

A P P E A R A N C E S

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Also Present:
 Anne Carlson
 Eric Nothman
 Suzanne Lee
 Arthur Bruestle
 Jaime Manzano
 Linda Guest
 Sandy Vogelgesang
 Margit Meissner
 John Tiernan
 Barbara Manzano

E X H I B I T S

Exhibit No.	Marked/Received
1-154	Premarked
155	Written testimony of Sandra Vogelgesang 168

C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
Michael Lenhart				
By Ms. Girard:		9		68,218
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P R O C E E D I N G S

1
 2 MS. ROBESON: I am, I'm calling the case of the
 3 application of Artis Senior Living Facility, CU 15-05
 4 requesting a conditional use for a 72 bed senior living
 5 facility located at 8301 River Road, Bethesda. This is on
 6 remand from the Board of Appeals for the purpose of
 7 conducting more fact finding on existing traffic safety
 8 along River Road and Carderock Spring Drive and the impact
 9 of the proposed use on traffic safety in those areas,
 10 including at off peak hours and for specific recommendations
 11 on possible measures to calm traffic and improve safety at
 12 that location, including but not limited to, turn lanes,
 13 speed limits, speed cameras or other speed recording devices
 14 and crosswalks. All right.
 15 That was a mouthful, but I think we all know why
 16 we're here. Would the parties identify themselves for the
 17 record?
 18 MS. GIRARD: Sure. Erin Girard with Linowes and
 19 Blocher on behalf of the applicant, Artis Senior Living.
 20 MS. ROBESON: And you are?
 21 MS. CARLSON: Anne Carlson.
 22 MS. ROBESON: Yes. And you're here as an
 23 individual?
 24 MS. CARLSON: Correct.
 25 MS. ROBESON: Yeah. Okay. Is there anyone else

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1 in addition to Ms. Carlson that wishes to testify today?
2 Okay. I see several hands. You are welcome to have Ms.,
3 you can testify individually and you're also welcome to have
4 Ms. Carlson act as a spokesperson. But you will, if you're
5 with an organization, you cannot represent the organization
6 unless you're represented by an attorney so you can speak as
7 an individual. All right.
8 Okay. Are there any, and just for the people that
9 weren't here the last time, my name is Lynn Robeson. I'm
10 the Hearing Examiner. I'm going to take all the testimony
11 and evidence in this case and write a decision. If you
12 disagree with the decision, you have the right to request
13 oral argument before the Board of Appeals. Keep in mind
14 that the Board of Appeals doesn't take any new evidence. So
15 whatever you want to say this is the time to say it. All
16 right.
17 Are there any preliminary matters?
18 MS. GIRARD: Just clarification on what you said.
19 As I understand it, this is limited to the issue of traffic
20 and traffic safety. Correct? So any new testimony today
21 should only be on that topic?
22 MS. ROBESON: Correct. The scope of the remand is
23 what I just repeated this morning. All the evidence that we
24 had originally is still in the case. You will have to be
25 re-sworn because in, technically it's a new proceeding. But

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1 everything that was previously submitted is still in the
2 record.
3 MS. GIRARD: Okay.
4 MS. ROBESON: Any other preliminary matters? All
5 right. With that, just a brief statement. It's informal
6 with certain formalities. You get to, I, I know, Ms.
7 Carlson, this is old hat for you.
8 MS. CARLSON: No, it's not.
9 MS. ROBESON: But there are some new people. You
10 can make an opening statement. The order of proceedings is
11 the applicant's testimony, cross-examination, testimony from
12 the opposition and closing, and rebuttal by the applicant
13 and a closing statement. In the opening statement, it's not
14 testimony. It's what you intend to prove. So if you just
15 want to say your piece, so to speak, that would come during
16 your time to testify. All right. Anything else? All
17 right.
18 Ms. Girard, do you have an opening statement?
19 MS. GIRARD: Just a brief one. As how we got
20 here, I don't need to reiterate for everyone.
21 MS. ROBESON: No.
22 MS. GIRARD: I'm not going to spend a lot of time.
23 I just wanted to note that, you know, the Hearing Examiner
24 had concerns at the end of the previous proceeding regarding
25 River Road, the pattern of accidents, severity index,

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1 impacts of the driveway alignment offset. And those, the
2 Board of Appeals noted those concerns and, and heard the
3 opposition and request for oral argument and wanted those
4 explored further. So that prompted the remand order. Since
5 then, there has been significant new evidence submitted both
6 by Mr. Lenhart, which he'll go through in a minute, but more
7 importantly, by the State Highway Administration and Park
8 and Planning Staff that I believe gives, covers all the
9 bases that perhaps the Hearing Examiner did not think were
10 covered before and is very definitive. I'll go through that
11 as part of my closing statement rather than now, but I just
12 kind of wanted to set the stage that I think that the
13 unopened questions that led to Condition 15 and the
14 uncertainty before have been addressed and Mr. Lenhart will
15 certainly go through that. Because today's, the focus of
16 the proceedings is solely on traffic, we intend to only call
17 Mr. Lenhart and we would save anyone else for rebuttal.
18 MS. ROBESON: Okay. Ms. Carlson.
19 MS. CARLSON: I have no opening statement.
20 MS. ROBESON: All right. I guess you're calling
21 Mr. Lenhart. Correct?
22 MS. GIRARD: I am.
23 MS. ROBESON: Mr. Lenhart, please raise your right
24 hand. Do you solemnly affirm under penalties of perjury
25 that the statements you're about to make are the truth, the

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1 whole truth and nothing but the truth?
2 MR. LENHART: I do.
3 MS. ROBESON: Okay. Mr. Lenhart qualified as an
4 expert in traffic, was it engineering?
5 MR. LENHART: And transportation planning.
6 MS. ROBESON: And planning. And transportation
7 planning at the last hearing. Since the last hearing, does
8 anyone have any cause to say that he's no longer that
9 expert? Seeing no response, you're qualified in this
10 proceeding as an expert in traffic engineering and
11 transportation planning. Go ahead, Ms. --
12 MR. LENHART: Thank you.
13 MS. GIRARD: And I would just note for the record
14 again his resume is in Exhibit, Exhibit 30.
15 MS. ROBESON: Yes.
16 DIRECT EXAMINATION
17 MS. GIRARD: Mr. Lenhart, are you familiar with
18 the findings and conclusions of the Hearing Examiner in her
19 September 8, 2015 report and recommendation regarding the
20 anticipated traffic impacts of the proposed conditional use?
21 MR. LENHART: Yes, I am.
22 MS. GIRARD: And are you familiar with the basis
23 of the Board of Appeals remand order on the traffic issues
24 and the basis for this hearing today?
25 MR. LENHART: Yes, I am.

1 MS. GIRARD: In light of the concerns expressed by
2 the community and the Hearing Examiner and Board of Appeals,
3 have you conducted any further studies with regard to the
4 conditional use application?

5 MR. LENHART: Yes, I have.

6 MS. GIRARD: Can you review the findings and
7 conclusions of that study? And I believe you're referring
8 to the speed statement, which is Exhibit 140(a).

9 MR. LENHART: Yes. That's correct. As there were
10 significant testimony both at the Planning Board hearing and
11 at the last Zoning Examiner's hearing, that there are high
12 speeds, motorists who're traveling at high speeds along
13 River Road and it's, its unsafe and that causes additional
14 concern for rear end accidents as well as pedestrian bicycle
15 and just other general safety issues. And there was
16 anecdotal evidence that people were, that speeds were in the
17 50 to 60 mile per hour range or, or what not and we had no
18 evidence, we had no evidence at the time to say exactly what
19 the speeds were. State had indicated they had done a speed
20 study, so we went out and we did a speed study. We
21 conducted that on Tuesday, January 5th, between 2:00 p.m.
22 and 3:00 p.m. along westbound River Road approximately 200
23 to 300 feet prior to Carderock Springs Drive. We, we, the
24 way the study is conducted, you, you pick off peak times.
25 You want to capture free flow speeds not any speeds that are

1 impacted by congestion or other vehicles that might be
2 slowing or stopping to turn left at Carderock Springs. So
3 we make physical observations of vehicles that are free
4 flowing, not captured in a platoon. They're just, they're
5 on their own or their first car in the platoon. And again,
6 they're not affected by if there is a stopped vehicle to
7 turn left at Carderock Springs or if they're stopping to
8 turn left. We, we don't include those. We only include
9 free flow traffic. That, that's how we determine the, the
10 free flow speeds and design speeds for the roadway. The
11 results of that speed study indicated that, first of all,
12 the posted speed limit is 40 miles per hour. The average
13 speed was 43 miles per hour. The median speed was 42 miles
14 per hour. Median is just simply 50 percent of the cars were
15 higher. Fifty percent of the cars were lower. The 85th
16 percentile speed was 49 miles per hour. That means that 15
17 percent of the vehicles were traveling 49 miles per hour or
18 faster. Eighty-five percent of the vehicles were traveling
19 49 or lower. That 85th percentile is referred to as the
20 design speed, the operating speed or design speed. That is
21 the speed that you want to insure that you have adequate
22 sight distance. Design parameters are all based upon the
23 design speed. You don't design for the fastest vehicle on
24 the roadway. The one person that's doing, you know,
25 whatever the top speed is. You design for something that

1 will accommodate for the majority of the traveling public.
2 And again, that was 49 miles per hour. I have, in my 15
3 years in the private sector and before that when I was with
4 State Highway Administration for 10 years, probably
5 conducted hundreds of speed studies. Almost 100 percent of
6 the time the 85th percentile or the design speed comes in
7 between five and 10 miles per hour above the posted speed
8 limit. It's just kind of the way it seems to work out. As
9 long as the speed limit is posted correctly, and you can see
10 five to 10 miles per hour above the speed limit. That is,
11 that is right where this speed limit is. And that's right
12 where the design speed is. The State Highway Administration
13 also in their letter to you dated --

14 MS. ROBESON: January 21st.

15 MR. LENHART: Let me make sure I --

16 MS. GIRARD: I got it.

17 MR. LENHART: Thank you. Yes. They, they confirm
18 in here that they also did a speed study, a --

19 MS. ROBESON: So their speed study was independent
20 of yours?

21 MR. LENHART: Theirs was independent of mine.

22 They, they had made mention numerous times that they had
23 speed studies, but they never provided them. So we
24 conducted our own. They're referring to their speed study
25 in here. They don't say when it was conducted, but they

1 said it was conducted during off peak hours between 10:00
2 and 2:00 p.m. and that the 85th percentile speed was within
3 10 miles per hour of the posted speed limit, which is
4 exactly what my findings were. And they confirm speeding
5 was not observed to be an issue along the subject segment of
6 Maryland 190. Then, and they, they further indicated that
7 speed humps and other traffic calming devices are really not
8 appropriate on that type of roadway due to the design of the
9 roadway and the fact that there's not a speeding problem.

10 MS. GIRARD: And Mr. Lenhart, just for the lay
11 people in the room, I, I had asked you this question when,
12 as part of the speed study. Can you just give everyone an
13 indication of how it's performed and how you're sure, my
14 question to Mr. Lenhart was is someone with a radar gun at
15 the side of the road so people are slamming on their brakes
16 --

17 MR. LENHART: Right.

18 MS. GIRARD: -- and affecting the data such --

19 MR. LENHART: No. I actually conducted the study
20 myself. I sat in the, I parked in the parking lot right
21 before the bridge. You know, there's eight, eight or 10
22 parking spaces there. So I was just one of eight or 10 cars
23 and I don't use a radar gun. I, I use time speed
24 measurements so you mark out on the pavement distance and
25 then you measure with a stop watch from point A to point B

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1 and you calculate the speed based upon that. So no one
2 would know that they're being observed and speeds would be
3 natural based upon that.

4 MS. GIRARD: Right. Okay. Subsequent to your
5 initial, kind of switching gears a little bit. One of the
6 other issues that was a big issue in the initial proceedings
7 was the crash data for the intersection. And subsequent to
8 your initial testimony on this application you submitted a
9 supplemental analysis that's Exhibit 99(b) that reviewed
10 among other things the crash data for the intersection at
11 Carderock Springs Drive and River Road and your
12 understanding the severity index assigned by the SHA to this
13 intersection. Can you review that analysis for us?

14 MR. LENHART: Yes. So the, the data provided by
15 the State Highway Administration included three years' worth
16 of accidents. There were a pattern of left turn accidents.
17 The people stopped to learn left into Carderock Springs
18 Drive being rear ended. The State Highway compiled that
19 data. They prepared a severity index and in the email
20 transmittal dated January 21st from Cedric Ward to the
21 Hearing Examiner where they transmitted their letter to you,
22 he states in here, and I'm, I'll quote from this, the
23 Hearing Examiner's report at page 33, 43 accurately states
24 that a severity index of six is low compared to other
25 intersections in SHA's District 3, Montgomery and Prince

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1 Georges County, and indicates that no further evaluation by
2 SHA is needed. And so, that's how the State Highway
3 compiles their data. They look at the, the districts. They
4 don't look at it by individual roads within the district.
5 They do comparable roads within the district. Interstates
6 within the district. Signalized intersections within the
7 district. Two lane roadways within the district.

8 MS. ROBESON: What's this, how do they calculate
9 the severity index?

10 MR. LENHART: It's a weighted scale and they
11 manage that internally. They don't allow outside sources to
12 review that data. They're concerned about liability issues
13 if there's an accident, being sued over that. But it's a
14 weighted scale so if it's property damage only, then that
15 has a low rating. If it's injuries, it has a slightly
16 higher rating. If it's fatalities, it has a much higher
17 rating. And then it's based on the number of accidents,
18 the, the, the weighted, it's based upon that.

19 MS. ROBESON: Yeah. I saw that. Yeah.

20 MR. LENHART: Yeah. So.

21 MS. ROBESON: I just thought you might have more
22 insight. Me having, I was going through the back door to
23 try and figure it out, but that's okay. Since you had
24 worked for them, I thought maybe you had some insight, but
25 --

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1 MR. LENHART: I worked on, there was a division
2 that prepared that data and I worked in one of the district
3 offices that we took their data and we evaluated road
4 sections using their data to see if there's any improvements
5 we could make to improve safety or if there were any
6 patterns that really needed to, to be improved or addressed.

7 MS. ROBESON: Okay.

8 MS. GIRARD: In that email, Mr. Ward's conclusion,
9 that, that's consistent with the analysis that you'd
10 submitted in August?

11 MR. LENHART: That's correct.

12 MS. GIRARD: In, somewhat switching, or related to
13 that, in Ms. Titus's recent letter to the Hearing Examiner
14 she notes that some accidents at this intersection may go
15 unreported because they do not involve bodily injury
16 requiring transport. What's your understanding of accident
17 reporting?

18 MR. LENHART: My understanding, and there's
19 nothing in writing. There's no policy on this. But my
20 understanding is if there's an accident, if it's a fender
21 bender, both cars can drive away and there's no injuries
22 that police generally don't report it. They just, they
23 leave it up to the motorists involved to deal with their
24 insurance companies and get, get things worked out.
25 However, if they would be reported, my opinion is that if

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1 they occur at this intersection, they're occurring at every
2 intersection. Fender benders that are not getting reported.
3 And so, it, this intersection in relation to other
4 intersections wouldn't change. Number one.

5 MS. ROBESON: Wait. I, I don't understand what
6 you're saying.

7 MR. LENHART: So if this intersection has
8 unreported accidents --

9 MS. ROBESON: Yes.

10 MR. LENHART: -- every other intersection along
11 River Road and --

12 MS. ROBESON: Oh, I do see what you're, now I see.

13 MR. LENHART: -- and State roadways also have
14 unreported intersections.

15 MS. ROBESON: Okay.

16 MR. LENHART: And the fact that there may be
17 unreported intersections here doesn't make this less safe
18 than other intersections because they're, they're
19 everywhere. It's a common occurrence. That's number one.
20 Number two. An --

21 MS. ROBESON: You're saying it's a uniform factor
22 of cross intersections that fender benders are not reported?

23 MR. LENHART: Correct. That's correct. And
24 number two, if it's a fender bender, it's no injuries, not
25 reported. Both vehicles are drivable. That, that would be

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1 a separate factor on the severity index that if you have
2 fatalities as the top, injuries as the second, damage as a
3 third where a vehicle can't drive away, must be towed, then
4 if you have a fender bender, that's going to be at the very,
5 very bottom of the severity index waiting and therefore, it
6 really wouldn't, I mean it could even improve the severity
7 index. It could lower the severity index because you have,
8 you'd be adding in more accidents with a much better
9 severity weighting. Does that make sense?

10 MS. ROBESON: Yes. Because one of the weights or
11 one of the weighting factors is severity?

12 MR. LENHART: Correct. Correct.

13 MS. GIRARD: Okay. And understanding your
14 testimony regarding the Carderock Springs Drive/River Road
15 intersection and your previous analysis and testimony
16 regarding the trip generation for the project and moving,
17 turning movements for the project, what impact do you
18 believe the proposed conditional use would have on the
19 safety and operations of the intersection?

20 MR. LENHART: I believe this would have no
21 negative impact on the safety and operations of the
22 intersection. As previously testified, this site has a
23 driveway opposite Carderock Springs. All of the testimony,
24 all of the accident/crash history indicates that the
25 concerns here are somebody traveling west on River Road

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1 slows and stops to make a left on Carderock Springs and gets
2 rear ended while they're waiting to make the left turn.
3 That condition has no bearing whatsoever on our driveway.
4 If we have someone trying to enter our driveway, they're
5 going to be driving west on River Road. Soon as they get to
6 the driveway they make right turn. They're not, first,
7 they're slowing to turn into the driveway so they're not a
8 rear end potential to anyone that might be sitting and
9 waiting to make a left turn. They're, they're slowing.
10 They're not, somebody driving down the roadway at 45, 49
11 miles per hour that would rear end somebody. They're
12 slowing. They turn in. And second of all, once they get to
13 the driveway, they turn in. They don't have to wait for a
14 gap in traffic. They're not a fixed object stopped and --

15 MS. ROBESON: But that's the, that's just the
16 east, or sorry, westbound movement?

17 MR. LENHART: That's westbound.

18 MS. ROBESON: Now I think there were some, well,
19 finish, you finish the westbound movement and then I'd like
20 you to address the eastbound, the left turns from Artis
21 eastbound on to River. Yeah.

22 MR. LENHART: From Artis to go eastbound on River?

23 MS. ROBESON: Yeah.

24 MR. LENHART: So, so I'm finished with the
25 westbound.

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1 MS. ROBESON: Okay. Well, I did have one question
2 and I, I understand that you're turning movement, the Staff
3 Report says that there's no conflicting turning movements,
4 but doesn't that only address the westbound traffic? Isn't
5 there a conflicting turning movement from the existing Artis
6 eastbound?

7 MR. LENHART: No different than any other
8 intersection on the roadway. And every intersection has
9 side streets with stop signs and the rules of the road, you
10 pull up. You stop. If there's a gap in traffic, you can
11 turn left. If there's somebody across from you, it's the
12 rules of the road who gets there first, you know, makes the
13 turn first. And so, there's no difference here than
14 anywhere for, from that perspective.

15 MS. ROBESON: Does it, okay. Does it matter, and
16 these aren't just, I'm not trying to give you a hard time.

17 MR. LENHART: Sure.

18 MS. ROBESON: I'm trying to get to the bottom of
19 all the questions.

20 MS. GIRARD: And we're fine with that.

21 MR. LENHART: Yes.

22 MS. ROBESON: Does it matter that the
23 intersections aren't aligned, or that the driveways aren't
24 aligned?

25 MR. LENHART: It, it does not. It's a very, very

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1 small offset. Very small offset. Number one. Number two,
2 the volume is coming out of Carderock, or out of our site
3 are very, very small. There, there off, there are two trips
4 in morning peak hour, four trips in the evening peak hour.
5 We've adjusted our staffing times so that shift changes are
6 off peak. Carderock Springs Drive is a residential
7 neighborhood. Generally, the peaks for residential traffic
8 are morning peak hour and evening peak hour. It does --

9 MS. ROBESON: But the speeds are, I, I'm sorry to
10 interrupt, but I, I want to get to my concern.

11 MR. LENHART: Sure.

12 MS. ROBESON: The speeds are slower at peak hour.
13 So by shifting to get through LATR, you've shifted, which is
14 fine. It's, I'm not saying that's sneaky. That's fine.

15 MR. LENHART: Um-hmmm.

16 MS. ROBESON: But you've shifted to off peak hours
17 which are the times that the accidents are occurring. So I
18 guess my question is adding, I think, the largest shift, if
19 I recall. The largest shift is 18 people. That's a 6:00
20 a.m. to a 3:00 p.m. And those are all coming out
21 theoretically. They're all coming out at 3:00 p.m. I'm
22 pretty sure that's --

23 MR. LENHART: Oh, bear with me for a second. I --

24 MS. ROBESON: No. It's fine. It was a while ago.
25 Maybe it's 6:00 to 2:00.

1 MR. LENHART: So I'm, I'm looking --
 2 UNIDENTIFIED FEMALE: 6:00 to 2:00?
 3 MR. LENHART: I'm looking at the accident --
 4 MS. ROBESON: Okay. No, I appreciate your
 5 volunteering from the, from the back, but please don't, this
 6 is his testimony under oath and we can't have anyone
 7 volunteering from the back. You're not under oath yet.
 8 Okay. I'm sorry, Mr. Lenhart. Go ahead.
 9 MR. LENHART: Sure. Not a problem. So there were
 10 2, 3, 4, 5, 6, 7 rear end accidents in a three year period.
 11 Those rear end accidents occurred, one was 6:00 p.m. One
 12 was 9:00 a.m. One was 11:00 a.m. One was 1:00 p.m. Two
 13 were 3:00 p.m. and one was 4:00 p.m. That's pretty well
 14 scattered throughout the day. It doesn't indicate a peak
 15 hour problem. It doesn't --
 16 MS. ROBESON: Well, address the off peak. That's
 17 what I want you to do. Please address the off peak problem.
 18 MR. LENHART: Sure.
 19 MS. ROBESON: Is there --
 20 MR. LENHART: No. There, there --
 21 MS. ROBESON: Because of the shift change, is
 22 there a problem in the off peak hours?
 23 MR. LENHART: There is not a problem in the off
 24 peak hours. The sight distance is well beyond what is
 25 required for safe ingress and egress. Off peak you have

1 much higher gaps in traffic. You have less traffic on the
 2 roadway. You have higher gaps. You have a signal at Seven
 3 Locks and, or down in that direction.
 4 MS. ROBESON: Oh, that creates --
 5 MR. LENHART: That creates huge gaps and I know
 6 because I sat out there and I, I sat and watched it while I
 7 was doing the speed study. There were platoons of vehicles
 8 that came through from the signal and then there was huge
 9 gaps that can be used to make turns. Speeds are not an
 10 issue. And off peak, we did our speed study in off peak.
 11 Speeds are not an issue. Volumes are not an issue. Plenty
 12 of gaps to make turns. Sight distance is well beyond what
 13 is necessary. The volume, even though we've shifted, I, I
 14 think it's the responsible thing to do where an applicant
 15 has the ability to make their shift changes off peak. I
 16 think that's the responsible thing to do. It's, one could
 17 look at it as trying to reduce your numbers during the peak
 18 so you have to do less during the peak. But we are in a
 19 world of growing congestion. Peak hours that continue to
 20 expand and get more congested. Where you have a user like
 21 this, where they can say, you know what, we're going to,
 22 we're going to stay away from the peaks. We're going to,
 23 you have used the network more evenly. You spread traffic
 24 out a little bit. Rather than adding to the peaks, you put
 25 it where there's room on the roadway to do so. It is, I

1 mean we have letters from the State, from the Park and
 2 Planning, both agreeing that this is safe, that there are no
 3 accident concerns related to this.
 4 MS. ROBESON: Yeah, I'm, I understand that. I'm
 5 just trying to make sure that, that, I mean my duty --
 6 MR. LENHART: Sure.
 7 MS. ROBESON: -- is to flesh out some of the
 8 unanswered questions.
 9 MR. LENHART: Sure.
 10 MS. ROBESON: And all I'm doing now by grilling
 11 you --
 12 MR. LENHART: Sure. And I'm okay. That's good.
 13 MS. ROBESON: I'm, and you don't have to reiterate
 14 what the State --
 15 MR. LENHART: Okay.
 16 MS. ROBESON: -- and the, I'm just trying to make
 17 sure that I get, I have all the answers on the record.
 18 MR. LENHART: Sure. I, I can't say strongly
 19 enough, I mean there are some cases that are a little more
 20 black and white and there are some that are a little more
 21 gray. This, this is a low traffic intensity. Even during
 22 the shift changes, it's a low traffic use. Sight distances
 23 are more than adequate. Speeds are not a problem. The
 24 offset is minor. The, even, the traffic in and out of
 25 Carderock Springs, it's not a heavy traffic roadway. There

1 are, there's some residential traffic that uses it. Not a
 2 significant amount compared to many other locations.
 3 MS. ROBESON: I kind of jumped in and --
 4 MS. GIRARD: No. That's okay.
 5 MR. LENHART: That's all right.
 6 MS. ROBESON: Do you, do you want to, do you have
 7 questions for your own witness?
 8 MS. GIRARD: Like I said, I would much rather have
 9 it all out here, so that's fine. Without going through the
 10 details we won't dwell on, on their analysis, per the
 11 Hearing Examiner, with what SHA and Technical Staff said,
 12 but they did both suggest a potential solution to the issues
 13 that have been raised by the community out here. Did they
 14 not? Are you familiar with that?
 15 MR. LENHART: Um-hmmm. They did. Yes.
 16 MS. GIRARD: And what solution was that?
 17 MR. LENHART: They suggested that if the community
 18 is concerned about the rear end accident pattern when
 19 they're trying to enter their community on Carderock Springs
 20 Drive that they could explore restricting that left turn
 21 movement and allowing that to happen elsewhere, but they
 22 said that they would want to work with the community first
 23 to make sure that that's something that would be agreeable
 24 to them.
 25 MS. GIRARD: And just to make sure it's on the

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1 record, so if that were to happen, does Carderock Springs
2 have alternate means of access --
3 MR. LENHART: It does.
4 MS. GIRARD: -- to its neighborhood?
5 MR. LENHART: Yes.
6 MS. GIRARD: Which could you review those quickly?
7 MR. LENHART: You drive about a quarter mile
8 further west on River Road roughly. Fen, Fenway Drive is
9 another entrance to the community on the left. And if you,
10 before you get to Carderock Springs Drive on westbound River
11 Road, there's a signalized intersection at Seven Locks. You
12 could, there's a left turn lane there, a signalized
13 movement. You can turn left on to Seven Locks, drive down
14 between a third and a half a mile and make a right turn on
15 to Lilly Stone Drive, which puts you into the neighborhood
16 and can, you can get back up to Carderock Springs or
17 anywhere within the neighborhood.
18 MS. GIRARD: And understanding your, your testimony
19 is that the proposed use will have no impact on the safety
20 of the intersection in question. On behalf of the
21 applicant, did you explore manners in which the concerns
22 that were expressed by the community at previous hearings
23 might be improved upon?
24 MR. LENHART: Yes.
25 MS. GIRARD: What, what efforts did that consist

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1 of?
2 MR. LENHART: Well, we, similar to the State
3 Highway Administration's letter, they suggested improved
4 signing for Carderock Springs Drive to increase motorist
5 awareness as you're driving westbound that there's an
6 upcoming intersection.
7 MS. GIRARD: Did you have back and forth with SHA
8 and Planning Staff trying to explore all of the various
9 options?
10 MR. LENHART: We did. Yes.
11 MS. GIRARD: And, and --
12 MR. LENHART: We had a meeting with the State
13 Highway and Park and Planning Staff.
14 MS. GIRARD: Right. And the result was that the
15 increased signage made the most sense?
16 MR. LENHART: That made the most sense. Yes.
17 They, they looked at some of the other things that were
18 inquired about by the Hearing Examiner and felt that those
19 were not applicable or appropriate measures in this case.
20 MS. GIRARD: Another issue explicitly raised by
21 the Board of Appeals was the potential for a crosswalk
22 across River Road to connect the bus stops.
23 MR. LENHART: Um-hmmm.
24 MS. GIRARD: Can you discuss that possibility?
25 MR. LENHART: Yes. That was one of the things we

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1 discussed with the State. And State Highway Administration
2 was pretty adamant that crosswalk would not be appropriate
3 at this location. They said that they felt that it actually
4 may reduce pedestrian safety by placing a crosswalk because,
5 first of all, the volume of pedestrians there is extremely
6 low. It basically just connects the two bus stops on either
7 side of the roadway. And they stated that without a
8 crosswalk, a pedestrian that wants to cross the roadway have
9 more than sufficient sight distance to make a safe crossing.
10 The lack of a crosswalk puts the onus on the pedestrian to
11 make sure that they look in both directions. They have an
12 adequate gap. They can cross safely. If you put a
13 crosswalk in, it, many pedestrians, and I'm sure even from
14 personal experience, you probably have seen many times,
15 you'll pull up to a crosswalk and a pedestrian will walk
16 right in front of you and they don't even look at you.
17 They'll just, they'll walk, they'll, because they think it's
18 a crosswalk. It's State law. That car has to stop. And so
19 it creates a false sense of security for the pedestrian.
20 MS. ROBESON: I guess, you know, I, I know that
21 you guys, I know you're an expert. It just seems counter,
22 counterintuitive to me how do handicapped people get across
23 the road? Seriously. I'm just asking. Say you're, you
24 know, handicapped and you want to cross to, to, I mean --
25 MR. LENHART: I mean there, there's no pedestrian

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1 facilities on either side of the street that are ADA
2 compliant or along River Road in, in either direction. I
3 would say that, I mean you've, you've got a bus stop. Could
4 you have a handicapped person get off a bus on one side,
5 cross and go to the other side? I guess the possibility is
6 there, but I would, I, I would think that a handicapped
7 person would be looking for other means rather than a
8 connection at that point from one bus to another. I mean
9 there are other ways for --
10 MS. ROBESON: Well, the T-2 is going to stop on
11 the south side. Correct? That's what I got from the Staff
12 Report.
13 MR. LENHART: Yes. T-2 stops on the south side.
14 The Ride-On Route 36 stops on the north side.
15 MS. GIRARD: Right. And exploring that a little
16 further, Mr. Garcia seemed to be making the point that there
17 wouldn't be a lot of reason for someone to cross from one
18 bus stop to the other.
19 MR. LENHART: Right.
20 MS. GIRARD: Can you explain that?
21 MR. LENHART: The, the, the, well, they both go to
22 Metro Stations. So, you know, the T-2 goes from Friendship
23 Heights Metro Station --
24 MS. ROBESON: Which is the closest? Correct?
25 MR. LENHART: I didn't measure out distances, but

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1 I think Bethesda is probably very similar in distance. And
2 there's a loop that goes from the Bethesda Station. It
3 comes out, it loops around some of the local streets, comes
4 up in front of our site on our side of the roadway and then
5 loops back to the Bethesda Metro. And that loop continues.
6 We think that that's probably more likely than if somebody
7 were to use the Metro for our, our stop, but that would be
8 the route that they would take. Could they have taken the
9 other one?
10 MS. ROBESON: Why is that?
11 MR. LENHART: I just think it's more, more direct,
12 in my opinion. And again, I didn't measure out exactly what
13 the distances are. Just looking at a map, it kind of seemed
14 like that would be the more direct. Is it possible that
15 someone could take the T-2 and cross over? Sure. But
16 again, there's more than adequate sight distance for safe
17 crossing. State Highway has looked at it. They said that
18 it's adequate and they don't recommend crosswalks.
19 MS. ROBESON: Yeah. And you said, okay. You said
20 that there's a gap because of this, it leads westbound
21 because of the Seven Locks?
22 MR. LENHART: That's correct.
23 MS. GIRARD: Are there other, are there also gaps
24 going eastbound?
25 MR. LENHART: There are signals to the west, but I

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1 don't recall the name of the street, the next signal west,
2 but there, there are signals. They could create some gaps,
3 but I didn't specifically measure that out, but, and the
4 other thing that State Highway looks at is driver
5 expectancy. If they put a crosswalk in, you, you want, you
6 don't want to desensitize, desensitize the motorists. So
7 people driving on River Road, they see a crosswalk, there's
8 an expectation that there's a fair volume of pedestrians.
9 In this case, there's not many pedestrians and it
10 desensitizes the motorists. They see a crosswalk. Nobody
11 in it. Crosswalk. Nobody in it. Crosswalk. Nobody in it.
12 And then one day somebody steps out thinking there's a
13 crosswalk here, that guy has to stop. By law, I have the
14 right of way. And they, they walk out and they get hit
15 because they think they have the right of way. The motorist
16 is not used to seeing anybody in the crosswalk. Really,
17 just look, the lack of a crosswalk actually improves safety
18 because it makes a pedestrian much more aware and
19 responsible for their own safety.
20 MS. ROBESON: Okay.
21 MS. GIRARD: Oh, and one other, the T-2 serving
22 the south side of River, is that, does that go in both
23 directions or only one?
24 MR. LENHART: Only one. I think it's an
25 eastbound. Yeah.

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1 MS. ROBESON: No. I think it, it goes up to
2 Rockville and back.
3 MR. LENHART: It goes to Rockville Metro and
4 Friendship Heights. I have that, I've got a map in here.
5 Let me see the map. Let me confirm that. Make sure that
6 I'm getting that right.
7 MS. ROBESON: I think that's what Staff said.
8 MS. CARLSON: I thought they said --
9 MS. ROBESON: Oh. Maybe I got it wrong.
10 MR. LENHART: I, I may have misspoke on that. I
11 want to make sure I'm --
12 MS. GIRARD: Oh, I may have been reading that
13 wrong too. Eastbound.
14 MS. ROBESON: Yeah, I'm, I'm pretty, well, if you
15 know.
16 MR. LENHART: But --
17 MS. ROBESON: If you don't know, it's --
18 MR. LENHART: That is a loop. It's a roundtrip.
19 So it goes both directions.
20 MS. ROBESON: Okay.
21 MR. LENHART: I apologize.
22 UNIDENTIFIED MALE: And we were giving him --
23 MS. GIRARD: Yeah. Because it's trying to log
24 himself off.
25 MR. LENHART: No. Yeah.

