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Transcript of Hearing

Date: May 31, 2022

Case: Heritage Gardens Land, LLC

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Conducted on May 31, 2022

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1 A P P E A R A N C E S	1 P R O C E E D I N G S
2 ON BEHALF OF MONTGOMERY COUNTY OFFICE OF ZONING AND	2 HEARING EXAMINER ROBESON: -- number 22-01,
3 ADMINISTRATIVE HEARINGS:	3 application of Heritage Gardens, LLC for a residential care
4 LYNN ROBESON HANNAN, HEARING OFFICER	4 facility in the RE2 Zone. Are the parties ready?
5	5 MS. HARRIS: Yes, thank you.
6 ON BEHALF OF THE APPLICANT:	6 MR. BROWN: Yes.
7 PATRICIA HARRIS, ESQUIRE	7 HEARING EXAMINER ROBESON: Would you please
8 LERCH, EARLY & BREWER, CHTD.	8 identify yourselves for the record?
9 7600 Wisconsin Avenue, Suite 700	9 MS. HARRIS: Patricia Harris with Lerch, Early &
10 Bethesda, MD 20814	10 Brewer on behalf of the Petitioner.
11 Phone: 301-986-1300	11 MR. BROWN: David Brown of Knauff & Brown on
12	12 behalf of the Greater South Glen Neighborhood Association and
13 ON BEHALF OF OPPOSING PARTIES:	13 the West Montgomery County Citizens Association.
14 DAVID BROWN, ESQUIRE	14 HEARING EXAMINER ROBESON: Okay. Welcome back. I
15 LAW FIRM OF KNOPF & BROWN	15 hope everyone had a nice weekend and now we're back at work
16 401 E Jefferson St, #206,	16 so we will try to get through this hearing as expeditiously
17 Rockville, MD 20850	17 as possible. Are there any preliminary matters?
18 Phone: 301-545-6100	18 MS. HARRIS: I have none.
19	19 MR. BROWN: I thought perhaps we should get a
20	20 little clarity on what our role is going to be in this
21	21 proceeding. My understanding is it is a rebuttal proceeding
22	22 and so we are not intending on putting on what might be
23	23 called a surrebuttal case, however we have submitted a number
24	24 of exhibits we would like a brief opportunity after the
25	25 Applicant's rebuttal case to briefly explain and perhaps have

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<p>5</p> <p>1 our witnesses who explain them also be subject to cross- 2 examination on those exhibits. I'm not envisioning this to 3 take more than 15 to 30 minutes at the end of that process. 4 HEARING EXAMINER ROBESON: Well, it's not entirely 5 rebuttal because we didn't have the staff report in the case 6 in chief. What I'd like to do is let the Applicant go 7 through their -- and there's a lot of new exhibits so I'd 8 liked the Applicant to go through the updated exhibits and 9 then, you can put on any -- and you would have the right to 10 cross-examine that. And then, you have the opportunity to 11 put on anyone that you would like to put on and then the 12 Applicant would get a rebuttal to that. 13 MS. HARRIS: And Ms. Robeson, the one thing is we 14 still have direct testimony from our traffic engineer. 15 HEARING EXAMINER ROBESON: Exactly. So I don't 16 consider this entirely rebuttal so I'd like to stick with it 17 still as if it's a case-in-chief, but I understand that your 18 case-in-chief has already been put on and we're looking at 19 some revisions and so I'd like to handle it, Applicant's 20 case-in-chief, your testimony, and response and then 21 Applicant's rebuttal. 22 MS. HARRIS: And just to be clear, it was our 23 intent to put Mr. Kabatt on first with direct testimony 24 regarding traffic, and then we would commence our rebuttal 25 case. Then that is when we would introduce in the various</p>	<p>7</p> <p>1 MR. KABATT: My name is Chris Kabatt. My business 2 address is 1110 Bonaffon Street, Suite 200, Silver Spring, 3 Maryland. And that's -- the company is Wells & Associates. 4 HEARING EXAMINER ROBESON: Okay. Go ahead Ms. 5 Harris. 6 MS. HARRIS: Thank you. And in picking up on your 7 request for an expeditious hearing Mr. Kabatt has been before 8 you many times. I can walk questions to qualify him as an 9 expert if need be, but if Mr. Brown and you accept the fact 10 that he's an expert in traffic engineering we can get right 11 into the substance. 12 MR. BROWN: No objection. 13 HEARING EXAMINER ROBESON: Mr. Brown? 14 MR. BROWN: No objection. 15 HEARING EXAMINER ROBESON: Okay. He's so -- he 16 has testified numerous times before OZHA as an expert and so 17 he is so qualified in traffic engineering. 18 MS. HARRIS: Thank you. Okay. Mr. Kabatt, are 19 you familiar with the zoning ordinance requirement that the 20 Applicant Heritage Garden Lands, LLC must satisfy which 21 requires the conditional use application not cause undue harm 22 with respect to traffic and that there be adequate traffic 23 capacity to accommodate the use? 24 MR. KABATT: I do understand that. And I've been 25 familiar with it.</p>
<p>6</p> <p>1 exhibits so that we submitted. Through the various -- 2 HEARING EXAMINER ROBESON: Yeah, I like the -- Mr. 3 Brown's client and people who oppose at the chance to 4 understand them and ask the questions on them before they 5 have to comment, they get a chance to comment. So -- 6 MS. HARRIS: But just to be clear, it was our 7 intent that our various rebuttal witnesses would be speaking 8 to this exhibits which would then provide Mr. Brown and his 9 client an opportunity to fully understand the purpose of 10 those exhibits. 11 HEARING EXAMINER ROBESON: Exactly. 12 MS. HARRIS: Okay. 13 HEARING EXAMINER ROBESON: That's what I was 14 looking for. 15 MS. HARRIS: Okay. Okay. With that, I guess we 16 have Mr. Kabatt on the stand? 17 MS. HARRIS: Correct. 18 HEARING EXAMINER ROBESON: Mr. Kabatt, can you 19 please raise your right hand? 20 Do you solemnly affirm under penalties of perjury 21 that the statements you're about to give are the truth, the 22 whole truth, and nothing but the truth? 23 MR. KABATT: I do. 24 HEARING EXAMINER ROBESON: Okay. Please state 25 your name and business address for the record.</p>	<p>8</p> <p>1 MS. HARRIS: And are you familiar with the 2 conditional use case that's before us today, case number 22- 3 01? 4 MR. KABATT: I am. 5 MS. HARRIS: And just to make sure we understand 6 your understanding, can you briefly explain what it involves? 7 MR. KABATT: So the conditional use application 8 involves a redevelopment of this site for 74 independent 9 living units, 45 of those being in cottages and 29 in the 10 Lodge building. And it also includes 73 memory care and 11 assisted living units which includes 96 beds in that 12 facility. 13 MS. HARRIS: Thank you. And can you please 14 describe your responsibilities in connection with the 15 conditional use application? 16 MR. KABATT: Sure. We -- our requirements were to 17 complete a local area transportation review and we started 18 that with reviewing the requirements with NNC PPC staff and 19 county staff. And we originally submitted a traffic 20 exemption statement to confirm that a full traffic study 21 would not be required due to the prior use on the site and 22 the trip generation with both uses. We prepared that 23 statement and we also prepared a supplemental analysis to 24 address neighbors' concerns. 25 However, the Hearing Examiner back in the early</p>

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<p style="text-align: right;">9</p> <p>1 part of -- I guess that was January or February ordered the 2 application back to planning staff for review to complete a 3 traffic study. The other -- so we went ahead and did that 4 process and that's why we're here today in May. We also 5 reviewed the plan for safe and adequate access and we 6 determined if there are -- if the use will cause undue harm 7 to the neighborhood from the traffic perspective. 8 MS. HARRIS: And when you say you did a traffic 9 study is that what is typically called a local area 10 transportation review study? 11 MR. KABATT: Yes. 12 MS. HARRIS: Okay. And have you made a personal 13 inspection of the property and are you familiar with the 14 surrounding area? 15 MR. KABATT: I have and I am. 16 MS. HARRIS: And in terms of the number of 17 employees what's your understanding with respect to that for 18 this use? 19 MR. KABATT: It's my understanding that at any one 20 time there'll be a maximum of 30 employees on site. 21 MS. HARRIS: And will -- when you calculate the 22 LATR Trip generation does that include the fact that there 23 may be some individual health workers that individual 24 residents may employ. In other words, just sort of generally 25 speaking, what's -- when you start talking about trip</p>	<p style="text-align: right;">11</p> <p>1 Falls Road and Democracy Boulevard. We did the intersection 2 of Norton Road and South Glen, and the driveway to the 3 Congregation at the B'nai Tikvah building. We also went down 4 to south to River Road and looked at the intersection of 5 Norton Road with the River. Then we went to the West looking 6 at the intersection of South Glen Road and Glen Road. And 7 then, in the future we would obviously evaluate the site 8 driveway. 9 There's another adequacy test it's called the 10 pedestrian system adequacy test, and that looks at pedestrian 11 level of comfort in the site area and it also looks for ADA 12 compliance. And there's street lighting involved in that 13 level of comfort as well. 14 The third test is for the bicyclists, and is 15 called the bicycle system adequacy test. And that, again, 16 you look at based on generation a certain radius from the 17 property. In this case, it's 250 feet, and that's the same 18 radius for the pedestrian level of comfort, 250 feet. And I 19 will note that the ADA compliance, they had to look at half 20 of that so that ADA compliance evaluation would be 125 feet. 21 The fourth adequacy test is the best transit 22 system adequacy, and that looks at the best transit system in 23 the area that based on the site size and trip generation you 24 would look in a 500 foot radius for the bus transit. 25 MS. HARRIS: And I'm going to interrupt you for</p>
<p style="text-align: right;">10</p> <p>1 generation what's included in those numbers? 2 MR. KABATT: The trip generation is all inclusive. 3 It includes the resident, any trips they may make themselves. 4 It includes vehicle trips and with trips from employees, any 5 visitors, shuttle services that may be associated with this 6 type of use. It also includes the service deliveries, trash 7 pickup and such. 8 MS. HARRIS: Okay. And can you summarize the 9 analysis that was included in the LATR report which was 10 Exhibit 134? 11 MR. KABATT: Sure. So I'm going to go through the 12 transportation study, the local area transportation review 13 that is dated March 31, 2022, and that we prepared in 14 consultation with the Maryland National Capital Park & 15 Planning Commission staff, SHA staff, and Montgomery County 16 DOT staff. As I noted earlier the proposal includes 74 17 independent living units and 96 beds for assisted living and 18 memory care. We performed a multimodal adequacy test. There 19 is four of those that are part of an LATR. 20 One is the motor vehicle test which is essentially 21 an evaluation of the capacity at surrounding intersections. 22 In this case, based on the trip generation and the number of 23 vehicle trips, the trip generation, we looked at one 24 intersection in each direction of the site. At one 25 significant intersection. We went to the east, we went to</p>	<p style="text-align: right;">12</p> <p>1 just one moment. You had said that you evaluated based on 74 2 independent living units and 96 beds. The land use report 3 also noted as an alternative 64 independent living units and 4 105 beds. Did you also evaluate the project based on that 5 alternative? 6 MR. KABATT: Yes. And within the LATR study there 7 is that. We did a trip generation comparison for that 8 program, the 64 living units and the 105 beds. And we 9 determined it shows that that program generates the same 10 number of trips as the -- what we evaluated it in the study. 11 MS. HARRIS: Okay. 12 MR. KABATT: So it's the same analysis 13 essentially. 14 MS. HARRIS: Can you proceed and talk about the 15 existing traffic counts, please? 16 MR. KABATT: Okay. So we took a series of traffic 17 counts. I'll say even all the way back to 2018 and we'll get 18 into that a little bit later. But as this application came 19 forward last fall, and well it's 2022 already, so in the fall 20 of 2021 in preparation for that and then in preparation for 21 the hearing we took traffic counts in 2021. In December of 22 2021, and then we also took counts in the winter of 2022. 23 And at some intersections based on some of the 24 hearing that occurred in February we went out and took 25 some -- I guess it might've been March, but we went out and</p>

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4 (13 to 16)

<p>13</p> <p>1 took some additional counts at some of the intersections. 2 And basically, we used the most recent counts for the traffic 3 study, the transportation study that's in front of you. And 4 just to give you -- yeah, we took them when schools were in 5 session and when school was in session as well. 6 But the Falls Road Democracy Boulevard, South Glen 7 Road intersection, we took counts in their in March of 2022, 8 March 8th at the Norton Road intersection with South Glen. 9 That was from January 25th of 2022. Norton and River Road 10 was in March of 2022, March 3rd, and South Glen and Glen Road 11 we also took on March 3, 2022. And I will note that those 12 traffic counts, as we got into late 2021 and then obviously 13 here in 2022 moving forward Montgomery County and the State 14 Highway Administration has deemed traffic to be typical. 15 And so there's no policy to adjust those counts 16 with factors and we move forward with the counts, you know, 17 as we collect them at the intersection. It's 2022 and we're 18 moving forward and traffic has normalized and SHA the County 19 has recognized that. 20 The traffic study, and this gets to the motor 21 vehicle test. The intersections are evaluated based on the 22 congestion standards and if you fall below that congestion 23 standard your intersections are deemed adequate. If you are 24 above that calculation of that congestion standard you would 25 have to mitigate and do some capacity improvements or trip</p>	<p>15</p> <p>1 have several land uses within that manual, the independent 2 living land use code we used was 252 which is senior adult 3 housing, multi family. For the assisted living we used 254, 4 the land use code and that's for assisted living and those 5 are both, again, scoped and discussed with transportation 6 staff that the three agencies, and we moved forward with that 7 trip generation. 8 So the 74 living units and that the 96 beds that 9 we determined, generate 50 a.m. peak hour person trips and 64 10 p.m. peak hour person trips. And because it's a 50 and 64 11 anything 50 or more person trips you would have to do an LATR 12 traffic study. We, as we mentioned earlier, the hearing 13 examiner said that there was -- or determined that there was 14 no credit for the school use that exists on the site today 15 because it has not been in operation. So with the 64 p.m. 16 trips we had to do an LATR study. And again, that's what we 17 did here. As Ms. Harris mentioned earlier, there was a 18 second scenario of the 64 independent living units and 105 19 beds and that again, as I mentioned it generates the same 20 number of person trips, 50 a.m. and 64 p.m. 21 Ms. Harris, if you could pull up table 36 from the 22 LATR study? 23 MS. HARRIS: Yes, hold on a second. 24 MR. KABATT: And while she's pulling that up this 25 table is going to show the capacity analysis results of the</p>
<p>14</p> <p>1 reductions to meet standards. 2 In the Potomac policy area the congestion standard 3 is 1,450 CLV, 1,450 critical lane volumes. There is, though, 4 another threshold of 1,350 critical lane volumes and if you 5 would hit that threshold you would have to do some additional 6 analysis at the intersections and do what they call a -- they 7 call it delay based analysis. And I'll get into that a 8 little bit more as we move forward here. 9 For the motor vehicle test we also look at any 10 other developments that might be occurring in the area in the 11 near future that are either in for process right now or have 12 been approved. In consultation with staff we identified one 13 project in this area. And it's in the process right now so 14 we'll keep it as a general term, but there is a private 15 school in the area that's filed an application for an 16 increase in student capacity. So we included that as a 17 pipeline project. And we added those trips associated with 18 that private school to the road network. And some of those 19 trips, obviously, would go through our study intersections. 20 We then went and evaluated the 74 living units and 21 the 96 beds and added those vehicle trips to the study 22 intersections. The trip generation for the residential care 23 community here was based on Institute of Transportation 24 Engineers Trip Generation Manual, and that is consistent with 25 the LATR guidelines and with our scoping with staff. They</p>	<p>16</p> <p>1 existing condition, the future background condition which is 2 existing vehicle trips plus the private school added on top 3 of that, and then the total future is adding on the Heritage 4 Potomac redevelopment. 5 MS. HARRIS: And I would note this is page 34 of 6 the LATR. Go ahead. 7 MR. KABATT: So the -- this shows that the 8 existing condition, the background condition and then the 9 total future condition, if we go over to the last two 10 columns, that's all cumulative. And under each of those 11 conditions there were -- you could see that the critical lane 12 volume calculations per each of the study intersections they 13 actually all fall below 1,000. And as mentioned the capacity 14 standard is 1,450 and that other threshold I talked about, 15 the additional analysis is 1,350. 16 So as you can see with the existing counts because 17 the trips added by the private school in the area and then 18 the trips added by the 74 independent living units and 96 19 beds, the intersections would operate well within the 20 condition standard and they would all pass the motor vehicle 21 adequacy test. 22 MS. HARRIS: Thank you. 23 MR. KABATT: And as I mentioned, however, back 24 when this application was active back in 2018, 2019, we had 25 conducted some traffic counts and we'll refer to that as the</p>

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5 (17 to 20)

<p>17</p> <p>1 pre-COVID era. But because of some concerns and to raise 2 questions -- or to answer questions that may come up, we did 3 to additional analysis in the report, or as part of this 4 study where we went back and looked at traffic counts that 5 were collected in 2016 along South Glen Road. 6 As I -- you know, I started talking about earlier 7 we -- that was a different time. You know, it's been over 8 two years now with COVID and people getting back to the 9 office, some people continuing to work from home. You know, 10 I'm working from home today. And that's just the reality of 11 the world we live in in March -- or May of 2022, and when we 12 took the counts in March of 2022. Both the state and the 13 county, not only Montgomery County but also, like, Prince 14 George's County they just have moved forward and acknowledge 15 that traffic conditions are what they are today, and deem it 16 as typical. 17 So regardless, we went back and looked at those 18 counts that we took in 2018 and they are higher, the traffic 19 counts at the intersections are higher than what we collected 20 in January or March of this year. I will note that we did 21 not have a count at River Road and Norton Road from 2018, but 22 we did have the counts along South Glen, like, Glen Road, 23 Norton and Falls Road. 24 In addition to using those 2018 traffic counts we 25 also looked at a different trip generation rate. There has</p>	<p>19</p> <p>1 you went that route, the study intersections all continue to 2 operate below the 1450 congestion standard for Potomac, but 3 also below the 1350 for that additional analysis, the highest 4 intersection being at Falls Road and Democracy. This just 5 confirms that the use proposed, the independent living unit 6 and the memory care, the assisted living when not have an 7 adverse impact on the intersection, that the analysis we 8 conducted, the current analysis is reinforced the results 9 even with the conservative analysis we fall below the 10 congestion standards and have a finding that the intersection 11 is adequate -- will operate adequately. 12 MS. HARRIS: Mr. Kabatt, I want to ask you one 13 clarifying question. Would a strict interpretation of the 14 LATR allow you to take credit for the trips that were 15 generated from the prior school use? 16 MR. KABATT: Yes. And that's -- 17 MR. BROWN: I object to the question. 18 HEARING EXAMINER ROBESON: Well, we already 19 decided it didn't. So I don't know why we're going here. 20 MS. HARRIS: Only to further prove the point that 21 the analysis did not include it and that it was a 22 conservative analysis. I had to follow-up questions to that 23 one question. 24 HEARING EXAMINER ROBESON: All right. 25 MS. HARRIS: So I'm sorry, your answer was that it</p>
<p>18</p> <p>1 been, you know some -- looking at 74 independent living 2 units, 45 of those units being in the cottages there's been 3 some question as to whether that use is more like a single 4 family home as opposed to multi-family. And there is a 5 different trip generation land use code for that single 6 family, so we applied that rate to the 45 units as well. And 7 it's slightly higher but as we get through the analysis here 8 it's not much of an impact at all. I think it's only a 9 handful of peak hours vehicle trips. 10 But using that land use code the 251 land use code 11 for single-family senior adult housing, the development would 12 generate 54 a.m. peak hour trips, that's four additional, and 13 68 p.m. peak hour person trips. And I think before, what did 14 I say that was, bear with me. The trip generation was 64 15 with the prior use and now it's 68 so an additional four peak 16 hour person trips both in the a.m. and the p.m. 17 Ms. Harris, if you would now up table 38 of the 18 report. This is the same table as before but with the -- 19 showing the results for the capacity analysis and it shows 20 both the existing total background conditions and total 21 future conditions. The existing now includes in the 2018 22 traffic counts sans the Norton Road, River Road because we 23 didn't have one at that time. 24 But as you can see, with the 2018 counts and with 25 the slightly higher trip rate for the single family use if</p>	<p>20</p> <p>1 would allow it; is that correct? 2 HEARING EXAMINER ROBESON: Well wait. What is 3 your -- I don't understand your question because we already 4 decided it didn't allow it. Allow what? 5 MS. HARRIS: And I agree with you that the hearing 6 examiner had decided it. My question was would -- let me 7 rephrase the question. 8 Would Park and Planning's interpretation of LATR 9 the allow you to consider the prior school use? 10 MR. KABATT: Yes. 11 MS. HARRIS: And did you do that? 12 MR. KABATT: Not in this study that was submitted 13 in March of 2022, we did not take -- there was no credit 14 taken for the school use to determine if, obviously, if a 15 study was needed or not. But the other part of that is in 16 that when I mentioned the background pipeline developments 17 the interpretation is that that existing -- or that school 18 use that had operated on this site before you would add those 19 trips into the analysis to -- as a pipeline project because 20 that was an approved use on the site. We did not do that in 21 this case because of the hearing examiner's interpretation, 22 and ruling and finding that that use was not valid and you 23 would not get credit for it. 24 MS. HARRIS: So in your opinion, does that make 25 for more conservative analysis?</p>

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<p style="text-align: right;">21</p> <p>1 MR. KABATT: It does in the fact that -- well, if 2 you were able to include it we wouldn't of had to done the 3 study, but in the a.m. which was the -- the a.m. had the -- 4 and we'll get into this a little bit later, but some critical 5 operations at the school would have had a higher trip 6 generation rate than what the proposed use has. 7 MS. HARRIS: Thank you. And then, another part, 8 the additional part of your LATR study was a Vision Zero 9 study; is that correct? And if so, can you explain what that 10 entailed in your findings? 11 MR. KABATT: Sure. Let's get -- so I had 12 mentioned the four -- I went through the four adequacy tests 13 that are part of the LATR. There's also a Vision Zero 14 statement that you include in an LATR and this -- the Vision 15 Zero statement gets into some of the roadway, the 16 transportation network safety and part of the review there is 17 we look at crash analysis, we do a crash analysis in the 18 area. 19 And per the guidelines you're supposed to look at 20 a certain radius based on the size of your project, and in 21 this case it's 250 feet from the property. And you look at 22 crash data from the last five years. We did that and it's 23 fair to say that the County actually has a Vision Zero 24 webpage and they give you -- you go through the crash data 25 that's through their GIS, thought their data that is</p>	<p style="text-align: right;">23</p> <p>1 determine what they were and they -- both of those crashes 2 were single vehicle crashes. One occurred in the middle of 3 the night and the other during the day. The one that was 4 fatal did involve alcohol. 5 Moving on, we also look at -- we also evaluate the 6 speeds on certain road segments in the study area. And 7 because of the size of this project we are, for a Vision Zero 8 statement the guidelines instruct you to do one speed study. 9 And that study we did was along South Glen Road, but we did 10 it along the property frontage west of Norton Road. 11 And that study you collect data for the full 48 12 hours and which we did in February of 2022 starting at 13 midnight on February 15th. And then that went through the 14 15th and the 16th. We did find that the data does show that 15 there is speeding along South Glen Road in both directions. 16 It's -- the speeding is actually what we measured is the 85th 17 percentile group and we found that speeding does occur. The 18 posted speed limit is 30 miles an hour and we were looking at 19 speeds that were in excess of 120 percent of the 85th 20 percentile. And so that tells you that, obviously, there is 21 speeding along that road and the County should be looking at 22 some -- they should consider some speed reduction measures 23 and enforcement on South Glen Road. 24 MS. HARRIS: And then, did you also evaluate 25 vehicle cueing along South Glen Road?</p>
<p style="text-align: right;">22</p> <p>1 recorded. And that's the process you go through. 2 And we identified that there were two crashes in 3 the last five years within 250 feet of this site. And none 4 of those - either of those crashes were reported as severe 5 or fatal. And with that, that means it was -- you don't -- 6 basically you don't have to go any further. I think those 7 crashes were proximate to a site. One actually was in the 8 parking lot of the congregation next to us, and the other one 9 was on South Glen Road but it wasn't a severe or fatal crash. 10 So it was -- we just -- that's the determination 11 they made that it wasn't -- they -- it wasn't anything to -- 12 I don't want to say you shouldn't be concerned about it, but 13 it was basically one crash in the area. However, because of 14 some comments that were made by the neighbors in the prior 15 hearings, earlier this year we went beyond what the LATR 16 required and we actually looked at the last seven years to 17 address the concerns and we also expanded the view area of 18 where those crashes might be. 19 And we went out to look at each of the four study 20 intersections that we examined and then also the segments in 21 between. And with that we identified two crashes that were 22 either severe or fatal. And they both occurred on South Glen 23 Road west of the site. One was a severe crash with severe 24 injury and one was, unfortunately, a fatal. So you could 25 look into that. This crash was a little bit more to</p>	<p style="text-align: right;">24</p> <p>1 MR. KABATT: We did look at vehicle queuing along 2 South Glen Road. It wasn't part of the motor vehicle 3 evaluation, but we did observe queues on South Glen Road 4 starting back in March of 2019 when we were preparing for the 5 hearings at that time. And then, we also look -- those were 6 personal obsvs are observations from associate staff, and then 7 we also look -- we also put out cameras in December 2019 for 8 several days. 9 We had been out there for essentially two-week 10 period and then reviewed data both for that time in December 11 2019, and then I went out again in February 2022 to just look 12 at the current situation. So back in March of 2019 we really 13 focused on the morning peak on eastbound South Glen Road 14 because that was identified as the peak along South Glen. 15 And we would essentially we were part of that queue because 16 we had to drive through the intersection with Falls Road and 17 we just wanted -- and then we sat on a side street and just 18 monitored and viewed what the queue would be. 19 And what we saw was that the queue essentially 20 extended to be somewhere between Lockland Road and Gary Road. 21 And then, that when you were actually in that queue you 22 would, if you were in between those two cross streets you 23 would pass through the Falls Road, Democracy Boulevard 24 intersection within one cycle length. So you may approach 25 that back of queue and the light might be green up at Falls</p>

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<p>25</p> <p>1 and then it would turn to red. But then on the next time, 2 the next cycle that you would get through the intersection. 3 That was our experience back in March of 2019. 4 We did, like I said, we did look at -- we did set 5 out some cameras along South Glen in 2019 we set one camera 6 near Normandie Farm Drive. A second camera just east of 7 Norton Road and a third camera just west of Norton Road. And 8 they were all looking east towards Falls Road, so we could 9 see -- we could try to capture where the back of the 10 eastbound queue would be. 11 We reviewed those videos and generally found 12 queuing occurring during the a.m. commuter period. Again, 13 extending somewhere between Lockland Road and Gary Road. 14 That was the typical morning. Based on the observations from 15 camera 2, which was situated east of Norton Road traffic 16 generally flowed on South Glen and then slowed down and 17 queued and started queuing as they approached Gary Road. 18 From camera 3, again that was a camera that was 19 placed west of Norton Road so along our property's frontage. 20 But we did find an approximate two to five minute period on a 21 couple of days around 8:20 that we saw some slowing down of 22 traffic and some queuing back towards Norton Road, lasting 23 again for, like, two to five -- a two to five minute period. 24 When I went out in February of 2022 I noted that 25 day that was what we determined to be a typical day that the</p>	<p>27</p> <p>1 that one position. But that cars would come up from the west 2 and they would approached the back of queue and that's what 3 we saw for about a 30-minute period. 4 MS. HARRIS: Okay. Thank you. 5 MR. KABATT: I will note that those queues that we 6 did see that -- on east -- or on South Glen Road, eastbound 7 South Glen Road, they do occur at what would be during a 8 typical morning commuter peak hour. In this case, somewhere 9 around, I guess at 8:20, 8:30. I will note that from the 10 shift change that we -- that are anticipated at Heritage 11 Gardens -- Heritage Potomac there would be a shift that would 12 change around -- at 7:00 a.m. The nighttime workers 13 would -- employees would leave at time. And there would be 14 a, you know, the daytime staff coming on at 7:00 a.m. So 15 even with that or with the folks at the end of the nighttime 16 folks where there would be a minimal staff they wouldn't 17 necessarily contribute to any peak queue when that was 18 occurring on eastbound South Glen Road because it was a 19 different time, 7:00 a.m. versus the 8:20 or 8:15 to 8:30. 20 MS. HARRIS: And in your opinion what's the cause 21 of the queue? 22 MR. KABATT: Well, queuing is caused by your 23 control at an intersection. In this case the queuing extends 24 from the Falls Road intersection which is controlled by a 25 traffic signal. And as many of you are -- drive a vehicle</p>
<p>26</p> <p>1 queuing occurred at Normandie Farm Drive. But I did not see 2 any queuing that morning go back anywhere near Norton Road 3 and that was February of 2022. 4 I will go back to the 2019. There was one day 5 that we did see queuing. I eventually saw some for a two to 6 five minute period on a couple of days. There was one day in 7 2019 from the video that there was a queue that did last 8 longer. It was on the eastbound South Glen Road and was back 9 towards Norton Road and it lasted for about a 30 minute 10 period, and then dissipated. And that, again, occurred 11 around the 8:30 area. It was generally from 8:15 to 8:45. 12 And we concluded that that was an anomaly because we did -- 13 on all the other queue observations that we had collected or 14 viewed and watched on whether it be on the camera or the 15 field observations, we did not see a queue like that on any 16 other day. 17 MS. HARRIS: Can I ask you a clarifying question? 18 Excuse me. When you say that the queue lasted for about 30 19 minutes on that one day, which you thought was an anomaly, 20 does that mean that it took 30 minutes to get to the light or 21 just that there was a queue for 30 minutes? Can you explain 22 that? 23 MR. KABATT: We saw the vehicles rolling, we call 24 it rolling queue or stopped for essentially a 30-minute 25 period. Not that one vehicle was stopped for 30 minutes in</p>	<p>28</p> <p>1 and you drive through a signal controlled intersection, 2 there's times where you're sitting there waiting for the 3 light to turn from red to green and that's your queue, right? 4 You're in a queue. 5 The state and the county work with transportation 6 and they're like, well we'll go in and talk to them about the 7 timing that is given to certain roadway approaches and to 8 phasing this at the traffic signal. And so in this case we 9 have Falls Road which is a state road and a higher classified 10 street than South Glen Road is. And you know, the county and 11 the state will go through and prioritize who gets an 12 appropriate amount of green time. 13 So looking at, if there was a queue issue on say 14 South Glen Road the county and state may go in and look at 15 adjustments that could be made to reduce that queue and it 16 could be done through things like more green time or a 17 different phasing scheme. But it's -- Ms. Harris to your 18 question, did it -- the queue results from the control at the 19 intersection and obviously the volume at approaches. 20 But there is a function of the signal timing and 21 the phasing that can be adjusted to negatively impact the 22 queue or alleviate it. 23 MS. HARRIS: Thank you. And then, in terms of 24 South Glen Road generally, how would you describe the level 25 of vehicle activity on that road?</p>

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<p style="text-align: right;">29</p> <p>1 MR. KABATT: South Glen Road is a low -- what I 2 would characterize as a low volume street, and that's what 3 it's intended to do. It collects -- it essentially collects 4 trips from the cross street said that provide access to 5 individual properties and distributes it to larger roads like 6 Falls Road or Glen Road to the north that takes you up to 7 Falls Road or downward into River Road. 8 As I said, we took counts in January of 2022 some 9 additional counts over at Falls Road. But just to give you 10 an idea, on South Glen Road in front of the property, there 11 were 76 vehicles were observed traveling westbound during the 12 a.m. peak hours, and that was 7:15 to 8:15, and that's just 13 over one car per minute. And eastbound, there was 200 -- 14 HEARING EXAMINER ROBESON: I'm sorry, what road? 15 What road was that on? 16 MR. KABATT: That's South can Road west of Norton 17 Road traveling westbound. So going towards -- 18 HEARING EXAMINER ROBESON: Westbound. Okay. 19 MS. HARRIS: But passing the property but headed 20 west, is that what you're saying? 21 MR. KABATT: Yes. 22 MS. HARRIS: Okay. And what was it per minute, 23 approximately? 24 MR. KABATT: Well, 76 vehicles, that's just over 25 one car per minute.</p>	<p style="text-align: right;">31</p> <p>1 Glen is accommodated adequately at the study intersections 2 during these peak times it's -- it carries on that during the 3 lower volume times during other parts of the day that the 4 study intersections would continue to operate during -- would 5 operate adequately at those times and therefore there is no 6 undue harm during those hours. 7 MS. HARRIS: Thank you. And can you please 8 describe how vehicles currently enter the property and the 9 proposed access? 10 MR. KABATT: Yes. The existing driveway is 11 immediately adjacent to the driveway for the congregation 12 B'nai Tikvah facility which is the driveway to the 13 congregation is opposite of Norton Road and the -- like I 14 said the driveway for Heritage Potomac is immediately 15 adjacent to that. There is a one inbound lane and one 16 outbound lane to the existing site. 17 The driveway for the proposed residential care 18 facility would be moved to the western property border and 19 what's nice about that from a transportation perspective is 20 that it provides separation from the Norton Road and B'nai 21 Tikvah driveway. This separation minimizes vehicle turning 22 complex at the Norton Road intersection and we found, and I 23 think as Soltesz has said that provided moving the driveway 24 to the west also improves the sight distances to the east and 25 the west along South Glen Road.</p>
<p style="text-align: right;">30</p> <p>1 MS. HARRIS: Okay. 2 MR. KABATT: Now traveling eastbound as you may 3 expect that volume was -- is higher. And we observed 227 4 vehicles traveling eastbound towards Norton and then really 5 on towards Falls Road, and that's along the property frontage 6 on South Glen. And that's approximately four cars per 7 minute. 8 During the p.m. peak hour, which we identified to 9 be 5:00 to 6:00 p.m., we observed 163 vehicles traveling 10 westbound on South Glen Road. That's somewhere between 2, 11 2-1/2 to 3 vehicles per minute traveling westbound. And then 12 eastbound it was a little bit lower. It was 111 vehicles, 13 and that's just under 2 vehicles per minute. 14 MS. HARRIS: Thank you. The LATR studies in the 15 a.m. and p.m. peak, but as you know in connection with the 16 conditional use there is criteria to show that the use will 17 not create undue -- is this accounted for in your analysis? 18 And if so, how? It is. So the LATR study looks at the 19 morning peak and the afternoon peak. And the reason we look 20 at those two separate hours is to -- it identifies the peak, 21 the most intense time of the adjacent road networks. And 22 those have been identified as your commuter peak times in the 23 morning and in the afternoon when people are going to school 24 and going to work. 25 Since our study concluded that the volume of South</p>	<p style="text-align: right;">32</p> <p>1 MS. HARRIS: Thank you. And then do you have any 2 concerns from a safety standpoint for the vehicles on South 3 Glen with the additional -- with the addition of the proposed 4 use? 5 MR. KABATT: No, I do not. There is adequate 6 capacity on South Glen Road at the site driveway at Norton 7 Road and of Falls Road. The proposed use is a low traffic 8 generator. There is sufficient site distance and South Glen 9 Road is not a high incident corridor. But the two severe, 10 one being fatal, crashes that occurred west of the site 11 involved a single vehicles, and has been mentioned, 12 unfortunately, the fatal -- there was a fatal one that 13 involved alcohol. 14 MS. HARRIS: Thank you. Now, I'm going to run 15 through a series of questions related to the zoning ordinance 16 criteria found in section 7.31 E 1F. From a transportation 17 perspective how would you characterize the residential care 18 facilities effect on traffic capacity with respect to its 19 impact on public roads as required by the zoning ordinance? 20 MR. KABATT: From a transportation perspective the 21 residential care facility, it's an overall -- it's a very low 22 traffic generator. During the adjacent street peak hours the 23 proposed use will add one car, approximately every two 24 minutes in the a.m. and in the p.m. Would add approximately 25 a car every 1.5 minutes to the road network.</p>

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<p>33</p> <p>1 As I testified earlier, each of the studied 2 intersections will continue to operate well within the 3 congestion standard of 1450 critical lane volumes for the 4 Potomac policy area. And I would just also know that this 5 application, should it move forward this aside proposal would 6 go to the Planning Board as a preliminary plan subdivision 7 application. And at that time the Planning Board would 8 determine the adequacy of the public facilities as well.</p> <p>9 MS. HARRIS: Thank you.</p> <p>10 HEARING EXAMINER ROBESON: But they say you don't 11 need the traffic study. But anyway. Their review -- they 12 don't go out to see -- if they keep their interpretation is 13 going to be that you're entitled to the credit from the 14 school and therefore don't need an additional traffic study.</p> <p>15 MS. HARRIS: Ms. Robeson, we would be more than 16 comfortable with that condition saying that the LATR, if this 17 were to move forward would need to be presented in connection 18 with the preliminary plan.</p> <p>19 HEARING EXAMINER ROBESON: Okay.</p> <p>20 MS. HARRIS: Mr. Kabatt, what are characteristics 21 associated the traffic inherent characteristics associated 22 with the residential care facility for accommodating more 23 than 16 individuals?</p> <p>24 MR. KABATT: The inherent characteristics 25 associated with this facility, and staff identified these as</p>	<p>35</p> <p>1 surrounding area.</p> <p>2 MS. HARRIS: And then one other question related 3 to this issue. Subsection G requires a finding that the 4 project will not result in adverse traffic impacts as a 5 result of non-inherent adverse effects alone, or in 6 combination with inherent and non-inherent adverse effects. 7 In your professional opinion will the project result in any 8 adverse traffic impacts that will harm the surrounding 9 neighborhood?</p> <p>10 MR. KABATT: No. In my opinion there would be no 11 non-inherent impacts, or inherent impacts that would 12 adversely impact the surrounding neighborhood.</p> <p>13 MS. HARRIS: And do you believe from a traffic 14 standpoint that the use is compatible with the surrounding 15 area?</p> <p>16 MR. KABATT: Yes, I do. As mentioned a few times, 17 this proposed residential care community is a low trip 18 generator.</p> <p>19 MS. HARRIS: And will vehicular access be safe, 20 adequate, and efficient?</p> <p>21 MR. KABATT: Yes. The access would be built 22 further to the west of the intersection of Norton Road and it 23 would be built to the County standards through its adequate 24 site distance. And there's available capacity on South Glen 25 Road at the site driveway and further the crashes are not --</p>
<p>34</p> <p>1 well, but it would be the one street parking, is it 2 sufficient to meet the requirements of the use and of the 3 zoning ordinance. And then also, the vehicular and 4 pedestrian trips to and from the site by employees, visitors, 5 residents, deliveries and as I mentioned, service like trash 6 pickup.</p> <p>7 MS. HARRIS: And you mentioned on street parking, 8 is that on site, or is it actually are we talking about 9 parking on the street?</p> <p>10 MR. KABATT: I misspoke. It's on-site parking.</p> <p>11 MS. HARRIS: Okay. And just to confirm, will 12 there be any parking along South Glen Road if this were 13 approved?</p> <p>14 MR. KABATT: Not for this site, no.</p> <p>15 MS. HARRIS: Okay. And do you agree with the 16 inherent characteristics identified by staff?</p> <p>17 MR. KABATT: I do. And I haven't identified any 18 others.</p> <p>19 MS. HARRIS: And have you evaluated whether there 20 are any non-inherent defects associated with the proposed 21 residential care facility as it relates to traffic?</p> <p>22 MR. KABATT: I did consider that and in my 23 professional opinion there are no non-inherent attributes or 24 characteristics related to traffic, site access or parking 25 that would have any adverse impact on the neighborhood and</p>	<p>36</p> <p>1 that we had mentioned are in the site vicinity area. Crashes 2 are not prevalent along this roadway.</p> <p>3 MS. HARRIS: And then finally, in your 4 professional opinion would you conclude that there are 5 adequate public facilities in terms of road network to 6 accommodate Heritage Potomac?</p> <p>7 MR. KABATT: Yes. The adjacent key intersections 8 and the site driveway would operate well within the Potomac 9 policy area congestion standard. And that tells you it 10 indicates that the adjacent road network would adequately 11 accommodate the proposed Heritage Potomac development.</p> <p>12 MS. HARRIS: And is there anything else that you 13 would like to add?</p> <p>14 MR. KABATT: No.</p> <p>15 MS. HARRIS: Thank you. Almost an hour precisely 16 to conclude Mr. Kabatt's testimony.</p> <p>17 HEARING EXAMINER ROBESON: Very good job, Mr. 18 Kabatt. And thank you for explaining in that detail. I did 19 have a question. There was some testimony at the first 20 hearing about people walking on South Glen Road, and I guess 21 my question was where is the nearest transit stop? And what 22 about -- and maybe you're not the one to ask, but what about 23 the safety of people, employees or other people trying to 24 take transit and get to and from the site?</p> <p>25 MS. HARRIS: And Ms. Robeson, you did, I think,</p>

