



Transcript of Zoning Hearing

Date: December 9, 2016

Case: 3 Sons Avalon, LLC LMA H-115, In Re:

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Transcript of Zoning Hearing
Conducted on December 9, 2016

1 (1 to 4)

1	1	1	3
2	MONTGOMERY COUNTY OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS	2	A P P E A R A N C E S
3	IN RE:	3	HEARING EXAMINER:
4	3 SONS AVALON, LLC LMA H-115,	4	LYNN A. ROBESON
5	Applicant.	5	ON BEHALF OF APPLICANT:
6		6	SOO LEE-CHO, ESQUIRE
7	Rockville, Maryland	7	
8	Friday, December 9, 2016	8	
9	9:42 a.m.	9	ON BEHALF OF PROPERTY OWNERS:
10		10	PATRICIA MCKENZIE, ESQUIRE
11		11	
12	Job No.: 126402	12	
13	Pages 1 through 130	13	
14	Reported by: Peggy L. Dingle	14	
15		15	
16		16	
17		17	
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19		19	
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21		21	
22		22	
23		23	
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25		25	
1	2	1	4
2	Administrative hearing held at the	2	C O N T E N T S
3	offices of:	3	EXAMINATION OF JAMES A. SOLTESZ PAGE
4		4	By Ms. Lee-Cho 12
5	MONTGOMERY COUNTY OFFICE OF ZONING AND	5	EXAMINATION OF DAVID AGER PAGE
6	ADMINISTRATIVE HEARINGS	6	By Ms. Lee-Cho 42
7	100 Maryland Avenue	7	By Ms. McKenzie 86
8	County Office Building	8	By Ms. Lee-Cho 120
9	Room 200	9	
10	Rockville, Maryland 20850	10	EXAMINATION OF PHIL ISAJA PAGE
11	(240)777-6660	11	By Ms. Lee-Cho 90
12		12	
13		13	EXAMINATION OF GLENN E. COOK PAGE
14		14	By Ms. Lee-Cho 104
15		15	
16		16	
17		17	
18	Pursuant to agreement, before Peggy L.	18	
19	Dingle, Notary Public of the State of Maryland.	19	
20		20	
21		21	
22		22	
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2 (5 to 8)

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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25																																	
<p style="text-align: center;">E X H I B I T S</p> <p style="text-align: center;">(Not Attached to the Transcript)</p> <table><tr><th>HEARING</th><th>EXHIBIT</th><th>PAGE</th></tr><tr><td>32</td><td>Affidavit of Posting</td><td>7</td></tr><tr><td>33</td><td>Floating Zone Plan</td><td>16</td></tr><tr><td>34</td><td>12/6/16 email from Al Rashi to James Soltesz</td><td>32</td></tr><tr><td>35</td><td>Ager Resume</td><td>43</td></tr><tr><td>36</td><td>Avalon Residential Surrounding Area Boundary</td><td>48</td></tr><tr><td>37</td><td>FY 2017 School Stats</td><td>67</td></tr><tr><td>38</td><td>No document marked</td><td></td></tr><tr><td>39</td><td>Isaja Resume</td><td>94</td></tr><tr><td>40</td><td>Cook Resume</td><td>105</td></tr><tr><td>41</td><td>12/6/16 letter from Patricia McKenzie to Hearing Examiner</td><td>124</td></tr></table>	HEARING	EXHIBIT	PAGE	32	Affidavit of Posting	7	33	Floating Zone Plan	16	34	12/6/16 email from Al Rashi to James Soltesz	32	35	Ager Resume	43	36	Avalon Residential Surrounding Area Boundary	48	37	FY 2017 School Stats	67	38	No document marked		39	Isaja Resume	94	40	Cook Resume	105	41	12/6/16 letter from Patricia McKenzie to Hearing Examiner	124	<p>MS. MCKENZIE: Patricia McKenzie. I am representing Paul and Mary McKenzie, adjacent property owners at 22805 Frederick Road.</p> <p>HEARING EXAMINER: Okay. Is there anyone here not represented by Miss Cho or Miss McKenzie that wishes to testify today?</p> <p>Okay. Seeing none, we are going to proceed. I have got the Affidavit of Posting. And unless anyone has an objection, I am going to add it to the record as Exhibit 32.</p> <p>(Exhibit 32 was marked for identification.)</p> <p>Are there any preliminary matters?</p> <p>MS. LEE-CHO: None that I am aware of.</p> <p>HEARING EXAMINER: Okay. Being none, we will -- the order of the Hearing -- and the only reason I raise this is you have a time -- you -- you may possibly have a time constraint.</p> <p>The order of the hearing is typically the Applicant's case, any Opposition case and then back to the Applicant. If you -- if the parties would like, I can let you proceed -- after opening statements, I can let you proceed first with your concern -- with your clients' concerns and then we can proceed with the Applicant's case if that helps</p>
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<p style="text-align: center;">P R O C E E D I N G S:</p> <p>HEARING EXAMINER: This is a public hearing in the case in the application of 3 Sons Avalon requesting rezoning from the R-200 to the TF5 zone for property located at 22901 Frederick Road, Clarksburg consisting of 10 point 27 acres of land in the Second Election District.</p> <p>This hearing is conducted on behalf of the County Council. So all your testimony and evidence should be presented here because if it's not and you disagree with my decision or recommendation in this case, then it's appeal -- you can request oral argument before the County Council, but it's based on the record in this case. They don't take additional evidence or testimony.</p> <p>Would the parties identify themselves for the record? That's you [indicating] --</p> <p>MS. LEE-CHO: Oh.</p> <p>HEARING EXAMINER: -- and you [indicating].</p> <p>MS. LEE-CHO: For the record, Soo Lee-Cho with the law firm of Miller, Miller and Canby on behalf of the Applicant 3 Sons Avalon, LLC.</p> <p>HEARING EXAMINER: Okay. And?</p>	<p>you at all. Sometimes it shortens things by letting the Applicant address what you have to say --</p> <p>MS. MCKENZIE: Sure</p> <p>HEARING EXAMINER: -- but it -- it's up to the parties. Right now --</p> <p>MR. SOLTESZ: Fine with me. That's -- that's -- that's fine with me.</p> <p>HEARING EXAMINER: No, your attorney has to answer.</p> <p>MR. SOLTESZ: Okay.</p> <p>HEARING EXAMINER: I know you are the client --</p> <p>MR. SOLTESZ: Okay. Sorry. I am sorry.</p> <p>HEARING EXAMINER: -- and the owner, but. So it sounds --</p> <p>MS. LEE-CHO: I would -- on -- on behalf of the Applicant I would defer to Miss McKenzie if they would like to make their statements. We have conferred and I believe that the concerns that the McKenzies had have -- have been addressed or will be addressed by the Applicant, but it's up to the McKenzies if they want to stay for the entire proceeding or if they wanted to go ahead of the --</p> <p>HEARING EXAMINER: Okay.</p>																																	

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3 (9 to 12)

<p>9</p> <p>1 MS. MCKENZIE: How long do you 2 anticipate the entire hearing will take? 3 HEARING EXAMINER: Well, we have, I am 4 counting, five experts. So it can take a while. 5 MS. LEE-CHO: We estimate at least three 6 hours. If it goes long, I would think four, but 7 not all day. 8 HEARING EXAMINER: Well, my position is 9 that we are -- we are going to try to get through 10 more quickly, but it can -- it's going to be at 11 least an hour and possibly two. You do have the 12 right to cross-examine these witnesses. 13 MS. MCKENZIE: Thank you. Thank you. 14 HEARING EXAMINER: Okay? Well, let -- 15 let me do this. Let's start with any opening 16 statements and -- and then you can take a minute 17 and think about what you want to do. 18 Miss Lee-Cho, do you have an opening 19 statement? 20 MS. LEE-CHO: Just briefly just to 21 orient -- find an orientation of the site. Why 22 don't I just use this board [indicating]. 23 HEARING EXAMINER: And that is? 24 MS. LEE-CHO: That is excerpt from the 25 Park and Planning Staff Report, page 21.</p>	<p>11</p> <p>1 identifies adjacent existing residential 2 development and also approved-to-be-built 3 residential development. So that is the site. 4 We will present experts, three experts, 5 to present the case and estimate about, at most, 6 three hours of testimony. 7 HEARING EXAMINER: Okay. Thank you. 8 Anything you would like to say? This is 9 just opening statement. 10 MS. MCKENZIE: No, I will -- I will 11 defer to -- to -- well, okay. So you want a 12 decision now? How do you want this -- 13 HEARING EXAMINER: Well, if you are 14 ready. If you -- if -- we can start with Miss 15 Lee-Cho's witnesses and then you can -- I will 16 leave it like this. You can interrupt at any time 17 and say, I would like to put my witnesses on. 18 MS. MCKENZIE: That -- that would be 19 excellent, yes. In a few minutes I will have my 20 keys. 21 HEARING EXAMINER: Oh, okay, okay. 22 MS. MCKENZIE: If a police officer can 23 find me, I will -- I will have my keys in a minute, 24 so. 25 HEARING EXAMINER: Okay. All right.</p>
<p>10</p> <p>1 HEARING EXAMINER: Okay. 2 MS. LEE-CHO: I don't know if you want 3 it separately marked, but -- 4 HEARING EXAMINER: No. 5 MS. LEE-CHO: -- it's just a blowup of 6 page 21. 7 HEARING EXAMINER: It -- yeah, no. 8 MS. LEE-CHO: As indicated by the 9 Hearing Examiner, the site is approximately 10 10 point 27, 10 point 28 acres located on the east 11 side of Frederick Road, also known as Maryland 355. 12 It is about 400 feet north of Shawnee Lane, the 13 intersection of Shawnee Lane and Maryland 355, and 14 I -- about 2700 feet south of Springtown Road and 15 Maryland 355. 16 HEARING EXAMINER: Stringtown? 17 MS. LEE-CHO: Stringtown? 18 HEARING EXAMINER: Yeah. Okay, that's 19 fine. It is. I thought you said Springtown. 20 MS. LEE-CHO: String. Stringtown. 21 HEARING EXAMINER: Okay. 22 MS. LEE-CHO: The site -- some notable 23 landmarks around the site to the site is -- to the 24 south is Clarksburg High School. This map shown on 25 page 21 of the Park and Planning Staff Report</p>	<p>12</p> <p>1 MS. MCKENZIE: Thank you. 2 HEARING EXAMINER: Why don't you call 3 your first witness, Miss Lee-Cho? 4 MS. LEE-CHO: Sure. And I guess I 5 should restate that. Actually, it's four 6 witnesses. I didn't count the owner, Mr. Soltesz, 7 as a witness. So if I could first call Mr. Jim 8 Soltesz. 9 HEARING EXAMINER: Mr. Soltesz? 10 THE WITNESS: Yes, ma'am. 11 HEARING EXAMINER: Once you get 12 situated, please raise your right hand. Do you 13 solemnly affirm under penalties of perjury that the 14 statements you are about to make are the truth, the 15 whole truth and nothing but the truth. 16 THE WITNESS: I do. 17 HEARING EXAMINER: Go ahead, Miss 18 Lee-Cho. 19 EXAMINATION BY COUNSEL FOR APPLICANT 20 BY MS. LEE-CHO: 21 Q So, Mr. Soltesz, can you begin by 22 providing a statement of why you invested in this 23 property and -- 24 A Sure. 25 Q -- what you might have seen as a</p>

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4 (13 to 16)

<p>13</p> <p>1 potential for the property?</p> <p>2 A Sure. I-- I wear a couple of hats. I</p> <p>3 have a civil engineering company that does a lot of</p> <p>4 work, 36 years in the County, and I don't usually</p> <p>5 invest in properties, but this property came</p> <p>6 available through some circumstances which was the</p> <p>7 Avalon School, which, unfortunately, you know, had</p> <p>8 to lose it during the recession.</p> <p>9 So I had looked at the property and knew</p> <p>10 of it and actually knew the people who run the</p> <p>11 Avalon School just through friends for a long time</p> <p>12 and I just believe that, well, Clarksburg is a</p> <p>13 great community. And we have done a lot of</p> <p>14 business in Clarksburg and I think we have been</p> <p>15 working up there for at least 15, 18 years.</p> <p>16 And to be, you know, really candid, I</p> <p>17 mean, it's -- it's a well-planned community.</p> <p>18 The -- the town center has nice, quaint aspects to</p> <p>19 it and then also they are, you know, developing</p> <p>20 behind where, like, Elm Street is.</p> <p>21 And I -- I -- personally, my belief is</p> <p>22 that the east side of 270 is the nicer area in</p> <p>23 Clarksburg. I guess I shouldn't say that, but I</p> <p>24 will say that and I am under oath. So I was -- I</p> <p>25 think that it's just -- it's a nice place to live</p>	<p>15</p> <p>1 A Yeah, yeah. I will say one thing.</p> <p>2 Because we are -- I am a civil engineer for a long</p> <p>3 time. I -- I -- when I looked at the property, as</p> <p>4 well as proposed improvements, you know, I look at</p> <p>5 it with the eye of can this actually be built. And</p> <p>6 one of the issues was the -- the -- the sewer --</p> <p>7 there -- there -- there wasn't a sewer line up</p> <p>8 through there.</p> <p>9 MS. LEE-CHO: Maybe at this point we</p> <p>10 could introduce the Floating Zone Plan where you</p> <p>11 can see the sewer easement.</p> <p>12 HEARING EXAMINER: That's not on this,</p> <p>13 the one we have?</p> <p>14 MS. LEE-CHO: Well, we are presenting a</p> <p>15 further revised floating zone plan with the binding</p> <p>16 elements. I didn't know if this was appropriate.</p> <p>17 HEARING EXAMINER: Oh, okay.</p> <p>18 THE WITNESS: Yeah, you can come up</p> <p>19 here. You can sit here.</p> <p>20 HEARING EXAMINER: Let me just say I --</p> <p>21 to shorten -- we are trying to streamline our</p> <p>22 hearings.</p> <p>23 THE WITNESS: Okay.</p> <p>24 HEARING EXAMINER: So to shorten our</p> <p>25 hearings we are trying to get to the point where we</p>
<p>14</p> <p>1 and it's a -- a -- a nice community.</p> <p>2 And so property came available and I</p> <p>3 looked as it as a flat piece of ground as an</p> <p>4 engineer, no wetlands, no flood plain, to be</p> <p>5 honest, not a lot of trees, so -- which are things</p> <p>6 to deal with. And so I thought it was, you know,</p> <p>7 really a decent, you know, nice piece of land.</p> <p>8 Did a lot of research on the Master</p> <p>9 Plan. Density I thought -- you know, I --</p> <p>10 basically four units an acre and I said, okay, that</p> <p>11 is reasonable and fair up to four units. Did not</p> <p>12 like, necessarily, the single-family detached</p> <p>13 having to line the road, but that's a discussion I</p> <p>14 had with Rose Crat [ph] now, to be honest, but we</p> <p>15 ended up, you know, following the Master Plan.</p> <p>16 So I just thought it was a nice piece --</p> <p>17 I thought it was a good piece of property and I</p> <p>18 think it was a good community. I think the people</p> <p>19 up there, who I met with many, many times not only</p> <p>20 for this but on behalf of a whole lot of projects,</p> <p>21 and I just -- I liked the community, so.</p> <p>22 Q Could you describe your efforts in terms</p> <p>23 of obtaining a WSSC easement to help service --</p> <p>24 A Sure.</p> <p>25 Q -- or provide service to the site?</p>	<p>16</p> <p>1 just address the criteria for approval, but if this</p> <p>2 is background for the Revised Plan -- and I do</p> <p>3 recall Mr. -- if this is background for submitting</p> <p>4 the Revised Plan, that's -- that's fine, but let me</p> <p>5 just remind that we are really trying to stick to</p> <p>6 the criteria.</p> <p>7 THE WITNESS: Okay. To get through</p> <p>8 this. Well, the sewer line is important because</p> <p>9 I -- I -- when I met with the McKenzies it was</p> <p>10 in --</p> <p>11 MS. LEE-CHO: It relates to something --</p> <p>12 THE WITNESS: It relates to them.</p> <p>13 HEARING EXAMINER: Well, that's helpful</p> <p>14 to me.</p> <p>15 THE WITNESS: It relates to me, but, I</p> <p>16 mean, I -- yeah.</p> <p>17 HEARING EXAMINER: That's helpful to me</p> <p>18 while you are introducing to me.</p> <p>19 THE WITNESS: Yeah.</p> <p>20 HEARING EXAMINER: So go -- so let's go</p> <p>21 ahead and this will be --</p> <p>22 MS. LEE-CHO: 33?</p> <p>23 HEARING EXAMINER: Yes.</p> <p>24 (Exhibit 33 was marked for</p> <p>25 identification.)</p>

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5 (17 to 20)

