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Transcript of Hearing

Date: February 24, 2017

Case: Maryland Catering, In Re:

Planet Depos

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Transcript of Hearing
Conducted on February 24, 2017

1 (1 to 4)

1	OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS	1	1	C O N T E N T S	3
2	FOR MONTGOMERY COUNTY, MARYLAND		2	PAGE	
3	-----x		3	OPENING STATEMENTS	4
4	In Re: :		4	DR. ALAN GOLDEN STATEMENT	7
5	MARYLAND CATERING : Case No. CU 15-06		5	DR. ALAN GOLDEN STATEMENT	54
6	-----x		6	DREW FINLEY STATEMENT	57
7			7		
8	HEARING		8		
9	Before Hearing Examiner Lynn A. Robeson		9		
10	Rockville, Maryland		10		
11	Friday, February 24, 2017		11		
12	9:39 a.m.		12		
13			13		
14			14		
15			15		
16			16		
17			17		
18			18		
19			19		
20			20		
21			21		
22			22		
23	Job: 136984		23		
24	Pages: 1 - 99		24		
25	Transcribed by: Susan Wilson		25		
1	A P P E A R A N C E S	2	1	P R O C E E D I N G S	4
2			2	LYNN A. ROBESON: Case of CU 15-06, Maryland Catering	
3	ON BEHALF OF MARYLAND CATERING:		3	Inc, an application for conditional use for a concrete	
4	JODY S. KLINE, ESQUIRE		4	inn under Section 5-3.2.4 in the Montgomery County	
5			5	Zoning Ordinance. The property is located at 10801	
6	ON BEHALF OF FIVE CIVIC ASSOCIATIONS:		6	MacArthur Blvd, Potomac, Maryland, on land in the R200	
7	DAVID BROWN, ESQUIRE		7	zone. The subject property is further described as Parcel	
8			8	527. My name is Lynn Robeson. I am the Hearing Examiner.	
9	ON BEHALF OF MR. AND MRS. DAY:		9	We've convened a limited hearing today to accomplish a	
10	WILLIAM J. CHEN, ESQUIRE		10	couple of things. The parties have agreed to postpone the	
11			11	case to allow the Planning Board time to act, to allow the	
12			12	Planning Board time to make their recommendation and the	
13			13	Planning Board did request that because it does impact the	
14			14	Great Falls National Park and they wanted to have a say,	
15			15	which I understand. We have some pending motions we're	
16			16	going to dispose of. If there's anyone here that wishes to	
17			17	testify today, rather than waiting for the rescheduled	
18			18	date, they can do that. Will the parties identify	
19			19	themselves for the record?	
20			20	JODY S. KLINE ESQ: Good morning. For the record my	
21			21	name is Jody Kline. I am an attorney for the law firm	
22			22	Miller, Miller and Canby with offices at 200B Monroe Street	
23			23	here in Rockville and I represent the applicant in this	
24			24	case, Maryland Catering, Inc.	
25			25	DAVID BROWN: David Brown of (inaudible) Brown. I	

Transcript of Hearing
Conducted on February 24, 2017

2 (5 to 8)

