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Transcript of Hearing

Date: April 9, 2021

Case: The Primrose School

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1 A P P E A R A N C E S	1 P R O C E E D I N G S
2 ON BEHALF OF APPLICANT THE PRIMROSE SCHOOL:	2 MR. CHEN: Good morning, Madam Examiner. This is
3 JODY KLINE, ESQUIRE	3 Bill Chen, and my clients are ready. There will be I assume
4 MILLER, MILLER & CANBY	4 though, a preliminary matter.
5 200-B Monroe Street	5 HEARING EXAMINER ROBESON HANAN: I would as well,
6 Rockville, Maryland 20850	6 let me call the case first.
7 Phone: (301) 762-5212	7 MR. CHEN: Thank you, yes.
8	8 HEARING EXAMINER ROBESON HANAN: Okay.
9 ON BEHALF OF CAROL KOSARY, PAUL POSEY and CC ENGLISH:	9 (inaudible). Okay. I'm getting feedback.
10 WILLIAM J. CHEN, JR., ESQUIRE	10 COURT REPORTER: This is the reporter. I was
11 CHEN, WALSH, TECLER & MCCABE	11 about to say I'm getting the feedback as well (inaudible).
12 200A Monroe Street	12 HEARING EXAMINER ROBESON HANAN: Oh. Excuse me.
13 Suite 300	13 Does anyone have a phone or other device turned on?
14 Rockville, Maryland 20850	14 MR. CHEN: Did that do anything?
15 Phone: (301) 279-9500	15 HEARING EXAMINER ROBESON HANAN: I'm sorry. I
16	16 left to make sure my phone was off. That's better.
17 ALSO PRESENT:	17 COURT REPORTER: It sounds much better to me.
18 JODY FREY, Montgomery County Technician	18 HEARING EXAMINER ROBESON HANAN: Okay, thank you.
19	19 MR. CHEN: Madam Examiner --
20	20 HEARING EXAMINER ROBESON HANAN: All right. Now
21	21 Mr. Kline, are you shuffling papers?
22	22 MR. KLINE: Well, I am, but I'm on mute, so I
23	23 don't -- so that wasn't me.
24	24 MR. CHEN: It wasn't me.
25	25 HEARING EXAMINER ROBESON HANAN: Okay. No paper

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2 (5 to 8)

5	<p>1 shuffling. Okay, I'm -- this is a continuation of the</p> <p>2 public hearing in CU 18-08, an application by a Primrose</p> <p>3 School for a conditional use to operate a 195-student</p> <p>4 daycare center at 7430 Needwood Road. Now, are there any</p> <p>5 other preliminary matters?</p> <p>6 MR. CHEN: Madam Examiner?</p> <p>7 HEARING EXAMINER ROBESON HANAN: Yeah.</p> <p>8 MR. CHEN: This is Bill Chen for the record.</p> <p>9 Since the last hearing I received Petitioner's supplemental</p> <p>10 prehearing statement. Have you received that? I received a</p> <p>11 hard copy on -- I think it was Wednesday.</p> <p>12 HEARING EXAMINER ROBESON HANAN: The Applicant's</p> <p>13 supplemental prehearing statement?</p> <p>14 MR. CHEN: Yeah. I got it at 3:00 in the</p> <p>15 afternoon on 7 April, hard copy from Mr. Kline's office.</p> <p>16 HEARING EXAMINER ROBESON HANAN: 7th of April?</p> <p>17 MR. CHEN: Wednesday. Mr. Kline, you want to</p> <p>18 help us here?</p> <p>19 HEARING EXAMINER ROBESON HANAN: I don't see it</p> <p>20 in my email.</p> <p>21 MR. KLINE: Good morning. This is Jody Kline</p> <p>22 speaking, the attorney for the Applicant. The material that</p> <p>23 was sent to both of you was the operational information</p> <p>24 handbooks dealing with Primrose School that had been</p> <p>25 referenced in earlier hearings that the hearing examiner had</p>	7	<p>1 2020 exchange. And I'm looking at page 101 (inaudible) you</p> <p>2 didn't want any more exhibits operations. And this is new</p> <p>3 material. I don't think it has any place in the record,</p> <p>4 especially at this late date. It's a year after the whole</p> <p>5 issue came up about operations where Mr. Mondava was</p> <p>6 examined about it, we now get this. It's new material and</p> <p>7 my client strongly objects to it being in the record and</p> <p>8 being accepted in the record.</p> <p>9 HEARING EXAMINER ROBESON HANAN: Mr. Kline?</p> <p>10 MR. KLINE: In Mr. Mondava's preparation for his</p> <p>11 testimony, he reviewed the record. He gave me the citation</p> <p>12 for when the hearing examiner that she thought that material</p> <p>13 would be valuable to have in the record. We realized that</p> <p>14 much later than probably you thought you would see it. And</p> <p>15 so I submitted it to you as early as I could. And I will</p> <p>16 just leave it at that.</p> <p>17 HEARING EXAMINER ROBESON HANAN: Okay. Well, I'm</p> <p>18 not going to consider it. I'm not going to admit it. I</p> <p>19 had -- you know, I guess I wasn't expecting -- I'm taking</p> <p>20 Mr. Chen's representation because I have even seen it. And</p> <p>21 it's on -- we are on rebuttal. So Mr. Chen has no</p> <p>22 opportunity, and I did not -- when I remember -- I remember</p> <p>23 asking him a year ago, but I don't think I realized the</p> <p>24 scope and depth of what was in that -- what was in the</p> <p>25 procedural manual. So I'm not going to admit it. All</p>
6	<p>1 asked for. I believe it was email to -- maybe accidentally</p> <p>2 to Ms. Johnson and mailed to your office and hand-delivered</p> <p>3 to Mr. Chen on whatever day you mentioned. I don't think it</p> <p>4 as much relevance for what we have left to do, but I just</p> <p>5 had put it into the record.</p> <p>6 MR. CHEN: Well --</p> <p>7 HEARING EXAMINER ROBESON HANAN: Well, I don't</p> <p>8 have it. And it must have -- you know, I don't know why. I</p> <p>9 won't speculate.</p> <p>10 MR. KLINE: Well, I can -- my secretary is</p> <p>11 upstairs, and I can have her check when it was transmitted</p> <p>12 to your office by email. I know it was mailed.</p> <p>13 MR. COOK: Well, let's hear from Mr. Chen. Mr.</p> <p>14 Chen, do you have an objection to this?</p> <p>15 MR. CHEN: Absolutely, this -- if you can see it</p> <p>16 on -- I will turn it. It's shared on the camera. It's</p> <p>17 about half -- it's over 100 pages. And it purports to be</p> <p>18 the handbook, the Primrose School parents' handbook 2021,</p> <p>19 Primrose School safe school plan management addition, the</p> <p>20 Primrose School preschool bounce learning classroom</p> <p>21 schedule. And I object to this. Mr. Kline can say, I</p> <p>22 guess, that he doesn't think it's of much importance, but it</p> <p>23 was important enough that literally at 3:00 p.m. on</p> <p>24 Wednesday before this Friday that a copy was hand-delivered</p> <p>25 to me and I will refer the hearing examiner to your March 6,</p>	8	<p>1 right.</p> <p>2 MR. CHEN: And just for the record, I will</p> <p>3 mention -- and we will let it go as far as my end. Your</p> <p>4 March 6, 2020 hearing at page 101, you make the observation</p> <p>5 that we don't need any more information about operations. I</p> <p>6 will let the words speak for themselves, but thank you,</p> <p>7 Madam Examiner. We abide by your ruling and appreciate it.</p> <p>8 Thank you.</p> <p>9 HEARING EXAMINER ROBESON HANAN: All right.</p> <p>10 Well, I assume there would be more preliminary matters.</p> <p>11 Unfortunately, I should -- is there any possibility of</p> <p>12 getting Mr. Cook? Because it's now only 15 minutes to go.</p> <p>13 Is there any possibility of getting Mr. Cook on the line</p> <p>14 now? I know we are intruding into his vacation.</p> <p>15 MR. KLINE: Well Mme. hearing examiner, you have</p> <p>16 a better way of detecting whether he is already online. I</p> <p>17 can certainly --</p> <p>18 HEARING EXAMINER ROBESON HANAN: I don't see him.</p> <p>19 MR. KLINE: Don't see him? Okay. I don't know</p> <p>20 why he -- well, all I can do is go upstairs and call him on</p> <p>21 his cell phone and ask him if he can (inaudible). I'm sure</p> <p>22 he will arrive by 10:00 if not earlier, but I'm not sure why</p> <p>23 he's not here yet.</p> <p>24 HEARING EXAMINER ROBESON HANAN: Well, and that</p> <p>25 may have been my mistake too. I should have scheduled him</p>

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3 (9 to 12)

9	11
<p>1 for 9:30. I was having a reaction to my second vaccine</p> <p>2 yesterday. But I'm fine now. All right. Well, I still</p> <p>3 don't see him on. I don't know. Who would your next</p> <p>4 witness be, Mr. Kline?</p> <p>5 MR. KLINE: Mr. Jolley, the landscape architect.</p> <p>6 I mean, the way it set up, I probably -- it probably</p> <p>7 wouldn't make a lot of sense to start him for 10 minutes and</p> <p>8 they come back to him. But if you like to do it, we could</p> <p>9 do it that way.</p> <p>10 HEARING EXAMINER ROBESON HANAN: Mr. Chen, do you</p> <p>11 have a preference?</p> <p>12 MR. CHEN: I would defer to frankly both the</p> <p>13 hearing examiner and Mr. Kline on it.</p> <p>14 HEARING EXAMINER ROBESON HANAN: I agree with Mr.</p> <p>15 Kline, unfortunately. So I'm going to -- we're going to go</p> <p>16 off the record until 10:00. I will monitor. If I see --</p> <p>17 please stay in the loop because if I see Mr. Cook earlier, I</p> <p>18 will come back on that -- let me put it this way. We will</p> <p>19 go off the record until I see Mr. Cook has joined the</p> <p>20 hearing and we will go back on. So please continue to</p> <p>21 monitor your computer.</p> <p>22 MR. CHEN: Very good.</p> <p>23 HEARING EXAMINER ROBESON HANAN: Thank you.</p> <p>24 (Off the record at 9:39 a.m. resuming at 9:50</p> <p>25 a.m.)</p>	<p>1 existing, what does that mean? The current traffic on the</p> <p>2 road today?</p> <p>3 MR. COOK: Yes, ma'am. That's what's out there</p> <p>4 today.</p> <p>5 HEARING EXAMINER ROBESON HANAN: Now, what is the</p> <p>6 background traffic?</p> <p>7 MR. COOK: The background traffic is the existing</p> <p>8 traffic. And in the traffic study we -- double check the --</p> <p>9 we added traffic from several other developments that have</p> <p>10 received approval in the area, and assigned to that to the</p> <p>11 road traffic, to the existing traffic. And that gives us</p> <p>12 the background traffic.</p> <p>13 HEARING EXAMINER ROBESON HANAN: So it's the same</p> <p>14 formulation as in the traffic for the LATR?</p> <p>15 MR. COOK: That's correct.</p> <p>16 HEARING EXAMINER ROBESON HANAN: Existing and</p> <p>17 background. Now, do these queues -- they don't reflect your</p> <p>18 projected traffic?</p> <p>19 MR. COOK: The total column that you see at the</p> <p>20 end does represent the traffic that's being projected to be</p> <p>21 generated by the daycare.</p> <p>22 HEARING EXAMINER ROBESON HANAN: Okay. Now how</p> <p>23 did you get to the -- how do you calculate the total queue?</p> <p>24 No, not the total queue. How do you calculate the length of</p> <p>25 the queue?</p>
10	12
<p>1 HEARING EXAMINER ROBESON HANAN: Thank you. Mr.</p> <p>2 Cook?</p> <p>3 MR. COOK: Yes, ma'am.</p> <p>4 HEARING EXAMINER ROBESON HANAN: Thank you, for I</p> <p>5 don't know where you -- thank you for coming back from</p> <p>6 you're probably well-deserved vacation.</p> <p>7 MR. COOK: Thank you, very much.</p> <p>8 HEARING EXAMINER ROBESON HANAN: What I have, and</p> <p>9 I hope what you're seeing on the screen is the queuing</p> <p>10 study.</p> <p>11 MR. COOK: Yes.</p> <p>12 HEARING EXAMINER ROBESON HANAN: Which is 161, I</p> <p>13 believe it's B or A. Does everyone see it?</p> <p>14 MR. KLINE: Yes.</p> <p>15 MR. CHEN: Madam Examiner.</p> <p>16 HEARING EXAMINER ROBESON HANAN: So I just have</p> <p>17 some questions on this. First of all, I think the title</p> <p>18 probably needs to be changed to westbound. Am I correct in</p> <p>19 that or not?</p> <p>20 MR. COOK: Yes, that's correct.</p> <p>21 HEARING EXAMINER ROBESON HANAN: It should be</p> <p>22 westbound Needwood. Okay. So I just want you to explain.</p> <p>23 I take it that the numbers here are linear feet, correct?</p> <p>24 MR. COOK: That's correct.</p> <p>25 HEARING EXAMINER ROBESON HANAN: Okay. Now the</p>	<p>1 MR. COOK: The length of the queue is determined</p> <p>2 by using -- we use the highway capacity software program and</p> <p>3 that computes the projected length of the queue based on the</p> <p>4 volumes that are entered.</p> <p>5 HEARING EXAMINER ROBESON HANAN: Okay.</p> <p>6 MR. COOK: I may be able to -- on Exhibit 233-A,</p> <p>7 which is the capacity worksheet that has been the topic that</p> <p>8 that that's the topic at a lot of conversation --</p> <p>9 (Exhibit 233-A was introduced.)</p> <p>10 HEARING EXAMINER ROBESON HANAN: Okay, are you</p> <p>11 seeing that now? Because I just pulled it out.</p> <p>12 MR. COOK: Yes ma'am, I am.</p> <p>13 HEARING EXAMINER ROBESON HANAN: Okay.</p> <p>14 MR. COOK: And if you look about midway through</p> <p>15 that block of items you will see back of queue 95th</p> <p>16 percentile. And that says 441.9 for the left turn lane.</p> <p>17 That's what the previous exhibit also showed. So the</p> <p>18 determination as to the total length of the queue is based</p> <p>19 on the highway capacity software.</p> <p>20 HEARING EXAMINER ROBESON HANAN: So you -- this</p> <p>21 has -- and that counts 25 feet per car?</p> <p>22 MR. COOK: Roughly 25 feet, yes ma'am.</p> <p>23 HEARING EXAMINER ROBESON HANAN: Now, this has,</p> <p>24 in 116 -- okay. You've used the 475 for the total length to</p> <p>25 get the 441; is that correct? The 441 in total, that is 95</p>

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4 (13 to 16)

13	<p>1 percent essentially of the total length of the queue?</p> <p>2 MR. COOK: Right, that's correct. That's the</p> <p>3 95th percentile, which is what we use to design things by.</p> <p>4 HEARING EXAMINER ROBESON HANAN: Okay. Now if</p> <p>5 you move that stopped bar on Carnegie back, your queue --</p> <p>6 MR. COOK: Stop bar on Carnegie?</p> <p>7 HEARING EXAMINER ROBESON HANAN: No, stop bar on</p> <p>8 westbound Needwood at the intersection. If you move that</p> <p>9 back, that's going to push you queue back; is that correct?</p> <p>10 MR. COOK: That's correct.</p> <p>11 HEARING EXAMINER ROBESON HANAN: Now this queuing</p> <p>12 also doesn't take into account the driveways, correct? You</p> <p>13 just measure to the intersections?</p> <p>14 MR. COOK: That's correct, from the stop bar to</p> <p>15 where the turn lane would end at, yes. The full width turn</p> <p>16 lane. That doesn't include the -- now at the end of the</p> <p>17 left turn lane you have the full width, which is 12 feet</p> <p>18 wide. And then you begin a taper, which is normally -- it</p> <p>19 somewhere between 100 and 150 feet or so long. The</p> <p>20 dimension that you see here, the 441.9 only represents the</p> <p>21 full width portion of the turn lane, not the taper.</p> <p>22 HEARING EXAMINER ROBESON HANAN: Okay. So</p> <p>23 your -- so what about -- what about the through lane? Does</p> <p>24 this measure -- is this only for the left-hand turn lane?</p> <p>25 Or does this account for queuing on the through lane as</p>	15	<p>1 227. Here, I will get it. No, I thought I -- oh. If the</p> <p>2 QSR factor -- I'm looking at 227-B. Let me get it for you</p> <p>3 so you don't have to -- SSS. So you should see it on your</p> <p>4 screen and is highlighted.</p> <p>5 (Exhibit 227-B SSS was introduced.)</p> <p>6 MR. COOK: Okay.</p> <p>7 HEARING EXAMINER ROBESON HANAN: All right.</p> <p>8 MR. COOK: That -- and that's not referring to</p> <p>9 delay. That strictly talking about queue length.</p> <p>10 HEARING EXAMINER ROBESON HANAN: Well, it says,</p> <p>11 the HCM procedures do not account for this blocking in the</p> <p>12 computation of delay.</p> <p>13 MR. COOK: What that's referring to is if -- if</p> <p>14 we find out that the queue storage ratio is greater than</p> <p>15 one, what that illustrates is we don't have sufficient</p> <p>16 storage space to accommodate the demand. The part about the</p> <p>17 delay is just that this exercise is strictly for queuing,</p> <p>18 not for delay. And what this is saying is that if it does</p> <p>19 appear to be some blockage, what you have to look at and</p> <p>20 analyze, if there is -- if that blockage could cause delay,</p> <p>21 then they're just letting you know that that's not included</p> <p>22 in the delay calculations.</p> <p>23 HEARING EXAMINER ROBESON HANAN: So it does</p> <p>24 affect the delay?</p> <p>25 MR. COOK: It could if there is a blockage, yes.</p>
14	<p>1 well? When I say through lane, I mean the multipurpose,</p> <p>2 left, right, and through lane.</p> <p>3 MR. COOK: The shared lane?</p> <p>4 HEARING EXAMINER ROBESON HANAN: Yeah.</p> <p>5 MR. COOK: No, the 475.3 represents the projected</p> <p>6 queue in the shared lane. The 441.9 is what's needed for</p> <p>7 just the exclusive left turn lane.</p> <p>8 HEARING EXAMINER ROBESON HANAN: I'm sorry. I'm</p> <p>9 writing my note. Now -- so this is gone. So the queue is</p> <p>10 calculated based on the volume of traffic movements, I</p> <p>11 guess, from that approach through the software program; is</p> <p>12 that correct?</p> <p>13 MR. COOK: That's correct.</p> <p>14 HEARING EXAMINER ROBESON HANAN: Okay. Now, I</p> <p>15 don't know if you were here or not for Dr. Kosary's</p> <p>16 testimony, that -- I'm moving now to delay.</p> <p>17 MR. COOK: Okay.</p> <p>18 HEARING EXAMINER ROBESON HANAN: And we're going</p> <p>19 to go back to the corrected worksheet. Now Dr. Kosary</p> <p>20 testified that the R squared factor, once it is below a</p> <p>21 certain number it doesn't account accurately for delay. Do</p> <p>22 you have a response to that?</p> <p>23 MR. COOK: I'm trying to find what she is</p> <p>24 referring to.</p> <p>25 HEARING EXAMINER ROBESON HANAN: Okay. Go to</p>	16	<p>1 HEARING EXAMINER ROBESON HANAN: Okay. Did you</p> <p>2 analyze the distance? For instance, we -- now, I didn't get</p> <p>3 this exhibit pre-put up, but did you analyze the queuing</p> <p>4 versus the driveways like Ms. Rodriguez's driveway?</p> <p>5 MR. COOK: We just looked at the queuing required</p> <p>6 for the left turn lane. We did not look at individual</p> <p>7 driveways for houses.</p> <p>8 HEARING EXAMINER ROBESON HANAN: Okay. So</p> <p>9 this -- I'm back at 161-A, that 75 total that I'm circling</p> <p>10 on the sheet right now.</p> <p>11 MR. COOK: Yes.</p> <p>12 HEARING EXAMINER ROBESON HANAN: That would</p> <p>13 account for the queue, that's the total queue, including</p> <p>14 what would back up on the through lane?</p> <p>15 MR. COOK: I believe you said, and correctly,</p> <p>16 that that for 75.3 represents the length of the queue for</p> <p>17 the right-hand curb lane westbound along Needwood Road.</p> <p>18 HEARING EXAMINER ROBESON HANAN: Okay. Now Dr.</p> <p>19 Kosary also testified -- and let me see if I can get this</p> <p>20 up -- about the R squared factor here. Do you see the</p> <p>21 highlighted section here? Were you here for this testimony?</p> <p>22 Or were you off in your travels?</p> <p>23 MR. COOK: I believe I -- I do not believe I was</p> <p>24 on when she testified to that. We did discuss through some</p> <p>25 of my testimony. This deals with the trip generation of the</p>

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5 (17 to 20)

<p>17</p> <p>1 daycare center. And I know I testified to that, but I'm not 2 sure I was on the phone with -- when Dr. Kosary was 3 testifying. 4 HEARING EXAMINER ROBESON HANAN: Okay. Well, 5 according to Dr. Kosary, and Dr. Kosary, you correct me if 6 I'm wrong. The trip generation is -- does not -- once the R 7 squared factor gets below, I think it's .75 -- is that what 8 you testified to Dr. Kosary? 9 DR. KOSARY: That's correct. And I testified 10 that there were two different standards for went to choose 11 the average rate over the equation. One was -- 12 HEARING EXAMINER ROBESON HANAN: Which equation? 13 MS. KOSARY: Oh, I'm sorry. I'm sorry. I 14 didn't -- 15 HEARING EXAMINER ROBESON HANAN: No, take a 16 moment. Take a moment. 17 MS. KOSARY: I didn't hear your question because 18 there was some rustling of paper. 19 HEARING EXAMINER ROBESON HANAN: No paper 20 rustling. 21 MS. KOSARY: No paper rustling. 22 HEARING EXAMINER ROBESON HANAN: That's going to 23 be one of our OZHA rules of procedure if we continue on this 24 path. 25 You testified, I believe, that if the R squared</p>	<p>19</p> <p>1 response? 2 MR. COOK: Generally, the R squared factor, if it 3 is below the .75, it is used by -- when using the handbook, 4 there are several other factors that must be considered. 5 And unfortunately, like a lot of mathematical formulas and 6 things of that nature, it's not always correct. Although 7 it's the rule of thumb, it's not always correct. The -- you 8 know, there is the fitted equation that is a second 9 (inaudible). 10 HEARING EXAMINER ROBESON HANAN: Well, what's 11 that? Was the fitted -- what your equation? 12 MR. COOK: In ITE, they have the two different 13 methods. They have the straight, average rate and then they 14 have the fitted curve, which is a little more -- in other 15 words is not a linear rate like the average rate is that the 16 Doctor is referring to. But it's based on -- 17 HEARING EXAMINER ROBESON HANAN: No, wait. The 18 average rate, s that the ITE equation? 19 MR. COOK: They are -- these are both published. 20 They're both in the ITE trip generation manual. 21 HEARING EXAMINER ROBESON HANAN: Okay. 22 MR. COOK: There is different -- for every land- 23 use that's contained in the manual, there may be multiple 24 methods of determining what rates are appropriate to use. 25 And the two that the Doctor and I referring to --</p>
<p>18</p> <p>1 factor is below .75, another methodology other than -- now, 2 I'm showing you 227-B. I think it's W -- no, UUU. You 3 testified, I believe, that if it's under .75 you should use 4 a different methodology; is that correct? 5 (Exhibit 227-B UUU was introduced.) 6 MS. KOSARY: Correct, the average rate 7 (inaudible). The average rate as opposed to the equation. 8 HEARING EXAMINER ROBESON HANAN: And when you say 9 equation, are you talking about the McTran software? 10 MS. KOSARY: No, this is the Institute for 11 Traffic Engineers. 12 HEARING EXAMINER ROBESON HANAN: (inaudible) the 13 rate. 14 MS. KOSARY: The ITE, right. Two different 15 players. 16 HEARING EXAMINER ROBESON HANAN: Correct. There 17 are many players in this. 18 MS. KOSARY: Many players in this. 19 HEARING EXAMINER ROBESON HANAN: Okay, now I know 20 I'm switching back. I'm going to allow everybody to ask 21 questions. But now you -- Mr. Cook, did you hear -- you 22 understood that testimony? 23 MR. COOK: Yes, I understand what the Doctor is 24 referring to, yes ma'am. 25 HEARING EXAMINER ROBESON HANAN: And you have a</p>	<p>20</p> <p>1 the Doctor is referring to a straight-line rate so that for 2 every thousand -- for instance, every thousand square feet 3 you generate the same amount of trips for that thousand 4 square feet. The fitted curve is slightly different in that 5 it also takes into consideration the size of the project and 6 the number of points that you have. For instance, if you 7 only had two or three sample points for a particular land- 8 use, you would, in all likelihood, use the average rate that 9 the Doctor is referring to. But in the manual, it tells you 10 that if you have 40 or more points for particular use and -- 11 HEARING EXAMINER ROBESON HANAN: Now, what is a 12 point? 13 MR. COOK: A point is a sample that was used to 14 develop these rates. 15 HEARING EXAMINER ROBESON HANAN: Okay. 16 MR. COOK: So -- and of course if you have 40, 17 then you have a much larger cross-section to choose from. 18 And what you really need to do when you look at the rates -- 19 in some cases the average rates are fine. In other cases, 20 the linear equation is much better to use because you have a 21 much higher number of samples. And what we have found for 22 some uses is the -- that for instance the linear curve, it 23 may have -- as an example I guess maybe retail space. For 24 2,000 square feet of retail space -- and I'm just giving you 25 numbers as an example. For 2,000 square feet, it may say</p>

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<p>21</p> <p>1 you start with 20 trips and then complete the rest of the 2 equation. Well, that's not appropriate because 2,000 square 3 feet of retail space is not going to generate 20 trips. So 4 what you really have to do is while there are guidelines 5 when to use one versus when to use the other, what it does 6 tell you is that you need to look at them, decide which ones 7 are the more appropriate ones to use, and to check with 8 government, in this case, Park and Planning, for their 9 interpretation so they can tell us what to use. In this 10 particular case for the daycare center we were told to use 11 the equations. So it's a little difficult to understand, 12 but it's not black and white. You have to use other 13 considerations to see which ones are the most appropriate 14 for that particular land-use that you are dealing with. 15 HEARING EXAMINER ROBESON HANAN: Wait, I'm 16 getting feedback. 17 MS. KOSARY: You certainly are. 18 MR. COOK: Yeah. You're okay now (inaudible)? 19 HEARING EXAMINER ROBESON HANAN: Yeah. 20 MS. KOSARY: Do you want me to reply also? 21 HEARING EXAMINER ROBESON HANAN: I do. 22 MS. KOSARY: I'm going to give you a much simpler 23 answer probably, in a way. As I noted, the ITE manual 24 presents criteria for when to choose an average rate and 25 went to choose the result of the equation. This is nothing</p>	<p>23</p> <p>1 observations and you could have an R squared of like .2. 2 You can have an R squared of zero. 3 You can have absolutely no relationship between 4 your data points what's on your X axis versus your Y axis. 5 It would be a garbage result if you used an equation in that 6 situation. I actually think that the LATR has actually made 7 the better call on this in terms of how to choose one over 8 the other. 9 HEARING EXAMINER ROBESON HANAN: Okay. All 10 right. I'm going to turn over to -- I'm going to turn it 11 over to -- I'm sorry, Mr. Kline to ask questions of Mr. 12 Cook. 13 Thank you, Dr. Kosary. 14 And then Mr. Kline, you will get to ask questions 15 of Dr. Kosary as well. 16 MR. KLINE: Thank you. I guess the first thing I 17 would ask is probably going to sound very simplistic 18 compared to the level of discussion you just had. But I 19 kept thinking that the queue lengths that you were talking 20 about related to the -- primarily the dedicated left turn 21 lane and that that would go back a certain distance, but 22 that there was capacity to make a left turn by using the 23 middle lane and that would, in fact, either reduce the 24 length of the queue or was supplement the length of the 25 queue. Am I wrong on that? Are these numbers taking into</p>
<p>22</p> <p>1 more than just a straight-line linear fit of the -- you 2 know, actually through the data points. And IT is basically 3 saying that if you have, I believe, more than 20 4 observations you should use the linear fit, the fit through 5 the straight-line equation instead of the average rate 6 irregardless of what the R squared -- and remember that R 7 squared is nothing more than just a measure of how good the 8 equation fits the data. The LATR however, appears to have a 9 different criteria of in that they are saying you use the 10 linear -- you use the linear equation results unless your R 11 squared is less than .75. 12 And I disagree with Mr. Cook. There is no 13 documentation on the record that Planning told them to do -- 14 to use one or the other. If you look at their scope of work 15 agreement, which is in Exhibit 63, it's over in appendix A, 16 the part on trip generation merely tells them that they 17 should be documenting how they made the decision of what 18 method to use, whether to use the average rate or whether to 19 use the straight-line equation results. 20 And I like the latter of -- what's reflected in 21 footnote 12 of using the regression results, the linear 22 equation unless your fit is under .75. I actually like that 23 better than just the ITE saying that if you've got 20 24 observations use the regression results regardless of what 25 the R squared is telling you because you could have 500</p>	<p>24</p> <p>1 account the through, right, and left turn optional left turn 2 lane? How does that work in? 3 MR. COOK: I'm assuming that, Mr. Kline, that 4 question was for me. 5 MR. KLINE: Yes, sir. I'm sorry. 6 MR. COOK: They do take both lanes into 7 consideration. The lane that's been in question has been 8 the exclusive westbound left turn lane, which came up as a 9 result of the queue ratio being over 1. But those queuing 10 figures do reflect the movements in each lane. That's why 11 there is -- on the table that's on your screen right now -- 12 I'm assuming the same one mentions the 95th percentile 13 queuing. And each column the first queue length represents 14 the exclusive left turn lane. The second number represents 15 the shared lane. 16 MR. KLINE: Okay, thank you. If understood your 17 comment about the options that are available to you, in your 18 opinion, you use your professional judgment to determine 19 what was the appropriate trip generation rate for the 20 proposed use? 21 MR. COOK: Yes, we do. And every reviewing 22 agency that reviews our studies, that's one of the very 23 first things they always review to see if we are making the 24 right assumptions in their opinions. And we got no brief 25 back on any of them from any agency that we dealt with.</p>

