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# Transcript of Hearing - Day 3

**Date:** March 2, 2022

**Case:** Heritage Gardens Land, LLC

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**Phone:** 888.433.3767

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<p>1 OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS</p> <p>2 FOR MONTGOMERY COUNTY, MARYLAND</p> <p>3 -----x</p> <p>4 In Re: :</p> <p>5 HERITAGE GARDENS LAND, LLC : Case No. CU 22-01</p> <p>6 -----x</p> <p>7 Day 3</p> <p>8 HEARING</p> <p>9 (Held Remotely)</p> <p>10 Before Hearing Examiner Lynn Robeson Hannan</p> <p>11 Rockville, Maryland</p> <p>12 Wednesday, March 2, 2022</p> <p>13 9:31 a.m.</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 Job: 437160</p> <p>24 Pages: 1 - 218</p> <p>25 Transcribed by: Molly Bugher</p>	<p>1 C O N T E N T S</p> <p>2 TRANSCRIPT OF THE PROCEEDINGS PAGE</p> <p>3 TESTIMONY OF WITNESSES:</p> <p>4 Neil Goldman 9</p> <p>5 Nina Weisbroth 15</p> <p>6 Renata Baker 21</p> <p>7 Catherine Scafide 27</p> <p>8 Amy Embry 34</p> <p>9 Abdul Chaudhry 34</p> <p>10 Heidi Finger 55</p> <p>11 Susanne Lee 61, 108</p> <p>12 Patty McGrath 99</p> <p>13 Marie Brigham 157, 198</p> <p>14 Rick Maggin 166</p> <p>15</p> <p>16 E X H I B I T S</p> <p>17 NUMBER DESCRIPTION PAGE</p> <p>18 Exhibit 17 Map 8</p> <p>19 Exhibit 51 NRI 178</p> <p>20 Exhibit 53 Forest conservation 67</p> <p>21 Exhibit 53A Approved NRI 68</p> <p>22 Exhibit 56C Aerial photo 177</p> <p>23 Exhibit 56C Site plan 177</p> <p>24 Exhibit 70 Plan 103</p> <p>25 Exhibit 74 Environmental buffers 65</p>
<p>1 A P P E A R A N C E S</p> <p>2 ON BEHALF OF MONTGOMERY COUNTY OFFICE OF ZONING AND</p> <p>3 ADMINISTRATIVE HEARINGS:</p> <p>4 LYNN ROBESON HANNAN, HEARING OFFICER</p> <p>5</p> <p>6 ON BEHALF OF THE APPLICANT:</p> <p>7 PATRICIA HARRIS, ESQUIRE</p> <p>8 LERCH, EARLY &amp; BREWER, CHTD.</p> <p>9 7600 Wisconsin Avenue, Suite 700</p> <p>10 Bethesda, MD 20814</p> <p>11 Phone: 301-986-1300</p> <p>12</p> <p>13 ON BEHALF OF WEST MONTGOMERY</p> <p>14 CITIZEN'S ASSOCIATION:</p> <p>15 DAVID BROWN, ESQUIRE</p> <p>16 LAW FIRM OF KNOPF &amp; BROWN</p> <p>17 401 E Jefferson St, #206,</p> <p>18 Rockville, MD 20850</p> <p>19 Phone: 301-545-6100</p> <p>20</p> <p>21 ALSO PRESENT TELEPHONICALLY:</p> <p>22 ASHLEY EVERHART, COURT REPORTER</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 E X H I B I T S</p> <p>2 NUMBER DESCRIPTION PAGE</p> <p>3 Exhibit 82 Potomac Master Plan - 150</p> <p>4 list of senior living units</p> <p>5 Exhibit 94E Potomac subregion Forest protection 140</p> <p>6 and Enhancement recommendations</p> <p>7 Exhibit 94G Photos 85</p> <p>8 Exhibit 94I Steep slopes GIS 73</p> <p>9 Exhibit 94N Impervious area diagram 176</p> <p>10 Exhibit 97A Revised/restated staff report 130</p> <p>11 Exhibit 113A Email 169</p> <p>12 Exhibit 113B Fourth Presbyterian school plan 171</p> <p>13 Exhibit 113C Lot size/above grade living area 191</p> <p>14 Comparison</p> <p>15 Exhibit 114A List of abutting properties 9</p> <p>16 Exhibit 114B Map 10</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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<p>5</p> <p>1 PROCEEDINGS</p> <p>2 MS. ROBESON: And this is a continuation of the</p> <p>3 case of CU-2201, an application for a residential care</p> <p>4 facility on South Glen Rd. in Potomac, Maryland. Will the</p> <p>5 parties identify themselves for the record?</p> <p>6 MS. HARRIS: Good morning. Pat Harris with Lerch,</p> <p>7 Early, &amp; Brewer here on behalf of the Applicant.</p> <p>8 MS. ROBESON: Mr. Brown, you're on mute.</p> <p>9 MR. BROWN: Sorry about that. Good morning.</p> <p>10 David Brown of Knauf and Brown, counsel for certain of the</p> <p>11 residents.</p> <p>12 MS. ROBESON: All right.</p> <p>13 MR. BROWN: The West Montgomery County Citizens'</p> <p>14 Association.</p> <p>15 MS. ROBESON: Okay, thank you. A few things. We</p> <p>16 have scheduled time beginning at 9:30 to hear testimony from</p> <p>17 citizens. A couple of things for those who weren't here at</p> <p>18 the prior hearings. This is a Microsoft Teams meeting. And</p> <p>19 because of that we are recording it. It would be -- the</p> <p>20 record would be recorded -- or recorded by the court reporter</p> <p>21 anyway. The court reporter (inaudible) the court reporter.</p> <p>22 Please do not interrupt each other during the</p> <p>23 hearing. Do not interrupt the attorney unless you have an</p> <p>24 objection. Please do not use the chat. Not everyone can</p> <p>25 monitor the chat and we cannot have ex parte communication.</p>	<p>7</p> <p>1 the office. We will keep checking and let you know. The</p> <p>2 other thing is, I was able -- we were able to recover the</p> <p>3 audio/visual from the first hearing. So I will be reviewing</p> <p>4 that. And so that issue was resolved, I believe. Were there</p> <p>5 any preliminary matters from the parties?</p> <p>6 MS. HARRIS: Ms. Robeson --</p> <p>7 MS. ROBESON: Yes.</p> <p>8 MS. HARRIS: I think that -- just to be mindful of</p> <p>9 the people's, residents' time that have taken time out of</p> <p>10 their busy day and sort of arranged their schedules. If</p> <p>11 people can testify as they are available, I mean for the</p> <p>12 first part of this hearing for the residents that are here.</p> <p>13 I know a number of them have rearranged their schedules more</p> <p>14 than once now to try to have an opportunity to testify.</p> <p>15 MS. ROBESON: Okay. So is there anyone who must</p> <p>16 testify in the next hour? I see Mr. Goldman and Ms.</p> <p>17 Weisbroth, their hands.</p> <p>18 MS. BAKER: And Ms. Baker as well.</p> <p>19 MS. ROBESON: Okay.</p> <p>20 MS. BAKER: I'm not on the video because I could</p> <p>21 not get audio when I joined. I'm on by phone only.</p> <p>22 MS. ROBESON: Okay. So we will take Mr. Goldman,</p> <p>23 Ms. Weisbroth, and Ms. Baker. We will start with them. All</p> <p>24 right. Mr. Goldman, please raise your right hand.</p> <p>25 MR. GOLDMAN: Good morning.</p>
<p>6</p> <p>1 So please do not use the chat.</p> <p>2 Your testimony today will be under oath and</p> <p>3 subject to cross-examination, which means that a party from</p> <p>4 the other -- from the Applicant can cross-examine you and ask</p> <p>5 you questions on your testimony. Because we don't -- we are</p> <p>6 trying to get away from interruptions, for those who wish to</p> <p>7 testify, there is a raise your hand button at the top of the</p> <p>8 screen. And please raise your hand if you -- when you want</p> <p>9 to testify and I will take your (inaudible). And I will take</p> <p>10 (inaudible).</p> <p>11 Okay. I don't know -- do you want to mute your</p> <p>12 microphone? Or are there -- does anyone have a second device</p> <p>13 on? Let's try this again. Okay. (Inaudible) background</p> <p>14 noise. I don't -- if there's anyone that has a second device</p> <p>15 close to their computer, that will create that. Okay. It's</p> <p>16 gone now, for the record.</p> <p>17 The other thing is I'm going to ask you to state</p> <p>18 your name and address, street address, and your email</p> <p>19 address. That really helps us with -- the way the Postal</p> <p>20 Service is working, that helps us to get you notice more</p> <p>21 quickly. Are there -- two other things in the last hearing.</p> <p>22 Ms. Harris, we did not have the letter in the office that</p> <p>23 your -- the letter of support. Because this record is going</p> <p>24 to be open, we can give it more time and/or she can resubmit</p> <p>25 by email, scanning it in an email. But we -- it was not in</p>	<p>8</p> <p>1 MR. BROWN: Mr. --</p> <p>2 MS. ROBESON: Just a second. Please raise your</p> <p>3 right hand.</p> <p>4 Do you solemnly affirm under penalties of perjury</p> <p>5 that the statements you're about to make are the truth, the</p> <p>6 whole truth, and nothing but the truth?</p> <p>7 MR. GOLDMAN: I do.</p> <p>8 MS. ROBESON: All right. Please state your</p> <p>9 name --</p> <p>10 MR. BROWN: Ms. Robeson?</p> <p>11 MS. ROBESON: Yes.</p> <p>12 MR. BROWN: Ms. Robeson, may I interrupt just a</p> <p>13 moment? We weren't finished with preliminary matters because</p> <p>14 you didn't get to me. I just wanted to suggest that you</p> <p>15 bring up online one of the maps that shows the surrounding</p> <p>16 neighborhood and that you ask each witness to identify on</p> <p>17 that map where they live, if that's relevant.</p> <p>18 MS. ROBESON: I have Exhibit 17 and I can share</p> <p>19 that. I think that will do what you wish. Are you seeing</p> <p>20 it?</p> <p>21 MS. HARRIS: Yes.</p> <p>22 MS. ROBESON: All right. Anything else, Mr.</p> <p>23 Brown? I didn't mean to neglect you.</p> <p>24 MR. BROWN: No, that's -- I just thought it would</p> <p>25 be helpful to all of us to know where the testifiers live if</p>

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<p style="text-align: right;">9</p> <p>1 they are close to the property.</p> <p>2 MS. ROBESON: That's fine. Okay. With that,</p> <p>3 we've sworn Mr. Goldman in. Mr. Goldman, it's -- you are up.</p> <p>4 MR. GOLDMAN: Thank you, so much. My name is Neil</p> <p>5 Goldman and I live with my wife, Vicki Cramm at 11010 Dobbins</p> <p>6 Drive. My email address is NGoldman@GoldmanVanBeek. I am a</p> <p>7 lawyer in private practice focused on real estate and</p> <p>8 litigation, but I'm here on my own behalf today. While our</p> <p>9 property does not abut the site of the application, we are</p> <p>10 across the street from properties that do and we will be</p> <p>11 affected by the proposed development if it is approved. It</p> <p>12 will be visible from our property and will be affected by the</p> <p>13 lights from it, the development and the vehicles that service</p> <p>14 in, and sirens from ambulances that will be visiting the</p> <p>15 facilities at all hours.</p> <p>16 It will change the character of the neighborhood</p> <p>17 profoundly. I understand the others will address these</p> <p>18 issues in more detail. And I'm not going to dwell on them</p> <p>19 now. I submitted as Exhibit 114A -- I don't know if -- am I</p> <p>20 able to share exhibits?</p> <p>21 MS. ROBESON: Let me just -- are you seeing it?</p> <p>22 MR. GOLDMAN: It's there. A number of the</p> <p>23 neighbors were involved in working together to oppose the</p> <p>24 application. And I -- I was the one doing the administrative</p> <p>25 work of collecting the signed opposition, some of which are</p>	<p style="text-align: right;">11</p> <p>1 MS. ROBESON: Okay. Can I -- just one thing I</p> <p>2 forgot to say quickly. If this goes up to -- on appeal on a</p> <p>3 written transcript. So you can't say -- and the transcript</p> <p>4 doesn't know where my cursor is.</p> <p>5 MR. GOLDMAN: Okay.</p> <p>6 MS. ROBESON: Keep your identification of B'nai</p> <p>7 Tzedek property is sufficient. But we've been using north --</p> <p>8 there is the north arrow. So this is west, north, east, and</p> <p>9 south. No --</p> <p>10 MR. GOLDMAN: It's the center property on the</p> <p>11 east. And it's the only one of the properties on that side</p> <p>12 of the project that is not in blue-green indicating in</p> <p>13 opposition. It's the only property --</p> <p>14 MS. ROBESON: I think (inaudible) been identified.</p> <p>15 I just wanted to point that out for the witnesses that are</p> <p>16 going to testify next. But go ahead.</p> <p>17 MR. GOLDMAN: Okay. There is a property on the</p> <p>18 other side that is identified as Heritage -- it's more or</p> <p>19 less the center one on the west side. That property is owned</p> <p>20 by what we understand to be -- it's Heritage Potomac South</p> <p>21 Glen Properties Trust. And we understand that to be</p> <p>22 affiliated with the Applicant. There was a meeting among the</p> <p>23 neighbors and Mr. Wormald. And we inquired about that</p> <p>24 because a number of us have concerns about the potential for</p> <p>25 that property to later, assuming that this is approved, and</p>
<p style="text-align: right;">10</p> <p>1 detailed, some of which appear to be on a form. On the -- on</p> <p>2 114A, I've identified those people whose properties abut the</p> <p>3 project and who -- it's the fourth column from the left. And</p> <p>4 the yes indicates that they are abutting neighbors.</p> <p>5 The right hand column, just because there are --</p> <p>6 the time it took to do this and our uncertainty as to how to</p> <p>7 present them, late in the game last week we tried to</p> <p>8 encourage people to submit the opposition statements</p> <p>9 themselves. And many did. And I didn't want to create</p> <p>10 confusion and clutter the record with duplicates. So the far</p> <p>11 right column indicates those people who sent in oppositions</p> <p>12 directly to OZHA that I was aware of. Maybe others have, but</p> <p>13 I did not submit the signed statements from those who had</p> <p>14 submitted them directly.</p> <p>15 I would like to pull up, if I may, Exhibit 114B.</p> <p>16 This is a map of the property and there is in, I guess a sort</p> <p>17 of blue-green, highlighted properties of folks who own</p> <p>18 property abutting the project who oppose it. And you can see</p> <p>19 it's the vast majority of them. The -- in 114, which was an</p> <p>20 email that I submitted, I listed 13 of 20 adjacent</p> <p>21 properties, signed statements opposing it. There are two</p> <p>22 properties that are significant and different in character</p> <p>23 than the others. One is the B'nai Tzedek Synagogue which is</p> <p>24 an institutional property that is on -- that your cursor is</p> <p>25 over it. The other --</p>	<p style="text-align: right;">12</p> <p>1 we obviously don't want it approved, but if it is we are</p> <p>2 concerned about the potential for that property to become</p> <p>3 another access point to the project.</p> <p>4 When we -- there was one neighbor who asked Mr.</p> <p>5 Wormald about it and he indicated in response to the</p> <p>6 question, as best I recall, that that property was owned by a</p> <p>7 different entity than the Applicant. That may be the case,</p> <p>8 but again, it's our understanding that it's an affiliate and</p> <p>9 is under common control and to the extent that this project</p> <p>10 is approved, which we hope and believe it should not be, it</p> <p>11 should be a condition that that property can't be used to</p> <p>12 access the project. It appears to me and other neighbors</p> <p>13 with whom I've spoken that the application is not driven by a</p> <p>14 perceived need to provide housing for seniors. Just know</p> <p>15 that I'm 69. It appears to be a naked real estate --</p> <p>16 HEARING EXAMINER ROBESON HANNAN: You look</p> <p>17 (inaudible).</p> <p>18 MR. GOLDMAN: Pardon?</p> <p>19 MS. ROBESON: Never mind. I said you look great</p> <p>20 though.</p> <p>21 MR. GOLDMAN: Oh. Well that's kind of you. Thank</p> <p>22 you. It appears to be a naked real estate play to put 45</p> <p>23 townhomes that they call cottages to make them appear more</p> <p>24 quaint, I believe, in an RE2 zone that would not permit more</p> <p>25 than roughly 8 residences when one considers the buffers and</p>

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<p>13</p> <p>1 other environmental constraints on this property. Given the 2 provisions of the zoning code, to shoehorn in the townhomes 3 the Applicant is required to provide the support services, 4 thus the need for the Lodge. 5 And in a related issue, if the project were 6 approved, the application presents very complex issues 7 regarding the enforcement of the age restrictions contained 8 in the zoning code with respect to the individually owned 9 units. It's far different from a rental community where a 10 single owner can easily exercise control over who can reside 11 in the property. The difficulty in enforcement presents a 12 reason not to approve the application. Simply having 13 covenants encumbering the property does not create a readily 14 available enforcement mechanism. And there are issues of 15 what happens to the property on death, how can it be 16 transferred, et cetera. And we have not heard the Applicant 17 explain that in any cohesive manner. That's all I have. And 18 I thank you. 19 MS. ROBESON: Thank you, very much. Ms. Harris, 20 any questions? Ms. Harris, you are on mute. 21 MS. HARRIS: No questions, thank you. I will, if 22 I -- no questions. Thank you. 23 MS. ROBESON: All right. I just wanted to point 24 out two things very quickly for the benefit -- Mr. Goldman, 25 can you please lower your hand?</p>	<p>15</p> <p>1 street address, and email address for the record. 2 MS. WEISBROTH: Good morning. My name is Nina 3 Weisbroth. I live at 10800 South Glen Rd. with my spouse, 4 Lance Kaline, and one of my adult children, River Kaline. We 5 are located almost directly across the street from the 6 planned project. My email address is NWeisbroth@gmail.com. 7 I want to thank you for the opportunity to speak. 8 The West Montgomery County Citizens' Association, 9 Mr. Brown, and my neighbors who directly about the development 10 have spoken and will continue to speak in detail as to the 11 myriad of issues and concerns this project raises. I want to 12 speak to a few aspects that really concern me. I want to 13 stay in no uncertain terms that I am vehemently opposed to 14 the Heritage Gardens plan because this product is 100 percent 15 antithetical to the nature of the community where the 16 developer seeks to build. 17 We are comprised of essentially, 2-acre single- 18 family homes, many with backyard gardens and chicken coops. 19 It has a rural, pastoral, quiet feel even on South Glen Rd.. 20 There are exactly two streetlights on of all of the roads 21 running by the property. I fear that this peaceful and at 22 night, dark neighborhood, is about to be pierced by a 23 bustling and bright development that is in stark contrast to 24 its potential setting. 25 I am concerned about the lighting, even more</p>
<p>14</p> <p>1 MR. GOLDMAN: Yes, I -- 2 MS. ROBESON: For the benefit of the parties, 3 there was some testimony. For the Applicants there was 4 testimony that -- a couple of days ago that the application 5 meets all the minimum requirements. And you know, the 6 standard isn't whether it meets the minimum. Well, it is, 7 but it's also whether it's compatible. So what we do, is if 8 there are legitimate concerns, we do have the ability to try 9 and address those concerns even if it's not the minimum. 10 For the -- those in opposition, I just wanted to 11 say zoning is not a plebiscite. So the number of 12 neighbors -- which means it's not a poll of how many people 13 oppose it. The criteria for approval are set out in the 14 staff report and it's whether it meets those criteria. So 15 your weightiest testimony will be whether it meets the 16 criteria that is set out in the zoning ordinance, which is 17 also set out in the staff report. So I wanted to make those 18 two points. Now I have -- next up we're going to have Ms. 19 Weisbroth and then Ms. Baker, correct? Ms. Weisbroth, please 20 raise your right hand. 21 Do you solemnly affirm under penalties of perjury 22 that the statements you're about to make are the truth, the 23 whole truth, and nothing but the truth? 24 MS. WEISBROTH: I do. 25 MS. ROBESON: Please state your name, address,</p>	<p>16</p> <p>1 concerned given the lack of detail regarding the lighting. 2 And I thank you for asking for the lighting plan. Regardless 3 of the detail however, there's no turning away from the fact 4 that the property will light up the neighborhood all night 5 long to meet code. What is now a dark forest will be lit up 6 kind of like having a baseball field pop up in your backyard. 7 It is unimaginable. 8 Whatever restrictions can be placed to reduce the 9 amount of outdoor lighting will be greatly appreciated. More 10 tragic than the light issue is the notion that this project 11 will put a huge number of cars and commercial vehicles onto a 12 two lane road with no sidewalks and no shoulders which is 13 already burdened by volume during commute hours. I literally 14 have traffic backing up to my driveway, and I am past the 15 development, from the intersection of Falls Rd. on some days. 16 It is ludicrous for the developer to hold out that there will 17 be no traffic impacts from the development. 18 I believe the townhouse section alone is 48 units, 19 which at two cars apiece is likely to add an additional 100 20 trips a day, not including their employees, their guests, or 21 anyone associated with memory care and assisted living 22 building. It is incomprehensible that a neighborhood can be 23 assaulted with that level of additional traffic. Reducing 24 the overall density of this project is key to reducing the 25 traffic impacts we will be forced to bear if it goes forward</p>

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<p>17</p> <p>1 at its current levels.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Ms. Weisbroth --</p> <p>3 just may I interrupt for a moment?</p> <p>4 MS. WEISBROTH: Of course.</p> <p>5 MS. ROBESON: I'm pulling up -- I'm hoping you can</p> <p>6 see on the screen a picture of the surrounding area.</p> <p>7 MS. WEISBROTH: Yes.</p> <p>8 MS. ROBESON: Is there any way you can describe</p> <p>9 where your property is?</p> <p>10 MS. WEISBROTH: Certainly. I am essentially two</p> <p>11 driveways further south on South Glen Rd. than the proposed</p> <p>12 development.</p> <p>13 MS. ROBESON: Two driveways further south. I'm</p> <p>14 trying to figure out south. So would you be between Lockland</p> <p>15 Rd. and the --</p> <p>16 MS. WEISBROTH: No.</p> <p>17 MS. ROBESON: No.</p> <p>18 MS. WEISBROTH: I'm before you get to Edison. I'm</p> <p>19 between the development and Edison.</p> <p>20 MS. ROBESON: Okay. So Edison is --</p> <p>21 MS. WEISBROTH: Edison intersects with South Glen</p> <p>22 Rd..</p> <p>23 MS. ROBESON: Oh, I see. And where are you?</p> <p>24 MS. WEISBROTH: I'm just -- I am slightly further</p> <p>25 east, closer to Falls Rd. than Edison.</p>	<p>19</p> <p>1 That's -- no worries. Not only do I worry about the</p> <p>2 potentially untenable increase in traffic for general</p> <p>3 driving, but I'm extremely concerned about the staff at the</p> <p>4 facility who rely on public transportation. There is no bus</p> <p>5 service to this property and there undoubtedly never will be.</p> <p>6 Those riding the bus will need to walk down South Glen on the</p> <p>7 side of a road with no shoulders, at all hours of the day and</p> <p>8 night with little lighting, posing an extremely hazardous</p> <p>9 situation for the employees and the drivers.</p> <p>10 I have no suggestions for ameliorating this and</p> <p>11 will only say that it is reflective of the completely</p> <p>12 inappropriate use of this property. I'm also concerned about</p> <p>13 the strategy at play for this development. It is essentially</p> <p>14 a two-part development, a building focused on offering</p> <p>15 housing to those with memory care and in need of assistance,</p> <p>16 being used it to leverage a townhouse section for people 65</p> <p>17 and older with very unusual ownership requirements that are</p> <p>18 going to be hard to follow that really seems incredulous to</p> <p>19 the marketability to that project.</p> <p>20 Further, these independent living residents have</p> <p>21 no way to access service other than to get into a car and</p> <p>22 drive. This is important to raise because a similar age</p> <p>23 restrictive project went up in the Potomac prosperous town</p> <p>24 center with simple ownership and within walking distance of</p> <p>25 services. That development found it was unable to sell to</p>
<p>18</p> <p>1 MS. ROBESON: Okay.</p> <p>2 MS. WEISBROTH: I'm between -- yeah.</p> <p>3 MR. BROWN: Perhaps you could bring --</p> <p>4 (Crosstalk)</p> <p>5 MR. BROWN: -- Exhibit 114B. That would be</p> <p>6 easier.</p> <p>7 MS. ROBESON: Okay. Ms. Weisbroth, does your</p> <p>8 property appear on this Exhibit 114B?</p> <p>9 MS. WEISBROTH: I believe it's the property --</p> <p>10 yeah. Yes. Well, is that Edison Rd. that I'm looking at on</p> <p>11 the --</p> <p>12 MS. ROBESON: The very top of -- or just below the</p> <p>13 north arrow there is a road. And I think that's Edison.</p> <p>14 MS. WEISBROTH: So where Edison intersects, if you</p> <p>15 just hop across the street, just that next -- just down --</p> <p>16 not that one. The next one down. That one I believe is my</p> <p>17 property.</p> <p>18 MS. ROBESON: So you are on the southeast</p> <p>19 intersection?</p> <p>20 MS. WEISBROTH: Correct.</p> <p>21 MS. ROBESON: Southeast?</p> <p>22 MS. WEISBROTH: Yes.</p> <p>23 MS. ROBESON: Okay. You are the lot. Okay, thank</p> <p>24 you. Sorry to interrupt. Go ahead.</p> <p>25 MS. WEISBROTH: Oh, no. No problem at all.</p>	<p>20</p> <p>1 the intended age group and then asked to be released from</p> <p>2 that form of requirements so that they could sell the homes.</p> <p>3 I implore you to set in place restrictions that</p> <p>4 would not allow the developer to be released from the</p> <p>5 requirements allowing use as a special exception. Lastly and</p> <p>6 most importantly, this development is not one by right. A</p> <p>7 development by right, a single family home on 2 acre parcels</p> <p>8 would be welcomed by everyone in the neighborhood. So this</p> <p>9 is not a NIMBY issue. It's not an anti-development issue.</p> <p>10 We would welcome development of that property. This is not</p> <p>11 that.</p> <p>12 This request is for a special exception to build</p> <p>13 the equivalent square footage of an IKEA warehouse store in</p> <p>14 the middle of our neighborhood. It in no way fits the</p> <p>15 character of where we live. It's like shoving a square peg</p> <p>16 into a round hole and it is not like the developer is</p> <p>17 building something in short supply. Potomac is now drowning</p> <p>18 in senior housing of all varieties. This developer has spent</p> <p>19 no time with this community save attending two town meetings</p> <p>20 that he was asked to attend to explain what was happening.</p> <p>21 They have faced resistance every step of the way.</p> <p>22 The fact is the developer withdrew the original</p> <p>23 plan, which was -- which looked like it was not going to be</p> <p>24 approved, finagled a change in the zoning to better fit their</p> <p>25 plans, and then resubmitted the request for a special</p>

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<p>21</p> <p>1 exception is simply repugnant and an affront to everyday 2 citizens who simply cannot fight that kind of scheming. In 3 closing, I do not believe this project fulfills the 4 intentions for special exception. 5 And if the project goes forward, I asked for as 6 much care and thoughtfulness of the existing neighborhood as 7 you can bring in your deliberations. I think you very much. 8 MS. ROBESON: Thank you. Ms. Harris, any 9 questions? 10 MS. HARRIS: No questions, thank you. 11 MS. ROBESON: Ms. Weisbroth, if you can, can you 12 lower your hand please? 13 MS. WEISBROTH: Of course. 14 MS. ROBESON: Ms. Baker, you are up next. 15 MS. BAKER: Thank you. 16 MS. ROBESON: Okay. Just a second. I'm going 17 to -- are you raising your right hand? 18 MS. BAKER: I am. 19 Do you solemnly affirm under penalties of perjury 20 that the statements you're about to make are the truth, the 21 whole truth, and nothing but the truth? 22 MS. ROBESON: And can you state your street 23 address and email address for the record? 24 MS. BAKER: I can. I'm Renata Baker. I'm the 25 current homeowner together with my husband, of the property</p>	<p>23</p> <p>1 As you've already heard, and I'm mindful that I 2 don't necessarily want to repeat everything that others have 3 already testified to, that there are undeniable traffic 4 problems on South Glen Rd.. As has already been noted, this 5 is a historic two-lane road that is already suffering from 6 overuse and more development than it can handle. There are 7 no sidewalks. That has been mentioned on this. 8 And many people use this road to access as an 9 alternative route (inaudible) as people further out in the 10 county we have experienced increased traffic problems from 11 people using South Glen Rd. as an alternative access to other 12 commercial developments at Montgomery Mall which are 13 expanding, and corporate offices and residential communities 14 that are growing all around the Democracy Boulevard area. 15 When I leave my property in the morning to take my 16 son to school I have to sit to exit out of Lockland Rd. for 17 far more time than should be reasonable. And any additional 18 development and use of this road will highly impact me 19 personally on a daily basis. It is unsafe to try to pull out 20 every morning with the volume of traffic that already exists 21 on that road. 22 I understand that a traffic survey or study has 23 been requested. But the timing of that survey is 24 unfathomable to me. To think that we are living in normal 25 times in a pandemic and that we have normal traffic patterns</p>
<p>22</p> <p>1 located at 10828 Lockland Rd., Potomac, Maryland. My email 2 address is NataB8840@gmail.com. I will note that I also have 3 an 84-year-old uncle who suffered a stroke that lives with 4 us, and a teenage son that resides at our property. I also 5 work for a Fortune 50 company for 25 years and have lived in 6 Potomac for 25 years, with my company being located within 5 7 miles of this proposed facility near Montgomery Mall. 8 My husband is a lawyer that works in Washington, 9 DC and my (inaudible) attends the Cibola (phonetic) which is 10 located within a mile of this property, of this proposed 11 project. As a result we commute to work and school, shop, 12 dine, seek medical care, and entertainment all in the 13 vicinity of the proposed facility. And as a result I believe 14 I'm highly informed with respect to the traffic patterns and 15 the ordinary course activities and use of this area by 16 residents in the surrounding community. 17 Because I'm informed with respect to this 18 community, I'm highly opposed to the requested construction 19 of a commercial residential care facility deeply embedded 20 within a residential neighborhood. I oppose this application 21 not only because it will directly impact the quiet enjoyment 22 of my own property, but because the requested development 23 would be highly incompatible with the neighborhoods in the 24 immediate facility [sic] and adversely impact the surrounding 25 area at all levels.</p>	<p>24</p> <p>1 occurring today is unbelievable and not supportable. As I 2 mentioned, I work for a Fortune 50 company that employs 3 thousands of employees. 4 I know people that live in these communities. My 5 company has not required people to come back to the office 6 fully. People are working from home. And any study that's 7 done currently will be skewed to a lower traffic pattern than 8 we experienced shortly before the pandemic. So there is no 9 way to judge, at this particular time, the full impact. And 10 even today there is significant impact already on South Glen 11 Rd.. 12 As has been testified to, the facility will 13 increase safety hazards for all of the neighborhood 14 residential pedestrians including children that routinely 15 walk or bike to surrounding areas and must use South Glen Rd. 16 to reach other neighborhoods, access the village shopping 17 center services, or access Great Falls Park if you want to 18 actually walk to those areas. South Glen Rd. has no 19 sidewalks, bike lanes, and pedestrians would encounter 20 hundreds of additional vehicles attempting to access the 21 proposed facility on a daily basis including emergency and 22 commercial vehicles that substantially increase the risk of 23 injury. 24 This facility proposes noise levels that are 25 incompatible with the surrounding residential neighborhood</p>

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<p>25</p> <p>1 from the required emergency medical services that would 2 necessarily occur in this type of facility. The 24 hour 3 staffing that includes multiple shift changes and 24 hours of 4 parking lot activity, commercial delivery services for food 5 and supplies back into that of a restaurant. 6 We heard testimony that there will be a restaurant 7 on site, a dining facility serving over 100 occupants every 8 day. Commercial garbage pickup, removal with dumpsters and 9 multiple weekly pickups that will be required by code. 10 (Inaudible) property, outdoor entertainment that used for 11 substantial group activities. All of this activity is well 12 beyond any noise level currently generated by the single- 13 family residential homes located largely on 2-acre 14 properties, parcels surrounding the property, and would 15 directly impact my property more than others because my 16 property abuts the rear of the facility where the proposed 17 large facility is planned, and the garbage facility and the 18 commercial loading dock and the parking lots will all be 19 located. 20 As a result, all of these commercial services will 21 occur directly behind my home and will impact the quiet 22 enjoyment of our property 24 hours (inaudible). There is no 23 residential (inaudible) that comes close to generating any of 24 this noise level. On Monday I also learned that the lighting 25 for this facility will directly impact my property at all</p>	<p>27</p> <p>1 MS. ROBESON: I should've asked since -- Mr. 2 Brown, do you have any questions? None -- 3 MR. BROWN: I have no questions. Thank you. 4 MS. ROBESON: Okay, thank you. Thank you Ms. 5 Baker. You may be excused from testifying, but you may stay 6 around of course. I see a hand from a Catherine Scafide. 7 Maybe I said that wrong 8 MS. SCAFIDE: It's okay. It's Scafide. I have a 9 meeting at 11:00. I was wondering if I could testify between 10 now and then. 11 MS. ROBESON: (Inaudible). Please raised your 12 right hand. 13 Do you solemnly affirm under penalties of perjury 14 that the statements you're about to make are the truth, the 15 whole truth, and nothing but the truth? 16 MS. ROBESON: Please state your street address, 17 your name, street address, and email address for the record. 18 MS. SCAFIDE: Sure. Catherine Scafide. I live at 19 10820 Edison Rd.. My property doesn't abut the development, 20 but is across the street from it. And my email -- 21 MS. ROBESON: Wait. Let me stop you for a moment. 22 MS. SCAFIDE: Okay. 23 MS. ROBESON: Is your property show -- is your 24 property shown on this map? 25 MS. SCAFIDE: Yes, it is. It looks like it's --</p>
<p>26</p> <p>1 evening hours, given the height of the proposed facility that 2 exceeds the height of the existing gym that is located, or 3 barn that is located. 4 It is also located at a higher elevation which 5 substantially increases the height of it. Heritage has 6 focused solely on the decorative elements of the lighting and 7 as not addressed the fact of the illumination of the 8 surrounding -- to the surrounding homes. They have stated 9 that they believe that the existing trees offer sufficient 10 protection from such lighting intrusion without any evidence 11 of the same with respect to my property. 12 They conveniently submit plans that show green, 13 lustrous trees, but not even their own expert testified that 14 trees (inaudible) their own expert testified that trees 15 without leaves will clearly make all of their facilities 16 visible even within (inaudible) feet of my home. There is no 17 home within my residential community that generates such 18 lighting issues. 19 For all of the above stated reasons I'm highly 20 opposed to this planned development as this use is in no way 21 compatible with any residential dwelling community. Thank 22 you for your time. 23 MS. ROBESON: Thank you. Ms. Harris, do you have 24 any questions? 25 MS. HARRIS: No questions, thank you.</p>	<p>28</p> <p>1 yes, it is the -- I'm sorry. Is that the -- what are we 2 calling that? The northwest? Oh, no, no. It's not shown on 3 here. It's across the street. So it's not shown on here. 4 MS. ROBESON: So a few lots across the street? 5 MS. SCAFIDE: No, no. It's across the other side 6 of Edison. You don't have the properties on the other side 7 of Edison showing. 8 MS. ROBESON: Okay. Let me just do one thing 9 quickly. Is there any way you can describe it roughly on 10 this map? 11 MS. SCAFIDE: Sure. Can you zoom in, please? 12 Thank you. So yes, it is on Edison Rd., first of all. And 13 it is the second property in from the intersection of Edison 14 and South Glen. 15 MS. ROBESON: Okay. 16 MS. SCAFIDE: That one. 17 MS. ROBESON: That's helpful. Okay, thank you. 18 MS. SCAFIDE: No problem. And you need my email? 19 MS. ROBESON: Yes. 20 MS. SCAFIDE: My email is KScafide@gnu.edu. 21 MS. ROBESON: Thank you. Go ahead. 22 MS. SCAFIDE: So thank you. Thank you for the 23 opportunity to provide testimony. I'm not a lawyer. I am a 24 nurse and a professor. And my husband of over 20 years is an 25 analyst for the County police. We've both lived in</p>



