OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY


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LOCAL MAP AMENDMENTS -        :      Case Nos. LMA H-113 & H-114
INVESTMENT PROPERTIES, INC.   :
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A hearing in the above-entitled matter was held on

September 16, 2016, commencing at 9:38 a.m., at the Stella

B. Werner Council Office Building, 100 Maryland Avenue,

Second Floor, RDMHR, Rockville, Maryland 20850 before:

Martin L. Grossman

Hearing Examiner

A P P E A R A N C E S

ON BEHALF OF THE APPLICANT:

ERIN E. GIRARD, ESQ.
LINOWES AND BLOCHER, LLP
7200 Wisconsin Avenue, Suite 800
Bethesda, Maryland 20814
301-961-5153

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Opening Statement by Ms. Girard   11

* * * * *

WITNESSES:

Jim Whalen   13

Vic Bryant, Expert Land Planner   27

Stephen E. Crum, Expert Civil Engineer   63

Nancy Randall, Expert Transportation Planner   68

* * * * *

E X H I B I T S

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1 East Gude Drive just north of Dover Road. Parcel N851
2 contains approximately 6.81 acres, and Parcel N766 contains
3 approximately 7.36 acres. The property is owned by Gude
4 Drive Properties, LLC and Dover Properties 3, LLC, which
5 have given their authorization for this re-zoning
6 application.
7   In both cases the Applicant seeks greater
8 flexibility and compatibility afforded by the proposed zone.
9 The applications retain existing buildings and seek approval
10 of additional density that would be accommodated within the
11 existing building footprints.
12   My name is Martin Grossman, I'm the Hearing
13 Examiner. I will take evidence here and write a report and
14 recommendation to the Council sitting as District Council,
15 which will take final action. Will the parties identify
16 themselves for the record, please?
17   MS. GIRARD: Erin Girard with Linowes and Blocher
18 on behalf of the Application.
19   MR. GROSSMAN: Ms. Girard, and sitting next to you
20 is?
21   MS. GIRARD: Sitting next to me is Jim Whalen with
22 Investment Properties, he'll be our first witness.
23   MR. GROSSMAN: Okay. And I see that there are
24 some people in the audience, are all the people in the
25 audience witnesses or people to be called by you, Ms.

1   P R O C E E D I N G S
2   MR. GROSSMAN: This is a public hearing in the
3 matter of LMAs H-113 and H-114, two applications by
4 Investment Properties, Inc. for Local Map Amendments to the
5 Zoning Ordinance requesting reclassification of two sites,
6 each containing two parcels. In H-113 the Applicant seeks
7 to re-zone Lot 3, Parcel N775, and Lot 4, Parcel N687,
8 described in Plat No. 22432 of the Cotler Industrial Park
9 Subdivision located at 800 and 630 East Gude Drive in
10 Rockville, Maryland from the existing I-H 2.5 H-70 Heavy
11 Industrial Zone to the I-M-F 2.5 H-70 Moderate Industrial
12 Floating Zone.
13   The property consists of 11.12 acres of land
14 situated on the east side of East Gude Drive just north of
15 Dover Road. Lot 3 contains approximately 4.56 acres, and
16 Lot 4 contains approximately 6.65 acres. The property is
17 owned by Gude Drive Properties 3, LLC, which has given its
18 authorization for this re-zoning application.
19   The second case is H-114, the Applicant seeks to
20 re-zone Parcel N851 and Parcel N766, described in Plat No.
21 21528 of the Cotler Industrial Park Subdivision located at
22 851 and 861 East Gude Drive in Rockville, Maryland from the
23 existing I-H 2.5 H-70 Heavy Industrial Zone to the I-M-F 2.5
24 H-70 Moderate Industrial Floating Zone. The property
25 consists of 14.7 acres of land situated on the west side of

1 Girard?
2   MS. GIRARD: Yes.
3   MR. GROSSMAN: Okay. Ordinarily I would invite if
4 there were any members of the community, or others who
5 wished to be heard in this case, I would invite them up and
6 get their names and hear evidence from them. Since they do
7 not exist today I note that for the record.
8   Okay. The nature of the proceeding, it's a
9 combination of formality and informality, that is we're
10 formal to the extent that all witnesses are sworn in,
11 they're subject to cross-examination if there were somebody
12 here to cross-examine. There is a Court Reporter who takes
13 everything down, and there will be a transcript of it, which
14 we post on our website while the matter is pending. It's
15 informal in the sense that the Rules of Evidence are
16 slightly more relaxed than in a court proceeding, but we
17 proceed in an orderly fashion, somewhat similar to a court
18 proceeding.
19   All right. I have a couple of preliminary matters
20 that I wanted to mention. Number one, and I'd like you to
21 have, you or your witnesses address it, I didn't see any
22 parking calculations for the proposed expanded square
23 footage on the Floating Zone plans; second is that an
24 executed covenant is required before the record closes and I
25 didn't see that. I note that you did add a proposed binding

1 term to the plans, although I, that's another aspect of it,
2 I haven't seen the amended, I've seen an e-mail copy, but I
3 haven't seen the formal copy of the amended Floating Zone
4 plans.
5   MS. GIRARD: Right.
6   MR. GROSSMAN: There is a mention in your Floating
7 Zone plans of a maximum height in the zone of 120 feet, and
8 I'd like your witness to address that, where that maximum
9 comes from. And do you have any other preliminary matters
10 that you want to address?
11   MS. GIRARD: No. We can address these through the
12 witnesses, but I just wanted to note, as will unfold as I
13 call everyone, the parking calculations are a little tricky
14 because they're driven by the use.
15   MR. GROSSMAN: Right.
16   MS. GIRARD: So, if it's a warehouse, for
17 instance, use is much lower than if it's a retail spot.
18   MR. GROSSMAN: Yes.
19   MS. GIRARD: And the I-M-F Zone allows both, so we
20 had noted on the plans that the parking calculations would
21 be done as tenant mixes changed, as we went in to get
22 permits we'd have to show to DPS that the parking was
23 sufficient on the site. So, rather than try to come up with
24 100 versions of different parking layouts --
25   MR. GROSSMAN: All right.

1   MS. GIRARD: -- that's why we did it as we did,
2 and the Land Planner can go through that a little more, in a
3 little more detail for you.
4   MR. GROSSMAN: All right.
5   MS. GIRARD: On the executed covenant, we do have
6 a binding element as we go through the case today, we are
7 proposing a slight adjustment to it. And I suppose my
8 question is to whether the Hearing Examiner would like us to
9 submit two declaration of covenants, one with the binding
10 element as we propose it, and one with how Staff proposed
11 it, or just as we proposed it?
12   MR. GROSSMAN: Well, what is the --
13   MS. GIRARD: I haven't had this situation arise.
14   MR. GROSSMAN: -- what's the language that you
15 propose? I saw the, what's on the, the term --
16   MS. GIRARD: On the plans.
17   MR. GROSSMAN: -- that's on the plan that you
18 submitted electronically.
19   MS. GIRARD: Right, and that came up fairly late
20 in the game, Staff had proposed that binding element, and we
21 were amenable to it, but as we go through this case Mr.
22 Whalen will explain why he'd like to add just a little bit
23 of flexibility into the language.
24   MR. GROSSMAN: And what's the language that you
25 desire?

1   MS. GIRARD: I've got it here. As it reads now it
2 says no increase in gross floor area will occur outside of
3 the existing building footprints.
4   MR. GROSSMAN: Right.
5   MS. GIRARD: And as we'll go through in our case,
6 the concern is if a tenant needs an outside generator, or if
7 a tenant needs, you know, a little bit of outdoor space that
8 could be accommodated on the existing surface parking, or
9 asphalt area and therefore not really trigger any storm
10 water or forest conservation, we'd like to have some
11 flexibility to do that. So, as we're --
12   MR. GROSSMAN: How would you phrase it, what is
13 the --
14   MS. GIRARD: So, as we, we would propose for it to
15 read no increase in gross floor area of more than 5,000
16 square feet will occur outside of the existing building
17 footprint, or existing impervious area. So, it's just those
18 two phrases, of more than 5,000 square feet, and then at the
19 end, or existing impervious area.
20   MR. GROSSMAN: Of course, if you do make that
21 change it would have to go back to Technical Staff, and I'd
22 have to keep the record open for some period of time for
23 them to evaluate it.
24   MS. GIRARD: Right.
25   MR. GROSSMAN: And then I'd -- and also for any

1 commentary, public commentary, so I don't know how that fits
2 into your plan in terms of timing?
3   MS. GIRARD: Right. I mean --
4   MR. GROSSMAN: I mean --
5   MS. GIRARD: Go ahead.
6   MR. GROSSMAN: -- it's your binding element, you
7 can submit whatever you want as a proposal, but that's a
8 significant, 5,000 square feet, I guess that's a significant
9 change in what you were proposing earlier, and I'm not sure
10 that the, the question you raise about whether you had a
11 generator running outside requires that much leeway. So,
12 you might cogitate that --
13   MS. GIRARD: It may be --
14   MR. GROSSMAN: -- and you can decide in the course
15 of the hearing how you want to propose it, because
16 obviously, the bottom line is that whatever you ultimately
17 want to submit --
18   MS. GIRARD: Right.
19   MR. GROSSMAN: -- will go through me and to the
20 Council for them to decide based also on the record here.
21   MS. GIRARD: Okay.
22   MR. GROSSMAN: Based solely on the record here,
23 oral argument, if requested, and my recommendation. So --
24   MS. GIRARD: Okay.
25   MR. GROSSMAN: -- but you do have the option of

1 doing it, I just want to make sure that the formalities are
2 followed, and that you have the proposed binding, proposed
3 covenant in the record, executed in the record before the
4 record closes --
5   MS. GIRARD: Right.
6   MR. GROSSMAN: -- and that you have the final
7 plans, which haven't been formally submitted here --
8   MS. GIRARD: Right.
9   MR. GROSSMAN: -- so --
10   MS. GIRARD: Yes, and we're happy to do that. I
11 was assuming that the record would be open for some period
12 of time after today anyway to --
13   MR. GROSSMAN: We usually keep it open --
14   MS. GIRARD: -- take in the transcript --
15   MR. GROSSMAN: -- until --
16   MS. GIRARD: -- and so I figured we would do it
17 after we had this conversation.
18   MR. GROSSMAN: But this would extend it a bit
19 further because I do have to give the some time to evaluate
20 it --
21   MS. GIRARD: For Technical Staff.
22   MR. GROSSMAN: -- and then --
23   MS. GIRARD: Understand.
24   MR. GROSSMAN: -- give the public some time too.
25   MS. GIRARD: Yes. Understand.

1   MR. GROSSMAN: Okay. All right. Well, you can
2 make an opening statement, if you wish.
3   OPENING STATEMENT
4   MS. GIRARD: Okay. Hopefully, what we just
5 discussed will be the most complicated part of the day. I
6 think people would like to take it easy on this Friday.
7 This case is pretty straightforward. We have not received
8 any letters, to my knowledge there's been none in your
9 record, or in the Planning Commission's record from anyone
10 objecting to, or even really interested in the application.
11 It is simply a request to convert the zoning to what it
12 really should be, and what it actually, what appears on the
13 property today. It was zoned as part of the recent, the
14 2004, 2014, rather, Sectional Map Amendment, it went right
15 into the I-H Zone, which was just a strict conversion, and
16 before that in 2004 the Upper Rock Creek Mt. Airy Master
17 Plan just wanted to retain the industrial zoning here. And
18 the Applicant and the property owners weren't very involved
19 in that 2004 Upper Rock Creek Area Master Plan, and so the
20 zoning just stayed as it was.
21   I will note, and we'll get into that as we go
22 through the testimony today, there was a property just to
23 the southeast that did participate in the Master Plan and
24 kind of flagged the very issue that we're presenting to you
25 today, that the uses in this area and on that property were

1 more akin to a moderate industrial use than they were heavy
2 industrial, and the Master Plan took that under advisement
3 and actually recommended that that property be zone I-M.
4 So, kind of following that course now we're paying
5 attention, now we need that flexibility as the owners look
6 at, you know, potential tenant turnover in the years, they
7 don't want to be restricted to heavy industrial uses. And
8 we would note the I-M-F Zone would allow for 39 additional
9 uses, while only excluding four that are available under the
10 I-H, two of which could not be developed on the property in
11 any case, and our Land Planner will go through that.
12   So, we think that it's pretty straightforward, we
13 will present to you through the testimony how the proposed
14 zone conforms to what is on the property today, and we would
15 suggest that as determined by Staff, and unanimously
16 recommended by the Planning Board, this re-zoning is
17 appropriate, and is consistent with the Master Plan.
18   MR. GROSSMAN: Right. I saw the issue that you
19 mentioned, I saw both of your papers, the land use report,
20 and in Technical Staff Report. I mean, I guess that's the
21 nugget of the issue here as to whether or not there is
22 substantial compliance with the Master Plan since it seems
23 to be indicating heavy industrial, whereas the evidence you
24 suggest would militate in favor of the moderate --
25   MS. GIRARD: Right.

1   MR. GROSSMAN: -- industrial. So, that's the
2 issue.
3   MS. GIRARD: And there is heavy industrial in the
4 area, it's just further down East Gude, more towards
5 Southlawn, so we're not, you know --
6   MR. GROSSMAN: Right.
7   MS. GIRARD: -- we're not proposing to go against
8 the Master Plan and convert the heavy into moderate, it's
9 more just, it's moderate today, everything around it is
10 moderate, and so let's recognize what it is.
11   MR. GROSSMAN: All right.
12   MS. GIRARD: So, with that we can call our first
13 witness.
14   MR. GROSSMAN: Thank you.
15   MS. GIRARD: And I call Jim Whalen.
16   MR. GROSSMAN: Mr. Whalen --
17   MR. WHALEN: Good morning.
18   MR. GROSSMAN: -- would you raise your right hand,
19 please?
20   (Witness sworn.)
21   MR. GROSSMAN: You may proceed.
22   MS. GIRARD: Mr. Whalen, can you state your name
23 and business address?
24   MR. WHALEN: Jim Whalen, I'm with Investment
25 Properties, Inc. at 11 North Washington Street in Rockville,

1 20850.

2 MS. GIRARD: And what is your occupation?

3 MR. WHALEN: Our firm is a real estate development

4 and asset management firm. And I'm the owner of the

5 company.

6 MS. GIRARD: Okay. And have the other owners of

7 the property subject to the current applications authorized

8 Investment Properties, Inc. to act on their behalf in these

9 proceedings?

10 MR. WHALEN: Yes. I'm also a member of three of

11 the different partners, three of the buildings there, and we

12 were the -- and my partner is the member of the one

13 application, or one of the parcels in the H-114.

14 MS. GIRARD: Okay. Can you identify for the

15 record the properties that are subject in the applications?

16 MR. WHALEN: Eight hundred, which is the northwest

17 side of the plan, 850 East Gude Drive; 861, which is the

18 southeast part of the plan; and 851, which is the southwest

19 part of the plan.