<p>17</p> <p>1 THE WITNESS: Actually --</p> <p>2 HEARING EXAMINER: And how would you</p> <p>3 characterize that? Revised Site Plan?</p> <p>4 MS. LEE-CHO: Floating Zone Plan.</p> <p>5 HEARING EXAMINER: Revised -- yeah.</p> <p>6 THE WITNESS: Here, I -- I just --</p> <p>7 HEARING EXAMINER: Is --</p> <p>8 THE WITNESS: May -- can I just show --</p> <p>9 point to it? Let me just show you.</p> <p>10 HEARING EXAMINER: Sure.</p> <p>11 THE WITNESS: I will get through this</p> <p>12 quick because I know everybody has got to get</p> <p>13 moving, so. Okay. The property --</p> <p>14 HEARING EXAMINER: I don't want to rush</p> <p>15 you.</p> <p>16 THE WITNESS: No, no, no, no. I get it.</p> <p>17 HEARING EXAMINER: It's just that we</p> <p>18 take --</p> <p>19 THE WITNESS: I get it.</p> <p>20 HEARING EXAMINER: We -- yeah.</p> <p>21 THE WITNESS: We will get to the point.</p> <p>22 HEARING EXAMINER: And you have -- I</p> <p>23 recall you testifying before me in the Clarksburg</p> <p>24 DPA for the --</p> <p>25 THE WITNESS: Yeah.</p>	<p>19</p> <p>1 HEARING EXAMINER: -- describe --</p> <p>2 THE WITNESS: At the end of Shawnee</p> <p>3 Lane there is a cul-de-sac. There is a sanitary</p> <p>4 sewer --</p> <p>5 BY MS. LEE-CHO:</p> <p>6 Q Okay.</p> <p>7 A -- line there. In order to have this</p> <p>8 property get public sewer we did a study -- we, as</p> <p>9 a company, did a study to show how the sanitary</p> <p>10 sewer could be brought up Shawnee Lane, across this</p> <p>11 lot which we have a easement for. I had to have</p> <p>12 the sanitary sewer study approved by WSSC, which we</p> <p>13 did. Obviously, worked with the property owner.</p> <p>14 The sewer line will come between these</p> <p>15 two lots [indicating]. They are not labeled on</p> <p>16 there. So I can't really say which lots they are.</p> <p>17 And it goes across the open parcel. And one of the</p> <p>18 things in the --</p> <p>19 HEARING EXAMINER: What open parcel?</p> <p>20 The parcel marked Open Space on the Floating --</p> <p>21 THE WITNESS: Yeah, it says, Storm water</p> <p>22 management, recreation, forestation, open space.</p> <p>23 HEARING EXAMINER: Okay.</p> <p>24 THE WITNESS: And sanitary sewer pops up</p> <p>25 through there. One of the issues in Mrs. -- the</p>
<p>18</p> <p>1 HEARING EXAMINER: For the --</p> <p>2 THE WITNESS: Yes.</p> <p>3 HEARING EXAMINER: I can't think of --</p> <p>4 for the outlet center, so.</p> <p>5 THE WITNESS: Yes, yes, yes. Okay.</p> <p>6 The -- the sanitary sewers back up here</p> <p>7 [indicating] in -- in a cul-de-sac --</p> <p>8 HEARING EXAMINER: When you say, Here,</p> <p>9 where is here.</p> <p>10 THE WITNESS: I am sorry. Shawnee Lane.</p> <p>11 I think it sort of cul-de-sacs back up in here</p> <p>12 [indicating].</p> <p>13 HEARING EXAMINER: Okay.</p> <p>14 THE WITNESS: And so --</p> <p>15 HEARING EXAMINER: To the -- okay.</p> <p>16 MS. LEE-CHO: To the east.</p> <p>17 THE WITNESS: The east.</p> <p>18 HEARING EXAMINER: Yeah, the</p> <p>19 transcript -- I have got -- I got to be picky.</p> <p>20 THE WITNESS: I understand.</p> <p>21 HEARING EXAMINER: The transcript --</p> <p>22 THE WITNESS: Okay.</p> <p>23 HEARING EXAMINER: -- doesn't know where</p> <p>24 here is. So --</p> <p>25 THE WITNESS: Okay.</p>	<p>20</p> <p>1 McKenzies can interrupt me at any time, but I</p> <p>2 believe they have the septic system in the back.</p> <p>3 And one of the things that they wished to have is</p> <p>4 access to the sanitary sewer, which would be a</p> <p>5 public lot. And so that's important.</p> <p>6 Now, the other thing, too, let me just</p> <p>7 raise this point.</p> <p>8 HEARING EXAMINER: Are they south of the</p> <p>9 20-foot easement of WSSC or are they -- are the</p> <p>10 McKenzies south --</p> <p>11 THE WITNESS: They are -- they are --</p> <p>12 HEARING EXAMINER: Oh, they are --</p> <p>13 THE WITNESS: They are here</p> <p>14 [indicating].</p> <p>15 HEARING EXAMINER: They front --</p> <p>16 THE WITNESS: That's Mr. --</p> <p>17 HEARING EXAMINER: Okay. They --</p> <p>18 THE WITNESS: Yeah.</p> <p>19 HEARING EXAMINER: -- they are the lot</p> <p>20 to the --</p> <p>21 MS. LEE-CHO: Immediate south.</p> <p>22 THE WITNESS: South.</p> <p>23 HEARING EXAMINER: -- south fronting on</p> <p>24 Frederick Road?</p> <p>25 THE WITNESS: 3 -- 355, yes. And their</p>

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6 (21 to 24)

<p>21</p> <p>1 septic system is in the back, I believe. 2 MS. MCKENZIE: Yes, it is. 3 MR. MCKENZIE: Yes. 4 THE WITNESS: So what they would like -- 5 and, again, she can -- jump in, Patricia -- to have 6 access to the sanitary sewer line, which we will -- 7 HEARING EXAMINER: Okay. 8 THE WITNESS: Okay. All right. I 9 better shut up. Okay. You go ahead. I can talk 10 about other issues, but that's okay. 11 BY MS. LEE-CHO: 12 Q So I think that's great. Mr. Soltesz, 13 you have had, as you have alluded to, meetings with 14 a number of neighbors and associations. But if 15 that is not necessary to the case, then we can just 16 move on. 17 HEARING EXAMINER: No, you can 18 briefly -- 19 THE WITNESS: Okay. 20 HEARING EXAMINER: -- summarize them. 21 THE WITNESS: I will go through them 22 real quick. 23 Having done this for 30 years, I know 24 it's good to do a lot of outreach and a lot of 25 outreach early. And so we posted -- made a nice</p>	<p>23</p> <p>1 THE WITNESS: Make sure. 2 BY MS. LEE-CHO: 3 Q Now, I -- Mr. Soltesz, I want you to -- 4 because you, I understand, have been intimately 5 involved in the issues related to the right 6 in/right out access point -- 7 A Uh-huh. 8 Q -- I would like you to explain to the 9 Hearing Examiner your understanding of, let's begin 10 with, the State Highway Administration -- 11 A Uh-huh. 12 Q -- letter that was provided in -- in 13 response to comments on the -- 14 A Uh-huh. 15 Q -- Traffic Impact Study, what it said -- 16 A Uh-huh. 17 Q -- and what you did to address 18 concerns -- 19 A Uh-huh. 20 Q -- raised in that SHA letter, as well as 21 MCDOT. 22 A Okay. Good. Well, originally, when I 23 bought the property I had obviously done a lot of 24 research on what was improved. I think they had 25 actually gone through and got a Special Exception</p>
<p>22</p> <p>1 relationship with some of the civic leaders up 2 there, attended meetings with them, held a public 3 meeting, for lack of a better word. The building 4 was locked. So we ended up going to the 5 restaurant, but everybody was there. We posted it. 6 So I -- I -- I -- and I reached out to 7 Mr. and Mrs. Winters -- 8 HEARING EXAMINER: Uh-huh. 9 THE WITNESS: -- which on this piece of 10 ground -- 11 HEARING EXAMINER: And that is the piece 12 that borders the -- 13 THE WITNESS: -- called Parcel -- 14 HEARING EXAMINER: Go ahead. 15 THE WITNESS: Yeah, Parcel 660. 16 HEARING EXAMINER: Okay. 17 THE WITNESS: So I -- I worked with them 18 and obviously, talked and met with the McKenzies, 19 met with Mr. McPherson. He spoke to some of the 20 neighbors. I went out and met with all the civic 21 association groups I could, met with the Chamber. 22 I did presentations in front of civic groups. I 23 did presentations in front of the Chambers. So we 24 did a lot of outreach. 25 HEARING EXAMINER: Okay.</p>	<p>24</p> <p>1 Site Plan. So I just basically mirrored the 2 roadway out. 3 The school had a loop road, two means of 4 ingress/egress. I thought, okay, it's been vetted. 5 That's fine. We will make that work. That's how 6 we started. 7 And then after we got into it, walked 8 the site, Phil Isaja, who is going to testify, we 9 looked at the issue of the site distance. And 10 this -- we proposed originally two full 11 intersection movements. However, the topography at 12 the site, this goes up this way [indicating], 13 slopes. As you proceed north the grades increase. 14 And we looked at this again before we 15 really got too far -- 16 Q The northern access? 17 A The northern access point. We thought 18 there might be a sight distance issue. And so we 19 looked at it closer and we believe we -- we do have 20 one. So we went back and I talked with MMCPPC. I 21 went to meet with Al Rashi and -- 22 HEARING EXAMINER: Who is? 23 BY MS. LEE-CHO: 24 Q Al Rashi is with what agency? 25 A Oh, M -- he is director.</p>

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7 (25 to 28)

<p>25</p> <p>1 HEARING EXAMINER: MCDOT, I believe. Am 2 I correct? 3 THE WITNESS: Yes, you are correct a 4 hundred percent, yes. 5 HEARING EXAMINER: Okay. Go ahead. 6 THE WITNESS: And we also talked to 7 State Highway. So in order to avoid any 8 sight distance issue we revised the plan and then 9 this was a right in/right out only. 10 HEARING EXAMINER: Okay. 11 THE WITNESS: The northern access point. 12 HEARING EXAMINER: Do you have any 13 documentation from SHA that this is going to meet, 14 you know, that they will accept this right in/right 15 out at that location? 16 THE WITNESS: We are -- we -- we 17 received a comments letter from Maryland State 18 Highway. Okay? It was because of the zoning today 19 and the fact we got to go through subdivision and 20 we will have to go and get access permit approval 21 on these that we are -- we did not submit a sight 22 distance study, although we anticipated that there 23 might be an issue. 24 HEARING EXAMINER: I -- I guess my 25 question is not so much the sight distance because</p>	<p>27</p> <p>1 A Yes, exactly. 2 Q -- as the comment letter? 3 A Yes. 4 HEARING EXAMINER: Is that in the 5 record? 6 MS. LEE-CHO: That is in -- 7 THE WITNESS: Yes. 8 MS. LEE-CHO: -- attached to the Staff 9 Report, Planning Staff Report. 10 HEARING EXAMINER: Okay. 11 MS. LEE-CHO: We can enter it as a 12 separate exhibit. 13 HEARING EXAMINER: No, no, don't. 14 MS. LEE-CHO: It's Attachment 3 -- 15 HEARING EXAMINER: Okay 16 MS. LEE-CHO: -- to the Planning 17 Staff -- 18 HEARING EXAMINER: All right. 19 BY MS. LEE-CHO: 20 Q In this letter, Mr. Soltesz, does it 21 indicate either a denial or approval of the two 22 full movement access points -- 23 A No. 24 Q -- that were shown on the plan? 25 A No. It just makes mention of it. It</p>
<p>26</p> <p>1 you are saying you don't think it's going to meet 2 the sight distance. What I am asking you is 3 whether any transportation agency has reviewed -- 4 THE WITNESS: Okay. 5 HEARING EXAMINER: -- this access and 6 said that's -- you know, that's something we could 7 potentially approve. 8 THE WITNESS: Yeah, we have a letter 9 from Maryland Department of Transportation District 10 5. 11 HEARING EXAMINER: Is that in the 12 record? 13 THE WITNESS: You have a comments 14 letter. 15 MS. LEE-CHO: We have a comments letter. 16 HEARING EXAMINER: But that's not on 17 this alignment. 18 MS. LEE-CHO: So let me just answer the 19 question. 20 HEARING EXAMINER: Okay. 21 BY MS. LEE-CHO: 22 Q The comment -- let me start with the 23 comment. So this is the -- the letter -- is this 24 the letter that you are referring to, Mr. 25 Soltesz --</p>	<p>28</p> <p>1 doesn't -- this is not a letter that they would be 2 denying it or approving it. 3 Q Subsequent to the receipt of this letter 4 did you reach out to MCDOT to confer with them on a 5 modification of the full movement -- 6 A Yes. 7 Q -- access? 8 A Yeah. Here was the process. We copied 9 the access plans that were previously approved for 10 the school. We submitted those as full access 11 plans. 12 HEARING EXAMINER: To SHA? 13 THE WITNESS: To SHA, to MNCPPDC and they 14 were referred to Montgomery County DOT. So 15 everybody had the exact plans that Avalon School 16 had, which was two access points. 17 HEARING EXAMINER: Right. 18 THE WITNESS: Then I went back and we 19 looked at the sight distance issue and we 20 voluntarily said we don't think that a full 21 movement on the north side necessarily would work. 22 HEARING EXAMINER: Okay. 23 THE WITNESS: So I went back to Al Rashi 24 MCDOT director and said, Would you support a right 25 in/right out? Went to MNCPPC, talked to them,</p>

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8 (29 to 32)

<p style="text-align: right;">29</p> <p>1 Would you support a right in/right out? Obviously, 2 the answer is yes. 3 Called State Highway. We haven't heard 4 back. They haven't denied it or approved it, but 5 there wasn't an issue before with a full movement. 6 So I can't imagine there would be a re -- a -- a 7 problem with the restricted movement of a right 8 in/right out. We were just proactive in examining 9 what the sight distance issue is. 10 So we modified the plan. I contacted -- 11 the issue came up in the last couple or three days 12 again. I knew we were going to be in front of you, 13 you know, Madam Hearing Examiner. I called, 14 figured I would get ahold of Al Rashi quicker than 15 I could Maryland State Highway. 16 HEARING EXAMINER: Chowdhury. 17 THE WITNESS: Huh? 18 HEARING EXAMINER: Mr. Chowdhury, who is 19 with the SHA. 20 THE WITNESS: He actually left. You 21 talking about Pranoy? 22 HEARING EXAMINER: Yes. 23 THE WITNESS: Yeah, he is -- he is gone. 24 That's okay. Anyway, so they have a new access 25 Erica --</p>	<p style="text-align: right;">31</p> <p>1 belong to Maryland State Highway. I urge you to 2 contact M -- Maryland State Highway to get their 3 support and approval, so. 4 Q And, Mr. Soltesz, short of having a more 5 definitive decision -- 6 HEARING EXAMINER: Well, let me see 7 just -- are there any objections? Do you have any 8 objections to this email coming in? 9 MS. MCKENZIE: I -- I haven't seen it, 10 but he -- he just basically paraphrased it, so -- 11 or read it verbatim. So I -- I am fine with that. 12 And -- and I was at the hearing for the 13 Avalon School. So the access that he is referring 14 to that was greater access -- 15 HEARING EXAMINER: The full movement 16 access? 17 THE WITNESS: Yes. It was approved 18 before and it was a bad idea before. So he has 19 voluntarily made changes to that. The only other 20 better solution would be to cut it off -- period -- 21 but they -- I think they have come up with the best 22 option. 23 HEARING EXAMINER: Okay. So I am going 24 to call this the 12/6/16 email from Al Rashi to Mr. 25 Soltesz. Just give me a moment to write. Okay.</p>
<p style="text-align: right;">30</p> <p>1 MR. COOK: Kwesi Woodroffe. 2 HEARING EXAMINER: No. Okay. 3 THE WITNESS: That's fine. You don't 4 need -- that's all right. Okay. 5 So I went back to Al Rashi and said, 6 Could you give me something quickly that shows that 7 you would be supportive of right in/right out. 8 And he said, Yes, not a problem. So he 9 sent an email to me within the last day or so so to 10 be sure -- here we go. 11 BY MS. LEE-CHO: 12 Q Okay. And is this the email you are 13 referring to? 14 A Yeah, yeah. And I will just -- 15 Q And if we want to mark that as Exhibit 16 34. 17 A Jim, this is follow-up to the 18 conversation today regarding the proposed right 19 in/right out on Frederick Road from the Avalon site 20 in Gaithersburg. MCDOT has no objections with your 21 current access concept. 22 However, since Frederick Road is under 23 the jurisdiction of Maryland State Highway, the 24 final decision regarding the access and 25 improvements within the right-of-way obviously</p>	<p style="text-align: right;">32</p> <p>1 (Exhibit 34 was marked for 2 identification.) 3 MS. LEE-CHO: And, Miss Robeson -- 4 HEARING EXAMINER: Yes. 5 MS. LEE-CHO: -- I do -- did want to 6 indicate we have Glenn Cook, who is the Project's 7 traffic engineer -- 8 THE WITNESS: Yeah. 9 MS. LEE-CHO: -- who will also, in his 10 professional opinion -- 11 HEARING EXAMINER: That's fine. I 12 just -- I was very confused about what the status 13 of the review process was. So let's just keep 14 going now and -- 15 THE WITNESS: It's -- it's changed, but 16 we requested a change for the right reason. Yeah. 17 HEARING EXAMINER: Okay. 18 THE WITNESS: That's why we changed it. 19 HEARING EXAMINER: All right. Keep 20 going. 21 THE WITNESS: Because it would have been 22 dangerous. 23 BY MS. LEE-CHO: 24 Q Okay. So with -- Mr. Soltesz, let's 25 move on. And while I have you, Mr. Soltesz, if you</p>

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9 (33 to 36)

<p>33</p> <p>1 could, you alluded to this previously about the 2 Winters' property and -- 3 HEARING EXAMINER: I am sorry. Which 4 one is the Winters? Is that -- 5 THE WITNESS: It is the -- 6 MS. LEE-CHO: Parcel 6 - 7 THE WITNESS: -- Parcel 6600. It's 8 north. North. 9 HEARING EXAMINER: I see. Okay. I see 10 it on the plan. 11 BY MS. LEE-CHO: 12 Q And if you could, sort of share your 13 thoughts in terms of the potential -- the -- the 14 concerns raised by Park and Planning Staff about -- 15 A Yeah, sure. 16 Q -- a potential future development on 17 that property and how that might impact your site. 18 A Right. Well, I -- I met with Mr. -- Mr. 19 Winters -- I don't know -- probably four or times 20 and they have -- actually, they owned all this 21 ground. It was the -- it was the Winter -- I think 22 it was Mrs. Winter's -- I don't know what her 23 maiden name was. King. 24 HEARING EXAMINER: Well, it's okay. 25 THE WITNESS: King. She is a King.</p>	<p>35</p> <p>1 they wanted -- they didn't want any houses here 2 [indicating]. And I said okay. So we moved 3 everything back up in through here [indicating]. 4 We squeezed that down. 5 Then they asked for a board-on-board 6 fence, which the McKenzies wanted, as well. We had 7 a talk about that, I am sure. 8 So there was no development plans. They 9 had no desire to rejoin an application. I get 10 that, but I thought I would ask the question. That 11 was probably three years ago. And that's it. I 12 mean, I don't know what they are going to do -- 13 HEARING EXAMINER: If -- okay. So I 14 guess the board-on-board fence that's shown is -- 15 is -- if it ever does develop, that is going -- the 16 P-660, if it ever does develop, a portion of that 17 board-on-board fence is going to go away because 18 it's in the outlot, correct. 19 THE WITNESS: Well, yes. Well, it 20 doesn't -- 21 MS. LEE-CHO: The -- 22 THE WITNESS: No, not necessarily. 23 BY MS. LEE-CHO: 24 Q Well, can you -- 25 A The --</p>
<p>34</p> <p>1 HEARING EXAMINER: I just need to know 2 how it impacts the property. 3 THE WITNESS: Okay, okay. All right. I 4 met with them. They are nice people. I asked them 5 originally -- because they are friends of Jody 6 Kline's, too -- if they wanted to join in the 7 application. Jody suggested I ask them. They 8 said, No, we are very happy here. We -- we like 9 our home and we are set. 10 And I said, Okay. Great. No problem. 11 Let me keep telling you what we are doing. I met 12 with them four or five times, showed them the plan. 13 They came back and said, Look, we would 14 prefer no houses along this stretch of the -- of -- 15 this stretch, the northeast slanted line that's -- 16 HEARING EXAMINER: Northwest? 17 THE WITNESS: Northwest. 18 MS. LEE-CHO: No, northeast. 19 THE WITNESS: No, northeast. 20 HEARING EXAMINER: Oh, you are right. 21 THE WITNESS: I am an engineer. 22 HEARING EXAMINER: I know. I am just 23 looking -- it's in the northwest portion of the 24 site. 25 THE WITNESS: Yeah, the northwest. So</p>	<p>36</p> <p>1 Q Mr. Soltesz, can you address the reason 2 there is an outlot shown on the Floating Zone Plan? 3 A Park and Planning asked us to place an 4 outlot there in the event that this property, which 5 I think is about 10 or 12 acres -- don't hold me to 6 it -- but if this property ever develops, Park and 7 Planning said they would like the possibility of 8 having a connection between the two-pieces. 9 So since I moved the houses away, as Mr. 10 Winters requested, we showed an outlot here 11 [indicating]. And you are correct, there is a 12 proposed fence there. But, obviously, if Mr. 13 Winter decides to do something or sell the property 14 and there is a future connection, then there can't 15 be a board-on-board fence. But that fence is there 16 because he had asked for it and I said absolutely 17 happy to. 18 Q And, Mr. Soltesz, what are your thoughts 19 on whether, in fact, today we are able to know with 20 any level of certainty whether -- what -- what -- 21 what exactly will be developed on the Winters' 22 property in the first instance or whether a 23 connection will even be necessary or warranted at 24 that time? 25 A There is no idea. I mean, you know,</p>

