

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS  
FOR MONTGOMERY COUNTY

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:  
REMAND - ARTIS SENIOR :  
LIVING : Case No. CU 15-05  
:  
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A hearing in the above-entitled matter was held on February 11, 2016, commencing at 9:36 a.m., at the Stella B. Werner Council Office Building, 100 Maryland Avenue, Second, Floor, Rita Davidson Memorial Hearing Room, Rockville, Maryland 20850 before:

Lynn A. Robeson

Hearing Examiner

A P P E A R A N C E S

On Behalf of the Petitioner:  
 Erin E. Girard, Esq.  
 Linowes and Blocher LLP  
 7200 Wisconsin Avenue, Suite 800  
 Bethesda, Maryland 20814

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

E X H I B I T S

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

C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
Michael Lenhart				
By Ms. Girard:		9		68,218
By Mr. Bruestle		38		41
By Mr. Nothman		39		43
By Mr. Manzano			58	
By Ms. Guest			63	
By Ms. Lee			64	
Anne Carlson				
By Ms. Girard	101			
Margit Meissner				
By Ms. Girard	109			
Eric Nothman				
By Ms. Girard	147			
Sandra Vogelgesang				
By Ms. Girard	166			
Suzanne Lee				
By Ms. Girard	181			
Patrick LaVay				
By Ms. Girard	184			
By Mr. Nothman			197	
By Mr. Bruestle			241	

P R O C E E D I N G S

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

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

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

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

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

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

5 MR. LENHART: Yes, I have.

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

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

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

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

14 MS. ROBESON: January 21st.

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

16 MS. GIRARD: I got it.

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

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

21 MR. LENHART: Theirs was independent of mine.

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

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

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

17 MR. LENHART: Right.

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

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

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

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

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

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

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

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

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

20 MR. LENHART: Yeah. So.

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

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

7 MS. ROBESON: Okay.

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

11 MR. LENHART: That's correct.

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

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

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

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

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

9 MS. ROBESON: Yes.

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

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

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

15 MS. ROBESON: Okay.

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

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

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

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1 a separate factor on the severity index that if you have  
2 fatalities as the top, injuries as the second, damage as a  
3 third where a vehicle can't drive away, must be towed, then  
4 if you have a fender bender, that's going to be at the very,  
5 very bottom of the severity index waiting and therefore, it  
6 really wouldn't, I mean it could even improve the severity  
7 index. It could lower the severity index because you have,  
8 you'd be adding in more accidents with a much better  
9 severity weighting. Does that make sense?  
10 MS. ROBESON: Yes. Because one of the weights or  
11 one of the weighting factors is severity?  
12 MR. LENHART: Correct. Correct.  
13 MS. GIRARD: Okay. And understanding your  
14 testimony regarding the Carderock Springs Drive/River Road  
15 intersection and your previous analysis and testimony  
16 regarding the trip generation for the project and moving,  
17 turning movements for the project, what impact do you  
18 believe the proposed conditional use would have on the  
19 safety and operations of the intersection?  
20 MR. LENHART: I believe this would have no  
21 negative impact on the safety and operations of the  
22 intersection. As previously testified, this site has a  
23 driveway opposite Carderock Springs. All of the testimony,  
24 all of the accident/crash history indicates that the  
25 concerns here are somebody traveling west on River Road

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1 slows and stops to make a left on Carderock Springs and gets  
2 rear ended while they're waiting to make the left turn.  
3 That condition has no bearing whatsoever on our driveway.  
4 If we have someone trying to enter our driveway, they're  
5 going to be driving west on River Road. Soon as they get to  
6 the driveway they make right turn. They're not, first,  
7 they're slowing to turn into the driveway so they're not a  
8 rear end potential to anyone that might be sitting and  
9 waiting to make a left turn. They're, they're slowing.  
10 They're not, somebody driving down the roadway at 45, 49  
11 miles per hour that would rear end somebody. They're  
12 slowing. They turn in. And second of all, once they get to  
13 the driveway, they turn in. They don't have to wait for a  
14 gap in traffic. They're not a fixed object stopped and --  
15 MS. ROBESON: But that's the, that's just the  
16 east, or sorry, westbound movement?  
17 MR. LENHART: That's westbound.  
18 MS. ROBESON: Now I think there were some, well,  
19 finish, you finish the westbound movement and then I'd like  
20 you to address the eastbound, the left turns from Artis  
21 eastbound on to River. Yeah.  
22 MR. LENHART: From Artis to go eastbound on River?  
23 MS. ROBESON: Yeah.  
24 MR. LENHART: So, so I'm finished with the  
25 westbound.