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<p>25</p> <p>1 MR. KLINE: So apropos of Dr. Kosary's comment, 2 your submission to Park and Planning Commission did explain 3 your rationale for your choice of methods to use to 4 determine trip generation? 5 MR. COOK: We listed the number of trips that 6 were being -- we projected to be generated, which were based 7 on the equation and they did not oppose that or write back 8 and say they disagreed. So we can only assume that they 9 felt they were appropriate for this particular land-use. 10 MR. KLINE: Thank you. No further questions, Mr. 11 Cook. 12 HEARING EXAMINER ROBESON HANAN: Any cross, Mr. 13 Chen? 14 MR. CHEN: Just a couple. Mr. Cook, according to 15 my understanding of your testimony, the queue for the right 16 hand straight through right turn lane is 475.3 feet; is that 17 right, sir? 18 MR. COOK: That's correct. Under total 19 conditions, yes. 20 MR. CHEN: And that's longer than the dedicated 21 left hand turn lane, correct? 22 MR. COOK: That's correct. 23 MR. CHEN: Now, you've testified before about one 24 way to address the issues of difficulties at the 25 intersection of Needwood and Redland was to move the stop</p>	<p>27</p> <p>1 concern. So by splitting the stop bar, you're not moving 2 the stop -- the stopping point for the through traffic. You 3 would just be moving the queue for the left turn back a 4 little bit further. 5 So there's different ways of handling it, but we 6 have -- we've not done any design on this yet until after 7 we've gotten comments back from everybody and we know we've 8 got a project. And then we would approach MCDOT to see 9 which method they would prefer. 10 MR. CHEN: Okay. So as we sit though here today, 11 there -- as you say, there has been no valuation of what 12 type of a change in the location of the stop bar in either 13 lane has been determined; is that an accurate statement? 14 MR. COOK: We've looked at and considered it, but 15 we did not have any formal approval from the government 16 agency at this point. 17 MR. CHEN: Have you submitted anything for 18 approval by the governmental agency? 19 MR. COOK: We've submitted no design plans or 20 anything of that nature at this time. No, we have not, 21 because we -- we kind of prepared a -- you know, a list of 22 two improvements. One being the relocation of the stop bars 23 and the other being the flattening of the radius on that 24 corner. Once we have an idea that this project will be 25 moving forward, then we would definitely be going to MCDOT</p>
<p>26</p> <p>1 bar; is that correct, sir? 2 MR. COOK: That's correct. 3 MR. CHEN: And as I understand your testimony, 4 you would be moving the stop bar further east, isn't that, 5 right? Further away from the intersection itself? 6 MR. COOK: That's correct. 7 MR. CHEN: And that consequently -- have you done 8 any calculation or consideration of how far east the stop 9 bar would be moved? 10 MR. COOK: We have not done any detailed type of 11 design for doing that at this point. It was just a -- you 12 know, something that was brought up as a question and we 13 looked at the existing conditions and found out that based 14 on the turning radius, if we had more room there for a truck 15 to make it turn at that location, then it would help move 16 traffic along at a high rate of speed. But we were 17 estimating it to be 10 feet. There is multiple things that 18 could -- I mean, we could -- we could move the entire stop 19 bar in both lanes back a given distance, maybe 10 feet. Or 20 we could just split the stop bar, which I'm sure everyone 21 has seen at some locations, where the left turn lane stop 22 bar is a little further back from the intersection than the 23 through lane is. And that's just to give the truck extra 24 room to swing. He's not going to interfere with the right 25 and most lane, but as the left turn lane where there is a</p>	<p>28</p> <p>1 to get their approval on which method they would prefer. 2 MR. CHEN: Within the 475.3 feet that would be 3 the queue for the through lane -- 4 MR. COOK: Yes. 5 MR. CHEN: Do you know how many driveways have 6 access onto Needwood? I guess it would be driveways on the 7 northern side of Needwood that would be within that distance 8 of 475.3 feet? 9 MR. COOK: No, I really don't. We never really 10 counted them. 11 MR. CHEN: Okay, but certainly -- assuming your 12 numbers are accurate and assuming that the queue in that 13 lane is going to be 475.3 feet, anyone exiting a driveway 14 that's within that distance is going to be -- will have to 15 wait until the queue provides space so that the car exiting 16 the driveway is able to enter east or westbound Needwood; 17 isn't that correct? 18 MR. COOK: If there is a queue built up at that 19 point in time or many times there is traffic moving. There 20 is gaps that people can get out and get into the flow 21 traffic. But certainly, if traffic was sitting there for 22 475 feet, then people would have to wait for it to open or 23 for traffic to start moving again to create a gap through 24 there. 25 MR. CHEN: Were you present --</p>

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<p style="text-align: right;">29</p> <p>1 HEARING EXAMINER ROBESON HANAN: Well, let me 2 just interrupt one second. The 475 however, that's the 95th 3 percentile of the queue, right? 4 MR. COOK: That's correct. 5 HEARING EXAMINER ROBESON HANAN: And why do you 6 use the 95th percentile versus 100 percent of the queue? 7 MR. COOK: Candidly, I would have to say that 8 that decision was made long before I was in the business. 9 HEARING EXAMINER ROBESON HANAN: Okay. 10 MR. COOK: But under any design plans that we 11 usually develop, or an engineering firm would develop, 12 they -- and ASHTO (ph.) recommends using the 95th percentile 13 queue. 14 HEARING EXAMINER ROBESON HANAN: Now 95th 15 percentile is you take 95 percent of 100 linear feet; is 16 that correct? I just want to make sure I understand it. 17 MR. COOK: Now, for -- as an example -- 18 HEARING EXAMINER ROBESON HANAN: I knew it 19 wouldn't be that simple. 20 MR. COOK: No, it never is. The 400 -- the 95th 21 percentile in the case of the total volumes that we're 22 talking about here for the curb lane of 475.3 means that the 23 maximum queue -- and I don't have a calculator right here to 24 do the math. But what that's saying is the -- that 475.3 25 feet, if you look for the maximum queue, would be about 5</p>	<p style="text-align: right;">31</p> <p>1 question, sir. There is apparently different types of 2 software that can be used for these calculations. Isn't 3 that right, sir? 4 MR. COOK: That's correct. 5 MR. CHEN: And is -- and I try to write this 6 down, but I may have gotten it erroneously. What is the 7 name of the software that The Traffic Group utilized? 8 MR. COOK: It -- for this particular exercise, as 9 required in Montgomery County, this is the highway capacity 10 manual software. 11 MR. CHEN: Okay. Now the highway capacity manual 12 though, recognizes other software; isn't that correct, sir? 13 MR. COOK: I'm sorry. Could you repeat that, 14 please? 15 MR. CHEN: I apologize. The highway capacity 16 manual also that recognizes other types of software that can 17 be utilized; isn't that correct, sir? 18 MR. COOK: There are other types of software that 19 are available. They are all tools that are at our disposal. 20 For instance, one that has been mentioned previously in our 21 hearings is the Synchro analysis. And that's another tool 22 that you can use to determine the delay and queuing and 23 things of that nature. The Synchro model is based on the 24 primary assumptions contained in the highway capacity 25 manual.</p>
<p style="text-align: right;">30</p> <p>1 percent greater than the 475. 2 HEARING EXAMINER ROBESON HANAN: So 475 times 3 1.05? 4 MR. COOK: Correct. 5 HEARING EXAMINER ROBESON HANAN: Okay. I'm sorry 6 Mr. Chen. Go ahead. 7 MR. CHEN: Mr. Cook, about a year ago when we had 8 the pre-Covid hearings, there was testimony from area 9 residents, including my recollection, residents that were 10 entering Needwood from driveways on the northern side of 11 Needwood, plus other people who were driving east -- 12 westbound on Needwood. There's even one gentleman that had 13 photographs of cueing or backups. Did you listen to any of 14 that testimony, sir? It was about a year ago. 15 MR. COOK: I did hear some of that testimony, 16 yes. 17 MR. CHEN: And based upon hearing that testimony 18 and the photographs that were reported to evidence, did The 19 Traffic Group do any recalculation or any calculation as a 20 result of the information supplied by those witnesses and 21 the photographs? 22 MR. COOK: No, we did not. We continued to 23 defend on the highway capacity manual software analysis to 24 compute the queue lengths. 25 MR. CHEN: Well, okay. Let me ask you another</p>	<p style="text-align: right;">32</p> <p>1 MR. CHEN: Okay. Okay. What's then the 2 difference? 3 MR. COOK: The Synchro analysis, at least from 4 what we've been asked to use it for, is primarily used when 5 you are looking at roadway networks. I would say as an 6 example -- maybe it's a bad example, but Maryland 355, 7 Rockville Pike, where you have a series of traffic signals 8 that are closely spaced together, Synchro, if you looked at 9 it using the highway capacity manual for intersections that 10 are that closely spaced, you wouldn't necessarily pick up 11 the true effect of what's happening because of all the 12 signals in that area. Synchro is a better tool to use for 13 something like that area because the intersections are so 14 close together and it does a better job of picking up 15 queuing, blockages, overflow, and things of that nature. So 16 it's usually used in the more tightly space road network as 17 opposed to a road such as Needwood where you have a major 18 road on each end, but you have a major distance between the 19 two and the art really any major, major generators in 20 between the two intersections that would impact the traffic 21 well. 22 MR. CHEN: So what would be the major 23 intersection east of the intersection of Needwood and 24 Redland that you're referring to? Would that be Muncaster? 25 MR. COOK: Yes, sir.</p>

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<p>33</p> <p>1 MR. CHEN: And your testimony is that between the 2 intersection of Needwood and Muncaster, and Needwood and 3 Redland there are no major traffic generators that would 4 justify utilizing the other type of software? 5 MR. COOK: Significant generators, yes. 6 MR. CHEN: Okay. I've no further questions. 7 HEARING EXAMINER ROBESON HANAN: Mr. Kline, do 8 you have any redirect? 9 MR. KLINE: Thank you. Mme. hearing examiner, 10 could you go to Exhibit 106? The (inaudible)? 11 HEARING EXAMINER ROBESON HANAN: Mr. Kline, you 12 are reverberating. 13 MR. KLINE: We are having that problem again. Is 14 that still a problem? 15 MR. COOK: Yes. 16 HEARING EXAMINER ROBESON HANAN: Try it again. 17 MR. KLINE: Can you hear me now clearly? 18 HEARING EXAMINER ROBESON HANAN: No. 19 MR. KLINE: It seems to be the same problem I had 20 yesterday when I was shuffling some papers accidentally. 21 HEARING EXAMINER ROBESON HANAN: All right. 22 Well, let's go forward and hopefully it will right itself. 23 Can the court reporter understand what Mr. Kline is saying? 24 COURT REPORTER: It's not perfect, but I can 25 understand what he is saying.</p>	<p>35</p> <p>1 MR. COOK: I don't recall hearing any testimony 2 concerning it. 3 HEARING EXAMINER ROBESON HANAN: But wouldn't you 4 count too -- because of left and turns, wouldn't you count 5 the other driveways on the south side? You've got Tapscott 6 (ph.) the (inaudible). 7 MR. KLINE: Well, Ms. Robeson, I was asking a 8 question in response to a question from Mr. Chen who did ask 9 about driveways on the north side, which is where the -- 10 HEARING EXAMINER ROBESON HANAN: Oh, I'm sorry. 11 I'm sorry. Go ahead. 12 MR. KLINE: Which is where the queues are 13 effective. We understand chair reviewer (inaudible), but I 14 was just answering -- asking for response to a specific 15 question. 16 HEARING EXAMINER ROBESON HANAN: I got you. 17 MR. KLINE: Fine. No further questions of Mr. 18 Cook. 19 HEARING EXAMINER ROBESON HANAN: All right. Mr. 20 Kline, are you ready to cross examine Dr. Kosary on her -- 21 my -- her answers to my questions? 22 MR. KLINE: I have no questions of Dr. Kosary. 23 HEARING EXAMINER ROBESON HANAN: Okay. Mr. Chen? 24 MR. CHEN: Yes. 25 HEARING EXAMINER ROBESON HANAN: Oh, wait a</p>
<p>34</p> <p>1 MR. KLINE: I will speak precisely. Could you 2 please -- okay, fine. Could you please go to page 5 of the 3 staff report? 4 HEARING EXAMINER ROBESON HANAN: Okay, you 5 should -- you are there. This is page 5 of Exhibit 106. 6 (Exhibit 6 was introduced.) 7 MR. KLINE: Mr. Cook, do you recognize the 8 subject property outlined in yellow? 9 MR. COOK: Yes, I do. 10 MR. KLINE: And that would be Carnegie Avenue 11 immediately to the left inside of the west of the subject 12 property? 13 MR. COOK: That's correct. 14 MR. KLINE: And between the intersection of 15 Carnegie and Needwood, and Carnegie and Redland, how many 16 driveways would be located on the north side of Needwood? 17 MR. COOK: It's a little difficult to see it at 18 the scale on the screen, but it looks to me like there would 19 be -- to the west there would be three residences between 20 Carnegie and Redland Road along Needwood on the north side. 21 MR. KLINE: And the property on the northeast 22 quadrant of Redland Road and Needwood Road is the Taiwanese 23 Cultural Center. Do you recall anyone testifying about 24 concerns about access to and from the road from the 25 Taiwanese Cultural Center?</p>	<p>36</p> <p>1 minute. Do you have any redirect or more questions for Dr. 2 Kosary? 3 MR. CHEN: Yes, I hadn't asked any questions of 4 Dr. Kosary. 5 HEARING EXAMINER ROBESON HANAN: Well, that's 6 what I'm saying. Is this -- 7 MR. CHEN: I (inaudible) now. 8 HEARING EXAMINER ROBESON HANAN: Just go ahead. 9 Whatever -- I'm trying to figure out what we are on. I 10 guess you are sort of on redirect because I instituted the 11 questions. 12 MR. CHEN: Thank you. 13 HEARING EXAMINER ROBESON HANAN: So go ahead. 14 MR. CHEN: Thank you. Dr. Kosary, what is the 15 issue with the left-hand turn queue? 16 MS. KOSARY: Okay, if we can go to -- I think 17 it's -- it's 232, which is the corrected. 18 HEARING EXAMINER ROBESON HANAN: It should -- 19 this is 233 -- 20 (Exhibit 233-A was introduced.) 21 MS. KOSARY: 233. 22 HEARING EXAMINER ROBESON HANAN: A, page 3. 23 MS. KOSARY: Right. Page 3 is a good one to look 24 at. The problem with the back of queue for the left intern 25 link, which was showing 441.9 feet, I remind everybody that</p>

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<p>37</p> <p>1 this lane is only like 425 feet long. So basically, you're 2 putting more hypothetical cars into it than you probably 3 have capacity in the lane to do -- 4 HEARING EXAMINER ROBESON HANAN: Okay. 5 MS. KOSARY: And that's what gets into the queue 6 storage ratio. Basically, if you go back to 227 SSS -- 7 HEARING EXAMINER ROBESON HANAN: Oh, just SS? 8 MS. KOSARY: SSS. You were there. 9 MR. CHEN: Three Ss? 10 MS. KOSARY: Missed my final S. On the third 11 page where it's discussing the queue storage ratio. This is 12 basically, like, I think I said before; it's a heads up to 13 the data analyst. And if we were to go back to 233, we 14 would see at the very top that the data analyst -- the very 15 top of the page. If you scroll -- the analyst is -- has the 16 initials MYC. If you went back to Exhibit 63 you would see 17 I believe the man's name is Mr. Mayan Yen Cheun. He is a PE 18 and he's a PTOE, which is a professional transportation 19 operations in here. So this man is credentialed twice. 20 I'm assuming that Mr. Cheun, he's obviously 21 demonstrated experience with the hyper capacity manual. He 22 needs to to get that PTOE. I'm assuming that he's also been 23 trained by a McTrans the company that produced the software. 24 And McTrans should have trained him to know that if the 25 queue storage ratio went above 1, the highway capacity</p>	<p>39</p> <p>1 microsimulation piece of software. It analyzes for a large 2 network, large piece of traffic core sim which McTran should 3 have been instructing this person that you go to if you 4 encounter a situation like this is actually what they refer 5 to as more of a microsimulation, more -- probably just 6 looking at an intersection. And this would have just given 7 him a better, more accurate depiction of what was going on 8 both with these queues and with this delay. And hopefully 9 that was understandable, and I will leave it at that. 10 MR. CHEN: I want to take you back to the 11 discussion about the 95th percentile. 12 MS. KOSARY: Yes. 13 MR. CHEN: Could you address that and clarify 14 your understanding of the implications of that? 15 MS. KOSARY: Yeah. And correct me if I make this 16 too complicated. These -- you know, these procedures are 17 based on assumptions of how we think the data is 18 distributed. If you've taken an introductory statistics 19 class, I mean Mr. Chen is laughing. He obviously got forced 20 to take one. They teach you what's referred to as the 21 normal distribution a bell-shaped curve. And you know the 22 curve you can look at what the 50th percentile is, what the 23 95th percentile, any percentile you want. Queuing gets a 24 little more complicated because it's actually not a 25 normal -- and there's nothing actually normal about what</p>
<p>38</p> <p>1 manual procedures being implemented by this particular piece 2 of software were going to be under shooting a number of 3 measures starting with the queue lengths. Your queue length 4 is obviously going to be shorter than what's being shown in 5 the left hand-turn lane because you only have so much 6 capacity in that left-hand turn lane. 7 Those cars are really going to be more than 8 likely pushed into the through lane extending the queue that 9 you see in the through lane. You should have also been 10 trained to realize that. You're under-shooting the 11 calculations for delay both in the left-hand turn lane and 12 in the through lane. If you pull it up and we're already 13 seeing that these are -- this particular approach, the 14 westbound Needwood approach -- these are a level of service 15 E. These are already, even with the underestimation on this 16 approach, these are numbers showing that this westbound 17 approach at this intersection, which is Redland Needwood is 18 very congested. It's got a level of service D. It's got 19 very long delays at the light. It's got, even with this 20 underestimation on the queues, it's got long queues. Mr. 21 Chuen should've been trained by McTrans in a situation like 22 this to know that he actually should have been going to a 23 different piece of software. He should have been going to 24 McTrans' microsimulation software and Synchro. I mean Mr. 25 Cook has been mentioning Synchro. Synchro is actually a</p>	<p>40</p> <p>1 they call the normal distribution. I actually know it as a 2 Gaussian distribution. And one of the weaknesses that -- 3 you know when I reviewed the highway capacity manual and 4 things like that that I saw is that they didn't take it 5 to -- out to getting to the point where you had standard 6 errors, which are things that are important. They are 7 measures that are important to know if you're going to 8 know -- if you are at the 95th percentile how much further 9 back is the 99th percentile. You need to know what's called 10 a standard error. 11 HEARING EXAMINER ROBESON HANAN: Dr. Kosary. I'm 12 sorry. I couldn't understand. You said if you are at the 13 95th percentile you have to look at where you are at what 14 percentile. It blanked out on me. 15 MS. KOSARY: Oh, no. You need to know where 16 you -- you need to know the shape of the distribution, the 17 shape of the curve. 18 HEARING EXAMINER ROBESON HANAN: Oh, I see. 19 MS. KOSARY: Right, that you're dealing with. 20 And in this particular interest -- example, it's not normal. 21 It's actually -- it's a different type of distribution. So 22 I can't tell you taking it from the 95th to the hundreds 23 percentile whether we're talking 5 feet or 500 feet. 24 HEARING EXAMINER ROBESON HANAN: I understand. 25 MS. KOSARY: Yeah, just because we don't have</p>

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<p>41</p> <p>1 enough information to make any assumptions whatsoever about 2 moving from the 95th to the 99th or the 95th to the 100th 3 how many more feet we are talking about. 4 HEARING EXAMINER ROBESON HANAN: Okay. 5 MS. KOSARY: We just don't know. We don't have 6 enough information. 7 MR. CHEN: I have no further questions. 8 HEARING EXAMINER ROBESON HANAN: Mr. Kline, any 9 redirects or cross? 10 MR. KLINE: I really don't have any questions for 11 Dr. Kosary. However, I would like to recall Mr. Cook to 12 address what he feels in response to what Dr. Kosary said 13 since I am afraid, I'm not capable of understanding it. 14 HEARING EXAMINER ROBESON HANAN: Okay. Given Mr. 15 Kline's shortcomings, I'm going to allow Mr. Cook to do 16 that. 17 MR. KLINE: Mr. Cook, if you could, just briefly 18 provide us with your response to Dr. Kosary's observations 19 in the context of how you practice transport engineering and 20 traffic planning. 21 MR. COOK: The highway capacity manual is a 22 document that's used by -- across North America. It's 23 really the most desirable way of analyzing intersections, 24 particularly signalized intersections. The Doctor 25 acknowledged that the Sim traffic and some of the other</p>	<p>43</p> <p>1 project. The rules in Montgomery County don't allow us to 2 do that. So our study was based on the rules that we are 3 given to use. The -- 4 HEARING EXAMINER ROBESON HANAN: But Mr. Cook, 5 the rules do give you the option to do that. 6 MR. COOK: I'm not sure why you say that unless 7 we were asked. The rules, I believe, state that we are to 8 use the highway capacity software methodology and that's 9 what we used. 10 HEARING EXAMINER ROBESON HANAN: Except when the 11 R2 factor is under 75. 12 MR. COOK: That's something completely different. 13 The R2 factor has to do with the trip generation 14 determination for your particular use. That has nothing to 15 do with -- 16 HEARING EXAMINER ROBESON HANAN: With the 17 queuing. 18 MR. COOK: -- the capacity analysis and the 19 queuing calculations of stuff that we use. They are 20 complete separate items. 21 HEARING EXAMINER ROBESON HANAN: Okay. Anything 22 else? 23 MR. COOK: The only other thing that I can think 24 of was the -- a statement was made about the queue length of 25 the westbound left turn along Needwood Road. In our report</p>
<p>42</p> <p>1 tools that are available are also worthy tools that could be 2 used to analyze certain situations, but in the case of 3 jurisdictions where we have requirements like local area 4 transportation review, the methodology that we are asked to 5 use is what we need to use. It's not something we can pick 6 and choose. 7 Traffic engineering is not an exact science 8 because a lot of it does deal with random arrivals and 9 things of that -- and that's another factor that needs to 10 be -- could be entered into some type of formula. We use an 11 design distribution quite often to do that. So it's not an 12 exact science, but there are other tools, but we are limited 13 to what we are asked to use. In some cases the State 14 Highway Administration asks us to use one methodology in 15 Montgomery County may ask us to use another different type 16 of methodology. So we end up doing things both ways. We 17 were only doing what we were required to do by the local 18 area transportation review guidelines. 19 And in most cases the answers come out to be the 20 same or at least similar. But we're not going to be getting 21 matches to the second and things of that nature because they 22 are based on different assumptions and what it is you are 23 actually measuring. So I understand the difference between 24 the models and the fact that the Doctor feels that we should 25 be using a different type of model for this particular</p>	<p>44</p> <p>1 we showed it as 430 feet. And the 95th percentile queue was 2 49 -- I'm sorry -- 441.9 feet, which is a difference of 3 about 11 feet. And the Doctor had submitted a formula from 4 McTrans which is correct where you look at the amount of 5 storage space versus what's needed based on the analysis. 6 And in this particular case the factor on the 7 corrected sheet showed a 1.03 factor. It was really 1.0279 8 or something to that effect. They just round it off. But 9 basically what -- when you apply that 3 percent for sake of 10 ease, to the 430 feet of storage that's available, that's 11 saying that in order to meet the 95th percentile regulation 12 based on the note that was highlighted on the corrected 13 worksheet we would need to lengthen the queue for the left 14 turn westbound along Needwood by approximately 11 feet. 15 And that 11 feet could be gained multiple ways. 16 One clearly, we could lengthen the storage area for the left 17 turn lane. There is sufficient width there that it would 18 just be a matter of re-striping the left turn lane and 19 adding a little bit of length to it so that we would be able 20 to get that queue ratio number down below 1, which is the 21 goal that the Doctor has been referring to. 22 The second thing is the -- when you look at the 23 intersection after the fullwidth left turn lane there is a 24 taper area that at its widest point is approximately 12 25 feet. You're going to have one car too many in the left</p>

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<p>45</p> <p>1 turn lane based on the 1.03 factor. That one car could very 2 easily pull into the hatch area where the taper is without 3 interfering with the through lane traffic, although it's not 4 recommended that -- I'm certainly not recommending that a 5 car do that because the hatching is there for them not to do 6 that. So I'm not recommending that. But in the real world 7 that happens quite often.</p> <p>8 The third alternative would be not something that 9 we can control, but at many intersections as people approach 10 when you have dual lanes, they look at the lanes and which 11 ones are the most congested and which ones are longest. If 12 someone approaches the intersection and sees that the left 13 turn lane is filled, they can stay in that through lane and 14 use that to make the left turn at the next intersection. So 15 there is a series of things that just happen on the road 16 network every day that could make up the difference and get 17 that queue ratio down below 1, which is what the goal is, 18 and we wouldn't have that particular problem.</p> <p>19 But we are -- essentially, we are discussing the 20 difference for one car. In reality, if we reran the numbers 21 and we did assume that that one extra car went through the 22 through lane, that would actually reduce the delay by about 23 a 10th of a second at the Redland and Needwood intersection. 24 Obviously not something that's noticeable, but it would have 25 a positive impact, but we have no way of forcing people to</p>	<p>47</p> <p>1 MR. CHEN: Objection. Mr. Cook has not observed 2 anything in the field, number one. And number two, this 3 goes beyond the scope of the examination.</p> <p>4 HEARING EXAMINER ROBESON HANAN: Yeah, it does, 5 Mr. Kline. I had very specific questions.</p> <p>6 MR. KLINE: All right. I have no further 7 questions of Mr. Cook.</p> <p>8 HEARING EXAMINER ROBESON HANAN: All right, cross 9 exam. Mr. Chen, do you have cross -- that was essentially a 10 mini rebuttal, but I do want to get more on this issue. So 11 Mr. Cook, you're still in the hot seat for a little bit.</p> <p>12 MR. COOK: That's fine.</p> <p>13 HEARING EXAMINER ROBESON HANAN: Mr. Chen, do you 14 have any questions of Mr. Cook?</p> <p>15 MR. CHEN: Well, just a couple. Number -- Mr. 16 Cook, let me go to this testimony about the queueing in the 17 left-hand turn lane. Based upon your testimony just now, I 18 take it you are acknowledging that given the amount of space 19 that is currently out there for that turn, that you would 20 have to move -- if I'm using the right word -- move the 21 storage lane further eastbound. Isn't that correct, sir?</p> <p>22 MR. COOK: For some given distance, yes.</p> <p>23 MR. CHEN: Okay. Now that's consistent with Dr. 24 Kosary's testimony about the length of that storage lane, 25 how far back it goes eastbound. Isn't that right, sir?</p>
<p>46</p> <p>1 stay in that lane. I 2 think those are the primary topics that the 3 Doctor talked about. She did make reference to the 4 training. All of our professional staff undergo training. 5 They constantly get trained every time there is a new update 6 to a document such as the highway capacity manual or the 7 ITE. So they are up-to-date with the -- all --</p> <p>8 HEARING EXAMINER ROBESON HANAN: Well, I think 9 she acknowledged that he was properly credentialed.</p> <p>10 MR. COOK: Okay. Then I don't have anything 11 else.</p> <p>12 HEARING EXAMINER ROBESON HANAN: Okay. Cross- 13 examination. Are you finished Mr. Kline?</p> <p>14 MR. KLINE: Well, I was going to ask him just a 15 couple of supplemental questions to that. And that is, Mr. 16 Cook, I bet there have been instances in your career where 17 you have done everything in accordance with the manuals and 18 the guidelines that you talked about, but the result just 19 didn't seem right, it didn't seem to match up with what you 20 saw on the field. Am I correct?</p> <p>21 MR. COOK: That's correct.</p> <p>22 MR. KLINE: Okay. In this instance, do you feel 23 that the results that you have reported are a realistic 24 portrayal of the circumstances that you've observed in the 25 field?</p>	<p>48</p> <p>1 MR. COOK: Yes.</p> <p>2 MR. CHEN: Now, what happens if there is a lane 3 that's blocked?</p> <p>4 MR. COOK: Well, it's just like any -- we cannot 5 design things in anticipation of incidents occurring. 6 There's just no way of --</p> <p>7 MR. COOK: Mr. Cook, could you just -- I 8 understand that. I'm going to give Mr. Kline redirect. 9 Could you just answer the question, what happens if a lane 10 is blocked?</p> <p>11 MR. COOK: Okay. If the left turn lane is 12 blocked, then all the traffic would have to utilize the 13 through lane or the shared lane to make the left, through, 14 and right until they were able to open up the other lane 15 again.</p> <p>16 MR. CHEN: And your testimony today is that is to 17 extend further eastbound the storage lane for the left turn 18 lane. Is that correct, sir?</p> <p>19 MR. COOK: A couple of feet, yes.</p> <p>20 MR. CHEN: You don't know today? As you sit 21 there today, you don't know how much further eastbound you 22 have to increase that storage lane; isn't that correct?</p> <p>23 MR. COOK: Based on the calculations we did it 24 would be approximately 11 feet. So what we would like to 25 have is approximately 441 feet of storage from wherever the</p>

