



## **Transcript of Hearing**

**Date:** December 16, 2016

**Case:** Parkview at Aspen Hill, LLP, CU 17-04, In Re:

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Transcript of Hearing  
Conducted on December 16, 2016

1 (1 to 4)

1	3
1 OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS	1 I N D E X
2 MONTGOMERY COUNTY OFFICE BUILDING	2 OPENING STATEMENTS PAGE
3 - - - - - x	3 BY MS. HARRIS 13
4 IN THE MATTER OF: :	4
5 PARKVIEW AT ASPEN HILL, : Case No.	5 TESTIMONY OF IVY DENCH-CARTER PAGE
6 LLP : CU 17-04	6 DIRECT 17
7 :	7
8 :	8 TESTIMONY OF TODD REDDAN PAGE
9 - - - - - x	9 DIRECT 34
10	10
11 OZAH HEARING	11 TESTIMONY OF KEVIN FOSTER PAGE
12 BEFORE THE HEARING EXAMINER	12 DIRECT 73
13 MARTIN L. GROSSMAN	13
14 ROCKVILLE, MARYLAND	14 TESTIMONY OF JUDITH MILLER PAGE
15 FRIDAY, DECEMBER 16, 2016	15 DIRECT 109
16 9:40 A.M.	16
17	17 TESTIMONY OF CHRISTOPHER KABATT PAGE
18	18 DIRECT 124
19	19
20	20
21	21 E X H I B I T S (Retained)
22	22
23 Job No.: 126404	23 MARKED ADMITTED
24 Pages: 1 - 152	24 EXHIBITS 1 - 38 143 143
25 Reported By: MELINDA JOHNSON, CSR	25
2	4
1 A P P E A R A N C E S	1 P R O C E E D I N G S
2	2 * * *
3 HEARING EXAMINER:	3 THE COURT: I shall call the case. This is
4 MARTIN L. GROSSMAN	4 a public hearing in the matter of CU 17-04 Parkview
5 OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS	5 at Aspen Hill, LLP, an application for conditional
6 100 Maryland Avenue	6 use in the zoning ordinance section -- wait for it
7 Room 200	7 -- 59.3.3.2.C.2.B to establish an independent living
8 Rockville, Maryland 20850	8 facility for seniors or persons with disabilities
9 240.777.6660	9 with 120 dwelling units. The subject site consists
10	10 of a 5.99-acre property identified as part of parcel
11 ON BEHALF OF THE APPLICANT:	11 P776 on tax map HR5.3 -- 53, excuse me.
12 PATRICIA HARRIS, ESQUIRE	12 It is located at 3132 Bel Pre Road in the
13 LERCH EARLY & BREWER	13 Aspen Hill area of Silver Spring, approximately
14 3 Bethesda Metro Center	14 1300 feet east of the intersection of Bel Pre Road
15 Suite 460	15 and Connecticut Avenue. It is in the RE-2 zone and
16 Bethesda, Maryland 20814	16 is subject to the 1994 Aspen Hill master plan.
17 301.841.3832	17 This hearing is conducted by the officer of
18	18 Zoning and Administrative Hearings. My name is
19	19 Martin L. Grossman. I'm the hearing examiner, which
20	20 means I will take evidence and write a report and
21	21 decision in this case.
22	22 Will the parties identify themselves for the
23	23 record, please.
24	24 MS. HARRIS: Good morning. Pat Harris with
25	25 Lerch, Early, and Brewer here on behalf of the

Transcript of Hearing  
Conducted on December 16, 2016

2 (5 to 8)

5	<p>1 Applicant.</p> <p>2 THE HEARING EXAMINER: All right. And I see</p> <p>3 there are a number of people in the audience. Is</p> <p>4 there anybody in the audience who is not a witness</p> <p>5 to be called by the Applicant or who wishes to be</p> <p>6 heard in this case? Seeing no hands.</p> <p>7 Ms. Harris, who are your witnesses today?</p> <p>8 MS. HARRIS: Our witnesses will be</p> <p>9 Ms. Ivy Dench-Carter representing the Applicant;</p> <p>10 Mr. Todd Reddan, civil engineer with GLW;</p> <p>11 Mr. Kevin Foster, the land planner from GLW;</p> <p>12 Ms. Judy Miller, the architect; and then</p> <p>13 Chris Kabatt, the traffic engineer.</p> <p>14 THE HEARING EXAMINER: All right. Those are</p> <p>15 the same you had previously identified?</p> <p>16 MS. HARRIS: Correct. We haven't added</p> <p>17 anyone else.</p> <p>18 THE HEARING EXAMINER: All right. And as I</p> <p>19 said, there is nobody in the audience from the</p> <p>20 community, and there were no letters that I received</p> <p>21 nor that staff received from the community.</p> <p>22 I won't go into a lengthy explanation of the</p> <p>23 proceedings. They're formal and informal. They are</p> <p>24 similar to a court proceeding. Witnesses would be</p> <p>25 sworn in and cross examined if there were somebody</p>	7	<p>1 four that you sought?</p> <p>2 MS. HARRIS: We do. And, in fact, our plans</p> <p>3 have been revised to reflect that.</p> <p>4 THE HEARING EXAMINER: Okay. That was my</p> <p>5 next question too about the revised plans. We'll</p> <p>6 have to hold the record open for at least ten days</p> <p>7 after today in order to give technical staff and the</p> <p>8 public an opportunity to comment on that change. I</p> <p>9 wouldn't leave it open in general, that is, for any</p> <p>10 comment because this public hearing is intended to</p> <p>11 be that form; but at least as to any changes, we</p> <p>12 would leave the record open.</p> <p>13 What effect, if any, will the new 2016 to</p> <p>14 2020 subdivision staging policy have if you do not</p> <p>15 file for subdivision before January 1, 2017? You</p> <p>16 can address that, if you like, through a witness</p> <p>17 or...</p> <p>18 MS. HARRIS: I'll give a short answer, and</p> <p>19 then our traffic engineer will, in fact, address it</p> <p>20 in more detail. And the short answer is there will</p> <p>21 be no effect. In fact, the requirements become less</p> <p>22 so under the new SSP for this property if we propose</p> <p>23 to do this.</p> <p>24 THE HEARING EXAMINER: Okay. And last night</p> <p>25 as I was preparing for this hearing, I noticed</p>
6	<p>1 here to cross examine, and everything is taken down</p> <p>2 by a court reporter.</p> <p>3 Let me just go to a couple of preliminary</p> <p>4 matters. If there are any modified plans or other</p> <p>5 exhibits that are introduced that have not been</p> <p>6 previously introduced, we will need, of course,</p> <p>7 electronic copies in PDF for maps, photos, and the</p> <p>8 like. And, of course, if they are text documents,</p> <p>9 in Microsoft Word or at the very least in</p> <p>10 text-searchable PDF format.</p> <p>11 This technical staff report, Exhibit 28, and</p> <p>12 attachments and the planning board letter,</p> <p>13 Exhibit 29, are automatically part of the record.</p> <p>14 But the planning board minutes and testimony are</p> <p>15 not.</p> <p>16 Question for you, do you accept the findings</p> <p>17 and analysis in the technical staff report?</p> <p>18 MS. HARRIS: Yes, we do. As well as the</p> <p>19 conditions of approval.</p> <p>20 THE HEARING EXAMINER: All right. That was</p> <p>21 my next question. You beat me to it.</p> <p>22 MS. HARRIS: Oh, sorry.</p> <p>23 THE HEARING EXAMINER: Do you accept the</p> <p>24 planning board's recommendation of at least ten</p> <p>25 long-term bicycle parking spaces rather than the</p>	8	<p>1 something. I sent you an e-mail.</p> <p>2 Did you receive that?</p> <p>3 MS. HARRIS: Yes, we did.</p> <p>4 THE HEARING EXAMINER: Okay. The e-mail</p> <p>5 asks: "What effect, if any, will ZTA 16-15 have on</p> <p>6 this case if it is adopted by the council?" Because</p> <p>7 it does change somewhat the requirements, at least</p> <p>8 for the limited use; but those are incorporated into</p> <p>9 the conditional use for this particular conditional</p> <p>10 use.</p> <p>11 So what effect, if any, would that have?</p> <p>12 MS. HARRIS: We reviewed, and it's a</p> <p>13 restriction on who can occupy the units. We</p> <p>14 reviewed that, and it appears that it would not have</p> <p>15 an effect. There was one somewhat curious provision</p> <p>16 that I would like an opportunity to ask staff what</p> <p>17 was intended by it. I can tell you now which one it</p> <p>18 was.</p> <p>19 THE HEARING EXAMINER: All right.</p> <p>20 By the way, I did make my e-mail. And</p> <p>21 actually Emily Tettelbaum, the technical staff,</p> <p>22 responded this morning saying she didn't think it</p> <p>23 would have an impact, but she will address it in her</p> <p>24 supplemental report. And that will be part of the</p> <p>25 record.</p>

Transcript of Hearing  
Conducted on December 16, 2016

3 (9 to 12)

<p>9</p> <p>1 MS. HARRIS: Yes. Okay. I saw that. 2 So it's on Page 4 of the ZTA subsection C 3 where it says -- where they take out that "a 4 caregiver can occupy" and then says "a person 5 authorized to occupy housing provided under any 6 federal or state program that is specifically 7 designed and operated to assist elderly persons as 8 defined in that program." 9 THE HEARING EXAMINER: Yes. 10 MS. HARRIS: It wasn't clear whether they're 11 saying that the housing needs to be authorized by 12 federal or state or that the individual person under 13 the program... 14 I just -- I think we'd like to ask staff for 15 some clarification on what the intent was for that 16 one. 17 THE HEARING EXAMINER: Right. Okay. 18 MS. HARRIS: But in any event, I don't -- we 19 did not see anything in the zoning attached 20 amendment that would adversely affect this project 21 and the occupants of it. 22 THE HEARING EXAMINER: Well, aside from 23 adversely, I mean, will it have any impact? Because 24 it is conceivable that it would be adopted prior to 25 a decision in this case; and, as you know, zoning</p>	<p>11</p> <p>1 MS. HARRIS: I think we would like to 2 approach it that way -- 3 THE HEARING EXAMINER: Okay. 4 MS. HARRIS: -- given that we didn't have a 5 chance to dig deeply into that. 6 THE HEARING EXAMINER: Right. Right. I 7 mean, this was in the back of my mind: Wasn't there 8 a ZTA affecting this? And then I looked it up, and 9 sure enough it was. Okay. 10 All right. One other thing I wanted to 11 mention in terms of the potential conditions, 12 obviously, this is a case where you have to go to 13 subdivision thereafter if there are any changes that 14 are made in the plans. And one of my conditions 15 would be adding on to what -- if this is approved, 16 what technical staff had suggested that you would 17 have to report back to zoning and administration 18 hearing any changes in the plans if they are 19 substantial. 20 I'm not sure what impact that would have. 21 It might have to be some kind of a minor amendment 22 or even a major amendment. Well, let's see what 23 occurs. 24 MS. HARRIS: Okay. And if there are changes 25 but they are not material and have no effect, is it</p>
<p>10</p> <p>1 changes are effective immediately even if there's a 2 pending application. 3 MS. HARRIS: So we went through the various 4 restrictions, or the changes on occupation. And, 5 but for seeking clarification on that one, the 6 Applicant representative indicated that there 7 wouldn't be -- would not adversely affect it or that 8 it wouldn't influence or affect the occupants. They 9 would meet all those qualifications for the 10 occupants in their facility. 11 THE HEARING EXAMINER: All right. Well, 12 that's part of the answer. The other part is -- 13 MS. HARRIS: Okay. 14 THE HEARING EXAMINER: -- will it affect at 15 all any consideration I have to have in making a 16 decision on this conditional use? You don't have to 17 answer it. I mean, since I just raised this 18 yesterday, I'll give you the opportunity while the 19 record is open in that ten-day period for you to 20 supplement your opinion on it. And we can talk 21 about it at the end. 22 MS. HARRIS: Okay. Okay. 23 THE HEARING EXAMINER: Just remind me when 24 we set the dates at the end, for you to have an 25 opportunity to respond to that issue.</p>	<p>12</p> <p>1 just a matter of opening the record to submit a 2 corrected plan so that it's reconciled? 3 THE HEARING EXAMINER: I would think so. 4 And I'm not even sure it's a matter of reopening the 5 record, per se, just that they are on file -- 6 MS. HARRIS: Okay. 7 THE HEARING EXAMINER: -- here if they have 8 no impact. 9 I was a little concerned because there was 10 something in the technical staff report indicating 11 that the plans as submitted would not qualify for 12 some provisions in the subdivision regs, so I'm not 13 sure how that would impact ultimately. An oddly 14 shaped -- 15 MS. HARRIS: Right. And our civil engineer 16 is going to get into that a little bit whatever -- 17 THE HEARING EXAMINER: Okay. 18 MS. HARRIS: -- we've made of some changes 19 to the configuration of the lot in an effort to 20 address that comment. 21 THE HEARING EXAMINER: All right. Are there 22 any other preliminary or procedural matters? 23 MS. HARRIS: Only that we have the notarized 24 affidavit posted. 25 THE HEARING EXAMINER: Okay. If you will</p>

Transcript of Hearing  
Conducted on December 16, 2016

4 (13 to 16)

13	<p>1 approach, and we'll add that onto the exhibit list</p> <p>2 if I can find my copy of it here.</p> <p>3 MS. HARRIS: Thank you.</p> <p>4 THE HEARING EXAMINER: Thank you. Now, my</p> <p>5 -- your copy doesn't have it yet, but there is an</p> <p>6 Exhibit 35 on the list, which is Emily Tettelbaum's</p> <p>7 brief response this morning to my e-mail saying that</p> <p>8 she didn't think it will have an impact, but she</p> <p>9 will address it. That is the intention there.</p> <p>10 MS. HARRIS: Okay.</p> <p>11 THE HEARING EXAMINER: All right. So 36</p> <p>12 would be the affidavit of posting.</p> <p>13 Okay. Do you wish to make an opening</p> <p>14 statement?</p> <p>15 MS. HARRIS: Yes. Just very briefly.</p> <p>16 THE HEARING EXAMINER: All right.</p> <p>17 * * *</p> <p>18 OPENING STATEMENTS</p> <p>19 MS. HARRIS: Thank you.</p> <p>20 Good morning again. Pat Harris. Currently</p> <p>21 we're here for a conditional use for the property</p> <p>22 located at 3132 Bel Pre Road for an independent</p> <p>23 living facility of 120 units.</p> <p>24 The existing property is 11.7 acres, and as</p> <p>25 noted ultimately in assuming approval of the</p>	15
14	<p>1 conditional use, we'd be proceeding with a</p> <p>2 preliminary plan and a subdivision to record a lot</p> <p>3 just under 6 acres for the conditional use -- to</p> <p>4 accommodate the conditional use.</p> <p>5 We're pleased with both the staff report</p> <p>6 recommendation and the planning board transmittal</p> <p>7 recommending support of the project.</p> <p>8 I think there is recognition that throughout</p> <p>9 the county the demographics are changing, and</p> <p>10 there's a need for these types of facilities. And</p> <p>11 to the extent there's a need for independent living</p> <p>12 facilities, there is even more of a need for</p> <p>13 independent living facilities that serve our county</p> <p>14 residents that are with limited means. And as</p> <p>15 Ms. Carter will explain, the majority of these units</p> <p>16 are, in fact, intended for low-income individuals.</p> <p>17 I previously went through our witness list.</p> <p>18 Through our witnesses, you'll hear that the project</p> <p>19 complies with the development standards of FRE2 and</p> <p>20 independent living conditional use standards; that</p> <p>21 it's consistent with the master plan; and that it's</p> <p>22 compatible with the surrounding area.</p> <p>23 So with that, I'd like to call our first</p> <p>24 witness unless you have any questions.</p> <p>25 THE HEARING EXAMINER: Just one question I</p>	16
	<p>1 have in reference to that. As I understand it, one</p> <p>2 of the conditions specified in the Code for this</p> <p>3 conditional use is a minimum -- that there were</p> <p>4 three alternatives. One of them is a minimum of</p> <p>5 15 percent of the dwelling units is permitted to be</p> <p>6 reserved housing for very low income. And I believe</p> <p>7 you've indicated that was what your plan was in this</p> <p>8 case, to use that option. But then you just -- in</p> <p>9 your opening statement, you said that a majority of</p> <p>10 the units would be that way.</p> <p>11 Is that the -- you're going to be -- more</p> <p>12 than 50 percent will be for households of very low</p> <p>13 income?</p> <p>14 MS. HARRIS: No. The -- Ms. Carter can</p> <p>15 explain this further. I actually think we meet a</p> <p>16 number of those different requirements because all</p> <p>17 but -- because of the number of affordable units and</p> <p>18 where they rate on the AMI scale. But we -- she'll</p> <p>19 address that in more detail.</p> <p>20 THE HEARING EXAMINER: Okay. But it is my</p> <p>21 understanding from the Code that it's an either/or</p> <p>22 thing in terms of what you have to meet; but, I</p> <p>23 mean, it's obviously fine if you meet more or all</p> <p>24 three and so on. But the condition that was</p> <p>25 proposed by staff was the third proposed condition</p>	
	<p>1 -- 15 percent of the units must be reserved by</p> <p>2 households of very low income.</p> <p>3 THE WITNESS: That's correct. We meet that.</p> <p>4 MS. HARRIS: Yes. But thank you for</p> <p>5 clarifying.</p> <p>6 THE HEARING EXAMINER: The reason I raised</p> <p>7 it just was because you used the term "the majority</p> <p>8 of the units." That's why.</p> <p>9 MS. HARRIS: Yes. Okay.</p> <p>10 THE HEARING EXAMINER: You may call your</p> <p>11 first witness.</p> <p>12 MS. HARRIS: Okay. Ms. Carter.</p> <p>13 Where would you like this?</p> <p>14 THE HEARING EXAMINER: Well, that's a good</p> <p>15 question. Let me ask the court reporter that</p> <p>16 because usually -- this is a new court reporting</p> <p>17 system, and in the past we've had microphones set</p> <p>18 up. You don't appear to set up microphones.</p> <p>19 (Off the record discussion.)</p> <p>20 BY MS. HARRIS:</p> <p>21 Q Ms. Carter, please state your full name,</p> <p>22 primary occupation, and your full business address.</p> <p>23 A Sure. Good morning. My name is</p> <p>24 Ivy Dench-Carter. I'm regional vice president of</p> <p>25 Pennrose Properties, LLC. The full business --</p>	

Transcript of Hearing  
Conducted on December 16, 2016

5 (17 to 20)

<p>17</p> <p>1 THE HEARING EXAMINER: Before you go any 2 further, let me swear you in. Would you raise your 3 right hand, please. 4 THE WITNESS: I do. 5 THE HEARING EXAMINER: All right. You may 6 proceed. 7 IVY DENCH-CARTER 8 having been first duly sworn, 9 was examined and testified as follows: 10 * * * 11 EXAMINATION 12 THE WITNESS: The business address is 575 13 South Charles Street Suite 140 Baltimore, Maryland, 14 21201. 15 THE HEARING EXAMINER: Court. Okay. 16 BY MS. HARRIS: 17 Q And how long have you been involved with 18 Pennrose, and what are your responsibilities there? 19 A Sure. I've been involved with the Pennrose 20 Enterprise, which includes our management company, 21 for 26 years. Started off with the management 22 company, left as a regional property manager, and 23 then transferred over to the development side, which 24 I've been with the development probably more than 25 15 years now. I am responsible for all of our</p>	<p>19</p> <p>1 THE WITNESS: Yes. Independent senior 2 units. 3 THE HEARING EXAMINER: Okay. And 36 4 facilities. 5 THE WITNESS: Exactly. 6 THE HEARING EXAMINER: Okay. 7 BY MS. HARRIS: 8 Q And please describe the independent living 9 facility project proposed for this site. 10 A Sure. The independent residences are for 11 seniors who are 62 years of age or older. We will 12 have a number of programs and coordinations of 13 various services to assist the residents in their 14 daily activities. 15 We'll be offering transportation for offsite 16 excursions through the Senior Connection, which is a 17 local nonprofit in the county. We'll have regularly 18 scheduled events such as movie nights, fitness 19 classes, walking jaunts, holiday events. 20 We also bring a number of medical resources 21 and programs into the building for the benefit of 22 the seniors including health screenings, health and 23 wellness program information from health 24 professionals, free annual flu shots, counseling on 25 Medicare, long-term insurance care, medical</p>
<p>18</p> <p>1 development activities in Maryland, Virginia, and 2 the District of Colombia. 3 Q And are you familiar with this subject, 4 conditional use? 5 A Yes, I am. 6 Q All right. And then can you briefly explain 7 what Pennrose's interests are in this property? 8 A We are the contract purchaser, the church is 9 the current owner and is authorized as conditional 10 use application. 11 THE HEARING EXAMINER: I saw that in the 12 file. 13 BY MS. HARRIS: 14 Q And just briefly, can you describe 15 Pennrose's experience in developing independent 16 living facilities? 17 A Sure. Pennrose was originally conceived 18 about 40 years ago as an affordable housing 19 developer in the state of Pennsylvania. Since then 20 we have developed more than 2300 senior independent 21 living developments totaling about 36 facilities. 22 The balance of our portfolio is majority affordable 23 family units up and down the Mid-Atlantic Coast. 24 THE HEARING EXAMINER: So the 2300, those 25 are independent units?</p>	<p>20</p> <p>1 billings, housekeeping preparatory suggestions, and 2 just a number of myriad issues to help seniors in 3 their golden years. 4 We have other various programs that we'll 5 coordinate. We like to survey our residents once 6 they are in the building to really get a feel for 7 what their needs are in case we need to provide 8 additional coordination of services. 9 THE HEARING EXAMINER: Okay. 10 THE WITNESS: We'll also have a number of 11 amenities in the building for the seniors. We'll 12 have a game room, a cyber cafe, a salon, and a 13 fitness center. 14 THE HEARING EXAMINER: I saw the description 15 "cyber cafe" in your submissions. What exactly is a 16 cyber cafe? Given that I am in that senior 17 category. 18 THE WITNESS: The cyber cafe is actually a 19 location within our larger community facility within 20 the building that they can actually get on a 21 computer. There will be coffee available. You 22 know, so we kind of call it a cyber cafe because 23 it's a counter and, you know, it's kind of chic and 24 sexy. That's the chic and sexy name for a computer 25 room.</p>

Transcript of Hearing  
Conducted on December 16, 2016

6 (21 to 24)

<p>21</p> <p>1 THE HEARING EXAMINER: All right. Thank 2 you. 3 BY MS. HARRIS: 4 Q And what was Pennrose's particular interest 5 in this property? 6 <b>A The overall need for supportive housing for 7 seniors with limited incomes. It's a significant 8 issue across the county, not just in this county. 9 We have a number of aging populations and really 10 need to make sure that we have facilities to address 11 their needs.</b> 12 Q Can you describe somewhat generally what the 13 individual population will look like in terms of 14 demographics? 15 <b>A Sure. Normally in our facilities ages range 16 from 62 years all the way up to 80, 85 years old. 17 It just depends on what their health needs are. So 18 as long as they can live independently with minimal 19 supervision. Those are the age ranges within our 20 properties.</b> 21 <b>Healthcare wise, they can take care for the 22 majority of their daily needs.</b> 23 <b>Activity levels are moderate. Some are 24 active. You have some seniors who are riding bikes 25 and, you know, walking and exercising, you know, on</b></p>	<p>23</p> <p>1 was suggested by technical staff to be imposed said 2 "15 percent of the units must be reserved for 3 households with very low income as defined in 4 Section 1.4.2." 5 What is the definition of very low income? 6 MS. HARRIS: Wait. 1.4 -- can you give the 7 section number? 8 THE HEARING EXAMINER: Section 1.4.2 -- 9 Defined terms. 10 MS. HARRIS: And I guess it's under "V" for 11 very. 12 THE HEARING EXAMINER: I just think it's in 13 the Code's definition. 14 MS. HARRIS: Okay. So look -- well. 15 THE HEARING EXAMINER: I didn't have the 16 code. 17 MS. HARRIS: It is under "V." Very low 18 income. "Income at or below 50 percent of area 19 median income as determined annually by the U.S. 20 Housing and Urban Development adjusted for household 21 size." 22 THE HEARING EXAMINER: Okay. So, Ms. 23 Dench-Carter, you talked about 60 percent of the 24 median. 25 THE WITNESS: I have a breakdown for you.</p>
<p>22</p> <p>1 a daily basis. 2 <b>We do have some seniors who remain employed 3 after the age of 62. Some on a full time; some on a 4 part-time basis.</b> 5 <b>Driving -- you know, about 50 percent is 6 probably the average that continue to drive in our 7 facilities.</b> 8 <b>And the income levels, as you were referring 9 to earlier -- we have a hundred and 20 units. 12 of 10 those units will not have any income restrictions 11 whatsoever, and the balance of the units will be 12 made available to seniors whose incomes are 13 60 percent of the area median income and below.</b> 14 Q Thank you. Have you met with the community 15 regarding this proposed application. 16 <b>A Yes. Pennrose has attended one meeting with 17 the church congregates of which the facility would 18 be located.</b> 19 Q And was that meeting made available to 20 people outside of the community as well? 21 <b>A Yes. Notices were sent to outside.</b> 22 THE HEARING EXAMINER: Excuse me one second. 23 MS. HARRIS: Sure. 24 THE HEARING EXAMINER: So in terms of the 25 income levels of the residents, the condition that</p>	<p>24</p> <p>1 THE HEARING EXAMINER: Okay. What's the 2 breakdown? 3 THE WITNESS: So we have -- and forgive my 4 math for a second here. We will have -- if we take 5 the one-person family income size, we have -- I 6 didn't write that down. Oh, I wrote down the income 7 levels. I'm sorry. One second. 8 THE HEARING EXAMINER: I don't need to make 9 you do the math now. I just want to make sure that 10 -- 11 THE WITNESS: Yes, we do. 12 THE HEARING EXAMINER: Because your 13 testimony talked about 60 percent of the median and 14 income, and the standard was 50 percent as I 15 understand it. And it has to be 15 percent of your 16 units. 17 THE WITNESS: Yes. And -- 18 THE HEARING EXAMINER: I just want to make 19 sure that you're not conflicting. If you want -- 20 THE WITNESS: We are not. 21 THE HEARING EXAMINER: -- you can submit 22 something in writing if you haven't already. I 23 don't know if -- I don't remember if your submission 24 dealt with that specifically. 25 MS. HARRIS: I need to double check whether</p>

Transcript of Hearing  
Conducted on December 16, 2016

7 (25 to 28)

25	<p>1 it did.</p> <p>2 THE HEARING EXAMINER: Okay.</p> <p>3 MS. HARRIS: I can't recall.</p> <p>4 THE HEARING EXAMINER: You can check during</p> <p>5 a break and then --</p> <p>6 MS. HARRIS: Okay. Okay.</p> <p>7 THE HEARING EXAMINER: -- come back to that</p> <p>8 point.</p> <p>9 THE WITNESS: Here we go. I found what I</p> <p>10 was looking for.</p> <p>11 THE HEARING EXAMINER: All right.</p> <p>12 THE WITNESS: So we have 16, 23, 46 plus 16.</p> <p>13 We have 62 units of the 120 that are --</p> <p>14 THE HEARING EXAMINER: Well, 43 plus 16 is</p> <p>15 not 62, so...</p> <p>16 MS. HARRIS: It's 52.</p> <p>17 THE WITNESS: 52. I'm sorry. We had</p> <p>18 52 units --</p> <p>19 MS. HARRIS: 52 percent.</p> <p>20 THE WITNESS: 52. No. 52 units below the</p> <p>21 very low income definition that meet that</p> <p>22 definition.</p> <p>23 THE HEARING EXAMINER: Okay. 52 units meet</p> <p>24 the very low income definition.</p> <p>25 MS. HARRIS: And the condition is that</p>	27	<p>1 THE WITNESS: 8:30 to 5:30.</p> <p>2 THE HEARING EXAMINER: Oh, okay. What about</p> <p>3 in the evenings?</p> <p>4 THE WITNESS: No.</p> <p>5 THE HEARING EXAMINER: There will not be any</p> <p>6 staff members?</p> <p>7 THE WITNESS: No staff persons in the</p> <p>8 evening. We will have staff on call if there is an</p> <p>9 emergency after office hours, so there will be</p> <p>10 someone available to come to the building if there</p> <p>11 is an emergency.</p> <p>12 THE HEARING EXAMINER: Are there state or</p> <p>13 county regulations that affect what your staffing</p> <p>14 requirements are for this type of facility?</p> <p>15 THE WITNESS: Not that I'm aware of. No,</p> <p>16 sir.</p> <p>17 THE HEARING EXAMINER: Ms. Harris?</p> <p>18 MS. HARRIS: No. And, in fact, the zoning</p> <p>19 ordinance is written in a way that they assume that</p> <p>20 independent living facilities are licensed</p> <p>21 facilities. And I don't believe they are licensed</p> <p>22 facilities.</p> <p>23 THE WITNESS: This would not be a licensed</p> <p>24 facility.</p> <p>25 THE HEARING EXAMINER: So essentially you</p>
26	<p>1 15 percent --</p> <p>2 THE HEARING EXAMINER: I understand.</p> <p>3 MS. HARRIS: Right. Okay.</p> <p>4 THE HEARING EXAMINER: You may proceed.</p> <p>5 MS. HARRIS: Okay. Thank you.</p> <p>6 BY MS. HARRIS:</p> <p>7 Q Can you please explain the overall operation</p> <p>8 of the facility.</p> <p>9 <b>A Sure. The facility will be managed by</b></p> <p>10 <b>Pennrose Management Company, which is an affiliate</b></p> <p>11 <b>of Pennrose Properties. We'll have two full-time</b></p> <p>12 <b>employees and two part-time employees. One manager</b></p> <p>13 <b>will be onsite full time. The other administrative</b></p> <p>14 <b>staff person will work part time.</b></p> <p>15 <b>Typically -- the full-time hours are</b></p> <p>16 typically 8:30 to 5:30 p.m. for the full-time</p> <p>17 employee. The part-time employee would vary based</p> <p>18 on programs that are being offered in the building.</p> <p>19 The property manager will oversee the day-to-day</p> <p>20 operations and act as --</p> <p>21 THE HEARING EXAMINER: So in terms of the</p> <p>22 people onsite, you said there will be one person --</p> <p>23 one staff member there at all times?</p> <p>24 THE WITNESS: Yes.</p> <p>25 THE HEARING EXAMINER: Okay.</p>	28	<p>1 just have -- then are these units owned, or are they</p> <p>2 apartments?</p> <p>3 THE WITNESS: They're apartments.</p> <p>4 THE HEARING EXAMINER: Okay. So you</p> <p>5 essentially have an apartment which you've set up</p> <p>6 with certain standards to meet the definitions in</p> <p>7 the conditional use description in the zoning</p> <p>8 ordinance, but you're not required to meet any</p> <p>9 specific state and federal and county regulations</p> <p>10 other than that?</p> <p>11 THE WITNESS: Correct, sir.</p> <p>12 THE HEARING EXAMINER: I guess, assuming</p> <p>13 normal housing code --</p> <p>14 THE WITNESS: Right.</p> <p>15 THE HEARING EXAMINER: -- requirements and</p> <p>16 building code requirements.</p> <p>17 MS. HARRIS: In contract assisted living</p> <p>18 facilities are licensed facilities.</p> <p>19 THE HEARING EXAMINER: Right. Okay. All</p> <p>20 right.</p> <p>21 BY MS. HARRIS:</p> <p>22 Q Getting now into more mundane issues like</p> <p>23 trash collection, can you please explain how that</p> <p>24 will all work.</p> <p>25 THE HEARING EXAMINER: That occasionally</p>



Transcript of Hearing  
Conducted on December 16, 2016

8 (29 to 32)

<p>29</p> <p>1 comes up.</p> <p>2 THE WITNESS: Right.</p> <p>3 The building has been designed to have trash</p> <p>4 chutes on floors 2 through 4 of the building, and</p> <p>5 those trash chutes will go down into a central</p> <p>6 location spot. And we would have Dumpster pick up</p> <p>7 twice a week from the property, and there will be a</p> <p>8 Dumpster located to the east of the building for</p> <p>9 pick up by the Dumpster.</p> <p>10 THE HEARING EXAMINER: Okay.</p> <p>11 How does the trash get from the chutes --</p> <p>12 the bottom of the chutes to the Dumpster, which I</p> <p>13 noticed is located some distance away in the parking</p> <p>14 lot?</p> <p>15 THE WITNESS: It's a mechanized -- rolling</p> <p>16 mechanism that the maintenance staff would roll from</p> <p>17 the trash room inside the building outside to the</p> <p>18 Dumpster for pick up.</p> <p>19 THE HEARING EXAMINER: I see. Okay.</p> <p>20 BY MS. HARRIS:</p> <p>21 Q And then the final question is can you</p> <p>22 explain the outdoor recreational amenities, though,</p> <p>23 recognizing that the other consultants will get to</p> <p>24 that in more detail.</p> <p>25 <b>A The outdoor will have a walking trail. I</b></p>	<p>31</p> <p>1 THE HEARING EXAMINER: Or a -- not the --</p> <p>2 partner, I guess is the...</p> <p>3 THE WITNESS: Partner, yes.</p> <p>4 THE HEARING EXAMINER: As a partner and the</p> <p>5 LLP.</p> <p>6 Is there a particular percentage --</p> <p>7 THE WITNESS: Yes.</p> <p>8 THE HEARING EXAMINER: -- that the HOC has?</p> <p>9 THE WITNESS: And I probably have that</p> <p>10 written down as well. I believe we are 65 -- help</p> <p>11 me out a second.</p> <p>12 MS. HARRIS: 11 percent.</p> <p>13 THE WITNESS: 11 percent for HOC.</p> <p>14 THE HEARING EXAMINER: Okay. And who owns</p> <p>15 the other 89 percent, or who is the 89 percent?</p> <p>16 THE WITNESS: The 89 is split between</p> <p>17 Shelter Development and Pennrose. No, not the LLC.</p> <p>18 That was --</p> <p>19 THE HEARING EXAMINER: Well, I don't -- it's</p> <p>20 not a good idea to have an exchange like that.</p> <p>21 THE WITNESS: Right.</p> <p>22 THE HEARING EXAMINER: Why don't you --</p> <p>23 THE WITNESS: We'll provide that information</p> <p>24 regarding that.</p> <p>25 MS. HARRIS: Okay.</p>
<p>30</p> <p>1 <b>believe we have an outdoor patio for the residents.</b></p> <p>2 <b>That's about it for outdoor activities. We don't</b></p> <p>3 <b>normally have too many.</b></p> <p>4 MS. HARRIS: Thank you. I have no other</p> <p>5 questions.</p> <p>6 THE HEARING EXAMINER: You mentioned you're</p> <p>7 associated with Pennrose. Parkview at Aspen Hill,</p> <p>8 LLP, is that owned by -- in some way by Pennrose?</p> <p>9 What's the relationship of the Applicant to</p> <p>10 Pennrose?</p> <p>11 THE WITNESS: In these types of</p> <p>12 transactions, we set up a separate ownership entity</p> <p>13 of which there are other entities involved in that</p> <p>14 ownership. So the housing commission of -- for</p> <p>15 Montgomery County is part owner of the building as</p> <p>16 well as Shelter Development, who was the original</p> <p>17 developer for the project.</p> <p>18 BY MS. HARRIS:</p> <p>19 Q And just to clarify, "the Housing</p> <p>20 Commission," are you referring to the Housing</p> <p>21 Opportunities Commission?</p> <p>22 <b>A Yes, the Housing Opportunities Commission.</b></p> <p>23 THE HEARING EXAMINER: Okay. So the HOC is</p> <p>24 a part owner?</p> <p>25 THE WITNESS: Yes.</p>	<p>32</p> <p>1 THE HEARING EXAMINER: -- provide that</p> <p>2 information?</p> <p>3 THE WITNESS: Okay.</p> <p>4 THE HEARING EXAMINER: I wasn't aware,</p> <p>5 actually, that the HOC -- was that disclosed in any</p> <p>6 of the documents?</p> <p>7 MS. HARRIS: I believe at the very beginning</p> <p>8 of the land use statement --</p> <p>9 THE HEARING EXAMINER: Okay.</p> <p>10 MS. HARRIS: -- it notes that HOC is -- we</p> <p>11 referred to it as a "joint venture."</p> <p>12 THE HEARING EXAMINER: Okay.</p> <p>13 MS. HARRIS: But it shows their involvement</p> <p>14 in the process.</p> <p>15 THE HEARING EXAMINER: Okay. All right.</p> <p>16 And...</p> <p>17 MS. HARRIS: And I think the one clarifying</p> <p>18 part is the project -- Pennrose came into the</p> <p>19 project this last year. It had been an arrangement</p> <p>20 between HOC and Shelter. Shelter remains in it for</p> <p>21 now through the entitlement process, and then</p> <p>22 Shelter will drop out, and at the end it will be</p> <p>23 Pennrose and HOC.</p> <p>24 THE HEARING EXAMINER: Well, is "Shelter"</p> <p>25 short for a longer term?</p>

Transcript of Hearing  
Conducted on December 16, 2016

9 (33 to 36)

<p>33</p> <p>1 MS. HARRIS: Shelter. 2 THE WITNESS: Shelter Group. 3 MS. HARRIS: Shelter Group. Yes. Sorry. 4 THE HEARING EXAMINER: All right. So 5 Shelter Group. All right. And they will drop out 6 you're saying, or... 7 MS. HARRIS: Well, we'll provide -- 8 THE HEARING EXAMINER: Okay. 9 THE WITNESS: Yeah, we'll provide a full 10 statement for you because it's a bit complicated. 11 THE HEARING EXAMINER: All right. All 12 right. 13 MS. HARRIS: So no other questions for 14 Ms. Carter unless you have others. 15 THE HEARING EXAMINER: Not right now. Thank 16 you. 17 THE WITNESS: Thank you. 18 MS. HARRIS: The next witness is 19 Mr. Todd Reddan. And if, in fact, the microphone 20 will pick him up on the right side of the room -- 21 just because he's going to be referring to easels. 22 Will that work? 23 (Off the record discussion.) 24 MS. HARRIS: Mr. Reddan, please state your 25 name -- your full name and occupation.</p>	<p>35</p> <p>1 licensed? 2 THE WITNESS: Yes. 3 THE HEARING EXAMINER: And as I understand 4 from Ms. Harris, you've testified before the 5 hearings examiner before? 6 THE WITNESS: Yes. 7 THE HEARING EXAMINER: And when was that? 8 What case? 9 THE WITNESS: It would have been in 10 August of 2015 Mount Jenner (phonetic) Senior 11 Housing. 12 THE HEARING EXAMINER: And you were 13 qualified and accepted as an expert in that case? 14 THE WITNESS: Yes, I was. 15 THE HEARING EXAMINER: Was that Len 16 Robertson? 17 THE WITNESS: Yes, it was. 18 THE HEARING EXAMINER: All right. In light 19 of Mr. Reddan's resume, background, and license as a 20 civil engineer and his prior acceptance as an expert 21 in civil engineering, I accept him as an expert -- 22 MS. HARRIS: Thank you. 23 THE HEARING EXAMINER: -- in this case in 24 civil engineering. 25 MS. HARRIS: Thank you.</p>
<p>34</p> <p>1 THE WITNESS: Todd Reddan; I'm a civil 2 engineer with Gutschick, Little, &amp; Weber. 3 THE HEARING EXAMINER: All right. Would you 4 raise your right hand, please. 5 TODD REDDAN 6 having been first duly sworn, 7 was examined and testified as follows: 8 * * * 9 EXAMINATION 10 MS. HARRIS: Mr. Grossman, Mr. Reddan has 11 testified before this board previously. I can go 12 through and qualify him as an expert if you would 13 like. His resume is in the record. 14 THE HEARING EXAMINER: All right. What's 15 the exhibit number for the resume? Here it is. 16 10-B. One second. Okay. All right. 17 And, Mr. Reddan, are you licensed as a civil 18 engineer in Maryland? 19 THE WITNESS: I am. 20 THE HEARING EXAMINER: And your license 21 number I see is registered. It says "registration 22 number 17285." 23 Is that correct? 24 THE WITNESS: That's correct. 25 THE HEARING EXAMINER: And you're currently</p>	<p>36</p> <p>1 /// 2 BY MS. HARRIS: 3 Q Mr. Reddan, are you familiar with the 4 conditional use application which is before the 5 hearing examiner? 6 A I am. 7 Q Can you please describe what your scope of 8 services were in preparing this conditional use 9 application? 10 A Our scope of services were to do all of the 11 site development, engineering, and planning for the 12 property basically outside of the building, grading, 13 utilities, storm water management, and the layout 14 and forest conservation as well. 15 Q And have you made a personal inspection of 16 the property? 17 A I have. 18 Q Can you please describe the location of the 19 property and the applicable zoning designation. 20 A The location of the property is 3132 21 Bel Pre Road, which is on the south side of 22 Bel Pre Road between Connecticut Avenue and 23 Layhill Road. It's an RE-2 zone, which is 24 residential estates in family 2-acre lots. 25 Q And are you familiar with RE-2 development</p>

Transcript of Hearing  
Conducted on December 16, 2016

10 (37 to 40)

<p>37</p> <p>1 standards of the zoning ordinance?</p> <p>2 <b>A I am.</b></p> <p>3 Q Are you also familiar with the conditional</p> <p>4 use standards for an independent living facility?</p> <p>5 <b>A I am.</b></p> <p>6 Q Can you please describe the development</p> <p>7 that's proposed by the conditional use application.</p> <p>8 And it may be best to approach the exhibit.</p> <p>9 <b>A Sure.</b></p> <p>10 Q This is the exhibit that was submitted into</p> <p>11 the record, which is Exhibit Number 5, the</p> <p>12 conditional use plan. And this is the cover --</p> <p>13 THE HEARING EXAMINER: But you told me you</p> <p>14 were -- that's cover sheet. But you are amending</p> <p>15 the plans?</p> <p>16 MS. HARRIS: We are amending it, but I</p> <p>17 thought we are going to get till -- I mean, if it</p> <p>18 would be helpful, we can talk about what the</p> <p>19 amendment -- why don't we --</p> <p>20 THE HEARING EXAMINER: Why don't we use</p> <p>21 plans that are going to be the plans --</p> <p>22 MS. HARRIS: Okay.</p> <p>23 THE HEARING EXAMINER: -- that are provided?</p> <p>24 MS. HARRIS: Okay. Then let me -- let's</p> <p>25 back up for a second.</p>	<p>39</p> <p>1 record is clear, by "right here" you're talking --</p> <p>2 it may be easier if you flip the chart so that north</p> <p>3 is pointing up.</p> <p>4 Okay. So right now you're talking about on</p> <p>5 the east --</p> <p>6 THE WITNESS: On the east side.</p> <p>7 THE HEARING EXAMINER: -- on the site, the</p> <p>8 stem that -- that part of the U that was on the east</p> <p>9 side is now being eliminated or shortened?</p> <p>10 THE WITNESS: It's being eliminated to a</p> <p>11 degree, and the area is being made up through a</p> <p>12 reconfiguration of the west stem. And actually</p> <p>13 that's how it's being made up through a</p> <p>14 reconfiguration of the west stem. It's a little bit</p> <p>15 less area. It was 5.99 acres that was proposed in</p> <p>16 the original conditional use; it's now about</p> <p>17 5.7 acres.</p> <p>18 BY MS. HARRIS:</p> <p>19 Q And if you could, why don't you show Mr. --</p> <p>20 why don't you present the revised plan? And then we</p> <p>21 can review what that looks like now.</p> <p>22 THE HEARING EXAMINER: Just for future</p> <p>23 reference, it would be easier in the next case if I</p> <p>24 get it in advance --</p> <p>25 MS. HARRIS: Okay.</p>
<p>38</p> <p>1 ///</p> <p>2 BY MS. HARRIS:</p> <p>3 Q Can you describe briefly the plan that was</p> <p>4 originally submitted and the changes that have</p> <p>5 occurred since then in response to comments by staff</p> <p>6 and the planning board.</p> <p>7 <b>A The plan that was originally submitted is --</b></p> <p>8 <b>this is the overall site plan showing it had a</b></p> <p>9 <b>property line, and this is -- really the only</b></p> <p>10 <b>changes is the property line.</b></p> <p>11 <b>The property line for the senior housing</b></p> <p>12 <b>facility, which is located at the back, had a</b></p> <p>13 <b>U shape to it, had a stem on the west side, the main</b></p> <p>14 <b>body on the south side, and another stem on the</b></p> <p>15 <b>right side, which narrowed down and fronted on</b></p> <p>16 <b>Bel Pre Road over here kind of giving it a U shape.</b></p> <p>17 THE HEARING EXAMINER: Right.</p> <p>18 THE WITNESS: And then the staff reviewing</p> <p>19 the conditional use had made a comment about not</p> <p>20 having this front on the road. They would like it</p> <p>21 to get pulled back. They wanted it to get pulled</p> <p>22 very far back. What we have proposed and showed to</p> <p>23 the planning board was pulling this narrow stem</p> <p>24 right here, and --</p> <p>25 THE HEARING EXAMINER: Wait. Just so the</p>	<p>40</p> <p>1 THE HEARING EXAMINER: -- so that I --</p> <p>2 because I do look at these things before the hearing</p> <p>3 so I can understand what's going on. And nothing</p> <p>4 that was presented to me changed that U shape, so</p> <p>5 everything that I had to work off of and to look at</p> <p>6 was the earlier plan. The only changes that I</p> <p>7 assumed you were going to be making were the bicycle</p> <p>8 changes, so I'd prefer to get something --</p> <p>9 MS. HARRIS: Okay. Okay. Yeah.</p> <p>10 THE HEARING EXAMINER: -- in advance.</p> <p>11 MS. HARRIS: Understood.</p> <p>12 THE HEARING EXAMINER: And, in fact, I mean,</p> <p>13 just for the purposes of the public commentary. In</p> <p>14 this case you don't have anybody who is complaining,</p> <p>15 but they also haven't had a copy of your plan</p> <p>16 either. Not that it necessarily is going to change</p> <p>17 anything in terms of response since you're</p> <p>18 surrounded by apartment buildings, but it's a much</p> <p>19 better practice for it --</p> <p>20 MS. HARRIS: Okay.</p> <p>21 THE HEARING EXAMINER: -- to be filed in</p> <p>22 advance.</p> <p>23 MS. HARRIS: Okay. Understood. I mean, I</p> <p>24 think our thinking was because it was a little</p> <p>25 confusing to understand, but also we did not view it</p>