20 MS. GIRARD: And can you review the history of

21 Investment Properties' involvement with the properties?

22 MR. WHALEN: We were the development partner for

23 800, 850, and 861, so our involvement was from the beginning

24 for approvals, and design and construction, and leasing, and

25 management of the current facilities. 851, the mini-

1 warehouses, or the self-storage facility, was built prior to

2 our time by my partner, in the '80s, I believe.

3 MR. GROSSMAN: Mr. Whalen, just make sure you

4 identify the location in terms of compass points, as I have

5 it 850 -- 800 and 850 are in the northeast corner of the

6 plan. Right? And I just want to make sure that you

7 correctly identified where they were; and 851 parcel and 851

8 is on the southwest, is that --

9 MR. WHALEN: Right.

10 MR. GROSSMAN: -- correct? Right.

11 MS. GIRARD: And on the --

12 MR. WHALEN: Sorry, I was confused by how we sited

13 these properties in writing because I think of them as north

14 and south.

15 MR. GROSSMAN: Okay. But then --

16 MR. WHALEN: Or east and west.

17 MR. GROSSMAN: -- the H-113 properties are in the

18 north --

19 MR. WHALEN: Correct.

20 MR. GROSSMAN: -- and the H-114 properties are to

21 the west of East Gude Drive --

22 MR. WHALEN: That's correct.

23 MR. GROSSMAN: -- on the south?

24 MR. WHALEN: That's correct.

25 MR. GROSSMAN: Okay. Okay. Just wanted to make

1 sure there wasn't any confusion in direction.

2 MS. GIRARD: Yes. It's a little confusing with

3 East Gude, and the way it turns in this location, so --

4 MR. GROSSMAN: It might have been all one case --

5 MS. GIRARD: -- we've struggled internally as to

6 what to call it.

7 MR. GROSSMAN: -- if the owners were identical it

8 might have been all just one case. I've consolidated it

9 because it made sense --

10 MS. GIRARD: Correct.

11 MR. GROSSMAN: -- consolidated if the hearing with

12 the same witnesses, you have the same Applicant, although

13 the ownership is a little bit different, and all the issues

14 are the same, and they're within each other's surrounding

15 area, so it all made sense to have one hearing rather than

16 two hearings. I plan to write, even though the Staff wrote

17 a single combined report, which is fine, I plan to actually

18 submit a different report, a separate report for each case

19 just in case there's some issue --

20 MS. GIRARD: Okay.

21 MR. GROSSMAN: -- that would arise --

22 MS. GIRARD: Right.

23 MR. GROSSMAN: -- they all will have separate

24 resolutions, and separate reports from me. And I will

25 suggest to the Council that they act at the same time on

1 both.

2 MS. GIRARD: Right. Okay. And I just wanted to

3 note, Mr. Whalen was referring to Exhibit 7 from Case

4 H-114 --

5 MR. GROSSMAN: Okay.

6 MS. GIRARD: -- when we were pointing to the

7 properties.

8 MR. WHALEN: Oops.

9 MS. GIRARD: No, it's okay. And Mr. Whalen, are

10 you familiar with the Local Map Amendment application

11 numbers H-113 and H-114, and the plans and reports submitted

12 in connection with the application?

13 MR. WHALEN: I am.

14 MS. GIRARD: Can you review for us why you believe

15 the I-M-F Zone is a more appropriate zoning classification

16 for the property than the existing I-H?

17 MR. WHALEN: Yes. You know, for us it really came

18 down to this is all about flexibility and uses. The

19 properties are essentially 100 percent leased, and for

20 awhile, but when the Coca-Cola property turned over that was

21 a, 861 East Gude Drive was a build-to-suit for Coca-Cola,

22 and after 15 years when they decided to consolidate, you

23 know, we were out leasing this building. And we found that,

24 you know, with the new zoning, and even with the old zoning

25 that the allowed uses in the heavy industrial were reduced

1 to the point where there really was only a few tenants we
2 could actually do business with, the rest were mostly
3 special exception, which from what I understood from our
4 attorneys, you know, the tenant would come in, yes, we can
5 do it, but it might take six or eight months to go through
6 the process, and when they hear that then the tenant leaves.
7 So, we were lucky enough to backfill that 861 with another
8 tenant, but in the meantime we told ourselves this would be
9 the time to make sure this doesn't happen again. So, it
10 really is all about flexibility and uses. In the case of
11 851 the warehouses, they were built in the '80s and as a
12 conforming use, and then self-storage was zoned out of it,
13 so they're a non-conforming use now. And I think that
14 ultimately caused a little trouble with refinancing and
15 things down the road, so it was really just to clean up for
16 flexibility.
17   When we built these buildings they were a little
18 unusual for the area and for Montgomery County in that they
19 were large with high clearances, with enough truck staging
20 area to actually have a proper warehouse, because, as you
21 know, probably in this area it's kind of a hodge-podge of
22 uses, there are highly great densities, very little parking,
23 and in many cases functionally obsolete, so our thoughts
24 here were to build a clean tilt-up product with high ceiling
25 heights with the possibility of doing mezzanine later down

1 the road, the reason for that, the building type is a really
2 flexible type building, to have a large warehouse user, or a
3 large showroom or so on, and if they want to expand you want
4 the opportunity to expand them within the building, and
5 where you can put the showroom upstairs, you can put offices
6 upstairs. We were also mindful of the possibility of going
7 after laboratory space if it was a permitted use, because as
8 the cost of that type of space is going up we would be a
9 lower cost alternative. Two of the properties we had built
10 that are not part of this application are on Dover Road,
11 which one was, I guess they were both annexed into the City
12 of Rockville because of the use issue, and one building,
13 which was the headquarters for John J. Kirlin Company,
14 indeed, went from a 50,000-foot building to double because
15 we did a second floor for them. And the parking at that
16 time had to be handled, so they purchased the lot next to
17 them to handle the parking, so the parking itself is, the
18 Code is the circuit breaker of whether the use is allowable.
19 But we don't have anything in mind, or any timing in mind,
20 because we have, you know, full buildings.
21   MR. GROSSMAN: Right.
22   MR. WHALEN: But what we don't want to do is have
23 an empty building and then run into this again, because it
24 was a real near miss for us.
25   MR. GROSSMAN: Okay.

1   MS. GIRARD: And so, you basically hit on it, but,
2 so you're saying that the increased density that's
3 contemplated as part of these applications, would be
4 accommodated within the building footprints?
5   MR. WHALEN: That's correct. It's, I mean, it's,
6 again, this is all designed for flexibility. We have no
7 intention to add increased density now, or have no desire to
8 because the tenants aren't asking for it. But it's really
9 for flexibility, and we could do it within the footprint and
10 still provide say a 14-foot clear space below, and a 10-foot
11 clear space above.
12   MR. GROSSMAN: All right.
13   MS. GIRARD: And we started at the beginning of
14 this hearing talking about our proposed revisions to the
15 binding element, and you understand that this will require
16 us obviously to go back to Staff, but is the 5,000 number
17 one you're comfortable with?
18   MR. WHALEN: I think so.
19   MS. GIRARD: Maybe somewhat --
20   MR. WHALEN: Truthfully, it's arbitrary because
21 this came in right at the end of the game, and when it was
22 mentioned to me I was like yes, I guess it doesn't make any
23 difference because we have no intent to do anything other
24 than to stay within the footprint. But as I slept on it my
25 thought was boy, this is exactly the flexibility issue that

1 I don't want to be put into a box. If maybe the generator
2 isn't the right idea, but I've had tenants that have food
3 uses that have special cooling that was much more cost
4 effective to do in an auxiliary building branching off from
5 the loading docks, you know, if Ferguson is one of our
6 tenants, or Amazon one of our tenants needs a special
7 warehouse that's secure, I just wanted some flexibility that
8 if I have an existing use there's something I can do say
9 within the, if I can point, I'm going to point to, you know,
10 a staging bay. So, this is 800 East Gude Drive.
11   MR. GROSSMAN: This is, the exhibit would be?
12   MR. WHALEN: This is Exhibit H -- Exhibit 7.
13   MR. GROSSMAN: In H-114?
14   MR. WHALEN: In H --
15   MS. GIRARD: Yes.
16   MR. WHALEN: -- 114.
17   MR. GROSSMAN: Okay.
18   MR. WHALEN: And I'm pointing to 800 East Gude
19 Drive, and this, this area that's lighter over here is the
20 truck docks.
21   MR. GROSSMAN: All right, but you're --
22   MR. WHALEN: So --
23   MR. GROSSMAN: -- actually pointing to the H-113
24 building.
25   MR. WHALEN: I am? I'm sorry. So --

1   MR. GROSSMAN: And -- okay.

2   MR. WHALEN: -- I'll correct myself.

3   MR. GROSSMAN: Okay. So, I mean, the exhibit may

4 be from H-114, but the --

5   MR. WHALEN: Right.

6   MR. GROSSMAN: -- building is in H-113.

7   MR. WHALEN: Okay. Well, it really applies in all

8 the buildings.

9   MR. GROSSMAN: Right.

10   MR. WHALEN: So, in any of these buildings where

11 you have large loading areas --

12   MR. GROSSMAN: Right.

13   MR. WHALEN: -- they're already concrete, they're

14 already impervious, so, for instance, if a tenant doesn't

15 require all those docks I can increase the parking count in

16 front of that area. If the tenant requires them I have to

17 reduce the parking count. If the tenant, if, say, I'm

18 pointing to H-113, 800 East Gude Drive, if the tenant here,

19 Ferguson, requires some kind of special ancillary covered

20 storage, they can put it right on top of that dock, right on

21 top of concrete, I want to be able to say yes to that.

22   MR. GROSSMAN: Right.

23   MR. WHALEN: I do not have a request, the 5,000

24 feet is arbitrary because I, you know, what I tried to do is

25 set up a situation where if I have a request I can react to

1 which is all impervious, for outdoor storage.

2   MR. GROSSMAN: Right.

3   MR. WHALEN: I don't see any practical reason why

4 I wouldn't allow them to cover that. And that's really what

5 this is about is trying to be as flexible as possible, and

6 the timing part of it, as I mentioned, we don't have a

7 project in mind, so --

8   MR. GROSSMAN: Yes.

9   MR. WHALEN: -- if it took another 30 days it

10 doesn't affect it. If it affects you in the process then

11 I'd worry about it, but --

12   MR. GROSSMAN: Well, I mean, I don't, I don't have

13 any feeling about the additional request. I based, I would

14 base my evaluation on what the objective Technical Staff

15 would say, and if they, and I don't know that they would

16 have to send it back to the Planning Board again, that would

17 be up to them.

18   MS. GIRARD: Yes. I think --

19   MR. GROSSMAN: Have you raised it with Technical

20 Staff at all?

21   MS. GIRARD: We have not. But we're happy to, you

22 know, we can decide at the end how long an appropriate

23 period of time is.

24   MR. GROSSMAN: All right.

25   MS. GIRARD: We're happy to work with them to come

1 it rather than coming back through the system where I

2 probably would lose the opportunity.

3   MR. GROSSMAN: Right.

4   MR. WHALEN: So, that's --

5   MR. GROSSMAN: I mean, the problem is not

6 necessarily with the extra square footage potential, as much

7 as with adding it in at the very end of the process.

8   MR. WHALEN: Right.

9   MR. GROSSMAN: I mean, perhaps it could be made

10 more palatable if you kept the binding element more similar

11 to what it is, and instead of saying, adding an extra 5,000

12 square feet, specify that if an ancillary, I'm just thinking

13 off the top of my head, some kind of ancillary function,

14 such as the air conditioning unit, or whatever, could be

15 added up to a maximum of, and then, I mean, maybe 5,000

16 square feet is too large, because you --

17   MS. GIRARD: Okay.

18   MR. WHALEN: Well, I've got to add these

19 buildings, the building I was pointing to is an 85,000-foot

20 building.

21   MR. GROSSMAN: Right.

22   MR. WHALEN: They're large buildings, and the

23 staging area behind those buildings are, you know, it's 130

24 feet, there's a lot of area back there. So, for instance,

25 right now, Ferguson uses a cordoned off part of the lot,

1 up with, I think we could easily all agree on what is an

2 appropriate binding element, and then we could submit --

3   MR. GROSSMAN: Okay.

4   MS. GIRARD: -- revised plans, and the covenant

5 memorializing that before the closure of the record.

6   MR. GROSSMAN: All right.

7   MR. WHALEN: If I were to guess what Staff was

8 thinking, you know, we've all said, you know, everything is

9 within the inevitable end, and they're like, you know, you

10 better, let's see that, because --

11   MR. GROSSMAN: Yes.

12   MR. WHALEN: -- we're asking for a lot of density,

13 and, you know, I'm sure there's a way we can make it

14 comfortable, because that's what we intend to do.

15   MR. GROSSMAN: Okay.

16   MS. GIRARD: Right. And I think for Staff, just

17 in our conversations with them, it's been more about they

18 don't want to trigger, they want to make it clear that

19 anything's not going to trigger more reviews. So, I think

20 in the situations we're describing it wouldn't, and so we

21 just need to talk that through with them.

22   MR. GROSSMAN: I understand. All right.

23   MS. GIRARD: So, Mr. Whalen, if the Council grants

24 the re-zoning classifications is it the property owner's

25 intention to operate the property in accordance with the

1 statement and plans submitted with the application,
2 including any binding elements?
3   MR. WHALEN: Yes.
4   MS. GIRARD: That's all I have for Mr. Whalen.
5   MR. GROSSMAN: I have no cross-examination.
6 Mercifully.
7   MR. WHALEN: Shall I step back?
8   MS. GIRARD: Yes. You can stay if you want,
9 there's plenty of room. Our next witness will be Ms. Vic
10 Bryant.
11   MR. GROSSMAN: All right. Ms. Bryant, would you
12 raise your right hand, please?
13   (Witness sworn.)
14   MR. GROSSMAN: All right, you may proceed.
15   MS. GIRARD: And Ms. Bryant has been qualified as
16 an expert land planner before the Office of Zoning and
17 Administrative Hearings within the last year, so we would
18 move for --
19   MR. GROSSMAN: Yes, before me.
20   MS. GIRARD: Right.
21   MR. GROSSMAN: Right.
22   MS. GIRARD: I think I was in that case, so I
23 remember it well. So, we would move for admission as an
24 expert in land planning.
25   MR. GROSSMAN: All right. Yes, based on her prior

1 testimony as an expert in this office, and probably before
2 the Board directly I accept her as an expert in land
3 planning.
4   MS. GIRARD: Great. Ms. Bryant, are you familiar
5 with the re-zoning application numbers H-113 and H-114?
6   MS. BRYANT: Yes, I am.
7   MS. GIRARD: And are you familiar with the
8 properties that are the subject of the applications?
9   MS. BRYANT: Yes, I have, I've visited both sites
10 on multiple visits.
11   MS. GIRARD: And are you familiar with the area
12 surrounding the properties?
13   MS. BRYANT: Yes, I am.
14   MS. GIRARD: And are you familiar with the
15 approved and adopted Upper Rock Creek Airy Master Plan and
16 its recommendations with respect to the subject properties
17 and the surrounding area?
18   MS. BRYANT: Yes, I am. There's no specific
19 recommendations for these sites, but there are some
20 recommendations for the overall area.
21   MS. GIRARD: And are you familiar with the I-M-F
22 Zoning classification, the requirements of the Zoning
23 Ordinance with respect to the re-zoning requested?
24   MS. BRYANT: Yes, I am.
25   MS. GIRARD: Have you analyzed the suitability of

1 the subject properties for the proposed re-zoning
2 classifications from a land planning standpoint?
3   MS. BRYANT: Yes, I have.
4   MS. GIRARD: And can you review for us the
5 findings of your land planning analysis?
6   MS. BRYANT: Yes, I can.
7   MR. GROSSMAN: Can I interrupt with my question
8 about the 120-foot height limit that you say the zone
9 permits? I'm just not sure, what's the source of that 120-
10 foot, in your, in the Floating Zone Plans in both cases --
11   MS. BRYANT: Right.
12   MR. GROSSMAN: -- you've indicated that in the
13 breakdown, and I just wondered where that came from?
14   MS. BRYANT: It is in the Master Plan, let me see
15 if I, I'm trying to think if I have a copy, if we have
16 copies of it.
17   MS. GIRARD: What are you looking for?
18   MS. BRYANT: Yes, it's in the SMA, though. The
19 120 feet, so it's per the zoning when they do the, when they
20 re-zoned everything --
21   MR. GROSSMAN: Yes.
22   MS. BRYANT: -- each of the properties is given a
23 density and a height restriction, and that is where the 120
24 feet comes from is the areas -- I'm sorry, the -- oh, sorry.
25 Now I remember what you're asking me.