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<p style="text-align: right;">49</p> <p>1 stop bar is moved to, to the rear of the queue for the left 2 turns. 3 MR. CHEN: Okay. Now that just brings up, I 4 think my last area. When he last testified, sir, you 5 mentioned improvements that were appropriate. My 6 recollection was the speed bumps, moving the stop bar, the 7 signalization, and the radius of the turn, the right-hand 8 turn from Redland on the Needwood. Do you recall that in 9 your testimony, sir? 10 MR. COOK: I remember moving the stop bar. I 11 remember cutting back on the radius, flattening the radius 12 out, which would result in signal modifications. Or 13 possibly changing the phasing or timing, not the phasing, 14 but the timing of the signal. I don't particularly remember 15 talking about installing more stop bars. 16 MR. CHEN: But today as I understand your 17 testimony, whatever that number was and what you had 18 identified previously, today you are also now including an 19 extension of the storage lane for the left-hand turn lane? 20 MR. COOK: That's correct. 21 MR. CHEN: Okay. And all of this sir, is based 22 upon the methodology recommended in the highway capacity 23 manual; is that your testimony? 24 MR. COOK: Yes. 25 MR. CHEN: Okay. Just real quick. Those -- what</p>	<p style="text-align: right;">51</p> <p>1 Kline? 2 MR. KLINE: No questions, thank you. 3 HEARING EXAMINER ROBESON HANAN: All right. That 4 constitutes Mr. Cook's rebuttal to Dr. Kosary. And unless 5 anyone has an objection, I hesitate to excuse Mr. Cook 6 again. If anyone has an objection, I'm going to excuse him 7 so he can continue to enjoy wherever he is. Okay. 8 Hearing no objection, I do thank you Mr. Cook for 9 coming in your time off. 10 MR. COOK: Okay, thank you very much. It's okay 11 for me to go? I can stay if it would be -- make people 12 comfortable. 13 HEARING EXAMINER ROBESON HANAN: It's up to your 14 attorney. 15 MR. COOK: Okay. 16 HEARING EXAMINER ROBESON HANAN: Thank you, Mr. 17 Cook. 18 MR. COOK: Okay, thank you. 19 MS. KOSARY: Thank you, Mr. Cook. 20 MR. COOK: Thank you, Doctor. 21 HEARING EXAMINER ROBESON HANAN: All right. With 22 that, Mr. Kline, do you want to call your next witness? 23 MR. KLINE: I'm glad to get ready -- 24 HEARING EXAMINER ROBESON HANAN: As long as he 25 doesn't mention an equation, I'm okay. Dr. Kosary, I'm</p>
<p style="text-align: right;">50</p> <p>1 is the data that your study has on traffic counts? 2 MR. COOK: We collect -- we conduct traffic count 3 at the study area intersections on a weekday, Tuesday, 4 Wednesday, or Thursday from 6:30 to 9:30 a.m. and 4:00 to 5 7:00 p.m. unless we were doing some other type of special 6 study to determine whether a signal was warranted. Then we 7 count for 12 hours at a minimum. But they are based on 8 counts that we conduct. 9 MR. CHEN: In this case, what were your counts? 10 Or are they on the page in your study? 11 MR. COOK: The summary of the counts are 12 contained in appendix A of our traffic study. 13 MR. CHEN: Thank you. By the way, would some of 14 these alternative software -- that software's that are 15 available, with that been able to take into account the 16 extension of the storage lane for the left-hand turn lane? 17 MR. COOK: Yes, they could. 18 MR. CHEN: Okay. And it's your testimony that 19 for this assignment, that The Traffic Group did not have the 20 authority to utilize any type of software other than that 21 which it did utilize? 22 MR. COOK: We didn't feel it was necessary, nor 23 is it required that we use any other type of software. 24 MR. CHEN: Okay. That's all I've got. 25 HEARING EXAMINER ROBESON HANAN: Redirect, Mr.</p>	<p style="text-align: right;">52</p> <p>1 joking really. 2 MR. KLINE: I was just wondering if maybe -- we 3 been doing this for an hour and a half plus. Mr. Jolley is 4 my next witness. We take a five-minute break in the start 5 with Mr. Jolley at say 11:11? 6 MR. CHEN: I have no problem with the break. 7 HEARING EXAMINER ROBESON HANAN: Okay, let's take 8 a five-minute -- or let's just say 11:15. And Mr. Jolley 9 will be up. Mr. Jolley -- well, I will save that for when 10 we get back. So we're going to go off the record. 11 (Off the record, 11:06 a.m., resuming at 11:20 12 a.m.) 13 HEARING EXAMINER ROBESON HANAN: Thank you. All 14 right. I believe Mr. Kline that Mr. Jolley is up. 15 Mr. Jolley, you're still under oath. You don't 16 have to get sworn again. 17 MR. KLINE: Would you like him to repeat his name 18 and business address? 19 HEARING EXAMINER ROBESON HANAN: Well, you can do 20 that for the court reporter. That helps them, I think. 21 MR. JOLLEY: My name is Jonathan; J-O-N-A-T-H-A- 22 N. Jolley; J-O-L-L-E-Y. My business address is 22375 23 Broderick Drive, Suite 110, Sterling, Virginia 20166. 24 MR. KLINE: Mr. Jolley, you are the landscape 25 architect primarily responsible for preparing and</p>

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<p>53</p> <p>1 supervising the preparation before preliminary forest 2 conservation plan for this project? 3 MR. JOLLEY: Yes, that's correct. 4 MR. KLINE: All right. And was your preliminary 5 forest conservation plan prepared in accordance with Chapter 6 22 a, the forest conservation law? 7 MR. JOLLEY: Yes, sir. 8 MR. KLINE: Okay. And did that preliminary 9 forest conservation plan receive a recommendation for 10 approval by the staff of MNCPPC? 11 MR. JOLLEY: Yes, they did. 12 MR. KLINE: And did the Planning Board approve 13 that PFCP in conjunction with recommendations on the 14 conditional use that brings us here today? 15 MR. JOLLEY: Yes, they did. 16 MR. KLINE: All right. You've heard testimony 17 expressing concern about trees that are on the Kosary/Posey 18 property that may be damaged as a result of activity on the 19 subject property. Are there trees on the Kosary/Posey 20 property that are not shown on the PFCP? 21 MR. JOLLEY: Yes, there are, sir. 22 MR. KLINE: And why are they not shown? 23 MR. JOLLEY: The trees on the neighboring 24 property to the east are not shown because the law assumes 25 that treats with a diameter of 24 or less inches at breast</p>	<p>55</p> <p>1 trees. On one second and I will share it with you. For the 2 record, I'm just pulling up Exhibit 115. This is 115-R. 3 These are photographs of trees on the Kosary property. No, 4 photographs of trees on eastern boundary of 7430 Needwood 5 Road. Is this what you want? 6 MR. KLINE: There we go. 7 HEARING EXAMINER ROBESON HANAN: So it is 115- 8 R.2. 9 So go ahead Mr. Kline. 10 (Exhibit 115-R.2 was introduced.) 11 MR. KLINE: I'm sorry. I'm sitting here talking 12 realizing I'm on mute. 13 Mr. Jolley, I know you heard the testimony 14 earlier. So it's your understanding that -- the reason I'm 15 stopping is I just realized that these photographs don't 16 have identifier marks. So let's work with them anyway. 17 The orange cones represent the Posey's/Kosary 18 estimate of the property line between the property and that 19 looks reasonable from these photographs, correct? 20 MR. JOLLEY: Correct. 21 MR. KLINE: Okay. So on what is shown up there 22 right now as R.2, the subject property is in the left side 23 of the photograph and the Posey -- Kosary, I'm sorry. 24 Kosary/Posey property is on the right-hand side of the 25 photograph.</p>
<p>54</p> <p>1 height, and breast height being defined as 4-1/2 feet above 2 the grade where the tree intersects the ground service, are 3 not significant trees and do not need to be reported as the 4 possible loss is not deemed as a serious loss of forest. 5 That is the primary reason trees 24 inches and under are not 6 included on these as such plans. 7 MR. KLINE: Mdm. hearing examiner, could you 8 please pull up exhibits RRRR 1 through 6, photographs in the 9 record? 10 HEARING EXAMINER ROBESON HANAN: Which number 11 exhibit? 12 MR. KLINE: I'm going to guess that's 227, but 13 I'm not sure a recall which batch that is. 14 HEARING EXAMINER ROBESON HANAN: 227 three R's? 15 MR. KLINE: Four. 16 HEARING EXAMINER ROBESON HANAN: Four R's. 17 MR. KLINE: Actually now that I -- I see a note 18 on here. It may be OZHA Exhibit 115. 19 HEARING EXAMINER ROBESON HANAN: Okay. 20 MR. KLINE: Exhibit R-2 is the note that on the 21 copy I have. 22 MR. JOLLEY: That's what I see as well. 23 HEARING EXAMINER ROBESON HANAN: Well, I have R- 24 1. Are you saying -- when you say R-2, is that two R's or 25 just R.2? Well, let me pull it up. I have photographs of</p>	<p>56</p> <p>1 MR. CHEN: If I may, Mr. Kline. I don't think 2 that's accurate. I think -- 3 MR. KLINE: Okay, thank you. 4 MR. CHEN: If I may -- 5 MR. KLINE: Thank you, Mr. Chen. I think you 6 are -- I think what you're about to say, I think it makes 7 sense that I ought to go and use the later exhibits because 8 they are better marked. So can we -- can somebody help me 9 where the RRRR exhibits are found so the hearing examiner 10 can go to that? 11 MR. CHEN: I will grab the exhibit. 12 MR. JOLLEY: 227-D. 13 MR. CHEN: Mdm. examiner, I think I just heard 14 227-D. It's in the cluster of exhibits. 15 HEARING EXAMINER ROBESON HANAN: Well, this is 16 all R. You know what, the tree stuff starts the traffic 17 stuff. So let me go down here. I used a technical word 18 there. Okay. I'm on the tree stuff. Well, no it's -- 19 MR. CHEN: Jody, is it four R's or -- 20 MR. KLINE: Four R's. 21 HEARING EXAMINER ROBESON HANAN: Four R's? 22 MR. KLINE: Yeah. 23 HEARING EXAMINER ROBESON HANAN: Bear with me a 24 moment while I locate the four R's. 25 MR. KLINE: Mr. Chen was correct. It is in the D</p>

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57	1 part of that package. 2 HEARING EXAMINER ROBESON HANAN: Okay. We will 3 go back here. Oh, wait. I'm sorry. 227-D? 4 MR. KLINE: Correct. 5 HEARING EXAMINER ROBESON HANAN: Okay. 6 MR. KLINE: There we go. There we go. Great. 7 HEARING EXAMINER ROBESON HANAN: Just for the 8 record, we are looking at 227-RRRR.2. 9 (Exhibit 227-RRRR.2 was introduced.) 10 MR. KLINE: Actually -- 11 HEARING EXAMINER ROBESON HANAN: Is that what you 12 wanted? 13 MR. KLINE: Could you scroll back to R.1? 14 RRRR.1? Thank you. We will start there. So Mr. Jolley, 15 tell us what we see in this photograph with the orientation 16 of the two respective properties. 17 MR. JOLLEY: So you're looking at obviously the 18 approximate location of the property line where the cone is 19 shown in the middle the photograph between the property of 20 7430 and 7416. And that would represent the property 21 locations of the respective trees on the east or west 22 boundary line. 23 MR. KLINE: And the diagonal arrows on the right- 24 hand side are referring to trees on the Kosary/Posey 25 property, correct?	59	1 it's probably .2 and that one as the subject property on the 2 left and the Kosary/Posey property on the right. So fine. 3 Go ahead. 4 HEARING EXAMINER ROBESON HANAN: No, this RRRR.2 5 shows Kosary/Posey on the left and subject on the right. 6 MR. JOLLEY: That's correct. 7 MR. KLINE: Yeah, let me put my glasses back on. 8 I will get it right next time. Thank you. 9 MR. JOLLEY: The next photo reverses again. 10 Subject property on the right. 7416 on the left. The 11 subject parcel on the right and 7416 to the left on RRRR.4. 12 Then the final photograph, subject property to the right on 13 the screen and 7416 to the left of your screen. That may be 14 a good -- maybe a good photograph to stay on right now, 15 Jody, if you want to proceed. 16 MR. KLINE: Mme. hearing examiner, can you go on 17 recess for a second while I figure out why our fire alarm 18 went off, please? 19 UNIDENTIFIED SPEAKER: What is your street 20 address? 21 HEARING EXAMINER ROBESON HANAN: 7416. Okay. 22 The fire alarm is off. Are we good to go Mr. Kline? 23 MALE VOICE: I think he is muted, Madam Examiner. 24 MR. CHEN: I think he can hear because he's 25 muted.
58	1 MR. JOLLEY: That is correct, sir. 2 MR. KLINE: Okay. So would like to have the 3 hearing examiner just scan through -- 4 HEARING EXAMINER ROBESON HANAN: Wait, did you 5 say -- the right-hand sign is Kosary/Posey, correct? 6 MR. KLINE: That's the designation 7016 indicates 7 that -- I'm sorry. 7416 indicates it's the Kosary/Posey 8 property. 9 MR. JOLLEY: Oh, I'm sorry. 10 HEARING EXAMINER ROBESON HANAN: Okay, yes. 11 Sometimes people blank out and I can't hear a word. So 12 okay, thank you. 13 MR. KLINE: Sure. And Mme. hearing examiner, I 14 just wanted to have you scan through these with Mr. Jolley 15 just kind of making an observation about each one and then 16 he will select a couple to go ahead and get to the further 17 questions. So could you just kind of scroll through them 18 please? 19 HEARING EXAMINER ROBESON HANAN: So right now I'm 20 showing four -- 227-D RRRR.1, .2, .3. 21 MR. KLINE: And maybe slow down a little bit 22 because -- and the reason I would like to slow down a little 23 bit is because the photograph orientation changes. So 24 sometimes the Kosary property is on one side and sometimes 25 it's on the other. So you're right now showing -- I think	60	1 MR. KLINE: Yeah, it did stop, but could you give 2 me one second to find out if that is going to happen again. 3 I know there are people in the building and apparently 4 that's a problem. But I cannot hear anything that it was 5 being said. So could you give me two minutes to talk with 6 the fire people? 7 HEARING EXAMINER ROBESON HANAN: Yeah. 8 MR. KLINE: Thank you. 9 MR. CHEN: What photo are we on just for the 10 record? What exhibit number is it? 11 HEARING EXAMINER ROBESON HANAN: This is 227-D 12 and what you looked at what you should be looking at, 13 sorry, is RRRR.5. 14 MR. CHEN: Okay, thank you very much. 15 MR. KLINE: Mme. hearing examiner -- 16 HEARING EXAMINER ROBESON HANAN: Back on the 17 record. 18 MR. KLINE: My apologies. We do have people in 19 the building today working on our fire alarm system. There 20 was not supposed to be an alarm and that apparently went off 21 accidentally. In might happen again, in which case I will 22 quickly go on mute. But we can continue, and I apologize 23 for the delay. 24 HEARING EXAMINER ROBESON HANAN: Okay. 25 MR. KLINE: I think as I was walking out the

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16 (61 to 64)

<p style="text-align: right;">61</p> <p>1 door, I heard Mr. Chen ask a question. And that was 2 probably about what page are we looking at. Is that right? 3 MR. CHEN: Yeah. 4 HEARING EXAMINER ROBESON HANAN: Yes. And we are 5 looking at 227-D RRRR.5. 6 MR. KLINE: All right. Well, let me start by 7 asking Mr. Jolley this question. There was testimony from 8 the adjacent property owners that they were concerned that 9 the activity on our property would have a deleterious effect 10 on trees on their property. Can you explain how that could 11 occur and what is the test to determine whether there is a 12 potential damage to trees on the Kosary/Posey property? 13 MR. JOLLEY: Yes. So in general, and it's within 14 the technical tree manual, Montgomery County. When you have 15 a disturbance of a critical root zone that exceeds 30 16 percent, that is considered a potentially negative impact on 17 roots of trees. So as you look -- when you evaluate the 18 health of the trees and the impacts of the -- of intended 19 activities within this critical root zones, the root zone is 20 obviously extremely important to the life and longevity of a 21 tree. So the 30 percent is the accepted threshold, under 30 22 it's in a safe threshold. Above 30 you would potentially 23 have impacts of those trees. As you look at the photos -- 24 and you can scroll through them if you would like, Mme. 25 hearing examiner.</p>	<p style="text-align: right;">63</p> <p>1 measures could be taken if we had access to the Kosary/Posey 2 property to ensure to the greatest extent possible the 3 survivability of any trees on the property at 7416. 4 MR. JOLLEY: Sure. So just to begin the -- I 5 just want to step back and begin the process. Obviously, we 6 will go through the final -- if the project proceeds, we 7 will go to the final review and entitlement approvals with 8 all the departments including the site, the final 9 landscaping plan, and forest conservation plan. As you move 10 towards the actual construction phase of the project you 11 would -- we would request that a preconstruction meeting be 12 held on the property. 13 During that meeting you would have the owner, 14 representatives from Primrose, the technical professionals 15 including myself. We would request a certified arborist 16 from Park and Planning to be on-site as well. The limited 17 disturbance would then be staked out. So the limited 18 disturbance Avenue you have seen on the plans presented 19 previously is along the eastern property line between 7430 20 and 7416. 21 So the limited disturbance will be staked by a 22 surveyor in the field and flagged so that everyone knows 23 exactly where it will be and where the limit of disturbance 24 line will be just inside of Mr. Vandaugh's (ph.) property. 25 We will have an opportunity to also discuss during that</p>
<p style="text-align: right;">62</p> <p>1 MR. KLINE: Let me suggest we use RRRR.4 because 2 that seems to be a good juxtaposition. 3 MR. JOLLEY: Okay. That you see a long view. 4 MR. KLINE: Yeah. From these photographs are you 5 able to determine whether the land disturbance on the 6 subject property would have an effect on the critical root 7 zones of the trees that we can see there on the left with 8 the arrow drawn toward it? 9 MR. JOLLEY: Yeah, so we are looking at RRRR.4. 10 So the tree that has a large arrow pointing to it on 7416, 11 the property line being in alignment with the orange cones 12 within that picture, the development site on 7430 to the 13 right. That tree, although we do not have a calculated 14 critical root zone for that specific tree because it is on 15 the property of the Kosary/Posey residence, I would 16 anticipate that there could be critical root zone impacts 17 along the area of development along our property line. 18 However, there are methods that we would like -- 19 that will -- we would like to employee. And I like to go 20 through some of those if you don't have a follow-up 21 question. 22 MR. KLINE: No. As a matter fact, what I would 23 like you to do is when you go out and do the land 24 disturbance on the property, would you talk about what could 25 be done within the limits of our property and what other</p>	<p style="text-align: right;">64</p> <p>1 meeting with Dr. Kosary, Mr. Posey at that meeting should 2 they wish to attend, the health of their trees along the 3 shared property line. So as part of that process if we are 4 allowed onto their property with a certified arborist from 5 Park and Planning, myself, an arborist that will be on the 6 team as well, the construction team, we would be able to 7 walk the border, evaluate the trees. 8 Then a report could be prepared by myself as well 9 as a certified arborist to look into any trees of concern 10 along that shared property line. So -- and this can 11 happen -- and I would mention it does not have to wait until 12 that point. We would be happy to do this at any time. 13 After the LOD is staked, and we had an opportunity to do 14 this in the field and I would like to do it before, well 15 before we actually do a preconstruction meeting, there are 16 methods if we are permitted by the property owner, Mr. Posey 17 and Dr. Kosary, we would like to employ several methods that 18 are proven methods to help mitigate the stress imposed on 19 trees during construction. 20 MR. KLINE: Mr. Jolley, would you do me a favor? 21 MR. JOLLEY: Yeah. 22 MR. KLINE: Would you break down the things you 23 want to talk about by what you could do that under your own 24 control within your own property and then what more could be 25 done if you had access to the adjacent property?</p>

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17 (65 to 68)

<p>65</p> <p>1 MR. JOLLEY: Okay. First, we will begin on the 2 eastern property line, western side obviously, on the 3 subject site. We first would have the LOD staked out in the 4 field prior to construction beginning of any earthmoving 5 activities. Trees that are to be removed along -- on the 6 subject site would be marked for removal. At that time, we 7 would be looking at where the earth disturbance is going to 8 occur and how to minimize that.</p> <p>9 We would employ extra signage along the entire 10 property line that no equipment is to be stored along that 11 property -- that shared property line in close proximity to 12 the property line. We do not have any overhanging tree 13 branches from the neighboring property damaged. We would 14 identify the area approximately between the proposed curbing 15 of the access drive that travels along the property line. 16 In that area between the proposed curbing and the limited 17 disturbance/property line along -- between the two 18 properties is going to be obviously landscaped. We would 19 employ a root pruning method on our side of the property 20 approximately 1 foot to 18 inches inside of the LOD away 21 from the neighboring property of 7416 at a -- and that would 22 occur in advance of the construction. At that -- we can 23 also -- that's the first step, Jody, that we would do for 24 our property. 25 MR. KLINE: Okay. So what is the function or</p>	<p>67</p> <p>1 MR. JOLLEY: That's correct.</p> <p>2 MR. KLINE: Mr. Jolley, I think you better repeat 3 that because I'm not sure that you answered the question the 4 hearing examiner asked.</p> <p>5 MR. JOLLEY: Okay. So the --</p> <p>6 MR. KLINE: Aren't you -- are you not talking 7 about root pruning trees on the Kosary property that extend 8 onto your property?</p> <p>9 MR. JOLLEY: I'm sorry. Yes, you are correct. I 10 misspoke a little bit there. So we are pruning roots that 11 potential -- that are potentially traveling between the two 12 property lines beyond the limited disturbance onto 7430 13 property. So those trees, those roots could be potentially 14 from trees that are on the Kosary/Posey property, that is 15 correct.</p> <p>16 MR. KLINE: Thank you. Go ahead. Keep talking 17 about other measures you can take that are within your 18 control within the property boundaries.</p> <p>19 MR. JOLLEY: So additional measures that we can 20 employ during construction are along the entire periphery of 21 the construction area along the property line is to restrict 22 any heavy machinery to be stored during the duration of the 23 project. There will be some grading activities between the 24 limited disturbance and the proposed driveway entering the 25 site in which the proposed landscape buffer will be</p>
<p>66</p> <p>1 what is the purpose of the root pruning? Why is that done? 2 What's the benefit of that?</p> <p>3 MR. JOLLEY: The first process of the root 4 pruning is to begin the process of slowly introducing the 5 stress and not all at one time. So if you were to just 6 randomly start disturbing the ground and ripping and pulling 7 up roots without pruning in advance, there is the potential 8 for damage to travel further in towards the root -- further 9 up the root zone path to those trees. So the root pruning 10 would have -- our first step of preparing the trees for any 11 stress that could occur during the process of construction.</p> <p>12 HEARING EXAMINER ROBESON HANAN: Now you're 13 talking about roots of trees that surface above the ground 14 on the Kosary property. Is that what you're talking about?</p> <p>15 MR. JOLLEY: No Madam Examiner. They are roots 16 that are right below the ground surface or under the ground 17 on the 7430 properties, on our side of the limited 18 disturbance --</p> <p>19 HEARING EXAMINER ROBESON HANAN: So these are 20 trees coming out of the ground on 7430?</p> <p>21 MR. JOLLEY: Yes, and trees that would be -- 22 consequently some roots will be pruned of trees that 23 (inaudible).</p> <p>24 HEARING EXAMINER ROBESON HANAN: These are the 25 trees that you're preserving on 7430?</p>	<p>68</p> <p>1 eventually installed. We would limit any storage of 2 building materials. We would limit any kind related to the 3 building itself or the site elements. We would not want any 4 of those materials stored along that property line to limit 5 any potential damage of trees or the property line along the 6 joint shared use or the joint shared property line.</p> <p>7 MR. KLINE: Sorry. Sorry.</p> <p>8 MR. JOLLEY: (inaudible).</p> <p>9 MR. KLINE: Are there any other measures that you 10 can take within the limits of your own property to try and 11 help the trees on the Kosary/Posey property?</p> <p>12 MR. JOLLEY: The only other method that we could 13 employ along the limited disturbance where we will be 14 doing the root pruning is we could, without entering the 15 property of 7416, we could employ some additional mulching 16 between where the -- the area where the roots are pruned 17 between the root prune limits and the limits of disturbance. 18 We could also add additional watering along there that may 19 assist the roots that are pruned along that entire limited 20 disturbance without entering the neighboring property.</p> <p>21 MR. KLINE: What measures would you then 22 recommend if you are able to obtain access to the adjacent 23 property and permission of the owners? What techniques 24 would you use to try to help the trees on their property to 25 be preserved?</p>

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18 (69 to 72)

<p style="text-align: right;">69</p> <p>1 MR. JOLLEY: Sure. If I was permitted to enter 2 the property, I would like to meet with Dr. Kosary and Mr. 3 Posey, walk the subject site, and evaluate all the trees 4 that they are concerned about along the property line that 5 may have a critical root zone impact during construction. 6 So the first step would be that we would walk the property 7 together, evaluate the trees, locate them on a map 8 accurately with a GPS or survey equipment. 9 Then from that I could do a more detailed study 10 of the critical root zone for the trees. We would evaluate 11 those areas of concern on their property and then we would 12 develop a plan for stress reduction during the process of 13 construction. And some of the items that you can include in 14 a stress reduction program -- the first being the root 15 pruning on the subject on our property on the subject site 16 as far away as possible from that LOD that we do, which is 17 approximately a foot. 18 We would walk the site after have identifying the 19 trees on their property. And I could discuss several 20 methods of permitted to do so on their property that would 21 help reduce stress during construction. First being 22 fertilization well in advance of construction. We could 23 fertilize the area with a slow-release fertilizer that would 24 last the duration of construction and we could develop a 25 plan for that fertilization with a certified arborist and</p>	<p style="text-align: right;">71</p> <p>1 are areas of lawn along the property underneath some of 2 these trees. Now lawn is a competitive plant for nutrients 3 and water. If permitted to do so, we would outline an area 4 acceptable to the property owner and we would apply a 2 to 3 5 inch layer of bark mulch. Bark mulch would retain the 6 moisture that when we are -- during the watering operations 7 it would retain for a longer period of time and provide a 8 blanket of organic material that would prevent the growth of 9 grass for a period of time. 10 And then upon the conclusion of construction we 11 could return it to the original condition or to the original 12 condition to the liking of the property owner. Those are 13 some of the methods I would employ if permitted, Jody, to 14 work with the property owner on their site. 15 MR. KLINE: Do you have any impression of -- or 16 do you have a professional opinion about the likely success 17 or the benefits that would accrue from these measures to the 18 trees on the subject property? On the adjacent property? 19 MR. JOLLEY: Yeah, they're proven methods that 20 are employed on projects throughout the country. We have -- 21 I have been involved with these programs before. I could 22 not state a specific percentage, but I can state that with a 23 proper program and the timing of such, if we are allowed to 24 prune early not doing a -- not during an extremely hot 25 period and we can prepare these roots in advance, then we</p>
<p style="text-align: right;">70</p> <p>1 the approval of Park and Planning. That would help give the 2 plants a boost in health and vigor before construction 3 begins. 4 We could also employee with their permission, 5 additional watering throughout construction where it would 6 be our responsibility to keep those trees on the property 7 well watered during the duration of construction. And we 8 could outline a schedule to do so and when that would be 9 acceptable to the property owner. 10 An additional measure to reduce the stress, 11 routinely you'll see -- is called tree crown reduction if 12 they would want to consider this. You could selectively 13 evaluate each tree of concern, evaluate any branches that 14 are of perhaps ill health. If there are any diseased 15 branches, we could identify that with a certified arborist. 16 And you can do selective pruning if they would 17 allow that, to reduce the overall crown of the canopy. I 18 want to state that that's not tree topping. That selective 19 pruning like you would do on a shrub, but you selectively 20 pruned with an arborist the branches to reduce the overall, 21 let's say demand of the tree and the plant to consume water. 22 That method is recommended that you never bring back more 23 than one third of a tree crown. That's just a suggestion. 24 We could also -- and I believe that this would 25 also help during the watering operations. Areas -- there</p>	<p style="text-align: right;">72</p> <p>1 could employ these measures are permitted to do so. I 2 believe it would significantly reduce the amount of stress 3 impose on the vegetation. 4 MR. KLINE: Is the applicant prepared to accept 5 the condition of recommended by the -- I'm sorry -- if 6 determined by the hearing examiner, that before any land 7 disturbance occurs, that the applicant will meet on site 8 with an inspector from the appropriate public agency, Park 9 and Planning, Montgomery County, and the owners of the 10 adjacent property if they desire, to determine what measures 11 should be employed to maximize protection of the trees 12 located on 7416 Needwood? 13 MR. JOLLEY: Yes, they are. 14 MR. KLINE: Thank you. Thank you. You heard 15 testimony from the owners on the property at 7416 that one 16 of the concerns was the removal of trees on our property 17 would basically open a vista onto the property at 7430. And 18 what I was going to ask you is when your landscaping plan is 19 implemented, what is the view going to be at that point in 20 time? And I'm going to ask you in anticipation of a 21 question you will be asked later at the beginning and at 22 maturity. 23 MR. CHEN: Objection. Two objections be well, 24 one basically. This gentleman is a landscape architect. I 25 don't believe it has been demonstrated to have any</p>

