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Transcript of Hearing

Date: September 14, 2020

Case: AB771 (Ellsworth Drive) Abandonment Hearings, In re

Planet Depos

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DIVISION OF TRANSPORTATION ENGINEERING
FOR MONTGOMERY COUNTY, MARYLAND

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In Re: :
ELLSWORTH DRIVE : NO. AB771

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PUBLIC HEARING
Gaithersburg, Maryland
Monday, September 14, 2020
12:14 p.m.

Job: 321674
Pages: 1 - 105
Transcribed by: Molly Bugher

Transcript of Hearing
Conducted on September 14, 2020

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Public Hearing held via Zoom:
Montgomery County Department of
Transportation
Division of Transportation Engineering
100 Edison Park Drive, 4th Floor
Gaithersburg, MD 20878
Phone: 240.777.8792

Pursuant to agreement, before Lee
Utterback, Notary Public in and for the State of
Maryland.

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A P P E A R A N C E S

MONTGOMERY COUNTY DOT:

MICHAEL PAYLOR, HEARING OFFICER

JOSHUA TRACY, MCDOT STAFF

TIARA MCCRAY, MCDOT STAFF

ON BEHALF OF MONTGOMERY COUNTY:

ROBERT BIRENBAUM, ESQ.

ON BEHALF OF APPLICANTS:

BARBARA A. SEARS, ESQUIRE

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1 P R O C E E D I N G S

2 HEARING OFFICER PAYLOR: Greetings and
3 good afternoon to all of you. It is now 12:14 on
4 the 14th day of September 2020. We are here for a
5 public hearing for abandonment petition AB771 to
6 consider an application received from Miles &
7 Stockbridge, PC on behalf of several Applicants
8 seeking the limited abandonment of two sections of
9 a public right-of-way known as Ellsworth Drive in
10 Downtown Silver Spring. We are conducting this
11 hearing virtually via Zoom.

12 My name is Michael Paylor and I am the
13 County Executive's designated hearing officer with
14 the County's Department of Transportation, and I
15 will be conducting this hearing.

16 This is an abandonment hearing that is
17 being conducted pursuant to Section 49.62F of the
18 Montgomery County Code. My role in the
19 abandonment processes to generate a report to make
20 a recommendation to the County Executive
21 concerning Applicants' petition for abandonment.
22 In order to do this, I will be considering
23 statements made at the hearing, written comments
24 received within the comment period, which is two
25 weeks following today's hearing date, and

1 documents submitted to support or explain a
2 position.

3 At the conclusion of commentary, my
4 report and recommendation will be forwarded to the
5 County Executive for consideration, and the County
6 Executive will then forward the report and the
7 County Executive's recommendation to the County
8 Council. The County Council will decide whether
9 to grant or deny the Applicants' petition for
10 limited abandonment.

11 It must be noted that a number of
12 participants are registered to speak, and I will
13 take this opportunity to stress what this hearing
14 is about. The Applicant has petitioned Montgomery
15 County to consider a limited abandonment of
16 Ellsworth Drive between Georgia Avenue and Fenton
17 Street. It is my understanding from the petition
18 that the Applicant desires that the right-of-way
19 for Ellsworth Drive be limited to pedestrian,
20 bicycle, and emergency vehicles only. The
21 Applicant seeks to exclude typical vehicular
22 traffic from Ellsworth Drive. The Applicant
23 contends that, except for emergency vehicles, the
24 right-of-way to Ellsworth Drive is one, no longer
25 presently needed to support vehicular traffic, and

1 two, that there is no anticipated need for
2 Ellsworth Drive to support vehicular traffic in
3 the foreseeable future.

4 The report and recommendation that I
5 will provide or prepare for the County Executive
6 will consider those two criteria based on the
7 statements made at the hearing, written comments
8 submitted were two weeks following today's
9 hearing, and documents submitted.

10 For those who wish to submit written
11 comments, please submit them to Ms. Tiara McCray
12 at Montgomery County Department of Transportation,
13 100 Edison Park Drive, 4th Floor, Gaithersburg,
14 Maryland, 20878, by September 28, 2020 at 5:00
15 p.m.

16 For those who have registered to speak
17 today, please bear my preliminary introductory
18 comments in mind. And if I find that you are
19 offering comments that are not germane to the
20 substance of this hearing, again regarding
21 Ellsworth Drive's present need for vehicular use
22 or anticipated need for vehicular use in the
23 foreseeable future, I may be compelled to
24 interrupt you or inquire how your comments are
25 relevant to the limited issue of the abandonment

1 issue under consideration for which I'm writing a
2 report and recommendation.

3 Additionally, there are a few hearing
4 protocols that we must cover before Ms. McCray
5 introduces the abandonment petition in the record.
6 First, please turn off or silence any
7 communication devices in your proximity. Second,
8 as an issue of decorum, all participants will be
9 given a due consideration. In so granting that
10 participant must be given their due consideration,
11 those offering comments following the close of
12 petitioner's case for abandonment are asked to
13 limit their comments to matters relevant to
14 whether the petition for limited abandonment ought
15 to be granted.

16 During this hearing, such comments
17 should be confined to three minutes or less and I
18 will be holding strictly to this limit. Keep in
19 mind that if you have additional comments, they
20 may be submitted to Ms. McCray by September 28,
21 2020 at 5:00 p.m.

22 Also, if one participant is interrupted
23 by another participant while offering comments
24 following the petitioner's case for abandonment, I
25 will issue the interrupting participant their

1 first warning. If there is a second interruption,
2 I will issue a second warning and that particular
3 interrupting participant will be muted. If that
4 same individual receives a third warning for
5 interrupting, that participant may be removed from
6 the call. And while I do not participate in this
7 occurrence or additional occurrences such as this,
8 if there are several participants making
9 interruption, I may elect to close the hearing.

10 Now I introduced Ms. Tiara McCray, real
11 estate specialist for Montgomery County to present
12 the case. Ms. McCray.

13 MS. MCCRAY: Thank you Michael. Good
14 afternoon everyone. As Michael stated, my name is
15 Tiara McCray and I'm a real estate specialist
16 within the transportation and engineering division
17 of the Department of Transportation. My office is
18 responsible for administration of the request to
19 abandon county right-of-way.

20 The Applicant has petitioned Montgomery
21 County to consider a limited abandonment of
22 Ellsworth Drive between Georgia Avenue and Fenton
23 Street. That is to say that my understanding from
24 the petition that the Applicant desires that the
25 right way for Ellsworth Drive be limited to

1 pedestrian and essential vehicular traffic only.
2 The petitioner has defined essential vehicles as
3 emergency and delivery vehicles. Thus the
4 Applicant to exclude normal vehicular traffic from
5 Ellsworth Drive.

6 The Applicant contends, except for
7 essential vehicles, that the right-of-way for
8 Ellsworth Drive is one, no longer presently needed
9 to support vehicle traffic, and two, there is no
10 anticipated need for Ellsworth Drive to support
11 vehicular traffic in the foreseeable future.

12 By way of background, I would like to
13 offer the following history concerning Ellsworth
14 Drive. First, lower Ellsworth. When Silver
15 Spring was being revitalized, the Peterson
16 company, PSA, sought and obtained the abandonment
17 of a portion of Ellsworth from Georgia Avenue to
18 just before City Place, referred to as lower
19 Ellsworth. However, the County Council required
20 as a condition of the abandonment in Council
21 resolution 13-1429 that an access easement be
22 recorded against portions of the revitalized
23 Silver Spring including Ellsworth Drive. The
24 provision of access easement Pacific Ellsworth
25 Drive provides for, and I quote, "A perpetual

1 nonexclusive easement and rite of passage and used
2 free of charge for vehicular and pedestrian
3 ingress and egress on, over, and across Ellsworth
4 Drive."

5 In addition to recording an access
6 easement among the land records, the county and
7 PSA also entered into a long-term lease for
8 Ellsworth Drive and set out the manner in which
9 Ellsworth can be used by PSA. The current
10 abandonment petition with respect to lower
11 Ellsworth is for the purpose of revising the
12 access easement provision I just read to you,
13 specifically vehicular traffic prevented on lower
14 Ellsworth would be revised so that A, only
15 emergency and delivery vehicles could have ingress
16 and egress on lower Ellsworth; B, access to the
17 public parking garage as retained via Georgia
18 Avenue through the alley; and C, a few metered
19 parking spaces on the street near a public garage
20 on Georgia will be in use.

21 Two, Upper Ellsworth. Upper Ellsworth
22 was not a part of PSA's original abandonment
23 petition when Silver Spring was revitalized. The
24 current petition is granted by a County Council
25 would also restrict nonessential vehicular access

1 on upper Ellsworth. Upper Ellsworth would remain
2 publicly owned by the County and leased to PSA.

3 Finally, the access easement. The
4 access easement is recorded among land records of
5 Montgomery County Maryland in book 21768 at page
6 658. The quote from the access easement
7 concerning Ellsworth Drive referenced at the top
8 of my remarks is found in section 6 of the access
9 easement on pages 650 and 651. The recorded
10 access easement will be read into the record
11 shortly.

12 I will now introduce the exhibits and
13 written comments we have received into record, but
14 for the sake of time, we will not be able to read
15 each individual written and email comment, but a
16 collection of letters, emails, and comments will
17 be included in a package for the hearing officer
18 to consider.

19 Please accept the following exhibits
20 into record. Exhibit A, the Applicant petition
21 for abandonment package.

22 Exhibit B, the abandonment filing fee
23 that were submitted via wire transfer.

24 Exhibit C, County Council resolution
25 (inaudible) 1429.

1 Exhibit D, public access easement, page
2 -- excuse me -- books, 21768, page X58.

3 Exhibit E, plat number 2271, which is
4 the sub division record plat.

5 Exhibit F is the Downtown Silver Spring
6 ground lease including interior Ellsworth Drive.

7 Exhibit G is a memorandum of ground
8 lease, book 21768, page 730.

9 Exhibit H, plat number 21283, which is a
10 ground lease plat.

11 Exhibit I, executive order number 84-20.

12 Exhibit J is a comment received the
13 Montgomery Department of permitting services and
14 the fire department access and water supply
15 supporting conditionally the abandonment.

16 Exhibit K is Washington Gas's comment
17 which is in support of the abandonment.

18 Exhibit L is the WSSC comment received
19 with the conditional approval requesting right-of-
20 way for the existing structure.

21 Exhibit M is Montgomery County Planning
22 Board's conditional approval -- excuse me --
23 approval requesting a public access easement along
24 Ellsworth Drive to allow for dog walking and the
25 annual Silver Spring Thanksgiving parade.

1 Exhibit N is the Office of
2 Transportation policy development review team's
3 comment with the conditional approval providing
4 access for emergency vehicles, a public access
5 easement that should be revised to include
6 pedestrian and bicycles. Maintenance of the
7 right-of-way should be provided by the Applicant
8 as well as existing utilities remaining in the
9 public access. And then public access to Wayne
10 Avenue -- the Wayne Avenue garage -- excuse me --
11 from Georgia Avenue.

12 Exhibit O is Potomac Edison's comment
13 explaining that they are outside of this -- that
14 this is outside of their territory.

15 Exhibit P is the abandonment sign
16 posting photos.

17 Exhibit Q is the abandonment aerial
18 photo.

19 Exhibit R, the Washington Times ad
20 number 43167 proof.

21 Exhibit S is the Go Montgomery
22 Newsletter posting.

23 Exhibit T is a collection of certified
24 mail of the public hearing notice as submitted to
25 the Applicant and all abutting property owners.

1 Exhibit U is a collection of public
2 hearing notices that have been submitted to both
3 civic associations, HOA, regional service centers,
4 housing agencies, utility companies, et cetera.

5 Exhibit V is the Montgomery County
6 Planning Board Downtown Silver Spring project and
7 site plan report and assessment.

8 Exhibit W is the Montgomery County
9 Planning Board project plan resolution number
10 919980058.

11 Exhibit X is Montgomery County Planning
12 Board's site plan resolution number 8199902M.

13 Exhibit Y is the storm water partners
14 network of Montgomery County letters to the
15 Montgomery County Planning Board on the issue of
16 synthetic turf.

17 Exhibit C is the community
18 reconsideration request.

19 Exhibit AA is the Applicant's letter
20 responding to the project plans reconsideration
21 request.

22 Exhibit AB is the Applicant public
23 hearing PowerPoint presentation.

24 Exhibit AC is Don Hoover, landscape
25 architect's resume.

1 Exhibit AD is the Applicant's response
2 on -- excuse me -- synthetic turf issues.

3 Exhibit AE is a collection of 117
4 general public comments received directly via
5 email.

6 Exhibit AF are comments that have been
7 intercepted from County Council emails directly
8 related to the abandonment. That concludes my
9 reading of exhibit.