<p style="text-align: right;">29</p> <p>1 Montgomery County our entire lives. We previously lived in a 2 much denser area of Georgetown Village located across Roger 3 Johnson on quarter acre lots up until 2019. 4 And I grew up on a farm. So I want our kids to 5 really enjoy the many benefits of a more rural life without 6 sacrificing a lot of our commute time. So we worked very 7 hard to save our money and bought, in 2019, the two-acre 8 property on Edison. We fell in love with the quiet 9 neighborhood. It's very quiet and has this old Potomac charm 10 of these various houses that don't look alike and some 11 ramblers. We bought a rambler. And established old trees, 12 which I find so characteristic of this area. 13 My husband and I, we -- my husband is a big guy. 14 We can't even touch our hands around some of the trees in our 15 yard. We love our house and the neighborhood. Our kids ride 16 bikes in the street. We have chickens, a huge vegetable 17 garden. Our kids camp in the backyard and we have a 18 telescope. We do stargazing because there is really very 19 little light pollution. And we love the wildlife. We see 20 hawks and eagles, fox, deer, coyote. And it's part of what 21 we enjoy about living in a more rural environment. 22 I have very significant concerns about the impact 23 of the noise and the light pollution that will really disrupt 24 this quality of life that we really bought into with his 25 neighborhood. I mean, we are recently living -- chose to</p>	<p style="text-align: right;">31</p> <p>1 have been numerous fatal and near fatal accidents on South 2 Glen just west of our street. We actually heard one of those 3 fatal accidents while we've been residing at our property. 4 There is a sharp turn right down the street from us and it's 5 very dangerous. There are stuffed animals that are all tied 6 up on the tree and stuff because of the fatal accidents that 7 have happened there. 8 And like so many have testified to, people 9 dangerously walk on South Glen. Like I said, you can't even 10 go around the car that's turning because there is not. 11 There's not enough space to build sidewalks. I'm constantly 12 terrified that I'm going to hit somebody while I'm trying to 13 drive my kids to school because people are walking on South 14 Glen, dodging around vehicles, jumping onto the grass to 15 hopefully not get hit. It's -- that road is a complete 16 overhaul if it's going to sustain the traffic and the 17 pedestrians that are going to come with a major build like 18 this. 19 And then finally, I echo what so many people have 20 said. Having lived now here for a couple of years, I saw the 21 traffic pre-COVID. And it was on unusual for the traffic 22 from Falls and South Glen to back up all the way to Norton. 23 Because that intersection is not made for vehicles -- the 24 amount of traffic coming off of South Glen. You can only 25 turn left and straight in one lane and right on the other.</p>
<p style="text-align: right;">30</p> <p>1 save our money and purchase this house in this neighborhood 2 because of its quiet life. And we also very concerned about 3 how the noise and the light pollution will impact the 4 wildlife of the area. 5 We've talked about trees, but I don't think 6 there's been much discussion about the wildlife. The 7 architect mentioned that there will be a four-story property 8 with lights on patios on the third and fourth floor. There 9 are no four-story properties anywhere near this neighborhood. 10 I can't understand why this Lodge has to be -- can't be two 11 stories or three stories, which is more consistent to the 12 height of the cottages that they plan to build and is more 13 consistent with the height of buildings in our neighborhood. 14 Our property, we live in a rambler. So our house 15 is one-story. Every morning I take my kids to school and 16 commute to work. I have kids who are in grade school. I 17 have been shocked by the traffic and dangers of South Glen. 18 It wasn't something I anticipated when I moved into the 19 neighborhood. It's not something you sometimes think about 20 when you pick a house. But South Glen is a really dangerous 21 road. It is very narrow. There are no sidewalks, as 22 everybody has already testified to. 23 There's not even really space to go around cars. 24 It -- I mean there is no -- and so if somebody is turning you 25 can't even go around the car, it's that narrow. And there</p>	<p style="text-align: right;">32</p> <p>1 And a whole bunch of people always turn left to go down 2 Falls. And so the traffic will stay there. And we will wait 3 multiple rounds of lights to even attempt to get to the 4 intersection. And so people dangerously go around cars to 5 try to get through that intersection. It's really dangerous. 6 So I just can't imagine the impact of -- this 7 volume of people and cars will have on the safety of the 8 residents, both the new residents who would live there and 9 the existing residence in our neighborhood. And it 10 completely detracts from the character of this neighborhood, 11 which is why we moved here, to have a huge building in 12 facility and residents and lights and light pollution. And I 13 finally -- I mean, I was driving past -- I think it's the 14 Brandywine nursing home. There are signs that say there are 15 units available. So I just -- I find it surprising that 16 there is this need for additional facilities to support these 17 senior citizens in this kind of type of facility. So anyway, 18 that's it. Thank you, very much for letting me testify. I 19 appreciate it. 20 MS. ROBESON: Thank you, very much. Are there 21 questions from either Ms. Harris or Mr. Brown? Ms. Harris? 22 MS. HARRIS: No, no questions. Thank you. 23 MS. ROBESON: Mr. Brown? 24 MR. BROWN: No questions. 25 MS. ROBESON: Ms. Scafile?</p>

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<p>33</p> <p>1 MS. SCAFIDE: Scafide. 2 MS. ROBESON: I'm sorry. 3 MS. SCAFIDE: It's okay. 4 MS. ROBESON: You may be excused. 5 MS. SCAFIDE: Thank you. 6 MS. ROBESON: Thank you for your testimony. Okay. 7 I see some hands, but they are phone numbers. So I don't 8 know who -- I don't know a name to call. I see a phone 9 number. Amy Embrey has her hand up. Ms. Embrey, are you 10 here? 11 MS. EMBREY: Yes, I am. Can you hear me? 12 MS. ROBESON: I can hear you. Do you have a 13 camera? 14 MS. EMBREY: I do. 15 MS. ROBESON: Will you please turn it on? 16 MS. EMBREY: I would prefer not to. 17 MS. ROBESON: But this is a quasi-judicial hearing 18 and we need to see your face, please, if possible. 19 MS. EMBREY: For the entire duration? I only ask 20 because I have COVID issues. 21 MS. ROBESON: Just while you speak. If you have 22 pajamas on, we won't tell. 23 MS. EMBREY: Okay. All right. I am-- 24 unfortunately I'm down with COVID. So I'm unfortunately down 25 with COVID so I'm just not pulled together today.</p>	<p>35</p> <p>1 school. It was a school and the property will be developed 2 into something. And the proposed use for this property would 3 bring far less traffic. 4 Seniors don't tend to go very often to many 5 places, than a school would. Less light pollution and less 6 traffic. And I would just like to add that as a realtor in 7 the community, there is a high level of need for such 8 housing. As the president of the Homeowner's Association for 9 the community called Tara we have -- a huge percentage of our 10 residents are retirees. And they are probably 70s or later. 11 And they are living in these huge houses that don't suit them 12 anymore, but they have a desire to stay in the community and 13 there isn't a great alternative for them. 14 And these houses don't tend to have first level 15 primary suites that are conducive to aging in place. And so 16 I do see a need in the community for such a development. And 17 I feel that the proposed use is low density. It's very 18 smart. It's aesthetically pleasing. It gives dignity to our 19 seniors and offers new and different options for seniors who 20 may not want to go into assisted living or retirement or CCRC 21 communities. 22 Because of COVID situations the desires have 23 changed as I see them, as I talk to my clients. We also have 24 just have an incredible housing shortage and that's 25 unprecedented and it continues to cause prices to go up in</p>
<p>34</p> <p>1 MS. ROBESON: (Inaudible) we are kind and 2 compassionate and I hope you (inaudible). But we would like 3 you to turn your camera on. 4 MS. EMBREY: Hello. 5 MS. ROBESON: I'm sorry that you have COVID. 6 (Inaudible) okay. I won't make any more editorial comments. 7 (Inaudible). 8 MS. EMBREY: So I provided a letter -- 9 MS. ROBESON: Wait. First I have to swear you in. 10 Please raise your right hand. 11 Do you solemnly affirm under penalties of perjury 12 that the statements you're about to make are the truth, the 13 whole truth, and nothing but the truth? 14 MS. EMBREY: Yes, I do. 15 MS. ROBESON: And would you please state your 16 name, street address, and email address for the record? 17 MS. EMBREY: Amy Embrey, 10905 Ballin Tree Lane, 18 Potomac, Maryland. 19 MS. ROBESON: And your email? 20 MS. EMBREY: ADEmbrey@gmail.com. 21 MS. ROBESON: Okay, thank you. Go ahead. 22 MS. EMBREY: So I definitely am aware of the 23 surrounding property owners' concerns. And my principal 24 thoughts surrounding all of this is that this property was 25 zoned for a school the whole time. It's been zoned for a</p>	<p>36</p> <p>1 the community. And as I see it from my profession, this 2 allows an opportunity for the seniors who are taking up these 3 big houses that could be homes for growing families, a place 4 to go and free up some of the housing stock. 5 So I was also incidentally part of the community 6 push to install a sidewalk along the bend in River Rd. years 7 ago, that took forever. And it was vehemently opposed by the 8 neighbors abutting that sidewalk. And, you know, I would 9 just say that it neither impacted their property values in 10 any way and it also added value to their houses in the form 11 of being able to get places like the canal. 12 And so the concerns that often arise out of change 13 are fear of the unknown. And I hear those fears and I 14 understand them and I would like to underscore from the real 15 estate perspective it neither diminishes the values of the 16 abutting properties. On the contrary, it will help them if 17 done well, which the proposed development does seem to be 18 done very well, can add to the value of our community, the 19 surrounding houses, a great and a lot of great solutions for 20 the community. 21 And I live here in Potomac. I commute South Glen 22 almost every day, maybe two or three times a day. I don't 23 want traffic either. And as I mentioned, I feel like of all 24 the solutions, of all the proposed developments out there 25 that could happen, this is one of the least invasive ways</p>

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10 (37 to 40)

<p>37</p> <p>1 that it could be developed in terms of impacting the traffic 2 in our area.</p> <p>3 MS. BAKER: Really? You really think so? Oh 4 my --</p> <p>5 MS. ROBESON: Okay, just a second. Whoever is 6 talking, there is -- this is not your time to talk. There is 7 no crosstalk in this hearing.</p> <p>8 MS. BAKER: Is there the opportunity to cross- 9 examine this witness?</p> <p>10 MS. ROBESON: Yes. Who is speaking? Is this Ms. 11 Baker?</p> <p>12 MS. BAKER: It is.</p> <p>13 MS. ROBESON: It is. You will get an opportunity 14 to ask questions. But first, Ms. Embrey, are you finished 15 with your testimony?</p> <p>16 MS. EMBREY: I think so, yeah.</p> <p>17 MS. ROBESON: Okay. Ms. Harris, do you have 18 questions?</p> <p>19 MS. HARRIS: No, I have a procedural question, 20 however. And that is, individuals that are testifying 21 without representation, I want to just clarify that they have 22 a right to cross-examine other individuals that are 23 testifying who aren't represented?</p> <p>24 MS. ROBESON: They do have a right to do that, but 25 there -- so Ms. -- I'm sorry. For Ms. Baker benefit, there</p>	<p>39</p> <p>1 experience with that.</p> <p>2 MR. BROWN: All right. So let me ask you on the 3 basis of your first-hand experience if any one of them has 4 expressed a strong preference to continue to be a homeowner, 5 a landowner in the smaller properties as opposed to being a 6 renter?</p> <p>7 MS. EMBREY: Yes. In fact, he may be on here 8 today. He's very interested in this particular community. 9 And he's not the only one.</p> <p>10 MR. BROWN: Are you aware that the -- that if 11 someone buys one of these units they can only be sold to 12 someone over 62 years of age?</p> <p>13 MS. EMBREY: I am, yes.</p> <p>14 MR. BROWN: Do you believe that -- based upon your 15 dealings with other people who might be interested, have 16 you -- do you have any information to suggest that that would 17 not concerned -- that particular limitation would not concern 18 those people about the salability of their property?</p> <p>19 MS. EMBREY: Not at all. I have no concern about 20 that. And in fact, I can tell you that I just put on the 21 market a house in the Courts of Clarksburg that's a 55 plus 22 community that restricts any residents under 19. And I sold 23 the house, or it's pending, in under seven days for well 24 above list price. I have zero concerns about the salability 25 of these properties in the future. We know that with the --</p>
<p>38</p> <p>1 are rules governing what kind of questions you can ask. So 2 I'm going let you have -- begin to ask questions. First let 3 me ask, Ms. Harris, did you have questions?</p> <p>4 MS. HARRIS: No, I don't. Thank you.</p> <p>5 MS. ROBESON: Okay. Mr. Brown, did you have 6 questions?</p> <p>7 MR. BROWN: Yes, just one or two. I was 8 wondering, you mentioned that you believe a number of the 9 homeowners in Potomac that own large homes in their 70s would 10 be interested in moving into one of these, one of these 11 cottage units; is that correct?</p> <p>12 MS. EMBREY: Absolutely.</p> <p>13 MS. ROBESON: Just a second. Can somebody 14 silence -- I hear phones going off and I can't hear the 15 witness. So if you have phones in the background, can you 16 unplug them or something? Okay. Go ahead, Mr. Brown. I 17 couldn't hear what you said.</p> <p>18 MR. BROWN: I'll start over.</p> <p>19 Are you a -- you testified that you believe that 20 there are senior people in their 70s who own large homes in 21 Potomac that would be interested in staying in the Potomac 22 area, but relocating to a smaller house such as the ones that 23 are going to be provided in the cottage units; is that 24 correct?</p> <p>25 MS. EMBREY: Absolutely. I have first-hand</p>	<p>40</p> <p>1 the baby boomers are one of our largest population groups. 2 And only about 10 percent of the houses in the greater DMV 3 have first level primary suites. We don't have situations 4 that allow them to live independently. So it is scarcity. 5 It will sell.</p> <p>6 MR. BROWN: Well, congratulations on your sale. 7 No further questions.</p> <p>8 MS. EMBREY: Thank you.</p> <p>9 MS. ROBESON: All right. I am going to point out, 10 to my knowledge need is not a criteria for approval. So I 11 let that go through because Ms. Embrey did raise it. And I 12 let you cross-examine on it. But just for everyone here, to 13 my knowledge, market need -- there are some conditional uses 14 where market need is a criteria for approval. This is not 15 one of them.</p> <p>16 MS. EMBREY: Okay. Can I ask a question?</p> <p>17 MS. ROBESON: Is this Ms. Baker?</p> <p>18 MS. EMBREY: This is Amy Embrey.</p> <p>19 MS. BAKER: No, I --</p> <p>20 MS. ROBESON: Wait. Let's -- wait. Wait. I 21 can't understand who is speaking.</p> <p>22 MS. EMBREY: Amy Embrey.</p> <p>23 MS. ROBESON: I'm sorry. Go ahead. No, it's not 24 your time. Is it a procedural question?</p> <p>25 MS. EMBREY: I'm not sure.</p>

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11 (41 to 44)

<p>41</p> <p>1 MS. ROBESON: (Inaudible) what do you want to say?</p> <p>2 Just to move this along.</p> <p>3 MS. EMBREY: Sorry. I just wonder what kind of</p> <p>4 studies may have done on the traffic impact of this</p> <p>5 development versus a school.</p> <p>6 MS. ROBESON: Well, we are waiting for that.</p> <p>7 MS. EMBREY: Okay.</p> <p>8 MS. ROBESON: Now, Ms. Baker, this is not -- I'm</p> <p>9 going to let you ask questions on her testimony, but it's not</p> <p>10 an opportunity to argue with the witness, okay?</p> <p>11 MS. BAKER: I understand.</p> <p>12 MS. ROBESON: So what questions do you have?</p> <p>13 MS. BAKER: She mentioned in her testimony that</p> <p>14 she is the president of the Homeowner's Association in a</p> <p>15 development called Tara. I am curious because she is not a</p> <p>16 resident of this local community, whether she would view, as</p> <p>17 a realtor, this type of facility being built in the middle of</p> <p>18 Tara as being a positive for property values within Tara.</p> <p>19 MS. EMBREY: So thank you for that question. And</p> <p>20 I will say that we currently are dealing with an ADU or</p> <p>21 accessory dwelling unit being built on a property abutting a</p> <p>22 number of our properties. And you know, I am very sensitive</p> <p>23 to change and the impact of that change and how it will</p> <p>24 impact the surrounding community. And I am in no way</p> <p>25 advocating that steps should not be taken to protect the</p>	<p>43</p> <p>1 more chance to answer. But I think she did answer it. But,</p> <p>2 go ahead Ms. Embrey. How would --</p> <p>3 (Crosstalk)</p> <p>4 MS. HARRIS: I'm going to object to the question</p> <p>5 if I could.</p> <p>6 MS. ROBESON: Yes.</p> <p>7 MS. HARRIS: I think that that was a total</p> <p>8 mischaracterization of the proposed development. I believe I</p> <p>9 heard a commercialized high-rise development.</p> <p>10 MS. ROBESON: (Inaudible)</p> <p>11 MR. HARRIS: So on this basis, I don't know how</p> <p>12 Ms. Embrey could even answer the question.</p> <p>13 MS. EMBREY: And also, I did answer. We don't</p> <p>14 have a large plot of land in the middle of our community that</p> <p>15 is zoned for a school. And so it would be impossible for me</p> <p>16 to tell you. However, I did relate to the extent that I</p> <p>17 could, how I would feel about it because we do have our own</p> <p>18 change happening. And that's the best that I can do. I also</p> <p>19 related, as you may have heard, the change with the sidewalk</p> <p>20 that happened that was also very opposed and it did not</p> <p>21 change the property value.</p> <p>22 I think that there are so many things that can be</p> <p>23 done. And over the years, for instance, the old farm house</p> <p>24 on River Rd. that had the Orthodox Church pop up next to it,</p> <p>25 they put up trees. It was painful in the beginning to those</p>
<p>42</p> <p>1 surrounding community and to preserve the value of it.</p> <p>2 And that doesn't mean that change shouldn't</p> <p>3 happen. We don't have a large property in our community that</p> <p>4 was zoned for a school. So it's difficult for me to say how</p> <p>5 I would feel about that. I do understand that in the process</p> <p>6 of evaluating this ADU our concerns were about the impact of</p> <p>7 impervious surfaces and how the water chain flow will change</p> <p>8 and things of that nature. You know, how can we create a</p> <p>9 win/win whereby we understand that changes can happen and we</p> <p>10 work to preserve the interests of the community at large.</p> <p>11 MS. BAKER: Again, you didn't answer my actual</p> <p>12 question, which was, are you suggesting that if a community</p> <p>13 like this was built within Tara there would not be opposition</p> <p>14 because it would impact the value of those acre properties by</p> <p>15 having a commercial high-rise facility built in the middle of</p> <p>16 Tara. As a real estate agent you're testifying that you are</p> <p>17 qualified to suggest that our property values will not be</p> <p>18 impacted and yet you haven't answered my question as to</p> <p>19 whether you think your personal property value would be</p> <p>20 impacted as a realtor if this facility was built in the</p> <p>21 middle of Tara. The fact that this property --</p> <p>22 (Crosstalk)</p> <p>23 MS. ROBESON: Ms. Baker, you've asked a question.</p> <p>24 MS. BAKER: Yes.</p> <p>25 MS. ROBESON: If you want, I will give her one</p>	<p>44</p> <p>1 property owners and it was zoned for such a thing. And when</p> <p>2 we buy properties we do our due diligence to understand what</p> <p>3 property lies behind us, around us, and conceptualize how</p> <p>4 that could change over time. So --</p> <p>5 MS. BAKER: So just separately then, is it your</p> <p>6 testimony that a residential sale with a forest conservation</p> <p>7 area behind it is not more valuable than a residential home</p> <p>8 with a five story facility that will be leased with 24 hour</p> <p>9 medical care? I would deem that to be commercial, but I'm</p> <p>10 happy to describe exactly what it is.</p> <p>11 MS. ROBESON: Well --</p> <p>12 MS. BAKER: With 24 hour --</p> <p>13 MS. ROBESON: No.</p> <p>14 MS. BAKER: So you're trying to say that --</p> <p>15 MS. ROBESON: Just a second, Ms. Baker. Just a</p> <p>16 second.</p> <p>17 MS. BAKER: Yes.</p> <p>18 MS. ROBESON: We are going into hypotheticals</p> <p>19 here. She is not qualified as an expert to deal in</p> <p>20 hypothetical situations. So --</p> <p>21 MS. BAKER: But she gave testimony to suggest that</p> <p>22 our property values would not be impacted. And I agree, she</p> <p>23 is not an expert and she should not be testifying to whether</p> <p>24 our property values would be impacted. But she was allowed</p> <p>25 to testify as a realtor that our property values surrounding</p>

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12 (45 to 48)

<p style="text-align: right;">45</p> <p>1 this community would not be impacted. And she was permitted 2 to -- 3 MS. ROBESON: Well I'm not sure -- I didn't hear 4 her say property values. I heard her say -- 5 MS. BAKER: She did say -- 6 MS. ROBESON: Okay. Well, I don't -- because she 7 is not an expert, I don't give her testimony on property 8 values weight. Now if you want to continue on this, I guess 9 the simple thing -- 10 (Crosstalk) 11 MS. BAKER: I'm fine if that's acknowledged, that 12 she is not an expert in property values. 13 MS. ROBESON: Okay. Any questions based on my 14 questions, Ms. Harris or Mr. Brown? 15 MS. EMBRY: I'm just curious if a local realtor 16 isn't an expert on local property values, who is. 17 MS. ROBESON: Well, do you want to be qualified as 18 an expert? 19 (Crosstalk) 20 MS. EMBREY: I'm just asking the question. Just 21 asking the question because -- so -- 22 MR. BROWN: I'm happy to volunteer an answer to 23 that. The homeowner under Maryland law is qualified as an 24 expert in the value of his own home and the possible change 25 in that value due to adjacent development.</p>	<p style="text-align: right;">47</p> <p>1 I will let your testimony in and give it the weight it -- 2 sorry -- weight it deserves. But I'm not going to qualify 3 you as an expert. 4 MS. EMBREY: And you know, in full clarity I 5 wasn't asking to be qualified as an expert. I simply asked 6 the question of who was an expert if not a local realtor. 7 MS. ROBESON: Well, experts legally and local 8 realtors are in a quasi-judicial trial, are two different 9 things. 10 MS. EMBREY: Got it. 11 MS. ROBESON: So Ms. Baker, do you have any other 12 questions? I'm not qualifying her as an expert. 13 MS. BAKER: Yeah. My only other question is 14 whether she has any connection to the developer as a realtor 15 in her official capacity. 16 MS. EMBREY: I do. 17 MS. ROBESON: And what -- 18 MS. BAKER: And what is the (inaudible) 19 relationship? 20 MS. EMBREY: Pardon? 21 MS. BAKER: Can you tell me what the nature of 22 that relationship is? 23 MS. EMBREY: Yeah, he -- the developers are 24 related to my husband. 25 MS. ROBESON: Anything else?</p>
<p style="text-align: right;">46</p> <p>1 MS. ROBESON: And have you reviewed this plan and 2 the location of the surrounding properties, Ms. Embrey? 3 MS. EMBREY: Yes ma'am, I have. 4 MS. BAKER: Have you looked at 10828 Lockland Rd.? 5 MS. EMBREY: Lockland? I'm familiar with the 6 road, the street, the recent listings in the neighborhood. 7 MS. ROBESON: So, I just -- hold on a second. 8 Backup. I'm having a problem with this because she was not 9 disclosed. Ms. Embrey was not disclosed as an expert. And 10 she is not required to file a prehearing statement because 11 she is not represented by counsel, but no one has had the 12 opportunity to look at her resume or voir dire. So Mr. 13 Brown, do you have objections to qualify her as an expert? 14 MR. BROWN: I have complete objection. 15 MS. ROBESON: So Ms. Harris, do you want to 16 qualify her as an expert? 17 MS. HARRIS: No, I don't think it's necessary. We 18 put our expert on yesterday. And I don't think it is 19 necessary. I think Ms. Embrey's testimony has spoken for 20 itself as a -- not as an expert. 21 MS. ROBESON: Well, I'm not going to qualify her 22 as an expert because she was not disclosed. Now, you didn't 23 have to disclose, but it would be highly unusual to qualify 24 someone as an expert even though you may consider yourself to 25 be an expert. So I will give your testimony the weight it --</p>	<p style="text-align: right;">48</p> <p>1 MS. BAKER: No. I don't have any further 2 questions. Thank you. 3 MS. ROBESON: Ms. Harris or Mr. Brown, any 4 questions based on those questions? 5 MR. BROWN: No questions. 6 MS. HARRIS: No questions. 7 MS. ROBESON: Ms. Embrey, I hope you feel better. 8 And you may be excused -- 9 MS. EMBREY: Thank you. 10 MS. ROBESON: As a witness. You can stay around, 11 but you may be excused. 12 MS. ROBESON: Thank you. All right. Anyone else? 13 I don't see hands raised. Is there anyone else that wishes 14 to -- okay, now I do. I see Mr. Chaudhray and Ms. Finger. 15 Mr. Chaudhray, you want to go first, please? 16 MR. CHAUDHRAY: Yes, I do. 17 MS. ROBESON: Okay. I'm not seeing you on the 18 camera. Can you turn on the camera, please? 19 MR. CHAUDHRAY: I just, I just did, but I don't 20 see it myself. 21 MS. ROBESON: Oh, I see -- I see something, but 22 not your face. You may have to -- you may have to adjust the 23 camera. There you are. 24 MR. CHAUDHRAY: Okay. Can you see me now? 25 MS. ROBESON: I do. Would you please raise your</p>

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13 (49 to 52)

<p>49</p> <p>1 right hand?</p> <p>2 Do you solemnly affirm under penalties of perjury</p> <p>3 that the statements you're about to make are the truth, the</p> <p>4 whole truth, and nothing but the truth?</p> <p>5 MR. CHAUDHRAY: I do.</p> <p>6 MS. ROBESON: Please state your street address,</p> <p>7 email, and name for the record.</p> <p>8 MR. CHAUDHRAY: My name is Abdul Chaudhray, and I</p> <p>9 live on 11005 Allen Tree Lane, Potomac, Maryland. My email</p> <p>10 address is ASChaudhray43@gmail.com</p> <p>11 MS. ROBESON: Thank you. Go ahead.</p> <p>12 MR. CHAUDHRAY: I have -- I am retired. I am an</p> <p>13 executive. Lived in Montgomery area about 30 years. And I</p> <p>14 am one of those people who Embrey was talking about, Amy was</p> <p>15 talking about, lives on Tara. And I'm in a big house. It's</p> <p>16 just me and wife are living that now. My house is 94,000</p> <p>17 square -- 900 -- 9400 square feet. And I would like to move</p> <p>18 down to a smaller area. But we still love the outdoors that</p> <p>19 people talk about in Potomac, a rural area. We like the</p> <p>20 greenery and we walk out and sit on the patio and enjoy that</p> <p>21 as long as we can. I do not -- we do not wish to stay in</p> <p>22 multistory buildings. We would like the fact that we have a</p> <p>23 cottage that we can live in and enjoy our last days while we</p> <p>24 have time to do it. So that's basically what it is. And</p> <p>25 that's what interests me in this community. Because we don't</p>	<p>51</p> <p>1 discussing the resell potential of these properties as</p> <p>2 testimony from my clients unfolds and the relevance of that</p> <p>3 potential to your decision in this case.</p> <p>4 MS. ROBESON: All right. I will take that as a</p> <p>5 proper. Do you have any questions of Mr. Chaudhray?</p> <p>6 MR. BROWN: Yes, if you will, just bear with me</p> <p>7 one moment. Mr. Chaudhray, you had expressed a potential</p> <p>8 interest in becoming, I guess, a purchaser of one of the</p> <p>9 cottage units and downsizing that way; is that correct?</p> <p>10 MR. GOLDMAN: Correct.</p> <p>11 MR. BROWN: Would your interest be in any way</p> <p>12 diminished if you were told that in order to occupy the</p> <p>13 premises you had to be a person in need of personal</p> <p>14 supervision of personal services, supervision, or assistance</p> <p>15 essential to sustaining the activities of daily living?</p> <p>16 MR. CHAUDHRAY: That would definitely impact my</p> <p>17 decision because we would like to be independent and live</p> <p>18 there as an independent in cottages.</p> <p>19 MR. BROWN: That's all I have. Thank you.</p> <p>20 MS. ROBESON: All right. Any other questions?</p> <p>21 Mr. Chaudhray, thank you for appearing. You may be excused.</p> <p>22 MR. CHAUDHRAY: Thank you.</p> <p>23 MS. ROBESON: I see Ms. Finger.</p> <p>24 MS. FINGER: I'm trying to turn my camera on.</p> <p>25 (Crosstalk)</p>
<p>50</p> <p>1 want to move out of the area. We love this area.</p> <p>2 MS. ROBESON: Okay, thank you. Ms. Harris, do you</p> <p>3 have any questions?</p> <p>4 MS. HARRIS: I do not, thank you.</p> <p>5 MS. ROBESON: Mr. Brown, questions?</p> <p>6 MR. BROWN: Yes, I do. Just give me a moment</p> <p>7 please.</p> <p>8 MS. ROBESON: Let me just point out,</p> <p>9 enforceability is an issue in this case, in my opinion. Need</p> <p>10 is not one of the criteria.</p> <p>11 MR. BROWN: Ms. Robeson, let me assure you that</p> <p>12 when I asked about the resell potential of these homes I was</p> <p>13 not addressing any issue relating to a traditional zoning</p> <p>14 requirement of having to show evidence of need, which was in</p> <p>15 fact in the zoning ordinance a couple of decades ago with</p> <p>16 relation to facilities of this type.</p> <p>17 MS. ROBESON: Mr. Brown, you have a paper that</p> <p>18 keeps covering your face. It's a paper between you and the</p> <p>19 camera.</p> <p>20 MR. BROWN: I'm sorry.</p> <p>21 MS. ROBESON: Thank you.</p> <p>22 MR. BROWN: Did you understand my point?</p> <p>23 MS. ROBESON: I did, yes. It used it to be in</p> <p>24 there.</p> <p>25 MR. BROWN: All right. We will be -- we will be</p>	<p>52</p> <p>1 MS. FINGER: On, but is not turning on. I don't</p> <p>2 know what to do.</p> <p>3 MS. ROBESON: Okay. Well, does anyone have an</p> <p>4 objection to Ms. Finger not having a camera on?</p> <p>5 MR. BROWN: No objection.</p> <p>6 MS. ROBESON: Ms. Finger, are you going to the</p> <p>7 icon in the top of the screen?</p> <p>8 MS. FINGER: Well, I have something in the middle</p> <p>9 of the screen where I raised my hand. And I see the</p> <p>10 microphone there. And then next to it is the turn camera on.</p> <p>11 And when I click on it I'm getting all sorts of possible</p> <p>12 instructions.</p> <p>13 MS. ROBESON: There should be a video camera icon</p> <p>14 next to the audio microphone icon.</p> <p>15 MS. FINGER: I see that. And I'm trying to turn</p> <p>16 it on and nothing happens.</p> <p>17 MR. CHAUDHRAY: Are you connected to a monitor,</p> <p>18 ma'am?</p> <p>19 MS. FINGER: WebCam access has been denied by</p> <p>20 Norton. So that may be my security is not allowing the</p> <p>21 camera.</p> <p>22 MS. ROBESON: Okay. Let me see.</p> <p>23 MS. FINGER: I do have Microsoft --</p> <p>24 MS. ROBESON: What browser are you using?</p> <p>25 MS. FINGER: I'm not sure. I'm sorry. I'm very</p>

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14 (53 to 56)

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1 not technological, I guess. But I have Microsoft Office, but  
2 I don't think that's the browser.  
3 MS. ROBESON: Are you on Internet Edge or Google  
4 Chrome?  
5 MS. FINGER: Yes, Edge.  
6 MS. ROBESON: Edge. Do you have Google Chrome?  
7 MS. FINGER: I do on my -- I've not tried to use  
8 it, but I do have it on my screen, my initial screen as a  
9 choice. But I would have to exit out of this and get onto  
10 Google Chrome, I guess.  
11 MS. ROBESON: Well, that's what I was going to  
12 suggest, is if you want to try that, we can take another  
13 witness while you're trying that.  
14 MS. FINGER: That would be fine. I will try that.  
15 MS. ROBESON: Okay, thank you.  
16 MS. FINGER: Okay.  
17 MS. ROBESON: Is there anyone else that would like  
18 to testify? Seeing none, or hearing none, Mr. Brown, do you  
19 want to take one of your witnesses?  
20 MR. BROWN: Yes, I have Susan Lee standing by in  
21 Nairobi. It's past dinnertime and she would like to get  
22 started.  
23 MS. HARRIS: But Ms. Robeson, if I could, I'm a  
24 little concerned because I think we fully expected Ms. Lee's  
25 testimony may take more than 5 or 10 minutes. And I would

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1 hate for Ms. Finger to have to wait for --  
2 MS. ROBESON: I'm, I'm -- well, with Mr. Brown's  
3 permission, I'm going to let Ms. Finger interrupt Ms. Lee's  
4 testimony. Mr. Brown, do you have an objection to doing  
5 that?  
6 MR. BROWN: Not at all.  
7 MS. ROBESON: The only other option is to let Ms.  
8 Finger testify without video. Do I hear any objections to  
9 that?  
10 MS. HARRIS: I have no objection.  
11 MR. BROWN: No objection.  
12 MS. ROBESON: Well, we will wait until -- let's  
13 see, it's 11:54 -- 10:54. Let's do this. Let's take a 10  
14 minute break and we will see if Ms. Lee -- I'm sorry -- Ms.  
15 Finger can get back on. If not, we're going to proceed with  
16 Ms. Lee, but I will interrupt the testimony when Ms. Finger  
17 is back on. Any objections?  
18 MS. HARRIS: (Inaudible 01:23:09). No. 10  
19 minutes?  
20 MS. ROBESON: Yes.  
21 MS. HARRIS: Thank you.  
22 (Off the record at 10:55 a.m., resuming at 11:06  
23 a.m.)  
24 MS. ROBESON: -- the camera. We appreciate your  
25 efforts to try that. So Ms. Finger, are you raising your

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1 right hand?  
2 MS. FINGER: I am.  
3 Do you solemnly affirm under penalties of perjury  
4 that the statements you're about to make are the truth, the  
5 whole truth, and nothing but the truth?  
6 MS. ROBESON: Please state your street address,  
7 your name, street address, and email address for the record.  
8 MS. FINGER: My name is Heidi Finger. My street  
9 address is 10125 Glen Rd. in Potomac, Maryland. My email is  
10 Fingers-3@Verizon.net.  
11 MS. ROBESON: Thank you. And what you like to  
12 say?  
13 MS. FINGER: Just briefly, I have sent in a  
14 letter, but I don't want to read the whole letter for the  
15 record here now. I just wanted to respond to some of the  
16 previous testimony. I live on Glen Rd. very close to where  
17 this proposed Heritage Gardens will be built. Like Mr.  
18 Chaudhray, I'm an interested person in purchasing a cottage  
19 there.  
20 I have followed the development of Heritage  
21 Gardens since it first made a presentation to the West  
22 Montgomery Citizens -- West Montgomery County Citizen's  
23 Association. And have remained interested in it. I drive on  
24 South Glen Rd. all the time in order to get to the village in  
25 Potomac. I have not driven at rush hour and I don't normally

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1 drive at rush hour. My husband and I have one car. And I  
2 have not encountered terrible traffic on South Glen Rd. the  
3 times I am traveling and driving there.  
4 I -- also my location on Glen Rd. is right next to  
5 Wayside Elementary School. And if there were a school  
6 instead of Heritage Gardens at the proposed site, I can tell  
7 you that they have to light up the school for security all  
8 night long and the lights are much brighter from a school  
9 than they would be for this senior development, and assisted-  
10 living, and memory care proposed development. I would never  
11 dream of walking on South Glen Rd.. I think the beauty of  
12 this development is that it has its own sidewalks and trails  
13 and safe area within the development and it's taken into  
14 consideration that we might have pets that we want to walk,  
15 and that's where we do it.  
16 In addition, as far as traffic is concerned, my  
17 experience with my mother who lived in a very similar  
18 development, but much, much larger in Florida, in Naples,  
19 Florida, they had cottages, a 14 story high-rise, apartment  
20 building, and a similar large, administrative buildings for  
21 assisted living and dining as well as a swimming pool. In  
22 the times that I visit her which were quite frequent. She  
23 died three years ago, but in the last 2011 through 2018, they  
24 had caregivers there, gardeners, kitchen help, nursing staff,  
25 and so forth.

