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Transcript of Hearing - Day 2

Date: February 28, 2022

Case: Heritage Gardens Land, LLC

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2 (5 to 8)

<p style="text-align: right;">5</p> <p>1 PROCEEDINGS</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Okay. Are the</p> <p>3 parties ready?</p> <p>4 MS. HARRIS: Yes, we are.</p> <p>5 MR. BROWN: All set here.</p> <p>6 HEARING EXAMINER ROBESON HANNAN: Okay. What I'm</p> <p>7 going to do is start the recording, as I think Mr.</p> <p>8 Baumgartner announced, the recording is on Microsoft Teams,</p> <p>9 and it's just a backup for our court reporter. The official</p> <p>10 record is the transcript that the court reporter produces.</p> <p>11 My name is Lynn Hannan. Thank you for your patience as we've</p> <p>12 switched hearing examiners. I have reviewed the transcript</p> <p>13 and the pleadings. If I'm a little rusty on some things -- I</p> <p>14 think I've got it all, but please be patient.</p> <p>15 A couple of words from reviewing the transcript.</p> <p>16 And these are just things that made it difficult for me. The</p> <p>17 transcript -- when witnesses are testifying, please don't say</p> <p>18 where the cursor is, or here, or to the left, or to the</p> <p>19 right, because it took me a lot of time to piece -- if this</p> <p>20 goes up on appeal, nobody will know what's left and what's</p> <p>21 right and where the cursor is because we don't do it</p> <p>22 visually. So if you could be careful about that that would</p> <p>23 be helpful.</p> <p>24 The other thing is that -- please don't what we</p> <p>25 call crosstalk, which means interrupt each other. There were</p>	<p style="text-align: right;">7</p> <p>1 could be wrong, is that -- are these lots that need to meet</p> <p>2 the -- they are clusters. They are clustered. So they don't</p> <p>3 meet the lot size requirements of a typical RA zone. I mean</p> <p>4 a RA2 zone lot. I think that is what he was getting at. And</p> <p>5 so if you -- I could be wrong, Mr. Brown. But those were</p> <p>6 just my thoughts after reading to the transcript. So with</p> <p>7 that, are there any preliminary matters from the parties?</p> <p>8 MS. HARRIS: This is Pat Harris on behalf of the</p> <p>9 Applicant. I had just a very few preliminary matters.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>11 MS. HARRIS: First, the email exchange we had</p> <p>12 identified, March 1st at approximately 3:00 for those that</p> <p>13 are not represented by counsel to testify. And I wanted to</p> <p>14 confirm that that is still the case. And maybe we need to</p> <p>15 revisit that at the end of the day when we see where we are</p> <p>16 with the testimony of the witnesses.</p> <p>17 And then second, I wanted to confirm -- and it</p> <p>18 sounds like you have read the transcript -- that you're not</p> <p>19 asking us to start anew here, that the four witnesses that</p> <p>20 testified on January -- at the end of January, that that's</p> <p>21 sufficient. You know, one advantage obviously having a taped</p> <p>22 Teams meeting is also have the benefit of reviewing the tape</p> <p>23 as well. So can you confirm that we (inaudible) where we</p> <p>24 were?</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Well, I just --</p>
<p style="text-align: right;">6</p> <p>1 a few occasions in the record where people interrupted each</p> <p>2 other. If you really need to jump in for an objection, for</p> <p>3 instance, you can do so. And then everybody stop. When</p> <p>4 there is an objection, please stop.</p> <p>5 If there is multiple witnesses that want to</p> <p>6 testify, there is a raise your hand button at the top of the</p> <p>7 screen. I can see if somebody has got their hand raised. So</p> <p>8 please use that instead of interrupting. And when you're</p> <p>9 being asked a cross -- a question on cross-examination, let</p> <p>10 the question finish. Let your attorney object if she feels</p> <p>11 that it's not an appropriate question. And those are just my</p> <p>12 thoughts on going to the transcript and trying to piece</p> <p>13 together all the testimony. But I do think I have it</p> <p>14 correct.</p> <p>15 The one thing that I had a thought on when I was</p> <p>16 reading through is I -- and Ms. Harris, you can debate this,</p> <p>17 but I don't understand -- you don't have to respond right</p> <p>18 now. But I'm a little confused about the ownership and</p> <p>19 exactly how it's going to work; there seems to be covenants</p> <p>20 and -- you call them ownership lots, but they are not lots.</p> <p>21 So at some point -- we have two days on this and I'm not</p> <p>22 asking you to go into detail now. But I would like to</p> <p>23 understand that more and understand -- make sure --</p> <p>24 understand the enforceability of the conditions of approval.</p> <p>25 And I think what Mr. Brown was getting at, but I</p>	<p style="text-align: right;">8</p> <p>1 oh, here I am interrupting. I'm sorry. That raises a good</p> <p>2 issue because something went wrong with the tape. So I</p> <p>3 haven't reviewed the tapes. I have reviewed the transcript.</p> <p>4 Now if you will allow me to proceed based on the transcript,</p> <p>5 if you -- you know, I haven't viewed the credibility of the</p> <p>6 witnesses, although I think almost all of them have testified</p> <p>7 as experts before in front of me.</p> <p>8 But I haven't reviewed -- we don't know why, IT is</p> <p>9 working on it, but I was not able to review the tape. So I</p> <p>10 leave it -- if you want, I will be happy to redo the first</p> <p>11 day of hearings. Or if you want to waive my review of the</p> <p>12 tape, I'm going to leave that to you, because I can't make</p> <p>13 that decision.</p> <p>14 MS. HARRIS: Okay. I think for purposes of</p> <p>15 proceeding this morning we will pick up where we left off.</p> <p>16 But I reserve the right to determine that we may need to go</p> <p>17 back if that's appropriate. I don't think that will be</p> <p>18 necessary. And then --</p> <p>19 HEARING EXAMINER ROBESON HANNAN: I mean, I</p> <p>20 don't -- it's one of those things that you probably don't</p> <p>21 want to make a decision on now. And so we will proceed. But</p> <p>22 I just wanted you to know that we do not have a tape backup</p> <p>23 of this. And we don't -- it's in IT. They are trying to</p> <p>24 straighten it out.</p> <p>25 MS. HARRIS: Okay. And then my final preliminary</p>

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3 (9 to 12)

<p>9</p> <p>1 matter, and it goes to your point of not saying left or right 2 or here or there. For purposes of our description we are 3 assuming that along South Glen Road is south, that the back 4 property line is North, and East and West accordingly just 5 for -- so that the record reflects that. 6 HEARING EXAMINER ROBESON HANNAN: That's helpful. 7 Thank you. 8 MS. HARRIS: Yes. 9 HEARING EXAMINER ROBESON HANNAN: Anything else 10 Mr. Brown? 11 MR. BROWN: No, nothing here. Ready to go. 12 MS. HARRIS: Ms. Robison, I did have one last 13 item. And there was email exchange on this as well. 14 HEARING EXAMINER ROBESON HANNAN: Oh, I'm sorry. 15 Go ahead. 16 MS. HARRIS: There was a written letter that was 17 signed and sent by a Ms. Heidi Finger (phonetic), but was 18 sent by U.S. postal mail after she had trouble sending it 19 electronically. And then per the -- Ms. Johnson's direction, 20 then she just sent it again electronically. So it didn't 21 have her signature. I want to confirm that you have that 22 physical letter and that that will be included into the 23 record, given that it is executed. But I realize it's 24 probably located in a physical place that you're not 25 currently located.</p>	<p>11</p> <p>1 are the truth, the whole truth and nothing but the truth? 2 MR. STEMANN: I do. 3 HEARING EXAMINER ROBESON HANNAN: Ms. Harris? 4 MS. HARRIS: Thank you. Mr. Stemann, for the 5 record, can you please state your name, your occupation, and 6 your professional background? 7 MR. STEMANN: Sure. My name is Timothy or Tim 8 Stemann. I'm a civil engineer. I've been working in the 9 field of civil engineering for almost 25 years. I attended 10 Virginia Tech, received a bachelors in civil engineering with 11 environmental option. I worked in Virginia for the first six 12 years of my career and sort of in southeastern Virginia among 13 some other areas. And then I've been in Maryland for the 14 past, about 18 years, primarily in Montgomery County. 15 MS. HARRIS: Are you and -- 16 MR. STEMANN: Yeah, go ahead. 17 MS. HARRIS: Are you a licensed professional 18 engineer in the State of Maryland? 19 MR. STEMANN: I am, yes. 20 HEARING EXAMINER ROBESON HANNAN: I'm sorry to 21 interrupt the flow. There is one thing I did not mention. I 22 see somebody using the chat. Do not use the chat because not 23 everybody can see it while the hearing is going on and we 24 cannot have ex parte communication. If you want -- I have a 25 chat from Renee Dubrowsa (phonetic). She wishes to offer</p>
<p>10</p> <p>1 HEARING EXAMINER ROBESON HANNAN: That's correct. 2 Unfortunately, both staff, we -- staff is -- the one staff we 3 have available is not able to go into the office today for 4 medical reasons. So I can't get anybody in there today. We 5 will be reconvening on Wednesday. If it's there, we can add 6 it to the record then. I think Mr. Brown has a copy of what 7 it says. But it doesn't meet our rules. So we will 8 reconvene on Wednesday. I believe Ms. Johnson will be in our 9 office tomorrow and if it's not there we can let you know and 10 she can reset -- you know, sign and scan it in. 11 MS. HARRIS: Okay. 12 HEARING EXAMINER ROBESON HANNAN: And then it can 13 be posted on Wednesday for the Wednesday hearing. 14 MS. HARRIS: Thank you. 15 HEARING EXAMINER ROBESON HANNAN: Okay. Anything 16 else? Okay. Ms. Harris, I think you're up with your next 17 witness. 18 MS. HARRIS: Thank you. Our next witness is 19 Timothy Stemann, civil engineer from Soltesz Engineering. 20 HEARING EXAMINER ROBESON HANNAN: Okay, Mr. 21 Stemann -- 22 MR. STEMANN: Good morning. 23 HEARING EXAMINER ROBESON HANNAN: Mr. Stemann, 24 please raise your right hand. Do you solemnly affirm under 25 penalties of perjury that the statements you're about to make</p>	<p>12</p> <p>1 testimony as to the impact of the proposed development, which 2 is fine. As we said, we may have a dedicated time for people 3 to speak. And if you stay on the line we will get there. 4 But please do not use the chat. Okay. Sorry about that. 5 Now Mr. Stemann, do you -- have you qualified as 6 an expert before? 7 MR. STEMANN: Yes, I have. 8 HEARING EXAMINER ROBESON HANNAN: Where? 9 MR. STEMANN: For DAT, actually I believe in front 10 of you I think, this last fall. 11 HEARING EXAMINER ROBESON HANNAN: I thought you 12 were familiar. Mr. Brown, do you have any objection to 13 qualifying Mr. Stemann as an -- are you -- in civil 14 engineering? 15 MR. BROWN: No, none. 16 HEARING EXAMINER ROBESON HANNAN: Okay. I'm going 17 to qualify him as an expert in civil engineering. 18 (Crosstalk) 19 MS. HARRIS: And Mr. Stemann you had also -- 20 HEARING EXAMINER ROBESON HANNAN: Somebody is 21 talking. Whoever is talking, please mute your phone, your 22 audio. Please mute it. Thank you. Okay. 23 Again, I apologize, Ms. Harris. Go ahead. 24 MS. HARRIS: Thank you. Mr. Stemann, can you also 25 describe in a little bit more detail your background as it</p>

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<p>13</p> <p>1 relates to environmental? Because I do think that he also 2 qualifies for an expert in civil engineering with a focus on 3 environmental issues.</p> <p>4 MR. STEMANN: Right. I've -- from working in 5 Montgomery County I've overseen the numerous projects dealing 6 with environmental issues, stream, floodplain, these sort of 7 issues that we run into in the county dealing with NRIs, 8 forest conservation also.</p> <p>9 MS. HARRIS: So Ms. Robison, I would like to offer 10 that he is an expert in civil engineering with a focus on 11 environmental compliance.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Well, I've never 13 heard of that before. I'm going to let him be a civil 14 engineer. But I will take that background into account when 15 considering his -- the weight of his testimony.</p> <p>16 MS. HARRIS: Okay, thank you. And Mr. Stemann, 17 are you familiar with the conditional use application which 18 is before us today?</p> <p>19 MR. STEMANN: I am.</p> <p>20 MS. HARRIS: And can you please describe what 21 services you provided at Soltesz with respect to this 22 application?</p> <p>23 MR. STEMANN: Sure. I'm project manager on the 24 project. So I helped to oversee the review of the existing 25 site condition, suitability of the site for the proposed use,</p>	<p>15</p> <p>1 the south end of the site. And there is an existing roadway 2 which splits. Yeah, it's right in that -- in the area 3 towards the eastern property line. And it's an entrance 4 that's shared with the temple which is on the adjacent 5 property along with the few residences there on the eastern 6 side of our property. And it's a three-way intersection. 7 There are two sort of driveways at the location across from 8 Norton Road on the south side of South Glen Road.</p> <p>9 And the new entrance, we are relocating it to the 10 western side of the property which has the benefit of 11 eliminating the three-way intersection currently. And then 12 also it improves the sight distance that is a higher point on 13 the property.</p> <p>14 MS. HARRIS: And what are the sight distances at 15 this new location?</p> <p>16 MR. STEMANN: At the new location is about 500 17 feet visible to the -- I guess we're calling that plan West, 18 or to the right if you're coming out of the development. And 19 about 300 feet to the left or to the east. And currently 20 it's about 200 feet from the three-way entrance. So it is an 21 improvement over that scenario.</p> <p>22 MS. HARRIS: Okay, thank you. And have you 23 evaluated the availability of water, sewer, gas, and other 24 utilities at this location? And are the capacities adequate 25 to service the proposed use?</p>
<p>14</p> <p>1 and then also the preparation of the development plans 2 including the conditional use plan, forest conservation plan, 3 stormwater concept, the site distance study.</p> <p>4 MS. HARRIS: And have you made a personal 5 inspection of the property?</p> <p>6 MR. STEMANN: Yes, I have.</p> <p>7 MS. HARRIS: Thank you. And I will get into more 8 of the substance of the case. Let's start with the --</p> <p>9 Oh, and Ms. Robeson, I should have said this 10 earlier. During the first hearing we thought that it worked 11 well that I -- we have copies of all of the exhibits that are 12 in the record and I'm going to pull them up. That was 13 acceptable Mr. Bumgardner. And I just want to confirm that 14 that's acceptable with you as well.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: That's fine. I 16 saw that.</p> <p>17 MS. HARRIS: Okay. Okay, thank you. So with 18 that, we're going to start with vehicular access. And can 19 you please describe the vehicular access to the site?</p> <p>20 MR. STEMANN: Okay. So currently -- 21 (Crosstalk)</p> <p>22 MS. HARRIS: Excuse me one second. I'm pulling up 23 Exhibit 45C. Go ahead.</p> <p>24 MR. STEMANN: Okay. So currently the access is 25 from South Glen Road, which is on the, as we are calling it,</p>	<p>16</p> <p>1 MR. STEMANN: Yes, they are. They are -- all of 2 those, gas, power, water, and sewer are available at the 3 site. The site is actually noted in modern sewer category, 4 W1 and S1 which states that public water and sewer is 5 available to the site which enables it to be developed.</p> <p>6 There are a number of other properties throughout 7 the area that would not have that classification. So this 8 site does have service available. And that's been confirmed 9 with WSSC. They approved what is known as a hydraulic 10 planning analysis which also gives their confirmation that 11 there is enough capacity, water and sewer to the site.</p> <p>12 MS. HARRIS: Okay. And I will note that the 13 exhibit that Mr. -- well, we have up on the screen Exhibit 14 55, which is the color-coded utility plan. Is there anything 15 more specific that you need to speak to with respect to this?</p> <p>16 MR. STEMANN: I will just note that the water is 17 available on South Glen road and that is where the new 18 connection will be made to the site. And then there is sewer 19 running on the north part of the property. You can sort of 20 see the multiple lines running through there denoting both 21 the line itself and the easement. And then the electric, I 22 think there is some red line work on the plan that comes off 23 of South Glen Road. I believe the gas is in a similar 24 location along South Glen Road.</p> <p>25 MR. STEMANN: Thank you. And you touched on this,</p>

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<p>17</p> <p>1 but I just want to go back for a moment. So the significance 2 of the fact that it's water sewer Category 1, water Category 3 1, and sewer Category 1, can you again state what the 4 significance of that is?</p> <p>5 MR. STEMANN: The main point is that there isn't 6 any additional expansion of the system that has to take 7 place. The water and sewer is already available in this case 8 to the site, and that it's -- there doesn't need to be any 9 additional paperwork or re-categorization of the site. It is 10 basically primed for development.</p> <p>11 MS. HARRIS: And are there sites in the Potomac 12 subregion that are not that category?</p> <p>13 MR. STEMANN: Yes, definitely. There are sites 14 that would be limited by topography and location and then 15 also are just not intended to be developed and sort of not 16 part of the master plan for WSSC to provide water and sewer 17 as part of that.</p> <p>18 MS. HARRIS: Thank you. And now we are going to 19 turn to Exhibit 51, which is the natural resources inventory. 20 Can you please just generally state what the purpose -- 21 purposes of a natural resources inventory -- and was one 22 approved in connection with this conditional use?</p> <p>23 MR. STEMANN: Sure. The purpose of the natural 24 resource inventory, the NRI, is to map the location of all 25 the existing environmental on-site features, topography,</p>	<p>19</p> <p>1 MS. HARRIS: And we would request administrative 2 notice of this document. It's an approved document by the 3 Planning Board. And big picture, what is the intent of the 4 guidelines?</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Well, wait, 6 wait, wait. Is there an objection to taking official notice 7 of the guidelines, Mr. Brown?</p> <p>8 MR. BROWN: No, we plan to refer to them 9 ourselves.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: All right. Just 11 for the record. Go ahead.</p> <p>12 MS. HARRIS: Thank you. And big picture --</p> <p>13 HEARING EXAMINER ROBESON HANNAN: Go ahead.</p> <p>14 MR. STEMANN: Big picture, they are intended to 15 provide guidance to protect natural resources on a site, 16 which would include floodplains, streams, stream valley 17 buffers, wetlands, and also forested areas. And the 18 important thing is they are guidelines. It's not a formal 19 law. And the Planning Board has noted -- they have stated 20 they are not regulations. They are a compilation of existing 21 policies and guidelines. But that being the case, we are 22 following the guidelines and we will sort of walk through 23 that and explain that.</p> <p>24 MS. HARRIS: And which agency is responsible for 25 determining the adequacy of compliance with the environmental</p>
<p>18</p> <p>1 wetlands, floodplains, streams, soils, and any significant 2 specimen trees. And the idea of the NRI is to capture this 3 moment in time. It's a snapshot of those conditions prior to 4 development or at this point when the development is ready to 5 proceed.</p> <p>6 The original NRI was approved in February 2019 7 by -- it was done by John Markovich at GMJM Forestry. That 8 was done in connection with the prior conditional use case 9 which had been begun in 2019. That was valid for two years. 10 So it expired last year. So John Markovich went back out to 11 the site to reconfirm, re-examine the trees on the site along 12 with the other site features. And then that was recertified 13 in August of last year.</p> <p>14 MS. HARRIS: And is it correct that there is a 15 requirement that only the person that does the original NRI 16 can recertify? Is that right -- do I have that right?</p> <p>17 MR. STEMANN: Correct, correct.</p> <p>18 MS. HARRIS: Thank you. Okay. Now I'm going to 19 turn to the environmental guidelines. I'm going to ask you a 20 series of questions related to these guidelines. First, 21 let's start with sort of the big picture and then we can 22 drill down to the specifics with respect to this site. So 23 are you familiar with the January 2000 guidelines approved by 24 the Montgomery County Planning Board?</p> <p>25 MR. STEMANN: Yes, I am.</p>	<p>20</p> <p>1 guidelines?</p> <p>2 MR. STEMANN: That is the Planning Board. And 3 that's in consultation with their staff.</p> <p>4 MS. HARRIS: Okay. And did the Planning Board in 5 this case find that the conditional use application is fully 6 consistent with the environmental guidelines?</p> <p>7 MR. STEMANN: Yes, they did, with no exceptions.</p> <p>8 MS. HARRIS: Okay. And is the property located 9 within a special protection area?</p> <p>10 MR. STEMANN: It is not. The special protection 11 areas, there is a number of them in the county. Those are 12 areas that have water resources or environmental features 13 related to those water resources that are considered of high 14 quality or unusually sensitive and would require additional 15 protection. But we are not in one of those areas.</p> <p>16 MS. HARRIS: And are there any streams on the 17 property? And if so, what type are they?</p> <p>18 MR. STEMANN: Sure. There are, there are two 19 major streams. The one -- I will let you pull that up. 20 There is a perennial stream which crosses sort of from the 21 eastern side of the property up to the northwest side. And 22 then there are -- there is an intermittent stream which 23 crosses from the western property line down into the site. 24 And that's what we are showing pictures of here. There was 25 some debate about the nature of this stream, as to whether it</p>

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<p>21</p> <p>1 was intermittent or ephemeral. It was decided to go ahead 2 with the intermittent classification, although that's -- 3 there was some debate on that. 4 MS. HARRIS: And when you say there was some 5 debate, can you just briefly, for those that aren't familiar 6 with the ephemeral versus intermittent -- 7 MR. STEMANN: Sure. Sure. An intermittent stream 8 would have baseload during certain parts of the year. It 9 typically the winter and spring there would always be water 10 in the stream during those times. Whereas in ephemeral 11 stream is really -- it's just going to fill up during a 12 storm. I hesitate to use the word ditch, but it's almost 13 just something that fills up when it rains that dissipates. 14 MS. HARRIS: And then you had referred to a 15 perennial stream. Does this have a classification? 16 MR. STEMANN: Yes, if they Use 1 or 1P stream. It 17 drains to Kilgore Branch which is north of the site which is 18 the Use 1P stream. And what that means is that should be 19 considered as it relates to water contact recreation, 20 protection of aquatic life, and public water supply. And 21 sort of a critical thing is that the stream classification 22 dictates some of the other matters, the stream valley and the 23 wetland buffers. So that's sort of the key point to then 24 determine some of the additional requirements. 25 MS. HARRIS: And I believe we have prepared, and</p>	<p>23</p> <p>1 MR. STEMANN: Sure. 2 MS. HARRIS: And if you want to say the color, I 3 can point to it with my pointer. 4 MR. STEMANN: Oh, okay. Okay. That works, yeah. 5 So the stream is shown in the dark blue. And so there is the 6 double line for the perennial stream that runs sort of 7 through the corner of the site. And then there is the 8 smaller intermittent stream which runs -- 9 HEARING EXAMINER ROBESON HANNAN: Wait, wait, 10 wait. Sorry. I'm sorry. The corner of the site, where -- 11 it's running -- 12 MR. STEMANN: Right. It's running from the -- 13 HEARING EXAMINER ROBESON HANNAN: (Inaudible). 14 MR. STEMANN: -- eastern property line to the 15 northwest, I guess -- 16 HEARING EXAMINER ROBESON HANNAN: Okay. Thanks. 17 MR. STEMANN: Yes. And then there are -- there is 18 the intermittent stream, which then runs from the perennial 19 stream upwards towards the, I guess it's the western side of 20 the site. And there is another intermittent stream on the 21 other side that runs off the property towards the east. 22 MS. HARRIS: And then just to be clear as to -- 23 HEARING EXAMINER ROBESON HANNAN: And that's all 24 in blue? The streams? 25 MR. STEMANN: Correct, that's in the darker blue.</p>
<p>22</p> <p>1 I'm going to pull it up now, what we are calling 2 environmental buffer plan, which is color-coded. 3 HEARING EXAMINER ROBESON HANNAN: Do you have the 4 Exhibit number for that? 5 MS. HARRIS: It is 40 -- 6 HEARING EXAMINER ROBESON HANNAN: I -- 7 MS. HARRIS: Exhibit 74. 8 HEARING EXAMINER ROBESON HANNAN: Okay, thank you. 9 MS. HARRIS: Yes. And I believe -- can you 10 explain the relationship of this dark blue line on the plan 11 to the stream itself? Is it -- 12 MR. STEMANN: Sure, that -- that the dark blue 13 line, and there's two lines there that are denoting that 14 perennial stream, that denotes in this case the stream banks. 15 So that would be the point at which the topo sort of changes 16 and the inside of that area is classified as part of the 17 stream area. But the stream itself is actually just a few 18 feet. It's shown on this plan as being, you know, 20 to 30 19 feet wide. But really the stream itself is situated within 20 the banks which are denoted. 21 MS. HARRIS: Okay, thank you. And then using this 22 Exhibit 74, I think will be helpful if you could identify the 23 various environmental items on this plan such as streams, 24 floodplain, the floodplain buffer, stream valley buffer, 25 wetlands, and wetlands buffer, if you could.</p>	<p>24</p> <p>1 MS. HARRIS: And to clarify, the perennial stream 2 has two blue lines denoting it, whereas the other streams 3 have -- the intermittent streams have just the one line; is 4 that correct? 5 MR. STEMANN: Correct, correct. 6 MS. HARRIS: Thank you. Okay. So that's the 7 streams, the dark blue color. Where would you go from there? 8 MR. STEMANN: From there, the floodplain is shown, 9 which is sort of the magenta line, which frames the perennial 10 stream. And then that's about the -- it varies from about 30 11 to 130 feet wide just depending on the topography in the 12 area. Outside of that is the floodplain buffer, which is 13 shown in yellow, which is 25 feet from the floodplain. And 14 it's just a direct delineation offset from there. 15 And then the next line out is the lighter blue 16 line, which is the stream valley buffer, which is 100 feet 17 offset from the stream or the stream bank. And then it's 18 also expanded in a few areas of -- with higher slopes. And 19 then the last item in color is the wetland. There is a small 20 vernal pool shown in orange. And then the 25 foot buffer 21 from that wetland is also shown in orange. 22 MS. HARRIS: Thank you. Okay. So you identify 23 the floodplain and a floodplain buffer. Can you tell us what 24 the difference of those -- what's the difference between 25 those two things?</p>

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<p>25</p> <p>1 MR. STEMANN: The floodplain delineation, the 2 magenta line where it delineates the extent of the 100 year 3 flood. And that's per analysis done for the County and 4 approved by the County by DPS. Where's the buffer is a 25 5 foot offset. So the magenta denotes where the water would 6 be. The yellow is sort of an additional cushion, buffer, 7 obviously to prevent development from getting anywhere near 8 the floodplain area.</p> <p>9 MS. HARRIS: Can you identify on the environmental 10 buffer exhibit those areas where the stream bank extends 11 beyond the floodplain? And can you explain this? And is 12 there any relevance to this.</p> <p>13 MR. STEMANN: Yeah. There is a spot. It's almost 14 in the center of the screen right now.</p> <p>15 MS. HARRIS: On --</p> <p>16 MR. STEMANN: If I can request --</p> <p>17 MS. HARRIS: There?</p> <p>18 MR. STEMANN: No, that's --</p> <p>19 HEARING EXAMINER ROBESON HANNAN: Okay. The 20 transcript doesn't know what's on the screen. So if you 21 could, just figure out a way to pinpoint it on this exhibit.</p> <p>22 MS. HARRIS: Maybe Mr. Stemann you could 23 identified as it relates to this 6A notation on the plan.</p> <p>24 MR. STEMANN: Sure. There's an area just -- I 25 will call it towards the east of the 6A where the blue stream</p>	<p>27</p> <p>1 MR. STEMANN: Right. And it starts with this 2 chart. It's sort of a multistep, almost there should be a 3 flowchart to sort of determine it. But it starts with the 4 use of the stream, which in our case is the use 1, 1P. So we 5 start with the 100 foot, that's our starting width. And then 6 the next determination is slopes that are occurring within 7 that area.</p> <p>8 You determine if there are steep slopes. You 9 review the topography per the guidelines. And then if those 10 slopes are determined to be what's termed hydraulically 11 adjacent, then that area is also included in the stream 12 valley buffer. And the best explanation -- I will just go 13 ahead and read the definition of hydraulically adjacent. 14 There will be the slopes line within 200 feet from the bank 15 of the stream drainage course that drains the directly to the 16 stream drainage course or its associated floodplain.</p> <p>17 So when the stream valley buffer encompasses the 18 toe of a steep slope within the 200 foot section, adjacency 19 will apply to the entire slope even if the 200 foot cut off 20 is the middle of the slope. And that's a lot of words to 21 explain that if there is a sloped -- a steep slope that 22 occurs near the stream valley buffer that drains directly to 23 the stream, then that area is included.</p> <p>24 MS. HARRIS: And you used directly at least once 25 or twice. What does directly --</p>
<p>26</p> <p>1 bank is outside the magenta floodplain line. There's another 2 spot a little further up also towards the northwest which 3 also indicates that. And that's a situation where the stream 4 bank itself is so wide that the floodplain would be fully 5 contained within the stream bank. And that's definitely a 6 possibility.</p> <p>7 MS. HARRIS: Did Park and Planning -- did you have 8 any back and forth or discussion with Park and Planning with 9 respect to that situation?</p> <p>10 MR. STEMANN: Yes. There was a question raised 11 about the floodplain analysis by Park and Planning. So we 12 provided the original delineation and analysis that was done 13 in a number of years ago. They understood and they were fine 14 with that. And then the critical point being that this is 15 all within the buffer and within the stream valley buffer and 16 these are areas that there is no intent to disturb that area 17 in any way. There are bigger, wider restrictions on that.</p> <p>18 MS. HARRIS: Okay. And let's turn to the stream 19 valley buffer. How is the width of -- and I will zoom out 20 here. How is the width of the stream valley buffer, and 21 again, that's the light blue line. How was that determined?</p> <p>22 MR. STEMANN: So that as per the environmental 23 guidelines. I don't know if you want to pull up that page 8.</p> <p>24 MS. HARRIS: Hold on one moment. This is Exhibit 25 . I think this is page 8. Yes, this is Exhibit 75 of the -- and it's page 8 of the environmental guidelines.</p>	<p>28</p> <p>1 MR. STEMANN: Directly -- right. Directly, it's 2 interpreted as without changing direction or stopping. If 3 that water flows to the stream without changing direction and 4 without stopping on its way.</p> <p>5 MS. HARRIS: And I think you said that the 6 topography guidelines of the environmental guideline -- I'm 7 sorry. The topography guidelines are relevant as well in 8 this flowchart calculation. So I put up page 7. Can you 9 explain what that -- how that relates to this analysis?</p> <p>10 MR. STEMANN: Right. And it actually might be on 11 the other exhibit where it states the steep slopes where 12 the -- if the slopes are over 15 percent they are sort of 13 considered in that. Although it's funny, their wording 14 states that 25 percent is considered steep but 15 percent is 15 counted in the stream valley buffer if need be.</p> <p>16 MS. HARRIS: Then are there examples on the NRI -- 17 and I'm going to go back to the environmental buffer here, 18 Exhibit 74. Are there examples on the NRI where the stream 19 buffer was expanded to take into this -- take into account 20 this concept of hydraulically adjacent?</p> <p>21 MR. STEMANN: Yes. There is an area to the 22 northwest. I don't know if I can -- let me see if I can --</p> <p>23 MS. HARRIS: Do you want me to give you the 24 cursor?</p> <p>25 MR. STEMANN: Yeah. Yeah, maybe I can point</p>

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<p>29</p> <p>1 out -- all right. Can you --</p> <p>2 MS. HARRIS: Yeah. Yeah.</p> <p>3 MR. STEMANN: There we go. Okay. So there is --</p> <p>4 there was an area here of steep slopes which --</p> <p>5 HEARING EXAMINER ROBESON HANNAN: (Inaudible)</p> <p>6 wait, I can't read the topos, but you're pointing to an area</p> <p>7 between a topo of -- no, that's soil. If you can just think</p> <p>8 of a way to describe where this is. It's in a hatched line</p> <p>9 on the --</p> <p>10 MR. STEMANN: Right. This is an area from the --</p> <p>11 we will call this the northwest property line --</p> <p>12 (Crosstalk)</p> <p>13 HEARING EXAMINER ROBESON HANNAN: Sorry. I --</p> <p>14 MS. HARRIS: Let me help him out. Mr. Stemann,</p> <p>15 the line at the back of the property is the -- what line? Is</p> <p>16 that the west line?</p> <p>17 MR. STEMANN: We'll call it (inaudible) -- we are</p> <p>18 calling that the north.</p> <p>19 MS. HARRIS: I'm sorry, north. The property line</p> <p>20 that's parallel to South Glen Road.</p> <p>21 MR. STEMANN: Right. We are calling that the</p> <p>22 north end of the property.</p> <p>23 MS. HARRIS: Okay. And then there is the western</p> <p>24 property line, which backs up to -- is it -- runs parallel to</p> <p>25 Edison. So then there is a line that connects those two</p>	<p>31</p> <p>1 an area there in between, sort of generally in the area where</p> <p>2 it says 116D, which is the soil classification. And there</p> <p>3 are some steeper slopes in that area, but they are considered</p> <p>4 to be hydraulically remote because they do not drain directly</p> <p>5 to the stream. And so the stream valley buffer remained at</p> <p>6 100 feet in that area. So that location does not drain</p> <p>7 directly to the stream.</p> <p>8 MS. HARRIS: Thank you. Okay. And the stream</p> <p>9 valley buffer at the intermittent stream touches the steep</p> <p>10 slopes. Should the stream valley buffer be expanded to</p> <p>11 encompass the entire slope in that area?</p> <p>12 MR. STEMANN: No. That would be this area, which</p> <p>13 is -- it's about halfway up the intermittent stream towards</p> <p>14 the western property line. There is an area of slopes which</p> <p>15 intersect the stream valley buffer. But they are draining</p> <p>16 away from the intermittent stream. So they are also</p> <p>17 considered not hydraulically adjacent. They do not drain to</p> <p>18 the stream or directly to the stream. So they are also not</p> <p>19 included.</p> <p>20 MS. HARRIS: Thank you. And you've mentioned</p> <p>21 steep slopes a couple times. What constitutes a steep slope?</p> <p>22 And can you please identify the slopes on the property in the</p> <p>23 vicinity of the stream and the development area?</p> <p>24 MR. STEMANN: Steep slopes is qualified as greater</p> <p>25 than 25 percent. There -- it might be easier to see on the</p>
<p>30</p> <p>1 property lines. And you are referring to that as the</p> <p>2 northwest property line?</p> <p>3 MR. STEMANN: Correct.</p> <p>4 MS. HARRIS: Okay.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Thank you.</p> <p>6 MR. STEMANN: So there is an area in this location</p> <p>7 which is west of the stream where the slopes are high enough</p> <p>8 and the area drains directly to the stream that was then</p> <p>9 included in the stream valley buffer. There are similar</p> <p>10 locations I think further -- I don't know if I can -- I don't</p> <p>11 know if I can scroll. You can see here closer to the east</p> <p>12 property line along the stream towards this hill that heads</p> <p>13 towards this 1C soil note that is also steeper. And that was</p> <p>14 also expanded to include those higher slopes. And there's</p> <p>15 probably a few more, but those two are the bigger areas.</p> <p>16 MS. HARRIS: Okay. So taking environmental</p> <p>17 guideline definition in account, should the stream valley</p> <p>18 buffer be expanded between the priority forest and the</p> <p>19 intermittent stream to encompass the entire slope? And first</p> <p>20 of all, maybe we should identify where the priority forest is</p> <p>21 and again, the intermittent stream.</p> <p>22 MR. STEMANN: So going back, the priority forest</p> <p>23 is on the northwest side of the property. And then the</p> <p>24 intermittent stream is the stream which runs from the</p> <p>25 perennial stream to the western property line. So there is</p>	<p>32</p> <p>1 NRI I think with the --</p> <p>2 MS. HARRIS: This one?</p> <p>3 MR. STEMANN: Yeah, that works. And there are</p> <p>4 areas -- there is a --</p> <p>5 HEARING EXAMINER ROBESON HANNAN: And the NRI</p> <p>6 is -- I can't read the exhibit number. Would it -- can you</p> <p>7 tell me the exhibit number again?</p> <p>8 MS. HARRIS: 51A.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Thank you.</p> <p>10 MS. HARRIS: I can zoom in here if you need me to.</p> <p>11 MR. STEMANN: Sure. So there are two levels of</p> <p>12 hatching, the sort of gray hatching on the plan. And the</p> <p>13 darker is the 25 percent slopes. And then the lighter is the</p> <p>14 15 percent. And you can see there is some on both sides of</p> <p>15 the stream and then of course in the stream itself there is a</p> <p>16 little bit of area of that slope.</p> <p>17 MS. HARRIS: When you say dark gray on Exhibit</p> <p>18 51A, it's this area that runs -- that's closer to the</p> <p>19 northern property line; is that correct?</p> <p>20 MR. STEMANN: Correct. And parallel to the</p> <p>21 perennial stream in that area.</p> <p>22 MS. HARRIS: Okay. And so to summarize, based on</p> <p>23 the type of stream and slope range pursuant to the</p> <p>24 environmental guidelines, how why should the stream valley</p> <p>25 buffer be on the property?</p>

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<p>33</p> <p>1 MR. STEMANN: So based on the stream 2 classification, it's 100 feet. And then in the areas with 3 the slopes, the higher slopes, 15 and above, that area is 4 then included in the stream valley buffer where it intersects 5 the stream valley buffer and drains directly to the stream. 6 So there is sort of a process. You have to go through all 7 the steps, but that's how that's determined. 8 MS. HARRIS: Okay. Thank you. And now, I'm going 9 to turn to the wetland. So I'm going to go back to this 10 Exhibit 74, the environmental buffers. What is the size of 11 the wetland? And where is it in relation to the stream 12 valley buffer? 13 MR. STEMANN: The wetland is about 570 square 14 feet. It's the orange area near the northern part of the 15 property. It's entirely within the stream valley buffer and 16 the wetland buffer is also entirely within the stream valley 17 buffer. So in this situation, since the stream valley buffer 18 already encapsulates the wetland and the buffer, the stream 19 valley buffer remains the same in that area. 20 MS. HARRIS: Okay. And how is the width of the 21 wetland buffer determined? 22 MR. STEMANN: That is also per the stream 23 classification. And that's on the -- that's a table in the 24 environmental guidelines that lays that out. And if you can 25 pull that up I think there is a couple --</p>	<p>35</p> <p>1 MR. STEMANN: Sure. That's page 67. It would 2 be -- I think it's Exhibit 77. There it is. 3 MS. HARRIS: Okay. So this is page 67 of the 4 environmental guidelines. And so explain again what this 5 chart does. 6 MR. STEMANN: So this identifies soils. It 7 identified by NRCS, the Natural Resource Conservation 8 Service, to have severe erodibility. And so if a soil is 9 classified in one of those categories, then special 10 precautions have to be made. In this case the wetland buffer 11 would have to be expanded. But in our situation none of our 12 soils qualify. 13 MS. HARRIS: Okay. And so do the widths of the 14 floodplain, the floodplain buffer, the stream valley buffer, 15 the wetland buffer comply with the environmental guidelines? 16 MR. STEMANN: They do. 17 MS. HARRIS: And did Park and Planning find that 18 as well? 19 MR. STEMANN: Yes, the NRI was approved by Park 20 and Planning and the Planning Board staff. 21 MS. HARRIS: Okay. Now I want to drill a little 22 bit deeper into those areas that you've identified as 23 environmentally -- environmental areas. I will say 24 environmental areas that are stream valley, stream valley 25 buffer, floodplain, floodplain buffer, et cetera. Are there</p>
<p>34</p> <p>1 MS. HARRIS: And I -- this is Exhibit 76, I think. 2 MR. STEMANN: Yeah, so -- 3 MS. HARRIS: Yeah. 4 MR. STEMANN: All right. So you start -- if we 5 scroll down to Use 1, you see it's 100 feet in the situation 6 where you have a wetland of special state concern, which we 7 are not, or steep slopes, which we are not in this area, or 8 with erodible soils, which we are also not. So you just come 9 down to the 25 foot which is where it ended up. 10 MS. HARRIS: And are we providing a buffer of 25 11 feet? 12 MR. STEMANN: We are. 13 MS. HARRIS: And are there -- and or there soils 14 having a severe hazard of erosion which are referred to 15 severely erodible in the environmental guidelines in the 16 vicinity of the wetland buffer? 17 MR. STEMANN: No, they are not. The soils in that 18 area are 6A. You can see the label sort of approximately 19 over the -- sort of to the southeast there is a 6A label. 20 And that is in that -- the wetland is in that 6A soil. And 21 that is not considered severely erodible. The environmental 22 guidelines -- there is a list of soils and it is not one of 23 those considered severely erodible. 24 MS. HARRIS: And where is that list of soils? 25 Just so we are all clear.</p>	<p>36</p> <p>1 any existing improvements within the floodplain? 2 MR. STEMANN: There are. The current roadway 3 which runs up the east property line and then runs along the 4 stream and then towards the western side is within the 100 5 year floodplain. So that's the one major item that's in the 6 floodplain. There is some line work on this plan that shows 7 the stormwater facility being within the floodplain, but that 8 appears to be sort of an error on this plan. There is no 9 impact, or there is no storm water within the floodplain. 10 MS. HARRIS: Okay. So are you -- just to clarify 11 that, are you saying that that -- the existing storm water 12 management facility is not within the floodplain? 13 MR. STEMANN: Correct. I think the -- 14 MS. HARRIS: Okay. And does the conditional use 15 proposing activity within the floodplain? 16 MR. STEMANN: The only activity proposed is the 17 removal of that driveway, of the impervious driveway. That 18 was coordinated with staff. It was determined to be 19 beneficial to remove it and relocate any roadway because of 20 that area. It converts that impervious area to pervious 21 within the floodplain of the perennial stream. 22 MS. HARRIS: And I'm assuming, but if you can 23 clarify this. Perennial stream being the larger stream, does 24 it have a higher status in terms of environmental sensitivity 25 say, then the other -- the intermittent stream?</p>

