaning that we're extending the period of time 16 the lights were on in darkness. Is it necessary to have 17 lights on prior to 6 a.m. in the morning or prior to the 18 time that all the students and faculty leave in the evening 19 even though there are clean-up crews in the building? 20 MR. MANDAVA: It is not necessary, and I think Mr. 21 Alt testified extensively about the lighting. We can put 22 in the timers, and we can switch out the lights before 6 23 a.m. and after, say, 7 p.m. in the evening. And the -- and 24 when the cleaners are inside the building cleaning, they 25 would go room by room, and they'll switch on the lights</p>
<p>142</p> <p>1 (Laughter.) 2 HEARING EXAMINER ROBESON HANNAN: Go ahead. Mr. 3 Mandava, you're still -- is it Man-dayva or Man-dava? 4 MR. MANDAVA: Man-dava. 5 HEARING EXAMINER ROBESON HANNAN: Mandava. You're 6 still under oath. 7 MR. MANDAVA: I understand. Thank you. 8 MR. KLINE: Well, and I'll forewarn Mr. Chen that I 9 guess my first question will kind of go to maybe something 10 he was concerned about, but probably not to the scope he 11 was concerned about, and that is, Mr. Mandava, you heard 12 Dr. Kosary raise the issue of whether any after-school 13 program that would bus children from an area elementary 14 school to the Primrose School would be successful in light 15 of the programs available in the public schools and that it 16 would complicate the operation of the facility. 17 Is there -- well, you heard that testimony? 18 MR. MANDAVA: Yes, I did. 19 MR. KLINE: Okay. Is there still an after-school 20 program favored or desired by Primrose for this facility? 21 MR. MANDAVA: To be honest, it is not desired 22 anymore, and, you know, it's been almost a year since the 23 first hearing as well, and things have been changing, and 24 of late we have seen a few other Primrose Schools as well 25 drop the after-school/before-school program, and we also,</p>	<p>144</p> <p>1 only for those rooms. There's also blinds for the windows, 2 so they can draw the blinds and, like, you know, minimize 3 the lighting coming out of the building and whatnot. 4 MR. KLINE: So you would be willing to -- or would 5 you be willing to accept a condition that the pole lights, 6 or all lights for that matter, will be metered so that they 7 will not come on earlier than 6 a.m. and stay on later than 8 7 p.m., as long as there's nobody in the building other 9 than cleaning crews? 10 MR. MANDAVA: Yes. 11 MR. KLINE: I know you spent a lot of time working 12 with Primrose, and what have you learned about how to keep 13 children under management when they're outside? 14 MR. MANDAVA: Well, there's a -- teachers are in a 15 certain ratio, which is regulated by the government itself, 16 and when the teacher -- when the kids are playing outside, 17 the teachers will be there in the same ratio supervising 18 the children. And they will not -- preventing them from 19 yelling, screaming, you know, controlling the children and 20 just making sure that they're playing in a normal way you 21 expect the kids to play. So that's -- that's what they do. 22 And -- and from (indiscernible), like, you know, 23 children playing, like, that would be in a regular noise 24 level. Yeah. 25 MR. KLINE: I believe -- I don't remember if it was</p>

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<p>145</p> <p>1 you or Mr. Taylor who testified, but what would be the time</p> <p>2 periods when children would be outdoors, both morning and</p> <p>3 afternoon, if there are both?</p> <p>4 MR. MANDAVA: Yeah. Most commonly, between 9 and</p> <p>5 11 a.m. in the morning and between 1 and 3 p.m. in the</p> <p>6 afternoon.</p> <p>7 MR. KLINE: And will children be outside during all</p> <p>8 those times, or are those just the time periods that are</p> <p>9 available for them to go out?</p> <p>10 MR. MANDAVA: Those will be the time periods that</p> <p>11 are available. Every group -- every age group has a</p> <p>12 certain schedule. They have other things as part of the</p> <p>13 balanced curriculum, as part of their schedule, and there</p> <p>14 will be the designated time for play and weather</p> <p>15 permitting, and those times typically fall within these</p> <p>16 windows, 9 to 11 in the morning and 1 to 3 in the</p> <p>17 afternoon.</p> <p>18 MR. KLINE: So does the recess time for each age</p> <p>19 group or each age vary where they'll get 20 minutes outside</p> <p>20 sort of sequentially?</p> <p>21 MR. MANDAVA: It -- the typical playtime is 45</p> <p>22 minutes, but that could be a little less than -- it could</p> <p>23 be a little than that 45 minutes based on their schedule</p> <p>24 and other things going on.</p> <p>25 MR. KLINE: Okay. And what would be the maximum</p>	<p>147</p> <p>1 with -- or in your conversations with the engineers and</p> <p>2 with Primrose, in terms of the design and the layout of all</p> <p>3 the facilities, was it explained to you that they wanted to</p> <p>4 have the building used to reduce the noise from the</p> <p>5 children, that's why the play lots were on the west and --</p> <p>6 MR. CHEN: Objection.</p> <p>7 MR. KLINE: -- southern sides?</p> <p>8 MR. CHEN: Objection.</p> <p>9 MR. KLINE: Okay. All right. Let me try it again.</p> <p>10 What did Primrose advise you would be the proper</p> <p>11 configuration/arrangement of the play lots relative to the</p> <p>12 building in order to try and attenuate noise?</p> <p>13 MR. CHEN: Again, objection. Where's -- Primrose,</p> <p>14 we had a witness.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Yeah. I'm going</p> <p>16 to leave that to Primrose.</p> <p>17 MR. KLINE: Okay, fine. Last question, Mr.</p> <p>18 Mandava, you reminded me that the Hearing Examiner asked</p> <p>19 for some of the materials related to Primrose's operation,</p> <p>20 and you've sent that to me, and, Madam Examiner, I will be</p> <p>21 submitting that to you tomorrow. I don't think it's</p> <p>22 particularly essential in the case, but you had asked for</p> <p>23 it, so we'll get it to you tomorrow.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: Okay. Well, what</p> <p>25 is it?</p>
<p>146</p> <p>1 number of children outside at any given time, and --</p> <p>2 MR. MANDAVA: Maximum would be 60. Six-zero, 60.</p> <p>3 MR. KLINE: And what would that time likely be, or</p> <p>4 would it be multiple times?</p> <p>5 MR. MANDAVA: So there are four playgrounds, and</p> <p>6 typically -- and these groups are separated by age,</p> <p>7 depending on the level of the playground and the age groups</p> <p>8 that are allowed to play. And they -- you would have -- it</p> <p>9 depends on the attendance on the day and also, like, you</p> <p>10 know, the maximum enrollment, various factors like that.</p> <p>11 And, based on that, you would, like, you know, lead the</p> <p>12 kids outside into the play areas in those 45-minute</p> <p>13 intervals based on their schedule. And 60 is the maximum,</p> <p>14 but, like, it doesn't mean that it will be 60 kids all the</p> <p>15 time.</p> <p>16 HEARING EXAMINER ROBESON HANNAN: I thought you</p> <p>17 said 62.</p> <p>18 MR. MANDAVA: Madam Examiner, I said 60 actually,</p> <p>19 after that -- you know, the -- I went through the notes</p> <p>20 and, like, it was 60.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: No, I just -- I</p> <p>22 thought -- I think I misheard you just now. That's why I</p> <p>23 asked.</p> <p>24 MR. MANDAVA: Oh, 60. Six-zero.</p> <p>25 MR. KLINE: And, Mr. Mandava, in your discussions</p>	<p>148</p> <p>1 MR. KLINE: Go ahead, Mr. Mandava. Can you</p> <p>2 describe what you sent to me?</p> <p>3 MR. MANDAVA: Sure, yeah. It's what we call a</p> <p>4 parent handbook, parent handbook. It is a handbook related</p> <p>5 to the parents when they enroll, and, well, it's got all</p> <p>6 the information about the typical day and the school and</p> <p>7 various aspects around safety and -- safety and, you know,</p> <p>8 the engagement of the parents and the nutrition programs</p> <p>9 and the curriculum and things like that, so just standard</p> <p>10 details about that, and also a typical schedule, classroom</p> <p>11 schedule of a student.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: All right. Will</p> <p>13 -- you know, you can send them, and then Mr. Chen, once</p> <p>14 he's had a reason -- or an opportunity to look at them can</p> <p>15 object or not object, and we'll decide whether they come in</p> <p>16 then.</p> <p>17 MR. CHEN: Well, I would just say I don't know how</p> <p>18 this fits within the opposition case, but so I probably am</p> <p>19 looking at it --</p> <p>20 HEARING EXAMINER ROBESON HANNAN: I have to go back</p> <p>21 and look. I've actually done a summary of testimony, and I</p> <p>22 remember I did have some questions, but I have to look</p> <p>23 back. So I can't rule on it now, but I'll rule on it</p> <p>24 Friday.</p> <p>25 MR. CHEN: Will I get it also tomorrow, Mr. Kline?</p>

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<p>1 MR. KLINE: Sorry. I'm sorry. Yes, sir. 2 MR. CHEN: Okay. 3 MR. KLINE: I had no further questions, Mr. 4 Mandava. 5 MR. MANDAVA: Thank you, Mr. Kline. 6 HEARING EXAMINER ROBESON HANNAN: Okay. Mr. Chen, 7 cross? 8 MR. CHEN: Thank you. 9 CROSS-EXAMINATION OF SRIKANTH MANDAVA 10 MR. CHEN: Just so I understand the information, 11 Mr. Mandava, the maximum number of children that would be 12 outside at any given point in time within the time frames 13 that you've given is 60; correct? 14 MR. MANDAVA: That's correct, yes. 15 MR. CHEN: And that would -- that would be -- and 16 there are four playground areas available? 17 MR. MANDAVA: That's correct, yeah. 18 MR. CHEN: And that the time periods that the 19 children would be outside would be between 9 and 11 and 1 20 and 3 p.m.? 21 MR. MANDAVA: That's correct, yeah. 22 MR. CHEN: And are the children going to talk to 23 each other outside when they're outside? 24 MR. MANDAVA: I would assume so, yeah. 25 MR. CHEN: And will there be -- how does a teacher</p>	<p>1 MR. MANDAVA: Sure. There's infants, which is 12 2 weeks to 11 months. Then there is 12 months to 18 months; 3 we call them the older infants or the young toddlers. Then 4 there's 18 months to 23 months, which is toddlers. Then 5 there's early preschool, which is at 24 months to 35 6 months. Then there's preschool -- that is three years to 7 four years -- and pre-K, which is four to five years. 8 MR. CHEN: So we're talking about the oldest child 9 that would be outside playing five years old? 10 MR. MANDAVA: Right. 11 MR. CHEN: And they could be as young as, what, 12 12 months, sir? 13 MR. MANDAVA: Twelve weeks. Twelve weeks. 14 MR. CHEN: Twelve weeks. So we're talking about 15 regulating 60 children between the ages of 12 weeks and 16 five years and the amount of noise that they're going to 17 make when they're outside. 18 MR. MANDAVA: There are four separate playgrounds. 19 Everybody -- every age group has their own playground. 20 Yeah. So -- 21 MR. CHEN: I agree with that. Yeah. 22 MR. MANDAVA: Could be six kids in one playground 23 or, like, 12 kids another playground, or it'll be 24 distributed like that. And that'll be wrapped in two -- 25 two directions of the property: one on the north side and</p>
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<p>1 stop a child from yelling? 2 MR. MANDAVA: Well, if they notice a child yelling, 3 they would obviously tell them not to yell and, like -- you 4 cannot stop them from doing that the first time, but 5 obviously, over a period of time, you would teach them, 6 like, you know, that's not the appropriate behavior, I 7 guess. 8 MR. CHEN: Okay. Will they have muzzles? 9 MR. MANDAVA: I didn't understand your question. 10 MR. CHEN: Will they -- will the teachers have the 11 authority and ability to put a muzzle on a child, so they 12 don't yell? 13 MR. MANDAVA: I don't think so. Yeah. 14 MR. CHEN: And what are the -- what's the age range 15 of the children? 16 MR. MANDAVA: That's up to five years if we take 17 the after-school and before-school out. Yeah. Three 18 months to five years. Yeah. 19 MR. CHEN: I'm sorry. Give me the age group -- 20 MR. MANDAVA: Twelve -- 21 MR. CHEN: -- youngest -- the youngest to the 22 oldest of the children -- 23 MR. MANDAVA: Sure. 24 MR. CHEN: -- that will be among those 60 that'll 25 be outside.</p>	<p>1 one on the west side. Yes. 2 MR. CHEN: Right. And, as I understand it though, 3 my question went to the age, and it will be -- 4 MR. MANDAVA: Um-hmm. 5 MR. CHEN: -- 12 weeks to five years? 6 MR. MANDAVA: Correct. 7 MR. CHEN: Are you aware of any other Primrose 8 facility where they have a system for controlling the noise 9 that the children will make? 10 MR. MANDAVA: In my conversations with Primrose, 11 what I understand is the building itself is designed in 12 such a way, linear, the linear way is designed in such a 13 way -- and the materials they use in the building as well 14 -- it helps in minimizing that noise. 15 MR. CHEN: Is that interior noise? 16 MR. MANDAVA: Exterior noise as well. Right. And 17 then there is landscaping outside and the trees and, like, 18 you know, the -- all that stuff, so and then, in this case, 19 we're putting in opaque fence around the play area, and so 20 those -- all the factors will help reduce the noise as well 21 as the supervision of the teachers in each play area. 22 Every play area will have, like, you know, two teachers, 23 based on the number of kids and, like -- and the ratios, 24 and they are there to make sure the kids are having a good 25 time and they're playing but not screaming and yelling.</p>