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15 (57 to 60)

<p>57</p> <p>1 And the development itself never had any traffic 2 to speak of. I often was the only person in a car exiting 3 the development to go out, whether it's shopping to grocery 4 store or some other errand. We -- my mother had around-the- 5 clock caregivers in her apartment. They came every eight 6 hours. They came by car. They parked in a certain reserved 7 area for them. And I think it would be that's what I 8 experienced it there would be much less imposing at this 9 Heritage Gardens.</p> <p>10 It seems to me that is very tastefully designed, 11 that it's -- would blend into the area. It wouldn't be 12 visible from the main road. I don't think the neighbors 13 would be impacted. Of course, I'm not an expert on any of 14 these things. I don't think the neighbors would be severely 15 impacted. I think if you had individual single-family homes, 16 each on 2 acres, you could have much more traffic, much more 17 noise.</p> <p>18 I see it in my own neighborhood. Although I have 19 an acre and a half, and I think the next-door neighbor is a 20 new house with three quarters of an acre, I can see right 21 into their house now and see their TV on and I don't think 22 there would be a similar situation in Heritage Gardens. And 23 so it sounds very appealing to me. I care tremendously about 24 the environment, trees, gardens, wildlife. I have all of 25 those where I live and I would like to have something as</p>	<p>59</p> <p>1 interested in Brandywine or any other assisted living. 2 MR. BROWN: And you would not be interested in 3 this particular property if they were a requirement to enter, 4 would you? 5 MS. FINGER: No, I would not. 6 MR. BROWN: Thank you. I have nothing further. 7 MS. HARRIS: I have a question of Ms. Finger, 8 please. 9 MS. ROBESON: Okay. 10 MS. FINGER: Sorry. I think there is a phone in 11 the background. Well, I can turn it off. There. 12 MS. HARRIS: Ms. Finger, but you did say that you 13 would be interested in the independent living component of 14 the property; is that correct? 15 MS. FINGER: That's correct. 16 MS. HARRIS: And the -- and are you aware that the 17 application as a residential care facility include senior 18 care communities, which include independent living and 19 therefore that service component that Mr. Brown just 20 mentioned, while that's attributable and a requirement of 21 assisted living, it's not required of an independent living? 22 MR. BROWN: I object to the (inaudible). 23 MS. FINGER: That's correct. 24 MR. BROWN: That's argumentative. 25 MR. GOLDMAN: Yeah, just a minute, Ms. Finger.</p>
<p>58</p> <p>1 close as possible. 2 So I echo the testimony of Mr. Chaudhry and Ms. 3 Embry. And I'm hoping that this will be approved so that I 4 have an option of somewhere to move where we could have some 5 assistance available on the property. And my experience is, 6 my husband and I both had surgery last summer. We needed to 7 have a caregiver. And it would be much more convenient to go 8 through the aging process where there is some medical staff 9 available, but you still have independence. So that's my 10 testimony.</p> <p>11 MS. ROBESON: Thank you. Mr. Brown, any 12 questions? 13 MR. BROWN: Yes, very briefly. Ms. Finger, I 14 gather that you would be a potential purchaser among the 15 cottage units at the property because you find them -- if on 16 the concept attractive; is that right? 17 MS. FINGER: Yes, that's correct. 18 MR. BROWN: Is either you or your husband over 62 19 years of age? 20 MS. FINGER: We are 77 and 79. 21 MR. BROWN: Well, that very much well qualifies. 22 Is either of you a person in need of personal, services, 23 supervision or assistance essential for sustaining the 24 activities of daily living? 25 MS. FINGER: Not at this time. So we are not</p>	<p>60</p> <p>1 Mr. Brown, go ahead. 2 MR. BROWN: I object to the question as 3 argumentative. Ms. Harris and I can have a disagreement 4 about what the requirements are. I simply asked -- I simply 5 asked the witness whether she would -- whether she would find 6 it agreeable or disagreeable if that requirement were there. 7 Whether or not that requirement is there is an issue of law 8 that Ms. Harris and I can discuss at a later, more convenient 9 time. But there is no point in getting to -- 10 MS. ROBESON: Right. I do -- 11 MR. BROWN: An argument with the witness about it. 12 MS. ROBESON: I'm going to sustain that. Do you 13 have any other questions, Ms. Harris? 14 MS. HARRIS: No I don't, thank you. 15 MS. ROBESON: Anyone else?. None, thank you for 16 appearing and working so hard at seeing you, Ms. Finger. You 17 can be excused, but you're welcome to hang around. 18 MS. FINGER: Thank you. 19 MS. ROBESON: Is there anyone else that wishes to 20 testify that's not going to be called by Ms. Harris or Mr. 21 Brown? Okay, hearing none, Mr. Brown, I think we have Ms. 22 Lee. 23 MR. BROWN: Yes, we do. Just -- 24 MS. ROBESON: Ms. Lee? 25 MR. BROWN: Would you please -- go ahead and swear</p>



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16 (61 to 64)

<p style="text-align: right;">61</p> <p>1 her in.</p> <p>2 MS. ROBESON: I don't see her. Oh, there she is.</p> <p>3 I have you. Please raise your right hand.</p> <p>4 Do you solemnly affirm under penalties of perjury</p> <p>5 that the statements you're about to make are the truth, the</p> <p>6 whole truth, and nothing but the truth?</p> <p>7 MS. LEE:</p> <p>8 MS. ROBESON: Ms. Lee, I think you are on mute.</p> <p>9 MS. LEE: I certainly am. I do. Thank you.</p> <p>10 MS. ROBESON: Okay, thank you. Please state your</p> <p>11 name, address, and email address for the record. And then I</p> <p>12 will turn it over to Mr. Brown.</p> <p>13 MS. LEE: My name is Susanne Lee. I live it 12900</p> <p>14 Circle Drive, Rockville, Maryland, 20850. My email address</p> <p>15 is SusanneLee1@hotmail.com.</p> <p>16 MS. ROBESON: Okay, Mr. Brown.</p> <p>17 MR. BROWN: Ms. Lee, could you please describe for</p> <p>18 the hearing examiner your educational background and</p> <p>19 experience that leads you to provide the testimony that</p> <p>20 you're going to provide today?</p> <p>21 MS. LEE: Well, I'm not appearing here as an</p> <p>22 attorney. I'm appearing as a vice president of West</p> <p>23 Montgomery County Citizens' Association. I've lived in the</p> <p>24 area about 30 years and have been involved multiple times</p> <p>25 with regard to the master plan, with regard to zoning, and</p>	<p style="text-align: right;">63</p> <p>1 read it and make sure I get it in, if that's okay with you.</p> <p>2 My name is Susanne Lee. I'm the current vice</p> <p>3 president of the West Montgomery County Citizens'</p> <p>4 Association. West Montgomery was founded in 1947 and has as</p> <p>5 its major goals the preservation of the unique and</p> <p>6 substantial environmental resources of the Potomac subregion</p> <p>7 and the maintenance of orderly planning and zoning consummate</p> <p>8 with the needs and desires of this community.</p> <p>9 West Montgomery opposes this application. We</p> <p>10 concur with the multiple legal and factual reasons presented</p> <p>11 by others in opposition. In my testimony I will describe the</p> <p>12 three major reasons why we oppose. First, the placement and</p> <p>13 construction of the Lodge complex will violate the</p> <p>14 environmental protection and building requirements contained</p> <p>15 in state and federal laws and regulations and summarized in</p> <p>16 Montgomery County's environmental guidelines for the</p> <p>17 management of development in the county. The Lodge complex</p> <p>18 construction will also violate the forest preservation</p> <p>19 requirements regarding the site in the Potomac subregion</p> <p>20 master plan.</p> <p>21 Second, the construction of a facility the size at</p> <p>22 this location is inconsistent with the basic framework of the</p> <p>23 master plan, including the elderly housing and special</p> <p>24 exception provisions. Third, the ownership structure of the</p> <p>25 facility is so bizarre that coupled with the stringent age</p>
<p style="text-align: right;">62</p> <p>1 land-use issues within the area. In my professional life I</p> <p>2 was 15 years in the General Counsel's office at EPA as an</p> <p>3 attorney working on regulations primarily related to water</p> <p>4 law issues.</p> <p>5 And then following my service at EPA I served in</p> <p>6 the Western Pacific working again as the environmental</p> <p>7 counsel in a small Pacific Island nation. Again, often times</p> <p>8 many water issues. So I come with an interest, a personal</p> <p>9 interest and years of experience of volunteering with the</p> <p>10 local citizens association on local matters.</p> <p>11 MR. BROWN: Have you studied this particular</p> <p>12 application in detail?</p> <p>13 MS. LEE: I have.</p> <p>14 MR. BROWN: What are your concerns about it?</p> <p>15 MS. LEE: If I may, I may just go ahead and read</p> <p>16 my testimony, if that's all right with you, Mr. Brown.</p> <p>17 MR. BROWN: Absolutely.</p> <p>18 MS. LEE: And then if you have particular</p> <p>19 questions -- is that okay? And I do apologize, I'm here in</p> <p>20 Nairobi. I'm very happy. My daughter works and lives here</p> <p>21 and I haven't been able to visit because of COVID and we</p> <p>22 tried to save this date up so knowing the January 28th. And</p> <p>23 I really appreciate you being willing to listen to me. And</p> <p>24 if I cut off, I will try to get back on. But I think it</p> <p>25 should be fine today. But as a result, I'm just going to</p>	<p style="text-align: right;">64</p> <p>1 restrictions dooms it to failure and guarantees an</p> <p>2 enforcement nightmare, all of which would have to be</p> <p>3 addressed through significant and extraordinarily stringent</p> <p>4 covenants, staging, and reporting requirements.</p> <p>5 First with regard to the environmental issues,</p> <p>6 OZHA must reject the conditional use that at this density,</p> <p>7 with this site plan, cannot be constructed without violating</p> <p>8 multiple local, state, and federal environmental requirements</p> <p>9 in the master plan. In particular we submit that you must</p> <p>10 reject a use that proposes and requires construction of the</p> <p>11 Lodge complex, the most intense use on the site, in protected</p> <p>12 streams, stream valley buffers, and adjacent steep slopes on</p> <p>13 erodible soils on slopes over 15 percent in the floodplain,</p> <p>14 in the floodplain buffer, and in the protected forest stand.</p> <p>15 The site is 30 acres, the majority of which is</p> <p>16 made up of open meadows with scattered forest stands.</p> <p>17 However, approximately 10 acres of the site is composed of</p> <p>18 stream valley buffers. Those 10 acres are in the far</p> <p>19 northern portion of the property and are composed almost</p> <p>20 entirely of prized riparian forest buffer, two streams, three</p> <p>21 valley buffers, and their adjacent steep slopes, slopes with</p> <p>22 highly erodible soils, floodplains, floodplain buffers,</p> <p>23 wetlands, and the protected priority forest stand delineated</p> <p>24 for protection in the master plan.</p> <p>25 The current proposal is to construct a Lodge</p>

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17 (65 to 68)

<p>65</p> <p>1 complex entirely in those 10 acres. The complex includes the 2 Lodge, 4 stories, 29 independent living units, 87 assisted 3 living or memory care units totaling 105 beds, 3 dining 4 rooms, multiple lounge and office areas, and 79 parking 5 spaces. The complex also includes what is characterized as a 6 recreational community, social clubhouse area. This remains 7 ill-defined except it appears there will be parking lots and 8 some use of an old middle school gym left over from the now 9 abandoned school use. Three quarters of the gym sits right 10 in the middle of the stream valley buffer.</p> <p>11 The proposed plan also requires a construction of 12 a new road through one of the streams and its buffer 13 connecting the Lodge complex with the rest of the site. I 14 believe in -- based on the testimony from the Applicant, it's 15 undisputed that these are the facts. And I -- in order to 16 just -- I just want to confirm that by pulling up just a 17 couple of their exhibits, if I could, just confirm exactly 18 what they are saying is going to happen and what we agree is 19 happening as well. So exhibit -- this is with regard to the 20 environmental issues. Exhibit 74, if you wouldn't mind 21 pulling that up, Ms. Hannan.</p> <p>22 MS. ROBESON: You should be seeing it.</p> <p>23 MS. LEE: That's it. So as you focus in on it, it 24 has the very nice coloring. So the light blue as they 25 described it, is the stream valley buffer. And then if you</p>	<p>67</p> <p>1 within the limits of disturbance, that's the black line that 2 goes over.</p> <p>3 And that an additional amount of the floodplain 4 buffer will be within the limits of disturbance. That's one 5 of the -- one of our big areas is stream valley buffer 6 because they are protected under the environmental 7 guidelines. The second issue has to do with the steep, 8 erodible slopes on the property. And looking to those, they 9 are basically at 116D. 116D on the map is right where it 10 will be constructed. And the definition of 116D is the soil 11 type at that spot. And on their natural resource inventory 12 they describe that as slope of 15 to 25 percent and highly 13 erodible soils. So they will be placing this right in the 14 middle of that area.</p> <p>15 Then the other environmental feature that I wanted 16 to indicate, I don't think it's as clear on this. If you 17 wouldn't mind going up just a little bit, I think I need to 18 bring up another exhibit to be able to show you this aspect. 19 Would you mind just scrolling to the top a little bit? Just 20 a little bit more. I think it does show it, but I think it 21 might be a better area. And this has to do with the forest 22 conservation requirements. So I think I would ask you to go 23 then from this exhibit to 50 -- let's see -- 53, I think that 24 the forest conservation plan. 53A probably shows it. And 25 these are all undisputed. So I just wanted to point it out.</p>
<p>66</p> <p>1 could go in just a little bit further, especially just to be 2 able to see -- especially down -- if you could focus in a 3 little bit. Thank you, very much.</p> <p>4 So the stream valley buffer is in blue. The gym 5 is -- basically has a 6A on it. And as you can see, the 6 stream valley buffer, it -- the stream valley buffer is to 7 the south of that. So it appears, about three quarters of it 8 in the stream valley buffer. The areas surrounding it are 9 within the limits of -- limits of -- not destruction, sorry, 10 disturbance. And as well, the area over where the road is 11 going to be and also towards the wetlands to the right.</p> <p>12 So there is a major area that is -- it's 13 undisputed, will be involved in the stream valley buffer. 14 It's about an acre according to what the planning report -- 15 planning staff report said it's about an acre. And there is 16 no restrictions on that. They are just going to be allowed 17 to do it. The second thing is that the -- there is also a 18 floodplain on the site.</p> <p>19 And if you didn't mind focusing in on 6A, there is 20 both a floodplain and a floodplain buffer. And on the corner 21 of the -- and you can see where the stream is and all that. 22 But as you can see on the corner of 6A, just down from 6A, 23 the yellow line, the yellow line is the floodplain buffer. 24 And the pink line is actually the floodplain. And you will 25 see that even a small portion of the floodplain that falls</p>	<p>68</p> <p>1 MS. ROBESON: I only have 53B.</p> <p>2 MS. LEE: 53A, do you have? I'm sorry. There.</p> <p>3 That's good. And unfortunately I think it only has this 4 sheet as an exhibit. But what I really wanted to focus on 5 what the right hand side, which is sheet 4. And then to zoom 6 in especially to the area in the top of it and the shaded, 7 very dark areas that's just above the phrase, supplemental 8 tree planting area. And that's the area that Mr. Park 9 described yesterday.</p> <p>10 The entire area, which is that sort of cone-shaped 11 thing, is the piece that -- it's undisputed. It's indicated 12 in the master plan. It's to be preserved. And the shaded 13 area is the amount that they will destroy in order to build 14 the lodge. You can see the outline of the lodge, it will be 15 right there. So those are the main areas of concern that we 16 have because we think they are in blatant violation of both 17 the master plan and the environmental guidelines.</p> <p>18 With regard -- and excuse me. The other thing is 19 that when you are deciding under the environmental guidelines 20 how much stream valley buffer is to be included you have sort 21 of a basic amount that you do. And it's under table -- it's 22 called table number 1. And it's on page -- this table number 23 1 is on page 8 of the environmental guidelines. And it 24 refers -- and it's used because it delineates how wide the 25 basic stream valley buffer should be.</p>

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18 (69 to 72)

<p style="text-align: right;">69</p> <p>1 So the Applicant has said that they've done their 2 calculations and that it turns out to be 100 feet wide, 3 100 -- yeah, 100 feet wide. So when you take that, then you 4 turn to the other page in the guidelines, that's not the end 5 when you have steep slopes nearby. So the guidelines then on 6 page 7 state specifically that if the stream buffer 7 encompasses the toe of a steep slope, the buffer will be 8 expanded beyond the width in table 1 to include the entire 9 slope. 10 So I wanted to use another exhibit to show where 11 that occurs. And I did discuss it a bit with Mr. Stemann 12 during his testimony. And that would have -- that is on 13 Exhibit 51A, which is the natural resource inventory. Now I 14 might point out that Exhibit 26 was the original one that 15 they submitted, which had no slopes delineated at all. It 16 was done by Mr. Markovich. He signed it. And then it was 17 only just before the hearing that this additional one was 18 submitted that actually has -- I hope I have the right one -- 19 actually has the steep slopes that are on it. 20 You can see to the far right and then down on the 21 key it actually shows where the -- based on shading, where 22 the steep slopes are on the site. So if you could, if you 23 wouldn't mind focusing in about -- if you -- let's see. I 24 think I had done the best numbers to be able to show you -- 25 it's right about there. That's good. And then if you would</p>	<p style="text-align: right;">71</p> <p>1 when the -- when the stream valley buffer touches the toe of 2 a steep slope, then it must be extended up and being -- and 3 the rest of that steep slope must be included as part of the 4 stream valley buffer. That's very important because that is 5 right exactly where the -- where it's going to be -- 6 HEARING EXAMINER ROBESON HANNAN: So that's the 7 (indiscernible). 8 MS. LEE: The -- excuse me. The Lodge complex. 9 That's on the left-hand side of the lodge looking at the 10 left-hand side. So that's important. So that -- and I must 11 say that Mr. Stemann objected that. He said that it -- and I 12 don't know whether he is an expert in that area. He was not 13 the one who did the national [sic] resource inventory. He 14 stated something like, it doesn't have to be sent up there 15 because it's not -- that slope isn't connected to the stream. 16 Well, that's not what the basis is. That's what 17 he looked at. You look at the stream that's set forth in the 18 guidelines, very straightforward. You look at the 200 feet 19 on either side of the stream and then you look at what 20 actually drains to the stream to determine what the stream 21 buffer is. But once you've determined that, then you take 22 the provisions in the -- and you decide whether it goes over 23 a toe of the slope and then it expands. 24 So we would say that that's a real straightforward 25 area where the stream valley buffer should be expanded even</p>
<p style="text-align: right;">70</p> <p>1 focus in straight on from that, straight in. It's near tree 2 150. And if you could go in a little bit further, sorry. A 3 little bit to the -- it's between -- there is 149 and 147. 4 I'm looking to see if there is some language. If you could 5 come and go there. Your cursor was just about there. Yes. 6 If you could see 150 a little bit -- go over to your -- to 7 the right. Sorry. 8 MS. ROBESON: I find (inaudible) but I can't find 9 150. 10 MS. LEE: How about 147? 147, does that -- 11 MS. ROBESON: There is 147. 12 MS. LEE: Okay. So you've got -- 13 HEARING EXAMINER ROBESON HANNAN: (Indiscernible) 14 marked on the exhibit. 15 MS. LEE: Sorry. Excuse me. So tree -- that's 16 tree 147. And -- 17 MS. ROBESON: 150 is also marked. 18 MS. LEE: And 150 is there. So 150 is a little 19 bit closer to what I wanted to point out, which is that the 20 shaded area are slopes that are steep slopes. They are over 21 25 percent. And that's sort of an arch right there under 22 147. And just to the left of it is the line that says SVB, 23 stream valley buffer. And there is a spot where that stream 24 valley buffer goes right across that slope, that steep slope. 25 And we would assert that because the guidelines require that</p>	<p style="text-align: right;">72</p> <p>1 more. The other is that the -- as you go to the right, say 2 over near number five, this is -- this area, all of the 3 shaded areas are a mix of steep slopes and slopes that aren't 4 quite so steep that would be 15 to 25 percent on erodible 5 soils. So he said that they had expanded the stream valley 6 buffer to include some of those steep slopes. 7 Well, we would submit, and I will go on with -- 8 when I describe the master plan provisions. The master plan 9 provisions state that that entire area, which we looked at in 10 the last exhibit, is to be protected. And if it can't be 11 protected under the -- if it's -- and it should be protected 12 as part of the stream valley stream buffer because most of 13 these are riparian forests. And if it cannot -- that either 14 the development should be clustered in order to avoid the 15 development on the forest stand, or that the existing buffers 16 and the environmental guidelines should be expanded to 17 include the entire forest stand. 18 So I point that out only because that's another 19 area where we believe that the Applicant has not provided the 20 amount of buffer that should be provided. And Mr. Stemann 21 really didn't speak to that. Mr. Park did. He admitted 22 those provisions were in the master plan, but no changes were 23 made. And I don't know why they -- when Mr. Markovich did 24 the first natural resource inventory, he delineated exactly 25 these same stream valley buffers, but he did not have any of</p>

<p>73</p> <p>1 the steep slopes indicated on the site plan.</p> <p>2 So I have no idea whether if -- and the most</p> <p>3 recent one, the one you're looking at now, is not signed by</p> <p>4 Mr. Markovich, it's not dated in any way. So I have no idea</p> <p>5 whether he that semi won't know because he is not here. He</p> <p>6 is not here. He is not testifying. So whether he would</p> <p>7 change it based on, for example, the master plan</p> <p>8 requirements. But it certainly isn't -- hasn't been changed</p> <p>9 based on the master plan requirements.</p> <p>10 I think one -- just one other thing is 94I, which</p> <p>11 is just to show you sort of what this -- what the stream --</p> <p>12 excuse me -- what the steep slopes look like on the site.</p> <p>13 It's just a -- it's a good -- it's a little bit easier to see</p> <p>14 than the shaded areas.</p> <p>15 MS. ROBESON: I'm sorry. What exhibit did you</p> <p>16 say?</p> <p>17 MS. LEE: 94I.</p> <p>18 MS. ROBESON: Thank you. I'm sorry. Give me</p> <p>19 the -- I was writing. What is the --</p> <p>20 MS. LEE: No problem. 94I.</p> <p>21 MS. ROBESON: Oh, I -- I, okay.</p> <p>22 MS. LEE: I as in igloo I guess. And I apologize</p> <p>23 because it's sideways. But it's a GIS of the site. The</p> <p>24 blue -- there you go, thank you. Just around. The blue is</p> <p>25 the steep slopes and the green is the slopes that are 15 to</p>	<p>75</p> <p>1 Planning figured out a way how to make sure that that was</p> <p>2 protected. There was never any question that it wouldn't be</p> <p>3 protected, but they just had to rearrange the configurations</p> <p>4 to do it.</p> <p>5 And in the Spectrum case, which I know you Ms.</p> <p>6 Hannan, just recently worked on, there was a delineated area</p> <p>7 in there that was a federally recognized wetlands</p> <p>8 provision -- wetlands area. And that was important enough</p> <p>9 that the Applicant went and got the Corps of Engineers to</p> <p>10 come out and examine the site. She did what I guess is</p> <p>11 called a shovel test, and found that in fact it had been</p> <p>12 paved over by a previous owner. And so she determined that</p> <p>13 there was no need -- there was no longer a wetland that</p> <p>14 needed to be regulated.</p> <p>15 But I just -- I cannot -- I cannot remember any</p> <p>16 situation where the environmental requirements have been so</p> <p>17 ignored as in this case and what it would require to have</p> <p>18 them do -- have it done. So I'm going to get back just to my</p> <p>19 written testimony.</p> <p>20 MS. ROBESON: May I just (inaudible) just briefly.</p> <p>21 Why -- are you saying that the supplemental planting isn't a</p> <p>22 sufficient mitigation for the loss of the stream valley</p> <p>23 buffer? Is that what -- and if so, why?</p> <p>24 MS. LEE: Well, I don't think -- I don't think</p> <p>25 it's -- I think those are protected. They're just protected</p>
<p>74</p> <p>1 25 percent with erodible soil. Both of these are highly</p> <p>2 protected under the environmental guidelines. So I guess</p> <p>3 that's --</p> <p>4 I just sort of wanted to lay the framework because</p> <p>5 I don't think any of us have disagreed with that except for</p> <p>6 the fact that we have disagreed on whether or not those</p> <p>7 calculations of the stream valley buffers are correct. And</p> <p>8 faced with that, the Planning Board staff admitted that over</p> <p>9 1 acre of stream valley buffer will be developed as part of</p> <p>10 this proposal. And the -- as well as the -- that forest plan</p> <p>11 provision.</p> <p>12 And their response to that was not to make them</p> <p>13 conform to the guidelines or the master plan, but all they</p> <p>14 are having to do is put in some supplemental plantings and</p> <p>15 mitigation. And I don't think there is anything that would</p> <p>16 permit that to be -- to be able to get around -- there is no</p> <p>17 reason why -- there is no basis for just allowing this go</p> <p>18 forward with that kind of planting.</p> <p>19 And I also point out too, these issues are</p> <p>20 important. And I know the Planning Board staff looks of</p> <p>21 them, but I really admire the fact that in the past OZHA</p> <p>22 looks at them independently. And for example, on the</p> <p>23 Brandywine site, which is a pretty concentrated site, there</p> <p>24 was a small amount of either wetlands and/or stream that was</p> <p>25 up near the golf course. And Katherine Nelson at Park and</p>	<p>76</p> <p>1 by statute. And you can't just going to say you're going to</p> <p>2 this and I will plant something over there. I just don't</p> <p>3 think you can -- it's not -- is not even close. I just --</p> <p>4 there are certain -- yeah, it's just -- you can't just go in</p> <p>5 and say I'm going to plant a few trees and get around the</p> <p>6 guidelines because the guidelines, although they are called</p> <p>7 guidelines, and Mr. Stemann says they are just guidelines</p> <p>8 that they are advising, they are not.</p> <p>9 The construction will violate the plain language</p> <p>10 of the county's environmental guidelines that govern all</p> <p>11 development in the county and the forest preservation</p> <p>12 requirements in the Potomac subregion master plan. Although</p> <p>13 they are called balance, the guideline is a compilation of</p> <p>14 state, local, and federal statutory and regulatory</p> <p>15 requirements and is made further binding incorporation by</p> <p>16 reference in the county's forest conservation strategy. As</p> <p>17 required by state --</p> <p>18 MS. ROBESON: (Inaudible) what are you reading?</p> <p>19 MS. LEE: Excuse me.</p> <p>20 MS. ROBESON: Are you reading from something?</p> <p>21 MS. LEE: Yes, from my testimony. I'm sorry.</p> <p>22 Yes.</p> <p>23 MS. ROBESON: Oh, I thought you were quoting</p> <p>24 something. I'm sorry.</p> <p>25 MS. LEE: I will in a minute. I'm sorry. Yeah.</p>

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20 (77 to 80)

<p>77</p> <p>1 No, no. They -- and it includes both state and local and 2 federal regulations including federal statutory requirements 3 for wetlands and floodplains are included as well. As 4 required by state statute, the primary objective of the 5 guidelines is the regulation of development in sensitive 6 areas in particular streams and their buffers, 100 year 7 floodplains, and steep slopes. For example, you can't 8 just -- you can't just give away -- you can't violate a 9 federal wetlands statute by saying if you plant a few more 10 trees -- these are statutory and regulatory.</p> <p>11 MS. ROBESON: I get what you're saying. 12 MS. LEE: Yeah. I'm sorry if I wasn't clear. 13 They are based on sound science and provide the detailed 14 methods necessary for protection against development in areas 15 prone to flooding and on -- where soils are unstable. That's 16 it to try to protect structures, but also to prevent erosion, 17 runoff, and sedimentation especially with regard to 18 preserving water quality, especially as a source of our 19 drinking water. I'm sorry. Got a little dry. 20 This is particularly important here because of the 21 streams in the lodge complex portion of the site are 22 tributaries of the Watts branch. The Watts branch enters the 23 Potomac just above the intake pipe at the WSSC filtration 24 plant located on River Rd. in Potomac. It produces 280 25 million gallons of drinking water a day that is distributed</p>	<p>79</p> <p>1 grading will be permitted in stream buffers except for 2 infrastructure uses, bikeways, and trails found to be 3 necessary, unavoidable, and minimized by the park and 4 planning department environmental staff working closely with 5 the utility or lead agency. Thus with the exception of the 6 sewer line and the proposed bike trail and perhaps the road 7 itself, the other construction of buildings, structures, or 8 impervious surfaces like parking lots proposed for the stream 9 valleys are prohibited.</p> <p>10 What the proposed location for construction of the 11 lodge complex must also be rejected because it violates the 12 plain language of the Potomac subregion master plan 13 requirements for forest conservation. Maryland land-use law 14 requires that the grant of a special exception, now 15 conditional use, must be consistent with the relevant master 16 plan as well as compatible with the existing neighborhood. 17 Likewise, the zoning code requires that a conditional use 18 substantially conforms with the recommendation of applicable 19 master plan. The master plan itself states, at page 13, that 20 a special exception may be denied if it is inconsistent with 21 master plan recommendations. The master plan is not merely 22 advisory.</p> <p>23 The forest in the northern portion of the site, 24 which I showed -- which we looked at on that map number four 25 where the lodge complex will be built, was studied as part of</p>
<p>78</p> <p>1 to 4.3 million residents of Montgomery and Prince George's 2 County. All of that water comes from the Potomac and most of 3 it from the Watts branch watershed.</p> <p>4 Sediment and runoff from Watts branch has 5 historically been a huge problem, but especially during 6 increasingly -- doing local storm events, which have been 7 increasing in severity in the last several years which cause 8 the source water quality to change dramatically and affect 9 the water treatment plant operation. It has reached such a 10 critical situation that there is a proposal to construct a 11 new intake pipe way out into the Potomac away from the Watts 12 Branch.</p> <p>13 A major focus of environmental protection in the 14 county and is reflected in the master plan has been to ensure 15 the Watts Branch stream valley is protected by an increase in 16 stormwater management and the headwaters in Rockville in 17 stringent adherence to the environmental guidelines in the 18 watershed. The construction of the lodge complex, building 19 on steep slopes and in stream valley buffers, forest stands 20 and floodplain buffers will result in just the opposite, 21 increased runoff, degradation, and sediment in the Watts 22 branch.</p> <p>23 The guidelines state specifically that quote, and 24 this is from the guidelines, no building, structures, 25 impervious services, or activities requiring clearing or</p>	<p>80</p> <p>1 the preparation of the master plan process and was 2 specifically addressed in the master plan. And I don't think 3 that they are objecting to that. I think they agree with 4 that.</p> <p>5 The master plan at page 13 specifically states 6 under forest resources, preserve properties containing 7 forested areas, see foldout map F, to prevent fragmentation 8 or to maintain stream valley buffers. It is undisputed that 9 the forest stand in that northern portion of the site is 10 listed for protection on map F. And I believe you looked at 11 that the other day Ms. Hannan when you pulled the -- they 12 pulled it up and sort of circled it.</p> <p>13 It is likewise undisputed that this proposed use 14 does not preserve it, but in fact a portion of the forest 15 including on the steep slopes will be destroyed in order to 16 construct the lodge. And in addition to its designation on 17 foldout map F, Exhibit 94E consists of the documents that 18 accompany the master plan and contain additional explanatory 19 information about the preservation requirements including 20 forest categories and the methods to be used to protect each. 21 The forest stands are divided into five categories. The 22 first three are the largest stands. If you want to bring up 23 that, it's Exhibit 94E. It's that document there. Yeah.</p> <p>24 And I think I have most of the pages outlined if I 25 can -- the forest stands are divided into five categories.</p>

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21 (81 to 84)

<p style="text-align: right;">81</p> <p>1 The first three are the largest stands and all are partly or 2 entirely within public parkland. As a result, the 3 preservation techniques focus on regulation of park 4 activities and park expansion. That's Exhibit 94 at pages 2- 5 3. The Heritage Garden site is in Category 4, which is 6 described as, quote, forest stands which are within riparian 7 corridors of 350 feet or less and which are also considered 8 high priority for preservation. That's Exhibit 94, page 2 9 again. 10 The need for and methods for preserving Category 4 11 stands at such as Heritage Gardens are described as follows. 12 So on page 5 it states, the narrow riparian areas, Category 13 4, are all high priority for retention and will likely be 14 protected by application of existing guidelines and 15 regulations as part of the county's normal development and 16 regulatory review process. That's at page 5. 17 And then the exhibit at page 13, quote, within 18 Category 4, all the stands are very high priority for 19 preservation. Since the -- 20 (Crosstalk) 21 MS. LEE: I'm sorry. Excuse me. 22 MS. ROBESON: Just some on the -- which -- is it 23 94E? 24 MS. LEE: 94E, yes. I think you had the document 25 up --</p>	<p style="text-align: right;">83</p> <p>1 subdivision. 2 MS. LEE: Yeah. Yes. 3 MS. ROBESON: So we have the right document. 4 MS. LEE: Yes. No, no. We are definitely there. 5 And the only concern I have is that I've written down page 6 numbers and I don't have it right in front of me. So I don't 7 know whether the page number -- 8 MS. ROBESON: Never mind, just continue to testify 9 and we will -- I will read the whole -- I will find them. 10 MS. LEE: Okay. It's only that when you put it in 11 a digital format, it may say a different number at the top of 12 the exhibit than it does on the actual page of the document. 13 So -- 14 HEARING EXAMINER ROBESON HANNAN: (Indiscernible). 15 MS. LEE: Exhibit 94, page 13 states, within 16 Category 4, all of the stands are very high priority for 17 preservation since they usually represent minimum stream 18 buffers and all the last defense between the streams and the 19 development that has already occurred. The buffers must be 20 saved when properties are developed. So most of these stands 21 will be preserved. 22 In a few instances, category forest stands have 23 been delineated which contain forest area that extends beyond 24 the minimum stream buffers but doesn't really fit into the 25 higher category. When these instances occur on developable</p>
<p style="text-align: right;">82</p> <p>1 (Crosstalk) 2 MS. ROBESON: I'm on page -- now what page are we 3 on? 4 MS. LEE: Let's see. I'm at 13. I'm sorry if I'm 5 going -- I didn't realize you were trying to -- 6 (Crosstalk) 7 MS. ROBESON: I'm sorry. Go ahead. 8 MS. LEE: That's okay. So on page 13 it further 9 states, within category for all of the stands are very high 10 priority for preservation since they usually are -- present 11 minimum stream buffers and are the last best defense between 12 the streams and the development that has already occurred. 13 The buffers -- 14 MS. ROBESON: I'm sorry. One second. I don't see 15 that on page -- 16 MS. LEE: Okay. 17 MS. ROBESON: 13 of 94E. 18 MS. LEE: I tell you what. So if you -- I 19 don't -- I can't pull it up right now. So if you look up at 20 the page number up at the top, whether -- I don't know 21 whether it's the page number that's listed in the exhibit. 22 You know, when it's page of something of a certain number of 23 pages -- 24 MS. ROBESON: (Inaudible) recommendations for 25 protection and enhancement of forest in the Potomac</p>	<p style="text-align: right;">84</p> <p>1 property, attempts should be made to save all of the stand. 2 And then the last quote is from Exhibit 94 and it's at the 3 very end of the exhibit. It's an October 18, '99 memo from 4 Callum Murray to Cassie Conlon further describing 5 preservation Category 4 forest. 6 Quote, Category 4 forest stands minimum riparian 7 buffers should all be considered high priority for 8 preservation. This should be possible through application of 9 stream buffers for the Planning Boards guidelines for 10 environmental management of development in Montgomery County. 11 In instances where buffers would be insufficient to protect 12 the entirety of the stand, cluster development, and/or park 13 acquisition should be considered. The master plan requires a 14 preservation of Category 4 stands on the Heritage Garden 15 site. 16 The method for doing that was to protect it so 17 application of the requirements contained in the 18 environmental guidelines. If they had been followed, the 19 forest sustained would be preserved. If the Applicant had 20 calculated the stream buffers is required, taking into 21 consideration the adjacent slope and the required extension 22 of the steep slopes and slopes with highly erodible soil and 23 avoided building on steep erodible soils the forest stand 24 would be entirely protected. To the extent there is any 25 portion that is still not protected, the buffers are to be</p>