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<p>37</p> <p>1 ask a related question earlier and we are going to put Ms. 2 Address back on to explain how that would be handled. But I 3 think -- 4 HEARING EXAMINER ROBESON: Oh, I'm sorry. 5 MS. HARRIS: -- at this time -- but Mr. Kabatt may 6 be able to answer part of that question. 7 MR. KABATT: There is a bus stop along -- there's 8 a bus line that runs along Falls Road. That's the -- it's 9 operated by WMATA Metro and it's the T2 line, I believe is 10 the line. And there are bus stops for the 11 northbound/southbound Falls Road at the intersection of 12 Democracy. 13 HEARING EXAMINER ROBESON: Okay. 14 MS. HARRIS: Ms. -- 15 HEARING EXAMINER ROBESON: I'll wait for the rest 16 if you -- for the other witness you said if you wish -- if 17 you think that's a better way to go. 18 MS. HARRIS: Yes. 19 HEARING EXAMINER ROBESON: Okay. 20 MS. BAKER: Ms. Robeson. I'm sorry, this is 21 Renata Baker. Can you -- can I ask Mr. Kabatt how far the 22 bus stop is from the entry point to the facility? 23 HEARING EXAMINER ROBESON: Okay. I'd -- let me 24 just finish my questions. 25 MS. BAKER: Okay.</p>	<p>39</p> <p>1 think you could submit it? 2 MS. HARRIS: Chris, I don't know if you forwarded 3 that to me or not, but could you, and then I can submit it 4 during our next break. 5 MR. KABATT: Sure. 6 HEARING EXAMINER ROBESON: Okay. So right now 7 we're waiting for MCDOT and Park and Planning -- or planning 8 Montgomery County Planning, correct? 9 MS. HARRIS: Correct. 10 HEARING EXAMINER ROBESON: Okay. 11 MS. HARRIS: And just to clarify, Mr. Cabot, MCDOT 12 will issue its own memo, is that what they typically do? 13 MR. KABATT: Well it's -- they typically send 14 their comments along to Park and Planning staff and sometimes 15 it's informal as part of an email and I think they get it 16 incorporated into an overall staff report. 17 HEARING EXAMINER ROBESON: Well, if we could just 18 get some documentation of what Planning and MCDOT's position 19 is that would be helpful, I think. 20 MS. HARRIS: We will follow up with staff in terms 21 of the status of their memo as well. 22 HEARING EXAMINER ROBESON: All right. I've seen 23 it a couple of ways. I've seen it as emails, you know, and 24 I've seen it mentioned in staff reports. 25 All right. Now, I think we had Ms. Baker. We're</p>
<p>38</p> <p>1 HEARING EXAMINER ROBESON: And then you -- well, 2 actually, I'm looking at my questions. Oh, the second 3 question I had was has your traffic study been reviewed and 4 approved by SHA and MCDOT or is that still outstanding? 5 MR. KABATT: So they are reviewed or under review 6 by MCDOT, Park and Planning transportation staff and SHA and 7 we did receive a comment letter from the state highway 8 administration. And they agreed with our conclusions. I 9 have not seen a staff report from MCDOT. 10 And Ms. Harris, I haven't seen an official letter 11 from Park and Planning staff either. 12 MS. HARRIS: No. And it was our understanding 13 that Park and Planning wasn't going to issue a memo after 14 they had completed their review, which I had expected to have 15 been submitted already. Obviously, they haven't submitted it 16 yet. 17 HEARING EXAMINER ROBESON: So MCDOT, is the state 18 highway one in the record? Has that been submitted as an 19 exhibit? 20 MS. HARRIS: No, we did not submit it. I had 21 thought that they would have submitted it directly and I just 22 checked the exhibit list and it's not there. We'd be more 23 than glad to submit it, however. If you would. You don't 24 have to do it right now, but if you -- or if -- you know, we 25 can -- we have tomorrow or we can submit it -- when do you</p>	<p>40</p> <p>1 going to -- and I'll just remind people if they wanted to 2 speak with you please raise your hand. 3 MR. BROWN: Will I get a shot at cross- 4 examination? 5 HEARING EXAMINER ROBESON: Oh yes. Yeah, I'm 6 sorry Mr. Brown. You're correct. Go ahead. 7 MR. BROWN: So is it my turn? 8 HEARING EXAMINER ROBESON: It is your turn. And 9 Ms. Baker we'll get to you. 10 MS. BAKER: Thank you. 11 MR. BROWN: Good morning Mr. Cabot, I just want to 12 follow-up briefly on a point raised by the hearing examiner, 13 and I would direct your attention to section 4 of your 14 report, which is entitled pedestrian and bicycle and bust 15 transit system adequacy test. Page 39 and 40. First of all, 16 if I understand your testimony correctly any employee who is 17 relying on public transit to get to the facility commuting 18 coming and going, the closest they can get is on the T2 bus 19 stop at Democracy and Falls Road, right. 20 MS. HARRIS: If I could interrupt for a moment. 21 As I indicated Ms. Address is going to be submitting 22 additional testimony with respect to this, which I think will 23 clarify this issue. 24 MR. BROWN: I'm just asking -- 25 HEARING EXAMINER ROBESON: Well, let's get --</p>

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<p>41</p> <p>1 MR. BROWN: I'm just asking if I have understood 2 his testimony correctly. 3 HEARING EXAMINER ROBESON: Yeah, and I'd like 4 to -- let's get the distance in the record. 5 MR. KABATT: Okay. I -- 6 HEARING EXAMINER ROBESON: Do you know the 7 distance? 8 MR. BROWN: That was my next question. 9 HEARING EXAMINER ROBESON: Yeah, Mr. Brown -- did 10 you understand Mr. Brown's question, Mr. Kabatt? 11 MR. KABATT: I did. I do understand it. And I 12 don't know the exact distance but the distance between Norton 13 Road, the Norton Road intersection and Falls Road is 14 approximately 3,000 feet. So 3000 feet is over a half a 15 mile. 16 MR. BROWN: Okay. 17 MR. KABATT: And I -- 18 MR. BROWN: Now, at the bottom of page 39 you 19 say -- 20 HEARING EXAMINER ROBESON: Do you have the exhibit 21 number that we're -- the updated traffic study is? 22 MS. HARRIS: The LATR is submitted as Exhibit 134. 23 HEARING EXAMINER ROBESON: Thank you. Go ahead, 24 I'm sorry. 25 MR. BROWN: I'm on page 39 at the bottom, it says,</p>	<p>43</p> <p>1 determination that it's undesirable. Speed would be a 2 consideration as well. 3 MR. BROWN: All right. Now, without quoting the 4 entire next paragraph, the gist of it, as I understand it is 5 that in the area between Falls Road and the entrance to the 6 facility there is no sidewalk separated from the vehicular 7 travel lanes and there is also no side path; is that right? 8 MR. KABATT: That's correct. 9 MR. BROWN: And you say, after that, since there 10 are no planned or programmed pedestrian facility projects for 11 South Glen Road it is impracticable to build a side path for 12 a short segment. Why would that be impracticable? 13 MR. KABATT: Well, it's part of the frontage 14 improvements when this was under review by the Planning Board 15 staff. This application, there is condition -- there is a 16 condition that talks about -- that gets to the point of 17 building a sidewalk along the property frontage. And the 18 reality is that you may build a sidewalk along our property 19 frontage but then there's nowhere -- you know, you would be 20 back onto the street once you went in front of the neighbors' 21 houses to the east and the west. There's no capital 22 improvement project to build a sidewalk along their 23 frontages. 24 MR. BROWN: So the last sentence of this paragraph 25 reads as follows. The Applicant will coordinate with</p>
<p>42</p> <p>1 South Glen Road is a non-urban roadway without pedestrian 2 sidewalk or pathway and it has a posted speed limit of 30 3 miles an hour. Per the Montgomery Planning Pedestrian level 4 of comfort methodology version 1.2, Section 5, pathway 5 evaluation table, South Glen Road has a score of 4, which is 6 considered undesirable. 7 Could you elaborate on that a little bit to give 8 me a sense of what a score of 4 means in relation to other 9 possible scores? 10 MR. KABATT: So the pedestrian level of comfort 11 looks at the conditions for a pedestrian along the roadway. 12 A score of 4 or a characteristic of undesirable typically 13 refers to a situation where there's no sidewalk or there may 14 be a sidewalk that's right up against the travel way. In 15 South Glen Road's case I'd -- the reason is because there is 16 no sidewalk along South Glen. The other characteristic you'd 17 look at are traffic volumes, like how many vehicles would be 18 passing, even if there was a sidewalk with no buffer, you 19 might look at the volume of traffic as well. 20 MR. BROWN: Is concern about that exacerbated by 21 the fact that there's excessive speed on South Glen Road in 22 this area? 23 MR. KABATT: Sorry, that's another variable. 24 Traffic volume, traffic speed that goes into the 25 determination and that score of four and the final</p>	<p>44</p> <p>1 Planning and MCDOT staff to provide an appropriate mitigation 2 or payment during the preliminary plan of subdivision review. 3 If -- is there any mitigation other than a sidewalk or a side 4 path that's possible in this situation? 5 MR. KABATT: For a pedestrian -- I mean, again, 6 you could lower speeds. You could work with the county to 7 define traffic common measures that might entice people or to 8 have them drive at the appropriate speeds, at lower speeds. 9 I mean, that's another option. But I would say the -- for 10 any pedestrian, you know, having the sidewalk separated from 11 the travel lane would be a -- one of the top mitigation 12 measures that we would look for. 13 MR. BROWN: But you also used the word payment in 14 that sentence. Is that a payment option as an option -- as 15 an alternative to actual mitigation activity? 16 MR. KABATT: There is and for -- generally for 17 what the Planning Board had established that that would be 18 for off site where they permit a payment in lieu of 19 construction. And so they determine that, you know, in 20 consultation with DOT or the Applicant or other property 21 owners that there's not sufficient right-of-way or there's 22 other impediments, like utility poles or whatever it may be 23 that it might not be feasible to build a sidewalk or even 24 desirable. Some roads just -- you know, the characteristic 25 of them and all don't necessarily lend themselves to a</p>

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<p style="text-align: right;">45</p> <p>1 sidewalk. And so all that would be taken into consideration 2 and a determination would be made if -- you know, if it would 3 be -- if there's an opportunity to construct a sidewalk 4 that's what it -- we understand the county desires and you 5 know are going to want you to build a sidewalk. 6 But if it through a process gets determined that 7 that's not feasible they will accept a payment to be -- that 8 you would make in lieu of that and that would be -- the 9 intent is that the fee would be used for a -- towards capital 10 improvement project or some other pedestrian facility in the 11 policy area. 12 MR. BROWN: Thank you very much, Mr. Kabatt, I 13 have nothing further. 14 HEARING EXAMINER ROBESON: Okay. Ms. Baker, do 15 you still have a question? 16 MS. BAKER: I do. Thank you, but Mr. Brown did 17 address my safety concerns about the pedestrian safety on the 18 road, which those of us who live in the neighborhood witness 19 regularly as being unsafe conditions. 20 My further question relates to the traffic study. 21 I thought I heard Mr. Kabatt mention earlier that he made an 22 assumption in the study that the traffic patterns have 23 normalized since his observations or since the observations 24 that were done in 2019. I'm -- I would like to understand to 25 what extent any work was done to determine whether that</p>	<p style="text-align: right;">47</p> <p>1 week. We haven't officially made a policy to get back to 2 five days a week, you know, working 8:00 to 5:00 or the trend 3 in employment at least for our employees is that flexibility 4 is important. My wife also works and she rarely goes into 5 the office. She's been working from home and it's been 6 starting and stopping, we're going to get back into the 7 office and it doesn't materialize so -- I mean, that's from 8 a -- just a personal observation is that there's flexibility 9 in the driving to work. So -- 10 MS. BAKER: Well -- 11 MR. KABATT: I say that because we're in a 12 different world than we were in 2018 and that's the reality 13 and traffic for our people that aren't driving to work, but 14 they're driving at various times and they're driving on 15 various days and not necessarily are the -- you know that 16 8:00 to 5:00 that we did in 2018. 17 MS. BAKER: So you're suggesting that the state 18 did a general assumption that things have returned to normal 19 based on traffic patterns and other criteria for the area as 20 a whole and not anything specific with respect to the roads 21 that are actually utilized in connection with this project. 22 Because you talked about your personal experience, my 23 personal experience is that I actually work on -- 24 HEARING EXAMINER ROBESON: Wait. Wait. Wait. 25 Just a second, Ms. Baker. This is not your turn to testify.</p>
<p style="text-align: right;">46</p> <p>1 presumption was, in fact, accurate. And whether you have 2 contacted any of the large corporations that are within a 3 five-mile radius to determine whether or not they have yet 4 required their employees to return to work. And whether they 5 have plans for -- in the future -- for them to be required to 6 come back into the office? 7 MR. KABATT: So the assumption that traffic as 8 normalized is based on the fact that the state of Maryland -- 9 the State Highway Administration and the County, Montgomery 10 County and similarly Prince George's County is saying that 11 they no longer require any kind of adjustment made to traffic 12 counts. And that is because through monitoring they monitor 13 traffic along area roadways and interstates and various -- I 14 guess various roads through the county that traffic has 15 stabilized. 16 And while we're not back at traffic volumes that 17 we might have seen in 2018 transportation folks throughout 18 the state have determined that we're at a stabilized 19 situation. And the fact may be no one knows what our world's 20 going to look like tomorrow or six months from now as far as 21 transportation and who's going back to work. But I have not 22 interviewed corporations within a certain mile radius to ask 23 that question. 24 I will say from personal experience that Wells & 25 Associates is not back to going to the office five days a</p>	<p style="text-align: right;">48</p> <p>1 You -- we will get there. 2 MS. BAKER: Okay. 3 HEARING EXAMINER ROBESON: But right now we're 4 just -- we've got to move through the hearing and this is the 5 time for questions. 6 MS. BAKER: Okay. That's fine. I will stick to 7 that. I will then move to a different question. 8 You mentioned also that the Bullis School has 9 applied to increase traffic to the school. Are you familiar 10 with what time the school actually starts? 11 MR. KABATT: Not -- I mean, I don't know the exact 12 time, but I believe it's around 8:00 a.m. 13 MS. BAKER: Okay. And you said your observations, 14 your personal observations that you testified to were done at 15 8:20 a.m? 16 MR. KABATT: Well, that's when we saw some queuing 17 occurring on eastbound South Glen Road. I will say when I 18 was out there in February the queue that -- I was out there 19 from probably 7:00 a.m. to sometime after 8:00. But I did 20 sit on sit -- 21 MS. BAKER: February -- 22 MR. KABATT: -- on South -- 23 MS. BAKER: Of what year? I'm sorry? 24 MR. KABATT: Of 2022. 25 MS. BAKER: So the recent queuing, not the queuing</p>

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13 (49 to 52)

<p style="text-align: right;">49</p> <p>1 done earlier that you studied that was studied?</p> <p>2 MR. KABATT: Well, I was just going to talk to</p> <p>3 the -- when I was out there in February.</p> <p>4 MS. BAKER: Okay.</p> <p>5 MR. KABATT: But I can talk to what we saw on</p> <p>6 (crosstalk)</p> <p>7 HEARING EXAMINER ROBESON: Well, finish what you</p> <p>8 were going to say about February and then if she -- if Ms.</p> <p>9 Baker has another question we can get to that.</p> <p>10 MS. BAKER: Okay.</p> <p>11 MR. KABATT: So in February when I was observing</p> <p>12 and driving through the intersection of Falls and Democracy</p> <p>13 it was around, you know, like I said it was around that 8:00</p> <p>14 time frame where there was congestion and some queuing on</p> <p>15 South Glen Road. But then I also notices that there was</p> <p>16 queuing on Democracy and it was -- you know there was -- that</p> <p>17 was the drop off time for Bullis.</p> <p>18 MS. BAKER: Okay.</p> <p>19 HEARING EXAMINER ROBESON: Anyone else? I have --</p> <p>20 are you finished Ms. Baker? No, you're not?</p> <p>21 MS. BAKER: No, I wanted to -- I again, don't want</p> <p>22 to testify but I believe he -- there was a suggestion that</p> <p>23 the queuing at some point did go past Lockland Road; is that</p> <p>24 correct?</p> <p>25 MR. KABATT: Yes. We did see some queuing past</p>	<p style="text-align: right;">51</p> <p>1 MS. BAKER: But there's no study done to see if</p> <p>2 there's any further impact on additional traffic as to</p> <p>3 whether that queue back into the neighborhood is increased;</p> <p>4 is that correct? You said you studied the four main roads,</p> <p>5 but you don't study any of the impact on the general</p> <p>6 residents in the neighborhood for actually being able to exit</p> <p>7 their neighborhood in a timely fashion?</p> <p>8 MR. KABATT: No, we didn't look at every cross</p> <p>9 street. But I will say that the proposed use is a low</p> <p>10 traffic generator and the vehicles that would be exiting the</p> <p>11 site during the morning hours would be at approximately 7:00</p> <p>12 a.m. and it would be from the overnight staff. So our</p> <p>13 conclusion is that, you know, and it suggests that this</p> <p>14 residential care community would not have a significant</p> <p>15 impact to queuing along South Glen. The shift change occurs</p> <p>16 at a different hour than when the -- or a different time</p> <p>17 period than when the queuing occurs today. And even in the</p> <p>18 past?</p> <p>19 MS. BAKER: So you looked only at the shift</p> <p>20 change? You didn't look at the impact from the residents</p> <p>21 leaving the facility to go to work, go to the grocery store,</p> <p>22 go to a doctor's appointment, make general ordinary course</p> <p>23 residential travel?</p> <p>24 MR. KABATT: No, we didn't.</p> <p>25 MS. BAKER: (Inaudible) that.</p>
<p style="text-align: right;">50</p> <p>1 Lockland Road, but in all the observations that we did we</p> <p>2 determined, you know, it was somewhere between Lockland and</p> <p>3 Gary where the average, if you will, the queuing would be.</p> <p>4 That would be, like, typical queuing on eastbound South Glen</p> <p>5 Road.</p> <p>6 MS. BAKER: Does any of your study take into</p> <p>7 consideration the ability for residents to exit their</p> <p>8 neighborhoods and the increase on that impact to those</p> <p>9 residential neighborhoods for trying to exit their</p> <p>10 neighborhoods?</p> <p>11 MR. KABATT: We looked at those four intersections</p> <p>12 I mentioned and went through and they were determined it</p> <p>13 would be like a key intersection. So the standard practice</p> <p>14 is to look at some key intersections and then if those</p> <p>15 intersections operate adequately, you know you -- but I'm not</p> <p>16 going to make an assumption about a particular roadway, but I</p> <p>17 guess it gets you a general sense of how traffic operates in</p> <p>18 the area.</p> <p>19 MS. BAKER: So if the traffic patterns back up to</p> <p>20 Lockland Road and past Lockland Road would it surprise you</p> <p>21 that it would take longer for someone to exit their</p> <p>22 neighborhood if the traffic is stalled?</p> <p>23 MR. KABATT: No, it wouldn't surprise me that</p> <p>24 it -- if there was a queue on eastbound South Glen that it</p> <p>25 would take longer than if there was not a queue.</p>	<p style="text-align: right;">52</p> <p>1 MR. KABATT: So the -- I think, as I testified,</p> <p>2 earlier the trips that we calculate, the vehicle trips that</p> <p>3 we calculate estimate leaving and entering the site during</p> <p>4 the a.m. peak hour includes any residents that are driving</p> <p>5 anywhere, any employees that are coming and going, service,</p> <p>6 deliveries, any visitors that may be coming and going at that</p> <p>7 time.</p> <p>8 And to further get into it, the -- what our</p> <p>9 practice is is that we collect traffic counts for a three</p> <p>10 hour period in the morning. And we take the highest 60</p> <p>11 minute period during those three hours. And that is your</p> <p>12 peak hour. And so you're looking at the peak your following</p> <p>13 Now that may occur, and I'm being hypothetical here, but that</p> <p>14 may occur from 8:00 a.m. to 9:00 a.m. at certain</p> <p>15 intersections.</p> <p>16 And then, we take the vehicle trips that are</p> <p>17 generated by, in this case Heritage Potomac, and we take the</p> <p>18 peak based on studies that have been done from the Institute</p> <p>19 of Transportation Engineers, we take the peak during that,</p> <p>20 what is known as the -- those morning hours. And we put</p> <p>21 those on top of each other. The reality may be that the peak</p> <p>22 that's generated by this residential care community may occur</p> <p>23 earlier than 8:00 to 9:00 a.m. because of things like shift</p> <p>24 change. So we combine it together so we don't miss the</p> <p>25 peaks.</p>

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14 (53 to 56)

<p style="text-align: right;">53</p> <p>1 So we do an analysis, a theoretical analysis of</p> <p>2 putting something that may occur earlier on top of the peak</p> <p>3 which may occur later. And, you know, you might not actually</p> <p>4 observe that situation in the future. But we study it</p> <p>5 because that's the most conservative approach.</p> <p>6 MS. BAKER: So are you saying, just to make sure I</p> <p>7 understand that you studied between 7:00 a.m. and 9:00 a.m.;</p> <p>8 is that what you're saying? When you say you put them on top</p> <p>9 of each other?</p> <p>10 MR. KABATT: We collected from --</p> <p>11 MS. BAKER: All the uses. All of the uses. Is it</p> <p>12 between 7:00 and 9:00? Or is it between 8:00 and 9:00?</p> <p>13 MR. KABATT: We collected traffic counts from 6:30</p> <p>14 a.m. until 9:30 a.m. and then again from 4:00 p.m. to 7:00</p> <p>15 p.m.</p> <p>16 MS. BAKER: Okay.</p> <p>17 HEARING EXAMINER ROBESON: Mr. Kabatt, I think</p> <p>18 what she's really trying to get to is will there be gaps? We</p> <p>19 know there's queues, but are there gaps?</p> <p>20 MR. KABATT: Yes. I --</p> <p>21 HEARING EXAMINER ROBESON: And when I say gaps,</p> <p>22 that means are there gaps that allow traffic to get out onto</p> <p>23 the roadway? And my thought is that's where she's really</p> <p>24 trying to get to.</p> <p>25 MR. KABATT: Uh-huh. Gaps are created in these</p>	<p style="text-align: right;">55</p> <p>1 approximately one car a minute I would -- yes, I would say</p> <p>2 that would throw gaps in traffic that you're able to get out</p> <p>3 onto the South Glen Road.</p> <p>4 HEARING EXAMINER ROBESON: Now another thing here</p> <p>5 too, the three vehicle per minutes. The queues were two to</p> <p>6 three vehicles per minute. Can you tell me, does that give</p> <p>7 you any idea of whether there'll be sufficient gaps?</p> <p>8 MR. KABATT: Yeah. Again, so two to three</p> <p>9 vehicles we're looking at, let's just say three that's one</p> <p>10 every 20 seconds, or one vehicle -- excuse me. If --</p> <p>11 HEARING EXAMINER ROBESON: Yeah.</p> <p>12 MR. KABATT: I'm sorry. You said two to three</p> <p>13 vehicles per minute?</p> <p>14 HEARING EXAMINER ROBESON: That's what I have</p> <p>15 written down.</p> <p>16 MR. KABATT: Yeah, so three vehicles per minute</p> <p>17 would be one vehicle every 20 seconds. So you know, I didn't</p> <p>18 do that study, but yes, I would say from my opinion that the</p> <p>19 20 seconds would be a sufficient amount of time if you were</p> <p>20 at a stop sign and you had 20 seconds to pull out onto a</p> <p>21 street. On South Glen Road that would be a sufficient amount</p> <p>22 of time.</p> <p>23 HEARING EXAMINER ROBESON: Well, how many vehicles</p> <p>24 are you adding -- is this project adding to the existing queue?</p> <p>25 Did you look at that?</p>
<p style="text-align: right;">54</p> <p>1 queues. A queue, you know, if you picture an accordion,</p> <p>2 yeah, there's topping and going and when you're towards the</p> <p>3 back of the queue you're kind of in this rolling queue and</p> <p>4 then when you get up closer to the Falls Road you'll actually</p> <p>5 be stopped. And so as the -- you know as traffic that's</p> <p>6 stopped gets going and then there is the rolling queue,</p> <p>7 that's when there'll be some gaps in traffic.</p> <p>8 And there may be -- you know, there may be a</p> <p>9 situation where there is a -- it's a segment, like a length</p> <p>10 of vehicles that are stopped at Falls Road and then there may</p> <p>11 be a gap along South Glen and then another segment of rolling</p> <p>12 cars that are further to the west because of that accordion</p> <p>13 effect. And that's how, you know, and then there's -- that's</p> <p>14 how side streets get out at certain periods.</p> <p>15 HEARING EXAMINER ROBESON: Well, you testified, I</p> <p>16 think, that -- I'm looking at my notes. That this would --</p> <p>17 that there were queues -- the queues 76 -- or one vehicle,</p> <p>18 like, on South Glen and Norton, there were 76 vehicles</p> <p>19 westbound at a certain point. One vehicle car per minute.</p> <p>20 So does that mean, say one vehicle car per minutes, does that</p> <p>21 allow a gap of enough time for a car to cross two -- you</p> <p>22 know, a lane and get in the -- whichever way you're going?</p> <p>23 Whether you have to cross or you don't have to cross.</p> <p>24 MR. KABATT: So if you were on the -- I if may</p> <p>25 interpret that a little bit, but yeah, one car a minute --</p>	<p style="text-align: right;">56</p> <p>1 MR. KABATT: Yes, just bear with me a second. Let</p> <p>2 me go to my trip generation table.</p> <p>3 So during -- in the a.m. we estimate that there</p> <p>4 would be 17 vehicle trips leaving the site.</p> <p>5 HEARING EXAMINER ROBESON: Is that the peak hour</p> <p>6 or the peak period?</p> <p>7 MR. KABATT: And that is the peak hour, and that</p> <p>8 is actually also with the higher trip generation rate so that</p> <p>9 would be the most conservative.</p> <p>10 HEARING EXAMINER ROBESON: The single family</p> <p>11 dwelling rate?</p> <p>12 MR. KABATT: Yes. And of those 17 vehicles some</p> <p>13 would go to the west, some would go down Norton Road, but the</p> <p>14 majority would go out towards Falls. So we would -- yeah, we</p> <p>15 would be adding vehicles to the queue. However, as I was</p> <p>16 mentioning the shift change does occur a lot earlier. Well,</p> <p>17 it occurs at 7:00 a.m. where we saw the queue occurring more</p> <p>18 towards the 8:00 hour. So in reality we didn't -- we don't</p> <p>19 think -- we conclude that there won't be a significant impact</p> <p>20 on the queue.</p> <p>21 HEARING EXAMINER ROBESON: What was your peak</p> <p>22 hour?</p> <p>23 MR. KABATT: So I --</p> <p>24 HEARING EXAMINER ROBESON: For this project?</p> <p>25 MR. KABATT: Yeah, I have it here. Just let me</p>

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15 (57 to 60)

<p>57</p> <p>1 turn to it.</p> <p>2 For the peak hour of Falls Road and South Glen</p> <p>3 Road -- excuse me. That's just -- bear with me one second,</p> <p>4 I'll find it.</p> <p>5 Oh, here it is. And excuse me, this is the</p> <p>6 intersection of South Glen Road and Norton Road.</p> <p>7 HEARING EXAMINER ROBESON: Uh-huh.</p> <p>8 MR. KABATT: That intersection the peak hour in</p> <p>9 the morning is 7:15 to 8:15.</p> <p>10 HEARING EXAMINER ROBESON: And when were the</p> <p>11 queues?</p> <p>12 MR. KABATT: Well, the queues had extended form</p> <p>13 Falls Road were around the longer queues that we saw ere</p> <p>14 around the 8:20 time period. And then that one --</p> <p>15 HEARING EXAMINER ROBESON: And when do you -- when</p> <p>16 do you expect to have most of the traffic generated by your</p> <p>17 facility entering the area where you -- the areas where you</p> <p>18 observed the queue?</p> <p>19 MR. KABATT: Well, I mean at that -- for the</p> <p>20 morning we would anticipate that it would be at shift change,</p> <p>21 would be the highest vehicle trip generation when employees</p> <p>22 are -- the overnight employees are leaving and the employees</p> <p>23 are coming in the morning.</p> <p>24 HEARING EXAMINER ROBESON: And that's 7:00 did you</p> <p>25 say?</p>	<p>59</p> <p>1 number for senior adult housing and apparently that's an</p> <p>2 industry standard or something like that. What would the</p> <p>3 number of -- the base number of trip generations be if it was</p> <p>4 not senior adult housing? If it was just adult housing? I</p> <p>5 mean --</p> <p>6 MR. KABATT: I don't have that answer for you. I</p> <p>7 mean, we looked at the use that is being proposed.</p> <p>8 MS. McGRATH: Okay. So off the top of your head,</p> <p>9 you don't know what the -- the number would be higher</p> <p>10 though, right? If it wasn't senior adult housing? If it was</p> <p>11 just regular townhouse housing?</p> <p>12 MR. KABATT: Yes. A market rate townhouse has a</p> <p>13 higher trip generation rate than a senior adult housing</p> <p>14 facility.</p> <p>15 MS. McGRATH: Okay. That was just my question. I</p> <p>16 just -- I mean, there are a lot of numbers in there that you</p> <p>17 all -- that an expert knows that they are. I just don't know</p> <p>18 where I could even look it up. But thank you.</p> <p>19 HEARING EXAMINER ROBESON: Thank you Ms. McGrath.</p> <p>20 If you could put your hand down and that will help me</p> <p>21 track -- and now I have Mr. Brigham? Mr. Brigham, are you</p> <p>22 there?</p> <p>23 MS. BRIGHAM: Actually, it's Marie Brigham.</p> <p>24 HEARING EXAMINER ROBESON: Okay.</p> <p>25 MS. BRIGHAM: And Mr. Kabatt, my question for you</p>
<p>58</p> <p>1 MR. KABATT: Yes, that shift change is at 7:00</p> <p>2 a.m.</p> <p>3 HEARING EXAMINER ROBESON: Okay. Thank you for</p> <p>4 answering those questions.</p> <p>5 Ms. Baker, do you have anything else that you'd</p> <p>6 like to ask?</p> <p>7 MS. BAKER: I don't have further questions, but of</p> <p>8 course, because I can't testify about my personal experience</p> <p>9 I just want to note that I don't agree with the personal</p> <p>10 observations made --</p> <p>11 HEARING EXAMINER ROBESON: Well, you can -- no</p> <p>12 wait. You can testify. Ms. Baker, you will be able to</p> <p>13 testify.</p> <p>14 MS. BAKER: Okay.</p> <p>15 HEARING EXAMINER ROBESON: It's just right now I</p> <p>16 have to keep an order so we don't forget anyone.</p> <p>17 MS. BAKER: Okay.</p> <p>18 HEARING EXAMINER ROBESON: Right now, we're just</p> <p>19 asking Mr. Kabatt questions.</p> <p>20 MS. BAKER: Okay.</p> <p>21 HEARING EXAMINER ROBESON: So you will get a</p> <p>22 chance to testify.</p> <p>23 Now, I see Patty McGrath's hand up?</p> <p>24 MS. McGRATH: Yes. Hi. I just had an information</p> <p>25 question about the study. And that is that Mr. Kabatt has a</p>	<p>60</p> <p>1 is if you're sitting -- I don't know if you actually have</p> <p>2 been doing this or just people that are in your company. But</p> <p>3 if you're sitting at Norton Road, and you want to make a turn</p> <p>4 onto South Glen, did you observe that in both directions the</p> <p>5 road is blind. There's a hill in both directions. So you</p> <p>6 cannot see a car coming from either direction until they're</p> <p>7 right on top of you.</p> <p>8 And the new driveway into this -- the new driveway</p> <p>9 into this proposed development puts their driveway at the top</p> <p>10 of one of the hills. So -- and the synagogue driveway is</p> <p>11 still going to be where it's always been. So if you're</p> <p>12 sitting at Norton you want to make a left-hand turn or a</p> <p>13 right-hand turn you could conceivably have to be looking at</p> <p>14 somebody at the new driveway trying to get out. Somebody at</p> <p>15 the synagogue trying to get out and you're also trying to see</p> <p>16 if there's a car coming in either direction.</p> <p>17 So you've got potentially five people sitting</p> <p>18 there trying to figure out what the other people are doing,</p> <p>19 if anybody's coming over the hill, and as you noted they are</p> <p>20 speeding most of the time. So it's to me, a much more</p> <p>21 dangerous intersection than what anybody has talked about so</p> <p>22 far today. And I would just like to hear your comments on</p> <p>23 that because that was not addressed at all.</p> <p>24 HEARING EXAMINER ROBESON: Okay. This is -- let</p> <p>25 me do this. This is -- I understand your question. I will</p>

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16 (61 to 64)

<p>61</p> <p>1 let this go, but first of all, I need everybody -- if you 2 haven't given your email to Nana Johnson -- email and address 3 to Nana Johnson of this -- well, let me ask, Mary -- Ms. 4 Brigham, have -- is your name on the list of parties to 5 receive notification? 6 MS. BRIGHAM: Yes it is. And I testified at the 7 last -- 8 HEARING EXAMINER ROBESON: Okay. 9 MS. BRIGHAM: Yeah. 10 HEARING EXAMINER ROBESON: Okay. And I know Ms. 11 Baker is. So -- 12 MS. BAKER: That's correct. 13 HEARING EXAMINER ROBESON: So I'm going to let him 14 do that, but this is not your time to testify. You've asked 15 for comments about the intersection of -- that you say sight 16 distances -- Mr. Kabatt, do you have any comments on that? 17 MR. KABATT: So I did observe traffic in the field 18 when I've been out there. I mentioned I was out there in 19 February of 2022, but I've been out there on other occasions 20 over the course of the years. And I will also say that as I 21 testified earlier, there is a benefit actually in separating 22 the driveway from the Norton Road intersection to further 23 west because it reduces those -- it minimizes those conflicts 24 that you are referring to. You don't have someone coming out 25 of the congregation driveway then the existing site driveway</p>	<p>63</p> <p>1 what I observed, appeared to be someone out for a morning 2 walk. I also, in reviewing the video which I've done some of 3 the review and my, you know, staff that I work with has done 4 some of the review, we looked for -- you know, we made it a 5 point to look for pedestrians as we did some review leading 6 up to these hearings. And the pedestrian activity is 7 minimal. There are pedestrians. There is -- we did observe 8 people walking along South Glen Road, but by no means was it 9 a steady stream of pedestrians. 10 We also, when we count -- do the turning movement 11 counts of the intersections we also do pedestrian counts. 12 And those pedestrian counts show very low pedestrian activity 13 at Norton and Fall -- or Norton and South Glen. 14 MS. HARRIS: Thank you. And then Ms. Baker 15 testified -- or in her questions of you she expressed concern 16 that the fact that DOT and the State are relying on current 17 '22 numbers as not really reflective of what reality may be, 18 if everyone were to return to work five days a week. But in 19 your opinion how -- I believe you did an analysis based on 20 2019 numbers in order to address that very issue; is that 21 correct, and can you just explain why you think, if you do, 22 that those 2019 observations and analysis would address the 23 concern raised by Ms. Baker? 24 MR. KABATT: Sure. So we did -- that's why we did 25 that analysis with the traffic counts were actually collected</p>
<p>62</p> <p>1 at the same time you're trying to negotiation a turn from 2 Norton Road. 3 And then, as far as the sight distance, I reviewed 4 the sight distance evaluation that was prepared by Soltesz 5 and taking the driveway further west of its location where we 6 have it it actually improves the sight distance for that 7 driveway to the east and to the west. So with the -- you 8 know the low volume street of South Glen and the improved 9 sight distance and moving the driveway to minimize those 10 potential conflicts, I -- my opinion is that it's actually a 11 safer condition and a better condition than existing. 12 HEARING EXAMINER ROBESON: Okay. Seeing no other 13 hands raised, are there any other questions? 14 MS. HARRIS: I just have a few on redirect. 15 HEARING EXAMINER ROBESON: I would -- that's fine. 16 Go ahead. 17 MS. HARRIS: Thank you. Mr. Kabatt, when you were 18 out at the site on the numerous occasions observing vehicles 19 did you also have an opportunity to review pedestrian 20 activity, and if so can you provide insights on what you 21 observed? 22 MR. KABATT: So my observation and up to the most 23 recent being February because for memory purposes of my 24 observation, is I saw one pedestrian when I was out there in 25 the a.m. period and it appeared and this is just again, my --</p>	<p>64</p> <p>1 in 2018 in preparation for that application that was in 2019. 2 But you know, that's what a lot of people will want to jump 3 back to is that pre-COVID time period. And so we did look at 4 those traffic counts and, as I said, they are higher than 5 what we observe today. Today, being the counts we sued for 6 the 2022 study. 7 However, the analysis shows we went through the 8 same process. But using those higher counts that the 9 intersections would continue to operate within the congestion 10 standard. 11 MS. HARRIS: Thank you. And then, one final 12 question to clarify something you said. You testified that 13 the a.m. peak hour would be 17 trips per the ITE. And then, 14 you said but because our actual shifts are earlier because 15 ITE includes employees but we know based on Ms. Andress' 16 testimony that our employees are going to be leaving well 17 before that; is that an accurate statement? 18 MR. KABATT: Yeah. The conclusion is and the 19 thought is that that 17 again, as I explained is the peak 20 generation for this use over -- and then you would apply to 21 the peak of the adjacent street. And those times may, in 22 reality, be at separate times. But we look at a three-hour 23 period in the morning and we take the peak from that three- 24 hour period and then we put on the peak that these studies 25 throughout -- over the years have shown for facilities like</p>

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17 (65 to 68)