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1 MS. ROBESON: Okay. Well, I did have one question  
2 and I, I understand that you're turning movement, the Staff  
3 Report says that there's no conflicting turning movements,  
4 but doesn't that only address the westbound traffic? Isn't  
5 there a conflicting turning movement from the existing Artis  
6 eastbound?  
7 MR. LENHART: No different than any other  
8 intersection on the roadway. And every intersection has  
9 side streets with stop signs and the rules of the road, you  
10 pull up. You stop. If there's a gap in traffic, you can  
11 turn left. If there's somebody across from you, it's the  
12 rules of the road who gets there first, you know, makes the  
13 turn first. And so, there's no difference here than  
14 anywhere for, from that perspective.  
15 MS. ROBESON: Does it, okay. Does it matter, and  
16 these aren't just, I'm not trying to give you a hard time.  
17 MR. LENHART: Sure.  
18 MS. ROBESON: I'm trying to get to the bottom of  
19 all the questions.  
20 MS. GIRARD: And we're fine with that.  
21 MR. LENHART: Yes.  
22 MS. ROBESON: Does it matter that the  
23 intersections aren't aligned, or that the driveways aren't  
24 aligned?  
25 MR. LENHART: It, it does not. It's a very, very

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1 small offset. Very small offset. Number one. Number two,  
2 the volume is coming out of Carderock, or out of our site  
3 are very, very small. There, there off, there are two trips  
4 in morning peak hour, four trips in the evening peak hour.  
5 We've adjusted our staffing times so that shift changes are  
6 off peak. Carderock Springs Drive is a residential  
7 neighborhood. Generally, the peaks for residential traffic  
8 are morning peak hour and evening peak hour. It does --  
9 MS. ROBESON: But the speeds are, I, I'm sorry to  
10 interrupt, but I, I want to get to my concern.  
11 MR. LENHART: Sure.  
12 MS. ROBESON: The speeds are slower at peak hour.  
13 So by shifting to get through LATR, you've shifted, which is  
14 fine. It's, I'm not saying that's sneaky. That's fine.  
15 MR. LENHART: Um-hmmm.  
16 MS. ROBESON: But you've shifted to off peak hours  
17 which are the times that the accidents are occurring. So I  
18 guess my question is adding, I think, the largest shift, if  
19 I recall. The largest shift is 18 people. That's a 6:00  
20 a.m. to a 3:00 p.m. And those are all coming out  
21 theoretically. They're all coming out at 3:00 p.m. I'm  
22 pretty sure that's --  
23 MR. LENHART: Oh, bear with me for a second. I --  
24 MS. ROBESON: No. It's fine. It was a while ago.  
25 Maybe it's 6:00 to 2:00.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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1 than a question.  
2 MS. ROBESON: Well, let's, wait. He can say isn't  
3 it true?  
4 MR. NOTHMAN: And so, so, is it true that the,  
5 that the height measurement that was taken for the sight  
6 distance study was taken close to the parapet of the bridge  
7 that would take into consideration the car was on the  
8 shoulder?  
9 MS. ROBESON: Okay. No, no discussion while  
10 you're testifying. Go ahead. Did you hear the question?  
11 MR. LENHART: Yes. That it was, I mean the, the  
12 parapet wall, the bridge is in close proximity. 100 feet.  
13 I don't, off the top of my head, I don't know the exact  
14 measurement, but 100 feet or so east of the driveway. Yes.  
15 MR. NOTHMAN: But that wasn't the question. The  
16 question was according to the AASHTO standards, the height  
17 of the measurement for your site is dictated by that  
18 standard. It would be affected by where the, the point at  
19 which you're measuring the site. And I'm asking did you, at  
20 point that you're measuring to, did you put, place it close  
21 to the parapet of the bridge which would be, would  
22 potentially affect your site line, which --  
23 MR. LENHART: State Highway and --  
24 MR. NOTHMAN: -- by, by, because in this case, in  
25 this case, traffic is traveling on the shoulder, which is