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22 (85 to 88)

<p style="text-align: right;">85</p> <p>1 extended to include them.</p> <p>2 And finally with regard to the buffers and the</p> <p>3 environmental issues, if you could, pull up Exhibit 94G.</p> <p>4 These are several pictures that I took on the site. And I</p> <p>5 want if you could go to the next one. I think they are</p> <p>6 little bit out of order. But if you could just go to the</p> <p>7 next one, this actually shows you the tributary that's on the</p> <p>8 site and shows you the condition of it basically there.</p> <p>9 What's happening is there is severe erosion already going on</p> <p>10 on the site. You can see trees are falling in all along the</p> <p>11 stream. It's that way all the way on its part of the stream</p> <p>12 as well as the abutting neighbors as well.</p> <p>13 So if you could, go back to the first picture that</p> <p>14 was there. The one just above it. This is actually a</p> <p>15 picture of the old gym. And as you can see in the -- it's --</p> <p>16 three quarters of it sits in the stream valley buffer. And</p> <p>17 as you can see, the stream valley buffer continues -- the</p> <p>18 stream actually continues. And you can see in the</p> <p>19 foreground, the erosion that so happened recently from the</p> <p>20 site and how it -- how close it is. The downspout on that</p> <p>21 back corner is where the floodplain buffer is, is located.</p> <p>22 Just to show you, it's basically all in and around the stream</p> <p>23 valley buffers in this area. There's 10 acres on the site,</p> <p>24 our stream valley buffer. And they're basically right here.</p> <p>25 And the next picture, if you could. I think it</p>	<p style="text-align: right;">87</p> <p>1 stream valley buffer goes to about the third data goes to up</p> <p>2 about the third window on the left when you look.</p> <p>3 So all -- and this whole area to the side of it is</p> <p>4 within the limits of disturbance. I don't know what they're</p> <p>5 going to be doing there, but those are all listed. And</p> <p>6 again, that downspout on the right hand corner is in the --</p> <p>7 is going to be coming right into the floodplain buffer.</p> <p>8 Now, I just wanted to speak a little bit -- that's</p> <p>9 fine with the exhibits, thank you.</p> <p>10 I wanted to point out -- one of our neighbors</p> <p>11 asked if I could speak for her just to give her -- a bit of a</p> <p>12 statement of the issue that she's had with it. Well, first</p> <p>13 of all, it's clear that there is water everywhere there.</p> <p>14 It's a stream valley buffer. You start to go up the slope</p> <p>15 where they're going to put the lodge, it's -- some of it is</p> <p>16 very steep slopes, other steep slopes with erodible soil.</p> <p>17 And the representative of the owner who met with us on the</p> <p>18 site. It was -- they were good enough to allow Mr. Brown and</p> <p>19 myself to go to the site, indicated that she had worked at</p> <p>20 the school before it closed and flooding from the</p> <p>21 intermittent stream, that's the one that Ms. Harris had</p> <p>22 provided a picture of, not the Kilgore Branch, but the one</p> <p>23 that I showed this picture of.</p> <p>24 MS. HARRIS: Objection, I -- I think that's</p> <p>25 hearsay.</p>
<p style="text-align: right;">86</p> <p>1 should be down just a little bit further. This is a -- this</p> <p>2 is a picture from the wetlands. There is a small area of</p> <p>3 wetlands. I meant to tell you as well they did not -- the</p> <p>4 wetlands require expansion of the buffer when they are</p> <p>5 adjacent to steep slopes. And Mr. Malkovich did not have the</p> <p>6 steep slopes located on the map. And as a result there was</p> <p>7 never any expansion of that. It's a small area though and I</p> <p>8 don't think -- with the exception of the sewer line, it's not</p> <p>9 going to be impacted.</p> <p>10 However, we see in front of you in the background</p> <p>11 is the old gym. And what you see is what's there now. They</p> <p>12 have a lot of sort of temporary buildings that were left over</p> <p>13 from the school, the abandoned school. Much of that is in</p> <p>14 the stream valley buffer because the buffer comes up -- you</p> <p>15 know, it's up to the right on that gym structure and it</p> <p>16 continues along over to here where the wetlands are. You can</p> <p>17 see it's a vernal pool during the winter.</p> <p>18 And then the construction will continue and there</p> <p>19 will be that's not quite sure what's going to be built there,</p> <p>20 with it's going to be, I don't know, kind of recreational</p> <p>21 structures or the parking lot. But the steep slopes and</p> <p>22 start to the right of that. I don't have a picture of those,</p> <p>23 but you'll see that they will go up to the right of that.</p> <p>24 And then I think the last -- the last -- just the last picture</p> <p>25 show you. This just gives you an idea again of the gym. The</p>	<p style="text-align: right;">88</p> <p>1 MS. ROBESON: Just a second. Just a second, Ms.</p> <p>2 Lee.</p> <p>3 MS. LEE: Sure.</p> <p>4 MS. ROBESON: Ms. Harris, did you want to say</p> <p>5 something?</p> <p>6 MS. HARRIS: Yes, that sounds like you say to me.</p> <p>7 I mean, she is quoting someone who is not here and saying</p> <p>8 what she heard.</p> <p>9 MS. ROBESON: Hearsay is admissible if it's -- I</p> <p>10 will lay in for the weight it deserves. We don't give it as</p> <p>11 much weight. It is admissible in administrative hearings.</p> <p>12 MR. BROWN: There is an exception to the hearsay</p> <p>13 rule when it comes from and when is an admission against the</p> <p>14 interest of the Applicant. As far I can tell, the people</p> <p>15 that allowed us on the property are aligned with the</p> <p>16 Applicant.</p> <p>17 MS. ROBESON: Well, I don't think we need to go</p> <p>18 into that. I will give it the weight that it deserves</p> <p>19 because it is testimony, it is hearsay. So go ahead.</p> <p>20 MS. LEE: I thought of it when I saw the picture</p> <p>21 that Ms. Harris had submitted of the other stream, the</p> <p>22 intermittent stream and the idea that somehow that was not a</p> <p>23 problem on the site. Because then I remembered what she had</p> <p>24 said, that when she worked to the school before closed and</p> <p>25 flooding from the intermittent stream, which comes down</p>

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23 (89 to 92)

<p style="text-align: right;">89</p> <p>1 through the buildings and the parking lot at a much greater 2 impact on their operations than the other larger Kilgore 3 tributary. 4 And in fact, when I looked at that picture, I 5 wondered because other neighbors had pointed out to me, which 6 I think I remember seeing when I was on site, is that the 7 ground -- there is a brown footbridge that goes over that 8 stream, has been totally washed away by the water that's a 9 been coming down over the site, and I believe that's what she 10 turned and sort of pointed to me. But I can't be sure. 11 And also, for example, Lynn Blithe who lives at 12 Dobson is an abutting property owner whose property extends 13 across the northern boundary of the property, including 14 through the stream itself, as it leaves the Heritage Gardens 15 site. She has some hearing difficulties trying to use the 16 Zoom and Teams platforms, and asked that I express her 17 outrage that even more intense development proposal for the 18 stream buffer, and steep slopes, given the battle that she 19 has waged over the last 10 years of living at that site, to 20 lessen the current impact on her property. Today, she says 21 she has spent approximately \$60,000 to stabilize our property 22 and mitigate the current impacts. 23 So turning from the Lodge portion, as to the rest 24 of the site there's another 20 acres outside this northern 25 area of stream valley buffers that can be developed. And</p>	<p style="text-align: right;">91</p> <p>1 neighbors in giant of a tree, a northern red oak, with a 2 circumference of 50 inches, 20 inches larger than the inches 3 of that trigger qualifying as a specimen. 4 And this is what the Applicant's land use report 5 has to say about this. There are 10 off-site trees being 6 impacted by the construction activities within the limited 7 disturbance of the project. The off-site trees with more 8 than 30 percent critical root zone impacts our proposed to be 9 preserved with extra treat measures. All efforts shall be 10 made to coordinate with the adjoining property to save these 11 trees. End of quote. 12 A conditional use site plan for a 30 acre property 13 that is so dense it can't even ensure the protection of 14 specimen trees in neighbors yards should be rejected. 15 Could I just take just a quick minute to get a 16 glass of water? 17 HEARING EXAMINER ROBESON HANNAN: Yes. 18 MS. LEE: I'll be right back. Is that okay? 19 Thanks. 20 I think I'm okay. I apologize. I think it's the 21 jet lag. I'll go ahead. (inaudible). 22 MR. BROWN: Ms. Lee, I want to ask you a 23 clarifying question if I could before we switch? 24 MS. LEE: Sure. 25 MR. BROWN: Looking at Exhibit 94E, I see the</p>
<p style="text-align: right;">90</p> <p>1 those are 20 acres of Meadows with three much smaller forest 2 stands and some very big old trees. The site, as currently 3 proposed, the use will result in clearcutting the trees and 4 moonscaping the rest of that lot. All the trees will be 5 removed from two of the three forest stands in the 20 acres. 6 And even though many trees on the site will be 7 saved because they are already in an existing forest 8 conservation easement on the remaining land in the north 9 outside the Lodge complex, 42, that's one-third of the 10 remaining 128 largest trees on the side, statutorily 11 protected and requiring a variance will be cut down. The 12 proposed use is so intense that as you heard during our last 13 days of testimony, 10 other large specimen trees that are on 14 abutting neighborhood properties, not even on the Heritage 15 site will be impacted through destruction of these critical 16 root zones. 17 The critical root zones of three of the specimen 18 trees, and one tree of significance, is, as we heard the 19 other day, on Mr. Maggin's lot on Edison. Their entire 20 buffer will be impacted by construction. The limits of 21 disturbance occurring right up to their property line. 22 Also impacted are seven other large specimen trees 23 on other neighbors abutting properties along the opposite 24 side of the property. Again, we discussed that it includes 25 the destruction of 40 percent of the critical root zone of a</p>	<p style="text-align: right;">92</p> <p>1 first 15 pages are one report. Within the next 14 pages are 2 another report followed by a figure 2, followed by a Planning 3 Board memorandum. 4 MS. LEE: Yes. 5 MR. BROWN: Were you reading from the second 6 document? 7 MS. LEE: I was reading from all three. And 8 that's why I -- I will try to clarify the page numbers and 9 submit them to you. I think what I was trying -- I was 10 provided that in the digital -- you know, the electronic 11 version. And so I think I was -- in order to try to clarify, 12 I was just trying to use the numbers that are up on the left- 13 hand corner of the documents. 14 MR. BROWN: All right. Go ahead. 15 MS. LEE: Which I think means it's a consecutive 16 page numbering. 17 MR. BROWN: Okay. Go ahead. 18 MS. LEE: Okay. Second, the construction of a 19 facility of this size at this location is inconsistent with 20 the basic framework of the master plan, including the elderly 21 housing and special exception provisions. Much is made of 22 the master plan a statement on page 38 that senior housing is 23 appropriate throughout the subregion by right, or as a 24 special exception. But it doesn't stop there. It goes on to 25 state that projects must meet zoning ordinance standards for</p>



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24 (93 to 96)

<p style="text-align: right;">93</p> <p>1 this use, and impacts on the surrounding neighborhood must be 2 minimized.</p> <p>3 When significant impacts cannot be mitigated, 4 projects should be located elsewhere in the subregion. Where 5 it is a special exception, the project must also meet the 6 special exception guidelines in the master plan. The zoning 7 code requires that it substantially conforms with the 8 recommendations of the applicable master plan and is 9 harmonious with and will not alter the character of the 10 surrounding neighborhood in a manner inconsistent with the 11 plan.</p> <p>12 The objective is to, quote, protect residential 13 areas while also attempting to meet important policy goals. 14 The entire structure of the master plan was crafted to 15 protect large swaths of low density areas, to serve as a 16 green wedge. More intense development was to occur on the 17 perimeter of the subregion, such as Fortune Park, now Park 18 Potomac, and establish centers such as Cabin John shopping 19 center at Potomac Village, and along major roads such as 20 River Rd.. As for elderly housing, the master plan lists 21 specific sites that appear -- quote, appear to be appropriate 22 for elderly housing. Unquote.</p> <p>23 An earlier version of the master plan spelled out 24 criteria to be used to identify locations, and similar 25 criteria were listed for determining locations for affordable</p>	<p style="text-align: right;">95</p> <p>1 sites, and in 5 potential sites as appropriate for elderly 2 housing. Master plan at page 38.</p> <p>3 The Quarry on River Rd. is one of the five 4 specifically targeted as a site for senior housing, and a 5 zoning amendment to permit it. In fact, senior housing was 6 never built on the site, and instead, Wornald, the Applicant 7 here, is a constructing 45 luxury townhouses without age 8 restrictions on the Quarry site.</p> <p>9 While there are small group homes for the elderly 10 and handicapped throughout the subregion, the larger 11 facilities are located in a manner consistent with the 12 subregions low in density residential areas, and green wedge 13 structure in the master plan. On the perimeter, and on a 14 major thoroughfares. While the Applicant is correct that no 15 large independent living facilities have been constructed in 16 the heart of the residential areas, as is proposed here, 17 there has been an explosion in the number of senior living 18 facilities built in a manner consistent with the overall 19 framework of the Master Plan, the zoning code, and the master 20 plan recommendations regarding growth outside the low density 21 residential areas.</p> <p>22 For example, since the adoption of the master plan 23 the Village at Rockville, located just across here at Scott 24 Drive, which is the subregion boundary, has constructed 241 25 independent living units, 111 are cottages, and 130 apartment</p>
<p style="text-align: right;">94</p> <p>1 housing. And those early drafts are the very last piece of 2 the Potomac subregion master plan, the digital version, and I 3 don't have it right in front of me here, but I can give you 4 those pages. Because they show that the criteria were listed 5 there and then they were, during the councils deliberations 6 on the master plan they did the line strike out. They struck 7 them out.</p> <p>8 And earlier versions of the master plan spelled 9 out criteria to be used to identify locations, and similar 10 criteria were listed for determining locations for affordable 11 housing. In its deliberations on the master plan, the County 12 Council deleted the criteria for both. The legislative 13 history indicates that the Council wanted to promote 14 affordable housing and didn't want to impose criteria that 15 would, in any way, restrict those locations. Because a 16 similar list of criteria was therefore elderly housing 17 whether consciously or inadvertently, they criteria were 18 deleted for elderly housing as well.</p> <p>19 And it's Montgomery County Council resolution 20 number 14-1170 adopted March 5th, '22 at pages 6 and 7. The 21 resolution appears, as I say, as the last document in the 22 Potomac Subregion master plan. Although the language of the 23 master plan no longer references the list of specific 24 criteria, it does identify 12 sites that it states reflect 25 those criteria; 3 existing facilities, 4 pending or approved</p>	<p style="text-align: right;">96</p> <p>1 units.</p> <p>2 Fox Hill on River Rd. just across the Beltway from 3 the Quarry added 240 independent living units. As the 4 Hearing Examiner is aware, just in the last two years three 5 new major assisted living memory care facilities have either 6 been constructed, Brandywine with 140 beds, and Artis with 72 7 are approved, but not yet constructed. Spectrum with 100 8 beds. Brandywine and Spectrum are barely a mile from the 9 Heritage Garden sites.</p> <p>10 What is important to note is that their 11 similarities and the stark contrast with Heritage Gardens. 12 All were constructed outside low density neighborhoods on the 13 perimeter of the low density zone, and on major, not narrow 14 rural roads, and with public transport for the workers 15 directly in front, or nearby within walking distance. 16 Construction did not require violating any of the county's 17 environmental requirements.</p> <p>18 Most recently, West Montgomery joined with the 19 abutting neighbors and did not oppose the Spectrum 20 application. It seemed a reasonable location within existing 21 commercial use on River Rd. with public transport, within 22 walking distance of the Village with shopping, doctors' 23 offices, churches and library. In response to neighbors 24 request, concerning impact and the neighborhood 25 compatibility, the Applicant redesigned the building,</p>

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25 (97 to 100)

<p style="text-align: right;">97</p> <p>1 downsizing from 3 to 2 floors and with added buffering via 2 walls and larger trees to minimize the impact on abutting 3 neighbors, just the opposite of this site. 4 Now, I need to take just a second. 5 HEARING EXAMINER ROBESON HANNAN: Ms. Lee, if 6 you -- I see a hand raised for a Patty McGrath. Is Ms. 7 McGrath here? 8 MS. MCGRATH: Yes, I am. I'm on the Zoom call. 9 HEARING EXAMINER ROBESON HANNAN: Ms. McGrath did 10 you want to -- are you not represented by either Mr. Brown or 11 Ms. Harris? 12 MS. MCGRATH: I am a neighbor of the property, the 13 development. I live on Edison Rd.. 14 HEARING EXAMINER ROBESON HANNAN: Okay. Just a 15 second. 16 MR. BROWN: Mr. Brown, is she a witness you were 17 planning to call? 18 MR. BROWN: No. 19 MS. MCGRATH: I was told -- I could be wrong Ms. 20 Hannan, I could be wrong, but I was told that neighbors would 21 be allowed to testify. I'm out of the country at the time, 22 so I wasn't sure if I, as a neighbor, I would be allowed to 23 testify, to just make a statement. A short statement. 24 HEARING EXAMINER ROBESON HANNAN: Mr. Brown, and 25 Ms. Harris, do you have an issue taking a break from Ms.</p>	<p style="text-align: right;">99</p> <p>1 about to make are the truth, the whole truth, and nothing but 2 the truth? 3 MS. MCGRATH: I do. 4 HEARING EXAMINER ROBESON HANNAN: Okay. Please 5 state your name, address, and email for the record. 6 MS. MCGRATH: Okay. My name is Patty McGrath, I 7 liv at 11007 Edison Rd. and my email is 8 PattyMcGrath08@aol.com. 9 HEARING EXAMINER ROBESON HANNAN: Thank you. 10 Okay. You can proceed. What would you like to say? 11 MS. MCGRATH: I'm going to try to get to my 12 statement so I don't ramble. Okay. Can you still see me? 13 HEARING EXAMINER ROBESON HANNAN: Your picture 14 dropped -- 15 MS. MCGRATH: Hello. 16 HEARING EXAMINER ROBESON HANNAN: I can't see you. 17 MS. MCGRATH: Oh, well, is it alright if I just 18 read my statement? 19 HEARING EXAMINER ROBESON HANNAN: Does anyone have 20 an objection to permitting Ms. McGrath to testify without a 21 camera? 22 MS. HARRIS: No. 23 MR. BROWN: No objection. 24 HEARING EXAMINER ROBESON HANNAN: All right. Go 25 ahead.</p>
<p style="text-align: right;">98</p> <p>1 Lee's testimony, maybe she can get some water, and let Ms. 2 McGrath testify? 3 MS. HARRIS: That's fine. 4 MR. BROWN: Absolutely fine with me. 5 HEARING EXAMINER ROBESON HANNAN: Okay. Ms. 6 McGrath, do you have access to a camera? 7 MS. MCGRATH: I do. I do. I have to turn some 8 lights so that you could actually see me. But my statement 9 is -- I'm working on an iPad. 10 HEARING EXAMINER ROBESON HANNAN: (inaudible) 11 don't go yet. Don't go yet. 12 MS. MCGRATH: Okay. I -- I -- 13 HEARING EXAMINER ROBESON HANNAN: Can you get the 14 camera on first? 15 MS. MCGRATH: What was that now? Turn on the 16 camera first? 17 HEARING EXAMINER ROBESON HANNAN: Yes, please. 18 MS. MCGRATH: Let me see if this works. Okay. I 19 just have to look at my statement, which I had sent in and I 20 composed it. 21 HEARING EXAMINER ROBESON HANNAN: Okay. Well, 22 first, just a second. Can you raise your right hand? 23 MS. MCGRATH: Yes. Well, yes. 24 HEARING EXAMINER ROBESON HANNAN: Do you solemnly 25 affirm under penalties of perjury that the statements you're</p>	<p style="text-align: right;">100</p> <p>1 MS. MCGRATH: Thank you very much. My home is 2 physically closer to the main nursing facility that's being 3 proposed and then the facility is to their South Glen Rd. 4 entrance. I did not realize this until I saw the aerial maps 5 of the proposal. I have suffered thousands of dollars of 6 flood water damage which eroded my driveway and culvert, and 7 had to be completely rebuilt. And in this proposed 8 development is a disturbance to a massive amount of tree 9 canopy and mycorrhizal soil moisture absorption capacity and 10 I believe that this will directly endanger my home by 11 increasing flood -- 12 HEARING EXAMINER ROBESON HANNAN: Mrs. McGrath, 13 can you see the exhibit on the screen? 14 MS. MCGRATH: I have to go back. 15 HEARING EXAMINER ROBESON HANNAN: Okay. Don't. 16 You can go ahead and keep reading. 17 MS. MCGRATH: Okay. Yeah. Okay. Let me go back. 18 HEARING EXAMINER ROBESON HANNAN: Is your property 19 on this exhibit? 20 MS. MCGRATH: I don't believe it's on the exhibit 21 because it doesn't literally abut the property. 22 HEARING EXAMINER ROBESON HANNAN: Okay. 23 MS. MCGRATH: But the distance from the Lodge to 24 S. Glen Rd. is shorter than the distance from the Lodge to my 25 house because of the length of it.</p>

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26 (101 to 104)

101	103
<p>1 MS. HARRIS: Could I interrupt again and asked for 2 the address, please? 3 MS. MCGRATH: Yes. It's 11007 Edison Rd.. 4 MS. HARRIS: Thank you. 5 MS. MCGRATH: Yeah. And it lies -- 6 HEARING EXAMINER ROBESON HANNAN: Okay. Go -- 7 MS. MCGRATH: Okay. 8 HEARING EXAMINER ROBESON HANNAN: Go ahead. 9 MS. MCGRATH: So my home depends on clean water 10 from a well that is 120 feet underground. The level of 11 ground disturbance created by building a townhouse 12 development in the midst of well water houses is completely 13 unacceptable and endangers my, and our, access to clean 14 water. The underground aquifers will be altered by a 15 development this in tents, which will channel massive amounts 16 of storm water. The Applicants contend that stormwater will 17 be better managed with this development. And actually, it is 18 there townhouse development in front of the development of a 19 nursing facility that will create massive stormwater issues 20 with rooftops adding to the paved areas and creating 21 stormwater runoff. 22 All of that area is currently in fields and 23 forests which it doesn't need stormwater management, but 24 actually moderates rainfall by retaining moisture in the 25 soil. Basically, what I am looking at from my view as a</p>	<p>1 has been caused by storm water damage. This would make it 2 unspeakably more intense. 3 So thank you very much. I have to express my 4 appreciation for everyone for allowing me to speak under 5 these circumstances. 6 HEARING EXAMINER ROBESON HANNAN: Thank you. Any 7 questions, Ms. Harris? 8 MS. HARRIS: Yes, please. So Ms. McGrath, if I 9 could, I'm going to pull up Exhibit 70. And I believe -- 10 tell me when you can see the screen. 11 MS. MCGRATH: yes, I can see 70. 12 MS. HARRIS: Okay. And I think, correct me if I'm 13 wrong, is this your property at the cul-de-sac of Edison Rd.? 14 MS. MCGRATH: Let me see, yes, that is. That is 15 it. 16 MS. HARRIS: Okay. 17 MS. MCGRATH: That is it. 18 MS. HARRIS: Okay. And you can see on this plan, 19 Exhibit 70 that there is, looks like some kind of stream 20 function that runs across your property; is that correct? 21 MS. MCGRATH: There is. 22 MS. HARRIS: Okay. 23 MS. MCGRATH: But what you cannot see -- 24 MS. HARRIS: Right. I'm sorry. 25 MS. MCGRATH: What you cannot see.</p>
102	104
<p>1 neighbor, what I see is replacing a school with a nursing 2 facility that's truly a managed living, and a townhouse 3 development in front of it, that would provide, basically, 4 normal townhouse living for persons presumably if the 5 zoning -- if the regulations would hold, for people over 65 6 years of age. 7 I asked myself the question with the Applicant be 8 willing to build only the main nursing facility, and I doubt 9 it. Because it's the town houses that will make the profit 10 for the whole project. Would be we be willing, as a 11 community, to welcome a nursing facility to replace the 12 school? Perhaps with strict environmental restrictions, I'm 13 not even sure of that myself. But certainly, the intense 14 development on the meadow that Susanne was describing is 15 really what is going to be extremely degrading to the whole 16 watershed area. 17 So basically, I am very much opposed to this 18 development because of its intense nature and I hope that the 19 environmental restrictions will be enough to either totally 20 turned down this proposal, or to have it go back to the 21 drawing boards and try to have -- to live within the 22 environmental constraints of that area. 23 I have been directly affected by the storm water, 24 and as I said, it cost almost \$10,000 to have that culvert 25 replaced, to see the water running over the driveway and that</p>	<p>1 HEARING EXAMINER ROBESON HANNAN: Ms. McGrath, 2 you'll get to say something. Let her finish asking you -- 3 MS. MCGRATH: Oh, okay. All right. 4 HEARING EXAMINER ROBESON HANNAN: -- the 5 questions. 6 MS. HARRIS: Okay. So I'm going to zoom out of 7 here just a bit, and I am going to follow the stream. Can 8 you see my cursor? 9 MS. MCGRATH: Yes. Yes. 10 MS. HARRIS: And so where does that stream -- it 11 intersects to a larger stream right where my cursor is; would 12 you agree with that? Within -- 13 HEARING EXAMINER ROBESON HANNAN: (inaudible) when 14 she -- when Ms. Harris says it right for her cursor is, that 15 is where the stream flows south -- no, flows north -- 16 MS. HARRIS: West. 17 HEARING EXAMINER ROBESON HANNAN: -- to Kilgore 18 Branch. West to Kilgore Branch (inaudible). 19 MS. HARRIS: Would you agree with that? 20 MS. MCGRATH: Well, I don't know the grades, and I 21 don't know, you know, -- but that is a stream that is on my 22 property, yes. 23 MS. HARRIS: And is that -- 24 MS. MCGRATH: Flows out of my property. 25 MS. HARRIS: And is that leg of the stream that I</p>

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27 (105 to 108)

<p>105</p> <p>1 just identified from your property to the intersection of the 2 Kilgore Branch Stream, is it that in any way -- does that 3 stream in any way intersect with the subject property, which, 4 as you can see down here, is further east of the property of 5 that stream?</p> <p>6 MS. MCGRATH: Well, yes it does. And all -- I 7 wish I had a cursor so that I could show you. If you went 8 from the cluster of two of those six townhouses there on that 9 first branch, the three and three, the first place where from 10 the main road to the left there's a group of three, and then 11 another group of three?</p> <p>12 MS. HARRIS: Are you talking on the subject 13 property?</p> <p>14 MS. MCGRATH: Basically --</p> <p>15 MS. HARRIS: Just so I'm clear?</p> <p>16 MS. MCGRATH: Basically --</p> <p>17 HEARING EXAMINER ROBESON HANNAN: Just a second. 18 You're discussing the two sets of -- the northern most sets 19 of town houses on the western side of that road?</p> <p>20 MS. MCGRATH: Right. Well, actually all of those 21 townhouses because what you can't see is that Edison Rd. 22 drains into my property. And drains when I have stood in 23 Edison Rd. in the pouring rain and watched the water come 24 around Edison Rd., past Dobbins, for some reason, past 25 Dobbins straight down to the cul-de-sac and straight into</p>	<p>107</p> <p>1 already said she doesn't know the topo. 2 MS. HARRIS: Okay. I don't think I have any more 3 questions of her. 4 HEARING EXAMINER ROBESON HANNAN: You can make 5 your point on rebuttal. 6 MS. HARRIS: Yes. 7 MR. BROWN: Mr. Brown, do you have any questions? 8 MR. BROWN: No questions. Thank you for your 9 testimony. 10 HEARING EXAMINER ROBESON HANNAN: Anyone else? 11 Did you want to say anything else, Ms. McGrath? 12 MS. MCGRATH: Well, I really appreciate being 13 allowed to speak and my sentiment is that it would be 14 wonderful to have a nursing facility and it would not be 15 wonderful to have a townhouse development in front of it to 16 pay for the nursing facility. 17 HEARING EXAMINER ROBESON HANNAN: Okay. Just 18 briefly, any questions based on that little end? 19 MS. HARRIS: No questions. 20 HEARING EXAMINER ROBESON HANNAN: Thank you very 21 much, Ms. McGrath. 22 MS. MCGRATH: Thank you so much for letting me 23 speak. I really appreciate it. 24 HEARING EXAMINER ROBESON HANNAN: That's what we 25 do. All right. So it's 12:27. Ms. Harris do you mind</p>
<p>106</p> <p>1 that branch. 2 MS. HARRIS: Okay. And did you -- 3 MS. MCGRATH: And it is unbelievable how much 4 water -- 5 MS. HARRIS: Is your property a higher -- 6 MS. MCGRATH: How much water -- 7 MS. HARRIS: Would you agree that your property is 8 at a higher elevation than the subject property? 9 MS. MCGRATH: I have no idea. What I do know -- 10 is that the water from -- that's draining from what looks 11 like the east side on this drawing, that's draining from 12 those properties onto Edison Rd. flows literally around that 13 curve, down to the cul-de-sac, stops -- stops and actually 14 crosses the street. Crosses Edison Rd., into my property. 15 MS. HARRIS: And I don't doubt that for a moment. 16 MS. MCGRATH: But you can't see that. 17 MS. HARRIS: But I understand what you're saying 18 and I wouldn't doubt that for a moment that the existing 19 conditions on an elevation that's higher than the subject 20 property is causing the existing situation. 21 What I'm trying to figure out from your 22 HEARING EXAMINER ROBESON HANNAN: Ms. Harris, just 23 limit to questions. 24 MS. HARRIS: Okay. 25 HEARING EXAMINER ROBESON HANNAN: I know she</p>	<p>108</p> <p>1 stopping sharing your screen? 2 MS. HARRIS: Oh, sorry. 3 HEARING EXAMINER ROBESON HANNAN: No, it's okay. 4 We're all trading back and forth. 5 Okay. I know that Ms. Lee is anxious for dinner. 6 Is -- how much longer, Mr. Brown, do you think Ms. Lee has? 7 Or Ms. Lee, how much longer? 8 MS. LEE: I think only about five minutes, if that 9 works. At the most. 10 HEARING EXAMINER ROBESON HANNAN: Yeah. Okay. 11 That's fine. 12 MS. LEE: I'm at my third objection. 13 HEARING EXAMINER ROBESON HANNAN: Okay. Well, I 14 appreciate your allowing us to interrupt to get people in and 15 out. Okay. Go ahead. I think you were reading from a 16 narrative so I'll let you continue. Thank you. 17 MS. LEE: Okay. I was just finishing up the 18 reasons why it's inconsistent with the master plan and now, 19 onto our third objection, which is: 20 We object to approval as a conditional use, a 21 residential care facility, senior care community that has as 22 one of its core elements a bizarre fee simple ownership 23 structure that coupled with stringent age restrictions will 24 be an enforcement disaster, and most likely be doomed to 25 fail, as did a prior age restricted elderly housing complex</p>

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28 (109 to 112)

<p>109</p> <p>1 in Potomac Village.</p> <p>2 The site will be owned and the conditional use</p> <p>3 held by 46 separate entities. This is a facility that is</p> <p>4 owned by 46 separate entities. The Applicant, and the 45</p> <p>5 entities to buy the fee simple townhouses. It's entirely</p> <p>6 unclear what role Sage, the actual provider of services will</p> <p>7 have, given that they have no ownership interest and will not</p> <p>8 be holding the -- will not be a holder of the conditional use</p> <p>9 according to what the Applicant has said.</p> <p>10 These 45 feet simple townhouses will, according to</p> <p>11 the Applicant, the price starting at around one and a quarter</p> <p>12 million, but most will be priced at close to 2 million. They</p> <p>13 will have three, maybe four bedrooms, two baths, and</p> <p>14 elevator, and a two car garage. But to qualify as a senior</p> <p>15 care community, the age restrictions are very stringent.</p> <p>16 Occupancy of any independent living unit, those in the lodge,</p> <p>17 and all of the fee simple townhouses is limited to persons 62</p> <p>18 years of age or older, with three very limited exceptions.</p> <p>19 The spouse of a resident, regardless of age, notice, it says</p> <p>20 spouse, not significant other. Another relative of a</p> <p>21 resident 50 years and older in the resident widow, widower or</p> <p>22 other surviving relative of a resident who dies while</p> <p>23 residing at the senior care community is allowed to remain</p> <p>24 even though there resident widow, widower, or other surviving</p> <p>25 relative has not reached the age of 62.</p>	<p>111</p> <p>1 and by whom? There's no communal structure as there would be</p> <p>2 in the usual senior facility, such as the Lodge. How do you</p> <p>3 define occupancy versus casual sleepovers, kids,</p> <p>4 grandchildren, want to rent it out as an Airbnb. People</p> <p>5 needing houses, or housesitting.</p> <p>6 Will there be a monthly synthesis? Should it be</p> <p>7 reported to the Board of Appeals? What happens when there</p> <p>8 are violations? What happens to the offending individual?</p> <p>9 And how is the townhouse owner held accountable? How and who</p> <p>10 will be responsible for determining that that minimum of 80</p> <p>11 percent of the dwelling units must be occupied by at least</p> <p>12 one person per unit who is 55 years of age or older?</p> <p>13 Especially since Sage isn't even in charge; they're not even</p> <p>14 one of the conditional use holders.</p> <p>15 Of equal concern is our well-founded fear that</p> <p>16 these age restricted luxury townhouses won't sell. Who would</p> <p>17 possibly be the first buyer, or a resale buyer of a \$2</p> <p>18 million, four bedroom townhouse with these permanent</p> <p>19 occupancy limitations, ones that will continue forever,</p> <p>20 internally, whether sold or resold, gifted, are included in</p> <p>21 the owner's estate. In fact, the community faced at that</p> <p>22 exact situation and a site a mile away in Potomac Village</p> <p>23 next to the library.</p> <p>24 Although it occurred many years ago and before the</p> <p>25 master plan, the issues are the same. The marketability of</p>
<p>110</p> <p>1 Furthermore, there's another provision,</p> <p>2 separately, a minimum of 80 percent of the dwelling units,</p> <p>3 all the lodge and the townhouses taken together, must be</p> <p>4 occupied by at least one person per unit who is 55 years of</p> <p>5 age or older. And that's the language right out of this most</p> <p>6 recent zoning text amendment. These are in contrast, and</p> <p>7 much more stringent than the occupancy limitations placed on</p> <p>8 independent living facilities for seniors and persons with</p> <p>9 disabilities, which is the provision the Applicant tried to</p> <p>10 get approved under the last time they filed for a conditional</p> <p>11 use.</p> <p>12 Under that provision, it can be occupied by a</p> <p>13 senior adult, 62 years and older, any other members of the</p> <p>14 household of a senior adult regardless of age, a resident</p> <p>15 caregiver, if needed, to assist a senior resident, or a</p> <p>16 person authorized to occupy housing provided under any</p> <p>17 federal or state program that is specifically designed and</p> <p>18 operated to assist seniors designed in that program.</p> <p>19 The big difference is that someone in an</p> <p>20 independent living facility for seniors can have any family</p> <p>21 members, or a resident caregiver move in with them to help</p> <p>22 out. This is absolutely not possible in these townhouses</p> <p>23 unless of those persons are also 62 years of age or older.</p> <p>24 How in the world with the age restrictions on</p> <p>25 occupancy in each of the 45 luxury townhouses be enforced,</p>	<p>112</p> <p>1 high end fee simple townhouses with very stringent age</p> <p>2 restriction occupancy limitations. At the time it was called</p> <p>3 Potomac Mews, and is now called the village of Potomac. The</p> <p>4 street addresses are 10000 to 10029, Gable Manor Court.</p> <p>5 Originally the land, 3-1/2 acres was zoned R200 and at most</p> <p>6 seven detached homes could be built. The developer applied</p> <p>7 for a special exception to build 12 fee simple high end</p> <p>8 townhouses and to detached houses, in addition to maintaining</p> <p>9 the historic Willett house already on the site.</p> <p>10 And he went under the existing (inaudible) for</p> <p>11 housing for the elderly, 62 years or older. The first</p> <p>12 application was denied because the developer did not meet the</p> <p>13 special exceptions because it failed to provide any related</p> <p>14 facility -- related services in addition to the housing. The</p> <p>15 developer amended the application to convert one of the</p> <p>16 houses, the historic Willett house, into a center for the</p> <p>17 provision of services and the special exception was granted.</p> <p>18 That special exception S13 (inaudible) went on sale, but</p> <p>19 despite having been heavily marketed for four years later - -</p> <p>20 HEARING EXAMINER ROBESON HANNAN: (inaudible)</p> <p>21 MS. LEE: Excuse me.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: You froze for a</p> <p>23 moment. What was the number of the -- your camera froze.</p> <p>24 MS. LEE: Oh, I'm --</p> <p>25 HEARING EXAMINER ROBESON HANNAN: What was the</p>