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<p>37</p> <p>1 MR. STEMANN: Correct, right. There would be a 2 higher priority on protecting that stream. And also, there 3 is no floodplain associated with the intermittent stream. So 4 there is a desire to remove that from the floodplain also. 5 MS. HARRIS: Got it. Okay. And then, does the 6 conditional use propose -- I'm sorry. So going from the 7 floodplain to the floodplain buffer, are there any existing 8 improvements within the floodplain buffer? And again, just 9 for -- to remind folks, that's the yellow line, right? 10 MR. STEMANN: Right. Right. 11 MS. HARRIS: Okay. 12 MR. STEMANN: So the existing roadway is also 13 within the buffer as it's (inaudible). And then that 14 existing stormwater facility that we mentioned near the 15 existing gym is also slightly within it. The history of the 16 stormwater facility predates -- it's from a previous owner of 17 the site. But it's assumed it was provided and in 18 coordination with that structure next to it. But there is no 19 intent to disturb that area. It will be -- remain as the 20 buffer. 21 MS. HARRIS: So it's existing and will remain, but 22 the Applicant is not proposing any activity within there; is 23 that right? 24 MR. STEMANN: Right. 25 MS. HARRIS: Okay. Are there any existing</p>	<p>39</p> <p>1 HEARING EXAMINER ROBESON HANNAN: (Inaudible) 20 2 feet wide? 3 MR. STEMANN: That's the existing sewer. And so 4 our proposed connection, which is sort of framed with that 5 LOD line work. And there is a line that says SAN on it. 6 That's the new sanitary connection for the site which would 7 connect -- 8 HEARING EXAMINER ROBESON HANNAN: (Inaudible). 9 MR. STEMANN: And that's within the stream valley 10 buffer. 11 HEARING EXAMINER ROBESON HANNAN: Okay. 12 MR. STEMANN: And then the third item is the 13 proposed road connection, which crosses the intermittent 14 stream. And that's also framed with that LOD line. And 15 that -- staff determined that eliminating the existing road 16 and relocating to this area was preferred environmentally. 17 It removes it from the area near the perennial stream and 18 crosses the intermittent stream instead. So those are three 19 stream valley buffer impacts. 20 MS. HARRIS: And going back to the parking lot for 21 a moment. So there is an existing surface parking lot that's 22 in the stream valley buffer that's being removed; is that 23 correct? 24 MR. STEMANN: Correct. 25 MS. HARRIS: And what is it being replaced with?</p>
<p>38</p> <p>1 improvements within the stream valley buffer? So that goes 2 to the light blue line. 3 MR. STEMANN: Right. And that would be just the 4 removal of the roadway. 5 MS. HARRIS: Okay. And does the conditional use 6 application propose any activity within the stream valley 7 buffer? 8 MR. STEMANN: Any activity -- proposed activity in 9 the stream valley buffer? 10 MS. HARRIS: Yes. 11 MR. STEMANN: So there are three things that are 12 sort of the key points that will happen in the stream valley 13 buffer. One is the removal of the parking area, which is 14 adjacent to the gym which is underlined by that 6A. On this 15 plan there is a note that says, stabilized area with turf 16 seed mix. That's approximately in that area of where that -- 17 that parking area that will be removed. The second item is a 18 sanitary line, an upgraded connection for the site which is 19 near the wetland area. And so there is a crossing there. 20 HEARING EXAMINER ROBESON HANNAN: Wait. I'm 21 sorry. Where is it? 22 MR. STEMANN: It is -- it's shown in a light gray 23 on this plan. There is a line which crosses the wetland 24 buffer and connects to a manhole there. It's shown -- it's 25 labeled as --</p>	<p>40</p> <p>1 MR. STEMANN: It's being planted, that area. Part 2 of it will be turf area and then part of it I believe it will 3 be for us to. So -- 4 MS. HARRIS: So turning it from impervious to 5 pervious? 6 MR. STEMANN: Yeah, exactly. 7 MS. HARRIS: And the existing gym, which is, as 8 you said, under this 6A designation on the plan, what's 9 happening there? 10 MR. STEMANN: So the gym is going to remain. It's 11 the opinion that it's better to retain it and remove it. 12 There won't be any additions or changes to the structure 13 itself. There may be some interior fit-up, but the intent is 14 to leave it. It would be more disturbing to take that 15 building out the stream valley buffer. In addition, the 16 County is always pushing for reuse of older buildings. So 17 using this for a new use is preferred than constructing some 18 sort of new facility. 19 MS. HARRIS: When you said is the opinion that is 20 better to keep it there, is -- did the Planning Staff and 21 therefore the Planning Board weigh in on that? It was their 22 opinion as well that -- 23 MR. STEMANN: Correct. That's -- yeah. That was 24 agreed to between our staff and then also Park and Planning 25 staff pushed for that also.</p>

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<p>41</p> <p>1 MS. HARRIS: Okay. So you've identified a 2 handful, shall we say, of activities that are contemplated 3 and that are going to occur within these various 4 delineations; are those contemplated and permitted by the 5 environmental guidelines? 6 MR. STEMANN: Yes. So I will go ahead and read a 7 little bit of the guidelines. In section 5A(1)(b) it 8 provides that no buildings, structures, impervious 9 structures, or activities requiring clearing or grading will 10 be permitted in the stream buffers except for infrastructure 11 uses, bikeways, and trails found to be necessary, 12 unavoidable, and minimized by Park and Planning Department 13 environmental staff working closely with the utility or lead 14 agency. 15 And then that's also expanded in subsection (f) 16 that states only unavoidable road and utility crossings will 17 be permitted in the stream buffer when it is clearly 18 demonstrated that no feasible alternative exists and every 19 effort is made to locate the road alignment and/or utilities 20 to create the least disturbance to existing vegetation, 21 grade, wetlands, trout spawning areas, and Use 3 watersheds, 22 et cetera. 23 So what this does is it allows the relocation of 24 the road, as that's contemplated as necessary. And then the 25 other item would be the small disturbance for the sanitary</p>	<p>43</p> <p>1 And as I stated, it's same issue -- crossing the 2 stream would be a more significant impact. So this is 3 minimizing the impact as desired by the guidelines. 4 MS. HARRIS: And just so that everyone is clear, 5 the reason it sounds like we just repeated ourselves is 6 because the wetland buffer is located within the stream 7 valley buffer, right? 8 MR. STEMANN: Right. So we are impacting both in 9 that area, but that's an unavoidable impact. 10 MS. HARRIS: And the environmental guidelines 11 provide on page 44 that the Planning Board may modify the 12 guidelines on a case-by-case basis and that the Planning 13 Board may grant acceptance on a case-by-case basis. In this 14 case, does the conditional use require modification or 15 exception to the environmental guidelines? 16 MR. STEMANN: No, it does not. To the extent that 17 minor land disturbances are occurring within these areas, 18 they are all permitted to occur pursuant to the guidelines. 19 MS. HARRIS: So the guidelines in other words 20 contemplate the minor disturbances that are being proposed; 21 is that right? 22 MR. STEMANN: Correct, correct. 23 MS. HARRIS: But the guidelines also say, but even 24 so, even if you are doing something else, the Planning Board 25 has the latitude to consider and allow?</p>
<p>42</p> <p>1 connection. And I would just point out that this is the only 2 location along the sewer line that is on this -- or let's say 3 the western side of the perennial stream. Any other location 4 for a connection would have to cross the perennial stream 5 itself. So this is the optimal location to make that 6 connection. 7 MS. HARRIS: And did you say there is already a 8 line there? Just to be clear. 9 MR. STEMANN: Correct. There is currently a 10 smaller sized line that connects and was providing for the 11 older buildings there on the site. It will be upgraded, but 12 it will use that same location, that same connection point. 13 MS. HARRIS: Okay. So those two things, the road 14 relocation and this line we were just talking about or within 15 the stream valley buffer. Are there any disturbances within 16 the wetland or the wetland buffer? 17 MR. STEMANN: Yes, the sanitary connection would 18 be. And the environmental guidelines also -- you know, we 19 spoke about the stream valley buffer. But in section 20 5B(1)(d), that's allowed. It states that wetlands and their 21 associated buffer areas must be maintained in their natural 22 condition unless the proposed disturbances for project 23 determined to be necessary and unavoidable for the public 24 good such as road crossings, water and sewer lines, and storm 25 drain outfalls for which no alternative exists.</p>	<p>44</p> <p>1 MR. STEMANN: Right, exactly. They could allow an 2 exception if need be, if the situation calls for it. 3 MS. HARRIS: But in this case, there is -- the 4 situation doesn't call for it? 5 MR. STEMANN: Correct (inaudible). 6 MS. HARRIS: I mean, I'm sorry. There is no 7 exception? 8 MR. STEMANN: Right. There is no -- right. No 9 exception for this site. Everything falls within the 10 guidelines. 11 MS. HARRIS: Got it. Okay. 12 HEARING EXAMINER ROBESON HANNAN: Just one thing. 13 Ms. Harris, you said minor. That kind of -- if he wants to 14 say they are minor, that's fine. But -- 15 MR. STEMANN: Right. 16 MS. HARRIS: I'll rephrase that to say the road 17 relocation and the sanitary outfall. 18 MR. STEMANN: Right, are considered minor. And 19 they are also considered unavoidable. And they've been 20 minimized as best as possible. 21 MS. HARRIS: Thank you. And in your professional 22 opinion, does the conditional use comply with the 23 environmental guidelines? And does it adequately protect the 24 environmental features on the property? 25 MR. STEMANN: Yes, it does. That's what -- the</p>

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<p>45</p> <p>1 impacts have been minimized and there has been care taken to 2 protect the stream.</p> <p>3 MS. HARRIS: And in your professional opinion, 4 will the overall quality of the stream be maintained as a 5 result of the development?</p> <p>6 MR. STEMANN: Yes. Yes.</p> <p>7 MS. HARRIS: In section 59-7.31 EG of the 8 conditional use requirements requires that the use will not 9 cause any undue harm as a result of dust. In your opinion, 10 is there any scenario in which the conditional use will 11 generate any significant amount of dust so as to cause undue 12 harm?</p> <p>13 MR. STEMANN: No.</p> <p>14 MS. HARRIS: And in your professional opinion, 15 does the proposed conditional use satisfy all the applicable 16 code requirements?</p> <p>17 MR. STEMANN: Yes, it does.</p> <p>18 MS. HARRIS: And is there any aspect of the 19 conditional use related to the disciplines you evaluated that 20 would lead you in your professional opinion to conclude that 21 the use is not compatible with the surrounding neighborhood?</p> <p>22 MR. STEMANN: No. The conditional use works in 23 terms of the existing environment. It's also different than 24 many residential care facilities that are more institutional 25 with more impervious, large parking lots, high, you know</p>	<p>47</p> <p>1 MR. BROWN: Ms. Robeson-Hannan, if you have read 2 the transcript, you will see that I raised the issue of cross 3 examination of this witness with Mr. Baumgardner. And he 4 gave me some latitude to allow my client, Susan Lee, who is a 5 member in good standing of the Maryland Bar, my client in 6 this case as a principal officer of the West Montgomery 7 Citizen's Association, and most importantly the person in the 8 Potomac area in the citizens group who has spent years and 9 years vetting projects in the Potomac area against the 10 environmental guidelines. She knows them far better than I 11 do. And Mr. Baumgardner gave her -- gave me some latitude to 12 allow her to do the -- to do the questions of Mr. Stemann.</p> <p>13 HEARING EXAMINER ROBESON HANNAN: Yes.</p> <p>14 MR. BROWN: I might add -- I might add also that 15 Ms. Lee is here today by way of a long-standing vacation she 16 had planned to meet her daughter in Nairobi, Kenya, where 17 it's eight hours later in the day and she is ready to 18 proceed.</p> <p>19 MS. HARRIS: And if I may before she does so, we 20 did register an objection to that. And I would note it was 21 determined that Ms. Lee can do the cross-examination. I just 22 want to confirm that in doing the cross-examination, Mr. 23 Brown will not also be doing cross-examination, that the -- 24 that Ms. Lee will be the cross examiner; is that correct?</p> <p>25 MR. BROWN: That is correct.</p>
<p>46</p> <p>1 light poles, taller buildings. And it's also a situation 2 where the lot coverage itself is 13.4 percent where 25 3 percent is allowed on a lot of these sites that is pushed to 4 the limit. And we are not doing that in our case.</p> <p>5 MS. HARRIS: And is there anything else you would 6 like to add in regards your testimony?</p> <p>7 MR. STEMANN: No, I believe that's it.</p> <p>8 MS. HARRIS: Thank you. That concludes my 9 questions of Mr. Stemann.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: Thank you. I 11 just have a question and then we will turn it over to Mr. 12 Brown. When you said -- I saw this in the record, and I want 13 to make sure I understand it. The lot coverage, this is 14 going to -- the 30.6 this is going to be one lot. Is that 15 correct?</p> <p>16 MS. HARRIS: Yes.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: Oh. Okay. Let 18 me rephrase it myself. When you say the lot coverage is -- 19 what was it? 13 something percent? Are you calculating that 20 based on the 30.6 acres?</p> <p>21 MR. STEMANN: Correct, yes.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: Okay. That 23 answers my question.</p> <p>24 Okay, Mr. Brown, I'm going to turn it over to you.</p> <p>25 Do you have --</p>	<p>48</p> <p>1 MS. HARRIS: Okay.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: All right. With 3 that, Ms. Lee, I turn it over to you.</p> <p>4 MS. LEE: Hi. Good morning. Good morning to you 5 folks there. And just one correction, Mr. Brown. And you 6 gave me admission to the Maryland Bar. I'm a member in good 7 standing of Pennsylvania and the District of Columbia, but 8 not Maryland, and I don't practice law in Maryland. So I 9 just have a couple of questions because it was very 10 enlightening to hear the description. It's been difficult to 11 figure out.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Okay. Ms. Lee, 13 you are not sworn in.</p> <p>14 MS. LEE: Oh, excuse me. Excuse me. Excuse me.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: You -- you're 16 not here as a witness. You are here -- no, you're here only 17 to ask questions. You can testify later under oath. But 18 you've got to keep your preface -- you can't do the preface.</p> <p>19 You can ask the questions.</p> <p>20 MS. LEE: All right.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Thank you. Go 22 ahead.</p> <p>23 MS. LEE: And I -- I will (inaudible) myself sworn 24 in. I don't want to stop if you wanted to do that.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: This is only the</p>

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<p>49</p> <p>1 time for questions.</p> <p>2 MS. LEE: Okay, fine.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: But you will get</p> <p>4 ample chance later. Right now you're just asking Mr. Stemann</p> <p>5 questions.</p> <p>6 MS. LEE: Mr. Stemann, could you please tell me</p> <p>7 whether there are steep slopes adjacent to the wetlands?</p> <p>8 MR. STEMANN: There are not any steep slopes. If</p> <p>9 we could pull up -- there was a --</p> <p>10 MS. HARRIS: What exhibit?</p> <p>11 MR. STEMANN: The NRI, which -- 51.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: How to rotate</p> <p>13 the view of the plans so that north is up?</p> <p>14 MS. HARRIS: Can I</p> <p>15 HEARING EXAMINER ROBESON HANNAN: It might help</p> <p>16 the witnesses, but I don't want to spend a lot of time, you</p> <p>17 know, orienting things.</p> <p>18 MS. HARRIS: Would that be -- is that helpful --</p> <p>19 HEARING EXAMINER ROBESON HANNAN: Yeah, I think it</p> <p>20 is a little bit because people don't have to think through</p> <p>21 what's north and what's south. So --</p> <p>22 MS. HARRIS: Now that Mr. Stemann has completed</p> <p>23 his testimony, he did a wonderful job identifying directions.</p> <p>24 We should have done it earlier. But --</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Oh, it's fine.</p>	<p>51</p> <p>1 Just clarifying.</p> <p>2 MS. HARRIS: Okay.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Okay, go ahead.</p> <p>4 MR. STEMANN: Okay. So if we can -- can I zoom?</p> <p>5 MS. HARRIS: I just did. More?</p> <p>6 MR. STEMANN: Okay. Yeah, there is some wetland.</p> <p>7 There is a -- it does catch that the -- can you repeat the</p> <p>8 question?</p> <p>9 MS. LEE: Yes. Is there a steep slope adjacent to</p> <p>10 the wetland?</p> <p>11 MR. STEMANN: No, not the wetland itself, no.</p> <p>12 MS. LEE: How do you define adjacency?</p> <p>13 MR. STEMANN: Adjacency? I don't know if</p> <p>14 adjacency is defined in the guidelines. I'm looking at this</p> <p>15 area. If it was hydraulically adjacent, I suppose this area</p> <p>16 may be considered, but that's at the edge of the buffer and</p> <p>17 not directly adjacent to the wetland itself.</p> <p>18 MS. LEE: You stated that the -- going to the area</p> <p>19 that -- sorry. It's on the other side, which is near the</p> <p>20 intermittent stream, the buffer delineation concerning that.</p> <p>21 And I think if we go there, it's going to be an area that you</p> <p>22 pointed out just below the 150 line. And you indicated that</p> <p>23 even -- first of all --</p> <p>24 HEARING EXAMINER ROBESON HANNAN: You mean south</p> <p>25 of the 150?</p>
<p>50</p> <p>1 Go ahead.</p> <p>2 MR. STEMANN: Okay. The question was about the</p> <p>3 wetland area.</p> <p>4 MS. HARRIS: And I think I should give you control</p> <p>5 of the --</p> <p>6 MR. STEMANN: And whether the --</p> <p>7 MS. HARRIS: Why don't you take control? Because</p> <p>8 that's probably easier.</p> <p>9 MR. STEMANN: Oh, okay.</p> <p>10 MS. HARRIS: You could have picked up your cursor</p> <p>11 like you did --</p> <p>12 MR. STEMANN: I was going to do that, but it</p> <p>13 wouldn't let me.</p> <p>14 MS. HARRIS: Okay, you can use --</p> <p>15 MR. STEMANN: Okay. Let me just try again.</p> <p>16 MS. HARRIS: Hold on. Let me -- let's start this</p> <p>17 again. I think it's easier if we did it the way we did it</p> <p>18 last time.</p> <p>19 MR. STEMANN: Okay. Okay.</p> <p>20 HEARING EXAMINER ROBESON HANNAN: When you say the</p> <p>21 way we did it, the way we did last time, just for the record,</p> <p>22 you are referring to how the plan --</p> <p>23 MS. HARRIS: He -- no, me pulling up the plan, but</p> <p>24 giving him control of the cursor.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Okay, fine.</p>	<p>52</p> <p>1 MS. LEE: Yes.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: (Inaudible)</p> <p>3 line?</p> <p>4 MS. LEE: Let's see. I guess is going to be a</p> <p>5 little bit north of the -- of 150 -- just -- yeah. As I'm</p> <p>6 looking at it here, it's going to be -- let's see. It will</p> <p>7 be -- looking at it right now, it's to the right of the 150.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: Okay. It's to</p> <p>9 the east of the 150?</p> <p>10 MS. LEE: Yes. Yes. And --</p> <p>11 MR. STEMANN: Right.</p> <p>12 MS. LEE: You stated that -- you identified the</p> <p>13 stream valley buffer. And you identified the steep slope and</p> <p>14 where they intersect. And you indicated that the stream</p> <p>15 valley buffer was not extended because the steep slope does</p> <p>16 not drain to the intermittent stream. Where does it drain?</p> <p>17 MR. STEMANN: It drains across this way. Just</p> <p>18 looking at the slopes in this area it would drain in this</p> <p>19 direction.</p> <p>20 HEARING EXAMINER ROBESON HANNAN: Okay. So you</p> <p>21 are -- just a second. You're pointing northeast; am I right?</p> <p>22 MR. STEMANN: Right. It is -- instead of draining</p> <p>23 to the southeast, it drains more towards the northeast away</p> <p>24 from the stream.</p> <p>25 MS. LEE: And on what basis do you state that?</p>

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<p>53</p> <p>1 MR. STEMANN: Based on the slopes, the direction 2 of the slopes, water would run perpendicular to the slopes. 3 And in this case, they would run in this direction across the 4 slope. And in that case, they run sort of not directly to 5 the stream. It sort of runs in parallel to the stream. 6 MS. LEE: I want -- on the NRI itself, the version 7 that your -- that you have up now as an exhibit is unsigned. 8 Could you please describe when this was prepared? And by 9 whom? 10 MR. STEMANN: This -- right. This was the 11 recertified plan that John Markovich prepared. It is not 12 infrequent that Park and Planning accepts a submittal and 13 approves it without a signature, but it was submitted and 14 coordinated with Mr. Markovich. 15 HEARING EXAMINER ROBESON HANNAN: Mr. Markovich is 16 with Park and Planning? 17 MR. STEMANN: He is with JM Forestry who did the 18 original (inaudible) and also did the recertification. 19 HEARING EXAMINER ROBESON HANNAN: And is there a 20 document somewhere that -- okay. I will let -- I will let 21 Ms. Lee continue. 22 MS. LEE: Well, maybe I could focus on the issue. 23 On Exhibit 26, which was the approved NRI that was submitted 24 in August, if we could pull that up, Exhibit 26. 25 MS. HARRIS: I'm going to object to that because I</p>	<p>55</p> <p>1 indicated, not with highly erodible or severely erodible 2 soils with the -- 3 MS. LEE: When you look at the key in the far 4 right hand corner it indicates those are two categories, but 5 there is nothing there; is that correct? 6 MR. STEMANN: Right. So this is the previous 7 approval of the NRI. And my interpretation of this is that 8 this plan was printed and then scanned. And the hatches for 9 the slopes do not read due to that scanning process. That 10 being said, this is the older plan. The newer plan indicates 11 it much better. It was digitally approved, so it didn't have 12 that downgrade of the scanning process. 13 MS. LEE: In addition to the key, are the actual 14 slopes, steep slopes and then the slopes on erodible soils 15 indicated on the map with hash-tagging? 16 MR. STEMANN: On this -- on this plan it's just 17 very difficult to see due to the scanning process. But the 18 newer plan indicates it more clearly. The approved plan. 19 MS. LEE: And this stream valley buffer that was 20 delineated here, is in exactly the same one that you've 21 identified today and discussed? 22 MR. STEMANN: Yes. Yes. 23 MS. LEE: And do you know whether Mr. Markovich 24 made any changes from this first one? 25 MR. STEMANN: The changes primarily related to the</p>
<p>54</p> <p>1 don't think we ever referred to -- we did not refer to 2 Exhibit 26. 3 HEARING EXAMINER ROBESON HANNAN: Well, I think 4 you did. Well, she said the original one. He mentioned the 5 original one that was recertified. So I think it's within 6 the realm of what he just -- on his testimony. 7 MR. STEMANN: Okay. 8 MS. HARRIS: Okay. Since we didn't pull it up as 9 an exhibit, we need to go to -- and we don't have it. I need 10 to go to the -- 11 HEARING EXAMINER ROBESON HANNAN: Well, I have it. 12 MS. HARRIS: Okay. 13 HEARING EXAMINER ROBESON HANNAN: Hold on. Let me 14 go to -- okay. One second. (Inaudible 1:14:40). Okay. Are 15 you seeing it? 16 MS. HARRIS: Yes. 17 MR. STEMANN: Yes. 18 HEARING EXAMINER ROBESON HANNAN: Okay. Do you 19 need it bigger? 20 MS. LEE: I'm fine with it that size. 21 HEARING EXAMINER ROBESON HANNAN: Okay. 22 MS. LEE: I just wanted to ask him if there are 23 any -- if there are any steep slopes or steep slopes with 24 erodible soils indicated on the NRI. 25 MR. STEMANN: Yes, there are steep slopes</p>	<p>56</p> <p>1 trees. Some of the trees' conditions had changed. That's 2 where the changes lie. Some trees fell. Some trees got 3 bigger. So that was the primary thing that was updated on 4 the recertified plan. 5 MS. LEE: And one last question with regard to 6 expansion of the stream valley -- in the stream buffers. Is 7 it -- you're not -- you haven't discussed the forest stand 8 requirements. Is there going to be another -- have you, have 9 you, have you considered, and what was your decision with 10 regard to expanding them to include the protected forest 11 stand? 12 MR. STEMANN: That would -- 13 MS. HARRIS: If I may, we have a different witness 14 that's going to be discussing issues related to forestry. 15 That's our next witness after Mr. Stemann. 16 MS. LEE: And with regard to expansion of the 17 stream valley buffers to include them; is that correct? This 18 is your witness on stream valley buffers; is that correct? 19 MS. HARRIS: Yes, but I thought the question that 20 you just asked related to forestry. 21 MS. LEE: Well, with regard to requirements to 22 expand stream valley buffers based on protected forest 23 stands. 24 MR. STEMANN: That is not within the environmental 25 guidelines. The guidelines which we outlaid, there is sort</p>

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<p>57</p> <p>1 of a process with the buffer determination related to the 2 stream type and then the slopes in the hydraulic adjacency. 3 Forest stands are not considered in part of that. 4 MS. LEE: The forest stand that I'm talking about 5 is in the master plan. So that's not -- was part of your 6 calculation? 7 MR. STEMANN: Correct. That's not part of the 8 stream valley buffer consideration. 9 MS. LEE: I think that's it. Thank you, very 10 much. 11 HEARING EXAMINER ROBESON HANNAN: Thank you. Any 12 redirect? 13 MS. HARRIS: Yes, just a few, please. 14 Mr. Stemann, the -- does NRI label three of the 15 soils as highly -- does NRI label three of the soils as 16 highly erodible? I don't want to -- let's go back to the 17 approved and updated NRI because that's the controlling NRI. 18 That will be Exhibit 51 again. I can bring that up, Ms. -- 19 HEARING EXAMINER ROBESON HANNAN: Okay. I will 20 stop sharing. 21 MS. HARRIS: -- Robeson. Okay. (Inaudible). 22 Does NRI identify three of the soils as highly erodible? 23 MR. STEMANN: It does. But this was reviewed and 24 we determined this is an error. They are not highly 25 erodible, but it was just a carryover.</p>	<p>59</p> <p>1 site are listed on here. The four soils that we have 2 (inaudible) are not part of this list. So they are not 3 considered a severe hazard of erosion, which are the critical 4 soils in question. 5 MS. HARRIS: And if you -- and so in your opinion, 6 the soils that are listed on the NRI, what classification of 7 erodibility should those be given? 8 MR. STEMANN: I think most were low. There might 9 have been one that was moderate when we did our review, but 10 none were considered high. 11 MS. HARRIS: And in Park and Planning, in 12 approving the NRI, would you conclude that they also 13 determined that they were not -- that the existing soils were 14 not highly erodible? 15 MR. STEMANN: Correct. This page of the severely 16 erodible is the more critical determination and none of them 17 qualified for that. 18 MS. HARRIS: So this is the controlling document 19 that determines erodibility? 20 MR. STEMANN: Exactly. 21 MS. HARRIS: And then since the time of the NRI -- 22 so you said that when the NRI was recertified, the original 23 preparer was required to be the -- to update it and he went 24 out to the site; is that correct? 25 MR. STEMANN: Correct. He walked the site to</p>
<p>58</p> <p>1 MS. HARRIS: And just to drill down on that little 2 bit. On the left-hand side of this soil chart there are four 3 different soils that are identified. 4 HEARING EXAMINER ROBESON HANNAN: Wait. Wait. 5 Where are we? 6 MS. HARRIS: We are on exhibit (inaudible) exhibit 7 and there are a number of tabulations and there is a soil 8 chart. 9 (Crosstalk) 10 HEARING EXAMINER ROBESON HANNAN: Okay. I see it. 11 The soil chart is exhibit -- what is this exhibit? 12 MS. HARRIS: It's the NRI exhibit number 50 -- I 13 think it's 51. 14 HEARING EXAMINER ROBESON HANNAN: Okay. 15 MS. HARRIS: And that's okay. So it identifies 16 four soil types, 1C, 2B, 3. 17 MR. STEMANN: 6A. 18 MS. HARRIS: And 116D. And can you then cross- 19 reference then to the environmental guidelines that identify 20 what highly erodible soils are? And for that I'm going to go 21 back to, I think it's Exhibit 70. No Exhibit 27. 22 MR. STEMANN: Yes. 23 MS. HARRIS: Okay. So we are on page 67 of the 24 environmental guidelines. 25 MR. STEMANN: Right. None of the soils on our</p>	<p>60</p> <p>1 verify the site conditions and to redetermine any trees that 2 may have changed. 3 MS. HARRIS: And is it possible since then -- and 4 since the time of the NRI, is it possible that other 5 conditions could have changed? 6 MR. STEMANN: Yes, but the NRI is considered a 7 snapshot and it's locked in. It's of that time period. 8 That's why it expires within two years. The intent being 9 that after two years the site needs to be revisited. But 10 within that timeframe it is considered the best snapshot of 11 the conditions. 12 MS. HARRIS: Why did he then -- but is an 13 exception made for the trees? I mean, why did he look at the 14 trees? 15 MR. STEMANN: Well, it had to be recertified 16 anyway. And the trees would probably be the thing that's 17 going to change most likely. If trees get over a certain 18 size their classification changes. And then also trees fall, 19 trees die, and he wanted to make sure on that. It's part of 20 the pre-walk of the site. 21 MS. HARRIS: So you're saying that of the items, 22 the most dynamic item is the growth of the trees and 23 therefore recertification would typically and standard to 24 focus on what additional growth has occurred within the time 25 of the original certification?</p>

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16 (61 to 64)

<p>61</p> <p>1 MR. STEMANN: Right. Right. Within two years 2 that's the most dynamic element, yeah. 3 MS. HARRIS: Okay, thank you. I have no other 4 questions for Mr. Stemann. 5 HEARING EXAMINER ROBESON HANNAN: All right. 6 MS. HARRIS: Wait, one last question. The NRI, it 7 goes -- and it's implicit because we've referred to it as the 8 recertified NRI. Park and Planning reviewed that and 9 approved it; is that correct? 10 MR. STEMANN: Correct. That plan is approved. 11 It's been certified by Park and Planning as the -- 12 MS. HARRIS: Is there some indication on the plan 13 of that? 14 MR. STEMANN: Yes, there is -- in the upper left- 15 hand corner of that plan sheet, there is a certification and 16 approval block from Park and Planning. There it is. 17 MS. HARRIS: Thank you. No further questions. 18 HEARING EXAMINER ROBESON HANNAN: All right. I 19 see Mr. Park moving to the forefront. We are going to take a 20 five-minute break and then we will come back for Mr. Park. 21 MS. HARRIS: Thank you. 22 HEARING EXAMINER ROBESON HANNAN: You may want to 23 keep your microphones muted because, you know, we can all 24 hear what everybody is saying. So if you want to have a 25 conversation that you don't want everyone the year, you</p>	<p>63</p> <p>1 as a landscape architect and planner? 2 MR. PARK: 18 years. 3 MS. HARRIS: And who's your current employer and 4 the business address, please? 5 MR. PARK: Yes, I work for Soltesz located at 2 6 Research Place, Suite 100, in Rockville, Maryland, 20850. 7 MS. HARRIS: And what is your current position at 8 Soltesz? 9 MR. PARK: I am the director of planning for the 10 Rockville office. And my job is to -- my job function is to 11 oversee the planning team and act as the primary contact 12 supporting engineers and representing company at -- for 13 (inaudible) applications. I'm also the senior landscape 14 architect. 15 MS. HARRIS: And what is your experience in 16 Montgomery County as it relates to forestry and environmental 17 regulation? 18 HEARING EXAMINER ROBESON HANNAN: Let me just let 19 me do this. He is qualified. Mr. Brown, is there anyone on 20 this call -- he has qualified as an expert in landscape 21 architecture before us. Is there anyone that objects to 22 qualifying him as a landscape architect? And this includes 23 everyone on the call. Is there anyone that objects to again 24 qualifying him as a landscape architect? 25 MR. BROWN: No objection here.</p>
<p>62</p> <p>1 should meet your microphone. So we will be back at 11:01. 2 Thanks. 3 (Off the record at 10:56 a.m., resuming at 11:01 4 a.m.) 5 HEARING EXAMINER ROBESON HANNAN: Someone has 6 those -- is sharing the screen -- that's our calendar. 7 Just -- I don't know if that's what you want up. Okay. So I 8 see Mr. Park. Ms. Harris, I'm going to turn it over to you. 9 MS. HARRIS: Thank you. Do you want him to -- 10 welcome Daniel, Daniel Park. Ms. Robeson, do you want to 11 swear him in before we get started? 12 HEARING EXAMINER ROBESON HANNAN: Oh, I apologize. 13 Please raise your right hand, Mr. Park. 14 Do you solemnly swear, under the penalties of 15 perjury that the statements you're about to give are the 16 truth, the whole truth and nothing but the truth? 17 MR. PARK: I do. 18 HEARING EXAMINER ROBESON HANNAN: Go ahead, Ms. 19 Harris. 20 MS. HARRIS: Thank you. Mr. Park can you please 21 state your full name and occupation for the record? 22 MR. PARK: Yes. Good morning, everyone. My name 23 is Daniel Park. I am a landscape architect and land-use 24 planner. 25 MS. HARRIS: And how long have you been employed</p>	<p>64</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Okay. See no 2 objections, I'm going to qualify him as a landscape 3 architect. Was there another specialty you wanted to qualify 4 him in? 5 MS. HARRIS: And in forest conservation. 6 HEARING EXAMINER ROBESON HANNAN: He is qualified 7 as that as well. Any objection to admitting him as an expert 8 in forest conservation? 9 MR. BROWN: No objection. 10 HEARING EXAMINER ROBESON HANNAN: All right. 11 Hearing none, we will so qualify Mr. Park. 12 MS. HARRIS: Thank you. Mr. Park, are you 13 familiar with the conditional use application which is the 14 subject of this hearing? 15 MR. PARK: Yes, I am, Ms. Harris. 16 MS. HARRIS: And can you please describe what your 17 role has been in connection with the conditional use 18 application? 19 MR. PARK: Absolutely. My role was to -- a few 20 things. Ensure the plan's compliance in the RA2 zone and 21 residential care facilities, development standards in regard 22 to landscaping offering and outdoor lighting. I reviewed the 23 overall landscape design for compatibility with surrounding 24 areas, provided design direction and oversight, and reviewed 25 landscape plans and lighting plans. And lastly, also prepare</p>

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17 (65 to 68)

<p>65</p> <p>1 the forest conservation plan and the variance for removal of 2 specimen trees. 3 MS. HARRIS: And have you made a personal 4 inspection of the property? 5 MR. PARK: Yes, I have. 6 MS. HARRIS: Thank you. Are you familiar with the 7 Montgomery County zoning ordinance including its provisions 8 related to the RA2 zone, residential care facilities, and the 9 general requirements of the ordinance regarding landscaping 10 and outdoor lighting? 11 MR. PARK: Yes, I am. And for the record, I would 12 like to go over some of those. I am familiar with the 13 requirements of the RA2 zone per section 4.4.4 of the zoning 14 ordinance, the residential care facility over 16 persons per 15 3.3.2.E, the general landscaping and outdoor lighting and 16 screening per 6.4 and 6.5, and the parking lot landscaping 17 under 6.2.9. 18 MS. HARRIS: Thank you. And now Ms. Robeson, I'm 19 going to pull up Exhibit 56C. And this is a landscaping 20 plan. And I -- Mr. Park, if you could describe what 21 landscaping is -- this is a rendered site plan. Sorry. What 22 landscaping is being proposed in connection with the project. 23 And we have more detailed plans. So this is obviously sort 24 of a high level description at this point. 25 MR. PARK: Of course, Ms. Harris. Thank you, yes.</p>	<p>67</p> <p>1 zoning ordinance both in terms of width and number of plants. 2 Screening is required along the eastern and western lot lines 3 because it shares a lot line with a residential use. That's 4 per 653A. And the buffer options are either an 8 foot or 12 5 foot wide screening. That's the requirement. And both 8 6 foot and 12 foot buffers are provided. I think it would be 7 helpful if we pulled up Exhibit 92 at this point to explain 8 per section 653C7, two options for landscape buffer are 9 available. And that's shown on the left hand side of the 10 screen there. We did produce an illustrative to better 11 explain the buffers provided in these locations. As you can 12 see in these, both options A and D, in different areas. 13 Option A as you can see there on the top of the page both in 14 plan and fashion view -- 15 HEARING EXAMINER ROBESON HANNAN: Well -- that's 16 okay. (Inaudible) all right. At the top of exhibit, what is 17 this, 92 the label -- 18 MR. PARK: Yes, Ms. -- 19 HEARING EXAMINER ROBESON HANNAN: A. Okay, that's 20 fine. 21 MR. PARK: Right. So option A as shown on top of 22 this exhibit here requires the following items. And this is 23 typical for every 100 foot section. And these items are two 24 canopy trees, two understory or evergreen trees, six large 25 shrubs, eight medium shrubs, and a 4 foot fence. But in our</p>
<p>66</p> <p>1 For Exhibit 56C, which is a lesser rendering, if you may pull 2 it up, Ms. Harris. 3 MS. HARRIS: Oh, sorry. I thought I had it on the 4 screen. Okay. 5 MR. PARK: It's on the screen now. 6 MS. HARRIS: Okay. 7 MR. PARK: So there are three main components of 8 the landscape design. One being the green area and 9 associated open spaces, the screening from abutting 10 properties per the section I mentioned earlier, and 11 landscaping for the parking lot for 10 or more parking 12 spaces. 13 MS. HARRIS: Thank you. Okay. And does the 14 conditional use comply with the applicable development 15 standards for the proposed RA2 zone and the residential care 16 facility? 17 MR. PARK: Yes, it does, except for minor waivers 18 of parking lot perimeter planting and tree canopy coverage 19 being requested. I will explain that later in my testimony. 20 MS. HARRIS: Okay. Then moving on to our next 21 exhibit, which is 46E. Does the zoning ordinance require any 22 planting or buffering in connection with the conditional use? 23 And does the project comply with these requirements? 24 MR. PARK: Yes, it does, Ms. Harris. And the 25 project complies with the screening requirements of the</p>	<p>68</p> <p>1 case we are providing a 6 foot fence. Any questions 2 regarding that, Ms. Robeson? 3 HEARING EXAMINER ROBESON HANNAN: No, I 4 understand. 5 MR. PARK: Option B is a 12 foot buffer and 6 includes a -- includes at least two canopy trees, four 7 understory or evergreen trees, eight large shrubs, and 12 8 medium shrubs. 9 Ms. Harris, I think it would be better if we went 10 to the previous exhibit, the landscape plan, exhibit -- 11 HEARING EXAMINER ROBESON HANNAN: 46C? Is that 12 46C? 13 MS. HARRIS: Yes. 14 MR. PARK: 46E as an Edward. 15 MS. HARRIS: C? Oh, E Correct. 16 HEARING EXAMINER ROBESON HANNAN: Okay, go ahead. 17 MR. PARK: So option A is utilized on the eastern 18 property line between the existing pipe stem lot, which is 19 really just a road to the Benoit (phonetic) property there. 20 Option A is providing -- 21 HEARING EXAMINER ROBESON HANNAN: What property? 22 MR. PARK: I'm sorry? 23 HEARING EXAMINER ROBESON HANNAN: What property? 24 MR. PARK: The Benoit property, parcel A. 25 HEARING EXAMINER ROBESON HANNAN: Parcel A to the</p>

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18 (69 to 72)

<p style="text-align: right;">69</p> <p>1 east, okay.</p> <p>2 MR. PARK: Yes, correct. So option A is utilized</p> <p>3 primarily along the portion of the road and to the parking</p> <p>4 lot in front of the actual building on the Benoit property.</p> <p>5 And then it transitions into option B beyond that because the</p> <p>6 fence we did not feel was necessary at that juncture and the</p> <p>7 wider buffer would be more appropriate.</p> <p>8 On -- yes, Ms. Harris, you can see there the</p> <p>9 different buffer transition there. And then on the western</p> <p>10 property line we did provide the wider 12 foot buffer along</p> <p>11 the entirety of that property line until it hits the stream</p> <p>12 valley buffer and the forest conservation areas associated</p> <p>13 with those areas. When combined with the existing tree line,</p> <p>14 the buffer area ranges in width from 40 to 80 feet at 20 year</p> <p>15 growth. And this is along the west property line again.</p> <p>16 Along the north property line --</p> <p>17 MS. HARRIS: If I can interrupt you for a second,</p> <p>18 when you say existing tree line, can you identify on this</p> <p>19 plan where that is? Is it --</p> <p>20 MR. PARK: Yes, Ms. Harris. So there is a bubble</p> <p>21 shaped line north of the label that says landscape buffer</p> <p>22 type B, typical. And that existing tree line ranges in width</p> <p>23 from 40 to 80 feet approximately. Oh, I'm sorry. For the</p> <p>24 record, let me restate. So it's actually a little less than</p> <p>25 that, but when combined with the proposed buffer, it ranges</p>	<p style="text-align: right;">71</p> <p>1 side, Glen Vista Lot 7.</p> <p>2 MR. PARK: Yes, Ms. Robeson.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: What's the --</p> <p>4 (inaudible).</p> <p>5 MR. PARK: I'm sorry to interrupt you. As you can</p> <p>6 see, the tree line extends from lot 6 into the subject</p> <p>7 property and there is essentially an existing tree stand</p> <p>8 there that covers a majority of the property line between Lot</p> <p>9 7 and the subject property.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: And is that --</p> <p>11 MS. HARRIS: And so --</p> <p>12 HEARING EXAMINER ROBESON HANNAN: -- be a</p> <p>13 conservation -- a forest conservation area?</p> <p>14 MR. PARK: Correct. The entirety that tree stand</p> <p>15 is proposed to be forest conservation easement.</p> <p>16 HEARING EXAMINER ROBESON HANNAN: Is it Category</p> <p>17 1?</p> <p>18 MR. PARK: Yes, it is.</p> <p>19 MS. HARRIS: And if I could, I'm going to go back</p> <p>20 for a moment to the overall plan. Mr. Park, if you could</p> <p>21 just describe -- my cursor is on Lot 7. To answer Ms.</p> <p>22 Robeson's question, can you just briefly described the</p> <p>23 plantings and the existing trees and south of the Lot 7</p> <p>24 MR. PARK: Yes, there are several large existing</p> <p>25 trees there which are sort of depicted in the aerial view</p>
<p style="text-align: right;">70</p> <p>1 in width from 40 to 80 feet.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Now, is that</p> <p>3 tree line on -- that's not on your property? That's on the</p> <p>4 other lots, properties, right?</p> <p>5 MR. PARK: That is correct.</p> <p>6 HEARING EXAMINER ROBESON HANNAN: Go ahead.</p> <p>7 MR. PARK: I would like to also note, Ms. Robeson,</p> <p>8 that the density of plantings is an increase in the 8 foot</p> <p>9 buffer versus a 12 foot buffer. So both a similar screening</p> <p>10 effect is achieved in both of those options. These buffers</p> <p>11 are the same as would be required for the general use of</p> <p>12 building which would typically be much taller in height and</p> <p>13 massing.</p> <p>14 HEARING EXAMINER ROBESON HANNAN: All right.</p> <p>15 MS. HARRIS: And then what's happening along the</p> <p>16 northern property line?</p> <p>17 MR. PARK: Right. There is a -- it is encumbered</p> <p>18 by environmental features. And so a forest conversation</p> <p>19 easement is being proposed over a majority of that. So there</p> <p>20 is a lot of forest there. It is essentially the screened as</p> <p>21 it is today.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: What is adjacent</p> <p>23 to Lot 7?</p> <p>24 MS. HARRIS: Lot --</p> <p>25 HEARING EXAMINER ROBESON HANNAN: On the northwest</p>	<p style="text-align: right;">72</p> <p>1 here. It's also within stream valley buffer as determined</p> <p>2 per the NRIFSD. And thus the Applicant is also providing</p> <p>3 additional, supplemental plantings above and beyond that. So</p> <p>4 at the end of the day the lawn area adjacent to the -- what's</p> <p>5 shown as an aerial tree now would be much larger.</p> <p>6 MS. HARRIS: And then if you could, just walk us</p> <p>7 along the property line to the north, given that on the</p> <p>8 existing landscaping plan the buffer doesn't show on the</p> <p>9 remainder of that property line either. So can you just</p> <p>10 briefly describe the condition walking around the property</p> <p>11 line to the northern property line?</p> <p>12 MR. PARK: Yes. If you continue along the western</p> <p>13 property line heading north, the project is proposing a</p> <p>14 Category 1 forest easement contiguous to the existing tree</p> <p>15 forest stand A. And so all of that would be captured in a</p> <p>16 forest easement at a minimum as well.</p> <p>17 MS. HARRIS: Thank you. And then while we have</p> <p>18 the screen -- this plan up, going back to Ms. Robeson's</p> <p>19 question, I believe you said that upon -- once the</p> <p>20 landscaping is in the buffer, then combined with the</p> <p>21 plantings and you acknowledge that those are on adjacent</p> <p>22 properties, the width would be between, I think you said 40</p> <p>23 and 80 feet. Can you identify those areas on this plan?</p> <p>24 MR. PARK: Yes. So --</p> <p>25 MS. HARRIS: Is it on this western property line?</p>