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<p>153</p> <p>1 MR. CHEN: Okay. And my question though, when --</p> <p>2 what is the literature or the regulations that Primrose has</p> <p>3 for regulating the noise of children playing?</p> <p>4 MR. MANDAVA: I don't know the answer, information</p> <p>5 that you're asking.</p> <p>6 MR. CHEN: Okay. So you don't know of any</p> <p>7 regulation that Primrose has for regulating the noise</p> <p>8 generated by children when they're outside?</p> <p>9 MR. MANDAVA: No, I'm -- I don't know the answer.</p> <p>10 I don't know that Primrose has a regulation on that. I</p> <p>11 don't know.</p> <p>12 MR. CHEN: Okay. By the way, you mentioned that</p> <p>13 there's the opaque fence and some other things. Have you</p> <p>14 got any noise data?</p> <p>15 MR. MANDAVA: I don't have any noise data.</p> <p>16 MR. CHEN: And do you have any expertise on noise?</p> <p>17 MR. MANDAVA: I don't have any expertise.</p> <p>18 MR. CHEN: And with regard to lights, as I</p> <p>19 understand your testimony, all exterior lights, all</p> <p>20 exterior lights will be metered so that they will not be on</p> <p>21 after 7 p.m. -- excuse me -- that's right, after 7 p.m. or</p> <p>22 before 6 a.m. Is that an accurate statement?</p> <p>23 MR. MANDAVA: That's right, yes.</p> <p>24 MR. CHEN: So that virtually all exterior lights</p> <p>25 will -- to the extent that they're ever on will be between</p>	<p>155</p> <p>1 falls during the course of the year?</p> <p>2 MR. MANDAVA: I guess that's public information.</p> <p>3 It's available as sunrise, sunset, and based on all those</p> <p>4 things, based on the day and month of the year, I guess.</p> <p>5 MR. CHEN: Yeah. But I'm asking you, do you know</p> <p>6 when darkness falls?</p> <p>7 MR. MANDAVA: That's a very broad question. I</p> <p>8 don't know how to answer that. Like, you know, are you</p> <p>9 asking me about a specific day or month or -- because as I</p> <p>10 -- it depends on the day, right, of the year.</p> <p>11 MR. CHEN: So you don't know?</p> <p>12 MR. MANDAVA: I can look -- I mean, how would I</p> <p>13 remember that information? I'd have to look up on what --</p> <p>14 MR. CHEN: Well, we're --</p> <p>15 MR. MANDAVA: -- day when the --</p> <p>16 MR. CHEN: -- here today, and you're here as a</p> <p>17 rebuttal witness to talk about lighting.</p> <p>18 MR. MANDAVA: Right.</p> <p>19 MR. CHEN: And your testimony has been that we're</p> <p>20 not going to have any exterior lights turned on between --</p> <p>21 before 6 a.m. or after 7 p.m.; correct?</p> <p>22 MR. MANDAVA: Right.</p> <p>23 MR. CHEN: And so I'm just asking you, do you know</p> <p>24 if it gets dark -- I'm -- you know, let me do it that way.</p> <p>25 Do you know if it gets dark, sir, at any point in time</p>
<p>154</p> <p>1 6 a.m. and 7 p.m.?</p> <p>2 MR. MANDAVA: That's when we'll use those lights,</p> <p>3 yes.</p> <p>4 MR. CHEN: And that includes the lights that are on</p> <p>5 poles; correct?</p> <p>6 MR. MANDAVA: Right.</p> <p>7 MR. CHEN: And that also includes the lighting</p> <p>8 that's attached to the exterior walls of the building;</p> <p>9 correct?</p> <p>10 MR. MANDAVA: Right. And from what I -- and,</p> <p>11 again, I think you asked this question to Mr. Alt and,</p> <p>12 like, you know, in his testimony, he provided the</p> <p>13 information as well that at the doors, exterior doors,</p> <p>14 there will be very soft lighting just to identify that</p> <p>15 there's a door there, but it's not going to be something</p> <p>16 which radiates a lot of light.</p> <p>17 MR. CHEN: Well, what -- what will it -- what would</p> <p>18 it -- what will it be? What's the wattage? What's the</p> <p>19 lumens?</p> <p>20 MR. MANDAVA: I don't know the technical details,</p> <p>21 Mr. Chen.</p> <p>22 MR. CHEN: Technical detail, okay. But you don't</p> <p>23 have information on that?</p> <p>24 MR. MANDAVA: I do not have it. Yeah.</p> <p>25 MR. CHEN: Do you know the hours when darkness</p>	<p>156</p> <p>1 before 7 p.m. during the course of the year?</p> <p>2 MR. MANDAVA: Yes.</p> <p>3 MR. CHEN: Okay. And you also will have crew -- a</p> <p>4 cleanup crew on the site after 7 p.m., as I recall the</p> <p>5 testimony.</p> <p>6 MR. MANDAVA: Um-hmm.</p> <p>7 MR. CHEN: So you're not going to worry about</p> <p>8 lighting for the benefit of your cleanup crew after 7 p.m.?</p> <p>9 MR. MANDAVA: They will be parking very close to</p> <p>10 the entrance of the property. And when they leave, they</p> <p>11 will leave in their car, and the car has lights and, like,</p> <p>12 you know, it should be sufficient lighting for them to</p> <p>13 drive out of the property.</p> <p>14 MR. CHEN: And what is Primrose's regulations on</p> <p>15 lighting, exterior lighting?</p> <p>16 MR. MANDAVA: As Mr. Alt has testified, it is not</p> <p>17 uncommon, and it's a fairly common thing, for the</p> <p>18 properties to switch off the lights in the night after</p> <p>19 their hours of operation are done. So that's what I</p> <p>20 understand from Primrose as well.</p> <p>21 MR. CHEN: So you're relying upon the testimony of</p> <p>22 Mr. Alt?</p> <p>23 MR. MANDAVA: And -- and in my conversations with</p> <p>24 Primrose, yes.</p> <p>25 MR. CHEN: Do they -- have they given you any</p>

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<p>157</p> <p>1 regulations or guidelines issued by Primrose?</p> <p>2 MR. MANDAVA: I haven't seen that. They might have</p> <p>3 those regulations. They might've -- I haven't seen that.</p> <p>4 MR. CHEN: Okay. And just so I'm clear on this, so</p> <p>5 we now understand there will be no before- of after-school</p> <p>6 programs at the site?</p> <p>7 MR. MANDAVA: Yes. It's our desire to, yeah,</p> <p>8 eliminate that program.</p> <p>9 MR. CHEN: So when is the earliest that there would</p> <p>10 be any activity on site? What time?</p> <p>11 MR. MANDAVA: 6 a.m. is when the teachers start</p> <p>12 coming in, and 6:30 is when the students can come.</p> <p>13 MR. CHEN: So that's six -- and what is the latest?</p> <p>14 If there's no after-school program, what is --</p> <p>15 MR. MANDAVA: 6:30 p.m. is the -- is when the</p> <p>16 school ends for the students.</p> <p>17 MR. CHEN: Well, how about -- I'm -- I don't want</p> <p>18 to restrict it to just students, sir. I'm talking about</p> <p>19 any and all activity of the school on site. Okay?</p> <p>20 MR. MANDAVA: 6 a.m. until 7 p.m.</p> <p>21 MR. CHEN: So we're talking about six --</p> <p>22 MR. MANDAVA: Except -- except the cleaning crew</p> <p>23 will be there beyond 7 p.m. inside the building, cleaning</p> <p>24 room by room.</p> <p>25 MR. CHEN: And are there going to be any parent</p>	<p>159</p> <p>1 MR. MANDAVA: There's no separate teacher events.</p> <p>2 So teacher events will be during the day.</p> <p>3 MR. CHEN: Okay. So all teacher events would be</p> <p>4 before -- would end before 6:30 p.m.?</p> <p>5 MR. MANDAVA: Yes. Yes.</p> <p>6 MR. CHEN: And so it's my understanding that there</p> <p>7 would be no activity on site after 6:30 p.m. except for the</p> <p>8 cleaning crew?</p> <p>9 MR. MANDAVA: 6:30 p.m. is when the school ends,</p> <p>10 and then the teachers start leaving. So 7 p.m., after 7</p> <p>11 p.m. is when there's nobody except the cleaning crew, yeah.</p> <p>12 MR. CHEN: Okay. So there are -- teachers must</p> <p>13 vacate or will be gone by 7 p.m.?</p> <p>14 MR. MANDAVA: That's correct. Yeah.</p> <p>15 MR. CHEN: Now you also said there would be no</p> <p>16 bussing of children to the school from public schools?</p> <p>17 MR. MANDAVA: That's correct. Yes.</p> <p>18 MR. CHEN: Will there be any bussing to the site?</p> <p>19 MR. MANDAVA: Well, we don't anticipate</p> <p>20 (inaudible).</p> <p>21 MR. CHEN: Say it again, sir. I'm sorry.</p> <p>22 MR. MANDAVA: We don't anticipate any. There's no</p> <p>23 bussing that we know of.</p> <p>24 MR. CHEN: So there would be no buses coming to the</p> <p>25 site?</p>
<p>158</p> <p>1 events?</p> <p>2 MR. MANDAVA: We -- six events in a year, as we</p> <p>3 have put in the proposal, and -- and they have to close by</p> <p>4 9 p.m.</p> <p>5 MR. CHEN: How many of those parent events?</p> <p>6 MR. MANDAVA: Six. Maximum of six per year.</p> <p>7 MR. CHEN: I -- I apologize, sir. And they would</p> <p>8 be starting at 9 p.m. or ending at 9 p.m.?</p> <p>9 MR. MANDAVA: They would be ending before 9 p.m.</p> <p>10 MR. CHEN: Okay. And I take it between 7 p.m. and</p> <p>11 9 p.m. there would be no lights on for those parents when</p> <p>12 they come to the site, park, and walk in?</p> <p>13 MR. MANDAVA: I -- I -- I have to check on that</p> <p>14 one. Yes. I mean, based on my previous statement, I was</p> <p>15 talking of the regular hours. Yes, for the six other</p> <p>16 events, if there are parents coming in, maybe for those six</p> <p>17 times in the year, up to six times -- it's, like, you know,</p> <p>18 it's not necessarily all the six -- we will have to -- we</p> <p>19 have to provide some lighting for them, yes, in the parking</p> <p>20 lot.</p> <p>21 MR. CHEN: So we know then that during the parent</p> <p>22 events, there will be lighting at night?</p> <p>23 MR. MANDAVA: For the maximum of six times in the</p> <p>24 year.</p> <p>25 MR. CHEN: How about teacher events?</p>	<p>160</p> <p>1 MR. MANDAVA: That's correct, yes.</p> <p>2 MR. CHEN: Do you include a van when you use the</p> <p>3 word bus?</p> <p>4 MR. MANDAVA: I do not. So if you're talking about</p> <p>5 the UPS trucks or, like, you know, that, I'm not including</p> <p>6 those.</p> <p>7 MR. CHEN: Yeah. I understand. Will there be any</p> <p>8 pupils either coming to the site or leaving the site by</p> <p>9 vans?</p> <p>10 MR. MANDAVA: If the -- if the parent comes in a</p> <p>11 what you call a people mover, I think, or I don't know if</p> <p>12 you consider that as a van. The six-seaters or the seven-</p> <p>13 seaters, etcetera. They might be using those sort of cars,</p> <p>14 which are people -- what we call people movers.</p> <p>15 MR. CHEN: Okay. But certainly the school will not</p> <p>16 be providing any type of bussing or van transportation to</p> <p>17 or from the school?</p> <p>18 MR. MANDAVA: That's correct.</p> <p>19 MR. CHEN: Okay. That's all I've got.</p> <p>20 HEARING EXAMINER ROBESON HANNAN: All right. Any</p> <p>21 redirect, Mr. Kline?</p> <p>22 MR. KLINE: No, ma'am. Thank you.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: Thank you. You</p> <p>24 may be excused again, Mr. Mandava.</p> <p>25 MR. MANDAVA: Thank you, Madam Examiner.</p>

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161	1 HEARING EXAMINER ROBESON HANNAN: All right, Mr. 2 Kline. Your next witness. 3 VOIR DIRE EXAMINATION OF ROBERT PEASE 4 MR. KLINE: I'd like to call a civil engineer to 5 provide rebuttal testimony. I sent to the Hearing Examiner 6 and Mr. Chen a résumé for Robert Pease to replace Mr. 7 Eduardo Intriago, who's left town and is no longer 8 associated with the project. I'd like to call for Mr. 9 Pease and let Mr. Chen and I determine whether he meets 10 expert qualifications. 11 Mr. Pease, are you with us? 12 MR. PEASE: I am, yes. 13 MR. KLINE: Mr. Pease, could you please introduce 14 yourself? 15 MR. PEASE: Name is Robert Pease. 16 HEARING EXAMINER ROBESON HANNAN: Well, first -- 17 hold on, hold on one second. 18 MR. PEASE: Sorry. 19 HEARING EXAMINER ROBESON HANNAN: Please raise your 20 right hand. 21 Do you solemnly affirm under penalties of perjury 22 that the statements you're about to make are the truth, the 23 whole truth, and nothing but the truth? 24 MR. PEASE: I do. 25 (Exhibit 237 introduced.)	163	1 MR. KLINE: How about courts of law? 2 MR. PEASE: Yes. Yes. Traffic. 3 MR. KLINE: Can you -- can you elaborate on that? 4 Do you know where and -- 5 MR. PEASE: I was a witness in a traffic case, and 6 I had to get into sight distance and things of that nature 7 based on the -- you know, the expertise I had in that type 8 of design. 9 MR. KLINE: Well, I'll -- I will -- Madam Hearing 10 Examiner, I'd like to offer Mr. Pease as an expert in civil 11 engineering based on 44 years of experience at a number of 12 firms that you are scrolling through right now and a 13 nominal classification as an expert in civil engineering in 14 a district court case. 15 HEARING EXAMINER ROBESON HANNAN: All right. Mr. 16 Chen, do you have any objections? 17 MR. CHEN: I'm going to have some questions. If 18 this is voir dire, I -- I do have questions. 19 HEARING EXAMINER ROBESON HANNAN: Yes, it is. 20 That's why I'm asking. Do you have voir dire? 21 MR. CHEN: Yes, I do. 22 HEARING EXAMINER ROBESON HANNAN: All right. 23 MR. CHEN: Mr. Pease, you say you've testified as 24 an expert in one case; is that correct, sir? 25 MR. PEASE: It was regarding a court case, a
162	1 HEARING EXAMINER ROBESON HANNAN: Now I have his 2 résumé on the screen, if people can see it. If you can't 3 see it, let me know. 4 Okay. Hearing none. Go ahead, Mr. Pease. 5 MR. PEASE: Well, just my -- a brief description of 6 my experience. I have approximately 44 years of 7 experience, various aspects of engineering design. I'm 8 licensed in three states: California, Maryland, and 9 Virginia. My present role here with Colliers, during the 10 time of this -- the design on this -- I'm getting ahead of 11 myself, I'm sorry. 12 I have experience with subdivision design, 13 sanitary, sewer storm, sewer utility -- all public 14 utilities, I'll call it -- site plan design, things of that 15 nature, stormwater management, storm drain design -- 16 HEARING EXAMINER ROBESON HANNAN: Okay. What are 17 -- 18 MR. KLINE: Mr. -- 19 HEARING EXAMINER ROBESON HANNAN: -- we hoping to 20 do here? Are we going to qualify him? 21 MR. KLINE: That was the question I was about to 22 ask is, Mr. Pease, have you ever qualified as an expert in 23 the field of civil engineering before a board or commission 24 or a hearing examiner like you're dealing with today? 25 MR. PEASE: Not before today, no.	164	1 traffic court case. 2 MR. CHEN: Tell me about it. How -- what was your 3 role? Were you called as an expert? Were you a party? 4 MR. PEASE: I was a witness to the -- to an 5 accident, and then my engineering background came into play 6 during the testimony as to what was going on. It was sort 7 of critical to what I had witnessed regarding a broadside 8 accident at an intersection. 9 MR. CHEN: So you were called as a fact -- what is 10 called a fact witness; is that correct? 11 MR. PEASE: I guess so. I -- yeah. 12 MR. CHEN: Okay. And I take it in the course of 13 your description of what you observed as a witness, in some 14 way it fell into your knowledge about -- 15 MR. PEASE: Specifically about whether or not there 16 was adequate sight distance at this intersection, yeah. 17 MR. CHEN: Where was this -- what -- what court was 18 this? 19 MR. PEASE: Oh my God, I believe it was Fauquier 20 County, Virginia. 21 MR. CHEN: When? 22 MR. PEASE: Good question. About 1994. 23 MR. CHEN: So going into that trial, you were not 24 retained as an expert witness as such, sir -- 25 MR. PEASE: That's correct.