10 HEARING EXAMINER PAYLOR: Thank you, Ms.
11 McCray. At this time we will hear the
12 petitioner's case for abandonment.

13 MR. TRACY: Tiara, who from the
14 Applicant needs to be unmuted?

15 MS. MCCRAY: If you could, unmute
16 Barbara Sears, please.

17 MR. TRACY: Sure.

18 MS. MCCRAY: And the rest of Applicants
19 can be unmuted as well.

20 MR. TRACY: All right. One moment.

21 MS. SEARS: Okay. Can you hear me now?
22 Hello. Okay, great. This is Barbara Sears.
23 Thank you so much. Sorry for the delay. Just
24 couldn't get back on. And thanks for the
25 statements. We will be presenting the Applicant's

1 case through myself, Bryant Foulger, representing
2 the Applicant, Don Hoover as an expert in
3 landscape architecture, as well as Jeff Amiteau as
4 a registered civil engineer in the State of
5 Maryland.

6 The latter two we would like to offer as
7 experts in their fields for accepting the new
8 testimony as an expert in those fields. And then
9 we also have as part of the Applicant team, Paul
10 Weinschenk of Peterson who is represented the
11 Applicant as well and Ian Duke who has been at
12 VIKA as the manage -- manager of the case thus far
13 for VIKA. So they can answer any questions that
14 the Hearing Examiner might have.

15 So we would like to make a preliminary
16 statement to the Hearing Examiner and that is a
17 request that review of all the material that has
18 been submitted on the synthetic turf, we believe
19 that that issue is not properly considered, to be
20 considered in this abandonment before the Hearing
21 Examiner and County Council. And that is because
22 the issue was decided as part of the project plan
23 and the site plan approvals. And those
24 resolutions that Ms. McCray mentioned have gone
25 out. They went out on July 7th, they were mailed.

1 And they determined the use of the turf was
2 approved in the design. So the issue does not
3 relate to -- is not relevant to the issue of the
4 need for the present need or future need of the
5 access easement for right-of-way for public use.
6 So we would ask that the testimony be limited to
7 exclude that testimony and evidence.

8 Over that objection we have submitted
9 the -- subject to that object, we have submitted
10 the request for reconsideration, but also --
11 excuse me, on the site plan and project plan staff
12 report as well as the opposition to the
13 consideration request showing that these same
14 issues were raised in the project and site plan
15 very extensively.

16 Agency recommendations were obtained on
17 storm water, fire, health and safety, and through
18 DP and DEP as well as MCDOT, and the issue was
19 determined as part of those proceedings. The
20 reconsideration was filed to those approvals and
21 was not granted by Park and Planning. And once
22 again, the same arguments were made. So they have
23 become final.

24 No appeal was filed, and we believe that
25 the proper issue is as read out by the Hearing

1 Examiner according to Chapter 49 which is the
2 present or future need for the abandonment areas
3 for public use. So we would like to make that
4 statement as we go forward and have that objection
5 of record. Subject to that objection we have also
6 submitted responses to the objections that were
7 contained in the prior proceedings and for the
8 record. So with that, I don't know the Hearing
9 Examiner wants to rule on that or just stand by
10 his statement at the start of the proceedings.

11 HEARING EXAMINER PAYLOR: Thank you, Ms.
12 Sears. At this time I'm not going to make a
13 ruling on it. I will take it under advisement. I
14 haven't had the opportunity to look at or review
15 much of that, much of the information you have
16 just presented.

17 MS. SEARS: Okay. Well, with that
18 objection, Your Honor, we will proceed. And the
19 issues I think have been very well laid out and
20 history laid out well by both the Hearing Examiner
21 and Ms. McCray. So I just want to mention that
22 the total area of the public use easement is
23 21,170 square feet and the Ellsworth abandonment
24 area is 8,065 square feet. So the majority of
25 this area that comprises Ellsworth Drive from

1 Georgia to Fenton was abandoned back in 1999 and
2 the public use easement granted by the County to
3 PSA for use at that time.

4 So with that, I would like to start off
5 with Bryant Foulger who can also add to that
6 history and explain the purpose of the abandonment
7 from the point of view of the Applicant.

8 MR. FOULGER: Thank you, Barbara. Can
9 you hear me okay?

10 MS. SEARS: Yeah.

11 MR. FOULGER: Okay. My name is Brian
12 Foulger and I'm a chairman -- I'm the chairman of
13 Foulger-Pratt. We are a real estate development
14 company in Montgomery County. We do work on over
15 the Washington region and then in the West we have
16 an office in California. I'm joined today by Paul
17 Weinschenk who is an officer, the president of
18 development for the Peterson Companies, a company
19 that is involved in real estate development all
20 over the Washington region. They're headquartered
21 in Virginia.

22 The Peterson companies and Foulger-Pratt
23 came together well over 20 years ago to join in
24 the redevelopment of Downtown Silver Spring. The
25 history is relevant here. And if you don't mind,

1 I'm going to go through some of that with you.

2 Downtown Silver Spring was an area that
3 gone through a period, and extended period of
4 decline. This decline started back in the '60s
5 and '70s and continued on into the '80s. And in
6 the early 1990s, there were two efforts that were
7 put together to redevelop Downtown Silver Spring
8 in public/private ventures. And they were the
9 topic of tremendous discussion and honestly, an
10 awful lot of dispute. In both of them failed to
11 really move forward to completion.

12 A new County Executive, Doug Duncan, was
13 elected then. And Doug invited me and a number of
14 other developers in the DC area to take a look at
15 what can be done in Downtown Silver Spring. And
16 the position that I took and that the Peterson --
17 together we took with Mr. Duncan was that the last
18 thing this County wanted was -- or the citizens of
19 Silver Spring wanted was another plan imposed upon
20 them. So ultimately, we were chosen and chosen to
21 develop, redevelop the site. And we did it
22 working with a steering committee that the County
23 Executive put together representing civic
24 association, civic activists, religious leaders,
25 business leaders, people who lived in Downtown

1 Silver Spring, a wide array of people. And we
2 worked through how we would redevelop this project
3 and developed with them a plan.

4 And that plan called for a number of
5 outdoor uses that would support the retail and the
6 restaurants and the other uses that would be
7 there. And what is out there today is almost
8 identical to what that steering committee approved
9 and ultimately was later proved by the Planning
10 Board and the County Council and ultimately the
11 state even because the State provided some of the
12 funding for some of the public improvements.

13 One doesn't -- so this whole plan and
14 everything that is out there is very much the
15 result of a tremendous amount of cooperation and
16 collaboration between the public sector, the
17 private sector, and the community and the citizens
18 of Downtown Silver Spring.

19 As Barbara mentioned, back in 1999 most
20 of Ellsworth was abandoned but for the small
21 section that we are discussing today in front of
22 what was then called City Place, now Ellsworth
23 Place. The reason that that portion was not
24 abandoned -- well, the abandonment took place so
25 that we could create a public environment there

1 that would allow for vehicular traffic, but was
2 also one where we could have public events and
3 programming and things like that that would
4 support the Downtown Silver Spring project and in
5 turn, the Silver Spring community.

6 The reason that this portion was not
7 abandoned, was at the time it was thought that
8 under an abandonment, it would revert -- that
9 property under abandonment reverts to the
10 adjoining property. And it was thought at that
11 time that the adjoining property was in fact City
12 Place. So this piece that the subject of today's
13 abandonment, would've reverted the ownership of
14 city Place and that was not the intent.

15 And so we held off with the County, all
16 in cooperation with the County and the Planning
17 Board, we held off on the abandonment of this
18 piece. Now, we then put in place the access
19 easement and the lease. And the anticipation at
20 the time of the best practice at the time and
21 honestly still today, is that when you develop
22 these projects around streets, you continue to
23 allow vehicular traffic.

24 But as Silver Spring has often proven to
25 be the case; Silver Spring was the exception to

1 the rule. And we learned living with the project
2 managing on our regular basis for over an extended
3 period of time, that really the best use there was
4 not allowing vehicles through there. At first we
5 close it off to vehicles during the weekends. And
6 then seven, eight years ago, we closed off almost
7 entirely to vehicles and it has functioned more as
8 a public plaza than a street for those last seven
9 or eight years.

10 We still have to provide emergency
11 access. There are -- we've had events where we've
12 had cars and trucks and things like that go up and
13 down that street to provide staging and set up and
14 things like that. But for the most part, it has
15 been a pedestrian plaza.

16 So the intent today is to abandon the --
17 complete this abandonment really that was started
18 20 plus years ago and then change the provisions
19 of the lease and the easement, the access
20 easement, to allow us to make improvements to the
21 project that are recently been approved by the
22 Planning Board.

23 Those improvements, about three years
24 ago or so, we as the owners, we continued to own
25 the project throughout this entire period.

1 Foulger-Pratt and Peterson, we are both long-term
2 owners of real estate and Downtown Silver Spring
3 is a prime example of that. We saw that the
4 project needed a refresh and we saw that just
5 physically, there were things that were wearing
6 out from that pedestrian traffic to there. And
7 that takes a toll over time. A wonderful problem
8 to have, but a challenge, nonetheless.

9 We also saw that there was tremendous
10 disruption and change going on in the world of
11 retail. And we've seen that. I don't need to
12 explain all that. The retail world is changing
13 dramatically. We've seen much more food than we
14 had ever anticipated, restaurants. We've seen the
15 advent of online retailing and the impact that had
16 on retail.

17 And so we started working together with
18 Peterson, Foulger-Pratt, an hour consultants
19 including Oculus and others, to really look at
20 where were the challenges, what were the things
21 that we could do to enhance the position of
22 Downtown Silver Spring and continue to really make
23 it a place for the community to come and, as we
24 said, dwell, spend time there.
25 So we engaged Oculus, and as I said,

1 other consultants and we developed a plan and we
2 worked through that plan with Park and Planning,
3 went through a site plan amendment then the
4 project plan amendment. We didn't change the
5 density. We didn't change any square footage. We
6 didn't add density. It was really a change to the
7 site plan, to the surface areas including
8 Ellsworth.

9 And we felt like those changes, while we
10 would still provide for access for emergency
11 vehicles and vehicles for special events and
12 things like that, we wanted to close Ellsworth to
13 vehicular traffic permanently and then use that
14 space and enhance that space so that we create a
15 much more attractive, viable, vibrant, exciting
16 experience for people who come to Downtown Silver
17 Spring.

18 And so that plan was approved recently
19 by Park and Planning. And so this abandonment is
20 really an effort on our part to put in place the
21 requirements of the project plan and the site plan
22 that was just recently approved.

23 The -- in going through both this
24 abandonment process and the site plan project plan
25 review, all of these things were, the materials,

1 the design, the whole approach, it was reviewed by
2 DPS. It was reviewed by the County DOT, by the
3 fire marshal, by virtually everybody. And
4 questions were asked, and those questions were
5 answered.

6 The fact that the street has been closed
7 for so many years, there's been no adverse impact
8 on traffic or anything around the area there. And
9 in fact, we actually got some complaints recently
10 from some people because we've been allowing cars
11 to drive down Ellsworth on a temporary basis to
12 allow for curbside pickup and we actually had a
13 lot of complaints from the community about us
14 allowing any cars in there at all.

15 So the abandonment really is to allow us
16 to move forward. We will amend the access
17 easements to allow for the closure of the street
18 and to allow for the, the construction and the
19 installation of the improvements and the fixtures
20 and furniture that we will be installing. We will
21 continue to use and program the space as public
22 space. There will be an ongoing calendar of
23 events and programming there that will serve the
24 entire community.

25 This is a project we are very proud of.

1 It's a project that came about because of the
2 leadership of the then County Executive Doug
3 Duncan and the County Council. And it came about
4 more than anything because this is what the
5 community really wanted in Downtown Silver Spring.
6 And based on the long history that we've now had
7 of nearly 20 years of operating this project, we
8 are very proud to say that we think that we've
9 done just that.

10 I think we've met or exceeded all of our
11 goals, and all of our aspirations for really
12 creating a new heart for the Silver Spring
13 community and they've embraced it and we've
14 embraced it. We are very proud to say that we
15 think that we've done just that. I think we've
16 met or exceeded all of our goals and all of our
17 aspirations. We're really creating a new heart
18 for the Silver Spring community and they've
19 embraced it and we've embraced them. We are very
20 proud of what we have done there. And this is
21 another step in continuing to manage and improve
22 and enhance Downtown Silver Spring for the benefit
23 of the community there. Don.