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<p>73</p> <p>1 MR. PARK: Right. Along the entirety of the 2 western property line except that until we hit the stream 3 valley buffer, that is what would be 40 to 80 feet in width 4 at 20 year growth. 5 MS. HARRIS: And in designing the -- in 6 determining that the -- 7 HEARING EXAMINER ROBESON HANNAN: Wait. 8 (Inaudible) 40 to 80 feet in width with the adjacent trees on 9 the other property? 10 MR. PARK: That's correct, Ms. Robeson. 11 HEARING EXAMINER ROBESON HANNAN: Okay. 12 MS. HARRIS: And in evaluating the appropriateness 13 of the 12 foot buffer, is it -- did you -- I'm assuming you 14 took into account the existing trees on the other side in 15 determining that that wasn't appropriate width and would 16 provide sufficient buffer? 17 MR. PARK: Yes. 18 MS. HARRIS: Okay, thank you. And then -- 19 HEARING EXAMINER ROBESON HANNAN: Can I have -- 20 ask a question real quick and then I will let you go 21 undisturbed? 22 Would it be an appropriate width without those 23 trees? If it was just option B, would it be inappropriate 24 with? 25 MR. PARK: Yes, ma'am, it would. Per the</p>	<p>75</p> <p>1 going to zoom in here on 46B. I believe you testified that 2 it complies except a few waivers are necessary. Can you 3 please explain how this complies with the requirements and 4 where the waivers are requested? 5 MR. PARK: Yes, Ms. Harris. We can start with the 6 compliance portion of it. So the (inaudible) complies with 7 the parking lot landscape island planting requirements under 8 6.2.9.C.3. And before I go on to the waiver request, I would 9 just like to say that the primary goal, our purpose for 10 parking lot landscaping requirements is to ensure no adverse 11 impact on adjoining properties. 12 And here, given the size of the property and the 13 location of parking, no one can really see the parking except 14 for residents and visitors to the site. It is not say that 15 there will be absolutely no visibility, but a majority of 16 that parking lot is screened otherwise. As such, the project 17 is seeking waivers. The perimeter planting under 629C3 and 18 canopy coverage under 629C3 under the provisions of 629L1A. 19 And so the requirement for perimeter planting 20 abutting a residential detached zone requires a 10 foot width 21 perimeter planting area, a six-foot hedge, fence, or wall, 22 canopy trees every 30 foot on center, and two understory 23 trees for every canopy tree. For the canopy coverage 24 requirement of 25 percent under 629C2 which says each parking 25 lot must maintain a minimum tree cover of 25 percent coverage</p>
<p>74</p> <p>1 conditional use buffering requirements it would be the 2 appropriate width. 3 MS. HARRIS: And in fact, I was going to go there 4 anyway and ask the question. As other experts have 5 testified, especially in the southern region of the property, 6 the building design is very different than what I'm going to 7 call a more typical institutional type residential care 8 facility. If this were a residential care facility that was 9 of more institutional style, what are the buffering 10 requirements in that instance? Are they the same? 11 MR. PARK: Yes, they are. For a general use 12 building they would be the same. 13 MS. HARRIS: So that the zoning ordinance in 14 determining that in either an 8 foot wide or 12 foot wide 15 buffer is appropriate, it didn't -- it identified that buffer 16 area with the more institutional residential care facility in 17 mind; is that right? 18 MR. PARK: Yes, it is. 19 HEARING EXAMINER ROBESON HANNAN: We don't -- we 20 don't know. That's for every conditional use as a general 21 building type. So it's not necessarily -- I won't argue the 22 point, but I think it's time to move on. 23 MS. HARRIS: And now let's move to Exhibit 46B. 24 And I want to ask you some questions about the parking lot 25 landscaping. So does the parking lot landscaping -- I'm</p>	<p>76</p> <p>1 at 20 years of growth over the parking lot surface or as 2 defined by the Planning Board's tree cyclical manual or as 3 amended. 4 And I think staff noted that a canopy waiver would 5 be appropriate here due to the size of the planting pits 6 which would limit the tree growth and canopy. Smaller trees 7 are more viable in this area. Larger trees would cause 8 pedestrian conflicts. And the larger trees would not really 9 be optimal in this location. I would note that this is not a 10 shopping center or a shopping center's parking lot where a 11 tree's canopy is especially important. The parking lot is 12 almost completely surrounded and screened by the building, as 13 you can see, which provides -- 14 HEARING EXAMINER ROBESON HANNAN: The canopy 15 requirements were also to keep the temperature of the 16 pavement down. 17 MR. PARK: Yes, Ms. Robeson. And because of the 18 placement of the -- 19 HEARING EXAMINER ROBESON HANNAN: (Inaudible) near 20 an intermittent stream and -- no, a perennial stream and an 21 intermittent stream. 22 MR. PARK: Correct. So there are trees that would 23 form shadows from the southern portion and also, depending on 24 the time of the day, the building would also provide adequate 25 shade. So really that sort of heat island effect on the</p>

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20 (77 to 80)

<p>77</p> <p>1 parking lot is reduced and planning staff agreed with that 2 assessment. 3 MS. HARRIS: Thank you. 4 MR. PARK: So -- 5 MS. HARRIS: Go ahead. 6 MR. PARK: I'm sorry? 7 MS. HARRIS: No, go ahead. That I -- I think I 8 interrupted you. 9 MR. PARK: Staff also determined that the 10 perimeter planting waiver is appropriate, as I stated. As 11 the closest surface -- closest point to the service parking 12 lot is approximately 400 feet from the adjacent property and 13 not visible, the purpose of perimeter landscaping is to 14 buffer neighboring properties' views. Again, the parking lot 15 is almost completely surrounded by the building. 16 MS. HARRIS: Thank you. Turning to Exhibit 53B. 17 What are the afforestation, reforestation requirements for 18 the project? And what is provided? And I think I need to 19 zoom in here a moment. 20 HEARING EXAMINER ROBESON HANNAN: Thank you. Is 21 this the PFCP? 22 MR. PARK: Yes, it is. 23 HEARING EXAMINER ROBESON HANNAN: I'm sorry. And 24 what was the exhibit number? 54 -- 25 MS. HARRIS: 53B.</p>	<p>79</p> <p>1 conservation easement requirements for the project? And 2 what's provided? 3 MR. PARK: Yes. So per the environmental 4 guidelines, all stream valley buffers, existing forest 5 retained, and existing easements are to be protected by a 6 Category 1 forest easement. As Mr. Stemmann testified 7 earlier, there is a portion of the stream valley buffer which 8 is not within forest conservation easement for the existing 9 building where the 6A label is and the functional area around 10 that building. 11 This plan, this preliminary forest conservation 12 plan confers 12.59 acres of Category 1 forest conservation 13 easement and 2.29 acres of additional supplemental planting 14 area. In short, the project provides environmental 15 protection benefits above and beyond what is required. 16 MS. HARRIS: Thank you. And then what are the 17 landscaping that's what landscaping is being provided 18 internal to the project? 19 MR. PARK: Yes. Ms. Harris, I think this would be 20 better explained on exhibit -- let's see here. The exhibit 21 which shows the rendered site plan or the landscape plan. 22 I'm sorry. 23 MS. HARRIS: That's okay. So back to this one? 24 MR. PARK: Actually, let's go to the landscape 25 plan exhibit. It will provide a little bit more detail.</p>
<p>78</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Thank you. 2 MS. HARRIS: Okay. So the question is, in 3 connection with the conditional use, what are the 4 afforestation and reforestation requirements? 5 MR. PARK: Yes. The forest clearing of 2.81 acres 6 for this plan requires -- the 12.73 acres of existing forest 7 stand yields no reforestation and no afforestation 8 requirement. So the project is essentially -- approximately 9 1.42 acres above the retention threshold. 10 MS. HARRIS: Okay. And so just to be clear on 11 that. Is it unusual for a project, based on your experience 12 of doing projects for many years in Montgomery County, is it 13 unusual for a project not to trigger either reforestation or 14 afforestation requirements? 15 MR. PARK: Yes, it is. You know, when a proposed 16 site has an existing forest, that's true. It's not -- it's 17 unusual not to trigger either afforestation or reforestation, 18 which is triggered when a certain amount of existing forest 19 is eliminated. And this is based on the land use category. 20 Typically proposed density of residential products are 21 typically much higher to the allowed upper limit which 22 requires more forest removal. And I find that this project 23 is well under the upper limit. And so we are preserving a 24 lot of that forest. 25 MS. HARRIS: Okay. And so what are the forest</p>	<p>80</p> <p>1 MS. HARRIS: Yes. 2 MR. PARK: Yes, Ms. Harris. If you could, just 3 zoom in a little bit. Okay. So the landscaping provided 4 internal to the project, they are per the requirements of 5 3.3.2.E2CIC. 6 HEARING EXAMINER ROBESON HANNAN: There's got to 7 be a shorter way to number the zoning ordinance. But go 8 ahead. 9 MR. PARK: Yes. Yes, ma'am. Which has 10 requirements for green area and open spaces. So 50 percent 11 green area is required under the conditional use and this 12 plan here shows 75.62 percent green area being provided. And 13 this is different than open space green area. It has a 14 different set of requirements. But a large central open 15 space is provided. They're so named, Saxton Park and 16 Heritage Gardens which equates to approximately 1.34 acres of 17 open space. As you can see here there are a series of 18 pathways, seating opportunities, and plenty of ornamental 19 planting opportunities, which define and connect these 20 spaces. 21 MS. HARRIS: Thank you. And in your experience, 22 the fact that it's providing -- the requirement is 50 percent 23 green area and this project is providing 75 percent -- over 24 percent green area. How does that relate to other 25 projects that you've -- conditional use -- residential care 26 facility projects that you've seen?</p>

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21 (81 to 84)

<p>81</p> <p>1 MR. PARK: I would say it's fairly high. The 2 unique opportunity here was the environmental areas, which 3 we've really embraced and supplemented. We created walkways 4 throughout the -- it's more like our campus type of 5 atmosphere. And so I would say that, in my opinion, that 6 this, as an overall plan, provides a very high percentage of 7 open area along with the environmental buffers and planting 8 opportunities.</p> <p>9 MS. HARRIS: Thank you. And then in your 10 professional opinion, does the proposed forest conservation 11 landscaping contribute to the project's overall compatibility 12 with the surrounding neighborhood? You may have somewhat 13 answer that, but I think Exhibit 56C may be helpful for this.</p> <p>14 MR. PARK: Yes. Yes, Ms. Harris, I think this is 15 important. Yes, the project complies with zoning ordinance 16 standards, but it goes well above this. The project provides 17 42 percent tree cover, or has 42 percent tree cover 18 predevelopment. And at the end of the day, there will be 42 19 percent tree cover post development. It provides protection 20 of, as I said before, 12.59 acres under a Category 1 forest 21 conservation easement, 75 percent overall green area.</p> <p>22 The combination of retained forest and newly 23 planted landscaping, really providing kind of a healthy, 24 natural environment for both wildlife and humans. And on 25 large and fragmented portions of the property, as you can see</p>	<p>83</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Over the 2 weekend.</p> <p>3 MR. PARK: Right. So a photometric plan was 4 prepared to show illumination levels throughout the 5 relating -- And this is to show the illumination on the 6 surface in terms of footcandles. We're using a residential 7 lantern style light. And as the plan shows we are providing 8 no more than .10 footcandles at the property line as required 9 under 644E. The fixtures are mounted on 12 foot high poles 10 which are 4 inches in diameter and spaced approximately 60 11 foot on center in a staggered pattern.</p> <p>12 I will note that the photometric plan, Exhibit 81 13 you see here today, has been modified versus the old one 14 because there was a hotspot along the south eastern edge 15 really right by that -- the turnaround there. And we just 16 adjusted that in good practice although it's technically not 17 required because the adjacent use is religious.</p> <p>18 MS. HARRIS: Thank you. Section 597.3.1 EG of the 19 conditional use requirements requires that the use will not 20 cause any undue harm as a result of illumination. In your 21 opinion, will the illumination from the conditional use cause 22 any undue harm to the neighborhood?</p> <p>23 MR. PARK: No, this is a very low level 24 illumination being provided in order to maintain the required 25 illumination at the property line. The lights are sufficient</p>
<p>82</p> <p>1 here, the open spaces are consolidated. The environmental 2 buffers have been consolidated as well. And so retention and 3 addition of these forest stands offer permanent protection, 4 unlike the clumps of trees that are there today which are 5 more likely to be damaged and/or killed otherwise. Overall, 6 this will be a significant landscape project at the end of 7 the day.</p> <p>8 MS. HARRIS: Thank you. Turning now for a moment 9 to lighting. A photometric was prepared for this project; is 10 that correct?</p> <p>11 MR. PARK: Yes, a photometric was prepared.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: And that's 13 Exhibit 81?</p> <p>14 MS. HARRIS: Yes.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Thank you.</p> <p>16 MS. HARRIS: A could you briefly explain what it 17 shows? And I can zoom in if need be.</p> <p>18 MR. PARK: Yes. The data points are hard to read, 19 but yes --</p> <p>20 HEARING EXAMINER ROBESON HANNAN: I looked at them 21 though.</p> <p>22 MS. HARRIS: Excuse me?</p> <p>23 HEARING EXAMINER ROBESON HANNAN: I did look at 24 them.</p> <p>25 MS. HARRIS: Okay.</p>	<p>84</p> <p>1 for safety of pedestrians on our site. The lights will 2 mostly be screened and blocked by building, forest, tree 3 line, buffer plantings from the adjacent properties. And 4 it's not to say that the light won't be visible, but we are 5 meeting the illumination levels for the ordinance. And there 6 are -- the way the plan is laid out, you can see that the 7 circulation in both vehicular and pedestrian are kind of in 8 the center of the site. So the illumination will be less 9 visible from the outside.</p> <p>10 MS. HARRIS: When you say outside, along the 11 perimeter of the property? Is that what you meant?</p> <p>12 MR. PARK: Yes, along the perimeter of the 13 property.</p> <p>14 MS. HARRIS: Okay, thank you. Now I want to turn 15 briefly to Exhibit 80, which is Map F of the sector plan.</p> <p>16 Are you familiar with this map?</p> <p>17 MR. PARK: Yes, I am.</p> <p>18 MS. HARRIS: And can you -- did the Planning Board 19 and Planning Staff review the application as it relates to 20 this map?</p> <p>21 MR. PARK: Yes, they did. Planning Board staff 22 Planning Board and staff determined that the recommendations 23 of the 2002 Potomac subregion master plan for preservation. 24 And this is Map F as illustrating have been satisfied, and I 25 concur. And if we could read just a little bit -- so the</p>

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22 (85 to 88)

<p>85</p> <p>1 recommendation is to preserve properties containing forest in 2 areas to prevent fragmentation or to maintain stream buffers. 3 This may be accomplished under the current zone, or where it 4 allows, clustering of homes away from sensitive areas. Map F 5 here designates the forest at the northern end of the 6 property as Category 4. The recommendation per the technical 7 appendix-- 8 HEARING EXAMINER ROBESON HANNAN: Before you go 9 on, would you orient me to where the property is? 10 MR. PARK: Oh yes, of course. Right. 11 HEARING EXAMINER ROBESON HANNAN: It's a hard one 12 to identify. I see an orange that is east of the -- is that 13 the Potomac? 14 MR. PARK: That's -- 15 MS. HARRIS: Actually, Mr. Park, can you identify 16 on this plan where Falls Road is identified here south of 17 River Road. Can you follow it up to South Glen and tell me 18 where to stop? And then we will direct the Hearing Examiner 19 that way. 20 MR. PARK: Yeah. So if you go north on Falls Road 21 there, if you stop there and take a left onto South Glen and 22 then you stop right there at the intersection road there -- 23 (Crosstalk) 24 HEARING EXAMINER ROBESON HANNAN: Do you know what 25 that intersection is? Is that north of--</p>	<p>87</p> <p>1 keep going. I keep interrupting. I just needed to get 2 oriented. Go ahead. 3 MR. PARK: Yes, thank you, Ms. Robeson. 4 MS. HARRIS: Okay. So Mr. Park, the color on the 5 property is orange. And on Map 4, orange is identified as 6 what? 7 MR. PARK: Category 4. 8 MS. HARRIS: And what does -- and what's the 9 significance of category 4? 10 MR. PARK: Right. So -- you know, per the 11 recommendations of the technical appendix the master plan 12 says to afford the highest level of protection to 1, 2, and 13 3. Category 4 is to be afforded the same level of protection 14 if it's within the stream valley buffer. And so the 15 significance is that it is to be protected if it falls within 16 those parameters. 17 MS. HARRIS: And -- 18 (Crosstalk) 19 MS. HARRIS: What -- and is the Category 4 on our 20 property within the stream valley buffer? 21 MR. PARK: A portion of it is, yes. 22 MS. HARRIS: Okay. 23 MR. PARK: A majority of it is, actually. 24 MS. HARRIS: Okay. And does the project preserve 25 a -- or does the project preserve any of this priority</p>
<p>86</p> <p>1 MS. HARRIS: Mr. Park, what road is that? Does 2 South Glen intersect with? 3 HEARING EXAMINER ROBESON HANNAN: Is that Norton 4 Road? 5 MS. HARRIS: It's Norton. 6 MR. PARK: Yes, I believe it's Norton Road. 7 HEARING EXAMINER ROBESON HANNAN: Please don't use 8 the chat. There is someone using the chat. Please don't use 9 it, okay? You're not under oath. All right. 10 So I think I understand where it is. And there is 11 a green -- I'm not sure what kind of shape that is. I mean, 12 not just green, but orange. 13 MR. PARK: Right. It's the orange shading, which 14 is the northern portion of the subject property, which for a 15 lack of a better term, that is -- it's fortune shaped -- 16 cookie shaped, I would say. And that is the area depicted on 17 this end. 18 HEARING EXAMINER ROBESON HANNAN: Now, does that 19 area correspond with the category, the forest -- Category 1 20 forest conservation easement? Or is that different? Not the 21 preservation category, but does that area on the map 22 correspond where your forest conservation easement is on the 23 subject property? 24 MR. PARK: Yes. Yes, it does. 25 HEARING EXAMINER ROBESON HANNAN: Okay. Well,</p>	<p>88</p> <p>1 forest? 2 MR. PARK: Yes, it does. 3 MS. HARRIS: And what -- approximately how much of 4 the priority forest? 5 MR. PARK: 94 percent. 6 MS. HARRIS: Okay. And then what's happening then 7 to that 6 percent? 8 MR. PARK: I think for this, Ms. Harris, if we 9 could go to Exhibit 74 it may better depict what's going on. 10 MS. HARRIS: Certainly. Okay. And zoom in. 11 MR. PARK: Yes, that's perfect. Right there. So 12 the forest stand associated with the Category 4 as defined 13 per the master plan is the thick dashed line. 14 HEARING EXAMINER ROBESON HANNAN: On the northwest 15 portion of the site? North and northwest? 16 MR. PARK: Yes, Ms. Robeson, it starts there, but 17 it is fairly large. It goes down. It goes east from that 18 northern point. It continues east and follows -- how do I 19 describe this? 20 HEARING EXAMINER ROBESON HANNAN: Is that 21 delineated by that dark hatched line? 22 MS. HARRIS: Mr. Park, what's the -- this -- 23 that -- the thick, black, dashed line? Can you explain what 24 that is on the plan? 25 MR. PARK: Yes, that is the proposed Category 1</p>

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23 (89 to 92)

<p style="text-align: right;">89</p> <p>1 forest conservation easement. Now the forest stand itself 2 today is that you know, we would probably want to look at the 3 NRIFSD. But essentially the forest stand that exists today 4 is on the northern property line of the site. And we are 5 proposing to remove 6 percent or .58 acres of the priority 6 forest at the very northwest corner. All of this is outside 7 of the stream valley buffer as you can see in -- depicted on 8 this plan as the lighter blue line, except for proximally 9 1200 square foot required for the sewer connection, as Mr. 10 Stemann testified earlier, as this is an unavoidable land 11 disturbance permitted under the environmental guidelines. 12 I would say that the entire .58 acres are being 13 compensated for with new forest contiguous to the area 14 removed in order to (inaudible) add retention. Additionally, 15 the project will provide 2.1 acres of supplemental plantings 16 within stream valley buffer not currently forest in. 17 MS. HARRIS: So can -- and I may give you control 18 for a moment. You just said that .58 will be compensated and 19 replanted adjacent to the existing forest. Did I hear that 20 right? 21 MR. PARK: That's correct. 22 MS. HARRIS: And so where -- can you point to 23 where that area is on this map? 24 MR. PARK: Yes. Or I can describe it on the 25 northwest property line. You will see that there is a</p>	<p style="text-align: right;">91</p> <p>1 this above and beyond what would otherwise be required? 2 MR. PARK: Yes. So to summarize, no fragmentation 3 of the priority forest will occur. And in the riparian area, 4 which is shown there where the intermittent stream is, will 5 receive plantings which it would not have otherwise because 6 this is above and beyond the required. And so we think this 7 is a great benefit to the project that this forest can be 8 established. 9 MS. HARRIS: And when you say no fragmentation, 10 for those that don't understand forestry, explain the 11 significance of that. 12 MR. PARK: Right. So if you have a forest stand 13 and you're proposing development that would bisect that 14 forest stand, we would consider that fragmentation. I would 15 clarify here that there are several forest stands on the 16 side. And the priority forest is considered stand A, which 17 is the largest forest stand on the northernmost portion of 18 the site. And that is the most significant. 19 There are other forest stands throughout the site 20 that we are removing per the environmental guidelines. And 21 we are well below our conservation threshold. But we are 22 also preserving the forest stands at the intermittent stream, 23 as you can see on this plan as the crosshatch area. And in 24 addition to that we are planting supplemental tree plantings 25 as I stated earlier.</p>
<p style="text-align: right;">90</p> <p>1 crosshatch. And below the crosshatch area there is like a -- 2 a zigzag, wavy hatch. 3 MS. HARRIS: This area? 4 MR. PARK: Correct. 5 MS. HARRIS: So this is the area west of the large 6 building, correct? 7 MR. PARK: Correct. 8 MS. HARRIS: Okay. So it is that area plus the 9 supplemental tree planting area adjacent to the -- where the 10 existing vernal pool is. 11 MS. HARRIS: And is that depicted by these wavy 12 lines? 13 MR. PARK: Yes. 14 MS. HARRIS: Okay. 15 MR. PARK: So that is the .58 acres associated 16 with a compensatory plantings that we are doing for the 17 priority forest. And if you look to the south where the 18 intermittent stream is, we are also providing 2.10 acres of 19 supplemental plantings in that area as well. 20 MS. HARRIS: So again, just be -- so everyone is 21 clear. It's -- are the supplemental plantings along the 22 intermittent stream denoted with these short wavy lines? 23 MR. PARK: Yes, it's the short wavy lines. 24 MS. HARRIS: Okay. So that was a lot to go over. 25 But can you give sort of bottom-line summary? How does -- is</p>	<p style="text-align: right;">92</p> <p>1 MS. HARRIS: And currently, what's the percentage 2 of the property that is covered by trees? 3 MR. PARK: Approximately 42 percent, or 12.73 4 acres. You know, as a technical point of clarification, Ms. 5 Harris, if you look at the honeycomb hatch there on the 6 northern property line -- 7 HEARING EXAMINER ROBESON HANNAN: The eastern? 8 MS. HARRIS: Northern. 9 MR. PARK: Northern. 10 MS. HARRIS: We didn't turn -- this plan is not 11 turned. 12 HEARING EXAMINER ROBESON HANNAN: Oh, okay. 13 MS. HARRIS: This area along the northern property 14 line -- 15 MR. PARK: Yes. 16 MS. HARRIS: That has a honeycombed -- yes? 17 MR. PARK: Yes. So we are only counting 11.59 18 acres for the forest conservation calculations. That area 19 there is an existing easement, 1.14. But we were not 20 permitted to count that toward our requirement. So I just 21 wanted to put on the record that that's what the differential 22 and those numbers are. 23 MS. HARRIS: So currently -- did you say currently 24 there is 42 percent of the property is subject -- is 25 forested? Is that right?</p>

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24 (93 to 96)

<p>93</p> <p>1 MR. PARK: Yes, that's correct.</p> <p>2 MS. HARRIS: And what will it be when -- assuming</p> <p>3 the conditional use gets constructed and all the plantings</p> <p>4 occur?</p> <p>5 MR. PARK: 42 percent.</p> <p>6 MS. HARRIS: So no -- overall, no net change? Is</p> <p>7 that what you are saying?</p> <p>8 MR. PARK: Correct.</p> <p>9 MS. HARRIS: Okay, thank you. And in your</p> <p>10 professional opinion having worked on environmental and tree</p> <p>11 issues in Montgomery County for the past 10 years, how does</p> <p>12 this compare in terms of tree impact? The impact here on the</p> <p>13 forest as compared to other projects?</p> <p>14 MR. PARK: My opinion is that this is much less as</p> <p>15 compared to some other projects. In my experience it's very</p> <p>16 unusual for a project not to trigger some sort of</p> <p>17 afforestation or reforestation. I mean, usually it's one, at</p> <p>18 least one of those would be triggered. Here we do not</p> <p>19 trigger either one. Inevitably, most development will</p> <p>20 trigger some elimination of trees in the forest. It's only</p> <p>21 when you reach a certain threshold that shift to mitigate.</p> <p>22 Here we don't trigger that requirement because we are so low.</p> <p>23 Again, we've agreed and done the right thing here to reforest</p> <p>24 portions of the site regardless, as I discussed earlier in my</p> <p>25 testimony.</p>	<p>95</p> <p>1 do apologize. I do get disconnected every once in a while.</p> <p>2 With regard to the priority forest stand that's designated in</p> <p>3 the master plan, you indicated that you believed, if I</p> <p>4 understand your testimony, that you are not required to</p> <p>5 protect all of it because at all doesn't fall within the</p> <p>6 stream valley buffers that your expert has said need to be</p> <p>7 established.</p> <p>8 And I wanted to -- and you quote the underlying</p> <p>9 documents that are -- we submitted as Exhibit 94E I believe</p> <p>10 it is that talks about how this Category 4 is to be</p> <p>11 implemented. And although it does indicate that it is the</p> <p>12 highest priority --</p> <p>13 HEARING EXAMINER ROBESON HANNAN: (Inaudible).</p> <p>14 MS. LEE: Excuse me. Excuse me. I'm sorry. I</p> <p>15 didn't mean to go into -- I just wanted to ask, in that</p> <p>16 document, because you did -- you did quote from it. In the</p> <p>17 document, did you also see that it states category stands</p> <p>18 have, and a few instances, category stands have been</p> <p>19 delineated which contain forest area that extends beyond the</p> <p>20 minimum stream buffers but doesn't really fit into the higher</p> <p>21 category. When these instances occur on developable property</p> <p>22 attempts should be made to save all the stand. What attempts</p> <p>23 have you made to save all the stand?</p> <p>24 MR. PARK: Yes, of course. If we could zoom out</p> <p>25 on this exhibit a little bit, Ms. Harris.</p>
<p>94</p> <p>1 MS. HARRIS: Thank you. In your professional</p> <p>2 opinion, does the proposed conditional you satisfy all</p> <p>3 applicable code requirements?</p> <p>4 MR. PARK: Yes, it does.</p> <p>5 MS. HARRIS: And is there anything else that you</p> <p>6 would like to add for Ms. Robeson's benefit?</p> <p>7 MR. PARK: No. Thank you, Ms. Robeson, Ms.</p> <p>8 Harris.</p> <p>9 MS. HARRIS: Thank you. No further questions for</p> <p>10 Mr. Park.</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Thank you. I'm</p> <p>12 going to turn over to Mr. Brown. Or is Ms. Lee cross-</p> <p>13 examining Mr. Park?</p> <p>14 MR. BROWN: Yes, she is. She will be directing</p> <p>15 her questions at the -- primarily at the forest -- the forest</p> <p>16 related marks of Mr. Park if she is there and available.</p> <p>17 MS. LEE: I am, thank you. Excuse me. Yes, thank</p> <p>18 you.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: Ms. Lee, do you</p> <p>20 mind turning your camera on, please?</p> <p>21 MS. LEE: Oh, excuse me. I think it is on. I</p> <p>22 will wave.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: Now it is.</p> <p>24 MR. PARK: Okay.</p> <p>25 MS. LEE: I can see you. Okay. Thank you. And I</p>	<p>96</p> <p>1 MS. HARRIS: (Inaudible).</p> <p>2 MR. PARK: Right, Ms. Lee. We did consider this</p> <p>3 very, very carefully. We looked at the stand A in detail. I</p> <p>4 did walk the site. You know, we are -- we essentially</p> <p>5 examined the area of least impact and the -- which is that</p> <p>6 northwestern portion of the forest stand A. And that edge</p> <p>7 there is really overgrown with invasives. The are some</p> <p>8 cherry trees there that are not in great condition. And so</p> <p>9 we've oriented our development in a way that is only really</p> <p>10 impacting that area.</p> <p>11 And we believe that (inaudible) off of that edge</p> <p>12 there would not create a condition for edge regression.</p> <p>13 There is naturally (inaudible) condition there where you</p> <p>14 would find deeper within the forest. And so yes, we've</p> <p>15 limited our grading with a use of a building which is tucked</p> <p>16 into the grade. And that little bit of forest to be removed</p> <p>17 is invasives that we believe could be removed and replanted</p> <p>18 with healthy, new afforestation, reforestation opportunities,</p> <p>19 which would really, in my professional opinion, at the end of</p> <p>20 the day, create a more healthy environment, especially in an</p> <p>21 area that is already not doing very great.</p> <p>22 MS. BAKER: Are there seven specimen trees that</p> <p>23 will be removed in that area?</p> <p>24 MR. PARK: Seven or more, yes.</p> <p>25 MS. BAKER: Yeah. And is that area on a steep</p>

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25 (97 to 100)

<p style="text-align: right;">97</p> <p>1 slope? Or is a steep slope defined by 45 -- 25 percent or</p> <p>2 more or 15 to 25 percent?</p> <p>3 MR. PARK: If I may just have a second, Ms.</p> <p>4 Robeson?</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Yes, that's</p> <p>6 fine.</p> <p>7 MR. PARK: Thank you.</p> <p>8 Yes, there are specimen trees being removed within</p> <p>9 the portion of the steep slope, not within stream valley</p> <p>10 buffer, that's correct.</p> <p>11 MS. BAKER: And then, one last thing. One</p> <p>12 statement from the same document that you had indicated was</p> <p>13 part of the master plan provisions. It says, in instances</p> <p>14 where buffers would be insufficient to protect the entirety</p> <p>15 of the stand, cluster development and/or Park acquisition</p> <p>16 should be considered. Did you consider, at all, trying to</p> <p>17 cluster the development so that you could avoid destroying</p> <p>18 the standard?</p> <p>19 MR. PARK: I would say yes. We did cluster the</p> <p>20 majority of the development on the southern portion as far as</p> <p>21 actual land disturbance, it's mostly on the other side where</p> <p>22 the sensitive areas are not. This area here implemented, as</p> <p>23 I said before, building construction that will be very, very</p> <p>24 limited as far as disturbance. I mean, we are essentially</p> <p>25 doing the very minimal. So I would say that we have made the</p>	<p style="text-align: right;">99</p> <p>1 those trees to grow.</p> <p>2 And at 10 years, gosh. If I can start with a 20</p> <p>3 year canopy growth, we're talking about maybe 27-1/2 feet as</p> <p>4 far as the canopy. As far as the height, you're probably</p> <p>5 going to be within the 20 to 25 foot range at that time. So</p> <p>6 at the 10 year they will be less than that. But again, at</p> <p>7 the 20 year growth they will fill in and fill out. The</p> <p>8 shrubs will grow a lot quicker and the trees will come in</p> <p>9 after that. But yes, at in your growth we're talking less</p> <p>10 than 20 feet for those trees in height.</p> <p>11 MS. LEE: Let me ask you particularly with regard</p> <p>12 to, I think it's Lot 3. It would come up -- it's the second</p> <p>13 lot in on the western border. This is one you described I</p> <p>14 think it's having 40 feet. And I'm sorry if I'm</p> <p>15 mischaracterizing it, but you are counting the buffer that's</p> <p>16 already on that individual's property as part of the buffer</p> <p>17 as I understand.</p> <p>18 And I just want to confirm, there are 10 specimen</p> <p>19 trees that you've asked for a variance to be able to destroy</p> <p>20 part of their critical root zone that appear on property that</p> <p>21 outside your own site. And if I recall, there are four on</p> <p>22 that lot number 3, the Maggin property whose critical root</p> <p>23 zones will be impacted. So just want to understand that you</p> <p>24 are counting those trees as part of your buffer.</p> <p>25 MR. PARK: Which area on this plan are you --</p>
<p style="text-align: right;">98</p> <p>1 engineering plan -- the planning efforts (inaudible) this</p> <p>2 development.</p> <p>3 MS. LEE: Going to the buffering requirements that</p> <p>4 you addressed, I wonder if you could tell us that I think you</p> <p>5 testified, and perhaps the previous person testified, that</p> <p>6 you're making the assumption based on a 25 year growth out</p> <p>7 period. And I wonder if you could tell us what the impact</p> <p>8 will be after 10 years for the neighbors who are going to get</p> <p>9 this new buffering. How tall will the trees be along --</p> <p>10 especially along that, I guess we call it the western side.</p> <p>11 MR. PARK: Yes, of course. Ms. Harris, can we go</p> <p>12 back to that exhibit so I may speak to this issue?</p> <p>13 MS. HARRIS: Is it the landscaping plan?</p> <p>14 HEARING EXAMINER ROBESON HANNAN: Yes, that will</p> <p>15 work.</p> <p>16 MS. HARRIS: Do you want the sections? Or the</p> <p>17 plan?</p> <p>18 MR. PARK: This will work fine. So, yes. Again,</p> <p>19 we are putting in plant material at the required size, Ms.</p> <p>20 Lee. And you are right. There will not be an instant</p> <p>21 effect. I mean, the trees will take time to grow. And in</p> <p>22 fact, if we put in larger trees, there can be an argument</p> <p>23 whether those larger trees will have better survivability or</p> <p>24 not. But we are planting the trees at the recommended,</p> <p>25 required size. And it will take time. It will take time for</p>	<p style="text-align: right;">100</p> <p>1 MS. LEE: It's Lot 3. Lot 3, right there. And</p> <p>2 there are three specimen trees and a tree of significance</p> <p>3 where you've asked for a variance in order to be able to</p> <p>4 destroy a portion of their critical root zone because your</p> <p>5 limits of disturbance will be close to the -- will be right</p> <p>6 up to the property line.</p> <p>7 MR. PARK: Right. If I may just look at the plan</p> <p>8 to see the critical root zones there and to see if we truly</p> <p>9 are asking for a variance to remove those. I will be with</p> <p>10 you in just a second.</p> <p>11 HEARING EXAMINER ROBESON HANNAN: While he's doing</p> <p>12 that. When he comes back I'm hearing this stand A. And I</p> <p>13 don't know which exhibit shows stand A. And so if there</p> <p>14 is -- we'll finish with Ms. Lee. But if somebody could get</p> <p>15 a -- just at some point I just want to make sure I understand</p> <p>16 what stand A is.</p> <p>17 MR. PARK: Yes.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Go ahead.</p> <p>19 First, finish with Ms. Lee's question.</p> <p>20 MR. PARK: Yes, of course. So the trees on Lot 3</p> <p>21 which are specimen and significant are not proposed to be</p> <p>22 removed as part of this plan.</p> <p>23 MS. LEE: Not to be removed, but you are asking</p> <p>24 for a variance because you're going to be destroying --</p> <p>25 they're on his property because you're going to be destroying</p>

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26 (101 to 104)

<p>101</p> <p>1 a portion of the critical root zone on each; is that correct</p> <p>2 MR. PARK: We are impacting these off-site trees</p> <p>3 with -- and Park and Planning staff has agreed that the</p> <p>4 chances of those trees survivability are high.</p> <p>5 MS. LEE: But you had to -- it required a</p> <p>6 variance; is that correct? That you received?</p> <p>7 MR. PARK: Yes, it did. We obtained a variance</p> <p>8 for impacting those trees. Again, they will not be -- they</p> <p>9 are not proposed to be removed.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: I saw something.</p> <p>11 And I did have a question about this. In -- maybe it was the</p> <p>12 PFCP staff report. There was a list of off-site trees that</p> <p>13 were going to have their critical root zone impacted. And</p> <p>14 some had poor prognosis. I don't know if they were on Lot 3.</p> <p>15 (Inaudible).</p> <p>16 MS. HARRIS: You got garbled there for a moment.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: Sorry.</p> <p>18 MS. HARRIS: You said there were some that had</p> <p>19 impacts to critical root zones and then I didn't hear --</p> <p>20 HEARING EXAMINER ROBESON HANNAN: And then their</p> <p>21 survivability chances were poor. And I can't -- I apologize.</p> <p>22 I can't remember whether it was in the staff report that</p> <p>23 included the PFCP. I'm trying to remember where I saw it.</p> <p>24 (Inaudible)</p> <p>25 I thought I made a note of it, but I'm not sure I</p>	<p>103</p> <p>1 So I guess my question is (inaudible).</p> <p>2 MR. PARK: I'm sorry Ms. Robeson, your question</p> <p>3 got garbled just a little bit. Would you mind --</p> <p>4 HEARING EXAMINER ROBESON HANNAN: I don't know</p> <p>5 what I'm doing. Let me try again. Let me share this exhibit</p> <p>6 with you. If you could give me that's hold on one second.</p> <p>7 Because that might be the easiest thing to do. Okay. Do you</p> <p>8 see the exhibit?</p> <p>9 MS. HARRIS: Yes.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: Okay. It says</p> <p>11 off-site variance in trees impacted. It does say to be</p> <p>12 retained, but some of the CRV impacts are fairly heavy. And</p> <p>13 so what is -- it says saved, but the question is, what is the</p> <p>14 likelihood that those trees are going to survive.</p> <p>15 MR. PARK: Right, Ms. Robeson. So we do</p> <p>16 understand this. And I believe the Applicant will work in</p> <p>17 conjunction with Park and Planning staff under their purview</p> <p>18 to, with the final forest conservation plan, propose measures</p> <p>19 to mitigate both on-site and off-site in conjunction with the</p> <p>20 neighbor to the extent possible to save those trees. And</p> <p>21 that is my understanding.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: Okay. Do you</p> <p>23 know where those trees are?</p> <p>24 MR. PARK: Yes ma'am, I do. They are located</p> <p>25 along the southeastern property line.</p>
<p>102</p> <p>1 did. I'm looking for the staff report.</p> <p>2 Well, then I tell you --</p> <p>3 MR. PARK: I think it's all in Exhibit 51B. I</p> <p>4 think Exhibit 51B includes the off-site trees.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: 51B or 53B?</p> <p>6 MR. PARK: 51B.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: That's the tree</p> <p>8 inventory. Which is -- you know the exhibit number of the</p> <p>9 staff report? Well, here, revised and restated, 97A. Well,</p> <p>10 if I can't find it, we can come back to it. But I did have a</p> <p>11 question because I saw the list of off-site trees that were</p> <p>12 being impacted. And I thought several had a poor chance.</p> <p>13 You know how you have to estimate the results of the impact?</p> <p>14 Unless that means -- okay. It's on page 28 of</p> <p>15 Exhibit 97. And maybe I'm reading it wrong. But it says --</p> <p>16 it has specimen tree removal. And you've got some percentage</p> <p>17 of (inaudible) impact of 100 percent. But (inaudible). So</p> <p>18 could you just explain -- I'm confused about what off-site</p> <p>19 trees are going to be impacted and their survival rate</p> <p>20 (inaudible). It's on table 5 on page 30.</p> <p>21 MS. HARRIS: And if I could clarify, you said</p> <p>22 Exhibit 97A, which is the staff report; is that correct?</p> <p>23 HEARING EXAMINER ROBESON HANNAN: Yeah, and on</p> <p>24 page 30 it says off-site impact, table 5. And it all says</p> <p>25 save, but some of them have pretty high impact of 46 to 40.</p>	<p>104</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Okay. So going</p> <p>2 back to that's okay, the southeastern property line. Are</p> <p>3 there any on the north or the western property line?</p> <p>4 MR. PARK: No off-site trees are being proposed to</p> <p>5 be removed on the western property line. Those trees are on-</p> <p>6 site.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Okay. So are</p> <p>8 the -- okay. So on the western property line they are all on</p> <p>9 site?</p> <p>10 MR. PARK: Confirmed.</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Okay. Is that</p> <p>12 list on page (inaudible) of the staff report? Is that the</p> <p>13 entirety of the off-site impact? I will pull it up again.</p> <p>14 MR. PARK: Yes Ms. Robeson, that is the entirety</p> <p>15 of the off-site CRZ impacts for specimen trees.</p> <p>16 HEARING EXAMINER ROBESON HANNAN: Okay. Those</p> <p>17 were my questions. Ms. Lee, I interrupted you. Do you have</p> <p>18 any other questions? Ms. Lee, did you hear my question?</p> <p>19 MS. HARRIS: It looks like she's frozen.</p> <p>20 HEARING EXAMINER ROBESON HANNAN: Mr. Brown, do</p> <p>21 you have a way to text her and let her know that her camera</p> <p>22 is -- I think --</p> <p>23 MR. BROWN: Yes.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: She's lost.</p> <p>25 Either has a poor connection --</p>

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27 (105 to 108)

<p>105</p> <p>1 MS. HARRIS: Maybe if she goes -- it gets out and 2 comes back in it may rejuvenate it. 3 HEARING EXAMINER ROBESON HANNAN: It's amazing we 4 are doing hearings from Nairobi. 5 MS. HARRIS: That may be a record for your office. 6 HEARING EXAMINER ROBESON HANNAN: Yeah. Let's 7 go -- let's do this. Let's go off the record for 10 minutes 8 and see -- how many more witnesses do you have, Ms. Harris? 9 MS. HARRIS: One today. And then of course we 10 have Mr. Kabatt was traffic, but that's going to have to 11 occur at a later date once staff is -- 12 HEARING EXAMINER ROBESON HANNAN: And who is it -- 13 who is it today? 14 MS. HARRIS: Mr. Kevin Kagan, who is going to -- 15 he is an appraiser. He will testify to property value 16 issues. 17 HEARING EXAMINER ROBESON HANNAN: Okay. 18 COURT REPORTER: Okay. And just to make sure -- 19 this is the court reporter. You like to be off the record, 20 correct? 21 MS. HARRIS: Ms. Robeson, since we off -- 22 HEARING EXAMINER ROBESON HANNAN: (Inaudible). 23 MS. HARRIS: Since we are off the record -- 24 HEARING EXAMINER ROBESON HANNAN: No, we aren't. 25 I don't think I called off the record. But we are going</p>	<p>107</p> <p>1 phone number. But I've seen both those phone numbers on the 2 line. So I don't see her. I mean, we could -- 3 MR. BROWN: I'm not sure how -- 4 HEARING EXAMINER ROBESON HANNAN: (Inaudible) and 5 see if she is back after lunch. Or maybe you have another 6 way of getting her. 7 MR. BROWN: I don't, frankly. 8 HEARING EXAMINER ROBESON HANNAN: Well, let's -- I 9 guess the best thing I can do is -- well, we can take a -- we 10 just took 10 minutes. We can take 50 minutes for lunch. I 11 don't want to move on to another witness. How many people 12 here had questions of a witness that spoken so far? 13 MS. HARRIS: I'm sorry. What was the question 14 again? 15 HEARING EXAMINER ROBESON HANNAN: How many people 16 in this meeting wanted to ask one of the witnesses a 17 question? Was it Ms. Baker? 18 MS. BAKER: It was Ms. Baker. Apologies. I was 19 trying to come off mute. 20 HEARING EXAMINER ROBESON HANNAN: I -- yes. 21 MS. BAKER: I was trying to -- Ms. Robeson, I -- 22 just to clarify, because you said that testimony for 23 residents was going to be pushed to March 1, it wasn't clear 24 to me whether these witnesses were intended to be available 25 on March 1 (inaudible).</p>
<p>106</p> <p>1 to -- let's do this. We're going to go off the record for 10 2 minutes and see if we can't get Ms. Lee back. The court 3 reporter -- Mr. Cuenca, did you have a question? 4 COURT REPORTER: No, just want to make sure that 5 we are off the record. Which we are now, correct? 6 HEARING EXAMINER ROBESON HANNAN: Okay, yes. We 7 are -- 8 (Off the record at 12:19 p.m., resuming at 12:32 9 p.m.) 10 HEARING EXAMINER ROBESON HANNAN: Do we have Ms. 11 Harris here? 12 MS. HARRIS: Sorry. My apologies. Here I am. 13 HEARING EXAMINER ROBESON HANNAN: No worries. Do 14 we have Ms. Lee? 15 MR. BROWN: I saw her a little while ago. I'm not 16 sure if she fell off again. 17 (Crosstalk) 18 MR. BROWN: Are you there? 19 HEARING EXAMINER ROBESON HANNAN: I am 20 (inaudible). I'm not seeing her. I don't see her. So Mr. 21 Brown, do you have any suggestions? 22 MR. BROWN: She's not -- she's not on? 23 HEARING EXAMINER ROBESON HANNAN: I don't see her, 24 no. I'm looking at the meeting -- let me do one more thing. 25 Let me see if she is on. I don't see her unless she's the</p>	<p>108</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Well -- 2 MS. BAKER: Point of my questions. 3 HEARING EXAMINER ROBESON HANNAN: If you have 4 particular questions, my concern now is that Ms. Lee is Mr. 5 Brown's primary client. You know, are you represented? Are 6 you speaking -- 7 MS. BAKER: I have not -- I have not engaged Mr. 8 Brown to represent me personally. 9 MS. HARRIS: Are you a member of West Montgomery 10 Civic Association? 11 MS. BAKER: I don't know what that means. 12 HEARING EXAMINER ROBESON HANNAN: I will take that 13 as a no. So are you a member of -- 14 MS. BAKER: I am a member of the Maryland Bar and 15 I am an adjacent property owner -- 16 HEARING EXAMINER ROBESON HANNAN: (Inaudible) 17 MS. BAKER: That's located at 10828 Lockland Road. 18 I am, what I believe is the northeastern corner of the lot, 19 the property most impacted by the location of the existing 20 gym and the building that's intended to be built. 21 HEARING EXAMINER ROBESON HANNAN: Okay. I 22 understand. Okay. That wasn't under oath. So what we're 23 going to -- the best I can think to do at this point, are you 24 willing to proceed? Do have a client with you on behalf of 25 West Montgomery except for Ms. Lee, Mr. Brown?</p>