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<p>165</p> <p>1 MR. CHEN: -- were you?</p> <p>2 MR. PEASE: That's correct.</p> <p>3 MR. CHEN: What involvement have you had with this</p> <p>4 application for the Primrose School at this site on --</p> <p>5 MR. KLINE: I -- I -- I -- that's a question I'll</p> <p>6 certainly ask him. I don't think that's subject --</p> <p>7 MR. CHEN: Okay.</p> <p>8 MR. KLINE: -- to voir dire though.</p> <p>9 MR. CHEN: Okay. We can wait. Okay. I appreciate</p> <p>10 that.</p> <p>11 You don't have a degree in engineering, do you,</p> <p>12 sir?</p> <p>13 MR. PEASE: No, I do not.</p> <p>14 MR. CHEN: In fact, as I -- looking at your résumé,</p> <p>15 in the 44 years that you've been employed in your field</p> <p>16 shown on your résumé, you spent one year in California,</p> <p>17 from 1988 to 1989; is that correct?</p> <p>18 MR. PEASE: Yes.</p> <p>19 MR. CHEN: And it was during that period of time</p> <p>20 that apparently you got certified as an engineer in</p> <p>21 California?</p> <p>22 MR. PEASE: Correct.</p> <p>23 MR. CHEN: Is that the first jurisdiction where you</p> <p>24 were certified as a professional engineer?</p> <p>25 MR. PEASE: It is, yes. It was.</p>	<p>167</p> <p>1 after that into your area of expertise.</p> <p>2 MR. CHEN: Okay. And I take it you had to pass a</p> <p>3 test to be certified as an engineer in California?</p> <p>4 MR. PEASE: Correct.</p> <p>5 MR. CHEN: And do they give that test in Virginia?</p> <p>6 MR. PEASE: They do. It's less stringent in</p> <p>7 Virginia because you don't have to pass the seismic portion</p> <p>8 --</p> <p>9 MR. CHEN: Did you take --</p> <p>10 MR. PEASE: -- (inaudible) --</p> <p>11 MR. CHEN: Did you take that test in Virginia?</p> <p>12 MR. PEASE: No. You get it from -- with</p> <p>13 reciprocity.</p> <p>14 MR. CHEN: Okay.</p> <p>15 MR. PEASE: You get your -- get your license</p> <p>16 through reciprocity.</p> <p>17 MR. CHEN: And, therefore, you never took it in</p> <p>18 Virginia?</p> <p>19 MR. PEASE: No, I have not.</p> <p>20 MR. CHEN: If I -- I've got to ask this because of</p> <p>21 your 44 years shown, sir, you're showing one year, '88 to</p> <p>22 '89, in California. Why -- why were you in California?</p> <p>23 MR. PEASE: My fiancée lived in California at the</p> <p>24 time.</p> <p>25 MR. CHEN: Ah, okay. That's a good answer, as far</p>
<p>166</p> <p>1 MR. CHEN: Okay. So that in the years leading up</p> <p>2 to the -- that period, which is, as I -- and I apologize.</p> <p>3 I'm fumbling because I --</p> <p>4 MR. PEASE: Oh, no, you're good.</p> <p>5 MR. CHEN: Between 1977 and 1988, you were employed</p> <p>6 in Virginia, and what capacity were you employed at that</p> <p>7 time?</p> <p>8 MR. PEASE: Oh, design engineer. I started out</p> <p>9 after college working in a planning office with Paciulli</p> <p>10 Simmons, had quite a few roles under them. I eventually</p> <p>11 evolved, whatever that word would be, into engineering</p> <p>12 aspects, more design aspects, subdivision, roads, things of</p> <p>13 that nature. I had to gain experience since I did not have</p> <p>14 a degree in engineering. And once I got that experience</p> <p>15 compiled, I was able to, you know, pass my EIT and continue</p> <p>16 with my experience --</p> <p>17 MR. CHEN: What is --</p> <p>18 MR. PEASE: -- but -- go ahead.</p> <p>19 MR. CHEN: You used the word EIT. What does that</p> <p>20 stand for?</p> <p>21 MR. PEASE: Engineer in Training. I -- I equate it</p> <p>22 to a driver's -- a learner's permit for drivers. It's --</p> <p>23 it's a first stage. It covers all kinds of engineering --</p> <p>24 chemical engineering, thermo -- all kinds of different --</p> <p>25 electrical engineering, structural, and then you branch out</p>	<p>168</p> <p>1 --</p> <p>2 MR. PEASE: No, I was --</p> <p>3 MR. CHEN: -- as I'm concerned. So I take it you</p> <p>4 have not previously testified as an expert witness?</p> <p>5 MR. PEASE: That's correct.</p> <p>6 MR. CHEN: What is your -- do you know the area of</p> <p>7 expertise that you will be offered to express an opinion</p> <p>8 about?</p> <p>9 MR. PEASE: Construction, yes. Stormwater</p> <p>10 management, yes. I've spent quite a number of years -- you</p> <p>11 know, you learn stormwater management right out of the</p> <p>12 gate. If you can't control water as an engineer, you don't</p> <p>13 have a future in engineering, so you learn that right out</p> <p>14 of the gate.</p> <p>15 During my ten years with Bohler Engineering, I was</p> <p>16 responsible for quality control for four regional Mid-</p> <p>17 Atlantic offices. And I reviewed all our plans, all their</p> <p>18 plans, for constructability, basically.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: Wait. Reviewed</p> <p>20 what plans? The -- the -- the --</p> <p>21 MR. PEASE: Whatever plans --</p> <p>22 HEARING EXAMINER ROBESON HANNAN: -- water plans or</p> <p>23 --</p> <p>24 MR. PEASE: Whatever plans those four offices put</p> <p>25 in front of me.</p>

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169	1 HEARING EXAMINER ROBESON HANNAN: Okay. 2 MR. PEASE: Stormwater, subdivision, site plans -- 3 yes, all of them. 4 MR. CHEN: So you were an in-house staff person to 5 review plans? 6 MR. PEASE: Correct. 7 MR. CHEN: And I take it someone else would prepare 8 the plan, and you would review it? 9 MR. PEASE: Correct. 10 MR. CHEN: And after you reviewed the plan, what 11 would you do? 12 MR. PEASE: I would write a comment letter, much 13 like the County does, for the design team and -- 14 MR. CHEN: The Bohler -- 15 MR. PEASE: -- distribute it -- 16 MR. CHEN: -- would that be the Bohler design team? 17 MR. PEASE: Whoever -- yeah, whichever office it 18 came from, that office manager would get a copy, always the 19 big guy would get a copy, but I would distribute the 20 comment letter, mark up the plans, and then review my 21 comments with the team. 22 MR. CHEN: Okay. So you would review plans and 23 make comments about the plan and share them with other 24 staff? 25 MR. PEASE: Correct. With the design staff as --	171	1 understand what that means. 2 MR. PEASE: Means and methods of construction 3 basically. 4 HEARING EXAMINER ROBESON HANNAN: You mean whether 5 the building can be constructed or -- 6 MR. PEASE: The storm drain outfall specifically. 7 HEARING EXAMINER ROBESON HANNAN: Okay. So you -- 8 you're here to testify on the storm drain outfall? 9 MR. PEASE: Correct. 10 HEARING EXAMINER ROBESON HANNAN: Okay. And where 11 in your résumé is your experience with storm drain 12 outfalls? 13 MR. PEASE: The 30 years leading up to the role I 14 had with Bohler Engineering for quality control. 15 MR. KLINE: And, Madam Hearing Examiner, sort of 16 apropos to Mr. Chen's earlier -- I noticed on the résumé 17 that he is responsible for subdivision review of the South 18 Riding subdivision. So he may be the person we want to 19 blame for the problems that are out there today. 20 MR. PEASE: That's a different -- 21 MR. KLINE: So he -- 22 MR. PEASE: -- that's a different South Riding, but 23 good try. 24 (Laughter.) 25 MR. KLINE: Okay. Right. I stand corrected. I --
170	1 and supervisory staff for that design team. 2 MR. CHEN: Madam Examiner, I don't think this 3 gentleman has demonstrated qualifications to be an expert 4 witness. 5 HEARING EXAMINER ROBESON HANNAN: And why? 6 MR. CHEN: Because, among other things, he does not 7 have an engineering degree, he has not ever previously been 8 recognized as an expert. 9 The most that I've heard, even as to the areas that 10 he has told us today he plans to address, involve reviewing 11 in-house plans and making comments on the plans for other 12 staff to -- to look at. I'm not saying -- I'm not 13 denigrating that -- that function, but that's not the 14 function that an individual with expertise, even in the 15 field or in the course of professional employment, would -- 16 would do. I mean, I haven't heard anything other than I've 17 reviewed some plans at this Bohler Engineering. 18 And, again, I'm not denigrating the -- the 19 importance of what he was doing. I just don't think it's 20 an area of expertise that is relevant to this proceeding. 21 HEARING EXAMINER ROBESON HANNAN: Mr. Pease, what 22 -- what topics are you going to address today? You said 23 stormwater? 24 MR. PEASE: Constructability -- 25 HEARING EXAMINER ROBESON HANNAN: I don't	172	1 I understand the questions, and the way I looked at it is 2 he's actually better than the -- the witness we had before 3 because he's the person who reviewed everything to make 4 sure the quality control as compared to Eduardo Intriago 5 who is a person designing it, and I think he actually -- 6 HEARING EXAMINER ROBESON HANNAN: Well, I see -- 7 MR. KLINE: -- has more experience. 8 HEARING EXAMINER ROBESON HANNAN: I see sewage 9 disposal systems, but I don't see the storm drain systems. 10 MR. KLINE: Mr. Pease. 11 HEARING EXAMINER ROBESON HANNAN: Oh, wait. 12 MR. KLINE: Mr. Pease, can you -- can you explain 13 to the Hearing Examiner kind of is the design of the storm 14 drain materially different than the design of a sewer 15 system? 16 HEARING EXAMINER ROBESON HANNAN: Well, first let 17 -- first let's get him -- decide whether he's qualified. I 18 think the standard for -- 19 MR. PEASE: Well -- 20 HEARING EXAMINER ROBESON HANNAN: -- being 21 qualified is whether he can assist the trier of fact in 22 resolving an issue. 23 MR. KLINE: May I -- may I ask this question then? 24 Mr. Pease, would you use the phrase "means and 25 methods," would you communicate to the Hearing Examiner

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<p>173</p> <p>1 what that means and how you believe that means you're 2 qualified to answer some of the questions you've heard by 3 listening to our hearings? 4 MR. PEASE: Well, I've heard concern regarding 5 disturbance with the neighbors, with the surrounding area 6 during the construction of this -- this storm drain 7 outfall, and I just wanted to hopefully help clarify what 8 that impact would look like to the -- to the surrounding 9 communities, surrounding lots. 10 Now if you're -- you know, if you're looking at my 11 résumé there, I started storm drain design when I was with 12 Paciulli Simmons. Like I said, we did a lot of subdivision 13 work there, did a lot of road design. You have to be -- 14 HEARING EXAMINER ROBESON HANNAN: Okay. I do see 15 the stormwater management design -- 16 MR. PEASE: It's in there. 17 HEARING EXAMINER ROBESON HANNAN: -- right here. 18 MR. PEASE: It's in there. 19 HEARING EXAMINER ROBESON HANNAN: Okay. What I'm 20 going to do, I'm going to qualify him as an expert, but I 21 have the right to give it the weight it deserves, but I do 22 think he has enough there to qualify as an expert. 23 Is it okay -- do you want to do civil engineering 24 in general, or do you want to storm drain design? 25 MR. CHEN: May I be heard?</p>	<p>175</p> <p>1 you know, common knowledge based upon his work experience. 2 HEARING EXAMINER ROBESON HANNAN: Well, Mr. Kline, 3 how do you want to phrase it? 4 MR. KLINE: Well, I -- I would like to have him 5 qualified as an expert in civil engineering. I'm not going 6 to be asking him to do any lines of sight analysis or 7 re-subdivision analysis, but I'm concerned that there may 8 be, as occurred in other witnesses, a growth in the field 9 of inquiry, and I want to basically have him be qualified 10 to answer anything subject to Mr. Chen's objection to it. 11 I -- I personally don't agree with the statement "means and 12 methods is not civil engineering" because I believe it is 13 the essence of civil engineering. 14 So I think he's qualified as an engineer, but I'm 15 -- I'm comfortable with your acceptance as civil 16 engineering but focusing on the primary issues that we've 17 talked about today, and that will be storm drain, sewer 18 system, and anything that flows out of questions from the 19 opposition's attorney. 20 HEARING EXAMINER ROBESON HANNAN: Okay. With that 21 qualification, I'm going to qualify him. 22 DIRECT EXAMINATION OF ROBERT PEASE 23 MR. KLINE: Mr. Pease. 24 MR. PEASE: Yes. 25 MR. KLINE: You participated in the design of the</p>
<p>174</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Yeah. Do I have 2 a choice? 3 MR. CHEN: Yes. (Inaudible.) Yes, yes. 4 HEARING EXAMINER ROBESON HANNAN: Go ahead, Mr. 5 Chen. 6 MR. CHEN: All right. I appreciate the description 7 Mr. Pease just gave you on means and methods. And that is 8 certainly not civil engineering, and it's certainly not the 9 area that the Examiner described. And what I think the 10 gentleman -- I think he's being very candid. 11 I think what he is saying is that, based upon his 12 experience working for engineering firms, he's -- he has 13 gotten a fair amount of exposure and experience to seeing 14 how these types of infrastructure facilities are 15 constructed. He may not have designed them, he may not 16 have actively done the plans for them, but he is seeing how 17 they are installed and -- and the implications for that 18 type of installation in a -- in an area, be it a 19 subdivision, a community, whatever. And that makes sense. 20 That -- that makes sense. 21 And he well may be able to testify about what would 22 be the situation during the course of the installation of 23 the piping that is being -- has been identified in this 24 case, so I think it's a more limited area. I'm not sure 25 it's a matter even of expertise. I think it's a matter of,</p>	<p>176</p> <p>1 systems related to the proposed Primrose School during the 2 early phases of the development working with Mr. Intriago. 3 Am I correct in that? 4 MR. PEASE: That's correct. My role at the time -- 5 HEARING EXAMINER ROBESON HANNAN: Well, can you be 6 more -- 7 MR. PEASE: -- go ahead. 8 HEARING EXAMINER ROBESON HANNAN: Just a second. 9 Can you be more specific about which systems? 10 MR. CHEN: Thank you. 11 MR. KLINE: Yes. Thank you. That's what I was 12 going to ask. I want -- I want the Hearing Examiner to 13 understand what Mr. Pease's familiarity is because Mr. Chen 14 appropriately asked that question earlier. 15 MR. PEASE: No, that's fine. This -- as we all 16 know, this site's been, you know, different variations of 17 designs, different outfalls, different vehicular 18 approaches. 19 As the site plan was approved through the 20 conceptual stormwater management stage back on November 21 4th, the outfall was taken down Carnegie Hall -- Carnegie 22 Avenue, I'm sorry, through the adjacent subdivision -- 23 Carnegie Hall, right -- through the adjacent subdivision 24 and out falls into the -- into the open space below 25 Ottenbrook Terrace. I was assisting Eduardo's design staff</p>

