

**BEFORE THE HEARING EXAMINER FOR MONTGOMERY COUNTY, MARYLAND**

Office of Zoning and Administrative Hearings

100 Maryland Avenue, Suite 200

Rockville, Maryland 20850

IN THE MATTER OF:	)	
Notley Road	)	
	)	
Applicant.	)	Local Map Amendment
	)	Application No. H-159
Notley Assemblage LLC	)	
	)	
Opposed to the Application.	)	
	)	
Keith Nusbaum	)	
	)	

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**OPPOSITION TO LETTER OF OBJECTIONS**

On October 27, 2025, Applicant filed with the Hearing Examiner a letter (the “Letter”) objecting to the Pre-Hearing Statement submitted by Keith Nusbaum (the “Opposition”). While the Opposition finds no allowance for the filings of “objections” in the Land Use Rules of Procedure (“Land Use Rules”), Opposition will respond as though Applicant had properly filed a procedural motion as allowed by Land Use Rule 3.9a.

Opposition is a proper Party of Record pursuant to Land Use Rule 3.1a, as the hearing examiner properly accepted the request on August 11, 2025, and Applicant acknowledges the same in its Letter.

As a Party of Record, Opposition has the right pursuant to Land Use Rule 3.5 to submit a pre-hearing statement. Land Use Rule 3.5, in fact, requires that any person who intends to appear in organized opposition to an application or who intends to introduce expert evidence or testimony must file a pre-hearing statement. Here, Opposition is both (1) a person and (2) one who intends to appear in organized opposition, as identified in his request to be a Party of Record. Having satisfied both requirements, Opposition not only has the right but is required to file a pre-hearing statement.

Applicant’s reference to Land Use Rule 3.3 is misplaced. Land Use Rule 3.3 addresses the unauthorized practice of law before the Office of Zoning and Administrative Hearings (“OZAH”) and simply requires that groups, organization, or entities who wish to argue matters and call witnesses must be represented by counsel. Such a rule is consistent with Maryland law

(see MD Business Occupations and Professions Code § 10-206) and guidance from the Montgomery County Circuit Court (see <https://www.montgomerycountymd.gov/cct/represent-myself.html>). Land Use Rule 3.3 says nothing about an individual's ability to appear *pro se* or of an individual's ability to argue matters or call witnesses. In fact, the rule only places limits individuals who are part of an organization to only narrative form testimony. The Land Use Rule places no such limitations on individuals not representing organizations.

Applicant then contends the right to appear in organized opposition is afforded only to counsel representing a Party of Record. Once again, however, Applicant struggles to understand the difference between the conjunctive and disjunctive. Land Use Rules 3.5 begins with a disjunctive, "or." In using a disjunctive, the rule separates "persons" and "associations represented by counsel" because individual persons are not required to be represented by counsel. As associations must, by Land Use Rule 3.3, be represented by counsel and individuals need not be, it would be illogical to read the rule any other way. Land Use Rule 3.5 established that persons (*i.e.* individuals) may appear in organized opposition and are afforded all of the rights and privileges of any other Party of Record, whether represented by counsel or otherwise. While the second half of Land Use Rule 3.5 permits individuals to testify and present written evidence without submitting a pre-hearing statement, it is no way establishes such actions as the exclusive process for individuals. Should an individual take the steps of submitting a pre-hearing statement and requesting to appear in organized opposition, Land Use Rule 3.5 affords that individual the right to all actions of a Party of Record in organized opposition, to include calling witnesses, introducing expert witnesses, cross-examining witnesses, and providing opening and closing statements.

This conclusion is further supported by the previous determination of OZAH Director and Hearing Examiner Kathleen Byrne in her email of on September 4, 2025 (attached as Ex. A). In her email, Director Byrne identifies three distinct groups within Land Use Rule 3.5 – (1) persons or associations represented by counsel, (2) person intending to appear in organized opposition, and (3) persons intending to introduce expert testimony. Director Byrne is unambiguous that groups two and three do not require representation by counsel to submit a pre-hearing statement, participate in the hearing, introduce expert witnesses, provide opening and closing statements, and call witnesses. Applicant was included in this email and was aware of this determination by the OZAH Director before filings its Objections. To request a different determination after a change in the Hearing Examiner is disingenuous and should not be permitted.

In sum, the Land Use Rules do not segregate individuals to a lower tier status of Party of Record as compared to associations represented by counsel. To do so would fundamentally violate the basic tenets of due process and materially restrict an individual's ability to participate in this hearing fairly. Opposition requests, and the law demands, the Objections be dismissed and Opposition be permitted to participate as a Party of Record in organized opposition.

To the extent the Hearing Examiner now rules to limit Opposition's ability to present an organized opposition, Opposition seeks a postponement of the hearing of at least 15 days pursuant to Land Use Rules 4.8a, 4.8b, and 4.8c to permit Opposition to seek appropriate judicial relief on the issue of due process.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Keith Nusbaum", is written over a horizontal line.

Keith Nusbaum

Ex. A



Keith Nusbaum &lt;knusbaum@gmail.com&gt;

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## Land Use Rules of Procedure 3.4/3.5

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**Office of Zoning and Administrative Hearings** <OZAH@montgomerycountymd.gov>

Thu, Sep 4, 2025 at 12:08 PM

To: Keith C Nusbaum &lt;knusbaum@gmail.com&gt;, Office of Zoning and Administrative Hearings &lt;OZAH@montgomerycountymd.gov&gt;, Elizabeth Rogers &lt;ecrogers@lercheary.com&gt;

Mr. Nusbaum,

The term "report" used in Rule 3.4 refers to any document created that "reports" on a particular subject matter related to the Application such as a traffic study, land use report, etc. Those reports are generally created by expert witnesses for the Applicant or the Opposition concerning the subject matter before the Hearing Examiner. Rule 3.4 sets forth the Applicant's requirements for a pre-hearing statement. Since you are appearing in opposition only Rule 3.5 would apply to you. Rule 3.5 requires a prehearing statement be submitted by the opposition only in the following situations: 1) persons or associations represented by counsel, 2) person intending to appear in organized opposition or 3) persons intending to introduce expert testimony. If none of these 3 situations describes your circumstance regarding your opposition, then you do not need to submit a prehearing statement referencing the information contained in Rule 3.4. With that said, if you intend to rely on documents or other demonstrative evidence such as photos at the hearing you MUST submit that evidence in both paper and electronic format (either WORD or PDF) no later than the Wednesday prior to the scheduled hearing date. For the November 6, 2025 hearing, any documents you wish the Hearing Examiner to review or for you to refer to during the hearing must be received by OZAH no later NOON on Wednesday, October 29, 2025. Because the hearing is held in a hybrid format, all documents must be uploaded on the website in a timely manner so that during the hearing everyone participating whether in person or remote can see the exhibit being referred to by the witness.

Katy Byrne

Director/Hearing Examiner

OZAH

240-777-6660

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**From:** Keith C Nusbaum <knusbaum@gmail.com>**Sent:** Wednesday, August 27, 2025 9:13 PM**To:** Office of Zoning and Administrative Hearings <OZAH@montgomerycountymd.gov>; Elizabeth Rogers <ecrogers@lercheary.com>**Subject:** Land Use Rules of Procedure 3.4/3.5**[EXTERNAL EMAIL]**

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**For more helpful Cybersecurity Resources, visit:** <https://www.montgomerycountymd.gov/cybersecurity>

