

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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:
PETITION OF THE HEIGHTS SCHOOL, : Case No. CBA 2197-C
INC. : OZAH No. 13-21
:
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A hearing in the above-entitled matter was held on February 19, 2015, commencing at 10:06 a.m., at the Office of Zoning and Administrative Hearings, 100 Maryland Avenue, Rita Davidson Memorial Hearing Room, Rockville, Maryland 20850 before:

Martin L. Grossman
Hearing Examiner

A P P E A R A N C E S

On Behalf of the Petitioner:

Soo Lee-Cho, Esq.

Miller, Miller & Canby

200-B Monroe Street

Rockville, MD 20850

E X H I B I T S (Cont.)

Exhibit No.		Marked/Received
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102	Aerial photo of school	61
103	Ms. Schmickel's resume	89
104	Updated campus master plan	98
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Witnesses:	Direct	Cross	Redirect	Recross
Philip J. McGovern By Ms. Lee-Cho:	31			
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Joanna Schmickel By Ms. Lee-Cho:	88, 130			
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E X H I B I T S

Exhibit No.		Marked/Received
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98	Letter from Mr. McGovern	14
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100	Letter from Ms. Newman	23

P R O C E E D I N G S

1
2 MR. GROSSMAN: This is a public hearing in the
3 matter of Petition of The Heights School, Board of Appeals
4 number CBA 2197-C and OZAH number 13-21 which seeks,
5 actually it probably should be 15-21, hold on a second, no,
6 it has a case number of 13-21, all right, which seeks the
7 modification to an existing private educational institution
8 special exception under Zoning Code Section 59-G-2.19 to
9 allow for reconstruction of athletic fields, construction of
10 a subterranean parking garage, construction of a new
11 theater, music and dining hall, new lower school building,
12 an expansion of the middle school building and enrollment
13 increase from 460 to 650 students and an incremental, an
14 increase in faculty and staff to 95 in total and summer
15 programs. The subject property is parcel one, block J,
16 Inverness Forest Subdivision located at 10400 Seven Locks
17 Road, Potomac, Maryland in the R-90 zone.
18 And this is a hearing conducted on behalf of the
19 Board of Appeals. My name is Martin L. Grossman. I am the
20 hearing examiner which means I will take evidence in this
21 case and write a report and recommendation to the Board of
22 Appeals which will make the decision.
23 Will the parties identify themselves for the
24 record, please?
25 MS. LEE-CHO: For the record, Soo Lee-Cho with the

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1 Law Firm of Miller, Miller & Canby on behalf of the
2 petitioner, The Heights School.
3 MR. GROSSMAN: All right, Ms. Lee-Cho. And I
4 assume that we have people here from the opposition who wish
5 to be heard and I'm going to ask for you folks to identify
6 yourselves. Anybody else who wishes to be heard? First of
7 all, is there anybody here who is not a witness to be called
8 by Ms. Lee-Cho who is in favor of the application? All
9 right. Seeing no hands -- okay. Seeing no hands in
10 response to that is there anybody here who wishes to be
11 heard in opposition to the application? All right. And I
12 see a number of hands. So let me start with the back row
13 first. Ma'am, your name, please?
14 MS. KURSBAN: My name is Sandy Kursban. It's K-U-
15 R-S-B-A-N.
16 MR. GROSSMAN: K-U-R-S-B-A-N?
17 MS. KURSBAN: Uh-huh.
18 MR. GROSSMAN: All right.
19 MR. SAWMELLE: Stephen Sawmelle, that's Stephen
20 with a P-H. Sawmelle is S-A-W-M-E-L-L-E.
21 MR. GROSSMAN: All right. Anybody else in the
22 back row? No? Front row? Sir?
23 MR. WHANG: My name is Yun Chow Whang. First name
24 Y-U-N, initial C., last name W-H-A-N-G.
25 MR. GROSSMAN: All right, sir.

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1 MR. FEINBERG: Eugene Feinberg, F-E-I-N-B-E-R-G.
2 MS. WEISS: Roberta Weiss.
3 MR. GROSSMAN: All right.
4 MS. WEISS: Last name W-E-I-S-S.
5 MR. GROSSMAN: Okay. Anybody else? All right.
6 Seeing no other hands. Now, I know there were two
7 organizations or two areas that had concerns here, one the
8 Democracy Lane residents, any one of you from Democracy
9 Lane? No, okay. Then also of course the other group are
10 the Potomac Pond.
11 MR. FEINBERG: I'm the designated board member.
12 MR. GROSSMAN: All right. Then, Mr. Feinberg,
13 would you be so kind as to come and take a seat at counsel
14 table? And Mr. Feinberg, will you be offering testimony
15 today on behalf of the association or as an individual or as
16 both?
17 MR. FEINBERG: The association and as an
18 individual.
19 MR. GROSSMAN: Okay. All right. I take it that
20 none of the people who spoke up is from the Democracy Lane?
21 Okay. Are you all in the Potomac Ponds area? Okay. All
22 right. All right, anybody else who wishes to be heard
23 today? All right. Seeing no other hands let me describe a
24 little bit about these proceedings and what we're here for.
25 The proceedings here are a combination of formality and

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1 informality. We are formal in the sense that we operate
2 pretty much the way a courtroom operates. Witnesses are
3 sworn in, they're subject to cross-examination, there is a
4 court reporter who takes everything down, we follow the
5 usual procedures you might see in a courtroom. The only
6 thing is the rules of evidence are a bit more relaxed here
7 and so is this proceeding, a little bit more relaxed. But
8 there is a certain formality to it as well. And everybody
9 who has so indicated will have the opportunity to give their
10 testimony. We will expect Mr. Feinberg to conduct any
11 cross-examinations but if anybody else has cross-examination
12 questions they have of a witness and they wish to be heard
13 in terms of cross-examination questions, I don't think we
14 have too many people here to hear from others also with
15 cross-examination questions either posed by yourself or if
16 you want through Mr. Feinberg.
17 Okay. We're here for a petition to modify a
18 special exception and a special exception is not really what
19 it sounds like, it's a bit of a misnomer. It's not a
20 variance from a statute. It is a use, as permitted under
21 the code, under the zoning ordinance, if certain conditions
22 are met that are spelled out in the zoning ordinance. There
23 are both general conditions that apply to almost every
24 special exception application and there are specific
25 conditions that apply to this particular type of special

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1 exception. This, of course, is a petition to modify an
2 existing special exception. And by the way, under the new
3 code, which does not apply here because this is, this
4 application predates the new code, under the new code these
5 special exceptions are called conditional uses which is more
6 accurately describing what they are. But we're here for a
7 modification of a special exception and because it is a
8 major modification most of the requirements of the original
9 special exception apply here and we'll generally speaking go
10 through those.
11 All right. Let me see if we can proceed here, I
12 think now, to some preliminary matters we have. First of
13 all I wanted to mention that my wife is a teacher in a
14 private school, the Norwood School, and I wanted to mention
15 that in case anybody thinks that is a grounds for objection.
16 I don't feel there's any conflict but I do like to make full
17 disclosure because it is another school. She's not in an
18 administrative post, she's a teacher in the school. Anybody
19 have a problem with me sitting on this case as a result of
20 that? Seeing no hands I'll proceed to the next point.
21 The technical staff report, that's the report of
22 the technical staff to the Maryland National Capital Park
23 and Planning Commission, which you all have probably seen by
24 now, had some corrections. That report is Exhibit No. 72
25 and the corrections in Exhibit No. 81 on pages 2, 3, 4, 8,

1 20, 26 to 27, 31 and 34. My administrative assistant made
2 those corrections in ink in the file but I just wanted to
3 alert you in case you didn't know that there were some
4 corrections to the technical staff report. Okay.

5 On February 9th, 2015, 10 days ago, we sent out a
6 notice that there was an amendment or motion to amend the
7 petition, again, in this case. And that was just 10 days
8 ago. So since this is the tenth day I wanted to hear if
9 anybody had an objection to the proposed amendments. Now,
10 amendments to a petition, if we grant the motion to amend,
11 that doesn't mean we're granting the petition. This is
12 just, would just be granting the right to ask for the, for
13 the petitioner to ask for a slightly different relief than
14 they previously asked for. Anybody have an objection to the
15 amendment that was proposed, or the amendments proposed on
16 February, or noticed, they were posted the preceding week,
17 those amendments? Anybody have any objection to those?
18 Seeing no hands we'll go to the next thing. We will grant
19 that motion to amend the petition.

20 Okay. I ought to mention one other thing. I
21 spoke to Leslie Saville, a technical staff member, last
22 night about whether she had any concerns with the proposed
23 amended, amendments to the petition and those include some
24 changes to the underlying plans as well as an amended
25 traffic analysis. And she indicated she would, she said she

1 had some concerns and she would send me an e-mail which she
2 has now done and I wanted to make that an exhibit in the
3 case and pass out copies of that. All right. So we're now
4 up to Exhibit No. 97.

5 MS. LEE-CHO: I, what was 96, I'm sorry?

6 MR. GROSSMAN: 96 was an e-mail from Mr. Freeman
7 listing the Potomac Pond homeowners association members who
8 wished to testify today. And I will hand these out. These
9 are copies of Exhibit No. 97. Ms. Lee-Cho, would you hand
10 them out to the people here to testify, please? Sir?

11 MR. SAWMELLE: Yes. We should have one other
12 thing. Two people were, would've liked to testify today but
13 couldn't make it. We have a brief statement by one of them
14 and a very succinct three sentences from another one my wife
15 and I might read that's in addition to our own statements.

16 MR. GROSSMAN: All right. We will certainly allow
17 that. I should mention that we allow people to submit
18 written, signed statements. Is there a signed statement you
19 have that you are --

20 MR. SAWMELLE: It's not signed but --

21 MR. GROSSMAN: Okay.

22 MR. SAWMELLE: -- we had agreed with people to
23 read what they had.

24 MR. GROSSMAN: All right. There is a problem and
25 what we do is there are two ways of getting things in the

1 record here. One is to submit a signed statement. The
2 person doesn't necessarily have to come to testify but there
3 is kind of a higher level of submission that is when
4 somebody comes to testify and they're subject to cross-
5 examination then we consider that as a higher level of
6 evidence in the case. We don't usually take unsigned
7 submissions because it's not possible to verify that. The
8 record is going to be open here for a bit of time after this
9 proceeding today so maybe we can allow that if they submit
10 it in signed form. Another possibility is if it's a written
11 statement that you have you can show it to Ms. Lee-Cho and
12 see if she has any objection. Is there anything new in
13 there that hasn't been covered by others or is not going to
14 be covered by others today?

15 MR. SAWMELLE: It's more individualized for this
16 particular homeowner that abuts Heights School.

17 MR. GROSSMAN: Okay.

18 MR. SAWMELLE: So, she e-mailed us thanking us for
19 doing it but that didn't constitute a signature on the
20 statement.

21 MR. GROSSMAN: No. Usually we don't, we take e-
22 mails from parties who have already submitted a signed
23 statement and we can identify who they are but usually we
24 want that, that check-off to, to know. It may be that if
25 you show it to Ms. Lee-Cho that she won't have a problem

1 with it being admitted and go on from there.

2 MR. FEINBERG: I will take care of obtaining, if I
3 can, signed statements and submitting them to Ms. Forbes.

4 MR. GROSSMAN: Okay. I mean, the only problem
5 with that is it'll be after the hearing and that the
6 petitioner will not have an opportunity to directly respond
7 in the hearing. So let's see how this goes and we'll see if
8 Ms. Lee-Cho has an objection to it coming in. First let me
9 finish making this entry about Exhibit No. 97 which is an e-
10 mail from technical staff responding to submissions of
11 petitioner noticed on February 9, 2015.

12 (Exhibit No. 97 was received
13 into evidence.)

14 MR. GROSSMAN: Okay. I haven't obviously had a
15 chance to look this over yet so I will give everybody an
16 opportunity to respond to their comments.

17 And perhaps after we finish with the preliminary
18 matters, Ms. Lee-Cho, I'll give you a five minute recess so
19 you have a chance to read that over. Would that --

20 MS. LEE-CHO: I would appreciate that.

21 MR. GROSSMAN: And as well as the others so that
22 you have an opportunity to talk to your, or talk to your
23 witnesses about it.

24 MS. LEE-CHO: Okay.

25 MR. GROSSMAN: Okay. Let me go to another

1 preliminary matter and that is I saw attached to the
2 technical staff report a letter from Mr. McGovern of October
3 21, 2014 which is addressed to the hearing examiner about
4 the exceedance of the permitted cap on enrollment and so on.
5 I haven't, I didn't actually see that letter sent to us
6 although it's addressed to us. Was there a copy actually
7 sent to the hearing examiner's office?

8 MS. LEE-CHO: It was and it's as an attachment to
9 the statement of operation. So it wasn't sent as a separate
10 document but it was meant to be part of the petitioner's
11 statement.

12 MR. GROSSMAN: Okay. I think that if you have a
13 copy of it with you we should that mark that as a
14 separate --

15 MS. LEE-CHO: Mark that as a separate exhibit?

16 MR. GROSSMAN: -- exhibit in the case since it's a
17 letter that was addressed to us directly but apparently
18 never sent as such by the declarant.

19 MS. LEE-CHO: And I do have the original.

20 MR. GROSSMAN: Okay. Thank you. And we'll mark
21 that as Exhibit No. 98.

22 (Exhibit No. 98 was received
23 into evidence,)

24 MR. GROSSMAN: This is 10/21/14, letter from
25 Philip McGovern of The Heights School to the hearing

1 examiner explaining exceedances in the enrollment and I
2 believe he also deals with the faculty cap too, does he not,
3 in this letter?

4 MS. LEE-CHO: I don't recall specifically.

5 MR. GROSSMAN: Well, maybe not. So exceedances in
6 the enrollment cap. All right. By the way, was there, I
7 handed out all the copies I had of the, of the e-mail. Was
8 there an extra copy there of the e-mail? No? Okay.

9 MS. LEE-CHO: Did you need a --

10 MR. GROSSMAN: I have one for the record but I
11 just, it's helpful to me to have another copy handy. Thank
12 you. Okay. Now, I've also seen references in the file to
13 the 15 year campus master plan. What exhibit is that 15
14 year campus master plan in the file?

15 MS. LEE-CHO: There is not a plan that's
16 specifically labeled as a 15 year but the illustrative plan
17 that is part of, I'm not sure which exhibit, if I can find
18 it, illustrative site plan 34 G.

19 MR. GROSSMAN: Okay.

20 MS. LEE-CHO: Yeah, and I guess it's not, but
21 March, March 2014 date.

22 MR. GROSSMAN: March what 2014?

23 MS. LEE-CHO: The exhibit says March 14, 2014.

24 MR. GROSSMAN: Okay. Okay. Next question, does
25 the petitioner accept the conditions proposed by the

1 technical staff in Exhibit No. 72 as corrected in Exhibit
2 No. 81 and endorsed, in general terms, by the Planning Board
3 in Exhibit No. 78?

4 MS. LEE-CHO: Petitioner does not accept the
5 technical staff's conditions as written. We do plan to
6 address further our comments to those conditions --

7 MR. GROSSMAN: Okay.

8 MS. LEE-CHO: -- in the hearing.

9 MR. GROSSMAN: Then I'll let you address that in
10 the hearing. Okay. Did the petitioner actually meet with
11 the community per the Planning Board's suggestions in its
12 letter?

13 MS. LEE-CHO: Yes, we did, on January 19th --

14 MR. GROSSMAN: Okay.

15 MS. LEE-CHO: -- after the Planning Board hearing
16 we did meet with the neighbors, a number of whom I believe
17 are here today --

18 MR. GROSSMAN: Uh-huh.

19 MS. LEE-CHO: -- at the school for a couple hours
20 and discussed what measures might be taken to help mitigate
21 some of the issues which will be part of the petitioner's
22 presentation this morning.

23 MR. GROSSMAN: All right. And have you executed
24 an affidavit of posting?

25 MS. LEE-CHO: We have.

1 MR. GROSSMAN: All right. If you could bring that
2 forward?

3 MS. LEE-CHO: I have, I believe I have the copies.

4 MR. GROSSMAN: Oh, maybe the original has already
5 been in the file, I don't think so but let's see. Sometimes
6 it gets left on the table here. Ah, there it is. My
7 administrative staff is always at least a step ahead of me,
8 so all right. So this will be Exhibit No. 99.

9 (Exhibit No. 99 was received
10 into evidence.)

11 MR. GROSSMAN: An affidavit of posting is the
12 declaration by the petitioner that they have had the notice
13 sign posted for the requisite period of time at the site and
14 they're required to keep that notice sign posted until 30
15 days after the Board of Appeals actually acts on this
16 amendment petition. Okay. Are there any other preliminary
17 or procedural matters that you have, Ms. Lee-Cho?

18 MS. LEE-CHO: I do not other than to indicate that
19 we will be, I have five witnesses prepared --

20 MR. GROSSMAN: Okay.

21 MS. LEE-CHO: -- to testify and I do have one
22 individual, a sixth potential witness that I would like to
23 reserve in the event that, depending on the level of
24 questions that come up.

25 MR. GROSSMAN: Okay. The witnesses you listed in

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1 your preliminary statements is Mr. DeVicente, Mr. McGovern,
2 that's two, Mr. Hadley, Ms. Schmickel, Mr. Smith and Ms.
3 White. Are those the witnesses --
4 MS. LEE-CHO: Yes.
5 MR. GROSSMAN: -- you plan?
6 MS. LEE-CHO: Yes.
7 MR. GROSSMAN: And --
8 MS. LEE-CHO: So, Mr. Hadley will be on reserve
9 depending on --
10 MR. GROSSMAN: Okay.
11 MS. LEE-CHO: But the remaining five will be my
12 principal --
13 MR. GROSSMAN: All right.
14 MS. LEE-CHO: -- will serve as principal
15 witnesses.
16 MR. GROSSMAN: Any other preliminary matters?
17 MS. LEE-CHO: I don't think so.
18 MR. GROSSMAN: Okay. Mr. Feinberg, did you have
19 any preliminary matters --
20 MR. FEINBERG: No, I do not.
21 MR. GROSSMAN: -- that you wish to be heard on?
22 All right. Anybody else? Seeing no hands, okay. Let me
23 now, I'm going to break for five minutes so that everybody
24 has a chance to look over the e-mail that we just received
25 from Leslie Saville of technical staff. And you have a

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1 chance to talk to your witnesses if you wish to about that,
2 Ms. Lee-Cho. And then we will proceed. The next order of
3 business will be to swear in the witnesses -- well, we don't
4 have to do that as a preliminary matter. We can do that as
5 the witnesses take the stand. So, anything else? Then
6 we'll break for five minutes. We'll come back at about 25
7 minutes to 11:00. Is that enough time?
8 MS. LEE-CHO: That is enough time, thank you.
9 MR. SAWMELLE: In that, in that same interim
10 should we provide the statements --
11 MR. GROSSMAN: Yes, provide the statements for Ms.
12 Lee-Cho to look at, see if she has an objection --
13 MR. SAWMELLE: Okay.
14 MR. GROSSMAN: -- to them just coming in.
15 MR. SAWMELLE: Okay.
16 MR. GROSSMAN: All right. Thank you, sir.
17 (Whereupon, at 10:31 a.m., a brief recess was
18 taken.)
19 MR. GROSSMAN: We're back on the record. From my
20 reading of that e-mail, Exhibit No. 97, Ms. Saville has a
21 concern about the traffic, not that it won't meet local area
22 transportation review, which is the standard that is looked
23 at, but that her feeling is that it would be okay to have
24 these off-site parking areas for event parking but that it
25 wouldn't meet the needs for daily operations. In the

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1 technical staff report she indicated that much of the
2 construction should not proceed until a garage was built
3 because of those concerns about parking and apparently she
4 feels that that still applies. And the second point, if I
5 take the e-mail correctly, is that some but not all of the
6 recommendations in the technical staff report regarding
7 plantings and so on have been followed in this amended,
8 these amended plans but not all. Is that, do you agree with
9 that --
10 MS. LEE-CHO: I'm sorry, could you just repeat
11 that last part?
12 MR. GROSSMAN: Yes. That according to Ms. Saville
13 the listed changes in her e-mail indicate that some but not
14 all of the recommended changes in the plans made by
15 technical staff were implemented in these changed plans.
16 That's what, and that's what I understood from her last
17 night.
18 MS. LEE-CHO: If I might? I mean, I read it a
19 little bit differently. I think she has comments to our
20 proposal or a different thought process or opinion but I
21 don't, I didn't see that she indicated we didn't address --
22 MR. GROSSMAN: That's the sense I got from it and
23 from my conversation with her last night but I will allow
24 you to submit something in addition in response after today
25 since you obviously haven't had a chance. We'll keep the

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1 record open for whatever reasonable period you think is
2 appropriate for comments from either side to what Ms.
3 Saville said.
4 MS. LEE-CHO: Well, and frankly our testimony
5 today through Mr. Aaron Smith of the EMT we can address Ms.
6 Saville's comments --
7 MR. GROSSMAN: Okay.
8 MS. LEE-CHO: -- and that's how I intended to
9 respond to the e-mail --
10 MR. GROSSMAN: Okay.
11 MS. LEE-CHO: -- through testimony.
12 MR. GROSSMAN: You're also free, I guess, if you
13 want during a break to call her and see if you have any, get
14 any more feedback as to what any additional things you want
15 to address in the proceedings. But I'll leave that up to
16 you. Okay. All right then.
17 MS. LEE-CHO: If you wanted to address the letters
18 that were submitted, or by the neighbors?
19 MR. GROSSMAN: Oh, yes, yes.
20 MS. LEE-CHO: Okay.
21 MR. GROSSMAN: Please.
22 MS. LEE-CHO: I don't have an objection to two of
23 the three, one from Ms. Newman, or no, I'm sorry, Sandy
24 Kursban.
25 MS. KURSBAN: Oh, I was going to read it.

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1 MS. LEE-CHO: You were going to read it, okay, on
2 behalf of Ms. Newman. Okay, statement on behalf of Ms.
3 Newman most of the issues are similar to ones that have been
4 raised in previous correspondence --
5 MR. GROSSMAN: Okay.
6 MS. LEE-CHO: -- from the neighbors, so that's
7 fine. And in addition, I don't have an objection to the one
8 from Ms., Mr. and Ms. Dicken, Arla and Bob Dicken. The
9 only, the one unfortunately I will have to object to the
10 paragraph submission by Mr. John Reghi, R-E-G-H-I, only
11 because Mr. Reghi and I had a conversation subsequent to the
12 January 19th meeting where we discussed what the school will
13 be proffering today as far as the ball intrusion on to his
14 property and so --
15 MR. GROSSMAN: I saw that picture of all of the,
16 the baseballs.
17 MS. LEE-CHO: Yeah. And so I don't think that
18 this paragraph fully describes the extent of our discourse
19 and without Mr. Reghi here I would not be able to inquire of
20 him and explore --
21 MR. GROSSMAN: All righty.
22 MS. LEE-CHO: -- the proffer that I described to
23 him and his comments are a reaction to that. So, that's the
24 only basis for which I don't think I can accept --
25 MR. GROSSMAN: Okay.

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1 MS. LEE-CHO: -- his paragraph.
2 MR. GROSSMAN: Well, why don't you hand forward
3 Ms. Newman's statement and you said Mr. and Ms. Dickens is
4 it?
5 MS. LEE-CHO: Yes.
6 MR. GROSSMAN: And we'll mark those as exhibits.
7 Okay. So, Ms. Newman's statement will be Exhibit No. 100.
8 THE COURT REPORTER: Can you spell the last name,
9 please?
10 MR. GROSSMAN: Yes. It's Linda S. Newman, N-E-W-
11 M-A-N, of 8015 Grand Teton Drive and 8008 Grand Teton Drive.
12 All right. So that's letter of opposition from Linda S.
13 Newman.
14 (Exhibit No. 100 was received
15 into evidence.)
16 MR. GROSSMAN: And Exhibit No. 101 is a letter, I
17 don't know how to characterize it. He says concerns, letter
18 of concerns that is the Arla and Bob Dicken, D-I-C-K-E-N,
19 letter. I'm not sure he used the word opposition in there.
20 So I'll say letter of concerns from Arla and Bob Dicken.
21 (Exhibit No. 101 was received
22 into evidence.)
23 MR. GROSSMAN: Okay.
24 MS. LEE-CHO: Mr. Grossman, if I might?
25 MR. GROSSMAN: Yes?

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1 MS. LEE-CHO: The issue of the ball intrusion was,
2 is going to be an issue for discussion and it is most, Mr.
3 John Reghi is not here today, who is most impacted I just
4 wondered, the school has constructed a proffer really in
5 response specifically to his complaints and concerns. I
6 have had a conversation where I believe he has agreed or,
7 but I can't testify on his behalf so I'm at a loss to how we
8 handle this and it's unfortunate that he's not here to
9 confirm that that would address his issue.
10 MR. GROSSMAN: Was his, let's see --
11 MR. SAWMELLE: Um --
12 MR. GROSSMAN: Mr. Sawmelle?
13 MR. SAWMELLE: Yes?
14 MR. GROSSMAN: Is the letter from Mr. Reghi, is
15 that, what's the date on it?
16 MR. SAWMELLE: I don't, I don't have that on me.
17 MS. LEE-CHO: There is no date.
18 MR. SAWMELLE: It was e-mailed to me.
19 MR. GROSSMAN: My question goes to whether or not
20 it predated the conversation that he had --
21 MR. SAWMELLE: I don't know --
22 MR. GROSSMAN: -- with petitioner's counsel.
23 MR. GROSSMAN: -- Gene, do you know?
24 MR. FEINBERG: I saw John's statement just
25 yesterday so I don't know exactly when it was generated but

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1 a lot of the pictures and everything were provided to the
2 Board as evidence prior to this.
3 MR. GROSSMAN: Right, I've seen the pictures. But
4 the question is whether or not he agrees that the proposed
5 changes by the petitioner to their plans --
6 MR. FEINBERG: That I don't know and --
7 MR. GROSSMAN: -- would satisfy his concerns.
8 MR. FEINBERG: I think we'll both have to check
9 that out.
10 MR. GROSSMAN: Okay. So you'll make that, that
11 proffer and then I will leave the record open, as I said,
12 and we can get a reply from him, kind of a yay or nay as to
13 whether it handles it. It's problematic to go beyond that
14 because the, if this hearing is concluded today then the
15 petitioner will not have an opportunity to --
16 MR. FEINBERG: I understand.
17 MR. GROSSMAN: -- address that evidence. So, it
18 is an issue. Okay. Then shall we move forward? Do you
19 have an opening statement, Ms. Lee-Cho?
20 MS. LEE-CHO: I do, very briefly.
21 MR. GROSSMAN: Okay.
22 MS. LEE-CHO: Would you like me to orient the
23 boards?
24 MR. GROSSMAN: At least give us a 50/50 view so I
25 can, I can see it too. So in other words don't face them

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1 per se to the audience. Maybe you can move something back
2 there and in a way that gives you more room. You don't have
3 to face it away from the audience, just so I can see it too.
4 That's fine.
5 MR. SMITH: Is that good?
6 MR. GROSSMAN: Yeah.
7 MS. LEE-CHO: Just very briefly, I'll start with
8 the zoning vicinity map which is Exhibit No. 13. So the
9 property in question, The Heights School, is highlighted in
10 blue. It is in the R-90 zone and it is surrounded mostly by
11 other R-90 zone properties as well as R-200. It's within
12 the 2002 Potomac sub-region master plan. A little bit just
13 about the history. The current size of the property is
14 19.81 acres. However, it did start with much more. It
15 started with I guess 38 acres originally as the Inverness
16 School back in 1967 which was the original approval of a
17 private educational institution on the property. It
18 encompassed the properties that are now known as the
19 Democracy Lane community as well as the residential
20 community that has evolved down to the corner of Democracy
21 and Seven Locks. So it was a much larger parcel. The
22 Heights School came onto the site in 1978 when they
23 purchased. They only purchased 25 acres of the larger 38,
24 obviously the rest being developed as residential. And then
25 in 1989 is when the additional five acres were parceled off

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1 to develop Democracy Lane and that's how we ended up with
2 the 19.8. The current modification that we'll be presenting
3 includes both obviously physical and operational aspects of
4 the special exception. It is the school's long-range, 15
5 year, at least 15 year master plan. The history of this
6 site is that they have gone through significant modification
7 in the past years so I guess the last major modification
8 occurred in 2000, actually 1996 and then there was an
9 amendment in 2000 that for the most part is what has been
10 built out and we'll go over with you the, what's the
11 existing improvements there today and then what are the
12 future under this present application for the full build
13 out.
14 MR. GROSSMAN: You had a more recent modification,
15 number B, in this scale, didn't you, didn't that --
16 MS. LEE-CHO: That, that was 2000.
17 MR. GROSSMAN: Oh, okay, was that 2000? Okay.
18 MS. LEE-CHO: That was 2000.
19 MR. GROSSMAN: All right.
20 MS. LEE-CHO: And there have been smaller,
21 administrative modifications which we will also go over.
22 So, with that, I will call my first witness.
23 MR. GROSSMAN: All right. Well let me see if, Mr.
24 Feinberg, do you have an opening statement or you want to
25 give something --

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1 MR. FEINBERG: No, I will --
2 MR. GROSSMAN: Okay.
3 MR. FEINBERG: -- wait until it's my turn.
4 MR. GROSSMAN: All right.
5 MS. LEE-CHO: All right. Before I do that I did
6 want to mention before the major modification in 2000 a lot
7 of the operational aspects of what's going on at the school
8 today, the summer camp, evening activities, weekends, those
9 were generally approved back in 1980 when there was a
10 modification for those activities. So, with that I'll just
11 call --
12 MR. GROSSMAN: You mean they were approved but not
13 implemented or what are you saying?
14 MS. LEE-CHO: They were approved but at that time
15 it wasn't as specified as we get into special exceptions
16 today --
17 MR. GROSSMAN: Right.
18 MS. LEE-CHO: -- and delineated in a statement of
19 operations. I just wanted to note that because to the
20 extent that the operational modifications that we're asking
21 for is an increase in enrollment and increase in faculty
22 much of the other operational aspects that are described in
23 the statement of operations which is the evening and weekend
24 activities, the sporting events, the summer camp even, we're
25 not asking for a change per se to what has been approved,

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1 what we believe has been approved and was, has been
2 occurring on the site for many years, not an increase per
3 se.
4 MR. GROSSMAN: Are you saying that, for example,
5 the hours to 11:00, has that been previously approved?
6 MS. LEE-CHO: The evening and weekend activities
7 were approved back in 1980. It wasn't specified until
8 11:00. They didn't do it that way back then. But clearly,
9 you know, no lighting was approved for the sporting fields
10 or the tennis courts. So certain outdoor activities could
11 not occur past 11:00. But other activities indoors have
12 been occurring on the site since 1980 because that's when
13 evening and weekend activities were first approved.
14 MR. GROSSMAN: In the volume suggested? I think
15 it's somewhat unusual to have school activities approved to
16 11:00 as opposed to 10:00. I've seen event activities
17 approved to 10:00 --
18 MS. LEE-CHO: And --
19 MR. GROSSMAN: -- but that's --
20 MS. LEE-CHO: And you will hear through the
21 testimony for the most part these activities end, you know,
22 10:00, 10:30. It's now sort of the trend with special
23 exceptions to allow for half hour closure, wrap up, you
24 know, that kind of thing where faculty actually, and staff,
25 are completely off site and that's how we tend to frame

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1 special exception approvals these days, the real outside
2 hours of operations to include all of that.
3 MR. GROSSMAN: Right.
4 MS. LEE-CHO: That's not to say that we're going
5 to have until 11:00, you know, music going on and then wrap
6 up at 1:00 in the morning. I mean, that's just not the way
7 it happens.
8 MR. GROSSMAN: All right.
9 MS. LEE-CHO: So, but we'll get into that.
10 MR. GROSSMAN: Okay, fine. Then you may call your
11 first witness.
12 MS. LEE-CHO: Okay. Alvaro? No, Phil, I'm sorry.
13 Mr. McGovern, I'm sorry.
14 MR. MCGOVERN: I'll be Alvaro.
15 MR. GROSSMAN: I think the microphone --
16 MS. LEE-CHO: Why don't we --
17 MR. GROSSMAN: -- was set up over on this side.
18 MS. LEE-CHO: I'm sorry.
19 MR. MCGOVERN: Oh, I'm sorry.
20 MS. LEE-CHO: Yeah, the microphone is here.
21 MR. MCGOVERN: I'm sorry, as long as I don't have
22 to go up there.
23 MR. GROSSMAN: We sometimes do that, dealer's
24 choice often.
25 MR. MCGOVERN: Great.

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1 MS. LEE-CHO: So, actually I'm going to switch
2 my --
3 MR. GROSSMAN: Mr. McGovern, can you state your
4 full name, please?
5 MR. MCGOVERN: Yes, it's Philip McGovern, Philip
6 J. McGovern.
7 MR. GROSSMAN: All right.
8 MR. MCGOVERN: I'm the chief financial officer at
9 The Heights School. This is my 13th year, hopefully a lucky
10 one. I've had two boys go through the school.
11 MR. GROSSMAN: All right. Well, before you say
12 anything more would you raise your right hand, please?
13 MR. MCGOVERN: Oh, sure.
14 (Witness sworn.)
15 MR. GROSSMAN: All right. You may proceed.
16 MS. LEE-CHO: Okay.
17 DIRECT EXAMINATION
18 BY MS. LEE-CHO:
19 Q So I think you've already stated, did you already
20 state your name and address?
21 A Not my address, 4623 Norwood Drive in Chevy Chase,
22 Maryland.
23 Q Okay. And just for the record could you restate
24 your position at the school?
25 A Yes, I am the chief financial officer and I've

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1 been employed at the school since October 1st, 2002.
2 Q Could you please start by describing The Heights
3 School's mission and educational approach?
4 A Yes. I will. A couple things, I'm sorry, I just
5 moved my notes to another page, if you could bear with me
6 going through all of these pages which I knew I shouldn't
7 have brought up here because I would mix them up but there
8 are a couple of points I did want to make. Well, so anyway,
9 The Heights School has been around for about 45 years now.
10 We are an independent school in the county with a Catholic
11 spirit. Our mission, we have, it's an all-boys school. It
12 consists of three schools; lower school third through fifth
13 grade, middle school sixth through eighth grade and upper
14 school ninth through twelfth grade.
15 MR. GROSSMAN: Let me interrupt you for a second.
16 You said with a Catholic spirit. Is that Catholic with a
17 capital C or a small C?
18 THE WITNESS: It's Catholic with a capital C. The
19 distinction to be made, it may have no value here at all, is
20 that we're not an archdiocesan school.
21 MR. GROSSMAN: All right.
22 THE WITNESS: We happen to be physically located
23 within the Archdiocese but we operate independent of the, of
24 the Archdiocese but we definitely have, our teaching has an
25 emphasis on Catholic virtues and standards.

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1 MR. GROSSMAN: But the property is not owned by
2 the Catholic church?
3 THE WITNESS: It is not.
4 MR. GROSSMAN: Okay.
5 THE WITNESS: It is not.
6 MR. GROSSMAN: There's a distinction in the land
7 use article about, and in the zoning ordinance about that.
8 That's why.
9 THE WITNESS: Okay, okay. That's, that's good.
10 This is -- well that isn't relevant. So, irrelevant. So,
11 we are over enrolled which I will get into and I thank you
12 for the opportunity for explaining that. But our mission
13 really is to develop young men physically, intellectually,
14 morally, spiritually so that they can, you know, be men of
15 integrity in the world and what we like to say they're the
16 kind of men you'd like your daughters to marry. I have two
17 daughters, so I'm always looking.
18 MS. LEE-CHO: Is there --
19 THE WITNESS: Have a couple, have a couple guys in
20 mind, but --
21 BY MS. LEE-CHO:
22 Q Is there a particular type of student or family
23 demographic that you target?
24 A Yes, we do. We, our target is really the lower
25 and middle income family, especially those with large

1 families and that becomes important in explaining what
2 happened with enrollment. But that is our target market.
3 We are working very hard, with all due respect, not to
4 become a, another private school in the area for the
5 affluent. We think there's a need for this particular
6 target, this emphasis and they're wonderful people and
7 that's what we're about.

8 Q Could you go ahead and discuss the circumstances
9 behind the current over-enrollment situation of the school?

10 A Yeah. And again thanks for giving me the chance
11 because I'm the one who put us here and I think it's
12 important to put the matter in context because otherwise it
13 appears like an act of defiance with the county and that's
14 not our intent at all to be in defiance of county rules.
15 And matter of fact we have always been very compliant with
16 any county regulations and I think we've been a good,
17 upstanding member of the community contributing, et cetera.
18 But I have to take you back a bit to the collapse of the
19 economy in, beginning in 2007. Right before that we had
20 several years of very strong enrollment, not exceeding
21 enrollment, at the 460, fundraising was going very well, all
22 indications that the school was very strong. A very
23 generous community had begun building an endowment for the
24 school which is a fantastic thing for an independent school
25 to be able to do. And so we had the courage then to decide,

1 it's time to build a new academic building. We were
2 bursting out at the seams in the space that we had. We
3 didn't have adequate facilities really to provide the kind
4 of experience we wanted for the boys. So we made a decision
5 to borrow 20 million dollars from Chevy Chase Bank and that
6 becomes important in a moment and so that we would be able
7 to service the debt that we were bringing on to construct
8 this new building with the steady tuition that we had,
9 slight increases over time, but also with the endowment we
10 were building and the income we anticipated earning from the
11 endowment. Again, our building opened September 2007 which
12 was a nightmare for me when I realized what was happening to
13 the economy. And what we anticipated was a significant loss
14 in income as was being experienced by other independent
15 schools in the area as enrollment was dropping, people just
16 couldn't afford to send their kids to school and we expected
17 the same things and began thinking through, okay, what's our
18 course of action here and had a couple of options that I'll
19 tell you about. In fact, we did have a significant loss in
20 tuition income but it wasn't from a drop in enrollment. As
21 a matter of fact, what we were experiencing was the
22 opposite, enrollment was, not enrollment but demand was
23 soaring which was kind of, we were all scratching our heads,
24 how could this be. So that was sort of in the back of our
25 heads. But what was happening to our, our families, the

1 lower and middle income families who were most hit by this
2 crisis, they either couldn't pay their tuition at all or
3 they needed significantly more financial aid in order to
4 stay at the school. So, you know, we, we thought a lot
5 about this and decided that the first thing we ought to do
6 is cut our operating costs. That's, you know, kind of
7 natural course of events, you lose income you cut back on
8 your costs. And that would be done, in fact, by laying off
9 faculty and dismissing the students who couldn't pay their
10 tuition. But that created other problems for us. If you
11 take the faculty out of the equation, they're really, you
12 know, critical to the mission, you all of a sudden are
13 unable to deliver the programs that you had been offering
14 and you begin this death spiral and people begin to leave
15 the school who can afford the school. We also thought, it's
16 just going to create more of an unemployment issue in the
17 county and we were troubled by that for our families. We
18 also recognized that this core market of ours, the lower and
19 middle income families, they're mission critical to us. We
20 don't want to have a two class system in the school. We
21 didn't want to have those who were at the lowest end of the
22 spectrum that would be saved by the financial aid we have
23 available and then the very wealthy. That is a, it's a, it
24 would be a problem for us, it's not our mission and
25 something that we wanted to avoid and in fact thought, well,

1 if we dismiss all of these students who can't afford to be
2 here we're going to create a problem for the county because
3 somebody's going to have to absorb the students.
4 MR. GROSSMAN: Let me interrupt you for a second.
5 THE WITNESS: Yeah.
6 MR. GROSSMAN: Ms. Lee-Cho, how is this relevant
7 to the present proceedings? I understand Mr. McGovern is
8 outlining what he had in his letter which is now Exhibit No.
9 98 but how is that relevant to this proceeding?
10 MS. LEE-CHO: I do think that it's relevant to
11 provide, and Mr. McGovern indicated, context. I think that
12 throughout the review of this case by technical staff this
13 issue of over-enrollment was very much, you know, at the
14 forefront of the minds of the --
15 MR. GROSSMAN: Well I mean it could be the subject
16 of an enforcement proceeding --
17 MS. LEE-CHO: That is --
18 MR. GROSSMAN: -- which this is not.
19 MS. LEE-CHO: That is correct. And we are, this
20 segues into then why we are asking for an increase. The
21 increase is not just to I guess rectify the over-enrollment.
22 It is a larger mission, the number 650 goes to a larger
23 mission. But I think, you know, that there is an
24 explanation necessary. My opinion is that the Board of
25 Appeals will want to hear, you know, the explanation for the

1 over-enrollment. That's --
 2 MR. GROSSMAN: I'm going to let him finish. I
 3 mean, he's already two thirds of the way through it I
 4 suppose. But I mean, even assuming good motives either you
 5 meet the cap or you don't. So if it's for an enforcement
 6 action the Board could certainly have a basis for saying, no
 7 you're exceeding the cap.
 8 MS. LEE-CHO: Right, and --
 9 MR. GROSSMAN: On this proceeding you're asking
 10 for enrollment which well exceeds the current enrollment.
 11 You're asking for permission for that so I'm not sure that a
 12 justification for why it is what it is now bears on this.
 13 As I say, I'm going to let you --
 14 MS. LEE-CHO: And I would add also that there have
 15 been some comments from opposition --
 16 MR. GROSSMAN: Yes.
 17 MS. LEE-CHO: -- that the additional enrollment
 18 requested should not be granted because of this propensity
 19 to over-enroll and I do think that the explanation for the
 20 over-enrollment is a unique one and it's not something that
 21 we hope will be repeated by circumstances, you know, outside
 22 of the school that there really were circumstances beyond
 23 the school that contributed to the over-enrollment. There's
 24 been criticism that if you extend it to 650, you know, the
 25 school could go to, you know, above that and that they've

1 had this propensity to over-enrollment beyond the county
 2 imposed cap. And that is really why we feel strongly that
 3 an explanation is in order.
 4 MR. GROSSMAN: All right. I mean, if I were to
 5 recommend approval of the increased cap that you are
 6 suggesting I would also simultaneously recommend something
 7 that would keep better track of enrollment to make sure that
 8 this problem doesn't exist. There is certainly an
 9 enforcement mechanism available. I'm not sure why it was
 10 allowed to exist, why Department of Permitting Services
 11 didn't note it or whatever but, but that certainly should,
 12 people should be alerted to that.
 13 BY MS. LEE-CHO:
 14 Q If you wanted to just --
 15 A Ultimately too --
 16 Q -- wrap up.
 17 A -- it's part of, and I'll get into it very
 18 quickly, but it's part of what drove us to begin this campus
 19 update, this application. We haven't a nickel to build
 20 anything that is proposed here. We have absolutely no
 21 money, no plans but it was our understanding that the county
 22 really appreciated when you came forward with all of your
 23 plans as opposed to piecemealing it.
 24 MR. GROSSMAN: Right.
 25 THE WITNESS: So in 2010 we began the process

1 really to address this and get back in good stead with the
 2 county which is where we really want to be. We don't want
 3 to be at odds or appear like we're just disregarding county
 4 regulations --
 5 MR. GROSSMAN: I understand.
 6 THE WITNESS: -- it's important to us. But so
 7 I'll just continue briefly. So we decided that for us it
 8 wasn't the right thing to lay off faculty, to get rid of
 9 students that are core to the mission and so we took this on
 10 as a temporary solution and we thought, this will get us
 11 through a crisis and we will then be able to get back to
 12 where we should be. Unfortunately the crisis continued, it
 13 got more complicated and, and then Capital One buys Chevy
 14 Chase Bank, so this is where this becomes important. The
 15 first move by Capital One when they take over a loan is to
 16 have us reappraise the property values, they find us in
 17 default of our loan even though we're making all payments
 18 and their rectification of that was a very expensive
 19 refinancing and the loss of four and a half million dollars
 20 of our endowment which was to be the other income source to
 21 help us fund the debt service. So, things had gone from bad
 22 to worse and it's at that point that we realized in order to
 23 survive we needed to continue to keep the number of kids we
 24 had enrolled. And so we also at that point made two other
 25 decisions. One was it's, we've got to get this campus

1 master plan application in place and before the county as
 2 quickly as possible so hire the architects and, and Soo to
 3 work with us on that. And the other thing we did, because
 4 we were feeling responsible for this and took it very
 5 seriously is we began to try and mitigate the impact on
 6 traffic. Honestly, we don't feel like we have an issue on
 7 campus with parking. It's very manageable for us to do what
 8 we're doing with the level of students and faculty we have
 9 except when we have family-wide events; that would be for a
 10 concert if we were having one or something to that effect.
 11 That's when we've got a problem and are forced off campus.
 12 But in terms of trying to mitigate some of the impact on
 13 traffic before, you know, even making anybody aware of this
 14 we introduced expanded bus service so it went from 18
 15 students who were being bussed to the school to 85 and then
 16 we greatly expanded our carpooling opportunities. In fact,
 17 our, our directory that's given to parents each year is
 18 organized by zip code to encourage that. So none of this
 19 makes it right. We completely accept that we did the wrong
 20 thing. But it was something that we thought was a temporary
 21 fix and that we would be able to correct ourselves and then
 22 other matters that were completely unanticipated caused us
 23 to decide, we have to pursue this as a permanent solution
 24 and so went forward with our plan.
 25 MR. GROSSMAN: So I understand your financial

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1 pressures explanation and the mea culpa but I just wondered
2 why you didn't ask the Board of Appeals for permission to
3 raise the cap.
4 THE WITNESS: You know, in hindsight that's a
5 great point. I really don't have an explanation. I thought
6 by going forward and saying, we need to launch the update of
7 our campus plan and application to include the, the increase
8 in enrollment we thought we would be addressing that. We
9 never had any idea that we would still be working on this
10 application. And part of that quite frankly is a function
11 of trying to be considerate of what we do on the campus and
12 recognizing that the topography of the campus is very
13 complicated for construction and we wanted to make sure that
14 we preserve the natural setting there. It's really a
15 beautiful campus with many trees that, you know, we're
16 trying to preserve, so --
17 MR. GROSSMAN: I don't understand that answer as
18 being an answer to my question. Why, in light of your
19 financial difficulties and the fact that you wanted to have
20 a higher cap, why didn't you just ask the Board of Appeals
21 to raise the cap?
22 MS. LEE-CHO: I'm going to have to take
23 responsibility for that --
24 MR. GROSSMAN: Okay.
25 MS. LEE-CHO: -- because when the school first

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1 came back in, we started talking about this in 2010, you
2 know, in the heart of it, a major modification would be
3 required and a team was compiled and a long range plan, you
4 might as well if you're going to embark on a major
5 modification do it right. And so that's what took the time
6 to file the, create the plan, the 15 year master plan to ask
7 for the increase.
8 MR. GROSSMAN: Well doing it right is asking for
9 permission before you exceed the cap, not after.
10 THE WITNESS: Yeah, for sure.
11 MR. GROSSMAN: That's doing it right.
12 THE WITNESS: For sure.
13 MR. GROSSMAN: All right. Okay, I won't belabor
14 the point.
15 MS. LEE-CHO: Okay, I think --
16 MR. GROSSMAN: As I said, this is not an
17 enforcement proceeding.
18 MS. LEE-CHO: Yeah.
19 MR. GROSSMAN: This is a proceeding to see if the
20 request to, well all of your requested changes should be
21 approved, so --
22 THE WITNESS: Right.
23 MS. LEE-CHO: Okay.
24 THE WITNESS: Well thanks very much for listening.
25 I appreciate that.