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19 (73 to 76)

<p>73</p> <p>1 (inaudible) relative to a before and after or after vista 2 view of a property. I just don't see -- I'm not detracting 3 from the gentleman's credentials as a landscape architect. 4 But I'm also aware that there are also professionals who are 5 qualified to provide for a vista upon development. And I 6 don't think this gentleman has been demonstrated to have 7 those qualifications. 8 MR. KLINE: I understand Mr. Chen's comment. And 9 maybe it's because I probably didn't properly phrase the 10 question. There was an exhibit in the record that I'm just 11 blinking on the number. How about SSSS? Could you pull 12 that up Mdm. hearing examiner? 13 MR. CHEN: Is that four Ss, Mr. Kline? 14 MR. KLINE: Yes, sir. 15 HEARING EXAMINER ROBESON HANAN: Yes, I'm in the 16 process of looking for it. Four Ss? 17 MR. KLINE: That's correct. 18 HEARING EXAMINER ROBESON HANAN: Okay. And I'm 19 assuming 227? 20 MR. KLINE: I hope that's correct. I -- 21 HEARING EXAMINER ROBESON HANAN: I believe it 22 would be in -- I believe it would be where we -- in the 23 exhibit we are in now. So let me -- 24 MR. CHEN: That's our understanding also, Mme. -- 25 MR. KLINE: You are correct. It should be</p>	<p>75</p> <p>1 for itself. And number two, does this gentleman have any 2 connection with the preparation of this document? Did he 3 prepare it? And otherwise it speaks for itself. The views 4 that will be the views according to the applicant because I 5 think this is their document, are -- 6 HEARING EXAMINER ROBESON HANAN: No, this is your 7 document. This was to show the trees at planting. 8 MR. CHEN: Oh, okay. I'm fine. I apologize for 9 that. 10 HEARING EXAMINER ROBESON HANAN: I believe it's 11 yours. 227-D. 12 MR. CHEN: I think you are correct. But again, 13 if there's any misrepresentation in here, certainly I think 14 this gentleman is qualified to say that we've misrepresented 15 what the landscape plan is for the subject property. But as 16 far as what it purports to show, I think the document speaks 17 for itself. 18 HEARING EXAMINER ROBESON HANAN: Well, what I'm 19 going to do is get -- I would like to hear his basis for, 20 for instance, do you know the topo of the site? 21 MR. JOLLEY: Yes. Yes, ma'am. 22 HEARING EXAMINER ROBESON HANAN: Well, Mr. Kline, 23 you can continue this, but I am a little uncomfortable 24 because he's never actually viewed it. So go ahead, but I'm 25 going to entertain objections.</p>
<p>74</p> <p>1 indeed. 2 HEARING EXAMINER ROBESON HANAN: I'm at the of D. 3 Let me see. Give me a moment to -- it might -- the last 4 exhibit I have in 227 -- wait. Oh, my mistake. Okay. 5 Depiction of newly planted trees, document SSSS in Exhibit 6 227-D. 7 MR. KLINE: It is not showing on the screen yet 8 here for me anyway. 9 HEARING EXAMINER ROBESON HANAN: I took it off 10 so -- if somebody complained that they got dizzy when I 11 scrolled. So there. Now it should be on the screen. 12 MR. KLINE: Thank you. Thank you. 13 Mr. Jolley, you can see the location of the 14 property or the residence on 7416 and the opening to the 15 rear of the property. I guess that's the water feature in 16 the backyard that shows up with a little light. And the 17 concern was that the removal of the trees on the subject 18 basically open up that space for views on the property. 19 The question I wanted you to answer was, would 20 you please describe what the view from the adjacent property 21 would be in light of the size of the trees and the features 22 that you're going to be installing? So what was somebody 23 from that 7416 be viewing? 24 MR. CHEN: Excuse me. I've got to go to places 25 on this. Number one, the document, the illustration speaks</p>	<p>76</p> <p>1 MR. KLINE: Sure. Fine. I agree with Mr. Chen 2 that the photographs says what it says. So let me talk more 3 about -- 4 HEARING EXAMINER ROBESON HANAN: Yeah, but it's 5 an aerial view and usually we get -- we actually get, as you 6 probably know, views that measure out what they can actually 7 see on a diagonal. And this is not that. So it's a two- 8 dimensional view. 9 MR. KLINE: Right. 10 HEARING EXAMINER ROBESON HANAN: But I will let 11 it continue and give it the weight it deserves if any. 12 MR. KLINE: Sure. Let me begin by talking about 13 what -- the original drawing from which this exhibit has 14 been prepared was the landscaping plan. And Mr. Jolley, I'm 15 looking at page 18 of the technical staff report, which 16 cites a section of the zoning ordinance talking about tree 17 canopy and basically says that each parking lot must 18 maintain a minimum tree canopy of 25 percent coverage at 20 19 years growth as defined by the Planning Board's trees 20 technical manual. So the underlying exhibit that is here 21 has been altered for purposes of the opposition's position. 22 Is the drawing that was intended to show the tree canopy 23 along the common property line and parking lot at 20 years 24 of growth? Is that correct? 25 MR. JOLLEY: That's correct.</p>

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20 (77 to 80)

<p>77</p> <p>1 MR. KLINE: All right. So that was prepared to 2 satisfy -- 3 HEARING EXAMINER ROBESON HANAN: Wait. Hold on. 4 This does not show 20 years of growth. 5 MR. KLINE: That is correct. I'm just trying to 6 demonstrate that the plan that was prepared was intended to 7 satisfy the requirements of the zoning ordinance. 8 HEARING EXAMINER ROBESON HANAN: Okay. 9 MR. KLINE: And from that -- and so this drawing 10 is intended to show what the trees would be at the time of 11 planting. And what I wanted you to do is describe the 12 species that you would have planted and how they would be 13 viewed from the backyard of the adjacent property in light 14 of the fence. For instance, how tall will the trees be that 15 you propose to plant? 16 MR. JOLLEY: The trees that we are proposing at 17 planting are intended to be 14 feet minimum as required by 18 code at the time of planting. Every tree along the entire 19 property line would be spaced at 30 feet on center. So you 20 would have a -- you have a canopy at the time of -- 21 Can I continue or -- oh, I thought -- Mme. 22 hearing examiner, I thought you asked a question. Sorry. 23 So along the common property line you have the fence that 24 and discussed previously. Within the landscape buffer we 25 will have a canopy tree, which is intended -- which is a</p>	<p>79</p> <p>1 So every 30 feet you have a virtual -- visual, 2 vertical buffer of approximately 14 feet at planning. Now 3 the trees at planting for the understory are generally going 4 to be between 6 and 8 feet at the time of planting. So they 5 will perhaps be even with the fence at the initial time of 6 planting, perhaps a little bit above. Depends on how 7 they -- how each plant is delivered. But generally, you're 8 looking at a 6- to 8-foot-tall tree for understory and then 9 the upper story. 10 So as the intent is, as the -- provide as an 11 impact, a visual impact at the time of planting. But over 12 time that visual barrier -- or not barrier. I should say 13 the visual -- obscure the -- it would obscure the view from 14 either side of the property through a multilayered system. 15 So you have the fence, understory, and upper canopy and as 16 they mature, obviously they get larger, taller, wider. And 17 so they -- 18 HEARING EXAMINER ROBESON HANAN: But all they're 19 going to see is the fence and what grows above the fence. 20 They're not going to see (inaudible). 21 MR. JOLLEY: Yes, correct, Mme. hearing examiner. 22 At the time of planting you would see -- 23 HEARING EXAMINER ROBESON HANAN: Well, they're 24 not going to see anything about the fence as I understand it 25 at maturity. They're just going to see the fence, correct?</p>
<p>78</p> <p>1 large tree intended to grow well in excess of 40 to 70 feet 2 over the time period of their maturity. They will be spaced 3 at approximately 30 feet on center. And in between each 4 canopy tree, there will be two understory trees. The intent 5 of this is to have a vertical buffer between the property 6 line and -- or between the joint property line to impair 7 obviously views to the public parking lot and driveway. 8 So if you are looking at the fence, and I can't 9 state it from the Kosary property because I have not stood 10 in that area shown where the water feature is, you would 11 first see a 6-foot fence starting at grade rising up 6 feet. 12 Every 30 feet on center, as you can see where the trees are 13 placed on that exhibit, you would have approximately 7 feet, 14 8 feet of tree. Well, you would see a little bit of the 15 tree trunk from the newly planted trees and then the canopy 16 of each tree itself. 17 The understory trees are generally trees that are 18 going to go 15, maybe 20 feet in height. But the species 19 that we propose are the Eastern Redbud. You're looking at 20 an average of 15, 18 feet in general. Those would be in 21 between each canopy tree and those provide an intermediate 22 visual buffer. So you have your solid opaque fence that is 23 obviously solid, and you can't see through it. You would 24 have the understory canopy maturing and then you would have 25 the upper story.</p>	<p>80</p> <p>1 MR. JOLLEY: You have the fence on the eastern 2 side. Well, you have the fence on the property line. 3 HEARING EXAMINER ROBESON HANAN: Right. And then 4 what's above it? 5 MR. JOLLEY: I'm sorry. 6 HEARING EXAMINER ROBESON HANAN: You are not 7 doing understory planting on the other side. So what 8 they're going to see is the white fence -- 9 MR. JOLLEY: Correct. 10 HEARING EXAMINER ROBESON HANAN: On the property 11 line. 12 MR. JOLLEY: Correct. 13 HEARING EXAMINER ROBESON HANAN: And then 14 whatever's above it? 15 MR. JOLLEY: Correct. And that's what I was 16 stating as the understory trees mature, they will be -- 17 start to be seen above the fence or up to approximately 15 18 feet because they are not large shade trees. The larger 19 shade trees are the ones that will be planted at 14 feet at 20 30 feet on center that are the larger circles you can see on 21 the exhibit. At the initial -- at initial planting you will 22 definitely see that at the time of planting. 23 HEARING EXAMINER ROBESON HANAN: How are you 24 going to maintain the Kosary side of the fence? 25 MR. JOLLEY: The Kosary side of the fence, we're</p>

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21 (81 to 84)

<p>81</p> <p>1 not proposing any -- obviously landscaping on their 2 property. So that won't be -- 3 HEARING EXAMINER ROBESON HANAN: No, I mean the 4 fence itself. 5 MR. JOLLEY: Oh, the fence itself? 6 HEARING EXAMINER ROBESON HANAN: Are you going to 7 wash it? 8 MR. JOLLEY: That what I think be an operational 9 question for the owner. But if they granted permission, I 10 would assume that the operational control, they would gladly 11 do that. 12 HEARING EXAMINER ROBESON HANAN: Okay. Go ahead. 13 MR. JOLLEY: But I couldn't answer that myself. 14 HEARING EXAMINER ROBESON HANAN: Okay. 15 MR. KLINE: So Mr. Jolley, at the time of 16 installation there will be trees that do extend above the 17 fence height that will be visible, correct? 18 MR. JOLLEY: That is correct. Those are the 19 shade trees that will be planted at a minimum of 14 feet 20 height every 30 feet. 21 MR. KLINE: And eventually, albeit maybe 20 22 years, but eventually they will all grow together, and they 23 will block all views of the activity on the subject 24 property? 25 MR. JOLLEY: The intent is to block and create a</p>	<p>83</p> <p>1 And by default if we're going to do that, you 2 would be required to install additional understory trees. 3 So instead of the 30 provided now, we would up that to 4 approximately 36. So exactly 36 as we would double the 5 amount of upper story trees. So the initial planting we 6 could have a greater impact vertically with a slightly wider 7 canopy at initial planting at a higher number with that 8 suggestion. 9 Does that answer your question, Jody? 10 MR. KLINE: Yeah, thank you. 11 Mme. hearing examiner, a bit of a diversion for 12 second. You may recall that in our initial presentation the 13 applicant's prima facie case, lighting was addressed by Mr. 14 Ault, the architect, but he is not available for this 15 hearing. I would like to ask Mr. Jolley some questions 16 about lighting based on experience that I would question him 17 about so Mr. Chen can feel comfortable about it. Eventually 18 I -- it's a little -- well, I would like to ask him to 19 testify about questions dealing with the lighting that came 20 up based on the experience that he would explain, if I'm 21 allowed to ask him to explain that. 22 HEARING EXAMINER ROBESON HANAN: Well, we can do 23 a voir dire if you would like to. Mr. Chen, you can 24 challenge it. 25 MR. CHEN: Well, before you get to voir dire I</p>
<p>82</p> <p>1 dense view along the entire periphery, correct. 2 MR. KLINE: Could you enhance the, what I will 3 call filtered views, or improve the screening capability by 4 making any changes to species, planning separation? Any 5 other features like that to give a better bang for the buck 6 at the beginning? 7 MR. JOLLEY: Yes. The -- we could provide a 8 larger caliper tree at initial planting. Typically, at 9 nurseries you can get trees that are native species which we 10 prefer to use because they are native to the region and they 11 are long-lived. You can get trees on average of 3 to 3-1/2 12 and 3-1/2 to 4 depending on availability at which season 13 they will be installed. But we could increase the planting 14 caliper size, which by default would allow for a higher 15 ultimate height at planting. 16 So depending on the species picked, you could 17 assume with a 3-1/2 -- 3 to 3-1/2 inch caliper tree minimum, 18 you would be in the neighborhood of 15, 16 feet, perhaps 19 even 17 feet depending on the species. One other thing we 20 could do, although I would not suggest creating a spacing 21 shorter between the shade trees, we could recommend a 22 density increase of -- instead of providing 15 trees along 23 the property line, we could up the -- if we used a 25 foot 24 on center spacing, that would allow us to put approximately 25 three additional shade trees along the property line.</p>	<p>84</p> <p>1 challenge. 2 MR. KLINE: Well, that's why I brought it up 3 first, because quite simply Mr. Chen would have a valid 4 point that Mr. Jolley was not listed as being an expert in 5 lighting and that's -- I haven't gone back and checked 6 because I'm sure that's true. But by the same token 7 lighting was such an issue he -- the opposition probably had 8 to anticipate somebody was going to say something about it. 9 And I would just like to offer Mr. Jolley as that person 10 rather than Mr. Ault. 11 MR. CHEN: Well, I appreciate that someone -- Mr. 12 Kline is telling me what I'm going to anticipate, but it 13 doesn't matter. This gentleman is a qualified landscape 14 architect. He is now being proffered as an expert to 15 express an opinion on lighting. That's beyond the scope of 16 what has been disclosed and quite frankly there may be an 17 issue about his qualifications and that would involve voir 18 dire. 19 But from our point of view it doesn't matter. 20 This gentleman has not been identified as a lighting expert 21 to testify and express opinions about lighting. It's that 22 simple. (Inaudible) with Mr. Ault but we had a substitute 23 witness earlier in this proceeding when somebody else could 24 not appear to testify. 25 MR. KLINE: I --</p>

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22 (85 to 88)

<p>85</p> <p>1 MR. CHEN: Mr. Pestor (ph.) came and testified 2 instead of Mr. Entriago. 3 MR. KLINE: I understand Mr. Chen's point and all 4 I can say is you do the prehearing submission and list the 5 areas of expertise. So I don't believe the opposition 6 should be surprised that there would be somebody testifying 7 on the subject of lights. And I'm glad to qualify him so 8 you can all be sure that he has the expert qualifications. 9 MR. CHEN: I object. This is a new expert 10 witness. That's what he is. And that's not what was 11 disclosed. 12 HEARING EXAMINER ROBESON HANAN: Well, at least 13 let him voir dire because there is a little bit more leeway 14 on rebuttal. But I want to know what his qualifications 15 are, and I would also want to know a proffer. Maybe it's 16 better to start with just proffering what he's going to say 17 so I know what to look for in his voir dire. 18 MR. KLINE: I'm glad to answer that if you let me 19 to do so now. Yeah, sure. 20 HEARING EXAMINER ROBESON HANAN: (inaudible). 21 MR. KLINE: A bit of limited scope. Basically, 22 what are the light fixtures that are going to be installed. 23 How do they -- 24 HEARING EXAMINER ROBESON HANAN: We know that. 25 MR. KLINE: Okay. And how -- then, I would be</p>	<p>87</p> <p>1 HEARING EXAMINER ROBESON HANAN: Well, I will say 2 that I have seen the Dark Sky manual used. So if -- he can 3 testify, but we have it in other cases. But I will -- but 4 that was in the, quote, dark sky area near little Bennett 5 Regional Park. So I will let him voir dire, but I'm not 6 convinced that he's able to qualify for those two issues. 7 But I will let him voir dire. 8 MR. KLINE: Mr. Jolley, you've heard the dialogue 9 you. So what we need to know is what you know about 10 lighting. 11 MR. JOLLEY: Yeah. 12 MR. KLINE: What is your expertise in lighting? 13 MR. JOLLEY: As a lighting -- as a licensed 14 landscape architect it is part of my routine duties on 15 projects that we work on to provide a lighting plan very 16 similar -- exactly like the plan that was provided by the 17 project architect where we provide the locations of the 18 lighting on the subject site. We locate the lighting on the 19 building when provided by the architect. We run the data 20 analysis and provide the illumination levels on the ground 21 surface as you've seen on the exhibits that are submitted. 22 Some extremely familiar with those type documents and I 23 routinely do them as a licensed landscape architect. 24 MR. KLINE: When you say routinely, give us an 25 order of magnitude, please.</p>
<p>86</p> <p>1 asking Mr. Jolley to critique the testimony in the record 2 about the visibility of the lights, whether they were 3 provide any or cause any glare on the subject property and 4 whether any of the International Dark Sky Association model 5 lighting ordinance is either used anywhere in regular -- I'm 6 sorry -- is used by any local governmental agency and 7 certainly Montgomery County. 8 HEARING EXAMINER ROBESON HANAN: Well, I guess 9 the first -- we know the glare. I mean, yeah. We know the 10 illumination levels because that's in the photometric plan, 11 right? 12 MR. KLINE: Correct. 13 HEARING EXAMINER ROBESON HANAN: We know the 14 lighting fixtures. So we don't have to review that. 15 MR. KLINE: Correct. 16 HEARING EXAMINER ROBESON HANAN: So the question 17 really is whether he believes that Ms. -- Dr. Kosary is 18 standard using the dark sky manual is a valid standard. 19 MR. KLINE: That would -- that would be one. And 20 then the second -- 21 HEARING EXAMINER ROBESON HANAN: (inaudible). 22 MR. KLINE: Well, I was going to ask him the big 23 question about the -- I'm just going to use the acronym, the 24 bug analysis also, because that was the glare issue. And so 25 I thought there were two points to be addressed.</p>	<p>88</p> <p>1 MR. JOLLEY: I would say over my career of 2 approximately 20 years, I've done hundreds of lighting 3 plans. 4 MR. KLINE: And did you coordinate with Mr. 5 Ault's architecture firm in terms of the selection of light 6 fixtures and location of light fixtures as it related to the 7 scope of your work on landscape architecture? 8 MR. JOLLEY: Yes, we do routinely coordinate with 9 the project architect primarily when they are the ones under 10 their scope of work doing the lighting design, as in this 11 case. We did speak with them about the location of lights 12 because that could affect obviously the conformance with the 13 tree ordinance and the landscaping requirements. So the 14 locations of the fixtures are placed so that there are not 15 any adverse effects to the ultimate lighting of the property 16 by tree canopies, locations of shrubbery, et cetera. So we 17 did coordinate with them. That is correct. 18 MR. KLINE: And does the lighting plan that was 19 submitted as the hearing examiner noted, the photometric 20 plan, does it comply with the lighting standards set forth 21 in the Montgomery County zoning ordinance? 22 HEARING EXAMINER ROBESON HANAN: Okay, wait. 23 Wait. We haven't finished the voir dire. 24 MR. KLINE: Oh, I'm -- 25 HEARING EXAMINER ROBESON HANAN: Let's go to --</p>

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23 (89 to 92)

<p style="text-align: right;">89</p> <p>1 Mr. Chen, do you want to challenge what he has done?</p> <p>2 MR. CHEN: Couple -- I just want to -- give me</p> <p>3 one or two questions that go to what I've heard during the</p> <p>4 course of this recent voir dire, if I may.</p> <p>5 HEARING EXAMINER ROBESON HANAN: Yeah.</p> <p>6 MR. KLINE: No objection here.</p> <p>7 MR. CHEN: You said sir, that you coordinated</p> <p>8 with -- and that was your word.</p> <p>9 MR. JOLLEY: Yeah.</p> <p>10 MR. CHEN: With Mr. Ault or the applicant on the</p> <p>11 location of lights so as to I guess not interfere with the</p> <p>12 tree cover or crowns of trees. Is that right?</p> <p>13 MR. JOLLEY: It's -- oh, were you finished with</p> <p>14 your question, sir?</p> <p>15 MR. CHEN: Yeah, go ahead.</p> <p>16 MR. JOLLEY: Okay. So during the design process</p> <p>17 normally -- obviously an architect, landscape architect,</p> <p>18 engineer, we are routinely sharing plans back and forth</p> <p>19 through the design process. So we are evaluating each</p> <p>20 other's scope of work. So they will have looked at our</p> <p>21 landscaping plans to help them determine, and we are looking</p> <p>22 at their lighting plans to make sure there are no conflicts</p> <p>23 where we think the -- both the landscaping and the lighting</p> <p>24 should be located so that they are in ideal locations.</p> <p>25 So what I was describing, sir, was the</p>	<p style="text-align: right;">91</p> <p>1 primarily the role of the engineer. But yes, we</p> <p>2 specifically coordinated between our two firms, various</p> <p>3 elements between our two designs scopes, yes.</p> <p>4 MR. CHEN: So Mme. --</p> <p>5 MR. JOLLEY: That would include review of the</p> <p>6 lighting, the poles, where they're located, what type.</p> <p>7 Although I did not select them personally.</p> <p>8 MR. CHEN: Mdm. examiner, I continue my objection</p> <p>9 to this. I think it's -- not only have we been a little bit</p> <p>10 mousetrapped I believe by this proposed expert testimony,</p> <p>11 but the gentleman has never even been recognized previously</p> <p>12 as a lighting expert. And that's his purpose right now.</p> <p>13 HEARING EXAMINER ROBESON HANAN: This is what I'm</p> <p>14 going to do.</p> <p>15 MR. KLINE: May I --</p> <p>16 HEARING EXAMINER ROBESON HANAN: Yeah, go ahead.</p> <p>17 MR. KLINE: I think I will just -- go ahead. I'm</p> <p>18 sorry.</p> <p>19 HEARING EXAMINER ROBESON HANAN: No, you go</p> <p>20 ahead.</p> <p>21 MR. KLINE: I would say that I have probably</p> <p>22 called 50 landscape architects to testify in hearings and</p> <p>23 they have testified about lighting and we didn't</p> <p>24 independently classify them as being experts in lighting.</p> <p>25 MR. CHEN: Were I in any of those cases?</p>
<p style="text-align: right;">90</p> <p>1 relationship between the technical professionals during the</p> <p>2 design process of the documents.</p> <p>3 MR. CHEN: How many times have you been</p> <p>4 recognized as a lighting expert?</p> <p>5 MR. JOLLEY: As a lighting expert, none that I</p> <p>6 could speak of on lighting only. I have provided testimony</p> <p>7 to various boards for my services which did include lighting</p> <p>8 on a project.</p> <p>9 MR. CHEN: Sure. So --</p> <p>10 MR. JOLLEY: That's it.</p> <p>11 MR. CHEN: I didn't want to cut you off. I</p> <p>12 apologize if I did.</p> <p>13 MR. JOLLEY: Now, that's fine.</p> <p>14 MR. CHEN: So as I understand your testimony,</p> <p>15 it's a normal, I guess practice or activity to coordinate</p> <p>16 different disciplines that are related to development of</p> <p>17 property. And what I understand you've testified to is that</p> <p>18 you've coordinated with the other professionals on this</p> <p>19 project and that does involve issues of light -- where</p> <p>20 lights will go, where trees will go, I assume were parking</p> <p>21 will go even, and any impermeable space, things of that</p> <p>22 nature. Even the building location; isn't that correct,</p> <p>23 sir?</p> <p>24 MR. JOLLEY: We -- I didn't specifically -- it</p> <p>25 wasn't about the selection of the location. That was</p>	<p style="text-align: right;">92</p> <p>1 HEARING EXAMINER ROBESON HANAN: Well, that's</p> <p>2 exactly what I'm trying to think through. I do believe that</p> <p>3 landscape architects -- but I can't remember for sure. And</p> <p>4 part of my issue with this case is there keeps being these</p> <p>5 things that are surprises.</p> <p>6 MR. CHEN: Yeah.</p> <p>7 HEARING EXAMINER ROBESON HANAN: So I guess --</p> <p>8 MR. KLINE: Mme. hearing examiner, you have a</p> <p>9 case in your office at the present time, the French</p> <p>10 International School.</p> <p>11 HEARING EXAMINER ROBESON HANAN: It's not in my</p> <p>12 office. It's at the Planning Board.</p> <p>13 MR. KLINE: All right.</p> <p>14 HEARING EXAMINER ROBESON HANAN: Go ahead.</p> <p>15 MR. KLINE: I was trying to give you an example</p> <p>16 and I think I will just leave it at that.</p> <p>17 HEARING EXAMINER ROBESON HANAN: Well, I tell you</p> <p>18 what. I'm going to let him testify, but not qualify him as</p> <p>19 an expert in lighting. Because I'm not prepared to make</p> <p>20 that determination. And he can testify, and I will give it</p> <p>21 the weight it deserves, but I'm not going to qualify him as</p> <p>22 an expert in lighting.</p> <p>23 Because all I have from you Mr. Kline is that</p> <p>24 there is a case -- and I have a lot of cases my office and I</p> <p>25 don't know how many proportionally have had lighting or not</p>

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24 (93 to 96)