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29 (113 to 116)

<p>113</p> <p>1 number of the special exception?</p> <p>2 MS. LEE: My worst fear that I'll freeze over</p> <p>3 here. But the special exception number, if you can hear me</p> <p>4 now was S-1386.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>6 MS. LEE: September 15, 1987.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: (inaudible).</p> <p>8 MS. LEE: All the townhouses were -- I'm sorry?</p> <p>9 Is it okay?</p> <p>10 HEARING EXAMINER ROBESON HANNAN: Yes, you're</p> <p>11 fine. Thank you.</p> <p>12 MS. LEE: All townhouses were constructed, went on</p> <p>13 sale, but despite being heavily marketed four years later</p> <p>14 none, not one of these fee simple age restricted houses were</p> <p>15 sold. The developer then went to the county and requested</p> <p>16 and obtained a zoning map amendment allowing the houses to be</p> <p>17 considered part of a planned unit development, a TD5. As</p> <p>18 such, the age restriction no longer applied in all of the fee</p> <p>19 simple houses were sold and continue to be resold.</p> <p>20 In support of G-690, the zoning map amendment, the</p> <p>21 developer's attorneys submitted a letter dated -- describing</p> <p>22 the circumstances leading to, and warranting the map</p> <p>23 amendment. The letter dated December 17, 1991 was from</p> <p>24 attorney Harry Lerch to Dale Price, then chief of the</p> <p>25 development (indiscernible) --</p>	<p>115</p> <p>1 and handicapped.</p> <p>2 Construction began and homes were offered for sale</p> <p>3 in 1988. In spite of nearly four full years of intensive</p> <p>4 sales efforts no units have been sold. For the past year</p> <p>5 they have been offered at prices more than \$150,000 below our</p> <p>6 costs. More than 1200 qualified prospective purchasers have</p> <p>7 visited the site and registered. Numerous other interested</p> <p>8 parties have also toured the houses. Many thousands of hours</p> <p>9 of work have been spent by two leading real estate firms and</p> <p>10 many other brokers, all to no avail.</p> <p>11 The zoning ordinance concept of a project in which</p> <p>12 homes would be occupied only by persons" I'm continuing to</p> <p>13 quote from the letter. "Would be occupied only by persons 62</p> <p>14 years of age and older appears to be a failure, at least with</p> <p>15 regard to this project. The law effectively says that anyone</p> <p>16 who buys a unit will only be able to resell it in the future</p> <p>17 for occupancy by someone who is 62 years of age and older.</p> <p>18 When prospective buyers realize that they are</p> <p>19 facing this extreme on future resale they find any excuse not</p> <p>20 to buy, and sales become virtually impossible. The owners</p> <p>21 are extremely proud of their design and the appearance of the</p> <p>22 project. And in fact, it has won national awards. Their</p> <p>23 only disappointments of course, have been that these</p> <p>24 beautiful homes have been sitting vacant for nearly 3 years</p> <p>25 without any occupancy."</p>
<p>114</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Ms. Lee? Oh</p> <p>2 dear.</p> <p>3 Ms. Lee?</p> <p>4 Mr. Brown, do you happen to have a number for her?</p> <p>5 MR. BROWN: No, I'll text her right away. Thank</p> <p>6 you.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Thanks.</p> <p>8 Let's -- while Mr. Brown's texting let's take a</p> <p>9 five-minute break, please. We'll be back at 12:41.</p> <p>10 (Off the record at 12:37 p.m., resuming at 12:43</p> <p>11 p.m.)</p> <p>12 MS. LEE: It's not much longer and I'll go</p> <p>13 ahead -- I think -- I hope that it was a -- I was starting to</p> <p>14 talk about a letter that went to the review. I'll start at</p> <p>15 the beginning of that paragraph just to make sure.</p> <p>16 HEARING EXAMINER ROBESON HANNAN: That's fine.</p> <p>17 MS. LEE: So in support of the G-690 zoning map</p> <p>18 amendment the developers attorney submitted a letter dated</p> <p>19 December 17, 1991. The letter was from attorney Harry Lerch</p> <p>20 then chief of the development review division of the Planning</p> <p>21 Board, and stated in relevant part, "the Applicant is</p> <p>22 somewhat unique in that Potomac Mews has already been</p> <p>23 developed and exist totally today virtually in its finished</p> <p>24 form. The Board of the Appeals in case number S-1396 --</p> <p>25 1386, granted a special exception for housing for the elderly</p>	<p>116</p> <p>1 And that's the end of the quote. I might add that</p> <p>2 there sort of Victorian. They are still there. They are</p> <p>3 Victorian-style, some of them have elevators. They are quite</p> <p>4 high end townhouses, and quite large. And this, from the</p> <p>5 Planning Board staff report of the zoning map amendment to</p> <p>6 TD5 that would lift the age restriction.</p> <p>7 Quote: It has become apparent that the expected</p> <p>8 market for these units as elderly housing did not exist.</p> <p>9 None of the units have been sold. The current rezoning</p> <p>10 request would make this project a standard market rate</p> <p>11 housing development free of the restrictions imposed under</p> <p>12 the conditions of the special exception. Staff concluded</p> <p>13 that it makes little sense to leave the unit standing vacant</p> <p>14 in limbo where they will certainly become an attractive</p> <p>15 nuisance, and eventual eyesore as they deteriorate.</p> <p>16 Obviously, we are very concerned about that and we</p> <p>17 ask that if the decision is to approve, multiple conditions</p> <p>18 have to be placed on it. I don't even know where you would</p> <p>19 begin to be able to do that. I know our attorney is looking</p> <p>20 into that. But I think the basic one that we are really</p> <p>21 concerned about is none of those townhouses should be</p> <p>22 developed, or constructed until the Lodge is constructed.</p> <p>23 Because the statute requires that in order to qualify as this</p> <p>24 kind of facility you must have assisted living and</p> <p>25 independent living.</p>

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30 (117 to 120)

<p>117</p> <p>1 So our big concern is that he will start to put</p> <p>2 the townhouses on the market, can't sell them, and then were</p> <p>3 stuck with those. But I think at a minimum, the Lodge has to</p> <p>4 be constructed. Otherwise, it doesn't qualify as a senior</p> <p>5 living facility under the statute. And of course, then</p> <p>6 trying to figure out what happens. And then it doesn't -- if</p> <p>7 there's violations how do we police it? Does it revert to</p> <p>8 the underlying zone? Will they be required to take them</p> <p>9 down? And staging so that we are sure that it actually works</p> <p>10 and we're not stuck with another situation like we were with</p> <p>11 Potomac Mews.</p> <p>12 That's it. Thank you very much, and thank you for</p> <p>13 your patience.</p> <p>14 HEARING EXAMINER ROBESON HANNAN: Thank you very</p> <p>15 much.</p> <p>16 MS. LEE: Thank you.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: Ms. Harris, do</p> <p>18 you have questions, or do you have at best you want to take</p> <p>19 a -- okay. Would you prefer to take a lunch now or would you</p> <p>20 prefer to go through -- finish Ms. Lee?</p> <p>21 MS. HARRIS: Unfortunately for Ms. Lee, I need to</p> <p>22 eat something. And so I would request that we have a lunch</p> <p>23 break and also, obviously, I want time to get my thoughts</p> <p>24 together for effective cross.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Mr. Brown, do</p>	<p>119</p> <p>1 MS. LEE: No, not as a confirmed science. Not as</p> <p>2 an actual degree program.</p> <p>3 MS. HARRIS: And are you a scientist?</p> <p>4 MS. LEE: No.</p> <p>5 MS. HARRIS: And are you a civil engineer?</p> <p>6 MS. LEE: No.</p> <p>7 MS. HARRIS: And then, do you recall testifying at</p> <p>8 the Planning Aboard in the 2018 Glen Mill Rd. case, that was</p> <p>9 preliminary plan number 1201-60180, where you were opposing</p> <p>10 at two lot subdivision for some of the same reasons that</p> <p>11 you've raised here, actually where you said that I'm not a</p> <p>12 scientist, I'm not a forester, I'm not an expert. Does</p> <p>13 that -- do you recall that?</p> <p>14 MS. LEE: Yes.</p> <p>15 MS. HARRIS: And is that -- would you still</p> <p>16 classify -- would you still agree with that statement?</p> <p>17 MS. LEE: Yes.</p> <p>18 MS. HARRIS: Moving on for a moment to the NRI,</p> <p>19 the code of Montgomery County regulations, another code</p> <p>20 section, 22.A.00.01.05 provides that the NRI is to be</p> <p>21 reviewed and approved by the planning director. And would</p> <p>22 you agree that in this case there is an approved NRI?</p> <p>23 MS. LEE: Well, that's interesting. I didn't get</p> <p>24 into the -- it's sort of complicated because of all the</p> <p>25 exhibits, but I did want to point out, I hope I made that</p>
<p>118</p> <p>1 you have an objection?</p> <p>2 MR. BROWN: No. I'm perfectly happy giving Ms.</p> <p>3 Harris the latitude she needs.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: Let's -- I'm not</p> <p>5 like Marty. Marty wouldn't do anything until 3:00. So let's</p> <p>6 go to 1:30, that's about 40 minutes. So we're going to</p> <p>7 recess until 1:30.</p> <p>8 MS. HARRIS: Thank you.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: We're going to</p> <p>10 continue with the cross-examination of Ms. Lee.</p> <p>11 MS. HARRIS: Thank you.</p> <p>12 (Off the record at 12:49 p.m., resuming at 1:34,</p> <p>13 p.m.)</p> <p>14 MS. HARRIS: I think it's evening for you Ms. Lee.</p> <p>15 So good evening again. You indicated in your background that</p> <p>16 you practice environmental law. I think you said for</p> <p>17 about -- approximately 15 years, is that correct?</p> <p>18 MS. LEE: Yes.</p> <p>19 MS. HARRIS: Have you ever prepared a natural</p> <p>20 resources inventory?</p> <p>21 MS. LEE: No.</p> <p>22 MS. HARRIS: And in terms of your background, do</p> <p>23 you have a degree in water resources or hydrology?</p> <p>24 MS. LEE: No.</p> <p>25 MS. HARRIS: Have you studied forestry?</p>	<p>120</p> <p>1 clear that there was an NRI that was approved in 2019 and</p> <p>2 that's the one that was submitted and that we -- the only</p> <p>3 document that we had since August of when it was submitted.</p> <p>4 So it was submitted with the prior application, I believe, in</p> <p>5 2019.</p> <p>6 And it appears as Exhibit -- let me get my exhibit</p> <p>7 numbers out. So that was what was in the file, and it was</p> <p>8 signed by Mr. Markovich. And it did not include any of the</p> <p>9 slope information. And we --</p> <p>10 MS. HARRIS: Wait.</p> <p>11 MS. LEE: And I put a -- excuse me, go ahead.</p> <p>12 Yeah.</p> <p>13 MS. HARRIS: Let me --</p> <p>14 MS. LEE: And so --</p> <p>15 MS. HARRIS: -- bring your attention to Exhibit</p> <p>16 51A, which is the approved -- let me bring it up on my</p> <p>17 screen. And as you probably recall from the earlier</p> <p>18 testimony the NRI needed to be recertified. Would you agree</p> <p>19 that in the top left-hand corner this indicates that this NRI</p> <p>20 was, in fact, approved by the Montgomery County Planning</p> <p>21 Department?</p> <p>22 MS. LEE: It's the document that you all presented</p> <p>23 at the end of December whenever you put in your last</p> <p>24 exhibits. And it's -- it has Mr. Penn's name on it, and it</p> <p>25 has a date back in August, but it was never in the -- that's</p>

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<p>121</p> <p>1 why it just seemed so bizarre to us. It was never in the 2 file before the Planning Board, and to the best of my 3 knowledge, it wasn't there before it even went to the 4 Planning Board. Because even looking at it that morning -- 5 And I testified, as you know, at the Planning 6 Board pointing out that the person who did the NRI did not 7 include the steep slopes. And so it wasn't until you 8 submitted it again. And I know that that version right there 9 has no signature by a preparer. There's no indication of who 10 prepared that document. Mr. Penn said he approved it back -- 11 his signed -- his piece up there says it was back in August. 12 But as I say, we never saw that until you folks submitted it 13 just before the hearing. 14 MS. HARRIS: But you wouldn't disagree that that 15 is an approved NRI, that's in the -- 16 MS. LEE: Well, I don't know if approved means? I 17 mean, it's supposed to be signed by the preparer. I have no 18 idea if Mr. Markovich was involved. You know, you didn't 19 present him to talk about how he added the steep slopes. So 20 I don't have any idea whether it's a good one or not. 21 HEARING EXAMINER ROBESON HANNAN: If I may just -- 22 I know this is cross-examination, but I will interject, Ms. 23 Harris, I didn't think of this. There is a requirement in 24 state law that a government can't rely on plans that are not 25 assigned and sealed by the professional that prepared them.</p>	<p>123</p> <p>1 correct? 2 MS. LEE: Yes. 3 MS. HARRIS: And I believe, if I heard you 4 correctly that you noted that one of them -- well, three of 5 them, they indicate on this that it's a highly erodible, 6 correct? 7 MS. LEE: Yes, and I'm going to pull up my copies 8 just so I can see them. 9 MS. HARRIS: And we'll just agree that on page 67 10 of the environmental guidelines that they refer to soils as 11 severe hazard of erosion, quote. Is that the technical term 12 used in the environmental guidelines? 13 MS. LEE: On page -- there's a discussion of the 14 unsafe soils on page 11. And then you're saying, on what 15 page are you quoting from? 16 MS. HARRIS: Page 67. 17 MS. LEE: Yes. That's the Appendix C that lists 18 specific kinds of erodible soil list. It does not include 19 the one that's listed here because it's -- 116D is not, but 20 at the bottom of page 11, it talks about -- first it talks -- 21 there's two categories, and I know your witness testified 22 that it wasn't in Appendix C, and we agree with that. But at 23 the very bottom of page 11, the discussion of unsafe and 24 unsuitable land is soils, erodible soils on slopes over 15 25 percent must be delineated on the NRI and highlighted for</p>
<p>122</p> <p>1 And I can't remember -- it may be in business occupations. I 2 can't remember, but that is one thing I was going to bring up 3 to make sure that the NRI SSD is something that we can rely 4 on. 5 I can get you the citation, I just don't have it 6 right now. 7 MS. HARRIS: And I would note, and as a matter of 8 practice, and especially in these COVID times the Park and 9 Planning has certified, but we can retroactively get this 10 executed -- signed, that they have approved unsigned NRIs. 11 HEARING EXAMINER ROBESON HANNAN: Well, we haven't 12 to my knowledge. So I'm just saying. That's 13 MS. LEE: May I just interject -- only to say that 14 I believe that the requirement in the forest conservation 15 statute for the NRI, not only states that you have to show 16 where the slopes are, but I believe it has to be signed. But 17 that suggests off the top of my head. 18 MS. HARRIS: So staying with this document and Ms. 19 Robeson we -- I mean I guess at a later date we can talk 20 about, it does provide for Mr. Markovich's signature block 21 here. I acknowledge that it is not signed, we can discuss 22 how that should be addressed. 23 HEARING EXAMINER ROBESON HANNAN: Okay. 24 MS. HARRIS: But turning now to the soil chart 25 (inaudible) there are four different soils identified here,</p>	<p>124</p> <p>1 potential inclusion in the protected areas of the site. 2 And so I assume that's why your consultant put 3 that down because even though it's not one of those really 4 bad soils listed in C, it definitely qualifies for one at the 5 bottom of page 11 because it is highly erodible soil between 6 15 to 25 percent. 7 MS. HARRIS: For a moment. Highly erodible, and 8 then, it refers you to Exhibit C on page 67, which says, the 9 following soils are classified as having a severe hazard of 10 erosion by NRCS based on the erodibility index of a soil map 11 unit. These soils are severely erodible and must be 12 incorporated in the wetland buffers according to the guidance 13 in chapters 3 and five. And then, it lists 1, 2, 3, 4, 5, 6, 14 7, 8, 9, 10. It lists 10 different soils. Would you agree 15 with me that the four soils that are listed on the NRI are 16 not listed on this highly erodible soil list? 17 MS. LEE: Well, I haven't checked to see about the 18 other three. I know the one that I'm particularly concerned 19 about because it's right in the middle of where the Lodge is 20 being built. And I think the erodible soils lists, the way 21 it's written is if you're on that list you are automatically 22 got problems and you're going to have to do something. 23 It doesn't even care -- it's just like that's an 24 automatic one. Whereas back on page 11 they are talking 25 about if you just -- erodible soils on slopes over 15 percent</p>



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<p>125</p> <p>1 must be delineated. It's sort of a separate thing. Your 2 automatic if you're on C, but if you're -- the other 3 possibility is that it's just erodible on slopes over 15 4 percent must be delineated. And I would also point out that 5 your consultant put it down. You know, you don't -- you're 6 not required to put every soil on the map. But if you 7 trigger it you have to do it, and he did it in 116D, it is in 8 big letters, right there.</p> <p>9 MS. HARRIS: On the map.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: 116D, is that an 11 exhibit number?</p> <p>12 MS. HARRIS: No.</p> <p>13 MS. LEE: No, 116D is the -- when you look on the 14 exhibit that has the -- well, on the NRI that would be -- 15 it's right there. It's a designation of the soil and they're 16 required to place it to show the soil types.</p> <p>17 HEARING EXAMINER ROBESON HANNAN: All right. I 18 understand.</p> <p>19 MS. HARRIS: So if I could, if you look at my 20 screen, you see soil type 116D.</p> <p>21 MS. LEE: Yes.</p> <p>22 MS. HARRIS: And then, when you cross reference 23 116D with page 67 of the environmental guidelines, 116D is 24 not on page 67 because it is not an erodible soil. And nor, 25 if you cross reference the soil 1C, 2B, or 6A.</p>	<p>127</p> <p>1 just reading exactly what is there. What it's saying. I 2 mean, he did what he was supposed to do because it is -- is 3 protected under the guidelines, clearly.</p> <p>4 MS. HARRIS: Let's go back to page 11 for a 5 moment. And I'll read -- do you agree that at the bottom of 6 page 11 it reads, one of the most common of these 7 characteristics in Montgomery County is highly erodible 8 soils. Highly erodible soils are those listed as having a 9 severe hazard of erosion in the 1995 soil survey of 10 Montgomery County (see Appendix C for the complete list of 11 highly erodible soil types).</p> <p>12 Do you agree that it says that?</p> <p>13 MS. LEE: Yes.</p> <p>14 MS. HARRIS: Okay. Thank you. Moving on to 15 Exhibit -- there's -- it's Exhibit -- I believe it was the 16 exhibit you had -- the -- 94I, I'm sorry. Let me get that 17 up.</p> <p>18 Well, actually maybe I -- Ms. Robeson, do you 19 recall what 94I is or would you like for me to bring it up?</p> <p>20 HEARING EXAMINER ROBESON HANNAN: 94I is -- 21 (Crosstalk)</p> <p>22 HEARING EXAMINER ROBESON HANNAN: (Inaudible) on 23 steep slopes?</p> <p>24 MS. HARRIS: Correct.</p> <p>25 HEARING EXAMINER ROBESON HANNAN: I have it up.</p>
<p>126</p> <p>1 MS. LEE: Well, I would say it's not a soil that's 2 listed on C as a -- that has a severe hazard of erosion. 3 Okay? That's the list, and we admit that. But when you look 4 at what is on the list, which is 116D it's described --</p> <p>5 MS. HARRIS: Wait, 116 -- I'm sorry didn't I -- I 6 thought I just heard you say 116D is not on the list.</p> <p>7 MS. LEE: It's not on Appendix C, which is 8 severely, whatever the, you know, sort of major language is. 9 And those ones are just well, you shouldn't be doing anything 10 kind of. I mean, I think no matter what even the slope, it 11 looks like. But instead, there is a requirement that ones 12 that are not on that list, but that are, as it says on the 13 bottom of page 11. I mean, there's a distinction, for sure. 14 But the ones that -- and the one on 116D falls in the 15 category of erodible soils on slopes over 15 percent must be 16 delineated on the NRI and highlighted for potential inclusion 17 in the protected areas of the site. And that's what your 18 consultant did.</p> <p>19 MS. HARRIS: Says Ms. Lee, are you suggesting 20 though, although you previously admitted that you haven't 21 prepared an NRI or reviewed one, that you know how to do this 22 and staff had incorrectly approved the NRI?</p> <p>23 MS. LEE: I don't know whether -- look, I'm not 24 saying that the NRI is inaccurate except he didn't have the 25 slopes on the first time around. I'm not saying that. I'm</p>	<p>128</p> <p>1 MS. HARRIS: Okay. So --</p> <p>2 HEARING EXAMINER ROBESON HANNAN:</p> <p>3 MS. HARRIS: Ms. Lee, you acknowledge that that 4 slope information came from a county-wide GIS map, is that -- 5 or actually where did that information come from?</p> <p>6 MS. LEE: It was -- when this came -- this was 7 back in 2019 with your first proposal. And I just asked at 8 Park and Planning. It seemed, you know, what kinds of -- 9 what's it look like on that site? And so -- and I don't have 10 access. I don't do GIS or anything like that. So they sent 11 me along this. So I got from Park and Planning because they 12 had it in their database.</p> <p>13 MS. HARRIS: And it was in their database and it 14 was based on a county-wide evaluation of topography, likely?</p> <p>15 MS. LEE: I think so. I don't know. They said it 16 was GIS, and that it was easy for them to get it, probably 17 for hard for me to obtain and so they just sent it to me in 18 that form. And then, when we submitted it to you as an 19 exhibit we put down the key underneath there so that it was 20 clear what it was.</p> <p>21 MS. HARRIS: But you're not exactly clear on the 22 origins of the GIS map -- this exhibit, except to say that it 23 is from a GIS; is that right?</p> <p>24 MS. LEE: And Catherine Nelson at Park and 25 Planning provided it to me.</p>

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<p>129</p> <p>1 MS. HARRIS: Okay. Thank you.</p> <p>2 MS. LEE: She's the head of the master plan and</p> <p>3 division and there.</p> <p>4 MS. HARRIS: And there was --</p> <p>5 (Crosstalk)</p> <p>6 MS. HARRIS: Okay. And then, are you also aware</p> <p>7 that as part of the NRI and the County regulations require</p> <p>8 that topography at a minimum scale of 1 inch to 200 feet with</p> <p>9 contour intervals not more than 5 feet must be provided in</p> <p>10 connection with an NRI specific to an individual property?</p> <p>11 MS. LEE: I don't know what the specific</p> <p>12 requirements are.</p> <p>13 MS. HARRIS: Well, let me just note that that's</p> <p>14 Section 22A001-01.06, natural resources inventory</p> <p>15 requirements. And I can show you on my screen of that.</p> <p>16 Would you generally agree that I cite specific evaluation of</p> <p>17 property is a going to be more accurate than a countywide</p> <p>18 assessment done of the entire county?</p> <p>19 MS. LEE: I don't have any idea. I don't -- I</p> <p>20 mean, I'm just using the documents that were provided to me.</p> <p>21 I don't have any idea how your expert did his, and I don't --</p> <p>22 I'm not an expert on this. We just wanted to get an idea,</p> <p>23 and I thought it was good to submit it because it gives you a</p> <p>24 better sort of graphic than the shading. It's harder to see</p> <p>25 the shading.</p>	<p>131</p> <p>1 sounded -- so would you not agree that the movement of</p> <p>2 providing -- well, let me back up for a second.</p> <p>3 Would you agree that relocating the existing</p> <p>4 driveway, and I'll bring up environmental buffer. That</p> <p>5 relocating the existing driveway that is currently adjacent</p> <p>6 to the perennial stream away from the perennial stream is an</p> <p>7 environmentally -- an environmental improvement?</p> <p>8 MS. LEE: I have no idea. I have no idea. I was</p> <p>9 just looking at the straightforward -- is it going to be</p> <p>10 stream valley buffer that's a going to be disturbed. And</p> <p>11 under the guidelines it's not supposed to be disturbed except</p> <p>12 in very narrow circumstances. And I admit that when it says</p> <p>13 infrastructure, it says that bikeways and infrastructure.</p> <p>14 Infrastructure includes the sewer line, and it might include</p> <p>15 the road. But of course, if you're not building, you have to</p> <p>16 have the road only because you're already building it in</p> <p>17 the -- in that environmentally sensitive area.</p> <p>18 And I have no idea whether it was better down. It</p> <p>19 is now, or where it's going to be put. Obviously, it's going</p> <p>20 to be the new disturbance because of the road already exists</p> <p>21 in its current location.</p> <p>22 MS. HARRIS: But it sounded to me that part of</p> <p>23 your argument also was that you were making a point about the</p> <p>24 existing gymnasium being within the floodplain buffer area;</p> <p>25 is that correct? I'm sorry -- the stream valley buffer area.</p>
<p>130</p> <p>1 MS. HARRIS: Right. But it's a document that you</p> <p>2 really don't know the source of except that it was provided</p> <p>3 by staff at Park and Planning; is that correct?</p> <p>4 MS. LEE: Yes. Yes.</p> <p>5 MS. HARRIS: I believe you said, and maybe I</p> <p>6 misunderstood you. Did you say that there is 1.02 acres of</p> <p>7 land that -- you mentioned 1.02 acres. Can you repeat for me</p> <p>8 what your point was about the 1.02 acres of land?</p> <p>9 MS. LEE: That's the amount of land that the staff</p> <p>10 report indicates is going to be developed in the stream and</p> <p>11 Valley buffers.</p> <p>12 MS. HARRIS: Okay. So I want to refer you to the</p> <p>13 staff report which I believe that it is --</p> <p>14 MR. BROWN: 97A.</p> <p>15 MS. HARRIS: Thank you. 97A, page 27, that says,</p> <p>16 the FCP shows a total of 1.20 acres of stream valley buffer,</p> <p>17 not being placed into Category 1 conservation easement, that</p> <p>18 is necessary for driveway and sanitary line crossing and the</p> <p>19 existing building and functional area.</p> <p>20 Is that where you got the 1.02?</p> <p>21 MS. LEE: Yes, because I hadn't seen it. I was</p> <p>22 going to ask your expert if they had done a -- if he could</p> <p>23 show and how much and all that. But then I found it in the</p> <p>24 staff report.</p> <p>25 MS. HARRIS: So do you recall that -- so it</p>	<p>132</p> <p>1 MS. LEE: Well, that's undisputed. I mean when</p> <p>2 you look at the 6A there --</p> <p>3 MS. HARRIS: That's been disputed. But it's an</p> <p>4 existing condition, correct?</p> <p>5 MS. LEE: Well, it's an exist -- it's very</p> <p>6 interesting because it was -- it was an abandoned use and</p> <p>7 it's not being used as a middle school gym going forward. So</p> <p>8 the Applicant, I think, is going to take every other</p> <p>9 structure, all of those, you know, double wide and stuff out.</p> <p>10 And I would submit that they should take this out. Why leave</p> <p>11 a building that's in the stream valley buffer, and as you can</p> <p>12 see from my pictures, continues, because of the erosion</p> <p>13 behind it is, it may be very soon structurally unsound. And,</p> <p>14 they're going to be -- in order to use it you're going to</p> <p>15 have to put in a new paved parking lot and I don't know</p> <p>16 whether there's anything else planned.</p> <p>17 MS. HARRIS: We'll get to that in a minute. So</p> <p>18 what you're saying is, in your opinion, you do have an</p> <p>19 opinion that taking out an existing structure is</p> <p>20 environmentally preferable but you don't have an opinion</p> <p>21 about moving an existing road next to a perennial stream and</p> <p>22 moving it away from the perennial stream would be in</p> <p>23 environmentally beneficial? Is that right?</p> <p>24 MS. LEE: No, I'm just -- it's just a</p> <p>25 straightforward things shouldn't be -- they should be built</p>

<p>133</p> <p>1 in stream valley buffers. And so it would be good if they 2 didn't put the road there either, and they take everything 3 out and just -- and then get it, you know, back to its normal 4 state is that it can function as a stream valley buffer and 5 prevent erosion.</p> <p>6 MS. HARRIS: And (inaudible) that an impervious 7 area within a stream valley buffer is preferable to pervious 8 area within a stream valley buffer?</p> <p>9 MS. LEE: Oh, I assume so, yes because you 10 shouldn't be constructing anything and the impervious would 11 be the constructed pieces.</p> <p>12 MS. HARRIS: And so did you -- or do you recall 13 Mr. Park -- or I'm sorry, Mr. Steeman testifying that there's 14 approximately 30,000 square feet of existing parking lot in 15 the stream valley buffer that will be removed?</p> <p>16 MS. LEE: Yes, which is really sad. They should 17 never have put it there. So they should be rewarded for 18 having a site that they've already denigrated so badly by 19 putting something --</p> <p>20 MS. HARRIS: Okay. Just for clarification, did 21 the -- to your knowledge, did the Applicant of this 22 application have any involvement in the construction or of 23 that existing parking lot?</p> <p>24 MS. LEE: I have no idea. I know he was 25 associated with the prior school.</p>	<p>135</p> <p>1 denotes the stream valley buffer. And so if you follow my 2 cursor all around, that's in the stream valley buffer. We 3 know that this dark blue line denotes the stream bank. And 4 so that within the light blue lines is the stream valley 5 buffer area.</p> <p>6 MS. LEE: And just to interrupt. There are two. 7 There's a stream valley buffer for the intermittent stream to 8 the left, and then there's the separate stream valley buffer 9 for the Kilgore tributary.</p> <p>10 MS. HARRIS: Right.</p> <p>11 MS. LEE: So it's not all, you know, and the 12 limits of disturbance are different on both -- with regard to 13 both.</p> <p>14 MS. HARRIS: Looking at this again, would you 15 agree that this parking lot to be constructed is outside the 16 stream valley buffer area?</p> <p>17 MS. LEE: I can't tell you because I can't -- I 18 mean I'm just being honest. I don't know. It would be -- I 19 don't know what's it going to be on that side of the gym, on 20 either side. I can't tell that because it's within the 21 limits of disturbance. So I don't know what they're going to 22 be building there.</p> <p>23 MS. HARRIS: Okay.</p> <p>24 MS. LEE: It might be a pickle ball court. I 25 don't know. I mean that's -- you know it's going to be</p>
<p>134</p> <p>1 MS. HARRIS: So you would agree with me that the 2 removal of the surface parking lot is an environmental 3 benefit, correct?</p> <p>4 MS. LEE: Sure.</p> <p>5 MS. HARRIS: The removal of the existing parking 6 lot, which is located within the stream valley buffer is an 7 environmental benefit?</p> <p>8 MS. LEE: Yes, and required, and it should have 9 been done earlier.</p> <p>10 MS. HARRIS: And then, moving on to, I believe I 11 heard you say, and you would be constructing parking within 12 the stream valley buffer. So on the exhibit that is 13 currently on the screen, the environmental buffer exhibit, as 14 you know, the blue line denotes the stream valley buffer. 15 And would you agree that the proposed parking lot is located 16 outside of that stream valley buffer?</p> <p>17 MS. LEE: You know, it's sort of hard to see where 18 exactly it is. I was sort of -- it's hard -- I was really 19 going by the limited disturbance and at that line is a little 20 bit easier to see. And it goes all the way on both sides of 21 the -- of that building. So it's hard for me to know where 22 they were going to build things. And what they were going to 23 do.</p> <p>24 MS. HARRIS: Let me sort of give a little primer 25 on this environmental buffer exhibit. So the light blue line</p>	<p>136</p> <p>1 disturbed and it should be left preserved.</p> <p>2 MS. HARRIS: Moving on to, I think the NRI may be 3 the best plan to show. You had indicated -- let me pull up 4 the NRIs. Sorry. You had testified that you thought that 5 the stream valley buffer should be extended around trees 147 6 and 150 because it clipped -- and again, it seems like on 7 this, this plan you don't have a problem reading the stream 8 valley buffer line, I think. Apparently.</p> <p>9 So here's the stream valley buffer line, correct? 10 You identified that during your testimony?</p> <p>11 MS. LEE: Uh-huh.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: It's the dark 13 solid --</p> <p>14 (Crosstalk)</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Just a second. 16 I'm sorry. It's the dark solid line, trees 150 and -- well, 17 it doesn't run through. But it runs through trees 150, and 18 it's labeled SDB. Thanks. Go ahead.</p> <p>19 MS. HARRIS: Okay. And I believe you were 20 focusing on this small -- the small dark area that is to the 21 north of the 150 designation and right under the SVB because 22 you noted that that is a steep slope within the stream valley 23 buffer; is that correct?</p> <p>24 MS. LEE: Well, this steep slope hasn't been 25 included in the stream valley buffer.</p>