1   MR. GROSSMAN: You've included 70 as your --
2   MS. BRYANT: Yes, 70, right.
3   MR. GROSSMAN: -- proposed zone, but I'm just
4 saying in your stats that you submitted --
5   MS. BRYANT: Yes.
6   MR. GROSSMAN: -- in with the Floating Zone Plan,
7 I'm looking now at the one Exhibit 12 for H-114, and --
8   MS. GIRARD: Right here. The section you're
9 referencing there.
10   MS. BRYANT: Yes, Section 50.
11   MR. GROSSMAN: I'll say, I think it's in both. I
12 know it's in one of them, let's see.
13   MS. BRYANT: I'm sorry.
14   MS. GIRARD: Probably not. I didn't even -- I can
15 get it.
16   MS. BRYANT: That's all right. Section
17 5.5.5B(2) --
18   MR. GROSSMAN: Right.
19   MS. BRYANT: -- basically, under the I-M-F Zone
20 the height is 120 feet is the maximum, but the Master Plan
21 recommends 70. And per that zone we are --
22   MR. GROSSMAN: I see.
23   MS. BRYANT: -- allowed to go up to 120, if we
24 make the proper justifications for it.
25   MR. GROSSMAN: What's the provision in the Code

1 that you're citing to?
2   MS. BRYANT: 5.5.5B(2).
3   MR. GROSSMAN: Capital B, two? And you're saying
4 that --
5   MS. BRYANT: Capital B(2), yes.
6   MR. GROSSMAN: -- that under B(2) a height of 120
7 feet is listed as the maximum for any I-M-F zoned --
8   MS. BRYANT: Yes.
9   MR. GROSSMAN: -- property, or --
10   MS. BRYANT: It's -- yes, let me see. The
11 setbacks for the site boundary and maximum height are
12 established by the Floating Zone Plan, all other setbacks
13 are established by site plan approval. And then if you look
14 under the --
15   MS. GIRARD: I don't know. Yes. Perhaps -- I
16 only have excerpts from the --
17   MS. BRYANT: Yes.
18   MS. GIRARD: -- Zoning Ordinance, perhaps we could
19 go through the rest of her testimony, and then when we're
20 talking to --
21   MR. GROSSMAN: That's fine. I mean, I don't
22 necessarily --
23   MS. BRYANT: Yes.
24   MS. GIRARD: -- someone else she can go grab a --
25   MR. GROSSMAN: -- have a problem with it --

1 other --
2   MS. BRYANT: No, I know.
3   MR. GROSSMAN: -- ones for the old Code --
4   MS. BRYANT: Right.
5   MR. GROSSMAN: -- and it'll take me another
6 decade, and I'm not sure I'll last that long.
7   MS. GIRARD: Right.
8   MS. BRYANT: I'm glad this isn't a conditional
9 use, because I'd probably call it a special exception about
10 12 times. But yes, that was -- from my recollection it
11 allows you to, allows you to go up to 120, but the Master
12 Plan recommends 70 --
13   MR. GROSSMAN: Okay.
14   MS. BRYANT: -- and so that's where our
15 recommendation for 70 comes from.
16   MR. GROSSMAN: All right. So, I'm sorry I
17 interrupted your flow there.
18   MS. BRYANT: Okay.
19   MR. GROSSMAN: You can return to your --
20   MS. BRYANT: That's all right.
21   MR. GROSSMAN: -- what you were saying.
22   MS. BRYANT: So, the -- okay. We're going to look
23 at the exhibits that are up here now, which is H-114,
24 Exhibit 16, which is on the southwest side of Gude, the 851,
25 861. The surrounding areas and properties, and this applies

1   MS. BRYANT: Right.
2   MR. GROSSMAN: -- if that's what it says in the
3 Code, but I --
4   MS. BRYANT: Yes. Somewhere in the Code.
5   MR. GROSSMAN: -- just don't remember where it
6 came from, and I was curious if you're going to submit an
7 amended plan, which you have to anyways to --
8   MS. GIRARD: Right.
9   MR. GROSSMAN: -- add the binding element, I'd
10 want to correct anything that's incorrect if that is
11 incorrect.
12   MS. BRYANT: Right.
13   MR. GROSSMAN: I don't have a problem with the 70-
14 foot --
15   MS. BRYANT: Right.
16   MR. GROSSMAN: -- hyping that's in the proposed
17 zone that you have, I just want to make sure the figures are
18 correct, and then where they came from.
19   MS. GIRARD: Okay. Yes, we can clarify that.
20 It's been awhile since I put the table together.
21   MR. GROSSMAN: I find it difficult under the new
22 Code, the numbering system of the new Code to keep the
23 section numbers in mind.
24   MS. BRYANT: Yes.
25   MR. GROSSMAN: It took me years to know all the

1 to both the H-113 on Exhibit 10, the surrounding areas are
2 similar, they're a variety of industrial, light industrial
3 and heavy industrial. Some of the uses in the area include
4 a travel agent, property management services, sales of
5 tires, automobile parts, scrap metal, and most of those tend
6 to be towards the northwest.
7   MR. GROSSMAN: Right. Well, now you've moved over
8 to --
9   MS. BRYANT: I'm sorry.
10   MR. GROSSMAN: -- H-113.
11   MS. BRYANT: Towards northwest of both properties,
12 so both the H-114 and the H-113, most of the properties to
13 the northwest of the two sites are a lighter industrial use,
14 and I said they're property management, travel agencies, a
15 distillery, auto body repair, and some service stations.
16   As you head south and a little more towards the
17 north along Southlawn that's where you have your more high
18 industrial, where you have a concrete plant, an asphalt
19 plant.
20   MR. GROSSMAN: You're pointing to the east,
21 though, are you --
22   MS. BRYANT: Yes, northeast. Sorry.
23   MR. GROSSMAN: Okay.
24   MS. BRYANT: So, like east, east of, east of the
25 site. Right. East, right. Correct. But yes, east of the

1 site --
2   MR. GROSSMAN: Okay.
3   MS. BRYANT: -- is the more high industrial uses.
4 And then to the south of the sites is the City of Rockville,
5 but they also have predominantly light industrial uses in
6 that area.
7   So, ours is kind of -- or both of the properties
8 are kind of in the transitional area between what is
9 predominantly light industrial to the north and west, the
10 high industrial, the east, and a more light industrial to
11 the south.
12   MR. GROSSMAN: And do you agree with Technical
13 Staff's definition of the surrounding area, they just drew a
14 radius down the middle, centering --
15   MS. BRYANT: Yes.
16   MR. GROSSMAN: -- between the two properties, and
17 I guess they run out, what, 1,000?
18   MS. BRYANT: 1,000 feet, I believe it was.
19   MR. GROSSMAN: Is that -- okay.
20   MS. BRYANT: They drew a circle, which was a
21 little different than most, usually it's --
22   MS. GIRARD: Right here.
23   MS. BRYANT: -- a few more physical boundaries.
24   MR. GROSSMAN: Yes, they went out 2,000-foot
25 radius of the subject properties.

1 terms of outdoor storage or, you know, that kind of space.
2 And they are currently, have a little bit of a forest
3 conservation easement on the property, it's basically the
4 trees that are there are being used for forest conservation,
5 there's no actual forest being saved, it's just an easement
6 over the landscaping. There's two storm water management
7 facilities and a large stream --
8   MR. GROSSMAN: There was a notation in the Staff
9 Report that the forest conservation easement had not been
10 recorded, if I recall in the Staff Report?
11   MS. BRYANT: If it is, correct.
12   MR. GROSSMAN: Is there a reason for that, or --
13   MS. BRYANT: It was done at the time, at the time
14 that this was done they did not record them. There are two
15 types of category forest conservation easements, there's
16 category one and category two, category two is used to
17 protect landscape material that's used to meet the forest
18 conservation requirements, and I'm not exactly sure what
19 year it was, but about, it was, I'd say it was right around
20 2000 they started asking that you record the easements.
21 Prior to that they just let the forest conservation plan
22 stand as the document that said these trees were to be
23 protected, so it was never required of the Applicant to
24 record them.
25   MR. GROSSMAN: Okay.

1   MS. BRYANT: Yes.
2   MR. GROSSMAN: Do you agree with that definition
3 of surrounding area?
4   MS. BRYANT: Yes, I do.
5   MR. GROSSMAN: Okay.
6   MS. BRYANT: So, that's the general nature of the
7 uses, they're all I-H 2.5 Zone, with a height of, what's the
8 FARs, the 2.5 with a height of 70 feet. Both properties are
9 surrounded by that except for H-114, which has some
10 additional light industrial uses that are within the City of
11 Rockville, and that's --
12   MR. GROSSMAN: All right.
13   MS. BRYANT: -- directly to the south of the
14 property. So, the subject properties, look at Exhibit H-
15 113, I mean, H-113, Exhibit 11, which is an aerial
16 photograph of the 800 and 850 East Gude Drive properties,
17 which are the ones to the east of East Gude Drive, or the
18 northeast of East Gude Drive. The image shows it's
19 currently improved with two industrial buildings that are,
20 have parking along the fronts and the sides of both of the
21 properties, and large loading docks at the rear of each of
22 the buildings. They are, it's improved with 146,628 square
23 feet, and we're asking to double that square footage either
24 through mezzanines or, you know, if we get the approval
25 through some, you know, GFA that might be accounted for in

1   MS. BRYANT: If they were to go through today they
2 would be required to record it.
3   MR. GROSSMAN: Okay. And it doesn't, you're
4 saying it doesn't apply retroactively, you don't have --
5   MS. BRYANT: No.
6   MR. GROSSMAN: -- to record them?
7   MS. BRYANT: Right. That's not, you know, if we
8 were to come up with a site plan they probably would make us
9 record it at that point, but no, they're not requiring it of
10 us now.
11   MR. GROSSMAN: Okay.
12   MS. BRYANT: Okay. And then, let me switch over
13 to Exhibit 7 of H-114, which is the opposite side of East
14 Gude Drive, which is the 861 and 851 East Gude Drive. As
15 you can see it's improved with a warehouse, with a
16 loading/staging area, and a series of one-story self-storage
17 buildings, with a small office, I don't know how to describe
18 what this is, it's kind of centered in the middle of the
19 property that is 851 East Gude. There's the office
20 building, along with some additional storage of vehicles,
21 and motorboats, and those kinds of outdoor large vehicle
22 storage.
23   And again, the stream that was at the back side of
24 the H-113 property is actually piped under H-113 under East
25 Gude Drive, and under this property, and then is

1 daylighting --
2   MR. GROSSMAN: This property?
3   MS. BRYANT: The property being the H-114
4 properties.
5   MR. GROSSMAN: Okay.
6   MS. BRYANT: And coming out, daylighting just to
7 the south of 861 East Gude Drive.
8   MR. GROSSMAN: So, that's to the southwest --
9   MS. BRYANT: Southwest of the property --
10   MR. GROSSMAN: -- of the property?
11   MS. BRYANT: -- right. Right along Dover Road.
12 And so, again, there will be a little bit of a stream valley
13 associated with that outfall.
14   It is improved with 149,805 square feet, and we're
15 asking again to double that number. And again, that would
16 be met through adding a mezzanine, or, to 861, or any
17 outdoor storage; and then a second floor to 851 on the self-
18 storage.
19   MR. GROSSMAN: Of gross floor area, that's right?
20   MS. BRYANT: Yes, gross floor area.
21   MR. GROSSMAN: Right.
22   MS. BRYANT: And then, again, the future tenant
23 mixes, and Erin had addressed this a little bit about the
24 parking, any expansion of these, of the property will have
25 to go through site plan review pursuant to Section 59-

1   MS. GIRARD: We noticed.
2   MR. GROSSMAN: -- for, just for simplicity since
3 there was a joint Staff Report I made them the same, the
4 Staff Report the same number, 26, for both cases, and then
5 we just skipped the number 25 for H-114 so that could
6 happen. So, now all the exhibits that apply to both --
7   MS. GIRARD: Will match up.
8   MR. GROSSMAN: -- should match up.
9   MS. GIRARD: That'd be great.
10   MR. GROSSMAN: So, we'll see this in H-114.
11   MS. GIRARD: And while we're doing exhibits,
12 actually, as you noted, Mr. Grossman, we had some via e-mail
13 that added the binding element, and we have for you now hard
14 copies, signed and sealed with the binding element as Staff
15 proposed it.
16   MR. GROSSMAN: Okay.
17   MS. GIRARD: So, we likely will be submitting
18 another one with the modification we discussed earlier.
19 But -- can you hand those to him?
20   MS. BRYANT: Uh-huh.
21   MS. GIRARD: Thanks.
22   MR. GROSSMAN: Thank you.
23   MS. BRYANT: Will you be giving them exhibit
24 numbers?
25   MR. GROSSMAN: Yes.