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177	<p>1 in trying to evaluate their alignment, vertical alignment, 2 horizontal alignment -- 3 HEARING EXAMINER ROBESON HANNAN: And Eduardo is 4 Eduardo Intriago? 5 MR. PEASE: Yes. 6 HEARING EXAMINER ROBESON HANNAN: Okay. Go ahead. 7 MR. PEASE: Just helping his younger staff, trying 8 to make sure -- trying to direct them the proper way to 9 align this system and assess different decision points in 10 front of them. 11 MR. KLINE: Well, and did you have that role in 12 other design features such as the -- the sewer system? 13 MR. PEASE: I did, yes. As -- as far as that 14 system is designed to date, yes. 15 MR. KLINE: Okay. Well, let me ask you questions 16 about the sewer system, first of all. 17 MR. PEASE: Okay. 18 HEARING EXAMINER ROBESON HANNAN: Wait. Are you 19 (inaudible) the sewer system or the storm drain? 20 MR. KLINE: Well, I was going -- no, I -- I -- I 21 did use the term systems, plural, and I did want to ask him 22 questions about the sewer system as well. 23 HEARING EXAMINER ROBESON HANNAN: Okay. Go ahead. 24 MR. KLINE: Mr. Pease, do you know what the sewer 25 category rating is in Montgomery County for the subject</p>	179	<p>1 has the capacity. We have not gone through an HPA with 2 WSSC at this -- 3 MR. KLINE: Okay, all right. 4 MR. PEASE: -- point. 5 MR. KLINE: So let me -- let me slow you down. I 6 think -- 7 MR. PEASE: Sure. 8 MR. KLINE: -- you're getting -- I mean, everybody 9 wants to hear that, but we need to understand a little bit 10 better. 11 MR. PEASE: Sure. 12 MR. KLINE: So the main system, are you just 13 describing what's the size of the pipes in the system? 14 MR. PEASE: Okay. The main -- I would imagine -- 15 HEARING EXAMINER ROBESON HANNAN: (Inaudible.) 16 Hold -- 17 MR. PEASE: -- is a -- go ahead. 18 HEARING EXAMINER ROBESON HANNAN: -- hold. Are you 19 describing the existing system or your proposed system? 20 Which -- which are you -- I'm confused about which system: 21 what's existing or what's proposed? 22 MR. PEASE: Are you talking to me or -- 23 MR. KLINE: Yeah, it's your -- 24 HEARING EXAMINER ROBESON HANNAN: Yeah. 25 MR. KLINE: No, she doesn't want to hear it from</p>
178	<p>1 property? 2 MR. PEASE: Well, it's actually WSSC, and it's 3 category three, and they consider that an area of 4 construction where new systems are given immediate priority 5 for both sewer and/or water systems. 6 MR. KLINE: And are you familiar with the -- the 7 number of fixtures that are proposed in the Primrose 8 building in terms of its intensity of use? 9 MR. PEASE: Well, I know they -- you know, each 10 classroom has its own facility, you know, based upon the 11 age of the child within that classroom, and I know they 12 have a lot of fixtures. 13 MR. KLINE: All right. Well, my -- what I'm 14 leading up to is, was your work on the plans for the sewer 15 system -- in that, did you determine that the capacity -- 16 the system had the capacity to handle the proposed Primrose 17 facility? 18 MR. PEASE: Based on the category, I'm -- I would 19 say that the system has the capacity, yes. 20 MR. KLINE: Well -- 21 MR. PEASE: The existing -- 22 MR. KLINE: -- when you say the -- you say the 23 category, meaning what? 24 MR. PEASE: The category of the -- of the main, of 25 -- of WSSC's planning area. I would imagine this system</p>	180	<p>1 me. She wants to hear it from you. 2 MR. PEASE: Oh, okay. I'm sorry. Okay. No, no, 3 no. I'm sorry. The existing system. The question on the 4 table, as I understand it, is whether or not the existing 5 system would have capacity for the Primrose School. 6 HEARING EXAMINER ROBESON HANNAN: Okay. And the 7 answer is? 8 MR. PEASE: I would imagine it does, yes, based on 9 the category of, you know -- of the -- of, you know, WSSC's 10 improvement. 11 MR. KLINE: I think we need something -- I think we 12 need -- 13 HEARING EXAMINER ROBESON HANNAN: (Inaudible.) 14 MR. KLINE: -- something more specific. 15 MR. PEASE: Okay. 16 HEARING EXAMINER ROBESON HANNAN: Let me talk. Let 17 me talk. Are you saying based on the W-3 category? Is 18 that what you're saying? 19 MR. PEASE: Well, that and, you know, if we had an 20 eight-inch main in that road at a half a percent slope, 21 that main's going to carry 930,000 gallons per day, which 22 would equate to about 2,600 households at a 350 gallon per 23 day flow rate. I know there's not 2,600 homes going into 24 that manhole, so -- 25 HEARING EXAMINER ROBESON HANNAN: What manhole? Do</p>

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<p>181</p> <p>1 you -- what manhole?</p> <p>2 MR. PEASE: The manhole that's about, oh, hundred</p> <p>3 feet to the north -- I'm sorry, to the east of us along</p> <p>4 Needwood. Now I know there's -- on our survey, it says on</p> <p>5 that manhole that it was not accessible. That means it was</p> <p>6 not accessible to the survey crew at the date of the</p> <p>7 survey. That does not mean it's not accessible to the</p> <p>8 public, just for clarity.</p> <p>9 MR. KLINE: So -- so you're saying that there is an</p> <p>10 existing eight-inch line in the right-of-way of Needwood?</p> <p>11 MR. PEASE: Correct.</p> <p>12 MR. KLINE: All right. And that would be extended</p> <p>13 to the Primrose property?</p> <p>14 MR. PEASE: Correct, yes.</p> <p>15 MR. KLINE: And your understanding of the fixtures</p> <p>16 and the kitchen and all the demands in the Primrose</p> <p>17 facility would not exceed the capacity of that line?</p> <p>18 MR. PEASE: Correct.</p> <p>19 MR. KLINE: And is it necessary to have a dialogue</p> <p>20 with the Sanitary Commission to verify that?</p> <p>21 MR. PEASE: That will take place, yes. After the</p> <p>22 conditional use permit's approved, we'll submit an HPA to</p> <p>23 WSSC, and they --</p> <p>24 MR. KLINE: Okay.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Now what --</p>	<p>183</p> <p>1 would cause a conflict with any of the residences along</p> <p>2 Needwood that presently are served by that line so that</p> <p>3 they run the risk of either -- well, run the risk of loss</p> <p>4 of service?</p> <p>5 MR. CHEN: Objection. I don't -- I've heard</p> <p>6 nothing that this gentleman can address that question at</p> <p>7 all.</p> <p>8 MR. KLINE: Well, I -- I -- I did hear him earlier</p> <p>9 talk about how he was instructing people how to design</p> <p>10 systems to avoid conflict, so I thought that was a</p> <p>11 reasonable question to ask him.</p> <p>12 MR. CHEN: It's a question --</p> <p>13 HEARING EXAMINER ROBESON HANNAN: I -- go ahead.</p> <p>14 MR. KLINE: Mr. Pease, can you answer, unless the</p> <p>15 Hearing Examiner tells me no?</p> <p>16 HEARING EXAMINER ROBESON HANNAN: No, I'm going to</p> <p>17 let it in for the weight it deserves.</p> <p>18 MR. KLINE: Sure. So, Mr. Pease, very simple, is</p> <p>19 -- to -- to extend the sewer line to the Primrose property,</p> <p>20 is it likely that it's going to risk any loss of service to</p> <p>21 anybody who's presently served by the sewer line?</p> <p>22 MR. PEASE: No. No likelihood.</p> <p>23 MR. KLINE: And that would be assured by a review</p> <p>24 by WSSC of your plans?</p> <p>25 MR. PEASE: Yes. Yes. And, you know, standard --</p>
<p>182</p> <p>1 MR. KLINE: And I -- I -- yeah. Yeah, I --</p> <p>2 HEARING EXAMINER ROBESON HANNAN: What's an H --</p> <p>3 okay.</p> <p>4 MR. KLINE: -- I stopped you before because we need</p> <p>5 a clarification of what a HPA is.</p> <p>6 MR. PEASE: Well, it's like a -- it's a -- it's</p> <p>7 like a conceptual plan that you submit to WSSC, and they</p> <p>8 look at your use group and determine, estimate the amount</p> <p>9 of flow from that use group, based on the use group and the</p> <p>10 square footage, and whether or not -- they'll assess</p> <p>11 whether or not their system has the capacity and whether or</p> <p>12 not they will allow an SEP, a system extension plan, to</p> <p>13 take place to move forward to get that -- to get the line</p> <p>14 extended to our property.</p> <p>15 MR. KLINE: Mr. Pease, are you aware of any reports</p> <p>16 of any transmission problems in the pipe --</p> <p>17 MR. PEASE: I am --</p> <p>18 MR. KLINE: -- today?</p> <p>19 MR. PEASE: I am not aware of any, no.</p> <p>20 MR. KLINE: And similarly any treatment problems at</p> <p>21 the end of the line?</p> <p>22 MR. PEASE: No, I am not.</p> <p>23 MR. KLINE: Okay, fine. I don't know -- well, let</p> <p>24 me ask you this. Is there any reason to think that the</p> <p>25 extension of the sewer line to serve the Primrose property</p>	<p>184</p> <p>1 standard means and methods during construction to ensure</p> <p>2 that the service isn't interrupted. These things are</p> <p>3 usually discussed in a pre-construction meeting. Just --</p> <p>4 you know, the pre-construction meetings, you talk about any</p> <p>5 -- any particular site facets that are near and dear to</p> <p>6 neighbors, public safety, things of that nature.</p> <p>7 MR. KLINE: I was going to go ahead and ask some</p> <p>8 questions now about the storm drain system unless -- unless</p> <p>9 Mr. Chen would like to ask questions about the sewer system</p> <p>10 right now.</p> <p>11 MR. CHEN: I'll do what the Examiner wants.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Let's finish --</p> <p>13 MR. CHEN: I can do --</p> <p>14 HEARING EXAMINER ROBESON HANNAN: Let's go finish</p> <p>15 with his direct, and then we go to cross.</p> <p>16 MR. KLINE: Fine. Mr. Pease, would you just</p> <p>17 reiterate what your familiarity is with the storm drain</p> <p>18 system to service the Primrose facility?</p> <p>19 MR. PEASE: Well, there's an existing system that</p> <p>20 discharges water, like I said before, south of Ottenbrook</p> <p>21 Terrace into the common open space. The plan on the table</p> <p>22 is to make some improvements to that system where the pipes</p> <p>23 are under capacity by either -- I think it's mostly</p> <p>24 increasing the diameter of those pipes to handle the extra</p> <p>25 burden, I'll call it, on the system, the extra flow into</p>

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<p>185</p> <p>1 the system.</p> <p>2 MR. KLINE: Why -- why -- why is the storm drain</p> <p>3 that's there today underperforming or not large enough to</p> <p>4 carry whatever the flow that it's getting, if you know?</p> <p>5 MR. PEASE: Well, we are adding -- adding flow from</p> <p>6 our site into that system, and there are a couple of</p> <p>7 stretches where that pipe is just too flat to --</p> <p>8 HEARING EXAMINER ROBESON HANNAN: What is that --</p> <p>9 MR. PEASE: -- to handle that extra flow.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: -- flat? Too</p> <p>11 flat, what does that mean?</p> <p>12 MR. PEASE: Too flat is just not at a slope that's</p> <p>13 great enough to push the water through the system, through</p> <p>14 the pipe.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Got you.</p> <p>16 MR. KLINE: So is it the -- our increase of flow</p> <p>17 that necessitates some corrections, or is it to change the</p> <p>18 grade to be able to get the velocity picked up?</p> <p>19 MR. PEASE: Well, my recollection, the directive</p> <p>20 was that we had to design the system -- this is getting</p> <p>21 into some technical issues here, but we had to design the</p> <p>22 system so that the hydraulic grade line did not go up into</p> <p>23 the manhole. Generally -- and I questioned that at the</p> <p>24 time -- generally, when you design a system, you are able</p> <p>25 -- you are allowed to have that hydraulic grade line go up</p>	<p>187</p> <p>1 system so that the hydraulic grade line --</p> <p>2 MR. CHEN: Object. Excuse me.</p> <p>3 MR. PEASE: -- (inaudible).</p> <p>4 MR. CHEN: I apologize.</p> <p>5 MR. PEASE: Go ahead.</p> <p>6 MR. CHEN: I object. We're -- I don't -- we're not</p> <p>7 talking about most jurisdictions. We're talking about</p> <p>8 Montgomery County, Maryland, and, you know, that --</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Well --</p> <p>10 MR. CHEN: -- that's the -- you know, that's what</p> <p>11 we're dealing with. We're not dealing --</p> <p>12 HEARING EXAMINER ROBESON HANNAN: (Inaudible.)</p> <p>13 MR. CHEN: -- with most systems or jurisdictions or</p> <p>14 Fairfax County, Virginia. We're dealing with Montgomery</p> <p>15 County. And if the gentleman is going to be testifying to</p> <p>16 this area's -- I think Mr. Kline wants him to testify about</p> <p>17 this specific -- this specific project, then the inquiry</p> <p>18 and the information has to deal with Montgomery County.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: I think he's</p> <p>20 setting -- Mr. Pease, are you aware of the requirement in</p> <p>21 Montgomery County?</p> <p>22 MR. PEASE: The short answer is we're adding water</p> <p>23 to the system.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: No, no. That</p> <p>25 wasn't --</p>
<p>186</p> <p>1 into the manhole just so it doesn't come out the inlets.</p> <p>2 In this case, we were not allowed to, so we had to increase</p> <p>3 the diameter of the pipes -- in some cases, just increase</p> <p>4 the slope of the pipe when we were able to based on --</p> <p>5 MR. KLINE: And --</p> <p>6 MR. PEASE: Go ahead.</p> <p>7 MR. KLINE: -- and -- and so let me ask you, the</p> <p>8 manhole you're talking about --</p> <p>9 MR. PEASE: Um-hmm.</p> <p>10 MR. KLINE: -- that's in Carnegie? We're not</p> <p>11 talking about Needwood any longer; right?</p> <p>12 MR. PEASE: Correct, correct.</p> <p>13 MR. KLINE: Yeah. So there is a manhole somewhere</p> <p>14 along the right-of-way for Carnegie that needs to be</p> <p>15 avoided, or how is it to be treated?</p> <p>16 MR. PEASE: Well, again, I'm sorry, I probably got</p> <p>17 too deep into the weeds here.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: We go deep.</p> <p>19 MR. PEASE: Go ahead.</p> <p>20 HEARING EXAMINER ROBESON HANNAN: We go deep.</p> <p>21 MR. PEASE: Well, we're going deeper.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>23 (Laughter.)</p> <p>24 MR. PEASE: Generally, when you design a storm</p> <p>25 drain system, most jurisdictions allow you to design that</p>	<p>188</p> <p>1 MR. PEASE: Okay.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: -- my question.</p> <p>3 My question is, are you aware of the requirement that --</p> <p>4 whether you can run the slope up -- what I have is up in --</p> <p>5 the hydraulic grade --</p> <p>6 MR. PEASE: The hydraulic grade line, um-hmm.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Yeah. Are you</p> <p>8 aware of that in Montgomery County?</p> <p>9 MR. PEASE: This was the only system I've ever come</p> <p>10 across where it was not allowed.</p> <p>11 HEARING EXAMINER ROBESON HANNAN: In -- but did you</p> <p>12 --</p> <p>13 MR. PEASE: Go ahead.</p> <p>14 HEARING EXAMINER ROBESON HANNAN: -- did you --</p> <p>15 MR. PEASE: Sorry.</p> <p>16 HEARING EXAMINER ROBESON HANNAN: -- have you</p> <p>17 reviewed them in Montgomery County, and are you aware</p> <p>18 whether Montgomery County does implement this? Just --</p> <p>19 MR. PEASE: I am not --</p> <p>20 HEARING EXAMINER ROBESON HANNAN: -- if you don't</p> <p>21 know, just say --</p> <p>22 MR. PEASE: I'm not aware specifically.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>24 MR. PEASE: Sorry.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Keep going. So</p>