24 MS. SEARS: You know, before -- this is
25 Barbara again. Before Don goes forward, perhaps

1 we can pull up the PowerPoint that we did. I
2 believe it's with the gentleman that's doing the
3 IT.

4 MR. WELSH: Yes, if you could do that.

5 MS. SEARS: That would be -- let's see.
6 I got it down in the exhibit. That would be the -
7 -

8 MS. MCCRAY: One second. It's a long
9 list.

10 MS. SEARS: Yeah. I'm looking at the
11 list. It looks like --

12 MS. MCCRAY: The PowerPoint presentation
13 is Exhibit AB.

14 HEARING EXAMINER PAYLOR: Yeah.

15 MS. SEARS: AB?

16 MS. MCCRAY: Yes.

17 MS. SEARS: Yeah, okay. If we could
18 bring that --

19 MR. WELSH: It wouldn't let me open
20 Exhibit AB. It says it's corrupt. It's not a file
21 that's supported.

22 MS. MCCRAY: I'm sorry. My apologies.
23 Is it possible for me to share my screen?

24 MR. WELSH: Yes.

25 MS. MCCRAY: All right. One second.

1 MR. WELCH: Yeah.

2 MS. SEARS: Okay. Well, if you go to
3 the first slide here, yeah, that is the general
4 area of the project. Here is the area to be
5 abandoned. And it shows you in yellow what was
6 previously abandoned basically, and what is
7 subject to the access easement.

8 The pinkish color is the upper
9 Ellsworth. And immediately to the north, there is
10 a little strip there that is owned by the County
11 and that is what Mr. Foulger was talking about
12 that once the pink area is abandoned, the County
13 will own basically the entire yellow and pink area
14 and it will then restructure the easement for the
15 purposes that have been specified in the
16 abandonment.

17 The next slide here is -- okay. That's
18 just the original dedication. So we can flip to
19 the next one. That is the area -- that is deed
20 establishing that the County does in fact own the
21 strip that would not be abandoned and therefore
22 has the right to obtain -- the abandonment of
23 upper Ellsworth.

24 Next slide. This is when the County,
25 then, after the abandonment. As it was mentioned

1 in 1999 this was the abandonment plat showing the
2 area that was in fact abandoned. It corresponds
3 with the slides we just saw and shows Ellsworth
4 Drive remaining, which we're calling upper
5 Ellsworth and that will be abandoned except for
6 the strip that is roughly areas 5 feet to the
7 north.

8 The next slide, that's just existing
9 conditions. It's a little hard to read but you
10 can go through it and see existing conditions in
11 different areas. The next slide is just a
12 description of the access into it. And the next
13 slide is the same thing.

14 It is the description and sketch. And
15 the next slide, same thing for the area to be
16 abandoned that is upper Ellsworth showing then the
17 area that the -- Montgomery County owns to the
18 north. And the next slide. Ah, that's where Don
19 Hoover comes in. Mr. Hoover will then address the
20 -- from this point on.

21 MR. HOOVER: Okay. Can everybody hear
22 me? Yes? Okay, good. Good afternoon. For the
23 record, my name is Don Hoover of Oculus. We are
24 the landscape architects responsible for
25 developing the design ideas for the project. I'm

1 going to give you a very brief overview of the
2 design and primarily try to focus on Ellsworth
3 Drive right-of-way and the role that it plays in
4 the renovation of Downtown Silver Spring.

5 As Bryant mentioned, our goal for the
6 project is to refresh and further activate the
7 public realm of Downtown Silver Spring. If you've
8 been out the site recently, really starting last
9 fall, you may see -- has seen that the building
10 façades are being painted with bright colors,
11 collection of murals by international artists have
12 been installed, and there is more to come on that
13 front.

14 The idea for Ellsworth is to transform
15 the street from a vehicular space into a
16 pedestrian street. It will still provide
17 emergency vehicle access, then it can be opened up
18 the vehicles for special events and for
19 maintenance. It's primary function will be for
20 pedestrian oriented activities.

21 Just to check the box and some technical
22 issues, the roadbed which was designed to carry
23 heavy vehicle or loads will remain in place. The
24 proposed improvements will be applied to the
25 surface and will not impact the streets ability to

1 support vehicles. The storm drainage system,
2 including the existing curb and gutters will
3 remain the same, except for changes at both ends
4 of the street where we are proposing to raise the
5 grates of the sidewalks to be flushed with
6 adjacent sidewalks basically creating a raised
7 table at Fenton as well as the alley near Georgia.

8 Bikes, well bikes will be able to move
9 freely throughout the entire space. A designated
10 bike lane has been provided on the sidewalk along
11 the south side of Ellsworth. We worked with
12 Planning staff to develop exactly what that
13 designation would look like and it complies with
14 the bicycle master plan and is approved by
15 Planning staff.

16 Go to the next slide. So this is a
17 photograph of Ellsworth today. And as Bryant
18 said, the street has been closed for years, but it
19 still looks and feels like a space for vehicles,
20 not for pedestrians, and that's really the primary
21 mission of this is to transform that space.

22 You can go to the next slide. So this
23 is a rendering of Ellsworth with the new
24 improvements. And this is spanning about halfway
25 down the street looking towards Fenton at the end.

1 So as you can see, the sidewalks, the paving for
2 the sidewalks will remain the same. We broadened
3 some of the planting at the base of the trees, but
4 you can see a collection of activities, which I
5 will show you in plan view in the next slide of
6 these -- a collection of rooms along the edge of
7 Ellsworth where we have permanent installations of
8 a number of different activities.

9 And then Ellsworth itself, at this and
10 the street, we are proposing to lay down turf for
11 folks to lounge or to have yard games, keeping it
12 a very flexible space. As you can see, the
13 existing curb and gutter remains as is. So the
14 drainage system will not be changed as a result of
15 this.

16 Next slide. So I'm showing you this
17 just to give you an idea of what all the different
18 pieces and parts are to the project. Today, when
19 you go out there, there is two things that
20 activate this entire space. One is retail. It's
21 a great activation of public spaces with -- and in
22 the space with outdoor dining. And then there is
23 an interactive water feature, and that's basically
24 it. That's what makes the place sing, if you
25 will.

1 So with this new proposal, you can see a
2 list of new programming elements. In the main
3 plaza there is -- we are putting a fountain back
4 in. It's going to be accompanied by a piece of
5 artwork. There is a stage. There is different
6 types of public seating. There is a community
7 chalkboard. The idea is to insert all these
8 different types of activities that it's not just
9 for young kids with the interactive water feature,
10 but really hitting young kids, middle-aged kids,
11 middle-aged people, people just providing a whole
12 range of different types of activity including
13 additional outdoor seating.

14 So you can see on the list, you know,
15 the kiddy horse rides. There is workstations with
16 Internet access, ping-pong tables, porch swings,
17 bistros seating, new cafe seating. So that's kind
18 of in a nutshell what's being proposed with the
19 project in particular what's happening in and
20 along Ellsworth.

21 So in closing, I will just say that, in
22 our opinion, Ellsworth Drive right of way is
23 central to the success of the space to transform
24 it from a street to a full on, central, public
25 space. And as Bryant said, building the heart of

1 Downtown Silver Spring.

2 MS. SEARS: One question, Don, that's
3 been raised in some of the letters is whether the
4 disabled people will be able to circulate through
5 the space if it is in fact abandoned, and the
6 designs that you have shown. Could you address
7 that for a second?

8 MR. HOOVER: Sure. The short answer is,
9 yes. In fact, we installed additional wheelchair
10 access ramps along the curbs, along Ellsworth to
11 allow freer access into the street itself. The --
12 from the -- what's shown on here is the turf area
13 moving plan west. That is all curbless through
14 that zone. So people can move across the plaza.

15 The turf itself is not being put down
16 like an athletic field with cushion under it. It
17 is an infill material. So we are using a short
18 pile turf that is adhered to the roadbed. So
19 wheelchairs will be able to maneuver on that
20 freely.

21 MS. SEARS: And I will just point out to
22 the Hearing Examiner that our petition that is
23 dated April 20, 2020, does in fact provide an
24 analysis of why this proposal does implement the
25 recommendations of the sector plan for the

1 Downtown Silver Spring as well as the 2018 bicycle
2 master plan that Mr. Hoover has mentioned the
3 facilities that are being employed to have a
4 designated area for bicycle others to pass through
5 the property.

6 So last question Mr. Hoover, do you want
7 not address the -- once the abandonment, what the
8 access will be to the garage. It is called the
9 Wayne Avenue garage for the property.

10 MR. HOOVER: I'm sorry. Barbara, did
11 you want me to address that?

12 MS. SEARS: If you could just from a
13 landscape planning view.

14 MR. HOOVER: Yeah.

15 MS. SEARS: Yeah.

16 MR. HOOVER: Yeah, sure. So from
17 Georgia, Ellsworth Drive, the portion that is
18 shown in white, that will be an active roadway.
19 It is one way, has always -- the alley has always
20 been one way going into the garage. So that will
21 remain the same.

22 There was parking on the north side of
23 Ellsworth that is -- that is being removed and the
24 sidewalk widened, primarily because it was very
25 awkward for people to get to those parking spaces.

1 They basically had to come down and do a U-turn to
2 park there. So the short answer to your question
3 is that access to the garage is unchanged by this
4 plan.

5 MS. SEARS: Thank you. And that will be
6 an issue that is covered when the changes to the
7 access easement are done if this abandonment is
8 granted. So we will have that same direct access
9 into the garage. So unless there is anything
10 else, Mr. Hoover, we can move on to Mr. Amateau.

11 All right. Jeff Amateau then, if he is
12 still with us, his --

13 MR. AMATEAU: Oh, I'm here, Barbara.

14 MS. SEARS: Okay.

15 MR. AMATEAU: Good afternoon.

16 MS. SEARS: Good afternoon, Jeff. And
17 if you could -- you are a registered civil
18 engineer in the State of Maryland?

19 MR. AMATEAU: Yeah. My name is Jeff
20 Amateau. I'm the director of engineering at the
21 VIKA Maryland office. And Barbara, Brian, and Don
22 have almost hit every point. I think the only
23 thing that I can add is a little discussion on the
24 existing utilities.

25 MS. SEARS: Yes, we have.

1 MR. AMATEAU: These are -- there are
2 existing streetlights and water and sewer mains
3 within the access area and also the upper
4 Ellsworth, which we are preparing easement
5 documents for. So we're going to be granting a
6 PUE for the streetlights and we are also going to
7 be granting a water and sewer easement to WDC
8 for the existing facilities.

9 And I think as mentioned previously, the
10 gas has already been abandoned there's no need for
11 the gas.

12 MS. SEARS: And some of this right-of-
13 way will of course be owned by Montgomery County.
14 So similar to what was done in the first
15 abandonment, some of these easements just have to
16 be confirmed by Montgomery County.

17 MR. AMATEAU: Yeah, exactly.

18 MS. SEARS: Okay. Then you have
19 reviewed all the letters that Sara has mentioned
20 from the -- I'm sorry -- from the utility
21 companies on their various conditions of approval?

22 MR. AMATEAU: That is correct. We are
23 in the process of working with WSSC to determine
24 the easement width. So we're going to move
25 forward on that, and we are also going to cover

1 the streetlights under a PUE.

2 MS. SEARS: So you see no problems with
3 the -- accommodating the request of these utility
4 companies?

5 MR. AMATEAU: That is correct, no
6 issues.

7 And then there is an existing storm
8 drain system in upper Ellsworth, which will remain
9 unchanged and basically functioning as it does
10 today.

11 MS. SEARS: All right. Then I think the
12 only other exhibits here were on access. If you
13 could just, and the next I think last two
14 exhibits?

15 MS. MCCREARY: Are you -- could you give
16 me the name of the exhibit that you're looking
17 for. It's not in the Powerpoint, correct?

18 MS. SEARS: It's (inaudible).

19 MR. DUKE: There aren't. This is Ian
20 with VIKA. There are two sheets past this slide
21 right here.

22 MS. SEARS: Oh yeah, that's what it is.
23 It's two sheets past there.

24 MS. MCCRAY: Got you.

25 MS. SEARS: Okay. Sorry. Slipped in a

1 cover sheet.

2 Yeah. This was just, and Jeff can add
3 anything he wants to this, but it was just an
4 effort to show in the hatched area where -- well,
5 if you go to the next slide.

6 MR. AMATEAU: I think if you go to the -
7 - Barbara I think it's the next slide that kind of
8 shows it a little better.