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1 not your standard interface.  
2 MS. ROBESON: It, hypothetically.  
3 MR. NOTHMAN: Hypothetically, at times. It's been  
4 part of the record.  
5 MS. ROBESON: Okay. No, no. Just --  
6 MR. NOTHMAN: Okay. Hypothetically?  
7 MS. GIRARD: Mr. Lenhart has stated that he was  
8 not the one that performed the sight distance evaluation so.  
9 Those were done by Mr. LaVay.  
10 MS. ROBESON: Is Mr. Irvay here?  
11 MS. GIRARD: Mr. LaVay is. Yes. But --  
12 MS. ROBESON: I'm sorry. What is his last name?  
13 I'm sorry.  
14 MS. GIRARD: LaVay.  
15 MS. ROBESON: LaVay.  
16 MS. GIRARD: L-A-V-A-Y.  
17 MS. ROBESON: Okay. All right.  
18 MS. GIRARD: I just don't want to go too far down  
19 this scale when he's not the --  
20 MS. ROBESON: Yeah, I understand. No, you're,  
21 you're right. So we, there is another witness that can  
22 address your question.  
23 MR. NOTHMAN: That's fine.  
24 MR. LAVAY: Can I come up?  
25 MS. ROBESON: No.

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1 MS. GIRARD: We'll call you after.  
2 MR. NOTHMAN: And one last question. You  
3 testified that there are no ADA facilities?  
4 MR. LENHART: The bus stops. There's no ADA, if  
5 you go down Carderock Springs, there's no sidewalks.  
6 There's no ADA compatible facilities to get to the bus  
7 stops. It's basically, you know --  
8 MS. ROBESON: From where though? I, didn't you  
9 have a, a crosswalk on your side that leads to that little  
10 car, golf cart thing? I'm not getting my --  
11 MS. GIRARD: Yeah, on our site. Right. There is,  
12 there's a walkway that comes down for pedestrians.  
13 MS. ROBESON: Oh, but you're, okay.  
14 MS. GIRARD: That's entirely on our site.  
15 MS. ROBESON: Okay. All right. So, I'm sorry.  
16 Can you answer the question? Are there any --  
17 MR. LENHART: Not that I'm aware, not, not serving  
18 the intersection.  
19 MS. ROBESON: Okay.  
20 MR. NOTHMAN: And am I able to ask him questions  
21 about other testimony or only the testimony that he made  
22 today?  
23 MS. ROBESON: Only the testimony he made today.  
24 MR. NOTHMAN: Even if it's his words in other  
25 testimony?

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1 MS. ROBESON: Yes. These are the, the rules of  
2 the road from, we are a quasi-judicial proceeding so we  
3 follow the judicial rules in the conduct of the hearing.  
4 MR. NOTHMAN: It pleases me greatly to follow the  
5 rules.  
6 MS. ROBESON: Well, they're kind of like the rules  
7 --  
8 MR. NOTHMAN: I, I simply, I simply don't know  
9 them all so that's why I --  
10 MS. ROBESON: Yes, I know. The rules, these are  
11 our rules of the road. So.  
12 MR. NOTHMAN: It's my understanding from your  
13 statements that you believe that the SHA has given a 100  
14 percent clean bill of health to the intersection?  
15 MR. LENHART: Yes.  
16 MR. NOTHMAN: And yet the SHA in their January  
17 21st --  
18 MS. ROBESON: Well, which, are you talking about  
19 the intersection of the Artis driveway or the intersection,  
20 or both, both roads in the intersection?  
21 MR. NOTHMAN: You raise actually one of the better  
22 questions right there. And this would be directed better to  
23 Mr. Lenhart. And that is do you see your intersection as  
24 separate and apart from the intersection at Carderock Drive  
25 or do you see it as one intersection? In your, in your

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

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

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

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

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1 rulings.