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28 (109 to 112)

<p>109</p> <p>1 MR. BROWN: As far as I know, no one in my group</p> <p>2 has -- intends to ask questions of anybody who has testified</p> <p>3 today.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: But my</p> <p>5 question -- my question is, do you have a client present in</p> <p>6 this meeting. That's what I'm asking you.</p> <p>7 MR. BROWN: Let me look at the list.</p> <p>8 MS. HARRIS: Ms. Robeson, while he's looking, can</p> <p>9 I make a suggestion possibly?</p> <p>10 HEARING EXAMINER ROBESON HANNAN: Sure.</p> <p>11 MS. HARRIS: Could Ms. Lee either text her</p> <p>12 questions to him, Mr. Brown, and he be the verbal mouthpiece</p> <p>13 to ask them? Or type questions in the chat? Or potentially</p> <p>14 have -- use the phone? So that we can --</p> <p>15 HEARING EXAMINER ROBESON HANNAN: I -- yes, I</p> <p>16 understand. Mr. Brown, do you have a way of communicating</p> <p>17 with Ms. Lee?</p> <p>18 MR. BROWN: I haven't been able to -- I was able</p> <p>19 to text her before, but I have not -- I will try again.</p> <p>20 HEARING EXAMINER ROBESON HANNAN: Why don't you</p> <p>21 text her and see if she is willing to proceed that way?</p> <p>22 MR. BROWN: While I'm waiting for an answer, I can</p> <p>23 tell you that I have a number of -- I'm representing a number</p> <p>24 of people that are attending this meeting this morning.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: So -- okay. So</p>	<p>111</p> <p>1 HEARING EXAMINER ROBESON HANNAN: So what you can</p> <p>2 do is after he finishes testifying, just raise your hand it</p> <p>3 will make sure that you get a chance to ask your questions.</p> <p>4 MS. BAKER: Okay.</p> <p>5 (Inaudible)</p> <p>6 HEARING EXAMINER ROBESON HANNAN: Did you have</p> <p>7 anything for Mr. Park? Or is it the appraiser you were most</p> <p>8 concerned about?</p> <p>9 MS. BAKER: I had one simple question for Mr.</p> <p>10 Park. And I'm happy to go on the record with it. I'm happy</p> <p>11 to just ask it off the record, whatever the preference is.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Well, I think we</p> <p>13 need to do it on the record. But -- all right. So Mr.</p> <p>14 Brown, we have clients in the room. Are you willing to</p> <p>15 proceed without Ms. Lee? And Ms. Harris, I wonder if you</p> <p>16 don't have an objection to bringing Mr. Park back at some</p> <p>17 point when we do get Ms. Lee, to let her ask -- finish asking</p> <p>18 her questions.</p> <p>19 MS. HARRIS: Hopefully that will be today. Is</p> <p>20 that what you're suggesting? Were first thing tomorrow?</p> <p>21 HEARING EXAMINER ROBESON HANNAN: I think it's two</p> <p>22 days from now.</p> <p>23 MS. HARRIS: Two days, sorry.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: Yeah.</p> <p>25 MS. HARRIS: Certainly, if that's necessary,</p>
<p>110</p> <p>1 your client -- you do have clients in the room?</p> <p>2 MR. BROWN: Yes, I do.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Okay. While,</p> <p>4 since you have a client in the room, what we could do -- let</p> <p>5 me ask Ms. Baker. Ms. Baker, who would you want to ask</p> <p>6 questions of?</p> <p>7 MS. BAKER: Again, I was asking procedurally</p> <p>8 whether it was appropriate or not for me to interject when I</p> <p>9 heard testimony that was not entirely clear to me to get</p> <p>10 clarification around what was being testified to. And if</p> <p>11 there is, in particular, an appraiser that is going to be</p> <p>12 testifying, I wanted to understand what extent we are</p> <p>13 permitted to ask questions for clarification of the</p> <p>14 testimony.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: You are -- you</p> <p>16 are permitted to ask questions on cross examination. So you</p> <p>17 would let him testify and then you would get the opportunity</p> <p>18 to ask questions of him. You will also -- we tentatively set</p> <p>19 a timeframe for neighbors to testify on Wednesday at 3:00</p> <p>20 p.m. And you could also testify them. But if you have</p> <p>21 questions, then you should -- that you are free to ask of</p> <p>22 them now while the witnesses are here. I'm sorry. While the</p> <p>23 witness is here.</p> <p>24 MS. BAKER: Okay, thank you. I appreciate the</p> <p>25 clarification.</p>	<p>112</p> <p>1 that's fine. I mean, I -- you know, unfortunately -- I mean,</p> <p>2 if we can get it done today either with the methods that we</p> <p>3 suggested, I --</p> <p>4 HEARING EXAMINER ROBESON HANNAN: (Inaudible).</p> <p>5 MS. HARRIS: It sounded to me like she was almost</p> <p>6 concluded her cross. But -- so --</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Yeah, I can't</p> <p>8 make that determination. But I am going to ask -- I think,</p> <p>9 Mr. Brown, did you (inaudible). It would be better if we</p> <p>10 could wrap it up -- their case today and that would give you</p> <p>11 a coherent case to present.</p> <p>12 MR. BROWN: I'm sorry. I was looking at the text</p> <p>13 message. Would you mind repeating that?</p> <p>14 HEARING EXAMINER ROBESON HANNAN: I said I would</p> <p>15 like to, if we can, get this wrapped up today without having</p> <p>16 to bring Mr. Park back. But you will have --</p> <p>17 MR. BROWN: Well, I -- here is the message I have.</p> <p>18 There is only one follow-up question that Ms. Lee has. And I</p> <p>19 can ask it if that's all right with everyone.</p> <p>20 HEARING EXAMINER ROBESON HANNAN: Fine. That's</p> <p>21 great.</p> <p>22 MS. HARRIS: Certainly.</p> <p>23 MR. BROWN: Okay. Mr. Park, would you turn to</p> <p>24 Exhibit 51A, please?</p> <p>25 MR. PARK: Yes, Mr. Brown. Ms. Harris, would you</p>

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29 (113 to 116)

113	<p>1 be able to --</p> <p>2 (Crosstalk)</p> <p>3 MS. HARRIS: Yeah, hold on one moment.</p> <p>4 MR. BROWN: Can you bring that up on the screen?</p> <p>5 MS. HARRIS: I am. Hold on one moment. Because</p> <p>6 it wasn't one of our exhibits, so I need to go back in here.</p> <p>7 (Crosstalk)</p> <p>8 MS. HARRIS: What was the number again? 51A?</p> <p>9 HEARING EXAMINER ROBESON HANNAN: A, but I have it</p> <p>10 on my screen.</p> <p>11 MS. HARRIS: Oh, I have it up now as well. Okay.</p> <p>12 MR. BROWN: Okay. If you will -- if you would</p> <p>13 focus in on the west property line and the trees that are</p> <p>14 slated for removal on lots that's on the lots on that side.</p> <p>15 Can you blow that up a bit so we can see the numbers? That's</p> <p>16 good right there. What I see on this exhibit, and I just</p> <p>17 want to confirm you agree with my understanding, tree 162 was</p> <p>18 a specimen tree with critical root zone impact. And the same</p> <p>19 is true of trees 167, 168, and 171, correct?</p> <p>20 MR. PARK: Mr. Brown, tree 167, 168, and 171 have</p> <p>21 critical root zone impact, correct.</p> <p>22 MR. BROWN: And 162 as well?</p> <p>23 MR. PARK: Yes sir, that's correct.</p> <p>24 MR. BROWN: And the actual trunk of the tree 4,</p> <p>25 162 is on Lot 6. And the trunk of the 167, 68, and 71 trees</p>	115	<p>1 root zone of the neighbor's giant tree will be destroyed. I</p> <p>2 just wanted to make sure to point that out. I think the</p> <p>3 number on the other -- on that side is (inaudible).</p> <p>4 MS. HARRIS: Objection. That sounds like</p> <p>5 testimony to me, not a question.</p> <p>6 (Crosstalk)</p> <p>7 HEARING EXAMINER ROBESON HANNAN: You can ask him.</p> <p>8 What is the number?</p> <p>9 MS. LEE: 255.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: I'm pointing at</p> <p>11 tree 255 on the eastern property line.</p> <p>12 MS. LEE: Yes.</p> <p>13 HEARING EXAMINER ROBESON HANNAN: Okay. Ms. Lee,</p> <p>14 do you want to ask your question?</p> <p>15 MS. LEE: Yes. Could you please confirm whether</p> <p>16 or not 40 percent of the critical root zone on 255, which is</p> <p>17 a northern meadow with a circumference of 50 inches, will be</p> <p>18 impacted? 40 percent of it?</p> <p>19 MR. PARK: That is correct, Ms. Lee.</p> <p>20 MS. LEE: And that's on an -- at on an adjacent</p> <p>21 property, not on your property?</p> <p>22 MR. PARK: Correct.</p> <p>23 MS. LEE: Thank you. That's it.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: All right. Ms.</p> <p>25 Baker?</p>
114	<p>1 are on Lot 3, correct?</p> <p>2 MR. PARK: Correct.</p> <p>3 MR. BROWN: And all for those trees, by number,</p> <p>4 are listed on page 30 of the staff report, correct?</p> <p>5 MR. PARK: Correct.</p> <p>6 MR. BROWN: I'm sorry. I didn't hear your answer.</p> <p>7 MR. PARK: Correct, sir.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: So this -- so</p> <p>9 167, that must have the 46 percent?</p> <p>10 MR. PARK: No, it's actually 27 percent CRZ impact</p> <p>11 for that off-site tree, Ms. Robeson.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>13 MR. BROWN: That's it. I just wanted to clarify</p> <p>14 that point.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Okay. Ms.</p> <p>16 Baker.</p> <p>17 MS. LEE: Could I -- excuse me. This is Susan</p> <p>18 Lee. Just wrap up. And then I apologize.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>20 MS. LEE: I just had -- I know. I'm sorry.</p> <p>21 Hopefully I won't (inaudible) again. I just have one</p> <p>22 additional question. And that had with -- that's with regard</p> <p>23 to a tree on the east side. And I think it's one of the</p> <p>24 largest ones. Say -- is a northern red oak with a</p> <p>25 circumference of 50 inches. And 40 percent of that critical</p>	116	<p>1 MS. BAKER: Yes.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Did you have a</p> <p>3 question of Mr. Park?</p> <p>4 MS. BAKER: I did. Mr. Park spoke to the lighting</p> <p>5 on the premises and limited his coverage in the discussion to</p> <p>6 talking about path lighting and pull lighting. Can you</p> <p>7 discuss the building lighting, in particular the facility at</p> <p>8 the back of the property, please?</p> <p>9 MS. HARRIS: Would it be helpful if I pull up</p> <p>10 the --</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Photometric</p> <p>12 plan?</p> <p>13 MS. HARRIS: Photometric?</p> <p>14 MS. BAKER: Yes, thank you.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: I've got it.</p> <p>16 MS. HARRIS: Too fast.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: Do you have it</p> <p>18 up?</p> <p>19 MS. HARRIS: No, I was getting ready to pull it</p> <p>20 up. I have it here now.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Okay. You go</p> <p>22 ahead then.</p> <p>23 MS. HARRIS: Okay. So you are Lot 3? Is that</p> <p>24 correct?</p> <p>25 MS. BAKER: I'm not sure what lot I am on your</p>

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30 (117 to 120)

117	<p>1 map.</p> <p>2 MS. HARRIS: Lot 2 or 3 I think.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Are you -- Ms.</p> <p>4 Baker, are you near the proposed building?</p> <p>5 MS. BAKER: I'm adjacent to their property, yes.</p> <p>6 I can visually see the building from my house in every</p> <p>7 window.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: You mean the --</p> <p>9 are you talking about the gymnasium building? Or --</p> <p>10 MS. BAKER: Well, the gymnasium building currently</p> <p>11 and whatever is being built clearly. So I think I am Lot 3.</p> <p>12 If you --</p> <p>13 MS. HARRIS: Okay.</p> <p>14 HEARING EXAMINER ROBESON HANNAN: Can you</p> <p>15 (inaudible). And can you scroll down? Is there -- there is</p> <p>16 the Lot 3 on the northern side?</p> <p>17 MS. HARRIS: But Ms. Baker is the owner of Lot 3</p> <p>18 off of Lockland, which is right here.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: Is -- okay.</p> <p>20 It's Lot 3 on the eastern side?</p> <p>21 MS. HARRIS: Correct.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>23 MS. HARRIS: So I think what I -- and now I'm</p> <p>24 scrolling in to the property line so we can evaluate the</p> <p>25 photometrics on that property line.</p>	119	<p>1 MS. BAKER: How is it zero at the property line?</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Okay. I think</p> <p>3 she is asking whether she will see it. Not -- not -- I</p> <p>4 understand the illumination, but I think she is also asking,</p> <p>5 is she going to see the building.</p> <p>6 MR. PARK: Right. And to answer that question,</p> <p>7 certainly in the winter when the foliage is gone the building</p> <p>8 may be visible. I think that because of the relationship of</p> <p>9 her property, or Lot 3 I should say, and the existing</p> <p>10 environmental features and the forest that will be protected</p> <p>11 plus the additional supplemental plantings we are providing</p> <p>12 in the distance, potentially you may see some lights, but it</p> <p>13 will be very minimal and they will be really peeking through</p> <p>14 a very dense forest area.</p> <p>15 MS. BAKER: Although you said that you're not</p> <p>16 doing any supplemental plantings in that area, based on your</p> <p>17 testimony; is that correct?</p> <p>18 MR. PARK: There is an area between the existing</p> <p>19 forest stand A and the adjacent forest stand and we are</p> <p>20 removing the impervious driveway to create a better natural</p> <p>21 condition. So we will be replanting that. So that is not</p> <p>22 correct. We will be replanting with supplemental plantings</p> <p>23 in that area.</p> <p>24 MS. BAKER: But that doesn't -- the supplemental</p> <p>25 plantings are before the buildings, not behind the buildings,</p>
118	<p>1 HEARING EXAMINER ROBESON HANNAN: Ms. Baker, what</p> <p>2 is your question?</p> <p>3 MS. BAKER: My question is, can you cover what the</p> <p>4 lighting is going to be on the back part of the property?</p> <p>5 What I heard testimony about was lighting that would be along</p> <p>6 the roadway and would be along pathways. I did not hear any</p> <p>7 testimony, or least I didn't hear it properly, but I didn't</p> <p>8 hear any testimony about the lighting around the building, in</p> <p>9 particular, that side of the property.</p> <p>10 MR. PARK: So --</p> <p>11 (Crosstalk)</p> <p>12 MR. PARK: What is your question?</p> <p>13 MS. BAKER: Can you cover the lighting plan as you</p> <p>14 did the lighting pools in the pathway lighting was more can</p> <p>15 you cover the lighting for the building and facility? Will</p> <p>16 it be lit up 24 hours a day in the evening in particular?</p> <p>17 MR. PARK: Ms. Robeson, and Ms. Harris, as far as</p> <p>18 I know, the building architecture has not been developed to a</p> <p>19 point where we are -- that we are providing building mounted</p> <p>20 fixtures. The requirement of the conditional use is for site</p> <p>21 lighting, which is provided on this photometric, which</p> <p>22 demonstrates the requirement of point -- or 0 footcandles</p> <p>23 along Lot 3's property line. And even if that building was</p> <p>24 lit to meet building code requirements, the illumination</p> <p>25 would not be -- would still be zero at the property line.</p>	120	<p>1 correct?</p> <p>2 MR. PARK: That's correct, yes. They are in front</p> <p>3 between Lot 3 and the building.</p> <p>4 MS. BAKER: Right. So there is no planting</p> <p>5 anticipated based on the testimony that I heard that shields</p> <p>6 Lot 3 or Lot 2 in particular, correct?</p> <p>7 MR. PARK: No, there are plantings. Actually, Ms.</p> <p>8 Harris, if you go to the forest conservation exhibit, this</p> <p>9 could be --</p> <p>10 MS. HARRIS: Which one?</p> <p>11 MR. PARK: The overall would work.</p> <p>12 MS. HARRIS: You mean the illustrative? No.</p> <p>13 MR. PARK: No, the forest conservation plan.</p> <p>14 MS. HARRIS: Oh, sorry. Okay.</p> <p>15 MR. PARK: Yes. So if you zoom in just a little</p> <p>16 bit more? Okay. So it's a little hard to see, but as you</p> <p>17 can see, there is a crosshatch area representing in the</p> <p>18 existing forest area. And then, there is additional</p> <p>19 planting, which is a way the hatch, thereby labeled there as</p> <p>20 supplemental plantings. If you follow the leader --</p> <p>21 MS. BAKER: Right. But that's in front of my</p> <p>22 property, not --</p> <p>23 HEARING EXAMINER ROBESON HANNAN: Can you zoom</p> <p>24 out, Ms. Harris, so I can see this in relation to the</p> <p>25 building and her lot? Okay. So the wavy area, Lot 3 is at</p>

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<p>121</p> <p>1 the end of this cul-de-sac, correct?</p> <p>2 MS. BAKER: Right there.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: On the eastern</p> <p>4 side? Okay. So Ms. Lee [sic], given this perspective, your</p> <p>5 question is --</p> <p>6 MS. HARRIS: Ms. Baker, you mean, right?</p> <p>7 MS. BAKER: I'm sorry -- I --</p> <p>8 HEARING EXAMINER ROBESON HANNAN: Your question is</p> <p>9 whether there will be supplemental plantings between your lot</p> <p>10 and the building?</p> <p>11 MS. BAKER: You have the lot line there, but</p> <p>12 you're not showing the position of the house. And the</p> <p>13 position of the house is such that it is directly across from</p> <p>14 the -- it's hard to -- I guess it's 6A.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: The before we</p> <p>16 (indiscernible) I'm going to go a little bit out of order,</p> <p>17 and do you have the ability to turn a camera on, or are you</p> <p>18 totally by phone?</p> <p>19 MS. BAKER: No, I can turn the camera on.</p> <p>20 HEARING EXAMINER ROBESON HANNAN: I'm going to</p> <p>21 swear you in so we know (indiscernible) to ask, okay? Do you</p> <p>22 mind turning your camera on?</p> <p>23 MS. BAKER: It should be on.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: Oh, it is.</p> <p>25 Please raise your right hand.</p>	<p>123</p> <p>1 MS. BAKER: Yes.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: That's what 6A</p> <p>3 is?</p> <p>4 MS. BAKER: Yes.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: So Mr. Park, are</p> <p>6 there any supplemental plantings between where she described</p> <p>7 where her house and that area?</p> <p>8 MR. PARK: No, there is not.</p> <p>9 MS. BAKER: And the contemplated building will be</p> <p>10 taller than the existing building, correct?</p> <p>11 MR. PARK: Are you referring to -- yes, correct.</p> <p>12 Yes, it will be slightly taller. I'm not quite sure of an</p> <p>13 actual dimension.</p> <p>14 MS. BAKER: And you are saying that you don't have</p> <p>15 the current lighting plan, but expect it to be lit in some</p> <p>16 fashion?</p> <p>17 MR. PARK: Correct. I would note that there is an</p> <p>18 existing building there that will screen most of that</p> <p>19 lighting most likely. And then obviously those forests, but</p> <p>20 yes.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Well, is the</p> <p>22 gymnasium going to be lit?</p> <p>23 MR. PARK: I don't know the answer to that</p> <p>24 question.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Well, isn't your</p>
<p>122</p> <p>1 Do you solemnly affirm -- right hand.</p> <p>2 MS. BAKER: I'm sorry. I'm trying to position the</p> <p>3 camera so that I can see myself, but I can't figure out how</p> <p>4 to do that.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Okay. Just turn</p> <p>6 your camera on. I was -- it was fine.</p> <p>7 MS. BAKER: Yeah, I was trying to make it private</p> <p>8 somehow, but it doesn't appear I can. Normally I can blur</p> <p>9 the background.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: We don't -- you</p> <p>11 should see my background. Okay. That's fine. Raise your</p> <p>12 right hand.</p> <p>13 Do you solemnly affirm under penalties of perjury</p> <p>14 that the statements you're about to make are the truth, the</p> <p>15 whole truth and nothing but the truth?</p> <p>16 MS. BAKER: Correct.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: And you just</p> <p>18 doing your (inaudible) so he can understand your question.</p> <p>19 Where is your house on Lot 3 looking at this exhibit?</p> <p>20 MS. BAKER: So the lot is like a pizza slice. And</p> <p>21 the house is towards the center and is angled in a way where</p> <p>22 the main portion of the house points towards 6A.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: All right.</p> <p>24 Okay. (Inaudible). Okay. So your question is, 6A is where</p> <p>25 it says forest clear area A1 0.04 acres?</p>	<p>124</p> <p>1 lighting plan supposed to be part of the conditional use</p> <p>2 application?</p> <p>3 MR. PARK: That's correct, Ms. Robeson. But it's</p> <p>4 not a requirement I believe to include that -- building</p> <p>5 mounted lights. I mean, we are providing -- we're not</p> <p>6 providing any light poles behind that structure. But as far</p> <p>7 as the building light, we are not required to show something</p> <p>8 on this plan.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Well, I'm not</p> <p>10 sure about that. But, you know, go ahead. I think you</p> <p>11 are -- if it's new lighting, it's supposed to be on here.</p> <p>12 Who is going to approve the new lighting?</p> <p>13 MR. PARK: We are not proposing new lighting in</p> <p>14 that location. So I guess --</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Wait.</p> <p>16 MR. PARK: I guess -- yes ma'am.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: Okay. Who</p> <p>18 was -- so -- well, you are going to be proposing some</p> <p>19 lighting in the parking lot, right? And on the exterior of</p> <p>20 the building, correct? And perhaps on the gymnasium?</p> <p>21 MR. PARK: I would say that on the existing -- on</p> <p>22 the proposed building, yes, there would most likely be some</p> <p>23 sort of building lighting, building mounted lighting. And</p> <p>24 yes, we are providing pole mounted lighting which is proposed</p> <p>25 on the plan.</p>

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32 (125 to 128)

<p>125</p> <p>1 MS. HARRIS: If I -- may I interject? I think I 2 can help clarify this. But I also think it may be helpful to 3 bring back our architect to clarify the building lighting. 4 If I may? 5 HEARING EXAMINER ROBESON HANNAN: Well, let's -- 6 let me get to -- Ms. Baker, do you have any other questions 7 of Mr. Park? Assuming this architect is going to be able to 8 clarify what the lighting is going to be. 9 MS. BAKER: No, I -- as I understand it, there 10 will be no screening plantings between my property and the 11 property being developed. And there is no current lighting 12 plan that's available from Mr. Park. So I'm finished with my 13 questions. Thank you for the opportunity. 14 HEARING EXAMINER ROBESON HANNAN: The application 15 requirements in 731B say landscaping and lighting. It 16 doesn't say just poles. And I've had cases that have the 17 building sconces and all that stuff on there. So it's 18 definitely something that we typically look at. 19 Anyway, Ms. Baker, so I can release Mr. Park and 20 let Mr. -- is it [Swee' hart] [Swi' hart]? 21 MS. HARRIS: [Swi' hart]. 22 HEARING EXAMINER ROBESON HANNAN: [Swi' hart]. 23 MS. BAKER: Well, actually, before you release Mr. 24 Park, I had some redirect for him. 25 HEARING EXAMINER ROBESON HANNAN: Okay, go ahead.</p>	<p>127</p> <p>1 MR. PARK: It is (inaudible). 2 MS. HARRIS: Right, but who owns the property on 3 which it's located? 4 MR. PARK: On the Benoit property. 5 MS. HARRIS: Okay. And do you -- 6 HEARING EXAMINER ROBESON HANNAN: And this 7 property is the religious institution? 8 MS. HARRIS: Yes. 9 HEARING EXAMINER ROBESON HANNAN: Okay. 10 MS. HARRIS: And Mr. Park were you aware that the 11 Benoit property has indicated their support for this 12 application? 13 MR. PARK: Yes. 14 MS. HARRIS: Thank you. Okay. now, moving over 15 to this lighting question just for a moment. And I'm going 16 to pull up along the eastern property line. Can you -- 17 actually maybe we should have pulled this plan up to begin 18 with. I believe that that is Ms. Baker's house, Lot 3. So 19 just -- first of all, can you estimate whether on this plan 20 or another plan the distance from the proposed Lodge building 21 to the property line? 22 MR. PARK: I'll give you an actual number; 480 23 feet. 24 MS. HARRIS: 480 feet? 25 MR. PARK: Yes.</p>
<p>126</p> <p>1 MS. HARRIS: Okay. So first of all, Mr. Park, 2 going back to the (inaudible). Trees that were identified on 3 the back -- on the western property line where there's going 4 to be critical -- impact to the critical root zone. Can you 5 identify, first of all, as a rule of thumb, the -- what's the 6 anticipated -- well, first of all, just identify for me what 7 the critical root zone of those four trees will be; the 8 impact? 9 MR. PARK: Yes. Tree 62 is a sycamore with 14 10 percent CRZ impact. Tree 167 is a red maple with 27 percent 11 CRZ impact. 168, also a red maple with 11 percent CRZ impact 12 and 171, a sycamore with 10 percent CRZ impact. 13 MS. HARRIS: And as a general rule the amount -- 14 percentage of impact that can occur without -- and still 15 allow a tree to retain, is at least what? 16 MR. PARK: I would say 30 to 35 percent. 17 MS. HARRIS: Okay. And then, moving to the 18 western property line, the tree that Ms. Lee focused on, 19 which I believe was tree number 250. Can you -- 20 MR. BROWN: 255. 21 MS. HARRIS: 255, thank you. 22 Can you identify what property that tree is 23 located on? 24 MR. PARK: Yes, 255 is a northern red oak. 25 MS. HARRIS: No, on what property is it located?</p>	<p>128</p> <p>1 MS. HARRIS: Okay. And based on your experience 2 as a landscape architect with experience in forestry issues, 3 how would you describe this area of forest that you see in 4 the northeast corner of the site? 5 MR. PARK: I would say dense. 6 MS. HARRIS: In terms of density. 7 MR. PARK: It's a dense forest. It's, you know, a 8 priority forest so I would say that it is a dense forest. 9 MS. HARRIS: And within that area is there the 10 ability to plant more trees and have them be viable given the 11 density that currently exists? 12 MR. PARK: You know, given where the stream is, 13 and not having a tree survey it would be hard to say. But 14 you know, generally I would say that it is pretty dense as it 15 stands today. But you know, you can always certainly add 16 trees if needed. It's not required by any means, for the 17 rules of forest conservation but that's my opinion is that 18 the forest that stands today is a densely planted forest 19 without a need to plant supplemental forest in that location. 20 MS. HARRIS: And then, along the -- here's the 21 existing barn. There's no -- there's just seed restoration 22 here. Is there any tree restoration -- there's no tree 23 restoration proposed along this area, correct? 24 MR. PARK: There is. Yes, where -- right there 25 were -- I'm sorry, not right there; if you follow from Ms.</p>

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<p style="text-align: right;">129</p> <p>1 Baker's property line and go north from that property line 2 up, and over to the west, I'm sorry, to the south, sorry. 3 MS. HARRIS: Like here? 4 MR. PARK: Yes, right there, a little more south. 5 HEARING EXAMINER ROBESON HANNAN: Right here? 6 What's here? 7 MS. HARRIS: So south of the -- east of the 8 existing barn, is that where you're talking about? 9 MR. PARK: South of the -- yeah right there. If 10 you follow where that green area is depicted as lawn, all of 11 that heading toward the eastern property line will -- toward 12 the eastern property line will all be planted with 13 supplemental trees. 14 HEARING EXAMINER ROBESON HANNAN: What type of 15 trees? 16 MR. PARK: There will be canopy trees, mostly 17 canopy trees. There will be some evergreen trees as well, 18 but I think it will be mostly a mix of those two types of 19 trees. 20 MS. HARRIS: And then, going back to the western 21 property line, just for one moment. You had indicated that 22 along that shared property line there would be a depth of -- 23 that the landscape buffer would be 12 feet; is that correct? 24 MR. PARK: Correct. 25 MS. HARRIS: And in and of itself without taking</p>	<p style="text-align: right;">131</p> <p>1 entire western property line and believe that we meet the 2 requirement and exceed it. 3 MS. HARRIS: And do you recall what the height of 4 the proposed structures will be? 5 MR. PARK: I believe they are 35 or 40 feet. 35 6 feet? 7 MS. HARRIS: Okay. And that's comparable to what, 8 if it were a single family developed in that site, is that 9 the comparable height to what a single-family would allow? 10 MR. PARK: Yes, I would say so. 11 MS. HARRIS: And as far as if a single-family 12 house were developed on that site would there be a buffering 13 a perimeter buffering requirement? 14 MR. PARK: I don't believe so, no. There would 15 not. 16 MS. HARRIS: Okay. Thank you. I don't believe I 17 have any more questions for Mr. Park, unless he can describe 18 now, because it may be helpful when we hear Mr. Swihart. 19 The -- in terms of the photometric, can you 20 describe what lighting was taken into account in developing 21 the photometric plan? 22 MR. PARK: Yes. The site lighting -- oh there it 23 is, yes. If you could zoom in? So we had evaluated the 24 placement of pole mounted lights, kept at a very low 12 foot 25 height. And we're providing illumination minimally</p>
<p style="text-align: right;">130</p> <p>1 into account the trees on the adjacent property, in your 2 professional opinion does that -- will that provide a 3 sufficient buffer? 4 MR. PARK: Yes, I do. And you know, perhaps we 5 should go back to the landscape plan so I could describe why 6 I think so. 7 MS. HARRIS: The section or this one? ? 8 MR. PARK: That one's good there. So that buffer 9 provided is not just a buffer, right. So we're talking about 10 a 12 foot buffer, it's a combination of the setback of these 11 proposed structures from that which is actually 50 percent 12 more than what is required. It exceeds the requirement by 16 13 feet. There is no actual requirement that the adjacent 14 structure cannot be visible. And you know, given that the 15 structures on Lot 3, 4 and the one adjacent to it are -- 16 where they sit today we believe that that buffer is 17 sufficient. You know, conversely we did consider this in 18 great detail because if you look at Lot 1, to the left -- or 19 to the south. 20 HEARING EXAMINER ROBESON HANNAN: While we're 21 (inaudible) the western side. 22 MR. PARK: Yes. So immediately to the east of 23 that where the building is located, we preserved a -- in this 24 case a Category 2 forest conservation easement so yes, we did 25 consider in detail the sufficiency of plantings along the</p>	<p style="text-align: right;">132</p> <p>1 sufficient for vehicular access as well as pedestrian 2 movement. And that is what you see on this plan. 3 MS. HARRIS: And zooming in on this plan, and at 4 what point -- and we're going to go back to that shared 5 property line, just for a moment. The numbers, the 6 photometric shows what numbers at the property line? 7 MR. PARK: Zero. 8 MS. HARRIS: And then, at what point -- where 9 approximately does that number increase from zero, as we move 10 westward? 11 MR. PARK: It would probably be within the range 12 of 450 feet or more. 13 MS. HARRIS: From the property line? 14 MR. PARK: Yes. 15 HEARING EXAMINER ROBESON HANNAN: Mr. Park, can 16 you explain for Ms. Baker, exactly which you're measuring 17 when you say 0.1 foot candles? 18 MR. PARK: Yes. It is the illumination in foot 19 candles. That's the measure of the illumination on the 20 surface of the ground. As you can see there, there are light 21 contours around each of the fixtures. And the last contour 22 represents the .1. So it's really the -- the data point 23 represents the illumination on the surface measured in foot 24 candles. 25 HEARING EXAMINER ROBESON HANNAN: As opposed to</p>

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34 (133 to 136)

<p>133</p> <p>1 being able to see the lights from further away?</p> <p>2 MR. PARK: Correct.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Okay. Just I</p> <p>4 just thought that may be helpful because it sounded to me</p> <p>5 like there's two things Ms. Baker is concerned about.</p> <p>6 MS. BAKER: That's correct. And you testified</p> <p>7 that the residences would be 35 feet. What will the building</p> <p>8 be?</p> <p>9 MS. HARRIS: Well, we may want to save that</p> <p>10 question for when our architect to get some back up.</p> <p>11 MS. BAKER: Okay. That's fine. Thank you.</p> <p>12 MS. HARRIS: And then, Mr. Park, one last</p> <p>13 question. So on the parking, on the -- well, two questions.</p> <p>14 On the parking lights, is there a requirement that does the</p> <p>15 shielded, down shielded or what kind of -- what type of</p> <p>16 design is required for that type of lighting?</p> <p>17 MR. PARK: Yes, there are shields related to the</p> <p>18 optic of the fixture. I believe Montgomery County planning</p> <p>19 staff would require that as well. And so yes, there will be</p> <p>20 a shielding associated with those pictures, and I believe if</p> <p>21 you look at the actual spec, that is provided.</p> <p>22 MS. HARRIS: Thank you. Okay.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: I have one more</p> <p>24 question. Is there anywhere appropriate for supplemental</p> <p>25 planting? And is this the category of forest easement where</p>	<p>135</p> <p>1 it should be done.</p> <p>2 MR. PARK: Yes, Ms. Robeson it's possible,</p> <p>3 however, you know, the grades are really dipping down there</p> <p>4 so, you know, the placement of those trees would have to be</p> <p>5 studied further. But they would have to be placed on a</p> <p>6 higher elevation to have a more immediate effect, but yes, it</p> <p>7 is possible.</p> <p>8 MS. BAKER: Mr. Park, one other question I just</p> <p>9 thought of. The existing school buildings there were lights</p> <p>10 emanating from those, I'm assuming? Would those have been</p> <p>11 visible -- are those visible from Lot 3?</p> <p>12 MR. PARK: I am not aware of lights on that side</p> <p>13 of the building.</p> <p>14 MS. BAKER: Okay.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Well, I think</p> <p>16 there's one alike, if I recall the photometric plan. See</p> <p>17 where it says forest clear area A-1, 0.04 acres, and then</p> <p>18 there is the corner of the parking -- I don't know if it's a</p> <p>19 drive isle or a sidewalk. I thought I saw a light there</p> <p>20 MS. BAKER: There is one light on the property</p> <p>21 that's clearly visible. If that's the point -- or the</p> <p>22 question.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: I'm seeing -- do</p> <p>24 you see the photometric? Ms. Harris has brought up the</p> <p>25 photometric plan. There is a proposed sidewalk, and then an</p>
<p>134</p> <p>1 you can plan supplemental planting, or is it the one that it</p> <p>2 has to be left exactly in its natural state?</p> <p>3 MR. PARK: That's a good question, Ms. Robeson, if</p> <p>4 we could zoom in, I would say that the existing Category 1</p> <p>5 easement there, there will probably be limitations on that.</p> <p>6 HEARING EXAMINER ROBESON HANNAN: When you say</p> <p>7 there, is that -- that's the honeycombed -- if I recall your</p> <p>8 testimony, that's the honeycomb, right?</p> <p>9 MR. PARK: That's correct.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>11 MR. PARK: So there may be some restrictions in</p> <p>12 that area as far as these existing in stand 1. Because we're</p> <p>13 going to record the forest conservation easement as part of</p> <p>14 this application, yes, potentially there is an opportunity to</p> <p>15 do that. However, you know, it's not a requirement by any</p> <p>16 means.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: (Inaudible)</p> <p>18 MR. PARK: (Inaudible) forest conservation</p> <p>19 (inaudible).</p> <p>20 HEARING EXAMINER ROBESON HANNAN: I totally</p> <p>21 understand that. But I'm also asking just as a matter of</p> <p>22 compatibility. Is it possible to put some, for instance,</p> <p>23 supplemental evergreens in or something like that to assist</p> <p>24 in, you know, buffering it during the winter? I'm just</p> <p>25 asking the question, I'm not saying one way or the other that</p>	<p>136</p> <p>1 existing, I think it's existing 5 foot sidewalk and then</p> <p>2 there is a light, A. Yes, that's it. So I guess my question</p> <p>3 is, you know, I just -- looking at this, trying to see, we</p> <p>4 haven't heard from Mr. Swihart about what will -- how much</p> <p>5 will be visible, but I also wonder if -- that looks like a</p> <p>6 doorway there, if there could be a wall sconce instead of a</p> <p>7 pole light? It's just a thought. I'm just playing with some</p> <p>8 thoughts.</p> <p>9 And the other option would be -- the other option</p> <p>10 would be to add supplemental screening close to the building</p> <p>11 outside of the forest Khan area. But that's another thought</p> <p>12 too.</p> <p>13 All right. Ms. Baker, do you have any further</p> <p>14 questions of Mr. Park?</p> <p>15 MS. BAKER: I do not, thank you.</p> <p>16 HEARING EXAMINER ROBESON HANNAN: Based on my</p> <p>17 questions, Ms. Harris do you have any other questions?</p> <p>18 MS. HARRIS: Of Mr. Park? No.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: Yeah.</p> <p>20 MS. HARRIS: No.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Okay. Now Mr.</p> <p>22 Park, you may be excused. We promise.</p> <p>23 MR. PARK: Thank you, Ms. Robeson. Ms. Harris.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: All right. Ms.</p> <p>25 Harris, what do you want to do? It's 1:30 I don't think</p>

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<p style="text-align: right;">137</p> <p>1 anyone had a chance to eat in the 10 minutes we took. Would 2 you like to take a half-hour break and then we go to Mr. -- 3 or do you want to continue with Mr. Swihart and take a 4 break -- 5 MS. HARRIS: Why don't we take a break now, if you 6 don't mind, and then we can put on Mr. -- I think it's [Swee' 7 hart]. 8 HEARING EXAMINER ROBESON HANNAN: I'm sorry. 9 That's how I said it in my head when I read the transcript. 10 So I apologize. Yeah. 11 MS. HARRIS: I think that makes sense. 12 HEARING EXAMINER ROBESON HANNAN: And then -- so 13 then we'll come back. How about we come back at 2:15? 14 MS. HARRIS: Okay. 15 MR. BROWN: Before we break I would like a sense 16 of when the Applicant expects to wrap up their case so I have 17 some sense of whether you are expecting us to begin our side 18 today or Tuesday -- I'm sorry, Wednesday. 19 MS. HARRIS: I would expect us -- we probably 20 have -- after Mr. Swihart testifies, and I expect that would 21 only be 10 or 15 minutes, and then we have Mr. Kagan, and 22 that's probably an hour, so I would think we probably get 23 to -- I mean start your testimony today. Your case. 24 And that's an estimate of how much time we will 25 need, approximately.</p>	<p style="text-align: right;">139</p> <p>1 testimony as quickly as possible. 2 MR. BROWN: I'd -- 3 MS. HARRIS: Okay. So 2:00? 4 HEARING EXAMINER ROBESON HANNAN: Okay. Just a 5 second. What did you say, Mr. Brown? 6 MR. BROWN: I'd like to get my expert witness on 7 today because I don't want her waiting around for all of the 8 citizens to testify first thing on Wednesday. 9 HEARING EXAMINER ROBESON HANNAN: That's fine. 10 Then we'll make her after Ms. Harris finishes, will make her 11 a priority. 12 MR. BROWN: All right. 13 MS. HARRIS: Though I want to make sure that one 14 of my -- our expert, our provider is available because I 15 think it will be helpful for her to hear Ms. Brecht's 16 testimony, so I would like to be able to confirm that real 17 quickly. 18 HEARING EXAMINER ROBESON HANNAN: Well. Okay. 19 Are you doing it right -- I see you texting. 20 MS. HARRIS: Yes. I'm waiting for an answer. I 21 texted a couple of minutes ago. 22 HEARING EXAMINER ROBESON HANNAN: Well, let's do 23 this. I would suggest that you schedule -- I can't remember 24 the name of your witness, I'm sorry. 25 MR. BROWN: Susan Brecht.</p>
<p style="text-align: right;">138</p> <p>1 MR. BROWN: Ms. Robeson, does that square with 2 your expectation, that we would get started later this 3 afternoon? 4 HEARING EXAMINER ROBESON HANNAN: Yes. 5 MR. BROWN: Okay. 6 HEARING EXAMINER ROBESON HANNAN: I mean, I'd be 7 willing. I don't know how everybody is set up in there -- in 8 front of their computers, but I would be willing, if it's 9 okay with you, to limit lunch to a half-an-hour, and come 10 back at 2:00. I don't know if -- you know, I don't want 11 people starving to death during this hearing. 12 MS. HARRIS: You don't want to -- that's fine. 13 That works for us. 14 HEARING EXAMINER ROBESON HANNAN: (inaudible) 15 this, on camera. So if you want to just take a half hour for 16 lunch I'd be willing to come back at 2:00 so we can get a 17 little bit of a -- we can get three hours in. 18 MR. BROWN: All right. I'm going to tell our 19 first witness, who is our proposed expert witness to be ready 20 at 3:00. I don't want her sitting around waiting too long to 21 testify. 22 HEARING EXAMINER ROBESON HANNAN: We'll try to 23 dispatch Mr. Kagan as quickly as possible. No offense. That 24 came out wrong. I think I need to eat lunch. We're not 25 dispatching any witness. We'll try to get through his</p>	<p style="text-align: right;">140</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Okay. Let's 2 schedule her for between 3:00 and 3:15, okay? We're going to 3 try -- 4 MR. BROWN: Okay. 5 HEARING EXAMINER ROBESON HANNAN: If that's -- if 6 you can't have your witness ready, Ms. Harris, we'll deal 7 with it after -- at 2:00. But rather than all hang on the 8 line let's see if we can proceed with that expectation and it 9 will try to get to Ms. Brecht today. All right? 10 MS. HARRIS: Yes. 11 HEARING EXAMINER ROBESON HANNAN: So let's go to 12 lunch. We'll be back at 2:00. 13 MS. HARRIS: Okay. Thank you. 14 MR. BROWN: Thank you. 15 (A lunch recess was taken) 16 HEARING EXAMINER ROBESON HANNAN: All right. So 17 we are ready to start -- are we starting with Mr. Swihart? 18 MS. HARRIS: Yes. 19 HEARING EXAMINER ROBESON HANNAN: Okay. Mr. 20 Swihart, you're still under oath. 21 MR. SWIHART: I understand. 22 HEARING EXAMINER ROBESON HANNAN: Thank you. 23 MS. HARRIS: And I don't know if Ms. Baker is on. 24 MS. BAKER: Yes, she is. 25 MS. HARRIS: So Mr. Swihart, I think I -- I want</p>