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1 MS. ROBESON: He's not enjoying this?
2 MS. GIRARD: With that, I guess I'll try to wrap
3 it up. Okay. Mr. Lenhart, based on your testimony today
4 and in the previous proceedings in this matter, from a
5 transportation engineering standpoint and based on the
6 additional information available as part of these remand
7 proceedings, will the proposed improvements cause undue harm
8 to the use, peaceful enjoyment, economic value or
9 development potential of abutting and confronting properties
10 or the general neighborhood?
11 MR. LENHART: No.
12 MS. GIRARD: And from a transportation engineering
13 standpoint and again based on the additional information
14 available as part of these remand proceedings, will the
15 proposed conditional use have any detrimental effect on
16 vehicular or pedestrian traffic or safety in this area?
17 MR. LENHART: No, it will not.
18 MS. GIRARD: That's all we have.
19 MS. ROBESON: All right. Thank you. Any
20 questions for Mr. Lenhart?
21 Yes, sir. You, you, can you come to the table and
22 identify yourself?
23 CROSS-EXAMINATION
24 MR. BRUESTLE: Thank you, Mr. Lenhart. My name is
25 Arthur Bruestle. I'm a community, Carderock community

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1 person, neighborhood.
2 MS. MANZANO: We can't hear him.
3 MR. BRUESTLE: My name is Arthur Bruestle. I live
4 in Carderock Springs and I use that entrance at Carderock
5 Drive. And I have --
6 MS. ROBESON: Okay. Just a second.
7 MR. BRUESTLE: Yeah.
8 MS. ROBESON: This isn't the time for testimony.
9 MR. BRUESTLE: I have a question for, for Mr.
10 Lenhart.
11 MS. ROBESON: Okay. Why don't you go ahead and
12 ask?
13 MR. BRUESTLE: Yeah. He measured west, westbound
14 traffic speed. However, eastbound traffic speed is quite
15 high coming down off the hill of River Road approaching
16 Carderock Springs Drive. And my opinion is that the speed
17 coming down the hill is higher.
18 MS. ROBESON: Ask your question. You're not under
19 oath.
20 MR. BRUESTLE: The question is why, why didn't you
21 measure westbound speeds and do you think, I mean eastbound
22 speeds? And do you think eastbound speeds are faster than
23 westbound speeds?
24 MS. ROBESON: Now that's a question. Thank you.
25 MR. BRUESTLE: You're welcome.

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1 MR. LENHART: Several reasons why we did not
2 measure. First and foremost, all of the accident data, all
3 of the safety complaints or concerns have been largely
4 surrounding the rear end accident pattern for westbound
5 traffic and the speeds associated with that movement. And
6 so we wanted to get data based upon that movement. And
7 secondly, I, in looking at it, I have no reason to believe
8 that the speed study there would be significantly different
9 than the speed study for westbound.
10 MS. ROBESON: Based on your observation?
11 MR. LENHART: Based upon my observations. Again,
12 we, we collect free flow speeds. These are not, it's
13 vehicles traveling whichever direction we're looking at.
14 It's a vehicle that's unaffected by somebody in front of
15 them that might keeping them, be keeping them from going
16 slow or somebody that's slowing down for whatever reason.
17 It's free flow, have no BPS. There's a down grade in the
18 other direction, but I don't believe it would be significant
19 difference in the findings for westbound based upon the many
20 studies that I've done. And sight distance is, again, more
21 than what is required to make a safe left turn. That you
22 see traffic, is there a gap, is there somebody coming? If
23 so, you can make your movement. And that's why I did it.
24 MS. ROBESON: Any, anyone else? Or do you have
25 any more questions?

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1 MR. BRUESTLE: Well, this is a new development. I
2 don't think it was considered before in that there's the
3 State or someone has put in a bike lane?
4 MS. ROBESON: Okay. I'm sorry.
5 MR. BRUESTLE: Yes.
6 MS. ROBESON: You've just got to ask a question.
7 MR. BRUESTLE: Oh, okay. Well, I don't think Mr.
8 Lenhart could have taken into account the, the bike lane
9 that comes to an end just short of the bridge?
10 MS. ROBESON: Well, then, Mr. Lenhart, did you --
11 MR. BRUESTLE: Will you --
12 MS. ROBESON: -- take into account the bike lane
13 that ends just short of the bridge? Is that your, your
14 question?
15 MR. BRUESTLE: Yes. Because it's a, something
16 Lillian's thought of.
17 MS. ROBESON: Okay. I just need the question.
18 MR. BRUESTLE: Yeah. That's the question.
19 MS. ROBESON: You're not under oath yet and, you
20 know, so, Mr. Lenhart, did you understand the question?
21 MR. LENHART: I'm not sure that I did.
22 MR. BRUESTLE: May I show him a picture, please?
23 MS. ROBESON: Okay. Yes. Well, is that picture
24 --
25 MR. BRUESTLE: Just taken yesterday. It's a, it's

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1 a development, it's a physical development that occurred
2 very recently, within the last few weeks.
3 MS. CARLSON: So it's not an exhibit in the record
4 currently.
5 MS. ROBESON: Why don't you do this? Why don't we
6 just ask whether he took into account the, the road
7 improvements and the bike lane improvements made as a result
8 of, is it Stoneyhurst Quarry that you're referring to?
9 MR. BRUESTLE: No. It's beyond that. Between
10 Stoneyhurst Quarry and the bridge. If I can show him the
11 picture, I think he'll see what I mean.
12 MS. ROBESON: Do you have any objection?
13 MS. GIRARD: I guess not.
14 MS. ROBESON: Yeah, let's just --
15 MS. GIRARD: I mean this is a little unusual.
16 MS. ROBESON: Let's get through this.
17 MS. GIRARD: Yeah.
18 MS. ROBESON: So I, I have to mark that as an
19 exhibit subject to later objection from Ms. Girard. Okay.
20 MS. GIRARD: Right. Yeah. I mean I'm, right.
21 MS. ROBESON: I --
22 MS. CARLSON: Well, we do have another, we do have
23 a photograph that is part of the exhibit list.
24 MS. ROBESON: That shows this --
25 MS. GIRARD: That would be preferable.

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1 MS. CARLSON: That, that would --
2 MS. ROBESON: Okay. That's better.
3 MS. CARLSON: So this is 148 B. This is a
4 photograph that shows the bike lane that has recently been
5 --
6 MS. ROBESON: Okay. All right. Stop, stop, stop.
7 Okay. You can ask questions, but we can't introduce
8 evidence right now. And I can't get the, let the --
9 MS. CARLSON: This is already in, in, in --
10 MS. ROBESON: I know that.
11 MS. CARLSON: Okay.
12 MS. ROBESON: But you're not testifying.
13 MS. CARLSON: Okay.
14 MS. ROBESON: You're telling me what the picture
15 is and it's not your time for testimony. If you want to, if
16 you want to ask Mr. Lenhart, Mr. Lenhart, are you familiar
17 with what's in the record? The photograph she's talking
18 about?
19 MR. LENHART: I just saw it from across the table.
20 MS. CARLSON: It shows the bike lane and the new
21 parking lot.
22 MS. ROBESON: Well --
23 MR. LENHART: Yeah, yeah. I'm familiar with that.
24 Sure. Fine.
25 MS. ROBESON: Okay. Then no more testimony. Just

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1 ask the question which is whether you took into account
2 those improvements that have just been made recently?
3 MR. LENHART: Yes. I have. My, my speed study
4 was conducted. I don't recall if the, if the bike path was
5 open yet on the date of my speed study. I know there's been
6 construction going on out there, but it has no impact or no
7 bearing on the results of the speed study or the results of
8 my findings. Our, my traffic statement alluded to the, the
9 shared bike path that meanders. In some places there's a
10 bike path. In some places it's shoulder use. This is no
11 different than what's in the master plan. What's intended.
12 What's been testified to that here's a bike path. And you
13 get up to the bridge, the bike path ends and bicyclists have
14 to use the shoulder, which is allowed and, and identified in
15 the master plan. It, it doesn't change the results of my
16 findings.
17 MS. ROBESON: So is your answer yes, you did take
18 into account --
19 MR. LENHART: Yes. I did. I did take those
20 things into account.
21 MS. ROBESON: Okay. Any other questions? Yes,
22 sir. Come forward. Please state your name and address.
23 CROSS-EXAMINATION
24 MR. NOTHMAN: Sure. My name is Eric Nothman. I
25 live at 8417 Fenway Road in Bethesda, Maryland. My house is

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1 one of the closest to the intersection.
2 MS. ROBESON: Okay. Just, just --
3 MR. NOTHMAN: This is my location.
4 MS. ROBESON: Okay. You just, this is, you will
5 get a chance to testify.
6 MR. NOTHMAN: That's fine.
7 MS. ROBESON: You don't have to tell me your
8 location.
9 MR. NOTHMAN: Okay.
10 MS. ROBESON: The only thing you can do is ask him
11 a question.
12 MR. NOTHMAN: Okay. Great. Did you conduct sight
13 distance studies and sight stop studies? And if so, were
14 they to the AASHTO Standards?
15 MR. LENHART: Yes. In conjunction with the civil
16 engineer, we did conduct sight distance analysis.
17 MR. NOTHMAN: Did you --
18 MR. LENHART: And they were in conformance with
19 AASHTO and DOT and State Highway requirements.
20 MR. NOTHMAN: Did you submit the site triangles as
21 evidence to substantiate your claims for sight distances and
22 stopping distances?
23 MR. LENHART: That was submitted by Mr. Pat LaVay,
24 I think, and testified in the last hearing. Yes. If I
25 recall correctly.

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1 MR. NOTHMAN: So, so those things are part of the
2 record?
3 MR. LENHART: Yes.
4 MR. NOTHMAN: You, you have this one?
5 MS. CARLSON: I don't, but --
6 MS. ROBESON: Anyone else?
7 MR. BRUESTLE: I have another question.
8 MS. ROBESON: Okay. Just a question.
9 MR. BRUESTLE: Yeah.
10 MS. ROBESON: And remember, I, you know, the site
11 studies are already part of the record.
12 MR. BRUESTLE: Yeah.
13 MS. ROBESON: So go ahead.
14 RE-CROSS EXAMINATION
15 MR. BRUESTLE: Mr. Lenhart said that the alignment
16 to the Carderock Drive and Artis driveway are not exactly
17 opposite. They're roughly 30 feet different.
18 MS. ROBESON: No, you --
19 MR. BRUESTLE: Okay.
20 MS. ROBESON: -- ask the question.
21 MR. BRUESTLE: And the question is if someone
22 pulls out of Artis and wants to make a left-hand turn and
23 somebody comes out at Carderock and wants to make a right-
24 hand turn and those streets are not aligned, who has the
25 right of way?

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1 expert opinion.
2 MS. ROBESON: I, I don't understand, I don't
3 understand that --
4 MR. NOTHMAN: Okay. You can look at, you can look
5 at two entrances --
6 MS. ROBESON: In layman's terms.
7 MR. NOTHMAN: In layman's terms, you could look at
8 it as two Ts or you could be looking at it as a cross. So
9 if I were to just use my fingers for moment, this would be a
10 cross that otherwise would be a T- and a T- unrelated.
11 MS. ROBESON: But how, I guess that --
12 MR. NOTHMAN: That would be two intersections
13 versus one.
14 MS. ROBESON: If you're, I think I may know what
15 you're getting at, which is, well, I'm going to let Mr.
16 Lenhart answer.
17 MR. LENHART: I think it would be considered one
18 intersection. I mean they're offset slightly, but, you
19 know, they, they, they do operate together, I would say.
20 MR. NOTHMAN: Okay. And as an intersection, do
21 you consider this to be a misaligned intersection?
22 MR. LENHART: They're not, again, they are not
23 directly across from each other. There's a slight offset.
24 MR. NOTHMAN: It's really a yes or no question.
25 MR. LENHART: Slight offset.

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1 MR. NOTHMAN: So that would be a yes? It's a
2 misaligned intersection.
3 MS. GIRARD: He's answered the question. I mean
4 --
5 MS. ROBESON: Okay. He, he did answer the
6 question.
7 MR. NOTHMAN: Okay. And as a misaligned
8 intersection, its offset is about 25 feet.
9 MS. GIRARD: Objection.
10 MS. ROBESON: Yes.
11 MR. NOTHMAN: Based on the drawings.
12 MS. ROBESON: Sustained. Not, not, there's no --
13 MR. NOTHMAN: Okay. I'm sorry. I'll, I'll ask it
14 a different way.
15 MS. ROBESON: No. No. Hold on. You have to wait
16 for me to rule on the objection.
17 MR. NOTHMAN: Sure. Sorry.
18 MS. ROBESON: You can't just keep going. So I
19 sustain it. You need to move on to another question.
20 MR. NOTHMAN: Okay.
21 MS. ROBESON: How many more questions? I thought
22 you said you only had two? How many more questions?
23 MR. NOTHMAN: A couple.
24 MS. ROBESON: Okay. Go ahead.
25 MR. NOTHMAN: So that the misaligned intersection,

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1 is that generally considered --
2 MS. ROBESON: Well, wait.
3 MR. NOTHMAN: He's an expert.
4 MS. ROBESON: He said it was offset. He didn't
5 say it was misaligned. So I guess --
6 MR. NOTHMAN: Offset means misaligned.
7 MS. ROBESON: Is there any, I don't know what --
8 MR. NOTHMAN: It's a yes or no question.
9 MS. ROBESON: Well, misaligned connotes --
10 MR. LENHART: A problem.
11 MS. ROBESON: -- a problem.
12 MS. GIRARD: Yes.
13 MR. NOTHMAN: That's a technical term. I can find
14 it for you if you like.
15 MS. CARLSON: Okay.
16 MS. ROBESON: No.
17 MS. GIRARD: Again, this is, this isn't just
18 questions.
19 MR. NOTHMAN: He's an expert and he's avoiding the
20 question.
21 MS. ROBESON: No. He, okay. That's it guys.
22 Take a break. Take a break. He, in my opinion, he's not
23 avoiding the question. I'm having trouble understanding
24 what you mean by your questions. And if I'm having a little
25 trouble understanding what you're meaning, I'm assuming he's

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1 trying to answer accurately. And it, it's not helpful in
2 these proceedings to start accusing people. All right.
3 I've found that. So we're all going to get along.
4 I have a question. Is there any difference, is
5 there any technical term for, in the, as a traffic engineer
6 for misaligned?
7 MR. LENHART: No. Not that I can think of. Not a
8 technical term.
9 MS. ROBESON: Okay. So what is, what do you want
10 to get at? What is your bottom line question?
11 MR. NOTHMAN: Well, the gentleman is an expert. I
12 thought I would ask his opinion that when you have a
13 misaligned intersection, if there are special safety
14 considerations that are well-known and well-understood and
15 common, commonly understood.
16 MS. ROBESON: Okay. Instead of misaligned, I'm
17 going to rephrase it.
18 MR. NOTHMAN: I'm sorry. I'm, I'm, I'm personally
19 using this because I have a good friend who happens to be
20 the Deputy Executive Director --
21 MS. GIRARD: Objection.
22 MS. ROBESON: Yes. Yeah. Yes.
23 MR. NOTHMAN: -- of Contra Costa, the
24 Transportation Authority.
25 MS. ROBESON: Okay. You must listen to my

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1 rulings.

2 MR. NOTHMAN: Okay.

3 MS. ROBESON: You are going to get a chance to

4 testify. All right. Getting this many objections, I'm

5 trying to stick to the rules of the road. We're never going

6 to get through this hearing. You're going to get a chance

7 to say everything you want to say. For the time being, I

8 think what you're getting at is, for the time being, is this

9 offset dangerous is what, or, no. Your question was are

10 there safety measures that people typically take when the,

11 when intersections are offset? No.

12 MR. NOTHMAN: I'm, no. I'm sorry. No. My, my

13 question is slightly different. I was just asking is it a

14 commonly, misaligned intersections, are they commonly known

15 in your industry to, to be a safety concern?

16 MS. ROBESON: Well, I already said you, I don't --

17 MR. NOTHMAN: I cannot, I cannot ask that

18 question?

19 MS. ROBESON: You can ask the question. You can't

20 use misaligned.

21 MR. NOTHMAN: I see. Okay.

22 MS. ROBESON: Find another way to ask it.

23 MR. NOTHMAN: When you, that's fine. That's fine.

24 Sorry. When you have this type of offset within an

25 intersection, is it, is there, is it a common view within

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1 your industry that that creates safety issues?

2 MR. LENHART: It really depends. And so, the

3 Hearing Examiner, if you, you're the one, you mentioned the

4 word offset. That's probably the best, the best term to

5 describe this. Offset. But --

6 MS. ROBESON: Well, when they don't T up --

7 MR. LENHART: Yes, it's --

8 MS. ROBESON: -- you know, I know, and I know

9 typically from the cases we have that SA, or MCDOT tries to

10 T them up.

11 MR. LENHART: Yes.

12 MS. ROBESON: So can you just elucidate a little

13 on that?

14 MR. LENHART: Yes. And, and so, part of my, part

15 of my experience is I worked at State Highway Administration

16 for 10 years. This is part of the record. I was the

17 division chief for the Access Permits Division for the

18 statewide Department of Transportation. And in an ideal

19 situation, you have a clean slate. You'd like to have a

20 perfect alignment. Many times --

21 MS. ROBESON: And why is that? Just for the

22 record, why, why do they try to get a perfect alignment?

23 MR. LENHART: Just to reduce the offset. It just

24 makes a cleaner intersection if there --

25 MS. ROBESON: And what does that mean? A cleaner

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1 intersection? Are the turning movements safer? Or I mean

2 what does that mean?

3 MR. LENHART: The turning movements align better,

4 particularly when you have, if you have a higher --

5 MS. ROBESON: What is --

6 MR. LENHART: I'm sorry.

7 MS. ROBESON: What does align mean?

8 MR. LENHART: If someone is making a, let's, let's

9 say a left turn into Carderock Springs Drive --

10 MS. ROBESON: From?

11 MR. LENHART: -- from westbound River Road.

12 MS. ROBESON: Okay.

13 MR. LENHART: And a left turn into our site at the

14 same time from eastbound River Road, so you have two types

15 of offsets.

16 MS. ROBESON: I understand.

17 MR. LENHART: The current offset --

18 MS. ROBESON: I'm with you.

19 MR. LENHART: The current offset, if those left

20 turns are happening, they don't block each other because

21 they're offset at 20, 20 to 25 feet.

22 MS. ROBESON: Oh, I understand. I, I -- do you

23 understand what he's saying?

24 MR. NOTHMAN: I think I'm following him. Yes.

25 MS. ROBESON: Yeah.

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1 MR. LENHART: If, if the, if they were offset in

2 the other direction --

3 MS. ROBESON: Yes.

4 MR. LENHART: -- where our site access was

5 basically in the middle of the bridge, and you had a queue

6 of vehicles that stop to make a left turn into Carderock

7 Springs.

8 MS. ROBESON: Westbound?

9 MR. LENHART: Westbound. And they backed up

10 across the bridge and blocked the driveway for our site,

11 then somebody driving eastbound would not be able to make a

12 left turn because the driveway would be blocked. In this

13 case, they're slightly offset in the other direction. So

14 the main line left turns don't block each other. That --

15 MS. ROBESON: What do you mean the main line left

16 turns?

17 MR. LENHART: The River Road left turns, people on

18 River Road trying to make a left turn on to Carderock

19 Springs or the site can do so freely. They're not, they're

20 not inhibited by each other. They're not blocked by a queue

21 for one or the other.

22 MS. ROBESON: I understand, okay. That --

23 MR. LENHART: And so, that's the foremost safety

24 concern that you want to look at. To make sure that people

25 on River Road are not impacted and can turn and can get out

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1 of the way. And so, we're good here because it is, it's
2 slightly offset to the good direction for that situation.
3 What it does do, the slight offset, is now you've got
4 somebody making a left turn from our site or from Carderock
5 Springs. They have to follow the rules of the road and, you
6 know, the first one that gets there makes their left turn or
7 they, you know, they, one waves the other one on and they
8 take turns in moving out. That doesn't really cause a
9 safety problem. It's not, it doesn't result in someone
10 sitting in River Road with traffic barreling up on them
11 while they're waiting to make their turn. It doesn't create
12 a safety problem. And it's very low volume movement. The
13 left turns out of our site, we've already testified that the
14 volume is very low. And the left turns out of Carderock
15 Springs are also very low. It's, it's largely right out and
16 left in. So it, it's a very low potential for a problem.
17 MS. CARLSON: Are you done?
18 MR. NOTHMAN: Yeah, I think that's a, a, that's it
19 for my questions. But I thank you for, I'll take my
20 opportunity to, to speak on the same topic at a later time.
21 MS. ROBESON: Your question was helpful to me. So
22 thank you for your question.
23 Anyone else? Yes, sir. Please come forward. And
24 please try and remember it's just questions now.
25 CROSS-EXAMINATION

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1 MR. MANZANO: My name is Mr. Manzano. In your
2 testimony, you present data that is to some extent
3 incidental and, and therefore voluntary and incomplete. My
4 question to you is what information, be it by volume or by
5 severity, would make you change your mind? Like a death at
6 that corner, at that intersection?
7 MS. GIRARD: Is, can we --
8 MS. ROBESON: I'm, I'm not sure, I don't
9 understand your question.
10 MR. MANZANO: I'm asking is it --
11 MS. ROBESON: You're saying, no. Let me just give
12 it a try. And you correct me if I'm wrong. Okay. Are you
13 saying what factors would make the safety issue more
14 pressing to solve or what would make him say it's unsafe
15 relative to other intersections? Is that what you're
16 saying?
17 MR. MANZANO: What I'm saying is as an expert, he
18 is presenting an opinion based on information that he has
19 received. That information he's received is significantly
20 --
21 MS. ROBESON: Okay. Well, that's part of your
22 testimony. Is there any --
23 MR. MANZANO: Then I'm asking his, therefore,
24 since his, his position is in part an opinion --
25 MS. ROBESON: Yes.

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1 MR. MANZANO: I would like to know what change in
2 data would make him change his opinion?
3 MS. ROBESON: Okay. What, okay.
4 MS. GIRARD: I, I think I have to object. I mean
5 now we're speculating as to how bad, you know, that's just
6 outside the scope of these proceedings to say his conclusion
7 is that based on the data he has there is no issue. To say,
8 well, when would there be an issue. Is, it's just --
9 MS. ROBESON: Well, I can, he did --
10 MS. GIRARD: -- speculative.
11 MS. ROBESON: -- testify based on my question
12 about the severity index. And is there data if, is there
13 data that would make you change your opinion?
14 MR. LENHART: That's a very difficult question to
15 answer.
16 MS. ROBESON: Okay.
17 MR. LENHART: Because it does lead into
18 speculation. It's, as Erin said, we have data that shows --
19 MS. ROBESON: Okay. You don't have to repeat, I'm
20 not trying to, to cut you off. Well, I am a little bit, but
21 --
22 MR. LENHART: It's okay.
23 MS. ROBESON: But, you know, I, I've gotten all
24 your data.
25 MR. LENHART: I wouldn't feel comfortable

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1 answering the question because it's, I'd be making up things
2 that may not --
3 MS. ROBESON: Scenarios?
4 MR. LENHART: Yeah. That, that, I mean --
5 MS. ROBESON: Okay.
6 MR. LENHART: -- that don't apply today.
7 MS. ROBESON: I have an idea. I have an idea.
8 After you testify about why you think his data is
9 incomplete, he might be able to answer your question more
10 directly.
11 MR. MANZANO: Would you want me to elaborate on
12 the, on the incompleteness now?
13 MS. ROBESON: No. No. Your time is coming. I
14 swear. Your time is coming.
15 MR. MANZANO: I agree.
16 MS. ROBESON: And we're getting --
17 MR. MANZANO: I resign.
18 MS. ROBESON: No. Don't resign.
19 MR. MANZANO: I mean I, I retire my, my, my
20 questioning now.
21 MS. ROBESON: Okay. You're, I think --
22 MR. MANZANO: I will come again at a later date.
23 MS. ROBESON: I think it's going to be more
24 helpful if he can respond to what you're talking about. And
25 so, we'll have him come back after you testify and try and

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1 address what the issues you're raising. Okay. This is,
2 it's hard to do a legalese kind of thing, but I've got to do
3 it.
4 MR. MANZANO: I just note, I guess for the record
5 --
6 MS. ROBESON: No, don't, no, no, no. Don't, no.
7 MR. MANZANO: On, based on his, his, his
8 presentation --
9 MS. ROBESON: Now --
10 MR. MANZANO: -- he does recognize --
11 MS. ROBESON: No.
12 MR. MANZANO: -- that he has --
13 MS. ROBESON: No.
14 MS. GIRARD: Objection.
15 MS. ROBESON: That is an objection. You guys,
16 please, please --
17 MR. MANZANO: Didn't he testify saying that his
18 information is incomplete?
19 MS. ROBESON: No. He did not.
20 MR. MANZANO: Or untimely?
21 MS. ROBESON: No. Stop.
22 MR. MANZANO: Stopped.
23 MS. ROBESON: I will not have this. I will not
24 have this. It's my job to keep this in order. And when I
25 stop, you must stop or we'll, we're not going to get through

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1 this case. And everybody is going to get a chance to get
2 their say. I'm trying to tell you this, I'm trying to work
3 with you to get your questions answered. And this is not
4 helping me. All right? All right. Yes. Okay. Now, let
5 me ask you, I've got two, two, are these going to be
6 questions and not, and they can only be questions based on
7 what he's testified to. Okay. If you promise that it's
8 only questions, you can come up, you can come up. Come on
9 up. Just identify yourself for the record.
10 CROSS-EXAMINATION
11 MS. GUEST: Linda Guest. I understand totally
12 about the crosswalk issue. I'm disappointed of course.
13 MS. ROBESON: Question, question.
14 MS. GUEST: With that, sorry. The crosswalk on
15 River Road east of Wilson, how is that different from a
16 crosswalk across at the Artis entrance?
17 MR. LENHART: Off the top of my head, I, I, I'm
18 not familiar right now with the details on that. I mean I
19 have to look into that, but I, I, I don't think it's
20 applicable and --
21 MS. GUEST: It's the same road.
22 MS. ROBESON: What, ah.
23 MS. GUEST: Whoops. Sorry.
24 MS. ROBESON: Please.
25 MS. GUEST: I'm sorry. I'm sorry.

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1 MS. ROBESON: It's only going to delay --
2 MS. GUEST: Okay.
3 MS. ROBESON: -- you're getting to your turn.
4 Okay. When, when you testify, you can say why you think it
5 isn't. All right.
6 MS. GUEST: Can we request information on that?
7 MS. ROBESON: This is the hearing. We've had a
8 lot of time, a lot of time to get all the information. And
9 if he doesn't have it, he's, can't answer if he doesn't
10 know. So I'm not going to hold the record open for any
11 additional information. Okay.
12 MS. GUEST: Okay. Um-hmmm.
13 MS. ROBESON: Yes. Please come forward.
14 CROSS-EXAMINATION
15 MS. LEE: My name is Suzanne Lee. A question with
16 regarding intersection. Is this a private driveway to
17 service a new commercial facility?
18 MS. GIRARD: Objection. Is he, is she asking him
19 to characterize whether this is commercial or residential?
20 If there's --
21 MS. LEE: No. No. The characterization is it
22 appears, and I want to make it a question, but I want to
23 make sure that you understand the context?
24 MS. ROBESON: No.
25 MS. LEE: Okay. Okay.

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1 MS. ROBESON: Don't --
2 MS. LEE: No, no. Is this --
3 MS. ROBESON: Just ask your question.
4 MS. LEE: Is this, is, you described this as an
5 offset intersection. Is this an intersection of two public
6 highways?
7 MR. LENHART: No.
8 MS. LEE: So is there a different standard that
9 would be used for the intersection of two public highways?
10 MS. ROBESON: Now that is a good, that is the way
11 you do it. I just want to give a pat on the back. But now
12 you can answer the question.
13 MR. LENHART: The State Highway Administration
14 typically looks for a separation of 750 feet between public
15 highways.
16 MS. LEE: Is there 750 feet between these two
17 roads?
18 MR. LENHART: No, but it's not a public highway.
19 MS. LEE: Okay. Is it a private, without getting
20 to this whether a right to private user --
21 MS. ROBESON: Don't, don't.
22 MS. LEE: All right. Is it, is it a private --
23 MS. ROBESON: You're doing so good.
24 MS. LEE: Is it a private driveway leading to a
25 new commercial senior housing facility?

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1 MS. GIRARD: Objection. We're back at commercial.
2 MS. ROBESON: Well --
3 MS. LEE: To a new senior housing facility?
4 MS. GIRARD: I'm fine with that question.
5 MR. LENHART: Yes.
6 MS. LEE: Okay.
7 MS. ROBESON: You, you did good. Not that
8 everybody else didn't, but we're learning so that's good.
9 MS. LEE: Okay. Are there different standards
10 that you would apply for a private driveway to a senior
11 housing than you would apply to a road that is considered to
12 be part of an intersection to, to public highways?
13 MR. LENHART: Yes. They're different facilities.
14 MS. LEE: And how are those different?
15 MR. LENHART: Different in that the State Highway
16 Administration has a general guideline of 750 feet spacing
17 between public roadways. There are many public roadways
18 with less than 750 feet because environmental features,
19 geometric features, land, land use zoning, property shapes
20 and sizes often don't allow you to provide 750 feet spacing
21 so you'll get many cases there's, there's less. In some
22 cases there's more where you, if you have a huge frontage,
23 you know, you can, you might have a situation where you
24 provide more. Same thing applies with private driveways.
25 The standard is much less. The, the, I mean the, the only

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1 standards out of COMAR really are, relate to the offset from
2 the private, or from the property line they look for a 10
3 foot tangent curb section off of the edge of the property
4 line and then a radius for the driveway and that's --
5 MS. ROBESON: A turning radius?
6 MR. LENHART: -- a turning radius to enter the
7 driveway. And then they have some offsets from
8 intersections on the same side of the roadway. But in
9 COMAR, I don't, I don't believe there's anything
10 specifically to separation or spacing.
11 MS. LEE: So when you refer to it as an
12 intersection, you're not doing it so in terms of a state,
13 two state roads or two, two public roads?
14 MR. LENHART: No. And, and we are coordinating
15 with State Highway's Access Permits Division. They have
16 reviewed this many times and are okay and have approved the
17 driveway as shown.
18 MS. LEE: Thank you.
19 MS. ROBESON: You'll have to save it. He will be
20 back. Anyone else? All right. Seeing none, we're going to
21 take a five minute break.
22 MS. GIRARD: Can I ask like three questions on
23 redirect?
24 MS. ROBESON: Oh, yes. Yes. You're allowed to do
25 that.

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1 MS. GIRARD: It's all right. I won't belabor it
2 because I know he's coming back, but --
3 MS. ROBESON: Yeah. You're allowed to do that.
4 REDIRECT EXAMINATION
5 MS. GIRARD: Okay. In response to questions that
6 were asked, you, you said you were familiar with the January
7 15th, 2016 letter from Park and Planning?
8 MR. LENHART: Yes.
9 MS. GIRARD: And can you read for the record the
10 highlighted, or the underlined portions? This is on page 3.
11 MR. LENHART: Yes. It states that, in quotes, It
12 should be further noted that the, that according to SHA the
13 intersection meets all of their guidelines and the American
14 Association of State Highway and Transportation Officials,
15 which is the AASHTO book that was referenced guidelines,
16 which includes measures of safety.
17 MS. GIRARD: And that's your understanding?
18 Correct?
19 MR. LENHART: That's my understanding. That is,
20 that was Mr. Garcia's preparation of this letter as a result
21 of our meeting between State Highway Administration and Park
22 and Planning Staff.
23 MS. GIRARD: And similarly, the January 21st, 2016
24 letter from State Highway regarding their speed studies, can
25 you read the underlying language there, please?

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1 MR. LENHART: Yes. In response to the speeding
2 concerns along Maryland 190, our office conducted
3 comprehensive speed studies along both directions of
4 Maryland 190 at Carderock Springs Drive.
5 MS. GIRARD: So while you only connected within
6 one, it's your understanding that State Highway conducted in
7 both?
8 MR. LENHART: That's correct.
9 MS. GIRARD: That's all I have.
10 MS. ROBESON: Okay. With that, we're going to
11 take a five minute break. Are you going to call Mr. LaVay?
12 MS. GIRARD: I, yeah. Yes, I will.
13 MS. ROBESON: Okay. So please be timely. Thank
14 you.
15 (OFF THE RECORD.)
16 (ON THE RECORD.)
17 MS. ROBESON: Now is the gentleman here that, yes.
18 You're here. I have a question. Would it be better instead
19 of calling Mr. LaVay now because he doesn't know, I think
20 you have some testimony that might impact the sight, sight
21 distance study. And since you can't testify to that now,
22 would it be better for you to put your testimony on and then
23 Mr. LaVay can answer your questions? Do you follow what I'm
24 saying? Since you can't, since you can't testify as to why
25 you think the sight distance standards, you can't testify at

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1 this point why you think the sight standards are, you know,
2 I, I think what you're getting at is the study was not
3 correct, would it be better to have Mr., have you put your
4 testimony on and then have Mr. LaVay come back and answer
5 specific questions?
6 MR. NOTHMAN: No, I'm, I'm fine with the way that
7 it's been proceeding. I didn't realize that the traffic
8 folks for Artis would be here and so I'm not as well
9 prepared as I would have otherwise been. And I, I am
10 afraid, thank you very much for helping me to understand the
11 best way to phrase, you know, it. And I'll, I can be very
12 careful to try not to introduce any testimony in asking a
13 couple questions. I just have a few questions. I guess if
14 I, I have, it ultimately would be, is that it?
15 MS. CARLSON: Yes.
16 MR. NOTHMAN: To be able to get some
17 clarification. So I could go either way. That said, I'm
18 very happy to ask a couple of questions and pursue the line
19 of reasoning that we've followed so far.
20 MS. ROBESON: Well, I'd kind of like to hear at
21 some point you obvious, okay.
22 Ms. Girard, what do you think?
23 MS. GIRARD: I'm fine with how you're outlining
24 it. Honestly, we weren't planning on calling Mr. LaVay to
25 talk and it probably would be more in manner of rebuttal

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1 anyway.
2 MS. ROBESON: Right. That's what I was thinking.
3 MS. GIRARD: Yeah.
4 MS. ROBESON: Do you have any other witnesses?
5 MS. GIRARD: No.
6 MS. ROBESON: So what we're going to do is I would
7 like to hear, are you still going to testify? Because I
8 would like to hear what you're going to --
9 MR. NOTHMAN: Oh, yes. I, I certainly will
10 testify. You know, one of the reasons why I think I would
11 like to be able to have the opportunity to ask the gentleman
12 some questions, I'd like it to be part of the record the way
13 that they've done the study.
14 MS. ROBESON: Yeah. That's fine. That's great.
15 So I think that the best way to do this without getting in
16 the weeds of the judicial rules is sometimes they work, but
17 not always, is have the citizens testify now and then we'll
18 have Mr. LaVay and/or Mr. Lenhart come back and address your
19 questions specifically so we don't have to say don't
20 testify, don't testify. So I think that's the best way to
21 do it. So with that, I will start, Ms. Carlson will start
22 with the opposition case. And I was very impressed. I see
23 the model over there. I was very impressed with your model.
24 So I don't know if you have a particular order, but let's go
25 ahead with your case.