<p>65</p> <p>1 this you put that peak and you know, that may occur at any 2 time during that three hour window. You put those two on top 3 of each other to get the analysis so you're covering the 4 highest -- you're analyzing the highest number of vehicles at 5 the study intersections.</p> <p>6 MS. HARRIS: And that peak of 17 incorporates some 7 cetin number of employee vehicles, correct? Because it's an 8 ITE generated number?</p> <p>9 MR. KABATT: Yes. It -- when ITE, like they get 10 these trip rates, they're an average over studying sites 11 across the country. And it doesn't discriminate on the type 12 of -- not the type of trip but who's making that trip, it's 13 any vehicle entering and exiting the site at that -- you know 14 during those -- entering and exiting the site. So it could 15 be -- an employee could be the trash truck. It could be a 16 delivery. Could be a visitor.</p> <p>17 MS. HARRIS: Okay. Thank you. I have no further 18 questions for Mr. Kabatt.</p> <p>19 HEARING EXAMINER ROBESON: Okay. Seeing no other 20 hands we're going to take a 10-minute -- well, who is your 21 next witness, MS. Harris?</p> <p>22 MS. HARRIS: So we're ready for our rebuttal case. 23 So we would start with Mr. Wormald and then Ms. Address.</p> <p>24 HEARING EXAMINER ROBESON: Okay. We're going to 25 take a 10-minute break and then we'll come back with Mr.</p>	<p>67</p> <p>1 construction. But our intent is to get the Lodge started at 2 or near the construction start of the cottages. The first 3 cottage structure we intend to build is the one along South 4 Glen Road that will serve as the model home.</p> <p>5 MS. HARRIS: And then, what is your plan for any 6 subsequent construction of the cottages? Would they be 7 done -- would you complete of them immediately or is there a 8 time period in which they actually get sold and constructed?</p> <p>9 MR. WORMALD: Yeah, typically, the way we do it is 10 we sell them first and then build them. That's the 11 typical -- there will be some allowance for spec building or 12 building units ahead of time and then selling them either 13 during construction or once they're completed. But we much 14 prefer to sell first and then to build.</p> <p>15 MS. HARRIS: Thank you. That was my only question 16 for Mr. Wormald. We just wanted to clarify since we had not 17 delivered testimony on phasing and we wanted to respond to 18 the suggested memo.</p> <p>19 HEARING EXAMINER ROBESON: All right. Mr. Brown, 20 do you have any questions?</p> <p>21 MR. BROWN: Give me a moment, please.</p> <p>22 Mr. Wormald, based on your phasing plan, do you 23 anticipate the Lodge going into service before all of the 24 cottage units are constructed?</p> <p>25 MR. WORMALD: It should be, yes. So the Lodge is</p>
<p>66</p> <p>1 Wormald.</p> <p>2 MS. HARRIS: Thank you.</p> <p>3 HEARING EXAMINER ROBESON: All right. 4 (A recess was taken)</p> <p>5 HEARING EXAMINER ROBESON: Mr. Wormald.</p> <p>6 MS. HARRIS: Yes.</p> <p>7 HEARING EXAMINER ROBESON: You're still under oath 8 from the prior hearing, Mr. Wormald.</p> <p>9 MR. WORMALD: Okay.</p> <p>10 MS. HARRIS: So Mr. Wormald, the opponent 11 submitted a detailed phasing memo as Exhibit 173 regarding 12 their desired phasing for the project. Can you please 13 describe the intended phasing for Heritage Potomac?</p> <p>14 MR. WORMALD: Sure. Yeah, so it's our intent to 15 construct the project in two phases. The first phase is the 16 site land development with the associated infrastructure and 17 the second phase is the actual vertical construction for both 18 the Lodge and the cottage IL units. More specifically in 19 phase 1 we would do the mass grading, construction of 20 underground utilities and installation of base road paving 21 for the entire project. And the, in phase 2, during or after 22 completion for phase 1, construction on both the Lodge and 23 cottages will commence. As you all know, especially now 24 given supply chain issues there could be some unforeseen 25 event that stalls either the Lodge or the cottage</p>	<p>68</p> <p>1 a longer construction timeline, but yeah. The Lodge will 2 likely be completed prior to -- now, if we get a huge demand 3 on the cottages and they're all building simultaneously -- 4 and that could happen as well, where we're building the 5 entire project all at once. And then it's a race to the 6 finish line at that point. But it's hard to predict exactly 7 what's going to occur. But yeah.</p> <p>8 MR. BROWN: So after you build the first one of 9 the cottage units, what would be the plan of attack for 10 completing the job? Is there a particular order that you 11 have in mind for the resto f them?</p> <p>12 MR. WORMALD: Order of construction for the 13 cottages?</p> <p>14 MR. BROWN: For the cottage units.</p> <p>15 MR. WORMALD: Right. So that would be in consult 16 with our construction team in terms of the optimal sort of 17 path through the project. But typically you're following the 18 structures through the project, one after another until you 19 get to some terminus point. If that makes sense.</p> <p>20 MR. BROWN: Okay. Apart from that -- apart from 21 what you've described are there any inconsistencies between 22 the recommended phasing that we proposed and your plans?</p> <p>23 MR. WORMALD: I would just stress that we need 24 flexibility. I think we have a line of interest in that we 25 want to get through the project as quickly as possible just</p>

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18 (69 to 72)

<p style="text-align: right;">69</p> <p>1 as you guys do. And so that's good. You know, it's in our 2 interest to build the Lodge, you know, like I said previously 3 during or after completion of phase 1. So yeah. No, I think 4 what I stated is what we intend. 5 MR. BROWN: Thank you. I have nothing further. 6 HEARING EXAMINER ROBESON: All right. Ms. Brigham 7 I think you still have your hand up. Did you have a question 8 or just forget to put -- did you just forget to put your hand 9 down? 10 MS. BRIGHAM: I couldn't figure out how to put the 11 hand down. I'm sorry about that. 12 HEARING EXAMINER ROBESON: Okay. 13 MS. BRIGHAM: But I don't have any more question. 14 (Off the record discussion; technical issues) 15 HEARING EXAMINER ROBESON: So I see a -- okay. 16 Hold on. Now, I have Patty McGrath's hand up. 17 MS. McGRATH: Yes, I had a question. I don't know 18 if this is the place to ask about the timing of construction 19 of the moderately priced dwelling units that are part of the 20 project. Is there any -- it's not possible to tell from 21 the -- you know, from the construction layouts which of those 22 units are the MPDUs and are they going to be, like, grouped 23 together or interspersed or -- I don't -- I just don't know. 24 MS. HARRIS: Well, Mr. Wormald did not testify 25 regarding the MPDUs.</p>	<p style="text-align: right;">71</p> <p>1 cottage unit. 2 MS. McGRATH: Okay. Thank you. That clarifies 3 it. Thank you very much. 4 MS. HARRIS: You're welcome. 5 HEARING EXAMINER ROBESON: Okay. I'm just sending 6 Ms. Harris did send me the SHA letter and I am sending it 7 right now to everyone along -- I'm forwarding her email with 8 the SHA letter attached. 9 MS. HARRIS: I thought I sent it to everyone, but 10 if I didn't my apologies. 11 HEARING EXAMINER ROBESON: Well, I just read it 12 quickly. 13 MS. HARRIS: Okay. 14 HEARING EXAMINER ROBESON: And then I have a hand 15 up from Mr. Wank? W-A-N-K. 16 MR. WANK: Yes, that's me, Steve Wank. 17 HEARING EXAMINER ROBESON: Okay. 18 MR. WANK: I listened to the testimony by Mr. 19 Wormald about -- 20 HEARING EXAMINER ROBESON: Just a second. I -- 21 have you -- okay. Can you give me your email address? Can 22 you state your email address and your name and address, 23 please? 24 MR. WANK: Sure. My email address is 25 SteveW@NIH.gov.</p>
<p style="text-align: right;">70</p> <p>1 MS. McGRATH: Okay. 2 MS. HARRIS: I can offer a legal answer if the 3 hearing examiner will allow me to. 4 HEARING EXAMINER ROBESON: Well, I thought there 5 were no MPDUs proposed with this. 6 MS. HARRIS: So in accordance with the MPDU law in 7 connection with the cottages there are no MPDUs on site. 8 They are required to make a contribution at the time of 9 settlement for each cottage sale. In connection with the 10 Lodge the MPDU law will be triggered when there are more -- 11 if more than 20 independent living units get constructed -- 12 are contained within the Lodge. And so, assuming that's the 13 case, the MPDUs will be constructed in the Lodge at the time 14 the Lodge is constructed, as part and parcel to the Lodge. 15 HEARING EXAMINER ROBESON: Okay. Does that answer 16 your question? 17 MS. McGRATH: Well, I guess so. I didn't see any 18 difference in the layouts of the, you know, the cottages and 19 I was -- and I didn't know if the cottages construction would 20 have required MPD units to be built as cottages. 21 MS. HARRIS: No. They are not -- they're -- in 22 fact the requirement is that they are not provide on-site. 23 The MPDU law provides that for senior for sale units there 24 must be -- the way MPDUs are addressed is there is a 3 25 percent payment made at the time of settlement on each</p>	<p style="text-align: right;">72</p> <p>1 HEARING EXAMINER ROBESON: And your address? 2 MR. WANK: 10921 Edison Road, Potomac, Maryland 3 20854. 4 MS. HARRIS: Ms. Robeson, by point of 5 clarification if people did not participate in the opposition 6 case, are they now permitted to cross-examine on rebuttal? 7 HEARING EXAMINER ROBESON: Well, it is a public 8 hearing. And I'm going to let it come in and -- and as long 9 as we can -- you know, I'm not going to delay the hearing for 10 it. 11 HEARING EXAMINER ROBESON: 12 MS. HARRIS: Okay. 13 HEARING EXAMINER ROBESON: So go ahead, Mr. Wank. 14 MR. WANK: Okay. I just have a question regarding 15 Mr. Wormald's testimony about the phasing. And so my 16 question, as I understand his (inaudible) is that units will 17 be built depending on financing and interest. Is there a 18 time limit, like, could this go on for 10 years if he doesn't 19 sell his last unit until the 10th year? Or is there some 20 time limit to when construction will stop? 21 MR. WORMALD: So yeah. I mean, certainly like all 22 development projects there are elements of financing and 23 sales. You know, banks typically require some sort of -- for 24 the cottages, for example, they won't let you spec the entire 25 project. You know, they'll typically require some presales.</p>

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19 (73 to 76)

<p style="text-align: right;">73</p> <p>1 But yeah. In terms of the speed I think you can just say 2 that it should be what would normally be what we're normally 3 experiencing in other projects, which is a reasonable 4 schedule. You know we're very consistent. We -- all of our 5 other projects we well very well. We lease up very well. 6 Construction schedules are predictable, so I would certainly 7 hope that in this instance we would continue that track 8 record and deliver the project in a timely manner. 9 MS. HARRIS: Is there a deadline? 10 MR. WANK: So I take it that there's no time 11 limit? I mean, you hope but this could go on for 30 years 12 based on that answer. 13 MR. WORMALD: Yeah, typically some sort of outer 14 limit is not necessarily imposed by anyone. I mean, 15 obviously that's not in our best interest. But yeah. I 16 don't know exactly how to answer that. 17 HEARING EXAMINER ROBESON: I'm not sure that 18 relates to the conditional -- to the criteria for approval of 19 this. I mean, what I have to look at is the criteria of 20 approval and I'm not sure that the length of time that this 21 is built out is part of that criteria for approval. 22 Anyone else? Okay. Mr. Wank, if you could lower 23 your hand. 24 Any redirect, Ms. Harris based on the questions 25 asked?</p>	<p style="text-align: right;">75</p> <p>1 morning that's fully occupied to double check. The -- and 2 the line staff do come in, our caregiving staff do come in 3 between 6:30 and 7:30 as our largest shift change. So that's 4 consistent with what we expected and what was testified to. 5 And then what we looked at was assuming that our 6 line staff which is the largest component, we tend to have 7 between 40 and 60 percent. I'm sorry, I'm looking down at my 8 notes if you see me here. Between 40 and 60 percent that 9 either ride share or carpool or change cars, one will come in 10 and then you know a spouse or a roommate will go out. So 11 there's some sort of sharing combination. So about 40 to 60 12 percent of our staff we're expected to drive and so 13 conversely about 40 to 60 percent would take public 14 transportation. Right? So if we look at -- there's two ways 15 we do it at our community. Some is they go and they 16 aggregate somewhere, maybe at -- you know so that we can pick 17 people up so they're waiting not more than 15 minutes or so 18 at a bus stop. 19 So somebody could take a metro from Rockville or 20 whatever, they could stop at the Potomac shopping and then 21 they could get on a bus. So they could, you know maybe they 22 go to the Potomac shopping center. Maybe we pick them up at 23 the Westfield Mall. Maybe we pick them up, you know anywhere 24 within a -- so wherever is a -- is the most efficient 25 aggregating site for them. I don't want to say that it's</p>
<p style="text-align: right;">74</p> <p>1 MS. HARRIS: No, thank you. 2 HEARING EXAMINER ROBESON: Okay. Anything else 3 from Mr. Wormald? 4 All right. Hearing none, Mr. Wormald, you may be 5 excused as a witness. I'm sure you'll hang around. 6 MR. WORMALD: Yeah. 7 HEARING EXAMINER ROBESON: Okay. Go ahead, Ms. 8 Harris. Your next witness? 9 MS. HARRIS: Is Kelly Cook Andress, the Sage Life 10 operator who testified previously. 11 HEARING EXAMINER ROBESON: Right. Ms. Andress, 12 you're still under oath. 13 MS. ANDRESS: Yes. I just want to -- I haven't 14 talked on this microphone today and I just wanted to be sure 15 you all can hear me? 16 HEARING EXAMINER ROBESON: Yes, you're coming 17 through very clear. 18 MS. HARRIS: Thank you. So Ms. Andress, a 19 question or comments came up previously and then they came up 20 most recently earlier this morning. With respect to how 21 employees who may be relying on public transportation will 22 actually get to the subject property. Can you testify as to 23 what you anticipate will happen in this situation? 24 MS. ANDRESS: Yes. So I do want to confirm, in 25 fact, I was intentionally at one of our communities this</p>	<p style="text-align: right;">76</p> <p>1 going to be one place or the other. 2 We've looked at the bus schedules from Sunday and 3 Saturday they run about every hour to weekdays which is every 4 half hour. So we would have different schedules on weekends 5 and weekdays pending on what the public transportation. And 6 basically it's the T2 bus line. So we would do that. Or 7 it's the 47 if they're coming down from Rockville maybe to 8 the Westfield mall, depending on, maybe on the weekends 9 that's a better route for some of our folks. 10 So then we would run our shuttlebus or our -- it's 11 not a you know, it's just our bus, our 12 passenger van that 12 we do to go and pick up at the most reasonable location. I 13 can't say that as a good employer today in a competitive 14 environment we don't want our folks walking around -- walking 15 down the street any more than anybody else and does. We want 16 to go and get them and deliver them to our door safely. 17 MS. HARRIS: So just to be clear, given that the 18 Potomac shopping center which is one of the option I think 19 that you mentioned, is approximately a mile away from the 20 site, it's your anticipation that a shuttle could, or would, 21 bring employees from there to the subject property and that 22 there would not be employees walking down South Glen Road is 23 that correct? 24 MS. ANDRESS: Correct. Correct. But I'm also not 25 commuting that it would be Potomac Village because sometimes</p>

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<p style="text-align: right;">77</p> <p>1 one a little further away saying this is the associate a lot 2 of time. So that's why we looked at options like the 3 Westfield, et cetera. So sometimes it's an easier 4 aggregation point that is a little further away. 5 MS. HARRIS: Understood. 6 HEARING EXAMINER ROBESON: What about -- which you 7 agreed to a condition saying -- not specifying way or the 8 shuttle will go, but that the Applicant will provide 9 employees using transit with a shuttle to the facility, 10 something like that? 11 MS. ANDRESS: Well, that there will be a shuttle 12 option, but you know what I'm reticent to do is to guarantee 13 that -- you know, we don't miss somebody who is a private -- 14 because people can also hire private aids or whatever. You 15 know, yes, we will include a -- 16 HEARING EXAMINER ROBESON: Your employees. 17 MS. ANDRESS: -- shuttle option. But I'm -- you 18 know I'm -- 19 HEARING EXAMINER ROBESON: No. I -- what I'm -- 20 MS. ANDRESS: -- wary of every and all. 21 HEARING EXAMINER ROBESON: -- referring to is a 22 condition saying employees aren't going to be traveling on 23 South Glen Road. So -- and I'm not talking about residents' 24 employees. But I am talking about your employees. 25 MS. ANDRESS: Well, once again, I don't control</p>	<p style="text-align: right;">79</p> <p>1 something that ensures that employees aren't walking down 2 South Glen Road. So I'll leave it open for now. 3 MS. ANDRESS: Okay. 4 MS. HARRIS: And I -- I'm sorry. And I had no 5 other questions for Ms. Andress. That was the only thing we 6 wanted to clarify. 7 HEARING EXAMINER ROBESON: Okay. Anyone else have 8 any questions? Mr. Brown, do you have questions? 9 MR. BROWN: No questions. 10 HEARING EXAMINER ROBESON: Anyone else? Okay. 11 Thank you Ms. Andress. You may be excused. 12 MS. ANDRESS: Thank you. 13 MS. HARRIS: And our next witness is Mr. Kagan. 14 HEARING EXAMINER ROBESON: Okay. Now my memory 15 is -- Mr. Kagan, did you testify at the prior hearing? 16 MS. HARRIS: You're on mute. 17 MR. KAGAN: Sorry. Yes, I did. 18 HEARING EXAMINER ROBESON: I'm sorry. Okay, 19 you're still under oath. 20 MS. HARRIS: So just to refresh, Mr. Kagan's from 21 Littman, Frizzel, and Mitchell, and prepared a market 22 analysis study. So Mr. Kagan is your report an appraisal? 23 MR. KAGAN: No, it is not an appraisal. 24 MS. HARRIS: And does it opine on the value of 25 homes surrounding the subject property?</p>
<p style="text-align: right;">78</p> <p>1 how my people get to work. I'm not -- I don't know why they 2 would want to -- I'm just very wary of every and all 3 conditions, like every single employee. I mean, maybe 4 they're bike riders. I mean, we have all -- you know I 5 don't -- I don't know. I've never had to -- I don't know 6 what that would look like. I'm not opposed to the idea of 7 it. I'm worried about the details. 8 MS. HARRIS: But just to be clear, if I could, if 9 there is such a condition the condition is that the -- that 10 Sage has an obligation to provide the shuttle, not that we 11 can control every single person's behavior, correct? Is that 12 correct, Ms. Robeson? 13 HEARING EXAMINER ROBESON: Correct. 14 MS. HARRIS: And maybe we could even include 15 something that stays and they will discourage employees from 16 walking down the -- on South Glen, but obviously you can't 17 control an employee's behavior. 18 MS. ANDRESS: Correct. 19 HEARING EXAMINER ROBESON: Okay. Yeah. Let me -- 20 I understand you don't want to be responsible for an 21 employee. On the other hand, I don't think it's safe for 22 employees to be walking, especially after what we heard from 23 Mr. Kabatt, I don't think it's safe for an employee to be 24 walking down South Glen Road. So if there's a condition you 25 can think of that's acceptable to you, I would prefer</p>	<p style="text-align: right;">80</p> <p>1 MR. KAGEN: No. 2 MS. HARRIS: What was the purpose of your report? 3 MR. KAGEN: As stated in the report the purpose 4 was to answer the question of whether a senior housing 5 development would be detrimental to the economic value of 6 surrounding residential real estate. 7 MS. HARRIS: And as report attempt to directly 8 compare homes in the neighborhood -- neighborhoods that were 9 studied to the home surrounding the subject property? 10 MR. KAGEN: No. Each of the projects studied 11 stand alone so for each project we studied we are just 12 directly comparing sales of the adjacent neighborhood to the 13 control neighborhood. 14 MS. HARRIS: Okay. And was there any effort to 15 make sure that the adjacent and control are similar? 16 MR. KAGEN: Yeah. I mean we, as best we could, 17 ensure the best I could, I tried to make sure that the homes 18 were of similar character, and the differentiating factor was 19 just their proximity to the senior project. 20 MS. HARRIS: And if one or multiple of the 21 comparable neighborhoods has home values that are more or 22 less than values for homes surrounding the subject, what 23 would that mean, or what does that mean? 24 MR. KAGEN: In the context of this analysis 25 nothing. Again, I'm not directly comparing homes in the</p>

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<p>81</p> <p>1 neighborhoods surrounding these other projects to the 2 neighborhoods surrounding the subject project. We are just 3 trying to determine if the senior living facilities in these 4 other areas had impacts on the adjacent neighborhoods 5 compared to the control neighborhoods.</p> <p>6 MS. HARRIS: Okay. That's helpful. And then why 7 does your -- why doesn't your report focus on home values?</p> <p>8 MR. KAGEN: The sale price of the home is 9 dependent on many different factors. You know, generally the 10 number of bedrooms, the layout, number of bathrooms, when it 11 was last renovated, so if we were to focus on sale prices we 12 would have to isolate all these factors for every sale, 13 examine how they impacted the sale price and it just kind of 14 gets to be very impractical to do an analysis that way.</p> <p>15 So we focused on appreciation rates. And if a 16 senior living facility had a negative was a negative factor 17 to a buyer's decision we would expect to see lower 18 appreciation rates for homes adjacent to senior living 19 facilities than in the controlled neighborhoods which are 20 more removed.</p> <p>21 MS. HARRIS: And some of the adjacent 22 neighborhoods cover homes that aren't immediately adjacent to 23 the senior project. How did you consider the impact of 24 immediately adjacent homes versus homes in the adjacent 25 neighborhood but that weren't immediately adjacent?</p>	<p>83</p> <p>1 changes in the market over time? Like for example, the most 2 recent appreciation in home prices that occurred in early 3 2017?</p> <p>4 MR. KAGEN: Yeah. So generally we had a similar 5 number of sales are, you know, a good number of sales and 6 both the adjacent neighborhood and the control neighborhood 7 and they occur around the same times. There was a similar 8 number of sales around the same times. The same time 9 periods, so it balances out in the analysis.</p> <p>10 MS. HARRIS: And opponents testified of instances 11 where asking price for a home was not what it was sold for 12 and that this was an indication of the impact of an adjacent 13 use. What's the relationship of asking price to value?</p> <p>14 MR. KAGEN: Right. So I mean an asking price may 15 be an indication of the seller's expectations, but a seller's 16 expectations can be unrealistic in either direction and the 17 asking price of the home can be used as a marketing tool so 18 there's various reasons that asking prices are what they are. 19 And generally, the most reliable indication of value of 20 similar properties in a similar location is the sales price, 21 or the sales price of similar homes.</p> <p>22 MS. HARRIS: And what happens in a weaker market 23 if the asking price is higher than the actual value?</p> <p>24 MR. KAGEN: In my experience if an asking price is 25 too high it may turn buyers away. They may view the sellers</p>
<p>82</p> <p>1 MR. KAGEN: Well, in my analysis I tried to 2 examine sales that did share lot lines with the senior living 3 facilities. However, although homes in the adjacent 4 neighborhood may not be immediately adjacent to the senior 5 project, certainly buyers of homes in the adjacent 6 neighborhood know that that senior project is that they are. 7 They're aware of the presence of it and if a senior living 8 facility was viewed as a being a negative factor then you 9 would expect to see lower appreciation rates even though it's 10 not immediately adjacent.</p> <p>11 MS. HARRIS: And I think the opponents 12 specifically mentioned the Victory Terrace. I believe that 13 was the project, which is surrounded by woods. How does what 14 you just said relate to that project?</p> <p>15 MR. KAGEN: Right. So even though there are woods 16 between the project and the adjacent neighborhoods are the 17 closest homes, again, buyers of those homes would know that 18 that project is that they are and if it was this a negative 19 factor would expect to see an impact on the sales price. And 20 similarly, our project number 3, Sunrise at Fox Hill. Even 21 though it's located on the other side of River Road from our 22 adjacent neighborhood the entrance to the adjacent 23 neighborhood, anyone entering that neighborhood would have to 24 drive by the project and they would be aware of its presence.</p> <p>25 MS. HARRIS: And how does your report consider</p>	<p>84</p> <p>1 as being unrealistic and they're not giving an opportunity or 2 a reasonable basis for negotiation and it can cause a 3 property to sit on the market for an extended period of time.</p> <p>4 MS. HARRIS: And I think you just said that in 5 your expert opinion the most reliable factor for determining 6 value is the average adjacent -- of comparable homes in the 7 area. Based on that, what's the average price of a six 8 bedroom home in the 20854 ZIP Code say between January 1, 9 2019 to June 2019.</p> <p>10 MR. KAGEN: Right. The most reliable indication 11 of value is sales prices and the average sales price of a six 12 bedroom home in the 20854 ZIP Code between January 1, 2019 13 and June 1, 2019 was \$1,547,639.</p> <p>14 MS. HARRIS: Thank you. And the adjacent or 15 controlled neighborhood data has a wide range of appreciation 16 values. What does that show?</p> <p>17 MR. KAGEN: That shows that other factors such as 18 the number of bedrooms, when the property was last renovated, 19 are really the -- have more of an impact on home values and 20 what buyers focus on purchasing a home.</p> <p>21 MS. HARRIS: And your report focuses on a number 22 of different projects. What's the relevance of these 23 projects?</p> <p>24 MR. KAGEN: So one, I mean, I can only -- if I 25 could manufacture the perfect comp, it would be the exact</p>

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22 (85 to 88)

<p style="text-align: right;">85</p> <p>1 same situation as what we have. But I can only examine what 2 exists. So I tried to pick projects in the Potomac area and 3 I picked three along River Road and in the Brightview project 4 which was right next door. But as mentioned, some of those 5 who projects had some factors like more wooded areas between 6 the project and the adjacent homes so I went a little outside 7 of the Potomac area to North Bethesda and looked at the 8 Grosvenor property which, you know, that facility has no 9 buffer between it and the adjacent homes. 10 So I thought it was a good one to examine. So I 11 tried to do as many as I practically could and tried to pick 12 areas that had similar affluence and home prices rather than 13 going to more far flung areas of the county or other 14 counties. 15 MS. HARRIS: If you had had the time to conduct 16 the analysis that you did on every single senior care 17 facility in the county, in your expert opinion what do you 18 think that you would have found? 19 MR. BROWN: Objection. 20 MR. KAGEN: I believe I would have found similar 21 results. I don't think you know we would -- 22 MR. BROWN: Objection. 23 MR. KAGEN: -- have seen a wide range of 24 appreciation rates and higher appreciation rates would be 25 attributed to properties that were recently renovated. Lower</p>	<p style="text-align: right;">87</p> <p>1 HEARING EXAMINER ROBESON: Anybody have cross- 2 examination? 3 MR. BROWN: Yes. 4 HEARING EXAMINER ROBESON: Ms. Baker. Oh, no. 5 Mr. Brown, go ahead and then I'll get to Ms. Baker. 6 MR. BROWN: Is it Kagens, is that your last name, 7 sir. 8 MS. HARRIS: Kagen. 9 MR. BROWN: Kagen, I'm sorry. 10 MR. KAGEN: That's all right. 11 MR. BROWN: Mr. Kagen, if your analysis was 12 accurate and correct it would suggest that with respect to 13 the senior living communities that you studied that there is 14 no adverse impact on appreciation rates between the 15 localities around those facilities and nearby control group 16 properties, correct? 17 MR. KAGEN: That's correct. 18 MR. BROWN: Why does that say anything about what 19 might happen in a different situation where there might be 20 adverse -- and adverse effect of the particular property at a 21 particular location? 22 MR. KAGEN: Well, I can't -- 23 MR. BROWN: Well, how can you generalize? 24 MR. KAGEN: I can only study what exists. I can't 25 make up data. So we looked at a wide range of facilities.</p>
<p style="text-align: right;">86</p> <p>1 appreciation rates to properties that maybe needed to be 2 renovated but hadn't been renovated in a while. And we would 3 have seen, I believe similar results. 4 MS. HARRIS: And then the -- 5 MR. BROWN: I object to the question and the 6 answer as completely speculative. 7 MS. HARRIS: The question was based on his 8 expert -- 9 MR. BROWN: It's not based on his study. 10 MS. HARRIS: -- opinion and the analysis that he 11 has conducted on -- 12 MR. BROWN: His expert opinion is based on the 13 study that he did to, not on some speculative other 14 situation. 15 HEARING EXAMINER ROBESON: I'll sustain that. He 16 didn't study the other homes. So go ahead. 17 MS. HARRIS: So in general can you remind the 18 hearing examiner what the conclusion was of your report? 19 MR. KAGEN: Yes. For the projects we did study 20 there was no significant difference in the appreciation rate 21 of the adjacent neighborhoods and the control neighborhoods. 22 And this indicates that the presence of a senior project does 23 not have an impact on adjacent home prices. 24 MS. HARRIS: Thank you. I have no further 25 questions for Mr. Kagen.</p>	<p style="text-align: right;">88</p> <p>1 Some that had more area of buffer -- you know, buffer and 2 trees and projects in the Potomac area and then we looked at 3 the Grosvenor property which has more of a direct impact on 4 adjacent homes because there's no buffer. It's right there 5 directly across the street from any houses there. And again, 6 we saw no difference in appreciation rates. 7 MR. BROWN: I have nothing further. 8 HEARING EXAMINER ROBESON: Ms. Baker? 9 MS. BAKER: Yeah, so effectively what you're 10 saying is that you're not testifying that there could not be 11 an impact on an individual house located next to the 12 facility, you're making assumptions and generalizations as to 13 the impact on an area compared to other facilities that you 14 have built. You've done no study of the actual impact to any 15 of the homes that's around this property and the nature of 16 the property in this particular area; is that correct? 17 MR. KAGEN: That's not true. So we looked at 18 sales of properties that shared a lot line with these 19 facilities and we dug -- and I dug deeper into those sales 20 and then determined -- or tried to determine if there was any 21 explanation to the -- or if we could determine if the senior 22 living facility had any impact. And we couldn't. 23 For example, 10827 Lockland Road which is located 24 nearby shares a lot line with the Brightview facility and 25 that property or that house sold at a significant discount to</p>

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23 (89 to 92)

<p style="text-align: right;">89</p> <p>1 the original asking price. I think the original asking price 2 was, like, \$2.6 million and it sold just around \$2 million. 3 And I talked to the seller's broker for that property and it 4 turned out that the buyer was from California, bought the 5 property sight unseen and so they didn't even consider that 6 it was next to the -- or there was no impact from the senior 7 living facility from that perspective. 8 But in talking to -- 9 MS. BAKER: I'm sorry. So you're saying -- 10 HEARING EXAMINER ROBESON: Just a second. Ms. 11 Baker, you need to let him finish, please. 12 MS. BAKER: I just wanted to clarify who he talked 13 to. Again. 14 HEARING EXAMINER ROBESON: Well, you can ask 15 that -- 16 MR. KAGEN: Marcia -- I'm sorry, it was Marcia 17 Schuman with Washington Pine Properties. She was -- 18 MS. BAKER: No, I'm sorry, whose agent? What 19 agent? 20 MR. KAGEN: It was the seller's agent, Marcia 21 Schuman with Washington Pine Properties. 22 MS. BAKER: No the buyer's agent? That's all I 23 wanted to know. 24 MR. KAGEN: The seller's agent. 25 MS. BAKER: Right. Okay.</p>	<p style="text-align: right;">91</p> <p>1 MR. KAGEN: Well, the -- again, I can't 2 manufacture where the facilities are located. 3 MS. BAKER: I'm not asking you to manufacture, I'm 4 just asking you did you consider the commercial nature of the 5 neighborhood where the facilities that you used as your 6 subject facilities are more commercial that this 7 neighborhood. Did you consider that as a factor in 8 determining whether it has an impact on the value of the 9 residents in this neighborhood. 10 MR. KAGEN: Well, I would say generally the 11 locations are pretty similar. So I don't have my report in 12 front of me. We just switched offices and I don't have 13 access to my database, so I don't know exactly what the order 14 of the projects that I had. But I remember one was just off 15 River Road and it was in the middle of a similar development, 16 you know, two-acre lots, multi-million dollar homes. It was 17 the one with the -- you know, surrounded by the woods. You 18 know, and that had no commercial facilities right next door. 19 The Grosvenor facility also was -- is in the 20 middle of a residential development and I don't believe 21 there's a -- I believe there's a community facility next door 22 but not any significant commercial next door that would 23 change the character of that neighborhood. 24 MS. BAKER: So is it your testimony then, that 25 River Road and Falls Road are major commuter -- major</p>
<p style="text-align: right;">90</p> <p>1 MR. KAGEN: And she mentioned that the difference 2 in the asking price and the sale price and why that stayed on 3 the market, I believe it was like, 100 days or a little over 4 that was it needed significant renovations. That the house 5 needed a all-new kitchen, all new bathrooms and then just 6 updates throughout and it turned away a lot of buyers. 7 MS. BAKER: And the Brightview facility was 8 already built at the time; is that correct? 9 MR. KAGEN: It was -- I believe it was under 10 construction or had just finished being built around the time 11 of that sale. 12 MS. BAKER: It was already built. 13 MR. KAGEN: Okay. 14 MS. HARRIS: And just to clarify. It's not 15 Brightview, it's Brandywine, to correct that. 16 MS. BAKER: Thank you. 17 MR. KAGEN: Oh, I'm sorry, my mistake. 18 MS. BAKER: And the other properties that you 19 looked at, the other facilities that you looked at you said 20 are located on River Road and on Falls Road. Did you 21 consider in your analysis that those roads have multiple bus 22 stops and other commercial facilities on the existing road? 23 And multiple traffic lights versus a facility that's being 24 built in the middle of a residential community that has no 25 commercial facilities, nor bus stops?</p>	<p style="text-align: right;">92</p> <p>1 commuter roads and that likewise South Glen Road is? 2 MR. KAGEN: I'm not testifying to the character of 3 the roads. 4 MS. BAKER: So would a facility and value be -- 5 I'm sorry. Would the value of a house be impacted whether it 6 was on a major road versus one that's on a country 7 residential road? 8 MR. KAGEN: I don't believe I'm testifying to the 9 value -- I mean -- of-- 10 MS. BAKER: I'm just trying to understand what 11 factors you considered when you decided that the residential 12 houses surrounding this property would not experience any 13 decline in value. I mean, from my perspective and for most 14 buyers' perspective whether you are going to be located near 15 a commercial facility is something that you take into 16 consideration when you purchase a home. Do you agree with 17 that, that people generally take that into consideration as 18 one of the elements? 19 MR. KAGEN: I think there's a number of elements 20 and I think -- 21 MS. BAKER: I agree. 22 MR. KAGEN: -- as I attested to -- 23 MS. BAKER: I agree and isn't on -- I agree 24 there's a number of elements. But do you agree that one of 25 the elements would be a close proximity next to a commercial</p>

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24 (93 to 96)

<p style="text-align: right;">93</p> <p>1 facility; is that typically an element that someone would 2 consider?</p> <p>3 MR. KAGEN: I think it is an element they would 4 consider, but as I testified to previously, I -- this is 5 going to be an attractive development, a high quality 6 development based on the plans and renderings that I've seen 7 and I do not believe it will have an impact on home prices 8 for adjacent properties.</p> <p>9 MS. BAKER: And I understand that's your opinion, 10 but in fact, two houses on Lockland Road sold for under their 11 asking price.</p> <p>12 THE COURT REPORTER: That's just -- just -- 13 MS. HARRIS: And that's testimony. 14 MS. BAKER: Well -- 15 HEARING EXAMINER ROBESON: Just save your -- 16 MS. BAKER: Well, okay. I'm sorry. I don't know 17 how to question without -- I don't know how to counter 18 what -- 19 MR. KAGEN: Well, Ms. Baker, if I could what I 20 testified to was the asking price is not a very good 21 indication of a home's value. Sale prices are the best 22 indication of a home's value. 23 MS. BAKER: All right. Okay. So -- 24 MR. KAGEN: But you can -- they can ask for -- 25 MS. BAKER: -- I'm talking about a sale price.</p>	<p style="text-align: right;">95</p> <p>1 HEARING EXAMINER ROBESON: But that is what you 2 can say when it's your turn to testify. 3 MS. BAKER: Okay. When I do -- 4 HEARING EXAMINER ROBESON: But (inaudible) -- 5 MS. BAKER: I do believe though, that there was 6 testimony earlier that there would be no impact on our houses 7 in this neighborhood and I don't know how to ask a question 8 that gets to the fact that there was an impact other than 9 just outdatedness. 10 HEARING EXAMINER ROBESON: I remember your 11 testimony and I think it's just getting to the point where 12 you can say you disagree with it. 13 MS. BAKER: Okay. 14 HEARING EXAMINER ROBESON: Based on your own 15 experience. But I'm not sure what you're trying to do right 16 now is -- well, you've actually asked some really good 17 questions. But I think the -- 18 MS. BAKER: Well, I -- yeah, I thought there was 19 testimony suggesting that an agent or a homeowner can just 20 willy nilly pick a price and I was trying to suggest that 21 that price takes into a number of factors and not just 22 outdatedness and that when buyers come in they also have a 23 list of factors when they make a counter on a price, and that 24 it's not unreasonable for anyone to think that being next to 25 a commercial facility would, in fact, impact that value.</p>
<p style="text-align: right;">94</p> <p>1 HEARING EXAMINER ROBESON: Ms. Baker, please don't 2 talk over. 3 MS. BAKER: Okay. 4 HEARING EXAMINER ROBESON: Don't interrupt and 5 don't talk over. 6 MR. KAGEN: So an asking price, you know, could be 7 what -- you know, the value of a home could be \$1.5 million, 8 but the asking price could be \$2 million. And because of 9 that it could sit on the market for a while and it might 10 never sell. Or the asking -- or in situations that I've seen 11 nearby a property will remain on the market for a while and 12 the asking price will slowly come down until it is more in 13 line with what similar houses are selling for. 14 MS. BAKER: So do people typically use an agent to 15 help them value their property? Does an agent have an 16 interest in a property selling quickly? 17 MR. KAGEN: I mean, they do but again -- 18 HEARING EXAMINER ROBESON: Ms. Baker, I understand 19 where you're going but an agent also has an interest in 20 getting a higher price. So -- 21 MS. BAKER: I understand that but there's a 22 balance between it and it's typically not -- not so far off 23 with the market condition is that they are -- 24 HEARING EXAMINER ROBESON: Well then, that -- 25 MS. BAKER: -- (inaudible) a price four times.</p>	<p style="text-align: right;">96</p> <p>1 It's not an unreasonable view. 2 HEARING EXAMINER ROBESON: So what I -- so ask him 3 if he agrees with that statement. 4 MS. BAKER: Do you agree with that statement? 5 MR. KAGEN: That being adjacent to -- just to 6 clarify what the statement was. That being adjacent to a 7 commercial facility has - is a factor that is considered by a 8 buyer; is that the question? 9 MS. BAKER: Correct. Or by an agent when listing 10 a property likewise. 11 MR. KAGEN: I mean, yes it is one of the factors. 12 MS. BAKER: Okay. Thank you. 13 HEARING EXAMINER ROBESON: All right. Ms. Harris, 14 redirect? 15 MS. HARRIS: Just one question. 16 Mr. Kagen, in the last round of questions the 17 question was the presence of a commercial property, is that 18 taken into account, and my question for you is; does it 19 depend on the nature of that commercial property? 20 MR. KAGEN: It certainly does. Like, there's -- 21 you know, being adjacent to a commercial property is one 22 factor, but there are many factors. You know the quality of 23 the adjacent facility is one of those factors. 24 MS. HARRIS: And would it make a difference if 25 that commercial property were in fact a residential care</p>