1 7.2.1G(2), and will become, has to be made compliant with
2 the applicable parking requirements based on the actual
3 tenant mix. So, again, it was hard for us to say this is
4 how many spaces we need when we don't know what the use is.
5 Again, if it was retail it would be a much higher number; if
6 it was a warehouse it's a much lower number. So, the idea
7 behind both H-113 and H-114 was that the loading dock areas
8 are substantial enough that they could be converted to
9 parking spaces if necessary to accommodate any future uses.
10 And again, if for whatever reason, you know, the use would
11 become too burdensome from a parking perspective, then DPS
12 would be required to not allow the use to go forward, if we
13 could not accommodate it appropriately.
14   Okay. Did that answer your question?
15   MR. GROSSMAN: While you were cogitating I noticed
16 that you have submitted affidavits of posting in both
17 cases --
18   MS. BRYANT: Uh-huh.
19   MR. GROSSMAN: -- and in both cases they will be
20 listed as Exhibit No. 28.
21   (Exhibit No. 28 was marked for
22   identification.)
23   MR. GROSSMAN: The exhibit numbers ordering was,
24 the order of the exhibit numbers was slightly off in the two
25 cases, so for --

1   MS. BRYANT: Okay, because --
2   MR. GROSSMAN: Hold on one second while I list
3 the --
4   MS. BRYANT: These need to change, then.
5   MS. GIRARD: Yes, because they have the binding
6 element, right?
7   MS. BRYANT: Right.
8   MS. GIRARD: Yes. So, they'll be the new ones.
9   MR. GROSSMAN: Affidavit of posting.
10   MS. GIRARD: They'll both be 29.
11   (Exhibit No. 29 was marked for
12   identification.)
13   MS. GIRARD: Well, actually, no, that's the,
14 that's the same. The other side of the board.
15   MS. BRYANT: Other side of the board?
16   MR. GROSSMAN: And 29 will be the new exhibit
17 number for the amended Floating Zone Plans in each case that
18 now contain the binding element approved by Staff and the
19 Planning Board. And that, there's no other change I take it
20 to the plan other than the addition of the binding element?
21   MS. GIRARD: Correct.
22   MR. GROSSMAN: Okay. All right. So, number 29 is
23 revised Floating Zone Plan with binding element. I have to
24 write this twice now for each thing, so. Okay.
25   MS. BRYANT: Okay.

1　　　MR. GROSSMAN: Proceed.

2　　　MS. BRYANT: I'm going to go over to the Floating

3 Zone Plan, this is Exhibit 113, I'm sorry, LMA H-113,

4 Exhibit 29 with the new binding elements on it.

5　　　MR. GROSSMAN: Right.

6　　　MS. BRYANT: This is, again, this is 800 and 850

7 East Gude Drive properties. And this shows the proposed

8 development, if you'll call it that, there's no real actual

9 new development shown on the plan because --

10　　　MR. GROSSMAN: Right.

11　　　MS. BRYANT: -- again, we're not proposing any,

12 but it does layout the data table, shows how we conform with

13 the I-M Zone on the data table on the right hand side,

14 versus the I-M-F Zone. And, you know, we list out all the

15 established requirements in terms of setbacks, parking

16 setbacks, heights, and open space, and we meet all those

17 requirements. The only place where we are a little low is

18 the parking lot tree canopy, we're supposed to have 25

19 percent, and we're at 3.3, but, again, as we would move

20 forward with the site plan we would have to conform it with

21 that process. But at the moment we are considered to be

22 conforming.

23　　　MR. GROSSMAN: I noticed that there was a slight

24 difference, if I recall, between what Staff listed in their

25 corrected, they have a table one on page seven of the Staff

1 Report which they corrected because they flipped the numbers

2 for H-113 and 114 for gross floor area. But when I looked

3 at the H-113 as a what is the current density, where is it?

4 You listed, oh, no, they listed 146,628, and somewhere on

5 here I thought I saw a different number from you?

6　　　MS. BRYANT: 146 --

7　　　MR. GROSSMAN: They listed 146 --

8　　　MS. BRYANT: -- 628.

9　　　MR. GROSSMAN: -- 628 for H-113.

10　　　MS. BRYANT: That's what written on the land use

11 report, and here you have 146,628.

12　　　MR. GROSSMAN: You do have that?

13　　　MS. BRYANT: Yes. And then --

14　　　MR. GROSSMAN: Okay.

15　　　MS. BRYANT: -- It's the analysis on the bottom

16 right hand --

17　　　MR. GROSSMAN: Right. I see that.

18　　　MS. BRYANT: Okay.

19　　　MR. GROSSMAN: I'm not sure where I saw a

20 difference. Maybe it was on the other one, let me look at

21 114.

22　　　MS. BRYANT: 121 maybe?

23　　　MR. GROSSMAN: Let me see if that's different.

24 149,805, so that's the same. I don't know where I saw a

25 difference there when I looked at it --

1　　　MS. BRYANT: Well --

2　　　MR. GROSSMAN: -- and it wasn't much off, but --

3　　　MS. BRYANT: -- it does get confusing after awhile

4 --

5　　　MR. GROSSMAN: Yes, it does.

6　　　MS. BRYANT: -- you're switching back and forth

7 from one to the next. I don't know if I got it wrong in

8 the --

9　　　MR. GROSSMAN: Maybe I just got confused myself.

10 It happens. You know, it's possible what I saw was under

11 the, in the third row, fourth row down on your table it has

12 I-M-F Zone, maximum 1,465,000, and maybe that's what I saw,

13 and then I just mixed it up with the smaller number --

14　　　MS. BRYANT: Right.

15　　　MR. GROSSMAN: -- 146, so maybe that's all it.

16 Okay.

17　　　MS. BRYANT: Yes.

18　　　MS. GIRARD: While we're talking about development

19 tables, and this referenced the height, we found the Zoning

20 Ordinance --

21　　　MS. BRYANT: Right.

22　　　MS. GIRARD: -- since we started talking.

23　　　MR. GROSSMAN: Okay.

24　　　MS. GIRARD: Can you now explain where the 120

25 feet came from?

1　　　MR. GROSSMAN: Yes.

2　　　MS. BRYANT: Yes. Under Division 4.8 Industrial

3 Zones, Section 4.8.2, density height allocations, Section A,

4 designating height limits, density is, and it says density

5 is calculated as an allowable floor area ratio, each

6 sequence of maximum total FAR, and maximum height is a zone

7 under the following limits, and then under I-M there's a

8 table that lists the I-L, the I-M, and the I-H, and under

9 the I-M it has height as, height as a maximum 25 to 120.

10 So, we're just referencing that section saying technically

11 we could go to 120, but the Master Plan calls for --

12　　　MR. GROSSMAN: Right.

13　　　MS. BRYANT: -- 70.

14　　　MR. GROSSMAN: I just didn't see that.

15　　　MS. BRYANT: Yes.

16　　　MR. GROSSMAN: I guess I was not looking in the I-

17 M Zone, I was looking in the I-M-F.

18　　　MS. BRYANT: Yes. Yes, the -- yes. And that's

19 what I was saying, it was under the --

20　　　MR. GROSSMAN: Okay.

21　　　MS. BRYANT: Our chart tries to show that one is

22 allowed under I-M and I-M-F zone, so. But we are proposing

23 70, which is what the Master Plan recommends.

24　　　MR. GROSSMAN: All right. I guess I had looked

25 at, you had cited the section as --

1   MS. BRYANT: Yes.

2   MR. GROSSMAN: -- 5.5.5.B(2) --

3   MS. BRYANT: Right.

4   MR. GROSSMAN: -- on your chart, and that's what

5 I, I guess I looked at, and I didn't see 120 on there.

6   MS. BRYANT: Right.

7   MR. GROSSMAN: Okay.

8   MS. BRYANT: So, Exhibit 29, H-113, again, has our

9 setbacks, and shows that we are in general conformance with

10 the zoning requirements of the I-M and the I-M-F Zone. And

11 again, we have on the bottom left hand side is a parking

12 requirements for the 800, 850 East Gude Drive existing

13 conditions.

14   MR. GROSSMAN: Right.

15   MS. BRYANT: And that chart shows that we are

16 required to have basically 248 parking spaces for the

17 existing uses, and we have 275, so there's already some

18 additional spaces allowed, you know, available to us should

19 some of the uses change around. And again, Department of

20 Permitting Services, in order to get a building permit to

21 outfit an interior space has to review the use and determine

22 that there's sufficient parking on the site.

23   MR. GROSSMAN: Well, the one concern I have with

24 not listing anything for the proposed expanded uses is if

25 you don't know what you're going to put there, and there is

1 a parking requirement, don't I have to consider the highest

2 possible use, the densest possible use, and that's parking

3 requirement, as to whether or not you can, for the zone that

4 you're proposing? And wouldn't you have to put that on your

5 Floating Zone Plan so that we know? I mean, it might be

6 less, but --

7   MS. BRYANT: Right.

8   MR. GROSSMAN: -- do you have the room to

9 accommodate this higher use, because we're not talking about

10 site plan here, we're talking about a Floating Zone Plan,

11 which is more general?

12   MS. BRYANT: I would say that this is more

13 general, and we do have, you know, articulated the fact that

14 we have some spaces that we could turn from loading dock

15 into spaces to accommodate it, and that there is DPS kind of

16 stops access at, you know, gate to let us not put in too

17 high a use. I think this would apply -- you could say that

18 about almost any project that came through for the County is

19 that, you know, and if it had a height of 200 feet and a GFA

20 of three you'd have to accommodate the parking somehow for

21 on any of those projects, and, you know, does that mean a

22 parking garage, or, you know, some other offsite parking

23 facility? I think that's a common problem with any project.

24   MR. GROSSMAN: It is, and the general rule is that

25 if you don't specify or limit yourself in a binding element

1 that you have to consider the harshest possible outcome in

2 the re-zoning, so that's why I say that there ought to be

3 something that specifies in some way how the parking is

4 going to be accommodated, or that you can accommodate it, or

5 will not have a use that exceeds the required amount of

6 parking. Because without something like that it's hard to

7 know from a zoning standpoint that the density you propose

8 potentially will allow you to have the required amount of

9 parking. I understand your concern, because you don't know

10 yet --

11   MS. BRYANT: Right, what we have.

12   MR. GROSSMAN: -- what you're planning, but you

13 could have something that, maybe that becomes a second

14 binding element, or maybe it's just specified on your

15 Floating Zone Plan that, you know, parking will be, for any

16 development will be, or the amount of development will be

17 limited by whatever parking is available on site, and will

18 be calculated at site plan review, or something to specify

19 it.

20   MS. BRYANT: Okay. H-114, Exhibit 29 is the

21 Floating Zone Plan for 851 and 861 East Gude Drive. And

22 again, we have a data table on the right hand side that

23 shows the I-M Zone, the I-M-F Zone, and what we have

24 proposed. And then this again, we meet all the

25 requirements, but landscaping is the one place where we

1 would need to beef up our requirements when we go through

2 site plan. And again, the table shows the parking, we are

3 required to have 103 parking spaces, and there's 108, again,

4 on this parcel, particularly on Parcel F the, there is a

5 large facility at the very center of the property that is

6 all asphalted, it's currently truck parking, and, you know,

7 truck parking, and that could be easily turned over into

8 vehicular, automobile parking if we should need additional

9 parking spaces.

10   MR. GROSSMAN: And by the way, on your plans, I

11 think on both of them you do have a line at the bottom that

12 says future parking will be determined based on tenant mix

13 at the time of site plan and/or use occupancy permit. I

14 think that just adding to that would be that density will

15 not exceed, future, any additions to density will not exceed

16 the --

17   MS. BRYANT: Okay.

18   MR. GROSSMAN: -- the space needed for required

19 additional parking.

20   MS. BRYANT: Okay. We're going to talk a little

21 bit about compatibility and master plan conformance. As we

22 mentioned before, Industrial Zones are what exists in this

23 area, and what is recommended in the Master Plan, that the

24 Southlawn area be considered industrial. We are maintaining

25 that by proposing an industrial use, it's a slightly

1 different zone, but still an industrial use. And the Master
2 Plan recommends retaining existing Industrial Zones in this
3 area, page 1393 and 94 are referenced, but it also goes on
4 to say that the Gude Drive, Southlawn area are generally
5 light industrial in character, even though parts of the area
6 are classified at I-2 Zone, which is the new I-H Zone. And
7 that's Master Plan at page 33, sorry, that's the new I-M, I-
8 2 is I-M. I-1 is I-H. The property provides -- and land
9 use and zoning goals for the industrial uses in the planning
10 area are to continue to allow commercial industrial land
11 uses in appropriate locations, and a manageable density, and
12 that's page 13 of the Master Plan. We feel that we follow
13 this because our densities are consistent with the
14 surrounding neighborhood at the time; it's, you know, at the
15 lower end of the FAR requirement. It's currently being used
16 as industrial land, so as such, it will continue to be used
17 as industrial land.
18   And the buildings that are built on the property
19 were built prior to the county-wide re-zoning, and again,
20 are very modern, functioning facilities that have, are not
21 anywhere near the end of their lifespan, so they will not be
22 torn down in the foreseeable future to accommodate some
23 greater use.
24   And it's a modest increase in the FAR, which
25 maintains the scale and intensity of the existing district,

1 is a question of whether or not this is, it's not the
2 compatibility issue, clearly from how you described it, it's
3 an issue as to whether or not the proposed medium industrial
4 is consistent with what the Master Plan recommends, and it
5 seems to recommend maintaining heavy industrial, because
6 there isn't much heavy industrial in Montgomery County, so
7 you don't want to lose too much heavy industrial --
8   MS. BRYANT: Right.
9   MR. GROSSMAN: -- area, so that's a part of the
10 plan's issue, and you're suggesting changing from a heavy
11 industrial to a medium, even though that gives you more
12 flexibility, and is consistent and may be more compatible
13 with your surrounding area. I want to hear how you justify
14 that in terms of the Master Plan.
15   MS. BRYANT: Okay. So, you know, as we were
16 saying there's four uses that we, that are in the I-H Zone
17 that we could not do, that we'd have trouble doing on this
18 property because of the shape and size of it. The Master
19 Plan does recommend high industrial uses in the County,
20 that's page 33 of the Master Plan, but it does make
21 exceptions for this broad recommendation within the Master
22 Plan itself. The --
23   MR. GROSSMAN: But not for this property?
24   MS. BRYANT: Not for this property specifically,
25 but it does make a general blanket statement about the area.