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1 MS. CARLSON: Good morning. My name is Anne
2 Carlson and I have been a resident of Carderock Springs and
3 a user of River Road for over 25 years. I'm here today to
4 again express my deep concern about the danger the Artis
5 Senior Living facility poses to its staff, patients and
6 visitors, to our community and to other users of River Road.
7 I fear my testimony will be inadequate to rebut the
8 statements of the State Highway Administration, Montgomery
9 County Planning Board Staff, Artis and its paid consultants,
10 but I will still try because common sense and common decency
11 to our neighborhood and other users of River Road compel me
12 to do so. And while I am a member of the Carderock Springs
13 Citizens --
14 MS. ROBESON: Wait. I didn't swear you in.
15 MS. CARLSON: Oh, sorry.
16 MS. ROBESON: I, I apologize. Now, I'm forgetting
17 the rules of the road. Please raise your right hand. Do
18 you solemnly affirm under penalties of perjury that the
19 statements you're about to make are the truth, the whole
20 truth and nothing but the truth?
21 MS. CARLSON: I do.
22 MS. ROBESON: I apologize. Go ahead.
23 MS. CARLSON: And while I am a member of the
24 Carderock Springs Citizens Association Board, I am not
25 speaking on its behalf today though it is similarly

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1 concerned by the Artis project. Before launching into my
2 arguments against the approval of the Artis facility, I wish
3 to thank you, Examiner Robeson, for taking considerable time
4 to hear the concerns of those of us objecting to the project
5 and to aggressively seek information about the impact it
6 will have on the safety of River Road. Unlike many of you,
7 this is my first rodeo in the world of Montgomery County
8 business development so I have appreciated your patience
9 with me as well. That said, thanks to the decision by
10 members of the Montgomery County Board of Appeals in
11 December. We are here again to talk about the impact of the
12 proposed use on traffic safety along River Road and
13 Carderock Springs Drive, including at off peak hours and
14 possible measures to both calm traffic and improve safety in
15 this location, including but not limited to turn lanes,
16 speed limits, speed cameras or other speed recording devices
17 and crosswalks. Alas, based on correspondence from and
18 reports of conversations with State Highway Administration
19 staff, it appears that none of these measures are possible.
20 So I have to ask does it make any sense to take what is
21 already a difficult intersection and add more traffic and
22 more turning movements with no counter measures? Indeed,
23 it's important to mention again that the SHA has seen the
24 need for turning lanes at every other project along this
25 stretch of River Road, including the River Quarry and River

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1 Hill townhouse developments. And there are photographs here
2 that --
3 MS. ROBESON: Now, can you just tell me --
4 MS. CARLSON: Yeah. That was Exhibit 148(a),
5 shows the new turning lane that was put in for the River
6 Quarry townhouse developments.
7 MS. GIRARD: Can, can you, thanks.
8 MS. CARLSON: That's 148(a). Also 148(a) is the
9 turning lane for Seven Locks Road.
10 MS. ROBESON: So it's, just a second.
11 MS. CARLSON: Yep. Yep, yep.
12 MS. ROBESON: Let me catch up with you. Okay.
13 Okay. I have it. The first photo is 148(a)(i). (a)(i).
14 Okay. And what is that?
15 MS. CARLSON: These are photographs of the turning
16 lanes into the River Quarry townhouse development.
17 MS. ROBESON: Okay.
18 MS. CARLSON: The River Hill townhouse development
19 and the Seven Locks/River Road intersection.
20 MS. ROBESON: Okay. Do you have any objection to
21 these, Ms. --
22 MS. GIRARD: No.
23 MS. ROBESON: Okay.
24 MS. CARLSON: Also there are --
25 MS. ROBESON: Now can we go to 148(ii)? I'd, I'd

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1 like to go through these and just for the record --
2 MS. CARLSON: Okay. Yeah.
3 MS. ROBESON: -- it's not, you attached multiple
4 --
5 MS. CARLSON: Right. So 148(a) --
6 MS. ROBESON: So --
7 MS. CARLSON: -- (i) --
8 MS. ROBESON: (ii), yeah.
9 MS. CARLSON: -- or (i) or I don't --
10 MS. ROBESON: Yeah. We went through that one.
11 Right?
12 MS. CARLSON: Right. Okay.
13 MS. ROBESON: 148(a)(ii).
14 MS. CARLSON: Yep. That's the Seven Locks
15 intersection.
16 MS. ROBESON: And is this westbound or eastbound?
17 MS. CARLSON: This is westbound. Well, it shows
18 both, but westbound.
19 MS. ROBESON: Okay.
20 MS. CARLSON: And also the intersection of 148(a).
21 I don't know. Do you call them three i's or three 1's. I'm
22 not sure what the --
23 MS. ROBESON: Little 3. Yeah, I know.
24 MS. CARLSON: And that is an intersection of the
25 River Hill townhouse development.

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1 MS. ROBESON: Is looking eastbound or westbound on
2 --
3 MS. CARLSON: Westbound.
4 MS. ROBESON: Westbound on River.
5 MS. CARLSON: Yeah.
6 MS. ROBESON: Okay.
7 MS. CARLSON: As well as the new River Quarry
8 Condominium Towers which --
9 MS. ROBESON: And is --
10 MS. CARLSON: That's 148(b) --
11 MS. ROBESON: (i).
12 MS. CARLSON: -- (i), which --
13 MS. ROBESON: Or whatever. Okay. And, go ahead.
14 I'm sorry.
15 MS. CARLSON: -- shows a, a new center median that
16 the Quarry Springs Development has installed, which is kind
17 of a curious cement barrier with turning lanes in and out of
18 the new Quarry Springs Condominium Towers.
19 MS. ROBESON: So the Quarry Springs --
20 MS. CARLSON: That's the old Stoneyhurst Quarry.
21 MS. ROBESON: Okay. Is this westbound on River
22 Road generally?
23 MS. GIRARD: Or is the truck facing eastbound?
24 MS. ROBESON: The truck is heading towards the
25 Beltway. It's eastbound.

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1 MS. GIRARD: Eastbound. Okay.
2 MS. ROBESON: Okay.
3 MS. CARLSON: Truck is heading towards the
4 Beltway.
5 MS. ROBESON: Okay. I get it.
6 MS. CARLSON: And then 148(d).
7 MS. ROBESON: (d). Wait. I have (d)(ii).
8 MS. CARLSON: Well, I'm just using 1, right now,
9 148.
10 MS. ROBESON: Well, can we just go through all of
11 them and then you can just say the number. I have to have
12 you identify for the record --
13 MS. CARLSON: Right. I'm just talking about the
14 turning lanes. That's --
15 MS. ROBESON: I --
16 MS. CARLSON: So these are photographs of the
17 turning lanes.
18 MS. ROBESON: I know, but these aren't formally
19 admitted yet. I just need to know, I'd like to go through
20 these and if you could tell me what the perspective is and
21 what they show for the record. That's kind of one thing I
22 have to do because it's not clear.
23 MS. CARLSON: So --
24 MS. ROBESON: So 148(b)(ii).
25 MS. CARLSON: I'm sorry. Which one are you --

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1 MS. ROBESON: It's this one. There's a bike lane?
2 MS. CARLSON: It's, oh, the, with the bike lane.
3 Yeah. Yeah. Okay.
4 MS. ROBESON: Big bike lane thing?
5 MS. CARLSON: I think I got it out to show --
6 MS. GIRARD: Yeah.
7 MS. ROBESON: And then it looks like a pathway. I
8 messed you up.
9 MS. CARLSON: You did.
10 MS. ROBESON: I did. Do you want to, if you want
11 to approach, I have them here. And then you don't have to
12 --
13 MS. CARLSON: Okay. So this one, what happened to
14 that one I had? Well, so, this is 148(b)(i).
15 MS. GIRARD: The right, it's on the right hand.
16 MS. ROBESON: This is 148(b)(ii).
17 MS. CARLSON: Oh, 148(b)(ii). Okay.
18 MS. ROBESON: Can you tell me what that is?
19 MS. CARLSON: This shows the bike lane coming to a
20 conclusion.
21 MS. ROBESON: The bike lane where?
22 MS. CARLSON: On River Road heading westbound.
23 MS. ROBESON: Approximately, I'm not sure, are
24 you, oh, this is just, is this just before the bridge? Is
25 that Cabin John Bridge? Or --

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1 MS. CARLSON: In the middle of, of the photograph
2 is where the Cabin John Bridge is. The, the bike lane is
3 ending just shortly before the bridge.
4 MS. ROBESON: Is it Cabin John Bridge or Cabin
5 John Creek Bridge?
6 MS. CARLSON: Probably Cabin John Creek. I don't
7 know that it has a name. I'm not aware that it has a name.
8 MS. ROBESON: Okay. And then we have 148(b)(iii),
9 which I have as, it looks like a parking area.
10 MS. CARLSON: Right. This is a new parking lot
11 that just popped up last month. I presume it was a State
12 Highway parking lot. Maybe Park and Planning put it in.
13 I'm not sure, but it, it provides, this is a new parking lot
14 that was just paved over. There had been some informal
15 parking there previously. There was a vegetable stand there
16 years ago, but State Highway kicked them out of it. This
17 parking lot just showed up maybe January, December. Just,
18 just very recently. And there, and there are no signs for
19 it.
20 MS. ROBESON: Okay. Now proceeding, I have --
21 MS. CARLSON: We have --
22 MS. ROBESON: 148(c)(i).
23 MS. CARLSON: Okay.
24 MS. ROBESON: It looks like you're on the bridge?
25 MS. CARLSON: Right. That, that's, yes. We're on

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1 the bridge and this photograph is looking up the hill
2 westbound showing the guard rail that exists at the Artis
3 driveway.
4 MS. ROBESON: Okay.
5 MS. CARLSON: And --
6 MS. ROBESON: And then 148(c)(ii).
7 MS. CARLSON: Is, again --
8 MS. ROBESON: It looks like --
9 MS. CARLSON: -- showing, looking eastbound, again
10 just a, a view of the guard rail, bridge and shoulder.
11 MS. ROBESON: Thank you. And then 148(c)(iii).
12 MS. CARLSON: Is showing the intersection of
13 Carderock Springs Drive with River Road and the Artis
14 driveway across looking eastbound.
15 MS. ROBESON: Thank you. And then I think you
16 have some more?
17 MS. CARLSON: There's 148 --
18 MS. ROBESON: (d). Now we're in the 148(d)
19 series.
20 MS. CARLSON: That's showing the intersection of
21 Fenway Drive and River Road.
22 MS. ROBESON: Are you looking west?
23 MS. CARLSON: And Clewerwall. I am looking east
24 in that photograph.
25 MS. ROBESON: Okay. And then 148(d)(ii)?

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1 MS. CARLSON: That is showing the intersection of
2 River Road with Congressional Country Club and the Norwood
3 School.
4 MS. ROBESON: Do you know if that's east or
5 westbound?
6 MS. CARLSON: That is looking westbound.
7 MS. ROBESON: Okay. And this (d), 148(d)(iii)?
8 MS. CARLSON: That is looking eastbound on River
9 Road down the hill towards the intersection of Carderock
10 Springs Drive and the Artis driveway.
11 MS. ROBESON: And then just, I think there's just
12 one, okay, one more photograph. And that is 148(c) or
13 (e)(i). Okay. And that's this.
14 MS. CARLSON: That is showing the intersection of
15 Carderock Springs Drive and the Artis driveway.
16 MS. ROBESON: And where are you standing when you
17 took this?
18 MS. CARLSON: I'm in the Carderock Springs Drive.
19 MS. ROBESON: Okay.
20 MS. CARLSON: Entrance.
21 MS. ROBESON: Thank you. Now, why don't you
22 continue with what you want --
23 MS. CARLSON: There are other photographs that,
24 but we can get to those later.
25 MS. ROBESON: Oh, are there other photographs?

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1 Did you take them?
2 MS. CARLSON: Yes. Yes. And I submitted them.
3 There was --
4 MS. ROBESON: Oh, I didn't see the (f). Let's go
5 through those. Okay. 148(f)(i). This looks like
6 eastbound, looking eastbound, east on River?
7 MS. CARLSON: Which one are you --
8 MS. GIRARD: Yes. Can you hold it up?
9 MS. ROBESON: Oh.
10 MS. CARLSON: Oh, okay. Yeah. That is eastbound.
11 Correct. And there's a subsequent one showing that just, as
12 traffic moves along that same location.
13 MS. ROBESON: And that's at (ii), 148(f)(ii). And
14 then it looks like 148(f)(iii) is the same location?
15 MS. CARLSON: Yes. It's just showing the passage
16 of traffic.
17 MS. ROBESON: Okay. And then there's 148(g).
18 MS. CARLSON: It shows an accident on River Road
19 at the, near the intersection of Carderock Springs Drive and
20 the Artis driveway.
21 MS. ROBESON: Okay. 148(g)(ii).
22 MS. CARLSON: Same.
23 MS. ROBESON: And (g)(iii) is?
24 MS. CARLSON: Following the accident that just,
25 aftermath.

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1 MS. ROBESON: Okay. Any objections, Ms., I'm
2 going to admit them unless I hear --
3 MS. CARLSON: There are, there are a couple more.
4 MS. ROBESON: Oh, are there more?
5 MS. CARLSON: Yep.
6 MS. ROBESON: Well, those aren't in the record
7 yet, correct?
8 MS. CARLSON: They should be. There should be a
9 map of the neighborhood.
10 MS. ROBESON: Okay. Let's wait until we get to
11 your testimony to do that.
12 MS. CARLSON: Okay. Okay. And there's also the
13 photograph of the --
14 MS. ROBESON: Model.
15 MS. CARLSON: -- model.
16 MS. ROBESON: But we have the real thing, right?
17 MS. CARLSON: Right. Right.
18 MS. ROBESON: Okay.
19 MS. GIRARD: Do you have the time of day for
20 148(g) for that, for those, that set of pictures?
21 MS. CARLSON: That accident occurred about 8:00
22 a.m. I, I, I couldn't tell you exactly, but it was roughly
23 8:00 a.m.
24 MS. GIRARD: Okay.
25 MS. ROBESON: Okay. Is, do you have any other

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1 objections, Ms. Girard?
2 MS. GIRARD: No. I'm, the quality of 148(f)'s are
3 little bit rough, at least in my copy, but --
4 MS. CARLSON: Would, would you like a clean copy?
5 MS. GIRARD: Oh, it's, yeah. If there are some
6 that are cleaner, that would be great.
7 MS. CARLSON: I can --
8 MS. ROBESON: Why don't you, do you have the
9 originals?
10 MS. CARLSON: That came out of my phone.
11 MS. ROBESON: Oh. Okay. Do those help, Ms.
12 Girard?
13 MS. GIRARD: Yes. They're much, for some reason
14 when I --
15 MS. ROBESON: Okay. Well, let me put --
16 MS. GIRARD: Mine were very blurry.
17 MS. ROBESON: Let me put --
18 MS. CARLSON: Just maybe your printer. That may
19 --
20 MS. ROBESON: You can hold on to the, okay.
21 MS. GIRARD: I don't need a copy forever. If I
22 just, when we talk about them --
23 MS. CARLSON: Sure.
24 MS. GIRARD: -- I wanted to see something on them.
25 MS. CARLSON: Sure.

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1 MS. ROBESON: Okay. All right.
2 MS. GIRARD: Otherwise I'm fine.
3 MS. ROBESON: All right.
4 MS. CARLSON: Are your copies those photographs
5 understandable?
6 MS. ROBESON: Yes.
7 MS. CARLSON: Okay.
8 MS. ROBESON: I, at least for now, I think so. I
9 get the gist. Okay. Now why don't you go ahead?
10 MS. CARLSON: Okay.
11 MS. ROBESON: Thank you.
12 MS. CARLSON: No problem. So as you can see from
13 the photographs, turning lanes have been installed at
14 virtually every other project along this stretch of River
15 Road. Thus, it would seem the turning lanes should also be
16 required for the Artis project. And if they can't be built
17 because of the narrow bridge over Cabin John Creek, then the
18 Artis facility should not be approved. Honestly, how can
19 you ask staff and visitors to wait at the bottom of the
20 steep hill to wait for a break in traffic to turn left into
21 the Artis driveway with cars and trucks barreling down the
22 hill? How can there not be collisions with terrible
23 outcomes? If you look at the photograph of the hill in
24 148(d). That's this one here.
25 MS. ROBESON: Okay.

1 MS. CARLSON: Which the applicant itself argued
2 was too steep to build a shared bike path all the way along
3 its property and consider the consequences of a stopped
4 vehicle, especially in the era of distracted driving? As
5 for other turning movements at the intersection, I agree
6 with Michael Garcia of the Planning Board Staff who found
7 that, quote, There is potential for conflict, close quote,
8 because the driveway of the proposed Artis facility and
9 Carderock Springs Drive are considerably offset.

10 MS. GIRARD: What, what, I'm sorry. Did you quote
11 what letter that was from? Or what email?

12 MS. CARLSON: That was in Mr. Garcia's --

13 MS. ROBESON: That was in his, from the old case,
14 I think.

15 MS. CARLSON: That was in his July 28th, 2015
16 email to Ms. Robeson. He says, Because Carderock Springs
17 Drive and the driveway to the proposed use are not aligned
18 directly across from each other, there is potential for
19 conflict. As a result, vehicles pulling out of both
20 locations to get on River Road could easily collide even if
21 they're going in different directions. With regard to the
22 danger to pedestrians and motorists of high speed traffic on
23 River Road in this area, the traffic consultant, Mr.
24 Lenhart, hired by Artis, found that the majority of drivers
25 exceed the 40 mile per hour speed limit, especially when all

1 vehicles are included, not just the front vehicle in a
2 platoon of cars and trucks. Yet, the SHA says speed cameras
3 are not appropriate because the River Road speed limit is
4 above 35 miles per hour and it is in a school zone. Even
5 though the Norwood School with over 400 students, with
6 parents driving them to and from school twice a day, is
7 practically an abutting property to the Artis property. As
8 for pedestrian safety in the face of such fast moving cars
9 and trucks, in his January 15, 2016 letter to you, Kipling
10 Reynolds wrote that the Montgomery County Planning Board
11 Staff, quote, was not made aware of any conflicts between
12 pedestrians and vehicles at this location and it was not an
13 issue raised during the Planning Board Public Hearing for
14 the case. Close quote. This is not true. I explicitly
15 testified that, quote, employees and visitors using buses to
16 reach the proposed Artis facility will risk their death
17 crossing the road. Close quote. However, the SHA has
18 stated that a crosswalk would not be safe in this area
19 because it would give pedestrians a false sense of security
20 that vehicles would stop for them. And yet, Artis has said
21 that many of its employees will use buses to get to and from
22 work lessening the need for ample parking spaces. So
23 depending on the bus they take, these workers will have to
24 cross River Road in gaps of speeding traffic, in daylight
25 and in darkness. In fact, during the winter, two shift

1 changes will occur in darkness, at 6:00 a.m. and 10:00 p.m.,
2 putting both pedestrians and motorists at risk. And while
3 there is a Ride-On bus, Route 36, that operates on a loop to
4 the Bethesda Metro Station that wouldn't require crossing
5 River Road, this bus doesn't get to the Artis driveway in
6 time for the 6:00 a.m. and 10:00 p.m. shift changes. It
7 doesn't operate on weekends and it isn't considered a
8 priority route as seen by its cancellation for several days
9 after the recent snowstorm. As for the T-2 Metro bus, it
10 likewise won't be able to transport employees on weekends
11 arriving and departing at 6:00 a.m. and 10:00 p.m. So how
12 will they get to and from work? And if they are going to
13 drive, where are they going to park given limited parking at
14 the site and will this not increase the number of trips in
15 and out of the Artis driveway? Truly, how does it make any
16 sense to build the Artis facility which would put more
17 pedestrians, be they workers or visitors, at risk crossing
18 River Road as well as motorists trying to avoid them or plan
19 for the staff to use the Metro bus system when its schedules
20 often won't accommodate them? Finally, the only measure the
21 SHA appears to support is enhanced signage. There are
22 currently T signs on River Road indicating the upcoming
23 intersection with Carderock Springs Drive and a sign noting
24 the end of the new bike lane, which will bring more cyclists
25 to the area, as seen in Exhibit 148(b) which we've already

1 -- however, there are no signs for the new Cabin John
2 parking lot just before the bridge in the Artis driveway
3 which will have its own limited traffic entering and
4 existing nor any signs forbidding the use of the shoulder to
5 pass vehicles stopped to make a left turn into Carderock
6 Springs Drive. For while Mr. Garcia of the Planning
7 Department Staff wrote in his July 28, 2015 email to you
8 that the shoulder can be used for passing, Mr. Reynolds of
9 the Planning Department Staff wrote in his January 15, 2016
10 letter to you that, quote, According to Maryland vehicle
11 law, vehicles should not drive on the shoulder unless they
12 are pulling over for an emergency, close quote. Photographs
13 of the shoulder being used for bypassing vehicles turning
14 left on to Carderock Springs Drive are seen in Exhibit
15 148(f). As these pictures here show, and can I, can I
16 approach you?

17 MS. ROBESON: Yes. Ms. Girard, do you want to --

18 MS. CARLSON: I just wanted to, well, try and be
19 useful to you. So in the first photograph --

20 MS. GIRARD: These are copies? I'm sorry. I just
21 want to make sure I'm looking at --

22 MS. CARLSON: Yeah. So you have two of the three
23 here.

24 MS. GIRARD: This is the first?

25 MS. CARLSON: The first one has the bus. Yes,

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1 that's the first one.
2 MS. GIRARD: Okay.
3 MS. CARLSON: So for me, I'm looking at the, the
4 school bus is in the middle and you can see there's a car
5 turning into Carderock Springs Drive and on the shoulder you
6 can see the cars --
7 MS. ROBESON: Now wait. I'm, which one are you
8 looking at? Because I have this as 148(f)(i). That's not
9 it.
10 MS. CARLSON: So all I do is follow the bus.
11 MS. ROBESON: 148(f) --
12 MS. CARLSON: So yes. Follow the bus.
13 MS. ROBESON: So, okay. 1 --
14 MS. CARLSON: So this is the first one. So here's
15 the bus.
16 MS. ROBESON: So that's 148(f)(i).
17 MS. CARLSON: So actually that, that is not what I
18 have in my hand. So --
19 MS. ROBESON: Look at the --
20 MS. CARLSON: So we can, so we can look at
21 148(f)(ii).
22 MS. ROBESON: Okay.
23 MS. CARLSON: Which is showing that cars are using
24 the shoulder to get around vehicles that are stopped.
25 MS. ROBESON: Why don't you take this and mark the

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1 cars where they're, it is a little bit unclear. So why
2 don't you take this and just mark the cars that are using
3 the shoulder. So in blue, just put a little X.
4 MS. CARLSON: So this car is using --
5 MS. ROBESON: Okay.
6 MS. CARLSON: -- the shoulder here.
7 MS. ROBESON: And that's on 148(f)(ii). All
8 right.
9 MS. CARLSON: So she's just made a mark to show
10 that there's a car in the shoulder.
11 MS. ROBESON: And then, keep going.
12 MS. CARLSON: Subsequent, you can see that the bus
13 has now moved on so it's the same line of traffic, but --
14 MS. ROBESON: It's further east after the bridge.
15 MS. CARLSON: Right. And so there's a new car
16 that is turning left and so there are cars, new cars --
17 MS. ROBESON: So, okay. So --
18 MS. CARLSON: -- using the shoulder here.
19 MS. ROBESON: Okay. So why don't you just mark
20 with an X on 148(f)(ii) the cars using the shoulder.
21 MS. CARLSON: And so you can see that the cars are
22 using the shoulder just at the entrance to the Artis
23 driveway. Now Mr. Reynolds of the Planning Department then
24 went --
25 MS. ROBESON: That, it's actually a woman. Kip

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1 Reynolds. Kipling, yeah.
2 MS. CARLSON: Oh, I, I'm sorry. Sorry. My
3 mistake.
4 MS. ROBESON: That's okay. It's an unusual name.
5 MS. CARLSON: Ms. Reynolds, then, of the Planning
6 Department then went on to raise the possibility of
7 restricting left turns from River Road to Carderock Springs
8 Drive as did Mr. Brian Young of the SHA in his January 21,
9 2016 letter to Casey Anderson of the Montgomery County
10 Planning Board. I cannot state strongly enough how
11 unacceptable this idea is to our Carderock Springs
12 community. We are a neighborhood of close to 500 homes and
13 the Carderock Springs Drive entrance has been a primary
14 gateway for us for over 50 years. To close the Carderock
15 Springs Drive intersection entrance for left turning
16 vehicles would only push traffic up the hill to the Fenway
17 Drive intersection which has its own complications and
18 limited site lines as seen in Exhibit 148(d). That's the,
19 this picture here that shows that the intersection of Fenway
20 Drive and River Road has limited site lines and also an
21 intersection across from it which is Clewerwall Drive. So
22 taking the River Road traffic and throwing it up to Fenway
23 Drive is not a safe option. Nor is it, if you throw it to
24 the Seven Locks Road/Lilly Stone Drive intersection which
25 already has traffic volume and speeding issues and it would

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1 badly clog the River Road/Seven Locks intersection with left
2 turning vehicles as people are trying to get, get there.
3 And I don't know if it would be helpful to you to see the
4 map of, of the community. That would be 1, Exhibit 148(e).
5 MS. ROBESON: Do you have any objection to that
6 coming in, Ms. --
7 MS. GIRARD: No.
8 MS. CARLSON: I mean that was, so --
9 MS. ROBESON: It's 148(e)(ii), just for the
10 record. Okay. Go ahead.
11 MS. CARLSON: So it's a primary entrance into our
12 neighborhood and to ask the community to drive way out of
13 its way on a regular basis to avoid that intersection would
14 not be a nice gesture to our community. Indeed, it would be
15 a cruel and unusual punishment to our neighborhood to
16 restrict left turns on to Carderock Springs Drive for
17 raising concern about the impact of the Artis facility on
18 the intersection. Yes, there have been vehicle collisions
19 at the intersection, but there have been no fatalities to
20 date. As a result, there currently is a low crash severity
21 rating for the intersection. However, the Artis project
22 could significantly increase the severity rating of the
23 intersection by causing serious injuries and deaths as more
24 pedestrians, both workers and visitors, using the bus cross
25 River Road. Motorists wait at the bottom of the steep hill

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1 to turn left on to the Artis driveway with fast moving cars
2 coming down the hill behind them. And Artis employees and
3 visitors try to exit the driveway on to River Road when
4 traffic is heavy. Moreover, the danger of these traffic
5 movements is exacerbated if the person is elderly, which
6 many visits to Artis will be. As I have previously stated,
7 I am not a traffic engineer, but I worked in the auto
8 industry for 15 years on automotive safety and other issues.
9 One of the safety issues I briefly worked on was elderly
10 drivers because not only do many older people drive
11 generally more slowly than the rest of the population, their
12 reaction times are often slower and their bones are more
13 fragile. So it's easy to imagine an older person coming to
14 visit a spouse or a friend and being killed or badly injured
15 as they pull out of the Artis driveway misjudging the speed
16 of cars coming down the steep hill from Potomac or thinking
17 that the cars coming down the straightaway from the Beltway
18 will slow for vehicles turning into Carderock Springs Drive
19 when it's possible they will use the shoulder to go around.
20 And what about the motorists or pedestrians they collide
21 with? Let us not wait for fatalities to act responsibly.
22 Now will there be a perfect storm of lethal traffic all the
23 time? No. But why court death by making the intersection
24 more complicated and by bringing many more vehicles in and
25 out of it, including staff, visitors to the residents,

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1 trucks delivering supplies, removing trash, clergy, medical
2 and other service providers, building contractors and others
3 during both peak and off peak hours. In conclusion, while I
4 can understand the sale of the existing estate and the
5 construction of the Artis facility would be very profitable
6 for the people involved, I beg the Zoning Examiner, the
7 Planning Board and its Staff, the SHA and Artis itself to
8 recognize the danger this project threatens. Indeed, the
9 Artis Senior Living facility should not be approved because
10 it will cause undue harm to our neighborhood and other
11 traffic on River Road, including motorists, pedestrians and
12 cyclists. And it would be dangerous to the staff and
13 various visitors to the facility whether they are coming to
14 see patients or providing services to the building. Surely
15 there must be a safer place to build an Alzheimer's care
16 facility. And if the Zoning Examiner will permit, I would
17 like to show you a model of the site and damage, and
18 demonstrate the danger of the proposed Artis project.
19 MS. ROBESON: All right. Any objection, Ms. --
20 MS. GIRARD: We're going to object to the model.
21 Yes.
22 MS. ROBESON: On what basis?
23 MS. GIRARD: I don't believe that Ms. Carlson is
24 saying that she's any kind of engineer that's done it to
25 scale, grading. All of that would just be assumptions that

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1 were made by a lay person and we don't think it's an
2 accurate representation.
3 MS. ROBESON: Well, I'll let it in and give it the
4 weight it deserves.
5 MS. CARLSON: Okay.
6 MS. ROBESON: Why don't you, where do you want to
7 put the model?
8 MS. CARLSON: I can put it on the table.
9 MS. ROBESON: Why don't we do that as long as you
10 keep the recording mics open?
11 MS. CARLSON: Okay. I'm just going to take it, a
12 moment to set up.
13 MS. LEE: Do you need some help?
14 MS. CARLSON: Sure. If you could grab that.
15 UNIDENTIFIED FEMALE: Could I testify while you're
16 doing this?
17 MS. CARLSON: No. That would be distracting.
18 Yeah, just, just, the box. Yes. And I apologize I used
19 what I had which were cat scratch pads and you're right.
20 MS. ROBESON: Oh, cat.
21 MS. CARLSON: It is not totally up to code.
22 MS. ROBESON: It actually looked like my living
23 room when my two boys were small. Between Thomas and
24 Matchbox.
25 MS. CARLSON: And I apologize for the workmanship

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1 here.
2 MS. ROBESON: Now you know we have to keep this
3 here? I'm just saying. We, we're going to have to keep it.
4 MS. CARLSON: Put the, in any event. So here I
5 have several concerns. One is the notion of somebody at the
6 bottom of this hill having to turn left into the Artis
7 driveway with traffic coming down behind them. I can't
8 imagine speeds of traffic are going 40, 50 miles an hour or
9 more. You're not expecting to see a stopped car at the
10 bottom of a hill. Since people don't usually have an
11 intersection at the bottom of a steep hill. You also have
12 the problem that was suggested about the offset intersection
13 where if this car is trying to come and get on to River Road
14 and this car is trying to go left, westbound on River Road,
15 they're going to end up colliding not taking into
16 consideration potentially that they are offset because
17 usually you have a straight T intersection and you wouldn't
18 have that problem because of the separation. But in this
19 case, you're going to have people collide. You also have a
20 situation where there are times when you have a car is
21 turning left from River Road into Carderock Springs Drive.
22 Most of the time the traffic can go around that way, but I
23 am concerned that someone who is coming out of the Artis
24 driveway will think that all of the traffic is going to stay
25 behind when, in fact, this car will go around because

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1 hour and four trips in the afternoon rush hour when here Mr.
2 Garcia is suggesting there might be as many as six trips in
3 the morning and 12 trips in the afternoon going by his math.
4 So I, I do dispute the, his saying that there will be, you
5 know, a few, that the, it won't generate a, a large number
6 of turning.
7 MS. GIRARD: And do you also have the January 15th
8 email, or letter rather from Ms. Kip Reynolds that you were
9 referring to?
10 MS. CARLSON: I do.
11 MS. ROBESON: And that is Exhibit?
12 MS. GIRARD: Oh, I don't have the number.
13 MS. ROBESON: Yeah. There's a lot of exhibits.
14 MS. GIRARD: Recent, I want to get the number
15 right first.
16 MS. ROBESON: Oh, 142? That one?
17 MS. GIRARD: Yes. And can you look at the top of
18 page 4 where Ms. Reynolds also talks about the offset?
19 Really the first full sentence at the top of that page of
20 the driveway.
21 MS. CARLSON: The, the driveway to the proposed
22 use?
23 MS. GIRARD: Yes. Are you familiar with this
24 statement as well?
25 MS. CARLSON: The driveway, it says, The driveway

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1 to the proposed use and Carderock Springs Drive are offset
2 in a way that does not cause the left turning vehicles from
3 River Road turning on to the facility's driveway or
4 Carderock Springs Drive to be in conflict. If the driveway
5 was located to the east of Carderock Springs Drive, then the
6 left turns could be in conflict thus necessitating the need
7 to look at possibly restricting some turns. Again, that is
8 not the case with the proposed use. I don't how he came,
9 she came to the conclusion given that it seems to me that it
10 will be conflict.
11 MS. GIRARD: And you had mentioned, your statement
12 was that Norwood is practically abutting the proposed site.
13 Do you have any sense of the distance between the two?
14 MS. CARLSON: Only that, and I don't know exactly
15 where your property line stops. Does it go all the way up
16 to Clewerwall?
17 MS. ROBESON: Okay. You, if you don't know, you
18 just say it. You don't know.
19 MS. CARLSON: Okay. Well, I guess I could, I
20 assume, I shouldn't assume. Can I ask whether the property
21 --
22 MS. GIRARD: If you don't know, you don't know.
23 MS. CARLSON: -- goes up to Clewerwall?
24 MS. GIRARD: It's not --
25 MS. ROBESON: Yeah. It's not your time to ask

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1 questions.
2 MS. CARLSON: Okay. Well, I will --
3 MS. ROBESON: You can give an estimate --
4 MS. CARLSON: -- go back and review --
5 MS. ROBESON: -- or --
6 MS. CARLSON: There is no other building between
7 the Artis facility and the Norwood School. There is a road,
8 Clewerwall Drive, in between the Norwood School and the
9 Artis property.
10 MS. ROBESON: Okay.
11 MS. CARLSON: So --
12 MS. ROBESON: I thought there were some houses?
13 MS. CARLSON: Clewerwall Drive does have some
14 houses down it.
15 MS. ROBESON: Okay.
16 UNIDENTIFIED FEMALE: But not up at the --
17 MS. ROBESON: No, please.
18 UNIDENTIFIED FEMALE: Sorry.
19 MS. ROBESON: You, you can, so, okay. Go ahead,
20 Ms. Girard.
21 MS. GIRARD: Okay. Looking at 140(d)(i), which is
22 this Fenway.
23 MS. ROBESON: (b)?
24 MS. GIRARD: (d).
25 MS. ROBESON: Oh, the snow series.