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10 (37 to 40)

<p>37</p> <p>1 they are -- they are very nice people. I have met 2 with them a lot of times and they are very happy 3 here and they have been longtime residents. And 4 Mrs. Winter has been here her whole life and they 5 have no desire to move. And I don't blame them. 6 They can stay there, obviously, as long as they 7 want. 8 So we don't know, A, anything maybe 9 built on that property; B, when, what, you know, 10 could be built there, whether it's multifamily, 11 whether it's commercial. Who knows. Okay. 12 Q Do you -- do you know what the Winters 13 themselves think about the outlot and whether they 14 wanted -- 15 HEARING EXAMINER: Well, I don't -- I 16 don't care what they think about the outlot. So -- 17 THE WITNESS: Okay. 18 HEARING EXAMINER: That came out wrong. 19 You know, it's not a criteria for me. So we don't 20 need -- 21 MS. LEE-CHO: Okay. 22 THE WITNESS: That -- that's fine. 23 HEARING EXAMINER: And I apologize for 24 keep interrupting. I am just trying to get to 25 certain points --</p>	<p>39</p> <p>1 were agreeing to in advance and what you weren't. 2 So okay. That helps me. 3 THE WITNESS: That's what they wanted 4 and that's what I put on. 5 HEARING EXAMINER: Okay. 6 MS. LEE-CHO: Thank you, Mr. Soltesz. I 7 think we are done with -- 8 THE WITNESS: Thank you. 9 MS. LEE-CHO: The next witness, David 10 Ager. 11 MR. AGER: Good morning. 12 HEARING EXAMINER: You know, I just have 13 one -- before we get to -- Mr. Soltesz, I have one 14 question for you. I don't want you to have to come 15 back, if ever that piece 660 redevelops, to simply 16 change that binding element. 17 Do you want to add -- to that fence 18 condition do you want to add -- I don't have the 19 condition. Do you want to add something like 20 subject to, you know -- 21 THE WITNESS: I -- 22 HEARING EXAMINER: You have got the 23 fence as shown on the Plan in that condition. If 24 that other property redevelops, that means you 25 might have to come back and amend this Plan to get</p>
<p>38</p> <p>1 THE WITNESS: I understand. 2 HEARING EXAMINER: -- so that we can 3 expedite this. I cannot see the binding elements 4 from here, but is the fence a binding element? 5 MS. LEE-CHO: Could you read Binding 6 Element -- 7 HEARING EXAMINER: No, no. Go ahead. I 8 am sorry. 9 BY MS. LEE-CHO: 10 Q Mr. Soltesz, could you read Binding 11 Element Number 6 that's noted on the Floating Zone 12 Plan? 13 A Why can't you do it? 14 Q I am not a witness. 15 HEARING EXAMINER: This is why you get 16 paid the big bucks. 17 THE WITNESS: Number six, board-on-board 18 fencing of at least six feet in height shall be 19 provided along portions of the site northern and 20 southern boundaries -- 21 HEARING EXAMINER: Okay. 22 THE WITNESS: -- as depicted on the 23 Floating Zone Plan. 24 HEARING EXAMINER: Okay. That -- that 25 answers my question. I just didn't know what you</p>	<p>40</p> <p>1 rid of this fence, which would not be -- 2 THE WITNESS: Uh-huh. Be a pain. 3 HEARING EXAMINER: Would -- yes. I -- 4 THE WITNESS: Right. 5 HEARING EXAMINER: Yes. 6 THE WITNESS: No, you are right. That's 7 a good point. 8 HEARING EXAMINER: So you may wish to 9 revise that condition to say subject to fence 10 shown -- I mean, fence shown subject to -- subject 11 to the possibility that this may be an outlot some 12 day because it's my -- you know, I am going on 13 what's compatible today, which, according to you, 14 this is to -- in the foreseeable future, this is 15 not going to be developed. So I am just saying 16 maybe you want to say subject to future use of this 17 outlot as an access or something like that. 18 THE WITNESS: Okay. 19 HEARING EXAMINER: It's just a 20 thought -- 21 THE WITNESS: No. 22 HEARING EXAMINER: -- so -- 23 THE WITNESS: Actually -- 24 HEARING EXAMINER: -- nothing in the 25 future --</p>

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11 (41 to 44)

<p>41</p> <p>1 THE WITNESS: Actually --</p> <p>2 HEARING EXAMINER: -- is going to make</p> <p>3 you come back because of the fence.</p> <p>4 MS. LEE-CHO: I -- I would agree that</p> <p>5 that's prudent to build in some language to</p> <p>6 accommodate that circumstance, if it happens. If</p> <p>7 we could, after the hearing or within the record</p> <p>8 period in the hearing provide further language --</p> <p>9 HEARING EXAMINER: Yeah, that's fine.</p> <p>10 MS. LEE-CHO: -- to address --</p> <p>11 HEARING EXAMINER: I don't expect you to</p> <p>12 do it today.</p> <p>13 THE WITNESS: That's a good idea. I</p> <p>14 think that makes sense.</p> <p>15 HEARING EXAMINER: Okay.</p> <p>16 THE WITNESS: Thank you.</p> <p>17 MS. LEE-CHO: All right.</p> <p>18 HEARING EXAMINER: Thank you. Wait.</p> <p>19 Before you believe, Miss McKenzie --</p> <p>20 THE WITNESS: Oh, excuse me.</p> <p>21 HEARING EXAMINER: -- do you have any</p> <p>22 questions?</p> <p>23 MS. MCKENZIE: No, I -- I don't think I</p> <p>24 have any questions for, Mr. Soltesz. Thank you.</p> <p>25 HEARING EXAMINER: Okay.</p>	<p>43</p> <p>1 Hearings of Montgomery County?</p> <p>2 A Yes, I have. The most recent was in</p> <p>3 2015 there was a rezoning case Dowden Station,</p> <p>4 which is just north of this property G-957. And</p> <p>5 there was a special exception I testified on called</p> <p>6 Green Court, LLC in the Twinbrook area that was</p> <p>7 S-2878 and that was also 2015.</p> <p>8 MS. LEE-CHO: Miss Robeson, I would</p> <p>9 offer Mr. Ager's resume. I have provided a copy to</p> <p>10 Miss McKenzie.</p> <p>11 HEARING EXAMINER: Miss McKenzie, Mr.</p> <p>12 Ager has testified quite a few times before this</p> <p>13 body as an expert in land planning. That's what</p> <p>14 you seek to qualify him as?</p> <p>15 MS. LEE-CHO: Correct. Yes.</p> <p>16 HEARING EXAMINER: Do you have any</p> <p>17 objections to him qualifying as an expert?</p> <p>18 MS. MCKENZIE: No objections.</p> <p>19 HEARING EXAMINER: Okay. I am going to</p> <p>20 mark his resume as Exhibit 35 and I am going to</p> <p>21 qualify him as an expert in land planning.</p> <p>22 (Exhibit 35 was marked for</p> <p>23 identification.)</p> <p>24 MS. LEE-CHO: Thank you.</p> <p>25 BY MS. LEE-CHO:</p>
<p>42</p> <p>1 THE WITNESS: Thank you.</p> <p>2 HEARING EXAMINER: All right. Mr. Ager,</p> <p>3 please raise your right hand. Do you solemnly</p> <p>4 affirm under penalties of perjury that the</p> <p>5 statements you are about to make are the truth, the</p> <p>6 whole truth and nothing but the truth?</p> <p>7 MR. AGER: I do.</p> <p>8 HEARING EXAMINER: All right.</p> <p>9 EXAMINATION BY COUNSEL FOR APPLICANT</p> <p>10 BY MS. LEE-CHO:</p> <p>11 Q Mr. Ager, can you please state your name</p> <p>12 and business address for the record?</p> <p>13 A My name is David Ager. Business address</p> <p>14 is Townscape Design, LLC -- excuse me -- 6030</p> <p>15 Daybreak Circle, Suite A150, Clarksville, Maryland.</p> <p>16 Q What is your profession and with what</p> <p>17 business are you associated?</p> <p>18 A I am a professional planner AICP</p> <p>19 certified, a landscape architect registered in the</p> <p>20 State of Maryland and other states and I am lead</p> <p>21 certified accredited professional in neighborhood</p> <p>22 design.</p> <p>23 Q And have you ever qualified as an expert</p> <p>24 land expert in the field of land planning before</p> <p>25 this body, the Office of Zoning and Administrative</p>	<p>44</p> <p>1 Q Mr. Ager, would you, by using any of the</p> <p>2 exhibits that we have brought here today, just help</p> <p>3 us describe the features of the subject property</p> <p>4 and start us out with that.</p> <p>5 A Okay. Now, to do that I am going to</p> <p>6 refer to the Floating Zone Plan.</p> <p>7 HEARING EXAMINER: Is this the revised</p> <p>8 one?</p> <p>9 THE WITNESS: I am sorry. The Revised</p> <p>10 Floating Zone Plan.</p> <p>11 HEARING EXAMINER: And that's Exhibit --</p> <p>12 MS. LEE-CHO: It's marked -- it's marked</p> <p>13 as Exhibit --</p> <p>14 HEARING EXAMINER: -- 33.</p> <p>15 THE WITNESS: 33. I am sorry. Exhibit</p> <p>16 33. The property is located at 22821 and 22901</p> <p>17 Frederick Road. There are actually three parcels</p> <p>18 on the property that comprise the property: 765,</p> <p>19 801 and 770 to the south.</p> <p>20 It -- the property has approximately</p> <p>21 2700 -- it's -- it's approximately 2700 feet -- I</p> <p>22 apologize -- from Stringtown Road to the north.</p> <p>23 It's 400 feet from Shawnee Lane, which is just off</p> <p>24 this particular map to the south. The size is 10</p> <p>25 point 28 acres, roughly. It's shaped as irregular</p>

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12 (45 to 48)

<p>45</p> <p>1 with about 750 feet of frontage on Frederick 2 Road/Maryland 355 and the approximate depth of the 3 property is about 600 feet from Frederick Road to 4 the broadest exterior perimeter. 5 Q Okay. 6 A The -- the property is sloping. It is 7 higher in the north and lower in the south and 8 change of grade is approximately 50 feet. The 9 Winters' home, which is -- 10 HEARING EXAMINER: Which is P-660? 11 THE WITNESS: -- which is parcel 660, is 12 just barely on the image. That is roughly the high 13 point [indicating]. There is a ridge that runs 14 through that property and the property falls in 15 this direction [indicating]. The balance of the 16 Winters' property actually drains to the north. So 17 a small portion drains to this property 18 [indicating]. 19 The property is, unlike some -- some 20 properties in Clarksburg, relatively free and clear 21 of -- of -- of environmental restraint. There are 22 no -- 23 HEARING EXAMINER: You are still in a 24 special protection there. 25 THE WITNESS: There is still -- I was</p>	<p>47</p> <p>1 introduce another exhibit, if I could, which -- 2 HEARING EXAMINER: Is this a new 3 exhibit? 4 THE WITNESS: It's a new exhibit. 5 HEARING EXAMINER: Okay. Miss McKenzie, 6 do you want to look at it or -- 7 MS. MCKENZIE: I -- I -- it looks like 8 an aerial view taken probably off the County 9 website or something. So I have -- 10 HEARING EXAMINER: Well, why don't 11 you -- 12 MS. MCKENZIE: -- I have no objection. 13 HEARING EXAMINER: -- why don't you tell 14 us what it is? 15 THE WITNESS: It's an aerial view taken 16 off a County website -- 17 HEARING EXAMINER: Okay. 18 THE WITNESS: -- with the application 19 site shown in yellow, a suggested surrounding area 20 shown in a dashed orange and it includes a 21 superimposed version of the Dowden Station G-957 22 approved plan that is not in the data base at the 23 County. So that is added to show what the future 24 development is going to look like just north of the 25 site.</p>
<p>46</p> <p>1 going to say that. You beat me to the punchline. 2 But things like wetlands, wetland 3 buffers, flood plain, streams, (inaudible) soils, 4 things like that are not present on this property 5 and there is no forest on the property, based upon 6 the natural resource inventory, which is in the 7 record. 8 There are six specimen trees on the site 9 that will be a part of the process and there is 10 three specimen trees adjoining the property. So as 11 they get into the preliminary plan stage more 12 detailed analysis -- those trees will be a part of 13 the detailed analysis. 14 BY MS. LEE-CHO: 15 Q Mr. Ager, could you help us define the 16 surrounding boundary area? As you know, there was 17 a discrepancy between the Applicant's surrounding 18 area boundary presented as on the Park and Planning 19 Staff planning boundary presented. If you could -- 20 A Yeah, I will make reference to page 21 21 of the Staff Report, which is where the Staff 22 interprets -- delineates the Applicant's original 23 surrounding area and represents what they feel is 24 more appropriate surrounding area. 25 With permission, I would like to</p>	<p>48</p> <p>1 HEARING EXAMINER: Okay. 2 THE WITNESS: And it's labeled Avalon 3 Residential Surrounding Area Boundary. 4 HEARING EXAMINER: Okay. Any -- any 5 objections? 6 MS. MCKENZIE: No objection. 7 HEARING EXAMINER: I will mark that as 8 Exhibit 36. Mr. Ager, can you fill in Exhibit -- 9 we are -- we are high-tech here. We make people -- 10 Exhibit 36 and it's called Avalon Residential 11 Surrounding Area Boundary. 12 (Exhibit 36 was marked for 13 identification.) 14 THE WITNESS: Yeah, and I don't -- the 15 purpose of this exhibit is to suggest -- first of 16 all, the suggested surrounding area boundary, let 17 me define it. It is those lots that front on 18 Frederick Road starting in the -- if I would -- 19 if -- to the northwest or the north. I don't know 20 how you want to define that. 21 HEARING EXAMINER: Yeah, I don't see 22 an -- 23 THE WITNESS: North is straight up. But 24 the -- the northwestern-most portion of Frederick 25 Road/Maryland 355 and its intersection with St. --</p>

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13 (49 to 52)

<p>49</p> <p>1 HEARING EXAMINER: See, he has north --</p> <p>2 THE WITNESS: -- St. Clair Road --</p> <p>3 HEARING EXAMINER: Let me just say this.</p> <p>4 He has -- Mr. -- the FCP has north not necessarily</p> <p>5 straight up but more -- I am just saying.</p> <p>6 THE WITNESS: No, I -- I know. I --</p> <p>7 HEARING EXAMINER: I will -- I will call</p> <p>8 it northwest.</p> <p>9 THE WITNESS: Okay. Northwest.</p> <p>10 MR. SOLTESZ: I think that's close.</p> <p>11 THE WITNESS: The suggested surrounding</p> <p>12 area includes the houses, the lots that front on</p> <p>13 Frederick Road up to the intersection with St.</p> <p>14 Clair Road. Going in a clockwise fashion, includes</p> <p>15 the lots that are fronting on or accessing Timber</p> <p>16 Creek Lane including to the south, and again in a</p> <p>17 clockwise manner, Foreman Boulevard from Timber</p> <p>18 Lake -- the intersection with Timber Lake -- I am</p> <p>19 sorry -- Timber Creek Lane, 355, the high school</p> <p>20 site and then lots that front on the southwest or</p> <p>21 west side of 355/Frederick Road.</p> <p>22 That's -- this is a plan that was</p> <p>23 developed by myself. It is identical to the Staff</p> <p>24 Report recommendation for the surrounding area,</p> <p>25 with one exception. The Staff Report sliced the</p>	<p>51</p> <p>1 the Highlands community. It does have -- it's --</p> <p>2 it's all single-family detached and it's a way in</p> <p>3 which that particular property addressed the</p> <p>4 frontage of criteria of the Master Plan, how -- how</p> <p>5 we should front on -- on the highway, on the 355</p> <p>6 corridor, basically. So I think it's pertinent to</p> <p>7 include in -- in the surrounding area. It's a</p> <p>8 similar situation.</p> <p>9 HEARING EXAMINER: Okay.</p> <p>10 BY MS. LEE-CHO:</p> <p>11 Q All right. If we can -- if we --</p> <p>12 HEARING EXAMINER: And you are saying</p> <p>13 that that should be part of the area because of the</p> <p>14 direct impact of the traffic along 355? Is that --</p> <p>15 THE WITNESS: I -- I think that the</p> <p>16 Staff made a comment in their report that it --</p> <p>17 obviously, going back to the Zoning Ordinance, it</p> <p>18 should be properties that are most affected and the</p> <p>19 site should be generally centrally located.</p> <p>20 I think that the site is still centrally</p> <p>21 located with that inclusion and I think that that</p> <p>22 also -- I think the -- the -- the corridor, the 355</p> <p>23 corridor, is -- quote, unquote -- the most affected</p> <p>24 by the site visually and traffic, which will be</p> <p>25 spoken by a different consultant.</p>
<p>50</p> <p>1 surrounding area at Suncrest Avenue, which is a</p> <p>2 private street which is located just north of the</p> <p>3 site.</p> <p>4 What I am suggesting is that it be</p> <p>5 extended along Frederick Road to the next public</p> <p>6 road intersection St. Clair Road. The reason for</p> <p>7 that and the basis for it is to include the sites</p> <p>8 or the properties within the -- in the immediate</p> <p>9 area that are the most affected, and that is</p> <p>10 generally the properties along the 355 corridor.</p> <p>11 It also, instead of arbitrarily stopping</p> <p>12 in the surrounding area along Timber Creek Lane, it</p> <p>13 completes that loop and allows all this to be</p> <p>14 included within that area [indicating] and it -- it</p> <p>15 centrally locates the subject site within the</p> <p>16 overall surrounding area. So it's a slight</p> <p>17 adjustment to the Staff draft or Staff Report</p> <p>18 surrounding area.</p> <p>19 HEARING EXAMINER: What's the effect</p> <p>20 of -- of the difference, I mean, to the character</p> <p>21 of the surrounding area? Why does it matter?</p> <p>22 Because is -- are those townhomes up there that</p> <p>23 it's picking up?</p> <p>24 THE WITNESS: No. What the -- the</p> <p>25 additional area is still zoned R-200. It's part of</p>	<p>52</p> <p>1 HEARING EXAMINER: Okay.</p> <p>2 BY MS. LEE-CHO:</p> <p>3 Q So, Mr. Ager, is it your testimony that</p> <p>4 it is now Applicant's position that we generally --</p> <p>5 the Applicant generally agrees with the surrounding</p> <p>6 area defined by Staff with some minor editions?</p> <p>7 A Yes, that's my understanding.</p> <p>8 Q If we could --</p> <p>9 HEARING EXAMINER: Okay. That was a</p> <p>10 leading question. But this isn't Perry -- this</p> <p>11 isn't --</p> <p>12 THE WITNESS: Perry Mason.</p> <p>13 HEARING EXAMINER: Anyway, go ahead.</p> <p>14 BY MS. LEE-CHO:</p> <p>15 Q If we could move on to the section of</p> <p>16 the Zoning Ordinance that -- that relates to the</p> <p>17 applicability of --</p> <p>18 HEARING EXAMINER: Well, before he does</p> <p>19 that, how do you characterize -- we have defined</p> <p>20 the area. How do you characterize it?</p> <p>21 THE WITNESS: It's -- it's a -- let me</p> <p>22 put that back up. It's a -- generally, as the</p> <p>23 Staff had said in the Report, it is generally a</p> <p>24 single-family detached neighborhood --</p> <p>25 HEARING EXAMINER: Uh-huh.</p>