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25 (97 to 100)

<p style="text-align: right;">97</p> <p>1 facility for seniors versus just, to use an example, a 2 commercial shopping center? 3 MR. KAGEN: Yes. I -- you know, obviously if it 4 was a commercial shopping center there is different 5 considerations. The traffic, you know who the tenants are 6 that -- how the project looks it's -- there's lot of factors. 7 MS. HARRIS: Okay. Thank you. No other questions 8 for Mr. -- 9 HEARING EXAMINER ROBESON: Okay. I just see 10 one -- Mr. Wank is your hand up? 11 MR. WANK: Yeah, my hand's up. 12 HEARING EXAMINER ROBESON: Okay. Quickly, can you 13 ask your question? 14 MR. WANK: Yes. I'll ask it quickly, thank you. 15 Mr. Kagen, I just have some questions about the analysis and 16 the design of your analysis. I'd like to know how many homes 17 you looked at that were actually sharing a property line 18 versus how many were removed from the property line. I'd 19 like to know how you chose which areas to look at as opposed 20 to all the areas. Was there a bias to your sampling? And 21 then, I'd like to know your statistical analysis based on 22 prices so that you can actually give me a value so that 23 you -- allows you to come to your conclusion that there was 24 no difference. 25 MS. HARRIS: I don't --</p>	<p style="text-align: right;">99</p> <p>1 to speak. How long do you take -- think for this case? 2 MS. HARRIS: We may be able to get through our 3 rebuttal testimony today. you know, I'll remind you that 4 while our direct rebuttal isn't taking that long, it seems 5 like the cross-examination takes as long as the direct 6 rebuttal. 7 HEARING EXAMINER ROBESON: I understand. 8 MS. HARRIS: So if not today, then you know, by 9 11:00 tomorrow. But if -- so I mean, what I would suggest is 10 can we take just a half an hour lunch and then plow back in? 11 HEARING EXAMINER ROBESON: We can do that. That's 12 what I was thinking. So with that, Mr. Brown, do you have an 13 objection to taking -- to being back at 1:00? 14 MR. BROWN: No objection. 15 HEARING EXAMINER ROBESON: All right. With that 16 we're going to be back at 1:00, and we'll proceed with Ms. 17 Harris's next witness. Thank you. 18 MS. HARRIS: Thank you. 19 (Off the record at 12:30 p.m., resuming at 1:04 20 p.m.) 21 HEARING EXAMINER ROBESON: Thank you. Okay. Ms. 22 Harris, do you want to call your next witness? 23 MS. HARRIS: Yes. It's Dennis Swihart, the 24 architect. 25 MR. SWIHART: And I'm here.</p>
<p style="text-align: right;">98</p> <p>1 MR. WANK: So I guess what I'm questioning you is, 2 is the methods of your analysis as opposed to your opinion 3 and expertise. 4 MS. HARRIS: Ms. Robeson, I'm going to object to 5 that; that it's outside the scope of his rebuttal testimony. 6 Mr. Kagen testified on direct. He was cross-examined by all 7 participants at that time. It's not fair nor -- and it's 8 outside the rules of procedure to go back and allow now 9 questioning based on his direct testimony. 10 HEARING EXAMINER ROBESON: I agree. It is beyond 11 the scope of Mr. Kagen's rebuttal testimony. 12 Mr. Wank, that was gone into in detail the last 13 time and at this point it's just narrowed to the scope of 14 what he testified to today. So I'm going to sustain that. 15 Any other questions? Okay. Seeing none -- Ms. 16 Harris, do you have any other questions? 17 MS. HARRIS: Not for Mr. Kagen. No, thank you. 18 HEARING EXAMINER ROBESON: Okay. Mr. Kagen you 19 may be excused. Ms. Harris, how many more witnesses to you 20 have on the rebuttal part? 21 MS. HARRIS: Five. 22 HEARING EXAMINER ROBESON: Okay. Well, it looks 23 like we're going not have to use tomorrow as well, unless -- 24 how long do you think you're going to take because I do hear 25 there's people want -- opposition, people in opposition want</p>	<p style="text-align: right;">100</p> <p>1 HEARING EXAMINER ROBESON: Okay. Mr. Swihart 2 you're still under oath. 3 MR. SWIHART: Yes. Okay. 4 MS. HARRIS: So Mr. Swihart, let's begin with -- 5 and discuss a couple of aspects of the cottage IL units. 6 There was testimony regarding the footprint of IL cottage 7 structures. Can you please clarify what these footprints 8 are? And in order to do that and in order to do that I'm 9 going to full up Exhibit 139 10 MR. SWIHART: Yeah, that's great. Alright so I 11 put together an exhibit to clarify this some more. It's a 12 comparison between so that our footprints with the directly 13 adjacent neighbors. And the cottage units in structures are 14 either duplexes or triplexes. The duplexes on the right and 15 triplexes on the left. And duplexes are approximately 107 16 feet by 74 feet and triplexes approximately 160 feet by 74 17 feet. 18 For the footprint the way I did this is I excluded 19 all exterior areas such as decks and screening porches 20 although I realized after doing this that the county GIS 21 system actually does include covered porches so I missed 22 that. Those will add about 225 square feet per unit to the 23 back of the house. 24 But even so, you can see the general size and 25 structures next to the neighbors so while it's not equivalent</p>

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26 (101 to 104)

<p>101</p> <p>1 it's generally compatible. There are many homes in the area 2 that are much larger than this as well.</p> <p>3 MS. HARRIS: And Mr. Magan testified that each IL 4 cottage unit would contained approximately 6,000 square feet 5 of area and noted that some of the homes in the area are only 6 2,500 to 3,000 square feet. What is the gross floor area of 7 the cottage ILs?</p> <p>8 MR. SWIHART: Well, yeah, I did an exhibit for 9 that as well. If you could pull up the floor plans it would 10 have some more dimensions on them.</p> <p>11 MS. HARRIS: This is Exhibit 140.</p> <p>12 MR. SWIHART: Okay. So the total square footage 13 is 3,300 square feet. These are -- just from my notes, these 14 are -- it's the identical floor plan for all of the units in 15 the project. We have a different look to each unit, but the 16 inside is the same. So it's very -- and 3,300 square feet 17 it's very comparable to the 2,500 to 3,000 noted by Mr. 18 Magan. Although I would say that while the older homes in 19 this neighborhood are on the range of 2,500 to 3,000 the 20 newer homes are much larger, many in the 8,000 to 9,000 21 square foot range.</p> <p>22 The cottage units will include the same space that 23 you expect to see in any high-end independent living unit. 24 In this case we have an open floor plan that includes the 25 spaces that you would expect to see, such as kitchen, dining</p>	<p>103</p> <p>1 rec room we could accommodate that as well as an option.</p> <p>2 MS. HARRIS: Thank you. Then moving on to the 3 elevations in response to testimony you prepared elevations 4 of the cottage units and I'm going to pull that up and then if 5 you could walk the hearing examiner through that, that would 6 be helpful. This is Exhibit 141.</p> <p>7 MR. SWIHART: Okay. So as I mentioned in my 8 last -- these are representative images of one of the units. 9 And we actually have, according to my testimony we actually 10 have five possible elevations for the triplex and two for the 11 duplex. And then, finally, several color palettes for -- 12 we'll have like, muted earth tones. It will have -- the 13 whole community will have a lots of variety to it. So this 14 is just one example to kind of show some dimensions and those 15 things.</p> <p>16 In front of you you also have some dimensions 17 illustrating the building heights. I don't know if you can 18 zoom in on that, Ms. Harris? Maybe on the right there. So 19 this -- so based on the zoning code the way that you measure 20 height is to the middle of the gable. Just a second here. I 21 lost my train of thought here. Oh yeah, based on the zoning 22 code, you measure to the middle point of the gable. The 23 elevations show the triplex to be just under 32 feet tall and 24 the duplex to be at 26 feet. But per the zoning code the way 25 you also measure it, it's based on the grade calculated as</p>
<p>102</p> <p>1 room, living room, master bedroom and bath, power room and a 2 separate library or flex office space on the first floor.</p> <p>3 The second floor there are two bedrooms for 4 visiting relatives and guests. It is not uncommon for 5 independent living units in projects -- in other projects to 6 include two and three bedroom units as well. Additionally, 7 the size of the independent living cottages is appropriate to 8 meet the market. This particular market we are serving which 9 is anticipated -- the anticipated independent living occupant 10 has downsized from a much larger Potomac home. These homes 11 can be as much as 9,000 square feet or more on multiple 12 floors. So at 3,300 square feet the cottage, the independent 13 living cottage would be a comfortable downsize.</p> <p>14 We found this market segment wants and typically 15 need the first floor master bedroom setup and plenty of open 16 space. With a shared bath and a small lounge area, the 17 upstairs provides appropriate accommodations for additional 18 family members and out of town guests. There will also be an 19 unfinished cellar that is directly under the main level floor 20 plan. And based on our experience about 90 percent of the 21 buyers are going not want that. We expect it will be used 22 mostly for storage because they're downsizing, but some of 23 the other uses could be use it as a play space for visiting 24 grandkids and for exercise or whatever hobbies that they're 25 used to doing. If buyers have a specific request such as a</p>	<p>104</p> <p>1 the average grade where the building is facing South Glen 2 Road. So you know, that makes it easy if you're facing South 3 Glen Road, but we have some other orientations and some lot 4 specific grading that changed that elevation a little bit, 5 the height of it just a little bit.</p> <p>6 For that reason and to be conservative we stated 7 in the application that the cottage units will not exceed 40 8 feet on the conditional use plan. But most of the buildings 9 are much closer to 32 feet or even less in some cases.</p> <p>10 Now, the side and rear elevations basically have 11 the same style as the front. We did continue the water table 12 around the end since those areas are also going to be fairly 13 visible. And at the rear each cottage -- let me find the 14 rear. Yeah, there we go. Each cottage has two dormers, a 15 screened in porch and an uncovered deck. And that's screened 16 in porch is the part that I didn't show on the footprint 17 right there, by the way.</p> <p>18 So the side elevation is showing, you can see 19 there's a light fixture on either side of the garage door and 20 in the back here if you're looking at -- that's -- there's 21 also a sconce at each deck. So you kind of have to look 22 carefully but on the sides you'll see -- we just have a light 23 fixture on each side of the garage door so that they can see 24 when they come in.</p> <p>25 Not showing, there's also a light in the recessed</p>

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27 (105 to 108)

<p>105</p> <p>1 entryway at the front of the unit. That's just up in the 2 ceiling. You know, you won't see that. And in addition to 3 stone the exterior will be clad with an insulated composite 4 system with a cementitious coating which is similar to stucco I 5 appearance. And the low maintenance composite trim and 6 decking also will be used.</p> <p>7 MS. HARRIS: And I would note for the hearing 8 examiner, we're going to go through lighting in more detail. 9 I know you had some questions about that. But that is a 10 little later in Mr. Swihart's testimony and then also in Mr. 11 Park.</p> <p>12 Moving on to the Lodge for a moment. Can you 13 clarify what the Lodge size is and breakdown the uses within 14 it?</p> <p>15 MR. SWIHART: Sure. The Lodge is just under 16 125,000 square feet, 124,824 square feet to be exact. It 17 will have 45,096 square feet of independent living use and 18 76,106 square feet of assisted living and memory care use.</p> <p>19 In order to provide services that are needed in 20 this type of project we have to achieve a certain economy of 21 scale. The building is (indiscernible) to serve all three 22 resident types and still be economically viable. By 23 comparison, Brandywine, which is all assisted living and 24 memory care is 135,000 square feet and Spectrum will be 25 152,655 square feet.</p>	<p>107</p> <p>1 Now, if you could just move over to the gym and 2 I'll go through those fixtures. Zoom in maybe on the 3 entryway of the gym, kind of. Yeah, that's good. That's 4 good. So the D is a recessed downlight just like the 5 entryway to the -- its' essentially the same light as the 6 entryway on the cottages. I should note this so that nobody 7 gets confused. The A fixtures are the pole lights and Danny 8 Park is going to talk about those. So those are more sight 9 lighting. The B fixture is another sconce just like on the 10 rear deck of the cottages.</p> <p>11 And so that's for the -- the B fixtures serve as 12 sort of a rear sort of emergency exit door. And the, if you 13 go up to the service area, actually zoom back in there. Now, 14 we're going on to the main lodge. You've got another one of 15 those B fixture, that's another sort of essentially a hinged 16 door that goes in. And if you zoom down just a little bit 17 you'll see some F fixtures right there. These actually don't 18 typically show up on a photometric plan because what they are 19 is they're fixtures in the ceiling such as a recessed deck 20 areas that we have serving the units.</p> <p>21 So if you could zoom out just a little bit more, 22 Pat, I want to see kind of this whole side of the building. 23 So the H fixtures are very similar to that. Those are also 24 in the ceilings and that's just a bigger covered patio space 25 or covered deck similar to the unit decks but just it's much</p>
<p>106</p> <p>1 MS. HARRIS: Thank you. Now, moving onto lighting 2 and Mr. Park is going to address the lighting, the site 3 lighting, but using the photometric which I'll pull up in a 4 moment, can you please identify for the record what the 5 exterior building lighting -- which exterior building 6 lighting was included in the photometric?</p> <p>7 MR. SWIHART: Yeah. We included all the exterior 8 lighting was in this photometric. I mean, I'm just going to 9 speak about the building mounted lighting and as you stated 10 Dan Park will get into the site lighting. So if we could 11 start with the cottages I'll just go through sort of the 12 locations and the fixtures so you get bearings and we'll get 13 into some detail later.</p> <p>14 So all these cottages are identical in lighting 15 setups. So on the front the C fixtures are what I described 16 on either side of the -- they're sconces that are on either 17 side of the garage door. On the B in the back is a 18 completely shielded fixture. These are the ones obviously 19 closer to the property lines so we wanted to make sure that 20 there were no way to see a light bulb or anything like that 21 so it's completely shielded sconce fixture on the back for 22 the deck.</p> <p>23 And then the D fixture is the ones up in the 24 ceiling of the recessed entryway, and again those are kind of 25 concealed from the neighbors just by their orientation.</p>	<p>108</p> <p>1 bigger and for communal use. And those are also recessed in 2 the ceiling. Their orientation is similar to any of the 3 lighting fixtures in the ceiling inside the building. Just 4 they happen to be outside the building. So we decided to 5 show --</p> <p>6 At the back you can see the D fixtures again. I 7 didn't mention this -- or I didn't talk much about the deck 8 last time and you know, it's important to note the deck is 9 significantly lower than the adjacent -- so the --</p> <p>10 HEARING EXAMINER ROBESON: Can you just -- I hear 11 somebody talking and I wanted to hear what he was saying. 12 Did you say the deck is significant lower? Is that what you 13 said?</p> <p>14 MR. SWIHART: Yeah. That's right. It's lower 15 than the property lines because the deck serves the main 16 level of the Lodge and that's down low. Essentially, 16 feet 17 below the nearest property line. So you can find the ones 18 closest to that left side there. The fixture's actually 16 19 feet below -- or the deck is actually 16 feet below that 20 property line. And it's 85 feet away from that property 21 line.</p> <p>22 So -- and also because -- especially because -- 23 especially because of the type of fixture it is it's fully 24 shielded which I'll show you in a minute. There's just no 25 way to see the source of light from there. You'll be able to</p>

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<p>109</p> <p>1 see some light emanating from it, but that's it.</p> <p>2 I think if we go back into the courtyard area?</p> <p>3 Just zoom in a little bit there. Again the F fixtures are</p> <p>4 some -- at the property -- the E fixture are a recessed light</p> <p>5 that goes into the ceiling of the porte-cochere on each side</p> <p>6 so if you enter in you're going to drive under this roof</p> <p>7 structure and that will light up your path. And then, the G</p> <p>8 fixtures are just really more of a decorative fixture. It's</p> <p>9 actually the same line of fixtures that we have on the</p> <p>10 cottage garages but it's bigger even though the lighting is</p> <p>11 actually the same -- it's the same lamp inside of it.</p> <p>12 And I believe that's all of them. And the other</p> <p>13 ones Danny Park can talk to those, the site lighting fixtures</p> <p>14 for landscape elements out there. So I guess I won't get</p> <p>15 into those.</p> <p>16 MS. HARRIS: And are there specifications with</p> <p>17 respect to these -- this lighting and if so can you go</p> <p>18 through those?</p> <p>19 MR. SWIHART: Yeah, sure. Can you pull up the</p> <p>20 spec sheet?</p> <p>21 MS. HARRIS: Is this --</p> <p>22 MR. SWIHART: Yeah, I need you to please zoom in</p> <p>23 on the A fixture there on the upper left. Well, yeah, I</p> <p>24 want -- I want to discuss that one, but we'll start with --</p> <p>25 the A fixture is the pole light that Daniel's going to get</p>	<p>111</p> <p>1 But because that element is up in the top you won't get a</p> <p>2 bright spot of light because you're not going to be looking</p> <p>3 for you to see the actual element, it will just be a</p> <p>4 reflection on the frosted glazing.</p> <p>5 And then, the last one on the cottages is the D</p> <p>6 fixture. And I mean, it's fairly standard. You know, it's a</p> <p>7 recessed can. It only produces 500 lumens of light which is</p> <p>8 the measure of how much light emanates from the lamp. And</p> <p>9 this, to give a sense, we met with a lighting consultant who</p> <p>10 sort of helped us pick out all these to make sure that given</p> <p>11 the concerns from the neighbors and everything that these</p> <p>12 were going to be low glare fixtures and low impact. He</p> <p>13 advised us to stick with 1000 lumens or less at the cottages.</p> <p>14 This would be appropriate for, like a residential, rule</p> <p>15 neighborhood. This one happens to be 500 lumens. As a point</p> <p>16 of comparison, if you go into a typical hotel entry, after</p> <p>17 you enter your door into your room there is a light fixture</p> <p>18 right there. That is typically, according to our lighting</p> <p>19 designer is typically about 800 to 1000 lumens. So that will</p> <p>20 give us a reference point of what we're talking about.</p> <p>21 Let's see. That's all the fixtures at the</p> <p>22 cottages.</p> <p>23 MS. HARRIS: How about -- I'm sorry. How about</p> <p>24 the Lodge lighting?</p> <p>25 MR. SWIHART: Yeah, right. So if you go to E</p>
<p>110</p> <p>1 into. But you've got a B fixture, if we could start there.</p> <p>2 That's fine, there it is. Yeah.</p> <p>3 So that's the fixture we're proposing for the rear</p> <p>4 deck at the cottages. And one thing I should mention all</p> <p>5 these fixtures are -- they're correct for -- they have the</p> <p>6 bases already design and they'll set the requirements for the</p> <p>7 lighting, the type of lighting we need, the intensity of</p> <p>8 light, the way the light's shielded, but there is a</p> <p>9 possibility that this light is used just for aesthetic</p> <p>10 improvements during the construction documents phase. They</p> <p>11 could be revised to a slightly different fixture. But they</p> <p>12 should have the same characteristics of lighting. Just a</p> <p>13 caveat there.</p> <p>14 But you can see it's fully shielded, the light</p> <p>15 is -- it's actually an LED fixture and typically on those LED</p> <p>16 fixtures and especially in this case the lamp element is</p> <p>17 actually way up in the top part of the fixture. So you can</p> <p>18 imagine that that cuts off the path of light coming out of</p> <p>19 the fixture and limits it pretty much just to the deck area.</p> <p>20 So if you can scan over to C. That is -- yeah.</p> <p>21 That's the light that's proposed for either side of the</p> <p>22 garage doors. It is a -- again, it's an LED fixture with the</p> <p>23 element up in the sort of the solid part at the top. It has</p> <p>24 a - and that -- it has a frosted globe on it that further</p> <p>25 cuts down any sort of glare. It will just be a nice glow.</p>	<p>112</p> <p>1 fixture that's the light -- yeah, right there. That's</p> <p>2 another recessed can light. It's going to go in the ceiling</p> <p>3 at the porte-cocheres. In this case, at the Lodge the</p> <p>4 lighting designer said 1500 lumens would be appropriate. And</p> <p>5 this is about 1500 lumens. There's going to be four of</p> <p>6 them -- no more than four of them there. And you will see</p> <p>7 the light source because it's up in that ceiling and then the</p> <p>8 lamp element itself is actually recessed in the fixture.</p> <p>9 So -- and also, frankly, just from the orientation of the</p> <p>10 whole building you're just never going to see the source of</p> <p>11 light. You'll see the reflection on the ground and, you</p> <p>12 know, maybe the columns that are next to it. But that's how</p> <p>13 you'll notice the light.</p> <p>14 And then, if you go to the F, those are the little</p> <p>15 downlights that are going to be in the balcony ceilings.</p> <p>16 These are only 550 lumens. Again, it's a recessed light so</p> <p>17 you're not going to be able to see the source, it's up in the</p> <p>18 ceiling and it shouldn't be an issue. And then the G, as I</p> <p>19 mentioned, -- right there. That's the Jeep fixture, it's the</p> <p>20 same light as you saw for the cottages at the garages. This</p> <p>21 is the entrance, a decorative entrance light next to the</p> <p>22 front entry doors to the Lodge. And it's got the same</p> <p>23 characteristics. It's got a frosted glass globe, it's got</p> <p>24 the recessed LED lamp up in the top of it so you don't see</p> <p>25 the actual source of light. And its output is 1000 lumens.</p>

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<p>113</p> <p>1 Let's see. And then lastly we should get to the H 2 fixture, which is inside the covered terrace areas. Yeah so 3 the H fixture is similar to the balconies. It's slightly -- 4 it's a slightly bigger fixture but has a frosted diffuser so 5 these are in the ceilings of the covered shared balconies. 6 MS. HARRIS: That's like -- 7 MR. SWIHART: On the upper floors. 8 MS. HARRIS: Is that H? 9 MR. SWIHART: Yeah, it should be H. Are we on? 10 MS. HARRIS: Yeah. But I'm not sure that I'm 11 showing H. 12 MR. SWIHART: It looks like H. 13 MS. HARRIS: Oh it is, sorry. 14 MR. SWIHART: That's it. Yeah. 15 MS. HARRIS: Okay. 16 MR. SWIHART: And that is it. Yeah, so it's just 17 another can. It's like a can, it's a narrower sort of light 18 but it's got a frosted glass so you won't see the impact of 19 the actual source. So that's kind of all the fixtures. I 20 would note that the terraces, patios, and balconies are 21 unlikely to get used much when it's cold out, especially at 22 night. So that, you know, when the trees are bare of leaves 23 there's just not going to be as much light out there. And 24 that should minimize the problem. At other times during the 25 summer and spring and most of the fall foliage on the trees</p>	<p>115</p> <p>1 MR. BROWN: As I understand it, Mr. Swihart, this 2 is intended to be an apples to apples comparison of building 3 footprints as between the Heritage Potomac cottage units and 4 neighboring homes; is that right? 5 MR. SWIHART: Yeah, and as I mentioned it's a 6 little bit off because I forgot to include the screened 7 porches. 8 MR. BROWN: I'd like to go now at Exhibit 170, 9 which is labeled clarifications of this exhibit. 10 HEARING EXAMINER ROBESON: Is that your exhibit, 11 Mr. Brown? 12 MR. BROWN: Yes. Yes, it is. 13 MS. HARRIS: Do you want me to put that up, Ms. 14 Robeson or? 15 HEARING EXAMINER ROBESON: I can do it. 16 MS. HARRIS: Okay. 17 MR. BROWN: I'm sorry. I thought these were all 18 available 19 HEARING EXAMINER ROBESON: They're on the website. 20 I just didn't have them up because Ms. Harris was sharing 21 them. 170? I see it. 22 MR. BROWN: That's it. Do you disagree with the 23 clarifications made on this exhibit, Mr. Swihart? 24 MR. SWIHART: No. They're accurate. The decks 25 aren't included though on either one of these.</p>
<p>114</p> <p>1 will significantly reduce any impact from these lights. 2 So by incorporating the recommendations from our 3 lighting consultant we managed to eliminate all the glare 4 issues throughout the project. We did find out later we 5 added some vegetative screens but it's not really needed for 6 glare control. That's like an extra measure, and our light 7 levels are also fairly low to begin with. But with the 8 vegetative screening yeah, it would reduce any actual light 9 as you know, we don't have any glare issues but it would also 10 cut down just the amount of light that reaches the 11 neighboring properties. So lighting shouldn't be an issue. 12 MS. HARRIS: And I will note again, Mr. Park will 13 walk through the actual photometric which incorporates all 14 the lighting. So with that, I have no other questions for 15 Mr. Swihart. 16 HEARING EXAMINER ROBESON: Okay. Mr. Brown, do 17 you have questions? 18 MR. BROWN: Yes, a few. Mr. Swihart, I want to 19 direct your attention first to Exhibit 139. 20 MR. SWIHART: Okay. Just a moment. 21 MS. HARRIS: So just to be clear, Mr. Brown, is 22 that our exhibit or your exhibit? 23 MR. BROWN: That's your 139. 24 MS. HARRIS: Oh ours. So it's 139. Okay. It's 25 on the screen if that's helpful.</p>	<p>116</p> <p>1 MR. BROWN: Did you do the calculations to show 2 what the difference was between your apples to apples and 3 ours? 4 MR. BROWN: I did. It's 225 -- hold on a second 5 and I'll get it in front of me. So once you add in the 6 porches, the screened porches, the duplex footprint was 5800 7 square feet and the triplex exist 8750 square feet. So let's 8 see, so comparing the 10 -- yeah, I've got them right here. 9 So comparing to 10609 South Glen our -- that footprint is 10 7520 square feet, ours is 8750. 10821 Edison, that footprint 11 is 6834 square feet and ours is 8750. 10811 Edison is 6782 12 square feet without adding any front porch or anything that 13 was missed on your diagram, versus the 5800 at our duplex. 14 And then 10921 Edison is 4592 square feet and our duplex is 15 5800. 16 MR. BROWN: Now, let's go to -- well, let me ask 17 this question. You did not try to do an apples to apples 18 comparison of the building heights of the cottage units to 19 surrounding neighborhood properties, did you? 20 MR. SWIHART: I think our land planner did that, 21 but no I don't have that in front of me. I know that we are 22 comparable or less to a typical two-story house in the 23 neighborhood. 24 MR. BROWN: Let's go to Exhibit 140. That's your 25 exhibit.</p>

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<p>117</p> <p>1 MR. SWIHART: Is that the one --</p> <p>2 HEARING EXAMINER ROBESON: You should be seeing</p> <p>3 it.</p> <p>4 MR. BROWN: Exhibit 140 is the floor plan.</p> <p>5 HEARING EXAMINER ROBESON: Oh.</p> <p>6 MR. BROWN: I believe.</p> <p>7 MR. SWIHART: Yeah, that's what he said.</p> <p>8 MR. BROWN: My question here is you labeled the</p> <p>9 areas in red, conditioned area. What is the rationale --</p> <p>10 were looking at something called conditioned area?</p> <p>11 MR. SWIHART: When because that's how it's</p> <p>12 measured when you're selling a house. And when you go to the</p> <p>13 listing they refer to the square footage of a house, they</p> <p>14 don't include basements, they don't include any exterior</p> <p>15 space such as screened porches. They don't include the</p> <p>16 garage. So that's why we did it that way.</p> <p>17 MR. BROWN: But the actual -- the effect of the</p> <p>18 size and the bulk of the property -- of the structure,</p> <p>19 doesn't depend on whether or not part of it is or is not</p> <p>20 conditioned, does it?</p> <p>21 MR. SWIHART: Well, this is meant to be a</p> <p>22 comparison to the neighbor houses so to be apples to apples</p> <p>23 we had to do it this way.</p> <p>24 MR. BROWN: But the neighbor houses also have</p> <p>25 garages and what is this area on the second floor above the</p>	<p>119</p> <p>1 back -- are there questions from anyone -- I see Ms. Baker's</p> <p>2 hand up.</p> <p>3 MS. BAKER: Yes, my hand is up. I had two</p> <p>4 questions. One is the -- it may be similar to Mr. Brown's</p> <p>5 point and unfortunately, I don't know that I'm going to be</p> <p>6 able to participate at a later point in the hearing so I</p> <p>7 would ask that the question be considered.</p> <p>8 The comparison of this unit to residential houses</p> <p>9 in the surrounding area you suggested that there are many of</p> <p>10 houses that are as large as this unit, but you did not</p> <p>11 suggest that the houses in the surrounding area are</p> <p>12 multifamily houses; is that correct?</p> <p>13 MR. SWIHART: Right.</p> <p>14 MS. BAKER: So are these units multifamily houses?</p> <p>15 MR. SWIHART: No. I mean, each unit is an</p> <p>16 individual family dwelling.</p> <p>17 MS. BAKER: Right. But within the square footage</p> <p>18 that your siding there's multiple families that can be</p> <p>19 unrelated?</p> <p>20 MR. SWIHART: No.</p> <p>21 MS. BAKER: Are they -- I thought you said they</p> <p>22 were triplex and duplex?</p> <p>23 HEARING EXAMINER ROBESON: I think she's talking</p> <p>24 about the entire for a duplex, is that your question?</p> <p>25 MS. BAKER: Yes, you can pay paired a -- okay</p>
<p>118</p> <p>1 garage? That's not in the red area?</p> <p>2 MR. SWIHART: It's an attic.</p> <p>3 MR. BROWN: And what's the headroom space in that</p> <p>4 attic?</p> <p>5 MR. SWIHART: Well, I'd have to guess on that</p> <p>6 because I haven't done the detailed design, but it's going to</p> <p>7 be zero at the eaves up to, I don't know, 10 feet at the</p> <p>8 center, maybe?</p> <p>9 MR. BROWN: Now you also --</p> <p>10 MR. SWIHART: (inaudible) calculation.</p> <p>11 MR. BROWN: You also did not do an apples to</p> <p>12 apples comparison on lot occupancy when you consider the</p> <p>13 ownership lots of the cottage units compared to the record</p> <p>14 lots of BRE to units in the neighborhood, did you?</p> <p>15 MS. HARRIS: Objection. Mr. Swihart did not</p> <p>16 testify to that. I believe you may have your opportunity</p> <p>17 when another witness testifies to lot occupancy.</p> <p>18 HEARING EXAMINER ROBESON: Is there somebody</p> <p>19 that's going to testify to it?</p> <p>20 MS. HARRIS: Yes.</p> <p>21 HEARING EXAMINER ROBESON: Okay. Mr. Brown, we</p> <p>22 will wait.</p> <p>23 MR. BROWN: Okay. I don't want to take up too</p> <p>24 much time, I guess I'm done. Thank you.</p> <p>25 HEARING EXAMINER ROBESON: All right. We're</p>	<p>120</p> <p>1 thank you, Ms. Robeson.</p> <p>2 MR. SWIHART: Right. That's right there triplex</p> <p>3 is so there would be three different families, or if it's a</p> <p>4 duplex, two different families.</p> <p>5 MS. BAKER: So the now 9000 square feet houses and</p> <p>6 that you said were of similar nature to this triplex unit are</p> <p>7 single-family residence, and not appropriate for fry</p> <p>8 families, or three families, unrelated families to be living</p> <p>9 at the same square footage; is that correct?</p> <p>10 MR. SWIHART: Yeah. I mean what we're saying is</p> <p>11 there could be three families living within the size of a</p> <p>12 typical neighborhood.</p> <p>13 MS. BAKER: Right, and the other houses in the</p> <p>14 neighborhood are single-family houses, so have one garage</p> <p>15 unit for example, whereas these will have separate garage</p> <p>16 units?</p> <p>17 MR. SWIHART: That's right.</p> <p>18 MS. BAKER: So many more cars that can fit within</p> <p>19 the garage space than the single-family houses?</p> <p>20 MR. SWIHART: Yeah. If you're comparing a triplex</p> <p>21 to a single-family house there will be three times as many</p> <p>22 garages.</p> <p>23 MS. BAKER: And you also testified that</p> <p>24 there was additional space for other family members to visit</p> <p>25 and for grandchildren to visit and there will be</p>

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<p>121</p> <p>1 additional -- I the expectation is that these are designed 2 for people that will have regular family visits in the 3 ordinary course; is that correct? 4 MR. SWIHART: Yeah, just like every other family 5 would. Yes, that's correct. 6 MS. BAKER: Right. So not a typical sort of 7 assisted living senior unit if you're going to have multiple 8 visits from family members regularly; is that -- 9 MR. SWIHART: Well, these are the independent 10 living cottages that were talking about. 11 MS. BAKER: Right. 12 MR. SWIHART: So that's not assisted living or 13 memory. 14 MS. BAKER: Okay. 15 MS. HARRIS: And I'm going to object to the 16 characterization. I don't think the witness ever said that 17 other family members would be visiting regularly, that was a 18 characterization that Ms. Baker applied. 19 MS. BAKER: Okay. 20 HEARING EXAMINER ROBESON: Well, he said that the 21 three bedrooms upstairs were for visitors and guests that 22 may -- 23 MS. HARRIS: That is correct. That's correct. 24 MS. BAKER: And that's what I was addressing. 25 That's the assumption that's being made in the design of</p>	<p>123</p> <p>1 MR. SWIHART: No, I just looked at building 2 mounted lighting. 3 MS. BAKER: Do you think that it's a significant 4 increase compared to two neighborhood streets and that 5 actually line this property? Based on the housing that you 6 observed in the neighborhood? 7 MR. SWIHART: Well, there are more units. I 8 really know that. So yeah. 9 MS. BAKER: And each unit has capacity for six 10 garages in each of the triplex units, plus the parking for 11 the commercial high rise facility where you likewise have 12 staff, resident said that likely have cars, or at least 13 family members and others at visiting, correct? 14 MR. SWIHART: I think those are the inherent 15 characteristics of this type of project. 16 MS. BAKER: Okay. And where is the measurement of 17 the light from all those sources considered? Not just the 18 outdoor lighting and the fact that it's down facing because 19 none of those other additional lighting is down facing. 20 MR. SWIHART: Which additional lighting are you 21 talking about, the cars? 22 MS. BAKER: Headlights and the windows from the 23 actual residence and the high rise facility. They obviously 24 will have lighting that transmits through the -- I mean, I 25 can see my neighbors lighting I can see a headlight on the</p>
<p>122</p> <p>1 these units is that there will, in fact need to be space for 2 family members to visit and spend the night. That's at the 3 assumption. I'm assuming in the architectural design of this 4 unit. 5 MR. SWIHART: Yeah, and it's two bedrooms 6 upstairs. Yeah, that's right. 7 MS. BAKER: Okay. In the lighting plan you 8 addressed, it appeared to me, the outdoor lighting. I don't 9 know who addresses the lighting interior lighting that would 10 be emitting from the high rise and from the units 11 collectively? Is that you, is that someone else? 12 MR. SWIHART: Well, I don't think it's usually a 13 requirement to get into that at this stage. But yeah, it's 14 going to be like any other building. The glass is going to 15 be sort of a lower visible light transmission and that makes 16 a difference. But that cuts down on glare, so because of the 17 current energy codes you have to tint the glass to some 18 degree so that's going to cut down. Like a clear glass I 19 think is 85 percent transmissible light and these will 20 probably be around 45 percent. 21 MS. BAKER: And did you take into consideration in 22 your lighting plan headlights from cars from the multiple 23 units and the different types of vehicles that will be 24 parking on the premises, and the number of cars that will be 25 parking on the premises? Coming and going at nighttime?</p>	<p>124</p> <p>1 property now. When the police -- the police regularly sit on 2 this property and monitor the activity on the property 3 because there's often cars that are back there that shouldn't 4 be back there. I can see as soon as they pull into the 5 development that the police are there. So my assumption is 6 that if there's 150 cars I'm going to see 150 cars headlights 7 on the property. Where is that measurement considered? 8 MR. SWIHART: I've never, ever seen any sort of 9 photometric or anything that calculates that number. So we 10 didn't consider that. 11 MS. BAKER: Okay. 12 MR. SWIHART: You can -- I, you can look at how 13 many cars you think are going to be there. We've gone 14 through the traffic study, and I think it's all sort of the 15 same subject matter. 16 MS. BAKER: Well, it's not. I mean, something 17 because there's nothing back there right now that -- 18 HEARING EXAMINER ROBESON: Okay. You 19 (inaudible) -- 20 MS. BAKER: I mean, it's 100 headlights. 21 HEARING EXAMINER ROBESON: That's a disagreement. 22 MS. BAKER: Yeah. Okay. 23 Thank you. You answered my questions. 24 MR. SWIHART: Sure. Thanks. 25 HEARING EXAMINER ROBESON: Okay. Anyone else?</p>