1 which is also a Master Plan objective, which is stated on
2 page 13 that to maintain light industrial districts at their
3 existing scale and intensity.
4   And the I-M-F Zone allows for, it's 36 uses, I
5 think you said 39. It's 36 uses, more than the I-H Zone for
6 this site. And then it would only exclude four uses, which
7 would be mining and excavation, which needs to be
8 recommended on a site plan, and the site plan does not
9 recommend mining for this site, so it would not be allowed.
10 It is also recommended for transfer of trash, again, and
11 because of the stream valley buffer on the site, and the
12 restrictive setbacks for that use there would be so little
13 land left to actually use as a trash transfer facility that
14 it just doesn't make, it's not feasible. And then the last
15 two pieces would be a crematory and heavy industrial. And
16 again, a crematory is probably not, you know, a great need
17 in the County, but more importantly, a probably appropriate,
18 closer to more heavy industrial uses, as opposed to the
19 light industrial that is currently in this neighborhood.
20 And then, again, heavy industrial is down on Southlawn and
21 on much larger pieces of property than this one. The
22 configuration of the property being a triangle, having a
23 stream valley buffer, again, makes it a little bit unwieldy
24 for heavy industrial to come into this site.
25   MR. GROSSMAN: And the only issue that I see here

1 It does say that, you know, that HNS properties, which is at
2 the corner of Dover and East Gude Drive, and for the west
3 side of East Gude Drive, adjacent to the City of Rockville,
4 and for properties along Southlawn, and again, that's page
5 33 of the Master Plan. It recognizes that those properties
6 to the west of East Gude Drive have been, historically been
7 annexing themselves into the City of Rockville to get the
8 proper zoning that is what the market demand is requiring of
9 them, and it actually supports that. It supports annexation
10 to the, requests west of East Gude and along Southlawn
11 because these areas are predominantly light in character.
12 So, they're saying, you know, we want high industrial, but
13 we recognized the fact that there are parts of this exact
14 neighborhood who are moving over to the City of Rockville
15 because of the light industrial nature of this particular
16 segment of the area.
17   So, with that in mind, and with the HNS property,
18 again, that was one where they had recommended it for
19 industrial, high industrial, and that owner managed to, you
20 know, participate in the master planning process, and had it
21 lowered to the medium industrial so that they could continue
22 the uses that they had, and that they recognize moving
23 forward that if that use should ever go away that they were
24 a light industrial building on a very small piece of
25 property surrounded by light industrial uses, and therefore

1 it would be highly unlikely for them to actually ever be
2 able to do a high industrial use with the property. And
3 that the buildings were relatively new, and therefore we
4 going to be around for awhile, and that is, you know, the
5 same arguments that we're making for us is that the, you
6 know, we have a very small piece of property, the shapes of
7 it, the storm water, the stream valley buffers that are on
8 both the properties make it hard for a heavy industrial use
9 to go into these sites. The HNS property actually has the,
10 there's a printing manufacturer that they wanted to keep on
11 that site, they have since gone out of business, or are in
12 the process of re-leasing, so, you know, it's one of those
13 things where as turnover comes in, you know, they recognize
14 that this was the highest and best use for this piece of
15 property. And we fall, I think, into that same category of
16 we have existing infrastructure that's relatively new, it's
17 catering to a light industrial use, it's currently being
18 used for light industrial use, the shapes and sizes of the
19 properties are restrictive, you know, to the point I said
20 that two of the four high industrial uses can't be done on
21 the property. So, it just in essence it takes two pieces of
22 property that could be used for industrial uses and
23 restricts that, and makes it harder for them to actually be
24 used for industrial uses because they can't accommodate the
25 high industrial uses on the property because of the physical

1 nature of the sites. And yet zoning would not allow them to
2 have the intermediate uses, so we're trying to remedy that
3 by saying these really are a medium use site, and that, you
4 know, the existing infrastructure on site is, that's what
5 they are built for, and the Master Plan has said yes, there
6 are some exceptions to this high industrial use.
7   MR. GROSSMAN: Are you suggesting that what
8 they're really getting at is that the fact that they have
9 approved a site to the southwest in a lighter industrial, or
10 a medium industrial use that your property is kind of a
11 transition between that and the heavy industrial to the
12 northeast?
13   MS. BRYANT: Yes. That was laid kind of out in
14 the land use plan, that we are kind of at that edge where
15 everything west to us and south of us is light industrial,
16 and that really you have to go up Southlawn to hit the high
17 industrial uses. And there are much larger parcels up
18 there, and lots that can accommodate some of the heavy
19 machinery and --
20   MR. GROSSMAN: What I'm getting at is the Master
21 Plan, if I understand you and what you're saying, is that it
22 recognizes this sort of transitional area, it just --
23   MS. BRYANT: Yes.
24   MR. GROSSMAN: -- extends a little further than
25 they specifically mention?

1   MS. BRYANT: Right. Yes, they do actually mention
2 that there are some townhouses, and, to the west of us. Let
3 me see if I can find that.
4   MR. GROSSMAN: Well, I wasn't necessarily even
5 saying transitional from residential areas, but transitional
6 from a light to a heavy industrial.
7   MS. BRYANT: Yes, light to -- when I say
8 townhouses they were, they are industrial uses, but they're
9 townhouse in form.
10   MR. GROSSMAN: I see. All right.
11   MS. BRYANT: Then they mention that as townhouses,
12 they kind of put them in quotes because they are, it is an
13 industrial use. So yes, the Master Plan does spell out the
14 fact that as you come down East Gude it does go from light
15 to heavy, and that's why they recommended anything on the
16 west side to support annexation into the City of Rockville,
17 but our client doesn't feel like that's really the way to
18 go, that staying in the County would be more appropriate.
19   MR. GROSSMAN: All right. Okay.
20   MS. BRYANT: So, I believe that was -- and then
21 there are some findings on the intent of the Floating Zone,
22 do we meet the goals of the General Plan, Master Plan,
23 Functional Plan? And again, the, maintains an industrial
24 use in an industrial area, and the area is concentrated
25 industrial uses around major transportation systems, away

1 from residential uses and less environmentally sensitive
2 areas. I think that, you know, we are an industrial use
3 away from residential. Ensure that the proposed uses are in
4 balance with all the plans, and the Southlawn area is zoned
5 industrial and is populated with industrial uses. The
6 existing infrastructure was built to accommodate these uses,
7 and has easy access to Interstate 370 and I270, which are
8 connected to the larger interstate system, so it allows for
9 greater flexibility. The traffic consultant will talk about
10 traffic in general. Allowing design flexibility and a great
11 developmental circulation network of land use patterns and
12 natural features. This facility currently is integrated
13 into the site, and it's taking advantage of the local
14 circulation network, and it's easily accessible to highways.
15 And then to encourage appropriate land use by providing
16 flexibility to respond to changing economic, demographic,
17 and planning trends that occur between comprehensive
18 district and section map amendments. And that's exactly why
19 we're here, we're asking for the flexibility to, flexibility
20 the re-zoning criteria espouses. And respond to the market
21 demands by obtaining the zone that is actually more flexible
22 and provides greater uses and encourages more industrial use
23 than the I-H Zone allows. Allowing various uses, building
24 types and densities as determined by a property's size, and
25 space zone to serve a diverse and evolving population. The

1 architecture of the existing building is a high quality, a
2 higher quality than typically build of a warehouse. The
3 density is appropriate for the size of the lot and the
4 character of the neighborhood, and its increased uses will
5 better serve the need of the population.
6   And then we have ensuring the development
7 satisfies both sustainable requirements, including location,
8 connection to circulation networks, density and use
9 limitations, open space, environmental protection
10 mitigation. Again, it's located in an industrial area, it
11 takes advantage of the existing network, its uses which are
12 allowed in the I-M Zone are in conformance to all applicable
13 environmental laws. Ensuring protection of established
14 neighborhoods, established in compatibility, you know, as we
15 said is an industrial use in an industrial neighborhood.
16 Providing development standards and general compatibility as
17 we talked about with the standards on the data table of the
18 Exhibits 29 for H-114 and H-113, they are consistent. Allow
19 for design flexibility to provide mitigation of any negative
20 impacts. There are no negative impacts, we're just asking
21 for a zone that's actually more compatible to the uses that
22 are currently being used in the area, which is light
23 industrial. And necessary findings.
24   MS. GIRARD: And I was going to say, I don't know
25 that we need to go through --

1   MS. BRYANT: Do we need to go through all of them?
2   MS. GIRARD: -- the report. You seem to be
3 flipping through your land planning report?
4   MS. BRYANT: Yes. Well, I just wanted to make
5 sure I hit the --
6   MS. GIRARD: The high notes. Right. I just
7 wanted to note on the record her land planning reports are
8 Exhibit 7 in H-113, and Exhibit 9 in H-114.
9   MR. GROSSMAN: Right. Let me go back for a second
10 to the proposed change to the binding element, the way you,
11 if I took this down correctly you're suggesting that it
12 would say no increase in gross floor area of more than 5,000
13 square feet on existing impervious area, or does it say or
14 existing?
15   MS. GIRARD: Or. It will not occur outside of
16 existing building footprints, or existing impervious area.
17   MR. GROSSMAN: But I'm not sure that makes sense
18 because you are requesting an increase in gross floor area
19 within the footprints of doubling, so I think that creates
20 confusion as to what you're requesting. If I understand
21 what you were saying that you want to be able to move
22 outside of the building is essentially what you're saying?
23   MS. GIRARD: Uh-huh.
24   MR. GROSSMAN: So, what you're trying to change --
25   MS. GIRARD: Yeah I see what you're getting at.

1   MR. GROSSMAN: -- is that you're trying --
2   MS. GIRARD: Yes, it's --
3   MR. GROSSMAN: -- to change by saying you can move
4 outside of the footprint.
5   MS. GIRARD: Right, and --
6   MR. GROSSMAN: Footprints of the buildings. So,
7 maybe you need to rephrase that --
8   MS. GIRARD: I think you're probably right.
9   MR. GROSSMAN: -- the binding element --
10   MS. GIRARD: Yeah.
11   MR. GROSSMAN: -- has changed.
12   MS. GIRARD: More in line with I think what you
13 mentioned earlier, maybe leave it in tact, but say except
14 for, you know, no more than 5,000 for ancillary on
15 impervious area, of something along those lines.
16   MR. GROSSMAN: Right. If that, if the binding
17 element were changed in that fashion would that change any
18 of your testimony, Ms. Bryant?
19   MS. BRYANT: No, it would not.
20   MR. GROSSMAN: Okay. All right.
21   MS. GIRARD: Did you have any more questions?
22   MR. GROSSMAN: No.
23   MS. GIRARD: Okay.
24   MR. GROSSMAN: Thank you.
25   MS. GIRARD: And Ms. Bryant, are you familiar with

1 the Technical Staff's analysis of the applications, and the
2 recommendation of the Planning Board with respect to the
3 applications?
4   MS. BRYANT: Yes.
5   MS. GIRARD: And did they generally, did Technical
6 Staff generally agree with your findings --
7   MS. BRYANT: Yes.
8   MS. GIRARD: -- and conclusions?
9   MS. BRYANT: Yes. Other than the binding element,
10 agreement.
11   MR. GROSSMAN: Does the Applicant adopt the
12 findings and conclusions of the Technical Staff and its
13 report?
14   MS. GIRARD: We do.
15   MR. GROSSMAN: All right.
16   MS. GIRARD: In your expert opinion will the
17 proposed zoning re-classification substantially conform with
18 the recommendations of the Upper Rock Creek Airy Master
19 Plan, General Plan, and other applicable County plans?
20   MS. BRYANT: Yes, it does as stated.
21   MS. GIRARD: And in your expert opinion would
22 approval of the applications further the public interests?
23   MS. BRYANT: Yes, it will, for additional
24 industrial uses in the area.
25   MS. GIRARD: In your opinion will the proposed

1 zoning re-classification satisfy the intent and standards of
2 the proposed I-M-F Zone?
3   MS. BRYANT: Yes.
4   MS. GIRARD: As you just reviewed?
5   MS. BRYANT: As just reviewed, and as laid out in
6 the data tables on Exhibits 29, H-114 and 113.
7   MS. GIRARD: And finally, in your expert opinion
8 will the proposed zoning re-classifications be compatible
9 with existing and approved adjacent development?
10   MS. BRYANT: Yes, it will. The adjacent
11 development is similar in use and nature, and light
12 industrial.
13   MS. GIRARD: That's all we have for Ms. Bryant.
14   MR. GROSSMAN: Aren't they light and medium --
15   MS. BRYANT: Light and medium --
16   MR. GROSSMAN: -- industrial?
17   MS. BRYANT: -- yes, sorry. The Master Plan just
18 refers to it as light.
19   MR. GROSSMAN: Okay.
20   MS. BRYANT: I'm using its language.
21   MR. GROSSMAN: All right. Thank you.
22   MS. GIRARD: Thank you. Next we have Steve Crum.
23   MR. GROSSMAN: Mr. Crum, will you raise your right
24 hand, please?
25   (Witness sworn.)

1   MR. GROSSMAN: All right.
2   MS. GIRARD: Mr. Crum, have you testified before
3 the Office of Zoning and Administrative Hearings recently?
4   MR. CRUM: Yes, most recently in Case No. G-957,
5 which was before Mr. Grossman, it was an R-200 to PD-4 case
6 in Clarksburg.
7   MS. GIRARD: And you were accepted as an expert in
8 Civil Engineering in that matter?
9   MR. CRUM: I was.
10   MS. GIRARD: Then we would move his admission as
11 an expert in Civil Engineering.
12   MR. GROSSMAN: Yes, based on Mr. Crum's prior
13 testimony as an expert in Civil Engineering I accept him as
14 an expert in Civil Engineering in this case.
15   MS. GIRARD: Thank you. Mr. Crum, as you familiar
16 with Local Map Amendment applications H-113 and H-114?
17   MR. CRUM: I am.
18   MS. GIRARD: And are you familiar with the
19 properties that are subject of the applications?
20   MR. CRUM: I am.
21   MS. GIRARD: Are you familiar with the area
22 surrounding the subject properties?
23   MR. CRUM: Yes.
24   MS. GIRARD: Have you analyzed the suitability of
25 the subject properties for the proposed re-zoning

1 classifications from a civil engineering standpoint?
2   MR. CRUM: I have.
3   MS. GIRARD: Can you review for us the findings of
4 your civil engineering analysis?
5   MR. CRUM: Generally, since the improvements are
6 existing it was a relatively simple analysis, and with the
7 exception of what a binding element that may change the, the
8 increase in density, it was all going to occur within the
9 footprints of the existing buildings. The sites are
10 developed, and are suitable for the uses that are
11 contemplated under the industrial medium intensity use, or
12 category.
13   MR. GROSSMAN: Well, let me stop you for a second.
14 With the exception that you noted, I don't want to have to
15 have another hearing --
16   MR. CRUM: Okay.
17   MR. GROSSMAN: -- here, so I want to know if
18 you're suggesting that the addition of the binding element
19 as changed would affect your analysis?
20   MR. CRUM: It won't.
21   MR. GROSSMAN: Okay.
22   MR. CRUM: The buildings are connected to public
23 facilities, water, sewer, electric, telephone, natural gas,
24 they're of sufficient capacity to accommodate the proposed
25 uses and the existing uses.