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<p>53</p> <p>1 THE WITNESS: -- that's evolving -- 2 HEARING EXAMINER: Uh-huh. 3 THE WITNESS: -- as evidenced by the 4 Dowden Station -- 5 HEARING EXAMINER: Uh-huh. 6 THE WITNESS: -- new -- new rezoning, 7 but it's also an area, that we will get into a 8 little bit later, that has criteria established to 9 maintain the character to also -- to allow this 10 evolution to occur with additions. 11 HEARING EXAMINER: And is the character 12 still primarily single-family residential? 13 THE WITNESS: Yes, it is still -- yes, 14 it is -- 15 HEARING EXAMINER: Is it -- 16 THE WITNESS: -- single-family 17 residential. 18 HEARING EXAMINER: Okay. All right. 19 THE WITNESS: There are two -- as noted 20 in the Staff Report -- 21 HEARING EXAMINER: Yeah. 22 THE WITNESS: -- there are two 23 institutional uses: The church across the street 24 and a school. 25 HEARING EXAMINER: And -- okay.</p>	<p>55</p> <p>1 There also are prerequisites in the -- 2 in the Zoning Ordinance under 5 point 1 point 3(d), 3 as in David. And there is three categories and 4 within each category there are two requi -- two 5 prerequisites must be attained in order to qualify. 6 And as evidenced in the Staff Report, and I agreed 7 with the Staff Report's findings, that -- that 8 they -- those prerequisites, in fact, are met. I 9 would be happy to go through them in detail, if you 10 would like. 11 HEARING EXAMINER: Okay. What's your 12 opinion on being adjacent to the bike route? Isn't 13 the bike route across the street? 14 THE WITNESS: It is within -- yes, it is 15 across. It is on the south or southwest side of 16 355. 17 HEARING EXAMINER: Uh-huh. 18 THE WITNESS: So it is within the 19 right-of-way of 355. But, yes, it's not 20 immediately adjacent. It's adjacent in the sense 21 that it sits within the right-of-way. 22 HEARING EXAMINER: Is there going to be 23 a way to get across the road to access it? 24 THE WITNESS: Well, there -- from the 25 site right now -- currently there are no sidewalks</p>
<p>54</p> <p>1 BY MS. LEE-CHO: 2 Q Now, moving on to the Zoning Ordinance 3 that addresses the applicability and eligibility of 4 sites for Building Zone Section 5 point 1 point 5 3 -- 6 THE COURT REPORTER: Excuse me, ma'am. 7 Can you please keep your voice up? I can barely 8 hear you. 9 MS. LEE-CHO: I am sorry. 10 BY MS. LEE-CHO: 11 Q Section 5 point 1 point 3. Is, Dr. -- 12 doctor -- Mr. Ager, is the floating zone 13 recommended for the property in the Master Plan? 14 A No, the Master Plan does not 15 specifically recommend a floating zone. 16 Q So can you take us through how this 17 property is eligible for a floating zone plan in 18 accordance with the Zoning Ordinance? 19 A Certainly. And I will reference the 20 Staff Report, as well as supporting evidence to 21 support the -- the eligibility. 22 First of all, the site has to be located 23 on a non-residential street, which this, in fact, 24 does. 355 is an arterial street. So that 25 qualifies from that standpoint.</p>	<p>56</p> <p>1 along 355 within the frontage of the site. 2 HEARING EXAMINER: Uh-huh. 3 THE WITNESS: As shown on the Floating 4 Zone Plan Exhibit 33, the Applicant is proposing a 5 sidewalk system along the frontage. The 6 intersection with Shawnee Lane is a -- is a -- a -- 7 a -- an open area. It's not a controlled 8 intersection, but it has pedestrian crossings, 9 crosswalks. So there is a -- a gap, so to speak, 10 between those two areas that would have to be 11 connected, essentially. 12 HEARING EXAMINER: There is no cross -- 13 there are or there aren't crosswalks on Shawnee 14 Lane? 15 THE WITNESS: There is pedestrian 16 handicapped ramps. It's not a controlled 17 intersection, no stop signs or no signalized 18 intersection. So but it is an intersection where 19 there is visibility -- 20 HEARING EXAMINER: So why would you say 21 it's accessible, the bike path on the other side is 22 adjacent? 23 THE WITNESS: Well, it's -- it's 24 adjacent in the sense that it's within the 25 right-of-way. It's immediately within the</p>

<p>57</p> <p>1 right-of-way. I agree with you that you have to 2 cross the street to get to it. 3 What I am suggesting is that the best 4 means to do that would be to go to the Shawnee Lane 5 intersection and cross at that location. And I am 6 suggesting that there is some of that 7 infrastructure is there. Some is being proposed by 8 the Applicant. 9 HEARING EXAMINER: Okay. 10 BY MS. LEE-CHO: 11 Q Mr. Ager, if you could, use the Floating 12 Zone Plan Exhibit 33 to describe what is being 13 proposed by this application. 14 A Certainly. The site is -- the 15 application is a 50-residential -- 50-unit 16 residential subdivision, primarily single-family 17 detached. There is 36 single-family detached 18 homes, 16 townhouses. Both are permitted within 19 the Floating Zone. Eight of the sixteen townhomes 20 are identified on the Floating Zone Plan as MPDUs. 21 So there is a mixture of -- of -- of unit types and 22 there is a mixture of socioeconomic levels. 23 The plan also does several things with 24 respect to compatibility with the neighborhood. It 25 provides an internal loop road, as much of this is</p>	<p>59</p> <p>1 a -- which the Staff has noted in their report, it 2 creates a rhythm of buildings along the street that 3 mimics what's there today. So even though it's a 4 infill site of added density, it actually is 5 mimicking the character of the neighborhood. 6 I think that's -- 7 Q Can you walk us through how the density 8 calculations were done in accordance with the 9 Master Plan? 10 A Certainly. The -- the Zoning 11 Ordinance -- if I can quote the chapter and verse, 12 the Zoning Ordinance allows in this particular case 13 4 point 36 dwelling units per acre plus MPDUs the 14 Master Plan has a provision -- a recommendation, I 15 should say, of 2 to 4 dwelling units per acre plus 16 MPDUs within the 355 area of the transit district, 17 which is the sites located within. So it has a 18 lower density threshold than the Zoning Ordinance 19 would allow. 20 The application is honoring the Master 21 Plan recommendation by limiting its density to four 22 units per acre plus an MPDU bonus. 23 Q And can you also articulate how that 24 density bonus is allowed under the Master Plan? 25 A Well, all projects within Clarksburg,</p>
<p>58</p> <p>1 discussed -- I am repeating what's in the Staff 2 Report, which is very clear -- the internal loop 3 road that Mr. Soltesz talked about that provides a 4 perimeter of resi -- of single-family detached 5 homes along the northern, eastern and southern 6 property boundaries. 7 And, as Mr. Soltesz has mentioned, there 8 is an open space corridor from the property to the 9 Winters' property and there is the plan that is 10 evidenced with a six-foot board-on-board fence in 11 two locations at northern -- north property line 12 closest to the Winters' residence and the southern 13 property line along the sideline of and generally 14 along the rear yard of the McKenzie residence to 15 the south. 16 The plan also includes on-site 17 afforestation, which is acting as a buffer, the 18 minimum width of which is 50 feet and that adds 19 another layer of compatibility along that portion 20 of the site. 21 There are open space parcels along the 22 southern property line and along the frontage of 23 355 that do a couple of things. One is it provides 24 setbacks that are in keeping with the general 25 character of the neighborhood and it also creates</p>	<p>60</p> <p>1 the calculations in Clarksburg and the 2 recommendations in the Master Plan are essentially 3 base recommendations and all properties similar to 4 the one just up the street, Dowden Station, the 5 MPDU bonus is in addition to that, and that's how 6 it's been interpreted and how it's been applied 7 throughout the Clarksburg Master Plan area. 8 Q And is that consistent with the 9 Clarksburg Master Plan Technical Appendix? 10 A Yes, on pages 9 and 10 of the Technical 11 Appendix is a reference of how that's calculated. 12 Q All right. Next, if -- Mr. Ager, if you 13 could, answer the following question. how does a 14 proposed float -- floating zone plan achieve 15 compatibility with existing and approved 16 surrounding developments, especially those that 17 consist of the larger lot sizes? 18 A Okay. I have made some of those 19 comments previously. I will just reinforce them. 20 Along the larger lots to the north and to the -- 21 generally to the east this plan specifically is -- 22 has -- proposes an open space parcel that acts as a 23 buffering mechanism. This is above and beyond what 24 would normally be considered compatible. Single 25 family -- single family could be considered</p>

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16 (61 to 64)

<p>61</p> <p>1 compatible in most cases.</p> <p>2 In addition to that, as you move kind of</p> <p>3 from the outside of the property perimeter to the</p> <p>4 inside it's almost like a layering effect. There</p> <p>5 is large lots along the perimeter with open space</p> <p>6 corridors, as mentioned previously, along parcel</p> <p>7 660, along certain portions of the properties that</p> <p>8 back up to Shawnee Lane and along the frontage of</p> <p>9 355.</p> <p>10 Then as you go to the interior block, so</p> <p>11 to speak, of the loop road, there is a combination</p> <p>12 of single-family detached and townhouses and the</p> <p>13 townhouses are generally within the block, on the</p> <p>14 interior portion of the block. They have access to</p> <p>15 an open space system for -- as an amenity that will</p> <p>16 be designed at -- you know, at the time of the</p> <p>17 primary plan, but there is a reference on the plan</p> <p>18 for an open space amenity within that internal</p> <p>19 block area.</p> <p>20 And as referenced earlier, the frontage</p> <p>21 along 355 is made compatible not only with the</p> <p>22 Master Plan recommendations but with the general</p> <p>23 character of the neighborhood by the way in which</p> <p>24 the homes will be located along that frontage.</p> <p>25 Q Okay. So let's try to abbreviate this</p>	<p>63</p> <p>1 bringing -- making those points, but they are not</p> <p>2 necessarily directly applicable to this site</p> <p>3 because of the nature of the site. But they are</p> <p>4 still -- it's still subject to the SPA</p> <p>5 requirements, still subject to the impervious</p> <p>6 goals, it's still subject to having the best water</p> <p>7 quality you can provide within the Special</p> <p>8 Protection Area, and other experts are going to get</p> <p>9 into that in more detail.</p> <p>10 HEARING EXAMINER: I was going to -- I</p> <p>11 was wondering. Okay. That's helpful. And you</p> <p>12 mean, for instance, the recommended impervious cap</p> <p>13 and --</p> <p>14 THE WITNESS: Yes.</p> <p>15 HEARING EXAMINER: Okay. All right.</p> <p>16 THE WITNESS: Yeah, which, again, just</p> <p>17 for the record, in Clarksburg there is not a</p> <p>18 specific number.</p> <p>19 HEARING EXAMINER: Right.</p> <p>20 THE WITNESS: Yeah.</p> <p>21 HEARING EXAMINER: Okay. Thank you.</p> <p>22 BY MS. LEE-CHO:</p> <p>23 Q Moving on to (inaudible) facilities, if</p> <p>24 you could address the --</p> <p>25 THE COURT REPORTER: Excuse me. I can't</p>
<p>62</p> <p>1 next section. On pages 9 through 12 of the</p> <p>2 Planning Staff Report there is an extensive</p> <p>3 analysis of the Master Plan conformance. Do you</p> <p>4 have anything add -- to add or augment in terms of</p> <p>5 that analysis?</p> <p>6 HEARING EXAMINER: Thank you.</p> <p>7 THE WITNESS: The -- the Staff brings</p> <p>8 up, I think it was, 13 basic points. No, I don't</p> <p>9 really have any disagreement with any of them.</p> <p>10 Some -- several of those points are just basic</p> <p>11 facts about the site or about the Master Plan.</p> <p>12 Others are analysis.</p> <p>13 I would just like to point out that</p> <p>14 there is some analysis on special -- the Special</p> <p>15 Protection Area and how properties in the Master</p> <p>16 Plan require (inaudible) mitigation, etcetera, and</p> <p>17 that's looking at page 12.</p> <p>18 This particular site, unlike other sites</p> <p>19 that I am aware of in this general neighborhood, is</p> <p>20 really -- it is within the Special Protection Area,</p> <p>21 but doesn't have a lot of constraints that you find</p> <p>22 on these other sites. It doesn't have, as I</p> <p>23 mentioned earlier, the stream valleys and things</p> <p>24 like that.</p> <p>25 So the Staff makes a point of</p>	<p>64</p> <p>1 hear you at all. Can -- can you --</p> <p>2 HEARING EXAMINER: Where is the --</p> <p>3 THE WITNESS: Me or --</p> <p>4 MS. LEE-CHO: Use the mic?</p> <p>5 HEARING EXAMINER: Yeah. Bring the mic</p> <p>6 closer. That may help.</p> <p>7 THE WITNESS: Uh-huh.</p> <p>8 MS. LEE-CHO: Is this better?</p> <p>9 HEARING EXAMINER: Actually, is it Miss</p> <p>10 Lee-Cho or Mr. Ager --</p> <p>11 MS. LEE-CHO: Is -- is this okay?</p> <p>12 THE COURT REPORTER: It -- it's both.</p> <p>13 Everyone keeps sort of --</p> <p>14 THE WITNESS: Dying off?</p> <p>15 THE COURT REPORTER: -- dying off and --</p> <p>16 THE WITNESS: No problem.</p> <p>17 THE COURT REPORTER: -- and speaking</p> <p>18 towards that wall [indicating].</p> <p>19 HEARING EXAMINER: Okay. Why don't</p> <p>20 you --</p> <p>21 THE WITNESS: Okay. No problem.</p> <p>22 HEARING EXAMINER: We may need -- if we</p> <p>23 do this again, we may need additional microphones</p> <p>24 because we usually have --</p> <p>25 MS. LEE-CHO: We have -- usually have</p>

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17 (65 to 68)

<p>65</p> <p>1 one right --</p> <p>2 HEARING EXAMINER: Oh, is there one</p> <p>3 there?</p> <p>4 MS. LEE-CHO: No, we don't.</p> <p>5 HEARING EXAMINER: I am sorry.</p> <p>6 MS. LEE-CHO: We usually have one here</p> <p>7 [indicating].</p> <p>8 MR. SOLTESZ: There is only one.</p> <p>9 HEARING EXAMINER: There is usually</p> <p>10 three.</p> <p>11 MS. LEE-CHO: Different mics.</p> <p>12 HEARING EXAMINER: At least three. It's</p> <p>13 just a suggestion.</p> <p>14 THE WITNESS: I will try to do better.</p> <p>15 HEARING EXAMINER: Everybody is good.</p> <p>16 We are all good here.</p> <p>17 BY MS. LEE-CHO:</p> <p>18 Q Mr. Ager, if you could, address the</p> <p>19 Project's compliance with the schools test, please.</p> <p>20 A Yes. Based upon the Subdivision Staging</p> <p>21 Policy and the most recently adopted adequacy test</p> <p>22 by the County Council, the site -- the school at</p> <p>23 this site is within -- that this site has -- that</p> <p>24 would send students to is adequate. There are --</p> <p>25 there is --</p>	<p>67</p> <p>1 somewhere. So do -- I would like to bring that</p> <p>2 colored version in.</p> <p>3 THE WITNESS: Okay, okay.</p> <p>4 HEARING EXAMINER: That will be 37,</p> <p>5 which is FY 2017 School Stats.</p> <p>6 (Exhibit 37 was marked for</p> <p>7 identification.)</p> <p>8 HEARING EXAMINER: Do you have any</p> <p>9 objections, Miss McKenzie?</p> <p>10 MS. MCKENZIE: No objection. I assume</p> <p>11 that's from a County website?</p> <p>12 HEARING EXAMINER: Mr. Ager, where did</p> <p>13 you get this?</p> <p>14 THE WITNESS: From the County website.</p> <p>15 HEARING EXAMINER: Yes. Okay. Boy, you</p> <p>16 are really good at --</p> <p>17 THE WITNESS: Public -- public -- and</p> <p>18 the public school website to be --</p> <p>19 MS. MCKENZIE: I have looked at it</p> <p>20 before.</p> <p>21 HEARING EXAMINER: Okay. Thank you. Do</p> <p>22 you need this to testify or not?</p> <p>23 THE WITNESS: No. I would just like to</p> <p>24 state for the record that the cluster that this</p> <p>25 site is located within is adequate, is not --</p>
<p>66</p> <p>1 Q For the record -- the record, could you</p> <p>2 just cite to what schools that they --</p> <p>3 A Yes, the --</p> <p>4 Q -- would generate to?</p> <p>5 A Yeah, the high school cluster is</p> <p>6 Clarksburg, the middle school is Rocky Hill and the</p> <p>7 elementary school is Little Bennett and the</p> <p>8 dividing line is actually Frederick Road. So</p> <p>9 everything on this side of Frederick Road</p> <p>10 [indicating] or the northeast side of Frederick</p> <p>11 Road goes to Little Bennett.</p> <p>12 The -- I believe has -- is -- is what --</p> <p>13 what the Staff sent over is that in the record?</p> <p>14 HEARING EXAMINER: Yes. I think what</p> <p>15 you are referring to, Mr. Ager, is I got an email.</p> <p>16 And I don't know if I have actually added it to the</p> <p>17 record yet or not, but we did receive an email from</p> <p>18 Staff that will be part of the record with the</p> <p>19 schools -- the 2017 annual schools test attached.</p> <p>20 THE WITNESS: That's right. And just to</p> <p>21 clarify, that is a color version, I believe.</p> <p>22 HEARING EXAMINER: Well, let me</p> <p>23 introduce it just so --</p> <p>24 THE WITNESS: Okay.</p> <p>25 HEARING EXAMINER: I know we have it</p>	<p>68</p> <p>1 HEARING EXAMINER: Okay. The reason I</p> <p>2 asked for it is one of the criteria for the</p> <p>3 floating zone is 120 percent.</p> <p>4 THE WITNESS: That's correct.</p> <p>5 HEARING EXAMINER: So I just wanted to</p> <p>6 make sure I had it in the record that it's 120</p> <p>7 percent, not just 105 -- 105, which is adequate.</p> <p>8 So --</p> <p>9 THE WITNESS: That's right.</p> <p>10 HEARING EXAMINER: -- that's why I --</p> <p>11 THE WITNESS: That is correct. And</p> <p>12 if --</p> <p>13 HEARING EXAMINER: So based on your</p> <p>14 review of this, I assume it does meet the 120 --</p> <p>15 the prerequisite for a floating zone plan that</p> <p>16 requires schools to have 120-percent capacity.</p> <p>17 THE WITNESS: Less than 120 --</p> <p>18 HEARING EXAMINER: I mean -- yes</p> <p>19 THE WITNESS: Yes, that is correct. In</p> <p>20 fact, with your permission, the test -- based upon</p> <p>21 the latest County Council decisions in November,</p> <p>22 November 15, the test -- what's just been entered</p> <p>23 into the record, I think, is 37 you said --</p> <p>24 HEARING EXAMINER: Yes.</p> <p>25 THE WITNESS: -- is actually going to</p>