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<p>125</p> <p>1 Ms. Harris, do you have redirect?</p> <p>2 MS. HARRIS: Just one question for Mr. Swihart.</p> <p>3 Are you familiar with the Fox Hill condominium independent</p> <p>4 living units on River Road?</p> <p>5 MR. SWIHART: Vaguely. I mean, let's see if I got</p> <p>6 some notes on it.</p> <p>7 Not off the top of my head, but I think I did</p> <p>8 receive some --</p> <p>9 MS. HARRIS: Do you -- are you aware that they</p> <p>10 have three bedroom independent living senior units in that</p> <p>11 facility?</p> <p>12 MR. SWIHART: Yeah. Actually I did look at those.</p> <p>13 I've got my notes here but so Fox Hill, yeah, it had one to</p> <p>14 three bedrooms plus den. There were typically 841 to 1941</p> <p>15 square feet. Ingleside, is another project, that had --</p> <p>16 that's in King Farm, it had one, two bedroom plus den. There</p> <p>17 is some projects in Georgia, Alpharetta, also has one or two</p> <p>18 bedrooms. I mean, these -- yeah. So many of these projects</p> <p>19 have multiple bedrooms.</p> <p>20 MS. HARRIS: Thank you. No other questions</p> <p>21 HEARING EXAMINER ROBESON: Okay. Seeing -- Ms.</p> <p>22 Baker, do you mind putting your hand down? Thank you.</p> <p>23 MS. BAKER: Oh, sorry.</p> <p>24 HEARING EXAMINER ROBESON: All right. Ms. Harris,</p> <p>25 call your next -- Mr. Swihart, you can be excused.</p>	<p>127</p> <p>1 Potomac subregion master plan?</p> <p>2 MS. PREKAJSKI: Yes, it is. And excuse me. Page</p> <p>3 VII of the master plan reads, that master plans generally</p> <p>4 look ahead about 20 years from the date of adoption, although</p> <p>5 they are intended to be updated and revised every 10 years.</p> <p>6 It is recognized that circumstances will change following</p> <p>7 adoption of a plan and that the specifics of a master plan</p> <p>8 may become less relevant over time. That's from the master</p> <p>9 plan.</p> <p>10 MS. HARRIS: Thank you. And in your opinion, is</p> <p>11 that language relevant with respect to the master plan</p> <p>12 recommendation on page 36, that the region would need to</p> <p>13 accommodate 750 senior housing units by 2020 to meet the</p> <p>14 needs of the subregion's aging population?</p> <p>15 MS. PREKAJSKI: No, I don't believe that that's</p> <p>16 relevant with respect to that.</p> <p>17 MS. HARRIS: And why is that?</p> <p>18 MS. PREKAJSKI: In some situations, the master</p> <p>19 plan recommendations can be outdated because of development,</p> <p>20 infrastructure, technology changes, changes in building</p> <p>21 practices and population demographics. More current county</p> <p>22 policies would take precedent over the master plan</p> <p>23 recommendations. County policy often changes more quickly</p> <p>24 than the master plans. And then when it does, the master</p> <p>25 plan catches up in the following edition of the master plan.</p>
<p>126</p> <p>1 MR. SWIHART: Thank you.</p> <p>2 HEARING EXAMINER ROBESON: Ms. Harris, please call</p> <p>3 your next witness.</p> <p>4 MS. HARRIS: That would be Ms. Jane Prekajski.</p> <p>5 HEARING EXAMINER ROBESON: Okay. Ms. Prekajski,</p> <p>6 please -- you are still under oath.</p> <p>7 MS. HARRIS: And Ms. Robison, I think you're still</p> <p>8 sharing your screen, which is sort of distorting the view.</p> <p>9 HEARING EXAMINER ROBESON: How's that?</p> <p>10 MS. HARRIS: Perfect, thank you.</p> <p>11 HEARING EXAMINER ROBESON: Okay, go ahead Ms.</p> <p>12 Harris.</p> <p>13 MS. HARRIS: On one moment. I just want to get</p> <p>14 myself organized here. Okay. Ms. Prekajski -- and first of</p> <p>15 all, can you pronounce your name again for my sake?</p> <p>16 MS. PREKAJSKI: For your sake and for the record</p> <p>17 it's Prekajski.</p> <p>18 MS. HARRIS: Prekajski, thank you. My apologies.</p> <p>19 After two years you would think I would know that. Are you</p> <p>20 aware of any language -- are you aware of language in any of</p> <p>21 the county master plans that acknowledges that under certain</p> <p>22 circumstances master plan recommendations may be less</p> <p>23 relevant over time?</p> <p>24 MS. PREKAJSKI: Yes.</p> <p>25 MS. HARRIS: And is such language contained in the</p>	<p>128</p> <p>1 But this language exists in the master plan in order to allow</p> <p>2 that flexibility to be applied.</p> <p>3 MS. HARRIS: And do you have an example of where</p> <p>4 you may have seen that?</p> <p>5 MS. PREKAJSKI: Yes. For example, the height</p> <p>6 restrictions in Bethesda, the 1994 sector plan contained a</p> <p>7 height chart and assigned specific site limitations to</p> <p>8 different areas, but then as the county embraced smart</p> <p>9 growth, it recognized that there was a housing shortage and</p> <p>10 wanted to encourage more housing, the language indicating</p> <p>11 that the recommendations are less relevant was relied upon to</p> <p>12 not require strict compliance with the height restrictions.</p> <p>13 And then subsequently in the 2014 zoning ordinance, they</p> <p>14 enacted zones that allowed for more flexibility.</p> <p>15 MS. HARRIS: And why, in your opinion, is that</p> <p>16 language not relevant here as it relates to the need for</p> <p>17 senior housing?</p> <p>18 MS. PREKAJSKI: Two reasons, policy and data. In</p> <p>19 terms of policy, I would actually say that the council's</p> <p>20 policies have expanded on the need for senior housing and</p> <p>21 moved in the direction of supporting an increase in housing</p> <p>22 in the areas throughout the county, even in areas such as the</p> <p>23 subject property, especially for senior living and housing</p> <p>24 and life care facilities. And this is evident in numerous</p> <p>25 county policy documents.</p>

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<p>129</p> <p>1 MS. HARRIS: And can you identify any of those</p> <p>2 documents specifically?</p> <p>3 MS. PREKAJSKI: Yeah, one in particular is the --</p> <p>4 it was a report prepared for Park and Planning entitled,</p> <p>5 meeting the housing needs of older adults in Montgomery</p> <p>6 County. And the Montgomery County planning department, the</p> <p>7 Department of Finance, the Department of Health and Human</p> <p>8 Services, and the Department of Housing and Community Affairs</p> <p>9 all participated in the committee on aging -- excuse me --</p> <p>10 community -- commission on aging contributed to the report.</p> <p>11 MS. HARRIS: And can you identify in that report</p> <p>12 any specific recommendations as they relate to this issue</p> <p>13 about the need for senior housing?</p> <p>14 MS. PREKAJSKI: Yes, we've submitted these as an</p> <p>15 exhibit, but they identified the need for senior housing is</p> <p>16 growing significantly, that accessible housing options are</p> <p>17 critical for helping older adults age in place. But most</p> <p>18 housing occupied by older adults cannot accommodate mobility</p> <p>19 issues that often come with aging. They identify that the</p> <p>20 county needs --</p> <p>21 HEARING EXAMINER ROBESON: (Inaudible) can I</p> <p>22 interrupt for a second? Why aren't there MPDUs in the</p> <p>23 cottages? Because I've read some of those reports. And</p> <p>24 don't they need moderately priced (inaudible) as well?</p> <p>25 MS. PREKAJSKI: I believe that Ms. Harris</p>	<p>131</p> <p>1 I just mentioned that the county needs to expand its</p> <p>2 resources and its tools to be able to respond to that growing</p> <p>3 need for changing housing demand among older adults. They</p> <p>4 specifically recommend, and this is a quote, to amend the</p> <p>5 county zoning ordinance to allow for more diverse housing</p> <p>6 types in a wider range of residential zones and explore</p> <p>7 alternative approaches to creating a greater mix of housing</p> <p>8 types such as form based codes and zoning overlays. And</p> <p>9 that's quoted from page 12 of that report.</p> <p>10 The county, they -- the report asks that the</p> <p>11 county consider ways to facilitate the development of more</p> <p>12 attached housing through the zoning code. There are larger</p> <p>13 concentrations of residents over 65 in the -- excuse me. Let</p> <p>14 me slow down a little bit. Our large concentrations of</p> <p>15 seniors in -- over 65 in the Potomac subregion. And it's</p> <p>16 noted that most of those older adults want to stay in the</p> <p>17 county.</p> <p>18 They also note that the greatest increases in</p> <p>19 population expected between 2015 and 2040 are in the 74 to</p> <p>20 84 -- 75 to 84-year-old population and the population of 85</p> <p>21 and older which will increase by 122 percent. And this is</p> <p>22 the age group that is most likely to desire this type of</p> <p>23 housing as this project is proposing.</p> <p>24 MS. HARRIS: Thank you. Is there any other</p> <p>25 documentation or policy actions by the county that also</p>
<p>130</p> <p>1 explained that a little bit earlier and that the for sale</p> <p>2 units do not have to provide them on the site, that they can</p> <p>3 pay 3 percent of the sales price of the for-sale unit which</p> <p>4 will go to a housing fund that will go towards providing</p> <p>5 affordable housing throughout the county.</p> <p>6 (Crosstalk)</p> <p>7 MS. HARRIS: If I could clarify --</p> <p>8 HEARING EXAMINER ROBESON: But that's not in</p> <p>9 Potomac, correct?</p> <p>10 MS. PREKAJSKI: No, not necessarily. The housing</p> <p>11 initiative fund can be used -- it could be used in Potomac,</p> <p>12 if that's what your question is. They could build -- the</p> <p>13 county could put that towards building affordable housing for</p> <p>14 seniors in the Potomac subregion.</p> <p>15 MS. HARRIS: And I would just, if I could, clarify</p> <p>16 the law. But it's not that it could -- that they have the</p> <p>17 option of paying the 3 percent. The law requires that in</p> <p>18 those instances. That's how it's going to be addressed with</p> <p>19 the payment of the 3 percent.</p> <p>20 Continuing, Ms. Prekajski, any other relevant</p> <p>21 provisions in the -- that document which was submitted as</p> <p>22 Exhibit 135 that are -- that you want to highlight?</p> <p>23 MS. PREKAJSKI: Yes. So the unmet housing needs</p> <p>24 for seniors, the report noted that the senior's desire to</p> <p>25 downsize into smaller homes, that -- and that the -- I think</p>	<p>132</p> <p>1 support the recommendation about senior housing, the need for</p> <p>2 senior housing in Potomac?</p> <p>3 MS. PREKAJSKI: Yes, along with those</p> <p>4 recommendations, the County Counsel did adopt a zoning text</p> <p>5 amendment that allowed for more types of housing and was</p> <p>6 actually adopted to allow this proposed use. It was adopted</p> <p>7 by the County Counsel unanimously and it was made known to</p> <p>8 the County Counsel that senior living would be proposed on</p> <p>9 this site. And they were very aware of that. They discussed</p> <p>10 it in the committee sessions and the council sessions. And</p> <p>11 they noted that the lifestyle and the demographics are</p> <p>12 changing in this area and that housing types need to respond</p> <p>13 to that.</p> <p>14 So -- excuse me. So ZTA provides for that. They</p> <p>15 provide for different types of housing to address different</p> <p>16 levels need within the single care community. And the older</p> <p>17 population of the baby boom, they noted that the county</p> <p>18 really needs to be ready to address that.</p> <p>19 MS. HARRIS: Okay. So those are the policy</p> <p>20 reasons. But I believe you -- what's the second reason? You</p> <p>21 said there were two reasons --</p> <p>22 MS. PREKAJSKI: Actually. It's -- as the housing</p> <p>23 the report stated, by 2040, 46,000 more seniors between the</p> <p>24 ages of 75 and 84 will be in the area. And the 85 plus group</p> <p>25 will, as I mentioned earlier, will be increased by 122</p>

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<p>133</p> <p>1 percent. So -- and the census tract information that's 2 available supports that notion as well because in 2000, the 3 year 2000, which was two years prior to the master plan, 9.9 4 percent of the population in the subregion was over 65 years 5 of age.</p> <p>6 In 2019, that figure had risen to 19.8 percent. 7 This is a 104 percent increase. And that was in 2019. 8 That's before 2020 even, of their goal. So this data just 9 reflects that current increase in the population and the 10 change in the demographics. And so it would be my conclusion 11 that the master plan language is even more relevant now than 12 it was at the time it was written.</p> <p>13 MS. HARRIS: And can you remind us, where is the 14 subregion in terms of meeting its goal of 750 new senior 15 units?</p> <p>16 MS. PREKAJSKI: Sure. At the time that this was 17 written, they anticipated a need of 750. And only 342 have 18 been developed since then, since that master plan was 19 written.</p> <p>20 MS. HARRIS: And was there a year by which they 21 wanted that 750 to occur, to be developed?</p> <p>22 MS. PREKAJSKI: Yeah, by 2020. And here we are in 23 2022, and we've only got less than half of that. So the need 24 is even greater to address the housing needs of the older 25 population and to be able to age in place in the</p>	<p>135</p> <p>1 even if half of the parcel is unusable for environmental 2 reasons, there is a benefit to keeping that area completely 3 open and concentrating the density on the other half of the 4 parcel. The overall density should be calculated on the 5 whole parcel. It's the concept of clustered zoning.</p> <p>6 To only calculate it based on the developable area 7 and completely disregard the value of the area left open and 8 unbuilt and the benefits that it conveys, it's -- that's -- 9 doesn't -- that doesn't add up. The undeveloped area is 10 often dedicated to parks or to wildlife preservation or 11 scenic views and protection of environmental qualities. So 12 all of that is integral to the overall development and are 13 each important parts of that development.</p> <p>14 And secondly, it's just -- that would go against 15 the -- contrary to what the zoning ordinance says. The 16 zoning ordinance indicates zoning is measured on the gross 17 tract area, not on the net tract area.</p> <p>18 MS. HARRIS: Okay. Well, even though that's your 19 position, did you nonetheless calculate it excluding those 20 environmental areas? And if so, can you reveal what was 21 shown or what you concluded?</p> <p>22 MS. PREKAJSKI: Yes, we did. Given the concern of 23 the neighbors, we thought well, let's look at that. And so 24 we took -- we -- I'm sorry. I'm looking through my figures 25 here. So the property is 30.6 acres in total tract area.</p>
<p>134</p> <p>1 neighborhoods that they grew up in.</p> <p>2 MS. HARRIS: Thank you. Anything else on that 3 before I moved to the next topic?</p> <p>4 MS. PREKAJSKI: Yeah, I would mention that of 5 those that were built since the master plan, only -- that 6 none of them are independent living. There are all assisted 7 living. So this addresses a very different need. Although 8 there is assisted living in this community as well. So if 9 they need to progress to that, they can. But the independent 10 living need just is -- has gone unanswered.</p> <p>11 MS. HARRIS: Thank you. Let's move on to the 12 issue of density. You previously testified that the 13 project's density for the independent living units was 16 14 percent of what was allowed and that the assisted living and 15 memory care unit beds were 10.3 percent of what was allowed. 16 Do I have that correct?</p> <p>17 MS. PREKAJSKI: Yes.</p> <p>18 MS. HARRIS: And then there was testimony from the 19 opponents that those portions of the property that are 20 encumbered with environmental features should not be included 21 in the density calculation. As a land planner, do you agree 22 with this approach?</p> <p>23 MS. PREKAJSKI: No, actually. First of all, 24 density is intended to control the overall -- density of the 25 overall parcel in the development that occurs upon it. So</p>	<p>136</p> <p>1 There are 13.67 acres of the property that are devoted to 2 stream valley buffer and Deadhome (ph.) priority forest 3 priority for us that is located outside of the stream Valley 4 buffer. The remaining buildable area is 16.93 acres. So --</p> <p>5 MS. HARRIS: And what -- so what would the density 6 be based on that 16.93 acres?</p> <p>7 MS. PREKAJSKI: Well, for the zoning ordinance, 8 the maximum independent living density is 15 units per acre. 9 So based on 16.93 acres, 250 independent living units would 10 be allowed. The project is only proposing 74 independent 11 living units. So it's considerably less. That's only 29 12 percent, 29.24 percent of the allowable density. The area 13 that would be required to build 74 units would only be 4.93 14 acres.</p> <p>15 For the assisted living and memory care units, we 16 subtracted out 4.93 acres that would be required for the 17 independent living units, and 12 acres is remaining. The 18 assisted living and memory care requirement is 20 -- 1200 19 square feet per bed, which would allow for 435 beds. Now 20 only 96 beds are proposed. 96 of the 435 allowed equates to 21 22 percent of the allowable density on the remaining portion 22 of the site. The area required for 96 beds is 2.64 acres of 23 land.</p> <p>24 MS. HARRIS: So what would the total land area -- 25 what total land area would be needed to accommodate the</p>

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<p>137</p> <p>1 proposed project?</p> <p>2 MS. PREKAJSKI: A total of 7.67 acres would be</p> <p>3 required to build the number of units that the Applicant is</p> <p>4 proposing. And that's 25 percent of the tract area or 45</p> <p>5 percent of the usable area of 16.93 after you subtract out</p> <p>6 the other stream valley, et cetera.</p> <p>7 MS. HARRIS: Thank you. And then for comparison</p> <p>8 purposes with respect to density and green area, how does</p> <p>9 this project compare to other projects in the vicinity? And</p> <p>10 do you --</p> <p>11 (Technical issues)</p> <p>12 MS. HARRIS: So I believe the witness was</p> <p>13 testifying about the relative green area of the various</p> <p>14 projects.</p> <p>15 MS. PREKAJSKI: Right. So you can see in the</p> <p>16 exhibit that's Heritage Potomac on the top. And then we</p> <p>17 compare that to Brandywine on the left and Spectrum in the</p> <p>18 middle, and Two Artis senior living on the right. So the</p> <p>19 FAR, which is the floor area ratio, which is the ratio of the</p> <p>20 building area to the site area, FAR based on Heritage's 30.6</p> <p>21 acres, was 0.21 FAR and Brandywine is .77 FAR. Spectrum is</p> <p>22 .59 FAR and Artis is .21 FAR just from the exhibits, that</p> <p>23 (inaudible) considerably less than some of the other</p> <p>24 surrounding communities.</p> <p>25 MS. HARRIS: And what about percentage of green</p>	<p>139</p> <p>1 MS. HARRIS: And would you say this is atypical</p> <p>2 for the area? I mean, do you have any sense of how it</p> <p>3 relates to the area?</p> <p>4 MS. PREKAJSKI: We looked at that. And in the</p> <p>5 area in the RA2 zone, there is a wide range of -- and</p> <p>6 sometimes is more, sometimes it's less. The zone requires</p> <p>7 physically a minimum of 70 feet between rear yard to rear of</p> <p>8 the buildings to -- if you take 35 foot rear yard setback</p> <p>9 required on both properties. But certainly within the</p> <p>10 surrounding area and in close proximity to the property there</p> <p>11 are examples of comparable back of house to back of house</p> <p>12 differences between the homes. The closest setback at</p> <p>13 Heritage to another off-site structure is 154 feet. And just</p> <p>14 in the proximity of the property, at a quick glance we</p> <p>15 identified three or four other examples where the rear to</p> <p>16 rear setback is less than 154 feet. And for the record, I'll</p> <p>17 just identify them. They are 10817 South Glen Road as it</p> <p>18 backs to 10825 South Glen Road. 10901 South Glen Road</p> <p>19 backing to 11001 South Glen Road. And 10835 South Glen Road</p> <p>20 to 10837 South Glen Road as well as 10210 Norton Road to</p> <p>21 10610 Barnwood Lane. And those are just in the immediate</p> <p>22 vicinity. We didn't go beyond that.</p> <p>23 HEARING EXAMINER ROBESON: What was the setbacks</p> <p>24 on those? What were you comparing?</p> <p>25 MS. PREKAJSKI: So those are some properties that</p>
<p>138</p> <p>1 area?</p> <p>2 MS. PREKAJSKI: Percentage of green area, so</p> <p>3 Heritage Potomac has 76 percent green area whereas Brandywine</p> <p>4 has 53 percent, Spectrum 65 percent, and Artis 77 percent.</p> <p>5 So we are one of the top in terms of the area of green</p> <p>6 dedicated throughout the site.</p> <p>7 MS. HARRIS: And moving on to setbacks -- let me</p> <p>8 take that -- let me take this off the screen, I guess. You</p> <p>9 previously testified what was required and provided -- I'm</p> <p>10 sorry. You previously testified what the required and what</p> <p>11 the provided setbacks were for the independent living</p> <p>12 cottages along western property line. Can you briefly remind</p> <p>13 us what the testimony was?</p> <p>14 MS. PREKAJSKI: Yes. The required setback on that</p> <p>15 property line is 20 feet. And the setbacks provided range</p> <p>16 from 31 to 36 feet, which is 50 percent more than what is</p> <p>17 required. I know that the required setbacks are the setbacks</p> <p>18 that the Council just adopted in approving that legislation</p> <p>19 for the senior care community.</p> <p>20 MS. HARRIS: And what's the distance if you</p> <p>21 measured it from structure to structure? So the structure on</p> <p>22 the subject versus the structures off-site on adjacent lots.</p> <p>23 MS. PREKAJSKI: Typically it will -- on the</p> <p>24 Heritage Gardens -- or excuse me -- Heritage Potomac project,</p> <p>25 it ranges from approximately 154 feet to more than 400 feet.</p>	<p>140</p> <p>1 have even less setback between the back of the house and --</p> <p>2 like for instance, comparing the backs of the triplexes to</p> <p>3 the closest house on Edison Lane or on Dobbins Drive. So</p> <p>4 those addresses are even less than what we are proposing on</p> <p>5 the Heritage Potomac property.</p> <p>6 HEARING EXAMINER ROBESON: And you are proposing</p> <p>7 54 to 400? Did I get that one right?</p> <p>8 MS. PREKAJSKI: 154 to over 400.</p> <p>9 HEARING EXAMINER ROBESON: Okay.</p> <p>10 MS. HARRIS: Thank you. That's helpful. Moving</p> <p>11 on to compatibility. There was a lot of testimony from the</p> <p>12 opponents that the proposed conditional use is not compatible</p> <p>13 with the surrounding area. After listening to that</p> <p>14 testimony, do you have any further observations with respect</p> <p>15 to this issue?</p> <p>16 MS. PREKAJSKI: Well, the zoning ordinance states</p> <p>17 that the compliance with the development standards does not</p> <p>18 create a presumption that the use is compatible with nearby</p> <p>19 properties. It cannot be dismissed that indeed in all</p> <p>20 respects this project does comply with all of the relevant</p> <p>21 standards for setbacks and compatibility. So where the</p> <p>22 development standards present a maximum such as in lot</p> <p>23 coverage, we are well under the maximum by 11.6 percent. And</p> <p>24 where the development standards present a minimum such as</p> <p>25 like in setbacks, we exceed the minimum by 1-1/2 times. So</p>

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<p>141</p> <p>1 I've already testified to this point with respect to all of 2 the development standards. So I won't reiterate that all 3 here. But in case of the height of the cottages as well, 4 they could go up to 50 feet. And we are limiting the cottage 5 heights 40 feet, mostly in the mid-30 foot range, but never 6 to exceed 40.</p> <p>7 MS. HARRIS: And I want to -- I think your -- what 8 you just testified to -- can you speak to the exhibit that I 9 just put up on the screen real briefly? I believe this is 10 Exhibit 137.</p> <p>11 MS. PREKAJSKI: Right. So on the left is what's 12 permitted. And this is a diagram that's taken straight out 13 of the zoning ordinance and on the right -- and that's -- 50 14 feet would be allowed. And you can see that that allows for, 15 like, three stories and a maximum of 50 feet. On the right 16 is what is proposed at Heritage Potomac, which is a maximum 17 of 40. This is maximum 38 here, but most of them are in that 18 38 foot range. It just depends on the measurement standards 19 as described previously by Mr. Swihart. But the visual 20 impact and actual measured height, the product at Potomac -- 21 Heritage Potomac is visually much less.</p> <p>22 MS. HARRIS: Thank you. And so you testified for 23 a moment about the development standards but I want to talk 24 about the relationship of the project the surrounding area. 25 What's your comment or your observation with respect to the</p>	<p>143</p> <p>1 MS. HARRIS: Yeah. How do I do that? I forget. 2 Oh, allow.</p> <p>3 MS. PREKAJSKI: Okay. Can you see this cursor 4 moving now?</p> <p>5 MS. HARRIS: Yes.</p> <p>6 MS. PREKAJSKI: Okay. All right. So for 7 instance, here is the subject property. And this zoning 8 around it is all RE2. But right adjacent to it, if you look 9 over here, this is -- this zoning right here is all R200. 10 You can see this on the certified zoning map as well. But I 11 just wanted to show you more area that is included outside of 12 that. But this whole area here is R200 and it's adjacent to 13 RE2 zones like right here, right here. So it was never 14 deemed incompatible even if the homes were the size lots of 15 R200 next to an RE2. So that's what I'm going -- trying to 16 explain, is that that relationship is not really 17 incompatible. It's just a little bit different.</p> <p>18 MS. HARRIS: So can you zoom in on that map and 19 show a relationship on -- of the existing RE2 to R200 which 20 you would say is comparable to what's being proposed on the 21 subject as it relates to the surrounding area?</p> <p>22 MS. PREKAJSKI: Okay. Just a minute. Let's see 23 if I can zoom. Oops.</p> <p>24 MS. HARRIS: If you can't zoom, I can. But can 25 you not make it bigger?</p>
<p>142</p> <p>1 compatibility of the project to the surrounding area?</p> <p>2 MS. PREKAJSKI: Well, there was testimony that the 3 physical layout of the project was not compatible with the 4 surrounding RE2 area. And the physical layout of Heritage 5 Potomac could be somewhat compared to what you would see in a 6 R200 zone. Each structure is on an area that is 7 approximately 16,000 square feet to 22,000 square feet in 8 size. In as in the case of the neighborhood and the subject 9 property and the other neighborhoods, it has been deemed 10 compatible to have R200 zone property immediately adjacent to 11 R200. I mean, excuse me, RE2 zoned property.</p> <p>12 HEARING EXAMINER ROBESON: Wait. I'm confused 13 about what your point is.</p> <p>14 MS. PREKAJSKI: Well --</p> <p>15 HEARING EXAMINER ROBESON: You are saying that 16 there is other areas -- that this is comparable to R200 17 zoning and R200 adjoins RE2 in other parts of Potomac; is 18 that what you're saying?</p> <p>19 MS. PREKAJSKI: Yes.</p> <p>20 MS. HARRIS: Do you -- Ms. Prekajski, I'm going to 21 bring up Exhibit 70, which is our community area map. I 22 think it may be helpful if you can speak to that point using 23 this exhibit.</p> <p>24 MS. PREKAJSKI: Sure. So maybe if I could grab 25 the control here. Let's see; can I request control?</p>	<p>144</p> <p>1 MS. PREKAJSKI: I apologize. I'm not doing this 2 correctly.</p> <p>3 HEARING EXAMINER ROBESON: Go to the -- go to the 4 top where -- yeah. Does that help?</p> <p>5 MS. PREKAJSKI: Yeah. So maybe I can do this 6 again. So for instance, here is some here. You can see 7 these are the homes that are in R200 zone. And those are 8 backing up to RE2 lots here. And again, if you -- if we -- 9 oops. Maybe I can use the hand.</p> <p>10 MS. HARRIS: Here, I can do it. There?</p> <p>11 MS. PREKAJSKI: Right. So here, if you can see, 12 these homes that are facing, I guess that is Sorrel Avenue. 13 They are backing to homes that are on -- oh, gosh. I don't 14 know the name of that other street. But here -- the Sorrel 15 and this street here, that is Lonistoga Way. These -- this 16 road here. So these are all R200 lots and they are backing 17 up to these homes here on Bent Cross Drive.</p> <p>18 HEARING EXAMINER ROBESON: What? I couldn't hear 19 the name.</p> <p>20 MS. PREKAJSKI: I apologize. That is Bent Cross 21 Drive.</p> <p>22 HEARING EXAMINER ROBESON: Okay.</p> <p>23 MS. HARRIS: So in your -- when the County goes 24 to zone and they come up with a zoning map and they put R200 25 next to RE2, is your -- did you testify that there is an</p>

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<p>145</p> <p>1 implicit compatibility? Are they zoning in a compatible 2 manner? Is that your point? 3 MS. PREKAJSKI: Right. I would say they are 4 compatible. And compatible doesn't mean the same. It just 5 means -- it doesn't mean comparable, like they are the same 6 size. It means compatible in that they can coexist in a 7 fruitful and healthy manner and -- 8 HEARING EXAMINER ROBESON: Well, if that's -- if I 9 say, just because we have this zoning adjoining, why have a 10 conditional use? 11 MS. PREKAJSKI: Well, I -- the conditional use 12 is -- 13 HEARING EXAMINER ROBESON: I just have difficulty 14 with the concept because, except that says -- A, I have 15 difficulty in because R200 permits townhouses. 16 MS. PREKAJSKI: No. No, these are not townhouses. 17 Those are single-family detached homes. And the point of the 18 comparison is really to show that, although -- there was some 19 concern that, well, you're putting homes close to, and 20 backing up to the R200 -- RE2 zoned homes that have the 21 larger lots. And we are saying we are providing homes on -- 22 well, they are not lots per se in the same traditional 23 standard, but they are backing up to RE2 lots. And that that 24 relationship is something that is -- it's compatible. 25 HEARING EXAMINER ROBESON: Well isn't the real</p>	<p>147</p> <p>1 triplex -- 2 MS. PREKAJSKI: Right. So here is -- 3 MS. HARRIS: Oh, like one and a half backing up to 4 a home? 5 MS. PREKAJSKI: Right. So that's -- what we were 6 trying to show is a similar situation in terms of massing, 7 backing up to the RE2 lots. And I think that relationship is 8 similar to what we are proposing here and that there is homes 9 that are may be relatively closer together than the RE2 homes 10 that it backs to so that -- and that relationship is 11 compatible and that that has been done elsewhere in the 12 Potomac subregion just right across the street basically. 13 MS. HARRIS: Thank you. Okay, we can move on from 14 that point. Did you consider what this property would look 15 like if it were developed -- if it were developed with 16 single-family residences? 17 MS. PREKAJSKI: Yes, we did. We looked at that. 18 And basically, if you had -- the most efficient layout if you 19 were to develop it with single-family homes, would be a spine 20 road through the middle of the property and then have 2 acre 21 lots on either side of the road. Because of the width of the 22 property, the lot configuration would probably be wider lots 23 and less deep than other RE2 lots given the linear nature of 24 the lots and the 50 foot front yard setback, which would push 25 the homes closer -- you know, farther away from the road.</p>
<p>146</p> <p>1 issue the massing of the triplex? To me, what I heard from 2 the citizens is the issue is the massing, not the fact that 3 every home is 300 to 3000 -- each individual unit. It's the 4 massing of the triplex and the duplex units with not very 5 much -- not as comparable space between them as in the 6 adjoining neighborhood. That was very poorly written, but 7 that -- or said, but that's kind of the issue I am hearing. 8 So I just can't -- I just -- you know, just because -- I 9 don't even know why this is similar to R200 except to say 10 smaller lots in some cases are compatible with bigger lots. 11 MS. PREKAJSKI: Well -- 12 MS. HARRIS: Let me just ask Ms. Prekajski one 13 last question on this and then we will move on. 14 MS. PREKAJSKI: Okay. 15 MS. HARRIS: And it's going to the comment the 16 hearing examiner just made about the massing. If you look 17 at -- can you see my cursor? 18 MS. PREKAJSKI: Yes. 19 MS. HARRIS: So from a perception standpoint, you 20 have an RE2 home here and it backs up to four R200 homes 21 along the back. From an experience and impact standpoint, in 22 your professional opinion, is there a -- is there any 23 significant difference between that relationship and the 24 relationship that we have on the subject where you have a 25 triplex -- let's go to the subject -- sorry. You have a</p>	<p>148</p> <p>1 And that's not unlike the triplex structures. The homes 2 would likely be built to the 35 foot rear setback line, thus 3 providing a comparable set back to what is being proposed at 4 Heritage Potomac. All in all, we would not anticipate a 5 dramatic difference between the relationship of the homes 6 along Edison to either potential single-family homes or the 7 proposed triplexes except that the heights of the single- 8 family homes could likely be the allowable 50 feet in height 9 or three stories, higher than what is proposed at Heritage, 10 which is one and a half to two stories. So we have an 11 exhibit that shows that potential layout if I could show 12 that. Or, you know -- that would demonstrate what I'm 13 talking about here. 14 MS. HARRIS: And Ms. Robeson, I would note that we 15 had not thought about preparing this exhibit when we 16 submitted our exhibits. So we wanted to ask permission to 17 show this exhibit before we do so. Otherwise, we'll have to 18 just rely on Ms. Prekajski's verbal description. 19 HEARING EXAMINER ROBESON: Mr. Brown, do you have 20 an objection? 21 MR. BROWN: Yes. 22 HEARING EXAMINER ROBESON: All right. Ms. 23 Prekajski -- 24 MR. BROWN: I haven't seen this. I'm not prepared 25 on this.</p>

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<p>149</p> <p>1 HEARING EXAMINER ROBESON: Yeah.</p> <p>2 MS. HARRIS: Understood. And we -- that's the</p> <p>3 reason we asked permission before we showed it. Okay. We</p> <p>4 will move on. The zoning hearing examiner specifically asked</p> <p>5 the question of how the topography played into the visibility</p> <p>6 of the proposed residential care facilities -- facility from</p> <p>7 the properties to the west. Was this taken into account?</p> <p>8 MS. PREKAJSKI: Yes. Could you call up please,</p> <p>9 Exhibit 143. It's sections rendered. These are cross-</p> <p>10 sections through the property to the adjacent homes and it</p> <p>11 demonstrates what the impact of the topography is on the</p> <p>12 visibility of the homes.</p> <p>13 MS. HARRIS: Okay.</p> <p>14 MS. PREKAJSKI: Okay. So you can see the</p> <p>15 topography along Edison Road and Dobbins Drive is higher than</p> <p>16 that of the subject property. From a compatibility</p> <p>17 standpoint, this is much more preferable than if the subject</p> <p>18 property were higher. If the subject property were higher,</p> <p>19 much more the structures would be visible and they would</p> <p>20 be -- appear taller than they are simply because the grade is</p> <p>21 higher. And the Planning Board --</p> <p>22 HEARING EXAMINER ROBESON: Can you just -- do you</p> <p>23 mind orienting me to what I'm looking at in section A there?</p> <p>24 MS. PREKAJSKI: Sure. So section A --</p> <p>25 HEARING EXAMINER ROBESON: (Inaudible).</p>	<p>151</p> <p>1 not have all of the heights of the adjacent homes, we used an</p> <p>2 average. And in section CC below this, we can -- maybe,</p> <p>3 let's see. I need to have -- could you -- okay. I wonder if</p> <p>4 you could raise the section up a little bit more towards the</p> <p>5 top of the page because my controls are covering it up.</p> <p>6 Okay. And then zoom out a little bit. Okay, perfect. So</p> <p>7 you can see that the Lodge, which is taller than the</p> <p>8 cottages -- oops -- is sunken down below -- much below the</p> <p>9 ground level of the house on the left. And as such, doesn't</p> <p>10 appear to be that tall. It looks almost the same height as</p> <p>11 the house on the adjacent property because it's been sunken</p> <p>12 down into the topography. And then (inaudible).</p> <p>13 HEARING EXAMINER ROBESON: Do you have anything</p> <p>14 that shows what Mr. Magan is going to see of the triplexes</p> <p>15 from his house?</p> <p>16 MS. HARRIS: Mr. Park is going to testify to that</p> <p>17 so, yes.</p> <p>18 HEARING EXAMINER ROBESON: Okay. Okay.</p> <p>19 MS. PREKAJSKI: He has some very specific graphics</p> <p>20 to show that. And to the right-hand side of this section</p> <p>21 too, if you pan over to the right you can -- oh, I'm sorry.</p> <p>22 I thought it went further than that. My apologies. Okay.</p> <p>23 So did you have any other questions on that topography?</p> <p>24 HEARING EXAMINER ROBESON: No.</p> <p>25 MS. PREKAJSKI: Okay.</p>
<p>150</p> <p>1 MS. PREKAJSKI: Section A is -- this is a cross-</p> <p>2 section from -- this right here is South Glen Road.</p> <p>3 HEARING EXAMINER ROBESON: Wait. What right</p> <p>4 where? The box?</p> <p>5 MS. PREKAJSKI: Yeah, I apologize. I should</p> <p>6 describe it. In between the lines in the middle of the</p> <p>7 drawing is the right-of-way for South Glen Road. To the left</p> <p>8 on the diagram is the house across the street facing the</p> <p>9 subject property. And to the right are the homes that are</p> <p>10 facing South Glen Road.</p> <p>11 HEARING EXAMINER ROBESON: Okay.</p> <p>12 MS. PREKAJSKI: Then if you go to section BB where</p> <p>13 the impact is of even greater concern by the neighbors</p> <p>14 understandably, this line on the left-hand side of the</p> <p>15 drawing is the property line of the subject property. Our</p> <p>16 subject property is between that line and this -- the line</p> <p>17 about two thirds of the way over towards the right. And you</p> <p>18 can see at the left-hand side of that property line, the</p> <p>19 relative height of the triplexes to the adjacent home, which</p> <p>20 we estimated to be about 35 feet. Now because our topography</p> <p>21 is lower, it doesn't appear to be any higher than that unit.</p> <p>22 And similarly, on the right hand side you can see that the</p> <p>23 relative height -- and you can carry these lines over if you</p> <p>24 zoomed in, but it is relative to the adjacent homes, which</p> <p>25 actually, some of these are much taller. But since we did</p>	<p>152</p> <p>1 MS. HARRIS: And the only question I had is how</p> <p>2 does this relate to the issue of Brandywine with the</p> <p>3 topography?</p> <p>4 MS. PREKAJSKI: Brandywine actually is the</p> <p>5 opposite. Brandywine, the building is on an elevation that's</p> <p>6 higher than the surrounding residents. So in that case the</p> <p>7 grade is higher than the adjacent property and the building</p> <p>8 appears much taller and much larger. And for this reason</p> <p>9 actually, the western corner of that building was reduced</p> <p>10 from three stories to two stories because it has that impact.</p> <p>11 MS. HARRIS: Was it just the western portion that</p> <p>12 was reduced?</p> <p>13 MS. PREKAJSKI: Yes, just that corner. The whole</p> <p>14 building was kept at the three stories. But in deference to</p> <p>15 the neighbor's view, they reduced one corner of the building.</p> <p>16 MS. HARRIS: Okay, thank you. Let's move to</p> <p>17 the -- let me get this off the screen and let's move to the</p> <p>18 issue of appropriateness of the location. There was</p> <p>19 testimony that this use should not be placed in a low-density</p> <p>20 zone and that the site is not appropriate for this use. As</p> <p>21 an expert in land planning, what is your opinion about this?</p> <p>22 MS. PREKAJSKI: I would disagree with that for a</p> <p>23 number of reasons. First, the property is zoned RE2 and the</p> <p>24 use is an allowed use in the zone. Second, the vector plan</p> <p>25 on page 38 provides senior housing is appropriate throughout</p>

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<p>153</p> <p>1 the subregion wherever the zoning permits this use either by 2 right or by special exception. Projects must meet the zoning 3 ordinance standards with issues and impacts on the 4 surrounding neighborhood must be minimized. 5 When significant impacts cannot be mitigated, 6 projects should be located elsewhere in the subregion. Where 7 it is a special exception, the project must also meet the 8 special exception guidelines in this master plan. So they 9 anticipated that it -- that this use may be proposed, but it 10 has to go through conditional use or special exception 11 review. This was written before the name was changed to 12 conditional use. 13 So at any rate, so they suggest that's, yes, it's 14 allowed, that it should be encouraged on all sides where 15 permitted. And the project meets the standards that are set 16 forth in the zoning ordinance. And it exceeds them. For 17 most of the standards, the proposed development is 18 significantly less than the maximums allowed and is 19 significantly more than the minimums required. The master 20 plan recognizes that there will be impacts and says they 21 should be minimized. 22 In this case, the impacts that the neighbors have 23 expressed concern about our all inherent characteristics of 24 the use. And these come from the staff report such as 25 vehicle trips to and from the property, varied hours of</p>	<p>155</p> <p>1 when you say it's less than this and more than this and the 2 Council said in the ZTA this, that's fine. But the fact is 3 you've got to show that is compatible here. 4 MS. PREKAJSKI: Right. 5 HEARING EXAMINER ROBESON: And not measure it 6 against what the ZTA says. Are the zoning ordinance says. 7 MS. PREKAJSKI: Right. And we did that just for 8 purposes of-- and you are right. I mean, just because it 9 meets or exceeds the standards doesn't mean that it's 10 compatible but what we are saying is, but we can't ignore the 11 fact that it does meet all the standards. And then -- 12 HEARING EXAMINER ROBESON: I think you said that 13 multiple times. 14 MS. PREKAJSKI: Right. And then what we believe 15 our exhibits are demonstrating is that it is compatible and 16 that it's not an incompatible relationship. And we've showed 17 that through a variety of exhibits such as the topography and 18 the relationship of the height to the adjacent homes, the 19 layout of the site, which will also be gone into in more 20 detail later by our landscape architect, what screening we 21 did to make the use more compatible. And as our 22 transportation analyst has demonstrated, the traffic will not 23 be incompatible. So we are trying to show that there is 24 compatibility on all these different criteria. 25 And you're absolutely right, it has to be</p>
<p>154</p> <p>1 operations, noise or odors associated with vehicles or noise 2 or odors associated with trash collection and trucks and 3 lighting. So only, as the master plan says, only if there 4 are significant impacts from the senior housing does the 5 master plan say that the site is not appropriate. So in my 6 professional opinion, while I recognize that the neighbors 7 object to this use, there -- no significant impacts have been 8 identified. 9 Third, the master plan says avoid excessive 10 concentration of special exceptions along major 11 transportation corridors. So it implicitly, by inference, 12 suggests that special exceptions use is not on major 13 transportation corridors are acceptable. Fourth, the -- 14 HEARING EXAMINER ROBESON: I disagree with that, 15 but go ahead. I guess it's how you interpret it. The fact 16 is, if there is special exceptions, they got to be 17 compatible. This does -- 18 MS. PREKAJSKI: Right. 19 HEARING EXAMINER ROBESON: They don't like him. I 20 had one right on Falls Road and they did all sorts of things 21 to screen it. But anyway, I just -- you know, this whole 22 thing about allowable, the density is allowable -- the real 23 issue is compatibility. 24 MS. PREKAJSKI: Right. 25 HEARING EXAMINER ROBESON: That's the issue. So</p>	<p>156</p> <p>1 compatible. That's the whole thing. That's why they put us 2 through the special exception review process in order to 3 prove that. And so that we can demonstrate it to the 4 surrounding neighbors that while this is a use that's 5 permitted in the zone, it's not traditionally -- it's not 6 traditionally something that's always in the zone. So we 7 have to demonstrate that it is also a compatible use. So -- 8 MS. HARRIS: Ms. Prekajski, are there other 9 reasons why you thought that this use, this site is an 10 appropriate location for this use? 11 MS. PREKAJSKI: Yes, a couple more. And one is 12 that it's very close to Potomac Village where there are 13 services and shopping available for the residents, and that 14 they would want to be a access and that that makes that very, 15 from a land planning perspective, appropriate for the use. 16 And also, the need, although we don't need to demonstrate 17 need, there is a very real and growing need for senior 18 housing in this area. And there is a lack of limited -- 19 there is a limited number of sites that this can happen on 20 that are large enough to be able to accommodate it. And we 21 have an opportunity here that we have an existing school that 22 has been -- is not going to use the land anymore. And that 23 can yield -- 24 HEARING EXAMINER ROBESON: I definitely hear you 25 about the -- I definitely hear you about that. And I haven't</p>