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1 MS. LEE-CHO: Alvaro?
2 THE WITNESS: This seat is quite warm here.
3 MS. LEE-CHO: It's the hot seat.
4 MR. DEVICENTE: Thank you.
5 MS. LEE-CHO: Mr. DeVicente, I always say that
6 tongue tied. Would you state your name and address and how
7 long you've been headmaster of the school?
8 MR. DEVICENTE: All right. My name is Alvaro
9 DeVicente. My address is 1810 Old Reston Avenue, Reston,
10 Virginia 20190 and this is my 13th year as headmaster at the
11 school and probably 20th as an employee of the school.
12 MR. GROSSMAN: Would you raise your right hand,
13 please?
14 (Witness sworn.)
15 MR. GROSSMAN: All right. You may proceed.
16 DIRECT EXAMINATION
17 BY MS. LEE-CHO:
18 Q Could you please start by explaining sort of why
19 the school is seeking an enrollment up to the 650?
20 A So, I guess a couple reasons. One is mission
21 driven and the other is programmatic. The mission driven,
22 as Mr. McGovern stated, we're a school that tries to work
23 with the families quite a bit. As a result, we do better
24 when we bring students when they're younger, third grade's
25 our first grade. So, the increase that we are looking at

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1 would take place mostly in those grades. So there would be
2 that we would have families with us for 10 years as opposed
3 to only four or some other duration. Just to give you a
4 sense of the numbers, right now we have 102 students in the
5 lower school and we're seeking to get up to 150 by adding
6 one extra section to each grade. We have 161 in the middle
7 school and we're looking to go up to about 190, 195 and we
8 have 266 in the upper school and we would go only up to
9 about 280 in the upper school. So the growth would be in
10 the younger, younger grades.
11 Q So when you do the math, that really just gets you
12 to 625.
13 MS. LEE-CHO: So I think when you end up looking
14 at the record and doing the math --
15 THE WITNESS: Right.
16 MS. LEE-CHO: -- I just want to clarify.
17 BY MS. LEE-CHO:
18 Q What is the ideal verses why are you asking for
19 the 650?
20 A Right. So the ideal, the thinking about this
21 would be about the 625 and that's because we find it to be
22 the balance between as many students as we could have but
23 not so many that we lose our personal approach to each
24 student. Petition for 650 is to allow for just natural
25 fluctuation from year to year depending on the application

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1 pool that we get. But I am equally concerned about not
2 exceeding many past 625 as I am to getting up to that number
3 because of the, really the approach to education that we
4 hope to --
5 MR. GROSSMAN: And let me interrupt, again,
6 because I realize I omitted something very important. I
7 forgot to allow Mr. Feinberg or anybody else to cross-
8 examine --
9 MR. FEINBERG: I had no questions.
10 MR. GROSSMAN: No questions --
11 MS. LEE-CHO: Oh, I'm sorry.
12 MR. GROSSMAN: -- for Mr. McGovern? Did anybody
13 else have any questions for Mr. McGovern because I, I
14 certainly should've given you the opportunity to cross-
15 examine him. I see no hands. All right. Thank you. I
16 apologize for that oversight. Go ahead.
17 THE WITNESS: And then programmatically what the
18 increase in student enrollment would allow us to do is to,
19 in terms of the curriculum, offer more electives which would
20 enrich the experience. So right now we're maxed out as to
21 how many classes we can offer, how many electives we can
22 offer. So, for instance, we have a very robust classical
23 language curriculum with five years of Latin and up to four
24 years of Greek. But the last two years of Greek are taught
25 in the same classroom by the same teacher at the same time

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1 because we don't have the space. So, you know, we get to
2 split those. Same thing happens with Latin. To be able to
3 offer two of economics as opposed to just one economics
4 class. So, in terms of the curriculum that's what the
5 increased number would do. Perhaps the bigger advantage is
6 to extra-curricular activities, athletics, not only the
7 quality of the teams but personally we're concerned about
8 the number of teams that we could have which would give
9 experience to more boys. Just recently we started a rugby
10 team and that has been a great experience for some boys who
11 didn't have a team sport beforehand. And also in the arts.
12 You know, we've developed music, graphic arts and now drama
13 quite well the last few years but we're clearly limited by
14 the number of students who can participate in all these
15 activities.
16 Q So you alluded to this a bit but if you could
17 specifically address, you know, how many more students above
18 your current enrollment, I believe you said about 529 of
19 your current enrollment --
20 A Uh-huh.
21 Q -- can be above that can be accommodated with your
22 existing facilities?
23 A At this point I would say, you know, a handful.
24 We can't add any more sections. We can't add any more
25 classes. So the only ones we could add would be individual

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1 students, let's say there may be room in a particular class
2 but there are really very, very few, maybe a handful at
3 most.
4 Q Okay. So how does the school plan to realize the
5 construction, we will get into a discussion of all of the
6 future facilities, but is there a plan for the school to
7 realize that?
8 A Well, the, the plan is very long-term. Keep in
9 mind, I think as Mr. McGovern mentioned, we don't have any
10 of the funding to realize any of the plans so it would
11 entail a very significant, major fundraising effort. And
12 also just a note, the facilities are not the only need that
13 we have. We have what are considered more important needs
14 in terms of raising funds for faculty compensation and
15 financial aid and so forth. So, the plan would be to engage
16 in a fundraising campaign. We haven't started, we haven't
17 even started the preliminary aspects of it and I don't know
18 when that will take place. But in terms of the actual
19 realization of the construction, if we had all the money,
20 well, I must say that a lot of what, in my mind, should be
21 constructed first is going to depend on donor intent. I
22 think that's just the way it tends to work. If we get a
23 very generous donor who desperately wants the auditorium I
24 suspect that we would put that first and seek the build the
25 auditorium. So, I would like to have the flexibility to

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1 determine what to build according to that donor intent.
2 The, the parking garage that we've been talking about with
3 159 spaces in it was always from the beginning designed as
4 part of that auditorium to provide parking for the events
5 that would, that the auditorium would host, not, not for
6 regular daily use by the students or faculty for which we
7 deemed there was no need for it. But, again, it could be
8 very hard to fundraise for a parking garage. I don't that
9 many donors out there, parents or otherwise, would be
10 excited about that, especially being underground. So, I
11 think it's going to have to be attached to something else,
12 you know, the auditorium and the parking garage or the
13 athletic facilities for the field and the parking garage
14 underneath. I think that was the intent of seeking some
15 flexibility as to what we would build first.
16 Q Now, how do you feel about the proposal to secure
17 off-site parking and if you want, if you could get into some
18 of the school's past experience --
19 A Sure.
20 Q -- in terms of utilizing off-site parking?
21 A The past experience that we're mentioning goes to
22 the 2006/2007 school year which is the school year when
23 we're building what is now the main building, the signature
24 building and the staging for that construction was the
25 parking lot that we have. So, during that school year we

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1 had zero parking on campus and the way we handled it was
2 with off-site parking and shuttle buses in the morning and
3 the afternoon. And I must say, you know, it worked quite
4 well. I think most of the students are very adaptable and
5 you know, even though they may complain for a couple of
6 weeks after a while it becomes the way of life. So I know
7 we can, we could do that, you know, I think in terms of, you
8 know, parking on campus, again, I really haven't seen it as
9 a significant problem that we've had. But, I think one
10 thing that we're committed to doing is, is a permanent
11 system which frankly would help us to keep track of how many
12 cars are allowed to park on campus, how many students and
13 faculty, with some permits for visitors obviously, and if we
14 saw that more permits were sought than spaces available then
15 I think a regular off-site parking system is very workable
16 for us. We have a couple locations nearby that I know we
17 could use for that purpose.

18 Q So I think you're alluding to the transportation
19 management plan that has been developed as part of this
20 application and if you wanted, and you're familiar with the
21 TMP, are you comfortable that it's workable and will be
22 effective for the school?

23 A I am. Yeah, I am. I'm familiar with it and
24 comfortable that it would work. I know that we could, we
25 could implement it and then know what steps would need to be

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1 taken for that purpose.

2 Q Has the school ever received complaints about
3 daily overflow parking occurring on adjacent neighborhood
4 streets?

5 A Not that I remember, not that I know of. But I
6 don't think, I think the, the, again the students don't park
7 on Seven Locks, faculty don't park on Seven Locks, they will
8 park on the parking lot. The, the times that I, I know --

9 MR. GROSSMAN: Is parking even allowed on Seven
10 Locks?

11 THE WITNESS: I --

12 MS. LEE-CHO: Along this stretch it's not signed,
13 so.

14 THE WITNESS: Yeah, it's unclear. But it's not,
15 it's not safe. It's not safe, I can say that much, right,
16 as all the neighbors I'm sure known. But the only things
17 I've seen, there's been, sometimes at the open house when a
18 lot of families come in, the once a year open house or
19 graduation. But we provide shuttle service. So it would
20 be, it would be people who don't want to use the shuttle and
21 on their own park there.

22 MR. GROSSMAN: Counsel mentioned the
23 transportation management plan, I take it you're talking
24 about Exhibit No. 93G as the latest version of it? Is that,
25 just so we can make sure we're talking about the same thing.

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1 MS. LEE-CHO: Yes, that is the latest version.

2 MR. GROSSMAN: Okay.

3 MS. LEE-CHO: 93G.

4 MR. GROSSMAN: Okay.

5 BY MS. LEE-CHO:

6 Q Okay, if you could address the hours of operations
7 that the school has request in its statement of operations
8 versus I think the condition that technical staff crafted,
9 condition number five --

10 A Uh-huh.

11 Q -- and sort of the school's position and comments
12 on that issue.

13 A I guess the, the issue at point is we, we
14 requested for hours of operation ending at 9:00 p.m. and
15 staff suggested 6:30. I guess what I would, why I like 9:00
16 p.m. is again, the flexibility, you know, there are going to
17 be times when a sporting event will go past 6:30, you know,
18 basketball will only have 10 or so home games during the
19 winter but soccer, baseball, lacrosse fall and the spring --
20 bless you -- it may go until sundown or sometime before
21 sundown. Mostly because of very small group activities that
22 we host on campus and the small group activities are
23 everything from a mother's reading book club, a dad's
24 meeting, a parent spiritual gathering, the numbers of these
25 groups are, you know, as few as five or six, as many as 40

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1 or 50 and they'll come in and you know, by and large they're
2 doing by 9:00, you know, even before that. In some cases
3 even the neighborhood association meetings that we host at
4 the school and we're happy to do that and those are all the
5 evening --

6 Q Now, these are different from the 50 evening and
7 weekend activities that have been very --

8 A Yes.

9 Q -- specifically delineated in the statement of
10 operations, is that correct?

11 A Correct. So the 50 include the, you know,
12 official school activities. So, you know, back to school
13 nights, meetings like that. These we're talking about very
14 small groups that are more on an adult basis that come to
15 the school and use the facilities.

16 Q The statement of operations on page 15 talk about,
17 you know --

18 MR. GROSSMAN: What's the exhibit number you're
19 referencing?

20 MS. LEE-CHO: Statement of operations, the most
21 recent submission I would say is 93E.

22 MR. GROSSMAN: All right. Let me pull out a copy
23 here. This is your second amended --

24 MS. LEE-CHO: Yes.

25 MR. GROSSMAN: -- statement of operations?

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1 MS. LEE-CHO: Yes.
2 MR. GROSSMAN: 93E. Okay, and what are you
3 referring to now?
4 MS. LEE-CHO: On page 15 of the statement of,
5 amended statement of operations where it begins --
6 MR. GROSSMAN: The second amended statement.
7 MS. LEE-CHO: The second amended statement of
8 operations discussing the evening and weekend activities, no
9 more than 50. And there is a section that talks about
10 evening activities during the weekday that end by 9:30 and
11 it describes the vast majority of the 50 being within
12 completion by 9:30.
13 MR. GROSSMAN: Uh-huh.
14 BY MS. LEE-CHO:
15 Q And so, I wanted to ask you to then sort of give
16 the hearing examiner a sense of, you know, how many
17 activities really are we talking about that could extend
18 later than 9:30.
19 A Well, very few really. I mean, the only ones I
20 can think of right now would be the three back to school
21 nights we have at the beginning of the year which start at
22 7:30, 8:00 and go past 9:30. There are some, there are
23 lectures for parents, about five or so during the year on
24 Saturday evenings beginning at 8:00 and some of the time may
25 go over, go up to, you know, 9:30 by the time we clean up

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1 and --
2 Q This is a Saturday?
3 A Saturday.
4 Q Okay. What about the alumni reunion mass?
5 A Alumni reunion, that's Wednesday before
6 Thanksgiving --
7 Q Uh-huh.
8 A -- it starts at 5:00 and that will go past 9:30,
9 yeah.
10 Q So really from a review of the statement of
11 operations, as far as a weekday evening ending by 11:00 p.m.
12 I only see the alumni reunion mass and dinner --
13 A Right.
14 Q -- as the one weekday.
15 A Yes.
16 Q And then weekends is where you mentioned the
17 parent lecture series.
18 A The parent lecture series.
19 Q There are a few more, the auction.
20 A The auction which is in the gym, right, that will
21 go longer and then there's the garden party --
22 Q Uh-huh.
23 A -- at the beginning of the year in September in
24 the courtyard and that will go beyond 11:00. Those are all
25 events for parents.

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1 MR. GROSSMAN: I'm not sure I understand
2 completely here. Are you saying that the vast majority of
3 these evening activities will end by 9:30 but there are only
4 a few that go to 11:00 --
5 MS. LEE-CHO: That's right.
6 MR. GROSSMAN: -- is that what you're saying?
7 MS. LEE-CHO: It is.
8 MR. GROSSMAN: And you're enumerating those few
9 now, is that what you're saying?
10 MS. LEE-CHO: Well they're in the statement of
11 operations.
12 MR. GROSSMAN: Well I see in the statement of
13 operations where it says weekday evening activity that ends
14 by 11:00 you refer only to the alumni reunion mass and
15 dinner.
16 MS. LEE-CHO: Correct.
17 MR. GROSSMAN: That's the only one that I see.
18 Are there others?
19 MS. LEE-CHO: Not on a weekday.
20 MR. GROSSMAN: Okay. And then the weekend
21 activity that ends by 11:00 you list approximately a dozen
22 of the school's weekend activities.
23 MS. LEE-CHO: That's right. That's because the
24 parent lecture series, they're a series, so there's just
25 more than one.

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1 MR. GROSSMAN: All right. I'm not going to
2 express an opinion on that until I hear, I want to hear from
3 the opposition on their concerns, if any, about the timing
4 of the activity.
5 BY MS. LEE-CHO:
6 Q So, going back to just the core hours, I think the
7 statement describes the core hours being early morning
8 hours, how do we describe the core hours, I'm sorry. When
9 we described it being 7:00 a.m. and that includes the
10 faculty arrival --
11 A Uh-huh.
12 Q -- student arrival times to 9:00 p.m. --
13 A Uh-huh.
14 Q -- Monday through Friday. So that is still the
15 school's proposed core hours of operation --
16 A Yes, it is.
17 Q -- is that correct?
18 A Correct.
19 Q Okay. All right. And the redline that we had
20 proposed, the school had proposed to the planning board, the
21 language, there was some addition to condition number five
22 indicating small group, indoor gatherings or meetings in
23 addition to the indoor basketball games --
24 A Uh-huh.
25 Q -- that can occur until 9:00. That was in

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1 response to, and trying to work with the staff's condition
2 as written to accommodate these additional --
3 A Uh-huh.
4 Q -- smaller activities, is that correct?
5 A Right, that's correct.
6 Q But it is still the school's preference to have a
7 more flexible --
8 A Uh-huh. It would be.
9 Q -- flexible parameters?
10 A It would be and I think the, I was always struck
11 by the chairman of the hearing board who himself that the
12 language may be too restrictive in terms of this, you know,
13 6:30 this many times as opposed to, I guess he, as far as I
14 understood it, his opinion was that it seemed too inflexible
15 to have a 6:30 deadline for students to be there and for
16 their activities.
17 Q Okay.
18 MR. GROSSMAN: Well, any individual opinions of
19 the Planning Board itself are not before me unless they are
20 reflected in the letter that the Planning Board sent --
21 THE WITNESS: I understand.
22 MR. GROSSMAN: -- which was a very simple --
23 THE WITNESS: Uh-huh.
24 MR. GROSSMAN: -- and just said, we generally
25 accept the recommendations of staff but it would be nice if

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1 you guys got together with the neighbors and talked about
2 it. That's an unusual Planning Board letter but that's what
3 it said.
4 BY MS. LEE-CHO:
5 Q So then getting to the neighbors.
6 A Uh-huh.
7 Q Could you talk about the meeting that was held on
8 January 19th and some of the issues that were discussed --
9 A Sure.
10 Q -- at that meeting?
11 A So I, some of you are here today, so we, we had a
12 meeting January 19th was it?
13 Q Uh-huh.
14 A Okay. In the evening and as far as I, I gathered
15 there are four main issues that were brought up. One is the
16 noise level on the west side of campus behind the middle
17 school in the morning before classes begin, during break
18 time the morning around 10:30 and also lunchtime, noise
19 level by, by students, another one was the, sort of the
20 views of the proposed middle school building and then there
21 was some conversation about security, trespassing by
22 students in the afternoon down the south side of the campus
23 and then the, the, the athletic, lacrosse and baseballs
24 going over to the neighbors' yard. Those were the four. I
25 thought the meeting was very positive. Actually I was very

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1 happy with it. It's, it's sometimes unfortunate that it
2 takes somewhat of a legal proceeding to get together as
3 neighbors but it was a benefit to it and that there's a
4 clear commitment to do it with greater regularity. But the,
5 so what we've been doing, in terms of the noise level, if I
6 could address each one of those one by one quickly, the
7 noise level, it's down to two grades, the sixth and the
8 seventh grade, who use that part of the building.
9 Interestingly enough, once we build a new, if we build a new
10 middle school building the noise level will also be reduced
11 because we'll be able to bring some activity indoors, as
12 opposed to now when they, they spill outside in that area.
13 Some of the lockers for the students are outside facing the
14 west side, the west neighbors. So --
15 MS. LEE-CHO: If I might just reference the aerial
16 behind you just to show the hearing examiner where the
17 middle school is located. And I'm not sure this aerial is
18 on the exhibit list. But this is the --
19 MR. GROSSMAN: Well if it's not then we should
20 mark it as an exhibit if you're going to reference it.
21 MS. LEE-CHO: I don't think it is.
22 MR. GROSSMAN: All right. So that would be
23 Exhibit No. 102.
24 MS. LEE-CHO: All right.
25 MR. GROSSMAN: And that's aerial photo of subject

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1 site.
2 (Exhibit No. 102 was received
3 into evidence.)
4 BY MS. LEE-CHO:
5 Q So if you could use Exhibit No. 102 and indicate
6 to the hearing examiner where the existing middle school --
7 A Uh-huh.
8 Q -- building is located --
9 A Sure.
10 Q -- on the property.
11 A This is, can see, this is the main building and
12 then this building wraps around, this is the existing middle
13 school building.
14 MR. GROSSMAN: First of all I guess we should say,
15 where is north on this photo?
16 MS. WEISS: Can he stand, excuse me, sir --
17 MR. GROSSMAN: Yeah, let me --
18 MS. WEISS: -- can he stand on the other side?
19 MR. GROSSMAN: Do you have a pointer that he can
20 use? If not I --
21 MS. LEE-CHO: Just --
22 MR. GROSSMAN: -- a laser pointer?
23 MS. LEE-CHO: -- if you could just stand, yeah, if
24 you could --
25 MS. WEISS: Yeah.

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1 MS. LEE-CHO: -- just stand right there that would
2 be good.
3 MR. GROSSMAN: Okay.
4 MR. FEINBERG: Yeah, that will help everybody see.
5 THE WITNESS: Great. So this is north.
6 MR. GROSSMAN: Okay, north is pointing up.
7 THE WITNESS: Pointing up.
8 MR. GROSSMAN: All right. Where is Seven Locks
9 Road on this?
10 THE WITNESS: This is Seven Locks Road --
11 MR. GROSSMAN: Okay.
12 THE WITNESS: -- right here.
13 MR. GROSSMAN: So now everybody knows what you're
14 talking about.
15 THE WITNESS: So, the middle school building is
16 back here.
17 MR. GROSSMAN: All right. So that's in the
18 northwest corner.
19 THE WITNESS: Northwest corner. So, the noise
20 complaints come from this area here.
21 MR. GROSSMAN: The people to the west.
22 THE WITNESS: To the west. And --
23 MR. GROSSMAN: All right, the reason I'm
24 identifying that is that the record should reflect what
25 you're saying so that --

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1 THE WITNESS: Thank you for that.
2 MR. GROSSMAN: Okay.
3 THE WITNESS: Please, add as much as necessary for
4 clarity purposes. And what happens that students will
5 gather around here outside of the building where some of the
6 lockers are as well as here in this corner where some of the
7 other lockers are. They gather in the morning when they
8 first come in.
9 MR. GROSSMAN: All right. Once again that's in
10 the extreme northwest corner.
11 THE WITNESS: Extreme northwest corner --
12 MR. GROSSMAN: Okay.
13 THE WITNESS: -- and west side I guess.
14 MR. GROSSMAN: Okay.
15 THE WITNESS: So when they first come in the
16 morning they, they may come in as early as 7:30, 7:40, 7:45,
17 they will go to the lockers, get their books, gather around
18 there. If it's not inclement weather we tend to, up to now
19 we've been keeping the students outside for as long as
20 possible before bringing them into the classrooms. So, and
21 then during the break during the morning and at lunch
22 they'll be out playing in this area here but also they'll --
23 MR. GROSSMAN: The area here once again --
24 THE WITNESS: Oh, I'm sorry.
25 MR. GROSSMAN: -- is the north --

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1 THE WITNESS: To the north --
2 MR. GROSSMAN: -- north, northwest, okay.
3 THE WITNESS: North, northwest. But also to the
4 west side of the middle school building there's a little,
5 you know, fish pond here that they like to play around and
6 so forth. So that's where, I think, the noise is generated.
7 And there are a couple things that we're, that we're doing
8 and some are operational and some are physical. So,
9 operationally what we've done so far is first to --
10 BY MS. LEE-CHO:
11 Q I'm sorry, when you say so far can you clarify
12 since when?
13 A Sure. So, so far meaning after the meeting with
14 the neighbors on the 19th. On the 23rd, Friday, we had a
15 faculty meeting which we already scheduled. At the faculty
16 meeting we appraised the faculty about the need to monitor
17 student behavior in this area during those times
18 specifically and also after that, so about two weeks ago, I
19 don't remember the exact date, I had an assembly with the
20 sixth grade and with the seventh grade separately to talk to
21 them about several things but among them a positive message
22 about being good citizens that includes being good
23 neighbors. And you know, I mentioned to them how they
24 wouldn't like it, how a neighbor could complain if they
25 decided to wander off the property, climb the fence and walk

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1 into the neighbor's back yard and start walking around their
2 living room, that would be an intrusion of the neighbor's
3 property but there are other ways to intrude, namely through
4 loud voice where the noise may actually intrude on the
5 neighbor's property through windows. So I think it was a
6 good, good assembly. More importantly because I suspect
7 that sixth and seventh graders may not always listen to
8 advice and live by it for the rest of their lives the middle
9 school head is going to be meeting with the faculty of the
10 sixth and seventh grade on a regular basis, so once a week
11 for the sixth grade and once a quarter for the seventh
12 grade. And one of the items now on their agenda is to
13 monitor that relationship and that noise. So we have a
14 system whereby to make sure the faculty are monitoring this.
15 MR. GROSSMAN: Now the neighbors you met with, I
16 noticed that since you're addressing something to the north,
17 northwest of the campus, were there Democracy Lane residents
18 there too because there apparently aren't today.
19 MR. FEINBERG: That development is the courts of
20 Democracy Lane. It's 16 homes. Four, four courts there.
21 MR. GROSSMAN: Yes, Mr. Feinberg. But what I'm
22 asking is when you met with, you said you met with the
23 neighbors on January 19th, were there members of that
24 neighborhood present too?
25 THE WITNESS: Yes.

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1 MR. FEINBERG: Yes.
2 THE WITNESS: Tom --
3 MR. FEINBERG: -- Tom Williams --
4 THE WITNESS: Yes.
5 MR. FEINBERG: Several others that I don't know
6 personally but I know Tom.
7 MR. GROSSMAN: Well, Mr. Feinberg, in this kind of
8 proceeding --
9 MR. FEINBERG: I'm sorry.
10 MR. GROSSMAN: -- provide him with the evidence.
11 MS. LEE-CHO: I could provide a, we do have a list
12 of the attendees from the January 19th meeting that we could
13 provide to the hearing examiner.
14 MR. GROSSMAN: Okay. Probably not a bad idea just
15 since the Planning Board did request that you do it. But I
16 was just curious because those folks aren't here today --
17 THE WITNESS: Uh-huh.
18 MR. GROSSMAN: -- and you've been addressing their
19 concerns.
20 THE WITNESS: Sure.
21 BY MS. LEE-CHO:
22 Q So, if you could continue to talk about the
23 operational as well as the physical --
24 A Uh-huh.
25 Q -- changes that --

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1 A So the --
2 Q -- you will be implementing?
3 A I guess the operational, besides the things that I
4 mentioned, I do think that the middle school head, who has
5 been in his position for now 15 years, monitoring the
6 situation with the faculty on a regular basis as part of an
7 already established meeting will be the most efficient way
8 to, to enforce a noise reduction. Also, as part of my
9 weekly administrative council meeting as of two weeks ago
10 we've added a standing item of neighbor relations so that I
11 have a way to bring those things up and deal with them in
12 the school-wide manner if need be. We've, we've only done
13 that in an as needed basis in the past whenever there was a
14 conversation but I think having it on a weekly basis will
15 help us to be much more proactive and on top of these, these
16 situations.
17 MR. GROSSMAN: Usually in these cases we setup
18 some kind of neighborhood liaison counsel --
19 MS. LEE-CHO: Yes, I was going to ask him --
20 THE WITNESS: Yes.
21 MR. GROSSMAN: -- which tends to help in that
22 regard and then the results of those meetings, which take
23 place on a regular basis with neighborhood representatives,
24 are then reported to the Board of Appeals on a regular basis
25 so that gives feedback in both directions.

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1 THE WITNESS: Sure.
2 MR. GROSSMAN: And I think it's a good idea. We
3 used to, when there was a people's counsel in the county
4 government, he would --
5 THE WITNESS: Right.
6 MR. GROSSMAN: -- attend those meetings, but --
7 BY MS. LEE-CHO:
8 Q And in that regard, of the conditions recommended
9 by technical staff that specific condition is one that the
10 school has no objection to --
11 A Uh-huh.
12 Q -- correct?
13 A Correct.
14 MR. GROSSMAN: Okay.
15 THE WITNESS: Correct, and we're, we're committed
16 to doing that.
17 MS. LEE-CHO: Although there are other conditions
18 that we can't --
19 THE WITNESS: Right.
20 MR. GROSSMAN: You can't abide, huh?
21 MS. LEE-CHO: -- accept as written.
22 THE WITNESS: Right.
23 MR. GROSSMAN: You may abide, you may follow, but
24 you don't like.
25 THE WITNESS: Right. In terms of the, the other,

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1 the other complaints, the, I'm going to use the map again if
2 I may.
3 MR. GROSSMAN: Certainly.
4 THE WITNESS: The security trespassing question is
5 down here in the south --
6 MS. LEE-CHO: West.
7 MR. GROSSMAN: West side.
8 THE WITNESS: -- southwest corner and I guess the
9 complaint is a number of students, I don't know if it's
10 every day or with some regularity who will be seen crossing,
11 coming from the school and crossing the neighbors' area.
12 BY MS. LEE-CHO:
13 Q And when you say a number of, I think there was
14 maybe a number thrown out at the January 19th meeting.
15 A Yeah, I --
16 Q Was it less than five?
17 A I think so. I don't remember it but I, my
18 impression was it was like three or four kids but I, you
19 know --
20 Q We'll need --
21 A -- I won't elucidate on that. That I've been
22 looking into. I just don't know where they would be going
23 or what kind of shortcut that is and I've been asking, I've
24 been, frankly I didn't want to come out and tell the
25 students not to do that because sometimes if it's not a

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1 major problem I don't want to get one by planting ideas in
2 their mind. So I've been talking to some of the seniors
3 about, hey, do you guys know anything about this and I
4 haven't gotten anything yet. One thing that is interesting
5 that there is no fence, this is the only area of campus that
6 has no fence with the neighbors --
7 Q Uh-huh.
8 A -- and I'm not sure why that is the case. I don't
9 know what the back history is. But it goes from, this is a
10 forested valley area, from the lower school and then it just
11 blends into the neighbor's property.
12 MR. GROSSMAN: Is there any plan to put a fence
13 there, Ms. Lee-Cho?
14 THE WITNESS: I, you know, we talked with our, I
15 would be happy to do that at some point. I think we
16 probably need to find out first why there isn't one if there
17 is some type of, I don't know, previous requirement that we
18 couldn't have a fence there. It's just surprising to me
19 that it's really the only spot in the whole campus that
20 doesn't have that fence.
21 MR. GROSSMAN: Was there any, Ms. Lee-Cho, was
22 there anything in the plans that called for a fence there?
23 MS. LEE-CHO: I don't think we proposed any new
24 fencing along the southwest property line, just to mend
25 existing fences.

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1 THE WITNESS: Uh-huh.
2 MS. LEE-CHO: I think there is a six-foot fence
3 along the west property line --
4 THE WITNESS: Uh-huh.
5 MS. LEE-CHO: -- it's a wood fence and then
6 there's a timber retaining wall. But no, we did not propose
7 any additional fence in that corner.
8 MR. GROSSMAN: Okay. And I don't want to muck
9 around with that because there's also a, a forest
10 conservation plan.
11 MS. LEE-CHO: Uh-huh.
12 MR. GROSSMAN: I don't know if it would interfere
13 with that. So unless there's a problem that comes out in
14 the testimony from the neighbors here I'm not going to
15 suggest adding something of that regard to the plans.
16 MS. LEE-CHO: There is a stone wall along towards
17 the middle of the southern property line and I'm not sure
18 whether that somehow obstructs, the grades there somehow
19 makes it difficult for fencing to remain --
20 MR. GROSSMAN: Okay.
21 MS. LEE-CHO: -- stable, I'm not sure.
22 MR. GROSSMAN: All right. But let's see if
23 there's a problem before we try to remedy it.
24 THE WITNESS: The, the, the athletic, lacrosse,
25 baseballs going into the neighbors' yard. The baseball

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1 field is down in the southeast corner of the property,
2 getting better at it, southeast corner of the property. I
3 think the, the complaints, I don't exactly where --
4 MS. LEE-CHO: The corner property.
5 THE WITNESS: I think it's this one right here,
6 right in the corner, the southeast --
7 MR. GROSSMAN: Southeast corner.
8 THE WITNESS: -- corner.
9 MR. GROSSMAN: Yes.
10 THE WITNESS: So, there's a netting here --
11 MR. GROSSMAN: Along the southern --
12 THE WITNESS: The southern part of the baseball
13 field.
14 MR. GROSSMAN: -- portion of the, all right.
15 THE WITNESS: So, the problem or the balls going
16 over must be during practices or playing around because the
17 actual games, the diamond is on the southwest corner of the
18 field and the field has a very long left field. I haven't
19 seen a homerun go over that netting ever that I remember.
20 But, what happens, we only have two fields. In the spring
21 we have several baseball teams and lacrosse teams, junior
22 varsity and varsity, practicing at the same time. So, some
23 days they'll be using the outfield for practice, one of the
24 teams. And I think that's where the problem may be.
25 MR. GROSSMAN: So they might be hitting balls out

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1 and over --
2 THE WITNESS: That's, that's --
3 MR. GROSSMAN: -- because they're not hitting from
4 home plate is what you're saying.
5 THE WITNESS: They're not hitting from home plate.
6 MR. GROSSMAN: I see.
7 THE WITNESS: There's no high school student there
8 I think could do that.
9 MR. GROSSMAN: Uh-huh. And then that southeast
10 corner, that's Mr. Reghi's house?
11 MS. LEE-CHO: Yes.
12 THE WITNESS: Right. So, I had a conversation
13 with athletic director after the neighbors meeting which Mr.
14 Reghi attended I believe and you know, showed me the picture
15 and talked about it and the athletic director has talked
16 with the coaches, lacrosse and baseball, about shifting the
17 way practice is held, now there are no practices yet but
18 will start soon, so as to avoid the balls going over and
19 also for the coaches to communicate with athletic director
20 immediately if, you know, the same day, if any balls do go
21 over so that we can keep rectifying the way we, we run the
22 practice. In that conversation with the neighbors we did
23 talk about extending the netting, perhaps all the way down
24 towards Seven Locks and it's something that we could do,
25 maybe should do eventually. What I would propose is that we

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1 wait to see if we can operationally stop the problem without
2 having to build this huge netting that frankly, I mean, for
3 us it would be an expenditure, I think for the neighbors
4 maybe an eyesore more than anything. So I think there was a
5 conversation about waiting to see if we can fix it before we
6 proceed.
7 BY MS. LEE-CHO:
8 Q Now, the netting that you're referring to would be
9 similar to the ball netting, 20 foot high poles that exist
10 along Seven Locks --
11 A Exactly.
12 Q -- Road?
13 A Right on the east side of the baseball field we
14 have a ball netting which is to prevent foul balls from
15 going onto Seven Locks.
16 Q And just so I understand, so the initial, the
17 proffer is to try to address it operationally and if the
18 ball intrusion continues through the community liaison
19 council meetings --
20 A Right.
21 Q -- you'll know how to address it and maybe discuss
22 for future implementation --
23 A Right.
24 Q -- a ball netting similar to the one on Seven
25 Locks, is that correct?

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1 A Right, that's correct.
2 MR. GROSSMAN: But wasn't your suggestion, Ms.
3 Lee-Cho, that Mr. Reghi agreed to that at your meeting?
4 MS. LEE-CHO: That is what I expressed to him
5 after the meeting on the telephone call with him. In
6 anticipation of the first hearing we had scheduled we
7 communicated that to him that that would be what we would
8 propose and his, can I share with you his response to me?
9 MR. GROSSMAN: Go ahead.
10 MS. LEE-CHO: His response to me was that he's
11 open to trying an operational solution and then to see if,
12 you know, the ball netting will become necessary. But he
13 wanted to defer to, you know, the hearing examiner's wisdom
14 and discretion to determine what would be best. That was
15 his response to me.
16 MR. GROSSMAN: Okay. Well, I mean, my wisdom is
17 going to be based on the evidence, so --
18 MS. LEE-CHO: I realize. But that's what he,
19 yeah.
20 MR. GROSSMAN: So, Mr. Feinberg, perhaps you can
21 get in touch with Mr. Reghi --
22 MR. FEINBERG: I will be planning --
23 MR. GROSSMAN: -- and see if he, and then report
24 back in writing to us --
25 MR. FEINBERG: Yes.

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1 MR. GROSSMAN: -- as to what his feeling is about
2 that, whether or not an operational fix initially would be
3 preferable --
4 MR. FEINBERG: That's an action item on me.
5 MR. GROSSMAN: Okay.
6 MS. LEE-CHO: Okay. Okay, well, I --
7 BY MS. LEE-CHO:
8 Q Oh one issue I think we didn't address was the
9 screening behind the middle school was the physical --
10 A Right.
11 Q -- and the split rail fencing --
12 A That's right, that's right. So, again, going back
13 to the northwest corner of the property behind the middle
14 school, a couple physical changes that would address both
15 some of the noise and also the views of the new middle
16 school building from the neighbors' west side properties are
17 screening with evergreens, on our property obviously, so
18 that right now, someone else can speak to this more
19 eloquently, but the evergreens to present those, those,
20 those views and also to dampen some of the sound and also we
21 would, we're committed before next school year to place
22 split rail fencing marking the easement on this west,
23 northwest side of the property so as to --
24 Q And when you say easement you mean the forest
25 conservation?

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1 A The forest conservation, I'm sorry, and the forest
2 conservation so as to prevent the students going in there
3 more, more easily. Now there's no, there's no fence so
4 it's, it's much, it's a bit harder to keep them from
5 exploring in that corner.
6 Q Okay. Great, thank you.
7 MS. LEE-CHO: All right, I have no further
8 questions for Mr. DeVicente.
9 MR. FEINBERG: I have several questions --
10 MR. GROSSMAN: All right, Mr. Feinberg?
11 MR. FEINBERG: -- and if I could stand by Exhibit
12 102 --
13 MR. GROSSMAN: Certainly.
14 MR. FEINBERG: -- it'll help illustrate it.
15 CROSS-EXAMINATION
16 BY MR. FEINBERG:
17 Q Talking about the order of construction, all, if
18 I'm correct, the only entrance is through here. I am --
19 MR. GROSSMAN: Through here being?
20 MR. FEINBERG: The only entrance is from Seven
21 Locks Road --
22 MR. GROSSMAN: Yes.
23 MR. FEINBERG: -- heading westward into the
24 property.
25 MR. GROSSMAN: All right.

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1 MR. FEINBERG: One of the construction areas is
2 the middle school back here in the northwest corner, another
3 one is the lower school here and would be the central west
4 part but it's in the backside of the school buildings and
5 talking about the auditorium and everything else. If
6 construction started on that, how would you then
7 subsequently do the, get back here for the construction?
8 MR. GROSSMAN: How'd you get back here being?
9 MR. FEINBERG: Back here to the western side where
10 the middle school are and the new lower school buildings
11 would be going in. Because there is no --
12 MR. GROSSMAN: Well let him answer the question.
13 MS. LEE-CHO: Wait, I mean, would you feel more
14 comfortable discussing phasing --
15 THE WITNESS: Sure, I mean --
16 MS. LEE-CHO: I would just, the construction
17 phasing is something that we did plan to address through the
18 architect's testimony who is next up.
19 MR. GROSSMAN: All right.
20 MS. LEE-CHO: Mr. DeVicente did not address the
21 construction phasing in his direct and I would, I think this
22 cross is more appropriate for the architect's testimony.
23 MR. GROSSMAN: All right.
24 MR. FEINBERG: Okay, then I'll --
25 MR. GROSSMAN: Do you accept that, Mr. Feinberg?

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1 I think that that's --
2 MR. FEINBERG: Yes.
3 MR. GROSSMAN: -- true. It's really not --
4 MR. FEINBERG: Okay.
5 BY MR. FEINBERG:
6 Q But then I bring it up in terms of the funding,
7 the fact that there is essentially no funding available.
8 One of the things that was talked about at the community
9 liaison meeting was not only the forest conservation area
10 here in the northwest corner but also another forest
11 conservation area here in the central south boundary type of
12 thing, split rail fencing and the school graciously offered
13 that they would put in the split rails well before they had
14 to. But if there's no funding available, where's that
15 funding going to come from for that?
16 A Right. Well, to that I, I'm hoping I think we
17 have enough funding for the split rail fencing that you
18 mentioned which is much less than we would need to build
19 multiple buildings --
20 Q Okay.
21 A -- on campus.
22 Q All right.
23 MR. FEINBERG: That's my question. I will address
24 in my statement some of the trespassing issues as will some
25 of the residents --

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1 MR. GROSSMAN: All right.
2 MR. FEINBERG: -- as well as some of the other
3 issues over here.
4 MR. GROSSMAN: Okay. Do any of the other members
5 of the audience have questions? Yes, sir? I guess before
6 anybody from the audience asks a question identify yourself
7 for the record and then ask your question.
8 MR. SAWMELLE: So, Stephen Sawmelle, and may I
9 approach?
10 MR. GROSSMAN: Yes.
11 MR. SAWMELLE: So, correct me if I'm wrong, Gene,
12 this is, would this be Democracy Lane?
13 MR. FEINBERG: No, a little further to the west.
14 MR. GROSSMAN: No, Democracy Lane's on the west.
15 MR. FEINBERG: Your, your property is just about
16 where your pen is.
17 MR. SAWMELLE: Right in here?
18 MR. FEINBERG: Yeah, a little further to the left.
19 MR. SAWMELLE: So I'm, we're in here?
20 MR. FEINBERG: Yeah, a little lower down.
21 MS. LEE-CHO: What is your address?
22 MR. FEINBERG: 81 --
23 MR. SAWMELLE: 8113.
24 MR. FEINBERG: It's the curvy --
25 MS. LEE-CHO: Democracy Lane?