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1 MS. GIRARD: Yes. So this is the entrance to your
2 community from, oh, I'm sorry, I've lost the name. What is
3 it? Fen, Fenway?
4 MS. CARLSON: This is Fenway Drive.
5 MS. GIRARD: Fenway Drive. Okay. And what, it
6 looks like it's striped. Is that, the white striping, is
7 that, without the snow being there of course, typically a
8 go-around lane so if people are making a left, people can
9 get around them?
10 MS. CARLSON: No. I, I, I don't know the answer
11 to that question. There are, the way that intersection is,
12 there is a, this is for vehicles coming out. This closest
13 to us is for vehicles coming out and the other driveway is
14 for vehicles going in. So there are two driveways to
15 Clewerwall Drive with Fenway Drive across. And so there's
16 limited sight lines is one of the problems. At the Fenway
17 Drive/River Road intersection you can't see the traffic very
18 quickly coming up the hill.
19 MS. GIRARD: But you don't know why it's not
20 striped like a typical shoulder with a solid white line.
21 Why it's dashed?
22 MS. CARLSON: I just, because it's, there's an
23 intersection there. Of Clewerwall Drive.
24 MS. GIRARD: Okay. Okay. That's fine. I just
25 want --

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1 MS. ROBESON: Asked and answered. Yeah.
2 MS. GIRARD: Yeah. That's fine. And so just so I
3 understand your testimony, when you talk about not
4 prohibiting the left turn lanes into Carderock Springs
5 Drive, you said the severity index is, is not low.
6 MS. CARLSON: No, I said it was six.
7 MS. GIRARD: Right. But --
8 MS. CARLSON: It is low.
9 MS. GIRARD: -- it's not, right.
10 MS. CARLSON: It is low.
11 MS. GIRARD: Right. So it's your, is it, is it
12 your testimony that there's not an existing problem at the
13 intersection today?
14 MS. CARLSON: I think the intersection is
15 difficult, but I think it's an important intersection for
16 our community and I object to the Artis facility making it
17 significantly dangerous by adding additional turning
18 movements and more traffic to the intersection.
19 MS. GIRARD: And when you say significantly
20 dangerous, this is your own feeling? This is your own
21 opinion?
22 MS. CARLSON: I'm looking at common sense of a
23 steep hill, offset intersection, high speed traffic. And by
24 that I mean traffic traveling over 40 miles an hour whether
25 it's 44, 45, 50. And I think the downhill traffic people do

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1 pick up speed coming down the hill and people don't expect
2 that there would be traffic turning left at the bottom of a
3 steep hill.
4 MS. GIRARD: That's all I have.
5 MS. ROBESON: Okay. Anything else, Ms. Carlson?
6 MS. CARLSON: No, thank you.
7 MS. ROBESON: Thank you very much for your input.
8 All right. Do you, is there, whoever wants to
9 testify next, may do so.
10 MS. CARLSON: Are you done with this?
11 MS. GIRARD: Yes, thank you.
12 MS. ROBESON: Ms. Carlson?
13 MS. CARLSON: Yeah. Oh, sure. It's not my
14 hearing.
15 MS. ROBESON: Yeah. Why don't you come forward?
16 Please raise your right hand. Do you solemnly affirm under
17 penalties of perjury that the statements you're about to
18 make are the truth, the whole truth and nothing but the
19 truth?
20 MS. MEISSNER: I do.
21 MS. ROBESON: Okay. Please state your name and
22 address for the record.
23 MS. MEISSNER: My name, my name is Margit Meissner
24 and I live at 8323 Steelspring Court in Carderock. And I
25 have lived there for the last 45 years. And I am here

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1 merely to report that I had exactly the experience that I
2 was afraid of a few days ago. I was standing on Carderock
3 Drive --
4 MS. CARLSON: Not standing.
5 MS. MEISSNER: I was, I was waiting at Carderock
6 Drive --
7 MS. ROBESON: In your vehicle?
8 MS. MEISSNER: In my vehicle, trying to turn right
9 on to River Road. And, of course, I was watching the
10 traffic coming from Potomac, coming down the hill at great
11 speed. And when, and I waited until there was, until the,
12 no more cars were coming and I am turning right on to River
13 Road and at that very second, a car comes out of the Artis
14 entrance and almost hits me. And I if I hadn't had the
15 speed, the, the, the, the mind of accelerating that car
16 would have hit me right exactly in the way this was shown.
17 And of course, I was, I was, I was surprised to have this
18 car coming out because I did not expect to come out of this
19 offset. If it had been a straight intersection, then I
20 would have been sure to look there, but since it was offset,
21 I did not realize that there was a car there. And I'm
22 assuming that the driver in that other car did exactly what
23 I did. Looked up to see where the cars were coming from
24 Potomac and not seeing anybody also started to turn left.
25 So that's all that I came to say.

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1 MS. ROBESON: Well, thank you. Just a sec. Ms.
2 Girard, do you have any questions?
3 MS. GIRARD: Just one. I'm looking for a picture.
4 Hold on.
5 DIRECT EXAMINATION
6 MS. GIRARD: I'm looking at Exhibit 148(e)(i). So
7 is this a, this is an accurate depiction of what you saw
8 when you were going to make your right hand turn?
9 MS. MEISSNER: Oh, I was standing here.
10 MS. GIRARD: Making a right?
11 MS. MEISSNER: Making right. Being further than
12 this picture shows. And then the car was coming this way
13 and I was turning that way.
14 MS. GIRARD: But it's your testimony that someone,
15 someone driving a vehicle would not automatically look
16 across the street to see a car at this entrance?
17 MS. MEISSNER: Well, I certainly didn't see it.
18 MS. GIRARD: That's all.
19 MS. ROBESON: Anything else? Anything else you
20 would like to say?
21 MS. MEISSNER: No.
22 MS. ROBESON: All right.
23 MS. MEISSNER: Except to say that it is very
24 important for our community to make sure that we are safe
25 there. And it is really an, very important issue for the

1 whole community.
 2 MS. ROBESON: Okay. Thank you.
 3 Anyone else that wants to speak? Yes. Come
 4 forward.
 5 MR. NOTHMAN: Hello, my name is Eric --
 6 MS. ROBESON: Okay.
 7 MR. NOTHMAN: I'm sorry.
 8 MS. ROBESON: Please raise your right hand.
 9 MR. NOTHMAN: Sure.
 10 MS. ROBESON: Do you solemnly affirm under
 11 penalties of perjury that the statements you're about to
 12 make are the truth, the whole truth and nothing but the
 13 truth?
 14 MR. NOTHMAN: I affirm.
 15 MS. ROBESON: Okay. Can you just restate your
 16 name and address? I think you already gave them, but --
 17 MR. NOTHMAN: No. Absolutely. I'd be pleased to.
 18 My name is Eric Nothman, N-O-T-H-M-A-N. I live at 8417
 19 Fenway Road in Bethesda, Maryland in Carderock Springs. My
 20 house is located, one of the closest houses, one of the two
 21 closest houses to this intersection in Carderock.
 22 MS. ROBESON: Okay. Is it, can you just briefly
 23 describe exactly the location?
 24 MR. NOTHMAN: Oh, yes. Sure. As you come in the
 25 entrance of Carderock Springs Drive, my house is the one

1 that you'll see on the left because it's the first one on
 2 the corner, on the left side.
 3 MS. ROBESON: Okay. Oh, I see. When you say one
 4 of two, you're doing the two on the intersection itself.
 5 MR. NOTHMAN: On Fenway Road with the, it's a very
 6 short drive and it T's into Fenway and then there's a house
 7 on the right and a house on the left on Fenway. There's
 8 not, there are no driveways on Carderock Springs Drive
 9 itself.
 10 MS. ROBESON: Okay. All right. Thank you.
 11 MR. NOTHMAN: Sure. So, first, let me say thank
 12 you very much for your forbearance and help this morning
 13 because I have to learn as I go. And I'm very pleased to
 14 have this opportunity and I'm grateful that this type of
 15 care and attention is being taken for something that's very
 16 important to our neighborhood. For my background, I just
 17 would like to mention I work as a senior officer of the
 18 World Bank. So this is a personal appeal. More
 19 importantly, I live in Carderock Springs community near the
 20 intersection of Carderock Drive and River Road. My family
 21 has owned our Carderock Springs home since 1962. My family
 22 is now the second generation living in this community, third
 23 generation if you count my kids, ages 10 and 11. As a long-
 24 standing member of this community, I am asking you as the
 25 Zoning Examiner to reverse the conditional approval for the

1 proposed new commercial facility, AKA Artis, across from
 2 Carderock Drive or, alternatively, insure the full funding
 3 for the significant costs required to establish a safe
 4 intersection. As a daily user of this intersection at
 5 Carderock Drive and River Road, it is clear that this
 6 intersection has already become dangerous. This is borne
 7 out by the data that's already presented and in the record
 8 in this case as provided by the Maryland State Highway
 9 Administration, Office of Traffic Safety, Traffic
 10 Development and Support Division as in the Exhibit SHA 52-1,
 11 ADC. It's the same study everyone has been referring to the
 12 period of time from January 1st, 2012 through December 31st,
 13 2014.
 14 MS. ROBESON: Is that the crash data study or a
 15 sight distance study?
 16 MR. NOTHMAN: It's, this is the ADC's study
 17 worksheet output. And this is the crash data study.
 18 MS. ROBESON: Okay.
 19 MR. NOTHMAN: And these numbers have been quoted
 20 here just minutes ago, but I'll just mention them because
 21 it's important to my flow of what I'm trying to describe.
 22 There, there are seven, seven total crashes that were, you
 23 know, as mentioned earlier, rear end. That five people
 24 injured in total, scattered over multiple accidents during
 25 the recent three year period. And so, people live in our

1 community for 30 years or more. I've seen some of them here
 2 today. The proposed commercial facility would be expected
 3 to be in operation for 30 years or more. Projected over 30
 4 years, five injuries per three years translates to 50 people
 5 injured over the next 30 years. Simple math. Five injuries
 6 in three years amounts to 50 over 30 years. Just multiply
 7 five by 10. Both cases three years by 10 to 30 years with
 8 the 50 injuries. So we are counting injuries here and not
 9 cars. Adding a single additional injury a year, by adding
 10 to the complexity of the intersection or increasing the risk
 11 would bring that total to 80. So we're, we're at 50 now
 12 increased by just one a year, that would bring us to 80. I
 13 would like to point out that we have about 400 houses or so
 14 in Carderock Springs, my neighborhood. And five entrance,
 15 entrance points. Simple math again. That's about 80
 16 households per entrance. Four hundred houses, five entrance
 17 points, 80 houses per entrance point. So for perspective, I
 18 have a concern the way that the data has been used saying
 19 average for intersections in Montgomery County when the
 20 relationship that we should really be looking at is the
 21 relationship how many people are using that intersection to
 22 how many injuries that you actually are achieving. If you
 23 had, for example, an, some place that had 1,000 houses that
 24 use the intersection and it had the same crash numbers as
 25 us, well, I'm sorry. That's not the same ratio of injuries

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1 to households. So that's why I'm trying to bring it to
2 everyone's attention. So one additional injury when you,
3 when you look at it this way, it's a perspective. Eighty
4 households per entrance, additional injury per year would
5 obtain about 80 injuries, one per household over the next 30
6 years. One per household. So my question is how dangerous
7 does this intersection need to be in order to be considered
8 a threat to community safety? Now we have a lot of
9 intersections around Carderock Springs. None like this one.
10 We have five entrance points. None of those intersections
11 pose anything close to the threat that this one does
12 already. So, to complicate this particular intersection for
13 our particular neighborhood is just wrongheaded, the wrong
14 direction and a complete and total mistake which is very
15 clear to people who live in our neighborhood. Even if we
16 were to average the already recorded injuries, over half the
17 community, 200 houses, just projecting forward. Simple math
18 again. The 50 injuries based on the five we had in the, in
19 the past three years, over the next 30 years, 50 based on
20 half of the houses in our neighborhood, about 200, we're
21 talking 25 percent in relationship to households to our
22 community. Fifty, 25 percent of 200 houses. So you can use
23 this, these numbers in a variety of ways, but the bottom
24 line is we have already a very dangerous, the most dangerous
25 intersection that all of us face. And one of the most

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1 dangerous things, I think we're all aware of this, that we
2 do in our modern lives is drive cars. And these cars are
3 filled with kids. They're filled with families. So,
4 therefore, any increase in the rate of injury above the
5 current five per three years should be considered completely
6 and totally unacceptable. Once built, the commercial
7 facility will have at least a 30-year longevity, affecting
8 our community for that period. So acceptance of this
9 commercial facility now as Montgomery County has done so far
10 will have long-term consequences. This, of course, raises
11 the question as to whether this proposed commercial facility
12 will increase the danger at this intersection. This, this
13 is where those of us who have used this intersection on a
14 long-term basis for years and who understand the dynamics at
15 play from our experience can provide important insights. I
16 have pulled away a few times to avoid an accident when
17 making a westbound left into our community off of River Road
18 because I keep my eyes on my rearview mirror and I notice
19 the driver behind me who is going to hit my car, not
20 noticing my stopped car or my turn blinker in time. In
21 fact, though I pulled away, I was still hit once. That
22 makes sense. I use it on a regular basis. And you know
23 what the statistics are. The vehicles that will be entering
24 River Road from the new commercial facility will physically
25 narrow and partially block the shoulder area available for

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1 River Road's westbound traffic. All the traffic entering
2 River Road from the new proposed commercial facility must
3 edge out to River Road in order to see oncoming westbound
4 traffic that is coming over the bridge. And I'm just so
5 grateful for this model. If you don't mind, I'm going to,
6 if I could, just use this to illustrate this car cannot see
7 this traffic clearly from being at the depressed slow and
8 this bridge parapet blocks the sight provision. And that's
9 why I will have questions about the studies that have been
10 conducted, the points at which they originated and the point
11 at the destination.

12 MS. ROBESON: Okay. For the record, I just have
13 to, the record doesn't know if this goes to the Board of
14 Appeals what you mean by this car.

15 MR. NOTHMAN: Thank you.

16 MS. ROBESON: So you're taking the blue car that's
17 positioned in the Artis driveway?

18 MR. NOTHMAN: Yes, I am.

19 MS. ROBESON: And what are you doing with it?

20 MR. NOTHMAN: Okay. Thank you. In this model,
21 there's a blue car that is positioned in the Artis driveway.
22 The Artis driveway, it's shown that it is lower than the
23 road bed of River Road, which is correct. And so, when you
24 do the traffic distance studies and sight lines, you're
25 supposed to, in essence, estimate approximately the eye

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1 level of the driver and that is your starting point. Your
2 destination point is, has a slightly different height, but
3 the, the bottom line is that it really matters a lot exactly
4 where you place your starting and ending points. It's
5 supposed to be a triangle and this without question is, the
6 bridge parapet is without question an obstruction that
7 obstructs the view of the driver who exits the Artis
8 driveway. Now I, I can reference the photo. 148(c). Where
9 you can see the height of the bridge parapet with the
10 railing on top. And the guard rail next to it. Now, I have
11 had the privilege of being a car that comes out of the
12 Carderock Drive, which is now illustrated in this model by
13 the black pickup truck. And so, I have witnessed also cars
14 coming out of this driveway when I've come in on westbound
15 to make a left into Carderock Drive. And you see the same
16 motion from the car exiting this drive in every case.

17 MS. ROBESON: From the blue car exiting the Artis
18 drive?

19 MR. NOTHMAN: From the blue car exiting the Artis
20 driveway. It must creep up slowly until its sight line of
21 the driver is able to clear sufficiently the view past this
22 parapet.

23 MS. ROBESON: The bridge abutment?

24 MR. NOTHMAN: The bridge, well, the bridge
25 abutment, I think abutments are down. I believe that the

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1 wall is a parapet.
2 MS. ROBESON: Oh, okay.
3 MR. NOTHMAN: It's just, I tried to look that up
4 before I came.
5 MS. ROBESON: The wall.
6 MR. NOTHMAN: The wall. Exactly. Yes. The wall,
7 the solid wall that blocks your view. Blocks the view of
8 the person, any driver coming out of the Artis driveway
9 that, unless you're in a very high vehicle in any case. So
10 as this car comes out, the driver needs to know what kind of
11 traffic is coming from the west. It's easy to see these.
12 That's not a problem.
13 MS. ROBESON: The, when you say these, you mean
14 the what?
15 MR. NOTHMAN: The east. I'm, I'm sorry. The
16 west. It's easy for --
17 MS. ROBESON: Eastbound?
18 MR. NOTHMAN: The eastbound traffic is easy, which
19 is to the west, is very easy for the car to see. That's not
20 a problem. It is the westbound traffic coming down River
21 Road that is very difficult to have, have clarity as you
22 come out of this drive. So, the car creeps up. Now, the
23 nose starts to go into an area which I am going to call the
24 shoulder, even though the driveway itself, of course,
25 doesn't become shoulder right at that point when the drive

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1 meets with River Road, but it's the same first 10 feet
2 approximately of width that's along the side of the paved
3 River Road is a shoulder area. Now, what happens --
4 MS. CARLSON: And you can show her the photograph.
5 MR. NOTHMAN: I can show with a photograph. Okay.
6 Yes. With this 148(c), you can see that the width of the
7 shoulder in comparison with the width of the road --
8 MS. ROBESON: Okay. That's 148(c)(ii).
9 MR. NOTHMAN: 148(c). So cars have come
10 westbound. When they see a stopped vehicle, they almost
11 universally now, they've been very well trained probably
12 over the years, go around on to this bridge shoulder. Now,
13 that driver who is coming westbound is corralled. On their
14 left they have a car that they're trying to avoid. On their
15 right they have a bridge parapet wall which they also are
16 trying to avoid. So the traffic may slow a bit, but it's
17 still going a good clip and it's coming down that chute.
18 Now --
19 MS. ROBESON: And the chute is the shoulder area.
20 MR. NOTHMAN: Is the shoulder area. That's right.
21 And so, the blue car in our model or the car rather that's
22 coming out of the Artis driveway edges out because it must.
23 It needs to take a look and see to be safe what's happening
24 with the traffic coming that is westbound. So you can only
25 imagine what's going to happen next. And I'm just going to

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1 steal one of these cars here. Well, this is good enough.
2 I'll take this one.
3 MS. CARLSON: No, use, use a regular one.
4 MR. NOTHMAN: Huh?
5 MS. CARLSON: You can use a big one.
6 MR. NOTHMAN: Use a big one. Okay. So this is
7 more like what it feels, I have to say. So this car is
8 waiting to make the left. It's the red car heading
9 westbound. The silver car that we're using for this
10 illustration comes around on the shoulder. Now, this car
11 might be here when it starts this, this effort --
12 MS. ROBESON: Now this car, you mean the --
13 MR. NOTHMAN: This car being the blue car coming
14 out of the Artis --
15 MS. ROBESON: The car in the Artis driveway?
16 MR. NOTHMAN: Right. May at a certain point, and
17 this isn't going to be every single time. This has to do a
18 bit with timing. But the Artis car is not really, on the
19 driveway is not, also there's a sight line issue from the,
20 the car that is going westbound that's now trying to avoid
21 the stopped car making the left. Its sight line is also
22 obstructed by this same wall. So, when this car, unless it
23 pulls up, it is not really quite visible, especially
24 considering what this driver is thinking about. This driver
25 is thinking about this stopped car --

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1 MS. ROBESON: Turning left?
2 MR. NOTHMAN: -- turning left and not wanting to
3 hit it. And, and by the way, as I mentioned several times,
4 I've had to, I have had to pull away because they didn't
5 even see me. This car. So they see this car. They make a
6 decision and start coming around. They're looking at the
7 bridge. They're looking at the car. Now, this poor
8 individual, whoever happens to be in this car --
9 MS. ROBESON: In the blue car coming out of Artis?
10 MR. NOTHMAN: In the blue car coming out of the
11 Artis driveway. Inches up, just trying to be safe. And if
12 the timing is just right, this car has to make an instant
13 decision. It has no more than one or two seconds to make up
14 its mind what it's going to do. It only has limited, it has
15 limited different things it can do. Now, most, I, I guess,
16 most times this happens, they'll go oh, and, and go like
17 this and try avoid the nose.
18 MS. ROBESON: And when you say go like this
19 they'll get --
20 MR. NOTHMAN: Go, go towards, towards the center
21 of River Road and try to cut just in front of the car that's
22 stopped trying to make a left in order to avoid an accident.
23 But I will, I don't know. I'm not a betting man, but
24 dollars to donuts, I'm not sure exactly what metaphor to
25 use, but somebody over the course of the year is going to

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1 pull out like this. This guy isn't going to notice until
2 it's too late.
3 MS. ROBESON: And that's the guy going right on
4 the shoulder?
5 MR. NOTHMAN: This is the guy on the shoulder.
6 And this is what's going to happen. Bam. He will, I
7 believe that this is called a T-bone when the, when the car,
8 one car hits perpendicular, especially into the driver's
9 side of another car. And this is the accident that I
10 believe will cause the most destruction, or one of the
11 accidents that'll cause the most destruction once this
12 commercial facility is empowered to place so much more
13 traffic on to this entrance. And I, because it's so easy to
14 see for those of us who live in the community, we end up
15 with a great concern that if there's not something done for
16 this intersection to make it not just where it is today,
17 safer than it is today because it's going to have increasing
18 pressures and increasing complications, we will have
19 fatalities. We'll be able then to use the, whatever scoring
20 system occurs within the State Highway Administration to
21 declare it a higher value that then will get more attention
22 after the fact. And, forgive me. I believe that we are
23 potentially better than that. That we can see these things
24 in advance. We can take the right actions to avoid that
25 type of human damage and it's unnecessary because this

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1 intersection could be fixed. It has a price tag, but it can
2 be fixed.
3 So as long as I'm just sort of talking
4 extemporaneously, if you don't mind, I'm going to now speak
5 about another type of danger the intersection presents. The
6 other, the other danger has to do with cars go by in both
7 directions. This car, the car coming out of the Artis
8 driveway, the car coming out, I'm sorry. Did you want to
9 ask any questions at all about --
10 MS. ROBESON: No. I'm listening.
11 MR. NOTHMAN: Okay. Okay. That's fine. So these
12 cars go by. These cars go by. You have a few seconds. And
13 two cars would like to make use of the same time gap between
14 the traffic coming in both directions, eastbound/westbound,
15 in order to come out. Now, the worst case, I think we've
16 talked about it a bit, worst case is the double left. And
17 Mr. Lenhart mentioned the idea that it would be good if
18 these two cars could communicate. He suggested well,
19 they'll signal each other. And he's absolutely correct. As
20 an expert, he put his finger right on it. If you could
21 communicate, that would make it safer. Unfortunately, and
22 this is where our experience comes in a little bit, I have
23 been the car coming out of the Carderock Drive and I have
24 had individuals coming from the residence come in to --
25 MS. ROBESON: From the Artis residence?

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1 MR. NOTHMAN: From the Artis facility.
2 MS. ROBESON: Yes.
3 MR. NOTHMAN: On to, on to River Road. Only it
4 wasn't the Artis facility at that time.
5 MS. ROBESON: Yeah. It was a residence. Yeah.
6 MR. NOTHMAN: It was a residence. Each and every
7 time that this occurred, it was simply fraught with
8 tremendous danger. And it's, you cannot signal from this
9 car across. These cars are too far apart. There is too
10 much happening with cars coming down this way and that way,
11 which you are trying to keep track of. It's just not
12 possible. Okay. And that is the heart of the problem
13 because since it is an intersection that's not aligned, you
14 do need to have some way to know what is the intent of the
15 car at the other side. First come, first served. I think
16 that's what I heard is the law of the land. Whoever gets
17 out there first, well, you have the same small gap of time
18 and you kind of have to make your bet. Are they coming out?
19 Are they not coming out? What are they doing? I want to
20 come out. Do they want to come out? Oh, yeah. Well, we
21 both want to come out, don't we? So when that happens, even
22 when you make a right turn, for example, coming out of the
23 Carderock Drive, this car, it depends on the traffic. If,
24 if the traffic cleared going eastbound first, so if the
25 traffic clears, it clears for the Artis, the car that's in

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1 the Artis facility first. By 25 feet, but still first.
2 That's, this, the car here that's coming by will go by and
3 clear here before it will clear for this car. So all
4 intents and purposes, this car making this right turn, this,
5 this car actually can get a head start. It's first come,
6 first served. Yeah. Off it goes. Now you have to be
7 paying a lot of attention to know wait a second, I'm
8 starting to go. I think I'm okay. Is he making a right or
9 is he making a left? Not everybody uses the turn blinker.
10 And this can happen. And I think that's the scenario --
11 MS. CARSON: With Margit?
12 MR. NOTHMAN: -- that Margit was talking about.
13 MS. ROBESON: Okay. When you say this can happen?
14 MR. NOTHMAN: The, the, okay, the, a crash can
15 happen even with a right turn coming out of Carderock Drive
16 and a left turn coming out of the Artis driveway.
17 MS. ROBESON: Because the gap in the traffic
18 appears or allows the driver coming from Artis to proceed --
19 MR. NOTHMAN: First.
20 MS. ROBESON: The, yeah.
21 MR. NOTHMAN: First. And this driver thinks I
22 have a shorter distance. I'm making a right. See. The
23 Artis, for him, for the Artis, for the car coming out of the
24 Artis facility is a farther distance to go to cut, cut
25 across a lane of traffic or the westbound. And so, he gets

1 a head start. This car thinks, oh, you know, I only have
 2 that far to go. And that's, that's, that's the case that
 3 Margit was talking about. She, she goes, oh, my goodness.
 4 There's a car out of nowhere. I'm, she steps on the gas.
 5 She, she managed to avoid it. But I'm, I'm just sharing
 6 with you that my personal experience has been regardless if
 7 I make a right or a left, when a car is coming out of the
 8 Artis driveway, it's a dangerous situation. You have to be
 9 extremely alert. And, you know, I try to be a very alert
 10 driver on this intersection for the reasons that we are
 11 aware how dangerous this intersection is out of all the
 12 intersections around our neighborhood. Not everybody stays
 13 on it each time. So we try to create circumstances --
 14 MS. ROBESON: Would it be helpful if there was
 15 some kind of signage clarifying the rules of the road, so to
 16 speak? The first car goes first?
 17 MR. NOTHMAN: It would be helpful to have a sign
 18 that said no passing on the shoulder, but I think people
 19 would ignore that sign. So it's, there's more than one
 20 challenge happening with the intersection. I think that's
 21 what we're, what we recognize is, living right next to it,
 22 there's a challenge that we have coming this way. There's a
 23 challenge coming out that way. This allows --
 24 MS. CARLSON: And there's a challenge for this
 25 poor yellow --

1 MR. NOTHMAN: There's a challenge for this yellow
 2 car coming down because of the speed.
 3 MS. ROBESON: No.
 4 MR. NOTHMAN: So. Yes.
 5 MS. ROBESON: You're, the, okay. Just one at a
 6 time --
 7 MR. NOTHMAN: Excuse me. Yes.
 8 MS. ROBESON: -- can testify.
 9 MS. CARLSON: Sorry.
 10 MS. ROBESON: There's a challenge in the car
 11 coming down the, eastbound coming down the slope. That's
 12 what you're saying?
 13 MR. NOTHMAN: That, that's correct. When, when
 14 this car is coming eastbound, if it wants to make a left.
 15 So that that's a challenge. When this car, when a car is
 16 going westbound and trying to go around, and this is, this
 17 is the worst one by far.
 18 MS. ROBESON: To go around?
 19 MR. NOTHMAN: A, a car making a left into
 20 Carderock Drive. That's this, this is, this is the one, to
 21 tell you the truth, I, I'm, I'm, I just, you know, this is
 22 going to happen. And so, and that, the, the, then there's
 23 a, there's a challenge if you have two lefts. Now we talked
 24 about the two lefts. Both, two, one car coming out of
 25 Carderock Drive, one car coming out of the Artis facility

1 who both, now normally if this is an aligned intersection,
 2 keep in mind we know what to do. Right? Everybody knows
 3 what to do. We pass on our rights. It's just everybody
 4 knows this. The offset, that's what makes this incredibly
 5 dangerous. You cannot pass on the right with a double left.
 6 It's impossible. So you may have good spatial judgment.
 7 You may realize that or you may not. Once you get out into
 8 the intersection keep in mind there's a timing issue at
 9 various points during the day because of the massive amounts
 10 of traffic that this road sustains today. So these are, in
 11 essence, the dangers that we see.
 12 Now, I happen to have a friend, I've tried to do
 13 some reading about all of this. I'm not a traffic expert.
 14 I've tried to reach out to people that I know who have
 15 expertise. I have a friend who is the Deputy Executive
 16 Director of the Contra Costa Transportation Authority.
 17 That's CCTA. His name is Martin Englemann, P.E. Yeah,
 18 Deputy Executive Director of the Contra Costa Transportation
 19 Authority. He is an engineer. He's not a traffic engineer,
 20 but he is a traffic planner. What he shared with me, I
 21 share with you.
 22 MS. GIRARD: Objection. He's going to read into
 23 the record evidence from someone else that we don't have the
 24 opportunity to cross-examine.
 25 MS. ROBESON: Well, hearsay is admissible and we

1 do have hearsay testimony from SHA so I'm going to let it
 2 in.
 3 MR. NOTHMAN: Thank you. So what he said and I
 4 repeat this. I think very, it's clear to me I have it. He
 5 said to me that misaligned intersections, and forgive me,
 6 I'm now using that word.
 7 MS. ROBESON: Well, you can do that now.
 8 MR. NOTHMAN: Okay.
 9 MS. ROBESON: You can characterize it if you --
 10 MR. NOTHMAN: Okay. But he said that those
 11 intersections, traffic engineers are, know cause problems.
 12 It's, they cause accidents. And they don't like them. And
 13 he shared with me that engineers in general are very safety
 14 conscious. This is what they strive for. So I end up
 15 wondering because I have not, I have to admit I've tried to
 16 look at the record, but I am not sure if I have seen every
 17 exhibit in the record, but I did not find a drawing of the
 18 full intersection. And one of the questions that I asked
 19 for Mr. Lenhart, did he see this as two separate
 20 intersections. One that's a T here and one that's a T
 21 there. He said no. He said --
 22 MS. ROBESON: But I don't understand the
 23 significance of that?
 24 MR. NOTHMAN: Okay. Once it's a single
 25 intersection, then I believe Artis has a responsibility to

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1 have a drawing that encompasses the entire intersection.
2 MS. ROBESON: Okay.
3 MR. NOTHMAN: As far as I can tell --
4 MS. ROBESON: Oh, you mean in order to analyze
5 safety?
6 MR. NOTHMAN: That's correct. And, and --
7 MS. ROBESON: Oh, I understand.
8 MR. NOTHMAN: Yes. And also, in order of very
9 basic level, to put the right information in front of the
10 State Highway Administration for them to examine. As far as
11 I've been able to tell, and forgive me, I may have missed it
12 and this will be one of my questions to the traffic experts
13 that are here today, was there and is there a drawing that
14 shows the full intersection? We've had testimony that it's
15 one intersection. The drawings that I have seen only show
16 part. They just show the Artis driveway. It just shows
17 some of River Road and a little teeny corner about something
18 that's happening over there someplace towards Carderock
19 Drive. And, forgive me, but as a traffic expert and as a
20 leaning towards safety for our community, it's not good
21 enough. I wouldn't accept it. I don't think that you, you,
22 as a Hearing Examiner, should accept it. I don't believe
23 that the State Highway Administration should accept it. And
24 if there is no full drawing, what are you trying to hide?
25 If anything.

