

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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:
:
LOCAL MAP AMENDMENT No. H101 :
:
NOVA-HABITAT - ZONING CHANGE :
FROM R-90 to TF-12 :
:
-----X

A hearing in the above-entitled matter was held on April 13, 2015, commencing at 9:38 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:

Damon B. Orobona, Esq.

Susan W. Carter, Esq.

Miller, Miller & Canby

200-B Monroe Street

Rockville, Maryland 20850

P R O C E E D I N G S

1 MR. GROSSMAN: This is a public hearing in the
2 matter of Local Map Amendment H101, an application for local
3 map amendment to the zoning ordinance requesting the
4 reclassification of lots 1, 2, 3 and part of 4, Block A of
5 the Rolling Hills Subdivision, located at 9213 Kensington
6 Parkway, and 3619 to 3623 Glenmoor Drive, Chevy Chase,
7 Maryland, to rezone it from the existing R-90 zone to the
8 TF-12 zone, that's townhouse floating zone, with a maximum
9 of 12 units per acre. The property consists of 1.41 acres
10 of land, that's 61,349 square feet including property to be
11 abandoned on Glenmoor Drive, and it is situated just north
12 of the Capital Beltway, I-495 and just east of Kensington
13 Parkway. The applicant proposes to construct up to 16
14 townhomes to be known as Creekside.

15 I note that this is the first hearing under the
16 new zoning ordinance for a rezoning. My name is Martin
17 Grossman, I'm the hearing examiner, which means I will take
18 evidence and write a report and recommendation to the
19 Council, which will make the decision in this case. Will
20 the parties identify themselves, please.

21 MR. OROBONA: Good morning, Damon Orobona, for
22 the record, along with Sue Carter, to my left, who are with
23 the law firm of Miller, Miller & Canby, representing the
24 applicant or the petitioner in this matter which is Nova-

C O N T E N T S

Witnesses: Direct Cross Redirect Recross
Ed Novak 10 -- -- --
Josyua Sloan 34 58 -- --
Jeff Amateau 64 69 -- --
Cherian Eapen 71 77 -- --

E X H I B I T S

Exhibit No. Marked/Received
28(a) Planning Board letter 57
28(b) Technical Staff Report 57
32 Affidavit of Posting 64
33 Jeffrey Amateau Resume 65
34 Cherian Eapen Resume 65

1 Habitat Incorporated. And, today we plan on calling four
2 witnesses for this application, which will be Ed Novak, the
3 petitioner, or on behalf of the petitioner, Nova-Habitat,
4 and then three expert witnesses, Josh Sloan with VIKA
5 Engineering, Jeff Amateau with VIKA Engineering, and Cherian
6 Eapen with Temoss.

7 MR. GROSSMAN: All right. How do you spell Mr.
8 Amateau's name?

9 MR. OROBONA: A-M-A-T-E-A-U.

10 MR. GROSSMAN: Okay. And, what is Mr. Amateau an
11 expert in?

12 MR. OROBONA: We're going to qualify Mr. Amateau
13 as an expert in civil engineering.

14 MR. GROSSMAN: So you have a land planner, Sloan,
15 Mr. Eapen is a traffic expert, right?

16 MR. OROBONA: Uh-huh.

17 MR. GROSSMAN: Now, I note that there are a number
18 of people in the audience here. Is there anybody in the
19 audience who wishes to testify as a witness who is not being
20 called by the applicant? I see no hands.

21 MR. OOBANA: A lot of excited people to see the
22 first rezoning application under the new zoning ordinance.

23 MR. GROSSMAN: Let me talk for a couple of moments
24 about the nature of the proceedings here, and then a few
25 preliminary matters. There are requirements, of course, in

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1 the code that are both general and specific. We're all not
2 that familiar with the new setup because it is a new zoning
3 ordinance, but it's set out pretty well in the Technical
4 Staff Report here. That's the report of the Technical Staff
5 of the Maryland National Capital Park and Planning
6 Commission. This hearing is conducted pretty much the way
7 you see a courtroom conducted. Witnesses testify under
8 oath. They are subject to cross-examination. There doesn't
9 happen to be anybody here to cross-examine, other than
10 myself, but that's the usual practice. Everything is taken
11 down by a court reporter, and there will be a transcript of
12 the proceedings. We usually put the transcript up on our
13 website. It takes about 10 days for it to get to us, and
14 then we put it up on our website while the case is pending.
15 Okay. Let me just go over a few preliminary
16 matters. First of all, let me mention, I have a budget
17 hearing on my own budget this afternoon at 2 o'clock, so if
18 we don't finish by then, we'll probably have to break around
19 then, so that I can attend the budget hearing, and then I'll
20 come back. Secondly, I want to make sure that any plans,
21 even if there are modifications to plans, they come in, that
22 they're probably sealed and signed as required by state law.
23 Thirdly, are there any covenants in this case?
24 MR. OROBONA: No, there are not.
25 MR. GROSSMAN: Okay. There is a procedure by

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1 which covenants can be entered in the record, in which case
2 they have to be filed in the land records, and then they
3 have to be followed, obviously. There are none, apparently,
4 in this case. We have received two letters at the last
5 minute here. One from the Audubon Naturalist Society, which
6 came in Thursday night, and I notified Mr. Orobona by e-mail
7 on Friday, and one when I arrived this morning from an
8 individual, Piera Weiss. And so, I want to make sure that
9 you have the opportunity to address the points raised there.
10 And, as I mentioned in my e-mail, since these are last
11 minute filings, if you need more time to file something, or
12 even need another hearing date on it, I will make that
13 available --
14 MR. OROBONA: Okay.
15 MR. GROSSMAN: -- so that you can respond to the
16 points raised in those letters. Okay, do you have any other
17 preliminary matters?
18 MR. OROBONA: Let me just frame the case for you,
19 if I may.
20 MR. GROSSMAN: Well, before you go into opening
21 statement, is there any procedural matters that we need to
22 discuss before we get into that?
23 MR. OROBONA: Well, the only thing is that we have
24 an Affidavit of Posting that we haven't filled out yet. I
25 believe Sarah in your office is preparing that right now.

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1 MR. GROSSMAN: Okay, all right. Anything else?
2 MR. OROBONA: That's it.
3 MR. GROSSMAN: All right. Anybody else have
4 anything? Ms. Carter?
5 MS. CARTER: No, nothing.
6 MR. GROSSMAN: Okay. All right, then you may
7 proceed with your opening statement.
8 MR. OROBONA: Thanks, Mr. Grossman. As you
9 mentioned, this is the first rezoning application under the
10 new zoning code. So it's been an exciting project to work
11 on. Just to quickly orient you to the project and the site
12 itself, this is a approximately 61,000 square foot site,
13 which includes four existing lots, Lots 1, 2, 3 and part of
14 Lot 4. As well as a small stretch of Glenmoor Drive that is
15 being simultaneously petitioned for abandonment with this
16 application. I'm sure we'll get more into that as the case
17 unfolds this morning. But just wanted to orient you
18 generally to the site, if I may.
19 The site is located just north of 495 Capital
20 Beltway, and is directly just south of Rock Creek Park.
21 Again, it's approximately 61,000 square foot site, in which
22 we are proposing an existing R-90 zone, and we are proposing
23 the TF-12 zone. And, we are proposing up to 16 townhomes on
24 the site that will balance the natural settings of Rock
25 Creek Park with the sites close proximity to the major

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1 downtown, the urban employment centers and retail
2 establishments. So with that as a quick background, I think
3 we're ready to call --
4 MR. GROSSMAN: Before you call, what's the status
5 of abandonment, since you do need the abandonment to be
6 approved for this rezoning to be approved. What's the
7 status of that?
8 MR. OROBONA: So we met last week, I can't
9 remember the exact date, I believe it was actually April
10 1st. We had a hearing before hearing officer Mike Subin.
11 MR. GROSSMAN: Okay. We being?
12 MR. OROBONA: The petitioner had a hearing before
13 Mike Subin, hearing officer for the County Executive. We'll
14 offer some testimony about that proceeding, a little bit
15 later, but he's heard the case and will be preparing his
16 recommendation to the County Executive, which would transmit
17 the recommendation to the County Council within, I believe,
18 45 days.
19 MR. GROSSMAN: So is it your -- you are
20 contemplating that the recommendation of the Executive on
21 the abandonment will be before the Council at the same time
22 or prior to the decision in this rezoning case?
23 MR. OROBONA: I think ideally we would schedule
24 both matters to arrive to the County Council for their final
25 decision on the same day, if that's possible. Working with

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1 Jeff Zyontz to get the scheduling in place for that. But if
 2 that is not the case, I agree there's a bit of the chicken
 3 or the egg question. And, I believe, it would probably make
 4 the most sense for the abandonment to go before the Council
 5 before the rezoning.
 6 MR. GROSSMAN: Yeah, I think it has to because you
 7 can't have a conditional rezoning.
 8 MR. OROBONA: Exactly, but you could place a
 9 condition on the abandonment that it's conditioned upon the
 10 local map amendment approval.
 11 MR. GROSSMAN: Well, I'm not an expert on
 12 abandonment, so I won't answer whether you can do that, but
 13 at the very least you'd have to have the abandonment
 14 approved either before or simultaneously with the rezoning.
 15 MR. OROBONA: Exactly.
 16 MR. GROSSMAN: All right. You may proceed then.
 17 MR. OROBONA: Great. So at this time I'll call
 18 Mr. Ed Novak.
 19 MR. GROSSMAN: All right, Mr. Novak, would you
 20 raise your right hand, please.
 21 (Witness sworn.)
 22 DIRECT EXAMINATION
 23 BY MR. OROBONA:
 24 Q Mr. Novak, can you state your full name and
 25 address for the record for the record?

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1 A Yes. My name is Edward Novak. Our address is,
 2 for Nova-Habitat, 7220 Chestnut Street, Chevy Chase,
 3 Maryland 20815.
 4 Q And what's your relationship with Nova-Habitat?
 5 A I am the founder and president of Nova-Habitat.
 6 Q And are you the petitioner in this case?
 7 A Yes.
 8 Q And do you agree to be bound by the testimony and
 9 all exhibits presented today?
 10 A Yes, I do.
 11 Q So, Mr. Novak, please give us a brief description
 12 of your background, professional educational background and
 13 professional training.
 14 A Certainly. I have a Bachelor's of Science and
 15 Masters of Business Administration from Carnegie Mellon
 16 University. I came to the D.C. area in 1983 to work for the
 17 Marriott Corporation in new business development. I was
 18 part of the team that formed the Senior Living Services
 19 Division of Marriott. I left Marriott in 1992 to form Nova-
 20 Habitat, and have been president of that company since then,
 21 and we've done development in the Greater Washington, D.C.
 22 area.
 23 Q Great. So you just mentioned your current
 24 employment with Nova-Habitat. Can you elaborate a little
 25 bit more on what Nova-Habitat does on a daily basis in your

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1 professional dealings?
 2 A Certainly. I would consider Nova-Habitat an
 3 entrepreneurial development company. We've completed a
 4 variety of projects that include mixed use, multi-family,
 5 retail, and senior living projects. We focus first on the,
 6 tend to focus first on the site itself to find what would be
 7 the best fit for a redevelopment opportunity. So we don't
 8 come with a preconceived notion of what type of project we
 9 want to do. We look at the site. We look at what the
 10 master plan would say, and try and develop a project that
 11 would be suitable for that site.
 12 Q And have you done a lot of projects or recent
 13 projects in Montgomery County or the Greater D.C. region
 14 recently?
 15 A Yes. We recently completed Fenwick Station which
 16 is a 310 unit apartment, multi-family apartment project in
 17 downtown Silver Spring. It was a site that was owned by the
 18 U.S. Postal Service. Nova-Habitat, my company, was a
 19 successful bidder for that site. We evaluated a number of
 20 development options, including hotel, commercial, other
 21 development. When we determined that multi-family was the
 22 best use for the site, we partnered with Insight Property
 23 Group, which is something that we often do, bring in a
 24 partner with expertise in that product type. We partnered
 25 with Insight Property Group, took the project forward, and