1   MR. GROSSMAN: In other words, they could double
2 the --
3   MR. CRUM: Yes.
4   MR. GROSSMAN: -- first floor area use of these
5 buildings, and perhaps the additional 5,000 square feet of
6 space within the utilities that are provided?
7   MR. CRUM: Yes, that's correct.
8   MR. GROSSMAN: Okay.
9   MS. GIRARD: And --
10   MR. CRUM: Go ahead.
11   MS. GIRARD: -- we talked a little bit about the
12 forest conservation plan for 800 and 850 East Gude, was
13 there anything you wanted to add on that?
14   MR. CRUM: I don't think there's anything that I
15 need to add. I probably should mention that storm water
16 management has been addressed for both the applications, and
17 exists under the criteria that was in place at the time.
18 And without any additional disturbance no new storm water
19 management would be required under current Code.
20   MS. GIRARD: And when you say disturbance when
21 we're talking about potentially enclosing a loading dock
22 area, or something unimpervious would that trigger any --
23   MR. CRUM: That would not trigger, particularly if
24 it was 5,000 square feet or less, that's the threshold for
25 sediment control.

1   MS. GIRARD: Okay. And --

2   MR. GROSSMAN: Now, if it did trigger it there

3 would have to be a new, some amendment to the preliminary

4 plan, or?

5   MR. CRUM: There wouldn't be an amendment to the

6 preliminary plan, if for some reason we disturbed more than

7 5,000 square feet we would be required to get a sediment

8 control permit from Montgomery County Department of

9 Permitting Services.

10   MR. GROSSMAN: Okay. You wouldn't have to bring

11 this site into compliance with environmental site design

12 requirements?

13   MR. CRUM: We would only have to address that

14 5,000 square feet. The site would be considered re-

15 development under the ESD, environmental site design

16 guidance.

17   MR. GROSSMAN: Which would?

18   MR. CRUM: Which allows you to just deal with the

19 new disturbed area.

20   MR. GROSSMAN: Okay.

21   MS. GIRARD: And is your detailed analysis

22 contained in the engineering reports in the record?

23   MR. CRUM: It is.

24   MS. GIRARD: And those are Exhibit 6 in H-113, and

25 Exhibit 11 in H-114. Based on your report and your

1 months ago?

2   MS. RANDALL: Yes, I was.

3   MS. GIRARD: And she was accepted as an expert in

4 transportation planning, so we would like to move her

5 admission.

6   MR. GROSSMAN: All right. Based on Ms. Randall's

7 prior testimony as an expert, actually, in a number of a

8 cases before me, I accept her as an expert in transportation

9 planning.

10   MS. GIRARD: Wonderful. Ms. Randall, are you

11 familiar with re-zoning applications number H-113 and H-114?

12   MS. RANDALL: I am.

13   MS. GIRARD: And are you familiar with the

14 properties that are the subjects of the applications?

15   MS. RANDALL: I am.

16   MS. GIRARD: Are you familiar with the area

17 surrounding the properties?

18   MS. RANDALL: Yes, I am, driven recently and

19 often.

20   MS. GIRARD: And are you familiar with the

21 Montgomery County requirements for review of adequate public

22 facilities, and the Local Area Transportation Review

23 Guidelines?

24   MS. RANDALL: Yes.

25   MS. GIRARD: And are you also familiar with the

1 testimony today, and in your expert opinion as a civil

2 engineer, will the proposed developments be served by

3 adequate public facilities and services, including water,

4 sanitary, sewer, storm drainage, and other public

5 improvements?

6   MR. CRUM: Yes.

7   MS. GIRARD: And in your opinion from a civil

8 engineering standpoint will the proposed zoning re-

9 classifications be compatible with existing and improved

10 adjacent development?

11   MR. CRUM: Yes, they will.

12   MS. GIRARD: That's all I have for Mr. Crum.

13   MR. GROSSMAN: I have no questions.

14   MS. GIRARD: Thank you.

15   MR. CRUM: Sure.

16   MS. GIRARD: Finally, we have Ms. Randall.

17   MR. GROSSMAN: Last but not least.

18   MS. GIRARD: Always last. Always. Something

19 about a bride's maid, I think.

20   MR. GROSSMAN: Would you raise your right hand,

21 please?

22   (Witness sworn.)

23   MR. GROSSMAN: All right.

24   MS. GIRARD: And Ms. Randall, I believe you were

25 just here with me in front of Mr. Grossman a couple of

1 approved and adopted Upper Rock Creek Airy Master Plan and

2 its transportation recommendations for the road network

3 surrounding the subject properties?

4   MS. RANDALL: I am.

5   MS. GIRARD: Have you analyzed the proposed re-

6 zonings of potential increased developments on the

7 properties from a transportation planning standpoint?

8   MS. RANDALL: I have.

9   MS. GIRARD: And can you review for us the

10 findings and conclusions of your traffic impact analysis?

11 And I would note her traffic studies are Exhibit 19 in H-

12 113, and Exhibit 17 in H-114.

13   MS. RANDALL: Similar to the separation of the

14 properties for land use evaluation, we did the same from the

15 traffic impact study, so that these could be looked at

16 separately, and reviewed by Staff separately. For the 800

17 and 850 Gude Drive properties, which are on the northeast

18 side of Gude Drive --

19   MR. GROSSMAN: That's the H-113.

20   MS. RANDALL: Thank you, H-113, we looked at --

21 well, the first thing that we did for all of the properties

22 was to meet with Staff, get a scoping agreement, agreed that

23 the 850 and 800 properties, or H-113, on the north side, and

24 the other properties on the, and I apologize for calling it

25 north side or south side --

1   MR. GROSSMAN: That's fine. No, that's fine.

2   MS. RANDALL: -- the orientation of the road you

3 could pick either.

4   MR. GROSSMAN: Right.

5   MS. RANDALL: But that both properties would have

6 the same study area. Our study area included Dover Road,

7 and East Gude Drive site access points to the property.

8 This is on the H-114 property, they have an access point

9 that comes down onto Dover Road. The site access points

10 along Gude Drive for both properties, there are several

11 access points for the property on the northeast side of Gude

12 Drive, one directly across from Dover Road, as you can see

13 on Exhibit 76. And there's a northern access --

14   MS. GIRARD: No, it's 16.

15   MS. RANDALL: Sorry, what was that?

16   MS. GIRARD: Sorry. Sixteen, I was like wow.

17   MS. RANDALL: That's 16. Sorry. Bad eyes.

18   MR. GROSSMAN: Exhibit 16 of H, which?

19   MS. GIRARD: H-113.

20   MS. RANDALL: H-113. There is also an access

21 further to the northwest on that property. We looked at the

22 intersection of East Gude Drive and Calhoun Drive, which is

23 further to the northwest on East Gude Drive, East Gude Drive

24 and Display Court. Then East Gude and Dover Road, which is

25 at the southeastern boundary of both properties, East Gude

1 and Southlawn, which is an intersection that is further

2 southeast of both properties.

3   We counted all of the properties volume coming and

4 going, obviously, from the site access points during the

5 typical weekday, and that's 6:30 to 9:30 in the morning,

6 typical weekday, and then from 4:00 to 7:00, those were done

7 in May of, excuse me, of last year. This project, as you

8 know, has been pending for awhile.

9   MR. GROSSMAN: 2015.

10   MS. RANDALL: Yes, that's correct. And we then

11 went through and analyzed the existing conditions for the

12 property, which was --

13   MR. GROSSMAN: Actually, I see this was filed May

14 of 2016, by the way.

15   MS. RANDALL: '16, yes. Yes.

16   MR. GROSSMAN: It wasn't last year.

17   MS. RANDALL: No, no, my counts were done in May,

18 2015.

19   MR. GROSSMAN: 2015. Okay.

20   MS. RANDALL: Yes. Yes.

21   MS. GIRARD: It took a little longer to file the

22 application --

23   MS. RANDALL: Yes, it took awhile.

24   MS. GIRARD: -- than the original ones did.

25   MR. GROSSMAN: I see. Okay.

1   MS. RANDALL: As we were going through, and

2 looking at what the potential density might be on the

3 property, and there were other issues. But we did our

4 counts in early May, and I believe this was filed towards

5 the end of May, or middle of May.

6   MR. GROSSMAN: Well, this was filed --

7   MS. GIRARD: It was longer than that.

8   MR. GROSSMAN: -- you're saying your counts were

9 made in May of 2015?

10   MS. RANDALL: Yes.

11   MR. GROSSMAN: This was filed in May of 2016?

12   MS. RANDALL: That's correct.

13   MR. GROSSMAN: Okay.

14   MS. RANDALL: That's correct. Yes. The existing

15 intersections using the existing volumes that were counted

16 at that time all meet the required standards, and are well

17 under the CLV standard for this area, which is at 1475 CLV.

18 The highest CLV at any one of the intersections occurred at

19 East Gude and Dover Road, and that is at 1152, so there was

20 more than sufficient capacity at these intersections.

21   The next thing we did was to take --

22   MR. GROSSMAN: Just for the record, you should

23 define the term CLV.

24   MS. RANDALL: Thank you. Critical lane volume.

25   MR. GROSSMAN: And what is that?

1   MS. RANDALL: That is a calculation of the

2 critical movements at a signalized intersection, or

3 unsignalized intersection. It's the standard that

4 Montgomery County currently uses for measuring capacity at

5 an intersection. It looks at the volume, the critical

6 movements, as an example, if you've got a north-south

7 roadway, the northbound throughs and the southbound lefts

8 are competing for that same space, or competing for green

9 time at a signalized intersection, so those two would be

10 considered critical movements. The same thing happens in

11 the east-west direction. So, it is looking, it's not the

12 total volume going through an intersection, but rather those

13 vehicles that are competing for that same green time. If

14 you had, if you were looking at northbound throughs and

15 southbound throughs they're not competing for the same

16 space, they're on opposite sides, and they're not competing

17 for that green time. It's the conflicting movements, lefts

18 or the rights, or in the opposite direction, if you're

19 looking at east and west you then add whatever the critical

20 movements are for the east-west flow, and the critical

21 movements for the north-south flow, you would add those then

22 together to get your total critical lane volume at an

23 intersection. And the County standards, as you know, are

24 set for the various policy areas within the County. In this

25 particular policy area, Derwood, it is set at 1475.

1   MR. GROSSMAN: I note that under the new proposed

2 staging area policies this analysis is going to change

3 somewhat, maybe --

4   MS. RANDALL: It is.

5   MR. GROSSMAN: -- as early as November. I'm not

6 sure, I take it that wouldn't affect this case?

7   MS. RANDALL: No.

8   MR. GROSSMAN: Okay.

9   MS. RANDALL: No. It would not. And it should be

10 noted that this particular case is for this flexibility for

11 this zoning. When they come in for a major redo it is

12 possible that they will be looking, Staff will be looking

13 for a new study, depending upon, you know, if they change

14 the uses in this significantly.

15   MR. GROSSMAN: Right.

16   MS. RANDALL: Or if they decide to come in and

17 modify the building in some form or fashion they may have to

18 go through that process, potentially.

19   MR. GROSSMAN: But as I understand your reports

20 they cover both the present and the potential increase in

21 gross floor area.

22   MS. RANDALL: We do in this analysis. I'm just

23 saying in the future if there were something to happen with

24 this piece of property that would trigger another LATR

25 review then they would be subject to those guidelines at

1 Gude Drive, or Dover Road, or Southlawn. It should be noted

2 that when we do our scoping agreement with Staff we set out

3 our distributions, we provide them with the information

4 before we have done our analysis so that they buy into what

5 we're proposing to do with the distributions. Because these

6 were all industrial uses they all follow a very similar

7 distribution pattern, though they don't have exactly the

8 same access, they may not enter the road quite the same way.

9   MR. GROSSMAN: Okay.

10   MS. RANDALL: Then in the projects, they were

11 adding, those background developments were adding a total of

12 83 a.m. peak hour trips to the area road network, and 95

13 p.m. peak hour trips to the network. In --

14   MR. GROSSMAN: Right. I noted that the

15 Transportation Planning Staff erroneously I think said that

16 you weren't going to be increasing the number of trips over

17 30, but a total number of trips would be over 30 and

18 therefore a full report was issued. I think actually both

19 of those are going if you do add the density you're

20 proposing your increase would be over 30 trips during the

21 peak hour and the peak period, but also your total is

22 clearly --

23   MS. RANDALL: That's correct.

24   MR. GROSSMAN: -- for this zone.

25   MS. RANDALL: And actually, Staff corrected --

1 that time.

2   MR. GROSSMAN: Okay.

3   MS. RANDALL: Pipeline developments were also

4 included. Staff gave us a list of projects in the area that

5 we needed to include, that was --

6   MR. GROSSMAN: Maybe you should also define what a

7 pipeline development is --

8   MS. RANDALL: Yes.

9   MR. GROSSMAN: -- for the record?

10   MS. RANDALL: It's an approved project that has

11 not yet been built or occupied. A project may be actually

12 under construction, but not physically occupied. So, any

13 project that is as we refer to it in the pipeline to be

14 occupied, be it not yet constructed, under construction, or

15 just not quite occupied, hadn't had all the finishers or

16 fittings of whatever the building is. So, in the case of

17 this particular project we had Lincoln Park, and that is

18 42,000 square feet, plus or minus, of warehouse use;

19 Southlawn, which was approximately 4,500 square feet of

20 industrial use; and then Easy Storage, which is in the City

21 of Rockville, which is approximately 110,000 square feet of

22 mini-warehouse. Those projects were included in our

23 analysis, the trips that would be generated both by those

24 projects that would then affect our study intersections were

25 applied to the study intersections routed through the East

1   MR. GROSSMAN: On the latest, the very latest

2 thing --

3   MS. RANDALL: Yes. They did.

4   MR. GROSSMAN: -- I just got yesterday --

5   MS. RANDALL: Yes.

6   MR. GROSSMAN: -- I haven't looked at what the

7 Transportation Staff --

8   MS. RANDALL: Yes. On page three of their Staff

9 Report they blue lined it, and took those --

10   MR. GROSSMAN: This is at the Transportation Staff

11 Report?

12   MS. RANDALL: Yes. It was.

13   MR. GROSSMAN: Because I think that the Technical

14 Staff, the overall Technical Staff Report already didn't

15 refer to the change, they just referred to the zone of it.

16   MS. RANDALL: Yes. And I'm happy to leave a copy

17 of this if --

18   MR. GROSSMAN: I have, I have it.

19   MS. RANDALL: You do, okay.

20   MR. GROSSMAN: It just came in yesterday, but I

21 just didn't look at -- I figured that's what they had done.

22   MS. RANDALL: Yes. No, they had --

23   MR. GROSSMAN: Correct? Because I --

24   MS. RANDALL: -- taken that --

25   MR. GROSSMAN: -- raised it with Technical Staff,

1 if seemed to me that they were misleading elements.

2   MS. GIRARD: Is that the Planning Board's letters?

3   MS. RANDALL: This is Mr. Axler's letter where he

4 makes the statement on, and he corrected it on the 31st of

5 August, and when I went last evening to pull his comments up

6 I saw that very line. It's on page three of his comments,

7 it's under the table under local transportation review.

8   MS. GIRARD: Well, I'm sorry to cut you off,

9 Nancy, but the Technical Staff Report is in the record at

10 26. I think what the Hearing Examiner is referring to that

11 he got yesterday was the Planning Board's transmission of

12 their recommendation?