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<p>189</p> <p>1 you don't know why you weren't allowed the hydraulic grade 2 beginning in the manhole? 3 MR. PEASE: No. 4 HEARING EXAMINER ROBESON HANNAN: Okay. 5 MR. KLINE: So I guess the question is, how do you 6 design the system and work around this? What did you do? 7 MR. PEASE: Well, that was sort of my whole point 8 in a roundabout way. And I will shut up about hydraulic 9 grade lines and manholes. Due to the -- the addition of 10 water into the system, the option was not on the table to 11 allow that to happen, so we had to increase the size of the 12 pipe to keep the hydraulic grade line out of the manholes. 13 MR. KLINE: And what does -- what does that mean in 14 terms of construction from whatever point to the outfall? 15 MR. PEASE: Well, that's -- that was the point 16 where we had -- you know, now we're replacing pipe and 17 increasing the size of the pipe. 18 MR. KLINE: Well, okay. But what does that mean in 19 terms of the effect on the land and how you get it to the 20 outfall point? Are we -- is it just as simple as dredging, 21 putting in increased pipe and connecting it to what's 22 there? How do we do this? 23 MR. PEASE: Well, it's standard trenching. We'll 24 have to use a trench box due to the depth of the existing 25 system as well as OSHA regulations. Can't have any trench</p>	<p>191</p> <p>1 MR. KLINE: Well, I don't know. Your people said 2 it, so I asked a question. 3 HEARING EXAMINER ROBESON HANNAN: It is vague. It 4 is vague. Let -- I know what you're trying to get to do, 5 and, you know, it's a comparison that's very difficult 6 because is this a big project for a daycare, or is it a big 7 project for, you know -- so I'm -- I'm going to sustain 8 this one. 9 MR. KLINE: Fine. So let me try it a different 10 way. Mr. Pease, is this a project that you describe -- 11 that you're familiar with and have seen and can handle? 12 HEARING EXAMINER ROBESON HANNAN: Well, what does 13 handle mean? 14 MR. KLINE: Well, in terms of being able to make 15 sure that it does not cause conflict. He explained all the 16 steps that would be taken to avoid any conflicts, and 17 that's what I'm leading up to. The claim is that this is a 18 disruption, and I would like him to try and explain to the 19 Hearing Examiner why it can be done in a way that it does 20 not cause a disruption or it minimizes the disruption. 21 HEARING EXAMINER ROBESON HANNAN: Okay. 22 MR. CHEN: Well, which is it? 23 HEARING EXAMINER ROBESON HANNAN: Well, he's 24 testified that you do one segment at a time, manhole to 25 manhole. What other ways do you --</p>
<p>190</p> <p>1 deeper than, what, three feet standing in a trench. And in 2 order to minimize the impact to the local area, the 3 community, we'll use a trench box. You can't cut back the 4 slope, three-to-one slope, at all in this area. 5 Obviously, we'll have to locate all the existing 6 utilities in the area, map that out, understand where all 7 our crossings are, check everything with the local 8 utilities, and, you know, get the plan solid enough so we 9 know exactly where everything is and where all the, I'll 10 call them pinch points, where all the test pits have to be 11 dug to ascertain the actual depths and locations of these 12 existing utilities. 13 And then it's basically installation from manhole 14 to manhole. It's not all going to be trenched out in one 15 day. It's not going to be left uncovered, you know, 16 through the duration. It'll be -- you know, manhole to 17 manhole, as -- as you construct it, trying to keep the 18 impact to the neighborhood minimal, at a minimum. 19 MR. KLINE: Well, you -- you heard this a couple 20 times mentioned as a big project. Do you consider it -- 21 based on the scope of projects you've seen, do you consider 22 it to be a big project? 23 MR. CHEN: Objection. 24 MR. KLINE: Why? 25 MR. CHEN: What does that mean, a big project?</p>	<p>192</p> <p>1 MR. KLINE: Yeah. Walk -- walk us through the 2 project, Mr. Pease, so the -- 3 MR. PEASE: Sure. 4 MR. KLINE: -- Hearing Examiner understands what 5 happens and what you do to ensure a -- to ensure the 6 project is completed as designed? 7 MR. PEASE: Right. And I think a lot of that is -- 8 first of all, having a good set of plans in front of you to 9 work from. I spoke briefly about utility research. We'd 10 have a utility -- a utility coordinator working with all 11 the local utility companies, getting their mapping in hand, 12 getting a point of contact with each company, sharing our 13 plan with them after we assessed their plans and included 14 them into our design. Then we share those plans with them. 15 They get a chance to critique it. "Oh, you need more 16 clearance here," whatever the case may be. 17 Once the plans are approved by the jurisdiction, 18 we'll obviously have a pre-construction meeting out on the 19 site, get all the trades together -- contractor, con-sub, 20 the County, county inspector will be there, utility 21 companies will be there. Any -- any particular concerns 22 can be presented at that time from any of those 23 individuals, whether it be from the county direction, from 24 the utility company's direction. 25 Before they can start construction, they'll have</p>

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<p>193</p> <p>1 erosion/sediment control in place. That'll have to be 2 inspected by the County before any ground disturbance. 3 Now we all know that trenching's going to be a bit 4 of issue. We talked about that. We'll have trench boxes 5 in place. As the -- as the trenching progresses, it'll be 6 dragged along as the pipes are constructed. Obviously, 7 we're going to be generating a lot of soil by excavating 8 those trenches. That'll have to be managed somehow by the 9 general contractor. I foresee, you know, just loading it 10 directly into dump trucks instead of the public right-of- 11 way and storing it temporarily, making sure at the end of 12 the day that all the trenches are safe, steel plates over 13 them. 14 At the end of the construction, during each 15 segment, you'll -- you're going to stabilize the ground, 16 get it seeded, temporarily seeded, straw -- straw bails 17 spread out, just to -- to stabilize the ground for 18 potential runoff after the -- after the fact. And it'll 19 just proceed from point to point. And when you have a 20 utility crossing, those utilities will be test pit, like I 21 said, and that data, that test pit data, will be compared 22 against the mapping data and the plans and verified, plans 23 adjusted if necessary. 24 HEARING EXAMINER ROBESON HANNAN: How long, in -- 25 how long do you expect the project --</p>	<p>195</p> <p>1 the other one was down -- I think -- I wrote down Deer Park 2 or Deer Point Court. Are -- are either one of those -- 3 merit some special explanation over and above what you just 4 mentioned -- 5 MR. PEASE: Well -- 6 MR. KLINE: -- or do they fit within the category 7 of what you described? 8 MR. PEASE: No, I understand. If you look at the 9 design, without being familiar with the design, it -- it 10 crosses Ottenbrook Terrace, and it goes up on the east side 11 of not Carnegie Hall but Carnegie Avenue, and then before 12 it gets to Deer Point, it crosses Carnegie Avenue, and the 13 reason for that is that it's approaching a WSSC main on the 14 east side of Carnegie Avenue. WSSC -- 15 HEARING EXAMINER ROBESON HANNAN: Could you pull 16 that -- is there an exhibit we can find that -- is it 196? 17 MR. PEASE: I'm not familiar with the exhibits. 18 HEARING EXAMINER ROBESON HANNAN: Okay. 19 MR. PEASE: Do you have the conceptual stormwater 20 management plan there? 21 HEARING EXAMINER ROBESON HANNAN: I have existing 22 drainage divides, proposed drainage divides, site proposed 23 drainage divides, existing storm drain profile, proposed 24 storm drainage, proposed storm drainage profile -- 25 MR. PEASE: Proposed storm drainage will work. I'm</p>
<p>194</p> <p>1 MR. PEASE: Of this sort to last? 2 HEARING EXAMINER ROBESON HANNAN: -- the entire 3 project -- 4 MR. PEASE: Um-hmm, um-hmm. Are you -- you're 5 talking about the building it too or just the outfall? 6 HEARING EXAMINER ROBESON HANNAN: The building it. 7 MR. PEASE: The building too, also? I'm -- 8 HEARING EXAMINER ROBESON HANNAN: No, no, no. Oh, 9 no, no. Just the storm drain, the system -- 10 MR. PEASE: Just the storm drain outfall. That's 11 what I'm asking. We're good. I -- yeah. I just wanted -- 12 HEARING EXAMINER ROBESON HANNAN: As far as it 13 goes. 14 MR. PEASE: I want to make sure I understood. 15 That's a good question. We've got a few hundred feet of -- 16 linear feet of storm drain here, and it's pretty deep. You 17 got quite a few crossings. I'm thinking something like 18 this would probably be around three or four months, 19 possibly. 20 HEARING EXAMINER ROBESON HANNAN: Okay. 21 MR. KLINE: Mr. Pease, thanks -- thanks for walking 22 through, and I don't want to interrupt you, but in 23 particular there were two points where conflict potentials 24 have been identified. One was on Carnegie, and I'm not 25 quite sure I know exactly what utilities there were, and</p>	<p>196</p> <p>1 sorry, I didn't -- didn't mean -- proposed storm drainage 2 will work. Sorry, I'm not that familiar with -- 3 HEARING EXAMINER ROBESON HANNAN: Right. 4 MR. CHEN: What exhibit is this, Madam Examiner? 5 HEARING EXAMINER ROBESON HANNAN: This is 196-F. 6 Now can you -- 7 MR. PEASE: Sure. You can see the outfall point at 8 the -- right there, um-hmm. As that system -- 9 HEARING EXAMINER ROBESON HANNAN: For the record, 10 I'm pointing to a -- a -- is that a octagon saying EX2, I 11 think. 12 MR. PEASE: That's what it says, yes. That's 13 correct. 14 HEARING EXAMINER ROBESON HANNAN: Okay. Go ahead. 15 MR. PEASE: From that point, the system traverses 16 westerly, then northeasterly, and it eventually gets to 17 Ottenbrook Terrace where it crosses the road -- there you 18 go -- and then it heads up the east side of Carnegie 19 Avenue, and this is the area we're talking about where it 20 crosses the road right in there. No, you're -- you went 21 too far. Right in there. It crosses the road. 22 If you can zoom in there, please. Part of the -- 23 okay. That's fine. Thank -- 24 HEARING EXAMINER ROBESON HANNAN: For the -- for 25 the record -- just a second -- for the record, we're</p>

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<p>197</p> <p>1 pointing at a crossing that is marked EX7. Go ahead. 2 MR. PEASE: Right. EX7 to A1. You can see the 3 WSSC sanitary sewer coming out of Deer Field -- Deer Point 4 rather, sorry, and it's headed northerly up Carnegie 5 Avenue. There is a manhole there with three laterals 6 coming out of it. We cross the street at that point to 7 avoid that sanitary sewer system. So we're crossing the 8 sanitary sewer, we're crossing the water line, and then we 9 cross another sanitary sewer and water line that's going up 10 Deer Point Court. We have four crossings in there to avoid 11 the crossing with the storm -- with the sanitary sewer 12 there on the east side of Carnegie. 13 MR. KLINE: Mr. Pease. 14 MR. PEASE: Of the access -- 15 MR. KLINE: Mr. Pease. 16 MR. PEASE: Yes. 17 MR. KLINE: You're doing a great job, but when I 18 look at the drawing, I don't see anything that's got, like, 19 an S on it, so can you help the Hearing Examiner put her 20 cursor on where the -- 21 MR. PEASE: Sure. Absolutely. 22 MR. KLINE: -- sewer line is? 23 MR. PEASE: If you -- between structures A1 and A2 24 there, there's a circle, between those two structures just 25 to the north as you face the page. Little higher. Right</p>	<p>199</p> <p>1 avoid. WSSC does not allow storm drain crossings of their 2 waterline or their sewer at a spline grade, at a -- at a 3 spline approach. It has to be 45 degrees or greater. So 4 that's why we crossed the road where we did. 5 It seems like we've increased the number of 6 crossings, but we -- that's -- that's the restriction we're 7 faced with. And, again, it's -- it doesn't really make the 8 project any more complex. It adds three crossings. In my 9 opinion, if you do your homework, you get your design 10 correct, there is really not any additional complexity to 11 the -- to the construction aspect of it. 12 HEARING EXAMINER ROBESON HANNAN: So your crossings 13 are at Ottenbrook Terrace and Carnegie Avenue? 14 MR. PEASE: Well, if you want to -- 15 HEARING EXAMINER ROBESON HANNAN: And then -- 16 MR. PEASE: -- if you want -- sorry, didn't mean to 17 interrupt you. Sorry. If you want to -- 18 HEARING EXAMINER ROBESON HANNAN: Well, where are 19 the crossings? 20 MR. PEASE: Zoom into Ottenbrook, if you would 21 please. If you want to walk through it, we can certainly 22 do that. 23 You can see -- you can see -- 24 HEARING EXAMINER ROBESON HANNAN: Is this the 25 eight-inch pipe here?</p>
<p>198</p> <p>1 there. That's the sanitary manhole. And then you -- 2 HEARING EXAMINER ROBESON HANNAN: Okay. For the 3 record, it's a gray line with -- marked, looks like, 3 DLD 4 8 -- no, 3 -- 8-inch pipe. Okay. Got it. 5 MR. PEASE: And then you -- 6 MR. KLINE: Thank you. 7 MR. PEASE: Sorry. Sorry, Jody. And then you can 8 see where that line heads northeasterly to the west on the 9 page, and it goes to another circle within the shoulder of 10 Carnegie Avenue, up a little bit -- I can't see her cursor 11 there. Go to the east please, as you face the page. 12 HEARING EXAMINER ROBESON HANNAN: Wait a minute. 13 Wait a minute. 14 MR. PEASE: Yeah. 15 HEARING EXAMINER ROBESON HANNAN: Okay. To the 16 east as I face the page. 17 MR. PEASE: Okay. I'm sorry. As you face the page 18 -- 19 HEARING EXAMINER ROBESON HANNAN: I'm actually 20 going south. 21 MR. PEASE: No, no. Yeah, no. We -- we went the 22 wrong -- head left, up to the left. There you go. Thank 23 you. Sorry about that. Sorry about my confusion there. 24 HEARING EXAMINER ROBESON HANNAN: No. 25 MR. PEASE: That is the system we were trying to</p>	<p>200</p> <p>1 MR. PEASE: Sorry. 2 HEARING EXAMINER ROBESON HANNAN: Is it this eight- 3 inch pipe? 4 MR. PEASE: That's the -- that's the sanitary 5 sewer. 6 HEARING EXAMINER ROBESON HANNAN: Okay. 7 MR. PEASE: But if you go -- if you go between 8 Existing 5 and pull the viewpoint down please. There you 9 go. Between Existing 4 and Existing 5, there is a water 10 line crossing you can see there. 11 HEARING EXAMINER ROBESON HANNAN: Okay. I see it. 12 MR. PEASE: Okay? 13 HEARING EXAMINER ROBESON HANNAN: It's marked W. 14 Yes. 15 MR. PEASE: Exactly. Now if you just pan slowly, 16 there are no more public utilities, meaning sewer or water 17 crossings, until we get to between Existing 7 and A1. And 18 the first crossing you see there would be the sanitary 19 sewer crossing -- again, the gray circles right there -- 20 little bit to the right for the crossing. Right there, 21 um-hmm. 22 And then a little bit further down would be the 23 water line crossing. And then, you know, you go between A1 24 and A2, now you have another water line crossing and a 25 sanitary sewer crossing between A1 and A2.</p>