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<p>137</p> <p>1 MS. HARRIS: Right.</p> <p>2 MS. LEE: And we would submit it needs to because</p> <p>3 the toe of the steep slope where SVB is will be expanded</p> <p>4 beyond the width to include the entire slope.</p> <p>5 MS. HARRIS: And do you agree that the</p> <p>6 environmental guidelines it makes it -- makes a distinction</p> <p>7 between hydraulically adjacent and hydraulically remote</p> <p>8 areas?</p> <p>9 MS. LEE: It does with regard to the definitions</p> <p>10 in the back. So when you go -- so first of all you have to</p> <p>11 decide how big your stream, your basic buffer is. And that's</p> <p>12 clear from the table on page A, table 1. Because you have to</p> <p>13 figure that out because in order to do that you have to know</p> <p>14 what the slope ranges. And so you decide whether it's --</p> <p>15 with the slope ranges based on the -- by what's defined in</p> <p>16 the hydraulically adjacent slopes. Slopes line within 200</p> <p>17 feet of the bank of the stream ranges that drink directly to</p> <p>18 the stream range course or its associated floodplain.</p> <p>19 And so first you have to decide what's within that</p> <p>20 200 feet. And I assume that that's what you folks did. I'm</p> <p>21 not saying that you you're not -- that it -- that you're not</p> <p>22 supposed to look at that for determining your basic stream.</p> <p>23 Your buffer. But then, once you've got that buffer, which is</p> <p>24 what you did here, you determined your buffer and I don't</p> <p>25 have the expertise, we don't have the experts to take you on</p>	<p>139</p> <p>1 MS. LEE: No because I think the NRIs usually are</p> <p>2 pretty clear about that. It defines it. It says, you know,</p> <p>3 if it's within -- you look at 200 feet. We just using the</p> <p>4 data that has been provided.</p> <p>5 MS. HARRIS: Moving on to the Potomac subregion</p> <p>6 forest analysis. I believe you said that this is effectively</p> <p>7 a statute; did I get that right?</p> <p>8 MS. LEE: Well, the master plan, especially under</p> <p>9 Maryland law are considered to have statutory effect. And in</p> <p>10 Montgomery county. So some states and some counties don't do</p> <p>11 that but Montgomery County has because it's incorporated by</p> <p>12 reference. The master plan requirements in the zoning code</p> <p>13 is considered to be a jurisdiction where they are binding.</p> <p>14 MS. HARRIS: Well, the master plan -- the zoning</p> <p>15 ordinance certainly requires substantial compliance with the</p> <p>16 master plan; you agree with that, right?</p> <p>17 MS. LEE: Yes.</p> <p>18 MS. HARRIS: But are you now suggesting that any</p> <p>19 recommendation in a master plan must be strictly followed</p> <p>20 because the master plan has the authority of -- statutory</p> <p>21 authority?</p> <p>22 MS. LEE: Yes.</p> <p>23 MS. HARRIS: Okay. Turning to page 13 of that</p> <p>24 document.</p> <p>25 MS. LEE: Of the master plan?</p>
<p>138</p> <p>1 as to whether it should have been 100 or 150, but we're just</p> <p>2 accepting what you put up here.</p> <p>3 And it's clear that the buffer -- then you go back</p> <p>4 to page 7, if the stream buffer is determined by the steepest</p> <p>5 100 feet within the hydraulically adjacent area, which is</p> <p>6 table 1, it encompasses the toe of a steep slope, the buffer</p> <p>7 will be expanded beyond the width and table 1 to include the</p> <p>8 entire slope. It doesn't talk about having to be, you know,</p> <p>9 there's no reason to go into drainage at that point because</p> <p>10 you already determined the size of your buffer.</p> <p>11 MS. HARRIS: But I think what I'm asking you is do</p> <p>12 you know whether that area is hydraulically adjacent or</p> <p>13 hydraulically remote?</p> <p>14 MS. LEE: Well, I'm saying I don't know, and it</p> <p>15 doesn't make any difference because you would have made that</p> <p>16 determination when you decided where the stream valley buffer</p> <p>17 would be, how far it was from that intermittent stream, and</p> <p>18 you decided it was 100 feet. That -- and that was based on</p> <p>19 the fact that that was the drainage area to that stream.</p> <p>20 But then, after that, once you've established</p> <p>21 that, just the plain language says what you've established</p> <p>22 touches the toe then you go up the slope.</p> <p>23 MS. HARRIS: And do you have any knowledge of --</p> <p>24 have you ever evaluated anything based on hydraulic adjacency</p> <p>25 or hydraulic remoteness?</p>	<p>140</p> <p>1 MS. HARRIS: No. Of the -- no, where one removed</p> <p>2 from the master plan. We're at the technical (inaudible) of</p> <p>3 the master plan. And I'm sorry, I lost track of -- maybe Mr.</p> <p>4 Brown can tell us which exhibit this is.</p> <p>5 MR. BROWN: There were two documents, at least 13</p> <p>6 pages long in Exhibit 94E. Is it the first one or the second</p> <p>7 one?</p> <p>8 MS. HARRIS: It's the one that's entitled Potomac</p> <p>9 subregion forest analysis.</p> <p>10 HEARING EXAMINER ROBESON HANNAN: I have 94E as</p> <p>11 recommendations for protection and enhancement of forests.</p> <p>12 Are you talking 94D?</p> <p>13 MS. HARRIS: No, that was it. Yes.</p> <p>14 HEARING EXAMINER ROBESON HANNAN: 94E. Okay. I</p> <p>15 can bring it up.</p> <p>16 MS. LEE: The one called forest analysis is the</p> <p>17 second document.</p> <p>18 MS. HARRIS: Not that one, the other one. Sorry.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: This is what I</p> <p>20 have. It should be on your screen as 94E.</p> <p>21 MR. BROWN: That's the first document in 94E. The</p> <p>22 question is, is she talking about the second document which</p> <p>23 is almost as long. It's part of 94E.</p> <p>24 MS. HARRIS: Yes. So if you scroll through there</p> <p>25 to page 13.</p>

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<p>141</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>2 MS. HARRIS: I have it up. Yeah, now -- no,</p> <p>3 that's not it. Ms. Robeson, I can pull it up.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>5 MS. HARRIS: So Ms. Lee, I think, you in</p> <p>6 discussing the fact that the apportioned of the trees on the</p> <p>7 site are within that Category 4, I believe you read this</p> <p>8 first paragraph, which says preservation Categories 4 and 5,</p> <p>9 correct?</p> <p>10 MS. LEE: Yes. Which -- could you just tell me</p> <p>11 what the page number is? Up at the top it has --</p> <p>12 MS. HARRIS: 29 out of 33.</p> <p>13 MS. LEE: 29/30, yeah. Yeah, go ahead. I'm</p> <p>14 sorry. I just --</p> <p>15 MS. HARRIS: No, that's okay. And in that last</p> <p>16 line of that paragraph says when these instances occur on</p> <p>17 developable property attempts should be made to save all the</p> <p>18 stand. So what does it -- and I want to focus on the word</p> <p>19 attempt for a moment. Does it say require?</p> <p>20 MS. LEE: No.</p> <p>21 MS. HARRIS: And does it say shall?</p> <p>22 MS. LEE: No.</p> <p>23 MS. HARRIS: It just simply says attempts,</p> <p>24 correct?</p> <p>25 MS. LEE: Yes.</p>	<p>143</p> <p>1 purpose section, they refer to that document as a memorandum,</p> <p>2 correct? Not a statute or a law or requirement but simply a</p> <p>3 memorandum, would you agree with that?</p> <p>4 MS. LEE: No. These were the scientist who -- or</p> <p>5 the scientists and the staff members who had looked at all --</p> <p>6 they did all of the environmental impacts and all of the</p> <p>7 analysis that led to the recommendations in the master plan.</p> <p>8 And then, they recommended to the master plan writers, that</p> <p>9 they include these sites with these requirements and that's</p> <p>10 what they did.</p> <p>11 MS. HARRIS: But my point is that in this</p> <p>12 technical Appendix to the master plan they referred to it</p> <p>13 simply as a memorandum, correct?</p> <p>14 MS. LEE: Yeah. Because I think there was a</p> <p>15 memorandum from the staff to the person, maybe Cala Murray</p> <p>16 (phonetic), whoever was in charge of drafting the master</p> <p>17 plan.</p> <p>18 MS. HARRIS: Okay.</p> <p>19 MS. LEE: Because a master plan is very -- you</p> <p>20 know, has just one sentence. So this laid out the details.</p> <p>21 MS. HARRIS: So moving on. Let me go back to</p> <p>22 the -- I think it's the NRI. So hold on one moment. No, I'm</p> <p>23 sorry, it's the staff report again. Page 30 of the staff</p> <p>24 report. Well, let me first say, are you aware that the tree</p> <p>25 technical manual indicates that trees that have a critical</p>
<p>142</p> <p>1 MS. HARRIS: And then, would you agree that in</p> <p>2 other areas of this document there is language such as should</p> <p>3 be -- on page 3. I can go to page 3, hold on.</p> <p>4 I'm sorry, page 1, sorry.</p> <p>5 So down at the bottom here, other important</p> <p>6 restoration opportunities. Is an opportunity --</p> <p>7 HEARING EXAMINER ROBESON HANNAN: What page?</p> <p>8 MS. HARRIS: We are on page 1.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>10 MS. HARRIS: It talks about opportunities for</p> <p>11 forest restoration, or opportunities -- important restoration</p> <p>12 opportunities. Would you also agree that those are -- that</p> <p>13 that is what one could classify as aspirational language but</p> <p>14 they are not requirements?</p> <p>15 MS. LEE: Well, that's a little bit different</p> <p>16 because it wasn't one that we looked into because this site</p> <p>17 is not a restoration area. You know, there were two kinds of</p> <p>18 forest areas in this whole master plan requirement. And when</p> <p>19 you look back on the master plan itself it starts out about</p> <p>20 restoring certain properties and preserving certain</p> <p>21 properties. And I think, just looking at it here, you're in</p> <p>22 the restoration group. So we didn't focus on that language</p> <p>23 at all because that's not our property.</p> <p>24 MS. HARRIS: Okay. And then going to page 2 of</p> <p>25 the recommendations for the forest enhancement, in the</p>	<p>144</p> <p>1 root zone impact of less than 30 percent are unequivocally --</p> <p>2 may be preserved?</p> <p>3 MS. LEE: I don't know how they -- and how it</p> <p>4 defines the -- I think other -- yeah, I don't --</p> <p>5 MS. HARRIS: So you're not aware that that 30</p> <p>6 percent is a -- that impacts less than 30 percent are</p> <p>7 generally -- trees are generally expected to survive that --</p> <p>8 an impact. So I believe you testified that along the east --</p> <p>9 the western property line, that there were four trees on Mr.</p> <p>10 Maggin's property that, I think you said, likely could be</p> <p>11 destroyed, if I have that right? Something to that effect.</p> <p>12 But if you look at page 30 of the staff report, would you</p> <p>13 agree that it indicates that the level of critical root zone</p> <p>14 impact is 14 percent, 27 percent, 11 percent, and 10 percent</p> <p>15 of those four trees?</p> <p>16 MS. LEE: Yes. And that does lead me to something</p> <p>17 Mr. Maggin wanted me to say the other day and I didn't --</p> <p>18 when I got cut off was that in addition to those specimen</p> <p>19 trees and the significant tree, he has two 50-year old cedars</p> <p>20 and he wondered that -- that are actually closer to the site</p> <p>21 then these trees, and wondered why they weren't listed. And</p> <p>22 I assume they weren't because they didn't -- they may be</p> <p>23 destroyed, but they're not specimen trees. And they didn't</p> <p>24 get to the 30 inches around, I just -- I have a feeling.</p> <p>25 But -- so -- but no, I'm not saying one way or the other.</p>

<p>145</p> <p>1 I'm just saying that when you have 30 acres and you have to 2 do -- you have to have -- and you have a site plan that's so 3 intense that you can't figure out how to build what you want 4 to without doing any damage whatsoever to the critical root 5 zones of anybody does that -- it isn't even on your property, 6 it's just too -- it's just too dense and should be modified. 7 Especially in an area with such low density, beautiful big 8 trees the character of the neighborhood.</p> <p>9 MS. HARRIS: And did -- you are aware that Mr. 10 Park testified that the amount of trees that there's 42 11 percent of the property is forested and 42 percent of the 12 property will be forested at the end of this development?</p> <p>13 MS. LEE: That's primarily because of the big 14 swath of the land that's protected in the master plan, and 15 was already in an existing conservation easement in the back.</p> <p>16 MS. HARRIS: Do you know the size of that 17 conservation easement?</p> <p>18 MS. LEE: Not offhand.</p> <p>19 MS. HARRIS: Would it surprise you to learn that 20 it's only 1 acre or less than 1?</p> <p>21 MS. LEE: Of what the existing one was?</p> <p>22 MS. HARRIS: The existing conservation easement on 23 the property, are you aware of how many acres it currently 24 protects?</p> <p>25 MS. LEE: No. I'm just saying that when you say</p>	<p>147</p> <p>1 MS. LEE: No. I think the idea was that they 2 seemed to have the characteristics and situation where they 3 would have been good. But as you can see with the Quarry, 4 Mr. Wormald decided not to put senior housing there. I mean, 5 these are properties that are owned by private entities. Set 6 you know, they're not required to put them there by any --</p> <p>7 MS. HARRIS: But would you agree --</p> <p>8 MS. LEE: -- means.</p> <p>9 MS. HARRIS: I'm sorry. I cut you off. Go ahead.</p> <p>10 MS. LEE: Go ahead.</p> <p>11 MS. HARRIS: But would you agree that there are 12 other appropriate and suitable sites within the master plan 13 region for senior housing?</p> <p>14 MS. LEE: Yes. But we think they're very limited. 15 And we have -- we tried to, as best we can, over the years, 16 tried to get them placed where they make the most sense and 17 where they affirmed the overall concept and structure of the 18 master plan, which is that there's a green wedge that 19 protects the environmental resources, low-density 20 neighborhoods, and then you put your most extensive, 21 intensive uses on the peripheries, and on the major 22 corridors.</p> <p>23 And so what we have the subregion is a lot of -- 24 of smaller -- you know, the sort of group homes. We have 25 lots of disabled and senior living facilities throughout.</p>
<p>146</p> <p>1 42 percent is going to be -- the rest of it is going to be 2 basically clear-cut. And so -- and the rest of it's back in 3 a stream valley buffer that, you know, you folks didn't try 4 to build in.</p> <p>5 MS. HARRIS: But there's currently only 6 approximately 1 acre that is protected by forest conservation 7 easement; do you agree with that?</p> <p>8 MS. LEE: I don't know how much it is right now. 9 I know there's an existing one, but I don't know how much.</p> <p>10 MS. HARRIS: So that if the Applicant -- and the 11 Applicant and imposing a forest conservation easement over 12 that remainder of that forested area, the northern portion of 13 the property, would you agree that that would provide an 14 environmental benefit?</p> <p>15 MS. LEE: Certainly.</p> <p>16 MS. HARRIS: Okay. I want to move to your 17 comments about the master plan and the use itself, and the 18 special exception use. And if I -- correct me if I'm wrong. 19 What I understood you to say, I believe, is that the master 20 plan identifies a number of properties that were appropriate 21 for senior care use; is that right?</p> <p>22 MS. LEE: Yes.</p> <p>23 MS. HARRIS: And it's your opinion that that -- 24 that those properties are the only properties in the Potomac 25 subregion that should be used for senior living uses?</p>	<p>148</p> <p>1 And one of our members, in fact, has been promoting the idea 2 that of people who have these very big houses and Potomac, as 3 they decide that they don't want to use those anymore that 4 they be converted into senior housing. Smaller units and 5 because, you know, I didn't get into the concept of what you 6 all are proposing. You can propose whatever you want to as 7 far as services.</p> <p>8 But what I see is if people want to age in place, 9 they often times have family members come in and move in with 10 them. Or they get a resident caregiver. They stay in their 11 own home. That won't be permitted here in your units. And 12 also, the smart money doesn't want to be stuck on a rural the 13 dark road where they have to drive to go to anything. So the 14 smart money, and I'm sorry, but if you've got the money you 15 move into Bethesda now.</p> <p>16 Friends are moving into Bethesda, they're moving 17 into DC on the major corridors because all of the services 18 are there. They can go out at night without having to drive. 19 I just -- that's it -- and you know, there are also other 20 ones that have facilities like pickle ball courts are indoor 21 swimming pools. Two of them at the Village at Rockville. I 22 didn't mean to go off on that but that's the whole idea. 23 They should be placed not -- they shouldn't put, basically a 24 very, very intense use in a low-density zone.</p> <p>25 This is -- it's an enormous development. When you</p>

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<p>149</p> <p>1 think about it, there is not one other development sense of 2 the master plan, even before the master plan of this size and 3 scope that was put in as a conditional use. I just -- I just 4 can't even imagine. It's like something that would go on 5 Rockville Pike, or Park Potomac.</p> <p>6 MS. HARRIS: Just so I'm clear, when you say this 7 size and scope, are you talking number of beds, number of 8 units, or the acreage of the property?</p> <p>9 MS. LEE: Well, I mean the size of the Lodge. 10 It's as big as Brandywine, and Brandywine is on a major 11 thoroughfare. In addition to Brandywine, you've got 45 12 houses, you know, duplexes, triplexes, and on a piece of land 13 that supposed to be RE2. If you had a small, maybe if you 14 had something small, but this is just -- and this is the most 15 intense use you could make right in the middle of a low 16 density residential zone. There's nothing -- there's nothing 17 that's been approved anywhere close to this as a special 18 exception that I can remember throughout the subregion. 19 There's not a -- there's nothing.</p> <p>20 Maybe at -- the only thing I was thinking last 21 night was at Glenstone. So Glenstone is a large 22 institutional use and it was approved as an institutional 23 use, and has its own special category. But even then, the 24 buildings on that, their whole mode of operation is to have 25 very low density buildings and an incredible amount of open</p>	<p>151</p> <p>1 approximately 700 units by, I think they said the next 20 2 years. Here we are the next 20 years and if you could 3 just -- and so we've identified Artis, Brandywine, and 4 Spectrum and with a total units and these are not independent 5 living units but simply assisted living, can you identify 6 what that number is?</p> <p>7 MS. LEE: 342, is that the one you're pointing at? 8 I wouldn't know what it means.</p> <p>9 MS. HARRIS: No, the 342, which is approximately 10 half of what the master plan recommended for a go back and -- 11 at the time the Potomac master plan was adopted in 2002. 12 So would you agree that the subregion has not met 13 its goal for the number of recommended units?</p> <p>14 MS. LEE: Well, I don't get into the need pieces. 15 It's fine -- and I always wondered when they talk about 16 housing places where you need extra care, I just don't know. 17 I don't do the needs analysis. I do know that most people 18 don't want to go to facilities. I mean, most of us want to 19 try to age in place. And I -- when I look around and see my 20 friends in the Potomac subregion, a lot of people try to stay 21 at home the best they can.</p> <p>22 And what happens is when they really needed is 23 when there's a memory care idea. So you've got a relative 24 who starts wandering at night, and so then you're looking at 25 something like Artis. And so because of the got to have 24/7</p>
<p>150</p> <p>1 space so the impact is -- and that's the only -- and of 2 course, that's not a -- that's not a special exception. It 3 was approved as a -- you know a different -- something 4 special.</p> <p>5 MS. HARRIS: So what you're saying is the density 6 really. I mean that's an important component is what I hear 7 you saying?</p> <p>8 MS. LEE: Oh yes. I mean, where do you see 9 anything, anything, not even in the village that's anywhere 10 close to this.</p> <p>11 MS. HARRIS: So low density is what you're looking 12 for over on --</p> <p>13 MS. LEE: Yeah. That's the whole master plan 14 is -- yeah. That's how it's set up.</p> <p>15 MS. HARRIS: We disagree with that.</p> <p>16 And then finally, I believe you were talking 17 about -- you indicated and we recognize that need is not a 18 requirement but I just wanted to call your attention to 19 Exhibit 82 which identifies those facilities that have been 20 constructed since the -- approved or constructed since the 21 adoption of the master plan. And so that master plan, at 22 that point, identified, I believe the number was in the 700s. 23 does that number sound about approximate to you that --</p> <p>24 MS. LEE: I don't remember but it was a lot.</p> <p>25 MS. HARRIS: Yeah. That point that a need of</p>	<p>152</p> <p>1 sort of locked down. And also, just to bring up, Brandywine, 2 a friend went over there for the free lunch the other day and 3 they've been open almost a year and they are only at one 4 third of their beds are for right now.</p> <p>5 I mean, I think the whole idea of senior living, 6 whether it should be really independent, because when you say 7 senior living, that doesn't automatically mean assisted 8 living or even independent living. It's just, housing for 9 seniors, it could be all kinds. I'm just saying I don't have 10 any idea what the need is going to be. I don't hear anybody 11 saying that they can't find a bed right now. And with the 12 pandemic, Spectra made a big pitch that they were going to 13 try to design their units so that they would lessen the 14 problems of infectious diseases and nursing homes.</p> <p>15 MS. HARRIS: But you would agree that since the 16 adoption of the Potomac Master Plan there have been no 17 independent living units constructed within the Potomac 18 subregion; do you agree with that?</p> <p>19 MS. LEE: Not in the middle of -- yeah. Not in 20 the middle of the low density -- yeah, area. Not the 21 residential area. They are on the perimeter, where 22 they're -- including Cabin John, for example.</p> <p>23 MS. HARRIS: Is that within the Potomac subregion?</p> <p>24 MS. LEE: Yeah, Cabin John is in the Potomac 25 subregion. I'm not sure. You know, they went in and got a</p>

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<p>153</p> <p>1 revision of their plan at Cabin John. And I can't -- I</p> <p>2 didn't follow what they did with the senior housing units.</p> <p>3 So I don't know whether --</p> <p>4 MS. HARRIS: (Inaudible) in Cabin John, correct?</p> <p>5 MS. LEE: What's that?</p> <p>6 MS. HARRIS: You do not know whether there is</p> <p>7 independent living within Cabin John?</p> <p>8 MS. LEE: I'm not sure. I know it was part of</p> <p>9 their sort of master plan but if you've driven by there</p> <p>10 recently, they've had big changes in their -- in what they've</p> <p>11 got at Cabin John these days. You know, they have new</p> <p>12 restaurants and new housing and I don't know.</p> <p>13 MS. HARRIS: I believe if you can give me a</p> <p>14 moment, Ms. Robeson, but I think that may be all my</p> <p>15 questions, but I just want to double check.</p> <p>16 Hold on. Yes, that concludes my questions for Ms.</p> <p>17 Lee.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Thank you.</p> <p>19 Mr. Brown, is there any redirect?</p> <p>20 MR. BROWN: Very brief, Ms. Robeson.</p> <p>21 Could you bring up Exhibit 51A again, please?</p> <p>22 HEARING EXAMINER ROBESON HANNAN: Yeah. It should</p> <p>23 be up.</p> <p>24 MR. BROWN: I would like you to focus in on the</p> <p>25 soils chart that Ms. Harris was talking with Ms. Lee about.</p>	<p>155</p> <p>1 MR. BROWN: I'm not asking about any list. I'm</p> <p>2 only asking about the information on the chart.</p> <p>3 MS. LEE: Oh. It is to indicate the soil types</p> <p>4 that are on the site.</p> <p>5 MR. BROWN: What does this chart tell you that the</p> <p>6 preparer is saying about the characteristics of -- erodible</p> <p>7 characteristics of soil type 1C?</p> <p>8 MS. LEE: That it's highly erodible.</p> <p>9 MR. BROWN: What about soil type 2B?</p> <p>10 MS. LEE: Highly erodible.</p> <p>11 MR. BROWN: And soil type 116D?</p> <p>12 MS. LEE: Highly erodible.</p> <p>13 MR. BROWN: Is it your understanding that those</p> <p>14 three highly erodible soils are found somewhere on the</p> <p>15 property?</p> <p>16 MS. LEE: Yes.</p> <p>17 MR. BROWN: I have nothing further.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Thank you. Any</p> <p>19 other questions from anyone else?</p> <p>20 All right. Thank you very much, Ms. Lee. I don't</p> <p>21 know if you've had dinner, or not, but --</p> <p>22 MS. LEE: No problem. Thank you.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: I hope you get a</p> <p>24 chance for that.</p> <p>25 MS. LEE: Thank you for your patience. Thank you.</p>
<p>154</p> <p>1 HEARING EXAMINER ROBESON HANNAN: It should be on</p> <p>2 your screen.</p> <p>3 MR. BROWN: Okay. Sorry about that. Ms. Lee, do</p> <p>4 you see the soil chart there?</p> <p>5 MS. LEE: Yes.</p> <p>6 MR. BROWN: I want to make sure I understand your</p> <p>7 understanding of this chart in certain respects. In the</p> <p>8 third row in this chart starts with map unit and symbol, and</p> <p>9 soil type. Do you see that?</p> <p>10 MS. LEE: Yes.</p> <p>11 MR. BROWN: Then, it says slope, drainage class,</p> <p>12 hydric soil, and highly erodible soil. Do you see all of</p> <p>13 that?</p> <p>14 MS. LEE: Yes.</p> <p>15 MR. BROWN: Do you see that under highly erodible</p> <p>16 soil three of them are labeled yes, and one of them is</p> <p>17 labeled know?</p> <p>18 MS. LEE: Yes.</p> <p>19 MR. BROWN: And do you see that names of the soils</p> <p>20 as well as their symbols on the left-hand side of this chart?</p> <p>21 MS. LEE: Yes.</p> <p>22 MR. BROWN: What is your interpretation of those</p> <p>23 yeses on that chart in relation to what the preparer was</p> <p>24 trying to convey?</p> <p>25 MS. LEE: Well, I don't have the list --</p>	<p>156</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Mr. Brown --</p> <p>2 MR. BROWN: I have two more witnesses.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: -- do you have</p> <p>4 another witness?</p> <p>5 MR. BROWN: I have two more witnesses. The first</p> <p>6 is Mr. Brigham, I believe is waiting.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: Mr. Brigham, are</p> <p>8 you here?</p> <p>9 MS. BRIGHAM: It's actually Mrs. Brigham.</p> <p>10 MR. BROWN: Oh, I'm sorry.</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Good afternoon,</p> <p>12 Mrs. Brigham. Your name on the thing says Edward, but --</p> <p>13 MS. BRIGHAM: That's because I'm on his laptop.</p> <p>14 And we -- and I need him for tech support.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>16 MS. BRIGHAM: So it's E stands for him and I don't</p> <p>17 know how I would get an MB up there because it's his laptop.</p> <p>18 MR. BRIGHAM: It's --</p> <p>19 (Crosstalk)</p> <p>20 MR. BRIGHAM: This is Mr. Brigham, if I may add,</p> <p>21 we have one computer and we're both listening and watching</p> <p>22 from the same computer.</p> <p>23 HEARING EXAMINER ROBESON HANNAN: That's fine.</p> <p>24 Please raise your right hand, Mrs. --</p> <p>25 Do you solemnly affirm under penalties of perjury</p>



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40 (157 to 160)

<p>157</p> <p>1 that the statements you're about to make are the truth, the 2 whole truth and nothing but the truth? 3 MS. BRIGHAM: I do. 4 HEARING EXAMINER ROBESON HANNAN: Please state your 5 name, street address and email address for the record. 6 MS. BRIGHAM: My name is Marie Brigham, 7 B-R-I-G-H-A-M. My street address is 11021 Dobbins Drive and 8 my email is M, as in Marie, L as in Lynn, another M, Brigham 9 at aol.com. And that's how you know how old we are because 10 we still have AOL. 11 HEARING EXAMINER ROBESON HANNAN: Okay. Go ahead, 12 Mr. Brown. 13 MR. BROWN: Ms. Brigham, I'd like you to take a 14 look at the map in Exhibit 114B and point out where your 15 property is on that exhibit, if Ms. Robeson will bring it up. 16 HEARING EXAMINER ROBESON HANNAN: Are you seen it 17 yet? 18 MS. BRIGHAM: No, I'm not. 19 HEARING EXAMINER ROBESON HANNAN: Okay. Hold on 20 one second. Now you should be. 21 MR. BROWN: Would you identify your -- 22 MS. BRIGHAM: I can't see -- 23 MR. BROWN: -- property on here? 24 MS. BRIGHAM: -- there it goes. There it is. 25 Okay. All right. So what do you see the end that's got the</p>	<p>159</p> <p>1 My names Marie Brigham. I live at 11021 Dobbins 2 Drive, which abuts the property seeking conditional use for 3 Heritage Gardens. Our house is at the top of the hill above 4 where the present gym is located, and where the Applicant 5 seeks to build a multistory lodge. 6 I have lived at this address for 30 years this 7 spring, and would like to speak to several areas of concern. 8 We search for years before finding our home on Dobbins Drive. 9 We were looking for a close in family neighborhood with at 10 least 2 acres and a barn so that I could keep my horse at 11 home. An added bonus was the Potomac Glen Riding School at 12 the time which was on the school property behind us. My 13 daughter spent summers at there at camp and the rest of the 14 year in the riding program. The whole neighborhood hiked, 15 walked their dogs, or their horses on, and helped maintain 16 the bridle trails that followed the Kilgore Branch stream 17 from the school property to the one lane bridge at South 18 Glen, Glen, and Glen Mill Rds. And then, on along the Watts 19 Branch and stream to the river. I know this property well. 20 I was amazed that at the January 28th hearing it 21 was remarked more than once that there were no conditional 22 uses in this neighborhood. We have had a conditional use 23 which was previously called a special exception for 30 years. 24 This is to allow us to keep horses on our property. We have 25 been paying the Montgomery County Department of Permitting</p>
<p>158</p> <p>1 point above where the Lodge would be? 2 MR. BROWN: Yes. 3 MS. BRIGHAM: Do you see that? 4 MR. BROWN: Yes. 5 MS. BRIGHAM: The thing is not on my house yet. 6 There. Go back down. Okay. That's -- 7 HEARING EXAMINER ROBESON HANNAN: I see a label 8 that say -- oh Brigham. Your name is on the lot. 9 MS. BRIGHAM: Okay. 10 HEARING EXAMINER ROBESON HANNAN: On this exhibit. 11 MS. BRIGHAM: And it's got like a full triangle 12 that goes up into my back yard. 13 HEARING EXAMINER ROBESON HANNAN: (Inaudible). 14 MS. BRIGHAM: On the property. Okay. 15 MR. BROWN: Ms. Brigham, you are my client in this 16 matter because you have some concerns about this development 17 proposal. I wonder if you would describe your concerns to 18 the hearing examiner? 19 MS. BRIGHAM: Mr. Brown, is it okay if I just read 20 what I've written down? 21 MR. BROWN: That will be fine. 22 MS. BRIGHAM: I think that might be easier for all 23 of us, and I get through it quicker. And some of it's going 24 to be repetitive. And some of it will be unique to my 25 property. But anyway.</p>	<p>160</p> <p>1 Services an annual fee for each of those 30 years. I am very 2 concerned that the proposed development would prevent me from 3 being able to keep horses on my property. It would 4 definitely be impossible during the years of construction, 5 and that prospect, for me, is heartbreaking. A new 6 conditional use should not be allowed to cancel out an 7 existing one. 8 I would like to also speak to the environmental 9 impact of this proposal on the Kilgore Branch -- 10 HEARING EXAMINER ROBESON HANNAN: Wait -- can I -- 11 Ms. Brigham, can I interrupt for a minute? Why would 12 construction of this prevent you from keeping horses on your 13 property? 14 MS. BRIGHAM: It is directly behind my back fence, 15 and my whole property is devoted to horses. So I have a 16 front yard paddock, a back yard paddock, a side paddock, a 17 behind the barn paddock and then in front of the barn 18 paddock. And if they are going to be bulldozing, they're 19 going to be trees cut and drop, there's going to be a huge 20 amount of noise and activity, and horses are animals of 21 flight. They get very scared by sudden movements and just 22 all this kind of noise and crashing and everything. My 23 neighbor next door, she had a tree cut down and it took her 24 all afternoon. I had to hand walk my horse for three hours 25 on the other side of the property because she was terrified.</p>

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<p>161</p> <p>1 And it took me forever to get her calmed down from that.</p> <p>2 So -- I mean there's going to be a major stuff</p> <p>3 happening down there, and it's a very close to me. You can</p> <p>4 see from that little point that my house is a very close to</p> <p>5 that property line. And I have a clear view of everything.</p> <p>6 I have a clear view of what I call their big barn, which is</p> <p>7 their gym. And I can see the roof of the classroom</p> <p>8 buildings. I can see the roof on that little building that</p> <p>9 they're going to tear down with the six pods in the center</p> <p>10 roof. And it's just -- it will be very dicey to have all</p> <p>11 that going on. And that's a concern for me.</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Thanks.</p> <p>13 Continue with your statement.</p> <p>14 MS. BRIGHAM: Okay. I would also like to speak to</p> <p>15 the environmental impact of this proposal on the Kilgore</p> <p>16 Branch Screen. From my backyard, I can view the stream as it</p> <p>17 passes the gymnasium, which by the way, does have windows,</p> <p>18 and as it passes through the property of my next-door</p> <p>19 neighbor. Over the past 30 years I have seen the stream get</p> <p>20 much wider and deeper as it flows away from the gym area.</p> <p>21 Yesterday, my neighbor and I walked down the steep</p> <p>22 slope in her backyard to the stream. I wanted to measure its</p> <p>23 width and depth. It was approximately 25 feet wide and 8</p> <p>24 feet deep. So I wasn't sure how the consultant on Monday</p> <p>25 came up with 3 feet. The stream is now overflowing its banks</p>	<p>163</p> <p>1 of the gym for my backyard.</p> <p>2 Since the Lodge is approximately 20 feet higher</p> <p>3 than the gym, I would be looking at least the top two floors.</p> <p>4 At night, there would be lights coming from each room window,</p> <p>5 in addition to the lights on the exterior of the building and</p> <p>6 in the parking lot. The effect would be like a hotel in my</p> <p>7 backyard.</p> <p>8 Combined with the lights on the gym, which I see</p> <p>9 now, the streetlights and the lights of the townhouses, this</p> <p>10 development would be an island of light in an otherwise dark</p> <p>11 neighborhood. I would also see the headlights of vehicles</p> <p>12 coming to the Lodge at night. The proposed road is a</p> <p>13 straight shot to my house. There would be visitors, staff</p> <p>14 changing shifts, not to mention emergency vehicles. There</p> <p>15 are no streetlights on Dobbins or Edison roads except for the</p> <p>16 one at the intersection of Edison and South Glen.</p> <p>17 South Glen is a designated country road which</p> <p>18 turns into a rustic road one block down from Edison Rd..</p> <p>19 There are no streetlights on South Glen after you pass the</p> <p>20 Glen Drive, until you get to the one lane bridge at South</p> <p>21 Drive, Glen, Glen Mill. It's like being in the country.</p> <p>22 Due to living in the country, many of us are on</p> <p>23 well and septic. There are concerns that the proposed</p> <p>24 development of the site could pose a threat to the</p> <p>25 groundwater aquifers underline the side and tap to buy our</p>
<p>162</p> <p>1 on a regular basis when we have heavy rain. A small bridge</p> <p>2 over the stream washed out during one of the more recent</p> <p>3 storms leaving some remnants in the stream and some in the</p> <p>4 neighbor's backyard. A huge ravine has cut across the trail</p> <p>5 path that I described earlier making it impossible to go</p> <p>6 further down the trail.</p> <p>7 The WSSC right-of-way is impassable right now.</p> <p>8 Based on what we are seeing, I believe that the overall</p> <p>9 quality of the stream will continue to degenerate much faster</p> <p>10 with the proposed heavy development.</p> <p>11 Many trees on the school property behind me are</p> <p>12 uprooting and falling because of the erosion and</p> <p>13 deterioration of the stream valley buffer and the slopes to</p> <p>14 the stream. My neighbors who are also abutting property</p> <p>15 owners have spent tens of thousands of dollars trying to</p> <p>16 counter and slowed the erosion on their property. The soil</p> <p>17 on their property and ours is clearly highly erodible. I</p> <p>18 don't understand how the experts can say that on the other</p> <p>19 side of my fence the soil is different.</p> <p>20 I would be happy to show them the gullies and</p> <p>21 washed out areas. I'm very concerned that cutting away the</p> <p>22 slope to build the Lodge will be unsafe on both sides of the</p> <p>23 property line. I share other neighbors' concerns about the</p> <p>24 lights from the proposed lodge building. I can see the top</p> <p>25 half of the gym sitting at my breakfast table. I can see all</p>	<p>164</p> <p>1 wells. I would also like confirmation that the WSSD line</p> <p>2 that the project would be looking into can handle this very</p> <p>3 large number of the townhouses and large buildings.</p> <p>4 During the time the Fourth Presbyterian School was</p> <p>5 in operation, the sewer connection -- and I don't know what</p> <p>6 you call those big round things that pop up in the sewer,</p> <p>7 like along the line, I have no idea for the technical word,</p> <p>8 but anyway, one of those overflowed sewage into the street</p> <p>9 for at least two days before it was repaired. And this is</p> <p>10 the place that they are planning to hook into the sewer line</p> <p>11 when if the project were built.</p> <p>12 And then, I have a couple of miscellaneous</p> <p>13 comments and questions for you. Many of the exhibits that we</p> <p>14 have been looking at show the property from an airplane view.</p> <p>15 And then, they also have an artist coloring in the other</p> <p>16 areas. And some of them are a mix. And when I look out for</p> <p>17 my back property, I am not looking down over tree cover. I</p> <p>18 am looking through the trunks of the trees. And right now, I</p> <p>19 can see everything.</p> <p>20 The hilltop where the Lodge would be built is</p> <p>21 going to lose a lot of trees so it's going to be even more</p> <p>22 open and visible from our house. And there are a lot of</p> <p>23 damage trees and when those fall then it's going to be even</p> <p>24 more extensive. The only area that is completely untouched</p> <p>25 is going to be on the other side of the stream. This</p>