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<p>141</p> <p>1 you to explain, if you could, the photometric in terms of the</p> <p>2 anticipated lighting that will appear on the dash in</p> <p>3 connection with the conditional use. So let me pull up the</p> <p>4 photometric, first of all.</p> <p>5 MR. SWIHART: I don't see it yet.</p> <p>6 MS. HARRIS: Hold on one second. Sorry.</p> <p>7 MR. SWIHART: There you go. Yeah. Is it on that</p> <p>8 area, the gym and the lodge?</p> <p>9 So the basic answer is that we want to have -- we</p> <p>10 intend to have the buildings, both the Lodge and the gym</p> <p>11 being minimally lit on the exterior. We are not planning to</p> <p>12 light up the entire field or anything like that. If you zoom</p> <p>13 in, code required lighting and were going to light up the</p> <p>14 entries as you would typically see. But in this case, that</p> <p>15 should not be an issue.</p> <p>16 Zoom in on the gym, please. And you can see it.</p> <p>17 So the As are the new light fixtures we have proposed. I</p> <p>18 would like to mention this, there's actually an existing</p> <p>19 light fixture in the southeast corner of the building that we</p> <p>20 are going to be removing. Yeah, right about in -- yeah,</p> <p>21 about in that area. So that area is going to get a little</p> <p>22 bit darker there. The new fixture should cover most of our</p> <p>23 code required lighting.</p> <p>24 There is an entry at the northeast side. You can</p> <p>25 see there this little pad there. That's a little entry pad.</p>	<p>143</p> <p>1 see would be in direct. It would be reflecting off of the</p> <p>2 building or reflecting off of the ground, but not -- they</p> <p>3 wouldn't be looking at a fixture at the actual bulk of the</p> <p>4 fixture. So that's the idea for that. And then, if we could</p> <p>5 go up towards the courtyard, that's the only other place we</p> <p>6 really anticipate lighting beyond what we show here.</p> <p>7 Scroll down just a little bit. So you've got the</p> <p>8 two porte-cocheres, the one on the right just above the arrow</p> <p>9 on the one way there, and then on the outside on the left</p> <p>10 there. Those are the covered structures. They would have</p> <p>11 light in the ceiling pointing down. So that shouldn't be an</p> <p>12 issue. And we may have some sconces on the face of the</p> <p>13 building that sort of the back of those cocheres -- the</p> <p>14 porte-cocheres on the right and the left, just as you would</p> <p>15 with any entry, we wanted to make this an illuminated</p> <p>16 pedestrian entry there. As well, we might have some low</p> <p>17 voltage landscape lighting in -- there are a number of</p> <p>18 specimen trees in this area that we'd like the residents to</p> <p>19 be able to enjoy. So that would be like a low level</p> <p>20 lighting, but it would be up lights on the --</p> <p>21 HEARING EXAMINER ROBESON HANNAN: (inaudible) you</p> <p>22 not add these to the plan? Because they are supposed to be</p> <p>23 on the plan because there's no site plan here. Because when</p> <p>24 we approve a conditional use we say there is no changes to</p> <p>25 what's on X plan. So I guess my question is it may seem like</p>
<p>142</p> <p>1 We'll probably take a look at that. We may need another</p> <p>2 light over that door, but any exterior sconces, or any</p> <p>3 exterior lights that we add either if there on the face of</p> <p>4 the building will be shielded fixtures so you can't see the</p> <p>5 fixture directly. And in that case -- we lost the image.</p> <p>6 But in that case, it's actually shielded by the building from</p> <p>7 Lot 3 that we were just talking about. And then the other</p> <p>8 entrance to that building is in the Western side where it</p> <p>9 says proposed 7 foot sidewalk. Right in that area there is a</p> <p>10 kind of a covered entry there. We'll take a look at the</p> <p>11 lighting in there. But any lighting that will be kind of set</p> <p>12 in an alcove to begin with so I don't see an issue there.</p> <p>13 Beyond that, if you'll scroll up just a bit to get</p> <p>14 the whole -- that right there is the -- right where it says</p> <p>15 dumpster pad on the left side, that's our loading dock area.</p> <p>16 I would like to -- I imagine it's a good possibility we will</p> <p>17 have another fixture or two in that area. Again, these will</p> <p>18 be shielded fixtures. You know obviously for safety around</p> <p>19 the dumpster area, we don't want it to be too dark in there.</p> <p>20 And also, over the --</p> <p>21 HEARING EXAMINER ROBESON HANNAN: (inaudible) are</p> <p>22 you talking a pole fixture?</p> <p>23 MR. SWIHART: I'm talking about really, just about</p> <p>24 sconces. So they would be -- but they would be downlights so</p> <p>25 it would be shielded so any light that the neighbors would</p>	<p>144</p> <p>1 details but that's -- there's actually law saying we can't</p> <p>2 approve something that is -- we can't delegate an approval,</p> <p>3 so I guess my question is who's going to approve those</p> <p>4 additional lighting?</p> <p>5 MS. HARRIS: Well, I would say, Ms. Robeson, that</p> <p>6 we are subject to preliminary plan approval here and --</p> <p>7 HEARING EXAMINER ROBESON HANNAN: (inaudible) when</p> <p>8 you do this lighting? What does preliminary plan have to do</p> <p>9 with this lighting? I'm not --</p> <p>10 MS. HARRIS: No, the point that I wasn't making is</p> <p>11 that could be a condition -- and you know, part of this is, I</p> <p>12 mean as you said, these are really details and when you're</p> <p>13 just getting -- while we have conceptual building plans, you</p> <p>14 know, the details of the building -- I mean we don't have</p> <p>15 schematic drawings yet of the plans.</p> <p>16 HEARING EXAMINER ROBESON HANNAN: But I have that</p> <p>17 Constellation Energy case that says I can't delegate to</p> <p>18 another plan unknown.</p> <p>19 MS. HARRIS: So your suggestion is that we need to</p> <p>20 go back, figure out exactly where our wall-mounted lighting</p> <p>21 is going to be and resubmit another photometric showing that</p> <p>22 we don't have any bleeding off of the property light.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: You may need to</p> <p>24 resubmit another photometric because the --</p> <p>25 MS. HARRIS: Wait, did you say, I didn't hear the</p>

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<p>145</p> <p>1 beginning of what you said.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: I'm not sure</p> <p>3 that you need to resubmit another photometric unless you</p> <p>4 believe that this photometric is going to change. What I do</p> <p>5 think, or maybe you do, but what I do think you have to do is</p> <p>6 at least show us where the lighting is going to be so we can</p> <p>7 see what the impact is on the adjoining properties. I mean,</p> <p>8 when these, in Mr. Swihart's opinion, would these lights</p> <p>9 impact -- it I'm trying to see the foot candles at the</p> <p>10 property line impact the foot candles at the property line?</p> <p>11 The additional --</p> <p>12 MR. SWIHART: No, based on where they are there so</p> <p>13 far from the property line that I don't see an issue with</p> <p>14 that. Most of them would be in the courtyard which is</p> <p>15 shielded on three sides and quite far from any property line.</p> <p>16 HEARING EXAMINER ROBESON HANNAN: Well, I do think</p> <p>17 that part of the conditional use, and we go into these</p> <p>18 details all of the time, is see where the building lights</p> <p>19 are. So I do think that -- and I think it's only fair to Ms.</p> <p>20 Baker that she get an opportunity to see it too.</p> <p>21 MS. HARRIS: So based on that, are you suggesting</p> <p>22 that we submit a revised plan telling where the building</p> <p>23 mounted lights are? And any --</p> <p>24 HEARING EXAMINER ROBESON HANNAN: All the exterior</p> <p>25 lighting is. That's what we usually get, all the exterior</p>	<p>147</p> <p>1 There we go. If you could zoom in on that, or</p> <p>2 really any of them. If you go to the one in the lower right</p> <p>3 corner, it's just one of our typical floor plans.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: That is the</p> <p>5 (inaudible) for the Heritage Potomac main building floor</p> <p>6 plans fourth level.</p> <p>7 MR. SWIHART: Yes. So I just want to point out,</p> <p>8 one thing is that -- one helpful thing is that our corridor</p> <p>9 don't go to the end of the building there. What you'll get</p> <p>10 from interior lighting which I don't know if that's really a</p> <p>11 part of this discussion, but it's going to be a pretty</p> <p>12 typical residential facility, maybe a little bit less</p> <p>13 lighting just because less lighting late at night is just</p> <p>14 based on the fact that these residents do tend to go to bed a</p> <p>15 little bit earlier. There are two -- there are exterior</p> <p>16 terraces at the upper right of this drawing and in the lower</p> <p>17 left of the drawing. These are covered in terraces so the</p> <p>18 light for those would be up in the ceiling, also making them</p> <p>19 indirect and not visible. You won't be able to see the</p> <p>20 fixture. That could be a light or two, a scone on the door</p> <p>21 leaving back into the building. But again, the fact that the</p> <p>22 area is covered it shouldn't be intrusive. And I think,</p> <p>23 other than that we don't have plans for anything else affect</p> <p>24 this.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Thank you.</p>
<p>146</p> <p>1 lighting and if it does change the photometric plan, you</p> <p>2 would have to submit another one of those.</p> <p>3 Now, I didn't see this in the record I reviewed.</p> <p>4 Is there a timeframe for the staff report coming back in? I</p> <p>5 mean not the staff report, I'm sorry. I mean the traffic</p> <p>6 study. Yeah.</p> <p>7 MS. HARRIS: No, not yet because we are still</p> <p>8 waiting for scoping approval from planning staff, and then we</p> <p>9 will be resubmitting our -- the traffic study and then they</p> <p>10 need to review it. So we don't know those dates yet.</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Well, saying</p> <p>12 there is some time built in here, if you want -- I think</p> <p>13 you're actually required (inaudible) we do it all the time,</p> <p>14 especially when it's adjacent to residential, and I think</p> <p>15 it's fairer to Ms. Baker to have an idea of what she's going</p> <p>16 to say and what she isn't, and we can make a determination of</p> <p>17 compatibility.</p> <p>18 MS. HARRIS: That's fine. We can do that. I</p> <p>19 think it would be helpful since he is now on the stand if Mr.</p> <p>20 Swihart could just go a little bit further and explain a</p> <p>21 little bit more about the lighting.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: That's fine.</p> <p>23 MR. SWIHART: Yeah, just to finish up. If we</p> <p>24 could go to the Lodge floor plans, I don't recall which</p> <p>25 exhibit that was.</p>	<p>148</p> <p>1 MS. HARRIS: So Ms. Robeson, per your suggestion</p> <p>2 we will prepare another lighting plan showing all the</p> <p>3 exterior lighting and submit that to the record.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: Now, I also, if</p> <p>5 you're -- I also was wondering if there -- I guess, can you,</p> <p>6 Mr. Swihart, can you speak to the view from Ms. -- were you</p> <p>7 here when Ms. Baker pointed out where her house was?</p> <p>8 MR. SWIHART: Yes, I was.</p> <p>9 MS. HARRIS: Should I pull up the overall</p> <p>10 illustrative site plan?</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Yeah, that was</p> <p>12 helpful because I think that shows her house on it.</p> <p>13 So her house is on the northeastern, Northeast of</p> <p>14 the property. Can you speak to -- now, you've got the</p> <p>15 photometric plan saying there's no illumination from lights</p> <p>16 coming on her property. But what is she going to see at</p> <p>17 night?</p> <p>18 MR. SWIHART: I mean --</p> <p>19 HEARING EXAMINER ROBESON HANNAN: If you could</p> <p>20 just describe it.</p> <p>21 MR. SWIHART: Okay. Well, I think in the summer</p> <p>22 time she -- I bit surprised if she could see anything through</p> <p>23 all those trees. If it's wintertime she'll see, you know, a</p> <p>24 relatively normal residential building that it doesn't have a</p> <p>25 lot of exterior lighting on it. The gymnasium building is</p>

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<p>149</p> <p>1 going to be mostly dark. We're not going to have any 2 lighting on any of the surfaces that are going to face her 3 lot. 4 The - -and the loading dock that I spoke about is 5 shielded between the gymnasium and the lodge structure. So 6 that eliminates that. To see anything, I mean, she's going 7 to see the lights that are on the photometric plan, the pole 8 light that are there, to some extent. And the lights that I 9 spoke of in the porte-cochere area that are just -- I think 10 it would be very minor. I mean, I think that she will know 11 that there's a building over there but I just don't see 12 any -- there aren't any glare issues. It's going to be quite 13 far away at that point. So I don't see much of any impact, 14 on her property. 15 MS. HARRIS: Can you also speak to what the 16 exterior of the barn building and where there are windows in 17 that building? 18 HEARING EXAMINER ROBESON HANNAN: Can you 19 explain -- I miss, what is the barn building? 20 MR. SWIHART: That's the green building there in 21 the lower right where it says -- 22 HEARING EXAMINER ROBESON HANNAN: The (inaudible) 23 gymnasium? 24 MR. SWIHART: Yes, that's the gymnasium. Yeah, we 25 call the barn as well. But yeah, that's going to be</p>	<p>151</p> <p>1 MS. BAKER: Thank you, I would. 2 Mr. Swihart, can you tell me how tall the building 3 is that is being built? 4 MR. SWIHART: Yes. 5 MS. BAKER: And how much it exceeds the height of 6 the existing building? 7 MR. SWIHART: Yeah. They -- okay. The Existing 8 building -- I'm going to go with the actual height. There's 9 a code height, which is to the middle point of the gable 10 roof, that's how we figure out our actual code required 11 height. But to the top of the roof is 33 feet 6 inches and 12 the new lodge building is -- it's 50 -- yeah, it's about 50 13 feet tall, the Lodge building. So we're a good, you know, 14 15, maybe 20 feet higher than that existing building there. 15 MS. BAKER: And you testified that there should be 16 minimal impact to my property from the lighting that you're 17 anticipating. 18 MR. SWIHART: Right. 19 MS. BAKER: Have you done any type of view of the 20 existing lighting that currently there for my property? 21 MR. SWIHART: Not from your property, no. 22 MS. BAKER: So what expertise are you relying on 23 to suggest that I'll have minimal impact from the lighting? 24 MR. SWIHART: Well, I've been at the place where 25 the lights are in looking back up at your property. And it's</p>
<p>150</p> <p>1 reconverted into the fitness center. But the conversions, 2 that's going to all be on an interior base. The only thing 3 on the exterior isn't going to be -- yeah, just like I said, 4 code compliant just to make sure the entries are lit up well 5 enough. There could be new paint or something like that, but 6 nothing on that -- yeah. 7 MS. HARRIS: But my point is, do you recall the 8 fenestration on that building as it -- 9 MR. SWIHART: I don't think there are any windows 10 on that building. At least not on that side that she would 11 be seeing. Yeah, there aren't any windows there. 12 MS. HARRIS: And is that changing? 13 MR. SWIHART: No. 14 HEARING EXAMINER ROBESON HANNAN: Okay. Ms. 15 Baker -- 16 MS. AKER: Yes? 17 HEARING EXAMINER ROBESON HANNAN: Are you -- Ms. 18 Harris? 19 MS. HARRIS: Yes? 20 HEARING EXAMINER ROBESON HANNAN: Are you finished 21 with Mr. Swihart? 22 MS. HARRIS: Yes. 23 HEARING EXAMINER ROBESON HANNAN: Ms. Baker, I'd 24 like to -- you know this -- if you want to ask Mr. Swihart 25 questions this would be the time.</p>	<p>152</p> <p>1 very hard to see your property from that area. 2 MS. BAKER: Because your standing in the light 3 looking the opposite direction, and you're trying to suggest 4 that you could see my lights, right? I'm just trying to 5 understand what you were saying. 6 MR. SWIHART: It was during the day. But I 7 couldn't see your house very well. It was pretty far away. 8 MS. BAKER: Yeah. 9 MR. SWIHART: I mean, I could see it. It was 10 winter time so I could see your house but you know, it was 11 not very -- 12 MS. BAKER: Yes because I can see very clearly the 13 building that exists there. I can see very clearly the 14 lighting that exists there currently. Which is one light. 15 MR. SWIHART: Yeah, and that may be the one that's 16 coming out. Yeah, but yeah. 17 MS. BAKER: But you're talking about a building 18 now that is almost 15, 20 feet higher, has lighting facing 19 me, not away from me, and has a parking month where lighting 20 is being added, a loading dock where it's being added. 21 MR. SWIHART: Well again -- 22 MS. BAKER: And you're suggesting it would be a 23 minimal impact to my property, and I'm just not understanding 24 how your reaching that conclusion. 25 MR. SWIHART: Well, all those lights are much</p>

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<p>153</p> <p>1 closer to the ground plane. I mean we don't have any lights 2 up at the roof or even the upper levels of the building. I 3 mean the only new lights you're really going to see, you 4 know, that aren't closer to the ground is just standard 5 residential, you know, dwelling units.</p> <p>6 HEARING EXAMINER ROBESON HANNAN: How high is the 7 light on the eastern corner of the gymnasium?</p> <p>8 MR. SWIHART: I think it's about 20 feet from the 9 (inaudible).</p> <p>10 HEARING EXAMINER ROBESON HANNAN: Not as high 11 as -- how high would be the under canopy light on the porte- 12 cochere?</p> <p>13 MR. SWIHART: Probably about 12 to 14 feet. It 14 would be a down light. It would be like a -- you know, a 15 recessed can fixture.</p> <p>16 MS. BAKER: But how is lighting from a 50 foot 17 being viewed as lighting similar to a residential unit? I'm 18 not following that.</p> <p>19 MR. SWIHART: Well, you know, a multifamily 20 residential unit. I mean it is a multifamily building. 21 We're not trying to pretend it's not. There will be 22 residents in there, they'll have windows, they'll have their 23 standard lighting. That's just the nature of what this is.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: Is there 25 anything that is -- is there any screening that could go</p>	<p>155</p> <p>1 number.</p> <p>2 MS. BAKER: Okay.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Anything else of 4 Mr. Swihart?</p> <p>5 MS. HARRIS: Well, I'm going to get him to 6 reiterate if he knows it, the distance of the building to 7 that southern -- that eastern property line.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: The eastern 9 property line adjacent to abutting -- Ms. Baker's property?</p> <p>10 MS. HARRIS: Yes.</p> <p>11 MR. SWIHART: Yeah, I don't know it off the top of 12 my head. I thought it was about 400 feet.</p> <p>13 MS. HARRIS: Thank you.</p> <p>14 MR. SWIHART: I don't know the exact number.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Anything else?</p> <p>16 MS. HARRIS: Not for me.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: Okay. Are we 18 ready -- go ahead.</p> <p>19 MS. SCAFIDE: I'm sorry, are other people allowed 20 to ask questions?</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Who is speaking?</p> <p>22 MS. SCAFIDE: My name is Catherine Scafide. I am 23 one of the neighbors.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: Are you 25 represented by Mr. Brown?</p>
<p>154</p> <p>1 along the north side of this building that might mitigate --</p> <p>2 MR. SWIHART: And I need to ask, are you asking 3 about the north or -- I mean, the north we don't -- the view 4 that we've been talking about is more to the east, if that's 5 what you're asking.</p> <p>6 HEARING EXAMINER ROBESON HANNAN: No, I'm 7 talking -- well, I guess I'm talking about north.</p> <p>8 MR. SWIHART: The forest right to the north.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: (inaudible).</p> <p>10 MR. SWIHART: Yeah, I mean, I guess Mr. Park 11 mentioned, it is possible to add just evergreens in there. 12 Boy, when I was on site it was just a huge forest between the 13 two. I didn't see the issue. Let yeah, it's possible.</p> <p>14 HEARING EXAMINER ROBESON HANNAN: Well, Ms. Baker 15 has the right to come back and testify. Right now, were on 16 the Applicant's case. But maybe you could be here for her 17 testimony and then she can just maybe describe more fully her 18 thoughts. Thank you.</p> <p>19 MS. BAKER: If I could ask Mr. Swihart a follow-up 20 question in terms of changes in elevation. That elevation 21 difference between Lot 3 and the Lodge?</p> <p>22 MR. SWIHART: Yeah. I don't know the exact number 23 in front of me. The Lodge is somewhat lower than -- I mean 24 the floor of the -- the ground at the Lodge is somewhat lower 25 than Lot 3. I don't -- sorry, I don't remember the exact</p>	<p>156</p> <p>1 MS. SCAFIDE: That's a good question. Mr. Brown, 2 are you representing me? I'm sorry.</p> <p>3 MR. BROWN: I don't think so.</p> <p>4 MS. SCAFIDE: Great. Okay, could I ask a 5 question?</p> <p>6 HEARING EXAMINER ROBESON HANNAN: Very well.</p> <p>7 MS. SCAFIDE: Could you speak to what the impact 8 of the exterior lighting from the Lodge is going to be on the 9 houses and that are on Edison and Dobbins?</p> <p>10 MS. HARRIS: And before he answers that, just for 11 the record, can you identify where you live?</p> <p>12 MS. SCAFIDE: Sure. I live at 10820 --</p> <p>13 HEARING EXAMINER ROBESON HANNAN: Wait. Wait. 14 Just -- I'm just going to put her under oath for the purposes 15 of cross-examination. I can't see your last name here.</p> <p>16 Do you solemnly affirm under penalties of perjury 17 that the statements are about to make are the truth, the 18 whole truth, and nothing but the truth?</p> <p>19 MS. SCAFIDE: Yes.</p> <p>20 HEARING EXAMINER ROBESON HANNAN: State your name 21 and address for the record.</p> <p>22 MS. SCAFIDE: My name is Catherine Scafide. I 23 live at 10820 Edison Rd.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: Okay. And 25 you're looking at an exhibit, 56C, that's on your screen now.</p>

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<p>157</p> <p>1 Can you describe where your house is on that exhibit?</p> <p>2 MS. SCAFIDE: Sure. And I apologize if my get my</p> <p>3 north and west and everything mixed up.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: Yeah, it's hard</p> <p>5 when north isn't up.</p> <p>6 MS. SCAFIDE: Yeah what is up. I live on the</p> <p>7 opposite side of the street from the houses that abut the</p> <p>8 development.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>10 MS. SCAFIDE: I'm the second house from the end.</p> <p>11 HEARING EXAMINER ROBESON HANNAN: The what?</p> <p>12 MS. SCAFIDE: The second house from the end. The</p> <p>13 second house from South Glen.</p> <p>14 HEARING EXAMINER ROBESON HANNAN: From the end of</p> <p>15 adjoining South Glen, or from the other end?</p> <p>16 MS. SCAFIDE: South Glen.</p> <p>17 MS. HARRIS: If you could, I'm going to pull up a</p> <p>18 different exhibit because I think that's going to be helpful</p> <p>19 to show. Do you live over here?</p> <p>20 MS. SCAFIDE: See, I live on the second lot from</p> <p>21 the end -- from the intersection of South Glen and Edison, I</p> <p>22 live two lots in on the left.</p> <p>23 MR. SWIHART: Right. I can see it. Probably the</p> <p>24 next one down.</p> <p>25 MS. SCAFIDE: The next one down, yes.</p>	<p>159</p> <p>1 lighting that's coming from those decks?</p> <p>2 MR. SWIHART: You'll be able to see the reflected</p> <p>3 light from that. You won't see the actual fixture, but yeah,</p> <p>4 it will be a -- you know, you'll be able to tell that there's</p> <p>5 a bit of terrace there.</p> <p>6 MS. SCAFIDE: Okay.</p> <p>7 MR. SWIHART: (inaudible) the light from it.</p> <p>8 MS. SCAFIDE: Okay. And will there be any down</p> <p>9 lighting along the walls of the building?</p> <p>10 MR. SWIHART: No, we don't intend -- you mean like</p> <p>11 an exterior sconce as a downline?</p> <p>12 MS. SCAFIDE: Yes.</p> <p>13 MR. SWIHART: We don't intend anything like that</p> <p>14 on that side of the building.</p> <p>15 MS. SCAFIDE: Okay. And so that would be put in</p> <p>16 when you guys submit your updated information you'll put all</p> <p>17 the sconces on the documents you're going to submit?</p> <p>18 MR. SWIHART: Right. Yeah, that's right.</p> <p>19 MS. SCAFIDE: To demonstrate that?</p> <p>20 MR. SWIHART: Yeah.</p> <p>21 MS. SCAFIDE: Okay. Thank you.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: Anyone else?</p> <p>23 Hearing none, Mr. Swihart, you may be excused and we can move</p> <p>24 to, I think it's Mr. Kagan next, Ms. Harris?</p> <p>25 MS. HARRIS: Correct.</p>
<p>158</p> <p>1 MR. SWIHART: Yeah, that one there. I see -- Ms.</p> <p>2 Harris, could you go to the site section on this? Which I</p> <p>3 think was in Jane's testimony. Ms. Przygocki's testimony.</p> <p>4 MS. HARRIS: Well that -- there's the section</p> <p>5 minds, but okay. Hold on one second.</p> <p>6 MR. SWIHART: I was thinking about number C</p> <p>7 because we're talking about the Lodge. Item C.</p> <p>8 MS. HARRIS: This one, right?</p> <p>9 MR. SWIHART: So if you zoom in on the Lodge, you</p> <p>10 know, we kind of went through this a little bit during my</p> <p>11 testimony, but the Lodge is recessed somewhat down in the</p> <p>12 earth so that the roof of the Lodge are similar in height to</p> <p>13 the roof of the adjacent houses. But my answer is relatively</p> <p>14 the same. Is that this is a standard multifamily building.</p> <p>15 On that side of the Lodge, we don't anticipate additional</p> <p>16 surface mounted lighting and all. We don't have a code where</p> <p>17 required to meet for there. So other than just the actual</p> <p>18 dwelling units, there are going to be standard windows there,</p> <p>19 there won't be, you know, significant lighting change in</p> <p>20 what's in there now.</p> <p>21 MS. SCAFIDE: Will we be able to think -- you</p> <p>22 spoke about those exterior lights from all those decks that</p> <p>23 will be on the outside on the fourth floor.</p> <p>24 MR. SWIHART: Yeah.</p> <p>25 MS. SCAFIDE: So will we be able to see the</p>	<p>160</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Mr. Kagan,</p> <p>2 please raise your right hand.</p> <p>3 Do you solemnly affirm under penalties of perjury</p> <p>4 that the statements you're about to make are the truth, the</p> <p>5 whole truth and nothing but the truth?</p> <p>6 MR. KAGAN: I do.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Thank you.</p> <p>8 MS. HARRIS: Thank you. Mr. Kagan, for the record</p> <p>9 can you please identify -- state your full name and primary</p> <p>10 occupation?</p> <p>11 MR. KAGAN: My full name is Kevin Lee Kagan, I'm a</p> <p>12 commercial real estate appraiser. I have an MAI designation</p> <p>13 through the Appraisal Institute.</p> <p>14 MS. HARRIS: And who is your current employer?</p> <p>15 MR. KAGAN: I am self-employed, but I am a partner</p> <p>16 at Lipman, Frizzell & Mitchell, LLC, which has an address of</p> <p>17 6240 Old Dobbin Ln., Suite 140, in Columbia, MD 21045.</p> <p>18 MS. HARRIS: And can you please describe your</p> <p>19 professional and educational background?</p> <p>20 MR. KAGAN: Sure. I have a bachelor's degrees in</p> <p>21 real estate and finance from the University of South</p> <p>22 Carolina. I have a Masters degree in real estate from John's</p> <p>23 Hopkins University. I am a certified general real estate</p> <p>24 appraiser with the State of Maryland, the Commonwealth of</p> <p>25 Virginia, and District of Columbia, and I hold an MAI</p>

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<p>161</p> <p>1 designation with the Appraisal Institute, as I said before. 2 MS. HARRIS: And when you say MAI, for the record, 3 what does that stand for? 4 MR. KAGAN: It doesn't stand for anything. It 5 used to stand for something, but now it's just a designation. 6 It basically signifies that that I have set myself apart from 7 my colleagues and completed additional education and 8 requirements, and testing to obtain the designation. 9 MS. HARRIS: Okay. Thank you. And have you 10 conducted appraisals in Montgomery County? 11 MR. KAGAN: I have. 12 MS. HARRIS: And in which areas? 13 MR. KAGAN: All over, Silver Spring, Bethesda, 14 Rockville, Gaithersburg, I did some in Darnestown, and Olney. 15 And currently, I'm actually appraising a small office a 16 building in Potomac Village. And when I say small, about 17 30,000 square foot. 18 MS. HARRIS: Thank you. And have you ever 19 testified as an expert before the Montgomery County Office of 20 Zoning and Administrative Hearings? 21 MR. KAGAN: I have not. 22 MS. HARRIS: Have you -- or any other relevant 23 administrative body? 24 MR. KAGAN: I have not. 25 MS. HARRIS: Okay.</p>	<p>163</p> <p>1 MR. BROWN: I don't see where there's any 2 prejudice. 3 HEARING EXAMINER ROBESON HANNAN: Well, let's get 4 through the expertise first. 5 Mr. Rosenthal? 6 MR. ROSENTHAL: My objection is a limited 7 objection. I certainly have no objection to him testifying 8 as an appraiser, which would include a fair market value and 9 current valuations. He certainly qualified and seems to have 10 stellar credentials. My objection is to him giving an 11 opinion as to future predictions, future valuations, and 12 statistical analyses. And maybe he has a background in 13 statistics, but it certainly has not been placed on the 14 record. 15 HEARING EXAMINER ROBESON HANNAN: Well, I think 16 that is a look at the present to see what the present 17 value -- where the present values are going to be impacted; 18 and I wrong, Mr. Kagan? 19 MR. KAGAN: That is correct. I will explain my 20 analysis later in the testimony. But I'm not opining on 21 future values. 22 MR. ROSENTHAL: So if I understand he will not 23 testify based on other comparables that the Heritage 24 development will, in the future, impact property values at 25 all. If he has no intention of testifying that Heritage as</p>
<p>162</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Well, let me ask 2 this. Mr. Brown, or anyone else, do you object to qualifying 3 Mr. Kagan as an expert in appraisal? 4 MR. BROWN: No. 5 MS. BAKER: (inaudible) appraisal. 6 MR. ROSENTHAL: I have a limited objection. This 7 is Sam Rosenthal. I'm one of the neighbors. I object -- 8 MR. BROWN: Ms. Robeson, I want to interrupt Mr. 9 Rosenthal for a moment. This is another situation where I 10 have delegated responsibility in order to keep costs down for 11 this representation. Mr. Rosenthal is one of my clients, he 12 is an active member of the bar, and I asked him to review Mr. 13 Kagan's report and to cross-examine him with regard to that 14 report. And so I would like him to state any objections and 15 that he may have to the qualification. 16 MS. HARRIS: And for the record, as I did 17 previously, I'm going to object to this. I mean -- and I 18 appreciate the fact that Mr. Brown gave us the courtesy that 19 Ms. Li wasn't going to be cross-examining our witness ahead 20 of time. He certainly could have let us know that Mr. 21 Rosenthal was going to take a similar position. It seems a 22 little bit unfair, if you will, to tell us two minutes before 23 our witness is going to testify that Mr. Brown is not, in 24 fact, going to be the one cross-examining the witness. 25 HEARING EXAMINER ROBESON HANNAN: I have to --</p>	<p>164</p> <p>1 developed -- 2 HEARING EXAMINER ROBESON HANNAN: Okay. Okay. I 3 don't even understand your objection. 4 MR. ROSENTHAL: My understanding of his -- 5 HEARING EXAMINER ROBESON HANNAN: (inaudible) 6 under the statute is to say, based on what we know today 7 using these -- you know, there's three methods of appraisal. 8 I didn't read his report in full. But there's three methods 9 that this won't impact it. Now, I don't even understand why 10 you object to that. 11 MR. ROSENTHAL: Because my understanding of his 12 report and his testimony is that it will not have an impact 13 on development as it built. And of course, it has not yet 14 been built and so it's a prediction. 15 HEARING EXAMINER ROBESON HANNAN: Well, I totally 16 disagree with that because his whole job is to assess the 17 impact as built. And so that's his whole job. So I'm not 18 going to say, that's what a MAI does. So I don't -- you 19 don't need statistical, you know, some kind of data analysis 20 and agreed to do that. You need the MAI, or it helps to have 21 the MAI appraisal. So I'm going to qualify him as an expert 22 real estate appraiser. 23 Okay. Go ahead, Mr. Kagan. 24 MS. HARRIS: Well, if I could, let me -- before I 25 start questioning Mr. Kagan, I did want to note that Mr.</p>

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<p>165</p> <p>1 Kagan is speaking to Section 597.3.1 E(g) --</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Right.</p> <p>3 MS. HARRIS: -- which says -- but might -- if I</p> <p>4 could.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: I'm sorry.</p> <p>6 MS. HARRIS: Which says it will not cause undue</p> <p>7 harm to the neighborhood as a result of non-inherent adverse</p> <p>8 effects alone, or the combination of inherent and non-</p> <p>9 inherent adverse effects in any of the following categories,</p> <p>10 of which one is economic value or development potential.</p> <p>11 Our -- to date, through our experts, they have documented,</p> <p>12 and the planning staff and the planning board, I will note,</p> <p>13 agree that in this case there are no non-inherent adverse</p> <p>14 impacts with the proposed development. So as such, this</p> <p>15 section really is not relevant, since the provision only</p> <p>16 comes in effect if there are applicable potential non-</p> <p>17 inherent adverse impacts. However, given that (inaudible)</p> <p>18 proposition in this case, we will have Mr. Kagan testified as</p> <p>19 to the impact on the economic values of the project to the</p> <p>20 abutting neighbors.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Understood.</p> <p>22 Because you don't know what was it -- you haven't heard the</p> <p>23 other side's case. So I understand.</p> <p>24 MS. HARRIS: Okay. And then, just briefly before</p> <p>25 going on to Mr. --</p>	<p>167</p> <p>1 MS. HARRIS: And do you have a general</p> <p>2 understanding of the operations of this specific proposed</p> <p>3 residential care facility?</p> <p>4 MR. KAGAN: Through conversations with the</p> <p>5 Petitioner and from what I've heard in this hearing</p> <p>6 previously, and up until now, yes.</p> <p>7 MS. HARRIS: Okay.</p> <p>8 MR. KAGAN: And have you made a --</p> <p>9 MR. KAGAN: And I'm familiar with the (inaudible).</p> <p>10 MS. HARRIS: I'm sorry, and you're familiar with</p> <p>11 what?</p> <p>12 MR. KAGAN: I'm sorry. I'm familiar with similar</p> <p>13 facilities also.</p> <p>14 MS. HARRIS: Thank you. And have you made a</p> <p>15 personal inspection of the property, and are you familiar</p> <p>16 with the existing conditions on the property?</p> <p>17 MR. KAGAN: I have.</p> <p>18 MS. HARRIS: And are you specifically aware that</p> <p>19 the school had a building permit to allow for an expansion of</p> <p>20 the school for a 400 student facility?</p> <p>21 MR. KAGAN: I am aware of that.</p> <p>22 MS. HARRIS: And have you reviewed the</p> <p>23 Petitioner's plans in this case?</p> <p>24 MR. KAGAN: I have, yes.</p> <p>25 MS. HARRIS: So please describe the scope of</p>
<p>166</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Okay. Quickly,</p> <p>2 because I want to move -- it's 2:38, and I promise to Mr.</p> <p>3 Brown. So if you can -- what was your second --</p> <p>4 MS. HARRIS: Well, just to the point that Mr.</p> <p>5 Rosenthal made, obviously if it's a requirement of the code</p> <p>6 that we need to put a witness on to testify to that point,</p> <p>7 you had already overturned his objection anyway.</p> <p>8 In Ms. Robeson, I also note, I forgot to say this</p> <p>9 at the very beginning of this afternoon session that our</p> <p>10 expert, Ms. Andress is here, so there is no issue with Ms.</p> <p>11 Breth testified when we get to her. So that --</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Understood.</p> <p>13 MS. HARRIS: -- with that, will go to Mr. Kagan's</p> <p>14 testimony.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Okay, Mr. Kagan.</p> <p>16 MS. HARRIS: Okay. So can you generally explain</p> <p>17 what an appraiser does?</p> <p>18 MR. KAGAN: Generally, an appraiser provides</p> <p>19 independent, impartial, and objective opinion of value, and</p> <p>20 we also do independent, impartial, and objective real estate</p> <p>21 consulting.</p> <p>22 MS. HARRIS: And are you familiar with the</p> <p>23 conditional use application which is before the Hearing</p> <p>24 Examiner today?</p> <p>25 MR. KAGAN: I am.</p>	<p>168</p> <p>1 services that you have provided with respect to evaluating</p> <p>2 the question at hand for this conditional use application.</p> <p>3 MR. KAGAN: Sure. So my scope of work is noted at</p> <p>4 the -- in my report, which I believe is Exhibit 58; is that</p> <p>5 correct?</p> <p>6 MS. HARRIS: That is correct.</p> <p>7 MR. KAGAN: Okay. But just to summarize I</p> <p>8 reviewed the background materials and plans provided to me.</p> <p>9 I visited the site, and I researched sales in the surrounding</p> <p>10 neighborhoods and sales in similar properties in the North</p> <p>11 Bethesda/Potomac area to study changes or impacts for those</p> <p>12 properties.</p> <p>13 MS. HARRIS: And what are the notable features</p> <p>14 of -- what are the notable features of this area of the</p> <p>15 county within which the property is located?</p> <p>16 MR. KAGAN: Notable features -- it's an affluent</p> <p>17 suburban neighborhood with good access to the DC area and</p> <p>18 large single-family homes with relatively large lots, mostly</p> <p>19 between a half-acre and 2 acres.</p> <p>20 MS. HARRIS: And how would you characterize the</p> <p>21 immediate area surrounding the property?</p> <p>22 MR. KAGAN: As an affluent suburban neighborhood.</p> <p>23 MS. HARRIS: Thank you. And then, going to the</p> <p>24 conditional use requirement, in your professional opinion,</p> <p>25 with the conditional use cause undue harm with respect to the</p>

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<p>169</p> <p>1 economic value art development potential of abutting or 2 confronting properties, or the general neighborhood? 3 MR. KAGAN: In my opinion, no. 4 MS. HARRIS: And can you elaborate on how you 5 reached that conclusion? 6 MR. KAGAN: Yeah. As detailed in my report I 7 researched the impacts of similar properties in the 8 Potomac/North Bethesda area and I researched changes in home 9 values over time to see how those properties impacted 10 adjacent residential houses and houses that are more removed 11 in the same neighborhood so they would be comparable with 12 similar characteristics, and determined that there was no 13 noticeable difference. 14 MS. HARRIS: Okay. And can you identify -- I 15 believe you took an analysis based on adjacent and control 16 sites, or houses. Can you explain how you handled that, and 17 what you evaluated? 18 MR. KAGAN: Yeah. It might be helpful to explain 19 kind of how I went about writing the report, and kind of the 20 methodology. 21 MS. HARRIS: Yes. 22 MR. KAGAN: So what I determined was the most 23 appropriate way to see if there was any economic impact on 24 adjacent homes or surrounding areas was to study changes in 25 appreciation. In the way I did that was I identified can</p>	<p>171</p> <p>1 Non-property specific factors are something like 2 just market conditions, you know like a sale in 2008 after 3 the housing crash. I mean, it might be difficult to sell a 4 house within and values would be down versus in 2006 or 5 today. And then also, there's seller duress or motivations 6 behind the sale that impact price. So looking at value 7 specifically isn't so helpful because of all these different 8 factors. But what we can see is we can look at general 9 appreciation rates for adjacent properties and compare that 10 to control neighborhoods, or areas that are a little more -- 11 a little further removed from the senior living facilities 12 and see if there is an appreciable difference. 13 If a nursing facility or one of the properties 14 that we studied has an impact on the values what we should 15 see is lower appreciation rates for those adjacent sales 16 versus the control areas. 17 MS. HARRIS: And what did you find? 18 MR. KAGAN: Right. So what we found was that 19 there was no appreciable difference between these adjacent 20 areas and the control areas. The annual increases were 21 generally the same, and we could not identify a difference. 22 I should also note that we -- there was -- we did -- I did 23 kind of pick through the sales. You know there's a lot of 24 sales that are what we would consider non-arm's length 25 between buyer and seller with the same name, or --</p>
<p>170</p> <p>1 paired sales, so sales of properties adjacent or nearby 2 similar senior living facilities -- 3 HEARING EXAMINER ROBESON HANNAN: I -- 4 MR. KAGAN: -- and looked at -- 5 HEARING EXAMINER ROBESON HANNAN: I am sharing 6 page 2 of his report. 7 MS. HARRIS: Thank you. 8 HEARING EXAMINER ROBESON HANNAN: Go ahead Mr. 9 Kagan. 10 MR. KAGAN: And I looked at -- sorry, I looked at 11 recent sales of homes that are adjacent to senior living 12 facilities, or nearby senior living facilities in the 13 Potomac/North Bethesda area. I determined the appreciation 14 over time from a previous sale of that property, and compared 15 it to similar sales, paired sales in what I call controlled 16 areas, or areas that are a little more removed from the 17 property but considered to be part of the same neighborhood 18 so a buyer would consider that to be a similar location. 19 And what I determined, and the reason I did this 20 and I looked at appreciation rates rather than individual 21 values was individual values are impacted by a number of 22 property specific factors and non-property specific factors. 23 Property specific factors include the size of the home, the 24 condition, whether or not it was recently renovated, you 25 know, number of bedrooms, and factors like that.</p>	<p>172</p> <p>1 And I also excluded sales that occurred over a 2 relatively short period of time, like one year or about one 3 year, which typically are like -- are flips. You know, an 4 investor buys a property, fixes it up and sells it at a much 5 higher price and you see very high appreciation rates. Or, 6 that sometimes would have very low appreciation rates 7 indicating some seller distress because buyers and sellers 8 typically -- or buyers don't typically buy a house, lived 9 there for a year and just sell it a year later. You know, 10 there likely was some reason that motivated them to do that. 11 So looking at what was left produced my analysis. 12 And so very simply, the process was identifying nearby single 13 family -- or sorry, senior living facilities, delineating 14 adjacent areas, or areas that would be directly impacted by 15 the facility, and then control areas, areas that are a little 16 farther removed. And then, identifying paired sales in both 17 the adjacent area and the control area and determining the 18 annual appreciation rates. And then, we really focus on the 19 medium rate because that also helps eliminate outliers in the 20 data. 21 MS. HARRIS: And so did you find any indication of 22 a residential care facility, or assisted living, or 23 independent living project adversely impacting the property 24 values of the nearby neighbor? Neighboring houses? 25 MR. KAGAN: No. The appreciation rates were</p>