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1 MR. FEINBERG: -- it's the curvy property there.
2 MR. SAWMELLE: So it's right in here?
3 MR. FEINBERG: No, no, it's a little lower.
4 MS. LEE-CHO: This is Democracy Lane, are you in
5 this cul-de-sac?
6 MR. SAWMELLE: Yeah, we're on, we're on --
7 MR. FEINBERG: I'm the engineer. This is your
8 property right over here.
9 MR. GROSSMAN: I can't see because --
10 MR. FEINBERG: Okay, move back over.
11 MR. GROSSMAN: Okay, all right. So in the extreme
12 south, southwest corner?
13 MR. SAWMELLE: Yeah.
14 MR. GROSSMAN: Okay.
15 MR. FEINBERG: Okay.
16 MR. SAWMELLE: Okay, so the point being, now that
17 I know where I live --
18 MR. GROSSMAN: We've established that anyway.
19 MR. SAWMELLE: Let me stand out of the way here.
20 MR. GROSSMAN: Yes, Mr. Sawmelle.
21 MR. SAWMELLE: So, yes, I understand there's noise
22 here but --
23 MR. GROSSMAN: Noise here being in the northwest.
24 MR. SAWMELLE: In the northwest corner. But
25 there's also a great deal of noise in the southwest corner

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1 and I don't know if that came up in your meet, I wasn't at
2 that meeting --
3 THE WITNESS: No.
4 MR. SAWMELLE: -- that you had with the neighbors
5 but we have, during the breaks, early morning we have, and
6 I'll address that in my statement, but there's a lot of
7 noise here.
8 MR. GROSSMAN: So what's your question of the
9 witness?
10 MR. SAWMELLE: Well that's a comment.
11 MR. GROSSMAN: But your comments will have to come
12 in your testimony but --
13 MR. SAWMELLE: All right. I'm glad I didn't know
14 that.
15 MR. GROSSMAN: -- you're not sworn in yet so --
16 MR. SAWMELLE: Okay.
17 MR. GROSSMAN: -- right now you can ask a cross-
18 examination question.
19 MR. SAWMELLE: Okay, okay. Well, that's on the
20 table but I, then I'll, I'll talk about that in my
21 statement.
22 MR. GROSSMAN: Okay, that's fine. Yes, ma'am?
23 MS. KURSBAN: Hi, my name is Sandy Kursban. And I
24 guess earlier you had mentioned that if a big donor comes
25 and says I want to have this wonderful auditorium --

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1 THE COURT REPORTER: Excuse me --
2 MR. GROSSMAN: You have to have to speak up
3 please.
4 THE COURT REPORTER: I need her to get near a
5 microphone --
6 MR. GROSSMAN: Okay.
7 THE COURT REPORTER: -- please.
8 MR. GROSSMAN: Would you come forward, Ms. --
9 MS. KURSBAN: I'll stand, I'll stand.
10 MR. GROSSMAN: No, you'll have to come near a
11 microphone.
12 THE COURT REPORTER: You need to come up to the
13 table, please.
14 MS. KURSBAN: Okay, so my question was, if a donor
15 approaches the school and says that we have many millions of
16 dollars and what we would like you to build right away for
17 me would be the auditorium, I, I guess I'm concerned that,
18 you know, you have to get approval from the Board of Appeals
19 before you would be able to do that, especially in light of
20 what we were just shown there now with the whole
21 transportation thing, so I guess my concern is that since
22 your enrollment went up from 460 to 575 and --
23 MS. LEE-CHO: 529.
24 THE WITNESS: 529.
25 MS. KURSBAN: -- 529 without approving the Board

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1 of Appeals I guess my concern is that would, I just want to
2 make sure that the Board of Appeals are going to be spoken
3 to.
4 MR. GROSSMAN: Right now you have an opportunity
5 to ask a question of the witness, a question --
6 MS. KURSBAN: So my question is --
7 MR. GROSSMAN: -- because if you have a comment --
8 MS. KURSBAN: Okay, sorry.
9 MR. GROSSMAN: -- we're going to let you --
10 MS. KURSBAN: Okay.
11 MR. GROSSMAN: -- we're going to swear you and get
12 your address so, you know --
13 MS. KURSBAN: Okay.
14 MR. GROSSMAN: -- and so on, so.
15 MS. KURSBAN: So my question is, if a, if a donor
16 and came to you and offered you many millions of dollars to
17 build an auditorium what would you do?
18 THE WITNESS: Thank them.
19 MS. KURSBAN: And that's not, it hasn't been
20 approved --
21 MS. LEE-CHO: Well --
22 MS. KURSBAN: -- but that's only what he wants.
23 MS. LEE-CHO: -- if I could clarify, when he used
24 the term auditorium it's meant to describe the theater
25 building --

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1 THE WITNESS: Right.
2 MS. LEE-CHO: -- which is part of this
3 application.
4 THE WITNESS: Right.
5 MS. LEE-CHO: So it would be approved. We're
6 requesting an approval of this theater in the special
7 exception modification.
8 MS. KURSBAN: And that would be the first thing
9 that you would build?
10 MS. LEE-CHO: No.
11 THE WITNESS: No, I mean, really I don't know what
12 we would build first, all it says that some of it going to
13 depend clearly on donor intent and you know, we may have an
14 idea of what we would need first or like first --
15 MS. KURSBAN: Uh-huh.
16 THE WITNESS: -- but I, I remain flexible to
17 change in that.
18 MS. KURSBAN: Right. So, my, my question was is
19 just, my question is will you, you know, will you work with
20 the Board of Appeals before you go ahead and decide what you
21 want to do with the donor's money?
22 THE WITNESS: I guess what I would say is that we
23 would follow all the legal requirements --
24 MS. KURSBAN: Yeah.
25 THE WITNESS: -- before doing anything.

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1 MS. KURSBAN: Uh-huh. But like I said before you
2 didn't with the enrollment.
3 MR. GROSSMAN: Right. I understand your concern
4 but according to Mr. DeVicente's testimony he's going to be
5 influenced in what he wants to build first by the fact that
6 he might have a donor for it who might want their name, the
7 donor might want his or her name on an auditorium rather
8 than a garage and so that might influence him. However, the
9 Board of Appeals can set a rule as to whether or not, what
10 has to go up first so that one of the things raise by
11 technical staff here --
12 MS. KURSBAN: Uh-huh.
13 MR. GROSSMAN: -- was a question of the order of
14 building things and a recommendation that a garage be built
15 first to handle parking needs. So, that is a question
16 that's before me --
17 MS. KURSBAN: Uh-huh.
18 MR. GROSSMAN: -- and will be before the Board of
19 Appeals. So we're going to hear evidence on that issue.
20 MS. KURSBAN: Okay. My other question is that you
21 mentioned that you borrowed 20 million dollars I guess back
22 in '07, '08 for what?
23 THE WITNESS: For the construction of the main
24 signature building which is right here.
25 MR. GROSSMAN: Right here being in the --

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1 THE WITNESS: Oh, sorry.
2 MR. GROSSMAN: -- northwest corner.
3 THE WITNESS: Northwest corner.
4 MS. KURSBAN: Okay.
5 THE WITNESS: And also to retire previous debt we
6 had from the early '90s I believe when we added a library to
7 the, also the same building in the northwest corner.
8 MS. KURSBAN: Uh-huh. Okay. Thank you.
9 MR. GROSSMAN: You're welcome. Any other cross-
10 examination questions? Okay. Any redirect?
11 MS. LEE-CHO: I don't think so. No, that's fine.
12 MR. GROSSMAN: Okay. All right. Let's take a
13 five minute break them and come back here. I think we'll
14 break for lunch at 1:00 if that's agreeable to everybody and
15 we'll take a five minute break now.
16 (Whereupon, at 12:04 p.m., a brief recess was
17 taken.)
18 MR. GROSSMAN: Ms. Lee-Cho, your next witness?
19 MS. LEE-CHO: Joanna Schmickel. Ms. Schmickel,
20 did you want to just go ahead and state your name and
21 address --
22 MS. SCHMICKEL: Sure.
23 MS. LEE-CHO: -- for the record and then be sworn
24 in?
25 MS. SCHMICKEL: Joanna Schmickel and people giving

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1 private addresses or offices?
2 MR. GROSSMAN: You can give your business address
3 if you're an expert witness.
4 MS. SCHMICKEL: Okay. 2909 M Street Northwest in
5 Washington, D.C.
6 MR. GROSSMAN: All right. Would you raise your
7 right hand, please?
8 (Witness sworn.)
9 MR. GROSSMAN: All right. You may proceed.
10 DIRECT EXAMINATION
11 BY MS. LEE-CHO:
12 Q Please describe your field of expertise.
13 A Primarily institutional clients with a specialty
14 in independent schools, K through 12.
15 Q And number of years would you say?
16 A I am practicing for 30 years. I've been in my
17 firm for 29 of those.
18 MR. GROSSMAN: I'm sorry, and what is your
19 specialty?
20 THE WITNESS: Independent, well, institutional
21 clients, primarily independent schools, K through 12,
22 kindergarten through twelfth grade.
23 MR. GROSSMAN: But what's your specialty. I mean,
24 what's your field of expertise?
25 THE WITNESS: Oh, I'm sorry. I'm an architect.

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1 MR. GROSSMAN: Okay.
2 THE WITNESS: Yes, could be a teacher, could be a
3 -- I'm sorry.
4 BY MS. LEE-CHO:
5 Q So, have you ever previously testified as an
6 expert before the Montgomery County Board of Appeals or the
7 hearing examiner?
8 A Montgomery County we were here for the
9 administrative adjustment for The Heights School and other
10 than that not in Montgomery County.
11 MR. GROSSMAN: So you were here for the
12 administrative adjustment, you didn't testify as an expert.
13 THE WITNESS: No, I did not.
14 MS. LEE-CHO: This is Ms. Schmickel's resume. I
15 will provide to --
16 MR. GROSSMAN: This is not in the record yet?
17 MS. LEE-CHO: Not yet.
18 MR. GROSSMAN: Okay. So we'll make this Exhibit
19 No. 103.
20 (Exhibit No. 103 was received
21 into evidence.)
22 MS. LEE-CHO: Would you like me to have Ms.
23 Schmickel walk through her resume or can I offer her as an
24 expert in the field of architecture and institutional site
25 design based on her resume?

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1 MR. GROSSMAN: She doesn't have to walk through
2 all of it but I think the highlights --
3 MS. LEE-CHO: Highlights.
4 MR. GROSSMAN: -- would be helpful.
5 BY MS. LEE-CHO:
6 Q If you could highlight your resume?
7 A Okay. I have been with Cox, Graae and Spack
8 Architects which was formally called Chris Cox Associates
9 since 1986. I have worked on a variety of schools in the
10 Washington, D.C. area. Again, since I'm specifically
11 talking about independent schools a few of them are The
12 Potomac School in McLean, I've worked with Georgetown
13 Preparatory School in Bethesda, Maryland, The Heights
14 School, I've done a few projects with the D.C. Public
15 Schools as well and a few higher ed schools. And then in
16 addition to that some other institutional clients such as
17 the Washington Ballet, the Folger Shakespeare Library and
18 the World Bank.
19 Q And I do see that you're registered in the state
20 of Maryland --
21 A I'm sorry, uh-huh, yes, registered in the state of
22 Maryland as well as the District of Columbia and Virginia
23 and have worked in a couple of other --
24 MR. GROSSMAN: When you say registered is that a
25 licensing?

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1 THE WITNESS: It's a license to practice
2 architecture so I am licensed to practice architecture in
3 those states.
4 MR. GROSSMAN: And do you have a license number
5 for the --
6 THE WITNESS: I have a license number --
7 MR. GROSSMAN: -- state of Maryland?
8 THE WITNESS: -- for each of those and I don't
9 know any of them off the top of my head.
10 MR. GROSSMAN: All right.
11 THE WITNESS: I can get all of them for you, but.
12 MR. GROSSMAN: All right. Have you testified as
13 an expert in any case anywhere as an architect?
14 THE WITNESS: I would say I have made many
15 presentations to various jurisdictions but not testified as
16 an expert witness.
17 MR. GROSSMAN: Okay.
18 THE WITNESS: Always on behalf of the client for
19 whom I'm working.
20 MR. GROSSMAN: Let me explain, this is a process
21 called voir dire. When somebody is offered as an expert
22 witness in a case they have to state what their expertise is
23 and then their qualifications and then you'll have the
24 opportunity to cross-examine as to those qualifications
25 before the witness is accepted as an expert. And an expert

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1 does not have to be somebody who has a degree in something.
2 An expert in the law is somebody who can offer information,
3 facts, opinions, beyond the ken of the fact-finder or the
4 average person. So that's generally what an expert is. In
5 this case, the witness has testified that she is a licensed
6 architect in the state of Maryland. Your education?
7 THE WITNESS: I have a bachelor of architecture
8 from Syracuse University.
9 MR. GROSSMAN: Okay. All right. Any cross-
10 examination questions --
11 MR. FEINBERG: Not from me.
12 MR. GROSSMAN: -- regarding this witness'
13 expertise?
14 MR. FEINBERG: Not on her expertise.
15 MR. GROSSMAN: Okay. Anybody else? No, okay. I
16 take it you --
17 MS. LEE-CHO: If there is no objection I would
18 like to offer Ms. Schmickel as an expert in the field of
19 architecture and institution site design.
20 MR. GROSSMAN: Okay, I accept Ms. Schmickel as an
21 expert in architecture and institutional site design.
22 BY MS. LEE-CHO:
23 Q Ms. Schmickel, could you begin by providing a
24 brief overview of the existing improvements on campus
25 including some that have been approved but yet unbuilt?

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1 And --
2 A I'm going to --
3 Q -- using the --
4 A -- readjust these a tab bit. Let me lower this.
5 Q Using the existing conditions plan labeled CS 101
6 which I believe is Exhibit, where is it, No. 34E1 or E1.
7 A The property is the 19 acres along Seven Locks
8 Road. Again, this plan is oriented to the north, the same
9 orientation we've been looking at it before. The campus
10 entrance, again, off of Seven Locks Road comes along the
11 north side into a parking --
12 MR. GROSSMAN: I'm going to stop you for one
13 second.
14 THE WITNESS: Uh-huh.
15 MR. GROSSMAN: This is an exhibit that's
16 already --
17 MS. LEE-CHO: It's already in.
18 MR. GROSSMAN: And this is exhibit?
19 MS. LEE-CHO: 34E1, or E1, I keep saying E-1.
20 MR. GROSSMAN: Okay. Okay, you may proceed.
21 THE WITNESS: Okay.
22 MR. GROSSMAN: Thank you.
23 THE WITNESS: Upon arrival there is a surface
24 parking lot and then kind of due west as you're heading into
25 the site is the signature building that Mr. DeVicente was

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1 talking about before. It was built in the, around 2008.
2 MS. LEE-CHO: '07.
3 MR. MCGOVERN: '06 and '07.
4 THE WITNESS: Okay. Behind it, to the west --
5 MR. GROSSMAN: No help from the audience.
6 THE WITNESS: Sorry.
7 MR. GROSSMAN: It's fine.
8 THE WITNESS: I'm sorry. Behind it to the west is
9 the existing middle school and it is a one story building
10 built in the '60s. It is not adequate these days for, for
11 educating especially middle school boys, very narrow
12 corridors, many of the classrooms are entered via steps,
13 several like five risers into classrooms. We've already
14 discussed lockers are located outside of the building on the
15 west, northwest corner and the southwest corner of the
16 building. And so this is an existing building that we are
17 considering as part of the improvements. There is also,
18 there are two log homes, one is of the same era, maybe even
19 earlier and the other one newer, I don't know the exact
20 year. Both of these buildings house the lower school. And
21 the upper school, as we talked before, is in the signature
22 building and it kind of connects over to the middle school.
23 There is a gymnasium on the campus. It is, I would call it
24 a Butler building, it's a metal frame building, very
25 industrial, does not provide an awful lot of amenities. It

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1 does have a basketball court, there are some storage rooms,
2 small locker area. It's not a building in which you can
3 have a large venue but you can play basketball in it. There
4 are several portable buildings. One is a facilities
5 building where their facility maintenance folks keep all of
6 their equipment. There are two that are actually used as
7 part of their academic program. They have a music program
8 in one, they have, I think, wrestling in one, so, so
9 facilities on the campus, other than the more current
10 buildings, are, I would say, substandard and in need of some
11 improvement. Also on campus are a few play fields, an upper
12 play field, a soccer field, and a lower play field which is
13 where they have their baseball. They have a few basketball
14 courts. The basketball courts are in the center of the
15 site. The play fields on are on the southeast corner of the
16 site. And in the northeast corner of the site are, are
17 tennis courts. They, the topography of the site is, it's
18 actually very lovely, it's a bit challenging to build on.
19 There is a valley along the west side that the campus slopes
20 into the valley and then from the neighboring property line,
21 the west property, it also slopes into the valley. There is
22 some contour leading off to the east side so the campus, the
23 signature building and the gymnasium are kind of at the high
24 point, so to speak, of this site. And then these play
25 fields on the southeast corner step down. Do you have any

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1 questions about that?
2 Q Did you, I'm sorry, did you cover the tennis, the
3 basketball courts?
4 A The basketball courts are in the center of this
5 site and then the tennis courts are in the northeast corner
6 of the site.
7 Q Okay. Is there anything else? Okay. Before you
8 get to the campus master plan I just wanted to, for the
9 record, focus your attention on specific sections of the
10 zoning ordinance that is part of The Heights School's
11 required findings for the Board to approve the modification
12 as requested, specifically Section 59-G-1.23(g) talks about
13 building compatibility and residential use.
14 A Sure.
15 Q Are you familiar with that section?
16 A I am familiar with that, yes.
17 Q Are you also familiar with Section 59-G-1.26 which
18 again talks about structures on a special exception site
19 whenever practicable and within these types of zones have a
20 residential character and compatibility?
21 A Yes.
22 Q So with those sections in mind, could you walk us
23 through --
24 A Uh-huh.
25 Q -- the proposed campus master plan using the

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1 building elevations and --
2 A Well some of these are in the 11 by 17 documents
3 that were --
4 MS. LEE-CHO: And I would say that these are in
5 the record but there may be some sheets that are updated and
6 so I would request that these be entered separately as a new
7 exhibit.
8 MR. GROSSMAN: All right.
9 MS. LEE-CHO: And I will pass it out. Would you
10 like one or two?
11 MR. GROSSMAN: Well, two would be lovely if you
12 have a second one. Thank you.
13 MS. LEE-CHO: This is for the --
14 MR. GROSSMAN: All right, so this will be Exhibit
15 No. 104.
16 MS. LEE-CHO: Now, this blow-up is essentially
17 just an enlargement of the first page of this exhibit.
18 MR. GROSSMAN: Okay. Now, Exhibit No. 104 is the
19 entire campus master plan?
20 MS. LEE-CHO: And building elevations.
21 MR. GROSSMAN: The master plan and building
22 elevations?
23 MS. LEE-CHO: Yes.
24 MR. GROSSMAN: Okay. So, shall we say updated
25 campus master plan, is that accurately characterize it, Ms.

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1 Lee-Cho?
2 MS. LEE-CHO: Yes.
3 MR. GROSSMAN: Okay. So, updated campus master
4 plan and elevations.
5 (Exhibit No. 104 was received
6 into evidence.)
7 MS. LEE-CHO: And that would be 102? No --
8 MR. GROSSMAN: 104.
9 MS. LEE-CHO: -- 104, I missed --
10 MR. GROSSMAN: You missed one, huh?
11 MS. LEE-CHO: Can you repeat back --
12 MR. GROSSMAN: 103 is Ms. Schmickel's resume.
13 MS. LEE-CHO: Okay.
14 MR. GROSSMAN: 102 is the aerial photo of the
15 subject site.
16 MS. LEE-CHO: Okay. And I would say illustrative
17 campus master plan.
18 MR. GROSSMAN: Updated illustrative campus master
19 plan. Is there a non-illustrative version of the campus
20 master plan or is that --
21 MS. LEE-CHO: Well, the special exception site
22 plan is the campus master plan. It's sort of, I mean, it
23 has all the same information, so --
24 MR. GROSSMAN: Okay.
25 MS. LEE-CHO: -- this is the illustrative version.

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1 THE WITNESS: Has color on it.
2 MR. GROSSMAN: I understand. We used to call them
3 render.
4 THE WITNESS: Prettier.
5 MR. GROSSMAN: We used to say rendered but
6 illustrative is probably --
7 BY MS. LEE-CHO:
8 Q Please proceed.
9 A I'll start with the plan and then go to the
10 elevations but the plan will help me just orient you to the
11 new buildings. Again, coming on campus the same general
12 approach, the same surface lot that's been reduced from
13 about 130 existing to about 98 in final master plan. The
14 signature building is to remain and then the middle school
15 at the back of the site on the northeast, northwest corner
16 is replaced in its current location. The footprint is a
17 very moderate adjustments, more or less in the same exact
18 footprint. It is, however, a two-story building and it will
19 allow for expansion of classes, more classes which will
20 allow for some of the middle school classes that are
21 currently in the upper school to move over to their own
22 school. There are some larger gathering spaces there that
23 do not exist in the current middle school. The building
24 will meet all ADA requirements, all accessibility
25 requirements. It very much does not now and the lockers

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1 will be brought inside which is a big deal because not only
2 is that just a good idea to have the lockers inside where
3 the kids will be near the specific areas for each of the
4 grades but it will also move some of that noise inside and
5 it'll be much better during bad weather. In the kind of the
6 valley area, this central area of the valley we're adding a
7 lower school, approximately 8,500 square feet, two floors.
8 And both of these buildings are two floors and their massing
9 is such and the materials are such that they do have a
10 residential feel. They're going to be some wood siding and
11 stone and materials I'll show you in the elevations that are
12 going to provide that residential feel. So the lower school
13 is item number five on the plan. Number six is the athletic
14 building that has been previously approved but it is now
15 shown here taking the space that's the existing gymnasium as
16 well as some of the existing some of the modular, portable
17 buildings outside of the gymnasium are in that site. So
18 this is already approved but that's showing where that goes.
19 To the east of the athletic building is the new play field.
20 It is on a structured parking garage. The parking is below
21 that. So now we've taken additional parking which will be
22 used primarily for events, they don't, the school does not
23 require the number of spaces we're going to provide, 159
24 spaces in this structured parking, in addition to the
25 remaining 98 on the surface lot, to give you about 257 I

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1 think was the final number of spaces. That's not necessary
2 for their day to day activity but it is going to be very
3 helpful when they have an event at the gymnasium or an event
4 like a graduation or something of that size. So, there's an
5 upper field that goes over top of the parking and then a
6 lower field. These are basically in the same location as
7 their two fields now. They do step downhill now but they'll
8 be updated and slightly graded differently. The, in the
9 center of the campus where the basketball courts are
10 currently located will be noted as number seven will be
11 their performing arts building and dining building, they'll
12 be combined in this building and that is going on top of the
13 gymnasium, I mean, on top of the basketball courts. We're
14 making an effort not to increase footprints significantly
15 where we don't have to if we have previously impervious
16 surfaces.
17 MR. GROSSMAN: Well, are you saying that the
18 proposed performing arts center is on top of the basketball
19 courts?
20 THE WITNESS: It is where the basketball courts
21 are located.
22 MR. GROSSMAN: I see.
23 THE WITNESS: So there will no longer be
24 basketball courts there.
25 MR. GROSSMAN: Okay.

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1 THE WITNESS: So on top of what is now an
2 impervious surface. So we're, again, very concerned to
3 maintain the forest conservation in, in pretty close to
4 where it is now. There are some adjustments. I think the
5 civil engineer will talk about that a little bit.
6 MR. GROSSMAN: I thought I got the impression from
7 Mr. DeVicente that the garage was proposed to be under the
8 new auditorium --
9 THE WITNESS: No, the garage --
10 MR. GROSSMAN: -- but is that --
11 THE WITNESS: -- is to be underneath the new play
12 field.
13 MR. GROSSMAN: Okay.
14 THE WITNESS: It's adjacent to the new auditorium.
15 MR. GROSSMAN: Okay.
16 THE WITNESS: There will be a connection below
17 ground from the garage to the new auditorium.
18 MR. GROSSMAN: Okay.
19 THE WITNESS: There will be a connection
20 underground from the garage to the new athletic building.
21 MR. GROSSMAN: Okay.
22 THE WITNESS: So there will be a tie between them.
23 MR. GROSSMAN: All right.
24 THE WITNESS: Okay. Tennis courts will remain in
25 their current location on the northeast corner of the site.

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1 Moving through the elevations, the first one in the package,
2 assuming we're all oriented in the same sequence, I'll let
3 you flip yours so I can make sure, is the lower school
4 building, again this is number five in the plan. The first
5 upper left hand corner of the sheet you see the approach
6 side from the east and that's a one-story building. Because
7 the grade is falling away to the valley when you get to the
8 valley side it's a two story building. This is a building
9 intended to have wood siding, wood beams and columns and be
10 kind of a residential feel, very, very, a lot of windows,
11 however, on the side that looks out to the valley. That
12 will have four classrooms and administrative space, some,
13 some storage. The next one in the sequence --
14 MR. GROSSMAN: While you're mentioning what its
15 exterior is can you address Ms. Lee-Cho's question about
16 consistency with 59-G-1.23(g) and 59-G-1.26?
17 THE WITNESS: Well, I mean, we're working to make
18 the massing feel like a residential building. In this case
19 it has a sloped roof, which is not to say that all
20 residential buildings have sloped roofs, but it has sloped
21 roofs and gable ends, it has materials, again, that would be
22 consistent with a residential building, siding, maybe some
23 stone in site walls. So those are all materials that would
24 be very comfortable in a residential area. It's sited in
25 such a way that it would feel comfortable in a residential

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1 area. Again, it's one-story above grade on the east side,
2 only two stories above grade on the west side.
3 MR. GROSSMAN: Is that true of all the
4 construction that is being proposed on the site?
5 THE WITNESS: All the construction that is being
6 proposed, the middle school and the lower school, yes, those
7 are very much trying to feel residential. It's less
8 practicable to have theater feel that way but we are trying
9 to keep the scale very low. We're pushing some of the
10 bigger spaces down into grade so that the building stays
11 within the height limit of the residential zoning.
12 Residential zoning allows for 35 feet above grade. So we're
13 staying within that height.
14 MR. GROSSMAN: And all of the proposed buildings
15 will be within the residential height limits?
16 THE WITNESS: Yes, and area and all the other
17 zoning regulations.
18 MR. GROSSMAN: Okay.
19 THE WITNESS: Our setbacks meet all those
20 regulations.
21 MR. GROSSMAN: All right.
22 THE WITNESS: So the next building is the middle
23 school. The first elevation is shown from the west side and
24 again, grade is falling away a little bit on the west side
25 of this building so you see the two stories plus the base

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1 which we do a stone base to wood siding, sloped roofs, we're
2 keeping with kind of the shed roof characteristics of the
3 existing middle school but we are creating a larger building
4 by making it a two-story building. I would like to skip
5 ahead just to an illustration that we have.
6 MR. GROSSMAN: While you're skipping --
7 THE WITNESS: Uh-huh.
8 MR. GROSSMAN: -- Ms. Lee-Cho, do you have copies
9 of these new exhibits on disc for us?
10 MS. LEE-CHO: These were all --
11 MR. GROSSMAN: You said this was a new --
12 MS. LEE-CHO: This one --
13 MR. GROSSMAN: -- these were updated.
14 MS. LEE-CHO: I will have to get that to you.
15 MR. GROSSMAN: Okay.
16 MS. LEE-CHO: I do apologize for that.
17 MR. GROSSMAN: All right. I'd appreciate that.
18 MS. LEE-CHO: Now, I thought I provided, prior to
19 the January 27th --
20 MR. GROSSMAN: You may have, yeah, for what you
21 filed previously you provided it. I'm just saying you said
22 these were revised so I just wanted to make sure --
23 MS. LEE-CHO: I just recall burning a disc for the
24 hearing and I don't remember where it went.
25 MR. GROSSMAN: Somebody has, there's a disc in

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1 front of you.
2 MS. LEE-CHO: This is something else.
3 MR. GROSSMAN: Okay.
4 MS. LEE-CHO: I will definitely get that to you.
5 MR. GROSSMAN: Okay, thank you.
6 THE WITNESS: If you flip ahead to a, an aerial
7 plan, aerial map and a building site section the aerial --
8 MR. GROSSMAN: I'm not sure -- all right, I see
9 it.
10 THE WITNESS: Yeah, I'm sorry, I didn't know how
11 many sheets ahead that was, I think three.
12 MR. GROSSMAN: okay.
13 THE WITNESS: The red line with the arrows are,
14 that's indicating where we're cutting the next image which
15 is going to be a site section.
16 MR. GROSSMAN: Okay.
17 THE WITNESS: It goes through two buildings on the
18 Democracy Lane property and then through the middle school,
19 the new middle school. And then if you skip to the next
20 page you'll see that site section. And what we're showing
21 here is a scale of the buildings. Democracy Lane is on the
22 far left, the two houses, it's kind of this pipestem layout,
23 so one house is on Democracy Lane, the other house is
24 backing up to the property line on the west side of the
25 campus and then the next building on the far right is the

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1 proposed middle school for The Heights.
2 MR. GROSSMAN: Okay.
3 THE WITNESS: And so you can see that massing-wise
4 we're trying to keep it, again, below that 35 foot height
5 limit and breaking it down into a mass that is consistent
6 with the residential feel. It is bigger than a typical
7 residential building so it's going to feel bigger but we are
8 interested in designing it so that it does meet all of those
9 requirements.
10 BY MS. LEE-CHO:
11 Q So in that regard if you could just expand a tiny
12 bit further on the articulation of the middle school on that
13 façade to help break up the mass.
14 A Yeah, so on the west elevation you'll see, and
15 it's, it's obviously two dimensional and flat on paper, but
16 we have a series of bays that project. Those bays are one
17 story with the stone base. The far end space which is kind
18 of glassy, that's going to be the living room for the middle
19 school. That is, again, a smaller mass. So these small
20 masses are broken out so that you don't have just one big
21 continuous elevation. And even within this, the two-story
22 portion of the building the massing is broken up. So, at
23 the far north end you have an area that is, has a few
24 smaller windows and then there's a stair and the stair
25 becomes a different mass, it projects a small amount. The

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1 plan as shown here doesn't articulate all of the in and out.
2 It kind of gives the outermost limits of that. And as we
3 design that that'll be articulated more. But the, the
4 massing does push in and out. The roof that's sloping, the
5 lower roof that's sloping toward us in this elevation brings
6 the massing again down, that section that we looked at a
7 second ago you can see that that massing on the west side is
8 lower and then the two story moves up so we're letting this
9 slope down, to again, break up --
10 MR. GROSSMAN: Right.
11 THE WITNESS: -- the elevation. So if you're
12 looking at this in a two dimensional way you see this height
13 well beyond as the highest point. But in reality you're not
14 going to read this as the height of the building. You're
15 going to be standing down here looking at this eave line and
16 then the roof will be sloping away from you until you get to
17 the clear story beyond. So that's, this is a series of
18 layers. We've flattened it into a two dimensional image
19 here --
20 MR. GROSSMAN: Right.
21 THE WITNESS: -- so it seems much more significant
22 in its size when its two dimensional. So if we were to
23 model this three dimensionally you would see that the
24 massing is, again --
25 MS. LEE-CHO: Uh-huh.

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1 THE WITNESS: -- being consistent with kind of
2 residential massing, it's broken down.
3 MS. WEISS: Do we all have that picture?
4 MS. LEE-CHO: It should be in your package.
5 MR. FEINBERG: Yeah, I haven't found it yet.
6 MS. WEISS: I don't, I've been looking for it.
7 THE WITNESS: It's right there, yeah, you have it.
8 Yours printed darker than mine.
9 MR. GROSSMAN: Yeah, yeah, one copy I have is
10 lighter and one copy is darker.
11 MR. FEINBERG: Okay.
12 THE WITNESS: But you have right, right there.
13 MR. FEINBERG: All right, because it looks
14 different.
15 THE WITNESS: Okay. I'll just hold this up so you
16 can see. It looks darker.
17 MS. WEISS: Oh, is this it? Oh, okay.
18 THE WITNESS: Here, oh, can you see that?
19 MS. WEISS: Yeah. Oh, okay.
20 MS. LEE-CHO: It's just they're darker.
21 MS. WEISS: It's a different color.
22 THE WITNESS: It is a different color. You know
23 what, that's somebody's printer.
24 MR. GROSSMAN: It's the two faces of eaves.
25 THE WITNESS: Yeah, I have no responsibility for

1 printer quality.
 2 MS. LEE-CHO: That's my fault.
 3 THE WITNESS: The next page as you flip, and it
 4 looks like this in my packet, shows the east side of the
 5 middle school right here and it shows the south end of the
 6 middle school looking this way. So that living room space
 7 that I talked about is right here. Again, this is in the
 8 foreground, this siding is in the background. So, massing-
 9 wise, again, we're breaking this up so you don't have these
 10 great big elevations that are, you know, right up in the
 11 very front of the building. They step back away from the
 12 plane of the building. So that, that is something that not
 13 only is going to fit nicely within the role of a residential
 14 context, it also is going to fit nicely within the context
 15 of the campus.
 16 MR. GROSSMAN: Right.
 17 THE WITNESS: So, the next two drawings are the
 18 ones we looked at already, the site aerial and then the
 19 section through the site, followed by garage building
 20 elevations. So, if you look at these elevations, what we're
 21 showing here in the background is the athletic field and
 22 what we're showing the long elevation and the short
 23 elevation of the garage. What happens is this again is a
 24 higher plane, the play field, the garage is below that. And
 25 then as the play field steps down to the east and the site

1 naturally falls away to the south you're going to have the
 2 side of the garage exposed. We're leaving that open because
 3 that's going to provide ventilation and such but also it
 4 will give us an opportunity to have a lighter, airier
 5 structure, just the rhythm of the columns, and then the plan
 6 is to do a green screen on those elevations of the garage so
 7 that they are planted and they become an architectural
 8 landscape element. Above the green screen of the garage
 9 there will be a fencing to keep balls and kids from going
 10 over the edge. Kids are more important than balls but both
 11 are going to be protected. The next few, the next plan
 12 shows that garage level. So, it's as if you take this play
 13 field off, that next plan is the garage. So you come from
 14 the surface parking in the center of the campus, come down a
 15 slope, so this is going downhill, downhill and then you
 16 enter the garage in what is kind of the northeast corner of
 17 the garage. And again, it's in the upper right hand corner
 18 of the drawings in the package. And then underneath that is
 19 parking for 159 cars but also access to the gymnasium, to
 20 some facilities, functions in the gymnasium building. And
 21 the last elevation is one of a, of the theater. Now, this
 22 is one that is a little harder to make look residential
 23 because you have a large few volumes. One is the seating
 24 area for the auditorium, the theater. That is going to be
 25 on the upper level and it is kind of orangish in my plan

1 here, number seven. The massing, again, falls down as you
 2 step down to become smaller and in the upper of the two
 3 drawings, where it says south elevation, you're looking at
 4 this elevation. So, the mass in the front that is stone and
 5 glass is much lower than the mass in the back which is wood
 6 siding that is the auditorium. So, the glass is bringing
 7 light down into a dining room, something that is very needed
 8 in their campus. They don't have a performing space and
 9 they don't have a dining room. They have a room in the
 10 signature building that they have lunch. I've had lunch
 11 there with the middle school kids. It's loud, it's crowded.
 12 They need a new dining room so that's happening over here.
 13 But they also don't have the program space for their
 14 performing arts and their arts. So that's the other thing
 15 that's going into this building.
 16 BY MS. LEE-CHO:
 17 Q Could you please talk about sort of where the
 18 school started with regard to the theater as far as their,
 19 you know --
 20 A The process we went through?
 21 Q Well, the programmatic start --
 22 A Uh-huh.
 23 Q -- of the sizing of the --
 24 A Yeah.
 25 Q -- theater.

1 A The theater, we were trying to get a much bigger
 2 theater than ultimately we've ended with. We were trying to
 3 get over a 500 seat theater. They have a very robust
 4 program now. They go off campus to the Strathmore
 5 performing arts facility and we could not get a seating of
 6 that size on this campus. We started with a single big
 7 building in the middle of the campus here that had theater
 8 and gymnasium. Again, the massing, trying to make it feel
 9 comfortable, both on the campus and within a residential
 10 neighborhood were, were, it just did not feel comfortable.
 11 It was not a practical approach to this. So, the evolution
 12 finally started to break the buildings into separate pieces.
 13 We, at another point, had the theater over in a middle
 14 school theater building over here. Again, massing-wise and
 15 construction-wise it's just very tricky and decided that
 16 pulling it out did a number of things. One is it brought
 17 all these kind of public functions of the signature building
 18 that has administrative, the athletic building that has the
 19 sporting events, the theater production type of functions
 20 all in the middle of campus so visitors could come in and be
 21 close to the entrance to any one of these. We could also
 22 tie them nicely with some landscaping for before and after
 23 functions. It kept the educational, smaller buildings in
 24 the back closer to the residential side of the campus. It
 25 did require a reduction in the seating size. We're down

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1 under 400 seats at the moment. As we fine-tune the building
2 the exact number of seats will be fine-tuned but we are not
3 able to build in this part of the campus, respect the forest
4 easement, conservation easement for this area of the campus
5 and make the size building that we had originally tried to
6 make but we do have a lot of these other functions that are
7 working very nicely and that was a compromise. So we have
8 all of these buildings within proximity to the parking,
9 within proximity to arrival, et cetera.

10 Q And just briefly going back onto the parking
11 garage and the number of spaces yielded out of the parking
12 garage --

13 A Uh-huh.

14 Q -- could you --

15 A 159.

16 Q -- talk about what got us to that number?

17 A Well, what got us to that number is we looked at
18 different places to put parking. We actually looked
19 underneath of the parking on the surface. This is a bit,
20 very difficult area, aside from the fact that we have
21 utilities coming through here, this is, there's more bedrock
22 in this area. We've done some core drills here. This was a
23 logical place because it does kind of support a number of
24 different things but the size of the parking is not based on
25 specifically a need. 159 spaces is a lot of spaces. If

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1 they maximize everything built out on this campus they only
2 need 135. So, this is based on the fact we need to build a
3 soccer field and that's the size of a soccer field. We have
4 a 330 foot by 200 foot wide soccer field which is a soccer,
5 a regulation size soccer field with a 10 foot buffer around
6 the edge. So, 10 feet's not a lot. We needed something
7 around the edge. So we were making the smallest soccer
8 field and putting parking under it. Again, we didn't want
9 more blacktop on this campus. We want the most amount of,
10 of green we can get. So we put that underneath a play field
11 and that size comes from a soccer field size. And then you
12 lay it out and you get 159 cars.

13 Q Okay. Can we, I guess, now that we're on the
14 topic of parking, go through the adequacy of parking on the
15 site? You mentioned --

16 A Uh-huh.

17 Q -- you know, a number of figures. If you could
18 walk us through what is the applicable parking rate under
19 the applicable zoning ordinance?

20 A We, we need one space per faculty or employee and
21 one per student driver. And right now, based on the number
22 of enrolled students and the number of faculty, we need 109
23 spaces. They have 130. So they're currently providing --

24 MR. GROSSMAN: Did you just say one space per
25 student and one space per faculty member?

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1 THE WITNESS: One space per student driver.
2 MR. GROSSMAN: Okay, and?
3 THE WITNESS: And one per faculty member.
4 MR. GROSSMAN: And what's the proposed --
5 BY MS. LEE-CHO:
6 Q How many student drivers?
7 A We have 35 student drivers and 74 faculty so 109
8 is what they require right now by zoning and they have 130
9 right now.
10 Q So --
11 MR. GROSSMAN: You have 74 faculty members that
12 are currently on campus or that are drivers? What's the 74
13 number reference?
14 THE WITNESS: 74 is, I think, the faculty and the
15 staff total.
16 MR. GROSSMAN: Total now or --
17 THE WITNESS: Now.
18 MR. GROSSMAN: -- total --
19 THE WITNESS: No, now.
20 MR. GROSSMAN: Okay.
21 THE WITNESS: So, their future enrollment when
22 they want to go to 650 would project to 95 faculty/staff and
23 then they're saying they would have 40 student drivers and
24 that would require 135 total. This is a zoning requirement,
25 not, you know --

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1 MR. GROSSMAN: Right.
2 THE WITNESS: They currently in their surface lot
3 which is what you see here as kind of the future
4 configuration is kind of similar but they have a whole area
5 that we're going to landscape and take out of the current
6 parking count and put it down below. So they currently have
7 the 135.
8 MS. LEE-CHO: 130.
9 THE WITNESS: 130, I'm sorry, in this
10 configuration. In this configuration you will then have 98
11 surface lots and --
12 MR. GROSSMAN: 98 surface spots?
13 THE WITNESS: Spots, yup, surface spots, sorry,
14 not lots.
15 MR. GROSSMAN: Okay.
16 THE WITNESS: Getting confused, too many numbers.
17 98 surface parking spots, we'll have 159 below the play
18 field in the structure parking.
19 MR. GROSSMAN: And as I recall it, some of those
20 159 are not car spaces, is that correct? They were
21 motorcycle spaces?
22 THE WITNESS: We have the mix that has some
23 motorcycle spaces, compact car and standard car. We have --
24 MR. GROSSMAN: Right.
25 THE WITNESS: -- the required number of accessible

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1 spots for vans.
2 MR. GROSSMAN: What is that number?
3 THE WITNESS: I don't remember off the top of my
4 head.
5 MR. GROSSMAN: But that's all included in the 159?
6 THE WITNESS: It's all included in the 159. The
7 plan shown in this package --
8 MR. GROSSMAN: Yes.
9 THE WITNESS: -- it shows the layout and the
10 numbers that are there but I have not committed those to
11 memory. We have one, two, three, four, five ADA accessible
12 spaces. We have four motorcycle spaces.
13 MS. LEE-CHO: Electronic charging.
14 THE WITNESS: Oh, those are electronic charging.
15 I'm sorry, we don't do that a lot these days. We're just
16 starting to get into it so I'm trying to figure out what we
17 had done there. So that, that is the entire number is 159.
18 MR. GROSSMAN: Okay, okay.
19 THE WITNESS: And again, when you combine these
20 for --
21 MR. GROSSMAN: The entire number of garage spaces?
22 THE WITNESS: Garage spaces.
23 MR. GROSSMAN: Right.
24 THE WITNESS: Uh-huh. When we combine the 159
25 garage spaces and the 98 surface spaces, 257 spaces total

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1 far exceeds what the zoning requirement which will be 135.
2 MR. GROSSMAN: Yeah, that's the zoning code
3 requirement but it doesn't, but obviously you're required to
4 have sufficient parking so that when you have events or
5 whatever you're not interfering with the community.
6 THE WITNESS: That's what they're, that is exactly
7 what their aim is is to meet zoning code, that's great, but
8 we want to also create parking sufficient for their events.
9 They don't want to have parking on Seven Locks Road. I
10 don't know why anybody would park there but they don't want
11 them parking on Seven Locks Road. So this will give them
12 that additional parking that is required to support their
13 events but it's not making surface parking that's hardtop.
14 It's trying to, to tuck it away so we can keep this campus
15 as green as possible.
16 BY MS. LEE-CHO:
17 Q So, Ms. Schmickel, you're aware of the technical
18 staff's recommendation --
19 A Uh-huh.
20 Q -- that the garage go first above all else because
21 of the concern --
22 MR. GROSSMAN: Well not above, but --
23 MS. LEE-CHO: -- or --
24 THE WITNESS: Below.
25 MR. GROSSMAN: -- below.