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1 it was recently completed in August of 2014. That
 2 particular project we proposed to have it be certified LEED
 3 Silver. We just were recently notified that we achieved
 4 LEED Gold, and the project is currently up for an Urban Land
 5 Institute, it's one of the finalists in their multi-family
 6 design competition.
 7 In terms of other projects in the region, Nova-
 8 Habitat's completed several mixed use projects, two of which
 9 are in Falls Church, the Broadway and the Byron projects
 10 which include luxury condominiums over ground floor retail
 11 and commercial. We've done an assisted living project in
 12 the City of -- or just outside the City of Fredericksburg,
 13 and we are currently about to break ground on a mixed use
 14 assisted living over retail project also in the City of
 15 Falls Church.
 16 Q Can you explain to us a little bit about how you
 17 came to be involved with the subject property in this
 18 application?
 19 A Yes. I was initially contacted by the executor of
 20 the estate of one of the four properties, 3619 Glenmoor
 21 Drive. They contacted me through a mutual contact from the
 22 Marriott Corporation, asking if I thought, and he had had
 23 some discussions with his neighbors, they felt collectively
 24 that the property had redevelopment potential possibly for
 25 an assisted living, senior living project. I came, met with

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1 them, looked at the property, determined that that was not
2 an appropriate redevelopment of the site, both from a zoning
3 and from a feasibility standpoint, but was interested in
4 pursuing other redevelopment options.
5 I personally purchased the property that was in an
6 estate situation due to the short time that they had to
7 settle the estate, and proceeded to contract purchase the
8 other three properties subject to the rezoning approval.
9 Q And can you tell us a little bit about your
10 impressions of the subject property, after you got involved
11 with it, when you were taking a look at it, what were your
12 impressions of the site overall?
13 A Certainly. You know, I often refer to this
14 property as four homes that have been orphaned by the
15 Capital Beltway. It was part the Greater North Chevy Chase
16 Village community, but when the Beltway came through, these
17 four properties were orphaned. There were at least 10 other
18 properties along Glenmoor Drive that were condemned as part
19 of the Beltway, but these four, on the north side of the
20 Capital Beltway, were left in place and were really
21 segregated from the rest of the community. So Glenmoor
22 Drive, formerly a through street, is now a cul de sac, in a
23 neighborhood of these properties.
24 MR. GROSSMAN: Are they occupied still? I
25 understand from your testimony they're owned by others.

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1 THE WITNESS: Yes, they are occupied.
2 MR. GROSSMAN: Is there a sound wall between the
3 Beltway and these properties?
4 THE WITNESS: There is not.
5 MR. GROSSMAN: Is there one planned for this
6 project?
7 THE WITNESS: I'm sorry?
8 MR. GROSSMAN: Is there one planned for this
9 project?
10 THE WITNESS: No, there is not. Now, and let me
11 clarify that. The properties really abut the Connecticut
12 Avenue off ramp. The Beltway splits right before this
13 property. So the Beltway splits off, heads west and south,
14 and the Connecticut Avenue off ramp is really what is
15 abutting the State Highway Administration property.
16 MR. OROBONA: And, if we can, Mr. Grossman, point
17 out the surrounding area map. It is an aerial photograph of
18 the site that you can kind of see that, and I apologize for
19 the small size.
20 MR. GROSSMAN: Do you want to use the file from
21 the -- that's your file?
22 MR. OROBONA: This would be filed.
23 MR. GROSSMAN: No, I mean do you have a bigger
24 version in the file?
25 MR. OROBONA: I don't. This is the biggest size.

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1 But, if you see here, the Beltway keeps going parallel to
2 the site with the off ramp kind of closer. Kind of outlined
3 in red here, closest to the site. As Mr. Novak was
4 testifying, is the off ramp that's the closest to the site.
5 MR. GROSSMAN: I just wondered if the better, you
6 know this in terms of its postulation, but I'll leave it to
7 you.
8 MR. OROBONA: Yeah, okay.
9 BY MR. OROBONA:
10 Q So, Mr. Novak, you began to characterize a bit of
11 your vision for the proposal of the townhouse project
12 itself. Can you kind of elaborate on that?
13 A Sure.
14 Q And, while you do that, I'll pull up the regular
15 site plan.
16 A Yes. While we felt that obviously --
17 MR. GROSSMAN: I'm sorry, Mr. Novak. You referred
18 to your exhibit before. Let's make sure the record reflects
19 what the exhibit number is that you were referring to.
20 MR. NOVAK: On the surrounding area map?
21 MR. GROSSMAN: Yes, the surrounding area map.
22 MR. NOVAK: That would be Exhibit 25(n). You want
23 me to mark it on the exhibit itself, Mr. Grossman?
24 MR. GROSSMAN: Yeah, there should be a copy in
25 here, but sure, that would probably be a good idea just so

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1 we don't get confused here. All right, and then your
2 rendered site plan is what exhibit number?
3 MR. OROBONA: That would be 25(c).
4 MR. GROSSMAN: Okay.
5 MR. ORBANA: I'll mark that as well.
6 MR. GROSSMAN: Mark it on that. All right, I'm
7 sorry for the interruption. Go ahead. I just want to make
8 sure the record reflects the exhibit numbers.
9 BY MR. OROBONA:
10 Q Okay.
11 A Okay. Well, while we felt that the orphaning of
12 these four single family homes was certainly a negative when
13 the Beltway came through, we felt that it was possible to
14 recreate a small neighborhood through the proposed townhouse
15 redevelopment. And, we felt that 16 townhomes, given the
16 site, size of the site, the 16 townhomes would be of
17 sufficient size to be feasible to redevelop. As well as
18 enable current stormwater management requirements, and
19 various other conditions to be met to actually improve the
20 overall site. And provide additional amenities, which we
21 will discuss as we move on.
22 Q Any particular features, as I mentioned before
23 Rock Creek Park is directly north of the site, so do you
24 want to elaborate more on how you see the interplay between
25 this community, the proposed townhouse community and Rock

1 Creek Park directly north?
 2 A Certainly. I would describe that the intent of --
 3 certainly from an architectural standpoint -- we feel as
 4 though the site lends itself towards a -- it's a very
 5 natural setting, and that we can create an architectural
 6 design and concept which, although that really is covered in
 7 the site plan approval, would be compatible with Rock Creek
 8 Park. We also feel that the location of the site
 9 immediately adjacent to Rock Creek Park creates an
 10 opportunity for more interaction with the park.

11 Q And, as I pointed out on the surrounding area map
 12 earlier, the subject property is in close proximity to some
 13 major employment centers in the county. And do you want to
 14 elaborate more on --

15 A Certainly. Certainly. In terms of the demand,
 16 Chevy Chase has always been a high, you know, enjoyed high
 17 demand for housing within the county due to its great
 18 location within Montgomery County, as well as close
 19 proximity to D.C. We expect the housing demand in the Chevy
 20 Chase area to continue to increase. There's certainly going
 21 to be increased jobs at Walter Reed, and with the
 22 consolidation at NIH, and we feel that those are both within
 23 close proximity to this site, essentially between a mile and
 24 a mile and a half away on a direct bus route, with a current
 25 bus stop in front of the property. And it's just a poled

1 bus stop, it's not a shelter, but it is right in front of
 2 the property.

3 So we felt that that location, that location
 4 attribute was very attractive. Also, in addition, although
 5 Chevy Chase has historically been developed primarily as a
 6 single family neighborhood, the increasing demographics
 7 among single professionals, childless couples, empty
 8 nesters, has really increased the demand for high quality,
 9 but low maintenance townhouse type product. And that is
 10 something that this project will also provide a supply of.
 11 So, although small in scale, we think that the site offers a
 12 unique opportunity to create an enclave of high quality
 13 homes that will meet the demands of the market in this area,
 14 and be very compatible with our neighbor, essentially our
 15 neighbor, Rock Creek Park, without having any impact on any
 16 abutting single family residences.

17 Q And so simultaneous with this application for a
 18 local map amendment, there's also an application for a
 19 street abandonment being filed along with it. Can you
 20 characterize the history of the abandonment request so Mr.
 21 Grossman can better understand that request a little?

22 A Certainly. And, once again, we think this is a
 23 win/win opportunity for the county. Glenmoor Drive is
 24 currently a county-owned, public-owned cul de sac, if you
 25 will, that's maintained by Montgomery County Department of

1 Transportation. In discussing it with the Montgomery County
 2 Department of Transportation, by our acquiring these four
 3 properties, they indicated that they would be willing, and I
 4 say willing, they really said they would be pleased to turn
 5 over the responsibility of the -- to have us redevelop the
 6 entire property and turn over the responsibility of
 7 maintaining a private driveway serving the 16 townhomes to
 8 our homeowner's association. Obviously, this is not the
 9 largest cul de sac in the county, and does not, you know,
 10 achieve high priority for maintenance and snow removal, and
 11 things like that. So, we think that that's a win/win
 12 situation.

13 So, the one caveat was that because the State
 14 Highway Administration owns the Capital Beltway, and
 15 therefore, is the abutting property owner, that by legal
 16 right, they would be entitled to one-half of Glenmoor Drive
 17 upon its abandonment. That would make our project
 18 infeasible. So, I contacted State Highway Administration,
 19 Dwayne Kershner was the gentleman at State Highway
 20 Administration that I had the most communication with. He
 21 went through the formal process of having -- State Highway
 22 Administration, he said, would not be able to formally
 23 abandon property that they don't actually own. So, but he
 24 did take it through a formal process with State Highway
 25 Administration, which they determined they would not be

1 opposed to the abandonment, and furthermore, that they would
 2 not be interested in receiving one-half of the right-of-way
 3 upon abandonment.

4 MR. GROSSMAN: All right. And is there a letter
 5 in the file to that effect?

6 MR. OROBONA: Correct, Mr. Grossman, that's
 7 Exhibit 9. It's an e-mail from Mike Cassidy and Dwayne
 8 Kershner of DOT and SHA.

9 MR. GROSSMAN: Okay, hold on one second. Let me
 10 take a quick look at that. I remember that there was a
 11 letter saying they didn't oppose the abandonment. I didn't
 12 remember the part about -- indicating that they didn't have
 13 an interest in half the rights. All right, so Exhibit 9
 14 consists of your letter, or a letter from Mike Cassidy, DOT
 15 to Mr. Kershner.

16 MR. OROBONA: And then an e-mail response, I
 17 believe, should be included there from Mr. Kershner back to
 18 Mike Cassidy.