Transcript of Hearing  
Conducted on December 16, 2016

11 (41 to 44)

<p>41</p> <p>1 as a material change that -- and there was no 2 opposition. Certainly if there had been -- 3 THE HEARING EXAMINER: Right. 4 MS. HARRIS: -- we would have. But I 5 understand. 6 THE HEARING EXAMINER: Okay. 7 MS. HARRIS: And we will do that in the 8 future. 9 THE HEARING EXAMINER: All right. So if we 10 could see the new plan. 11 MS. HARRIS: Okay. 12 THE WITNESS: Just there was -- at the 13 planning board, there was an exhibit shown that did 14 pull the property line down, so that was -- you 15 know, that was before a public body, I guess, at 16 that time, so... 17 THE HEARING EXAMINER: Right. That's 18 helpful, but the planning board minutes are not part 19 of our record. The only thing that's part of our 20 record automatically is the technical staff report 21 and the planning board letter, which didn't 22 specifically mention this change at least from the 23 perspective of anybody who's going to participate in 24 this public hearing by OZAH who may not have 25 attended the planning board session. They wouldn't</p>	<p>43</p> <p>1 new exhibit. Why don't we mark it? And that will 2 be exhibit -- so you'll have an entirely new 3 conditional use plan? 4 MS. HARRIS: Yes. 5 THE HEARING EXAMINER: And all of the -- and 6 it's supposed to be in 12 pieces as I recall. 7 12 pages of the new conditional use plans. 8 MS. HARRIS: Yes. 9 THE HEARING EXAMINER: So you'll have an 10 entirely new one. 37-A, I suppose, then will be the 11 cover sheet; is that the cover? 12 MS. HARRIS: Yes. 13 THE HEARING EXAMINER: Okay. 14 THE WITNESS: This is sheet 3, not the cover 15 sheet. 16 THE HEARING EXAMINER: Okay. That's the -- 17 THE WITNESS: This is the overall -- 18 "Conditional Use Overall Site Plan" is the title. 19 THE HEARING EXAMINER: Okay. So why don't 20 we follow the same numbering system that we had, and 21 37-A will be the cover. Let me look back. Yeah. I 22 don't know exactly. 23 MS. HARRIS: I don't think F or G, the site 24 plan details, will change. 25 THE HEARING EXAMINER: B was the existing</p>
<p>42</p> <p>1 know about this in advance. All right. 2 BY MS. HARRIS: 3 Q So if you could present the plan as we are 4 now proposing to the hearing examiner. 5 <b>A North still being up, we're proposing to</b> 6 <b>pull the property line down to -- the east stem</b> 7 <b>would basically be eliminated. And the property</b> 8 <b>line would be squared off just south of the existing</b> 9 <b>house out there far enough down to allow the</b> 10 <b>necessary building setback from the existing house</b> 11 <b>from the proposed property line.</b> 12 THE HEARING EXAMINER: That's the pastor's 13 house? 14 THE WITNESS: Yes. 15 THE HEARING EXAMINER: Okay. 16 THE WITNESS: I indicated there was some 17 area being made up on the west side. This has been 18 widened on the west side just in the north part of 19 the west stem. 20 THE HEARING EXAMINER: All right. So the 21 stem on the west is widened at the north end? 22 THE WITNESS: To some degree over what it 23 was before, but the property was reduced from 5.99 24 to 5.7 acres. 25 THE HEARING EXAMINER: Okay. So this is a</p>	<p>44</p> <p>1 conditions one. I'm not sure that will change, but, 2 well, just to be consistent... 3 THE WITNESS: I mean, the green area is 4 delineated on the site detail. 5 MS. HARRIS: Okay. 6 THE WITNESS: So that will have to be 7 relined. 8 MS. HARRIS: I think for simplicity 9 purposes, we will submit a new revised plan that's A 10 through G. 11 THE HEARING EXAMINER: Right. That will be 12 through Page 7, I suppose. Well, you also have -- 13 MS. HARRIS: Well, I wrote "1 through 12." 14 That's what we'll submit. 15 THE HEARING EXAMINER: Yeah, which I guess 16 that -- your landscape plan, I suppose, is part of 17 that and your lighting plan -- 18 THE WITNESS: Yes. 19 THE HEARING EXAMINER: -- and so on. All 20 right. Yes because that would all have to be -- 21 THE WITNESS: It would be best to do all 12 22 sheets. 23 MS. HARRIS: Yes. 24 THE HEARING EXAMINER: That particular one, 25 the overall plan, would be 37-C to continue with</p>

Transcript of Hearing  
Conducted on December 16, 2016

12 (45 to 48)

<p>45</p> <p>1 this.</p> <p>2 THE WITNESS: If A is the cover sheet, yeah.</p> <p>3 MS. HARRIS: Yes.</p> <p>4 THE HEARING EXAMINER: Right. A is the</p> <p>5 cover. B was the existing conditions, and C would</p> <p>6 be the overall. Would you write that at the bottom</p> <p>7 of page --</p> <p>8 THE WITNESS: I was just going to do that.</p> <p>9 THE HEARING EXAMINER: -- 37 C?</p> <p>10 Ms. Harris, did you bring along electronic</p> <p>11 copies of these with you?</p> <p>12 MS. HARRIS: No, we didn't. But I can get</p> <p>13 those to you either later today or first thing</p> <p>14 Monday morning.</p> <p>15 THE HEARING EXAMINER: All right. Yes. As</p> <p>16 soon as you can because I use those.</p> <p>17 MS. HARRIS: Okay.</p> <p>18 THE HEARING EXAMINER: And I had planned to</p> <p>19 use those in -- quickly in terms of writing a report</p> <p>20 --</p> <p>21 MS. HARRIS: Okay.</p> <p>22 THE HEARING EXAMINER: -- because I'm going</p> <p>23 to be out of town for a substantial period of time.</p> <p>24 MS. HARRIS: Okay. Well, during a break we</p> <p>25 could probably even -- does your office have these</p>	<p>47</p> <p>1 had three permanent bicycle lockers shown at the</p> <p>2 plans that went before the planning board.</p> <p>3 We are now showing five lockers, which is</p> <p>4 ten permanent spaces. There's two spaces per</p> <p>5 locker, and that was in response to the feedback</p> <p>6 that we received from them on the bicycle parking</p> <p>7 waiver. And those are shown in the plan.</p> <p>8 MS. HARRIS: And then, Mr. Grossman, the</p> <p>9 other thing to note is just that the original plan</p> <p>10 that was submitted incorrectly stated that the total</p> <p>11 number of spaces was 115, but the plan itself showed</p> <p>12 117, so that correction has been made on the new</p> <p>13 37-C.</p> <p>14 THE HEARING EXAMINER: So it's 117, not 115?</p> <p>15 MS. HARRIS: Correct.</p> <p>16 THE HEARING EXAMINER: Okay.</p> <p>17 BY MS. HARRIS:</p> <p>18 Q Can you please explain the relationship</p> <p>19 between the RE-2 development standards and the</p> <p>20 conditional use and how we meet those.</p> <p>21 A Yeah. The RE-2 standards have front, side,</p> <p>22 and rear setbacks; and the conditional use has</p> <p>23 front, side, and rear setbacks.</p> <p>24 In the RE-2 zone, the front setback from the</p> <p>25 street is 50 feet. The side yard setback -- the</p>
<p>46</p> <p>1 on --</p> <p>2 THE WITNESS: I can have them e-mailed.</p> <p>3 THE HEARING EXAMINER: I'm not sure our</p> <p>4 e-mail will hold it, but if it can -- if it will --</p> <p>5 MS. HARRIS: Okay.</p> <p>6 THE HEARING EXAMINER: You know, if it fit</p> <p>7 on e-mail, you can do that. But we all will need a</p> <p>8 CD also for the record.</p> <p>9 MS. HARRIS: Okay.</p> <p>10 THE WITNESS: I can e-mail them when I get</p> <p>11 back to the office today. I'll do that.</p> <p>12 THE HEARING EXAMINER: That will be a start.</p> <p>13 BY MS. HARRIS:</p> <p>14 Q So in addition to the lot configuration, as</p> <p>15 Mr. Grossman noted, there was a -- the planning</p> <p>16 board made a recommendation about adding additional</p> <p>17 bike spaces.</p> <p>18 A Correct.</p> <p>19 Q Can you explain where that change is</p> <p>20 reflected --</p> <p>21 A Yes.</p> <p>22 Q -- and what that change is?</p> <p>23 A Down in the -- compass directions here -- in</p> <p>24 the west side of the proposed building. In the</p> <p>25 front on the west side of the proposed building, we</p>	<p>48</p> <p>1 side setback for an RE-2 zone is 17 feet. I believe</p> <p>2 it has a sum of 35 feet. And the rear setback on an</p> <p>3 RE-2 zone is 35 feet.</p> <p>4 The conditional use -- oh, well, further on</p> <p>5 the development standards, the building has 50 feet</p> <p>6 in an RE-2 zone. The lot coverage is 25 percent in</p> <p>7 an RE-2 zone.</p> <p>8 Our lot coverage is about 12 percent. We</p> <p>9 far exceed any of the setbacks. The closest we come</p> <p>10 to a setback -- in the back we're about 36 feet from</p> <p>11 the rear property line. But, you know, in relation</p> <p>12 to that 35-foot setback, we far exceed the west and</p> <p>13 the east side setbacks. We're showing a setback</p> <p>14 from this property line as a side setback as well.</p> <p>15 We exceed that. We are over 600 feet from the</p> <p>16 street, so we far exceed 50 foot.</p> <p>17 Q And in talking about the setbacks, you're</p> <p>18 referring to the building setback as it relates to</p> <p>19 the property lines; is that correct?</p> <p>20 A That's correct.</p> <p>21 THE HEARING EXAMINER: I take it because the</p> <p>22 area has now changed, all of the -- well, many, if</p> <p>23 not all, of the calculations that are in the</p> <p>24 technical staff report -- compliance with density</p> <p>25 requirements and that sort of thing -- all of those</p>

Transcript of Hearing  
Conducted on December 16, 2016

13 (49 to 52)

<p>49</p> <p>1 will have changed.</p> <p>2 THE WITNESS: The only ones that changed</p> <p>3 were the percent green area, which is a conditional</p> <p>4 use develop standard.</p> <p>5 THE HEARING EXAMINER: Right.</p> <p>6 THE WITNESS: Not an RE-2 development</p> <p>7 standard.</p> <p>8 MR. FOSTER: The percent green area was</p> <p>9 adjusted because the site area was adjusted. The</p> <p>10 lot coverage was adjusted because the site area was</p> <p>11 adjusted. Actually, the 12 percent is the lot</p> <p>12 coverage for the revised property size.</p> <p>13 THE HEARING EXAMINER: Okay.</p> <p>14 THE WITNESS: Only the setbacks did not</p> <p>15 change.</p> <p>16 THE HEARING EXAMINER: Right. Well, I</p> <p>17 guess.</p> <p>18 THE WITNESS: Because this -- we only</p> <p>19 affected this property line, which our setbacks were</p> <p>20 not calculated from. Our setbacks are closer down</p> <p>21 here, so we when we said "the setback provided," we</p> <p>22 were talking about the sides over your --</p> <p>23 THE HEARING EXAMINER: Along the southern</p> <p>24 area?</p> <p>25 THE WITNESS: The main part. In the</p>	<p>51</p> <p>1 numbers to staff, which were presented to the</p> <p>2 planning board. But I understand that you need</p> <p>3 those as well.</p> <p>4 THE HEARING EXAMINER: Yeah, I guess, did --</p> <p>5 was there a written submission from the technical</p> <p>6 staff to the planning board as a follow up?</p> <p>7 MS. HARRIS: No. It was just verbal</p> <p>8 presentation.</p> <p>9 THE HEARING EXAMINER: Okay. Because</p> <p>10 sometimes -- well, did they use an -- any kind of a</p> <p>11 visual presentation which had this on it?</p> <p>12 MS. HARRIS: They did with --</p> <p>13 THE WITNESS: They did.</p> <p>14 MS. HARRIS: -- the revised and -- but there</p> <p>15 wasn't a -- I can't recall. And does that -- that</p> <p>16 sheet doesn't have the development standards on it.</p> <p>17 I can't recall if the sheet --</p> <p>18 THE WITNESS: The development standards are</p> <p>19 on the cover sheet.</p> <p>20 MS. HARRIS: Right. And I'm like -- I</p> <p>21 cannot recall if that was presented.</p> <p>22 THE WITNESS: I don't think that was</p> <p>23 presented to the planning board.</p> <p>24 THE HEARING EXAMINER: Okay. Sometimes they</p> <p>25 do a slide presentation of the revisions, and I just</p>
<p>50</p> <p>1 southern part, correct.</p> <p>2 THE HEARING EXAMINER: Okay.</p> <p>3 THE WITNESS: Nothing was --</p> <p>4 THE HEARING EXAMINER: You had no buildings</p> <p>5 or whatever to have it -- or even structures in the</p> <p>6 portion of the view that's being eliminated; is that</p> <p>7 right?</p> <p>8 THE WITNESS: That's correct. We had no</p> <p>9 setbacks stated from any property lines on the east</p> <p>10 side of it.</p> <p>11 THE HEARING EXAMINER: Okay.</p> <p>12 Ms. Harris, would you take a look at the</p> <p>13 chart of development standards that's in the</p> <p>14 technical staff report and make sure that in your</p> <p>15 follow up submission that you do whatever</p> <p>16 recalculations are necessary on there so that we get</p> <p>17 an accurate --</p> <p>18 MS. HARRIS: Yes.</p> <p>19 THE HEARING EXAMINER: -- showing of the</p> <p>20 compliance with development standards both from the</p> <p>21 zone -- the RE-2 zone standards and from the</p> <p>22 required development standards and remainder of the</p> <p>23 Code.</p> <p>24 MS. HARRIS: Yes. And prior to the planning</p> <p>25 board hearing, we had presented those revised</p>	<p>52</p> <p>1 wondered if they had done it here and I can get a</p> <p>2 copy of that printed out.</p> <p>3 MS. HARRIS: I can check back with staff. I</p> <p>4 do not recall that. I think, again, that it was the</p> <p>5 revised 37-C. I mean, it was 37-C and then just</p> <p>6 verbal testimony --</p> <p>7 THE HEARING EXAMINER: Okay.</p> <p>8 MS. HARRIS: -- a verbal presentation about</p> <p>9 the two standards that it changed.</p> <p>10 THE HEARING EXAMINER: All right.</p> <p>11 THE WITNESS: They weren't as concerned --</p> <p>12 the staff -- with the property line knowing it was</p> <p>13 coming back before that subdivision and they would</p> <p>14 take a look at it. But that would be their official</p> <p>15 response to the property line.</p> <p>16 THE HEARING EXAMINER: All right.</p> <p>17 BY MS. HARRIS:</p> <p>18 Q Can you please describe the surface parking</p> <p>19 and the driveway access.</p> <p>20 <b>A The surface parking is located in the shape</b></p> <p>21 <b>-- the building is shaped like an "L." It's sort</b></p> <p>22 <b>of located in the crease of the "L" to keep it</b></p> <p>23 <b>consolidated to the use of the residence that --</b></p> <p>24 <b>near the -- as close as possible to the main front</b></p> <p>25 <b>door for the use of the residents. There's 117</b></p>

<p>53</p> <p>1 parking spaces as we indicated. 2 It has all the internal green requirements 3 that are required in the zoning ordinance for a 4 parking lot, which is 5 percent. We meet motorcycle 5 parking spaces. We meet an electric station -- 6 charging station requirement, a shared parking 7 requirement. All of their standards are met. 8 It has continuous circulation. It also is 9 compatible with fire apparatus requirements from 10 DPS. It's going to be served by a single driveway. 11 Off of Bel Pre Road, a new driveway would be cut 12 25 feet wide, and that driveway will act as the 13 access for the existing church use just to the north 14 of that and to the senior housing facility in the 15 south. 16 Q Is the parking screened? 17 A The parking is screened as I indicated from 18 the east and the south from the building -- the 19 shape of the building. It's screened from the west 20 by -- there's existing trees there now, but we're 21 going to afforest and reforest that area. So 22 there'll be increase in the density of the trees on 23 the west side. So that will add to the screening 24 from the properties on the west. 25 So Bel Pre Road is actually behind the</p>	<p>55</p> <p>1 parking having 30 permanent bicycle parking spaces 2 was probably way beyond the need for bicycle parking 3 for a senior housing. 4 In addition, I indicated before these are 5 lockers. They're about -- they're, you know, about 6 4 or 5 feet wide and 6 feet or so deep. To stack up 7 30 -- or 15, I'm sorry, permanent lockers in the 8 front really kind of gets into the way of 9 landscaping and foundation plantings and all the 10 things that you want to put in there to beautify the 11 front of the facility. That would be kind of a bit 12 of an eyesore, and it wouldn't be used by the 13 residents. 14 THE HEARING EXAMINER: If the planning board 15 is happy with the number of spaces they suggested -- 16 bicycle spaces, I'm fine with that. 17 MS. HARRIS: Okay. Okay. So what we're 18 asking for is a waiver of 19 from the 29 to the 10. 19 29 required; 10 provided. 20 THE HEARING EXAMINER: Of the permanent 21 spaces? 22 MS. HARRIS: Of the long term, yes. 23 THE HEARING EXAMINER: The long term, right. 24 MS. HARRIS: Correct. Okay. 25 BY MS. HARRIS:</p>
<p>54</p> <p>1 church's use, so the church itself -- and usually 2 the church would actually screen it from 3 Bel Pre Road. 4 Q Where is the loading space? 5 A Loading spaces are off to the west. There 6 is also a transformer and a generator in the same 7 general area. 8 Q Thank you. The zoning ordinance 9 Section 6.2.10 allows the deciding body, which in 10 this case is the ZHE, the authority to waive the 11 requirements of Section 6.2. And there's two waiver 12 requests in connection with this project. One has 13 to do with the number of bike spaces. I think you 14 touched on that, but can you elaborate on that one 15 first, please. 16 A Yes. So we have a request for a waiver. 17 The parking -- the bicycle parking needed per code 18 was four spaces per -- or one bicycle space for four 19 units, which would divide out to 30 parking spaces. 20 And I think 90 or 95 percent needed to be permanent 21 parking, which is around 29 permanent spaces. And 22 then the rest could be temporary spaces, which is 23 basically a U rack. 24 Being that it's a senior housing facility, 25 we felt, and the Applicant felt, that the bicycle</p>	<p>56</p> <p>1 Q And then the second waiver had to do with 2 the parking setback and the requirement that a 3 34-foot parking setback is required. Can you 4 explain that situation. 5 A Yeah. The zoning ordinance requires that a 6 conditional use parking be set back at twice the 7 side yard building setback, which in this case would 8 be 34 feet. This property line here is considered a 9 side yard. 10 THE HEARING EXAMINER: This property line? 11 THE WITNESS: The north. The north of the 12 senior housing between the senior housing and the 13 church -- 14 THE HEARING EXAMINER: All right. 15 THE WITNESS: -- that property line being 16 treated as a side property line. The 30 -- we 17 would, by the zoning ordinance, need the parking to 18 be set back 34 feet. We have the whole lot -- I 19 don't want to say the whole front. That's not true. 20 There's several parking spaces to the east and 21 several parking spaces to the west where the parking 22 takes a 90-degree turn that are within that setback, 23 but on the other side of that setback is an existing 24 parking facility already there for the church. 25 So having -- assuming the intent of setting</p>

Transcript of Hearing  
Conducted on December 16, 2016

15 (57 to 60)

<p>57</p> <p>1 parking back in a residential zone is to screen it 2 from a residential use, this is not the residential 3 use, so that's why we were asking for a waiver for 4 that parking setback. 5 THE HEARING EXAMINER: Okay. So if I 6 understand you correctly, you're saying that the 7 parking spaces on the subject site that are within 8 the setback actually are abutting another parking 9 lot or the church parking lot. Is that what you're 10 saying? 11 THE WITNESS: It's not -- I wouldn't use the 12 word "abutting." It is in proximity to it. 13 THE HEARING EXAMINER: Okay. 14 THE WITNESS: It is on the other -- that 15 parking is going to be about 34 feet, 35 feet from 16 the property line on the church's side, and we set 17 the property line there so as not to place their 18 parking within that zoning restriction. 19 So keeping that in mind and honoring that, 20 there will be about 34 feet from the property line. 21 And we go down to -- I want to say 9 feet, I think, 22 is the closest. So we'll have some more management 23 in between there, which will have landscaping in it. 24 So it's not abutting it. It's set back maybe 10, 25 20 feet approximately, I'm guessing.</p>	<p>59</p> <p>1 the senior housing. I would say about half of them, 2 so maybe ten and another four or five. So about 3 half of them and not completely within there. 4 That's portions of the parking that are 5 within that setback. Most of those spaces that are 6 within the parking setback -- it's only the front 7 portion of them that are in there. It's sort of a 8 diagonal line that... 9 THE HEARING EXAMINER: So you're saying that 10 the front of about 10 to 15 spaces are within the 11 parking setback? 12 THE WITNESS: Yes. 13 THE HEARING EXAMINER: Okay. 14 THE WITNESS: That's correct. 15 THE HEARING EXAMINER: And the rest of them 16 are compliant with the parking setback? 17 THE WITNESS: Yes. 18 THE HEARING EXAMINER: All right. I take it 19 that your point is that there that setback -- the 20 rational for that setback doesn't apply in this case 21 because essentially the nearest items on the 22 adjacent property are parking spaces themselves? 23 THE WITNESS: That's correct. 24 THE HEARING EXAMINER: Okay. 25 THE WITNESS: Parking spaces for</p>
<p>58</p> <p>1 THE HEARING EXAMINER: So what is set back 2 10 to 20 feet? 3 THE WITNESS: The parking on the senior 4 housing. 5 THE HEARING EXAMINER: Oh, so the senior 6 housing parking is -- you're saying in this 7 particular area is 10 to 20 feet away from the -- 8 THE WITNESS: Yeah, I'm eyeballing that. 9 THE HEARING EXAMINER: Okay. 10 THE WITNESS: It's probably in the staff 11 report the exact dimension. I don't want to 12 contradict that. 13 THE HEARING EXAMINER: From the church 14 parking is what you're saying? 15 THE WITNESS: From the property line. 16 THE HEARING EXAMINER: From the property 17 line. 18 THE WITNESS: From the church parking, it's 19 going to be over 40 feet away. 20 THE HEARING EXAMINER: Okay. And you 21 mentioned that there's some of your spaces that are 22 in the situation. Are the bulk of the parking 23 spaces set back the required amount? 24 THE WITNESS: There's 25, 29, and probably a 25 little over 30 parking spaces on that north side of</p>	<p>60</p> <p>1 nonresidential use. 2 THE HEARING EXAMINER: Okay. 3 BY MS. HARRIS: 4 Q Okay. In your opinion does the proposed 5 parking -- is it adequate to serve the independent 6 living facility? 7 A Yes. 8 Q Can you please explain the storm water 9 management proposal and the status of the storm 10 water management concept plan. 11 A Yes. The storm management concept plan has 12 been submitted to the Department of Permitting 13 Services and at this point is still under review. 14 There are one, two, three, four, five, six, 15 seven storm water management facilities that meet 16 the environmental site design criteria of the State 17 of Maryland's storm water management regulations. 18 Technically speaking, they're called microbial 19 retention facilities. 20 There's two located on the west side of the 21 driveway. There's three located on the north side 22 of the parking lot of the senior housing. And 23 there's two located on the west side of the building 24 in parking for the senior housing. And that would 25 be in full compliance with the storm water</p>



Transcript of Hearing  
Conducted on December 16, 2016

16 (61 to 64)

<p>61</p> <p>1 <b>management regulations.</b></p> <p>2 THE HEARING EXAMINER: State and county?</p> <p>3 THE WITNESS: Yes.</p> <p>4 THE HEARING EXAMINER: And the concept plan</p> <p>5 that's been submitted, is this still under review?</p> <p>6 THE WITNESS: It's under review, yes.</p> <p>7 THE HEARING EXAMINER: And I take it you'd</p> <p>8 have to meet the requirements when you go to</p> <p>9 subdivision?</p> <p>10 THE WITNESS: Yes. The preliminary plan at</p> <p>11 subdivision would not be approved without the storm</p> <p>12 water concept not being approved.</p> <p>13 BY MS. HARRIS:</p> <p>14 Q I want to go back one moment because I</p> <p>15 failed to ask you about the height of the project</p> <p>16 and what the proposed -- you had indicated that the</p> <p>17 RE-2 maximum height is 50.</p> <p>18 What's the maximum height permitted by</p> <p>19 the --</p> <p>20 <b>A Right.</b></p> <p>21 Q -- and what's the proposed height of the</p> <p>22 property?</p> <p>23 <b>A I didn't get into the conditional use</b></p> <p>24 <b>standards, but the conditional use standard for</b></p> <p>25 <b>height is 60 feet. The RE-2 standard for height is</b></p>	<p>63</p> <p>1 <b>perpendicularly, which is what we're doing right</b></p> <p>2 <b>here.</b></p> <p>3 THE HEARING EXAMINER: "Right here" being --</p> <p>4 THE WITNESS: Where we're putting the new</p> <p>5 driveway cut in to dually serve the church and the</p> <p>6 senior housing.</p> <p>7 BY MS. HARRIS:</p> <p>8 Q In terms of setbacks, you indicated the RE-2</p> <p>9 setback. I note that the minimum side and rear</p> <p>10 setbacks is 25 feet --</p> <p>11 <b>A Yes.</b></p> <p>12 Q -- for the independent.</p> <p>13 <b>A So the setbacks differ in the conditional</b></p> <p>14 <b>use. There's 25-foot side yard setbacks. The rear</b></p> <p>15 <b>setback is also 25 feet; however, we're using the</b></p> <p>16 <b>more restrictive, which the zoning ordinance</b></p> <p>17 <b>requires you to do the more restrictive setback of</b></p> <p>18 <b>35 feet, which is the RE-2 rear yard setback. And</b></p> <p>19 <b>we're honoring the 25-foot more restrictive side</b></p> <p>20 <b>yard setback of the conditional use.</b></p> <p>21 THE HEARING EXAMINER: And once again, those</p> <p>22 are not changing from --</p> <p>23 THE WITNESS: They are not.</p> <p>24 THE HEARING EXAMINER: -- the previously</p> <p>25 submitted plans?</p>
<p>62</p> <p>1 <b>50 feet. We'll be less than 50 feet whether it's</b></p> <p>2 <b>measured from the existing average grade or the</b></p> <p>3 <b>proposed average grade. We would be less than</b></p> <p>4 <b>50 feet measured from that average grade to the</b></p> <p>5 <b>midpoint of the gable of the roof- the highest</b></p> <p>6 <b>gabled roof.</b></p> <p>7 THE HEARING EXAMINER: I take it that's not</p> <p>8 going to change from what was in your original</p> <p>9 plans?</p> <p>10 THE WITNESS: No.</p> <p>11 THE HEARING EXAMINER: Okay.</p> <p>12 THE WITNESS: I don't see that changing.</p> <p>13 BY MS. HARRIS:</p> <p>14 Q And then another conditional independent --</p> <p>15 well, conditional use standard that we didn't touch</p> <p>16 on is the minimum front setback of 50 feet.</p> <p>17 Do we meet that requirement?</p> <p>18 <b>A We do.</b></p> <p>19 Q And can you explain that in more detail.</p> <p>20 <b>A Well, the minimum setback is 50 feet, which</b></p> <p>21 <b>I thought was also the zoning RE-2 standard from...</b></p> <p>22 Q Yes.</p> <p>23 <b>A Okay. And the only stipulation on that was</b></p> <p>24 <b>that the front setback be retained as green space</b></p> <p>25 <b>with the exception of driveways that can traverse it</b></p>	<p>64</p> <p>1 THE WITNESS: Our setbacks would not</p> <p>2 change --</p> <p>3 THE HEARING EXAMINER: Okay.</p> <p>4 THE WITNESS: -- based on the property line</p> <p>5 that I had talked about.</p> <p>6 THE HEARING EXAMINER: All right.</p> <p>7 BY MS. HARRIS:</p> <p>8 Q And then finally, the final standard is the</p> <p>9 minimum green area, which is required to be</p> <p>10 70 percent.</p> <p>11 And do we meet that requirement?</p> <p>12 <b>A Right. The conditional use requires a</b></p> <p>13 <b>70 percent green area. We do meet that requirement.</b></p> <p>14 <b>Even with the new property line configuration, we're</b></p> <p>15 <b>about 71 percent.</b></p> <p>16 Q And do you recall what we were under the</p> <p>17 old?</p> <p>18 <b>A I believe we were about 72 percent.</b></p> <p>19 Q Thank you.</p> <p>20 MS. HARRIS: And, Mr. Grossman, we will get</p> <p>21 you those specific elements --</p> <p>22 THE HEARING EXAMINER: All right.</p> <p>23 MS. HARRIS: -- as you requested.</p> <p>24 THE HEARING EXAMINER: Okay.</p> <p>25</p>

Transcript of Hearing  
Conducted on December 16, 2016

17 (65 to 68)

<p>65</p> <p>1 BY MS. HARRIS:</p> <p>2 Q Moving on to public facilities, have you</p> <p>3 evaluated the availability of water and sewer?</p> <p>4 <b>A I have. There is an existing 16-inch water</b></p> <p>5 <b>line on Bel Pre Road. We'd make a connection to</b></p> <p>6 <b>that and provide a meter out close to the road. We</b></p> <p>7 <b>will connect to the water line on Bel Pre Road,</b></p> <p>8 <b>bring service back to serve both domestic and fire</b></p> <p>9 <b>needs to the building.</b></p> <p>10 <b>There is an existing sanitary sewer line</b></p> <p>11 <b>that runs from the east toward the west that goes</b></p> <p>12 <b>through the middle of the property, sort of bisects</b></p> <p>13 <b>it. And we'll be connecting to the sanitary --</b></p> <p>14 <b>existing sanitary line for sanitary service.</b></p> <p>15 <b>There is existing overhead electric and</b></p> <p>16 <b>cable communication lines on Bel Pre Road that there</b></p> <p>17 <b>would be probably an underground electric line. Run</b></p> <p>18 <b>that from those overhead lines on Bel Pre Road for a</b></p> <p>19 <b>lack of --</b></p> <p>20 THE HEARING EXAMINER: What are the water</p> <p>21 and sewer categories?</p> <p>22 THE WITNESS: I believe it's one. Could be</p> <p>23 -- it -- it -- yeah, it would be one. I was going</p> <p>24 to say it could be two, but I'd have to check. It</p> <p>25 is a category that we can connect to from the</p>	<p>67</p> <p>1 THE HEARING EXAMINER: I have a question</p> <p>2 regarding the lighting. Is that your photometrics?</p> <p>3 THE WITNESS: We did a photometric plan.</p> <p>4 There's site lighting that are 13 feet high. I call</p> <p>5 the top of it a gooseneck. I don't know if that's</p> <p>6 the proper term or not. It's a turndown head with a</p> <p>7 shield on the top that would direct the light</p> <p>8 down --</p> <p>9 THE HEARING EXAMINER: Right.</p> <p>10 THE WITNESS: -- onto the surface parking.</p> <p>11 The photometric study -- not done by us. Done by</p> <p>12 the lighting provider -- shows that we would not</p> <p>13 have any light intensity bleeds past the property</p> <p>14 line. There'd be some pedestrian -- I didn't</p> <p>15 mention that there is a sidewalk along the driveway</p> <p>16 coming in off of Bel Pre Road. There will be a</p> <p>17 pedestrian scale bollard lighting along the driveway</p> <p>18 coming in.</p> <p>19 THE HEARING EXAMINER: All right. I also</p> <p>20 noticed in the staff report, they indicated that you</p> <p>21 weren't -- you didn't have to meet the 0.1-foot</p> <p>22 candle standard at the property lines because you're</p> <p>23 not abutting any single-family homes, but isn't the</p> <p>24 past -- doesn't the pastor's home fall into that</p> <p>25 category of a single-family home?</p>
<p>66</p> <p>1 outset.</p> <p>2 THE HEARING EXAMINER: Okay.</p> <p>3 THE WITNESS: It doesn't need any category</p> <p>4 changes.</p> <p>5 THE HEARING EXAMINER: All right.</p> <p>6 MS. HARRIS: Mr. Foster will confirm the --</p> <p>7 THE HEARING EXAMINER: All right.</p> <p>8 MS. HARRIS: -- classification.</p> <p>9 BY MS. HARRIS:</p> <p>10 Q And then finally, have you evaluated the</p> <p>11 project with respect to fire access?</p> <p>12 <b>A I have. I indicated before that our</b></p> <p>13 <b>circulation here meets the fire apparatus</b></p> <p>14 <b>circulation requirements minimum 20 feet wide, a</b></p> <p>15 <b>minimum 25-foot radius inside then a 50-foot radius</b></p> <p>16 <b>on the outside. It meets the fire circulation from</b></p> <p>17 <b>turning in Bel Pre Road, travelling down the</b></p> <p>18 <b>proposed driveway, circulating around the parking</b></p> <p>19 <b>and leaving and turning back out on Bel Pre Road.</b></p> <p>20 Q So in sum is it your opinion that the</p> <p>21 proposed conditional use meets development standards</p> <p>22 of both the conditional use requirements and the</p> <p>23 RE-2 development standards?</p> <p>24 <b>A It is.</b></p> <p>25 Q Okay. Thank you.</p>	<p>68</p> <p>1 THE WITNESS: I guess it could. We analyzed</p> <p>2 it along this property all along the property lines,</p> <p>3 but in case of a multi-family -- I actually have the</p> <p>4 photometrics here that I can look at and see if</p> <p>5 there's --</p> <p>6 THE HEARING EXAMINER: Well, I've looked at</p> <p>7 that, and what I'm saying is it seems to me that</p> <p>8 that -- I don't know that under your new plan</p> <p>9 whether any of your lighting gets close to the</p> <p>10 pastor's --</p> <p>11 THE WITNESS: Yeah, I was going to say the</p> <p>12 lighting is concentrated down in front of the</p> <p>13 building beyond the parking -- the most -- northern</p> <p>14 most parking line. So all of the 13-foot light</p> <p>15 poles that I had described, they're all located in</p> <p>16 this area down here.</p> <p>17 THE HEARING EXAMINER: And "this area down</p> <p>18 here" being the --</p> <p>19 THE WITNESS: In front of the senior housing</p> <p>20 facility on the north side of the senior housing</p> <p>21 facility quite far from both the church and the</p> <p>22 house on the church use.</p> <p>23 THE HEARING EXAMINER: However it seemed to</p> <p>24 me that in terms of what standard applied, given</p> <p>25 that the pastor's home is there, it is an abutting</p>

Transcript of Hearing  
Conducted on December 16, 2016

18 (69 to 72)

<p>69</p> <p>1 lot. After -- in subdivision, it will be an 2 abutting lot with a single-family home that the 3 standard -- the 0.1-foot candle standard would 4 apply. It appeared to me that you met it all over, 5 but in terms of what applies, it seems to me that 6 would apply. 7 Ms. Harris, do you have any comment on that? 8 MS. HARRIS: I haven't evaluated it, but I 9 think based on the extent that's a single-family 10 home and -- 11 THE HEARING EXAMINER: Right. 12 MS. HARRIS: -- classified as such, then that 13 would be applicable. And I haven't looked at the 14 photometric with that in that regard. But just to 15 be clear, what you're saying, Mr. Grossman, is that 16 we meet it. It's just that the staff report 17 indicated that it -- 18 THE HEARING EXAMINER: Right. Right. 19 MS. HARRIS: Okay. 20 THE HEARING EXAMINER: I just noticed when I 21 heard the staff -- 22 MS. HARRIS: Okay. I understand. 23 THE HEARING EXAMINER: -- report, what they 24 said, 25 "It doesn't apply." But I think it does apply.</p>	<p>71</p> <p>1 whatever the standards are or get a signed variance. 2 MS. HARRIS: Yes. 3 BY MS. HARRIS: 4 Q Just to be clear though, so can you, please, 5 just identify where those signs are on the plan. 6 THE WITNESS: Yeah. There's one on the east 7 side of the -- proposed on the east side of the 8 proposed entrance, which is just about 10 to 12 feet 9 from the property line located outside of a gas 10 easement that runs along there. 11 And then there -- and that is a -- I can 12 call it a monument sign. I don't think it's going 13 to be very tall. It's probably -- it's probably 14 going to be about the same scale. I believe there 15 is a sign out there, and it will probably be about 16 the same scale as the sign that's out there. But, 17 like I said, it hasn't been designed yet. 18 THE HEARING EXAMINER: Well, actually, there 19 is a picture of it or a diagram of it on the 20 conditional use plan of both sides. 21 THE WITNESS: Yeah, there might be a picture 22 of it. I don't know if all the dimensions and all 23 are on it, are they? 24 THE HEARING EXAMINER: I believe they were. 25 Well, at least they were --</p>
<p>70</p> <p>1 MS. HARRIS: Yeah. 2 THE WITNESS: When we -- we had it done so 3 that it was 0 or .1 at the property lines 4 regardless, so we don't have any light bleed. At 5 the closest point of the property of the parking lot 6 lights to the property line and the pastor's house 7 being farther away, it would be -- there would be no 8 light bleed up there. 9 THE HEARING EXAMINER: All right. I also 10 noticed you have two proposed signs; one at the 11 Bel Pre Road entrance and one at the entrance at the 12 parking lot. Two monument signs. 13 THE WITNESS: Yes. 14 THE HEARING EXAMINER: Will those be lighted 15 or unlighted? 16 THE WITNESS: I believe they're going to be 17 lit internally. I don't know. The details have not 18 been designed on those yet. 19 THE HEARING EXAMINER: All right. And 20 you're going to have to -- there will be a condition 21 regarding the signs. I think that you'll meet the 22 conditions for -- in terms of square footage based 23 on the -- what was said in the staff report about 24 the surface area of the sign for a subdivision. But 25 there will be a condition that you have to meet</p>	<p>72</p> <p>1 THE WITNESS: Okay. 2 THE HEARING EXAMINER: -- on it -- that the 3 staff in the report, the staff report indicated a 4 number of inches -- 5 THE WITNESS: Okay. 6 THE HEARING EXAMINER: -- in width and 7 height, which I then multiplied out and it indicated 8 to me that you would be within the square footage 9 restriction for subdivision signs -- 10 THE WITNESS: Okay. 11 THE HEARING EXAMINER: -- which are allowed 12 too. But, once again, that would be something that 13 would be determined by the Department of Permitting 14 Services and the Sign Review Board as long as we 15 make the determination of compatibility. And I 16 guess Mr. Foster can address that issue. 17 THE WITNESS: There may have been more 18 details provided by us than I can recall. There's 19 an additional sign. I believe it's going to be down 20 close to where the driveway meets the parking of the 21 senior housing. It's going to be a smaller scale 22 sign. I think it's on the west side of the 23 driveway. It will actually be on the property of 24 the senior housing lot. 25 MS. HARRIS: Thank you.</p>

Transcript of Hearing  
Conducted on December 16, 2016

19 (73 to 76)

<p>73</p> <p>1 I have no further questions unless you do. 2 THE HEARING EXAMINER: Nor do I. I think I 3 badgered him enough. 4 MS. HARRIS: Thank you, Mr. Reddan. 5 Our next witness is Mr. Foster. 6 THE HEARING EXAMINER: Can I get your full 7 name, please, Mr. Foster? 8 THE WITNESS: Kevin Foster. 9 THE HEARING EXAMINER: All right. Raise 10 your right hand, please. 11 KEVIN FOSTER 12 having been first duly sworn, 13 was examined and testified as follows: 14 * * * 15 EXAMINATION 16 BY MS. HARRIS: 17 Q Can you please explain your primary 18 occupation and background about your professional 19 job. 20 <b>A I am a certified land planner and licensed</b> 21 <b>landscape architect. I'm the principal with</b> 22 <b>Gutschick, Little, &amp; Weber, offices at 3909 National</b> 23 <b>Drive in Burtonsville, Maryland.</b> 24 Q Have you testified before this court 25 previously?</p>	<p>75</p> <p>1 <b>with design staff with property layout, working with</b> 2 <b>designing the landscape plans, the buffering, and</b> 3 <b>also working and designing the forest conservation</b> 4 <b>plans as well on the property.</b> 5 Q Thank you. Can you please describe the 6 surrounding area. 7 <b>A Okay. I'm now going to work with -- what's</b> 8 <b>the exhibit number for the surrounding area exhibit?</b> 9 MS. HARRIS: In the land use report -- as 10 part of the land use report, 3-B was the aerial map. 11 THE WITNESS: So this is a copy of 12 Exhibit 3-B, the surrounding neighborhood plans. 13 And so I'm referencing Exhibit 3-B. 14 And just to give you a little review, 15 running roughly in the middle of the site, 16 east/west, is Bel Pre Road. The site is located in 17 the center of the exhibit outlined in red. And just 18 to the west of the site, running north/south roughly 19 is Connecticut Avenue. And further west is Georgia 20 Avenue. And outlined in orange dotted line is what 21 was determined to be basically the surrounding 22 neighborhood. 23 THE HEARING EXAMINER: Right. And the 24 technical staff adopted your definition. 25 THE WITNESS: Correct. Just to give a brief</p>
<p>74</p> <p>1 <b>A Yes, I have.</b> 2 Q Excuse me, this hearing examiner? 3 <b>A Yes, I have. Several times.</b> 4 THE HEARING EXAMINER: All right. Then 5 based on Mr. Foster's resume, which is indicated in 6 the Exhibit 10-A and his prior testimony as an 7 expert before me in land planning, I believe in 8 landscape architecture here -- 9 THE WITNESS: Yes. 10 THE HEARING EXAMINER: -- as well, I accept 11 him as an expert in land planning and landscape 12 architecture in this case. 13 MS. HARRIS: Thank you. 14 BY MS. HARRIS: 15 Q Are you familiar with the subject 16 conditional use? 17 <b>A Yes, I am.</b> 18 Q Can you please describe what your 19 responsibilities were in connection with this. 20 <b>A My initial responsibilities were review of</b> 21 <b>the zoning code, a review of the Aspen Hill master</b> 22 <b>plan, a review of the County's housing policies, a</b> 23 <b>review of all the materials that we put together for</b> 24 <b>this development, putting together the land use</b> 25 <b>report, helping to put that together, then working</b></p>	<p>76</p> <p>1 description of what we used to come up with that, to 2 the north was Big Bear Terrace, which is a small 3 road just off of Homecrest Road. And the southern 4 boundary of Leisure World, that was kind of the 5 boundary to the north. 6 The boundary to the east was 7 Beaverwood Lane. The boundary to the south was, 8 again, Beaverwood Lane because it turns along the 9 bottom of the site and Peppertree Lane. And then 10 the boundary to the west was Connecticut Avenue. 11 BY MS. HARRIS: 12 Q Thank you. Can you describe the surrounding 13 zoning. 14 <b>A Sure.</b> 15 Q And we're referring to -- the zoning map was 16 -- the certified zoning map was Exhibit 4. 17 <b>A Okay. This was a copy of the Exhibit 4,</b> 18 <b>which is the zoning map for the surrounding</b> 19 <b>neighborhood. And, again, it's the same basic</b> 20 <b>orientation as the surrounding neighborhood map with</b> 21 <b>Bel Pre Road running east/west in the middle.</b> 22 <b>The subject property is outlined in red; and</b> 23 <b>the surrounding neighborhood, again, is outlined in</b> 24 <b>Orange. The subject property is a very light tan.</b> 25 <b>You can also see there is some other light tan on</b></p>