9 MS. SEARS: Yeah. It shows it better,
10 yeah. There's one last slide. Yeah. And two of
11 them.

12 MS. MCCRAY: One second.

13 MR. AMATEAU: Go ahead. So what's shown
14 in blue -- it's blue on my screen, is the access
15 easement that we're going to be preparing sketches
16 and descriptions for the essential vehicles,
17 pedestrians, and art screen. And then, the
18 purplish area on lower Ellsworth is the access
19 easement that we're preparing an easement sketch
20 and description for the vehicle access for the
21 Wayne Garage from Georgia Avenue.

22 MS. SEARS: So I think that basically
23 concludes the case for us. If there is any
24 testimony that's allowed in about the turf, we
25 would like to come back and perhaps, discussed

1 that for a minute, if the hearing examiner would
2 give us that accommodation.

3 HEARING EXAMINER PAYLOR: Yes, that's
4 fine. Are there any other witnesses that you are
5 going to call to speak on behalf of this
6 abandonment?

7 MS. SEARS: No. No, I think it's
8 covered in our petition and I would also call the
9 Examiner's attention to the very thorough analysis
10 of the Department of Planning did on the
11 abandonment that gives a lot of background data
12 and findings that are helpful, I think, to the
13 case as well.

14 The only other thing is in the site plan
15 report and in the site plan and the project plan,
16 and in the resolutions approving, there is also a
17 good deal of discussion on the purpose of
18 compliance with the design, with the sector plan,
19 the bicycle plan, and why this is an advancement
20 of the goals of those plans to have this design
21 include the abandonment. So we would ask the
22 Examiner to take those into account as well.

23 HEARING EXAMINER PAYLOR: Yes, thank
24 you. I will, and I certainly want to talk about
25 the short pile turf as you made reference to that

1 you said you were going to speak on later on. I'm
2 certainly interested in that.

3 But I would like to go back to exhibit
4 K5. I have one or two questions on that with
5 regard to the bicycle path, the bicycle pathway
6 that's proposed in conjunction with that concept.

7 MS. SEARS: Okay. I'll pass -- Tiara,
8 if you can bring that back up and perhaps, Don,
9 you could be prepared to answer anything on that.

10 MR. HOOVER: Yeah, sure.

11 MS. MCCRAY: One second.

12 MR. HOOVER: Are we pulling the plan up;
13 is that what we're doing?

14 HEARING EXAMINER PAYLOR: Yeah. I was
15 actually going to draw our attention back to the
16 exhibit that you showed, I believe it was called
17 out as K5, but if the plan was being shown that's
18 fine too.

19 You mentioned that the bicycle pathway
20 was going to be located on the south side. And so
21 I had some questions about that. They may be
22 covered in the immensity of the documents, but I
23 wanted to just ask a couple of questions for the
24 record.

25 MR. HOOVER: Sure. Look down to K5,

1 toward the middle. Keep going. There we go.

2 HEARING EXAMINER PAYLOR: Yeah. So
3 yeah, and K5 is fine. Just that you mentioned
4 that the bicycle facilities would be on the south
5 side. Two things. What's the approximate width
6 of the bicycle pathway, and are we talking about
7 bidirectional bicycle traffic on that segment?

8 MR. HOOVER: The pathway is being marked
9 with medallions, not, like showing the edges. It
10 was, in talking with the Planning staff, we all
11 agreed that we don't want - we did not want to
12 have a pathway that had edges marked on it.

13 The width of the tree area, I want to
14 say it's 10 feet. But according to the bicycle
15 master plan, the bikeway on this street is not
16 connecting to anything. It's really just coming
17 from Fenton into the space. And so again, the
18 discussions with Planning, it was more to be an
19 indication to pedestrians that bicycles are in
20 this area.

21 MR. FOULGER: But you should -- the
22 sidewalk on the south side of the street is quite
23 a bit wider than the sidewalk on the north side of
24 the street.

25 MR. HOOVER: Correct.

1 MR. FOULGER: That was done originally
2 for pedestrian traffic and we just had depths on
3 those retail stores that were just too great. So
4 we made that sidewalk quite a bit wider on the
5 south side, then the sidewalk on the north side,
6 which is a more normal dimension.

7 So there's room there for both
8 pedestrians and bikes.

9 HEARING EXAMINER PAYLOR: Okay. Thank
10 you.

11 MS. SEARS: Ian, do you know the width
12 of that, that area?

13 MR. DUKE: I'm reviewing plans right now
14 to see if I can determine a dimension.

15 MS. SEARS: Okay. If you find one
16 perhaps you can add that to the discussion.

17 HEARING EXAMINER PAYLOR: Thank you.

18 All right. Just to be clear, you
19 mentioned that there are no other witnesses that
20 you would like to call to speak on this
21 abandonment, right?

22 MS. SEARS: No, not at -- until perhaps
23 at the end.

24 HEARING EXAMINER PAYLOR: So with regard
25 to this next portion of the hearing, the public

1 comment, are there comments that are desired to be
2 made on this limited abandonment petition?

3 And so, Tiara, and company, do we have
4 the -- do we have a protocol for who is going to
5 be permitted to provide their comments and what
6 sequence that is going to occur?

7 MS. MCCRAY: I have the order if you
8 would like me to go ahead and call the names in
9 the order that I have them? That's not the order
10 in which they were received, so I just want to
11 make that statement prior to calling a witness's
12 name.

13 HEARING EXAMINER PAYLOR: To grab hands
14 out of the air. So let's proceed in that wise.

15 MS. MCCRAY: Yes, sir. Now the first --

16 HEARING EXAMINER MICHAEL PAYLOR: And please
17 keep in mind again, I want to reiterate that I'm
18 asking or directing you all to relegate your
19 comments to a maximum of three minutes. And I
20 will be attending strictly to this time limit.

21 MS. MCCRAY: The first individual I have
22 is Mark Paster.

23 All right. Does anyone see and/or hear
24 Mark Paster? Joshua, can you check to see if Mark
25 Paster is here?

1 MR. TRACY: Yes, one moment.

2 MS. MCCRAY: Thank you.

3 I am going to --

4 MR. TRACY: I do not see a Mark Pastor
5 here.

6 MS. MCRAE.: Okay. The next individual
7 I have is Diana Conway. And I apologize in
8 advance everyone if I mispronounce your name.

9 HEARING EXAMINER PAYLOR: So again, just
10 to provide a little bit more context, there was a
11 request to announce approximately how long the
12 wait time was going to be based on the testimony.
13 So I think it might be beneficial for us to maybe
14 call out five individuals to say hey, these five
15 people are on the docket, and then call them out
16 individually as we go. And that way if a person's
17 name is not listed in the first five person docket
18 then they know they probably have about a half an
19 hour to wait, or something like that. Or not half
20 an hour, 15 minutes.

21 MS. MCRAE: That that's perfectly fine.
22 The first five people have been added starting
23 with -- to the chat starting with Diana Conway.
24 If you'd like for those who are on the call I can
25 --

1 HEARING EXAMINER PAYLOR: Yeah, thank
2 you.

3 MS. MCCRAY: -- get you the next names.
4 My apologies. The first is Diana Conway. Next
5 will be Sheldon Fishman. Following Mr. Fishman
6 Ray Britch. Following Mr. Ray is Michael Mage.
7 After Mr. Mage will be Kathleen Michels.

8 HEARING EXAMINER PAYLOR: Thank you
9 Tiara.

10 Ms. Conway?

11 MS. CONWAY: Thank you. I especially
12 want to thank Tiara who has been endlessly patient
13 with those of us over the age of 50 trying to
14 figure out how this works. You've got some
15 serious encryption. So thank you.

16 I'm here today representing the Women's
17 Democratic Club. I'm the president of the club,
18 we are 600 politically active women and focused on
19 issues that predominantly affect women and
20 children. We are in support of the abandonment
21 with conditions. In the condition is the
22 exclusion of synthetic turf. My testimony will be
23 submitted shortly, but I'll go through it quickly,
24 and then go back.

25 The Department of Environmental

1 Protection has issued serious concerns about the
2 use of synturf in a letter of July 13th. The
3 Planning Board by a majority, opposed the use of
4 synturf in its letter of July 30th, and the other
5 two members of the Planning Board were silent on
6 the merits of using synthetic turf stating only
7 that it did not belong in their forum as an issue.

8 We believe the ML4 permits, and the
9 National Pollution Discharge elimination system
10 will be violated by installation of synthetic
11 turf, including the plastic, the backing, and the
12 untold gallons of glue that will be required to
13 stick it to the existing roadbed, and to
14 continually go back as it breaks down and add glue
15 to that.

16 An additional toxic load would be the
17 flame retardant, biocides, disinfectants,
18 sterilizers, and notwithstanding airy statements
19 about attentive cleaning using unnamed common
20 household cleansers, the record is quite clear
21 that synturf needs aggressive cleaning for common
22 events like spit, sweat, snot, blood, vomit, bird
23 feces, dog feces, sticky food and drinks,
24 cigarettes, gum, Thanksgiving parade candy.
25 Studies show that synturf is a terrific medium for

1 growing MRSA, staph infection that is resistant to
2 antibiotics, and it gets more so as it gets older.
3 And the CDC has told us that plastics, like
4 synthetic turf, can support Covid for up to three
5 days.

6 The second major objection to synthetic
7 turf is the near certainty that it contains lead.
8 We've known since 2007 when three cases were
9 brought by the State of California that the
10 plastic carpet itself, not the infill used on the
11 field, contains up to 5000 ppm of lead. The
12 industry has failed in the intervening 13 years to
13 loudly proclaim it has led free products. The CDC
14 and American Academy of Pediatrics has said there
15 is absolutely no safe level of lead exposure and
16 any claim to the contrary --

17 HEARING EXAMINER PAYLOR: 30 seconds,
18 Ms. Conway. Thank you.

19 MS. CONWAY: -- is illusory. You also
20 have PFAS which is the toxic chemical of the day.
21 The synthetic dirt gets reliably hotter than
22 adjoining blacktop making it less attractive, not
23 more attractive as a place to hang out.

24 Flammability is not an issue. The fire
25 department where I'm sitting right now in

1 Massachusetts actually issued a request for a fire
2 break around proposed synthetic turf because
3 they're worried about flames spreading from the
4 turf if it gets vandalized or catches fire to the
5 adjoining woods. It's a petroleum product. It is
6 inherently flammable.

7 HEARING EXAMINER PAYLOR: Thank you, Ms.
8 Conway.

9 MS. CONWAY: These are issues and
10 manufacturers have indicated it is not appropriate
11 for this use.

12 HEARING EXAMINER PAYLOR: Thank you, Ms.
13 Conway. I appreciate your testimony. I apologize
14 for being so abrupt and having to cut you off.
15 Thank you.

16 MS. CONWAY: Thank you.

17 HEARING EXAMINER PAYLOR: And again,
18 please remember that any additional comments that
19 anyone on this call has can be submitted during
20 the comment. To Ms. Tiara McCray.

21 Who's next Tiara?

22 MS. MCCRAY: I muted, my apologies. I
23 have Mr. Sheldon Fishman next.

24 HEARING EXAMINER PAYLOR: Mr. Fishman.

25 MR. FISHMAN: Thank you very much.

1 Again, I wanted to basically echo what Diana said
2 about Ms. McCray.

3 Ms. McCray, could we put up page 2 of my
4 testimony, please?

5 And she has done a terrific job in
6 supporting public comments and I very much
7 appreciate it.

8 I won't repeat anything that Diana said,
9 except that when she referred to the Planning
10 Board, their letter to you of July 30th attachment
11 M, said specifically that the question of
12 synthetic turf, they're looking to you for an
13 answer and they chose not to approve it, the
14 synthetic turf, but they're looking to you and the
15 county.

16 And Ms. McCray, could you put up my
17 testimony?

18 MS. MCCRAY: I sent Joshua a message.
19 It's Exhibit AE, page 114.

20 MR. TRACY: Yes, stand by.

21 MS. MCCRAY: Thank you.

22 MR. FISHMAN: So basically, my family
23 has lived in Silver Spring for over 40 years, so
24 we appreciate the redevelopment of Downtown Silver
25 Spring and we very much support the re-

1 redevelopment of Silver Spring. It will be an
2 improvement that we support with the condition.

3 And the condition is that you not put
4 synthetic turf there. Basically, in one sentence,
5 my testimony is that I agree with the Department
6 of Environmental Protection that says a more
7 environmentally, preferable alternative should be
8 utilized. They're right. And with that, you will
9 the rest of my time. I appreciate how busy you
10 guys are. Thank you.