19 MR. GROSSMAN: E-mail response. All right, I see
 20 that. I confirm that HSA does not oppose the abandonment of
 21 Glenmoor Drive, and on the second page is a single line that
 22 carries over. I can conditionally confirm that based upon
 23 an internal review if Montgomery County was to formally
 24 abandon Glenmoor Drive, SHA, State Highway Administration,
 25 would have no interest in 50 percent of the roadbed. Now,

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1 is there a more formal documentation than that?
2 MR. OROBONA: No, there is not.
3 MR. GROSSMAN: I don't know that that would be
4 sufficient to express -- I'd like to have some signed
5 document from the State Highway Administration to that
6 effect.
7 MR. OROBONA: Okay.
8 MR. GROSSMAN: And we will leave the record open
9 so you can have that filed. I don't anticipate you'll have
10 a problem, but I don't think that an e-mail, unsigned e-mail
11 would suffice. And, of course, Mr. Novak's testimony
12 regarding it is hearsay, although nobody's here to object to
13 it, and I'm not going to strike it in any way. You know,
14 and given the buttressing of the e-mail, we should certainly
15 let it come in, but I do think that we should have something
16 more from the state than an e-mail.
17 MR. OROBONA: Certainly, I can try to get that to
18 you very quickly.
19 MR. GROSSMAN: Okay.
20 MR. OROBONA: I guess along those same lines, Mr.
21 Grossman, as far as hearsay goes, would you like to hear Mr.
22 Novak's characterization of the abandonment hearing on April
23 1st?
24 MR. OROBONA: Certainly. And for the same reason,
25 we do allow -- administrative proceedings like this do allow

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1 hearsay to a certain extent. The limitation on it is that
2 it should be reliable and relevant, but obviously, if we
3 have problems sometimes if you're in a who struck John type
4 of case, then hearsay commentary would be more questionable.
5 In this type of situation, I don't think it's an issue.
6 There should also be a transcript, I presume, of the hearing
7 before Mr. Subin.
8 MR. OROBONA: Yes.
9 MR. GROSSMAN: So. Sure, Mr. Novak, please
10 characterize it.
11 THE WITNESS: Sure. Well, as Damon pointed out,
12 we did have a hearing in front of Mr. Michael Subin on April
13 1st, in which the abandonment was recommended for -- I
14 believe, recommended for approval at the conclusion of the
15 hearing, but that Mr. Subin did have --
16 MR. GROSSMAN: You say it was recommended for
17 approval by whom?
18 THE WITNESS: Well, I'm sorry. I probably
19 mischaracterized that. There were questions -- let me
20 backup for a second. There were questions regarding,
21 similar to the same that you had, Mr. Grossman. There were
22 some questions as to the order of events, and so Mr. Subin
23 asked, you know, has the State Highway Administration
24 formally abandoned their rights to half of Glenmoor Drive,
25 and the State Highway Administration, frankly, has said, we

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1 can't abandon rights that we don't currently own. So tell
2 us when we own those rights, and then we can take it
3 formally to their formal process through abandoning those
4 rights.
5 MR. GROSSMAN: But why is it that they don't own
6 the rights at this point? Why do they say that?
7 THE WITNESS: Because Glenmoor Drive has not been
8 abandoned.
9 MR. GROSSMAN: I see. So you're saying that --
10 THE WITNESS: And Glenmoor Drive wouldn't be
11 abandoned unless the rezoning and abandonment go hand-in-
12 hand.
13 MR. GROSSMAN: Well, once the abandonment goes
14 through on the county level, you're saying then the state
15 considers that it then owns something to be abandoned? I'm
16 not sure I understand that chicken/egg part.
17 MR. OROBONA: If I may, Mr. Grossman.
18 MR. GROSSMAN: Yes.
19 MR. OROBONA: Glenmoor Drive right now is a county
20 owned right-of-way. So Montgomery County owns the entirety
21 of Glenmoor Drive.
22 MR. GROSSMAN: I see.
23 MR. OROBONA: If it's abandoned, the way the
24 reversionary rights work, is half of it goes to the property
25 owners on one half of the right-of-way, the other half of

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1 the right-of-way, ownership of the right-of-way goes to the
2 property owner on the other, the southern side.
3 MR. GROSSMAN: Okay.
4 MR. OROBONA: Because the State Highway
5 Administration owns the right-of-way for the Beltway, the
6 Capital Beltway, they are the property owner on the southern
7 half of the site.
8 MR. GROSSMAN: Right. So as soon as the Council
9 approves the abandonment, then the State would, at that
10 point, have the right to that property.
11 MR. OROBONA: Exactly.
12 MR. GROSSMAN: Then what happens, can there then
13 be a simultaneous rezoning? Don't we have to then wait for
14 the abandonment by the State?
15 MR. OROBONA: Well, the right-of-way would be
16 abandoned. It would just be that SHA would own half of that
17 land area, and I guess the preemptive process that we've
18 been going through is dealing with SHA in determining if
19 this right-of-way were to be abandoned, that land would
20 revert to SHA, yet SHA would not have an interest in owning
21 that, and would then convey that land to Mr. Novak or Nova-
22 Habitat.
23 MR. GROSSMAN: Okay, so you're saying the
24 proceeding that the State then goes through, after they
25 acquire that half interest, is not an abandonment in and of

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1 itself?

2 MR. OROBONA: Exactly.

3 MR. GROSSMAN: That is some conveyance of their

4 land right.

5 MR. OROBONA: Exactly.

6 MR. GROSSMAN: So my question then should be, does

7 that conveyance of the State land right have to occur before

8 the Council can act on the rezoning application?

9 MR. OROBONA: I wouldn't imagine so.

10 MR. GROSSMAN: Or, at the very least, we'd have to

11 have something from the State saying that they agree to this

12 rezoning. I think that would probably be sufficient in the

13 same way as other property owners can.

14 MR. OROBONA: I agree. I think the intent was at

15 Exhibit 9 satisfied that requirement. But, if you'd like a

16 more --

17 MR. GROSSMAN: Yeah, a more formal thing. So,

18 okay, I think I'm satisfied with that, handling it in that

19 way. That is, that we have permission from them, assuming

20 they obtain ownership rights by an abandonment, they have no

21 interest in that, and they agree that they would convey it

22 or however it's going to be handled in that fashion.

23 THE WITNESS: And not to speak as a lawyer,

24 because I'm not one, but my understanding is --

25 MR. GROSSMAN: We can forgive that.

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1 THE WITNESS: Thank you. Thank you. But my

2 understanding as well in talking to the SHA was that, that

3 the actual -- what we would need from them would be a

4 quitclaim deed prior to record plat. Because we don't want

5 to be in a situation, as well as you can imagine, where the

6 road is abandoned, and then for some unforeseen reason, the

7 rezoning is not approved, the neighbors that currently have

8 a public road don't want to all of a sudden assume

9 responsibility for maintaining a private road.

10 MR. GROSSMAN: Right.

11 THE WITNESS: The purpose of the abandonment of

12 the road was so that the road could be removed and the

13 entire project be developed.

14 MR. GROSSMAN: Right. Yeah, my interest here is

15 in just making sure that the timing is such that when it

16 gets before the Council, they can actually act on the

17 zoning. And now I'm convinced, from what Mr. Orobona says,

18 that that actually, as long as we have a formal State

19 pronouncement that they are giving permission to the extent

20 that they acquire ownership in the process of the

21 abandonment, that they give permission. That's sufficient

22 under the zoning ordinance, because owners can give

23 permission to what's happening on their land, to have it

24 rezoned. They don't have to actually go through that whole

25 process, they just have to let us know that they've given

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1 permission in a formal way at that point.

2 BY MR. OROBONA:

3 Q And one last question before we move off the

4 abandonment hearing that occurred on April 1st, just to kind

5 of reiterate a question that Mr. Grossman had earlier. Did

6 Technical Staff of the Planning Department recommend

7 approval of that abandonment to hearing officer Subin?

8 A Yes, they did.

9 MR. OROBONA: I believe that was the

10 recommendation of approval that Mr. Novak was referring to.

11 MR. GROSSMAN: Okay. Is there a technical staff

12 memo to that effect?

13 MR. OROBONA: There is.

14 MR. GROSSMAN: All right. And I don't think

15 that's in this record yet.

16 MR. OROBONA: And it may not be, but we can get

17 you a copy if you'd like that.

18 MR. GROSSMAN: I'd appreciate that for the record

19 as well.

20 BY MR. OROBONAA:

21 Q So, switching gears, back to the design of the

22 proposed community. Mr. Grossman earlier asked a question

23 about whether there would be any noise wall. Maybe you can

24 elaborate more on your envisioned lay out for the site and

25 how that would interact with any potential noise impact from

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1 the abutting Beltway.

2 A Certainly. We have had a preliminary noise

3 analysis done on the property. And that indicated that --

4 well, and let me also mention that the topography of the

5 property is such that this property sits fairly well below

6 the level of the Connecticut Avenue and Beltway, Connecticut

7 Avenue off ramp and the Beltway. In effect, that helps to

8 mitigate the noise impact by itself. Being that the noise

9 travels up.

10 MR. GROSSMAN: Well, on that kind of point, I'd

11 prefer to hear from an expert or somebody who's qualified as

12 an expert on it.

13 THE WITNESS: But in terms of the design of the

14 townhouses, we have designed them in such a way that, to the

15 certain extent, that the townhouses themselves act as their

16 own sound wall for their backyards. There are 10 units

17 facing Rock Creek -- or backing to Rock Creek Park, with

18 rear yards between the units and the park. So the units

19 themselves help shield the rear yards from the Beltway. And

20 then the six units that are on the opposite side are in a

21 location that's farthest away from the Beltway and the off

22 ramp on the site, and the natural topography helps mitigate

23 the noise impact on that area. So, we are designing the

24 project from a site plan perspective to take advantage of

25 the natural topography.

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1 MR. GROSSMAN: And what about inside the
2 townhomes? Is there a noise issue inside the townhomes?
3 THE WITNESS: No, there would not be. The
4 relative noise inside the units would be easily mitigated by
5 current standards for insulation and building materials.
6 MR. GROSSMAN: And Mr. Orobona, have your expert
7 testify to that.
8 MR. OROBONA: Of course. We will follow up with
9 that. But, before we -- let me pull up Exhibit 25(m).
10 MR. GROSSMAN: Okay.
11 BY MR. ORBANA:
12 Q Mr. Novak, can you please testify a bit about the
13 proposed height of these townhomes and why you are
14 proffering this height requirement?
15 A Yes. The units themselves would be four living
16 levels, including a basement. But in the way that it's
17 designed, as you can see from the center driveway that
18 bisects the site, we have fourth, top floor, third level
19 terraces on the front of the units that are backing to the
20 Beltway, and we have rear facing terraces on the units that
21 back to Rock Creek Park, so that from the entrance drive
22 both units appear as three-story facades. And even from the
23 park side, because of the step back on the top floor, that
24 would appear as a three-story or a two and a half-story
25 facade as well. So we have, again, used the natural

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1 topography of the site to carve the units within the
2 property, if you will, to mitigate any kind of height
3 impact.
4 Q And, Mr. Novak, have you solicited any feedback
5 from nearby community associations in regard to your
6 proposal?
7 A Yes. We met in February with the North Chevy
8 Chase Village Council, and the residents at their regular
9 monthly meeting, and we shared our plans and answered their
10 questions.
11 Q Okay. Any feedback in particular?
12 A There were no apparent objections at that time.
13 And several residents voiced support for the redevelopment
14 as both appropriate and attractive.
15 MR. GROSSMAN: That's another piece of hearsay, by
16 the way.
17 THE WITNESS: Then if I could add, very
18 attractive. The proposed bus and bike shelter, in
19 particular, was viewed very favorably.
20 BY MR. OROBONA:
21 Q And, we presented this proposal to them Planning
22 Board on March 26th. Did the Planning Board support your
23 application?
24 A Yes, the Planning Board voted unanimously to
25 support the recommendation for the rezoning.

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1 Q Great. And the last question for Mr. Novak, we,
2 as Mr. Grossman mentioned earlier, we received a letter from
3 the Audubon Society just a few days ago. Have you had an
4 opportunity to review that letter?
5 A I have.
6 Q And do you have any comments or any things to
7 address the concerns raised in that letter?
8 MR. GROSSMAN: That's Exhibit 30, by the way.
9 THE WITNESS: Yes. I want to state for the record
10 that Nova-Habitat has been and continues to be dedicated
11 towards environmentally sensitive development. That has
12 been one of our hallmarks, as indicated by the Fenwick
13 Station project being able to achieve LEED gold, when we
14 were only required to achieve LEED silver. You know, we
15 review --
16 MR. GROSSMAN: Perhaps you should explain what
17 those terms mean for the record.
18 THE WITNESS: Leadership in Environmental and
19 Engineering Design is a standard by which larger commercial
20 and multi-family projects are rated under a point system.
21 And as part of the county approval process, many projects
22 are asked to or required to achieve LEED silver
23 certification, which is what we promised to do on our
24 Fenwick Station project. The actual certification process
25 does not occur until after the building has been completed.