<p>77</p> <p>1 the zoning map. That's RE-2 zoning. 2 In the surrounding neighborhood, there is 3 some darker tan on the west, south, and east of the 4 subject property. That's R-20 zoning, multi-family 5 car and apartment zoning. 6 There is also some lighter tan within the 7 surrounding area that's R-200, multi -- I mean, 8 single-family, detached zoning that has some special 9 exception uses, some townhouse uses, and some 10 single-family uses. 11 There is also some RT-12.5 townhouse zoning 12 on the southern portion of the surrounding 13 neighborhood. There is also some PD-2 zoning at the 14 intersection of Bel Pre Road and Homecrest. And 15 then there is also some PRC zoning down on the 16 southern edge of Leisure World. 17 Q In addition to that, is there anything else 18 you would add in terms of describing the general 19 character of the surrounding area? 20 A The general character of the surrounding 21 area is mostly residential with several 22 institutional special exceptions in the 23 neighborhood. 24 The area directly around the subject 25 property -- when I say, "directly around," to the</p>	<p>79</p> <p>1 facility, are they all garden apartments? 2 THE WITNESS: Yes. 3 THE HEARING EXAMINER: Okay. And you 4 mentioned some single-family units. I didn't see 5 any single-family units other than the pastor's unit 6 that would directly about the subject property. 7 THE WITNESS: They're not directly abutting. 8 I'm now referencing the surrounding neighborhood 9 exhibit. 10 THE HEARING EXAMINER: Okay. 11 THE WITNESS: They're not directly abutting. 12 They're in basically the south/east corner of the 13 surrounding neighborhood. Along Beaver Lane there 14 is a small area of R-200 zoning that has 15 single-family detached houses, but there is garden 16 apartments between those single-family detached and 17 the subject property. 18 THE HEARING EXAMINER: Okay. 19 BY MS. HARRIS: 20 Q You indicated that you had reviewed the 21 Aspen Hill master plan in connection with your 22 preparation of this conditional use. Can you 23 explain how it applies to this property and whether 24 the property -- the subject conditional use plan is 25 consistent with the master plan?</p>
<p>78</p> <p>1 west, south, and east of the subject property are 2 garden apartments -- 3 and 4 story garden apartments 3 probably built in the '70s and '80s. Still in very 4 good shape, but they're very typical of the 5 garden-apartment style in this section of Montgomery 6 County. Especially when you go further west over 7 toward Georgia Avenue, there is a very large stock 8 of garden-apartment housing in this portion of 9 Montgomery County. 10 In the surrounding neighborhood, there is 11 also a mix of townhouses and single-families -- 12 single-family housing just to the east of the 13 subject property. 14 And then north of Bel Pre Road there is some 15 single-family houses as well as a place of worship, 16 Vedanta Center of Greater Washington. There is a 17 Moose Lodge of Wheaton. There is Aspenwood Senior 18 Living Community, Winchester School, Genesis 19 Healthcare, the Layhill Center just north of the 20 subject property. 21 And then if you move west on Bel Pre Road, 22 there is Aquarius Local Park and a fire station. So 23 there is certainly a mix within the neighborhood. 24 THE HEARING EXAMINER: All of the apartment 25 complexes which are noted around the proposed</p>	<p>80</p> <p>1 A Certainly. I reviewed the master plan, and 2 there's several sections of the master plan that I 3 think are generally relevant to this application. 4 Starting with land use subjective's on page 29, "The 5 master plan" -- and I'm quoting from the 1994 Aspen 6 Hill master plan on Page 29: 7 "To preserve and increase housing resources 8 in Montgomery County" -- to support the County 9 housing policies, and I'll talk a little bit about 10 the housing policies later. 11 So this application certainly supports 12 increasing housing resources in Montgomery County. 13 We're adding 120 apartment -- you know, senior 14 apartments in an area of the county that certainly, 15 you know, everywhere in the county now with the 16 aging population, we certainly need additional 17 housing units. And the master plan calls for it, 18 and I think this application is providing part of 19 that. 20 On page 80 there is a specific section 21 talking about special exceptions in particular, and 22 the master plan talks about avoiding excessive 23 concentrations of special exceptions and other 24 non-residential land uses along major transportation 25 corridors.</p>

Transcript of Hearing  
Conducted on December 16, 2016

21 (81 to 84)

<p>81</p> <p>1 Well, in this case Bel Pre Road is not 2 considered a major transportation corridor. 3 Bel Pre Road is an arterial road, so clearly this 4 special exception is not concentrating a special 5 exception use along a major transportation corridor. 6 And this a residential use, not a nonresidential 7 use. Whereas -- 8 THE HEARING EXAMINER: I'm not really sure 9 that they meant to exclude roads such as 10 Bel Pre Road from major transportation corridors 11 when they wrote that -- 12 THE WITNESS: Okay. Well -- 13 THE HEARING EXAMINER: -- plan. But I'm not 14 saying -- suggesting that given the nature of this 15 particular conditional use, that -- 16 THE WITNESS: Right. 17 THE HEARING EXAMINER: -- the plan didn't 18 intend to allow it. I am just saying that I noticed 19 that distinction between Bel Pre Road and major 20 transportation corridors. I thought it was somewhat 21 artificial. I'm pretty familiar with that area, so 22 I thought it was. 23 <b>A Right. And even if you make -- you know,</b> 24 <b>were to discuss that distinction, I think in this</b> 25 <b>case how we designed it -- you know, where we</b></p>	<p>83</p> <p>1 points. We're combining the access point of this 2 facility with the church. 3 THE HEARING EXAMINER: Right. 4 THE WITNESS: So we're trying to reduce the 5 number of access points, make it safer on 6 Bel Pre Road. 7 The master plan goes on, talks about special 8 exceptions: "And in the design and review of 9 special exceptions, the following guidelines should 10 be followed in addition to those stated in the 11 special exceptions in the zoning ordinance." 12 And it talks about: "In particular front 13 yard parking should be avoided because of its 14 commercial appearance; however, in situations where 15 side or rear parking is not available, front yard 16 parking should be allowed only if it can be 17 adequately landscaped and screened." 18 Well, I think, again, how we've situated our 19 parking behind the church, putting our storm water 20 management in front of it, using that landscaping, 21 again, we've really tried to do what the master plan 22 has, you know, asked us not to create that front 23 yard, you know, parking again. 24 THE HEARING EXAMINER: Right. You're 25 clearly not having parking along Bel Pre Road.</p>
<p>82</p> <p>1 <b>located it over 600 feet back from the road --</b> 2 THE HEARING EXAMINER: Right. 3 THE WITNESS: -- behind the church, 4 landscaping it, I think, you know, we've really done 5 a great job of, you know, trying to buffer this and 6 make it appropriate for the site and not -- you 7 know, not concentrating it along the road. 8 THE HEARING EXAMINER: Right. I don't think 9 there is any argument about that. 10 THE WITNESS: Right. 11 THE HEARING EXAMINER: I mean, I don't think 12 that it would be a violation of the intent of that 13 plan. 14 THE WITNESS: Right. 15 THE HEARING EXAMINER: I just thought that 16 that distinction between major transportation 17 corridors and Bel Pre Road given the size of that 18 road is somewhat artificial is all I'm saying. 19 THE WITNESS: Right. And the master plan 20 also goes on to say: 21 "It's important in this area to minimize 22 uses that might diminish the safety and reduce the 23 capacity of the roadways by creating too many access 24 points and conflict turning movements." 25 In this case we're trying to combine access</p>	<p>84</p> <p>1 THE WITNESS: Right. 2 THE HEARING EXAMINER: I think that would be 3 the issue. 4 THE WITNESS: Right. And it says: "Close 5 scrutiny should be given to replacing or enhancing 6 screening and buffering as used from abutting 7 residential areas along major roadways." 8 You know, the way we sited this building, 9 we're using the building for the majority of our 10 screening of that parking area from the surrounding 11 buildings, and in the sides that we can't use the 12 building, we're providing buffering. So I think 13 we're trying to make this as compatible as we can to 14 the surrounding buildings. 15 THE HEARING EXAMINER: All right. In your 16 opinion, will the plan as now proposed be compatible 17 -- 18 THE WITNESS: Yes. 19 THE HEARING EXAMINER: -- with the 20 surrounding area? 21 THE WITNESS: Yes, it will. 22 THE HEARING EXAMINER: How about the signs 23 that are listed? Are they compatible? 24 THE WITNESS: Yes. 25 THE HEARING EXAMINER: Okay.</p>

Transcript of Hearing  
Conducted on December 16, 2016

22 (85 to 88)

<p>85</p> <p>1 THE WITNESS: There is a section in the 2 master plan regarding environment. It says: 3 "Implement programs to achieve state water quality 4 standards in Rock Creek and northwest branch." 5 THE HEARING EXAMINER: What page are you on 6 now? 7 THE WITNESS: I'm on page 122. 8 THE HEARING EXAMINER: Okay. 9 THE WITNESS: Environmental Resource 10 Recommendations. The second recommendation is: 11 "Reduce existing and avoid potential future property 12 damage from flooding erosion sedimentation through 13 appropriate storm water management." 14 This existing site has absolutely no storm 15 water management, so by the implementation of this 16 proposal, we're going to be providing full 17 environmental site designs for water management for 18 this site and thereby, you know, implementing the 19 recommendations of the master plan providing, you 20 know, fully -- full county and state required storm 21 water management to protect the environment. 22 It also talks about maintaining and adding 23 existing forest cover in accordance with County's 24 forest conservation laws. You know, we've done a 25 forest conservation plan. We're going to be</p>	<p>87</p> <p>1 helpful if we pull up the plan and then if you can 2 sort of dwell down on any of the site 3 characteristics to -- including landscaping to 4 further discuss the compatibility with the 5 surrounding area and the adjacent properties. 6 THE HEARING EXAMINER: Well, Ms. Harris, I 7 take it you have with you hard copies of all of the 8 revived plans. 9 MS. HARRIS: No. And, in fact, that's what 10 I thought we had said that we can hand deliver 11 those. We have the 37-C. 12 THE HEARING EXAMINER: I see. 13 MS. HARRIS: But the A through the entire 14 12-sheet section -- 15 THE HEARING EXAMINER: Oh, I thought we were 16 talking about the electronic copies of that. You 17 don't have the hard copies? 18 MS. HARRIS: I don't think. Do we have the 19 revised ones? 20 THE WITNESS: I don't have hard copies of 21 every sheet, no, or PDFs with me right now. 22 MS. HARRIS: If you want them, I mean, we 23 could take a five-minute break and get a delivery 24 over to you for this afternoon. 25 THE HEARING EXAMINER: Yeah, I mean, this is</p>
<p>86</p> <p>1 afforesting up to the minimum standards providing 2 onsite forest cover and meeting the forest 3 conservation requirements, therefore, you know, 4 meeting the recommendations of the master plan. 5 THE HEARING EXAMINER: As I understand it, 6 the planning board, according to their letter, has 7 approved the preliminary forest conservation plan 8 and the associated tree variance. 9 THE WITNESS: They have. 10 THE HEARING EXAMINER: Okay. 11 THE WITNESS: There's also a final section 12 of the master plan. It's on Page 176 under 13 "Community Facility Objectives" under "The Elderly," 14 is "Provide affordable housing for the elderly with 15 rental and privately-owned units in a variety of 16 housing types." 17 So obviously we're directly meeting that 18 goal of the master plan by providing rental housing 19 for elderly and persons with disabilities. 20 BY MS. HARRIS: 21 Q In your opinion, does the proposed project 22 conform with the Aspen Hill master plan? 23 A It does. 24 Q If we could -- you've touched on a number of 25 issues having to do with compatibility. It may be</p>	<p>88</p> <p>1 the public hearing for the case. 2 MS. HARRIS: Yes. 3 THE HEARING EXAMINER: And if you have 4 revised plans, which as I said, really should have 5 been submitted in advance of the hearing, but you'd 6 certainly have to have them at the hearing. 7 THE WITNESS: We have all of the site and 8 the landscaping hard copies here and the cover sheet 9 as well. 10 THE HEARING EXAMINER: You have all of the 11 conditional use plan? 12 THE WITNESS: But as a set, there is a 13 couple of items on the site detail sheet that are 14 not here. 15 THE HEARING EXAMINER: Okay. 16 MS. HARRIS: But just to be clear, do they 17 reflect the revised property line? 18 THE WITNESS: Yes. 19 MS. HARRIS: Okay. 20 THE HEARING EXAMINER: Why don't I take a 21 break and you can -- 22 MS. HARRIS: Figure out what we have. 23 THE HEARING EXAMINER: -- go over and make 24 sure -- 25 MS. HARRIS: Okay.</p>

Transcript of Hearing  
Conducted on December 16, 2016

23 (89 to 92)

<p>89</p> <p>1 THE HEARING EXAMINER: -- that we have it 2 because we certainly -- at the public hearing, we 3 should have all of the plans. 4 MS. HARRIS: Yes. You're right. 5 THE HEARING EXAMINER: All right. We'll 6 take a break until 20 minutes after 11:00. 7 (Recess.) 8 THE HEARING EXAMINER: Back on the record. 9 What's the conclusion about the plans? 10 MS. HARRIS: The majority of them either did 11 not change or are here in their changed state, but 12 there are four sheets that are not. 13 THE HEARING EXAMINER: Okay. 14 MS. HARRIS: And so we're requesting that 15 those -- we thought it would be easier just to get 16 the entire new package so that it's all complete 17 couriered up here. 18 THE HEARING EXAMINER: Okay. 19 MS. HARRIS: And the only thing -- yes. And 20 so they -- but just for the record, the sheets that 21 did change that aren't here at the moment are sheet 22 one. 23 And the only reason for sheet one is the, as 24 stated, it has nothing do with the property lines. 25 It has to do with the height, which says the stated</p>	<p>91</p> <p>1 that this would occur in this case, is that the 2 plans were then sent back to or provided to staff to 3 make sure -- to give them an opportunity to make 4 sure that the further changes, that they had no 5 issue with them and that they were compatible. 6 THE HEARING EXAMINER: Right. And we will 7 do that in this case as well. 8 MS. HARRIS: Okay. 9 THE HEARING EXAMINER: But since it is the 10 public hearing, number one, the hearing examiner 11 likes to know in advance what the plan is and should 12 know. And that's contemplated in the Code, really. 13 Although we do allow changes at the hearing, 14 it's not the best practice to make them that 15 significant without another public hearing. It just 16 so happens you don't have any opposition here, so it 17 might not be that big a problem. But we would, as a 18 -- because it's a public hearing, we would want the 19 plans in advance. 20 Now, if they're being submitted at the 21 hearing with these changes, we obviously submit them 22 to technical staff and for public comment after 23 they're submitted to a public hearing. It's not a 24 good practice at the hearing first -- 25 MS. HARRIS: Okay.</p>
<p>90</p> <p>1 height on the plan is 47 feet. And upon reflection, 2 we think it's better just to state 50 feet because 3 it -- just to give a little bit of flexibility so it 4 would say "maximum height 50 feet." 5 THE HEARING EXAMINER: Okay. I did see in 6 the staff report that it did say "47." I mean, it 7 said -- it recited the height. 8 MS. HARRIS: Okay. I mean, we're still 9 under the 50. I think the purpose of the staff 10 report was just to confirm that we're under the 11 50-foot requirement. I mean, the 60-foot 12 requirement. 13 THE HEARING EXAMINER: Right. But they also 14 do a compatibility assessment too, so the question 15 of the height of the building would impact -- 16 MS. HARRIS: Go to compatibility? Okay. 17 THE HEARING EXAMINER: I'm not just 18 suggesting that it would be incompatible given its 19 surroundings are actually a couple of feet taller, 20 but I'm just saying I have to give them time to 21 evaluate. 22 MS. HARRIS: During my -- and, again, I want 23 to apologize that we didn't have these here. The 24 last hearing I had where there were changes 25 submitted, and so I was proceeding upon the thought</p>	<p>92</p> <p>1 THE HEARING EXAMINER: -- if there are 2 significant changes like cutting off a leg of the 3 site. It may not impact on anything here adversely. 4 In fact, it probably has less of an impact because 5 you're reducing the size of the site rather than 6 increasing it; but, as I said, this is a practical 7 matter. 8 MS. HARRIS: Okay. 9 THE HEARING EXAMINER: It's not a good idea. 10 MS. HARRIS: I understand what you're 11 saying. I actually, in trying to figure out 12 procedurally how to handle this, I did review the 13 rules and was reliant upon the rule that states that 14 you can revise at the public hearing. And, again, 15 knowing that -- well, I mean, I hear you and that in 16 the future we will make sure that we get them 17 submitted in advance. 18 THE HEARING EXAMINER: Well, as you know, 19 that issue is an issue in another case because it 20 doesn't specifically say it in the zoning ordinance 21 that it can be revised at the hearing. It does say 22 in our rules that if there is a revision at the 23 hearing, there should be time to -- it should be 24 submitted -- i forget exactly how it's worded. 25 But I'm not suggesting that there shouldn't</p>



Transcript of Hearing  
Conducted on December 16, 2016

24 (93 to 96)

<p>93</p> <p>1 be the allowance for changes at the hearing, 2 especially to improve compatibility. But in this 3 case, to address a potential problem at subdivision, 4 and it's better to have it changed in advance of 5 subdivision so we have the plans that are likely to 6 be the ones that go into subdivision here at the 7 hearing so there aren't major changes thereafter. 8 But I'm just saying as a practical matter, 9 we would like to have it in advance next time. 10 MS. HARRIS: Okay. Understood. 11 THE HEARING EXAMINER: But in any event, now 12 that we're where we are, so your plan is to -- 13 you've sent out to have a set couriered here? 14 MS. HARRIS: We're about to make that 15 request, yes. 16 THE HEARING EXAMINER: Okay. 17 MS. HARRIS: And so it would be a full set, 18 but as I noted, the majority of the majority of the 19 plans that are here are reflective of -- either did 20 not change or have -- or present the change. 21 THE HEARING EXAMINER: Right. So which are 22 the ones that are not here? You said sheet one. 23 THE WITNESS: Sheet one. But, again, that 24 had to do with the height, which then that seems 25 that that's separate issue.</p>	<p>95</p> <p>1 MS. HARRIS: Yeah, yes. 2 THE WITNESS: Yes. 3 THE HEARING EXAMINER: Okay. All right. So 4 let's go with that plan. About how long do you 5 think it will take to get here? 6 THE WITNESS: I've got to call. It would be 7 this afternoon. 8 THE HEARING EXAMINER: Okay. 9 THE WITNESS: What is the end of the day? 10 THE HEARING EXAMINER: Well, the end of the 11 day is 5:00 o'clock. 12 THE WITNESS: Okay. 13 THE HEARING EXAMINER: But we have the court 14 reporter, so we don't want to unduly extend her 15 time. 16 THE WITNESS: Okay. It would be after 17 lunch, but I will call and express the urgency of 18 it. 19 THE HEARING EXAMINER: All right. Thank 20 you. 21 MS. HARRIS: May we proceed? 22 THE HEARING EXAMINER: Yes. 23 BY MS. HARRIS: 24 Q Okay. So, Mr. Foster, using exhibit -- it's 25 sheet 8 of 12, so this will be new Exhibit 37.</p>
<p>94</p> <p>1 THE HEARING EXAMINER: Right. 2 MS. HARRIS: Number seven, which is a detail 3 sheet. 4 THE HEARING EXAMINER: Right. 5 MS. HARRIS: And then sheets 11 and 12. And 6 11 and 12 are the photometrics, so it needs -- the 7 line is -- 8 THE HEARING EXAMINER: Right. 9 MS. HARRIS: Nothing is going to change. 10 The line will change -- 11 THE HEARING EXAMINER: Right. 12 MS. HARRIS: -- on the photometric. 13 THE HEARING EXAMINER: All right. 14 THE WITNESS: They should be signed and 15 sealed. 16 MS. HARRIS: Yes, they should be signed and 17 sealed. 18 THE HEARING EXAMINER: Well, you have 19 somebody here who can sign and seal it; correct? 20 MS. HARRIS: Yes. 21 THE WITNESS: Two people are here. We just 22 need our seals. The seals are not here. 23 THE HEARING EXAMINER: Can they be couriered 24 over also so you can have it in here before the 25 record closes today?</p>	<p>96</p> <p>1 THE HEARING EXAMINER: Let's see. 2 MS. HARRIS: It will be 37-G. 3 THE HEARING EXAMINER: All right. 4 BY MS. HARRIS: 5 Q Can you please identify and walk through the 6 details that -- 7 THE HEARING EXAMINER: Well, G would have 8 been 7. 9 MS. HARRIS: G is 7. I'm sorry. I thought 10 it said 7 Through 12. It's E-A, so... 11 THE HEARING EXAMINER: Okay. So it's a 12 landscape plan, so we can make it -- I guess let's 13 just continue with the numbering system. We'll make 14 it 37-H; right? Would that make sense? 15 MS. HARRIS: Yes. 16 THE HEARING EXAMINER: Would be the revised 17 landscape plan on sheet 8; right? 18 MS. HARRIS: Yes. And sheet 9 would then be 19 I. 20 THE HEARING EXAMINER: 37-I. And the 21 details would be J. Sheet 10; right? 22 MS. HARRIS: Correct. And then we might as 23 well continue that. The photometrics would be L and 24 M. 25 THE HEARING EXAMINER: Right.</p>

Transcript of Hearing  
Conducted on December 16, 2016

25 (97 to 100)

<p style="text-align: right;">97</p> <p>1 MS. HARRIS: So that would be sheet 11 is L 2 and sheet 12 is M. 3 THE HEARING EXAMINER: Okay. 4 MS. HARRIS: Actually it's H, I, J, K, L; 5 right? 6 THE HEARING EXAMINER: Yes. You caught me 7 there. 8 MS. HARRIS: I think I may have. 9 THE HEARING EXAMINER: So K would be sheet 10 11; L would be 12. 11 MS. HARRIS: What sheet is that? 12 THE WITNESS: The forest conversation plan. 13 THE HEARING EXAMINER: So let me jot these 14 down here. 15 Okay. All right. So I think we're 16 consistent now. A through L; right? So it will be 17 pages 1 through 12. 18 MS. HARRIS: Yes, correct. 19 THE HEARING EXAMINER: Okay. 20 BY MS. HARRIS: 21 Q Mr. Foster, relying on Exhibit 37-H -- is 22 that H? 23 A Yes. 24 Q Can you please identify -- you had touched 25 on some of the site characteristics, but can you</p>	<p style="text-align: right;">99</p> <p>1 obviously, we had to do a natural resources 2 inventory and forest delineation. And there was a 3 single forest stand located on the site, and it was 4 basically on the eastern portion of the site to the 5 east of the existing parking lot between the parking 6 lot and the apartment buildings to the east. So 7 that area of wooded woods, I guess you would call 8 them, is considered forest. 9 The remaining treed areas to the east, 10 south, and west of the property, there weren't quite 11 enough trees, and there wasn't enough density in 12 those -- that forest band to be considered forest. 13 But there is significant trees there. They're 40-, 14 50-, 60-foot tall trees. They've been there for 15 quite a long time. They create a very nice edge 16 along a lot of that area, and so they create a nice 17 scale, a nice buffer to the existing three- and 18 four-storey garden apartments that there. 19 And a lot of those garden apartments have 20 more trees that are part of that buffer that go onto 21 their property. So, you know, when you look at 22 these garden apartments from the subject property, 23 they look somewhat wooded, you know, or the tree -- 24 they've been there for a long time. These aren't 25 new structures, so they had canopy. They're, you</p>
<p style="text-align: right;">98</p> <p>1 provide further detail in terms of the surrounding 2 landscaping and components of the plan that in your 3 opinion make it compatible with the surrounding 4 area? 5 A Sure. Actually, I think I'll first start 6 with 37-C, which is the overall conditional use 7 plan. And just to take a step back real quick, and 8 describe a little bit about the site conditions 9 because they weren't really described a lot 10 previously. 11 The preexisting site has been talked about a 12 little bit, but it contains the Wheaton Seventh-Day 13 Adventist Church, which is roughly in the center of 14 the subject property, and it faces Bel Pre Road. 15 Behind the church is an existing parking lot, and in 16 front of the church, between the church and 17 Bel Pre Road, is a fairly significant open grass 18 area. 19 And then there's behind or to the south of 20 the parking lot, between the parking lot and the 21 surrounding area, there is an open grass area. And 22 then on the southern and western and somewhat 23 eastern property boundaries, there is a -- basically 24 a tree or forested buffer. 25 And as part of our analysis of the site,</p>	<p style="text-align: right;">100</p> <p>1 know, well-heeled in the community. That was kind 2 of an important element when we were designing part 3 of this site and using as much of that as we could. 4 So as -- now I'm going to refer to 5 Exhibit 37-H. So as we were designing the site and 6 trying to bring the building and the parking for the 7 new use into the site and bring it to the rear of 8 the property, obviously we were trying to put this 9 use in the back trying to make it as compatible with 10 the neighborhood as we could, not having it up on 11 the street. 12 We were trying to nestle it into the back of 13 the site behind the church, use the church as a 14 buffer, but then also use as much of the existing 15 screening around the site where it was possible with 16 the existing forest stand on the eastern side of the 17 site, the existing tree stand on the western side of 18 the site where we could keep that to create as much 19 buffer as we can and then using the L shape of the 20 building as a buffer for then putting the parking in 21 the middle of the site. 22 Now, the architect will describe in a little 23 while the actual character of the building, the 24 residential style of the building. It's a four 25 story building, bearing -- keeping with the</p>

Transcript of Hearing  
Conducted on December 16, 2016

26 (101 to 104)

<p>101</p> <p>1 character of the area.</p> <p>2 But as far as the -- what we were proposing</p> <p>3 was once we, you know, designed where we wanted the</p> <p>4 building and the parking, then we really looked at</p> <p>5 how we were going to buffer that with landscaping.</p> <p>6 The storm water was designed to obviously</p> <p>7 treat all of the runoff from the building and the</p> <p>8 parking lots. We have landscaping requirements in</p> <p>9 those storm water facilities to meet county</p> <p>10 regulations. We have buffering requirements for the</p> <p>11 parking based on zoning code requirements for the</p> <p>12 parking. We have canopy coverage requirements for</p> <p>13 the parking lot that we meet, and then we also had</p> <p>14 compatibility buffering that we have to meet as part</p> <p>15 of the zoning code.</p> <p>16 So that was really the biggest issue for us</p> <p>17 when it looks to how we were getting this building</p> <p>18 to fit within this site was then coming up with a</p> <p>19 buffer on the southern and eastern side with our</p> <p>20 landscaping.</p> <p>21 So we have this buffer screening that we</p> <p>22 have created on the southern and eastern side. We</p> <p>23 have the existing trees that were then doing</p> <p>24 afforestation planting in for creating our buffer on</p> <p>25 the western side, and our existing forest stand on</p>	<p>103</p> <p>1 Q Mr. Foster, have you evaluated whether the</p> <p>2 project complies with the specific development</p> <p>3 standards of the zoning ordinance with respect to</p> <p>4 the conditional use requirement?</p> <p>5 A Yes, I have.</p> <p>6 Q And does it?</p> <p>7 A Yes, it does.</p> <p>8 Q How about the specific requirements for the</p> <p>9 parking facilities?</p> <p>10 A Yes.</p> <p>11 Q Thank you.</p> <p>12 THE HEARING EXAMINER: Well, I think you've</p> <p>13 asked for a waiver on one of those for the parking</p> <p>14 -- was that the setbacks?</p> <p>15 MS. HARRIS: The setback.</p> <p>16 THE HEARING EXAMINER: Regarding the</p> <p>17 setbacks.</p> <p>18 MS. HARRIS: And Mr. Reddan discussed that.</p> <p>19 THE HEARING EXAMINER: But as far as the</p> <p>20 landscaping requirements of it is what --</p> <p>21 MS. HARRIS: Yes.</p> <p>22 THE HEARING EXAMINER: -- you're saying that</p> <p>23 their in compliance.</p> <p>24 THE WITNESS: Correct for the landscape</p> <p>25 requirements.</p>
<p>102</p> <p>1 the eastern side sort of really wrapping this entire</p> <p>2 site with landscaping, forest conservation, and</p> <p>3 buffer plantings to really create a compatible</p> <p>4 situation for what we're building here so that it</p> <p>5 fits within this community and becomes a part of</p> <p>6 this residential setting that we're working in.</p> <p>7 THE HEARING EXAMINER: Okay.</p> <p>8 MS. HARRIS: Mr. Grossman, the Section 6.2</p> <p>9 of the zoning ordinance sets forth specific</p> <p>10 landscaping requirements, and the plans indicate</p> <p>11 this in the land use statement. But would it be</p> <p>12 helpful for us to go through those specific</p> <p>13 requirements in terms of Mr. Foster's testimony? I</p> <p>14 mean, there is a handful of them.</p> <p>15 THE HEARING EXAMINER: Yeah. Well, I leave</p> <p>16 that to you. I can't recall whether the staff</p> <p>17 report went through them point by point or not.</p> <p>18 They usually do an analysis of 6.2.</p> <p>19 MS. HARRIS: Yes. On Page 26 -- 25 and 26.</p> <p>20 THE HEARING EXAMINER: Yeah. So I leave it</p> <p>21 to you if you think that it requires further</p> <p>22 explanation or justification, or if you want to rely</p> <p>23 on the staff report.</p> <p>24 MS. HARRIS: Right.</p> <p>25 BY MS. HARRIS:</p>	<p>104</p> <p>1 MS. HARRIS: Okay. Thank you.</p> <p>2 ///</p> <p>3 BY MS. HARRIS:</p> <p>4 Q Can you please describe what are the</p> <p>5 inherent effects associated with this proposed</p> <p>6 conditional use?</p> <p>7 A The typical inherent effects of a senior</p> <p>8 living facility would typically be the trips</p> <p>9 generated, you know, a parking lot, you know, a</p> <p>10 building, the normal activities that would -- you</p> <p>11 know, having employees on site, the staff. Those</p> <p>12 would be the inherent activities for a senior</p> <p>13 facility that would be expected for an application</p> <p>14 like this.</p> <p>15 Q I would note that the staff report set forth</p> <p>16 six inherent characteristics.</p> <p>17 Have you reviewed those six inherent</p> <p>18 characteristics?</p> <p>19 A Yes, I did.</p> <p>20 Q Do you agree with those?</p> <p>21 A Yes.</p> <p>22 Q Are there any other -- are there any adverse</p> <p>23 or non-inherent characteristics associated with this</p> <p>24 use in your opinion that would cause any adverse</p> <p>25 impacts?</p>

Transcript of Hearing  
Conducted on December 16, 2016

27 (105 to 108)

<p style="text-align: right;">105</p> <p>1 <b>A No. No, there are not.</b></p> <p>2 Q Are there any previous approvals for the</p> <p>3 project for which -- to which this project needs to</p> <p>4 comply?</p> <p>5 <b>A No.</b></p> <p>6 Q And, in your opinion, will the condition use</p> <p>7 be in harmony with the general neighborhood?</p> <p>8 <b>A In my opinion, I think it will be definitely</b></p> <p>9 <b>in harmony with the general neighborhood and will</b></p> <p>10 <b>certainly be compatible. Definitely with the design</b></p> <p>11 <b>that puts the building, you know, over 600 feet back</b></p> <p>12 <b>from the street, buffers the parking, and uses a</b></p> <p>13 <b>building that's very much in character with the</b></p> <p>14 <b>surrounding building style around it -- very, you</b></p> <p>15 <b>know, three and four story garden apartments around</b></p> <p>16 <b>it. Really creating that same type of residential</b></p> <p>17 <b>style. It's certainly going to be in character and</b></p> <p>18 <b>very compatible with the neighborhood.</b></p> <p>19 Q And in terms of adequate public facilities,</p> <p>20 Mr. Reddan touched on some having to deal with the</p> <p>21 water, sewer, and -- the water and sewer and storm</p> <p>22 water.</p> <p>23 But have you evaluated the other public</p> <p>24 facilities other than traffic? And if so, what's</p> <p>25 your opinion about those?</p>	<p style="text-align: right;">107</p> <p>1 says that things like police, fire, and health</p> <p>2 clinics are assumed to be adequate unless there is</p> <p>3 evidence to the contrary, which there isn't in this</p> <p>4 case.</p> <p>5 MS. HARRIS: Okay. Thank you.</p> <p>6 BY MS. HARRIS:</p> <p>7 Q One of the specific requirements for the</p> <p>8 independent living is that there are adequate --</p> <p>9 that the conditional use has adequate accessibility</p> <p>10 or provide onsite public transportation to medical</p> <p>11 services, shopping areas, recreation, and other</p> <p>12 community services.</p> <p>13 Can you explain how this application meets</p> <p>14 that requirement.</p> <p>15 <b>A Yes. There is -- we're currently planning</b></p> <p>16 <b>to have an accessible pedestrian sidewalk connection</b></p> <p>17 <b>out to Bel Pre Road, and there is currently a bus</b></p> <p>18 <b>stop. Right at Bel Pre Road, there are two Ride On</b></p> <p>19 <b>bus routes that serve that bus stop out there.</b></p> <p>20 <b>The Applicant is also proposing a shuttle</b></p> <p>21 <b>service through Senior Connect to serve the</b></p> <p>22 <b>surrounding area. There is also numerous commercial</b></p> <p>23 <b>facilities -- medical facilities within a mile of</b></p> <p>24 <b>the property at Plaza del Mercado. Up at</b></p> <p>25 <b>Leisure World there is medical facilities and</b></p>
<p style="text-align: right;">106</p> <p>1 <b>A With a senior facility, obviously they're</b></p> <p>2 <b>not creating any kids. No children, so there's no</b></p> <p>3 <b>impact on schools. There is -- based on review of</b></p> <p>4 <b>the staff report and --</b></p> <p>5 THE HEARING EXAMINER: Well, you could have</p> <p>6 people with disabilities who are not disabled in</p> <p>7 that arena and could potentially have kids.</p> <p>8 THE WITNESS: I suppose that is true.</p> <p>9 THE HEARING EXAMINER: All right.</p> <p>10 THE WITNESS: But there is a fire station</p> <p>11 directly down the -- directly across the street --</p> <p>12 just down the street and the police station 2300</p> <p>13 Randolph Road. So I think that it's currently</p> <p>14 operating in accordance with the annual growth</p> <p>15 policy. So I don't see any adequate public</p> <p>16 facilities issues with this project.</p> <p>17 THE HEARING EXAMINER: I mean, technically</p> <p>18 the hearing examiner doesn't make a decision on</p> <p>19 adequate public facilities since this case is going</p> <p>20 to subdivision. But it does bear on other issues</p> <p>21 that we do make a decision on, so to some extent</p> <p>22 it's well to have some testimony in that regard as</p> <p>23 you have provided.</p> <p>24 Also, of course, every subdivision staging</p> <p>25 policy that I have ever seen has a paragraph that</p>	<p style="text-align: right;">108</p> <p>1 <b>commercial facilities and also down at Aspen Hill</b></p> <p>2 <b>and Connecticut and Georgia Avenue.</b></p> <p>3 Q Thank you. And your opinion -- we touched</p> <p>4 on this, but just to summarize.</p> <p>5 Is the project -- is the proposed height</p> <p>6 density and parking compatible with the surrounding</p> <p>7 area?</p> <p>8 <b>A Yes. In my opinion, I believe it is.</b></p> <p>9 Q Is there anything else that you would like</p> <p>10 to add in terms of what you evaluated in your role</p> <p>11 as a land planner?</p> <p>12 <b>A In my opinion, I do not think this will have</b></p> <p>13 <b>any impact on the -- will not have a negative impact</b></p> <p>14 <b>on the surrounding area, and I think it's very</b></p> <p>15 <b>appropriate in siting and scale and provide an</b></p> <p>16 <b>adequate screening to ensure that there is no, you</b></p> <p>17 <b>know, negative impacts on the residential character</b></p> <p>18 <b>of the area.</b></p> <p>19 <b>And I think the project certainly is</b></p> <p>20 <b>furthering the housing goals in the master plan and</b></p> <p>21 <b>providing, you know, a senior housing that's</b></p> <p>22 <b>certainly needed in the county.</b></p> <p>23 MS. HARRIS: Thank you. No other questions.</p> <p>24 THE HEARING EXAMINER: I have no further</p> <p>25 questions.</p>

Transcript of Hearing  
Conducted on December 16, 2016

28 (109 to 112)

<p>109</p> <p>1 MS. HARRIS: Thank you. Our next witness is</p> <p>2 the architect, Ms. Judy Miller.</p> <p>3 THE HEARING EXAMINER: Will you state your</p> <p>4 full name, please.</p> <p>5 THE WITNESS: Yes. It's Judith Miller.</p> <p>6 THE HEARING EXAMINER: All right. Ms.</p> <p>7 Miller, would you please raise your right hand.</p> <p>8 JUDITH MILLER</p> <p>9 having been first duly sworn,</p> <p>10 was examined and testified as follows:</p> <p>11 * * *</p> <p>12 EXAMINATION</p> <p>13 THE HEARING EXAMINER: You may proceed.</p> <p>14 MS. HARRIS: Thank you.</p> <p>15 BY MS. HARRIS:</p> <p>16 Q Can you please tell the hearing examiner who</p> <p>17 your current employer is and what your position is.</p> <p>18 <b>A Yes. It's Architecture by Design. We're</b></p> <p>19 <b>located at 8355 Court Avenue in Ellicott, Maryland.</b></p> <p>20 <b>I am the principal and -- founder and principal of</b></p> <p>21 <b>the firm. And we perform architectural services for</b></p> <p>22 <b>a variety of projects, but mainly multi-family</b></p> <p>23 <b>residential.</b></p> <p>24 Q Are you a licensed architect?</p> <p>25 <b>A Yes. I am licensed in six states.</b></p>	<p>111</p> <p>1 THE WITNESS: So, yes, I testified as an</p> <p>2 architect with regards to the architecture in this</p> <p>3 zoning.</p> <p>4 THE HEARING EXAMINER: Generally an expert</p> <p>5 in legal proceedings is somebody who can offer</p> <p>6 testimony that goes beyond the kin of the layman on</p> <p>7 the points about which the testimony is given and</p> <p>8 can be of an assistance to the fact finder.</p> <p>9 However, the question I'm really asking is</p> <p>10 has somebody -- has the hearing authority said, "We</p> <p>11 accept you as an expert in architecture"?</p> <p>12 THE WITNESS: Yes, they have.</p> <p>13 THE HEARING EXAMINER: Okay.</p> <p>14 THE WITNESS: Yes, they have.</p> <p>15 THE HEARING EXAMINER: All right.</p> <p>16 MS. HARRIS: With that as background and</p> <p>17 noting that Ms. Miller's resume is in the record,</p> <p>18 I'd like to have her qualified as an expert in</p> <p>19 architecture.</p> <p>20 THE HEARING EXAMINER: All right. Given Ms.</p> <p>21 Miller's resume in Exhibit 10-D in the record, her</p> <p>22 background in architecture and license in the state</p> <p>23 of Maryland, and previous testimony as an expert, I</p> <p>24 accept her as an expert in architecture.</p> <p>25 MS. HARRIS: Thank you.</p>
<p>110</p> <p>1 THE HEARING EXAMINER: How about Maryland?</p> <p>2 THE WITNESS: Yes, Maryland too.</p> <p>3 BY MS. HARRIS:</p> <p>4 Q Have you ever testified before the</p> <p>5 Montgomery County zoning examiner?</p> <p>6 <b>A I have not.</b></p> <p>7 Q But have you testified before other bodies</p> <p>8 or similar type decision makers?</p> <p>9 <b>A Yes, I have.</b></p> <p>10 Q Can you give a little background of that,</p> <p>11 please.</p> <p>12 <b>A Harford County. I've done -- matter of</b></p> <p>13 <b>fact, the other evening I just did a zoning hearing</b></p> <p>14 <b>in Havre de Grace, and --</b></p> <p>15 THE HEARING EXAMINER: When you say you did</p> <p>16 it, you testified --</p> <p>17 THE WITNESS: I testified, yes.</p> <p>18 THE HEARING EXAMINER: -- as an expert?</p> <p>19 THE WITNESS: Yes.</p> <p>20 THE HEARING EXAMINER: You seemed to</p> <p>21 hesitate on that.</p> <p>22 THE WITNESS: Well, I'm trying to figure out</p> <p>23 what the definition of an expert is. Is it the same</p> <p>24 in that jurisdiction as it is here?</p> <p>25 THE HEARING EXAMINER: Well --</p>	<p>112</p> <p>1 BY MS. HARRIS:</p> <p>2 Q Can you please describe your</p> <p>3 responsibilities with regard to the subject</p> <p>4 conditional use.</p> <p>5 <b>A Yes. My responsibilities include designing</b></p> <p>6 <b>and supervising the work of the architectural</b></p> <p>7 <b>documents for the subject property.</b></p> <p>8 Q Have you had an opportunity to visit the</p> <p>9 site?</p> <p>10 <b>A Yes, I have.</b></p> <p>11 Q Are you familiar with the Montgomery County</p> <p>12 zoning ordinance?</p> <p>13 <b>A Yes, I am.</b></p> <p>14 Q Can you please describe the basic principals</p> <p>15 and concepts that were applied to the design? And</p> <p>16 if it would be helpful, we can put up onto the board</p> <p>17 Exhibit number -- the elevations, which were</p> <p>18 Exhibit 16.</p> <p>19 <b>A Yes, that would be helpful. Thank you.</b></p> <p>20 THE HEARING EXAMINER: I take it,</p> <p>21 Ms. Miller, that those architectural designs will</p> <p>22 not change based on the changes that are being made</p> <p>23 in the plan.</p> <p>24 THE WITNESS: No, they will not change.</p> <p>25 THE HEARING EXAMINER: Okay.</p>

Transcript of Hearing  
Conducted on December 16, 2016

29 (113 to 116)