11 HEARING EXAMINER PAYLOR: Thank you very
12 much.

13 You're on mute, Tiara.

14 MS. MCCRAY: That definitely changes
15 things. Next is Mr. Ray Britch, and I apologize
16 if I've mispronounced your name here.

17 HEARING EXAMINER PAYLOR: Is Mr. Britch
18 on the call?

19 MS. MCCRAY: Joshua?

20 MR. TRACY: Checking, one moment.

21 MS. MCCRAY: Thank you.

22 HEARING EXAMINER PAYLOR: In the
23 meanwhile --

24 MS. MCCRAY: Up next, will have Mr.
25 Mage, if Mr. Mage can be prepared to speak next.

1 MR. TRACY: I'm not seeing Mr. Britch on
2 the call. We can move on.

3 HEARING EXAMINER PAYLOR: Thank you,
4 Josh.

5 Mr. Mage?

6 MR. MAGE: I'm here. Can you show me
7 the screen?

8 MR. TRACY: Yes sir, we hear you.

9 MR. MAGE: Mr. Fishman start --

10 MS. MCCRAY: I'm sorry, sir, could you
11 repeat your request?

12 MR. MAGE: Could you show me full-
13 screen? Show my face full-screen here?

14 HEARING EXAMINER PAYLOR: Mr. Mage, we
15 can see you.

16 MR. MAGE: I do not have a -- I do not
17 have something to show full-screen other than
18 holding it in my hand. So I would like to --

19 HEARING EXAMINER PAYLOR: I'm sorry, Mr.
20 Mage, did you have a display that you wanted us to
21 see; is that what you're saying?

22 MR. MAGE: Yes, exactly.

23 MS. MCCRAY: Your video has been
24 changed, Mr. Mage.

25 MR. MAGE: Well, it should be on.

1 MS. MCCRAY: We can see you, yes sir.

2 MR. MAGE: You can see me?

3 MS. MCCRAY: Yes, sir.

4 HEARING EXAMINER PAYLOR: Have you
5 submitted your Exhibit 2 this office so that we
6 might include it in the presentation; is that what
7 you're looking for, just to see your exhibit?

8 MR. MAGE: I just wanted to see it; I'll
9 just hold it up here now. So everyone can see
10 what I'm holding.

11 HEARING EXAMINER PAYLOR: Yes sir, thank
12 you.

13 MR. MAGE: Okay. I'm testifying --
14 okay, if you'll start the clock on behalf of the
15 ACLU of Maryland, Montgomery County Chapter. And
16 we oppose this abandonment unless it is revised
17 and amended. We wish to save Silver Spring
18 fountain and ensure that Ellsworth Drive is not
19 the next step to gentrifying Downtown Silver
20 Spring.

21 The Downtown Silver Spring organization
22 has asked the County to let make major changes to
23 Ellsworth Drive. Unfortunately, the plans include
24 ripping out the beautiful mosaic fountain that
25 neighborhood kids have used as a summer wading

1 pool for over 15 years; covering the street with
2 synthetic turf which would keep young neighborhood
3 skaters and skateboarders from practicing their
4 skills as they do now, and obstructing the bike
5 traffic, as shown in renderings that I have seen.

6 Downtown Silver Spring is clearly trying
7 to attract more upscale, genteel clientele to
8 Ellsworth Drive. But that's how gentrification
9 happens, pushing people of color and lower income
10 community members out of the area, reducing the
11 rich diversity that makes Silver Spring what it is
12 today. Reducing the options for fountain wading,
13 for skating, and for bike traffic; these
14 reductions run counter to Montgomery County's
15 proclaimed ideals of diversity and inclusion.

16 We ask you to one, save the fountain and
17 keep it as a wading pool for public use. Two, to
18 not use synthetic turf on Ellsworth Drive; have
19 you ever tried skating on synthetic turf? Three,
20 require that the section of Ellsworth Drive in the
21 Executive Order 8420 be kept open for skaters and
22 to practice their skills.

23 HEARING EXAMINER PAYLOR: Thirty
24 seconds, Mr. Mage. Thank you.

25 MR. MAGE: Maintain an unobstructed bike

1 path. Five, prepare a racial equity and social
2 justice impact statement of the type mentioned in
3 Bill 2719 for the entire project.

4 Let's keep Silver Spring and the County
5 equitably inclusive and welcome for all people.
6 We thank you for your attention. Our request is
7 accompanied by a petition with over 350 signatures
8 as of this morning.

9 HEARING EXAMINER PAYLOR: Thank you, Mr.
10 Mage. We appreciate your testimony.

11 MR. MAGE: -- to do these necessary
12 changes.

13 HEARING EXAMINER PAYLOR: Thank you,
14 sir.

15 MS. MCCRAY: Next, we will have Allison
16 Gillespie.

17 HEARING EXAMINER PAYLOR: Allison?

18 MS. MCCRAY: She's on mute.

19 HEARING EXAMINER PAYLOR: She was.

20 MR. TRACY: Yes, I've requested to
21 unmute her.

22 Ms. Gillespie, if you would just accept
23 that request.

24 MS. GILLESPIE: I'm here.

25 HEARING EXAMINER PAYLOR: All right.

1 Great.

2 MR. TRACY: Great.

3 MS. GILLESPIE: Yeah. But I'm here on
4 the phone number because of audio trouble. So my
5 phone number also has my name. I hope that's
6 clear. I had chatted with you about it privately
7 on the chat. Can you hear me?

8 HEARING EXAMINER PAYLOR: Yes, ma'am.
9 Thank you. You can proceed.

10 MS. GILLESPIE: Okay. Very good. Thank
11 you. Sorry. I had started to speak, I'm sorry
12 about that.

13 I wanted to let everyone know, I've
14 lived here for 24 years. I'm glad to see the
15 resurrection of Silver Spring. I've been grateful
16 for what has happened, and I think it has been
17 wonderful. Over this last spring and summer I
18 have been working very hard on open street
19 efforts, and working with many DOT people on
20 trying to reuse some unused street space for
21 efforts like what was just described on Ellsworth.

22 Ellsworth means a lot to me. My mom
23 used to live two blocks before she passed away
24 last year, she was in her 80s. I used to put her
25 in her wheelchair and wheeled her up and down

1 Ellsworth, and each of the businesses got to know
2 us and would welcome us personally, and make an
3 effort to make my mom comfortable even as she had
4 very severe dementia. Some of the street
5 musicians would even start playing Pink Panther
6 because they knew that was her favorite song. So
7 Ellsworth means a lot to me.

8 While Covid has hit our community, we
9 have been trying very, very hard to work with the
10 Peterson company to get what other communities
11 have, which is a street scape that is full of
12 tables, socially distanced. The Bethesda Urban
13 Partnership has done this very successfully.
14 Wheaton has done it very successfully, Rockville
15 has done it very successfully, Takoma Park has
16 done it very successfully. Silver Spring could
17 have done it successfully, but Peterson refused.
18 They blocked us doing anything like that, refused
19 to even consider it. Said we're not very good
20 community members during the process.

21 HEARING EXAMINER PAYLOR: Ms. Gillespie
22 --

23 MS. GILLESPIE: There's tons of room --
24 yes?

25 HEARING EXAMINER PAYLOR: You have -- I

1 just -- I'm trying to make a determination on, you
2 know, you talked about --

3 MS. GILLESPIE: Yeah.

4 HEARING EXAMINER PAYLOR: Yeah.

5 MS. GILLESPIE: I am. I am. I
6 understand, Michael.

7 I'm worried as far as Peterson being a
8 good overseer of this space in the way that's
9 described. I understand that they want -- they're
10 saying, but it seems to me that what they're
11 really concerned about is profit-making and not
12 being a very good community member. At this point
13 I would love to see a lot of the plans that are
14 here, but I have serious concerns about their
15 management of the abandonment as it's described,
16 given what they have -- the kind of community
17 member they've been this summer.

18 I would like to see Downtown Silver
19 Spring continue to thrive, but I don't see
20 anything other than Peterson continuing to survive
21 in this plan, and in the way they've acted this
22 summer. I'm by no means a nimby (ph) I welcome
23 development, I --

24 HEARING EXAMINER PAYLOR: Thirty
25 seconds.

1 MS. GILLESPIE: Okay. I gotcha. I
2 think that's what's happened in Downtown Silver
3 Spring has been great, but I think that Peterson
4 has gotten a little cavalier, and I wonder about
5 having some sort of oversight to this abandonment;
6 should we give it over to Peterson completely.

7 I hope you'll take that into
8 consideration, and I'll be letting the Council
9 know the same concerns. Thank you Mr. Paylor.

10 HEARING EXAMINER PAYLOR: Thank you, Mr.
11 Gillespie.

12 Again, I want to caution us to make sure
13 that her comments are -- and discussions are
14 specifically towards this issue, the limited
15 abandonment of Ellsworth Drive. So again, I'm
16 looking to be a little bit more stringent and
17 trying to make sure that we focus our comments on
18 that and not on some other radial issues. So
19 anyways, let's be forewarned.

20 All right, who's next?

21 MS. MCCRAY: Ms. Kathleen Michels.

22 HEARING EXAMINER PAYLOR: Is she in the
23 first group of five or six, or is she in the next
24 segment?

25 MS. MCCRAY: She is in the first group.

1 HEARING EXAMINER PAYLOR: Okay. Great,
2 thank you.

3 You said Ms. Michels?

4 MS. MCCRAY: Michels, I believe,
5 Kathleen.

6 DR. MICHELS: Yes. Thank you very much.
7 If I could start?

8 HEARING EXAMINER PAYLOR: You may.

9 DR. MICHELS: Okay. Thank you. Good
10 afternoon, I'm Dr. Kathleen Michels, a resident of
11 the area for over 30 years, a public health
12 scientist, and mother of two boys. And I'd like
13 to thank the Hearing Examiner and Ms. McCray for
14 her endless patients.

15 As a family, we are familiar with this
16 area through all its iterations. I am also
17 familiar with the synthetic turf carpet material
18 proposed to be glued down on the asphalt. We
19 support the majority of the Planning Board and the
20 Department of Environmental Protection in asking
21 you to please allow abandonment only if the
22 synthetic turf carpet, or similar materials are
23 prohibited.

24 The Planning Board recommended against
25 synthetic turf plastic carpeting because of heat,

1 health, and sanitation contamination concerns.
2 One of the issues identified is the difficulty in
3 cleaning the plastic tufted outdoor carpet when
4 people with animals and food, and occasional
5 vehicles would be on it, all the time. Unlike a
6 plastic carpet in a sports field, which allows
7 none of these, and in fact, explicitly excludes
8 pets, food, and drink.

9 The Department of Environmental
10 Protection has also submitted recommendations
11 against synthetic turf as not appropriate for this
12 use, in part, since it adds to the physical and
13 chemical pollution load from this site instead of
14 improving it. The only rationale that Foulger-
15 Pratt has been able to give for gluing a plastic
16 carpet -- a plastic bladed carpet onto Ellsworth
17 Avenue is the fake visual illusion of a soft,
18 cool, healthy space for people to congregate. The
19 reality is the exact opposite. Plastic synthetic
20 turf carpet team, especially glued to anything
21 hard is hard, hotter than the asphalt it is glued
22 to, toxic, unsanitary, and polluting.

23 According to current studies, it will
24 leach chemicals and shed tons of micro plastic and
25 associated pathogens and pollutants, a dangerous

1 illusion indeed. The MS-4 stormwater regulations
2 do not allow purposely adding new point sources of
3 stormwater pollution. And the existence of a
4 stormwater facility is not a license to pollute.
5 Water quality controlled stormwater facilities are
6 intended for background pollution from non-point
7 sources, which are not currently possible to
8 prevent.

9 The developer has publicly posted
10 misleading and incorrect information in response
11 about cleaning synthetic turf. They say they can
12 safely wash and clean the carpet with things like
13 mineral spirits and detergents, and they say that
14 the existing stormwater facilities --

15 HEARING EXAMINER PAYLOR: Thirty
16 seconds, Ms. Michels.

17 DR. MICHELS: -- take care of additional
18 per forceful plastic and chemical pollutants from
19 the site. This is simply false. The stormwater
20 regulations are very clear that any added, non-
21 rainwater discharges are not allowed. Any
22 chemical other than those used for firefighting
23 activities is 100 percent illegal even if a
24 stormwater facility, and especially if a
25 stormwater facility is present.