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1 After construction has been completed. And when that was
2 done, and the point system was tallied up, we actually by
3 two points achieved LEED gold, the higher standard of LEED
4 gold certification.
5 MR. GROSSMAN: How many levels of standards are
6 there?
7 THE WITNESS: I believe there are four levels of
8 certification, LEED silver, LEED gold, and LEED platinum.
9 MR. GROSSMAN: Okay.
10 THE WITNESS: So, you know, we view that the
11 adjacency to Rock Creek Park as both a responsibility and an
12 opportunity in this case. And I certainly, in reading
13 through the concerns from the Audubon Naturalist Society
14 with respect to stormwater management, with respect to
15 landscaping and invasive species, with respect to protecting
16 the trees that are part of Rock Creek Park, those are all
17 matters that we certainly agree with, and believe that we
18 can achieve. And, in fact, we believe that given that the
19 four single family homes were developed prior to any
20 stormwater, significant stormwater management requirements
21 that are now required of new development today, that we will
22 have a significant improvement in the stormwater management
23 side of this project abutting Rock Creek Park. And there
24 are certainly other things that we have anticipated in our
25 discussions with staff, Maryland National Capital Park and

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1 Planning Staff that we would address during the site plan
2 process, and would be more than willing to invite the
3 Audubon Naturalist Society to help participate in those
4 discussions.
5 MR. GROSSMAN: Okay.
6 MR. OROBONA: No further questions for this
7 witness.
8 MR. GROSSMAN: I have no questions.
9 MR. OROBONA: The next witness will be Josh Sloan.
10 MR. GROSSMAN: Good morning, Mr. Sloan, would you
11 raise your right hand, please.
12 (Witness sworn.)
13 MR. GROSSMAN: You may proceed.
14 DIRECT EXAMINATION
15 BY MR. OROBONA:
16 Q Mr. Sloan, can you say your full name and business
17 address for the record?
18 A Josyua Sloan with VIKA Maryland, 20251 Century
19 Boulevard, Suite 400, Germantown, Maryland 20874.
20 Q And, Mr. Sloan, can you please describe your
21 background, a little bit about your education and training?
22 A I have a Bachelor of Arts in Biology, where I
23 focused on plant ecology and environmental ethics. I have a
24 Master of Landscape Architecture from Suny Environmental
25 Science and Forestry in Syracuse University. I've been

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1 practicing in public and private practice for a little over
2 20 years in landscape architecture.
3 Q And are you a registered landscape architect?
4 A I am registered in Maryland and Virginia.
5 Q Great. And so where have you previously worked,
6 and can you give us your job title during those tenures?
7 A So, I'm currently Director of Landscape
8 Architecture and Planning for VIKA Maryland. I also worked
9 for a little over seven years for MNCPPC, and I was a Senior
10 Planner, then Planner Coordinator, and then a Supervisor at
11 MNCPPC. And before that I was in private practice again.
12 Q And with your time as a land planner at Park and
13 Planning, did you regularly interpret master plans and work
14 with zoning regulations?
15 A I did. I was, in particular, for the last couple
16 of years, I was Supervisor of the I-270 Corridor, which
17 comprises about six master plans, and we would regularly
18 have projects come in where we had to interpret and make
19 recommendations based on those master plans.
20 Q And, during your time at Park and Planning, did
21 you ever work as a lead planner or a supervisor on local map
22 amendment applications?
23 A I did. Over seven plus years I worked on rezoning
24 applications and amendments from several different zones,
25 from the town sector to the transit station, the OM, the CT

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1 zones, and residential townhouse zones, at that time there
2 were four, and did cases, primarily in Gaithersburg, for
3 those.
4 Q And also, in your time at Park and Planning, were
5 you involved at all in the comprehensive revision to the
6 zoning ordinance?
7 A I spent about five years working on the
8 comprehensive rezoning, the ordinance and the comprehensive
9 mapping. And in that capacity, I wrote significant text,
10 presented, rewrote, defended, especially the areas involved
11 with development standards, general regulations, and
12 procedures, focusing on Articles 59.4 which is the Euclidian
13 standards to 59.7 which are the procedures, in particular,
14 the floating zones themselves.
15 Q So you're very familiar with the new zoning
16 ordinance regulations for floating zones under the existing
17 zoning regulations?
18 A I am.
19 Q And, in your time, now with VIKA, can you give us
20 a few examples of some projects you've been working on?
21 A Well, as has been noted, this is the first
22 rezoning for a new floating zone under the new ordinance,
23 and to my knowledge there aren't any others pending before
24 the hearing examiner yet. Most of the floating zones that
25 come forward are still amendments to existing floating

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1 zones, and we're doing one, for example, in the town sector
2 zone up in Montgomery Village, and other small amendments,
3 they're usually done through site plan at this point.
4 MR. OROBONA: Mr. Grossman, Mr. Sloan's resume
5 should have been submitted to you, which is Exhibit 29(b).
6 MR. GROSSMAN: Yes.
7 MR. OROBONA: So at this time, I'd like to offer
8 him as an expert witness in land planning and landscape
9 architecture.
10 MR. GROSSMAN: All right. Mr. Sloan, do you have
11 any -- I noticed your certifications for landscape
12 architecture, is there any certification for land planner,
13 that you have or that is available that you don't have?
14 THE WITNESS: There is one, AICP, the American
15 Institute of Certified Planners. I actually am part of the
16 board of the local APIA, and I'm working with them closely,
17 and sitting for that certification in about a month.
18 MR. GROSSMAN: All right. Have you testified as
19 an expert previously in any situation?
20 THE WITNESS: I have not.
21 MR. GROSSMAN: Okay.
22 MR. OROBONA: To clarify, Mr. Grossman, in his
23 role at MNCPPC, wouldn't he be an expert in land planning in
24 that capacity?
25 MR. GROSSMAN: Well, I can't answer that question

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1 for you. That's something that you have to put into
2 evidence.
3 MR. OROBONA: Okay.
4 MR. GROSSMAN: And the question -- well, first of
5 all, let's explain what an expert is. An expert doesn't
6 have to be somebody who has a specific degree or doesn't
7 have to be somebody who has testified before as an expert.
8 An expert has to be somebody who can offer information that
9 is beyond the ken of layman, and which can help the
10 factfinder make a decision. So, in that category, I'm not
11 suggesting that Mr. Sloan is not an expert, but I want to
12 know what exactly his credentials are because, and his
13 knowledge in that area of land planning, because that goes
14 to the weight of the evidence, assuming he's certified. And
15 there is nobody else here to examine the credentials. But,
16 is there a specific thing, Mr. Orobona, that you're pointing
17 to in Mr. Sloan's background that you feel qualifies him as
18 an expert land planner, as opposed to an expert in landscape
19 architecture? You've mentioned, of course, that he's worked
20 on the zoning ordinance, and things related to that. Is
21 there anything else that you're specifically pointing to?
22 MR. OROBONA: I would say his previous job title
23 as a Senior Planner, Planner Coordinator, Planner -- were
24 you a senior planner at Park and Planning?
25 THE WITNESS: Senior Planner, then Planner

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1 Coordinator, then Planner Supervisor.
2 MR. GROSSMAN: Did you review, in that capacity,
3 did you review land planning proposals or land proposals by
4 developers?
5 THE WITNESS: Oh yeah, numerous times.
6 MR. GROSSMAN: Okay. All right. I find based on
7 the witness's background and his testimony, his experience
8 with technical staff, that he is an expert in land planning,
9 and I so accept him as such.
10 MR. ORBANA: Thank you, Mr. Grossman.
11 MR. GROSSMAN: And landscape architecture, for
12 sure.
13 MR. OROBONA: Thank you.
14 BY MR. OROBONA:
15 Q Mr. Sloan, have you visited the subject property,
16 and are you familiar with the site?
17 A I have been there several times, very familiar.
18 Q And can you kind of explain the character of the
19 subject property?
20 A The site, right now, occupied by four units and
21 one garage in one particular case, was part of the Rolling
22 Hills Subdivision, and as noted earlier, it was cut off from
23 that subdivision by the Beltway in the 1960's. There is one
24 public road leading from Kensington Parkway, roughly east to
25 west. There's a bit of floodplain that actually skirts the

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1 northern boundary of the property, and all of our project
2 limits of disturbance are out of that floodplain and
3 actually 25 feet beyond that is where we're setting, where
4 the setback is for our development. There's no forest on
5 site. We have got a confirmation that there are no rare,
6 endangered, or threatened species from Department of Natural
7 Resources on site, or that would be impacted by the
8 development. And then there's stream valley buffers are
9 well off the site to the north.
10 Q Okay. And I'm going to pull --
11 MR. GROSSMAN: Is it in a special protection area?
12 THE WITNESS: It's not in a special protection
13 area. Currently there are no stormwater management
14 facilities on site. The road drains directly to a storm
15 drain.
16 BY MR. OROBONA:
17 Q And I just put up Exhibit 25(n), back up on the
18 easel, which is the surrounding area map. Mr. Sloan, are
19 you familiar with the boundaries of the surrounding area
20 that was proffered by Technical Staff of the Planning
21 Department?
22 A I am.
23 Q And that would be Beach Drive to the north, Rock
24 Creek Park to the east, the off ramp for the Capital Beltway
25 to the south, and Connecticut Avenue to the west. Do you

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1 agree with the surrounding area as defined by Technical
2 Staff?
3 A I do.
4 MR. GROSSMAN: In your mind, what's the meaning of
5 surrounding area?
6 THE WITNESS: Well, in this case, it would be to
7 identify whether or not the development is compatible with
8 that neighborhood. And this is a strange case where the
9 neighborhood is, actually there's nonexistent. There's not
10 much to be compatible with, except for the parkland and then
11 the highway. So the parkland is the key issue for our
12 development.
13 MR. GROSSMAN: All right.
14 BY MR. OROBONA:
15 Q And have you reviewed the 1989 Kensington/Wheaton
16 Master Plan for this area?
17 A Yes. Yes, I have.
18 Q And what are the land use recommendations given
19 for -- in the master plan?
20 A The master plan breaks out a number of specific
21 sectors within the master plan, and this is one of the areas
22 that's indicated for any particular recommendation at all in
23 any of those. It was, as noted by Mr. Novak, it was
24 orphaned not only by the community to the south, but by the
25 master planners. It really is sort of alone by itself.

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1 There are no specific recommendations. There are general
2 recommendations to increase the mix of housing to support
3 the employment areas around this. There's only a note about
4 floating zones in this master plan, that they should not be
5 applied where they can have a impact on existing stable
6 neighborhoods, which we do not believe this one is.
7 MR. GROSSMAN: But I take it that the zoning
8 ordinance does not recommend this particular zone?
9 THE WITNESS: The master plan does not make any --
10 MR. GROSSMAN: The one that you're seeking.
11 THE WITNESS: The master plan does not make any
12 recommendations for a floating zone.
13 MR. GROSSMAN: Well, does it make a recommendation
14 to maintain the current zone?
15 THE WITNESS: No, it does not. It's completely
16 silent on this property.
17 MR. GROSSMAN: Well, not specifically this
18 property. Isn't there usually -- there's usually a map, a
19 zoning map on which the recommendations for all of the land
20 within the particular region is specified. Where does this
21 fall? Where does this property fall in terms of a
22 recommendation? It's my understanding that they, the
23 recommendation was to continue the R-90 zone, not per se
24 addressing this particular property, but just because it's
25 part of the larger whole that's in that zone, is that

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1 correct? Whole being W-H-O-L-E.
2 THE WITNESS: It's kind of curious because the
3 residential areas all have hatching in them, and because
4 Glenmoor Drive is written in this, and takes up the entire
5 area, there's no hatching, so --
6 MR. GROSSMAN: What page are you on?
7 THE WITNESS: I'm on page 64 of the master plan,
8 which is the land use plan.
9 BY MR. ORODANA:
10 Q So Mr. Sloan, on page 64 of the land use plan on
11 the key for -- that explains the different hash marks for
12 the map -- is there a key for a blank property?
13 A There is not. There's no key and there's no
14 hatching on -- there's no hatching on the property and no
15 key for that.
16 MR. GROSSMAN: So you're saying the master plan is
17 silent regarding what the zone -- what they're recommending
18 in general for this area?
19 THE WITNESS: It's unusually, particularly silent
20 for this particular silent. It was really not considered.
21 MR. GROSSMAN: Did I misread the Technical Staff
22 Report? I thought that they had said -- well, what it says
23 in terms of zoning history on page 3 of the Technical Staff
24 Report, which is Exhibit, part of Exhibit 28, it says zoning
25 history at the time of the 1954 comprehensive rezoning of

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1 the county, the subject property was zoned in the R-90
2 zoning classification. In 1958, when the regional district
3 was expanded to include the upper Montgomery County, the
4 Associated Comprehensive Map Amendment confirmed the R-90
5 classification and the property has remained in the R-90
6 zone ever since.
7 THE WITNESS: Right. Yeah, the comprehensive
8 rezoning confirmed that zoning, but it was not a specific
9 recommendation.
10 MR. GROSSMAN: Okay, let me just take a look and
11 see if you said anything else in terms of the master plan.
12 THE WITNESS: Also in the Technical Staff Report
13 on page 8, the required findings on the bottom of the page,
14 Technical Staff does mention that the Kensington/Wheaton
15 Plan gives no specific recommendations for the subject
16 property on page 64 of the master plan's land use map
17 provides no recommendation for the subject property.
18 MR. GROSSMAN: I see. Okay. All right, fair
19 enough.
20 BY MR. ORODANA:
21 Q Mr. Sloan, can you briefly explain the overall
22 planning concepts for the development proposal on this site?
23 A I'm going to refer again to the illustrative site
24 plan, which is Exhibit 25(c) is that?
25 Q Yes.