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1 MS. ROBESON: Okay. All right. All right.
2 MR. NOTHMAN: Well, okay, I'll back, I'll back
3 away from that. But what, what is it, why wouldn't there
4 be, why wouldn't there be?
5 MS. ROBESON: Well, they're --
6 MR. NOTHMAN: That's the question I have. If
7 there's no drawing that shows the full intersection and if
8 we're all here together to come up with a safe outcome, why
9 wouldn't there be a drawing?
10 MS. ROBESON: Well, how about this? Do you have,
11 you know, quite honestly it sounds to me like right or
12 wrong, SHA is saying they can't put a left turn lane in
13 because of the bridge. Because of the proximity to the
14 bridge. So, you know, what would your suggestions be to
15 make this safer? Assume for a minute, I know that your
16 position is you don't want to put, you don't want to approve
17 it at all. I understand that. And I'm not denigrating the
18 seriousness of that position. But what, what would your
19 suggestions be to make it safer?
20 MR. NOTHMAN: I, thank you for your asking that
21 question. I personally have struggled with this a lot. I
22 have to start, I turned to my friend who is a traffic
23 planner and asked his opinion. And this is before I saw the
24 letter that came from SHA recently that said that it's not
25 feasible at this time. And I suggested the idea that, hey,

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1 you know, that the end turn lanes are too expensive. You
2 know. Widen the bridge. Too expensive. There's my
3 starting, starting point. But he pointed out, he said that
4 you can do anything if you have the money. In other words,
5 you know, all this business about can't do it. It's not
6 feasible. It's all about the money. And for me, if a
7 commercial facility wants to come in and make lots of money,
8 I'm all for it. This is a capitalist country. I think it's
9 a great thing. However, there shouldn't be cost shifting
10 from the commercial facility's impact to the taxpayer.
11 There shouldn't be cost shifting of danger and risk that the
12 neighborhood has to absorb in order for that facility and
13 those people to do whatever good work they want to do to
14 make whatever profit they'd like to make. In other words,
15 things have a price tag and they have a cost. Now, I am not
16 a traffic expert. I don't know all the different ways that
17 this might be solved. How can you align the intersection?
18 Can you move the whole intersection away from the bridge? I
19 don't know. Maybe. Both sides.
20 MS. ROBESON: Now I'm just asking you from your
21 own knowledge or suggestions. Not from an expert's
22 knowledge or suggestions.
23 MR. NOTHMAN: Okay. That's fine. You know, from
24 everything that I have heard, we need to have, I would
25 suggest this, this is my, I believe this is going to cause

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1 the greatest harm so I would look at that first. Say okay.
2 How do we not have the, the car that is going around the
3 stopped car on the shoulder going westbound hit another car
4 here? How --
5 MS. ROBESON: Coming out of the Artis?
6 MR. NOTHMAN: Coming out of the Artis.
7 MS. ROBESON: You're saying is there any way to,
8 to, okay. Go ahead.
9 MR. NOTHMAN: I mean how, you know, how do, how do
10 you solve that problem?
11 MS. ROBESON: Right.
12 MR. NOTHMAN: For, for me, either you widen the
13 bridge. You put in a turn lane, which is the, would, would,
14 that would handle it. Or, alternatively, you, you move the
15 intersection far enough away from the bridge so that your
16 sight line is not impeded, so that you don't necessarily
17 have a misaligned intersection or maybe you move, you align
18 them, but you align them farther from the bridge together.
19 I mean I'm not saying any of these things are cheap.
20 They're not. They're expensive.
21 MS. ROBESON: Okay.
22 MR. NOTHMAN: But it's --
23 MS. CARLSON: Can I answer the question?
24 MS. ROBESON: No.
25 MS. CARLSON: Okay.

1 MR. NOTHMAN: She's ask, yeah. So, so align, you
2 know, so for the, for the, the multiple problems we saw
3 opposing, the solution is to align the intersection. It's
4 that straightforward. To solve the sight line issue, as far
5 as I know, I mean I don't know if you could change the
6 bridge so that you could have sight line. I don't know.

7 MS. ROBESON: Okay. All right.

8 MR. NOTHMAN: But, you know, the, the wall.

9 MS. ROBESON: I don't want to belabor it.

10 MR. NOTHMAN: So --

11 MS. ROBESON: I just thought you might have
12 something. Okay, go ahead.

13 MR. NOTHMAN: I don't, I don't have a magic, I
14 don't have a magic bullet. But I believe that there
15 shouldn't be cost shifting. In other words, if it has a
16 price tag. If this is what's needed to be safe.

17 MS. ROBESON: No. I understand.

18 MR. NOTHMAN: Then that's the price. And either
19 the facility can cover it or the taxpayer covers it, but
20 what I believe would be wrong is that people are killed in
21 the process. That our neighborhood suffers. I think that's
22 wrong.

23 MS. ROBESON: Okay.

24 MR. NOTHMAN: And, look, I so much appreciate you
25 taking the time and allowing me to say these things.

1 MS. ROBESON: Yes. You know, I, I do need, I do
2 understand your points and I need to make sure we get
3 through everybody that wants to speak --

4 MR. NOTHMAN: Sure.

5 MS. ROBESON: -- and ask questions.

6 MR. NOTHMAN: But that, that's fine.

7 MS. ROBESON: So if you could, if you have another
8 point, that you could move on.

9 MR. NOTHMAN: Yeah, let me see if, I may have
10 made almost all my points. I'll skip through here just for
11 a moment and see. I'll try to cherry pick. All right. So
12 here, just to substantiate and support. Lynn Robeson asked
13 this question of the Montgomery County Planning Department
14 in your email dated December 21st, 2015. Will cars exiting
15 the facility and turning left on to River Road have the
16 potential to block cars moving right to avoid someone stops
17 to make a left turn? A brilliant question. In response,
18 Kipling Reynolds, the AICP Chief stated later in a letter
19 dated January 15th, 2016, There is a chance that this could
20 happen. However, vehicles exiting the facility must yield
21 to vehicles on River Road. So here the AICP Chief has
22 acknowledged the fact that we residents know is painfully
23 clear, there is a chance this will happen and from our
24 perspective, a likelihood. I would like to point out that
25 contrary to Ms. Reynolds's advice, the car in the facility's

1 entrance will not be in a position to yield once it is, once
2 it's stopped at the shoulder area of River Road straining to
3 see if it's safe to make its left on to River Road.

4 Basically, it's not going to be able to get out of the way.

5 And, the sight lines blocked by the bridge require each and
6 every car edge out on to the shoulder because regardless if

7 you're making a right or a left out of this facility, you

8 need to be able to see the west, the westbound traffic.

9 Skip ahead. Oh, now it's about the, the cyclists.

10 The shoulder is also a bike path for the Montgomery County
11 plan. In fact, by Montgomery, Maryland law, bicycles on
12 this bike path that was recently marked on the pavement
13 along River Road just a few hundred east will go on to this
14 same westbound shoulder at this same point on River Road.

15 This is from the Maryland law. A bicyclist riding at the
16 speed of traffic can operate in any lane just as any other

17 vehicle can. Where there is not a bike lane, the bicyclist
18 may also use the shoulder of the roadway. That's TR 21-

19 1205.1(b). Can you picture yourself or your family riding
20 your bicycle on the shoulder on the bridge at this point on

21 River Road? Those of us in the community can. We can also
22 picture unsuspecting cyclists following the marked on the

23 pavement bike path a few hundred feet away that directs a
24 cyclist exactly into this increasingly dangerous shoulder

25 area. The commercial facility that stands to profit by the

1 residential to commercial zoning transaction has hired
2 traffic consultants who have explained why all the
3 community's concerns for safety are unfounded.

4 Unfortunately, we as residents are not financially in a

5 position to hire our own traffic consultants to compete. Of
6 course, this is one of the reasons residential properties,

7 zoning, master plans and cyclists must be protected by the
8 County. If Board members were to drive, Board members,

9 forgive me, Hearing Examiner --

10 MS. ROBESON: I understand.

11 MR. NOTHMAN: -- were to drive westbound on River
12 Road and go around a car making a left into our community or

13 drive on the shoulder as if a car was making a westbound
14 left into our community, the increased danger brought by

15 this proposed commercial facility's traffic encroachment on
16 the westbound shoulder would be immediately and readily

17 apparent. It would be my suggestion that if a reversal is
18 not summarily granted that the Board, that the --

19 MS. ROBESON: I understand.

20 MR. NOTHMAN: -- Hearing Examiner take the time
21 potentially to make this trip and see for yourself if a

22 traffic consultant is needed to refute common sense. In
23 response to Mr. Casey Anderson, Chair, Montgomery County

24 Planning Board's letter dated July 6th, 2015, Brian Young,
25 District Engineer, SHA, replied on January 21st, 2016. In

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1 MS. ROBESON: Well, wait a minute.
2 MR. NOTHMAN: Yes.
3 MS. ROBESON: Wait. How long --
4 MR. NOTHMAN: I have --
5 MS. ROBESON: Let me do this. I'm going to stop
6 you a second.
7 MR. NOTHMAN: Okay.
8 MS. ROBESON: Who else here wants to testify?
9 Okay. What I'm going to have to do is ask you, you know,
10 whatever you said in the past is not technically before me
11 today.
12 MR. NOTHMAN: I see.
13 MS. ROBESON: And I have to get through this
14 hearing.
15 MR. NOTHMAN: I hear you.
16 MS. ROBESON: And I'm not going to by going into
17 what was said before. So I am going to sustain Ms. Girard's
18 objection and move forward.
19 MR. NOTHMAN: Well, I have some of this testimony
20 is germane to what was said today.
21 MS. ROBESON: If you could keep it brief because I
22 want to make sure that everybody else gets a chance to talk
23 and then Ms. Girard has a chance to, you know, say what she
24 wants to say.
25 MR. NOTHMAN: Okay. Let me try my best.

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1 MS. ROBESON: Okay.
2 MR. NOTHMAN: Mr. Lenhart just recently, moments
3 ago testified that to, in answer to your question about a
4 disabled person. He said that there was no pedestrian
5 facility. These are his words. In, that were ADA-related
6 involved. He is 100 percent wrong on this point. The AD,
7 there's an ADA bus stop at the end of Carderock Drive. It
8 is ADA compliant. It was formed, it's one of 3,000 bus
9 stops in Montgomery County. So I'm surprised that Mr.
10 Lenhart is not aware of this. Lee, Lee Winestone is the
11 Montgomery County Department of Transportation person who
12 had a lot to do with making that happen. He happens to be a
13 friend mine so I know some details about this. He recently
14 got recognized by the Federal Transit Administration on July
15 23rd, 2015 for his contribution for ADA, for making these
16 bus stops ADA compliant.
17 MS. ROBESON: Okay. But I, if, if it's, that's
18 fine.
19 MR. NOTHMAN: So anyway, so that's just one point.
20 At, Mr. Lenhart suggested opposing cars can signal each
21 other. That's not so in this particular case. I know from
22 personal experience that the distance is too far. I've
23 tried, I've been in this particular intersection trying to
24 look at cars across. It's another point where Mr. Lenhart
25 made testimony as an expert and I just want to rebut it.

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1 MS. ROBESON: Okay.
2 MR. NOTHMAN: I am looking forward to the
3 opportunity to ask a few more questions to understand how
4 possibly the sight lines that are so apparent if you place
5 your car in these locations as I have and you take a look
6 and see what you can see and what you can't see in terms of
7 traffic and the way that I've watched and witnessed the
8 behavior of drivers responding to the intersection.
9 MS. ROBESON: Okay.
10 MR. NOTHMAN: So, again, I'm trying to think of
11 the points that are directly related to what the testimony
12 you've had today. So these are several areas of where I
13 believe that the, that we have a value added. That the
14 people who live in this community, we know about this
15 intersection. We're there all the time. We're not flaky I
16 don't know what.
17 MS. ROBESON: I understand.
18 MR. NOTHMAN: And so, common sense, sometimes you,
19 it goes a long way.
20 MS. ROBESON: Okay.
21 MR. NOTHMAN: So, let me see if I can wrap things
22 up. The lack of complete drawings I brought up. I think
23 there should be drawings --
24 MS. ROBESON: Okay. You don't have to reiterate.
25 MR. NOTHMAN: Lack of --

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1 MS. ROBESON: Just --
2 MR. NOTHMAN: So the, let's see. All right. I
3 think I can skip to my closing paragraph. Thank you for
4 your indulgence. So, making a fully aligned, complete and
5 safe intersection is the responsibility of the commercial
6 facility regardless of the cost. As the SHA described, the
7 first choice that they looked at was the widening of the
8 road and put in turn lanes. That's because that's the
9 obvious choice if you were able to do so. Once the
10 misaligned intersection comes in, to SHA's attention, an
11 aligned intersection is likely to be the recommended outcome
12 for the reasons described above. And we, we, we went
13 through those. Both cars seeking the same break in traffic.
14 So --
15 MS. ROBESON: Okay. Don't go through them again.
16 MR. NOTHMAN: Okay. So, so --
17 MS. ROBESON: I need to give everybody a chance to
18 speak.
19 MR. NOTHMAN: Okay. I just have my, my closing
20 paragraph for you.
21 MS. ROBESON: Okay.
22 MR. NOTHMAN: Thank you. So, alternatively, if
23 the County or commercial facility were to put aside
24 sufficient funds to align the intersection, widen the bridge
25 and put in turn lanes as part of the conditional approval

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1 that currently requires only reporting of the future
2 accident data and included an implementation threshold such
3 as one additional injury per year, then it would be a fully
4 funded plan for remedial action when the additional injuries
5 occur. Rightfully, any remedial action should be the full
6 responsibility to the commercial facility. However, the way
7 that it stands now, our community must first suffer
8 additional injuries, then fight for remedial corrections
9 with competing State level priorities. This is not a fair
10 or reasonable burden to place on our community. In the
11 process, many additional injuries and possibly deaths will
12 occur. If the intersection were later to be corrected, the
13 taxpayers would shoulder the burden. The most likely
14 result, end result will be the Carderock residents will be
15 denied the use of their own entrance. So, thank you. I
16 appeal to you on behalf of my community, my neighbors and my
17 children who all deserve your protection. Thank you for
18 your time so much.

19 MS. ROBESON: Thank you for your time.
20 Ms. Carlson, I didn't, oh, wait. You've got to
21 answer questions.
22 MR. NOTHMAN: Oh, I'm sorry. Yes.
23 MS. ROBESON: And then we're going to take a break
24 for lunch and then hopefully get to everybody.
25 Ms. Carlson, if you have any suggestions, you

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1 know, I'll come back to you. That don't involve major
2 capital improvements. Because right or wrong, you know, I
3 cannot legally require the applicant to pay for a left turn
4 lane in the bridge. So, you know, that's not a condition of
5 approval that I could put on this conditional use. So if
6 you have anything, you know, feel, let me, let Erin Girard
7 know and you can have an opportunity.
8 Okay. Ms. Girard, your questions.
9 MS. GIRARD: Just one, one question actually.
10 DIRECT EXAMINATION
11 MS. GIRARD: Has your community or you personally
12 ever approached Montgomery County either the Department of
13 Transportation or police about the rampant use or as you, as
14 you characterized it, the rampant use of the shoulder to get
15 around left turn vehicles?
16 MR. NOTHMAN: I have not.
17 MS. GIRARD: Okay. That's all I have.
18 MS. ROBESON: Okay. So with that, let me see the
19 hands again of those in opposition that wish to testify.
20 Okay. How long are your remarks going to be? Do you have
21 an idea?
22 UNIDENTIFIED MALE: I don't know.
23 UNIDENTIFIED FEMALE 1: About 10 minutes.
24 UNIDENTIFIED MALE: Or 15. Can we break for
25 lunch?

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1 MS. ROBESON: Huh? No. No. I have to break for
2 lunch or I'll be on the floor. We're going to break for
3 lunch for an hour. I'm going to ask the court reporter if
4 she has the flexibility to stay beyond 5:00 if we need it.
5 We're going to shoot for 5:00, but I don't want this to go
6 into an additional day. Okay. All right. So with that,
7 we'll be back at 2 o'clock. Thank you.
8 (OFF THE RECORD.)
9 (LUNCH.)
10 (ON THE RECORD.)
11 MS. ROBESON: Wait. I need to go back on the
12 record one second. Kathy, are you ready to go back on the
13 record.
14 THE COURT REPORTER: Yes.
15 MS. ROBESON: I would like Ms. Carlson to put that
16 exhibit back. Take a picture of it with your phone. Share
17 it with Ms. Girard. And if acceptable to both of you, email
18 it to me so I can put the picture, it's a different
19 arrangement than what you had in the photograph you
20 submitted so if you could take the picture, show it to her.
21 If it's okay, I'll put the photo in the record today. And
22 that way, if anything happens to that, we're, we're covered.
23 MS. GIRARD: Okay.
24 MS. ROBESON: Thank you.
25 MS. CARLSON: Yeah. Thank you.

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1 (OFF THE RECORD.)
2 (LUNCH.)
3 (ON THE RECORD.)
4 AFTERNOON SESSION
5 MS. ROBESON: Okay. We are back on the record. I
6 hope people are feeling better. Do we have the next
7 witness? Ms. Guest. Please raise your right hand. Do you
8 solemnly affirm under penalties of perjury that the
9 statements you're about to make are the truth, the whole
10 truth and nothing but the truth?
11 MS. GUEST: I do.
12 MS. ROBESON: And state your name and address for
13 the record.
14 MS. GUEST: Linda Guest, 8005 Quarry Ridge Way,
15 Bethesda, Maryland 20817.
16 MS. ROBESON: Thank you. You can proceed.
17 MS. GUEST: Okay. I have lived in the River Hill
18 Community of 111 homes located at the corner of River and
19 Seven Locks Roads about a half mile east of the Artis
20 property and on, on the north side of River Road, on the
21 edge of the sub-region. I've been ingressing and egressing
22 River Road for 28 years and I'm very happy that we have a
23 large median that protects us. It's two lanes to get to the
24 center and then two lanes to the left. I have been in
25 Clewerwell, or Clewerwall and tried to make a left turn from

1 there. And it seemed like an eternity before I could make
 2 that left and it was not comfortable. And I also went to
 3 the Artis facility and made a left turn from there. It was
 4 very uncomfortable and I felt very insecure doing that and
 5 I'm not a timid driver. My friends will tell you. But
 6 anyway, I've been a visiting assisted living facility since
 7 about 2002 for family members and elderly friends. And in
 8 May I visited the Artis facility in Olney and also the Great
 9 Falls/Herndon facilities. They have a great design, nice
 10 landscaping and caring staff. I'm concerned that the
 11 proposed shift changes are incompatible with bus schedules
 12 and pose a danger for River Road drivers. Artis emphasizes
 13 shift changes outside of peak hours at 6:00 a.m., 2:00 p.m.
 14 and 10:00 p.m. as if a bell goes off in a factory. This is
 15 not the way it works. First of all, there's overlap. Just
 16 like in a hospital. The incoming shift does turnover with
 17 the departing shift and that may last 30 minutes. If an
 18 employee fails to show up at the appropriate time due to
 19 traffic jams, late buses, kids, whatever, someone may not be
 20 leaving for some time. And if someone calls in sick, that's
 21 another problem. And this is a healthcare facility, not a
 22 factory. Secondly, the bus schedules for the alleged 50
 23 percent of the employees is not viable. The Ride-On bus
 24 number 36 would not arrive until about 6:45 a.m. and it
 25 ceases service at 7:50 p.m. and doesn't operate on weekends

1 at all. The T-2 can deliver weekday employees near the 6:00
 2 a.m. start, but not until 7:25 or so on weekends. And the
 3 T-2 ceases weekend operation to Friendship Heights at about
 4 7:25 p.m. and to Rockville at 8:04 p.m. Consequently, the
 5 weekend 2:00 p.m. shift has no way home and the 10:00 p.m.
 6 shift has no way in unless they want to arrive very early.
 7 So these employees will be driving or getting rides on the
 8 weekends. The impact of, on River Road I think has been
 9 very minimalized with the applicant's traffic statements
 10 suggesting only two peak a.m. trips and four peak p.m.
 11 trips. Now I looked at the LATR. I understand that
 12 anything under 30 does not require a traffic study and the
 13 LATR is based on Montgomery County traffic trip generation
 14 rate study. But I also read Glenn Orlin's Phed Committee
 15 meeting memorandum of June 17th, 2013 that says that the
 16 LATR numbers come from a traffic study that was completed in
 17 1989 incorporated into the LATR in 1990 and has not been
 18 changed ever since.
 19 MS. GIRARD: Objection.
 20 MS. ROBESON: Wait.
 21 MS. GIRARD: We're, I don't even, that memo is not
 22 in the record and we're, I, I don't know that traffic, the,
 23 the whole basis of the traffic study is back on the table.
 24 MS. ROBESON: Oh, well, I think, go ahead. What's
 25 the relevance of that?

1 MS. GUEST: The relevance is that he's also saying
 2 that the ITE trip generation manual is the most up to date
 3 and authoritative document on all transportation standards,
 4 the 9th edition. He says that. And other applications for
 5 memory care centers have used those numbers, both in
 6 Montgomery County and all around the country.
 7 MS. ROBESON: I, just for a moment. Ms. Girard,
 8 in the interest of getting through, I, I'm going to let it
 9 in and give it the weight it deserves. Okay.
 10 MS. GIRARD: Okay.
 11 MS. ROBESON: The memo is not in the record so --
 12 MS. GIRARD: Right. Yeah, that's my concern.
 13 MS. ROBESON: Yeah. Okay. Go ahead. I'm sorry.
 14 MS. GUEST: Okay. Well, I guess the, what, well,
 15 this specific record. Because you can see, and OZAH has
 16 applications before it. The Brandywine Senior Living,
 17 Colesville Senior Living and --
 18 MS. ROBESON: But what's your basis for saying
 19 it's, it's outdated? The LATR is outdated. That's the
 20 question.
 21 MS. GUEST: Oh, the Glenn Orlin memo?
 22 MS. ROBESON: Yeah. That's what's not in the
 23 record.
 24 MS. GUEST: So --
 25 MS. ROBESON: So --

1 MS. GUEST: I can't give it to you now?
 2 MS. ROBESON: What's the relevance to the safety
 3 of the intersection?
 4 MS. GUEST: Well, because I think that there are
 5 going to be far more trips. Because if you used the ITE
 6 trip generation, and Artis has submitted applications
 7 elsewhere with the 9th edition ITE trip generation and they
 8 show for a 72-bed facility, they would have 13 a.m. peak
 9 trips, 21 p.m. peak trips, but it's really the daily trips
 10 that are at question. And that would be 198 daily trips.
 11 That's 198 opportunities to have problems at this
 12 intersection.
 13 MS. ROBESON: Say those numbers again? I, I don't
 14 want to belabor the point.
 15 MS. GUEST: No.
 16 MS. ROBESON: Mr. Lenhart, are you paying
 17 attention?
 18 MR. LENHART: I am paying attention. Yes.
 19 MS. ROBESON: Okay. Go ahead.
 20 MS. GUEST: Okay. Thirteen a.m. peak trips, 21
 21 p.m. peak trips and 198 daily trips in and out of the
 22 facility.
 23 MS. ROBESON: Okay. Oh, I see what you're saying.
 24 Okay.
 25 MS. GUEST: Yeah.

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1 MS. GIRARD: Wait. I, I don't. I, I mean I
2 don't, how do we get to 198?
3 MS. GUEST: Well, first of all --
4 MS. ROBESON: She's not just counting peak hour.
5 MS. GUEST: Right. The facility is open 24/7.
6 MS. ROBESON: She's, she's counting every shift
7 change.
8 MS. GUEST: I'm counting --
9 MS. ROBESON: Whether it's peak hour or not.
10 MS. GUEST: It's not just about shift changes.
11 MS. ROBESON: Well, actually where do you get the
12 198?
13 MS. GUEST: From Artis's submissions in other
14 facilities.
15 MS. ROBESON: Okay. But the rate, as I understand
16 it and, and I didn't look at this, is based on bedrooms.
17 MS. GUEST: That's right.
18 MS. ROBESON: So could those be larger bedrooms?
19 I mean not larger bedrooms.
20 MS. GIRARD: Facilities.
21 MS. GUEST: If you had, if you had a 64-bed
22 facility, the daily trip rate would be, go down to 175.
23 MS. ROBESON: Okay. You know, you can rebut. I
24 think it's --
25 MS. GIRARD: Yeah. Okay.

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1 MS. ROBESON: Yeah. Go ahead.
2 MS. GUEST: Well, and the point is that this is a
3 far more intense facility.
4 MS. ROBESON: I see.
5 MS. GUEST: Than, you know, what I thought might
6 be an eight-bed, lovely dementia care center. And not only
7 that, but the traffic on River Road right now is excessive.
8 We just had approval for starting Hearst just to the east
9 and the starting Hearst facility did trigger a traffic study
10 because it's for 97 condos. And in 2004, Gorove-Slade
11 Associates did the traffic study and it shows the daily
12 traffic of 8,881 trips westbound and 7,430 trips eastbound
13 during January of whatever. I have it. 2004, I guess. And
14 there were a significant number of trips during non-peak
15 hours, some of which approached the peak hour. And Mr.
16 Lenhart had mentioned that Seven, the signal at Seven Locks
17 creates gaps. Yes, it does. River Hill takes advantage of
18 that. Stoneyhurst could take advantage of that.
19 Stoneyhurst is still under construction. It hasn't even hit
20 the road yet. Another issue I wanted to bring up is, you
21 know, assuming the employees take the bus, there's one dim
22 street light at the Carderock Springs entrance and I know
23 that SHA can't install a crosswalk, but I'm wondering how
24 are those employees, where are they going to be? Are they
25 going to be on the shoulder? It's my understanding that the

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1 pathway, the bike pathway is only going to go up so far, but
2 if they have to go to the bus stop at Clewerwall, how are
3 they going to get there?
4 MS. ROBESON: Why can't they use the bus stop at
5 the facility? Why would they go to the bus stop at
6 Clewerwall?
7 MS. GUEST: Because they want to go the other way.
8 MS. ROBESON: Okay. Go ahead.
9 MS. GUEST: But my question, well, what I would
10 suggest is, and because Stoneyhurst when that was approved,
11 they had to put in a path all the way to that, to the
12 bridge, the Creek bridge and all the way to Seven Locks
13 Road, including in front of River Hill. So why can't they
14 put a path all the way up to Clewerwall? I mean this was
15 what was in the applicant's proposal. That that's where the
16 employees catch the bus, up at Clewerwall. I'd like to see
17 a path so the employees would be walking there because the
18 shoulder on River, on the north side narrows to only a few
19 feet and during the snow, it's non-existent. In tandem with
20 that, lighting, the applicant has proposed no signage, which
21 is highly unusual for any commercial business. It's not in
22 keeping with what has been done at Olney or Great
23 Falls/Herndon where they have monument signs.
24 MS. GIRARD: Objection. Why are we talking about
25 signage?

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1 MS. GUEST: Well, because this issue of --
2 MS. ROBESON: Go ahead. What is the relevance?
3 MS. GUEST: That how are drivers to know what's
4 going on?
5 MS. ROBESON: You're saying, and you're saying
6 it's a safety issue because they don't know where to turn.
7 MS. GUEST: Um-hmmm. And you can put out all
8 these little yellow signs and I, I think Anne has a photo
9 where you're looking from Seven Locks up River west and it
10 shows all these yellow signs. And it's visual pollution.
11 In this case, I'm wondering if maybe an appropriately sized,
12 well placed sign would be more beneficial than some of the
13 other signage that we heard about.
14 MS. ROBESON: You mean a sign announcing the
15 entrance?
16 MS. GUEST: Yeah. Like --
17 MS. ROBESON: Okay.
18 MS. GUEST: Like a business would have.
19 MS. ROBESON: Yeah. Okay. I understand.
20 MS. GUEST: I'm not sure where that would be, but,
21 and another question that's come up is whether or not the
22 County has the authority to limit the number of employees or
23 restrict the hours because it's not just employees who are
24 in these facilities. You have private care nurses. You
25 have in addition to the visitors, and they have to take care

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1 of the families. You have a lot of these people. And you
2 might have a lot more in a Potomac facility than you would
3 have in some other facilities. By law, the facility is
4 required to attend to the needs. You can't just say that
5 employees can't be there. They have to, to be there to take
6 care, to spoon feed, whatever, and take care of these needs.
7 Can you really limit them? I don't know.
8 MS. ROBESON: Well, I can if there's a good reason
9 which means a reason that would mitigate an adverse impact.
10 So it would, you would have to demonstrate and that's what
11 this hearing is about. You would have to demonstrate that
12 the number of employees are going to create safety problems.
13 Okay. So --
14 MS. GUEST: And it's not just employees either.
15 And are they part-time employees or full-time employees.
16 MS. ROBESON: Okay. Are you asking me? I --
17 MS. GUEST: Well, it's a question. It's, it's not
18 defined.
19 MS. ROBESON: Okay.
20 MS. GUEST: Are they full, full-time equivalent
21 employees because they could have 38 full-time people or
22 they could have twice that working part-time.
23 MS. ROBESON: Well, I think the, I think the
24 condition before said 18 people on X shift. So many people
25 on the next shift. So there was a specific number of

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1 employees coming and going.
2 MS. GUEST: Right. Right. Well, I would like to
3 see this facility located in a safer location.
4 MS. ROBESON: Okay.
5 MS. GUEST: Thank you.
6 MS. ROBESON: I understand. Anything else that --
7 MS. GUEST: No.
8 MS. ROBESON: Okay. Well, Ms. Girard, do you have
9 any questions?
10 MS. GIRARD: No.
11 MS. ROBESON: All right. Well, I appreciate your
12 coming out and thank you. Now, let me just, I was thinking
13 at lunch, if anyone has suggestions, it's, as I said, it's
14 beyond my power to make the applicant construct a left turn
15 lane. I can't do it. If any, just a second. If anyone has
16 any suggestions about something that you think might make
17 the intersection safer, you know, please volunteer those.
18 Yes?
19 MS. GUEST: Is there any way to create like a
20 service lane going up to Clewerwall so you're, you don't
21 even have to go out at that point?
22 MS. ROBESON: Yeah. I can't answer that. So --
23 MS. GUEST: No.
24 MS. ROBESON: -- at this stage I can't.
25 MS. GUEST: I think that would solve a lot of

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1 problems.
2 MS. ROBESON: Okay. Okay. Who would like to be
3 next? Please raise your right hand. Do you solemnly affirm
4 under penalties of perjury that the statements you're about
5 to make are the truth, the whole truth and nothing but the
6 truth?
7 MS. VOGELGESANG: I do.
8 MS. ROBESON: Please state your name and address
9 for the record.
10 MS. VOGELGESANG: My name is Sandy or Sandra
11 Vogelgesang and the address is 9009 Charred Oak Drive in
12 Bethesda, Maryland 20817.
13 MS. ROBESON: Okay. Why don't you go ahead?
14 MS. VOGELGESANG: Okay. As I noted, my name is
15 Sandy Vogelgesang. I serve as the president of the West
16 Bradley Citizens Association. I am presenting this
17 testimony in behalf of Carl Koenig, who is our vice
18 president and treasurer and could not be here today.
19 MS. ROBESON: Yes. He was a party in the first
20 case.
21 MS. VOGELGESANG: Exactly.
22 MS. ROBESON: Yes.
23 MS. VOGELGESANG: Exactly. I've been involved in
24 community activities and issues for about 20 years,
25 including local planning and zoning issues since the 2002

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1 Potomac Master Plan. As Carl was writing his testimony as
2 an individual, I am speaking also as an individual. I'll
3 address two aspects of the safety issue raised by the
4 intersection at the proposed Artis facility. First, the
5 safety challenge for the users of the Artis facility, and
6 then, second, the safety challenge for the residents of
7 Carderock Springs. First point, the intersection by the,
8 for the Artis project would be unsafe for Artis facility
9 users and I think that's the case for several reasons. The
10 dangerous nature of westbound traffic turning left into
11 Carderock Springs Drive shows the danger for eastbound
12 traffic turning left into the Artis driveway, the same
13 intersection. Something we've seen illustrated in previous
14 testimony today. In his letter of January 13th, 2016, the
15 Artis traffic consultant, Mr. Lenhart, draws the wrong
16 conclusion from his own data when he dismisses the danger to
17 Artis facility users from motorists speeding on River Road.
18 He concludes on page 2 that, quote, There is not an
19 excessive speeding problem along this section of River Road,
20 end quote. However, the last column of the data table of
21 westbound traffic speeds on page 3 of this letter shows that
22 61 percent are exceeding the 40 mile per hour speed limit,
23 31 percent, almost one in three, are going in excess of 45
24 miles per hour, and 14 percent, almost one in seven, are
25 traveling at 50 miles per hour or faster. Thus, the danger

1 is not from the number of vehicles which are respecting the
 2 speed limit. The danger is from the large number of
 3 vehicles that are traveling too fast. In his testimony in
 4 the original hearing, Mr. Lenhart said he had an eastbound
 5 morning vehicle count outside of the peak hours of 630 per
 6 hour. Using his data of 14 percent traveling 50 miles per
 7 hour or faster, this would mean that 88 vehicles per hour or
 8 one every 41 seconds or three every two minutes are passing
 9 this intersection eastbound at the speed of 50 miles per
 10 hour or greater. When the Quarry Springs or Stoneyhurst
 11 facility opens, the number of vehicles speeding through this
 12 intersection will be even higher. Mr. Lenhart's letter
 13 reports on the speed of westbound traffic where the drivers
 14 have been approaching the intersection from a flat roadway.
 15 The traffic approaching the intersection to turn left into
 16 an Artis facility would be going eastbound. Going in that
 17 direction, eastbound, the Artis driveway is at the bottom of
 18 a long hill where the downhill traffic is naturally picking
 19 up speed unless the drivers are riding their brakes. Thus,
 20 the report understates the speed of the traffic and the
 21 number of cars per minute exceeding 50 miles per hour which
 22 would be behind any car stopping to turn left into the Artis
 23 driveway. Beyond the speed factor, there's another factor.
 24 All of the nearby development projects on this part of River
 25 Road have had physical safety features built where their

1 driveways intersect with River Road from the north. This,
 2 we believe, is powerful evidence that such features are
 3 needed to avoid having the projects increase the safety
 4 hazards. The other projects, for example, have right turn
 5 deceleration lanes for westbound traffic starting from the
 6 Beltway. Giancola townhouses has one. River Hill has one.
 7 Quarry Springs or Stoneyhurst has one. Artis would be next
 8 in the line-up. Norwood School has one. So we feel this is
 9 just as necessary for the Artis project. Another point in
 10 this regard, the other projects have center left turn lanes
 11 for eastbound traffic turning into the project. Again,
 12 River Hill has one. Quarry Springs has one. Norwood has
 13 one. We think that Artis should as well. Another aspect.
 14 The other projects have at least a center left turn lane for
 15 traffic. River Hill does. Quarry Springs does. Norwood
 16 School. Why not Artis? Note that River Hill and Quarry
 17 Springs have the just mentioned safety features even though
 18 they do not have another driveway opposite. The Norwood
 19 School driveway has a driveway opposite. The Artis driveway
 20 also has an opposite driveway that is, in fact, as we
 21 discussed earlier today, offset. So the Norwood
 22 Congressional intersection is the most relevant model of
 23 what a commercial project should have if it were to be safe
 24 for its commercial and family visitors. That intersection
 25 has left turn lanes in both directions, a traffic light and

1 painted crosswalks for pedestrians. Speaking of
 2 pedestrians, as we talk about the, the problems for Artis
 3 users. It's not just an issue for cars and drivers of cars.
 4 Pedestrians trying to access the Artis facility from the bus
 5 stop on the south side of River Road do so at great risk
 6 from turning vehicles and the 50 mile per hour plus vehicles
 7 as they try to cross River Road since there would not be a
 8 traffic light, a median or even a painted crosswalk. Those
 9 using a wheelchair may well not make it to the ADA compliant
 10 bus stop on the Artis side.
 11 Those are the key points that Carl has made with
 12 regard to the implications for Artis guests. Second, the
 13 Artis facility, in his view and mine, would make the
 14 intersection less safe for Carderock residents. The
 15 Carderock Springs Drive residents waiting for a break in
 16 traffic so they can exit on to River Road can be facing
 17 vehicles waiting to exist from the opposite Artis driveway,
 18 which is offset. Again, we've illustrated this amply today.
 19 This offset makes the turning movements from the two
 20 driveways conflicting turn movements. What happens when
 21 there is finally a break in traffic and an Artis exiting car
 22 rushes to turn left and a Carderock existing car turns
 23 right? Or vice versa. Or the Artis and Carderock cars both
 24 turn left with the lane offset increasing the chance of
 25 collision? It is not obvious who has the right-of-way and

1 both are likely to start immediately before the break in
 2 traffic closes up. What if, at the same time, a pedestrian
 3 who gets off the eastbound bus from Rockville tries to take
 4 advantage of the break in traffic and runs across River
 5 Road? Will a driver turning left from Carderock, perhaps a
 6 repairman or a parent with some children in the car stop in
 7 the middle of the road for the pedestrian and risk being
 8 broadsided by the eastbound or westbound cars or keep going
 9 and hope that the pedestrian can get out of the way? Either
 10 way injury is likely.
 11 To conclude, the Maryland State Highway
 12 Administration considers River Road to be a major
 13 transportation highway and will not or cannot add the
 14 physical safety features necessary to prevent the increased
 15 safety hazards that the Artis facility would cause. Thus,
 16 we believe that the proper conclusion is that the Artis
 17 application should be denied because, first, the proposed
 18 project does not meet the zoning ordinance requirement that
 19 a conditional use not cause, quote, undue harm, end quote,
 20 to the, quote, health, safety or welfare of neighboring
 21 residents, visitors or employees, end quote. And, two, the
 22 proposed project is contrary to the recommendation of the
 23 2002 Potomac Master Plan, which says on page 35, quote,
 24 avoid excessive concentration of special exceptions along a
 25 major transportation corridor, unquote. And finally, three,

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1 the proposed project is contrary to the 2002 Potomac Master
2 Plan, which, on page 38, second paragraph, after saying
3 that, quote, senior housing is appropriate throughout the
4 sub-region, end quote, says, quote, when significant impacts
5 cannot be mitigated, projects should be located elsewhere in
6 the sub-region, unquote. Thus, I respectfully urge that you
7 recommend disapproval of the Artis conditional use
8 application. Thank you.
9 MS. ROBESON: Thank you for taking the time. Ms.
10 Girard, any questions?
11 MS. GIRARD: I just, honestly, I might have been
12 writing and I want to make sure I heard it correctly.
13 DIRECT EXAMINATION
14 MS. GIRARD: When you were talking about the chart
15 with, Mike Lenhart's speeding chart and you came up with the
16 number of speeders, you used a number to base that on and I
17 want to make sure that I heard that correctly. If you want
18 to --
19 MS. VOGELGESANG: Yes. Well, what I can also do
20 if this helps because I know was giving a lot of dense data.
21 I have a copy for the record, so I could just submit that.
22 MS. ROBESON: I would like that because --
23 MS. VOGELGESANG: Okay.
24 MS. ROBESON: -- it's easier than --
25 MS. VOGELGESANG: Absolutely.