1 There are so many downsides to synthetic
2 turf and no positives except illusion. I am here
3 to remind you of the power of illusion and to ask
4 you to protect us from its dangers. Please, prove
5 abandonment only if --

6 HEARING EXAMINER PAYLOR: Thank you, Ms.
7 Michels.

8 DR. MICHELS: -- synthetic turf or other
9 similar polymer materials is prohibited. Thank
10 you.

11 HEARING EXAMINER PAYLOR: And again, I'm
12 going to make a summary judgment on this aspect.
13 I understand that many of you may be concerned
14 about the use of synthetic turf. But that really
15 doesn't have much, if anything, to do with whether
16 or not we are in support, or opposed to this
17 limited abandonment. The type of material that
18 can be used as something that can be addressed,
19 but the focus of this hearing is on whether or not
20 the limited abandonment of Ellsworth Drive from --
21 for -- just for bicycle, and pedestrian, and
22 emergency vehicles as opposed to typical traffic
23 is what's on the table now. So if you have
24 comments, or if you're looking to submit comments
25 during this hearing that talk about your

1 opposition to the synthetic turf application, I'm
2 going to ask you to hold those comments in
3 abeyance. You may submit them during the comment
4 period. But for the purpose of this call, and the
5 purpose of this hearing our focus should be on the
6 abandonment itself.

7 Who's next, Tiara?

8 MS. MCCRAY: The next group of five will
9 be Xavier, Lisa, Carrie, Anne, and Shruti,
10 starting with Xavier.

11 Mr. Xavier?

12 HEARING EXAMINER PAYLOR: Thank you.

13 MS. MCCRAY: Josh, can you see if Mr.
14 Xavier is on the call?

15 MR. TRACY: I do not see Mr. Xavier on
16 the call.

17 MS. MCCRAY: All right. Next up, we
18 have Ms. Lisa.

19 MR. TRACY: I don't see Lisa Haynes on
20 the call either.

21 MS. MCCRAY: Thank you. Next, we have
22 Ms. Carrie.

23 MR. TRACY: I don't see Carrie on the
24 call.

25 HEARING EXAMINER PAYLOR: All right.

1 MS. MCCRAY: Next, we have Ms. Anne.

2 MR. TRACY: Ms. Vorce is on the line, if
3 you could please unmute your phone.

4 MS. MCCRAY: Josh, could you send her an
5 invitation to unmute herself?

6 MR. TRACY: She is unmuted.

7 Ms. Vorce, can you hear us?

8 MS. MCCRAY: Okay.

9 HEARING EXAMINER PAYLOR: Do you want to
10 come back to her?

11 MS. MCCRAY: I'll leave a note. Up
12 next, we have Ms. Shruti.

13 MS. BHATNAGAR: Hi. Good afternoon, I'm
14 here.

15 HEARING EXAMINER PAYLOR: Thank you.

16 MS. BHATNAGAR: Good afternoon,
17 everyone. My name is Shruti Bhatnagar and I'm the
18 chair of the Sierra Club, Montgomery County. I'm
19 testifying on behalf of nearly 6,000 members to
20 share Sierra Club's concerns related to
21 installation of synthetic turf, and argue to keep
22 those concerns in the forefront of your decision-
23 making for the abandonment of the right-of-way on
24 Ellsworth Drive.

25 The Sierra Club supports the majority of

1 Planning Board's comment and recommendation and
2 requests that the approval of abandonment be
3 contingent on not allowing use of synthetic turf
4 and requiring a more watershed friendly
5 alternative to synthetic turf and its microplastic
6 and chemical pollutants.

7 The Sierra Club Montgomery County and
8 Maryland Chapter are opposed to synthetic turf
9 because it poses a threat to both public health
10 and the environment. Some of our concerns include
11 water pollution from microplastic as it degrades,
12 composition of glue attached to the turf, to the
13 asphalt, chemicals recommended for its cleaning,
14 increase in stormwater runoff that could carry
15 additional pollutants, and whether it is
16 compatible with the existing stormwater management
17 facility.

18 Flammability of this petroleum based
19 product and the large generation of synthetic
20 turf, which is plastic waste, that must be
21 disposed every 8 to 10 years. Other concerns will
22 be outlined in our detailed, written testimony.

23 But we have a special concern regarding
24 this project's compatibility with the existing
25 stormwater management facility given the fact that

1 increases in heavy precipitation events are
2 already occurring as a result of climate change
3 and which are not factored into current codes for
4 the design of stormwater or other infrastructure.

5 Abandonment of right-of-way also reduces
6 the County's opportunities for increasing
7 stormwater management capacity to green
8 infrastructure projects. This -- the additional
9 synthetic turf on top of the existing impervious
10 surface would be a missed opportunity to advance
11 the County's obligations for stormwater management
12 under the MS-4 permit that requires removal of
13 impervious surfaces and treatment of stormwater
14 runoff in older neighborhoods such as Downtown
15 Silver Spring which were not built to treat
16 stormwater to the maximum extent practicable.

17 Green infrastructure is an approach that
18 enables more stormwater to either infiltrate soil
19 or evaporate from vegetation and intercepts it
20 before it reaches the ground, thereby reducing
21 polluted runoff. In addition, it provides many
22 other benefits associated with actual green
23 spaces.

24 With the recognition by the County
25 Council that we are in a climate emergency, it is

1 critical that climate considerations, both extreme
2 heat periods and increases in heavy precipitation
3 events are considered in all development,
4 planning, and decision-making.

5 We hope you agree that adapting new
6 development projects are some of the best
7 opportunities the County has to increase the
8 climate resilience. The proposed synthetic turf
9 in Downtown Silver Spring would only reduce
10 climate resiliency.

11 As you review the abandonment of
12 Ellsworth Drive, please keep these concerns that
13 have been shared with you in regard to
14 installation of synthetic turf at the forefront of
15 your decision-making.

16 Thank you so much.

17 HEARING EXAMINER PAYLOR: Thank you
18 Shruti.

19 MS. MCCRAY: Our next group of five,
20 Robert Peters, Ms. Sylvia, Diana, Brett and Annie,
21 starting with Mr. Peters.

22 MR. PETERS: Hi. I'm wondering, after
23 hearing the comments about the artificial turf, if
24 you couldn't just paint that section of the street
25 green? Something that would be easily washable.

1 I mainly wanted to really request that
2 the fountain there is, to me, the highlight of the
3 current development, and to replace it by
4 something much smaller. I just love seeing the
5 kids dance around, and I think we will be missing
6 something if that's replaced.

7 Third, I just was wondering, I assume
8 the cost of this would be passed on to the shops
9 in the area, but would that be a significant
10 increase in cost? Would it drive any current
11 shops away?

12 That's it.

13 HEARING EXAMINER PAYLOR: Thank you, Mr.
14 Peters.

15 MS. MCCRAY: Up next, we have Ms.
16 Sylvia.

17 MS. TOGNETTI: Thank you for the
18 opportunity to make a statement. My name is
19 Sylvia Tognetti. I'm speaking today as an
20 individual, but I also serve as the water issue
21 wade (ph) for the Montgomery County, and I
22 contributed to the more detailed statement that
23 was provided by Sierra Club.

24 I just wanted to make a very brief
25 statement to emphasize that abandonment is against

1 the County's interest unless it's for the purposes
2 of advancing stormwater management goals because
3 the County has a regulatory obligation to retrofit
4 older areas to improve management of stormwater
5 and to comply with their stormwater permit.

6 And redevelopment is the best
7 opportunity to do this. Right of way sites are
8 ideal because the County owns these, and they are
9 also the best sites for green infrastructure
10 projects that reduce, rather merely detain
11 stormwater runoff. And green infrastructure
12 provides many benefits associated with actual, as
13 opposed to artificial green spaces. And it makes
14 no sense to forgo this opportunity.

15 So basically, abandoning for purposes of
16 gluing synthetic turf to the pavement would take
17 the County backwards. And therefore, it should be
18 contingent on advancing stormwater management
19 goals.

20 Thank you very much.

21 HEARING EXAMINER PAYLOR: Thank you, Ms.
22 Tognetti, appreciate it.

23 MS. MCCRAY: Next we have Ms. Diana.

24 HEARING EXAMINER PAYLOR: Ms. Zuckerman?

25 MR. TRACY: You might need to give Ms.

1 Zuckerman a moment. She said she was on another
2 call. She's trying to work simultaneously.

3 MS. MCCRAY: I can add Ms. Zuckerman to
4 the end, and we can come back to her to give her
5 some time.

6 MR. TRACY: Why don't you do the next
7 one to come back to her?

8 MS. MCCRAY: Okay. Next on our list we
9 have Brett. Is Mr. Brett on the call?

10 All right.

11 MR. TRACY: I don't see Brett.

12 MS. MCCRAY: Ms. Zuckerman, are you
13 prepared to make your comments? You're on mute,
14 Ms. Zuckerman.

15 HEARING EXAMINER PAYLOR: Still no?

16 MS. MCCRAY: Josh, can you send her a
17 request to unmute?

18 MR. TRACY: I did. Let's go down the
19 list. I sent her a chat and when she responds
20 I'll --

21 HEARING EXAMINER PAYLOR: Thank you,
22 Josh.

23 MS. MCCRAY: Okay. Next, we have Ms.
24 Annie.

25 MS. TULKIN: Hello.

1 HEARING EXAMINER PAYLOR: Hi, Ms.
2 Tulkin.

3 MS. TULKIN: Can you hear me? Hi.
4 Great. I'll jump right in.

5 So I'm Annie Tulkin, I'm a resident of
6 Silver Spring. I've lived here for about four
7 years. In my professional life I worked towards
8 access and inclusion for people with disabilities,
9 specifically people with physical disabilities and
10 health conditions. As a community member and a
11 member of the County's pedestrian master planning
12 committee, I bring this lens to my advocacy in
13 Silver Spring and to this discussion today.

14 So I'm speaking with you today to ask
15 the County to only abandon Ellsworth Drive if
16 synthetic turf is not allowed there. In addition
17 to the numerous invalid environmental concerns
18 around synthetic turf and the street base, I think
19 there's also an Americans With Disabilities Act
20 ADA compliance issue with the use of synthetic
21 turf. The ADA requires that the surface be "firm,
22 stable, and slip resistant." And although the
23 developers claim that the turf is ADA compliant, I
24 have serious concerns about the turf meeting those
25 compliance requirements.

1 I was listing to Mr. Hoover and the
2 petitioner mention access ramps and curbless entry
3 when they were doing their presentation earlier.
4 And they appear to maintain that wheelchairs would
5 be able to move freely on the synthetic turf, but
6 they didn't provide any data to support that aside
7 from their word.

8 So I would maintain that turf material
9 poses challenges for people using mobility aids
10 and devices. I have a few examples, so just
11 thinking through this, strollers and grocery
12 carts; it takes more effort to push your cart
13 through the turf. Walkers, you can't simply slide
14 forward when you're on turf, canes and crutches,
15 they don't anchor well to surfaces that are not
16 uniform and the turf would provide some barrier
17 for that.

18 Manual scooters, so if someone has a
19 temporary injury or if they're healing and they
20 have their foot up, and they're trying to wheel
21 around, it's harder to manage that on uneven and
22 textured surfaces.

23 Silver Spring provides -- excuse me,
24 prides itself on diversity and disability is an
25 aspect of diversity. People with disabilities are

1 the largest minority group in the United States,
2 and it's a group that anyone can join at any point
3 in their lives. So if our county believes in
4 equal access then we can't allow developers to
5 implement plans that would present a barrier to
6 accessing business services. And that's why we
7 can only allow the abandonment if the synthetic
8 turf is not allowed there.

9 The ADA, the Americans With Disabilities
10 Act just celebrated its 30th anniversary in July.

11 HEARING EXAMINER PAYLOR: You have 30
12 seconds, Ms. Tulkin.

13 MS. TULKIN: Got it. So parents with
14 strollers, the elderly, people with mobility
15 impairments, people who are temporarily disabled.
16 So we can't allow -- we can't abandon a public
17 space at that everybody can currently access and
18 have that turned into a space that excludes. I
19 think we can do better to create spaces that are
20 equitable and universally designed, and I
21 encourage the County to only abandon Ellsworth
22 Drive if synthetic turf is not allowed there.

23 Thank you.

24 HEARING EXAMINER PAYLOR: Thank you, Ms.
25 Tulkin.

1 MS. MCCRAY: Ms. Zuckerman, are you able
2 to -- we still cannot hear you.

3 MR. TRACY: Yes, she said she was having
4 issues with her connection.

5 MS. MCCRAY: Okay.

6 MR. TRACY: We're just going to move on
7 for now.

8 MS. MCCRAY: That's fine. All right,
9 then we have -- the next two which will be our
10 final individuals that we have listed right now,
11 we have Mr. Richard Lorr and after Mr. Lorr will
12 be Mr. Reed.