<p>113</p> <p>1 THE WITNESS: Absolutely not. 2 As you can see in this rendering, it's a 3 four story building, peaked roofs, siding, brick, 4 and, you know, traditional windows, which are very 5 compatible with the area. And in my visits to the 6 site, you know, adjacent to it are multi-family 7 projects three and four stories of similar scale and 8 architectural design. 9 Can you refresh my memory of what the 10 question was? 11 BY MS. HARRIS: 12 Q Just the basic principals and concepts that 13 went into developing this design. 14 A Yes. In developing this as the civil 15 engineer and the land planner or architect had 16 discussed, we felt that it made the most sense to 17 put it exactly where it was to provide the buffering 18 of the adjacent properties and, you know, keeping it 19 600 plus feet from the main road. We also tried to 20 use similar materials. There is a fair amount of 21 brick in the area; a fair amount of siding. So we 22 did that as well as the peaked roofs are very 23 compatible. 24 Q In terms of bedroom -- the number of 25 bedrooms, will there be one-bedroom and two-bedroom</p>	<p>115</p> <p>1 A Oh, I can just describe it, and you can kind 2 of see from the elevation. So you have this very 3 nice covered porch to share at the entry. And off 4 of that are the leasing offices and the manager 5 offices as well as the very, I think to quote you, 6 "sexy" -- It was actually Ivy who said that -- sexy 7 cyber cafe, community space, a kitchenette, a salon, 8 a fitness area. There's a generous amount of 9 community spaces for the residents of this building. 10 Q Okay. Thank you. 11 So in your opinion does the architectural -- 12 is the architectural design compatible with the 13 neighborhood? 14 A Very much so. Yes, it is in my opinion. 15 And I visited the site on numerous occasions as 16 well. 17 THE HEARING EXAMINER: The floor plan by the 18 way was Exhibit 11. 19 MS. HARRIS: Okay. 20 THE HEARING EXAMINER: And I take it that 21 won't change either with changes in the plans. 22 THE WITNESS: No. Not, it hasn't. 23 BY MS. HARRIS: 24 Q Mr. Reddan touched on the lighting. 25 Is there anything else that you needed to</p>
<p>114</p> <p>1 units? 2 A Yes. There are one-bedroom units and 3 two-bedroom units. The mix is 61 one bedrooms and 4 59 two bedrooms. 5 Q And... 6 THE HEARING EXAMINER: You said, "69"? 7 THE WITNESS: No. 61 one bedrooms. 8 THE HEARING EXAMINER: 61 one bedrooms. 9 THE WITNESS: And 59 two bedrooms. So 10 almost a 50/50 split. 11 THE HEARING EXAMINER: Okay. 12 BY MS. HARRIS: 13 Q Can you describe generally the ground floor. 14 THE HEARING EXAMINER: You did submit a 15 floor plan. 16 MS. HARRIS: Okay. Yes. So the ground 17 floor plan. I don't know if it'd be -- 18 THE WITNESS: Is it in any of these exhibits 19 here? Do you know? 20 MS. HARRIS: I don't think so. 21 THE WITNESS: I can give you a visual. 22 THE HEARING EXAMINER: We have a copy of it. 23 MS. HARRIS: Okay. 24 BY MS. HARRIS: 25 Q Do you want to -- I think you can just --</p>	<p>116</p> <p>1 add in terms of the photometric that was submitted? 2 A No. Mr. Reddan and I have discussed that 3 because it is always an issue, and especially with 4 the green and energy requirements, we are sensitive 5 to using the dark sky lighting and making sure that 6 the light doesn't encroach on other properties. 7 Q Okay. 8 THE HEARING EXAMINER: And I take it also 9 sufficient lighting for safety? 10 THE WITNESS: Absolutely. Absolutely. 11 BY MS. HARRIS: 12 Q Where will the mechanical equipment be 13 located? 14 A So the mechanical equipment for a building 15 of this size and the smaller scale of the units -- 16 they're roughly -- 675 is the smallest. And I would 17 say almost -- 18 THE HEARING EXAMINER: 675 square feet? 19 THE WITNESS: 675 square feet. I apologize. 20 Up to about 800 square feet, 850 square feet for the 21 larger units. 22 We're using a ducted mini split high 23 efficiency unit, which is -- I love them personally 24 -- which is placed along the rear side of the 25 building. The condensing units as in any split</p>

Transcript of Hearing  
Conducted on December 16, 2016

30 (117 to 120)

<p>117</p> <p>1 system unit, you have an outside unit and you have 2 an inside unit. 3 These are very quiet and highly efficient, 4 which will provide an energy-efficient, 5 cost-effective solution to the residents since they 6 pay their own utilities. And it will not -- 7 although we have to place them along the rear 8 facades, it should not have any adverse impact to 9 the residents or the adjacent properties. It 10 actually should have less impact than a standard 11 condenser form which you see in many buildings like 12 this. 13 THE HEARING EXAMINER: I take it that this 14 is -- that each unit has a separate facility. 15 THE WITNESS: Yes, they do. 16 THE HEARING EXAMINER: And so you'd have the 17 outdoor portion to the rear of each unit? 18 THE WITNESS: Yes. 19 THE HEARING EXAMINER: Now, they're multi 20 stories here, so -- 21 THE WITNESS: Yes. 22 THE HEARING EXAMINER: -- how does that work? 23 THE WITNESS: How does that work? Okay. 24 Well, what we've done -- it's very difficult to see 25 from there because it's a smaller scale; but there's</p>	<p>119</p> <p>1 But in essence since I have four units stacked, 2 there's four in close proximity. 3 THE HEARING EXAMINER: Okay. 4 THE WITNESS: So if I have some on the 5 front, I have to basically place them along the rear 6 because I didn't want to impact the elevation. And 7 it does -- 8 THE HEARING EXAMINER: So essentially 9 there'll be 120 of these units on the outside? 10 THE WITNESS: Yes, there will be. Yes. 11 BY MS. HARRIS: 12 Q Thank you. Referring to the site plan, can 13 you please identify where the generator will be on 14 this project. 15 <b>A Yes. That is on the -- I confuse myself --</b> 16 <b>east -- west side.</b> 17 THE HEARING EXAMINER: North is up. 18 THE WITNESS: Yes. 19 THE HEARING EXAMINER: That always works 20 best in my experience in hearings to have north at 21 the top. 22 THE WITNESS: Yes. It's on the west side of 23 the building, and it's incased in its own 24 sound-resistant enclosure. 25 BY MS. HARRIS:</p>
<p>118</p> <p>1 these little rectangular boxes. 2 THE HEARING EXAMINER: Right. 3 THE WITNESS: They're roughly 11 inches 4 wide, 27 inches high, and 27 inches wide, so a box 5 basically that is attached to the wall about 11 6 inches off the wall. So you can still mow under, 7 you know, and not cause any impact to the fire 8 protection safety of the building. There is nothing 9 to work around. 10 So we've placed these along the rear facade 11 as not to impact the visual, you know, elevations on 12 the front and side facades. So we've placed them 13 along the back, and there are distance requirements 14 for the line sets. So we carefully thought about 15 where they can go as far as the distance. So, like 16 for example, this unit on the far left side of the 17 rear could potentially be the one for that unit up 18 here. 19 THE HEARING EXAMINER: All right. So in 20 other words, there are four of these little units 21 behind each tier of apartments; is that right? 22 THE WITNESS: There could be four; there 23 could be six based upon -- because it doesn't work 24 out as a perfect little swath of units here. 25 Sometimes that does; sometimes they split this way.</p>	<p>120</p> <p>1 Q How far from the property line is the 2 generator inclosure approximately? 3 <b>A I'd have to defer to -- if you have a scale,</b> 4 <b>that would be awesome. Thank you.</b> 5 <b>This is 50. It is approximately -- very</b> 6 <b>far. It's 140 to 150 feet from the property line.</b> 7 Q And in your experience, will there any 8 adverse effects from the noise generated from the 9 generator? 10 <b>A No. Since it's self contained in a noise</b> 11 <b>unit.</b> 12 THE HEARING EXAMINER: It's at the Southwest 13 corner of the building? Is that what you said? 14 THE WITNESS: Yes. 15 THE HEARING EXAMINER: And, well, what's the 16 generator used for? Emergencies? 17 THE WITNESS: Emergencies, yes. 18 THE HEARING EXAMINER: Okay. 19 THE WITNESS: Absolutely. If elevators -- 20 and with seniors, you want to make sure you have 21 that. 22 THE HEARING EXAMINER: Okay. And how 23 frequently is it tested? 24 THE WITNESS: It should be tested weekly, I 25 believe. I would have to speak to my mechanical</p>

Transcript of Hearing  
Conducted on December 16, 2016

31 (121 to 124)

<p>121</p> <p>1 engineer to verify that.</p> <p>2 THE HEARING EXAMINER: I take it that's the</p> <p>3 only noise it will make unless there is an</p> <p>4 emergency.</p> <p>5 THE WITNESS: Yes.</p> <p>6 THE HEARING EXAMINER: Okay.</p> <p>7 THE WITNESS: Yes. Exactly.</p> <p>8 THE HEARING EXAMINER: All right.</p> <p>9 BY MS. HARRIS:</p> <p>10 Q And, again, referring to the site plan, can</p> <p>11 you identify the location of the Dumpster enclosure?</p> <p>12 <b>A Yes. That is on the north side. Excuse my</b></p> <p>13 <b>north, south, east, west figuring each time.</b></p> <p>14 <b>It's on the north side of the building, on</b></p> <p>15 <b>the opposite side of the parking lot, adjacent to</b></p> <p>16 <b>that -- I would call it the front property line</b></p> <p>17 <b>separating the church from the senior living.</b></p> <p>18 <b>And that is accessed from these double doors</b></p> <p>19 <b>on the front facade to the east side. Like</b></p> <p>20 <b>Ms. Carter was saying, but, you know, it gets rolled</b></p> <p>21 <b>out to this Dumpster area.</b></p> <p>22 Q Can you explain the actual enclosure.</p> <p>23 <b>A Yes. It is -- I do not recall. I don't</b></p> <p>24 <b>recall the exact -- because that was the civil's --</b></p> <p>25 <b>under his purview.</b></p>	<p>123</p> <p>1 <b>going to be used as to where to place it, which I've</b></p> <p>2 <b>already touched upon previously, but facing back</b></p> <p>3 <b>here to the rear of the site.</b></p> <p>4 <b>And as far as the parking and having the</b></p> <p>5 <b>parking area not about but adjacent to -- for</b></p> <p>6 <b>the use of the church above, we felt that that made</b></p> <p>7 <b>the most sense in compatibility for the proximity of</b></p> <p>8 <b>the adjacent property.</b></p> <p>9 Q Thank you.</p> <p>10 MS. HARRIS: And I have no further questions</p> <p>11 for Ms. Miller.</p> <p>12 THE HEARING EXAMINER: I don't either.</p> <p>13 Thank you.</p> <p>14 THE WITNESS: Thank you.</p> <p>15 MS. HARRIS: We have one final witness,</p> <p>16 which is Mr. Kabatt.</p> <p>17 THE HEARING EXAMINER: Would you state your</p> <p>18 full name, please.</p> <p>19 THE WITNESS: Christopher L Kabatt.</p> <p>20 THE HEARING EXAMINER: Raise your right</p> <p>21 hand.</p> <p>22 CHRISTOPHER KABATT</p> <p>23 having been first duly sworn,</p> <p>24 was examined and testified as follows:</p> <p>25 * * *</p>
<p>122</p> <p>1 THE HEARING EXAMINER: In any event, it's</p> <p>2 located in the northeast corner of the site?</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MS. HARRIS:</p> <p>5 Q Will it be enclosed?</p> <p>6 <b>A It has doors on it and sides. It does not</b></p> <p>7 <b>have a top.</b></p> <p>8 Q In terms of trash removal, are you familiar</p> <p>9 with that from an operational aspect?</p> <p>10 Were you involved in any of those decisions?</p> <p>11 <b>A Yes. We have to ask the questions how</b></p> <p>12 <b>frequently so we can size the trash room accordingly</b></p> <p>13 <b>and the chutes.</b></p> <p>14 Q In your opinion, what would you look for in</p> <p>15 a conditional use to evaluate overall compatibility</p> <p>16 with the neighborhood, and have you done that here?</p> <p>17 And, if so, what is your opinion?</p> <p>18 <b>A Okay. That is a long question.</b></p> <p>19 <b>In a project like this where there is a</b></p> <p>20 <b>conditional use, we do visit the site. We evaluate</b></p> <p>21 <b>the areas adjacent to the site, and we look for</b></p> <p>22 <b>contextual materials. We look for contextual size</b></p> <p>23 <b>elements to make sure it's compatible with the</b></p> <p>24 <b>adjacent surroundings.</b></p> <p>25 <b>And then we also look at how the building is</b></p>	<p>124</p> <p>1 EXAMINATION</p> <p>2 BY MS. HARRIS:</p> <p>3 Q Mr. Kabatt, can you please explain your</p> <p>4 position at Wells &amp; Associates and your background.</p> <p>5 <b>A Sure. I am a transportation engineer and</b></p> <p>6 <b>planner and a registered PE, professional engineer,</b></p> <p>7 <b>in Maryland. I have been with Wells &amp; Associates</b></p> <p>8 <b>for about 19 years. Our office is in -- the office</b></p> <p>9 <b>I work out of is in Silver Spring, 8730 Georgia</b></p> <p>10 <b>Avenue, Suite 200.</b></p> <p>11 <b>I'm the principal associate there, and my</b></p> <p>12 <b>responsibilities include the managing projects and</b></p> <p>13 <b>supervising staff and attending meetings with the</b></p> <p>14 <b>client and public agencies.</b></p> <p>15 Q Have you testified before a hearing examiner</p> <p>16 previously?</p> <p>17 <b>A I have, yes.</b></p> <p>18 MS. HARRIS: Mr. Grossman, based on his</p> <p>19 resume and his background, I'd like to qualify him</p> <p>20 as an expert in traffic engineering.</p> <p>21 THE HEARING EXAMINER: I don't recall. Did</p> <p>22 you testify before me, Mr. Kabatt?</p> <p>23 THE WITNESS: I have. And were you the</p> <p>24 Victory Crossing case in White Oak? I don't recall</p> <p>25 which case it was that was before you, but I have.</p>



Transcript of Hearing  
Conducted on December 16, 2016

32 (125 to 128)

<p>125</p> <p>1 THE HEARING EXAMINER: All right. 2 MS. HARRIS: And then there was that West 3 Lane case with -- 4 THE WITNESS: Ms. Rose. 5 THE HEARING EXAMINER: Okay. All right. 6 Well, based on your qualifications as outlined in 7 your resume, Exhibit 10-C, and your previous 8 testimony as an expert in transportation planning 9 and traffic engineering; is that correct? 10 THE WITNESS: Yes. 11 THE HEARING EXAMINER: In traffic 12 engineering, I accept you as an expert in those 13 fields. 14 BY MS. HARRIS: 15 Q Have you prepared a traffic report in 16 connection with this case? And, if so, can you 17 please explain it. 18 <b>A Yes, I did. Me and my team did, and I'll</b> 19 <b>just go through the steps of the report.</b> 20 Q That would be helpful. 21 THE HEARING EXAMINER: What exhibit is that? 22 MS. HARRIS: It's exhibit... 23 THE HEARING EXAMINER: The traffic statement 24 is 9. 25 MS. HARRIS: Actually, yes. But maybe let's</p>	<p>127</p> <p>1 and Planning and Montgomery County Department of 2 Transportation. 3 THE HEARING EXAMINER: Have you filed a 4 subdivision? 5 THE WITNESS: No, we have not yet. We are 6 hoping to do that before the end of the year, but as 7 Mr. Kabatt will explain, there is no longer that 8 deadline. 9 THE HEARING EXAMINER: Okay. Why didn't you 10 file the traffic study here? 11 MS. HARRIS: Only because it technically 12 wasn't required according to staff, and we were 13 focused on the preliminary plan. 14 THE HEARING EXAMINER: Do you have a copy? 15 MS. HARRIS: We do have a copy. And we can 16 submit it now if... 17 THE HEARING EXAMINER: Yes. Let's do that. 18 THE WITNESS: Do you want it? 19 THE HEARING EXAMINER: Yes, please. 20 Okay. Thank you. This will be -- if I'm 21 counting correctly, we're up to Exhibit 38. This is 22 LATR. 23 Just out of curiosity, since on Page 2 of 24 your traffic statement, Exhibit 9, you say 120 25 dwelling units will generate 24 a.m. peak hour trips</p>
<p>126</p> <p>1 back up for one moment. I think it would be helpful 2 to explain your preparation of the traffic statement 3 and then any subsequent reports that you may have 4 prepared. 5 THE WITNESS: Right. So we did prepare a 6 traffic statement for the conditional use 7 application, and then that was followed up by a 8 local area transportation review traffic study that 9 has been submitted to Park and Planning and has been 10 reviewed by county staff and apartment planning 11 staff. 12 THE HEARING EXAMINER: What exhibit is that? 13 MS. HARRIS: That I don't think was 14 submitted here. When we -- the Park and Planning 15 staff indicated that for purposes of the hearing 16 examiner report, the traffic statement that was 17 submitted was acceptable. But because we were in 18 the process of preparing the preliminary plan, the 19 preliminary plan did require the LATR. And so 20 that's been prepared in connection with the LATR. 21 Has that been submitted to Park and Planning 22 yet? 23 THE WITNESS: Yes, it was. It's dated 24 October 7th, and it was submitted to Park and 25 Planning and has been reviewed already by both Park</p>	<p>128</p> <p>1 and 30 p.m. peak hour trips, why didn't that 2 automatically trip off the requirement for you to do 3 a traffic study? 4 MS. HARRIS: It did, but the conditional use 5 requirements note that if the condition use is going 6 to be filed by the preliminary plan that an LATR and 7 that evaluation will occur in connection with the 8 preliminary plan. And at the time of filing the 9 conditional use, obviously the LATR report was not 10 prepared. 11 THE HEARING EXAMINER: Well, the adequate 12 public facilities finding would be done at 13 preliminary plan, but the amount of traffic is also 14 a compatibility issue. So it is an issue that's 15 before me in this case. So the traffic study would 16 be relevant to that and would have been submitted. 17 Even though it's kicked off by the fact that 18 you have a certain requirement for it based on the 19 numbers, it's not just applicable to preliminary 20 planning. In a case where you're going to produce 21 traffic, it is certainly a compatibility issue, so 22 it should automatically be submitted to us since it 23 was filed in October. 24 This is Exhibit 38. Don't forget. I need a 25 disc copy of this, and if not in Word, then in text</p>

Transcript of Hearing  
Conducted on December 16, 2016

33 (129 to 132)

<p>129</p> <p>1 searchable PDF format.</p> <p>2 MS. HARRIS: Okay. Can we proceed?</p> <p>3 THE HEARING EXAMINER: You may proceed.</p> <p>4 BY MS. HARRIS:</p> <p>5 Q Are you familiar with the zoning ordinance</p> <p>6 requirements that the Applicant must satisfy in</p> <p>7 connection with the conditional use?</p> <p>8 <b>A I am, yes.</b></p> <p>9 Q And can you explain the report that you</p> <p>10 prepared in preparation with the conditional use</p> <p>11 application.</p> <p>12 <b>A Sure. I'll just walk through the report</b></p> <p>13 <b>basically. We did prepare the local area</b></p> <p>14 <b>transportation review, and it consists of existing</b></p> <p>15 <b>traffic counts along Bel Pre Road at the key</b></p> <p>16 <b>intersections and includes background pipeline</b></p> <p>17 <b>developments that are approved in the area. And it</b></p> <p>18 <b>includes the trip generation of the proposed</b></p> <p>19 <b>120 units for the independent living facility.</b></p> <p>20 <b>And those -- the trip generation was</b></p> <p>21 <b>calculated based on the Institute of Transportation</b></p> <p>22 <b>Engineers' trip rates -- the trip generation manual.</b></p> <p>23 <b>And it includes all users of this site, meaning the</b></p> <p>24 <b>residents, staff, trash pick up, other deliveries,</b></p> <p>25 <b>visitors, anybody that would be coming to and from</b></p>	<p>131</p> <p>1 all in your LATR study?</p> <p>2 THE WITNESS: No.</p> <p>3 THE HEARING EXAMINER: Okay.</p> <p>4 THE WITNESS: Should be 24 a.m. and 30 p.m.</p> <p>5 in that statement as well.</p> <p>6 THE HEARING EXAMINER: Okay. All right.</p> <p>7 You may proceed.</p> <p>8 THE WITNESS: So once we considered all of</p> <p>9 the counts, the pipeline projects, and the</p> <p>10 120 dwelling units, we measured the intersections.</p> <p>11 We measured one to the east on Bel Pre Road, and</p> <p>12 that's with Homecrest Road. And then to the west</p> <p>13 Bel Pre Road and Connecticut Avenue. And we also</p> <p>14 looked at the future driveway on Bel Pre.</p> <p>15 And we determined based on the critical lane</p> <p>16 volume analysis that those intersections, under</p> <p>17 existing conditions without what they are today, and</p> <p>18 then future conditions with the pipeline projects</p> <p>19 but without the development and then future</p> <p>20 conditions with the development. Under all three of</p> <p>21 those scenarios, the intersections operated well</p> <p>22 within the congestion standard for this policy area.</p> <p>23 THE HEARING EXAMINER: What is the</p> <p>24 congestion standard?</p> <p>25 THE WITNESS: I'm going to turn to it right</p>
<p>130</p> <p>1 that site.</p> <p>2 <b>And the Institute of Transportation</b></p> <p>3 <b>Engineers, the way they come up with their trip</b></p> <p>4 <b>rates is they -- there are several sites across the</b></p> <p>5 <b>US. Similar facilities were surveyed, and the</b></p> <p>6 <b>result in trip generation rate for the a.m. and p.m.</b></p> <p>7 <b>peak hours was established.</b></p> <p>8 THE HEARING EXAMINER: Why was the ITE</p> <p>9 standard used rather than the LATR standard? Was</p> <p>10 there an equivalent LATR for this type of facility?</p> <p>11 THE WITNESS: There is actually in the</p> <p>12 guidelines a rate for independent living facilities</p> <p>13 or senior facilities, but over the course of the</p> <p>14 years, in consultation with staff there it was</p> <p>15 determined that the ITE rates were more reflective</p> <p>16 of the actual use. The ones in the LATR, I believe,</p> <p>17 are too low.</p> <p>18 THE HEARING EXAMINER: Okay. And so when</p> <p>19 you did your traffic statement, Exhibit 9, did you</p> <p>20 use the same -- did you use ITE standards, or this</p> <p>21 is just an estimate? How did you arrive at your</p> <p>22 trip projection in your statement?</p> <p>23 THE WITNESS: In the statement those were</p> <p>24 based off ITE standards as well.</p> <p>25 THE HEARING EXAMINER: Did those change at</p>	<p>132</p> <p>1 here. I don't have it written down, but it is 1475.</p> <p>2 THE HEARING EXAMINER: All right. Can you</p> <p>3 tell me what -- since I didn't have a chance to read</p> <p>4 your study yet, what you came up with as the total</p> <p>5 for each of those three studied intersections, Bel</p> <p>6 Pre at Homecrest, at Connecticut Avenue, and at the</p> <p>7 driveway.</p> <p>8 THE WITNESS: Yes. Let me just -- I'm going</p> <p>9 to flip to the table on the report, which is --</p> <p>10 Table 3-5 has all three conditions.</p> <p>11 THE HEARING EXAMINER: On page?</p> <p>12 THE WITNESS: That's on Page 27.</p> <p>13 And so I'm just going to go for the total</p> <p>14 future, which would be with 120. The Connecticut</p> <p>15 Avenue and Bel Pre Road intersection has the</p> <p>16 critical lane volume of 1,154 for the a.m. peak hour</p> <p>17 and 967 for the p.m. peak hour.</p> <p>18 The driveway -- the future driveway on</p> <p>19 Bel Pre Road would have 835 in the a.m. peak hour</p> <p>20 and 726 in the p.m. peak hour.</p> <p>21 THE HEARING EXAMINER: I'm not seeing that.</p> <p>22 I'm seeing "site driveway." Oh, that's existing.</p> <p>23 THE WITNESS: Number two.</p> <p>24 THE HEARING EXAMINER: Number two.</p> <p>25 THE WITNESS: Yeah, and that existing --</p>

Transcript of Hearing  
Conducted on December 16, 2016

34 (133 to 136)

<p>133</p> <p>1 THE HEARING EXAMINER: Hold on a second. 2 That says -- number two says "Winchester School and 3 Bel Pre Road." 4 THE WITNESS: Yeah, that's because our site 5 driveway actually -- our future site driveway 6 actually lines up across from the Winchester school 7 driveway. So it -- in labelling it here "Winchester 8 School," it should be Winchester School slash future 9 site driveway slash Bel Pre Road. 10 THE HEARING EXAMINER: All right. So you're 11 saying that number two is 835 and 726; right? 12 THE WITNESS: That's correct. 13 THE HEARING EXAMINER: And Homecrest? 14 THE WITNESS: And then Homecrest and 15 Bel Pre Road that is the intersection to the east of 16 the site, and that's a.m. peak hour 888, and the 17 p.m. peak hour is 179. 18 THE HEARING EXAMINER: Okay. And I see that 19 you studied a couple of other intersections here as 20 well. 21 THE WITNESS: We did. Staff did ask us to 22 look at Beaverwood Lane and Bel Pre as well, and 23 that is 661 in the a.m. peak hour and 703 in the 24 p.m. peak hour. 25 THE HEARING EXAMINER: But you also have</p>	<p>135</p> <p>1 <b>impact. That's per the LATR guidelines.</b> 2 Q Did you also evaluate TPAR in connection 3 with your evaluation? 4 <b>A We did look at TPAR transportation policy</b> 5 <b>area review, and there is -- it's not -- this</b> 6 <b>project is exempted from TPAR because of the</b> 7 <b>affordable housing component.</b> 8 Q And is this project served by adequate 9 public transportation? And if so, can you explain 10 that. 11 <b>A Sure. Another part of the LATR study that</b> 12 <b>we put into the evaluation is an review of the</b> 13 <b>public transportation facilities in the area. And</b> 14 <b>as mentioned earlier from the other experts, there</b> 15 <b>are two Ride On bus lines along Bel Pre Road of</b> 16 <b>Route 26 that runs between Montgomery Mall and the</b> 17 <b>Glenmont metro station and Route 49 that runs</b> 18 <b>between the Rockville metro station and the Glenmont</b> 19 <b>metro station.</b> 20 <b>There are two bus stops for each direction,</b> 21 <b>eastbound and westbound, on Bel Pre Road just to the</b> 22 <b>west of the property line. And there is a marked</b> 23 <b>crosswalk across Bel Pre Road that essentially</b> 24 <b>connects those two bus stops.</b> 25 <b>There's also a shared use path along the</b></p>
<p>134</p> <p>1 another one labelled "existing site driveway." 2 THE WITNESS: We did look at the -- so under 3 the existing condition, we looked at the existing 4 site driveway, which is just west of Homecrest on 5 the eastern side of the property. And we just -- 6 the critical lane volumes there are just carried 7 through each condition, essentially the through 8 movements on Bel Pre Road. 9 THE HEARING EXAMINER: So that is -- 10 according to your thing is 791 and 692. 11 THE WITNESS: Yes. 12 THE HEARING EXAMINER: All right. 13 BY MS. HARRIS: 14 Q Generally speaking based on the standard and 15 what the impact would be at those intersections, 16 what's your opinion about that? 17 <b>A So overall, the use is a load traffic</b> 18 <b>generator generally. It does only generate 24 a.m.</b> 19 <b>peak hour trips and 30 p.m. peak hour trips. And</b> 20 <b>given the operation on Bel Pre Road at the study</b> 21 <b>intersections, there is what is a minimal impact on</b> 22 <b>Bel Pre Road.</b> 23 <b>I would point out that if the site generated</b> 24 <b>one less trip during the p.m. peak hour, it would be</b> 25 <b>deemed a project with not having a measurable</b></p>	<p>136</p> <p>1 <b>south side of Bel Pre Road, which goes across the</b> 2 <b>church's front edge there and then across the</b> 3 <b>driveway. And that is for use for bicycles and</b> 4 <b>pedestrians.</b> 5 Q So under the current traffic requirements, 6 is it your opinion that the project is -- that there 7 is adequate public facilities to accommodate the 8 project? 9 <b>A Yes. Again, based on the measure of the</b> 10 <b>critical lane volumes on the Bel Pre Road</b> 11 <b>intersections and the site driveway, there is</b> 12 <b>adequate public facilities for transportation.</b> 13 Q And putting aside APF, because the hearing 14 examiner also must make a finding of compatibility, 15 will the additional 30 maximum peak hour trips have 16 any adverse impacts on the neighborhood in terms of 17 a compatibility evaluation? 18 <b>A No, I don't believe so. Again, I believe it</b> 19 <b>will be a minimal impact.</b> 20 Q Have you had an opportunity to review the 21 newly adapted subdivision staging policy? 22 <b>A I have, and for this case in particular, the</b> 23 <b>Aspen Hill policy area is in what is referred to as</b> 24 <b>the yellow policy area -- transportation policy</b> 25 <b>area. And the new -- instead of the 30 peak hour</b></p>

Transcript of Hearing  
Conducted on December 16, 2016

35 (137 to 140)

<p>137</p> <p>1 vehicle trips that would be the trigger for a 2 traffic study, the new way to evaluate it is 3 converting vehicle trips over the person trips, and 4 50-person strips would be the trigger. 5 And so when you go through those 6 calculations that are outlined in the new SSP, we 7 would just say it would generate 46-person trips 8 during the peak hour. And therefore we would fall 9 below the threshold, and we would not have to submit 10 a traffic study. 11 THE HEARING EXAMINER: Since I'm not all 12 that familiar with the new SSP, what is a person 13 trip? 14 THE WITNESS: It's every person that comes 15 to that site during that peak hour, so there could 16 be two people in a car. And you'd be counting those 17 two people that are entering the site during that 18 peak hour as opposed to one vehicle. And then it 19 would also include all the people using the metro 20 bus or the Ride On bus that would walk onto the site 21 or a bicyclist that would enter the site, so you're 22 calculating every person. 23 THE HEARING EXAMINER: What about 24 bicyclists? 25 THE WITNESS: Yes, that would count as well.</p>	<p>139</p> <p>1 you do a delayed based analysis that's based on the 2 highway capacity manual. 3 THE HEARING EXAMINER: Okay. So they keep 4 the congestion standard of 1475? 5 THE WITNESS: I believe the -- the way I 6 read it, I believe the congestion standard for each 7 policy area is no longer there. It goes away, and 8 so there's just a threshold of -- if I recall 9 correctly from reading it, I believe it's 1350. And 10 if you are -- 11 THE HEARING EXAMINER: Is that for any 12 yellow area, or is that specified for particular -- 13 THE WITNESS: That's for any yellow area, 14 for any green area that you would -- if you were 15 below -- within that standard, you would just have 16 to do the critical lane volume analysis. If you 17 were above that -- if you were 1600, you would then 18 also have to do that based analysis, the HCM 19 methodology. 20 BY MS. HARRIS: 21 Q So then if, in fact, we filed this 22 preliminary plan after January 1st, the LATR study 23 would not be required? 24 <b>A That the way I understand it, yes.</b> 25 MS. HARRIS: Okay. Mr. Grossman, do you --</p>
<p>138</p> <p>1 So whether you walk, bike, take the bus, or are a 2 passenger in a car or the driver in the car, those 3 are all person trips. 4 THE HEARING EXAMINER: I mean, I can see how 5 that would impact on a number of things in terms of 6 facilities, but I don't know that that -- I don't 7 know that that consistently would measure impacts of 8 traffic -- of vehicular traffic. Since you have 9 other extraneous things that are built in, I'm not 10 sure how that functions in that regard. 11 THE WITNESS: You do. You still would -- if 12 you hit the trigger, then you would have the 13 requirement to do a traffic study. You would still 14 do the measurements -- the critical lane volume 15 measurements of the number of vehicle trips that are 16 going in and out of the site and then measuring the 17 impact it would have on that impressed intersection. 18 THE HEARING EXAMINER: Well, do they use the 19 same CLV standard that you're measuring the trips 20 against, or is there something different? 21 THE WITNESS: For this policy area, the 22 yellow policy area, you would start with the 23 critical lane volume analysis. And then if you went 24 above the certain critical lane volume, I believe 25 it's 1350, then they tend -- the County would have</p>	<p>140</p> <p>1 THE HEARING EXAMINER: Because none of your 2 CLVs are above 1350 or whatever? 3 THE WITNESS: Well, we would not generate -- 4 we would not hit the trigger of 50-person trips in a 5 peak hour. 6 THE HEARING EXAMINER: Okay. But even if 7 you did, if I understand you correctly, you wouldn't 8 hit the 1350 CLV that would required delayed 9 analysis? 10 THE WITNESS: That's right. So the study we 11 have in front of you now would be a similar study 12 that would be in front of you or in front of the 13 planning board for the subdivision preliminary plan. 14 We wouldn't have to go any further than critical 15 lane volume. 16 THE HEARING EXAMINER: All right. So it's 17 your opinion that the new 2016 to 2020 subdivision 18 staging policy would not create any new issues for 19 this proposed facility? 20 THE WITNESS: That's correct. That's my 21 opinion. 22 THE HEARING EXAMINER: All right. What 23 about the safety of both the entry areas and the 24 driveways and other parking areas on the site? Is 25 it safe and efficient?</p>

Transcript of Hearing  
Conducted on December 16, 2016

36 (141 to 144)

<p>141</p> <p>1 THE WITNESS: Yes. The driveway itself is 2 located at what we call a sag of the curve there, so 3 the high point at Homecrest and then comes down the 4 hill and then back up the hill as you go towards 5 Connecticut. And there is -- you can see on the 6 aerial exhibit that's -- I forget what this exhibit 7 number is here. 8 THE HEARING EXAMINER: Which one are you 9 referring to? 10 MS. HARRIS: The aerial. 11 THE HEARING EXAMINER: The aerial photo? 12 THE WITNESS: The aerial photograph of the 13 surrounding neighborhood. 14 MS. HARRIS: It was 3-B. 15 THE WITNESS: 3-B. 16 MS. HARRIS: A blow up of 3-B. 17 THE WITNESS: The driveway which would be on 18 the western -- towards the western edge of the 19 property is on a relatively straight section of 20 Bel Pre Road. We think there is adequate site 21 distance. That should be in the record that the 22 civil engineers have prepared -- 23 THE HEARING EXAMINER: All right. 24 THE WITNESS: -- that show adequate site 25 distance at the driveway. And then within the</p>	<p>143</p> <p>1 an independent living facility in the RE-2 zone. I 2 know we have a couple housekeeping items to discuss 3 including the acceptance of the revised plans. 4 THE HEARING EXAMINER: Have they arrived 5 yet? 6 THE WITNESS: They're applying them at the 7 office, and then they're going to leave. But it's 8 about 45 minutes away. 9 THE HEARING EXAMINER: Okay. So I guess we 10 can break and then just come back at 1:30. Does 11 that make sense? 12 MS. HARRIS: That makes sense. 13 THE HEARING EXAMINER: I mean, what we could 14 do -- I was going to say you could just stop by my 15 office, but then court reporter won't know. So why 16 don't we just say we'll resume at 1:30? 17 Before we break, I presume you want 18 Exhibits 1 through 38 and their subparts admitted. 19 MS. HARRIS: Yes, please. 20 THE HEARING EXAMINER: Okay. They are 21 admitted into evidence and as well the -- and they 22 are -- that does include the revised plans 37 and 23 it's various subparts. 24 (Exhibits 1 through 38 were marked and 25 admitted into evidence.)</p>
<p>142</p> <p>1 parking lot, it's on the site plan here and the 2 concept plan, it's -- the circulation is adequate. 3 And so I'd agree that it's safe and adequate 4 circulation. 5 THE HEARING EXAMINER: Okay. Is the current 6 driveway on what used to be the eastern leg of the 7 proposed site, or is the current driveway 8 approximately where the planned driveway is? 9 THE WITNESS: The existing driveway is on 10 the eastern edge of the church's property. 11 THE HEARING EXAMINER: Okay. 12 THE WITNESS: But, you know, the very 13 eastern edge actually. 14 THE HEARING EXAMINER: Okay. All right. 15 Because I saw the -- it's the other end of the U, 16 and I just wasn't sure whether that was the current 17 drive. Okay. Thank you. 18 MS. HARRIS: I have no other questions for 19 Mr. Kabatt. 20 THE HEARING EXAMINER: I think I've asked 21 all of mine as well. 22 MS. HARRIS: Okay. Thank you. 23 So, Mr. Grossman, that concludes our case. 24 With our witnesses we've demonstrated that we meet 25 the standards of the conditional use and the -- for</p>	<p>144</p> <p>1 MS. HARRIS: Yes. 2 THE HEARING EXAMINER: And also that you 3 want an opportunity to respond to my question about 4 the proposed GTA 16-15. 5 How much time do you want to respond to 6 that? 7 MS. HARRIS: I mean -- 8 THE HEARING EXAMINER: It's up to you. I 9 mean, I realize the holidays are coming. I'm going 10 to have to give technical staff time to respond to 11 looking at the new plans as well as whatever you 12 submit. I don't want to squeeze you on time, but I 13 don't want to unduly delay anything. So how much 14 time do you want? 15 MS. HARRIS: I mean, by the end of next week 16 we could get something -- 17 THE HEARING EXAMINER: Okay. 18 MS. HARRIS: -- a brief memo to you, 19 assuming I can get a hold of staff to understand the 20 origins of the ZTA and because I have some specific 21 questions. But I'd say by -- that's the 23rd or 22 27th? 23 THE HEARING EXAMINER: Yes, that would be 24 the 23rd of December. 25 MS. HARRIS: Okay.</p>

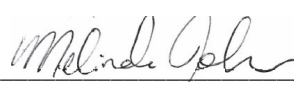
Transcript of Hearing  
Conducted on December 16, 2016

37 (145 to 148)

<p>145</p> <p>1 THE HEARING EXAMINER: I mean, I don't want 2 to have to -- I mean, I'm going to announce at this 3 public hearing. If it changes, then I'd have to 4 issue something, and I don't want to have to do 5 that. 6 MS. HARRIS: No. I understand that. 7 THE HEARING EXAMINER: -- so make sure you're 8 giving yourself enough time. 9 MS. HARRIS: The 23rd will work. 10 THE HEARING EXAMINER: So 12/23 is for 11 Applicant's additional submissions, but the actual 12 hard copies will come today for the plans, 37 and 13 it's subparts; and the disc hopefully will also come 14 today of those. And that will be helpful. So is 15 there anything else that has to be -- 16 MS. HARRIS: You had a question, and I did 17 not -- I have not had a chance to ask the Applicant 18 about the ownership relationship. 19 THE HEARING EXAMINER: Yes, the ownership 20 relationship. Right. 21 MS. HARRIS: And so I don't know if we'll 22 have that information. We'll have it by that date. 23 THE HEARING EXAMINER: You can file it with 24 your December 23rd filing. 25 MS. HARRIS: Okay.</p>	<p>147</p> <p>1 you want time to respond to whatever comes out of 2 the staff report? 3 MS. HARRIS: I don't believe so. I don't 4 think that's necessary given that -- I don't that's 5 necessary. 6 THE HEARING EXAMINER: All right. I don't 7 want you to ask for it later if somebody comes from 8 the public or whatever or -- 9 MS. HARRIS: Okay. Why don't -- five days? 10 THE HEARING EXAMINER: Any amount of time 11 you want or don't want. It's up to you. I'm 12 leaving it up to you because the record is going to 13 close on whatever day you pick. 14 MS. HARRIS: Friday is the 13th; right? So 15 14, 15. So the next Tuesday. 16 THE HEARING EXAMINER: The 16th is a holiday 17 by the way. 18 MS. HARRIS: Okay. So the 18th. 19 THE HEARING EXAMINER: Okay. So 1/18/17 for 20 any -- you're not required to respond, but you can 21 any Applicant response. And 1/18/17 the record will 22 close at close of business. 23 MS. HARRIS: And just so that I'm clear, 24 keeping the record -- I mean, resuming this 25 afternoon at 1:30 simply to accept the plans, we</p>
<p>146</p> <p>1 THE HEARING EXAMINER: There is no emergency 2 on that for sure. Was there anything else that we 3 had? I think you sufficiently responded through 4 your transportation expert on the question of the 5 subdivision staging policy. 6 MS. HARRIS: Yes. Okay. 7 THE HEARING EXAMINER: So you don't have to 8 really address that. You're welcome to address it 9 in a separate memo or -- 10 MS. HARRIS: I don't think that's necessary. 11 THE HEARING EXAMINER: So let's see. Then 12 give staff -- I mean, it's over the holidays, so 13 they're not going to get this until the 23rd. So I 14 can't really just give them ten days. How about 15 Friday the 13th? 16 MS. HARRIS: That's ominous. 17 THE HEARING EXAMINER: So that would be 18 January 13, 2017, for any public comment on the new 19 exhibits and any staff comment. Does that sound 20 reasonable? 21 THE WITNESS: No. That's fine. 22 THE HEARING EXAMINER: Okay. I said, "Does 23 it sound reasonable?" And you said, "No." 24 MS. HARRIS: Yes. Yes, it does reasonable. 25 THE HEARING EXAMINER: All right. And do</p>	<p>148</p> <p>1 can't treat that in the similar manner that we're 2 treating these other items that -- I mean, I will 3 come in this afternoon or I am wondering whether at 4 least myself and maybe the engineer need to be here 5 in the afternoon, I guess. 6 THE HEARING EXAMINER: You mean whether you 7 -- well, I just want to make sure that we get 8 everything in at this point because the plans are so 9 basic to the -- 10 MS. HARRIS: Right. Okay. 11 THE HEARING EXAMINER: So, yes, I'd like you 12 to be here for the -- 13 MS. HARRIS: Right. Okay. 14 THE HEARING EXAMINER: And I don't think 15 anybody has to sign off on -- seal and sign the 16 plans. 17 MS. HARRIS: But the rest of your team 18 doesn't need to stay. 19 THE HEARING EXAMINER: In fact, if you were 20 -- no. 21 MS. HARRIS: Okay. 22 THE HEARING EXAMINER: Anybody that has to 23 sign and seal and so on, if they come in before 24 then, you can drop them in my office and let me 25 know, and then if the court reporter's available, we</p>

Transcript of Hearing  
Conducted on December 16, 2016

38 (149 to 152)

<p>149</p> <p>1 can reconvene earlier, I suppose, if that's -- you 2 know, if you want to. 3 MS. HARRIS: Okay. We'll notify you when 4 they get here. 5 THE HEARING EXAMINER: All right. Anything 6 else that we have to do? 7 MS. HARRIS: I don't believe so. 8 THE HEARING EXAMINER: I think I did say 9 that the new filings in addition including your 10 memo, et cetera, will be admitted even though they 11 don't currently have an exhibit number. 12 MS. HARRIS: Yes. 13 THE HEARING EXAMINER: Okay. 14 MS. HARRIS: Thank you. 15 THE HEARING EXAMINER: We are in recess 16 until 1:30 or so. 17 (Recess.) 18 THE HEARING EXAMINER: Do you have a 19 development to report? 20 MS. HARRIS: Yes, I do. We would like to 21 submit Exhibits 37-A through L. 22 THE HEARING EXAMINER: All right. And they 23 are all signed and sealed? 24 MS. HARRIS: They're signed and sealed. 25 They're not folded. We can fold them. And we</p>	<p>151</p> <p>1 THE HEARING EXAMINER: All right. If you 2 would be so kind as to have them folded to save 3 Ellen some time and make sure that this part is on 4 the outside so she can stamp them. 5 MS. HARRIS: Okay. 6 THE HEARING EXAMINER: And we'll make the 7 disc -- the disc will be 37-M. 8 MS. HARRIS: Okay. N? 9 THE HEARING EXAMINER: M as in Martin. 10 MS. HARRIS: M. Okay. 11 THE HEARING EXAMINER: All right. Is there 12 anything else that we need to address? 13 MS. HARRIS: I think that is it. 14 THE HEARING EXAMINER: Okay. I thank you 15 very much. Have a good weekend. We are adjourned. 16 * * * 17 (The Hearing concluded at 2:01 p.m.) 18 19 20 21 22 23 24 25</p>
<p>150</p> <p>1 assumed that the two that we marked during the 2 hearing, which are now identical to what we're 3 submitting that we don't need -- 4 THE HEARING EXAMINER: We don't need them. 5 MS. HARRIS: Yes, they're here. 6 THE HEARING EXAMINER: Okay. Would you hand 7 them up to me so I can take a quick look at the 8 exciting developments. Thank you. 9 So I presume they're all consistent with 10 that first part. 11 MS. HARRIS: Yes. 12 THE HEARING EXAMINER: I'm not going to look 13 further. And if you would be so kind -- well, maybe 14 I'll just do it. It's probably simpler for me to do 15 it, so just so she knows what to mark them. So this 16 is 37 A, B, C. Do we have the CD also? 17 MS. HARRIS: Yes, we do have the CD. But 18 there was some confusion about whether these are, in 19 fact, searchable. 20 THE HEARING EXAMINER: These will be the 21 plans. I don't really need to have it searchable. 22 It's only the text documents. 23 MS. HARRIS: The text. Okay. 24 If for some reason you do need them, let us 25 know. We can submit.</p>	<p>152</p> <p>1 CERTIFICATE OF SHORTHAND REPORTER 2 3 4 I, MELINDA JOHNSON, Certified Shorthand 5 Reporter, the officer before whom the foregoing 6 Hearing was taken, do hereby certify that the 7 foregoing transcript is a true and correct record of 8 the testimony given; that said testimony was taken 9 by me stenographically and thereafter reduced to 10 typewriting under my direction; and that I am 11 neither counsel for, related to, nor employed by any 12 of the parties to this case and have no interest, 13 financial or otherwise, in its outcome. 14 15 IN WITNESS WHEREOF, I have hereunto set my hand 16 this 29th day of December 2016. 17 18 19 20  21 Melinda Johnson, CSR 22 23 24 25</p>