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<p>173</p> <p>1 nearly identical, or there was no appreciable difference 2 between them. We looked at a lot. We also -- I say we, I 3 also looked at the specific sales abutting any of these 4 facilities. And there was only a handful, and again, there 5 was no factor or there was no -- we could not determine that 6 the senior living facility impacted the sale at all. There 7 was other factors impacting the sale, you know, like I 8 mentioned, property specific factors like the -- whether or 9 not it was recently renovated, et cetera. 10 And we -- and I think another thing that we did 11 look at was the Brightview Grosvenor property. 12 MS. HARRIS: I was just going to ask you about 13 that. 14 MR. KAGAN: Because our sale -- (inaudible) 15 property number four. We focused on the single family 16 neighborhood surrounding that property. But then, we also 17 looked at the townhouses nearby. And the Brightview 18 Grosvenor is an interesting case study, or an interesting one 19 to look at because the property was built in 2000. So we can 20 look at sales that occurred before it was built, and sales 21 after. And again, there was no appreciable difference, or 22 any -- we could not determine that the Brightview Grosvenor 23 facility impacted sales prices at all. 24 MS. HARRIS: Thank you. And are there any 25 characteristics of this specific conditional use, in terms of</p>	<p>175</p> <p>1 line is it's a risk of practicing law without a license. 2 Now, you can go through -- text your questions to Mr. Brown, 3 but theoretically he can save them if you want to do that. 4 Or you know, we can cut that out and out let you ask the 5 questions. But Mr. Brown, before we do this again in another 6 case, I do want notice. There is a practicing law without a 7 license. 8 MR. BROWN: Ms. Robeson -- Ms. Robeson, Mr. 9 Rosenthal is a resident of this community. 10 HEARING EXAMINER ROBESON HANNAN: He's not -- but 11 he's not licensed to practice in Maryland. None -- and 12 neither is -- 13 MR. BROWN: He is authorized to ask questions 14 under your rubric if he is not my client. So he can fire me 15 on the spot and ask the questions. It's just a formality. 16 HEARING EXAMINER ROBESON HANNAN: Well -- 17 MR. BROWN: You have to understand Ms. Robeson 18 that to engage in -- to engage in an opposition of the case 19 of this magnitude requires an enormous investment on the part 20 of citizens who have nothing financially to gain from 21 approval or disapproval of the project. They are just trying 22 to maintain the status quo. The other side can hire an army 23 of all the people that they need to put multiple kinds of 24 studies, and for the opposition to have everything funneled 25 through the lawyer and have to do everything is enormously</p>
<p>174</p> <p>1 its design that may minimize potential impacts of the project 2 and contribute to the conclusion that you just identified? 3 MR. KAGAN: Sure. So the proposed development is 4 very residential in nature. You know, just understanding and 5 listening to the hearing so far the proposed buildings will 6 be very high quality and generally, I think, attractive, and 7 in line with the surrounding residential neighborhoods. 8 MS. HARRIS: Thank you. And is there anything 9 else that you would like to add to your testimony? 10 MR. KAGAN: No, that is all. Keep it short and 11 sweet. 12 MS. HARRIS: Thank you. No further questions for 13 this witness. 14 HEARING EXAMINER ROBESON HANNAN: How about 15 (inaudible)? Okay. So are you finished? I just want to 16 make sure you're finished with your questions, Ms. Harris. 17 MS. HARRIS: Yes, I am. 18 HEARING EXAMINER ROBESON HANNAN: Okay. Cross- 19 examination? 20 MR. ROSENTHAL: So if you're going to allow me to 21 testify -- to cross-examine, I do want to point out that I'm 22 not a member of the Maryland bar, but I am a member of the 23 DC, New Jersey, New York bars and the federal bar in 24 Maryland. 25 HEARING EXAMINER ROBESON HANNAN: Well, the bottom</p>	<p>176</p> <p>1 expensive. That's why the labor has been divided in this 2 case. And it's not exactly an unreasonable situation because 3 I'm using lawyers to do the same work that I would have to do 4 if I had to spend all the time -- 5 HEARING EXAMINER ROBESON HANNAN: Well, they can 6 ask -- 7 MR. BROWN: (inaudible) in this (inaudible). 8 HEARING EXAMINER ROBESON HANNAN: I'll let him ask 9 questions if they don't do it as lawyers. 10 MR. ROSENTHAL: I'm happy to do it as a resident 11 and neighbor. 12 HEARING EXAMINER ROBESON HANNAN: All right. 13 MR. ROSENTHAL: (inaudible) that many questions 14 that I think are necessarily show great lawyer skills. In 15 fact, people would say they don't. 16 HEARING EXAMINER ROBESON HANNAN: Well, let's hear 17 the questions. 18 MR. ROSENTHAL: All right. It's really factual. 19 Mr. Kagan, you said you considered specific sales of abutting 20 properties; is that right? 21 MR. KAGAN: That's right, yeah. 22 MR. ROSENTHAL: And did you look and see that 23 there are approximately 15 houses that would abut the 24 Heritage development? 25 MR. KAGAN: I did notice that, yes.</p>

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<p>177</p> <p>1 MR. ROSENTHAL: And with respect to Arden, there 2 was only one, am I correct? 3 MR. KAGAN: To Arden? 4 MR. ROSENTHAL: Yes. Arden ProMedica and there's 5 one of your comparable properties? 6 MR. KAGAN: There's more than one house abutting 7 those properties. 8 MR. ROSENTHAL: Well, if we go to -- if I may pull 9 up your report. 10 HEARING EXAMINER ROBESON HANNAN: No, I'll pull it 11 up. 12 MR. ROSENTHAL: I'm sorry. 13 HEARING EXAMINER ROBESON HANNAN: Go ahead. 14 MR. ROSENTHAL: And I'm looking at your report -- 15 MR. KAGAN: Mr. Rosenthal, I think to clarify are 16 you saying there's 15 sales, or 15 properties -- 17 MR. ROSENTHAL: Fifteen houses -- 18 MR. KAGAN: -- physically abutting? 19 MR. ROSENTHAL: -- that would abut the property. 20 MR. KAGAN: Okay. 21 MR. ROSENTHAL: And I can -- 22 MR. KAGAN: I believe there are more than just one 23 house abutting the Arden Courts ProMedica facilities. 24 MR. ROSENTHAL: Well, looking at your report, the 25 only two houses I see here are one that is on Normandy farm,</p>	<p>179</p> <p>1 MR. KAGAN: Yes, that is the only compared the 2 sale I was able to find abutting. And that would be abutting 3 the subject property. 4 MR. ROSENTHAL: And did you make any effort to 5 find another property that was similarly situated to 10827 6 Lockland Road? 7 MR. KAGAN: Similarly situated? 8 MR. ROSENTHAL: Yeah. 9 MR. KAGAN: Well, my report delineates the areas, 10 there's maps or aerials showing the areas that I searched. I 11 can tell you the process that I went through. I searched the 12 multiple listing service or Bright MLS to find sales within 13 the last -- I believe I searched five years or so back to 14 2016. And then, from that list of sales I tried to find a 15 previous sale of those properties. And so the one included 16 in those charts in my report are just the ones that had 17 previous sales I was able to do a paired sale analysis on. 18 MR. ROSENTHAL: So when we're talking about paired 19 sales, let me ask you to compare 10827 Lockland which was 20 sold in January of 2021 with 10707. Do you see those in your 21 report? 22 MR. KAGAN: Uh-huh. 23 MR. ROSENTHAL: And in fact, that's the same 24 street, correct? 25 MR. KAGAN: Yes, sir.</p>
<p>178</p> <p>1 which you decided you would not include, and the other was 2 10827 Lockland Road. What other sales did you look at that 3 abut any of the proposed -- the existing developments? 4 MR. KAGAN: So you're talking about sales now, and 5 not properties that are physically abutting? I can't 6 manufacture sales that either a sale occurred or it didn't 7 occur, and then for me to measure the appreciation has to be 8 paired sales, there must be a previous sale of that property. 9 So even though there may be a recent sale of a property, that 10 may not be a previous sale for me to measure appreciation 11 rates for it. 12 MR. ROSENTHAL: Let me be precise. 13 MR. KAGAN: Sure. 14 MR. ROSENTHAL: The only sale that you considered 15 with respect to Brandywine was 10827 Lockland Road, am I 16 correct? 17 MR. KAGAN: Let me check my report real quick. 18 Just give me one second. 19 HEARING EXAMINER ROBESON HANNAN: I have a list of 20 the sales on page 5. 21 MR. KAGAN: Yes. Yes, the 10827 Lockland. 22 MR. ROSENTHAL: Yes. 23 MR. KAGAN: Is that what you're referring to, Mr. 24 Rosenthal? 25 MR. ROSENTHAL: Correct.</p>	<p>180</p> <p>1 MR. ROSENTHAL: Sold within four months of each 2 other, correct? 3 MR. KAGAN: That's right. 4 MR. ROSENTHAL: Each 2 acres or above, correct? 5 MR. KAGAN: That's correct. 6 MR. ROSENTHAL: And you'll notice 10707, according 7 to your report, am I correct, \$569 a square foot? 8 MR. KAGAN: That's right. 9 MR. ROSENTHAL: And 10827, the abutting property 10 sold for less than half of that, 227 a square foot, correct? 11 MR. KAGAN: That's correct. 12 MR. ROSENTHAL: And the appreciation that you 13 referred to was more than twice -- I'm sorry, almost twice 14 the amount for 10707 versus the abutting property 10827, 15 correct? 16 MR. KAGAN: That is correct. 17 MR. ROSENTHAL: Now, 10827 actually abuts the 18 development whereas 10707 is on the opposite side, way down 19 the street to the beginning of the road near South Glen, am I 20 correct? 21 MR. KAGAN: I'll have to look up their specific 22 locations, but I assume that you're correct. 23 MR. ROSENTHAL: Is there any explanation that you 24 can give for why 10827 sold for more than -- actually, it was 25 half the value per square foot than 10707, other than the</p>

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<p>181</p> <p>1 fact that 10827 abutting the property?</p> <p>2 MR. KAGAN: Yeah. It has to do with the size of</p> <p>3 the home.</p> <p>4 MR. ROSENTHAL: And so --</p> <p>5 MR. KAGAN: People upgrade (inaudible).</p> <p>6 MR. ROSENTHAL: That would also explain why the</p> <p>7 appreciation was approaching twice the amount for smaller</p> <p>8 home?</p> <p>9 MR. KAGAN: No. So the difference in</p> <p>10 appreciation, like I mentioned, there's a lot of factors that</p> <p>11 impact the specific values of homes and specific houses. You</p> <p>12 know, number of bedrooms, when they were last renovated, the</p> <p>13 layout. And so the strength of this analysis is that I was</p> <p>14 able to find, and use, multiple sales. So in this case for</p> <p>15 the adjacent -- what I'm calling the adjacent neighborhood or</p> <p>16 adjacent area, we have we have 10 paired sales and the</p> <p>17 appreciation rate that I'm looking at is the median of those</p> <p>18 10 sales. So sales and have higher rates of appreciation or</p> <p>19 lower rates of appreciation and of those outliers don't waste</p> <p>20 so much on the median rate.</p> <p>21 MR. ROSENTHAL: (inaudible)</p> <p>22 MR. KAGAN: But --</p> <p>23 MR. ROSENTHAL: I'm sorry, were you finished?</p> <p>24 MR. KAGAN: And you know -- no, I was going to say</p> <p>25 just looking between the two sales from the information that</p>	<p>183</p> <p>1 opposed to proximity to a senior development?</p> <p>2 MR. KAGAN: The size of the house shouldn't impact</p> <p>3 the appreciation. I think what you're asking is whether the</p> <p>4 size of the house changed because if we're looking at a</p> <p>5 paired sale the data that I was using, I did look to see if</p> <p>6 there was a significant renovations or a change in the area</p> <p>7 of the property. And in those, because it's apples to</p> <p>8 oranges in the paired sale, I didn't include those, but if</p> <p>9 the square foot area did not change from the previous sale to</p> <p>10 the current sale that is a good indication of appreciation</p> <p>11 over time.</p> <p>12 MR. ROSENTHAL: So when you talk about all of</p> <p>13 these different factors that could affect the sale price or</p> <p>14 the appreciations, is it your testimony that you did an</p> <p>15 analysis to determine what specific factors impacted either</p> <p>16 square foot price for annual increase? And if you did, where</p> <p>17 is that reflected in your report?</p> <p>18 MR. KAGAN: So to answer your question, I did not</p> <p>19 look at square foot price. I was focused -- the factors that</p> <p>20 I was focused on was one, were both the current sale and the</p> <p>21 previous sale arms-length transactions? I tried to determine</p> <p>22 if there was significant changes to the property in terms of</p> <p>23 square foot area or something like that that would create an</p> <p>24 unreliable annual increase. And I tried to eliminate non</p> <p>25 arms-length sales or sales that were obviously like</p>
<p>182</p> <p>1 is presented in my chart, the 10827 lot is also a more recent</p> <p>2 construction, it is almost 9000 square feet, or is above 9000</p> <p>3 square feet above grade area; that's according to the SDAT</p> <p>4 versus just about 3500 and the other sale. So there's a</p> <p>5 differences, and then a difference in lot size. So there's</p> <p>6 physically in the houses.</p> <p>7 But also to your point, these sold recently in</p> <p>8 relative to each other in 2021 and at very similar prices.</p> <p>9 MR. ROSENTHAL: So Mr. Kagan, you mentioned an</p> <p>10 outlier. So on your list of homes and that you call</p> <p>11 adjacent, the only home that's abutting, you would say is an</p> <p>12 outlier, 10827, yes or no?</p> <p>13 MR. KAGAN: No, I don't think it's an outlier.</p> <p>14 MR. ROSENTHAL: So when you use the term outlier I</p> <p>15 take it you want referring to 10827, you were referring to</p> <p>16 some other sale, right?</p> <p>17 MR. KAGAN: Well, what I meant by outlier was</p> <p>18 extremes in the appreciation; extremely low appreciation,</p> <p>19 extremely high appreciations because you know, there's all</p> <p>20 these properties specific factors that were being accounted</p> <p>21 for in this data.</p> <p>22 MR. ROSENTHAL: So let's talk about property</p> <p>23 specific values. One you mentioned is the size of a house.</p> <p>24 Did you do anything to try and determine whether the size of</p> <p>25 the house impacted appreciation or price per square foot as</p>	<p>184</p> <p>1 (inaudible) or something. But I think that in terms of</p> <p>2 appreciation over time the house that is larger or smaller</p> <p>3 should generally appreciate at the same rate. And the reason</p> <p>4 that you're seeing differences for these two sales for</p> <p>5 example are property specific (inaudible) reason.</p> <p>6 MR. ROSENTHAL: Well, you would ignore 10827 and</p> <p>7 10707 as being property specific examples; is that your</p> <p>8 testimony?</p> <p>9 MR. KAGAN: Ignore them?</p> <p>10 MR. ROSENTHAL: Yes, you would --</p> <p>11 MR. KAGAN: No. No, I didn't --</p> <p>12 MR. ROSENTHAL: -- say the discrepancy --</p> <p>13 MR. KAGAN: I did not.</p> <p>14 MR. ROSENTHAL: Let me finish my question, Mr.</p> <p>15 Kagan.</p> <p>16 MR. KAGAN: Sorry. I'm sorry.</p> <p>17 MR. ROSENTHAL: You would say that the difference</p> <p>18 in value increase is attributable to specific property</p> <p>19 characteristics?</p> <p>20 MR. KAGAN: The value increase from the previous</p> <p>21 sale to the current sale?</p> <p>22 MR. ROSENTHAL: Yeah, 10 (inaudible) percent.</p> <p>23 MR. KAGAN: I was --</p> <p>24 MR. ROSENTHAL: Ten versus (inaudible) percent?</p> <p>25 MR. KAGAN: Yeah. I mean, the difference there,</p>

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<p>185</p> <p>1 it is properties specific. Or it might be differences in the 2 market. You know, the 10827 Lockland Road the previous sale 3 was in 1990 versus 2017 for the 10707 sale. 4 But again, you know, these specific data points 5 kind of get averaged out when you're looking at the data set. 6 And it -- you know, the control group also has some sales 7 with high appreciation. In some sales with low appreciation, 8 but they get averaged out for medianed out, if you will, when 9 you look at the data as a whole. 10 MR. ROSENTHAL: Now, Mr. Kagan, you use the term 11 specific sales abutting as something that you look at. In 12 addition to 10827, did you look at which properties 13 specifically abutted any of the other projects? 14 MR. KAGAN: Well, 10827 I did not look at 15 specifically because it is not abutting a senior living 16 facility. It's abutting the subject property. I looked at 17 the sales abutting Arden Court, for example and the ProMedica 18 skilled nursing facility, and I looked at sales abutting -- 19 specifically looked at sales abutting the other properties 20 that I looked at, yes. 21 MR. ROSENTHAL: And you weren't aware of 10827's 22 proximity to Brandywine? 23 MR. KAGAN: I'm sorry, it's not abutting the 24 Brandywine property. 25 MR. ROSENTHAL: (inaudible) you about the</p>	<p>187</p> <p>1 you compare the 40 to 80 foot buffer that Mr. Park testified 2 about with the buffer that exists on Victory? 3 MR. KAGAN: Specifically the buffer, no. 4 MR. ROSENTHAL: Okay. I'm looking at your report. 5 I don't see a scale. What is the buffer that is between the 6 facility, which is the large structure, I take it, that is in 7 the middle of the page, and any of the homes that surround 8 it? 9 MR. KAGAN: I didn't -- again, I did not measure 10 the buffer. 11 MR. ROSENTHAL: Are you -- did you ever go out to 12 that site? 13 MR. KAGAN: I did. 14 MR. ROSENTHAL: And did you drive around that ring 15 of houses? 16 MR. KAGAN: I did, yes. 17 MR. ROSENTHAL: And were you able to see the 18 facility from any of the houses that surround the facility? 19 MR. KAGAN: The houses are on large lot so I'd 20 have to -- from the street, because I wasn't going on their 21 houses, or you know, in their back yard. I'd have to see, 22 you know, it was difficult to see through the house and 23 through the trees in the buffer area. So I would say no, I 24 wasn't able to see the Victory Terrace property. 25 MR. ROSENTHAL: Okay. And that's in part, due to</p>
<p>186</p> <p>1 properties at Victory Terrace. You're aware there were a 2 number of properties in there that abut Victory Terrace, 3 correct? 4 MR. KAGAN: The victory Terrace property, yes. 5 MR. ROSENTHAL: Yes. And I take it, you were here 6 when Mr. Park testified that there would be a buffer of 7 between 40 and 80 feet on Heritage, which would include not 8 only the Heritage property but also the existing property 9 owners; do you recall that testimony? 10 MR. KAGAN: I believe so, yes. 11 MR. ROSENTHAL: Did you do anything to compare 12 that buffer of 40 to 80 feet with Victory Terrace? And if I 13 could, have the report pulled up, page 12? 14 MR. KAGAN: Yeah. I mean -- is so there's only so 15 many skilled nursing facilities that you can -- that I could 16 examine. And some have more buffer than others. You know, 17 for example if you look at the Brightview Grosvenor, there's 18 no buffer whatsoever. The single-family houses are directly 19 across the street, you know, with a direct view of the 20 building. And the data is the same for both, you know 21 Victory Terrace and Brightview Grosvenor and Arden Court, you 22 know, close to the subject property. There is no discernible 23 difference in appreciation rate for those adjacent and the 24 control group. 25 MR. ROSENTHAL: That wasn't my question, sir. Did</p>	<p>188</p> <p>1 the fact that there are a very substantial number of trees 2 that are at least 20 years old that separate the houses and 3 Victory; is that correct? 4 MR. KAGAN: It was wooded, yes. 5 MR. ROSENTHAL: Okay. And in fact, there are 6 rolling hills between the facility and any of the houses; is 7 that correct? 8 MR. KAGAN: As I recall, there was, like a hill 9 between the main street there in the facility. I don't 10 recall so specifically as I was driving around, you know, 11 around to the back where those abutting properties are, what 12 the elevation changes were. Again, it was difficult to see 13 through the house and through the trees. 14 MR. ROSENTHAL: Now, you said there was no 15 appreciable difference in the valuation increase between any 16 of these other sites. Let's talk about Victory since were 17 staying with that for a moment. 18 MR. KAGAN: Sure. 19 MR. ROSENTHAL: You looked at figures for what you 20 called adjacent homes, and one of them was -- and I'm looking 21 at page 10 of your report. 22 If we could go to page 10? 23 And if we look at the 11th entry, it's for 9704 24 Spicewood Lane. And that has a monstrous annual increase of 25 116 percent; do you see that?</p>

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<p>189</p> <p>1 MR. KAGAN: Yes, sir.</p> <p>2 MR. ROSENTHAL: And the reason for that is because</p> <p>3 the home was newly constructed and resold in two years; am I</p> <p>4 right?</p> <p>5 MR. KAGAN: Probably but I don't know -- again, I</p> <p>6 wasn't really looking at specific sales. I looked at the MLS</p> <p>7 listings. That looks like it picked up a lot sale.</p> <p>8 MR. ROSENTHAL: Actually, you were looking at</p> <p>9 specific homes. Let's go to page 12 when you discussed</p> <p>10 Spicewood in particular.</p> <p>11 And I'm looking at paragraph 9704 Spicewood Lane.</p> <p>12 That's referring to the same house, isn't it?</p> <p>13 Wasn't it your conclusion that quote --</p> <p>14 MR. KAGAN: Yes. So --</p> <p>15 MR. ROSENTHAL: -- the amount of increase --</p> <p>16 MR. KAGAN: Yes.</p> <p>17 MR. ROSENTHAL: -- by the -- let me finish.</p> <p>18 MR. KAGAN: I did look at that.</p> <p>19 MR. ROSENTHAL: Let me finish.</p> <p>20 MR. KAGAN: Sorry.</p> <p>21 MR. ROSENTHAL: The amount of the increase is</p> <p>22 impacted by the construction of the current house in 2015,</p> <p>23 right?</p> <p>24 MR. KAGAN: Yes. Sorry, it's been months since I</p> <p>25 wrote this report, but yes.</p>	<p>191</p> <p>1 this one, or I wanted to include it because it was an</p> <p>2 abutting property, and I wanted to talk specifically about</p> <p>3 the increase for that. And you know, that it was a -- you</p> <p>4 know, that the reason for this increase was because it was a</p> <p>5 newly constructed house, and the previous sale was of a --</p> <p>6 basically a development site, or a teardown. The house was</p> <p>7 built in 2015. So I think the only reason that I included</p> <p>8 that was because it was abutting the Victory Terrace</p> <p>9 property.</p> <p>10 MR. ROSENTHAL: Okay. It's one thing to include</p> <p>11 it, but you would agree that it does skew the results?</p> <p>12 MR. KAGAN: No, it doesn't. It doesn't skew the</p> <p>13 results.</p> <p>14 MR. ROSENTHAL: Let's take it out. Without that,</p> <p>15 are you aware that the average increase in goes from 12.11</p> <p>16 percent to less than 2-1/2 percent?</p> <p>17 MR. KAGAN: Right.</p> <p>18 MR. ROSENTHAL: If there was a --</p> <p>19 MR. KAGAN: But I'm not looking at the average.</p> <p>20 I'm looking at the median. And the median even that 2-1/2</p> <p>21 percent is in line with the control group.</p> <p>22 MR. ROSENTHAL: So let me ask you to look at the</p> <p>23 average. I understand you'd like to look at the median, but</p> <p>24 bear with me for a moment and look at the average. When you</p> <p>25 take out that sale, which is comparing a vacant lot or a</p>
<p>190</p> <p>1 MR. ROSENTHAL: And that's understandable, you</p> <p>2 don't have to apologize. And I'm looking at your analysis.</p> <p>3 The home with the built in 2015 and it sold one year later,</p> <p>4 which explains an increase of 116 percent, right?</p> <p>5 MR. KAGAN: That sounds right, yes.</p> <p>6 MR. ROSENTHAL: So what you're doing is you're</p> <p>7 comparing, as you say, basically the sale of a vacant lot, or</p> <p>8 maybe even a teardown with a newly constructed house of 8700</p> <p>9 square feet; is not surprising is it that there's 117 percent</p> <p>10 increase, is there?</p> <p>11 MR. KAGAN: For that sale, no. But it didn't</p> <p>12 (inaudible).</p> <p>13 MR. ROSENTHAL: So you would agree that that's</p> <p>14 now --</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Wait. Mr.</p> <p>16 Rosenthal, can you let him finish answering?</p> <p>17 MR. ROSENTHAL: My apologies. My apologies.</p> <p>18 Please finish.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: All right. He</p> <p>20 probably --</p> <p>21 MR. KAGAN: So -- oh, I'm sorry.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: Go ahead.</p> <p>23 MR. KAGAN: So I mean again, I wrote this report</p> <p>24 several months ago. And I think the reason that I included</p> <p>25 that was just because there was a limited amount of sales for</p>	<p>192</p> <p>1 teardown, with an 8700 -- the sale of an 8700 square foot</p> <p>2 house, you would agree that it skews that the result for the</p> <p>3 average sale, correct?</p> <p>4 MR. KAGAN: For the average appreciation, yes.</p> <p>5 MR. ROSENTHAL: Okay. And you would agree that</p> <p>6 the average appreciation of less than 2-1/2 percent is</p> <p>7 approaching half of what it is for what you call the control</p> <p>8 neighborhood, right?</p> <p>9 MR. KAGAN: I -- yes.</p> <p>10 MR. ROSENTHAL: Okay. Now, looking at the</p> <p>11 appreciation here, average appreciation, which let's say</p> <p>12 without Spicewood is roughly 2-1/2 percent. How does that</p> <p>13 compare with Montgomery County in general, a 2-1/2 percent</p> <p>14 increase?</p> <p>15 MR. KAGAN: I didn't look at the county in</p> <p>16 general. I looked at the neighborhoods specifically.</p> <p>17 MR. ROSENTHAL: You call it the --</p> <p>18 MR. KAGAN: Or these areas.</p> <p>19 MR. ROSENTHAL: I apologize again. Please finish.</p> <p>20 MR. KAGAN: I'm sorry. I didn't look at the</p> <p>21 county in general. So the market for the county in general</p> <p>22 is going to be different than a -- you know, than a</p> <p>23 neighborhood like this were you're talking about multi-</p> <p>24 million dollar houses. So I didn't think it was relevant to</p> <p>25 be looking at the county as a whole rather we should be</p>

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<p>193</p> <p>1 looking at this -- you know, these adjacent neighborhoods and 2 comparing it to these controlled neighborhoods that I 3 identified. 4 And again, to speak to your other point about the 5 averages, you're getting into differences between averages 6 and medians and I -- just to speak to this point, including 7 the sale, or excluding the sale of 9604 Spicewood Lane, does 8 not change the results. It -- the medians, which was what I 9 was looking at would be the same. And the control group, you 10 know, for a comparison, you know, has an 11 percent annual 11 appreciation sale as a sale with less than 1 percent 12 appreciation. So you have to be looking at the data as a 13 whole and when you look at specific properties it's not -- 14 it -- you're opening (inaudible) the property specific or 15 these properties specific factors that I think (inaudible) 16 MR. ROSENTHAL: (Inaudible)? 17 MR. KAGAN: I'm sorry. Hello? 18 MR. ROSENTHAL: Hello, I -- did you get -- hello? 19 MR. KAGAN: I'm sorry, someone -- can you hear me? 20 MR. ROSENTHAL: Yeah, I hear you fine. I think 21 we're okay to proceed. 22 MS. HARRIS: I think Ms. Baker has her microphone 23 on so (inaudible). 24 MS. BAKER: No, I didn't. Okay. 25 MR. ROSENTHAL: Your point is in order to avoid</p>	<p>195</p> <p>1 on price appreciation, right? 2 MR. KAGAN: Yeah, but you have to know all the 3 factors. Right? So if you look at a sale, you know, you 4 have to know what bathrooms they renovated, if they made any 5 flooring upgrades or painted the walls or -- you know, all of 6 the different factors that impact the homes of value. You'd 7 have to know what all of those are for all of these sales to 8 determine what, if any one of those specific things is really 9 impacting the value, and how much is impacting the value. 10 MR. ROSENTHAL: Do you know what a regression -- 11 MR. KAGAN: So it's not practicable. 12 MR. ROSENTHAL: Do you know what a regression 13 analysis is? 14 MR. KAGAN: Yes, sir. 15 MR. ROSENTHAL: Are you competent to perform one? 16 MR. KAGAN: Yes, sir. 17 MR. ROSENTHAL: And did you attempt to do that in 18 this case? 19 MR. KAGAN: I did not. 20 MR. ROSENTHAL: Let me ask you to go to the next 21 one that you said was comparable. I'd like to go to Sunrise 22 at Fox Hill, and if I could draw your attention to page -- 23 HEARING EXAMINER ROBESON HANNAN: Where are you in 24 the report? 25 MR. ROSENTHAL: Pardon?</p>
<p>194</p> <p>1 specific property characteristics you have to have a large 2 enough sample; is that what I hear you saying? 3 MR. KAGAN: That's correct, yes. 4 MR. ROSENTHAL: Okay. And here you've got 12 5 houses that make up Victory Terrace adjacent and you've got 6 11 that make up Victory Terrace control neighborhoods. What 7 did you do to assure yourself that your sample size was large 8 enough? 9 MR. KAGAN: So one was going back in time, right? 10 I went back to 2016 so if I were to limit the amount of time 11 that I looked at to say sales prior to 2018, that would 12 obviously limit the sample size. So really what -- I mean I 13 didn't look back farther than 2016, but I thought that going 14 back to just five years, 2016 provided enough data to kind of 15 even out, or rule out some of these outlier properties, or 16 properties with high appreciation, low appreciation because 17 of these properties specific to factors. 18 MR. ROSENTHAL: So when you refer to these 19 properties specific factors, you could have performed an 20 analysis to determine the impact of any particular factor on 21 price, could you not? 22 MR. KAGAN: So you're talking about, like a factor 23 like a bathroom renovation? 24 MR. ROSENTHAL: No, you can do what's called a 25 regression analysis to determine what factors had what impact</p>	<p>196</p> <p>1 HEARING EXAMINER ROBESON HANNAN: So where is 2 Sunrise at Fox Hill? 3 MR. ROSENTHAL: I was going to say, page 17. 4 HEARING EXAMINER ROBESON HANNAN: Okay. Thanks. 5 MR. ROSENTHAL: When you're ready Mr. Kagan. 6 MR. KAGAN: I'm ready. 7 MR. ROSENTHAL: Okay. So (inaudible) facility -- 8 MR. KAGAN: I'm sorry, you broke up for a second. 9 MR. ROSENTHAL: Is this one you considered to be a 10 comparable facility? 11 MR. KAGAN: I don't know if it's comparable, but 12 it is a senior living facility. 13 MR. ROSENTHAL: It's one that you base your 14 opinion on that there would be no impact with the development 15 of Heritage, based on what you call at Fox Hills, correct? 16 MR. KAGAN: Right. Yeah. 17 MR. ROSENTHAL: Now, there are no homes that 18 actually a but Fox Hills; am I correct that they either but 19 the road, a commercial establishment, or a golf course? Is 20 that right? 21 MR. KAGAN: That's right. Fox Hill is on the 22 other side of River Road from these neighborhoods. But Fox 23 Hill is a large development, and it is certainly visible from 24 in those neighborhoods. 25 MR. ROSENTHAL: But none of the homes that are</p>

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<p>197</p> <p>1 reflected on the 17 Pepperell or 7409 Indraff Court are 2 comparable to any of the houses on Edison Road or on Dobbins 3 Court; am I correct? 4 MR. KAGAN: Comparable. I don't even -- 5 MR. ROSENTHAL: None of them back up -- 6 MR. KAGAN: -- (inaudible) those specific 7 properties. 8 MR. ROSENTHAL: None of them back up to 9 (inaudible)? 10 MR. KAGAN: They don't share a lot line but from 11 the backyard of 17 Pepperell Court, for example, or even 4709 12 Indraff you would see the Fox Hill facility. 13 MR. ROSENTHAL: And you can see it also driving up 14 270, driving down River Road, correct? 15 MR. KAGAN: You could. 16 MR. ROSENTHAL: Okay. Let's then -- you thought 17 that a particularly good example was Brightview Grosvenor? 18 Let's go, if we could, to page 19 of the report? 19 HEARING EXAMINER ROBESON HANNAN: I'm not sure he 20 said a particularly good example of what? I didn't 21 understand your question. 22 MR. ROSENTHAL: Withdraw it, and rephrase it. 23 Did you believe that -- 24 HEARING EXAMINER ROBESON HANNAN: Which one is -- 25 Brightview's the one over in Bethesda, right?</p>	<p>199</p> <p>1 adjacent property in the context of a control property within 2 a similar neighborhood. 3 MR. ROSENTHAL: So let me then go to page -- 4 MR. KAGAN: I'm not -- I'm sorry. 5 MR. ROSENTHAL: Let me go to page 5 of your 6 report. 7 MR. KAGAN: Sure. 8 MR. ROSENTHAL: And I want to see the extent to 9 which some of these paired sales are really paired, in that 10 the individual characteristics that you've repeatedly 11 referred to bear any similarity to each other. Let's take a 12 look at 10001 South Glen Road; do you see that? 13 MR. KAGAN: Yes. 14 MR. ROSENTHAL: It's number 10. 15 MR. KAGAN: Yes. 16 MR. ROSENTHAL: Let's compare that with -- 17 HEARING EXAMINER ROBESON HANNAN: Oh, wait. Wait, 18 wait. Where are we? 19 MR. ROSENTHAL: We're on page 5 of the report. 20 We're looking at the 10th sale. 21 HEARING EXAMINER ROBESON HANNAN: I see it. I'm 22 sorry. 23 MR. ROSENTHAL: And that is 10001 South Glen Road. 24 And am I correct, Mr. Kagan, it sold for \$950,000 in 2016? 25 MR. KAGAN: Yes.</p>
<p>198</p> <p>1 MR. ROSENTHAL: At page 19 of the report, yes. 2 HEARING EXAMINER ROBESON HANNAN: (Inaudible). 3 MR. ROSENTHAL: Now, Brightview has a -- it 4 borders a not-for-profit, the American -- it looks like the 5 American Fisheries Society. It borders Grosvenor Lane. It 6 borders, it looks like Edward Avenue, and there are, as I 7 think you testified, there are some townhouses, correct? 8 MR. KAGAN: That's correct, yes. 9 MR. ROSENTHAL: And was it your conclusion in your 10 report that the townhouses actually lost value which you 11 attribute to the fact that new construction of townhouses 12 sometimes it does that? 13 MR. KAGAN: Yes, I believe I discussed that in my 14 report, yes. 15 MR. ROSENTHAL: Were there any houses, townhouses 16 or otherwise, on your -- in your picture here at page 19 17 which are comparable to the houses on Edison or Dobbins? 18 MR. KAGAN: No. It is a -- they are smaller lots. 19 It -- you know, if I was appraising a house on Edison I would 20 not use these as sales. But that does not diminish the 21 results of this analysis. 22 MR. ROSENTHAL: Well, once again, individual 23 characteristics can affect the value of a house and as we saw 24 with 10827 Lockland depreciation, correct? 25 MR. KAGAN: So yes. Which is why I examined the</p>	<p>200</p> <p>1 MR. ROSENTHAL: And what you would call a paired 2 sale, to use the expression in your report, is 11261 South 3 Glen Road, which sold for, it looks like twice the price 1.8 4 million June 28th -- 5 MR. KAGAN: No, that's -- I'm sorry, continue. 6 Finish your question. 7 MR. ROSENTHAL: Am I wrong? 1,840,000 in June 8 2021? 9 MR. KAGAN: So what you're wrong about is what a 10 paired sale is. I'm not comparing 10001 South Glen Road to 11 any of the other sales in that list. I'm comparing it to a 12 sale of itself at a different point in time. 13 MR. ROSENTHAL: Okay. So let's just compare the 14 houses to see how similar they are because you refer to 15 individual characteristics. So I just want to understand 16 whether those two properties are similar to each other other 17 than the fact that one you said was adjacent and one was in a 18 control neighborhood. 19 Am I right that one was 2800 square feet that was 20 10001 South Glen? 21 MR. KAGAN: Yeah. So I mean, I think to answer 22 your question, without going through all the different 23 factors here -- or columns in my chart, houses are going to 24 have different specific factors and what I was looking at 25 was -- and maybe I should have explained this better at the</p>

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<p style="text-align: right;">201</p> <p>1 beginning. But a paired sale is a sale of the same property 2 at an earlier point in time. 3 MR. ROSENTHAL: Okay. 4 MR. KAGAN: Right? So the appreciation for 10001 5 South Glen Road is just the appreciation for that property. 6 And compared -- and it's comparison to another house on 7 Edison isn't going to impact the appreciation of that 8 individual property, the market does. 9 MR. ROSENTHAL: Thank you for that. 10 MR. KAGAN: That's (inaudible). 11 MR. ROSENTHAL: Thank you for that clarification, 12 that's helpful. So let me just ask you as a comparison, 13 10001 South Glen is a very different house, is it not than 14 11261 South Glen Road in many different respects? 15 MR. KAGAN: I'm sorry, 11261? 16 MR. ROSENTHAL: Yes. It's number 4 on Arden Court 17 ProMedica control neighborhoods. 18 MR. KAGAN: Yeah, I mean it's going to be very 19 different. But again, I'm looking at the previous sale and 20 appreciation over time. You know, the market dictates 21 appreciation. And to be -- and the relevance of this 22 analysis is that if there is a external factor like the 23 presence of a skilled nursing facility or a senior facility 24 that is considered undesirable then houses in the adjacent 25 neighbors should appreciate at a slower rate, or lesser rate</p>	<p style="text-align: right;">203</p> <p>1 factors are minimized when you look at the data as a whole. 2 MR. ROSENTHAL: So in order to -- I'm just trying 3 to understand if you try to look at these property specific 4 values, one thing you would look at is proximity on the 5 street; are they close to each other, correct? 6 MR. KAGAN: Yeah. I mean, I think you're -- I'm 7 sorry, but you keep asking questions about this property 8 specific factors, but the property specific factors I don't 9 think, in my opinion don't impact the appreciation rates that 10 I'm measuring here because we're measuring appreciation of 11 the same property. 12 MR. ROSENTHAL: Well, let me ask -- let's -- where 13 we don't have the same property -- 14 HEARING EXAMINER ROBESON HANNAN: (inaudible) to 15 say, Mr. Rosen -- I am -- I understand -- when you keep 16 comparing different properties, and he's saying that doesn't 17 matter because he's comparing the sales of the same property. 18 And I don't know (inaudible) keep going into, you know, is in 19 this lot like that a lot, but actually the comparison is the 20 same lot. 21 MR. ROSENTHAL: The reason I'm asking the question 22 is because -- 23 HEARING EXAMINER ROBESON HANNAN: But don't 24 (inaudible) -- just a second. Is that what you're saying Mr. 25 Kagan? That you don't compare similarities between the</p>
<p style="text-align: right;">202</p> <p>1 than houses in the control neighborhood. 2 MR. ROSENTHAL: Well, if we just take a look at 3 these two, and these are ones that you picked, not me. 10001 4 South Glen sold in 2016. 11261 sold in 2021. How was the 5 market in 2021 different than 2016? 6 MR. KAGAN: I mean, there - -it's different, but 7 we're measuring appreciation over that time. Because the 8 presence of the senior living facility was there, and we have 9 2016 sales in the adjacent group, and we have 2016 sales in 10 the control group. And we -- and again, the adjacent group 11 is impacted by the presence of a senior living facility, you 12 would see the lower materially lower appreciation on it in 13 the median, or on the average for those sales; which we are 14 not seeing. 15 MR. ROSENTHAL: And maybe you've answered this, 16 and I apologize if I'm repeating the question. You did 17 nothing to try and determine whether sales in 2021 which 18 comprised most of your control neighborhoods here were 19 impacted largely by the mortgage rates and the price 20 increases in the market as a whole; you didn't try and 21 isolate that factor, I take it? 22 MR. KAGAN: No. Because I mean, over time, those 23 things are changing anyway. I'm sure that -- you know, 24 interest rates in 1994, for example, were a lot different 25 than they are in 2016. So again, the property's specific</p>	<p style="text-align: right;">204</p> <p>1 different properties, your comparing the same property twice? 2 MR. KAGAN: That's exactly -- 3 HEARING EXAMINER ROBESON HANNAN: -- and looking 4 and seeing the -- why don't you take a minute just for the 5 record and explain median versus average, please? 6 MR. KAGAN: Yeah. So the average is -- well, I 7 mean, I don't know exactly how to explain and average. But 8 the average is like the middle number. So if you had five 9 numbers and they were, you know, 5, 5, 7-1/2 and 10, 10, the 10 average would be 7-1/2, but the median is the middle number. 11 So if you had 5, 5, 5, 10, 10, the median would be 5. So -- 12 or if you had 0, 0, 5, 10, 10, the median would be 5. It's 13 the middle number of the data set. 14 HEARING EXAMINER ROBESON HANNAN: It's the 15 middle -- is it fair to say it's the middle of a range of 16 numbers, values? 17 MR. KAGAN: Yes. 18 HEARING EXAMINER ROBESON HANNAN: The way you 19 described 1 to 10, the median is 5, correct? 20 MR. KAGAN: That's correct, yes. 21 HEARING EXAMINER ROBESON HANNAN: So if you have 22 different values -- so can you explain the difference between 23 that and average? 24 MR. KAGAN: So -- 25 HEARING EXAMINER ROBESON HANNAN: What is --</p>

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<p>205</p> <p>1 MR. KAGAN: I think what you're getting at is</p> <p>2 the --</p> <p>3 HEARING EXAMINER ROBESON HANNAN: (inaudible)</p> <p>4 remove. What factor does median remove, that average has?</p> <p>5 MR. KAGAN: Right. So the median, when you have</p> <p>6 high appreciations and low appreciations, or high numbers and</p> <p>7 low numbers, the median lessens the impact of those high</p> <p>8 numbers and low numbers. Whereas, an average you're</p> <p>9 (inaudible).</p> <p>10 HEARING EXAMINER ROBESON HANNAN: And it's not</p> <p>11 (inaudible) the (inaudible)? So --</p> <p>12 MR. KAGAN: I'm sorry?</p> <p>13 HEARING EXAMINER ROBESON HANNAN: -- with that,</p> <p>14 Mr. Rosenthal, what further questions do you have?</p> <p>15 MR. ROSENTHAL: Well, I'm actually almost done. I</p> <p>16 just have one or two more questions.</p> <p>17 Are you aware of any other senior facilities that</p> <p>18 have been built in Montgomery County since 2016?</p> <p>19 MR. KAGAN: So again, it was several months and so</p> <p>20 done this analysis. And I think we've looked at -- or I</p> <p>21 looked at a larger area, but I thought it was the most</p> <p>22 relevant for this to keep it in Potomac and North Bethesda</p> <p>23 and or more (inaudible).</p> <p>24 MR. ROSENTHAL: And was there a geographic limit</p> <p>25 to the ones that you looked at in terms of mileage?</p>	<p>207</p> <p>1 you looked at sales during the time period -- it looks fairly</p> <p>2 broad to me between 2016 at least and 2021 whether or not you</p> <p>3 looked at the sale of my home, which is located at 10828</p> <p>4 Lockland Road, that closed on May 17, 2019?</p> <p>5 MR. KAGAN: I mean, if it sold I looked at it. I</p> <p>6 don't -- if it got excluded, it was because there wasn't a</p> <p>7 relevant earlier sale to create a paired sale now.</p> <p>8 MS. BAKER: So would it surprise you to hear that</p> <p>9 the house sold for \$200,000 plus less than the previous sale</p> <p>10 despite renovations and increased property investments? The</p> <p>11 house is an adjacent property. It has not been included in</p> <p>12 your report and it is -- it sold for less than the original</p> <p>13 owner paid for it.</p> <p>14 MR. KAGAN: Okay. When was the original sale?</p> <p>15 MS. BAKER: Despite increases in property.</p> <p>16 MR. KAGAN: Okay. So --</p> <p>17 MS. BAKER: And it's not in your report and I'm</p> <p>18 curious why it's not in the report. But I also want to</p> <p>19 understand given that sale, if there's another house that is</p> <p>20 identical to it on the same street where that owner paid 2.4</p> <p>21 million and I paid 1.6 million and the houses are identical</p> <p>22 do you expect that that's going to impact their property</p> <p>23 value, given your expertise in appraisals?</p> <p>24 MR. KAGAN: I'm sorry, I don't -- so you're saying</p> <p>25 that your sale at \$1.6 million and then there was a nearby</p>
<p>206</p> <p>1 MR. KAGAN: No. I -- there needed to be enough, I</p> <p>2 guess, density nearby or houses nearby. And I wanted it to</p> <p>3 have single family houses. Those were kind of my criteria.</p> <p>4 So you know, originally I was just looking at, like the River</p> <p>5 Road corridor and I came up with those three comparable</p> <p>6 properties and then we -- or I expanded it to include the</p> <p>7 Grosvenor property, specifically because there's no buffer</p> <p>8 around it. So I thought it would be a good one to look at.</p> <p>9 MR. ROSENTHAL: Which ones in the North</p> <p>10 Bethesda/Rockville/Potomac/Bethesda area did you exclude?</p> <p>11 MR. KAGAN: I don't recall.</p> <p>12 MR. ROSENTHAL: I have no further questions.</p> <p>13 HEARING EXAMINER ROBESON HANNAN: Thank you. Any</p> <p>14 redirect, Ms. Harris?</p> <p>15 MS. HARRIS: Sorry. No. No redirect of this</p> <p>16 witness.</p> <p>17 MS. BAKER: Ms. Robeson?</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Before I jumped</p> <p>19 to redirect before asking if anyone else has questions.</p> <p>20 Does anyone else have questions of this witness?</p> <p>21 MS. BAKER: Yes, Ms. Robeson, it's Ms. Baker</p> <p>22 again, and I do have a question.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: Okay. Go ahead.</p> <p>24 MS. BAKER: Can you tell me, you know, given that</p> <p>25 you looked at sales during the time -- in your own testimony,</p>	<p>208</p> <p>1 property that sold previously for \$4 million and they're</p> <p>2 similar houses?</p> <p>3 MS. BAKER: No, 2.4 million, and they're identical</p> <p>4 houses.</p> <p>5 MR. KAGAN: Uh-huh.</p> <p>6 MS. BAKER: And my property is adjacent to the</p> <p>7 subject property. And theirs is not.</p> <p>8 MR. KAGAN: Uh-huh. So I mean, I don't know why</p> <p>9 your sale wasn't picked up.</p> <p>10 MS. BAKER: I don't either.</p> <p>11 MR. KAGAN: Yeah, there must have been something</p> <p>12 that I saw. Again, I did this several months ago so I don't</p> <p>13 recall exactly specific sales and there was a lot of data</p> <p>14 that I was looking at. But generally for residential</p> <p>15 appraisals you -- a residential appraisers will look at sales</p> <p>16 of similar houses in the neighborhood and make adjustments</p> <p>17 for discernible differences. I don't know specifically what</p> <p>18 your property is or what -- you know what features it has and</p> <p>19 what the property -- other property --</p> <p>20 HEARING EXAMINER ROBESON HANNAN: Ms. Baker, what</p> <p>21 is the address of your property?</p> <p>22 MS. BAKER: 10828 Lockland Road.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>24 MS. BAKER: And the house to my left -- or right,</p> <p>25 facing does not border the property and is an identical house</p>

