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Transcript of Administrative Hearing, Day 2

Date: September 13, 2017

Case: Robin Rice Day Care Center

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<p>1 OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS</p> <p>2 FOR MONTGOMERY COUNTY, MARYLAND</p> <p>3 -----x</p> <p>4 In Re: :</p> <p>5 Robin Rice Daycare : Case No.</p> <p>6 Application of Robin Rice : CU 17-14</p> <p>7 -----x</p> <p>8</p> <p>9 ADMINISTRATIVE HEARING, DAY 2</p> <p>10 Before Hearing Examiner Martin Grossman</p> <p>11 Rockville, Maryland</p> <p>12 Wednesday, September 13, 2017</p> <p>13 9:59 a.m.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 Job: 155721</p> <p>24 Pages: 327 - 661</p> <p>25 Transcribed by: Molly Bugher</p>	<p>1 ANDREW LUCARELLI, Resident</p> <p>2 17436 Park Mill Drive</p> <p>3 Derwood, MD</p> <p>4</p> <p>5 TOM JOHNSON, Resident</p> <p>6 17509 Park Mill Drive</p> <p>7 Derwood, MD</p> <p>8</p> <p>9 SHERYL GREENFIELD, Resident</p> <p>10 17719 Caddy Drive</p> <p>11 Derwood, MD</p> <p>12</p> <p>13 JANE LEWIS, Resident</p> <p>14 17713 Caddy Drive</p> <p>15 Derwood, MD 20855</p> <p>16</p> <p>17 RUTH SCHWARTZ, Resident</p> <p>18 17828 Cliffbourne Lane</p> <p>19 Derwood, MD</p> <p>20</p> <p>21 CAROL GANNON, Resident</p> <p>22 17516 Park Mill Drive</p> <p>23 Derwood, MD</p> <p>24</p> <p>25</p>
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<p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 ROBIN RICE, Applicant</p> <p>4</p> <p>5 ABDON D. ACKAD, JR., Spouse of Applicant</p> <p>6</p> <p>7 G. MACY NELSON, Esq., For Ms. Lloyd and Mr. Johnson</p> <p>8</p> <p>9 ANNE GREGORSKI, Objector</p> <p>10</p> <p>11 KATIE BECKER, Objector</p> <p>12 17712 Shady Mill Road</p> <p>13 Derwood, MD 20855</p> <p>14</p> <p>15 JIM BENSON, Real Estate Appraiser</p> <p>16 12805 Folly Quarter Road</p> <p>17 Ellicott City, MD</p> <p>18</p> <p>19 JAMES SNEE, Resident</p> <p>20 18006 Mill Creek Drive</p> <p>21 Derwood, MD</p> <p>22</p> <p>23 CLAIRE DECLINE, Resident</p> <p>24 18037 Mill Creek Drive</p> <p>25 Derwood, MD</p>	<p>1 BONNIE LLOYD</p> <p>2 17605 Park Mill Drive</p> <p>3 Derwood, MD</p> <p>4</p> <p>5 ELAINE McCANN FRENCH</p> <p>6 17701 Mill Creek Drive</p> <p>7 Derwood, MD</p> <p>8</p> <p>9 PAT LABUDA</p> <p>10 16929 Briar Dale Road</p> <p>11 Derwood, MD</p> <p>12</p> <p>13 PATTY PETERSON</p> <p>14 7505 Park Mill Court</p> <p>15 Derwood, MD</p> <p>16</p> <p>17 JEAN NODINE</p> <p>18 7508 Park Mill Court</p> <p>19 Derwood, MD 20855</p> <p>20</p> <p>21 ANNE GREGORSKI</p> <p>22 17500 Park Mill Drive</p> <p>23 Derwood, MD</p> <p>24</p> <p>25</p>

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E X H I B I T S	P R O C E E D I N G S
PAGE	
1 NO DESCRIPTION	1
2 116A-P Photographs of traffic and cars from 341	2 MARTIN GROSSMAN: All right. I'm going to call the
3 Shady Grove Road through Mill Run Drive 370	3 case and I apologize for the delay, but- I understand
4 going to subject sit	4 everybody had problems, several traffic problems getting
5	5 here. So that's why we held off beginning the case.
6 117A-L List and photographs of sheds 382	6 MALE VOICE: Thank you for doing that.
7 118A Loudness comparison chart 382	7 MARTIN GROSSMAN: All right. Let me call the case.
8 118B Noise Comparison Chart 382	8 This is day two of the public hearing in the matter of
9 119A-G Photos showing backyard of site property 392	9 Robin Rice, OZHA number CU17-14, application for a
10 120A-K Photos concerning Mill Creek Towne 398	10 conditional use pursuant to Zoning Ordinance Section
11 Swim Association	11 593.4.4.E, to allow a childcare center for up to- a child
12 121A-B Illustration of staff parking and pick up 401	12 daycare center I should say, for up to 30 children in her
13 and drop off	13 property at 17505 Park Mill Drive in Derwood, Maryland. The
14 122 Aerial photograph of the neighborhood 406	14 subject site is Lot 8, Block G of the Mill Creek Towne
15 123 Photograph of excavation at site property 417	15 subdivision and it is zoned R200. A conditional use is
16 123A Photograph showing proposed pavers 417	16 required for a child daycare center in the R200 zone. Day
17 124 Back and white photograph of area with 473	17 one of this hearing was held on August 4, 2017, and notice
18 pins showing properties	18 for this additional day was issued on August 22, 2017. My
19 125 Aerial Photo 506	19 name is Martin Grossman. I'm the Hearing Examiner which
20 126 Outline of testimony - Tom Johnson 507	20 means I will take evidence here and write a report and
21 127 Next Door - Middle Creek Town 511	21 decision in the case. At the first session on August 4, I
22 community listserve document (rejected)	22 explained about the- what these proceedings are and what
23 128A 7/14/17; 4:45 p.m. photo-cars at daycare 513	23 they are not. This is a land use hearing. We don't deal
24 128B 8/22/17; 4:55 p.m. photo-cars at daycare 513	24 with- directly with the question of the care of the
25 128C 8/29/17; 8:20 a.m. photo-cars at daycare 513	25

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<p>335</p> <p>1 children, which is part of the function of the Maryland 2 Department of Education. I also explained that cross- 3 examination of the applicant's witnesses will, for the most 4 part, be conducted by the opposition attorney, Mr. Nelson 5 and other parties at counsel table. If somebody in the 6 audience has an additional question that they wish to pose, 7 they can raise their hand when those folks have had their 8 opportunity to cross-examine and Mr. Nelson will talk to 9 you and see if there is an additional question to pose. 10 There is a final version of applicant's proposed site plan 11 showing structures including the proposed addition, access, 12 parking, landscaping, lighting, and signage. It's in the 13 record as Exhibit 111. At the first day of the hearing, 14 testimony was given by the applicant, Robin Rice, by Angela 15 Pryor, the resident and current operator of the group 16 daycare Happy Childcare Nest on the site, by Emily 17 Tettlebaum of Technical Staff, and by seven members of the 18 opposition; Kathleen Mason, Barbara Feldman, Jim Snee, 19 Clare Decline, Nancy McGuinness, John Patrick Duffy, and 20 Andre Polissedjian. Any other opposition witnesses will be 21 given an opportunity to testify after Ms. Rice completes 22 her case. I also denied a motion to dismiss that have been 23 made by Mr. Nelson based on the question regarding the 24 identity of the proposed operator of the child daycare 25 center, of the proposed child daycare center. And I took</p>	<p>337</p> <p>1 if an entity is doing business, if the applicant is doing 2 business as a particular entity, I would like to include 3 that in the title of it. I just wanted to know do you 4 intend to use that? Will you be doing business as that or 5 you don't know at this point. That's fine. If you don't 6 know, that I can just entitle it with your name. 7 ROBIN RICE: I will be requesting to purchase the 8 marketing rights to that name (inaudible). 9 MARTIN GROSSMAN: You'll be requesting. 10 ROBIN RICE: Yeah. 11 MARTIN GROSSMAN: Okay. Which means that you don't 12 know for sure because requests are not always agreed to. 13 ROBIN RICE: Correct. 14 MARTIN GROSSMAN: Okay. 15 ROBIN RICE: And the- I have to check with OCC that- I 16 believe they put my name on there, they do it- doing 17 business as, as long as I'm not an LLC. If I am an LLC, 18 they have to put the LLC name. 19 MARTIN GROSSMAN: All right. 20 ROBIN RICE: So it's not an LLC. It's just marketing. 21 MARTIN GROSSMAN: All right. And I know that you have 22 submitted- you had submitted an updated affidavit of 23 posting. Technically speaking, this should be an affidavit 24 of posting that takes you until the day of the hearing. The 25 affidavit of posting is an affidavit that indicates that</p>
<p>336</p> <p>1 under advisement the objection that was made by the 2 applicant to the admission of the appraiser's report by Mr. 3 Benson in the absence of Mr. Benson as a witness. I ruled 4 on that in a written order during the interregnum between 5 the two hearing days and ruled that I agreed with the 6 applicant that we should not admit the appraisal report 7 unless Mr. Benson is available as a witness for cross- 8 examination, given that not only is it hearsay, but it's an 9 expert report. All right. I have a brief question for the 10 applicant. Since Ms. Pryor testified that she is the owner 11 and operator of the current group daycare, Happy Childcare 12 Nest, would that be the name. If this conditional use were 13 granted, would that be the name under which it would 14 function or is it some other name? I just want to know how 15 to title my report. Are you doing business as or will you 16 be doing business as Happy Childcare Nest or on some other 17 entity? 18 ROBIN RICE: It's a marketing name that I have to pay 19 Mrs. Pryor for and- 20 MARTIN GROSSMAN: Is your microphone turned on? 21 ROBIN RICE: Yes. Happy Childcare Nest is a marketing 22 name that I will need to pay Ms. Pryor for, but the license 23 will be under my name, Robin Rice. 24 MARTIN GROSSMAN: No, but I'm just asking. The reason 25 I'm asking is because when I issue my report and decision,</p>	<p>338</p> <p>1 the notice sign has been posted on the property as required 2 up until the hearing and should remain there actually, 3 until all of the- if there are any appeals one way or the 4 other or request for oral argument- 5 ROBIN RICE: I did- 6 MARTIN GROSSMAN: The notice sign should remain up. 7 ROBIN RICE: Okay, but the affidavit of postings are 8 in order. 9 MARTIN GROSSMAN: When you say they're in order- I'm 10 not saying they are out of order. I'm saying that 11 technically speaking, you should have an affidavit of 12 posting that takes you up to the day of the hearing. The 13 affidavits of posting that you submitted earlier are not 14 obviously, because they have been- before the final day of 15 the hearing, were not- did not include up to today. 16 ROBIN RICE: Okay. I will check with Sarah and see 17 what else you want me to do. 18 MARTIN GROSSMAN: Right. Just execute another 19 affidavit of posting. 20 ROBIN RICE: Another affidavit. Okay. 21 MARTIN GROSSMAN: That's all. I don't think there's 22 any issue about it. It's just that- just to make the record 23 clear. 24 ROBIN RICE: Okay. 25 MARTIN GROSSMAN: Okay. Are there any other procedural</p>

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<p>339</p> <p>1 or preliminary matters? Ms. Rice do you have anything you 2 need to discuss procedurally here? 3 ROBIN RICE: Not at this time. 4 MARTIN GROSSMAN: Okay. Mr. Nelson. 5 G. MASON NELSON: Just one point, Mr. Benson, the 6 appraiser, I arbitrarily asked him to show up at 12:45 and 7 I was just trying to make a reasonable judgment. 8 MARTIN GROSSMAN: Okay. 9 G. MASON NELSON: I thought that might be during lunch 10 break, but I'm hopeful that we can put him on this 11 afternoon. 12 MARTIN GROSSMAN: All right. That sounds like a 13 reasonable possibility. Oh, yes, let me remind everybody, 14 when you speak, make sure you turn on your microphone 15 because the court reporter is recording through that 16 microphone. You have a microphone there that you hit the 17 red button. 18 G. MASON NELSON: I'm on. Mason Nelson on by half of 19 Mrs. Lloyd and Mr. Johnson. I just made a comment about the 20 appraiser Mr. Benson. 21 MARTIN GROSSMAN: All right, but I will just caution 22 everybody, witnesses or anybody else who is making a 23 statement on the record should make sure that their 24 microphone is turned on so that the court reporter actually 25 gets a true version of it. At counsel table we have Ms.</p>	<p>341</p> <p>1 exhibit number, sir. 2 MARTIN GROSSMAN: Let me just say, first of all, don't 3 put anything up on the screen as an exhibit unless it's 4 actually legible because there is no point in that, okay. 5 Okay. For- the next exhibit number is 116. What do you have 6 as an exhibit? 7 ROBIN RICE: Okay. 116 is- 8 MALE VOICE: What's wrong with this thing? 9 ROBIN RICE: Damn it. We just did it. There we go. Not 10 on there though. Are we like not plugged in or something? 11 Okay. It's Exhibits A through P and the first page- 12 MARTIN GROSSMAN: You're saying 116 is multiple pages? 13 ROBIN RICE: Multiple pages- 14 MARTIN GROSSMAN: Are they photographs or- 15 ROBIN RICE: Of photographs. 16 MARTIN GROSSMAN: Okay. So 116A through P are 17 photographs of what Ms. Rice? 18 ROBIN RICE: It's photographs of basically the 19 entrance from Shady Grove Road through Mill Run Drive going 20 to my site. 21 MARTIN GROSSMAN: All right. 22 ROBIN RICE: So the first exhibit number A is- 23 MARTIN GROSSMAN: 116A. 24 ROBIN RICE: 116A is the list of the exhibits. 25 MARTIN GROSSMAN: A is the list? Why don't we make 116</p>
<p>340</p> <p>1 Rice, her husband Mr. Ackad, Mr. Nelson, Anne Gregorski, 2 and Katie Becker. All right. If there are no other 3 preliminary matters- anybody else have a preliminary 4 matter? No, all right. Then let us proceed. Ms. Rice, you 5 may proceed with your case. You are still under oath. 6 ROBIN RICE: Yes. Could I request that the lights go 7 down so that you can see the projector? 8 MALE VOICE: (inaudible) I don't- comes on. It has to 9 warm up a little bit. 10 MARTIN GROSSMAN: All right. 11 ROBIN RICE: This is a presentation, A through P. I've 12 marked the exhibits with the letters. Do you have an 13 exhibit number, sir? 14 MARTIN GROSSMAN: We will in a second I guess. I mean, 15 it's not particularly clear. Can you make it larger? 16 ROBIN RICE: That's- 17 MALE VOICE: (inaudible) that way. 18 ROBIN RICE: That is not an easy slide to see, but not 19 necessary either. The next one is pictures. Hang on one 20 sec. 21 MARTIN GROSSMAN: Okay. We can see the airplane, but 22 I- 23 ROBIN RICE: Okay. That's not good. I'm sorry. Hang 24 on. I should have started this before, but let me move- 25 this is the hard copy and the first page is- oh, I need an</p>	<p>342</p> <p>1 the list of the exhibits if all of the- of the photographs, 2 okay. 3 ROBIN RICE: Yes. 4 MARTIN GROSSMAN: And then- all right and so 116 is 5 the list of photos. And then photo A is what? 6 ROBIN RICE: A is just the list. 7 MARTIN GROSSMAN: No, A is 116. 8 ROBIN RICE: Okay. A is 116. 9 MARTIN GROSSMAN: I'm sorry. 116 is the list. 10 ROBIN RICE: 116A. 11 MARTIN GROSSMAN: 116 is the list and then A through 12 P, or whatever it is, is the- will be the photographs 13 themselves. 14 ROBIN RICE: Okay. I already marked them B. 15 MARTIN GROSSMAN: All right. Let's do it your way 16 then. Okay. 17 ROBIN RICE: Let's do- let's do- 18 MARTIN GROSSMAN: So A is the list. 19 ROBIN RICE: A is the list. B is the traffic light 20 going from Park Mill- from Shady Grove Road to Mill Run 21 Drive intersection. C is the sidewalk at Shady Grove Road 22 and Mill Run Drive intersection. D is the bus stop at Shady 23 Grove Road and Mill Run Drive intersection. E is the tunnel 24 underneath Shady Grove- 25 MARTIN GROSSMAN: Hold on a second. So, I'm sorry.</p>

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<p>343</p> <p>1 What was- and what exactly is the relevance of all of these 2 photographs?</p> <p>3 ROBIN RICE: (inaudible) list.</p> <p>4 MARTIN GROSSMAN: All right.</p> <p>5 ROBIN RICE: I already provided these (inaudible)</p> <p>6 MALE VOICE: PowerPoint expert here.</p> <p>7 MARTIN GROSSMAN: (inaudible)</p> <p>8 ROBIN RICE: F is the-</p> <p>9 MARTIN GROSSMAN: Hold on one second. What is the 10 point of all of these photographs?</p> <p>11 ROBIN RICE: Part of the preponderance of evidence is 12 for me to show vehicle traffic movements to refute the fact 13 about sidewalks. There are no parking signs there. There 14 are pedestrian paths. There is a tunnel. It's showing you 15 the safety and the residential character of the vehicular 16 traffic through one of the three abilities to get into the 17 neighborhood.</p> <p>18 MARTIN GROSSMAN: So you're saying that this 19 demonstrates that there won't be a traffic problem. Is that 20 what you are suggesting?</p> <p>21 ROBIN RICE: It demonstrates the existing traffic 22 conditions for traffic to be able to move swiftly and 23 safely through this area from Shady Grove Road to my site.</p> <p>24 MARTIN GROSSMAN: All right. And these are all 25 photographs, that is 116B through P, are photographs that</p>	<p>345</p> <p>1 parking. When you turn- H is when you turn left into the 2 area going towards my property. I is- shows you to the 3 right hand side looking at the school. Again, more evidence 4 that there is sidewalks in the area.</p> <p>5 MARTIN GROSSMAN: Please don't call out from the 6 audience. If you have something to say, when you testify- 7 if you wish to testify that there are no sidewalks in the 8 area or there are, that something you can testify to, but 9 calling out from the audience does not get in the record 10 and is not appropriate for a hearing. Thank you. Go ahead 11 ma'am</p> <p>12 ROBIN RICE: J shows a car parked on the grass. K 13 shows a stop sign and this stop sign is when you are on 14 Park Mill Drive and you want to make a right-hand turn onto 15 Mill Run to get to the traffic light, there- it says stop. 16 Cost traffic does not stop. So when you're going from the 17 traffic light on Mill Run, the traffic does not have to 18 stop at that four-way intersection. It can go straight. The 19 traffic from Park Mill Drive has to stop. So it's a two-way 20 stop, not a four-way stop intersection that helps the 21 traffic move.</p> <p>22 MARTIN GROSSMAN: In which exhibit is this by the way?</p> <p>23 ROBIN RICE: This is K.</p> <p>24 MARTIN GROSSMAN: K and that is showing Park Mill 25 Drive. And what is the intersection? Park Mill Drive-</p>
<p>344</p> <p>1 you took yourself?</p> <p>2 ROBIN RICE: Yes, sir.</p> <p>3 MARTIN GROSSMAN: Okay. And when did you take these 4 photographs?</p> <p>5 ROBIN RICE: About two weeks ago.</p> <p>6 MARTIN GROSSMAN: All right. And they accurately 7 reflect the conditions that are depicted at the site?</p> <p>8 ROBIN RICE: Going- yeah, the traffic pattern towards 9 the site. Here you go.</p> <p>10 MARTIN GROSSMAN: I'm just asking if the photographs 11 accurately depict the conditions at the site currently.</p> <p>12 ROBIN RICE: It's not pictures of the site. It's 13 pictures of the road going to the site.</p> <p>14 MARTIN GROSSMAN: I'm sorry. Pictures of- they 15 actually depict the areas that you are professing.</p> <p>16 ROBIN RICE: Yes. Yes, sir. So this is B, C.</p> <p>17 MARTIN GROSSMAN: Okay.</p> <p>18 ROBIN RICE: So this is B showing the traffic light. 19 This is C showing the sidewalk to cross the street. This is 20 the bus stop on Mill Run and Shady Grove Road. There is an 21 underground tunnel going from the other side of Shady Grove 22 Road to the Mill Run. When you come out of the tunnel, 23 there is a sidewalk. This is F. There is a sidewalk that 24 goes to the speed limit sign of 25 miles an hour. There is 25 no- the sidewalk continues to the parking sign that says no</p>	<p>346</p> <p>1 ROBIN RICE: The intersection of Park Mill Drive and 2 Mill Run Drive.</p> <p>3 MARTIN GROSSMAN: Okay.</p> <p>4 ROBIN RICE: Where traffic would be coming from one of 5 the three entrances into the area.</p> <p>6 MARTIN GROSSMAN: All right.</p> <p>7 ROBIN RICE: L is a picture going from that 8 intersection towards my property. It's got a bit of a curve 9 that will help slow down traffic. The next one shows how 10 straight and flat it is to- going towards my property. My 11 property does not have any no parking signs in front of it. 12 There are no parking signs in front of the school on Park 13 Mill. There are no parking signs on Mill Run Drive, which 14 is the primary residential street. There are other no 15 parking signs in the area and M shows another one. It's on 16 Wheat Fall. I've got a picture of the mailbox, 17542, and 17 it shows a no parking sign there. On the same street, there 18 is another no parking sign by the outlet. And I put in an 19 additional one.</p> <p>20 MARTIN GROSSMAN: You are suggesting that by this, 21 that parking is legal on your street. Is that what you're 22 saying?</p> <p>23 ROBIN RICE: I'm suggesting that there are no parking 24 signs in some areas and in front of my property, on my 25 street; there are no no parking signs.</p>

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<p>347</p> <p>1 MARTIN GROSSMAN: And what conclusion are you asking 2 me to draw from that piece of evidence? 3 ROBIN RICE: That parking can be allowed on the grass 4 in the area because- where there are no parking signs, 5 okay. 6 MARTIN GROSSMAN: Okay. 7 ROBIN RICE: Otherwise, they would put up a no parking 8 sign in the- everywhere. And the last one is another 9 picture of Tom's truck. He's been kind enough to stop 10 parking in the street, blocking the traffic. He's parking 11 at the neighbor's house, which is- which I appreciate. So 12 that issue is being resolved. Okay. The next slide 13 (inaudible). 14 DON ACKAD: I don't know. So you are through this 15 group of slides. 16 ROBIN RICE: Yeah. The next presentation is my parking 17 plan, which I can only show on the screen. 18 DON ACKAD: (inaudible). 19 ROBIN RICE: Okay. Now it's not- 20 MARTIN GROSSMAN: You're not planning- parking an 21 airplane there are you? 22 ROBIN RICE: No. 23 MARTIN GROSSMAN: All right. 24 ROBIN RICE: I'm sorry. I've got to fix that. 25 MARTIN GROSSMAN: That's the slide that (inaudible).</p>	<p>349</p> <p>1 MARTIN GROSSMAN: Let me identify that exhibit. Your 2 parking plan is Exhibit 17 I believe. Let me see. Just so 3 we identify what's up on the screen for the record. 4 ROBIN RICE: I think it's 117. 5 MARTIN GROSSMAN: No, 17 I believe is the parking 6 space layout map I think. 7 ROBIN RICE: Oh, okay. 8 MARTIN GROSSMAN: Hold on one second. Sorry. Yes, so 9 what you have up there on the- as a slide, without the 10 additional color things that you are putting out there, is, 11 I believe, Exhibit 17. Your parking plan entitled- your 12 parking space layout. And this- okay. 13 ROBIN RICE: Okay. 14 G. MASON NELSON: May I see this for a little while to 15 do is check for- 16 MARTIN GROSSMAN: Sure. 17 MARTIN GROSSMAN: Yes, but note that an additional 18 parking space has been added in Exhibit 111 right, just 19 east of- on her side yard, just east of parking space 20 number 10. So there is an additional parking. Where she has 21 car depicted up on the slide, there is an additional 22 parking space there right after that. 23 JIM SNEE: Can we get a clarification of the figure on 24 the top left? What does that represent? 25 MARTIN GROSSMAN: Yes. Ms. Rice, what are the- there</p>
<p>348</p> <p>1 ROBIN RICE: The parking plan- there we go. Okay. I do 2 not have hard copies of this, but the first slide shows- 3 MARTIN GROSSMAN: Well, if you don't- you do have a 4 hard copy that's in the file already- 5 ROBIN RICE: Yes. 6 MARTIN GROSSMAN: As your parking plan. 7 ROBIN RICE: Yes, so- 8 MARTIN GROSSMAN: But I- it's a little hard for me to 9 see there. Do you have 11 parking spaces or just 10 10 depicted there? 11 ROBIN RICE: It's just 10. My son-in-law was stuck on 12 the other side of the hurricane to fix number 11, but I 13 think you can (inaudible) it. So let me show- 14 MARTIN GROSSMAN: All right. Well, the point I'm 15 making is that if we are showing something, why don't you 16 put up your Exhibit 111, which shows the additional parking 17 space that you are proposing, which is- 18 ROBIN RICE: Bear with me with this presentation. It 19 shows the flow. It shows the ability that when one car is 20 there, the resident car, that person can care for three 21 infants. 22 MARTIN GROSSMAN: All right. 23 ROBIN RICE: A second resident car can care for- 24 MARTIN GROSSMAN: Well, hold on one second ma'am. 25 ROBIN RICE: Okay.</p>	<p>350</p> <p>1 is a color addition too on the left there. What is that. 2 ROBIN RICE: Yes, those are pictures of three infants. 3 MARTIN GROSSMAN: I see. 4 ROBIN RICE: So what I'm trying to do with this 5 presentation is show you the flow of the infants, the 6 staff, and the residents and how it works as far as the 7 traffic pattern is concerned on the site. 8 MARTIN GROSSMAN: All right. 9 ROBIN RICE: So when the nonresident staff member 10 wakes up, she can care for a staff ratio of three infants 11 on her own. A second nonresident staff member can take care 12 of 10 children that are preschool aged. So there are no 13 nonresident staff parking requirements for the first 13 14 children when the two staff members can help in the 15 morning. The OCC regulations for the 30 client children 16 center require me to have six staff members if I'm full for 17 the- with all three rooms, and two of the rooms are filled 18 with infants. Okay. So I need six. One is a non- one is a 19 resident so I need five nonresident staff members. Out of 20 those five nonresident staff members, two need to be 21 teachers and I want to provide a parking space for them. 22 The other three people need to be aides. I can easily hire 23 aides that have public transportation or walking versus 24 needing a parking space. Okay. The zoning ordinance 25 requires me to ask you for a parking reduction in spaces,</p>

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<p>351</p> <p>1 which I want to do for the nonresident staff members where 2 I don't have enough parking for them. Let me get back to 3 that. So the third person to come would be an assistant 4 without a car who could then add three more infants. I'm 5 still not using any of the eight spaces in the front. I 6 would have another assistant come from the bus and then the 7 second resident staff member can leave or stay home and not 8 work. If permitted, a staff member could then park on the 9 side in the space that is space number nine. Then another 10 three infants can come in. If permitted, I would park 11 another teacher's car on the grass on Park Mill Road, and I 12 am- that's up to your decision. Then I can care for another 13 10 children and then have another assistant come in. This 14 gives me the three parking spaces that I need or want for 15 the teachers and having the three assistants who do not 16 need a parking space or I can make an employment agreement 17 that they may not come with a car; either way. Part of my 18 submissions was the childcare demographics. The income of 19 assistants is low. They can't afford a car and usually I 20 can't find one that has a car. They take the bus and Emily 21 did a great job of showing you the buses. 22 MARTIN GROSSMAN: I read your statement that you filed 23 and as I recall, you indicated you would have three 24 teachers, three aides, and wanted an additional, seventh 25 parking space, to accommodate overlaps of-</p>	<p>353</p> <p>1 allowed on grass parking, the next place I would a car 2 would be on the grass and there is room for four on the 3 grass in total, in the front. But that's up to you. I 4 understand that. 5 MARTIN GROSSMAN: And if you're not allowed any grass 6 parking? 7 ROBIN RICE: If I'm not allowed any grass parking, I 8 would use number four and five for staff members and now I 9 still have five spaces, okay. And I still have seven. Seven 10 is another space that I would use. The car is, on the 11 slide, is showing that it's going over here. If you 12 eliminate the four parking spaces in the front, I still 13 have the six parking spaces that I need for the nonresident 14 staff members, but I don't really need them. It's just 15 pretend. I don't really want to use parking space number 16 seven, but it is a way for me to show that I've got it even 17 though I'm not going to use it if you won't give me the 18 parking reduction for the bus. If I really needed it, I 19 would probably do a modification and I have room to put it 20 where this particular car is. Number seven is already 21 paved. I don't really want to demo it. I just don't want to 22 really use it. Okay? This slide shows the timeline of the 23 presentation. At 6:00 in the morning, with two residents 24 and two of their own children depicted as school-aged 25 children, a car can come in- I want to be open at 6:00 in</p>
<p>352</p> <p>1 ROBIN RICE: Yes. 2 MARTIN GROSSMAN: Of approximately five minutes from 3 arrivals and departures. 4 ROBIN RICE: Yes, so I'm- 5 MARTIN GROSSMAN: (inaudible) for seven parking spaces 6 for your staff. 7 ROBIN RICE: Yes, so I need a parking- 8 MARTIN GROSSMAN: That correct? 9 ROBIN RICE: Yes, so I need a parking reduction for 10 the number of parking spaces that you determine I don't 11 have that I don't need anyway, for the assistants to be 12 able to come and not park because they will come without 13 cars anyhow. So out of the seven, I need a reduction, but I 14 don't know how many spaces you will consider that I have. 15 Another parking space for staff- okay. So the third 16 assistant; now I've got all of the children in the property 17 and I'm still not using any of the eight spaces in the 18 front unless you tell me otherwise. If one of the 19 assistants does have a car, then I would put them in space 20 number eight. Now I've got four of the non- four staff 21 members out of the six that I need and I only need two on 22 the bus. Another parking space that I would use would be in 23 between number three and five. This gives a better 24 circulation of the traffic around that car if I only need 25 to have one more car space there. Now I've got five. If I'm</p>	<p>354</p> <p>1 the morning, but I'm hoping to not have any clients until 2 7:00, but I need to get them all in for working parents 3 which is about 9:00. The first car I anticipate coming in 4 at 7:00 a.m. with two siblings, a baby and a preschooler. 5 They park in space number one and leave. 7:30 I have two 6 more. 7:50 there is another one and you can see the number 7 of children increasing. 7:51, another car could come in. 8 7:55, the first car goes out. I've been doing this for 30 9 years. This is the way the traffic flow works in a circular 10 driveway. 7:56, that car could still be there. 7:57- 11 MARTIN GROSSMAN: At other sites for that for that 12 many years. 13 ROBIN RICE: Yes, but I've observed this type of 14 secular traffic for 30 client children for 30 years. One of 15 the decisions that I would appreciate you putting in your 16 report so I know that I'm doing it correctly, is I would 17 allow during- two times during the day, morning peak time 18 and afternoon peak time, I would allow a car to park in the 19 driveway exit area because it is on pavement. It's not 20 parking on the grass. It's on pavement. And I would allow 21 the person, one car to be there for the drop off and 22 discharge of children. The second car can be behind them. 23 This is 8:02. If they come one minute from each other, it's 24 8:02 with three cars. At 8:03, is when I anticipate the 25 first car being able to go. If you look at the Marion Drive</p>

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<p>355</p> <p>1 case, the statement in that operation was that it takes 2 five minutes for a parent to get out of the car, go to the 3 side of the house, walk down the hill, go to the back of 4 the house, drop off the child, and go back to their cars; 5 five minutes. My property, the door for the daycare on the 6 right-hand side, is in the front of the building. It's 7 ground-level walkout. They don't have to navigate a 8 pedestrian sidewalk or anything else. My testimony is it 9 takes three minutes for a parent to drop off, get in their 10 car, and get the car out of the parking spot. 11 MARTIN GROSSMAN: Just so the record is clear, the 12 Marion Drive case, you are talking about is on the design 13 (inaudible) 14 ROBIN RICE: Yes, sir. Yes, sir. 15 MARTIN GROSSMAN: It's another conditional use case in 16 a different neighborhood in a different sized lot and so 17 on. 18 ROBIN RICE: Yes, sir, but the comparison isn't any of 19 that. It's how long does it take for child get out of the 20 car, get into the front door, and then back into the car. 21 My comparison is that they said five minutes. They are in 22 the back of the house and I am saying three. 23 MARTIN GROSSMAN: I understand your point. I mean, my 24 concern is completely aside from questions of- 25 ROBIN RICE: Certainly.</p>	<p>357</p> <p>1 I've got four cars that were in the driveway, but at 8:03, 2 I'm back to three cars in the driveway. 3 MARTIN GROSSMAN: All right. 4 ROBIN RICE: At 8:04, I would put another car in on 5 the side and at 8:05 comes in the sixth car, okay. That is 6 as tight as it can be. It is as tight as I want it to be 7 and it's not because of the parking. I don't want more than 8 six families inside the building at the same time. That's 9 where the real traffic jam is, inside the building. Not the 10 parking lot. So at 8:05, all of the six cars have arrived 11 and then at 8:06, 8:07, 8:08, they are leaving. And I don't 12 have another contract signed until 8:10. It works, okay. 13 MARTIN GROSSMAN: All right. 14 ROBIN RICE: It's 10 whole minutes. It's a lot of 15 time. 16 MARTIN GROSSMAN: I understand that your testimony. I 17 understand. 18 ROBIN RICE: Okay. 19 MARTIN GROSSMAN: You can move to the next point now. 20 ROBIN RICE: Okay. So throughout the day at 8:10, 21 8:30, you've got a couple of cars coming in. The parent 22 agreement is that they have to stop at space number one and 23 not on the driveway apron; 8:45. 8:47. We are talking about 24 a couple of cars coming in. At 9:00, I could have a car; 25 9:02. 9:15. 9:30. And you're pretty much done by 9:30 of</p>
<p>356</p> <p>1 MARTIN GROSSMAN: Compatibility and traffic and all of 2 that, is whether or not this fairly complex plan can work 3 out as a practical matter. I mean, as aside from any 4 questions of compatibility with the neighborhood and 5 traffic and all that. Just a question of whether a plan 6 with this number of car parking spaces and your three 7 minute interval concept, whether that actually would work 8 out as a practical matter. 9 ROBIN RICE: This is what I'm trying to demonstrate 10 and my objective is to sign no more- I'm just tighter and 11 more precise with what I want to do. It's six cars in a 10 12 minute time period. That is my plan. I will not sign a 13 contract for more than six cars in a 10 minute time period. 14 That works. I know it works, okay. If you want to change it 15 to five cars in 10 minutes or five cars in 15 minutes- 16 MARTIN GROSSMAN: Well, even five cars in 10 minutes 17 is two minutes a car. 18 ROBIN RICE: It's not- it- okay. Take a look at it 19 please, sir. 20 MARTIN GROSSMAN: Well, isn't that true? You said six 21 cars in 10 minutes. That's less than two minutes per car. 22 ROBIN RICE: If we look at 8:00 on this slide with the 23 first car coming in, a second car coming in 8:01, a third 24 car coming in at 8:02, a fourth car coming in at 8:03. At 25 8:03, I'm anticipating that the first car is gone, okay.</p>	<p>358</p> <p>1 getting the customers and because they want to be there for 2 the educational activities and curriculum that we provide. 3 At 1:00, you normally have a child getting picked up. So 4 now my presentation is showing you in reverse; 1:00, a 5 child gets picked up. 3:30, a child would get picked up; 6 4:00; just one car at a time; 5:00. You can have a two-car 7 pattern; 5:30. This shows a three car pattern. Four car 8 pattern; 5:50. 5:52. Then at 6:00, the second time I've got 9 the biggest pattern for 10 minutes of the six cars. But 10 these are not people who are going to a shopping center and 11 buying groceries and going off, that person in the car is 12 in the way. These are 30 people that get to know each 13 other. It's Matthew's father. It's Sarah's mother that's in 14 the parking lot. They help each other out. They work 15 together waiting a minute and not being concerned about 16 blocking is easy. When the parents come in, the first 17 parent, and they see another one coming behind them, they 18 go faster. And during the peak time, contract-wise, you may 19 not stay. You have to come and go if you have a contract 20 for that 8:00 to 8:10 time slot, okay. No lingering. So 21 this shows the traffic pattern that at the end of the day 22 you are back to the two school aged children and the two 23 residents. Okay. Exhibit number 88 in the file shows the 24 worst possible conditions for grass parking and it shows 25 one of Angie's staff members, part-time employees, and even</p>

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<p>359</p> <p>1 with a torrential rainstorm, the car is still on the grass 2 on high ground. 3 MARTIN GROSSMAN: All right. So 88 and 89 were 4 photographs received at the first hearing on August 4, 5 showing water on the Johnson yard next door. 6 ROBIN RICE: It's water on- 7 MARTIN GROSSMAN: Storm water accumulated. 8 ROBIN RICE: Yeah, from my property. From Beverly's 9 property, to my property, to Tom's property. 10 MARTIN GROSSMAN: Right. Okay. 11 ROBIN RICE: Okay. So I think it's a good parking 12 spot. Let me- 13 DON ACKAD: What are you looking for? 14 ROBIN RICE: This one. Okay. My property has a parking 15 lot in the front of the house which is required to be 16 paved, of eight spaces. My proposal is to have parking 17 space nine, which is part of the conditional use, and then 18 the two residents, 10 and 11. 19 MARTIN GROSSMAN: On the side yard. 20 ROBIN RICE: On the side yard. A question I'd really 21 appreciate being in the opinion is can a staff- a 22 nonresident staff member park in a resident parking spot. 23 Yes or no. Okay. So that I know that I'm doing it 24 correctly. With the parking requirement the way that I see 25 it and the way that I react, the setback requirement is for</p>	<p>361</p> <p>1 parking service, it says pavers, but it does not say 2 impervious pavers. So I checked with DPS and they said I 3 can pave it. 4 MARTIN GROSSMAN: Well, once again, that's a bit of 5 hearsay. 6 ROBIN RICE: I know. It's my testimony and what I 7 said. So the question is- 8 MARTIN GROSSMAN: Well, your testimony- there is a 9 difference between your testimony and what you are saying 10 yourself and your testimony as to what somebody else is 11 hanging outside of the hearing. 12 ROBIN RICE: Correct. 13 MARTIN GROSSMAN: The latter being hearsay. 14 ROBIN RICE: Correct, but the question is; can I put 15 in the- I can park there on the grass. Can I park there on 16 the grass if I put impervious pavers? I would just like you 17 to tell me, yes, you can put in the impervious pavers. 18 MARTIN GROSSMAN: I can't give you advisory opinions. 19 I'm going to decide the case. 20 ROBIN RICE: Okay. 21 MARTIN GROSSMAN: And then you can read the report and 22 decision. 23 ROBIN RICE: Okay. My- 24 MARTIN GROSSMAN: I will say though, that there is an 25 issue. As you know, there was an exchange, which is in the</p>
<p>360</p> <p>1 the front parking lot because the Section 59 629B, parking 2 requirements for conditional use is requiring five to nine 3 spaces. If a property with a conditional use requiring the 4 spaces abutting, et cetera, et cetera, it says, the parking 5 lot. My front eight spaces is definitely a parking lot. The 6 ordinance requires it to be surfaced which is why it is a 7 parking lot. The side parking, I put my- this is- I put 8 Angie's husband's car on the side. It generated a complaint 9 inspection and the complaint inspection said that it's fine 10 because you can park on grass on the side. So the question 11 is, can I surface- 12 MARTIN GROSSMAN: By the way, that's a bit of hearsay. 13 I don't know if that in fact is correct, but- 14 ROBIN RICE: I do have the- 15 MARTIN GROSSMAN: He objected to it, but I'm not 16 taking that as that's the law on- 17 ROBIN RICE: It generated a complaint inspection and 18 I've got a copy of the complaint inspection somewhere, to 19 give to you. But the question is; can I pave the side? It's 20 not a parking lot because it doesn't- it isn't required to 21 pave it, but if I pave it, is it then a parking lot. If the 22 setback is eight feet from the side, it's not a setback of 23 planting in my opinion. It's a setback of parking surface. 24 My proposal is to put in impervious pavers. Are impervious 25 pavers a parking surface? You look under the definition of</p>	<p>362</p> <p>1 record, between myself and Emily Tettelbaum in which I 2 asked, why isn't this governed by the provision in the 3 zoning ordinance that covers parking lots of 10 or more 4 cars because you plan to have 11 cars there. Ms. 5 Tettelbaum's response and I'm going to give you the exhibit 6 number of this email exchange. 7 ROBIN RICE: I do recall it. 8 MARTIN GROSSMAN: Right. I think it's 109. Make sure 9 that I'm referencing the right number. Yes, it's Exhibit 10 109. I asked Ms. Tettelbaum why she applied the statutory 11 provision that covers conditional uses of five to nine 12 cars, that's Section 59.6.2.9.B as in boy, when there is 13 another provision, Section 59.6.2.9 A and C that covered 14 parking facilities of 10 or more cars. And since you have 15 11 cars there- her response was that she considered the two 16 parking spaces, which you intended for a residence to be 17 separate, and therefore that's why she applied the other 18 section. I'm not sure that's the way I would interpret it. 19 I understand the argument. One could argue that this is an 20 11 car parking lot in which the provisions of section 21 59.6.2.9 A and C apply in which case the setback 22 requirements are 10 feet for landscaping and shading and 23 there are other requirements as well for landscape bylines 24 and so on, if that applies. So anyway, that was the 25 exchange.</p>

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<p>363</p> <p>1 ROBIN RICE: Okay. My point is that the words, parking 2 lot and the words, parking facility, both of them require 3 surface parking. 4 MARTIN GROSSMAN: Right. 5 ROBIN RICE: Okay. So if I don't do the surface 6 parking, it's not a parking lot and it's not a parking 7 facility. It's just parking. 8 MARTIN GROSSMAN: Well, I understand your argument. I 9 don't know that there is any authority that supports that 10 argument. It seems to me that the provision in the zoning 11 ordinance that I just mentioned, is intended to protect the 12 neighborhood from adverse impact on their residential 13 quality from a large parking lot. And so the more cars you 14 have programmed to park on a residential property, the more 15 it impacts the neighborhood and the more that the- 16 applicable the section is, A and C rather than B. 17 ROBIN RICE: Yes. Just- 18 MARTIN GROSSMAN: Either one. 19 ROBIN RICE: Yeah. 20 MARTIN GROSSMAN: You'd still have to have an eight 21 foot, at the minimum, setback if those three cars on the 22 side yard are considered part of the parking lot or parking 23 facility between those cars and the lot line. 24 ROBIN RICE: My argument is that it's not the cars 25 that need to be eight feet back. You don't need a perimeter</p>	<p>365</p> <p>1 parking waiver- 2 ROBIN RICE: Yes, but that was- 3 MARTIN GROSSMAN: Using the language of the 2004 4 zoning ordinance which no longer applies. I mean, I would 5 consider that to be a waiver request, although mislabeled, 6 but there is a provision for parking waivers under the new 7 zoning ordinance in 59.6.2.10. 8 ROBIN RICE: Well, I started this application a year 9 and a half ago. 10 MARTIN GROSSMAN: Yes. 11 ROBIN RICE: Okay, when a parking waiver was required. 12 MARTIN GROSSMAN: Did you say was or wasn't? 13 ROBIN RICE: Was. 14 MARTIN GROSSMAN: Yes. 15 ROBIN RICE: It's not required anymore. 16 MARTIN GROSSMAN: Why do you say that? 17 ROBIN RICE: Because if we look at the Staff Report 18 this says that they- Emily does not support the request for 19 a waiver of 22 feet under Section 625K2B. 625K2B under the 20 zoning text amendment doesn't apply to detached houses 21 anymore. 22 MARTIN GROSSMAN: That's correct, but that's a 23 different section. The other sections that we just 24 discussed still exists. They haven't been changed. 25 ROBIN RICE: So I still need a parking waiver?</p>
<p>364</p> <p>1 planting of eight feet. You need the surface pavement to be 2 eight feet away from the fence. Not the car. 3 MARTIN GROSSMAN: What do you have to support that 4 argument? 5 ROBIN RICE: Because of the terminology, parking lot 6 and parking facility. It's not a parking lot or a parking 7 facility unless it's paved. 8 MARTIN GROSSMAN: Do you have any cases that have so 9 ruled in this kind of circumstance that, in a residential 10 setting, that is not considered part of the parking 11 facility under your circumstances? 12 ROBIN RICE: It used to be you needed a parking waiver 13 to get closer to the fence line. There's so many cases 14 where can park right by the fence because you had to apply 15 for parking waiver, but the ordinance changed it. I don't 16 need a parking waiver anymore. So if I don't need a parking 17 waiver- 18 MARTIN GROSSMAN: What makes you think that you don't 19 need a parking waiver? 20 ROBIN RICE: Because the zoning ordinance says you 21 don't. 22 MARTIN GROSSMAN: Where does it say in the zoning 23 ordinance that you don't need a parking waiver? There is a 24 provision for a parking waiver in the zoning ordinance; 25 59.6.2.10 covers waivers. You actually filed a request for</p>	<p>366</p> <p>1 MARTIN GROSSMAN: Well, I- the question is- when you 2 say, need a parking waiver, the question is, are you in 3 compliance with the zoning ordinance. If you desire to do 4 something that is contrary in terms of parking, contrary to 5 what the zoning ordinance requires, then yes, it would 6 require a waiver to be granted. Requesting it doesn't 7 necessarily grant it, but that is the case. But even if we 8 treat your waiver request that you made under the old 9 zoning ordinance as if it were under the new zoning 10 ordinance, under 59.6.2.10, the new waiver provisions, 11 you'd still have to justify the grant of that waiver. 12 ROBIN RICE: Section 59E281 uses the terminology and 13 setback parking facility. 14 MARTIN GROSSMAN: 59E; you're referring to the old 15 zoning ordinance, correct? 16 ROBIN RICE: The parking zoning ordinance, yeah. 17 MARTIN GROSSMAN: You're looking at a different code. 18 You have to look at the 2014 zoning ordinance. This case is 19 governed by the 2014 zoning ordinance, not by the 2004 20 zoning ordinance. 21 ROBIN RICE: I don't- 22 MARTIN GROSSMAN: Your parking waiver request was 23 couched in terms of the 2004 zoning ordinance. But I'm not 24 going to stand on labels like that. You know, I would 25 consider that your request for a parking waiver under the</p>

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<p>367</p> <p>1 language of the old zoning ordinance was a request under 2 the new zoning ordinance, if you had a basis for such a 3 request. 4 ROBIN RICE: I'm putting up a six foot fence. 5 MARTIN GROSSMAN: I understand. All right. So that is 6 an argument that you don't need the screening and so on 7 because you have a- you're going to have a fence. That's an 8 argument one can make. 9 ROBIN RICE: Okay, and I'm- 10 MARTIN GROSSMAN: It may or may not be sufficient, but 11 that's an argument you could make. 12 ROBIN RICE: And I'm putting in a- I want to put in 13 impervious pavers instead of paving it as far as water is 14 concerned. 15 MARTIN GROSSMAN: Right. I don't think that's going to 16 change the question of whether or not a waiver would be 17 appropriate. 18 ROBIN RICE: Okay. 59E42A- 19 MARTIN GROSSMAN: No, but that's once again- 20 ROBIN RICE: The wrong one. 21 MARTIN GROSSMAN: You are looking at the wrong zoning 22 ordinance. 23 ROBIN RICE: I'm sorry. Then all of this is something 24 I can't read. So 59E62 is the wrong one too? 25 MARTIN GROSSMAN: If it's-</p>	<p>369</p> <p>1 revoked as far as detached homes. They did not revoke 2 59.6.2.5.K.1 which says that quote, "Each parking facility 3 must be located to maintain a residential character and 4 pedestrian friendly street." That is still in the law as 5 well. 6 ROBIN RICE: Okay. Then my testimony is that the fence 7 takes care of that. 8 MARTIN GROSSMAN: Okay. 9 ROBIN RICE: Okay. The parking ordinance gives you 10 three choices as far as sizes of the parking spaces. You 11 could do 7 x 21, 6 x 19.5, or- 12 MARTIN GROSSMAN: What zoning ordinance provisionally 13 are you talking about there? 14 ROBIN RICE: I'm looking at the wrong one again, but I 15 don't think it changed. The parking spaces are- my parking 16 spaces are 8½ feet wide by 18 feet long. Another choice 17 that I could have done was 7 feet wide by 21 or 6½- 18 MARTIN GROSSMAN: If you're looking at the wrong 19 zoning ordinance, there's no point in discussing that 20 because I'm not going to apply the wrong zoning ordinance. 21 ROBIN RICE: I'm using the widest parking space that 22 was in the old ordinance. I'm using 8½ feet wide when a car 23 is 6 feet wide as far as opening the doors is concerned. 24 It's the biggest width. 25 MARTIN GROSSMAN: I understand that.</p>
<p>368</p> <p>1 ROBIN RICE: Okay. 2 MARTIN GROSSMAN: All the parking requirements and 3 waiver requests et cetera, are in the new zoning ordinance 4 59.6, article 59.6. And the one for waivers, I believe is 5 59.6.2.10, I believe is the waiver provision. 6 ROBIN RICE: Okay. The zoning ordinance requires that 7 I have four spaces for drop-off and pickup, which I have. 8 And without the side parking, which I'm anticipating and 9 hoping to get approved, I still have four parking spaces 10 for residents and staff members that- if the residents are 11 not allowed to park on the side. I still have eight left if 12 you eliminate everything. I can't on the grass; I can't 13 park on the side. I can't park at the dead end. I can't 14 park anywhere except on those eight spaces. 15 MARTIN GROSSMAN: But you also need- you also are 16 required under the provisions specific to child daycare 17 centers, to have sufficient area for discharge and pickup 18 of children. 19 ROBIN RICE: Correct. 20 MARTIN GROSSMAN: So in addition to the parking spaces 21 for the residents and for the staff. So that's another 22 area. I should mention to you that I know that an issue 23 arose between you and Ms. Tettelbaum as to the revocation 24 by the zoning text amendment of the provision that 25 59.6.2.5.K.2.B, which you correctly indicated had been</p>	<p>370</p> <p>1 ROBIN RICE: Okay. 2 MARTIN GROSSMAN: I haven't looked at the widths 3 required in the zoning ordinance for the spaces so the 4 question is; which zoning ordinance are you applying? You 5 have to apply the 2014 zoning ordinance, not the 2004 6 zoning ordinance. 7 ROBIN RICE: All right, but it's- I just wanted to say 8 it's 8½ feet wide. The cars are six so opening the doors is 9 easy.) My next presentation is what I call, sheds. 10 MARTIN GROSSMAN: Yes. Is that your shed? 11 ROBIN RICE: That's my shed, yeah. 12 MARTIN GROSSMAN: Okay. Depicted there. Do you have a 13 photograph of that for the record? 14 ROBIN RICE: Okay. Those are A through L. 15 MARTIN GROSSMAN: All right. So this will be 117, 16 Exhibits A through L. 17 ROBIN RICE: Okay. (inaudible) this. There you go. So 18 A is my shed. B shows my shed and Tom's shed and the 19 property line. 20 MARTIN GROSSMAN: All right. So these just identify 21 these. These are photographs? All photographs? A through L? 22 ROBIN RICE: Photographs, yeah. 23 MARTIN GROSSMAN: Okay. And A is- 24 ROBIN RICE: A is my shed. 25 MARTIN GROSSMAN: Your shed.</p>

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12 (371 to 374)

<p>371</p> <p>1 ROBIN RICE: B is my shed. I've got it written down, 2 sir. 3 MARTIN GROSSMAN: Okay. 4 ROBIN RICE: B is my shed. 5 MARTIN GROSSMAN: Well, if you have the list, let's 6 make that- that list will be Exhibit 117 and then A will be 7 the photograph. 8 ROBIN RICE: Okay. 9 MARTIN GROSSMAN: Unless you've labeled them already. 10 Have you labeled those? 11 ROBIN RICE: I've labeled them starting with A. 12 MARTIN GROSSMAN: Okay so the list itself is not 13 labeled in this case, correct? 14 ROBIN RICE: Correct. 15 MARTIN GROSSMAN: Okay. So that will be list- 117 is a 16 list of photos A through L. Okay. 17 ROBIN RICE: So the first one is my shed. 18 MARTIN GROSSMAN: Okay. 19 ROBIN RICE: The second one is my shed, the old fence, 20 and Tom's shed. 21 MARTIN GROSSMAN: Okay. 22 ROBIN RICE: The third one is the space between my 23 shed and Tom's shed. Mine is about four or five feet from 24 the property line and Tom's is about a foot or so. 25 MARTIN GROSSMAN: It would be helpful to me if you</p>	<p>373</p> <p>1 the property line. 2 MARTIN GROSSMAN: Right. 3 ROBIN RICE: The next- 4 MARTIN GROSSMAN: I don't know about his shed, that 5 your shed is in violation of the setback requirement. 6 ROBIN RICE: No, it's not. 7 MARTIN GROSSMAN: Okay. Why is that? 8 ROBIN RICE: Because when you are applying the setback 9 requirement to a shed, you first have to figure out where 10 the shed is. If the shed was on the side of my house, then 11 I would need to apply the side setback requirements. If I 12 put the shed in today and looked at today's ordinance, this 13 shed was there when I bought the property. I've got no clue 14 when it was put in. The code for Tom's shed- 15 MARTIN GROSSMAN: Forget about Tom's shed. 16 ROBIN RICE: Okay. The code when the sheds were put in 17 might not have had that setback requirement, I don't know. 18 MARTIN GROSSMAN: It did. I checked the code going 19 back to 1955. 20 ROBIN RICE: I'm sorry. 21 MARTIN GROSSMAN: I checked the codes going back- the 22 zoning ordinances going back to 1955. 23 ROBIN RICE: Okay. 24 MARTIN GROSSMAN: This always been, for accessory 25 buildings, there's been a 12 foot in this zone or the</p>
<p>372</p> <p>1 have a copy of that list that I could see. 2 ROBIN RICE: Yeah. 3 MARTIN GROSSMAN: Thank you. Now, did you take these 4 photos yourself? 5 ROBIN RICE: Yes. 6 MARTIN GROSSMAN: And when did you take them? 7 ROBIN RICE: About a month ago. 8 MARTIN GROSSMAN: All right. And they- 9 ROBIN RICE: Prior to putting in the fence. 10 MARTIN GROSSMAN: They accurately depict the scene as 11 it exists today? 12 ROBIN RICE: No. 13 MARTIN GROSSMAN: Oh, okay. 14 ROBIN RICE: Okay. 15 MARTIN GROSSMAN: What does not- what is not accurate? 16 ROBIN RICE: The fence. I put in a new fence. 17 MARTIN GROSSMAN: Okay, and where is the fence. 18 ROBIN RICE: On the next slides. 19 MARTIN GROSSMAN: Okay. 20 ROBIN RICE: Okay. So the first one is my shed. The 21 second one is my shed and Tom's shed with the old fence. 22 This third one shows the space between my shed and Tom's 23 shed. 24 MARTIN GROSSMAN: Okay. 25 ROBIN RICE: Both of them are less than 12 feet from</p>	<p>374</p> <p>1 predecessors zone which is RR. They've been 12 foot 2 setbacks. 3 ROBIN RICE: Okay, but is 12 foot setback if the shed 4 is in the side yard and it's not. It's in the rear yard 5 because it's behind the house, not on the side. 6 MARTIN GROSSMAN: It doesn't- that distinction, it's 7 distinction without a difference. It is an accessory 8 building. The setback is from an accessory building. That's 9 the setback requirement that I'm applying, that I'm 10 mentioning here is a 12 foot setback requirement. Just as 11 you have another issue on another setback on your main 12 building, which also does not appear to be in compliance 13 with the zoning ordinance going back to- going back to 14 before this area was platted. 15 ROBIN RICE: Okay. The other- the building was built 16 with a building permit and it was in 1982 or so. I've got 17 those papers too. So the Staff Report did not- was missing 18 documentation about what the code was in 1982. 19 MARTIN GROSSMAN: I'm telling you what the code was. 20 ROBIN RICE: Okay. 21 MARTIN GROSSMAN: I read the code going back, as I 22 said, to 1955. 23 ROBIN RICE: Right. I didn't know that so I don't know 24 what to do about it. 25 MARTIN GROSSMAN: What traditionally has been done, if</p>