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42 (165 to 168)

<p style="text-align: right;">165</p> <p>1 property has been -- excuse me. I lost track here.</p> <p>2 Okay. This property -- okay. One other thing</p> <p>3 which is kind of -- I don't know -- no, I'll skip that.</p> <p>4 Can you still see me?</p> <p>5 HEARING EXAMINER ROBESON HANNAN: I can.</p> <p>6 MS. BRIGHAM: Okay. Where was I? This property</p> <p>7 has been a beloved part of this neighborhood for generations.</p> <p>8 In a perfect world it would be turned into a nature preserve,</p> <p>9 and Arboretum, or a park. I believe that at most, it should</p> <p>10 have single-family homes on 2 acre lots. This project should</p> <p>11 be rejected on the grounds of incompatibility, environmental</p> <p>12 degradation that causes harm to a neighboring property, and</p> <p>13 to the larger stream valley.</p> <p>14 HEARING EXAMINER ROBESON HANNAN: Thank you very</p> <p>15 much.</p> <p>16 Ms. Harris, do you have questions?</p> <p>17 MS. HARRIS: I do not. Thank you.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Mr. Brown, do</p> <p>19 you have any follow-up questions?</p> <p>20 MR. BROWN: No. There was no cross.</p> <p>21 HEARING EXAMINER ROBESON HANNAN: Oh that's right.</p> <p>22 I'm sorry.</p> <p>23 Ms. Brigham, you may be excused as a witness.</p> <p>24 Thank you for coming.</p> <p>25 MS. BRIGHAM: Thank you.</p>	<p style="text-align: right;">167</p> <p>1 MR. BROWN: Yes. I'd like to do like we did with</p> <p>2 Marie Brigham, to identify your property on Exhibit 114B.</p> <p>3 If you could bring that up?</p> <p>4 HEARING EXAMINER ROBESON HANNAN: You should be</p> <p>5 seeing it.</p> <p>6 MR. MAGGIN: Yes, I'm Lot 3, where it says</p> <p>7 Maggin/Tassen, which is the second house in on Edison Rd.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: I see it.</p> <p>9 Lot --</p> <p>10 MR. MAGGIN: Right there.</p> <p>11 HEARING EXAMINER ROBESON HANNAN: Is it -- yeah.</p> <p>12 Okay. I see it.</p> <p>13 MR. BROWN: So Mr. Maggin, like with Ms. Brigham,</p> <p>14 I gather that you are opposed to this project, and I would</p> <p>15 like you to explain to the hearing examiner why that is so.</p> <p>16 MR. MAGGIN: All right. Thank you. I am one of</p> <p>17 13 abutting neighbors that is opposed to the project. To me,</p> <p>18 it's not surprising that the neighborhood is over whelming</p> <p>19 leak opposed to the project. In 2019, and again in 2021 the</p> <p>20 Applicant chose to pursue the design and development of a</p> <p>21 conditional use project, not a project by right, without any</p> <p>22 consultation or design collaboration with the surrounding</p> <p>23 neighborhood.</p> <p>24 Possibly, that could be understood if it was a</p> <p>25 project by right. But as a conditional use, I think there is</p>
<p style="text-align: right;">166</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Mr. Brown, do</p> <p>2 you have anyone else?</p> <p>3 MR. BROWN: My last witness is Rick Maggin.</p> <p>4 HEARING EXAMINER ROBESON HANNAN: Mr. Maggin, can</p> <p>5 you turn your camera on? Thank you.</p> <p>6 MR. MAGGIN: Yes, I just did.</p> <p>7 HEARING EXAMINER ROBESON HANNAN: I see you.</p> <p>8 MR. MAGGIN: Okay.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Please raise</p> <p>10 your right hand.</p> <p>11 Do you solemnly affirm under the penalties of</p> <p>12 perjury that the statements you are about to make are the</p> <p>13 truth, the whole truth, and nothing but the truth?</p> <p>14 MR. MAGGIN: I do.</p> <p>15 HEARING EXAMINER ROBESON HANNAN: All right.</p> <p>16 Please state your name, address, and email address for the</p> <p>17 record.</p> <p>18 MR. MAGGIN: My name's Rick Maggin. I live at</p> <p>19 10811 Edison Rd. in Potomac, Maryland. My email address</p> <p>20 R-I-C-K at magginconstruction.com. Construction is spelled</p> <p>21 out.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: Okay. Thank</p> <p>23 you. Mr. Brown --</p> <p>24 MR. BROWN: Mr. Maggin I would --</p> <p>25 HEARING EXAMINER ROBESON HANNAN: Go ahead.</p>	<p style="text-align: right;">168</p> <p>1 no excuse for that. The Applicant's design initially began</p> <p>2 in 2019 with 81 townhouses without any elderly care component</p> <p>3 to speak of. Now, we have, two years later, after a zoning</p> <p>4 text amendment, we have 45 townhouses with 150,000 foot,</p> <p>5 approximately, square foot Lodge building. And it's obvious</p> <p>6 that the intent all along was to build townhouses and</p> <p>7 maximize the square footage of the developable property,</p> <p>8 without any consideration to the zoning, the current zoning,</p> <p>9 the environmental issues, traffic, and the adjacent</p> <p>10 neighborhood.</p> <p>11 During both application processes spanning a</p> <p>12 couple of years, the planning staff never reached out to us,</p> <p>13 the surrounding community, for any input on design or</p> <p>14 compatibility. Conversely, a number of us requested a</p> <p>15 meeting with the planning staff in 2019 before it was</p> <p>16 approved by the Planning Board, and met with Rich Weaver and</p> <p>17 three or four others from the planning staff, and expressed</p> <p>18 our concern to a number of issues.</p> <p>19 At that meeting, Rich Weaver actually boasted</p> <p>20 about his input for the design of this project. And said,</p> <p>21 when questioned about the compatibility, he said isn't the</p> <p>22 design nice? Doesn't it look like a Potomac home?</p> <p>23 After the project was withdrawn by the developer</p> <p>24 in 2020, I again reached out to the planning staff on behalf</p> <p>25 of the neighbors, with no response. If you could, bring up</p>

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<p>169</p> <p>1 Exhibit 113A, I'd like to refer to that. And I'd like to 2 read it to everybody. 3 This was after the project was withdrawn on 4 Friday, February 21st. and I don't know if you guys can hear 5 my dog in the background, but if you -- 6 HEARING EXAMINER ROBESON HANNAN: (Inaudible). 7 MR. MAGGIN: -- barking sorry about that. 8 Anyhow, I sent this email to Rich Weaver and Josh 9 Penn and it states in regard to Heritage Gardens. Hi Rich, 10 I'm writing to follow up on my phone message on February 5th 11 regarding a withdrawal of Heritage Gardens conditional use 12 application 1909. 13 I'm writing because he never returned my call. 14 This is three weeks later. 15 I called to discuss MNCPPC conditional use 16 application process and determine the best way for our 17 neighborhood, those affected most, to be engaged and kept 18 informed of any future conditional use development proposals 19 being considered for the property. Our objective is to 20 encourage the developer, and the planning staff to obtain 21 neighborhood and involvement in the early design process. 22 Healthy discussion and feedback with the neighbors 23 on key issues could result in a successful shared vision and 24 avoid another protracted procedure costing the developer, 25 community, and taxpayers a substantial amount of wasted time</p>	<p>171</p> <p>1 want to emphasize again that the site is 30 acres; 10 acres 2 are not buildable. A couple of acres are dedicated to roads. 3 Even if they were to build single-family homes onto a lots as 4 allowed by right, they would be lucky to get 8 to 9 buildable 5 lots. So the consultants it references time and time again 6 to 30 acres is not really relevant. 7 If we could turn to Exhibit 113B, the Fourth 8 Presbyterian School plan. 9 HEARING EXAMINER ROBESON HANNAN: You should be 10 seeing it. 11 MR. MAGGIN: Yes, I do. Thank you. If you could 12 blow it up a little bit more that would be great. 13 Great. Thank you. 14 Applicant referred to likely scenarios in their 15 testimony. That's not relevant either. There was never a 16 permit issued for a likely scenario. This is a site plan of 17 the permit -- excuse me, that was issued. You'll note the 18 closest point the school building would have had from any of 19 the property lines on the west was 390 feet, and 450 feet 20 from the property line. What you see in a brown is the 21 footprint of the school building that was approved. 22 Permit number 474500 was in the actual permit 23 number, it was issued in 7 of 2008. It included a 67,000 24 square-foot building. Later, I believe it was 2009, there 25 was a 3000 foot modular building approved, and in 2010, and</p>
<p>170</p> <p>1 and money. We appreciate your time and welcome any thoughts 2 and suggestions you may have. I would be happy to coordinate 3 any efforts with our community. 4 Never heard from them. 5 I think it was obvious from our meeting, and other 6 responses that they had a different agenda. Their agenda was 7 essentially to push this project forward. And they were 8 working with the developer. They really didn't address any 9 of our concerns. 10 Compatibility with the surrounding neighborhood. 11 Frankly, it's a very disturbing to me to hear the Applicant 12 tell us how the project is compatible with our neighborhood. 13 We are the people that live here all day, every day. Many of 14 us, including myself, for over 30 years. We know what's 15 best, we know what's compatible, and what's not. Families 16 chose to move to this neighborhood specifically because of 17 the benefits of the large lots and spaces between homes. 18 Many of us moved here from developments that had smaller lots 19 and smaller homes. 20 The project size, scale, and density is 21 inappropriate and not compatible with the surrounding 22 neighborhood. 23 I'd like to do next clarify some testimony that 24 was given earlier regarding the side and the former school. 25 I just want to -- I know it's been pointed out before, but I</p>	<p>172</p> <p>1 8000 foot the gym building. Adding all that together, I 2 believe that it's less than 80,000 square feet. That's what 3 was permitted, not a likely scenario. The current site plan, 4 with all the gross square footage of the building, as best as 5 I can estimate, and there was limited information on the 6 plans is closer to 450,000 square feet, almost half a million 7 square feet, on less than 20 acres, like I said. 8 The two closest lots to South gland, which if you 9 scroll a little bit towards South Glen, a little bit of the 10 site plan is cut off. 11 HEARING EXAMINER ROBESON HANNAN: Right. I'm 12 trying to -- 13 MR. MAGGIN: If you could just minimize it. Or 14 maybe it doesn't show. Anyhow, do you see that dark line 15 there that borders the side of the school? Those are 7 acres 16 which constitute two other parcels. Those were never 17 included in the permit for the school there has never been a 18 permit issued for those 7 acres. 19 The other thing I wanted to point out is that the 20 building was a two-story building, and it did not operate 24 21 hours a day. The school use was abandoned and a special 22 exception, in my mind, and maybe I'm wrong, but my 23 understanding of a special exception is when a use, or a 24 site -- I guess it's a use is abandoned, the special 25 exception goes away.</p>

<p>173</p> <p>1 So I might be wrong, but my understanding is in 2 2014 when the school was abandoned the special exception when 3 away. So all of this reference to the school building is not 4 relevant, including the traffic. That's the way I view it. 5 I'm not testifying as an expert on the zoning code or 6 anything else. 7 But now that I mentioned traffic, I'd like to ask 8 Ms. Robeson if there is any way possible, it would be 9 extremely helpful to bring out the truth of the situation and 10 the conditions surrounding this proposed development, if you 11 could get involved in setting the criteria for the traffic 12 report. The Applicant's information on traffic today does 13 not present an accurate picture. As many people have pointed 14 out, number one, the surveys were taken during COVID, 15 extremely different than the normal situation. 16 The traffic accident report was based on a limited 17 scope, and did not include all the accidents on South Glen. 18 As somebody already testified, there was a fatality. I 19 believe there were two fatalities between 2019 and now on 20 South Glen Rd. just, probably less than a quarter of a mile 21 down the road. 22 I think the fieldwork for any traffic study should 23 be done while schools, especially BOLUS (phonetic) is in full 24 session, and has normal class schedule, not learning from 25 home, not on flex schedule during exam weeks like they did in</p>	<p>175</p> <p>1 The other concern I had was that that in my mind, 2 and again, it's my opinion, the Applicant was missing 3 information. There was no data table indicating the gross 4 square foot area of the townhouses, both the duplexes and the 5 triplexes, or the Lodge building. There should have been a 6 cover sheet, it should have been mentioned in the land use 7 report, and it may not be a requirement but how could you 8 possibly evaluate a development of this size and its 9 compatibility with the neighborhood without even knowing 10 these things? 11 It appears that that there is about, like I said, 12 close to half a million square feet between the Lodge, the 13 gym, and the townhouses. There are no floor plans for the 14 lower level, and the second level of the townhouses. In 2019 15 they had full floor plans for both, including the potential 16 set up. The floor plan for the basement in 2019 included 17 another bedroom, a fourth bedroom, a third bathroom, a media 18 room, a gymnasium, and a family room. This time, for some 19 reason, they were left off the submission. The same thing 20 with the second floor. They didn't have a second floor floor 21 plan. 22 Now, I heard from somebody, I'm out of town and 23 I'm not sure, but I heard from somebody they submitted 24 something, I guess it was last week. But better late than 25 never.</p>
<p>174</p> <p>1 the other prior reports, and not on vacation like they've 2 done when they did the study in the middle of December. The 3 estimated traffic trips as other people have pointed out as 4 well, is very misleading. And I understand, and I'm not a 5 traffic expert, but I understand that they did report based 6 on this and being an elderly housing facility, and there's a 7 separate classification for elderly housing facilities. 8 What we have here is an elderly housing facility 9 contained in the Lodge, and a totally separate age restricted 10 facility being the townhouses. They have extremely different 11 traffic requirements. Other people have testified to the 12 number of people going in and out. You have 45 townhomes, 13 you have 130 some beds, I believe, in the facility. Somebody 14 should be in charge of coming up with -- or setting a 15 criteria for doing an accurate traffic study to really gauge 16 the full impact on this community and the roads. 17 The roads, as a number of people have pointed out, 18 the public facilities are not adequate. There is no 19 shoulder. There is no sidewalk. People walk on the side of 20 the road right now, caregivers and lawn people, and 21 housekeepers and so forth, and I'm just amazed that nobody 22 has recently been hit, especially in bad weather. There's no 23 bus transportation, as people have pointed out. All these 24 things should be taken into consideration when a traffic 25 report criteria is set so that it's properly evaluated.</p>	<p>176</p> <p>1 Only on the landscape and lighting drawings did 2 they indicate the size of the townhouse. They're not 3 indicated on the normal site plans where you would expect 4 them. The first floor plans, by the way, initially, and I 5 don't know what has been submitted, did not have dimensions 6 or a scale so you couldn't even tell the size of the units. 7 There are no elevation drawings of the sides and rear of the 8 townhouses, no material selections indicated. 9 The site plans say a proposed building height of 10 50 feet on many of the triplex units, page 4 of the site 11 plans, while the land use report says a maximum of 40 feet. 12 Which is correct? If we could bring up exhibit and 94N now 13 I'd like to talk about compatibility with my particular 14 property. My property is the -- yes. Right there. 15 HEARING EXAMINER ROBESON HANNAN: It's shaded in 16 green. 17 MR. MAGGIN: Correct. 18 HEARING EXAMINER ROBESON HANNAN: Just west of -- 19 MR. MAGGIN: The second house in on Edison, on the 20 west side of the Applicant's property. 21 That particular drawing shows the difference in 22 the spaces and the green area around the surrounding 23 neighborhood versus the Applicant's proposal. And keep in 24 mind, I have a note in the lower right-hand corner of the 25 Applicant's property, 10 of those acres, the majority of the</p>

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<p>177</p> <p>1 green space, because 10 of the acres is 33 percent of the 2 property is not buildable. Whereas all the other properties 3 in the surrounding neighborhoods have significant more green 4 space. So that really -- especially if you blow it up, it 5 shows you the extreme density of the proposal versus the 6 existing neighborhoods.</p> <p>7 And for a minute, if everybody can imagine, I'm 8 sitting on my back patio looking at the townhouses, which are 9 located 30 feet from the property line. What I will be 10 looking at is from left to right, a triplex of 160 feet, a 40 11 foot storm water pond area, a duplex of 117 feet, a 40 foot 12 storm water area, and another triplex of 160 feet. And I 13 guess the good news is, if you want the good and bad in the 14 situation, the good news is I won't be able to see many of 15 the lights from the cars that drive by because I'm going to 16 have a 40 foot wall in my backyard.</p> <p>17 Where in the surrounding neighborhood, the 18 surrounding compatible neighborhood does somebody look out 19 their back yard and see that kind of structure? Look at the 20 other houses in the neighborhood. Look at what their views 21 are out their backyard.</p> <p>22 Can we switch now to aerial photo, Exhibit 56C, 23 please? This photo as, I think a couple of people have 24 mentioned, is and I don't know if it's enhanced or not, I 25 can't really tell I think it is, but maybe it's not, shows</p>	<p>179</p> <p>1 And one measures 29 inches in circumference, one 2 measures 31 at 3 feet above the ground. I don't know what 3 the technical measurement is supposed to be for a specimen 4 tree, but to me it's a specimen tree because there 50 years 5 old and they provide more coverage year-round than any of the 6 other trees, and they are not even shown. There's also a 7 cedar tree, I believe, shown -- that isn't shown on the 8 Applicant's property. But that does beg a question, how many 9 other trees like that throughout the neighborhood are not 10 shown?</p> <p>11 And to the Applicant, you know the chances of 12 disturbing a root zone on any of those trees of mine may be 13 minimal, and according to statistics they may live, but maybe 14 they won't. And that will be significant because, like --</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Well, how --</p> <p>16 MR. MAGGIN: -- everybody else said, when looking 17 at the buffer plantings they'll take 20 years to mature.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Well let me ask 19 you something. Are they close -- I trees 170, 171, 168 and 20 167. Already cedar trees closer to the property line then 21 those are?</p> <p>22 MR. MAGGIN: Yes. Yes. They're actually -- I 23 think one is to the left of 171, and one is to the right of 24 171, both closer to the property line. And I'm speaking from 25 memory. I'm out of town now, so I'm not sure. But I believe</p>
<p>178</p> <p>1 this great tree canopy behind my back yard. And when I say 2 tree canopy that's exactly what it is. It's a tree canopy. 3 It doesn't tell anything like Marie said about the understory 4 of the trees.</p> <p>5 I can sit in my backyard right now, and this 6 occurs probably five, six months out of the year because 7 there is no foliage back there, with the exception of some 8 cedar trees which we'll talk about later. But the under 9 canopy, I can sit in my porch in the back yard and I can see 10 cars driving down to the Synagogue. At night, when the 11 Synagogue has an event, I can see lights in the Synagogue. 12 So even though it looks like from the tree canopy it's very 13 dense, the under canopy is not dense at all, almost half the 14 year.</p> <p>15 If we could go to Exhibit 51, that'd be great.</p> <p>16 HEARING EXAMINER ROBESON HANNAN: Do you know if 17 it's A or B? A probably?</p> <p>18 MR. MAGGIN: I believe it's that one, the first 19 one. Yeah. And if you could blow up on my backyard there? 20 I think Susanne Lee talked about it and we've talked about a 21 number of times, but I didn't know she was going to bring up 22 the cedar issue. But I do have a number of very nice trees 23 back there that do provide high canopy. There are two cedar 24 trees that are over 50 years old, that are closer to the 25 property line, I think, than any of those trees that show.</p>	<p>180</p> <p>1 that's correct.</p> <p>2 Anyhow, back to the buffer plantings it's going to 3 take 15 to 20 years for them to grow tall enough. And even 4 when they grow tall enough they aren't going to obscure a 40 5 foot townhouse, or a 50, depending on which number was 6 correct in the plan.</p> <p>7 Another thing I should point out, if you could 8 scroll so that the bottom of the plan shows? Great. Along 9 the, I guess it would be the east property line the Applicant 10 shows a 6 foot vinyl fence along with some screening along 11 the property line. And I'm assuming they are showing a vinyl 12 fence there because they think it's important to block the 13 lights coming down from South Glen into the synagogue from 14 the new townhomes that that they're planning on building.</p> <p>15 They show no fence along any of the other lines.</p> <p>16 If this project is approved in any fashion, I think it would 17 be mandatory that they have a condition that they are to 18 install a 10 foot high natural stone fence around the entire 19 perimeter of the property. Not a vinyl fence.</p> <p>20 The economic impact on my property is going to be 21 substantial. With proper design, generous setbacks, buffers 22 and so forth it wouldn't be as much of an economic impact. 23 The massive four and five-story building, the thin buffering 24 the screening elements, all around the monster duplex and 25 triplexes, and keep in mind, each one of these townhouses is</p>

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<p>181</p> <p>1 approximately 6000 square feet, gross square feet. These are 2 no small townhouses. 3 A number of the single family homes in the 4 neighborhood are only 2500, 3000 feet. 5 HEARING EXAMINER ROBESON HANNAN: Are you 6 talking -- when you say 6000, is that the (inaudible) -- 7 MR. MAGGIN: The gross building square footage. 8 HEARING EXAMINER ROBESON HANNAN: I'm sorry. Is 9 it each townhouse or the whole stick of -- 10 MR. MAGGIN: No, each townhouse. So the duplexes 11 are roughly around 12,000 square feet. The triplexes roughly 12 around 18,000 square feet. 13 MR. BROWN: Are you talking about the footprint or 14 the gross floor area? 15 MR. MAGGIN: I'm not -- 16 HEARING EXAMINER ROBESON HANNAN: Mr. (inaudible), 17 before continue, there was a question from Mr. Brown. Are 18 you talking about footprint or the gross floor area? 19 MR. MAGGIN: I'm talking about gross for area. So 20 you had the basement, you had the first floor, you had the 21 garage, you had the screen porch is, you had the second 22 floor, so yes. 23 Economic impact. I may as well talk about the 24 study that was done because I have some serious concerns and 25 some comments on that.</p>	<p>183</p> <p>1 of analysis was that they examined the historical sales 2 price, appreciation rates between two neighborhoods over the 3 period 2016 to 2021. This methodology provides an analysis 4 of time. Substantially after most of the projects were 5 developed. Consequently, it's not even relevant in most of 6 the cases. 7 So if we look at senior facility number 1, which 8 was ProMedica, Arden Courts and Brandywine. ProMedica was 9 built 28 years prior to the study. Arden Courts was built 22 10 years prior to the study. Brandywine is the only relevant 11 case study to this situation because this situation we are 12 talking about economic impact between my property and 13 everyone else's property from the time the developer came out 14 with his concept to the time the project is completed. 15 So it's a before and after look, a before and 16 after window. It's not a window 10, 20, 30 years down the 17 road. That has nothing to do with this situation. 18 Noteworthy, on that particular Brandywine project is 10827 19 Lockland is the only house adjacent to the Brandywine 20 facility and I believe Sam pointed this out yesterday, and is 21 similar to the proposed Heritage Garden develop. 22 The zoning on that particular property, by the 23 way, was RE2. But on three sides of the property you have a 24 Falls Rd., so you have access off of a major corridor. You 25 have the existing 20 to 30-year-old elderly facility on the</p>
<p>182</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Not just a 2 second. You're referring to the appraisal report? 3 MR. MAGGIN: Yes, I'm sorry. I think it's called 4 market conditions report dated 12/27/21. 5 HEARING EXAMINER ROBESON HANNAN: Okay. Okay what 6 we don't need to -- 7 MR. MAGGIN: If we could bring that up because we 8 might want to refer to that. 9 HEARING EXAMINER ROBESON HANNAN: Okay. Do you 10 recall the exhibit number? 11 MR. MAGGIN: I do not. Dave? 12 MR. BROWN: Hang on. 13 MR. MAGGIN: I should have marked it down. I'm 14 sorry. 15 MS. HARRIS: It was 58. 16 MR. MAGGIN: 58. 17 HEARING EXAMINER ROBESON HANNAN: Thank you. I'm 18 getting there. 19 MR. MAGGIN: Okay. I can go ahead if you like? 20 HEARING EXAMINER ROBESON HANNAN: Go ahead. And 21 I'll eventually get there. 22 MR. MAGGIN: Okay. 23 HEARING EXAMINER ROBESON HANNAN: Here it is. 24 Okay. Go ahead. 25 MR. MAGGIN: The report says that the methodology</p>	<p>184</p> <p>1 other side, and then you have Falls Rd. golf course on the 2 other. So it really only impacted that one particular 3 property. And that one particular property ended up being 4 discounted -- well, let me get to that one. So I can -- let 5 me go on if I could because I can't find it right now. 6 But senior facility number 2 was Victory Terrace. 7 Victory Terrace was built in 2003, that's 13 years prior to 8 the study. Even began. Noteworthy is the existing buffering 9 at the closest point adjacent to the properties and you can 10 look at the aerial, it's in that report, the closest point is 11 282 feet to the property line from the edge of the facility 12 to the property line of the closest residence. Many of them 13 are 500 feet, 4 to 500 feet. The building is a three-level 14 building. The zoning in that was RE2, but as I said the 15 study period -- you're not even comparing before and after 16 development. 17 Senior facility number 3 was Fox Hill, which was 18 built in 2008. Again, eight years prior to the study. As 19 Sam mentioned yesterday there's no effective residential 20 neighbors. It's bordered by 495, it's bordered by Bradley 21 Boulevard, commercial across the street, River Rd., and a 22 golf course. The zoning of that, by the way was R200. 23 Senior faculty number 4, which is Brightview 24 Grosvenor was built in 2020 but it's not even close to being 25 a compatible neighborhood. Brightview is built in an urban</p>

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47 (185 to 188)

<p>185</p> <p>1 setting where the largest adjacent lot size is less than 5400 2 square feet or a twelfth of an acre. The zoning for the 3 Brightview and adjacent townhomes is R60 and to the west of 4 Flanning -- I'm sorry, is R90 and to the west of Fleming is 5 R60. Not even close to being comparable to 2 acre home 6 sites.</p> <p>7 The relevant and critical analysis must be to look 8 at the value of the adjacent properties prior to the 9 development of a senior living facility, then after the 10 facilities were built. Only Brandywine is the relevant study 11 and only the adjacent property which is located at 10827 12 Lockland Rd. is applicable. Construction began in -- for 13 Brandywine in 2020.</p> <p>14 10827 Lockland sits on a 2.4 acre lot. It sits on 15 a cul-de-sac. There is 9025 feet, square feet above grade 16 living area. There is 13,000 including the basement area. 17 Eight bedrooms, ten baths. The average sales price in 18 Potomac at that time was \$293 a square foot. The listed 19 sales price at 9/17/2020 was \$200,695,000 which was \$299 a 20 square foot, so it's very close to the average selling price 21 for the above grade living area, not the gross square 22 footage.</p> <p>23 The house sold, let's see -- four months later for 24 \$200,050,000, \$227 a square foot, 23 percent below the 25 average square foot price. The house was on the market for</p>	<p>187</p> <p>1 home. We met in my backyard. I showed them the plans of 2 what was going to be built and there was obviously no 3 question, I mean, common sense will tell you, you're going to 4 limit the number of buyers for your home because people 5 looking at 2-acre -- for 2-acre properties in Potomac aren't 6 going to want that situation in their backyard so it reduces 7 the supply. It's common sense, if you don't have the demand 8 your price is going to go down.</p> <p>9 There obviously, are people that will buy. There 10 are people that will buy right on River Rd., you know, 500 or 11 100 feet from River Rd.. There's always going to be somebody 12 that's going to buy, but you limit the amount of supply. And 13 in that particular neighborhood that's not what people are 14 looking for. I asked her about how it would affect and she's 15 been in business over 30 years.</p> <p>16 I asked her how it would affect my price. She 17 said, unfortunately it's already affected your price because 18 I knew about it. And she was speaking for herself. I knew 19 about what was going to be developed back there and in fact, 20 the only thing she had known about was the -- I think 50 some 21 townhouses that were on the plan in 2019. When I showed her 22 this plan she was blown away. She said it's significantly 23 impacted your price already.</p> <p>24 But there is going to be -- if this -- if this 25 project is built your price -- the price of your property is</p>
<p>186</p> <p>1 131 days. The average number of days on the market in the 2 fall of 2020 for a house in Potomac was 30 to 35 days. The 3 house was reduced 25 percent in order to sell.</p> <p>4 By the way, page 7 of the report states that the 5 property sold for 2695, which is not correct. That was the 6 listing price. The property sold for 2050. It's shown 7 correct in the chart but in the write up it's not shown 8 correctly.</p> <p>9 I spoke to one of the brokers involved in that 10 transaction. There's no question whatsoever that that 11 development impacted that sales price. No question. And 12 that's what she told me.</p> <p>13 MS. HARRIS: Objection. I'm going to register my 14 objection again as hearsay, similar to the last situation, 15 when I raised it.</p> <p>16 HEARING EXAMINER ROBESON HANNAN: So I think, an 17 expert broker also spoke and related some hearsay from 18 brokers, so I'm going to let it in (inaudible) weight it 19 deserves.</p> <p>20 And I am hearing -- I am hearing an echo. Maybe 21 it's on my end. I will have my -- okay. Go ahead, Mr. --</p> <p>22 MR. MAGGIN: Do you want me to turn my volume up?</p> <p>23 HEARING EXAMINER ROBESON HANNAN: No. Go ahead.</p> <p>24 MR. MAGGIN: Okay. The -- when I had -- I had 25 another broker from a large company, Compass, come to my</p>	<p>188</p> <p>1 going to be impacted not only now, through the construction 2 period and after the construction period. At some point down 3 the road it will settle out. But how far that point down the 4 road is, who knows. And I'm not -- and she wasn't even 5 saying it's going to come back to where the rest of the 6 prices in the neighborhood are that aren't abutting that 7 property.</p> <p>8 So there's no question every single property that 9 abuts this proposed project will be affected severely.</p> <p>10 I'm going to be short and try and wrap this up 11 because I know you guy have heard this for days now and -- 12 excuse me. I just made a short list of compatibility issues 13 with the surrounding neighborhood; home designs, there's no 14 question. Homes in the neighborhood are individual. You 15 have designs all over, very wide range. The homes in this 16 subdivision would all look similar.</p> <p>17 Lot sizes in our neighborhood range from 2 to 3.4 18 acres. The ownership lots that are proposed on the townhouse 19 developments are an eighth of an acre. Setbacks are nowhere 20 near comparable as you saw from that green area exhibit.</p> <p>21 The lighting, and thank you very much for 22 addressing the building lighting, because that's not taken 23 into consideration on the photometrics, and will be 24 substantial. But as Marie testified, and unfortunately there 25 was a doctor who lives in the neighborhood adjacent to the</p>



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48 (189 to 192)

<p>189</p> <p>1 entryway. I thought he was going to testify today, but I 2 guess he couldn't get away. He is actually in charge of a 3 senior living facility in Virginia. 4 He said -- we were on a conference call and maybe 5 he submitted written testimony, I don't know. He said there 6 is movement, action all day long, in and out of his facility. 7 Whether it's ambulances, whether it's caregivers, whether 8 it's customers, whether it's urgent calls for family, whether 9 it's service people in and out. And lights are on and off 10 all night long. This building is a -- some people refer to 11 it as a four-story building, it's actually designed as a 12 five-story building. There are five floors in certain areas. 13 The density, of the above grade living area, the 14 surrounding neighborhood, if you divide the land area versus 15 the above grade living area, there is 209 -- 2954 square feet 16 of building per acre. If you look at the townhouses and the 17 Lodge, there's 18,055 square feet per acre. And that's based 18 on 305,000 square feet of building. Not the gross square 19 footage, the above grade living area. And I'm guessing at 20 that because it's very difficult to determine. That doesn't 21 include the 450,000 gross square feet. That's an enormous 22 difference. 23 The density of the people, we've gone through 24 that. The economic impact, I've gone through that. The 25 enjoyment of our property, I think that's obvious, the</p>	<p>191</p> <p>1 piece. 2 HEARING EXAMINER ROBESON HANNAN: Thank you. 3 Ms. Harris -- 4 MR. BROWN: Ms. Robeson, I just have a couple of 5 additional questions for Mr. Maggin. 6 HEARING EXAMINER ROBESON HANNAN: Okay. 7 MR. BROWN: And perhaps I should have asked this 8 at the outset, Mr. Maggin. You said you're not an expert in 9 this, and you're not an expert in that, but you provided a 10 lot of a detailed testimony. What is your background that 11 you brought to the testimony? Your background in 12 (inaudible)? 13 MR. MAGGIN: I'm a builder and developer, 14 primarily commercial, although we've done a lot of 15 multifamily as well. 16 MR. BROWN: And where does that take place? 17 MR. MAGGIN: We've worked all over the state of 18 Maryland, DC, and Virginia, and currently working in South 19 Carolina. 20 MR. BROWN: One last thing. You mentioned your 21 exhibits 113A and 113B; but you didn't mention your exhibit 22 113C. Can you tell us what that is about? Can you bring 23 that up? 24 MR. MAGGIN: I can't see the top. 25 HEARING EXAMINER ROBESON HANNAN: (Inaudible).</p>
<p>190</p> <p>1 buffers. The sheer scale of a development, the noise, the 2 adequate public facilities, the traffic, all these are 3 issues. 4 And I'll just finish up by saying that if this 5 development does get approved in fashion I ask that the 6 hearing examiner address a phasing plan which, like, Susanne 7 mentioned mandates that the lodge be built and occupied 8 before any townhouse construction begins because that is a 9 component necessary for the townhouses as I understand it. 10 The trash dumpster service, restriction of hours. 11 We had requested of the school, I believe it was 12 2008 that they provide us with a covenant that restricts the 13 owner and occupant of 10901 Edison Rd. from using that 14 property for ingress and egress. That was never given. 15 A 10 foot minimum natural stone wall, not a vinyl 16 wall around the entire perimeter of the property be built. 17 Material selections be discussed and approved by the 18 surrounding neighborhood, and last but not least, enforcement 19 requirements. Which is a totally separate issue and as a 20 number of people have referred to, is extremely complicated. 21 And I -- and in my mind and I've seen it all over the area, 22 extremely difficult to enforce. 23 HEARING EXAMINER ROBESON HANNAN: Okay. Thank 24 you. 25 MR. MAGGIN: And thank you for letting me say my</p>	<p>192</p> <p>1 Yeah, I can't -- can you read it if I go back? 2 MR. MAGGIN: Maybe I can find -- oh, okay. I 3 think I have a copy actually. That's the lot size and above 4 grade living area comparison. So what I did was I took the 5 information from the tax roll, and marked down in surrounding 6 neighborhoods street a column, the fourth and fifth column 7 over from the left, the surrounding neighborhood streets, the 8 lot size and above grade living area. And then I -- in the 9 next two columns just transferred the information over for 10 those that were adjacent to the existing property. 11 And at the bottom of the page I provided an 12 average so that over the 60 properties you have an average 13 lot size of 94,720 square feet, and above grade living area 14 of 5095 square feet. And that provides a 19 to 1 ratio of 15 lot size to above grade living area. And at the bottom was 16 Heritage Gardens, which is -- I did the same thing, I didn't 17 summarize. I think that's the average of all their lots in 18 the above grade living area. And there lot size to above 19 grade living area is 2 to 1, so the comparison is 19 to 1 20 versus 2 to 1. Just a compatibility issue. 21 HEARING EXAMINER ROBESON HANNAN: Okay. 22 MR. BROWN: Thank you, Mr. Maggin for your 23 testimony. I have no further questions. 24 HEARING EXAMINER ROBESON HANNAN: Ms. Harris? 25 MS. HARRIS: Yes, just a few.</p>