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1 MS. LEE-CHO: That's true.
2 THE WITNESS: Yes.
3 BY MS. LEE-CHO:
4 Q Go first before any other improvement on the site
5 and the school's proposal is to have some options on the
6 table for alternatives. There was one alternative that was
7 mentioned by the technical staff as an interim alternative
8 and that's to create more spaces where the current tennis
9 courts are located.
10 A Uh-huh.
11 Q But I wonder if you could talk about that as maybe
12 a potential longer term solution to on-site parking and how
13 many spaces might be yielded from that area.
14 A From the tennis courts?
15 Q Uh-huh.
16 A Yeah, that was discussed as an interim or
17 potentially long-term, but an interim space, parking area as
18 desired by the school at least because they don't want to
19 lose their tennis courts long term but you could get an
20 additional 50 spaces there. So that would free up some of
21 the parking if you're using any of the existing parking for
22 staging or creating the new parking. So we do have some
23 swing space on campus.
24 MR. GROSSMAN: And I'm sorry, what is that, what's
25 in that upper northeastern --

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1 THE WITNESS: The tennis courts.
2 MR. GROSSMAN: Oh, okay.
3 THE WITNESS: So we could go resurface that, put
4 down gravel or whatever, and make a temporary lot there.
5 BY MS. LEE-CHO:
6 Q And you're familiar with the master plan that's
7 applicable to this property, the 2002 Potomac sub-region
8 master plan?
9 A Uh-huh.
10 Q Are you familiar with any guidance in the master
11 plan with regard to parking that might be located, you
12 know -- oops. I am sorry about that.
13 MR. GROSSMAN: It's tough to be a witness when the
14 lawyers --
15 THE WITNESS: That would've hurt if it got me.
16 MS. LEE-CHO: It's a projectile.
17 MR. GROSSMAN: -- are throwing things at you.
18 BY MS. LEE-CHO:
19 Q Are you familiar with any guidance in the master
20 plan with regard to locating parking on a site like this?
21 A I don't recall, does that, if that has a
22 requirement not to or to locate parking here. But there is
23 not a, zoning doesn't have a setback for parking the way it
24 has a setback for buildings.
25 Q Okay.

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1 A Unless I'm reading this wrong.
2 Q I do believe in the master plan there is some
3 discussion about locating parking that we've reviewed and it
4 talks about locating in the front yard.
5 A Oh, okay, yeah, I'm sorry. I mean, this is
6 located in an area that has some screening. Ideally we
7 wouldn't want long-term parking located there but from a
8 landscaping point of view we are proposing some additional
9 landscaping in this area.
10 Q So long as where it's needed, parking where it's
11 needed --
12 A Uh-huh.
13 Q -- where it's in a situation like this where it's
14 tight, if you adequately landscape and screen --
15 A And screen.
16 Q -- parking in the front --
17 A Yeah.
18 Q -- may be allowable under the master plan --
19 A Yes.
20 Q -- is that correct?
21 A And there is some existing planting and we would
22 be having proposed planting in this area also to screen it
23 so that it's not a parking lot in the front of the campus.
24 Q And this may be a question more for our engineer
25 but --

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1 A Uh-huh.
2 Q -- how difficult would it be to lay down the
3 gravel and to have parking available at grade in that area?
4 A Well, we'll let him talk about the details of it
5 but that is something that's done by contractors all the
6 time --
7 Q Uh-huh.
8 A -- in terms of providing temporary surface lots,
9 providing temporary staging areas.
10 Q Okay.
11 A So it is, it is certainly a feasible thing and a
12 reasonable thing to do.
13 MR. GROSSMAN: How many spots are you saying for
14 that area?
15 THE WITNESS: 50.
16 BY MS. LEE-CHO:
17 Q So, at this point I'd like you to go through the
18 phasing discussion. It did come up --
19 A Uh-huh.
20 Q -- in the previous discussion about construction
21 phasing, what's the optimal, what are the school's
22 options --
23 A Uh-huh.
24 Q -- and any other thoughts that you have.
25 A Sure. And I think that one comment that was made

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1 earlier is, you know, obviously have a little bit of
2 flexibility so that if donators, a large donation comes for
3 a specific use that they be allowed to use it in whatever
4 makes sense sequence-wise. Ideally it would be nice to
5 start with the lower school and then the middle school. And
6 this does a couple of things. One is it gets us building
7 out of the site, painting ourselves out of the corner
8 instead of into a corner. The lower school go first, it
9 will provide swing space to move the kids from the middle
10 school over to the lower school during construction of the
11 middle school which ideally could go second. Then you've
12 got the middle school constructed, the lower school
13 constructed, and, and again these are swing spaces so that
14 when you build other pieces of the campus, whether it's the
15 performing arts and dining or, or the athletic building,
16 some of those functions, music, wrestling, et cetera, are in
17 portable trailers on-site. So they could then move those
18 functions into the lower school. When all is built out
19 these two buildings would be the lower school classrooms,
20 the log building that is now a classroom building could now
21 be specialized for sciences, they could have kind of a
22 really great science, right at grade in the valley where
23 they've got all their bugs and salamanders and stuff right
24 there. So this would long-term be classrooms but it would
25 be swing classrooms in the interim. Then building your way

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1 out of the campus, the athletic building and the play fields
2 and the garage and the theater would be at the end of the
3 sequence. That has to do with, again, program swinging
4 spaces, physically building out of the campus and it doesn't
5 mean that you can do it in another order. I know you raised
6 a question earlier about, what if you build something here
7 and then you're stuck, you can't build there. You can build
8 anywhere. I mean, it comes down to dollars. We build in
9 extremely tight, urban sites where there's no staging space,
10 you're up against other buildings. That can be done.
11 Dollars are greater when it's more difficult, when there's
12 less space but you could build it in that other sequence.
13 So again, if a donation came in that said, we want to build
14 one of these buildings first and these second, that could be
15 done in that order. But ideally you'd take care of the
16 program and take care of the ease of construction in that
17 sequence.
18 Q Now --
19 MR. GROSSMAN: Ms. Lee-Cho, was the question of
20 temporary parking in the tennis court area raised with
21 technical staff in lieu of a garage?
22 MS. LEE-CHO: It was.
23 MR. GROSSMAN: I mean, not in lieu of --
24 MS. LEE-CHO: Yes. That was --
25 MR. GROSSMAN: -- but prior to the garage?

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1 MS. LEE-CHO: That was the petitioner's proposal
2 to have longer term use of the parking created on the tennis
3 courts to support the increases in enrollment and you know,
4 over time. Staff's recommendation was to only allow use of
5 the tennis courts during construction of the garage. So
6 while, from their opinion, the garage should go first but
7 while the garage is being constructed, to the extent that
8 there's loss of parking spaces due to staging areas and that
9 such that we could create those additional spaces on the
10 tennis courts. But then we'd have to get rid of those as
11 soon we're done with constructing the garage. It's a very
12 restrictive phasing plan.
13 MR. GROSSMAN: And the issue or the possibility
14 was raised by you with staff of building the lower school
15 first --
16 MS. LEE-CHO: Yes.
17 MR. GROSSMAN: -- and the middle school and while
18 that was going on having the tennis court parking and they
19 didn't like that?
20 MS. LEE-CHO: No.
21 MR. GROSSMAN: And they didn't like it because?
22 MS. LEE-CHO: It was never articulated to us
23 directly why they didn't like it other than it's parking in
24 the front of the property. I think that that, if I had to
25 guess, there was no expression of exactly why. But because

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1 it was in the front yard and to the point of the master plan
2 where, you know, it does discourage but it doesn't prohibit
3 where it's necessary, deemed necessary or unpractical to,
4 not practical to have parking elsewhere. It is my opinion
5 that the master plan leaves that on the table. I think
6 staff may not have agreed with my read of the master plan.
7 MR. GROSSMAN: Was there, was the possibility of
8 screening of Seven Locks Road posed to the --
9 MS. LEE-CHO: Yes.
10 MR. GROSSMAN: -- staff and they still didn't like
11 it? And would parking in that area be an issue with regard
12 to the forest conservation plan?
13 MS. LEE-CHO: No.
14 THE WITNESS: We already have a pervious surface,
15 an impervious surface there.
16 MR. GROSSMAN: Okay.
17 MS. LEE-CHO: It is an existing impervious area
18 that would just be converted.
19 MR. GROSSMAN: And it would be accessed, I take
20 it, by the internal road system.
21 THE WITNESS: Yeah, it could come, come from just
22 southwest --
23 MR. GROSSMAN: Right.
24 MS. LEE-CHO: There are existing spaces here that
25 would be converted to an access --

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1 MR. GROSSMAN: Right.
2 MS. LEE-CHO: -- drive.
3 MR. GROSSMAN: And when you say temporary parking,
4 how long is temporary in your mind if this plan worked?
5 MS. LEE-CHO: I mean, I would agree that once the
6 garage is constructed there really is no further need for
7 the spaces on the tennis courts. But we just present it as
8 an option to the off-site satellite parking scenario that
9 coupled with potential spaces on the tennis courts with the
10 off-site this use, The Heights School's programs can be
11 facilitated without the garage.
12 MR. GROSSMAN: I guess that didn't respond to my
13 question.
14 MS. LEE-CHO: I'm sorry.
15 MR. GROSSMAN: This is decades long plan. So what
16 I guess would be a concern of the technical staff and the
17 Board of Appeals would be, you could have temporary parking
18 for 30 years.
19 MS. LEE-CHO: That would not be ideal for the
20 school. The tennis courts are part of their program. They
21 would be losing a, it would not be ideal for the school to
22 lose their tennis courts. They would want to recoup that as
23 soon as possible. But it's just also the garage is a very
24 expensive endeavor. And to have that be required to go
25 first is essentially saying we can't realize this master

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1 plan for a very long time.
2 MR. GROSSMAN: I'm going to stop us here because I
3 promised Mr. Feinberg we would eat no later than 1:00 and it
4 is now two minutes after 1:00 so why don't we break for
5 lunch?
6 MS. LEE-CHO: I think this is a good breaking
7 point.
8 MR. GROSSMAN: All right. And we'll come back at
9 1:45.
10 MS. LEE-CHO: Thank you.
11 MR. FEINBERG: Thank you, sir.
12 MR. GROSSMAN: You're welcome.
13 (Whereupon, at 1:03 p.m., a luncheon recess was
14 taken.)
15 MR. GROSSMAN: Back on the record.
16 MS. LEE-CHO: Okay. Before I go back to Ms.
17 Schmickel I just wanted to give you the disc --
18 MR. GROSSMAN: Okay, great.
19 MS. LEE-CHO: -- with the exhibit that she used to
20 testify.
21 MR. GROSSMAN: Okay. And we'll call that 104A is
22 disc of Exhibit No. 104.
23 (Exhibit No. 104A was received
24 into evidence.)
25 MS. LEE-CHO: Okay.

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1 MR. GROSSMAN: Okay.
2 DIRECT EXAMINATION (RESUMED)
3 BY MS. LEE-CHO:
4 Q Ms. Schmickel, just to pick up where we left off
5 before the lunch break, just going back very briefly again
6 on the use of the tennis courts for surface lot spaces, I
7 wanted to, you've had a chance to refresh your recollection
8 about the actual master plan provision so if you could, for
9 the hearing examiner, cite to what provision in the master
10 plan guides the use of the tennis courts for parking?
11 A In the master plan on page 36, specifically the
12 2002 Potomac sub-region master plan, it indicates that
13 parking should be located and landscaped to minimize
14 commercial appearance and in the situations where the side
15 or rear yard parking is not available that front yard
16 parking should be allowed only if can be adequately screened
17 and landscaped.
18 MR. GROSSMAN: Okay.
19 THE WITNESS: And we do have adequate space to
20 screen and landscape this parking.
21 MR. GROSSMAN: Okay.
22 BY MS. LEE-CHO:
23 Q And just for the ease of reference, what page of
24 the master plan?
25 A 36.

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1 Q Okay. So at this point you've heard some
2 testimony about the off-site parking options that the school
3 is proposing --
4 A Uh-huh.
5 Q -- in lieu of having to do the garage first. In
6 your professional opinion, the alternative parking
7 options --
8 A Uh-huh.
9 Q -- that have been discussed, would they provide
10 safe, adequate, efficient parking for the school?
11 MR. GROSSMAN: Well, hold on, which alternative
12 parking?
13 BY MS. LEE-CHO:
14 Q Any of the off-site or the on-site, additional on-
15 site tennis --
16 A The temporary tennis --
17 Q -- the use of the tennis courts.
18 A -- courts?
19 Q Uh-huh. In your professional opinion, do those
20 sort of immediate and or, you know, aside from the ultimate
21 build out, the interim conditions, would those also offer
22 adequate parking --
23 A Yeah --
24 MR. GROSSMAN: Well hold on. Is that within your
25 expertise, Ms. Schmickel to offer --

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1 THE WITNESS: Well, site --
2 MR. GROSSMAN: -- an opinion on adequacy of
3 parking?
4 THE WITNESS: -- master planning and site planning
5 we're going to also have a traffic engineer and a civil
6 engineer so we have, so yes, master planning.
7 MR. GROSSMAN: I just wanted to know if that, you
8 consider that part of your --
9 THE WITNESS: Sure.
10 MR. GROSSMAN: -- architectural expertise.
11 THE WITNESS: Sure, site circulation. Uh-huh.
12 MR. GROSSMAN: Okay.
13 THE WITNESS: Yeah.
14 MR. GROSSMAN: All right.
15 THE WITNESS: Yeah, and I do think that it is very
16 feasible and would provide adequate additional 50 spaces and
17 circulation-wise it works quite well with their traffic
18 pattern.
19 MR. GROSSMAN: Okay.
20 BY MS. LEE-CHO:
21 Q But you're also familiar with the school's
22 programmatic --
23 A Uh-huh.
24 Q -- needs and desires out of this master plan. So
25 in light of the school's programmatic goals and where they

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1 want to get to an the additional parking that might be
2 offered with the tennis courts my question is, in your
3 professional opinion, could that be adequately accommodated
4 with those additional spaces?
5 A Yes, I think that also satisfies their
6 programmatic needs, uh-huh.
7 MS. LEE-CHO: At this point I sort of wanted to go
8 through, you know, 59-G-1.21 with Ms. Schmickel just so that
9 we have it in the record, the general conditions as well as
10 some of the specific conditions that are in her area of
11 expertise.
12 MR. GROSSMAN: It's all up to you.
13 MS. LEE-CHO: All right.
14 BY MS. LEE-CHO:
15 Q So, starting with the general conditions, in your
16 professional opinion will The Heights School's master plan
17 and special exception modification proposed, will it be
18 consistent with the general plan and development of the
19 district including the Potomac sub-region master plan
20 adopted by the county?
21 A Yes, I think it will be consistent with those.
22 Q Does it adhere to the zoning ordinance
23 requirements?
24 A Yes.
25 Q What efforts does the master plan contemplate to

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1 allow for enhanced buffering, screening that's required?
2 A Both in terms of landscape buffering and siting of
3 the buildings so that they are adequately screened.
4 Q Okay. Will the school's master plan be in harmony
5 with the general character of the neighborhood and
6 considering population density, design, scale and bulk of
7 any proposed new structures, intensity and character of
8 activity and number of similar uses?
9 A Absolutely. I think that everything that we're
10 talking about here is consistent with the scale, the bulk,
11 et cetera.
12 Q Will it not be detrimental to the use and peaceful
13 enjoyment, economic value, development of surrounding
14 properties or the general neighborhood of the subject site?
15 A I think we're improving the conditions of the
16 surrounding properties.
17 Q Okay.
18 MR. GROSSMAN: I think you asked will it not be.
19 BY MS. LEE-CHO:
20 Q Will it not be detrimental?
21 A It will not be detrimental.
22 MR. GROSSMAN: I just want to make sure we're
23 answering the right question.
24 THE WITNESS: I was, yeah, I'm sorry.
25 BY MS. LEE-CHO:

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1 Q Will it cause any objectionable noise, vibrations,
2 fumes, odors, dust, illumination, glare or physical activity
3 at the subject site?
4 A No. There won't be any additional noise or
5 illumination. We'll keep all the light levels within the
6 requirements, all the --
7 MR. GROSSMAN: I can't recall. Was there a
8 lighting plan in the package?
9 THE WITNESS: Yeah, we did have a lighting plan
10 and we did calculations so that we know where the foot
11 candles, they fall off by the property line.
12 MR. GROSSMAN: And the foot candles are --
13 THE WITNESS: We're down to zero at the property
14 lines. It's --
15 MR. GROSSMAN: All the property lines --
16 THE WITNESS: Well, from the --
17 MR. GROSSMAN: -- or just side and rear?
18 THE WITNESS: -- buildings and the street
19 lighting, the path lighting, yes, I think we're down to zero
20 actual measurable foot candles as we calculated them.
21 MR. GROSSMAN: Okay.
22 MS. LEE-CHO: And that will be further covered by
23 the engineer.
24 MR. GROSSMAN: All right. Just for the audience,
25 these questions are a listing of the general conditions that

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1 are required for special exceptions. You can see them in
2 the technical staff report. She lists them.
3 MS. LEE-CHO: I always hate this one, it's phrased
4 so weirdly.
5 BY MS. LEE-CHO:
6 Q Will it not when evaluated in conjunction with
7 existing and approved special exceptions in the neighboring
8 one-family residential area increase the number, intensity
9 or scope of special exception uses sufficiently to affect
10 the area adversely or alter the predominantly residential
11 nature of the area?
12 A Okay, so now that I've rephrased, it will not
13 adversely affect the residential nature of the, of the area.
14 Q And in fact the residential area was very much
15 considered as part of the --
16 A Yeah.
17 Q -- design would you agree?
18 A The design and massing and materials, et cetera,
19 were all considered as part of the design.
20 Q Will it not adversely affect the health, safety,
21 security, morals or general welfare of the residents,
22 visitors or workers in the area at the subject site?
23 A It will not adversely affect any of the --
24 Q Okay.
25 A -- mentioned.

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1 Q And then in addition I have, I'd like you to go
2 through some of the specific conditions that are relevant to
3 your area of expertise. The specific conditions for private
4 educational institutions are found in Section 59-G-2.19.
5 Those requirements require that the private educational
6 institution use not constitute a nuisance because of number
7 of students, noise, type of physical activity. In your
8 professional opinion as proposed, this school's modification
9 and master plan, will it not constitute a nuisance with
10 regard to number of students, noise, type of physical
11 activity?
12 A In my professional opinion it will not cause a
13 nuisance.
14 Q The requirements also, we talked about this,
15 require that the architectural design of the buildings of
16 the school be compatible with other buildings in the
17 surrounding neighborhood and the site is clearly located on
18 a lot more than two acres but in your professional opinion
19 is it compatible in terms of its exterior architecture with
20 the single-family residential neighborhood that surrounds
21 it?
22 A Yes, absolutely.
23 Q Okay. The private educational institution also is
24 not to adversely affect or change the present character or
25 future development of the surrounding residential community.

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1 Is it in your professional opinion that it will not change
2 the predominantly residential character?
3 A It will not change the predominantly residential
4 character. We're making efforts to be consistent with
5 residential scale and rhythm and massing.
6 Q And in fact this entire area is developed out with
7 residential uses all around --
8 A Uh-huh.
9 Q -- the special exception for many years, is it
10 not?
11 A Yes.
12 Q I think that does it for you, Ms. Schmickel.
13 Thank you very much.
14 A We have to --
15 Q Oh, yes, cross-examination.
16 MR. GROSSMAN: In other words you've --
17 MS. LEE-CHO: I'm done with direct.
18 MR. GROSSMAN: -- asked all the questions?
19 MS. LEE-CHO: Yes.
20 MR. GROSSMAN: All right. Cross-examination?
21 MR. FEINBERG: Are you the appropriate person to
22 ask questions about the stormwater drainage or --
23 THE WITNESS: No, you're going to be hearing from
24 the civil engineer.
25 MR. FEINBERG: Okay. I wanted to make sure that I

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1 wasn't missing a chance to ask a question of the appropriate
2 person. I have no other further questions.
3 THE WITNESS: All right.
4 MR. GROSSMAN: Any other --
5 MS. LEE-CHO: May I ask were your phasing
6 questions addressed by this witness?
7 MR. FEINBERG: Pardon?
8 MS. LEE-CHO: Your previous construction phasing
9 questions.
10 MR. FEINBERG: Yes. I heard the answer that the
11 way I interpret the answer is it is feasible to build the
12 lower and middle schools later but it will cost more.
13 THE WITNESS: Uh-huh.
14 MR. GROSSMAN: Okay. Any -- yes, sir?
15 MR. SAWMELLE: When you refer to noise of the
16 surrounding --
17 MR. GROSSMAN: You may have to come up. Can you,
18 are you catching? No, you have to come up.
19 THE WITNESS: Step over so you can be near the
20 microphone.
21 MR. GROSSMAN: You can pull a, you know, we have
22 enough chairs there. We can pull another chair there so you
23 can both sit down. Okay.
24 MR. SAWMELLE: So, when you refer to noise of the
25 surrounding residential community were you talking about

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1 construction noise?
2 THE WITNESS: I'm talking about the final master
3 plan realized noise. I think that you're going to reduce
4 the amount of noise, especially around the middle school, by
5 bringing a lot of those activities into the building.
6 Construction noise is a different kind of noise and there
7 will be noise associated with construction always whether
8 it's a house going up next door to you or a school going up
9 next door to you.
10 MR. SAWMELLE: Okay. That's my question and then
11 I'll comment in my statement.
12 MR. GROSSMAN: All right.
13 MR. SAWMELLE: Thank you.
14 MR. GROSSMAN: Any other cross-examination
15 questions for this witness? All right. Hold on one second,
16 Ms. Schmickel. Are you going to cover the question of the
17 density of student population with a witness?
18 MS. LEE-CHO: I had Mr. Smith going to that
19 provision, yes.
20 MR. GROSSMAN: Okay. I just wanted to make sure.
21 MS. LEE-CHO: I mean, I could have Ms. Schmickel
22 go through that as well.
23 MR. GROSSMAN: Well, I'm not sure that she's the
24 appropriate person in terms of -- you don't have a land use
25 expert per se.

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1 MS. LEE-CHO: I don't, I don't.
2 MR. GROSSMAN: Okay. So that's why I raise that
3 question. Okay. All right, then I have no further
4 questions. Thank you. You're now certified as an expert
5 which is good to be able to tell your friends and family.
6 THE WITNESS: I'll add that to the list.
7 MR. GROSSMAN: When I tell my wife I'm an expert
8 she poo-poo's it because no duly constituted body like this
9 has ever certified me.
10 THE WITNESS: Yeah, I'm not sure my husband's that
11 impressed.
12 MR. GROSSMAN: Give it a try. All right. Your
13 next witness?
14 MS. LEE-CHO: I have Nicole White.
15 MR. GROSSMAN: Okay.
16 MS. LEE-CHO: Please state your name and
17 professional address for the record.
18 MS. WHITE: Sure. Nicole White, I'm a principal
19 with Symmetra Design. Our address is 727 15th Street
20 Northwest, Washington, D.C.
21 MR. GROSSMAN: Ms. White, would you raise your
22 right hand, please?
23 (Witness sworn.)
24 MR. GROSSMAN: All right. You may proceed.
25 DIRECT EXAMINATION

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1 BY MS. LEE-CHO:
2 Q Ms. White, please describe your field of
3 expertise.
4 A I am a traffic engineer and transportation
5 planner.
6 Q And your number of years' experience as a traffic
7 engineer and planner?
8 A 19 years.
9 Q Okay. Have you previously testified as an expert
10 witness before the hearing examiner or the Board of Appeals?
11 A Yes, I have.
12 Q Could you recite the projects or the cases
13 specifically?
14 A In front of the hearing examiner, Montgomery
15 County Washington Episcopal School.
16 MR. GROSSMAN: Who was the hearing examiner on
17 that?
18 THE WITNESS: Forgive me, Francoise --
19 MR. GROSSMAN: Francoise Carrier, yes.
20 THE WITNESS: Yeah. And then I've been accepted
21 at the expert at the Washington, D.C. Board of Zoning
22 Adjustment, the Zoning Commission, Prince George's County
23 hearing examiner and circuit court.
24 MR. GROSSMAN: Okay.
25 MS. LEE-CHO: I have Ms. White's resume and based

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1 on her qualifications I would offer her as an expert in the
2 field of traffic engineering and planning.
3 MR. GROSSMAN: And transportation planning.
4 MS. LEE-CHO: And transportation planning.
5 MR. GROSSMAN: All right. Let me, that'll be
6 Exhibit No. 105.
7 (Exhibit No. 105 was received
8 into evidence.)
9 MS. LEE-CHO: All right --
10 MR. GROSSMAN: Hold on one second. All right.
11 Any questions regarding this witnesses expertise?
12 MR. FEINBERG: Not from me.
13 MR. GROSSMAN: All right. Anybody in the
14 audience? All right. And I see that you have a masters of
15 engineering, civil engineering from University of Maryland?
16 THE WITNESS: Masters of engineering is not called
17 civil engineering but it's a professional masters from
18 University of Maryland, bachelor of science in civil
19 engineering also from University of Maryland.
20 MR. GROSSMAN: Okay.
21 THE WITNESS: It's a small distinction. I didn't
22 do a thesis so that's the difference between the MS and the
23 ME.
24 MR. GROSSMAN: Okay. Yeah, I just saw it said
25 master of engineering and it said underneath civil

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1 engineering.
2 THE WITNESS: Yes.
3 MR. GROSSMAN: Okay. And then transportation was
4 a sub-category in that?
5 THE WITNESS: Exactly.
6 MR. GROSSMAN: Okay, in 2002. And are you a
7 licensed civil engineer?
8 THE WITNESS: I'm licensed in Maryland, yes.
9 MR. GROSSMAN: Okay.
10 THE WITNESS: And also a professional traffic
11 operations engineer through the instate of transportation
12 engineers.
13 MR. GROSSMAN: Okay, great. All right, I accept
14 Ms. White as an expert in traffic engineering and
15 transportation planning.
16 MS. LEE-CHO: Okay. Thank you.
17 BY MS. LEE-CHO:
18 Q Ms. White, if you could begin by briefly
19 summarizing the transportation impact study that was
20 conducted for The Heights School?
21 A Sure. Our firm was retained by The Heights School
22 to prepare a transportation impact study associated with the
23 increased enrollment in students and staff. We prepared our
24 study in accordance with LATR guidelines. We conducted a
25 scoping meeting with the transportation planning staff and

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1 agreed upon a scope of work. We studied --
2 MR. GROSSMAN: Let me mention for the audience,
3 LATR stands for local area transportation review and that's
4 the standard that's used, generally speaking, for Montgomery
5 County. There are other standards that sometimes are
6 applied. I'm not sure we'll get into it here, the highway
7 capacity manual run by the state and so on but the main one
8 relied on by Montgomery County is, with all its issues, is
9 LATR.
10 THE WITNESS: My apologizes for the acronym.
11 MR. GROSSMAN: Okay.
12 THE WITNESS: So we agreed on seven study area
13 intersections and we found all the study area intersections
14 to operate within the threshold capacity level which is 1450
15 for critical lane volume. Our analysis included background
16 projects that included the expansion of the Westfield
17 Shopping Mall and also the Ourisman Ford property and
18 Potomac Highlands project.
19 MR. GROSSMAN: Well as I recall from reading your
20 report there is one intersection that is not, will not
21 comply but with the improvements by Westfield will conform?
22 THE WITNESS: That is correct. We also -- thank
23 you for that reminder -- we also included approved and
24 funded transportation projects which is the intersection
25 improvements at Seven Locks and Tuckerman.

1 MR. GROSSMAN: Okay. So what your testimony is is
2 that after those improvements are completed that all the
3 intersections that are studied will meet LATR?

4 THE WITNESS: That is correct.

5 MR. GROSSMAN: And the intersections that were
6 selected are those that were required by technical staff?

7 THE WITNESS: That is correct.

8 MR. GROSSMAN: Okay.

9 BY MS. LEE-CHO:

10 Q So if you could just continue to talk about the
11 traffic impact study and I believe it was reviewed by
12 Department of Transportation as well as Park and Planning?

13 A Yes, as noted in that staff report it was
14 evaluated by staff, also Montgomery County Department of
15 Transportation and Montgomery County Department of Fire and
16 Rescue Services and they all support the transportation
17 elements of the plan according to that report.

18 Q Okay, great.

19 MR. GROSSMAN: I'm going to stop you for a second.
20 One of the things that Leslie Saville mentioned to me last
21 night was that on your current submissions at the, you
22 mentioned Fire and Rescue, that's what alerted me to that,
23 was the question of fire marshal approval and she said that
24 there was, that whereas there is some provision for final
25 fire marshal there was nothing about interim fire marshal

1 approval or something to that effect. Do you understand my
2 question?

3 MS. LEE-CHO: I do understand your question.

4 MR. GROSSMAN: Okay.

5 MS. LEE-CHO: And it is a question for our next
6 witness --

7 MR. GROSSMAN: Okay.

8 MS. LEE-CHO: -- to address. We do have the fire
9 lane order exhibit that is being processed by the fire
10 marshal.

11 MR. GROSSMAN: All right. So I'd ask you to
12 address that at the appropriate time. Thank you.

13 BY MS. LEE-CHO:

14 Q So you've already addressed the Seven Locks and
15 Tuckerman intersection so we won't belabor that point but
16 that is a fully funded improvement that is anticipated
17 within, do you have a timeframe?

18 A I don't have the timeframe. I know it's fully
19 funded and that the county will be responsible for
20 construction of it.

21 Q Could you discuss the off-site parking, satellite
22 parking options that have been presented by the school today
23 to allow for growth in the school prior to garage
24 construction and your supplemental analysis of those off-
25 site --

1 A Sure. After we submitted our transportation
2 impact study the idea of the use of the, one or two,
3 satellite locations near the school was brought up as a
4 measure to manage parking demand. So, we heard from staff
5 that that was not considered in our review of adequate
6 public facilities. So, we contacted our transportation
7 staff and what would need, what would we need to do to
8 satisfy that. We submitted a supplemental memorandum on
9 February 5th to Michael Garcia and Leslie Saville --

10 MR. GROSSMAN: Right, and that's Exhibit --

11 MS. LEE-CHO: Which is in the record.

12 MR. GROSSMAN: Yes. And that's Exhibit No. 94A is
13 the supplemental traffic study.

14 MS. LEE-CHO: Correct.

15 THE WITNESS: So the study looked at two potential
16 off-site parking lot locations at the Pauline Betz Addie
17 Tennis Center at 7801 Democracy Boulevard and the East Gate
18 Swim and Tennis Club at 10200 Gainsborough Road. So we
19 conducted additional analysis to determine the impacts at
20 the Seven Locks, Democracy Boulevard intersection and found
21 still that all, that intersection would operate acceptably.

22 We submitted this and I sent Michael Garcia an e-mail who
23 responded back that he was supportive of our memorandum and
24 during our phone conversation supportive of the location of
25 both facilities and that they're approximately a half mile

1 from the school. But he had the following conditions in his
2 e-mail.

3 MR. GROSSMAN: Oh, I didn't not receive a copy of
4 that e-mail.

5 THE WITNESS: That was, yes, that was not
6 submitted. That was an e-mail that happened just two days
7 ago which caused us to submit to him this morning a updated
8 version of our February 5th memorandum.

9 MR. GROSSMAN: Well --

10 THE WITNESS: But the two topics, and we can
11 certainly submit this for the record, but the two topics
12 were related to in the event that both, instead of one or
13 the other of the parking facilities are used would the
14 school agree to that which the school did. And the second
15 condition was initially --

16 MR. GROSSMAN: Wait a minute, repeat that
17 sentence. In the even that one of the two --

18 THE WITNESS: That both of. In our February 5th
19 memorandum we looked at an either/or scenario, the use of 20
20 to 30 at either of the two locations because based on the
21 demand for the zoning requirement there wouldn't be a need
22 for that to have both at the same time. He's saying, could
23 you look at the provision to use both in the even that you
24 need, let's say, 40 to 60 spaces.

25 MR. GROSSMAN: Okay.

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1 THE WITNESS: So the school agreed to that and we
2 did the analysis that supports that and even in the e-mail
3 that you received from Leslie it shows that they didn't
4 think that there would be a problem with traffic.
5 MR. GROSSMAN: Right.
6 THE WITNESS: So that was the first request by
7 Mike Garcia.
8 MR. GROSSMAN: Right. The e-mail that you're
9 referring to Leslie is the one we've now marked as Exhibit
10 No. 97. But yeah, she didn't mention this previous exchange
11 that you had with Michael Garcia --
12 THE WITNESS: Michael Garcia, right.
13 MR. GROSSMAN: -- that's why I, she mentioned that
14 she spoke --
15 THE WITNESS: She was not a part of that
16 conversation.
17 MR. GROSSMAN: Right. She spoke to Michael
18 Garcia --
19 THE WITNESS: Uh-huh.
20 MR. GROSSMAN: -- before she sent the e-mail to
21 me --
22 THE WITNESS: Right.
23 MR. GROSSMAN: -- but she didn't mention that
24 there was a separate exchange. So I would like to see a
25 copy of the e-mail or have a copy of that e-mail for the

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1 record that Michael Garcia sent requesting the additional
2 study and of course the additional study.
3 THE WITNESS: Okay. And then the second item was
4 related to the expanding the hours of operation of the
5 shuttle bus connecting to the satellite parking locations.
6 During our, in our February 5th memorandum we suggest that
7 the shuttle bus would stop shortly after dismissal and he
8 wanted to see that time period extended to support more
9 after school activities so the school also agreed to that.
10 So that was documented in our updated memorandum that was
11 just submitted this morning and Leslie probably didn't have
12 the benefit of that when she sent you the e-mail.
13 BY MS. LEE-CHO:
14 Q So let me take the hearing examiner, let's take a
15 step back --
16 A Sure.
17 Q -- as to the progression of this topic.
18 MR. GROSSMAN: Well, before you do that. Do you
19 have a copy of that --
20 MS. LEE-CHO: I do.
21 MR. GROSSMAN: -- updated transportation study?
22 Thank you. And has that copy been supplied to the
23 opposition?
24 MS. LEE-CHO: No, it hasn't.
25 MR. FEINBERG: Takes away one of my remarks.

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1 MR. GROSSMAN: Do you have any extra copies for
2 other people?
3 MS. LEE-CHO: I have one extra.
4 MR. GROSSMAN: Okay. So let me mark this as an
5 exhibit. And Mr. Feinberg and other members of the
6 opposition, you will have an opportunity to respond not only
7 in your comments today but in writing if you wish to within,
8 while the record remains open. I'm going to leave the
9 record open for at least 15 days so that we can get 10 days
10 for a response and then another five days for any reply to a
11 response. Okay. So this is Exhibit No. 106 and that's
12 further supplemental? Further supplemental transportation
13 impact study.
14 (Exhibit No. 106 was received
15 into evidence.)
16 MR. GROSSMAN: I guess does it solely address
17 these external parking lots?
18 THE WITNESS: Yes.
19 MR. GROSSMAN: Okay.
20 THE WITNESS: And the associated analysis.
21 MR. GROSSMAN: All right. Regarding external
22 parking lots. And 106A is the disc of Exhibit No. 106.
23 (Exhibit No. 106A was received
24 into evidence.)
25 MR. GROSSMAN: Okay. All right.

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1 MS. LEE-CHO: Okay.
2 MR. GROSSMAN: You may proceed.
3 MS. LEE-CHO: So, I personally find the
4 progression a little confusing with a lot of dates and
5 supplementals. So I just wanted Ms. White to walk us
6 through so the record is clear --
7 MR. GROSSMAN: Sure.
8 MS. LEE-CHO: -- how the TIS for the school has
9 progressed.
10 BY MS. LEE-CHO:
11 Q So we started with the original TIS which took
12 into consideration the full build out of the site with the
13 enrollment up to 650 and the faculty up to 95 all arriving
14 and leaving from The Heights School.
15 A That is correct.
16 Q And so you've already stated the conclusion of
17 that TIS was favorable, is that correct?
18 A That is correct.
19 Q Okay. But that TIS did not fully evaluate the
20 number of parking on the site or did it --
21 A It, it --
22 Q -- in terms of its ability to support that use,
23 the increase enrollment and faculty use?
24 A There was no parking assessment associated with
25 the study --

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1 Q Okay.

2 A -- if you're saying when we looked at demand we
3 did not include that in it.

4 Q Right. Okay. And then subsequent to that there
5 was a transportation management plan that talked about
6 providing off-site parking for larger events, is that
7 correct?

8 A That is correct.

9 Q Okay. But that is not what the supplementals are
10 addressing?

11 A That is correct.

12 Q These supplementals, the first being dated
13 February 5th, first address the potential of providing 20 to
14 30 additional parking spaces at an off-site location, two
15 options, one at the Pauline Betz Addie Tennis Center and one
16 at the East Gate Swim Club --

17 A Yes.

18 Q -- as potential off-site parking locations for
19 daily parking, is that correct?

20 A That is correct.

21 Q Okay. So, can you explain for the hearing
22 examiner why a supplemental analysis was needed? In other
23 words, you know, I'm talking about the diversion of trips.

24 A Sure.

25 Q Why was a supplemental to the original TIS needed

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1 when this option of off-site parking came into play?

2 A So it was requested or needed because in our
3 original TIS we assumed 100 percent of the traffic would go
4 to the campus. But with the use of off-site parking there
5 would be a small percentage of traffic that would divert or
6 be redistributed to one or two of those satellite locations
7 and that would impact the Democracy, Seven Locks
8 intersection.

9 MR. GROSSMAN: And are you talking about this
10 occurring day in and day out or just for events?

11 THE WITNESS: This is for the typical or everyday
12 use of the facilities, yes.

13 MR. GROSSMAN: Okay. And these off-site parking
14 lots would be available also for event parking?

15 THE WITNESS: My understanding is that as needed
16 that they, the school could use the parking for events and
17 they have in the past.

18 MR. GROSSMAN: All right.

19 THE WITNESS: But we're talking about, again, the
20 supplemental analysis was for the, the everyday use of this
21 to support parking demand management as needed.

22 MR. GROSSMAN: Okay. I ask you to address also
23 Leslie Saville of the technical staff, her concern that this
24 is not a particularly workable plan, that is having offsite
25 parking for day to day use of the school.

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1 THE WITNESS: Yeah. I'm surprised, a little bit,
2 about the e-mail because like I mentioned, I had talked to
3 Michael Garcia who said that his --

4 BY MS. LEE-CHO:

5 Q What is Mr. Garcia's position?

6 A He is a transportation planner who reviewed our
7 study. And we talked on the phone, he actually pulled the
8 two sites up while we were on the phone together and thought
9 that the distance made sense. And then I would just note
10 also from our transportation study that 70 percent of the
11 traffic is approaching from this direction anyway and so
12 most of the people are actually in the vicinity of the
13 parking facility, the off-site parking facilities. One is
14 0.5 miles from the school, one is 0.7 miles from the school
15 and it's a one minute trip in a shuttle bus that, you know,
16 to take you to the school. So I was a little surprised to
17 see where it wouldn't work from an operational standpoint.

18 MR. GROSSMAN: All right. So you're saying in
19 your opinion it would work or what's your opinion on it?

20 THE WITNESS: Yeah, in my opinion this is used
21 often and would work as a strategy to manage parking demand
22 as needed.

23 MR. GROSSMAN: I mean, I think that Ms. Saville's
24 comments went to the practical aspect of day to day
25 operations whereas Michael Garcia's comments went to

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1 satisfying LATR --

2 THE WITNESS: Uh-huh.

3 MR. GROSSMAN: -- and general traffic concerns.

4 THE WITNESS: Right.

5 MR. GROSSMAN: So hers was not so much a traffic
6 issue as it was --

7 THE WITNESS: An operations --

8 MR. GROSSMAN: -- an operational thing.

9 THE WITNESS: -- issue. Yeah.

10 MR. GROSSMAN: Do you have an opinion on that?

11 THE WITNESS: Yeah, certainly. One by the
12 proximity of the locations being so close to the school and
13 having a shuttle bus that can make continuous loops then it
14 becomes a practical solution. If it was far away and there
15 was, let's say, a one hour frequency, a bus once an hour
16 then that's less desirable. But if the shuttle bus can make
17 continuous loops and provide sort of on demand service then
18 it absolutely can be something that's used to manage parking
19 demand in conjunction with a number of these other measures
20 that are in our transportation management plan.

21 MR. GROSSMAN: What time of day would there, if
22 you're doing it on a daily basis, what time of day would I
23 guess students and maybe some teachers or staff be arriving
24 at the parking lot --

25 THE WITNESS: SO --

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1 MR. GROSSMAN: -- in order to get the shuttle bus
2 and get to school on time?
3 THE WITNESS: Yeah, school start time is 8:20.
4 And let me just, as I'm answering that question, the school
5 also operates a shuttle to the Metrorail station which is
6 much further away and that logistically works. So, I mean,
7 certainly they could, you know, manage something that's a
8 lot --
9 MR. GROSSMAN: Which Metrorail station --
10 THE WITNESS: -- a lot closer.
11 MR. GROSSMAN: -- does it run to?
12 THE WITNESS: To the Grosvenor Metrorail station.
13 MR. GROSSMAN: Okay.
14 THE WITNESS: I think that's about four miles
15 away.
16 MR. GROSSMAN: All right.
17 THE WITNESS: I apologize because I don't know, I
18 don't want to state in the record exactly four miles because
19 I'm not 100 percent sure --
20 MR. GROSSMAN: I get you.
21 THE WITNESS: -- maybe confusing that with another
22 number that I was looking at.
23 BY MS. LEE-CHO:
24 Q But the Grosvenor station is the station from
25 which they provide a shuttle?

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1 A Let me just confirm that. And I'll look to the,
2 okay, I think it's easier than pulling it up in the report.
3 Yes, I'm getting the confirmation that is the Grosvenor
4 station.
5 MR. GROSSMAN: When you say you're getting the
6 confirmation?
7 THE WITNESS: The headshakes from the school. It
8 was easier than looking back at our report which I
9 thought --
10 MS. LEE-CHO: It is in the TIS.
11 THE WITNESS: Yes, it is stated in the TIS.
12 MR. GROSSMAN: Okay.
13 BY MS. LEE-CHO:
14 Q So going back to --
15 A So --
16 Q -- the hearing examiner's question?
17 A So, the, so yeah, so if the arrival is, the start
18 time is 8:20 conceivable they, students would want to arrive
19 similar to what they do for the shuttle from, and the school
20 bus that they have going into residential areas, 20 plus
21 minutes before school so they could, you know, run it 30
22 minutes or so before that. So starting an hour or so before
23 school, you know. I don't have the exact plan detailed out
24 but certainly, logistically that can all be worked out and
25 managed so that it works successfully.

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1 MR. GROSSMAN: So I was just trying to think how
2 that coincided with the peak traffic hour during that
3 period.
4 THE WITNESS: Oh, the peak traffic hour is 7:15 to
5 8:15, it varies, plus or minus 15 minutes.
6 MR. GROSSMAN: Okay. So it is right in the middle
7 of the peak --
8 THE WITNESS: Yes.
9 MR. GROSSMAN: -- hour. I mean, I'm not sure, and
10 let me ask your opinion on it, does the operation of an
11 external parking lot where a number of people arrive and
12 then proceed in one shuttle bus, I presume, every how many
13 minutes?
14 THE WITNESS: The frequency would need to be
15 worked out but I'm saying if you were to map it on Google
16 Maps it's a minute from, so by the time you add for, you
17 know, loading and unloading of the students in a round trip
18 it could conceivably be about 15 minutes. This is a
19 hypothetical --
20 MR. GROSSMAN: Okay.
21 THE WITNESS: -- back of the envelope calculation
22 and so --
23 MR. GROSSMAN: Right.
24 THE WITNESS: -- you're talking about four round
25 trips in an hour potentially.