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13 (375 to 378)

<p>375</p> <p>1 the conditional use were granted here, you can ask the 2 Board of Appeals for a variance from a zoning code 3 provision to allow a conditional use, if in fact, you're 4 not in compliance with a provision of the zoning ordinance. 5 What's happened in the past, if the Hearing Examiner 6 determined that it was appropriate to grant a conditional 7 use, it would be granted subject to the grant of a variance 8 and if no variance were granted, then the conditional use 9 would not go into effect. So there is a process. There is 10 case law that allows somebody to apply for a variance in 11 order to obtain a conditional use. Sometimes the decision 12 on the conditional use is postponed if the Hearing Examiner 13 thinks that it's an appropriate conditional use, but there 14 is a need for a variance to allow an applicant to decide 15 whether or not he, she, or it wishes to apply for variance. 16 But in any event, you are faced with that issue which was 17 raised by Ms. Tettelbaum in her Staff Report that you have 18 a noncompliant side yard setback from your main building as 19 well as from your accessory building. 20 ROBIN RICE: Yeah, with the missing documentation 21 about the code, but that's okay. 22 MARTIN GROSSMAN: When you say missing documentation 23 about the code, the code is the law. It doesn't have to be 24 included in a Staff Report. The code is the law that 25 everybody can look at.</p>	<p>377</p> <p>1 in the sign that the County Council allows me to put there. 2 MARTIN GROSSMAN: On one second. Since you mentioned 3 the sign at this point, let me ask you; I saw that you are 4 proposing to have a sign. Instead of having a sign on the 5 Park Mill Drive side, to have a sign on the Shady Grove 6 Road side, correct? 7 ROBIN RICE: Correct. 8 MARTIN GROSSMAN: And you proposed a sign that is no 9 more than two square feet in size. 10 ROBIN RICE: Correct. 11 MARTIN GROSSMAN: And in height, no more than five 12 feet. 13 ROBIN RICE: Correct, and five feet back. 14 MARTIN GROSSMAN: And five feet setback, which is- 15 what are the zoning ordinance requirements. What I wasn't 16 clear on, is if you have a six foot fence there, how will 17 your sign be seen from Shady Grove Road? 18 ROBIN RICE: It's visible because of the four foot 19 gate. 20 MARTIN GROSSMAN: So you are- in other words, you're 21 gate is four feet high and then you would have a sign that 22 appeared over the top of the gate. 23 ROBIN RICE: Correct. 24 MARTIN GROSSMAN: There is still a question, by the 25 way, regarding the sign. Since the Board of Appeals has</p>
<p>376</p> <p>1 ROBIN RICE: Is there anything about the length of 2 time that it's been existing like easements after seven 3 years (inaudible) kind of a thing? 4 MARTIN GROSSMAN: I can't- you can consult an attorney 5 about the effect of any of that. I can't give you an 6 advisory. I'm just telling you that from what I've seen in 7 the report; it appears that you have a side yard setback 8 issue. Okay? 9 ROBIN RICE: Okay. All right. And the shed too then. 10 The shed is on skid things. I can pick it up in my opinion, 11 it's in the backyard, not the side yard, which is the next 12 picture. 13 G. MASON NELSON: What's the letter of that please? 14 ROBIN RICE: Sorry, he's got my numbers and you've got 15 my papers. 16 MARTIN GROSSMAN: Well, I- 17 G. MASON NELSON: It doesn't matter. I'll sort it out. 18 MARTIN GROSSMAN: All right. 19 ROBIN RICE: Okay. The next which is my shed with the 20 present condition of the fence my brother, and husband and 21 I built. It's a six foot board on board fence. The next one 22 shows the space between my shed and the six foot board on 23 board fence. The next one shows the new gate that I put in 24 now that I know that the fence- the Shady Grove Road fence 25 is mine. And your sign, that's where I'm proposing to put</p>	<p>378</p> <p>1 already opined that there potentially is a traffic hazard 2 from having a sign there, and that sign that you had 3 proposed at that time that they denied was a larger sign. 4 Part of their rationale for denying that sign variance was 5 that it was a traffic hazard because people would be 6 looking at the sign and potentially be distracted. That was 7 part of the rationale. If you have a smaller sign, wouldn't 8 that be even more of a problem because people wouldn't be 9 able to read it as readily? 10 ROBIN RICE: My burden- my application was for a sign 11 variance from what the County Council has given me as a 12 right as a property owner. Okay. I failed at getting the 13 variance for the back. 14 MARTIN GROSSMAN: Right. 15 ROBIN RICE: My understanding with your authority in 16 this case, is that you have the right to reduce the size of 17 the sign as far as the sign variance is concerned. My 18 question is, does your office have the authority to reduce 19 the sign, smaller, and take away the County Council's 20 decision that I can have a sign two feet, five feet, five 21 feet. 22 MARTIN GROSSMAN: Well, my understanding of our 23 authority is that if we grant a conditional use, then we 24 can impose whatever conditions are necessary to protect the 25 neighborhood in one way or another. Part of it would be to</p>

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14 (379 to 382)

<p>379</p> <p>1 protect the issue of traffic distraction. Faced with a 2 Board of Appeals decision that a larger sign is a traffic 3 distraction, there would be a concern. I'm not saying how I 4 would rule on this, but there would be a concern about a 5 traffic distraction issue if you had a sign where you are 6 proposing to put it. I'm not arguing- I'm not telling you 7 how I'm going to rule on it. I'm just saying that the issue 8 does not disappear entirely just because it's compliant in 9 terms of size. The size restrictions are to protect 10 compatibility. That's why they exist in the zoning 11 ordinance. They're not dealing with the question of traffic 12 distraction which is one of the things that was address 13 because you took your case to the Board of Appeals for the 14 variance. 15 ROBIN RICE: Right. 16 MARTIN GROSSMAN: So in any event- 17 ROBIN RICE: Would it be- 18 MARTIN GROSSMAN: I understand at least my question is 19 answered as to how it would be visible. I understand now it 20 would be visible over the gate. 21 ROBIN RICE: Correct. 22 MARTIN GROSSMAN: Okay. 23 ROBIN RICE: That's where yours- the sign from your 24 office has been since whenever I put it up. This picture 25 shows- that yellow post and white sign is the sign from</p>	<p>381</p> <p>1 this shows the height of Tom's shed from my fence. Tom's 2 shed is quite large and it's a good sound barrier between 3 our two properties. This is a horizontal picture showing 4 the length of Tom's shed. I think it's about 10 feet high 5 and 16 feet long, about a foot from the property line. So 6 it's one reason why- 7 MARTIN GROSSMAN: What exactly does Tom's shed have to 8 do with what's before me? 9 ROBIN RICE: It's- once we get to the noise of the 10 children on the outside, the shed is a noise barrier. 11 MARTIN GROSSMAN: Oh, I see. Okay. 12 ROBIN RICE: Okay. So I was just trying to show you 13 how tall and how long it is. 14 MARTIN GROSSMAN: Okay. 15 ROBIN RICE: Presuming he doesn't have to move it too 16 if the zoning ordinance- if he is in violation as well. 17 MARTIN GROSSMAN: But he is not asking for a 18 conditional use. 19 ROBIN RICE: I know. I know. Okay. So there's that one 20 of the sheds. (Inaudible) out of there. Okay. As far as 21 noise control, chapter 31B- 22 DON ACKAD: Do you have another one in here? 23 ROBIN RICE: Yeah, I'll get it. It has a definition of 24 daytime, means the hours of 7:00 a.m. to 9:00 p.m. on 25 weekdays and 9:00 a.m. to 9:00 p.m. on-</p>
<p>380</p> <p>1 your office and it hasn't caused any vehicle situations. 2 And the signs all over the place on Shady Grove Road, but 3 I'll (inaudible) anywhere (inaudible). 4 MARTIN GROSSMAN: No calling out from the audience. 5 Once again, you can testify about that, but I understand 6 your point. There's been a sign there for the zoning notice 7 sign is what you're saying. 8 ROBIN RICE: Correct. 9 MARTIN GROSSMAN: It's been on Shady Grove Road as 10 well is the one that you have on- 11 ROBIN RICE: And more. 12 MARTIN GROSSMAN: Park Mill Drive. 13 ROBIN RICE: This is another picture of the new fence 14 and we've seeded and grassed the area. 15 MARTIN GROSSMAN: Is that part of 117? 16 ROBIN RICE: Yes. Okay. That's the side towards Tom's 17 property. 18 MARTIN GROSSMAN: Okay. 19 ROBIN RICE: This one shows that we seeded and grassed 20 the right side of the house so we can- when it finishes 21 growing, we will put in the six foot board on board fence 22 up to the front of the house so it's nice and level and 23 graded for the water and that's where my tenants will start 24 parking when the grass grows. This shows that we continued 25 the fence up to the front of the house on Tom's side and</p>	<p>382</p> <p>1 MARTIN GROSSMAN: What are you reading from? 2 ROBIN RICE: Chapter 31B, noise control. 3 MARTIN GROSSMAN: 31B okay. 4 ROBIN RICE: The definition of daytime. Daytime means 5 the hours of 7:00 a.m. to 9:00 p.m. on weekdays and 9:00 6 a.m. to 9:00 p.m. on weekends and holidays. So that goes 7 towards my suggested conditions for outside use. I need 8 another exhibit number; we're at number 118. 9 MARTIN GROSSMAN: Okay. 10 ROBIN RICE: Outside time for the kids is a- 11 MARTIN GROSSMAN: Hold on. What is Exhibit 118? 12 ROBIN RICE: 118 is a loudness comparison chart. 13 MARTIN GROSSMAN: Okay. You didn't take photographs of 14 the loudness did you? 15 ROBIN RICE: No, sir. And there is A, B, and C. It's 16 three pages. 17 MARTIN GROSSMAN: So it's three pages of noise 18 comparison? 19 ROBIN RICE: I'm sorry. A is a loudness comparison 20 chart. 21 MARTIN GROSSMAN: Okay. 22 ROBIN RICE: B is a noise level chart and C is just 23 the end of it. 24 MARTIN GROSSMAN: End of what? 25 ROBIN RICE: Noise level chart is B and C.</p>

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15 (383 to 386)

<p>383</p> <p>1 MARTIN GROSSMAN: Okay. So actually, it will just be</p> <p>2 B. It will be to page B.</p> <p>3 ROBIN RICE: Yeah.</p> <p>4 MARTIN GROSSMAN: Okay. So you have 118A is a loudness</p> <p>5 comparison chart and 118B is a noise level chart.</p> <p>6 ROBIN RICE: Yeah.</p> <p>7 MARTIN GROSSMAN: Okay.</p> <p>8 ROBIN RICE: Part of my proposal is for all of the 30</p> <p>9 client children to be able to go outside at the same time.</p> <p>10 MARTIN GROSSMAN: Can I see those exhibits?</p> <p>11 ROBIN RICE: Sure.</p> <p>12 MARTIN GROSSMAN: And in fact, I would like for all</p> <p>13 the exhibits that you have- since I don't think the other</p> <p>14 parties have had an opportunity to look at the other</p> <p>15 exhibits, can I- Mr. Nelson, can I see the other exhibits</p> <p>16 that were proffered here?</p> <p>17 G. MASON NELSON: I'm sorry, I was looking- I didn't</p> <p>18 hear the question.</p> <p>19 MARTIN GROSSMAN: Do you have the other exhibits that</p> <p>20 Ms. Rice had submitted?</p> <p>21 G. MASON NELSON: (inaudible) which- I have- which-</p> <p>22 MARTIN GROSSMAN: 117.</p> <p>23 G. MASON NELSON: I have 117.</p> <p>24 MARTIN GROSSMAN: 116, 117.</p> <p>25 G. MASON NELSON: I have it. You need those?</p>	<p>385</p> <p>1 ROBIN RICE: So the loudness noise comparison chart is</p> <p>2 just- it's interesting.</p> <p>3 MARTIN GROSSMAN: May I have it please?</p> <p>4 ROBIN RICE: Yeah, I'm just trying to (inaudible).</p> <p>5 MARTIN GROSSMAN: You don't have a copy for yourself?</p> <p>6 ROBIN RICE: (inaudible).</p> <p>7 MARTIN GROSSMAN: All right. Let me take a look at it</p> <p>8 then. All right. Would you please show this to Mr. Nelson</p> <p>9 and the other parties? That's Exhibit 118A and B. All</p> <p>10 right. Ms. Rice.</p> <p>11 ROBIN RICE: It's really important to me for all the</p> <p>12 kids to be able to go outside at the same time; educational</p> <p>13 activities, being able to see the snowfall. And I'm trying</p> <p>14 really hard to be a premium sibling childcare center. That</p> <p>15 will help with the traffic and the parking if I can attract</p> <p>16 siblings. I want them to be to go outside together, not</p> <p>17 have their noses pressed against the window and looking at</p> <p>18 their brother who is playing outside with an older age</p> <p>19 group and not being able to go outside with them. It's</p> <p>20 really important to me. Out of all your decisions, this is</p> <p>21 the critical one for me. The loudness comparison chart</p> <p>22 gives you some ideas about the decibels. My husband is very</p> <p>23 knowledgeable about this, but looking at it, that a garbage</p> <p>24 disposal at 3 feet is 80 dB.</p> <p>25 MARTIN GROSSMAN: What are you looking at? Since I</p>
<p>384</p> <p>1 MARTIN GROSSMAN: If</p> <p>2 G. MASON NELSON: I'm sorry. I thought those were my</p> <p>3 copy.</p> <p>4 MARTIN GROSSMAN: Did you bring copies Ms. Rice for</p> <p>5 the- for Mr. Nelson or no?</p> <p>6 G. MASON NELSON: Oh, I beg your pardon. I've been</p> <p>7 putting them in my file.</p> <p>8 MARTIN GROSSMAN: Okay.</p> <p>9 G. MASON NELSON: I'm sorry. A little annotated. I</p> <p>10 wrote on it for my cross-examination.</p> <p>11 MARTIN GROSSMAN: Oh, I see. Well, you can keep them</p> <p>12 if you're told them for cross-examination.</p> <p>13 G. MASON NELSON: Oh, no.</p> <p>14 MARTIN GROSSMAN: I just thought- I wanted to make</p> <p>15 sure that I got them back for the record here.</p> <p>16 G. MASON NELSON: Yeah, I'm sorry. I thought they were</p> <p>17 mine.</p> <p>18 MARTIN GROSSMAN: Okay. That was a fair assumption.</p> <p>19 Usually one brings a copy for the other parties, but- just</p> <p>20 think of how much of my ink you saved by already marking</p> <p>21 these.</p> <p>22 G. MASON NELSON: They were pre-marked.</p> <p>23 MARTIN GROSSMAN: Oh, there were pre-marked. Oh, then</p> <p>24 you deserve the credit Ms. Rice.</p> <p>25 G. MASON NELSON: Sorry about that.</p>	<p>386</p> <p>1 don't have a copy in front of me-</p> <p>2 ROBIN RICE: Yeah, I'm sorry.</p> <p>3 MARTIN GROSSMAN: Are you looking at 118A or B?</p> <p>4 ROBIN RICE: 118A.</p> <p>5 MARTIN GROSSMAN: Okay.</p> <p>6 ROBIN RICE: That the garbage disposal is it 3 feet</p> <p>7 and a diesel truck at 50 feet is the same decibel reading.</p> <p>8 MARTIN GROSSMAN: Hold on one second. Ma'am, I see you</p> <p>9 standing in the back. There are seats up front.</p> <p>10 FEMALE VOICE: I'm fine, thank you.</p> <p>11 MARTIN GROSSMAN: All right. Carry on.</p> <p>12 ROBIN RICE: And the second exhibit talks about</p> <p>13 garbage disposal somewhere that was here. But the point of</p> <p>14 these exhibits is that a rock band in somebody's garage is</p> <p>15 the same decibels as a jet, but it depends on the distance</p> <p>16 that you are away from the object of the noise is a very</p> <p>17 important part for noise.</p> <p>18 MARTIN GROSSMAN: Do you have a decibel scale for 30</p> <p>19 children in the backyard?</p> <p>20 ROBIN RICE: No, I couldn't find anything anywhere</p> <p>21 that talked about that, but these exhibits do talk about</p> <p>22 the distance of the noise being a critical factor.</p> <p>23 MARTIN GROSSMAN: Right.</p> <p>24 ROBIN RICE: Tom's shed is a big help for the noise</p> <p>25 barrier there. My property is on a hill.</p>

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16 (387 to 390)

<p>387</p> <p>1 MARTIN GROSSMAN: Do you have any evidence that a shed 2 is an effective noise barrier? 3 ROBIN RICE: I have a witness who can talk about it. 4 MARTIN GROSSMAN: All right. 5 ROBIN RICE: But- 6 MARTIN GROSSMAN: Well, who is that? 7 ROBIN RICE: My husband. 8 MARTIN GROSSMAN: You did not list him as an expert. I 9 asked you at the very- 10 ROBIN RICE: No, I listed him as a witness. I did not 11 list him as an expert. If you can't hear him, that's fine, 12 but he is a safety manager. He is retired from the Secret 13 Service. 14 MARTIN GROSSMAN: Hold on one second. The reason I 15 asked you at the- before the hearings all began, as I asked 16 if you are calling Mr. Ackad as an expert witness and you 17 said no. Because if somebody is being called as an expert 18 witness, the other side is entitled to know in advance what 19 opinions are going to be offered and what the basis is for 20 the opinions, as you know from looking at OZHA's rules. So 21 it's a little bit unfair to call him. He may be well- 22 qualified for that, but that's the reason I posed the 23 question to you. All right. Go ahead. 24 ROBIN RICE: Okay. The next presentation are pictures 25 of my backyard. I won't go into them.</p>	<p>389</p> <p>1 ROBIN RICE: Correct. 2 MARTIN GROSSMAN: Size of the lot is 150 by 100. 3 ROBIN RICE: Correct. The front yard is 43 feet. The 4 house is 30 feet. So we are looking at 100 and- so we are 5 looking at 50- about 80 feet behind the house, proximately. 6 MARTIN GROSSMAN: I'm sorry. The front yard is what 7 size? 8 ROBIN RICE: The front yard is 43 feet. 9 MARTIN GROSSMAN: And the house is what depth 10 including for the addition? The proposed addition? 11 ROBIN RICE: I have to find another figure 12 (inaudible). 13 MARTIN GROSSMAN: Looks to me, just eyeballing it from 14 your Exhibit 111, that the backyard is somewhere between a 15 third and a half of the full length of it. So it's 16 somewhere in the 50 to let's say 75 feet depth. That's 17 what- just looking at your diagram from Exhibit 111. 18 ROBIN RICE: The house is- on the right-hand side is 19 26.24 feet. On the left-hand side it's 27 feet. 20 MARTIN GROSSMAN: But I don't know which is left and 21 right. Depending on which way you're looking at it. Which 22 is south and north? 23 DON ACKAD: This is north. 24 MARTIN GROSSMAN: Okay. The north side is the shorter 25 side on the house, but once again, you're intended to add</p>
<p>388</p> <p>1 MARTIN GROSSMAN: I didn't mean to cut you off on the 2 noise question, if you have any other statement to make 3 about it. My question was, how do we know that the shed 4 will be an effective noise? Do you have any admissible 5 evidence to that effect? 6 ROBIN RICE: I was planning on having my husband 7 testify without being an expert just to give you 8 information. 9 DON ACKAD: I am a certified- I'm a retired certified 10 safety professional. 11 MARTIN GROSSMAN: Well, you can call out now Mr. 12 Ackad. It's not your turn. All right. We'll- I'll let you 13 call him and proffer whatever his testimony is and then we 14 can make a decision on whether or not it's appropriate at a 15 later time with the understanding that it may be excluded, 16 but I will let you make a proffer as to what it will be 17 when he is called as a witness. Other than your husband's 18 Mr. Ackad, is there any other evidence on this point of 19 noise attenuation? 20 ROBIN RICE: Just the size and the topography of the 21 backyard. It is 100 feet wide and the distance between the 22 back of the house and- the depth of the house is- the lot 23 is 150 feet. So it's 100 feet by 150 feet. 24 MARTIN GROSSMAN: Well, that depth is not just the 25 backyard. That is the entire-</p>	<p>390</p> <p>1 an addition that's going to add depth to the house itself. 2 ROBIN RICE: That's true. 3 MARTIN GROSSMAN: I'm just- as I say, I'm just 4 eyeballing it from here. It looks like the depth of the 5 yard is somewhere in the 50 to 75 feet depth. 6 ROBIN RICE: Yeah, I think the 75 is probably closer, 7 but there is a site plan with the addition drawn on it in 8 my original application. 9 MARTIN GROSSMAN: Well, this- the exhibit that is 10 going to control is Exhibit 111. That's your final site 11 plan. What you filed earlier didn't have- 12 DON ACKAD: (inaudible). 13 ROBIN RICE: Okay. 14 MARTIN GROSSMAN: I never saw anything in the file 15 with any better description of the proposed addition than 16 exists on 111 which has the actual dimensions, the proposed 17 dimensions. 18 ROBIN RICE: Okay. 19 MARTIN GROSSMAN: That seems to be the best 20 (inaudible). 21 ROBIN RICE: Okay. 22 MARTIN GROSSMAN: Okay. All right. So you may move to 23 the next point. I take it from your description, is that 24 you would love to have all 100- all 30 children outside in 25 the backyard at one time and you don't believe that they</p>

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17 (391 to 394)

<p>391</p> <p>1 would produce a level of noise that would disturb the 2 neighbors. Does that summarize what your argument is on 3 that? 4 ROBIN RICE: I don't believe it would be a non- 5 inherent noise level. 6 MARTIN GROSSMAN: Okay. 7 DON ACKAD: I don't see those papers in here. 8 ROBIN RICE: Yeah, I know. 9 MARTIN GROSSMAN: Let me explain to the people in the 10 audience here what- why you made that reference the way did 11 and what that means. In the zoning ordinance, there is a 12 distinction between what they consider inherent adverse 13 effects and non-inherent adverse effects. It is assumed by 14 the Council when they allow certain conditional uses, that 15 they may have some adverse effects, but the Council has 16 determined that those adverse effects may be balanced by 17 the benefit to the community such as in some childcare 18 facilities that it would be of benefit to the community. So 19 they've determined that there may be, as I said, some 20 inherent adverse effects which are adverse effects that are 21 typical of or would be produced by this type of conditional 22 use no matter where it was located in the zone. But it also 23 recognize that in some cases, a conditional use would be 24 proposed that would have adverse effects that go beyond 25 those that are inherent to this type of use either because</p>	<p>393</p> <p>1 describe each individual one. 2 ROBIN RICE: Okay. 3 MARTIN GROSSMAN: These are 119, a series of photos. 4 Once again, you have an index page listing them? 5 ROBIN RICE: I did not on this one. I'm sorry, sir. 6 MARTIN GROSSMAN: Oh, okay. So how many more exhibits 7 of this sort do we have? 8 ROBIN RICE: I think there is just one more in this 9 presentation. I divided up my information into presentation 10 and sort of rebuttal presentations and I'm sort of planning 11 on stopping once I get through this. 12 MARTIN GROSSMAN: Okay. So- 13 ROBIN RICE: And then continuing with this after they 14 get a chance if that's all right. 15 MARTIN GROSSMAN: Well, I'm- well, the question is, if 16 it's true rebuttal, but we will get into that later. So 17 119A is what? 18 ROBIN RICE: A through G. 119A is a picture of- that's 19 on the screen- of the playground equipment that's 25 feet 20 away from the Shady Grove property line over by Tom's with 21 the old fence. 22 MARTIN GROSSMAN: So this is playground equipment in 23 your backyard? 24 ROBIN RICE: Yeah. It's showing the depth of the 25 topography going down of the property.</p>
<p>392</p> <p>1 of the nature of the use or because of the site conditions 2 in the particular case. Those are considered non-inherent 3 adverse effects. The zoning ordinance does not permit the 4 denial of a conditional use based solely on inherent 5 adverse effects, but it does permit the denial of a 6 conditional use if there are non-inherent effects, whether 7 or not those alone cause an adverse effect or whether in 8 combination with inherent adverse effects, there is an 9 undue harm to the neighborhood. So that's the way it's 10 defined in the zoning ordinance and that's why you may hear 11 the term inherent adverse effects and non-inherent adverse 12 effects. All right. Ms. Rice, you may continue. 13 ROBIN RICE: Okay. The next exhibits are- maybe I 14 should start with a new- yeah, a new number. 15 DON ACKAD: I wouldn't (inaudible) this. The last one. 16 ROBIN RICE: (inaudible). 17 DON ACKAD: (inaudible). 18 ROBIN RICE: The next exhibits are A through G and the 19 exhibit number will be- 20 MARTIN GROSSMAN: 119. 21 G. MASON NELSON: 119. 22 MARTIN GROSSMAN: And what is 119? What is it? 23 ROBIN RICE: 119 is a series of pictures showing my 24 backyard. It, A shows the topography going- 25 MARTIN GROSSMAN: Well, hold on one second before you</p>	<p>394</p> <p>1 MARTIN GROSSMAN: Okay. 2 ROBIN RICE: C is another picture of the playground 3 equipment. 4 MARTIN GROSSMAN: Well, wait a minute. You just gave 5 me A. What is B? 6 ROBIN RICE: Yeah, my slides are slightly wrong. B is 7 a view from Beverly's area so you can see the distance from 8 that side of the property line. 9 MARTIN GROSSMAN: I'm sorry. B is what? What is that? 10 ROBIN RICE: B is from Beverly's property line. 11 MARTIN GROSSMAN: I'm sorry. What am I looking at 12 there? 13 ROBIN RICE: This one is B. 14 MARTIN GROSSMAN: And this is also your backyard? 15 ROBIN RICE: Yep. 16 MARTIN GROSSMAN: Okay. 17 ROBIN RICE: It's huge. 18 MARTIN GROSSMAN: Backyard from your other neighbor. 19 ROBIN RICE: Yeah, from Beverly's. 20 DON ACKAD: (inaudible) fence here. 21 ROBIN RICE: This one is C. 22 MARTIN GROSSMAN: Beverly Lloyd? 23 ROBIN RICE: Yes, sir. 24 MARTIN GROSSMAN: Okay. 25 ROBIN RICE: This one is C and it's a ground-level</p>

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18 (395 to 398)

<p>395</p> <p>1 picture of the property, of the playground equipment. 2 MARTIN GROSSMAN: By the way, do you have electronic 3 copies of all of these exhibits? 4 ROBIN RICE: I've got them here and I've got to click 5 it on- I've got to do the burn of the disc thing. 6 MARTIN GROSSMAN: Okay. 7 ROBIN RICE: Okay. D is the fort that shows the fence 8 that I put in a year ago on Beverly's area. 9 MARTIN GROSSMAN: I'm sorry. What am I looking at 10 there? It's hard for me to make that one out. 11 ROBIN RICE: I'm sorry it's- D is the fort and it 12 shows the fence that I put in a year ago on Beverly side. 13 MARTIN GROSSMAN: This is also in your backyard? 14 ROBIN RICE: Yes, sir. E is another picture towards 15 Beverly's property showing her house location. 16 MARTIN GROSSMAN: Wait a minute. So I'm still in your 17 backyard, right? 18 ROBIN RICE: Yeah. Two to go. 19 MARTIN GROSSMAN: Okay. 20 ROBIN RICE: F is the view from the Shady Grove fence 21 showing the back of my house. G is the fort so you can see 22 that the ground-level where the fort is is lower than the 23 fence level on Shady Grove Road. You can see all the ivy in 24 the back. 25 MARTIN GROSSMAN: Okay.</p>	<p>397</p> <p>1 ROBIN RICE: Parking on the grass and signage is a big 2 part of- 3 DON ACKAD: Do you want this on the screen? 4 ROBIN RICE: (inaudible). 5 DON ACKAD: I'll do it. 6 ROBIN RICE: Oh, yeah. Do it. Do that one, yeah. 7 MARTIN GROSSMAN: Thank you, Mr. Nelson. 8 ROBIN RICE: Let me (inaudible). Parking on the grass 9 and signage is a part of this situation. There is a noise- 10 there is a conditional use called the Mill Creek Towne Swim 11 Association. Yeah, sorry. I need a new exhibit number, sir. 12 MARTIN GROSSMAN: But you said that that was it, 13 Exhibit 119. There is another exhibit? 14 ROBIN RICE: I have another, yes. 15 MARTIN GROSSMAN: Is this the last one of the 16 exhibits? 17 ROBIN RICE: Before rebuttal exhibits, yes. 18 MARTIN GROSSMAN: Okay. All right. So 120, and what is 19 this? 20 ROBIN RICE: There is a conditional use in Mill Creek 21 Towne. 22 MARTIN GROSSMAN: Then tell me what this exhibit is. 23 MALE VOICE: (inaudible). 24 ROBIN RICE: Sorry. It's that Mill Creek Towne Swim 25 Association.</p>
<p>396</p> <p>1 ROBIN RICE: So Shady Grove property line in that area 2 is about eight to nine feet versus the six foot that's on 3 the other side. 4 MARTIN GROSSMAN: Okay. 5 ROBIN RICE: Okay. 6 MARTIN GROSSMAN: By the way, does somebody own that 7 airplane I keep on seeing out there? 8 ROBIN RICE: My husband's. 9 MARTIN GROSSMAN: Are you a pilot, sir? 10 DON ACKAD: Yes, sir. 11 MARTIN GROSSMAN: All right. Do you fly out of the 12 Montgomery County Airpark? 13 DON ACKAD: So far. 14 MARTIN GROSSMAN: Yes, ma'am. 15 CLARE DECLINE: I'm just curious. At the last meeting, 16 you approved an initial two hours for her and some of us 17 may not be able to stay all day. 18 MARTIN GROSSMAN: Right. We're going to- she said 19 she's going to be done in a minute or two and then we can 20 take testimony from others. We will take a brief break and 21 then we will hear from people who wish to testify. 22 G. MASON NELSON: We will also have cross examination 23 at some point. 24 MARTIN GROSSMAN: Yes, we'll have cross examination 25 first (inaudible).</p>	<p>398</p> <p>1 MARTIN GROSSMAN: What is- so this is- do you have a 2 list? Is this one photograph or is it- Ms. Rice? Is this- 3 ROBIN RICE: Yeah, I do not have a list for this one, 4 sir. I'm sorry. This is exhibit number- 5 MARTIN GROSSMAN: I know this is Exhibit 120, but how 6 many photographs is this? 7 ROBIN RICE: Five in the series. 8 MARTIN GROSSMAN: Okay. 9 G. MASON NELSON: May I be heard? 10 MARTIN GROSSMAN: Five. 11 G. MASON NELSON: May I be heard briefly? 12 MARTIN GROSSMAN: Yes, sir. 13 G. MASON NELSON: On behalf of my clients, I object to 14 the relevance of this evidence. I feel as if- 15 MARTIN GROSSMAN: You mean 120? 16 G. MASON NELSON: Yes, sir. 17 MARTIN GROSSMAN: Well, I don't know what it is. 18 G. MASON NELSON: (inaudible). 19 MARTIN GROSSMAN: I'll consider that objection as soon 20 as I understand what she is proffering. So 120A through E. 21 And what are these photos of? 22 ROBIN RICE: These are- this is information about the 23 Mill Creek Towne Swim Association. It is a conditional use 24 that is on the corner of Mill Run Drive and Shady Grove 25 Road. They are allowed 350 members. They have hours of</p>

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19 (399 to 402)

<p style="text-align: right;">399</p> <p>1 operation with noise of swimming, social events, water 2 aerobics, from as late as 8:15 at night. 3 MARTIN GROSSMAN: Let me understand what it is that 4 the exhibit- the photos identify. The photos are of the- of 5 what? Of the Mill Creek- what is it? 6 ROBIN RICE: Mill Creek Towne Swim Association. 7 MARTIN GROSSMAN: All right. Mill Creek Towne Swim 8 Association. And where is that located? 9 ROBIN RICE: It's on the corner of Mill Run Drive and 10 Shady Grove Drive. Shady Grove Road. I keep saying that. 11 I'm sorry. 12 MARTIN GROSSMAN: Okay. And was the relevance of these 13 photos? 14 ROBIN RICE: The character of the neighborhood. That 15 the noise level is permitted to go until 8:15 at night. 16 They have- can you start one? 17 DON ACKAD: Do you want to keep going? 18 ROBIN RICE: Okay. In the interest of time- I'm sorry, 19 what exhibit number am I on, sir? 20 MARTIN GROSSMAN: 120. 21 ROBIN RICE: In the interest of time- 22 DON ACKAD: These pictures are not there. 23 ROBIN RICE: I'm going to- 24 DON ACKAD: These pictures are not here. 25 ROBIN RICE: I'm going to submit capital A, B, C, D,</p>	<p style="text-align: right;">401</p> <p>1 MARTIN GROSSMAN: Okay. 2 ROBIN RICE: Thank you for (inaudible). 3 MARTIN GROSSMAN: What's the relevance then showing me 4 pictures of a swimming pool that are well outside of the 5 neighborhood across a major road? 6 ROBIN RICE: It shows a conditional use that has 7 parking on the grass, parking blocking a sidewalk, parking 8 of food trucks. 9 MARTIN GROSSMAN: Please do not call out from the 10 audience. If you want to dispute what Ms. Rice has said, 11 you can do so in your testimony. 12 ROBIN RICE: There are food trucks for- that are 13 parking on the grass serving both nonmembers and members. 14 MARTIN GROSSMAN: I'm going to overrule the objection 15 on the relevance, but that will go to the weight that this 16 is to be given with the understanding that it is not in the 17 neighborhood and it is across a major road, Shady Grove 18 Road. 19 ROBIN RICE: Okay. Can I have one more exhibit number, 20 sir? 21 MARTIN GROSSMAN: 121. 22 ROBIN RICE: 121. I've got 121A and B are just the 23 conclusion pictures of the staff parking that I presented 24 earlier. 25 MARTIN GROSSMAN: I'm sorry. These are pictures you</p>
<p style="text-align: right;">400</p> <p>1 E, F, G, H, I, J, and K. 2 MARTIN GROSSMAN: That's a lot more than five. All 3 right. We are to K you say? 4 ROBIN RICE: Yes, sir. 5 MARTIN GROSSMAN: This exhibit shows a picture of a 6 sign on Shady Grove Road that says, be cool, join the pool. 7 MARTIN GROSSMAN: Well, you have to identify what 8 photo you are talking about. 9 ROBIN RICE: Exhibit 120A, upper right corner. 10 MARTIN GROSSMAN: Okay. 11 ROBIN RICE: Shows a sign. 12 ANDRE POLISSEDIJIAN: There is nothing on the screen. 13 ROBIN RICE: I know. I'm sorry. They don't coordinate 14 with what I've got in my hand. This is a sign on Shady 15 Grove Road. 16 MARTIN GROSSMAN: Hold on one second. First of all, do 17 you have a map that you can show me where exactly this is. 18 I'm looking at the Technical Staff Report on Page 4 and you 19 said this is at Mill Run Drive and Shady Grove Road. Which 20 side of Shady Grove Road is it on. 21 ROBIN RICE: (inaudible). 22 MARTIN GROSSMAN: Okay. So you're saying that it's on 23 the east side of Shady Grove Road, not in the defined 24 neighborhood. 25 ROBIN RICE: Correct.</p>	<p style="text-align: right;">402</p> <p>1 presented already? 2 ROBIN RICE: If the parking. All those cars and 3 things. Just two pictures of the 75 slides or so that I had 4 up on the screen. 5 MARTIN GROSSMAN: I still don't understand. What are 6 these? Let me see the pictures. 7 ROBIN RICE: I just did two representative pictures 8 (inaudible). 9 MARTIN GROSSMAN: I see. Okay. So 121A is illustration 10 of staff parking and 121B is an illustration of drop off 11 and pick up. Okay. Why don't you show them to Mr. Nelson 12 too? 13 ROBIN RICE: (inaudible). Conditional use 1502, Lily 14 Pads, showed a traffic pattern of six- 15 MARTIN GROSSMAN: If you're going to make an argument 16 here, this is not the time for argument. 17 ROBIN RICE: Okay. 18 MARTIN GROSSMAN: You're going to be given an 19 opportunity to argue your case. 20 ROBIN RICE: Part of my application is for five social 21 and promotional events. The promotional events, the private 22 parking spaces on my property can accommodate that. A 23 promotional event is like an open house for two hours where 24 cars come at a very staggered pattern and stay maybe 15 25 minutes or so to kind of take a look at the facility. So I</p>

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20 (403 to 406)

<p>403</p> <p>1 don't need any public parking for promotional events. 2 MARTIN GROSSMAN: Okay. 3 ROBIN RICE: Social events are another story though. 4 You can end up with grandparents coming for a Halloween 5 party. They don't know the parking requirements and you can 6 end up with 30 cars with the parents plus grandparents. 7 It's a lot of parking. So I will either use the on street 8 parking where there are no parking signs. An alternative to 9 that is to park at the school which is walking distance, 10 the quarter mile parameter. That is permitted for both 11 nonprofit and profit organizations. 12 MARTIN GROSSMAN: So you are saying that for your 13 promotional events, you don't need any extra parking, but 14 for your social events, you might have up to 30 people. 15 ROBIN RICE: Social events, there is two 16 possibilities. One is I can park on the grass in front of 17 everybody's property, the dead end everywhere because the 18 will be a lot of cars. Two, if you put a condition that I 19 can't park there for social events, then I'll part of the 20 school. 21 MARTIN GROSSMAN: And how many social events would you 22 have? 23 ROBIN RICE: One or two a year that would be like big 24 ones. Or the conditional use. This does not mean that the 25 resident can't have her own social events.</p>	<p>405</p> <p>1 MARTIN GROSSMAN: Okay. What we're going to do now, is 2 we will take a five-minute break and they will have cross 3 examination of Ms. Rice then we will proceed to hear from 4 any other witnesses who wish to testify. So it's now- well, 5 it will take us to- it's a break until 11:45. Is that- 6 G. MASON NELSON: Mr.- I'm sorry. May I have a 7 question? 8 MARTIN GROSSMAN: Yes, sir. Put your mic on if it's 9 not. Okay. 10 G. MASON NELSON: We have competing pressure here. 11 Some people need to get on. The witness was- the applicant 12 was allocated two hours for today. We are now two hours 13 into it, but part of my concern is that she is in the 14 middle of her- she has and concluded direct examination. 15 MARTIN GROSSMAN: Well, she says she has concluded her 16 direct examination. 17 G. MASON NELSON: Oh, I misunderstood that. 18 MARTIN GROSSMAN: The only thing that is left is 19 argument or a potentially rebuttal. 20 G. MASON NELSON: I misunderstood and I withdraw my 21 observation. 22 MARTIN GROSSMAN: Okay. 23 G. MASON NELSON: I thought she was reserving the 24 opportunity to continue her direct examination. 25 MARTIN GROSSMAN: No, as I understand, what she is</p>
<p>404</p> <p>1 MARTIN GROSSMAN: Okay. 2 ROBIN RICE: Okay. And I checked on the website to 3 make sure that I can- a private organization can park on 4 the school property and you can. You have to schedule it 5 and pay a fee and stuff like that, but you can. Okay. I 6 have more information to put into the record, but I'm 7 willing to pause at this point to give the opposition have 8 a chance- 9 MARTIN GROSSMAN: So you have more information from 10 the record, what are you talking about? 11 ROBIN RICE: I want to go over my list of suggested 12 conditions. I want to go over the prehearing submission of 13 the cases. 14 MARTIN GROSSMAN: Well, that's not- your suggestions 15 regarding conditions and the discussion of the case, I 16 would consider argument which we can have after. You're not 17 producing new evidence (inaudible) your testimony. 18 ROBIN RICE: No, I think just some of the information 19 might be considered new evidence, but if you rule that it's 20 irrelevant when they bring up, then my- it's kind of more 21 rebuttal evidence. 22 MARTIN GROSSMAN: All right. 23 ROBIN RICE: So I think this would be a good time to 24 get the opposition opportunity and for me to pause for 25 that.</p>	<p>406</p> <p>1 saying is she has some additional evidence that may be 2 needed in rebuttal depending on what the other evidence is, 3 and that she has some arguments to make about conditions 4 that should be noted. 5 G. MASON NELSON: Fair enough. Thank you for that 6 clarification. 7 MARTIN GROSSMAN: Okay. So we will break until 11:45. 8 Then we will have cross examination and then testimony from 9 any other witnesses. 10 G. MASON NELSON: What witnesses- exhibit numbers do I 11 start with for my reference? 12 MARTIN GROSSMAN: I'm sorry. 13 G. MASON NELSON: The next exhibit number is what, 14 sir? 15 MARTIN GROSSMAN: The next exhibit number is 122. By 16 the way, I should ask Ms. Rice, before we- 17 ROBIN RICE: Yes, sir. 18 MARTIN GROSSMAN: Break completely here. You indicated 19 that you are calling Mr. Ackad as a witness. 20 ROBIN RICE: Again, he's more of a rebuttal witness if 21 they bring- 22 MARTIN GROSSMAN: More of a rebuttal, okay. 23 ROBIN RICE: Bring some issues up, he's got the 24 information. 25 MARTIN GROSSMAN: Okay. All right. So you've completed</p>

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21 (407 to 410)

<p>407</p> <p>1 your case in chief? 2 DON ACKAD: Yes. 3 MARTIN GROSSMAN: I don't know what that means. Is 4 that a yes? 5 ROBIN RICE: As long as I can present things as 6 rebuttal information, then I'm okay. 7 MARTIN GROSSMAN: At your rebuttal you can present 8 them, yes. 9 ROBIN RICE: Okay. 10 MARTIN GROSSMAN: All right. Yes, until 11:45. 11 (Off the record.) 12 (On the record.) 13 MARTIN GROSSMAN: All right. Folks, we're going to 14 resume now. All right. I was just asked by a member of the 15 opposition as to what is rebuttal versus direct evidence. 16 The applicant is entitled to put on rebuttal if there's 17 evidence presented that, during the opposition case, that 18 is- would not have been part- was not responsive to her 19 original presentation in a way that couldn't have been 20 predicted usually. I mean, there is a difference- there is 21 a question in the law as to what is true rebuttal and what 22 is- and should be part of the case in chief and what is not 23 true rebuttal. We are little bit more relaxed here, but in 24 terms of the opposition, you should put on whatever you 25 have in your case as appropriate now. If the rebuttal were</p>	<p>409</p> <p>1 it. Okay. 2 G. MASON NELSON: A little angle. 3 MARTIN GROSSMAN: Yes, angle it a little bit to the 4 audience. I can see it. You can do it a little more even. 5 Okay. That's fine. I can see it. 6 G. MASON NELSON: I have copies, additional hard 7 copies of this exhibit. 8 MARTIN GROSSMAN: So this is a- this is- essentially 9 it looks to me like the photograph of the neighborhood, an 10 aerial photograph of the neighborhood. 11 G. MASON NELSON: That's right. Shady Grove here. 12 MARTIN GROSSMAN: Shady Grove on the right and to the 13 north is- 14 G. MASON NELSON: The north is generally Park Mill 15 Drive, Mill Run Drive, and so on. 16 MARTIN GROSSMAN: All right. 17 G. MASON NELSON: Ms. Rice, you- this is Exhibit 122. 18 MARTIN GROSSMAN: Right. 19 G. MASON NELSON: You recognize this aerial 20 photograph, do you not? 21 ROBIN RICE: Yes. 22 G. MASON NELSON: All right. So see here? If you'll- 23 ROBIN RICE: Yes. 24 G. MASON NELSON: If you'll just accommodate me to 25 come here to the photograph with me so we can point to</p>
<p>408</p> <p>1 to put on by- put on by the applicant contains information 2 that requires or should be responded to, there can be 3 what's called a sur-rebuttal by the opposition depending. 4 The cleaner away obviously is for the applicant to put on 5 everything in her case in chief and then the opposition to 6 put on their entire case and then there is usually no need 7 for rebuttal. But once again, we will be somewhat flexible 8 in that this is a fairly complicated matter and there are a 9 lot of people involved. But the ground rule is, that the 10 opposition should put on whatever their opposition case is, 11 whatever their testimony or exhibits are in their case. All 12 right. Now we turn to the cross-examination of Ms. Rice, 13 the applicant, which will be conducted by Mr. Nelson and 14 others as they say- the others at the council table may 15 also have questions and then if there are additional 16 questions from the audience that you wish posed, you can 17 tell- raise your hand and then Mr. Nelson will talk to you 18 and see if additional questions should be posed. All right. 19 Mr. Nelson. 20 G. MASON NELSON: (inaudible) examiner, I have the 21 (inaudible) which I would like to mark as Exhibit 122. Will 22 put it here so the witness can see and you can see it. I'm 23 sorry if the audience cannot see it. 24 MARTIN GROSSMAN: Why don't you push a little for the 25 back onto the screen so then everybody could probably see</p>	<p>410</p> <p>1 different parts of it if you don't mind. 2 ROBIN RICE: Sure. 3 G. MASON NELSON: Now, (inaudible). 4 MARTIN GROSSMAN: Excuse me one second. Yes, ma'am. 5 KATIE BECKER: I'm sorry. What is the exhibit number? 6 G. MASON NELSON: 122. All right. Give us a walking 7 tour of this photograph Ms. Rice. Take us from the 8 intersection of Shady Grove and Park (inaudible) Park Mill 9 drive and let's walk together from that point to the 10 residents that you own. 11 ROBIN RICE: Okay. 12 MARTIN GROSSMAN: Why don't you use a laser pointer? I 13 have one here. So that people can see what you're talking 14 about. There is a little button that- 15 G. MASON NELSON: Thank you. I should have brought 16 mine. I forgot. 17 MARTIN GROSSMAN: You can do it from back here. In 18 other words, don't block the- then you won't block my view 19 either. 20 ROBIN RICE: Okay. 21 MARTIN GROSSMAN: There is a button on top which 22 operates it. No, on top. Right there. That's it. Don't put 23 it in anybody's eyes. 24 ROBIN RICE: (inaudible). 25 G. MASON NELSON: Keep your finger on it.</p>

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<p>411</p> <p>1 ROBIN RICE: Keep your finger on it. 2 MARTIN GROSSMAN: Yeah. 3 ROBIN RICE: Okay, I got it. Okay. So like my slide 4 presentation said, this is the intersection of Shady Grove 5 Road and Mill Run with the swimming pool is over here and 6 you go in this way. 7 MARTIN GROSSMAN: Over here being to the east. 8 ROBIN RICE: I'm sorry. Where I'm pointing. 9 MARTIN GROSSMAN: Off the picture. 10 ROBIN RICE: Off the page. Yeah, a little bit. Where 11 the underground tunnel is and the sidewalk is and you turn- 12 and the traffic lights are and you turn left here if you're 13 coming from this direction and you've got four houses on 14 the right and two houses on the left. You go to this 15 intersection where there is- 16 MARTIN GROSSMAN: What intersection is that? 17 ROBIN RICE: Park Mill and Mill Run and where you can 18 keep going straight without stopping; stop signs are on 19 Park Mill and- on both sides of Park Mill. If you turn 20 right, you're going towards the school. The sidewalk goes 21 from the bus stop, the tunnel area, out a little bit and 22 then it stops and you have to walk on the grass. 23 G. MASON NELSON: All right so where does the sidewalk 24 stop, Ms. Rice? 25 ROBIN RICE: Within a house or two. It's in my</p>	<p>413</p> <p>1 from that point on is there? 2 ROBIN RICE: On Mill Road Drive, correct. 3 G. MASON NELSON: Okay. Now let's turn left on Park 4 Mill. Now, you and the Hearing Examiner and I are walking 5 together. Is there a sidewalk on either side of Park Mill 6 Drive? 7 ROBIN RICE: No. There is grass 20 feet wide on both 8 sides of the paved area that you can walk on. 9 G. MASON NELSON: All right. The grass on either side 10 of the paved area is 20 feet wide that you can walk on. 11 ROBIN RICE: Yes. 12 G. MASON NELSON: So that's the easement for the road? 13 ROBIN RICE: It's called a right-of-way. It's a 14 secondary, residential street that's 60 feet wide. Twenty 15 feet in the middle is paved and there is twenty feet on 16 either side that's grass and it's a public right-of-way, 17 it's not a street. 18 G. MASON NELSON: All right. So it's fair to say, is 19 it not, that if we are in front of your property, that the 20 first 20 feet of grass is not owned by you. 21 ROBIN RICE: Correct. 22 G. MASON NELSON: And is it fair to say that the 23 large- if I'm facing your property, that the large bush or 24 tree on the right side of your property, on the Lloyd 25 resident side, is at least 20 feet off from the road?</p>
<p>412</p> <p>1 pictures. Then you get at this intersection and you turn 2 left. 3 MARTIN GROSSMAN: This intersection (inaudible). 4 ROBIN RICE: By Park Mill and Mill Run. 5 MARTIN GROSSMAN: Okay. 6 ROBIN RICE: And then you go down here to my house. 7 G. MASON NELSON: All right. Let's come back and have a 8 closer look at this aerial photograph. I want you to speak 9 with precision and identify for the Hearing Examiner, Mr. 10 Grossman, where the alleged sidewalk is that you said goes 11 a house or two. 12 ROBIN RICE: I think it's easier to see in my 13 pictures, but it goes from the outside- you go outside the 14 tunnel and you can't see it on this because of the trees. 15 G. MASON NELSON: How about on the west side of the 16 tree. Do you see it? 17 ROBIN RICE: Yeah, it's (inaudible) the sidewalk. 18 G. MASON NELSON: Okay. And then it stops? 19 ROBIN RICE: It stops coming out. 20 G. MASON NELSON: Okay. So it stops before you reach 21 the second house, is that correct? 22 ROBIN RICE: (inaudible). Yes. 23 G. MASON NELSON: All right. Okay. So now let's turn- 24 let's walk from that point to the intersection with Park 25 Mill Drive. There is no sidewalk on either side of the road</p>	<p>414</p> <p>1 ROBIN RICE: From the paved road, yes. From the County 2 property, no. 3 G. MASON NELSON: All right. So but it's more than 20 4 feet from the edge of the paved road. 5 ROBIN RICE: I would be probably more- it's probably 6 precisely 20 feet but we didn't (inaudible). 7 G. MASON NELSON: All right. Now, tell me about the 8 houses across the street from your property. What sort of 9 land uses are they- do they have? 10 ROBIN RICE: The one across the street directly across 11 the street, directly across the street, that gentleman I 12 believe it is heavily involved some church activities. He 13 has a lot of visitors. To the left of that house is Anne 14 Gregorski's house. To the left of that is the swimming- 15 Andrew's house where he has done construction for a year or 16 so with trucks and workers and everybody and (inaudible). 17 G. MASON NELSON: Ms. Rice, excuse me for a moment. My 18 question is; are those residential properties? 19 ROBIN RICE: Yeah, they are. It's residential. 20 G. MASON NELSON: All right. Mrs. Lloyd's property is 21 residential, is it not? 22 ROBIN RICE: Yeah. 23 G. MASON NELSON: Okay. Now, do any of those 24 properties on Park Mill have their front yards paved for 25 parking?</p>

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23 (415 to 418)