Transcript of Hearing  
Conducted on December 16, 2016

39

A			
<p><b>about</b> 7:5, 10:21, 18:18, 18:21, 22:5, 23:23, 24:13, 27:2, 30:2, 37:18, 38:19, 39:4, 39:16, 42:1, 46:16, 48:8, 48:10, 48:17, 49:22, 52:8, 55:5, 57:15, 57:20, 59:1, 59:2, 59:10, 61:15, 64:5, 64:15, 64:18, 70:23, 71:8, 71:14, 71:15, 73:18, 80:9, 80:21, 80:22, 82:9, 83:7, 84:22, 85:22, 87:16, 89:9, 93:14, 95:4, 98:8, 98:11, 103:8, 105:25, 110:1, 111:7, 116:20, 118:5, 118:14, 123:5, 124:8, 134:16, 137:23, 140:23, 143:8, 144:3, 145:18, 146:14, 150:18 <b>about:</b> 83:12 <b>above</b> 123:6, 138:24, 139:17, 140:2 <b>absolutely</b> 85:14, 113:1, 116:10, 120:19 <b>abut</b> 79:6, 123:5 <b>abutting</b> 57:8, 57:12,</p>	<p>57:24, 67:23, 68:25, 69:2, 79:7, 79:11, 84:6 <b>accept</b> 6:16, 6:23, 35:21, 74:10, 111:11, 111:24, 125:12, 147:25 <b>acceptable</b> 126:17 <b>acceptance</b> 35:20, 143:3 <b>accepted</b> 35:13 <b>access</b> 52:19, 53:13, 66:11, 82:23, 82:25, 83:1, 83:5 <b>accessed</b> 121:18 <b>accessibility</b> 107:9 <b>accessible</b> 107:16 <b>accommodate</b> 14:4, 136:7 <b>accordance</b> 85:23, 106:14 <b>according</b> 86:6, 127:12, 134:10 <b>accordingly</b> 122:12 <b>accurate</b> 50:17 <b>achieve</b> 85:3 <b>acre</b> 4:10 <b>acres</b> 13:24, 14:3, 39:15, 39:17, 42:24 <b>across</b> 21:8, 106:11, 130:4, 133:6,</p>	<p>135:23, 136:1, 136:2 <b>act</b> 26:20, 53:12 <b>active</b> 21:24 <b>activities</b> 18:1, 19:14, 30:2, 104:10, 104:12 <b>activity</b> 21:23 <b>actual</b> 100:23, 121:22, 130:16, 145:11 <b>actually</b> 8:21, 15:15, 20:18, 20:20, 32:5, 39:12, 49:11, 53:25, 54:2, 57:8, 68:3, 71:18, 72:23, 90:19, 92:11, 97:4, 98:5, 115:6, 117:10, 125:25, 130:11, 133:5, 133:6, 142:13 <b>adapted</b> 136:21 <b>add</b> 13:1, 53:23, 77:18, 108:10, 116:1 <b>added</b> 5:16 <b>adding</b> 11:15, 46:16, 80:13, 85:22 <b>addition</b> 46:14, 55:4, 77:17, 83:10, 149:9 <b>additional</b> 20:8, 46:16, 72:19, 80:16, 136:15, 145:11 <b>address</b> 7:16, 7:19,</p>	<p>8:23, 12:20, 13:9, 15:19, 16:22, 17:12, 21:10, 72:16, 93:3, 146:8, 151:12 <b>adequate</b> 60:5, 105:19, 106:15, 106:19, 107:2, 107:8, 107:9, 108:16, 128:11, 135:8, 136:7, 136:12, 141:20, 141:24, 142:2, 142:3 <b>adequately</b> 83:17 <b>adjacent</b> 59:22, 87:5, 113:6, 113:18, 117:9, 121:15, 122:21, 122:24, 123:5, 123:8 <b>adjourned</b> 151:15 <b>adjusted</b> 23:20, 49:9, 49:10, 49:11 <b>administration</b> 11:17 <b>administrative</b> 1:1, 2:5, 4:18, 26:13 <b>admitted</b> 3:23, 143:18, 143:21, 143:25, 149:10 <b>adopted</b> 8:6, 9:24, 75:24 <b>advance</b> 39:24, 40:10, 40:22, 42:1, 88:5, 91:11, 91:19, 92:17, 93:4, 93:9 <b>adventist</b> 98:13</p>



Transcript of Hearing  
Conducted on December 16, 2016

40

<p><b>adverse</b> 104:22, 104:24, 117:8, 120:8, 136:16</p> <p><b>adversely</b> 9:20, 9:23, 10:7, 92:3</p> <p><b>aerial</b> 75:10, 141:6, 141:10, 141:11, 141:12</p> <p><b>affect</b> 9:20, 10:7, 10:8, 10:14, 27:13</p> <p><b>affected</b> 49:19</p> <p><b>affecting</b> 11:8</p> <p><b>affidavit</b> 12:24, 13:12</p> <p><b>affiliate</b> 26:10</p> <p><b>affordable</b> 15:17, 18:18, 18:22, 86:14, 135:7</p> <p><b>afforest</b> 53:21</p> <p><b>afforestation</b> 101:24</p> <p><b>afforesting</b> 86:1</p> <p><b>after</b> 7:7, 22:3, 27:9, 69:1, 89:6, 91:22, 95:16, 139:22</p> <p><b>afternoon</b> 87:24, 95:7, 147:25, 148:3, 148:5</p> <p><b>again</b> 13:20, 52:4, 63:21, 72:12, 76:8, 76:19, 76:23, 83:18, 83:21, 83:23,</p>	<p>90:22, 92:14, 93:23, 121:10, 136:9, 136:18</p> <p><b>against</b> 138:20</p> <p><b>age</b> 19:11, 21:19, 22:3</p> <p><b>agencies</b> 124:14</p> <p><b>ages</b> 21:15</p> <p><b>aging</b> 21:9, 80:16</p> <p><b>ago</b> 18:18</p> <p><b>agree</b> 104:20, 142:3</p> <p><b>allow</b> 42:9, 81:18, 91:13</p> <p><b>allowance</b> 93:1</p> <p><b>allowed</b> 72:11, 83:16</p> <p><b>allows</b> 54:9</p> <p><b>almost</b> 114:10, 116:17</p> <p><b>along</b> 45:10, 49:23, 67:15, 67:17, 68:2, 71:10, 76:8, 79:13, 80:24, 81:5, 82:7, 83:25, 84:7, 99:16, 116:24, 117:7, 118:10, 118:13, 119:5, 129:15, 135:15, 135:25</p> <p><b>already</b> 24:22, 56:24, 123:2, 126:25</p> <p><b>also</b> 19:20, 20:10, 37:3, 40:15, 40:25, 44:12,</p>	<p>46:8, 53:8, 54:6, 62:21, 63:15, 67:19, 70:9, 75:3, 76:25, 77:6, 77:11, 77:13, 77:15, 78:11, 82:20, 85:22, 86:11, 90:13, 94:24, 100:14, 101:13, 106:24, 107:20, 107:22, 108:1, 113:19, 116:8, 122:25, 128:13, 131:13, 133:25, 135:2, 135:25, 136:14, 137:19, 139:18, 144:2, 145:13, 150:16</p> <p><b>alternatives</b> 15:4</p> <p><b>although</b> 91:13, 117:7</p> <p><b>always</b> 116:3, 119:19</p> <p><b>amending</b> 37:14, 37:16</p> <p><b>amendment</b> 9:20, 11:21, 11:22, 37:19</p> <p><b>amenities</b> 20:11, 29:22</p> <p><b>ami</b> 15:18</p> <p><b>amount</b> 58:23, 113:20, 113:21, 115:8, 128:13, 147:10</p> <p><b>analysis</b> 6:17, 98:25, 102:18, 131:16, 138:23, 139:1, 139:16, 139:18, 140:9</p> <p><b>analyzed</b> 68:1</p> <p><b>announce</b> 145:2</p>	<p><b>annual</b> 19:24, 106:14</p> <p><b>annually</b> 23:19</p> <p><b>another</b> 38:14, 57:8, 59:2, 62:14, 91:15, 92:19, 134:1, 135:11</p> <p><b>answer</b> 7:18, 7:20, 10:12, 10:17</p> <p><b>any</b> 6:4, 7:9, 7:11, 7:13, 8:5, 8:11, 9:5, 9:18, 9:23, 10:15, 11:13, 11:18, 12:22, 14:24, 17:1, 22:10, 27:5, 28:8, 32:5, 48:9, 50:9, 51:10, 66:3, 67:13, 67:23, 68:9, 69:7, 70:4, 79:5, 82:9, 87:2, 91:16, 93:11, 104:22, 104:24, 105:2, 106:2, 106:15, 108:13, 114:18, 116:25, 117:8, 118:7, 120:7, 122:1, 122:10, 126:3, 136:16, 139:11, 139:13, 139:14, 140:14, 140:18, 146:18, 146:19, 147:10, 147:20, 147:21, 152:11</p> <p><b>anybody</b> 5:4, 40:14, 41:23, 129:25, 148:15, 148:22</p> <p><b>anyone</b> 5:17</p> <p><b>anything</b> 9:19, 40:17,</p>
--	---	--	--

Transcript of Hearing  
Conducted on December 16, 2016

41

77:17, 92:3, 108:9, 115:25, 144:13, 145:15, 146:2, 149:5, 151:12 <b>apartment</b> 28:5, 40:18, 77:5, 78:24, 80:13, 99:6, 126:10 <b>apartments</b> 28:2, 28:3, 78:2, 79:1, 79:16, 80:14, 99:18, 99:19, 99:22, 105:15 <b>apartments;</b> 118:21 <b>apf</b> 136:13 <b>apologize</b> 90:23, 116:19 <b>apparatus</b> 53:9, 66:13 <b>appear</b> 16:18 <b>appearance;</b> 83:14 <b>appeared</b> 69:4 <b>appears</b> 8:14 <b>applicable</b> 36:19, 69:13, 128:19 <b>applicant</b> 5:1, 5:5, 10:6, 30:9, 54:25, 107:20, 129:6, 145:17, 147:21 <b>applicant's</b> 145:11 <b>applicant:</b> 2:11 <b>applicant;</b> 5:9 <b>application</b> 4:5, 10:2,	18:10, 22:15, 36:4, 36:9, 37:7, 80:3, 80:11, 80:18, 104:13, 107:13, 126:7, 129:11 <b>applied</b> 68:24, 112:15 <b>applies</b> 69:5, 79:23 <b>apply</b> 59:20, 69:4, 69:6, 69:25 <b>applying</b> 143:6 <b>approach</b> 11:2, 13:1, 37:8 <b>appropriate</b> 82:6, 85:13, 108:15 <b>approval</b> 6:19, 13:25 <b>approvals</b> 105:2 <b>approved</b> 11:15, 61:11, 61:12, 86:7, 129:17 <b>approximately</b> 4:13, 57:25, 120:2, 120:5, 142:8 <b>aquarius</b> 78:22 <b>architect</b> 73:21, 100:22, 109:2, 109:24, 111:2, 113:15 <b>architect;</b> 5:12 <b>architectural</b> 109:21, 112:6, 112:21, 113:8, 115:11, 115:12 <b>architecture</b> 74:8, 74:12, 109:18, 111:2,	111:19, 111:22, 111:24 <b>architecture"</b> 111:11 <b>area</b> 4:13, 14:22, 22:13, 23:18, 39:11, 39:15, 42:17, 44:3, 48:22, 49:3, 49:8, 49:9, 49:10, 49:24, 53:21, 54:7, 58:7, 64:9, 64:13, 68:16, 68:17, 70:24, 75:6, 75:8, 77:7, 77:19, 77:21, 77:24, 79:14, 80:14, 81:21, 82:21, 84:10, 84:20, 87:5, 98:4, 98:18, 98:21, 99:7, 99:16, 101:1, 107:22, 108:7, 108:14, 108:18, 113:5, 115:8, 121:21, 123:5, 126:8, 129:13, 129:17, 131:22, 135:5, 135:13, 136:23, 136:24, 136:25, 138:21, 138:22, 139:7, 139:12, 139:13, 139:14 <b>area;</b> 113:21 <b>areas</b> 84:7, 99:9, 107:11, 122:21, 140:23, 140:24 <b>aren't</b> 89:21, 93:7, 99:24 <b>arena</b> 106:7	<b>argument</b> 82:9 <b>around</b> 54:21, 66:18, 77:24, 77:25, 78:25, 100:15, 105:14, 105:15, 118:9 <b>arrangement</b> 32:19 <b>arrive</b> 130:21 <b>arrived</b> 143:4 <b>arterial</b> 81:3 <b>artificial</b> 81:21, 82:18 <b>aside</b> 9:22, 136:13 <b>asked</b> 83:22, 103:13, 142:20 <b>asking</b> 55:18, 57:3, 111:9 <b>asks:</b> 8:5 <b>aspect</b> 122:9 <b>aspen</b> 1:5, 4:5, 4:13, 4:16, 30:7, 74:21, 79:21, 80:5, 86:22, 108:1, 136:23 <b>aspenwood</b> 78:17 <b>assessment</b> 90:14 <b>assist</b> 9:7, 19:13 <b>assistance</b> 111:8 <b>assisted</b> 28:17 <b>associate</b> 124:11
--	---	--	--

Transcript of Hearing  
Conducted on December 16, 2016

42

<b>associated</b> 30:7, 86:8, 104:5, 104:23 <b>associates</b> 124:4, 124:7 <b>assume</b> 27:19 <b>assumed</b> 40:7, 107:2, 150:1 <b>assuming</b> 13:25, 28:12, 56:25, 144:19 <b>attached</b> 9:19, 118:5 <b>attachments</b> 6:12 <b>attended</b> 22:16, 41:25 <b>attending</b> 124:13 <b>audience</b> 5:3, 5:4, 5:19 <b>august</b> 35:10 <b>authority</b> 54:10, 111:10 <b>authorized</b> 9:5, 9:11, 18:9 <b>automatically</b> 6:13, 41:20, 128:2, 128:22 <b>availability</b> 65:3 <b>available</b> 20:21, 22:12, 22:19, 27:10, 83:15, 148:25 <b>avenue</b> 2:6, 4:15, 36:22, 75:19, 75:20, 76:10, 78:7, 108:2, 109:19, 124:10, 131:13, 132:6, 132:15 <b>average</b> 22:6, 62:2,	62:3, 62:4 <b>avoid</b> 85:11 <b>avoided</b> 83:13 <b>avoiding</b> 80:22 <b>aware</b> 27:15, 32:4 <b>away</b> 29:13, 58:7, 58:19, 70:7, 139:7, 143:8 <b>awesome</b> 120:4 <hr/> <p style="text-align: center;"><b>B</b></p> <hr/> <b>b</b> 34:16 <b>back</b> 11:7, 11:17, 25:7, 37:25, 38:12, 38:21, 38:22, 43:21, 46:11, 48:10, 52:3, 52:13, 56:6, 56:18, 57:1, 57:24, 58:1, 58:23, 61:14, 65:8, 66:19, 82:1, 89:8, 91:2, 98:7, 100:9, 100:12, 105:11, 118:13, 123:2, 126:1, 141:4, 143:10 <b>background</b> 35:19, 73:18, 110:10, 111:16, 111:22, 124:4, 124:19, 129:16 <b>badgered</b> 73:3 <b>balance</b> 18:22, 22:11 <b>baltimore</b> 17:13	<b>band</b> 99:12 <b>based</b> 26:17, 64:4, 69:9, 70:22, 74:5, 101:11, 106:3, 112:22, 118:23, 124:18, 125:6, 128:18, 129:21, 130:24, 131:15, 134:14, 136:9, 139:1, 139:18 <b>basic</b> 76:19, 112:14, 113:12, 148:9 <b>basically</b> 36:12, 42:7, 54:23, 75:21, 79:12, 98:23, 99:4, 118:5, 119:5, 129:13 <b>basis</b> 22:1, 22:4 <b>bear</b> 76:2, 106:20 <b>bearing</b> 100:25 <b>beat</b> 6:21 <b>beautify</b> 55:10 <b>beaver</b> 79:13 <b>beaverwood</b> 76:7, 76:8, 133:22 <b>because</b> 7:10, 8:6, 9:23, 12:9, 15:16, 15:17, 16:7, 16:16, 20:22, 24:12, 33:10, 33:21, 40:2, 40:24, 44:20, 45:16, 45:22, 48:21, 49:9, 49:10,	49:18, 51:9, 59:21, 61:14, 67:22, 76:8, 83:13, 89:2, 90:2, 91:18, 92:4, 92:19, 98:9, 116:3, 117:25, 118:23, 119:6, 121:24, 126:17, 127:11, 133:4, 135:6, 136:13, 140:1, 142:15, 144:20, 147:12, 148:8 <b>become</b> 7:21 <b>becomes</b> 102:5 <b>bedroom</b> 113:24 <b>bedrooms</b> 113:25, 114:3, 114:4, 114:7, 114:8, 114:9 <b>been</b> 6:5, 7:3, 17:8, 17:17, 17:19, 17:24, 29:3, 32:19, 34:6, 35:9, 41:2, 42:17, 47:12, 60:12, 61:5, 70:18, 71:17, 72:17, 73:12, 88:5, 96:8, 98:11, 99:14, 99:24, 109:9, 123:23, 124:7, 126:9, 126:20, 126:21, 126:25, 128:16 <b>before</b> 1:12, 7:15, 17:1, 34:11, 35:4, 35:5, 36:4, 40:2, 41:15, 42:23, 47:2, 52:13,
---	--	---	--

<p>55:4, 66:12, 73:24, 74:7, 94:24, 110:4, 110:7, 124:15, 124:22, 124:25, 127:6, 128:15, 143:17, 148:23, 152:5 <b>beginning</b> 32:7 <b>behalf</b> 2:11, 4:25 <b>behind</b> 53:25, 82:3, 83:19, 98:15, 98:19, 100:13, 118:21 <b>being</b> 26:18, 39:9, 39:10, 39:11, 39:13, 42:5, 42:17, 50:6, 54:24, 56:15, 61:12, 63:3, 68:18, 70:7, 91:20, 112:22 <b>bel</b> 4:12, 4:14, 13:22, 36:21, 36:22, 38:16, 53:11, 53:25, 54:3, 65:5, 65:7, 65:16, 65:18, 66:17, 66:19, 67:16, 70:11, 75:16, 76:21, 77:14, 78:14, 78:21, 81:1, 81:3, 81:10, 81:19, 82:17, 83:6, 83:25, 98:14, 98:17, 107:17, 107:18, 129:15, 131:11, 131:13, 131:14, 132:5, 132:15, 132:19, 133:3, 133:9,</p>	<p>133:15, 133:22, 134:8, 134:20, 134:22, 135:15, 135:21, 135:23, 136:1, 136:10, 141:20 <b>believe</b> 15:6, 27:21, 30:1, 31:10, 32:7, 48:1, 64:18, 65:22, 70:16, 71:14, 71:24, 72:19, 74:7, 108:8, 120:25, 130:16, 136:18, 138:24, 139:5, 139:6, 139:9, 147:3, 149:7 <b>below</b> 22:13, 23:18, 25:20, 137:9, 139:15 <b>benefit</b> 19:21 <b>best</b> 37:8, 44:21, 91:14, 119:20 <b>bethesda</b> 2:14, 2:16 <b>better</b> 40:19, 90:2, 93:4 <b>between</b> 31:16, 32:20, 36:22, 47:19, 56:12, 57:23, 79:16, 81:19, 82:16, 98:16, 98:20, 99:5, 135:16, 135:18 <b>beyond</b> 55:2, 68:13, 111:6 <b>bicycle</b> 6:25, 40:7, 47:1, 47:6, 54:17, 54:18,</p>	<p>54:25, 55:1, 55:2, 55:16 <b>bicycles</b> 136:3 <b>bicyclist</b> 137:21 <b>bicyclists</b> 137:24 <b>big</b> 76:2, 91:17 <b>biggest</b> 101:16 <b>bike</b> 46:17, 54:13, 138:1 <b>bikes</b> 21:24 <b>billings</b> 20:1 <b>bisects</b> 65:12 <b>bit</b> 12:16, 33:10, 39:14, 55:11, 80:9, 90:3, 98:8, 98:12 <b>bleed</b> 70:4, 70:8 <b>bleeds</b> 67:13 <b>blow</b> 141:16 <b>board</b> 6:12, 6:14, 14:6, 34:11, 38:6, 38:23, 41:13, 41:18, 41:21, 41:25, 46:16, 47:2, 50:25, 51:2, 51:6, 51:23, 55:14, 72:14, 86:6, 112:16, 140:13 <b>board's</b> 6:24 <b>bodies</b> 110:7</p>	<p><b>body</b> 38:14, 41:15, 54:9 <b>bollard</b> 67:17 <b>both</b> 14:5, 50:20, 65:8, 66:22, 68:21, 71:20, 126:25, 140:23 <b>bottom</b> 29:12, 45:6, 76:9 <b>boundaries</b> 98:23 <b>boundary</b> 76:4, 76:5, 76:6, 76:7, 76:10 <b>box</b> 118:4 <b>boxes</b> 118:1 <b>branch</b> 85:4 <b>break</b> 25:5, 45:24, 87:23, 88:21, 89:6, 143:10, 143:17 <b>breakdown</b> 23:25, 24:2 <b>brewer</b> 2:13, 4:25 <b>brick</b> 113:3, 113:21 <b>brief</b> 13:7, 75:25, 144:18 <b>briefly</b> 13:15, 18:6, 18:14, 38:3 <b>bring</b> 19:20, 45:10, 65:8, 100:6, 100:7 <b>buffer</b> 82:5, 98:24,</p>
---	---	---	--

<p>99:17, 99:20, 100:14, 100:19, 100:20, 101:5, 101:19, 101:21, 101:24, 102:3 <b>buffering</b> 75:2, 84:6, 84:12, 101:10, 101:14, 113:17 <b>buffers</b> 105:12 <b>building</b> 1:2, 19:21, 20:6, 20:11, 20:20, 26:18, 27:10, 28:16, 29:3, 29:4, 29:8, 29:17, 30:15, 36:12, 42:10, 46:24, 46:25, 48:5, 48:18, 52:21, 53:18, 53:19, 56:7, 60:23, 65:9, 68:13, 84:8, 84:9, 84:12, 90:15, 100:6, 100:20, 100:23, 100:24, 100:25, 101:4, 101:7, 101:17, 102:4, 104:10, 105:11, 105:13, 105:14, 113:3, 115:9, 116:14, 116:25, 118:8, 119:23, 120:13, 121:14 <b>buildings</b> 40:18, 50:4, 84:11, 84:14, 99:6, 117:11 <b>built</b> 78:3, 138:9 <b>bulk</b> 58:22 <b>bulling</b> 122:25</p>	<p><b>burtonsville</b> 73:23 <b>bus</b> 107:17, 107:19, 135:15, 135:20, 135:24, 137:20, 138:1 <b>business</b> 16:22, 16:25, 17:12, 147:22 <b>by:</b> 1:25</p> <hr/> <p style="text-align: center;"><b>C</b></p> <hr/> <p><b>c</b> 44:25, 47:13, 52:5, 87:11, 98:6, 125:7 <b>cable</b> 65:16 <b>cafe</b> 20:12, 20:16, 20:18, 20:22, 115:7 <b>cafe"</b> 20:15 <b>calculated</b> 49:20, 129:21 <b>calculating</b> 137:22 <b>calculations</b> 48:23, 137:6 <b>call</b> 4:3, 14:23, 16:10, 20:22, 27:8, 67:4, 71:12, 95:6, 95:17, 99:7, 121:16, 141:2 <b>called</b> 5:5, 60:18 <b>calls</b> 80:17 <b>came</b> 32:18, 132:4 <b>can't</b> 25:3, 51:15, 51:17, 84:11,</p>	<p>102:16, 146:14, 148:1 <b>candle</b> 67:22, 69:3 <b>cannot</b> 51:21 <b>canopy</b> 99:25, 101:12 <b>capacity</b> 82:23, 139:2 <b>car</b> 77:5, 137:16, 138:2 <b>care</b> 19:25, 21:21 <b>carefully</b> 118:14 <b>caregiver</b> 9:4 <b>carried</b> 134:6 <b>carter</b> 14:15, 15:14, 16:12, 16:21, 33:14, 121:20 <b>case</b> 1:5, 4:3, 4:21, 5:6, 8:6, 11:12, 15:8, 20:7, 35:8, 35:13, 35:23, 39:23, 40:14, 54:10, 56:7, 59:20, 68:3, 74:12, 81:1, 81:25, 82:25, 88:1, 91:1, 91:7, 92:19, 93:3, 106:19, 107:4, 124:24, 124:25, 125:3, 125:16, 128:15, 128:20, 136:22, 142:23, 152:12 <b>case;</b> 9:25 <b>categories</b> 65:21</p>	<p><b>category</b> 20:17, 65:25, 66:3, 67:25 <b>caught</b> 97:6 <b>cause</b> 104:24, 118:7 <b>cd</b> 46:8, 150:16, 150:17 <b>center</b> 2:14, 20:13, 75:17, 78:16, 78:19, 98:13 <b>central</b> 29:5 <b>certain</b> 28:6, 128:18, 138:24 <b>certainly</b> 41:2, 78:23, 80:1, 80:11, 80:14, 80:16, 88:6, 89:2, 105:10, 105:17, 108:19, 108:22, 128:21 <b>certificate</b> 152:1 <b>certified</b> 73:20, 76:16, 152:4 <b>certify</b> 152:6 <b>cetera</b> 149:10 <b>chance</b> 11:5, 132:3, 145:17 <b>change</b> 7:8, 8:7, 40:16, 41:1, 41:22, 43:24, 44:1, 46:19, 46:22, 49:15, 62:8, 64:2, 89:11, 89:21, 93:20, 94:9,</p>
---	--	---	--

<p>94:10, 112:22, 112:24, 115:21, 130:25 <b>changed</b> 40:4, 48:22, 49:1, 49:2, 52:9, 89:11, 93:4 <b>changes</b> 7:11, 10:1, 10:4, 11:13, 11:18, 11:24, 12:18, 38:4, 38:10, 40:6, 40:8, 66:4, 90:24, 91:4, 91:13, 91:21, 92:2, 93:1, 93:7, 112:22, 115:21, 145:3 <b>changing</b> 14:9, 62:12, 63:22 <b>character</b> 77:19, 77:20, 100:23, 101:1, 105:13, 105:17, 108:17 <b>characteristics</b> 87:3, 97:25, 104:16, 104:18, 104:23 <b>charging</b> 53:6 <b>charles</b> 17:13 <b>chart</b> 39:2, 50:13 <b>check</b> 24:25, 25:4, 52:3, 65:24 <b>chic</b> 20:23, 20:24 <b>children</b> 106:2 <b>chris</b> 5:13 <b>christopher</b> 3:17, 123:19,</p>	<p>123:22 <b>church</b> 18:8, 22:17, 53:13, 54:1, 54:2, 56:13, 56:24, 57:9, 58:13, 58:18, 63:5, 68:21, 68:22, 82:3, 83:2, 83:19, 98:13, 98:15, 98:16, 100:13, 121:17, 123:6 <b>church's</b> 54:1, 57:16, 136:2, 142:10 <b>chutes</b> 29:4, 29:5, 29:11, 29:12, 122:13 <b>circulating</b> 66:18 <b>circulation</b> 53:8, 66:13, 66:14, 66:16, 142:2, 142:4 <b>civil</b> 5:10, 12:15, 34:1, 34:17, 35:20, 35:21, 35:24, 113:14, 141:22 <b>civil's</b> 121:24 <b>clarification</b> 9:15, 10:5 <b>clarify</b> 30:19 <b>clarifying</b> 16:5, 32:17 <b>classes</b> 19:19 <b>classification</b> 66:8 <b>classified</b> 69:12 <b>clear</b> 9:10, 39:1,</p>	<p>69:15, 71:4, 88:16, 147:23 <b>clearly</b> 81:3, 83:25 <b>client</b> 124:14 <b>clinics</b> 107:2 <b>close</b> 52:24, 65:6, 68:9, 72:20, 84:4, 119:2, 147:13, 147:22 <b>closer</b> 49:20 <b>closes</b> 94:25 <b>closest</b> 48:9, 57:22, 70:5 <b>clv</b> 138:19, 140:8 <b>clvs</b> 140:2 <b>coast</b> 18:23 <b>code</b> 15:2, 15:21, 23:16, 28:13, 28:16, 50:23, 54:17, 74:21, 91:12, 101:11, 101:15 <b>code's</b> 23:13 <b>coffee</b> 20:21 <b>collection</b> 28:23 <b>colombia</b> 18:2 <b>combine</b> 82:25 <b>combining</b> 83:1 <b>come</b> 25:7, 27:10, 48:9, 76:1,</p>	<p>130:3, 143:10, 145:12, 145:13, 148:3, 148:23 <b>comes</b> 29:1, 137:14, 141:3, 147:1, 147:7 <b>coming</b> 52:13, 67:16, 67:18, 101:18, 129:25, 144:9 <b>comment</b> 7:8, 7:10, 12:20, 38:19, 69:7, 91:22, 146:18, 146:19 <b>commentary</b> 40:13 <b>comments</b> 38:5 <b>commercial</b> 83:14, 107:22, 108:1 <b>commission</b> 30:14, 30:20, 30:21, 30:22 <b>communication</b> 65:16 <b>community</b> 5:20, 5:21, 20:19, 22:14, 22:20, 78:18, 86:13, 100:1, 102:5, 107:12, 115:7, 115:9 <b>company</b> 17:20, 17:22, 26:10 <b>compass</b> 46:23 <b>compatibility</b> 72:15, 86:25, 87:4, 90:14, 90:16, 93:2, 101:14, 122:15, 123:7, 128:14, 128:21, 136:14, 136:17</p>
---	--	--	---

<b>compatible</b> 14:22, 53:9, 84:13, 84:16, 84:23, 91:5, 98:3, 100:9, 102:3, 105:10, 105:18, 108:6, 113:5, 113:23, 115:12, 122:23 <b>complaining</b> 40:14 <b>complete</b> 89:16 <b>completely</b> 59:3 <b>complexes</b> 78:25 <b>compliance</b> 48:24, 50:20, 60:25, 103:23 <b>compliant</b> 59:16 <b>complicated</b> 33:10 <b>complies</b> 14:19, 103:2 <b>comply</b> 105:4 <b>component</b> 135:7 <b>components</b> 98:2 <b>computer</b> 20:21, 20:24 <b>conceivable</b> 9:24 <b>conceived</b> 18:17 <b>concentrated</b> 68:12 <b>concentrating</b> 81:4, 82:7 <b>concentrations</b> 80:23 <b>concept</b> 60:10, 60:11, 61:4, 61:12, 142:2	<b>concepts</b> 112:15, 113:12 <b>concerned</b> 12:9, 52:11 <b>concluded</b> 151:17 <b>concludes</b> 142:23 <b>conclusion</b> 89:9 <b>condenser</b> 117:11 <b>condensing</b> 116:25 <b>condition</b> 15:24, 15:25, 22:25, 25:25, 70:20, 70:25, 105:6, 128:5, 134:3, 134:7 <b>conditional</b> 4:5, 8:9, 10:16, 13:21, 14:1, 14:3, 14:4, 14:20, 15:3, 18:4, 18:9, 28:7, 36:4, 36:8, 37:3, 37:7, 37:12, 38:19, 39:16, 43:3, 43:7, 43:18, 47:20, 47:22, 48:4, 49:3, 56:6, 61:23, 61:24, 62:14, 62:15, 63:13, 63:20, 64:12, 66:21, 66:22, 71:20, 74:16, 79:22, 79:24, 81:15, 88:11, 98:6, 103:4, 104:6, 107:9, 112:4, 122:15, 122:20, 126:6, 128:4, 128:9, 129:7, 129:10,	142:25 <b>conditions</b> 6:19, 11:11, 11:14, 15:2, 44:1, 45:5, 70:22, 98:8, 131:17, 131:18, 131:20, 132:10 <b>conducted</b> 4:17 <b>configuration</b> 12:19, 46:14, 64:14 <b>confirm</b> 66:6, 90:10 <b>conflict</b> 82:24 <b>conflicting</b> 24:19 <b>conform</b> 86:22 <b>confuse</b> 119:15 <b>confusing</b> 40:25 <b>confusion</b> 150:18 <b>congestion</b> 131:22, 131:24, 139:4, 139:6 <b>congregates</b> 22:17 <b>connect</b> 65:7, 65:25, 107:21 <b>connecticut</b> 4:15, 36:22, 75:19, 76:10, 108:2, 131:13, 132:6, 132:14, 141:5 <b>connecting</b> 65:13 <b>connection</b> 19:16, 54:12, 65:5, 74:19, 79:21, 107:16, 125:16, 126:20,	128:7, 129:7, 135:2 <b>connects</b> 135:24 <b>conservation</b> 36:14, 75:3, 85:24, 85:25, 86:3, 86:7, 102:2 <b>consideration</b> 10:15 <b>considered</b> 56:8, 81:2, 99:8, 99:12, 131:8 <b>consistent</b> 14:21, 44:2, 79:25, 97:16, 150:9 <b>consistently</b> 138:7 <b>consists</b> 4:9, 129:14 <b>consolidated</b> 52:23 <b>consultants</b> 29:23 <b>consultation</b> 130:14 <b>contained</b> 120:10 <b>contains</b> 98:12 <b>contemplated</b> 91:12 <b>contextual</b> 122:22 <b>continue</b> 22:6, 44:25, 96:13, 96:23 <b>continuous</b> 53:8 <b>contract</b> 18:8, 28:17 <b>contradict</b> 58:12 <b>contrary</b> 107:3
---	---	---	---

Transcript of Hearing  
Conducted on December 16, 2016

47

<p><b>conversation</b> 97:12</p> <p><b>converting</b> 137:3</p> <p><b>coordinate</b> 20:5</p> <p><b>coordination</b> 20:8</p> <p><b>coordinations</b> 19:12</p> <p><b>copies</b> 6:7, 45:11, 87:7, 87:16, 87:17, 87:20, 88:8, 145:12</p> <p><b>copy</b> 13:2, 13:5, 40:15, 52:2, 75:11, 76:17, 114:22, 127:14, 127:15, 128:25</p> <p><b>corner</b> 79:12, 120:13, 122:2</p> <p><b>correct</b> 5:16, 16:3, 28:11, 34:23, 34:24, 46:18, 47:15, 48:19, 48:20, 50:1, 50:8, 55:24, 59:14, 59:23, 75:25, 94:19, 96:22, 97:18, 103:24, 125:9, 133:12, 140:20, 152:7</p> <p><b>corrected</b> 12:2</p> <p><b>correction</b> 47:12</p> <p><b>correctly</b> 57:6, 127:21, 139:9, 140:7</p> <p><b>corridor</b> 81:2, 81:5</p> <p><b>corridors</b> 80:25, 81:10,</p>	<p>81:20, 82:17</p> <p><b>cost-effective</b> 117:5</p> <p><b>could</b> 39:19, 41:10, 42:3, 45:25, 54:22, 65:22, 65:24, 68:1, 86:24, 87:23, 100:3, 100:10, 100:18, 106:5, 106:7, 118:17, 118:22, 118:23, 137:15, 143:13, 143:14, 144:16</p> <p><b>council</b> 8:6</p> <p><b>counsel</b> 152:11</p> <p><b>counseling</b> 19:24</p> <p><b>count</b> 137:25</p> <p><b>counter</b> 20:23</p> <p><b>counting</b> 127:21, 137:16</p> <p><b>counts</b> 129:15, 131:9</p> <p><b>county</b> 1:2, 14:9, 14:13, 19:17, 21:8, 27:13, 28:9, 30:15, 61:2, 78:6, 78:9, 80:8, 80:12, 80:14, 80:15, 85:20, 101:9, 108:22, 110:5, 110:12, 112:11, 126:10, 127:1, 138:25</p> <p><b>county"</b> 80:8</p> <p><b>county's</b> 74:22, 85:23</p> <p><b>couple</b> 6:3, 88:13,</p>	<p>90:19, 133:19, 143:2</p> <p><b>couriered</b> 89:17, 93:13, 94:23</p> <p><b>course</b> 6:6, 6:8, 106:24, 130:13</p> <p><b>court</b> 5:24, 6:2, 16:15, 16:16, 17:15, 73:24, 95:13, 109:19, 143:15, 148:25</p> <p><b>court:</b> 4:3</p> <p><b>cover</b> 37:12, 37:14, 43:11, 43:14, 43:21, 45:2, 45:5, 51:19, 85:23, 86:2, 88:8</p> <p><b>coverage</b> 48:6, 48:8, 49:10, 49:12, 101:12</p> <p><b>covered</b> 115:3</p> <p><b>crease</b> 52:22</p> <p><b>create</b> 83:22, 99:15, 99:16, 100:18, 102:3, 140:18</p> <p><b>created</b> 101:22</p> <p><b>creating</b> 82:23, 101:24, 105:16, 106:2</p> <p><b>creek</b> 85:4</p> <p><b>criteria</b> 60:16</p> <p><b>critical</b> 131:15, 132:16, 134:6, 136:10, 138:14, 138:23,</p>	<p>138:24, 139:16, 140:14</p> <p><b>cross</b> 5:25, 6:1</p> <p><b>crossing</b> 124:24</p> <p><b>crosswalk</b> 135:23</p> <p><b>csr</b> 1:25, 152:21</p> <p><b>cu</b> 1:6, 4:4</p> <p><b>curiosity</b> 127:23</p> <p><b>curious</b> 8:15</p> <p><b>current</b> 18:9, 109:17, 136:5, 142:5, 142:7, 142:16</p> <p><b>currently</b> 13:20, 34:25, 106:13, 107:15, 107:17, 149:11</p> <p><b>curve</b> 141:2</p> <p><b>cut</b> 53:11, 63:5</p> <p><b>cutting</b> 92:2</p> <p><b>cyber</b> 20:12, 20:15, 20:16, 20:18, 20:22, 115:7</p> <hr/> <p style="text-align: center;"><b>D</b></p> <hr/> <p><b>d</b> 111:21</p> <p><b>daily</b> 19:14, 21:22, 22:1</p> <p><b>damage</b> 85:12</p> <p><b>dark</b> 116:5</p> <p><b>darker</b> 77:3</p> <p><b>date</b> 145:22</p>
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<b>dated</b> 126:23 <b>dates</b> 10:24 <b>day</b> 95:9, 95:11, 147:13, 152:16 <b>day-to-day</b> 26:19 <b>days</b> 7:6, 146:14, 147:9 <b>de</b> 110:14 <b>deadline</b> 127:8 <b>deal</b> 105:20 <b>dealt</b> 24:24 <b>december</b> 1:15, 144:24, 145:24, 152:16 <b>deciding</b> 54:9 <b>decision</b> 4:21, 9:25, 10:16, 106:18, 106:21, 110:8 <b>decisions</b> 122:10 <b>deemed</b> 134:25 <b>deep</b> 55:6 <b>deeply</b> 11:5 <b>defer</b> 120:3 <b>defined</b> 9:8, 23:3, 23:9 <b>definitely</b> 105:8, 105:10 <b>definition</b> 23:5, 23:13, 25:21, 25:22, 25:24, 75:24, 110:23	<b>definitions</b> 28:6 <b>degree</b> 39:11, 42:22, 56:22 <b>del</b> 107:24 <b>delay</b> 144:13 <b>delayed</b> 139:1, 140:8 <b>delineated</b> 44:4 <b>delineation</b> 99:2 <b>deliver</b> 87:10 <b>deliveries</b> 129:24 <b>delivery</b> 87:23 <b>demographics</b> 14:9, 21:14 <b>demonstrated</b> 142:24 <b>dench-carter</b> 3:5, 5:9, 16:24, 17:7, 23:23 <b>density</b> 48:24, 53:22, 99:11, 108:6 <b>department</b> 60:12, 72:13, 127:1 <b>depends</b> 21:17 <b>describe</b> 18:14, 19:8, 21:12, 36:7, 36:18, 37:6, 38:3, 52:18, 74:18, 75:5, 76:12, 98:8, 100:22, 104:4, 112:2, 112:14, 114:13, 115:1 <b>described</b> 68:15, 98:9	<b>describing</b> 77:18 <b>description</b> 20:14, 28:7, 76:1 <b>design</b> 60:16, 75:1, 83:8, 105:10, 109:18, 112:15, 113:8, 113:13, 115:12 <b>designation</b> 36:19 <b>designed</b> 9:7, 29:3, 70:18, 71:17, 81:25, 101:3, 101:6 <b>designing</b> 75:2, 75:3, 100:2, 100:5, 112:5 <b>designs</b> 85:17, 112:21 <b>detached</b> 77:8, 79:15, 79:16 <b>detail</b> 7:20, 15:19, 29:24, 44:4, 62:19, 88:13, 94:2, 98:1 <b>details</b> 43:24, 70:17, 72:18, 96:6, 96:21 <b>determination</b> 72:15 <b>determined</b> 23:19, 72:13, 75:21, 130:15, 131:15 <b>develop</b> 49:4 <b>developed</b> 18:20 <b>developer</b> 18:19, 30:17	<b>developing</b> 18:15, 113:13, 113:14 <b>development</b> 14:19, 17:23, 17:24, 18:1, 23:20, 30:16, 31:17, 36:11, 36:25, 37:6, 47:19, 48:5, 49:6, 50:13, 50:20, 50:22, 51:16, 51:18, 66:21, 66:23, 74:24, 103:2, 131:19, 131:20, 149:19 <b>developments</b> 18:21, 129:17, 150:8 <b>diagonal</b> 59:8 <b>diagram</b> 71:19 <b>differ</b> 63:13 <b>different</b> 15:16, 138:20 <b>difficult</b> 117:24 <b>dig</b> 11:5 <b>dimension</b> 58:11 <b>dimensions</b> 71:22 <b>diminish</b> 82:22 <b>direct</b> 3:6, 3:9, 3:12, 3:15, 3:18, 67:7 <b>direction</b> 135:20 <b>direction;</b> 152:10 <b>directions</b> 46:23 <b>directly</b> 77:24, 77:25,
--	--	--	--