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1 MS. ROBESON: -- going through the transcript.
2 This is an exact copy of what you just read?
3 MS. VOGELGESANG: Yes, it is. There were a couple
4 times when I was speaking extemporaneously too for
5 transitional purposes.
6 MS. ROBESON: Yes.
7 MS. VOGELGESANG: But the substance is the same.
8 MS. ROBESON: Do you have an objection?
9 MS. GIRARD: Assuming it's the, you know, and I'll
10 take her at her word that it's what she said.
11 MS. ROBESON: She's under oath.
12 MS. GIRARD: Yeah.
13 MS. VOGELGESANG: I'm not knowledgeable enough to
14 diverge much from what Carl was saying.
15 MS. ROBESON: Okay. So I'm going to mark this --
16 MS. VOGELGESANG: And I'd be in trouble with Carl.
17 MS. ROBESON: -- as 155, Exhibit 155.
18 MS. CARLSON: It's already an exhibit.
19 MS. ROBESON: Where?
20 MS. CARLSON: It is --
21 MS. ROBESON: I don't --
22 MS. CARLSON: Len, Lenhart's speed, speed study --
23 MS. ROBESON: -- recognize the name.
24 MS. CARLSON: -- was --
25 MS. VOGELGESANG: Sort of attached to a letter of

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1 January 13th.
2 MS. ROBESON: No.
3 MS. GIRARD: I think she's admitting your
4 testimony as a new exhibit.
5 MS. ROBESON: What I, yes.
6 MS. GIRARD: Isn't that what you were doing?
7 MS. VOGELGESANG: Oh, I'm sorry. I'm sorry.
8 MS. ROBESON: Yes. I want the testimony and
9 whatever, so I'm going to make it 155 and I'm going to make
10 it written testimony of Sandy Vogelgesang.
11 (Hearing Exhibit 155 was
12 received in evidence.)
13 MS. VOGELGESANG: Probably in fairness, it would
14 be Carl Koenig, who --
15 MS. ROBESON: Well --
16 MS. VOGELGESANG: It's his --
17 MS. ROBESON: It says Sandra Vogelgesang.
18 MS. VOGELGESANG: Okay. Okay.
19 MS. ROBESON: So that's what I'm going to call it.
20 Thanks. Any other, now you're looking for the number?
21 MS. GIRARD: I'm not sure I got the answer.
22 Right. The number that you used with the speeding numbers
23 to get to a conclusion. Does that, do you know what I mean?
24 MS. ROBESON: Can you provide that, Ms.
25 Vogelgesang?

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1 MS. VOGELGESANG: You need, talking about the
2 speeding numbers, when I was talking about the 61 percent
3 exceeding 40 miles --
4 MS. GIRARD: Right.
5 MS. VOGELGESANG: That --
6 MS. GIRARD: And then, but then you went on to say
7 --
8 MS. VOGELGESANG: Um-hmmm. Then using a stat of
9 14 percent.
10 MS. GIRARD: Okay. Yeah. And is, Mr. Lenhart
11 said, now I'm reading her, which I think said he had an
12 eastbound morning vehicle count outside of the peak hours of
13 630.
14 MS. VOGELGESANG: 30.
15 MS. GIRARD: Okay. That's what I was trying to
16 figure out. Yeah.
17 MS. VOGELGESANG: Okay. And I apologize I didn't
18 make another copy.
19 MS. GIRARD: If you don't mind, I was writing off
20 there.
21 MS. VOGELGESANG: Sure. Yeah.
22 MS. GIRARD: 630. Okay. That's all I have.
23 MS. VOGELGESANG: Okay.
24 MS. ROBESON: That's all you have. Okay.
25 Anything else, Ms. Vogelgesang? Anything else?

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1 MS. VOGELGESANG: No. I just wanted to represent
2 what Carl had done in behalf of our citizen association.
3 MS. ROBESON: Thank you.
4 MS. VOGELGESANG: Because he wanted to support
5 Carderock.
6 MS. ROBESON: Thank you.
7 MS. VOGELGESANG: Thank you.
8 MS. ROBESON: Okay. Anyone else that wishes to
9 testify? Yes.
10 MR. BRUESTLE: My name is Arthur Bruestle. I live
11 at 8316 Fenway Road in Bethesda in Carderock Springs.
12 MS. ROBESON: Okay. Please raise your right hand.
13 Do you solemnly affirm under penalties of perjury that the
14 statement you're about to make are the truth, the whole
15 truth and nothing but the truth?
16 MR. BRUESTLE: I do.
17 MS. ROBESON: Go ahead.
18 MR. BRUESTLE: That was a hard act to follow. I'd
19 just like to make some points. We, we learned that roughly
20 14 percent of the drivers westbound in River Road exceed 49
21 or 50 miles an hour. We learned that from Mr. Lenhart's
22 testimony --
23 MS. ROBESON: Right.
24 MR. BRUESTLE: -- and report. On the stretch of
25 River Road between Seven Locks and Bradley there's a lane

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1 reduction from two lanes to, to one lane going westbound.
2 There are two housing developments. There's a fire station.
3 There's parking for Cabin John Trail. There's a bike lane
4 that abruptly ends just short of the bridge. There's an
5 intersection at Clewerwall Drive, Fenway Drive up above and
6 then the intersection between Carderock Country Club and
7 Norwood School. Given all of that, going from Seven Lock to
8 Bradley, I think one should consider, and now adding Artis,
9 one should consider reducing the speed from 40 to 35 miles
10 an hour. And the advantage of 35 miles an hour, we learned
11 from the State Highway Department letter, is that you can
12 then post a, a speed detection sign and have speed controls
13 that enable drivers to know what, what speed they're going
14 on. Without, if you're down, above, if you're above 35
15 miles an hour, according to State Highway, you can't put
16 such a speed camera. So I think there is an advantage, if,
17 if Artis goes ahead, to reducing the speed on that long
18 stretch to 35 miles an hour and enable speed detection.
19 Secondly, the bike lane that they built, which ends just
20 about 300 feet short of the bridge, it actually terminates
21 and a biker wouldn't know what to do. Should he just
22 disappear? There's a sign that says Bike Lane Ends. The
23 Bike Lane Ends sign is probably good for the driver because
24 the drivers will realize that the biker is coming on, but
25 the biker then has to drive on the shoulder and he has to

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1 cross the bridge on the shoulder. And this is the same
2 shoulder that cars use to, to pass a left turning vehicle, a
3 car going into left turn on Carderock. So you have the
4 conflict of the, the bike, the car turning, car turning into
5 Artis, cars passing left turning vehicles at Carderock. My
6 suggestion to that is to stripe, zebra stripe. If you don't
7 do anything else, at least zebra stripe that section of the
8 bike path so that everyone knows that's not a bike trail and
9 you're not supposed to drive on it. I called the Montgomery
10 County --
11 MS. ROBESON: Wait. What's not a bike trail?
12 MR. BRUESTLE: The, the --
13 MS. CARLSON: Shoulder.
14 MR. BRUESTLE: The shoulder. The bike trail, the
15 bike trail ends and it, it continues on the shoulder.
16 MS. ROBESON: I see.
17 MR. BRUESTLE: See, there's a sign here that says
18 Bike Trail Ends.
19 MS. ROBESON: Oh, okay. I, I understand what
20 you're saying.
21 MR. BRUESTLE: And there's a wonderful bike trail.
22 But it just ends.
23 MS. ROBESON: Okay.
24 MR. BRUESTLE: What is a biker to do?
25 MS. CARLSON: Turn around.

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1 MR. BRUESTLE: Yeah. So I, I feel, you know,
2 having a limited, kind a limited solution, zebra stripes
3 there would be, would be good. The zebra stripes would tell
4 drivers it's a no-no to drive over on the shoulder and it
5 would tell the, keep the bikers safer. I think general,
6 that would be general safety improvement. I'd like to hear
7 Mr. Lenhart's opinion on that, if you would render it.
8 Those, other than everything else being said, I have nothing
9 more to add.
10 MS. ROBESON: Thank you.
11 MR. BRUESTLE: You're welcome.
12 MS. ROBESON: Ms. Girard, do you have any
13 questions?
14 MS. GIRARD: Nothing.
15 MS. ROBESON: All right. You may be excused.
16 Thank you.
17 THE COURT REPORTER: Could I ask Mr. Bruestle to
18 spell his last name?
19 MR. BRUESTLE: Yes. B-R-U-E-S-T-L-E.
20 THE COURT REPORTER: Thank you.
21 MR. BRUESTLE: You're welcome.
22 MS. ROBESON: Okay. Now I know there's someone
23 there that's been waiting to testify. I missed your hand
24 because it's right behind Ms. Carlson. So why, why don't
25 you come next. Is there anyone after that? Okay. Seeing

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1 none. Ms. -- please raise your right hand. Do you solemnly
2 affirm under penalties of perjury that the statements you're
3 about to make are the truth, the whole truth and nothing but
4 the truth?
5 MS. LEE: I swear. Yes.
6 MS. ROBESON: And please state your name and
7 address for the record.
8 MS. LEE: My name is Suzanne Lee, L-E-E. I reside
9 at 12900 Circle Drive, Rockville, Maryland 208, 20850. I'm
10 currently the president of the West Montgomery County
11 Citizens Association. However, I'm testifying in opposition
12 today as an individual member of the public because we were
13 unable to meet the requirements for filing a prehearing
14 statement no later than 20 days before the, before the
15 hearing. I wish to reiterate the uniquely adverse effects
16 on traffic safety of placing this intense commercial use at
17 a location that is already dangerous and compromised that
18 were set forth in the January 20th, 2016 letter from
19 Catherine Titus to the Hearing Examiner. I believe it's
20 Exhibit 149. Placement of the facility at this location
21 will have unique adverse impacts, harmful impacts on the
22 safety of all of those who live in the entire Potomac sub-
23 region. That neighborhood includes not just Carderock, but
24 all of those, the thousands of those, unfortunately, there's
25 thousands of us out on that road, who use this very heavily

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1 trafficked section of River Road each day. Contrary to the
2 remand order, the January 21st letter from the State Highway
3 Administration that I would consider to be the experts here
4 that you consulted with fails to address in any way the
5 impact the proposed use will have on traffic safety in that
6 area. Instead it focuses only on the already substantial
7 safety issues which have been discussed today with regard to
8 the intersection of Carderock Springs Road and River Road.
9 And as a result, it failed to look at any of the impacts
10 with regard to traffic from the site and in particular,
11 today, which I think is a very interesting concept of this
12 unaligned intersection issue and, and as a result, it also,
13 because it doesn't address any of those, it also does not,
14 in a manner consistent with the remand order, does not
15 provide any calming, traffic calming or improvements for
16 safety with regard to the impacts that are caused by the
17 Artis. What it does instead is focus on the issues that
18 people have been dealing with at that intersection without
19 Artis being there. So as a result, it, it looks at it. I,
20 I think that they concluded as well that there have been
21 many multiple dangerous crashes there and they, and they
22 reject pretty much all the possibilities for calming
23 traffic. So there's going to be no new speed limits.
24 There's going to be no cameras. They specifically reject
25 the westbound turn lane because it's too close to the

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1 bridge. The terrain is bad there and the presence of a
2 stream. It only suggests to erect a symbolic sign showing
3 the T intersection on the south side opposite the same sign
4 that's currently on the north side. So that indicates right
5 there that they're not looking at all at the Artis section
6 of the intersection. And the ultimate irony, it also
7 suggests that because they think it's too expensive to move
8 the bridge, to put in a turn lane that this community will
9 have to suffer basically the consequences not only of what
10 they already have, but, and I didn't even go into what the
11 additional impact is going to be from Artis, by putting up a
12 No Left Turn lane. I think that's the ultimate negative
13 impact of, of having this, not the ultimate, but one of the,
14 one of the indications of, of how adverse this will be and
15 how uniquely adverse it will be. Their letter does indicate
16 that there's an intersection warning sign installed on
17 westbound River Road prior to the intersection. In fact,
18 that warning sign is placed not for Carderock Springs or for
19 the new facility, but for the new intersection at the
20 development in the Stoneyhurst Quarry that, that we've
21 talked about today. At that, at that intersection, at that
22 spot, the road is flat at that location. All the
23 development is concentrated on the north side with no other
24 conflicting intersections.
25 MS. ROBESON: Well, can I stop you a minute?

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1 MS. LEE: Sure. Sure.
2 MS. ROBESON: I just had a question.
3 MS. LEE: Sure.
4 MS. ROBESON: Where is that sign?
5 MR. NOTHMAN: Here's the photograph. You've got
6 to show the sign, ma'am.
7 MS. LEE: Oh. I'm sorry.
8 MS. ROBESON: When you say before the, I the
9 quarry was east of this.
10 MS. LEE: I'm sorry. Yeah. And, and that's not,
11 the sign I'm talking about, at least what I think from when,
12 when I'm looking at, when I'm looking at what the State
13 Highway is saying, there's an intersection warning sign is
14 installed along Maryland's prior to the intersection to
15 bring additional awareness. Oh, I see. I was thinking that
16 they were talking about the yellow flashing sign that has
17 now been installed at the Stoneyhurst Quarry.
18 MS. ROBESON: Yeah, I think they're talking about,
19 well, I can't testify, but --
20 MS. LEE: No, you're right. I think maybe, I
21 think maybe they're, and so then as a result, they're
22 pointing out that they could put another one on the other
23 side of the road, the yellow one. But I would point out
24 that, that, that just as folks have talked about other
25 locations where there are turn lanes, down at Stoneyhurst,

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1 MS. GIRARD: But you're not familiar what else is
2 in the record regarding SHA's thoughts on the site analysis?
3 MS. LEE: No. No. Because I assumed that they
4 were, they were supposed to look at what the impacts are and
5 what are specific mitigation measures that could be taken
6 and they don't address it all.
7 MS. ROBESON: Okay. Any other, anything else?
8 MS. GIRARD: No.
9 MS. ROBESON: Before we get into rebuttal, very
10 quickly, Ms. Carlson, had you in the inter, you know, the
11 time since it was remanded have had thoughts about
12 improvements that, or safety improvements. You mentioned, I
13 think, something about a sign saying No Shoulder. Anything
14 else?
15 MS. CARLSON: Just a moment. I had it all good to
16 go. And actually I made these suggestions to you on August
17 24th in my submission to you last year in an effort to be
18 cooperative to the process and the things that we mentioned
19 then were moving the Artis driveway further up the hill so
20 that it wasn't so much in conflict. Adding it at the
21 traffic light at the intersection, be it flashing or motion
22 censored. Installing speed cameras, mandating a lower speed
23 limit, creating a well-marked crosswalk, constructing
24 turning lanes and asking the State Highway Administration to
25 try harder to make this possible.

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1 MS. ROBESON: Okay.
2 MS. CARLSON: I'm almost done. Adding better
3 signage about the intersection, including something that
4 would say No Use of the Shoulder for Passing. And, in fact,
5 I, I would suggest that there could be room for a turning
6 lane if the SHA wanted to do it in that there is, and I
7 have, this would be 148(c), there is room between where the
8 bridge ends. There's a guard rail. Okay. I'm looking at
9 it backwards. But I think if State Highway really wanted to
10 make an effort, there is room for them to make a turning
11 lane.
12 MS. ROBESON: Right. But that's not something the
13 applicant can control.
14 MS. CARLSON: Well, and, and I don't, I obviously
15 don't know who has to do what, but the River Quarry
16 townhouse development had to build something separate.
17 MS. ROBESON: Right.
18 MS. CARLSON: The Quarry Springs development had,
19 they have had something specific done for them. And I don't
20 know whether, who pays for what. I don't know whether
21 Quarry Springs paid for that new center median with the
22 goofy turns or, I mean I don't know who pays for that.
23 MS. ROBESON: Okay. Well, thank you.
24 MS. LEE: If I could just inject, because you had
25 asked about people's, asking for suggestions. I think if

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1 it's not doable, it's just not doable. If the State says
2 they can't put a, a turn lane in, that it should be
3 rejected. It's just such an overwhelming impact.
4 MS. ROBESON: Okay. All right. Ms. Girard, any
5 questions based on what was just testified to?
6 MS. GIRARD: No.
7 MS. ROBESON: Okay. Thank you. Ms. Girard, you
8 may put on whomever you wish on rebuttal.
9 MS. GIRARD: Sure. I guess we'll do Pat LaVay
10 first.
11 MS. ROBESON: If, Mr. LaVay, please raise your
12 right hand. Do you solemnly affirm under penalties of
13 perjury that the statements you're about to make are the
14 truth, the whole truth and nothing but the truth?
15 MR. LAVAY: Yes, I do.
16 MS. ROBESON: Thank you. Go ahead, Ms. Girard.
17 DIRECT EXAMINATION
18 MS. GIRARD: Mr. LaVay, you were here all day so I
19 assume you heard Mr. Nothman's comments regarding sight
20 distance?
21 MR. LAVAY: I did.
22 MS. GIRARD: Can you walk us through how those
23 studies were performed and what your findings are and --
24 MR. LAVAY: Yes.
25 MS. ROBESON: Well, let me just clarify. I just,

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1 he was an expert in the first, oh, I know how I've --
2 MS. GIRARD: Yes. In civil engineering.
3 MS. ROBESON: Yes. He was. Okay. Unless I hear
4 something saying he should no longer be an expert, we'll
5 still qualify you as an expert in civil engineering.
6 MS. GIRARD: 26, Exhibit 26 is his resume.
7 MS. ROBESON: Okay. Go ahead.
8 MR. LAVAY: So our office conducted a survey, a
9 sight distance survey of the entrance in March 2015. It was
10 conducted in accordance with AASHTO and State Highway
11 standards. The State Highway Administration uses AASHTO
12 standards as their guidelines. For example, Montgomery
13 County has their own, but on state highways, SHA uses AASHTO
14 standards. And under this circumstance, we measured both
15 intersection sight distance and stopping sight distance.
16 There are differences between the two. Stopping sight
17 distance is measuring an object at two feet of height at the
18 proposed driveway to an object three and a half feet in
19 height at a distance a certain described areaway. And in
20 this case, there's a 40 mile per hour posted speed limit.
21 Therefore, we use a design speed of 50 miles per hour. The
22 criteria is typically 10 miles, they have a, the State
23 Highway and AASHTO have a chart which typically the design
24 speed is 10 miles per hour over the posted speed limit. The
25 intersection sight distance is a little bit, the, the

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1 requirement is a longer bit longer because that takes into
2 account cars actually not, not something just sitting in the
3 road, but a car getting out of the site and accelerating in
4 order to get going on the street without making a car coming
5 towards it stop. So there's two, two criteria. So that's a
6 more conservative number. So typically if the, as, as Mr.
7 Lenhart mentioned, if the intersection sight distance is
8 met, the stopping sight distance is also met because the
9 stopping is less. So we measured those numbers from, the
10 requirement is to measure at a point 15 feet back from the
11 traveled roadway. So in, into the site on the driveway.
12 From the center line of that driveway it's --
13 MS. ROBESON: Well, wait. In this case, you're
14 into the right-of-way, right? Not the site?
15 MR. LAVAY: Correct. The whole, the majority --
16 MS. ROBESON: You're, are you basically 15 feet
17 from the white line?
18 MR. LAVAY: Yes.
19 MS. ROBESON: Okay.
20 MR. LAVAY: But that's the travel roadway. The
21 edge of the --
22 MS. ROBESON: In colloquial terms.
23 MR. LAVAY: Correct.
24 MS. ROBESON: Okay.
25 MR. LAVAY: So, so 15 feet in towards the site,

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1 which is still within the right-of-way, from that edge of
2 that white line. And so that's in one direction. In the
3 other direction, you're from the center line of the
4 driveway. The exiting car would be on the right side.
5 You're five feet from the center line of the driveway.
6 MS. ROBESON: Okay.
7 MR. LAVAY: So that's where you have your
8 measuring point. So from that point to measure stopping
9 sight distance, you use a point two feet above the ground
10 and then you have someone else go down a certain distance
11 from this. And you look as far as you can see to a point
12 three and a half feet above the ground. The, the object at
13 two feet above the ground represents anything from a car to
14 an object that rolls out. The three and a half foot height
15 represents a driver in a car. The, the requirement for that
16 measurement is 425 feet at the design speed. At the actual
17 posted speed it's 305, but that's somewhat irrelevant. Our
18 measurement was 780 feet to the left, which is to the east.
19 And our measurement to the right was 1,310 feet.
20 MS. ROBESON: Okay.
21 MR. LAVAY: For the intersection sight distance,
22 the requirements for a left turn from the site, from the
23 Artis site out into, to eastbound River Road, the
24 intersection sight distance required is 555 feet. The
25 measured intersection sight distance to the right is --

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1 MS. ROBESON: Wait. To the right. To west,
2 looking west?
3 MR. LAVAY: Yes.
4 MS. ROBESON: Okay.
5 MR. LAVAY: Yeah. Because a left turn from the
6 site. So you'd look west.
7 MS. ROBESON: Oh, I see. Okay.
8 MR. LAVAY: Is, is 1,320 feet. The intersection
9 sight distance for making a right turn from the site or a
10 left turn into the site is 480 feet. And the measured view
11 there was 780 feet.
12 MS. ROBESON: Okay.
13 MR. LAVAY: So bottom line is we exceed
14 significantly in all directions. And again, that, that
15 point of measurement was 15 feet back from the traveled
16 roadway, which is beyond the width of the shoulder along
17 River Road.
18 MS. ROBESON: Okay.
19 MR. LAVAY: So where that car is sitting, to point
20 to the example here, where that car is sitting at that point
21 --
22 MS. GIRARD: Which car? Yeah. For the
23 transcript.
24 MS. ROBESON: When you say that car --
25 MR. LAVAY: Excuse me. I'm sorry. When the, when

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1 the blue Jaguar is sitting --
2 MS. ROBESON: Oh, wait. It's a Jaguar there?
3 MS. CARLSON: I don't think it's a Jaguar.
4 MR. LAVAY: It's the Bentley.
5 MS. CARLSON: Not, it's a Bentley.
6 MR. LAVAY: It's a Bentley.
7 MS. GIRARD: Oh.
8 MS. ROBESON: Even better.
9 MS. CARLSON: We know who's going to Artis.
10 MS. ROBESON: No. I'm too old for a, no. I, I'm
11 sorry. You're talking about the car coming out of the Artis
12 driveway.
13 MR. LAVAY: Yes. Yes. So where that car is
14 sitting is, is just behind the shoulder so that if someone
15 does come on the shoulder, they're not, there's not a direct
16 conflict.
17 MS. ROBESON: Okay. Hold on. You lost me at
18 Bentley and Jaguar.
19 MR. LAVAY: Okay. So, okay. So --
20 MS. ROBESON: No.
21 MR. LAVAY: I, should I use the exhibit?
22 MS. ROBESON: Yes.
23 MR. LAVAY: Okay. So --
24 MS. ROBESON: Use the Bentley.
25 MR. LAVAY: So the Bentley is sitting here.

1 That's just, let's just say it's sitting right there.
 2 MS. ROBESON: Okay.
 3 MS. CARLSON: It'll stop. It'll stop for you.
 4 MS. ROBESON: Your --
 5 MR. LAVAY: I don't want it to poke too far out
 6 here.
 7 MS. CARLSON: No, no, no. It'll stop.
 8 MS. ROBESON: Your sight distance is, how big is
 9 the shoulder there?
 10 MR. LAVAY: Ten feet.
 11 MS. ROBESON: Okay. So your sight distance is
 12 actually five feet beyond the shoulder.
 13 MR. LAVAY: That's the, the point of measurement.
 14 Yes.
 15 MS. ROBESON: Yes. Okay.
 16 MR. LAVAY: And you're looking --
 17 MS. ROBESON: So does, so in your expert opinion,
 18 does that Bentley have to creep forward to get adequate,
 19 let's take Mr. Nothman, I'm sorry.
 20 MR. NOTHMAN: That's fine. No problem.
 21 MS. ROBESON: I know who you are. Mr. Nothman's
 22 scenario of can that car sit 15 feet away from the end of
 23 the used roadway, whatever, the white line and see a car
 24 passing on the shoulder?
 25 MR. LAVAY: Yes.

1 MS. ROBESON: So in your opinion, it doesn't have
 2 to creep forward to get an adequate sight distance on either
 3 side?
 4 MR. LAVAY: Correct. And, and because the
 5 oncoming car can also see the, the oncoming car on the
 6 shoulder can also see the car sitting at our driveway and
 7 the stopping sight distance measures the distance needed to
 8 require once someone sees that car and reacts to it and then
 9 hits the brakes. They can also stop in a, in a reasonable
 10 amount of distance.
 11 MS. ROBESON: And, and what you're saying is
 12 that's the stopping sight distance?
 13 MR. LAVAY: Correct.
 14 MS. ROBESON: Okay. I'm just --
 15 MR. LAVAY: Which, which is the most important for
 16 that particular --
 17 MS. ROBESON: I'm not making findings in any way.
 18 I'm just trying to make sure I understand what you're
 19 saying.
 20 MR. LAVAY: Okay.
 21 MS. GIRARD: So Mr. LaVay, your analysis, if I'm
 22 hearing you correctly, 1) accounted for speeding, 2) was
 23 measured from, I think you said two feet above the ground,
 24 so maybe even a little lower than someone sitting in their
 25 car?

1 MR. LAVAY: Well, so, so I should, I should take a
 2 step back. So for stopping sight distance, the point of, of
 3 measurement at the driveway is two feet above the ground.
 4 For intersection sight distance, which is longer
 5 requirement, it's three and a half feet above the ground on
 6 both points. So stopping it's two and three and a half.
 7 The intersection it's three and a half and three and a half.
 8 MS. ROBESON: For practical purpose, I think there
 9 was testimony that the driveway is depressed to some extent.
 10 Would that affect aside from the theoretic, the requirement
 11 of measurement, would that affect the sight distance?
 12 MR. LAVAY: I have, I have to disagree that the
 13 drive, the driveway is not depressed. As shown in this, I
 14 think the exhibit grossly exaggerates the condition there.
 15 The driveway at, at best is flat in that area. But it's,
 16 it's you're coming down from the site. There is a slight
 17 dip, but it's, it's much further into the, in, towards the
 18 site than where the car would be sitting. And that's just
 19 because there's a, a stream that crosses through there. But
 20 when you're sitting at that intersection or that driveway, I
 21 should say, you are sitting flat if not graded towards the
 22 road. So you're not, you're not inclined looking back down
 23 the road.
 24 MS. ROBESON: Okay.
 25 MS. GIRARD: And, I'm assuming not, but does that

1 parapet block the view or the guard rail or anything
 2 associated with that bridge. Is that blocking the driver's
 3 view?
 4 MR. LAVAY: No, it does not. That's, anything
 5 that, that would be in that, when we measure the sight
 6 distance, anything, even vegetation that obstructs, we have
 7 to note. So the only vegetation or items that are allowed
 8 to be in that sight line or anything that's lower than 18
 9 inches. So, you know, in, in this example, the guard rail
 10 is not shown here. The, the parapet wall shown that, in the
 11 model, it's certainly closer to the driveway than in reality
 12 at the scale, but what really happens out there is just to
 13 the left of the driveway if you're sitting in the driveway,
 14 there's a guard rail, a metal guard rail that's maybe 18
 15 inches high that runs for maybe for 100 feet and then the
 16 parapet wall starts. So the significant, the wall is not as
 17 close as it depicts here as to the driveway.
 18 MS. ROBESON: Okay.
 19 MR. LAVAY: And we did not, we did not find that
 20 wall to provide any obstruction to that measured sight
 21 distance.
 22 MS. ROBESON: Okay.
 23 MR. LAVAY: Otherwise, we would have, otherwise,
 24 we would have had it noted.
 25 MS. ROBESON: Okay. I understand your testimony.

1 MS. GIRARD: One other issue that --
 2 MS. ROBESON: You will get a chance. Mr. Nothman
 3 is waving behind you. Yeah, Mr. Nothman, you will get a
 4 chance to ask questions.
 5 MR. NOTHMAN: No. That's, that's fine. No
 6 problem. Thank you so much.
 7 MS. GIRARD: One other issue that came up, just to
 8 cover all the bases, was the, someone had asked was there a,
 9 well, actually two different times today the issue has come
 10 up about first it was someone had represented that the bike
 11 path was not extended all the way to Clewerwall because of
 12 the slope going up. And then another issue was raised as to
 13 could you put a service drive from the site access up to
 14 Clewerwall. Can you review for us what, you know, what the
 15 constraints are with --
 16 MR. LAVAY: I understand --
 17 MS. GIRARD: -- both why the bike path didn't go
 18 all the way and why you couldn't do a service drive?
 19 MR. LAVAY: I, I just want to clarify the second
 20 question. The service drive, you're saying, from --
 21 MS. GIRARD: As I understand it, it would run
 22 parallel to River Road.
 23 MR. LAVAY: Okay.
 24 MS. GIRARD: Up to --
 25 MR. LAVAY: Kind of like a, like a, a road, okay.