<p>415</p> <p>1 ROBIN RICE: No. (inaudible). 2 DON ACKAD: I think their driveways are (inaudible). 3 G. MASON NELSON: I'm going to ask the audience not to 4 critique the testimony. I'm also going to ask the witness's 5 husband not to correct the witness's testimony. 6 MARTIN GROSSMAN: Yes. 7 G. MASON NELSON: So let me- 8 MARTIN GROSSMAN: Well, let me double down on that. 9 Nobody else is to call out. The only people involved in 10 this examination are the person asking the questions and 11 the person answering the questions. 12 G. MASON NELSON: My question, Ms. Rice, is there any 13 house on Park Mill Drive that is paved the entire front 14 yard? 15 ROBIN RICE: No. 16 G. MASON NELSON: No. So in that respect, your parking 17 plan would be in stark contrast, would it not, to the other 18 residential operatives on that street? 19 ROBIN RICE: I wouldn't say so. 20 G. MASON NELSON: You wouldn't say so. Okay. Tell me 21 in your own words, Ms. Rice, how the paving- your parking 22 plan is compatible with the other residential- this is your 23 opportunity to say how is compatible to pave your front 24 yard with Mrs. Lloyd's residence. 25 ROBIN RICE: My proposal is to pave 30 percent of my</p>	<p>417</p> <p>1 done at your property since that last date before today 2 ROBIN RICE: I built a fence and we graded the right 3 side of the house as depicted by the pictures. 4 G. MASON NELSON: Okay. You graded the right side of 5 the house. The house on the Lloyd side? 6 ROBIN RICE: Yes. 7 G. MASON NELSON: Let me mark as Exhibit 123- is the 8 original. Here's a copy for the witness. Is that- is 9 Exhibit 123 a photograph of the excavation you did on the 10 Lloyd side? 11 ROBIN RICE: Yes. 12 G. MASON NELSON: Now, what's this black plastic? 13 What's that? 14 ROBIN RICE: This is sediment control. 15 G. MASON NELSON: All right. So that's designed to 16 keep the sediment from flowing off of your property. 17 ROBIN RICE: Correct. 18 G. MASON NELSON: All right. And what's the purpose of 19 this excavation? 20 ROBIN RICE: When Angie's husband's car was- a white 21 Jeep was parked on (inaudible) side of the property, trying 22 to get there, the grading of the lot was a little bit of a 23 hill and I just wanted to flatten it out. 24 G. MASON NELSON: Okay. You wanted to flatten it out. 25 And the reason you wanted to flatten it out is you wanted</p>
<p>416</p> <p>1 front yard which is my right as a property owner. Anybody 2 else can do that if they want to. It's a residential right. 3 I don't need a waiver. I don't need anything. I can do it 4 whether- my application is denied. It's 30 percent as a 5 residential use. So resident property owner, I more than 6 allowed to do. 7 G. MASON NELSON: Let me rephrase (inaudible). 8 ROBIN RICE: Yeah. 9 G. MASON NELSON: Is there any house in that 10 neighborhood that parks 10 cars there? 11 MARTIN GROSSMAN: There being? 12 G. MASON NELSON: At the resident- at a single 13 residence. 14 MARTIN GROSSMAN: Okay. 15 ROBIN RICE: At the school. 16 G. MASON NELSON: No, no, no. I'm talking- let's talk- 17 let's speak more precisely. 18 ROBIN RICE: Okay. 19 G. MASON NELSON: On Mill Run Drive or Park Mill 20 Drive, the two roads in this neighborhood, in the Staff 21 Defined Neighborhood, is there any residence, single 22 residential property, where 11 cars are parked? 23 ROBIN RICE: Not that I know of. 24 G. MASON NELSON: Okay. We were, last here I think in 25 August. Tell Mr. Grossman what construction work you have</p>	<p>418</p> <p>1 to park how many cars there? 2 ROBIN RICE: Initially two. Now three. 3 G. MASON NELSON: All right. So now the proposal is to 4 park three cars on the right side of your house on the 5 Lloyd side. 6 MARTIN GROSSMAN: When you say right side, is that 7 north? South? East? West? 8 G. MASON NELSON: It's going be the south- roughly 9 south side. If you're facing the house, it's the right 10 side. It's roughly the south side. On the Lloyd side of 11 your property, you want to have three spots between the 12 edge of your house and the property line with Mrs. Lloyd. 13 ROBIN RICE: If the conditional use is granted, yes. 14 G. MASON NELSON: All right. 15 MARTIN GROSSMAN: And just can you help me out here 16 and tell me which way we are facing here on this picture 17 123? What's- what am I looking at because I can't tell from 18 this. 19 G. MASON NELSON: Okay. So it's true, is it not, Ms. 20 Rice, that if we were looking at this photograph, it's sort 21 of an odd perspective, but the structure on the left is 22 your property? 23 ROBIN RICE: Yes. 24 G. MASON NELSON: The sediment control fence is 25 roughly on the property line with the Lloyd residence.</p>

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24 (419 to 422)

<p>419</p> <p>1 ROBIN RICE: No.</p> <p>2 G. MASON NELSON: I beg your pardon?</p> <p>3 ROBIN RICE: No.</p> <p>4 G. MASON NELSON: No? Where is that?</p> <p>5 ROBIN RICE: It's a couple of feet inside my property</p> <p>6 line.</p> <p>7 G. MASON NELSON: All right.</p> <p>8 ROBIN RICE: That little stick with the reddish thing</p> <p>9 on top of it, that's the property line.</p> <p>10 G. MASON NELSON: Okay.</p> <p>11 MARTIN GROSSMAN: And the fence that we see, is a in</p> <p>12 your backyard or front yard?</p> <p>13 G. MASON NELSON: That's in my backyard.</p> <p>14 MARTIN GROSSMAN: That your backyard, okay.</p> <p>15 G. MASON NELSON: So Park Mill Drive is to the rear</p> <p>16 (inaudible) for this picture?</p> <p>17 ROBIN RICE: Correct.</p> <p>18 MARTIN GROSSMAN: Well wait a minute. Now I'm really-</p> <p>19 I'm confused by this perspective. I just want to know what</p> <p>20 I'm looking at.</p> <p>21 G. MASON NELSON: If I may, this is our perspective.</p> <p>22 We are looking- our back we're standing on the edge Park</p> <p>23 Mill Drive looking down the property line between the</p> <p>24 applicant's property and the Lloyd property.</p> <p>25 MARTIN GROSSMAN: All right. You're saying that the</p>	<p>421</p> <p>1 ROBIN RICE: Yes.</p> <p>2 G. MASON NELSON: I'm sorry?</p> <p>3 ROBIN RICE: Yes.</p> <p>4 G. MASON NELSON: Now, I was a little confused about</p> <p>5 your testimony about the fence that you propose to</p> <p>6 construct. Do you propose to construct a fence just inside</p> <p>7 of the property line on the Lloyd residence?</p> <p>8 ROBIN RICE: Yes, six feet, board on board up at the</p> <p>9 front of the house and (inaudible) would be in the front of</p> <p>10 the house (inaudible).</p> <p>11 G. MASON NELSON: Okay. So did I understand you to</p> <p>12 make the case to Mr. Grossman when he was asking you about</p> <p>13 the compatibility question of this parking lot between your</p> <p>14 residence and the Lloyd residence, you said no problem</p> <p>15 because the fence, the board on board fence, will be a</p> <p>16 barrier to (inaudible) to obscure the parking from the</p> <p>17 Lloyd residence?</p> <p>18 ROBIN RICE: I did- I don't call the right side a</p> <p>19 parking lot. I call it parking.</p> <p>20 G. MASON NELSON: That wasn't the question. My</p> <p>21 question was; did I understand you to say, in response to</p> <p>22 Mr. Grossman's question, that, no worries. We will have a</p> <p>23 fence that separates that parking area from the Lloyd</p> <p>24 property?</p> <p>25 ROBIN RICE: Yeah, my plan is to put in a six-foot</p>
<p>420</p> <p>1 photograph here, the photographer is standing on which</p> <p>2 side? Where is Shady Grove Road on this photograph?</p> <p>3 G. MASON NELSON: In the back.</p> <p>4 MARTIN GROSSMAN: Here?</p> <p>5 G. MASON NELSON: Yes, sir.</p> <p>6 MARTIN GROSSMAN: Okay. So the top of the photograph</p> <p>7 would be Shady Grove Road and at the bottom of the</p> <p>8 photograph is Park Mill Drive. Is that correct?</p> <p>9 G. MASON NELSON: That's correct.</p> <p>10 MARTIN GROSSMAN: Okay.</p> <p>11 G. MASON NELSON: Do you agree, Ms. Rice?</p> <p>12 ROBIN RICE: I'm sorry. I-</p> <p>13 G. MASON NELSON: Do you agree that Shady Grove would</p> <p>14 be in the back of this photograph, Park Mill Drive would be</p> <p>15 in the front.</p> <p>16 ROBIN RICE: Correct.</p> <p>17 MARTIN GROSSMAN: Okay.</p> <p>18 ROBIN RICE: This is not a picture of what exists now,</p> <p>19 but-</p> <p>20 G. MASON NELSON: Now, did you also excavate in your</p> <p>21 rear yard?</p> <p>22 ROBIN RICE: No.</p> <p>23 G. MASON NELSON: All right so this is the only</p> <p>24 excavation you've done on your property since the last</p> <p>25 hearing?</p>	<p>422</p> <p>1 board on board fence.</p> <p>2 G. MASON NELSON: Right. And how far will the closest</p> <p>3 spot of parking be to that fence? How many inches?</p> <p>4 ROBIN RICE: Parking surface or vehicle?</p> <p>5 G. MASON NELSON: Parking surface.</p> <p>6 ROBIN RICE: Parking surface (inaudible) it will be</p> <p>7 pervious pavers that will be inside and the left one will</p> <p>8 be eight feet (inaudible) fence. The right one will be</p> <p>9 closer than eight feet from the fence.</p> <p>10 G. MASON NELSON: The right what?</p> <p>11 ROBIN RICE: There is going to be-</p> <p>12 MARTIN GROSSMAN: Will the parking pavers abut the</p> <p>13 fence? In other words, will be right against the fence?</p> <p>14 ROBIN RICE: No. Cars are six feet wide.</p> <p>15 G. MASON NELSON: (inaudible) can I just ask a</p> <p>16 question, Mr. Grossman?</p> <p>17 MARTIN GROSSMAN: Yes.</p> <p>18 G. MASON NELSON: The question, Ms. Rice, is you are</p> <p>19 going to have pervious pavers there on which the cars are</p> <p>20 going apart. Is that correct?</p> <p>21 ROBIN RICE: Where the wheels of the cars are going</p> <p>22 park, yes.</p> <p>23 G. MASON NELSON: Okay. How close is the closest</p> <p>24 pervious pavers to the fence? That's the question on the</p> <p>25 table.</p>

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25 (423 to 426)

<p>423</p> <p>1 ROBIN RICE: Okay. I don't know for sure. The pervious</p> <p>2 pavers, one of them will be eight feet from the property</p> <p>3 line and the other one will have to be closer; two strips.</p> <p>4 G. MASON NELSON: Okay. Now, it's fair to say, is it</p> <p>5 not, that the one that's closer has to, at least the width</p> <p>6 of a car, that distance closer?</p> <p>7 ROBIN RICE: No.</p> <p>8 G. MASON NELSON: (inaudible). Why not?</p> <p>9 ROBIN RICE: Because the car is not going to sit on</p> <p>10 the pervious pavers. The wheels are.</p> <p>11 MARTIN GROSSMAN: What does that mean? What do you</p> <p>12 mean wheels are?</p> <p>13 ROBIN RICE: Pervious pavers, what you need is like a</p> <p>14 railroad track. Something thick enough (inaudible).</p> <p>15 MARTIN GROSSMAN: You are saying the car is not going</p> <p>16 to sit on it, but the wheels will. What does that mean?</p> <p>17 ROBIN RICE: The wheels of the car-</p> <p>18 MARTIN GROSSMAN: The wheels of the car, right?</p> <p>19 ROBIN RICE: The wheels of the car will be on pervious</p> <p>20 pavers.</p> <p>21 MARTIN GROSSMAN: Right.</p> <p>22 ROBIN RICE: Okay. Underneath the car will be grass.</p> <p>23 MARTIN GROSSMAN: I see. So you're saying that you're</p> <p>24 going to have two strips of pervious pavers and one strip</p> <p>25 will be closer to the fence. Maybe abutting the fence and</p>	<p>425</p> <p>1 G. MASON NELSON: I'm sorry?</p> <p>2 ROBIN RICE: Yes.</p> <p>3 G. MASON NELSON: Okay. Now, what if the car that's</p> <p>4 closest to Shady Grove wants to leave before the others?</p> <p>5 What happens?</p> <p>6 ROBIN RICE: If the job is offered to Angie and she</p> <p>7 accepts it, she will ask her husband to move the cars. It's</p> <p>8 standard parking.</p> <p>9 G. MASON NELSON: I'm sorry.</p> <p>10 ROBIN RICE: If Angie is in- a car is in parking space</p> <p>11 number 11, and her husband's (inaudible) car is in parking</p> <p>12 space number 10, she can use her husband's car or she can</p> <p>13 ask her husband to move it or she can move it because it's</p> <p>14 her car too.</p> <p>15 G. MASON NELSON: All right. Could we please see the</p> <p>16 blowup of the- I think it's 111.</p> <p>17 MARTIN GROSSMAN: Sure. I think it's not really a</p> <p>18 blowup, but it is Exhibit 111.</p> <p>19 G. MASON NELSON: I'm sorry. The- okay.</p> <p>20 MARTIN GROSSMAN: That's the final site plan</p> <p>21 (inaudible).</p> <p>22 G. MASON NELSON: Right. (inaudible) 122, 90 degrees</p> <p>23 so the orientation is the same as it is in 111. Ms. Rice,</p> <p>24 what I wants to do is help me compare what we see now at</p> <p>25 the subject property and what we see on the Exhibit 111. Do</p>
<p>424</p> <p>1 in fact, the other one will be eight feet or so away.</p> <p>2 ROBIN RICE: Yes. I will make the other one</p> <p>3 (inaudible).</p> <p>4 MARTIN GROSSMAN: And in the middle, will be grass.</p> <p>5 ROBIN RICE: In the middle, there would be grass and</p> <p>6 the sides will be grass.</p> <p>7 MARTIN GROSSMAN: Okay.</p> <p>8 ROBIN RICE: It's like railroad tracks.</p> <p>9 MARTIN GROSSMAN: Okay.</p> <p>10 G. MASON NELSON: So your point is that a car, the</p> <p>11 width of the car could be slightly greater than the width</p> <p>12 of the wheelbase.</p> <p>13 ROBIN RICE: Correct.</p> <p>14 G. MASON NELSON: All right. How close will the edge</p> <p>15 of the car be to the fence?</p> <p>16 ROBIN RICE: I haven't measured yet.</p> <p>17 G. MASON NELSON: It could be six inches couldn't it?</p> <p>18 ROBIN RICE: The width from the house and the property</p> <p>19 line is 11.2 inches, 11'2". A car is about six. So I've got</p> <p>20 5'2" to put on the left side and left side of the car.</p> <p>21 (inaudible)</p> <p>22 G. MASON NELSON: The bottom line is, in this area</p> <p>23 that you've excavated between your residence and the Lloyd</p> <p>24 residence, your proposal is to have- to park three cars.</p> <p>25 ROBIN RICE: Correct.</p>	<p>426</p> <p>1 you have the- can I use the light Ms.-</p> <p>2 ROBIN RICE: Sure.</p> <p>3 G. MASON NELSON: Okay. And let me just point. Now, of</p> <p>4 course we're talking about- this is the subject property,</p> <p>5 is it not? I'm sorry. It's going to be-</p> <p>6 ROBIN RICE: (inaudible).</p> <p>7 G. MASON NELSON: Now, thank you. So that's the bush</p> <p>8 we are talking about. So that bush is that bush there.</p> <p>9 ROBIN RICE: Correct.</p> <p>10 G. MASON NELSON: Okay. Now, how many cars can you fit</p> <p>11 on your driveway now?</p> <p>12 ROBIN RICE: On my driveway on the private property?</p> <p>13 G. MASON NELSON: Yes.</p> <p>14 ROBIN RICE: Like everybody else, I can fit</p> <p>15 (inaudible). I think three on each side.</p> <p>16 G. MASON NELSON: Okay.</p> <p>17 ROBIN RICE: So six.</p> <p>18 G. MASON NELSON: You can park six cars here?</p> <p>19 ROBIN RICE: Depending on whether they're compacts or-</p> <p>20 G. MASON NELSON: All right. Let's look here. If we</p> <p>21 look on the north side of your driveway, (inaudible) you</p> <p>22 are adding all (inaudible).</p> <p>23 ROBIN RICE: (inaudible).</p> <p>24 G. MASON NELSON: You're adding all these spots here,</p> <p>25 are you not? Those are all new.</p>

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26 (427 to 430)

<p>427</p> <p>1 ROBIN RICE: (inaudible) yes. 2 G. MASON NELSON: All right. 3 ROBIN RICE: Well, no. I'm sorry. The pavement- the 4 existing pavement is already there. The seven, eight, six, 5 and part of four and five. The new pavement will be the 6 rest of four and five, two, three, and one. 7 G. MASON NELSON: All right. Now, let's talk about the 8 dimensions here. We know- you told us that the dimension 9 from your property, the residence, to the edge of the 10 right-of-way is 43 feet. 11 ROBIN RICE: On part of the property, yes. 12 G. MASON NELSON: Okay. Now, does any of your plan- 13 and how long- how wide is the easement? 14 ROBIN RICE: How wide is the (inaudible)? 15 G. MASON NELSON: The right-of-way. 16 MARTIN GROSSMAN: On Park Mill Drive? 17 G. MASON NELSON: On Park Mill Drive. 18 ROBIN RICE: It's- I don't understand what you mean by 19 easement (inaudible). 20 MARTIN GROSSMAN: He said easement, but he meant the 21 right-of-way. 22 ROBIN RICE: The right-of-way of the street is 60 feet 23 wide from (inaudible) side of the grass. 24 G. MASON NELSON: All right. So if we are looking at 25 this plat, what we're saying is this dimension here of the</p>	<p>429</p> <p>1 depiction in 88 showing no flooding. There's also this. 2 G. MASON NELSON: Right. Now, could I see Exhibit 3 please, 121A? 4 MARTIN GROSSMAN: You, actually I think have it over 5 there. So now you can see it. 6 G. MASON NELSON: Now, let's look together, Ms. Rice, 7 at Exhibit 121A and I want to think about the dimensions of 8 your front yard. Exhibit 121A shows the- it shows the 9 residence, does it not? 10 ROBIN RICE: Yes. 11 G. MASON NELSON: And it shows the dimension 43 feet 12 to the right-of-way. 13 ROBIN RICE: From the left corner of the- by the 14 house, yes. 15 G. MASON NELSON: And it shows the right-of-way, does 16 it not? 17 ROBIN RICE: Yes. 18 G. MASON NELSON: And what are these three cars here? 19 That's part of your parking plan? 20 ROBIN RICE: It is part of the available public 21 parking where it is grass and there are no no parking 22 signs. 23 G. MASON NELSON: Well, that's the road is it not? 24 ROBIN RICE: No, the road is here. 25 G. MASON NELSON: Well, I beg to differ. We have this</p>
<p>428</p> <p>1 edge of your residence to the edge of the right-of-way is 2 43. 3 ROBIN RICE: Yes measuring from this part of the 4 building is 43. 5 G. MASON NELSON: Right. And then you say 20 feet of 6 the grass is right-of-way. 7 ROBIN RICE: Public right-of-way, yes. 8 G. MASON NELSON: All right. And then 20 feet is the 9 pavement. 10 ROBIN RICE: Right. 11 G. MASON NELSON: Now, and your plan contemplates, Ms. 12 Rice, that there will be parking on the public right-of- 13 way? 14 ROBIN RICE: If the Hearing Examiner allows it, yeah. 15 G. MASON NELSON: Okay, but not on the road. 16 ROBIN RICE: No. That's a violation of the 17 (inaudible). 18 G. MASON NELSON: Okay. So the public right-of-way, 19 that's the area that's depicted in the photographs showing 20 the flooding, is it not? 21 ROBIN RICE: Yes. 22 G. MARTIN NELSON: Okay. 23 MARTIN GROSSMAN: 88 and 89? 24 G. MASON NELSON: 88 and 89. 25 ROBIN RICE: Yeah, partially, with the rest of the</p>	<p>430</p> <p>1 dimension here of 43 feet from the left corner down here to 2 the edge of the right-of-way. We just spoke of moment ago 3 about the right-of-way in the next area here. And then the 4 next line is the edge of the paved period, is it not? 5 ROBIN RICE: The paved area is on this side of the 6 cars. 7 G. MASON NELSON: What is, Ms. Rice, this area here? 8 ROBIN RICE: (inaudible). This area right there looks 9 like it's after the 43 feet in this area here is- yeah, 10 this area here is still part of (inaudible). 11 G. MASON NELSON: All right. Well, let's (inaudible). 12 MARTIN GROSSMAN: Let me see. What are you referring 13 to by here and there is not clear on the record? 14 ROBIN RICE: (inaudible). 15 G. MASON NELSON: And I apologize to the audience 16 because this- the question Mr. Grossman is, I asked the 17 witness; isn't this dimension here the edge of the house, 18 to the edge of the right-of-way, 43 feet marked there. She 19 said, yes. I then directed her to this line here, this area 20 here running horizontally and I asked her if that whether 21 that was the right-of-way. She said, yes. So then I asked, 22 what is- aren't these three cars parked on the road? She 23 said, no. 24 MARTIN GROSSMAN: And the three cars you are referring 25 to, the three cars at the bottom of the exhibit which would</p>

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27 (431 to 434)

<p style="text-align: right;">431</p> <p>1 be adjacent to or on Park Mill Drive, correct?</p> <p>2 G. MASON NELSON: My question is, are they not on Park</p> <p>3 Mill Drive.</p> <p>4 MARTIN GROSSMAN: Okay. And the answer is?</p> <p>5 ROBIN RICE: No.</p> <p>6 MARTIN GROSSMAN: No?</p> <p>7 ROBIN RICE: Yeah.</p> <p>8 MARTIN GROSSMAN: What are they on?</p> <p>9 ROBIN RICE: They on the grass.</p> <p>10 MARTIN GROSSMAN: Oh, okay. Are they on the Park Mill</p> <p>11 Drive right-of-way?</p> <p>12 ROBIN RICE: In the public right-of-way on the grass,</p> <p>13 yes.</p> <p>14 MARTIN GROSSMAN: Okay.</p> <p>15 G. MASON NELSON: My question is different. My</p> <p>16 question is, then what are these two lines here at the 43</p> <p>17 feet? That's the edge of the right-of-way there.</p> <p>18 ROBIN RICE: Correct.</p> <p>19 G. MASON NELSON: And there is no line there Mr.</p> <p>20 Grossman.</p> <p>21 ROBIN RICE: The cars don't occupy 20 feet width. They</p> <p>22 are only 6 feet wide. So if they're right beside the street</p> <p>23 on the paved part of the street, there's going to be lots</p> <p>24 of grass on the right-hand side as part of the public</p> <p>25 right-of-way. It's 20 feet wide. It's huge. You could fit</p>	<p style="text-align: right;">433</p> <p>1 exactly here on 43 feet line (inaudible) here.</p> <p>2 MARTIN GROSSMAN: Okay. All right.</p> <p>3 ROBIN RICE: This is exactly the property line.</p> <p>4 MARTIN GROSSMAN: Okay. So if there is a distance</p> <p>5 between where you driveway ends and- where your driveway</p> <p>6 ends and where you have the cars depicted as another line-</p> <p>7 the cars are depicted. What is in that space between where</p> <p>8 the driveway end and this other line that's marked 39 feet?</p> <p>9 ROBIN RICE: In this section that's marked 39 feet,</p> <p>10 this space is grass. In this section marked 10 feet, it's</p> <p>11 paved because that's the apron.</p> <p>12 MARTIN GROSSMAN: Okay. I understand that. I'm just</p> <p>13 saying, how wide is this area that has the designation, 39</p> <p>14 feet in it?</p> <p>15 ROBIN RICE: From the-</p> <p>16 MARTIN GROSSMAN: How- what's the depth of that area?</p> <p>17 ROBIN RICE: From the property line to the paved</p> <p>18 surface of the street is 20 feet.</p> <p>19 MARTIN GROSSMAN: So you're saying- well, that's the</p> <p>20 question I think. So is this a paved surface of the street</p> <p>21 below that? Your earlier answers indicate that they were on</p> <p>22 the grass.</p> <p>23 ROBIN RICE: Yeah.</p> <p>24 MARTIN GROSSMAN: That these cars were on the grass.</p> <p>25 So it's not the paved surface of the street.</p>
<p style="text-align: right;">432</p> <p>1 two cars there.</p> <p>2 G. MASON NELSON: The question, Ms. Rice, is on your</p> <p>3 Exhibit 121A, what line does this represent? What does this</p> <p>4 represent? This line here this right next to the end of the</p> <p>5 43 feet mark?</p> <p>6 ROBIN RICE: You're talking about this line right</p> <p>7 here? That's the property line.</p> <p>8 G. MASON NELSON: I'm talking about this line right</p> <p>9 here.</p> <p>10 ROBIN RICE: This line right there is just a line so</p> <p>11 that you can write down 39 feet, 10 feet, 10 feet, 20½</p> <p>12 feet. It's just a line.</p> <p>13 G. MASON NELSON: So that line has, in your view, no</p> <p>14 meaning whatsoever?</p> <p>15 ROBIN RICE: It's got the name that is down there.</p> <p>16 It's a line that has the dimensions of the spaces there.</p> <p>17 MARTIN GROSSMAN: May I see? So I take it Mr. Nelson,</p> <p>18 from your questions that you are suggesting that in fact,</p> <p>19 that line, that space between- where it appears that the</p> <p>20 driveway ends, and I'm not sure that was- she has parking</p> <p>21 space number six. You have it labeled on Exhibit 111 as a</p> <p>22 10 foot wide space, but you don't exactly say where your</p> <p>23 driveway ends. Can you point where your driveway ends and</p> <p>24 the right-of-way begins?</p> <p>25 ROBIN RICE: The driveway on private property ends</p>	<p style="text-align: right;">434</p> <p>1 ROBIN RICE: Correct.</p> <p>2 MARTIN GROSSMAN: So my question-</p> <p>3 ROBIN RICE: I don't park in the street, on the paved</p> <p>4 surface in the street. I'd be blocking traffic.</p> <p>5 MARTIN GROSSMAN: So the question is, what is in this</p> <p>6 area where you've indicated 39 feet? Is that grass or is</p> <p>7 that pavement?</p> <p>8 ROBIN RICE: It's-</p> <p>9 MARTIN GROSSMAN: And then, what's the depth of it?</p> <p>10 ROBIN RICE: It's grass and it's 20 feet from the</p> <p>11 private property to the paved street where 6 feet of it is</p> <p>12 being occupied by the car. So that's about the size of a</p> <p>13 car.</p> <p>14 MARTIN GROSSMAN: Okay. So you're saying that this</p> <p>15 space is about six feet in depth as- because it's</p> <p>16 approximately the size of the car, five or six feet in</p> <p>17 depth. And then there is another, whatever, 15 feet or so</p> <p>18 of grass and those cars are parked in the grass.</p> <p>19 ROBIN RICE: Right.</p> <p>20 MARTIN GROSSMAN: Okay.</p> <p>21 ROBIN RICE: When a cars parked there, there will be</p> <p>22 14 feet of grass and 6 feet of grass covered up by car.</p> <p>23 MARTIN GROSSMAN: Okay.</p> <p>24 G. MASON NELSON: And my question remains, is on</p> <p>25 Exhibit 121A introduced by the applicant, what is the</p>

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<p>435</p> <p>1 significance, if any, of that line on which 39.7 is 2 written. 3 ROBIN RICE: To show the width that is- of 39 feet in 4 between the two aprons and how big that one is. 5 MARTIN GROSSMAN: All right. I think we've beaten this 6 one to death. 7 G. MASON NELSON: Now, let's look, while we are 8 talking about parking, at the testimony in August about 9 some- in Exhibit 122, some additional parking and there is 10 concern at the dead end. Could you point that out to us on 11 this aerial photograph? 12 ROBIN RICE: (inaudible) on this (inaudible) from this 13 driveway here. If you go down Park Mill Drive, you would 14 have to turn left a little bit to get to this one driveway 15 and then you drive all the way down here to that over 16 there. 17 MARTIN GROSSMAN: (inaudible). 18 G. MASON NELSON: (inaudible). 19 ROBIN RICE: (inaudible) driving as they are. 20 G. MASON NELSON: Are you still proposed to use that 21 as a parking area? 22 ROBIN RICE: Sure. 23 G. MASON NELSON: Sure. Okay. And who will park there? 24 ROBIN RICE: Nonresident staff members, me, visitors, 25 guests. Anybody who wants to. It's public parking.</p>	<p>437</p> <p>1 these streets when your customers are coming in? Is that an 2 issue? 3 ROBIN RICE: It's a non-inherent- no, it's an inherent 4 issue of being in a neighborhood whether there it's a 5 conditional use, childcare, limited use, home occupancy 6 accessory apartment or anything else, you know, it's a 7 neighborhood. 8 G. MASON NELSON: Right. So you used the phrase 9 inherent risk and inherent adverse effect. Of course, 10 that's a term (inaudible) conditional use and special 11 acceptance jurisprudence which Mr. Grossman is familiar 12 with. But that's not true for neighborhoods where there are 13 sidewalks is it? It's not an inherent adverse effect for a 14 neighborhood where there are proper sidewalks is it? 15 ROBIN RICE: I disagree. 16 G. MASON NELSON: You disagree. Why do you disagree? 17 ROBIN RICE: Because there are other conditional uses 18 like that. Because sidewalks aren't part of it. Because the 19 neighbors can walk in the grass and stay off the street if 20 they want to. Because I'm doing weekdays only. Right now, 21 the limited use is allowed seven days a week, 24 hours a 22 day. I'm proposing to cut that down to 68 percent of the 23 days and hours that are allowed. A lot of the work days, 24 the kids are in school. 25 G. MASON NELSON: Could I see exhibits 116 and 117?</p>
<p>436</p> <p>1 G. MASON NELSON: I beg your pardon. 2 ROBIN RICE: It is- you are allowed to park on public 3 property where there is no no parking sign. That's 4 available parking for me and anybody else who wants to park 5 there. 6 G. MASON NELSON: All right. And have you ever parked 7 there? 8 ROBIN RICE: Yeah. 9 G. MASON NELSON: And how do you get from that 10 auxiliary parking lot to your place of business? 11 ROBIN RICE: You walk. 12 G. MASON NELSON: And what path do they? 13 ROBIN RICE: Park Mill Road. (inaudible) down the dead 14 in section of Miller Drive and you take a right and walk 15 down the rest. 16 G. MASON NELSON: Are there sidewalks in that area? 17 ROBIN RICE: No. 18 G. MASON NELSON: How many children live in this 19 community? 20 ROBIN RICE: I don't know. 21 G. MASON NELSON: Is that relevant to you. 22 ROBIN RICE: Not to find out a specific statistical 23 fact; there are children there. 24 G. MASON NELSON: So does it concern you that there 25 may be children on- young children riding their bikes on</p>	<p>438</p> <p>1 MARTIN GROSSMAN: Sure. Okay. That's one copy. By the 2 way, I've- I've marked Exhibit 122 as- the additional copy 3 that Ms. Rice marked up to show the pavers as 122A. So you 4 have a 122, which shows the picture you submitted and she 5 identified and then 122A which she marked it up to show the 6 pavers that she intends to install. Okay. So you wanted- 7 I'm sorry- 8 G. MASON NELSON: 116 and 117. 9 MARTIN GROSSMAN: Okay. There is 116. They may not all 10 be labeled with the 116 so we have to be a little careful 11 until we get the number 116 on them. Don't get confused. 12 Here is 117. 13 G. MASON NELSON: Now, I want to talk about the area 14 encompassed by Mill Run Drive and Park Mill Drive. 15 ROBIN RICE: Okay. 16 G. MASON NELSON: All right. It's an area that's 17 smaller than the Staff Defined Neighborhood, but I've been 18 trying to focus the examination. Now I want to direct you 19 to your Exhibit 116 and ask you to tell us please which 20 photograph in 116 is within the area defined of Mill Run 21 Drive and Park Mill Drive, that geographical area. What 22 photograph in 116 falls within the geographical area? 23 ROBIN RICE: It depends on whether you want to count 24 the intersection (inaudible) street or not. 25 G. MASON NELSON: Ms. Rice, I defined the geographical</p>

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<p>439</p> <p>1 area as that area created by the boundaries of Mill Run 2 Drive and Park Mill Drive. That's this area here. And the 3 question is- my question Ms. Rice, is the area defined by 4 Mill Run Drive and Park Mill Drive, what photographs in 5 Exhibit 116 fall within that area?</p> <p>6 ROBIN RICE: All of them. Mill Run Drive goes all the 7 way over there.</p> <p>8 G. MASON NELSON: Ms. Rice, I'm going to say it the 9 third time. I'm asking you- I'm defining this geographical 10 area as Mill Run Drive down to Park Mill Drive and back up 11 here. Is it- can the Hearing Examiner see that geographical 12 area to which I refer?</p> <p>13 MARTIN GROSSMAN: I do.</p> <p>14 G. MASON NELSON: The question Ms. Rice, what 15 photographs in Exhibit 116 fall within that geographical 16 area?</p> <p>17 ROBIN RICE: It depends on whether you are starting it 18 here on Mill Run Drive or here on Mill Run Drive or in the 19 middle where the traffic light is.</p> <p>20 ROBIN RICE: Start- I'm starting at the intersection 21 there.</p> <p>22 MARTIN GROSSMAN: Well, she is saying, does it include 23 the houses on the other side of the intersection?</p> <p>24 G. MASON NELSON: No, I'm asking-</p> <p>25 ROBIN RICE: In the middle of the intersection or all</p>	<p>441</p> <p>1 shows this grass right here. So it's past the sidewalk. It 2 shows part of that. It shows less of the intersection, but 3 part (inaudible).</p> <p>4 G. MASON NELSON: Let's take the next exhibit. What's 5 the next one that appears there?</p> <p>6 ROBIN RICE: That one shows (inaudible) too. It shows 7 99 percent of it is the intersection and the crosswalk, but 8 then you can see that section (inaudible). Well, no, that 9 the other one. That one doesn't show it all. (inaudible).</p> <p>10 G. MASON NELSON: D, what does D show?</p> <p>11 ROBIN RICE: It shows the bus stop, the underground 12 tunnel, and parts of the grass (inaudible).</p> <p>13 G. MASON NELSON: All right. Where is the bus stop in 14 this photo, ma'am?</p> <p>15 ROBIN RICE: Over here.</p> <p>16 G. MASON NELSON: Okay.</p> <p>17 ROBIN RICE: On the other side of the grass.</p> <p>18 G. MASON NELSON: Okay. Let's go to- where is Exhibit 19 E?</p> <p>20 ROBIN RICE: Exhibit E is the underground tunnel.</p> <p>21 G. MASON NELSON: Okay, which is where on this 122?</p> <p>22 ROBIN RICE: It's underneath here and it goes up here. 23 So it ends here (inaudible).</p> <p>24 G. MASON NELSON: Underneath- the tunnel go beneath 25 Park Mill?</p>
<p>440</p> <p>1 the way to the specific property line where the private 2 property starts and you're not on (inaudible) Mill Road at 3 all. Is that your question?</p> <p>4 G. MASON NELSON: I'm sorry this so difficult. Let's 5 try it this way. The grass area on the inside of Mill Run 6 Drive and Park Mill Drive at the edge of the paved area of 7 those two roads; what photographs in Exhibit 116 fall 8 within that geographical area?</p> <p>9 ROBIN RICE: B, D, E, F, G, H, I, J, K.</p> <p>10 G. MASON NELSON: Well, let's do those together. Let's 11 start one at a time.</p> <p>12 ROBIN RICE: L, M, N- hang on- and O, P, (inaudible). 13 So the only one that is not is C every one (inaudible).</p> <p>14 G. MASON NELSON: Okay. Where is B?</p> <p>15 ROBIN RICE: B is looking at the intersection and the 16 part of the grass area on Mill Run Drive (inaudible).</p> <p>17 G. MASON NELSON: Looking at what intersection?</p> <p>18 ROBIN RICE: The intersection of Mill Run Drive and 19 Park Mill Road.</p> <p>20 G. MASON NELSON: Okay. So that grass area you see in 21 that photograph is where?</p> <p>22 ROBIN RICE: (inaudible).</p> <p>23 G. MASON NELSON: I'm talking about the inside area. 24 I'm talking about this area here.</p> <p>25 ROBIN RICE: This area here- this picture right here</p>	<p>442</p> <p>1 ROBIN RICE: No, Park Mill's- one second.</p> <p>2 G. MASON NELSON: All right. So let's just clarify 3 your testimony. The underground tunnel goes beneath Shady 4 Grove, not Park Mill, is that correct?</p> <p>5 ROBIN RICE: Correct.</p> <p>6 G. MASON NELSON: All right. So that's not part of 7 that geographical area that we are talking about, is it?</p> <p>8 ROBIN RICE: Yeah.</p> <p>9 G. MASON NELSON: Ms. Rice?</p> <p>10 ROBIN RICE: Yeah.</p> <p>11 G. MASON NELSON: The underground tunnel is here, is 12 it not?</p> <p>13 ROBIN RICE: The underground tunnel goes from the 14 conditional use swimming pool association (inaudible) and 15 it goes out past here.</p> <p>16 G. MASON NELSON: All right.</p> <p>17 ROBIN RICE: Past (inaudible).</p> <p>18 G. MASON NELSON: All right. Let's go to the next 19 exhibit.</p> <p>20 MARTIN GROSSMAN: What exactly is the point that we 21 are trying to get to?</p> <p>22 G. MASON NELSON: What I'm trying to establish is that 23 the sidewalk, the underground tunnel, all of these 24 intersections are not in the immediate area of the proposed 25 conditional use. That's the point I'm trying to establish.</p>

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<p>443</p> <p>1 MARTIN GROSSMAN: Are you saying that they are not in 2 the defined neighborhood or they are just not in your 3 segment of it that you are suggesting? 4 G. MASON NELSON: They are not within the area that's 5 closest to the proposed conditional use. That's the point 6 that I'm trying to make. If the Hearing Examiner has the 7 point, I'm happy to move on. 8 MARTIN GROSSMAN: I have the point, but I'm saying 9 that the Staff suggested definition of the neighborhood 10 goes a bit to the north. It includes the houses to the 11 north of Mill Run Drive and Park Mill Drive, which you're 12 apparently (inaudible). The area that you are suggesting 13 does not go as far as that. Am I correct? Is that- the area 14 that you are suggesting is only south of Mill Run Drive. 15 G. MASON NELSON: Right. Well, let me just try to 16 short-circuit. 17 MARTIN GROSSMAN: Well, I- 18 G. MASON NELSON: May I just make this point? 19 MARTIN GROSSMAN: Yes. 20 G. MASON NELSON: One of my client's concerns is 21 pedestrian safety. One of the themes of the applicant's 22 case is, no worries there is underground tunnels. There is 23 a sidewalk. One of our themes is, the underground tunnel 24 might be at Shady Grove Road and Shady Grove is at the edge 25 of the Staff Defined Neighborhood, but it doesn't address</p>	<p>445</p> <p>1 (Off the record.) 2 (On the record.) 3 MARTIN GROSSMAN: Oh, I didn't realize you had 4 returned. I was waiting for you. 5 ROBIN RICE: I'm sorry. I was (inaudible). 6 MARTIN GROSSMAN: You must have quietly slipped in. 7 All right let's come back. 8 G. MASON NELSON: I just have one more question. 9 MARTIN GROSSMAN: I misspoke before, by the way, when 10 identified I the location that you spoke of of the pavers. 11 That's actually Exhibit 123A. 123 is the digging up of the 12 side yard on the Lloyd side and 123A shows where you marked 13 the pavers. I had previously said it was 122A. All right, 14 Mr. Nelson. 15 G. MASON NELSON: Very briefly, Ms. Rice, the current 16 residents own an SUV and a Jeep, do they not? 17 ROBIN RICE: I know Wayne's car is a white Jeep and 18 Angie's is a- I don't know what it is. 19 G. MASON NELSON: Is a what? 20 ROBIN RICE: I don't know what Angie's is. It's a car. 21 G. MASON NELSON: All right. We'll follow up. I have 22 nothing further. 23 MARTIN GROSSMAN: Okay. Ms. Gregorski, you have 24 questions? 25 MS. GREGORSKI: No, thank you.</p>
<p>444</p> <p>1 the inherent incompatibility of the proposed conditional 2 use on Park Mill Drive. That's the point I'm trying to 3 make. 4 MARTIN GROSSMAN: I understand your point. 5 G. MASON NELSON: Can I have just one minute 6 (inaudible)? 7 MARTIN GROSSMAN: Certainly. 8 G. MASON NELSON: Can I just speak to my client for 9 one minute. 10 MARTIN GROSSMAN: Sure. 11 G. MASON NELSON: Mr. Johnson, Mrs. Lloyd, and Mr. 12 (inaudible), let's talk. 13 MARTIN GROSSMAN: Ms. Rice, if you hand those back to 14 me, I'm going to make sure that each one of them says the 15 exhibit number on it. Not just the letter so that we don't 16 get confused with the plethora- 17 ROBIN RICE: I'm just trying to get it back in order. 18 MARTIN GROSSMAN: The plethora of other exhibit 19 photos. Thank you. Those are- an A here. I see B. 20 ROBIN RICE: (inaudible). 21 MARTIN GROSSMAN: Thank you. 22 ROBIN RICE: Sir, (inaudible). 23 MARTIN GROSSMAN: Sure. We're going to break for about 24 a minute here while Ms. Rice had to use the facilities. 25 Okay.</p>	<p>446</p> <p>1 MARTIN GROSSMAN: All right. Ms. Becker? 2 KATIE BECKER: No thank you. 3 MARTIN GROSSMAN: All right. All right, is there 4 anybody else? I know see any other hands. Okay then. Cross- 5 examination is done. Let's move on to who wishes to 6 testify. 7 G. MASON NELSON: Before we call the next witness, may 8 I inquire as to what the schedule is because we have a 9 witness who I think is- 10 FEMALE VOICE: Actually, I wanted to ask her a 11 question. I'm sorry. 12 MARTIN GROSSMAN: All right. Well, talk to- 13 FEMALE VOICE: (inaudible). 14 MARTIN GROSSMAN: Talk to Mr. Nelson. 15 G. MASON NELSON: All right. So the question- may I 16 just ask it from here? 17 MARTIN GROSSMAN: Sure. 18 G. MASON NELSON: The question is- well, actually, two 19 citizens have asked me this question. I should have asked 20 it. 21 MARTIN GROSSMAN: Okay. 22 G. MASON NELSON: And this question goes to the 23 proposal to park the vehicles on the right-of-way, the 20 24 foot right-of-way, the grass right- 25 MARTIN GROSSMAN: Right.</p>

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<p style="text-align: right;">447</p> <p>1 G. MASON NELSON: The question on the table is some: 2 what about a snow event? When the snow or roads are plowed 3 and the snow is pushed to the side of the road onto that 4 right-of-way. What happens in the parking in that instance? 5 FEMALE VOICE: And it sits for weeks. 6 G. MASON NELSON: And it sits for weeks. 7 MARTIN GROSSMAN: All right. Ask Ms. Rice. 8 G. MASON NELSON: In those circumstances, how do you 9 propose to handle the parking? 10 ABDON ACKAD: Get 30 shovels. 11 ROBIN RICE: You either close for the day or you 12 shovel. I'm sorry. 13 MARTIN GROSSMAN: That's the question posed to you. 14 ROBIN RICE: Yeah. Daycare is either closed for the 15 day or they shovel until the shoveling is done. 16 MARTIN GROSSMAN: Whose they? 17 G. MASON NELSON: Pardon? 18 MARTIN GROSSMAN: Whose they shovels? 19 ROBIN RICE: Employees, my staff, residents. 20 G. MASON NELSON: Kids. 21 MARTIN GROSSMAN: Okay. So you're saying you would 22 have people shovel out the place where they would be 23 parking in either on the grassy right-of-way? Okay. 24 G. MASON NELSON: That's all (inaudible). 25 MARTIN GROSSMAN: All right. Yes, ma'am</p>	<p style="text-align: right;">449</p> <p>1 department is in the next block on Muncaster Mill and Shady 2 Grove Road. They have the right to stop- 3 MARTIN GROSSMAN: No calling out. No calling out. 4 ROBIN RICE: They have the right to stop on Shady 5 Grove Road, take out their apparatus and respond that way. 6 G. MASON NELSON: All right. So let me ask you this 7 question. Your point is well, I'm never going to have 11 8 cars there at one time, but you might have 6 or 7 or 8 9 there at one time. In that event, are you suggesting to Mr. 10 Grossman that there would be no impediment at all to any 11 emergency responder to the subject property? 12 ROBIN RICE: My parking plan has a 20.5 width on the 13 left side and the right side in the front of the house. 14 It's a through lot. There is a gate in the back of the 15 house. It's in the middle of two streets. I don't see any 16 difficulties with first responders to be able to do that. 17 My husband is a retired fireman, safety and health manager. 18 He can help answer those questions if you like. 19 G. MASON NELSON: I have nothing further. 20 MARTIN GROSSMAN: Okay. 21 KATIE BECKER: I'm sorry. I have a question now. 22 MARTIN GROSSMAN: Yes. Ms. Becker. 23 KATIE BECKER: During Exhibit 17 when you went over 24 the parking plan, you said that by contract you would have 25 6 cars dropping off in a 10 minute time period. So my</p>
<p style="text-align: right;">448</p> <p>1 FEMALE VOICE: I have a question. 2 MARTIN GROSSMAN: Okay. Mr. Nelson, would you- the 3 reason- since we have so many people here and you don't 4 have microphones back there, the easiest way to handle it 5 is through Mr. Nelson. Okay. Mr. Nelson. 6 G. MASON NELSON: I'll be very brief. The question for 7 Ms. Rice is, that assuming hypothetically that Mr. Grossman 8 were to approve the conditional use, and if you had your 9 parking plan filled to capacity with 11 vehicles, what 10 effect would that have on the ability of an emergency 11 responder to address some fire, for example, at the subject 12 property? That's the question on the table. 13 MARTIN GROSSMAN: Okay. Ms. Rice. 14 ROBIN RICE: My proposal isn't to have 11 cars parked 15 at the same time. My proposal is to have parking spaces for 16 residents, non-resident employees, and a drop off and 17 discharge of four to six spaces for the customers. So the 18 11 spaces aren't filled. For emergency purposes, I'm a 19 through lot. If there was a fire in the backyard, the fire 20 engine could go in the backyard. I've got a nice gate they 21 can go through. 22 G. MASON NELSON: The fire engine can travel through 23 the gate? 24 ROBIN RICE: No, the fire personnel can get through 25 the gate. The hoses can get through the gate. The fire</p>	<p style="text-align: right;">450</p> <p>1 question is; on days like today when we all had a hard time 2 getting here on time, what happens when families do not 3 make the appropriate drop off time? Do they just push 4 later? Do they don't come at all? 5 ROBIN RICE: The way that you do the contract is like 6 any other seat reservation type of business. You've got 7 show tickets for two shows. You've got Metro tickets, 8 whatever. You've got a seat, all right. When we sign a 9 contract with a customer, you sign the contract that they 10 can have that seat from 8:00 to 8:10 for their car. No 11 other customers are allowed to come during that time 12 period. When you look at the schedule and you let everybody 13 know that after 8:10, 8:10- it's more of a staggered- 14 you're only going to have a couple of cars and they can 15 come later, but the only people that can come between 8:00 16 and 8:10 are the people that have a contract for that 17 space. They can come before, they can come later. You look 18 at your pattern of traffic and the contracts that you sign, 19 but nobody other than those six people are allowed to come 20 between 8:00 and 8:10. 21 MARTIN GROSSMAN: So what happens if the traffic holds 22 them up? They miss their period entirely and they can't 23 come for the day? 24 ROBIN RICE: They have to wait until 8:10. They are 25 not allowed to come between 8:00 and 8:10. That is their</p>

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32 (451 to 454)

<p>451</p> <p>1 time period. It's the same as when you sign a contract for 2 somebody to come- 3 MARTIN GROSSMAN: I'm just asking you how you would 4 handle it be so somebody is delayed until 8:20, what 5 happens to them? 6 ROBIN RICE: They can come in 8:20 because I don't 7 have a- the idea of the maximum of six cars, that's the 8 maximum, but that's not all day long. It's two time periods 9 for about 10 minutes in the morning and 10 minutes in the 10 evening. 11 MARTIN GROSSMAN: Okay. 12 ROBIN RICE: They can't come during that time period 13 unless they have a signed contract for 8:00 to 8:10 and 14 that's it. 15 MARTIN GROSSMAN: Okay. All right. 16 ROBIN RICE: If I may clarify just a little bit more, 17 it's the same thing when you sign a contract when the child 18 can come. There is a staffing pattern form you've got to 19 fill out, and give to the Department of Human Resources and 20 you sign contracts because they can't bring the child 21 unless you got the staff member either. They can't just 22 come in and out whenever they want to. It's a signed 23 contract with a specific time both for the vehicles and the 24 child and the staff members. 25 MARTIN GROSSMAN: Okay. Ma'am, why don't you come</p>	<p>453</p> <p>1 ROBIN RICE: You have- it's not when you can come. 2 It's when you can't come. Between 8:00 and 8:10 is the time 3 period that I'm going to have a signed contract for a 4 maximum of six parents, okay. Everything else is staggered. 5 It's a couple of kids here and there. 6 CLARE DECLINE: So if I'm a 6:00 in the morning 7 person, there is no problem if I come in 6:10. 8 ROBIN RICE: Yeah, that's fine. 9 CLARE DECLINE: 6:15. 10 ROBIN RICE: Yeah. 11 CLARE DECLINE: Okay. So you have a contract with 12 these people and in a contract there's usually 13 repercussions if something isn't met. What are your 14 repercussions? 15 ROBIN RICE: To enforce the contract, you have to have 16 conditions, right. There's late fees and if they- 17 particularly if they are not there between 8:00 and 8:10, 18 if they are past 6:00, which is their latest pickup time, 19 then you have a late fee. 20 CLARE DECLINE: All right. I'll wait for the rest for 21 testimony. 22 MARTIN GROSSMAN: All right. Thank you Mrs. Decline. 23 ANDREW LUCARELLI: Mr. Grossman, may I ask some 24 follow-up questions on that one? 25 MARTIN GROSSMAN: All right. Come forward, sir, and</p>
<p>452</p> <p>1 forward? Because if you have additional questions, I think 2 it would just be simpler. 3 CLARE DECLINE: Forward to where? 4 MARTIN GROSSMAN: Right to Mr. Nelson where Mr. Nelson 5 is. He's got his mic on. 6 CLARE DECLINE: I just want clarification. 7 MARTIN GROSSMAN: Well you have- you're not speaking 8 into a mic. We want to make sure the court reporter gets 9 your question. Come forward. Come forward all the way and 10 identify yourself. 11 CLARE DECLINE: Clare Decline. 12 MARTIN GROSSMAN: All right Ms. Decline. 13 CLARE DECLINE: I'm sorry. I don't understand your 14 answer. If I'm a parent and I have- what time do you open 15 in the morning? 16 ROBIN RICE: The (inaudible). 17 CLARE DECLINE: First, what time does the first parent 18 come? 19 ROBIN RICE: My proposal is to be permitted to have 20 the first parent come at 6:00 in the morning. 21 CLARE DECLINE: Okay. I'm the parent that signs the 22 contract with you for 6:00 in the morning and traffic or 23 something holds me up, maybe my kid doesn't want to get 24 dressed. So then when can I come? Do I have to wait until 25 all of the other kids are dropped off?</p>	<p>454</p> <p>1 identify yourself. 2 ANDREW LUCARELLI: My name is Andrew Lucarelli. I just 3 have a few more follow-up questions regarding your parking 4 plan, Ms. Rice. 5 ROBIN RICE: Sure. 6 ANDREW LUCARELLI: So you- 7 MARTIN GROSSMAN: How to spell Lucarelli, sir? 8 ANDREW LUCARELLI: Lucarelli, L-U-C-A-R-E-L-L-I. 9 MARTIN GROSSMAN: Okay. 10 ANDREW LUCARELLI: So your parking plan and these 11 spots that you assigned, is contingent not on people 12 fitting into a very narrow window, correct? I mean there 13 is- we are talking about three minutes to get a car into 14 your facility and out again. Is that what you've- is that 15 your proposed plan for the busiest period of time in which 16 you would have the most traffic? 17 ROBIN RICE: My statement is that it's three minutes 18 for a parent to be able to drop off and pick up. I want 6 19 cars to be able to come onto the property during a 10 20 minute time period. But it's one after the other. So the 21 first car is gone when the third car shows up. 22 ANDREW LUCARELLI: I understand that your plan is for 23 that to happen, but three minutes is a very, very narrow 24 window. I mean, I have trouble- 25 MARTIN GROSSMAN: No. You can't testify. (inaudible).</p>

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33 (455 to 458)