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18 (69 to 72)

<p>69</p> <p>1 change on January 1st. 2 HEARING EXAMINER: Yes. 3 THE WITNESS: I don't know if that's 4 material to your decision or not. 5 HEARING EXAMINER: It's going to be 6 applicable -- thank you for bringing that up. 7 That's -- I really appreciate that. But that will 8 be applicable to special exceptions filed after 9 January 1st and not -- 10 THE WITNESS: And rezonings? 11 HEARING EXAMINER: And rezonings. 12 THE WITNESS: Okay. 13 HEARING EXAMINER: And not the normal 14 rule that I have to apply, whatever the law is, 15 that the date of the decision. So it's not going 16 to be applicable. I will take it. 17 THE WITNESS: Okay. 18 HEARING EXAMINER: I -- I would like to 19 take it just in case I am wrong because I haven't 20 seen the resolution yet. 21 THE WITNESS: Well, the reason I -- the 22 only reason I would like to have you be aware of it 23 is that it shows the -- the level of availability 24 of seats within the schools is pretty good compared 25 to the rest of them.</p>	<p>71</p> <p>1 HEARING EXAMINER: Before I submit this, 2 Miss McKenzie, do you -- have you had a chance to 3 look at this or -- 4 MS. LEE-CHO: I can provide a copy. 5 HEARING EXAMINER: Okay. 6 MS. MCKENZIE: I don't -- I don't recall 7 if it was in the Staff Report. 8 HEARING EXAMINER: And do you have 9 any -- is this in the resolute. 10 THE WITNESS: Yes. 11 HEARING EXAMINER: Where -- where did 12 you get this? 13 THE WITNESS: I -- I got it from the 14 packet that was approved -- 15 HEARING EXAMINER: By the County 16 Council? 17 THE WITNESS: -- by the County Council 18 on November the 15th. 19 HEARING EXAMINER: Okay. All right. So 20 this is the -- this is the actual resolution? 21 THE WITNESS: Yes, the page numbers from 22 the packet are actually listed on the -- 23 HEARING EXAMINER: Okay. 24 THE WITNESS: -- on the exhibit. 25 HEARING EXAMINER: Thank you. Any</p>
<p>70</p> <p>1 HEARING EXAMINER: Okay. 2 THE WITNESS: I mean, the -- 3 HEARING EXAMINER: Oh, I see what you 4 are saying. 5 THE WITNESS: I -- I mean -- 6 HEARING EXAMINER: Okay. 7 THE WITNESS: Yeah, and this is just a 8 few weeks away, a couple weeks away and this -- 9 HEARING EXAMINER: So this is amended 10 school tests? 11 THE WITNESS: Yes, ma'am. 12 HEARING EXAMINER: Thank you. 13 THE WITNESS: And -- and just for the 14 record, if I might, the -- just to summarize what 15 you have before you, it's that nine pages of the 16 excerpt from the adoption on November the 15th and 17 it illustrates a cluster utilization of between 94 18 and 98 percent for the affected schools or -- 19 HEARING EXAMINER: I see that. 20 THE WITNESS: And that's very -- a very 21 good number. I mean, it's well, well below the 22 120-percent threshold -- 23 HEARING EXAMINER: Right. 24 THE WITNESS: -- for a finding. And 25 then they have a second --</p>	<p>72</p> <p>1 objection, Miss McKenzie? 2 MS. MCKENZIE: I have no objection, but 3 I would note that if you do further research, on 4 page 19 the middle school they call it Clarksburg, 5 but it's actually called Rocky Hill. 6 HEARING EXAMINER: Okay. 7 MS. MCKENZIE: Is that -- is that -- 8 THE WITNESS: That is correct. It's 9 Rocky Hill -- 10 MS. MCKENZIE: -- is that a cluster -- 11 HEARING EXAMINER: That's the cluster. 12 MS. MCKENZIE: -- is that the cluster 13 name? 14 THE WITNESS: That's a cluster name. 15 MS. MCKENZIE: Okay. Cluster name. I 16 got it. Okay. 17 THE WITNESS: Yeah, but -- but your -- 18 MS. MCKENZIE: So that that would 19 include both elementary schools on page 18 and then 20 the middle school on -- one middle school and one 21 high school in that cluster? 22 HEARING EXAMINER: Okay. 23 MS. MCKENZIE: I -- I see. 24 HEARING EXAMINER: Thank you. 25 THE WITNESS: That's correct. It is</p>

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19 (73 to 76)

<p>73</p> <p>1 Rocky Hill.</p> <p>2 MS. MCKENZIE: Thank you.</p> <p>3 HEARING EXAMINER: Okay. Thank you.</p> <p>4 Okay. Go ahead, Mr. Ager.</p> <p>5 THE WITNESS: Well, just to summarize,</p> <p>6 the cluster utilization is in the 94 to 98-percent</p> <p>7 range, which is very, very --</p> <p>8 HEARING EXAMINER: Right.</p> <p>9 THE WITNESS: -- good, well below the</p> <p>10 threshold for a finding.</p> <p>11 And then when you drill down into the</p> <p>12 other information that's made available, the actual</p> <p>13 school they have a new test, the actual elementary</p> <p>14 and middle schools have a test and the elementary</p> <p>15 school is at 90 percent, 90 point 5, and the middle</p> <p>16 school is at 94 point 3.</p> <p>17 So it's -- so when you drill down to the</p> <p>18 specific site, the availability of seats and the --</p> <p>19 it's even better than the general cluster.</p> <p>20 HEARING EXAMINER: Okay. All right.</p> <p>21 BY MS. LEE-CHO:</p> <p>22 Q Mr. Ager, do you have anything to add to</p> <p>23 the Planning Staff Report's analysis as to the</p> <p>24 adequacy of fire and police service to the site?</p> <p>25 A No, I do not.</p>	<p>75</p> <p>1 don't think we have covered that yet in your</p> <p>2 testimony. Could you, using one of the exhibits,</p> <p>3 elaborate on what planned transit you are referring</p> <p>4 to?</p> <p>5 A Certainly. I am referring to Exhibit 36</p> <p>6 surrounding area map. There is a couple things.</p> <p>7 One is there is an existing bus line -- two -- two</p> <p>8 bus lines along 355 today. So there is</p> <p>9 availability today going to --</p> <p>10 HEARING EXAMINER: Do you know where</p> <p>11 they run?</p> <p>12 THE WITNESS: They run generally</p> <p>13 north/south. They are generally running along 355</p> <p>14 into -- into -- into Germantown and further south.</p> <p>15 HEARING EXAMINER: I see. Okay. That</p> <p>16 was --</p> <p>17 THE WITNESS: I want to say -- the</p> <p>18 numbers I don't want to misquote, but they are in</p> <p>19 the Staff Report.</p> <p>20 HEARING EXAMINER: Okay. That's fine.</p> <p>21 THE WITNESS: In the Bus Rapid Transit</p> <p>22 Functional Plan 355 is also going to be one of the</p> <p>23 future bus rapid transit corridors and within --</p> <p>24 there will be a planned stop at the intersection of</p> <p>25 Frederick Road -- the closest planned stop, I</p>
<p>74</p> <p>1 HEARING EXAMINER: Good answer.</p> <p>2 BY MS. LEE-CHO:</p> <p>3 Q In your professional opinion, how does</p> <p>4 this proposal further the public interest of the</p> <p>5 County, which is one the necessary findings?</p> <p>6 A Right. Well, it does several things.</p> <p>7 First, it -- it implements the goals and</p> <p>8 recommendations of the Master Plan. It provides,</p> <p>9 you know, residential -- a well-integrated</p> <p>10 residential community into Clarksburg. It provides</p> <p>11 it in a location that is near planned and existing</p> <p>12 public transit and close to amenities such as the</p> <p>13 outlet center, as mentioned earlier, things like</p> <p>14 that. And it's done in such a way that it's very</p> <p>15 sensitive to the character of the existing</p> <p>16 neighborhood and to the general character</p> <p>17 recommendations and implementation strategies in</p> <p>18 the Master Plan.</p> <p>19 It also provides a mix of housing and it</p> <p>20 provides a high percentage of single-family</p> <p>21 detached, which, again, is something that the</p> <p>22 Master Plan is looking for. And it provides MPDUs,</p> <p>23 which is affordable housing. It helps provide</p> <p>24 affordable housing in this neighborhood.</p> <p>25 Q You mentioned planned transit, and I</p>	<p>76</p> <p>1 should say, will be at the intersection of</p> <p>2 Frederick Road and Shawnee Lane, which is just 400</p> <p>3 feet from the property. That is a mixed street</p> <p>4 design. It's going to -- the buses will run --</p> <p>5 in -- in the -- in the -- in the normal lanes.</p> <p>6 Then in addition to that, the</p> <p>7 corridor -- CCT, the corridor City's transit way is</p> <p>8 planned along Observation Drive, in the -- in the</p> <p>9 median of Observation Drive, which runs between a</p> <p>10 quarter mile and a half a mile from the subject</p> <p>11 site. There is a planned station at the</p> <p>12 intersection of Shawnee Lane and Observation Drive</p> <p>13 on the --</p> <p>14 HEARING EXAMINER: Can you show me where</p> <p>15 the -- or can you indicate on that -- what exhibit</p> <p>16 is that? 30 --</p> <p>17 THE WITNESS: 36.</p> <p>18 HEARING EXAMINER: 36? Where is</p> <p>19 Observation Drive --</p> <p>20 THE WITNESS: It doesn't --</p> <p>21 HEARING EXAMINER: -- going to be,</p> <p>22 roughly?</p> <p>23 THE WITNESS: It's -- it's built -- I am</p> <p>24 starting at the north --</p> <p>25 HEARING EXAMINER: Yes.</p>

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20 (77 to 80)

<p>77</p> <p>1 THE WITNESS: -- and I am going to be 2 heading south. From Stringtown Road it's built to 3 its intersection with Robert -- Roberts Tavern 4 Drive. 5 HEARING EXAMINER: Okay. 6 THE WITNESS: It is dedicated from that 7 point through the Garnkirk Farms approved 8 subdivision, which is PD-11 just outside the 9 surrounding area. It runs down the -- it's split, 10 basically. It's half on that property, half on 11 future properties. The Dowden Station community 12 just dedicated or will be dedicating -- they just 13 got a site plan approved, a preliminary plan 14 approved, for dedication of that portion of 15 Observation Drive to their south property terminus. 16 Then it will continue along the 17 northeast side of Garnkirk Farms to its 18 intersection with Shawnee Lane and then will 19 eventually continue south down to the Linthicum 20 properties and across and into Germantown. 21 HEARING EXAMINER: Okay. Thanks. 22 THE WITNESS: And the -- the station is 23 planned right there at the intersection of Shawnee 24 Lane -- 25 HEARING EXAMINER: Is any of that in the</p>	<p>79</p> <p>1 Q I am just going to -- going to quickly 2 run through these with Mr. Ager, the first of which 3 does this application further the goals, and you 4 have already answered, but if you could just 5 restate for the record, the Master Plan and General 6 Plan Functional Master Plan? 7 HEARING EXAMINER: Well, he has already 8 gone through that in pretty much detail. Do you 9 have anything to add? 10 BY MS. LEE-CHO: 11 Q Do you have anything to add? 12 A No, I don't I believe so. I believe we 13 hit all of the key points and I would say that if I 14 did miss something, I think it's in the Staff 15 Report. They did a -- a very extensive analysis, 16 as well. 17 Q All right. So why don't I do it this 18 way. If we -- if you could, refer to pages 18 to 19 23 of the Planned Staff Report which goes through 20 the purpose and intent of the floating zones -- 21 A Uh-huh. 22 Q -- and articulate if you have anything 23 to add to what is indicated in -- on those pages. 24 A I am starting on page 18, Item A(1), 25 Further the goals of the general plan, the focal</p>
<p>78</p> <p>1 CIP or CTP? 2 THE WITNESS: I -- I -- 3 HEARING EXAMINER: It doesn't matter. I 4 don't think it matters for this. 5 THE WITNESS: I don't know the answer to 6 that question. 7 HEARING EXAMINER: Yeah, that's fine. 8 THE WITNESS: I can tell you the site -- 9 the -- the -- the station location was approved as 10 a part of the Garnkirk Farms subdivision. 11 HEARING EXAMINER: Okay. 12 THE WITNESS: It was actually -- for the 13 purposes of this site it was actually up in the 14 general vicinity of the Dowden Station -- 15 HEARING EXAMINER: Okay. 16 THE WITNESS: -- but it was moved here, 17 which actually makes it more proximate to this site 18 and more accessible. 19 HEARING EXAMINER: Okay. 20 BY MS. LEE-CHO: 21 Q Okay. Mr. Ager, are you familiar with 22 Section 59 dash 5 point 1 point 2 of the Zoning 23 Ordinance that discusses the purposes -- the 24 purpose and intent of the floating zones? 25 A Yes, yes.</p>	<p>80</p> <p>1 master plan and functional master plans. I believe 2 the Staff has covered that very thoroughly and I 3 agree with what they are saying. 4 I would -- I would just -- I probably am 5 repeating myself. I just would like to say that 6 the Staff has noted that the setbacks, the variety 7 of -- the way the -- the project has been designed 8 is very much in keeping with the general 9 neighborhoods so it's from a compatibility 10 standpoint. I would just like to highlight that. 11 I think that's a good point. 12 On page 20, I guess it's item 2, the 13 header indicates, Ensuring that the proposed uses 14 are in balance with the supporting existing planned 15 infrastructure. To the extent it falls within my 16 expertise, I think I have testified and I find, you 17 know, we meet the criteria for a floating zone. 18 Item -- and I agree with the Staff Report. 19 Item 3, does it allow -- does the 20 floating zone allow flexibility (inaudible) -- 21 THE COURT REPORTER: Excuse me, sir. 22 Slow down and louder. 23 THE WITNESS: My -- my apologies. I was 24 trying to be streamlined. 25 THE COURT REPORTER: Thank you.</p>

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21 (81 to 84)

<p>81</p> <p>1 THE WITNESS: My -- apologies.</p> <p>2 THE COURT REPORTER: I -- I-- I get you,</p> <p>3 but I need to understand.</p> <p>4 THE WITNESS: What I will do is I will</p> <p>5 just refer to the page and the item number. Maybe</p> <p>6 that will be sufficient rather than read it.</p> <p>7 HEARING EXAMINER: That's fine. And why</p> <p>8 don't you move -- you know, move -- yeah, closer to</p> <p>9 the mic --</p> <p>10 THE WITNESS: Sure.</p> <p>11 HEARING EXAMINER: -- and that might</p> <p>12 help.</p> <p>13 THE WITNESS: And I am referring to the</p> <p>14 Staff Report on page 20, item 3 --</p> <p>15 HEARING EXAMINER: Uh-huh.</p> <p>16 THE WITNESS: -- the question of whether</p> <p>17 the site design and the application meets the</p> <p>18 design flexibility and integrates into the</p> <p>19 circulation network lane use patterns and natural</p> <p>20 features.</p> <p>21 As I have discussed earlier, it -- it</p> <p>22 does, in fact, integrate well into the neighborhood</p> <p>23 and is very compatible and is complementary to the</p> <p>24 general land use patterns.</p> <p>25 With respect to the natural features, as</p>	<p>83</p> <p>1 is relatively free of environmental constraints,</p> <p>2 has a higher percentage of single-family detached</p> <p>3 as you see in more recent applications. So that's</p> <p>4 a positive with respect to -- again, to the Master</p> <p>5 Plan and to the general character of the</p> <p>6 neighborhood.</p> <p>7 And then, finally, item 3 on page 22,</p> <p>8 does it -- does the application satisfy the basic</p> <p>9 sustainability requirements, including open space,</p> <p>10 standard and environmental protection and</p> <p>11 mitigation. And the answer, yes, it does.</p> <p>12 The open space, as evidenced on the</p> <p>13 Floating Zone Plan, meets the minimum requirement</p> <p>14 of ten percent. The forestry has been provided on</p> <p>15 site and other natural features, you know, as was</p> <p>16 mentioned earlier, are not evidenced on the</p> <p>17 property. So it is within the Special Protection</p> <p>18 Area and I believe other experts will be testifying</p> <p>19 on -- to the details on that.</p> <p>20 On the bottom of page 22 of the Staff</p> <p>21 Report, item C(1), Established and compatible</p> <p>22 relationships between new developments and existing</p> <p>23 neighborhoods, densities and uses. I would just</p> <p>24 agree with the Staff analysis and just refer back</p> <p>25 to my previous testimony on that and the site does,</p>
<p>82</p> <p>1 I have noted earlier, there aren't that many on the</p> <p>2 site. And so with respect that there are some, it</p> <p>3 has accommodated them and really there is -- it's a</p> <p>4 unique situation in -- in Clarksburg.</p> <p>5 Going on to page 21 of the Staff Report</p> <p>6 providing flexibility to respond to changes in</p> <p>7 economic, demographic and planning trends that</p> <p>8 occur between Congressional district and sectional</p> <p>9 map amendments, the floating zone does, in fact, do</p> <p>10 that. It's a recently adopted zone. So it has</p> <p>11 that flexibility and the application takes</p> <p>12 advantage of the -- of the characteristics of the</p> <p>13 zone, opportunities of the zone.</p> <p>14 On page 22, item 2, Allowing various</p> <p>15 uses, building types and densities as determined by</p> <p>16 the site size and base zone and serving a diverse</p> <p>17 and evolving population, I have already testified</p> <p>18 to the variety of building types, the integration</p> <p>19 of the building types, the densities, how the</p> <p>20 densities are calculated in the Zoning Ordinance</p> <p>21 and how the subject application has modified that</p> <p>22 to accommodate and be consistent with the</p> <p>23 recommendations of the Master Plan. So I agreed</p> <p>24 with the Staff on those items.</p> <p>25 Also, this particular site, because it</p>	<p>84</p> <p>1 in fact, accomplish that, the necessary findings.</p> <p>2 Item -- on -- on page 23 of the Staff</p> <p>3 Report, item 2, Providing development standards and</p> <p>4 general compatibility standards to protect the</p> <p>5 character of the adjacent neighborhoods. The --</p> <p>6 the Floating Zone Plan has both -- it has</p> <p>7 identified and it's in the binding elements of</p> <p>8 height restrictions and setbacks along the</p> <p>9 perimeter of the property, 40 feet for the height</p> <p>10 and 25 feet for a setback from neighboring</p> <p>11 properties.</p> <p>12 At this point I just would like to point</p> <p>13 out that there was a typo in our statement of</p> <p>14 justification. It says that the height limit is 50</p> <p>15 feet. In the table, I believe it's on -- on page</p> <p>16 14 of the Statement of Justification, and that</p> <p>17 showed that as an error, that should read 40 feet.</p> <p>18 It also in that same table at the -- the</p> <p>19 bottom line minimum parking required it says 92</p> <p>20 spaces and the required column that is correct.</p> <p>21 And it says provided 92 spaces, which is correct,</p> <p>22 but there is also 8 spaces shown on the public</p> <p>23 street. So it's actually a hundred spaces.</p> <p>24 HEARING EXAMINER: When you say public</p> <p>25 street, are you talking about the -- is the</p>