13 HEARING EXAMINER PAYLOR: All right, Mr.
14 Lorr.

15 MR. LORR: Yes. Thank you very much.
16 It's a pleasure to talk to you.

17 My first -- I have two major concerns.
18 But my first concern is that it would appear that
19 Montgomery County lacks the authority to approve
20 the petition. Petitioner says, and properly so,
21 that this proceeding is governed by Section 4962
22 and 4963-C. 4963-C lets two bases for granting of
23 an abandonment of a right of way. And they
24 concede, of course, that the second one, having to
25 do with the protection of the health and safety,

1 and welfare of the residents is inapplicable. We
2 can all agree to that.

3 But what they made the remarkable
4 statement is that the right of way, the roadway
5 that is to say, is no longer necessary for present
6 public use or anticipated a public use. That's
7 the only basis that they have to say that it
8 should be abandoned. And obviously, the whole
9 purpose of the abandonment is to increase public
10 use; to increase the anticipated public use. So
11 very simply, there is no authority to grant the
12 requested abandonment.

13 I'm aware that the abandonment was
14 granted before, but it is clear that it was an
15 excess of the statutory authority, which has not
16 been changed in the interim.

17 My second point, which I am very
18 concerned about, is the protection of the First
19 Amendment. We are dealing with entrepreneurs who
20 sometimes find ways to control the spaces that
21 they have for their own private entrepreneurial
22 interests. What I am concerned about is ensuring
23 two conditions that the government will place upon
24 the lessee, that the right of freedom of speech,
25 assembly, and association on the property continue

1 in a way that will not harm, for instance, people
2 wanting to pick it a company.

3 HEARING EXAMINER PAYLOR: So Mr. Lorr,
4 how does this relate to the abandonment?

5 MR. LORR: Well, it is my belief that
6 you just cannot simply abandon property, first of
7 all, there would be no statutory authority to do
8 it. But if you did it you have to do things to
9 protect the interest of the public. Simply
10 abandoning it and saying okay, you take it all
11 over and we will -- you can put your synthetic
12 turf unit. You can deny people the right to
13 picket, to express themselves. These are not the
14 values that we have in our country.

15 And I don't know if this is within your
16 purview as the Hearing Examiner to address these
17 issues. I honestly don't know. But I'm
18 commending to you the idea that the government
19 should place conditions on the use of this
20 property and protect us all.

21 HEARING EXAMINER PAYLOR: Thank you, Mr.
22 Lorr, your three minutes are up. And thank you.

23 MR. LORR: Yes, I do. Thank you.

24 HEARING EXAMINER PAYLOR: I appreciate
25 your testimony.

1 MR. LORR: Thank you. My pleasure to
2 talk to you.

3 MS. MCCRAY: Next is Mr. Dan Reed.

4 HEARING EXAMINER PAYLOR: Mr. Reed.

5 MR. REED: Hi. My name is Dan Reed. I
6 grew up in Downtown Silver Spring, I'm a homeowner
7 here. My partner and I both work in Downtown
8 Silver Spring and I'm asking the County Council to
9 reject the abandonment of Ellsworth Drive as it is
10 currently proposed.

11 Ellsworth has been a pedestrian street
12 basically since it was rebuilt in 2004. It hosts
13 big events like the Thanksgiving parade, but it's
14 also a space a community has made its own.
15 Whether it's kids playing on the splash pad or old
16 friends running into each other, buskers, street
17 performers, skateboarders.

18 Having listened carefully, I like many
19 of the Applicant's proposals, particularly the new
20 mural and the new street furniture that was
21 discussed today. But I'm worried by the Peterson
22 company in difference to the public's role in this
23 public street. Over the past 16 years Peterson
24 security has unfairly policed the public access to
25 the space from attempting to arrest people for

1 taking pictures, or handing out campaign --

2 HEARING EXAMINER PAYLOR: Mr. Lee --

3 MR. LEE: Let me finish, please.

4 HEARING EXAMINER PAYLOR: No. We want
5 to make sure that our comments are focused on the
6 abandonment and not on those radial issues.

7 MR. LEE: Sir, if you let me finish I
8 can do that. Thank you.

9 You know, Peterson --

10 HEARING EXAMINER PAYLOR: Be careful,
11 Mr. Lee.

12 MR. LEE: -- public concerns about the
13 redesign including impeding accessibility for
14 bicyclists or people using mobility devices, or
15 that it would keep skateboarding or undesirables
16 about. The residents also have a lot of concerns
17 about Peterson's petition to allow curbside pickup
18 for businesses on Ellsworth, and their
19 unwillingness to --

20 HEARING EXAMINER PAYLOR: I couldn't get
21 a whole lot. Yeah. Is someone --

22 MR. REED: Their willingness to engage
23 to be aware of the community to --

24 HEARING EXAMINER PAYLOR: Excuse me, Mr.
25 Reed.

1 (Overtalk)

2 HEARING EXAMINER PAYLOR: Mr. Reed.

3 MR. REED: -- life on Woodlawn Avenue.

4 HEARING EXAMINER PAYLOR: Mr. Reed, just

5 a moment. Does somebody need to mute their

6 microphone because they're talking over Mr. Reed.

7 Do we have them covered, please?

8 I apologize, Mr. Reed. Please go on.

9 MR. REED: Thank you. I feel Peterson's

10 brushed off the public concerns about

11 accessibility on Ellsworth Drive whether for

12 bicyclists or people using mobility devices, and

13 they've been completely indifferent to calls from

14 residents and restaurants on Ellsworth Drive

15 during the Covid-19 pandemic to have outdoor

16 dining.

17 Councilmember Glass has done a great job

18 of trying to reach out to Peterson about ensuring

19 public's access to the space and they have totally

20 rejected attempts to work with us.

21 One staff person from Peterson told us

22 we should just be grateful they're investing in

23 the community, and I find that really insulting.

24 A lot of people pay good money to live in this

25 community, or to spend money enjoying the

1 businesses on Ellsworth Drive while being in
2 Ellsworth Drive itself. And yet, they have
3 completely restricted the public's use of this
4 space from the long term, and temporarily this
5 year.

6 And that's why I'm urging the Council to
7 reject this abandonment. This is a public street
8 and should be treated as a public street with
9 public input and full public discussion about what
10 changes they want to make their and programming on
11 there. If Peterson wants more control of this
12 street, they must be accountable to the community
13 that owns it and makes it such a great place to
14 be. Thank you for your consideration.

15 HEARING EXAMINER PAYLOR: Thank you, Mr.
16 Reed.

17 MS. MCCRAY: We Ms. Vorce has returned
18 back.

19 MR. TRACY: And we also have Ms.
20 Zuckerman.

21 HEARING EXAMINER PAYLOR: Ms. Zuckerman.

22 MS. MCCRAY: Great. I have both noted.

23 MR. TRACY: Okay.

24 MS. MCCRAY: Ms. Vorce, if you can hear
25 us, if you could unmute yourself?

1 MS. VORCE: Okay. Can you hear me?

2 MS. MCCRAY: Yes, we can.

3 MS. VORCE: Great. Thank you.

4 Apologies for my technical failure earlier.

5 My name is Anne Vorce. I spend a lot of
6 time trying to protect our county's water quality
7 and the environment. I'm an active member of the
8 Friends of Sligo Creek, our watershed group,
9 although I'm testifying today as an individual.
10 I've submitted written testimony as well. I join
11 with the environmental community and numerous
12 residents of the county to oppose the abandonment
13 application, AB771 as it now stands.

14 The reason for the opposition is that
15 the application contains proposals to carpet part
16 of Ellsworth Drive with synthetic turf, once the
17 County agrees to abandon it. Why our synthetic
18 turf concerns germane in this abandonment hearing?
19 First, as I trust you are aware, on June 18th the
20 Planning Board voted to require the developer to
21 come up with an alternative to synthetic turf for
22 its certified site plan in case the County Council
23 rejects AB771 because of opposition to synthetic
24 turf. I did not hear the Applicant's attorney
25 mentioned this today. Similarly, I did not see

1 mention of this fact in the Planning Board's
2 approved summary of the issues for its July
3 abandonment hearing. But the issues are linked as
4 part of the official record.

5 But secondly, synthetic turf would not
6 be installed on Ellsworth unless limited abandon
7 is approved. So what the Applicant is proposing
8 to do to the road once it is abandoned is crucial.

9 The County will be giving away a public
10 good, and in return should require the public be
11 protected. The need to protect the public through
12 any abandonment decision is, in fact, embodied in
13 the abandonment criteria in the Montgomery County
14 code. The principles implicit at the heart of the
15 code are health, safety, and well-being of the
16 public.

17 Permitting the proposal to go forward
18 with a synthetic turf component will increase risk
19 for the health and well-being of the many people
20 that will still be using Ellsworth, and violated
21 the Clean Water Act by having a negative impact on
22 our waterways.

23 An important part of the present, or
24 anticipated public use will continue, and cannot
25 be abandon with their plan. If normal vehicle

1 traffic will no longer be on Ellsworth, that is
2 only part of the public use. People will still
3 use Ellsworth; water will still run off Ellsworth
4 into the storm drain system which will make its
5 way quickly to Sligo Creek and draining --

6 HEARING EXAMINER PAYLOR: And you've got
7 about 30 seconds, ma'am.

8 MS. VORCE: -- eventually into the
9 Anacostia and the Chesapeake Bay. The public will
10 not be sufficiently protected if this proposal
11 goes through.

12 So on health and safety grounds, I urge
13 you to recommend the following in your report;
14 that the County Executive recommend that the
15 synthetic turf proposal be dropped from the
16 certified site plan. That the developer be
17 required, instead, to install environmentally
18 friendly and healthy materials. I also urge you
19 to reach out to the county's health officer, Dr.
20 Travis Gales, to discuss the health and safety is
21 synthetic --

22 HEARING EXAMINER PAYLOR: Thank you,
23 ma'am. I appreciate your sharing --

24 MS. VORCE: -- and the views of the DEP
25 --

1 HEARING EXAMINER PAYLOR: -- your
2 testimony.

3 MS. VORCE: -- are taken into account.
4 Thanks so much for listening to my testimony.

5 HEARING EXAMINER PAYLOR: Thank you so
6 much.

7 Ms. McCray?

8 MS. MCCRAY: Next, we have Ms.
9 Zuckerman.

10 HEARING EXAMINER PAYLOR: Ah, that's
11 right.

12 MS. MCCRAY: She has called in.

13 Ms. Zuckerman, if you can you can go
14 ahead and unmute your phone.

15 DR. ZUCKERMAN: Okay.

16 HEARING EXAMINER PAYLOR: There you are.

17 DR. ZUCKERMAN: Okay. Can you hear me
18 now?

19 HEARING EXAMINER PAYLOR: Yes, we can.
20 Welcome.

21 DR. ZUCKERMAN: Oh thank you. Thanks
22 very much. I'm Dr. Diana Zuckerman, I'm president
23 of the National Center for Health Research, and
24 I've lived in Montgomery County for almost 30
25 years. I raised my family here, and I know our

1 county really well. And I know -- and I'm proud
2 that we care very much about our planet, and about
3 our environment, and about our health. And that's
4 why I think the abandonment issue is really very
5 tidy and with the issue of protecting our
6 environment.

7 It just makes no sense for our County
8 plastic bags in grocery stores, or plastic straws
9 in restaurants, and then add to local and global
10 pollution with these huge areas of plastic grass.
11 I'm an epidemiologist and most of the time I'm
12 focusing on Covid-19. But when, I hope, Covid
13 will be a distant memory, hopefully, we would
14 still be living with artificial turf if we don't
15 get smarter about these decisions.

16 Just in brief, artificial turf is a
17 petroleum-based product and so are rubber surfaces
18 that are often used as well. So these are both
19 made from petroleum. They get very hot, they can
20 be burned -- they can burn, they can be doused
21 with flame retardants, but those flame retardants
22 are also toxic and can run off into Sligo Creek.

23 The product is designed for traffic, not
24 even for farmers market trucks. We certainly
25 don't want dog walking there. If, you know,

1 unlike grass where -- which is all biodegradable,
2 when dogs do their thing on artificial turf, it
3 just stays there, and bacteria can grow.

4 So in summary, I just want to say that
5 this is a huge issue for many of us and that the
6 abandonment really has to depend on proper
7 stewardship and environmental protection, which is
8 not what the developer seems to be interested in,
9 I'm sorry to say.