79:6, 79:7, 79:11, 86:17, 106:11 <b>disabilities</b> 4:8, 86:19, 106:6 <b>disabled</b> 106:6 <b>disc</b> 128:25, 145:13, 151:7 <b>disclosed</b> 32:5 <b>discuss</b> 81:24, 87:4, 143:2 <b>discussed</b> 103:18, 113:16, 116:2 <b>discussion</b> 16:19, 33:23 <b>distance</b> 29:13, 118:13, 118:15, 141:21, 141:25 <b>distinction</b> 81:19, 81:24, 82:16 <b>district</b> 18:2 <b>divide</b> 54:19 <b>documents</b> 6:8, 32:6, 112:7, 150:22 <b>does;</b> 118:25 <b>doing</b> 63:1, 101:23 <b>domestic</b> 65:8 <b>done</b> 52:1, 67:11, 70:2, 82:4, 85:24, 110:12, 117:24, 122:16, 128:12 <b>door</b> 52:25	<b>doors</b> 121:18, 122:6 <b>dotted</b> 75:20 <b>double</b> 24:25, 121:18 <b>down</b> 6:1, 18:23, 24:6, 29:5, 31:10, 38:15, 41:14, 42:6, 42:9, 46:23, 49:20, 57:21, 66:17, 67:8, 68:12, 68:16, 68:17, 72:19, 77:15, 87:2, 97:14, 106:11, 106:12, 108:1, 132:1, 141:3 <b>dps</b> 53:10 <b>drive</b> 22:6, 73:23, 142:17 <b>driver</b> 138:2 <b>driveway</b> 52:19, 53:10, 53:11, 53:12, 60:21, 63:5, 66:18, 67:15, 67:17, 72:20, 72:23, 131:14, 132:7, 132:18, 132:22, 133:5, 133:7, 133:9, 134:1, 134:4, 136:3, 136:11, 141:1, 141:17, 141:25, 142:6, 142:7, 142:8, 142:9 <b>driveways</b> 62:25, 140:24 <b>driving</b> 22:5 <b>drop</b> 32:22, 33:5,	148:24 <b>dually</b> 63:5 <b>ducted</b> 116:22 <b>duly</b> 17:8, 34:6, 73:12, 109:9, 123:23 <b>dumpster</b> 29:6, 29:8, 29:9, 29:12, 29:18, 121:11, 121:21 <b>during</b> 25:4, 45:24, 90:22, 134:24, 137:8, 137:15, 137:17, 150:1 <b>dwell</b> 87:2 <b>dwelling</b> 4:9, 15:5, 127:25, 131:10 <hr/> <b>E</b> <hr/> <b>e-a</b> 96:10 <b>e-mail</b> 8:1, 8:4, 8:20, 13:7, 46:4, 46:7, 46:10 <b>e-mailed</b> 46:2 <b>each</b> 117:14, 117:17, 118:21, 121:13, 132:5, 134:7, 135:20, 139:6 <b>earlier</b> 22:9, 40:6, 135:14, 149:1 <b>early</b> 2:13, 4:25 <b>easels</b> 33:21 <b>easement</b> 71:10	<b>easier</b> 39:2, 39:23, 89:15 <b>east</b> 4:14, 29:8, 39:5, 39:6, 39:8, 42:6, 48:13, 50:9, 53:18, 56:20, 65:11, 71:6, 71:7, 75:16, 76:6, 76:21, 77:3, 78:1, 78:12, 79:12, 99:5, 99:6, 99:9, 119:16, 121:13, 121:19, 131:11, 133:15 <b>eastbound</b> 135:21 <b>eastern</b> 98:23, 99:4, 100:16, 101:19, 101:22, 102:1, 134:5, 142:6, 142:10, 142:13 <b>edge</b> 77:16, 99:15, 136:2, 141:18, 142:10, 142:13 <b>effect</b> 7:13, 7:21, 8:5, 8:11, 8:15, 11:25 <b>effective</b> 10:1 <b>effects</b> 104:5, 104:7, 120:8 <b>efficiency</b> 116:23 <b>efficient</b> 117:3, 140:25 <b>effort</b> 12:19 <b>either</b> 15:21, 40:16, 45:13, 89:10,
--	--	--	--

<p>93:19, 115:21, 123:12 <b>elaborate</b> 54:14 <b>elderly</b> 9:7, 86:13, 86:14, 86:19 <b>electric</b> 53:5, 65:15, 65:17 <b>electronic</b> 6:7, 45:10, 87:16 <b>element</b> 100:2 <b>elements</b> 64:21, 122:23 <b>elevation</b> 115:2, 119:6 <b>elevations</b> 112:17, 118:11 <b>elevators</b> 120:19 <b>eliminated</b> 39:9, 39:10, 42:7 <b>eliminated;</b> 50:6 <b>ellen</b> 151:3 <b>ellicott</b> 109:19 <b>else</b> 5:17, 77:17, 108:9, 115:25, 145:15, 146:2, 149:6, 151:12 <b>emergencies</b> 120:16, 120:17 <b>emergency</b> 27:9, 27:11, 121:4, 146:1 <b>emily</b> 8:21, 13:6 <b>employed</b> 22:2, 152:11 <b>employee</b> 26:17</p>	<p><b>employees</b> 26:12, 104:11 <b>employer</b> 109:17 <b>enclosed</b> 122:5 <b>enclosure</b> 119:24, 121:11, 121:22 <b>encroach</b> 116:6 <b>end</b> 10:21, 10:24, 32:22, 42:21, 95:9, 95:10, 127:6, 142:15, 144:15 <b>energy</b> 116:4 <b>energy-efficient</b> 117:4 <b>engineer</b> 5:10, 5:13, 7:19, 12:15, 34:2, 34:18, 35:20, 113:15, 121:1, 124:5, 124:6, 148:4 <b>engineering</b> 35:21, 35:24, 36:11, 124:20, 125:12 <b>engineering;</b> 125:9 <b>engineers</b> 130:3, 141:22 <b>engineers'</b> 129:22 <b>enhancing</b> 84:5 <b>enough</b> 11:9, 42:9, 73:3, 99:11, 145:8 <b>ensure</b> 108:16 <b>enter</b> 137:21</p>	<p><b>entering</b> 137:17 <b>enterprise</b> 17:20 <b>entire</b> 87:13, 89:16, 102:1 <b>entirely</b> 43:2, 43:10 <b>entities</b> 30:13 <b>entitlement</b> 32:21 <b>entity</b> 30:12 <b>entrance</b> 70:11, 71:8 <b>entry</b> 115:3, 140:23 <b>environment</b> 85:2, 85:21 <b>environmental</b> 60:16, 85:9, 85:17 <b>equipment</b> 116:12, 116:14 <b>equivalent</b> 130:10 <b>erosion</b> 85:12 <b>especially</b> 78:6, 93:2, 116:3 <b>esquire</b> 2:12 <b>essence</b> 119:1 <b>essentially</b> 27:25, 28:5, 59:21, 119:8, 134:7, 135:23 <b>establish</b> 4:7 <b>established</b> 130:7 <b>estates</b> 36:24 <b>estimate</b> 130:21</p>	<p><b>et</b> 149:10 <b>evaluate</b> 90:21, 122:15, 122:20, 135:2, 137:2 <b>evaluated</b> 65:3, 66:10, 69:8, 103:1, 105:23, 108:10 <b>evaluation</b> 128:7, 135:3, 135:12, 136:17 <b>even</b> 10:1, 11:22, 12:4, 14:12, 45:25, 50:5, 64:14, 81:23, 128:17, 140:6, 149:10 <b>evening</b> 27:8, 110:13 <b>evenings</b> 27:3 <b>event</b> 9:18, 93:11, 122:1 <b>events</b> 19:18, 19:19 <b>ever</b> 106:25, 110:4 <b>every</b> 87:21, 106:24, 137:14, 137:22 <b>everything</b> 6:1, 40:5, 148:8 <b>everywhere</b> 80:15 <b>evidence</b> 4:20, 107:3, 143:21, 143:25 <b>exact</b> 58:11, 121:24 <b>exactly</b> 19:5, 20:15, 43:22, 92:24, 113:17, 121:7</p>
---	---	---	--

<b>examination</b> 17:11, 34:9, 73:15, 109:12, 124:1 <b>examine</b> 6:1 <b>examined</b> 5:25, 17:9, 34:7, 73:13, 109:10, 123:24 <b>examiner</b> 1:12, 4:19, 35:5, 36:5, 42:4, 74:2, 91:10, 106:18, 109:16, 110:5, 124:15, 126:16, 136:14 <b>example</b> 118:16 <b>exceed</b> 48:9, 48:12, 48:15, 48:16 <b>exception</b> 62:25, 77:9, 81:4, 81:5 <b>exceptions</b> 77:22, 80:21, 80:23, 83:9, 83:11 <b>exceptions:</b> 83:8 <b>excessive</b> 80:22 <b>exchange</b> 31:20 <b>exciting</b> 150:8 <b>exclude</b> 81:9 <b>excursions</b> 19:16 <b>excuse</b> 4:11, 22:22, 74:2, 121:12 <b>exempted</b> 135:6 <b>exercising</b> 21:25	<b>exhibit</b> 6:11, 6:13, 13:1, 13:6, 34:15, 37:8, 37:10, 37:11, 41:13, 43:1, 43:2, 74:6, 75:8, 75:12, 75:13, 75:17, 76:16, 76:17, 79:9, 95:24, 95:25, 97:21, 100:5, 111:21, 112:17, 112:18, 115:18, 125:7, 125:21, 125:22, 126:12, 127:21, 127:24, 128:24, 130:19, 141:6, 149:11 <b>exhibits</b> 3:24, 6:5, 114:18, 143:18, 143:24, 146:19, 149:21 <b>existing</b> 13:24, 42:8, 42:10, 43:25, 45:5, 53:13, 53:20, 56:23, 62:2, 65:4, 65:10, 65:14, 65:15, 85:11, 85:14, 85:23, 98:15, 99:5, 99:17, 100:14, 100:16, 100:17, 101:23, 101:25, 129:14, 131:17, 132:22, 132:25, 134:1, 134:3, 142:9 <b>expected</b> 104:13 <b>experience</b> 18:15, 119:20, 120:7 <b>expert</b> 34:12, 35:13, 35:20, 35:21, 74:7, 74:11, 110:18, 110:23, 111:4, 111:11, 111:18, 111:23, 111:24, 124:20, 125:8, 125:12, 146:4 <b>experts</b> 135:14 <b>explain</b> 14:15, 15:15, 18:6, 26:7, 28:23, 29:22, 46:19, 47:18, 56:4, 60:8, 62:19, 73:17, 79:23, 107:13, 121:22, 124:3, 125:17, 126:2, 127:7, 129:9, 135:9 <b>explanation</b> 5:22, 102:22 <b>express</b> 95:17 <b>extend</b> 95:14 <b>extent</b> 14:11, 69:9, 106:21 <b>extraneous</b> 138:9 <b>eyeballing</b> 58:8 <b>eyesore</b> 55:12	18:21, 19:4, 21:10, 21:15, 22:7, 27:20, 27:21, 27:22, 28:18, 60:15, 60:19, 65:2, 101:9, 103:9, 105:19, 105:24, 106:16, 106:19, 107:23, 107:25, 108:1, 128:12, 130:5, 130:12, 130:13, 135:13, 136:7, 136:12, 138:6 <b>facility</b> 4:8, 10:10, 13:23, 19:9, 20:19, 22:17, 26:8, 26:9, 27:14, 27:24, 37:4, 38:12, 53:14, 54:24, 55:11, 56:24, 60:6, 68:20, 68:21, 79:1, 83:2, 86:13, 104:8, 104:13, 106:1, 117:14, 129:19, 130:10, 140:19, 143:1 <b>facing</b> 123:2 <b>fact</b> 7:2, 7:19, 7:21, 14:16, 27:18, 33:19, 40:12, 87:9, 92:4, 110:13, 111:8, 128:17, 139:21, 148:19, 150:19 <b>failed</b> 61:15 <b>fair</b> 113:20, 113:21 <b>fairly</b> 98:17
---	---	---

<b>fall</b> 67:24, 137:8 <b>familiar</b> 18:3, 36:3, 36:25, 37:3, 74:15, 81:21, 112:11, 122:8, 129:5, 137:12 <b>family</b> 18:23, 24:5, 36:24 <b>far</b> 38:22, 42:9, 48:9, 48:12, 48:16, 68:21, 101:2, 103:19, 118:15, 118:16, 120:1, 120:6, 123:4 <b>farther</b> 70:7 <b>federal</b> 9:6, 9:12, 28:9 <b>feedback</b> 47:5 <b>feel</b> 20:6 <b>feet</b> 4:14, 47:25, 48:1, 48:2, 48:3, 48:5, 48:10, 48:15, 53:12, 55:6, 56:8, 56:18, 57:15, 57:20, 57:21, 57:25, 58:2, 58:7, 58:19, 61:25, 62:1, 62:4, 62:16, 62:20, 63:10, 63:18, 66:14, 67:4, 71:8, 82:1, 90:1, 90:2, 90:4, 90:11, 90:19, 105:11, 113:19, 116:18, 116:19, 116:20,	120:6 <b>feet;</b> 63:15 <b>felt</b> 54:25, 113:16, 123:6 <b>fields</b> 125:13 <b>figure</b> 88:22, 92:11, 110:22 <b>figuring</b> 121:13 <b>file</b> 7:15, 12:5, 18:12, 127:10, 145:23 <b>filed</b> 40:21, 127:3, 128:6, 128:23, 139:21 <b>filing</b> 128:8, 145:24 <b>filings</b> 149:9 <b>final</b> 29:21, 64:8, 86:11, 123:15 <b>finally</b> 64:8, 66:10 <b>financial</b> 152:13 <b>find</b> 13:2 <b>finder</b> 111:8 <b>finding</b> 128:12, 136:14 <b>findings</b> 6:16 <b>fine</b> 15:23, 55:16, 146:21 <b>fire</b> 53:9, 65:8, 66:11, 66:13, 66:16, 78:22, 106:10, 107:1,	118:7 <b>firm</b> 109:21 <b>first</b> 14:23, 16:11, 17:8, 34:6, 45:13, 54:15, 73:12, 91:24, 98:5, 109:9, 123:23, 150:10 <b>fit</b> 46:6, 101:18 <b>fitness</b> 19:18, 20:13, 115:8 <b>fits</b> 102:5 <b>five</b> 47:3, 59:2, 60:14, 147:9 <b>five-minute</b> 87:23 <b>flexibility</b> 90:3 <b>flip</b> 39:2, 132:9 <b>flooding</b> 85:12 <b>floor</b> 114:13, 114:15, 114:17, 115:17 <b>floors</b> 29:4 <b>flu</b> 19:24 <b>focused</b> 127:13 <b>fold</b> 149:25 <b>folded</b> 149:25, 151:2 <b>follow</b> 43:20, 50:15, 51:6 <b>followed</b> 83:10, 126:7 <b>following</b> 83:9	<b>follows:</b> 17:9, 34:7, 73:13, 109:10, 123:24 <b>foot</b> 48:12, 48:16, 56:3, 63:14, 63:19, 66:15, 67:21, 68:14, 69:3, 99:14 <b>footage</b> 70:22, 72:8 <b>foregoing</b> 152:5, 152:7 <b>forest</b> 36:14, 75:3, 85:23, 85:24, 85:25, 86:2, 86:7, 97:12, 99:2, 99:3, 99:8, 99:12, 100:16, 101:25, 102:2 <b>forested</b> 98:24 <b>forget</b> 92:24, 128:24, 141:6 <b>forgive</b> 24:3 <b>form</b> 117:11 <b>form;</b> 7:11 <b>formal</b> 5:23 <b>format</b> 6:10, 129:1 <b>forth</b> 102:9, 104:15 <b>foster</b> 3:11, 5:11, 66:6, 72:16, 73:5, 73:7, 73:8, 73:11, 95:24, 97:21, 103:1 <b>foster's</b> 74:5, 102:13
---	--	--	--

<b>foster:</b> 49:8 <b>found</b> 25:9 <b>foundation</b> 55:9 <b>founder</b> 109:20 <b>four</b> 7:1, 54:18, 59:2, 60:14, 89:12, 100:24, 105:15, 113:3, 113:7, 118:20, 119:1, 119:2 <b>four-storey</b> 99:18 <b>four;</b> 118:22 <b>fre2</b> 14:19 <b>free</b> 19:24 <b>frequently</b> 120:23, 122:12 <b>friday</b> 1:15, 146:15, 147:14 <b>front</b> 38:20, 46:25, 47:21, 47:23, 47:24, 52:24, 55:8, 55:11, 56:19, 59:6, 59:10, 62:16, 62:24, 68:12, 68:19, 83:12, 83:15, 83:20, 83:22, 98:16, 118:12, 119:5, 121:16, 121:19, 136:2, 140:11, 140:12 <b>fronted</b> 38:15 <b>full</b> 16:21, 16:22, 16:25, 22:3,	26:13, 33:9, 33:25, 60:25, 73:6, 85:16, 85:20, 93:17, 109:4, 123:18 <b>full-time</b> 26:11, 26:15, 26:16 <b>fully</b> 85:20 <b>functions</b> 138:10 <b>further</b> 15:15, 17:2, 48:4, 73:1, 75:19, 78:6, 87:4, 91:4, 98:1, 102:21, 108:24, 123:10, 140:14, 150:13 <b>furthering</b> 108:20 <b>future</b> 39:22, 41:8, 85:11, 92:16, 131:14, 131:18, 131:19, 132:14, 132:18, 133:5, 133:8 <hr/> <b>G</b> <hr/> <b>g</b> 96:2 <b>gable</b> 62:5 <b>gabled</b> 62:6 <b>game</b> 20:12 <b>garden</b> 78:2, 79:1, 79:15, 99:18, 99:19, 99:22, 105:15 <b>garden-apartment</b> 78:5, 78:8 <b>gas</b> 71:9	<b>general</b> 7:9, 54:7, 77:18, 77:20, 105:7, 105:9 <b>generally</b> 21:12, 80:3, 111:4, 114:13, 134:14, 134:18 <b>generate</b> 127:25, 134:18, 137:7, 140:3 <b>generated</b> 104:9, 120:8, 134:23 <b>generation</b> 129:18, 129:20, 129:22, 130:6 <b>generator</b> 54:6, 119:13, 120:2, 120:9, 120:16, 134:18 <b>generous</b> 115:8 <b>genesis</b> 78:18 <b>georgia</b> 75:19, 78:7, 108:2, 124:9 <b>getting</b> 28:22, 101:17 <b>give</b> 7:7, 7:18, 10:18, 23:6, 75:14, 75:25, 90:3, 90:20, 91:3, 110:10, 114:21, 144:10, 146:12, 146:14 <b>given</b> 11:4, 20:16, 68:24, 81:14, 82:17, 84:5, 90:18, 111:7, 111:20, 134:20, 147:4 <b>given;</b> 152:8 <b>giving</b> 38:16, 145:8	<b>glenmont</b> 135:17, 135:18 <b>glw;</b> 5:10, 5:11 <b>go</b> 5:22, 6:3, 11:12, 17:1, 25:9, 29:5, 34:11, 57:21, 61:8, 61:14, 78:6, 88:23, 90:16, 93:6, 95:4, 99:20, 102:12, 118:15, 125:19, 132:13, 137:5, 140:14, 141:4 <b>goal</b> 86:18 <b>goals</b> 108:20 <b>goes</b> 65:11, 82:20, 83:7, 111:6, 136:1, 139:7 <b>going</b> 12:16, 15:11, 33:21, 37:17, 37:21, 40:3, 40:7, 40:16, 41:23, 45:8, 45:22, 53:10, 53:21, 57:15, 58:19, 62:8, 65:23, 68:11, 70:16, 70:20, 71:12, 71:14, 72:19, 72:21, 75:7, 85:16, 85:25, 94:9, 100:4, 101:5, 105:17, 106:19, 123:1, 128:5, 128:20, 131:25, 132:8, 132:13, 138:16, 143:7, 143:14, 144:9, 145:2, 146:13,
---	--	--	--

Transcript of Hearing  
Conducted on December 16, 2016

54

147:12, 150:12 <b>golden</b> 20:3 <b>good</b> 4:24, 13:20, 16:14, 16:23, 31:20, 78:4, 91:24, 92:9, 151:15 <b>gooseneck</b> 67:5 <b>grace</b> 110:14 <b>grade</b> 62:2, 62:3, 62:4 <b>grading</b> 36:12 <b>grass</b> 98:17, 98:21 <b>great</b> 82:5 <b>greater</b> 78:16 <b>green</b> 44:3, 49:3, 49:8, 53:2, 62:24, 64:9, 64:13, 116:4, 139:14 <b>grossman</b> 1:13, 2:4, 4:19, 34:10, 46:15, 47:8, 64:20, 69:15, 102:8, 124:18, 139:25, 142:23 <b>ground</b> 114:13, 114:16 <b>group</b> 33:2, 33:3, 33:5 <b>growth</b> 106:14 <b>gta</b> 144:4 <b>guess</b> 23:10, 28:12,	31:2, 41:15, 44:15, 49:17, 51:4, 68:1, 72:16, 96:12, 99:7, 143:9, 148:5 <b>guessing</b> 57:25 <b>guidelines</b> 83:9, 130:12, 135:1 <b>gutschick</b> 34:2, 73:22 <hr/> <b>H</b> <hr/> <b>h</b> 97:21, 100:5 <b>h;</b> 96:14 <b>half</b> 59:1, 59:3 <b>hand</b> 17:3, 34:4, 73:10, 87:10, 109:7, 123:21, 150:6, 152:15 <b>handful</b> 102:14 <b>handle</b> 92:12 <b>hands</b> 5:6 <b>happens</b> 91:16 <b>happy</b> 55:15 <b>hard</b> 87:7, 87:17, 87:20, 88:8, 145:12 <b>harford</b> 110:12 <b>harmony</b> 105:7, 105:9 <b>harris</b> 2:12, 3:3, 4:24, 5:7, 13:20, 27:17,	35:4, 45:10, 50:12, 69:7, 87:6 <b>havre</b> 110:14 <b>hcm</b> 139:18 <b>head</b> 67:6 <b>health</b> 19:22, 19:23, 21:17, 107:1 <b>healthcare</b> 21:21, 78:19 <b>hear</b> 14:18, 92:15 <b>heard</b> 5:6, 69:21 <b>hearings</b> 1:1, 2:5, 4:18, 35:5, 119:20 <b>height</b> 61:15, 61:17, 61:18, 61:21, 61:25, 72:7, 89:25, 90:1, 90:4, 90:7, 90:15, 93:24, 108:5 <b>help</b> 20:2, 31:10 <b>helpful</b> 37:18, 41:18, 87:1, 102:12, 112:16, 112:19, 125:20, 126:1, 145:14 <b>helping</b> 74:25 <b>here</b> 4:25, 6:1, 12:7, 13:2, 13:21, 24:4, 25:9, 34:15, 38:16, 38:24, 46:23, 49:21, 52:1, 56:8, 63:2, 66:13,	68:4, 68:16, 74:8, 88:8, 88:14, 89:11, 89:17, 89:21, 90:23, 91:16, 92:3, 93:6, 93:13, 93:19, 93:22, 94:19, 94:21, 94:22, 94:24, 95:5, 97:14, 102:4, 110:24, 114:19, 117:20, 118:18, 118:24, 122:16, 123:3, 126:14, 127:10, 132:1, 133:7, 133:19, 141:7, 142:1, 148:4, 148:12, 149:4, 150:5 <b>here"</b> 39:1, 63:3, 68:18 <b>hereby</b> 152:6 <b>hereunto</b> 152:15 <b>hesitate</b> 110:21 <b>high</b> 67:4, 116:22, 118:4, 141:3 <b>highest</b> 62:5 <b>highly</b> 117:3 <b>highway</b> 139:2 <b>hill</b> 1:5, 4:5, 4:13, 4:16, 30:7, 74:21, 79:21, 80:6, 86:22, 108:1, 136:23, 141:4 <b>hit</b> 138:12, 140:4, 140:8
--	--	--	--

<p><b>hoc</b> 30:23, 31:8, 31:13, 32:5, 32:10, 32:20, 32:23 <b>hold</b> 7:6, 46:4, 133:1, 144:19 <b>holiday</b> 19:19, 147:16 <b>holidays</b> 144:9, 146:12 <b>home</b> 67:24, 67:25, 68:25, 69:2, 69:10 <b>homecrest</b> 76:3, 77:14, 131:12, 132:6, 133:13, 133:14, 134:4, 141:3 <b>homes</b> 67:23 <b>honoring</b> 57:19, 63:19 <b>hopefully</b> 145:13 <b>hoping</b> 127:6 <b>hour</b> 127:25, 128:1, 132:16, 132:17, 132:19, 132:20, 133:16, 133:17, 133:23, 133:24, 134:19, 134:24, 136:15, 136:25, 137:8, 137:15, 137:18, 140:5 <b>hours</b> 26:15, 27:9, 130:7 <b>house</b> 42:9, 42:10, 42:13, 68:22, 70:6 <b>household</b> 23:20</p>	<p><b>households</b> 15:12, 16:2, 23:3 <b>housekeeping</b> 20:1, 143:2 <b>houses</b> 78:15, 79:15 <b>housing</b> 9:5, 9:11, 15:6, 18:18, 21:6, 23:20, 28:13, 30:14, 30:19, 30:20, 30:22, 35:11, 38:11, 53:14, 54:24, 55:3, 56:12, 58:4, 58:6, 59:1, 60:22, 60:24, 63:6, 68:19, 68:20, 72:21, 72:24, 74:22, 78:8, 78:12, 80:7, 80:9, 80:10, 80:12, 80:17, 86:14, 86:16, 86:18, 108:20, 108:21, 135:7 <b>however</b> 63:15, 68:23, 83:14, 111:9 <b>hr</b> 4:11 <b>hundred</b> 22:9</p> <hr/> <p style="text-align: center;"><b>I</b></p> <hr/> <p><b>idea</b> 31:20, 92:9 <b>identical</b> 150:2 <b>identified</b> 4:10, 5:15 <b>identify</b> 4:22, 71:5, 96:5, 97:24, 119:13, 121:11</p>	<p><b>immediately</b> 10:1 <b>impact</b> 8:23, 9:23, 11:20, 12:8, 12:13, 13:8, 90:15, 92:3, 92:4, 106:3, 108:13, 117:8, 117:10, 118:7, 118:11, 119:6, 134:15, 134:21, 135:1, 136:19, 138:5, 138:17 <b>impacts</b> 104:25, 108:17, 136:16, 138:7 <b>implement</b> 85:3 <b>implementation</b> 85:15 <b>implementing</b> 85:18 <b>important</b> 82:21, 100:2 <b>imposed</b> 23:1 <b>impressed</b> 138:17 <b>improve</b> 93:2 <b>incased</b> 119:23 <b>inch</b> 65:4 <b>inches</b> 72:4, 118:3, 118:4, 118:6 <b>inclosure</b> 120:2 <b>include</b> 112:5, 124:12, 137:19, 143:22 <b>includes</b> 17:20, 129:16, 129:18, 129:23 <b>including</b> 19:22, 87:3,</p>	<p>143:3, 149:9 <b>income</b> 15:6, 15:13, 16:2, 22:8, 22:10, 22:13, 22:25, 23:3, 23:5, 23:18, 23:19, 24:5, 24:6, 24:14, 25:21, 25:24 <b>incomes</b> 21:7, 22:12 <b>incompatible</b> 90:18 <b>incorporated</b> 8:8 <b>incorrectly</b> 47:10 <b>increase</b> 53:22, 80:7 <b>increasing</b> 80:12, 92:6 <b>independent</b> 4:7, 13:22, 14:11, 14:13, 14:20, 18:15, 18:20, 18:25, 19:1, 19:8, 19:10, 27:20, 37:4, 60:5, 62:14, 63:12, 107:8, 129:19, 130:12, 143:1 <b>independently</b> 21:18 <b>indicate</b> 102:10 <b>indicated</b> 10:6, 15:7, 42:16, 53:1, 53:17, 55:4, 61:16, 63:8, 66:12, 67:20, 69:17, 72:3, 72:7, 74:5, 79:20, 126:15 <b>indicating</b> 12:10</p>
--	---	--	--



<b>individual</b> 9:12, 21:13	<b>internally</b> 70:17	16:24, 17:7, 115:6	<b>kicked</b> 128:17
<b>individuals</b> 14:16	<b>intersection</b> 4:14, 77:14,	<b>J</b>	<b>kids</b> 106:2, 106:7
<b>influence</b> 10:8	132:15, 133:15, 138:17	<b>january</b> 7:15, 139:22,	<b>kin</b> 111:6
<b>informal</b> 5:23	<b>intersections</b> 129:16, 131:10,	146:18	<b>kind</b> 11:21, 20:22,
<b>information</b> 19:23, 31:23,	131:16, 131:21, 132:5, 133:19,	<b>jaunts</b> 19:19	20:23, 38:16,
32:2, 145:22	134:15, 134:21, 136:11	<b>jenner</b> 35:10	51:10, 55:8,
<b>inherent</b> 104:5, 104:7,	<b>introduced</b> 6:5, 6:6	<b>job</b> 1:23, 73:19,	55:11, 76:4,
104:12, 104:16,	<b>inventory</b> 99:2	82:5	100:1, 115:1,
104:17	<b>involved</b> 17:17, 17:19,	<b>johnson</b> 1:25, 152:4,	150:13, 151:2
<b>initial</b> 74:20	30:13, 122:10	152:21	<b>kitchenette</b> 115:7
<b>inside</b> 29:17, 66:15,	<b>involvement</b> 32:13	<b>joint</b> 32:11	<b>know</b> 9:25, 20:22,
117:2	<b>is:</b> 85:10	<b>jot</b> 97:13	20:23, 21:25,
<b>inspection</b> 36:15	<b>issue</b> 10:25, 21:8,	<b>judith</b> 3:14, 109:5,	22:5, 24:23,
<b>instead</b> 136:25	72:16, 84:3,	109:8	41:15, 42:1,
<b>institute</b> 129:21, 130:2	91:5, 92:19,	<b>judy</b> 5:12, 109:2	43:22, 46:6,
<b>institutional</b> 77:22	93:25, 101:16,	<b>jurisdiction</b> 110:24	48:11, 55:5,
<b>insurance</b> 19:25	116:3, 128:14,	<b>justification</b> 102:22	67:5, 68:8,
<b>intend</b> 81:18	128:21, 145:4	<b>K</b>	70:17, 71:22,
<b>intended</b> 7:10, 8:17,	<b>issues</b> 20:2, 28:22,	<b>kabatt</b> 3:17, 5:13,	80:13, 80:15,
14:16	86:25, 106:16,	123:16, 123:19,	81:23, 81:25,
<b>intensity</b> 67:13	106:20, 140:18	123:22, 124:3,	82:4, 82:5,
<b>intent</b> 9:15, 56:25,	<b>it'd</b> 114:17	124:22, 127:7,	82:7, 83:22,
82:12	<b>it;</b> 92:6, 94:19	142:19	83:23, 84:8,
<b>intention</b> 13:9	<b>ite</b> 130:8, 130:15,	<b>keep</b> 52:22, 100:18,	85:18, 85:20,
<b>interest</b> 21:4, 152:12	130:20, 130:24	139:3	85:24, 86:3,
<b>interests</b> 18:7	<b>items</b> 59:21, 88:13,	<b>keeping</b> 57:19, 100:25,	91:11, 91:12,
<b>internal</b> 53:2	143:2, 148:2	113:18, 147:24	92:18, 99:21,
	<b>itself</b> 47:11, 54:1,	<b>kevin</b> 3:11, 5:11,	99:23, 100:1,
	141:1	73:8, 73:11	101:3, 104:9,
	<b>ivy</b> 3:5, 5:9,	<b>key</b> 129:15	104:11, 105:11,
			105:15, 108:17,
			108:21, 113:4,
			113:6, 113:18,
			114:17, 114:19,
			118:7, 118:11,
			121:20, 138:6,
			138:7, 142:12,
			143:2, 143:15,
			145:21, 148:25,
			149:2, 150:25
			<b>knowing</b> 52:12, 92:15

<b>knows</b> 150:15	<b>large</b> 78:7	<b>lengthy</b> 5:22	<b>likely</b> 93:5
<b>L</b>	<b>larger</b> 20:19, 116:21	<b>lerch</b> 2:13, 4:25	<b>likes</b> 91:11
<b>l</b> 52:21	<b>last</b> 7:24, 32:19,	<b>less</b> 7:21, 39:15,	<b>limited</b> 8:8, 14:14,
<b>l"</b> 52:22	90:24	62:1, 62:3,	21:7
<b>l;</b> 97:4, 97:16	<b>later</b> 45:13, 80:10,	92:4, 117:10,	<b>line</b> 38:9, 38:10,
<b>labelled</b> 134:1	147:7	134:24	38:11, 41:14,
<b>labelling</b> 133:7	<b>latr</b> 126:19, 126:20,	<b>let's</b> 11:22, 37:24,	42:6, 42:8,
<b>lack</b> 65:19	127:22, 128:6,	95:4, 96:1,	42:11, 48:11,
<b>land</b> 5:11, 32:8,	128:9, 130:9,	96:12, 125:25,	48:14, 49:19,
73:20, 74:7,	130:10, 130:16,	127:17, 146:11	52:12, 52:15,
74:11, 74:24,	131:1, 135:1,	<b>letter</b> 6:12, 41:21,	56:8, 56:10,
75:9, 75:10,	135:11, 139:22	86:6	56:15, 56:16,
80:4, 80:24,	<b>laws</b> 85:24	<b>letters</b> 5:20	57:16, 57:17,
102:11, 108:11,	<b>layhill</b> 36:23, 78:19	<b>levels</b> 21:23, 22:8,	57:20, 58:15,
113:15	<b>layman</b> 111:6	22:25, 24:7	58:17, 59:8,
<b>landscape</b> 44:16, 73:21,	<b>layout</b> 36:13, 75:1	<b>license</b> 34:20, 35:19,	64:4, 64:14,
74:8, 74:11,	<b>leasing</b> 115:4	111:22	65:5, 65:7,
75:2, 96:12,	<b>least</b> 6:9, 6:24, 7:6,	<b>licensed</b> 27:20, 27:21,	65:10, 65:14,
96:17, 103:24	7:11, 8:7,	27:23, 28:18,	65:17, 67:14,
<b>landscaped</b> 83:17	41:22, 71:25,	34:17, 35:1,	68:14, 70:6,
<b>landscaping</b> 55:9, 57:23,	148:4	73:20, 109:24,	71:9, 75:20,
82:4, 83:20,	<b>leave</b> 7:9, 7:12,	109:25	88:17, 94:7,
87:3, 88:8,	102:15, 102:20,	<b>light</b> 35:18, 67:7,	94:10, 118:14,
98:2, 101:5,	143:7	67:13, 68:14,	120:1, 120:6,
101:8, 101:20,	<b>leaving</b> 66:19, 147:12	70:4, 70:8,	121:16, 135:22
102:2, 102:10,	<b>left</b> 17:22, 118:16	76:24, 76:25,	<b>lines</b> 50:9, 65:16,
103:20	<b>leg</b> 92:2, 142:6	116:6	65:18, 67:22,
<b>lane</b> 76:7, 76:8,	<b>legal</b> 111:5	<b>lighted</b> 70:14	68:2, 70:3,
76:9, 79:13,	<b>leisure</b> 76:4, 77:16,	<b>lighter</b> 77:6	89:24, 133:6,
125:3, 131:15,	107:25	<b>lighting</b> 44:17, 67:2,	135:15
132:16, 133:22,	<b>len</b> 35:15	67:4, 67:12,	<b>lines;</b> 48:19
134:6, 136:10,		67:17, 68:9,	<b>list</b> 13:1, 13:6,
138:14, 138:23,		68:12, 115:24,	14:17
138:24, 139:16,		116:5, 116:9	<b>listed</b> 84:23
140:15		<b>lights</b> 70:6	<b>lit</b> 70:17
			<b>little</b> 12:9, 12:16,
			34:2, 39:14,
			40:24, 58:25,

73:22, 75:14, 80:9, 90:3, 98:8, 98:12, 100:22, 110:10, 118:1, 118:20, 118:24 <b>live</b> 21:18 <b>living</b> 4:7, 13:23, 14:11, 14:13, 14:20, 18:16, 18:21, 19:8, 27:20, 28:17, 37:4, 60:6, 78:18, 104:8, 107:8, 121:17, 129:19, 130:12, 143:1 <b>llc</b> 16:25, 31:17 <b>llp</b> 1:6, 4:5, 30:8, 31:5 <b>load</b> 134:17 <b>loading</b> 54:4, 54:5 <b>local</b> 19:17, 78:22, 126:8, 129:13 <b>located</b> 4:12, 13:22, 22:18, 29:8, 29:13, 38:12, 52:20, 52:22, 60:20, 60:21, 60:23, 68:15, 71:9, 75:16, 82:1, 99:3, 109:19, 116:13, 122:2, 141:2 <b>location</b> 20:19, 29:6, 36:18, 36:20, 121:11 <b>locker</b> 47:5	<b>lockers</b> 47:1, 47:3, 55:5, 55:7 <b>lodge</b> 78:17 <b>long</b> 17:17, 21:18, 55:22, 55:23, 72:14, 95:4, 99:15, 99:24, 122:18 <b>long-term</b> 6:25, 19:25 <b>longer</b> 32:25, 127:7, 139:7 <b>look</b> 21:13, 23:14, 40:2, 40:5, 43:21, 50:12, 52:14, 68:4, 99:21, 99:23, 122:14, 122:21, 122:22, 122:25, 133:22, 134:2, 135:4, 150:7, 150:12 <b>looked</b> 11:8, 68:6, 69:13, 101:4, 131:14, 134:3 <b>looking</b> 25:10, 144:11 <b>looks</b> 39:21, 101:17 <b>lot</b> 12:19, 14:2, 29:14, 46:14, 48:6, 48:8, 49:10, 49:11, 53:4, 56:18, 57:9, 60:22, 69:1, 69:2, 70:5, 70:12, 72:24, 98:9, 98:15, 98:20, 99:5, 99:6, 99:16, 99:19,	101:13, 104:9, 121:15, 142:1 <b>lots</b> 36:24, 101:8 <b>love</b> 116:23 <b>low</b> 15:6, 15:12, 16:2, 23:3, 23:5, 23:17, 25:21, 25:24, 130:17 <b>low-income</b> 14:16 <b>lunch</b> 95:17 <hr/> <b>M</b> <hr/> <b>m</b> 151:7 <b>made</b> 11:14, 12:18, 22:12, 22:19, 36:15, 38:19, 39:11, 39:13, 42:17, 46:16, 47:12, 112:22, 113:16, 123:6 <b>main</b> 38:13, 49:25, 52:24, 113:19 <b>mainly</b> 109:22 <b>maintaining</b> 85:22 <b>maintenance</b> 29:16 <b>major</b> 11:22, 80:24, 81:2, 81:5, 81:10, 81:19, 82:16, 84:7, 93:7 <b>majority</b> 14:15, 15:9, 16:7, 18:22, 21:22, 84:9, 89:10, 93:18	<b>make</b> 8:20, 13:13, 21:10, 24:8, 24:9, 24:18, 50:14, 65:5, 72:15, 81:23, 82:6, 83:5, 84:13, 88:23, 91:3, 91:14, 92:16, 93:14, 96:12, 96:13, 96:14, 98:3, 100:9, 106:18, 106:21, 120:20, 121:3, 122:23, 136:14, 143:11, 145:7, 148:7, 151:3, 151:6 <b>makers</b> 110:8 <b>makes</b> 143:12 <b>making</b> 10:15, 40:7, 116:5 <b>mall</b> 135:16 <b>managed</b> 26:9 <b>management</b> 17:20, 17:21, 26:10, 36:13, 57:22, 60:9, 60:10, 60:11, 60:15, 60:17, 61:1, 83:20, 85:13, 85:15, 85:17, 85:21 <b>manager</b> 17:22, 26:12, 26:19, 115:4 <b>managing</b> 124:12 <b>manner</b> 148:1 <b>manual</b> 129:22, 139:2 <b>many</b> 30:3, 48:22,
---	---	---	---

Transcript of Hearing  
Conducted on December 16, 2016

59

82:23, 117:11 <b>map</b> 4:11, 75:10, 76:15, 76:16, 76:18, 76:20, 77:1 <b>maps</b> 6:7 <b>mark</b> 43:1, 150:15 <b>marked</b> 3:23, 135:22, 143:24, 150:1 <b>martin</b> 1:13, 2:4, 4:19, 151:9 <b>maryland</b> 1:14, 2:6, 2:8, 2:16, 17:13, 18:1, 34:18, 73:23, 109:19, 110:1, 110:2, 111:23, 124:7 <b>maryland's</b> 60:17 <b>master</b> 4:16, 14:21, 74:21, 79:21, 79:25, 80:1, 80:2, 80:5, 80:6, 80:17, 80:22, 82:19, 83:7, 83:21, 85:2, 85:19, 86:4, 86:12, 86:18, 86:22, 108:20 <b>material</b> 11:25, 41:1 <b>materials</b> 74:23, 113:20, 122:22 <b>math</b> 24:4, 24:9 <b>matter</b> 1:4, 4:4, 12:1, 12:4, 92:7, 93:8, 110:12	<b>matters</b> 6:4, 12:22 <b>maximum</b> 61:17, 61:18, 90:4, 136:15 <b>maybe</b> 57:24, 59:2, 125:25, 148:4, 150:13 <b>mean</b> 9:23, 10:17, 11:7, 15:23, 37:17, 40:12, 40:23, 44:3, 52:5, 77:7, 82:11, 87:22, 87:25, 90:6, 90:8, 90:11, 92:15, 102:14, 106:17, 138:4, 143:13, 144:7, 144:9, 144:15, 145:1, 145:2, 146:12, 147:24, 148:2, 148:6 <b>meaning</b> 129:23 <b>means</b> 4:20, 14:14 <b>meant</b> 81:9 <b>measurable</b> 134:25 <b>measure</b> 136:9, 138:7 <b>measured</b> 62:2, 62:4, 131:10, 131:11 <b>measurements</b> 138:14, 138:15 <b>measuring</b> 138:16, 138:19 <b>mechanical</b> 116:12, 116:14, 120:25 <b>mechanism</b> 29:16 <b>mechanized</b> 29:15	<b>median</b> 22:13, 23:19, 23:24, 24:13 <b>medical</b> 19:20, 19:25, 107:10, 107:23, 107:25 <b>medicare</b> 19:25 <b>meet</b> 10:9, 15:15, 15:23, 16:3, 25:21, 25:23, 28:6, 28:8, 47:20, 53:4, 53:5, 60:15, 61:8, 62:17, 64:11, 64:13, 67:21, 69:16, 70:21, 70:25, 101:9, 101:13, 101:14, 142:24 <b>meet;</b> 15:22 <b>meeting</b> 22:16, 22:19, 86:2, 86:4, 86:17 <b>meetings</b> 124:13 <b>meets</b> 66:13, 66:16, 66:21, 72:20, 107:13 <b>melinda</b> 1:25, 152:4, 152:21 <b>member</b> 26:23 <b>members</b> 27:6 <b>memo</b> 144:18, 146:9, 149:10 <b>memory</b> 113:9 <b>mention</b> 11:11, 41:22,	67:15 <b>mentioned</b> 30:6, 58:21, 79:4, 135:14 <b>mercado</b> 107:24 <b>met</b> 22:14, 53:7, 69:4 <b>meter</b> 65:6 <b>methodology</b> 139:19 <b>metro</b> 2:14, 135:17, 135:18, 135:19, 137:19 <b>microbial</b> 60:18 <b>microphone</b> 33:19 <b>microphones</b> 16:17, 16:18 <b>microsoft</b> 6:9 <b>mid-atlantic</b> 18:23 <b>middle</b> 65:12, 75:15, 76:21, 100:21 <b>midpoint</b> 62:5 <b>might</b> 11:21, 71:21, 82:22, 91:17, 96:22 <b>mile</b> 107:23 <b>milller</b> 3:14, 5:12, 109:2, 109:5, 109:7, 109:8, 112:21, 123:11 <b>milller's</b> 111:17, 111:21 <b>mind</b> 57:19 <b>mind:</b> 11:7
--	---	---	--