<p>455</p> <p>1 ANDREW LUCARELLI: Yeah, I know. I'm not. 2 MARTIN GROSSMAN: Ask the question. 3 ANDREW LUCARELLI: So my question is; given the 4 narrowness of the window and the likelihood that someone 5 would miss that window, then doesn't that make your plan 6 less feasible in the real world because it's going to be 7 very difficult for people to hit those three-minute windows 8 that you've assigned them? 9 ROBIN RICE: I'm looking for 6 cars in a 10 minute 10 time period where all 6 cars can park on the property at 11 the same time. With car number one coming onto the 12 property, I anticipate that car number one will be gone in 13 three minutes leaving five cars. 14 ANDREW LUCARELLI: I understand, but isn't this entire 15 plan contingent on it running perfectly and then if you 16 start to have issues where people come late, people come- 17 traffic, more people come at the same time, the whole 18 window gets pushed back from say that 10 minute interval to 19 everyone comes later than that and then you start getting 20 into situations where people would be arriving for the 21 later time period. They are not backing up with those other 22 cars. 23 ROBIN RICE: My proposal is 6 cars in 10 minutes. 24 MARTIN GROSSMAN: You said that already. 25 ROBIN RICE: Okay.</p>	<p>457</p> <p>1 your contingency? 2 ROBIN RICE: The maximum that I want to sign a 3 contract for is 6 for a 10 minute time period. I'm not 4 going to do 6 for that 10 minute time period before that 5 and 6 for 8:00 to 8:10. 6 JIM SNEE: The 6:00 people could be late. The 7:00 7 people could be late. 8 MARTIN GROSSMAN: Mr. Snee. 9 JIM SNEE: So what are you going to do if six of them 10 show up at 7:59? 11 ROBIN RICE: I have a signed contract with the parents 12 that they cannot come between 8:00 and 8:10. 13 JIM SNEE: All right Mr. Snee, this is already been 14 now covered by a number of different questions on the same 15 point. We understand the issue of the practicality. All 16 right. Ma'am. 17 SHERYL HAMMOND: May I ask a- 18 MARTIN GROSSMAN: Yes, come on forward. State your 19 name please. 20 SHERYL HAMMOND: Thank you. My name is Sheryl Hammond. 21 MARTIN GROSSMAN: Okay. And how do you spell Hammond? 22 SHERYL HAMMOND: H-A-M-M-O-N-D. 23 MARTIN GROSSMAN: And how about the Sheryl? 24 SHERYL HAMMOND: S-H-E-R-Y-L. 25 MARTIN GROSSMAN: Okay.</p>
<p>456</p> <p>1 MARTIN GROSSMAN: He's asking, is that a practical 2 plan given that the time period for drop off and pick up 3 that you selected is very narrow, and a narrow amount of 4 time. Is it a practical solution essentially? 5 ROBIN RICE: Yes. 6 MARTIN GROSSMAN: Okay. That's her answer. 7 ANDREW LUCARELLI: All right. So all the questions I 8 have. Thank you. 9 MARTIN GROSSMAN: All right. Mr. Snee. 10 JIM SNEE: Jim Snee. Using that situation they are 11 talking about, if six cars showed up at 7:59, what are you 12 going to do about it? 13 ROBIN RICE: Sir, a point of order. He has already 14 testified. 15 MARTIN GROSSMAN: He's not testifying. He's asking you 16 cross-examination question. 17 ROBIN RICE: Oh, okay. Great. Go ahead. 18 JIM SNEE: If a six cars show up at 7:59, what's your 19 contingency. 20 ROBIN RICE: I have- part of my proposal is to have a 21 parking plan where every parent has a specific time that 22 they can come- that they are prohibited from coming into. 23 Somebody comes at 7:59, they are part of the contracts for 24 7:50 to 8:00. It's okay. 25 JIM SNEE: If six of them show up at 7:59, what is</p>	<p>458</p> <p>1 SHERYL HAMMOND: I do not know the exhibit numbers, 2 but I have a question related to the photographs that were 3 taken to show traffic flow and how well that worked. What 4 time of day did you take those photographs? 5 ROBIN RICE: You're talking about kind of the 6 photographs coming from Mill Run to Park Mill? 7 SHERYL HAMMOND: Mm-hmm, to your property. What time 8 of day were those photographs taken? 9 ROBIN RICE: I don't recall exactly. 10 SHERYL HAMMOND: Do you recall what day of the week 11 those photographs were taken? 12 ROBIN RICE: I honestly don't remember, but- 13 SHERYL HAMMOND: Have you visited the property at the 14 time of day when you are proposing the bulk of the drop- 15 offs during school, when school is in session? 16 ROBIN RICE: Have I visited the property then? 17 SHERYL HAMMOND: Have you witnessed the traffic flow 18 that exists at the time you are proposing the drop off of 19 the majority of your children? 20 ROBIN RICE: Yeah, I couple times I've been around at 21 8:00 in the morning. 22 SHERYL HAMMOND: During school when school was in 23 session? 24 ROBIN RICE: Yeah, I've been owned the property for 25 year and a half. So yeah.</p>

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34 (459 to 462)

<p>459</p> <p>1 SHERYL HAMMOND: Okay.</p> <p>2 MARTIN GROSSMAN: All right. Thank you, ma'am. All</p> <p>3 right. Ms. Decline, you've had your chance more than once</p> <p>4 so we're going to move along now. Sir, did you have a</p> <p>5 question?</p> <p>6 MALE VOICE: I've been advised to hold it.</p> <p>7 MARTIN GROSSMAN: All right, sir. All right. So now</p> <p>8 let's turn to Ms. Gregorski.</p> <p>9 ANNE GREGORSKI: Yes.</p> <p>10 MARTIN GROSSMAN: You wish to testify?</p> <p>11 ANNE GREGORSKI: Yes.</p> <p>12 MARTIN GROSSMAN: All right. We'll have you come up</p> <p>13 here so that</p> <p>14 G. MASON NELSON: (inaudible).</p> <p>15 MARTIN GROSSMAN: Yes, Mr.-</p> <p>16 G. MASON NELSON: So now we are going to the</p> <p>17 protestant's case?</p> <p>18 MARTIN GROSSMAN: Yes.</p> <p>19 ROBIN RICE: All right. We have an extra witness here.</p> <p>20 ANNE GREGORSKI: That would be a better idea.</p> <p>21 MARTIN GROSSMAN: Okay. Has he arrived?</p> <p>22 G. MASON NELSON: He's here and ready to go if</p> <p>23 (inaudible).</p> <p>24 MARTIN GROSSMAN: Okay. Sure, it's your case.</p> <p>25 G. MASON NELSON: All right. I didn't know whether</p>	<p>461</p> <p>1 your right hand please? Do you swear or affirm to tell the</p> <p>2 truth, the whole truth, and nothing but the truth under</p> <p>3 penalty of perjury?</p> <p>4 JIM BENSON: I do.</p> <p>5 MARTIN GROSSMAN: I can't hear you.</p> <p>6 JIM BENSON: I do.</p> <p>7 MARTIN GROSSMAN: Okay. You have to speak loud enough</p> <p>8 so that the audience can hear you too, Mr. Benson.</p> <p>9 JIM BENSON: Okay.</p> <p>10 G. MASON NELSON: Mr. Benson, what is your profession,</p> <p>11 sir?</p> <p>12 JIM BENSON: Real estate appraiser.</p> <p>13 G. MASON NELSON: All right. Mr. Grossman, I will do</p> <p>14 this in as much detail as you want given the time.</p> <p>15 MARTIN GROSSMAN: Okay.</p> <p>16 G. MASON NELSON: So if I'm taking too much time, I'm</p> <p>17 prepared to be informed of that fact. Tell us a little bit</p> <p>18 about your professional background, Mr. Benson. The goal</p> <p>19 here is to educate Mr. Grossman on your experience over the</p> <p>20 years in the real estate appraisal business.</p> <p>21 JIM BENSON: Okay. I went to American University.</p> <p>22 Graduated with a degree in real estate and urban</p> <p>23 development 33 years ago. As soon as I came out of school,</p> <p>24 became a real estate appraiser. So I've done probably</p> <p>25 10,000 plus residential appraisals over the course of my</p>
<p>460</p> <p>1 (inaudible).</p> <p>2 MARTIN GROSSMAN: Okay. That's fine. That's fine. I</p> <p>3 was just turning to Ms. Gregorski because she was the first</p> <p>4 one after you to file a statement, a prehearing statement,</p> <p>5 but I'm perfectly fine since you have your expert witness</p> <p>6 here.</p> <p>7 G. MASON NELSON: All right Mr. Benson. (inaudible)</p> <p>8 call Mr. Benson. Where would you like the witness and sit.</p> <p>9 MARTIN GROSSMAN: Right up here we have a seat and you</p> <p>10 can turn on the mic if you would. Right there, sir. You'll</p> <p>11 see the little button there and if you make it red, it will</p> <p>12 actually pick up your voice. Right there, yeah. It's not</p> <p>13 turning on. That's not good. Well, that's a good question.</p> <p>14 G. MASON NELSON: Try one seat down.</p> <p>15 MARTIN GROSSMAN: Yeah, try one seat down. That looks</p> <p>16 like that's green so that one ought to work. Make it red.</p> <p>17 That's it. Okay. You're on.</p> <p>18 JIM BENSON: All set.</p> <p>19 MARTIN GROSSMAN: Now can you state your name please?</p> <p>20 Your full name and address.</p> <p>21 JIM BENSON: My name is Jim Benson at 12805 Folly</p> <p>22 Quarter Road, Ellicott City, Maryland.</p> <p>23 MARTIN GROSSMAN: All right.</p> <p>24 G. MASON NELSON: Mr. Benson-</p> <p>25 MARTIN GROSSMAN: Hold on one second. Would you raise</p>	<p>462</p> <p>1 career.</p> <p>2 MARTIN GROSSMAN: Do you have any specific license or</p> <p>3 certification?</p> <p>4 JIM BENSON: I'm Maryland state certified number 764.</p> <p>5 MARTIN GROSSMAN: Certified, that's 764.</p> <p>6 JIM BENSON: Yeah.</p> <p>7 MARTIN GROSSMAN: And certified as what?</p> <p>8 JIM BENSON: As a residential real estate appraiser.</p> <p>9 MARTIN GROSSMAN: All right. Go ahead.</p> <p>10 MARTIN GROSSMAN: And over the years, 30 years plus of</p> <p>11 doing these real estate appraisals, do you have a</p> <p>12 jurisdiction that you spend or a jurisdiction you spend</p> <p>13 most of your time?</p> <p>14 JIM BENSON: Probably- all appraisers- all residential</p> <p>15 appraisers are going to take on different counties. My</p> <p>16 focus is probably 70 to 80 in percent Montgomery County.</p> <p>17 The first company I worked with was right next to the mall</p> <p>18 over at Lake Forest in the, at the time, the Standard</p> <p>19 Federal Building.</p> <p>20 G. MASON NELSON: So are you able to estimate how many</p> <p>21 appraisals you've done in Montgomery County over the years?</p> <p>22 Thousands I suppose.</p> <p>23 JIM BENSON: Yeah, absolutely.</p> <p>24 G. MASON NELSON: Now, you mentioned your</p> <p>25 certification. You mentioned your degree at American</p>

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35 (463 to 466)

<p style="text-align: right;">463</p> <p>1 University. Have you taken additional coursework in real 2 estate? 3 JIM BENSON: Yes, as an appraiser, every three years 4 we have to take 42 hours, I believe is the number. So every 5 three years I'm getting 42 hours of coursework. 6 G. MASON NELSON: All right. And what professional 7 affiliations do you have Mr. Benson? 8 JIM BENSON: National Association of Real Estate 9 Appraisers. I'm also a licensed realtor so I'm within the 10 National Association of Realtors. 11 G. MASON NELSON: You are a member of the Montgomery 12 County Board of Realtors. 13 JIM BENSON: I am. 14 G. MASON NELSON: All right. 15 JIM BENSON: The Greater Capital Area 16 MARTIN GROSSMAN: I'm sorry can say that again. 17 JIM BENSON: It's called the Greater Capital Area, 18 GCAAR, Association of Realtors. 19 G. MASON NELSON: We are not yet talking about the 20 work you did in this case. We are going to your experience 21 and knowledge. Over the course of your career, have you 22 acquired expertise in appraising residential houses in 23 Montgomery County? I think you said yes, you have. 24 JIM BENSON: Right. Predominantly. 25 G. MASON NELSON: Okay. And if you acquired expertise</p>	<p style="text-align: right;">465</p> <p>1 any, of a nearby commercial use on the value of residential 2 property? 3 JIM BENSON: Yes. 4 G. MASON NELSON: And during your 30 years plus of 5 real estate appraisal work, predominantly in Montgomery 6 County, have you acquired expertise in appraising houses 7 that are not affected by either A, a commercial- a busy 8 road or B, a commercial land-use? 9 JIM BENSON: Yes. 10 G. MASON NELSON: All right. Do you have the expertise 11 to form an opinion as to the value of a residential 12 property on Park Mill Drive in Montgomery County question 13 mark you have the expertise to analyze that? 14 JIM BENSON: Absolutely. 15 G. MASON NELSON: All right. And you have the 16 expertise to analyze the effect, if any, of a nearby road 17 on Park Mill- on a residence on Park Mill Drive? 18 JIM BENSON: Yes. 19 G. MASON NELSON: And you have the expertise to 20 evaluate the effect, if any, of the commercial use on the 21 value of a residence in Park Mill Drive? 22 JIM BENSON: Yes. 23 G. MASON NELSON: Mr. Hearing Examiner, I offer Mr. 24 Benson as an expert real estate appraiser and I proffer him 25 as having expertise in appraising 17509 Park Mill Drive,</p>
<p style="text-align: right;">464</p> <p>1 in evaluating, as an appraiser, the effect of nearby land 2 uses on the value of say a residential property? 3 JIM BENSON: Absolutely. 4 ROBIN RICE: May I make an objection? 5 MARTIN GROSSMAN: Yes, you may. 6 ROBIN RICE: This case is not a land-use change. It's 7 a conditional use application. So his expertise in land-use 8 changes is not relevant. It's conditional- changes of 9 conditional uses. 10 MARTIN GROSSMAN: Well, I think it's a broad enough 11 category. It's land-use- condition of these is a form of 12 land-use. Is not a rezoning, but it's a form of land-use. 13 So I'll overrule the objection. 14 ROBIN RICE: Okay. 15 G. MASON NELSON: So what I'm driving at Mr. Benson, 16 I'm yet talking about the specific facts of this case, but 17 in your 30 years plus working as a real estate appraiser 18 predominantly in Montgomery County where you've performed 19 thousands of real estate appraisals, have you acquired 20 expertise in analyzing the effect, for example, a busy road 21 on the value of residential property? 22 JIM BENSON: Yes. 23 G. MASON NELSON: During those same 30 plus years, during 24 those same thousands of appraisals in Montgomery County, 25 have you acquired expertise in evaluating the effect, if</p>	<p style="text-align: right;">466</p> <p>1 which is Mr. Johnson's residence, and generally and 2 specifically to analyze the effect of the nearby Shady 3 Grove Road and the proposed daycare center at the subject 4 property next door immediately to the south and I offer him 5 for voir dire. 6 MARTIN GROSSMAN: Okay. Let me explain. This is a 7 process called voir dire. That is a process in which the 8 credentials of an expert to testify in a particular area 9 are examined to determine whether he in this case, it can 10 be a she, can be certified as an expert. An expert in the 11 law is not necessarily someone with a particular degree, 12 although, of course, it could add on to the expert's 13 credentials, but it's somebody who can offer testimony 14 beyond the ken of a layman that would assist the fact 15 finder in making a decision. So now this gentleman, Mr. 16 Benson, has been proffered as an expert real estate 17 appraiser to appraise, and I'm going to shorten your 18 suggestion; appraise the effect of the proposed daycare 19 center on the adjacent properties. Ms. Rice, do you have 20 any questions regarding this witness's credentials? Not the 21 substance of his testimony about the appraisal, but as to 22 his credentials as an expert. 23 ROBIN RICE: I have questions and objections that his 24 testimony as an expert is about residential property and 25 property being next to something that is rezoned</p>

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36 (467 to 470)

<p>467</p> <p>1 commercial. I haven't heard any testimony from him saying 2 he has any expertise, knowledge, or how many properties 3 he's evaluated that are next to a conditional use. 4 MARTIN GROSSMAN: All right. So I take it that is a 5 question. Have you evaluated the effects of a property- on 6 a property next to a proposed conditional use or special 7 exception which is the analogous term? 8 JIM BENSON: No. I mean, not in this scenario we are- 9 MARTIN GROSSMAN: Well, I'm going to say not in- 10 what's the scenario we are in? 11 JIM BENSON: Evaluating or doing an appraisal on a 12 home that has something that's coming up that is proposed 13 and extracting that value. 14 MARTIN GROSSMAN: All right. Do you have additional 15 questions? 16 ROBIN RICE: I just don't see how he can help if he's 17 got- 18 MARTIN GROSSMAN: No, no. 19 ROBIN RICE: Okay. 20 MARTIN GROSSMAN: I'm not- we're not arguing the issue 21 now. If you have any other questions regarding his 22 credentials as an expert, his ability to offer useful 23 testimony as an expert here. 24 ROBIN RICE: Do you have any knowledge about how many 25 conditional uses there are in Montgomery County?</p>	<p>469</p> <p>1 Specifically that that's a bad thing? 2 JIM BENSON: Specifically, I mean, of the numerous 3 appraisals that I've done, that would just go under a 4 commercial use. So I wouldn't specify it as being a daycare 5 center or a laundromat or anything. It would just be 6 subject is located next to a commercial use and go on from 7 there. 8 ROBIN RICE: When you say, next to a commercial use, 9 how do you identify that it is a commercial use? 10 JIM BENSON: Typically, there is signage. There's a 11 lot of ways to tell that a property next door is commercial 12 use. Just if it's got different characteristics with, like 13 a parking lot or a different kind of architecture, of 14 course. 15 ROBIN RICE: How do you determine a property is near a 16 commercial use? Do you look at the zones that is next to? 17 JIM BENSON: No. 18 ROBIN RICE: Where there is a residence (inaudible). 19 JIM BENSON: No. 20 G. MASON NELSON: (inaudible). 21 MARTIN GROSSMAN: It's a little far afield, but I'm— 22 G. MASON NELSON: (inaudible) qualifications. It seems 23 to me that this is not relevant to qualifications. That's 24 the base of my- 25 MARTIN GROSSMAN: Well, it is in the sense that she is</p>
<p>468</p> <p>1 G. MASON NELSON: Object to relevance to- 2 MARTIN GROSSMAN: Well, I think it's a legitimate 3 question. She is focusing in on the fact that this is an 4 application for a conditional use and she is suggesting 5 that this appraiser is not an expert in this area because 6 he hasn't looked at the question of the effect of a 7 conditional use. There is another question and let's see if 8 she has any other questions. Do you have a question? 9 ROBIN RICE: Do you have any idea of how many 10 childcare centers there are in the county? 11 JIM BENSON: No. 12 MARTIN GROSSMAN: I think that's irrelevant, but- 13 ROBIN RICE: Have you ever appraised a property near a 14 childcare center? 15 JIM BENSON: No. 16 ROBIN RICE: There's 460 childcare centers in this 17 County and you have never- have you ever noticed any of 18 them in the County when you're doing your appraisals? 19 JIM BENSON: Sure, but in the scope of my work, not- I 20 haven't had one adjacent to the property. 21 ROBIN RICE: Have you ever put, in any of your 22 thousands of real estate appraisals that could possibly be 23 near the 468 child care centers in the County, have you 24 ever written down that this property is worth less because 25 it's X number of miles away from a childcare center?</p>	<p>470</p> <p>1 making a distinction between the appraiser looking at 2 conditional uses and an appraiser looking at commercial 3 properties. So I've let her ask a couple of questions in 4 this area. Is there anything else? 5 JIM BENSON: Maybe to clarify; if I'm looking at a 6 house, I pull up and there is a Highs (phonetic) or 7/11 7 next door, immediately I see the- I mean, that's clear. I 8 pulled up. I saw- I think you have some signage in your- at 9 your house now. It's clear that there is a commercial 10 situation going on there. 11 MARTIN GROSSMAN: All right. Ms. Rice, anything else 12 of this witness regarding his qualifications as an expert? 13 ROBIN RICE: No. 14 MARTIN GROSSMAN: All right. Anybody else have any 15 questions regarding his qualifications at counsel table? 16 No? All right. Do you object to him testifying as an expert 17 appraiser as proffered by- as a real estate appraiser 18 appraising effects on- of the proposed daycare center as a 19 commercial use? 20 ROBIN RICE: I object because his information isn't 21 about a commercial- a conditional use. It's about 22 commercial property. 23 MARTIN GROSSMAN: I understand your objection. Mr. 24 Nelson, do you wish to respond to that? 25 G. MASON NELSON: I think the witness satisfies any</p>

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37 (471 to 474)

<p>471</p> <p>1 test for this hearing examiner permitting and offering an 2 expert testimony on real estate. The applicant is making a 3 distinction between his use of the phrase, commercial use, 4 and her application for a conditional use, but the reality 5 is, if this conditional use is approved, there will be a 6 commercial use. So I think it has nothing to do with his 7 qualifications and I would urge you to permit him to offer 8 his testimony and to accept his testimony. 9 MARTIN GROSSMAN: I- 10 ROBIN RICE: If I may say, since his testimony is that 11 he has never done one appraisal with a conditional use, he 12 can't be an expert for this type of an appraisal. 13 MARTIN GROSSMAN: I disagree. I think he is qualified 14 as an expert in real estate appraisals and certainly on the 15 impact of a commercial use on property values and I 16 understand the distinction you are making. If it is a 17 distinction that makes a difference, and I'm not sure that 18 it does, I'll hear his testimony and decide. I suspect that 19 it is- it's a matter that goes to the weight of his 20 testimony, not to his qualifications as an expert. So I 21 accept him as an expert in real estate appraisers and the 22 appraisal of the effects of the commercial property, in 23 this case, a daycare center on adjacent property values. 24 G. MASON NELSON: Thank you. Mr. Benson, did my client 25 Mr. Johnson, Thomas Johnson, engage you to analyze whether</p>	<p>473</p> <p>1 neighborhood right there and if you have comparable sales, 2 which are sales of other homes within the neighborhood to 3 match up with yours, that's the homes that you want to see 4 what the market is willing to pay for those homes. 5 G. MASON NELSON: May I interrupt just for a moment? 6 JIM BENSON: Yeah. 7 G. MASON NELSON: I have on the board, an aerial 8 photograph of an area that's greater than the Staff Defined 9 Neighborhood. My intention was to have a big enough 10 photograph that we could put on it the comparable sales 11 that appear in his report. I would like to mark that as an 12 exhibit now as I may. 13 MARTIN GROSSMAN: All right. 14 G. MASON NELSON: What number, sir? 15 MARTIN GROSSMAN: We are up to 124. 16 G. MASON NELSON: So on the easel now, is Exhibit 124, 17 which is a black-and-white blowup. It shows Midcounty 18 Highway in the lower left-hand corner. It shows Shady 19 Grove. It shows Park Mill Drive and on Park Mill, it has 20 three pins for the subject property, the Lloyd residence, 21 and the Johnson residence. Now, it has other identifying 22 (inaudible) which I will ask the witness about. May I use 23 your pointer, sir? 24 MARTIN GROSSMAN: Sure. 25 G. MASON NELSON: Now, you mentioned the word,</p>
<p>472</p> <p>1 the proposed daycare center adjacent to his residential 2 property, would have- would or would not have an adverse 3 effect on the value of his property? Was that the 4 engagement? 5 JIM BENSON: Within our conversation he hired me to do 6 the appraisal on his home with- and he explained to me what 7 was happening in the neighborhood next door and wanted to 8 know if there would be an impact on value. 9 G. MASON NELSON: All right, so and did you- 10 MARTIN GROSSMAN: And value of what? 11 JIM BENSON: Of his home. 12 MARTIN GROSSMAN: Okay. 13 G. MASON NELSON: All right. So did you undertake- did 14 you accept that assignment? 15 JIM BENSON: Yes. 16 G. MASON NELSON: Now, before we turn to the details 17 of this case, tell us- we are not appraisers. We are 18 citizens and lawyers. What are the basic steps that you go 19 through to answer that question? What's- just take us to 20 the basic steps. How do you go about doing it? 21 JIM BENSON: You want to- it really is, it's pretty 22 basic. You want to find- compare apples to apples. What's 23 been happening in the area. What's been happening in the 24 immediate neighborhood. And you want to, if you can, stay 25 in the immediate neighborhood. I'm looking at the</p>	<p>474</p> <p>1 appraise comparable sales. What does that mean sir, in your 2 line of work? 3 JIM BENSON: You're trying to find the most relevant 4 sales to compare to the subject property that you're 5 looking at that has similar characteristics 6 architecturally, style, design style, and really, probably 7 the most important there, is location. 8 G. MASON NELSON: All right. So let's start at 17405 9 Park Mill Drive. If that one of your comparables? 10 JIM BENSON: Yes, that's the comparable number one. 11 G. MASON NELSON: Okay. And why did you select that as 12 a comparable? 13 JIM BENSON: After I did the inspection of the home, 14 I- this home has two scenarios. It backs to Shady Grove 15 Road. 16 G. MASON NELSON: Let me stop a moment. So we are now 17 talking about Mr. Johnson's residence, right? 18 JIM BENSON: Right. 19 G. MASON NELSON: And that's 17509. I should have 20 started there; 17509 Park Mill Drive. You started there, 21 you look at Mr. Johnson's property. Is that right? 22 JIM BENSON: Right. That's the first step. 23 G. MASON NELSON: Okay. 24 JIM BENSON: I do my inspection of the home to see 25 what exactly I'm appraising.</p>

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<p>475</p> <p>1 G. MASON NELSON: All right. And what- in layman's 2 terms, in the terms of the work you perform, what was 3 relevant about what you saw at Mr. Johnson's house at 17509 4 Park Mill? 5 JIM BENSON: Definitely the adverse site influence of 6 Shady Grove Road in the back. 7 G. MASON NELSON: All right. Okay. So that's a busy 8 road nearby. That's an- that's a well-known adverse effect. 9 Is that right? 10 JIM BENSON: Yes. 11 G. MASON NELSON: Okay. Any other significant facts? 12 JIM BENSON: The house next door having that 13 commercial use and knowing of an expansion possibility is 14 another adverse. 15 G. MASON NELSON: All right. So what we have- when you 16 look, of course- you have a description of Mr. Johnson's 17 house: size and so on, right so you know all that. Then you 18 say it's next to a busy road. 19 JIM BENSON: Right. 20 G. MASON NELSON: And it's next to a proposed 21 commercial use, and expansion of daycare center. Is that 22 right? 23 ROBIN RICE: Objection. It's next to a proposed 24 conditional use. 25 MARTIN GROSSMAN: Well, technically, that's correct.</p>	<p>477</p> <p>1 So you start with the location and- 2 G. MASON NELSON: But it's close. That's good, right? 3 JIM BENSON: Right. It's close. It's on the same 4 street and it also has that adverse site influence in the 5 back of a busy road. I believe that's Midcounty Highway 6 G. MASON NELSON: Midcounty Highway, okay. So that 7 respect it's a good comparison because nearby 8 geographically. 9 JIM BENSON: Right. 10 G. MASON NELSON: And it abuts to- it does not but, 11 but it's close to a busy road, Midcounty Highway. 12 JIM BENSON: Right. 13 G. MASON NELSON: Is there a commercial use next to it 14 or a commercial use proposed to be built next to it? 15 JIM BENSON: No. 16 G. MASON NELSON: All right. So- 17 ROBIN RICE: Objection. There is one on the other side 18 of Midcounty Road. 19 MARTIN GROSSMAN: You're not the witness and so you 20 can- 21 ROBIN RICE: Objection. Facts not in evidence. 22 MARTIN GROSSMAN: Well, he is testifying and you may 23 disagree with him and it may be contrary to the facts, but 24 he can answer whatever answers. 25 ROBIN RICE: Okay.</p>
<p>476</p> <p>1 There is currently a limited use there and the proposal is 2 for conditional use. 3 G. MASON NELSON: Okay. I said a proposed expansion of 4 a daycare center. I think we are saying the same thing. 5 MARTIN GROSSMAN: I think your meaning the same thing. 6 I'm not sure of the exact words, but it's sufficient that 7 everybody understands. 8 G. MASON NELSON: Okay. So now that our baseline. So 9 now our goal is to figure out whether this daycare- 10 expansion of a daycare center will have an adverse effect 11 on Mr. Johnson's value. Is that right? That's the 12 assignment. Is that right? Say yes or no. 13 JIM BENSON: Yes. 14 G. MASON NELSON: Okay. So let's go to comparable one. 15 JIM BENSON: Okay. 16 G. MASON NELSON: 17405 Park Mill, why did you pick 17 that? 18 JIM BENSON: It's definitely important in this- it's 19 not an easy appraisal because you have to find recent and 20 relevant sales and they have to be recent as in not two or 21 three years ago. They have to be within the past year, 22 preferably within the past six months and relevant. They 23 have to be- they have to have similar characteristics and 24 the most important thing in real estate, if anybody's ever 25 taken a real estate class, is location, location, location.</p>	<p>478</p> <p>1 MARTIN GROSSMAN: You can cross examine him on the 2 point if you wish. 3 G. MASON NELSON: Okay. Now- 4 MARTIN GROSSMAN: So the objection is overruled. 5 G. MASON NELSON: Comparable number two, Mr. Benson, 6 is which address? 7 JIM BENSON: 7332 Muncaster Mill Road. 8 G. MASON NELSON: Okay. So 72- Mr. Grossman, 7232 is 9 at the top of Exhibit 124. 10 MARTIN GROSSMAN: That is a 7232? 11 JIM BENSON: 7332. 12 G. MASON NELSON: 7332 Muncaster, I beg your pardon, 13 Mill Road. So this residence is a little further away from 14 the Johnson residence than is 17405. What's significant 15 about this sale or this property? 16 JIM BENSON: That one is located on a busy street, a 17 busy road, Muncaster road. It also is facing a commercial 18 use. 19 G. MASON NELSON: Okay. And what's the commercial use? 20 JIM BENSON: It's a large church. 21 G. MASON NELSON: Okay. Now, what's your third 22 comparable? 23 JIM BENSON: Third comparable was on Miller Fall Road. 24 It's 7644 Miller Fall Road. 25 G. MASON NELSON: All right. That's a little bit to</p>

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<p>479</p> <p>1 the west.</p> <p>2 JIM BENSON: Right. And that one-</p> <p>3 G. MASON NELSON: Why did you select that as</p> <p>4 comparable?</p> <p>5 JIM BENSON: I like it in a lot of ways that it is</p> <p>6 similar to the subject in design, split-level. The only-</p> <p>7 the major-major difference is it's on a quiet street and</p> <p>8 does not have any adverse site influence; next to</p> <p>9 commercial or a busy street behind.</p> <p>10 ROBIN RICE: I'd like to make an objection of the use</p> <p>11 of adverse regarding my property and my use. It's a</p> <p>12 conditional use for children. There's no facts in evidence</p> <p>13 that having a daycare available in the neighborhood is an</p> <p>14 adverse effect in the first place.</p> <p>15 MARTIN GROSSMAN: Overruled. He's not talking about</p> <p>16 your place right now. He's saying that this other property</p> <p>17 that he's describing as a comparable, does not have any</p> <p>18 other- this not have an adverse situation. So I overrule</p> <p>19 your objection.</p> <p>20 G. MASON NELSON: Okay. Now Mr. Benson, I should've</p> <p>21 asked you so on the dates for the sales for comparables</p> <p>22 one, two, and three are what? Do you have that in your</p> <p>23 record?</p> <p>24 JIM BENSON: Yeah.</p> <p>25 G. MASON NELSON: Let's start with 17405. When was</p>	<p>481</p> <p>1 G. MASON NELSON: That's the Muncaster Mill Road</p> <p>2 (inaudible).</p> <p>3 JIM BENSON: Muncaster Mill Road and a church.</p> <p>4 G. MASON NELSON: All right.</p> <p>5 JIM BENSON: And one doesn't have any and one has just</p> <p>6 one adverse site influence, the busy street in the back.</p> <p>7 G. MASON NELSON: All right. So one doesn't have any,</p> <p>8 7640 Mill Fall.</p> <p>9 JIM BENSON: Right.</p> <p>10 G. MASON NELSON: And the one that has one is 17405</p> <p>11 Park Mill.</p> <p>12 JIM BENSON: Right.</p> <p>13 G. MASON NELSON: All right. Go ahead.</p> <p>14 JIM BENSON: The whole idea with an appraisal is</p> <p>15 trying to extract how much value that adverse site</p> <p>16 influence has on the property. And is it a negative</p> <p>17 \$200,000.00 adjustment? No. Is it \$100.00? No. We have to</p> <p>18 find out what the value is of that adverse site influence</p> <p>19 is and through field studies and numerous appraisals with</p> <p>20 similar scenarios, we determine what is reasonable. And</p> <p>21 whenever I'm doing an appraisal, that's, in my mind, I have</p> <p>22 to sleep at night and whatever is reasonable in my</p> <p>23 estimation is, after it's been extracted from the market, a</p> <p>24 legitimate value for that adverse site influence. So in</p> <p>25 this particular case, I came up with a negative \$15,000.00</p>
<p>480</p> <p>1 that sold?</p> <p>2 JIM BENSON: It sold in April of this year.</p> <p>3 G. MASON NELSON: 2017.</p> <p>4 JIM BENSON: Yeah.</p> <p>5 G. MASON NELSON: Comparable two, Muncaster 7332?</p> <p>6 JIM BENSON: November of '16.</p> <p>7 G. MASON NELSON: All right. And 76484 Miller Fall?</p> <p>8 JIM BENSON: December of '16.</p> <p>9 G. MASON NELSON: All right. All previous.</p> <p>10 JIM BENSON: I mean, the appraisal was done in May so</p> <p>11 they are all within the six months basically; seven months.</p> <p>12 G. MASON NELSON: Now, based on your experience as an</p> <p>13 appraiser, are you able to offer Mr. Grossman an opinion as</p> <p>14 to the current- the question now is the current value of</p> <p>15 Mr. Johnson's residence assuming there is a conditional use</p> <p>16 next door, the expansion of daycare center, versus a value</p> <p>17 if it wasn't next to the expanded daycare center. Do you</p> <p>18 understand the question?</p> <p>19 JIM BENSON: Yes.</p> <p>20 G. MASON NELSON: Okay. So what is your opinion?</p> <p>21 JIM BENSON: Well, I mean the use of these</p> <p>22 comparables, you have- we have one that has the same- and</p> <p>23 this is all my educated opinion. One has the same exact two</p> <p>24 adverse site influences. And I know you don't like using</p> <p>25 that word, but it is.</p>	<p>482</p> <p>1 adjustment.</p> <p>2 G. MASON NELSON: All right. So let me use layman's</p> <p>3 terms. Did I understand you say, Mr. Benson, that the</p> <p>4 existence of- assuming this expanded daycare center is</p> <p>5 approved next door to Mr. Johnson's residence, that will</p> <p>6 have an adverse effect on the value of his property to- in</p> <p>7 the amount of approximately \$15,000.00.</p> <p>8 JIM BENSON: Yes.</p> <p>9 G. MASON NELSON: Okay. And what is that value?</p> <p>10 JIM BENSON: It is the value of-</p> <p>11 G. MASON NELSON: How much was the number?</p> <p>12 JIM BENSON: What is the value?</p> <p>13 G. MASON NELSON: What number did you come up with as</p> <p>14 the value assuming the expanded daycare center next-door?</p> <p>15 JIM BENSON: What is the estimate of the value of his</p> <p>16 home?</p> <p>17 G. MASON NELSON: Yeah.</p> <p>18 JIM BENSON: \$364,000.00.</p> <p>19 G. MASON NELSON: Okay. And did I understand that to</p> <p>20 mean if there were no expanded daycare center next-door, it</p> <p>21 would be \$364,000.00 plus \$15,000.00?</p> <p>22 JIM BENSON: Yes.</p> <p>23 G. MASON NELSON: Okay. Mr. Grossman, I'm a little</p> <p>24 confused about this procedure in Montgomery County. I know</p> <p>25 that the appraisal is in the record. Do I mark a new copy</p>

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<p>483</p> <p>1 now?</p> <p>2 MARTIN GROSSMAN: No, I think it's already marked as</p> <p>3 Exhibit 69A I think it is. Let's see.</p> <p>4 G. MASON NELSON: All right. I would like to show the</p> <p>5 witness a copy of 69A so he can identify it as acceptable.</p> <p>6 Let me show you a copy of the appraisal and leaf through it</p> <p>7 and I'll ask you to identify it including the documents at</p> <p>8 the end and I will move it into evidence.</p> <p>9 JIM BENSON: Okay.</p> <p>10 MARTIN GROSSMAN: I take it, Mr. Nelson, it hasn't</p> <p>11 changed since you submitted it in your statement.</p> <p>12 G. MASON NELSON: (inaudible).</p> <p>13 MARTIN GROSSMAN: It is still the same as the one in</p> <p>14 69A. You have to- I couldn't hear your answer.</p> <p>15 G. MASON NELSON: Yeah, it should be identical.</p> <p>16 MARTIN GROSSMAN: Okay.</p> <p>17 G. MASON NELSON: The same (inaudible), but I just</p> <p>18 wanted to ask (inaudible).</p> <p>19 MARTIN GROSSMAN: Okay.</p> <p>20 JIM BENSON: Yeah, that's it.</p> <p>21 MARTIN GROSSMAN: I would like to move into evidence</p> <p>22 Mr. Benson's appraisal, Exhibit 69A. And I (inaudible) at</p> <p>23 the back of it, it includes his license and CV. It's</p> <p>24 attached to the same exhibit.</p> <p>25 ROBIN RICE: I have objections to the exhibit.</p>	<p>485</p> <p>1 adverse impact on the subject, that's Mr. Johnson's home,</p> <p>2 marketability. This adverse impact on the subject's market</p> <p>3 value was reflected in the sales comparison analysis. Does</p> <p>4 that accurately reflect your opinion?</p> <p>5 JIM BENSON: Yes, sir.</p> <p>6 MARTIN GROSSMAN: Okay. And then there was another</p> <p>7 comment I saw. Comments on cost approach. You said some</p> <p>8 additional loss in value in the form of external</p> <p>9 obsolescence due to the subject's location backing into a</p> <p>10 busy street. Additional loss in value due to the subject's</p> <p>11 immediate neighbor planning expansion of existing daycare</p> <p>12 center. Strong neighborhood opposition was evident on the</p> <p>13 day of the inspection with dozens of neighbors posting</p> <p>14 signs reflecting negative opinions on this proposed</p> <p>15 expansion. Is that also part of your analysis?</p> <p>16 JIM BENSON: Yes.</p> <p>17 MARTIN GROSSMAN: All right. Ms. Gregorski and Ms.</p> <p>18 Becker, do you have any questions at this witness was all</p> <p>19 right. Now, do you have cross-examination questions of the</p> <p>20 witness?</p> <p>21 ROBIN RICE: Objections to the report.</p> <p>22 MARTIN GROSSMAN: We're going to get to that. I'm</p> <p>23 letting you cross-examine the witness first and then you</p> <p>24 can take- based on all of that, we will take on the</p> <p>25 objections you have the report.</p>
<p>484</p> <p>1 MARTIN GROSSMAN: Right. We're going to wait until she</p> <p>2 does her cross-examination. In fact, usually we take</p> <p>3 motions to admit evidence at the end of these hearings, but</p> <p>4 we're certainly going to wait until after she has done her</p> <p>5 cross-examination before I act on that.</p> <p>6 G. MASON NELSON: I need to have a moment to speak my</p> <p>7 client (inaudible).</p> <p>8 MARTIN GROSSMAN: Sure.</p> <p>9 ROBIN RICE: So, do you want me to raise my objections</p> <p>10 or-</p> <p>11 MARTIN GROSSMAN: No, not yet. I would let you cross-</p> <p>12 examine the witness first if you wish to. And then you can</p> <p>13 voice your objections.</p> <p>14 G. MASON NELSON: That's all I have for this witness.</p> <p>15 MARTIN GROSSMAN: All right. Mr. Benson, I saw in</p> <p>16 Exhibit 69A, two comments from you. Subject is- on one page</p> <p>17 it's entitled, adverse site conditions and/or external</p> <p>18 factors. Subject is also located next door to a licensed</p> <p>19 daycare center that is currently in the process of applying</p> <p>20 for permission from the County to expand their facilities.</p> <p>21 Once approved, this expansion will increase the commercial</p> <p>22 facilities daily capacity with plans to expand their</p> <p>23 driveway and parking facilities and increase neighborhood</p> <p>24 commercial traffic on an existing neighborhood residential</p> <p>25 street. All of this expansion will have an additional</p>	<p>486</p> <p>1 ROBIN RICE: Okay.</p> <p>2 MARTIN GROSSMAN: You don't have to cross-examine him,</p> <p>3 but you may if you wish.</p> <p>4 ROBIN RICE: No, I want to. The comparable on</p> <p>5 Muncaster Mill, you selected that because- did you select</p> <p>6 that because it was near commercial property?</p> <p>7 JIM BENSON: Whenever we do an appraisal, we look at</p> <p>8 dozens of comparables. I probably pulled 30 or 40</p> <p>9 comparables and paired them down to what is most recent and</p> <p>10 relevant. The fact that it is a split level on a busy</p> <p>11 street, kind of- it's got a busy street in the front. He's</p> <p>12 got a busy street in the back so that was something that</p> <p>13 was the same; same style, same neighborhood. Then it also</p> <p>14 has the commercial across the street. So those two factors</p> <p>15 played heavily in my selection of that comparable.</p> <p>16 ROBIN RICE: Are you saying the busy street in the</p> <p>17 front of Muncaster Mill facing two churches and the Humane</p> <p>18 Society is comparable to a busy street in the backyard with</p> <p>19 a fence? There is no adjustment for the front yard busy</p> <p>20 street versus a backyard busy street in your report?</p> <p>21 JIM BENSON: No.</p> <p>22 ROBIN RICE: No?</p> <p>23 JIM BENSON: They are both bad. I mean, I don't want</p> <p>24 to sit down on Mr. Johnson's deck if there is a constant</p> <p>25 traffic audibility. Front, same thing. You have- getting in</p>

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<p style="text-align: right;">487</p> <p>1 and out of there is probably difficult. So in- I mean, it's 2 not a perfect comp. It doesn't have the exact same, but 3 comp one does have the exact same in the back. So you go 4 with what you have and those- that is and was the best 5 comparable I had. One of the best. 6 ROBIN RICE: With no adjustment for the severe 7 difference between the front and back? 8 MARTIN GROSSMAN: He's answered that question. 9 ROBIN RICE: Okay. You're saying that you evaluate 10 Tom's property at \$364,000.00. Is that if the conditional 11 use gets granted? 12 JIM BENSON: Yes. 13 ROBIN RICE: What is your appraisal of Tom's property 14 with the limited use of 12 children being in operation? 15 JIM BENSON: It would- I would take that \$15,000.00 16 and add it back because I wouldn't be subtracting it out in 17 the analysis. 18 ROBIN RICE: Okay. So you're saying that the 12 19 children has no effect in an adverse condition that affects 20 the price of the house, but 30 does? 21 JIM BENSON: I'm saying- yeah, basically. 22 ROBIN RICE: Okay. Can- if the Hearing Examiner were 23 granted 22 children instead of 30, what would the negative 24 property value be? \$15,000.00- still \$15,000.00 or less 25 than \$15,000.00?</p>	<p style="text-align: right;">489</p> <p>1 signage up front. 2 ROBIN RICE: Okay. 3 JIM BENSON: So I knew which one I was looking at. 4 ROBIN RICE: So to, once again- 5 MARTIN GROSSMAN: I think he has basically answered. 6 He has said that- you want to say what the financial impact 7 would be if you had only 22 children versus the 30 you 8 asked for. He essentially answered that he didn't slice the 9 salami quite that finally. Is difficult but an exact figure 10 on it. But he did testify as to what is the proposal, which 11 is 30 children. He said that having a 30 child daycare 12 center next door would reduce property value by, in his 13 estimate, approximately \$15,000. I think that's been asked 14 and answered. 15 ROBIN RICE: All right. When you did your appraisal, 16 did you notice that Tom is operating a roofing business out 17 of his property? 18 MARTIN GROSSMAN: That's Tom Johnson- 19 ROBIN RICE: Yes, sir. 20 MARTIN GROSSMAN: Next-door neighbor whose house is- 21 ROBIN RICE: Whose house is being appraised. 22 JIM BENSON: As in customers and- 23 ROBIN RICE: No. My question is, did you notice when 24 you did the appraiser, that Tom Johnson operates a 25 commercial business, roofing company, at his property?</p>
<p style="text-align: right;">488</p> <p>1 JIM BENSON: It's not- it's just not an ideal 2 situation for any residential property to be located next 3 to a commercial property. It's just not. So finding out 4 that exact number and value is difficult. I found it 5 difficult, but it's also- and it wouldn't be- you can't 6 break it down. Okay, instead of- I don't know. Your number 7 is 30 to 22 or whatever. 8 ROBIN RICE: There is- what you're saying has 12 has 9 no adverse effect financially with a dollar sign and that 10 30 is \$15,000.00. So I'm asking you, 22, what is the 11 economic adverse effect? 12 JIM BENSON: Well, from one- 13 ROBIN RICE: In a dollar figure. 14 JIM BENSON: And I saw when I was- observed, I mean, 15 your house, I don't know if you live there, but it was a 16 minor change. I think I saw a sign. I saw the, whatever we 17 would call it, the big sign that said when the hearing was 18 going to be. And of course, I saw all of the signs on the 19 street. 20 ROBIN RICE: So the sign is the adverse effect? 21 JIM BENSON: No, but I saw- I mean, I noticed it 22 because when we do an appraisal, we notice what the 23 neighbors look like across the street, next door, on either 24 side, what is going on next door. And I clearly saw it. I 25 forget what your company is called, but it clearly had</p>	<p style="text-align: right;">490</p> <p>1 It's- 2 MARTIN GROSSMAN: All right. And me make sure I 3 understand your question. You say operates at, do you mean 4 he does administrative things regarding it and maybe he 5 parks his truck there, but you're not suggesting that he 6 actually does the construction at his property. 7 ROBIN RICE: He has his vehicles at his property. He 8 has his equipment at his property. He has vehicle traffic 9 going back and forth with materials, et cetera. He's got 10 three trucks, a trailer, ladders all over the place. It is 11 a business operation. 12 MARTIN GROSSMAN: I understand that. I'm just saying 13 that you're not saying that he does the actual work at his 14 property. 15 ROBIN RICE: No, he does other people's roofs. 16 MARTIN GROSSMAN: He has the equipment and trucks that 17 he parks there occasionally. 18 ROBIN RICE: Yes. 19 JIM BENSON: I knew he was a roofer. That's because he 20 told me. Beyond that, I mean, I don't know that he was 21 conducting business out of his property. The scope of my 22 work was to look at his house and find out, from the 23 neighborhood activity and what's going on next door, at 24 your house, what impact that would have if it got expanded. 25 So it wasn't something I was looking at or aware of</p>

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42 (491 to 494)

<p style="text-align: right;">491</p> <p>1 ROBIN RICE: Okay. You are saying I'm devaluing his 2 property by \$15,000.00 if I get the conditional use 3 approved, but the limited use is okay. What I'm trying to 4 find out is how much is Tom's business use of his property 5 with the vehicles and the parking and the ladders and the 6 material; what is the financial adverse effect of his 7 business to my property. 8 G. MASON NELSON: Relevance. 9 JIM BENSON: I didn't do that valuation. 10 MARTIN GROSSMAN: I'm sorry. Did you say something Mr. 11 nothing? 12 G. MASON NELSON: Yeah, if this were 9:00 in the 13 morning, I probably wouldn't object, but since it's 2:00 in 14 the afternoon and we haven't had lunch, object to 15 relevance. My threshold is getting lower. 16 MARTIN GROSSMAN: Yes, that is not the question. I 17 understand why you ask it, but it's not really the relevant 18 question because presumably, he is not here to appraise the 19 impact of other people on your property. He is here to 20 appraise the impact of your proposed expansion on others 21 and presumably, if Mr. Johnson were to move, those things 22 wouldn't exist anymore on his property. So I don't think- I 23 don't see how this- how your question gets to a relevant 24 issue. 25 ROBIN RICE: Part of his testimony is that I'm</p>	<p style="text-align: right;">493</p> <p>1 is isn't for sale. 2 MARTIN GROSSMAN: But your other point might be more 3 salient, and that is the question of, if there is another 4 commercial venture actually operating in the area, has the 5 residential quality already been diminished. That's a 6 separate issue, but it didn't go to your question. Okay. Do 7 you have another question? 8 ROBIN RICE: Okay. How did you determine the square 9 footage of Tom's house? 10 JIM BENSON: A tape measure. 11 ROBIN RICE: A tape measure. Okay. Is that in the 12 evidence? Your calculations, et cetera? 13 MARTIN GROSSMAN: Does it have to be? 14 ROBIN RICE: Square footage- the value of the house is 15 greatly determined on an accurate square footage. 16 MARTIN GROSSMAN: I know, but does his appraisal have 17 to say, I used a tape measure? 18 JIM BENSON: I've got- 19 MARTIN GROSSMAN: Why is (inaudible). 20 JIM BENSON: I know I have- I brought an abbreviated 21 version with me; the parts that I thought would be 22 important to today. But I think I'm 99- well, I know I saw 23 my sketch. So if I made a sketch, which I did, I measured 24 the house with a tape measure and took all the dimensions 25 and calculated them</p>
<p style="text-align: right;">492</p> <p>1 changing residential to commercial. 2 MARTIN GROSSMAN: Right. 3 ROBIN RICE: My statement is that the business use of 4 Mr. Johnson is a commercial use for his business. 5 MARTIN GROSSMAN: Right. 6 ROBIN RICE: He doesn't have a separate place. That's 7 his business. 8 MARTIN GROSSMAN: Well, you could argue that's- I 9 could see you arguing that, but that's not what your 10 question was. 11 ROBIN RICE: My question is what- 12 MARTIN GROSSMAN: The question was (inaudible) 13 commercial impact of his property on you. That's not really 14 the issue. 15 ROBIN RICE: Or, okay. What is the commercial 16 devaluation of his own property on his property because he 17 is operating a business out of his like I'm operating a 18 business out of mine. 19 MARTIN GROSSMAN: But that goes to the point I made 20 that his own operation wouldn't necessarily devalue his 21 property for sale because once he moves, he sells it, it's 22 not going on anymore. The next-door neighbors still there 23 with whatever uses on the next-door neighbor's property. So 24 that's why it's not relevant here to that point. 25 ROBIN RICE: Well, mine is not for sale. The business</p>	<p style="text-align: right;">494</p> <p>1 ROBIN RICE: Okay, but the report doesn't have the 2 calculations on it so I can check to see if you are 3 correct. 4 MARTIN GROSSMAN: Well, he is not required to put in 5 there, in the report, his calculations. You can challenge 6 it if you have a different figure with your own evidence, 7 but- 8 JIM BENSON: I can certainly provide calculations at a 9 later time or we can do them right now if I look at my 10 sketch, but I didn't bring my sketch. 11 MARTIN GROSSMAN: I don't think that's necessary. 12 ROBIN RICE: Do you use the property tax evaluations 13 as- to determine square footage? 14 JIM BENSON: Do I? 15 ROBIN RICE: Do you ever look at the SDAT? 16 JIM BENSON: Oh, yeah. I look at the SDAT on pretty 17 much every property. 18 ROBIN RICE: Okay. What is the SDAT figure for Tom's 19 house as far as square footage is concerned. 20 JIM BENSON: I don't have it with me, but I know split 21 levels in Montgomery County tax assessor's, they have a 22 hard time with split levels because typically, you will 23 have some assessors calling three levels above grade and 24 some assessors will go two levels above grade and you have 25 to- I mean, I wouldn't just go with the SDAT on any</p>

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43 (495 to 498)

<p>495</p> <p>1 property I appraise. I run my tape measure. I measure each 2 dimension and then I calculate it. So I don't know what the 3 SDAT has to or- 4 ROBIN RICE: The SDAT for Tom's house, I saw is 1750. 5 Yours is 1778. It's- 6 JIM BENSON: No, mine's 1750. 7 ROBIN RICE: I'm sorry. Then the SDAT is 1778. 8 JIM BENSON: They probably measured wrong. 9 ROBIN RICE: Okay. 10 MARTIN GROSSMAN: And if they did, what would be the 11 impact at all of that if that small difference. 12 ROBIN RICE: I think it's \$3000.00 or \$4000.00. 13 JIM BENSON: No. 14 ROBIN RICE: Twenty-eight square feet. 15 JIM BENSON: Twenty-eight square feet, it's not any 16 difference. 17 MARTIN GROSSMAN: Well, he's answered the question. 18 ROBIN RICE: Okay. Tom's SDAT value is \$303,700.00. 19 Your appraisal is \$364,000.00. This is 120 percent of the 20 SDAT value. This value is because the current business use 21 of my property- oh, okay. So it's 120 percent of the SDAT 22 value. The other properties are selling for more than the 23 120 percent. His is the lowest property value in the 24 neighborhood as far as SDAT is concerned. His is only 25 \$303,000.00.</p>	<p>497</p> <p>1 your question? Just ask the question. 2 ROBIN RICE: Did you notice the difference in square 3 foot value according to the SDAT value that Miller Fall is 4 the highest and Tom's is the lowest? 5 JIM BENSON: I'm aware of assessment ratios and their 6 relevance, but his lot is 15,000 square foot and that lot 7 is 15,076 square feet. That is so not relevant to anything 8 worth adjusting. I don't care what the assessor has as far 9 as what they've valued it at. It's not my problem. My 10 problem was to estimate his value based on comparables. If 11 that third comparable or if any other comparable was double 12 in size, lot size, there would be an adjustment there, but 13 these lot sizes are almost identical. 14 MARTIN GROSSMAN: Okay. Any other questions? 15 ROBIN RICE: You stated in your report after a high 16 rate of foreclosures and short sales in the latter 2000s, 17 the markets changed. I started looking- 18 MARTIN GROSSMAN: Don't tell us what you started 19 looking. 20 ROBIN RICE: Yeah. Did you know that my property was a 21 foreclosure before I bought it? 22 JIM BENSON: No. 23 ROBIN RICE: If my property was still a foreclosure, 24 what would the devaluation be of the property in- 25 MARTIN GROSSMAN: Why is that relevant? We are not</p>
<p>496</p> <p>1 MARTIN GROSSMAN: Well, you can't testify here. 2 ROBIN RICE: Okay. 3 MARTIN GROSSMAN: You can just ask a question. And 4 you're not suggesting that SDAT house assessments are the 5 equivalent of an appraised value are you? 6 ROBIN RICE: No, but- 7 MARTIN GROSSMAN: If you relied on- 8 ROBIN RICE: I used to have my real estate license. 9 Looking at the SDAT is a good- and figuring out the 10 percentage of that property versus your property is 11 another- is just another tool for an estimate on what to 12 list a house for. If you want to list it as the fair market 13 value or if you want to underlist the value to make 14 (inaudible). 15 MARTIN GROSSMAN: Do you have another question? 16 ROBIN RICE: The three comparable properties you chose 17 to do in your appraisal are 17405 Mill Road with a 15,000 18 lot size and a SDAT value of \$188,700.00. Muncaster Mill 19 has a SDAT value of \$199,400.00. And Miller Fall Road has a 20 SDAT value of \$210,000.00. Tom's lot size has a SDAT value 21 of \$188,700.00. If you divide the SDAT value by- 22 MARTIN GROSSMAN: You are really testifying I tried 23 to let you get- 24 ROBIN RICE: All right. 25 MARTIN GROSSMAN: (inaudible) a question, but what's</p>	<p>498</p> <p>1 talking about the value of your property. 2 ROBIN RICE: He's talking about my proposed condition 3 devaluing Tom's property. 4 MARTIN GROSSMAN: Right. 5 ROBIN RICE: I would like to know how- if I had not 6 purchased the property and it was still a foreclosure, if 7 Tom's property value would have also been decreased for 8 that reason. 9 G. MASON NELSON: Object to relevance. 10 MARTIN GROSSMAN: I understand that and I just don't 11 think it's really relevant to the- the situation we have to 12 evaluate is the one that exists today. So the fact that it 13 might have had other adverse impacts before you bought the 14 property and did whatever you did on it, is a different 15 question. Right now, we're dealing with the question of, 16 will your proposed conditional use, if approved, have an 17 adverse impact on property values around it. That's the 18 question. So let's stick to that question. (inaudible). 19 ROBIN RICE: What other adverse effects can devalue a 20 property, like foreclosures and accessory apartments and 21 swimming pools? 22 JIM BENSON: Well, on the foreclosure line, of course 23 a vacant house, typically a foreclosure is vacant and it's 24 been- it's distressed and that it's been abandoned and 25 probably abused because someone doesn't have pride of</p>