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<p>1 HEARING EXAMINER ROBESON HANNAN: Yes.</p> <p>2 MR. PEASE: You see the -- there you go. The water</p> <p>3 and the sewer, right.</p> <p>4 And you can see we have a telephone line marked out</p> <p>5 there, the line with the T through it. See the -- it's</p> <p>6 parallel with the curb and gutter. To your left, little</p> <p>7 more left please. It's -- it's above the storm drain pipe.</p> <p>8 Keep going -- there's the electric line you just crossed.</p> <p>9 That's electric. And if you go further up above that</p> <p>10 proposed storm drain, that's the --</p> <p>11 HEARING EXAMINER ROBESON HANNAN: (Inaudible.)</p> <p>12 MR. PEASE: -- telephone line.</p> <p>13 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>14 MR. PEASE: You can see where it crosses the storm.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: All right. All</p> <p>16 right. That -- that's -- that answered my questions.</p> <p>17 MR. PEASE: Okay. I'm sorry to go the long way</p> <p>18 around.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: Fine. Mr. Kline,</p> <p>20 I'm turning it back to you.</p> <p>21 MR. KLINE: Well, two questions. And could you</p> <p>22 take one more step back, so we have a little bit larger</p> <p>23 perspective of the -- if that -- if that works.</p> <p>24 MR. PEASE: Sure.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Okay. Which</p>	<p>1 standard practices -- it's doable.</p> <p>2 MR. KLINE: Mr. Pease, I sent you copies of</p> <p>3 photographs that have been put in the record: FF, GG, and</p> <p>4 HH.</p> <p>5 MR. PEASE: Um-hmm.</p> <p>6 MR. KLINE: And I -- the Hearing Examiner doesn't</p> <p>7 have to pull them up, but they show the trench boxes and</p> <p>8 the equipment associated with the kind of trenching you're</p> <p>9 talking about. Are the activities shown in those</p> <p>10 photographs uncommon in construction of both commercial and</p> <p>11 residential developments?</p> <p>12 MR. PEASE: No, they're --</p> <p>13 MR. CHEN: Objection.</p> <p>14 MR. PEASE: Sorry.</p> <p>15 MR. CHEN: There was no testimony that they were</p> <p>16 uncommon or anything like that. They were -- they were --</p> <p>17 MR. KLINE: All right.</p> <p>18 MR. CHEN: -- typical trench boxes.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: That is true.</p> <p>20 That is true.</p> <p>21 MR. KLINE: Okay. Well, thank you. No, I --</p> <p>22 because the question I really wanted to get to was are</p> <p>23 those intrinsically environmental problems to</p> <p>24 neighborhoods?</p> <p>25 MR. CHEN: Objection. This gentleman has not been</p>
202	204
<p>1 (inaudible) --</p> <p>2 MR. KLINE: No, I'm sorry. I want to --</p> <p>3 MR. PEASE: Oh.</p> <p>4 MR. KLINE: -- go the other direction.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: This one?</p> <p>6 MR. CHEN: Back off, back off, back off.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Oh, zoom out.</p> <p>8 Zoom out.</p> <p>9 MR. KLINE: Well, what I -- what I wanted to try</p> <p>10 and do is get a photograph that showed the building and the</p> <p>11 outfall point, which is in the upper right-hand -- there we</p> <p>12 go. That's great. Thank you.</p> <p>13 So, Mr. Pease, that represents the extent of the</p> <p>14 work -- let me rephrase that. That -- that describes the</p> <p>15 extent of the work of new construction, new pipe?</p> <p>16 MR. PEASE: Correct.</p> <p>17 MR. KLINE: All right. And I heard you say these</p> <p>18 are all doable based on diligence and studies that you've</p> <p>19 done today; correct?</p> <p>20 MR. PEASE: Correct.</p> <p>21 MR. KLINE: Is this, in your opinion, a difficult,</p> <p>22 complex project?</p> <p>23 MR. PEASE: Well, it's a bit complex. It's a tight</p> <p>24 site. It's -- it's doable. You know, like we said before,</p> <p>25 trench boxes, controlling your stockpiling, site safety,</p>	<p>1 qualified as --</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Yeah, I --</p> <p>3 MR. CHEN: -- an environmentalist.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: -- I can't go</p> <p>5 there. I'm not with you on that one, Mr. Kline.</p> <p>6 MR. KLINE: Very good. Then let me take you to --</p> <p>7 you've -- you've talked about what's going to happen</p> <p>8 building the storm drain. What's going to happen when we</p> <p>9 get to the outfall? What are we going to do in order to</p> <p>10 improve the existing conditions at the outfall?</p> <p>11 MR. PEASE: Well, there's -- there's a bit of</p> <p>12 erosion going on at that outfall. It's a fairly well-</p> <p>13 defined channel that's been eroded. Certainly as part of</p> <p>14 this final design stage and approval process, we'll have to</p> <p>15 design a ditch line through there. Based on the amount of</p> <p>16 storm drain flow and whatever the slope is of that outfall,</p> <p>17 we'll -- we'll go out there and improve the outfall by</p> <p>18 redressing that undercut. We'll give it a good shape, put</p> <p>19 some fabric down and line it with riprap to take the energy</p> <p>20 out of the storm drain flow within the ditch to prevent any</p> <p>21 further erosion in that area.</p> <p>22 MR. KLINE: So implementation of this storm drain</p> <p>23 project will eliminate an existing condition?</p> <p>24 MR. PEASE: It would, yes.</p> <p>25 MR. KLINE: I have no further questions of Mr.</p>

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52 (205 to 208)

<p>205</p> <p>1 Pease.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Okay. We're</p> <p>3 going to -- I have to make one phone call, so we're going</p> <p>4 to take a five-minute break. We'll be back in five</p> <p>5 minutes. Okay.</p> <p>6 We're off the record.</p> <p>7 (Pause in proceedings.)</p> <p>8 HEARING EXAMINER ROBESON HANNAN: Okay. I'm sorry</p> <p>9 I interrupted.</p> <p>10 Mr. -- I think it's Mr. Chen.</p> <p>11 CROSS-EXAMINATION OF ROBERT PEASE</p> <p>12 MR. CHEN: Mr. Pease, what's this all going to</p> <p>13 cost?</p> <p>14 MR. PEASE: Well, we haven't prepared a bond</p> <p>15 estimate yet. Just the storm drain outfall?</p> <p>16 MR. CHEN: No. The whole stormwater management</p> <p>17 system that you just finished describing.</p> <p>18 MR. PEASE: The stormwater -- storm drain outfall?</p> <p>19 MR. CHEN: Not -- not at the outfall itself. No,</p> <p>20 sir. I'm talking about the whole -- do you want to bring</p> <p>21 up that whole -- that exhibit --</p> <p>22 HEARING EXAMINER ROBESON HANNAN: 196, what's shown</p> <p>23 on 196.</p> <p>24 MR. CHEN: Yeah. Thank you. That whole -- what is</p> <p>25 shown on that -- that exhibit, so that whole stormwater</p>	<p>207</p> <p>1 MR. CHEN: And you are replacing, aren't you, sir,</p> <p>2 a public facility?</p> <p>3 MR. PEASE: Correct.</p> <p>4 MR. CHEN: And in Montgomery County, what is your</p> <p>5 experience in this type of a project to replace a public</p> <p>6 stormwater drain system?</p> <p>7 MR. PEASE: Well, for this particular project, we</p> <p>8 did receive the conceptual stormwater management approval.</p> <p>9 And, as part of their approval conditions, they stipulate</p> <p>10 that we need to do these improvements to this system.</p> <p>11 MR. CHEN: Yes. But that was -- that conceptual</p> <p>12 plan of approval was by a state agency. I'm -- this local</p> <p>13 system is owned and operated by the County. Are you aware</p> <p>14 of that, sir?</p> <p>15 MR. PEASE: Yes.</p> <p>16 MR. CHEN: Okay. And what is your -- my question</p> <p>17 was, what is your experience with dealing with Montgomery</p> <p>18 County in replacing an existing stormwater drain system?</p> <p>19 MR. PEASE: Well, I've had some experience with</p> <p>20 improving this system. You generally don't replace a</p> <p>21 system; you modify it, add to it.</p> <p>22 MR. CHEN: Right. But we're talking here, sir --</p> <p>23 and you were candid about it. You're -- we are replacing</p> <p>24 --</p> <p>25 MR. PEASE: Right.</p>
<p>206</p> <p>1 management system that you described -- the crossings, the</p> <p>2 laterals, down to the outfall. What's the whole thing</p> <p>3 going to cost?</p> <p>4 MR. PEASE: Bear with me a moment.</p> <p>5 MR. CHEN: Sure.</p> <p>6 MR. PEASE: We have about 1,200 linear feet of</p> <p>7 storm drain system -- actually, probably closer to 1,400.</p> <p>8 I would imagine the storm drain outfall, as you're looking</p> <p>9 at it with -- due to the trench depth and everything else,</p> <p>10 you're probably looking at 800,000, a million.</p> <p>11 MR. CHEN: Is that for labor, the whole ball and</p> <p>12 wax?</p> <p>13 MR. PEASE: That's an estimate, an off-the-cuff</p> <p>14 estimate, yes.</p> <p>15 MR. CHEN: And you said previously something to the</p> <p>16 extent about a bond issue. What do -- what did you mean by</p> <p>17 that, sir?</p> <p>18 MR. PEASE: Well, it's public bond improvements.</p> <p>19 All this is within public right-of-way, and we'll have to</p> <p>20 post a bond improvement, a surety, letter of credit --</p> <p>21 MR. CHEN: And that --</p> <p>22 MR. PEASE: -- with the county plan approval.</p> <p>23 MR. CHEN: And that means that the -- the local</p> <p>24 jurisdiction is going to have to approve this improvement?</p> <p>25 MR. PEASE: Correct.</p>	<p>208</p> <p>1 MR. CHEN: -- new pipes, bigger pipes, you know.</p> <p>2 MR. PEASE: Correct.</p> <p>3 MR. CHEN: In Montgomery County, what is your</p> <p>4 previous experience with this type of a project?</p> <p>5 MR. PEASE: In Montgomery County?</p> <p>6 MR. CHEN: Yes, sir.</p> <p>7 MR. PEASE: I'm trying to think project to project</p> <p>8 here. We've had a couple of projects come through, you</p> <p>9 know, similar. We've -- you know, we've replaced some</p> <p>10 pipes within a pipe network on a -- on a couple of site</p> <p>11 plans. I've had some experience with it. It's fairly</p> <p>12 limited.</p> <p>13 MR. CHEN: In Montgomery County?</p> <p>14 MR. PEASE: Yes.</p> <p>15 MR. CHEN: We've got 400 linear feet with trenching</p> <p>16 and all types of improvements. I'm just asking, do you</p> <p>17 have anything comparable to this, sir?</p> <p>18 MR. PEASE: Not on one site, no.</p> <p>19 MR. CHEN: And do you -- is it your understanding</p> <p>20 or your representation that Montgomery County will</p> <p>21 authorize a private business to come in and replace a</p> <p>22 public facility?</p> <p>23 MR. PEASE: Yes.</p> <p>24 MR. CHEN: Okay. And that's why there has to be a</p> <p>25 bond; is that right, sir?</p>

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<p>209</p> <p>1 MR. PEASE: Yes.</p> <p>2 MR. CHEN: And, as I understand your testimony,</p> <p>3 from the beginning to the end, we're talking three to four</p> <p>4 months?</p> <p>5 MR. PEASE: Of the outfall, yes.</p> <p>6 MR. CHEN: What do you mean by of the outfall?</p> <p>7 MR. PEASE: Well, not including the building. The</p> <p>8 building's going to take a year, year and a quarter.</p> <p>9 MR. CHEN: I appreciate that.</p> <p>10 MR. PEASE: Okay.</p> <p>11 MR. CHEN: I appreciate that, yeah. I -- I -- I</p> <p>12 apologize. I don't want to --</p> <p>13 MR. PEASE: No, you're good.</p> <p>14 MR. CHEN: -- I don't want to mislead you. I'm --</p> <p>15 I'm focused right now on the stormwater management system</p> <p>16 that Mr. Kline has taken you through in the last 15, 20</p> <p>17 minutes.</p> <p>18 MR. PEASE: Understood. We're good.</p> <p>19 MR. CHEN: Good. Thank you, sir. And are there</p> <p>20 any other authorizations that you will need, such as</p> <p>21 easements or anything like that?</p> <p>22 MR. PEASE: Well, we'll certainly -- we're going to</p> <p>23 need ENS plans. There's all kinds of approvals and permits</p> <p>24 -- grading plans, ENS --</p> <p>25 MR. CHEN: From where are you going to have to get</p>	<p>211</p> <p>1 evening.</p> <p>2 MR. CHEN: And how deep will the trenching have to</p> <p>3 go, sir?</p> <p>4 MR. PEASE: Just a minute please.</p> <p>5 MR. CHEN: Sure.</p> <p>6 MR. PEASE: Actually, it looks like in Ottenbrook</p> <p>7 there, that lower crossing, that's actually fairly shallow</p> <p>8 at only about six feet or so.</p> <p>9 MR. CHEN: Okay. What are we -- what's the range</p> <p>10 that we're going to be --</p> <p>11 MR. PEASE: Yeah. Just a minute please.</p> <p>12 MR. CHEN: Sure, sure.</p> <p>13 MR. PEASE: Absolutely. Bear with me here.</p> <p>14 That second crossing where we cross from the east</p> <p>15 side of Carnegie to the west side at the Deer Point</p> <p>16 intersection, that --</p> <p>17 MR. CHEN: Yes.</p> <p>18 MR. PEASE: -- one's -- that one's about eight</p> <p>19 feet, eight to nine feet deep. And the one crossing Deer</p> <p>20 Point is about, eh, eight to nine feet deep also. The one</p> <p>21 towards the cul-de-sac, let me see, that one is at about --</p> <p>22 about ten feet.</p> <p>23 MR. CHEN: Okay. Is -- is it fair to state that</p> <p>24 the maximum -- or, excuse me, I apologize -- the range will</p> <p>25 be six to ten feet?</p>
<p>210</p> <p>1 these approvals, sir?</p> <p>2 MR. PEASE: From DPS.</p> <p>3 MR. CHEN: Only DPS?</p> <p>4 MR. PEASE: Well, we'll get -- we're going to need</p> <p>5 road permits. We have county roads we're open cutting.</p> <p>6 MR. CHEN: And to what extent has your client or --</p> <p>7 or your engineering firm undertaken on getting any</p> <p>8 approvals or authorizations for this stormwater management</p> <p>9 system?</p> <p>10 MR. PEASE: This site hasn't reached that stage at</p> <p>11 this point.</p> <p>12 MR. CHEN: And how will people traverse these local</p> <p>13 roads that you have identified in your testimony where</p> <p>14 we've got Ottenbrook Terrace and the other road -- you</p> <p>15 know, how are -- how are all these roads going to be</p> <p>16 traversed by cars, by the residents and visitors to the</p> <p>17 area?</p> <p>18 MR. PEASE: Well, if you -- if you look at the plan</p> <p>19 there, we have that one crossing on Ottenbrook, and then we</p> <p>20 have the other one on Carnegie and then the third one on</p> <p>21 Deer Point, and then it crosses again at the existing</p> <p>22 cul-de-sac at Carnegie. Excuse me. Wherever we have those</p> <p>23 crossings, they'll open cut that road to make those</p> <p>24 improvements, to make the substitution of the storm drain,</p> <p>25 and they'll -- they'll put steel plates on the road in the</p>	<p>212</p> <p>1 MR. PEASE: Yes.</p> <p>2 MR. CHEN: And, as I understand your testimony, at</p> <p>3 -- at some -- at night, the trenches will be covered by</p> <p>4 metal plates?</p> <p>5 MR. PEASE: Steel plates, yes.</p> <p>6 MR. CHEN: Steel plates. I'm sorry, sir. Yes,</p> <p>7 steel plates.</p> <p>8 MR. PEASE: No, you're good. You're good.</p> <p>9 MR. CHEN: By the way, the outfall, you're going to</p> <p>10 have to remedy the outfall because you're adding to the</p> <p>11 system, aren't you?</p> <p>12 MR. PEASE: Well, that outfall should be remedied</p> <p>13 anyway.</p> <p>14 MR. CHEN: I understand that, sir. I get it.</p> <p>15 MR. PEASE: Yeah, but yes.</p> <p>16 MR. CHEN: (Inaudible.)</p> <p>17 MR. PEASE: Yes.</p> <p>18 MR. CHEN: Okay. And, as I understand your</p> <p>19 testimony, we're talking about new larger pipes, about</p> <p>20 1,400 linear feet?</p> <p>21 MR. PEASE: Yes, that's correct.</p> <p>22 MR. CHEN: And these trench boxes, could you --</p> <p>23 what are they, sir?</p> <p>24 MR. PEASE: Well, they're basically, essentially</p> <p>25 steel walls that are separated by bars that keep the walls</p>