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<p style="text-align: right;">157</p> <p>1 decided -- really, I'm giving you a hard time.</p> <p>2 MS. PREKAJSKI: That's okay.</p> <p>3 HEARING EXAMINER ROBESON: I'm giving you a hard</p> <p>4 time. But my real concern is Mr. Magan looking at the</p> <p>5 triplex that are 20 feet from the property line. To me the</p> <p>6 mass of the triplex is quite large and they are quite close</p> <p>7 to the property line.</p> <p>8 MS. PREKAJSKI: And the --</p> <p>9 HEARING EXAMINER ROBESON: And I don't see</p> <p>10 anything surrounding this. And I didn't see anything in your</p> <p>11 exhibit with the R200 that has a relationship of an 8000 as</p> <p>12 well, I forget the square footage of the triplex, but an 8000</p> <p>13 square feet structure 20 feet from the property line but I'm</p> <p>14 just saying -- that's all I'm saying.</p> <p>15 MS. HARRIS: Okay. Just for the record Ms.</p> <p>16 Prekajski, can you identify the minimum setback of the</p> <p>17 triplexes?</p> <p>18 HEARING EXAMINER ROBESON: I know what the minimum</p> <p>19 setback is.</p> <p>20 MS. HARRIS: No, but you said several times that</p> <p>21 we're providing a 20 foot setback. And in fact, that's not</p> <p>22 correct. And so I just want make sure that the record is</p> <p>23 (inaudible) setback.</p> <p>24 HEARING EXAMINER ROBESON: Oh, I'm sorry. Was</p> <p>25 the -- what setback are you providing?</p>	<p style="text-align: right;">159</p> <p>1 HEARING EXAMINER ROBESON: And it doesn't mean by</p> <p>2 any chance I've decided. I just -- it doesn't mean I'm</p> <p>3 against it. It doesn't mean I'm for it. I really am just</p> <p>4 pressing you a little bit on it, okay?</p> <p>5 MS. PREKAJSKI: Yes. Well, I'm happy to provide</p> <p>6 anything you need in terms of clarification.</p> <p>7 MS. HARRIS: So Ms. Prekajski, just to finish up</p> <p>8 here, is there anything else that you would like to add in</p> <p>9 terms of the project's general conformance with the master</p> <p>10 plan or its compatibility with the surrounding neighborhood</p> <p>11 that you haven't already stated?</p> <p>12 MS. PREKAJSKI: Well, I would just say in</p> <p>13 conclusion, that my professional opinion is that the proposed</p> <p>14 development is an appropriate use of the property. And it</p> <p>15 comports with the goals of the master plan and other</p> <p>16 subsequent policy documents prescribed by the county. It</p> <p>17 meets a really growing need for housing for elderly in</p> <p>18 Potomac and proposes the type of housing that will allow</p> <p>19 seniors to age in place yet avail themselves of a wide range</p> <p>20 of services as they age.</p> <p>21 The units provide low maintenance, accessible</p> <p>22 environment with indoor and outdoor amenities for health and</p> <p>23 wellness. And in addition, the project spaces close to</p> <p>24 neighborhood retail and services of Potomac Village, which</p> <p>25 will be important for the new residents. The design of the</p>
<p style="text-align: right;">158</p> <p>1 MS. PREKAJSKI: Most of the homes are an average</p> <p>2 of about 35 feet away from the property line and the very,</p> <p>3 very close as well is 30 feet. So it's significantly more</p> <p>4 than --</p> <p>5 (Crosstalk)</p> <p>6 MS. PREKAJSKI: And as we stated also earlier,</p> <p>7 building to building we are like 154 feet at the closest</p> <p>8 point. Relative to for instance, Renata Baker's house,</p> <p>9 that's over 400 feet away. So, you know -- and so we have</p> <p>10 been -- tried to be sensitive to that relationship. And</p> <p>11 we've -- the houses are farther from the property line. They</p> <p>12 are -- and they will be significant screening as well, which</p> <p>13 as I said Daniel Park will testify to you later.</p> <p>14 HEARING EXAMINER ROBESON: Well, I'm sorry to, you</p> <p>15 know, go into all this. I just -- I'm -- so anyway. Keep</p> <p>16 going --</p> <p>17 MS. PREKAJSKI: Is there anything I can do to</p> <p>18 clarify any of the points that you're saying are</p> <p>19 incompatible?</p> <p>20 HEARING EXAMINER ROBESON: No. I would like to</p> <p>21 see Mr. Park's --</p> <p>22 MS. PREKAJSKI: He is a landscape architect. I'm</p> <p>23 not sure it will show up on the cross-sections, but I think</p> <p>24 you will be able to describe it much better detail in his</p> <p>25 exhibits as well.</p>	<p style="text-align: right;">160</p> <p>1 community and the architectural style of the buildings fits</p> <p>2 in well with the estate style homes of the Potomac area. And</p> <p>3 the low-density preservation of natural features and</p> <p>4 significant landscape plantings provide a setting that is</p> <p>5 very compatible with the surrounding neighborhood.</p> <p>6 MS. HARRIS: Thank you.</p> <p>7 MS. PREKAJSKI: And that's my conclusion.</p> <p>8 MS. HARRIS: I didn't mean to cut you off.</p> <p>9 HEARING EXAMINER ROBESON: All right. I see a</p> <p>10 hand. Mr. Brown, do you have any questions? Mr. Brown?</p> <p>11 MR. BROWN: Yes, I have a number of questions.</p> <p>12 HEARING EXAMINER ROBESON: Go ahead.</p> <p>13 MR. BROWN: Ms. Prekajski, you just said that</p> <p>14 there is a real and growing need for more senior housing. Do</p> <p>15 you have any evidence that there is a real and growing need</p> <p>16 in the 75 and over set for holding onto real estate where</p> <p>17 they own the property and are responsible for taxes and</p> <p>18 maintenance?</p> <p>19 MS. PREKAJSKI: Well, I would answer that a couple</p> <p>20 of ways. One, in terms of the maintenance, the maintenance</p> <p>21 is taken care of here by the management company. Secondly,</p> <p>22 if you recall, the representative from Sage Life expressed</p> <p>23 that this is the age that people are looking for independent</p> <p>24 living and assisted living depending on what their</p> <p>25 circumstances are.</p>

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<p style="text-align: right;">161</p> <p>1 What this provides is an opportunity to still 2 continue to own real estate, because not all seniors want to 3 necessarily be in a congregant setting like in an apartment 4 or in an assisted living facility. They would prefer, in 5 my -- and this is my anecdotal experience. If they can stay 6 in the home and still be able to get around, they prefer 7 that. 8 So I think -- and the facts and figures that have 9 been presented in terms of what -- how many units have been 10 provided that allow for this in the county, and the number of 11 people that will need them in the future, I think it -- that 12 evidence together supports that yes, there is a growing need 13 for that and for the assisted living as well. I know there 14 are many people that live into their 90s or whatever, and 15 they are still getting up and getting around. And they don't 16 necessarily need a congregant setting where they are, you 17 know -- 18 MR. BROWN: People who -- 19 MS. PREKAJSKI: -- have to have services. But 20 here they can avail themselves of the services and still stay 21 in place, but they can have the -- maybe a physical therapist 22 come to their house or something like that, so it provides 23 like a positive place for them to live out their -- the rest 24 of their days. 25 MR. BROWN: Isn't the motivation for people who</p>	<p style="text-align: right;">163</p> <p>1 But I think that's something that they would certainly be 2 happy to help you with if you -- 3 MR. BROWN: Let me put the question this way. You 4 mentioned the housing needs survey that the county did, I 5 believe it was in 2018, and you excerpted portions of it as 6 an exhibit in this case, right? 7 MS. PREKAJSKI: Right, yeah. 8 MR. BROWN: Is there anything in that document 9 that says that there is a real and growing need among people 10 in the 75 and over set to switch from where they are living 11 to a new place where they continue the burdens of home 12 ownership? 13 MS. PREKAJSKI: It doesn't state that specifically 14 I don't believe, but it does state that there is a growing 15 need for people in that -- for housing in that age group, and 16 that -- that they -- there is a growing need for both 17 independent living and assisted living in that age group. 18 And -- 19 MR. BROWN: But the evidence -- 20 MS. PREKAJSKI: I'm sorry but -- 21 HEARING EXAMINER ROBESON: Mr. Brown, I'm having 22 trouble -- 23 MS. PREKAJSKI: I'm sorry, go ahead. 24 MR. BROWN: I don't understand your point. 25 HEARING EXAMINER ROBESON: Mr. Brown, I'm having</p>
<p style="text-align: right;">162</p> <p>1 want to age in place that they want to stay in the community 2 in the house that they've lived in for 10, 20, 30 or 40 years 3 among people that they know? 4 MS. PREKAJSKI: Yeah, often times, yes. But 5 sometimes those -- the mobility issues that come along with 6 aging prevent that. If their bedroom is on the top floor and 7 the kitchen is on the middle floor and their laundry's on the 8 first floor, that's very -- for someone who has mobility 9 issues, that's a very dangerous situation as well as 10 inconvenient. So while they would prefer to stand in their 11 own home -- if they could stay in their own neighborhood, 12 that's kind of the next best thing. And that's what we are 13 aiming for here. 14 MR. BROWN: Are you telling me that, for example, 15 if the dishwasher in my -- if I were living in one of these 16 units in the dishwasher went on the fritz, all I would need 17 to do is call somebody at the Lodge they're going to dispatch 18 a repairman? I don't have a choice as to who services my 19 appliances? Am I responsible for that repair? What are the 20 terms? 21 MS. PREKAJSKI: No, sir. I didn't say that. I 22 think as the owner of the unit, you always have the choice to 23 dispatch whoever you want. However, if you need help in 24 doing that, I think that -- and I can't speak to everything 25 that Sage Life does. I don't want to go outside of my arena.</p>	<p style="text-align: right;">164</p> <p>1 trouble hearing you. Can you turn your sound up? Or -- 2 MR. BROWN: I'm sorry. 3 HEARING EXAMINER ROBESON: It's all right. 4 MR. BROWN: Did you finish your answer? 5 MS. PREKAJSKI: I'm sorry. I forgot where I was. 6 I just -- I think that the report -- I don't think it says 7 specifically, yes, there is a lot of people that want to move 8 out of their house and go to a different house. But it does 9 say specifically that there are people that would like to age 10 in place, however their mobility issues prevent him from 11 being able to do that. 12 So yes, they would prefer to stay at home. But a 13 second choice would be to go to a facility, to move into 14 either a home ownership or a rental relationship, whatever 15 they choose to do. I know there are -- this is the only 16 senior living community where it's a purchase arrangement. 17 And I know some people choose that and some people don't. 18 And we're just providing options, that's all. They have the 19 option to do either one. 20 MR. BROWN: Let's go over -- we talked about some 21 of the possible zoning configurations for this property. You 22 mentioned what the property might look like under residential 23 development as RE2 property. Let me ask you to take a look 24 at Exhibit 142, the current site plan. 25 MS. PREKAJSKI: Okay. Can someone bring that up?</p>

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<p>165</p> <p>1 MS. HARRIS: I can bring that up. Hold on. Do 2 you see it? 3 MS. PREKAJSKI: Yes, thank you. 4 MR. BROWN: As a thought experiment of the type 5 that you have been doing, imagine that this loop in the 6 middle of this project were eliminated and there were a 7 single spine road all the way back to the Lodge. 8 MS. PREKAJSKI: Right. 9 MR. BROWN: That would eliminate the nine duplexes 10 in the middle effectively, correct? 11 MS. PREKAJSKI: I'm sorry. I'm trying to fix my 12 screen. Yes. 13 MR. BROWN: That would be 18 -- that would be a 14 loss of 18 units, right? 15 MS. PREKAJSKI: Wait could you -- I don't know why 16 that's -- I'm sorry. My control band is going right to the 17 middle of that exhibit. I apologize for the inconvenience. 18 MR. BROWN: Well, it's a very simple -- it's a 19 very simple hypothetical. Would just eliminating the loop in 20 the middle and eliminating nine duplexes or 18 units -- 21 MS. PREKAJSKI: Right, yes. So -- 22 MR. BROWN: In that scenario -- 23 MS. HARRIS: Wait, can I ask for clarification on 24 that question? Where are the -- I don't see nine duplexes 25 you would eliminate the housing within that loop.</p>	<p>167</p> <p>1 just supposed you go with the current plan to have a large 2 number of cottage units of the type that you are proposing, 3 but you eliminate the loop and you eliminate nine units, 4 wouldn't it be the case that if you eliminated nine units 5 that are inside the loop, that you could setback -- you could 6 setback the houses much further from the surrounding 7 properties? 8 MS. PREKAJSKI: Well, as I said, you could set 9 them back to some degree, probably at least 35 feet. 10 However, if you have a spine road through the middle, your 11 front of your home will be -- have to be by requirement, 12 farther away from the front street as is shown on this plan 13 because -- 14 HEARING EXAMINER ROBESON: Well, wait -- 15 MS. HARRIS: Let me -- 16 HEARING EXAMINER ROBESON: I think the scenario 17 is, if you go -- what about with this development, what about 18 just -- forget the single-family homes. Use this conditional 19 use. And you eliminated those nine units and you just did a 20 spine road, right through those units, you could bring -- you 21 could bring those units on the western and southern edges 22 further from the property line. 23 MS. PREKAJSKI: That is true. And with the 24 exception of maybe closer to South Glen Road where the 25 property narrows significantly, yes, you are right. That</p>
<p>166</p> <p>1 HEARING EXAMINER ROBESON: I think you're 2 eliminating three triplexes or nine units. 3 MS. HARRIS: Yes. 4 HEARING EXAMINER ROBESON: I'm sorry. Is that 5 nine units? 6 HEARING EXAMINER ROBESON: I think it's just the 7 units in the loop. 8 MS. PREKAJSKI: Right. So in the center there -- 9 I have a paper copy here that I can -- and now I can see this 10 little bit better on the screen as well. So in the center 11 there are three triplexes as has been stated. So that's nine 12 units. 13 MR. BROWN: Okay. If you eliminated those nine 14 units and just had a single spine drive, would you not be 15 able to move in the house is considerably further away from 16 the boundary lines on either side? 17 MS. PREKAJSKI: You could move them in. However, 18 there would be a 50 foot front yard setback on each of those. 19 So while this -- this doesn't have that 50 foot front yard 20 setback. If you were to go with a standard method RE2, 21 then -- well, you could pull those houses a little bit 22 farther away from the other RE2 lots. You would also have a 23 50 foot setback in the front. So that -- you're not going to 24 pick up as much area as it would appear. 25 MR. BROWN: Let me restate my question. Let's</p>	<p>168</p> <p>1 would allow for larger rear yards. 2 MR. BROWN: Now let me explore one other 3 possibility with you. Would you agree that with this 4 property having, I think you said something like 13 acres 5 that's largely undevelopable, that this property would be 6 probably a good candidate for rezoning to RE2C? 7 MS. PREKAJSKI: Well, I -- you could try to rezone 8 it to RE2C. I don't know that there's anything that would 9 prevent that but I haven't studied that. 10 MR. BROWN: Well then don't you -- 11 MS. PREKAJSKI: In that case there would be a 12 whole different set of requirements for the RE2C and we would 13 have to look at what your yield would be then. 14 MR. BROWN: Well, the yield would be a function of 15 the acreage. And if you're bound by the number of acres at 16 30, and the number of units at 1 per 2 acres, you could 17 probably approach somewhere between 10 and 15 units on the 18 property, correct? 19 MS. PREKAJSKI: I haven't -- I don't -- I don't 20 know. I haven't done that count. I'm going to say that's 21 possible. However, if we look at an RE2, the most we looked 22 at we could at most get 11. If you had smaller lots in an 23 RE2C, you might be able to get 15 I don't know. And I'm 24 reluctant to make -- opine on any of this, not having done 25 that. And just to point out that the purpose of this</p>

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<p>169</p> <p>1 application is not to develop it with more single-family 2 homes, but to provide for senior living. And in order to 3 make this work for senior living, you kind of need both 4 components of the Lodge and the cottages. 5 MR. BROWN: I understand. Let's move to Exhibit 6 143. I would like to focus on the bottom row, if you would 7 please, section CC. 8 MS. PREKAJSKI: Okay. 9 MR. BROWN: First of all, in the fine print 10 between the building and the bold vertical black line, it 11 says reforestation planning area with supplemental screening. 12 I gather that this area is going to be completely regraded 13 and then replanted; is that right? 14 MS. PREKAJSKI: I want to make sure I am getting 15 the appropriate place where that section is taken. So if you 16 will, bear with me. So much of that area, although not all, 17 but much of that area will be regraded and replanted, yes. 18 MR. BROWN: So how many years will it be before 19 the trees look like they are depicted in this diagram? 20 MS. PREKAJSKI: We have very detailed testimony on 21 that from the landscape architect. I'm here to testify as a 22 planner. And I would prefer that he be able to address that 23 with you more specifically. 24 MR. BROWN: Well, let me ask you a planner 25 question then. If you will look to the left side of this</p>	<p>171</p> <p>1 is no description -- there's no drawing showing what those 2 boundaries are of those lots in the record. But they will 3 have to be shown at I guess at the subdivision -- at the time 4 of subdivision because it delineates property, real property 5 owned by the holder of the -- the owner of the building 6 rather than the developer of the property. 7 So there has to be some kind of a delineation of 8 the lot -- of the cottage ownership lots on a plat, even 9 though it's not a record plat. My question is this. I tried 10 to do a rough comparison of the lot coverage of one of these 11 cottage ownership lots as compared to the lot coverage 12 requirement in the RE2 zone. And I don't come anywhere near 13 25 percent. It looks to me like it's more like 90 percent. 14 Do you agree with that number? 15 MS. PREKAJSKI: Well, I haven't done that 16 computation. Though I would say we have -- that the -- 17 again, the lot coverage is based on the record lot, not on 18 the ownership lot. And that lot coverage -- 19 MR. BROWN: That lot that you're talking about 20 will be the entire parcel minus the ownership lots of money 21 is the common area, the Lodge lot, right? 22 MS. PREKAJSKI: The -- 23 MR. BROWN: If you -- is going to be a huge 24 number. 25 MS. PREKAJSKI: If you were to compute it on that</p>
<p>170</p> <p>1 diagram you will see a house. And I'm wondering if a person 2 standing up on the second floor that house and looking out at 3 this building is going to see three full floors at least 4 until these plants get going. 5 MS. PREKAJSKI: No, they will -- they are -- they 6 will not be able to see the full three floors. They -- the 7 plants at the very least are -- most of the screening plants 8 are planted at 10 foot height so that takes -- that's one 9 floor that they won't see. And then as these grow to their 10 mature height, and again, I think you're going to be very 11 pleasantly surprised by the amount of screening that will be 12 provided there. 13 And I think there is no -- I can't tell you that 14 you will never be able to see any part of this building. You 15 will. And that's not a criteria for approval. But I think 16 that the planting that is proposed in addition to the way 17 that the building is set into the slope will go a long way to 18 making it compatible with the adjacent property. Not to 19 mention also, that that's -- the house is a significant 20 distance away from that other building. So I guess that's 21 it. 22 MR. BROWN: One more area that I wanted to ask you 23 about. In the RE2 zone, the lot coverage requirement is 25 24 percent. In this particular case, there's going to be 25 something called cottage ownership lots. And I have -- there</p>	<p>172</p> <p>1 basis, yes, the number would be a lot larger. The way it is 2 computed in this circumstance is on the record lot. And the 3 percentage is 13.4 percent of the entire lot is covered by 4 buildings. And so -- and that's -- when you are looking at 5 the property, you're not seeing property lines. You are 6 seeing lot coverage and open area. And we have used the 7 methodology that is required by the zoning ordinance in order 8 to measure this lot coverage. 9 But you're right, if you computed it that way it 10 would be a bigger number. But yeah, that's just how it's -- 11 the legal way that it has to be. 12 MR. BROWN: I understand all too well. Thank you, 13 very much. No more questions. 14 HEARING EXAMINER ROBESON: I see a hand up from 15 Ms. Janet. However, I can't see the last name. 16 MR. BROWN: I'm sorry? 17 HEARING EXAMINER ROBESON: Is she here? I see a 18 hand up from a Ms. Janet Hyper -- I cannot see the last name 19 on my screen. Is she here? Okay. Now I don't see any hand. 20 All right. Do you have any -- now I see a hand from Susan 21 Lee. 22 MS. HARRIS: I thought that Ms. Lee was 23 represented by Mr. Brown. 24 HEARING EXAMINER ROBESON: She is. Ms. Lee, I 25 would like to hear -- you are represented by Mr. Brown and</p>

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<p>173</p> <p>1 you should be asking questions through them.</p> <p>2 MS. LEE: Okay, that's fine. Thank you, very</p> <p>3 much. I will.</p> <p>4 HEARING EXAMINER ROBESON: Okay. And the Ms.</p> <p>5 Harris, do you have any questions based on Mr. Brown's</p> <p>6 questions?</p> <p>7 MS. HARRIS: I just have one question. And it</p> <p>8 goes back to the relationship of a single family development</p> <p>9 on the site as it relates to Mr. Magan's property. And while</p> <p>10 we can't show the exhibit that was prepared, I would like to</p> <p>11 ask the witness if she could describe what the view, the</p> <p>12 likely view would be from Mr. Magan's house to the proposed</p> <p>13 single family development on the site immediately to his</p> <p>14 east.</p> <p>15 MR. BROWN: I object to the question. We are not</p> <p>16 dealing with single family development here.</p> <p>17 HEARING EXAMINER ROBESON: I thought Mr. Park was</p> <p>18 going to address that.</p> <p>19 MS. HARRIS: Well, I think this is a relevant</p> <p>20 question. Just as Mr. Brown has raised a hypothetical about</p> <p>21 eliminating nine units on the site, I think I'm perfectly</p> <p>22 entitled to ask a question of what -- because it goes to</p> <p>23 compatibility. And if -- what would an RE2 development look</p> <p>24 like on this property and how does that compare to what we</p> <p>25 are proposing? And is one more compatible than the other? I</p>	<p>175</p> <p>1 MS. HARRIS: And what is the maximum height that</p> <p>2 would be permitted in RE2?</p> <p>3 MS. PREKAJSKI: That would be 50 feet.</p> <p>4 MS. HARRIS: And is there a landscape buffer</p> <p>5 requirement in the RE2 under single family development?</p> <p>6 MS. PREKAJSKI: Are you saying RE2 or R200?</p> <p>7 MS. HARRIS: RE2.</p> <p>8 MS. PREKAJSKI: Okay. All right. So, I'm sorry.</p> <p>9 Can you restate the question?</p> <p>10 MS. HARRIS: What -- with the -- with the</p> <p>11 landscape buffer between the -- if this property were</p> <p>12 developed as RE2, would the landscape buffer between the</p> <p>13 subject and the properties along Edison Road be as robust as</p> <p>14 what the Applicant is proposing?</p> <p>15 MS. PREKAJSKI: If it -- I'm looking now at the</p> <p>16 RE -- I have to look at -- I would say I need to look at the</p> <p>17 development standards, specifically a standard development of</p> <p>18 RE2.</p> <p>19 MS. HARRIS: All right. Then I don't want to</p> <p>20 waste the time doing that. But let me just ask one follow-up</p> <p>21 question. So from the perception of Mr. Magan's back deck</p> <p>22 looking over to this property at an RE2 development, what</p> <p>23 would he be seeing, assuming for a second that there is no</p> <p>24 landscaping between the properties no matter what? Would</p> <p>25 what he would be seen under a single family development</p>
<p>174</p> <p>1 think it's relevant.</p> <p>2 HEARING EXAMINER ROBESON: Well, you can ask</p> <p>3 without -- you can ask what he might see with an RE2</p> <p>4 development.</p> <p>5 MS. HARRIS: I think that's what it -- that was my</p> <p>6 question.</p> <p>7 HEARING EXAMINER ROBESON: Okay.</p> <p>8 MS. HARRIS: Okay. Ms. Prekajski, if the adjacent</p> <p>9 property were developed to RE2, a single family development,</p> <p>10 what would be the minimum setback required along the west --</p> <p>11 the shared western property line?</p> <p>12 MS. PREKAJSKI: It would be a 35 foot setback,</p> <p>13 which is exactly what we are proposing here.</p> <p>14 MS. HARRIS: And what would be the side yard</p> <p>15 setbacks on that lot?</p> <p>16 MS. PREKAJSKI: I don't have the zoning ordinance</p> <p>17 with me now, but my recollection is 8 feet on each side with</p> <p>18 a total of 15 feet as total.</p> <p>19 MS. HARRIS: So then presumably a proper -- a</p> <p>20 building -- a house could be constructed? And I think you</p> <p>21 said because of the shapes of the lots, they would be more</p> <p>22 linear and they could be developed close to 8 feet to</p> <p>23 either -- side to side; is that correct?</p> <p>24 MS. PREKAJSKI: Right. You could wind up having</p> <p>25 16 feet between each unit if you put them side by side.</p>	<p>176</p> <p>1 differ significantly from what the Applicant is proposing?</p> <p>2 MS. PREKAJSKI: I think it would --</p> <p>3 HEARING EXAMINER ROBESON: Well, how can she</p> <p>4 answer that if she doesn't know the landscaping?</p> <p>5 MS. HARRIS: But I said just for sake of --</p> <p>6 HEARING EXAMINER ROBESON: Okay.</p> <p>7 MS. HARRIS: Even seeing the landscaping, just</p> <p>8 assume there is no landscaping there.</p> <p>9 MS. PREKAJSKI: Well, I think as a -- I think</p> <p>10 you're asking the question from a massing standpoint.</p> <p>11 MS. HARRIS: Yes.</p> <p>12 MS. PREKAJSKI: And the proximity of those homes</p> <p>13 to his rear yard. And I think it would be very similar. You</p> <p>14 may have houses that are the same size as the duplex perhaps,</p> <p>15 or if it was RE2 zoning you would probably have homes about</p> <p>16 the same size as the triplexes as was demonstrated by Dennis</p> <p>17 Swihart.</p> <p>18 MS. HARRIS: Well --</p> <p>19 MS. PREKAJSKI: That the --</p> <p>20 HEARING EXAMINER ROBESON: If you've got 2 acre</p> <p>21 zoning -- I don't want to go down the road -- it's not my</p> <p>22 comparison compare it to RE2. I want a compatible -- what I</p> <p>23 feel comfortable is a compatible relationship. And without</p> <p>24 really doing a scoping out -- I know Mr. Brown asked that</p> <p>25 question. I was more interested in his question about the</p>

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<p>177</p> <p>1 development as is with just the spine road going through. 2 But all I'm -- so I don't think we need to go down -- nobody 3 has done any kind of survey of what they could get out of 4 this property in the RE2 zone. I don't see any point -- if 5 you feel that massing wise, it would have the same 6 relationship, you can, you know, go ahead and opine to that 7 given that nobody has even looked at the -- looked at the 8 site from that relationship, from an RE2 perspective. 9 MS. HARRIS: So Ms. -- let me just bring this to a 10 close by -- and I think you already said this. But for my 11 massing standpoint, with the development under single family 12 be comparable to what is being proposed currently? 13 MS. PREKAJSKI: Yes, it would. There would be a 14 front yard setback of 50 feet. There would be a side 15 setback, if it was in the RE2, of 17 feet. 16 HEARING EXAMINER ROBESON: It would be a 2 acre 17 lot, right? 18 MS. PREKAJSKI: Right, for a 2 acre lot. The rear 19 setback would be 35 feet, which is the same as what we are 20 proposing. And the size of the building would be similar to 21 what we are proposing because we based the architecture on 22 similar buildings in the neighborhood. (inaudible) answer 23 the question. 24 HEARING EXAMINER ROBESON: If it's a 2 acre lot, 25 why would somebody site their house in the minimum setback</p>	<p>179</p> <p>1 HEARING EXAMINER ROBESON: Yeah, you may be 2 excused. Thank you. 3 MS. PREKAJSKI: Thank you, very much. 4 (A recess was taken) 5 MS. HARRIS: Thank you. Our next witness is Tim 6 Stemann. 7 HEARING EXAMINER ROBESON: Okay. 8 MS. HARRIS: And I -- 9 HEARING EXAMINER ROBESON: Mr. -- 10 MS. HARRIS: And I think I may have mispronounced 11 that as well. 12 MR. STEMANN: No, you got that. You got that. 13 That was great. 14 HEARING EXAMINER ROBESON: Mr. Stemann, were you a 15 witness at the first hearing? 16 MR. STEMANN: Yes, I was. 17 HEARING EXAMINER ROBESON: I'm sorry. You are 18 still under oath. 19 MR. STEMANN: Okay. 20 HEARING EXAMINER ROBESON: And Ms. Harris, are you 21 still sharing your screen? 22 MS. HARRIS: Oh, I am. Thank you. Thank you. So 23 Mr. Stemann, has the department of permitting services 24 approved a storm water management concept for the proposed 25 development?</p>
<p>178</p> <p>1 unless for some reason there is an odd lot? 2 MS. PREKAJSKI: Well, I -- what I described 3 earlier was if there was a spine road down the middle and it 4 was a 2 acre subdivision, the one thing that you don't see on 5 this layout is that these -- the houses would have to be 6 setback at least 50 feet from the road. So that pushes them 7 more towards the back. And so you want -- 8 HEARING EXAMINER ROBESON: But you can't tell me 9 right now if there will be 35 feet or 50 feet? 10 MS. PREKAJSKI: No, I'm sorry, I can't. I haven't 11 done -- 12 HEARING EXAMINER ROBESON: Okay. I think we need 13 to move on. I get what you're saying. 14 MS. HARRIS: And you will be glad to know that the 15 end of Ms. Prekajski's testimony. 16 MS. PREKAJSKI: Thank you. 17 MS. HARRIS: Could we take a five-minute break? 18 HEARING EXAMINER ROBESON: I was going to suggest 19 a 10 minute break. 20 MS. HARRIS: Okay. 21 HEARING EXAMINER ROBESON: Because I actually got 22 a phone call while we had lunch break and I haven't eaten 23 lunch. So I want to take a 10 minute break and go eat lunch 24 and we will be back at 3:24. How's that? 25 MS. PREKAJSKI: Good. Is this witness dismissed?</p>	<p>180</p> <p>1 MR. STEMANN: Yes, they have. That was approved 2 on March 1st of this year. 3 MS. HARRIS: And I would note that that's Exhibit 4 154, for the record. And what was the purpose of the storm 5 water management concept and the county's review thereof? 6 MR. STEMANN: Okay. So the county code for storm 7 water, which is section 1920, it states the primary goal of 8 the county is to maintain, after development, as nearly as 9 possible, the predevelopment runoff characteristics and to 10 reduce stream channel erosion, pollution, siltation, and 11 sedimentation and local flooding by implementing 12 environmental site design to the maximum extent practicable. 13 So what that all means is that the storm water 14 regulations consider a number of items, including impervious 15 surfaces that would be proposed at the site, existing and 16 proposed drainage areas, and the potential for soil erosion. 17 I know there was discussion previously during the opponent's 18 testimony about erosion and the concern of erosion, but the 19 approval of the stormwater concept also sort of reiterates 20 that this site, along with the NRI and that the county finds 21 that the project implies with all of those various 22 environmental regulations. If you want to pull up one of the 23 plan sheets please, Ms. Harris. 24 MS. HARRIS: Yes. Oh, 55 or -- 25 MR. STEMANN: Yeah, any of those, maybe.</p>

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<p>181</p> <p>1 MS. HARRIS: Oh, sorry. Hold on.</p> <p>2 MR. STEMANN: And so if you can zoom in just</p> <p>3 slightly, I think this is probably the best overall view.</p> <p>4 HEARING EXAMINER ROBESON: So for me, is it 155A?</p> <p>5 MR. STEMANN: Yes.</p> <p>6 HEARING EXAMINER ROBESON: Okay.</p> <p>7 MR. STEMANN: And so what the design includes is</p> <p>8 microbio retention facilities and microbio retention planter</p> <p>9 boxes. And you can see some of the smaller shapes next to</p> <p>10 the units and in the green area. And those will be providing</p> <p>11 stormwater treatment to reduce runoff, to increase</p> <p>12 infiltration and evapotranspiration to mitigate for the</p> <p>13 proposed impervious, which is part of the new development.</p> <p>14 So the county gave us an approval. And that's</p> <p>15 also in keeping with that. We also consulted with Hillis-</p> <p>16 Carnes who is a geotechnical, geo-structural engineering</p> <p>17 firm. And they released the letter in January 2020. That's</p> <p>18 Exhibit 157, that also determined that the soils are not</p> <p>19 classified as severe for erosion and that the post</p> <p>20 development is considered feasible from a geotechnical point</p> <p>21 of view. And we wanted to share that just to reiterate along</p> <p>22 with the stormwater concept, that this site is in keeping</p> <p>23 with environmental regulations.</p> <p>24 HEARING EXAMINER ROBESON: And that was Exhibit</p> <p>25 157, did you say?</p>	<p>183</p> <p>1 proposed storm water plan. And the runoff will be controlled</p> <p>2 by those facilities.</p> <p>3 MS. HARRIS: Thank you. I want to turn to the</p> <p>4 issue of the stream valley buffer and how it should be</p> <p>5 calculated. There was testimony suggesting that the stream</p> <p>6 valley buffer should be extended to encompass an entire</p> <p>7 priority forest if the stream valley buffer hits any portion</p> <p>8 of the priority forest. Based on your 18 years of experience</p> <p>9 in Montgomery County, can you explain if this is a correct</p> <p>10 methodology to determine the extent of the stream valley</p> <p>11 buffer?</p> <p>12 MR. STEMANN: No, there's nothing in the</p> <p>13 environmental regulations that would suggest that you would</p> <p>14 extend the stream valley buffer to cover priority forests.</p> <p>15 You could run into a situation where the stream valley buffer</p> <p>16 intersected a large priority forest and that it could</p> <p>17 possibly include all of that area. So it's limited to the --</p> <p>18 what's in the environmental regulations, which don't</p> <p>19 stipulate anything about the priority forest.</p> <p>20 MS. HARRIS: Thank you. And there was testimony</p> <p>21 that over 1 acre of the stream valley buffer will be</p> <p>22 developed. Was that accurate?</p> <p>23 MR. STEMANN: No, and I think that was a</p> <p>24 misunderstanding. As part of the staff report there was a</p> <p>25 statement about 1.02 acres of stream valley buffer that would</p>
<p>182</p> <p>1 MR. STEMANN: Yes.</p> <p>2 HEARING EXAMINER ROBESON: Okay.</p> <p>3 MS. HARRIS: And I would note, I think you said it</p> <p>4 was dated 1/2020. But I just pulled it up and it's dated --</p> <p>5 (Crosstalk)</p> <p>6 MS. HARRIS: 2022.</p> <p>7 MR. STEMANN: Right. I misstated.</p> <p>8 MS. HARRIS: Okay, thank you. And then following</p> <p>9 up on the erosion issue, the Montgomery county trees approved</p> <p>10 technical manual, page 115, which is Exhibit 156 provides</p> <p>11 additional guidance on soil characteristics. For the soil of</p> <p>12 concern, which was soil type 116D, what does it note? And I</p> <p>13 will pull up that exhibit now.</p> <p>14 MR. STEMANN: The table in the trees manual also</p> <p>15 notes the erosion hazard is moderate. Yeah, there it is.</p> <p>16 It's the second -- 116D and that second note of moderate</p> <p>17 aligns with the erosion hazard. Or I guess it's the first</p> <p>18 one. And that is in keeping with the same determination of</p> <p>19 the environmental guidelines which were utilized in</p> <p>20 developing the NRI.</p> <p>21 MS. HARRIS: Thank you. And is there any evidence</p> <p>22 that the proposed conditional use will cause any erosion on</p> <p>23 adjacent properties?</p> <p>24 MR. STEMANN: No, there's not. The development</p> <p>25 and the increased impervious will be mitigated by the</p>	<p>184</p> <p>1 not be placed in the conservation easement. That's a greater</p> <p>2 area than the area being developed. That sort of included</p> <p>3 some extraneous areas that are also not being included</p> <p>4 including the area around the gym that was previously</p> <p>5 developed, and some green area around the gym that won't be</p> <p>6 part of that conservation easement.</p> <p>7 So since there was a lot of focus on the stream</p> <p>8 valley buffer and we touched on floodplain and wetlands and</p> <p>9 all of that, we thought we could create an exhibit sort of</p> <p>10 further illustrates the stream valley buffer, since that's</p> <p>11 one of the greater developing green area that the county uses</p> <p>12 to determine developable area. And so we had created an</p> <p>13 exhibit, Exhibit 158, to walk through the development and so</p> <p>14 we can show how we've reduced impervious and also minimized</p> <p>15 our new development.</p> <p>16 MS. HARRIS: So I just want to (inaudible) can you</p> <p>17 walk through -- and I agree with you. There was a lot of</p> <p>18 testimony that may have gotten confusing. So our goal here</p> <p>19 is to try to simplify that testimony briefly. So can you</p> <p>20 walk through what this exhibit is showing, please?</p> <p>21 MR. STEMANN: All right. So the first page, the</p> <p>22 green area on the site is the stream valley buffer as</p> <p>23 determined by -- during the NRI process. And the yellow</p> <p>24 highlighted area is the buildings in the pavement which are</p> <p>25 currently existing at the site. Currently this is about</p>