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44 (499 to 502)

<p>499</p> <p>1 ownership anymore when they're getting foreclosed on and 2 then the grass doesn't get cut and it starts to- it 3 certainly would have an adverse impact on neighboring 4 homes. I'm not sure-</p> <p>5 ROBIN RICE: Can you give me a dollar figure on-</p> <p>6 MARTIN GROSSMAN: What's the point? Once again, the 7 question is not what other things could have an impact on 8 the neighborhood. The question is, what impact will your 9 proposal have. Let's stick to that. If you have any 10 relevant questions to that, please feel free to ask. I've 11 given you a lot of latitude, Ms. Rice.</p> <p>12 ROBIN RICE: I realize that. You stated in your report 13 that strong neighborhood opposition was evident on the day 14 of the inspection, with dozens of neighbors posting signs 15 with negative opinions on the proposed expansion. Are you 16 saying that the opposition signs that were put in the 17 neighborhood by my neighbors have a negative impact on 18 property values?</p> <p>19 JIM BENSON: The signs? I would think the signs 20 alerted a potential buyer in your neighborhood that 21 something is going on and I need to do more investigations 22 to find out what is going to happen. And if that occurs, 23 how would that affect the house that I'm about to buy in 24 the neighborhood. That's as a- and that's what a buyer 25 would do his due diligence and say, what's going on with</p>	<p>501</p> <p>1 over is negative- no impact or half impact?</p> <p>2 JIM BENSON: I would say the further you get away from 3 your house, the more your house is worth and if you are 4 right next door, that's about as close as you can get.</p> <p>5 ROBIN RICE: And if you- and that's the same for any 6 conditional use; the further away you are from it or the 7 closer you are from it, the adverse effect and financial 8 differences different.</p> <p>9 JIM BENSON: Yeah, any adverse- the further you get 10 away from the adverse effect or adverse use, the better off 11 your going to be.</p> <p>12 ROBIN RICE: Would you say someone who is in need of 13 childcare would not look at a childcare business being 14 next-door as an adverse effect?</p> <p>15 MARTIN GROSSMAN: That's- I'm not going to allow that. 16 And he is not an expert in what people who need childcare- 17 I just don't think that's a relevant question.</p> <p>18 ROBIN RICE: On Page 3 of your report, you stated in 19 part, some additional analysis was given to a home that was 20 listed on the septic Street at 17524 Park Mill Drive. This 21 home is located in close proximity to the proposed expanded 22 daycare facility. When looking at other homes that have 23 sold within the subject subdivision, this listed for an 24 average of \$27,000.00 less than seven other homes of 25 similar model and style. This is a direct reflection on the</p>
<p>500</p> <p>1 all the signs. Adverse- I mean, the adverse impact would 2 be- they would- it would raise questions in a buyer's mind.</p> <p>3 ROBIN RICE: Would it devalue properties that were for 4 sale when those signs were up?</p> <p>5 JIM BENSON: Yeah, it must definitely word because the 6 signs are up for a reason. And what's the reason? The 7 reason is there is something going on in the neighborhood 8 that the whole neighborhood doesn't like or a lot of the 9 neighborhood does not like. And that will have an impact on 10 somebody trying to sell their house. It will have an impact 11 on a buyer driving down the street with their realtor 12 wondering what's going on with all the signs. And then what 13 they're told what's going on with the signs, that would 14 have an adverse impact on property values, for sure. It's 15 common sense. If there is something not homogenous with the 16 neighborhood going on, it will have an adverse impact. It 17 just- that's just, it's common sense.</p> <p>18 MARTIN GROSSMAN: All right. Any other questions?</p> <p>19 ROBIN RICE: You're saying Tom's property is worth 20 \$15,000.00 less because it's beside mine. If it was one 21 house further, what with the difference be in the property 22 value?</p> <p>23 JIM BENSON: I didn't do an appraisal one house 24 further. I did it immediately adjacent. So-</p> <p>25 ROBIN RICE: As an expert, which is a that one house</p>	<p>502</p> <p>1 adverse influence of the proposed expansion daycare 2 facility on the street as to other homes in the 3 neighborhood. I couldn't find any documentation in your 4 report regarding these other seven houses. I didn't even 5 see an address of any of the houses. Can you show me where 6 the information is in your report?</p> <p>7 JIM BENSON: It's in my work file. I do not have it in 8 the report. I actually, for my reference, and you're 9 welcome to have this, pulled a- eight colonials that 10 recently sold in Mill Creek Towne. And that one on Park 11 Mill looks like it sold for the least out of all of them. 12 And I think I have one that was listed as high as 13 \$475,000.00, and that was listed for \$425,000.00.</p> <p>14 ROBIN RICE: In preparation for this hearing, did you 15 take a look to see if that property had sold?</p> <p>16 JIM BENSON: Yeah, I did.</p> <p>17 ROBIN RICE: And it was list- so your list price was 18 \$425,000.00?</p> <p>19 JIM BENSON: Right.</p> <p>20 ROBIN RICE: What did it sell for?</p> <p>21 JIM BENSON: Well, they did the old, build in the 22 closing costs routine, and they sold it for-</p> <p>23 ROBIN RICE: What did it sell for?</p> <p>24 JIM BENSON: It sold for \$432,000.00 with \$13,000.00 25 in closing help. That's a \$419,000.00 net.</p>

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45 (503 to 506)

<p>503</p> <p>1 ROBIN RICE: I'm not talking that; I'm talking the 2 list versus the sell price of the property. Did you, in 3 preparation for this hearing, see any other listings in the 4 area? 5 JIM BENSON: No. 6 ROBIN RICE: 17521 Park Mill Drive- 7 MARTIN GROSSMAN: No, ma'am. You can't testify. 8 ROBIN RICE: Okay. Okay. That will do it. Thank you, 9 sir. 10 JIM BENSON: Okay. Thank you. 11 MARTIN GROSSMAN: On one second Mr. Benson. Do you 12 still have an objection to his appraisal report coming into 13 evidence (inaudible). 14 ROBIN RICE: Yeah, it's outside the neighborhood. 15 It's- the street is nowhere close to being- 16 MARTIN GROSSMAN: No, the appraisal. 17 ROBIN RICE: Yeah. 18 MARTIN GROSSMAN: The overall appraisal report. 19 ROBIN RICE: Yeah, it's irrelevant to- it's the- 20 MARTIN GROSSMAN: When you say it's outside the- 21 report is not- 22 ROBIN RICE: It's outside the Staff- he took one 23 property that sold for like this much more than the SDAT, 24 okay. Meaning deplorable condition. Why didn't we get 25 multiple houses on that street at that particular street is</p>	<p>505</p> <p>1 that we broke for lunch. I'm sorry to have kept you all so 2 long. It's five after 2:00. I guess that's come back at 3 2:45. And there's a cafeteria downstairs on the second 4 floor. Hopefully, there is something left. 2:45 because 5 we're going to finish today. 6 (Off the record.) 7 MARTIN GROSSMAN: So all right. Are we ready to 8 resume? We are? Ms. Rice, are you ready? 9 ROBIN RICE: Yes I'm ready. 10 MARTIN GROSSMAN: Ms. Rice? Are you ready? Okay. Let's 11 come to order here, resuming hearing. Mr. Nelson, how many 12 opposition witnesses do you anticipate? 13 G. MASON NELSON: Well, there are nine witnesses. I've 14 met with them during the lunch break. 15 MARTIN GROSSMAN: Okay. 16 G. MASON NELSON: And normally we do a direct form 17 examination, and I've told them they're going to be sworn 18 in. They're going to identify their residence on the aerial 19 photograph. 20 MARTIN GROSSMAN: Okay. 21 G. MASON NELSON: And the hope is that we can do it 22 very efficiently. 23 MARTIN GROSSMAN: Sure. 24 G. MASON NELSON: All right. 25 MARTIN GROSSMAN: All right.</p>
<p>504</p> <p>1 a comparable? It's not. 2 MARTIN GROSSMAN: Well, doesn't that go to the weight 3 to be given? I mean, you disagree with his conclusions or 4 challenge what he used as comparables, but doesn't that go 5 to the weight to be given, not to its admissibility? 6 ROBIN RICE: It's- it can't be admissible because it's 7 not the same. Mine is conditional. His is commercial. If he 8 is going to look at properties that are near an existing 9 commercial use, use the Mill Creek Towne Swim Club. That's 10 just a- you know, this far away from the intersection. 11 MARTIN GROSSMAN: That's- the swim club is across- is 12 not a residential property and is across- 13 ROBIN RICE: No, it's a conditional use. It's 14 commercial. 15 MARTIN GROSSMAN: It's across the road. In any event, 16 you object. I've heard your basis and I overrule the 17 objection and that appraisal report will come into evidence 18 and your points that you raised go to the weight to be 19 given to the report, not to its admissibility. Okay. All 20 right. Thank you, Mr. Benson. 21 G. MASON NELSON: May the witness be excused? 22 MARTIN GROSSMAN: The witness may be excused. 23 G. MASON NELSON: Mr. Benson, thank you very much for- 24 JIM BENSON: Thank you. 25 MARTIN GROSSMAN: All right. I think it's fair time</p>	<p>506</p> <p>1 G. MASON NELSON: So I just realized that the- I have 2 a larger aerial photograph which (inaudible) I have copies. 3 Ms. Rice, this is a larger area and I'd like to mark that 4 as- 5 MARTIN GROSSMAN: One-twenty five; aerial photo. 6 G. MASON NELSON: All right. Okay. 7 MARTIN GROSSMAN: Oh, this is not the same as- 8 G. MASON NELSON: No. So 122 which is the Park 9 Mill/Mill Run area. 10 MARTIN GROSSMAN: Right. 11 G. MASON NELSON: This is a higher elevation. 12 MARTIN GROSSMAN: Okay. 13 G. MASON NELSON: And includes a greater area. So why 14 don't we start with Tom Johnson. 15 MARTIN GROSSMAN: All right. Mr. Johnson. Come on up 16 and if you would be so kind as to have a seat up here, 17 there's one seat that's got a red light for its microphone 18 and that's the one that you should take. You see there's 19 one with a red light on? 20 TOM JOHNSON: I see green. Oh here we go. This one. 21 Testing. 22 MARTIN GROSSMAN: Ah. Came across 5x5. 23 TOM JOHNSON: Can you hear that Steve? 24 MARTIN GROSSMAN: All right. Mr. Johnson, would you 25 state your full name and address please?</p>

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46 (507 to 510)

<p>507</p> <p>1 TOM JOHNSON: Okay. I'm Tom Johnson. I live at 17509 2 Park Mill Drive. I'm directly next door to the applicant. 3 MARTIN GROSSMAN: In Derwood, Maryland? 4 TOM JOHNSON: In Derwood, yes. 5 MARTIN GROSSMAN: All right. Would you raise your 6 right hand please? Do you swear or affirm to tell the 7 truth, the whole truth, and nothing but the truth under 8 penalty of perjury? 9 TOM JOHNSON: I do. 10 MARTIN GROSSMAN: All right. You may proceed. 11 G. MASON NELSON: Mr. Johnson, I'm not going to ask 12 you a series of questions except to say this is your 13 opportunity to communicate with the Hearing Examiner your 14 thoughts as to whether this application should be approved 15 or disapproved. So I will, unless Mr. Grossman you want me 16 to ask some specific questions, I'll just- 17 MARTIN GROSSMAN: I think we can let him do it in 18 narrative form. 19 G. MASON NELSON: Thank you. 20 TOM JOHNSON: Well, I thought it might be helpful to 21 provide you an outline of what I wanted to share. 22 MARTIN GROSSMAN: All right. 23 TOM JOHNSON: It may or may not be, but- 24 MARTIN GROSSMAN: Let me mark this as an exhibit, and 25 it will be 126. All right. An outline of Mr. Johnson's- of</p>	<p>509</p> <p>1 daycare would be received by the neighbors. And I told her 2 as long as it's kept small and discreet you'll probably be 3 okay. In other words, no signs, no new paving to the 4 natural appearance of the property. Then she told me she 5 wanted to have at least 12 kids, or else she would have to 6 sell the house. And I told her what's wrong with that? 7 You've made good money, so sell it and take your gains. And 8 it wasn't long after that that she changed the goal posts 9 and told me now she wanted 30 kids. And I told her, look, 10 you clearly see all the objections so why are you doing 11 this? Her answer, because I can. Now my second point is 12 that we have a- ours is a residential community and any 13 property that requires signs and new paving will be out of 14 place. It will be inconsistent with the neighborhood and it 15 will be an eyesore. Park and Planning duly noted that it 16 will look like a commercial property. It's not congruent 17 with our neighborhood. Third bullet point; it was- I wanted 18 to mention again about the adverse effect on our home 19 values. But I'm going to, since the appraiser already did 20 that I will only add one more comment and that is to have a 21 daycare center of that size would be like having a 22 McDonald's drive-in next door. And I don't think anyone 23 wants to buy a house next to a McDonald's drive-in. When I- 24 oh, when I expressed these concerns I was told, don't 25 worry. When the house is sold the conditional use permit</p>
<p>508</p> <p>1 Tom Johnson's testimony. 2 TOM JOHNSON: If I could start by just commenting on 3 some of the things that have already been said this 4 morning. A comment about the staff taking a bus. I believe 5 that's hypothetical. Also, the issue about the Shady Grove 6 fence belonging to the people in our community. I'm not so 7 sure about that. I've never seen that in writing. I do know 8 when a car ran through- ran off Shady Grove, landed in the 9 backyard of Cliffbourne Lane right next to the swimming 10 pool, the driver died, that fence was rebuilt by the 11 County. So I'm not saying either way whether it's owned by 12 us or the County, I just wanted to make that point. Oh. 13 Saying that my property is used as a commercial business is 14 100 percent false. My home is not a business. I do not even 15 claim a home office. I was even half tempted to bring my 16 1040s here as evidence that there's no claim. Also, as a 17 side note, I'm not even able to deduct attorney fees for 18 this case because my home generates no income, further 19 proof, my house is not a business. Now, to get on with what 20 I came here to share. Normally when a person starts a 21 business they get a feel for the neighborhood. They want to 22 get, they want to find out if it would be suitable or 23 compatible, and how people would feel about it. Well, Robin 24 did this after she bought the home. Where she came to me 25 and asked, trying to get a feel of how I thought this</p>	<p>510</p> <p>1 will be removed and it will revert back to residential. My 2 fourth bullet point- 3 G. MASON NELSON: You were told that? Who told you 4 that? 5 TOM JOHNSON: Robin. Fourth bullet point; daycares 6 seem to be everywhere. There are literally dozens within a 7 one to two mile radius. Some of us have read the hearings 8 from other applications and at all of them the Hearing 9 Board was told about this great need for daycares and how 10 they were all full because the demand is supposedly so 11 great. However, some residents from Mill Creek Towne took 12 it up on themselves to call some of these daycares and they 13 were not full. They do have vacancies. 14 MARTIN GROSSMAN: Okay. There is a problem and I 15 haven't heard an objection from Ms. Rice, but what you're 16 apparently trying to do, kind of through the back door, is 17 some hearsay as to whether or not there were vacancies or 18 not. Apparently somebody told you or others who called, 19 this might be even a double hearsay situation, that there 20 was a certain number of people or not number of people in a 21 daycare. That's really not fair grounds for testimony, so 22 I'm not going to let you testify as to what others have 23 said. 24 TOM JOHNSON: Okay. All right. I'll move on to the 25 next one. Let's see. The next one is, I think this has</p>

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47 (511 to 514)

<p>511</p> <p>1 already been stated before, but how our closest 2 intersection has been written about in neighborhood news 3 about it's a dangerous intersection. And that is, I have 4 that right here. 5 MARTIN GROSSMAN: What is neighborhood news? 6 TOM JOHNSON: It's called Next Door. It's a- kind of a 7 community listserve. 8 MARTIN GROSSMAN: All right. Let's mark this as 9 Exhibit 127. 10 TOM JOHNSON: Okay. 11 MARTIN GROSSMAN: Hold on one second, sir, if you 12 would. Let me jot this down. This is- it's called Crime and 13 Safety or is it? 14 TOM JOHNSON: Oh, it's under that category, under that 15 heading. 16 MARTIN GROSSMAN: So something from- it says 17 regarding- so you say it's a listserve. 18 TOM JOHNSON: Right. I called it a listserve. I- 19 MARTIN GROSSMAN: Middle Creek Towne and let me see 20 what- this is your- I take it you're seeking to introduce 21 this for this article that says dangerous intersection, 22 Park Mill and Mill Run? 23 TOM JOHNSON: Correct. 24 MARTIN GROSSMAN: Okay. 25 ROBIN RICE: (Inaudible)</p>	<p>513</p> <p>1 cars all at once. Robin, you can have your own copy. 2 MARTIN GROSSMAN: Okay. So, Mr. Johnson, let's see. 3 Let's call this Exhibit 128. 4 TOM JOHNSON: My point is that they can't do it with 5 only six to eight kids, that they have now how can they do 6 it with more? 7 MARTIN GROSSMAN: All right. So these are photos- did 8 you take these photos, sir? 9 TOM JOHNSON: Yes, sir. 10 MARTIN GROSSMAN: All right. And when did you take 11 them? 12 TOM JOHNSON: They are dated. 13 MARTIN GROSSMAN: Okay. Monday, 14 July, 4:45 p.m. 14 Here's one (inaudible) and this one's August 22, 4:55 p.m. 15 and then August 29 at 8:20 a.m. And let's see, 128 - 16 ROBIN RICE: I'm going to object (inaudible) 17 MARTIN GROSSMAN: Well, hold on one second while I 18 just jot down what they are; 128A is photo of- in 128A am I 19 looking at your driveway, her driveway, what am I looking 20 at? 21 TOM JOHNSON: The picture, the photo was taken from my 22 driveway and there are three cars there. All three are 23 parents coming to pick up kids. 24 MARTIN GROSSMAN: Okay. But that's in the afternoon, 25 and the car in the driveway that's also-</p>
<p>512</p> <p>1 MARTIN GROSSMAN: Sure. 2 TOM JOHNSON: Shall I continue or should I wait? 3 MARTIN GROSSMAN: Hold on one second while she has a 4 chance to read it. 5 ROBIN RICE: Shall I say an objection because it's 6 hearsay, Mark Custer who wrote it isn't here (inaudible) 7 here. 8 MARTIN GROSSMAN: Yes, you may object and let me take 9 a look at it for a second. Yes. I think once again there's 10 a legitimate hearsay objection to this. Hearsay is a 11 statement made outside of the hearing room which is offered 12 to prove the truth of the matter that's asserted therein. 13 So if the declarant is not here to be cross-examined and 14 you're seeking to introduce, which you apparently are, 15 about the danger of this intersection, that's a form of 16 hearsay. These kinds of proceedings allow a certain amount 17 of hearsay. I don't like to allow it in this kind of 18 situation where it's an issue in the case as opposed to 19 just some document confirming something. So I will grant 20 that objection. 21 TOM JOHNSON: Okay. One more point. Robin tells us 22 that the drop off and pick up times will be staggered in 23 order to alleviate congestion, but this isn't so. I have 24 photos that it's not happening. Here's three cars all at 25 once. Pictures of two cars all at once. Pictures of two</p>	<p>514</p> <p>1 TOM JOHNSON: That was a client. 2 MARTIN GROSSMAN: But that's yours, you're saying. 3 TOM JOHNSON: That was one of Robin's daycare people. 4 MARTIN GROSSMAN: Oh, I see. Okay. So that's- okay. 5 That's in her driveway. 6 TOM JOHNSON: Yes, sir. 7 MARTIN GROSSMAN: Okay. All right. So 128A is a photo 8 of applicant's drive- 9 TOM JOHNSON: I have plenty more pictures but I did 10 not want to bore you to death. 11 MARTIN GROSSMAN: Thank you. Applicant's drive and 12 front roadway with cars parked and that is on 7/14/17, at 13 4:45 p.m. B is essentially the same thing, from a different 14 angle, on a different date? Is that- 15 TOM JOHNSON: No, they're different times. 16 MARTIN GROSSMAN: Yeah. Different day, different time, 17 but it's essentially the same depicting and from a 18 different angle, but it's also showing cars that are using 19 the daycare. Is that correct? 20 TOM JOHNSON: Yeah. Two cars at the same time. 21 MARTIN GROSSMAN: And then one parked on the grass. 22 TOM JOHNSON: Yes. They're both from parents. 23 MARTIN GROSSMAN: Okay. This would be 8/22/17 at 4:55 24 p.m. and C, same thing again. 25 TOM JOHNSON: Same thing.</p>

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<p>515</p> <p>1 MARTIN GROSSMAN: (inaudible) just a different date 2 and time. 3 TOM JOHNSON: I tried to have a variety of morning and 4 afternoon. 5 MARTIN GROSSMAN: Okay. And that's 9:00, I'm sorry 6 8/29/17 at 8:20 a.m. Now, what's your objection, Ms. Rice? 7 ROBIN RICE: These are pictures of the limited 8 existing use, not the proposed use. 9 MARTIN GROSSMAN: Right. 10 ROBIN RICE: And if the proposed use gets granted I'll 11 have (inaudible) driveway (inaudible) 12 MARTIN GROSSMAN: Right. But- I don't know that this 13 makes this objectionable. As a picture it's showing what 14 the limited use is using now, and the house is occupied. I 15 don't see how it's objectionable. Taken with the note. 16 Obviously it's not with the conditional use because that 17 hasn't been granted. 18 ROBIN RICE: Right. That's just irrelevant because 19 it's not it's not the proposed parking plan. 20 MARTIN GROSSMAN: Well, I don't know if it's 21 irrelevant. You've introduced many pictures that are the 22 present and the past and they're all, you consider relevant 23 I presume. 24 ROBIN RICE: Okay. 25 MARTIN GROSSMAN: So, okay.</p>	<p>517</p> <p>1 the street. We have Laura who's across the street from me 2 who's mentally and physically handicapped, who actually 3 wanted to be here today. And we also have a little boy on 4 my side of the street who takes a special ed bus and he 5 plays on his scooter in the street in the afternoons. And 6 also Kathleen who's 99 years old walks in the street with 7 her walker. And this has never been addressed with how they 8 will handle these people. My eighth bullet point, neighbors 9 of existing daycares in residential neighborhoods tell 10 stories of having their driveways blocked by people 11 dropping off or picking up their kids. 12 MARTIN GROSSMAN: Once again, you have a hearsay 13 problem here about what somebody else says, if it's an 14 effort to prove that it's true, and that seems to be. So, 15 anyway I'm not going to let that. 16 TOM JOHNSON: I wanted to throw it out anyway. 17 MARTIN GROSSMAN: All right. And I threw it out. 18 TOM JOHNSON: Good one. I'd like to address noise. 19 Right now there are only six kids and they're much louder 20 than Shady Grove Road. Any of us could be standing along 21 any roadway and we can easily hear somebody screaming over 22 the traffic. Allow her more than six kids and multiply 23 those levels again. Now twice in one day I heard screaming 24 so loud and so unlike any normal type of screaming that I 25 ran out of my house. I was in the house and heard it. I ran</p>
<p>516</p> <p>1 G. MASON NELSON: What were the exhibit numbers? I 2 missed those. 3 MARTIN GROSSMAN: Yes, it's 128A, B and C and A is the 4 photo on 7/14/17 at 4:45 p.m.; B is the photo at 8/22/17 at 5 4:55 p.m.; and C is 8/29/17 at 8:20 a.m. Okay. 6 TOM JOHNSON: Okay. Next, my sixth bullet point. Robin 7 told the people that live uphill from her property that 8 they should go the other way. I see this as her admission 9 that traffic will be a problem and by also by telling 10 neighbors she will call the police on vehicles parked on 11 the street is even further admission that she visualizes 12 traffic being a problem. 13 ROBIN RICE: Object. Objection. I said the neighbors 14 can go the other way. (inaudible) procedure if people 15 object to a car being parked in the street is to call the 16 police. 17 MARTIN GROSSMAN: Well, you can cross examine. That's 18 not a basis for an objection so that's overruled. But would 19 you please have your seat while he's testifying. 20 ROBIN RICE: Sure. 21 MARTIN GROSSMAN: Unless he has a picture or 22 something. Thank you. 23 TOM JOHNSON: Next, something has never been- 24 something that has never been addressed is how she and her 25 clients will respond to the handicapped neighbors that use</p>	<p>518</p> <p>1 out of my house and- but I stopped because I felt like it 2 wouldn't do any good. I would just be told to mind my own 3 business. My tenth bullet point; Angela mentioned at the 4 last hearing, and I'm glad you're here Angela. 5 MARTIN GROSSMAN: Angela Pryor, for the record. 6 TOM JOHNSON: Yeah, Angela Pryor. Angela mentioned at 7 the last hearing that somebody complained about a tree limb 8 hanging in a tree in the back yard. Well, that person was 9 me. This is a picture of the tree limb- 10 MARTIN GROSSMAN: Let's mark it as an Exhibit. Thank 11 you. 12 TOM JOHNSON: -that I reported. 13 MARTIN GROSSMAN: Exhibit 129 and- 14 TOM JOHNSON: And the County did come out and inspect 15 it. The County gave it a pass. 16 MARTIN GROSSMAN: Hold on one second so I can 17 identify. This is a tree limb that you photographed? 18 TOM JOHNSON: Yes, sir. 19 MARTIN GROSSMAN: And this is in the applicant's 20 backyard? 21 TOM JOHNSON: Yes. 22 MARTIN GROSSMAN: It's not hanging over into your 23 yard, right? 24 TOM JOHNSON: No. 25 ROBIN RICE: Objection.</p>

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<p>519</p> <p>1 MARTIN GROSSMAN: Hold on one second.</p> <p>2 TOM JOHNSON: Hold on.</p> <p>3 MARTIN GROSSMAN: All right. So tree limb on the Rice</p> <p>4 property. And when was this photograph taken?</p> <p>5 TOM JOHNSON: It was maybe one week prior to the last</p> <p>6 hearing.</p> <p>7 MARTIN GROSSMAN: All right. So in late July-</p> <p>8 TOM JOHNSON: Yes.</p> <p>9 MARTIN GROSSMAN: Of 2017?</p> <p>10 TOM JOHNSON: Yes.</p> <p>11 MARTIN GROSSMAN: And does it accurately reflect the</p> <p>12 condition at that time?</p> <p>13 TOM JOHNSON: At that time, yes.</p> <p>14 MARTIN GROSSMAN: Okay. So what happened- but, I'm</p> <p>15 sorry. What's your objection Ms. Rice?</p> <p>16 ROBIN RICE: The tree limb was in Mr. Johnson's</p> <p>17 property. It was inspected by the State, not the County.</p> <p>18 MARTIN GROSSMAN: You say it- this is not in the</p> <p>19 property?</p> <p>20 TOM JOHNSON: Part of it hung in to my property.</p> <p>21 MARTIN GROSSMAN: I see. So you're saying that it was</p> <p>22 a tree limb that was in part on Ms. Rice's property and</p> <p>23 part on your property?</p> <p>24 TOM JOHNSON: Yes. But it was in her tree.</p> <p>25 MARTIN GROSSMAN: It was in her tree. Okay.</p>	<p>521</p> <p>1 TOM JOHNSON: Okay. In that same letter to the State I</p> <p>2 also told them about rodents that run between the</p> <p>3 properties. I heard nothing from the County or the State so</p> <p>4 I set up a live trap to prove it. Here are pictures of</p> <p>5 rats. Rats that have been caught that are between the</p> <p>6 properties.</p> <p>7 MARTIN GROSSMAN: Really I- it's not- I'm going to say</p> <p>8 that I'm not going to mark them unless you feel it's</p> <p>9 necessary that- Mr. Nelson, do you think it's necessary to</p> <p>10 preserve? What's the rat issue have to do with this case?</p> <p>11 G. MASON NELSON: I don't think we need to spend time</p> <p>12 on it.</p> <p>13 MARTIN GROSSMAN: Okay. I mean there's no point. I</p> <p>14 would ordinarily mark it and say I'm not going to be</p> <p>15 included in the record because it has no relevance to this</p> <p>16 for the land use, unless you can tell me-</p> <p>17 TOM JOHNSON: About adverse- adding to adverse item</p> <p>18 clause. That there are rodents.</p> <p>19 MARTIN GROSSMAN: But you're not suggesting- that's</p> <p>20 not a land-use issue. That is an upkeep, I guess, issue or</p> <p>21 some other issues that don't really pertain to whether or</p> <p>22 not I would grant a conditional use. That's something that</p> <p>23 can be regulated by the appropriate authorities. But-</p> <p>24 TOM JOHNSON: Okay. Okay. My 11th, I only have 12</p> <p>25 bullet points.</p>
<p>520</p> <p>1 ROBIN RICE: It fell from my tree into his property.</p> <p>2 It's not there anymore.</p> <p>3 MARTIN GROSSMAN: Okay. All right. That's not a basis</p> <p>4 for an objection, but I understand. You can object-</p> <p>5 ROBIN RICE: I object to that he says County when it</p> <p>6 was the State that inspected it. And-</p> <p>7 MARTIN GROSSMAN: What possible difference could that</p> <p>8 make, by the way?</p> <p>9 ROBIN RICE: Just trying to correct the record.</p> <p>10 MARTIN GROSSMAN: Okay. All right. All right. So, and</p> <p>11 what (crosstalk)</p> <p>12 TOM JOHNSON: So it got a pass.</p> <p>13 MARTIN GROSSMAN: What significance is this tree limb?</p> <p>14 TOM JOHNSON: Because within about three weeks of</p> <p>15 that, after it was given a pass, it fell. So it wasn't on</p> <p>16 the day I reported it. In other words they said it was</p> <p>17 fine, it's not going anywhere, don't worry about it. Three</p> <p>18 weeks later it fell.</p> <p>19 MARTIN GROSSMAN: All right. But I mean right now it's</p> <p>20 not an issue for me is it?</p> <p>21 TOM JOHNSON: No longer.</p> <p>22 MARTIN GROSSMAN: Okay. Well I don't really- there was</p> <p>23 never really an issue for me was it? I mean why would it-</p> <p>24 TOM JOHNSON: It was more an issue for the State.</p> <p>25 MARTIN GROSSMAN: Oh. Okay. All right.</p>	<p>522</p> <p>1 MARTIN GROSSMAN: Okay.</p> <p>2 TOM JOHNSON: My 11th bullet point, early on many of</p> <p>3 us felt sorry for Angela because at that time we believed</p> <p>4 she was put in the middle of this, and I'll tell you why we</p> <p>5 thought that. It was because when I had a conversation with</p> <p>6 her husband I asked him if they were going to buy the house</p> <p>7 when their lease was up because I know they currently</p> <p>8 rented with the option to buy. He said no, I don't think</p> <p>9 so. I asked why, he said because of the neighbors. I said</p> <p>10 you don't take any of this personally do you, he said no. I</p> <p>11 told him there would not have been any of this if Robin had</p> <p>12 not applied for 30 kids. She should've been content to keep</p> <p>13 it small and discrete. And to that he answered what; 30</p> <p>14 kids? We can't handle 30 kids.</p> <p>15 MARTIN GROSSMAN: Well, once again, that's- I'm not</p> <p>16 sure that qualifies as hearsay because the exclamation, we</p> <p>17 can't handle 30 kids, is not offered to prove the truth of</p> <p>18 it because he's not going to necessarily be the one</p> <p>19 handling them. But once again, there hasn't been an</p> <p>20 objection so just go ahead.</p> <p>21 ROBIN RICE: Objection then. (inaudible)</p> <p>22 TOM JOHNSON: Okay. At the last hearing Robin tried to</p> <p>23 deflect attention to me with pictures of my trucks. But I'm</p> <p>24 not the one applying for a daycare. Yet the photos were</p> <p>25 allowed to be admitted in a folder and the last remark I</p>

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50 (523 to 526)

<p>523</p> <p>1 heard is they were put in the folder and tucked inside, I 2 guess this shows it is that the residential neighborhood 3 they claim it is. So I brought all the registrations to 4 show only one is a commercial vehicle. The other is a 5 pleasure vehicle. It happens to be a truck. Some guys like 6 Corvettes, I like trucks. 7 MARTIN GROSSMAN: Okay. And who were you saying said 8 that, I guess that shows it's not a commercial- it's not a 9 residential neighborhood? 10 TOM JOHNSON: I'm sorry, sir, but it was you. 11 MARTIN GROSSMAN: I never said this shows it. I would 12 have said this is attempt to be introduced to show it. 13 TOM JOHNSON: Because you were wondering what was the 14 purpose of all the photos. And you said, I guess, this 15 shows that is not the residential neighborhood. 16 G. MASON NELSON: His point was that he was trying to 17 summarize the theme of the applicant, Mr. Johnson. He 18 wasn't identifying a fact. 19 MARTIN GROSSMAN: Pardon me? 20 G. MASON NELSON: So let me just ask a question. Of 21 the trucks you have on your property, is one a personal 22 truck? 23 TOM JOHNSON: One is, definitely. 24 G. MASON NELSON: Okay, that's the Toyota? 25 TOM JOHNSON: Yes.</p>	<p>525</p> <p>1 G. MASON NELSON: Okay. So when you come home at the 2 work day you have your van and a trailer? 3 TOM JOHNSON: Yes. 4 G. MASON NELSON: All right. Do you do any work at 5 your residence? 6 TOM JOHNSON: No. 7 G. MASON NELSON: All right. So you park it in your 8 driveway? 9 TOM JOHNSON: Yes. 10 G. MASON NELSON: All right. That's all I have. Thank 11 you. 12 TOM JOHNSON: Okay. My closing statement. Angela was 13 asked if anyone had said anything to her. Her answer was 14 no. Well, that's not true. My wife and I invited them to 15 our home. They were invited but they did not come, and we 16 have been friendly. We have been friendly, not friends, but 17 friendly. We have also been able to talk with both Robin 18 and her husband and all along I have asked Robin to be 19 content with what she had, has and urged her not to do 20 this. I want to use my closing statement as a plea to 21 Robin. You saw the room packed at the Park and Planning 22 Commission. You saw the room packed at the last hearing on 23 August 4th, and you see the room packed today. You've seen 24 the signs all over the neighborhood and the numbers of 25 people that are objecting to what you are doing. Surely you</p>
<p>524</p> <p>1 G. MASON NELSON: All right. Is there- 2 MARTIN GROSSMAN: Well, hold on a second. I just think 3 we need to straighten this out. If that's what came out my 4 lips it was not to say that it was proving that it wasn't a 5 residential neighborhood. It was to say that she was 6 attempting to offer it to prove that it was not a 7 residential neighborhood. So I may have used a shorthand or 8 misspoken, but I can assure you that I did not mean to 9 imply that this is not a residential neighborhood, based on 10 a couple of photographs of a couple of trucks. 11 TOM JOHNSON: Okay. 12 MARTIN GROSSMAN: So- and if you all received that 13 misimpression I'll correct it now. 14 TOM JOHNSON: Thank you. 15 MARTIN GROSSMAN: All right. 16 TOM JOHNSON: And my closing statement- 17 MARTIN GROSSMAN: Well, I think Mr. Nelson had a 18 question. 19 G. MASON NELSON: So do you park at your residence in 20 the truck you use for your business? 21 TOM JOHNSON: Yes. 22 G. MASON NELSON: All right. How many trucks do you 23 park at your residence that you use for your business? 24 TOM JOHNSON: My van is commercial, that's parked at 25 my home and it has a trailer typically attached to it.</p>	<p>526</p> <p>1 see this. So once again, I'm asking you as person-to-person 2 that you reconsider. I've told you before to sell the 3 property, take your gains and I'm saying it again. 4 MARTIN GROSSMAN: All right. Any cross-examination 5 from Ms. Becker? Ms. Gregorski. I'm sorry. 6 ROBIN RICE: Thank you. I do have a little bit. 7 MARTIN GROSSMAN: Yes, Ms. Rice, certainly. 8 ROBIN RICE: Have you observed that two of the staff 9 members that work for Angie take the bus and walk on the 10 street to get to work? 11 TOM JOHNSON: I know one is dropped off by it's either 12 a husband or a boyfriend, and the other one I have seen one 13 that takes the bus. 14 ROBIN RICE: Okay. Do you know their names? 15 TOM JOHNSON: No. We just- 16 ROBIN RICE: Okay. Do you have a business? 17 TOM JOHNSON: I have a business vehicle, ma'am. 18 ROBIN RICE: Do you have a business? Are you self 19 employed? Do you have a business? 20 TOM JOHNSON: I'm self employed. 21 ROBIN RICE: Okay. Do you have a commercial business 22 address? 23 TOM JOHNSON: Do I have a commercial business address? 24 ROBIN RICE: Yes. 25 TOM JOHNSON: No.</p>

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<p>527</p> <p>1 ROBIN RICE: Okay.</p> <p>2 TOM JOHNSON: I have a home office.</p> <p>3 ROBIN RICE: Okay. Just looking for the commercial</p> <p>4 business address. Do you know that Angie currently has 10</p> <p>5 children enrolled, not 6?</p> <p>6 TOM JOHNSON: If she has 10 then they must, at- when</p> <p>7 I'm not watching, observing her walk them in a stroller in</p> <p>8 the middle, well, not the middle of the street, along the</p> <p>9 side of the street in-</p> <p>10 ROBIN RICE: But my question is do you know that she</p> <p>11 has 10 children enrolled, not 6.</p> <p>12 TOM JOHNSON: I counted what I observed.</p> <p>13 ROBIN RICE: Okay. So you have not ever observed the</p> <p>14 fact that that there are 10 children in the yard?</p> <p>15 TOM JOHNSON: I avoid peeping over the fence.</p> <p>16 ROBIN RICE: Do you- you have three trucks and do you</p> <p>17 use all three of them for your business?</p> <p>18 TOM JOHNSON: No.</p> <p>19 ROBIN RICE: Do you use two of them for your business?</p> <p>20 TOM JOHNSON: No.</p> <p>21 ROBIN RICE: You use just one of them for your</p> <p>22 business?</p> <p>23 TOM JOHNSON: My van is my business vehicle.</p> <p>24 ROBIN RICE: And does your trailer have a separate</p> <p>25 tag? Vehicle tag on it?</p>	<p>529</p> <p>1 SHERYL GREENFIELD: Of course.</p> <p>2 MARTIN GROSSMAN: Do you swear or affirm to tell the</p> <p>3 truth, the whole truth, and nothing but the truth-</p> <p>4 SHERYL GREENFIELD: I do.</p> <p>5 MARTIN GROSSMAN: -under penalty of perjury.</p> <p>6 SHERYL GREENFIELD: I do.</p> <p>7 MARTIN GROSSMAN: All right. Now you may proceed.</p> <p>8 G. MASON NELSON: Now you're going to give your</p> <p>9 testimony.</p> <p>10 SHERYL GREENFIELD: Yes.</p> <p>11 G. MASON NELSON: But first let's just identify your</p> <p>12 house on the map. I see Caddy Drive here with a cul-de-sac.</p> <p>13 Where is your house?</p> <p>14 SHERYL GREENFIELD: Right on the corner of the cul-de-</p> <p>15 sac and Caddy Drive.</p> <p>16 SHERYL GREENFIELD: Right on the corner of the cul-de-</p> <p>17 sac and Caddy drive. Right there.</p> <p>18 G. MASON NELSON: Okay. So-</p> <p>19 SHERYL GREENFIELD: Right there, the last house.</p> <p>20 G. MASON NELSON: On the south side or the north side?</p> <p>21 SHERYL GREENFIELD: On the south side, where you're</p> <p>22 pointing.</p> <p>23 G. MASON NELSON: Right here. So the second</p> <p>24 (inaudible) of Caddy. Do you see that, Mr. Grossman?</p> <p>25 MARTIN GROSSMAN: Barely, yes.</p>
<p>528</p> <p>1 TOM JOHNSON: Of course it does. You know that.</p> <p>2 ROBIN RICE: All right. So that-</p> <p>3 MARTIN GROSSMAN: So what's the point of this line of</p> <p>4 questioning?</p> <p>5 ROBIN RICE: That he has two commercial vehicles, one</p> <p>6 is the truck, and one is the trailer, because they have</p> <p>7 separate tax. And then I'm done.</p> <p>8 MARTIN GROSSMAN: All right. So you're finished?</p> <p>9 ROBIN RICE: Yes, sir.</p> <p>10 MARTIN GROSSMAN: All right. Thank you, sir. Oh, is</p> <p>11 there any redirect?</p> <p>12 G. MASON NELSON: No.</p> <p>13 MARTIN GROSSMAN: All right. Thank you, sir.</p> <p>14 G. MASON NELSON: All right, Sheryl Greenfield.</p> <p>15 MARTIN GROSSMAN: Is that red light still on there?</p> <p>16 SHERYL GREENFIELD: Yes it is.</p> <p>17 MARTIN GROSSMAN: Great. All right.</p> <p>18 SHERYL GREENFIELD: My name is Sheryl Greenfield. I</p> <p>19 live at 17719 Caddy Drive in Derwood.</p> <p>20 MARTIN GROSSMAN: Would you raise your-</p> <p>21 SHERYL GREENFIELD: I have lived in Derwood for 42</p> <p>22 years.</p> <p>23 MARTIN GROSSMAN: Hold on one second.</p> <p>24 SHERYL GREENFIELD: Yes.</p> <p>25 MARTIN GROSSMAN: Would you raise your right hand?</p>	<p>530</p> <p>1 G. MASON NELSON: Okay. I'm sorry. All right. Would</p> <p>2 you state your address again? I'm sorry.</p> <p>3 SHERYL GREENFIELD: Sure. 17719 Caddy, C-A-D-D-Y,</p> <p>4 Drive, Derwood.</p> <p>5 MARTIN GROSSMAN: Okay. Thank you.</p> <p>6 SHERYL GREENFIELD: Caddy Drive is considered part of</p> <p>7 Mill Creek Towne as opposed to what Ms. Rice asserted in</p> <p>8 her first meeting that Mill Creek ended at Miller Fall</p> <p>9 Road. We are all affected by this proposed property. This</p> <p>10 house is not a 30 child house. This is a residential house.</p> <p>11 I don't know where she's going to put 30 children inside</p> <p>12 that house on a rainy day. Where is she going to put 30</p> <p>13 children in a backyard? How is she going to drop off these</p> <p>14 people in this 10 minute time limit, which is purely</p> <p>15 unrealistic? That she's going to back up the traffic on</p> <p>16 Mill Creek, backup the traffic on Mill Run, backup the</p> <p>17 traffic on Park Mill. This neighborhood was built as a</p> <p>18 residential neighborhood in 1967 and that's the way it</p> <p>19 should stay. Thank you.</p> <p>20 MARTIN GROSSMAN: All right. Hold on one second. Any</p> <p>21 cross examination questions here? Here? Ms. Rice? No. Thank</p> <p>22 you very much for coming and sharing your views Ms.</p> <p>23 Greenfield.</p> <p>24 G. MASON NELSON: Jane Lewis.</p> <p>25 MARTIN GROSSMAN: All right. Would you state your full</p>

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<p>531</p> <p>1 name and address please. 2 JANE LEWIS: My name is Jane Lewis. I live at 17713 3 Caddy Drive, Derwood Marilyn 20855. 4 MARTIN GROSSMAN: I'm sorry. What's the ZIP? 5 JANE LEWIS: 20855. 6 MARTIN GROSSMAN: And how do you spell your last name? 7 JANE LEWIS: L-E-W-I-S. 8 MARTIN GROSSMAN: Okay. Would you raise your right 9 hand please? Do you swear or affirm to tell the truth, the 10 whole truth and nothing but the truth under penalty of 11 perjury? 12 JANE LEWIS: I do. 13 MARTIN GROSSMAN: You may have a seat. 14 G. MASON NELSON: Ms. Lewis, before you begin your 15 testimony, but let's just locate your house. Ms. Greenfield 16 testified that she- her house is just at the intersection 17 of the cul-de-sac and Caddy Drive. Is your house relative 18 to that? 19 JANE LEWIS: I am just what is that, east of that. 20 G. MASON NELSON: East. 21 JANE LEWIS: So I'm not on the cul-de-sac, I go down 22 Caddy Drive. 23 G. MASON NELSON: All right. So all right. Okay. So- 24 JANE LEWIS: I live directly next door to her. 25 G. MASON NELSON: All right.</p>	<p>533</p> <p>1 G. MASON NELSON: Ruth Schwartz. 2 MARTIN GROSSMAN: That's it. That's the hot seat. 3 Right there. This should be one with a red light on it. 4 RUTH SCHWARTZ: This one here. Okay. All right. 5 MARTIN GROSSMAN: Would you state your full name and 6 address please. 7 RUTH SCHWARTZ: My name is Ruth Schwartz. My address 8 is 17828 Cliffbourne Lane in Derwood. 9 MARTIN GROSSMAN: All right. And how do you spell your 10 Schwartz? 11 RUTH SCHWARTZ: It's S-C-H-W-A-R-T-Z. 12 MARTIN GROSSMAN: Okay. And Cliffbourne, is that Lane, 13 Drive? 14 RUTH SCHWARTZ: It's Lane. 15 MARTIN GROSSMAN: Okay. All right. Thank you. You may- 16 would you raise your right hand please? Do you swear or 17 affirm to tell the truth, the whole truth, and nothing but 18 the truth under penalty of perjury? 19 RUTH SCHWARTZ: I do. 20 MARTIN GROSSMAN: All right. You may proceed. 21 RUTH SCHWARTZ: Okay. 22 G. MASON NELSON: Direct your comments to Mr. 23 Grossman. 24 RUTH SCHWARTZ: Okay. Okay. I've been a resident of 25 Mill Creek Towne for 38 years, and when my children were</p>
<p>532</p> <p>1 JANE LEWIS: I am opposed to the conditional use 2 application. The main- and I agree with what my neighbors 3 have said, but I just wanted to point out that I live on 4 the other side of Miller Fall I walk the neighborhood every 5 single day usually between the hours of 6:00 a.m. and 8:30 6 a.m. I walk with my dog and I probably go two to three 7 miles and I would say that at least twice a week, if not 8 three times a week I am walking down Park Mill Drive. I 9 find that there are cars parked along the road in front of 10 many of the homes and I am forced to walk out into the 11 street to walk around them to keep going; while the grass 12 in the 10 feet on either side of the roadway may be public 13 access land, I view it as my neighbors land and I choose to 14 stay out of it. Some people walk their dogs, don't pick up 15 after them, and I just choose to stay out of the grass. I 16 guess I have a concern that with the increased traffic that 17 could be coming in mornings and afternoons that those 18 vehicles will add to the difficulty of pedestrians, young, 19 old, and with or without pets walking along the street. And 20 I just wanted to make that concern known. 21 MARTIN GROSSMAN: Okay. 22 JANE LEWIS: That's all I had to say. 23 MARTIN GROSSMAN: Any questions? No? Thank you very 24 much for coming down and sharing your views. 25 JANE LEWIS: Thank you.</p>	<p>534</p> <p>1 younger I ran a home daycare. I operated that home daycare 2 for 10 years. It was quite a contrast from a large daycare 3 that Ms. Rice is proposing. I cared for between two and 4 four children on most days, in addition to my own children. 5 Okay. So I operated the daycare for nine years, and after 6 that I had a job with Montgomery County Social Services and 7 I visited a lot of daycare homes. It was really my job was 8 to visit the homes. So I really have a lot of experience in 9 daycare, and with daycare and with preschool children. And 10 my specific point I want to make here is that there is no 11 way, it's totally unrealistic for parents to drop off or 12 pick up their children in three minutes, or even five 13 minutes. My daycare parents would usually spend anywhere 14 from 15 to 30 minutes with me and the children because 15 children can't transition that easily. If you just pick up 16 a child like that, you know, you're going to have 17 screaming. They have to be ready to go, find their shoes or 18 whatever. And it's just hard for them to transition. And 19 that is totally unrealistic. And if parents try to do that 20 based on some contract you're going to have, you know, 21 parents in tears as well. It's just not going to happen. In 22 addition, as far as the parking goes, you know, some 23 parents come by and breast-feed during the day and so 24 that's another additional car there. So I- when I had my 25 daycare I did give the children- the parents, tell them</p>

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<p>535</p> <p>1 what happened during the day, give them their project, et 2 cetera and it usually took- it took quite a while. So my 3 point is that I just don't think that a large center is 4 appropriate for our nice residential neighborhood. In 5 addition, I will just add here that I am also a walker. And 6 I don't walk on the grass because I have a bad ankle and 7 sometimes it's uneven. That's how I broke my ankle to begin 8 with was by walking on the grass, and it was an even there. 9 So my doctor has said that I should be careful with that 10 ankle all the time. So I think it's really an issue for me 11 and a lot of the people who are out there walking to have 12 all of this traffic in the neighborhood. 13 MARTIN GROSSMAN: Okay. Thank you. Hold on one second. 14 Any cross examination questions? 15 ROBIN RICE: You're saying parents stayed in your home 16 for half an hour in the beginning and at the end of the 17 day? 18 RUTH SCHWARTZ: Well, more often in the afternoon, but 19 usually it would take about 10 minutes in the morning. You 20 know, you didn't just drop off a child like that, or you 21 will have tears. 22 ROBIN RICE: Ten minutes in the morning and how long 23 would you say in the in the afternoon? 24 RUTH SCHWARTZ: Well, you know, it depends. At least 25 15 minutes; many times a half an hour.</p>	<p>537</p> <p>1 ROBIN RICE: Okay. 2 RUTH SCHWARTZ: I liked to talk to the parents. 3 ROBIN RICE: All right. Thank you very much. 4 RUTH SCHWARTZ: Mm-hmm. 5 MARTIN GROSSMAN: Thank you, ma'am. Appreciate your 6 sharing your views. 7 G. MASON NELSON: Carol Gannon. 8 CAROL GANNON: Hi. 9 MARTIN GROSSMAN: Good morning. Good afternoon I 10 should say. We lose track of time here after a while. 11 CAROL GANNON: We're having so much fun. I thought Anne 12 was going to call me as part of- 13 G. MASON NELSON: All you want to do that? We 14 (inaudible) on you. All right. 15 MARTIN GROSSMAN: Hold on one second. Let me first- 16 CAROL GANNON: Okay. 17 MARTIN GROSSMAN: Would you state your full name and 18 address please? 19 CAROL GANNON: Carol Gannon. 20 MARTIN GROSSMAN: All right. 21 CAROL GANNON: I live at 17516 Park Mill Drive in 22 Derwood for 52 years. I hate to admit that, but it's true. 23 G. MASON NELSON: Microphone- 24 CAROL GANNON: What? 25 ROBIN RICE: Microphone.</p>
<p>536</p> <p>1 ROBIN RICE: So 10 to 15 and they might hang on- 2 RUTH SCHWARTZ: You know I- this is not an exact 3 amount. But there was no way that parents dropped off their 4 kids or picked them up in three minutes, ever. It didn't 5 happen. 6 ROBIN RICE: Did you have a front door or did the kids 7 have to go in the back of the house? 8 RUTH SCHWARTZ: Some- I had a backyard and- 9 ROBIN RICE: No, when they were dropped off. Was it in 10 the front of the house at the front door, a side door of 11 what? 12 RUTH SCHWARTZ: When they were dropped off, it was in 13 the front. 14 ROBIN RICE: Okay. 15 RUTH SCHWARTZ: In the afternoon sometimes we were in 16 the back. 17 ROBIN RICE: Okay. 18 RUTH SCHWARTZ: Mm-hmm. 19 ROBIN RICE: Did you have any apps or cell phones or 20 all this stuff our younger generations are doing to be able 21 to communicate with the parents, pictures et cetera, so 22 they know what's going on during the day before they even 23 get there? 24 RUTH SCHWARTZ: No. But if I did I probably would 25 prefer not to do that.</p>	<p>538</p> <p>1 CAROL GANNON: Oh I'm sorry. Here? 2 MARTIN GROSSMAN: Well, it should be- is the red light 3 on? 4 CAROL GANNON: The red light's on. Can you hear me? 5 MARTIN GROSSMAN: Okay. Is that better? 6 CAROL GANNON: Okay. 7 MARTIN GROSSMAN: All right. Would you raise your 8 right hand, please? 9 CAROL GANNON: Oh yeah. 10 MARTIN GROSSMAN: Do you swear or affirm to tell the 11 truth, the whole truth, and nothing but the truth under the 12 penalty of perjury? 13 CAROL GANNON: I do. 14 MARTIN GROSSMAN: Okay. Now, do you prefer to be 15 questioned by- 16 ANNE GREGORSKI: Well, you had a statement first, 17 right? 18 CAROL GANNON: Well, I was just going to say that we- I 19 agree with everything that's been said and we bought the 20 neighborhood because- we bought in Mill Creek Towne because 21 it was a quiet, peaceful, safe neighborhood and the very 22 reason that Robin wants into this neighborhood; we've 23 maintained it. We've been very lucky but it was hard work. 24 Everybody keeps their property up very well and works hard. 25 The very reason Rice is- Mrs. Rice's plan for a daycare</p>