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1 MR. GROSSMAN: Okay. So, my question rattling
2 around in my head is whether or not that actually improves
3 the, or decreases I guess is a better word, the level of
4 traffic in the area of the school itself, within a half mile
5 of the school by having the shuttle bus rather than
6 individual cars arriving.
7 THE WITNESS: There would be a slight decrease at
8 the entrance to the school, yes --
9 MR. GROSSMAN: All right.
10 THE WITNESS: -- and to the intersections to the
11 north would remain the same. The school would potentially
12 have a slight decrease and there would be some changes to
13 the one intersection that we were asked to study --
14 MR. GROSSMAN: All right.
15 THE WITNESS: -- which is the Seven Locks at
16 Democracy.
17 MR. GROSSMAN: So I'm looking at from a standpoint
18 of the neighborhood it might be actually --
19 THE WITNESS: Beneficial.
20 MR. GROSSMAN: -- a traffic benefit.
21 THE WITNESS: Uh-huh.
22 MR. GROSSMAN: Okay. All right.
23 BY MS. LEE-CHO:
24 Q And because this has been rattling in my head as
25 well and I wonder if you've seen this operated on another

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1 site or case but isn't it possible for the school to,
2 because under the transportation management plan they're
3 going to implement a permit parking program where they will
4 know, you know, who is actually requiring a vehicle trip to
5 the site that the satellite parking could be designated for,
6 say, faculty only that live within a closer proximity so
7 that their arrival time could be much more exact and not
8 subject to long commutes that could have them miss the
9 shuttle bus or the timing of it is what I'm thinking about.
10 I mean, there are ways that the school can construct the
11 shuttle service --
12 A Sure. So, if --
13 Q -- and best manage and serve --
14 A Yeah, if your question is about an exact schedule
15 I'm sure the school could come up with a schedule where the
16 bus leaves, you know, in 15 minute increments or something
17 to be determine by the school so that someone could plan
18 their arrival to --
19 Q Uh-huh.
20 A -- you know, meet that bus. But then also, again,
21 the idea of having both lots in such close proximity to the
22 school and having 15 minute headways for the bus, 15 minutes
23 is certainly an acceptable, you know, headway. They could
24 sit in their cars and wait and know what time the bus is
25 arriving. So it's certainly a manageable situation.

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1 MR. GROSSMAN: And how many parking spaces in each
2 of those external lots?
3 THE WITNESS: 20 to 30.
4 MR. GROSSMAN: Okay.
5 THE WITNESS: So we, from an analysis standpoint
6 we looked at the maximum.
7 MR. GROSSMAN: So, is it the school's concept that
8 if you have the external lots operating on a daily basis,
9 let's say you have both of them operating on a daily basis
10 rather than one, would that obviate the need for the parking
11 area on the tennis courts?
12 MS. LEE-CHO: That may. The tennis court option
13 is to provide option. So if the off-site parking, the
14 satellite parking is becoming more difficult to manage then
15 the on-site conversion of the tennis courts may be a better
16 option.
17 THE WITNESS: Yeah.
18 MS. LEE-CHO: But --
19 THE WITNESS: Can I just add onto that? So I
20 think the whole benefit of this transportation management
21 plan that's submitted and the monitoring plan and why the
22 school is asking for this flexibility is the transportation
23 management plan should be a living document, that's what we
24 say in our world, and changing. You should monitor what
25 programs are successful, what programs are not successful

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1 and make modifications as needed. So the school is asking
2 for flexibility to have a number of these measures as
3 options to consider depending on what its specific need is.
4 So the idea is that, you know, they don't want to be
5 handcuffed to building the parking garage when it may not be
6 needed. Instead, let's explore other measures and these are
7 part of the toolbox. It could be expanded shuttle service,
8 it could be a robust carpool program, it could be a number
9 of these measures. So they would monitor the situation on
10 an annual basis and see what is working best.
11 BY MS. LEE-CHO:
12 Q And we've jumped into the TMP discussion but what
13 mechanisms are imbedded into the TMP to assume the county
14 that these robust measures are constantly being, are
15 evolving and working for the site?
16 A So this monitoring plan that I speak of would be
17 submitted annually to Park and Planning, to the county and
18 also to a neighborhood liaison committee. I don't know if
19 that's the formal name of it. But it would show this, these
20 sort of statistics.
21 Q So how they're doing on an annual basis?
22 A How they're doing on an annual basis in terms of
23 parking and when they assign the number of permits they can
24 monitor this and make adjustments as needed. It could be
25 that they decide to create policies to restrict certain

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1 people instead of building a parking garage. But the idea
2 is just for flexibility to do what's best.
3 MR. GROSSMAN: What I want you to consider and
4 what I'm considering now is whether or not technical staff's
5 recommendation of requiring the sequencing, that the garage
6 be built first, is necessary if we have the external parking
7 lots. And as part of rolling into that question is whether
8 or not you'd still need the tennis court parking because, I
9 mean, there is a downside in terms of the view from the road
10 so I understand that concern, master plan and just
11 neighborhood concerns. There may be an upside in the
12 neighborhood to having the external parking lots because of
13 the reduced flow of traffic. So, but I just would like to
14 get that concept of whether or not that if we didn't have
15 the garage required to be built first whether or not the
16 external parking lots would be sufficient in and of
17 themselves.
18 THE WITNESS: Instead of the satellite parking?
19 MR. GROSSMAN: No, the satellite --
20 THE WITNESS: Or are you saying just period?
21 MR. GROSSMAN: -- instead of --
22 THE WITNESS: The garage?
23 MR. GROSSMAN: Not instead of the garage because
24 ultimately that might be built. I'm saying about the
25 sequencing of the garage. Right now there's a recommended

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1 condition from technical staff that the other buildings not
2 be built until the garage is built so that there will be
3 adequate parking on the campus. The applicant has come back
4 and said, well, we'll have two external, satellite parking
5 areas and we also can use the tennis court for temporary
6 parking. And my question goes to whether or not you even
7 need the tennis court for the external parking. Is that
8 necessary because there was a concern about the tennis court
9 becoming semi-permanent --
10 THE WITNESS: Right.
11 MR. GROSSMAN: -- because there's no funding the
12 build the buildings right now.
13 THE WITNESS: Yeah, I would say it may not be
14 necessary. In the simplest of calculations there would be
15 about 124 spaces or 125 spaces, not including the tennis
16 courts and not including off-site parking. And if you
17 consider the requirement for future faculty and stuff which
18 is 95 spaces and the projected requirement for student
19 drivers which is 40 spaces, visitor spaces as suggested by
20 planning staff of seven spaces then the total required would
21 be 142 spaces. So that, we're talking about a difference
22 between the 142 that I just calculated and the 124 available
23 spaces of 18 spaces. So it's just a matter of how do we
24 accommodate a 18 space need.
25 MR. GROSSMAN: And you're saying the 124 exists

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1 currently?
2 THE WITNESS: No, with some reconfiguration it
3 would.
4 MS. SCHMICKEL: No.
5 MS. LEE-CHO: That's the existing.
6 THE WITNESS: Oh, it is existing? I thought there
7 was some modifications that needed to be made.
8 MS. LEE-CHO: That includes the modifications.
9 THE WITNESS: Modifications.
10 MR. GROSSMAN: Well, I want to understand this
11 side conversation.
12 MS. LEE-CHO: I'm sorry.
13 MR. GROSSMAN: What does the 124 include?
14 MS. LEE-CHO: That is the, that's what would be
15 existing on the site that addresses the fire lane order
16 issue.
17 MR. GROSSMAN: Okay.
18 MS. LEE-CHO: So after we've addressed the fire
19 lane order issue that's what we'll be left with, 124.
20 MR. GROSSMAN: And that's without adding
21 additional spaces now?
22 MS. LEE-CHO: Correct.
23 MR. GROSSMAN: That's basically your current
24 configuration --
25 MS. LEE-CHO: Yes.

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1 MR. GROSSMAN: -- after addressing fire lane
2 issues?
3 MS. LEE-CHO: Correct.
4 MR. GROSSMAN: So, on the surface of it at least
5 it looks as if 142 spaces, is that 142 figure, is that
6 assuming that the Board of Appeals grants the additional --
7 THE WITNESS: This is --
8 MR. GROSSMAN: -- increase in enrollment --
9 THE WITNESS: Yeah.
10 MR. GROSSMAN: -- and the additional faculty?
11 THE WITNESS: That is correct.
12 MR. GROSSMAN: All right. So, it would appear
13 that if you have the two satellite parking you'd have more
14 than enough --
15 THE WITNESS: That's correct.
16 MR. GROSSMAN: -- parking without the garage.
17 THE WITNESS: That is correct.
18 MR. GROSSMAN: At least, I mean, certainly once an
19 auditorium is built I suppose and you have a lot of people
20 coming there you'd want to have that availability of a
21 garage but it might not as emergent a need as suggested by
22 staff if you have well-functioning off-site parking.
23 Anyway, that's, if you want to address that further those
24 are the things --
25 MS. LEE-CHO: Right.

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1 MR. GROSSMAN: -- I'm cogitating.
2 BY MS. LEE-CHO:
3 Q So, okay, I think we've already addressed Ms.
4 Saville's e-mail.
5 A Uh-huh.
6 Q And is there anything else that you wanted to --
7 A I don't think so.
8 Q -- rebut in --
9 A No.
10 Q -- terms of her e-mail? Okay. This is sort of,
11 there was a supplemental back in August 20 of 2013 to the
12 TIS so that in total I guess there have been three
13 supplementals.
14 A That is correct.
15 Q Okay. That first supplemental though didn't deal
16 with off-site parking at all but dealt with some changes or
17 comments --
18 A Well, it dealt with site access and circulation.
19 Q Okay.
20 A We looked at queueing to confirm that queueing
21 would not extend beyond the property of The Heights School.
22 We confirmed that it did and it would in the future with
23 population increases.
24 Q And --
25 MR. GROSSMAN: And I take it the supplementals

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1 don't replace the previous studies --
2 THE WITNESS: That is correct. It was --
3 MR. GROSSMAN: -- so each one's --
4 THE WITNESS: -- just a technical --
5 MR. GROSSMAN: -- in addition to the initial
6 study?
7 THE WITNESS: Right.
8 BY MS. LEE-CHO:
9 Q So just touching --
10 THE WITNESS: There was one, just for
11 clarification, there was one replacement. I don't even know
12 if you have it in the record but there was a, I think it was
13 May 2013 transportation study that we submitted to staff and
14 then they had comments. So this October 17th study did
15 replace that May 2013 study, so I don't even know --
16 MR. GROSSMAN: All right. I think the simplest
17 thing to do is just give me the exhibit numbers of the
18 currently active transportation impact studies, the ones
19 that I should look at.
20 MS. LEE-CHO: That would be, okay, Exhibit No.
21 63E --
22 MR. GROSSMAN: Okay. I've got that one here.
23 That's the initial study.
24 THE WITNESS: Is that the October 2014 study?
25 MS. LEE-CHO: Okay.

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1 THE WITNESS: So the early one was never in the
2 record.
3 MS. LEE-CHO: The earlier one was never entered.
4 THE WITNESS: Okay.
5 MR. GROSSMAN: Yeah, this is October 17, 2014.
6 THE WITNESS: Okay. So then we're good.
7 MS. LEE-CHO: And this is confusing but there is a
8 supplemental TIS memorandum that is part of the record that
9 predates the October 2014.
10 MR. GROSSMAN: Okay, so what exhibit number is
11 that?
12 MS. LEE-CHO: And you know, honestly it was
13 required by Park and Planning staff to be attached to the
14 transportation management plan, that's how it came into the
15 record.
16 MR. GROSSMAN: Okay.
17 MS. LEE-CHO: It was never separately submitted.
18 So --
19 THE WITNESS: Do you mean the August --
20 MS. LEE-CHO: Uh-huh.
21 THE WITNESS: -- 2013?
22 MS. LEE-CHO: Yeah. The August 20 --
23 THE WITNESS: Okay.
24 MS. LEE-CHO: -- 2013 supplemental was required by
25 Park and Planning to be an attachment to the transportation

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1 management plan which is in the record and which is Exhibit
2 No. 70B.
3 MR. GROSSMAN: B as in boy?
4 MS. LEE-CHO: B as in boy.
5 MR. GROSSMAN: All right. So now what are the
6 other supplements to the TIS?
7 MS. LEE-CHO: Then the supplement to the October
8 2014 TIS can be found on Exhibit No. 94A and now 106.
9 THE WITNESS: And then there's an e-mail that, is
10 that going to be a new --
11 MS. LEE-CHO: That was a new exhibit, 106. So
12 then we'll make, I don't have it though, do you have the e-
13 mail, Mike Garcia's e-mail?
14 THE WITNESS: I can e-mail it, just not here.
15 MR. GROSSMAN: Okay. You may proceed with your
16 questions.
17 MS. LEE-CHO: Okay.
18 BY MS. LEE-CHO:
19 Q So I just wanted you to summarize the on-site
20 circulation and queueing described in that August 2013
21 supplemental that's attached to the transportation
22 management plan and the drop-off, pick-up activity that will
23 occur.
24 A So, we just indicated that the queueing would all
25 occur on the premises.

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1 Q And specifically that there will not be any backup
2 onto Seven Locks Road?
3 A That is correct. There is adequate space on the
4 premises when you consider the circulation of the driveway
5 to accommodate all the cars during both pick-up and drop-off
6 activities and that includes projected activity as well.
7 Q Is there a TPAR payment associated with --
8 A Yes, there is.
9 Q And what is that?
10 A The dollar amount I don't know. The school has
11 committed to it.
12 Q But there will be a TPAR payment --
13 A Yes.
14 Q -- required? We've covered some about the
15 transportation management plan but I wonder if you could
16 just sort of give a real overview of the scope, what it
17 covers and what it's intended to do.
18 A Sure. The transportation management plan from
19 December 30th, 2014 was essentially a plan to manage traffic
20 and parking demand and look for opportunities to get people
21 in other modes of transportation. It also manages on-site
22 traffic circulation to effectively direct students during
23 drop-off and pick-up times of the day. And in areas it
24 suggested there will be staff outside to help manage the
25 operation of pick-up and drop-off. And it talks about

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1 carpool programs and other programs and special event
2 parking as well.
3 Q And this was mentioned earlier I believe, but even
4 before the approval of this TMP --
5 A Uh-huh.
6 Q -- the school has implemented an additional bus
7 route, is that correct?
8 A That is correct.
9 Q So can you tell us a little bit about that?
10 A Yeah, they have three bus routes to different
11 areas in Virginia. I think McLean is one, Alexandria and
12 Great Falls, Reston area as well.
13 Q So in your professional opinion are the measures
14 outlined in the TMP and the additional off-site parking
15 options likely to ensure that parking, access and
16 circulation on the school site will function in an adequate
17 manner such that construction of the garage first is not, in
18 your opinion, necessary?
19 A I'm sorry -- yes, I agree that the plan is, can
20 you repeat the way the --
21 Q Okay. In your opinion --
22 MR. GROSSMAN: It's a little bit leading.
23 MS. LEE-CHO: Okay.
24 BY MS. LEE-CHO:
25 Q In your opinion are the measures in the TMP

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1 adequate such that the phasing of construction is not
2 necessary to have the garage be constructed first?
3 A Yes, the TMP is adequate to indicate that.
4 MS. LEE-CHO: I think that's it. I do want to go
5 over some of the specific conditions --
6 THE WITNESS: Okay.
7 MS. LEE-CHO: -- unless you had any more --
8 MR. GROSSMAN: Well, actually I had two questions
9 but you may touch on them. One is, in your opinion, would
10 the proposed additions to the school as well as the addition
11 to enrollment and faculty and staff, will traffic become a
12 nuisance in the area?
13 THE WITNESS: No, traffic, according to our study,
14 would be within the threshold established by the county for
15 that policy area.
16 MR. GROSSMAN: Well it's not exactly the same
17 question.
18 THE WITNESS: Okay. Help me to understand.
19 MR. GROSSMAN: Would it be a nuisance?
20 THE WITNESS: I, I'm not --
21 MR. GROSSMAN: Would it create a nuisance?
22 THE WITNESS: -- I'm such a technical person.
23 Like what do you mean by nuisance?
24 MR. GROSSMAN: Well that's a fair question. But
25 I'm going to ask it just that way without defining it

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1 because the statute asks whether it would be a nuisance, I
2 believe. Doesn't 219 ask that question?
3 MS. LEE-CHO: It does. It does use the term
4 nuisance. I would proffer though that Ms. White, in terms
5 of what the county has established regulation-wise to
6 analyze whether something is a nuisance that's --
7 MR. GROSSMAN: Well, let's let her testify.
8 MS. LEE-CHO: -- her expertise.
9 THE WITNESS: Yeah, well that's why I used the
10 specific thresholds in this policy area that's established
11 by the county. So, you know, there's detailed calculations
12 that are done to indicate that traffic would operate in an
13 acceptable manner. So, I just do the analysis that supports
14 that and in fact it does and staff has agreed with our
15 analysis. I don't know how helpful I'm being to you in the
16 nuisance but --
17 MR. GROSSMAN: Well, I'll leave it to you as
18 whether you want your traffic expert to answer the question
19 that's posed by the statute. So you can pose the question
20 or not and I'll ask you a different question while Ms. Lee-
21 Cho is thinking about that. Would the proposed increase in
22 enrollment and faculty and all the construction, would the
23 traffic result in any problems with safety to pedestrian and
24 vehicular traffic?
25 THE WITNESS: You're saying associated with

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1 construction?
2 MR. GROSSMAN: Not associated with the
3 construction itself but I'm saying if all of the
4 improvements are approved --
5 THE WITNESS: Uh-huh.
6 MR. GROSSMAN: -- and all of the increase in
7 staff, faculty and enrollment --
8 THE WITNESS: -- Uh-huh.
9 MR. GROSSMAN: -- occur would there be any adverse
10 impact on the safety of pedestrians and vehicles?
11 THE WITNESS: No, I don't think the increase in
12 traffic would adversely impact conditions from an
13 efficiency, operations or safety perspective.
14 MR. GROSSMAN: Okay. All right. Now, I leave it
15 to you, Ms. Lee-Cho as to whether or not --
16 MS. LEE-CHO: Sure, I'm just trying to find the
17 nuisance information.
18 THE WITNESS: And I'd love to hear what is
19 considered nuisance.
20 MR. GROSSMAN: The statute doesn't define
21 nuisance.
22 THE WITNESS: There's no, it's very subjective?
23 MR. GROSSMAN: It's not --
24 THE WITNESS: If it's objective then no, it's not
25 a nuisance.

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1 MR. GROSSMAN: It's not entirely subjective but
2 it's not defined in the zoning ordinance. They use the term
3 a number of times.
4 MS. LEE-CHO: It is in the specific conditions I
5 guess.
6 MR. GROSSMAN: Right.
7 MS. LEE-CHO: It's not in the --
8 MR. GROSSMAN: 219. 59-G-2.19 I believe.
9 MS. LEE-CHO: It does say, one of the findings
10 that the Board has, Board of Appeals has to make and we are
11 seeking expert assistance --
12 THE WITNESS: Uh-huh.
13 MS. LEE-CHO: -- in making those findings is that
14 private educational institution use will not constitute a
15 nuisance because of a number of things --
16 THE WITNESS: Uh-huh.
17 MS. LEE-CHO: -- one of which is traffic.
18 THE WITNESS: Okay.
19 BY MS. LEE-CHO:
20 Q So, I would couch the question thusly. Assuming
21 that the regulations that we have in place and the standards
22 that we have in place to analyze adequacy of public
23 facilities, transportation network being one of them. In
24 your professional opinion, has the school complied with all
25 requirements, regulations and standards such that in your

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1 opinion traffic should not be a nuisance?
2 MR. GROSSMAN: That's too much of a --
3 THE WITNESS: yes.
4 MR. GROSSMAN: Well, I hear your answer, but
5 that's too much of a set of --
6 MS. LEE-CHO: Well I think from the expert's
7 perspective she has to assume that the regulations that the
8 county has put in place for her to analyze and the hurdles
9 that we have to go through to meet traffic requirements are
10 for the purposes of not being a nuisance to the community. I
11 mean, I just, I --
12 THE WITNESS: Yeah.
13 MR. GROSSMAN: I'll simplify the question. If she
14 can't answer it she can say she can't answer it. Will the
15 this private educational institute, as modified in
16 accordance with what the petitioner request, create a
17 nuisance because of traffic?
18 THE WITNESS: No.
19 MR. GROSSMAN: All right.
20 MS. LEE-CHO: Okay.
21 MR. GROSSMAN: You know, I leave it up to the, I
22 actually did look up and obtain the current case law
23 definitions of nuisance in another case because of this very
24 problem. But I prefer to at least let the expert opine as
25 to what she considers nuisance in view of the language in

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1 the code which calls for that finding.
2 MS. LEE-CHO: It is a strange, it is quite
3 subjective. I don't know what, you know, to make of that.
4 Okay.
5 BY MS. LEE-CHO:
6 Q While we're on the specific conditions I would I
7 guess, an additional finding that the Board of Appeals would
8 have to make is that the private educational institution
9 must conform with the following standards and the first of
10 which, density, the allowable number of peoples per acre
11 permitted to occupy the premises at any one time must be
12 specified by the Board considering the following factors.
13 So in determining the appropriate density of students per
14 acre the Board must consider traffic patterns as one of the
15 factors it considers including impact of increased traffic
16 on residential streets, proximity to arterial roads and
17 major highways, provision of measures for transportation
18 demand management, adequacy of drop-off and pick-up areas
19 for all programs and events including on-site stacking,
20 space and traffic control to effectively deter queues of
21 waiting vehicles from spilling over onto adjacent streets.
22 In your professional opinion has The Heights School's
23 modification complied with this requirement?
24 A Yes. I can't speak to the density other than
25 the --

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1 Q Right.
2 A -- criteria that you've established.
3 Q Right.
4 MR. GROSSMAN: Well I think she's asking you the
5 question about density with regard to --
6 THE WITNESS: To the transportation.
7 MR. GROSSMAN: -- traffic involvement.
8 THE WITNESS: Yes.
9 BY MS. LEE-CHO:
10 Q And then additional another finding is in
11 evaluating traffic impacts on the community the Board must
12 take into consideration the total cumulative number of
13 expected car trips generated by the regular academic program
14 and the after school or summer programs, whether or not the
15 traffic exceeds the capacity of the road and a
16 transportation management plan that identifies measures for
17 reducing demand for road capacity must be approved by the
18 Board. In your professional opinion, has this application
19 complied with this requirement?
20 A We have examined traffic conditions during school
21 periods but you mentioned something about summer?
22 Q Yes.
23 A I --
24 Q You did not --
25 A I cannot speak to the summer because that is not

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1 typically, or ever required of our --

2 Q But the summer program is an existing and

3 previously approved program and so --

4 A So it's not a --

5 Q -- it wasn't part of the scope of the

6 modification.

7 A Okay.

8 MR. GROSSMAN: Is there an increased proposed in

9 the summer program?

10 MS. LEE-CHO: No, they're not.

11 MR. GROSSMAN: And the summer program currently

12 exists?

13 MS. LEE-CHO: Correct.

14 MR. GROSSMAN: So, there's no, at this point

15 you're not asking for a modification of the summer program?

16 MS. LEE-CHO: No, we're not.

17 MR. GROSSMAN: Okay.

18 BY MS. LEE-CHO:

19 Q So with that understanding your answer would be --

20 A Yes.

21 Q -- we've complied?

22 A That's correct.

23 Q Okay. All right. And lastly I guess I would just

24 cover a couple general condition items. I know this is

25 somewhat redundant but one of the findings under the general

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1 conditions is that the site will be served by adequate

2 public facilities including public roads. So, in your

3 professional opinion --

4 A Yes.

5 Q -- have we met the APF requirements?

6 A Yes, we have.

7 MS. LEE-CHO: That's all I have.

8 MR. GROSSMAN: All right. Cross-examination, Mr.

9 Feinberg?

10 MR. FEINBERG: Yes, I do. Safety related

11 questions, I thank you for bringing up the subject.

12 CROSS-EXAMINATION

13 BY MR. FEINBERG:

14 Q Two concerns, did you address the issue of not

15 only student, faculty and staff, pedestrian along Seven

16 Locks Road in the vicinity of the school which has

17 shoulders, no sidewalks, and if I remember the county plan

18 they're not considering sidewalks to even plan for it until

19 calendar year '20, given that there is a very strong

20 narrowing of the shoulder between the school and Grand Teton

21 Drive?

22 A Yeah, we did look at, have a, our study included a

23 pedestrian impact statement as part of it and we are aware

24 of the limited pedestrian facilities off of the campus. But

25 that doesn't have an impact, per se, on the students getting

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1 to the campus given, for the satellite parking, for example,

2 we're talking about the use of shuttle parking, I mean,

3 shuttles coming back and forth between the campus, the bus

4 stops are located right outside of the school entrance. So

5 there's not the need for the sidewalks there. But that is

6 something that is, the county is aware of as well.

7 MR. FEINBERG: Well, I'll address it when I make

8 my statement --

9 THE WITNESS: Okay.

10 MR. FEINBERG: -- because I have a safety concern

11 there.

12 BY MR. FEINBERG:

13 Q The other thing is the shuttle you're proposing

14 for the tennis center. If I remember correctly there is no

15 left turn from Democracy Boulevard directly into the tennis

16 center. You have to go further east on Democracy

17 Boulevard --

18 MR. GROSSMAN: Democracy Boulevard or --

19 MR. FEINBERG: On Democracy Boulevard.

20 MR. GROSSMAN: Okay.

21 BY MR. FEINBERG:

22 Q The tennis center is on the north side of

23 Democracy Boulevard between Seven Locks Road and Westfield,

24 am I correct?

25 A Uh-huh. Uh-huh.

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1 MR. GROSSMAN: Oh, oh, you're not talking about

2 part of the school campus?

3 MR. FEINBERG: No, but they're --

4 MR. GROSSMAN: Okay, okay.

5 MR. FEINBERG: -- talking about a shuttle.

6 MR. GROSSMAN: I'm familiar with the tennis are

7 there --

8 MR. FEINBERG: Yeah. They're talking about --

9 MR. GROSSMAN: -- off Democracy.

10 MR. FEINBERG: -- a shuttle.

11 MR. GROSSMAN: Right.

12 BY MR. FEINBERG:

13 Q And if I remember correctly and I may not, that

14 first left turn or that first opening in the median strip

15 has a no left turn, there's no left turn lane coming east.

16 There is one coming west --

17 A Uh-huh.

18 Q -- to go into the street on the other side. To

19 me, there is a safety concern, even if you're talking about

20 a van, has to pull into that narrow strip and then make a

21 turn across traffic. That strip gets a lot of traffic --

22 MR. GROSSMAN: Well, you have to ask a question.

23 MR. FEINBERG: Okay.

24 MR. GROSSMAN: You can't --

25 BY MR. FEINBERG:

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1 Q Have you considered the safety of that shuttle
2 making a left turn --
3 A We did not consider the left turn. We just looked
4 at the Seven Locks, Democracy intersection.
5 MR. GROSSMAN: Okay. Any other questions?
6 MR. FEINBERG: Nope.
7 MR. GROSSMAN: Any other questions from the
8 audience of this witness? Any -- yes, ma'am?
9 MS. KURSBAN: It's not related to her --
10 MR. GROSSMAN: You have to come forward so they
11 can pick up your voice on the microphone.
12 MS. KURSBAN: It's good to stand up once in a
13 while anyway.
14 MR. GROSSMAN: Right, gets the blood circulating.
15 We do have a chair there no, so.
16 MS. KURSBAN: And this is not a question directly
17 related to the topic right now but I'm concerned about the
18 time and I'm hoping that we're going to leave. My question
19 is, will we be able to testify today?
20 MR. GROSSMAN: I hope so but I can't guarantee it.
21 Usually the petitioner goes first but if in fact it looks
22 like it's going to create a problem usually the applicant's
23 counsel will consent to taking you out of order. Is that a
24 problem?
25 MS. LEE-CHO: That wouldn't be a problem. I

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1 offered it at the lunch break.
2 MR. GROSSMAN: Okay.
3 MS. KURSBAN: Yes, she did. I mean, we do want to
4 hear all their testimony but we also would like to be heard
5 today also.
6 MR. GROSSMAN: All right. So, how long do you
7 think your testimony will take?
8 MS. KURSBAN: Gene --
9 MR. FEINBERG: Mine will be between five and six
10 minutes.
11 MR. GROSSMAN: All right.
12 MS. KURSBAN: And I'm actually not testifying but
13 I'm testifying for somebody, another neighbor that wasn't
14 able to come today.
15 MR. GROSSMAN: Well I'm not sure you can do that
16 exactly but --
17 MS. KURSBAN: Well, I guess, I didn't know because
18 I've never been to a hearing like this before so I didn't, I
19 didn't know if, you know, after we testify do you ask
20 questions or is it over or --
21 MR. GROSSMAN: No, I mean, the usual order of
22 things is the petitioner puts on their case, there's cross-
23 examination then the opposition would put on their case,
24 there'd be cross-examination and then there's an opportunity
25 for rebuttal and there's even an opportunity for surrebuttal

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1 evidence if there is such but I don't know that there would
2 be in this case.
3 MS. KURSBAN: But this will not continue another
4 day, I mean --
5 MR. GROSSMAN: It could conceivably if it's not,
6 if we don't have time to finish today then it would
7 conceivably be, and we established a second day, next
8 Thursday the 26th, just in case. It's in the notice.
9 MS. KURSBAN: Thank you
10 MR. GROSSMAN: But, you know, if you wish, you
11 know, we'll take your testimony out of order and Ms. Lee-Cho
12 says she doesn't object to that. So, if you want to wait
13 until 4:00 before we consider that?
14 MS. KURSBAN: Yes.
15 MR. GROSSMAN: Okay.
16 MS. KURSBAN: Gene, is that all right? Gene?
17 MR. GROSSMAN: We wait until 4:00 and then we'll
18 cogitate --
19 MR. FEINBERG: Yeah.
20 MR. GROSSMAN: -- whether to take your testimony
21 out of order? That would be fine.
22 MS. KURSBAN: Okay. Thank you.
23 MR. GROSSMAN: You're welcome. Any other cross-
24 examination questions of this witness? Seeing no hands, is
25 there any redirect?

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1 MS. LEE-CHO: Yes, I would like to redirect.
2 REDIRECT EXAMINATION
3 BY MS. LEE-CHO:
4 Q Ms. White, in terms of the question about the left
5 turn movement on Democracy to, I presume, access the tennis
6 center --
7 A Uh-huh.
8 Q -- parking lot, considering the number of trips
9 within an hour, even if there were no left turn, I guess
10 what would be the relative impact of left turn movement or
11 U-turn movement necessary to access the tennis center
12 proposed --
13 A You're talking about the number of vehicles?
14 Q The number of trips a shuttle might make, trips a
15 shuttle might make to the tennis center. What's the
16 relative impact of the --
17 A The --
18 Q -- school's proposed use?
19 A Yeah, we assume four shuttle trips in an hour.
20 Q Within an hour? And what's the timeframe, how
21 many hours are we talking about that a shuttle would be
22 running?
23 A So I would say four during the high demand time
24 and then, you know, maybe less frequent, you know --
25 MR. GROSSMAN: Four trips or four hours?

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1 THE WITNESS: Four trips --
2 MR. GROSSMAN: Okay, she asked --
3 THE WITNESS: -- during an hour.
4 MR. GROSSMAN: -- how many hours I think.
5 THE WITNESS: Right. So, I don't know, maybe
6 it's --
7 BY MS. LEE-CHO:
8 Q Are we talking about a one hour --
9 A Until 6:00 or 6:30 in the afternoon.
10 Q So are we talking about one hour in the morning
11 and one hour in the afternoon?
12 A In the afternoon the county has requested, or Park
13 and Planning has requested expanded hours for the lots.
14 Q And what are those hours?
15 A To support afterschool activity. So we didn't say
16 the exact time but in the ballpark of 6:30 p.m. I would say,
17 6:00 p.m. or so.
18 Q So, to Mr. Feinberg's point, if there is no left
19 turn lane right in front of the tennis center what would be
20 the option of the van shuttle to, what would they do? Go to
21 the next intersection? What would be the move then, what
22 would you assume?
23 A So they --
24 MR. GROSSMAN: Well let's not go what she would
25 assume. Let's see if you have an answer to the question.

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1 THE WITNESS: Well, I guess --
2 MR. GROSSMAN: What --
3 THE WITNESS: -- do you have an aerial? I mean, I
4 don't think we have an aerial --
5 MR. FEINBERG: I looked it up on Google Maps.
6 MS. KURSBAN: There's one other left turn.
7 MR. GROSSMAN: Yes, sir?
8 MR. FEINBERG: I can tell you what I would do,
9 what I've done, is that I've --
10 MR. GROSSMAN: Well you can testimony on the point
11 now but here is --
12 MR. FEINBERG: Well I can pose a question.
13 MR. GROSSMAN: Well, we're going to, what we'll do
14 is we'll let -- Ms. Lee-Cho, let's do this. If you don't
15 have any other redirect questions, why don't we, instead of
16 releasing the witness, let her check on that, the status of
17 that. I'm sure you can access a computer. And then come
18 back --
19 MS. LEE-CHO: That would be fine.
20 MR. GROSSMAN: -- and you can answer the question
21 of, if in fact no left turn is available from Democracy
22 Boulevard into the tennis court area --
23 MS. LEE-CHO: What is --
24 MR. GROSSMAN: -- what's the alternative and
25 whether it's safe and practical.

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1 MS. LEE-CHO: Okay.
2 MR. GROSSMAN: Okay?
3 MS. LEE-CHO: Thank you.
4 MR. GROSSMAN: All right. Your next witness?
5 MS. LEE-CHO: Aaron Smith.
6 MR. FEINBERG: May we have a five minute break?
7 MR. GROSSMAN: Sure. All right. We'll come back
8 about 12 minutes after 3:00 then.
9 (Whereupon, at 3:06 p.m., a brief recess was
10 taken.)
11 MR. GROSSMAN: I made mention to you that, here's
12 what I said about nuisance, traffic nuisance in another
13 case. A hazard or nuisance in the sense used by the zoning
14 ordinance is more akin to an activity or condition which
15 creates a substantial danger or disruption of normal
16 activities or interference with enjoyment of property beyond
17 that which is reasonably expected from this type of use at
18 this location.
19 THE WITNESS: Okay. I appreciate that.
20 MR. GROSSMAN: That's the way I approached it
21 looking at the case law and so on and --
22 MS. LEE-CHO: I think with that --
23 MR. GROSSMAN: -- the dictionary definition.
24 THE WITNESS: Yeah, that --
25 MS. LEE-CHO: -- she could've answered.

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1 THE WITNESS: Yeah. That is helpful.
2 MR. GROSSMAN: All right. So your answer doesn't
3 change on that question?
4 THE WITNESS: No, it doesn't.
5 MR. GROSSMAN: All right.
6 MS. LEE-CHO: Actually, Ms. White was able to take
7 a look at Google.
8 MR. GROSSMAN: Okay.
9 THE WITNESS: So there is a traffic signal at
10 Westlake and Democracy --
11 MR. GROSSMAN: Yes.
12 THE WITNESS: -- well there's a median break
13 before that but if we find that it is better for the shuttle
14 to make a U-turn at a traffic signal it's just a few hundred
15 feet down and they could make a U-turn there and --
16 MR. GROSSMAN: I see, up a hill.
17 THE WITNESS: Yes.
18 MR. GROSSMAN: Okay. And so the shuttle could
19 proceed to the light or make the turn at an earlier break --
20 THE WITNESS: Exactly.
21 MR. GROSSMAN: -- and make a U-turn and then come
22 back to the --
23 THE WITNESS: And then make a right turn into the
24 parking lot.
25 MR. GROSSMAN: Okay. And would that constitute a

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1 problem --
2 THE WITNESS: No.
3 MR. GROSSMAN: -- from a transportation --
4 THE WITNESS: No problem.
5 MR. GROSSMAN: -- management standpoint?
6 THE WITNESS: No, it doesn't.
7 MR. GROSSMAN: Okay. All right.
8 MS. LEE-CHO: Thank you.
9 THE WITNESS: Uh-huh.
10 MR. GROSSMAN: All right. Are there any
11 questions? Hold on, before you leave, I have to let you be
12 cross-examined. No questions? Anybody? No, all right.
13 MR. FEINBERG: I just wanted to make sure --
14 THE WITNESS: Thank you.
15 MR. FEINBERG: -- that was under consideration.
16 MR. GROSSMAN: Yes.
17 THE WITNESS: Thank you
18 MR. GROSSMAN: You're good to go. Okay. Thank
19 you.
20 MS. LEE-CHO: All right. Aaron, can you please
21 state your name and address?
22 MR. SMITH: Aaron Smith. I'm an associate with A.
23 Morton Thomas and Associates at 800 King Farm Boulevard in
24 Rockville, Maryland.
25 MR. GROSSMAN: All right. Will you raise your

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1 right hand, please?
2 (Witness sworn.)
3 MR. GROSSMAN: All right. You may proceed.
4 DIRECT EXAMINATION
5 BY MS. LEE-CHO:
6 Q Please describe your field of expertise.
7 A I am a licensed civil engineer in the state of
8 Maryland as well as D.C. and Virginia.
9 Q Okay. How many number of years' experience do you
10 have in civil engineering?
11 A 17 years.
12 Q And do you also have experience in environmental
13 engineering design and consulting I thought I read?
14 A Primarily civil engineering.
15 Q Primarily?
16 A Yes.
17 Q Have you ever previously testified as an expert
18 witness before the hearing examiner or the Board of Appeals?
19 A Yes, I have.
20 Q Can you name the cases?
21 A It was actually just one, the Sienna School, and I
22 believe Mr. Grossman --
23 MR. GROSSMAN: I was the hearing examiner, yes.
24 MS. LEE-CHO: I have Mr. Smith's resume.
25 MR. GROSSMAN: Okay.

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1 MS. LEE-CHO: I offer it for the record.
2 MR. GROSSMAN: Thank you. That will be Exhibit
3 No. 107, Aaron Smith resume.
4 (Exhibit No. 107 was received
5 into evidence.)
6 MR. GROSSMAN: All right.
7 MS. LEE-CHO: And I notice here that he does have
8 his professional registration numbers listed on page 2.
9 MR. GROSSMAN: All right.
10 MS. LEE-CHO: And if you want to just briefly go
11 through the education, background I would offer Mr. Smith as
12 an expert in civil engineering and environmental design --
13 MR. GROSSMAN: All right.
14 MS. LEE-CHO: -- based on his resume.
15 MR. GROSSMAN: And you have a BS in civil
16 engineering from University of Notre Dame and ME in civil
17 engineering from the University of Maryland?
18 THE WITNESS: Correct.
19 MR. GROSSMAN: And you are licensed in the state
20 of Maryland?
21 THE WITNESS: Yes, I am.
22 MR. GROSSMAN: Any questions about this witness'
23 qualifications --
24 MR. FEINBERG: Nope.
25 MR. GROSSMAN: -- as an expert? Okay. Anybody

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1 else? No.
2 MR. FEINBERG: I just know the questions that I'm
3 going to raise.
4 MS. LEE-CHO: You're going to test his expertise.
5 MR. GROSSMAN: I accept Mr. Smith as an expert in
6 civil engineering.
7 MS. LEE-CHO: Okay, great. Thank you.
8 BY MS. LEE-CHO:
9 Q So I want to begin by discussing the recent
10 changes that have been made to the special exception site
11 plan, in particular since the Planning Board hearing. We
12 had a meeting with the neighbors on January 19th and a
13 subsequent submittal into the record of a revised special
14 exception site plan and that is in Exhibit No. 93A dated
15 January 27th, 2015 and we have a copy of that plan for your
16 use in your testimony.
17 A Uh-huh.
18 Q If you could walk us through the revisions on this
19 latest version of this site plan?
20 A So, as stated, since our meeting with the
21 community and the last Planning Board meeting we made
22 revisions to the special exception site plan in response to
23 their comments, specifically revisions were to add the
24 addition of the split rail fence in the northwest corner of
25 the property --

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1 MR. GROSSMAN: Can you step back a little?
2 THE WITNESS: Sorry.
3 MR. GROSSMAN: Thank you.
4 THE WITNESS: So and these revisions are clouded
5 on this plan. We added split rail fence along the forest
6 conservation easement in the northwest corner of the
7 property adjacent to the existing middle school.
8 MR. GROSSMAN: Okay. And you say they are clouded
9 you say?
10 THE WITNESS: Yes, we just clouded the items that
11 are new, that have changed since the original special
12 exception.
13 MR. GROSSMAN: Okay. What do you mean by the term
14 clouded?
15 THE WITNESS: The, the items that are different we
16 have put a --
17 MR. GROSSMAN: A funny little curvy thing around?
18 THE WITNESS: Curved delineation --
19 MR. GROSSMAN: All right.
20 THE WITNESS: -- around it.
21 MR. GROSSMAN: And that was much more eloquently
22 put. And this is exhibit that we're looking at is what
23 number?
24 MS. LEE-CHO: 93A.
25 THE WITNESS: We've also added the addition of

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1 split rail fence in the southwest corner, again, delineating
2 the forest conservation easement area. We've added a note
3 in the southeast corner relative to what's already been
4 discussed today about balls going into the properties to the
5 south that the school will repair, repair existing ball
6 netting and extend fencing as necessary to protect adjoining
7 properties.
8 MR. GROSSMAN: So that, the as necessary I take it
9 is the operational judgmental issue? Is that what you mean
10 by as needed?
11 MS. LEE-CHO: Um --
12 MR. GROSSMAN: I mean, are you going to make the
13 operational judgment --
14 MS. LEE-CHO: Yes.
15 MR. GROSSMAN: -- first and then --
16 MS. LEE-CHO: Yes.
17 MR. GROSSMAN: -- do it if need be, is that the
18 idea?
19 MS. LEE-CHO: Well --
20 THE WITNESS: Yeah, I think it's --
21 MR. GROSSMAN: As needed is a waffley term for a
22 plan.
23 THE WITNESS: I think it goes back to the
24 discussion about whether a tall netting is actually
25 necessary and aesthetically pleasing to the neighbors --

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1 MR. GROSSMAN: Right.
2 THE WITNESS: -- and it was going to be as part of
3 the ongoing discussion. They're going to make the
4 operational changes and make the necessary repairs to the
5 existing netting out there and then if there are, you know,
6 additional changes that need to be made that would be worked
7 out with the --
8 MR. GROSSMAN: Yeah, I mean, I don't have a
9 problem with that approach if it's good with the neighbors.
10 But I'm just saying, on a plan it's a little bit unusual to
11 say, as needed, rather than to say specifically what's being
12 done. It is unusual. I'm not saying you shouldn't do it
13 here because of the unusual situation but --
14 MS. LEE-CHO: And with the record remaining open
15 we would be open to better language if the hearing examiner
16 would recommend or something much more clear if that is the
17 direction that you wanted to go. But this is, this was just
18 our first take.
19 MR. GROSSMAN: I get you, I get you. Okay.
20 THE WITNESS: We've also added the requirement for
21 split rail fence around the proposed location of the theater
22 building. That fence wouldn't be installed until actually
23 the time of the theater building construction. And then the
24 only other item that we noted on, as changed on the special
25 exception site plan was actually the parallel parking spaces

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1 on the existing exit drive, they're going to remain. In the
2 original special exception site plan they were noted as
3 removed per the fire marshal's requirements. We've since
4 revised or developed an interim approval with the fire
5 marshal that allows those parallel parking spaces to remain.
6 MR. GROSSMAN: Well that raises the question of --
7 THE WITNESS: Yes.
8 MR. GROSSMAN: -- what I was told last night. Is
9 that interim approval somewhere reflected?
10 MS. LEE-CHO: It's pending.
11 THE WITNESS: It is, so, I received correspondence
12 from Ms. Marie LaBaw this week.
13 MR. GROSSMAN: Who's that?
14 THE WITNESS: She's with the fire marshal's
15 office.
16 MR. GROSSMAN: Okay.
17 THE WITNESS: And she indicated to me that it is
18 in the process of approval; that she's approved it and it's
19 being processed currently.
20 MR. GROSSMAN: Okay. I mean, that's a piece of
21 hearsay that I can't accept. I mean, hearsay is an
22 extrajudicial declaration offered to prove the truth of the
23 matter that's asserted therein, all of which is to say that
24 that piece of information that somebody outside of this
25 hearing room told this witness is being offered to prove

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1 that it's true. That is, that it'll be approved.
2 MS. LEE-CHO: We can offer her e-mail.
3 MR. GROSSMAN: Right. Ordinarily we do accept
4 some forms of hearsay in this kind of proceeding. But it
5 has to be, that's kind of a critical thing; that is a
6 government approval aspect. So I wouldn't really accept
7 that. It'd have to be actually shown to me in a better form
8 than a statement by a witness that somebody else said that
9 for that particular thing. Now, do you have a written
10 documentation?
11 THE WITNESS: We can provide it.
12 MR. GROSSMAN: Okay. You can file that while the
13 record is open.
14 MS. LEE-CHO: We have been pressing Ms. LaBaw for
15 several weeks now --
16 MR. GROSSMAN: Right.
17 MS. LEE-CHO: -- and it's been difficult but --
18 MR. GROSSMAN: Okay. But I take it that that's
19 the interim solution that we're talking, that was raised by
20 Leslie last night that the fire marshal, that was the issue?
21 MS. LEE-CHO: Yes.
22 MR. GROSSMAN: Okay. And the final solution,
23 there's a final solution that's been approved by the fire
24 marshal?
25 THE WITNESS: Yes.