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1 A The units are laid out roughly east/west. As Mr.
2 Novak pointed out, they are set based on the grade which
3 slopes generally from the south down towards the northwest
4 corner, and they step with the grade so that the units are
5 always about 30 feet above grade level from the new private
6 road that will be established. Most of the site, I think
7 about, well not most of the site, but a significant part of
8 the site, 20 percent of the site will remain an open space
9 for environmental buffers and protections, and stormwater
10 management facilities to take care of the runoff from the
11 new road and the rooftops.
12 There is no forest on land, but there are some
13 significant trees, which are trees with 30 inches or greater
14 diameter. And those will all be mitigated through variance
15 trees as they're called, and we'll be planting at least 15
16 three inch caliber trees primarily along the forested buffer
17 to further protect the floodplain and the stream valley
18 which is, as I said, offsite. Each building will have its
19 own garage plus a driveway that's about 20 feet deep, so
20 parking is ample. And then there's a turn around to
21 accommodate fire and rescue access at the southeast side of
22 the site.
23 We're using retaining walls to limit our limits of
24 -- to minimize our limits of disturbance. We're cutting
25 into a hill that goes up to the Connecticut Ave. ramp on the

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1 southeast, and then we're actually using a retaining wall to
2 fill part of the site.

3 MR. GROSSMAN: Can you point to the retaining wall
4 to the southeast?

5 THE WITNESS: So, as necessary, we certainly
6 haven't done any final grading yet, we're at the rezoning
7 stage. But we're anticipating cutting into the site as we
8 move, as the new road moves from Kensington Parkway towards
9 the Connecticut Ave. off ramp, and we will have retaining
10 walls holding up the embankment here, but that allows us to
11 limit our disturbance into this property. And then, if
12 necessary, depending on how the terracing and the walkouts
13 work for the units that are facing Rock Creek Park to the
14 north, there may be some retaining wall here, again to limit
15 our disturbance so that we're not impacting the floodplain
16 or the setback to the floodplain.

17 MR. GROSSMAN: All right. So when you say facing
18 to the north, in other words, you're saying the front of
19 these townhomes is towards the park there?

20 THE WITNESS: No, they will, no. All of the
21 townhouses front the new private road.

22 MR. GROSSMAN: Okay.

23 THE WITNESS: There, as the buildings themselves
24 front on, not having front doors, but as they face towards
25 the park.

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1 MR. GROSSMAN: Okay. So it's the rear of the
2 buildings that face to the park, and that's the same in
3 terms of the units that are on the southwest, is that
4 correct?

5 THE WITNESS: The units on the southwest, their
6 rears are towards the corner formed by the off ramp and
7 Kensington Parkway where SHA retains land here, and actually
8 it goes up significantly.

9 MR. GROSSMAN: All right. So there's a garage
10 they pull in, there's a garage on the front of the house in
11 effect?

12 THE WITNESS: The garage and the front door are
13 both on the private road.

14 MR. GROSSMAN: Okay. And you had mentioned at the
15 beginning, you said they were largely east/west. They look
16 like they're perfectly on a diagonal, on a hypotenuse that,
17 from the angle created by Connecticut Avenue and --

18 THE WITNESS: They're northwest-southeast.

19 MR. GROSSMAN: Right. Okay.

20 BY MR. ORODANA:

21 Q Any further thoughts on this, Mr. Sloan?

22 A In terms of LODs, stormwater, I think that's about
23 it.

24 Q Okay. So kind of moving on to the standards that
25 the new zoning ordinance sets up. There's an intent

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1 statement under Section 5.1.2.A of the new zoning
2 regulations that requires the proposal be in furtherance of
3 the goals of the master plan. In your professional opinion,
4 is this proposal in furtherance of the general goals of the
5 master plan since there are no specific recommendations
6 given for this property?

7 A What we look to when there are no specific
8 recommendations are the general recommendations, and in this
9 case, this was a 1989, I believe, master plan. It's quite
10 old, as the Planning Board noted in their discussion of it,
11 these are exactly what the floating zones are intended to
12 do. They accommodate changes that cannot be foreseen in the
13 master plan that old. And so, looking at the general
14 objectives of increasing the mix of housing, of protecting
15 stable neighborhoods where you don't want to change the
16 character. We're putting in an area where we can really
17 actually establish a neighborhood where one was before, but
18 then cutoff by the Beltway. I think it does certainly
19 fulfill that intent.

20 Q Great. Now also under the new zoning regulations,
21 there are intent statements that require a floating zone
22 encourage the appropriate use of land.

23 MR. ORODANA: That's section 5.1.2.B, Mr.
24 Grossman.
25

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1 BY MR. ORODANA:

2 Q How does this project promote the appropriate use
3 of land?

4 A The things we look to for that are whether or not
5 there is -- the nearby context is supported by this. In
6 this case, there is transit, both a bus line and then that
7 goes right to the Metro, and then a future purple line
8 station within about a mile. So there's not going to be a
9 large increase in road use or anything by the development.
10 There are existing facilities for utilities that we can tie
11 directly into, so there's not a need for increased services.
12 There is certainly the employment centers that were
13 discussed. So this is providing housing for the expanding
14 employment base, federal government primarily, just to the
15 southwest of the site. And so, in those terms, I think it's
16 appropriate use of the land for this.

17 Q And lastly, the intent statement requires that
18 established neighborhoods be protected. That's Section
19 5.1.2.C. Can you briefly explain how this proposal protects
20 existing neighborhoods that are compatible with the
21 surrounding area?

22 A It's compatible with the surrounding area. We're
23 actually going to be removing some of the structures from
24 the floodplain area. We're going to be expanding the park-
25 like setting of this, and incorporating it into the park-

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1 like environment. There are no neighbors to negatively
2 impact. The primary way it protects the neighborhood is
3 really by taking a lot of the pressure of redevelopment off
4 of those existing neighborhoods and pointing something with
5 a little bit higher density in an area where it won't have
6 negative impacts.

7 Q Now, the zoning ordinance also requires under
8 Section 5.1.3.D that certain prerequisites be satisfied
9 before a floating zone application can even be filed.

10 Technical Staff goes through these prerequisites on pages 12
11 to 13 on the Technical Staff Report. In your professional
12 opinion, Mr. Sloan, does this application satisfy all of the
13 prerequisites required for the filing of a floating zone at
14 this location?

15 A This does. This has to meet two of the three --
16 two prerequisites of three categories, and it meets at least
17 two, and actually more, on in each of those. I can run
18 through them or we can defer to the Technical Staff Report.

19 MR. GROSSMAN: I leave that to you, Mr. Orobona.

20 BY MR. OROBONA:

21 Q Why don't we briefly touch on each of the
22 prerequisites, Mr. Sloan.

23 A Okay. For transit and infrastructure, this one
24 meets three of the prerequisites. There's water and sewer
25 that serves this site that we can tie directly in without

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1 need for an upgrade or a pump station. This area is also,
2 it's both at the, or all three elementary, middle and high
3 school levels are all under the 105 percent capacity, and so
4 not only is it not in a moratorium, there won't even be an
5 extra impact fee for schools. The signalized intersections
6 within a quarter mile are under the existing critical lane
7 volume standards for this area. In terms of the vicinity
8 and facilities, this is on a bike route that takes you
9 directly to services within three miles, both to the north
10 in Kensington, and the south in Chevy Chase. And it is also
11 within three quarter miles of recreation facilities provided
12 by a public park along a long walking path. So it meets
13 those for the vicinity and facilities.

14 In terms of environmental resources, we are
15 keeping out of all environmental buffers and off the
16 floodplain with our LOD. There are no rare, endangered,
17 threatened species, as I mentioned. There's also no forest
18 on site. A third one that wasn't -- we didn't take credit
19 for, but we could.

20 Q Okay. And how are the development standards
21 handled under a new townhouse floating zone?

22 A The new floating zones are quite flexible in terms
23 of development standards when a recommendation isn't made
24 specifically for a property, it strictly limits the density
25 you can ask for. And it also establishes a minimum open

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1 space, and we are within the density established by this
2 property's parameters, its size, and its previous zoning at
3 12 units per acre. The open space required for this
4 building type, the townhouse building type on this size
5 property is 10 percent, and we're providing 20 percent open
6 space. In terms of the other things, lot size, height, and
7 setbacks, all of those are established through basically a
8 negotiation with Technical Staff, and those have all been
9 laid out in the development table, and we're comfortable
10 with all of those standards. And then, we have the general
11 requirements that we have to meet. And in this case, it's
12 really only the parking requirement, which is two per unit,
13 and we are providing those.

14 Q And can you quickly run through the development
15 standards that are actually being proffered on this
16 particular application?

17 A So the TF-12, as the name implies, is the
18 townhouse 12 units per acre zone, so our density is 12 units
19 per acre. We're providing 20 percent open space, primarily
20 for our environmental buffers, stormwater areas, and some
21 landscape areas. The height we're requesting is 50 feet.
22 It's to accommodate the slopes that are on site, and make
23 sure that there are no questions about those. We're
24 certainly well below the canopy line or the sight lines of
25 any potential residences around. In terms of setback, we're

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1 maintaining a 10-foot setback from the public right-of-way,
2 a minimum 2-foot setback on the side for our end units, and
3 then a 4-foot from the rear. Those are minimum, and they
4 may be changed at site plan. In terms of parking, two
5 parking spaces per unit. One thing that we should note that
6 the Technical Staff doesn't have a minimum for lot size.
7 Our units are 800 square feet. So the 800 square feet, you
8 know, just on the floor plan minimum, a minimum lot size of
9 800 or 900 square feet would be, you know, we would proffer
10 and be able to work with Technical Staff at site plan on
11 where that actually ends up. And then, I think that's about
12 it.

13 Q Okay. And, Mr. Sloan, in your professional
14 opinion, would this application, or this proposal, further
15 the public interest of the county?