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<p>209</p> <p>1 built at the same time period by the same developer. 2 HEARING EXAMINER ROBESON HANNAN: I guess it 3 depends on when the prior sales were. 4 MS. BAKER: I understand but the owner of my 5 property took over a \$200,000 hit in his property value and 6 I'm asking -- 7 MR. KAGAN: So Ms. -- 8 MS. BAKER: -- why that wasn't considered in the 9 report. 10 MR. KAGAN: Ms. Baker, I'm looking at the SDAT 11 sheet for your property and it doesn't list a previous sale 12 price. It just has the \$1.6 million sale price. So that's 13 probably why I -- 14 MS. BAKER: It's public -- it's publicly available 15 data. I mean I can show you the previous sale price. And 16 the tax basis actually went down for the County. The tax 17 (inaudible) on the property reduced as well. 18 MR. KAGAN: Are you suggesting that the difference 19 between your house and this other house is because your 20 adjacent to the subject property which is currently a -- 21 MS. BAKER: Well, I was -- I can tell you directly 22 that I took into consideration, and that the previous 23 property owner had the house on the market for over a year 24 and could not sell it, reduced the price three times. And 25 when I bought this house I understood from the realtor that</p>	<p>211</p> <p>1 home, you said in May of 2019? 2 MS. BAKER: Correct. 3 MS. HARRIS: And you said that the house was on 4 the market for how long prior to that? 5 MS. BAKER: I don't have the precise a day, but 6 approximately a year. 7 MS. HARRIS: And do you know when the original 8 application for this project was filed? 9 MS. BAKER: Off the top of my head, I do not, but 10 I know it existed. 11 MS. HARRIS: And would it surprise you if I told 12 you it was in April of 2019? 13 MS. BAKER: When you say this project, do you make 14 this project currently being considered or the project that 15 was anticipated earlier? 16 MS. HARRIS: The one that was anticipated earlier. 17 MS. BAKER: No, it wouldn't surprise me. As I 18 noted, it was in place and was something we took into 19 consideration. 20 MS. HARRIS: Right. But based on the fact that 21 this application -- that prior application was filed in April 22 of 2019 and you indicated that your house was on the market 23 for at least a good year prior, so for an entire year before 24 an application was even filed they were having trouble 25 selling the house; is that correct?</p>
<p>210</p> <p>1 it was directly because of this development that they could 2 not sell their house. And that they had to keep reducing the 3 price. That's my understanding, but I can tell you I took it 4 into account. And yes, I got a reduced property value. But 5 it also was never contemplated that this type of facility was 6 what was going to be built when I bought the house. But I'm 7 not trying to testify, I wanted to clarify whether or not you 8 took it into consideration, or whether you excluded it, and 9 you confirmed that it wasn't included. 10 MR. KAGAN: Yes. So I mean the other reasons I 11 excluded the sale was because I couldn't determine whether 12 the previous sale was an arms-length transaction or what 13 was -- you know, details about the previous sale. So you 14 know, like I said, this was months ago. If I excluded it, 15 there was a reason I excluded it. Probably because I 16 couldn't tell the reliability of the previous sale. So -- 17 MS. BAKER: That's fine. Thank you. 18 MR. KAGAN: Yeah. 19 HEARING EXAMINER ROBESON HANNAN: Any other 20 questions? 21 MS. HARRIS: Ms. Robeson, it sounded like Ms. 22 Baker was testifying there for a moment. And I do have a 23 question for her, if I may? 24 HEARING EXAMINER ROBESON HANNAN: Okay. Go ahead. 25 MS. HARRIS: So Ms. Baker, you purchased your</p>	<p>212</p> <p>1 MS. BAKER: Just because the application wasn't 2 filed doesn't mean that no one knew about the proposed 3 development. Especially realtors that were showing the 4 house. 5 MS. HARRIS: Until April of 2019, there was no 6 public records available indicating what was being proposed 7 for the property. 8 MS. BAKER: I was able to look at what was being 9 proposed. 10 MS. HARRIS: In May, yes. 11 MS. BAKER: I closed in May. So before I closed. 12 And again, I don't have the dates in front of me but I can 13 show you what the realtor gave me. 14 MS. HARRIS: I have no other questions. 15 HEARING EXAMINER ROBESON HANNAN: Okay. Any 16 further questions? 17 All right. With that, if that conclusion your 18 case in chief, Ms. Harris? 19 MS. HARRIS: Well, except for Mr. Kabatt as we 20 discussed earlier, the traffic consultant. 21 HEARING EXAMINER ROBESON HANNAN: That's right. 22 And that's for another day. Does that conclude your case for 23 today? 24 MS. HARRIS: Yes. 25 HEARING EXAMINER ROBESON HANNAN: Okay. So we are</p>

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<p>213</p> <p>1 going to turn to Mr. Brown.</p> <p>2 Mr. Brown, I do have one question. Did you</p> <p>3 delegate the authority to cross-examine to anybody else?</p> <p>4 MR. BROWN: No.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: All right. So</p> <p>6 Mr. Brown, why don't you call your first witness and I</p> <p>7 believe Ms. Address is here. I thought I saw her.</p> <p>8 MS. HARRIS: Address, yes.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Okay. Go ahead,</p> <p>10 Mr. Brown.</p> <p>11 MR. BROWN: If I may make a very brief opening</p> <p>12 statement?</p> <p>13 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>14 MR. BROWN: The grounds for our objection are as</p> <p>15 stated in our prehearing statement, Exhibit 63. We do not</p> <p>16 agree with the planning board's conclusion that there are no</p> <p>17 non-inherent adverse effects on this property. And, in fact,</p> <p>18 the very first item on our list of grounds for objections is</p> <p>19 that that the ownership and management structure of the</p> <p>20 conditional use is a non-inherent feature of the project that</p> <p>21 will cause adverse effects. And in order to evaluate whether</p> <p>22 or not this is or is not -- the structure is or is not a non-</p> <p>23 inherent feature of the community we propose to call Susan</p> <p>24 Brecht as our first witness.</p> <p>25 Ms. Brecht, would you please state your name and</p>	<p>215</p> <p>1 witness is Ms. Brecht?</p> <p>2 MR. BROWN: Yes.</p> <p>3 MS. BRECHT: Right.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: Okay. Please</p> <p>5 raise your right hand. Do you solemnly affirm under</p> <p>6 penalties of perjury that the statements you're about to make</p> <p>7 are the truth, the whole truth, and nothing but the truth?</p> <p>8 MS. BRECHT: I do.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Okay. Go ahead.</p> <p>10 Ms. Brecht, can you tilt -- I can only see above your</p> <p>11 glasses.</p> <p>12 MS. BRECHT: Okay. I don't know --</p> <p>13 HEARING EXAMINER ROBESON HANNAN: (inaudible) your</p> <p>14 face, all of it.</p> <p>15 MS. BRECHT: I don't know what to do about that.</p> <p>16 HEARING EXAMINER ROBESON HANNAN: Okay. Well, now</p> <p>17 since you sat closer I can see most of your face.</p> <p>18 MS. BRECHT: All right.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: That's good.</p> <p>20 MS. BRECHT: You wouldn't want to miss seeing my</p> <p>21 face, that's for sure.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>23 MR. BROWN: So Ms. Brecht, we'll start over.</p> <p>24 Would you give us your name and address please?</p> <p>25 MS. BRECHT: Yes. My name is Susan B. Brecht. My</p>
<p>214</p> <p>1 address?</p> <p>2 MS. BRECHT: Yes. My name is Susan B. Brecht. My</p> <p>3 address is 419 Riverside Drive, Pine Beach, New Jersey.</p> <p>4 MR. BROWN: I think it's time for the hearing</p> <p>5 examiner to swear in the witness.</p> <p>6 Ms. Robeson?</p> <p>7 THE COURT REPORTER: So this is the court</p> <p>8 reporter. I'm looking through the list right now. I think</p> <p>9 she is not here. I believe her computer just have crashed or</p> <p>10 something. Let me double check just in case.</p> <p>11 (Off the record at 3:57, p.m., resuming at 3:58,</p> <p>12 p.m.)</p> <p>13 HEARING EXAMINER ROBESON HANNAN: I don't know why</p> <p>14 I left. I didn't leave intentionally. I apologize for that.</p> <p>15 And so I really don't know why I left. So --</p> <p>16 I apologize. Mr. Brown I just heard the very</p> <p>17 beginning. I didn't hear any of your opening statement,</p> <p>18 which is where we dropped off. So again, my apologies. So</p> <p>19 you were --</p> <p>20 MR. BROWN: I was --</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Go ahead.</p> <p>22 MR. BROWN: All you heard was the witness's</p> <p>23 unsworn name and address, and then I turned to you to swear</p> <p>24 her in but you weren't there.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Okay. And the</p>	<p>216</p> <p>1 address is 419 Riverside Drive, Pine Beach, New Jersey.</p> <p>2 MR. BROWN: Ms. Burke, you've been identified as</p> <p>3 our proposed expert witness in this case. And I provided, as</p> <p>4 Exhibit 94E a copy of a CV with your name on it; is that your</p> <p>5 current CV?</p> <p>6 MS. BRECHT: Yes, it is.</p> <p>7 MR. BROWN: Would you please summarize your</p> <p>8 educational background and experience in the senior care</p> <p>9 industry?</p> <p>10 MS. BRECHT: Be glad to. I'm a graduate of the</p> <p>11 University of Pennsylvania with an undergraduate degree, I'm</p> <p>12 sure you're all interested in knowing that I was an English</p> <p>13 major and music minor. I have been involved in the senior</p> <p>14 housing industry for probably close to 40 years. Burke</p> <p>15 Associates is celebrating its 32nd anniversary this year, and</p> <p>16 we are well known throughout the industry as experts in the</p> <p>17 area of market research and understanding of the markets and</p> <p>18 the products that are offered for those who are considered</p> <p>19 seniors.</p> <p>20 We don't do any general real estate market</p> <p>21 research, we are strictly in the senior housing field.</p> <p>22 MR. BROWN: So in your work have you become</p> <p>23 familiar with the various kinds of senior care communities</p> <p>24 that have been developed around the country in the past few</p> <p>25 decades?</p>

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<p>217</p> <p>1 MS. BRECHT: Yes I have. And you used the word 2 care, and in some cases there is no care. So there are a 3 variety of different product types for people age 55 and 4 above, or 62 and above. 5 MR. BROWN: All right. We'll get to that in just 6 a moment. First of all, if you qualify as an expert you'll 7 be asked to provide your opinion on where and how the 8 Heritage Gardens plan fits into this larger picture of senior 9 living arrangements. For that purpose, have you familiarized 10 yourself with the basics of the Heritage Garden's 11 operation -- 12 MS. HARRIS: Mr. Brown? 13 MR. BROWN: -- as described at page -- 14 MS. HARRIS: May I interrupt again? I think the 15 hearing examiner dropped off again. 16 HEARING EXAMINER ROBESON HANNAN: I'm here. 17 MR. BROWN: Oh, did we lose her again? 18 HEARING EXAMINER ROBESON HANNAN: No, I'm here. 19 MR. BROWN: All right. 20 MS. HARRIS: My apologies. 21 MR. BROWN: Have you familiarized yourself with 22 the basics of the Heritage Gardens operation as described at 23 pages 1 through 18 of Exhibit 44, the updated Soltesz Land 24 Use Report? 25 MS. BRECHT: Yes.</p>	<p>219</p> <p>1 residential care. 2 MS. BRECHT: The senior housing market would be 3 fine. 4 HEARING EXAMINER ROBESON HANNAN: The senior 5 housing market. Okay. Go ahead. 6 MR. BROWN: Is there any further objections? 7 HEARING EXAMINER ROBESON HANNAN: All right. 8 MS. HARRIS: No, I don't object. 9 MR. BROWN: All right. Would you please describe, 10 Ms. Brecht, the currently accepted types of senior living 11 arrangements that are offered around the country? Maybe 12 beginning with the lowest to the highest level of care giving 13 to residents. 14 MS. BRECHT: I'd be glad to do that. The one that 15 is strictly residential and does not involve care, is what we 16 call active adult communities. They can be offered on a for- 17 sale, or a rental basis. No supportive services are 18 available to residents. The community might have a clubhouse 19 with areas for social activities and an exercise room. That 20 would be very common in an active adult community. 21 The next product does like to mention is what we 22 call continuing care retirement communities, also known as 23 life planned communities. These offer multiple levels 24 including independent living, assisted living, memory care, 25 and skilled nursing. Residents typically enter through the</p>
<p>218</p> <p>1 MR. BROWN: Do you believe you can provide the 2 hearing examiner informed opinion on that subject? 3 MS. BRECHT: Yes. 4 MR. BROWN: I ask for acceptance of Ms. Burke as 5 an expert on the various segments of the nationwide senior 6 living market.. 7 HEARING EXAMINER ROBESON HANNAN: Okay. Any 8 objections? 9 MS. HARRIS: What specifically is she being 10 offered as an expert in, just so I'm clear? 11 MR. BROWN: She's here to provide testimony on 12 where the Heritage Gardens project fits into the spectrum of 13 senior living arrangements around the country. 14 HEARING EXAMINER ROBESON HANNAN: Well, what if -- 15 I think you initially said the nationwide senior market. Am 16 I incorrect in that? 17 MR. BROWN: She has gained her experience and 18 knowledge of the industry by analyzing the market through 19 which she understands what the various types of arrangements 20 are. That's the purpose of her testimony to describe those 21 kinds of arrangements and where, in her opinion, Heritage 22 Garden fits into the larger picture. 23 HEARING EXAMINER ROBESON HANNAN: Well, what I'll 24 do is I'll call her an expert in the senior housing market. 25 Senior facility -- senior living facilities market or</p>	<p>220</p> <p>1 independent living and they have a contract that allows them 2 to move through the other levels of care. The CCRCs, 3 continuing care retirement communities, require a payment of 4 an up front entrance fee upon entry that is not one -- an 5 entrance fee is not a purchase. They are not buying the real 6 estate. And they also pay a monthly fee to cover the cost of 7 services. 8 Another product, as well as a level of care within 9 a CCRC is the assisted living and memory care. These are 10 licensed facilities that provide assistance with activities 11 of daily living which include things such as bathing, 12 dressing, eating, toileting, transferring in and out of bed. 13 They also include three daily meals and transportation 14 services. And the memory care is similar except it's for 15 people with significant cognitive impairment. 16 So those are the various product types. 17 MR. BROWN: Now, on page 3 of the Soltesz report 18 is the following statement. The project is modeled on other 19 successful senior living projects throughout the country that 20 provide gradient levels of care (assisted and independent 21 living), on a campus setting with different housing options. 22 Now, modeled is their choice of words. What would 23 be your choice? How does this project emulate or not the 24 basics of a segment of the senior living projects market? 25 MS. BRECHT: It's not typical to combine what we</p>

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<p style="text-align: right;">221</p> <p>1 call an active adult community on the same campus as one that</p> <p>2 offers independent living, assisted living, memory care. So</p> <p>3 I would say this project combines two different segments of</p> <p>4 the senior living industry.</p> <p>5 MR. BROWN: Now, the report, on the same page,</p> <p>6 goes on to state --</p> <p>7 HEARING EXAMINER ROBESON HANNAN: (inaudible).</p> <p>8 Sorry, Mr. Brown. Did you say it's atypical to mesh</p> <p>9 independent living with the other two?</p> <p>10 MS. BRECHT: No. I said it's atypical to mesh</p> <p>11 active adult living communities --</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Oh, active adult</p> <p>13 communities.</p> <p>14 MS. BRECHT: Yes.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: I see. Go</p> <p>16 ahead.</p> <p>17 MR. BROWN: The report goes on to state, quote:</p> <p>18 The property will be comprised of a mix of independent living</p> <p>19 and assisted living in memory care units. My question to you</p> <p>20 is how common in the senior care industry would you find</p> <p>21 independent living and assisted living with our without</p> <p>22 memory care in a single project?</p> <p>23 MS. BRECHT: Very common. They often combine</p> <p>24 independent living, assisted living, memory care. But this</p> <p>25 is typically not in a community that's offered on a for-sale</p>	<p style="text-align: right;">223</p> <p>1 MR. BROWN: Now, in the Heritage Gardens project</p> <p>2 we have ownership units that are called cottage units, that</p> <p>3 are separate from the lodge where the assisted living and</p> <p>4 memory care and some of the other independent living units</p> <p>5 are. If someone was an occupant of one of these cottage</p> <p>6 units and wanted to move into the Lodge into assisted living</p> <p>7 or memory care, I believe the testimony or the description is</p> <p>8 that that would be done on a space-available basis. If that</p> <p>9 is correct, how would that situation differ from the way the</p> <p>10 matter -- that would be handled in a CCRC?</p> <p>11 MS. BRECHT: In a CCRC residents are assured that</p> <p>12 they can move through the levels of care as needed per their</p> <p>13 contract. If, for example, an assisted living unit is not</p> <p>14 available to an independent living resident, the CCRC will</p> <p>15 find a way to provide more supportive services to the</p> <p>16 resident in the independent living unit until one is</p> <p>17 available in assisted living.</p> <p>18 MR. BROWN: Well, now consider the situation, if</p> <p>19 you would, where an owner of one of these cottage units</p> <p>20 wanted to move into the Heritage Lodge and there was space</p> <p>21 available. Under the Heritage Garden structure, this would</p> <p>22 mean that the person would be switching from an ownership</p> <p>23 unit to a rental unit?</p> <p>24 MS. BRECHT: Right.</p> <p>25 MR. BROWN: What difficulties, if any, do you</p>
<p style="text-align: right;">222</p> <p>1 basis.</p> <p>2 MR. BROWN: What is your understanding of why for-</p> <p>3 sale independent living and rental assisted living and memory</p> <p>4 care units are not often found together?</p> <p>5 MS. BRECHT: Well, I think they're serving two</p> <p>6 different market segments. For-sale independent living which</p> <p>7 you'd find in an active adult community serves a younger</p> <p>8 segment of the market. They're looking for a residential</p> <p>9 community but they don't need supportive services. Whereas,</p> <p>10 CCRCs and assisted and memory care serve an older segment,</p> <p>11 entry is typically between the ages of 75 and 80, much to</p> <p>12 their regret. And this segment anticipates requiring support</p> <p>13 services. And those who come into the independent living</p> <p>14 level of the community expect to have the option for services</p> <p>15 including meals, housekeeping, transportation and social</p> <p>16 activities.</p> <p>17 MR. BROWN: In your opinion, is there an emerging</p> <p>18 trend in the senior care industry toward putting these two</p> <p>19 types of senior care together on the same property?</p> <p>20 MS. BRECHT: Well, you've been using the word care</p> <p>21 and I would not use that word to describe active adult. I</p> <p>22 can understand what your question is. It is not typical to</p> <p>23 see an active adult community sharing a campus with a senior</p> <p>24 care community that offers independent living, assisted</p> <p>25 memory care.</p>	<p style="text-align: right;">224</p> <p>1 believe the owner might encounter in making the switch from</p> <p>2 owner to renter?</p> <p>3 MS. BRECHT: Well, if the owner of the cottage is</p> <p>4 carrying a mortgage on that cottage it could be cost</p> <p>5 prohibitive to continue to pay both the mortgage and the</p> <p>6 monthly fee at the Lodge for assisted or higher levels of</p> <p>7 care.</p> <p>8 MR. BROWN: Would that be a problem at a CCRC?</p> <p>9 MS. BRECHT: No.</p> <p>10 MR. BROWN: Now, on page 13 of the Soltesz report,</p> <p>11 it states as follows, quote: The data indicates that there</p> <p>12 is a growing demand for ownership units in the independent</p> <p>13 living segment of the market, generally. Support for this</p> <p>14 claim is a footnote reference to page 33 of a 2018 AARP</p> <p>15 survey. Have you examined this reference?</p> <p>16 MS. BRECHT: Yes. And it does not -- first of</p> <p>17 all, page 33 is a cover page for the following section. And</p> <p>18 beyond that, I don't see any reference in the AARP survey for</p> <p>19 a demand for ownership versus rental for independent living.</p> <p>20 I don't think there's any evidence of that.</p> <p>21 MR. BROWN: Is this demand question addressed in</p> <p>22 the Montgomery County 2018 senior housing needs report?</p> <p>23 MS. BRECHT: I don't believe so.</p> <p>24 MR. BROWN: Is a desire to age in place the same</p> <p>25 thing as a desire for ownership of an independent living</p>

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<p>225</p> <p>1 unit?</p> <p>2 MS. BRECHT: No. A desire to age in place is what</p> <p>3 people want -- I mean, if you -- I would like to age in place</p> <p>4 in my home until they carry me out feet first. It's -- you</p> <p>5 want to be surrounded by all of the things that you spent a</p> <p>6 lifetime enjoying and collecting and it all reinforces who</p> <p>7 you are as an individual. So aging in place is how I would</p> <p>8 distinguish that.</p> <p>9 MR. BROWN: Now, you weren't here for this, but</p> <p>10 during an earlier part of the hearing, the president of Sage</p> <p>11 Life, Kelly Cook Andress, who is here with us today, was</p> <p>12 asked whether one could find senior living facilities</p> <p>13 elsewhere that, like Heritage Gardens, combine ownership</p> <p>14 units at the independent living level with assisted living on</p> <p>15 the same property. She mentioned two places, Springton Lake</p> <p>16 in Media, Pennsylvania and Willow Valley in Lancaster,</p> <p>17 Pennsylvania. She said they were not exactly like this</p> <p>18 property. Did you review whether those two properties fit</p> <p>19 and how those two properties fit into the overall picture of</p> <p>20 senior living?</p> <p>21 MS. BRECHT: Well, Willow Valley is a CCRC and</p> <p>22 always has been. So I don't know what more to say about it,</p> <p>23 other than that's what it is. It's not a for-sale property,</p> <p>24 it's a CCRC in the typical format. Springton Lake is not a</p> <p>25 CCRC and it is a community where entering seniors make an</p>	<p>227</p> <p>1 MS. BRECHT: Right.</p> <p>2 MS. HARRIS: Nothing more than that really; is</p> <p>3 that correct?</p> <p>4 MS. BRECHT: That is correct.</p> <p>5 MS. HARRIS: And then, you went to a CCRC?</p> <p>6 MS. BRECHT: Uh-huh.</p> <p>7 MS. HARRIS: And then, you went to assisted living</p> <p>8 and memory care. What I didn't hear is independent living.</p> <p>9 Where does that fit in and why did you skip over independent</p> <p>10 living?</p> <p>11 MS. BRECHT: I didn't think I skipped over it.</p> <p>12 Independent living is a level of residency in a CCRC.</p> <p>13 MS. HARRIS: Are you suggesting that there are no</p> <p>14 projects that are exclusively independent living outside of a</p> <p>15 CCRC complex?</p> <p>16 MS. BRECHT: No, I'm not suggesting that. There</p> <p>17 are some communities that are independent living. They</p> <p>18 primarily would be offered on a rental basis.</p> <p>19 MS. HARRIS: And when you say, primarily on a</p> <p>20 rental basis, are you aware of any that are other than a</p> <p>21 rental basis?</p> <p>22 MS. BRECHT: I'm not. There may be some that</p> <p>23 charge an entrance fee, but it would not be typical if there</p> <p>24 are not other levels of care.</p> <p>25 MS. HARRIS: And are you familiar -- okay. So</p>
<p>226</p> <p>1 equity investment and it's a co-op, which isn't the same as</p> <p>2 owning the land and the building where they live. Also,</p> <p>3 Springton is - -this is I think, a very interesting</p> <p>4 arrangement. Springton Lake residents are also given</p> <p>5 priority access to assisted living and nursing home care at</p> <p>6 two local CCRCs, Dunwoody Village and Whitehorse Village.</p> <p>7 I've never really seen that model. I think it's very</p> <p>8 interesting and I hope it works for everybody.</p> <p>9 MR. BROWN: Is there anything else you'd like to</p> <p>10 add to your testimony?</p> <p>11 MS. BRECHT: No, I think we've covered everything</p> <p>12 that we wanted to cover. I hope I've answered all these</p> <p>13 questions adequately.</p> <p>14 MR. BROWN: Thank you. I have no further</p> <p>15 questions.</p> <p>16 HEARING EXAMINER ROBESON HANNAN: Ms. Harris?</p> <p>17 MS. HARRIS: Yes, thank you.</p> <p>18 Good afternoon, Ms. Brecht.</p> <p>19 MS. BRECHT: Hi.</p> <p>20 MS. HARRIS: So when you started -- in your</p> <p>21 testimony you said, let me start with going through the</p> <p>22 various levels of housing types. I think you started with</p> <p>23 active adult and you identify that as a typically -- well,</p> <p>24 for sale or rental, maybe some shared amenities like a</p> <p>25 clubhouse or a pool.</p>	<p>228</p> <p>1 then, I believe what you then said was -- it sounded to me,</p> <p>2 and tell me if this is accurate, that you were classifying</p> <p>3 the cottage, independent living units in this Heritage</p> <p>4 development as active adult; is that correct?</p> <p>5 MS. BRECHT: I believe that's how they're</p> <p>6 characterized, yes.</p> <p>7 MS. HARRIS: How they're characterized by whom?</p> <p>8 MS. BRECHT: I believe that they are active adult.</p> <p>9 They do not offer services, they are for sale. You're</p> <p>10 looking astonished when I say they don't offer services.</p> <p>11 They're not a service enriched community. They're a real</p> <p>12 estate community.</p> <p>13 MS. HARRIS: Did you listen to Ms. Andress'</p> <p>14 testimony, when she testified at the end of January?</p> <p>15 MS. BRECHT: No, I was not --</p> <p>16 MS. HARRIS: Would you be surprised to hear that</p> <p>17 the Lodge property -- the Lodge building provides a separate</p> <p>18 dining hall for the independent living units, both the</p> <p>19 cottage units and those in the Lodge?</p> <p>20 MS. BRECHT: Not terribly surprised. I mean,</p> <p>21 because there is a Lodge component on this campus its</p> <p>22 (inaudible) to provide things like a dining room where</p> <p>23 anybody can go and pay the cost. It would not be typical of</p> <p>24 a strictly active adult community to have a dining facility.</p> <p>25 MS. HARRIS: So that is one difference. And what</p>

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<p>229</p> <p>1 about a service fee to cover for the independent living 2 cottage units to cover basic medical and support services; 3 would that surprise you and would you expect to see that -- 4 MS. BRECHT: It would totally surprise me for the 5 cottage units to have a contract that provided them with 6 medical services. That would make no sense to me at all. 7 MS. HARRIS: And when Ms. -- 8 HEARING EXAMINER ROBESON HANNAN: Can you explain 9 that? 10 MS. HARRIS: Me or Ms. Brecht? 11 HEARING EXAMINER ROBESON HANNAN: Well, Ms. 12 Brecht. 13 MS. BRECHT: As an active adult community part 14 of -- you don't receive medical services. 15 MS. HARRIS: And I think that's what I'm trying to 16 get at is that we're not an active adult community. We are 17 classified both by the definition of the zoning ordinance and 18 operationally as an independent living facility and I think 19 that's where the breakdown is. 20 Do most active adult communities have a 21 transportation component for the independent -- for the 22 active adult -- 23 MS. BRECHT: I don't believe -- I mean, they may 24 have some modest amount of transportation, but it's not a 25 significant part of what's offered.</p>	<p>231</p> <p>1 familiar, I believe you said you're familiar with some 2 facilities that are a combination of independent living and 3 assisted living; is that right? 4 MS. BRECHT: Yes. 5 MS. HARRIS: And in those situations and not 6 putting a CCRC aside for a moment. 7 MS. BRECHT: Right. 8 MS. HARRIS: In those communities are there 9 situations or scenarios where someone may -- I'm going to use 10 the word, graduate, but I think you know what I -- progresses 11 from independent living and needs assisted living and there 12 is not an assisted living bed or unit available? Does that 13 ever happen? 14 MS. BRECHT: I'm sure it happens. I mean, I can't 15 comment on the entire universe of possibilities of what can 16 happen. But I'm certain that it might happen. 17 MS. HARRIS: And then, do you know -- 18 MS. BRECHT: That they would probably do is -- 19 MS. HARRIS: Yeah. 20 MS. BRECHT: -- help someone relocate to a higher 21 level of care. 22 MS. HARRIS: Outside that -- 23 MS. BRECHT: (inaudible) 24 MS. HARRIS: -- community? 25 MS. BRECHT: That's right.</p>
<p>230</p> <p>1 MS. HARRIS: So there wouldn't be, necessarily, an 2 on-site van and potentially an additional facility? 3 MS. BRECHT: Yeah. 4 MS. HARRIS: So would it surprise you to hear that 5 the cottages in this case are -- avail themselves of all 6 those things? A dining hall, a monthly service fee to cover 7 sort of basic support and transportation? 8 MS. BRECHT: It doesn't surprise me because of the 9 nature of this particular community, which combines active 10 adult cottages with the - -I'm sorry, I'm forgetting the name 11 of the building where -- 12 MS. HARRIS: The Lodge. 13 MS. BRECHT: -- they can -- thank you. The Lodge 14 where they have independent living apartments, assisted 15 living, and memory care. 16 MS. HARRIS: But the fact that they -- that all 17 those services are, in fact, made available to the cottages, 18 wouldn't you agree that that gets classified more as an 19 independent living unit and not, what did you call it? 20 MS. BRECHT: An active adult. 21 MS. HARRIS: I mean, yes. 22 MS. BRECHT: Well, I really don't want to quibble 23 about using the term active adult versus independent living. 24 This was presented to me as an active adult community. 25 MS. HARRIS: Okay. Fair enough. And you're</p>	<p>232</p> <p>1 MS. HARRIS: And again, I don't -- you said you 2 weren't available for Ms. Andress's testimony, but would it 3 surprise you that that's exactly what she described that 4 would happen at Heritage if, in fact, an assisted living 5 facility was not available when someone was to go from the 6 independent living to the assisted living? 7 MS. BRECHT: Not -- it wouldn't particularly 8 surprise me. 9 MS. HARRIS: And then, I believe you said that one 10 of the reasons that you thought it was a little -- oh you 11 were talking about -- you described the burdens involved if 12 an individual lived in an ownership independent living and 13 then wanted to then progress to -- 14 MS. BRECHT: Needed. 15 MS. HARRIS: -- needed, yeah, needed to go into -- 16 because no one does it voluntarily. 17 MS. BRECHT: Exactly right. 18 MS. HARRIS: If someone needed to go into an 19 assisted living, that one of the burdens they would 20 potentially have is the burden -- if they were still carrying 21 a mortgage on one of the cottages, right? 22 MS. BRECHT: Right. Exactly. 23 MS. HARRIS: IS that not a similar burden that 24 exists if someone lives in a single-family home somewhere and 25 then needs to go into assisted living that they have a</p>

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<p>233</p> <p>1 burden -- they could have a burden of a mortgage that they 2 need to take care of? 3 MS. BRECHT: Of course. 4 MS. HARRIS: Okay. And you've been -- you said 5 you've done this -- you've been doing this now for almost 40 6 years, correct? 7 MS. BRECHT: That's right. 8 MS. HARRIS: And would you agree that in the past 9 20, 30, 40 years that the industry has evolved? That early 10 on it was much more institutional in nature? 11 MS. BRECHT: Yes. 12 MS. HARRIS: And in the last few decades there's 13 been more of an effort to offer a wider variety of community 14 design and types of communities -- to speak to the needs of 15 this new demographic of seniors? 16 MS. BRECHT: Of which I am a part. Yes. And I'm 17 very glad to hear you use the word community because one the 18 things we like to say in our industry is don't use the "F" 19 word, facility. 20 MS. HARRIS: Oh, correct. 21 MS. BRECHT: Because that's very institution -- 22 it's a very institutional -- 23 HEARING EXAMINER ROBESON HANNAN: Ms. Harris -- 24 (Crosstalk) 25 HEARING EXAMINER ROBESON HANNAN: Okay.</p>	<p>235</p> <p>1 putting seniors aside for a moment, would you agree that in 2 general the population -- the adult population has a wide 3 variety of housing tastes? 4 MS. BRECHT: Well, of course, sure. 5 MS. HARRIS: And would you similarly expect that 6 when someone gets to be 62 plus that they would continue to 7 have a wide variety of housing tastes? 8 MS. BRECHT: Yes. And I think that they wouldn't 9 consider moving until they felt a need to move. 10 MS. HARRIS: Agreed. That -- and I believe Ms. 11 Address testified to that. So you're -- what you're saying 12 is no one would voluntarily move into Heritage Gardens 13 independent living it's because they have a need that needs 14 to be taken care of? 15 MS. BRECHT: Well, they would move into the active 16 adult -- you know the for-sale active adult cottage 17 component, they might because it's not need driven. 18 MS. HARRIS: But if it is providing transport -- 19 if you're paying for transportation, you're paying for food, 20 and you're paying a monthly service fee -- 21 MS. BRECHT: But you're not paying for those 22 things if you're in one of the cottages. 23 MS. HARRIS: I don't think you heard Ms. Address's 24 testimony. Or you said you didn't hear it. 25 MS. BRECHT: Right.</p>
<p>234</p> <p>1 MS. HARRIS: And one other quick -- going back one 2 moment for the difference between a -- the average age for a 3 active adult is typically 55; is that correct? 4 MS. BRECHT: Legally that's the age that's 5 possible. 6 MS. HARRIS: Okay. 7 MS. BRECHT: We don't see many people age 55 8 moving into active adult. They're at least a decade older. 9 MS. HARRIS: I'll vouch for that. And then, the 10 typical -- or the legal age for independent living is -- do 11 you -- 12 MS. BRECHT: I think for a CCRC, I think it's 60. 13 It may be 62. I think that's the age in the regulations. 14 MS. HARRIS: Yes, in the Montgomery County 15 residential care facility definition it requires 62. 16 MS. BRECHT: 62, uh-huh. 17 MS. HARRIS: Yes. Okay. Thank you. Are you -- 18 I'm going -- 19 MS. BRECHT: No, I was just going to say for the 20 55 plus communities, one member of the household has to be 21 55. It could be that, you know, he married a 38-year-old. 22 And let's not go there. 23 MS. HARRIS: Always he. 24 MS. BRECHT: Oh, yeah. 25 MS. HARRIS: And then, would you agree that --</p>	<p>236</p> <p>1 MS. HARRIS: You didn't listen to her testimony, 2 correct? 3 MS. BRECHT: Correct. 4 MS. HARRIS: Okay. The record states that you 5 would be if you were moving into one of the independent 6 living units. 7 MS. BRECHT: But independent living cottages 8 versus the independent living apartments. 9 MS. HARRIS: There would be no -- would it 10 surprise you that there is no distinction in the level of 11 services provided whether you are moving into an independent 12 living Lodge unit versus an independent living cottage unit? 13 MS. BRECHT: Yes. 14 MS. HARRIS: That the services are the same? 15 MS. BRECHT: It would surprise me. 16 MS. HARRIS: Are you familiar -- I'm going to name 17 a couple, just a handful -- you would agree that there's a 18 wide variety of types of senior projects out there; is that 19 correct? Do you agree with that? 20 MS. BRECHT: Yes. 21 MS. HARRIS: And I think you said that Spring -- 22 MS. BRECHT: Ton. 23 MS. HARRIS: Springton Lake, thank you. That it's 24 co-op, not ownership but it's co-op? 25 MS. BRECHT: Right.</p>

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<p>237</p> <p>1 MS. HARRIS: Correct. Are you familiar with a 2 project called Brightwood in Lutherville, Maryland? 3 MS. BRECHT: I've heard of it, but I'm -- I can't 4 say I'm familiar -- I couldn't speak to it in any specific 5 terms. 6 MS. HARRIS: Would you be surprised to hear that 7 that's independent living in an ownership unit? In an 8 ownership structure? 9 MS. BRECHT: Well, no. Because you know there are 10 different options. They're not necessarily common, but -- so 11 no. 12 MS. HARRIS: Right. But -- so I guess, then, as 13 we were talking about the industry evolving it used to be 14 fairly predictable what you could get. You'd get a multi- 15 family style of assisted living, independent living, and now 16 there's definitely more options; do you agree with that? 17 MS. BRECHT: Yeah. 18 MS. HARRIS: Okay. And then, just a couple of 19 others here. Meadowridge Senior Villas in Gaithersburg, 20 Maryland? 21 MS. BRECHT: Not familiar. 22 MS. HARRIS: If you're not familiar with it then 23 you have no knowledge that that's an independent living in a 24 condo structure? Condominium structure? 25 MS. BRECHT: I wouldn't because I'm not familiar</p>	<p>239</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Anyone else have 2 questions? Hearing none, thank you Ms. Brecht. 3 MS. BRECHT: My pleasure. 4 HEARING EXAMINER ROBESON HANNAN: And you can be 5 excused. 6 MS. BRECHT: Thank you very much. 7 HEARING EXAMINER ROBESON HANNAN: Mr. Brown, do 8 you want to try to get through another witness, or have we 9 exhausted everyone today, what's your pleasure? 10 MR. BROWN: If Mr. Rosenthal is ready and willing 11 I would be happy to have him testify. 12 HEARING EXAMINER ROBESON HANNAN: All right. 13 MR. BROWN: Since we've heard his cross- 14 examination earlier. 15 HEARING EXAMINER ROBESON HANNAN: Yes. Mr. 16 Rosenthal, I can't remember -- did you have an -- 17 MS. HARRIS: No, I have a question. And I wasn't 18 clear and maybe Mr. Brown could identify, what other 19 witnesses they have. I don't know that that was ever 20 identified. 21 MR. BROWN: Well, Susan Li will be testifying from 22 Nairobi on Wednesday morning. I guess after the other 23 witnesses on both sides who want to testify first thing, 24 testify. I also have either Mr. or Mrs. Brigham and Mr. Rick 25 Maggin and possibly Lin Blei. That's it.</p>
<p>238</p> <p>1 with it. 2 MS. HARRIS: Okay. And then how about -- and it 3 was mentioned through the last testimony Fox Hill in 4 Bethesda. Are you familiar with that? 5 MS. BRECHT: Also not familiar with it. 6 MS. HARRIS: Would you be surprised to hear that 7 that offers independent living, assisted living, memory care 8 in a for-sale equity type of situation for the independent 9 living? 10 MS. BRECHT: You know, I'm somewhat surprised, but 11 if it -- if that's what they do, that's what they do. I'm 12 not suggesting that every single thing is modeled on exactly 13 the same structure. 14 MS. HARRIS: But they -- 15 MS. BRECHT: But I don't want to be perceived as 16 having suggested that. 17 MS. HARRIS: Okay. Thank you. Hold on one 18 moment. I don't believe I have any more questions for Ms. 19 Brecht. 20 MS. BRECHT: Thank you very much. Appreciate your 21 questions. 22 MS. HARRIS: Yes. 23 HEARING EXAMINER ROBESON HANNAN: Mr. Brown, any 24 redirect? 25 MR. BROWN: No redirect.</p>	<p>240</p> <p>1 MS. HARRIS: Thank you. 2 MR. ROSENTHAL: If you want me to proceed, Mr. 3 Brown, I could do that today. 4 HEARING EXAMINER ROBESON HANNAN: Yeah, before we 5 go off the record, I do want to clarify -- and maybe it was 6 my mistake because I've heard different times for when the 7 witnesses should be here. 8 What is your understanding and who's been telling 9 the most people when the external -- when the neighborhood 10 can testify? Is that at 9:00? I think at one point I said 11 3:00 but now I keep hearing 9:30. Was that already set, 9:30 12 and I didn't realize it? 13 MS. BAKER: You have it -- 14 MR. BROWN: That's what Mr. -- 15 MS. BAKER: Sorry, go ahead. 16 MR. BROWN: Mr. Baumgardner set it at 9:00 a.m. 17 But you changed it to 9:30, so that's why I used 9:30. 18 MS. HARRIS: But we had an email exchange the 19 other day where we had said 3:00 and I thought, Mr. Brown, 20 you said, oh yeah, maybe that makes sense given the time 21 difference for Ms. Li. I don't know that it really matters. 22 I would ask Mr. Wormald who's been in touch with some of the 23 people whether he's told people that it would be around 3:00 24 on Wednesday or -- and if he hasn't then maybe it makes sense 25 to do it -- the citizens first thing so that they can -- they</p>