<p style="text-align: right;">93</p> <p>1 or have had landscape architects testify as to lighting or 2 whether it's even been an issue. So he can testify. You 3 will be qualified as a landscape architect. But I'm not 4 going to -- and if there is some kind of inference you can 5 draw from that, that's fine. But I will let him testify, 6 but I'm not going to qualify him as an expert in lighting. 7 MR. KLINE: Thank you for your ruling and we will 8 keep our questions to pure factual matters. 9 HEARING EXAMINER ROBESON HANAN: Well, I hope so 10 because -- okay. Go ahead. 11 MR. KLINE: The question I prematurely asked you 12 a minute ago Mr. Jolley was, was the lighting plan that was 13 submitted, particularly the photometric plan, comply with 14 the requirements for the lighting sections of the Montgomery 15 County zoning ordinance? 16 MR. CHEN: Objection. I have a standing -- I 17 guess if the examiner will recognize the standing objection. 18 HEARING EXAMINER ROBESON HANAN: I figured you 19 had a standing -- I was just going to proffer that you had a 20 standing objection. 21 MR. CHEN: Thank you. Now this gentleman is not 22 going to testify about compliance with the county law. So 23 go ahead. I have the -- 24 HEARING EXAMINER ROBESON HANAN: Well, you know 25 what? We already have the testimony from the architect. So</p>	<p style="text-align: right;">95</p> <p>1 MR. CHEN: 227-D I'm hearing. 2 HEARING EXAMINER ROBESON HANAN: Okay, you've got 3 to tell me how many -- I don't know why my brain seems to go 4 out. 227-D I have begins with four Os. 5 MR. CHEN: It should be five. 6 MR. KLINE: But it goes up to five Os. So five 7 Cs comes before five Os. 8 HEARING EXAMINER ROBESON HANAN: Oh, I thought 9 you meant three Cs. I learn as the day goes on in this 10 hearing, my ability to track the number of letters 11 decreases. So bear with me. Okay. And I'm on five As, 12 five Bs. Here we go. Is this what you're looking for? 13 This is 227-D with five Cs. 14 (Exhibit 227-D CCCCC was introduced.) 15 MR. CHEN: Could you put it up on the screen, 16 Madam Examiner? 17 HEARING EXAMINER ROBESON HANAN: Oh. Yeah, I 18 could do that too. Now it should be up. Is everyone seeing 19 it? 20 MR. KLINE: Yes. 21 HEARING EXAMINER ROBESON HANAN: Okay. 22 MR. KLINE: Mr. Jolley, you're familiar with this 23 exhibit affectionately called the bug exhibit? 24 MR. JOLLEY: Yes, I am. 25 MR. KLINE: Okay. Can you just refresh your</p>
<p style="text-align: right;">94</p> <p>1 I don't see why -- that it does meet the illumination levels 2 in the cut off. So I don't see why he needs to rehash that. 3 What is it that you want to address in this rebuttal Mr. 4 Kline? 5 MR. KLINE: Get right to the point then. 6 HEARING EXAMINER ROBESON HANAN: But I'm still 7 recognizing Mr. Chen's objection to his expertise. It's 8 standing. 9 MR. CHEN: Thank you. 10 MR. KLINE: Mme. hearing examiner, could you 11 please pull up Exhibit C, five Cs? Five Cs? C, Charlie, 12 Charlie, Charlie, Charlie, Charlie? 13 HEARING EXAMINER ROBESON HANAN: And what is it? 14 227 or 115? 15 MR. KLINE: 227. And -- 16 HEARING EXAMINER ROBESON HANAN: And is it three 17 or two Cs? 18 MR. KLINE: Well, it's five Cs in 227-D 19 apparently. 20 HEARING EXAMINER ROBESON HANAN: Okay. So let me 21 see if I can -- if I have that. Hold on. No, it's got to 22 be something 227 -- hold on. 23 Hold on. 24 I think it's -- go ahead Ms. Kosary. Dr. Kosary. 25 MS. KOSARY: 227-D.</p>	<p style="text-align: right;">96</p> <p>1 memory on what was presented earlier about what this intends 2 to show? 3 MR. JOLLEY: It is my understanding that this is 4 the -- the bug rating in this particular document with five 5 Cs is to show the potential glare that is potentially 6 viewable surrounding the installation of a light pole. As 7 you're looking at this particular pole, for example, they 8 show what they call a high zone between the angles of 60 and 9 80 and very high zone between 80 and 90. 10 The -- and if you scroll, I believe it's down to 11 the next exhibit, there was an exhibit that was selected or 12 circled. It's colored actually. If you go little bit 13 further down the chain there. Yes, that particular exhibit. 14 So from my design, when I perform design, the 15 lighting, if you're looking at this particular document you 16 have the back of the light fixture to the left, the front of 17 the light picture with the light throw is traveling is what 18 you're looking at on this test report. I believe the red 19 and the blue lines where -- were created by Dr. Kosary. So 20 you are looking at the -- between the 60 and 70 degrees 21 angle where the blue arrows are and that is circled for 22 where the most potential light or the potential for glare 23 would be seen between those angles. 24 So I look at it from a physical perspective. 25 When you have a specified light pole of 25 feet, or I'm</p>

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25 (97 to 100)

<p style="text-align: right;">97</p> <p>1 sorry, 20 feet, that light pole would be the closest light</p> <p>2 pole. If you would, scroll to the exhibit where the --</p> <p>3 there were dimensions from the property line to the two</p> <p>4 light poles, please.</p> <p>5 HEARING EXAMINER ROBESON HANAN: I don't know</p> <p>6 that is.</p> <p>7 MR. KLINE: Yeah. Mr. --</p> <p>8 (Crosstalk)</p> <p>9 HEARING EXAMINER ROBESON HANAN: So we look --</p> <p>10 just a second. We're looking at 227-D, document five Bs.</p> <p>11 MR. JOLLEY: Am I allowed to continue?</p> <p>12 HEARING EXAMINER ROBESON HANAN: Yes.</p> <p>13 MR. JOLLEY: Okay. So after review of those</p> <p>14 documents, if I look at these two distances that were shown</p> <p>15 on this exhibit, I do agree with the dimensions that are</p> <p>16 shown on the exhibit because I compared them against our</p> <p>17 skilled documents. They are approximately --</p> <p>18 HEARING EXAMINER ROBESON HANAN: You do agree?</p> <p>19 You do or don't?</p> <p>20 MR. JOLLEY: I do agree with the dimension that</p> <p>21 is shown. And it's approximate on this aerial that you have</p> <p>22 the closest light pole along the southern parking boundary,</p> <p>23 is approximately 135-ish feet from the Kosary residence.</p> <p>24 That pole is the standard parking light pole selected by a</p> <p>25 project architect. That pole is 20 feet in height. That</p>	<p style="text-align: right;">99</p> <p>1 direct glare issue, not diffused light, but direct glare as</p> <p>2 an in you can potentially see an LED bulb. So that</p> <p>3 purport -- not purports -- but the -- I believe that the</p> <p>4 glare issue is -- should not be a concern from a direct</p> <p>5 glare point of view from the neighboring property.</p> <p>6 And this could also be compared against the</p> <p>7 illumination plan that in that area, if you look on the</p> <p>8 lighting plan exhibit, the highest level of illumination on</p> <p>9 the ground plane in that particular area between the fence</p> <p>10 and the -- well, we will say before the property line on the</p> <p>11 western side on the subject site being developed is 0.1,</p> <p>12 which is prior to the actual property line. So I believe</p> <p>13 the illumination levels would indicate a slightly higher</p> <p>14 result if the direct angle of light was actually being</p> <p>15 thrown out further in a more direct fashion towards the</p> <p>16 eastern property line.</p> <p>17 So I believe it supports my view or analysis of</p> <p>18 that angle of throw from that particular luminaire.</p> <p>19 MR. KLINE: Mr. Jolley, and regarding that</p> <p>20 particular luminaire, does that luminaire have features that</p> <p>21 basically minimize the amount of glare or eliminate the</p> <p>22 amount of glare that could be bothersome to the adjoining</p> <p>23 property owners?</p> <p>24 MR. JOLLEY: Yes. If you look at the lighting</p> <p>25 documents on the lighting plans provided, that particular</p>
<p style="text-align: right;">98</p> <p>1 post, that pole will be installed.</p> <p>2 If you look and you compare it against the</p> <p>3 grading plan, the grading plan indicates that the</p> <p>4 approximate ground elevation in that area of the parking lot</p> <p>5 is going to be plus or minus 467.5. So if you extended that</p> <p>6 pole of 20 vertical feet, you would then be able to</p> <p>7 transpose the higher-level of the angle or potential glare,</p> <p>8 which was indicated at -- I did 70 feet. Or 70 degree</p> <p>9 angle. I apologize.</p> <p>10 So if you were to draw an angled line 70 degree</p> <p>11 from the pole, that line would intersect the ground. So</p> <p>12 think of it as a triangle. The end of that 70 degree line</p> <p>13 would intersect the ground at approximately 55 feet east and</p> <p>14 west and north where that degree of angle of throw from the</p> <p>15 light would be -- you would be a to see what we will call a</p> <p>16 direct line of sight or a potential glare. That 55 foot</p> <p>17 distance, if you're to measure it on the plan from the light</p> <p>18 that indicated where the arrow is pointing to where it says</p> <p>19 closest, 135, the 55 foot distance will take you to</p> <p>20 approximately the location of just before the curbing being</p> <p>21 installed along the eastern access driveway.</p> <p>22 So the point that I'm trying to make is, by</p> <p>23 looking at the height of the pole and the angle of that</p> <p>24 particular selected luminaire you could utilize that data to</p> <p>25 interpolate the distance where you would potentially have a</p>	<p style="text-align: right;">100</p> <p>1 luminaire being used is a -- number one, it's an LED, flat</p> <p>2 glass type where the bulb isn't hanging below the surface.</p> <p>3 So you don't have a -- it's not exposed. Let's say it's</p> <p>4 contained within the housing. Provided within the spec</p> <p>5 sheet on the lighting page there is an option. There are</p> <p>6 two options.</p> <p>7 The first selected is actually selected on the</p> <p>8 plan already was a backlight shield. So they would be</p> <p>9 putting a backlight shield along that, which typically</p> <p>10 wrap -- install on the back in a little bit -- and actually</p> <p>11 you can install it along the side as well, to reduce that</p> <p>12 angle of throw even greater to whatever direction you want.</p> <p>13 So you essentially -- you are placing a hood or a shield,</p> <p>14 literal, physical shield below the light fixture that would</p> <p>15 prevent the shine of light towards the eastern property</p> <p>16 boundary.</p> <p>17 That could easily be -- number one, it's already</p> <p>18 specified for backlight. But number two, it can be further</p> <p>19 enhanced by a side lens -- I'm sorry -- a side backlight</p> <p>20 restriction as well on the unit.</p> <p>21 One other particular feature of those lights, if</p> <p>22 you look on the documents, is that they do have an</p> <p>23 adjustable arm. So it's -- you could purchase them as a</p> <p>24 rigid -- as a rigid arm or an arm that flexes. Not flexes,</p> <p>25 it's adjustable up or down. When you -- if it was up to me,</p>

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26 (101 to 104)

<p>101</p> <p>1 I would which can be ordered with the lights that are 2 specified. After the lights are installed that -- what 3 could happen is with a rigid arm, those lights are no longer 4 able to be adjusted in the field. 5 So when you have the adjustable arm, after they 6 are installed you can wait until -- obviously it's dark one 7 evening. The neighbors could meet on the subject site, 8 myself, others. And if need be, we could further adjust 9 that lens, or the project architect I should say. We could 10 further adjust that lens in the field to ensure between the 11 two measures, that we can reduce the angle of throw for 12 anything going towards the eastern property line. 13 So what I'm stating here is that a fine-tuning 14 ability, and is not a finite, permanent situation for where 15 that light is going to go the moment you put that pole in 16 the ground and that's it and the neighbors that's the 17 neighboring property owners, the surrounding property owners 18 would have zero ability to suggest a fine-tuning. You could 19 even bring a -- we have tools that measure the lighting 20 along the ground surface as well. 21 So there are options that you can select that I 22 believe would also aid in fine-tuning once the project is 23 constructed to eliminate any possible direct glare to the 24 residence next door. 25 MR. KLINE: Last question Mr. Jolley. Would you</p>	<p>103</p> <p>1 you're muted. 2 HEARING EXAMINER ROBESON HANAN: Mr. Chen, you 3 are still muted. 4 MR. CHEN: Thank you. I'm -- you just 5 experienced some of my technological incompetency. Madam 6 Examiner, it's 12:44. And I would like to break for lunch 7 at this time. I need to think about this testimony. This 8 is all new, especially the sighting information. I need a 9 few minutes or some time while I (inaudible). 10 HEARING EXAMINER ROBESON HANAN: Okay, let me ask 11 one more -- let me just quickly ask Mr. Kline. Is your last 12 witness -- is your last witness Mr. Wolford? 13 MR. KLINE: That is correct, rebuttal testimony 14 from the land planner. 15 HEARING EXAMINER ROBESON HANAN: And that will be 16 the last? 17 MR. KLINE: That would be the only people we 18 would expect to call, yes. 19 HEARING EXAMINER ROBESON HANAN: Okay. We could 20 take an -- we can go off the record for a lunch break until 21 1:45. 22 (Crosstalk) 23 HEARING EXAMINER ROBESON HANAN: Okay. We are 24 off the record. 25 (Off the record at 12:45 p.m., resuming at 1:47</p>
<p>102</p> <p>1 please comment on Mr. Davis's testimony that he believed 2 that the applicant had failed to comply with the 3 requirements of section 59.6.5.2 of the screening 4 requirements in the Montgomery County zoning ordinance? 5 MR. JOLLEY: Right. If you're looking at -- it's 6 yes, 5.2.5 K 2B I believe. That particular section of the 7 zoning ordinance for -- as for the parking design standards, 8 stated that the minimum side yard setback equals two times 9 the setback requirement for a detached house. That being 10 said, it would have determined that we would have a buffer 11 of 35 feet along the property line. As part of the parking 12 lot waiver that was requested, that was granted to be -- 13 that was recommended I should say, by staff and the planning 14 commission and that was reduced to 12 feet. 15 So therefore, the buffer that would remain as 16 green space between the proposed parking lot and any 17 adjacent property line would be that determined width. So I 18 disagree with that as it was -- it's the waiver the grant -- 19 or I'm sorry -- the recommendation approval for the waiver 20 would naturally reduce that buffer because the parking lot 21 would be installed along the periphery. 22 MR. KLINE: I have no further questions of Mr. 23 Jolley. 24 HEARING EXAMINER ROBESON HANAN: Mr. Chen? 25 COURT REPORTER: I think he is -- Mr. Chen,</p>	<p>104</p> <p>1 p.m.) 2 HEARING EXAMINER ROBESON HANAN: Thank you. We 3 are back on the record. 4 I believe is Mr. Chen's cross-examination of Mr. 5 Jolley. 6 MR. CHEN: Mr. Jolley, I want to go to the last 7 area that you testified about involving Mr. Davis's 8 testimony. 9 MR. JOLLEY: Yes, sir. 10 MR. CHEN: What was your disagreement with Mr. 11 Davis's testimony? 12 MR. JOLLEY: My primary discriminate with that 13 particular section of the code is that it does state that 14 you would need to double the setback -- 15 MR. CHEN: 34 feet? 16 MR. JOLLEY: To a great -- yes, correct. 17 MR. CHEN: I interrupted you. I apologize, sir. 18 Go ahead, finish. 19 MR. JOLLEY: No, I -- while looking at that 20 section of the code -- and I pull up -- double check it. 21 I'm looking at right now, which is -- we're speaking about 22 6.2.5 K 2B, correct? 23 MR. CHEN: Yes. 24 MR. JOLLEY: Okay. So if you look at that 25 setback, the statement that it states on the code is the</p>

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27 (105 to 108)

<p>105</p> <p>1 minimum side parking setback equals two times the minimal 2 size setback for a detached house. So if that was provided, 3 it would have been the 34, 35 feet for the parking. That 4 would have been physically set in the real world a width for 5 a buffer to plant of that width. 6 MR. CHEN: 35 feet? 7 MR. JOLLEY: Right, because you wouldn't have any 8 actual improvements whether it be paving or curbing. So it 9 would have essentially provided a little more room for 10 planting materials. Now because of parking waiver request, 11 which was discussed earlier, which was supported for the 12 parking lot which in turn is connected to the driveway, that 13 was reduced to 12 feet. 14 So I disagree in the fact that if the waiver was 15 not granted -- I'm sorry. I keep saying granted, but 16 recommended for approval, then we would have a wider 17 planting area. So I disagree that you can't -- we can't 18 have -- you can't have both in the situation I don't -- is 19 where I'm going with the granting of the parking waiver. 20 MR. CHEN: Well -- 21 MR. JOLLEY: I'm sorry, recommendation. 22 MR. CHEN: Yes, there has been no grant of any 23 parking waiver -- 24 MR. JOLLEY: No, and I corrected myself. Right. 25 MR. CHEN: So as we sit here today, Mr. Davis's</p>	<p>107</p> <p>1 that would just be too much maintenance. 2 MR. CHEN: Okay. 3 MR. JOLLEY: For, you know -- but the requirement 4 for the planting units are based on the per linear footage 5 of the buffer which they say you need the 30 trees -- I'm 6 sorry. The 30. The two -- one specimen tree planted on 7 center every 30 feet plus the two understory trees as -- 8 along the length of that property line. 9 MR. CHEN: Okay, but just so I'm clear on this. 10 Mr. Davis was saying that 34 feet was required. You 11 acknowledge that as we sit here today, 34 feet is required? 12 MR. JOLLEY: Yes, it's required based on the 13 code. 14 MR. CHEN: Thank you. By the way, just a quick 15 on the -- I'm jumping it, but this is good time. On 16 exhibit -- I think it was 227-D SSSS, which is entitled 17 depiction of newly planted trees. Do you recall that 18 exhibit, sir? 19 MR. JOLLEY: Yes, sir. 20 MR. CHEN: Okay. That was the exhibit that Dr. 21 Kosary prepared reflecting, as I recall her testimony, 22 plantings that would be in place upon approval of the 23 conditional use. 24 MR. JOLLEY: That's correct. That's my 25 understanding as well, sir.</p>
<p>106</p> <p>1 testimony that the setback for this conditional use without 2 the waiver, admittedly, is 34 feet. 3 MR. JOLLEY: Correct. 4 MR. CHEN: And as I understand your testimony, a 5 width of 34 feet would be sufficient for the planting buffer 6 that you have been recommending on your landscape plan; 7 isn't that right? 8 MR. JOLLEY: No, that's not what I'm saying. I'm 9 saying that the plants that are provided within that 10 space -- 11 MR. CHEN: What space? 12 MR. JOLLEY: In the green space between the 13 buffer between the proposed driveway and the property line. 14 The plantings that we are providing the room, the ground 15 space is adequate for the proposed planting. So what I'm 16 saying is the width is obviously less because of the waiver 17 for the parking. 18 MR. CHEN: And that's 12 feet? 19 MR. JOLLEY: Correct, sir. 20 MR. CHEN: My question was, the setback area was 21 34 feet, that area, assuming it's 34 feet will be more than 22 sufficient for the buffer that you have proposed on your 23 landscape plan. 24 MR. JOLLEY: Yes, we probably would have had some 25 lawn in area in there as well because the entire width --</p>	<p>108</p> <p>1 MR. CHEN: Has she made any misrepresentations? 2 MR. JOLLEY: I do not know the scale of the 3 drawing. I haven't measured it myself. But what I believe 4 is depicted for the locations of the trees, it's very 5 difficult to see the understory trees on this scale, but if 6 there are 15 shade trees shown along the eastern property 7 line, I would state that is correct. 8 MR. CHEN: Okay, thank you. Now you also said 9 that while your plan reflects that number of trees, as I -- 10 but as you also said -- but you can increase the numbers. 11 MR. JOLLEY: If so desired by the client and 12 acceptable by the County, I believe we could slightly 13 increase them, not dramatically increase. Slightly 14 increase. 15 MR. CHEN: Right. 16 MR. JOLLEY: I would not recommend a spacing on 17 center any more than 25 feet. 18 MR. CHEN: Okay. By the way -- 19 MR. JOLLEY: For shade trees, sir, I was 20 referring to by the way. 21 MR. CHEN: Yes, sir. I understand. Now the 22 poles that you testified about and you got into rigid arms 23 and adjustable arms, correct? 24 MR. JOLLEY: Correct. 25 MR. CHEN: The current proposal is -- does not</p>

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28 (109 to 112)

<p style="text-align: right;">109</p> <p>1 provide for adjustable arms, but you are recommending 2 adjustable arms. Is that my understanding of your 3 testimony? 4 MR. JOLLEY: That is correct, sir. 5 MR. CHEN: And with regard to your testimony 6 about direct layer, I put that in quotes. You said the 7 direct layer issue. Can you point to the testimony of 8 either Dr. Kosary or Mr. Posey or anyone else that said that 9 there was going to be a glare problem from the poles? 10 MR. JOLLEY: A glare problem? 11 MR. CHEN: Yes, sir. 12 MR. JOLLEY: I can't recall off the top of my 13 head, sir, but I believe that the intent of the discussions 14 were that light would cause a disturbance. And by 15 disturbance, glare by nature, by nature is disturbing to the 16 human eye. 17 MR. CHEN: Would you accept my -- 18 MR. JOLLEY: It's a little hard to hear. There 19 are some rustling. I apologize. 20 MR. CHEN: No, I'm with you. Mr. -- I think the 21 examiner is rustling papers or somebody is. 22 HEARING EXAMINER ROBESON HANAN: No, it's not me. 23 I don't rustle anything. It's Mr. Kline. 24 MR. CHEN: Okay. Maybe it's Mr. Kline then. 25 MR. JOLLEY: He's the rustler, yeah. Keep going.</p>	<p style="text-align: right;">111</p> <p>1 that would also help enforce and ensure as minimal 2 disturbance as possible to all surrounding neighbors. 3 MR. CHEN: Including those neighbors to -- 4 further to the west? 5 MR. JOLLEY: Further to the west? Yes, because 6 they would be side shielded as well. That's correct. So 7 the west, that's correct. 8 MR. CHEN: Now notwithstanding those shields -- 9 MR. JOLLEY: Yes. 10 MR. CHEN: -- my clients will see the poles? 11 MR. JOLLEY: Yeah. 12 MR. CHEN: They will see the poles during the 13 day? They will see them at night as well? 14 MR. JOLLEY: It's my understanding that they 15 should be, that they stated in their testimony that they 16 could see the poles next door as well without a complete and 17 utter wall, a visual barrier that you cannot see through it 18 in any respect. I believe at some point in the property 19 yes, they would be able to see it vertically. They would be 20 able to see a pole. 21 MR. CHEN: Okay. Now, does this is parking lot 22 have to have light poles? 23 MR. JOLLEY: Does it have to have light poles? 24 MR. CHEN: Yes, sir. 25 MR. JOLLEY: You need to have -- for the code,</p>
<p style="text-align: right;">110</p> <p>1 I'm sorry. 2 MR. CHEN: As I understand it, sir, the testimony 3 that my clients have offered or made relative to the poles, 4 did not mention glare. They were not talking about glare. 5 MR. JOLLEY: Okay. 6 MR. CHEN: Now having said that, it's your 7 testimony as I understand it that shields could be put on 8 the pole light. Is that correct, sir? 9 MR. JOLLEY: Yes, that is an option that you 10 could purchase for the luminaires. 11 MR. CHEN: Okay. And I think you testified that 12 the shields could be in such a way that there would not be 13 apparently some kind of lighting going to the east toward my 14 clients' property. Is that right? 15 MR. JOLLEY: I don't know if it would completely 16 eliminate, but it would definitely provide, if you think of 17 it as a physical blocking, sir, a shield is a piece of 18 equipment that is mounted. When you look at the light, it 19 reflects -- that LED luminaire has a flat bottom. So on the 20 sides of the unit you could install what is a -- typically 21 it's a metallic type of shield that is attached to the 22 actual luminaire. 23 So what that would do would provide an additional 24 focusing downward and eliminate less -- in simpler terms, 25 less width of throw, like throw, distance. So I believe</p>	<p style="text-align: right;">112</p> <p>1 you do need to provide safe, adequate light, which based on 2 the staff report, they agreed upon with the levels that were 3 provided. And so you do need to have a light source that 4 would distribute that light in and even manner and a pole is 5 the primary way of doing that with the luminaire mounted on 6 an arm. 7 MR. CHEN: So you are saying -- is your testimony 8 that the requirements for the lighting parking area 9 necessitate a 20 foot pole? 10 MR. JOLLEY: No, I'm not saying that it 11 necessitates a 20-foot pole, sir. I'm stating that that is 12 a primary -- that is the -- that is the primary design or 13 utilization of a light pole and luminaire to distribute the 14 light evenly. And a pole, as I do not have a -- as there is 15 not a building on either side surrounding the parking lot, 16 we need to mount -- the light source would need to be 17 mounted. I'm not stating that 20 feet is the only height. 18 MR. CHEN: Okay. Have you done any analysis, 19 sir, to the height that would be required for lighting to 20 comply with the code? 21 MR. JOLLEY: You can use a variety of pole 22 heights and sources sir, depending on the light that you 23 utilize. 24 MR. CHEN: What would be the required pole height 25 to comply with the code?</p>

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29 (113 to 116)

<p>113</p> <p>1 MR. JOLLEY: I would go for 15 feet.</p> <p>2 MR. CHEN: Okay.</p> <p>3 MR. JOLLEY: I did not design the lighting, sir,</p> <p>4 as I stated earlier.</p> <p>5 MR. CHEN: You are testifying as an expert,</p> <p>6 though. The hearing examiner -- you have been offered in</p> <p>7 that context and the hearing examiner is allowing you to</p> <p>8 testify.</p> <p>9 MR. JOLLEY: Understood.</p> <p>10 MR. CHEN: Any lower?</p> <p>11 MR. JOLLEY: Is it physically possible? Yes.</p> <p>12 However, the lower you go, the more lights you need to</p> <p>13 install. So you could also have a detrimental effect by</p> <p>14 having more lights or spread surrounding a property and</p> <p>15 with -- let's say within the parking area. And then that</p> <p>16 could lead to, could lead to additional -- a light</p> <p>17 reflecting or refracting off of the building et cetera, that</p> <p>18 then travels outward. So the pole method reduces the total</p> <p>19 number of lights that need to be installed.</p> <p>20 The items that I suggested would help fine tune a</p> <p>21 final install product in the field. So that could be used</p> <p>22 to work well at night, physically witness and adjust poles</p> <p>23 that could be potentially disturbing of a neighbor. I'm</p> <p>24 sorry, not the poles, the luminaires.</p> <p>25 MR. CHEN: Okay. And I think -- now when you say</p>	<p>115</p> <p>1 MR. JOLLEY: Yeah, the photometric document. I</p> <p>2 believe the document I printed out here just for my ease of</p> <p>3 seeing it with my own eyes is labeled Exhibit 94-B, OZHA CU-</p> <p>4 18-08. It is the plan with all the illumination levels on</p> <p>5 it.</p> <p>6 MR. CHEN: Is it fair to state that those</p> <p>7 properties will also be able to see the luminaires and the</p> <p>8 lighting that is being proposed?</p> <p>9 MR. JOLLEY: Yes, it's fair to state that they</p> <p>10 may be able to see that. Yes, sir.</p> <p>11 MR. CHEN: And with the poles that are being</p> <p>12 proposed, you testified that the one pole closest to the</p> <p>13 Kosary/Posey property was at an elevation of 467.5; is that</p> <p>14 correct, sir?</p> <p>15 MR. JOLLEY: Yeah, based on the grading plan, the</p> <p>16 elevation that's the contours in the area are generally at</p> <p>17 that elevation, yes.</p> <p>18 MR. CHEN: And the luminaire would be 20 feet</p> <p>19 above the elevation?</p> <p>20 MR. JOLLEY: Correct.</p> <p>21 MR. CHEN: So that the total elevation height</p> <p>22 would then be approximately -- I guess if it's 20 feet,</p> <p>23 487.5 (inaudible); is that correct.</p> <p>24 MR. JOLLEY: Yes, sir.</p> <p>25 MR. CHEN: Now --</p>
<p>114</p> <p>1 lower lights could cause problems, are you referring to the</p> <p>2 glare of the building as the problem with lower-level</p> <p>3 lights?</p> <p>4 MR. JOLLEY: It could be. If the -- the lower</p> <p>5 you go, the more lights you would need to install to ensure</p> <p>6 an even distribution of light pattern around the parking</p> <p>7 lot. So you could get -- every service has -- you can</p> <p>8 refract off of any service. Obviously white being, as we</p> <p>9 all know, the most reflective and black being the most</p> <p>10 absorbent. So the more light fixtures you have, you could</p> <p>11 increase light refraction off of material surrounding the</p> <p>12 property.</p> <p>13 MR. CHEN: Has your review of the lighting plan</p> <p>14 included the implications of the plan for the properties</p> <p>15 further to the west? There is the Tapscott property and</p> <p>16 then there is the Mitchell property I believe.</p> <p>17 MR. JOLLEY: Yeah, I did look at the plan and the</p> <p>18 lighting levels, I have it right here, sir. What is your</p> <p>19 specific question?</p> <p>20 HEARING EXAMINER ROBESON HANAN: Wait, excuse me.</p> <p>21 MR. JOLLEY: Yes.</p> <p>22 HEARING EXAMINER ROBESON HANAN: Which plan are</p> <p>23 you looking at?</p> <p>24 MR. JOLLEY: Oh, I'm sorry.</p> <p>25 HEARING EXAMINER ROBESON HANAN: The photometric?</p>	<p>116</p> <p>1 MR. JOLLEY: Forgive my jostling. I'm just</p> <p>2 grabbing the plans here.</p> <p>3 HEARING EXAMINER ROBESON HANAN: As long as you</p> <p>4 don't reverberate.</p> <p>5 MR. JOLLEY: Okay, I will try my best.</p> <p>6 MR. CHEN: There was testimony -- I think you are</p> <p>7 present, that the elevation of the Kosary/Posey patio was at</p> <p>8 468.5. Do you recall that, sir? Or will you accept that</p> <p>9 number?</p> <p>10 MR. JOLLEY: Yes, will. I'm also looking at the</p> <p>11 grading and the grading exhibit page CUP-6. It also has the</p> <p>12 grading on it; I'm looking at it now. 468.5 is accurate.</p> <p>13 MR. CHEN: So that -- and I think you've already</p> <p>14 indicated this. With those elevations standing on the patio</p> <p>15 of my clients' property, those poles and the luminaires -- I</p> <p>16 think you said this -- would be visible?</p> <p>17 MR. JOLLEY: Through a filter -- I'm assuming</p> <p>18 because I've never stood personally on the patio.</p> <p>19 MR. CHEN: Gotcha.</p> <p>20 MR. JOLLEY: But I could say I think I can</p> <p>21 understand how they could be seen from the patio. That's</p> <p>22 correct.</p> <p>23 MR. CHEN: By the way, maybe just -- this is</p> <p>24 going to I think what you are about to say about the buffer.</p> <p>25 You recall a series of photographs that Mr. Klein had you</p>