1 Yeah. So the issues there are not necessarily the grade of
 2 River Road because this model, again, grossly exaggerates
 3 the grade on River Road. The grade on River Road is at its
 4 steepest point, which is further up the hill at about eight
 5 percent. This model just, I don't have a ruler with me, but
 6 it's probably 2-to-1 to 3-to-1. You know, 30 to 50 percent.
 7 So there's a huge difference in what it actually is. And
 8 the eight percent for a public road is, is acceptable. It's
 9 very common around here. As you get down towards the site
 10 it, it decreases to six percent and then in front of the,
 11 the driveway it's more like four or four and a half percent.
 12 Very reasonable. So the, the constraints as far as going up
 13 and down the road with bikes or cars is not in, in this, in
 14 the access, in the vertical access. It's horizontally. And
 15 as you go --
 16 MS. ROBESON: What do you mean horizontally?
 17 MR. LAVAY: So if, if you're coming --
 18 MS. ROBESON: You mean like room on the side of
 19 the road?
 20 MR. LAVAY: Yeah. So if you're coming, it's not
 21 a, it's not an issue of the road grade. It's an issue of
 22 the grade perpendicular to the road going up towards the
 23 Artis site. So once you leave the traveled roadway, there's
 24 a shoulder. There's a little bit of grassed area and
 25 there's more grassed are available at the, in the center

1 frontage of the site. And as you get up towards the end of
 2 the site and as you get up towards Clewerwall, there's a
 3 huge hillside that runs just off the edge of the pavement
 4 and it climbs by 30 feet or something like that. And
 5 there's rock in there and, so in order to --
 6 MS. ROBESON: I think we had testimony on that.
 7 MS. GIRARD: We did.
 8 MR. LAVAY: Yeah, and that, that's all part of the
 9 record from the bike path discussion in the original
 10 hearing. But that would prevent you from, unless you,
 11 unless you constructed a very tall retaining wall, that
 12 would prevent you from providing any kind bike facility or
 13 vehicular facility up along that road. And I can tell you
 14 from my experience with SHA, they are almost never letting
 15 us put retaining walls in the right-of-way anymore because
 16 it's a maintenance issue. So that's something we looked at
 17 heavily.
 18 MS. ROBESON: Okay.
 19 MS. GIRARD: That's all I have for Mr. LaVay.
 20 MS. ROBESON: Okay. Mr. Nothman, I know you're,
 21 you're anxious.
 22 MR. NOTHMAN: Well, thank you.
 23 MS. CARLSON: I would like to make a comment too
 24 when the time comes.
 25 MS. ROBESON: Okay. Well, this is the time for

1 questions, but I'll give you, do you have more testimony or,
 2 because you do get an opportunity for a closing argument
 3 too.
 4 MS. CARLSON: It was just to address the guard
 5 rail issue and the hill. So, but I can wait until after Mr.
 6 Nothman.
 7 MS. ROBESON: Okay. Well, you can ask him
 8 questions. Let's, let's start with Mr. Nothman and then, go
 9 ahead.
 10 MR. NOTHMAN: Right. Thank you. Thank you very
 11 much.
 12 CROSS-EXAMINATION
 13 MR. NOTHMAN: I have a question. The first
 14 question is the 15 feet that's set by AASH --
 15 MS. CARLSON: AASHTO?
 16 MR. NOTHMAN: AASHTO. Yeah. And what's the
 17 reasoning behind the 15 feet back?
 18 MR. LAVAY: I don't believe that's set by AASHTO.
 19 I think that, that particular requirement is set by the
 20 State Highway Administration.
 21 MR. NOTHMAN: Okay.
 22 MR. LAVAY: I don't know particularly why it's set
 23 that way. My, my assumption would be that they are
 24 accounting for situations, a lot of state highways are, are
 25 limited access.

1 MR. NOTHMAN: Um-hmmm.
2 MR. LAVAY: And they do have shoulders.
3 MR. NOTHMAN: Um-hmmm.
4 MR. LAVAY: And it would be perfectly within the
5 dimensions required because typically what you have is if
6 you assume that a vehicle's, let's assume for a second that
7 a shoulder, even though it's illegal to drive on, might be
8 traveled. Normally, stop bar placements are usually four to
9 six feet back from traveled roadways.
10 MR. NOTHMAN: Yes.
11 MR. LAVAY: So a measurement of 15 feet would mean
12 they took into account the shoulder possibly having
13 something on it. Whether it's a bike or a car.
14 MR. NOTHMAN: Okay. And so, from the point of
15 measurement the idea of, I guess, three and a half feet for
16 an intersection, is it you're approximating the line of
17 sight of the driver sitting in the car?
18 MR. LAVAY: The three and a half foot measurement
19 is the driver sitting in the car.
20 MR. NOTHMAN: So, when you were putting the stake
21 in the ground or the pole or whatever was used and then
22 looking across, were you inside of the wall or outside of
23 the wall or were you over the wall? Because to get out to
24 1,000 feet when the wall, you mentioned the wall is 100 feet
25 away. And so, if you were going to go out anything further

1 than 100 feet, you have to be either one side or the other
2 or above. Do, do you recall where you were?
3 MR. LAVAY: Well, the, the line is a, is a, is a,
4 is not a straight line down the road. It's a diagonal line.
5 MR. NOTHMAN: Okay.
6 MR. LAVAY: So you might be in front of the wall.
7 You might be behind the wall, but you're not looking
8 directly at the wall. You're looking out into, into the
9 lane of traffic so I don't know how that 15 foot mark
10 relates to the actual parapet wall that's down the road.
11 MR. NOTHMAN: Um-hmmm.
12 MR. LAVAY: But I know that it was not obstructing
13 that sight distance triangle because it, you know, it --
14 MR. NOTHMAN: Sure.
15 MR. LAVAY: It takes into account, I mean, if
16 that, that wall happens to fall in there, you can't see past
17 it.
18 MR. NOTHMAN: Okay.
19 MR. LAVAY: So it, it, it's not as if you're
20 looking directly at the wall. You're looking to an object
21 that's, you have to remember that that wall is sitting on
22 the edge of a 10 foot shoulder.
23 MR. NOTHMAN: Right.
24 MR. LAVAY: So the 10 foot to the travel lane.
25 And then we're measuring a point that's from there another

1 seven feet into the lane because you're five feet from the
2 center line. So we're measuring a significant distance away
3 from the wall in the roadway. That's where the three and a
4 half foot stake is. So we're looking away from the wall
5 with our sight distance line.
6 MR. NOTHMAN: Now I'm not following you 100
7 percent. Would you consider just pointing out --
8 MR. LAVAY: Sure. So --
9 MR. NOTHMAN: Thank you.
10 MS. ROBESON: I want to drive the Bentley.
11 MR. LAVAY: The Hearing Examiner is in the
12 Bentley. Sitting here. And again, you know, this --
13 MS. CARLSON: I will give you a, some height here.
14 MR. LAVAY: Yeah. And some of this is, you know,
15 again, this is not to scale, but this, this wall is probably
16 further back and it's further this way, but --
17 MS. CARLSON: Well, I have a photograph that shows
18 --
19 MR. LAVAY: Yeah.
20 MS. CARLSON: The guard rail --
21 MS. ROBESON: Well, this is not the time to go
22 back and forth.
23 MS. CARLSON: Okay. Okay.
24 MR. LAVAY: So, you know, this car is sitting
25 here. And what, we have a stake so that the center line of

1 this driveway is the center line of the driveway.
2 MS. ROBESON: Yes.
3 MR. LAVAY: We're measuring a point five feet away
4 from that. So like, you know, let's just assume this car
5 is, you know, sitting right over top of that five feet point
6 to the stakes in the middle of the car. We then take a
7 measurement, and let's assume that the center line of the
8 roadway, let's say that this car's driver side wheels from
9 the center line of the roadway. This silver --
10 MS. ROBESON: This car, is the car traveling in
11 the lane westbound on River Road?
12 MR. LAVAY: Correct.
13 MS. ROBESON: Somewhere around the bridge.
14 MR. LAVAY: Correct.
15 MS. ROBESON: Okay.
16 MR. LAVAY: So let's assume that, well, they're
17 going to be, in this case, the distance is so long, they're
18 going to be way back here somewhere. So the point that
19 we're measuring --
20 MS. CARLSON: Don't, don't --
21 MR. LAVAY: This one has auto pilot.
22 MS. CARLSON: No, no. Don't, don't pull it back.
23 MS. ROBESON: This is going to be an interesting
24 transcript. Okay.
25 MS. CARLSON: Don't pull it back. Just, just --

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1 MR. LAVAY: This would be, yeah, this would be all
2 in motion.
3 MS. CARLSON: Put it down.
4 MS. ROBESON: Oh, it's a wind-up one.
5 MS. CARLSON: No, well, only if you --
6 MR. LAVAY: First of all --
7 MS. ROBESON: I remember those. Okay. Anyway, go
8 --
9 MR. LAVAY: So, so we're, the point that we're
10 measuring here, the, the center line of the road here
11 somewhere, we're measuring five feet away from that center
12 line. So somewhere, let's say, right in the middle of this
13 car there's another stake. So the sight line is from here
14 to here. And as you can see, in this case, although the
15 abutment is there, that's, that's not obstructing that sight
16 line. Now if the car were way back here, it might be.
17 MS. ROBESON: Now when --
18 MR. LAVAY: The blue car --
19 MS. ROBESON: If, if the Bentley was back what,
20 how many feet?
21 MR. LAVAY: I don't know, we have to, we have to
22 look at that and sort of see where the pinch point was.
23 MS. ROBESON: Okay.
24 MR. LAVAY: But it, you know, at some point, you
25 probably would get back here.

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1 MS. ROBESON: Back toward the Artis, for the
2 record, back toward the Artis driveway.
3 MR. LAVAY: Right.
4 MS. ROBESON: Okay.
5 MR. LAVAY: Right. So, you know, as long as he's
6 out here in the Bentley --
7 MR. NOTHMAN: Um-hmmm.
8 MR. LAVAY: -- he can see out here. And so he can
9 --
10 MS. ROBESON: To a car in the middle of River
11 Road?
12 MR. LAVAY: Right.
13 MS. ROBESON: Yeah.
14 MR. NOTHMAN: Okay. And when you do these, would
15 this show up as an obstruction in your drawing?
16 MS. ROBESON: What's this?
17 MR. NOTHMAN: The, would the parapet show up as an
18 obstruction in your drawing?
19 MR. LAVAY: It's not an obstruction. So as I
20 understand, it doesn't show up as, it's not an obstruction.
21 MR. NOTHMAN: Okay. So it's either, the sight
22 line would then be going either over, in front of or behind
23 in order to --
24 MR. LAVAY: In, in this case, in this case it was
25 going in front of it.

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1 MR. NOTHMAN: -- not be an obstruction. I'm
2 sorry?
3 MR. LAVAY: In this case it was going in front of
4 it because, in other words, see this way --
5 MS. ROBESON: When you say in front, what you're
6 referring to is within the roadway?
7 MR. LAVAY: That's correct.
8 MS. ROBESON: Yeah.
9 MR. NOTHMAN: Okay. Now that's the part that I'm
10 having a challenge. And thank you for pointing it out.
11 Because if the, if the, you're saying that it's 15 feet from
12 the white line. Is that the white line in the center of the
13 road or 15 feet from the edge of the road?
14 MR. LAVAY: The edge of the road.
15 MR. NOTHMAN: Okay. And I think we were hearing
16 before that it's a 10 foot distance from there to the edge
17 of the shoulder.
18 MR. LAVAY: Um-hmmm.
19 MR. NOTHMAN: So if it's 10 feet from the white
20 line to the edge of the shoulder, that means that the sight
21 line would be the five foot back from that?
22 MR. LAVAY: Yeah. Which does not, and I think I
23 know where you're going. The wall doesn't necessarily,
24 isn't necessarily an exact location, that location. There
25 could be a bend, there's a slight, you know, when the guard

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1 rail --
2 MR. NOTHMAN: Yes.
3 MR. LAVAY: You can see that it kind of turns,
4 there are some things happening between the wall and the
5 driveway that maybe make that a little bit more room. So,
6 although there's like a 10 foot shoulder, maybe there's
7 really 11 feet to the wall. You know, that, an extra four
8 feet, that extra four feet can easily come about in the next
9 100 feet where there is no wall.
10 MS. ROBESON: Wait, wait. You guys know where
11 you're going, but I don't.
12 MR. LAVAY: Okay. So I --
13 MS. ROBESON: Can you just summarize that real
14 quick?
15 MR. LAVAY: I, I think what the concern is that if
16 you look at, you're standing on the bridge. There's a 10
17 foot shoulder under the wall.
18 MS. ROBESON: Yeah.
19 MR. LAVAY: Two foot stripes or there may actually
20 be like 11 feet of width before you hit the wall.
21 MS. ROBESON: Okay.
22 MR. LAVAY: So if you were just to extrapolate
23 that out and assume the wall, continue to our driveway, then
24 it would be linear and you assume that any point that was 15
25 feet back would have to be obstructed by the wall.

1 MS. ROBESON: Right.
 2 MR. LAVAY: But, and, and what I'm explaining is
 3 that is that as you go beyond the wall, the road widens, the
 4 guard rail twists. There's a little bit of, little bit of
 5 change.
 6 MS. ROBESON: I see. There's --
 7 MR. LAVAY: In over 100 feet, four feet is very
 8 small. That extra little bit of space gives us the room to
 9 see.
 10 MS. ROBESON: I see.
 11 MR. LAVAY: You know, the State built it that way.
 12 I think they had this in mind.
 13 MS. ROBESON: He's nodding a, Mr. Nothman is
 14 nodding at me like --
 15 MR. NOTHMAN: No, I'm fine.
 16 MS. ROBESON: -- what's --
 17 MR. NOTHMAN: No, I'm fine. I'm definitely fine.
 18 MR. LAVAY: That may have been, that may have been
 19 intentional construction back there when this house was
 20 built, you know, 20 years ago, whatever.
 21 MR. NOTHMAN: Um-hmmm.
 22 MS. GIRARD: Yeah.
 23 MR. LAVAY: Twenty-five years ago. We don't know.
 24 MR. NOTHMAN: Okay. And so, from the sight point
 25 where the driver sits to the front of an average car, I know

1 it's a, it's going to vary. But that distance might be what
 2 do you think?
 3 MR. LAVAY: From where the driver's, four feet.
 4 MS. ROBESON: Oh, I see where --
 5 MR. LAVAY: I think that's why, I think that's why
 6 they typically have you put, I think four feet is where they
 7 typically assume. That's why the stop bar placement usually
 8 has, so if you have a, you have a stop bar, there's usually
 9 a second bar four feet back.
 10 MR. NOTHMAN: So, I'm sorry. I'm not following
 11 you completely. Stop bar. I'm not familiar with that.
 12 Talk, so --
 13 MR. LAVAY: So, so I guess my, my, my --
 14 MS. ROBESON: What's a stop bar?
 15 MR. LAVAY: The paint the, the paint the lines in
 16 the, you know how you usually have, you'll have a bar and
 17 then you have a thick bar and you might have another bar
 18 that sits --
 19 MS. ROBESON: Yeah. Okay.
 20 MR. LAVAY: So I want to say it's about four feet.
 21 MR. NOTHMAN: Okay. So from where you sit, it's
 22 about four feet from where you sit, where your eyes are to
 23 the bumper of your car. It seems a little short to me. I
 24 just, you know, I'm guessing --
 25 MR. LAVAY: It depends on what kind of car you're

1 driving. Really
 2 MR. NOTHMAN: Depends on the car. Yeah. Depends
 3 on the car.
 4 MR. LAVAY: Now in this, it's nothing. If you're
 5 driving, you know, that --
 6 MR. NOTHMAN: Because you've got your whole
 7 engine compartment, you know, and you've got a lot of,
 8 you've got a bumper. It sticks out. So maybe six feet?
 9 MR. LAVAY: Yeah, it could, I mean Montgomery
 10 County uses rather than 15 feet, I'll give you an example.
 11 Montgomery County uses six feet.
 12 MR. NOTHMAN: Okay.
 13 MR. LAVAY: So theirs is even closer.
 14 MR. NOTHMAN: All right.
 15 MR. LAVAY: Yeah. They, they may assume that cars
 16 are shorter. State Highway may assume that cars are longer.
 17 MR. NOTHMAN: Okay. Well, fair enough. But the
 18 idea of the five foot range, something like that. So I
 19 guess the, the point is that if you have a shoulder that's
 20 10 feet and your sight line is measured, and those are the
 21 cars that somewhat four to 15 feet. And so if it had to be
 22 exact, then five feet it's going to poke in, it won't poke
 23 in at all. It'd happen to be six feet. If you didn't
 24 actually stop exactly at that sight point, if you, you know,
 25 if, if you're pulling up, you're trying to take a look. As

1 you say, you know, a few feet here or there. Not everybody
 2 is going to be measuring exactly at 15, 15 feet.
 3 MR. LAVAY: Right. And that's, and that's, so
 4 that, that situation you described --
 5 MR. NOTHMAN: Yeah.
 6 MR. LAVAY: -- is captured in the, in the stopping
 7 sight distance. So if, if someone does project out into the
 8 shoulder --
 9 MR. NOTHMAN: Right.
 10 MR. LAVAY: -- there's adequate sight, stopping
 11 sight distance where this car can see, react and stop.
 12 MR. NOTHMAN: Yes.
 13 MS. ROBESON: And this car is a car westbound on
 14 River Road.
 15 MR. LAVAY: I'm sorry. Car traveling westbound on
 16 River Road towards the Artis development.
 17 MR. NOTHMAN: Sure. And I, and I, so I think that
 18 part of the, well, I'm asking questions so I shouldn't, I
 19 don't know, I'm not sure. But --
 20 MS. ROBESON: Oh, I'll stop you.
 21 MR. NOTHMAN: Okay. All right. Just that then if
 22 you, if you have the, forgive me a minute. Grab some of
 23 these.
 24 MR. LAVAY: Oh, yeah. Here you go. Sorry.
 25 MR. NOTHMAN: Thank you. No problem. So you've

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1 got this guy here. You've got this guy coming here. You've
2 got, he, he may be stuck out a couple feet.
3 MS. CARLSON: You're going to have to describe the
4 vehicles.
5 MS. ROBESON: Okay. I'm sorry to delay this, but
6 I need you to describe your scenario.
7 MR. NOTHMAN: Sure. That's fine. So we, so we
8 have a, a, we're back to the left turn scenario into
9 Carderock Drive going westbound. We've got --
10 MS. ROBESON: No. Into, oh.
11 MR. NOTHMAN: The westbound on --
12 MS. ROBESON: A westbound vehicle on River.
13 MR. NOTHMAN: On River Road, turning left.
14 MS. ROBESON: Turning left into Carderock Springs.
15 MR. NOTHMAN: That's correct. And then --
16 MS. ROBESON: We have a left turn vehicle --
17 MR. NOTHMAN: Yeah.
18 MS. ROBESON: -- coming out of Artis eastbound on
19 River?
20 MR. NOTHMAN: Yes.
21 MS. ROBESON: And we have a car behind the left
22 turn on to Carderock going on to the shoulder to pass him?
23 MR. NOTHMAN: Yes. That's correct.
24 MS. ROBESON: Is that we have?
25 MR. NOTHMAN: Yes. Those are things that we have.

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1 MS. ROBESON: Okay.
2 MR. NOTHMAN: And so the car that's coming around
3 to pass the car making the left into Carderock, the
4 observation that we were talking, the scenario we were
5 talking before was this, in our case it's a red car. It's
6 going around the left, the car that's trying to make the
7 left turn. At the point when it wants to get around this
8 car, the Carderock Drive is right at the edge, very close to
9 the edge of the parapet of the bridge. This is, this, this,
10 the Artis driveway is further away. So this car then
11 notices the brake lights, decides to go around the red car,
12 red car. It's getting close now to the parapet. It's
13 trying to be careful not to hit the car next to it and so,
14 as it does so, it now can start to focus perhaps further
15 ahead. Because at first its, its sight and its interest and
16 its focus, brake lights here, bridge there. And once it
17 clears and gets about there, it has now more of an
18 opportunity to be focusing on what happens to be down in
19 this area. So the distance from here to here, you've been
20 talking for a while the general idea that from the Artis
21 driveway over to the edge of the bridge --
22 MS. ROBESON: Yeah. I understand.
23 MR. NOTHMAN: Is maybe 80 feet, 100 feet.
24 Something like that. So that even though you may be able to
25 have some sort of sight line and I appreciate very much the

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1 work that you've done, the reality of the stopping distance,
2 stopping distance is set that many feet --
3 MS. ROBESON: Well, let's, let me do this.
4 MR. NOTHMAN: So --
5 MS. ROBESON: Let me just ask him --
6 MR. NOTHMAN: Sure.
7 MS. ROBESON: Because I think I know where you're
8 going.
9 MR. NOTHMAN: Yes.
10 MS. ROBESON: And that is does, is there enough
11 stopping distance between the car going around on the
12 shoulder and the left turn coming out of the Artis driveway?
13 MR. LAVAY: Well, the trouble with that is we
14 don't know what speed this car is going at. This car can't
15 be going at 50 miles per hour if he's braking because this
16 car is braking. He could be going anywhere from 30 to 10 to
17 five and we just don't know. What we do know is that there
18 is an offset and that offset actually helps a little bit in
19 that, that the, the car going westbound on River Road
20 turning left into Carderock is stopped short of the Artis
21 driveway because of the offset. So that actually increases
22 the ability of a car passing on the shoulder around the
23 bridge abutment to get around without actually hitting the
24 car that's sitting in the Artis driveway. So I don't know
25 the exact distances and I don't know what speed this could

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1 be projected to be at. That's a sort of very weak scenario.
2 I'm sure it would be different from every driver. Some
3 people step on the gas right away. Some people are more
4 conservative. But there is room in here to, to get around a
5 different maneuver. So, for what have you.
6 MR. NOTHMAN: And, and thank you very much. I'm
7 so grateful for everyone to take so much time on this
8 particular point. But I think that that was what my
9 testimony was that most drivers when they see this will be
10 able to successfully do this. But in the course of a year,
11 there's going to be --
12 MS. GIRARD: Objection. I feel like we're making
13 a statement now instead of asking questions.
14 MR. NOTHMAN: Okay. That's good. That's good.
15 Okay.
16 MS. ROBESON: We are. And --
17 MR. NOTHMAN: That's fine. So I'll back off. So
18 that, that's fine.
19 MS. ROBESON: Okay.
20 MR. NOTHMAN: I just want to --
21 MS. ROBESON: While we have --
22 MR. NOTHMAN: Yeah.
23 MS. ROBESON: -- the civil engineer up, do you
24 have any other questions for him?
25 MR. NOTHMAN: Well, I'm not sure if he's the right

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1 civil engineer, but perhaps I can ask the question and he
2 can tell us.
3 MS. ROBESON: Okay.
4 MR. LAVAY: Sure.
5 MR. NOTHMAN: Just that, and again this might be
6 my lack of full examination of the record, but I was
7 striving to understand if there was a full sight plan for
8 the entire intersection. Meaning the Carderock Springs
9 Drive portion of the intersection, the Artis driveway
10 portion of the intersection and the River Road portion --
11 MR. LAVAY: Right.
12 MR. NOTHMAN: -- submitted as part of the
13 submission to, for this project.
14 MR. LAVAY: So the way we view this project is
15 that we are a, we are a commercial driveway that is very
16 close, in very close proximity to an intersection. Because
17 this not a public street, this is not a third street, even a
18 private street, it's just a commercial driveway, it's not
19 actually a part of the intersection in our opinion. And,
20 and that's the way the State Highway treats it and the
21 County treats it when you look at what plans you develop.
22 Now the Carderock Springs driveway is really just shown for
23 reference so we can show we, we did want to show that there
24 is something else in the area as far as the, you know, the
25 impacts of our driveway. But it's not looked at as a four-

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1 way intersection, if you will, the way I think you might be
2 thinking. So --
3 MR. NOTHMAN: No, not the way I'm thinking. The
4 way that the gentleman testified --
5 MR. LAVAY: Well --
6 MR. NOTHMAN: -- earlier in the day. But --
7 MS. ROBESON: Well, okay.
8 MR. LAVAY: It's all, it's all subject to
9 interpretation. I mean the term intersection, I don't know
10 that it has a definite meaning. You know, and when it comes
11 this stuff, I mean when you look at SHA and, and the County,
12 and we, we applied for a commercial driveway. They don't
13 require you to do any kind of formal intersection studies.
14 You know, there's no formal requirement to show a certain
15 amount of, you know, you have to show your property
16 frontage. We usually, we usually only show to the center
17 line of the roadway. Sometimes we get the whole roadway.
18 In this case, we got Carderock Springs Drive because we knew
19 it was an important part of the area. But there's no
20 requirement to have any kind of comprehensive plans for that
21 intersection because we're, we are just a driveway on River
22 Road.
23 MR. NOTHMAN: Okay. But I think you referred to
24 Carderock Springs Drive as a driveway. I'm not sure.
25 MR. LAVAY: No. That, no, that's a street. I'm

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1 talking about the Artis driveway.
2 MR. NOTHMAN: Okay. I, I, that's fine.
3 MR. LAVAY: So in, in my opinion --
4 MR. NOTHMAN: I just heard you differently a
5 moment ago.
6 MR. LAVAY: -- in the way that we, and the way
7 that from a civil engineering standpoint --
8 MR. NOTHMAN: Yes.
9 MR. LAVAY: Now it's different from a traffic
10 engineering standpoint.
11 MR. NOTHMAN: Sure.
12 MR. LAVAY: But from a civil engineering
13 standpoint, we viewed this as a commercial driveway that is,
14 abuts and is very close to a three, you know a three-pronged
15 intersection which includes River Road in two directions and
16 Carderock Springs Drive. All public streets.
17 MR. NOTHMAN: Okay. So I think the longest road
18 is, no, there was no --
19 MS. ROBESON: No. You --
20 MR. NOTHMAN: I'm sorry?
21 MS. ROBESON: You don't summarize.
22 MR. NOTHMAN: No. Sorry.
23 MS. ROBESON: You just, you got your, asked your
24 question. You got your answer. Okay.
25 MR. NOTHMAN: Okay. All right. And if I have

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1 challenge reconciling what the gentleman said with what the
2 other gentleman said earlier today to a direct question
3 about was this an, an intersection that, that Carderock
4 Springs Drive together with Artis driveway improvements is
5 an intersection. And now it's not an intersection.
6 MS. GIRARD: Mr. LaVay just explained that it can
7 be different from a civil engineering perspective --
8 MS. ROBESON: Yeah.
9 MS. GIRARD: -- than a transportation engineering
10 perspective.
11 MS. ROBESON: Yes. He did.
12 MR. NOTHMAN: Oh, I see. Forgive me. I didn't,
13 you guys do this all the time. Okay. Thank you. I get
14 that now. All right.
15 MS. ROBESON: Okay.
16 MR. NOTHMAN: So from a traffic perspective, we
17 have one view. From a civil engineering perspective, we
18 have another. I get it. Thank you so much.
19 MS. ROBESON: Okay. And I'm trying not to get,
20 I'm trying to get to the, the essential problems. So I
21 don't, well, do you have any other questions?
22 MR. NOTHMAN: Not, thank you so much for taking
23 your time to help me see the way that you do this. Thank
24 you.
25 MS. ROBESON: All right. Okay. Thank you. Ms.

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1 MS. ROBESON: From eastbound River Road?
2 MR. LENHART: Eastbound. I'm sorry. Yes. East,
3 from eastbound River Road, left turn into the site does not
4 even come close to warranting a left turn. So, you know,
5 you don't just put a left turn lane in to put a left turn
6 lane in. There's warranting conditions. There's
7 extenuating circumstances. There's environmental impacts.
8 There's, there's traffic operations. There's a lot of
9 different things to look at. And it is not warranted in
10 this case.
11 MS. GIRARD: It was also suggested that the
12 accident data that was provided by State Highway did not
13 account for the number of people who are using the Carderock
14 Springs intersection. Do you, with your experience at the
15 State and in private practice, what's your understanding of,
16 of that?
17 MR. LENHART: That's not correct. State Highway
18 Administration, when they do an annual review of accident
19 data at intersections and along roadways, one of the main
20 factors that goes into their review as the traffic volume
21 through an intersection. So they look at the number of
22 accidents. They look at the volume through the
23 intersection. They develop a rate. Accidents per number of
24 vehicles that use the intersection.
25 MS. ROBESON: Okay.

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1 MR. LENHART: And that, you can't just look at a
2 number because you might have a farm road that had one
3 single vehicle accident on the farm road and now it's, you
4 know --
5 MS. ROBESON: Percentage.
6 MR. LENHART: Percentage wise, it's 100 percent
7 accident rate. And that just doesn't, and that's an extreme
8 situation, but you have to look at volume, accidents. And
9 that way you can develop a rate so you can compare it
10 against other locations. And State Highway does do that.
11 They did that in this instance.
12 MS. ROBESON: Do you recall, I can't remember. Is
13 there a, oh, that's what it didn't tell you for Mr. LaVay.
14 Is there a stop bar on the driveway or a stop sign?
15 MS. CARLSON: Do you know?
16 MS. GIRARD: At our driveway.
17 MR. LENHART: I don't --
18 MS. ROBESON: No, no. Not now. Nobody answer
19 from the, it's shown on the site plan. Is there a stop bar
20 or a stop sign? Well, no, let's finish with him.
21 MR. LENHART: There's a, a little crosswalk shown.
22 No stop bar. And it's, it's, it's common that driveways
23 don't necessarily have a stop bar put on.
24 MS. ROBESON: Okay.
25 MR. LENHART: Private driveways. Public streets

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1 oftentimes do, but not always. So, and no, there is not one
2 out there today and I wouldn't expect that there would be
3 one in the future.
4 MS. ROBESON: On the Artis driveway?
5 MR. LENHART: On the driveway. Correct.
6 MS. GIRARD: And quickly, in, as part of the
7 previous proceedings, it was raised that the issue or the,
8 the letter from, recent letter from SHA didn't specifically
9 address the propriety of the driveway. Is it your
10 understanding that they did review and approve that as part
11 of the other, or the earlier proceeding?
12 MR. LENHART: Absolutely. That, that was, it was
13 always understood that this was the case that was raising
14 the --
15 MS. ROBESON: What, what was the case?
16 MR. LENHART: That, that the Artis application was
17 driving the questions of is this a safe intersection in
18 comparison to other intersections. Does the Artis facility
19 have a negative impact at this intersection or make it
20 unsafe?
21 MS. ROBESON: Okay. I guess I'm not sure of the
22 relevance of the question. What, what are you saying?
23 MS. GIRARD: I just, it was raised that somehow,
24 or it was implied by some of the speakers that State Highway
25 in their most recent letter because they didn't go into a

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1 long analysis of, of this project in particular in relation
2 to safety of the road somehow discounted that this project
3 was happening.
4 MS. ROBESON: Oh. Okay.
5 MR. LENHART: There, there was specific testimony
6 by one gentleman that, he said that the State Highway letter
7 made no mention whatsoever of whether the Artis driveway was
8 safe. That all of the, the SHA letter pertained to the
9 Carderock Springs Drive street.
10 MS. ROBESON: No. I understand and I think there
11 is some correspondence from the first case.
12 MS. GIRARD: Right. But I'm just eliciting that
13 that exists.
14 MS. ROBESON: Yeah.
15 MS. GIRARD: The, we spent, and I know you were
16 here with the model. One issue that was raised is if a,
17 let's see if I can do this, and west, a car traveling, if,
18 if people are trying to get both out of the Artis driveway
19 and Carderock Springs Drive --
20 MS. ROBESON: In left turns? Both lefts?
21 MS. GIRARD: In, well, the one from Carderock
22 Springs, they both want to head eastbound.
23 MS. ROBESON: Okay.
24 MR. LENHART: Um-hmmm.
25 MS. ROBESON: Okay. Right turns.

1 MS. GIRARD: Okay. And there is a car coming down
2 traveling westbound and it would cause a break at the, the
3 person in the Artis driveway would see the break before the
4 person in the Carderock Springs driveway would see the
5 break.

6 MS. ROBESON: Okay. Can you address the testimony
7 of the dangers of having a car turning left out of Artis and
8 a car turning right out of Carderock Springs?

9 MS. GIRARD: You shortcut my question. But, yeah,
10 that is what --

11 MR. LENHART: Yes. So I believe the testimony
12 before indicated that the car turning right of Carderock
13 Springs would have access to the gap in traffic before, or
14 no. I'm sorry. The car turning left out of the Artis
15 driveway would have access to the gap before the driveway at
16 Carderock Springs and start pulling out and cause an, a
17 potential accident where they would collide. A car
18 traveling east on River Road at, let's say 50 miles per
19 hour, design speed 49-50 miles per hour, translates to about
20 70, 70 some feet per second. If we have the Artis driveway
21 and the Carderock Springs road, if they're offset by about
22 25 feet, the car traveling at 75 feet per second, you'd have
23 a third of a second by the time the car traveling east from
24 the time they pass the Artis driveway to the time they pass
25 the Carderock Springs.

1 MS. ROBESON: Oh, I see what you're saying.

2 MR. LENHART: It would be a third of a second.

3 MS. ROBESON: Okay.

4 MR. LENHART: Which is not nearly enough time for
5 any significant movement of the car coming out of Carderock,
6 out of Artis to cause a conflict with the car making a right
7 out of Carderock Springs. Could it happen that they would
8 both maybe try to make a movement? Yes. But it's not, not
9 enough time, a quarter of a second or a third of a second,
10 to make a significant difference and I don't think that it
11 would impact the safety whatsoever.

12 MS. ROBESON: Okay. I understand what you're
13 saying.

14 MR. LENHART: Sure.

15 MS. GIRARD: One last question. On the speed
16 studies, I think you, you testified to this, but it, it was
17 raised that the studies showed that the majority of people
18 were going over the speed limit on River Road.

19 MR. LENHART: Yeah.

20 MS. GIRARD: Is that a typical occurrence for most
21 roads? Is that unusual?

22 MR. LENHART: That's normal.

23 MS. GIRARD: Does that cause concerns?

24 MR. LENHART: No, it's, the average speed and the
25 mean speed work. So if average speed, you, you add up all

1 the speeds and divide by the number of vehicles. The mean
2 speed is just half of them are going more, half are going
3 less than that. But there were 42 to 43 miles per hour for
4 those two. That's normal, but that's within zero to five
5 miles per hour over the speed limit. The 85th percentile
6 speed is the speed that we design to. As traffic engineers,
7 as highway designers, the 85th percentile is the speed that
8 matters. And that's where you're, you're designing a
9 roadway that is able to handle the majority of the traffic,
10 but, you know, there's that little bit at the top, the 15
11 percent. You can't design for that. You know, you, you
12 would over-design. You'd over-spend. You wouldn't be able
13 to physically build, and, and if you do try to, it's just
14 going to increase speeds more. Because now you've got a
15 roadway that's designed to higher speeds. People are going
16 to drive at higher speeds and that number keeps creeping up.
17 So you pick a design speed that's reasonable and that's what
18 you strive for.