2 MR. NOTHMAN: Okay.

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

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

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

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

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

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

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

10 there safety measures that people typically take when the,

11 when intersections are offset? No.

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

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

14 commonly, misaligned intersections, are they commonly known

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

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

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

18 question?

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

20 use misaligned.

21 MR. NOTHMAN: I see. Okay.

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

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

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

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

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1 your industry that that creates safety issues?

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

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

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

5 describe this. Offset. But --

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

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

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

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

10 T them up.

11 MR. LENHART: Yes.

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

13 on that?

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

15 of my experience is I worked at State Highway Administration

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

17 division chief for the Access Permits Division for the

18 statewide Department of Transportation. And in an ideal

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

20 perfect alignment. Many times --

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

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

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

24 makes a cleaner intersection if there --

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

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

2 what does that mean?

3 MR. LENHART: The turning movements align better,

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

5 MS. ROBESON: What is --

6 MR. LENHART: I'm sorry.

7 MS. ROBESON: What does align mean?

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

9 say a left turn into Carderock Springs Drive --

10 MS. ROBESON: From?

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

12 MS. ROBESON: Okay.

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

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

15 of offsets.

16 MS. ROBESON: I understand.

17 MR. LENHART: The current offset --

18 MS. ROBESON: I'm with you.

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

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

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

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

23 understand what he's saying?

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

25 MS. ROBESON: Yeah.

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

2 the other direction --

3 MS. ROBESON: Yes.

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

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

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

7 Springs.

8 MS. ROBESON: Westbound?

9 MR. LENHART: Westbound. And they backed up

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

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

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

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

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

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

16 turns?

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

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

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

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

21 for one or the other.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 MS. GIRARD: This is the first?

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

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

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

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

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

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

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

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

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





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

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

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

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

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

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

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

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

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

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

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

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

15 MR. NOTHMAN: Thank you.

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

18 MR. NOTHMAN: Yes, I am.

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

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

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

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

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

23 MS. ROBESON: The bridge abutment?

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

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

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

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

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



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

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

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

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

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

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

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

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

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

7 MS. ROBESON: Okay. All right.

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

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

10 MR. NOTHMAN: So --

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

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

17 MS. ROBESON: No. I understand.

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

23 MS. ROBESON: Okay.

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

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

4 MR. NOTHMAN: Sure.

5 MS. ROBESON: -- and ask questions.

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

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

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

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

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

5 And, the sight lines blocked by the bridge require each and  
6 every car edge out on to the shoulder because regardless if  
7 you're making a right or a left out of this facility, you  
8 need to be able to see the west, the westbound traffic.

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

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

15 This is from the Maryland law. A bicyclist riding at the  
16 speed of traffic can operate in any lane just as any other  
17 vehicle can. Where there is not a bike lane, the bicyclist  
18 may also use the shoulder of the roadway. That's TR 21-  
19 1205.1(b). Can you picture yourself or your family riding  
20 your bicycle on the shoulder on the bridge at this point on  
21 River Road? Those of us in the community can. We can also  
22 picture unsuspecting cyclists following the marked on the  
23 pavement bike path a few hundred feet away that directs a  
24 cyclist exactly into this increasingly dangerous shoulder  
25 area. The commercial facility that stands to profit by the

1 residential to commercial zoning transaction has hired  
2 traffic consultants who have explained why all the  
3 community's concerns for safety are unfounded.  
4 Unfortunately, we as residents are not financially in a  
5 position to hire our own traffic consultants to compete. Of  
6 course, this is one of the reasons residential properties,  
7 zoning, master plans and cyclists must be protected by the  
8 County. If Board members were to drive, Board members,  
9 forgive me, Hearing Examiner --