Transcript of Hearing  
Conducted on December 16, 2016

60

<b>mine</b> 142:21	62:19, 63:16, 63:17, 63:19, 72:17, 99:20, 130:15	<b>myself</b> 119:15, 148:4	21:22, 65:9, 94:6, 105:3
<b>mini</b> 116:22		<b>N</b>	<b>negative</b> 108:13, 108:17
<b>minimal</b> 21:18, 134:21, 136:19	<b>morning</b> 4:24, 8:22, 13:7, 13:20, 16:23, 45:14	<b>name</b> 4:18, 16:21, 16:23, 20:24, 33:25, 73:7, 109:4, 123:18	<b>neighborhood</b> 75:12, 75:22, 76:19, 76:20, 76:23, 77:2, 77:13, 77:23, 78:10, 78:23, 79:8, 79:13, 100:10, 105:7, 105:9, 105:18, 115:13, 122:16, 136:16, 141:13
<b>minimize</b> 82:21	<b>most</b> 59:5, 68:13, 68:14, 113:16, 123:7	<b>narrow</b> 38:23	<b>neither</b> 152:11
<b>minimum</b> 15:3, 15:4, 62:16, 62:20, 63:9, 64:9, 66:14, 66:15, 86:1	<b>mostly</b> 77:21	<b>narrowed</b> 38:15	<b>nestle</b> 100:12
<b>minor</b> 11:21	<b>motorcycle</b> 53:4	<b>national</b> 73:22	<b>new</b> 7:13, 7:22, 16:16, 41:10, 43:1, 43:2, 43:7, 43:10, 44:9, 47:12, 53:11, 63:4, 64:14, 68:8, 89:16, 95:25, 99:25, 100:7, 136:25, 137:2, 137:6, 137:12, 140:17, 140:18, 144:11, 146:18, 149:9
<b>minutes</b> 6:14, 41:18, 89:6, 143:8	<b>mount</b> 35:10	<b>natural</b> 99:1	<b>newly</b> 136:21
<b>mix</b> 78:11, 78:23, 114:3	<b>move</b> 78:21	<b>nature</b> 81:14	<b>next</b> 6:21, 7:5, 33:18, 39:23, 73:5, 93:9, 109:1, 144:15, 147:15
<b>moderate</b> 21:23	<b>movements</b> 82:24, 134:8	<b>near</b> 52:24	<b>nice</b> 99:15, 99:16, 99:17, 115:3
<b>modified</b> 6:4	<b>movie</b> 19:18	<b>nearest</b> 59:21	<b>night</b> 7:24
<b>moment</b> 61:14, 89:21, 126:1	<b>moving</b> 65:2	<b>necessarily</b> 40:16	<b>nights</b> 19:18
<b>monday</b> 45:14	<b>mow</b> 118:6	<b>necessary</b> 42:10, 50:16, 146:10, 147:4, 147:5	
<b>montgomery</b> 1:2, 30:15, 78:5, 78:9, 80:8, 80:12, 110:5, 112:11, 127:1, 135:16	<b>much</b> 40:18, 100:3, 100:14, 100:18, 105:13, 115:14, 144:5, 144:13, 151:15	<b>need</b> 6:6, 14:10, 14:11, 14:12, 20:7, 21:6, 21:10, 24:8, 24:25, 46:7, 51:2, 55:2, 56:17, 66:3, 80:16, 94:22, 128:24, 148:4, 148:18, 150:3, 150:4, 150:21, 150:24, 151:12	
<b>monument</b> 70:12, 71:12	<b>multi</b> 77:7, 117:19	<b>needed</b> 54:17, 54:20, 108:22, 115:25	
<b>moose</b> 78:17	<b>multi-family</b> 68:3, 77:4, 109:22, 113:6	<b>needs</b> 9:11, 20:7, 21:11, 21:17,	
<b>more</b> 7:20, 14:12, 15:11, 15:19, 15:23, 17:24, 18:20, 28:22, 29:24, 57:22,	<b>multiplied</b> 72:7		
	<b>mundane</b> 28:22		
	<b>must</b> 16:1, 23:2, 129:6, 136:14		
	<b>myriad</b> 20:2		

Transcript of Hearing  
Conducted on December 16, 2016

61

<b>nobody</b> 5:19 <b>noise</b> 120:8, 120:10, 121:3 <b>non-inherent</b> 104:23 <b>non-residential</b> 80:24 <b>none</b> 140:1 <b>nonprofit</b> 19:17 <b>nonresidential</b> 60:1, 81:6 <b>normal</b> 28:13, 104:10 <b>normally</b> 21:15, 30:3 <b>north</b> 39:2, 42:5, 42:18, 42:21, 53:13, 56:11, 58:25, 60:21, 68:20, 75:18, 76:2, 76:5, 78:14, 78:19, 119:17, 119:20, 121:12, 121:13, 121:14 <b>northeast</b> 122:2 <b>northern</b> 68:13 <b>northwest</b> 85:4 <b>notarized</b> 12:23 <b>note</b> 47:9, 63:9, 104:15, 128:5 <b>noted</b> 13:25, 46:15, 78:25, 93:18 <b>notes</b> 32:10 <b>nothing</b> 40:3, 50:3,	89:24, 94:9, 118:8 <b>noticed</b> 7:25, 29:13, 67:20, 69:20, 70:10, 81:18 <b>notices</b> 22:21 <b>notify</b> 149:3 <b>noting</b> 111:17 <b>number</b> 5:3, 15:16, 15:17, 19:12, 19:20, 20:2, 20:10, 21:9, 23:7, 34:15, 34:21, 34:22, 37:11, 47:11, 54:13, 55:15, 72:4, 75:8, 83:5, 86:24, 91:10, 94:2, 112:17, 113:24, 132:23, 132:24, 133:2, 133:11, 138:5, 138:15, 141:7, 149:11 <b>numbering</b> 43:20, 96:13 <b>numbers</b> 51:1, 128:19 <b>numerous</b> 107:22, 115:15 <hr/> <b>O</b> <hr/> <b>o'clock</b> 95:11 <b>oak</b> 124:24 <b>objectives"</b> 86:13 <b>obviously</b> 11:12, 15:23, 86:17, 91:21, 99:1, 100:8, 101:6, 106:1,	128:9 <b>occasionally</b> 28:25 <b>occasions</b> 115:15 <b>occupants</b> 9:21, 10:8, 10:10 <b>occupation</b> 10:4, 16:22, 33:25, 73:18 <b>occupy</b> 8:13, 9:5 <b>occupy"</b> 9:4 <b>occur</b> 91:1, 128:7 <b>occurred</b> 38:5 <b>occurs</b> 11:23 <b>october</b> 126:24, 128:23 <b>oddly</b> 12:13 <b>of:</b> 1:4 <b>offer</b> 111:5 <b>offered</b> 26:18 <b>offering</b> 19:15 <b>office</b> 1:1, 1:2, 2:5, 27:9, 45:25, 46:11, 124:8, 143:7, 143:15, 148:24 <b>officer</b> 4:17, 152:5 <b>offices</b> 73:22, 115:4, 115:5 <b>official</b> 52:14 <b>offsite</b> 19:15	<b>oh</b> 6:22, 24:6, 27:2, 48:4, 58:5, 87:15, 115:1, 132:22 <b>old</b> 21:16, 64:17 <b>older</b> 19:11 <b>ominous</b> 146:16 <b>once</b> 20:5, 63:21, 72:12, 101:3, 131:8 <b>one</b> 8:15, 8:17, 9:16, 10:5, 11:10, 11:14, 14:25, 15:1, 15:4, 22:16, 22:22, 24:7, 26:12, 26:22, 26:23, 32:17, 34:16, 43:10, 44:1, 44:24, 54:12, 54:14, 54:18, 60:14, 61:14, 65:22, 65:23, 70:10, 70:11, 71:6, 89:22, 89:23, 91:10, 93:22, 93:23, 103:13, 107:7, 114:3, 114:7, 114:8, 118:17, 123:15, 126:1, 131:11, 134:1, 134:24, 137:18, 141:8 <b>one-bedroom</b> 113:25, 114:2 <b>one-person</b> 24:5 <b>ones</b> 49:2, 87:19, 93:6, 93:22, 130:16
---	--	---	---

Transcript of Hearing  
Conducted on December 16, 2016

62

<p><b>only</b> 12:23, 38:9, 40:6, 41:19, 49:2, 49:14, 49:18, 59:6, 62:23, 83:16, 89:19, 89:23, 121:3, 127:11, 134:18, 150:22</p> <p><b>onsite</b> 26:13, 26:22, 86:2, 107:10</p> <p><b>open</b> 7:6, 7:9, 7:12, 10:19, 98:17, 98:21</p> <p><b>opening</b> 3:2, 12:1, 13:13, 13:18, 15:9</p> <p><b>operated</b> 9:7, 131:21</p> <p><b>operating</b> 106:14</p> <p><b>operation</b> 26:7, 134:20</p> <p><b>operational</b> 122:9</p> <p><b>operations</b> 26:20</p> <p><b>opinion</b> 10:20, 60:4, 66:20, 84:16, 86:21, 98:3, 104:24, 105:6, 105:8, 105:25, 108:3, 108:8, 108:12, 115:11, 115:14, 122:14, 122:17, 134:16, 136:6, 140:17, 140:21</p> <p><b>opportunities</b> 30:21, 30:22</p> <p><b>opportunity</b> 7:8, 8:16, 10:18, 10:25, 91:3, 112:8,</p>	<p>136:20, 144:3</p> <p><b>opposed</b> 137:18</p> <p><b>opposite</b> 121:15</p> <p><b>opposition</b> 41:2, 91:16</p> <p><b>option</b> 15:8</p> <p><b>orange</b> 75:20, 76:24</p> <p><b>order</b> 7:7</p> <p><b>ordinance</b> 4:6, 27:19, 28:8, 37:1, 53:3, 54:8, 56:5, 56:17, 63:16, 83:11, 92:20, 102:9, 103:3, 112:12, 129:5</p> <p><b>orientation</b> 76:20</p> <p><b>original</b> 30:16, 39:16, 47:9, 62:8</p> <p><b>originally</b> 18:17, 38:4, 38:7</p> <p><b>origins</b> 144:20</p> <p><b>other</b> 6:4, 10:12, 11:10, 12:22, 20:4, 26:13, 28:10, 29:23, 30:4, 30:13, 31:15, 33:13, 47:9, 56:23, 57:14, 76:25, 79:5, 80:23, 104:22, 105:23, 105:24, 106:20, 107:11, 108:23, 110:7, 110:13, 116:6, 118:20, 129:24, 133:19,</p>	<p>135:14, 138:9, 140:24, 142:15, 142:18, 148:2</p> <p><b>others</b> 33:14</p> <p><b>otherwise</b> 152:13</p> <p><b>out</b> 9:3, 31:11, 32:22, 33:5, 42:9, 45:23, 52:2, 54:19, 65:6, 66:19, 71:15, 71:16, 72:7, 88:22, 92:11, 93:13, 107:17, 107:19, 110:22, 118:24, 121:21, 124:9, 127:23, 134:23, 138:16, 147:1</p> <p><b>outcome</b> 152:13</p> <p><b>outdoor</b> 29:22, 29:25, 30:1, 30:2, 117:17</p> <p><b>outlined</b> 75:17, 75:20, 76:22, 76:23, 125:6, 137:6</p> <p><b>outset</b> 66:1</p> <p><b>outside</b> 22:20, 22:21, 29:17, 36:12, 66:16, 71:9, 117:1, 119:9, 151:4</p> <p><b>over</b> 17:23, 38:16, 42:22, 48:15, 49:22, 58:19, 58:25, 69:4, 78:6, 82:1, 87:24, 88:23, 94:24, 105:11, 130:13, 137:3,</p>	<p>146:12</p> <p><b>overall</b> 21:6, 26:7, 38:8, 43:17, 43:18, 44:25, 45:6, 98:6, 122:15, 134:17</p> <p><b>overhead</b> 65:15, 65:18</p> <p><b>oversee</b> 26:19</p> <p><b>own</b> 117:6, 119:23</p> <p><b>owned</b> 28:1, 30:8</p> <p><b>owner</b> 18:9, 30:15, 30:24</p> <p><b>ownership</b> 30:12, 30:14, 145:18, 145:19</p> <p><b>owns</b> 31:14</p> <p><b>ozah</b> 1:11, 41:24</p> <hr/> <p style="text-align: center;"><b>P</b></p> <hr/> <p><b>package</b> 89:16</p> <p><b>page</b> 3:2, 3:5, 3:8, 3:11, 3:14, 3:17, 9:2, 44:12, 45:7, 80:4, 80:6, 80:20, 85:5, 85:7, 86:12, 102:19, 127:23, 132:11, 132:12</p> <p><b>pages</b> 43:7, 97:17</p> <p><b>pages:</b> 1:24</p> <p><b>paragraph</b> 106:25</p> <p><b>parcel</b> 4:10</p> <p><b>park</b> 78:22, 126:9,</p>
--	--	--	---

126:14, 126:21, 126:24, 126:25 <b>parking</b> 6:25, 29:13, 47:6, 52:18, 52:20, 53:1, 53:4, 53:5, 53:6, 53:16, 53:17, 54:17, 54:19, 54:21, 55:1, 55:2, 56:2, 56:3, 56:6, 56:17, 56:20, 56:21, 56:24, 57:1, 57:4, 57:7, 57:8, 57:9, 57:15, 57:18, 58:3, 58:6, 58:14, 58:18, 58:22, 58:25, 59:4, 59:6, 59:11, 59:16, 59:22, 59:25, 60:5, 60:22, 60:24, 66:18, 67:10, 68:13, 68:14, 70:5, 70:12, 72:20, 83:13, 83:15, 83:16, 83:19, 83:23, 83:25, 84:10, 98:15, 98:20, 99:5, 100:6, 100:20, 101:4, 101:8, 101:11, 101:12, 101:13, 103:9, 103:13, 104:9, 105:12, 108:6, 121:15, 123:4, 123:5, 140:24, 142:1 <b>parkview</b> 1:5, 4:4, 30:7 <b>part</b> 4:10, 6:13, 8:24, 10:12,	26:14, 30:15, 30:24, 32:18, 39:8, 41:18, 41:19, 42:18, 44:16, 49:25, 50:1, 75:10, 80:18, 98:25, 99:20, 100:2, 101:14, 102:5, 135:11, 150:10, 151:3 <b>part-time</b> 22:4, 26:12, 26:17 <b>participate</b> 41:23 <b>particular</b> 8:9, 21:4, 31:6, 44:24, 58:7, 80:21, 81:15, 83:12, 136:22, 139:12 <b>parties</b> 4:22, 152:12 <b>partner</b> 31:2, 31:3, 31:4 <b>passenger</b> 138:2 <b>past</b> 16:17, 67:13, 67:24 <b>pastor's</b> 42:12, 67:24, 68:10, 68:25, 70:6, 79:5 <b>pat</b> 4:24, 13:20 <b>path</b> 135:25 <b>patio</b> 30:1 <b>patricia</b> 2:12 <b>pay</b> 117:6 <b>pd-2</b> 77:13	<b>pdf</b> 6:7, 6:10, 129:1 <b>pdfs</b> 87:21 <b>pe</b> 124:6 <b>peak</b> 127:25, 128:1, 130:7, 132:16, 132:17, 132:19, 132:20, 133:16, 133:17, 133:23, 133:24, 134:19, 134:24, 136:15, 136:25, 137:8, 137:15, 137:18, 140:5 <b>peaked</b> 113:3, 113:22 <b>pedestrian</b> 67:14, 67:17, 107:16 <b>pedestrians</b> 136:4 <b>pending</b> 10:2 <b>pennrose</b> 16:25, 17:18, 17:19, 18:17, 22:16, 26:10, 26:11, 30:7, 30:8, 30:10, 31:17, 32:18, 32:23 <b>pennrose's</b> 18:7, 18:15, 21:4 <b>pennsylvania</b> 18:19 <b>people</b> 5:3, 22:20, 26:22, 94:21, 106:6, 137:16, 137:17, 137:19 <b>peppertree</b> 76:9 <b>percent</b> 15:5, 15:12,	16:1, 22:5, 22:13, 23:2, 23:18, 23:23, 24:13, 24:14, 24:15, 25:19, 26:1, 31:12, 31:13, 31:15, 48:6, 48:8, 49:3, 49:8, 49:11, 53:4, 54:20, 64:10, 64:13, 64:15, 64:18 <b>percentage</b> 31:6 <b>perfect</b> 118:24 <b>perform</b> 109:21 <b>period</b> 10:19, 45:23 <b>permanent</b> 47:1, 47:4, 54:20, 54:21, 55:1, 55:7, 55:20 <b>permitted</b> 15:5, 61:18 <b>permitting</b> 60:12, 72:13 <b>perpendicularly</b> 63:1 <b>person</b> 9:4, 9:12, 26:14, 26:22, 137:3, 137:4, 137:7, 137:12, 137:14, 137:22, 138:3, 140:4 <b>personal</b> 36:15 <b>personally</b> 116:23 <b>persons</b> 4:8, 9:7, 27:7, 86:19 <b>perspective</b> 41:23
---	--	---	--



<p><b>phonetic)</b> 35:10 <b>photo</b> 141:11 <b>photograph</b> 141:12 <b>photometric</b> 67:3, 67:11, 69:14, 94:12, 116:1 <b>photometrics</b> 67:2, 68:4, 94:6, 96:23 <b>photos</b> 6:7 <b>pick</b> 29:6, 29:9, 29:18, 33:20, 129:24, 147:13 <b>picture</b> 71:19, 71:21 <b>pieces</b> 43:6 <b>pipeline</b> 129:16, 131:9, 131:18 <b>place</b> 57:17, 78:15, 117:7, 119:5, 123:1 <b>placed</b> 116:24, 118:10, 118:12 <b>plaining</b> 38:23 <b>plan</b> 4:16, 12:2, 14:2, 15:7, 37:12, 38:3, 38:7, 38:8, 39:20, 40:6, 40:15, 41:10, 42:3, 43:3, 43:24, 44:9, 44:16, 44:17, 44:25, 47:7, 47:9, 47:11, 60:10, 60:11,</p>	<p>61:4, 61:10, 67:3, 68:8, 71:5, 71:20, 74:22, 79:21, 79:24, 79:25, 80:1, 80:2, 80:6, 80:17, 80:22, 81:13, 81:17, 82:13, 82:19, 83:7, 83:21, 84:16, 85:2, 85:19, 85:25, 86:4, 86:7, 86:12, 86:18, 86:22, 87:1, 88:11, 90:1, 91:11, 93:12, 95:4, 96:12, 96:17, 97:12, 98:2, 98:7, 108:20, 112:23, 114:15, 114:17, 115:17, 119:12, 121:10, 126:18, 126:19, 127:13, 128:6, 128:8, 128:13, 139:22, 140:13, 142:1, 142:2 <b>plan"</b> 43:18, 80:5 <b>plan;</b> 14:21 <b>planned</b> 45:18, 142:8 <b>planner</b> 5:11, 73:20, 108:11, 113:15, 124:6 <b>planning</b> 6:12, 6:14, 6:24, 14:6, 36:11, 38:6, 41:13, 41:18, 41:21, 41:25, 46:15, 47:2, 50:24, 51:2, 51:6, 51:23,</p>	<p>55:14, 74:7, 74:11, 86:6, 107:15, 125:8, 126:9, 126:10, 126:14, 126:21, 126:25, 127:1, 128:20, 140:13 <b>plans</b> 6:4, 7:2, 7:5, 11:14, 11:18, 12:11, 37:15, 37:21, 43:7, 47:2, 62:9, 63:25, 75:2, 75:4, 75:12, 87:8, 88:4, 89:3, 89:9, 91:2, 91:19, 93:5, 93:19, 102:10, 115:21, 143:3, 143:22, 144:11, 145:12, 147:25, 148:8, 148:16, 150:21 <b>planting</b> 101:24 <b>plantings</b> 55:9, 102:3 <b>plaza</b> 107:24 <b>please</b> 4:23, 16:21, 17:3, 19:8, 26:7, 28:23, 33:24, 34:4, 36:7, 36:18, 37:6, 47:18, 52:18, 54:15, 60:8, 71:4, 73:7, 73:10, 73:17, 74:18, 75:5, 96:5, 97:24, 104:4, 109:4, 109:7, 109:16, 110:11, 112:2, 112:14, 119:13, 123:18, 124:3, 125:17,</p>	<p>127:19, 143:19 <b>pleased</b> 14:5 <b>plus</b> 25:12, 25:14, 113:19 <b>point</b> 25:8, 59:19, 60:13, 70:5, 83:1, 102:17, 134:23, 141:3, 148:8 <b>pointing</b> 39:3 <b>points</b> 82:24, 83:1, 83:5, 111:7 <b>poles</b> 68:15 <b>police</b> 106:12, 107:1 <b>policies</b> 74:22, 80:9, 80:10 <b>policy</b> 7:14, 106:15, 106:25, 131:22, 135:4, 136:21, 136:23, 136:24, 138:21, 138:22, 139:7, 140:18, 146:5 <b>population</b> 21:13, 80:16 <b>populations</b> 21:9 <b>porch</b> 115:3 <b>portfolio</b> 18:22 <b>portion</b> 50:6, 59:7, 77:12, 78:8, 99:4, 117:17 <b>portions</b> 59:4 <b>position</b> 109:17, 124:4</p>
---	--	--	---

<p><b>possible</b> 52:24, 100:15</p> <p><b>posted</b> 12:24</p> <p><b>posting</b> 13:12</p> <p><b>potential</b> 11:11, 85:11, 93:3</p> <p><b>potentially</b> 106:7, 118:17</p> <p><b>practical</b> 92:6, 93:8</p> <p><b>practice</b> 40:19, 91:14, 91:24</p> <p><b>prc</b> 77:15</p> <p><b>pre</b> 4:12, 4:14, 13:22, 36:21, 36:22, 38:16, 53:11, 53:25, 54:3, 65:5, 65:7, 65:16, 65:18, 66:17, 66:19, 67:16, 70:11, 75:16, 76:21, 77:14, 78:14, 78:21, 81:1, 81:3, 81:10, 81:19, 82:17, 83:6, 83:25, 98:14, 98:17, 107:17, 107:18, 129:15, 131:11, 131:13, 131:14, 132:6, 132:15, 132:19, 133:3, 133:9, 133:15, 133:22, 134:8, 134:20, 134:22, 135:15, 135:21, 135:23, 136:1, 136:10, 141:20</p> <p><b>preexisting</b> 98:11</p>	<p><b>prefer</b> 40:8</p> <p><b>preliminary</b> 6:3, 12:22, 14:2, 61:10, 86:7, 126:18, 126:19, 127:13, 128:6, 128:8, 128:13, 128:19, 139:22, 140:13</p> <p><b>preparation</b> 79:22, 126:2, 129:10</p> <p><b>preparatory</b> 20:1</p> <p><b>prepare</b> 126:5, 129:13</p> <p><b>prepared</b> 125:15, 126:4, 126:20, 128:10, 129:10, 141:22</p> <p><b>preparing</b> 7:25, 36:8, 126:18</p> <p><b>present</b> 39:20, 42:3, 93:20</p> <p><b>presentation</b> 51:8, 51:11, 51:25, 52:8</p> <p><b>presented</b> 40:4, 50:25, 51:1, 51:21, 51:23</p> <p><b>preserve</b> 80:7</p> <p><b>president</b> 16:24</p> <p><b>presume</b> 143:17, 150:9</p> <p><b>pretty</b> 81:21</p> <p><b>previous</b> 105:2, 111:23, 125:7</p> <p><b>previously</b> 5:15, 6:6, 14:17, 34:11,</p>	<p>63:24, 73:25, 98:10, 123:2, 124:16</p> <p><b>primary</b> 16:22, 73:17</p> <p><b>principal</b> 73:21, 109:20, 124:11</p> <p><b>principals</b> 112:14, 113:12</p> <p><b>printed</b> 52:2</p> <p><b>prior</b> 9:24, 35:20, 50:24, 74:6</p> <p><b>privately-owned</b> 86:15</p> <p><b>probably</b> 17:24, 22:6, 31:9, 45:25, 55:2, 58:10, 58:24, 65:17, 71:13, 71:15, 78:3, 92:4, 150:14</p> <p><b>problem</b> 91:17, 93:3</p> <p><b>procedural</b> 12:22</p> <p><b>procedurally</b> 92:12</p> <p><b>proceed</b> 17:6, 26:4, 95:21, 109:13, 129:2, 129:3, 131:7</p> <p><b>proceeding</b> 5:24, 14:1, 90:25</p> <p><b>proceedings</b> 5:23, 111:5</p> <p><b>process</b> 32:14, 32:21, 126:18</p> <p><b>produce</b> 128:20</p> <p><b>professional</b> 73:18, 124:6</p>	<p><b>professionals</b> 19:24</p> <p><b>program</b> 9:6, 9:8, 9:13, 19:23</p> <p><b>programs</b> 19:12, 19:21, 20:4, 26:18, 85:3</p> <p><b>project</b> 9:20, 14:7, 14:18, 19:9, 30:17, 32:18, 32:19, 54:12, 61:15, 66:11, 86:21, 103:2, 105:3, 106:16, 108:5, 108:19, 119:14, 122:19, 134:25, 135:6, 135:8, 136:6, 136:8</p> <p><b>projection</b> 130:22</p> <p><b>projects</b> 109:22, 113:7, 124:12, 131:9, 131:18</p> <p><b>proper</b> 67:6</p> <p><b>properties</b> 16:25, 21:20, 26:11, 53:24, 87:5, 113:18, 116:6, 117:9</p> <p><b>property</b> 4:10, 7:22, 13:21, 13:24, 17:22, 18:7, 21:5, 26:19, 29:7, 36:12, 36:16, 36:19, 36:20, 38:9, 38:10, 38:11, 41:14, 42:6, 42:7, 42:11, 42:23, 48:11, 48:14, 48:19,</p>
---	---	---	---

Transcript of Hearing  
Conducted on December 16, 2016

66

<p>49:12, 49:19, 50:9, 52:12, 52:15, 56:8, 56:10, 56:15, 56:16, 57:16, 57:17, 57:20, 58:15, 58:16, 59:22, 61:22, 64:4, 64:14, 65:12, 67:13, 67:22, 68:2, 70:3, 70:5, 70:6, 71:9, 72:23, 75:1, 75:4, 76:22, 76:24, 77:4, 77:25, 78:1, 78:13, 78:20, 79:6, 79:17, 79:23, 79:24, 85:11, 88:17, 89:24, 98:14, 98:23, 99:10, 99:21, 99:22, 100:8, 107:24, 112:7, 120:1, 120:6, 121:16, 123:8, 134:5, 135:22, 141:19, 142:10 <b>proposal</b> 60:9, 85:16 <b>propose</b> 7:22 <b>proposed</b> 15:25, 19:9, 22:15, 37:7, 38:22, 39:15, 42:11, 46:24, 46:25, 60:4, 61:16, 61:21, 62:3, 66:18, 66:21, 70:10, 71:7, 71:8, 78:25, 84:16, 86:21, 104:5, 108:5, 129:18, 140:19, 142:7,</p>	<p>144:4 <b>proposing</b> 42:4, 42:5, 101:2, 107:20 <b>protect</b> 85:21 <b>protection</b> 118:8 <b>provide</b> 20:7, 31:23, 32:1, 33:7, 33:9, 65:6, 86:14, 98:1, 107:10, 108:15, 113:17, 117:4 <b>provided</b> 9:5, 37:23, 49:21, 55:19, 72:18, 91:2, 106:23 <b>provider</b> 67:12 <b>providing</b> 80:18, 84:12, 85:16, 85:19, 86:1, 86:18, 108:21 <b>provision</b> 8:15 <b>provisions</b> 12:12 <b>proximity</b> 57:12, 119:2, 123:7 <b>public</b> 4:4, 7:8, 7:10, 40:13, 41:15, 41:24, 65:2, 88:1, 89:2, 91:10, 91:15, 91:18, 91:22, 91:23, 92:14, 105:19, 105:23, 106:15, 106:19, 107:10, 124:14, 128:12, 135:9, 135:13, 136:7, 136:12, 145:3,</p>	<p>146:18, 147:8 <b>pull</b> 41:14, 42:6, 87:1 <b>pulled</b> 38:21 <b>pulling</b> 38:23 <b>purchaser</b> 18:8 <b>purpose</b> 90:9 <b>purposes</b> 40:13, 44:9, 126:15 <b>purview</b> 121:25 <b>put</b> 55:10, 74:23, 74:25, 100:8, 112:16, 113:17, 135:12 <b>puts</b> 105:11 <b>putting</b> 63:4, 74:24, 83:19, 100:20, 136:13</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <hr/> <p><b>qualifications</b> 10:9, 125:6 <b>qualified</b> 35:13, 111:18 <b>qualify</b> 12:11, 34:12, 124:19 <b>quality</b> 85:3 <b>question</b> 6:16, 6:21, 7:5, 14:25, 16:15, 29:21, 67:1, 90:14, 111:9, 113:10, 122:18, 144:3, 145:16, 146:4 <b>questions</b> 14:24, 30:5,</p>	<p>33:13, 73:1, 108:23, 108:25, 122:11, 123:10, 142:18, 144:21 <b>quick</b> 98:7, 150:7 <b>quickly</b> 45:19 <b>quiet</b> 117:3 <b>quite</b> 68:21, 99:10, 99:15 <b>quote</b> 115:5 <b>quoting</b> 80:5</p> <hr/> <p style="text-align: center;"><b>R</b></p> <hr/> <p><b>r-</b> 77:4, 77:7, 79:14 <b>rack</b> 54:23 <b>radius</b> 66:15 <b>raise</b> 17:2, 34:4, 73:9, 109:7, 123:20 <b>raised</b> 10:17, 16:6 <b>randolph</b> 106:13 <b>range</b> 21:15 <b>ranges</b> 21:19 <b>rate</b> 15:18, 130:6, 130:12 <b>rates</b> 129:22, 130:4, 130:15 <b>rather</b> 6:25, 92:5, 130:9 <b>rational</b> 59:20</p>
--	---	---	---

<b>rd</b> 144:21, 144:24, 145:9, 145:24, 146:13 <b>re-2</b> 4:15, 36:23, 36:25, 47:19, 47:21, 47:24, 48:1, 48:3, 48:6, 48:7, 49:6, 50:21, 61:17, 61:25, 62:21, 63:8, 63:18, 66:23, 77:1, 143:1 <b>read</b> 132:3, 139:6 <b>reading</b> 139:9 <b>real</b> 98:7 <b>realize</b> 144:9 <b>really</b> 20:6, 21:9, 38:9, 55:8, 81:8, 82:4, 83:21, 88:4, 91:12, 98:9, 101:4, 101:16, 102:1, 102:3, 105:16, 111:9, 146:8, 146:14, 150:21 <b>rear</b> 47:22, 47:23, 48:2, 48:11, 63:9, 63:14, 63:18, 83:15, 100:7, 116:24, 117:7, 117:17, 118:10, 118:17, 119:5, 123:3 <b>reason</b> 16:6, 89:23, 150:24 <b>reasonable</b> 146:20, 146:23,	146:24 <b>recalculations</b> 50:16 <b>recall</b> 25:3, 43:6, 51:15, 51:17, 51:21, 52:4, 64:16, 72:18, 102:16, 121:23, 121:24, 124:21, 124:24, 139:8 <b>receive</b> 8:2 <b>received</b> 5:20, 5:21, 47:6 <b>recess</b> 89:7, 149:15, 149:17 <b>recited</b> 90:7 <b>recognition</b> 14:8 <b>recognizing</b> 29:23 <b>recommendation</b> 6:24, 14:6, 46:16, 85:10 <b>recommendations</b> 85:10, 85:19, 86:4 <b>recommending</b> 14:7 <b>reconciled</b> 12:2 <b>reconfiguration</b> 39:12, 39:14 <b>reconvene</b> 149:1 <b>record</b> 4:23, 6:13, 7:6, 7:12, 8:25, 10:19, 12:1, 12:5, 14:2, 16:19, 33:23, 34:13, 37:11, 39:1, 41:19, 41:20, 46:8,	89:8, 89:20, 94:25, 111:17, 111:21, 141:21, 147:12, 147:21, 147:24, 152:7 <b>recreation</b> 107:11 <b>recreational</b> 29:22 <b>rectangular</b> 118:1 <b>red</b> 75:17 <b>red;</b> 76:22 <b>reddan</b> 3:8, 5:10, 33:19, 33:24, 34:5, 34:10, 34:17, 36:3, 73:4, 103:18, 105:20, 115:24, 116:2 <b>reddan's</b> 35:19 <b>reddan;</b> 34:1 <b>reduce</b> 82:22, 83:4, 85:11 <b>reduced</b> 42:23, 152:9 <b>reducing</b> 92:5 <b>refer</b> 100:4 <b>reference</b> 15:1, 39:23 <b>referencing</b> 75:13, 79:8 <b>referred</b> 32:11, 136:23 <b>referring</b> 22:8, 30:20, 33:21, 48:18, 76:15, 119:12, 121:10, 141:9 <b>reflect</b> 7:3, 88:17	<b>reflected</b> 46:20 <b>reflection</b> 90:1 <b>reflective</b> 93:19, 130:15 <b>reforest</b> 53:21 <b>refresh</b> 113:9 <b>regard</b> 69:14, 106:22, 112:3, 138:10 <b>regarding</b> 22:15, 31:24, 67:2, 70:21, 85:2, 103:16 <b>regardless</b> 70:4 <b>regards</b> 111:2 <b>regional</b> 16:24, 17:22 <b>registered</b> 34:21, 124:6 <b>registration</b> 34:21 <b>regs</b> 12:12 <b>regularly</b> 19:17 <b>regulations</b> 27:13, 28:9, 60:17, 61:1, 101:10 <b>related</b> 152:11 <b>relates</b> 48:18 <b>relation</b> 48:11 <b>relationship</b> 30:9, 47:18, 145:18, 145:20 <b>relatively</b> 141:19 <b>relevant</b> 80:3, 128:16
--	--	---	---

<b>reliant</b> 92:13 <b>relineated</b> 44:7 <b>rely</b> 102:22 <b>relying</b> 97:21 <b>remain</b> 22:2 <b>remainder</b> 50:22 <b>remaining</b> 99:9 <b>remains</b> 32:20 <b>remember</b> 24:23 <b>remind</b> 10:23 <b>removal</b> 122:8 <b>rendering</b> 113:2 <b>rental</b> 86:15, 86:18 <b>reopening</b> 12:4 <b>replacing</b> 84:5 <b>report</b> 4:20, 6:11, 6:17, 8:24, 11:17, 12:10, 14:5, 41:20, 45:19, 48:24, 50:14, 58:11, 67:20, 69:16, 69:23, 70:23, 72:3, 74:25, 75:9, 75:10, 90:6, 90:10, 102:17, 102:23, 104:15, 106:4, 125:15, 125:19, 126:16, 128:9, 129:9, 129:12, 132:9, 147:2,	149:19 <b>reported</b> 1:25 <b>reporter</b> 6:2, 16:15, 95:14, 143:15, 152:1, 152:5 <b>reporter's</b> 148:25 <b>reporting</b> 16:16 <b>reports</b> 126:3 <b>representative</b> 10:6 <b>representing</b> 5:9 <b>request</b> 54:16, 93:15 <b>requested</b> 64:23 <b>requesting</b> 89:14 <b>requests</b> 54:12 <b>require</b> 126:19 <b>required</b> 28:8, 50:22, 53:3, 56:3, 58:23, 64:9, 85:20, 127:12, 139:23, 140:8, 147:20 <b>required;</b> 55:19 <b>requirement</b> 53:6, 53:7, 56:2, 62:17, 64:11, 64:13, 90:11, 90:12, 103:4, 107:14, 128:2, 128:18, 138:13 <b>requirements</b> 7:21, 8:7, 15:16, 27:14, 28:15, 28:16,	48:25, 53:2, 53:9, 54:11, 61:8, 66:14, 66:22, 86:3, 101:8, 101:10, 101:11, 101:12, 102:10, 102:13, 103:8, 103:20, 103:25, 107:7, 116:4, 118:13, 128:5, 129:6, 136:5 <b>requires</b> 56:5, 63:17, 64:12, 102:21 <b>reserved</b> 15:6, 16:1, 23:2 <b>residence</b> 52:23 <b>residences</b> 19:10 <b>residential</b> 36:24, 57:1, 57:2, 77:21, 81:6, 84:7, 100:24, 102:6, 105:16, 108:17, 109:23 <b>residents</b> 14:14, 19:13, 20:5, 22:25, 30:1, 52:25, 55:13, 115:9, 117:5, 117:9, 129:24 <b>resource</b> 85:9 <b>resources</b> 19:20, 80:7, 80:12, 99:1 <b>respect</b> 66:11, 103:3 <b>respond</b> 10:25, 144:3, 144:5, 144:10, 147:1, 147:20 <b>responded</b> 8:22, 146:3	<b>response</b> 13:7, 38:5, 40:17, 47:5, 52:15, 147:21 <b>responsibilities</b> 17:18, 74:19, 74:20, 112:3, 112:5, 124:12 <b>responsible</b> 17:25 <b>rest</b> 54:22, 59:15, 148:17 <b>restriction</b> 8:13, 57:18, 72:9 <b>restrictions</b> 10:4, 22:10 <b>restrictive</b> 63:16, 63:17, 63:19 <b>result</b> 130:6 <b>resume</b> 34:13, 34:15, 35:19, 74:5, 111:17, 111:21, 124:19, 125:7, 143:16 <b>resuming</b> 147:24 <b>retained</b> 62:24 <b>retained)</b> 3:21 <b>retention</b> 60:19 <b>review</b> 39:21, 60:13, 61:5, 61:6, 72:14, 74:20, 74:21, 74:22, 74:23, 75:14, 83:8, 92:12, 106:3, 126:8, 129:14, 135:5, 135:12, 136:20 <b>reviewed</b> 8:12, 8:14,
---	---	---	--

79:20, 80:1, 104:17, 126:10, 126:25 <b>reviewing</b> 38:18 <b>revise</b> 92:14 <b>revised</b> 7:3, 7:5, 39:20, 44:9, 49:12, 51:14, 52:5, 87:19, 88:4, 88:17, 92:21, 96:16, 143:3, 143:22 <b>revision</b> 92:22 <b>revisions</b> 51:25 <b>revived</b> 50:25, 87:8 <b>ride</b> 107:18, 135:15, 137:20 <b>riding</b> 21:24 <b>road</b> 4:12, 4:14, 13:22, 36:21, 36:22, 36:23, 38:16, 38:20, 53:11, 53:25, 54:3, 65:5, 65:6, 65:7, 65:16, 65:18, 66:17, 66:19, 67:16, 70:11, 75:16, 76:3, 76:21, 77:14, 78:14, 78:21, 81:1, 81:3, 81:10, 81:19, 82:1, 82:7, 82:17, 82:18, 83:6, 83:25, 98:14, 98:17, 106:13, 107:17, 107:18, 113:19,	129:15, 131:11, 131:12, 131:13, 132:15, 132:19, 133:3, 133:9, 133:15, 134:8, 134:20, 134:22, 135:15, 135:21, 135:23, 136:1, 136:10, 141:20 <b>roads</b> 81:9 <b>roadways</b> 82:23, 84:7 <b>robertson</b> 35:16 <b>rock</b> 85:4 <b>rockville</b> 1:14, 2:8, 135:18 <b>role</b> 108:10 <b>roll</b> 29:16 <b>rolled</b> 121:20 <b>rolling</b> 29:15 <b>roof</b> 62:5, 62:6 <b>roofs</b> 113:3, 113:22 <b>room</b> 2:7, 20:12, 20:25, 29:17, 33:20, 122:12 <b>rose</b> 125:4 <b>roughly</b> 75:15, 75:18, 98:13, 116:16, 118:3 <b>route</b> 135:16, 135:17 <b>routes</b> 107:19 <b>rt-</b> 77:11	<b>rule</b> 92:13 <b>rules</b> 92:13, 92:22 <b>run</b> 65:17 <b>running</b> 75:15, 75:18, 76:21 <b>runoff</b> 101:7 <b>runs</b> 65:11, 71:10, 135:16, 135:17 <hr/> <b>S</b> <hr/> <b>s</b> 78:3 <b>safe</b> 140:25, 142:3 <b>safer</b> 83:5 <b>safety</b> 82:22, 116:9, 118:8, 140:23 <b>sag</b> 141:2 <b>said</b> 5:19, 15:9, 23:1, 26:22, 49:21, 69:24, 70:23, 71:17, 87:10, 88:4, 90:7, 92:6, 93:22, 96:10, 111:10, 114:6, 115:6, 120:13, 146:22, 146:23, 152:8 <b>salon</b> 20:12, 115:7 <b>same</b> 5:15, 43:20, 54:6, 71:14, 71:16, 76:19, 105:16, 110:23, 130:20, 138:19 <b>sanitary</b> 65:10, 65:13,	65:14 <b>satisfy</b> 129:6 <b>save</b> 151:2 <b>saw</b> 9:1, 18:11, 20:14, 142:15 <b>say</b> 56:19, 57:21, 59:1, 65:24, 68:11, 77:25, 90:4, 90:6, 92:20, 92:21, 110:15, 116:17, 127:24, 137:7, 143:14, 143:16, 144:21, 149:8 <b>say:</b> 82:20 <b>saying</b> 8:22, 9:11, 13:7, 33:6, 57:6, 57:10, 58:6, 58:14, 59:9, 68:7, 69:15, 81:14, 81:18, 82:18, 90:20, 92:11, 93:8, 103:22, 121:20, 133:11 <b>says</b> 9:3, 9:4, 34:21, 89:25, 107:1, 133:2 <b>says:</b> 84:4, 85:2 <b>scale</b> 15:18, 67:17, 71:14, 71:16, 72:21, 99:17, 108:15, 113:7, 116:15, 120:3 <b>scale;</b> 117:25 <b>scenarios</b> 131:21 <b>scheduled</b> 19:18
--	---	---	--

<b>school</b> 78:18, 133:2, 133:6, 133:8 <b>schools</b> 106:3 <b>scope</b> 36:7, 36:10 <b>screen</b> 54:2, 57:1 <b>screened</b> 53:16, 53:17, 53:19, 83:17 <b>screening</b> 53:23, 84:6, 84:10, 100:15, 101:21, 108:16 <b>screenings</b> 19:22 <b>scrutiny</b> 84:5 <b>se</b> 12:5 <b>seal</b> 94:19, 148:15, 148:23 <b>sealed</b> 94:15, 94:17, 149:23, 149:24 <b>seals</b> 94:22 <b>searchable</b> 129:1, 150:19, 150:21 <b>second</b> 22:22, 24:4, 24:7, 31:11, 34:16, 37:25, 56:1, 85:10, 133:1 <b>section</b> 4:6, 23:4, 23:7, 23:8, 54:9, 54:11, 78:5, 80:20, 85:1, 86:11, 87:14, 102:8, 141:19 <b>sections</b> 80:2	<b>sedimentation</b> 85:12 <b>see</b> 5:2, 9:19, 11:22, 29:19, 34:21, 41:10, 62:12, 68:4, 76:25, 79:4, 87:12, 90:5, 96:1, 106:15, 113:2, 115:2, 117:11, 117:24, 133:18, 138:4, 141:5, 146:11 <b>seeing</b> 5:6, 132:21, 132:22 <b>seeking</b> 10:5 <b>seemed</b> 68:23, 110:20 <b>seems</b> 68:7, 69:5, 93:24 <b>seen</b> 106:25 <b>self</b> 120:10 <b>senior</b> 18:20, 19:1, 19:16, 20:16, 35:10, 38:11, 53:14, 54:24, 55:3, 56:12, 58:3, 58:5, 59:1, 60:22, 60:24, 63:6, 68:19, 68:20, 72:21, 72:24, 78:17, 80:13, 104:7, 104:12, 106:1, 107:21, 108:21, 121:17, 130:13 <b>seniors</b> 4:8, 19:11, 19:22, 20:2, 20:11, 21:7,	21:24, 22:2, 22:12, 120:20 <b>sense</b> 96:14, 113:16, 123:7, 143:11, 143:12 <b>sensitive</b> 116:4 <b>sent</b> 8:1, 22:21, 91:2, 93:13 <b>separate</b> 30:12, 93:25, 117:14, 146:9 <b>separating</b> 121:17 <b>serve</b> 14:13, 60:5, 63:5, 65:8, 107:19, 107:21 <b>served</b> 53:10, 135:8 <b>service</b> 65:8, 65:14, 107:21 <b>services</b> 19:13, 20:8, 36:8, 36:10, 60:13, 72:14, 107:11, 107:12, 109:21 <b>session</b> 41:25 <b>set</b> 10:24, 16:17, 16:18, 28:5, 30:12, 56:6, 56:18, 57:16, 57:24, 58:1, 58:23, 88:12, 93:13, 93:17, 104:15, 152:15 <b>setback</b> 42:10, 47:24, 47:25, 48:1, 48:2, 48:10, 48:12, 48:13, 48:14, 48:18,	49:21, 56:2, 56:3, 56:7, 56:22, 56:23, 57:4, 57:8, 59:5, 59:6, 59:11, 59:16, 59:19, 59:20, 62:16, 62:20, 62:24, 63:9, 63:15, 63:17, 63:18, 63:20, 103:15 <b>setbacks</b> 47:23, 48:9, 48:13, 48:17, 49:14, 49:19, 49:20, 50:9, 63:8, 63:10, 63:13, 63:14, 64:1, 103:14, 103:17 <b>setbacks;</b> 47:22 <b>sets</b> 102:9, 118:14 <b>setting</b> 56:25, 102:6 <b>seven</b> 60:15, 94:2 <b>seventh-day</b> 98:12 <b>several</b> 56:20, 56:21, 74:3, 77:21, 80:2, 130:4 <b>sewer</b> 65:3, 65:10, 65:21, 105:21 <b>sexy</b> 20:24, 115:6 <b>sexy"</b> 115:6 <b>shall</b> 4:3 <b>shape</b> 38:13, 38:16, 40:4, 52:20, 53:19, 78:4,
--	--	--	--