13   MR. GROSSMAN: Right. We also --

14   MS. GIRARD: So, I just want to make sure that

15 what Ms. Randall is referring to is actually in the record,

16 because I'm not sure if Staff sent that to the Hearing

17 Examiner as part of their Staff Report or not?

18   MR. GROSSMAN: Not as the original Staff Report,

19 they attached the uncorrected --

20   MS. GIRARD: They did attach this?

21   MR. GROSSMAN: -- they attached the original Staff

22 Report that we received --

23   MS. GIRARD: Uh-huh.

24   MR. GROSSMAN: -- attached the original

25 Transportation Planning Staff memo.

1 a copy and paste.

2   MR. GROSSMAN: Yes, I suspect you're right. Well,

3 it's not a direct conflict because what they were saying was

4 that the change was not more than 30, but that's an

5 inaccurate statement.

6   MS. RANDALL: That's correct.

7   MR. GROSSMAN: And then the next paragraph talks

8 about the total, but in fact both are more?

9   MS. RANDALL: Yes.

10   MR. GROSSMAN: Okay.

11   MS. RANDALL: Yes. Do you want that?

12   MR. GROSSMAN: Yes. We can actually add that, the

13 corrected, or I don't think that necessarily makes a big

14 difference, but --

15   MS. GIRARD: As long as it's in the record I'm

16 fine --

17   MR. GROSSMAN: No, right. I --

18   MS. GIRARD: -- it just wasn't, it wasn't clear

19 from the exhibit list that that was in the record.

20   MR. GROSSMAN: No, it hasn't been, the corrected

21 one hasn't been put in the record.

22   MS. GIRARD: Entered yet. Okay.

23   MR. GROSSMAN: It arrived yesterday, but it hasn't

24 been exhibitized.

25   MS. GIRARD: Got it. Okay.

1   MS. GIRARD: Okay. Memo.

2   MR. GROSSMAN: What they have now attached is the

3 one that's corrected on 8-31. Let me see if I can pull that

4 up. It's just stamped at the top.

5   MS. GIRARD: Right. In red.

6   MR. GROSSMAN: Right. Well, my copy is not color

7 copy, so, but it's, it's stamped corrected 8-31-16. And

8 let's see, what's the page that they made the correction on?

9   MS. RANDALL: They made the correction on page

10 three.

11   MR. GROSSMAN: Okay.

12   MS. RANDALL: Underneath of the table up in the

13 right hand corner that says land use, under the paragraph

14 local area transportation review, about middle of the page.

15   MR. GROSSMAN: Okay. I see. And they crossed out

16 the Applicant is not required to submit --

17   MS. RANDALL: That's correct.

18   MR. GROSSMAN: -- a traffic study because the

19 proposed change generates fewer than 30, yes.

20   MS. RANDALL: Right.

21   MR. GROSSMAN: Okay.

22   MS. RANDALL: Okay. Which obviously is in direct

23 conflict with the next paragraph.

24   MR. GROSSMAN: Right, right.

25   MS. RANDALL: I think it was just a holdover from

1   MS. RANDALL: Yes. So, to continue, when you add

2 the background development to the seven study intersections

3 that we looked at, again, the highest critical lane volume

4 result is at East Gude and Dover Road, and that CLV comes up

5 to 1,167 vehicles, critical lane vehicles.

6   MR. GROSSMAN: Right.

7   MS. RANDALL: Then the next step that we looked at

8 was the existing site, and what the density increase could

9 be for this property. Looking at that footprint and

10 doubling that footprint basically gives you the answer,

11 knowing that that second floor could come in. And then it

12 was a question of how much of that is going to be a

13 warehouse use, or an office use for the property, or a

14 retail use, all those different possible combinations. When

15 we went through the possible combinations the highest

16 generator for this was going to be the combination of

17 warehouse and retail, for obvious reasons.

18   And so, the, under the existing square footage

19 that we have on the property today is 146,628 square feet,

20 warehouse comprises 123,000 of that, approximately, and

21 office comprises 23,000 of that. So, the existing uses are

22 generating 125 trips in the morning, and 120 in the evening.

23 This can be found on Table 3-4, or page 22. I better put my

24 glasses on. And with changing the uses, and increasing the

25 quantity of uses on the property, with the majority going to

1 warehouse, we have 259,385 square feet of warehouse, and
2 33,871 square feet of retail space, and the increase, or the
3 net increase overall from the property in the morning peak
4 hour is 79 trips, and 248 in the evening, peak hour.
5   MR. GROSSMAN: By the way, I think what I'll do to
6 get the corrected, I noticed that the Technical Staff Report
7 attached to the Planning Board's letter, or that came in
8 with the Planning Board's letter didn't change, didn't
9 correct the item that they corrected in their table on page
10 seven. So, if nobody has any objection, I will correct
11 that, probably just interlineate the change on that, and
12 I'll include the corrected Transportation Staff Report, and
13 I'll make it as an Exhibit 27A, that is it'll be an
14 attachment to the Planning Board letter.
15   MS. RANDALL: Sure.
16   MR. GROSSMAN: And it'll just say corrected Staff
17 Reports, or something like that.
18   MS. RANDALL: Okay.
19   MR. GROSSMAN: And that'll be the same in both
20 cases.
21   (Exhibit No. 27A was marked
22   for identification.)
23   MR. GROSSMAN: Okay.
24   MS. RANDALL: Okay. So, the results of adding the
25 additional traffic from the increase in square footage, or

1 doubling of putting a second floor on those buildings, would
2 bring the CLV, the highest CLV up to 1,231 critical lane
3 vehicles, that's at East Gude Drive and Dover Road. It
4 should be noted, obviously, that the East Gude Drive site
5 access for 800 and 850 also go up, but they are well within
6 the 1475 standard.
7   MR. GROSSMAN: Okay.
8   MS. RANDALL: And the remainder of the
9 intersections are, as well.
10   MR. GROSSMAN: How did you calculate the usage for
11 the additional density that would be provided if we don't
12 know what that usage exactly would be?
13   MS. RANDALL: We were looking at, we -- and
14 obviously, we don't. It was a question of for this
15 particular piece of property if we doubled the square
16 footage, and the intent was not to knock the buildings
17 down --
18   MR. GROSSMAN: Right.
19   MS. RANDALL: -- that we were going to stay within
20 those footprints, that if they, and they have the ability to
21 have a second floor, that gave us the number, and then, then
22 it was a question of what is the likely tenanting of these
23 buildings.
24   MR. GROSSMAN: Right.
25   MS. RANDALL: And looking at, I mean, obviously,

1 we could have used office, but that trip generation would
2 have been lower, and we wanted to ensure that we had
3 flexibility within the property. And I believe that under
4 the zone, and, please, somebody correct me if I'm wrong, but
5 I think there's also a limitation on the percentage of
6 retail that you can have within this zone. So, we wanted to
7 make sure that we were looking at the worst case, with
8 tenanting mix, but all the while taking advantage of max
9 density.
10   MR. GROSSMAN: Okay. So, you calculated your
11 figures for CLV based on the worst case scenario for
12 potential tenancy --
13   MS. RANDALL: That's correct.
14   MR. GROSSMAN: -- for the increased usage?
15   MS. RANDALL: That's correct.
16   MR. GROSSMAN: Okay.
17   MS. RANDALL: Are you ready?
18   MR. GROSSMAN: Yes.
19   MS. RANDALL: Okay.
20   MR. GROSSMAN: Thank you.
21   MS. RANDALL: The next thing we did was to do the
22 study for 851 and 861, parcels that are on the southwest
23 side of East Gude Drive.
24   MS. GIRARD: So, H-114.
25   MS. RANDALL: Thank you. H-114. And in this

1 report everything is generally the same, the study area is
2 the same, the background developments that we included in
3 the prior route report are included here with one change, we
4 added the development of this property into our background
5 so that we would have an understanding of the compound
6 nature of these projects.
7   MR. GROSSMAN: You said the development of this
8 property and reached over to --
9   MS. RANDALL: I'm sorry, and I reached for my
10 other document. My apologies. For 800 and 850 --
11   MR. GROSSMAN: So, for H-113?
12   MS. RANDALL: Yes.
13   MR. GROSSMAN: So, you included H-113 development
14 in the potential background traffic for --
15   MS. RANDALL: That's correct. That's --
16   MR. GROSSMAN: Did you do the same when you did H-
17 113 did you include H-114?
18   MS. RANDALL: No, we went through the exercise
19 only once to come up. It wasn't going to matter one way or
20 the other, we just --
21   MR. GROSSMAN: Okay.
22   MS. RANDALL: -- wanted to understand what the
23 worst case was going to be for --
24   MR. GROSSMAN: Okay.
25   MS. RANDALL: -- the property in terms of our

1 study intersections.
2   MR. GROSSMAN: All right.
3   MS. RANDALL: We didn't go through that twice.
4 The additional trips that were noted in the report of -- do
5 you have an exhibit number?
6   MS. GIRARD: Yes, H-11 -- which one do you want me
7 to refer to?
8   MR. GROSSMAN: H-11 --
9   MS. RANDALL: Because 800 --
10   MS. GIRARD: H-113 is Exhibit 19.
11   MS. RANDALL: Exhibit 19, so the trip generation
12 that is shown in Exhibit 19 for the properties of 850 and
13 800 East Gude Drive are contained in Table 3-2, so the total
14 traffic that is going to be generated by all of these
15 background developments was going to be 162 a.m. peak hour
16 trips, and 343 background trips.
17   MS. GIRARD: And you're looking at Table 3-2 --
18   MS. RANDALL: On page --
19   MS. GIRARD: -- in Exhibit --
20   MS. RANDALL: -- 19.
21   MS. GIRARD: -- 17 at H-114.
22   MS. RANDALL: Thank you.
23   MR. GROSSMAN: Wait a minute.
24   MS. GIRARD: The numbers she's citing to --
25   MR. GROSSMAN: You just referenced the -- before

1 you said she was looking at an H-113 exhibit?
2   MS. GIRARD: That was when she was holding up the
3 one for 800.
4   MR. GROSSMAN: Okay. So, now looking at --
5   MS. GIRARD: The chart she's talking about right
6 now is Exhibit, yes, it's Exhibit 17 --
7   MR. GROSSMAN: Right.
8   MS. GIRARD: -- in H-114 --
9   MR. GROSSMAN: All right.
10   MS. RANDALL: Page --
11   MS. GIRARD: -- Table 3-2 --
12   MS. RANDALL: Page 19.
13   MR. GROSSMAN: Okay. And that's the one that
14 includes the H-113 traffic generation?
15   MS. RANDALL: Exactly.
16   MR. GROSSMAN: And so, what did you come up with
17 in terms of CLV?
18   MS. RANDALL: Yes, exactly. And so, the next step
19 was, obviously, we went through and ran the background CLV,
20 they all met the standard, so the last test was the total
21 future, which is shown on Table 3-4, sorry, yes, 3-4, which
22 is the trip generation for the parcels on the southwest side
23 of East Gude, that's 851 and 861, and the net increase in
24 volume for those parcels is 117 a.m. peak hour trips, and
25 249 p.m. peak hour trips. The mix of uses in this southern

1 site is slightly different, we have 272,495 square feet of
2 warehouse, and 27,000 square feet, plus or minus, of retail
3 space. Again, this was selected based on maintaining the
4 max density, and making sure that we were looking at a worst
5 case scenario for this property, as well. The total square
6 footage on the property would be 299,610 square feet. Those
7 trips were distributed to the area roadways, added through
8 the network, and the resulting, the highest CLV, again,
9 occurred at the intersection of East Gude Drive and Dover
10 Road with a CLV of 1,257 vehicles during the p.m. peak hour.
11 The site access on Dover Road, just for information
12 purposes, is well under, the max there is 474 vehicle trips.
13 So, there is an access as shown on Exhibit 29 to the east or
14 the right side of that parcel, you can see the access that
15 comes directly out onto Dover Road.
16   MR. GROSSMAN: Right. I noticed that the
17 Technical Staff Report did not list the site access figures,
18 but your report did.
19   MS. RANDALL: Yes.
20   MR. GROSSMAN: Right.
21   MS. RANDALL: Yes. Yes. We looked at each, each
22 one --
23   MR. GROSSMAN: Right.
24   MS. RANDALL: -- of the site access points. So,
25 that was the basic CLV analysis. The other thing that Staff

1 asked us to, and they are actually expanding this in the
2 next round of LATR guidelines, but they also ask you to do a
3 pedestrian bicycle transit statement, which is contained
4 within both the reports. There is a Ride-On bus Route 59 in
5 the immediate vicinity along East Gude Drive. We looked at
6 each one of the signalized intersections within our study
7 area to provide information on crosswalks, ADA compliant,
8 the full inventory that Staff is looking for on those items,
9 and we had gone through, put all of that in the original
10 report, and as I said, Staff is expanding, and we have a new
11 member at MCDOT and she came from the City of Rockville, and
12 she's -- Sorry. Thank you. Montgomery County Department of
13 Transportation. She used to work for the City of Rockville,
14 and they have a very expanded requirement in the way of
15 pedestrian information that they want to see in their
16 pedestrian, she's now applying that to all projects in
17 Montgomery County. So, I think you'll be seeing expanded
18 statements. So, there is a supplemental analysis that we
19 did to address the comment from Montgomery County Department
20 of Transportation, which I believe Erin has provided you
21 copies this morning, and I've got additional copies if you
22 don't.
23   MS. GIRARD: I have them, but if you don't.
24   MS. RANDALL: I do. I do.
25   MS. GIRARD: Mine have hole punches.