10 MS. ROBESON: I understand.

11 MR. NOTHMAN: -- were to drive westbound on River  
12 Road and go around a car making a left into our community or  
13 drive on the shoulder as if a car was making a westbound  
14 left into our community, the increased danger brought by  
15 this proposed commercial facility's traffic encroachment on  
16 the westbound shoulder would be immediately and readily  
17 apparent. It would be my suggestion that if a reversal is  
18 not summarily granted that the Board, that the --

19 MS. ROBESON: I understand.

20 MR. NOTHMAN: -- Hearing Examiner take the time  
21 potentially to make this trip and see for yourself if a  
22 traffic consultant is needed to refute common sense. In  
23 response to Mr. Casey Anderson, Chair, Montgomery County  
24 Planning Board's letter dated July 6th, 2015, Brian Young,  
25 District Engineer, SHA, replied on January 21st, 2016. In



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 which is the 1700 feet to the east, that is a road, the road  
2 is flat at that location. All the development is  
3 concentrated on the north side so you don't have any  
4 conflicting intersections like you do here. There's a turn  
5 lane and it conforms to the Potomac Sub-region Master Plan  
6 as required by 7.3.1.E.i.c of the Zoning Code. That's the  
7 location where this senior housing facility should be  
8 located. The Potomac Sub-region --  
9 MS. GIRARD: Objection. Objection. We're not  
10 getting into where it should be located. That has nothing  
11 to do with the traffic impacts.  
12 MS. ROBESON: Yeah. We, we can't, it's beyond our  
13 ability, or my ability at this hearing to go into  
14 conformance with the Master Plan.  
15 MS. LEE: Well, with regard to, but, but  
16 statements with regard to traffic though.  
17 MS. ROBESON: Yes.  
18 MS. LEE: I mean if --  
19 MS. ROBESON: Well, how did that relate to  
20 traffic?  
21 MS. LEE: Because, because that, because, for  
22 example, that's why they located. That's why they indicated  
23 there should be these five specific locations for senior  
24 housing in the sub-region because of --  
25 MS. GIRARD: Objection. There's nothing in the

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1 Master Plan that says that that, that's because of traffic.  
2 MS. LEE: It's because of impacts and, and also  
3 the other master plan, the other, the other master plan  
4 statement which has already been brought up here. The  
5 safety issues raised confirm that it's inconsistent with the  
6 Master Plan provisions on conditional uses. They should be  
7 denied if, quote, if they result in an excessive  
8 concentration of special exceptions along major  
9 transportation corridors and uses that might diminish safety  
10 with too many access points or conflicting turn movements.  
11 And I would say that those are magnified by this site with  
12 this unaligned intersection location.  
13 MS. ROBESON: Okay. I understand what you're  
14 saying. I'll let it in, but master plan, I'm not going to  
15 say, I can't say in my decision this is, complies with the  
16 master plan, another location complies with the master plan.  
17 MS. LEE: I understand.  
18 MS. ROBESON: The only one that I'm dealing with  
19 is this location.  
20 MS. LEE: I understand.  
21 MS. ROBESON: Okay. Go ahead.  
22 MS. LEE: I think so. I think if, if you were  
23 going to focus on the piece of the master plan it wouldn't  
24 be the location of where that is even though that, those are  
25 the kinds of issues they examined when they were determining

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1 those locations, but this specific language with regard to  
2 an excess of special exceptions and access points where  
3 conflicting turn movements, which is on page 35 of the  
4 Master Plan. And of course, not only do you have multiple  
5 special exceptions along here that's one of the problems.  
6 MS. GIRARD: Objection.  
7 MS. ROBESON: Okay. Then I --  
8 MS. LEE: Yeah.  
9 MS. ROBESON: I really can't get into that.  
10 MS. LEE: Okay. Okay.  
11 MS. ROBESON: That's not my charge from the Board  
12 of Appeals.  
13 MS. LEE: Okay. Okay.  
14 MS. ROBESON: What we're dealing with is traffic  
15 safety. I do understand your point.  
16 MS. LEE: Um-hmmm. Um-hmmm.  
17 MS. ROBESON: It's not lost on me, but --  
18 MS. LEE: But with regard to at least that.  
19 MS. ROBESON: -- I have to stick to traffic  
20 safety.  
21 MS. LEE: Yeah. Yeah. And I think that that's,  
22 that, that statement on page 35 of the Master Plan goes  
23 right to traffic safety.  
24 MS. ROBESON: Oh, so --  
25 MS. LEE: So because of its stunningly bad