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22 (85 to 88)

<p>85</p> <p>1 circular loop the public street?</p> <p>2 THE WITNESS: Yes. Yes, I am.</p> <p>3 HEARING EXAMINER: That's going to be</p> <p>4 public street.</p> <p>5 THE WITNESS: Yes.</p> <p>6 HEARING EXAMINER: Okay.</p> <p>7 THE WITNESS: And there is four parking</p> <p>8 spaces shown at the -- kind of the curvature of</p> <p>9 those two for that road.</p> <p>10 HEARING EXAMINER: Okay.</p> <p>11 THE WITNESS: So there is two locations</p> <p>12 that's the additional eight spaces that I am</p> <p>13 referring to.</p> <p>14 HEARING EXAMINER: And that's in</p> <p>15 addition to the minimum?</p> <p>16 THE WITNESS: That's correct. So it's a</p> <p>17 hundred spaces shown on the -- on the plan. And I</p> <p>18 am -- if I could add, that's -- there is a table in</p> <p>19 the bottom right-hand corner of --</p> <p>20 HEARING EXAMINER: Exhibit 36?</p> <p>21 THE WITNESS: 33. I am sorry.</p> <p>22 HEARING EXAMINER: Exhibit 33?</p> <p>23 THE WITNESS: 33 that you can't read</p> <p>24 from there.</p> <p>25 HEARING EXAMINER: No.</p>	<p>87</p> <p>1 A There is a mandatory referral. There is</p> <p>2 a County project for the bike -- the multiuse path,</p> <p>3 basically, along the western side or the southwest</p> <p>4 side of 355 that's been approved, but I don't -- I</p> <p>5 am not aware that it's been funded. I am not sure.</p> <p>6 But it's been approved. You have to ask maybe one</p> <p>7 of the other experts if they know. But that has</p> <p>8 been -- that's -- that's an improvement.</p> <p>9 And then there is some miscellaneous</p> <p>10 sidewalk improvements. Like, for example, this</p> <p>11 particular application is proposing full frontage</p> <p>12 improvement for a pedestrian sidewalk.</p> <p>13 Q And I -- and I was suggesting that or --</p> <p>14 or bringing that up in reference to the bike route</p> <p>15 issue and access to the bike route because</p> <p>16 currently there is no sidewalk on either side of</p> <p>17 355?</p> <p>18 A Yes, that's correct.</p> <p>19 MR. SOLTESZ: That's correct.</p> <p>20 MS. MCKENZIE: Nothing further.</p> <p>21 HEARING EXAMINER: That would be an</p> <p>22 issue -- yes, I understand. Now, this does have to</p> <p>23 go through preliminary planning. Are you saying</p> <p>24 you are concerned about the -- that there is no</p> <p>25 ability to access the bicycle path or --</p>
<p>86</p> <p>1 THE WITNESS: But it lists the parking</p> <p>2 as I just described it to you.</p> <p>3 HEARING EXAMINER: Okay.</p> <p>4 THE WITNESS: So it's corrected --</p> <p>5 HEARING EXAMINER: So it's correct?</p> <p>6 THE WITNESS: It's correct on the plan.</p> <p>7 HEARING EXAMINER: Okay. Thank you.</p> <p>8 THE WITNESS: Yes.</p> <p>9 THE WITNESS: I believe I have made</p> <p>10 reference to the Staff Report and all of the items</p> <p>11 I -- if I have missed it, I am -- I would just like</p> <p>12 to state as a general comment I am in general</p> <p>13 agreement with the Staff Report and their findings.</p> <p>14 MS. LEE-CHO: I have nothing further for</p> <p>15 Mr. Ager unless you have -- the Hearing Examiner</p> <p>16 has questions.</p> <p>17 HEARING EXAMINER: No, I don't have</p> <p>18 anything. Miss McKenzie, do you have questions?</p> <p>19 EXAMINATION BY COUNSEL FOR PROPERTY OWNERS</p> <p>20 BY MS. MCKENZIE:</p> <p>21 Q I would just like to ask one question.</p> <p>22 In -- in your research and you have obviously</p> <p>23 reviewed the plans for other developments in the</p> <p>24 area, are there any proposals for a sidewalk on</p> <p>25 either side of Route 355?</p>	<p>88</p> <p>1 MS. MCKENZIE: I wouldn't say I was</p> <p>2 concerned. I was more interested -- just a little</p> <p>3 background that I would have -- was going to give</p> <p>4 in my -- in my statement, but I grew up there.</p> <p>5 HEARING EXAMINER: Okay. Wait, wait.</p> <p>6 MS. MCKENZIE: So I -- I -- I bring that</p> <p>7 up as so just for your awareness of what's there.</p> <p>8 HEARING EXAMINER: Okay, okay.</p> <p>9 THE WITNESS: Should I -- would it be</p> <p>10 appropriate for me to just go through the sidewalk</p> <p>11 improvements that are currently there or proposed</p> <p>12 in addition to this site?</p> <p>13 HEARING EXAMINER: Well --</p> <p>14 THE WITNESS: I mean --</p> <p>15 HEARING EXAMINER: -- my only --</p> <p>16 THE WITNESS: -- would that be helpful?</p> <p>17 HEARING EXAMINER: I need to stay --</p> <p>18 stick to the criteria for approval. I can only see</p> <p>19 the sidewalks in the criteria for approval as far</p> <p>20 as accessing the bike path and there is usually</p> <p>21 something in the intent that deals with</p> <p>22 accessibility, pedestrian accessibility, or</p> <p>23 circulation. The intent clauses are somewhat</p> <p>24 redundant in some ways but usually somewhere it's</p> <p>25 in there.</p>

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23 (89 to 92)

<p>89</p> <p>1 Is it -- I -- unless -- if you can tell 2 me why it relates particularly to these criteria 3 for approval, you know, we can delve into it more. 4 If not -- 5 MS. MCKENZIE: I don't think it does 6 relate to the criteria for approval. I -- I have 7 looked at the Zoning Ordinance. I -- I have looked 8 at the Staff Report. 9 HEARING EXAMINER: Okay. 10 MS. MCKENZIE: So it was more really for 11 informational purposes. 12 HEARING EXAMINER: Okay. All right. 13 Well -- 14 MS. MCKENZIE: The -- you know, I grew 15 up there and I didn't -- 16 HEARING EXAMINER: Okay. Well, wait. 17 It's not your -- 18 MS. MCKENZIE: -- get killed. So I 19 think people can get across the street. 20 HEARING EXAMINER: As you know, it's -- 21 okay. It's not your turn to testify. We will get 22 there. And if you want to jump in, that's fine, 23 but right now I have to stick to the questions. 24 Okay? 25 So I don't have anything further. Do</p>	<p>91</p> <p>1 associated with the firm Soltesz. I am a senior 2 associate with the firm. 3 Q Mr. Isaja, could you describe your 4 professional experience in the field of civil 5 engineering? 6 A Sure. I have got 29 years of experience 7 in the civil field, particularly in the land 8 development field, and imagine projects from 9 entitlement phase to final engineering and permit 10 phase and -- and that experience is in Montgomery 11 County, as well as Prince George's County. 12 HEARING EXAMINER: Have you ever 13 qualified as an expert in civil engineering in a 14 court or an administrative proceeding? 15 THE WITNESS: Not in a court. 16 HEARING EXAMINER: In an -- 17 THE WITNESS: Plan -- Planning Board 18 hearings but not in a zoning hearing. 19 HEARING EXAMINER: Okay. They don't 20 really qualify as experts. Why don't you submit 21 his resume. And, Miss McKenzie -- you are 22 licensed? You are currently licensed? 23 THE WITNESS: No, I am not licensed. 24 HEARING EXAMINER: You are not licensed? 25 THE WITNESS: Right.</p>
<p>90</p> <p>1 you have any -- Miss Lee-Cho, do you have anything 2 further based on Miss McKenzie's questions? 3 MS. LEE-CHO: I do not. 4 HEARING EXAMINER: All right. Thank 5 you, Mr. Ager. You may be excused. 6 And, Miss Lee-Choe, you may call your 7 next witness. 8 MS. LEE CHO: Sit here. 9 MR. ISAJA: Sure. 10 HEARING EXAMINER: Please raise your 11 right hand. Do you solemnly affirm under penalties 12 of perjury that the statements you are about to 13 make are the truth, the whole truth and nothing but 14 the truth. 15 MR. ISAJA: I do. 16 EXAMINATION BY COUNSEL FOR APPLICANT 17 BY MS. LEE-CHO: 18 Q Okay. Please state your name and 19 business address for the record. 20 A My name is Phil Isaja. Business -- 21 business address is Two Research Place, Rockville, 22 Maryland 20850. 23 Q Can you please state your profession and 24 what firm you are associated with? 25 A Sure. I am a civil engineer and I am</p>	<p>92</p> <p>1 HEARING EXAMINER: Okay. Do you -- 2 okay. You have a bachelor of science in civil 3 engineering and you practice -- how do you practice 4 civil engineering if you are not licensed? 5 THE WITNESS: Under a professional 6 engineer. 7 HEARING EXAMINER: I see. Okay. Do you 8 have any objection to admit -- admitting Mr. Isaja 9 as an expert in civil engineering? 10 MS. MCKENZIE: Can I review his CV? 11 MS. LEE-CHO: Oh, sure. If it might 12 help if I might ask Mr. Isaja to provide example 13 projects, specific projects he has worked on in 14 recent years. 15 HEARING EXAMINER: Why don't you give 16 one or two and -- well, let me ask you this. 17 THE WITNESS: Uh-huh. 18 HEARING EXAMINER: What does managing -- 19 I would prefer if you could describe your role in 20 the projects you have done. 21 THE WITNESS: Sure. 22 HEARING EXAMINER: And specifically with 23 reference to use of the civil engineering skills. 24 THE WITNESS: Okay. I have -- I have 25 designed pretty much everything that you can design</p>

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24 (93 to 96)

<p>93</p> <p>1 in civil engineering from --</p> <p>2 HEARING EXAMINER: Now, what does design</p> <p>3 mean.</p> <p>4 THE WITNESS: Computations. I have -- I</p> <p>5 have designed roadways, roadway improvements,</p> <p>6 sediment erosion control, storm water management,</p> <p>7 storm drain and paving, State Highway outside road</p> <p>8 improvements, water and sewer with WSSC as a</p> <p>9 designer engineer.</p> <p>10 And as an associate manager I have</p> <p>11 managed and -- and seen projects through the zoning</p> <p>12 preliminary site plan through Park and Planning</p> <p>13 record plat process. I have taken projects through</p> <p>14 final engineering and permits and construction</p> <p>15 administration services.</p> <p>16 HEARING EXAMINER: Okay.</p> <p>17 THE WITNESS: I have pretty much done</p> <p>18 everything you can do in land development.</p> <p>19 HEARING EXAMINER: Okay. Do you have</p> <p>20 any --</p> <p>21 MS. MCKENZIE: I have no objection.</p> <p>22 HEARING EXAMINER: Okay. I will qualify</p> <p>23 you as an expert in civil engineering.</p> <p>24 THE WITNESS: Thank you.</p> <p>25 HEARING EXAMINER. And Exhibit 39 will</p>	<p>95</p> <p>1 There is the final water quality plan</p> <p>2 process through DPS which requires -- that that</p> <p>3 kind of goes concurrently with the site plan</p> <p>4 process and that is also approved by the Planning</p> <p>5 Board.</p> <p>6 And then you go through the third phase,</p> <p>7 which is preparation of final storm water</p> <p>8 management engineering plans for construction. So</p> <p>9 there is an extra step in the process for special</p> <p>10 protection areas.</p> <p>11 Q Now, at this stage of this -- at this</p> <p>12 phase of this application the storm water -- is</p> <p>13 there a storm water concept plan that is required?</p> <p>14 A No, there is not for the zoning for the</p> <p>15 purpose of this -- this case, but we have</p> <p>16 rigorously looked at water quality early on the</p> <p>17 project to make sure that we can implement storm</p> <p>18 water management for this project based on the most</p> <p>19 current Maryland Department of Environment</p> <p>20 regulations.</p> <p>21 That -- to -- to further make the point,</p> <p>22 we have -- we have implemented sidewalks on one</p> <p>23 side of the public road and that pretty much --</p> <p>24 that follows the County's environmental guidelines</p> <p>25 for projects that fall within a special protection</p>
<p>94</p> <p>1 be resume of Phil Isaja. Is that how you say it?</p> <p>2 THE WITNESS: Yes, ma'am.</p> <p>3 HEARING EXAMINER: Isaja?</p> <p>4 THE WITNESS: Uh-huh.</p> <p>5 HEARING EXAMINER: Okay. Thank you.</p> <p>6 (Exhibit 39 was marked for</p> <p>7 identification.)</p> <p>8 BY MS. LEE-CHO:</p> <p>9 Q Mr. Isaja, you have heard from previous</p> <p>10 testimony that the property is located in the</p> <p>11 Clarksburg Special Protection Area. Could you</p> <p>12 explain what that means exactly?</p> <p>13 A Yes. Special protection areas are areas</p> <p>14 within Montgomery County that have been identified</p> <p>15 that need additional natural resource protection.</p> <p>16 There are actually four SPA areas within Montgomery</p> <p>17 County, Clarksburg being one of those. Piney</p> <p>18 Branch, Upper Paint Branch and Rock Creek are the</p> <p>19 other three.</p> <p>20 SPAs -- projects that fall under special</p> <p>21 protection areas or SPAs require a more rigorous</p> <p>22 approval through the County through MCDPS. They</p> <p>23 require a preliminary water quality plan review.</p> <p>24 That's typically done during the preliminary plan</p> <p>25 process, requires Planning Board approval.</p>	<p>96</p> <p>1 area.</p> <p>2 We have reduced the pavement with, you</p> <p>3 know, like 20 feet. So, basically, that's the</p> <p>4 County's minimum standard for road width. So that</p> <p>5 reduces impervious area. So we have -- we have</p> <p>6 kind of gone to great lengths early on in the</p> <p>7 project to -- to make sure that the project</p> <p>8 falls --</p> <p>9 HEARING EXAMINER: And that meets all</p> <p>10 the fire access requirements?</p> <p>11 THE WITNESS: Yes, ma'am, it does.</p> <p>12 HEARING EXAMINER: I just looked at the</p> <p>13 radius there at some of those turns.</p> <p>14 THE WITNESS: Yes.</p> <p>15 HEARING EXAMINER: It's tight, but</p> <p>16 that's okay.</p> <p>17 HEARING EXAMINER: Yeah, they are</p> <p>18 getting tight and the projects are getting denser</p> <p>19 but they -- we -- we do -- we did do all that up</p> <p>20 front, yes.</p> <p>21 HEARING EXAMINER: Okay.</p> <p>22 BY MS. LEE-CHO:</p> <p>23 Q So could you speak to the 35-percent</p> <p>24 impervious goal, imperviousness goal that is</p> <p>25 recommended by Planning Staff and how you believe</p>

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25 (97 to 100)