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<p style="text-align: right;">213</p> <p>1 apart, and it keeps the trench from collapsing on to any 2 personnel working within that trench. The bars assist the 3 track hoes to drag the -- drag the trench boxes along the 4 trench as the construction progresses, and, you know, gets 5 the -- it allows them to pull the boxes along and backfill 6 once the boxes are out of the way. 7 MR. CHEN: And there's no need for getting any 8 approvals from any private property owners? 9 MR. PEASE: There might be. We -- we have to look 10 at the final design here. 11 MR. CHEN: Okay. So that's still on -- that's 12 something that still is on the offing? 13 MR. PEASE: Yes. Obviously the -- the intent is to 14 avoid it at all -- you know, if possible. 15 MR. CHEN: What happens if a private property owner 16 gets involved and they are not willing to give an easement? 17 MR. PEASE: We'll have to look at other adjustments 18 possibly. You know, when you're going through the design, 19 you're going to try your best to avoid impacting any 20 existing utilities. 21 We were looking at the telephone/electric line 22 along Carnegie Avenue there earlier. The intent would be 23 to cross that rather than dig it up and have to relocate it 24 and run temporary services to any adjacent owners. If it 25 were working with a -- with a homeowner that's unwilling to</p>	<p style="text-align: right;">215</p> <p>1 he's going to store this material in the interim. It's 2 definitely a process. 3 Now we talked about the trench, using the trench 4 boxes themselves. They -- they're -- they certainly slow 5 down the -- the construction due to the fact that they're 6 essentially in the way. They're saving lives, but they're 7 in your way, and you have to work around them. It's not -- 8 it's not a quick process removing the pipe, replacing the 9 pipe with those things in the way. But they're necessary. 10 MR. CHEN: And I guess all of these matters, these 11 issues could cause delay and -- and lengthen the time for 12 the project; is that right? 13 MR. PEASE: I think the delay comes when your plan 14 isn't where it's supposed to be -- 15 MR. CHEN: Why not? 16 MR. PEASE: -- during the process. Improper 17 utility research, improper utility coronation. On this 18 site, it's going to be key to -- 19 MR. CHEN: Why is that, sir? Why is that key on 20 this site? 21 MR. PEASE: Why -- why is that key? So you don't 22 run into any problems in the field. You know, contractors, 23 knowing what they're doing with these trench boxes far 24 better than I do, it's our job to keep them from running 25 into a utility, having a four-day stoppage in work while we</p>
<p style="text-align: right;">214</p> <p>1 work with us, then we would go to the other plan of 2 relocating those other utilities as a -- as a backup. 3 MR. CHEN: That's added cost, I take, too. 4 MR. PEASE: It would be. 5 MR. CHEN: The -- the testimony you gave, sir, 6 about -- I mean, your testimony was trenching will be a bit 7 of an issue. Do you recall that testimony, sir? I have 8 that in quotes. Is that right, sir? 9 MR. PEASE: Issue -- 10 MR. CHEN: Okay. 11 MR. PEASE: -- task, however you want to call it. 12 MR. CHEN: No problem. 13 MR. PEASE: Um-hmm. 14 MR. CHEN: And maybe you've already answered this. 15 It's not a trick question. But I -- I have it in quotes. 16 When you -- when you say it's a bit of an issue, can you 17 please define that? What do you mean by that? 18 MR. PEASE: It's going to take some steps just to 19 -- you know, I talked about the fact that you can't just 20 pull dirt out of the trench and dump it in the road. 21 MR. CHEN: Right. 22 MR. PEASE: You can't do that for the neighbors' 23 sake. You're going to have to have dump trucks at the 24 ready, staged, one getting filled up, one waiting to get 25 filled up, and then going to wherever the contractor deems</p>	<p style="text-align: right;">216</p> <p>1 try to figure out how to go around that utility at the last 2 minute. 3 MR. CHEN: And, in this case, you have -- 4 MR. PEASE: Go ahead. 5 MR. CHEN: I'm sorry. And, in this case, you've 6 identified electrical, water, telephone, and the existing 7 stormwater system itself -- 8 MR. PEASE: Correct. 9 MR. CHEN: -- that's involved; right? 10 MR. PEASE: Um-hmm. 11 MR. CHEN: Are there any other possible -- 12 MR. PEASE: Any other surprises? 13 MR. CHEN: Yeah. 14 MR. PEASE: Well, quite frankly, the electrical and 15 the telephone are the easy ones. They're generally two or 16 three feet underground. They don't rely on gravity. You 17 know, they're pretty easy to deal with. The ones that are 18 of more concern, in my opinion, are the water lines. 19 You're going to be putting this under the water lines. 20 Generally, water lines are only four feet deep. So it's 21 more the sanitary and the water that would concern me here. 22 MR. CHEN: And it's -- 23 MR. PEASE: But, again, working with a private -- 24 sorry, working with private utilities, you -- you -- you 25 have that long lead time. You've got to get all that --</p>

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<p>217</p> <p>1 all that coordinated months in advance, so the disconnects 2 can happen, the relocations can happen, should they be 3 necessary. 4 MR. CHEN: There was some testimony that because 5 the stormwater management system is a county system, that 6 the County would be disinclined to have a private 7 contractor do the work, that the County would probably make 8 it part of a capital improvements project. Have you heard 9 that testimony, sir? 10 MR. PEASE: I have not. My understanding, it's 11 privately financed. 12 MR. CHEN: Ah. Who told you that? 13 MR. PEASE: That's just my understanding with this 14 project. 15 MR. CHEN: Okay. So, well, have you listened to -- 16 what testimony have you listened to, sir? 17 MR. PEASE: I haven't listened to any prior to 18 today. 19 MR. CHEN: So you listened to today's testimony? 20 MR. PEASE: Some, yes. 21 MR. CHEN: Did you read any transcripts of prior 22 testimony, sir? 23 MR. PEASE: Oh, boy. It's been limited -- it's 24 been a while. Some having to do with the site itself, that 25 was a few months ago. That was not pertaining to this</p>	<p>219</p> <p>1 I had, you know, quite a bit of involvement early 2 on. We were going through various concepts, concept plans, 3 different layouts, accessing Carnegie Avenue, accessing 4 Needwood, flipping the driveway entrance, parking in the 5 front of the building, parking towards the rear of the 6 building, the forest conservation plan, quite a bit of 7 involvement here and there in the earlier stages. 8 MR. CHEN: And am I correct in understanding that a 9 lot of the trenching depth goes to what you were describing 10 as the need for gravity flow of the stormwater? Is that -- 11 am I correct in understanding that, sir? 12 MR. PEASE: Well, let me look at the profile here. 13 Just a minute. 14 (Witness reviewing document.) 15 MR. PEASE: Sorry for the pause here. I'm looking 16 at the profile. I don't know if you have any of these on 17 the record or not. 18 MR. CHEN: Go ahead. You can describe it. 19 MR. PEASE: We're good. Okay. We're good. 20 MR. KLINE: Madam Hearing Examiner, could you -- 21 HEARING EXAMINER ROBESON HANNAN: Let me get the 22 vertical -- 23 MR. KLINE: It would be -- 24 HEARING EXAMINER ROBESON HANNAN: I have -- 25 MR. KLINE: -- it would be 196-G, I believe,</p>
<p>218</p> <p>1 outfall that we're looking at today. 2 MR. CHEN: Do you have any recollection of any 3 testimony that you've either listened to or transcripts 4 that you've read that you disagreed with? 5 MR. PEASE: No, I don't think so. I -- not that I 6 can -- that comes to the forefront of my mind. 7 MR. CHEN: I also understand that part of what you 8 were describing, sir, is that aside from getting plans 9 approved by the local jurisdiction to which I assume you're 10 talking about DPS, which is the Department of Permitting 11 Services; correct? 12 MR. PEASE: Correct. 13 MR. CHEN: The other issues that you identified, 14 again, from my notes, were erosion and sediment control, 15 that a lot of soil will be generated, and you told us about 16 the trucks and the storing, and then stabilizing the ground 17 with straw and seeding. Isn't that right, sir? 18 MR. PEASE: Correct. 19 MR. CHEN: How long have you been involved with the 20 Primrose project for this property that we're dealing with, 21 or did you come in and out? 22 MR. PEASE: I was on the periphery while Mr. 23 Intrigo was with us, more involved after his departure 24 about a year, year and a half ago or so. But the project 25 hasn't moved that much in that interim either.</p>	<p>220</p> <p>1 Proposed Storm Drain Profile. 2 HEARING EXAMINER ROBESON HANNAN: I've -- 3 MR. PEASE: Thank you. 4 HEARING EXAMINER ROBESON HANNAN: -- got it up. 5 MR. PEASE: Thank you. 6 MR. KLINE: And it's actually G, H, and I -- or G 7 and H. 8 MR. PEASE: No, this one'll do fine. This one sort 9 of shows what I'm looking at. If you could zoom in please. 10 MR. CHEN: What -- what exhibit are we on, Madam 11 Examiner? 12 HEARING EXAMINER ROBESON HANNAN: 196-G. 13 MR. CHEN: Thank you. Go ahead, sir. 14 MR. PEASE: Thank you. Between right where your 15 cursor is, you can see the -- move up a wee bit, sorry. 16 Oh, I lost -- okay. 17 You see the dashed line there? That represents the 18 finished grade over the pipe network. You can see towards 19 the -- I'm going to go right and left instead of east and 20 west -- if you go to the right, that's the upper reach of 21 the system as it approaches the site itself. 22 Traveling left, you can see where the system 23 actually bisects a hill. All right? So your depth of 24 cover goes anywhere from five to six feet towards the east 25 there, towards the right, to a maximum depth of about 15</p>

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<p style="text-align: right;">221</p> <p>1 feet at that peak, right about where your cursor -- right</p> <p>2 there, um-hmm. So that's one of the challenges. The</p> <p>3 system actually seems to bisect a hill, a ridge.</p> <p>4 As you travel west, it gets back to a shallow --</p> <p>5 I'm sorry, left, sorry about that -- as you travel --</p> <p>6 HEARING EXAMINER ROBESON HANNAN: No, I -- that's</p> <p>7 fine.</p> <p>8 MR. PEASE: Sorry about that. As you travel left,</p> <p>9 it gets back down to the five- or six-foot range, and then</p> <p>10 all of a sudden it drops.</p> <p>11 If you can zoom in on that area, please, where it</p> <p>12 drops. No, go to -- right there. Zoom in there if you</p> <p>13 would please. You can -- that's good enough. Thank you so</p> <p>14 much.</p> <p>15 That particular structure there, we have the pipe</p> <p>16 coming in about five or six feet deep, then that manhole</p> <p>17 drops an additional five feet. That's because it's taking</p> <p>18 some flow. You can see that ellipse right there. It's</p> <p>19 taking some flow from a branch pipe. I believe it's going</p> <p>20 down Ottenbrook, if I remember correctly. But now we're</p> <p>21 back to, what, 14, 15 feet of depth again. So it's a --</p> <p>22 it's a bit of a peculiar system. It looks like they were</p> <p>23 forcing the grades with the original design in a couple</p> <p>24 areas. It's -- it's a little different, a little</p> <p>25 different.</p>	<p style="text-align: right;">223</p> <p>1 MR. PEASE: General contractor.</p> <p>2 MR. CHEN: Ah, okay. So it'll be -- there -- it'll</p> <p>3 be some general contractor that'll be hired by, I guess --</p> <p>4 do you know who would hire them?</p> <p>5 MR. PEASE: The owner.</p> <p>6 MR. CHEN: Okay. And that's assuming that the</p> <p>7 local jurisdiction would not require that the replacement</p> <p>8 of the public stormwater management system would not have</p> <p>9 to go through the governmental process?</p> <p>10 MR. PEASE: Correct.</p> <p>11 MR. CHEN: Yeah, okay. And I -- am I correct that,</p> <p>12 as we sit here today, no one knows what position the County</p> <p>13 -- Montgomery County will take relative to replacing that</p> <p>14 stormwater drainage system; is that correct, sir?</p> <p>15 MR. PEASE: That -- we got to this stage in the</p> <p>16 process when Mr. Intriago was still here. He was more</p> <p>17 involved with the -- with the conversations with, you know,</p> <p>18 county staff, basically. I don't feel too comfortable</p> <p>19 speaking to the history of that project while it was under</p> <p>20 his --</p> <p>21 MR. CHEN: Okay.</p> <p>22 MR. PEASE: -- management.</p> <p>23 MR. CHEN: Okay. Just so I'm clear on this, during</p> <p>24 the period of time that this system will be installed, will</p> <p>25 the public streets that you've identified -- Ottenbrook and</p>
<p style="text-align: right;">222</p> <p>1 Generally, your storm drain system would follow the</p> <p>2 slope and you would have a -- I don't want to call it a</p> <p>3 constant bury depth but something a little more -- little</p> <p>4 more predictable. In this case, we're going through a</p> <p>5 ridge line and trying to accept that flow from that spur</p> <p>6 which forces that system down a little extra depth.</p> <p>7 MR. CHEN: I thought a moment ago the range of the</p> <p>8 depth of the trenching was six to ten feet, but apparently</p> <p>9 you -- looking at this graph, there are greater depths than</p> <p>10 that. You mentioned there was 15 feet at one portion, and</p> <p>11 another portion it sounded like it was another depth of 15</p> <p>12 feet of -- am I misunderstanding or mistaken, sir?</p> <p>13 MR. PEASE: We were talking about the street</p> <p>14 crossings when my -- when I said six to ten feet.</p> <p>15 MR. CHEN: Oh, okay. Okay. Ignoring the street --</p> <p>16 the street crossings, what are we talking about as far as</p> <p>17 the maximum depths that we're dealing with?</p> <p>18 MR. PEASE: It's about 15 feet.</p> <p>19 MR. CHEN: That's a lot of dirt. Is that why you</p> <p>20 say there's going to be a lot of dirt that has to be, I</p> <p>21 guess, dug --</p> <p>22 MR. PEASE: Yes. Yes.</p> <p>23 MR. CHEN: Okay. If you -- if you -- I hope I ask</p> <p>24 this the correct way, and, I apologize, what business or</p> <p>25 entity will do this work?</p>	<p style="text-align: right;">224</p> <p>1 the other -- Deer something --</p> <p>2 MR. PEASE: Deer Point, yes.</p> <p>3 MR. CHEN: Deer Point. Yes, sir. They're not</p> <p>4 going to be able to be used in the normal course because</p> <p>5 there will be construction activity. Isn't that correct,</p> <p>6 sir?</p> <p>7 MR. PEASE: No, they'll be open.</p> <p>8 MR. CHEN: Okay. So --</p> <p>9 MR. PEASE: The trench -- sorry.</p> <p>10 MR. CHEN: So that -- I'm sorry. So that the kids</p> <p>11 who normally ride bicycles or the adults that ride bicycles</p> <p>12 will be able to continue to utilize the streets as they</p> <p>13 typically use them and -- and walk across the streets and</p> <p>14 along the streets?</p> <p>15 MR. PEASE: We talked a couple minutes ago about</p> <p>16 open trenching the road and managing the -- you know, the</p> <p>17 construction across the road. Part of that will be one-</p> <p>18 lane closures. There will be obviously traffic control as</p> <p>19 well as pedestrian control.</p> <p>20 I don't believe there's -- I can't remember if</p> <p>21 there's any sidewalks out of this subdivision or not, quite</p> <p>22 frankly. But there will certainly be vehicular control,</p> <p>23 standard maintenance of traffic, signage, safety signage,</p> <p>24 warnings during construction while that trench is open,</p> <p>25 while it's uncapped, we'll call it, no steel plates in</p>