Transcript of Hearing  
Conducted on December 16, 2016

71

<p>100:19 <b>shaped</b> 12:14, 52:21 <b>share</b> 115:3 <b>shared</b> 53:6, 135:25 <b>she'll</b> 15:18 <b>sheet</b> 37:14, 43:14, 43:15, 45:2, 51:16, 51:17, 51:19, 87:14, 87:21, 88:8, 88:13, 89:21, 89:23, 93:22, 93:23, 94:3, 95:25, 96:17, 96:18, 96:21, 97:1, 97:2, 97:9, 97:11 <b>sheet;</b> 43:11 <b>sheets</b> 44:22, 89:12, 89:20, 94:5 <b>shelter</b> 30:16, 31:17, 32:20, 32:22, 33:1, 33:2, 33:3, 33:5 <b>shelter"</b> 32:24 <b>shield</b> 67:7 <b>shopping</b> 107:11 <b>short</b> 7:18, 7:20, 32:25 <b>shortened</b> 39:9 <b>shorthand</b> 152:1, 152:4 <b>shots</b> 19:24 <b>should</b> 83:9, 83:13,</p>	<p>83:16, 84:5, 88:4, 89:3, 91:11, 92:23, 94:14, 94:16, 117:8, 117:10, 120:24, 128:22, 131:4, 133:8, 141:21 <b>shouldn't</b> 92:25 <b>show</b> 39:19, 141:24 <b>showed</b> 38:22, 47:11 <b>showing</b> 38:8, 47:3, 48:13, 50:19 <b>shown</b> 41:13, 47:1, 47:7 <b>shows</b> 32:13, 67:12 <b>shuttle</b> 107:20 <b>side</b> 17:23, 33:20, 36:21, 38:13, 38:14, 38:15, 39:6, 39:9, 42:17, 42:18, 46:24, 46:25, 47:21, 47:23, 47:25, 48:1, 48:13, 48:14, 50:10, 53:23, 56:7, 56:9, 56:16, 56:23, 57:16, 58:25, 60:20, 60:21, 60:23, 63:9, 63:14, 63:19, 68:20, 71:7, 72:22, 83:15, 100:16, 100:17, 101:19, 101:22, 101:25, 102:1, 116:24, 118:12, 118:16, 119:16,</p>	<p>119:22, 121:12, 121:14, 121:15, 121:19, 134:5, 136:1 <b>sides</b> 49:22, 71:20, 84:11, 122:6 <b>sidewalk</b> 67:15, 107:16 <b>siding</b> 113:3, 113:21 <b>sign</b> 70:24, 71:12, 71:15, 71:16, 72:14, 72:19, 72:22, 94:19, 148:15, 148:23 <b>signature-sl7or</b> 152:19 <b>signed</b> 71:1, 94:14, 94:16, 149:23, 149:24 <b>significant</b> 21:7, 91:15, 92:2, 98:17, 99:13 <b>signs</b> 70:12, 70:21, 71:5, 72:9, 84:22 <b>signs;</b> 70:10 <b>silver</b> 4:13, 124:9 <b>similar</b> 5:24, 110:8, 113:7, 113:20, 130:5, 140:11, 148:1 <b>simpler</b> 150:14 <b>simplicity</b> 44:8 <b>simply</b> 147:25 <b>since</b> 10:17, 18:19,</p>	<p>38:5, 40:17, 91:9, 106:19, 117:5, 119:1, 120:10, 127:23, 128:22, 132:3, 137:11, 138:8 <b>single</b> 53:10, 99:3 <b>single-families</b> 78:11 <b>single-family</b> 67:23, 67:25, 69:2, 69:9, 77:8, 77:10, 78:12, 78:15, 79:4, 79:5, 79:15, 79:16 <b>sir</b> 27:16, 28:11 <b>site</b> 4:9, 19:9, 36:11, 38:8, 39:7, 43:18, 43:23, 44:4, 49:9, 49:10, 57:7, 60:16, 67:4, 75:15, 75:16, 75:18, 76:9, 82:6, 85:14, 85:17, 85:18, 87:2, 88:7, 88:13, 92:3, 92:5, 97:25, 98:8, 98:11, 98:25, 99:3, 99:4, 100:3, 100:5, 100:7, 100:13, 100:15, 100:17, 100:18, 100:21, 101:18, 102:2, 104:11, 112:9, 113:6, 115:15, 119:12, 121:10, 122:2, 122:20, 122:21, 123:3, 129:23, 130:1, 132:22, 133:4,</p>
---	--	--	--



<p>133:5, 133:9, 133:16, 134:1, 134:4, 134:23, 136:11, 137:15, 137:17, 137:20, 137:21, 138:16, 140:24, 141:20, 141:24, 142:1, 142:7 <b>sited</b> 84:8 <b>sites</b> 130:4 <b>siting</b> 108:15 <b>situated</b> 83:18 <b>situation</b> 56:4, 58:22, 102:4 <b>situations</b> 83:14 <b>six</b> 60:14, 104:16, 104:17, 109:25, 118:23 <b>size</b> 23:21, 24:5, 49:12, 82:17, 92:5, 116:15, 122:12, 122:22 <b>sky</b> 116:5 <b>slash</b> 133:8, 133:9 <b>slide</b> 51:25 <b>small</b> 76:2, 79:14 <b>smaller</b> 72:21, 116:15, 117:25 <b>smallest</b> 116:16 <b>solution</b> 117:5 <b>some</b> 9:15, 11:21,</p>	<p>12:12, 12:18, 21:23, 21:24, 22:2, 22:3, 29:13, 42:16, 42:22, 57:22, 58:21, 67:14, 76:25, 77:3, 77:6, 77:8, 77:9, 77:11, 77:13, 77:15, 78:14, 79:4, 97:25, 105:20, 106:21, 106:22, 119:4, 144:20, 150:18, 150:24, 151:3 <b>somebody</b> 5:25, 94:19, 111:5, 111:10, 147:7 <b>someone</b> 27:10 <b>something</b> 8:1, 12:10, 24:22, 40:8, 72:12, 138:20, 144:16, 145:4 <b>sometimes</b> 51:10, 51:24, 118:25 <b>someway</b> 30:8 <b>somewhat</b> 8:7, 8:15, 21:12, 81:20, 82:18, 98:22, 99:23 <b>soon</b> 45:16 <b>sorry</b> 6:22, 24:7, 25:17, 33:3, 55:7, 96:9 <b>sort</b> 48:25, 52:21, 59:7, 65:12, 87:2, 102:1 <b>sought</b> 7:1</p>	<p><b>sound</b> 146:19, 146:23 <b>sound-resistant</b> 119:24 <b>south</b> 17:13, 36:21, 38:14, 42:8, 53:15, 53:18, 75:18, 76:7, 77:3, 78:1, 79:12, 98:19, 99:10, 121:13, 136:1 <b>southern</b> 49:23, 50:1, 76:3, 77:12, 77:16, 98:22, 101:19, 101:22 <b>southwest</b> 120:12 <b>space</b> 54:4, 54:18, 62:24, 115:7 <b>spaces</b> 6:25, 46:17, 47:4, 47:11, 53:1, 53:5, 54:5, 54:13, 54:18, 54:19, 54:21, 54:22, 55:1, 55:15, 55:16, 55:21, 56:20, 56:21, 57:7, 58:21, 58:23, 58:25, 59:5, 59:10, 59:22, 59:25, 115:9 <b>speak</b> 120:25 <b>speaking</b> 60:18, 134:14 <b>special</b> 77:8, 77:22, 80:21, 80:23, 81:4, 83:7, 83:9, 83:11 <b>specific</b> 28:9, 64:21,</p>	<p>80:20, 102:9, 102:12, 103:2, 103:8, 107:7, 144:20 <b>specifically</b> 9:6, 24:24, 41:22, 92:20 <b>specified</b> 15:2, 139:12 <b>split</b> 31:16, 114:10, 116:22, 116:25, 118:25 <b>spot</b> 29:6 <b>spring</b> 4:13, 124:9 <b>square</b> 70:22, 72:8, 116:18, 116:19, 116:20 <b>squared</b> 42:8 <b>squeeze</b> 144:12 <b>ssp</b> 7:22, 137:6, 137:12 <b>stack</b> 55:6 <b>stacked</b> 119:1 <b>staff</b> 5:21, 6:11, 6:17, 7:7, 8:16, 8:21, 9:14, 11:16, 12:10, 14:5, 15:25, 23:1, 26:14, 26:23, 27:6, 27:7, 27:8, 29:16, 38:5, 38:18, 41:20, 48:24, 50:14, 51:1, 51:6, 52:3, 52:12, 58:10, 67:20, 69:16, 69:21,</p>
--	--	---	--

<p>70:23, 72:3, 75:1, 75:24, 90:6, 90:9, 91:2, 91:22, 102:16, 102:23, 104:11, 104:15, 106:4, 124:13, 126:10, 126:11, 126:15, 127:12, 129:24, 130:14, 133:21, 144:10, 144:19, 146:12, 146:19, 147:2 <b>staffing</b> 27:13 <b>staging</b> 7:14, 106:24, 136:21, 140:18, 146:5 <b>stamp</b> 151:4 <b>stand</b> 99:3, 100:16, 100:17, 101:25 <b>standard</b> 24:14, 49:4, 49:7, 61:24, 61:25, 62:15, 62:21, 64:8, 67:22, 68:24, 69:3, 117:10, 130:9, 131:22, 131:24, 134:14, 138:19, 139:4, 139:6, 139:15 <b>standards</b> 14:19, 28:6, 37:1, 37:4, 47:19, 47:21, 48:5, 50:13, 50:20, 50:21, 50:22, 51:16, 51:18, 52:9, 53:7, 61:24, 66:21, 66:23, 71:1, 85:4, 86:1, 103:3, 130:20, 130:24,</p>	<p>142:25 <b>standards;</b> 14:20 <b>start</b> 46:12, 98:5, 138:22 <b>started</b> 17:21 <b>starting</b> 80:4 <b>state</b> 9:6, 9:12, 16:21, 18:19, 27:12, 28:9, 33:24, 60:16, 61:2, 85:3, 85:20, 89:11, 90:2, 109:3, 111:22, 123:17 <b>stated</b> 47:10, 50:9, 83:10, 89:24, 89:25 <b>statement</b> 13:14, 15:9, 32:8, 33:10, 102:11, 125:23, 126:2, 126:6, 126:16, 127:24, 130:19, 130:22, 130:23, 131:5 <b>statements</b> 3:2, 13:18 <b>states</b> 92:13, 109:25 <b>station</b> 53:5, 53:6, 78:22, 106:10, 106:12, 135:17, 135:18, 135:19 <b>status</b> 60:9 <b>stay</b> 148:18 <b>stem</b> 38:13, 38:14, 38:23, 39:8, 39:12, 39:14,</p>	<p>42:6, 42:19, 42:21 <b>stenographically</b> 152:9 <b>step</b> 98:7 <b>steps</b> 125:19 <b>still</b> 42:5, 60:13, 61:5, 78:3, 90:8, 118:6, 138:11, 138:13 <b>stipulation</b> 62:23 <b>stock</b> 78:7 <b>stop</b> 107:18, 107:19, 143:14 <b>stops</b> 135:20, 135:24 <b>stories</b> 113:7, 117:20 <b>storm</b> 36:13, 60:8, 60:9, 60:11, 60:15, 60:17, 60:25, 61:11, 83:19, 85:13, 85:14, 85:20, 101:6, 101:9, 105:21 <b>story</b> 78:2, 100:25, 105:15, 113:3 <b>straight</b> 141:19 <b>street</b> 17:13, 47:25, 48:16, 100:11, 105:12, 106:11, 106:12 <b>strips</b> 137:4 <b>structures</b> 50:5, 99:25 <b>studied</b> 132:5, 133:19</p>	<p><b>study</b> 67:11, 126:8, 127:10, 128:3, 128:15, 131:1, 132:4, 134:20, 135:11, 137:2, 137:10, 138:13, 139:22, 140:10, 140:11 <b>style</b> 78:5, 100:24, 105:14, 105:17 <b>subdivision</b> 7:14, 7:15, 11:13, 12:12, 14:2, 52:13, 61:9, 61:11, 69:1, 70:24, 72:9, 93:3, 93:5, 93:6, 106:20, 106:24, 127:4, 136:21, 140:13, 140:17, 146:5 <b>subject</b> 4:9, 4:16, 18:3, 57:7, 74:15, 76:22, 76:24, 77:4, 77:24, 78:1, 78:13, 78:20, 79:6, 79:17, 79:24, 98:14, 99:22, 112:3, 112:7 <b>subjective's</b> 80:4 <b>submission</b> 24:23, 50:15, 51:5 <b>submissions</b> 20:15, 145:11 <b>submit</b> 12:1, 24:21, 44:9, 44:14, 91:21, 114:14, 127:16, 137:9, 144:12, 149:21,</p>
---	--	--	---

Transcript of Hearing  
Conducted on December 16, 2016

74

150:25 <b>submitted</b> 12:11, 37:10, 38:4, 38:7, 47:10, 60:12, 61:5, 63:25, 88:5, 90:25, 91:20, 91:23, 92:17, 92:24, 116:1, 126:9, 126:14, 126:17, 126:21, 126:24, 128:16, 128:22 <b>submitting</b> 150:3 <b>subparts</b> 143:18, 143:23 <b>subparts;</b> 145:13 <b>subsection</b> 9:2 <b>subsequent</b> 126:3 <b>substantial</b> 11:19, 45:23 <b>sufficient</b> 116:9 <b>sufficiently</b> 146:3 <b>suggested</b> 11:16, 23:1, 55:15 <b>suggesting</b> 81:14, 90:18, 92:25 <b>suggestions</b> 20:1 <b>suite</b> 2:15, 17:13, 124:10 <b>sum</b> 48:2, 66:20 <b>summarize</b> 108:4 <b>supervising</b> 112:6, 124:13 <b>supervision</b> 21:19	<b>supplement</b> 10:20 <b>supplemental</b> 8:24 <b>support</b> 14:7, 80:8 <b>supportive</b> 21:6 <b>supports</b> 80:11 <b>suppose</b> 43:10, 44:12, 44:16, 106:8, 149:1 <b>supposed</b> 43:6 <b>sure</b> 11:9, 11:20, 12:4, 12:13, 16:23, 17:19, 18:17, 19:10, 21:10, 21:15, 22:23, 24:9, 24:19, 26:9, 37:9, 44:1, 46:3, 50:14, 76:14, 81:8, 88:24, 91:3, 91:4, 92:16, 98:5, 116:5, 120:20, 122:23, 124:5, 129:12, 135:11, 138:10, 142:16, 145:7, 146:2, 148:7, 151:3 <b>surface</b> 52:18, 52:20, 67:10, 70:24 <b>surrounded</b> 40:18 <b>surrounding</b> 14:22, 75:6, 75:8, 75:12, 75:21, 76:12, 76:18, 76:20, 76:23, 77:2, 77:7, 77:12,	77:19, 77:20, 78:10, 79:8, 79:13, 84:10, 84:14, 84:20, 87:5, 98:1, 98:3, 98:21, 105:14, 107:22, 108:6, 108:14, 141:13 <b>surroundings</b> 90:19, 122:24 <b>survey</b> 20:5 <b>surveyed</b> 130:5 <b>swath</b> 118:24 <b>swear</b> 17:2 <b>sworn</b> 5:25, 17:8, 34:6, 73:12, 109:9, 123:23 <b>system</b> 16:17, 43:20, 96:13, 117:1 <hr/> <b>T</b> <hr/> <b>table</b> 132:9, 132:10 <b>take</b> 4:20, 9:3, 21:21, 24:4, 48:21, 50:12, 52:14, 59:18, 61:7, 62:7, 87:7, 87:23, 88:20, 89:6, 95:5, 98:7, 112:20, 115:20, 116:8, 117:13, 121:2, 138:1, 150:7 <b>taken</b> 6:1, 152:6, 152:8 <b>takes</b> 56:22	<b>talk</b> 10:20, 37:18, 80:9 <b>talked</b> 23:23, 24:13, 64:5, 98:11 <b>talking</b> 39:1, 39:4, 48:17, 49:22, 80:21, 87:16 <b>talks</b> 80:22, 83:7, 83:12, 85:22 <b>tall</b> 71:13, 99:14 <b>taller</b> 90:19 <b>tan</b> 76:24, 76:25, 77:3, 77:6 <b>tax</b> 4:11 <b>team</b> 125:18, 148:17 <b>technical</b> 6:11, 6:17, 7:7, 8:21, 11:16, 12:10, 23:1, 41:20, 48:24, 50:14, 51:5, 75:24, 91:22, 144:10 <b>technically</b> 60:18, 106:17, 127:11 <b>tell</b> 8:17, 109:16, 132:3 <b>temporary</b> 54:22 <b>ten</b> 6:24, 7:6, 47:4, 59:2, 146:14 <b>ten-day</b> 10:19 <b>tend</b> 138:25
---	--	---	---

<b>term</b> 16:7, 32:25, 55:22, 55:23, 67:6 <b>terms</b> 11:11, 15:22, 21:13, 22:24, 23:9, 26:21, 40:17, 45:19, 63:8, 68:24, 69:5, 70:22, 77:18, 98:1, 102:13, 105:19, 108:10, 113:24, 116:1, 122:8, 136:16, 138:5 <b>terrace</b> 76:2 <b>tested</b> 120:23, 120:24 <b>testified</b> 17:9, 34:7, 34:11, 35:4, 73:13, 73:24, 109:10, 110:4, 110:7, 110:16, 110:17, 111:1, 123:24, 124:15 <b>testify</b> 124:22 <b>testimony</b> 3:5, 3:8, 3:11, 3:14, 3:17, 6:14, 24:13, 52:6, 74:6, 102:13, 106:22, 111:6, 111:7, 111:23, 125:8, 152:8 <b>tettelbaum</b> 8:21 <b>tettelbaum's</b> 13:6 <b>text</b> 6:8, 128:25, 150:22, 150:23 <b>text-searchable</b> 6:10	<b>th</b> 144:22, 146:15, 147:16, 147:18, 152:16 <b>th;</b> 147:14 <b>thank</b> 13:3, 13:4, 13:19, 16:4, 21:1, 22:14, 26:5, 30:4, 33:15, 33:17, 35:22, 35:25, 54:8, 64:19, 66:25, 72:25, 73:4, 74:13, 75:5, 76:12, 95:19, 103:11, 104:1, 107:5, 108:3, 108:23, 109:1, 109:14, 111:25, 112:19, 115:10, 119:12, 120:4, 123:9, 123:13, 123:14, 127:20, 142:17, 142:22, 149:14, 150:8, 151:14 <b>themselves</b> 4:22, 59:22 <b>thereafter</b> 11:13, 93:7, 152:9 <b>thereby</b> 85:18 <b>therefore</b> 86:3, 137:8 <b>thing</b> 11:10, 15:22, 41:19, 45:13, 47:9, 48:25, 89:19, 134:10 <b>things</b> 40:2, 55:10, 107:1, 138:5, 138:9 <b>think</b> 8:22, 9:14, 11:1, 12:3, 13:8, 14:8, 15:15, 23:12, 32:17, 40:24, 43:23, 44:8, 51:22, 52:4, 54:13, 54:20, 57:21, 69:9, 69:25, 70:21, 71:12, 72:22, 73:2, 80:3, 80:18, 81:24, 82:4, 82:8, 82:11, 83:18, 84:2, 84:12, 87:18, 90:2, 90:9, 95:5, 97:8, 97:15, 98:5, 102:21, 103:12, 105:8, 106:13, 108:12, 108:14, 108:19, 114:20, 114:25, 115:5, 126:1, 126:13, 141:20, 142:20, 146:3, 146:10, 147:4, 148:14, 149:8, 151:13 <b>thinking</b> 40:24 <b>third</b> 15:25 <b>thought</b> 37:17, 62:21, 81:20, 81:22, 82:15, 87:10, 87:15, 89:15, 90:25, 96:9, 118:14 <b>three</b> 15:4, 15:24, 47:1, 60:14, 60:21, 105:15, 113:7, 131:20, 132:5, 132:10 <b>three-</b> 99:17	<b>threshold</b> 137:9, 139:8 <b>through</b> 7:16, 10:3, 14:17, 14:18, 19:16, 29:4, 32:21, 34:12, 39:11, 39:13, 44:10, 44:12, 44:13, 65:12, 85:12, 87:13, 96:5, 96:10, 97:16, 97:17, 102:12, 102:17, 107:21, 125:19, 129:12, 134:7, 137:5, 143:18, 143:24, 146:3, 149:21 <b>throughout</b> 14:8 <b>tier</b> 118:21 <b>till</b> 37:17 <b>time</b> 26:13, 26:14, 41:16, 45:23, 90:20, 92:23, 93:9, 95:15, 99:15, 99:24, 121:13, 128:8, 144:5, 144:10, 144:12, 144:14, 145:8, 147:1, 147:10, 151:3 <b>time;</b> 22:3 <b>times</b> 26:23, 74:3 <b>title</b> 43:18 <b>today</b> 5:7, 7:7, 45:13, 46:11, 94:25, 131:17, 145:12, 145:14 <b>todd</b> 3:8, 5:10,
---	---	---

<p>33:19, 34:1, 34:5 <b>together</b> 74:23, 74:24, 74:25 <b>told</b> 37:13 <b>top</b> 67:5, 67:7, 119:21, 122:7 <b>total</b> 47:10, 132:4, 132:13 <b>totaling</b> 18:21 <b>touch</b> 62:15 <b>touched</b> 54:14, 86:24, 97:24, 105:20, 108:3, 115:24, 123:2 <b>toward</b> 65:11, 78:7 <b>towards</b> 141:4, 141:18 <b>town</b> 45:23 <b>townhouse</b> 77:9, 77:11 <b>townhouses</b> 78:11 <b>tpar</b> 135:2, 135:4, 135:6 <b>traditional</b> 113:4 <b>traffic</b> 5:13, 7:19, 105:24, 124:20, 125:9, 125:11, 125:15, 125:23, 126:2, 126:6, 126:8, 126:16, 127:10, 127:24, 128:3, 128:13, 128:15, 128:21, 129:15, 130:19,</p>	<p>134:17, 136:5, 137:2, 137:10, 138:8, 138:13 <b>trail</b> 29:25 <b>transactions</b> 30:12 <b>transcript</b> 152:7 <b>transferred</b> 17:23 <b>transformer</b> 54:6 <b>transmittal</b> 14:6 <b>transportation</b> 19:15, 80:24, 81:2, 81:5, 81:10, 81:20, 82:16, 107:10, 124:5, 125:8, 126:8, 127:2, 129:14, 129:21, 130:2, 135:4, 135:9, 135:13, 136:12, 136:24, 146:4 <b>trash</b> 28:23, 29:3, 29:5, 29:11, 29:17, 122:8, 122:12, 129:24 <b>travelling</b> 66:17 <b>traverse</b> 62:25 <b>treat</b> 101:7, 148:1 <b>treated</b> 56:16 <b>treating</b> 148:2 <b>tree</b> 86:8, 98:24, 99:23, 100:17 <b>treed</b> 99:9 <b>trees</b> 53:20, 53:22,</p>	<p>99:11, 99:13, 99:14, 99:20, 101:23 <b>tried</b> 83:21, 113:19 <b>trigger</b> 137:1, 137:4, 138:12, 140:4 <b>trip</b> 128:2, 129:18, 129:20, 129:22, 130:3, 130:6, 130:22, 134:24, 137:13 <b>trips</b> 104:8, 127:25, 128:1, 134:19, 136:15, 137:1, 137:3, 137:7, 138:3, 138:15, 138:19, 140:4 <b>true</b> 56:19, 106:8, 152:7 <b>trying</b> 82:5, 82:25, 83:4, 84:13, 92:11, 100:6, 100:8, 100:9, 100:12, 110:22 <b>tuesday</b> 147:15 <b>turn</b> 56:22, 131:25 <b>turndown</b> 67:6 <b>turning</b> 66:17, 66:19, 82:24 <b>turns</b> 76:8 <b>twice</b> 29:7, 56:6 <b>two</b> 26:11, 26:12, 47:4, 52:9, 54:11, 60:14, 60:20, 60:23,</p>	<p>65:24, 70:10, 70:12, 94:21, 107:18, 114:4, 114:9, 132:23, 132:24, 133:2, 133:11, 135:15, 135:20, 135:24, 137:16, 137:17, 150:1 <b>two-bedroom</b> 113:25, 114:3 <b>type</b> 27:14, 105:16, 110:8, 130:10 <b>types</b> 14:10, 30:11, 86:16 <b>typewriting</b> 152:10 <b>typical</b> 78:4, 104:7 <b>typically</b> 26:15, 26:16, 104:8</p> <hr/> <p><b>U</b></p> <hr/> <p><b>ultimately</b> 12:13, 13:25 <b>under</b> 7:22, 9:5, 9:12, 14:3, 23:10, 23:17, 60:13, 61:5, 61:6, 64:16, 68:8, 86:12, 86:13, 90:9, 90:10, 118:6, 121:25, 131:16, 131:20, 134:2, 136:5, 152:10 <b>underground</b> 65:17 <b>understand</b> 15:1, 24:15, 26:2, 35:3, 40:3, 40:25, 41:5, 51:2, 57:6, 69:22,</p>
--	---	--	---

Transcript of Hearing  
Conducted on December 16, 2016

77

86:5, 92:10, 139:24, 140:7, 144:19, 145:6 <b>understanding</b> 15:21 <b>understood</b> 40:11, 40:23, 93:10 <b>unduly</b> 95:14, 144:13 <b>unit</b> 79:5, 116:23, 117:1, 117:2, 117:14, 117:17, 118:16, 118:17, 120:11 <b>units</b> 4:9, 8:13, 13:23, 14:15, 15:5, 15:10, 15:17, 16:1, 16:8, 18:23, 18:25, 19:2, 22:9, 22:10, 22:11, 23:2, 24:16, 25:13, 25:18, 25:20, 25:23, 28:1, 54:19, 79:4, 79:5, 80:17, 86:15, 114:1, 114:2, 114:3, 116:15, 116:21, 116:25, 118:20, 118:24, 119:1, 119:9, 127:25, 129:19, 131:10 <b>unless</b> 14:24, 33:14, 73:1, 107:2, 121:3 <b>unlighted</b> 70:15 <b>until</b> 89:6, 146:13, 149:16 <b>urban</b> 23:20	<b>urgency</b> 95:17 <b>use</b> 4:6, 8:9, 8:10, 10:16, 13:21, 14:1, 14:3, 14:4, 14:20, 15:3, 15:8, 18:4, 18:10, 28:7, 32:8, 36:4, 36:8, 37:4, 37:7, 37:12, 37:20, 38:19, 43:3, 43:7, 43:18, 45:16, 45:19, 47:20, 47:22, 48:4, 49:4, 51:10, 52:23, 52:25, 53:13, 54:1, 56:6, 57:2, 57:3, 57:11, 60:1, 61:23, 61:24, 62:15, 63:14, 63:20, 64:12, 66:21, 66:22, 68:22, 71:20, 74:16, 74:24, 75:9, 75:10, 79:22, 79:24, 80:4, 81:5, 81:6, 81:7, 81:15, 84:11, 88:11, 98:6, 100:7, 100:9, 100:13, 100:14, 102:11, 103:4, 104:6, 104:24, 105:6, 107:9, 112:4, 113:20, 122:15, 122:20, 123:6, 126:6, 128:4, 128:5, 128:9, 129:7, 129:10, 130:16, 130:20, 134:17, 135:25, 136:3,	138:18, 142:25 <b>use;</b> 8:8, 39:16 <b>users</b> 129:23 <b>uses</b> 77:9, 77:10, 80:24, 82:22, 105:12 <b>using</b> 63:15, 83:20, 84:9, 95:24, 100:3, 100:19, 116:5, 116:22, 137:19 <b>usually</b> 16:16, 54:1, 102:18 <b>utilities</b> 36:13, 117:6 <hr/> <b>V</b> <hr/> <b>v</b> 23:17 <b>v"</b> 23:10 <b>variance</b> 71:1, 86:8 <b>variety</b> 86:15, 109:22 <b>various</b> 10:3, 19:13, 20:4, 143:23 <b>vary</b> 26:17 <b>vedanta</b> 78:16 <b>vehicle</b> 137:1, 137:3, 137:18, 138:15 <b>vehicular</b> 138:8 <b>venture</b> 32:11 <b>verbal</b> 51:7, 52:6, 52:8 <b>verify</b> 121:1	<b>vice</b> 16:24 <b>victory</b> 124:24 <b>view</b> 40:25, 50:6 <b>violation</b> 82:12 <b>virginia</b> 18:1 <b>visit</b> 112:8, 122:20 <b>visited</b> 115:15 <b>visitors</b> 129:25 <b>visits</b> 113:5 <b>visual</b> 51:11, 114:21, 118:11 <b>volume</b> 131:16, 132:16, 138:14, 138:23, 138:24, 139:16, 140:15 <b>volumes</b> 134:6, 136:10 <hr/> <b>W</b> <hr/> <b>wait</b> 4:6, 23:6, 38:25 <b>waive</b> 54:10 <b>waiver</b> 47:7, 54:11, 54:16, 55:18, 56:1, 57:3, 103:13 <b>walk</b> 96:5, 129:12, 137:20, 138:1 <b>walking</b> 19:19, 21:25, 29:25 <b>wall</b> 118:5, 118:6
---	---	--	---

<p><b>want</b> 24:9, 24:18, 24:19, 55:10, 56:19, 57:21, 58:11, 61:14, 87:22, 90:22, 91:18, 95:14, 102:22, 114:25, 119:6, 120:20, 127:18, 143:17, 144:3, 144:5, 144:12, 144:13, 144:14, 145:1, 145:4, 147:1, 147:7, 147:11, 148:7, 149:2</p> <p><b>wanted</b> 11:10, 38:21, 101:3</p> <p><b>washington</b> 78:16</p> <p><b>water</b> 36:13, 60:8, 60:10, 60:15, 60:17, 60:25, 61:12, 65:3, 65:4, 65:7, 65:20, 83:19, 85:3, 85:13, 85:15, 85:17, 85:21, 101:6, 101:9, 105:21, 105:22</p> <p><b>way</b> 8:20, 11:2, 15:10, 21:16, 27:19, 55:2, 55:8, 84:8, 115:18, 118:25, 130:3, 137:2, 139:5, 139:24, 147:17</p> <p><b>we'll</b> 7:5, 13:1, 19:15, 19:17, 20:4, 20:10, 20:11, 26:11, 31:23, 33:7,</p>	<p>33:9, 44:14, 57:22, 62:1, 65:13, 89:5, 96:13, 143:16, 145:21, 145:22, 149:3, 151:6</p> <p><b>we're</b> 13:21, 14:5, 42:5, 48:10, 48:13, 53:20, 55:17, 63:1, 63:4, 63:15, 63:19, 64:14, 76:15, 80:13, 82:25, 83:1, 83:4, 84:9, 84:12, 84:13, 85:16, 85:25, 86:17, 89:14, 90:8, 90:10, 93:12, 93:14, 97:15, 102:4, 102:6, 107:15, 109:18, 116:22, 127:21, 148:1, 150:2</p> <p><b>we've</b> 12:18, 16:17, 82:4, 83:18, 83:21, 85:24, 117:24, 118:10, 118:12, 142:24</p> <p><b>weber</b> 34:2, 73:22</p> <p><b>week</b> 29:7, 144:15</p> <p><b>weekend</b> 151:15</p> <p><b>weekly</b> 120:24</p> <p><b>welcome</b> 146:8</p> <p><b>well-heeled</b> 100:1</p> <p><b>wellness</b> 19:23</p> <p><b>wells</b> 124:4, 124:7</p>	<p><b>went</b> 10:3, 14:17, 47:2, 102:17, 113:13, 138:23</p> <p><b>weren't</b> 52:11, 67:21, 98:9, 99:10</p> <p><b>west</b> 38:13, 39:12, 39:14, 42:17, 42:18, 42:19, 42:21, 46:24, 46:25, 48:12, 53:19, 53:23, 53:24, 54:5, 56:21, 60:20, 60:23, 65:11, 72:22, 75:16, 75:18, 75:19, 76:10, 76:21, 77:3, 78:1, 78:6, 78:21, 99:10, 119:16, 119:22, 121:13, 125:2, 131:12, 134:4, 135:22</p> <p><b>westbound</b> 135:21</p> <p><b>western</b> 98:22, 100:17, 101:25, 141:18</p> <p><b>whatever</b> 12:16, 50:5, 50:15, 71:1, 140:2, 144:11, 147:1, 147:8, 147:13</p> <p><b>whatsoever</b> 22:11</p> <p><b>wheaton</b> 78:17, 98:12</p> <p><b>whereas</b> 81:7</p> <p><b>whereof</b> 152:15</p> <p><b>whether</b> 9:10, 24:25, 62:1, 68:9,</p>	<p>79:23, 102:16, 103:1, 138:1, 142:16, 148:3, 148:6, 150:18</p> <p><b>white</b> 124:24</p> <p><b>whole</b> 56:18, 56:19</p> <p><b>wide</b> 53:12, 55:6, 66:14, 118:4</p> <p><b>widened</b> 42:18, 42:21</p> <p><b>width</b> 72:6</p> <p><b>winchester</b> 78:18, 133:2, 133:6, 133:7, 133:8</p> <p><b>windows</b> 113:4</p> <p><b>wise</b> 21:21</p> <p><b>wish</b> 13:13</p> <p><b>wishes</b> 5:5</p> <p><b>within</b> 20:19, 21:19, 56:22, 57:7, 57:18, 59:3, 59:5, 59:6, 59:10, 72:8, 77:6, 78:23, 101:18, 102:5, 107:23, 131:22, 139:15, 141:25</p> <p><b>without</b> 61:11, 91:15, 131:17, 131:19</p> <p><b>witness</b> 5:4, 7:16, 14:17, 14:24, 16:11, 33:18, 73:5, 109:1, 123:15, 152:15</p> <p><b>witnesses</b> 5:7, 5:8, 5:24,</p>
--	--	--	--

Transcript of Hearing  
Conducted on December 16, 2016

79

14:18, 142:24 <b>wondered</b> 52:1 <b>wondering</b> 148:3 <b>wooded</b> 99:7, 99:23 <b>woods</b> 99:7 <b>word</b> 6:9, 57:12, 128:25 <b>worded</b> 92:24 <b>words</b> 118:20 <b>work</b> 26:14, 28:24, 33:22, 40:5, 75:7, 112:6, 117:22, 117:23, 118:9, 118:23, 124:9, 145:9 <b>working</b> 74:25, 75:1, 75:3, 102:6 <b>works</b> 119:19 <b>world</b> 76:4, 77:16, 107:25 <b>worship</b> 78:15 <b>wouldn't</b> 7:9, 10:7, 10:8, 41:25, 55:12, 57:11, 140:7, 140:14 <b>wrapping</b> 102:1 <b>write</b> 4:20, 24:6, 45:6 <b>writing</b> 24:22, 45:19 <b>written</b> 27:19, 31:10, 51:5, 132:1	<b>wrote</b> 24:6, 44:13, 81:11 <hr/> <b>y</b> <hr/> <b>yard</b> 47:25, 56:7, 56:9, 63:14, 63:18, 63:20, 83:13, 83:15, 83:23 <b>yeah</b> 33:9, 40:9, 43:21, 44:15, 45:2, 47:21, 51:4, 56:5, 58:8, 65:23, 68:11, 70:1, 71:6, 71:21, 87:25, 95:1, 102:15, 102:20, 132:25, 133:4 <b>year</b> 32:19, 127:6 <b>years</b> 17:21, 17:25, 18:18, 19:11, 20:3, 21:16, 124:8, 130:14 <b>yellow</b> 136:24, 138:22, 139:12, 139:13 <b>yesterday</b> 10:18 <b>yourself</b> 145:8 <hr/> <b>z</b> <hr/> <b>zhe</b> 54:10 <b>zone</b> 4:15, 36:23, 47:24, 48:1, 48:3, 48:6, 48:7, 50:21, 57:1, 143:1 <b>zoning</b> 1:1, 2:5, 4:6,	4:18, 9:19, 9:25, 11:17, 27:18, 28:7, 36:19, 37:1, 53:3, 54:8, 56:5, 56:17, 57:18, 62:21, 63:16, 74:21, 76:13, 76:15, 76:16, 76:18, 77:1, 77:4, 77:5, 77:8, 77:11, 77:13, 77:15, 79:14, 83:11, 92:20, 101:11, 101:15, 102:9, 103:3, 110:5, 110:13, 111:3, 112:12, 129:5 <b>zta</b> 8:5, 9:2, 11:8, 144:20 <hr/> " <hr/> 114:6 <hr/> . <hr/> .1 70:3 .10 54:9 .2 4:7, 23:4, 23:8 .3 4:7 .3832 2:17 .6660 2:9 <hr/> 0 <hr/> 0.1 67:21, 69:3 00 89:6, 95:11 01 151:17	<b>04</b> 1:6, 4:4 <hr/> <b>1</b> <hr/> <b>1</b> 44:13 <b>1,154</b> 132:16 <b>1.4</b> 23:4, 23:6, 23:8 <b>10</b> 34:16, 55:18, 55:19, 57:24, 58:2, 58:7, 59:10, 71:8, 74:6, 96:21, 111:21, 125:7 <b>100</b> 2:6 <b>109</b> 3:15 <b>11</b> 31:12, 31:13, 89:6, 94:5, 94:6, 97:1, 97:10, 115:18, 118:3, 118:5 <b>11.7</b> 13:24 <b>115</b> 47:11, 47:14 <b>117</b> 47:12, 47:14, 52:25 <b>12</b> 22:9, 43:6, 43:7, 44:13, 44:21, 48:8, 49:11, 71:8, 87:14, 94:5, 94:6, 95:25, 96:10, 97:2, 97:10, 97:17, 145:10 <b>12.5</b> 77:11 <b>120</b> 4:9, 13:23,
--	---	--	--



Transcript of Hearing  
Conducted on December 16, 2016

80

<p>25:13, 80:13, 119:9, 127:24, 129:19, 131:10, 132:14 <b>122</b> 85:7 <b>124</b> 3:18 <b>126404</b> 1:23 <b>13</b> 3:3, 67:4, 68:14, 146:15, 146:18, 147:14 <b>1300</b> 4:14 <b>1350</b> 138:25, 139:9, 140:2, 140:8 <b>14</b> 147:15 <b>140</b> 17:13, 120:6 <b>143</b> 3:24 <b>1475</b> 132:1, 139:4 <b>15</b> 8:5, 15:5, 16:1, 17:25, 23:2, 24:15, 26:1, 55:7, 59:10, 144:4, 147:15 <b>150</b> 120:6 <b>152</b> 1:24 <b>16</b> 1:15, 8:5, 25:12, 25:14, 65:4, 112:18, 144:4, 147:16 <b>1600</b> 139:17 <b>17</b> 1:6, 3:6, 4:4, 48:1, 147:19,</p>	<p>147:21 <b>17285</b> 34:22 <b>176</b> 86:12 <b>179</b> 133:17 <b>18</b> 147:18, 147:19, 147:21 <b>19</b> 55:18, 124:8 <b>1994</b> 4:16, 80:5 <b>1:</b> 143:10, 143:16, 147:25, 149:16 <b>1st</b> 139:22 <hr/><b>2</b> <hr/><b>2-acre</b> 36:24 <b>20</b> 1:15, 22:9, 57:25, 58:2, 58:7, 66:14, 77:4, 89:6 <b>200</b> 2:7, 77:7, 79:14, 124:10 <b>2015</b> 35:10 <b>2016</b> 1:15, 7:13, 140:17, 152:16 <b>2017</b> 7:15, 146:18 <b>2020</b> 7:14, 140:17 <b>20814</b> 2:16 <b>20850</b> 2:8 <b>21201</b> 17:14 <b>23</b> 25:12, 144:21,</p>	<p>144:24, 145:9, 145:10, 145:24, 146:13 <b>2300</b> 18:20, 18:24, 106:12 <b>24</b> 127:25, 131:4, 134:18 <b>240.777</b> 2:9 <b>25</b> 48:6, 53:12, 58:24, 63:10, 63:14, 63:15, 63:19, 66:15, 102:19 <b>26</b> 17:21, 102:19, 135:16 <b>27</b> 118:4, 132:12, 144:22 <b>28</b> 6:11 <b>29</b> 6:13, 54:21, 55:18, 55:19, 58:24, 80:4, 80:6, 152:16 <b>2:</b> 151:17 <hr/><b>3</b> <hr/><b>3-5</b> 132:10 <b>3-b</b> 75:10, 75:12, 75:13, 141:14, 141:15, 141:16 <b>30</b> 26:16, 27:1, 54:19, 55:1, 55:7, 56:16, 58:25, 128:1, 131:4, 134:19, 136:15, 136:25, 143:10, 143:16,</p>	<p>147:25, 149:16 <b>301.841</b> 2:17 <b>3132</b> 4:12, 13:22, 36:20 <b>34</b> 3:9, 56:3, 56:8, 56:18, 57:15, 57:20 <b>35</b> 13:6, 48:2, 48:3, 48:12, 57:15, 63:18 <b>36</b> 13:11, 18:21, 19:3, 48:10 <b>37</b> 43:10, 43:21, 44:25, 45:9, 47:13, 52:5, 87:11, 95:25, 96:2, 96:14, 96:20, 97:21, 98:6, 100:5, 143:22, 145:12, 149:21, 150:16, 151:7 <b>38</b> 3:24, 127:21, 128:24, 143:18, 143:24 <b>3909</b> 73:22 <hr/><b>4</b> <hr/><b>40</b> 1:16, 18:18, 58:19, 99:13 <b>43</b> 25:14 <b>45</b> 143:8 <b>46</b> 25:12, 137:7 <b>460</b> 2:15 <b>47</b> 90:1, 90:6</p>
---	---	---	---

Transcript of Hearing  
Conducted on December 16, 2016

81

<p><b>49</b> 135:17</p> <hr/> <p style="text-align: center;"><b>5</b></p> <hr/> <p><b>5.3</b> 4:11 <b>5.7</b> 39:17, 42:24 <b>5.99</b> 4:10, 39:15, 42:23 <b>50</b> 15:12, 22:5, 23:18, 24:14, 47:25, 48:5, 48:16, 61:17, 62:1, 62:4, 62:16, 62:20, 66:15, 90:2, 90:4, 90:9, 90:11, 99:14, 114:10, 120:5, 137:4, 140:4 <b>52</b> 25:16, 25:17, 25:18, 25:19, 25:20, 25:23 <b>53</b> 4:11 <b>575</b> 17:12 <b>59</b> 114:4, 114:9 <b>59.3</b> 4:7 <b>5:</b> 26:16, 27:1, 95:11</p> <hr/> <p style="text-align: center;"><b>6</b></p> <hr/> <p><b>6.2</b> 54:9, 54:11, 102:8, 102:18 <b>60</b> 22:13, 23:23, 24:13, 61:25, 90:11, 99:14 <b>600</b> 48:15, 82:1,</p>	<p>105:11, 113:19 <b>61</b> 114:3, 114:7, 114:8 <b>62</b> 19:11, 21:16, 22:3, 25:13, 25:15 <b>65</b> 31:10 <b>661</b> 133:23 <b>675</b> 116:16, 116:18, 116:19 <b>69</b> 114:6 <b>692</b> 134:10</p> <hr/> <p style="text-align: center;"><b>7</b></p> <hr/> <p><b>70</b> 64:10, 64:13, 78:3 <b>703</b> 133:23 <b>71</b> 64:15 <b>72</b> 64:18 <b>726</b> 132:20, 133:11 <b>73</b> 3:12 <b>776</b> 4:11 <b>791</b> 134:10 <b>7th</b> 126:24</p> <hr/> <p style="text-align: center;"><b>8</b></p> <hr/> <p><b>80</b> 21:16, 78:3, 80:20 <b>800</b> 116:20 <b>835</b> 132:19, 133:11</p>	<p><b>8355</b> 109:19 <b>85</b> 21:16 <b>850</b> 116:20 <b>8730</b> 124:9 <b>888</b> 133:16 <b>89</b> 31:15, 31:16 <b>8:</b> 26:16, 27:1 <b>8;</b> 96:17</p> <hr/> <p style="text-align: center;"><b>9</b></p> <hr/> <p><b>90</b> 54:20, 56:22 <b>95</b> 54:20 <b>967</b> 132:17 <b>9:</b> 1:16</p>	
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