19 MS. ROBESON: Okay.

20 MS. GIRARD: I actually lied. I have one more
21 question. It was, the issue, the question of is there
22 anything else that can be done? State Highway has suggested
23 enhanced signage. I don't know whether you can opine to
24 this or not as to whether the State Highway would consider
25 signage about not driving on the shoulder and/or striping of

1 the shoulder. Do you think that that would have a benefit
2 and do you think there's a chance that State Highway would
3 approve that?

4 MR. LENHART: It's possible that they would
5 approve it. I, I can't say that they would. I mean there,
6 there are standard Do Not Drive on Shoulder signs. They may
7 be willing to install one. I don't think it's necessary
8 here. You know, as testified by Mr. LaVay, there is
9 sufficient stopping sight distance, intersection sight
10 distance. Anybody, and my observations, I was out there as
11 well. I made some turns here. And I had people pass me on
12 the shoulder. But while they were doing it, they were
13 probably going 10, 15, 20 miles per hour. Not 50 miles per
14 hour. Just the nature of trying to get over, slow down.
15 You've got a parapet wall on the one side. I mean people
16 know they're driving on the shoulder and they're not
17 supposed to be. So they slow down to be safe about it. So
18 it is a safe maneuver. Maybe the State would be willing to,
19 to post a sign. Just I doubt reduce that movement, but I
20 don't think it should be a condition of approval because it
21 has no, has no bearing on our driveway. And only they can
22 approve it. If, if they, if they say no, we don't want it,
23 then, you know, they, at least we've asked. And if they
24 don't want it, then, you know, that's their prerogative.

25 MS. ROBESON: Okay.

1 MS. GIRARD: Okay. That's all I have.
 2 MS. ROBESON: All right. Ms. Carlson, do you have
 3 any questions for Mr. Lenhart?
 4 MS. CARLSON: No.
 5 MS. ROBESON: No. Mr., no, do you have any
 6 questions?
 7 MR. NOTHMAN: Yeah.
 8 MS. ROBESON: Okay. Can we, I need to get through
 9 them expeditiously. But come on up.
 10 MR. NOTHMAN: If the car, in the scenario where we
 11 were having the westbound traffic go around the stopped car
 12 making a left into Carderock Springs Drive, you're offering
 13 distances at 50 miles an hour of 70 feet or 75 feet on,
 14 would be one second. So if they are driving, let's say, 30
 15 miles an hour the, you know if the speed limit is 40 and
 16 they slowed down by 10, for example, how many feet per
 17 second would the cars be going at?
 18 MR. LENHART: My testimony was that, is it my turn
 19 to play with the model? I --
 20 MS. ROBESON: Yeah. We're going to charge after
 21 this.
 22 MR. LENHART: All right.
 23 MS. ROBESON: Artis is paying. No. I'm joking.
 24 MR. LENHART: Yeah, aren't we?
 25 MS. ROBESON: Well, you are paying. Yeah. I get

1 the idea.
 2 MR. LENHART: My testimony was that if, if the car
 3 is traveling eastbound on River Road and by the time they
 4 pass, if they get to this point where they've now created a
 5 gap, I'm sorry. This, this point being --
 6 MS. ROBESON: Wait. Are you describing where all
 7 these vehicles are?
 8 MS. CARLSON: You have to, you have to mention the
 9 color of the cars.
 10 MR. LENHART: Yeah. The --
 11 MS. ROBESON: No, not the color. Just --
 12 MS. CARLSON: Position.
 13 MR. LENHART: So if --
 14 MS. ROBESON: Position.
 15 MR. LENHART: By the time the car traveling
 16 eastbound on River Road is opposite of the Artis driveway
 17 and, and now the Artis driveway, there's a gap for them to
 18 be able to make a left turn out of the driveway.
 19 MS. ROBESON: Yeah.
 20 MR. LENHART: And that car continues east, they've
 21 traveled 25 feet roughly. Now there's a gap for both the
 22 Artis driveway, who, who has theoretically started to move,
 23 and the Carderock Springs driveway, this car that was
 24 traveling east on River Road, traveling approximately 75
 25 feet per second.

1 MR. NOTHMAN: Yes.
 2 MR. LENHART: Which would take them about a
 3 quarter to a third a second.
 4 MR. NOTHMAN: Sure.
 5 MR. LENHART: To get through there. The car
 6 exiting the Artis driveway is not going to make it more than
 7 a few feet by the time --
 8 MR. NOTHMAN: Yes.
 9 MR. LENHART: -- you know, a, a quarter of a
 10 second.
 11 MR. NOTHMAN: Because it's from a stopped
 12 position. Sure.
 13 MR. LENHART: Sure. So that was my testimony.
 14 MR. NOTHMAN: I understand.
 15 MR. LENHART: And I'm not sure if that was what
 16 you asked.
 17 MR. NOTHMAN: No, no. I was simply referring to
 18 that then to try to apply the same logic at different speed
 19 opposite direction. This car, which is the red car going
 20 around the stopped car trying to make a, going westbound,
 21 trying to make a left turn into Carderock Springs Drive that
 22 it would, you, you mentioned that they might be going 10
 23 miles, 15 miles. So I was just hazarding, you know, the
 24 idea that they might go as much as 30 miles. They wouldn't
 25 be necessarily going 40 miles an hour, but they would slow

1 down in order to be safe, as you had mentioned.
 2 MR. LENHART: Sure.
 3 MS. GIRARD: Is this his opinion though? I mean
 4 it would, Mr. Lenhart said 10 to 20.
 5 MS. ROBESON: It's a hypothetical.
 6 MS. GIRARD: And he's saying 30.
 7 MS. ROBESON: You know --
 8 MR. NOTHMAN: So I was, so my question to him --
 9 MS. ROBESON: Okay.
 10 MR. NOTHMAN: -- as an expert is what, what type
 11 of feet per second are we talking then at, at these rate? I
 12 think you might know.
 13 MS. ROBESON: You mean at 30 miles an hour?
 14 MR. NOTHMAN: Yeah. Yeah. Say as an example.
 15 Yes.
 16 MS. GIRARD: Which was not his testimony as to how
 17 fast they might be going there. Didn't you use 20?
 18 MS. ROBESON: Yeah.
 19 MR. LENHART: In my testimony --
 20 MS. GIRARD: Or 10.
 21 MR. NOTHMAN: My question is how far, how, okay.
 22 I'm sorry. Go on.
 23 MS. ROBESON: Okay. Just a second.
 24 MR. NOTHMAN: I could reframe the question if
 25 you'd like.

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1 MS. ROBESON: What?
2 MR. NOTHMAN: I can reframe the question if you'd
3 like.
4 MS. ROBESON: I don't understand the relevance.
5 Are you saying --
6 MR. NOTHMAN: Oh, I see. It's stopping, it's,
7 it's to establish about how much time this, a driver has
8 between this point and the car that's entering River Road
9 from the Artis driveway.
10 MS. ROBESON: Traveling what? What's your
11 assumption?
12 MR. NOTHMAN: Well, we're, we've talked quite a
13 bit. There's been the idea that it's about 100 feet from
14 here --
15 MS. ROBESON: No. I mean, but the speed.
16 MR. NOTHMAN: Yes. Yes.
17 MS. ROBESON: What, what's your, what are you
18 asking him based on the speed?
19 MR. NOTHMAN: Well, I was, I was suggesting as an
20 upper limit. That 30 miles an hour would be upper, upper
21 limit.
22 MS. ROBESON: Well --
23 MR. NOTHMAN: I was asking, the question would be,
24 okay, I could say what, you know, at what speed, I guess,
25 that a car --

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1 MS. ROBESON: No, you can ask him to assume 30
2 miles.
3 MR. NOTHMAN: Okay.
4 MS. ROBESON: But that doesn't mean that he's
5 testifying that that's the speed. Do you see what I'm
6 saying?
7 MR. NOTHMAN: No, no. No. I'm not asking if
8 that's the speed. I'm asking the feet per second. It would
9 be handy to know because I, earlier in my testimony I
10 mentioned I thought it would be about one to two seconds
11 that the driver would have to make a decision once, once
12 they stopped focusing --
13 MS. ROBESON: Okay. This is what I'm going to do
14 then.
15 MR. NOTHMAN: So I'm just trying to --
16 MS. ROBESON: I'm going to, okay.
17 MR. NOTHMAN: -- confirm with the expert if the
18 testimony that I had provided is in line with the expert's
19 opinion.
20 MS. ROBESON: Well, it's all about his testimony,
21 not your testimony.
22 MR. NOTHMAN: I see. I understand. Okay.
23 MS. ROBESON: So you get to, okay. What I'm going
24 to do.
25 MR. NOTHMAN: Yes.

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1 MS. ROBESON: Because there are, are so many
2 possibilities that, you know, we could go into scenarios all
3 night long.
4 MR. NOTHMAN: Yes.
5 MS. GIRARD: Um-hmmm.
6 MS. ROBESON: I am going to let you ask that one
7 question assuming a 30, 30 miles per hour. Okay.
8 MR. NOTHMAN: Okay. Great. Fantastic.
9 MS. ROBESON: And, but it's my understanding, and
10 I want you to clarify whether you testified that cars would
11 be going 30 miles an hour because it's my understanding you
12 did not testify that the cars would be going 30 miles an
13 hour. Is that correct?
14 MR. LENHART: That's correct.
15 MS. ROBESON: Okay. So can you provide Mr., you
16 want to know the amount of time it would need, the car
17 behind the car turning left on to Carderock Springs would
18 need to --
19 MR. NOTHMAN: Travel that distance to, to the car
20 that's exiting the Artis driveway?
21 MS. ROBESON: Okay. Can you answer that?
22 MS. GIRARD: But what exactly is the distance?
23 Are we sure of the distance is, is my other question?
24 MR. NOTHMAN: It's, it's been, it's been offered
25 and approximated both by Mr. Lenhart as well as others

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1 today. It's about 100 feet.
2 MS. ROBESON: No.
3 MS. GIRARD: I honestly don't remember. I just
4 want to make sure whether he was on the right number.
5 MS. CARLSON: But you have to get out the site
6 plan and look at it.
7 MR. NOTHMAN: You could look at the site plan, but
8 that, that's not fair.
9 MS. ROBESON: No. I, no. I tell you something.
10 This is getting a little too much into speculation for
11 scenarios that I don't, I, I saw the cars on the shoulder.
12 I believe there's cars on the shoulder, but getting into a
13 scenario where it depends on how fast the cars are going and
14 we have no, you know, in a very specific situation and we
15 have no basis to know whether this is true or not, I don't
16 want to spend a lot of time on it. Pick a point. Can, can
17 you give a distance?
18 MS. GIRARD: We don't have the bridge parapet
19 depicted on the plan, the site plan, but I have. So we
20 can't --
21 MS. ROBESON: Okay. So we can't give you, so they
22 can't give you a distance.
23 MR. NOTHMAN: The bridge parapet starts at the
24 edge of the bridge. At the point --
25 MS. GIRARD: Right. I don't, it just is not on

1 the plan.
 2 MS. ROBESON: It's not on the --
 3 MR. NOTHMAN: The bridge is on the plan?
 4 MS. GIRARD: No. That, neither is on the plan.
 5 MS. ROBESON: No.
 6 MS. GIRARD: So we can't --
 7 MR. NOTHMAN: Oh, the bridge is not on the plan.
 8 MS. GIRARD: We can't scale it.
 9 MS. ROBESON: He's saying he can't ask, answer
 10 your question because he doesn't know the distance between
 11 where the, the red, the car behind the car turning left, he
 12 doesn't know the distance between that and the Artis
 13 driveway.
 14 MR. NOTHMAN: Okay. I, what can I do? Okay.
 15 Thank you.
 16 MS. ROBESON: Okay. Anything else?
 17 MR. NOTHMAN: Oh, I had one other question simply
 18 about you had mentioned that this is, should be considered
 19 from a traffic perspective. One intersection has a plan
 20 that was submitted that shows the Carderock Springs Drive
 21 full intersection, Artis driveway and River Road together.
 22 It was part of the submission. I'd asked this along, you
 23 know, before I just had --
 24 MR. LENHART: I think I, I think I stated that
 25 ours is a driveway. Ours is a driveway, private driveway to

1 a private use, but --
 2 MS. ROBESON: Well, just answer is there a plan?
 3 MR. LENHART: There is, the site plan shows the
 4 relation of our driveway to Carderock Springs. State
 5 Highway Administration and Park and Planning have on
 6 numerous occasions, at the Hearing Examiner's request,
 7 reviewed the access of the driveway in relation to Carderock
 8 Springs. This has been reviewed, shown on the plans and I
 9 think the question has been answered.
 10 MR. NOTHMAN: So a full intersection was shown,
 11 showing fully Carderock Springs Drive, fully Artis driveway
 12 and River Road? Is that what you said?
 13 MS. ROBESON: No. Okay. Just a sec. I think
 14 we're getting bogged down. He's saying there is a plan
 15 that's been reviewed by Park and Planning that shows both
 16 intersections. Okay. There is, I don't know what your
 17 additional question is. Do you mean has, has SH --
 18 MR. NOTHMAN: Could you cite the exhibit? That
 19 would really be helpful.
 20 MS. ROBESON: The site plan shows, it doesn't
 21 show, somewhere it does. Okay. It shows Carderock Springs
 22 and the driveway.
 23 MR. NOTHMAN: May I approach to take this?
 24 MS. ROBESON: Sure.
 25 MR. NOTHMAN: Thank you.

1 MS. ROBESON: But I'm not, because --
 2 MR. NOTHMAN: I see. Okay. And so, this was the
 3 plan that was submitted to SHA?
 4 MS. ROBESON: Yeah. I sent it to them.
 5 MS. GIRARD: Yeah. You did.
 6 MR. NOTHMAN: All right. Thank you. I, it's not
 7 exactly what I was thinking of in terms of seeking approval
 8 from SHA, but I don't know enough about what SHA needs so.
 9 MS. ROBESON: Well, they've already said they're
 10 going to issue an access permit. So I would assume they
 11 wouldn't specially, well, anyway. I would assume they
 12 wouldn't say that if they had, didn't have the information.
 13 MR. NOTHMAN: Yeah. Okay. All right. Thank you.
 14 I have one last question. And that's just would something
 15 called rumble strips along this shoulder here alert drivers
 16 to pay more attention, wake you up if you will, focus
 17 attention if there's something unusual going on? Perhaps
 18 act as a traffic calming measure to encourage drivers to
 19 slow down if they were on the shoulder?
 20 MR. LENHART: My opinion is that the State would
 21 not want rumble strips or would not approve rumble strips on
 22 the shoulder. Typically rumble strips are put on roadways,
 23 you know, like two lane roadways where they put them on the
 24 edge lines or on the center line so if you aren't paying
 25 attention, you doze off, you'd run across it. It wakes you

1 up, alerts you that you're doing something. Or if you're
 2 driving down the roadway and there's a stop sign coming up.
 3 And you know, it's a high speed roadway. I can think of
 4 several locations that, that they put them in to alert you
 5 that you're approaching something. The shoulder, you're not
 6 supposed to be driving on the shoulder of the bridge anyway
 7 so the, the State is going to view that as why are we
 8 putting them on the shoulder? People are over there. They
 9 already know they're over there. I, I just don't think
 10 that's an appropriate application.
 11 MS. ROBESON: Okay.
 12 MR. NOTHMAN: All right.
 13 MS. ROBESON: Yes, you can have, I'm, I'm going to
 14 take a couple more questions and then I have to leave room
 15 for closing argument. So --
 16 MR. BRUESTLE: I just have --
 17 MS. ROBESON: Come, come forward.
 18 CROSS-EXAMINATION
 19 MR. BRUESTLE: Mr. Lenhart, may I have your
 20 opinion on 35 miles an hour speed limit for that stretch of
 21 road starting at Seven Locks and heading out toward
 22 Clewerwall as opposed to 40?
 23 MR. LENHART: Do I think that it should be reduced
 24 or would they allow the reduction?
 25 MR. BRUESTLE: Both.

1 MR. LENHART: My opinion is that it should not be
2 reduced. 40, I think is an appropriate speed limit. I say
3 that based on my 10 years when I was at State Highway
4 Administration doing speed studies and establishing speed
5 limits and I also don't think that the State would allow it
6 to be reduced. It is an arterial roadway. It is, it does
7 have somewhat higher design speeds and what the State would
8 tell you is they've done a speed study that shows that the
9 operating speed is 45 to 49 based on their information.
10 MS. ROBESON: Right. Let's not rehash it.
11 MR. LENHART: Yeah.
12 MS. ROBESON: You, so you think that because it's
13 in the nature within the realm of the design speed. Is that
14 what you're saying?
15 MR. LENHART: They wouldn't reduce, yes. Yeah.
16 They wouldn't reduce it because it would, they just would
17 not reduce it.
18 MS. ROBESON: Okay.
19 MR. BRUESTLE: Thank you.
20 MS. ROBESON: But, you know, I know where you're
21 going and I appreciate the thoughts.
22 MR. LENHART: Yeah.
23 MS. ROBESON: And maybe that's a, anyway. Okay.
24 Anyone else? Okay. Thank you. Do you have any more
25 follow-up questions? Ms. Carlson, did you want to make, do

1 you, did you want to make any additional points in testimony
2 as new testimony or do you want to say the points that
3 you've already made to save for closing argument?
4 MS. CARLSON: I would just, I'm going to make some
5 closing remarks.
6 MS. ROBESON: Okay. All right. All right. So,
7 Ms. Girard?
8 MS. GIRARD: I hate to bore you with this. Could
9 we take like a five minute break? Just so we can run to the
10 restroom.
11 MS. ROBESON: No. Yes.
12 MS. GIRARD: And that doesn't mean I'm going to
13 have a long-winded closing statement. I just --
14 MS. ROBESON: Okay.
15 MS. GIRARD: I would appreciate that. Thank you.
16 (OFF THE RECORD.)
17 (ON THE RECORD.)
18 MS. ROBESON: Okay. We are back, Ms. Carlson?
19 MS. CARLSON: Yes.
20 MS. ROBESON: We're back on the record.
21 MS. CARLSON: All right.
22 MS. ROBESON: Did you take the picture of the
23 model and show --
24 MS. CARLSON: I did. I did.
25 MS. ROBESON: And did you email it to Ellen?

1 MS. CARLSON: I have not yet.
2 MS. ROBESON: Can you just take a moment and do
3 that real quick?
4 MS. CARLSON: Yep.
5 MS. ROBESON: And then I'll, I just want to make
6 sure we have it in the record and then you can both --
7 MS. CARLSON: Do you want Ellen in the picture or
8 not in the, I mean Erin in the picture or not in the
9 picture?
10 MS. ROBESON: I leave that up to --
11 MS. GIRARD: Do the, do the no --
12 MS. ROBESON: We could, we could do selfies. You
13 know.
14 MS. CARLSON: Let's see. There you are.
15 MS. GIRARD: Yeah. You can delete those.
16 MS. CARLSON: There's Ellen.
17 MS. ROBESON: I think both of you look fine.
18 MS. CARLSON: There's Erin. There is --
19 MS. ROBESON: A little glazed, but --
20 MS. CARLSON: Carl. I'm trying to remember
21 everybody who is in our group.
22 MS. ROBESON: Well, I'll take care of getting it
23 to all the parties.
24 MS. CARLSON: Okay. Okay.
25 MS. ROBESON: I just want to make sure it's in

1 Ellen's hands before we end today and I'll make sure it gets
2 to the parties tomorrow.
3 MS. CARLSON: Can I call it Artis intersection
4 model?
5 MS. ROBESON: Yes.
6 MS. CARLSON: Is that okay?
7 MS. ROBESON: Perfect.
8 MS. CARLSON: That was just a coincidence. It was
9 Bentley going into the Artis facility. Or not. No. It
10 was. All right.
11 MS. ROBESON: All right.
12 MS. CARLSON: I'll try and keep it brief.
13 MS. ROBESON: No, it's Ms. Girard's turn first.
14 MS. CARLSON: Oh, sorry. Sorry.
15 MS. ROBESON: Then it goes to you.
16 MS. CARLSON: Okay.
17 MS. ROBESON: And then she gets the last say.
18 MS. CARLSON: Last. Okay.
19 MS. ROBESON: So go ahead.
20 MS. GIRARD: Okay. As I started with my opening
21 statement, we recognize that at the conclusion of the
22 initial proceedings the Hearing Examiner felt there were
23 open issues regarding the traffic safety of River Road
24 associated with the application. At that time, I think
25 everyone was operating under the assumption that there were

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1 safety issues based on the anecdotal testimony. There was
2 crash data and there were allegations of a speeding problem,
3 although we didn't have any empirical data on that. Since
4 then, however, evidence, since the initial hearing, the
5 evidence that we had presented as part of our initial case
6 in chief has been buttressed significantly. Mr. Lenhart's
7 speed study, for example, shows there's not an excessive
8 speeding problem on River Road during off peak hours. And
9 we also have evidence in the record that there's adequate
10 sight distance at the observed speeds to avoid other
11 vehicles. There's the January 15th letter from Technical
12 Staff concluding among other things that while there's a bus
13 stop, where there are bus stops on either side of River Road
14 near the site, bus service is such that employees would
15 likely arrive and depart from the project side of River
16 Road. That slower traffic would not necessarily mean a
17 safer intersection and speed cameras were not appropriate
18 along this stretch of River Road. That the turning queue
19 from River Road on to Carderock Springs Drive would not be
20 increased with the proposed development and sight distance
21 is adequate from proposed driveway to access River Road.
22 That the intersection itself meets all AASHTO guidelines
23 which include measures for safety. Ms. Reynolds also
24 concluded there is no compelling reason to restrict site
25 access to right-in/right-out. The next is a quote from page

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1 3. The driveway to the proposed use and Carderock Springs
2 Drive are offset in a way that does not cause the left
3 turning vehicles from River Road turning in to the
4 facility's driveway or Carderock Springs Drive to be in
5 conflict. They conclude that the possible solution rather
6 than anything associated with the application and they even
7 go so far as to say if there is an existing issue with the
8 turns, left turns into Carderock Springs Drive, it's not
9 something that the applicant would exacerbate or be
10 responsible for. That perhaps restricting those left turns
11 would be the appropriate method. Not denying the
12 conditional use. January 21st an email came in and a letter
13 from SHA concluding, again confirming its severity index of
14 six is low compared to other intersections in SHA's District
15 3 and no further evaluation by SHA is needed. They also
16 concurred with Planning Staff that speeding is not an issue
17 and this area is not eligible for speed cameras. They also
18 found there's adequate sight distance to avoid cars turning
19 left on to Carderock Springs Drive. And I would note that
20 many of the pictures submitted by Ms. Carlson actually show
21 that. I mean you, in most of those pictures you can see for
22 a very great distance. So the pictures speak, speak to that
23 issue as well as the empirical data. To address the pattern
24 of crashes, SHA said they would install an additional
25 warning sign assembly. They did say River Road could not be

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1 widened in this location. And they, again, concluded
2 perhaps the most appropriate course of action would be to
3 limit the left turn lanes. These submissions by Technical
4 Staff and SHA as well as the analysis and testimony of Mike
5 Lenhart today provide the only technical, expert evidence on
6 record on the issue of safety. And all concluded that there
7 is not currently a significant safety issue at the
8 intersection and most importantly, that the proposed
9 development will not exacerbate or complicate the turning
10 movements at issue in any way so as to affect safety. You
11 know, the hypotheticals that we've heard today and fears of
12 what will happen is not probative evidence. To say, you
13 know, if there was someone running across the street and
14 someone biking and someone going left and someone going
15 right, these are all just, you know, hypothetical situations
16 that kind of build on worst fears. There's also assumptions
17 being made as, as to what might occur and, you know, it's
18 really very much in line, as I've said in previous
19 submissions, with Anderson v. Sawyer as far as the fear.
20 It's really just generalized fear as to what this will do.
21 And the only substantive and expert testimony of record. We
22 have to defer to the experts on this. Even if you were to
23 discount Mr. Lenhart as being the applicant's expert,
24 there's SHA and there's Technical Staff who have since the
25 remand have submitted very powerful, I thought, analysis on

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1 that. And under Sing Lee v. County Commissioners, the
2 expertise of an agency in its own field should be respected.
3 I don't, I can't say that I understand sight distance 100
4 percent. And I think we can all say well, you know, it
5 makes sense that that could block your sight, but, you know,
6 there's a reason that we have empirical studies and we have
7 ways of doing things. This is, you know, to, to do it
8 otherwise or just say well, let's see what people think. It
9 just doesn't fly. So, so based on the evidence of record, I
10 think the findings are clear that need to be made and I
11 think anything to the contrary would be unsubstantiated.
12 The last thing I just want to note is, as you know, the
13 first hearing on this case was over seven months ago. So we
14 implore you to issue a quick report. I understand you get
15 30 days. We just really would like to bring this to a
16 resolution as quickly as possible. And we'd appreciate
17 anything you can do to facilitate that. We'd also suggest,
18 I understand condition 15 of your previous recommendation
19 came out of those uncertainties and I think that since
20 they've been addressed, we would posit that perhaps that
21 condition is no longer appropriate.
22 MS. ROBESON: Okay. Ms. Carlson.
23 MS. CARLSON: Okay. Well, I have some random
24 thoughts that I'll try and get to succinctly. One gets to
25 the alignment of the driveway. I know there was some talk

1 about what it was. And I just noticed in Exhibit 111, which
 2 is a site, site plan, you can see that the edge of the, I
 3 guess that would be the eastbound, the eastbound side of the
 4 Artis driveway lines up pretty much with the westbound side
 5 of Carderock Springs Drive. So that's the level of offset.
 6 So if we are trying to say is there a misalignment or is
 7 there offset, it appears from this drawing you can see that
 8 Carderock Springs Drive is offset considerably and so there
 9 does create conflict for turning vehicles. Artis has said
 10 that 38 parking spaces were adequate because many of their
 11 employees would be using buses. But as we've heard today,
 12 the bus schedules aren't going to accommodate them on
 13 numerous shifts, both on weekends, evenings and early
 14 mornings. And so I'm questioning how these employees are
 15 going to be getting to work and whether we're going to be
 16 seeing a lot more trip generations because people aren't
 17 going to be able to use the buses. I also continue to be
 18 concerned that the trip generation rates being stated have
 19 only been looking at peak hour traffic in the morning and in
 20 the afternoon. And there's no recognition of the trips that
 21 are generated throughout the day and evening. And Ms. Guest
 22 talked about there being, you know, well over 100 trips in
 23 and out of a similar facility. I think it was even close to
 24 200 trips in and out. So it's, it's not a matter of just a
 25 few times a day cars coming in and out of the intersection.

1 I also want to note that vehicles in the Artis driveway are
 2 not easily seen. I appreciate that there is sight distance,
 3 but if you look at Exhibit 148(c) and 148(b), particularly,
 4 you can, it's, it's difficult to see what is coming out of
 5 the Artis driveway because of the guard rail, because of the
 6 sign showing that there's a bridge coming. There's a, a
 7 yellow and black striped sign. And the bridge abutment. So
 8 it is not a clear sight line in this picture, 148(c). You
 9 can see where the guard rail and the sign will be
 10 camouflaging cars coming out of the Artis driveway. So I
 11 think there is an issue with people being able to see
 12 clearly that there is somebody potentially coming out of the
 13 intersection. There was also some testimony that this model
 14 didn't accurately reflect the steepness of the hill. I
 15 would say, again, photographs of 148(d) showing the
 16 steepness of the hill and 148(b) both show that the hill is
 17 considerably steep. And to ask a car to wait at the bottom
 18 of that hill to turn left into the Artis driveway is, I
 19 think, an extremely dangerous move. With regard to speeding
 20 on River Road, the amount of traffic speed over the speed
 21 limit is not so much my concern as the fact that Mr.
 22 Lenhart's study demonstrated that traffic moving on River
 23 Road is moving at a high speed whether it's 40 or 50 or
 24 more. This is not a slow road where pedestrians can be
 25 crossing casually. It's, my point is that it's a high speed

1 road. Not, there may be speeding, but this is not a slow
 2 road that, that traffic is motoring along. I, I again would
 3 implore there not to be a left turn restriction. It would
 4 be grossly unfair to our community.
 5 MS. ROBESON: That, that is --
 6 MS. CARLSON: Okay.
 7 MS. ROBESON: Well, I shouldn't speak, but I can't
 8 --
 9 MS. CARLSON: Okay.
 10 MS. ROBESON: I couldn't put it on there.
 11 MS. CARLSON: Fair enough. Fair enough. And I
 12 agree the current severity rating of the intersection is low
 13 because we haven't had the kind of complications that we're
 14 dealing with here by adding more vehicles and more
 15 complicated turning movements. So the fact that the current
 16 state of the intersection is relatively safe, not dangerous,
 17 I don't think that you can extrapolate to say then that
 18 there's not going to be any increased danger by adding all
 19 these new turning movements. Do we have worst fears? Yes,
 20 we do. But they're based on some real world experience with
 21 that intersection. Almost all of us who testified today
 22 have lived in the area for 20, 30, 40 years. We're long-
 23 term residents. We know what happens along River Road. And
 24 we know what happens at that intersection. Lastly, in, in
 25 reading Martin Grossman's letter to Rose Krasnow of

1 September 21, 2015, he says under the new zoning ordinance,
 2 to approve a conditional use application, the Hearing
 3 Examiner must find that the proposed development will not
 4 cause undue harm to the neighborhood as a result of a non-
 5 inherent adverse effect alone or other combination of an
 6 inherent and a non-inherent adverse effect in any of the
 7 following categories: The use, peaceful enjoyment, economic
 8 value or development potential of abutting and confronting
 9 properties of the general neighborhood, traffic, noise,
 10 odors, dust, illumination or a lack of parking or the
 11 health, safety or welfare of neighboring residents, visitors
 12 or employees. I think the Zoning Examiner has heard enough
 13 today that there is considerable concern about the impact of
 14 this project on the traffic and safety of our neighborhood
 15 and urge you do not approve the project.
 16 MS. ROBESON: Thank you very much. Ms. Girard.
 17 MS. GIRARD: Really just, just two or three
 18 rebuttal points. I, you know, that's exactly the testimony
 19 that I'm trying to say, you know, under case law it doesn't
 20 have, have weight. To say Carderock is offset. Therefore,
 21 it's going to create conflicts. You know, you can't draw
 22 that conclusion without expert opinion or even, you know,
 23 probative evidence to back that up. In fact, I think I
 24 understand that at the end of the original proceedings you
 25 had concern, the Hearing Examiner had concerns about the

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1 offset. I am going to admit, I didn't fully understand what
 2 all that meant. But I think that, you know, as part of the
 3 testimony today, we've certainly fleshed that out. What
 4 exactly that means from an operation standpoint. And I
 5 don't think you can just automatically draw the conflict
 6 that, or drawn the conclusion that offset equals conflict.
 7 With regard to the reduction for buses, I think the
 8 testimony was that perhaps people would use it. If it is
 9 that the bus service doesn't work, doesn't account for that
 10 or wouldn't work for the employees, they'll come by car or
 11 car pool or any number of other means, but that, that's
 12 included in the traffic count. That's always been
 13 contemplated. And, you know, on the one hand, people are
 14 arguing that well, they won't practically take the bus
 15 because it's not going to work out. And on the other, we
 16 have pedestrians running across the street all the time to
 17 get from one bus stop to the other. And then the last point
 18 I'd just like to make is with regard to the picture that Ms.
 19 Carlson was showing.
 20 MS. ROBESON: Do you know which exhibit that is?
 21 MS. GIRARD: Yeah, 148(c)(i).
 22 MS. ROBESON: Okay.
 23 MS. GIRARD: You know, we're using this picture to
 24 demonstrate that you can't see the car in the driveway when,
 25 in fact, Mr. LaVay's testimony is that the person in the car

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1 is going to be about 15 feet to the south of where this
 2 picture is taken. We're practically sitting on the parapet
 3 in the picture. So I think it's important to keep track of,
 4 of, of the truth in what we were, are showing and
 5 representing. And based on that and my previous comments
 6 and evidence of today, I, too, thank the Hearing Examiner
 7 for all of her work on this. As we certainly have vetted
 8 every issue and as we appreciate the, the community's
 9 participation as well and look forward to a quick
 10 resolution.
 11 MS. ROBESON: Okay. What I'm going to do is the
 12 only thing I'm going to let in the record is the photo and
 13 if you missed a party, just distributing the photo. If
 14 there was anybody that wasn't here today, distributing the
 15 photo to them. Okay. And then I have to leave the record
 16 open for 10 days to let the transcript in. Now, I will
 17 attempt to, I know everybody is anxious about, to get
 18 resolution of this so I will attempt to get the, get the
 19 decision out, you know, earlier than the 30 days. I can't
 20 always guarantee it, but I will attempt to do so. So with
 21 that, the record is going to close, is the 21st a Monday?
 22 It, it's a Sunday. The record is going to close the 22nd.
 23 MS. CARLSON: A holiday.
 24 MS. ROBESON: No, I think, I think this Monday is
 25 the holiday. It, it's going to remain open though not for

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1 any additional things being submitted except for the photo
 2 of the model and any email from me distributing it and the
 3 transcript. That's the only thing I'm keeping it open for.
 4 Okay. And I do thank the parties for their time in looking
 5 at this. So hopefully there's enough there this time that
 6 we won't be seeing each other in the summer. Okay. So with
 7 that, and I will try to get the decision done for both
 8 sides. Okay. All right. With that, we're going to adjourn
 9 the hearing. Thank you very much.
 10 (Whereupon, at 4:20 p.m., the hearing was
 11 concluded.)
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1 C E R T I F I C A T E
 2 DEPOSITION SERVICES, INC., hereby certifies that
 3 the attached pages represent an accurate transcript of the
 4 electronic sound recording of the proceedings before the
 5 Office of Zoning and Administrative Hearings for Montgomery
 6 County in the matter of:
 7 Case No.: CU 15-05 REMAND - Artis Senior Living
 8
 9 By:
 10
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 13 Consuella Miles, Transcriber
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