<p>97</p> <p>1 the project will be able to meet that goal?</p> <p>2 A Right. As I alluded to, we -- we spent</p> <p>3 a lot of time to try to reduce impervious area as</p> <p>4 much as we could with the -- with the width --</p> <p>5 reducing the width of public roadways, sidewalks on</p> <p>6 one side of the street. And we the -- the -- the</p> <p>7 area -- this impervious area is based on gross</p> <p>8 track area. So it's inclusive of public roads,</p> <p>9 private alleys, the building themselves and</p> <p>10 sidewalks.</p> <p>11 Q What does it not include?</p> <p>12 A It does not include any future</p> <p>13 improvements within the right-of-way. That will be</p> <p>14 done by others and that's -- basically follows</p> <p>15 the -- it's in agreement with the findings in the</p> <p>16 Staff Report.</p> <p>17 Q One of the requirements of the floating</p> <p>18 zone application is to have -- articulate a</p> <p>19 preliminary storm water management strategy. Has</p> <p>20 one -- you alluded to one being developed. Could</p> <p>21 you, for the record, describe it in more detail?</p> <p>22 A Sure. Basically, new storm water</p> <p>23 management regulations require microscale</p> <p>24 practices. You use devices such as dry wells or</p> <p>25 micro bioretention facilities, bio swales and grass</p>	<p>99</p> <p>1 HEARING EXAMINER: -- but I can't</p> <p>2 remember the first --</p> <p>3 MR. SOLTESZ: ESD</p> <p>4 THE WITNESS: ESD.</p> <p>5 HEARING EXAMINER: ESD, environmental</p> <p>6 site design.</p> <p>7 THE WITNESS: That's correct.</p> <p>8 BY MS. LEE-CHO:</p> <p>9 Q In using the Floating Zone Plan Exhibit</p> <p>10 33, could you just walk us through where on the</p> <p>11 site the strategies are --</p> <p>12 A Sure.</p> <p>13 Q -- anticipated to be implemented?</p> <p>14 A We have left pockets of area in the</p> <p>15 open -- there is -- there is an area defined as</p> <p>16 open space in storm water management in the center</p> <p>17 of the site.</p> <p>18 HEARING EXAMINER: Uh-huh.</p> <p>19 THE WITNESS: So we anticipate along the</p> <p>20 edges of where the units are on the, I guess I</p> <p>21 would call it, west and east side we would have</p> <p>22 some -- some small storm water facility devices</p> <p>23 placed there.</p> <p>24 In this green area here, which is the</p> <p>25 southeast portion of the site, we would -- we would</p>
<p>98</p> <p>1 swales.</p> <p>2 And it's a little different than the</p> <p>3 way -- the way the regulations were in the past</p> <p>4 where you would have larger storm water facilities.</p> <p>5 So what you are trying to do with a micro design is</p> <p>6 mimic and replicate what is in good condition.</p> <p>7 So these devices have only a maximum</p> <p>8 drainage area of about 20,000 square feet. So you</p> <p>9 have these little devices placed -- pretty much</p> <p>10 scattered around -- all -- all around the site, and</p> <p>11 what that does is they act like filtration devices.</p> <p>12 And if the soils permit -- permit infiltration,</p> <p>13 then they will infil -- infiltrate in through the</p> <p>14 soil.</p> <p>15 The facilities have a special storm</p> <p>16 water soil mix that acts as a filter. So it's --</p> <p>17 it's almost -- you could think of it almost like a</p> <p>18 coffee filter where it kind of separates the -- the</p> <p>19 bad from the -- from what you want to drink.</p> <p>20 HEARING EXAMINER: Is that the</p> <p>21 standard -- now I can't remember -- to the MEP --</p> <p>22 MR. SOLTESZ: ESD.</p> <p>23 HEARING EXAMINER: -- to the maximum</p> <p>24 extent practical --</p> <p>25 THE WITNESS: That's what's called --</p>	<p>100</p> <p>1 have some storm water --</p> <p>2 HEARING EXAMINER: Southeast of lot 30?</p> <p>3 THE WITNESS: Lot 30, correct. And west</p> <p>4 of lot 36, south of lot 1, south of lot 19 and</p> <p>5 there is a space where, as labeled storm water</p> <p>6 pond, storm water easement, basically, on the east</p> <p>7 side of the site there would be some storm water</p> <p>8 management in that green space area over there, as</p> <p>9 well.</p> <p>10 And I am sorry. I am not sure if I said</p> <p>11 to the west of lot 5.</p> <p>12 HEARING EXAMINER: 5, uh-huh.</p> <p>13 THE WITNESS: All right. So we have</p> <p>14 taken, you know, a lot of -- a lot of -- put a lot</p> <p>15 of thought into making sure we preserve enough open</p> <p>16 space to -- to design and construct those type of</p> <p>17 facilities.</p> <p>18 BY MS. LEE-CHO:</p> <p>19 Q Can you also address how you expect to</p> <p>20 meet the forest conservation requirements on the</p> <p>21 Floating Zone Plan?</p> <p>22 A Sure. We have created a -- a buffer</p> <p>23 from the adjacent subdivision basically on the</p> <p>24 northeast portion of the site and there is a small</p> <p>25 afforestation area between just east of lot 4.</p>

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26 (101 to 104)

<p>101</p> <p>1 HEARING EXAMINER: What about Staff?</p> <p>2 Staff has a comment that says they don't -- it</p> <p>3 meets -- the 50-foot buffer meets the minimum</p> <p>4 requirement but they want it expanded and they want</p> <p>5 fences. I think I am on page 22 of the Staff</p> <p>6 Report, item 3.</p> <p>7 Are you going to be able to accommodate</p> <p>8 what they are saying there? It says, The</p> <p>9 50-foot-wide strip of afforestation should be</p> <p>10 widened, if possible. The strip meets the minimum</p> <p>11 standard, but in practice it doesn't -- basically,</p> <p>12 it doesn't seem to work.</p> <p>13 Then somewhere there is something about</p> <p>14 a fence protecting that strip from encroachment by</p> <p>15 the rear -- in the rear yards of the neighboring</p> <p>16 property or the property owners.</p> <p>17 Do you have any position on that that</p> <p>18 whether something like that is possible at this</p> <p>19 time -- do you have any position at this time</p> <p>20 whether something like that is possible?</p> <p>21 THE WITNESS: I mean, at this -- at this</p> <p>22 time we, as you -- as you mentioned. We do meet</p> <p>23 the criteria --</p> <p>24 HEARING EXAMINER: Right.</p> <p>25 THE WITNESS: -- for a -- for that</p>	<p>103</p> <p>1 sewer will be an eight -- proposed to be an</p> <p>2 eight-inch sewer. The water will be tied into an</p> <p>3 existing 16-inch main located on Maryland 355. So</p> <p>4 we feel that the water and sewer infrastructure</p> <p>5 surrounding the site is adequate for this</p> <p>6 subdivision.</p> <p>7 MS. LEE-CHO: I have nothing further.</p> <p>8 HEARING EXAMINER: Okay. Any questions,</p> <p>9 Miss McKenzie?</p> <p>10 MS. MCKENZIE: No questions.</p> <p>11 HEARING EXAMINER: Okay. You may be</p> <p>12 excused. Thank you.</p> <p>13 MS. LEE-CHO: My next witness, Mr. Glenn</p> <p>14 Cook.</p> <p>15 HEARING EXAMINER: Mr. Cook --</p> <p>16 MR. COOK: Morning.</p> <p>17 HEARING EXAMINER: -- please raise your</p> <p>18 right around. Do you solemnly affirm under the</p> <p>19 penalties of perjury that the statements you are</p> <p>20 about to make are the truth, the whole truth and</p> <p>21 nothing but the truth.</p> <p>22 MR. COOK: I do.</p> <p>23</p> <p>24</p> <p>25</p>
<p>102</p> <p>1 division of forest. So the width is there. We can</p> <p>2 take it into consideration, but at this time I am</p> <p>3 not sure if I have anything else to offer.</p> <p>4 HEARING EXAMINER: Okay.</p> <p>5 BY MS. LEE-CHO:</p> <p>6 Q Is that an issue, Mr. Isaja, that is --</p> <p>7 will be addressed at a further time?</p> <p>8 A I believe we can -- we can further</p> <p>9 investigate that at the preliminary -- preliminary</p> <p>10 plan phase stage of the project.</p> <p>11 Q Now, turning to the public utilities</p> <p>12 that will be serving the site?</p> <p>13 A Uh-huh.</p> <p>14 Q Could you address the adequacy of</p> <p>15 water/sewer capacity whether there -- it will be</p> <p>16 adequate to support this proposal?</p> <p>17 A Sure. Just a second. The -- the</p> <p>18 project is currently in a category W-1 and S-3.</p> <p>19 What that pretty -- what that means per MCDEPE's</p> <p>20 terminology is that water is -- at the property is</p> <p>21 eligible to proceed with public water and sewer.</p> <p>22 The water and sewer will be public on</p> <p>23 the property. As Mr. Soltesz alluded to earlier,</p> <p>24 the sewer service will be coming from the southeast</p> <p>25 side of the property from Shawnee Lane and the</p>	<p>104</p> <p>1 EXAMINATION BY COUNSEL FOR APPLICANT</p> <p>2 BY MS. LEE-CHO:</p> <p>3 Q Mr. Cook, please state your name and</p> <p>4 business address for the record.</p> <p>5 A My name is Glenn Cook and my business</p> <p>6 address is 9900 Franklin Square Drive, Suite H,</p> <p>7 Baltimore, Maryland 2136.</p> <p>8 Q Please state your profession, area of</p> <p>9 expertise?</p> <p>10 A I am a traffic engineer and</p> <p>11 transportation planner.</p> <p>12 Q Have you ever qualified as an expert in</p> <p>13 the field of transportation planning and traffic</p> <p>14 engineering before this time?</p> <p>15 A Yes, I have.</p> <p>16 HEARING EXAMINER: Okay. Miss McKenzie,</p> <p>17 I do believe Mr. Cook has testified on a number of</p> <p>18 occasions. Do you have any objection to him coming</p> <p>19 in as a witness? Is it both traffic engineering</p> <p>20 and transportation planning?</p> <p>21 THE WITNESS: That's normally what we</p> <p>22 do, yes.</p> <p>23 HEARING EXAMINER: Okay. Do you have</p> <p>24 any objection to him coming in as an expert in</p> <p>25 those fields?</p>

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27 (105 to 108)

<p>105</p> <p>1 MS. MCKENZIE: No objections.</p> <p>2 HEARING EXAMINER: Okay. Thank you.</p> <p>3 Exhibit 40 will be Mr. Cook's resume, resume of</p> <p>4 Glenn Cook. All right.</p> <p>5 (Exhibit 40 was marked for</p> <p>6 identification.)</p> <p>7 BY MS. LEE-CHO:</p> <p>8 Q Mr. Cook, as you know, one of the</p> <p>9 findings necessary for floating zone application is</p> <p>10 to meet the LATR requirements, could you please --</p> <p>11 well, first, did you prepare a Traffic Impact Study</p> <p>12 for the site?</p> <p>13 A Yes, we did.</p> <p>14 Q Please describe your findings and --</p> <p>15 HEARING EXAMINER: I figured he did, but</p> <p>16 go ahead.</p> <p>17 BY MS. LEE-CHOI:</p> <p>18 Q Please describe your findings and</p> <p>19 conclusions.</p> <p>20 A Okay. As you said, the LATR, which is</p> <p>21 the Local Area Transportation Review Guidelines</p> <p>22 established by Park and Planning, have to be done</p> <p>23 and a finding has to be made for a project of this</p> <p>24 size. So that's what we did.</p> <p>25 The normal procedure is we scope it out</p>	<p>107</p> <p>1 and revised our study.</p> <p>2 HEARING EXAMINER: Uh-huh.</p> <p>3 THE WITNESS: The revised study was</p> <p>4 dated in October, October 28, 2016, and that</p> <p>5 actually showed a reduction in traffic for the site</p> <p>6 because the plan at that time was for 34</p> <p>7 single-family units but 16 townhouse units. So the</p> <p>8 number of units went down and so did the number of</p> <p>9 trips being generated.</p> <p>10 So we did our analysis of the study area</p> <p>11 intersections and the site access plans and what we</p> <p>12 found was, based on the total traffic planned in</p> <p>13 this area with the development of this property we</p> <p>14 would be within the congestion standard established</p> <p>15 for this area.</p> <p>16 HEARING EXAMINER: Okay. And what is</p> <p>17 the congestion standard?</p> <p>18 THE WITNESS: The congestion standard</p> <p>19 for this area is 1425.</p> <p>20 HEARING EXAMINER: CLV.</p> <p>21 THE WITNESS: CLV, yes.</p> <p>22 HEARING EXAMINER: Okay. And what are</p> <p>23 you?</p> <p>24 THE WITNESS: Let's see. We were -- at</p> <p>25 Maryland 355 and Stringtown Road intersection,</p>
<p>106</p> <p>1 with the Park and Planning Staff. They tell us</p> <p>2 what intersections to look at, how much traffic to</p> <p>3 include from other developments in the area and</p> <p>4 then we do our study.</p> <p>5 Our study is simply we look at existing</p> <p>6 conditions by going out and conducting turning</p> <p>7 counts at the intersections that we were asked to</p> <p>8 study. We include traffic that's being generated</p> <p>9 by other approved developments in the area. In</p> <p>10 this particular project we had 15 developments that</p> <p>11 we included, some of them as far away as west of</p> <p>12 270 along Ridge Road. So it was a pretty</p> <p>13 comprehensive list. And then we generated traffic</p> <p>14 for our site.</p> <p>15 Now, we -- in this particular case and</p> <p>16 as prior testimony has -- has said, we prepared a</p> <p>17 study back in -- let me get you the -- in July of</p> <p>18 2016 which looked at the development of the subject</p> <p>19 property based on the plan at that time. And that</p> <p>20 plan was for 32 single-family units and 22</p> <p>21 townhouse units and it showed a full movement</p> <p>22 access at the northernmost access along 355.</p> <p>23 HEARING EXAMINER: Uh-huh.</p> <p>24 THE WITNESS: As the issue of safety and</p> <p>25 all came up about the northern access, we went back</p>	<p>108</p> <p>1 which was the busiest intersection that we studied,</p> <p>2 the critical lane volume during the morning peak</p> <p>3 hour was 1364. During the evening peak hour it was</p> <p>4 1125. All of the other intersections were less</p> <p>5 than a thousand.</p> <p>6 HEARING EXAMINER: Okay.</p> <p>7 MS. LEE-CHO: Miss Robeson, I would just</p> <p>8 note that the October 28, 2016 version of the TIS</p> <p>9 was included in a submission labeled Exhibit 23.</p> <p>10 HEARING EXAMINER: Thanks. I was just</p> <p>11 looking for that. So I appreciate it. Did you --</p> <p>12 do you have any comments on the feasibility of the</p> <p>13 northern access? Did you look at that or have you</p> <p>14 not looked at that?</p> <p>15 THE WITNESS: No, we have looked at it.</p> <p>16 I -- the -- the Soltesz company did sight distance</p> <p>17 measurements at that location.</p> <p>18 HEARING EXAMINER: Uh-huh.</p> <p>19 THE WITNESS: And just north of that</p> <p>20 entrance there is an oververtical along 355 --</p> <p>21 HEARING EXAMINER: Okay.</p> <p>22 THE WITNESS: -- and it does restrict</p> <p>23 the sight distance. We -- at the north for the</p> <p>24 left turns coming to go south on 355, while the</p> <p>25 standard is to have about 555 feet of sight</p>

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28 (109 to 112)

<p>109</p> <p>1 distance, we have in the neighborhood of 280-some 2 feet. So it would be unsafe for somebody to turn 3 left out of that entrance to head south on 355. 4 That was the reason that we went to the right 5 in/right out because the right in/right out only 6 has to have enough sight distance for traffic to 7 and from the south. 8 HEARING EXAMINER: The south? 9 THE WITNESS: And we -- 10 HEARING EXAMINER: Have you looked at 11 the -- have you had the opportunity to look at the 12 design of the intersection as to whether it might 13 meet the criteria for SHA or was that a question 14 for Mr. Isaja? 15 MS. LEE-CHO: No. 16 THE WITNESS: Yeah, yeah. 17 HEARING EXAMINER: It would be a -- 18 THE WITNESS: In -- in looking at the 19 design as shown on the site plan -- 20 HEARING EXAMINER: Yes. 21 THE WITNESS: -- it all -- it's not to 22 all of the details that we would need to get a 23 permit at this point -- 24 HEARING EXAMINER: An access permit. 25 THE WITNESS: -- with the rate of usage</p>	<p>111</p> <p>1 testify or have -- I suspect that you may be a 2 daughter of those -- 3 MS. MCKENZIE: Yes. 4 HEARING EXAMINER: -- two wonderful 5 people sitting in the back. This is your turn to 6 present your witnesses. I am going to take a very 7 short five-minute break and you can collect your 8 thoughts as to what you want to say and we will be 9 back here at 11:40. 10 Please make sure you have calendars 11 because there is -- there is one outstanding item, 12 which is the -- if you wish to do a revised 13 condition on the fence. 14 Also, if someone could give me a copy of 15 the new site plan with the new conditions just in 16 case I have a question on them. Mr. Ager, can you 17 just bring it up here or take it off for a moment? 18 MR. AGER: Absolutely. 19 HEARING EXAMINER: I am going to take a 20 look at those. Maybe I will make it ten minutes at 21 11:45 because I just wanted to look at those 22 conditions and see if I have any questions. Okay? 23 MS. LEE-CHO: Yes. 24 HEARING EXAMINER: I am not as young as 25 I used to be, but I don't know even in my 20s if I</p>
<p>110</p> <p>1 and everything. 2 HEARING EXAMINER: Yeah. 3 THE WITNESS: But there is nothing there 4 that would prevent us from doing that. We would be 5 able to design that entrance with the proper 6 channelization and everything to meet the State 7 standards in order to get an access permit. 8 HEARING EXAMINER: Okay. That was my 9 question. 10 MS. LEE-CHO: Well, thank you. I -- you 11 covered the next line of questions that I had for 12 Mr. Cook. So with that, I don't think I have 13 anything further. 14 HEARING EXAMINER: Okay. Miss McKenzie, 15 do you have any questions? 16 MS. MCKENZIE: No, I have no questions. 17 HEARING EXAMINER: Usually the traffic 18 engineer is the most controversial witness, so all 19 right. Well, you may be excused. 20 THE WITNESS: Okay. Thank you. 21 HEARING EXAMINER: Thank you. Do you 22 have any other witnesses? 23 MS. LEE-CHO: I do not. 24 HEARING EXAMINER: All right. What I am 25 going to do is this. It's your turn to have --</p>	<p>112</p> <p>1 could have read them from here. Okay. So we will 2 come back at 11:45 and then it will be your time -- 3 have you had a chance to read this plan? 4 MS. MCKENZIE: I -- Mr. Soltesz brought 5 the plan to my office. I read the binding 6 elements -- 7 HEARING EXAMINER: Okay. 8 MS. MCKENZIE: -- this morning -- 9 HEARING EXAMINER: Okay. 10 MS. MCKENZIE: -- that were added to the 11 plan. 12 HEARING EXAMINER: Okay. 13 MS. MCKENZIE: So I am pretty familiar 14 with it. 15 HEARING EXAMINER: Okay. So we are just 16 going to take a short -- until 11:45 we will go off 17 the record. Thank you. 18 (Thereupon, a brief break was taken, and 19 the deposition continued as follows:) 20 HEARING EXAMINER: We are -- we are back 21 on the record. Miss Lee-Cho, do you have any 22 further witnesses? 23 MS. LEE-CHO: I may have -- 24 HEARING EXAMINER: On direct? 25 MS. LEE-CHO: -- yes, Mr. Cook come back</p>

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29 (113 to 116)