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1 MS. LEE-CHO: So, yes.
2 BY MS. LEE-CHO:
3 Q So, Aaron, why don't you talk about how we got to
4 the interim? The final campus master plan has no parallel
5 spaces in the egress lane, right?
6 A Right.
7 Q So then please explain why we sought after an
8 interim solution.
9 A So, as has been discussed repeatedly today there's
10 a discussion of parking and the need for parking on the
11 campus. And so the reason that we went back to the fire
12 marshal's office to look at an interim approval for fire
13 access was to allow these parking spaces, parallel parking
14 spaces to remain on the campus.
15 MR. GROSSMAN: They're part of the 124 that you've
16 included? How many are there in that area?
17 THE WITNESS: There are seven I believe.
18 MR. GROSSMAN: Okay. And in the final solution
19 would they be included as part of the parking or not?
20 THE WITNESS: The way it's been left to the fire
21 marshal's office is that they have approved this interim
22 condition and if and when the school moves forward with any
23 sort of building permit it would be reevaluated at that time
24 whether it could continue to operate with the interim
25 approval which would allow those parking spaces to remain or

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1 whether they would have to remove those parking spaces and
2 go to the final condition approval which designates that as
3 a fire lane and does not allow parallel parking spaces.
4 MR. GROSSMAN: So that's up in the air?
5 THE WITNESS: It is up in the air with regard to
6 any future construction whether or not they would be allowed
7 to continue to keep those parking spaces.
8 BY MS. LEE-CHO:
9 Q And in the event that those future spaces are
10 required to be removed, wouldn't that be part of the
11 assessment to go to the off-site parking option --
12 A Yes.
13 Q -- if a demand for on-site parking is increased
14 and the number of spaces on-site is reduced?
15 A Correct.
16 Q All right.
17 A Yes.
18 MR. GROSSMAN: That was the leading way of asking
19 by saying --
20 MS. LEE-CHO: Yes.
21 MR. GROSSMAN: -- wouldn't that be --
22 MS. LEE-CHO: Wouldn't that be.
23 MR. GROSSMAN: -- instead of would that be is
24 really the better way to ask that. But okay.
25 THE WITNESS: Right. So, yes, the overall parking

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1 would be evaluated at that time.
2 MR. GROSSMAN: All right.
3 BY MS. LEE-CHO:
4 Q Okay. So, let's go back to, could you read the
5 actual language that you've included in that bubble --
6 A For the parallel?
7 Q -- for the parallel spaces?
8 A It states, parallel parking stripes to remain
9 subject to review and approval by Montgomery County Fire
10 Marshal.
11 Q So, again, if there is a better way to
12 encapsulate --
13 MR. GROSSMAN: All right. But I take it your
14 position is that, okay, if you lose those seven spaces, with
15 the addition of the off-site parking you still have plenty
16 to meet the minimum requirements?
17 MS. LEE-CHO: Correct.
18 MR. GROSSMAN: okay.
19 THE WITNESS: The only other change which isn't
20 noted on the special exception site plan is the screening
21 plan, screen.
22 BY MS. LEE-CHO:
23 Q And why wasn't it noted on the special exception
24 site plan?
25 A Well, we generally don't address plantings on a

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1 special exception site plan. So we've addressed it on the
2 landscape plans --
3 MR. GROSSMAN: All right.
4 THE WITNESS: -- which are, so best illustrated
5 here.
6 MR. GROSSMAN: What exhibit number are you looking
7 at now?
8 MS. LEE-CHO: That would be Exhibit 93C4.
9 MR. GROSSMAN: 93C --
10 MS. LEE-CHO: 4.
11 MR. GROSSMAN: -- 4?
12 MS. LEE-CHO: Uh-huh.
13 MR. GROSSMAN: Roman numeral four, little four?
14 MS. LEE-CHO: Numeral four.
15 MR. GROSSMAN: Okay.
16 THE WITNESS: And the change that was made, the
17 change made to this plan had to do with, again, as a result
18 of our meeting with the community on January 19th their
19 request for screening in the northwest corner adjacent to
20 the middle school and so --
21 MR. GROSSMAN: I can't quite understand what I'm
22 looking at there. What part of the diagram is that?
23 THE WITNESS: So, it's, I don't want to block
24 anybody's view here, it's, we're looking at the middle
25 school northwest corner.

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1 MR. GROSSMAN: Okay, I got you.
2 THE WITNESS: So, here's the middle school
3 building here.
4 MR. GROSSMAN: All right.
5 THE WITNESS: It's zoomed in, same --
6 MR. GROSSMAN: Got you.
7 THE WITNESS: -- orientation.
8 MR. GROSSMAN: Right.
9 THE WITNESS: And so we've shown the plantings of
10 evergreen trees along the, along the forest conservation
11 easement line --
12 MR. GROSSMAN: Right.
13 THE WITNESS: -- as a way to screen some of the
14 activity associated with the middle school and that was a
15 direct result of our conversations with the community on
16 January 19th.
17 MR. GROSSMAN: Okay.
18 BY MS. LEE-CHO:
19 Q At this point could you address the comment by Ms.
20 Saville that, in terms of I guess her preference or her
21 recommendation would be to locate those plantings along the
22 property line as opposed to where we've located them?
23 A Right. Ms. Saville's comment, as Ms. Lee-Cho
24 stated, was actually not to put these plantings along the, I
25 guess the eastern boundary of the easement closer to the

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1 school but actually put them along the property line.
2 MR. GROSSMAN: Right.
3 THE WITNESS: The reason we've placed them where
4 we have is you can see that the elevation change from the
5 school towards the property line, it actually drops to a
6 lower elevation at the property line. So, again, in talking
7 with the community their preference actually was to have
8 these screenings at a higher elevation to make them a more
9 effective screen from their property.
10 MR. GROSSMAN: What is the elevation difference?
11 THE WITNESS: Right now we're showing these
12 plantings at about elevation, it varies from about elevation
13 312 up to 318 in that area and then kind of drops off in the
14 back. At the property line you're down at, what's that 308,
15 306, 304. So you're talking about two, four, six, eight,
16 maybe eight to 10 feet of elevation difference along that
17 stretch.
18 MR. GROSSMAN: Okay.
19 THE WITNESS: And so our approach was to take
20 advantage of that elevation change.
21 MR. GROSSMAN: Now, maybe I'm misreading it but it
22 looks like your illustrative landscape plan over there looks
23 like it already has a significant amount of trees along the
24 property line, am I misunderstanding that?
25 THE WITNESS: No, you're not. There is an

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1 existing forest conservation easement area here --
2 MR. GROSSMAN: Right.
3 THE WITNESS: -- and it is but there are not,
4 those are primarily deciduous trees, there are not evergreen
5 trees --
6 MR. GROSSMAN: Okay.
7 THE WITNESS: -- there. And so that was part of
8 the, the requirement, one of the stipulations was that these
9 would be evergreen trees.
10 MR. GROSSMAN: I just wonder whether or not those,
11 you could even put evergreen trees given the competition of
12 the deciduous trees down along the property line. Could you
13 actually put evergreen trees along the property line?
14 THE WITNESS: Yes, our landscape architect has
15 looked at that and it's not dense, it has a natural
16 forest --
17 MR. GROSSMAN: Okay.
18 THE WITNESS: -- element to it but it's not so
19 dense that it couldn't survive.
20 MR. GROSSMAN: Okay. All right, so I don't know
21 if technical staff was privy to the conversation that you
22 had with the neighborhood, the January 19 conversation so
23 I'm not sure that Leslie Saville knows of the preference of
24 the neighborhood in that regard. So, I mean, that's a
25 question. Was that brought to her attention by you at

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1 all --
2 MS. LEE-CHO: No, we've --
3 MR. GROSSMAN: -- Ms. Lee-Cho?
4 MS. LEE-CHO: -- not, I've not had communication
5 with Ms. Saville since the Planning Board hearing. She's
6 only received the materials. And again, that's why I wish
7 the neighbors who were at the meeting from the Courts of
8 Democracy Lane --
9 MR. GROSSMAN: Right.
10 MS. LEE-CHO: -- were here but --
11 MR. GROSSMAN: Okay. Maybe they were so satisfied
12 with your explanation --
13 MS. LEE-CHO: We hope.
14 MR. GROSSMAN: -- that they didn't need come.
15 Okay.
16 BY MS. LEE-CHO:
17 Q So, while we're here --
18 A Uh-huh.
19 Q -- why don't you go into a little bit more detail
20 about the split rail fencing and the forest conservation
21 plan approval --
22 A Uh-huh.
23 Q -- that it's related to?
24 A Sure.
25 MR. GROSSMAN: Is there an additional witness, by

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1 the way, after Mr. Smith?
2 MS. LEE-CHO: No.
3 MR. GROSSMAN: Okay.
4 THE WITNESS: Part of the requirements of the
5 forest conservation plan were to put split rail fencing in
6 this area as part of pulling the building permit or pulling
7 your erosion sediment control land disturbing permit. What
8 the school has offered and is willing to do is actually put
9 the split rail fence in prior to the next school year, fall
10 2015. Again, this is part of our, what came out of our
11 community meeting on January 19th were some things that
12 could be done in the interim knowing that there is no real
13 scheduled construction due to lack of funds. So, again, the
14 school is willing to put in the split rail fencing and these
15 plantings now in order to meet those --
16 BY MS. LEE-CHO:
17 Q And what would the split rail fencing really do?
18 What's the purpose of the split rail fencing?
19 A Right. So the big issue for the neighbors here is
20 the activity and the noise. Right now there is an existing
21 forest conservation easement there but it's not delineated.
22 It's not, it's pretty ambiguous and so the split rail
23 fencing will become, it will clearly define the easement
24 area and also be a deterrent for kids getting into it and
25 getting closer to the property line and closer to the

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1 neighbors who are --
2 MR. GROSSMAN: Point to the location of the split
3 rail again for me.
4 THE WITNESS: It's along the easement line right
5 here.
6 MR. GROSSMAN: Okay.
7 BY MS. LEE-CHO:
8 Q And just to be clear, the split rail fencing is
9 not something that a kid, high school or middle school,
10 couldn't climb over.
11 A Sure.
12 Q It's not to prevent access but it's to demarcate
13 the area --
14 A Right, it's --
15 Q -- is that right?
16 A It is. Yes, you can still get past it but it's to
17 keep not only kids but also mowers and things of that
18 nature, just to preserve that area. So, it's not a, it's
19 not a screen, it's again, split rail fences --
20 MR. GROSSMAN: You're not going to electrify it
21 and put concertina wire on it. So --
22 MR. FEINBERG: That one doesn't impact me.
23 MR. GROSSMAN: I've got a question for you. Would
24 the addition of those evergreens violate any condition of
25 the forest conservation plan?

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1 THE WITNESS: No, as long as they're native
2 species they can be planted in that area and they would be.
3 MR. GROSSMAN: Okay. I mean, there's nothing in
4 the language that, or the plan itself, that shows what the
5 vegetation is and that's not included in that vegetation
6 now, right, on the forest conservation plan?
7 THE WITNESS: We have, I mean, we have an approved
8 NRFSD and forest conservation plan that get into the species
9 of all the trees.
10 MR. GROSSMAN: Right, but I'm just saying,
11 whatever was approved by the Planning Board when they
12 approved the, I guess it was the preliminary forest
13 conservation --
14 THE WITNESS: Uh-huh.
15 MR. GROSSMAN: -- or maybe it was the final, I
16 don't know, you already had a forest conservation plan.
17 MS. LEE-CHO: I think it's final.
18 THE WITNESS: Uh-huh.
19 MR. GROSSMAN: So, when they approved that final
20 conservation plan there presumably is a plan that shows the
21 trees that are going to be there, right?
22 THE WITNESS: Yes, I mean, there --
23 MR. GROSSMAN: And those trees won't be on it is
24 what I'm saying.
25 THE WITNESS: Correct.

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1 MR. GROSSMAN: And you're saying it still wouldn't
2 violate it just because they're native species it wouldn't
3 violate it adding them even though they're not on the plan?
4 THE WITNESS: This was actually one of the
5 recommendations in the staff report was to put some screen
6 plantings in and again, I'm not necessarily a forest
7 conservation expert but my understanding is that these
8 plants would not be in violation of the forest conservation
9 plan.
10 MR. GROSSMAN: Okay. You might find that out
11 because we don't want to have anything that directs, on the
12 hand, that you follow the approved forest conservation plan,
13 on the other tells you to violate it.
14 BY MS. LEE-CHO:
15 Q Well let me ask you this. When the forest
16 conservation plan was approved by the Planning Board --
17 A Yes.
18 Q -- is there anything in that approval that
19 prohibits a land owner from introducing native species into
20 the easement area?
21 A No, not that I'm aware of.
22 MR. GROSSMAN: Well, it's the not that I'm aware
23 of part that's problematic.
24 MS. LEE-CHO: We will need to --
25 MR. GROSSMAN: You need to find that out --

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1 THE WITNESS: I can --
2 MR. GROSSMAN: -- and submit something on the list
3 of things you're submitting before the record closes.
4 THE WITNESS: I mean, I think there is a
5 requirement to submit a revised conservation plan as part
6 of, as part of the approved forest conservation. We're
7 resubmitting plans to them which would obviously include
8 these revisions. So there's already a process in place that
9 will accommodate this.
10 MS. LEE-CHO: Okay.
11 MR. GROSSMAN: I mean, generally --
12 MS. LEE-CHO: We'll get it clear.
13 MR. GROSSMAN: -- my question was you said that
14 the split rail fence is right at the easement line, right?
15 THE WITNESS: Yes.
16 MR. GROSSMAN: And so presumably the trees you're
17 going to be adding are past it.
18 THE WITNESS: They would be, yes, they would be --
19 MR. GROSSMAN: They would be actually in the
20 easement.
21 THE WITNESS: -- inside the easement.
22 MR. GROSSMAN: So that's why --
23 THE WITNESS: In the area, yes.
24 MR. GROSSMAN: Yes. So we do need to clarify
25 that.

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1 THE WITNESS: Yeah.
2 BY MS. LEE-CHO:
3 Q Okay. And I think you did mention this but
4 typically the split rail fencing would not be, or when would
5 that, when would split rail fencing be required?
6 A It was, it's to be required with, at the time of
7 the construction of the middle school improvements. So, if
8 and when that ever occurs it would be part of that approval
9 to install the split rail fencing.
10 Q Now, in addition to the split rail fencing behind
11 the middle school we also talked with the neighbors about
12 adding it to the southern --
13 A Yes.
14 Q -- end of the property. Could you remind us for
15 what purpose that, what purpose would that serve as far as
16 addressing one of the neighbor's concerns?
17 A So, the other area that we're, that the school is
18 willing to put split rail fence in is in the southwest
19 corner, again, adjacent to the easement area and that was
20 part of our conversation, again, with the community about
21 some, I think primarily safety and just getting into this
22 area which has steep slopes and --
23 MR. GROSSMAN: Right.
24 THE WITNESS: -- falling trees and things of that
25 nature.

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1 BY MS. LEE-CHO:
2 Q And the split rail fencing around the future
3 theater, that was not specifically discussed with the
4 neighbors per se but --
5 A Correct.
6 Q -- you've thrown it anyway?
7 A Well, it's a requirement of the construction of
8 the, the, when the theater is, when the school goes to pull
9 the permits for the theater.
10 Q Well I guess are we proposing to --
11 A Not at this time.
12 Q -- put it in? Okay.
13 A Because it would, I mean, there's an existing
14 basketball court there now --
15 Q Right. So what is the school proposing to install
16 right away as far as split rail fencing?
17 A They're willing to put the split rail fence in
18 adjacent to the middle school --
19 Q Uh-huh.
20 A -- in the northwest corner --
21 Q Uh-huh.
22 A -- and along this forest conservation easement
23 boundary in the southwest corner.
24 Q Okay. All right. Can you get into for us what
25 was not addressed on this plan that may have been included

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1 in the technical staff report and recommendation?
2 A Yes. One of the staff comments was the
3 requirement to add shading of paved areas --
4 MR. GROSSMAN: Right.
5 THE WITNESS: -- and our, the way that the code
6 reads is that --
7 BY MS. LEE-CHO:
8 Q Can you cite the code, please.
9 A Sure. It's Section 59-E-2.83, parking and loading
10 facilities for special exception uses in residential zones.
11 It requires that trees be planted and maintained throughout
12 the parking facility to ensure that at least 30 percent of
13 the paved area, including driveways, are shaded. Shading
14 must be calculated by using the area of the tree crown at 15
15 years after the parking facility is built. This only
16 applies for any cumulative enlargement of a surface parking
17 facility that is greater than 50 percent of the total
18 parking area approved before May 6th, 2002. The entire off
19 street parking facility must be brought into conformance
20 with this section. So, the, the school's existing surface
21 parking lot was approved in 2000 and we are not proposing to
22 increase surface parking by 50 percent as part of the
23 proposed special exception. The, the increase in parking is
24 going to be in an underground parking lot.
25 MR. GROSSMAN: So you're saying it's not

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1 required --
2 THE WITNESS: Correct.
3 MR. GROSSMAN: -- by the code provision?
4 THE WITNESS: Correct.
5 MR. GROSSMAN: And my question would be, if staff
6 thought it was desirable would it be a bad thing for you to
7 do?
8 THE WITNESS: It would be, it wouldn't necessarily
9 be a bad thing to do but it would be a significant cost to
10 the school and it would be difficult, we didn't go as far as
11 to study how feasible it would be to actually meet that
12 requirement of 30 percent of shaded, shading 30 percent of
13 their paved area on side.
14 MS. LEE-CHO: And if I might?
15 THE WITNESS: Yeah.
16 BY MS. LEE-CHO:
17 Q The proposal doesn't entail redoing the main
18 portions of the existing parking lot, does it not? It
19 retains it the way it is for the two lower tiers of surface
20 parking?
21 A Correct.
22 Q So, in order to meet this requirement, the school
23 would be undertaking to take out permanent asphalt or --
24 A It potentially would need --
25 Q -- what would be entailed?

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1 A Yeah. They potentially need to be, they would
2 potentially lose parking spaces in order to create islands
3 that would allow for the plantings necessary to meet the
4 shading requirements.
5 MR. GROSSMAN: Does this, was your concern about
6 this area mentioned to staff? I mean, you raised the
7 question that it's not required by the code according to
8 your interpretation?
9 THE WITNESS: We did.
10 MR. GROSSMAN: And what did they say?
11 MS. LEE-CHO: I believe the staff report the way
12 it states it is that they think it's still a good idea and
13 that the school should voluntarily do it.
14 MR. GROSSMAN: Well, it wouldn't be a matter of
15 voluntarily, it would be --
16 MS. LEE-CHO: Well, if it's not required --
17 MR. GROSSMAN: Well --
18 MS. LEE-CHO: -- by the code it would be something
19 that they would still proffer. When I mean voluntary I mean
20 proffer to do --
21 MR. GROSSMAN: Okay.
22 MS. LEE-CHO: -- as part of the special exception.
23 MR. GROSSMAN: Okay. All right.
24 THE WITNESS: I think in, I think that the way
25 that was stated by staff was looking at the overall

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1 environmental sensitivity of the proposed development and
2 from our perspective, you know, they made a deliberate
3 decision to build within existing footprints on existing
4 impervious areas, put parking below grade as opposed to
5 creating additional surface parking, they've done everything
6 they can to preserve the environmental integrity of their
7 property and it's part of the school's mission. So, we felt
8 like the environmental elements were met by the approach to
9 the site plan and that this didn't apply.
10 BY MS. LEE-CHO:
11 Q Let me ask you this question. So if the
12 underground parking garage wasn't part of the school's
13 proposal --
14 A Uh-huh.
15 Q -- and they still needed to provide additional
16 parking on-site to support their program what would be their
17 options for on-site parking?
18 A They really, because, and this has been brought up
19 repeatedly, it is, the topography and the limitations on
20 site, there really is nowhere else to put parking.
21 Q Well, there is forest conservation are.
22 A You'd have to get into, you'd have to get into
23 easement areas are really the only open space available to
24 the school at this point.
25 Q Okay. Okay, at this point I would just like to go

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1 through the general development standards of 59-G-1.23 and
2 ask you to walk us through the application's compliance with
3 each element.
4 A Okay.
5 Q So 59-G-1.23, let's see, has a number of elements,
6 the first of which are the development standards of the R-90
7 zone. And so could you just quickly walk us through whether
8 this application complies?
9 A Sure. Yes, the application complies with all of
10 the development standards in the R-90 zone including
11 building height, building coverage, setbacks, lot area and
12 student density per acre. I would like to mention, though,
13 that the school was granted a setback variance approved by
14 the Board of Appeals for one of the baseball dugouts, the
15 existing baseball dugouts along Seven Locks Road.
16 MR. GROSSMAN: When was that granted?
17 MS. LEE-CHO: That was last year.
18 THE WITNESS: Was it last year?
19 MS. LEE-CHO: Uh-huh.
20 THE WITNESS: It was recently. There's a case
21 number here, case number A-6430.
22 MR. GROSSMAN: Okay.
23 BY MS. LEE-CHO:
24 Q Okay. I think we've covered the parking
25 sufficiently.

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1 A Uh-huh.
2 Q So, let's move on to minimum frontage waiver. Is
3 there a minimum frontage waiver requirement?
4 A I don't believe there is.
5 Q It's not applicable?
6 A Not applicable.
7 MR. GROSSMAN: You mean minimum frontage but not a
8 waiver.
9 MS. LEE-CHO: Minimum frontage requirement. It
10 says waiver.
11 BY MS. LEE-CHO:
12 Q Okay. So there was an amended final forest
13 conservation plan and tree variance approved by the Planning
14 Board, correct?
15 A Correct.
16 Q And if you could just very quickly summarize what
17 the school is required to do under the FCP?
18 A Sure. They are required to plant 15 native canopy
19 trees on site for the loss of specimen trees. That's a
20 requirement prior to pulling their first sediment control
21 permit. They need to record their category one easements by
22 deed and then once recorded they need to be delineated with
23 permanent markers and signage. In this case in some areas
24 that will be handled by split rail fence. They need to
25 submit a certificate of compliance to use an off-site forest

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1 mitigation bank. Then again, prior to, the way the forest
2 conservation report reads, they have to delineate the area
3 adjacent to the middle school which we've already discussed
4 with split rail fence. But the school is going to be
5 willing to do that now. And then also the proposed theater
6 building which they will do prior to building that building.
7 They're required to remove all debris, equipment and
8 structures from conservation easement areas. This is
9 actually something worth mentioning, again, having to do
10 with the northwest corner of the property where the
11 neighbors have complained about the noise. Existing out
12 there right now within the easement areas there are two
13 structures. There's a pavilion and some benches that are
14 used by the students. Those will be removed and those will
15 be removed immediately to, to again, meet the requirements
16 of the forest conservation plan but also to help with some
17 of the noise issues that the neighbors are experiencing.
18 And then the last bullet is then to submit a revised forest
19 conservation plan indicating location of the 15 new trees
20 and the location of the split rail fencing which will --
21 MR. GROSSMAN: Okay.
22 THE WITNESS: -- will address your concern.
23 MS. LEE-CHO: And we'll check that additional
24 plantings could be added to that and get back to you.
25 THE WITNESS: Right.

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1 BY MS. LEE-CHO:
2 Q So there is no water quality plan I believe but
3 there is a stormwater management concept, could you --
4 MR. GROSSMAN: Well, is this in a special
5 protection area?
6 THE WITNESS: It is not.
7 MR. GROSSMAN: And so you wouldn't have a --
8 MS. LEE-CHO: No.
9 MR. GROSSMAN: -- water quality plan.
10 THE WITNESS: Right.
11 BY MS. LEE-CHO:
12 Q Could you discuss the stormwater management
13 concept that has been approved by DPS?
14 A Yes. So, we have an approved stormwater
15 management concept. It includes the construction of seven
16 new micro bioretention areas, a new sand filter, a new
17 underground storage and green roof on three of the four new
18 proposed buildings. Additionally, the school will be
19 required to restore and stabilize the existing downstream
20 outfall to Cabin John Creek which is actually on the other
21 side of Seven Locks Road. So down here it outfalls --
22 MR. GROSSMAN: Right.
23 THE WITNESS: -- into the stream and they would do
24 a restoration in that location.
25 MR. GROSSMAN: I sometimes wonder what the future

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1 holds for green roofs, whether they will survive on a long-
2 term basis. What do you think?
3 THE WITNESS: They seem to be pretty mainstream
4 now.
5 MR. GROSSMAN: I know.
6 THE WITNESS: I mean, our experience is that the
7 benefits are questionable, I think, at least in terms of
8 some of the stormwater manage --
9 MR. GROSSMAN: Right.
10 THE WITNESS: -- elements that we need to address
11 but I, I, I think they're going to be around for a while
12 based on --
13 MR. GROSSMAN: I just wonder whether they put
14 sufficiently heavy burden on, you know, structural burden
15 since they, I would assume, carry a great deal more weight
16 than usual roofs, don't they?
17 THE WITNESS: There is a structural cost to that
18 and Ms. Schmickel might be able to answer that question
19 better than I could but --
20 MR. GROSSMAN: Well, it's almost an idle curiosity
21 because --
22 THE WITNESS: Yeah.
23 MR. GROSSMAN: -- it's what's being required these
24 days but --
25 THE WITNESS: Yeah.

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1 MR. GROSSMAN: -- I'm just saying that --
2 THE WITNESS: I think when it was less mainstream
3 it was something, a cost benefit analysis that was, that was
4 done by most owners. Now it's kind of, it's just accepted
5 as more part of the overall cost of the buildings because
6 that's the way they're constructed now.
7 MR. GROSSMAN: Okay. In these days of four-foot
8 snowfalls in Boston you wonder about what the effect is on
9 roofs.
10 THE WITNESS: Yeah. The only other thing I'll
11 mention about the approved concept plan is that it does,
12 there are really two outfall, there are two outfall points
13 and Ms. Schmickel talked about this as well. There is a
14 drainage divide that runs down the middle of the property.
15 There's basically two outfall points from the property.
16 There's one in the southwest corner which drains down to, to
17 the Inverness Pond.
18 MR. FEINBERG: Potomac Pond.
19 THE WITNESS: Potomac Pond, sorry. And the other
20 one goes out to the public storm drain on Seven Locks Road.
21 MR. GROSSMAN: Is this plan going to increase or
22 decrease the amount of stormwater that will be experienced
23 by the neighbors?
24 THE WITNESS: It will decrease and that was kind
25 of where I was going. What, the ultimate build out will

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1 result in a decrease in both the 10 and 100 year storm
2 events to both the Potomac Pond and to the, to the Seven
3 Locks public storm drain and that primarily has to do with
4 just the age of the construction on site hasn't required the
5 level of stormwater management that would be required with
6 any of this future construction. And so it's a combination
7 of that and also there would actually be, with the ultimate
8 build out of this, there would be more area draining towards
9 Seven Locks Road and less area draining towards to Potomac
10 Pond, a slight change in drainage area. The net result is
11 that in both cases there's a decrease.
12 MR. GROSSMAN: What about to Democracy Lane, any
13 impact on those folks?
14 THE WITNESS: Over here?
15 MR. GROSSMAN: Yes, to the west.
16 THE WITNESS: They actually drain, they actually
17 drain towards the school property.
18 MR. GROSSMAN: Okay.
19 THE WITNESS: So they're part of the contributing
20 drainage area to the Potomac Pond.
21 MR. GROSSMAN: And will the proposal comply with
22 all these environmental site design requirements?
23 THE WITNESS: Yes. Yes, it will.
24 MR. GROSSMAN: All right.
25 THE WITNESS: I should, I should mention that we

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1 did work with DPS for a very long time on developing this
2 stormwater management concept. There is, as part of the
3 approval, this school has demonstrated that they've done
4 everything they can to meet the requirements on site and
5 there, there is a, as part of the concept approval, a fee
6 that can be paid to meet any requirements they're not able
7 to meet on site.
8 MR. GROSSMAN: Well, that raises the question as
9 to whether or not any of the requirements you're not able to
10 meet are going to result in additional flow to the neighbors
11 which you're telling me that's not the case.
12 THE WITNESS: No, there will be a decrease, even
13 though they're, they're not able to meet, they're not able
14 to do all of the ESD measures on site there will still, the
15 net result will be a decrease of the storm drainage off of
16 their site.
17 MR. GROSSMAN: Okay.
18 MS. LEE-CHO: Okay.
19 BY MS. LEE-CHO:
20 Q At this point I'd like you to very quickly go
21 through the stormwater phasing exhibits that were
22 prepared --
23 A Sure.
24 Q -- and I do, this is already on the exhibit list
25 as 63D. It was requested by technical staff for us to do an

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1 analysis of what stormwater facility would need to be done
2 for each phase or potential phase of development. So,
3 Aaron, if you could --
4 A Sure.
5 Q -- do you have --
6 A Yeah, I do have a copy. So, what this goes back
7 to again is the flexibility desired by the school with
8 regard to phasing their construction since it's primarily
9 based on fundraising and potential donors. Staff wanted us
10 to look at various potential options and what would be done
11 for stormwater management, whether it was feasible to meet
12 the requirements of the concept approval. So we did look
13 at, you know, in each case what would be done if a certain
14 building was constructed. So we looked at the lower school
15 first and identified what stormwater management would be
16 required to meet, to meet the concept approval standards and
17 it would include construction of the stormwater management
18 in the northeast corner up here adjacent to the tennis
19 courts and then the existing pond that it's in the valley
20 here would be retrofitted, just some structure in the pond
21 would be retrofitted to accommodate the additional drainage.
22 Second option we looked at was if the middle school was
23 constructed first. Again, the same stormwater management
24 requirements or stormwater management elements could be
25 built to meet the requirements, the facilities adjacent to

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1 the tennis court and again a retrofit of the existing pond
2 in the, in the southwest corner as well as the construction
3 of the green roof which is part of the middle school. The
4 third option would be building the gym and the garage first
5 which would result in constructing all the proposed
6 stormwater management on site. And then if we built the
7 theater first we looked at again building the stormwater
8 management adjacent to the tennis courts as well as the
9 stormwater facilities adjacent to the ball fields. And in
10 each case, in each case we have identified as part of any
11 building construction the construction of the lead-in
12 sidewalk from Seven Locks Road which was one of staff's
13 comments. So we have accommodated for that in any building
14 construction they would be committed to building a lead-in
15 sidewalk as part of that.
16 Q So I want to spend a little more time on this
17 lead-in sidewalk issue because it is one of contention with
18 the technical staff. So, Aaron, could you just --
19 MR. GROSSMAN: Hold on one second.
20 MR. FEINBERG: It's 4:00.
21 MR. GROSSMAN: You're right. So the question is,
22 how much longer do you think your questioning will go?
23 MS. LEE-CHO: I think about half an hour longer.
24 Yeah, half an hour.
25 MR. GROSSMAN: All right. So, I was hoping you

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1 were going to say just two more minutes but if it's going to
2 be a half an hour I think that we should turn to the
3 neighborhood folks that want to testify and since you don't
4 object to that shall we allow Mr. Feinberg to be first off?
5 All right. Mr. Feinberg, once again, state your full name
6 for the record and I'll swear you.
7 MR. FEINBERG: Eugene Feinberg, 8104 Appalachian
8 Terrace, Potomac, Maryland.
9 MR. GROSSMAN: Could you raise your right hand,
10 please?
11 (Witness sworn.)
12 MR. GROSSMAN: All right. You may proceed.
13 DIRECT EXAMINATION
14 MR. FEINBERG: Thank you. I have a prepared
15 statement which is modified slightly adlib because of
16 certain statements made here today.
17 MR. GROSSMAN: Okay.
18 MR. FEINBERG: Good afternoon. I originally had
19 good morning.
20 MR. GROSSMAN: You changed that quickly, just a
21 few hours.
22 MR. FEINBERG: Yup. I'm an original Potomac Pond
23 homeowner since 1987 and I've been a homeowner or resident
24 of Montgomery County since '65.
25 MR. GROSSMAN: Now, by the way, just to be clear,

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1 you stated before you are testifying both on behalf of --
2 MR. FEINBERG: I, that's my next statement.
3 MR. GROSSMAN: Okay, and yourself.
4 MR. FEINBERG: I represent both myself and the
5 board of the Potomac Pond homeowners association, an
6 association of the owners of the 38 homes immediately south
7 of The Heights School. Our homes are our property that The
8 Heights School or its predecessor sold to our builder in the
9 early '80s as they sold the property to the west of the
10 school to the builder of the Courts of Democracy Lane
11 because, quote, they didn't need those property parcels for
12 school purposes. This was 20, 30 years ago. Others of our
13 homeowners are present today, some of whom will speak and
14 provide individual views after I provide this over this
15 overview. While The Heights School may serve an educational
16 purpose we take severe issue with any growth in student
17 population until the school provides physical
18 infrastructure, practices and policies needed to prevent
19 their students from depriving our homeowners of their rights
20 to privacy and safety. Some examples, some of which have
21 been mitigated by statements made today, hard balls and
22 rocks, not only balls, but rocks, hit or thrown over the
23 fence that bounds the south side of the school's athletic
24 field threatens homes that immediately abut that boundary.
25 It often appears that these acts are deliberately targeted

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1 to do damage, those that involve rocks. Those are not part
2 of practice. Students that trespass on our properties,
3 invade our privacy, are often noisy and over the years have
4 caused us to give up our walkway through the woods through
5 the west of our pond because of its misuse. I myself can
6 testify when I was my late wife's caregiver home at late
7 afternoon when I walked the dogs I saw many students, well
8 dressed, polite, quiet at the times I saw them, walking up
9 through Steve and Sandy's property at the end of my block,
10 not just four or five. I saw many more over the years.
11 Intrusive --
12 MR. GROSSMAN: Do you have a suggestion about how
13 to stop that traffic?
14 MR. FEINBERG: I'm going to get to that.
15 MR. GROSSMAN: Okay.
16 MR. FEINBERG: But there's a safety issue. I
17 don't like my suggestion because there's a safety issue.
18 MR. GROSSMAN: Okay.
19 MR. FEINBERG: Intrusive noise levels coming from
20 the school grounds, mainly on weekdays but sometimes on
21 weeknights or weekends. Parking and traffic delays on Seven
22 Locks Road that impede the only means of access to 26 of our
23 homes, particularly when we're trying to make a left turn.
24 The Heights School has a policeman to control traffic coming
25 in and out of The Heights School during rush hour, we don't.

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1 Making a left turn out of either Grand Teton Drive or
2 Matterhorn is a dangerous process. These problems have been
3 ongoing for many years. Often they've been brought to the
4 school's attention. In most instances when culpability has
5 been clear the school has paid to repair the physical
6 damage, property damage. In others they indicated they took
7 some sort of disciplinary action. However, the problems
8 still have persisted. We've heard some good words today
9 from the headmaster about alerting the students and
10 everything else. Furthermore, after the fact action is not
11 the same as prevention. Well, I think the headmaster's
12 words today are the first step towards prevention. It does
13 not remedy the disturbance experienced or the ongoing
14 concern that it might happen again and with even greater
15 consequences. We note that at the proposed level of 650 the
16 ratio of students per acre substantially exceeds by a factor
17 of five or more that of any other K through 12 private
18 school in Montgomery County that has a baseball field and we
19 note that the school's current enrollment of 529 students
20 already exceeds the county approved level of 460. Further
21 increased density could only invite increased trouble. In
22 addition, we can't help but observe that if The Heights
23 School is otherwise in financial need it is obvious that
24 alternative solutions, of which we've heard nothing, are
25 also available such as moving to another area. We

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1 understand that's also a financial burden. In addition, we
2 can't help but observe that if The Heights School -- well,
3 pardon, started repeating myself. Again, as the school has
4 had a past record that has not been at least obvious to us
5 satisfactory in resolving long-standing issues with its
6 neighbors we believe that granting The Heights School's
7 expansion petition would significant exacerbate the
8 situation. We therefor request that The Heights School's
9 expansion petition be denied until the above issued have
10 been satisfactorily resolved. We heard a first step along
11 that today, we'd like to see more and I'm going to talk
12 about some more.
13 MR. GROSSMAN: Okay.
14 MR. FEINBERG: However, after reviewing the
15 materials we previously forwarded and those we offer today
16 the Planning Board hearing approves the Heights School
17 expansion we urge that at a minimum that they impose the
18 conditions recommended by the Planning Commission.
19 Furthermore, since past experience clearly indicates that
20 the remedies recently offered by the school at the
21 aforementioned community liaison meeting, namely split rail
22 boundary fencing with posted signs and high ball restricting
23 netting will scarcely discourage the more rambunctious of
24 the school's students from past misbehavior we urge that the
25 following additional conditions be imposed. One, that the

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1 school's census not be permitted to grow until new
2 supporting infrastructure is in place. For example, a
3 sidewalk segment along Seven Locks Road between The Heights
4 School's vehicle outlet and our Grand Teton Drive, therefore
5 enabling students to safely access Democracy Boulevard via
6 our existing sidewalks. There are sidewalks in front of our
7 property from Grand Teton all the way to Democracy
8 Boulevard. You asked if we had a proposed solution, unless
9 they can block that southwest corner from the lower school
10 and that area there from students coming down there is no
11 physical blockage to prevent them from coming up onto Grand
12 Teton Drive or onto Appalachian Terrace through the back
13 way.
14 MR. GROSSMAN: Well, are we talking about the area
15 where they said they were going to put a split rail fence in
16 the southwest?
17 MR. FEINBERG: Well, the split rail fence only
18 covers part of it. I can go over to the map and I'll show
19 you --
20 MR. GROSSMAN: All right.
21 MR. FEINBERG: -- the area that isn't covered.
22 Okay. The new fencing, at least the higher fencing or any
23 emplacement along Seven Locks Road, be added to prevent
24 students from intruding into the area south of the athletic
25 field and into the southwest corner of The Heights School

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1 property. And I'll point that out on the map. That new
2 construction of the extended gymnasium and theater adopt
3 modern, soundproofing techniques. We are sure they're going
4 to follow what the, you know, the county code requires but
5 there might be some additional required. That the school be
6 required to avoid local, on-street parking by formally
7 arranging for overload parking with shuttle bus services
8 required. Well, we've heard that today, you know, talked
9 about. This wasn't available to --
10 MR. GROSSMAN: Can you read that to me one more
11 time?
12 MR. FEINBERG: That the school be required to
13 avoid local on-street parking on Grand Teton Drive by
14 formally arranging for overload parking with shuttle bus
15 services as required. Well, I think we heard about that
16 today. When I wrote this I hadn't heard. Most importantly,
17 that the school be required to provide a security officer to
18 patrol the outer boundaries of the school during high egress
19 periods and after the conclusion of high attendance athletic
20 and other special events. We would also appreciate, one,
21 that the school's offer regarding the order of construction
22 be formalized and we understand the funding problems,
23 construction of the theater and parking garage occur
24 concurrently, that we hadn't heard being repeated again
25 today, that the two be tied together and after the middle

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1 school has completed construction. Well, I got my answer to
2 that about the lower one. And the school, and this is
3 important, while we heard the headmaster talk and what he
4 said to the students and what he said to the faculty that
5 the school implement a notification and violation policy
6 applicable to student intrusions into both the category one
7 conservation easement area, that area down in south central,
8 and our property. We ask that that be periodic, not just
9 once in a while, you know, like weekly or daily. And that
10 concludes my formal statement. I have a signed copy other
11 than my adlib comments --
12 MR. GROSSMAN: All right.
13 MR. FEINBERG: -- that I'd be happy to give.
14 Okay, I'll just show you --
15 MR. GROSSMAN: When you get up why don't you hand
16 me the signed --
17 MR. FEINBERG: Yes.
18 MR. GROSSMAN: -- and I'll make that an exhibit.
19 That'll be 108, Mr. Feinberg --
20 MR. FEINBERG: Here's three more.
21 MR. GROSSMAN: -- Potomac Pond statement.
22 (Exhibit No. 108 was received
23 into evidence.)
24 MR. GROSSMAN: Thank you.
25 MR. FEINBERG: Thank you. Right now the split

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1 rail fence, this is the other conservation area that the
2 school offered to enclose. It's this area here. This is
3 high, this is high, there's like a valley in between. So
4 there's fencing along up here, there's fencing along here,
5 they've offered to put in a split rail fence along here.
6 MR. GROSSMAN: Okay, so let me just, the along
7 here is that --
8 MR. FEINBERG: Along here is the western boundary
9 of the, is this conservation area one? This is conservation
10 area one, this is conservation area --
11 MR. SMITH: Well, they're category, they're all
12 category one --
13 MR. FEINBERG: Okay.
14 MR. SMITH: -- conservation areas. So they
15 haven't been designated by number but that would be --
16 MR. GROSSMAN: That's a type of --
17 MR. SMITH: Yes.
18 MR. FEINBERG: Okay.
19 MR. SMITH: So that's the forest conservation area
20 along the southern valley.
21 MR. FEINBERG: I would call this the south central
22 one.
23 MR. GROSSMAN: Right.
24 MR. FEINBERG: And so by enclosing it here along
25 this western boundary --

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1 MR. GROSSMAN: Yes.
2 MR. FEINBERG: -- and if the students obey it that
3 will keep them out of this area here because we've had
4 problems with the students coming out over here and coming
5 through --
6 MR. GROSSMAN: And here being the eastern --
7 MR. FEINBERG: The eastern edge.
8 MR. GROSSMAN: -- or southeastern portion.
9 MR. FEINBERG: Coming along here and going
10 through. They also come down this hill and this is sloped.
11 MR. GROSSMAN: This hill being right in the
12 central --
13 MR. FEINBERG: The proposed lower school, coming
14 down the hill and then coming up the hill onto Grand Teton
15 Court, or Grand Teton Drive.
16 MS. WEISS: Drive.
17 MR. GROSSMAN: But they're going to have the
18 central, they're going to have the split rail fence there,
19 that --
20 MR. FEINBERG: No but, see, they can still come
21 down through this area here.
22 MR. GROSSMAN: This area here being --
23 MR. FEINBERG: It's --
24 MR. GROSSMAN: -- through the conservation
25 easement area.