10 And it would be crazy to not only have
11 this addition to the problem of climate change
12 from our community, but also we would need to
13 spend a lot of money on disposal because the used
14 carpet of artificial turf don't last very long.

15 HEARING EXAMINER PAYLOR: Thirty
16 seconds, Dr. Zuckerman.

17 DR. ZUCKERMAN: They start looking
18 ratty. Yes, okay.

19 And then, you know, they have to be
20 disposed of, and how are we going to do that?

21 So thanks very much for letting me
22 speak, and I'm sorry it took so long to get this
23 speaker to work. Thank you.

24 HEARING EXAMINER PAYLOR: Thank you for
25 your perseverance. Appreciate your testimony.

1 Who's next?

2 MS. MCCRAY: We have no other
3 participants that have been registered. If
4 someone has registered and I have not called your
5 name, please let me know. But I believe everyone
6 has been given an opportunity to speak.

7 HEARING EXAMINER PAYLOR: All right.
8 Not having seen anyone identify themselves as a
9 requester to speak, is there anyone else on the
10 call who would like to provide comments to this
11 abandonment hearing? This will be your
12 opportunity.

13 MR. TRACY: Mr. Paylor, I have not
14 received any additional chat requests for
15 comments.

16 MS. MCCRAY: Nor have I.

17 HEARING EXAMINER PAYLOR: Very good.
18 And I also want to thank those individuals who
19 have sent the Zoom group chat messages with regard
20 to the turf, and the issues associated with that,
21 and your perspectives on that, those of you who
22 have spoken. Thank you very much.

23 And so at this time --

24 MS. SEARS: I think this -- well, I had
25 a little Drupal with my mute button. This is

1 Barbara Sears. But I just did want to say on the
2 turf, that we had -- I think it's Exhibit BD
3 submitted written responses to the issues. And in
4 listening to these, they seem to be in the same
5 issues as previously raised. So subject to our
6 objection, we do have in the record those
7 responses which in view of the comments made by
8 the Hearing Examiner, we won't go into a lot of
9 detail on, but they are there.

10 Also, there's a little confusion in my
11 mind on some of the testimony with regard to what
12 DEP recommended. They recommended, and it's in
13 the record, that the site plan be approved with
14 the use of the turf. So I'm confused by some of
15 the statements that seem to indicate otherwise.

16 And that was the same issue as -- in
17 terms of DOT. Their recommendations are favorable
18 towards the site plan amendments and design, as
19 well as the abandonment, they're favorable. So I
20 will just call attention to the actual
21 recommendations to the staff report on the site
22 plan that are the final recommendations, and I
23 believe they're all consistent in supporting the
24 application.

25 So I think that's about it unless Mr.

1 Foulger or Mr. Weinschenk want to state anything
2 in addition to some of what they've heard.

3 MS. MCCRAY: Ms. Sears, were you asking
4 us to pull your response on the synthetic turf
5 issue for it to be broadcast?

6 MS. SEARS: No. I just -- I don't think
7 there's any more testimony warranted on in in view
8 of what the examiner has said. I just wanted to
9 point out to the extent things were said, I
10 believe they're all covered in those responses.

11 And additionally, on the questions of
12 being able to circulate through the site with
13 bicyclers or pedestrian, again definitely that was
14 the major goal of the design. That was one of the
15 main purposes of the design, and that has been
16 preserved around this turf, which is only about
17 8,000 square feet of the entire area, are
18 hardscape that allow passages on both perimeters.

19 So again, the case meets -- or the
20 design meets the criteria of the ADA.

21 So with that, unless there are anybody
22 else on my team, or the client side that want to
23 state anything, I think we are complete.

24 HEARING EXAMINER PAYLOR: Thank you.

25 MR. DUKE: Mr. Paylor, I did want to

1 answer your question. This is Ian with VIKA. I'm
2 the Applicant.

3 HEARING EXAMINER PAYLOR: Yes, thank
4 you.

5 MR. DUKE: The bicycle width at a
6 minimum is 12 feet wide on the south side of that
7 hardscape there.

8 HEARING EXAMINER PAYLOR: Very good.

9 MR. DUKE: Between the building and the
10 tree pad.

11 HEARING EXAMINER PAYLOR: And just to
12 reiterate or recap what you said, it's not edge
13 marked bidirectional and also will be the venue.
14 The whole intent is to notify pedestrians that
15 bicyclist will be using this area as well; is
16 that correct?

17 MR. DUKE: That is my understanding.
18 There are medallions that are --

19 HEARING EXAMINER PAYLOR: Yeah,
20 medallions.

21 MR. DUKE: -- to be placed through that
22 alignment.

23 HEARING EXAMINER PAYLOR: All right.

24 MS. SEARS: And that's -- just been
25 worked out but -- I was just going to say, maybe

1 you're going to say the same thing, Bryant, and I
2 apologize. But that system was worked out closely
3 with Park and Planning, transportation staff and
4 it was to allow that circulation to take place and
5 further the intent of the bicycle master plan that
6 it be a mix street -- open street type of design.

7 Bryant, I'm sorry.

8 MR. FOULGER: No, exactly right. I --
9 you said exactly what I was going to say.

10 HEARING EXAMINER PAYLOR: Yes. And
11 thank you for that. And although I'm not
12 silencing you and not asking for additional input
13 on this, but I appreciate you mentioning, or
14 talking about the synturf again because at the end
15 of your discussion you did say that you wanted to
16 talk at the end about it. And so thank you for
17 doing that. I did have some questions about it.

18 I've heard the comments that individuals
19 have made on this and so I know some folks are
20 saying that they want to re-comment on the matter.
21 I don't know that that's necessary.

22 Ms. Conway, I'll give you a minute to
23 say what you believe you want to say.

24 MS. CONWAY: Thank you, Mr. Paylor. I
25 appreciate the opportunity to add some comments.

1 The more I hear, the more concerned I am. On one
2 hand, I think most people on this call are quite
3 pleased with the general plan and the idea of
4 redoing what was a tired area and giving back to
5 the community that way.

6 But even this piece about the bicycles
7 it has not been clear to me that it is not an
8 edge-marked -- and that it is not edge marked,
9 that the medallions are simply to give somebody a
10 heads up that they may -- that there may be a bike
11 coming along behind them while there on there with
12 their dog or their stroller or whatever, which
13 seems to sort of go against the idea of, dwelling,
14 I think was the word that was used earlier by the
15 Applicant.

16 Similarly, the idea that the existing
17 infrastructure can handle additional MF4 violation
18 is questionable, as is the matter of the nation to
19 me this goes to the technical aspects of
20 abandonment. The storm water system is not up to
21 par first of all, and second of all it certainly
22 not up to par for adding material of highly
23 variable buoyancy, especially depending on how
24 much of the glue is stuck to it. And it's going
25 to be an ongoing, as Dr. Michel said, and ongoing

1 point source of pollution. And I did not hear
2 that addressed.

3 I did not hear anybody address the
4 matter of lead, of PFOS, which even Donald Trump's
5 EPA is freaked out about. There are lawsuits all
6 over the country for people adding PFOS to the
7 water table. I did not hear anybody address the
8 fact that synthetic turf runs 50 to 70 degrees
9 hotter than ambient temperature in direct
10 sunlight. Which no matter how many trees you
11 have, you will have direct sunlight; is that
12 really where people are going to want to sit and
13 drink their coffee?

14 I did not hear anybody address the
15 direct question of flammability. Again, I can
16 show you clippings across the country of fields
17 that have caught on fire, and those are fields
18 with silicone in them that helps mitigate the
19 flammability of the surface. This will have
20 nothing but yesterday's coffee and glue on it.

21 HEARING EXAMINER PAYLOR: All right.

22 MS. CONWAY: And cigarettes. I can
23 imagine people sitting there just as they do on
24 grass, playing with the grass and pulling on and
25 digging at it. There are going to be burns from

1 cigarettes, they're going to be kids playing with
2 matches. Synthetic turf is famous for appealing
3 to vandals who want to go around and make a mess.

4 HEARING EXAMINER PAYLOR: Well, I
5 appreciate that.

6 MS. CONWAY: None of which I approve of,
7 but all of which is predictable. I didn't hear
8 any of those things addressed. Such thank you for
9 the opportunity, Mr. Paylor.

10 HEARING EXAMINER PAYLOR: Thank you so
11 much, Ms. Conway. I appreciate it.

12 Mr. Fishman, I'll allow you some time as
13 well. Yes, sir.

14 MR. FISHMAN: I'm a little bit confused
15 about the comments about how the Department of
16 Environmental Protection approve this because I'm
17 reading their letter and it says, "The Department
18 of Environmental Protection, DEP, has received
19 numerous letters from concerned citizens about the
20 proposed use of artificial turf on Ellsworth, and
21 believes that a more environmentally preferable
22 alternative should be utilized."

23 And that's the July 30th memo from DEP.

24 So I --

25 HEARING EXAMINER PAYLOR: Well --

1 MR. FISHMAN: Yes, sir. And I'll also
2 point out that the Planning Board also is looking
3 -- said in their letter of July 30th that they're
4 looking for you -- whether or not it is
5 appropriate to have synthetic turf on Ellsworth
6 Road. Thank you. Ellsworth Drive.

7 HEARING EXAMINER PAYLOR: Thank you, I
8 appreciate it.

9 MS. MCCRAY: Mr. Paylor, we also have a
10 comment from Ms. Shruti from the Sierra Club
11 noting that their written testimony also mentions
12 and includes some of what Ms. Conway brought up
13 earlier.

14 HEARING EXAMINER PAYLOR: Yes, I've been
15 apprised of that. Thank you so much, Ms. McCray.

16 MR. LORR: Mr. Paylor, may I ask a
17 question?

18 HEARING EXAMINER PAYLOR: So -- again,
19 you can provide a comment and frame it in the form
20 of a question, but at this point we're not going
21 to have a dialogue back and forth about this
22 matter.

23 MR. LORR: Thank you. My question is
24 simply to better understand your role and whether
25 you have the power to approve or disapprove this

1 petition with reasonable conditions?

2 HEARING EXAMINER PAYLOR: Yeah, I --

3 MR. LORR: Could you say --

4 theoretically say I want to protect with this
5 community from environmental problems? Is that
6 within your power? So Mr. Lorr that's a great
7 question and I sought to cover that in my
8 introductory remarks. I'm going to review all of
9 the information, the discussions that have taken
10 place here, the documentation that's been provided
11 on this, and I'm going to make a recommendation to
12 the County Executive as to whether or not we
13 should move forward with the abandonment, on
14 whatever merits, or lack thereof. And so that is
15 my role.

16 MR. LORR: Okay. My comments about the
17 first amendment before, and the free association
18 were in that nature. I believe they may not be as
19 important as the environment, but to me, as of, or
20 a past lawyer, they very much are.

21 HEARING EXAMINER PAYLOR: Thank you.

22 Okay. I know there was an ask about the
23 timelines, and I believe that is for -- are you
24 talking about a decision and making a
25 determination as to whether or not we -- the

1 abandonment -- the limited abandonment will be
2 supported or rejected; is that what you're asking,
3 Ms. Conway?

4 MS. CONWAY: Yes, it is. I'm just
5 trying to figure out where the decision points are
6 going to move from one body to the next. Thank
7 you.

8 HEARING EXAMINER PAYLOR: Yeah. Right
9 now -- I appreciate that. Right now we don't have
10 a definitive timeline. Again, we got the two week
11 commentary and so sometime within 4 to 6 weeks
12 after that my recommendation will be completed.
13 Anaheim's certainly not sure how long it will take
14 to route through the County Executive's office, or
15 the County Council.

16 All right, if there are no further
17 comments from meeting participants, I am declaring
18 this hearing closed. Again, as I mentioned
19 earlier, the record will remain open until
20 September 28th, 2020 and that will allow us to
21 accommodate additional comments for the record.
22 Those comments and any other correspondence may be
23 addressed to Ms. Tiara McCray, Montgomery County
24 Department of Transportation, 100 Edison Park Dr.,
25 Gaithersburg, MD 20878. And I apologize, I'll say

1 this again.

2 Montgomery County Department of
3 Transportation, 100 Edison Park Dr., 4th Floor,
4 Gaithersburg, MD 20878.

5 Thank you very much everyone. This
6 hearing is now ended.

7 (Off the record at 2:17 p.m.)

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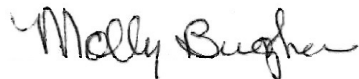
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Molly Bugher, CDLT-161
DATE: September 25, 2020

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 Conducted on September 14, 2020

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