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<p>539</p> <p>1 center, not only does not support the values of Mill Creek 2 Towne residents have strived to create and maintain, but 3 seriously jeopardizes its continued success as a quiet and 4 safe neighborhood. She is capitalizing on the advantages of 5 the neighborhood while jeopardizing the very values it was 6 built on. I'm just going to go off script now and say that 7 as a teacher, I taught in Montgomery County schools, and to 8 think that you can put 200 children in a house that size, I 9 think it's unhealthy.</p> <p>10 MARTIN GROSSMAN: No, the plan is for 30 children.</p> <p>11 CAROL GANNON: I'm sorry, 200 children; 30 children is 12 unrealistic. The fence in the backyard which goes across 13 the back of Shady Grove and the back of her yard and all 14 the houses on that side; I heard her testify before that 15 she found out that was her fence; that it was her fence and 16 she took part of it down and put up a (inaudible) gate. I 17 have never been told that that was our fence. That we- I 18 was told it belonged to the County and that the County can 19 permit a fence that is regularly knocked down by cars, by 20 people, by old age to have children playing in the back 21 yard is negligence, I believe. And I would really urge you 22 not to grant this to Ms. Rice. Okay.</p> <p>23 G. MASON NELSON: Just a moment please.</p> <p>24 CAROL GANNON: Oh, yeah.</p> <p>25 ANNE GREGORSKI: Sure. My question goes along with Jim</p>	<p>541</p> <p>1 property?</p> <p>2 CAROL GANNON: I'm the fourth house on the left-hand 3 side across the street from her.</p> <p>4 ANNE GREGORSKI: Thank you.</p> <p>5 CAROL GANNON: Okay.</p> <p>6 MARTIN GROSSMAN: Okay. Ms. Rice, any questions?</p> <p>7 ROBIN RICE: No, thank you, Carol.</p> <p>8 MARTIN GROSSMAN: Thank you very much for coming down.</p> <p>9 G. MASON NELSON: Andrew, and I'm not sure how to 10 pronounce Andrew's last name.</p> <p>11 ROBIN RICE: Lucarelli.</p> <p>12 ANDREW LUCARELLI: Lucarelli.</p> <p>13 MARTIN GROSSMAN: Sir, would you state your full name 14 and address please?</p> <p>15 ANDREW LUCARELLI: My name is Andrew Leader Lucarelli. 16 My address is 17436 Park Mill Drive, Derwood, Maryland.</p> <p>17 MARTIN GROSSMAN: All right. Would you raise your 18 right hand please? Do you swear or affirm to tell the truth 19 the whole truth, and nothing but the truth under the 20 penalty of perjury?</p> <p>21 ANDREW LUCARELLI: I do so swear.</p> <p>22 MARTIN GROSSMAN: All right. You may proceed.</p> <p>23 G. MASON NELSON: Mr. Lucarelli, before you offer your 24 comments, let's just identify your family's residence on 25 Exhibit 124. Can you see from where you are now?</p>
<p>540</p> <p>1 Snee's testimony when he spoke about how the drainage works 2 in the neighborhood and how many springs; there were a lot 3 of springs there. It was an environmentally sensitive area. 4 Do you have a spring between your property-</p> <p>5 CAROL GANNON: Yeah.</p> <p>6 ANNE GREGORSKI: And the property next to you?</p> <p>7 CAROL GANNON: In about 1980, '83 we woke up one 8 morning and the basement was filled. I live in a bi-level, 9 it was filled with water. I called the Corp of Engineers 10 and they came and traced it that we were sitting on top of 11 a spring and the people who lived next door were also 12 sitting on top of a spring, fresh water was coming out by 13 gallons, by gallons, and I said, well, we might as well 14 reroute that and I'll do my wash and drink. They said, oh, 15 don't do any of that. But even the people next door to me, 16 they put in a swimming pool and until they had it filled 17 the liner came up because of the force of the water 18 underneath. So I don't know, Anne wants to go on the 19 environmental side of this and we do have- well, I had a 20 sump pump put in immediately because it was dangerous to 21 have water, which is very powerful and the people next 22 door, on their lawns had salamanders swimming on it all the 23 time. And so anyhow we are on top of a creek according to 24 the Corp of Engineers.</p> <p>25 ANNE GREGORSKI: How far away are you from Robin's</p>	<p>542</p> <p>1 ANDREW LUCARELLI: All right. I can see it very well 2 actually.</p> <p>3 G. MASON NELSON: Just point. See how the pointer 4 works.</p> <p>5 ANDREW LUCARELLI: Sure. I live two houses down from 6 Ms. Rice's property on the left.</p> <p>7 G. MASON NELSON: So if we're facing Ms. Rice's 8 property to her right is Mrs. Lloyd, so you're a neighbor 9 of- you're on the other side of Mrs. Lloyd?</p> <p>10 ANDREW LUCARELLI: I'm on the opposite side of the 11 street, yes.</p> <p>12 G. MASON NELSON: On the opposite side.</p> <p>13 ANDREW LUCARELLI: Yes.</p> <p>14 G. MASON NELSON: Okay. All right.</p> <p>15 ANDREW LUCARELLI: And I have submitted previously two 16 letters which I have been offered into evidence, 40C and 40 17 quadruple D, and I will take up the Board and everyone's 18 time with, you know, reciting the facts in those letters, 19 but I'd like, with your permission, to incorporate those 20 letters into my testimony.</p> <p>21 MARTIN GROSSMAN: Certainly. They were 40?</p> <p>22 ANDREW LUCARELLI: 40C.</p> <p>23 MARTIN GROSSMAN: C and?</p> <p>24 ANDREW LUCARELLI: And 40 quadruple D.</p> <p>25 MARTIN GROSSMAN: All right.</p>

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<p>543</p> <p>1 ANDREW LUCARELLI: But I think I, looking at the crowd, 2 I'm probably in somewhat of a unique situation here because 3 I have two school-age children who walk to school at the 4 Mill Creek Towne Elementary School which is just up Park 5 Mill Drive from our house. And you know, their path to 6 school every day takes them directly past Ms. Rice's 7 property and certainly they will be impacted by any 8 increase in traffic which, I think will tend to coincide, 9 at least in the morning, with the times, the arrival times 10 of some of Ms. Rice's clientele. Of course they also play 11 in the front yard, ride their bikes in the street. You 12 know, we go for walks so, you know, we are actively using 13 that on a very regular basis. And, you know, to me it- her 14 plan is sort of a fundamental frustration of the entire 15 reason that we have zoning in the first place. If anyone 16 can build anything anywhere then the intrusion upon their 17 neighbors, I think, can be great. And I think in this case 18 her plan, and I don't- I've actually never talked to Ms. 19 Rice so I'm not casting aspersions here at all. But I think 20 her plan is just completely incompatible with our 21 neighborhood and the effects on our way of life would be 22 much greater than what is contemplated in her proposals. So 23 the one other thing I would like to mention and this is the 24 first part will be a bit of hearsay so hopefully you'll 25 forgive me but I understand that the construction that is</p>	<p>545</p> <p>1 stayed under that requirement so that we didn't have to 2 take in those- undergo any of those groundwater mediation 3 efforts. And I think that would- where Anne was going with 4 that is the plan to pave essentially her entire, or much of 5 her front yard, I mean it's difficult for me to see, I 6 haven't done the calculations, but difficult to see how 7 that could be done without violating those same codes that 8 we had to concern ourselves with. 9 MARTIN GROSSMAN: But I think the direct question was 10 did you originally plan to put a circular drive in front of 11 your house and change that plan? I think that was the- 12 ANDREW LUCARELLI: No. We were not planning on putting 13 a circular drive. We did have to- perhaps the original 14 drawings have a slightly different driveway with what we 15 ended up with due to the concerns about the not incurring a 16 groundwater mediation situation. 17 MARTIN GROSSMAN: Okay. And do you have a circular 18 drive now? 19 ANDREW LUCARELLI: We do not, no. It's a straight 20 driveway. 21 MARTIN GROSSMAN: Okay. All right. Any questions? 22 ROBIN RICE: Is your house directly across from 23 Beverly's or is that one Anne's and yours is next to 24 Anne's? 25 ANDREW LUCARELLI: I think probably Anne's would more-</p>
<p>544</p> <p>1 ongoing at my house has been the source of some discussion 2 in a prior session which I wasn't able to attend. So I just 3 wanted to state for the record that we are building an 4 addition onto our house. We have a permit through the 5 County which was issued last September. It is a entirely 6 personal expansion of the house. There is no commercial use 7 for our property in any way, shape or form. 8 MARTIN GROSSMAN: All right. Any questions, cross- 9 examination? 10 G. MASON NELSON: No. 11 ANNE GREGORSKI: I have a question. Were you at one 12 time going to install a different kind of driveway? 13 ANDREW LUCARELLI: Yeah. Well, not a different kind of 14 driveway per se, but one of the challenges that we had when 15 we were designing our addition is the County requirement 16 that if you add more than 400 square feet of non permeable 17 surface to your existing structure and that can be either 18 in the form of an actual building or in the form of, you 19 know, additional pavement or you know, patios, those types 20 of things that you are required to put in ground water 21 mediation either in the form of a drywell or there was some 22 other possible design around it that I don't remember. I 23 remember it being very expensive so one of the major 24 considerations of our design in the plan that was 25 ultimately approved by the County was to make sure that we</p>	<p>546</p> <p>1 be more directly across from Beverly's, yes. 2 ROBIN RICE: Okay. So- 3 ANDREW LUCARELLI: So mine would be the next house. 4 ROBIN RICE: The next house over. 5 ANDREW LUCARELLI: Going towards the big bend in Park 6 Mill Drive. 7 ROBIN RICE: What time do the kids walk to the school? 8 ANDREW LUCARELLI: They usually leave about 8:25 or 9 8:30. The school opens its doors at 8:40, so we usually try 10 to get them there around that time. 11 ROBIN RICE: Okay. And do they go there during the 12 summer? 13 ANDREW LUCARELLI: They do not go to the school during 14 the summer, no. 15 ROBIN RICE: Do they go to any daycare, after school, 16 summer camps? 17 ANDREW LUCARELLI: Typically we have had- we've had a 18 nanny since my oldest daughter was born, so she has taken 19 care of both of the kids up until now. This is the first- 20 my youngest just entered kindergarten so I think next 21 summer we'll- well, we don't really have a concrete plan as 22 to how we're going to handle childcare. 23 ROBIN RICE: Do you know the percentage of the front 24 yard that I'm planning to pave? 25 ANDREW LUCARELLI: I do not.</p>

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<p>547</p> <p>1 ROBIN RICE: Do you realize it's not the whole thing 2 and that it's 30 percent? 3 ANDREW LUCARELLI: I- I will take your word for it, the 4 30 percent figure doesn't really mean anything to me, it's 5 all somewhat relative. 6 ROBIN RICE: Okay. Thank you. 7 ANDREW LUCARELLI: Okay. 8 MARTIN GROSSMAN: Thank you, Mr. Lucarelli. 9 ANDREW LUCARELLI: Thank you. 10 MARTIN GROSSMAN: Appreciate it. 11 G. MASON NELSON: Bonnie Lloyd. 12 MARTIN GROSSMAN: I'm sorry, what was that name? 13 G. MASON NELSON: Bonnie Lloyd. 14 MARTIN GROSSMAN: Would you state- yes. Would you 15 state your full name and address please? 16 BONNIE LLOYD: My name is Bonnie Lloyd. I reside at 17 17605 Park Mill Drive, Derwood, Maryland. 18 MARTIN GROSSMAN: Would you raise your right hand, 19 please? Do you swear or affirm to tell the truth, the whole 20 truth, and nothing but the truth under penalty of perjury? 21 BONNIE LLOYD: I do. 22 MARTIN GROSSMAN: You may proceed. 23 G. MASON NELSON: First, let's locate your house on 24 Park Mill. Can you see the map from where you are? 25 BONNIE LLOYD: Barely.</p>	<p>549</p> <p>1 Creek Towne most directly to Ms. Rice's property. 2 MARTIN GROSSMAN: All right. Well let's mark this as 3 an exhibit. And let's see. So this will be, Exhibit 130, 4 and these are the homes Bonnie Lloyd says will be the most 5 affected. 6 BONNIE LLOYD: That's what I believe, yes. 7 MARTIN GROSSMAN: All right. And why did you select 8 these homes? 9 BONNIE LLOYD: Because the Shady Grove Road entrance 10 to the neighborhood is the most direct route to the Rice 11 property and in the few surrounding homes after are very 12 close to the property. 13 MARTIN GROSSMAN: So you feel that the additional 14 traffic is unlikely to enter at Shady Grove Road and Mill 15 Run Drive. Is that what you're saying? 16 BONNIE LLOYD: I do because it's the only controlled 17 entrance to the neighborhood. The other entrances out onto 18 Muncaster Mill and to Midcounty Highway are not traffic 19 lights. They are simply stop signs and it is very difficult 20 to get out many times of the day, onto those roads. 21 MARTIN GROSSMAN: Okay. No, hold on. Hold on one 22 second. Oh do you have additional photos to share? Is that 23 what- 24 BONNIE LLOYD: Yes. 25 MARTIN GROSSMAN: Oh. I thought you were getting up to</p>
<p>548</p> <p>1 G. MASON NELSON: I'm going to bring it over closer. 2 BONNIE LLOYD: Mine is pretty easy to locate. I live 3 across from school on Park Mill Drive, right there. 4 G. MASON NELSON: Just point for the (inaudible) 5 MARTIN GROSSMAN: Okay. 6 BONNIE LLOYD: Right there. 7 G. MASON NELSON: Okay. 8 MARTIN GROSSMAN: All right. 9 G. MASON NELSON: I'm sorry (inaudible) or this one. 10 BONNIE LLOYD: Yeah. No, the first one. Yeah. 11 G. MASON NELSON: Sorry. I'm going to (inaudible). The 12 witness pointed out that she resides in the house right 13 there across from the school. Is that correct? 14 BONNIE LLOYD: Yes. 15 G. MASON NELSON: Okay. What did you want to tell the 16 Hearing Examiner? 17 BONNIE LLOYD: Well, I object to the conditional use 18 permit based on, you know, many of the things that my 19 neighbors have already stated. You know, the traffic, the 20 limited parking, pedestrian safety, devaluation of our 21 properties, and the proposed changes to the Rice property 22 make it discordant with our neighborhood. I have prepared 23 photographs of the 22 homes that I feel are the most 24 impacted. They are the ones on this map that the clients 25 would take from the Shady Grove Road entrance of the Mill</p>	<p>550</p> <p>1 leave. 2 BONNIE LLOYD: No, no, no. No, I would like you to, if 3 you would, to flip through those photographs. 4 MARTIN GROSSMAN: Well, unfortunately I can't just 5 flip through. If I look at them I have to make them into 6 exhibits. 7 BONNIE LLOYD: Oh. Okay. 8 G. MASON NELSON: We would like to move those into 9 evidence. 10 MARTIN GROSSMAN: All right. Well, let's- they have to 11 be identified. So Mr. Nelson, would you be so kind as to 12 mark them? They'll begin with- they're 131 and- 13 G. MASON NELSON: A through? 14 MARTIN GROSSMAN: A through whatever number of photos 15 there are. 16 G. MASON NELSON: I'll do that. 17 BONNIE LLOYD: Should I wait? 18 MARTIN GROSSMAN: Yes, please. 19 G. MASON NELSON: I'll hand them up in groups. 20 BONNIE LLOYD: Okay. 21 MARTIN GROSSMAN: Well, just hold on a second. Are you 22 any relation to Beverly Lloyd? 23 BONNIE LLOYD: I am. I'm her daughter-in-law. 24 MARTIN GROSSMAN: Okay. 25 G. MASON NELSON: To keep this moving I'm going to</p>

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<p>551</p> <p>1 hand the witness now exhibits 131A through E, and all 2 marked the others as she's identifying them. 3 MARTIN GROSSMAN: Okay. 4 G. MASON NELSON: So Ms. Lloyd what we need to do here 5 is, first of all, tell us, did you take all these 6 photographs at roughly the same time period? 7 BONNIE LLOYD: Yes, I did. 8 G. MASON NELSON: And when was that roughly? 9 BONNIE LLOYD: About two weeks ago. 10 G. MASON NELSON: All right. And do they reasonably 11 and accurately depict what the subject matter looks like 12 today? 13 BONNIE LLOYD: I believe they do. 14 G. MASON NELSON: Okay. So when you go through each 15 photograph, they're marked 131A, B, et cetera. My writing 16 is not perfect, but I think you can decipher it. 17 BONNIE LLOYD: Okay. 18 G. MASON NELSON: Just say what it shows and what your 19 point is and I'll keep (inaudible) the others, they're 20 coming. 21 MARTIN GROSSMAN: Okay. 22 BONNIE LLOYD: Okay. Well, I mean more than just any 23 one picture is the whole lot of them that I feel that shows 24 the character of the neighborhood and the uniformity of the 25 rest of the homes. I started at Shady Grove Road, came in</p>	<p>553</p> <p>1 MARTIN GROSSMAN: Mr. Nelson. There are additional 2 photographs. 3 G. MASON NELSON: I'm almost finished. 4 BONNIE LLOYD: Okay. Well it got two more then, I 5 guess. 6 MARTIN GROSSMAN: Okay. 7 G. MASON NELSON: For the record, handed the witness 8 Exhibits 131A through E and I'm handing her now Exhibits 9 131F through V and if I may paraphrase, Mr. Grossman, that 10 these are other houses that are depicted on the map which 11 is Exhibit 130. 12 MARTIN GROSSMAN: Okay. 13 BONNIE LLOYD: Yes. 14 G. MASON NELSON: Which she says, her point is they 15 show a consistent type of residential use without circular 16 drives (crosstalk) 17 MARTIN GROSSMAN: Right. 18 BONNIE LLOYD: Yes. 19 MARTIN GROSSMAN: And so the photos are of all the 20 pictures- of all the- are photos of the houses that you've 21 labeled on Exhibit 130, is that correct? 22 BONNIE LLOYD: Yes, they are. 23 MARTIN GROSSMAN: I see. Okay. 24 G. MASON NELSON: There is a map, let's put it all 25 together.</p>
<p>552</p> <p>1 Mill Run Drive and go down Park Mill Drive, that's the 2 order of them. And as you can see when you look at these 3 pictures there are no homes that have circular driveways. 4 There are no homes that have parking for 10 vehicles. There 5 are no homes with fencing in the front yard. Any of those, 6 and other changes that Ms. Rice has requested for 17505 7 Park Mill Drive, will be discordant with our residential 8 neighborhood. And otherwise, those very changes that she's 9 requesting, in my mind, make it absolutely unsellable as a 10 residential property should she give up that right for her 11 conditional use. And it essentially makes it permanent for 12 the neighborhood. I don't think anybody is looking at real 13 estate agent- 14 MARTIN GROSSMAN: (inaudible) permanent? 15 BONNIE LLOYD: Well, but I mean no one says to a real 16 estate agent please, find me a house bordering a large road 17 or that has a third of the front yard paved and fencing in 18 the front. It's unreasonable to think that that is going to 19 convert to a residential property. 20 MARTIN GROSSMAN: Okay. 21 BONNIE LLOYD: Okay. I also have, unfortunately, 22 another photograph which I guess- 23 MARTIN GROSSMAN: Well, then why don't you just hand 24 it to- 25 BONNIE LLOYD: Okay.</p>	<p>554</p> <p>1 BONNIE LLOYD: He's got the map. 2 MARTIN GROSSMAN: You've got the map. 3 G. MASON NELSON: Here's the photographs. 4 MARTIN GROSSMAN: Okay. 5 G. MASON NELSON: All right. Okay. And this will be 6 132 and 133. Let me show you what's been marked as 132. 7 What is that? 8 BONNIE LLOYD: This is a depiction of the property at 9 17505 with a Photoshopping of the photograph to depict the 10 changes that have been requested. 11 MARTIN GROSSMAN: So is a picture of the subject site 12 that's been Photoshopped? 13 BONNIE LLOYD: Correct. See (inaudible) 14 MARTIN GROSSMAN: All right. Let me- are you showing 15 it to Ms. Rice? 16 BONNIE LLOYD: Oh, it does. 17 MARTIN GROSSMAN: What's 133? 18 BONNIE LLOYD: Well, 133 is a separate matter and 19 because I am the daughter-in-law of Beverly Lloyd and Mrs. 20 Lloyd lives and the adjacent property at 177501 Park Mill 21 Drive, I am intimately familiar with her home. And this 22 depicts a view over Ms. Rice's property and showing my 23 mother-in-law's home. And I have pointed out that my 24 mother-in-law's bedroom window overlooks the Rice property 25 right at her driveway. And I just think it's patently</p>

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<p>555</p> <p>1 unfair that my mother-in-law is subjected to drop off times 2 from 6:30 a.m. until 9:00 a.m.; doors slamming, children 3 screaming, adults talking, into her bedroom window, 4 disturbing her sleep. She's lived there for over 50 years. 5 She shouldn't have to tolerate this. 6 MARTIN GROSSMAN: Okay. 7 G. MASON NELSON: If I could move into- 8 BONNIE LLOYD: Now 240 days a year. 9 G. MASON NELSON: I'd like to move into evidence 10 exhibits 132, the Photoshop- 11 MARTIN GROSSMAN: But we're going to- we'll deal with 12 all of the exhibits at the end. 13 G. MASON NELSON: All right. I need to see the 14 Photoshopping. 15 ROBIN RICE: Can I see them before they get into 16 evidence? 17 G. MASON NELSON: Sure. 18 MARTIN GROSSMAN: Pardon me? 19 G. MASON NELSON: Do you have the (inaudible) 20 MARTIN GROSSMAN: Okay; 33, 2, 21 MARTIN GROSSMAN: All right. Ms. Rice, you've had a 22 chance to examine the Photoshopped? 23 ROBIN RICE: Yeah. I'm trying to get through them 24 quickly. 25 MARTIN GROSSMAN: No, I'm talking about the one- the</p>	<p>557</p> <p>1 MARTIN GROSSMAN: I'm speaking in very general terms. 2 I'm not saying this one will be granted, I'm just saying 3 that's how it's supervised. 4 BONNIE LLOYD: Right. Okay. I think that's all I have 5 to add. 6 MARTIN GROSSMAN: All right. Anybody have any cross- 7 examination questions of this witness? 8 ROBIN RICE: Just one question. Did you notice in your 9 pictures that 7301, 7310 and 7313 have more of an L-shape 10 or half a circular driveway? 11 BONNIE LLOYD: I'd have to see the picture. I don't 12 know them off the top of my head. 13 ROBIN RICE: Okay. 14 MARTIN GROSSMAN: Packet. 15 G. MASON NELSON: What addresses, Ms. Rice? 16 ROBIN RICE: 7301, 7310 and 7313, they're more of an 17 L-shape when everybody else is straight. 18 G. MASON NELSON: Here's 7301. 19 BONNIE LLOYD: I don't believe any of them can hold 10 20 cars. 21 ROBIN RICE: The question is are they an L-shape or 22 are they straight? 23 BONNIE LLOYD: There is a piece away from the straight 24 driveway, yes. 25 ROBIN RICE: Okay. On those three. Okay. That's all.</p>
<p>556</p> <p>1 one that's been modified. 2 ROBIN RICE: Oh, yes. Yes. I like- it's real pretty. 3 Thank you. 4 MARTIN GROSSMAN: Do you have any objection to that? 5 ROBIN RICE: No. It's nice. 6 MARTIN GROSSMAN: Okay. All right. Okay. Okay, Ms. 7 Lloyd. 8 BONNIE LLOYD: Okay. And I think my last point is 9 that- I'm sorry. I've lost my train of thought. 10 MARTIN GROSSMAN: Happens to me all the time. Don't 11 worry about it. 12 BONNIE LLOYD: Yeah. Oh, is that- okay. Ms. Rice calls 13 on her 30 years of experience in the child-care business 14 and she tells us that, you know, the cars will be coming 15 every three minutes and the children only take three 16 minutes to pick up and there will be no traffic issues and 17 all that kind of stuff. But where will be the oversight if 18 this conditional use is- 19 MARTIN GROSSMAN: The Department of Permitting 20 Services does oversight. They inspect once a year and also 21 receive any complaints. If a complaint is received they 22 then investigate the complaint and a conditional use can be 23 revoked if it's not in compliance with any conditions that 24 are imposed as part of the grant. 25 BONNIE LLOYD: Okay.</p>	<p>558</p> <p>1 Thank you. 2 MARTIN GROSSMAN: Okay. All right. Then anybody else? 3 No? Thank you very much Ms. Lloyd. We appreciate it. 4 JIM SNEE: (inaudible) 5 MARTIN GROSSMAN: Oh, I'm sorry. Mr. Snee. 6 JIM SNEE: Yeah, I left it with him, but I can ask it. 7 MARTIN GROSSMAN: All right. 8 JIM SNEE: You mention that the intersection at Shady 9 Grove and Mill Run is a major exit for all of the people on 10 the- your side of Shady Grove. Is this the same 11 intersection- the only controlled intersection that the 12 people on the other side of Shady Grove use, since there's 13 over 100 more homes on the other side of Shady Grove that 14 belong to Mill Creek Towne. 15 BONNIE LLOYD: Yes. 16 JIM SNEE: Is that the same traffic controlled 17 intersection that they use? 18 BONNIE LLOYD: It is. Definitely. 19 MARTIN GROSSMAN: Okay. Any other cross-examination? 20 No. Okay. Thank you Ms. Lloyd. Appreciate it. 21 G. MASON NELSON: Elaine McCann. 22 MARTIN GROSSMAN: Will you state your full name and 23 address please. 24 ELAINE MCCANN FRENCH: Elaine McCann French. 25 MALE VOICE: The other one.</p>

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<p>559</p> <p>1 ELAINE MCCANN FRENCH: Other-</p> <p>2 MARTIN GROSSMAN: Yeah, the one by (inaudible)</p> <p>3 ELAINE MCCANN FRENCH: Oh yeah, sorry guys. Elaine</p> <p>4 McCann French, 17701 Mill Creek Drive.</p> <p>5 MARTIN GROSSMAN: And I'm sorry. Your last name is</p> <p>6 French?</p> <p>7 ELAINE MCCANN FRENCH: French.</p> <p>8 MARTIN GROSSMAN: And what was the address again?</p> <p>9 ELAINE MCCANN FRENCH: 17701 Mill Creek Drive.</p> <p>10 MARTIN GROSSMAN: Okay. Would you raise your right</p> <p>11 hand, please?</p> <p>12 ELAINE MCCANN FRENCH: Surely.</p> <p>13 MARTIN GROSSMAN: Do you swear or affirm to tell the</p> <p>14 truth, the whole truth and nothing but the truth under</p> <p>15 penalty of perjury?</p> <p>16 ELAINE MCCANN FRENCH: I do.</p> <p>17 MARTIN GROSSMAN: All right. You may proceed.</p> <p>18 ELAINE MCCANN FRENCH: Thank you. I- originally I just</p> <p>19 talked at a break with Mr. Nelson. I just wanted to mention</p> <p>20 something about this intersection that keeps coming up. The</p> <p>21 Mill Run and Park Mill and Mill Run and Shady Grove, but I</p> <p>22 also heard a lot, so I really wanted to say that especially</p> <p>23 Mr. Johnson was told his was hearsay. So I am a witness to</p> <p>24 that intersection, virtually on a daily basis. I come from</p> <p>25 my neighborhood, Mill Creek Towne, Mill Creek Drive, but</p>	<p>561</p> <p>1 MARTIN GROSSMAN: Well, isn't that the controlled</p> <p>2 intersection?</p> <p>3 ELAINE MCCANN FRENCH: Yes, it is. The only</p> <p>4 intersection that's controlled that the majority of people,</p> <p>5 if you want to get out without problem you use the traffic</p> <p>6 light. It is already congested. I counted last time 8 to 10</p> <p>7 cars. I had to wait halfway up the hill and probably go</p> <p>8 through one or two lights before I could exit out of the</p> <p>9 neighborhood. That's now.</p> <p>10 MARTIN GROSSMAN: Okay.</p> <p>11 ELAINE MCCANN FRENCH: Thank you.</p> <p>12 MARTIN GROSSMAN: All right. Hold on one second.</p> <p>13 ELAINE MCCANN FRENCH: Oh.</p> <p>14 MARTIN GROSSMAN: Any cross-examination?</p> <p>15 ROBIN RICE: As a witness stating that you observed</p> <p>16 the intersection a lot, do you observe the Mill Creek Towne</p> <p>17 swimming pool signs that are on Shady Grove Road?</p> <p>18 ELAINE MCCANN FRENCH: To be honest I've lived here</p> <p>19 for 30 years. I don't, you know, I don't, probably don't</p> <p>20 notice as much because I know it's there.</p> <p>21 ROBIN RICE: So you have seen the signs or you have</p> <p>22 not seen the signs?</p> <p>23 ELAINE MCCANN FRENCH: Oh, I have. But I don't- really</p> <p>24 they don't draw me because I've lived here so long they're</p> <p>25 in the background.</p>
<p>560</p> <p>1 I'm coming down the hill from the top of Mill Run Drive.</p> <p>2 There is always, always, no exaggeration a back up of</p> <p>3 traffic that goes from Shady Grove Road back over Park Mill</p> <p>4 Drive and up the hill. Since school has started I count 8</p> <p>5 to 10 cars waiting for the light.</p> <p>6 MARTIN GROSSMAN: About what time of day is that?</p> <p>7 ELAINE MCCANN FRENCH: Anywhere between 7:30 and 9:00.</p> <p>8 MARTIN GROSSMAN: A.m?</p> <p>9 ELAINE MCCANN FRENCH: A.m.</p> <p>10 MARTIN GROSSMAN: Okay.</p> <p>11 ELAINE MCCANN FRENCH: My other concern is, and as I</p> <p>12 said, this has exacerbated with- when the school year</p> <p>13 opened. So my other concern is that that intersection of</p> <p>14 Mill Run and Park Mill is a- there's a stop sign on the</p> <p>15 Park Mill Side that come into the Mill Run. There are cars,</p> <p>16 and I don't want to quantify, but often enough that treat</p> <p>17 that intersection as a four-way stop sign. Some weeks back,</p> <p>18 since we started this process I was almost broad-sided by a</p> <p>19 school bus that came zooming though that stop sign. This is</p> <p>20 not hearsay. I could tell you other stories. And even</p> <p>21 vehicles coming from Park Mill, turn onto Mill Run to exit</p> <p>22 onto Shady Grove, as I said, treat it as a- and sometime</p> <p>23 within since our last hearing there was a Montgomery County</p> <p>24 police cruiser broadsided in Shady Grove Road with traffic</p> <p>25 coming off of Mill Run. It is a chaotic intersection.</p>	<p>562</p> <p>1 ROBIN RICE: I'm talking about the temporary ones that</p> <p>2 are banners that are on the metal part-</p> <p>3 MARTIN GROSSMAN: What's the relevancy of that?</p> <p>4 ROBIN RICE: Part of the sign issue is the safety of</p> <p>5 signs-</p> <p>6 MARTIN GROSSMAN: This is (inaudible)</p> <p>7 ROBIN RICE: Signs because (crosstalk)</p> <p>8 MARTIN GROSSMAN: I understand.</p> <p>9 ELAINE MCCANN FRENCH: See I don't think (crosstalk)</p> <p>10 My issue wasn't signs.</p> <p>11 MARTIN GROSSMAN: No, you didn't- you didn't bring it</p> <p>12 up.</p> <p>13 ROBIN RICE: No. She brought up her expertise as-</p> <p>14 ELAINE MCCANN FRENCH: No, I was talking about-</p> <p>15 MARTIN GROSSMAN: And you didn't (crosstalk)</p> <p>16 ROBIN RICE: -far as the intersection is concerned.</p> <p>17 ELAINE MCCANN FRENCH: No. As the traffic at the</p> <p>18 intersection, not the signs at the intersection.</p> <p>19 MARTIN GROSSMAN: Well, hold on a second Ms. French.</p> <p>20 The objection that could be made to that is the on the</p> <p>21 scope of the direct. In other words she didn't discuss</p> <p>22 signs at all, but, as I say, I try to be more flexible</p> <p>23 here. So she's answered your question.</p> <p>24 ROBIN RICE: Okay. Thank you very much.</p> <p>25 ELAINE MCCANN FRENCH: Mm-hmm. Thank you.</p>

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60 (563 to 566)

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<p>1 MARTIN GROSSMAN: Thank you, Ms. French. You have one 2 more? 3 G. MASON NELSON: Yeah, Pat Labuda. 4 MARTIN GROSSMAN: Okay. Can you state your full name, 5 please, and address. Yeah, that's the right one. 6 PAT LABUDA: I'm (inaudible). My name is Pat Labuda. I 7 live at 16929 Briardale Road in Derwood, Marilyn 20855. My- 8 MARTIN GROSSMAN: Hold on one second. Briardale Road. 9 PAT LABUDA: Mm-hmm. 10 MARTIN GROSSMAN: Okay. And 16929. And how do you 11 spell your last name? 12 PAT LABUDA: L-A-B-U-D-A. 13 MARTIN GROSSMAN: All right. Would you raise your 14 right hand, please? Do you swear or affirm to tell the 15 truth, the whole truth and nothing but the truth under 16 penalty of perjury? 17 PAT LABUDA: Yes, I do. 18 MARTIN GROSSMAN: Okay. 19 PAT LABUDA: Okay. My husband and I have lived in 20 Derwood, Maryland and raised our six children there for 21 over 44 years. For close to two decades I have served as 22 the president of the Greater Shady Grove Civic Alliance, 23 which is an umbrella organization for the homeowners 24 associations of the greater Derwood area, which includes 25 the Mill Creek community. The Derwood community is facing</p>	<p>1 FEMALE VOICE: Has fallen, a County employee has 2 fallen. 3 MARTIN GROSSMAN: Oh, County employees. 4 FEMALE VOICE: Yes. 5 MARTIN GROSSMAN: And- 6 FEMALE VOICE: Call 911. 7 MARTIN GROSSMAN: Okay. 8 PAT LABUDA: She's laying down? 9 MARTIN GROSSMAN: I actually don't have- I don't have 10 my cell phone. 11 FEMALE VOICE: She's down, as in down. 12 MARTIN GROSSMAN: I don't have my cell phone. We'll 13 temporarily recess here. 14 (Off the record.) 15 (On the record.) 16 MARTIN GROSSMAN: I apologize for the interruption, 17 but there's nothing we can do about it. All right. 18 PAT LABUDA: Is she okay? 19 MARTIN GROSSMAN: Yes. I think she'll be fine. She's 20 now in a chair and is being wheeled down to her floor. 21 Okay. 22 PAT LABUDA: Okay. So continuing where I left off. 23 MARTIN GROSSMAN: Yes. 24 PAT LABUDA: It's short too. I, along with many other 25 people in Derwood are very concerned with requests within</p>
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<p>1 many changes including a huge expansion of homes near the 2 Shady Grove Metro. 3 MARTIN GROSSMAN: I have to stop you for a second. You 4 are speaking on your own behalf here, today- 5 PAT LABUDA: Yes, I am. 6 MARTIN GROSSMAN: -and not for the Association. 7 PAT LABUDA: Yes, I am. Mm-hmm. 8 MARTIN GROSSMAN: Okay. 9 PAT LABUDA: Over 6000 new units are proposed in the 10 Shady Grove sector plan. It is very important for us to 11 continue to maintain the residential appeal of the Derwood 12 community. I, along with many other people in Derwood are 13 very concerned with requests within our community that ask 14 for an exception to the residential zoning requirement to 15 enable people to set up businesses. Oh. 16 MARTIN GROSSMAN: Just a second. 17 PAT LABUDA: Oh. 18 G. MASON NELSON: We're just (inaudible) 19 PAT LABUDA: (inaudible) are here. 20 MARTIN GROSSMAN: Sounds like somebody had a fall. 21 PAT LABUDA: They did. 22 MARTIN GROSSMAN: Mr. Nelson, would you check and see 23 if they need me to call 911 or something? 24 FEMALE VOICE: A County employee has fallen. 25 MARTIN GROSSMAN: Pardon me?</p>	<p>1 our community that asked for an exception to the 2 residential zoning requirements to enable people to set up 3 businesses that should be located in areas approved for 4 commercial use. Zoning policies are put in place by the 5 County to protect to protect the residential character of 6 our communities this is the reason why zoning ordinances 7 and the office of zoning and administrative hearing exists. 8 Commercial uses such as a 30 child daycare facility are not 9 in keeping with a residential area. Zoning regulations are 10 made to protect residential areas. Requests for exceptions 11 to the rules need to be carefully managed as they create a 12 problematic precedent that others will follow. We urge the 13 Office of Zoning and Administrative Hearing to oppose this 14 commercial request for a large 30 child daycare facility by 15 Ms. Rice, and preserve the residential appeal of the Mill 16 Creek and Derwood communities. Thank you. I would also like 17 to add a comment on Shady Grove. We live- we back on to 18 Shady Grove. We're three houses down, but we back on to 19 Shady Grove. We can see Shady Grove directly because 20 there's a big hole in the fence that the County put up, 21 whenever they built that awful road. And it's because a car 22 hit it and the County has left it down. And that's 23 happened, you see along Shady Grove Road other times where 24 a car will hit it or something and it's down until somebody 25 either does something about it. But, you know, it is a</p>

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<p>567</p> <p>1 problem and shows the vulnerability of being in the 2 backyard really in that area. Because there have been so 3 many accidents on Shady Grove Road. And so that's certainly 4 a concern if you back on to Shady Grove Road, you know, 5 having 30 young kids in your backyard playing seems very 6 problematic too.</p> <p>7 MARTIN GROSSMAN: I certainly understand the sense of 8 your testimony, but I do want to for that zoning. This is 9 an application not to vary from the zoning ordinance. Not 10 for an exception to the zoning ordinance, but rather for a 11 use that is permitted by the zoning ordinance if specific 12 statutory conditions are met. And so they are spelled out 13 in the zoning ordinance. So that's what this is an 14 application for. This sense of, part of what you testified 15 was that we should be careful not to vary from the zoning 16 ordinance. Whether this is granted or denied, it's not a 17 varying, it's following the specifics of the zoning 18 ordinance. So I just thought you ought to understand that.</p> <p>19 PAT LABUDA: I appreciate that very much because I 20 intend to (inaudible) a lot of the candidates that are 21 running for County Council and I think that needs to be 22 address, you know, by the County to allow for that kind of 23 usage in residential areas because most people when they 24 bought their properties in residential areas that were 25 zoned residential, I think, had the feeling that it's</p>	<p>569</p> <p>1 even join it if you lived outside of the community. It was 2 for the community. My impression was that it was built when 3 the community was built. It's always been there. It's been 4 there for 44 years. And Shady Grove Road didn't exist then 5 either.</p> <p>6 ROBIN RICE: Yeah. Are either in favor of that 7 conditional use?</p> <p>8 G. MASON NELSON: Object to relevance.</p> <p>9 PAT LABUDA: Well it's on-</p> <p>10 G. MASON NELSON: Object to relevance.</p> <p>11 PAT LABUDA: -it's on a huge property. It's not a 12 residential piece of property.</p> <p>13 MARTIN GROSSMAN: Hold on one second. I'm sorry. I 14 missed that question. What was that question?</p> <p>15 ROBIN RICE: Are you in favor of that conditional use 16 being continued?</p> <p>17 PAT LABUDA: I don't-</p> <p>18 MARTIN GROSSMAN: Well, once again. I'll sustain that 19 objection. It's not relevant. Okay. What is that that we 20 have up on the board?</p> <p>21 G. MASON NELSON: Excuse me, sir. I think this witness 22 is concluded. Ms. Becker is going to make a presentation 23 next as part of her case.</p> <p>24 MARTIN GROSSMAN: Okay.</p> <p>25 G. MASON NELSON: And I think she's getting-</p>
<p>568</p> <p>1 residential. And a 30-child daycare is not.</p> <p>2 MARTIN GROSSMAN: Well, it is. That's why this office, 3 in part, why this office exists and why we have this 4 strenuous process that goes through not only a review by 5 the Technical Staff of the Planning Department, but also a 6 Planning Board hearing of its own and their recommendations 7 and then a full-fledged due process hearing here to 8 determine whether or not the zoning ordinance, whether it's 9 compatible with the residential area and so on. There are 10 many standards and the compatibility is the most 11 significant of them. So I understand the sense of your 12 testimony, but I didn't want any misunderstanding about 13 that.</p> <p>14 PAT LABUDA: Okay. Thank you.</p> <p>15 MARTIN GROSSMAN: Okay. And hold on one second. Any 16 cross examination?</p> <p>17 ROBIN RICE: Do you live in Mill Creek Towne?</p> <p>18 PAT LABUDA: No. I don't. We live in Derwood off of 19 Briardale road. We live on Briardale road, I'm sorry. So.</p> <p>20 ROBIN RICE: Mill Creek Towne Swim Club is a 21 conditional use. Were you involved with that, opposed to 22 it, for it?</p> <p>23 PAT LABUDA: No. That was there before I think. Mill 24 Creek Towne, we moved 44 years ago. That was already there. 25 The swim center was there and it was so full we couldn't</p>	<p>570</p> <p>1 MARTIN GROSSMAN: Okay. Thank you Ms. Labuda. Okay.</p> <p>2 FEMALE VOICE: Microphone.</p> <p>3 FEMALE VOICE: We can't move the microphone.</p> <p>4 MALE VOICE: Move your microphone.</p> <p>5 FEMALE VOICE: How. It's my microphone and it won't 6 (inaudible).</p> <p>7 FEMALE VOICE: We tried. We just have to deal with it.</p> <p>8 MARTIN GROSSMAN: All right. First of all (crosstalk) 9 Ms. Becker.</p> <p>10 KATIE BECKER: Yes?</p> <p>11 MARTIN GROSSMAN: You need to turn on your microphone.</p> <p>12 KATIE BECKER: Okay.</p> <p>13 MARTIN GROSSMAN: Okay.</p> <p>14 KATIE BECKER: Will you go from- I don't know how you 15 want to handle this with the exhibits, so I'm just going to 16 give you a copy of the slides and then you can tell me.</p> <p>17 MARTIN GROSSMAN: Okay. Well, first of all, let me, if 18 you're going to testify, state your full name and address.</p> <p>19 KATIE BECKER: (inaudible)</p> <p>20 MARTIN GROSSMAN: All right. So we have, Ms. Becker 21 would you state your full name and address, please?</p> <p>22 KATIE BECKER: My name is Katie Becker. I live at 23 17712 Shady Mill Road, Derwood 20855.</p> <p>24 MARTIN GROSSMAN: All right. Ma'am</p> <p>25 KATIE BECKER: Oh wait. Patty, and then she'll sit</p>

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<p>571</p> <p>1 back there. If she has anything to say she'll come to the 2 mic. 3 MARTIN GROSSMAN: Okay. 4 KATIE BECKER: Go ahead. State your name and- 5 MARTIN GROSSMAN: Name and address please. 6 PATTY PETERSON: Patty Peterson. I live at 7505 Park 7 Mill Court, Derwood. 8 MARTIN GROSSMAN: 7505 Park Mill Court. 9 PATTY PETERSON: Yes. 10 JEAN NODINE: And then if you want to chime in, just 11 come up. My name is Jean Nodine and I live at 7508 Park 12 Mill Court, Derwood, Maryland 20855. 13 MARTIN GROSSMAN: A little too fast. Jean Nodine. 14 JEAN NODINE: Right. 15 MARTIN GROSSMAN: How do you spell your last name 16 again? 17 JEAN NODINE: N-O-D-I-N-E. 18 MARTIN GROSSMAN: And you live at? 19 JEAN NODINE: 7508 Park Mill Court, Derwood, Maryland. 20 MARTIN GROSSMAN: All right. Would all three of you 21 raise your right hands, please. Do you swear or affirm to 22 tell the truth, the whole truth, and nothing but the truth 23 under penalty of perjury? 24 KATIE BECKER: I do. 25 PATTY PETERSON: Yes.</p>	<p>573</p> <p>1 suggesting Shady Grove Road, Muncaster Mill Road, and 2 Midcounty Highway. Is there another boundary to this? 3 KATIE BECKER: Well, another boundary is another 4 neighborhood off of- 5 MALE VOICE: Redwood. 6 FEMALE VOICE: No it's not. 7 FEMALE VOICE: No, it's not. 8 KATIE BECKER: Okay the back side- you guys just stop, 9 please. The back side of the neighborhood is another 10 neighborhood. When we made the presentation we did not 11 include the original side of Mill Creek Towne which is the 12 pool side that has been mentioned previously today. 13 MARTIN GROSSMAN: You mean across Shady Grove Road? 14 KATIE BECKER: Correct. 15 MARTIN GROSSMAN: I want to talk about the other side. 16 I just want to see where the- where the- 17 KATIE BECKER: Okay. It's Washington Grove Road, I 18 guess is what you would say. But that's not really- it 19 doesn't border Mill Creek Towne. 20 KATIE BECKER: So the front- 21 MARTIN GROSSMAN: Over to the west, what's the western 22 edge of your definition of the neighborhood? 23 KATIE BECKER: Okay Mill Creek Drive- 24 MARTIN GROSSMAN: Is it Shady Grove Road? 25 PATTY PETERSON: Mill Creek Drive.</p>
<p>572</p> <p>1 JEAN NODINE: I do. 2 MARTIN GROSSMAN: Okay. All right. So you may proceed 3 with your presentation. 4 KATIE BECKER: This slide, we just want you to know 5 that the neighborhood as we know it is larger than the 6 Staff Defined Neighborhood and there are 406, approximately 7 462 homes within the neighborhood. 8 JEAN NODINE: Okay. 9 MARTIN GROSSMAN: Hold on one second. Go back that one 10 slide again. 11 PATTY PETERSON: There are- 12 MARTIN GROSSMAN: You want the neighborhood to be 13 defined as Mill Creek Towne being bordered by Shady Gove 14 Road, Muncaster Mill Road and Midcounty Highway. What about 15 on, let's see the other side. 16 PATTY PETERSON: Well, when you include the other 17 sides up to 591; 591 homes. But there- 18 MARTIN GROSSMAN: Well, the other side of what? I want 19 to know what all- 20 PATTY PETERSON: Shady Grove, or the road- 21 MARTIN GROSSMAN: Hold on one second. 22 PATTY PETERSON: Okay. Okay. 23 MARTIN GROSSMAN: I want to know what all the 24 boundaries are that you are suggesting for the 25 neighborhood. You are suggesting Mill Creek. You are</p>	<p>574</p> <p>1 MARTIN GROSSMAN: What? 2 KATIE BECKER: Mill Creek Drive. 3 MARTIN GROSSMAN: All right. Shady Grove, Muncaster 4 Mill, Midcounty, and Mill Creek. Okay. 5 KATIE BECKER: All right. As previously discussed 6 there is something called the Staff Defined Neighborhood so 7 I wanted to include the data that is already an exhibit, a 8 previous exhibit, that photo. 9 MARTIN GROSSMAN: Right. 10 KATIE BECKER: And the Staff Defined Neighborhood is 11 approximately 34 percent of Mill Creek Towne as a whole. 12 MARTIN GROSSMAN: Okay. 13 KATIE BECKER: The next few pictures are just examples 14 of what the homes in Mill Creek Towne look like and how 15 they have been maintained. And this is the photo of the 16 current group daycare home located within Mill Creek Towne 17 and obviously the Staff Defined Neighborhood. 18 MARTIN GROSSMAN: And what's, as you say it's outside 19 the- what's the address of that group daycare? 20 PATTY PETERSON: This is Robin's. 21 MARTIN GROSSMAN: Oh. Okay. Okay. I thought you meant 22 it was some other. 23 PATTY PETERSON: Oh, no. Sorry. 24 MARTIN GROSSMAN: Okay. 25 KATIE BECKER: And so the information that we are</p>

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<p>575</p> <p>1 presenting to you today is just to let you know that we are 2 strongly opposed to this application and our presentation 3 will specifically list the reasons why. 4 MARTIN GROSSMAN: All right. 5 KATIE BECKER: I would say that the most important 6 reason why to us is the traffic and pedestrian safety and 7 other people have discussed this today. So I won't go over, 8 you know, talk about things that have already been 9 mentioned. But I do want to reiterate that there are no 10 sidewalks in the community other than the long sidewalk in 11 front of the elementary school. Mill Creek Towne, all roads 12 in Mill Creek Towne have a speed limit of 25 miles per 13 hour. Earlier today Ms. Rice mentioned that if people are 14 late it's written into the contract- time what time- the 15 contracts what time they have to be picked up. What time 16 they can be dropped off and she said that there are charges 17 if they are late, which is just adds to the speeding 18 problem within the community because if a parent or family 19 member is being faced with a late charge they're going to 20 increase their speed through the community. 21 PATTY PETERSON: Also, if they don't hit their target 22 time of arrival they would have to keep circling- like a 23 plane circling the area driving through the community 24 waiting for the opening to appear so that will increase the 25 traffic. And if the parent's late to work I'm sure they're</p>	<p>577</p> <p>1 expansion traffic. You know, if the one access point is 2 used. But it's an average of 40 some homes per access 3 point. Of course, you know, the Shady Grove entrance access 4 point has been discussed most frequently, but I disagree 5 that that's the most heavily used access point to the 6 community. 7 PATTY PETERSON: And I believe on- submitted our 8 letters opposing the conditional use and any future 9 amendments, current amendments from the many hours 10 discussed last time of the 19, 18 homes, all of those folks 11 have submitted letters opposing it and it's listed in- 12 MARTIN GROSSMAN: I mean I don't understand your point 13 there. What is your point? 14 PATTY PETERSON: There was a lot of discussion that 15 maybe only 3 or 4 were opposed of the 19 homes. Ms. Rice 16 was trying to say that there was really only 19 homes 17 because everybody else isn't going to be impacted because 18 everyone's going to use Mill Run, Shady Grove. There's 19 gross exaggerations of everyone's doing this or everyone's 20 doing that. That doesn't- that's how- not how people work. 21 We're not robots. People come from all different directions 22 and for all various reasons. They might have stopped at 23 Giant or whatever. So we got letters from- the County has 24 received letters from all 19 homes that were kept being 25 described as the only ones that are impacted showing that</p>
<p>576</p> <p>1 not leisurely driving around the community waiting for that 2 little window to open up for their three-minute arrival 3 drop off time; or their 10-minute window, but three minutes 4 in and out. 5 KATIE BECKER: We feel that there are four major 6 access points into our community, many of which commuters 7 who do not even live in the community use as cut through 8 and the County has already placed speed humps on Mill Creek 9 Drive to try to slow the traffic. And all four of these 10 access points lead to the Staff Defined Neighborhood. 11 PATTY PETERSON: Also when people talk about trip 12 counts for traffic studies I was told by someone who does 13 these things that each trip, when a parent arrives is one. 14 When they leave is another, but then they got to come back 15 again to pick up and drop off, so that's four trip counts. 16 So when you do that 30 times 4 we get our 120 trip counts. 17 ROBIN RICE: Objection. My traffic pattern shows 21 18 because of siblings. 19 MARTIN GROSSMAN: That's a factual dispute and you 20 can- your evidence versus their evidence. That's all. 21 ROBIN RICE: Okay. 22 MARTIN GROSSMAN: It's not an objection. 23 KATIE BECKER: So we drove the community and counted 24 the homes from each of the four major access points to the 25 community and as many as 59 homes will be affected by the</p>	<p>578</p> <p>1 they're opposed to this. And if those 19 homes are opposed 2 that's not demonstrating harmony with the community, the 3 neighbors. I don't see how this is co-existing happily with 4 a happy nest, I think is the name. It's not happy for the 5 surrounding neighbors. So I don't know where the happiness 6 is coming from. 7 MARTIN GROSSMAN: I think that was probably to 8 reference the children being happy. But in any event. Ms. 9 Becker, let me ask you a question. Do you- you handed me a 10 packet of these, I presume it's a PowerPoint presentation. 11 KATIE BECKER: (inaudible) slides similar. 12 MARTIN GROSSMAN: Pardon me? 13 JEAN NODINE: They're Google slides, but it's similar, 14 yes. 15 MARTIN GROSSMAN: Okay. So you haven't submitted it 16 electronically, correct? Do you have it on disk? 17 JEAN NODINE: I can give you PDF right now, email. 18 MARTIN GROSSMAN: Okay. Well, how- 19 JEAN NODINE: (inaudible) email, PDF. 20 MARTIN GROSSMAN: Well how long is the- how large is 21 the PDF? 22 KATIE BECKER: I don't know. I have it on a stick too. 23 I can- 24 MARTIN GROSSMAN: Okay. Well, you need to submit it so 25 that we have an electronic copy of all this.</p>