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<p>117</p> <p>1 take a look at today? Do you recall those earlier? I don't 2 think we need to print them. 3 MR. JOLLEY: Okay. 4 MR. CHEN: Unless you want them. 5 MR. JOLLEY: No, no, no. I have paper copies as 6 well. So if -- go ahead. 7 MR. CHEN: My understanding is that all of the 8 trees as shown in those photographs, I think there were four 9 photographs, all of the trees that are shown in those 10 photographs that are on the subject property, the Primrose 11 property, they are all going to be removed; is that correct, 12 sir? 13 MR. JOLLEY: That is correct, sir. 14 MR. CHEN: Okay. And I think one of your 15 recommendations would be to do some selective pruning. Is 16 that the right word? Some light pruning of the trees on my 17 clients' property that have their root systems on the 18 Primrose property; is that correct, sir? 19 MR. JOLLEY: That is correct, sir. The root 20 pruning would occur on the subject property being developed. 21 That is correct. 22 MR. CHEN: And as far as dealing with the trees 23 that are on my clients' property, that is the only activity 24 that would occur on the Primrose property relative to the 25 trees on my clients' property?</p>	<p>119</p> <p>1 MR. JOLLEY: Correct, sir. 2 MR. CHEN: Additional watering on my clients' 3 property? 4 MR. JOLLEY: Root pruning is -- the root pruning 5 is only on the subject site on our side of the LOD. I did 6 not -- I don't want to suggest that we would be doing 7 additional root pruning again on any part of that -- their 8 property. 9 MR. CHEN: Okay, thank you. Then I had that -- I 10 was erroneous because I'm now focusing my inquiry on my 11 clients' property. 12 MR. JOLLEY: Clients' property, got it. 13 MR. CHEN: Okay. Then with regard to the trees 14 that are near the property line of my clients' property, you 15 recommended a course of action would be additional watering? 16 MR. JOLLEY: Correct. 17 MR. CHEN: A tree crown reduction? You're not 18 talking about topping. You're talking about branches that 19 are in ill health or selective pruning; is that correct, 20 sir? 21 MR. JOLLEY: Correct, sir. 22 MR. CHEN: Okay. 23 MR. JOLLEY: These are obviously all -- I will 24 let you finish. 25 MR. CHEN: Okay. And the third is there are lawn</p>
<p>118</p> <p>1 MR. JOLLEY: True, other than what watering we 2 can do -- 3 (Crosstalk) 4 MR. CHEN: Yeah, I'm sorry. I will take you 5 through that. With regard to the activity on site, on the 6 Primrose property, as to the trees on my clients' property 7 the only activity would be root pruning? 8 MR. JOLLEY: Well, no. Yeah, it would be root 9 pruning, correct. We would do a physical root pruning. 10 MR. CHEN: Okay. 11 MR. JOLLEY: But I said the -- what we can also 12 do is that where you are root pruning, you will by nature 13 essentially be creating a slice in the ground. And that we 14 could also, on the subject site, on the site being developed 15 on our side of the property west of that property line, you 16 can also introduce some additional water to keep those roots 17 that were pruned as moist as possible that are encroaching 18 upon that zone. 19 MR. CHEN: Okay, thank you. And your further 20 testimony was that, with regard to my clients' property -- 21 MR. JOLLEY: Yes. 22 MR. CHEN: -- you had -- as my notes reflect, and 23 I think I've got it accurately, but you will certainly tell 24 me if I don't. You had four recommendations. And that was 25 root pruning on my clients' property?</p>	<p>120</p> <p>1 areas under the trees, and you would recommend one to two 2 inches of bark mulch to be -- to retain the moisture and 3 then return that area to grass later on? 4 MR. JOLLEY: If so desired by your client. And 5 the -- so, yes. And not just bark mulch. You could also -- 6 I would actually -- I think -- did I say -- if I said bark, 7 you could use bark, but you could also use double shredded 8 hardwood, which actually is more attractive, number one. 9 Number two, it would hold more moisture. Typically, what 10 you see in front of residential homes is -- double shredded 11 bark mulch is a -- for the appearance, it's more of a 12 stringy texture versus bark, as in bark shavings from a pine 13 tree. 14 MR. CHEN: Okay. 15 MR. JOLLEY: I would recommend root -- double 16 shredded bark mulch. 17 MR. CHEN: Okay. Excuse me, I just dropped my 18 pen. 19 MR. JOLLEY: That's all right. My plans fell 20 down. 21 MR. CHEN: And your testimony was that 22 (inaudible). You got your plans? 23 MR. JOLLEY: I do for now unless they fall down 24 again. 25 MR. CHEN: And as I -- again, going back to my</p>

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31 (121 to 124)

<p>121</p> <p>1 notes, utilizing those three recommendations you have, it 2 was your opinion that they were proven methods with a proper 3 program. Meaning, you said pruning early, is what you meant 4 by proper program. And then it would, quote, significantly 5 reduce the stress, end quote -- 6 MR. JOLLEY: Yes, sir. 7 MR. CHEN: Of the trees on my clients' property. 8 Is that -- 9 MR. JOLLEY: Reduce stress, correct, sir. 10 MR. CHEN: Okay. By the way, I know you haven't 11 been on my clients' property, but do you have any idea how 12 many trees are in question that are in the situation on my 13 clients' property? 14 MR. JOLLEY: I don't have any exact numbers. I 15 haven't walked the property, but I have viewed it from the 16 periphery of the other property. And there are -- there are 17 several trees on their property along the edge. So I'm 18 aware, I just haven't walked their specific side of the 19 property though. 20 MR. CHEN: Okay. 21 MR. JOLLEY: I would be happy to with them. I 22 will just offer that. 23 MR. CHEN: One moment, Madam Examiner, please. 24 HEARING EXAMINER ROBESON HANAN: Okay. 25 Wait, I hear someone whispering.</p>	<p>123</p> <p>1 MR. JOLLEY: Because of the program of the 2 subject property? 3 MR. JOLLEY: Because of the program of the 4 subject property? 5 MR. CHEN: The program proposed by Primrose? 6 MR. JOLLEY: As in the site plan layout of the 7 features on the subject site? Or -- 8 MR. CHEN: No, I apologize. 9 MR. JOLLEY: I'm misunderstanding your question, 10 sir. 11 MR. CHEN: I understand. And maybe this is your 12 answer. There's been extensive testimony that the Primrose 13 program calls for 195 students plus 30 some odd supporting 14 staff. Are you aware of that? 15 MR. JOLLEY: Yes, sir. 16 MR. CHEN: Okay. And is it correct that the 17 waiver that you've identified is required because of that 18 program that is being proposed? 19 MR. JOLLEY: The program was connected to the 20 site design. So yes, I -- it would be -- there would be a 21 connection. 22 MR. CHEN: Okay. And you were involved in that 23 site design? You testified about that? 24 MR. JOLLEY: I am. 25 MR. CHEN: Okay. No further questions.</p>
<p>122</p> <p>1 MR. CHEN: Yeah, ignore it. 2 I also understand that with regard to the waiver, 3 that the waiver is a consequence of the program that 4 Primrose has for the daycare center; is that correct, sir? 5 MR. KLINE: Objection. I think that goes beyond 6 the direct testimony earlier. 7 MR. CHEN: Well, he testified about the waiver. 8 HEARING EXAMINER ROBESON HANAN: He did testify 9 about the waiver. 10 MR. KLINE: He testified about the waiver, but he 11 didn't testify about why it was required. 12 MR. CHEN: So I have to accept that he testified 13 there is the waiver, but I can ask why a waiver is acquired? 14 HEARING EXAMINER ROBESON HANAN: I'm -- you know 15 what? I'm going to sit -- 16 (Crosstalk) 17 HEARING EXAMINER ROBESON HANAN: Go ahead. 18 MR. KLINE: I would -- what I was going to say is 19 Mr. Wolford will certainly get into it. But I will withdraw 20 my objection. Let's get it over with. 21 MR. CHEN: Again, sir -- 22 MR. JOLLEY: Yes, sir. 23 MR. CHEN: Is it your understanding that the 24 waiver is required because of the program that Primrose is 25 proposing for the subject property?</p>	<p>124</p> <p>1 MR. JOLLEY: Although I'm not -- although I'm not 2 the engineer. Just so we make that clear. 3 MR. CHEN: I understand. Thank you very much, 4 sir. I have no further questions. 5 HEARING EXAMINER ROBESON HANAN: Mr. Klein? 6 MR. KLINE: No redirect. 7 HEARING EXAMINER ROBESON HANAN: All right. Mr. 8 Klein, call your next and last rebuttal witness, please. 9 MR. KLINE: Mr. Wolford, are you with us? 10 MR. WOLFORD: I'm here, sir. 11 HEARING EXAMINER ROBESON HANAN: Mr. Wolford, you 12 are still under oath. 13 MR. WOLFORD: Yes, I am. Thank you. 14 MR. KLINE: Mr. Wolford, can I have you begin 15 your testimony with a description of your familiarity with 16 the State's smart growth priority funding program? 17 MR. KLINE: Yes, I'm quite familiar with the 18 program. It came into place in 1997. There were a lot of 19 reasons for it. It came from the State. It was an 20 initiative from the governor's office to the state planning 21 office. And the -- one of the main reasons it came into 22 place was to better allocate the distribution and use of the 23 limited financial resources that the State of Maryland has 24 available to support programs and improvements throughout 25 the State of Maryland. So -- but it does -- and so it's</p>

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<p>125</p> <p>1 done on a statewide basis and lightly coordinated with the</p> <p>2 local planning offices. But it's still on a relatively</p> <p>3 grand scale and it does not really mean that if you are in a</p> <p>4 priority funding area you can proceed with development. And</p> <p>5 if you're not in a priority funding area, you cannot proceed</p> <p>6 with development.</p> <p>7 MR. CHEN: What -- pardon me. This part I have</p> <p>8 to object to. The gentleman as I understand it is now</p> <p>9 proposing to tell the hearing examiner what the smart growth</p> <p>10 program does. And that's different than explaining his</p> <p>11 background with the program. And I object to any opinion</p> <p>12 from this witness as to what the smart growth program would</p> <p>13 permit or not permit.</p> <p>14 HEARING EXAMINER ROBESON HANAN: Mr. Klein?</p> <p>15 MR. KLINE: Well, I don't disagree with Mr. Chen.</p> <p>16 We probably ought to establish a little bit better</p> <p>17 foundation for what Mr. Wolford wants to say.</p> <p>18 HEARING EXAMINER ROBESON HANAN: I guess I'm</p> <p>19 wondering -- before we go there, I'm wondering why we are</p> <p>20 going into the PFA. Is he going to disagree that the PFA</p> <p>21 doesn't cover this property?</p> <p>22 MR. KLINE: He will not. He will agree that it</p> <p>23 is within the area. He will disagree about its</p> <p>24 applicability to this project.</p> <p>25 HEARING EXAMINER ROBESON HANAN: Well, I thought</p>	<p>127</p> <p>1 HEARING EXAMINER ROBESON HANAN: Well, let me ask</p> <p>2 Mr. Chen. I can't remember. There is an exhibit in here</p> <p>3 that (inaudible) something.</p> <p>4 Well Mr. Chen, do you agree or disagree that this</p> <p>5 is not in the priority funding area?</p> <p>6 MR. CHEN: You accurately described our evidence</p> <p>7 on this point. We don't -- we do not contend that it is in</p> <p>8 the smart growth area. In fact, my recollection is both</p> <p>9 through -- I think was mainly through Mr. Davis. We just</p> <p>10 offered the state document that showed that.</p> <p>11 HEARING EXAMINER ROBESON HANAN: Yes. So I don't</p> <p>12 think there is a need to establish that is not in the</p> <p>13 priority funding area.</p> <p>14 MR. KLINE: Then I would ask Mr. Wolford some</p> <p>15 simple questions about the -- that would be relative to</p> <p>16 the -- I will rephrase that. I'm going to go in a different</p> <p>17 direction in.</p> <p>18 Mr. Wolford, there was questions raised about the</p> <p>19 ability to construct the storm drain system, I thought</p> <p>20 because of some of the influence of the priority funding</p> <p>21 system. Is there any reason to understand that the priority</p> <p>22 funding system would preclude the construction of the storm</p> <p>23 drain system proposed by the applicant?</p> <p>24 MR. WOLFORD: No, because the applicant is a</p> <p>25 private individual doing a private development and proposing</p>
<p>126</p> <p>1 we agreed that is not applicable to this project.</p> <p>2 MR. KLINE: Well, why did we spend so much time</p> <p>3 talking about it then?</p> <p>4 HEARING EXAMINER ROBESON HANAN: Your witness</p> <p>5 spent -- Ms. --</p> <p>6 MR. CHEN: Yes.</p> <p>7 HEARING EXAMINER ROBESON HANAN: (inaudible)</p> <p>8 brought it up.</p> <p>9 MR. KLINE: I'm sorry. Who did?</p> <p>10 (Crosstalk)</p> <p>11 HEARING EXAMINER ROBESON HANAN: Your real estate</p> <p>12 appraiser. They have --</p> <p>13 (Crosstalk)</p> <p>14 HEARING EXAMINER ROBESON HANAN: The applicant --</p> <p>15 I mean, the -- Mr. Chen introduced exhibits showing that</p> <p>16 this is not in the priority funding area. So I guess I</p> <p>17 don't -- is there an argument with that?</p> <p>18 MR. KLINE: I would guess that we spent 2, 2-1/2</p> <p>19 hours, no, an hour plus listening to Mr. Davis talk about</p> <p>20 the applicability of the priority funding area. And I don't</p> <p>21 recall there being a comment that this property is not in</p> <p>22 it. If is not in it, then I don't know why we heard so much</p> <p>23 about it from Mr. Davis. I was calling Mr. Wolford simply</p> <p>24 to confirm the fact that it isn't applicable. If we all</p> <p>25 agree on that, then we can forget all this testimony.</p>	<p>128</p> <p>1 to do self-funded private money to improve a storm drain</p> <p>2 system to serve his property.</p> <p>3 MR. KLINE: And we do not -- we do not believe</p> <p>4 that there is any state policy that would preclude us from</p> <p>5 doing that, correct?</p> <p>6 MR. WOLFORD: Correct. Property outside the</p> <p>7 priority funding area can proceed with development. It just</p> <p>8 can't ask for state funds to support any development unless</p> <p>9 it's in the public benefit.</p> <p>10 MR. KLINE: And what --</p> <p>11 HEARING EXAMINER ROBESON HANAN: Which they</p> <p>12 assume it isn't in the public benefit.</p> <p>13 MR. WOLFORD: In this case it is not. This</p> <p>14 project is for private use funded by private money.</p> <p>15 MR. KLINE: Mr. Chen, I see lots of</p> <p>16 gesticulations. So I guess I just want to make sure we are</p> <p>17 all in agreement on this because I thought this was what</p> <p>18 your premise was for the questions the other day. I</p> <p>19 remember you asking my -- Mr. Pease, can you actually get a</p> <p>20 permit to build what you want to build in light of the fact</p> <p>21 of the situation.</p> <p>22 MR. KLINE: Well, are you done then with Mr.</p> <p>23 Wolford?</p> <p>24 MR. KLINE: No, sir. And maybe it was more of a</p> <p>25 rhetorical question. I just thought maybe you had a</p>

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<p>129</p> <p>1 question about that's with your own clients. But if you're</p> <p>2 okay with where we are going, that's fine.</p> <p>3 MR. CHEN: No, I'm going to cross-examine on this</p> <p>4 subject, but --</p> <p>5 MR. KLINE: Fine.</p> <p>6 MR. CHEN: (inaudible) time I will cross-examine.</p> <p>7 MR. KLINE: Okay, fine. I'll just direct your</p> <p>8 attention to the storm drain system itself. And I don't</p> <p>9 want you to repeat anything that Mr. Pease got into. But</p> <p>10 you -- have you visited the property to observe the outfall</p> <p>11 situation at the -- where the storm drain basically</p> <p>12 outfalls?</p> <p>13 MR. WOLFORD: (inaudible) yes, I have been.</p> <p>14 HEARING EXAMINER ROBESON HANAN: Just a second.</p> <p>15 We have an objection. Mr. Chen, do you have an objection?</p> <p>16 MR. CHEN: Well, I think this goes -- I'm not</p> <p>17 sure what this is even responsive to or whether this</p> <p>18 gentleman -- because he is recognized as a land planner</p> <p>19 (inaudible) credential to get into the subject area. I do</p> <p>20 recollect Mr. Pease testified about the subject I think he</p> <p>21 was qualified as being able to testify about it. So I will</p> <p>22 cross-examine him about it.</p> <p>23 HEARING EXAMINER ROBESON HANAN: Why are we going</p> <p>24 into the storm drain system, Mr. Klein?</p> <p>25 MR. KLINE: Well ultimately it will result in</p>	<p>131</p> <p>1 that. Why are we going -- you proffer what you want to say.</p> <p>2 MR. KLINE: Okay. I would -- my proper would be</p> <p>3 there was testimony that there was an adverse environmental</p> <p>4 impact as a result of the existing storm drain system,</p> <p>5 agreed?</p> <p>6 MR. KLINE: But that wasn't Mr. Davis. That was</p> <p>7 Mr. Berg.</p> <p>8 MR. KLINE: Well, I'm calling --</p> <p>9 HEARING EXAMINER ROBESON HANAN: (inaudible)</p> <p>10 Doctor Kosary.</p> <p>11 MR. KLINE: Okay. Well, I'm calling a rebuttal</p> <p>12 witness --</p> <p>13 (Crosstalk)</p> <p>14 MR. KLINE: Pardon me?</p> <p>15 HEARING EXAMINER ROBESON HANAN: As a land</p> <p>16 planner.</p> <p>17 MR. KLINE: Right. Right. Well, here's what I</p> <p>18 want to -- I believe that the --</p> <p>19 HEARING EXAMINER ROBESON HANAN: But proffer what</p> <p>20 you want to say.</p> <p>21 MR. KLINE: Are you asking me to proffer it</p> <p>22 again? Is that what you said?</p> <p>23 HEARING EXAMINER ROBESON HANAN: Yeah.</p> <p>24 MR. KLINE: Yeah, sure. The proper would be</p> <p>25 this. My -- the testimony of the record says that there is</p>
<p>130</p> <p>1 something related to the master plan. But I wanted Mr.</p> <p>2 Wolford to basically explain what would be the benefits of</p> <p>3 being able to build a storm drain system. What would happen</p> <p>4 from a massive planning point of view?</p> <p>5 HEARING EXAMINER ROBESON HANAN: I don't even</p> <p>6 understand that.</p> <p>7 MR. CHEN: Yeah (inaudible) sense.</p> <p>8 MR. KLINE: Okay.</p> <p>9 HEARING EXAMINER ROBESON HANAN: I mean, what --</p> <p>10 whether you -- I mean, it would be -- I can think of</p> <p>11 benefits, but I don't know what that has to do with the</p> <p>12 master plan.</p> <p>13 MR. CHEN: That's my point.</p> <p>14 MR. KLINE: Okay. What I mean, I will either</p> <p>15 proffer it or I will get to it. However you want to do it.</p> <p>16 HEARING EXAMINER ROBESON HANAN: Well, let's get</p> <p>17 to -- or let's just go forward.</p> <p>18 MR. KLINE: Okay. Okay. Mr. Wolford, is there</p> <p>19 an environmental, a deleterious environmental impact at the</p> <p>20 outfall where it basically water is pouring out an insight</p> <p>21 into the parkland and creating environmental problems?</p> <p>22 MR. CHEN: Objection. This man has not been</p> <p>23 presented, was not revealed as an environmental expert. He</p> <p>24 is a land planner.</p> <p>25 HEARING EXAMINER ROBESON HANAN: I agree with</p>	<p>132</p> <p>1 an adverse environmental condition created by the existing</p> <p>2 storm drain system.</p> <p>3 HEARING EXAMINER ROBESON HANAN: And?</p> <p>4 MR. KLINE: Allowing the applicant to construct,</p> <p>5 basically approving the conditional use that would allow the</p> <p>6 system to be constructed would eliminate that adverse</p> <p>7 environmental situation. The upper rock Creek master plan</p> <p>8 that we are so much about is predicated on trying to improve</p> <p>9 the environmental setting of the situation. I thought what</p> <p>10 we were being told before is that the county is not going to</p> <p>11 go out and fix it. So for private developers doing that,</p> <p>12 then that is something that is effectuating the goals of the</p> <p>13 master plan. And I just was going to have Mr. Wolford</p> <p>14 basically explain how he thought that was basically</p> <p>15 satisfied the requirements of the master plan for trying to</p> <p>16 improve the environmental situation.</p> <p>17 HEARING EXAMINER ROBESON HANAN: Well, what you</p> <p>18 can say is, if it doesn't prove that there is testimony, but</p> <p>19 is not Mr. Wolford's testimony and is not Mr. Davis's</p> <p>20 testimony. You can certainly ask him if there is -- if this</p> <p>21 fixes erosion and that kind of stuff, does the capital</p> <p>22 improvement comply with the master -- with whatever you want</p> <p>23 to call it, the (inaudible).</p> <p>24 MR. KLINE: Okay. All right. And I'm glad to do</p> <p>25 that but let me just say you used a phrase that suggests to</p>

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<p>133</p> <p>1 me that there is still a misunderstanding about what the 2 program -- because there is no capital improvement program. 3 That would be -- 4 HEARING EXAMINER ROBESON HANAN: (inaudible). 5 MR. KLINE: Okay, thank you. Okay, great. Mr. 6 Wolford, just so that your following comments have some 7 credibility, would you please explain your background in 8 terms of knowledge of the environment? 9 MR. WOLFORD: I -- 10 HEARING EXAMINER ROBESON HANAN: Wait a minute. 11 Wait a minute. I am not going here. 12 MR. KLINE: Okay. Okay. I thought you -- 13 HEARING EXAMINER ROBESON HANAN: (inaudible). 14 MR. KLINE: I thought I heard you say, ask him, 15 does this improve it. I thought you would want to know why 16 he thinks it would improve it. 17 HEARING EXAMINER ROBESON HANAN: Right. Well, 18 just assumed that it would resolve environmental issues 19 based on the testimony, hypothetically based on the 20 testimony thus far, assuming it resolved environmental 21 issues, would it comply with the master plan. 22 MR. KLINE: Mr. Wolford, would you explain why 23 you believe construction of a new storm drain system would 24 eliminate an environmental problem that exists? 25 MR. CHEN: (inaudible) my objection will abide by</p>	<p>135</p> <p>1 I will. Oh. Do you have a page number before I share it, 2 Mr. Kline? 3 MR. KLINE: I'm sorry. It would be page 3, 4 figure 2. 5 HEARING EXAMINER ROBESON HANAN: Okay. I'm 6 sorry. For some reason it's not -- well, that's not what I 7 want either. If you can, hold on one second. I don't know 8 why it's not coming up. I may have to close Google. Okay. 9 There we go. Now you should be seen it. 10 MR. KLINE: Thank you. Mr. Wolford, you've heard 11 the testimony from Mr. Davis about the pros and cons of the 12 area outlined in red called the surrounding neighborhood. 13 From -- as a land planner, what are your comments with 14 regard to whether that's a valid surrounding neighborhood 15 for purposes of this application? 16 MR. WOLFORD: This is the surrounding 17 neighborhood that was determined by the staff at the 18 Maryland national capital of park and planning commission. 19 And I -- this varies from what we had in the statement of 20 justification. I was a little broader than this. But after 21 reviewing what they had determined that what they felt was 22 the neighborhood for the project, I agree that this is it 23 and that the red line represented on this exhibit is what it 24 needs to be. 25 MR. KLINE: And you understood Mr. Davis is</p>
<p>134</p> <p>1 the hearing examiner's ruling. 2 HEARING EXAMINER ROBESON HANAN: Okay. At this 3 point I'm going to let it in and give it the weight it 4 deserves. But I will tell you I don't like hearing of new 5 expertise on rebuttal. (inaudible) environmental expert. 6 If you want to ask him hypothetically if this project 7 resolves some of the existing environmental issues that 8 comply with the master plan, and I bet you he says yes. Mr. 9 Wolford, do you say yes to that? 10 MR. WOLFORD: Yes, I do. 11 HEARING EXAMINER ROBESON HANAN: All right. 12 MR. KLINE: And keeping it in the land-use 13 planning ground then, please explain why it addresses the 14 goals of the upper rock Creek master plan. 15 MR. WOLFORD: Because one of the main goals of 16 the upper rock Creek master plan is to maintain high -- 17 maintain existing high-quality and manage the impacts of 18 human activity on the planning area and the natural 19 resources. 20 MR. KLINE: Thank you. Give me one second, 21 please. 22 MR. WOLFORD: Yep. 23 MR. KLINE: Mdm. hearing examiner, could you call 24 up Exhibit 106, which is the staff report? 25 HEARING EXAMINER ROBESON HANAN: Yes, I'm sorry.</p>	<p>136</p> <p>1 questioning about whether that was valid as it particularly 2 related to the land area west of Redland Road? 3 MR. WOLFORD: Yes, I did. But I think that area 4 needs to be included in the neighborhood for one or two 5 factors. The first is that immediately to the upper part of 6 the page or north of this neighborhood is the intercounty 7 connector, which is an interstate freeway type 8 classification Road, which I think increases and impacts the 9 area of the neighborhood. On the upper right left and 10 corner is Mid-County Highway, which also impacts it and 11 creates a need for it to be on the west side of Redland 12 Road. And then in the lower left-hand corner of this 13 exhibit is the Metro station which we all know has huge 14 impacts on surrounding communities, especially one like this 15 that's within walking distance of the Shady Grove Metro 16 station. So I think the red line on here is well supported 17 by the neighborhood itself and those additional outside the 18 neighborhood factors. 19 MR. KLINE: Thank you. Would you characterize 20 the area -- 21 HEARING EXAMINER ROBESON HANAN: Well, but just a 22 second. The test for the neighborhood is not the influence 23 of outside factors on the neighborhood, is it? 24 MR. WOLFORD: I think in the case where there is 25 a Metro station within walking distance to the side, I think</p>