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<p>225</p> <p>1 place. Obviously no one's going to be traveling across it. 2 There will be barricades, personnel to manage any vehicular 3 traffic. It'll be sealed up at the end of the evening. 4 MR. CHEN: Has there been any assessment of any 5 vegetation or -- such as trees that have to be removed or 6 replaced for this project, for the stormwater management 7 project? 8 MR. PEASE: You know, surprisingly, there aren't 9 many along this route. The -- the -- I don't know the 10 exhibit number, but do you have that plan view available? 11 Sorry. 12 HEARING EXAMINER ROBESON HANNAN: No, it's okay. 13 Are you seeing -- 14 MR. PEASE: Perfect. Thank you so much. No, keep 15 it right where it is. You're good. 16 There is, towards the outfall, you can see those 17 houses -- there you go. Thank you so much. 18 There's -- there's the outfall where it departs 19 Ottenbrook and goes towards that parcel, that open space. 20 There -- it goes over a asphalt trail, so they're -- you 21 know, we're replacing the trail. 22 MR. CHEN: Who owns that trail? By the way, who 23 owns that? Do you know? 24 MR. PEASE: Park. 25 MR. CHEN: The Maryland National Capitol Park and</p>	<p>227</p> <p>1 MR. CHEN: Okay. Now let me shift gears a little 2 bit on you. You testified about the -- let me get my -- I 3 apologize. Let me just pull my -- you testified about the, 4 as I understand it, sir, the sewer system initially, before 5 you dealt with the stormwater management system. And you 6 talked about the fact that the site is in WSSC category 7 three; is that correct, sir? 8 MR. PEASE: That's correct. 9 MR. CHEN: And when you talked about capacity -- 10 you remember your testimony that you talked about the 11 capacity of the system? 12 MR. PEASE: I do. 13 MR. CHEN: And, as I understood your testimony, 14 when you used the word capacity, you were talking about the 15 physical capability of the system to handle the project. 16 Is that a fair statement? 17 MR. PEASE: That's a fair statement, yes. 18 MR. CHEN: And, at this time -- well, what is the 19 definition of a category three? 20 MR. PEASE: Well, I have it right here. WSSC 21 defines it as areas where improvements to, or construction 22 of, new community systems will be given immediate priority, 23 and service will generally be provided within two years or 24 as development and requests are planned and scheduled. 25 MR. CHEN: Has there been any requests at all</p>
<p>226</p> <p>1 Planning Commission? 2 MR. PEASE: No, I don't -- I don't know if that's 3 homeowners' association or, you know, the Park -- 4 MR. CHEN: It looks like the larger field is 5 Maryland National Capitol Park and Planning Commission, but 6 we're focusing on this strip from Ottenbrook into that 7 area. 8 MR. PEASE: Correct. 9 MR. CHEN: We don't know -- we don't know who has 10 title to that strip; is that correct, sir? 11 MR. PEASE: Well, looks like MNCPPC, based on that 12 label I see there. 13 MR. CHEN: Okay, okay. No problem. But you -- I 14 -- I diverted your attention. You were talking -- 15 MR. PEASE: No, you're good. You're good. But you 16 can see where the trail terminates just before Existing 17 Structure 3 there. 18 MR. CHEN: Yes, sir. 19 MR. PEASE: We'll need to do some survey work in 20 this area and pick up any trees in the area as well as that 21 incised outfall where that ditch is eroded. 22 MR. CHEN: Right, right. Okay. But to the extent 23 there is any vegetation, such as trees, they're going to 24 have to be probably replaced. Is that a fair statement? 25 MR. PEASE: Yes, yes.</p>	<p>228</p> <p>1 presented to the WSSC for servicing this site in this 2 project? 3 MR. PEASE: Not in this juncture. Not -- not yet, 4 no. 5 MR. CHEN: And, accordingly, at this point in time, 6 Primrose cannot make any representation about what, if any, 7 requirements or authorizations WSSC will give for this 8 project. Is that a fair statement? 9 MR. PEASE: I'm not sure. Understanding the 10 category and the implied obligation to provide sewer and 11 water service based on that category, I think it would be 12 just up to their assessment, like I testified earlier 13 regarding the -- what the -- the anticipated flow from this 14 facility, demands on the water system, flow for the sewer 15 system. I -- I don't think they'd have cause to deny 16 service. 17 MR. CHEN: Well, but certainly only the WSSC, the 18 Washington Sanitary Suburban -- Washington Suburban 19 Sanitary Commission has the authority to make a decision 20 about service; isn't that correct, sir? 21 MR. PEASE: Yes, yes. 22 MR. CHEN: And you're telling us that, thus far, to 23 your knowledge, there has been no contact with the WSSC 24 relative to obtaining service for this site. Is that also 25 a fair statement?</p>

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<p>229</p> <p>1 MR. PEASE: I believe that's correct, yes.</p> <p>2 MR. CHEN: And do you know how long this property</p> <p>3 has been in the category three status?</p> <p>4 MR. PEASE: I don't. You know, I -- I don't know.</p> <p>5 MR. CHEN: What would you guess?</p> <p>6 MR. PEASE: I wouldn't want to hazard a guess.</p> <p>7 MR. CHEN: Okay.</p> <p>8 MR. PEASE: Yeah. I -- I do know that the</p> <p>9 properties immediately surrounding it are categories one</p> <p>10 and two. I'm sorry. One, sorry. Categories one.</p> <p>11 MR. CHEN: Okay. But you don't know how long this</p> <p>12 site has been in category three?</p> <p>13 MR. PEASE: I don't. No.</p> <p>14 MR. CHEN: Now, as I understand it, this project</p> <p>15 has been pending going back several years, probably at</p> <p>16 least three or four years. Is that a fair statement?</p> <p>17 MR. PEASE: That's a fair statement, yes.</p> <p>18 MR. CHEN: And during that period of time, as I</p> <p>19 understand your testimony, no one has contacted the WSSC</p> <p>20 relative to service for this property?</p> <p>21 MR. PEASE: Not to my knowledge.</p> <p>22 MR. CHEN: Okay. Are there any requirements that</p> <p>23 attend the filing of what is known as an HPA, a conceptual</p> <p>24 plan to the WSSC?</p> <p>25 MR. PEASE: Well, we have to file one. Basically,</p>	<p>231</p> <p>1 clogged shut with dirt, whatever, whatever the reason may</p> <p>2 be.</p> <p>3 MR. CHEN: Okay. But certainly at a minimum what</p> <p>4 we do know is there's going to have to be an HPA conceptual</p> <p>5 plan because that eight-inch line in Needwood is going to</p> <p>6 have to be extended to the Primrose property; is that --</p> <p>7 MR. PEASE: Correct.</p> <p>8 MR. CHEN: -- an accurate statement?</p> <p>9 MR. PEASE: That would be standard even if the --</p> <p>10 yeah. Yes. You're correct.</p> <p>11 MR. CHEN: Okay. When you use the word fixtures in</p> <p>12 the building, what are you talking about? Are you talking</p> <p>13 about toilets? Are you talking about sinks? Are you</p> <p>14 talking about hot water heaters, you know, fountains --</p> <p>15 MR. PEASE: When you're -- when you're -- when</p> <p>16 you're going for a plumbing license, you -- architects and</p> <p>17 plumbers talk about fixture units. It's like an</p> <p>18 equivalency. A lavatory sink in your bathroom is rated a</p> <p>19 different number of fixture units than a urinal will be or</p> <p>20 a toilet will be or a kitchen sink. They -- different</p> <p>21 demands off the water line system. You basically -- so</p> <p>22 there's those types of fixtures, fixture units, which</p> <p>23 assess demand, and then there's obviously the fixtures you</p> <p>24 and I are familiar with -- toilets, urinals, sinks -- so</p> <p>25 which one are we talking about here?</p>
<p>230</p> <p>1 that's where they assess the demand on their system, based</p> <p>2 on the use and the square footage. We talked about that</p> <p>3 briefly --</p> <p>4 MR. CHEN: Yeah.</p> <p>5 MR. PEASE: -- prior. And that -- that sort of</p> <p>6 gives you -- once that plan is approved, that gives you the</p> <p>7 go-ahead to proceed with an SEP, the system extension plan</p> <p>8 for the sanitary sewer, as well as an SU plan, which would</p> <p>9 be water line tap, water meter --</p> <p>10 MR. CHEN: Would your -- would your firm prepare</p> <p>11 the HP -- HPA conceptual plan?</p> <p>12 MR. PEASE: Yes.</p> <p>13 MR. CHEN: And is there any reason why it hasn't</p> <p>14 (inaudible) --</p> <p>15 MR. PEASE: Again, not to my knowledge.</p> <p>16 MR. CHEN: And as I understand your testimony, the</p> <p>17 notation on the manhole that says non-accessible, and I --</p> <p>18 please -- I think that's the right word. Am I using the</p> <p>19 correct word, sir?</p> <p>20 MR. PEASE: I believe that's correct. Yeah, that's</p> <p>21 generally what our surveyors will put on their survey when</p> <p>22 they are out in the field and for whatever reason they</p> <p>23 can't pop a lid on a manhole and get us the invert</p> <p>24 information, and generally -- there are different reasons</p> <p>25 you can't get the manhole open. Sometimes they're just</p>	<p>232</p> <p>1 MR. CHEN: Yeah. That's my question.</p> <p>2 MR. PEASE: Well, we were -- I think we were</p> <p>3 talking about fixtures initially, based on the number of --</p> <p>4 okay. Right. You're talking about my response a few</p> <p>5 minutes ago. Right. I was addressing the number of</p> <p>6 fixtures, the number of toilets, bathroom facilities we'll</p> <p>7 call it. There's going to be sinks for preparing food,</p> <p>8 lavatory sinks obviously, and, you know, different needs</p> <p>9 for different aged children. You're going to -- you're not</p> <p>10 going to clean a child in a bathroom sink. I don't know</p> <p>11 what the setups are specifically, but I'm sure they're</p> <p>12 different.</p> <p>13 MR. CHEN: Do you know how many fixtures are going</p> <p>14 to be in this building?</p> <p>15 MR. PEASE: I do not, no. No.</p> <p>16 MR. CHEN: Are you aware of how many children will</p> <p>17 be in this building?</p> <p>18 MR. PEASE: Hundred and ninety.</p> <p>19 MR. CHEN: And how about, what I would call staff,</p> <p>20 adult staff, teachers, administrators, do you know how many</p> <p>21 of those folk will be there?</p> <p>22 MR. PEASE: I believe this building has probably</p> <p>23 about 10 to 12 classrooms, plus administrative staff. I</p> <p>24 don't know if you call them classrooms or not. Care rooms.</p> <p>25 MR. CHEN: There was testimony, sir, that your firm</p>

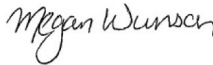

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<p>233</p> <p>1 has done a fair number of Primrose projects. Is that --</p> <p>2 MR. PEASE: Um-hmm.</p> <p>3 MR. CHEN: -- your understanding also?</p> <p>4 MR. PEASE: Yeah, we're working on one -- yeah,</p> <p>5 another one in Montgomery County right now. It's actually</p> <p>6 approved, under construction.</p> <p>7 MR. CHEN: And, as I understand the testimony, and</p> <p>8 I do -- do think it was Mr. Intriago gave it --</p> <p>9 MR. PEASE: Um-hmm.</p> <p>10 MR. CHEN: -- that Primrose has different templates</p> <p>11 -- that's my word -- different templates of different types</p> <p>12 of facilities --</p> <p>13 MR. PEASE: Sure.</p> <p>14 MR. CHEN: -- for different numbers of pupils. Is</p> <p>15 that your understanding as well, sir?</p> <p>16 MR. PEASE: I know they have different building</p> <p>17 configurations. And I'm sure the -- I'll call it --</p> <p>18 MR. KLINE: Mr. Pease, could you hold up please.</p> <p>19 MR. PEASE: Sure.</p> <p>20 MR. KLINE: I have an objection. I'm not sure this</p> <p>21 is within the scope of his original testimony.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: I (inaudible).</p> <p>23 MR. CHEN: Well --</p> <p>24 HEARING EXAMINER ROBESON HANNAN: Yes.</p> <p>25 MR. CHEN: I was going to say it goes to fixtures</p>	<p>235</p> <p>1 you know, later on, the shiva and things of that nature.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Right. All</p> <p>3 right.</p> <p>4 MR. CHEN: Okay. If you can give --</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Take your few</p> <p>6 minutes. Then we'll go -- we'll go -- do you want to go</p> <p>7 off the record for five minutes or --</p> <p>8 MR. CHEN: Yeah. That -- five minutes should be</p> <p>9 fine.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>11 (Pause in proceedings.)</p> <p>12 MR. CHEN: I have no further questions of this</p> <p>13 gentleman.</p> <p>14 HEARING EXAMINER ROBESON HANNAN: Okay. Mr. Kline,</p> <p>15 do you have redirect, or do you want to defer redirect, or</p> <p>16 what would you like?</p> <p>17 MR. KLINE: No, I -- first of all, thank you for</p> <p>18 accommodating my schedule, but I think two quick questions</p> <p>19 for Mr. Pease, so he can get off this. Mr. -- actually</p> <p>20 three questions.</p> <p>21 REDIRECT EXAMINATION OF ROBERT PEASE</p> <p>22 MR. KLINE: Mr. Pease, would WSSC accept an HPA or</p> <p>23 an application for an HPA in advance of an applicant having</p> <p>24 the zoning approvals necessary to implement a project?</p> <p>25 MR. PEASE: I wouldn't think so, no. They -- no.</p>
<p>234</p> <p>1 and capacity.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: No. You were</p> <p>3 asking about prototype buildings.</p> <p>4 MR. CHEN: Yeah. Yeah. I'll --</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Now I --</p> <p>6 MR. CHEN: -- (inaudible) your ruling, but I -- you</p> <p>7 know, I thought it was a logical part of that, but, you</p> <p>8 know, I'm not going to fight with you about that.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Okay. It's</p> <p>10 sustained.</p> <p>11 MR. CHEN: Can I have a -- a -- a break for a</p> <p>12 moment?</p> <p>13 HEARING EXAMINER ROBESON HANNAN: Sure. Do you</p> <p>14 want to -- well, it's 4:20.</p> <p>15 MR. CHEN: Well, we --</p> <p>16 HEARING EXAMINER ROBESON HANNAN: And I only say</p> <p>17 that because of Mr. Kline's schedule.</p> <p>18 MR. CHEN: If I'm done -- I just want to check if I</p> <p>19 am, but if I --</p> <p>20 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>21 MR. CHEN: -- my suggestion is, unless -- subject</p> <p>22 to Mr. Kline's redirect, obviously, that this is probably</p> <p>23 where we're going to wind up for today.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: Okay. All right.</p> <p>25 MR. CHEN: Given what we've heard already about,</p>	<p>236</p> <p>1 MR. KLINE: Okay. Even if they did, would you</p> <p>2 consider it premature to be asked -- submitting an HPA to</p> <p>3 WSSC at this point in time?</p> <p>4 MR. PEASE: Yes.</p> <p>5 MR. KLINE: And why would that be?</p> <p>6 MR. PEASE: There's no guarantee that you're not</p> <p>7 wasting their time, quite frankly. WSSC is pretty adamant</p> <p>8 about having all your ducks in a row with their</p> <p>9 applications, sequentially basically.</p> <p>10 MR. KLINE: Thank you. Last question. Would</p> <p>11 construction of the storm drain system that you've talked</p> <p>12 about in detail today, in accordance with permits and</p> <p>13 conditions imposed by whatever governmental agency issues</p> <p>14 those permits and approvals, would construction in</p> <p>15 accordance with those permits and approvals, would it</p> <p>16 result in not causing any adverse environmental effects?</p> <p>17 MR. CHEN: Objection. This gentleman is not an</p> <p>18 environmentalist.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: Yeah. I'm</p> <p>20 confused by that. I thought we already sustained -- I</p> <p>21 already --</p> <p>22 MR. CHEN: You did.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: I don't know what</p> <p>24 you mean, Mr. Kline, and I don't recall him testifying to</p> <p>25 environmental effects.</p>

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<p>237</p> <p>1 MR. KLINE: I'll withdraw the question, and that 2 completes my questioning of Mr. Pease. 3 HEARING EXAMINER ROBESON HANNAN: All right. Thank 4 you very much. 5 Mr. Kline, if you need to run, you may be excused. 6 I'm going to adjourn -- Mr. Pease, you may be 7 excused. 8 I'm going to adjourn this hearing until Friday, 9 April 9th, at 9:30. Thank you very much. 10 (Off the record at 4:30 p.m.) 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>239</p> <p>1 CERTIFICATE OF TRANSCRIBER 2 I, Megan Wunsch, do hereby certify that 3 the foregoing transcript is a true and correct record of 4 the recorded proceedings; that said proceedings were 5 transcribed to the best of my ability from the audio 6 recording and supporting information; and that I am neither 7 counsel for, related to, nor employed by any of the parties 8 to this case and have no interest, financial or otherwise, 9 in its outcome. 10 11 12 13  14 _____ 15 Megan Wunsch, AAERT CET 16 April 14, 2021 17 18 19 20 21 22 23 24 25</p>
<p>238</p> <p>1 CERTIFICATE OF COURT REPORTER 2 I, Lee Utterback, AAERT CER, the officer before whom 3 the foregoing proceedings were taken, do hereby certify 4 that said proceedings were electronically recorded by me; 5 and that I am neither counsel for, related to, nor employed 6 by any of the parties to this case and have no interest, 7 financial or otherwise, in its outcome. 8 9  10 _____ 11 Lee Utterback, AAERT CER, Court Reporter 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	

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