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<p style="text-align: right;">241</p> <p>1 don't have to wait around.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Well, that's</p> <p>3 fine with me. If you want to do it at 9:30, I just want to</p> <p>4 make sure everybody's on the same wave length. So -- and if</p> <p>5 I confused that mix, I apologize. So it will be Wednesday,</p> <p>6 March 2nd at 9:30 a.m.</p> <p>7 MS. HARRIS: That works.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: Okay. Go ahead.</p> <p>9 If we're done -- and the other think I wanted to say while</p> <p>10 everybody's before I forget is everyone who wants to -- that</p> <p>11 is in this meeting should give their email addresses to Nana</p> <p>12 Johnson. You can email them and that's simply because it's</p> <p>13 much, much easier for us to notify of different things like</p> <p>14 if there's another hearing or whatever, by email. And so if</p> <p>15 you could, tomorrow or the next day, give your email address</p> <p>16 to Ms. Johnson so you'll continue to get notifications about</p> <p>17 the case.</p> <p>18 MS. BAKER: Ms. Robeson, if we submitted -- if I</p> <p>19 submitted a declaration separately via email, is that</p> <p>20 considered already registered, or do you need me to do that</p> <p>21 again separately?</p> <p>22 HEARING EXAMINER ROBESON HANNAN: What's a</p> <p>23 declaration?</p> <p>24 MS. BAKER: A statement. A witness statement.</p> <p>25 I'm not sure of the precise name for it.</p>	<p style="text-align: right;">243</p> <p>1 MR. ROSENTHAL: I do.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Thank you. Go</p> <p>3 ahead.</p> <p>4 MR. ROSENTHAL: I have a PowerPoint and I can pull</p> <p>5 it up or if you want to pull it up and I can tell you when</p> <p>6 I'm going to the next tab, or the next page.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Is it in the</p> <p>8 record?</p> <p>9 MR. ROSENTHAL: Yes. It was sent in.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: What exhibit is</p> <p>11 it?</p> <p>12 MR. ROSENTHAL: I'm sorry?</p> <p>13 HEARING EXAMINER ROBESON HANNAN: What exhibit is</p> <p>14 it?</p> <p>15 MR. ROSENTHAL: What exhibit is it? Oh, that's a</p> <p>16 good question. I looked this morning and I saw it was --</p> <p>17 that it was there. I don't know that I have the exhibit</p> <p>18 number. But I do know that it was there. Let me just see if</p> <p>19 I -- hang on.</p> <p>20 I believe -- I think it might be 116. I wrote</p> <p>21 down Exhibit 116. I hope that's it. Maybe we can pull that</p> <p>22 up and see. If not, I can -- I have it on my screen and I</p> <p>23 can share it.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: I (inaudible).</p> <p>25 MR. ROSENTHAL: I'm sorry?</p>
<p style="text-align: right;">242</p> <p>1 HEARING EXAMINER ROBESON HANNAN: You can -- is it</p> <p>2 already in the record?</p> <p>3 MS. BAKER: I submitted it last week.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: Oh, well then we</p> <p>5 have it. you don't have to resubmit it.</p> <p>6 MS. BAKER: Okay. Thank you.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Honest, I do</p> <p>8 read everything that comes in.</p> <p>9 MS. BAKER: Thank you.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: It just has to</p> <p>11 be signed.</p> <p>12 MS. BAKER: It was, thank you.</p> <p>13 MS. HARRIS: And Ms. Robeson, one last thing and I</p> <p>14 hate to ask this. Can we take a five-minute break?</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Yes.</p> <p>16 MS. HARRIS: Thank you.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: Okay. We'll be</p> <p>18 back to you, Mr. Rosenthal.</p> <p>19 MR. ROSENTHAL: I'll be here. Thank you.</p> <p>20 (Off the record at 4:37 p.m., resuming at 4:41</p> <p>21 p.m.)</p> <p>22 HEARING EXAMINER ROBESON HANNAN: All right. Mr.</p> <p>23 Rosenthal, do you solemnly affirm under penalties of perjury</p> <p>24 that the statements you're about to make are the truth, the</p> <p>25 whole truth and nothing but the truth?</p>	<p style="text-align: right;">244</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Hold on one</p> <p>2 second. Is that it?</p> <p>3 MR. ROSENTHAL: It is.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>5 MS. HARRIS: Ms. Robeson?</p> <p>6 HEARING EXAMINER ROBESON HANNAN: Yes.</p> <p>7 MS. HARRIS: So we submitted an email with very</p> <p>8 minor floor plan changes last week. I believe it was Exhibit</p> <p>9 115.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: Yes.</p> <p>11 MS. HARRIS: Mr. Rosenthal, I believe is</p> <p>12 represented by counsel, Mr. Brown. And I'm surprised that</p> <p>13 whatever this Exhibit 116, first of all it wasn't shared with</p> <p>14 the Applicant. And two, that it wasn't submitted as part of</p> <p>15 the pre-hearing statement.</p> <p>16 MR. ROSENTHAL: Well, it was --</p> <p>17 MS. HARRIS: (inaudible) being shown on this, we</p> <p>18 have not seen.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: Okay. Mr.</p> <p>20 Rosenthal, we do require reports and exhibits to be -- or at</p> <p>21 least a summary of testimony to be included in the pre-</p> <p>22 hearing statement. What you could do is just testify and</p> <p>23 not use the PowerPoint.</p> <p>24 MR. ROSENTHAL: If that's where I'm left, that's</p> <p>25 what I'll have to do.</p>

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<p style="text-align: right;">245</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Okay. But why 2 don't you testify verbally. 3 MR. ROSENTHAL: And if I can submit the PowerPoint 4 as a summary of my testimony, great. If I can't, so be it. 5 HEARING EXAMINER ROBESON HANNAN: We can -- yeah, 6 we can -- let's just go with your verbal testimony. 7 MS. HARRIS: And in fact, I would request that 116 8 be struck from the record given that it wasn't provided in 9 advance in accordance with the rules. 10 HEARING EXAMINER ROBESON HANNAN: Okay. That's 11 fine. 12 MR. ROSENTHAL: So let me first explain who I am. 13 HEARING EXAMINER ROBESON HANNAN: But there is 14 no -- there's flexibility on rebuttal, but I realize that 15 this is not going to -- he's not going to be on rebuttal. 16 That's what I was thinking. So go ahead. We're going to 17 strike it and you go ahead and testify. 18 MR. ROSENTHAL: I am a neighbor. First, my name 19 is Sam Rosenthal. I live on Edison Road at 11010 Edison 20 Road. And so I am someone who, I believe, is affected by the 21 development. When I drive down Edison Road, as I do many 22 times a day, I will see the development. My neighbor's 23 values, I believe, will be affected by it and so will mine. 24 And I believe it will change the character of the 25 neighborhood.</p>	<p style="text-align: right;">247</p> <p>1 little distance away from where Edison forks into South Glen. 2 We've seen Potomac change but our neighborhood has not. And 3 we regard this as being a very different and a very -- really 4 a dramatic change to what we all have been living in and what 5 we all hope to continue. One of the things that I've heard 6 over and over again in this hearing is that the zoning meets 7 requirements. 8 And I'm not testifying as a lawyer, I'm not a 9 zoning lawyer by trade, but I do know that the regulations 10 says just because something satisfies specific requirements 11 doesn't mean the use is compatible. And so I'd like to talk 12 about, from a very personal standpoint what I believe is 13 compatibility. What I see from the facts as to compatibility. 14 And one of the most striking things to me, about 15 our neighborhood is density. It's a 2-acre zoning. It's 16 nothing but 2-acre zoning and it's one where some neighbors 17 have horses. I think one neighbor has -- other wildlife in 18 the neighborhood. It's one where the density will change 19 when we look at the people who will be coming into the 20 neighborhood. The structures, both in terms of size and in 21 density. And also the support personnel and services that 22 are going to be coming on a daily basis. 23 So what do I see that's different about the 24 development? And I've heard some of the testimony that it 25 really is compatible and fits in. Well, ours are single</p>
<p style="text-align: right;">246</p> <p>1 I've lived here for over 30 years and so I 2 appreciate this notion of aging in place and I'm actually 3 doing that. I'm 72 and so I'm in the age group that should 4 benefit from some senior living. I don't, however, regard 5 this development as allowing me to age in place. What I see 6 it doing is changing the character of my neighborhood and 7 really impacting my ability to age in the environment that 8 I've selected and lived in for over 30 years. 9 A home I've raised two daughters. I live with my 10 wife and I have to describe the neighborhood in kind of 11 personal terms. It's one where if I take a walk down the 12 street, I'm going to see my neighbors. I'm going to say 13 hello. I know them, and it's a neighborhood where I can look 14 out, I see wildlife, and I can actually see the stars at 15 night because it's not one where there's a lot of bright 16 lights. 17 It's a quiet neighborhood. It's a friendly 18 neighborhood, and it is truly a Potomac neighborhood. And 19 what I mean by that is it doesn't have all very large houses. 20 Some are old, some are ramblers. It has a real diversity of 21 housing. And it's one where it's all 2 acre lots. And so 22 one of the things that marks our neighborhood is a quite 23 Potomac neighborhood. 24 We live, of course, we go down South Glen, but 25 South Glen even that road is designated a country road, a</p>	<p style="text-align: right;">248</p> <p>1 family homes. There won't be one single family home 2 constructed on the Heritage development. Ours are all 3 distinctive homes. There aren't two homes on our street in 4 our neighborhood that look alike. They're all very, very 5 different. 6 Heritage will be all identical. Yes, they will 7 have the façade will be changed and I think that one of the 8 witnesses testified that there are changes to the façade and 9 we see that often in a development where it's the same 10 structure but you put a different face on it and it looks a 11 little different. That's not a distinctively Potomac home, 12 which is what ours is. Our homes are all 2-acre, 2-story 13 homes. This is not going to be 2 acres or 2 story. One of 14 the facilities, what they call the Lodge will be 4 stories. 15 That's a very different development. That's a very different 16 thing that sticks out like a sore thumb. 17 I was going to talk about lighting, but I think 18 that ought to wait. I think the lighting report, and I thank 19 you, Ms. Robeson, for asking for that because I think the 20 lighting is going to be a very important feature. As I said, 21 when I go out at night or I look out the window, I can see 22 stars. I don't think we're going to be doing that when 23 there's a lot of lighting and a lot of facilities that 24 require lighting. 25 And I understand why lighting is required. It's</p>

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<p style="text-align: right;">249</p> <p>1 senior citizen housing. And so you can't have dark streets. 2 You can't have dark sidewalks. But that changes the nature 3 of our neighborhood. It makes it a very, very different 4 place. 5 One of the things I said was, in terms of 6 character is density. And we can look at density different 7 ways and I look at density in terms of just people. How many 8 people are there? Are we dealing with the corner of M Street 9 and Wisconsin Avenue? Or are we dealing with Edison Road and 10 Dobbins which is a very different neighborhood. Heritage is 11 not going to be the corner in Georgetown, but it is not going 12 to be Edison and Dobbins any longer. 13 They are going to have 135 residents, three per 14 unit. A lodge of 125 residents, 29 independent, 68 assisted, 15 and 28 memory. That's 260 residents. That's 8.7 residents 16 per acre and that's not counting any employees or support. 17 The neighboring -- the neighborhood around it is 1.25 18 residents per acre, 30 acres on 24 acres. And so we're 19 comparing 8.7 residents per acre to 1.25, roughly 7 or 8 20 times the density and that's without considering the people 21 who we expect are going to be coming and going, and coming 22 and going, and coming and going throughout the day and 23 throughout the night. 24 My mother is in a senior living facility in New 25 Jersey and I can tell you ambulances come and go, visitors</p>	<p style="text-align: right;">251</p> <p>1 residents, 30 employees, you're now up to 9.7 people per 2 acre, and that's one -- versus 1.25 residents in the 3 surrounding neighborhood. Density of roughly eight or nine 4 times. 5 What am I leaving out? Well, a lot. I'm leaving 6 out the people who pick up the garbage, the trash, I'm 7 leaving out visitors who are going to be coming and going 8 because one of the selling points is that they want to have 9 people age in place to be able to live near their families. 10 And of course, that's a property thing to want to do, but it 11 means those families are going to be coming on a regular 12 basis to visit mom or dad. 13 The UPS trucks, the FedEx trucks, the U.S. Mail, 14 the food deliveries, the laundry deliveries, the housekeepers 15 for independent living and the aides for independent living. 16 So none of that is included in the 9.7 people per acre. And 17 so if I were looking at what I would expect the flow of 18 people to be, it's going to be a lot more than what we are 19 accustomed to on South Glen Road. 20 The reason that I think that's really critically 21 important and I think it's probably the most important thing 22 I have to say, is it's already a dangerous situation to drive 23 down South Glen and to see, I don't know whether they're 24 housekeepers or gardeners, or people who are just living in 25 the neighborhood who don't have cars, walking on South Glen.</p>
<p style="text-align: right;">250</p> <p>1 come and go, support comes and go. People picking up the 2 trash come and go. It's a very, very busy place. And I 3 expect that Heritage will be no different because you need it 4 in order to support those residents. So who do we have? 5 They say 30, I think 30 is going to be probably on the low 6 side. And I'll just sort of run through quickly, what they 7 anticipate having -- 8 HEARING EXAMINER ROBESON HANNAN: Well, 30 -- I'm 9 sorry, 30 what? 10 MR. ROSENTHAL: 30 support staff, I think at any 11 given time is what I recall. 12 HEARING EXAMINER ROBESON HANNAN: I see. Yes. 13 MR. ROSENTHAL: An executive director, a business 14 office manager, a marketing director, building engineer, food 15 and beverage director, wellness director, LPN, medical techs, 16 I wasn't sure whether they were including them, I don't know 17 how they can't. Assisted living caregivers, memory 18 caregivers, housekeeping staff, housekeepers, porters, 19 laundry aides, memory care director, enrichment director, 20 activity assistant, drivers, concierges, security 21 professionals, facility staff, food service staff, dining 22 room supervisors, a sous chef, cooks, utility workers, 23 server/dietary aides, kitchen and cleaning. 24 So if you look at that, and there's no reason why 25 you would exclude them from density, you're now up to 260</p>	<p style="text-align: right;">252</p> <p>1 And when you have 30 people on a shift, or 30 people at any 2 given time some of them are not going to be driving, they're 3 going to be taking the bus. 4 There is no bus that's going to leave them off at 5 Heritage Gardens. It's going to leave them at Falls and 6 South Glen and they're going to be adding to the people 7 walking down South Glen. And I can't emphasize enough, this 8 is a fast road. It's faster than it should be, and there are 9 no sidewalks and there are no real grass areas to walk on. 10 Sometimes there are, and then it drops off and the people 11 then are walking in the street. 12 And so you're going to have a lot of foot traffic 13 on South Glen that's going to change the character of South 14 Glen. I talked about density, not just in terms of people, 15 but I also think density is very important in terms of the -- 16 just the structures. What is it going to look like and 17 what's it going to feel like? 18 If you look at Heritage, it's 20 foot front 19 setbacks, 30 foot rear yard. If you look at the neighbors, 20 it's 95 front yard setbacks, it's 184 rear yard setbacks. 21 And even those numbers are probably a bit deceiving in favor 22 of Heritage because there's no setback for attached 23 dwellings. You know, they're attached. So when you look at 24 the density in terms of the structures that are going to be 25 built it's just a much more dense neighborhood.</p>

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<p>253</p> <p>1 If you look at the number of the total size of the 2 structures and the above-grade living area, Heritage is 3 roughly a 2 to 1 ratio of lot size to above-grade living 4 space as far as I can tell from the plans and I think -- Rick 5 Maggin is going to be testifying as to those numbers in more 6 detail. But if you compare the neighborhood it's 19 to 1. 7 So you're looking at a comparison of 2 to 1 versus our 8 neighborhood which is 19 to 1. By any stretch of the imagine 9 that's just a whole lot more dense. That's not the same 10 character. 11 And I've heard this term, compatible and 12 character. And there's no question that this is highly 13 subjective as to what's good, what's bad, what's similar, 14 what's different. But I don't think anyone can look at the 15 numbers and say that if you look at character, density is not 16 an important component of character. If you look to buy a 17 house, I don't think anyone can say, well, what's the lot 18 size? Am I buying a half-acre lot? Am I buying a quarter- 19 acre lot? Am I buying multi-family housing or am I buying a 20 2-acre lot? So when I hear the witnesses talk about 21 character and compatibility, I think density, 2-acre lots 22 versus multi-family dwellings. 23 There are other issues that I know that other 24 witnesses are going to testify to them do I'm not going to 25 belabor the point, but our neighborhood is going to be very</p>	<p>255</p> <p>1 appreciation difference it's because they did it much, much 2 better than Heritage is going to do it in terms of the area 3 between, which is heavily wooded, heavily landscaped, there 4 are rolling hills and truthfully, those people have a lot 5 more comfort between their lots and the facility that was 6 built at Victory than we'll have. 7 The trees, well, I was glad to hear that there are 8 some trees going in, but there isn't enough space in a 40 to 9 80 foot buffer to build the sort of trees that you would need 10 to really have a buffer. I heard that the growth will be at 11 20 years. Well, if I'm alive at age 92 I'll enjoy looking at 12 the trees. I think that if the residents move in are alive 13 when those trees are grown they can enjoy looking at the few 14 trees that are being planted. But that's not the sort of 15 buffer that I think any of the other facilities -- the other 16 comparisons that Mr. Kagan used really look like what 17 Heritage is intending to do. 18 And I'd like to pull up -- pull up the report 19 where I have it on my computer, I can pull it up as well. It 20 might actually be easier if I did it because I've bookmarked 21 the cites. 22 HEARING EXAMINER ROBESON HANNAN: Okay. 23 MR. ROSENTHAL: Okay. So if we go to - -and I'm 24 sure it's the wrong one. It wasn't so easy for me to do, I 25 guess. If we go to the Heritage plot, the visual. You take</p>
<p>254</p> <p>1 different while the construction, the noise, the debris, and 2 disruption is going on. And I think the way in which these 3 are build, the order in which they're built, is going to be 4 important and it's going to be a tremendous amount of 5 disruption. Not just to the neighborhood and the quite that 6 we have, but also to what's going on on South Glen. 7 I think there is testimony, and I think there is 8 going to be additional testimony as to the trees. When I 9 drive down Edison I see what is now the school. I can see 10 through those neighborhoods. I can -- through those 11 neighboring properties. I can see what's going to be there 12 when I drive down Edison or when I walk the dog down Dobbins. 13 I can see, it's not that far. I asked Mr. Kagan, when you 14 drove around Victory could you see the facility, and he said 15 no, he couldn't. He was honest about it and he said he 16 couldn't. He couldn't look through the houses. 17 Well, actually, you can also look past the houses 18 and you can't see what's built in Victory. And so I don't 19 know, Ms. Robeson, if it's appropriate, but I'd certainly 20 love to have you take a drive down our neighborhood and take 21 a drive down Victory and see just how well padded or how well 22 that facility is hidden from view from the neighbors. 23 And there was a lot of cross-examination and 24 testimony about whether Victory was an adequate comparison 25 with Heritage. Well, I would submit that if there was no</p>	<p>256</p> <p>1 a good look at what's there and you see that 40 to 80 foot 2 buffer and it's -- 3 HEARING EXAMINER ROBESON HANNAN: I'm not -- I 4 don't -- I'm not seeing it. 5 MR. ROSENTHAL: That's because I'm not sharing it. 6 My apologies. 7 HEARING EXAMINER ROBESON HANNAN: Can you just 8 tell me which exhibit it is? 9 MR. ROSENTHAL: Oh, okay. I can do that, yes. 10 That might be the easier way to do it. I'm going to page 2 11 of the report, which is Exhibit 58 of -- the LFM report. And 12 when you look at page 2, and you think about a 40 to 80 foot 13 buffer that includes the adjacent property owners, and then 14 you compare it with what else they have. And you go to 15 Victory, which is on page -- 16 HEARING EXAMINER ROBESON HANNAN: Wait, I'll get 17 it. 18 MR. ROSENTHAL: Page 12. 19 HEARING EXAMINER ROBESON HANNAN: Okay. Let me 20 got to page 2 first. I'm in the traffic -- 21 MR. ROSENTHAL: Okay. 22 HEARING EXAMINER ROBESON HANNAN: Okay. 23 Okay. Here's page 2. 24 MR. ROSENTHAL: Okay. And you see a 40 to 80 foot 25 buffer is very thin when compared with Victory, which shows a</p>

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<p>257</p> <p>1 very substantial buffer which explains why Mr. Kagan was not 2 able to see Victory from the road driving around on either 3 Bencross or Spicewood, or (indiscernible). And then, I 4 would say if you also take a look at Heritage and compare 5 with Arden, and you look at Arden which is on -- 6 HEARING EXAMINER ROBESON HANNAN: Is Arden on the 7 sales comp one? 8 MR. ROSENTHAL: I'm sorry? 9 HEARING EXAMINER ROBESON HANNAN: Okay. 10 MR. ROSENTHAL: I apologize, I couldn't hear you. 11 HEARING EXAMINER ROBESON HANNAN: I'm just trying 12 to find Arden on this. Do you know what page Arden is? 13 COURT REPORTER: I do. Arden would be -- the 14 drawing would be on page 7, the visual -- the aerial. 15 HEARING EXAMINER ROBESON HANNAN: Okay. 16 MR. ROSENTHAL: And you see, that too has 17 substantial buffering. I made much in the cross-examination 18 of 10827 Lockland and you see where that is. That's the only 19 house that's really nearby except for Normandy Farm which was 20 excluded from the analysis. Everything else is buffered. 21 Some of it by Falls Road. Some of it by a commercial 22 restaurant that's to the south of Arden. Some of it to the 23 extensive trees and some of it to the golf course to the 24 north. That looks nothing like the 40 to 80 foot buffering 25 that is anticipated.</p>	<p>259</p> <p>1 Brightview Grosvenor which is page 24. This is also very 2 different than Heritage. We have on one side, Grosvenor 3 Lane, which is a fast road. And we have to the right of it a 4 not-for-profit, no one lives there. We have to the south of 5 Brightview the townhouse complexes which Mr. Kagan said he 6 recognized lost value because new construction sometimes does 7 that. But there are only a precious few that actually are 8 abutting. Fleming Avenue also serves as a buffer. So on two 9 sides we have roads buffering it. One side a not-for-profit, 10 and on the fourth and remaining side we've got one or two 11 townhouses. None of those bear any resemblance to the thing 12 line of trees that would be expected to be planted or 13 growing, and I think as the cross-examination by Ms. Li 14 brought out, some of them may actually -- some of the 15 existing houses on the Heritage site may actually be 16 jeopardized by the roto structure being damaged. So if we 17 look at the buffering that's going on, it's a very different 18 environment. 19 One of the things that Mr. Kagan did was he took 20 what he called adjacent houses and he took what he called a 21 control group and he took a relatively small number. And I 22 asked him, I used this term regression analysis and he said 23 he could do it, but he didn't. And I'd like to explain why 24 that would have been so important. 25 HEARING EXAMINER ROBESON HANNAN: Okay.</p>
<p>258</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Okay. 2 MR. ROSENTHAL: And when you're ready, I'd like to 3 go to Fox Hills which is on page 17. 4 HEARING EXAMINER ROBESON HANNAN: Okay. 5 MR. ROSENTHAL: So this too, looks nothing like 6 Heritage. And let me explain what we're looking at. To the 7 north, which is cut off, is a golf course. Those people do 8 not live on the golf course. People who are adjacent, 9 there's one house, but that, of course, is across a 10 substantial road to the right of Fox Hills. Underneath that 11 the corner of -- I'm trying to think what that is. Well, 12 it's River Road right underneath it says 7409 Indraff Court, 13 right underneath that is a commercial establishment. It's a 14 nursery. Then River Road, as we all know, is a very fast 15 road. That serves as a buffer. 16 Now, if I'm at 17 Pepperell and I'm at 7409 17 Indraff, can I look across and see Fox Hills? Yes. That's 18 not my problem. My problem is I'm looking at River Road and 19 if you drive down that street, Pepperell or Indraff Court, 20 none of those people have the attractive view that people on 21 Edison and people on Dobbins have, or would have if it was 2- 22 acre zoning. And of course, on the left of Fox Hills that 23 we're seeing is 270. So that too is very different in terms 24 of the buffering and what's anticipated. 25 And then, let me go, if you're ready, to</p>	<p>260</p> <p>1 MR. ROSENTHAL: What it does, a regression 2 analysis says I'm going to look at different factors and I'm 3 going to be able to tell which is which is more important 4 than others. So I can tell you the relative impact of lot 5 size, of age of the house. I can look at the square footage 6 aboveground. I can look at the date of sale and whether some 7 sales which occurred, for example, in the go-go year of last 8 year of real estate prices, and I can isolate those things 9 and I can then tell you if I do a regression analysis whether 10 truly being adjacent to a senior development is going to 11 impact the price. 12 And I think if you look at what he did, yeah, he 13 took a group and he compared it with another group, but you 14 can't really say without looking into that group what the 15 impact is of being adjacent. For one thing, and I think that 16 Mr. Kagan honestly acknowledged this, is you've got to look 17 at which ones are abutting. Those are the people who are 18 going to feel the brunt of the housing project. 19 And in our case it will be 15 houses. In the case 20 of Arden Court there was only one. And so you really do have 21 to look because he only had one, at what's the impact. And 22 so it really is quite fair if you've only got one, to say do 23 you have another similarly situated house and is there some 24 reason why these square footage price of that house sold for 25 roughly half of another house down the street, which both</p>

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<p>261</p> <p>1 sold within four months of each other.</p> <p>2 And the obvious answer is no you can't unless you</p> <p>3 do a regression analysis. The logical conclusion is well,</p> <p>4 one is abutting the property, the senior development, and the</p> <p>5 other is down the street at the opposite end of the street.</p> <p>6 But without the regression analysis I think it's unfair to</p> <p>7 say, no there really isn't any impact. If you look at what</p> <p>8 Mr. Kagan said were median prices, and median sales, and</p> <p>9 median increases, well, actually the medians tell a very</p> <p>10 interesting story. Because in some cases the median either</p> <p>11 of square footage, lot size, above grade development are</p> <p>12 dramatically different.</p> <p>13 And without a proper analysis you can't just say</p> <p>14 I've taken a bunch that are - what I'll call adjacent based</p> <p>15 on my definition and I'll take another group that's based on</p> <p>16 what I'm going to consider the control neighborhood and I'm</p> <p>17 going to see if I can make them come out the same way. How</p> <p>18 are they different?</p> <p>19 Well, I'll give you a couple of examples. Victory</p> <p>20 Terrace, the median above grade square footage was 5310. If</p> <p>21 you look at the median above grade square footage of Victory</p> <p>22 Terrace there was 2535. In other words, houses of almost</p> <p>23 half the size and one of the things Mr. Kagan said could</p> <p>24 affect pricing increases is size of the house. Lot sizes</p> <p>25 too.</p>	<p>263</p> <p>1 11261 South Glen and that is number 4 on the control</p> <p>2 neighborhoods, and that's 3.2 acres. The former one was 2800</p> <p>3 square feet, the one on South Glen is 8400 square feet. One</p> <p>4 if four bedrooms, the other has 6. One has got 4 baths, the</p> <p>5 other is 10. And so I get the point that you have to look at</p> <p>6 numbers of houses; you can't look at just one. But when</p> <p>7 you've got such disparities in what A and B are, you can't</p> <p>8 simply say I'm going to ignore the individual differences</p> <p>9 between what's in an adjacent neighborhood and what's in a</p> <p>10 control neighborhood.</p> <p>11 And I could give you many other examples of where</p> <p>12 the adjacent neighborhood and the control neighborhood</p> <p>13 reflect dramatically different houses. And that's why you</p> <p>14 may get dramatically different results.</p> <p>15 I just want to emphasize that Mr. Kagan and I do</p> <p>16 agree that abutting properties is important. While in ours</p> <p>17 there are 15 abutting properties, in Arden ProMedica,</p> <p>18 Brandywine, there's only 1. In victory Terrace there were</p> <p>19 eight, with a very, very fulsome -- a very --</p> <p>20 HEARING EXAMINER ROBESON HANNAN: Wait. Are you</p> <p>21 saying -- just a second. Are you saying in his report he</p> <p>22 only listed one sale, but there's more in your neighborhood,</p> <p>23 there's -- are you --</p> <p>24 MR. ROSENTHAL: No, I'm comparing --</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Are you --</p>
<p>262</p> <p>1 This report that was produced compares some lots</p> <p>2 that are half an acre or less, with some lots that are 3</p> <p>3 acres or more. It compares some houses that are 2000 square</p> <p>4 feet with some that are 9000 square feet. And you can't</p> <p>5 really say without looking at a proper analysis what the</p> <p>6 impact of those individual factors are. And I think that Mr.</p> <p>7 Kagan repeatedly referred to the fact that there are these</p> <p>8 individual factors. I am in complete agreement with him,</p> <p>9 which is why the sort of analysis which simply lumps some</p> <p>10 houses in one neighborhood with some houses in another</p> <p>11 neighborhood and then tries to draw conclusions is woefully</p> <p>12 inadequate.</p> <p>13 And to give you just one or two examples, 10001</p> <p>14 South Glen Road --</p> <p>15 HEARING EXAMINER ROBESON HANNAN: What page are</p> <p>16 you on?</p> <p>17 MR. ROSENTHAL: I'm sorry?</p> <p>18 HEARING EXAMINER ROBESON HANNAN: What page are</p> <p>19 you on?</p> <p>20 MR. ROSENTHAL: I'm sorry, on page 5. Page 5 of</p> <p>21 Exhibit 58. Let me know when you're ready.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: I'm ready, I</p> <p>23 think.</p> <p>24 MR. ROSENTHAL: Okay. And look at 10001 you're</p> <p>25 comparing a house with less than half-an-acre with a house at</p>	<p>264</p> <p>1 MR. ROSENTHAL: No, I apologize. I'm now</p> <p>2 comparing just abutting properties, not necessarily sales.</p> <p>3 I'm just --</p> <p>4 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>5 MR. ROSENTHAL: -- looking at maps of those</p> <p>6 neighborhoods and seeing around Heritage how many houses</p> <p>7 would back, would share a property line, and there are 15.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>9 MR. ROSENTHAL: If I look at Arden, ProMedica, and</p> <p>10 Brandywine there's only one. And I think Mr. Kagan would say</p> <p>11 no, there are actually more but not with a sort of narrow</p> <p>12 buffer that we're looking at. If you look at Victory</p> <p>13 Terrace, those all abut, they share a property line, and</p> <p>14 there are eight of them. But once again, Victory has a very</p> <p>15 robust buffer. If you look at Fox Hills, there are no</p> <p>16 abutting property owners, none whatsoever, the only abutting</p> <p>17 property owners are River Road and 270, and the other street.</p> <p>18 I do think that the testimony from the individual</p> <p>19 who actually bought her house on Lockland who negotiated</p> <p>20 based on the fact that there was a development that was being</p> <p>21 discussed and proposed, and she was able to exact a reduction</p> <p>22 in price is the sort of dramatic testimony that shows there</p> <p>23 really is a reduction in property values. It really is going</p> <p>24 to make a difference and I think that her real life</p> <p>25 experience is probably the best thing that you could find to</p>

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<p>265</p> <p>1 show not theoretically speaking, but as a real life matter is 2 it going to affect our neighborhood. 3 So in conclusion I'd just like to say this is a 4 neighborhood where I would like to age in place. It's going 5 to be a very different place, it's not going to be the same 6 neighborhood. I'm not sure it's going to be a neighborhood 7 at all. And I really wish that we had at least more 8 buffering that would make us more like Victory and less like 9 you know, I'll use the expression again, the corner of 10 Wisconsin and M Street in Georgetown. Thank you. 11 HEARING EXAMINER ROBESON HANNAN: Thank you. 12 Ms. Harris, questions? 13 MS. HARRIS: Yes. Thank you. Just a few. 14 Mr. Rosenthal, you said you're an attorney; is 15 that correct? 16 MR. ROSENTHAL: But I'm not testifying as an 17 attorney, thankfully. 18 MS. HARRIS: Okay. Are you a real estate 19 attorney? 20 MR. ROSENTHAL: I am not. 21 MS. HARRIS: Okay. And are you a real estate 22 broker? 23 MR. ROSENTHAL: I am not. 24 MS. HARRIS: And are you a real estate agent? 25 MR. ROSENTHAL: I am not.</p>	<p>267</p> <p>1 around that lot? 2 MR. ROSENTHAL: Yeah, I thought that actually 3 makes the case even better for opposing. Because if you look 4 at Brandywine -- 5 HEARING EXAMINER ROBESON HANNAN: What am I 6 looking at right now? Which facility? 7 MS. HARRIS: Brandywine. 8 MS. HARRIS: Brandywine. Okay. 9 MR. ROSENTHAL: I think, Ms. Robson, she'd like to 10 look at page 7 of the Exhibit 58. 11 MS. HARRIS: So my question was, why didn't when 12 you were talking about the Arden Court buffer why did you not 13 focus on the Brandywine? 14 MR. ROSENTHAL: Well, I was using a shorthand, but 15 let me just discuss Brandywine. Brandywine, as I understand 16 it was a relatively recent development. And if you look at 17 the sales on Lockland -- 18 HEARING EXAMINER ROBESON HANNAN: 19 MS. HARRIS: No, all I -- my question wasn't 20 about -- 21 MR. ROSENTHAL: Let me finish. Let me finish my 22 answer -- 23 MS. HARRIS: (inaudible). 24 HEARING EXAMINER ROBESON HANNAN: No, Mr. 25 Rosenthal. This is just time to answer her questions. Mr.</p>
<p>266</p> <p>1 MS. HARRIS: Are you an appraiser? 2 MR. ROSENTHAL: I'm a neighbor. 3 MS. HARRIS: Okay. 4 MR. ROSENTHAL: I'm a neighbor and I'm a -- 5 neighbor and I'm -- 6 MS. HARRIS: That was not my question. My 7 question was whether you were an appraiser? 8 MR. ROSENTHAL: Let me complete my answer. So my 9 testimony is really not to give an opinion based on 10 professional experience, but an opinion based on living in 11 the neighborhood and looking at the documents that have been 12 presented, mostly by you, Ms. Harris, that give you a very 13 clear picture of what our development will look like as 14 opposed to the others. And so that's the basis for my 15 testimony. It's not to testify as an appraiser, or as a real 16 estate attorney. 17 MS. HARRIS: All right. Thank you. 18 MR. ROSENTHAL: But as a neighbor. 19 MS. HARRIS: Turning to Exhibit 58, page 7 of Mr. 20 Kagan's -- I have it up on my screen and I can show it. So 21 you focused on Arden Court. Was there -- when you were 22 talking about landscaping buffering, correct? 23 MR. ROSENTHAL: Yes. 24 MS. HARRIS: Was there a reason that you didn't 25 focus on the Brandywine project and the landscaping buffer</p>	<p>268</p> <p>1 Brown can come back and if you need to explain something, 2 But this is just answering her questions. 3 MR. ROSENTHAL: So the answer is I did consider 4 Brandywine. 5 MS. HARRIS: And the buffer that Brandywine was 6 providing? 7 MR. ROSENTHAL: I did and the reason that I was 8 referring to Arden was really as shorthand because there were 9 several senior facilities that are lumped together. But I 10 think Brandywine should be considered and I'm happy to 11 explain why. 12 MS. HARRIS: And then, I think you said that based 13 on your calculation you calculated that we would have 8 14 people -- persons per acre, not including the employees; was 15 that correct? 16 MR. ROSENTHAL: Yes. 17 MS. HARRIS: And would it surprise you, if you 18 looked at Brandywine that they would -- based on their 19 acreage of -- their land area of 4 acres and providing 140 20 beds that they would have 34 people per acre; would that 21 surprise you? 22 MR. ROSENTHAL: There's some question because I 23 understand there are going to be three bedroom units, and I 24 think that some of the estimates and explanations -- 25 MS. HARRIS: You think --</p>

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<p style="text-align: right;">269</p> <p>1 MR. ROSENTHAL: -- of how many people will be 2 living there, may not be taking into account that if you've 3 got three bedrooms, they're there for a reason and there will 4 be more than 2 people living in those units. 5 MS. HARRIS: Are you familiar with the residential 6 care facility requirements that it's a -- that it's the 7 couples that are over 62 years old? 8 MR. ROSENTHAL: Yeah, I am. And that's why I was 9 kind of wondering. When we had a community neighborhood 10 meeting, when I think you presented -- your clients 11 presented, there was some discussion about being able to age 12 in place and I think there was some discussion of the fact 13 that there was -- they were large enough that people could 14 come and stay there. And I don't know whether the plan was 15 for people to stay as short-term visitors or long-term 16 visitors or pole would use those third bedrooms for other 17 purposes. But the fact is you are building units with three 18 bedrooms. It's -- they're not being built with one bedroom 19 and a den. 20 MS. HARRIS: Do you -- could you imagine a 21 scenario where at holiday time an elderly couple of 75 or 80 22 had their out of town family to come visit and needed an 23 extra bedroom? 24 MR. ROSENTHAL: I could certainly imagine that. 25 And I could imagine also where if somebody has a third</p>	<p style="text-align: right;">271</p> <p>1 that instance is 16 individuals per acre. Would that 2 surprise you? 3 MR. ROSENTHAL: I'm not sure how you're 4 calculating that. And I'm going to have to ask you how 5 you're calculating it and also whether you're including any 6 of the staff, any of the 30 or more people -- 7 MS. HARRIS: No, as I said, I was comparing it 8 your 8 people -- persons per acre, not including staff. I 9 recognize that you said that the -- 10 MR. ROSENTHAL: So -- 11 MS. HARRIS: -- if you included the staff the 12 number would increase to 9. 13 MR. ROSENTHAL: So am I correct that the Lodge 14 would have 125 residents; 29 independent, 69 assisted and 28 15 memory? And the multi-family units would have 135? And 16 you're saying that would not be 135 so it would be two per 17 unit and you'd enforce that rule. Is that how you get down 18 to the 8? 19 MS. HARRIS: You -- I was using your testimony 20 where you said there would be approximately 8 people per 21 acre. 22 MR. ROSENTHAL: Yeah. And I'm telling you how I 23 got there. 24 MS. HARRIS: Okay. And I'm saying based on your 8 25 per acre -- I wasn't -- I was asking you about Brandywine and</p>
<p style="text-align: right;">270</p> <p>1 bedroom and they have somebody move in and there's nobody 2 policing them. There's nobody there to say, hey, we're going 3 to evict you. And so I think one of the things that's 4 attractive to people is having three bedrooms. I think the 5 people who are buying the units, you know, some of them I 6 have no doubt will be having more people living there than, 7 you know, just the couple who are buying it. 8 MS. HARRIS: I would proffer that the conditional 9 use has conditions and mechanisms in place to assure you that 10 that would not happen. 11 HEARING EXAMINER ROBESON HANNAN: Well, I -- just 12 a note. On your rebuttal, I'd like to hear about -- I'm 13 confused about ownership enforcement and that type of thing 14 and I'd like you to have someone on rebuttal that can address 15 that. 16 MS. HARRIS: Yes. And you had made a note of that 17 at the beginning, this morning. 18 HEARING EXAMINER ROBESON HANNAN: I did? Okay. 19 MS. HARRIS: We will address it. 20 HEARING EXAMINER ROBESON HANNAN: Sorry to 21 interrupt. 22 MS. HARRIS: Along the same lines of density, just 23 to provide another example that we've talked about, the Ardis 24 facility. That also has a total acreage of four acres of 25 land area. Would it surprise you that the density per - in</p>	<p style="text-align: right;">272</p> <p>1 Ardis. I wasn't asking you anything more about Heritage. 2 I have no more questions for Mr. Rosenthal. 3 MR. ROSENTHAL: Then I'm fairly confused by your 4 question. I wasn't testifying as to -- 5 HEARING EXAMINER ROBESON HANNAN: So you're not -- 6 you're not up, so to speak. Okay? So she doesn't have any 7 more questions. 8 Does anyone else have questions? 9 Okay. Hearing none, Mr. Brown, do you have 10 redirect? 11 MR. BROWN: Just a few items. 12 Mr. Rosenthal, do you know whether or not the 13 zoning of the Brandywine and Arden Courts' properties are 14 RE2? 15 MR. ROSENTHAL: I don't know that. 16 MR. BROWN: Was there -- you said that you wanted 17 to talk about Brandywine in relation to your testimony. Is 18 there something you wish to add about Brandywine? 19 MR. ROSENTHAL: Yes. The one thing that I thought 20 was -- 21 MS. HARRIS: That's outside the scope of the 22 cross. 23 MR. ROSENTHAL: No because -- 24 HEARING EXAMINER ROBESON HANNAN: No, you -- Mr. 25 Rosenthal. That's not up to you.</p>

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<p>273</p> <p>1 MR. ROSENTHAL: I'm sorry. I (inaudible).</p> <p>2 HEARING EXAMINER ROBESON HANNAN: You're not on</p> <p>3 the floor, okay?</p> <p>4 MR. ROSENTHAL: I apologize.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Ms. Harris, I do</p> <p>6 think it was part of the scope of his original testimony and</p> <p>7 part of the scope of the cross.</p> <p>8 MS. HARRIS: The question on cross had to do with</p> <p>9 the buffers provided around the Brandywine facility. That</p> <p>10 was the only point of bringing up Brandywine with respect to</p> <p>11 the buffers.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: I thought you</p> <p>13 also brought up the density.</p> <p>14 MS. HARRIS: And the density, right. But Mr. --</p> <p>15 yes, the density and the buffers.</p> <p>16 HEARING EXAMINER ROBESON HANNAN: So what are you</p> <p>17 addressing right now, Mr. Rosenthal?</p> <p>18 MR. ROSENTHAL: It's a very simple point and that</p> <p>19 is Brandywine, I think it was in 2020 was constructed. If</p> <p>20 you look at Lockland --</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Wait. What are</p> <p>22 you going to compare?</p> <p>23 MR. ROSENTHAL: I'm going to compare on page 5,</p> <p>24 two sales that are post Brandywine. And if you look at those</p> <p>25 sales the one for the one for 10827 was sold in January of</p>	<p>275</p> <p>1 examination was.</p> <p>2 Mr. Brown, I'm going to turn it over to you for</p> <p>3 redirect.</p> <p>4 MR. BROWN: I have nothing further.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: All right. With</p> <p>6 that, let me just do a couple of housekeeping things. We</p> <p>7 have citizen testimony this coming Wednesday, March 2nd at</p> <p>8 9:30. That's the citizen testimony, correct?</p> <p>9 MS. HARRIS: Correct.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: Mr. Brown, is</p> <p>11 that your understanding?</p> <p>12 MR. BROWN: Yes.</p> <p>13 HEARING EXAMINER ROBESON HANNAN: Okay. So we</p> <p>14 will do that. I would like everyone who was present in the</p> <p>15 meeting today to get their email addresses to Nana Johnson of</p> <p>16 her office -- her email is</p> <p>17 nana.johnson@montgomerycountymd.gov. One word. All right.</p> <p>18 MS. HARRIS: And Ms. Robeson, if I could clarify</p> <p>19 that statement does not apply to our witnesses whose</p> <p>20 information is in the record; is that correct?</p> <p>21 HEARING EXAMINER ROBESON HANNAN: No, it does not</p> <p>22 apply to -- it does not apply to expert witnesses that have</p> <p>23 been called by Ms. Harris or Mr. Brown.</p> <p>24 Okay. so with that we are going to adjourn</p> <p>25 until -- we can start actually if -- no I don't want to do</p>
<p>274</p> <p>1 2021.</p> <p>2 MS. HARRIS: Ms. -- if I could object again, just</p> <p>3 for a moment. I did not cross Mr. Rosenthal on anything</p> <p>4 having to do with sales and the economic value. I asked him</p> <p>5 whether he was a real estate agent, a real estate attorney,</p> <p>6 et cetera.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: I (inaudible).</p> <p>8 MS. HARRIS: There were no other questions.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: So I don't</p> <p>10 understand where -- let me do this. Just let me figure out.</p> <p>11 What is the proffer -- what you want to say? Just proffer</p> <p>12 it, don't say it.</p> <p>13 MR. ROSENTHAL: Sure.</p> <p>14 HEARING EXAMINER ROBESON HANNAN: Just tell me</p> <p>15 (inaudible) what would you say?</p> <p>16 MR. ROSENTHAL: That the buffer surrounding</p> <p>17 Brandywine was ineffective because if you look at a sale post</p> <p>18 construction which is 10827 Lockland, it suffered</p> <p>19 substantially --</p> <p>20 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>21 MR. ROSENTHAL: -- in value.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: Okay. That is</p> <p>23 beyond -- okay. Then, I'm going to strike that because that</p> <p>24 is beyond the scope of -- that was more what you were asking</p> <p>25 Mr. Kagan. So that was beyond the scope of what the cross-</p>	<p>276</p> <p>1 that. We could -- we can adjourn until 9:30 on Wednesday,</p> <p>2 March 2nd. All right.</p> <p>3 MS. HARRIS: Thank you.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: Thank you. Have</p> <p>5 a good evening everyone.</p> <p>6 MS. HARRIS: Good night.</p> <p>7 (The recording was concluded.)</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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CERTIFICATE OF NOTARY PUBLIC

I, Brendon Cuenca, do hereby certify that I
am neither counsel for, related to, nor employed by
any of the parties to this case and have no interest,
financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed my notarial seal this 9th day of MArch,
2022.



Brendon Cuenca

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I, Molly Bugher, do hereby certify that the
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provided; and that I am neither counsel for, related to, nor
employed by and of the parties to this case and have no
interest, financial or otherwise, in its outcome.



Molly Bugher, CDLT-161

Date: March 9, 2022

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