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1 MR. FEINBERG: It's, how would you best describe
2 it?
3 MR. SMITH: There's, there's --
4 MR. FEINBERG: By the area of the proposed lower
5 school?
6 MR. SMITH: Yeah, there's an open area in the
7 southwest corner that does not have any easement.
8 MR. FEINBERG: Yeah. There's no fencing that
9 prevents the students from coming down from the upper level
10 into the southwest corner and then coming south onto Grand
11 Teton Drive and southwest onto Appalachian Terrace property.
12 MR. GROSSMAN: Okay. Is there any reason why the
13 school doesn't provide that fencing? You talked about that
14 earlier.
15 MS. LEE-CHO: I don't have an answer for that.
16 Honestly, I thought there was fencing so I was mistaken.
17 MR. FEINBERG: No.
18 MR. SMITH: I believe it's the only area on campus
19 that doesn't currently have fencing.
20 MR. GROSSMAN: Will a split rail fence there be
21 sufficient? I just wonder --
22 MR. FEINBERG: No.
23 MR. GROSSMAN: -- I mean, that's, we talked about
24 only really split rail fencing and screening for the balls
25 but I don't know that many split rail fences that will keep

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1 teenage boys off.
2 MR. FEINBERG: And it won't. But, you know, I
3 talked about safety. I'm concerned about students walking
4 along this shoulder right here because it's narrow and
5 making the students --
6 MR. GROSSMAN: The shoulder on Seven Locks Road.
7 MR. FEINBERG: Seven Locks Road. Making the
8 students go along Seven Locks Road to either Grand Teton, we
9 have a private pathway between Grand Teton and Appalachian
10 but everybody uses it. And coming up onto Appalachian
11 without going on to people's property and then onto
12 Democracy Lane which is where I believe most of the students
13 are going.
14 MR. GROSSMAN: Uh-huh.
15 MR. FEINBERG: Well, we all know kids. I raised
16 three, I've got seven grandchildren. Making them go the
17 long way around is not going to be an easy thing for them to
18 do because they would have to go all the way here, all the
19 way here, all the way here, rather than coming through here
20 and going across.
21 MR. GROSSMAN: So what's your solution?
22 MR. FEINBERG: I, more fencing, high up here --
23 MR. GROSSMAN: Well what kind of fencing are we
24 talking about because if you think that split rail fence is
25 not going to --

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1 MR. FEINBERG: It would have to be some sort of a
2 barrier fence that has a gate in there controlled by the
3 school for emergency purposes or for maintenance purposes
4 that would prevent students from coming down this area by
5 the, you know, from the high up by the gymnasium down into
6 the southwest corner.
7 MS. LEE-CHO: If I might?
8 MR. GROSSMAN: yes.
9 MS. LEE-CHO: I think that to the extent that
10 there is a gap in perimeter fencing it is not unreasonable
11 to have the school add, you know, whether it's chain link --
12 MR. GROSSMAN: To fill in the gap.
13 MS. LEE-CHO: Yeah. Chain link or board on board
14 along the property line. But that's what I think would --
15 MR. FEINBERG: Yeah.
16 MS. LEE-CHO: -- make sense.
17 MR. GROSSMAN: Do we run into any problems by
18 using chain link fence there? I mean, is there --
19 MS. LEE-CHO: There is chain link --
20 MR. GROSSMAN: -- an aesthetic issue? Is the
21 other fencing chain link? What's --
22 MS. LEE-CHO: I guess there is six-foot privacy
23 wood fence along the western --
24 MR. FEINBERG: Uh-huh.
25 MS. LEE-CHO: -- property line so I guess a

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1 continuation of a wood fence in the corner --
2 MR. FEINBERG: And there are wood fences along our
3 property line.
4 MS. LEE-CHO: Because it does look like there's a
5 pattern of wood fence --
6 MR. FEINBERG: Yes.
7 MS. LEE-CHO: -- being used.
8 MR. GROSSMAN: Okay.
9 MR. FEINBERG: So, you know, it's a safety issue
10 and I don't want the kids to get hurt.
11 MR. GROSSMAN: All right. Let me suggest that you
12 discuss it with the school and come up with a proposal for
13 fencing that area and then submit it to Mr. Feinberg and to
14 technical staff and get some feedback and see if we can
15 solve that issue.
16 MR. FEINBERG: I'd like to bring Mr. Sawmelle in
17 and the other property owners directly impacted right over
18 here. There's about three of four property owners because
19 Mr. Sawmelle's property is this one right over here. It's
20 right off of where they come up. That's where I see the
21 kids walking when I see them because I'm walking in this
22 area in the southwest corner on Appalachian Terrace.
23 MR. GROSSMAN: Right. But I just want to make
24 sure that we're solving the problem, not creating another
25 one, so I think that making sure that all of the interested

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1 people have a shot at looking at the proposal --
2 MR. FEINBERG: I don't want kids hurt.
3 MR. GROSSMAN: Okay.
4 MS. LEE-CHO: Okay.
5 MR. FEINBERG: Okay, thank you.
6 MR. GROSSMAN: All right. Cross-examination of
7 Mr. Feinberg?
8 MS. LEE-CHO: No.
9 MR. GROSSMAN: Okay. I'm going to ask you to,
10 after we give the rest of the community a chance to say
11 their piece, in addition to the fence issue he mentioned a
12 number of other concerns and I'll invite you to address
13 those concerns with your witnesses afterwards but --
14 MS. LEE-CHO: Okay.
15 MR. GROSSMAN: -- all right. Who wants to be the
16 next victim here? Mr. Sawmelle? Okay. Mr. Whang, would
17 you state your full name and address please?
18 MR. WHANG: Yun Chow Whang, 8003 Grand Teton
19 Drive, Potomac, Maryland.
20 MR. GROSSMAN: All right, sir. Would you raise
21 your right hand, please?
22 (Witness sworn.)
23 MR. GROSSMAN: All right. You may proceed.
24 DIRECT EXAMINATION
25 MR. WHANG: I want to describe property damage to

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1 houses on the south side of the school, Grand Teton Drive
2 south side on school by student body of Heights School. And
3 the first item is soccer ball and baseball. You have seen
4 picture of the baseball.
5 MR. GROSSMAN: Yes.
6 MR. WHANG: The soccer ball actually, soccer ball
7 damage to my house 1986, '87 and it broke a bedroom window
8 and before hit roof, caused roof leak in the living room.
9 So I hired a lawyer to deal with that damage problem at the
10 time. Now, second item is about year 2000 students set fire
11 on the backyard wooden fence at 8001 Grand Teton on daytime.
12 Fire engine and police came, police car came. So, there is
13 police record about the fire damage. And third item is on
14 spring of 2003 a student by name of Noznesky, N-O-Z-N-E-S-K-
15 Y, throw rocks at three houses and three houses, 8003, 8007
16 and 8013 of Grand Teton Drive, target at patio door glasses,
17 broke glass door.
18 MR. GROSSMAN: Okay. Now, this is, does that
19 complete your statement, sir?
20 MR. WHANG: Yes, sir.
21 MR. GROSSMAN: Is there anything that you're
22 recommending to avoid this problem in the future? Because
23 this is not, there is nothing that this kind of proceeding
24 can do to rectify --
25 MR. WHANG: Uh-huh.

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1 MR. GROSSMAN: -- what's happened to you in the
2 past.
3 MR. WHANG: You're right.
4 MR. GROSSMAN: This is, the nature of this
5 proceeding is to try to review the request to the change in
6 the setup of the school now, to increase enrollment and add
7 some other things and so the question of what sort of
8 conditions should be imposed, if any, to make it neighborly
9 to its neighbors. So, are you suggesting anything in
10 particular in that regard or?
11 MR. WHANG: No, I support what --
12 MR. GROSSMAN: What Mr. Feinberg said?
13 MR. WHANG: -- Mr. Feinberg has said.
14 MR. GROSSMAN: All right.
15 MR. WHANG: Yeah.
16 MR. GROSSMAN: All right. Any cross-examination?
17 MS. LEE-CHO: No.
18 MR. GROSSMAN: All right. All right, well thank
19 you, Mr. Whang. I appreciate you coming down here and
20 sharing your concerns. All right. Yes, sir. Mr. Sawmelle,
21 can you state your full name and address, please?
22 MR. SAWMELLE: Steve Sawmelle, 8113 Appalachian
23 Terrace, Potomac, Maryland.
24 MR. GROSSMAN: All right. Would you raise your
25 right hand, please?

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1 (Witness sworn.)
2 MR. GROSSMAN: You may proceed.
3 DIRECT EXAMINATION
4 MR. SAWMELLE: Thank you for the opportunity to
5 testify today. My wife Sandy Kursban and I live in the
6 Potomac Pond community on Appalachian Terrace. We directly
7 overlook the south boundary of the school. We've lived in
8 the community for three years and have a very realistic view
9 of what our day to day life would be like if The Heights
10 School increased its student level to the numbers requested
11 in an expansion. A large percentage of Potomac Pond
12 residents are, like my wife and me, in their retirement
13 years. Many of us are at home during much of the work week.
14 We have grandchildren and within limits we love the sound of
15 children playing. However, if the number of students were
16 to increase by the large percentage requested by Heights the
17 regular din outside our home would grow to a roar. Were the
18 dramatic increase in enrollment to occur the resulting level
19 of noise would be extremely disruptive to our daily life.
20 And here I'm talking about the southwest corner which wasn't
21 named by Heights as a noise area but that's our area of
22 concern for noise. Also the noise from evening and weekend
23 activities could add yet more anxiety to our life at home.
24 And I say anxiety given if there's an increase, if this
25 increase. I'm not saying we're under anxiety as well. In

1 the spring and fall especially if the increase were to occur
 2 we would need to close all our windows. Sitting out on our
 3 deck would be possibly only at certain times. I attended
 4 the Planning Commission hearing on January 15th and heard
 5 school officials meekly apologize for having substantially
 6 and willingly violated the school enrollment limit. I
 7 didn't realize all of the extenuating circumstances and I
 8 did hear that today. If the student level were to be
 9 increased as requested that would be bad enough. But we
 10 have zero confidence, this is my written statement before
 11 today, we have zero confidence that the school would even
 12 adhere to that level based on the disclosure, the recent
 13 disclosure of their enrollment violation. I heard you, Mr.
 14 Examiner, talk about what you would have a precaution there,
 15 you would have some kind of guideline. On many mornings
 16 when my wife and I are hoping to sleep in a bit we're
 17 awakened by students' yells as they run down and then up the
 18 long hill from the school. With many more students, our
 19 quality of life would plummet. For our neighbors' whose
 20 homes and property most directly border the school grounds
 21 such as Y.C.'s and John Reghi's we deeply sympathize with
 22 their unhappy situation and many others of us in the
 23 community experience worry when we consider the impacts of
 24 the requested expansion as cited by Gene in his statement.
 25 Our next door neighbor Wally Heston who was unable to

1 testify this morning due to commitments at her workplace
 2 told us that she feels just as we do --
 3 MR. GROSSMAN: Well, once again you're --
 4 MR. SAWMELLE: I, yes.
 5 MR. GROSSMAN: -- in that area that's --
 6 MR. SAWMELLE: Right.
 7 MR. GROSSMAN: -- problematic.
 8 MR. SAWMELLE: Right.
 9 MR. GROSSMAN: I'll let you state it but I have to
 10 say that --
 11 MR. SAWMELLE: I understand.
 12 MR. GROSSMAN: -- I probably won't consider it
 13 unless the petitioner doesn't object.
 14 MR. SAWMELLE: Okay. Ms. Heston told us that she
 15 feels just as we do about the proposed expansion. Her home,
 16 like ours, also overlooks the school. She's right adjacent
 17 to us. So, to conclude, we ask that you rule against the
 18 expansion. Thank you for your attention.
 19 MR. GROSSMAN: Let me mention to you that what I
 20 was thinking of in terms of if in fact I were to recommend
 21 approval of the expanded enrollment and faculty, it would be
 22 an annual reporting requirement to the Board as to what
 23 their enrollment and faculty levels, faculty/staff levels
 24 were so that there wouldn't be that danger. And I say
 25 annually because I think that's sufficient because

1 enrollment is not going to increase except on a yearly
 2 basis.
 3 MR. SAWMELLE: Right.
 4 MR. GROSSMAN: So that, it seems to me, would
 5 eliminate the problem of, you know, cheating on the
 6 enrollment caps.
 7 MR. SAWMELLE: Right, right.
 8 MR. GROSSMAN: And you know, you mentioned the
 9 problem with noise, et cetera. You didn't mention the thing
 10 with the proposed structural changes. I assume that your
 11 concerns are with the levels, the numbers of students, not
 12 with the fact that The Heights School wants to add, you
 13 know, a new building here or there, that's not your problem?
 14 MR. SAWMELLE: That's not, it will be a problem
 15 because of the construction noise but in talking with my
 16 wife we thought that's not really something that's a strong
 17 case to argue against construction noise --
 18 MR. GROSSMAN: Right.
 19 MR. SAWMELLE: -- although that could go on for a
 20 long time and it would be, it would be very disturbing.
 21 MR. GROSSMAN: It's true, there isn't anything in
 22 the zoning ordinance about the interim problem of
 23 construction by the way.
 24 MR. SAWMELLE: That's what we thought.
 25 MR. GROSSMAN: There is, of course there are noise

1 regulations and restrictions that are enforced by the county
 2 and they do enforce them. If you complain they'll come out
 3 and measure the decibels and so on --
 4 MR. SAWMELLE: That's good to know.
 5 MR. GROSSMAN: -- and time restrictions as to when
 6 construction can take place and so on. So there are those
 7 restrictions. I can't really go beyond that. But there's
 8 nothing in the zoning ordinance per se that would restrict
 9 construction noise for an approved special exception.
 10 MR. SAWMELLE: Right, that's what we thought.
 11 MR. GROSSMAN: But in any event, as I say, it's
 12 covered by other regulations. Is there anything that, other
 13 than denying the requested increases in enrollment, are
 14 there any suggested conditions that you would proffer that
 15 might ameliorate the situation that you face whether or not
 16 there's an increase. You mentioned there's a din now, it
 17 would go to a road.
 18 MR. SAWMELLE: Uh-huh.
 19 MR. GROSSMAN: And my question is what, if
 20 anything, can be done about the din in your mind?
 21 MR. SAWMELLE: Well, it's been covered today
 22 fairly well. I agree with all the points that Gene, that
 23 Gene brought up. The headmaster or one of, one of the
 24 Heights officials spoke about, oh it was the headmaster,
 25 talked about talking to the students about noise and keeping

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1 noise down. That would be mitigating. But we could even in
2 our, in our periodic meetings with the school, the committee
3 and the school, we could talk and say what we're hearing and
4 what the situation is. You asked if this was basically it.
5 I appreciate that Gene brought up the idea of the
6 trespassing through our property and of course that's
7 something we would like to see, we would like to see that
8 divider, that fence, continuation of the wooden fence so
9 that there's not that intrusion onto our property.
10 MR. GROSSMAN: Okay. Anything else that you want
11 to add?
12 MR. SAWMELLE: That's it.
13 MR. GROSSMAN: Cross-examination?
14 MS. LEE-CHO: (No audible response.)
15 MR. GROSSMAN: All right. Thank you. Appreciate
16 your coming in.
17 MR. SAWMELLE: This is my signed statement.
18 MR. GROSSMAN: Oh, okay. Let me mark that also,
19 Exhibit No. 109.
20 (Exhibit No. 109 was received
21 into evidence.)
22 MR. GROSSMAN: Mr. Sawmelle, was the school there
23 when you moved in?
24 MR. SAWMELLE: It was.
25 MR. GROSSMAN: Okay. So you might have expected

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1 that there would be some noise from the school.
2 MR. SAWMELLE: we realized that, yeah.
3 MR. GROSSMAN: All right.
4 MR. SAWMELLE: It's, it's very, it's livable, it's
5 perfectly livable the way the situation is now even with the
6 sounds. But we know, we know with how loud it is, I call it
7 a din and it's only a din during the early morning like
8 starting around 8:00 and then during lunch or during breaks
9 it gets loud. And we've been able to cope with that. We,
10 we love children and we've been able to cope with that. But
11 if the expansion, if the raise in student level goes to
12 what's envisioned and that din, as I said, will get very
13 loud, much louder.
14 MR. GROSSMAN: I'm not sure that that's the case,
15 by the way. I don't, there wasn't really evidence by which
16 I could assess that. I mean, there may be steps that can be
17 taken to limit the amount of noise at those times. But I'm
18 not sure that the increase of -- what's the current level
19 now? Even though about 500 what?
20 MS. LEE-CHO: 529.
21 MR. GROSSMAN: 529 and you're requesting how many?
22 MS. LEE-CHO: 650.
23 MR. GROSSMAN: So, you know, I'm not sure that the
24 increase, 20 percent or whatever it is, would necessarily
25 add significantly to the noise. I don't know the answer to

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1 that.
2 MR. SAWMELLE: I think the southwest corner --
3 MR. GROSSMAN: Yes.
4 THE COURT REPORTER: Sorry, if you're going to
5 continue could he come back to the microphone?
6 MR. GROSSMAN: Yes, I apologize to you. I
7 should've. My fault.
8 MR. SAWMELLE: The southwest corner is where the
9 kids congregate.
10 MR. GROSSMAN: Yes.
11 MR. SAWMELLE: It's one of their, besides the
12 northwest corner, the southwest corner and what was it 529
13 now did I hear you say, is that the right --
14 MS. LEE-CHO: Yes.
15 MR. SAWMELLE: It's just that that be all the more
16 kids congregating and running up and down the hill and it's
17 just, our sense was it would be appreciably more noise.
18 MR. GROSSMAN: Yeah. But I'm not sure it moves
19 from a din to a roar. I just don't know. It's possible it
20 would add --
21 MR. SAWMELLE: A din to a greater din.
22 MR. GROSSMAN: A 20 percent larger din. But I
23 don't know, you know, there really isn't any direct evidence
24 of that but it, you know, it could increase it. All right.
25 I'll have to think about that.

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1 MR. SAWMELLE: Okay.
2 MR. GROSSMAN: Thank you.
3 MR. FEINBERG: May I make a comment of something
4 that was said by The Heights School?
5 MR. GROSSMAN: Sure.
6 MR. FEINBERG: About the concern about the look of
7 the netting on the south side, we are more concerned with
8 safety and prevention of balls, stuff coming over, than we
9 are about the look of a high netting to prevent them to come
10 over.
11 MR. GROSSMAN: Right. But what they're suggesting
12 is that if they can do it operationally --
13 MR. FEINBERG: I'm not arguing that.
14 MR. GROSSMAN: Yeah. So --
15 MR. FEINBERG: I'm just saying --
16 MR. GROSSMAN: -- I think there's a sensibility in
17 that and if the person apparently most affected is agreeable
18 to that it does make a certain amount of sense especially
19 since if this were approved, you know, I would recommend
20 that there be this annual kind of review in any case and so
21 there would be an opportunity to get back to the school and
22 require that the netting be put up. But it does make some
23 sense but --
24 MR. FEINBERG: I'm encouraged by the fact that
25 this, am I using the right term, community liaison counsel?

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1 MR. GROSSMAN: That's what that's been called in
2 the past.
3 MR. FEINBERG: Yeah. That it's supposed to meet
4 at least twice a year --
5 MR. GROSSMAN: Uh-huh.
6 MR. FEINBERG: -- and more often if people feel it
7 necessary and that will give all the neighbors, not only
8 ourselves, but the Courts of Democracy and Inverness and the
9 new development when it goes in on the other side, a chance
10 to sit down with the school, air whatever issues have come
11 up in the preceding six months --
12 MR. GROSSMAN: Right.
13 MR. FEINBERG: -- and there will be a report on
14 that made to the county that can be reviewed after the next
15 six months.
16 MR. GROSSMAN: Yeah, no, I agree.
17 MR. FEINBERG: So I'm encouraged by that.
18 MR. GROSSMAN: I think that that system has worked
19 well. I give credit to the former people's counsel for
20 inventing that system and I think that, you know, having
21 that ability to communicate on a regular basis makes a
22 difference. All right. Any additional testimony? Anybody
23 else wishes to be heard?
24 MS. KURSBAN: Want me to testify on behalf of my
25 neighbor? I have the testimony here.)

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1 MR. GROSSMAN: Well, we have that, come on forward
2 and take the hot seat and let's talk about that for a
3 second.
4 MS. KURSBAN: I've been on this hot seat a few
5 times today. Okay. My name is Sandy Kursban.
6 MR. GROSSMAN: All right. Let me swear you in,
7 Ms. Kursban.
8 MS. KURSBAN: Okay.
9 MR. GROSSMAN: And your address?
10 MS. KURSBAN: It's 8113 Appalachian Terrace,
11 Potomac, Maryland.
12 MR. GROSSMAN: All right. Raise your right hand,
13 please.
14 (Witness sworn.)
15 MR. GROSSMAN: Okay. So, you're asking to testify
16 not on your own behalf but on behalf of a neighbor?
17 MS. KURSBAN: One of our neighbors was planning on
18 coming and she was not able to at the last minute --
19 MR. GROSSMAN: Okay.
20 MS. KURSBAN: -- and asked if I would testify on
21 her behalf.
22 MR. GROSSMAN: All right.
23 MS. LEE-CHO: If I might, has that --
24 MR. GROSSMAN: Ms. Lee-Cho, can we --
25 MS. LEE-CHO: -- has that, is the written

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1 letter --
2 MS. KURSBAN: Well, we, I think we gave it to you
3 this morning.
4 MS. LEE-CHO: Okay, so that has been submitted?
5 MR. GROSSMAN: That's the written one that you had
6 a concern --
7 MS. LEE-CHO: Yes.
8 MR. GROSSMAN: -- about?
9 MS. LEE-CHO: No, no, it's one that we accepted.
10 MR. GROSSMAN: Oh, it's one you accepted, okay.
11 MS. LEE-CHO: I think Ms. Kursban is suggesting
12 reading it into the record --
13 MR. GROSSMAN: Oh.
14 MS. LEE-CHO: -- and I just, I think that it's
15 been entered --
16 MR. GROSSMAN: It's in the record already.
17 MS. LEE-CHO: -- into the record and I don't
18 know --
19 MR. GROSSMAN: This is --
20 MS. LEE-CHO: -- unless you have your own
21 testimony --
22 MR. GROSSMAN: Right.
23 MS. LEE-CHO: -- her letter has been entered into
24 the record.
25 MR. GROSSMAN: That's the letter from Ms. Newman?

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1 MS. KURSBAN: Correct.
2 MS. LEE-CHO: Yes.
3 MR. GROSSMAN: Okay, yeah, it's in the record as
4 Exhibit No. 100.
5 MS. KURSBAN: So you don't want me to talk?
6 MR. GROSSMAN: There's no reason for you to read
7 it out because, but if you have your own statement you want
8 to make you're certainly invited to do that. You're not
9 required, you're invited to do it. It's up to you.
10 MS. KURSBAN: I don't think so.
11 MR. GROSSMAN: Okay. Well we appreciate you
12 coming here in any event and --
13 MS. KURSBAN: This has been quite an experience.
14 MR. GROSSMAN: -- helping us out today. Thank you
15 very much.
16 MS. KURSBAN: Thank you.
17 MR. FEINBERG: I have a question for Mr. Aaron, if
18 that's appropriate right now.
19 MR. GROSSMAN: Um --
20 MR. FEINBERG: Sorry, that Aaron's your first
21 name.
22 MR. GROSSMAN: Right. He hasn't finished his
23 testimony yet --
24 MR. FEINBERG: Okay.
25 MR. GROSSMAN: -- so we'll let him come back.

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1 MR. FEINBERG: Yeah.
2 MR. GROSSMAN: Anybody else in the audience who
3 wishes to be heard? Okay.
4 MS. LEE-CHO: Okay.
5 DIRECT EXAMINATION (RESUMED)
6 BY MS. LEE-CHO:
7 Q I think where we left off was the lead-in
8 sidewalk --
9 A Yes.
10 Q -- and the timing of the lead-in sidewalk --
11 A Yes.
12 Q -- construction being one of contention.
13 MR. GROSSMAN: I have a slight problem with that.
14 THE WITNESS: I'm sorry.
15 MR. GROSSMAN: Move over to the side here, I think
16 I solved it by just moving over. You're my witness to my
17 wife, I exercised today. I slid.
18 BY MS. LEE-CHO:
19 Q Okay. So, the timing of the construction of the
20 lead-in sidewalk is one that the petitioner agrees with the
21 technical staff's recommendation. What is technical staff's
22 recommendation with regard to the timing of the construction
23 of the lead-in sidewalk?
24 A I believe their recommendation is that it be
25 constructed prior to the next school year, fall 2015.

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1 Q Okay. So before we get into the school's proposal
2 or opposition to that --
3 A Uh-huh.
4 Q -- recommendation could you give us a little bit
5 of background as to how this lead-in sidewalk came up in
6 terms of the review of this application and specifically the
7 improvements, the county project contemplated for Seven
8 Locks Road?
9 A Right. Yeah, I believe that the staff comment was
10 generated as part of looking at the future development of
11 Seven Locks Road and the proposed plan to add sidewalks and
12 bike lanes on Seven Locks Road. That plan is currently, I
13 think it's not currently funded, it's beyond the current
14 five year CIP planning forecast to --
15 Q And I have here a copy of the Seven Locks bike
16 lane and safety improvements CIP excerpt. I think you were
17 the one who found it.
18 A Yeah.
19 MS. LEE-CHO: I would like to have it entered into
20 the record.
21 MR. GROSSMAN: Okay. This is Exhibit No. 110,
22 it's the Seven Locks bikeway and the safety improvements.
23 It's got a number attached to it, P as in Paul, 501303 close
24 parens.
25 (Exhibit No. 110 was received

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1 into evidence.)
2 BY MS. LEE-CHO:
3 Q Aaron, could you just quickly tell us what is it
4 that we're looking at here, Exhibit No. 110?
5 A All right. So this is the county's forecasted
6 capital improvements plan. So it's their forecasted funding
7 for projects in the county. This is what's been submitted
8 is specific to the Seven Locks bike lane safety
9 improvements. It's currently gone through its, let's see,
10 it's fiscal year 2020 they have some funding in there for
11 planning design and supervision but they do not currently
12 have construction funded. And that's, so it's to be funded
13 beyond fiscal year 2020 for construction. Right now it's
14 only funded for some planning design and that's still five
15 years from now in fiscal year 2020.
16 Q And when the lead-in sidewalk issue first came
17 about in this application I believe that AMT was asked to
18 get into contact with the consultant or contractor who might
19 be working with the county --
20 A Yes.
21 Q -- on that project to be able to include on the
22 school's special exception plan --
23 A Yes.
24 Q -- the design. Can you tell us in those
25 interactions what you were able to find out through the

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1 county's consultant as far as where things stand --
2 A Right.
3 Q -- on the project?
4 A So, yes, we did reach out to the design engineer
5 for the proposed improvements. Those are reflected on the
6 special exception site plan, it's those shaded sidewalk
7 shown along Seven Locks Road. That's based on the plans
8 that were provided to us by the consultant working for the
9 county. And what they indicated to us at that time was that
10 basically this design has been only developed to a
11 conceptual level and that there's really no detailed design
12 available for it and so other than showing kind of the
13 shaded potential locations of sidewalks there's no real
14 design to coordinate with at this time.
15 MR. GROSSMAN: Does this are cover the area in
16 question, the area that's between the school and Democracy
17 Boulevard?
18 THE WITNESS: It does. We actually --
19 MS. LEE-CHO: Yeah, we talked --
20 THE WITNESS: -- we went through this and there
21 are different phases to the project. And so there's, I
22 believe it's broken down between Seven Locks from Montrose
23 to Tuckerman and then phase two is a segment from Tuckerman
24 to Democracy Boulevard which would --
25 MR. GROSSMAN: Oh, I see.

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1 THE WITNESS: -- encompass --
2 MR. GROSSMAN: Phase two provides a dual bike way
3 between --
4 THE WITNESS: And pedestrian --
5 MR. GROSSMAN: -- Seven Locks road from Tuckerman
6 to Democracy Boulevard, okay.
7 THE WITNESS: Right.
8 MR. GROSSMAN: Because it doesn't, and the first
9 sentence is misleading then.
10 THE WITNESS: It is. We ran into the same issue
11 when we were researching it.
12 MR. GROSSMAN: The first sentence implies that it
13 doesn't go all the way to Democracy Boulevard. Maybe the
14 first sentence describes phase one. I wonder if this
15 project, as described in the projection, the financial
16 projection here, includes phase two and phase three or is it
17 just phase one.
18 MS. LEE-CHO: I think it is just phase one. If
19 you look down under other --
20 MR. GROSSMAN: Yes.
21 MS. LEE-CHO: -- you'll see, this project
22 currently provides funding for phase one improvements only.
23 MR. GROSSMAN: I see. So --
24 MS. LEE-CHO: So we're not even at phase two.
25 MR. GROSSMAN: Right. So you're beyond FY '20 for

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1 construction. So, I'm not sure, so what is this
2 establishing for us?
3 MS. LEE-CHO: Well, the purpose of the lead-in
4 sidewalk and this is what, this sort of what triggered the
5 lead-in sidewalk --
6 MR. GROSSMAN: Yes.
7 MS. LEE-CHO: -- on the site.
8 BY MS. LEE-CHO:
9 Q Aaron, could you show the hearing examiner where
10 the lead-in sidewalk connects to the Seven Locks Road
11 improvement and then onto the site?
12 A Right. So, the lead-in sidewalk we're discussing
13 is starting here would be the connection.
14 MR. GROSSMAN: Starting here being --
15 THE WITNESS: I'm sorry.
16 MR. GROSSMAN: -- at Seven Locks?
17 THE WITNESS: At Seven Locks Road.
18 MR. GROSSMAN: Okay.
19 THE WITNESS: And runs up along the south side of
20 the entrance drive adjacent to the existing conservation
21 easement area and wraps up into the center of the property.
22 MR. GROSSMAN: Okay. Is there a sidewalk at all
23 on the south end of that area? I see another what appears
24 to be a roadway of some kind.
25 THE WITNESS: This here?

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1 MR. GROSSMAN: Yes.
2 THE WITNESS: That's proposed --
3 MR. GROSSMAN: Okay.
4 THE WITNESS: -- kind of as the ultimate build
5 out. But the difference between these two, this would be an
6 ADA compliant lead-in sidewalk, this would be lead-in
7 compliant up to the ball fields but then we have to
8 introduce stairs to deal with the elevation change.
9 MR. GROSSMAN: I see. Okay.
10 MS. LEE-CHO: Okay.
11 MR. GROSSMAN: All right.
12 BY MS. LEE-CHO:
13 Q So then could you talk about sort of what is it
14 that the school is proposing as far as the timing for this
15 lead-in sidewalk in light of the schedule for the Seven
16 Locks improvements to which it's supposed to connect?
17 A Right. So, the school and as shown in the
18 stormwater management option exhibits that we were
19 discussing before we broke there for a few minutes, the idea
20 would be that the lead-in sidewalk would be tied to the
21 construction of any of the buildings and it makes, from,
22 from, in my opinion it makes more sense, it doesn't make
23 sense to construct a sidewalk to connect to a roadway that
24 as documented today is unsafe for pedestrians. So the idea
25 is that the sidewalk would be built as part of future

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1 construction and hopefully would coincide time-wise better
2 with the proposed improvements on Seven Locks Road and
3 actually provide a continuous, safe pedestrian path along
4 Seven Locks Road and up into the property.
5 Q So the technical staff's recommendation was to
6 require construction of the lead-in sidewalk regardless of
7 whether any buildings as part of the campus master plan was
8 being constructed? It was just to construct it right away?
9 What was the timeframe?
10 A I believe it was, their recommendation was to
11 construct it, again, prior to the start of the school year,
12 fall 2015.
13 Q This coming fall?
14 A This coming fall.
15 Q Okay. And can you go through sort of, well, can
16 you provide your professional opinion as to what it would
17 take in order to actually construct the sidewalk prior to
18 this coming fall?
19 A So, it would be a fairly substantial project. It
20 would trigger a stormwater management requirement if just
21 the sidewalk alone were constructed. The staff's
22 recommendation to have it constructed prior to the school
23 year just, from a schedule perspective, would be difficult
24 to get a design and permit package together and solicit it
25 and bid it for construction and have it done prior to that

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1 time. So it's not an insignificant project in and of
2 itself. It's a fairly lengthy stretch of, of concrete
3 sidewalk that would have to be installed.
4 MR. GROSSMAN: Was this one of the conditions
5 recommended by staff that --
6 MS. LEE-CHO: Yes.
7 MR. GROSSMAN: -- that you do it by --
8 MS. LEE-CHO: We do not agree with.
9 MR. GROSSMAN: -- that you do it by when? When
10 did staff say you had to?
11 MS. LEE-CHO: The staff recommendation is
12 condition 7A.
13 MR. GROSSMAN: There were so many conditions --
14 MS. LEE-CHO: It's 7A --
15 MR. GROSSMAN: -- I lost track of it.
16 MS. LEE-CHO: -- and it just simply states, prior
17 to the start of the 2015-2016 school year --
18 MR. GROSSMAN: Okay.
19 MS. LEE-CHO: -- construct a lead-in sidewalk from
20 Seven Locks Road to the sidewalk at the gymnasium which is
21 essentially the center of the campus.
22 MR. GROSSMAN: Okay. And you wanted that --
23 MS. LEE-CHO: And my proposed redline --
24 MR. GROSSMAN: Oh, yeah, is that redline actually,
25 I know you sent me, you e-mailed me a copy of your redline

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1 when I asked for it but I don't know that it's in the
2 record --
3 MS. LEE-CHO: Well --
4 MR. GROSSMAN: -- as an exhibit yet. Is it?
5 MS. LEE-CHO: -- it was something that was only
6 presented to the Planning Board, it was intended for
7 Planning Board purposes.
8 MR. GROSSMAN: Exhibit No. 84, let's see. Yeah,
9 I --
10 MS. LEE-CHO: Yes, 84, it's in one of the
11 exhibits.
12 MR. GROSSMAN: Okay.
13 MS. LEE-CHO: So, I believe I addressed the
14 sidewalk in the new condition 23 which states, construction
15 of the lead-in sidewalk from Seven Locks Road to the
16 Gymnasium must be completed before a use and occupancy
17 certificate for any of the building facilities approved
18 under this application may be issued. So, it would allow
19 the school to raise money for the sidewalk in conjunction
20 with a capital building program and the construct it
21 together with the associated building.
22 MR. GROSSMAN: Okay.
23 MS. LEE-CHO: But it would be the first building.
24 MR. GROSSMAN: Let me go a step backwards for a
25 second and ask the court reporter. Can you stay late today?

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1 THE COURT REPORTER: Sure.
2 MR. GROSSMAN: Okay. Because we might be able to
3 finish and I do want you to go over your redline suggested
4 changing the proposed conditions and let me find out from
5 Mr. Feinberg. Mr. Feinberg, can you stay a little late
6 today?
7 MR. FEINBERG: I can stay.
8 MR. GROSSMAN: Okay.
9 MR. FEINBERG: It's a lot easier than coming back
10 next Thursday.
11 MR. GROSSMAN: We might make you come back next
12 Thursday just for the fun of it. I would think you'd want
13 to do this again.
14 MR. FEINBERG: There's some people in the federal
15 government who might object because they want me at a
16 meeting too.
17 MR. GROSSMAN: Oh, those feds, you know. All
18 right. Okay. So let's continue and I don't know if you
19 have more with this witness on this.
20 MS. LEE-CHO: Yeah. Just one --
21 MR. GROSSMAN: Okay.
22 MS. LEE-CHO: -- detail --
23 MR. GROSSMAN: Okay.
24 MS. LEE-CHO: -- regarding the lead-in sidewalk.
25 THE WITNESS: Uh-huh.

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1 BY MS. LEE-CHO:
2 Q You mentioned that the stretch of the sidewalk
3 that wraps around the forest conservation easement area has
4 to be ADA compliant and I wondered if you could expand a
5 little bit about what will be necessary to make that --
6 MR. GROSSMAN: Thank you, Mr. Whang.
7 MS. LEE-CHO: -- sidewalk ADA compliant including
8 the ramps and et cetera.
9 THE WITNESS: Sure. Yes, so in order to be ADA
10 compliant you have to maintain a five percent slope or less.
11 In this case we're tied to the grades of the entrance
12 drives. So, it will require and in some locations the
13 interaction of handrails and a small kind of curved
14 retaining wall in order to make the grades work so it's not
15 simply just a concrete sidewalk. In some areas there will
16 be ADA compliant ramps required.
17 MR. GROSSMAN: Okay.
18 BY MS. LEE-CHO:
19 Q Okay. All right. I think that covers the lead-in
20 sidewalk. Just to quickly go through the rest, there is an
21 existing monument sign on the site. Is that being
22 maintained as is or are there any changes?
23 A No changes, it's existing to remain.
24 Q Okay. Can you address the lighting being proposed
25 and whether it meets the --

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1 A Yes.

2 Q -- zoning ordinance requirements?

3 A It does meet the zoning ordinance requirements. A

4 photometric study was done and confirmed compliance. It

5 does not exceed the existing light levels out there and the

6 proposed light levels would not exceed 0.1 foot candles

7 along the side and rear lot lines. There is existing

8 lighting along the frontage having to do with Seven Locks

9 Road and there are small lights on the existing monument

10 sign that's there. Additionally there will be no lighting

11 of any play fields or tennis courts. There's nothing

12 existing or proposed.

13 MR. GROSSMAN: Okay.

14 BY MS. LEE-CHO:

15 Q And all of that has been noted on the special

16 exception site plan, correct?

17 A Yes.

18 Q Okay. I'd like to go through the specific

19 conditions. So, as I've done with these previous witnesses

20 there are some specific conditions required for private

21 educational institutions to justify a density and enrollment

22 that we're seeking. Part of that analysis requires whether

23 noise or the type of physical activity that would be

24 entailed in the use would not be onerous to adjacent

25 neighborhoods or communities. I would like to ask you your

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1 personal -- or not your personal but your professional

2 opinion as to the density that is being requested here and

3 whether in your opinion it exceeds the zoning ordinance

4 limits as far as student per acre requirements.

5 MR. GROSSMAN: Well, can he really answer, I mean,

6 mathematically we can answer that. We can tell just by

7 looking at it it doesn't exceed the limits that are in the

8 zoning ordinance. But the question is, isn't that land use

9 question as to whether or not it's going to, how it's going

10 to impact on the neighbors and so on?

11 MS. LEE-CHO: I think part of this analysis has to

12 do with the topography and the land, where the improvements

13 can be located which is, it's an engineering exercise,

14 understanding that --

15 MR. GROSSMAN: Okay.

16 MS. LEE-CHO: -- and where, so that where the

17 activity centers are feasible. And in light of that and the

18 limitations of the site I think Mr. Smith can opine as to

19 his professional opinion as to what is being requested can

20 be sustained or supported on this particular site.

21 MR. GROSSMAN: I guess from an engineering

22 standpoint, I'm not sure it's going to answer the question

23 though as to whether or not the increase proposed increase

24 in student density creates a land use problem. That is,

25 land use in the sense of impact on the neighbors. He can

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1 answer it within his professional arena from the standpoints

2 that you specify. But I'm not sure it's going to fully

3 answer your question as to your burden.

4 MS. LEE-CHO: Well, I mean, if you think you can

5 answer, if not, on that issue I may just have to defer to

6 the technical staff's analysis, it was pretty exhaustive.

7 They surveyed pretty much all the schools in the county and

8 analyzed --

9 MR. GROSSMAN: Okay.

10 MS. LEE-CHO: -- and compared. So --

11 MR. GROSSMAN: All right.

12 MS. LEE-CHO: -- we may have to leave it at that.

13 MR. GROSSMAN: Okay.

14 THE WITNESS: I guess what I am comfortable

15 stating is that the proposed student density per acre is

16 well below the permitted required density per acre and the

17 existing uses on site are not changing and the locations of

18 those uses are not changing and the school's been in this

19 location for 35 years. The areas, the athletic facilities

20 and fields are going to be in the same locations they have

21 been for that period of time.

22 MR. GROSSMAN: All right. I am curious. Mr.

23 Feinberg seemed to link the density issue with schools that

24 had baseball fields. I don't know of anybody else who --

25 MR. FEINBERG: That's because we looked at, we

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1 were trying to do apples and apples. There are schools that

2 don't have baseball fields that have different densities.

3 MR. GROSSMAN: Right. But I'm not sure that a

4 baseball field per se is what determines impact. Now, if

5 the balls are coming over a fence that's something else.

6 But the density issue is that, it seems to me to be a

7 separate issue and they seem to be, and the schools that

8 they cited, that the technical staff cited in its report,

9 they seem to be pretty much in the middle as the technical

10 staff observed.

11 MR. FEINBERG: Uh-huh.

12 MR. GROSSMAN: On the other hand, for some reason

13 I don't think they included the Landon School and I wondered

14 about that because it's right in that same general area.

15 Let me see where that chart is, on page 39.

16 MS. LEE-CHO: Yeah, you're right, Landon is not on

17 the chart.

18 MR. GROSSMAN: I wonder why that's the case but I

19 don't know that it would skew the results that much. They

20 probably have a lower density, they have a very big campus,

21 but the 32.8 which is what's listed for The Heights School

22 with the proposed increase is certainly not out of the

23 ordinary for private schools. Okay.

24 BY MS. LEE-CHO:

25 Q One of the requirements is to provide sufficient

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1 buffer and we've had some discussion about that today --
2 A Uh-huh.
3 Q -- and I just wanted to ask in your professional
4 opinion whether all the outdoor sports and recreation
5 facilities that are existing or proposed are located such
6 that it will not constitute an intrusion into adjacent
7 residential properties.
8 MR. GROSSMAN: What does that mean? What do you
9 mean an intrusion?
10 MS. LEE-CHO: Well, I mean, it's inclusive of the
11 ball intrusion, we don't want --
12 MR. GROSSMAN: Well, yeah, but I mean, isn't this
13 a land use question? If you're asking him whether or not
14 something is going to physically intrude from an engineering
15 standpoint that's one thing. But if you're asking him if
16 the --
17 MS. LEE-CHO: Well I'm asking him whether in his
18 opinion adequate buffers have been addressed on the site
19 plan which --
20 MR. GROSSMAN: Adequate in what way, for noise or
21 what are we talking about, view? He can testify as to
22 whether or not a view will be blocked of something. He can
23 testify as to whether or not there would be, how much
24 noise --
25 MS. LEE-CHO: Well, there is sufficient --

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1 MR. GROSSMAN: -- will escape if you studied it.
2 But --
3 MS. LEE-CHO: Right. Limited to, you know, views,
4 sufficient setbacks, evergreen landscaping, those are visual
5 buffers.
6 MR. GROSSMAN: Yeah. I just wanted to keep it
7 within his area of expertise --
8 MS. LEE-CHO: Understood.
9 MR. GROSSMAN: -- rather than, I mean, when you
10 say intrude --
11 MS. LEE-CHO: Not overly broad.
12 MR. GROSSMAN: Yeah, overly broad, beyond that
13 which he can really testify to as an expert.
14 MS. LEE-CHO: Okay. With that caveat?
15 THE WITNESS: Can you, which --
16 MS. LEE-CHO: It's page 11, buffer, all outdoor
17 sports and recreation facilities must be located, landscaped
18 or otherwise buffered so that the activities associated with
19 the facilities will not constitute an intrusion into
20 adjacent residential properties. The facility must be
21 designed and sited to protect adjacent properties from
22 noise, spill light, stray balls, and other objectionable
23 impacts by providing appropriate screening measures such as
24 sufficient setbacks, evergreen landscaping, solid fences and
25 walls.