16 A I think it furthers the public interest in a few
17 ways. One, it's providing a modest increase in density
18 where it can provide housing for the increases in employment
19 opportunities in the nearby Walter Reed and the federal
20 buildings to the southwest. It's at an area that is not
21 going to negatively impact schools. It's in an area that
22 has infrastructure that can accommodate it. We're going to
23 be increasing the amount of stormwater treated, and thereby
24 further protecting the important Rock Creek Park to the
25 northwest of the site. We'll be mitigating any impacts to

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1 trees and then providing significantly a greater tree canopy
2 once we replant the site. I think that about covers it.
3 Q Great. And are there adequate public facilities
4 to cover this development in the area?
5 A There are, in terms of schools. As I noted, there
6 are -- we're well below the moratorium level, and below the
7 105 percent capacity that requires an extra impact fee.
8 There are at least, I think there are three fire stations
9 within two miles of the site. There are two police stations
10 within two miles of the site. The roads are below the
11 CLV's, you know, within the quarter mile limits that we're
12 looking at.
13 MR. GROSSMAN: CLV standing for critical lane
14 volume?
15 THE WITNESS: The critical lane volume for traffic
16 impacts of roads. So there are adequate public facilities.
17 BY MR. ORODANA:
18 Q And, Mr. Sloan, as Mr. Novak testified, we
19 received a letter from the Audubon Society on Thursday
20 evening. Do you have any planning responses to the concerns
21 raised in that letter?
22 A Yeah. I certainly support their mission, and
23 understand their concerns. As I noted much earlier on, I
24 have a background in environmental ethics and plant ecology.
25 The concern that was raised by Parks was really about

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1 liability issues of any trees potential damage or anything
2 like that. And so we're going to work with them for any
3 limbing or anything that's necessary, and actually be
4 expanding some of our plantings that will move that forest
5 line actually further towards us, but with new trees. The
6 increases in tree canopy, the mitigation of any impacts, the
7 increased stormwater management protections will actually, I
8 think, enhance the quality of water that is outfalling into
9 the creek.
10 The stream valley buffer that they mentioned is
11 actually well off of our property, and our closest building
12 is about 90 feet from that stream valley buffer at its
13 closest point, and then is further, so we're, we're actually
14 almost, we're basically accommodating their interest in a
15 100-foot setback from the stream valley buffer. We're out
16 of the floodplain and beyond that 25 feet at our tightest
17 point, and further in most cases. More generally, I think
18 that I would hope that the Audubon and similar, well this is
19 Audubon Naturalist Society, not the Audubon Society, looks
20 toward the broader view of smart growth. We're taking
21 pressure off of outlying areas, rural areas, and areas that
22 don't have the infrastructure for transit and facilities
23 that this one does. So we can actually minimize our impacts
24 compared to this kind of density further out.
25 MR. GROSSMAN: The thrust of the Audubon

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1 Naturalist Society letter seems to be towards the water
2 quality, and since you're going to have a civil engineer
3 testify about it, I think that you should have the engineer
4 address that question about stormwater management.
5 MR. OROBONA: Okay.
6 BY MR. OROBONA:
7 Q Last question for Mr. Sloan. So, about five
8 minutes before this hearing we were notified of another
9 letter that came in from Piera Weiss, who had a question
10 about the road classification of, I believe, it was
11 Kensington Parkway, was what she was referring to. Do you
12 have any comments on those, or preliminary, I should say
13 preliminary comments on those thoughts from that letter?
14 A Ms. Weiss indicates that the table for the road
15 classifications is silent on this section of road from Beach
16 Drive down. It only classifies Kensington Parkway from
17 Beach Drive to the north as a primary street. And since
18 it's silent, she infers that there's question about the
19 classification of the road. But as Technical Staff had
20 mentioned, and as we have in our quick relook at this, have
21 confirmed, there is also a map that is not mentioned in the
22 letter or the e-mail, on page 96, that does indicate that
23 this is not a primary street, it is considered a parks road.
24 MR. GROSSMAN: Page 96 of what?
25 THE WITNESS: Of the Kensington/Wheaton Master

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1 Plan. That this is a park road distinct from the primary
2 streets, and therefore, is not, we agree with Technical
3 Staff, a residential road.
4 BY MR. OROBONA:
5 Q And so, just to reiterate, Technical Staff also
6 found that this was a non-residential street?
7 A Right.
8 MR. GROSSMAN: And the reason that's an issue is
9 because there's a requirement in the zoning ordinance that
10 it be -- that the access be from a non-residential street,
11 is that correct?
12 THE WITNESS: We need to either front on a non-
13 residential street, or confront or abut certain zoned
14 properties. And so abutting on this non-residential street
15 is how we can apply for the zone.
16 MR. GROSSMAN: Okay.
17 MR. OROBONA: So, no further questions for Mr.
18 Sloan.
19 MR. GROSSMAN: All right. By the way, I'm going
20 to -- I noticed that in our file, the Planning Board letter
21 and the Technical Staff only had one exhibit number. I'm
22 going to make the Planning Board letter 28(a) and the
23 attached Technical Staff Report 28(b), as in boy.
24 (Exhibit No. 28(a) and (b) were
25 marked for identification.)

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1 MR. GROSSMAN: And, I take it from hearing your
2 testimony, you don't disagree, Mr. Sloan, with any of the
3 findings in the Technical Staff Report?
4 MR. SLOAN: No, I think they're accurate.
5 Correct.
6 MR. GROSSMAN: And so, Mr. Orobona, does the
7 applicant adopt also the Technical Staff Report findings as
8 part of its evidence in this case?
9 MR. OROBONA: We would. One quick clarifying
10 question to Mr. Sloan. In the Technical Staff Report it's
11 mentioned that Park staff recommended, I don't have the --
12 let met actually make sure I have the correct terminology
13 here --
14 MR. GROSSMAN: Give me a page reference too.
15 MR. OROBONA: On page 6 of the Technical Staff
16 Report, I'll read it, Park staff reviewed the development
17 proposal and have the following preliminary comments:
18 Maximize the distance from the homes to the forested edge in
19 the parkland, at least 100 feet is ideal. And then it goes
20 on to say, damage to the homes from trees falling from
21 parkland can be a problem for Parks. Later on the same page
22 the lead reviewer of the, the lead author of the staff
23 report states, the applicant's staff will continue to work
24 together to establish an appropriate distance from the
25 proposed townhomes to the existing parkland tree canopy. So

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1 question for Mr. Sloan, is this application, if approved at
2 the local map amendment stage will proceed to a preliminary
3 plan -- will it proceed to a further development application
4 stage?
5 MR. SLOAN: If we proceed, we're going to be
6 filing a preliminary plan of subdivision and a site plan, at
7 which time we can look at these details quite closely.
8 MR. GROSSMAN: These details being the distance
9 from the tree canopy?
10 MR. SLOAN: Being the distance from parkland, the
11 setback, the replanting, any mitigation, anything else
12 that's necessary.
13 MR. OROBONA: And were there conversations between
14 the petitioner and Planning staff regarding working together
15 and actually meeting on the site to develop an appropriate
16 setback, for lack of a better term?
17 MR. SLOAN: I spoke to both Park staff and
18 Planning staff to set up something further as this goes
19 forward, to meet on site and deal with these issues, yes.
20 MR. GROSSMAN: So let's get back to my question to
21 you, Mr. Orobona.
22 MR. OROBONA: Yes.
23 MR. GROSSMAN: You broke in with this additional
24 question to Mr. Sloan but, do you accept the findings in the
25 Technical Staff Report, Exhibit 28(b) as part of the

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1 applicant's evidence in this case?
2 MR. OROBONA: We do.
3 MR. GROSSMAN: All right. Usually, when I review
4 an application I go from the general first, and I don't
5 think you mentioned that Section 59-7.2.1.E lists necessary
6 findings for a rezoning application for a floating zone.
7 And, the first one is a general statement that just because
8 you meet them all doesn't mean it's sufficient. The second
9 is a list of requirements. And I want to make sure that you
10 satisfied, that you have addressed all of those.
11 MS. CARTER: Could you repeat that section?
12 MR. GROSSMAN: Yes. I have it written down as
13 Section 59-7.2.1.E. So .1 just says a floating zone
14 application must satisfy 59-5. It may not be sufficient to
15 require approval of the application; and .2 the district
16 council must find the floating zone plan will, and then it
17 has a series of requirements. Now, you may have addressed
18 them all in the more specific things, but why don't you go
19 over that just to make sure that we've covered it.
20 MR. OROBONA: Sure. Mr. Sloan, as Mr. Grossman
21 just stated, under this section of the zoning ordinance
22 there is a requirement that the proposal substantially
23 conform with the recommendations of the local master plan,
24 general plan, and other applicable county plans. Can you
25 briefly summarize whether this proposal satisfies or is

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1 consistent with those plans.
2 MR. SLOAN: It is consistent with the master plan,
3 and actually the master plan does speak in its general
4 objectives to the general plan itself. And the mix of
5 housing in these areas to support employment, and then the
6 protection of existing stable neighborhoods, which this
7 application does.
8 MR. OROBONA: And would this proposal satisfy the
9 intent, purposes and --
10 MR. GROSSMAN: I think you missed further the
11 public interest.
12 MR. OROBONA: There was a previous question
13 specifically about that.
14 MR. GROSSMAN: I just wanted to make sure that you
15 covered each of these.
16 MR. OROBONA: So just to touch all the bases, does
17 this, in your professional opinion does this proposal
18 further the public interests of the county?
19 MR. SLOAN: It does. It's in-fill development near
20 employment centers with existing infrastructure that does
21 not need upgrading, and won't have any negative impacts. It
22 also has an environmentally beneficial role in its increased
23 stormwater capacity, quality and quantity control that I
24 think will be talked about later.
25 MR. OROBONA: And, does this proposal satisfy the

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1 intent, purposes and standards of the proposed zone, and the
2 requirements of Article 59?
3 MR. SLOAN: It does meet the intent. We went
4 through the specific intent. I think there are three
5 statements or so that the intent is to satisfy in terms of
6 the development standards, going through those. We went
7 through the density, height and all of those that we meet,
8 and then the general requirements for the TF-12 zone that
9 will be met. In particular, the parking requirement will be
10 met.
11 MR. ORBANA: And is this proposal compatible with
12 existing and approved adjacent development? And let me know
13 if you want me to bring the surrounding area map back up.
14 MR. SLOAN: I mean, in terms of compatibility,
15 again, we look more towards the park and think of this as
16 park-oriented development, bringing some enhancements to the
17 property for the park. Introducing more people to it, and I
18 think it was also mentioned the new gateway feature for the
19 bus/bike station that we'd like to proffer along with this
20 for the park, sort of a gateway to the park.
21 MR. OROBONA: And you mentioned park-oriented
22 development. Can you elaborate a bit on that, and is that
23 something that's similar to transit-oriented development?
24 MR. SLOAN: It is with a little twist that it
25 really focuses more on open space. So we're doubling the

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1 amount of open space required. This is going to be a very
2 green site. The driveway aprons themselves are being
3 designed so that they can accommodate trees. The open
4 spaces will all be heavily planted. So we're trying to
5 bring the parkland actually closer into the development than
6 its technical boundary on a piece of paper. And, bring a
7 greater awareness and more people to enjoy and be aware of
8 the park.
9 MR. GROSSMAN: All right. The last item was
10 general traffic.
11 MR. OROBONA: And we will have an expert --
12 MR. GROSSMAN: Address that?
13 MR. OROBONA: Yes.
14 MR. GROSSMAN: And actually the very last thing
15 doesn't apply because you're not applying for a non-
16 residential floating zone. Okay. I have no other
17 questions. You have any redirect based on my questions?
18 All right, thank you, Mr. Sloan, I appreciate it. And
19 congratulations on being an expert. I always wish that
20 somebody would certify me as an expert so I can tell my wife
21 that I'm an expert on something.
22 MR. OROBONA: At this time I'll call Jeff Amateau.
23 MR. GROSSMAN: Why don't we take a five minute
24 break here, and then we'll get your next witness.
25 MR. OROBONA: Sounds perfect.