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1 location, I mean you can't get much worse than, you're,  
2 you're not putting, because of the stunning location with  
3 regard to traffic at the bottom of a steep hill, thousands  
4 of cars a day, you're, this is, this is not by right by, you  
5 know, you have to look at all of the, all of the, the  
6 implications with regard to safety and traffic. This  
7 facility has uniquely adverse public health safe, public  
8 safety impacts and thus, the application should be denied.  
9 MS. ROBESON: Thank you very much. Any questions,  
10 Ms. Girard?  
11 MS. GIRARD: Ms., just one.  
12 DIRECT EXAMINATION  
13 MS. GIRARD: Ms. Lee, are you aware as part of the  
14 previous proceedings of SHA's review of the site access?  
15 MS. LEE: Their, their previous, you mean the one  
16 --  
17 MS. GIRARD: You're indicating that they didn't  
18 study the, the site access and I'm just wondering --  
19 MS. LEE: No.  
20 MS. GIRARD: -- if you're familiar with the  
21 evidence of record regarding that?  
22 MS. LEE: No. I'm just looking at what was  
23 submitted with regard after the remand order went out and  
24 what they've, assume, I assume because it's January 21st,  
25 that this was responding to the remand order.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 Girard, do you have another witness on rebuttal?  
2 MS. GIRARD: Mr. Lenhart. But did Ms. Carlson, do  
3 you have any questions of him?  
4 MS. CARLSON: I guess I don't have a question of  
5 him. I have, guess I will have to leave my comments till  
6 later.  
7 MS. ROBESON: Well, okay. Go ahead.  
8 MS. GIRARD: We have, then we're done with Mr.  
9 LaVay and we have Mr. Lenhart.  
10 MS. ROBESON: Yeah. You may be excused. Mr.  
11 Lenhart, you're still under oath.  
12 REDIRECT EXAMINATION  
13 MS. GIRARD: Okay, Mr. Lenhart. We're going to  
14 bounce around a little bit because my notes are a little  
15 scattered from today, but I want to be sure to hit  
16 everything that we need to. One, the ADA classification or  
17 clarification, it was pointed out that the bus stop on River  
18 Road is ADA compliant.  
19 MR. LENHART: Yes.  
20 MS. GIRARD: And it was represented that your  
21 testimony said it was not. Can you clarify what you meant  
22 regarding the ADA access on River Road?  
23 MR. LENHART: I believe what I stated, and if I  
24 didn't, I'm pretty sure what I stated was that there are no  
25 ADA facilities leading up to the intersection. There's no

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1 sidewalk on Carderock Springs Road. There's no ADA  
2 compliant sidewalk coming down on the other side. And  
3 there's no sidewalks along River Road. Yes, there are bus  
4 stops on both sides. There's been a ton of testimony about  
5 that. And I believe that they are ADA compliant. I don't,  
6 I don't believe I said that they weren't. I said that other  
7 facilities there are not existing.  
8 MS. GIRARD: So is it likely that someone in a  
9 wheelchair could get to that compliant bus stop?  
10 MR. LENHART: It's not, not easily. No. Not from  
11 adjacent neighborhoods or streets.  
12 MS. GIRARD: Regarding the bus stops. Do you  
13 recall, when you prepared your traffic analysis, did you  
14 consider discounting in any way for people who may use the  
15 bus?  
16 MR. LENHART: No. We used the, the LATR  
17 Guidelines includes an appendix for trip generation and, and  
18 it states in the LATR Guidelines that this is, under the  
19 LATR transportation review, it discusses trip generation and  
20 it says that, I'm quoting, Applicants should use Appendix 1  
21 for trip generation rates and equations for typical land  
22 uses within Montgomery County. Should use the rates within  
23 this, you go back to Appendix 1. And it has rates for  
24 different land uses. General office, retail, fast food,  
25 different types of residential, private schools. And then