1   MS. RANDALL: No, no, no. That's fine. So, I
2 have copies of the letters --
3   MR. GROSSMAN: Okay.
4   MS. RANDALL: -- from MCDOT approving our traffic
5 impact study, the LATR study, and their request for this
6 additional information, as well.
7   MR. GROSSMAN: All right.
8   MS. RANDALL: And I have this for both properties.
9   MR. GROSSMAN: Okay.
10   MS. RANDALL: One second.
11   MR. GROSSMAN: Okay. So, all right. So, we
12 haven't seen, this hasn't been supplied --
13   MS. RANDALL: No.
14   MR. GROSSMAN: -- to my office before? Okay.
15   MS. RANDALL: No, and it was information that they
16 were requesting to supplement the record. Just so you know,
17 I did have a conversation with Rebecca Torma, and she said
18 that this had fulfilled her request for information, the
19 additional information.
20   MR. GROSSMAN: Okay.
21   MS. RANDALL: There's also a graphic on the very
22 back that provides the data that she was looking for.
23   MR. GROSSMAN: Okay. So, for H-113, Exhibit 30
24 will be Ms. Randall's letter to Ed Axler of August 10, 2016.
25   (Exhibit No. 30 was marked for

1   MR. GROSSMAN: -- and then you supplied it --
2   MS. RANDALL: That's correct.
3   MR. GROSSMAN: So, actually, your letter will be
4 Exhibit 31.
5   (Exhibit No. 31 was marked for
6   identification.)
7   MR. GROSSMAN: And their request will be Exhibit
8 30 as 7-25-16 request from Gregory Leck of MCDOT for a
9 pedestrian and bicycle statement. And 31 will be your
10 letter to Ed Axler addressing pedestrian and bicycle paths.
11 All right. And that's the same numbering for both cases.
12 Okay.
13   MS. GIRARD: Okay. Ms. Randall, I think we eluded
14 to this, but just to be clear, so, did Park and Planning
15 Staff and the Montgomery County Department of Transportation
16 evaluate your traffic impact analysis?
17   MS. RANDALL: They did.
18   MS. GIRARD: And did they agree with your
19 conclusions?
20   MS. RANDALL: They did.
21   MS. GIRARD: And did they find any improvements or
22 anything else was necessary?
23   MS. RANDALL: No, they did not.
24   MS. GIRARD: So, Ms. Randall, based on your
25 analysis and in your expert opinion are nearby roads and

1   identification.)
2   MR. GROSSMAN: And since I haven't read through
3 this, this is, I take it this is the letter that addresses
4 the question of pedestrian and bicycle access?
5   MS. RANDALL: Yes, and the letter that came from
6 the government staff indicates that they approved the LATR
7 study, but, yes, I believe it's the last statement in their
8 letter requesting this information.
9   MS. GIRARD: And it mainly deals with pedestrians?
10 Pedestrian network?
11   MS. RANDALL: It does. ADA compliant,
12 pedestrians, more detailed inventory than is typically
13 required.
14   MR. GROSSMAN: Well, wait a second. Now, I'm a
15 little confused. Just let me understand. All right. So,
16 and then you have the letter from Gregory Leck dated, but
17 that precedes your letter, so now I --
18   MS. RANDALL: It should.
19   MS. GIRARD: The letter --
20   MS. RANDALL: It should. Their letter is
21 requesting additional information.
22   MR. GROSSMAN: Okay. All right. So, what I'll do
23 then is -- all right. So, they requested the additional
24 information --
25   MS. RANDALL: Yes.

1 circulation systems adequate to serve the proposed
2 developments?
3   MS. RANDALL: They are.
4   MS. GIRARD: And in your expert opinion would the
5 proposed development generate traffic that does not exceed
6 the critical lane volumes, or volume capacity ratio standard
7 as applicable under the Planning Board's LATR guidelines?
8   MS. RANDALL: The LATR guidelines require a CLV of
9 1475, and for both cases the CLV will be well below that
10 1475 critical lane volume limit.
11   MS. GIRARD: Okay. And I your expert opinion from
12 the standpoint of transportation planning is the proposed
13 zoning classifications and developments suitable for the
14 subject properties, and compatible with existing and
15 approved adjacent development?
16   MS. RANDALL: It is.
17   MS. GIRARD: That's all we have for Ms. Randall.
18   MR. GROSSMAN: Will any of your conclusions be
19 affected if there is an additional 5,000 square feet of
20 usage outside of the footprint of the building?
21   MS. RANDALL: No, I don't believe so based on what
22 I've heard today, because it is going to be an ancillary
23 use. It is not an expansion of, you know, as an example,
24 retail space, it's not an, it's more for if you've got to do
25 a storage of outdoor type of equipment, or a refrigerator,

1 or what do I want to call it, sorry --
2   MR. GROSSMAN: Air conditioner?
3   MS. RANDALL: -- storms. No, generators.
4   MR. GROSSMAN: Yes, generators.
5   MS. RANDALL: Sorry, I just couldn't come up with
6 the word. That kind of use doesn't generate traffic. Now,
7 if for whatever reason they were to come in and expand
8 retail space, you know, expand the building for retail
9 space, and --
10   MR. GROSSMAN: That wouldn't be permitted under
11 the binding element of change with that.
12   MS. GIRARD: Right.
13   MS. RANDALL: Well, exactly. That's my point, you
14 know, DPS would look at that, and that would be a whole new
15 case. So, I do not see that this request would impact
16 traffic in any way. And again, we have the ability to look
17 at this from a trip generation point of view, and look at
18 this in relation to what has been produced for these
19 reports, as well, you know if they were to mix the uses in
20 some form or fashion. I don't see that happening, but, you
21 know, there's always, the Staff always has that opportunity
22 to come back and take a look at what was prior, what the
23 prior approval was.
24   MR. GROSSMAN: And are the access points to the
25 sites, and the internal circulation in the sites in both H-

1   MS. GIRARD: Sure.
2   MR. GROSSMAN: And, but before I do I take it
3 there are no more exhibits that you planned to submit?
4   MS. GIRARD: No.
5   MR. GROSSMAN: So, and I assume that you want to
6 admit the Exhibits 1 through 31 and their subparts into
7 evidence?
8   MS. GIRARD: Yes, please.
9   MR. GROSSMAN: Okay. So, in both cases, in
10 exhibits, in Case H-113, and in case H-114, Exhibits 1
11 through 31 and their subparts are admitted into evidence,
12 and I will also admit into evidence any supplemental filings
13 that you make that is correction of the Floating Zone Plan,
14 to include any changed binding element that's proposed, and
15 any other justification statement you wish to provide to
16 Technical Staff for that purpose, they will also be admitted
17 as exhibits in the case.
18   (Exhibit Nos. 1-31 were
19   received into evidence.)
20   MR. GROSSMAN: And now, how much time do you want
21 to talk among yourselves to determine the exact language
22 that you want in the proposed binding elements?
23   MS. GIRARD: Five minutes should be more than
24 fine.
25   MR. GROSSMAN: Okay. All right. I'll give you a

1 113 and 114 safe and adequate?
2   MS. RANDALL: They are. They are. I've driven
3 through both, you can circulate easily through both
4 properties. And for the mini-warehouse, you know, there's
5 not free access into that, it's well secured.
6   MR. GROSSMAN: Okay. Okay. I have no further
7 questions.
8   MS. GIRARD: That's all we have.
9   MS. RANDALL: Okay.
10   MR. GROSSMAN: Thank you.
11   MS. GIRARD: I'm sorry, we're --
12   MR. GROSSMAN: I'm going to get --
13   MS. GIRARD: -- talking about the binding element.
14   MR. GROSSMAN: I'm going to do this, I'm going to
15 break in just a couple of minutes and give you some time to
16 think of language to figure out the exact language that you
17 want --
18   MS. GIRARD: Okay.
19   MR. GROSSMAN: -- in your binding element as
20 amended, because this is the public hearing, and so we
21 should at the very least have that language stated at the
22 public hearing --
23   MS. GIRARD: Sure.
24   MR. GROSSMAN: -- so that it's available to the
25 public should they wish to comment on it.

1 little bit more, I'll give you 10 minutes, and we'll come
2 back. And I always double attorney estimates, a general
3 rule of thumb. We'll come back at 10 to 12:00.
4   MS. GIRARD: Okay.
5   MR. GROSSMAN: Okay.
6   MS. GIRARD: Perfect. Thank you.
7   MR. GROSSMAN: Sure.
8   (OFF THE RECORD.)
9   (ON THE RECORD.)
10   MR. GROSSMAN: All right. Back on the record.
11   MS. GIRARD: It's a good thing we had 10 minutes.
12   MR. GROSSMAN: If you need more time I'm happy
13 to --
14   MS. GIRARD: No, we're good, but it did take every
15 bit of it. I figured I should write it out.
16   MR. GROSSMAN: All right. So, what is the final
17 language?
18   MS. GIRARD: Okay. I am going to hand you,
19 it's --
20   MR. GROSSMAN: All right.
21   MS. GIRARD: -- the best handwriting I can do,
22 what we think --
23   MR. GROSSMAN: It's a lot better than my
24 handwriting. I can't even read my handwriting after a day
25 or two.

1   MS. GIRARD: I was trying hard, that's why I took
2   all 10 minutes.
3   MR. GROSSMAN: All right. So, the new language is
4   no increase in gross floor area will occur outside of the
5   existing building footprint, except that a maximum of 5,000
6   square feet may be located on existing impervious area
7   outside the building footprints for ancillary tenant uses.
8   This area will count towards the maximum gross floor area
9   allowed by the plan. Okay.
10   MS. GIRARD: And we added that last part just to
11 kind of clarify after what Ms. Randall was saying that we're
12 not proposing that 5,000 be in addition to the cap that we'd
13 set --
14   MR. GROSSMAN: Right.
15   MS. GIRARD: -- it would be part of.
16   MR. GROSSMAN: Okay.
17   MS. GIRARD: So, it wouldn't generate any traffic
18 that's not already accounted for in her studies.
19   MR. GROSSMAN: Right. So, let me make this as an
20 Exhibit 32, and this will be admitted, as well, in both
21 cases.
22   (Exhibit No. 32 was marked for
23   identification, and received
24   into evidence.)
25   MS. GIRARD: Okay.

1   MR. GROSSMAN: And we'll call it proposed revised
2   language for binding element. We'll say Applicant's
3   proposed, Applicant's proposed revised language for binding
4   element.
5   MS. GIRARD: Okay.
6   MR. GROSSMAN: Okay. Okay. So, do you have any,
7   you have no additional witnesses, I take it?
8   MS. GIRARD: I do not.
9   MR. GROSSMAN: Do you have a closing statement you
10 wish to make?
11   MS. GIRARD: No, I think we, I think we've
12 exhausted --
13   MR. GROSSMAN: You've covered it.
14   MS. GIRARD: -- everything we want to say.
15   MR. GROSSMAN: All right. So, let's talk about
16 how much time you need. I think that you'll have to submit
17 this in a more formal form --
18   MS. GIRARD: Yes.
19   MR. GROSSMAN: -- to our office, and to Technical
20 Staff, so how much time do you want to do that, with any
21 justification you want to add?
22   MS. GIRARD: I can do that by early next week.
23   MR. GROSSMAN: Okay. Just --
24   MS. GIRARD: Let me get a calendar here.
25   MR. GROSSMAN: Yes, I'll get a calendar up, too.

1   And give yourself enough time so you're sure of any of these
2   steps, because I don't want to have to issue --
3   MS. GIRARD: Right.
4   MR. GROSSMAN: -- a formal order extending time,
5   you know --
6   MS. GIRARD: Right.
7   MR. GROSSMAN: -- not that I would have a problem
8   with extending you time, just I don't want to have to
9   distribute that to everybody in the world.
10   MS. GIRARD: We can submit the revised binding
11 element and justification by the 21st, let's say, I'll give
12 myself till Wednesday.
13   MR. GROSSMAN: Okay. So, 9-21-16 for revised
14 binding element and justification. Well, we want to give
15 Staff at least 10 days, and I don't assume they'll go back
16 to the Planning Board for this, but it's conceivable that
17 they would, but --
18   MS. GIRARD: Honestly, if they thought that it was
19 major enough to go back to the Planning Board we'd have to
20 work on what they thought would trigger it, maybe back it
21 down.
22   MR. GROSSMAN: Right. So, that would actually,
23 that would be, becomes a Saturday, so it would be, Staff
24 would have to, we'd give Staff till 10-3, the 10-day period
25 ends on the first of October, which is a Saturday, so they

1   would have till 10-3-16 for Staff, or public response. And
2   since this is announced at a public hearing I won't issue
3   anything --
4   MS. GIRARD: Okay.
5   MR. GROSSMAN: -- further than just this
6   announcement. And then do you want a few days just in case
7   Staff doesn't agree --
8   MS. GIRARD: Yes.
9   MR. GROSSMAN: -- do you want a few days to
10 respond? So, until what date, then, do you want?
11   MS. GIRARD: Why don't we go till the seventh,
12 that Friday?
13   MR. GROSSMAN: Okay. So, that's 10-7-16 for
14 Applicant response.
15   MS. GIRARD: And then assuming that they're in
16 agreement, or if there's a little tweak here and there,
17 that's the point at which we would submit the covenant and
18 the revised plan with that language. Should we wait, I'm
19 assuming we should wait to do that until we get Staff's
20 input, is what I'm saying.
21   MR. GROSSMAN: No, I think the, probably the best
22 way to do it is when you submit it, when you submit the
23 covenant, revised covenant and justification you also submit
24 the revised --
25   MS. GIRARD: Plans.

1 MR. GROSSMAN: -- Floating Zone Plans.

2 MS. GIRARD: Okay. So, submit that all --

3 MR. GROSSMAN: It's not much of a change.

4 MS. GIRARD: -- by the 21st.

5 MR. GROSSMAN: Yes.

6 MS. GIRARD: But then if Staff has, doesn't like a

7 word, or whatever, then we would re-submit plans to address

8 their comments by the seventh?

9 MR. GROSSMAN: Right, unless that's --

10 MS. GIRARD: Okay.

11 MR. GROSSMAN: -- tremendous, is that a tremendous

12 expense to have that done like that?

13 MS. BRYANT: I don't think so. MR.

14 GROSSMAN: Okay.

15 MS. GIRARD: No.

16 MR. GROSSMAN: All right. So, I think that's the

17 best way because then you have --

18 MS. GIRARD: Okay.

19 MR. GROSSMAN: -- the final plan is out there,

20 too --

21 MS. GIRARD: Sure.

22 MR. GROSSMAN: -- as well. So, the 9-21 date is

23 for the revised binding element, the justification, and the

24 revised FZP for both cases.

25 MS. GIRARD: Yes.

1 MR. GROSSMAN: And October 3 Staff or public

2 response; October 7 for Applicant's response; and then we'll

3 say 10-7 will be close of the record --

4 MS. GIRARD: Okay.

5 MR. GROSSMAN: -- at close of business. Is there

6 any reason why we need to build more time in it than that

7 for, let's say if Staff, I guess if Staff disagrees and

8 comes back with an alternative proposal, or something, then

9 I guess your response would have to handle that, if your

10 response doesn't agree with what Staff says at that point,

11 and you can certainly talk to them --

12 MS. GIRARD: Yes, we can work within a week.

13 MR. GROSSMAN: -- about it, then we'd have to

14 extend the closing of the record, which I prefer, once

15 again, I prefer since this is the public hearing I don't

16 have to issue something. When I have to issue something I

17 have to send it to a lot of places.

18 MS. GIRARD: Yes. Understood.

19 MR. GROSSMAN: So --

20 MS. GIRARD: I'm going to get right to them, so

21 I --

22 MR. GROSSMAN: Okay.

23 MS. GIRARD: -- we'll be able to get it all done

24 by the seventh.

25 MR. GROSSMAN: So, we're good on all that, then?

1 MS. GIRARD: Yes.

2 MR. GROSSMAN: Okay, then. And as I said, the

3 additional exhibits based on these additional submissions

4 will become part of the record, will be admitted into the

5 record, as well. Is there anything further?

6 MS. GIRARD: That's it.

7 MR. GROSSMAN: Then we are adjourned. Have a good

8 weekend --

9 MS. GIRARD: Thank you very much.

10 MR. GROSSMAN: -- everybody.

11 (Whereupon, at 11:59 a.m., the hearing was

12 concluded.)

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