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<p>137</p> <p>1 that that has an influence on what the neighborhood is. And</p> <p>2 that's why I think the neighborhood on the east side of</p> <p>3 Redland Road needs to be included in the neighborhood for</p> <p>4 this property.</p> <p>5 HEARING EXAMINER ROBESON HANAN: All right.</p> <p>6 MR. KLINE: Mr. Wolford, you said on the east</p> <p>7 side of Redland Road.</p> <p>8 MR. WOLFORD: West side, I'm sorry.</p> <p>9 MR. KLINE: Thank you.</p> <p>10 HEARING EXAMINER ROBESON HANAN: We are all</p> <p>11 getting east, west, north, and south -- it started with the</p> <p>12 orientation of the CUP. Anyway, go ahead.</p> <p>13 MR. WOLFORD: This goes back over year, doesn't</p> <p>14 it?</p> <p>15 HEARING EXAMINER ROBESON HANAN: Yes.</p> <p>16 MR. WOLFORD: Sorry?</p> <p>17 HEARING EXAMINER ROBESON HANAN: Go ahead.</p> <p>18 MR. KLINE: Mr. Wolford, would you characterize</p> <p>19 the area outlined in red as being a low-density large lot</p> <p>20 area?</p> <p>21 MR. WOLFORD: No, I would not. And when I was</p> <p>22 reported -- so I did quite a bit of additional research.</p> <p>23 And I looked at the neighborhood north of Needwood Road and</p> <p>24 east of Redwood Road. And that's a development that was</p> <p>25 subdivided and recorded in 1964 1965. To have to assume</p>	<p>139</p> <p>1 the south --</p> <p>2 HEARING EXAMINER ROBESON HANAN: Excuse me.</p> <p>3 MR. WOLFORD: Yes.</p> <p>4 HEARING EXAMINER ROBESON HANAN: Are you talking</p> <p>5 about the -- I'm sorry to interrupt.</p> <p>6 MR. WOLFORD: Yes.</p> <p>7 HEARING EXAMINER ROBESON HANAN: Are you talking</p> <p>8 about the REI south of Needwood?</p> <p>9 MR. WOLFORD: Yes. So the --</p> <p>10 (Crosstalk)</p> <p>11 MR. WOLFORD: So the first group is to the right.</p> <p>12 And if you want, I will help you get your cursor there if</p> <p>13 you want to see what I'm talking about. It's -- no, it's</p> <p>14 inside that box or that loop road that goes around there.</p> <p>15 Yes, that. All those lots. And it's about 62 of them were</p> <p>16 recorded in 1983 and 1984. And those, even though they are</p> <p>17 in the REI zone, they are in the 20, 21,000 to 25,000 square</p> <p>18 feet range, which I would not consider as low-density, large</p> <p>19 lot. And then Madam Examiner, I'm -- the last subdivision I</p> <p>20 looked at --</p> <p>21 HEARING EXAMINER ROBESON HANAN: Wait.</p> <p>22 MR. WOLFORD: Yes.</p> <p>23 HEARING EXAMINER ROBESON HANAN: Just a second.</p> <p>24 I need to break for five minutes, okay?</p> <p>25 MR. WOLFORD: Sounds great.</p>
<p>138</p> <p>1 that it was constructed soon after that. In that</p> <p>2 neighborhood there are 302 recorded lots. And it's in the</p> <p>3 R-200 zone, single-family detached. And all those lots that</p> <p>4 I looked at in there, the square footage for them is all</p> <p>5 well below 20,000 square feet and there is a substantial</p> <p>6 number of lots in there. The straight, square, or</p> <p>7 rectangular lots on the roads, not at the end of the cul-de-</p> <p>8 sacs, were the (inaudible) in the 11,000 to 12,000 square</p> <p>9 feet range. So I don't think the R-200 zoned property and</p> <p>10 that 302 recorded lots north of Needwood Road would classify</p> <p>11 as a low-density, large lot, single-family detached</p> <p>12 neighborhood. Then Jody, the other thing I did, was I</p> <p>13 looked at the lots that are immediately east and west of the</p> <p>14 property south of Needwood Road. And I did the same</p> <p>15 exercise with them. So there is to ages to that</p> <p>16 neighborhood. There is the age of the right or the east,</p> <p>17 and those -- that's the Deer Lane Road and the Deer Lake</p> <p>18 Lane section. That was subdivided and developed in 1983 and</p> <p>19 1984. And those lots are mostly in the low 20,000 square</p> <p>20 feet range. There are a few at the end of cul-de-sacs or on</p> <p>21 outward signs of (inaudible) where the square footage goes</p> <p>22 larger. But there again, they are in the 20 to 25,000</p> <p>23 square feet range and I don't think that's -- would be</p> <p>24 considered a low-density, large lot subdivision. And then</p> <p>25 the last group that I looked at is grouped as directly to</p>	<p>140</p> <p>1 HEARING EXAMINER ROBESON HANAN: Okay, five</p> <p>2 minutes.</p> <p>3 (Off the record)</p> <p>4 (Back on the record)</p> <p>5 HEARING EXAMINER ROBESON HANAN: Now we were</p> <p>6 talking about --</p> <p>7 MR. WOLFORD: The neighborhood. And yet the</p> <p>8 exhibit up of the neighborhood.</p> <p>9 HEARING EXAMINER ROBESON HANAN: And I'm going to</p> <p>10 get it up again.</p> <p>11 MR. WOLFORD: Thank you.</p> <p>12 HEARING EXAMINER ROBESON HANAN: There you go. I</p> <p>13 do apologize for interrupting your flow.</p> <p>14 MR. WOLFORD: No, that's okay.</p> <p>15 HEARING EXAMINER ROBESON HANAN: So (inaudible).</p> <p>16 MR. WOLFORD: I have five kids. I'm used to lots</p> <p>17 of interruptions.</p> <p>18 (Crosstalk)</p> <p>19 MR. WOLFORD: The REI neighborhood south of</p> <p>20 Needwood Road is really -- was really primarily -- yes, that</p> <p>21 part was developed and is pretty much 21,000 25,000 square</p> <p>22 feet lots. So I don't think that's characterized as large</p> <p>23 lot single. And then the other portion is the loop in the</p> <p>24 two -- the three cul-de-sac (inaudible) of the development</p> <p>25 immediately south of the subject site. Yeah, that's Deer</p>

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<p style="text-align: right;">141</p> <p>1 Park Court, Carnegie Avenue, and (inaudible) Terrace. Those 2 were done -- there's 28 lots in there. Those were recorded 3 in 1988. And most of those lots are -- again, they are in 4 the 20 to 30,000 square foot range except the larger pie 5 shaped lots at the end of the cul-de-sac, which range of the 6 40,000 square feet. So there are a few in that part of the 7 subdivision that kind of meet the RE1 zone, but most of them 8 are well under 30,000 square feet. So I don't think any of 9 the R-200 existing development north of Needwood Road or any 10 of the RE1 zone south of Needwood Road could be classified 11 as low-density, large lot development. 12 HEARING EXAMINER ROBESON HANAN: Okay. 13 MR. KLINE: Mme. hearing examiner, could you get 14 a page 7 of 106? It should be a couple of pages beyond 15 that. 16 HEARING EXAMINER ROBESON HANAN: Okay. You 17 should be seeing it. 18 MR. KLINE: Yes, ma'am. Thank you. 19 (Crosstalk) 20 MR. KLINE: Mr. Wolford, I did not want to 21 mischaracterize Mr. Davis's candid testimony. So what I 22 would like you to do, is looking at this exhibit and 23 identify the subject property and explain how you fit that's 24 how you feel it fits into the overall scheme of and 25 environmental goals of the upper rock Creek master plan.</p>	<p style="text-align: right;">143</p> <p>1 what are the features of the area that is, I will say 2 driving the recommendation to the plan. 3 MR. WOLFORD: Well, the -- everything above Mont 4 Caster Mill Road is above the rock Creek drainage area. So 5 it has completely different requirements for impervious news 6 and recommendations and preservation of open space than the 7 portion south of Mont Caster Mill, which primarily flows 8 into crabs Brink, which has a less stringent requirement for 9 impervious in this and a possible high recommendation for 10 density and development. 11 MR. KLINE: Thank you. My last question dealing 12 with the master plan talks about the impervious news, which 13 is an issue as it relates to the whole plan. It is pointed 14 out we have one standard for the upper rock Creek north of 15 Mont Caster and none below that. But impervious was an 16 issue dealing with the subject property. In which you 17 explain why the application did not include the play areas 18 as impervious area in the calculations? 19 MR. WOLFORD: Yes. So -- 20 MR. CHEN: Objection. Excuse me, objection. 21 This is beyond -- first of all, it's beyond anything that 22 Mr. Davis testified about. It's beyond the area of 23 expertise of the land planner. The testimony about this 24 particular subject was presented initially in the 25 applicant's case in chief by the engineer with the full</p>
<p style="text-align: right;">142</p> <p>1 MR. WOLFORD: Well, there is -- the site is 2 labeled on this with a red arrow in a site. It's inside an 3 area that is designated as RE1, which I think as I just went 4 through all the lot sizes in the neighborhood, that is 5 really an outlier. And this is an older master plan. There 6 is a substantially much greater density and development to 7 the north and around us that is much smaller. On the west 8 side of Redmond Road, it abuts a property that's in the PD2 9 lane use, which is multifamily and townhouses. And even 10 though the RE1 South riding neighborhood which is behind us, 11 which is (inaudible) Brooke and the continuation of Carnegie 12 are lot sizes that are less than 40,000 square feet. 13 MR. KLINE: Mr. Davis was -- again, I -- I don't 14 want to mischaracterize (inaudible) because as I say, he was 15 very candid. But essentially, one of the distinguishing 16 factors would you say of the subject property relative to 17 the area of primary focus of the master plan, meeting with 18 the Mont Caster Mill Road? 19 MR. WOLFORD: Could you repeat that question, Mr. 20 Klein? 21 MR. KLINE: Yeah, the master plan says that the 22 primary land use recommendations for the plant object the 23 proper -- a focus on the area north of Mont Caster Mill 24 Road. And I was going to ask you to try and basically point 25 out the distinguishing factors between this property and</p>	<p style="text-align: right;">144</p> <p>1 explanation as to why it was -- as it was calculated. And 2 there is -- that the active respondent to the disparity 3 between what they were calling and what the staff was 4 calculating as an impervious area. And this witness is 5 beyond his area. 6 HEARING EXAMINER ROBESON HANAN: Well, I remember 7 already in the testimony there is an explanation as to why. 8 And is my recollection that the explanation is because it is 9 somewhat pervious but doesn't train as quickly. And so the 10 state of Maryland doesn't count it as pervious area. Am I 11 recollecting that correctly? 12 MR. KLINE: Well, your -- first of all, your 13 recollection is better than mine because I don't remember 14 that level of testimony at all. 15 HEARING EXAMINER ROBESON HANAN: I do. 16 MR. KLINE: Okay. But Mr. Wolford would remember 17 better than I would because he would have been monitoring it 18 since Mr. (inaudible) would have been the source of that. 19 And that's -- 20 HEARING EXAMINER ROBESON HANAN: Well, let me ask 21 you something. Are you trying to say that the playground 22 shouldn't be calculated as pervious area? Is that what you 23 are trying to say? 24 MR. KLINE: Mr. Wolford is prepared to explain 25 why parking planning did not require us to include that area</p>

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<p>145</p> <p>1 as an impervious area. And he was -- and Mr. Wolford is 2 intended to be a rebuttal witness to all of the witnesses 3 before, not just Mr. Davis, who did talk about it. But it 4 goes back to Mr. Reid we are trying to rebut as well. 5 Marie's, I'm sorry. So yes, he has a very -- 6 HEARING EXAMINER ROBESON HANAN: (inaudible). 7 MR. KLINE: Sorry. I would like to proffer -- 8 HEARING EXAMINER ROBESON HANAN: I will let him 9 go into -- I'm going to let him go into it. It's -- but -- 10 well, go ahead. 11 MR. KLINE: Mr. Wolford, would -- 12 HEARING EXAMINER ROBESON HANAN: (inaudible). 13 MR. KLINE: Mr. Wolford, would you explain why 14 the applicant and parking planning staff did not include the 15 play areas in the -- that the impervious in this area 16 calculation? 17 MR. WOLFORD: Yes, it's a matter of the nature of 18 the product that is used in the services that are placed in 19 the play area. There is a decent amount of the play area, 20 which is just gravel averse subgrade, which is where all the 21 mechanical units are contained. That should be pervious 22 because there is no pavement there. There is a small amount 23 of walkway that comes round that is impervious. There will 24 be natural grass areas inside the play area, which are 25 pervious. And then the way that the artificial surface is</p>	<p>147</p> <p>1 MR. WOLFORD: Well, we designed the first 2 pervious pavement parking lot in Montgomery County. It's 3 550 cars at the national Cancer Institute at the Johns 4 Hopkins campus. And that exact science that was used to 5 create the concrete, which in this case is the synthetic 6 grass surface and the rubber mat area, passes water through 7 into a groundwater recharge storage facility, which is clean 8 gravel. So it's -- that's what we done in that technology 9 which is repeated everywhere. It's even used on the eight- 10 foot side trail on our side of Needwood road or the south 11 side of Needwood Road. And so this is the same size. And I 12 apologize for not having attended or heard all of the 13 previous testimony. I'm just going by what I know is the 14 surface material in the specifications for what's used. So 15 there is natural grass out there. There is this particular 16 material out there and there is gravel under the air 17 condenser (inaudible) all of which are pervious materials. 18 So there -- that's possibly why there is a difference in 19 what was in the staff report and what was then put into the 20 record by the opponents as -- and I've heard numbers up to 21 47 percent. And then there was justification around that 22 why that was not a percentage of impervious this that was 23 conducive to be compatible with the neighborhood. I think 24 that's where I was headed. 25 MR. KLINE: With the approval by the County of a</p>
<p>146</p> <p>1 constructed under the play area, which is to keep the mud 2 down and keep the children say, if a synthetic turf that has 3 a (inaudible) polypropylene backing on it that is impervious 4 over top of a one or 2 inch layer of what's called poly 5 green padding, which is a proprietary product which is made 6 up of larger pieces of rubber that are -- and found that are 7 put together that are also pervious. And then is placed 8 over a minimum 6 inch clean gravel layer over the subgrade. 9 So -- and all those products are made and designed to 10 facilitate and promote the vertical movement of water 11 through them to be stored in the gravel layer under the play 12 area, which then leads to infiltration, groundwater 13 recharge, and the cooling of the water before it gets 14 released in the storm water management. 15 HEARING EXAMINER ROBESON HANAN: I'm sorry to 16 interrupt. I remember your witness saying -- and I don't 17 remember who it was saying that the state of Maryland 18 calculated it as impervious, counted it as impervious. So 19 now you are saying is not impervious? 20 MR. WOLFORD: I can't -- I did not attend all of 21 the testimony. I can't remember that. 22 HEARING EXAMINER ROBESON HANAN: (inaudible). 23 MR. KLINE: While Mr. Wolford, would you explain 24 why you seem to know so much about it and why you understand 25 that to be the case?</p>	<p>148</p> <p>1 concept storm water management plan showing what we have 2 show before, would that tell us anything about what the 3 county would accept -- 4 (Crosstalk) 5 MR. CHEN: Objection. That's speculative. It's 6 purely speculative. 7 HEARING EXAMINER ROBESON HANAN: I'm going to 8 sustain it. I -- do you have an approved storm water -- I 9 think you do have an approved -- do you have an approved to 10 storm water concept plan? 11 MR. WOLFORD: Yes, we do, approved by the County 12 of the Department of permitting services. 13 HEARING EXAMINER ROBESON HANAN: You know -- and 14 what does that say? Does that consider imperviousness? 15 MR. WOLFORD: It's a concept scale, so it's done 16 on a relative grand scale to show that we have the capacity 17 of room and location on the property to handle the rough 18 calculations for imperviousness. 19 HEARING EXAMINER ROBESON HANAN: And so is the 20 playground included in that? 21 MR. WOLFORD: Yes. 22 HEARING EXAMINER ROBESON HANAN: (inaudible). 23 MR. WOLFORD: Some of the playground is in some 24 of it is impervious and some of it is pervious in that 25 calculation.</p>

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<p>149</p> <p>1 HEARING EXAMINER ROBESON HANAN: And then how 2 much is impervious and that calculation? 3 MR. WOLFORD: I don't have the calculations in 4 front of me exactly at this moment. 5 HEARING EXAMINER ROBESON HANAN: I really think 6 your engineer testified -- well, okay. So you're saying 7 some is in some isn't, but we don't know how much. 8 MR. WOLFORD: Correct. We will know as we move 9 through the design. And whatever is pervious will be 10 counted as pervious and whatever is impervious will be 11 counted as impervious. And that's in the technical design 12 at the next stage of the process. 13 HEARING EXAMINER ROBESON HANAN: So what did 14 planning take into account? 15 MR. WOLFORD: I think they did the same thing 16 that we did, which account some of it is lawn, some of it 17 as -- 18 MR. CHEN: Objection. I think? 19 HEARING EXAMINER ROBESON HANAN: Do you know? 20 MR. WOLFORD: We have a number for the 21 imperviousness of this site and it matches the same number 22 that is in the staff report. I don't know how they got 23 their number. 24 HEARING EXAMINER ROBESON HANAN: Okay. 25 MR. KLINE: Mdm. hearing examiner, could you</p>	<p>151</p> <p>1 testimony presented by Mr. Wolford, the engineer, and your 2 applicant that the program was driving the size of the 3 building and the location. We've accepted that. We haven't 4 challenged that. 5 MR. KLINE: Well, that's my point. You can't ask 6 the question the way you did and basically address the whole 7 thing. I want Mr. Wolford to explain why -- all of the 8 factors that work with this site. 9 MR. CHEN: He can't. I object to repeating 10 direct testimony from the same witness. 11 MR. KLINE: Yeah, and that's why I have rebuttal 12 witnesses to go back and -- 13 MR. CHEN: No, he already testified to this. 14 MR. KLINE: Yeah, but that's why you call a 15 rebuttal witness because you had witnesses who testified 16 after and I want to try and clarify. 17 MR. CHEN: I had no witnesses that disputed the 18 testimony presented by Mr. Walford, the engineer and your 19 Applicant that the program was driving the size of the 20 building and the location. We've accepted that. We've not 21 challenged that. 22 MR. KLINE: Well, that's my point is there -- you 23 can't ask the question the way you did and basically address 24 the whole thing. I want Mr. Walford to explain why -- all 25 of the factors that work with this site.</p>
<p>150</p> <p>1 please put up CUP4 and/or 5, which I think is Exhibit 199-D 2 or E? 3 HEARING EXAMINER ROBESON HANAN: This is 199-D. 4 Do you need to see the label? 5 MR. KLINE: Not necessarily, but I do need to see 6 the picture. 7 HEARING EXAMINER ROBESON HANAN: Oh. Let me get 8 it larger so you can see better. 9 MR. KLINE: That would be fine. Mr. Wolford, you 10 said -- I'm sorry. You heard the question asked a few 11 minutes ago of Mr. Jolley, was the layout of the property 12 driven by the primrose program. And I didn't object, but I 13 would like you to explain the nuances of why the layout is 14 what it is. 15 MR. CHEN: Objection. This is -- we've -- the 16 engineer testified about this. This is -- heat -- yes, he 17 already testified about this once before. 18 MR. KLINE: Yeah, and that's why have rebuttal 19 witnesses to go back -- 20 MR. CHEN: Now, this is -- he already testified 21 to this. 22 MR. KLINE: Yeah, but that's why you call a 23 rebuttal witness, because you had witnesses that testified 24 after and I want to try to clarify. 25 MR. CHEN: I had no witnesses that disputed the</p>	<p>152</p> <p>1 MR. CHEN: He can't -- I object to repeating 2 direct testimony from the same witness. 3 HEARING EXAMINER ROBESON HANAN: (inaudible) 4 there are two, because I remember in parsing through this in 5 detail both through Mr. Entriago and he can -- okay -- I'm 6 going to let him summarize it. 7 Go ahead. What drives the site layout? 8 MR. WOLFORD: Primarily the shape of the lot. 9 The lot is roughly 600 feet deep and a little over 200 feet 10 wide, so it is -- it's elongated and when you -- and you 11 have two public right-of-ways adjacent to this which 12 establish the front yard setback off of Carnegie and the 13 front yard setback off of Needwood Road. When you put that 14 together with the initiatives that Park and Planning has to 15 pull the buildings to the front of the site and put the 16 driveway down the side of the site and put the rear -- the 17 parking in the rear, you end up with this configuration. 18 We had -- we've probably done 18 or 20 -- 19 HEARING EXAMINER ROBESON HANAN: No see -- 20 MR. WOLFORD: Yes ma'am. 21 HEARING EXAMINER ROBESON HANAN: We've been 22 through all the iterations. 23 MR. WOLFORD: Okay. 24 HEARING EXAMINER ROBESON HANAN: I have typed 25 through six days of hearings of the iterations. Now,</p>

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<p>153</p> <p>1 there's lots swings you can put on what drives this site to 2 zoning. And in fact, there's many factors that drive it. 3 So is it -- so you're saying it's the long narrow lot and 4 what else are you saying? 5 MR. WOLFORD: The requirement -- 6 HEARING EXAMINER ROBESON HANAN: Requesting the 7 design requirements and that fact that it's two right-of- 8 way -- two front yards. 9 MR. WOLFORD: Correct. 10 HEARING EXAMINER ROBESON HANAN: Okay. We did go 11 through -- I mean I typed it -- 12 MR. KLINE: And you're right. Maybe I don't need 13 to go through that if you picked the nuances. But earlier I 14 felt that the question asked of Mr. Jolley did not pick up 15 those nuances and if the Hearing Examiner is familiar with 16 them that's fine. 17 HEARING EXAMINER ROBESON HANAN: Well, I -- 18 there's about -- there's several different theories on 19 what's driving the site design. And I haven't made a 20 decision, but I do know them all. 21 MR. KLINE: Then I think we ought to wrap it up. 22 I'll finish my questions with Mr. Wolford. 23 HEARING EXAMINER ROBESON HANAN: Okay. Go ahead. 24 MR. KLINE: I'm sorry. I am finished with Mr. 25 Wolford.</p>	<p>155</p> <p>1 testified about contradicts Mr. Reese; isn't that right? 2 MR. WOLFORD: Correct. 3 MR. CHEN: Okay. So, as we sit here today as far 4 as Mr. Reese is concerned, you do not have any information 5 to contradict him? 6 MR. WOLFORD: I don't have knowledge to 7 contradict him. 8 MR. CHEN: Yeah, because you want present, and 9 you haven't read the transcript? 10 MR. WOLFORD: Correct. We already established 11 that. 12 MR. CHEN: And he testified a year ago, right? 13 MR. WOLFORD: Yes. 14 MR. CHEN: And in the ensuing 12 months you did 15 not read a transcript of his testimony? 16 MR. WOLFORD: No, I did not. 17 MR. CHEN: Okay. You testified that the area 18 north of Muncastor is the primary focus of the Rock Creek 19 Master Plan; am I correct in that, sir? 20 MR. WOLFORD: No. 21 MR. CHEN: Okay. What is -- how would you -- 22 MR. WOLFORD: Jody's question was how does what's 23 north of Needwood Road in the Upper Rock Creek Master Plan 24 differ from what is south of Needwood Road -- or of 25 Muncastor Mill Road.</p>
<p>154</p> <p>1 HEARING EXAMINER ROBESON HANAN: Okay. And that's 2 your last witness? 3 MR. KLINE: That is correct. 4 HEARING EXAMINER ROBESON HANAN: Okay. Oh yeah. 5 Mr. Chen, you get cross. 6 MR. CHEN: Thank you. 7 Mr. Wolford, were you present when Mr. Reese 8 testified? 9 MR. WOLFORD: No, I was not. 10 MR. CHEN: Have you read his testimony? 11 MR. WOLFORD: No, I have not. 12 MR. CHEN: Do you have any disagreement with 13 anything that Mr. Reese testified about? 14 MR. WOLFORD: I'm not sure because I don't know 15 what he testified to. 16 MR. CHEN: Okay. So you cannot challenge anything 17 that Mr. Reese testified about? 18 MR. WOLFORD: Now, if you point out something 19 specific that's the point that he made -- 20 MR. CHEN: No, sir, this is cross-examination. As 21 it sits today, you cannot dispute anything that Mr. Reese 22 testified about? 23 MR. WOLFORD: Other than the testimony I've 24 provided, you're correct. 25 MR. CHEN: But you don't know if what you</p>	<p>156</p> <p>1 MR. CHEN: Okay. And where is that difference 2 articulated in the plan? 3 MR. WOLFORD: If you want to go on a break for 4 about 15 minutes, I'll find it and pointed exactly out to 5 you. 6 MR. CHEN: Yeah, let's do that. 7 MR. WOLFORD: Okay. That would be great. 8 HEARING EXAMINER ROBESON HANAN: We have it -- 9 I'll get the plan up, when we get back on you can find the 10 page I can go to the page. 11 MR. WOLFORD: That sounds fantastic. Thank you. 12 HEARING EXAMINER ROBESON HANAN: Yes, going off. 13 Let's go off the record for five minutes. We'll come back 14 at 3:10. 15 (Off the record, 3:05 p.m., resuming at 3:15 16 p.m.) 17 MR. CHEN: Okay. We are back to Mr. Wolford of 18 finding a reference in the master plan that the state said 19 that the area south of Muncastor will be treated less 20 stringently than the area north. Less stringent is Mr. 21 Wolford's words. 22 MR. WOLFORD: Yeah, I think the best place to go 23 for that is -- I mean the environmental section, the 24 environmental resource portion plan starts on page 39. But I 25 think, not knowing the next couple of questions, Mr. Chen, I</p>

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<p>157</p> <p>1 think page 49, watersheds and stream valleys is probably the 2 reference I was making. 3 MR. CHEN: Okay. Let's go to page 49 then, sir. 4 Madam Examiner, can you pop page 49? 5 HEARING EXAMINER ROBESON HANAN: Okay. I'm 6 there. 7 MR. CHEN: Thank you. 8 HEARING EXAMINER ROBESON HANAN: Are we on the 9 right place here? 10 MR. WOLFORD: Yeah, that's perfect. So the 11 second paragraph says Rock Creek and North Branch are use 3 12 streams above Muncaster Mill Road and below Muncaster Mill 13 Road are use number 4 streams. And then when you flip to 14 the next page, to the map you can see that the -- what's 15 shown as blue on your print is where the sites are located 16 which is just a watershed protection area regular level. 17 And the pink area below that which is the remainder of the 18 Crabbs Branch is just in a water management area which means 19 that it's already substantially developed and they're just 20 managing the water in the watershed. And the rest of it, 21 which is everything to the right and above Muncaster Mill is 22 in watershed restoration and other classes of protection -- 23 special protection area, watershed protection. 24 MR. CHEN: Okay. I'm looking, sir per your 25 testimony where you said south -- the southern area is less</p>	<p>159</p> <p>1 Go ahead, sir. I'm sorry. 2 MR. WOLFORD: I'm referring to the text on page 3 49, and the map on page 50. 4 MR. CHEN: Okay. All right. Okay. 5 MR. WOLFORD: So it says, Rock Creek and North 6 Branch are use 3 streams above Muncaster Mill Road. 7 MR. CHEN: Yeah. 8 MR. WOLFORD: And below Muncaster Mill Road are 9 use 4 streams. 10 MR. CHEN: So based upon that sentence here 11 saying that the master plan is less stringent in the area 12 south of Needham Road for development than the area north? 13 MR. WOLFORD: In a combination with all the text 14 on the environment that starts on page 39 this -- in the 15 five minutes I had encapsulates pretty much what the master 16 plan is saying is that because of the classification of the 17 streams which determines their ability to support habitat 18 there is a difference in what happens in one portion of Rock 19 Creek from what happens in another portion of Crabbs Branch. 20 MR. CHEN: Okay. Okay, Mr. Davis testified on 21 Tuesday, correct? And Friday, Friday and Tuesday. Were 22 you, I guess, online to hear that testimony, sir? 23 MR. WOLFORD: Yes. 24 MR. CHEN: And as I recollect, during the course 25 of his testimony Mr. Davis took the hearing examiner through</p>
<p>158</p> <p>1 stringent than the northern area. Those are your words. 2 MR. WOLFORD: Yes. Was that a question? 3 MR. CHEN: Where does the plan use those words, 4 sir? 5 MR. WOLFORD: It -- 6 MR. CHEN: Even, if I may, by looking at page 49 7 and page 50 the area that were dealing with where the 8 subject property is located, admittedly, is not in the 9 watershed preservation area and Mr. Davis was a very plain 10 about that, but even your own map that you pointed us to has 11 this area in a watershed protection area, regular level. 12 MR. WOLFORD: Jody's question was, is there a 13 difference between above Muncaster Mill Road and below. I 14 was taking that in general terms. What I should have stated 15 was in the extreme lower right corner of the planning area, 16 which is shown on map 49, which is the Crabbs Branch 17 watershed it is the urban watershed management and watershed 18 protection -- 19 MR. CHEN: I -- 20 MR. WOLFORD: -- which is different from the rest 21 of the drainage area. 22 MR. CHEN: Excuse me, sir. I don't see map 49. 23 She 24 MR. WOLFORD: The map on page 50. 25 MR. CHEN: Okay. Okay year on page 50, that map.</p>	<p>160</p> <p>1 a number of pages in the master plan. I think, probably 10 2 or 12 specific parts of the master plan, to support his 3 relative to compliance with that master plan, going right to 4 this very point that we're talking about, in large part. 5 Did you hear that testimony, sir? 6 MR. WOLFORD: Yes, I did. 7 MR. CHEN: Okay. And have you gone to the 8 sections of the plan that Mr. Davis referenced during his 9 testimony? 10 MR. WOLFORD: I followed along with him in the 11 master plan as he provided his testimony. 12 MR. CHEN: Okay. Where did you disagree with the 13 testimony that he provided? 14 MR. WOLFORD: The only place that I disagree is 15 where I just pointed out, and the fact that we are in a 16 particular area that is different from other parts of the 17 master plan. 18 MR. CHEN: Okay. And he made that -- he also 19 recognized that too, didn't he, sir? 20 MR. WOLFORD: Yes. 21 MR. CHEN: Let me, if I may, sir, go back to your 22 testimony about the surrounding area. You mentioned that 23 the area west of Redland should be included and you 24 understand that that's a different planning area? You do 25 understand that don't you, sir?</p>

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41 (161 to 164)