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1 (Whereupon, a brief recess was taken.)
2 MR. GROSSMAN: All right, we're back on the
3 record. I have been handed the Affidavit of Posting, which
4 has now been executed. So let me exhibitize that. That'll
5 be Exhibit 32.
6 (Exhibit No. 32 was marked for
7 identification.)
8 MS. CARTER: What was Exhibit 31?
9 MR. GROSSMAN: Thirty-one is the e-mail from Piera
10 Weiss.
11 MS. CARTER: Oh, okay.
12 MR. GROSSMAN: Okay, are you ready for your next
13 witness, Mr. Orobona?
14 MR. OROBONA: We are. I'm going to call Jeff
15 Amateau.
16 MR. GROSSMAN: Mr. Amateau, would you raise your
17 right hand, please.
18 (Witness sworn.)
19 MR. GROSSMAN: You may proceed.
20 DIRECT EXAMINATION
21 BY MR. OROBONA:
22 Q Mr. Amateau, can you for the record state your
23 full name and business address?
24 A My full name is Jeffrey Bruce Amateau. I work at
25 VIKA Maryland at 20251 Century Boulevard, Suite 400,

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1 Germantown, Maryland 20874.
2 Q And Mr. Amateau, can you give us a little bit of
3 background on your educational history and training?
4 MR. GROSSMAN: Do we have a resume for Mr.
5 Amateau?
6 MR. OROBONA: We do. I'm sorry, Mr. Grossman.
7 MR. GROSSMAN: That'll be Exhibit 33.
8 (Exhibit No. 33 was marked for
9 identification.)
10 MR. OROBONA: And while we're at it, can we have
11 an Exhibit 34, Cheri Eapen's resume.
12 MR. GROSSMAN: Certainly.
13 (Exhibit No. 34 was marked for
14 identification.)
15 MR. GROSSMAN: Okay, so 33 is the resume of
16 Jeffrey Amateau. And 34 is the resume of Cherian Eapen.
17 Okay, you may proceed.
18 BY MR. OROBONA:
19 Q Mr. Amateau, can you give us a bit of a brief
20 background on your educational history and training?
21 A Yep. I received my Bachelor of Science from the
22 University of Maryland in 1988. And as soon as I graduated,
23 I went to work for VIKA in the Virginia office. We had a
24 Virginia office at that time. And, in 1992 I went and
25 worked for another company, Frederick Ward and Associates in

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1 the Baltimore area. Realized I made a mistake, and came
2 back to VIKA.

3 MR. GROSSMAN: The Bachelor's of Science was in
4 Civil Engineering?

5 THE WITNESS: Yes.

6 MR. GROSSMAN: Okay.

7 THE WITNESS: And I've been working there every
8 since.

9 BY MR. OROBONA:

10 Q Are you a licensed civil engineer?

11 A Yes, in Maryland and in the District of Columbia.

12 MR. GROSSMAN: And what's your license number?

13 THE WITNESS: Maryland is 20510. Don't ask me
14 about D.C., I don't have that memorized.

15 MR. GROSSMAN: We only need Maryland. 20510?

16 THE WITNESS: Yep.

17 BY MR. OROBONA:

18 Q And since you've been at VIKA, can you kind of
19 give us an example of some of the projects that you've been
20 working on throughout the years?

21 A Yes. I've worked on recently the Chevy Chase Lake
22 project with EYA, which is right off of Chevy Chase Lake
23 Drive. It's a townhouse development with multi-family. The
24 one that really takes most of my time is the Pike and Rose
25 project with FRIT. I'm the lead engineer on that, project

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1 manager, and we recently finished phase one, and we went on
2 to phase two. I've worked on road projects, on water
3 management projects, you know, sediment control. Every sort
4 of civil engineer.

5 Q Sewer capacity issues?

6 A Yep. Water and sewer. A lot of friends at WSSC.

7 Q Have you previously been qualified as an expert
8 witness in the field of civil engineering?

9 A Yes, one time with City of Rockville, special
10 exception for the Potomac Valley Nursing Home.

11 Q Okay.

12 MR. OROBONA: Mr. Grossman, at this time, I'd like
13 to offer Mr. Amateau as an expert witness in the field of
14 civil engineering, unless you'd like me to continue.

15 MR. GROSSMAN: Based on his resume, Exhibit 33,
16 and his background, education, and his having been
17 previously qualified as a civil engineer expert, I expect
18 Mr. Amateau as an expert in civil engineering.

19 BY MR. OROBONA:

20 Q Mr. Amateau, will this project have adequate
21 public water and sewer capacity to support 16 proposed
22 townhomes at this location?

23 A Yes. Adjacent to the site there is existing
24 public water and sewer. The sewer is a 10 inch line, and
25 the water is a 8 inch line. And they will have capacity.

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1 It has been confirmed, verbally, hearsay, by WSSC, but we
2 expect a letter of findings in about two weeks to
3 officially, you know, set the record.

4 Q So no upgrades for sewer capacity would be
5 necessary is your understanding at this point in time?

6 A That's correct. And water.

7 Q Okay, great. And is a stormwater management
8 concept plan required as part of the local map amendment
9 application process?

10 A No.

11 Q And, notwithstanding that it's not required at the
12 local map amendment application stage, have you begun to
13 study the proposed stormwater management facilities at this
14 particular location?

15 A Yes. We've prepared a concept. Just want to make
16 sure that there was enough area to provide stormwater, and
17 we have developed a plan currently showing three
18 microbiofilters, and these three, in combination, provide
19 the target rainfall of two inches, which is approximately
20 6000 cubic feet of storage for this project.

21 Q And the existing site today, does that have
22 stormwater management facilities existing on the site?

23 A We found no evidence of existing management other
24 than a storm drain system.

25 Q Okay. And similar to what I've asked the other

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1 witnesses who came up here, did you have an opportunity to
2 read the letter from the Audubon Naturalist Society that
3 came in late last week?

4 A I did.

5 Q And, do you have any thoughts, in your
6 professional opinion -- well, let me back up and say that
7 that letter -- did that letter raise any issues about water
8 quality on this particular site?

9 A It did. It did. And, the fact that we are
10 providing three microbiofilters and meeting the target
11 rainfall, translates to a mimicking woods in good condition
12 as our stormwater runoff, so it's definitely an improvement,
13 enhancement, than the current site for stormwater.

14 Q Okay. Thank you.

15 MR. OROBONA: Mr. Grossman, that's all I have for
16 this particular witness unless you have any questions.

17 MR. GROSSMAN: If I understand, Mr. Amateau, you
18 have prepared a preliminary stormwater management plan?

19 THE WITNESS: Yes.

20 MR. GROSSMAN: But, I don't see it in the record
21 here. Is that correct?

22 MR. OROBONA: It was not filed.

23 MR. GROSSMAN: Okay. I think especially in view
24 of the letter from the Audubon Naturalist Society, that the
25 stormwater management concept plan, at least, should be in

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1 the record. So can you submit that in the 10-day period?
2 MR. ORODANA: No issues. We can do that.
3 MR. GROSSMAN: Okay.
4 MR. AMATEAU: We have a plan, and we also have a
5 set of comps. So I don't know if that's two exhibits or
6 one.
7 MR. GROSSMAN: A set of comps?
8 MR. AMATEAU: Computations.
9 MR. GROSSMAN: Oh, I see. I don't that I need the
10 computations. What I need is -- need is perhaps the wrong
11 word. I think it would be helpful to have it in the record
12 given that the issue was raised of stormwater management,
13 raised by the Audubon Naturalist Society, even though it may
14 not be a specific precondition of a rezoning. I take it, it
15 hasn't gone to the Department of Permitting Services yet.
16 MR. AMATEAU: No.
17 MR. ORODANA: That's why I wanted to clarify. It's
18 not an approved stormwater management concept plan.
19 MR. GROSSMAN: Right. It's your proposed
20 stormwater management concept plan.
21 MR. ORODANA: Exactly.
22 MR. GROSSMAN: And, at least to the extent that
23 the Council may have a question about the question raised by
24 the Audubon Naturalist Society, at least there would be
25 something in the record that references it. And, I take it,

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1 Mr. Amateau, you're saying that when this project is
2 completed, assuming that the stormwater management plan is
3 approved by the Department of Permitting Services, that you
4 would actually improve the stormwater management on the site
5 from what it is now, and I take it that you're also saying
6 that it would have less of an adverse impact on the
7 surrounding natural area?
8 MR. AMATEAU: Yes. It'll be -- the runoff would
9 mimic predevelopment rates, so, definitely an enhancement.
10 MR. GROSSMAN: Predevelopment rates. In other
11 words, your development or any pre any development?
12 MR. AMATEAU: Pre any development.
13 MR. GROSSMAN: Okay. And, I take it that it is
14 designed to meet current environmental site design
15 requirements?
16 MR. AMATEAU: Yes, 100 percent.
17 MR. GROSSMAN: All right.
18 MR. OROBONA: No further questions, thank you, Mr.
19 Amateau. And, we're ready to call our final witness, Mr.
20 Grossman. That would be Cherian Eapen.
21 MR. GROSSMAN: All right, Mr. Eapen. Would you
22 raise your right hand, please.
23 (Witness sworn.)
24 MR. GROSSMAN: You may proceed.
25 DIRECT EXAMINATION

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1 BY MR. ORODANA:
2 Q Mr. Eapen, can you please state your full name and
3 business address for the record.
4 A Sure. For the record my name is Cherian Eapen.
5 I'm a Certified Professional Transportation Planner, and my
6 business address is 23118 Birch Mead Road, Clarksburg,
7 Maryland 20871.
8 Q Great. And can you just briefly describe your
9 both previous employment history and current employment
10 history for Mr. Grossman.
11 A Certainly. Overall, I have over 22 years of
12 professional planning and traffic engineering experience,
13 and of that about 10 years was with Montgomery County
14 Planning Department, Park and Planning Commission, as a
15 Planning Coordinator, Transportation Planner, Master
16 Planner, and doing transportation planning. And the others
17 were in the private sector as a consultant.
18 Q All right. And, have you previously been
19 qualified as an expert witness in transportation planning
20 before this forum?
21 A Yes, I have. A couple of years back on a special
22 exception case for a daycare facility, and in the past also
23 as staff of the Park and Planning Commission in front of the
24 Board.
25 MR. GROSSMAN: You mean as certified by a hearing

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1 examiner?
2 THE WITNESS: A hearing examiner here, sir, as
3 staff.
4 MR. GROSSMAN: Okay. And what -- do you remember
5 the cases?
6 THE WITNESS: Yes. There was 10001 New Hampshire
7 Avenue, there was a case for an office use right at the
8 corner of Elton and New Hampshire Avenue, several years
9 back, before Ms. Carrier.
10 MR. GROSSMAN: Okay.
11 MR. ORODANA: And so, at this time I'd like to
12 offer Mr. Eapen as an expert witness in the field of
13 transportation planning, unless you'd like me to further the
14 line of questioning.
15 MR. GROSSMAN: No. I think that based on Mr.
16 Eapen's resume, which is Exhibit 34, and his prior service
17 on the Technical Staff of the Maryland National Capital Park
18 and Planning Commission, as well as his testimony as an
19 expert, I accept him as an expert, and I take it, it's
20 transportation planning and traffic engineering, is that
21 the?
22 MR. ORODANA: Yeah, that's correct.
23 MR. GROSSMAN: Okay, thank you.
24 BY MR. ORODANA:
25 Q Mr. Eapen, can you please quantify for us the

1 anticipated transportation impact that this particular
 2 proposal would have on the surrounding area.
 3 A Certainly. There was documentation -- as part of
 4 that documentation was provided to Park and Planning staff,
 5 which is also part of the Staff Report. To summarize
 6 basically, the proposal that's in front of you today, which
 7 includes 16 townhomes, will, based on the Planning
 8 Department local area transportation review, transportation
 9 policy area review guidelines, will generate approximately
 10 eight peak-hour trips in the morning peak period, and 13
 11 peak-hour trips during the weekday afternoon, or evening
 12 peak period.

13 MR. GROSSMAN: During the peak period or during
 14 the peak hour?

15 THE WITNESS: The peak hour of, within the -- one
 16 peak hour within that period.

17 MR. GROSSMAN: Okay. And that's both for the
 18 morning and, eight in the morning you said?

19 THE WITNESS: Yeah, eight in the morning and 13 in
 20 the afternoon or evening. And we amass that against the
 21 four units, single family units that are presently on the
 22 site, and taking credit for trips related, peak hour trips
 23 related to those existing units, which will be four peak
 24 hour trips in the morning, and four in the evening. There
 25 is an incremental traffic of about four peak hour trips in

1 the morning, and nine peak hour trips in the evening. And,
 2 these are documented and concurred by the Planning
 3 Department staff, in their staff report.