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<p>579</p> <p>1 JEAN NODINE: You got a packet earlier. This packet, 2 and there's a few slides that- 3 MARTIN GROSSMAN: I- 4 KATIE BECKER: -have changed. So this is- 5 MARTIN GROSSMAN: I'm not sure I ever got an 6 electronic copy of this. 7 KATIE BECKER: No. Electronic, we submitted it, a hard 8 copy well before the deadline. 9 MARTIN GROSSMAN: Yeah but I need- the rules require- 10 G. MASON NELSON: I'll work on getting you an 11 electronic copy- 12 KATIE BECKER: Okay. 13 G. MASON NELSON: -of what we're looking at. 14 KATIE BECKER: Sure. 15 MARTIN GROSSMAN: Right. The rules require an 16 electronic submission as well. And when I do my reports I 17 look at the computer. 18 KATIE BECKER: Okay. 19 MARTIN GROSSMAN: And also we want to make sure that 20 your presentation here is properly labeled. I've called it 21 Exhibit 134, but I would ask you to mark each page on this 22 with a separate A, B, et cetera until you get to AA, BB, 23 and so on so that it's properly listed and can be referred 24 to. 25 KATIE BECKER: Okay. So do you want me to do that</p>	<p>581</p> <p>1 Montgomery County code. As previously stated today there 2 are areas with in Mill Creek Towne and the Staff Defined 3 Neighborhood that restrict parking so there are pictures 4 for that. The daycare is on a more narrow section of Park 5 Mill Drive and, you know, Ms. Rice stated that there are no 6 signs in that area. 7 MARTIN GROSSMAN: Do you dispute that? 8 KATIE BECKER: No. I agree with that. 9 MARTIN GROSSMAN: Okay. 10 KATIE BECKER: In Exhibit 116 today she stated that 11 the daycare customers will be parking on the grass because 12 of the absence of the no parking signs. 13 ROBIN RICE: Objection. I talked about nonresident 14 staff members talking on the grass, not the customers. 15 MARTIN GROSSMAN: I think she said she will be talking 16 about it. I may have misheard you. 17 KATIE BECKER: There will just be parking on the 18 grass. I didn't specify who will be parking. 19 MARTIN GROSSMAN: (crosstalk) and Staff (inaudible) 20 KATIE BECKER: In Montgomery County parking on an 21 unimproved surface in the County right-of-way is a 22 violation when the grass has been destroyed. So if there 23 are four cars that are consistently parking in the County 24 right-of-way it will not take that much time for the right 25 of way to be destroyed and for mud and ruts to appear. And</p>
<p>580</p> <p>1 right now? 2 MARTIN GROSSMAN: Well, you can wait until you're 3 finished and when somebody else is doing it. But I'm just 4 saying that- 5 KATIE BECKER: Right. Okay. 6 MARTIN GROSSMAN: It will be Exhibit 134 and many 7 subparts. 8 JEAN NODINE: Okay. 9 KATIE BECKER: So there's been a- previously today 10 there's been a lot of talking- there's been a lot of talk 11 about parking and whether it's, you know, happening on the 12 street, or it's happening in the public right-of-way. I'll 13 discuss later why I think it's going to end up being on the 14 street. And if the daycare customers are parking on the 15 street it is going to create traffic issues because it's a 16 narrow road and so if there are people parked on both sides 17 of the road it will be difficult to navigate in between the 18 cars and it will be especially difficult for emergency 19 vehicles, school buses, and commercial trucks. In addition, 20 the excessive on street parking will limit the line of 21 sight which endangers pedestrians, and it will also make it 22 difficult for the residents on Park Mill Drive to back out 23 of their driveway. It is possible that when the daycare 24 customers are parked on the road that they will be parked 25 within five feet of driveways which is a violation of</p>	<p>582</p> <p>1 when Ms. Rice was discussing Exhibit 116 and Exhibit 17 2 today. 3 MARTIN GROSSMAN: 117? 4 KATIE BECKER: No. It was 17 when we went all the way 5 back to- 6 MARTIN GROSSMAN: Oh, the parking plan. Okay. 7 KATIE BECKER: -to the beginning. 8 MARTIN GROSSMAN: Okay. Right. 9 KATIE BECKER: She admitted that she doesn't have 10 enough parking for all of the employees unless they park in 11 the right-of-way. So I can only assume then when the grass 12 becomes muddy and they can no longer park in the right-of- 13 way because of violations that they will be parking on the 14 road. 15 PATTY PETERSON: I went to Mill Creek Towne Elementary 16 school back in 1968 when there were none- sidewalks, and 17 when the school was renovated they added the sidewalks and 18 a swimming pool. I was a member. Was already there when we 19 came to buy the house you knew the pool, you see the plan 20 where it's going to be. People moved in and now this is 21 after the fact trying to put something, so to compare the 22 pool to the school. We know the school was going to be 23 there, we know the pool was going to be there. So when I 24 came to Mill Creek Towne that there weren't sidewalks and 25 they even put up new parking signs because they don't want</p>

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<p>583</p> <p>1 the buses, the parents, obstructing views so no parking. 2 Yet were going to allow a- possibly the County would allow 3 a daycare to have all this parking on the street when 4 there's a special ed bus that needs to come through. There 5 are elderly drivers that- I'm not going to blame old or 6 young drivers, but they have a tendency may be to not drive 7 properly and it's tight, and it's just not fair to put more 8 stress on them. But anyway, so no parking signs for the 9 school now, that wasn't there back in the '70s, '80s. And 10 this is something they've done when they studied the 11 situation. They've added sidewalks. They added no parking 12 signs. 13 MARTIN GROSSMAN: I- frankly, I don't see what that- 14 what point that is. 15 PATTY PETERSON: Because when now- 16 MARTIN GROSSMAN: How does that (inaudible) on this. 17 PATTY PETERSON: -that this daycare is being added, if 18 it gets added, maybe they should be required to have no 19 parking signs in front of it and so that there's no sight 20 line problems and also pay for sidewalks. The school has 21 the sidewalks because there's a need. You have children 22 walking. If there's going to be staff members walking from 23 a dead end, or from the bus stop, or kids going to the 24 park, or she takes them on- Angela does, on wagon rides 25 maybe we should have sidewalks and the business should pay</p>	<p>585</p> <p>1 transportation for students in special education, the 2 magnet and gifted and talented programs and some of the 3 vocational programs. So it would really be 16 plus and 4 someone already stated today that there's a special ed bus 5 that drives on Park Mill Drive so that would be, you know, 6 in addition to the 16 public bus stops that they talk 7 about. Going back to the whole County push for safety there 8 are issues with cars driving around the busses so they've 9 added the video cameras and the County is working to 10 educate the public about the issues of driving around the 11 busses and ignoring the arms because it leads to incidents 12 every year with the kids who are the bus stops and we have 13 16 of them in Mill Creek Towne. And the elementary school 14 students who live within the community walk to school. 15 There are no busses for students within Mill Creek 16 unless- for elementary school students within Mill Creek 17 Towne unless it would be a special education bus for them 18 to ride. So being that there are 120 trip counts a day, 19 that would be associated with the daycare expansion and the 20 fact that there are no sidewalks in the community that 21 endangers a large number of children who walk to school. 22 MARTIN GROSSMAN: You say 120 trip counts a day. 23 You're not talking about during the peak hour? You're 24 talking about the entire day? 25 KATIE BECKER: Mm-hmm.</p>
<p>584</p> <p>1 for it. And maybe no parking signs so we don't have the 2 problem with parking on the right away blocking driveways. 3 If we're going to do it, let's do it right. Possibly widen 4 the road. This little indentation for the school wasn't 5 there back in the '70s; they've done this. They've modified 6 it. 7 MARTIN GROSSMAN: Okay. All right. 8 PATTY PETERSON: All right. 9 KATIE BECKER: Okay. So going along with the traffic 10 and pedestrian safety is the safety for the schoolchildren; 11 safety for pedestrians and the children who stand at the 12 bus stops is a big push in Montgomery County. I know 13 because I'm a County school teacher and it's something 14 that's discussed during pre-service and they have the 15 videos/slide shows that they play for the students about 16 how to be safe. Next slide. 17 MARTIN GROSSMAN: What's the kid doing with the book? 18 PATTY PETERSON: He's getting hit by a car and he's on 19 the windshield. This is a County- from the Montgomery 20 County website. 21 MARTIN GROSSMAN: I see. 22 PATTY PETERSON: Public schools. 23 KATIE BECKER: Within Mill Creek Towne there are 16 24 NCPS bus stops for the middle school and the high school, 25 and that number 16 does not include the extra special bus</p>	<p>586</p> <p>1 MARTIN GROSSMAN: That's generally not the way the 2 County counts its traffic. It counts it during the peak 3 hour or the peak period. 4 JEAN NODINE: Well, MC- Ms. Rice said that her daycare 5 would open at 6:00 even though she wouldn't want the drop 6 off starting at 6:00 and I'm not sure, did you say until 7 9:00 or 8:30, 9:00. I don't know when the drop-offs end, 8 but that time zone falls within all of the pickup times for 9 MCPS, so that would be 60 of the trip counts, because you 10 drive in and then you drive out. And then it would happen 11 again in the evening when the students are coming home from 12 school and getting off at the busses and those 16 bus 13 stops, I didn't even include the after school busses that 14 run Tuesday, Wednesdays and Thursdays in the evenings. 15 MARTIN GROSSMAN: But I'm just actually, was just 16 addressing the question of how the County- the County 17 system counts traffic. They've just changed by the way. 18 They've changed to a somewhat different system for their 19 local area transportation review. They used to count the 20 number of vehicle trips during the peak hour of the period, 21 now they count person trips which include cars, bikes, 22 pedestrians, and so on in transit. So they upped the number 23 of when you had to do a full traffic study. It used to be 24 30 or more trips during the peak you did a full traffic 25 study. Now it's 50 person trips during the peak hour and</p>

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<p>587</p> <p>1 you do a full study. This was very close to that point, by 2 the way. It was like 49 I think, if I recall, so it was 3 very close to that point at which you'd have to do a full 4 traffic study which was not done here. But in any event. Go 5 ahead.</p> <p>6 KATIE BECKER: Okay. Next slide.</p> <p>7 PATTY PETERSON: Back to the students. When they wait 8 for their bus they're not standing on the grass in the 9 morning because of the dew and most folks know teenagers 10 and young kids they don't like their shoes wet, their socks 11 wet so they're standing on the street. And daylight savings 12 time is dark for the morning, the high school kids and you 13 have parents zipping in to a community that are- because 14 most of our community we don't have too many babies. If we 15 do they're- I don't know of- I can't testify if they're 16 actually using this daycare, but we're having folks coming 17 from outside the community using our community for their 18 daycare and we have a concern for our students standing at 19 bus stops and if there's black ice, wet roads, kids are on 20 the corner and it's dangerous and we care about the safety 21 of our students.</p> <p>22 JEAN NODINE: And there is one big bus stop at the 23 intersection of Park Mill Drive and Mill Run.</p> <p>24 KATIE BECKER: I do not have an expert to call for the 25 utilities infrastructure impact so I just posed questions.</p>	<p>589</p> <p>1 will only become worse. Today when Exhibit 117 was entered 2 Ms. Rice stated that her tenants will soon begin parking on 3 the grass on the side of the home, once the excavated area 4 grows grass. On August 4th when Emily Tettlebaum, I think 5 I'm pronouncing that correctly, was here she testified that 6 a waiver to park in the grass on the side of the home is 7 not needed, however if a vehicle is parked on the grass and 8 causes damage to the grassy area then it becomes a code 9 violation regardless of where the vehicle is parked.</p> <p>10 ROBIN RICE: Objection. The testimony was about the 11 public right-of-way grass, not the private property grass. 12 I can erode the private property grass.</p> <p>13 MARTIN GROSSMAN: Well, that's just a difference- 14 KATIE BECKER: But families- 15 MARTIN GROSSMAN: -in your record- 16 KATIE BECKER: -testimony- 17 MARTIN GROSSMAN: That's a difference in the 18 recollection of the testimony. It's not a basis- well, it 19 can be a basis for an objection, but anyway I'm going to 20 let her recollection control her testimony and I'll- if I 21 have to look at it when I- at the transcript I'll do that.</p> <p>22 ROBIN RICE: Okay.</p> <p>23 KATIE BECKER: I just want to make sure I'm 24 understanding. You're saying that Emily's testimony was 25 about parking in the road? Or your testimony was about</p>
<p>588</p> <p>1 I wonder, are the WSSC owned water and sewer lines sized to 2 handle a commercial application on Park Mill Drive. Are the 3 water and sewer piping- the water and sewer piping sizes 4 were built for single family home flow estimates, not for 5 30 plus people in a home. I wonder if the homeowners on 6 Park Mill Drive will experience more sanitary sewer 7 overflows due to the group daycare expansion. When baby 8 wipes or personal wipes and toys are flushed down the 9 toilet they create many public health concerns such as 10 sanitary sewer overflows.</p> <p>11 MARTIN GROSSMAN: Well, let me stop you. I mean I 12 can't- I have to go on evidence. And there is no evidence 13 to support the assertions that are inherent in those 14 questions. The evidence that I do have in terms of public 15 facilities and services is that other than the question 16 relating to traffic and to some extent relating to the 17 storm water overflow, the Staff says that the public 18 facilities are adequate. So I don't have any other evidence 19 to contradict that.</p> <p>20 KATIE BECKER: Next slide. So the next slide has to do 21 with storm water. We have pictures taken recently that the 22 group daycare vehicle traffic has created an erosion 23 problem in the public right-of-way. You can see the mud 24 that's being tracked in and out of the driveway and onto 25 the road. If an expansion takes place the current issue</p>	<p>590</p> <p>1 parking in the road? Parking in the right-of-way.</p> <p>2 ROBIN RICE: I believe her testimony was about the 3 erosion in the public right-of-way.</p> <p>4 KATIE BECKER: I wrote down what she said, and my 5 notes from August 4th are, Emily confirmed that you do not 6 need a waiver to park on the side of the home, however if 7 the vehicle is parked on the grass and causes damage to the 8 grassy area then it becomes a code violation regardless of 9 where it is parked side or back.</p> <p>10 MARTIN GROSSMAN: That's my recollection too, but 11 maybe not.</p> <p>12 KATIE BECKER: So this is an issue because it's 13 proposed parking on the side of the house when the grass 14 grows in. So that will lead to additional- it's an 15 environmental impact.</p> <p>16 MARTIN GROSSMAN: Let me stop you for a second and ask 17 about how much longer do you expect your presentation to 18 take, since it's 10 to 5:00. I'm not rushing you- 19 PATTY PETERSON: We're half way through. We're half- 20 way through. So how long have we already gone? Ten minutes?</p> <p>21 KATIE BECKER: I don't know; 10 more minutes.</p> <p>22 MARTIN GROSSMAN: Okay. Does anybody have a problem 23 staying late? Does the court reporter, sir? You can stay 24 late. Okay. The reason I ask that is if it's possible for 25 us, and I would hope that it is, for us to complete this</p>

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<p>591</p> <p>1 case today I'd like to do it.</p> <p>2 JEAN NODINE: We don't want to be rushed.</p> <p>3 MARTIN GROSSMAN: I'm not rushing anybody. I'm just</p> <p>4 saying and I would like to complete it today if we can. If</p> <p>5 we cannot will have to come back another day. But we're</p> <p>6 going to try to complete it today. I take it that would be</p> <p>7 everybody's preference.</p> <p>8 KATIE BECKER: Do you want to continue because I want</p> <p>9 to see the (inaudible)</p> <p>10 MARTIN GROSSMAN: Pardon me?</p> <p>11 PATTY PETERSON: (inaudible) want to get going.</p> <p>12 MARTIN GROSSMAN: Hold on one second.</p> <p>13 PATTY PETERSON: Okay.</p> <p>14 MARTIN GROSSMAN: I don't know. You know if Ms.</p> <p>15 Gregorski has a present- you have a presentation as well?</p> <p>16 ANNE GREGORSKI: (Inaudible)</p> <p>17 MARTIN GROSSMAN: Well, I'm not asking you to be</p> <p>18 quick. I'm just asking you how long estimate it will take.</p> <p>19 ANNE GREGORSKI: I can try to finish (inaudible)</p> <p>20 MARTIN GROSSMAN: I'm, once again, I'm not rushing</p> <p>21 you, I'm just trying to get an estimate. Okay.</p> <p>22 ANNE GREGORSKI: (Inaudible)</p> <p>23 MARTIN GROSSMAN: Do you anticipate rebuttal evidence?</p> <p>24 ROBIN RICE: Yes.</p> <p>25 MARTIN GROSSMAN: How long do you think that will</p>	<p>593</p> <p>1 which should then make it into the waterways.</p> <p>2 MARTIN GROSSMAN: Well, I'm not sure that that's true</p> <p>3 or not true. What evidence do you have of that? That that</p> <p>4 (inaudible) that might be caused by the additional parking</p> <p>5 there is going to end up with sediment in-</p> <p>6 JEAN NODINE: This is the evidence I guess, just it's-</p> <p>7 this is violation.</p> <p>8 KATIE BECKER: I guess I don't understand your</p> <p>9 question.</p> <p>10 MARTIN GROSSMAN: My question is is there really an</p> <p>11 impact here- such an environment impact as you're talking</p> <p>12 about, as significant as you're talking about. I understand</p> <p>13 the point that was originally raised, as I saw it, by Mr.</p> <p>14 Snee in his testimony, about the fact that the destruction</p> <p>15 of the grass and the rutting would cause additional storm</p> <p>16 water accumulation and there's already storm water</p> <p>17 accumulation there; or it may cause more damage. But I</p> <p>18 don't see, I don't know that there's evidence here upon</p> <p>19 which I can base a conclusion that anything that the</p> <p>20 increase in parking there would do, would be, and have any</p> <p>21 significant impact.</p> <p>22 KATIE BECKER: Okay. So drop that. We'll drop that.</p> <p>23 But how are they going to park where if the soil is very</p> <p>24 damp because a car's heavy how is it, how is this really</p> <p>25 going to work? She's saying they're going to park here but</p>
<p>592</p> <p>1 take?</p> <p>2 ROBIN RICE: I don't know.</p> <p>3 MARTIN GROSSMAN: Okay. All right. Well, maybe we can</p> <p>4 do it by 6:00, and that would be a viable way to go. So</p> <p>5 okay. Please, Ms. the Becker, continue.</p> <p>6 KATIE BECKER: Okay. So continuing on the storm water</p> <p>7 environmental impact concerns, all storm water will</p> <p>8 eventually make its way to waterways through ditches and</p> <p>9 pipes. Sediment and rainwater is one of the main forms of</p> <p>10 water quality degradation in streams. These are pictures of</p> <p>11 the, I call them ditches, but storm water management</p> <p>12 easements throughout the community, and throughout the</p> <p>13 Staff Defined Neighborhood. And these pictures are just</p> <p>14 after what one might call a normal range, not torrential</p> <p>15 downpour similar to the pictures that were shown on August</p> <p>16 4th.</p> <p>17 MARTIN GROSSMAN: Well. I mean the question here is</p> <p>18 limited to what, if any, additional impacted there will be</p> <p>19 from the proposed conditional use.</p> <p>20 PATTY PETERSON: She's parking on the-</p> <p>21 MARTIN GROSSMAN: So I- the single thing were talking</p> <p>22 about here is the grass- the effect on the grass and the</p> <p>23 soil, eroding the soil.</p> <p>24 KATIE BECKER: -and then all of those contaminants</p> <p>25 because the grass is gone end up going into the easement</p>	<p>594</p> <p>1 during ice, snow, winter, the ground balls, re-freezes,</p> <p>2 it's-</p> <p>3 MARTIN GROSSMAN: Well, I'm not saying that her plan</p> <p>4 is practical. I'm just saying that-</p> <p>5 KATIE BECKER: Well, you spent a lot of time going</p> <p>6 over it so were trying to rebut it. That's all. We are</p> <p>7 showing pictures of water. We'll move on.</p> <p>8 MARTIN GROSSMAN: All right. I'm just saying that the</p> <p>9 environmental argument is somewhat attenuated by the-</p> <p>10 KATIE BECKER: Chesapeake Bay is not going to like all</p> <p>11 of this going into the drain because it's going to end up</p> <p>12 into the drain.</p> <p>13 MARTIN GROSSMAN: That's an assertion by you, not an</p> <p>14 expert opinion.</p> <p>15 KATIE BECKER: Okay. It's- I witnessed this car coming</p> <p>16 there and it was beeping the horn for a person to come out</p> <p>17 of the daycare house and it's just a disregard, just</p> <p>18 respect for the community and we were told that it's going</p> <p>19 to be you know, that it was going to play nicely. But this</p> <p>20 is not even up to 30 and we have someone beeping the horn.</p> <p>21 And this is-</p> <p>22 PATTY PETERSON: No, no, no.</p> <p>23 KATIE BECKER: Okay. You want to go back?</p> <p>24 MARTIN GROSSMAN: How often did you observe this one</p> <p>25 beeping?</p>

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<p>595</p> <p>1 KATIE BECKER: Me, I observed it one time. There's 2 someone else here who observed it before me on another 3 occasion that can testify. 4 MARTIN GROSSMAN: I mean, I don't know that that gets 5 me anywhere either. 6 KATIE BECKER: Yeah but this- 7 MARTIN GROSSMAN: I mean clearly the issue of traffic 8 in the neighborhood and additional commotion and all the 9 other things are significant issues, but if somebody beeped 10 one that's been observed once or twice I'm not sure that 11 that gives me any information I can act on. 12 KATIE BECKER: I just don't wish that on anyone else 13 to have to endure and prove all the time that it happened 14 more than once or twice. 15 MARTIN GROSSMAN: Well, I'm about proof all the time. 16 KATIE BECKER: Because not everybody's here that, 17 like, these meetings go on and on so they're not all here 18 to be able to say yes, I witnessed this, yes I witnessed 19 this and that's why we're at a disadvantage. We are the 20 victims of this. Really, we are. But we'll move on. You 21 can- I won't take the point away. It's just sad. 22 JEAN NODINE: Today during Exhibit 118 Ms. Rice said 23 that her intent is to have all 30 children outside together 24 at the same time, so this is another example of disturbing 25 the peace of the community and this weekend Ms. Pryor</p>	<p>597</p> <p>1 residential home? 2 KATIE BECKER: Yeah. Sandy Spring. I took a drive up 3 there. It was Case number S1192. That's there now and we'll 4 show you some of the pictures, that once they get into the 5 residence, this is what the residents are having to look 6 at. 7 MARTIN GROSSMAN: Well, I don't think you have to fear 8 that here. First of all, she's not requesting that kind of 9 a sign. She's requesting a sign in the back and that is no 10 more than two square feet assigned area. That's one- 11 KATIE BECKER: Give an inch, some people take a mile. 12 I don't know. We'll see. 13 MARTIN GROSSMAN: Well they can't take a mile. 14 KATIE BECKER: This is the same house, I'm trying to 15 go through it quickly. I don't to argue that if you- if you 16 don't want to- I'll just go through it and it's not good- 17 MARTIN GROSSMAN: All I'm saying- all I'm saying to 18 you is that while I appreciate all the effort that's gone 19 into collecting all of this I have to act on real evidence. 20 I know that there's not going to be a sign that there 21 that's a huge sign- 22 KATIE BECKER: Okay. 23 MARTIN GROSSMAN: -at this property, even if it were 24 approved. I also know there are significant issues in this 25 case, and you know, things that are not-</p>
<p>596</p> <p>1 admitted to a physical altercation that took place at the 2 daycare property. And we don't know if it was a special 3 event and something related to the daycare or if it was, 4 you know, an after hours personal event. But it is an 5 example of disturbing the peace. 6 MARTIN GROSSMAN: Again, if you don't know what the 7 source of it is I don't know that I can rely on it in any 8 way as evidence. 9 JEAN NODINE: Well, Ms. Pryor admitted to it on social 10 media when she explained that it happened. And she's here. 11 MARTIN GROSSMAN: Well, it's not before me. 12 KATIE BECKER: So I can show you the email. 13 MARTIN GROSSMAN: No. It's not before me as evidence 14 in the case. 15 KATIE BECKER: This is an example of a sign that the 16 County permits at another daycare that backs to Mill Creek 17 Towne that Ms. Feldman was told was closer to her house 18 when actually it's, by roadways, it's not. It's through the 19 woods on the backside of another community. But it has the 20 vacancies- now and rolling because there was testimony that 21 there is not- (inaudible) there wasn't a need, there's 22 openings. Here's a place that has their sign. And that's a 23 pretty huge sign out in front of a residential home and 24 either, is it R200 or R90. 25 MARTIN GROSSMAN: That's a sign in front of a</p>	<p>598</p> <p>1 KATIE BECKER: Okay. 2 MARTIN GROSSMAN: -provable are, you know, are not- 3 KATIE BECKER: Okay. I'm glad to hear that there won't 4 be a sign that obnoxious in front of the home. This is the 5 same home, with that sign, that the neighbors are looking 6 at Big Bird, Barney, the stuff is stored out front. 7 MARTIN GROSSMAN: Is there something that I'm not 8 seeing on this? Where's the sign? 9 KATIE BECKER: This is the home. This is the sign- 10 MARTIN GROSSMAN: Oh, I see. 11 KATIE BECKER: -in front of this home. And I have at 12 the top of the case number, and she had it in her 13 restatement hearings or whatever, her, this is one of the 14 cases that she was using to support. It says a visual 15 impact. I wouldn't wish this on any neighbor to have to 16 look at every morning, drinking your coffee, looking at 17 Barney in The Bird. Okay. And the bikes are all out front. 18 This is what happens in the County does not, you know, the 19 one cent a year and- 20 MARTIN GROSSMAN: I have no idea about this particular 21 special exception. 22 KATIE BECKER: Maybe we'll go out and I'll drive you 23 around and show you so before you make your decision- 24 MARTIN GROSSMAN: S1192. 25 KATIE BECKER: This is the one that Mrs. Feldman was</p>

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<p>599</p> <p>1 told was closer to her home. So Ms. Feldman has to deal 2 with this in her backyard. And I'm only proving this up 3 because I spent hours here last time until 6:00 listening 4 to how it's so much closer. This is in fact in Ms. 5 Feldman's- 6 MARTIN GROSSMAN: What's so much closer? May I- I 7 don't understand what you're saying so stop. Slow down. 8 KATIE BECKER: Okay. 9 MARTIN GROSSMAN: So I can understand what you're 10 saying. 11 KATIE BECKER: I'm sorry. I'm feeling rushed. 12 MARTIN GROSSMAN: Okay. All right. 13 KATIE BECKER: This daycare- 14 MARTIN GROSSMAN: This and being the S1192? 15 KATIE BECKER: Mm-hmm. Was for the last meeting that 16 we sat through was told that this is closer to a Mill Creek 17 Towne residence and was also provided as evidence from Ms. 18 Rice, I guess, supporting her case and that if this is 19 allowed she should be allowed. Like why would- that's what 20 I'm getting from why she has it in there. I got this number 21 from her evidence that she submitted. So I'm showing you 22 pictures because you haven't gotten a chance to drive out, 23 and this is what we fear. This is what the County is 24 permitting to go on. 25 MARTIN GROSSMAN: When you say I haven't gotten a</p>	<p>601</p> <p>1 KATIE BECKER: Wait, wait. When you say that I'm 2 concerned- 3 MARTIN GROSSMAN: But I'm astounded that- 4 KATIE BECKER: -because it was put into evidence, 5 well, it's in evidence in the file. 6 MARTIN GROSSMAN: Oh I understand. Thank you. 7 KATIE BECKER: We don't want this in Mill Creek Towne. 8 MARTIN GROSSMAN: Okay. 9 KATIE BECKER: There has been discussion about the 10 need for daycare in the Derwood area and according to the 11 US Census Bureau Derwood only has 313 children under the 12 age of 18, and the number is decreasing. I know previously 13 you said that- I don't remember who it was, mentioned that 14 there are daycares with vacancies, and you said it was 15 hearsay. 16 JEAN NODINE: (inaudible) 17 KATIE BECKER: So we can just skip the next slide. It 18 just lists the daycare centers in Derwood, in the area; 19 Derwood, Gaithersburg close to Mill Creek Towne. 20 MARTIN GROSSMAN: Okay. 21 PATTY PETERSON: These are just different cases that 22 Ms. Rice- okay. This SE112 was brought up by Ms. Rice and 23 were comparing it, the square footage to her lot. You know, 24 you can see it's apples and oranges. It's not the same; 25 three-car garage versus no garage, three-quarter, it's all</p>
<p>600</p> <p>1 chance to drive out, you're talking about a site visit? 2 KATIE BECKER: To the site. To different sites that 3 are in her hearings. And I don't expect you to- 4 MARTIN GROSSMAN: In effect a site visit, and a site 5 visit has all kinds of things that, requirements that are 6 attached to it that are fairly complex and sometimes 7 difficult. So I'm not going to do a site visit. 8 KATIE BECKER: Oh no, I don't expect you to. That's 9 why I brought you pictures. And I'm just trying to show you 10 what's in our backyard. And what we're trying to stop from 11 our front yard. This is all the same place. There's storage 12 going on, excessive. Flat tire, car left, abandoned. This 13 is the parking lot in a three quarter acre lot if we pull 14 up the information on this place. 15 MARTIN GROSSMAN: Wait a minute this what is this 16 parking lot of? This is that this- 17 KATIE BECKER: That daycare, of that house; three 18 quarter lot. 19 MARTIN GROSSMAN: And you say that's a residential 20 home? 21 KATIE BECKER: Yes. It's sad. 22 MARTIN GROSSMAN: I have no idea why that is- 23 KATIE BECKER: That's why we are- 24 MARTIN GROSSMAN: This has nothing to do with this 25 case as far as I can tell. But I-</p>	<p>602</p> <p>1 there. This is pictures of the two residences side-by-side. 2 It's different. And the roads that are coming off are 3 primary roads or secondary roads. So considerations that 4 need to be recognized when you're comparing the different 5 conditional use cases; we listed are things that we think 6 should be considered. 7 MARTIN GROSSMAN: All right. Well, frankly, I mean I 8 know that Ms. Rice attached a number of references to other 9 special exceptions conditional uses, but I have to tell you 10 each of these cases is what we call in the law, sui 11 generis, that is it's governed by it's own site situation. 12 So some things have absolutely- are not comparable. For one 13 of the things she mentioned this morning, the Zang case. 14 Well, the Zang case is on a property that's about four 15 times the size of this property. I mean some things are 16 just not comparable and can't govern. But in any event go 17 ahead. 18 KATIE BECKER: This slide might be irrelevant at this 19 point because Ms. Rice didn't talk about the park across 20 from her property today, which is outside of the Staff 21 Defined Neighborhood. But if the Mill Creek Towne park off 22 of Shady Grove is being considered as an area for the 23 daycare children to go if they weren't playing in their own 24 backyard I know you haven't done a site visit, but it's 25 important to realize that the park isn't really just across</p>

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<p>603</p> <p>1 the street. It's across six lanes of traffic and those six 2 lanes of traffic are divided by a very wide medium (sic), 3 deep median. 4 MARTIN GROSSMAN: I'm familiar with the area. 5 KATIE BECKER: Okay. And the two bike lanes on both 6 sides. Today there was talk about the dead end parking on 7 Mill Run Drive as an available parking space for staff and 8 guests attending special events and not today, but 9 previously Ms. Rice said that this dead end area is not 10 near any homes in Mill Creek Towne or the Staff Defined 11 Neighborhood and these are pictures of the homes whose 12 property abuts the dead end area and you can see that there 13 is a front yard within that dead end area and a neighbor's 14 side yard which is in that dead end area. 15 MARTIN GROSSMAN: Somebody at the last hearing said 16 that there was some kind of a Verizon or other- 17 JEAN NODINE: Right-of-way. 18 MARTIN GROSSMAN: -utility easement. Do you have any 19 evidence of that? 20 JEAN NODINE: Verizon trucks- 21 KATIE BECKER: I personally called and they said they 22 will contact the car or police to get it to be moved when 23 they need to work on it. That's all they said. 24 MARTIN GROSSMAN: The question was whether or not 25 there is in fact a- some kind of easement or something that</p>	<p>605</p> <p>1 increases the adverse effect on the homes. She also- 2 PATTY PETERSON: I'm sorry. 3 KATIE BECKER: -she also stated during the last 4 hearing and today that the daycare- the group daycare 5 expansion traffic would use the Shady Grove Road access 6 point, without focusing on the other major three access 7 points. And in the last hearing she recommended that if 8 Park Mill Drive residents are offended by the daycare and 9 don't want to see it they can drive the other way and drive 10 in a circular driving pattern to avoid her investment 11 property. We say that there are four main access points to 12 Mill Creek Towne and a total of six access points if you 13 only discuss the Staff Defined Neighborhood. Ms. Rice will 14 have absolutely no control over which routes are used to 15 enter and leave Mill Creek Towne or the Staff Defined 16 Neighborhood. As I previously said today as many as 59 17 homes will be disturbed by the group daycare expansion 18 traffic and that's per trip count. And if the Park Mill 19 Drive residents use the circular driving pattern as 20 suggested by Ms. Rice then 49 homes are affected, not the 21 18 that she previously stated would be affected by using 22 Shady Grove, and 49 homes is 32 percent of the homes within 23 the Staff Defined Neighborhood. So that's a really big 24 impact. So we feel that the data that I just discussed 25 demonstrates that there absolutely is an adverse effect on</p>
<p>604</p> <p>1 prevents somebody from parking in that area. 2 KATIE BECKER: Well, Verizon said that's how they 3 handle it. They have access to it and what they do is just 4 call the police. Or try to get the person to move it if 5 they know where they are. 6 MARTIN GROSSMAN: Okay. 7 KATIE BECKER: Because I asked for- I tried to get 8 what you want but they weren't going to go down that road 9 with me. 10 MARTIN GROSSMAN: Okay. 11 KATIE BECKER: So it's our opinion that the dead end 12 parking is not a viable option for the expansion for the 13 reasons that we've stated and other ones that were 14 presented today. 15 MARTIN GROSSMAN: It's also a quarter of a mile away 16 from the subject site. 17 PATTY PETERSON: Right, and if they do need to move it 18 who's going to watch the children? That would be my 19 question is, if they're going to go move the cars- anyway 20 that's would be the daycare's- 21 KATIE BECKER: On the first day of testimony Ms. Rice 22 said that the traffic- when she was discussing the reason 23 why she chose the site on Park Mill Drive as opposed to a 24 site let's say on Mill Creek Drive, she discussed that the 25 more homes that would have to be passed by the traffic</p>	<p>606</p> <p>1 a substantial number of homes within Mill Creek Towne and 2 the Staff Defined Neighborhood due to group daycare 3 expansion traffic. And just in conclusion the three of us 4 are strongly opposed to the application. It will have an 5 extraordinarily negative impact on Mill Creek Towne as well 6 as the Staff Defined Neighborhood. It will not promote the 7 health, safety, morals and general welfare of the 8 community. It will not protect and conserve the value of 9 the buildings and encourage the most appropriate use of the 10 land and it will not facilitate the creation of a 11 convenient, attractive and harmonious community. 12 MARTIN GROSSMAN: All right. Thank you all. Cross 13 examination, Ms. Rice? 14 ROBIN RICE: One question. You talk about 592 houses 15 and there's 300 children in the area. 16 KATIE BECKER: I talked about 462 homes in Mill Creek 17 Towne and the census is all of Derwood, 20855, not just 18 Mill Creek Towne. 19 ROBIN RICE: Okay; 462 houses. Do you have any idea of 20 how many children there are in the 462 houses? 21 KATIE BECKER: No. The census doesn't break it down 22 that way. 23 PATTY PETERSON: Do you, when you made this 24 investigation- 25 MARTIN GROSSMAN: Whoa, whoa, whoa.</p>

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<p>607</p> <p>1 PATTY PETERSON: Okay.</p> <p>2 MARTIN GROSSMAN: This is not your turn.</p> <p>3 PATTY PETERSON: Okay. Sorry.</p> <p>4 MARTIN GROSSMAN: Okay, this is cross-examination.</p> <p>5 ROBIN RICE: Regardless of how many children are in</p> <p>6 Mill Creek Towne, won't the traffic be worse if they have</p> <p>7 to leave the neighborhood to go to other people's</p> <p>8 neighborhoods for childcare versus having childcare in Mill</p> <p>9 Creek Towne for them to go to?</p> <p>10 JEAN NODINE: There's no evidence that that's</p> <p>11 happening.</p> <p>12 ROBIN RICE: I'm asking Katie.</p> <p>13 JEAN NODINE: Well I'm- well the three of us-</p> <p>14 MARTIN GROSSMAN: Well, now she can ask an individual</p> <p>15 (inaudible) testify.</p> <p>16 JEAN NODINE: Okay.</p> <p>17 KATIE BECKER: Can you repeat the question?</p> <p>18 ROBIN RICE: If we've got 462 houses in Mill Creek</p> <p>19 Towne, regardless of how many children are in Mill Creek</p> <p>20 Towne in those 462 houses won't the traffic be worse if all</p> <p>21 462 houses that need child care have to drive out of the</p> <p>22 neighborhood to somebody else's neighborhood or to a</p> <p>23 commercial zone than if there was child care in the</p> <p>24 neighborhood?</p> <p>25 KATIE BECKER: Well, the 462 number is number of homes</p>	<p>609</p> <p>1 not data proven, that-</p> <p>2 MARTIN GROSSMAN: But hold on just a minute.</p> <p>3 PATTY PETERSON: Okay.</p> <p>4 MARTIN GROSSMAN: Any other questions?</p> <p>5 ROBIN RICE: No, that's it, thank you.</p> <p>6 MARTIN GROSSMAN: Okay. All right. Thank you ladies</p> <p>7 and Ms. Becker, if you would just-</p> <p>8 KATIE BECKER: Yes, I'm going to start numbering.</p> <p>9 MARTIN GROSSMAN: Number these A, B, C, et cetera,</p> <p>10 while Ms. Gregorski is putting on her presentation.</p> <p>11 KATIE BECKER: Well, I'm (inaudible) to Z and I go-</p> <p>12 MARTIN GROSSMAN: AA, BB, right, right. We've done</p> <p>13 that with the letters of opposition. All right. Ms.</p> <p>14 Gregorski would you state your full name, and address</p> <p>15 please?</p> <p>16 ANNE GREGORSKI: Anne Gregorski; 1-</p> <p>17 MARTIN GROSSMAN: Folks can I ask you to quiet down so</p> <p>18 Ms. Gregorski can be heard. Go ahead.</p> <p>19 ANNE GREGORSKI: 17500 Park Mill Drive.</p> <p>20 MARTIN GROSSMAN: Okay. Would you raise your right</p> <p>21 hand, please. Do you swear or affirm to tell the truth, the</p> <p>22 whole truth and nothing but the truth under penalty of</p> <p>23 perjury?</p> <p>24 ANNE GREGORSKI: I do.</p> <p>25 MARTIN GROSSMAN: All right, you may proceed.</p>
<p>608</p> <p>1 within the community. I don't have children so that's one</p> <p>2 house that doesn't have kids, Jean doesn't have kids. Do</p> <p>3 you have kids?</p> <p>4 PATTY PETERSON: My son is grown.</p> <p>5 KATIE BECKER: So it's not 462 homes with children,</p> <p>6 and if I'm going to make an assumption, I don't have data</p> <p>7 on this, if a parent or guardian is taking their child to</p> <p>8 daycare, it is because they would be leaving the community</p> <p>9 anyway to go to work, so they would be leaving anyways and</p> <p>10 it wouldn't create extra traffic. It may create extra</p> <p>11 traffic through the community to drive to Park Mill Drive</p> <p>12 opposite of their normal route to work and then leave the</p> <p>13 community.</p> <p>14 ROBIN RICE: Would it create more traffic in somebody</p> <p>15 else's community to leave Mill Creek Towne and then go to</p> <p>16 somebody else's community?</p> <p>17 KATIE BECKER: Okay. Well-</p> <p>18 ROBIN RICE: Like Sunrise.</p> <p>19 MARTIN GROSSMAN: Uh, is your microphone on? Because</p> <p>20 had said they were having trouble hearing.</p> <p>21 KATIE BECKER: Yes, sir.</p> <p>22 MARTIN GROSSMAN: Okay.</p> <p>23 KATIE BECKER: I can answer that hypothetically.</p> <p>24 MARTIN GROSSMAN: It's too argumentative. Let's-</p> <p>25 PATTY PETERSON: We were told we don't have- this is</p>	<p>610</p> <p>1 ANNE GREGORSKI: Thank you. I live right across the</p> <p>2 street, one house over from Robin Rice- Robin Rice's house.</p> <p>3 I have- Park Mill Drive. This is the area we're concerned</p> <p>4 about. There's that lovely pool and swimming community</p> <p>5 (inaudible)</p> <p>6 MARTIN GROSSMAN: I can't hear you or see you. See</p> <p>7 what you're pointing to.</p> <p>8 ANNE GREGORSKI: Is that me?</p> <p>9 G. MASON NELSON: Don't worry about your phone. Stand</p> <p>10 on the other side so he can see it.</p> <p>11 MARTIN GROSSMAN: Thank you.</p> <p>12 ANNE GREGORSKI: Right there.</p> <p>13 MARTIN GROSSMAN: Right.</p> <p>14 ANNE GREGORSKI: I'm right here and there's Robin's</p> <p>15 house right there.</p> <p>16 MARTIN GROSSMAN: Yes.</p> <p>17 ANNE GREGORSKI: Okay. So basically I walk my dog</p> <p>18 every day just like Jane does. We bump into each other</p> <p>19 every now and then and we walk around this circle, it's a</p> <p>20 very nice walking circle to go through. As you can see</p> <p>21 there's a curve right there-</p> <p>22 MARTIN GROSSMAN: Right there being?</p> <p>23 ANNE GREGORSKI: A curve- when you turn in from Mill</p> <p>24 Run you're going to hit a curve and go straight an then</p> <p>25 you'll go around another curve to- up to Mill Run.</p>

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72 (611 to 614)

<p>611</p> <p>1 MARTIN GROSSMAN: All right, you're heading straight 2 south and then you're making a right turn and heading west. 3 ANNE GREGORSKI: Correct. 4 MARTIN GROSSMAN: I'm just trying to identify it so 5 the record is clear as to what you're saying. 6 ANNE GREGORSKI: Yes. So these two curves, they're 7 wicked blind spots. When you're driving Mr. Abdon here can 8 testify the other day when we were driving he had to whoop, 9 adjust his car over because he was on- we were right there 10 at the curve so he moved his car over, but it's a small 11 road, not two cars going by, multiple cars I feel sorry for 12 that houses here; their mailboxes get hit frequently. 13 MARTIN GROSSMAN: All right, that's the northern end 14 of the circuit that you walk. 15 ANNE GREGORSKI: Yes. 16 MARTIN GROSSMAN: Okay. 17 ANNE GREGORSKI: I'm referring to. And then around 18 here- 19 MARTIN GROSSMAN: The southern end, the southeastern 20 end. 21 ANNE GREGORSKI: It elevates, at the southern end it 22 elevates and that's why it has a blind spot. 23 MARTIN GROSSMAN: Okay. 24 ANNE GREGORSKI: As you're going up that way when 25 we're walking our dogs. So it's not a safe road to walk on.</p>	<p>613</p> <p>1 in this area. That's why I keep mentioning the rivers and 2 the- 3 MARTIN GROSSMAN: By the way, I think you're entirely 4 correct. I looked carefully at the Gaithersburg vicinity 5 Master Plan to find something really relevant here. 6 ANNE GREGORSKI: Yeah. 7 MARTIN GROSSMAN: It just so happens that you're in 8 the area of what's called the Air Park Analysis Area. 9 ANNE GREGORSKI: Right. 10 MARTIN GROSSMAN: However, they've broken that down 11 into three other segments. You're not actually- your area 12 is not in any of them. 13 ANNE GREGORSKI: That's right. 14 MARTIN GROSSMAN: You're in the extreme eastern edge 15 of that area and the Plan doesn't seem to discuss you at 16 all. 17 ANNE GREGORSKI: And that's because of Mill Creek. 18 That's the part and that's Mill Creek. I can hand these to 19 you. That's- and not to mention that is why the ICC in my 20 first prestatemetn hearing I explain why the ICC goes all 21 the way around this area to preserve. They have to have 22 filters for the runoff water because of Rock Creek. 23 MARTIN GROSSMAN: All right so these photos, 135A and 24 B are of the Mill Creek Towne Park. 25 ANNE GREGORSKI: Right.</p>
<p>612</p> <p>1 For children to be walking on the road it's not safe at 2 all. 3 MARTIN GROSSMAN: You mean under current conditions? 4 ANNE GREGORSKI: Under current conditions. 5 MARTIN GROSSMAN: All right. 6 ANNE GREGORSKI: Yeah. I have the newspaper lady, 7 sometimes she gets this close with that newspaper. 8 MARTIN GROSSMAN: All right. 9 ANNE GREGORSKI: All right. So those are the technical 10 problems with the traffic there. But I wanted to go through 11 the- Robin put case history, she had certain cases in there 12 and the Veenu Duggal (phonetic) conditional use 13 applications, CU17-09, in that case it is stated, Staff 14 advises that the site lies within the Derwood communality's 15 area designated in the plan. The plan recommends preserving 16 the residential neighborhoods and protecting them from 17 traffic congestion. That was very important. The Veenu 18 Duggal site, first it's an R90 zone. It falls within the 19 Shady Grove sector plan which is they encourage more 20 childcare in that sector plan than the Gaithersburg plan. 21 Our neighborhood falls in the Gaithersburg Master Plan, but 22 we fall between Midcounty, Muncaster Mill Road and Shady 23 Grove Road and there's really nothing in any of the Master 24 Plans that talk about that area, mainly because of Mill 25 Creek and it is also where Rock Creek is- Rock Creek comes</p>	<p>614</p> <p>1 MARTIN GROSSMAN: And you took these photos? 2 ANNE GREGORSKI: I took them. 3 MARTIN GROSSMAN: When was that? 4 ANNE GREGORSKI: A week and a half ago. 5 MARTIN GROSSMAN: And they accurately represent the 6 area? 7 ANNE GREGORSKI: Yes. 8 MARTIN GROSSMAN: Okay. 9 ANNE GREGORSKI: That's why I continually because I 10 studied the Master Plan myself because in a lot of her 11 cases she tries to say Bethesda Garrett Master Plan, but it 12 doesn't apply. That's more commercial in zone. They have 13 different kinds of buildings and so- 14 MARTIN GROSSMAN: Right. So you're saying that Ms. 15 Rice makes reference to other master plans- 16 ANNE GREGORSKI: Exactly. 17 MARTIN GROSSMAN: -in her submissions. 18 ANNE GREGORSKI: Correct. 19 MARTIN GROSSMAN: And not this Master Plan (inaudible) 20 ANNE GREGORSKI: Correct. So maintaining the 21 residential character was the most important thing in the 22 Veenu Duggal conditional use opinion. They have curbs, they 23 have a wrap-around street where they can turn around. They 24 have a garage and they have a driveway and that is the most 25 like the area that we live in. But those are the huge</p>

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73 (615 to 618)

<p>615</p> <p>1 differences in it. As you already pointed out in the Zang 2 case, huge property. Huge. I was really- it- I actually 3 enjoyed myself because I was able to go to these daycares 4 I- after work when the rush hour was on and I saw how they 5 handled their traffic flow, and the Zang case, parents 6 parked and they went in and they picked up their children. 7 And there was absolutely no overflow or anything like that. 8 They- you felt like the kids- and the other one was the 9 old, the DuFief (phonetic) Mill they- that was a very warm 10 caring place where they also had plenty of parking area. 11 They parked, they went in and they picked up their 12 children. So- but that's not what's going to happen here. 13 This is like McDonald's. So the- James Moy (phonetic) and 14 Amber Primm conditional use opinion, that's an R90 zone 15 that they also have the wide driveway and- but the Hearing 16 Examiner found that they weren't- it will remain a single 17 family detached residence in a neighborhood of a single 18 family detached residences and no external modifications to 19 the structure or the lighting are planned. And they were 20 limited to 12 children. And I'm using that as an example 21 because I went there to take a picture of the roads, 22 because it is on Bower Road which is a main thoroughfare 23 and Woodcrest and right next to it somebody opened up a 24 daycare. So as far as the snowball effect it occurs. So 25 it's- you really don't need a picture of it, do you?</p>	<p>617</p> <p>1 MARTIN GROSSMAN: -special exceptions. Each of these 2 cases has to be assessed- 3 ANNE GREGORSKI: Some of the- 4 MARTIN GROSSMAN: -based on the neighborhood and the 5 lot, the specific site that we're talking about. 6 ANNE GREGORSKI: Some of the cases I'm concerned about 7 because they didn't have much relevance but they did have 8 modifications after a special exception was granted. And 9 because she has made so many drastic changes without even 10 approval, my concern is that she's going to- there will be 11 no public hearing for modifications if a special exception 12 is granted. 13 MARTIN GROSSMAN: Well, first of all, I don't know 14 what changes she's made without approval, but she's 15 entitled under the zoning ordinance to have what's called a 16 limited use without, in this zone, in the R200 zone to have 17 up to 12 children- 18 ANNE GREGORSKI: Right. 19 MARTIN GROSSMAN: -without a conditional use. 20 ANNE GREGORSKI: How did it go from 8 to 12 when in 21 other areas it's- you have to have a hearing for the- 22 MARTIN GROSSMAN: Yes. But in the- that's true. In 23 some zones in the R60, R90 you have to have a conditional 24 use to go to 12. In the R200 zone you do not need a 25 conditional use to go to 12. So that's why that would have</p>
<p>616</p> <p>1 MARTIN GROSSMAN: No. 2 ANNE GREGORSKI: No. So yeah. The other sites, the 3 Shirley and Michael Vesper located on Frederick Road, they 4 have this huge back yard with big tree on it. It's a 5 lovely- no signs are allowed and even though it's way out- 6 far away from other buildings there are sound restrictions. 7 There are light restrictions. She is asking for extra 8 lighting. She's already lit up her back yard at night so 9 everyone can see it. 10 MARTIN GROSSMAN: Well only one additional light she's 11 requested to be on her shed. 12 ANNE GREGORSKI: But it's already bright as day and I 13 know one of the lights goes into Beverly's bedroom window. 14 MARTIN GROSSMAN: Well, I should point out that under 15 the zoning ordinance, the zoning ordinance lighting 16 sections don't apply to existing lighting. But they would 17 apply to the one new lighting she has so if this were 18 approved it would be restricted to residential lighting 19 pointing down that would not affect any of the neighbors. 20 ANNE GREGORSKI: So, yeah. And Randolph Road, the one 21 on Randolph Road that she uses. It's on a six-lane highway 22 right there. Huge parking lot. 23 MARTIN GROSSMAN: Like, I said, I don't think you have 24 to concern yourself about other conditional uses or- 25 ANNE GREGORSKI: Okay.</p>	<p>618</p> <p>1 happened. Once- if a conditional use were granted and she 2 wanted to modify it it would depend on- the modification 3 question would depend on whether it's a significant 4 imposition on the community or not. If it's not, if it's a 5 very minor modification it can be done administratively, 6 but even an administrative modification must be noticed to 7 the community and anybody can object and request a hearing. 8 If it's a major modification it would have to go through 9 the same procedure as you're seeing here of the original 10 grant of the conditional use. 11 ANNE GREGORSKI: Okay. 12 MARTIN GROSSMAN: And it's linked to the- 13 ANNE GREGORSKI: So if she wanted- 14 MARTIN GROSSMAN: -the difference is linked to how 15 large the impact is on the neighborhood. 16 ANNE GREGORSKI: From a 30 to a 35 child, would that 17 be minor or major? 18 MARTIN GROSSMAN: That would be actually a different- 19 this particular conditional use is limited to 30. If this 20 is a- between 13 and 30 children that is this- under the 21 code that is this definition of this type of conditional 22 use. There is a provision for a daycare center for larger 23 than that, but that's a special category of 31 and up. 24 Okay. 25 ANNE GREGORSKI: Thank you.</p>

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74 (619 to 622)

<p>619</p> <p>1 MARTIN GROSSMAN: Sure.</p> <p>2 ANNE GREGORSKI: And also, a lot of the opinions had</p> <p>3 interesting information. For example the detrimental effect</p> <p>4 of the safety of vehicular or pedestrian traffic. We've</p> <p>5 already discussed that. I have to state, however, in our</p> <p>6 street when Honey, it's a little senile Golden Retriever</p> <p>7 came across the road during rush hour, totally stopped</p> <p>8 traffic on Park Mill Drive and I tried to get the dog, come</p> <p>9 on, come on out, come on, but everybody was stopped. No one</p> <p>10 could move. The dog was like, hey I like hanging out here,</p> <p>11 so that's the kind of road that we have. And if a car broke</p> <p>12 down in line on her driveway there would not be sufficient</p> <p>13 space for other cars to pass the broken car. There are no</p> <p>14 pull off areas at the daycare, even if she had the apron</p> <p>15 driveway, so that a disabled car can be moved off to the</p> <p>16 main road. And yeah. Another thing is the placement of her</p> <p>17 house. She's on the left-hand side so everyone has to turn</p> <p>18 left coming down they have to turn left to go around. So</p> <p>19 that's going to impact traffic going north.</p> <p>20 MARTIN GROSSMAN: I don't know what you mean by</p> <p>21 everybody has to turn left. What direction is that? East,</p> <p>22 west?</p> <p>23 ANNE GREGORSKI: Because she is on- as you're going</p> <p>24 south on Park Mill Drive-</p> <p>25 MARTIN GROSSMAN: Okay.</p>	<p>621</p> <p>1 because that's the controlled intersection.</p> <p>2 ANNE GREGORSKI: Right. Right, that's the only light.</p> <p>3 MARTIN GROSSMAN: Right. So that's the one evidentiary</p> <p>4 thing I think I can reach a conclusion about based on that</p> <p>5 factor.</p> <p>6 ANNE GREGORSKI: Okay. And I have an objection to the</p> <p>7 plus or minus 500 foot bump-out that she has on her</p> <p>8 drawing.</p> <p>9 MARTIN GROSSMAN: Right.</p> <p>10 ANNE GREGORSKI: Specifics. It needs to be specific so</p> <p>11 it can be enforced.</p> <p>12 MARTIN GROSSMAN: Well, it would be. It would have to</p> <p>13 go through a permitting process. If this conditional use</p> <p>14 were approved then it would be conditioned on- she'd have</p> <p>15 to follow all the permitting process that's required for an</p> <p>16 addition. It may or may not be allowed under the zoning</p> <p>17 ordinance, that particular addition, so. I don't reach that</p> <p>18 conclusion, I'm just- this is- I wanted a plan. I wanted to</p> <p>19 make sure that we had a plan in the file that showed all of</p> <p>20 the things that she intended to do and that's what Exhibit</p> <p>21 111 is intended to do.</p> <p>22 ANNE GREGORSKI: And another thing is the fence that</p> <p>23 she's planning to put up where the two cars are going,</p> <p>24 three cars are going to park will not fulfill the</p> <p>25 alternative compliance method. It will not- the fence will</p>
<p>620</p> <p>1 ANNE GREGORSKI: -to get to her house, you're going to</p> <p>2 have to make a left-hand turn into her driveway.</p> <p>3 MARTIN GROSSMAN: Yes, that's correct.</p> <p>4 ANNE GREGORSKI: Okay. So she's going to have an apron</p> <p>5 driveway so everyone can go around, correct?</p> <p>6 MARTIN GROSSMAN: Well, that's what she's requested,</p> <p>7 yes.</p> <p>8 ANNE GREGORSKI: So if it impacts the traffic going</p> <p>9 this way. Say people don't to make a left because of the</p> <p>10 trouble. Right now we see people pulling in, pulling out,</p> <p>11 pulling into Bev's driveway, pulling into my driveway,</p> <p>12 going that way. But if she gets that driveway then what</p> <p>13 they'll do is they'll go around the other way, go this way,</p> <p>14 go totally around Park Mill Drive, Mill Run, Park Mill</p> <p>15 again to go in and then out. But it's still impacting-</p> <p>16 MARTIN GROSSMAN: I don't know if that's the case. I</p> <p>17 don't know that that's what they're going to do to get in</p> <p>18 or out. That's an assumption.</p> <p>19 ANNE GREGORSKI: If the traffic gets too bad they're</p> <p>20 going to take the alternate-</p> <p>21 MARTIN GROSSMAN: Well, I think there are lots of</p> <p>22 traffic concerns but I can't make an assumption about how</p> <p>23 they're going to- which direction they're going to come</p> <p>24 from. Although there's been testimony that they're most</p> <p>25 likely to enter at the Mill Run Drive and Shady Grove</p>	<p>622</p> <p>1 not lessen the traffic, it will not stop the flow of water</p> <p>2 onto the properties, will not add to the- will add to the</p> <p>3 congestion and unsafe conditions in the whole area.</p> <p>4 MARTIN GROSSMAN: Well, (crosstalk)</p> <p>5 ANNE GREGORSKI: A hedge won't do the same either, and</p> <p>6 the privacy, as far as that goes will- Bev, Beverly Lloyd</p> <p>7 can see, she can see all that, hear all of it. It will be</p> <p>8 right there. The fence is not a buffer.</p> <p>9 MARTIN GROSSMAN: It's not exactly the alternative</p> <p>10 compliance provision because it's really the question of</p> <p>11 whether or not she is complying with various setbacks and</p> <p>12 landscaping, screening provisions.</p> <p>13 ANNE GREGORSKI: Okay.</p> <p>14 MARTIN GROSSMAN: Is more of the question and not an</p> <p>15 alternative compliance question.</p> <p>16 ANNE GREGORSKI: I am going to thank you very much for</p> <p>17 your time and it has been an educational experience.</p> <p>18 MARTIN GROSSMAN: Thank you for- hold on one second.</p> <p>19 Any questions of this witness?</p> <p>20 ROBIN RICE: You talked about being at several other</p> <p>21 daycares and witnessing their traffic pattern.</p> <p>22 ANNE GREGORSKI: Yes.</p> <p>23 ROBIN RICE: One of them was DuFief Mill.</p> <p>24 ANNE GREGORSKI: Yes.</p> <p>25 ROBIN RICE: Do you know the capacity of that</p>