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49 (193 to 196)

<p>193</p> <p>1 Hello, Mr. Maggin, how are you?</p> <p>2 MR. MAGGIN: Fine, how are you.</p> <p>3 MS. HARRIS: I'm fine. Thank you. So you</p> <p>4 indicated that the former school use was subject to a</p> <p>5 conditional use. Were you aware that it was, in fact, a</p> <p>6 religious school on the site?</p> <p>7 MR. MAGGIN: Yes.</p> <p>8 MS. HARRIS: And were you aware -- are you aware</p> <p>9 that religious schools, in fact, don't require special</p> <p>10 exceptions uses, and so therefore, there was no special</p> <p>11 exception use associated with the school?</p> <p>12 MR. MAGGIN: No, actually I wasn't. I was aware</p> <p>13 that the special exception -- or the religious component was</p> <p>14 such that it didn't require them to do a traffic report.</p> <p>15 MS. HARRIS: Okay. Well, there was no special</p> <p>16 exception. And do you recall any special exception</p> <p>17 proceeding prior to the issuance of the building permit for</p> <p>18 the plan that you showed that indicated that it was phased?</p> <p>19 MR. MAGGIN: No.</p> <p>20 MS. HARRIS: And were you aware that that was, in</p> <p>21 fact, the first phase of development of the overall school</p> <p>22 master plan?</p> <p>23 MR. MAGGIN: The first phase of a proposed</p> <p>24 development, correct.</p> <p>25 MS. HARRIS: Correct. Okay. Thank you. And</p>	<p>195</p> <p>1 because he presented it as a one-story building. And as I'm</p> <p>2 looking at the floor plan I said oh, this is a nice floor</p> <p>3 plan. I said a one-story building, but you have an elevator.</p> <p>4 Oh well, you know that goes up to the second floor.</p> <p>5 Okay. And where is the second floor plan? Oh</p> <p>6 here's the second floor plan. Oh, you have two bedrooms and</p> <p>7 two bathrooms, and how about a basement, do you have a</p> <p>8 basement? Oh yeah, here's the basement. So that's how that</p> <p>9 meeting went. It wasn't here's what it'll look from your</p> <p>10 back yard. And here's what the floor plan it. It wasn't</p> <p>11 we're in the initial stages of design, can we meet with you</p> <p>12 and some other neighbors and get input on this? Because I</p> <p>13 told him it was very dense, very large, and it surprised me</p> <p>14 that they were trying to do that. And that's how he left the</p> <p>15 meeting.</p> <p>16 MS. HARRIS: When did you participate in one of</p> <p>17 the two meetings that the Applicant had on site in 2019 with</p> <p>18 the --</p> <p>19 MR. MAGGIN: No, I was out of town.</p> <p>20 MS. HARRIS: And then, in August of 2021 did you</p> <p>21 receive a letter from the developer, not the board of appeals</p> <p>22 required notice, but a letter from the developer indicating</p> <p>23 that they were moving forward with the conditional use and to</p> <p>24 reach out if -- for further discussion and an opportunity to</p> <p>25 meet?</p>
<p>194</p> <p>1 then, you indicated you're a builder and a developer, and I</p> <p>2 think I knew that in fact. And you're not a real estate</p> <p>3 appraiser; is that correct?</p> <p>4 MR. MAGGIN: Not an appraiser, I am a real estate</p> <p>5 agent.</p> <p>6 MS. HARRIS: Thank you. And do you have an active</p> <p>7 real estate license?</p> <p>8 MR. MAGGIN: Yes.</p> <p>9 MS. HARRIS: In Montgomery County?</p> <p>10 MR. MAGGIN: DC and Maryland.</p> <p>11 MS. HARRIS: And do you -- I think you indicated</p> <p>12 that there was really no opportunity to review any design</p> <p>13 plans of this project; did I understand that correctly?</p> <p>14 MR. MAGGIN: No, that's not how I put it. The</p> <p>15 developer came to us on a number of instances and said here's</p> <p>16 what we are building. They presented it to us. That's far</p> <p>17 different from asking the community for input on design and</p> <p>18 compatibility. I've been -- if you want me to expand on that</p> <p>19 I'll expand on it.</p> <p>20 MS. HARRIS: Did you participate in -- well, I</p> <p>21 believe you had a meeting with Mr. Wormald in December of</p> <p>22 2018; do you recall that?</p> <p>23 MR. MAGGIN: Yes, my wife and I had a meeting with</p> <p>24 him. At that meeting he presented a floor plan to us, and it</p> <p>25 was the first floor plan. And it was actually laughable</p>	<p>196</p> <p>1 MR. MAGGIN: We received the obligatory letter.</p> <p>2 At that point the plans were already done. The staff had</p> <p>3 already been involved. We reached out to the staff and tried</p> <p>4 to get their input. I've developed properties and reached</p> <p>5 out --</p> <p>6 MR. BROWN: I'm sorry.</p> <p>7 MR. MAGGIN: -- all over the area.</p> <p>8 MR. BROWN: It's hard to hear, yeah. No, I'm not.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Wait just a</p> <p>10 second. Just --</p> <p>11 (Audio interference)</p> <p>12 HEARING EXAMINER ROBESON HANNAN: Okay.</p> <p>13 MR. MAGGIN: Ms. Harris, I have developed and</p> <p>14 built properties in DC, and been part of the development</p> <p>15 teams that have built all around various jurisdictions in</p> <p>16 Maryland, and I've been involved in rezoning and by right</p> <p>17 properties. And that is not how you involve a community. To</p> <p>18 be in a position to approach a conditional use project and</p> <p>19 not asked to meet and have design input throughout the</p> <p>20 project is absurd. In DC, you wouldn't get away with it.</p> <p>21 MS. HARRIS: Well, Mr. Maggin, I think --</p> <p>22 MR. MAGGIN: You absolutely wouldn't get away with</p> <p>23 it.</p> <p>24 MS. HARRIS: -- you're surmising --</p> <p>25 MR. MAGGIN: The first thing I do as a developer</p>

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50 (197 to 200)

<p>197</p> <p>1 is I reach out to the community and set up a meeting with 2 everybody. 3 MS. HARRIS: And that was, in fact the intent -- 4 MR. MAGGIN: And our architects. And we talk 5 about design. 6 MS. HARRIS: And that was -- 7 MR. MAGGIN: We talk about compatibility, what 8 would you guys like to see as a community? That was never 9 done. I was in charge of the Association, and other people 10 were significantly involved, including Susanne Lee, and we 11 were the ones that ended up requesting meetings. And for the 12 planning staff not to -- 13 MS. HARRIS: Well -- 14 MR. MAGGIN: -- involve us, frankly, is criminal 15 on their part. 16 MS. HARRIS: It is unfortunate that you 17 interpreted the letter that was sent at the end of August as 18 not a gesture to begin an open dialogue. That was the intent 19 of the letter and we were somewhat dismayed, frankly, that we 20 had not heard from the community on that. 21 HEARING EXAMINER ROBESON HANNAN: Ms. Harris, 22 you're not testifying. 23 MS. HARRIS: Yes (inaudible). 24 HEARING EXAMINER ROBESON HANNAN: Mr. Wormald can 25 come on in rebuttal if he wishes.</p>	<p>199</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Yes. 2 MS. BRIGHAM: I think her name was Embry. 3 HEARING EXAMINER ROBESON HANNAN: Yes. 4 MS. BRIGHAM: But anyway, she said that the 5 property is zoned for a school, and that's not accurate. 6 Before the Fourth Presbyterian School came there the school 7 had a conditional use -- the property had a conditional use. 8 But it's not zoned for a school. It's just it had a 9 conditional use. 10 HEARING EXAMINER ROBESON HANNAN: Here's a -- 11 MS. BRIGHAM: (inaudible) before but there when 12 the -- 13 HEARING EXAMINER ROBESON HANNAN: (Inaudible). 14 MS. BRIGHAM: -- religious school came and they 15 didn't have a conditional use anymore. Before then they did. 16 HEARING EXAMINER ROBESON HANNAN: Yes. A school, 17 I non-religious school under the zoning ordinance requires a 18 conditional use. 19 MS. BRIGHAM: Right. 20 HEARING EXAMINER ROBESON HANNAN: But because it's 21 a religious school, it does not. So thank you for 22 clarifying. 23 Anyone else? All right. Thank you for everyone 24 who testified. I'm going to ask this -- what is your plan, 25 Ms. Harris, as far as rebuttal?</p>
<p>198</p> <p>1 MS. HARRIS: Thank you. Okay. I have no further 2 questions of Mr. Maggin. 3 HEARING EXAMINER ROBESON HANNAN: Mr. Brown, do 4 you have any redirect? 5 MR. BROWN: No redirect. No additional witnesses 6 as far as I know. 7 HEARING EXAMINER ROBESON HANNAN: Okay. 8 MR. BROWN: Unless there are perhaps some other -- 9 there may be some other neighbors who wish to testify. 10 HEARING EXAMINER ROBESON HANNAN: Is there -- 11 MR. BROWN: But I'm through. 12 HEARING EXAMINER ROBESON HANNAN: Okay. Is there 13 anyone else that would like to testify on this application? 14 Okay. Seeing no hands and hearing no volunteers. 15 MS. BRIGHAM: Ms. Roberson? 16 HEARING EXAMINER ROBESON HANNAN: Yes. 17 MS. BRIGHAM: This is Marie again, Marie Brigham 18 who testified earlier. 19 HEARING EXAMINER ROBESON HANNAN: Yes. 20 MS. BRIGHAM: Can I just make one other comment? 21 The lady who was an attorney, I mean, a realtor, who 22 testified earlier -- 23 HEARING EXAMINER ROBESON HANNAN: Ms. -- 24 MS. BRIGHAM: -- she was testifying for the 25 developer.</p>	<p>200</p> <p>1 MS. HARRIS: So as you know, we are waiting for 2 the traffic study to be reviewed. Well, first of all it 3 needs to be submitted to Park and Planning per Mr. 4 Bumgardner's direction. It needs to be reviewed by Park and 5 planning, I'm assuming, but I don't know this for a fact, 6 that they'll be issuing some kind of written memo responding 7 to the traffic study. 8 HEARING EXAMINER ROBESON HANNAN: Right. 9 MS. HARRIS: And then once said that has occurred 10 and Mr. Brown has had an opportunity to review it then we 11 will need to schedule testimony for our last witness, Mr. 12 Kabatt. Following Mr. Kabatt's testimony, we would be 13 prepared to put on our rebuttal case and then moved to 14 closing arguments. But unfortunately I think that may end up 15 being -- I mean I can't predict Park and Planning staff 16 schedule but I think it's likely going to be three or four 17 weeks. 18 HEARING EXAMINER ROBESON HANNAN: Okay. My main 19 inquiry was reviewed -- what I wanted to do, just listening 20 to everything here, and having read the transcripts, I did 21 have a couple of concerns. I've already mentioned the one 22 several times about the ownership. And I'd like to just give 23 you a heads up of my concerns because I'd like you to address 24 them in your rebuttal. I am -- the ownership, I am confused 25 about. I think that the density is just -- okay.</p>

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51 (201 to 204)

<p style="text-align: right;">201</p> <p>1 If we could do this, if we could take just five 2 minutes so I can go through my notes and get my thoughts 3 together and we'll come for 10 minutes if you can stay 4 around? And then I'll probably be able to do it in a more 5 coherent fashion. 6 MS. HARRIS: Okay. 7 HEARING EXAMINER ROBESON HANNAN: So let's take a 8 10 minute break. So we will come back at 4:05. Thank you. 9 (Off the record at 3:56 p.m., resuming at 4:12 10 p.m.) 11 HEARING EXAMINER ROBESON HANNAN: Giving me a 12 moment. I tried to order these questions by topic, but I 13 gave up and just went through my notes as they occurred to 14 me. The first question is screening setback screening and 15 setbacks. And I noticed what's the conditional use site plan 16 number? I think it's 45A. That's the cover sheet. That's 17 not what I -- well, I'm not going to go find -- I'm not going 18 to go find the plans. 19 Well, the screening and the setbacks. Okay. Mr. 20 Park I recall testified that there was a 40 foot overall 21 buffer because of all these woods, not on this property. And 22 I have a couple of concerns because a couple of witnesses 23 testified and I found their testimony critical that these 24 woods don't really screen them from the view of these 25 settings. So what you have on the top is just, I think it</p>	<p style="text-align: right;">203</p> <p>1 The other thing is that density because even 2 though I -- 3 MS. HARRIS: Can I -- 4 HEARING EXAMINER ROBESON HANNAN: -- what I -- 5 MS. HARRIS: -- just interrupt just one second for 6 clarification? I'm sorry. 7 HEARING EXAMINER ROBESON HANNAN: Yeah. 8 MS. HARRIS: When you said you're wondering 9 whether there should be additional setbacks, can you identify 10 where you're talking about just so I'm clear? 11 HEARING EXAMINER ROBESON HANNAN: Well, not the 12 setbacks from the northern -- the setbacks from the western 13 property line, in particular. And I'm getting to that in a 14 minute. Just because I found Mr. Maggin's testimony credible 15 that it's density because you've got so much of the parcel 16 constrained by forest and wetlands and stream valley buffer, 17 you really don't have as much -- all the massing has to be on 18 a much smaller parcel than the entire 30 acres. 19 And just looking -- just seeing Mr. Maggin's 20 description of looking at the face of these things, he didn't 21 say how far he was from them, but I can -- just at a rough 22 scale, he is not that far, and he is going to be looking at 23 pretty much a wall of townhouses that is atypical for that 24 zone. So even though density wise, you know, you have a low 25 density per bed, and maybe number of units compared to other</p>
<p style="text-align: right;">202</p> <p>1 was option B, the 12 foot buffer, which isn't very much 2 screening considering the proximity of these houses to these 3 townhouses, or the cottages. 4 I'm concerned that the forested area -- well, A, 5 I'm never -- I'm not going to rely on the forested area on 6 property outside your property because I never know whether 7 they're going to maintain it, and so it sounds like it's not 8 providing screening from the visual impact from the 9 neighbors. 10 The second question I have is are all the trees 11 grown? I mean, I know the measurement for the circumference 12 is taken at chest high, and I can't remember everything else, 13 but do we have all the trees? So I would like to know if 14 that NRIFSB, it was recertified, but we need to double check 15 that everything is accounted for on it, and all the off-site 16 impacts are there, are accounted for. 17 Also, the topo. The topo, I saw the second, and 18 the topo says that the -- the topo helps visual screening 19 from a street view. And I could be wrong about this. It 20 helps screen the high. But my question is these properties, 21 several people have mentioned they are above the bowl of the 22 stream and the floodplain, just roughly. So even if the 23 height may be screened from a street view, they are seeing 24 everything. And I'm wondering if there should be additional 25 screening, additional setbacks.</p>	<p style="text-align: right;">204</p> <p>1 senior living facilities, it's that mass in a way that makes 2 it -- I don't have the net usable acres, but certainly I 3 think Mr. Maggin's testimony with the gross floor area over 4 the properties was significant. 5 I would like to see a lighting plan with 6 everything shown. And that is typical. We always go -- 7 well, and the ones I've done, we do go into the building 8 sconces and that type of thing. As far as Ms. Lee's 9 testimony, what attempts have been made -- there were a 10 couple of things in the environmental guidelines about the 11 extent possible you should design around the stream valley, 12 some of the environmental constraints on the site. What 13 attempts were made to do that? 14 And I do have a question as to why we don't 15 mitigate the gymnasium which is in the stream valley and the 16 flood plain and raises the level -- if it's going to raise 17 the level of the flood water I know it's an existing 18 condition and maybe legally you can build it. I don't know 19 if you have to pay flood insurance, but it just seems like 20 why wouldn't you mitigate the impact it's having? 21 MS. HARRIS: When you say mitigate the impact, can 22 you clarify what you mean by that? 23 HEARING EXAMINER ROBESON HANNAN: I mean, get 24 it -- why wouldn't you get it out of the flood plain? That's 25 what I mean.</p>

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52 (205 to 208)

<p>205</p> <p>1 MS. HARRIS: Okay.</p> <p>2 HEARING EXAMINER ROBESON HANNAN: Given that, you</p> <p>3 do have acreage, it seems like your list impacted acreage is</p> <p>4 on the southern side of the property. Now, you could do a</p> <p>5 small work facility perhaps for the launch in the northern</p> <p>6 part of the property. But these are just things I'm throwing</p> <p>7 out there because I'm not sure that the woods is going to</p> <p>8 buffer as much as indicated. And it is -- the massing is</p> <p>9 relatively intense where it occurs.</p> <p>10 And, I don't know if the topo does really -- you</p> <p>11 don't have to do this, these are just my --- I'm just giving</p> <p>12 you my concerns. If you feel like they don't need to be --</p> <p>13 or they aren't a concern, you know, I'm giving you some heads</p> <p>14 up so you can say something on rebuttal.</p> <p>15 I would also like accident data. I don't know if</p> <p>16 it's already been provided, but may be updated. I think it's</p> <p>17 on the state police -- I think it's on the state police</p> <p>18 website. Because I think some of this was done in 2019, and</p> <p>19 now it's back, and I don't know what's it been updated.</p> <p>20 The second thing is, is there any plan to</p> <p>21 shuttle -- how many employees are going to use mass transit?</p> <p>22 Where's the nearest bus stop, and are there any plans to</p> <p>23 shuttle employees to and from the bus stop to avoid, or you</p> <p>24 know, is this not an issue for some other reason? Okay.</p> <p>25 And then, how wide is South Glen Rd. and can a</p>	<p>207</p> <p>1 people's wells, but if you want to address that concern you</p> <p>2 can.</p> <p>3 And are there elevations? I tried to go through</p> <p>4 the exhibits, but I was taking more time than I thought it</p> <p>5 was worth. Are there elevations of the cottages just the</p> <p>6 breadths? I guess the -- are there measurements of the</p> <p>7 footprints? They're on the conditional use plan, I guess.</p> <p>8 Well, if somebody could provide the square footage</p> <p>9 of the footprint. Are the floorplans that were scaled --</p> <p>10 were they gross floor area or were they interior area?</p> <p>11 MS. HARRIS: Are you asking for answers now</p> <p>12 because I'm making a list of everything?</p> <p>13 HEARING EXAMINER ROBESON HANNAN: If you know, if</p> <p>14 you don't could -- okay. I'll just --</p> <p>15 (Crosstalk)</p> <p>16 MS. HARRIS: -- if we get back to you. I would</p> <p>17 prefer to take in information and then get back to you as</p> <p>18 opposed to respond now unless you (inaudible).</p> <p>19 HEARING EXAMINER ROBESON HANNAN: No. I'm -- and</p> <p>20 again, if these are not issues as you see them, those are</p> <p>21 just what I'm concerned about after the hearing today and</p> <p>22 yesterday and it would be helpful to me if you could address</p> <p>23 them.</p> <p>24 And I believe that's all the questions that I had.</p> <p>25 Well, and you might as well address and I think</p>
<p>206</p> <p>1 fire engine and an ambulance pass each other? I assume they</p> <p>2 can, but I'd just like it in the record.</p> <p>3 Could you have done anything to minimize that</p> <p>4 priority forest area? We need a signed updated NRIFSD. Are</p> <p>5 there any plans to mitigate some of the damage that has</p> <p>6 already occurred on the stream? And again, I'm not saying --</p> <p>7 I'm just asking you to tell me this. I'm not saying you must</p> <p>8 do this. I'm just asking you whether it's a good idea.</p> <p>9 Whether it's been looked at and whether it's a bad idea, et</p> <p>10 cetera.</p> <p>11 The master plan recommendations for the need for</p> <p>12 senior housing is 20 years old. And you know, a lot of times</p> <p>13 when Applicants come in and say well, you can't give weight</p> <p>14 to this master plan recommendation because it's 20 years old.</p> <p>15 And so my question is is that still a relevant -- I</p> <p>16 understand but if this is going to be based on master plan</p> <p>17 recommendations the question is how valid is that</p> <p>18 recommendation still?</p> <p>19 And I think there's something in the very front of</p> <p>20 every master plan that says, well, this is a snapshot now,</p> <p>21 but it's recommendations may not be as pertinent over time.</p> <p>22 So if we're going to rest this case on the need for senior</p> <p>23 housing called for in 2002, is that still a valid need?</p> <p>24 I assume the traffic counts will not be done on a</p> <p>25 school holiday. I don't see this as having an impact on</p>	<p>208</p> <p>1 you would do this anyway, but the -- I assume that you have</p> <p>2 worked the storm water out so this doesn't exacerbate runoff</p> <p>3 off site. But if you could just address that in relation to,</p> <p>4 I think, it was Ms. McGrath's testimony.</p> <p>5 MS. HARRIS: Will do.</p> <p>6 HEARING EXAMINER ROBESON HANNAN: All right. So</p> <p>7 with that, do you -- we don't know, I guess, what the timing</p> <p>8 will be for the next hearing because we don't have the</p> <p>9 traffic -- we don't have a deadline certain on the traffic</p> <p>10 report; am I correct on that one?</p> <p>11 MS. HARRIS: Yes. What I would suggest is once we</p> <p>12 have some certain dates -- once the traffic report's</p> <p>13 submitted to staff and they've approved it then I can let you</p> <p>14 know and then I think that's probably the time that we can</p> <p>15 schedule another -- schedule the final hearing date.</p> <p>16 HEARING EXAMINER ROBESON HANNAN: Okay. I really</p> <p>17 encourage you to work with the -- you do this -- I know most</p> <p>18 applicants do this anyway, but it may be helpful to meet</p> <p>19 again if you're proposing any changes with the (inaudible) in</p> <p>20 advance and I'm sure staff will be happy to meet. I'm sure</p> <p>21 they will be happy to meet as well.</p> <p>22 So with that, the only thing to keep in mind is</p> <p>23 that we have to -- if we don't set a hearing date today we</p> <p>24 have to send out 15 days written notice. So whenever you're</p> <p>25 calling to set a hearing date give us that 15 day window or</p>

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<p style="text-align: right;">209</p> <p>1 two or three days before for staff. We don't have staff in 2 the office every day at the moment. So just keep that in 3 mind when you're scheduling the hearing. 4 Does anyone have any other questions? 5 MR. BROWN: I do. Ms. Robson, I'd like to talk -- 6 it would be helpful to talk for just a couple of minutes 7 about the end game in this process. And before I ask a 8 specific question, I just want to refer back to an exchange 9 between me and Hearing Examiner Baumgardner regarding 10 covenants. 11 I had made the pitch to him that we felt strongly 12 that this application was incomplete without at least a draft 13 set of covenants, that among other things, addressed some of 14 the transfer of ownership issues associated with the age 15 restrictions about which you heard some testimony today. 16 Mr. -- Ms. Harris's response, as I understood it was that 17 covenants would not be forthcoming at this point and that my 18 request was rather unprecedented. Covenants would come out 19 in the course of the preliminary plan process at the Planning 20 Board. 21 MS. HARRIS: I think if I could -- go ahead, I'm 22 sorry. 23 MR. BROWN: Did I misstate you? Please correct me 24 if I did. 25 MS. HARRIS: Well, I thought -- no, I thought</p>	<p style="text-align: right;">211</p> <p>1 something that I'm going to have to produce in writing to you 2 at some point down the road. I'm wondering where this fits 3 into your plans for closing argument, and whether or not you 4 would like a closing argument -- 5 HEARING EXAMINER ROBESON HANNAN: Okay. Can I -- 6 MR. BROWN: -- that would include -- 7 HEARING EXAMINER ROBESON HANNAN: I'm raising my 8 hand. Oops, I missed it. Okay. I'm raising my hand. 9 That's a good point because it brought up one 10 thing that I didn't write down and that is the legal 11 structure. It would be helpful for me, prior to the last 12 hearing, to have -- if you could do a (indiscernible) summary 13 of what the legal structure is going to be so I could at 14 least try and get my head around it before -- you know, maybe 15 it's a co-op. I don't know. No, it would be -- anyway. If 16 you could just give me written -- give me something in 17 writing describing the legal structure. Because I can't say 18 that -- how can you write covenants if you don't know what 19 the legal structure is? I'm going to suggest that Ms. Harris 20 take a stab -- I do think -- I don't know whether covenants 21 are inappropriate. I mean, we have them with rezoning. But 22 I do think having certain provisions of them, like 23 enforcement and transfer of units, and Ms. Harris, if you 24 want to take a stab at that before Mr. Brown does, or work 25 together with Mr. Brown he's -- but you have better access to</p>
<p style="text-align: right;">210</p> <p>1 that -- we did have that exchange, but then I thought zoning 2 Hearing Examiner Baumgardner also said what would be typical 3 is as a condition of approval that the declarations would be 4 required. He certainly didn't sound like he was asking for 5 them in advance. 6 MR. BROWN: I -- 7 HEARING EXAMINER ROBESON HANNAN: Well, let me -- 8 MR. BROWN: I accept that correction. May I 9 continue? 10 HEARING EXAMINER ROBESON HANNAN: Yes. 11 MR. BROWN: He also made it clear to me that if we 12 had specific concerns about what those covenants should 13 contain I was free to make recommendations to you as to 14 conditions of conditional use approval. Or, I guess he 15 expressed it, recommendations to him. But now, it would be 16 recommendations to you, and you heard testimony today that, 17 in fact, I have been working on that problem. 18 So that leads me to the question of how we're 19 going to end this? Obviously, I don't like proposing 20 conditions that assume that the project is going to be 21 approved when I'm going to be advocating that it be 22 disapproved. Nevertheless, I feel that this is important to 23 look at alternatives relief scenario and provide you with our 24 specific recommendations as to what we would like to see 25 ultimately in those covenants. And that's going to be</p>	<p style="text-align: right;">212</p> <p>1 the legal structure than he does. 2 MS. HARRIS: But when you say take a stab at that, 3 are you looking for a draft covenant, or rather a document 4 that identifies those provisions that would be included 5 within a-- 6 HEARING EXAMINER ROBESON HANNAN: The latter. 7 MS. HARRIS: Yes, okay. 8 HEARING EXAMINER ROBESON HANNAN: The latter. 9 MS. HARRIS: Yes. 10 HEARING EXAMINER ROBESON HANNAN: I don't want to 11 hear about insurance liability and all of that kind of stuff. 12 But it would be -- and I suggest you talk to Mr. Brown about 13 what his citizens think should be in there. But since you 14 have a better idea of, or more access to what legal structure 15 is going to be, it might be a good idea for you to speak with 16 Mr. Brown and then address some of the enforceability 17 concerns. 18 MS. HARRIS: That's fine. And frankly, I would be 19 surprised if there was a lot of distance between us in terms 20 of what the provisions should be. I mean, it's not as if we 21 weren't anticipating that all along. 22 HEARING EXAMINER ROBESON HANNAN: Yeah. 23 MS. HARRIS: That's always been a part of our 24 structure. So what I would suggest is all come up with 25 something, share it with Mr. Brown and we'll work and</p>

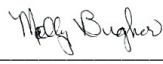
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<p style="text-align: right;">213</p> <p>1 hopefully we can provide you with a document that identifies</p> <p>2 all the necessary provisions.</p> <p>3 HEARING EXAMINER ROBESON HANNAN: Now, what's a</p> <p>4 reasonable timeframe? I really would like that summary</p> <p>5 description, as detailed as you feel comfortable making it of</p> <p>6 what the ownership structure is going to be. So what's a</p> <p>7 reasonable time frame for you to provide that?</p> <p>8 MS. HARRIS: I would like to say two or three</p> <p>9 weeks, but -- two weeks maybe? I need to -- I mean I'm -- so</p> <p>10 we have someone in our office that does this all the time so</p> <p>11 I need to make sure of his availability and such. I mean,</p> <p>12 now I'm -- Ken made a funny face when I said three weeks.</p> <p>13 Two weeks? I'll shoot for two weeks but I would hate to have</p> <p>14 like a date certain when (inaudible).</p> <p>15 HEARING EXAMINER ROBESON HANNAN: Well,</p> <p>16 (inaudible) this. Let's see, today is -- well, let's shoot</p> <p>17 for two weeks. I leave that to you, but make a deadline</p> <p>18 which I would like. Make a deadline of three weeks which</p> <p>19 would be the 23rd. March 23rd.</p> <p>20 MS. HARRIS: That's certainly doable and if we can</p> <p>21 get it even earlier we certainly will.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: Thank you so</p> <p>23 much.</p> <p>24 Mr. Brown, are you okay with that?</p> <p>25 MR. BROWN: I would be very happy to receive a</p>	<p style="text-align: right;">215</p> <p>1 I'm asking Ms. -- there's two different things going on.</p> <p>2 Okay? One is just a description of the legal structure that</p> <p>3 they're proposing. That's it. I just want to know that in</p> <p>4 three weeks.</p> <p>5 MS. HARRIS: And that doesn't take -- right. That</p> <p>6 doesn't involve Mr. Brown. That's me explaining to you how</p> <p>7 we anticipate this legal structure.</p> <p>8 HEARING EXAMINER ROBESON HANNAN: Exactly. And</p> <p>9 then, Mr. Brown, the separate assignment is the covenants and</p> <p>10 you can work on that together and you may not agree. Maybe</p> <p>11 you could do a -- I just had a case that was remanded by the</p> <p>12 Board of Appeals and the Applicant met with the citizens and</p> <p>13 listed the areas of consensus and listed the areas of no</p> <p>14 consensus. So you know, I don't expect consensus of the</p> <p>15 covenants. I just -- all I'm asking for from Ms. Harris by</p> <p>16 May [sic] 23rd is a written description of the legal</p> <p>17 structure that they are proposing.</p> <p>18 MS. HARRIS: March 23rd.</p> <p>19 HEARING EXAMINER ROBESON HANNAN: That, yes.</p> <p>20 MR. BROWN: Well, I'll put it this way. If Ms.</p> <p>21 Harris wants to give me a draft of her concept of what</p> <p>22 should -- of key elements of the covenants that might have</p> <p>23 some relationship to the issues in this case, I'll give her a</p> <p>24 turnaround response within two weeks of the time she gets it</p> <p>25 to me.</p>
<p style="text-align: right;">214</p> <p>1 submission from Ms. Harris on the 23rd and turn around a</p> <p>2 response to it within probably two weeks of that. But I</p> <p>3 don't think that the two of us could come up with any kind of</p> <p>4 consensus document in three weeks.</p> <p>5 HEARING EXAMINER ROBESON HANNAN: No, I'm just</p> <p>6 talking -- I'm not talking about the declaration of</p> <p>7 covenants.</p> <p>8 MR. BROWN: No, I'm not either. I'm not either.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Well, I didn't</p> <p>10 ask for a consensus document on that one. A consensus one is</p> <p>11 what you want to see in these covenants.</p> <p>12 MR. BROWN: What I'm telling you is I think that</p> <p>13 we have some very different ideas about what these covenants</p> <p>14 should contain than her client does. So I do not anticipate</p> <p>15 that if she sends me something in three weeks I'm going to</p> <p>16 say it's just fine. And I don't anticipate that we --</p> <p>17 HEARING EXAMINER ROBESON HANNAN: But --</p> <p>18 MR. BROWN: -- would reach agreement in any event.</p> <p>19 This is something you're going to have to decide because I</p> <p>20 don't believe --</p> <p>21 HEARING EXAMINER ROBESON HANNAN: So --</p> <p>22 MR. BROWN: -- there's any realistic chance we're</p> <p>23 going to agree on what those terms should be.</p> <p>24 HEARING EXAMINER ROBESON HANNAN: All right.</p> <p>25 Well, that's not what I'm saying for in three weeks. What</p>	<p style="text-align: right;">216</p> <p>1 HEARING EXAMINER ROBESON HANNAN: Okay. We're</p> <p>2 still talking about different things.</p> <p>3 MR. BROWN: I'm not talking about the legal</p> <p>4 structure. I'm talking about --</p> <p>5 HEARING EXAMINER ROBESON HANNAN: Oh, wait.</p> <p>6 (inaudible). Okay. So what you're saying is for the</p> <p>7 covenants you need a two-week turnaround?</p> <p>8 MR. BROWN: Yes.</p> <p>9 HEARING EXAMINER ROBESON HANNAN: Okay. So Ms.</p> <p>10 Harris, do you think we can get all this done -- I have no</p> <p>11 idea when the traffic study's coming out. I assume staff</p> <p>12 will review it as they normally do.</p> <p>13 MS. HARRIS: Well, let me just say, given the</p> <p>14 timing we will try to get Mr. Brown something within the next</p> <p>15 week. But again, I'm sort of promising something without</p> <p>16 consulting with my partner who's going to be taking the lead</p> <p>17 on this.</p> <p>18 HEARING EXAMINER ROBESON HANNAN: Understood.</p> <p>19 Thank you. All right --</p> <p>20 MR. BROWN: Whatever date she delivers I will do</p> <p>21 something within two weeks of that date.</p> <p>22 HEARING EXAMINER ROBESON HANNAN: (inaudible).</p> <p>23 Thank you. And so is there any -- can anyone think of</p> <p>24 anything else? You can always email me.</p> <p>25 Okay. Hearing none, I am going to continue this</p>

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<p>217</p> <p>1 case indefinitely. I'm hoping that the parties will contact 2 me with dates when they are ready to proceed based on the 3 traffic study. 4 MS. HARRIS: I will as soon as we know a date. 5 HEARING EXAMINER ROBESON HANNAN: Mr. Brown, 6 within two weeks that you'll get something back to Ms. 7 Harris? 8 MR. BROWN: Right. And we will then decide among 9 ourselves what's going to be submitted to you, either a 10 consensus document or two documents. 11 HEARING EXAMINER ROBESON HANNAN: That's fine. I 12 appreciate it. 13 All right. With this I'm going to continue it 14 until -- indefinitely. Please, everyone on this phone call 15 provide Ms. Johnson of our office -- make sure if you didn't 16 read it into the record, of your email and street address so 17 we can get the notice to you for the next hearing. 18 Thank you very much. It was a long hearing. 19 Thank you for participating. 20 MS. HARRIS: Thank you. 21 (The proceeding concluded 4:41 p.m.) 22 23 24 25</p>	
<p>218</p> <p>1 CERTIFICATE OF TRANSCRIBER 2 I, Molly Bugher, do hereby certify that the 3 foregoing transcript is a true and correct record of the 4 recorded proceedings; that said proceedings were transcribed 5 to the best of my ability from the audio recording as 6 provided; and that I am neither counsel for, related to, nor 7 employed by and of the parties to this case and have no 8 interest, financial or otherwise, in its outcome. 9 10  11 _____ 12 Molly Bugher, CDLT-161 13 Date: March 9, 2022 14 15 16 17 18 19 20 21 22 23 24 25</p>	



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