<p>161</p> <p>1 MR. WOLFORD: Yes.</p> <p>2 MR. CHEN: Okay. Now, you mentioned that there</p> <p>3 were three factors that persuade you that the area west of</p> <p>4 Redland should be included in the surrounding area, do you</p> <p>5 remember that sir?</p> <p>6 MR. WOLFORD: No, I did not say that. I said</p> <p>7 that there are other factors just outside the neighborhood</p> <p>8 that is defined which are major factors that influence this</p> <p>9 particular neighborhood. I agreed with the red outline that</p> <p>10 the staff had for the neighborhood. I agreed that the land</p> <p>11 west of Redland Road should be included in the neighborhood</p> <p>12 then I pointed out that there are several factors</p> <p>13 immediately outside the neighborhood which are major factors</p> <p>14 which influence what happens in the neighborhood.</p> <p>15 MR. CHEN: If you would, sir, why does the area</p> <p>16 west of Redland on that -- within that red outline --</p> <p>17 Mdm. examiner, I apologize. Could you take us to</p> <p>18 that map? I think it's page 7, is it, of the staff report?</p> <p>19 HEARING EXAMINER ROBESON HANAN: I think it's</p> <p>20 three.</p> <p>21 MR. CHEN: Yeah, thank you.</p> <p>22 Sir, can you tell the Examiner why the area west</p> <p>23 of Redland should be included in the surrounding area?</p> <p>24 MR. WOLFORD: Because it's contiguous to this</p> <p>25 particular neighborhood. It is within a very short walk of</p>	<p>163</p> <p>1 HEARING EXAMINER ROBESON HANAN: Okay.</p> <p>2 MR. CHEN: I think we were just on it, EEE, three</p> <p>3 Es.</p> <p>4 HEARING EXAMINER ROBESON HANAN: Okay. I have to</p> <p>5 go -- this is 227-B. Hold on.</p> <p>6 Three Cs?</p> <p>7 MR. CHEN: Es. Es.</p> <p>8 HEARING EXAMINER ROBESON HANAN: I will get this.</p> <p>9 Okay. There we have it.</p> <p>10 MR. CHEN: Could you roll to the next page?</p> <p>11 There's a page with some graphs -- thank you.</p> <p>12 Sir, can you see the exhibit?</p> <p>13 HEARING EXAMINER ROBESON HANAN: I can make it</p> <p>14 larger, just one second.</p> <p>15 MR. WOLFORD: As soon Mr. Chen tells me which</p> <p>16 chart, he wants to be on --</p> <p>17 MR. CHEN: You've got it in front of you right</p> <p>18 now, sir. Can you see it?</p> <p>19 MR. WOLFORD: Which of the two charts? Left-hand</p> <p>20 side, right-hand side?</p> <p>21 HEARING EXAMINER ROBESON HANAN: Here. Let me</p> <p>22 try this.</p> <p>23 MR. CHEN: You know if you can -- I just want him</p> <p>24 to read the highlighted sections.</p> <p>25 Can you read that, sir?</p>
<p>162</p> <p>1 this particular neighborhood, and what happens with the site</p> <p>2 is impacts what happens north of Needwood Road and impacts</p> <p>3 what's west of Redland Road, and vice versa.</p> <p>4 MR. CHEN: Okay. That's your testimony, correct,</p> <p>5 sir?</p> <p>6 MR. WOLFORD: Yes.</p> <p>7 MR. CHEN: Hello?</p> <p>8 MR. WOLFORD: Yeah.</p> <p>9 MR. CHEN: Okay. And you also mentioned several</p> <p>10 little neighborhoods in the outlined, the red outlined area</p> <p>11 that were east of Redland --</p> <p>12 MR. WOLFORD: Correct.</p> <p>13 MR. CHEN: Did you take into account -- can you</p> <p>14 identify the subdivisions that were developed under cluster</p> <p>15 subdivision provisions of the County Code?</p> <p>16 MR. WOLFORD: No. I just looked at the record</p> <p>17 plats to see what the lot sizes were because I wanted to</p> <p>18 find out was this a predominantly large lot -- hold on, I'll</p> <p>19 look up my notes here -- a low density, large lot in the</p> <p>20 neighborhood. And when I looked at the lot size, I</p> <p>21 disagreed that this was a large lot neighborhood.</p> <p>22 MR. CHEN: Okay. Could we go to Exhibit 227,</p> <p>23 document EEE, Madam Examiner?</p> <p>24 HEARING EXAMINER ROBESON HANAN: Three E?</p> <p>25 MR. CHEN: Yes.</p>	<p>164</p> <p>1 MR. WOLFORD: Yes.</p> <p>2 MR. CHEN: Can you read the two highlighted</p> <p>3 sections?</p> <p>4 MR. WOLFORD: Can you tell me what the source of</p> <p>5 this document is?</p> <p>6 MR. CHEN: Yes. Sure. It's the general plan,</p> <p>7 refinement goals and objectives for Montgomery County.</p> <p>8 MR. WOLFORD: Okay.</p> <p>9 MR. KLINE: And Mr. Chen, please note that it</p> <p>10 says draft. I'm not objecting, but it's not the final</p> <p>11 version.</p> <p>12 MR. CHEN: Is there any difference? Mara is</p> <p>13 saying there is no difference. This is off the web right</p> <p>14 now.</p> <p>15 MR. WOLFORD: Madam Examiner, can you -- the part</p> <p>16 that's in the lower left-hand that's highlighted, can you</p> <p>17 enlarge that a little bit for me, please?</p> <p>18 Thank you.</p> <p>19 Mr. Chen, you ready for me to read to you?</p> <p>20 MR. CHEN: Yes, sir.</p> <p>21 MR. WOLFORD: Okay. "Area master plans and</p> <p>22 functional plans since 1969 have further defined the wedge.</p> <p>23 All master plans since 1969 have considered areas zoned for</p> <p>24 lots of 1 and 2 acres as the residential wedge."</p> <p>25 Are you ready for the other one?</p>

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<p>165</p> <p>1 MR. CHEN: Yes, sir.</p> <p>2 MR. WOLFORD: Okay. "The residential wedge is</p> <p>3 now characterized by single family detached houses on lots</p> <p>4 of 1 and 2 acres. Houses on large lots existing before the</p> <p>5 adoption of the general plan, of course, but the location,</p> <p>6 zoning and quantity of such housing has become more clearly</p> <p>7 defined in the intervening period."</p> <p>8 MR. CHEN: Do you have any problems with these</p> <p>9 provisions of the general plan, sir?</p> <p>10 THE WITNESS. No, I don't, but it doesn't</p> <p>11 specifically address what size lots are within the</p> <p>12 neighborhood.</p> <p>13 MR. CHEN: Okay. And can we now go to the staff</p> <p>14 report, Madam Examiner?</p> <p>15 HEARING EXAMINER ROBESON HANAN: Just a second.</p> <p>16 I've run out of space.</p> <p>17 MR. KLINE: That's number 106.</p> <p>18 HEARING EXAMINER ROBESON HANAN: Yeah. I'm</p> <p>19 getting there. Okay. Let me pull it up separately. Okay.</p> <p>20 It should be up.</p> <p>21 MR. CHEN: Thank you. Could you go to page 6,</p> <p>22 please? Thank you.</p> <p>23 Sir, there's a paragraph that starts at the very</p> <p>24 bottom of 6, page 6 of the staff report and continues over</p> <p>25 and concludes at the top of page 8. Intervening on page 7</p>	<p>167</p> <p>1 references, too, correct?</p> <p>2 MR. WOLFORD: Correct.</p> <p>3 MR. CHEN: Okay. Now, are you aware that the</p> <p>4 storm drainage plan that currently exists that you</p> <p>5 referenced early on in your testimony is a public facility?</p> <p>6 Are you aware of that, sir?</p> <p>7 MR. WOLFORD: I didn't get to testify about the</p> <p>8 storm drain system. You said that was Mr. Pease that did</p> <p>9 that.</p> <p>10 MR. CHEN: Excuse me, sir. At the very beginning</p> <p>11 of your testimony Mr. Kline asked you, the ability to</p> <p>12 construct the storm water management system. Do you</p> <p>13 remember that testimony, sir?</p> <p>14 MR. WOLFORD: Yes.</p> <p>15 MR. CHEN: Okay. And my question to you is, are</p> <p>16 you aware that that system is a public facility?</p> <p>17 MR. WOLFORD: Yes. That was privately</p> <p>18 constructed with the development and it is -- and then it's</p> <p>19 in the public right-of-way and turned over to the public.</p> <p>20 MR. CHEN: Excuse me. It's a public facility as</p> <p>21 we sit here today; isn't that right, sir?</p> <p>22 MR. WOLFORD: Correct.</p> <p>23 MR. CHEN: Okay. Is there any agreement between</p> <p>24 Prinrose and Montgomery County that would authorize Prinrose</p> <p>25 to replace a public facility such as this specific one?</p>
<p>166</p> <p>1 there's a figure, but I'm directing you to the text of that</p> <p>2 one paragraph. Could you take a moment and read it out</p> <p>3 loud?</p> <p>4 MR. WOLFORD: The paragraph that starts, "the</p> <p>5 2004 Upper Rock Creek Master Plan"?</p> <p>6 MR. CHEN: Thank you, yes sir.</p> <p>7 MR. WOLFORD: "The 2004 Upper Rock Creek Area</p> <p>8 Master Plan confirms the site for the RE-1 zone. The master</p> <p>9 plan does not provide explicit recommendations for the</p> <p>10 property, and it does not identify specific areas that are</p> <p>11 deemed suitable for the proposed use."</p> <p>12 MR. CHEN: Keep going.</p> <p>13 MR. WOLFORD: And then it skips page 7, and then</p> <p>14 picks back up at the top of page 8. "The master plan also</p> <p>15 recommends keeping the residential wedge areas at a low</p> <p>16 density that is compatible with the existing community. On</p> <p>17 page 12 the plan encourages community design that is</p> <p>18 compatible with adjacent development protects views from</p> <p>19 local roads, offers harmonious road design and maintains</p> <p>20 open space.</p> <p>21 MR. CHEN: Do you agree with that statement in</p> <p>22 the staff report?</p> <p>23 MR. WOLFORD: 100 percent, yes.</p> <p>24 MR. CHEN: Okay. And you also heard Mr. Davis's</p> <p>25 testimony about the parts of the master plan that he</p>	<p>168</p> <p>1 MR. WOLFORD: The replacement and upgrade of that</p> <p>2 public facility in the adjacent development is part of the</p> <p>3 storm water concept approval granted for the project from</p> <p>4 the Department of Public Services, DPS, at Montgomery</p> <p>5 County.</p> <p>6 MR. CHEN: Is there an agreement to authorize the</p> <p>7 replacement of a public facility by a private developer in</p> <p>8 this case?</p> <p>9 MR. WOLFORD: Not yet.</p> <p>10 MR. CHEN: I use --</p> <p>11 MR. WOLFORD: Not yet.</p> <p>12 MR. CHEN: Not yet.</p> <p>13 MR. WOLFORD: But they have seen the plans and</p> <p>14 they agreed to the plans.</p> <p>15 MR. CHEN: I am not disputing that they like what</p> <p>16 the plan or would call for. My only question is it's a</p> <p>17 public facility, correct, sir?</p> <p>18 MR. WOLFORD: Yes.</p> <p>19 MR. CHEN: And that there is no, as we sit here</p> <p>20 today, there is no agreement by which Montgomery County has</p> <p>21 authorized Prinrose to upgrade that public facility?</p> <p>22 MR. WOLFORD: Correct, we are not to that point</p> <p>23 yet.</p> <p>24 MR. CHEN: Okay. And you are aware that the</p> <p>25 Montgomery County zoning ordinance has a requirement for</p>

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<p>169</p> <p>1 compliance with adequate public facilities?</p> <p>2 MR. WOLFORD: Correct.</p> <p>3 MR. CHEN: Okay. Now, Madam Examiner, could we</p> <p>4 go to Exhibit 115-S, document S.1?</p> <p>5 (Exhibit 115-S, document S.1, was introduced.)</p> <p>6 HEARING EXAMINER ROBESON HANAN: Are you seeing</p> <p>7 it yet?</p> <p>8 MR. CHEN: No.</p> <p>9 HEARING EXAMINER ROBESON HANAN: Okay. Can you</p> <p>10 see it now?</p> <p>11 MR. CHEN: Yes, thank you very much.</p> <p>12 Sir, you want to -- have you seen this document</p> <p>13 before today?</p> <p>14 MR. WOLFORD: Probably. But I have not read it</p> <p>15 and refresh my memory on it for quite a bit.</p> <p>16 MR. CHEN: Okay. Why don't you take a minute to</p> <p>17 read it to refresh your recollection?</p> <p>18 MR. WOLFORD: Okay.</p> <p>19 MR. CHEN: Have you read it, sir?</p> <p>20 MR. WOLFORD: Yes.</p> <p>21 MR. CHEN: In this document is from the Counties</p> <p>22 Department of Permitting Services; is that correct?</p> <p>23 MR. WOLFORD: Yes.</p> <p>24 MR. CHEN: And it's May 31, 2019?</p> <p>25 MR. WOLFORD: Correct.</p>	<p>171</p> <p>1 MR. WOLFORD: "The synthetic turf area of the</p> <p>2 site must be considered an impervious surface and not</p> <p>3 permeable."</p> <p>4 MR. CHEN: How does that sentence, sir, match</p> <p>5 with your testimony about the playground areas?</p> <p>6 MR. WOLFORD: At the time that that -- and I</p> <p>7 don't know where in the process the storm water concept</p> <p>8 letter was. I don't know if this is one of the earlier</p> <p>9 reviews or if this is later in the stage, or if this is the</p> <p>10 final approval letter. I don't think it is because it says</p> <p>11 it was denied, or unacceptable at that point in time. So I</p> <p>12 have no idea where this was in the process because I wasn't</p> <p>13 the engineer that did the project or testified about this.</p> <p>14 My point is that at the point that this was done,</p> <p>15 there were details about the play area including the gravel</p> <p>16 area, the natural irrigated turf, and the type of synthetic</p> <p>17 turf that were going to be used that were not known to the</p> <p>18 engineer and were not known to DPS.</p> <p>19 MR. CHEN: Yet so --</p> <p>20 MR. WOLFORD: So that's why they made that</p> <p>21 statement.</p> <p>22 MR. CHEN: Well, okay. Has your client provided</p> <p>23 any update to this statement?</p> <p>24 MR. WOLFORD: It's not appropriate that we would</p> <p>25 do that at this point in time. We have an approved storm</p>
<p>170</p> <p>1 MR. CHEN: And it does address impervious</p> <p>2 surface; isn't that right?</p> <p>3 MR. WOLFORD: Correct.</p> <p>4 MR. CHEN: And can you read the second sentence</p> <p>5 in the paragraph number 1?</p> <p>6 MR. WOLFORD: "A downstream storm drain</p> <p>7 analysis" --</p> <p>8 MR. CHEN: No, it's the second sentence in</p> <p>9 paragraph 1.</p> <p>10 MR. WOLFORD: Oh, I'm sorry.</p> <p>11 MR. CHEN: No problem.</p> <p>12 MR. WOLFORD: "The storm water management concept</p> <p>13 proposes to meet required stormwater management goals via</p> <p>14 three microbio retention facilities." Is that correct?</p> <p>15 MR. CHEN: I apologize, sir. There is a</p> <p>16 paragraph 1. Do you see that in that letter -- is in the</p> <p>17 middle --</p> <p>18 HEARING EXAMINER ROBESON HANAN: Number. Number</p> <p>19 1.</p> <p>20 MR. WOLFORD: Oh. Okay. I thought he meant the</p> <p>21 first paragraph. I'm sorry.</p> <p>22 HEARING EXAMINER ROBESON HANAN: I know. I did</p> <p>23 too.</p> <p>24 MR. CHEN: My fault. Could you read the second</p> <p>25 sentence is there, sir?</p>	<p>172</p> <p>1 water concept which is what is a requirement of the Planning</p> <p>2 Board to go to this stage to ask for approval of conditional</p> <p>3 use. If we are successful here, the next step we would do</p> <p>4 would be to go to technical plans with DPS and then get into</p> <p>5 it with them on the details and specifics of all of the</p> <p>6 types of drainage and underdrain impervious surface,</p> <p>7 impervious surface and groundwater recharge.</p> <p>8 MR. CHEN: But we are, at this point, before the</p> <p>9 Office of Zoning and Administrative Hearings on the</p> <p>10 application for the conditional use; isn't that correct?</p> <p>11 MR. WOLFORD: That's correct. And we have an</p> <p>12 approved storm water concept plan.</p> <p>13 MR. CHEN: And this document, this Exhibit 115-S,</p> <p>14 document S.1 is the latest information that's contained in</p> <p>15 the record on the application?</p> <p>16 MR. WOLFORD: I'd have to take your word for it.</p> <p>17 I know that the storm water concept plan is approved, but</p> <p>18 this doesn't look like an approval letter.</p> <p>19 MR. CHEN: Okay. And now, the storm water</p> <p>20 concept plan, you keep coming back to that. Is that an</p> <p>21 exhibit in this proceeding?</p> <p>22 MR. WOLFORD: I don't know. Mr. Entriago was the</p> <p>23 engineer that testified, and you have an engineer that</p> <p>24 testified, and you had an engineer that had opposition</p> <p>25 testimony to it. You'd have to check with either of them.</p>

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44 (173 to 176)

<p>173</p> <p>1 MR. CHEN: And is that plan, assuming it's in the 2 record, do you know whether that plan addresses impermeable 3 space and the calculation for impermeable space? 4 MR. WOLFORD: I don't think that it does because 5 at the point where that was done, we did not have the 6 specifics of the amount of turf area, gravel area, or the 7 type of material in the subgrade under the play surface 8 area. 9 MR. CHEN: Oh -- 10 MR. WOLFORD: Those are all technical portions of 11 the approval process that come out later in the process. 12 MR. CHEN: Oh, you mean they're inappropriate for 13 consideration by the hearing examiner? 14 MR. WOLFORD: No. What is appropriate for 15 consideration by the hearing examiner is that there is a 16 storm water concept plan approved. And at that point in 17 time, the specifics of the design, detailed design, that 18 come out if we get to the next stage in the process will be 19 dealt with by DPS. 20 MR. CHEN: Are you aware of the provisions in the 21 Upper Rock Creek Master Plan that addresses impermeable 22 space? 23 MR. WOLFORD: I am. 24 MR. CHEN: Okay. And accordingly, you would 25 agree, therefore, that the calculation consideration of</p>	<p>175</p> <p>1 extent that in that conditional use application that if the 2 hearing examiner determined -- let me strike that. 3 The Taiwanese Cultural Center is right down the 4 road from the subject site; isn't that right, sir? It's 5 down at the -- 6 MR. WOLFORD: Yes. 7 MR. CHEN: Okay. 8 MR. WOLFORD: The intersection of Needwood Road 9 and Redland Road, correct. 10 MR. CHEN: Very close, would you agree with that? 11 MR. WOLFORD: Yes. 12 MR. CHEN: Okay. Now, I assume that if the 13 hearing examiner in that case and made a determination that 14 the neighborhood area was a large lot, low density 15 residential area, I assume you would disagree with that 16 conclusion? 17 MR. WOLFORD: I'm not having been involved with 18 the case or read the case, based upon you saying that I 19 would have to disagree with it. 20 MR. CHEN: Okay. I don't have any further 21 questions. 22 HEARING EXAMINER ROBESON HANAN: All right. 23 Redirect, Mr. Kline? 24 MR. KLINE: Mr. Wolford, what is the agreement 25 that was referenced by both you and Mr. Chen that follows</p>
<p>174</p> <p>1 impermeable area is a front for consideration of the hearing 2 examiner in conjunction with compliance with the master 3 plan; isn't that right? 4 MR. WOLFORD: That's correct. 5 MR. CHEN: And in this particular case, again 6 limiting ourselves to the record as it exists today, do we 7 have any information relative to the calculation of 8 impermeable area that is more recent than Exhibit 115-S, 9 document S.1? 10 MR. WOLFORD: You have the testimony and 11 documents that were put into the record by Mr. Entriago, the 12 engineer on the project. 13 MR. CHEN: Okay. Now, if I may just shift back 14 for a moment. Are you aware of a conditional use for an 15 organization called the Taiwan Cultural Center which is 16 located at 7509 Needwood Road? 17 MR. WOLFORD: I know that they are there, and I 18 know that there is a conditional use. I have not read the 19 opinion of the conditional use, or the testimony that was 20 provided. 21 MR. CHEN: Okay. So it's not going to make any 22 questions about the content of the hearing examiner's report 23 and decision in that case; is that a fair statement? 24 MR. WOLFORD: That's a fair statement. 25 MR. CHEN: I do assume, however, that to the</p>	<p>176</p> <p>1 the conceptual storm water management plan that will 2 hopefully allow for reconstruction of the storm drainage 3 system? What is that document? 4 MR. WOLFORD: There's a storm water concept 5 approved, and part of that storm water concept shows the 6 reconstruction of the storm drain out through the abutting 7 neighborhood to the south to Crabbs Branch. 8 MR. KLINE: Well, I guess the question I'm asking 9 is is there actually a document, contract, or is it just 10 nothing more than submissions and plans approved by DPS? 11 MR. WOLFORD: It's calculations and plans, 12 drainage area maps, hydrology, and hydraulic calculations, 13 and then profiles of the storm drain system that were 14 submitted to DPS, reviewed, comments addressed, and then 15 approved. 16 MR. KLINE: I have no further questions of Mr. 17 Wolford. 18 HEARING EXAMINER ROBESON HANAN: All right. 19 Anything else, Mr. Kline? 20 MR. KLINE: No, ma'am. 21 HEARING EXAMINER ROBESON HANAN: Okay. Thank 22 you, Mr. Wolford. You may be excused. 23 MR. WOLFORD: Thank you so much. Have a great 24 day, everybody. 25 HEARING EXAMINER ROBESON HANAN: Same to you.</p>


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45 (177 to 180)

<p>177</p> <p>1 All right. Mr. Kline, and Mr. Chen, how -- I</p> <p>2 guess the question is, this is a lot of material to do</p> <p>3 closing statements today. How do you want to proceed?</p> <p>4 MR. KLINE: Well, thanks for letting me go first,</p> <p>5 Mr. Chen.</p> <p>6 I have consistently said there's eight -- this is</p> <p>7 10 days. So I've consistently said I'd like a little bit of</p> <p>8 time to be able to do a cogent presentation for closing</p> <p>9 argument. Thinking that you were quite interested in trying</p> <p>10 to get rid of this today, I came in early this morning, and</p> <p>11 over lunch hour kind of pare down my closing argument. In</p> <p>12 an ideal world, I would ask maybe if you could save Mr.</p> <p>13 Chen, Mr. Kline, I'll give you each 45 minutes and let sit</p> <p>14 down and do this next Monday, Tuesday, or Wednesday,</p> <p>15 whatever and do it then. Because I -- this case seems to</p> <p>16 have worn me out so that every time we finish at 4 o'clock</p> <p>17 at the end of the day I'm just really worn out. I just</p> <p>18 don't think I do my client as a good a job as I would like</p> <p>19 to do with a little bit more time.</p> <p>20 MR. CHEN: I don't disagree with Mr. Kline. I</p> <p>21 think probably 45 minutes even on his side is awfully short.</p> <p>22 But I'm very sympathetic to his comments having been on the</p> <p>23 opposite side of the table but experiencing the same things.</p> <p>24 HEARING EXAMINER ROBESON HANAN: All right.</p> <p>25 Well, I have to say I have to share your experiences. But</p>	<p>179</p> <p>1 memory is better.</p> <p>2 Does the 13th work for you, Mr. Kline?</p> <p>3 MR. KLINE: I do have DRC at 9:30, and thinking I</p> <p>4 was going to be open; I made an appointment to see a</p> <p>5 urologist that day also. That can be canceled, obviously.</p> <p>6 But I can't get out of the DRC at 9:30.</p> <p>7 HEARING EXAMINER ROBESON HANAN: Well, I don't</p> <p>8 want to -- I could to 1:00 on the 13th and that would --</p> <p>9 MR. KLINE: Yep. And actually that's when my</p> <p>10 appointment occurs so -- the DRC is never long. So if -- I</p> <p>11 should be out of that by 10:30. So anywhere between 10:30</p> <p>12 and 1:00?</p> <p>13 HEARING EXAMINER ROBESON HANAN: Well, what I'm</p> <p>14 hearing is you need two hours, right?</p> <p>15 MR. KLINE: Yep. I don't -- I wouldn't have</p> <p>16 asked you for more than an hour. I would've said 45, and</p> <p>17 maybe a little bit of wrap up at the end also. But yes, I</p> <p>18 can do my part within an hour.</p> <p>19 HEARING EXAMINER ROBESON HANAN: How are you on</p> <p>20 the -- wait a minute, I'm just trying to figure out what's</p> <p>21 on my calendar here. Okay. So you're thinking 11:00?</p> <p>22 MR. KLINE: I am sure that I am out of the</p> <p>23 Development Review Committee meeting by 10:30.</p> <p>24 MR. CHEN: I think he is saying 10:30.</p> <p>25 HEARING EXAMINER ROBESON HANAN: Okay. We can do</p>
<p>178</p> <p>1 it's been educational, that's for sure.</p> <p>2 MR. KLINE: It has been a fascinating hearing,</p> <p>3 that's really true. But in hopes of maybe that we would go</p> <p>4 the direction you -- I think you're going, I did go up and</p> <p>5 get my calendar over the lunch hour and have it here. And</p> <p>6 would be glad to, not push this off at all and be ready to</p> <p>7 go as soon as you're ready. I know you like Mondays and</p> <p>8 Fridays, but we've had other midweek day hearings. And I</p> <p>9 don't think it's more than two or three hours at best.</p> <p>10 MR. CHEN: I agree with the length of time. I</p> <p>11 was not as ensanguine, or the thought hadn't even occurred</p> <p>12 to me, so I don't have my calendar, although I do know that</p> <p>13 Mr. Kline and I had spoken about, the 13th is a being a</p> <p>14 possibility for a hearing date. I think that was floated</p> <p>15 with the hearing examiner at one point.</p> <p>16 HEARING EXAMINER ROBESON HANAN: Yeah, it was.</p> <p>17 MR. CHEN: I'm not proposing it. But I know I'm</p> <p>18 clear on that date, if the hearing examiner is inclined to</p> <p>19 set a date for us to reconvene for the very limited purpose,</p> <p>20 I apologize, I don't have my calendar. But I'll do the best</p> <p>21 of my mental recollection.</p> <p>22 HEARING EXAMINER ROBESON HANAN: Well, I was</p> <p>23 thinking the 13th. I mean, if you let it go -- what I found</p> <p>24 is that if you let it go too long and wait for the</p> <p>25 transcript read six dates of hearings. While it's in your</p>	<p>180</p> <p>1 that.</p> <p>2 MR. KLINE: And since my doctor's appointment is</p> <p>3 at 1:00 here I am asking if I can get out 15 minutes early.</p> <p>4 So if you, did it at 10:30 and we ran until 12:30 that would</p> <p>5 be fine for me.</p> <p>6 MR. CHEN: Mr. Kline, if I may interject a</p> <p>7 moment. Is a late afternoon time more flexible for you?</p> <p>8 MR. KLINE: I have a 6:30 meeting with the</p> <p>9 Wheaton Urban Design Committee at 6:30 but I'd be back in</p> <p>10 the office, I'm sure, by 3:00 so 3:00 to 5:00?</p> <p>11 MR. CHEN: That works. That would probably be</p> <p>12 easiest, I think.</p> <p>13 HEARING EXAMINER ROBESON HANAN: That might be</p> <p>14 better. And then you wouldn't have quite as much pressure.</p> <p>15 MR. KLINE: Well, I'm going to guess that Mr.</p> <p>16 Chen knows more about visiting urologists than I do, so he</p> <p>17 probably has a better sense of what I'm getting myself into.</p> <p>18 HEARING EXAMINER ROBESON HANAN: Well, I don't</p> <p>19 know. (Inaudible) TMI for me.</p> <p>20 Let's try -- so I heard a 3:00 to 5:00; do you</p> <p>21 want to try 3:00 to 5:00?</p> <p>22 MR. CHEN: That works for me.</p> <p>23 MR. KLINE: Wonderful.</p> <p>24 HEARING EXAMINER ROBESON HANAN: Okay. Let's do</p> <p>25 that. And does that give you enough time, Mr. Kline, to get</p>

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46 (181 to 184)

<p>181</p> <p>1 to the Wheaton thing?</p> <p>2 MR. KLINE: Yes, ma'am. Yeah. That's at 6:30.</p> <p>3 That will not be a problem.</p> <p>4 HEARING EXAMINER ROBESON HANAN: Okay. And court</p> <p>5 reporter, well, I guess I have to -- I don't even know who</p> <p>6 to call. I'll get Sarah to make sure the court reporter is</p> <p>7 there.</p> <p>8 THE COURT REPORTER: Perfect.</p> <p>9 HEARING EXAMINER ROBESON HANAN: Was that Mr.</p> <p>10 Greer?</p> <p>11 THE COURT REPORTER: Yes, this is Mr. Greer.</p> <p>12 HEARING EXAMINER ROBESON HANAN: Okay. So I'll</p> <p>13 inform the court reporter and that will be it.</p> <p>14 Okay. With that, and I appreciate everyone for</p> <p>15 hanging in there. So with that we're going to adjourn this</p> <p>16 hearing until -- I just left my calendar, and I can't</p> <p>17 remember the date.</p> <p>18 MR. KLINE: Tuesday, April 13th at 3:00.</p> <p>19 HEARING EXAMINER ROBESON HANAN: Tuesday, April</p> <p>20 13 at 3:00. Okay. We're off the record. Thank you.</p> <p>21 MR. KLINE: Thank you.</p> <p>22 MR. CHEN: Thank you, Mdm. hearing examiner for</p> <p>23 your patience.</p> <p>24 And Mr. Kline, thank you for your normal</p> <p>25 conviviality.</p>	<p>183</p> <p>1 CERTIFICATE OF TRANSCRIBER</p> <p>2 I, Molly Bugher, do hereby certify that the foregoing</p> <p>3 transcript is a true and correct record of the recorded</p> <p>4 proceedings; that said proceedings were transcribed to the</p> <p>5 best of my ability from the audio recording as provided; and</p> <p>6 that I am neither counsel for, related to, nor employed by</p> <p>7 and of the parties to this case and have no interest,</p> <p>8 financial or otherwise, in its outcome.</p> <p>9</p> <p>10 </p> <p>11 <u>Molly Bugher</u></p> <p>12 Molly Bugher, CDLT-161</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>182</p> <p>1 (The recording was concluded.)</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

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