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75 (623 to 626)

<p>623</p> <p>1 facility?</p> <p>2 ANNE GREGORSKI: It's large. It's huge. I think it's</p> <p>3 over 100 children.</p> <p>4 ROBIN RICE: One hundred and fifty were-</p> <p>5 ANNE GREGORSKI: It was approved for 150, but I don't</p> <p>6 think they have 150.</p> <p>7 ROBIN RICE: Okay. And is in an R200 zone?</p> <p>8 ANNE GREGORSKI: Hold on. I don't know what zone it-</p> <p>9 but it's on 2.26 acres and it's located on a primary road.</p> <p>10 And the pool, the- it changed ownership I believe and they</p> <p>11 filled in the pool, so the opinion, the things that they</p> <p>12 discussed in the opinion no longer apply.</p> <p>13 ROBIN RICE: And what was the other place you went to,</p> <p>14 that you thought the traffic was good?</p> <p>15 ANNE GREGORSKI: The Zan.</p> <p>16 MARTIN GROSSMAN: Zang?</p> <p>17 ANNE GREGORSKI: Yeah. Case. The one that is- they're</p> <p>18 only allowed 30 children for that huge facility and they</p> <p>19 have a wonderful program. And they were 22 children and</p> <p>20 were trying to get 30 children and they told them no, that</p> <p>21 they had to wait a year to see how- then after a year they</p> <p>22 could increase their enrollment and that was located on</p> <p>23 1.344 acres. Yeah.</p> <p>24 ROBIN RICE: And you went there when the 30 children</p> <p>25 was approved?</p>	<p>625</p> <p>1 to what the rebuttal will be? Because we may have an</p> <p>2 objection to it.</p> <p>3 MARTIN GROSSMAN: Okay. That's a fair question. Can</p> <p>4 you tell us what you intend in your rebuttal?</p> <p>5 ROBIN RICE: I'm going to go through them one at a</p> <p>6 time as I recall them.</p> <p>7 MARTIN GROSSMAN: Well, let's just get an idea of what</p> <p>8 it is that you're rebutting.</p> <p>9 ROBIN RICE: Things in this book.</p> <p>10 MARTIN GROSSMAN: I don't know what that means. I</p> <p>11 can't see the book.</p> <p>12 ROBIN RICE: All right.</p> <p>13 MARTIN GROSSMAN: I'm asking you for a proffer of what</p> <p>14 it is that you intend to rebut-</p> <p>15 ROBIN RICE: Okay.</p> <p>16 MARTIN GROSSMAN: Because rebuttal is not something</p> <p>17 that you would ordinarily have in your case in chief. Let</p> <p>18 me- here's an excerpt from a case in Maryland. It says</p> <p>19 generally a party's required to put on all known evidence</p> <p>20 relevant to his or her claim in the case in chief so that</p> <p>21 the opponent may respond in the case in defense. Rebuttal</p> <p>22 is to be reserved for evidence refuting matters that were</p> <p>23 brought up for the first time in the case in defense.</p> <p>24 Proper rebuttal evidence explains, replies to, contradicts</p> <p>25 or impeaches new evidence presented by the opposing party</p>
<p>624</p> <p>1 ANNE GREGORSKI: Pardon me?</p> <p>2 ROBIN RICE: You visited it after the 30 children was</p> <p>3 approved?</p> <p>4 ANNE GREGORSKI: I'm assuming that that is an old</p> <p>5 opinion that you put in there that the 30 children was</p> <p>6 there and even if it was 22 it was so nice.</p> <p>7 ROBIN RICE: And you were satisfied with the traffic</p> <p>8 pattern of both of those facilities? (inaudible)</p> <p>9 ANNE GREGORSKI: Well, in addition to having a huge</p> <p>10 parking lot on the side so the parents could park and see</p> <p>11 their children, then they also had the driveway that was</p> <p>12 very clear, they had an empty road. I know that there was a</p> <p>13 lot of opposition to it from the residents around it, but</p> <p>14 that I probably why they had to wait a year.</p> <p>15 ROBIN RICE: Thank you very much.</p> <p>16 MARTIN GROSSMAN: Okay. (inaudible) Thank you Ms.</p> <p>17 Gregorski.</p> <p>18 ANNE GREGORSKI: Thank you.</p> <p>19 MARTIN GROSSMAN: All right. Does that complete the</p> <p>20 opposition case now? Mr. Nelson?</p> <p>21 G. MASON NELSON: It does.</p> <p>22 MARTIN GROSSMAN: Okay. Do you have any rebuttal?</p> <p>23 ROBIN RICE: Yes. And I'm a bit flustered trying to</p> <p>24 get it organized. One of the issues was-</p> <p>25 G. MASON NELSON: Excuse me. Do we have a proffer as</p>	<p>626</p> <p>1 in his or her case. So that's what I would expect you to</p> <p>2 address, not just evidence you hand and you held in your</p> <p>3 hip pocket.</p> <p>4 ROBIN RICE: Okay. I believe this is rebuttal</p> <p>5 evidence-</p> <p>6 G. MASON NELSON: Okay.</p> <p>7 ROBIN RICE: -for me to go through. One of the issues</p> <p>8 was the comment that the fence is mine. When I bought the</p> <p>9 property I didn't know whether it was mine or not. I called</p> <p>10 DPS and a very, very young man came and-</p> <p>11 G. MASON NELSON: Object (inaudible)</p> <p>12 MARTIN GROSSMAN: I'm sorry.</p> <p>13 G. MASON NELSON: I object. I understand this to be a</p> <p>14 proffer as to the request to rebut evidence about the</p> <p>15 ownership of the fence.</p> <p>16 MARTIN GROSSMAN: Right.</p> <p>17 G. MASON NELSON: I don't think this is- there's no</p> <p>18 new matter to which she's responding.</p> <p>19 MARTIN GROSSMAN: I agree that there isn't. That's not</p> <p>20 a new issue. You already testified.</p> <p>21 ROBIN RICE: I have evidence that it's my fence.</p> <p>22 MARTIN GROSSMAN: Oh, okay. All right.</p> <p>23 AUDIENCE: (inaudible)</p> <p>24 MARTIN GROSSMAN: Please no calling out from the</p> <p>25 audience.</p>

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76 (627 to 630)

<p style="text-align: right;">627</p> <p>1 G. MASON NELSON: Mr. Hearing Examiner, my point is 2 this is an issue that came up in her direct testimony. It's 3 not proper rebuttal. It's 10 minutes to 6:00 on Day 2. 4 We're on- 5 MARTIN GROSSMAN: It's actually 25 minutes to 6:00, 6 but- but in any event what- my question is slightly 7 different. That is what difference does it make if it's her 8 fence or not? I don't quite understand why is that that 9 significant? 10 ROBIN RICE: They said- I'm saying it's mine. They're 11 saying it's not. 12 MARTIN GROSSMAN: Well, they raised a question about 13 it. 14 ROBIN RICE: I have the evidence. 15 MARTIN GROSSMAN: I don't know if they said it wasn't. 16 They said that there was some question about it, but what 17 difference does it make, by the way? 18 ROBIN RICE: It's my fence. I can- which gave me the 19 right to put in the gate to make it lower so that I can use 20 the sign. 21 MARTIN GROSSMAN: I see. Okay. All right. So I'm going 22 to allow her to introduce that evidence. 23 ROBIN RICE: Thank you. 24 MARTIN GROSSMAN: Okay. 25 ROBIN RICE: I called DPS. A very, very young man came</p>	<p style="text-align: right;">629</p> <p>1 ROBIN RICE: That would be a- 2 MARTIN GROSSMAN: So this is a email- 3 ROBIN RICE: It's the email- 4 MARTIN GROSSMAN: -from Leggett's office. 5 ROBIN RICE: It is from Joy Nurmi, his special 6 assistant. But I spoke to Mr. Leggett in a meeting. 7 MARTIN GROSSMAN: And it's saying it is your fence? 8 ROBIN RICE: It's my fence. 9 MARTIN GROSSMAN: Okay. 10 KATIE BECKER: Are we allowed to object to this? 11 MARTIN GROSSMAN: Yeah, if you want. If you have an 12 objection. 13 KATIE BECKER: Yeah. It's an email, the person isn't 14 here to speak to it and we weren't allowed to enter an 15 email, and the person is here. 16 MARTIN GROSSMAN: Well, wait a minute. Wait a minute. 17 When you say you were not allowed- 18 KATIE BECKER: That doesn't make sense. 19 MARTIN GROSSMAN: When you say you were not allowed to 20 enter an email what do you mean? 21 KATIE BECKER: I had proof about a disturbance at the 22 daycare center, the person who confirmed it, via email, is 23 here and you said that it wasn't admissible. Now here is an 24 email that she's entering- 25 MARTIN GROSSMAN: I-</p>
<p style="text-align: right;">628</p> <p>1 and looked at the fence and said I could do anything I 2 wanted with it. 3 MARTIN GROSSMAN: Well, once again that's hearsay. 4 ROBIN RICE: Hang on. Let me- let me go. And I asked 5 for him to put it in writing and never heard from him 6 again. Then I called him again and a young man came out and 7 said he's have to do research. Then I had a meeting with 8 Hadi Mansouri at DPS and he didn't have his fence guide. 9 Then I had another meeting with Hadi Mansouri- 10 MARTIN GROSSMAN: Let's skip to the chase here. What- 11 ROBIN RICE: Then I talked to- 12 MARTIN GROSSMAN: What is your evidence? 13 ROBIN RICE: Then I had a meeting with Ike Leggett and 14 Ike Leggett ordered the Department of Transportation to 15 please do a survey of the property and make a decision of 16 whether it's my fence or not. And this is the survey plot 17 that Ike Leggett ordered and the email from his assistant, 18 Joy, that says that since the fence is not in the County 19 right-of-way it is your fence. 20 MARTIN GROSSMAN: Okay. 21 ROBIN RICE: Okay. 22 MARTIN GROSSMAN: Let's mark it. 23 ROBIN RICE: The number, sir? 24 MARTIN GROSSMAN: Somewhere here I have a- here it is. 25 One thirty-six.</p>	<p style="text-align: right;">630</p> <p>1 KATIE BECKER: -this person isn't here so how is it 2 admissible? 3 MARTIN GROSSMAN: I understand. I don't know what the- 4 about the person being here and you other thing. I'm not- 5 it wasn't- I didn't follow that at the time. But that's not 6 really the issue. Can I see the document in question? She 7 said she had a survey plat attached to it. Okay. Okay. 8 Here's the difference and I'm going to keep this as an 9 Exhibit A and B. This is an email from a government 10 official saying that the government does not have a right 11 to this fence. It's also a plat attached, I guess, saying 12 effectively the same thing. Whereas, which has an indicia 13 of reliability to it, whereas the email you were talking 14 about has about an in effect who struck John. If somebody 15 heard that some incident occurred somewhere. A very 16 different kind of evidence. As I have said a couple of 17 times here, this kind of proceeding some hearsay is 18 admissible if it's otherwise reliable and probative. I 19 think this kind of hearsay is reliable and probative 20 whereas the kind of hearsay you're talking about would not 21 be without getting into a lengthy testimony on an issue 22 that's not really an issue in this case. Why would I care 23 if there was a single incident where somebody screamed if 24 that's what you were talking about? 25 KATIE BECKER: No, it was a physical altercation.</p>

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77 (631 to 634)

<p>631</p> <p>1 MARTIN GROSSMAN: Or even if there was a physical 2 altercation. It doesn't govern whatever would happen in 3 this case. 4 KATIE BECKER: Well, it was at the daycare center and 5 the person who confirmed it is Angela Pryor, and she is 6 here. 7 MARTIN GROSSMAN: Yes, but I'm not assessing whether 8 or not there was this kind of incident at the daycare. 9 KATIE BECKER: Okay. No problem. 10 MARTIN GROSSMAN: This is a different question. 11 G. MASON NELSON: Okay. 12 KATIE BECKER: I was just questioning how one email 13 could be- 14 MARTIN GROSSMAN: I mean one can- 15 KATIE BECKER: -admitted and another one couldn't- 16 MARTIN GROSSMAN: One could go to the- 17 KATIE BECKER: -and you explained that. 18 MARTIN GROSSMAN: -one could go the Department of 19 Permitting Services and complain about the fact that there 20 are some incident or to the Department of Education about 21 some problem at the existing group daycare. 22 KATIE BECKER: That's a great suggestion. 23 MARTIN GROSSMAN: That's not the issue that's before 24 me. The issue before me is whether or not Ms. Rice can 25 establish a daycare center at this property. So these are</p>	<p>633</p> <p>1 different location, with many other different 2 circumstances. 3 ROBIN RICE: I'm just looking at some of the 4 conditions, not that this site is okay or that site's okay 5 but what are the conditions were granted the conditional 6 use. 7 MARTIN GROSSMAN: Well, that's not what this- that's 8 not part of the rebuttal. Okay. 9 ROBIN RICE: Part of the rebuttal is how many vehicles 10 per a time period should be permitted and this one said 11 11 vehicles per half hour. Part of the suggestions is- 12 MARTIN GROSSMAN: This one being? 13 ROBIN RICE: I'm sorry. The April 30th, 2013. Number 14 11, condition was a suggestion to pay \$11,700 to the 15 Montgomery County Department of Transportation to mitigate 16 new traffic generated during peak traffic periods. 17 MARTIN GROSSMAN: That's a separate- that's something- 18 that doesn't even apply here; TPAR which no longer exists. 19 It's not an issue. 20 ROBIN RICE: It was a suggestion that they made and 21 I'm just saying that it was something that was picked up in 22 a granted conditional use. 23 MARTIN GROSSMAN: Yeah, but you're talking about an 24 additional condition or something. I only want to know 25 right now, if you have any rebuttal evidence. I'm not</p>
<p>632</p> <p>1 very different kinds of hearsay. All right, Ms. Rice, what 2 else do you have on rebuttal? 3 G. MASON NELSON: There should be a proffer. 4 MARTIN GROSSMAN: A proffer or let's just get to the 5 chase here, Mr. Nelson. What else do you have? Let's roll 6 with it. Forget about the proffer. 7 ROBIN RICE: Okay. 8 MARTIN GROSSMAN: Let's just get the- as you say it's 9 getting late. 10 ROBIN RICE: The reason I put in the case that was 11 signed by Butch Prager (phonetic) April 30th, 2013 was- 12 MARTIN GROSSMAN: What case is that? 13 ROBIN RICE: It- they didn't have a number on it, but 14 it was issued April 30th, 2013. And it was on- in Layhill, 15 170 Randolph Road Silver Spring for 62 children. This 16 hearing examiner concluded that a waiver of the side yard 17 setback that would permit parking within 12 feet of the 18 eastern property line would not defeat the purposes of 19 Zoning Ordinance 59E42 and should be granted. 20 MARTIN GROSSMAN: Right, but that has no- and I've 21 said it many times here. Those kinds of decisions based on 22 individual sites have no impact on me. I'm going to assess 23 this case based on this site and all the conditions here. 24 Not based on what another hearing examiner said regarding a 25 different site for a different number of children in a</p>	<p>634</p> <p>1 saying you have to have rebuttal evidence. Most cases do 2 not. I'm just saying if you have rebuttal evidence I'll 3 hear your rebuttal evidence. 4 ROBIN RICE: Part of the talk was about the 30 5 children going out in the backyard and creating noise. 6 MARTIN GROSSMAN: Yes. 7 ROBIN RICE: The DuFief Mill case, number S858A is in 8 a R200 zone and the children- there was no restriction on 9 the children going outside- 10 MARTIN GROSSMAN: How big was the property? 11 ROBIN RICE: -even though there were 150. 12 MARTIN GROSSMAN: How big is the property there? 13 ROBIN RICE: It is two acres, but there was no 14 restriction. 15 MARTIN GROSSMAN: That's the- once again, that's the 16 whole reason why I cannot rely on what a hearing examiner 17 did in another case with a completely different site. One 18 in this case and that case where there were- it was two 19 acres. You know you're on- 20 ROBIN RICE: It's still an R200- 21 MARTIN GROSSMAN: -15,000 square feet. 22 ROBIN RICE: I know. It's still an R200 zone. The 23 condition was that the kids could not be out between noon 24 and 2:00. The S2500 showed that- 25 MARTIN GROSSMAN: You're making, wait a minute. What</p>

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<p>635</p> <p>1 you're doing is making an argument.</p> <p>2 ROBIN RICE: All right. Maybe I should not have-</p> <p>3 MARTIN GROSSMAN: Not rebuttal.</p> <p>4 ROBIN RICE: -of</p> <p>5 MARTIN GROSSMAN: -You're referencing me to a number</p> <p>6 of other decisions. I've already said many times, if it's</p> <p>7 not a legal question, if there's another decision out there</p> <p>8 that made a decision on a matter of law that's one thing. I</p> <p>9 would look at that. And we try to be consistent in our</p> <p>10 rulings but you can't be consistent about completely</p> <p>11 different factual scenarios. You have to judge by the</p> <p>12 factual scenario that's presented and here you have 15,000</p> <p>13 square feet and you have a certain number of children you</p> <p>14 want to have in the back yard and that's what I'm going to</p> <p>15 look at, not something that happened on DuFief Mill Road</p> <p>16 when it's on a two acre property, or Zang which is also,</p> <p>17 you know, two acres.</p> <p>18 ROBIN RICE: My comparison is they're both R200 zones.</p> <p>19 MARTIN GROSSMAN: I know and I'm not buying that</p> <p>20 comparison. That's not the issue.</p> <p>21 ROBIN RICE: Okay.</p> <p>22 MARTIN GROSSMAN: I mean it affects some things, but</p> <p>23 it does not affect the analysis of incapability</p> <p>24 potentially.</p> <p>25 ROBIN RICE: I put in S2500 to show that 30 cars can</p>	<p>637</p> <p>1 children. I wanted to go over the conditions with you.</p> <p>2 Maybe I made a mistake and had a pause, but that's what I</p> <p>3 wanted to do.</p> <p>4 MARTIN GROSSMAN: Well, I'm going to talk to you about</p> <p>5 that in a minute, but I just want- do you have any</p> <p>6 rebuttal, any other rebuttal evidence?</p> <p>7 ROBIN RICE: One of your statements into the record</p> <p>8 was that major modifications require a hearing. The Sunrise</p> <p>9 Modification Request from 40 children with somebody living</p> <p>10 in the property to 35 children addition, was considered to</p> <p>11 them not being a major modification. They just did it in a</p> <p>12 work session. They allowed the sign without sending them</p> <p>13 back to the Sign Board. Side yard parking doesn't have</p> <p>14 (inaudible) under Parking Plan, and the statement was 98</p> <p>15 percent of them will walk or use public transportation.</p> <p>16 MARTIN GROSSMAN: Well, first of all, once again,</p> <p>17 that's a different zoning ordinance. That's was under the</p> <p>18 2004 zoning ordinance, correct? That's number one. Number</p> <p>19 two, what I said was that you can request a minor</p> <p>20 modification, depending on the level of impact on the</p> <p>21 community a Hearing Examiner can grant that</p> <p>22 administratively or not. If the Hearing Examiner decides to</p> <p>23 grant it administratively, it still requires that there be</p> <p>24 a notice sent to the community that this is- that it's been</p> <p>25 granted and then the community has a right to request a</p>
<p>636</p> <p>1 show up in an R200 zone at the same time. This one had four</p> <p>2 spaces for loading and unloading with a queue of 32</p> <p>3 children.</p> <p>4 MARTIN GROSSMAN: Ms. Rice.</p> <p>5 ROBIN RICE: All right.</p> <p>6 MARTIN GROSSMAN: You're doing it again.</p> <p>7 ROBIN RICE: I won't do it then. One of the</p> <p>8 testimonies was that from one of the witnesses said that</p> <p>9 they were 22 houses affected, and I do agree with that.</p> <p>10 MARTIN GROSSMAN: Then you don't have to have a</p> <p>11 rebuttal on it if you agree with it.</p> <p>12 ROBIN RICE: Well, the rebuttal is that there's</p> <p>13 testimony from other witnesses talking about more houses.</p> <p>14 MARTIN GROSSMAN: Well, it's a way of analyzing the</p> <p>15 evidence. It's not a- the question is if you- depending on</p> <p>16 how you look at the area that's involved that determines</p> <p>17 how many numbers and what numbers of houses are affected.</p> <p>18 You look at it in one way; they looked at it a different</p> <p>19 way.</p> <p>20 ROBIN RICE: In the other hearing you asked me how</p> <p>21 many of the 458 child care centers in Montgomery County are</p> <p>22 between the category of 13 to 30.</p> <p>23 MARTIN GROSSMAN: Right.</p> <p>24 ROBIN RICE: I went through all of them, looked all of</p> <p>25 them up, there are 62 out of the 458 are between 13 to 30</p>	<p>638</p> <p>1 hearing. And then at the hearing if the hearing examiner</p> <p>2 determines it's still not a major modification, it's a</p> <p>3 minor modification and will have only minimal impact on the</p> <p>4 community then that would be the end of the story. If the</p> <p>5 Hearing Examiner decides there's a major impacts then it</p> <p>6 has to go through the major modification process and the</p> <p>7 major modification process both under the old zoning</p> <p>8 ordinance and under the new one requires all of the</p> <p>9 submissions that would be required for an original filing</p> <p>10 of a conditional use or a special exception. Yes, Ms.</p> <p>11 Gregowski.</p> <p>12 ANNE GREGOWSKI: I actually have the ruling on that</p> <p>13 and it's a resolution to transfer the special exception.</p> <p>14 They transferred it to other parties, and then they</p> <p>15 modified it because the proposed modification was such that</p> <p>16 the terms could be modified without substantially changing</p> <p>17 the nature, character or intensity of the use and without</p> <p>18 substantially changing the effect on traffic or on the</p> <p>19 immediate neighborhood.</p> <p>20 MARTIN GROSSMAN: That's the standard. Okay. Did you</p> <p>21 have anything on that- on the rebuttal? Just on the</p> <p>22 rebuttal issue? Because we're going to move and I'm going</p> <p>23 to let you make an argument, but this is just on rebuttal,</p> <p>24 evidence. Any other evidence in rebutting anything that's</p> <p>25 been put in?</p>

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<p>639</p> <p>1 ROBIN RICE: Just that there are-</p> <p>2 MARTIN GROSSMAN: This is not easy, sir. It's not</p> <p>3 easy, she's not an attorney. It's not easy, give her a</p> <p>4 moment. Let's be a little patient. Okay.</p> <p>5 ROBIN RICE: Just-</p> <p>6 MARTIN GROSSMAN: I realize it's late and we're all</p> <p>7 tired.</p> <p>8 ROBIN RICE: Yeah. Just signs. As far as the safety's</p> <p>9 concerned. The sign hearing in front of the Board of</p> <p>10 Appeals, I was offered a second hearing but decided not to.</p> <p>11 They told me it would take four months. There's a fire-</p> <p>12 there's signs on the street for the fire department, for a</p> <p>13 church, for the Mill Creek Towne Garden Club, for the Swim</p> <p>14 Association and one of the suggestions was to put signs on</p> <p>15 Rockville Pike. I can't do that it's not close enough, but</p> <p>16 the worst signs as far as safety is concerned are the signs</p> <p>17 on the metro busses. This one has a-</p> <p>18 MARTIN GROSSMAN: Well, let's not go too far afield</p> <p>19 here.</p> <p>20 ROBIN RICE: Okay.</p> <p>21 MARTIN GROSSMAN: We're not talking about signs on</p> <p>22 metro busses.</p> <p>23 ROBIN RICE: Okay.</p> <p>24 MARTIN GROSSMAN: I take it you're done with your</p> <p>25 rebuttal.</p>	<p>641</p> <p>1 and give you an opportunity to summarize why you think this</p> <p>2 application should be granted. This is your opportunity to</p> <p>3 argue if you think that there are conditions that would</p> <p>4 ameliorate it in some way you can specify those. Or you can</p> <p>5 argue why it is you think that this is compatible with the</p> <p>6 neighborhood or should be granted.</p> <p>7 G. MASON NELSON: Mr. Grossman.</p> <p>8 MARTIN GROSSMAN: Then I'm going to give- yes?</p> <p>9 G. MASON NELSON: Excuse me, the- this is just a</p> <p>10 suggestion. Would it be more efficient if we submitted</p> <p>11 written argument? I feel like I could do it more precisely</p> <p>12 with references to the code and to the record. I think it</p> <p>13 would be easier for you I think and easier for me and more</p> <p>14 efficient and more effective.</p> <p>15 MARTIN GROSSMAN: I sometimes do it, but I'm- I don't</p> <p>16 want to do it here. I would just prefer to hear the oral</p> <p>17 argument now and then be able to close the record for</p> <p>18 everything except for the transcript which should be here</p> <p>19 in seven days and then the record will close completely at</p> <p>20 that point, but it will be closed as far as anything else</p> <p>21 after we leave here today. Yes, ma'am?</p> <p>22 SHERYL GREENFIELD: Is there a time limit on how long</p> <p>23 she's allowed to talk right now?</p> <p>24 MARTIN GROSSMAN: There's no official time limit, but</p> <p>25 I'll cut it short if need be. Usually we hopefully get them</p>
<p>640</p> <p>1 ROBIN RICE: Okay.</p> <p>2 MARTIN GROSSMAN: Well, I'm asking you. Okay. I've</p> <p>3 asked you a number of- I've asked you at least five times.</p> <p>4 ROBIN RICE: I can't think of anything else at this</p> <p>5 point in time.</p> <p>6 MARTIN GROSSMAN: Okay. All right. Is there any sur-</p> <p>7 rebuttal?</p> <p>8 G. MASON NELSON: No, sir.</p> <p>9 MARTIN GROSSMAN: Bless you. All right. Okay. So the</p> <p>10 next question is the evidence, moving the evidence in. Now</p> <p>11 we have numerous exhibits here, and that's- oh, thank you.</p> <p>12 That's 1 through 136 and their subparts. We've already</p> <p>13 decided that 127 would not be admitted. That's regarding</p> <p>14 the listserve evidence. And there was an objection to 69A,</p> <p>15 but I overruled that, so that will be admitted. I take it</p> <p>16 that both the applicant and the opposition wish the rest of</p> <p>17 the exhibits to be admitted.</p> <p>18 G. MASON NELSON: Correct.</p> <p>19 MARTIN GROSSMAN: Is that correct, Ms. Rice?</p> <p>20 ROBIN RICE: Yeah.</p> <p>21 MARTIN GROSSMAN: Okay. So all of those other</p> <p>22 exhibits- oh, thank you very much. All of those other</p> <p>23 exhibits that's 1 through 36 (sic) with the exceptions I</p> <p>24 noted will be admitted into evidence. Okay. Next question</p> <p>25 is argument. And Ms. Rice, I'm going to turn to you first</p>	<p>642</p> <p>1 done in 10 minutes.</p> <p>2 SHERYL GREENFIELD: Okay. Thank you.</p> <p>3 MARTIN GROSSMAN: Okay. 10 minutes for each side, but</p> <p>4 it could be less.</p> <p>5 ROBIN RICE: Most of the testimony that I heard is</p> <p>6 about inherent adverse affects. When I started the case I</p> <p>7 presented my reasoning for selecting the property and it</p> <p>8 was substantiated by opposition witnesses that I'm</p> <p>9 affecting 22 homes for the major traffic. There's a big-</p> <p>10 there are big decisions about where the- my non-resident</p> <p>11 staff members can park. But, I can reduce the number of</p> <p>12 parking spaces. I don't need seven; I need three. Even if I</p> <p>13 lose the side parking which I don't think I will lose for</p> <p>14 the residents at least the eight parking spaces still</p> <p>15 satisfies my needs all on private property. The parking at</p> <p>16 the dead end is available. It's within a quarter of a mile</p> <p>17 which is what the zoning ordinance allows it to be within.</p> <p>18 It's helpful.</p> <p>19 MARTIN GROSSMAN: Where in the zoning ordinance does</p> <p>20 it say that it can be within a quarter of a mile.</p> <p>21 ROBIN RICE: I don't know exactly where that is. I'd</p> <p>22 have to look it up. I'm sorry.</p> <p>23 MARTIN GROSSMAN: I'm not aware of that if- there are</p> <p>24 some measurements of distance that talk about what is</p> <p>25 walking distance from a metro station, that kind of thing,</p>

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<p style="text-align: right;">643</p> <p>1 but I'm not aware of anything that pertains to conditional 2 uses that says parking within a quarter of a mile. I mean 3 it may be in there, it's a very big document. 4 ROBIN RICE: Yeah. 5 MARTIN GROSSMAN: And it may be in there somewhere, 6 but I'm just not aware of it. 7 ROBIN RICE: It's in there. 8 MARTIN GROSSMAN: For a conditional use. 9 ROBIN RICE: Yeah. 10 MARTIN GROSSMAN: It specifies for a conditional use? 11 I don't think so. There may be- it may be in there 12 somewhere, but I don't think so. All right. Go ahead. 13 ROBIN RICE: Okay. So there aren't any- there are 14 inherent adverse effects, all of this testimony was in 15 front of the County Council 30 years ago and multiple 16 times. I was involved with that, but they decided that we 17 need the child care in residential zones. The child care is 18 in residential zones. The parking, I just need to find out 19 where my non-resident staff members can park or I have to 20 not hire anybody that does want to come with a car. Either 21 way it will work. The eight spaces alone would work. But 22 the- 23 MARTIN GROSSMAN: Well, I'm going to go by your 24 Exhibit 111. 25 ROBIN RICE: Okay.</p>	<p style="text-align: right;">645</p> <p>1 school. 2 ROBIN RICE: It's not a conditional use. It is a 3 business. 4 MARTIN GROSSMAN: It's in the school. 5 ROBIN RICE: It's a business. It's not- 6 MARTIN GROSSMAN: Okay. 7 ROBIN RICE: It's not the County business, it's a 8 business. 9 MARTIN GROSSMAN: But in fairness to you, I have to 10 say if you're trying to convince me that this is not a 11 residential neighborhood because the school has a Bar-T 12 facility of some kind there, that's not going to convince 13 me of that. This is a residential neighborhood. 14 ROBIN RICE: All right. Okay. I meet the parking 15 standards with a reduction in the number of parking spaces 16 for non-resident staff members. I meet the building 17 requirements. I meet the yard space. I've got a traffic 18 plan that I've been supervising and watching for 30 years 19 that works. This is a maximum number of children that I 20 would allow in a 10 minute time period. I'm just trying to 21 be more precise. It all fits. 22 MARTIN GROSSMAN: Okay. 23 ROBIN RICE: I would like to go over the conditions 24 with you, but that's your choice. 25 MARTIN GROSSMAN: Okay.</p>
<p style="text-align: right;">644</p> <p>1 MARTIN GROSSMAN: Which is the plan you submitted and 2 that's the plan that I'm going to evaluate. 3 ROBIN RICE: Okay. I just, I recognize that you can 4 reduce anything that I ask you for. Like the 6 minutes, 6 5 cars in 10 minutes you could decide something less. 6 MARTIN GROSSMAN: I think as I mentioned the last 7 time, I appreciate your flexibility, but I have to assess 8 the plan that's before me. 9 ROBIN RICE: Okay. The Schultz test. The neighborhood 10 is not completely residential. The area is a mixed-use of 11 residential homes, residential homes with commercial 12 building permits, home occupations, rooms being rented out, 13 rooms with kitchens and separate entrances that are not 14 applied- that are not applying for an accessory apartment 15 conditional use. 16 MARTIN GROSSMAN: I don't think that's the- that's not 17 the evidence here. You're talking about- you're quoting 18 from Schultz? 19 ROBIN RICE: Schultz- I'm saying that the neighborhood 20 is not completely residential. Some of my prehearing 21 submissions were permits that show commercial building 22 permits. And there is a business, the Bar-T Club for 45 23 children in the Staff defined- 24 MARTIN GROSSMAN: But that's in the school you said. 25 The Bar-T Club is either after care or not, but it's in the</p>	<p style="text-align: right;">646</p> <p>1 ROBIN RICE: Okay. The conditions are that I'm bound 2 by my testimony and exhibits- 3 MARTIN GROSSMAN: It's no longer used as a condition. 4 It's not in the new code and at the request of the 5 Department of Permitting Services we no longer include that 6 as a condition. 7 ROBIN RICE: Okay. What I did- 8 MARTIN GROSSMAN: You're bound by your testimony 9 because it's subject to perjury. 10 ROBIN RICE: Okay. 11 MARTIN GROSSMAN: But we don't have a specific 12 condition because it's no longer in the zoning ordinance. 13 ROBIN RICE: All right. What I did was I wrote down 14 the conditions from the other cases to get an idea of what 15 you might decide and to let you know a little bit of what 16 might be an issue. If you write down that I have to correct 17 any deficiencies found in any government inspections, I 18 just want it to be clear that I'm required to correct 19 deficiencies after an appeal process, if I think that the 20 deficiency is incorrect. 21 MARTIN GROSSMAN: Okay. 22 ROBIN RICE: Okay. I'm applying for 30 client 23 children. The verbiage in that is really important. In the 24 Marion Drive Schultz case there was a issue about the owner 25 having a party and the parking was not in accordance with</p>

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<p>647</p> <p>1 the parking plan or the conditional use.</p> <p>2 MARTIN GROSSMAN: Right. Just so once again, that's</p> <p>3 the Zang case that's been mentioned.</p> <p>4 ROBIN RICE: Right. Okay. I kept Marion Drive in my</p> <p>5 head. If you- I want you to put in client children so that</p> <p>6 it's not confused that the resident children don't have</p> <p>7 their own property rights and I think there is a- the</p> <p>8 zoning ordinance for a limited use counts children under</p> <p>9 the age of six. There's a long story behind that. But the</p> <p>10 reason that the state doesn't count children that are</p> <p>11 residents are because the child has their own residential</p> <p>12 property rights. Okay.</p> <p>13 MARTIN GROSSMAN: So you might have 32 children or</p> <p>14 whatever in this facility, 30 of them by- as part of the</p> <p>15 child daycare center and two of them might be a resident</p> <p>16 child.</p> <p>17 ROBIN RICE: Right. So it's 30 client children does</p> <p>18 not count residential children or visitors or Saturday</p> <p>19 parties or Halloween costumes or any of that stuff. It's 30</p> <p>20 client children.</p> <p>21 MARTIN GROSSMAN: I get you.</p> <p>22 ROBIN RICE: Okay. When you have contracts with the</p> <p>23 parents if there's an emergency at the time of closing the</p> <p>24 conditions can be conflicting. I'm obviously not going to</p> <p>25 stop caring for the child until somebody comes and gets the</p>	<p>649</p> <p>1 MARTIN GROSSMAN: You indicated that you weren't sure</p> <p>2 that you were going to do it that way, but-</p> <p>3 ROBIN RICE: I'm, my statement of operation says I'm</p> <p>4 going to work on hiring somebody. I'm going to offer the</p> <p>5 job to Angie. I want somebody living there.</p> <p>6 MARTIN GROSSMAN: Okay.</p> <p>7 ROBIN RICE: There might be time periods where there</p> <p>8 might be a change in staff, but I want somebody living</p> <p>9 there. If I didn't want somebody living there it wouldn't</p> <p>10 make any sense to be in a residential zone. It would make</p> <p>11 more sense to be in a commercial zone. I think the quality</p> <p>12 of care of having somebody in the property is extremely</p> <p>13 high; it's extremely rare because the fire code is very,</p> <p>14 very expensive to allow somebody to stay in it. And I think</p> <p>15 you could put it in as a condition that I continue to have</p> <p>16 an employee living in the property which makes it a more</p> <p>17 attractive property for the neighbors. But I need some sort</p> <p>18 of verbiage in there that if she decides not to or quits I</p> <p>19 need- I'm in charge and I want to hire somebody else</p> <p>20 because it won't be me living there. Okay. I'm asking for</p> <p>21 seven client children to avoid modification requests.</p> <p>22 MARTIN GROSSMAN: I don't understand that.</p> <p>23 ROBIN RICE: Okay.</p> <p>24 MARTIN GROSSMAN: You're asking for seven client</p> <p>25 children.</p>
<p>648</p> <p>1 child. But if the adult is in an emergency situation I just</p> <p>2 want to make it clear that the child will be kept until</p> <p>3 somebody comes for them, which I'm required to do anyway.</p> <p>4 MARTIN GROSSMAN: Certainly.</p> <p>5 ROBIN RICE: Okay. I just don't want pictures taken</p> <p>6 of, oh they've got a kid past the conditional use hours.</p> <p>7 Okay.</p> <p>8 MARTIN GROSSMAN: Certainly.</p> <p>9 ROBIN RICE: I had a couple of kids that were</p> <p>10 basically abandoned and I kept them. The wording as far as</p> <p>11 not using a public address system of any kind during the</p> <p>12 building or amplified music needs to be during the approved</p> <p>13 hours of operation of the business. There's only two child</p> <p>14 care facilities that I know of that also have people living</p> <p>15 in the property. One is the property my daughter now owns</p> <p>16 that I built and the other one is the Zang case. I can't</p> <p>17 find anybody else who lives in the property. They close it</p> <p>18 down. It's empty at night and the weekends. My property, in</p> <p>19 my proposal is not to make it commercial zone, it's not to</p> <p>20 make it commercial only, as far as a daycare use is</p> <p>21 concerned with the conditional use. It's a mixed-use of</p> <p>22 somebody living there and the conditional use.</p> <p>23 MARTIN GROSSMAN: That was actually-</p> <p>24 ROBIN RICE: It's not going to be vacant at night and</p> <p>25 weekends.</p>	<p>650</p> <p>1 ROBIN RICE: I'm sorry, seven non-resident staff</p> <p>2 members. If a non-resident staff member is signed out</p> <p>3 they're a guest of the property, they don't have to go out</p> <p>4 in the rain and stand and wait for the bus 10 minutes early</p> <p>5 before they really need to go. They can stay in the</p> <p>6 property is my-</p> <p>7 MARTIN GROSSMAN: That's a piece of minutia I don't</p> <p>8 have to address.</p> <p>9 ROBIN RICE: Okay. I will have a contractual agreement</p> <p>10 to stagger the children, 6 in 10 minutes or whatever you</p> <p>11 decide. The number of days is approximately 250 days. The</p> <p>12 outside playtime is-</p> <p>13 MARTIN GROSSMAN: What do you mean the number of days</p> <p>14 is 252 days? What does that mean? You mean you're not doing</p> <p>15 it on the weekends?</p> <p>16 ROBIN RICE: My statement of operations is that I want</p> <p>17 to do weekdays and no federal holidays.</p> <p>18 MARTIN GROSSMAN: Weekdays and not federal holidays.</p> <p>19 ROBIN RICE: And not federal holidays. I will be</p> <p>20 closed. And that is reducing the number of days down to 68</p> <p>21 percent of the available days.</p> <p>22 MARTIN GROSSMAN: I don't have to address that in the</p> <p>23 condition. It's-</p> <p>24 ROBIN RICE: True.</p> <p>25 MARTIN GROSSMAN: It would say specifically if it were</p>

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<p>651</p> <p>1 granted what- that it would be weekdays and not federal 2 holidays.</p> <p>3 ROBIN RICE: Okay. The condition of the outside 4 playtime. I put it into two parts. One is when school's 5 open and one is when school's closed. When school is open 6 the need for the children is to go outside together. It can 7 be a short amount of time, like an hour in the morning and 8 in the afternoons. Or they can go outside in group sizes 9 with the preschool going out first, the toddlers second, 10 the infants last and going back in in reverse for like a 90 11 minute time period in the morning and in the afternoon. 12 With the exception of fire drills, educational activities 13 or emergencies the children may not be outside during the 14 hours of 1:00 to 3:00. That gives a two-hour window of no 15 children outside; which is like the DuFief Mill idea. When 16 school is closed it's the same thing of let them out for an 17 hour together. Siblings need to be together. That's what I 18 want to be available. It will help me reduce the number of 19 parking vehicle.</p> <p>20 SHERYL GREENFIELD: This is new testimony.</p> <p>21 MARTIN GROSSMAN: No, no.</p> <p>22 SHERYL GREENFIELD: (inaudible) she's giving new 23 testimony.</p> <p>24 MARTIN GROSSMAN: No, no, no. She's finished with her 25 closing argument except for the extent that if this</p>	<p>653</p> <p>1 MARTIN GROSSMAN: I got the point.</p> <p>2 ROBIN RICE: Okay. All right. And I think that's it.</p> <p>3 MARTIN GROSSMAN: Okay. All right. Then Mr. Nelson, 4 your closing statement.</p> <p>5 G. MASON NELSON: Thank you, Mr. Grossman. Of course 6 I'm here on behalf of Mrs. Lloyd and Thomas Johnson who 7 reside on each side of the subject property. We're here on 8 an application for a conditional use. The applicant has the 9 burden of proof of course, we all know that but that's the 10 important legal principal here when we have all this 11 evidence in dispute. This case of course, you're the third 12 land use professional to examine the evidence in this case. 13 Technical Staff reviewed it carefully and of course 14 Technical Staff recommended disapproval in very strong 15 terms. The Planning Board reviewed this application and, of 16 course, they disapproved the application in very, very 17 strong terms. As you know, one doesn't often see that in an 18 application for a conditional use case, at least in my 19 experience it's not common. Before I turn to the legal 20 criteria, which of course you know, that governs this 21 application, there is a legal question, which you 22 identified in your email to Technical Staff on August 29, 23 2017 about the parking. Do we treat this as 5 to 9 and 24 don't count the two because they work there, or live there, 25 or do we count it as over 10? And you raised an argument, a</p>
<p>652</p> <p>1 conditional use is granted she wants certain conditions 2 that are specified and that's what she's saying now. She's 3 entitled to-</p> <p>4 SHERYL GREENFIELD: (inaudible) 10 minutes.</p> <p>5 MARTIN GROSSMAN: She's entitled to make that argument 6 as to conditions. How many more of these are we talking 7 about?</p> <p>8 ROBIN RICE: I think that's it.</p> <p>9 MARTIN GROSSMAN: Okay.</p> <p>10 ROBIN RICE: Oh, no, no. There's one more. I'm sorry.</p> <p>11 MARTIN GROSSMAN: Okay.</p> <p>12 ROBIN RICE: With the exception of when school's 13 closed I want a couple of school-aged kids, if I have them, 14 to be able to outside during naptime. One of the conditions 15 that has been written in other conditional uses is that the 16 children must be picked up by an adult. That's not legal. 17 There is a form OCC1214 that is an emergency form by the 18 state. The parents sign that form and give us permission to 19 release the children to specific people. If a 17-year-old 20 sibling wants to come and pick up their sibling we are 21 required by law to release the child to the sibling if they 22 are on that emergency form.</p> <p>23 MARTIN GROSSMAN: All right.</p> <p>24 ROBIN RICE: Okay. So please don't write that one 25 down. Okay. If a parent wants somebody to pick up that is-</p>	<p>654</p> <p>1 question. Technical Staff presented a perspective and I 2 would urge you to go with the substance of your email and 3 to treat it as a parking lot with 11 spaces. I see that as 4 a purely legal question. Staff's observation was 5 interesting but not dispositive and I think that your 6 analysis of that- the way you presented it is a more 7 accurate interpretation of the law, so I make that legal 8 point at the outset. Let's turn to the criteria for the 9 special exception because when I think of a special 10 exception case I tell clients we have to go to the zoning 11 ordinance and look at the criteria. That's why I haven't 12 objected to a lot of this evidence because something 13 (inaudible) said well, it's not relevant to the criterias, 14 you know. We've got to talk about the criteria and we go to 15 Section 7.3.1E, necessary finds. These are the findings on 16 which the applicant has the burden of proof to satisfy you 17 that they've met and Section 7.3.1.E.1.B that if you're 18 going to approve a conditional use you need to satisfy the 19 requirements of the zone, and this residence and shed to 20 not. Now maybe they're grandfathered in as a residential 21 structure, right. But we're not talking about whether the 22 house is allowed. Whether it can be converted to a 23 conditional use. Categorically the applicant has failed to 24 meet the requirements of that section. That by itself is a 25 basis to disapprove this application. Section 6.2.5.K,</p>


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<p>655</p> <p>1 these are off street parking facilities for conditional 2 use. This is a heavy burden. You know, we haven't yet 3 talked about the residential nature of this community, but 4 I mean I think the evidence is overwhelming. I don't think 5 I need to repeat it. It's just like, that's why I did the 6 aerial photograph, because to me there's no debate. What 7 does it say? The parking facility, this is a requirement on 8 which the applicant has the burden of proof. She must prove 9 that her parking facility must be- must maintain a 10 residential character and a pedestrian friendly street. I 11 say no way. Not even close. That by itself is a basis to 12 disapprove it. Section 7.3.1.E.1.D; the applicant has the 13 heavy- has the burden of proving that this conditional use 14 will not alter the character of the surrounding 15 neighborhood. Correction. I misspoke. What I wanted to was 16 not, because that was reference to the Master Plan, and 17 there's some ambiguity about the Master Plan. I meant to 18 not focus on that but focus on the next one which talks 19 about that the conditional use might not- will not 20 adversely affect the surrounding neighborhood. And I say 21 that's not close. I mean there's been- one of the 22 interesting things about this case is the citizens whom I 23 don't represent, I think did a pretty nice technical 24 presentation, carefully thought out, giving you a walking 25 tour of this community and that testimony was, I think</p>	<p>657</p> <p>1 effects as described by each of the citizens, I believe is 2 a non-inherent adverse effect that requires this Examiner 3 to disapprove it under Schultz and Loyola (phonetic) and 4 all those cases. But when I look at this case I think to 5 myself- look at the aerial photograph and I look at a site 6 plan and I step back from the criteria and I say to myself, 7 incompatible. So we urge you to disapprove this 8 application. It's time to end this case. We urge you to 9 accept the recommendations of Technical Staff and the 10 Planning Board and disapprove this application. It's been a 11 long journey for my clients and all the community and we 12 appreciate your attention to the detail and urge you to 13 disapprove. Thank you very much. 14 MARTIN GROSSMAN: Thank you Mr. Nelson. Ms. Gregorski 15 do you have anything to say? 16 ANNE GREGORSKI: No. Thank you, very much. 17 MARTIN GROSSMAN: Ms. Becker? 18 KATIE BECKER: Nothing additional. 19 MARTIN GROSSMAN: Okay. All right. Let me talk about 20 the, once again, I don't think there's anything else here 21 so the record is now closed except for the receipt of the 22 transcript and it should fully close on September 22, when 23 the transcript, 2017, when the transcript is due so that's 24 the effective closing date, although no further submissions 25 from the applicant. No further opposition submissions will</p>
<p>656</p> <p>1 objective and dispositive of this issue. Then- 2 MARTIN GROSSMAN: One thing I can always count on in 3 Montgomery County, we get wonderful participation from 4 citizens doing amazing collections of information. So- 5 G. MASON NELSON: Good. It takes- and you know I've 6 done that work, I know how much time it takes. It's a lot 7 of work to do and they did it well. You know then there was 8 talk about the adequate public facilities and so on and 9 there was talk about sewage; I didn't get exercised about 10 the sewage, although it's an important issue, but I didn't 11 see it as being part of this case, you know. 12 MARTIN GROSSMAN: Right. 13 G. MASON NELSON: So I wasn't going to lose sleep 14 over it. But the road is, right. And Staff says this road, 15 Park Mill Drive is inadequate. That's a basis by itself to 16 reject this application. You know, then we get into the 17 non-inherent adverse use and believe me I've litigated 18 those cases. I've spent a lot of years arguing what's a 19 non-inherent use and I think a non-inherent use you've got 20 to look at not just the proposed conditional use, but the 21 community, the neighborhood around it because if the 22 neighborhood around it has unique characteristics it turns 23 something that might be an inherent use into a non-inherent 24 adverse effect. And here we have a community- no sidewalks, 25 purely residential and I think that all of these adverse</p>	<p>658</p> <p>1 be accepted for filing. This is it. I want to thank 2 everybody for coming down here today and in August because 3 I know it's been a long couple of days, but I think it's an 4 important process to make sure that the applicant receives 5 a fair hearing and the community and opponents receive a 6 fair hearing, so we try to do that. Yes? 7 ANNE GREGORSKI: Can I just inquire, once the record 8 is officially closed on the 22nd- 9 MARTIN GROSSMAN: Yes. 10 ANNE GREGORSKI: Do you have an estimate of how much 11 time you might take to conclude your review and make your 12 (inaudible) 13 MARTIN GROSSMAN: Okay. The statute, the zoning 14 ordinance gives me 30 days. A time period which I may 15 extend. I can pretty much guarantee I will be within that 16 time period because I almost never extend my time. 17 ANNE GREGORSKI: Thank you. 18 MARTIN GROSSMAN: So it will be within 30 days of 19 September 22 and probably less. Okay. Yes, ma'am? 20 FEMALE VOICE: And how will the community be notified? 21 MARTIN GROSSMAN: Every person who testified here will 22 get a written notice. Every person who was a party, that is 23 because they've testified, or because they were granted 24 party status, will get a written notice which will say 25 whether it's been granted or not and will give a link to</p>

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<p>659</p> <p>1 the Office of Zoning and Administrative Hearings' website 2 on which the entire report and decision will be located. 3 Any party to this process, that is anybody who's testified 4 or has been declared a party has the right within 10 days 5 thereafter, 10 days after issuance, to request oral 6 argument before the Board of Appeals. The record, however, 7 is the record established here. That- the Board of Appeals 8 if somebody were to request an oral argument before the 9 Board of Appeals they would rely on the record that we 10 produce here. That's the exhibits that have been admitted 11 and the testimony. And any rulings that I've made along the 12 way. Any other questions? 13 ROBIN RICE: Yes. If you haven't noticed my computer 14 skills are horrid. (inaudible) figure it out. 15 MARTIN GROSSMAN: I have noticed. 16 ROBIN RICE: I finally figured out that when you send 17 something to the disc it doesn't actually get there until 18 you burn it. I didn't know that. I've got a lot the 19 exhibits on here, I'm not confident that I got all of them. 20 MARTIN GROSSMAN: All right. 21 ROBIN RICE: So- 22 MARTIN GROSSMAN: I'm not going to count them, just 23 get an electronic copy as I'm going to get from- 24 ROBIN RICE: Okay. 25 MARTIN GROSSMAN: -Ms. Becker. I'm not counting that</p>	<p>661</p> <p>1 CERTIFICATE OF TRANSCRIBER 2 I, MOLLY BUGHER, do hereby certify that the foregoing 3 transcript is a true and correct record of the recorded 4 proceedings; that said proceedings were transcribed to the 5 best of my ability from the audio recording and supporting 6 information; and that I am neither counsel for, related to, 7 nor employed by any of the parties to this case and have no 8 interest, financial or otherwise, in its outcome. 9 10  11 _____ 12 Molly Bugher 13 DATE: September 22, 2017 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p>660</p> <p>1 as being outside of the record. I understand that just- 2 you're going- 3 ROBIN RICE: Okay. I just wanted to- 4 MARTIN GROSSMAN: -you're going to hand me the 5 electronic copies. All right. If there's nothing further we 6 are adjourned. I thank you all and I thank the court 7 reporter. 8 ROBIN RICE: Thank you, sir. 9 (Off the record at 6:23 p.m.) 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	