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1 THE WITNESS: Right.
2 MR. GROSSMAN: Okay.
3 MS. LEE-CHO: And really it's that last sentence,
4 whether in your profession ability, professional opinion the
5 site has been designed to accomplish that last part.
6 MR. GROSSMAN: Yeah, he can testify to that.
7 THE WITNESS: And I think based on the discussion
8 today that I'm comfortable with it in my professional
9 opinion. It is, there are ongoing conversations about
10 additional screening measures. There are existing setbacks
11 and actually a substantial amount of forest on the site to
12 buffer activities. So in that case I would say yes that
13 there are adequate buffers on site.
14 BY MS. LEE-CHO:
15 Q And in that regard there is one issue that was
16 raised by technical staff and that is some buffer presumably
17 that was approved under previous reviews --
18 A Right.
19 Q -- around the tennis courts.
20 A Right.
21 Q Can you tell us whether you have been able to find
22 what was required previously?
23 A Right. Yeah, we have not. The reference is to a
24 requirement to provide additional screening or buffering
25 along the northern boundary of the tennis courts in the

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1 northeast corner. It references a previously approved
2 landscape and lighting plan. We have not been able to find
3 a copy of the previously approved landscape and lighting
4 plan. There are existing trees in that location now that
5 are, you know, no one's planning on removing.
6 MR. GROSSMAN: Who did you say referenced it?
7 THE WITNESS: It was in the staff report.
8 MS. LEE-CHO: The technical staff.
9 MR. GROSSMAN: Okay. You say you haven't been
10 able to find it?
11 THE WITNESS: Correct.
12 MR. GROSSMAN: If staff referenced it they can
13 find it, right?
14 THE WITNESS: I assume they can. It hasn't --
15 MS. LEE-CHO: Well, I --
16 THE WITNESS: -- come to our attention.
17 BY MS. LEE-CHO:
18 Q We have found previous plans, I think that, Aaron,
19 you've looked at.
20 A Right.
21 Q Do they show plantings being required along the
22 northern property?
23 A They do not. They actually reference a buffer
24 that's no longer there. The configuration of the tennis
25 courts is actually different than what's shown on the plans

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1 that we've looked at.
2 MR. GROSSMAN: Well I guess let's ask the question
3 this way. Should there be some additional buffering in your
4 opinion regarding those tennis courts to meet the criteria
5 about intrusion which was just enunciated by your attorney?
6 THE WITNESS: I don't believe additional buffering
7 is required. There's a 10 foot fence there around the
8 tennis courts and there are some existing plantings in that
9 location, so --
10 MR. GROSSMAN: Okay.
11 THE WITNESS: -- we would not recommend additional
12 buffers.
13 BY MS. LEE-CHO:
14 Q All right. General conditions. The last finding
15 that I would ask you help us with has to do with whether
16 there will be adequate public services and facilities, I
17 won't say schools because we are a school, police and fire
18 protection, water, sanitary, sewer, storm drainage, whether
19 this condition is satisfied by the application?
20 A Yes, it is. There is adequate public utility
21 connections and fire access.
22 MS. LEE-CHO: I don't think I have anything
23 further for Mr. Smith.
24 MR. GROSSMAN: Okay. Before we, you had some
25 cross-examination --

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1 MR. FEINBERG: Yes.
2 MR. GROSSMAN: -- questions, Mr. Feinberg. Let's
3 take a five minute break before we do that. And you have no
4 additional witnesses, correct? So then --
5 MS. LEE-CHO: No additional witness. Unless --
6 MR. GROSSMAN: -- we can --
7 MS. LEE-CHO: -- there's questions that the
8 hearing examiner wants to ask I can call.
9 MR. GROSSMAN: Well nothing that occurs to me at
10 the moment. But I do want to go over your redline --
11 MS. LEE-CHO: Okay.
12 MR. GROSSMAN: -- proposed conditions and anything
13 else. And by the way, the way this procedure works, after
14 the record closes, the record will be open for at least
15 another 15 days, 10 days at least for the comments that --
16 MR. FEINBERG: Like John Reghi's statement.
17 MR. GROSSMAN: -- I said you could file and also
18 whatever additional submissions Ms. Lee-Cho is going to file
19 and then five days for each side to respond to those. Then
20 once the record closes I have 30 days in which to write a
21 report and recommendation to the Board of Appeals. And I
22 usually keep within those time limits although I have the
23 power to extend it as necessary. Then the Board of Appeals
24 will set this down for a work session and the don't
25 necessarily send out a notice to people about the work

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1 session so you'll want to check with the Board of Appeals.
2 Everybody who testified here today, not the experts but
3 every party who testified will get a written notice from my
4 office saying what my recommendation is in very brief form
5 and giving you the website where the entire report will be
6 on our website. And then you have 10 days after that if you
7 wish, anybody, either side, to request oral argument before
8 the Board of Appeals. They don't have to grant that. They
9 can decide this case just based on the pure record that we
10 produce here today and my report and you're not allowed to
11 introduce additional evidence at their work session. It's
12 just an oral argument if they grant oral argument. As I
13 say, they don't have to grant oral argument. Then, once
14 they act on it they issue a resolution within the next few
15 weeks after that which formalizes whatever their decision
16 is. Anyway, so that's the process. So we'll take a five
17 minute break, come back at a quarter after 5:00 and finish
18 up.
19 MS. LEE-CHO: All right.
20 (Whereupon, at 5:10 p.m., a brief recess was
21 taken.)
22 MR. GROSSMAN: Okay. Let us proceed. Back on the
23 record.
24 MS. LEE-CHO: I think I have completed, oh, cross-
25 examination.

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1 MR. GROSSMAN: Oh, okay. So you've finished?
2 Cross-examination --
3 MR. FEINBERG: Okay.
4 MR. GROSSMAN: -- Mr. Feinberg.
5 CROSS-EXAMINATION
6 BY MR. FEINBERG:
7 Q One is more of a clarification question. On the
8 proposed biofiltration garden that's supposed to be in the
9 southwest corner --
10 A Southwest?
11 Q Southwest corner. I'm looking at, I think it's
12 Exhibit No. 63D which has the four which, which gets built
13 first, you know, diagrams.
14 A Yes.
15 Q It doesn't appear on the first, second or fourth
16 one. It appears on the third one. Because I was little
17 worried, I was going to ask you, why did it disappear.
18 A Right. So --
19 Q When will it be built if, under the other options?
20 A So, there's an existing facility there now.
21 Q There's a stormwater drain.
22 A Right, there's an existing pond --
23 Q Yeah.
24 A -- down here now and under these first couple of
25 options that, that facility would only be retrofitted,

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1 there's a riser structure in it that could be retrofitted to
2 accommodate whatever, you know, additional drainage is
3 coming to it.
4 Q Yeah, because of, I believe you're going to get
5 increased water flow off the, where the area of the lower
6 school is, will be going in and things like that into that
7 basin.
8 A Right, the lower school, under the lower school
9 option or the middle school option which actually it's
10 really more or less a replacement in the same place. So the
11 increased stairs is minor. But to answer your question
12 about when the facilities in the southwest corner would be
13 constructed, it wouldn't be until really the gym or garage
14 option is introduced.
15 Q I just wanted to make sure that it's still going
16 to go there.
17 A Oh, yes. And the facilities, the proposed
18 facilities in the southwest corner are actually, they are
19 above grade --
20 Q Yes.
21 A -- bioretention facilities but the main management
22 facility is underground storage.
23 Q Yeah. The reason I was asking, I was present at
24 the association, wasn't The Heights School's problem.
25 A Right.

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1 Q The builder at Democracy Lane, diesel flowed down
2 into that --
3 A Oh.
4 Q -- into our pond.
5 A Yeah, well there shouldn't be any of that.
6 Q No. That wasn't The Heights School. The other
7 question I have, you know, I said before I was concerned
8 about safety on Seven Locks Road of students trying to
9 transit from the school down to Grand Teton. From Grand
10 Teton on down there is a public sidewalk from Grand Teton to
11 Matterhorn, from Matterhorn to Democracy Boulevard. From a
12 technical point of view, not a financial or schedule, how
13 hard would it be to install a sidewalk from where the
14 existing sidewalk coming out of the school and to Seven
15 Locks Road down to Grand Teton Drive? The reason I'm asking
16 is I, there is at least one or two homes on Democracy
17 Boulevard near Falls Road where the builders have put in
18 sidewalks just in front of their new property, dirt on
19 either side of it. So I assume precedent for new
20 construction requiring --
21 A Along, along the frontage?
22 Q Yeah.
23 A Well, in this case that hasn't been brought up as
24 a requirement obviously and there are I think other
25 consideration that the county's dealing with. It think

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1 they're looking at both bike and pedestrian walkways through
2 there. So, I want to make sure I answer your question
3 specifically. What, what's your question specifically in
4 that case?
5 Q Well, I recognize what the county is planning
6 because they will take part of our property when they do it
7 too.
8 A Right.
9 Q But in the interim, because that could be years
10 away, from a technical viewpoint, not a funding or schedule,
11 is it feasible to install a sidewalk to county standards
12 from the entrance onto Seven Locks Road over to Grand Teton
13 Drive?
14 A I haven't studied it. It hasn't been part of our
15 investigation --
16 Q Okay.
17 A -- so I can't really say whether, the fact that
18 it's planned tells me that it's feasible but I can't --
19 Q Okay.
20 A -- say whether it's possible.
21 Q I'm used to, myself --
22 A Right.
23 Q -- as a subject matter expert in certain fields
24 giving answers like that and I certainly accept it from you.
25 MR. GROSSMAN: Any other questions, Mr. Feinberg?

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1 MR. FEINBERG: No.
2 MR. GROSSMAN: Anybody else have any questions?
3 Ms. Schmickel, you want to cross-examine your associate's
4 expert?
5 THE WITNESS: On the green roof?
6 MS. SCHMICKEL: On the green roof?
7 MR. GROSSMAN: No, I'm just teasing.
8 MS. SCHMICKEL: It does cost more money to build a
9 green roof, so.
10 MR. GROSSMAN: All right. Any redirect?
11 MS. LEE-CHO: Yes, I would like to redirect.
12 REDIRECT EXAMINATION
13 BY MS. LEE-CHO:
14 Q Just going back to that issue of constructing a
15 sidewalk along Seven Locks Road --
16 A Uh-huh.
17 Q -- the side entrance down to Grand Teton, are you
18 familiar with the current cross section of Seven Locks Road
19 enough to testify as to --
20 A No.
21 Q You're not?
22 A I'm not.
23 Q Whether it's an open swale --
24 A I believe, I haven't looked at in detail, I
25 believe it's an open section pavement drains into a swale

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1 along there which and then gets picked up again and goes to
2 a storm drain across --
3 MR. FEINBERG: There's a narrowing for a swale
4 right next to John Reghi's house --
5 THE WITNESS: Yeah.
6 MR. FEINBERG: -- which is the corner house there.
7 MS. LEE-CHO: Okay. I'm in a difficult position
8 because there was an associate that we worked with at AMT
9 much more closely on this issue when it came up with the
10 county and he's no longer with AMT and I can't question Mr.
11 Smith because he obviously wasn't directly involved in why
12 in fact no sidewalk on the school property frontage was
13 required. So I'm at sort of a difficult, I do know why it
14 wasn't required but I can't --
15 MR. GROSSMAN: Why don't you proffer it to me?
16 MS. LEE-CHO: Okay. Basically the engineering
17 that would be required would be much too onerous for the
18 school or any single property to accomplish because of the
19 Seven Locks grading. The county project that's going to
20 come through on Seven Locks is not simply a slapping on of a
21 sidewalk on grade. It is a complete reconstruction of Seven
22 Locks Road, it's a regrading. And so although it was
23 brought up MCDOT did not choose to impose upon The Heights
24 School any type of sidewalk construction along its frontage
25 understanding the engineering feat that it would be required

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1 to accomplish.
2 MR. GROSSMAN: And it's not suggested in the staff
3 report either, right?
4 MS. LEE-CHO: No.
5 MR. GROSSMAN: So, it's not really an issue
6 that's --
7 MS. LEE-CHO: But it has --
8 MR. GROSSMAN: -- technically before me. It was
9 raised by Mr. Feinberg --
10 MS. LEE-CHO: Yes.
11 MR. GROSSMAN: -- so that's, I guess, the answer.
12 MS. LEE-CHO: It's the rebuttal.
13 MR. GROSSMAN: But in terms of what I have to
14 consider it's really not directly before me.
15 MS. LEE-CHO: But I wanted to at least somewhat --
16 MR. GROSSMAN: Yes.
17 MS. LEE-CHO: -- get that out.
18 MR. GROSSMAN: Okay.
19 MS. LEE-CHO: Okay. So I think we omitted maybe a
20 couple minor things from Ms. Saville's e-mail that --
21 MR. GROSSMAN: Okay.
22 MS. LEE-CHO: -- I would like Mr. Smith --
23 MR. GROSSMAN: Okay.
24 MS. LEE-CHO: -- to address.
25 MR. GROSSMAN: Go ahead.

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1 BY MS. LEE-CHO:
2 Q Number one, there's a bullet point where Ms.
3 Saville asks about two full-sized bus parking spaces and
4 where they might have gone.
5 A Right.
6 Q Can you help address that question?
7 A Sure. Right, she's asking, the original special
8 exception plan, again, removed the parallel parking spaces
9 along the exit drive through the center of the property.
10 Included in those parallel parking spaces are bus parking
11 spaces and so she's asking, she's asking under the old
12 exhibit what happens to those bus spaces and I guess the
13 response is that under the new approved fire access plan
14 those bus spaces remain because this is no longer a
15 designated fire lane
16 MS. LEE-CHO: If you have any further questions,
17 I'm just trying to --
18 MR. GROSSMAN: Okay.
19 BY MS. LEE-CHO:
20 Q Okay. And there is a suggestion that if keeping
21 the parallel spaces is an interim condition that it --
22 A Right.
23 Q -- shown on a separate sheet. Do you have an
24 opinion as to whether that would be clarifying or more
25 confusing?

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1 A Um --
2 Q Currently --
3 A I mean --
4 Q We currently show the parallel spaces on the
5 special exception site plan and have a note that indicates,
6 to be removed if required by the fire marshal.
7 A Right.
8 Q I believe, my interpretation of Ms. Saville's e-
9 mail is she would prefer a whole separate sheet to show the
10 interim condition and the final special exception without,
11 showing without the parallel, you know, having the parallel
12 spaces removed.
13 A Okay.
14 Q I just would like to know, in your opinion, is
15 that necessary or what would you recommend we do?
16 A I mean, I don't feel like it's necessary. I think
17 it's addressed by the note. The note we can maybe work with
18 staff on the language in the note and the fire marshal is
19 really the governing body that's going to, you know, require
20 whether or not those parallel parking spaces remain or are
21 removed.
22 Q Okay.
23 MS. LEE-CHO: Nothing further.
24 MR. GROSSMAN: Did we address where the buses
25 would be located question? Did I miss that?

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1 MS. LEE-CHO: Yeah, he answered it.
2 MR. GROSSMAN: Okay.
3 BY MS. LEE-CHO:
4 Q But go ahead and repeat.
5 A Yeah, that's what we were just discussing. She --
6 MR. GROSSMAN: Okay.
7 BY MS. LEE-CHO:
8 Q Why don't you show on the plan where they are?
9 A So, these are the parallel parking spaces that are
10 in question --
11 MR. GROSSMAN: Right.
12 THE WITNESS: -- which include the bus spaces that
13 she's referencing.
14 MR. GROSSMAN: Okay.
15 THE WITNESS: Her bullet point is referencing the
16 old fire access exhibit which designated this as a fire lane
17 and --
18 MR. GROSSMAN: Okay.
19 THE WITNESS: -- which would've required the
20 removal of those bus parking spaces. But we now have an
21 agreement to route the fire access, you know, through the
22 property and this, the parallel parking spaces can remain.
23 MR. GROSSMAN: So that's the documentation that
24 you were going to going to be providing?
25 MS. LEE-CHO: Yes.

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1 THE WITNESS: Correct.
2 MR. GROSSMAN: Okay.
3 THE WITNESS: With the e-mail from the --
4 MR. GROSSMAN: Okay.
5 THE WITNESS: -- fire marshal's office.
6 MR. GROSSMAN: All right. Good.
7 MS. LEE-CHO: And we can go through the redline
8 and I think in the process of going through the redline of
9 the conditions I will be able to hit what I wanted to hit as
10 far as a closing argument per se but just a wrap up --
11 MR. GROSSMAN: Okay.
12 MS. LEE-CHO: -- on several issues.
13 MR. GROSSMAN: You know, we haven't really dealt
14 much with the question of hours and the concern that I have
15 about 11:00 hours. And you, when you first talked about it
16 you said, well, you know, we're trying to follow the new
17 kind of standard where the, when you say 11:00 it means that
18 the thing might end at 10:30 but you were going to clean up
19 by 11:00. I'm not sure that, I'm trying to think if there
20 are any other schools in the county that have up to 11:00
21 hours as opposed to 10:00. You might take a look at that
22 during your 10 day period and supply me with that
23 information because 11:00 sounds pretty late to me.
24 MS. LEE-CHO: And are you concerned just with
25 other schools or other special exceptions?

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1 MR. GROSSMAN: No, the special exceptions.
2 MS. LEE-CHO: Other special exceptions?
3 MR. GROSSMAN: Yeah.
4 MS. LEE-CHO: Okay.
5 MR. GROSSMAN: Private educational institution
6 special exceptions because, you know, there's a level of
7 imposition on the neighborhood. That's --
8 MS. LEE-CHO: Well, I mean, do you want me to
9 focus only on school special exceptions or other special
10 exceptions, like swim clubs --
11 MR. GROSSMAN: No, school special exceptions. No,
12 no, no, no.
13 MS. LEE-CHO: Okay.
14 MR. GROSSMAN: Private educational institution
15 special exceptions --
16 MS. LEE-CHO: Okay.
17 MR. GROSSMAN: -- where the conditions are set up
18 and usually they have operating hours and they may have
19 special event hours. I know we looked at, we did a lot of,
20 in the German School case we had considerable number of
21 conditions and that's set up hour by hour and I've had
22 numerous other ones. I just can't recall --
23 MS. LEE-CHO: Okay.
24 MR. GROSSMAN: -- because it's been years ago.
25 Okay. And other than telling the boys to be quiet, is there

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1 some way of dealing with noise issues because that's clearly
2 a concern to some of the neighbors? What do you think?
3 MS. LEE-CHO: I mean, it's a very difficult
4 question and you know, I don't think any about of tree
5 plantings really will do it.
6 MR. GROSSMAN: Right.
7 MS. LEE-CHO: I really do think it's an
8 operational control issue. There is a requirement to
9 provide outdoor play. That's part of the school function.
10 So that's an inherent impact. I don't know that the noise
11 from this use is any more exorbitant than another, any other
12 special exception use by a school with outdoor play areas.
13 I don't think you have any evidence to show that there's a
14 condition on this site that makes the kids louder.
15 MR. GROSSMAN: No, if they're violating a noise
16 ordinance it's one thing but to the extent that school can
17 cut back on noise obviously it would be a desirable thing to
18 do. And I'm just throwing that issue out. We have school
19 officials here. If there is some way that that noise could
20 be reduced because that is a neighborhood concern that would
21 be helpful. What about the trespassing issue? Is --
22 MS. LEE-CHO: That's a physical --
23 MR. GROSSMAN: -- there some way other than, I
24 know including the, completing a fence there would
25 certainly --

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1 MS. LEE-CHO: The fencing would help.
2 MR. GROSSMAN: -- would help on that southwest
3 corner. But I think Mr. Feinberg was also talking about the
4 southeast corner and the trespassing he observed. Is there
5 some way to deal with it there, crossing people's property
6 and so on?
7 MS. LEE-CHO: I mean, at that point there is a
8 question of whether are they trespassing off of the public
9 road or through, I mean, I don't know --
10 MR. GROSSMAN: Yeah, I'm not condemning anybody.
11 MS. LEE-CHO: -- how much we can control.
12 MR. GROSSMAN: I'm not saying the school did
13 something wrong or didn't do something right. I'm just
14 saying if there's a way to address that you ought to look at
15 it in these next 10 days so it can be, it is a neighborhood
16 concern.
17 MS. LEE-CHO: Yeah.
18 MR. GROSSMAN: All right. Let's turn to the
19 redline issues.
20 MS. LEE-CHO: So, despite the fact -- Mr.
21 Feinberg, do you have a copy of the redline?
22 MR. FEINBERG: No.
23 MS. LEE-CHO: You might need a copy of the
24 redline. Do I have an extra copy? Yeah.
25 MR. FEINBERG: Okay. Thank you. I appreciate it.

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1 May I keep this copy or --
2 MS. LEE-CHO: I'm just trying to find an extra
3 copy.
4 MR. GROSSMAN: Want me to print out an extra copy?
5 I'm sure I --
6 MS. LEE-CHO: No, I do have it.
7 MR. GROSSMAN: -- have it on my computer. Okay.
8 So, can Mr. Feinberg keep --
9 MS. LEE-CHO: Yes.
10 MR. GROSSMAN: -- that copy?
11 MS. LEE-CHO: You can.
12 MR. FEINBERG: Thank you.
13 MR. GROSSMAN: That's Exhibit No. 84, by the way.
14 MS. LEE-CHO: 84. So, okay, we walk through the
15 staff recommended conditions, we have no problem with
16 condition one through three. Beginning with condition four,
17 again, that's the fire lane order --
18 MR. GROSSMAN: I got it.
19 MS. LEE-CHO: -- condition.
20 MR. GROSSMAN: Okay.
21 MS. LEE-CHO: And my redline of seeking to address
22 the future amendment of that fire lane order.
23 MR. GROSSMAN: Okay.
24 MS. LEE-CHO: Okay. Number five is the hours of
25 operations. In trying to keep in line as much as possible

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1 with the staff recommended language we inserted some
2 descriptive language for the type of meets that occur in
3 addition to indoor basketball games before 9:00. The
4 response we got from the Planning Board generally was, maybe
5 this is too specific, but our proposal would be if the hours
6 of operation are permitted from 8:00 a.m. to 9:00 p.m. then
7 that generally would cover a predominantly all the
8 activities on site. And then we would separately deal with
9 the evening and weekend activities that end later than 9:00.
10 MR. GROSSMAN: Yeah. What about it, Mr. Feinberg?
11 It doesn't seem to me like small group indoor gatherings or
12 meetings such as that should --
13 MR. FEINBERG: Right.
14 MR. GROSSMAN: -- impose an issue on the
15 neighborhood.
16 MR. FEINBERG: No, in fact we've been one of those
17 groups.
18 MR. GROSSMAN: Right.
19 MR. FEINBERG: We've had annual meetings on the
20 high school grounds from 7:30 to 9:00.
21 MR. GROSSMAN: Okay. All right. So, that doesn't
22 seem to --
23 MS. LEE-CHO: So, if we would just remove my
24 redline completely and go back to the original language the
25 only change you would have to make is to the first line.

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1 Instead of 6:30 p.m., 9:00 p.m.
2 MR. GROSSMAN: All right. I'll think about that.
3 MS. LEE-CHO: That's two options.
4 MR. GROSSMAN: Okay.
5 MS. LEE-CHO: Or however else you want it.
6 MR. GROSSMAN: Okay.
7 MS. LEE-CHO: We can deal with it.
8 MR. GROSSMAN: And then the evening and weekend
9 activities extending until 10:00 or 11:00, 50 per year.
10 That seems like an awful lot and once again you're going to
11 check on other private educational institution special
12 exceptions and see if they really do activities until 11:00
13 p.m.
14 MS. LEE-CHO: And again --
15 MR. GROSSMAN: And 50 seems like a large number
16 because you only had, you didn't have 50 on your -- how many
17 are on your real list of --
18 MS. LEE-CHO: Yeah, I didn't, we didn't ask for 50
19 that ended until --
20 MR. GROSSMAN: 11:00. It was like --
21 MS. LEE-CHO: -- or went until --
22 MR. GROSSMAN: -- three or four?
23 MS. LEE-CHO: Well, that, I would say 15.
24 MR. GROSSMAN: 15. All right. Well, that's more
25 in the reasonable zone. But why don't you look at that

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1 issue and see what you come up with on that. All right.
2 MS. LEE-CHO: Then seven.
3 MR. GROSSMAN: That's the lead-in sidewalk issue.
4 Okay. I understand your point on that. The ball
5 restricting net, once again, that's something if it can be
6 done operationally --
7 MS. LEE-CHO: Right.
8 MR. GROSSMAN: -- it --
9 MS. LEE-CHO: We don't object to a ball
10 restricting net --
11 MR. GROSSMAN: Right.
12 MS. LEE-CHO: -- if required in the future but --
13 MR. GROSSMAN: Right.
14 MS. LEE-CHO: -- yeah. And all of this was
15 supposed to be before this coming fall, so.
16 MR. GROSSMAN: All right. Now, you say repair and
17 replace place chain link and you added chain link fencing.
18 MS. LEE-CHO: Well, there is --
19 MR. GROSSMAN: Why not repair and replace any
20 fencing belonging to the school along the south property
21 line?
22 MS. LEE-CHO: Yes.
23 MR. GROSSMAN: And you're going to add --
24 MS. LEE-CHO: Repair and --
25 MR. GROSSMAN: -- fill in the gap of fencing.

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1 That's inartfully worded but you know the idea.
2 MS. LEE-CHO: Right.
3 MR. GROSSMAN: I'm going to cross out the word
4 chain link. All right.
5 MS. LEE-CHO: E and F were acceptable. And E was
6 the TMP and F was the community liaison counsel.
7 MR. GROSSMAN: Wait a minute, what happened to
8 eight?
9 MS. LEE-CHO: Oh, I was just on 7E and F.
10 MR. GROSSMAN: Oh, seven.
11 MS. LEE-CHO: Those are TMP and --
12 MR. GROSSMAN: Yeah, okay. Yes, that's right.
13 MS. LEE-CHO: So eight, this was install necessary
14 screen plantings. And the only, the issue we had during the
15 first available planting season. That would've been
16 possibly this spring. I think our proffer is to install by
17 no later than Fall 2015 planting season.
18 MR. FEINBERG: Which one are we at?
19 MS. LEE-CHO: Eight.
20 MR. GROSSMAN: Well, you're actually, you just
21 said install necessary screening as recommended around
22 tennis courts, west property. And you're just looking on
23 your plans when it says to do it you mean?
24 MS. LEE-CHO: Right.
25 MR. GROSSMAN: And then you had obviously the

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1 question about the shading --
2 MS. LEE-CHO: Correct.
3 MR. GROSSMAN: -- of the parking area and I'll
4 look at that issue.
5 MS. LEE-CHO: And on that issue I do believe that
6 if that section of the zoning ordinance was interpreted the
7 way technical staff, there is no incentive to do structure
8 parking. I think it undermines the whole intent of that
9 section having grandfathered old surface lots and triggering
10 the new requirements only if you expanded by more than 50
11 percent. That provision sort of educated the school in
12 terms of what would be the best option. And I think in
13 hindsight we might have done it differently had we known
14 you'd have to tear up the existing surface lot anyway, so.
15 MR. GROSSMAN: Right. I will look at the section
16 of the code and give you an opinion of it. All right.
17 MS. LEE-CHO: So I guess going back on condition
18 eight, as recommended around tennis courts, at the time that
19 we recommended this redline we just took at face value
20 technical staff's representation that there was some
21 plantings required around the tennis courts.
22 MR. GROSSMAN: Right.
23 MS. LEE-CHO: At this point I think we were
24 wondering whether that is in fact the case.
25 MR. GROSSMAN: That is in fact --

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1 MS. LEE-CHO: Not the case.
2 MR. GROSSMAN: -- not the case. So, you would
3 strike the recommended around the tennis courts from your
4 redline and just say, on the west property line to the
5 middle school and near the south property line adjacent to
6 the gym and the ball fields?
7 MS. LEE-CHO: And in fact we would further have to
8 revise this, not on the west property line because this was
9 also --
10 MR. GROSSMAN: Oh, yeah.
11 MS. LEE-CHO: -- written before our community
12 meeting.
13 MR. GROSSMAN: Before you, right. So, it's --
14 MS. LEE-CHO: And we didn't --
15 MR. GROSSMAN: You would say near the west
16 property line but adjacent to the --
17 MS. LEE-CHO: Middle school.
18 MR. GROSSMAN: All right.
19 MS. LEE-CHO: And I did forget about staff's
20 recommendation that there be plantings along the south
21 property line adjacent to the gym and ball fields. I don't
22 think we would feel that that's necessary.
23 MR. FEINBERG: Well you're taking out trees
24 there --
25 MS. LEE-CHO: Um --

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1 MR. FEINBERG: -- if I remember. That's on that
2 high portion.
3 MS. LEE-CHO: Well that's as a result of the
4 garage construction.
5 MS. SCHMICKEL: That's a play field now.
6 MR. SMITH: Right.
7 MS. LEE-CHO: Can you help with that?
8 MR. SMITH: If I may. This area here, there was
9 some, there is some forested area that's being removed in
10 this area it has --
11 MR. GROSSMAN: You have to identify where here
12 is --
13 MR. SMITH: I'm sorry.
14 MR. GROSSMAN: -- for the record.
15 MR. SMITH: Along the south side of the ball
16 field, the upper play field. And the only reason that's
17 required is for fire access. So, you know, I think the
18 intent here is that, you know, this would only be cleared
19 enough to get the fire access required to get down to the
20 ball field and around the garage structure. And then, you
21 know, this would be maintained and restored to the extent
22 possible. But I don't think we show any, you know, new
23 plantings along that boundary.
24 MS. LEE-CHO: And --
25 MR. SMITH: And that's what's being --

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1 MS. LEE-CHO: And to the --
2 MR. SMITH: -- requested there.
3 MR. FEINBERG: Wouldn't there also be a fence
4 there --
5 MS. LEE-CHO: You know what --
6 MR. FEINBERG: -- to prevent balls from coming out
7 the field into that conservation area?
8 MR. SMITH: I don't think we're showing, there's
9 going to be a fence surrounding the ball field as Ms.
10 Schmickel mentioned for both kids' safety and to keep the
11 balls on the field.
12 MS. LEE-CHO: So staff's recommendation is in
13 condition 22D where it just says, show screening plants
14 around the tennis courts, west property and near south
15 property line adjacent to the gym and ball fields. And I
16 guess I'm confused because the south property line is not
17 adjacent to the gym and ball fields. The gym, there is a
18 forest conservation area in between the south property line
19 and the gym and ball fields. So I --
20 MR. GROSSMAN: Why don't you clear that issue up
21 with staff --
22 MS. LEE-CHO: I will.
23 MR. GROSSMAN: -- and then get back to me. Okay.
24 nine through 12 you're copasetic and 13, that's the phasing
25 issue with the garage.

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1 MS. LEE-CHO: Correct. Again, this was a proposal
2 on our part. If the hearing examiner wanted to reword it
3 obviously but we requested that the construction of the
4 garage part, any other proposed structure requirement, which
5 is B, unless additional off-street parking locations are
6 identified and secured by the school to adequately
7 accommodate daily parking demands. So we were trying to
8 caveat the requirement to --
9 MR. GROSSMAN: Right.
10 MS. LEE-CHO: -- do the garage first.
11 MR. GROSSMAN: Right, I understand that issue.
12 MS. LEE-CHO: Okay. C, 13C, that's again,
13 removing of the shading of the paved areas requirement.
14 MR. GROSSMAN: Right.
15 MS. LEE-CHO: I think we addressed all of the
16 other issues indicated there or will do with the garage
17 construction. E, again, limiting the school to not be able
18 to increase its enrollment until the garage is constructed
19 was, it was a problem and we felt that the enrollment
20 shouldn't be limited if the school can acquire the off-site
21 parking.
22 MR. GROSSMAN: Right. I understand that issue.
23 MR. FEINBERG: Can I ask a question at this point?
24 MR. GROSSMAN: Yes, sir.
25 MR. FEINBERG: Isn't the way that this is stated

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1 asking the Planning Board to grant you a new maximum level
2 as opposed to the current, current --
3 MR. GROSSMAN: You mean the Board of Appeals?
4 MR. FEINBERG: -- level of 460?
5 MR. GROSSMAN: You don't mean the Planning Board,
6 you mean the Board.
7 MR. FEINBERG: I mean the, pardon me. I forget
8 the exact term.
9 MR. GROSSMAN: Yes, it's the Board of Appeals that
10 is --
11 MR. FEINBERG: Board of Appeals.
12 MR. GROSSMAN: Yes, I see your point though
13 because the --
14 MR. FEINBERG: Yeah.
15 MR. GROSSMAN: -- way this is phrased --
16 MR. FEINBERG: Because the current limit is 460 --
17 MR. GROSSMAN: But that's actually the technical
18 staff's wording I think.
19 MS. LEE-CHO: Uh-huh.
20 MR. FEINBERG: Yeah.
21 MR. GROSSMAN: Because it implies that they're
22 approving, not implies, it is approving --
23 MR. FEINBERG: Yeah.
24 MR. GROSSMAN: -- the current levels which exceed
25 their previously allowed levels.

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1 MR. FEINBERG: Yeah.
2 MR. GROSSMAN: So, yes, that's true, that's what
3 it's doing.
4 MS. LEE-CHO: Yes. But --
5 MR. GROSSMAN: I don't know if other than your
6 general objection to --
7 MR. FEINBERG: Other than, other than a general
8 objection to it, yeah.
9 MR. GROSSMAN: That is what it's doing.
10 MR. FEINBERG: It's formalizing --
11 MR. GROSSMAN: Well, I mean, this is the process
12 by which it would be formalized.
13 MR. FEINBERG: Okay.
14 MR. GROSSMAN: So --
15 MS. LEE-CHO: Well, we would --
16 MR. GROSSMAN: -- it's not going, I mean, it's not
17 sliding something through under the radar. This is the
18 process under which it's formalized.
19 MR. FEINBERG: Okay.
20 MS. LEE-CHO: And the approval is for 650. This
21 condition is just saying, even though we're approved for 650
22 we can't go beyond current enrollment until --
23 MR. GROSSMAN: Right.
24 MS. LEE-CHO: Right.
25 MR. GROSSMAN: With the, right.

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1 MS. LEE-CHO: And then here, the last line of E
2 talks about the summer programs. My concern was that the
3 summer programs it says, are limited to 200 students. The
4 actual approval is at any one time.
5 MR. GROSSMAN: Yes. And I think that is that
6 there can't be more than 200 on the campus --
7 MS. LEE-CHO: At any one time.
8 MR. GROSSMAN: -- at any one time. That's usually
9 the way it's done.
10 MS. LEE-CHO: Yeah.
11 MR. GROSSMAN: Okay.
12 MS. LEE-CHO: As, again, at any one time the any
13 one time clarification. 14 to 21 was acceptable. 22H,
14 beginning with H I believe.
15 MR. GROSSMAN: Right.
16 MS. LEE-CHO: It's just that that was, I don't
17 know if this was part of the staff's errata sheet but the
18 plan is showing 24 already. So I just, 12 bike racks are
19 not shown, 12 are shown. She misread the legend.
20 MR. GROSSMAN: Okay.
21 MS. LEE-CHO: Maybe the numbering on my, it's
22 wrong, it's G, H, I, it should be A, B, C, D. So, D, 22D,
23 again, the shade tree issue I deleted.
24 MR. GROSSMAN: Oh, yeah, you're using where it
25 obviously picked up the --

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1 MS. LEE-CHO: Yeah, the previous.
2 MR. GROSSMAN: It loves to tell you --
3 MS. LEE-CHO: I hate that line function.
4 MR. GROSSMAN: -- what it's going to do with you.
5 I hate that too.
6 MS. LEE-CHO: It has its own mind.
7 MR. GROSSMAN: All right.
8 MS. LEE-CHO: And showing that's at the south end.
9 MR. GROSSMAN: Yeah.
10 MS. LEE-CHO: We just wanted flexibility.
11 MR. GROSSMAN: Right, right. Those are the
12 shading and netting issues.
13 MS. LEE-CHO: And then 23 was, again, the lead-in
14 sidewalk timing issue.
15 MR. GROSSMAN: Right.
16 MS. LEE-CHO: So, I think what I can summarize the
17 disparity between technical staff and petitioner's, you
18 know, recommended changes basically in three areas; the
19 garage phasing issue, the lead-in sidewalk issue timing and
20 the shading of the paved areas. Those are like the major
21 bones of contention on the conditions of approval.
22 MR. GROSSMAN: And maybe hours.
23 MS. LEE-CHO: And the hours.
24 MR. GROSSMAN: Well, they were giving you hours,
25 more hours than I'd be inclined to give you.

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1 MS. LEE-CHO: Right.
2 MR. GROSSMAN: So.
3 MS. LEE-CHO: So.
4 MR. GROSSMAN: All right. Did you want to make a
5 closing statement? Or before we reach that point --
6 MR. FEINBERG: I have no further questions.
7 MR. GROSSMAN: No? Okay. I take it that you'd
8 like to have all the exhibits admitted into evidence?
9 MS. LEE-CHO: I would.
10 MR. GROSSMAN: Okay. So, any objection to that?
11 MR. FEINBERG: No.
12 MR. GROSSMAN: All right. So, Exhibits Nos. 1
13 through 110 and their subparts are admitted into evidence
14 and I will also admit the subsequent filings which I've
15 permitted here within the 15 day period that we're going to
16 keep the record open.
17 MS. LEE-CHO: Okay.
18 MR. GROSSMAN: All right. If you wish to make a
19 closing statement?
20 MS. LEE-CHO: Very briefly. I think a lot has
21 been said, presented today. I won't repeat all of it
22 obviously.
23 MR. GROSSMAN: Thank you, as that would take quite
24 a few hours.
25 MS. LEE-CHO: Yeah. But I think just the key

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1 point is sort of a reasonableness in terms of timing and the
2 school's ability to continue on with its mission but then
3 also to be able to afford to do some of the things that
4 staff recommended going ahead with more immediately is
5 really what we're concerned about the most. And I've
6 mentioned the lead-in sidewalk and just the constraint of
7 having to do the garage first and not allowing that
8 flexibility. The school is very open, willing, able, ready
9 to engage the community liaison counsel. They took the
10 effort to meet and invite the neighbors immediately after
11 the Planning Board hearing at the suggestion of the chair
12 which I thought was a very good idea and will continue to do
13 so and I think that will be a very good addition to this
14 site, to this special exception as well as to the
15 neighborhood to allow that dialogue to continue. Some of
16 these issues I think need to be fleshed out a little more
17 with the communication to really get to a solution that will
18 work for everyone. And I think that approach would be
19 something that the school would really request the hearing
20 examiner to consider. I don't have much else other than,
21 you know, a request for reasonableness.
22 MR. GROSSMAN: You won't get that. All right.
23 Sir? Mr. Feinberg? You wish to --
24 MR. FEINBERG: I am heartened --
25 MR. GROSSMAN: -- add a closing stamen?

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1 MR. FEINBERG: -- by the words that I've heard
2 today. I'm heartened by the fact that there will be at
3 least every six month meetings with the school where issues
4 can be aired and discussed. But time will tell whether that
5 process works. You know, I hope it will for all concerned.
6 MR. GROSSMAN: I think it, well I think it has in
7 the past --
8 MR. FEINBERG: Yeah.
9 MR. GROSSMAN: -- with other schools. I don't see
10 why it wouldn't work here.
11 MR. FEINBERG: I've just been around long enough,
12 I'm cynical.
13 MR. GROSSMAN: If it doesn't you can file
14 complaints.
15 MR. FEINBERG: I know.
16 MR. GROSSMAN: If there's non-compliance with
17 conditions of a special exception there is a process set
18 forth in the code for you to follow which --
19 MR. FEINBERG: Yeah, I understand that.
20 MR. GROSSMAN: -- you know, and ultimately a
21 special exception can be revoked if the conditions are not
22 followed. It's a strong enough potential penalty for an
23 operation such as a large private education institution,
24 they don't want to see their special exception revoked. So
25 it's a pretty good enforcement tool if it's invoked.

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1 MR. FEINBERG: But I am heartened by what I heard
2 today.
3 MR. GROSSMAN: Good. Well, hopefully it will all
4 work out. All right. Is there anything further? We set
5 the date on which the record closes. Staff has to
6 straighten up here because we have another hearing here
7 tomorrow morning, so. Let's see, let me get a calendar out.
8 All right. So, today's the 19th and there is no 29th of
9 February, so --
10 MR. FEINBERG: Not this year.
11 MR. GROSSMAN: So, and that will be the 1st of
12 March was the, so it becomes the 2nd of March. So, the
13 first 10 day period will be March 2. So, anybody who has
14 any comments in response to things that were filed and
15 accepted today or which were notice and they wish to comment
16 on they should do so by March 2.
17 MS. LEE-CHO: So comments for anything presented
18 today?
19 MR. GROSSMAN: The things that were presented, you
20 know, that came up such as the technical staff e-mail and so
21 on because people are just getting it today they need to
22 have, in fairness, have 10 days to respond to it. If they
23 wish to, they don't have to, but they can. And you had some
24 things to respond to also which I'm sure you've listed out
25 and I don't have to go into. And then if there are any

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1 responses then, let's see, one, two, three, four, let's say
2 by March 9 any replies to those filings by March 2. And the
3 record will close at the close of business on Monday, March
4 9. Is that agreeable to everybody? Ms. Lee-Cho?
5 MS. LEE-CHO: I just have a question. I have on
6 my list working with the neighborhood community the fencing
7 on the southwest corner, getting clarification from
8 technical staff about the screening along the south property
9 line and the couple e-mails to get to you and whether the
10 FCP can accommodate the additional plantings without further
11 process.
12 MR. GROSSMAN: Right.
13 MS. LEE-CHO: Those things I need to get to you
14 before --
15 MR. GROSSMAN: You might clear up the confusion
16 about the fire marshal thing too because they apparently
17 haven't seen the agreement from the fire marshal's office.
18 MS. LEE-CHO: Right, the e-mail. So that's one of
19 the --
20 MR. GROSSMAN: Right. So they need to see --
21 MS. LEE-CHO: -- e-mails.
22 MR. GROSSMAN: Right. And they need to --
23 MS. LEE-CHO: That's one of the e-mails.
24 MR. GROSSMAN: -- technical staff needs to see
25 that too.

1 MS. LEE-CHO: Okay. So, can you clarify when I
 2 need to get all of that into you?
 3 MR. GROSSMAN: Tomorrow morning.
 4 MR. FEINBERG: You didn't want to sleep tonight
 5 anyway.
 6 MR. GROSSMAN: That was the 10 day thing but if
 7 that's --
 8 MS. LEE-CHO: That's March 2nd?
 9 MR. GROSSMAN: March 2nd. But if that's a problem
 10 for you I can make it longer. What's --
 11 MS. LEE-CHO: It's not a problem. The only thing,
 12 I should be able to do that within 10 days.
 13 MR. GROSSMAN: If you think it is a problem tell
 14 me now because I don't want to have to issue an order,
 15 because then I have to send it out to umpteen-million people
 16 and it's expensive.
 17 MS. LEE-CHO: No, if that's it then I think we
 18 should be able to. I just want to clarify that that's what
 19 you expect --
 20 MR. GROSSMAN: Right, correct.
 21 MS. LEE-CHO: -- by March 2nd.
 22 MR. GROSSMAN: Right.
 23 MS. LEE-CHO: Okay.
 24 MR. GROSSMAN: And then everybody has until March
 25 9 to respond to things that you would file by then and if

1 Mr. Feinberg or other members of the opposition file
 2 commentary by March 2nd then you would have until March 9th
 3 to respond --
 4 MS. LEE-CHO: Got it.
 5 MR. GROSSMAN: -- close of business on March 9,
 6 2015, I'm writing 2014 down here, but 2015 the record
 7 closes. All right. You're all good with that?
 8 MS. LEE-CHO: Very good.
 9 MR. GROSSMAN: Is there anything further? No?
 10 All right. Then thank you very much. I appreciate very
 11 much the participation by the members of the school as well
 12 as by the community. Very helpful by everybody.
 13 MR. FEINBERG: It was an experience for me too.
 14 Thank you for your time.
 15 MR. GROSSMAN: Thank you.
 16 (Whereupon, at 6:05 p.m., the hearing was
 17 concluded.)
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C E R T I F I C A T E

DEPOSITION SERVICES, INC., hereby certifies that
 the attached pages represent an accurate transcript of the
 electronic sound recording of the proceedings before the
 Office of Zoning and Administrative Hearings for Montgomery
 County in the matter of:

Petition of The Heights School
 Special Exception No. CBA 2197-C
 OZAH No. 13-21

By:

Brandon Fields, Transcriber

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