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<p>185</p> <p>1 36,000 square feet of impervious within the stream valley 2 buffer. And then -- 3 MS. HARRIS: Turning to the next page, or the next 4 sheet. 5 MR. STEMANN: Right. And this highlights the area 6 of impervious that will be removed, which is 30,000 square 7 feet. Everything excluding the gym will be removed from the 8 stream valley buffer. 9 MS. HARRIS: So just to clarify, when we came to 10 this sheet, there was an orange color that came up. 11 MR. STEMANN: Right. 12 MS. HARRIS: Those orange colors of the impervious 13 that's been removed from the stream valley buffer; is that 14 correct? 15 MR. STEMANN: Correct, the orange area which is 16 about 30,000 square feet. 17 MS. HARRIS: Okay. And then moving to the last 18 page. What does that show? 19 MR. STEMANN: So the orange on here to both the 20 new impervious in the stream valley buffer, which is our 21 access road to the Lodge from the front of the site. We also 22 noted in blue, the sanitary connection, since that is a 23 construction that will occur within the stream valley buffer. 24 But that area will return to its current state, which is 25 vegetated. So it's not a new impervious area, but there is</p>	<p>187</p> <p>1 the gentleman who prepared -- John Markovich, who prepared 2 the NRI originally. 3 MS. HARRIS: Thank you. And the zoning hearing 4 examiner inquired as to whether the trees on the adjacent 5 property, and we are talking about the western property line 6 now, should be included in the NRI. Did you review this? 7 MR. STEMANN: We did. They weren't included in 8 the original, but we did do a site visit, a couple of site 9 visits to verify. There are some bigger trees along that 10 property line, but they are not quite big enough to qualify 11 for what would be shown on the NRI. 12 MS. HARRIS: Okay. And then finally, and this was 13 coming from another inquiry that the zoning hearing examiner 14 had, what is the width with South Glen Road? 15 MR. STEMANN: South Glen Road, we measured it 16 along the property line or along our practice. It varies 17 from about 20.5 to 21.5 feet through that area. So that's 18 the width required by fire department access. And that was 19 as noted on the approved fire department access plan that 20 was -- we noted it as 20, but it is actually greater than 21 that in some locations. 22 MS. HARRIS: Thank you. I have no further 23 rebuttal questions for Mr. Stemann. 24 HEARING EXAMINER ROBESON: I just had one. 25 (inaudible) there are trees on -- not on the -- along that</p>
<p>186</p> <p>1 some development within that blue area. And so -- 2 MS. HARRIS: And so (indiscernible). Sorry. Keep 3 going. 4 MR. STEMANN: So the total impervious then to be 5 added to the stream valley buffer is 7000 square feet. And 6 if you will note, we were removing 30,000. Though it is a 7 net gain. And I would also state that moving the road to 8 this location is also an improvement because the current 9 roadway alignment is not only deep within the stream valley 10 buffer, but also impacts the floodplain in that area. 11 MS. HARRIS: So in your professional opinion, 12 relocating the road from its current location, which I'm 13 showing on -- by my cursor along the southern -- I'm sorry -- 14 the eastern boundary of the property to more of the center 15 property, is denoted in orange. In your professional 16 opinion, that the environmental benefits in common is that 17 correct? 18 MR. STEMANN: Right, correct. That's a better 19 route for that that roadway. 20 MS. HARRIS: Okay, thank you. Turning to the NRI, 21 so was the NRI signed as directed by the zoning and hearing 22 examiner? 23 MR. STEMANN: Yes, it was. We coordinated that. 24 And that was sent to Park and Planning on March 7th. It was 25 signed by -- his name is slipping my mind at the moment. But</p>	<p>188</p> <p>1 common property line but not on the subject property that are 2 going to have their critical root zone -- I think we 3 discussed two of them and they were only -- the critical root 4 zone wasn't that impacted. But did you find additional trees 5 when you went back out? 6 MR. STEMANN: There are some trees -- 7 HEARING EXAMINER ROBESON: (inaudible) 174 or 8 something. There, I can share it real quick. Let me just 9 make sure I'm in the right place. New NRI FSD, it would 10 be -- I'm sorry, I'm not seeing it. I guess what I'm asking 11 is are there additional trees that you found Ms. Ruth Soames 12 are going to be impacted or not? 13 MR. STEMANN: No. No. The NRA did not change. 14 We had assigned but there were no additional trees added to 15 that document. 16 HEARING EXAMINER ROBESON: What about Mr. Magan's 17 testimony that there was a tree that wasn't shown on the NRI? 18 MR. STEMANN: Right. Those are the trees we 19 looked at. They weren't large enough to qualify to be shown 20 on that NRI based on their size. They are in that area. I 21 think will speak to that at a later document, or at a later 22 testimony. I think there may be some documentation to on 23 those trees so we'll discuss that a little bit further. Our 24 landscape architect will discuss that. 25 HEARING EXAMINER ROBESON: Okay. All right.</p>

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<p>189</p> <p>1 That's fine. Thank you.</p> <p>2 Mr. Brown, did you have any questions</p> <p>3 MR. BROWN: Ms. Robeson I'm not sure. I have to</p> <p>4 confer with Ms. Lee who was handling the environmental issues</p> <p>5 for us before. And if we give her a little latitude she</p> <p>6 will -- she can tell you whether there are any questions or</p> <p>7 not.</p> <p>8</p> <p>9 HEARING EXAMINER ROBESON: Okay. Is she on -- in</p> <p>10 a meeting now?</p> <p>11 MS. LEE: Yes. Excuse me.</p> <p>12 HEARING EXAMINER ROBESON: Ms. Lee -- and then I</p> <p>13 see Ms. McGrath Vincent Ms. Lee, why don't you go ahead.</p> <p>14 MS. LEE: Well, let me ask -- I know this because</p> <p>15 maybe our questions should be held back until -- I know that</p> <p>16 there have been additional documents that have been</p> <p>17 presented, exhibits, one is a memorandum from Mr. Klebasko.</p> <p>18 When the wetlands delineation and stream valley buffers and</p> <p>19 then also some other ones that look like they dealt with the</p> <p>20 master plan provisions with regard to forest conservation.</p> <p>21 So is there going to be anybody else that's going to be</p> <p>22 discussing those? Or just this gentleman now?</p> <p>23 MS. HARRIS: No.</p> <p>24 MR. STEMANN: Yes.</p> <p>25 MS. HARRIS: Mr. Park -- go ahead.</p>	<p>191</p> <p>1 prohibition that set forth in the environmental standards,</p> <p>2 and it reflects the state and the national regulations. I</p> <p>3 just wonder what we're missing here.</p> <p>4 MS. HARRIS: (Inaudible).</p> <p>5 MS. LEE: That you somehow think you can do just</p> <p>6 some other plantings as sort of a mitigation when it such a</p> <p>7 strong requirement based on not just environmental protection</p> <p>8 but ensuring the safety and adequacy of built environment so</p> <p>9 things don't fall in streams?</p> <p>10 MS. HARRIS: If I could, Mr. Stemann in</p> <p>11 combination with Mr. Park testified about this in detail</p> <p>12 during their direct testimonies citing the various provisions</p> <p>13 of the environmental regulations I would submit that the</p> <p>14 answer to the question lies in previously offered testimony</p> <p>15 and that question that was just posed is a little off-base</p> <p>16 from what the rebuttal testimony was anyway.</p> <p>17 MS. LEE: Well, he's just saying that -- he's</p> <p>18 positing what they're going to do in order to meet the</p> <p>19 requirements and I'm just asking how that does it when I</p> <p>20 don't see any provisions anywhere for exemptions or</p> <p>21 mitigation and I'm just asking.</p> <p>22 HEARING EXAMINER ROBESON: Well, I have to say I</p> <p>23 remember it being testified to at length that there were</p> <p>24 exemptions for infrastructure, utilities, and that kind of</p> <p>25 thing at the first hearing. And I remember they introduced</p>
<p>190</p> <p>1 MR. STEMANN: Well yeah, I was going to say Mr.</p> <p>2 Park and actually Mr. Klebasko is also going to testify and</p> <p>3 they'll speak to those.</p> <p>4 MS. LEE: But maybe I could just ask a preliminary</p> <p>5 question because there seems to be such a disconnect. I</p> <p>6 assume that you're following the environmental guidelines,</p> <p>7 which are a mix of statutes, regulations, and federal, state,</p> <p>8 and local. But I just wonder how, if that's the case, when</p> <p>9 there is a very strict limitation on page 17 that says no</p> <p>10 building, structure, impervious surfaces or activities</p> <p>11 requiring clearing or grading will be permitted in stream</p> <p>12 buffers except for infrastructure uses, bikeways and trails</p> <p>13 found to be necessary, unavoidable, and minimized (inaudible)</p> <p>14 Planning Department, environmental staff working closely with</p> <p>15 the utility or lead agency.</p> <p>16 And I ask you that because it's true that the</p> <p>17 current owner of the property had an enormous amount of</p> <p>18 impervious surface as you indicated, 35,000 square feet. But</p> <p>19 you're reducing that by 21,000 square feet so you have 14,000</p> <p>20 left. It includes, if I understand what you're saying,</p> <p>21 you're going to be including the old gym plus the road but</p> <p>22 there's also the limits of disturbance around that building</p> <p>23 when you look at the documents that you've presented.</p> <p>24 And I just want to know what legal basis do you</p> <p>25 have to be able to exempt yourself from that straightforward</p>	<p>192</p> <p>1 it as an exhibit. So I guess my question is does it that</p> <p>2 address your question?</p> <p>3 MS. LEE: And I'm not objecting to that, to the</p> <p>4 infrastructure ones so that would cover the bike path, the</p> <p>5 infrastructure and the roads. So for example, the sewer</p> <p>6 line, but I don't see how they can exempt the area -- the</p> <p>7 additional area around the old gym and the old gym. To</p> <p>8 continue to allow a structure that's over 11 years old to be</p> <p>9 so close to the stream, and we can talk when we have Mr.</p> <p>10 Klebasko discussed his determination as to how long before it</p> <p>11 falls in. But I just wanted to know -- I just -- that's the</p> <p>12 provisions that I don't understand how there is an exception</p> <p>13 for things other than --</p> <p>14 HEARING EXAMINER ROBESON: Okay. Now you're</p> <p>15 saying -- when you say that I do remember asking why would</p> <p>16 you leave the gym in. And I remember the staff report</p> <p>17 stating it would be more environmentally damaging to take it</p> <p>18 out than to leave it in. But is that something you can</p> <p>19 answer?</p> <p>20 MS. HARRIS: Can I ask -- maybe I can ask Mr.</p> <p>21 Stemann a question that will help in this regard.</p> <p>22 Do the environmental regulations -- is it correct</p> <p>23 that the environmental regulations control what can be built</p> <p>24 or provide guidance in terms of what can be built within a</p> <p>25 stream valley buffer?</p>

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<p>193</p> <p>1 MR. STEMANN: Correct, right. That would be the</p> <p>2 case for new construction.</p> <p>3 MS. HARRIS: And to your knowledge is there any</p> <p>4 requirement within those environmental regulations about</p> <p>5 removing previous link existing improvements and that were</p> <p>6 previously permitted?</p> <p>7 MR. STEMANN: Not to my knowledge, no. I don't</p> <p>8 believe so.</p> <p>9 MS. LEE: How about the area around that building?</p> <p>10 So I think there's going to be new parking lot, maybe? The</p> <p>11 limit to disturbance are included within the stream valley</p> <p>12 buffer that surround it. That don't have anything to do</p> <p>13 with, you know, the infrastructure. The road are --</p> <p>14 MR. STEMANN: Right. There's no new parking</p> <p>15 associated with the gym. The existing parking there is being</p> <p>16 removed. There is an area around the gym that will be</p> <p>17 maintained for the storm water facility and I think</p> <p>18 there's -- we're providing some green space around there</p> <p>19 which ends up not in a conservation area, but it is a green</p> <p>20 space around the gym.</p> <p>21 MS. HARRIS: And Mr. Stemann, can you explain in a</p> <p>22 little bit more detail why you wouldn't subject the area</p> <p>23 immediate that's used for maintenance immediately around the</p> <p>24 existing structure to the forest conservation easement?</p> <p>25 MR. STEMANN: Well, in order to access the</p>	<p>195</p> <p>1 so the first stages to kind of like prep for the major</p> <p>2 construction and then the construction would be the Lodge,</p> <p>3 hopefully being finish before some of the clustered cottages,</p> <p>4 or whatever. Okay.</p> <p>5 So my question is are there storm water special</p> <p>6 temporary storm water measures going into effect and which</p> <p>7 exhibit are they in, for the construction and removal of all</p> <p>8 the green things that are keeping the place from washing away</p> <p>9 in a big pile of mud?</p> <p>10 MR. STEMANN: All right. That was not part of the</p> <p>11 storm water concept process but when we continue the process</p> <p>12 with DPS for permitting we will be required to provide a</p> <p>13 erosion and sediment control plan which will address</p> <p>14 construction grading and to protect the streamways from any</p> <p>15 runoff during that part of the process.</p> <p>16 MS. McGRATH: Okay. All right. Just a different</p> <p>17 stage.</p> <p>18 MR. STEMANN: Right.</p> <p>19 MS. McGRATH: Thank you.</p> <p>20 HEARING EXAMINER ROBESON: And you said, clear the</p> <p>21 entire side but I'm sure they aren't clearing the entire</p> <p>22 site.</p> <p>23 MS. McGRATH: No. I mean the site that's going to</p> <p>24 be developed.</p> <p>25 HEARING EXAMINER ROBESON: I know.</p>
<p>194</p> <p>1 building and there is also a desire to have the ability for</p> <p>2 residents to use some of that area around the gym weather for</p> <p>3 walking or accessing around that site. That's the desire to</p> <p>4 leave some of that area available.</p> <p>5 MS. HARRIS: But no additional impervious area is</p> <p>6 being constructed?</p> <p>7 MR. STEMANN: No, not associated with the gym.</p> <p>8 HEARING EXAMINER ROBESON: All right. Ms. Lee, I</p> <p>9 think you have your answer. Did you have any other</p> <p>10 questions? And then I -- Ms. McGrath has had her hand up for</p> <p>11 quite some time. So Ms. Lee -</p> <p>12 MS. LEE: Okay. Only that I can ask these --</p> <p>13 those questions of the folks who are going to discuss the</p> <p>14 forest conservation and the status of the gymnasium, and I</p> <p>15 think that's going to be two other people, later.</p> <p>16 HEARING EXAMINER ROBESON: Okay.</p> <p>17 MS. LEE: Thank you.</p> <p>18 HEARING EXAMINER ROBESON: Ms. McGrath, do you</p> <p>19 have a question?</p> <p>20 MS. McGRATH: Yes, I do. Thank you. I</p> <p>21 wondered -- from what Mr. Wormald described as the process of</p> <p>22 the development, it sounded like the first stage was to sort</p> <p>23 of clear cut the whole site and lay it out for the</p> <p>24 development for the street, for the roads, and because the</p> <p>25 grading is going to change for the Lodge and so forth. And</p>	<p>196</p> <p>1 MS. McGRATH: Okay. Thank you.</p> <p>2 HEARING EXAMINER ROBESON: Thank you. Okay. Ms.</p> <p>3 Harris, do you have any questions based on those question?</p> <p>4 MS. HARRIS: I do not. Thank you.</p> <p>5 HEARING EXAMINER ROBESON: Okay. Mr. Stemann, you</p> <p>6 may be excused as a witness.</p> <p>7 MR. STEMANN: All right. Thank you very much.</p> <p>8 MS. HARRIS: And our next rebuttal witness is Mr.</p> <p>9 Park.</p> <p>10 HEARING EXAMINER ROBESON: Oh, the man of the</p> <p>11 hour.</p> <p>12 MR. PARK: Really billed it.</p> <p>13 UNIDENTIFIED SPEAKER: And we shall see.</p> <p>14 HEARING EXAMINER ROBESON: Mr. Park, you're still</p> <p>15 under oath.</p> <p>16 MR. PARK: Yes, ma'am. If I may just have a</p> <p>17 second pull up the document here.</p> <p>18 HEARING EXAMINER ROBESON: Sure.</p> <p>19 MS. HARRIS: So Mr. Park, I didn't know whether</p> <p>20 you wanted me to control the screen or whether you want to</p> <p>21 pull them up on your own. Whichever is easier for you. And</p> <p>22 your own mute.</p> <p>23 MR. PARK: Yes, Ms. Harris, I would prefer if you</p> <p>24 can control the screen.</p> <p>25 MS. HARRIS: Okay. Okay so let's begin with --</p>

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<p>197</p> <p>1 HEARING EXAMINER ROBESON: I'm sorry. Before you 2 start, Ms. McGrath, if you're still here can you put your 3 hand down? Because I never know if it's a new question. 4 Thank you. Okay. Go ahead. 5 MS. McGRATH: My apologies. Thank you. 6 MS. HARRIS: Okay. So let's begin with the 7 landscaping went to this is going to be the bulk of your 8 testimony, obviously. Which areas of the subject property 9 have changed as it relates to the landscaping since your 10 previous testimony? And with respect to that question, I'm 11 pulling up Exhibit 144-J. 12 MR. PARK: Yes, Ms. Harris, if I may just have 13 another second I got my mice mixed up here. Okay. Yes, 14 there are two areas that have been revised to address 15 neighbors the comments so far as it relates to landscaping. 16 Those areas include in the area at the western property line 17 and in the forest conservation area at the northern portion 18 of the site which include both the western property line as 19 well as a portion of the eastern property line. 20 MS. HARRIS: And there was testimony during the 21 hearing regarding the adequacy of the landscaping, 22 particularly along the western property line. Can you 23 describe the revisions that you have made? 24 MR. PARK: Yes, Ms. Harris. First, I'd like to 25 reiterate what was originally provided was in conformance</p>	<p>199</p> <p>1 MS. HARRIS: Thank you. And now, I'm going to 2 pull up Exhibit 151. And then, if you could walk through in 3 more detail what those changes were that would be helpful. 4 MR. PARK: Yes. First I would like to note that 5 we have included the three additional offsite trees on this 6 exhibit. They are labeled N1, N2, and N3 on Mr. Magan's 7 property. As Mr. Stemann testified, these were not required 8 on the NRFSD as they are not of a significant or a specimen 9 tree size. However, we do show them here to demonstrate 10 their approximate CRZ disturbances are less than 15 percent. 11 In fact, all of the surveyed trees on the adjacent 12 properties along the western property line have CRZ 13 disturbances of less than 30 percent. 14 MS. HARRIS: And what's the significance of less 15 than 30 percent? 16 MR. PARK: Thirty percent or less CRZ disturbance 17 typically will equate to a high survival rate of that tree, 18 most likely these trees they will all survive construction. 19 MS. HARRIS: Thank you. Okay. So what did you do 20 after hearing feedback from the neighbors, if you could 21 elaborate? 22 MR. PARK: Yes, Ms. Harris. We modified our 23 landscape screening to provide a green wall of giant green 24 arborvitae and cryptomeria to provide a dense, uniform and 25 above adequate screening, above what the zoning ordinance</p>
<p>198</p> <p>1 with what the zoning ordinance requires. Given that the 2 cottage unit setbacks were 50 percent greater than what was 3 required. It was our opinion that this was adequate. We 4 were not relying on the landscaping on the adjacent 5 properties, just pointing out the landscape buffers provided 6 were not existing in a vacuum. 7 However, we have contacted all of the property 8 owners on the western property line and met with eight of the 9 six owners who responded to our outreach. And to clarify, 10 one of those losses is owned by Southland School as a rental 11 property so it was not included. 12 MS. HARRIS: I just have a clarify the question, 13 something you just said. You said you contacted eight of the 14 six. I assume you meant six of the eight? 15 MR. PARK: Yes. Sorry about that. Six of the 16 eight owners, correct. 17 MS. HARRIS: Okay. 18 MR. PARK: Some of the property owners expressed 19 that the Applicant team reduce views of structures and 20 lights. I'd like to point out that this is not a requirement 21 of conditional use or requirements per the zoning ordinance, 22 but we did take into great consideration the feedback we got 23 again, just from a personal perspective I did -- I really did 24 appreciate the honest feedback and we tried to do our best to 25 accommodate them.</p>	<p>200</p> <p>1 requires. These trees will be 10 foot in height, spaced at 6 2 foot on center. They will be matching, of specimen quality, 3 and be hand selected and tagged by a landscape architect. 4 This means that they will be of the highest quality and 5 standards. And based on field observations around the 6 property and walking the site It's my professional opinion 7 that the plant material selected will do very well on this 8 site. 9 Where the landscape buffer transitions -- so that 10 lot 1, Lot 3, and Lot 4 have the green wall treatment. 11 However, as the cryptomeria turns and there's more space 12 there we are allowing for a more integrated integration of 13 shrub and more attractive material. Although they are also 14 very effective in doing the same screening, as you will see 15 on the southern portion. 16 MS. HARRIS: And then, what about revisions at the 17 forest conservation area at the northern portion of the site? 18 I think I may need a new exhibit. Is the -- 19 MS. HARRIS: Yes, Ms. Harris, It's Exhibit 151. 20 HEARING EXAMINER ROBESON: Before you go to that, 21 did you say six feet on center for the green wall? 22 MR. PARK: Correct. 23 HEARING EXAMINER ROBESON: Okay. 24 MS. HARRIS: So Mr. Park are there more than one 25 page for Exhibit --</p>

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<p>201</p> <p>1 MR. PARK: Oh, I'm sorry. I must have put the 2 wrong exhibit number there. I can -- 3 MS. HARRIS: Let me see something. 4 MR. PARK: It should be Exhibit 150, 150, Ms. 5 Harris. 6 MS. HARRIS: Oh, okay. Hold on. Okay. 7 So can you explain what your approach was along 8 the northern portion? 9 MR. PARK: Yes. We took a similar approach here, 10 especially after meeting with Ms. Brigham as well as Ms. 11 Baker. But we wanted to make sure that we provided a similar 12 screening effect but more suitable for the forest understory. 13 And so that was the intent here. I would note that the 14 supplemental planting and reforestation areas are shown as 15 well. So if you look at the exhibit, the single trees are 16 the supplemental evergreen trees being planted. But then 17 there are additional green shaded areas which represent the 18 plant material which is being shown on the forest planting 19 schedule as well. 20 And there was some question in the earlier 21 testimony from the neighbors about what size these cereals 22 are and how big they are, and I would note here that the 23 deciduous ornamentals, evergreen, they're all shown here in 24 that schedule. The canopy trees that there are at a 3 inch 25 caliper size, so they will be 12 to 14 feet in height when</p>	<p>203</p> <p>1 height will be at least 19 feet in height. 2 MS. HARRIS: And then seven years later? Seven 3 years after construction? 4 MR. PARK: They will be approximately 31 feet in 5 height based on this plant material and how aggressively 6 these grow vertically. 7 MS. HARRIS: Okay. Thank you. So now, we talked 8 about 10821, and then going to Ms. Brigham's property on 9 Dobbins? 10 MR. PARK: Yes, Ms. Harris, you can see from this 11 view of Ms. Brigham's property it shows several areas of 12 staggered evergreen trees of different species. These are a 13 little bit different than what we proposed along the property 14 line and there are shade conditions, a canopy we have to 15 consider so we use a hemlock and some other varieties that 16 would -- that we saw were doing well here on this site. And 17 so we selected those. It will provide a similar effect but 18 one that is appropriate for a forest conservation area. 19 MS. HARRIS: Thank you. And Mr. Magan testified 20 that he would want to see a 10 foot tall stone wall along his 21 shared property line. And what's your professional opinion 22 about this as compared to the landscaping that is, in fact, 23 being proposed? 24 MR. PARKS: Right. In terms of compatibility, I 25 didn't see such walls anywhere in the surrounding</p>
<p>202</p> <p>1 installed. 2 MS. HARRIS: Thank you. So it's helpful to see 3 this in plan view, but do you have some descriptions or 4 exhibits that show what it really is going to look like from 5 these adjacent properties? 6 MR. PARK: Yes, Ms. Harris, I think Exhibit 145 7 will show this. And after meeting with neighbors we selected 8 three properties to provide an example of what this will look 9 like. This includes Mr. Magan's property, Mr. Chong's 10 property and Ms. Brigham's property. As you can see from the 11 view of Mr. Magan's property we considered plantings at three 12 years after planting, a six-year-old tree, and at seven years 13 after planting, a 10-year-old tree to ensure the heights will 14 be adequate even in the short term. Keep in mind these trees 15 will be 10 foot high at installation. That's Mr. Magan's 16 property there the next slide. And likewise, this is a view 17 of Mr. Chong's property which -- his lot -- or his unit is 18 facing a little bit at an angle here. So you can kind of see 19 what that looks like at 3 years and at 10 years. 20 MS. HARRIS: And while we're here, just to 21 reiterate, so at three year growth on -- using Mr. Magan just 22 as an example, you said the trees will be how tall? 23 MR. PARK: At three-year growth -- give me a 24 second here. We have an exhibit that shows exactly how tall 25 they are but as far as the green wall three-year post install</p>	<p>204</p> <p>1 neighborhood so it's my opinion that, you know, I wall would 2 be out of character, especially one that is 10 foot tall. 3 You know, it seems like it might be a good approach initially 4 but I think in hindsight that's -- that would be definitely 5 out of character. And so when we engage Mr. Magan, he 6 pointed out an example to us of a landscape treatment that he 7 saw and so we looked at that, and there is an example of what 8 we're proposing at the corner of Edison and South Glen. 9 And Ms. Harris, if you can zoom in? 10 You can see here this is the actual image of what 11 this agreement wall looked like this wall of arborvitae, just 12 to restate, it is a single row of arborvitae space at 6 foot 13 on center. It was actually Mr. Magan that pointed out this 14 landscape treatment to us and after examining the trees we 15 agree that the screening is extremely effective and the trees 16 are thriving in this application. 17 Actually, it's really doing well, there is a 18 little bit of browning on the front side just because of the 19 proximity to the road, but in this application I think it's a 20 fantastic green screen. 21 MS. HARRIS: And again, at 10 years old -- well, 22 after seven years the trees will be planted when they are -- 23 they'll be 3 years old at the time of planting; is that 24 correct? 25 MR. PARKS: That's correct and you can imagine how</p>

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<p style="text-align: right;">205</p> <p>1 tall, or how quick they grow. I mean, at 3 years they're 2 already 10 feet, so you know. So please note that these 3 trees are 10 foot tall when going in and the giant green 4 arborvitae is a -- it's a specifically cultivated to screen 5 very, very quickly. And I can go into a little bit more of 6 the details on why this tree is effective. You know, it has 7 more of a central leader versus some other arborvitae, but 8 allows them to be spaced very closely together without 9 competing much and it really does a great job of screening, 10 that's the intent of the material.</p> <p>11 MS. HARRIS: And Mr. Magan at one point testified 12 that he would sit on his back and watch the cars go in and 13 out of the Temple driveway. Once these are planted, at the 14 time of planting would he be able to see those cars from the 15 existing property at the religious institution to the east of 16 the subject?</p> <p>17 MR. PARKS: No. These are dense evergreen trees 18 which are full from top to bottom. And I will provide a 19 continuous visual barrier and Mr. Magan will most likely not 20 see the view of the cars driving to the synagogue, nor will 21 he see the vehicles on the subject property either.</p> <p>22 MS. HARRIS: Thank you. And moving to the eastern 23 side for a moment, we heard from Ms. Baker that she had a 24 concern about visibility from her property. Did you give any 25 consideration to that? Yes. I think it might be helpful if</p>	<p style="text-align: right;">207</p> <p>1 this picture you can, on this picture, see the surface 2 parking lot. Will that be removed?</p> <p>3 MR. PARKS: Yes, it will.</p> <p>4 MS. HARRIS: And then, I believe the landscape 5 plan that you showed a moment ago showed that there will be 6 some supplemental plantings in this area; is that correct?</p> <p>7 MR. PARKS: Yes, there will be.</p> <p>8 MS. HARRIS: And what will -- briefly, can you -- 9 what will those consist of?</p> <p>10 MR. PARKS: 3 inch caliper canopy trees. I think 11 it is anywhere between five and 8 foot ornamental and 12 evergreen trees and some shrubs as well.</p> <p>13 MS. HARRIS: Thank you. And then, what's the 14 maintenance proposed for all these trees?</p> <p>15 MR. PARKS: Right, Ms. Harris, so all the tree 16 buffers will be planted on a show a property and maintained 17 by the HOA and landscape inspections typically are conducted 18 twice a year there was some concern from neighbors about deer 19 protection and et cetera and deer protection mesh or 20 repellent spray will be applied throughout the year and 21 replaced as needed by a licensed landscape contractor.</p> <p>22 MS. HARRIS: Thank you. Moving on to the priority 23 forest. The Potomac subregion forest analysis technical 24 appendix provides that -- and I'm quoting. Attempts should 25 be made to save, end quote, all the priority forest stands.</p>
<p style="text-align: right;">206</p> <p>1 we go to Exhibit 146. And we did reach out to Ms. Baker, I 2 believe on two occasions. There was some correspondence but 3 I think there was no more after that but we did want to meet 4 with Ms. Baker obviously. But if you look at this image of 5 146 --</p> <p>6 MS. HARRIS: Oh, sorry. I didn't -- it's on my 7 screen but no one else --</p> <p>8 HEARING EXAMINER ROBESON: Now, she had to leave. 9 She said she would be here tomorrow. So you know, I don't 10 know to what extent, but she did send me a chat so she will 11 be here tomorrow and maybe Mr. Park would summarize very 12 briefly this testimony again for her.</p> <p>13 MS. HARRIS: That's fine. And this will take 14 probably one minute so we'd be happy -- S -- let him 15 completed now but we'd be happy to reiterate it tomorrow.</p> <p>16 HEARING EXAMINER ROBESON: Sure.</p> <p>17 MR. PARKS: Yes. And this is a photo taken near 18 the property line because we didn't engage Ms. Baker in the 19 field we took a shot from right at the property line and we 20 confirmed the existence of a healthy forest between Ms. 21 Baker's property and the remaining Jim structure. Which is 22 more than 360 feet away at the closest point to the lot line 23 and you can see here you can hardly see the gym structure 24 even in winter.</p> <p>25 MS. HARRIS: And then, Mr. Park while we're on</p>	<p style="text-align: right;">208</p> <p>1 What efforts have been taken in connection with the 2 conditional use?</p> <p>3 MR. PARKS: Right, Ms. Harris. So I just want to 4 emphasize that this is not a requirement, it says attempts 5 should be made. And as I have previously testified we have 6 made such attempts. And although I probably wasn't as clear 7 as I should have been, so I'd like to just go through the 8 four things that we did. One is clustering the development 9 as far as the land area away from the stream valley buffer. 10 Two, adjusting the form and orientation of the building. 11 Three, limiting grading by tucking the foundation walls into 12 grade. And four, selectively only removing damaged forest, 13 primarily damaged by invasive plants as you can see in the 14 image to the right there.</p> <p>15 When we were on sight, you know, we -- I had a 16 discussion with Ms. Brigham about the damage and we both 17 agreed that it is an issue. All these attempts were 18 contemplated to minimize the impact on the priority forest.</p> <p>19 MS. HARRIS: And do you think your efforts will be 20 successful? Or have been successful?</p> <p>21 MR. PARKS: Yes, they will be once the invasives 22 are out of there. But the project is only eliminating six 23 percent of the priority forest, and the portion which is 24 severely damaged by invasive plants the invasive species here 25 you know, in particular silk grass, honeysuckle, multiflora</p>

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<p style="text-align: right;">209</p> <p>1 rose account for 39 percent coverage of the herbaceous layer 2 of the forest floor, as you can see here. 3 MS. HARRIS: And you say see here, so I'm -- we're 4 looking at Exhibit 147? Yes. 5 MR. PARKS: Yes. 6 MS. HARRIS: And so you're referring to these two 7 photos; is that correct in terms of the impact of the 8 invasives? 9 MR. PARKS: Yes. I'm referring to the photos 10 which show the severe invasives on the ground and crawling up 11 the trees and vines as well. 12 MS. HARRIS: Okay. Thank you. 13 MR. PARKS: I just want to clarify that there are 14 seven variance trees in the forest stand and a majority of 15 them are in poor and fair condition. And it makes sense 16 because they're damaged from invasives. Because the forest 17 is so damaged here removing it would not create edge 18 regression which is where the change in the edge condition 19 impacts the interior forest habitat. And so that's not 20 really a concern that typically the forest is an interior 21 forest and it's high quality there is a change in the edge it 22 may have an effect but as you can see here that's not the 23 case. So my professional opinion it's better to remove the 24 invasives and dying trees and replace with new healthy trees. 25 MS. HARRIS: So you testified that you're</p>	<p style="text-align: right;">211</p> <p>1 MS. HARRIS: And just to be clear, there is not 2 any regulatory or statutory requirement to -- for that 3 additional 2.1 acre planting; is that correct? 4 MR. PARKS: That's correct. 5 MS. HARRIS: Thank you. So let's move on to 6 lighting. Mr. Swihart reviewed the exterior building 7 lighting. Can you please review the site lighting that's 8 being provided and for that I will pull up 148, which is the 9 photometric that we showed previously. 10 MR. PARKS: Yes. 11 MS. HARRIS: I can zoom in if that would be 12 helpful. 13 MR. PARKS: Yes, so these things are kind of hard 14 to see, but sure. After consulting with the lighting 15 consultant with Mr. Swihart and myself we are proposing new 16 pole fixtures and low level landscape fixtures to further 17 address concerns about light visibility and illumination. 18 THE pole fixtures are still located along the street and at 19 12 foot height, but we were able to further reduce light 20 levels with this new specification. So those are all the 21 fixtures that are labeled A. They are essentially the same, 22 or similar locations as they were before, along the street. 23 And maybe, Ms. Harris, if we go to the frontage 24 of the site. There is one sign light labeled J at the 25 entrance sign there. And then, I believe there are six</p>
<p style="text-align: right;">210</p> <p>1 removing, even with those best efforts and you've got it 2 narrowed down to just eliminating .58 of the priority forest. 3 Are you doing anything to address the fact that the .58 of 4 the forest will be removed? 5 MR. PARKS: Yes, Ms. Harris. If you can flip over 6 to the next slide. So this is what we were talking about, 7 the 6 percent. And then, what we're putting back, again 3 8 inch caliper trees, 6 to 8 foot tall ornamentals, evergreens. 9 And so yes, while not required we are replanting the whole 10 .58 acres of priority forest adjacent to the priority forest 11 to remain. These plants will include the list of plants I 12 went over. And if you go to the next slide, Ms. Harris? 13 MS. HARRIS: Well, before we do I just want to 14 clarify for the hearing examiner. So the darker green on 15 this screen, that equals .58 of new forest that will be 16 planted adjacent to the priority forest; is that right? 17 MR. PARKS: Correct. 18 MS. HARRIS: All right. Thank you. And now, 19 moving to the next slide. 20 MR. PARKS: Right. Yes, Ms. Harris, we can see 21 that. So this next slide shows that you know, while we are 22 not required we are voluntarily planting an additional 2.10 23 acres of supplemental plantings. And in my opinion, this is 24 an overall environmental benefit and good stewardship of the 25 land.</p>	<p style="text-align: right;">212</p> <p>1 landscape lights which will illuminate piers that run along 2 the front fence and pier arrangement there. And then, the 3 only other area as far as sight lighting is at the Lodge 4 building. 5 Right. So you can see there that there's another 6 J fixture of the sign light at the Lode fixture -- or at the 7 Lodge sign. And then, I believe there are six landscape 8 lights that will gently illuminate the trees toward the rear 9 of the Lodge courtyard area. Um -- 10 MS. HARRIS: Okay. And -- go ahead. I'm sorry. 11 MR. PARKS: Yes. No, no. So I just wanted to 12 point out and Mr. Swihart did that the proposed light 13 fixtures, we did look at them closely so the pole lights and 14 that we swapped out have a, more of a horizontal lens and a 15 cutoff roof which projects that light downward. The lens is 16 frosty to diffuse the light source, reduce glare, and 17 increase visual cover. So I just wanted to point that out as 18 well. 19 MS. HARRIS: Thank you. And was a new photometric 20 done based on all the exterior lighting that both of you just 21 testified to and incorporating the lighting that Mr. Swihart 22 testified to? 23 MR. PARKS: Yes. The new photometric is in the 24 format of Park and Planning so it's black and white, but this 25 is the same exhibit. But yes, a new photometric was revised</p>

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<p>213</p> <p>1 for the new fixtures mentioned and it continues to show the 2 light levels at the property line is 0.0. There are no value 3 zero -- I'm sorry. Not only are the values zero at the 4 property line but as the exhibit shows they are 04 large 5 portions of the property. As you can see indicated in the 6 gray shading</p> <p>7 MS. HARRIS: Thank you. And are you familiar with 8 the zoning ordinance section 6.44 E which requires, and I'm 9 quoting, for conditional use of lighting .1 footcandles or 10 less at any lot line that abuts a lot with a detached housing 11 building type not located in a CR or employment zone.</p> <p>12 MR. PARKS: Yes, I am aware.</p> <p>13 MS. HARRIS: And what's that -- and first of all 14 do we comply with that requirement that the levels not exceed 15 .1 at the property line?</p> <p>16 MR. PARKS: Yes, Ms. Harris, we do. This is 17 important because the zoning ordinance specifically considers 18 the light levels for situations like this where you have a 19 conditional use next to a detached single-family house type 20 or a building type. And the proposed lighting far exceeds 21 this requirement. In our opinion, the fact that the light is 22 so much below what the ordinance requires speaks for itself 23 in terms of compatibility, although we can always do better. 24 And I think the Applicant team has really made an effort to 25 do what we can here. So yeah, we have revisited and</p>	<p>215</p> <p>1 like if it were developed for single-family residential? 2 MR. PARKS: Right. So you know, instead of a 3 private driveway we would have at least one public street on 4 the property, which would probably have taller lights. 5 Public roads standards you're probably looking at 14 to 16 6 foot high poles versus the 12 foot poles in a residential. 7 The private street allows us to have that flexibility of the 8 shorter poles. A second, I think a single-family development 9 would not have to provide, nor would we anticipate providing 10 the level of landscaping buffer that is being proposed on the 11 property.</p> <p>12 Also, houses can be 50 feet tall with a full three 13 stories under a by right development scenario. Just as a 14 visual inspection of the lights in the surrounding 15 neighborhood. Ms. Harris, if you can pull up the next 16 exhibit.</p> <p>17 MS. HARRIS: Go ahead. So can you explain what 18 this exhibit is showing.</p> <p>19 MR. PARKS: Ms. Harris, I'm not --</p> <p>20 MS. HARRIS: I'm sorry. I'm not showing it. 21 Sorry. Okay. So the -- can you explain what this exhibit's 22 showing? And this is Exhibit 149.</p> <p>23 MR. PARKS: Yes. You know, we just did a quick 24 visual inspection of the surrounding neighborhood to get a 25 sense of the light levels that would exist under a by right</p>
<p>214</p> <p>1 reselected fixtures and believe that it definitely helps with 2 the compatibility beyond what the ordinance requires.</p> <p>3 MS. HARRIS: And can you describe the existing 4 lighting on the property?</p> <p>5 MR. PARKS: Yes. Yes, testimony from neighbors 6 may have left the impression that the property is fully dark, 7 but that's really not the case. There are at least 70 8 fixtures that we -- we counted fixtures but there are 24 9 light poles, 60 unshielded sconces and floodlights and when 10 the property was operating as a school it was well lit and 11 some of these light continued to operate for safety reasons.</p> <p>12 Now, I just want to clarify that not all of them 13 are operating, obviously, but you could definitely see that 14 there are -- if the pole lights were on, this, as were on 15 some of them. But moreover, any development on this property 16 would have liked.</p> <p>17 MS. HARRIS: And just to clarify, how many light 18 are on the property currently? Because you just said it very 19 quickly and I want to make sure the record reflected what you 20 said.</p> <p>21 MR. PARKS: Yes, Ms. Harris. We counted 70 light 22 fixtures.</p> <p>23 MS. HARRIS: Okay. Thank you. And can you 24 briefly explain, because this property will be developed one 25 way or another, what with the lighting on the property look</p>	<p>216</p> <p>1 development scenario and this is pretty typical of what you 2 see. But this is what we found in the surrounding 3 neighborhood. So there's obviously taller pole lights, some 4 architectural highlighted -- highlights with accent up lights 5 on -- things of that nature.</p> <p>6 MS. HARRIS: Thank you. So all -- in sum with 7 respect to the lighting, is it is it your opinion that the 8 lighting is compatible with -- the proposed lighting is 9 compatible with the surrounding neighborhood?</p> <p>10 MR. PARKS: Yes, it is. Not only for the fact 11 that it's zero at the property lie per the ZO, but -- per the 12 zoning ordinance, but the Applicant has taken measures to 13 reduce the impact of lighting with (indiscernible). The 14 landscape screening changes. You know, lighting is an 15 inherent characteristic of a residential care facility. And 16 no matter what's developed on the property there's going to 17 be lighting. You know, existing residents can look out the 18 window today and see lighting in other resident's home to 19 day. So I mean, you know, to conclude let's say in our case 20 we went above and beyond the regulatory requirements to 21 mitigate the visual impacts of the proposes lighting and we 22 did this after listening the neighbors testimonies, onsite 23 meetings, had discussion with other consultants.</p> <p>24 MS. HARRIS: Thank you. And is there anything 25 else that you would like to add with respect to either</p>