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1 it has one for senior and elderly housing. And one of the  
2 components under senior and elderly housing are assisted  
3 living facilities and that has rates of .0, 0.03 trips per  
4 bed for the morning peak hour; 0.06 trips per bed for the  
5 evening peak hour. For a 72-bed facility, that's two trips  
6 in the morning peak hour and four trips in the evening peak  
7 hour. There's no discount there for, you know, people using  
8 the bus or transit or whatever.  
9 MS. ROBESON: Taking transit.  
10 MR. LENHART: That's just, that's right out of the  
11 guidelines.  
12 MS. ROBESON: Right.  
13 MR. LENHART: What the rates are. There, there  
14 were some qualitative statements by the applicant that there  
15 are bus stops there and people can use transit if they'd  
16 like, but we took no credit for it.  
17 MS. GIRARD: Okay. And do you recall any  
18 statements about people using the Clewerwall bus stop as  
19 opposed to the one in front of our, would there be a benefit  
20 to using them instead of the one in front of our project?  
21 MR. LENHART: Not, not that I can think of.  
22 MS. GIRARD: Okay. And when you used your LATR  
23 numbers in accordance with the guidelines, that was reviewed  
24 by, reviewed and approved by Staff in the Planning Board?  
25 MR. LENHART: Yes.

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1 MS. GIRARD: Okay. We've heard a great deal of  
2 testimony about the turn lanes along River Road. River  
3 Hill, the Quarry, Congressional, Norwood, all of those. And  
4 it's been indicated that because those turn lanes were  
5 appropriate for those developments that it's an indication  
6 that that's the only safe way, I'm paraphrasing here.  
7 MR. LENHART: Right. If --  
8 MS. GIRARD: But that's a see if we need.  
9 MR. LENHART: If they can do it there, they should  
10 do it here.  
11 MS. GIRARD: Right. Can you review for us your  
12 thoughts on that?  
13 MR. LENHART: Yes. Those other locations, some, I  
14 believe some of those are signalized that were referred to.  
15 And generally, the State, generally wants a left turn lane  
16 at a signalized intersection so you don't have a signal with  
17 somebody stopping in one lane to make a left turn blocking  
18 the through traffic. So they like to see left turn lanes in  
19 those cases. The Quarry, yes, there was a left turn lane  
20 built for that. That is a much more traffic intensive  
21 project than this with 10 to 15 times more traffic. State  
22 Highway Administration and AASHTO both have guidelines for  
23 warrants for left turn lanes. This, the left turn lane into  
24 this site from westbound River Road doesn't even come close  
25 to warranting a left turn lane.

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

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

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

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

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

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

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

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

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

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

3 MS. ROBESON: Okay.

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

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

14 MR. LENHART: Sure.

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

19 MR. LENHART: Yeah.

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

22 MR. LENHART: That's normal.

23 MS. GIRARD: Does that cause concerns?

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

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

19 MS. ROBESON: Okay.

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

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

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

25 MS. ROBESON: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 any additional things being submitted except for the photo  
2 of the model and any email from me distributing it and the  
3 transcript. That's the only thing I'm keeping it open for.  
4 Okay. And I do thank the parties for their time in looking  
5 at this. So hopefully there's enough there this time that  
6 we won't be seeing each other in the summer. Okay. So with  
7 that, and I will try to get the decision done for both  
8 sides. Okay. All right. With that, we're going to adjourn  
9 the hearing. Thank you very much.  
10 (Whereupon, at 4:20 p.m., the hearing was  
11 concluded.)  
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2 DEPOSITION SERVICES, INC., hereby certifies that  
3 the attached pages represent an accurate transcript of the  
4 electronic sound recording of the proceedings before the  
5 Office of Zoning and Administrative Hearings for Montgomery  
6 County in the matter of:  
7 Case No.: CU 15-05 REMAND - Artis Senior Living  
8  
9 By:  
10  
11  
12  
13 Consuella Miles, Transcriber  
14  
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