<p>113</p> <p>1 up and address the bicyclist route issue that sort 2 of was left out there. 3 HEARING EXAMINER: Okay. Well, let's 4 do this. Let's have her -- you have the 5 opportunity -- well, okay, let's take him up 6 because rebuttal is technically -- 7 MS. LEE-CHO: But he might need a -- a 8 few minutes to look up -- 9 HEARING EXAMINER: Well, then I -- if 10 it's okay with you, I would like to take you, Miss 11 McKenzie, or you or is it your parents, whoever 12 wants to testify, and I am going to let him testify 13 not as a rebuttal witness -- I am going to let Mr. 14 Cook testify, not as a rebuttal witness because 15 then he is limited to what you bring up, but as a 16 direct witness. 17 MS. LEE-CHO: Uh-huh, uh-huh. 18 HEARING EXAMINER: Okay. Why don't you 19 go ahead. 20 MS. MCKENZIE: Okay. For the record 21 again, my name is Patricia McKenzie. I represent 22 Paul and Mary McKenzie and they are the property 23 owners to the south -- if I may approach Exhibit 24 33 -- 25 HEARING EXAMINER: Certainly.</p>	<p>115</p> <p>1 right-hand side of the Plan that you have, as 2 mentioned the fence, which is one of our requests, 3 and there are also comments in the Staff Report 4 about buffers. And I am taking the fence to be 5 the -- one of the buffers that they are requesting, 6 but, again, it is on -- it is on the Plan. 7 The other accommodations that we have 8 asked for are in reference to a sewer easement for 9 the possibility of connecting the McKenzie 10 residence to the public sewer to be built. And 11 that doesn't, also, I don't believe, fall under the 12 criteria of your approval, but there is a -- I 13 would say there is a public policy argument in 14 supporting our request for the sewer easement as 15 the County has an interest in making sure that 16 residences are actually occupiable. 17 My other comments I also don't really 18 think come into play in your actual criteria. 19 Looking at the Staff Report, I think that they have 20 covered all of your criteria expertly. 21 HEARING EXAMINER: Now, this isn't 22 testimony because I have to swear you in if it's 23 testimony or ask your parents to come up because 24 you are an attorney. 25 MS. MCKENZIE: Correct. And -- and --</p>
<p>114</p> <p>1 MS. MCKENZIE: -- they are the property 2 owners to what I am calling the south boundary line 3 right here [indicating]. 4 HEARING EXAMINER: Okay. 5 MS. MCKENZIE: So their existing 6 residence is approximately right there 7 [indicating], their septic area [indicating]. 8 HEARING EXAMINER: You are -- you are 9 just below -- it's -- 10 MS. MCKENZIE: May I approach? 11 HEARING EXAMINER: Yes. 12 MS. MCKENZIE: Right here [indicating]. 13 HEARING EXAMINER: Basically, you are 14 the rectangular cut-out on this other part of the 15 property just below the sewer easement, storm water 16 management and open space? 17 MS. MCKENZIE: Yes. 18 HEARING EXAMINER: Okay. 19 MS. MCKENZIE: And -- and I am 20 participating in this hearing because they have a 21 couple of concerns. But I have met with Mr. 22 Soltesz and we have communicated back and forth. 23 So I am not objecting to his application. 24 I -- we have asked for a few 25 accommodations on the binding elements on the</p>	<p>116</p> <p>1 and I -- I -- I debated on whether or not to -- 2 HEARING EXAMINER: So this isn't -- 3 MS. MCKENZIE: -- to just submit myself 4 so that they would not have to testify. 5 HEARING EXAMINER: Okay. Well, we will 6 treat these as your -- not testimony, but -- unless 7 I hear something that is testimony, but just 8 comment -- making your comments on the application? 9 MS. MCKENZIE: Yes, that would be great. 10 HEARING EXAMINER: Okay. Go ahead. 11 MS. MCKENZIE: So and, actually, I don't 12 really have much more. I have submitted a -- a 13 letter dated December 6 which you have 14 acknowledged. I request that that become part of 15 the record. 16 And I will handle the -- the site 17 stabilization matters and -- and those other 18 private issues on number three and four. I think 19 that I can handle that with Mr. Soltesz. We have 20 had lots of communications and -- and I think that 21 we have a great working relationship. 22 HEARING EXAMINER: Okay. 23 MR. SOLTESZ: Yes. 24 HEARING EXAMINER: So that was a 25 statement. So you can -- can't ask questions. If</p>

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30 (117 to 120)

<p>117</p> <p>1 you have anything you want to address with Mr. Cook</p> <p>2 or any other issues, we will move to that.</p> <p>3 MS. LEE-CHO: Is he ready? If we could</p> <p>4 have a moment. While we are waiting, is the email</p> <p>5 from Jamie Pratt responding to the bicyclist route</p> <p>6 question in the record already or identified as an</p> <p>7 exhibit?</p> <p>8 HEARING EXAMINER: I believe it is --</p> <p>9 MS. LEE-CHO: Okay. It's in number --</p> <p>10 HEARING EXAMINER: But let me just</p> <p>11 double check. I have torn the file apart, but I --</p> <p>12 it -- I was going to put it in, but whether our</p> <p>13 administrative assistant is -- yes, it's in here</p> <p>14 Exhibit 30, which you are welcome to look at.</p> <p>15 MS. LEE-CHO: I only have it on my</p> <p>16 phone. So if you wouldn't mind.</p> <p>17 HEARING EXAMINER: You can see what's</p> <p>18 there. The only thing missing from Exhibit 30 is</p> <p>19 his attachment of the FY 2017 school test should be</p> <p>20 in there, too, but --</p> <p>21 MS. LEE-CHO: Thank you.</p> <p>22 HEARING EXAMINER: But I need that back.</p> <p>23 MS. LEE-CHO: I would like to use it to</p> <p>24 show --</p> <p>25 HEARING EXAMINER: We have somebody --</p>	<p>119</p> <p>1 If you wish to revise that condition,</p> <p>2 you know, you can -- by the time -- I would prefer,</p> <p>3 since it involves the fencing, that I can do one of</p> <p>4 two things. I can ask you to submit it by Tuesday,</p> <p>5 the 13th, and give Miss McKenzie or the -- I could</p> <p>6 ask you to submit it by Wednesday, December 14th</p> <p>7 and give Miss McKenzie an opportunity to comment on</p> <p>8 it by Friday the 16th and then the record can close</p> <p>9 on the 19th unless anybody feels that that isn't</p> <p>10 sufficient time for them.</p> <p>11 MS. LEE-CHO: I think -- well, we will</p> <p>12 need some time, once the language is -- is</p> <p>13 confirmed and agreed upon, to then get it on the</p> <p>14 Plan and then the Plan submitted.</p> <p>15 HEARING EXAMINER: Well, it doesn't have</p> <p>16 to be -- you know, the closing of the record</p> <p>17 doesn't have to be by the 19th. That's only the</p> <p>18 minimum it has to be open so we can get the</p> <p>19 transcript in.</p> <p>20 So why don't you take a minute. We will</p> <p>21 have Mr. Cook come testify and then work -- I</p> <p>22 thought maybe it would be simpler than that, but</p> <p>23 let's -- let's go have Mr. Cook testify and then we</p> <p>24 will work out the dates</p> <p>25 MS. LEE-CHO: And if -- I apologize, but</p>
<p>118</p> <p>1 you want Mr. Cook to --</p> <p>2 MS. MCKENZIE: I -- I have it.</p> <p>3 MS. LEE-CHO: Thank you.</p> <p>4 HEARING EXAMINER: We have had somebody</p> <p>5 walk out the other day with several exhibits.</p> <p>6 Okay. Well, I am going to give him -- we have no</p> <p>7 cafeteria today. So you are going to have to</p> <p>8 satisfy your hunger cravings elsewhere.</p> <p>9 So I am going to give him another ten</p> <p>10 minutes to -- we will go off the record until 12:05</p> <p>11 and, hopefully, that will be enough time for him.</p> <p>12 If it's not, why doesn't somebody come in to our</p> <p>13 office and let Sara or Ellen know that you need</p> <p>14 more time, but right now we will give him an extra</p> <p>15 ten minutes.</p> <p>16 MS. LEE-CHO: Thank you.</p> <p>17 HEARING EXAMINER: All right? We are</p> <p>18 going to go off the record. Thanks.</p> <p>19 (Thereupon, a brief break was taken, and</p> <p>20 the deposition continued as follows:)</p> <p>21 HEARING EXAMINER: I believe that we</p> <p>22 have -- we are back on the record. Thank you. I</p> <p>23 believe we have just one -- we have to leave the</p> <p>24 record open for ten calendar days to receive the</p> <p>25 transcript. So we are already looking at the 19th.</p>	<p>120</p> <p>1 we -- we were discussing outside and rather than</p> <p>2 Mr. Cook, I think we would like to bring back Mr.</p> <p>3 Ager, who had addressed this issue somewhat and</p> <p>4 wanted to --</p> <p>5 HEARING EXAMINER: Okay. That's fine.</p> <p>6 MS. LEE-CHO: That's okay.</p> <p>7 HEARING EXAMINER: You have an</p> <p>8 objection, Miss McKenzie?</p> <p>9 MS. MCKENZIE: No objection.</p> <p>10 HEARING EXAMINER: Mr. Ager, why don't</p> <p>11 you come up? You are still under oath.</p> <p>12 THE WITNESS: Thank you.</p> <p>13 HEARING EXAMINER: You just can't get</p> <p>14 away.</p> <p>15 THE WITNESS: No comment.</p> <p>16 EXAMINATION BY COUNSEL FOR APPLICANT</p> <p>17 BY MS. LEE-CHO:</p> <p>18 Q Mr. Ager, I see you have before you</p> <p>19 Exhibit 30. Could you -- which is described as an</p> <p>20 email between Jamie Pratt and Lynn Robeson dated</p> <p>21 December 7, 2016 regarding the bicyclist route; is</p> <p>22 that correct?</p> <p>23 A Uh-huh, that's correct.</p> <p>24 Q Have you reviewed this email?</p> <p>25 A Yes, I have.</p>

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31 (121 to 124)

<p>121</p> <p>1 Q Thinking back to your previous testimony 2 on the adjacency of the bicyclist route can you 3 augment or is there anything you would like to add 4 to your testimony? 5 A Yeah, maybe just to clarify, I -- I read 6 the interpretation by the -- by the staff to you 7 and I agree with their interpretation. 8 HEARING EXAMINER: Okay. 9 THE WITNESS: I have four basic points 10 that need clarifying. One is, if I wasn't clear 11 previously, I believe that the bicycle tract is the 12 adjacent -- because it's in the right-of-way is 13 adjacent to the facility. 14 Second, that that is a future share -- 15 HEARING EXAMINER: You mean that -- 16 okay. 17 THE WITNESS: Yeah. 18 HEARING EXAMINER: I get it. 19 THE WITNESS: Yeah. I mean, if you 20 were -- 21 HEARING EXAMINER: No, I get it. 22 THE WITNESS: -- reversing things, it 23 disqualified the other side. But, anyway, the 24 shared use path that they have referenced is -- in 25 fact, meets the criteria of a bicyclist route,</p>	<p>123</p> <p>1 HEARING EXAMINER: All right. Having 2 none, Miss Lee Choe, do you want a closing 3 statement or not? 4 MS. LEE-CHO: No. I think it -- 5 everything has been well-covered and -- 6 HEARING EXAMINER: Okay. Anything? 7 MS. MCKENZIE: Madam Examiner, I -- I 8 would like to ask that my letter dated December 6 9 to the Office of Zoning and Administrative Hearings 10 be entered as an exhibit. 11 HEARING EXAMINER: Okay. Well, what I 12 am going to do at this time is enter as an 13 exhibit -- they have exhibit numbers, but they are 14 not formally entered until the end of the hearing. 15 So unless anyone objects, I am going to enter all 16 of the exhibits that are marked as exhibits in the 17 file. 18 MS. LEE-CHO: Well, I think Miss 19 McKenzie's point is this letter has yet to be 20 marked in the file. 21 MS. MCKENZIE: I don't see it -- 22 HEARING EXAMINER: Oh, that one? 23 MS. MCKENZIE: -- I don't see it in the 24 list. 25 HEARING EXAMINER: I thought you meant</p>
<p>122</p> <p>1 clearly. 2 HEARING EXAMINER: What shared -- the 3 shared use path on the west side? 4 THE WITNESS: That they reference in -- 5 yes, that they reference in Exhibit 30. And there 6 is two other points. One is I also agree with 7 their general interpretation that a non-access 8 controlled roadway, which is, in fact, what our 9 frontage road is, it's my understanding that we 10 have a front access controlled, obviously, but also 11 our speed limit is 40 miles per hour and it would 12 allow it to be a -- a shared roadway bike system or 13 bike route. 14 And because the bicyclist route 15 terminology that's in the Code is not defined, I 16 believe that there is broad discretion in 17 interpretation on how that can be interpreted, and 18 I would just like to go on the record I agree with 19 the general statement by the Staff on that. 20 HEARING EXAMINER: All right. Thank 21 you. Anything else? 22 MS. LEE-CHO: That's it. 23 HEARING EXAMINER: Do you have any 24 questions based on his testimony? 25 MS. MCKENZIE: I have no questions, no.</p>	<p>124</p> <p>1 this one [indicating]. Okay. Let's bring it. And 2 this would be -- 3 MS. MCKENZIE: 41, I believe. 4 HEARING EXAMINER: Okay. And have you 5 seen this? 6 MS. LEE-CHO: Yes, I have. 7 HEARING EXAMINER: Okay. And you -- do 8 you have an objection? 9 MS. LEE-CHO: I do not. 10 HEARING EXAMINER: Okay. So 41 will be 11 letter from -- letter dated 12/6/16 from Patricia 12 McKenzie to me, Hearing Examiner. 13 (Exhibit 41 was marked for 14 identification.) 15 HEARING EXAMINER: Okay. Anything else? 16 MS. LEE-CHO: I don't think so. 17 HEARING EXAMINER: All right. With 18 that, we can go back to discussing dates. How long 19 do you think it's going to take you to revise the 20 conditions on the Plan if you want to do that? You 21 don't have to do that. 22 Yes, Mr. Soltesz, why don't -- 23 MR. SOLTESZ: Yeah, we -- 24 HEARING EXAMINER: -- you come -- come 25 forward so we can make sure you are --</p>

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32 (125 to 128)

<p>125</p> <p>1 MR. SOLTESZ: Yeah, thank you. Thank 2 you. I mean, we -- we want to do it. 3 HEARING EXAMINER: Okay. 4 MR. SOLTESZ: So we will -- 5 MS. LEE-CHO: So I think if we gave 6 ourselves -- 13th or 14th would be fine and if we 7 can get a quick response from Ms. McKenzie, we 8 should be able to turn around our plan within a 9 day, do you think, just -- just get the language on 10 the plan and submit it to the Hearing Examiner. 11 MR. SOLTESZ: Yeah, yeah. I mean, I -- 12 I -- I -- 13 MS. LEE-CHO: So the 19th may work. 14 We -- we may want to push it to the 20th just to 15 get us an extra -- 16 HEARING EXAMINER: Well, let me do this. 17 I don't know how important two days are to you, but 18 just to make sure that I don't have to reopen the 19 record again, why don't we have you submit the 20 changes to the plan -- to the plan on the 21st of 21 December instead of the 19th? 22 MS. LEE-CHO: That's acceptable. 23 HEARING EXAMINER: Okay. So your 24 changes. 25 MR. SOLTESZ: Well, we -- we -- if we --</p>	<p>127</p> <p>1 HEARING EXAMINER: You didn't propose 2 any other changes, did you? 3 MR. SOLTESZ: No, no, no. I just want 4 to make sure you didn't, either. I am fine. 5 HEARING EXAMINER: Oh, no, I -- 6 MR. SOLTESZ: Okay, okay. 7 HEARING EXAMINER: And, well, actually, 8 you don't even have to change it. I just suggested 9 it so you never have to come back. 10 MR. SOLTESZ: I think it's a great idea. 11 We are going to change it and make everybody happy. 12 HEARING EXAMINER: And, Miss McKenzie, 13 how -- so you want 48 hours. So your comments are 14 due Thursday, the 22nd, 12/22 and then the record 15 is going to close. All right? 16 MR. SOLTESZ: Okay. 17 HEARING EXAMINER: Then I have 45 days 18 to issue a recommendation to the County Council. 19 We are trying not to take that long. We do have 20 some telecommunication shot clock cases, which I 21 don't know if you are familiar with a shot clock, 22 but we have -- 23 MR. SOLTESZ: I am not. 24 HEARING EXAMINER: Huh? 25 MR. SOLTESZ: I am not.</p>
<p>126</p> <p>1 if we get it in beforehand -- I mean, let's just 2 get it in and get it done. 3 MS. LEE-CHO: Well, the record has to 4 remain open until the 19th anyway. 5 HEARING EXAMINER: Yeah 6 MR. SOLTESZ: Okay, okay. We will be 7 done before the 19th and I will get it to the 8 McKenzies -- 9 HEARING EXAMINER: Okay. So that you 10 will have -- 11 MR. SOLTESZ: -- I promise you. And I 12 will give them more than a day to look at it, I 13 promise you. It's not going to be -- 14 HEARING EXAMINER: How long -- how long 15 do you want to look at it. 16 MS. MCKENZIE: Forty-eight hours is 17 sufficient. 18 MR. SOLTESZ: That's -- 19 HEARING EXAMINER: So the plan with the 20 revised binding elements will be in by 12/19. 21 MR. SOLTESZ: Right. And only talking 22 about condition six? 23 HEARING EXAMINER: Correct. 24 MR. SOLTESZ: That's right. Okay. Just 25 wanted to -- perfect. We will get it done.</p>	<p>128</p> <p>1 HEARING EXAMINER: Well, Miss Lee-Cho 2 can -- we have to get them in and out from Planning 3 from acceptance of the application for filing 4 within 150 days, including potential appeal to the 5 Board of Appeals under -- 6 MS. LEE-CHO: Federal regulations. 7 HEARING EXAMINER: -- federal 8 regulations. 9 So we do have a couple of shot clock 10 cases. So we have to give them priority. But we 11 will -- we will -- Mr. Soltesz looks shocked. 12 MR. SOLTESZ: No, I -- I -- I know 13 what -- I am going to find out what it is. I have 14 never heard of it. 15 HEARING EXAMINER: Okay. So we will try 16 to get it out -- we do try to -- we really do try 17 to get it out more quickly because we know by this 18 time you have already been waiting and so I will 19 try to get it out quickly. 20 MR. SOLTESZ: Okay. 21 HEARING EXAMINER: But that is our time 22 deadline. I am sure you know or Miss Lee-Cho and 23 for Miss McKenzie's benefit, if you disagree with 24 my recommendation, you have, I think, ten days to 25 request oral argument before the County Council.</p>

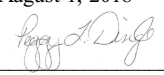
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Conducted on December 9, 2016

33 (129 to 132)

129

1 All right?
2 All right. With that, we are going to
3 adjourn the hearing. Thank you.
4 MR. SOLTESZ: Thank you. Thank you very
5 much.
6 MS. LEE-CHO: Thank you.
7 MS. MCKENZIE: Thank you.
8 (The proceedings were concluded at 12:20
9 p.m.)
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130

1 CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC
2 I, PEGGY L. DINGLE, a Notary Public, the
3 officer before whom the foregoing proceedings were
4 taken, do hereby certify the foregoing transcript
5 is a true and correct record of the proceedings;
6 that said proceedings were recorded by me
7 stenographically and thereafter reduced to
8 typewriting under my supervision; and that I am
9 neither counsel for, related to, nor employed by
10 any of the parties in the foregoing proceeding and
11 caption named and have no interest, financial or
12 otherwise, in the outcome of the cause named in
13 said caption.
14 IN WITNESS WHEREOF, I have hereunto set
15 my hand and affixed my seal this 17th day of
16 December 2016.
17
18 My commission expires:
19 August 1, 2018
20 
21 _____
22 NOTARY PUBLIC IN AND FOR
23 THE STATE OF MARYLAND
24
25

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