4 MR. GROSSMAN: Okay. And in your traffic
 5 statement, was Exhibit 8, and I take it that's still
 6 current?

7 THE WITNESS: That's correct. And just to add on,
 8 that documents the, the second part of the overall adequate
 9 public facilities test. I talk about the local area
 10 transportation review test previously. There was a finding
 11 made that the transportation policy area review could also
 12 be met at the time of building permit.

13 MR. GROSSMAN: That's the TPAR?

14 THE WITNESS: Yes, sir.

15 MR. OROBONA: Okay. Now, Mr. Grossman, we're
 16 going to go back real quick to the standards required for
 17 the townhouse floating zone listed in the Technical Staff
 18 Report.

19 MR. GROSSMAN: Okay.

20 MR. ORODANA: On page 16 of the Technical Staff
 21 Report. This is under Section 7.2.1.E.e.

22 BY MR. ORODANA:

23 Q So, Mr. Eapen, in your professional opinion, would
 24 this proposal generate traffic that would exceed the
 25 critical lane volume or volume capacity ratio standard as

1 applicable under the Planning Board's LATR Guidelines, or if
 2 traffic exceeds the applicable standard, does the applicant
 3 demonstrate an ability to mitigate such adverse impacts?

4 A The traffic statement that was submitted meets the
 5 requirements that generate fewer than 30 peak hour trips,
 6 overall, based on the proposal, and both the TPAR and LATR
 7 findings will be met as part of the finding for the
 8 particular project.

9 Q So, I believe you just testified to the same thing
 10 twice. I just wanted to touch all of the bases. I
 11 apologize for that.

12 MR. GROSSMAN: If you don't do it twice, we're not
 13 good lawyers.

14 BY MR. ORODANA:

15 Q So, last question for you, Mr. Eapen, again, five
 16 minutes before the hearing we were notified of a letter that
 17 came in on the record, which is Exhibit 31, an e-mail from
 18 Piera Weiss, questioning the classification of Kensington
 19 Parkway. Did you have an opportunity to review that letter,
 20 albeit the fact that it's, the e-mail that we have is cut
 21 off, so we didn't actually get to read --

22 MR. GROSSMAN: Yeah, we actually, I have, printed
 23 it out, I noticed the same problem as I read it just before
 24 I came in here, and I printed out a full copy. And, if you
 25 want, I'll hand that to you, and then you could actually

1 read the things that are missing from that.

2 MR. ORODANA: That would be helpful. Thank you,
 3 and if you could give us just a minute, Mr. Grossman to
 4 quickly review this.

5 MR. GROSSMAN: Sure. Take your time.

6 BY MR. ORODANA:

7 Q Okay. And so we have, you know, again, had a very
 8 quick opportunity to review this letter at this point in
 9 time. But, Mrs. Weiss is raising a concern about the
 10 classification of Kensington Parkway. Can you, in your
 11 professional opinion tell us what you think the
 12 classification of Kensington Parkway is?

13 A So based on the request to review the
 14 classification for the section of Kensington Parkway
 15 alongside frontage, really look at page 96 of the
 16 Kensington/Wheaton Master Plan, which clearly present the
 17 section of the road as a park road. That's the best
 18 information I could gather from the master plan
 19 recommendation that's included in that particular master
 20 plan.

21 MR. GROSSMAN: So, is it your opinion that that
 22 section of the road meets the requirement of a non-
 23 residential road?

24 THE WITNESS: Based on what is stated, yes, sir.

25 MR. GROSSMAN: Based on what's stated?

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1 THE WITNESS: What's shown in the master plan.
2 MR. GROSSMAN: Is there any source that would give
3 more direct response about that or is there something else
4 that one should look to other than the master plan on this
5 point?
6 THE WITNESS: The only thing that I can think
7 about is a precedent case where we had similar project out
8 in Westbard area, where a similar townhouse project was
9 approved to rezoning off Little Falls Parkway, which is also
10 classified as a park road, that's really.
11 MR. GROSSMAN: I approved that, but I don't recall
12 anybody raising the issue, that issue at that time. I just
13 don't recall it. Maybe it happened. There were a number of
14 issues in that case.
15 THE WITNESS: No, I do not recall for that
16 particular project myself, and I think Damon was the
17 reviewer as well. But, as far as the road classification
18 issue, I think it meets the requirements that's all for part
19 of the zoning.
20 MR. GROSSMAN: Okay. All right, you've testified
21 about traffic volume, is there any issue regarding traffic
22 safety that this proposal would give rise to?
23 THE WITNESS: Certainly, none that I can think of.
24 We had a site distance evaluation is really important key to
25 examining the traffic safety at that particular access point

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1 to the development from Kensington Parkway, and that the
2 site distance study that was completed by VIKA shows that
3 the site distance for the proposed driveway will be more
4 than adequate for the speed limit that's on --
5 MR. GROSSMAN: I don't recall if that's in the
6 record.
7 MR. ORODANA: That's not in the record. We'd be
8 happy to submit a copy of -- and again, it was similar to
9 the stormwater management concept plan. The petitioner was
10 proactively checking standards that are anticipated to be
11 reviewed at later stages of review, preliminary plan, site
12 plan. We are happy to submit that into the record.
13 MR. GROSSMAN: Would you do so, please. All
14 right. And, is there any issue about parking raised by this
15 project? Is there a minimum of the amount of parking that's
16 supposed to be required for this type of proposal?
17 THE WITNESS: My understanding is that parking is
18 provided per the code, plus there is a driveway that
19 additional vehicles can park in front of the home. So, my
20 opinion is that adequate parking is provided at the
21 development.
22 MR. GROSSMAN: The code requirement would be two
23 parking spaces per unit?
24 THE WITNESS: Per unit.
25 MR. GROSSMAN: And, you're saying that this

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1 private road that's being developed between the two sets of
2 units would be sufficient to allow on-street parking for
3 guests, is that what you're saying?
4 THE WITNESS: What I'm saying is there is adequate
5 parking. There are two additional parking spaces provided
6 for each unit in addition to the required spaces that are
7 provided in the garage.
8 MR. GROSSMAN: And where are those additional
9 spaces located? Can you point to them on -- what's the site
10 plan, the rendered site plan, what's the number of that
11 exhibit again?
12 THE WITNESS: 25(c).
13 MR. GROSSMAN: Okay.
14 THE WITNESS: And each of the units are provided
15 the driveways which is 20 feet wide, and can accommodate
16 vehicles that, two more additional vehicles that could be
17 parked.
18 MR. GROSSMAN: Oh, I see. So that you can have
19 two side-by-side vehicles parked in there, in addition to
20 the two in the garage?
21 THE WITNESS: Yes.
22 MR. GROSSMAN: I see. Okay. And that, in your
23 opinion, is adequate parking?
24 THE WITNESS: Yes, double the code the code
25 requirement.

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1 MR. GROSSMAN: Okay. All right.
2 MR. ORODANA: So, we have no further questions for
3 Mr. Eapen.
4 MR. GROSSMAN: Ms. Carter, do you wish to
5 brutalize your own witness?
6 MS. CARTER: No, I have no further questions.
7 MR. GROSSMAN: Then, I have no further questions.
8 Thank you.
9 MR. ORODANA: We have no further witnesses to
10 call, so I guess we rest our case.
11 MR. GROSSMAN: Yes. I presume you want to admit
12 into evidence the exhibits thus far, Exhibits 1 through 34?
13 MR. ORODANA: Yes.
14 MR. GROSSMAN: And any additional, the additional
15 filings which I've asked for, which include, the
16 documentation from the State Highway Administration, the
17 Technical Staff memo regarding abandonment, and actually,
18 the record of the abandonment hearing wouldn't be a bad
19 idea. You probably have a transcript by now, it's been more
20 than 10 days.
21 MR. ORODANA: I don't, but I can look into it.
22 MR. GROSSMAN: Yeah, probably would have one. The
23 third was the stormwater management concept plan, and the
24 fourth was the site distance study.
25 MR. CARTER: Mr. Grossman, if the transcript is

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1 not ready within the next 10 days, the transcript of the
2 abandonment hearing, can that be -- it's not critical?
3 MR. GROSSMAN: I don't think it's critical. It's
4 just, you know, one more item that people could be looking
5 to, so since it's taken place, it's not a bad thing to have
6 it in our record, you would think. And if the -- is 10 days
7 sufficient to get the letter from the State? I guess that's
8 the biggest -- the rest of them I think you'd have in hand,
9 but I don't know how fast the State will act.
10 MR. ORODANA: Exactly. What can I tell you is
11 we've definitely had plenty of conversations in the past
12 with HSA and DOT, so I am optimistic that they could work
13 quickly to pull this together, but I, you know, I can't
14 promise you at this point in time.
15 MR. GROSSMAN: Well, I can hold the record open
16 for whatever period of time you think you'll need. You tell
17 me.
18 MS. CARTER: Would it be possible for him to, if
19 he doesn't have it within eight, nine days, to request an
20 extension, and that way we could --
21 MR. GROSSMAN: Certainly. Yeah, my only, I have
22 to, if I extend it, formally I have to issue a formal order
23 extending it. I'm holding it open only for purposes of
24 these additional submissions. I'm not holding it open for
25 additional public commentary, etcetera. I think that

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1 everybody's had their opportunity. Nobody appeared for the
2 hearing. If there were somebody here, then I would give
3 them additional time to further respond. But there isn't
4 anybody here, so I think that that's the only purpose for
5 which it'll be held open would be for your additional
6 submissions.
7 MR. ORODANA: Maybe we can request 14 days.
8 MR. GROSSMAN: Sure.
9 MR. ORODANA: Actually, before we do that.
10 MS. CARTER: But that was the question, I guess we
11 had, is that it wouldn't be leaving the record open for
12 general comments.
13 MR. GROSSMAN: No. I don't think that would be
14 fair given that you've already had to face two last minute
15 comments.
16 MS. CARTER: Exactly.
17 (Off the record discussion.)
18 MR. ORODANA: Mr. Grossman, it was just pointed
19 out to me that the site distance analysis was, in fact,
20 submitted to you.
21 MR. GROSSMAN: Okay.
22 MR. ORODANA: Exhibit 29(I).
23 MR. GROSSMAN: All right, let's see. Oh, site
24 distance analysis, sealed. Signed, sealed and delivered.
25 Okay, so that's one to cross off the list. Good.

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1 MR. ORODANA: And, as far as the letter from SHA,
2 we'll make every effort possible to submit a letter, or get
3 a more formalized letter from SHA. But if it doesn't happen
4 --
5 MR. GROSSMAN: I'll extend it then as need be.
6 MR. ORODANA: But, if SHA were to tell us that it
7 would take three months to go through that formal process, I
8 don't anticipate that that could occur, but it perhaps
9 might.
10 MR. GROSSMAN: Well then, we'll, I guess, consult
11 as to what you want to do at that point. So, at this point
12 do you want to keep it open for 14 days, is that what you
13 want to do?
14 MR. ORODANA: Yes.
15 MR. GROSSMAN: Okay, so we'll say that the record
16 here will close on April 27th. That's 14 days from today.
17 And, if I hear back from you that you still need to get
18 something from the State, and you want to keep the record
19 open further for that, then I will certainly grant that.
20 MS. CARTER: And what it is that you need from the
21 State is essentially the content of that e-mail, but on
22 their letterhead and signed?
23 MR. GROSSMAN: Exactly. All right, so I will
24 admit Exhibits 1 through 34, and the additional exhibits
25 that you are going to supplement the record with. All

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1 right.
2 MS. CARTER: And, you don't need -- he's marked
3 these, but these were copies.
4 MR. GROSSMAN: No, because I already have those.
5 If you had written on them in some way, then I would get
6 those too. But if there are no additional exhibits, those
7 are just the copies of what we already have in the record.
8 All right, anything further then?
9 MS. CARTER: No.
10 MR. GROSSMAN: All right, I thank you very much,
11 and we are adjourned.
12 (Whereupon, at 11:47 a.m., the hearing was
13 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:

Local Map Amendment No. H101

Nova-Habitat - Zoning Change from R-90 to TF-12

OZAH No. 12-03

By:

Keena Lukacinsky, Transcriber

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
LOCAL MAP AMENDMENT No. H101**

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