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<p>217</p> <p>1 landscape or lighting that would be helpful to the hearing 2 examiner? 3 MR. PARKS: Not at this time. Thank you, Ms. 4 Harris, Ms. Robeson. 5 MS. HARRIS: Thank you. That concludes Mr. Park's 6 testimony. 7 HEARING EXAMINER ROBESON: Mr. Brown? I think -- 8 MR. BROWN: Ms. Lee may have a question or two 9 about the priority forest testimony and then I think Mr. 10 Magan may have a question about his particular property which 11 was discussed extensively. 12 MS. LEE: I do have a question if I could about 13 the priority forest? But if Rick would like to go first, I 14 know he's a busy -- and he's actually -- he's working on some 15 projects. But I guess the first thing is that its' very 16 clear in the master plan that there were certain areas that 17 were to be protected. And you've indicated that you agree 18 with that. 19 Isn't it true that the master plan provisions in 20 Montgomery County are binding, not just advisory? 21 MS. HARRIS: I'm going to object to that. That's 22 a question of law the landscape architect can't necessarily 23 answer. 24 HEARING EXAMINER ROBESON: Agreed. 25 MS. LEE: That's fine. So did you -- when you</p>	<p>219</p> <p>1 section that you are taking over and you will be invading -- 2 you're going to be clear cutting all the trees off that 3 portion. 4 MR. PARKS: We will be removing a portion of the 5 priority forest that has been damaged by invasive plants and 6 this area is outside of the stream valley buffer. 7 MS. LEE: But it's the one, but it's within the 8 area that clearly designated in the master plan to be 9 protected? 10 MR. PARKS: No. It says all attempts should be 11 made and the Applicant team believes that we've made 12 substantial attempts and we believe that Park and Planning 13 staff concurs with that in their approval of the FSD and 14 their approval of the forest conservation plan, as well. 15 MS. LEE: But geographically or intrinsically or 16 math wise, it is exactly where the line has been drawn. Now, 17 I understand you're saying that you've made all attempts to 18 try to preserve it, but in fact, you're going to be clear 19 cutting a portion of the area that was designated in the maps 20 in the master plan. 21 MR. PARKS: We are removing a portion of the 22 forest that is damaged by invasives and we are restoring that 23 to a better condition. And I think most environmental 24 professionals would agree that in this particular case given 25 the 39 percent of invasive cover on the forest that's a</p>
<p>218</p> <p>1 read back through the details of how those forest areas we 2 determined is it the case that much science went into when 3 you look back through the exhibits of how they were to be 4 defined and which forest actually were selected? 5 MR. PARKS: As far as the master plan? 6 MS. LEE: Yes. I mean, the background documents 7 from the master plan have extensive environmental studies 8 that were done. 9 MR. PARKS: Yes, we did look at that document, 10 yes. 11 MS. LEE: For example the piece that you're going 12 to be clear cutting is on a steep slope, is that correct, 13 part of it? It's over 25 percent slope. 14 MR. PARKS: I'd have to revisit that or I'd have 15 to see a document. We can pull it up but I'd have to look at 16 that document for the relationship of that particular forest 17 stand to this steep slopes. 18 MS. LEE: I would say look at -- I think maybe 19 specimen trees say 136, 140, I think they're right on the 25 20 percent slope. And steep slopes riparian buffers were 21 exactly some of the scientific issues that the planning staff 22 and the science folks in the county were trying to address. 23 So you've indicated there's lots of stilt grass, we all have 24 to deal with that. But you're basically going to clear cut 25 every tree that's on the stand; is that correct? In this</p>	<p>220</p> <p>1 better approach than to preserve it. 2 MS. LEE: Well, let me ask you, so stilt grass 3 those are the invasives we're talking about and then in 4 addition -- in addition to the regular trees there is -- I 5 just wanted to list the specimen trees that are going to be 6 removed. 7 So these are protected under the forest 8 conservation statute so it's tree 127, a black cherry 32 9 inches circumference. Number N28 another black cherry 34 10 inches. 129 a black cherry 46 inches. 136 a yellow poplar 11 39 inches. 139 a yellow poplar 40 inches. 140 a yellow 12 poplar 38. 141 another poplar 32. And also 138 a sycamore 13 that's on the edge of 40 inches. I'm just pointing out that 14 it's basically going to be clear cut and I'm not sure what 15 you're going to be planting some things outside where the 16 designated area was but I have -- I think -- what's going to 17 be where it's -- the rest of it's going to be -- 18 It's not as if you're planting in the spot where 19 the forest was. You're going to be building the Lodge there. 20 I just wanted to clarify that. 21 MS. HARRIS: If I could, I didn't hear a question 22 there. And I think that we need to remember that this is -- 23 HEARING EXAMINER ROBESON: Yeah, I didn't either. 24 MS. LEE: So I just want to clarify, you said that 25 you'd be replacing -- you'd be redoing the forest, replacing</p>

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<p style="text-align: right;">221</p> <p>1 that forest and could you please clarify that area is going 2 to be built on? That is it's going to be part of the Lodge 3 or is it going not be a forest? 4 MR. PARKS: The area that we are removing we are 5 planting a majority of that area with 3 inch caliper trees, 6 ever -- the list that I went over in my testimony in order to 7 remove -- well, after we remove invasives that are killed -- 8 that are putting the cherry tree that you mentioned in fair 9 condition, 46 cherries in poor condition, the poplar is in 10 fair condition and I do agree with you that there is one tree 11 there that is in fair condition but it's going to exacerbate 12 as it goes. So to remove the invasives in this area and to 13 put back a majority of the priority forest with new plantings 14 adjacent to the area that we're removing will not prevent -- 15 will not create fragmentation, Ms. Lee, and its' my 16 professional opinion that in years to come this will become a 17 better condition environmentally. 18 MS. LEE: But just to clarify you're doing it 19 solely because you're going to be building the Lodge? That's 20 where you need to build the Lodge, correct? If you weren't 21 building the lodge there would you be going in and 22 clearcutting it? 23 MR. PARKS: Right. The Lodge is in this location. 24 We've made all attempts. In other words we looked at the 25 geometry and we have minimized to all extents practical</p>	<p style="text-align: right;">223</p> <p>1 MS. HARRIS: I know -- you know, I need to check 2 our -- my notes. I don't recall if we did or not, or we were 3 assuming that -- 4 HEARING EXAMINER ROBESON: That (inaudible). 5 MS. HARRIS: -- would do it. I just can't -- I 6 need to refresh my memory. 7 HEARING EXAMINER ROBESON: It's okay. You know, I 8 will send it tomorrow and just say this is what was -- this 9 is what we discussed and please review. I did just get -- 10 MS. HARRIS: Actually I know recall, Ms. Robeson, 11 I did discuss it with staff and they said, well, they 12 needed -- I can't give it to them and have them comment on 13 it. IT needs to come from you for them to comment on it. 14 HEARING EXAMINER ROBESON: All right. 15 MS. HARRIS: So I think they're waiting for you to 16 forward it. 17 HEARING EXAMINER ROBESON: Okay. I didn't realize 18 that. Okay. So I will forward -- what exhibits should I 19 forward to them? Just the plan? The plan and the 20 supplemental -- does your landscape plan include the 21 supplemental plantings? 22 MS. HARRIS: Let me see. Yes, they do. So I can, 23 after this -- I mean it's all of 144. 24 HEARING EXAMINER ROBESON: Okay. 25 MS. HARRIS: And then, I think that supplemental</p>
<p style="text-align: right;">222</p> <p>1 engineering wise to minimize it. But yeah, the Lodge is 2 going into an area of the priority forest, which you're 3 correct, a very small portion of it, 6 percent, right. We're 4 talking about and we can pull up the exhibit again, a very 5 small percent. And we think -- and Park and Planning staff 6 believes that it's appropriate in this situation. 7 MS. LEE: But the Lodge could be built in a way 8 that you wouldn't have to impact any of the priority forest. 9 You have 30 acres on site, correct? 10 MR. PARKS: Well, I think it's a win/win in this 11 situation because you're removing the invasives and we are 12 creating a better condition. So we did take that into 13 consideration as well. 14 MS. LEE: I just don't think stilt grass -- 15 HEARING EXAMINER ROBESON: Well, I (crosstalk) 16 but you can express your disagreement, you know, that's one 17 thing for tomorrow, but today is questions. 18 MS. LEE: Gotcha. Thank you. 19 HEARING EXAMINER ROBESON: And I don't see any 20 other questions. Anyone else have any questions? Well I had 21 a follow-up question. 22 Have you sent this revised -- there's a section of 23 the zoning ordinance that requires me to send this back, 24 changes and plans to Park and Planning for a comment. Have 25 you submitted these revisions to Planning or no?</p>	<p style="text-align: right;">224</p> <p>1 landscape plan which was Exhibit -- was it 151? I think that 2 would be -- I would say, unless Mr. Park disagrees, 144, 150 3 and 151. Do you agree with that Mr. Park? 4 MR. PARKS: Yes, Ms. Harris. So it's really going 5 to be Exhibit 144 A through J. As far as the other exhibits 6 they were created for -- as exhibits for the hearing examiner 7 and the -- for the record. But yeah, they should all align 8 so if you want to transmit more that will -- 9 HEARING EXAMINER ROBESON: Okay. I'm also, since 10 the lighting plan was technically different, I'm going to 11 send that back to them with the photometric study. And I 12 just got from them in an email, but I know that they sent it 13 to the group that their report on the -- or recommendation on 14 the traffic study. I haven't read it. It just came in to me 15 two minutes ago. So you should be getting a copy of that. 16 So I will forward the landscape plan and the 17 revised lighting plans to them for comments. 18 MS. HARRIS: Okay. 19 HEARING EXAMINER ROBESON: And where are we at 20 this point? Ms. Harris, were you going to have -- 21 MS. HARRIS: We have one more witness which we 22 would be able to get done today. 23 HEARING EXAMINER ROBESON: Oh, wait. I'm sorry. 24 I have Rick Magan's hand up. 25 Mr. Magan, do you have a question for Mr. Park?</p>

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<p>225</p> <p>1 MR. MAGAN: Yes, I do, Ms. Robeson.</p> <p>2 HEARING EXAMINER ROBESON: Okay. Go ahead.</p> <p>3 MR. MAGAN: Mr. Park, I appreciate the time coming</p> <p>4 out to the house and discussing the bordering issues with the</p> <p>5 neighbors. I just had a couple of quick questions. Do you</p> <p>6 realize that the plants that are in that photo that you show</p> <p>7 on Exhibit 168 are planted in alternating rows? So in other</p> <p>8 words you have a row of plants and then right behind it you</p> <p>9 have another row in between existing plants with a deer fence</p> <p>10 in between them?</p> <p>11 MR. PARKS: Mr. Magan are you referring to the</p> <p>12 example on Edison?</p> <p>13 MR. MAGAN: Yes. No, actually South Glen. It was</p> <p>14 the photo of the arborvitae with your person on the right-</p> <p>15 hand side with a pole next to him.</p> <p>16 MR. PARKS: Yes, sir. Yes, sir. He is a fellow</p> <p>17 that worked for a landscape contractor that yes, we did</p> <p>18 examine --</p> <p>19 HEARING EXAMINER ROBESON: I think I am showing it</p> <p>20 now.</p> <p>21 MR. MAGAN: Yeah, that'd be great.</p> <p>22 MR. PARKS: Right. So just to clarify, Mr. Magan,</p> <p>23 that is a single row of trees. They are not staggered. They</p> <p>24 are spaced 6 foot on center. We did observe -- we went in</p> <p>25 there, we observed where the trunks are. But to my</p>	<p>227</p> <p>1 long as the specifications for the soils and the condition of</p> <p>2 the material which I will personally tag myself I think that</p> <p>3 will be the most important to establishing that look good</p> <p>4 that you have there.</p> <p>5 As for any deer resistance I think it's -- I think</p> <p>6 that it is a maintenance issue whether it be deer spray if</p> <p>7 they -- you know if the deer get really hungry they will chew</p> <p>8 on it. But we have measures in place as far as maintenance</p> <p>9 and we believe that this material will do very well here.</p> <p>10 MR. MAGAN: You mentioned that the Association</p> <p>11 would be responsible for maintaining it. Are we going to</p> <p>12 have something in writing that states that, that they number</p> <p>13 one, protect it against deer, continually not just the first</p> <p>14 year it's planted, but ongoing. And that they replace any</p> <p>15 trees that die, or they treat any trees that get infected and</p> <p>16 replace them when we don't have the proper coverage between</p> <p>17 our property and the new development?</p> <p>18 MR. PARK: Mr. Magan, I think that's a question</p> <p>19 for the Applicant. But as far as I understand these HOAs are</p> <p>20 operated by professional that would engage a licensed</p> <p>21 landscape contractor and there would be a contract in place</p> <p>22 for that maintenance to occur on a regular scheduled. As far</p> <p>23 as a mechanism that will give you, sir, more comfort that is</p> <p>24 something I think is open for dialogue.</p> <p>25 MR. MAGAN: The elevation drawings that you had</p>
<p>226</p> <p>1 understanding and based on my field observation those are</p> <p>2 spaced 6 foot on center in a single row.</p> <p>3 MR. MAGAN: I can tell you when they were planted,</p> <p>4 they were planted in alternate rows and the deer ate them up</p> <p>5 and they ended up going and back and putting in a deer fence</p> <p>6 in between the trees. The other thing that you didn't point</p> <p>7 out but I think we should be aware of is that that one of the</p> <p>8 main reasons that the deer don't continue to eat those is</p> <p>9 because they have, I think a 6 or 8 foot iron fence right</p> <p>10 behind the row of arborvitae so the deer don't have a path to</p> <p>11 get through and have a very difficult time getting to the</p> <p>12 rear side.</p> <p>13 Are you also aware that those plants were planted</p> <p>14 in 2011 nearly 11 years ago?</p> <p>15 MR. PARKS: I guess I'll address of the comment</p> <p>16 about the fencing in the deer. So as far as I understand the</p> <p>17 giant green arborvitae there is probably one of the most deer</p> <p>18 resistant plants available and they're very popular for that</p> <p>19 region for that reason.</p> <p>20 MR. MAGAN: (inaudible) true.</p> <p>21 MR. PARKS: Right. And there is space behind that</p> <p>22 fence out there so if the deer wanted to they could go</p> <p>23 through there. But you know it's kind of one of those things</p> <p>24 where, in my opinion, I think these trees will do very well</p> <p>25 here as long as they are planted at 6 foot on center. As</p>	<p>228</p> <p>1 shown before show a pretty good coverage. This photo that</p> <p>2 you show on the lower right is about 11 years' worth of</p> <p>3 growth. Do you agree that the coverage would not be as</p> <p>4 immediate and long-lasting and maintenance free and effective</p> <p>5 as a 10 foot high stone wall?</p> <p>6 MR. PARK: I think we're comparing apples and</p> <p>7 oranges and you know, as far as a screen I believe that this</p> <p>8 material as spaced, 6 foot on center will be touching on day</p> <p>9 1. You're right that they would have -- there would be some</p> <p>10 period of growth which we illustrated on how they would grow</p> <p>11 together. But you know, as far as an effective screen, a</p> <p>12 visual barrier, absolutely I believe this will achieve that</p> <p>13 visual barrier and I think this will be more compatible than</p> <p>14 a 10 foot stone wall.</p> <p>15 MR. MAGAN: And that's really all I had. Thank</p> <p>16 you.</p> <p>17 MR. PARK: Thank you, sir.</p> <p>18 HEARING EXAMINER ROBESON: Mr. Park, or maybe I</p> <p>19 should ask Ms. Harris. Is there a language that we can</p> <p>20 impose as a condition of the special exception that the</p> <p>21 homeowner's association will maintain and replace as</p> <p>22 necessary the landscaping?</p> <p>23 MS. HARRIS: I think that's fairly standard</p> <p>24 practice and while I haven't conferred with the Applicant I</p> <p>25 think that would be acceptable and one of the things I was</p>

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<p>229</p> <p>1 going to suggest during my closing remarks is that we have an 2 opportunity to proffer certain conditions. And I actually 3 had just made a note that that would be one of them. 4 HEARING EXAMINER ROBESON: Okay. 5 MS. HARRIS: Yes. I mean, and I think it is -- I 6 mean, it's well accepted practice that the home owner's 7 association is obligated to maintain the landscaping and 8 replace if necessary and I don't -- so - - 9 HEARING EXAMINER ROBESON: I'm just saying it's 10 one thing to complain to the HOA and it's another to have it 11 as a condition of the special exception. So I'm just 12 positing that to you as something that could be addressed by 13 condition. 14 MS. HARRIS: And we definitely agree with that and 15 we noted that as well. 16 HEARING EXAMINER ROBESON: Okay. Mr. Magan, you 17 still have your hand up. Did you have something to add, or 18 no? 19 I'm not sure he's -- Mr. Magan? 20 MR. MAGAN: No. No, I'm sorry. I'll go ahead and 21 take that off. 22 HEARING EXAMINER ROBESON: Okay. Thank you. 23 So do you have any more questions of Mr. Park 24 based on Mr. Magan's questions? 25 MS. HARRIS: I do not.</p>	<p>231</p> <p>1 I've got you. Now, did you appear at the first hearing? 2 MR. KLEBASKO: I did not. 3 MS. HARRIS: HE didn't. 4 HEARING EXAMINER ROBESON: Okay. 5 Do you solemnly affirm under penalties of perjury 6 that the statements you're about to give are the truth, the 7 whole truth, and nothing but the truth? 8 MR. KLEBASKO: I do. 9 HEARING EXAMINER ROBESON: Thank you. Go ahead, 10 Ms. Harris. 11 MS. HARRIS: So let me first comment that Mr. 12 Klebasko's resume is in the record but I will still 13 nonetheless walk you through his credentials. 14 Mr. Klebasko, can you please state your full name 15 and primary occupation for the record? 16 MR. KLEBASKO: Yes. Michael Klebasko 17 environmental consultant. 18 MS. HARRIS: And can you describe your 19 professional and educational background? 20 MR. KLEBASKO: Yes. I have a degree in biology 21 from St. Mary's College of Maryland. I have a Masters degree 22 from the University of the Maryland College Park in the 23 Marine Estuary and Environmental Sciences. 24 I worked for two years as a biologist for the U.S. 25 Fish and Wildlife Service at Annapolis as an environmental</p>
<p>230</p> <p>1 HEARING EXAMINER ROBESON: Okay. So Mr. Park, 2 thank you. You may be excused as a witness for the time 3 being. 4 And Ms. Harris, what do you want to do? It's 10 5 to 5:00. 6 MS. HARRIS: I think we could complete our 7 rebuttal case with Mr. Klebasko if we can indulge everyone 8 for another half hour or so. 9 HEARING EXAMINER ROBESON: Is the court reporter 10 available for that? Mr. Loretto? 11 THE COURT REPORTER: Yes, I am. 12 HEARING EXAMINER ROBESON: Okay. So we'll go 13 ahead and try that and then tomorrow what we're going to do 14 we're going to continue this to tomorrow. And we will start 15 with anyone who wants to say anything based on what they've 16 heard today. Okay? And then the Applicant will have a 17 chance to wrap up with any responses. So that's how we'll do 18 it. So Ms. Harris, you go ahead and just call your next 19 witness. 20 MS. HARRIS: So I'm calling Mike Klebasko. 21 Mr. Klebasko, are you here? 22 MR. KLEBASKO: I'm here, can you hear me okay? 23 MS. HARRIS: Yes. It's been a long day and you've 24 been very patient. So we appreciate that. 25 HEARING EXAMINER ROBESON: Wait I need to -- okay,</p>	<p>232</p> <p>1 consultant for the last 29 years. 2 MS. HARRIS: So (inaudible) you been in the in 3 environmental science field? 4 MR. KLEBASKO: About 31 years. 5 MS. HARRIS: And who is a current employer and 6 that can you please provide the address? 7 MR. KLEBASKO: Wetland Studies and Solutions Inc., 8 1131 Benfield Boulevard, Suite L, Millersville, Maryland 9 21108. 10 MS. HARRIS: What is your current position and -- 11 I'm sorry. What is your current position and 12 responsibilities? 13 MR. KLEBASKO: I'm manager of the Maryland 14 environmental sciences section in the Maryland office. In 15 addition to performing wetland delineation and natural 16 resource inventories I also work in obtaining environmental 17 permits and for providing expert testimony at federal, state, 18 and local hearings. I also manage three environmental 19 scientists. 20 MS. HARRIS: And do you have any licenses or 21 certificates? 22 MR. KLEBASKO: Yes. I'm a certified wetland 23 delineators by the Corps of Engineers. I'm a designated 24 professional wetlands scientists by the Society of Wetland 25 Scientists, and a qualified professional per the State Forest</p>

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<p>233</p> <p>1 Conservation Act.</p> <p>2 MS. HARRIS: The Montgomery County Office of</p> <p>3 Zoning and hearing -- Administrative Hearings or another</p> <p>4 comparable administrative body?</p> <p>5 MR. KLEBASKO: Yes.</p> <p>6 MS. HARRIS: And were you qualified as an expert</p> <p>7 in the field of environmental science for that testimony?</p> <p>8 MR. KLEBASKO: I was.</p> <p>9 MS. HARRIS: And I would like to qualify -- I</p> <p>10 would like to offer Mr. Klebasko as an expert in the field of</p> <p>11 environmental science.</p> <p>12 HEARING EXAMINER ROBESON: Okay. Mr. Brown, do</p> <p>13 you have an objection?</p> <p>14 MR. BROWN: No objection.</p> <p>15 HEARING EXAMINER ROBESON: Okay. He is so</p> <p>16 qualified.</p> <p>17 MS. HARRIS: Thank you.</p> <p>18 HEARING EXAMINER ROBESON: Go ahead.</p> <p>19 MS. HARRIS: Okay. So first, can you please</p> <p>20 explain what you are asked to do with respect to this matter?</p> <p>21 MR. KLEBASKO: Yes. There's a portion of the</p> <p>22 existing gym structure that is partially located within the</p> <p>23 stream valley buffer on the site. I understand that there</p> <p>24 was testimony given previously that leaving the building in</p> <p>25 place was -- would negatively impact the existing stream and</p>	<p>235</p> <p>1 can be allowed.</p> <p>2 MS. HARRIS: And so given that this was</p> <p>3 conducted -- I mean constructed for someone to have validly</p> <p>4 issued a permit, are you surprised that this is even a topic</p> <p>5 of discussion at this point?</p> <p>6 MR. KLEBASKO: I am surprised. The building is</p> <p>7 existing. It's there by right.</p> <p>8 MS. HARRIS: And is the building located within</p> <p>9 the floodplain or is it just within the stream valley buffer,</p> <p>10 if you can zero in on where it is located.</p> <p>11 MR. KLEBASKO: Well, the building is located</p> <p>12 within approximately 5489 square feet of the building are</p> <p>13 located in the stream valley buffer. However, the structure</p> <p>14 is not located in a 100 year floodplain or the floodplain</p> <p>15 buffer, and it does not appear to be a flood hazard. There</p> <p>16 is no evidence and that the presence of the structure has</p> <p>17 caused the stream to migrate or has in any way negatively</p> <p>18 impacted the stream.</p> <p>19 The project overall includes a lot of mitigation</p> <p>20 as well as of the reduction of approximately 61 percent of</p> <p>21 existing impervious cover within the stream valley buffer.</p> <p>22 That equates to approximately 1/2 acre of impervious net loss</p> <p>23 from the stream valley buffer.</p> <p>24 MS. HARRIS: So if you are going to propose any</p> <p>25 mitigation for this existing building is there anything that</p>
<p>234</p> <p>1 it should be removed. I was asked to evaluate the existing</p> <p>2 conditions and to assess the impact of retaining the building</p> <p>3 as well as to provide potential mitigation strategies and</p> <p>4 options.</p> <p>5 MS. HARRIS: And was that gym structure a part of</p> <p>6 (inaudible) building permit?</p> <p>7 MR. KLEBASKO: It was. And to partially mitigate</p> <p>8 that impact the county required the establishment of a 1.13</p> <p>9 acre forest conservation easement along the northern property</p> <p>10 line.</p> <p>11 MS. HARRIS: And how common is it for the county</p> <p>12 ever, except maybe in this instance, allow for impervious</p> <p>13 areas to be located within the stream valley buffer?</p> <p>14 MR. KLEBASKO: Well, the county's general position</p> <p>15 is that impervious areas should be outside of the stream</p> <p>16 valley buffer, but I don't think it's a legal requirement and</p> <p>17 exceptions certainly are made. Most particularly for</p> <p>18 utilities and other infrastructure. On occasion, they do</p> <p>19 allow encroachments of four structures. This site being an</p> <p>20 example of one years ago, when it was originally permitted.</p> <p>21 You know, they required some forest conservation</p> <p>22 and in other cases they probably required tree planting to</p> <p>23 help offset or mitigate the impacts impervious in the stream</p> <p>24 valley buffer. In this case the difference is the building</p> <p>25 is existing. And that clearly proves that they are -- they</p>	<p>236</p> <p>1 comes to mind that you would propose?</p> <p>2 MR. KLEBASKO: Well, as I said, the building</p> <p>3 comprises about 5489 square feet of area within the stream</p> <p>4 valley buffer and that occupies about .12 percent of the</p> <p>5 total stream valley buffer on site. A very, very small</p> <p>6 percentage. We worked with the Applicant and suggested an</p> <p>7 additional mitigation measure that wasn't originally</p> <p>8 proposed, and that was to provide an additional 5489 square</p> <p>9 feet of riparian plantings within the existing grass open</p> <p>10 area between the building and the existing stream. As shown</p> <p>11 on, I believe it's Exhibit 161, the SVB supplemental planting</p> <p>12 exhibit, it shows the -- and I don't know, Ms. Harris, are</p> <p>13 you able to bring that up?</p> <p>14 MS. HARRIS: Hold on one moment. It's coming.</p> <p>15 MR. KLEBASKO: Thank you. You can see it?</p> <p>16 MS. HARRIS: Yes.</p> <p>17 MR. KLEBASKO: The orange colored areas is the</p> <p>18 existing impervious or the gym structure in the stream valley</p> <p>19 buffer. The greenish area immediately to the -- I guess the</p> <p>20 east of that building, that's north. There it goes. That's</p> <p>21 the offset that we have recommended they put additional</p> <p>22 riparian plantings. Those would be woody trees, understory</p> <p>23 and shrub species throughout the area. That is a mostly open</p> <p>24 mowed lawn in its current condition. The plants we'd be</p> <p>25 looking to put in there would be native tree species only,</p>

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<p style="text-align: right;">237</p> <p>1 such as red maple, sweet gum, various species of oaks, papaw, 2 ironwood, northern spice bush and (indiscernible). 3 MS. HARRIS: And what would be the effect or 4 impact of such plantings? 5 MR. KLEBASKO: Well, it would be to expand the 6 existing forest which is along the stream channel to the East 7 to create a larger course to the stream buffer that currently 8 exists there today. There's a lot of benefits by doing that. 9 The trees will root, they will help to stabilize the soil and 10 prevent future stream bank migration toward the building. 11 They will improve natural infiltration, they'll help loosen 12 the soil and improve infiltration, reduce overland runoff, 13 and velocity. They will also increase shade and help 14 moderate stream temperatures and keep them cooler. So all 15 those benefit are a plus to the environment by doing that. 16 MS. HARRIS: Thank you. And what's the condition 17 of the stream channel? 18 MR. KLEBASKO: Well, the existing stream channel 19 exists a typical pattern of erosion and incision similar to 20 other urban streams in this area. 21 MS. HARRIS: Is it a threat to the building? 22 MR. KLEBASKO: It doesn't appear to be. The gym 23 is located outside the 100 year floodplain and the associated 24 floodplain buffer. There's at least 20 feet of space minimum 25 between the building and the existing stream bank. That's a</p>	<p style="text-align: right;">239</p> <p>1 MR. KLEBASKO: -- what may be planted there. It's 2 not exactly what will be planted there. But I wanted to give 3 an example of the types of species that will be there. 4 HEARING EXAMINER ROBESON: The reason I asked -- 5 now I'm hearing (inaudible). 6 MS. HARRIS: It may have been Mr. Klebasko. 7 Because he just muted himself so if it's -- 8 HEARING EXAMINER ROBESON: Oh. Yeah. Okay. I 9 don't know whether we need to have specific plan for that 10 area as part of the conditional use, so let me just mull on 11 that. But I'm going to turn it over to Mr. Brown and see if 12 he has any questions. 13 MR. BROWN: I must again defer to Ms. Lee on the 14 environmental side. 15 MS. LEE: I just have a couple. You indicated 16 that the current building does not sit in the flood plain 17 buffer or the flood plain, but I wonder if you could use -- 18 using that exhibit there could -- just pan down a bit to the 19 left hand corner as you're looking at the building now, if 20 you could look at the -- I think you can do it with this 21 exhibit and not have to go back to the colored buffers in 22 Exhibit 74. 23 If you could point out exactly where the flood 24 plant buffer is with regard to the corner that has the 25 number -- LOD, the limits of -- there.</p>
<p style="text-align: right;">238</p> <p>1 lot of area. It's a relatively smaller drainage area at that 2 point. It would have to move along way to get toward that 3 building to become a problem. 4 MS. HARRIS: And then, to conclude (inaudible) the 5 site evaluated the proposal, what's-- what in your -- sorry. 6 What are you overall professional observations regarding this 7 proposed use as it relates to the stream and the gym building 8 within the stream valley buffer? 9 MR. KLEBASKO: Well, I feel that the proposed 10 additional plantings as well as the impervious are that's to 11 be removed from the stream valley buffer in the other areas 12 of the site will improve the stream valley buffer over the 13 existing conditions. And I don't feel that the current 14 stream bank is moving at a rate that poses a threat to the 15 existing gym building. 16 MS. HARRIS: Thank you. I have no other questions 17 for Mr. Klebasko. 18 HEARING EXAMINER ROBESON: All right. Do you have 19 an exhibit showing exactly what's going to be -- I can't read 20 the exhibit on the screen. Does that show -- 21 MR. KLEBASKO: Yes. That lists all the various 22 and the overstory, the understory and shrubs. And I just 23 want to mention that that's a native list of plants that is 24 typical of -- 25 HEARING EXAMINER ROBESON: Could be.</p>	<p style="text-align: right;">240</p> <p>1 So how close would you say that is? Is it inches, 2 or even a foot from the building? 3 MR. KLEBASKO: Well, you would have to look at the 4 scale. But if you're referring to the flood plain. Well, it 5 looks very -- oh, you're saying the flood plain buffer. 6 MS. LEE: Yes. 7 MR. KLEBASKO: I was looking at the flood plain. 8 Its' fairly close. 9 MS. LEE: Okay . And then looking at the flood 10 plain, (inaudible) oh, excuse me. The flood plain itself if 11 you just go down that line you see the FP. So you can see 12 that the flood plain is within the limits of the disturbance 13 at that point and then -- is that -- is that clear? And I 14 just want to confirm that the flood plain is within the 15 limits of disturbance at that point. 16 MR. KLEBASKO: Yeah, it's in the limits of the 17 flood plain so that they remove the existing parking lot, 18 which is an environmental benefit. 19 MS. LEE: Okay. And then further down on the 20 same, on the same map, just a little bit down if you can just 21 scroll down a little bit, following the flood plain is it 22 also the case that the limits of disturbance include the 23 flood plain a bit further down? So you'll see as you follow 24 down here and you go across the -- I think it's going to be 25 some sort of a pathway or a trail, so would you confirm that</p>


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<p>241</p> <p>1 in fact the limits of the flood plain -- the limits of 2 disturbance are within the flood plain? 3 MR. KLEBASKO: Yes, I also confirmed that's the 4 existing driveway to get into the site, which I believe is 5 proposed to be removed. That's why it's within the limits of 6 disturbance of the flood plain. Again, as an environmental 7 improvement by removing existing impervious cover. 8 MS. LEE: Okay. And then, I wonder if you could 9 pull up and I'm sorry that I can't help you do it, but it's 10 Exhibit 94G. 11 So these -- I just want to confirm is this a 12 condition that you -- you indicated you've been down there 13 recently. Is this a condition that you found as well with 14 regard to the stream and how close it is to the building? 15 MR. KLEBASKO: Yes. That looks -- 16 MS. LEE: Okay. And maybe go down just a little. 17 MR. KLEBASKO: -- relative to what I saw. 18 MS. LEE: Yeah, and this is the condition of the 19 stream as it goes? Yeah, that's it. And so -- and then 20 those are the wetlands. So just to go back -- well one -- so 21 this is the gymnasium. I'm sorry. Thank you so much for 22 it -- 23 So those are the wetlands. Did you do any 24 analysis with regard to the non-titled wetlands and the 25 buffer there?</p>	<p>243</p> <p>1 Manchkin. He hasn't appeared as a witness yet, but he's the 2 person whose been doing the resource inventory. So he did -- 3 MS. HARRIS: Wait. Wait. That's a non -- 4 HEARING EXAMINER ROBESON: I -- 5 MS. HARRIS: (inaudible) on that. 6 MS. LEE: Excuse me. I just wanted to know -- so 7 you haven't done anything with regard to delineation of the 8 wetlands buffer or worked with him in any way on the -- those 9 documents that he's presented to us? 10 MR. KLEBASKO: I had no involvement with the 11 preparation of the NRI plan. 12 MS. LEE: Okay. Okay. That's it. And then, I 13 think just one -- just so the last question is that based on 14 your analysis of it you've made the determination that the 15 stream channel is relatively stable and does not appear to 16 pose a risk for the gym building foundation for the 17 foreseeable future. And I wonder if you further define what 18 you, as a technical person, defines as the foreseeable 19 future? 20 MR. KLEBASKO: Well, for me foreseeable is 20 plus 21 years. 22 MS. LEE: Okay. And so it's -- so it's to last 20 23 years? 24 MR. KLEBASKO: I don't see that stream migrating 25 to that building in the next 20 years or beyond. I'll --</p>
<p>242</p> <p>1 MS. HARRIS: And I'm going to object to that 2 because that is outside the scope of what he testified to. 3 MS. LEE: Okay. 4 MS. HARRIS: He did not say anything about that. 5 MS. LEE: So he did not. He did not. Okay. He 6 didn't do anything with regard to the wetlands. 7 And so just looking at the -- 8 HEARING EXAMINER ROBESON: Well, wait. Wait. 9 MS. LEE: Oh, excuse me. 10 HEARING EXAMINER ROBESON: Mr. Klebasko, did you 11 look at the wetlands buffer and the wetlands? 12 MR. KLEBASKO: Which wetlands? Where are we 13 talking about? There are no wetlands in that photo. 14 MS. LEE: The photo before, sorry. Sorry. Just 15 to bear that -- 16 MR. KLEBASKO: I walked down and saw that area, 17 yes. 18 MS. LEE: But you didn't make any -- did you make 19 any conclusions with regard to the -- 20 MS. HARRIS: Objection. 21 MR. KLEBASKO: -- wetlands? 22 MR. KLEBASKO: There was no reason for me to make 23 a conclusion other than when I was there I noticed it was -- 24 they are dry. 25 MS. LEE: And so Mr. -- I think his name is</p>	<p>244</p> <p>1 it's going to take a long while, if it ever moves over as far 2 as the building. It's got a long way to go. 3 MS. LEE: How far would you say it is from the 4 building right now? 5 MR. KLEBASKO: I believe it testified it was about 6 20 feet minimum right now. 7 MS. LEE: Thank you, that's all I have. 8 HEARING EXAMINER ROBESON: Okay. Any other 9 questions? 10 MS. HARRIS: No. 11 HEARING EXAMINER ROBESON: Hearing none, Ms. 12 Harris, do you have any questions on redirect? 13 MS. HARRIS: I do not. Thank you. Thank you, Mr. 14 Klebasko. 15 HEARING EXAMINER ROBESON: Thank you Mr. Klebasko. 16 MR. KLEBASKO: Thank you. 17 HEARING EXAMINER ROBESON: You may be excused. 18 So what we will do is adjourn this hearing to -- 19 or continue this hearing, not adjourn this hearing, to 20 tomorrow, June 1st at 9:30. And we will begin with the 21 evidence of those in opposition to this -- the case and we 22 will follow with Ms. Harris's rebuttal and the opposition may 23 testify on the traffic report or if they have comments or 24 concerns of the rebuttal. 25 With that, we're going to adjourn. I will try to</p>

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<p style="text-align: right;">245</p> <p>1 send these exhibits off to Planning. And I will -- I will go 2 back and check what they just sent me on traffic and make 3 sure everybody has been copies. 4 MR. BROWN: Ms. Robeson, one -- 5 HEARING EXAMINER ROBERSON: Okay. With that -- 6 MR. BROWN: -- question. 7 HEARING EXAMINER ROBERSON: Yes? 8 MR. BROWN: A quick question. 9 MS. HARRIS: And I have a quick question as well. 10 HEARING EXAMINER ROBERSON: Yeah. 11 MR. BROWN: What do you envision by way of closing 12 argument? And who gets to say what when? 13 HEARING EXAMINER ROBERSON: Well -- 14 MS. HARRIS: Believe it or not, that was going to 15 be my question, so Mr. Brown and I are on the same page. 16 HEARING EXAMINER ROBERSON: Okay. What we're 17 going to do is Ms. Harris gets the first closing, Mr. Brown 18 you get your closing and then Ms. Harris gets a rebuttal. I 19 had -- I don't know how long I hadn't thought of assigning 20 times. Usually they're about 15 to 20 minutes, the two sides 21 and then rebuttal is shorter. If you want more than that you 22 can let me know. 23 MR. BROWN: Sounds about right. 24 HEARING EXAMINER ROBERSON: Okay. So with that we 25 will continue this case to tomorrow, June 1st with the same</p>	<p style="text-align: right;">247</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: June 9, 2022 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">246</p> <p>1 link that's on our website. 2 Thank you very much. 3 MS. HARRIS: Thank you. Bye. 4 MS. LEE: And the time? Was it 9:00? 5 (Off the record at 5:12 p.m.) 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	

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