5	7
1 represent Five Civic Association in this case.	1 seat please raise your right hand. Do you solemnly affirm
2 LYNN A. ROBESON: They're in the record.	2 under penalties of perjury that the statement that you're
3 DAVID BROWN: They're in the record.	3 about to make are the truth, the whole truth and nothing
4 WILLIAM J. CHEN: Good morning Madam Examiner. My name	4 but the truth?
5 is Bill Chen and I'm legal counsel for Mr. and Mrs. Day who	5 DR. ALAN GOLDEN: I do.
6 are (inaudible).	6 LYNN A. ROBESON: Please state your name and address
7 LYNN A. ROBESON: Okay, thank you. Now we're going to	7 for the record.
8 get to, what I'd like to do first is see if there's anyone	8 DR. ALAN GOLDEN: Dr. Alan Golden, 7814 Stable Way,
9 here that wishes to testify instead of, to present their	9 Potomac, MD.
10 (inaudible) testimony instead of waiting for the Planning	10 LYNN A. ROBESON: Can you spell Golden for the
11 Board to make their recommendation?	11 transcript?
12 DAVID BROWN: There is one witness.	12 DR. ALAN GOLDEN: G-O-L-D-E-N. And the first name is
13 LYNN A. ROBESON: I see one hand. Okay, before we get	13 A-L-A-N.
14 into that then I just have one disclosure and that is,	14 LYNN A. ROBESON: Okay, thank you.
15 obviously I discuss the cases with Staff frequently and the	15 DR. ALAN GOLDEN: My house is located directly behind
16 Zoning Ordinance (inaudible). I did contact Staff in a	16 the proposed structure. I moved to the area in 1988, in
17 phone call in which, to discuss-	17 Woodlawn, which is a couple hundred yards north of this
18 WILLIAM J. CHEN: Excuse me ma'am. You mean, when you	18 site. I move there for a specific-
19 say Staff you mean the staff for the Maryland-National	19 LYNN A. ROBESON: A hundred yards, did you say?
20 Capital Park and Planning Commission?	20 DR. ALAN GOLDEN: several hundred yards.
21 LYNN A. ROBESON: Yes. I did contact them to discuss	21 LYNN A. ROBESON: Okay.
22 when the Planning Board moved its hearing. At one point the	22 DR. ALAN GOLDEN: It's the next block.
23 Planning Board wanted to pull the hearing, their hearing,	23 LYNN A. ROBESON: Okay.
24 and I did discuss when they moved the hearing to a later	24 DR. ALAN GOLDEN: I moved there for several reasons.
25 date, I think it was February 16th, I did contact Staff to	25 It was convenient to the beltway. I work in Virginia, down
6	8
1 see if the Planning Board would be able to get their	1 at Woodbridge. I've been commuting for forty-two years.
2 recommendation in seven days in advance of the hearing and	2 LYNN A. ROBESON: Wow. You don't look that tired.
3 during that discussion we discussed a number of items	3 DR. ALAN GOLDEN: When I started there was one span on
4 including what the Staff recommendation given that they	4 the American Legion Bridge.
5 didn't have all of the information, (inaudible), that type	5 LYNN A. ROBESON: Wow.
6 of thing. And at the time Mr. Weaver said, well Jody Kline	6 DR. ALAN GOLDEN: And we called it the Cabin John
7 is a friend of mine. I didn't take it that that would, I	7 Bridge at that time.
8 didn't think that it was a big deal. I didn't take it that	8 LYNN A. ROBESON: Yeah.
9 that biased his case. I did receive an explanation of his	9 DR. ALAN GOLDEN: So I went through all that
10 statement that many of the Staff at the Planning Department	10 construction, commuting and of course the traffic is now
11 have very collegial relationships with Development	11 even more insane. But the reason that I moved to this area
12 Attorneys and, and his legal counsel didn't feel it	12 specifically was because, not just being convenient, it was
13 necessary to recuse himself. I have no reason, their	13 quiet. If I wanted noise or a hustling area I would've
14 position was, well we'd have to recuse everybody but I, out	14 moved to downtown Bethesda, downtown Rockville or even DC
15 of an abundance of caution I'm just disclosing it. I have	15 but I wanted peace and quiet. In 1998 I got engaged and
16 no reason to dispute or think that their explanation is	16 decided to move to a larger house so I identify a beautiful
17 incorrect. Okay, so that's disclosed. Now let's, if we	17 lot, which overlooked, basically a forest that was facing
18 would like, because I have a feeling that getting the	18 the same way my former residence was and I designed and had
19 timing of the case and the next hearing date is going to be	19 a house built for myself and my former fiancé. She never
20 a little complicated, I would like to let the gentleman who	20 made the final trip.
21 wishes to testify, testify. And then we can get to the	21 LYNN A. ROBESON: My condolences.
22 motions, the preliminary matters that are in front of us	22 DR. ALAN GOLDEN: Actually I think I escaped.
23 and we can get to scheduling another case, alright? Sir,	23 LYNN A. ROBESON: It worked out well?
24 would you please come forward? Now our testimony is under	24 DR. ALAN GOLDEN: Yes. So now it has (inaudible). But
25 oath and subject to cross examination. So when you have a	25 the same reason goes for why I chose that spot. Quiet.

Transcript of Hearing
Conducted on February 24, 2017

3 (9 to 12)

<p style="text-align: right;">9</p> <p>1 There's rush hour traffic, which quickly disappears after 2 seven or eight o'clock at night. There's no commercial 3 activity between Potomac Village and Cabin John. That's 4 several miles in either direction, except for Old Angler's 5 Inn, which at the time was a fairly quiet place. It was 6 very well-known for people to go there for private, quiet 7 dinners. It was not a nuisance. A few years ago they were 8 given permission for a patio, which we thought was going to 9 be for quiet dinner music and outdoor dining. Well this 10 particular patio became the site of loud parties. Public 11 address systems, window rattling bass, loud music that you 12 can hear blocks away. I walk my dog- 13 LYNN A. ROBESON: By public address system, do you 14 mean amplified music? 15 DR. ALAN GOLDEN: Yeah, amplified music and amplified 16 speeches and singing. 17 LYNN A. ROBESON: Okay. 18 DR. ALAN GOLDEN: If I would go to sleep early, 19 sometimes I would wake up to a hundred people singing Happy 20 Birthday over a PA system. On more than one occasion I 21 called the management of Old Angler's and asked them, after 22 the noise ordinance was supposed to kick in, giving them an 23 hours grace period, I asked them to quiet it down. More 24 often than not they did not and on, I cannot exactly, give 25 an exact number but I called the police and things quieted</p>	<p style="text-align: right;">11</p> <p>1 I'm not sure about that. But that makes it even harder to 2 see and the parking is totally inadequate and even though 3 the proposal for a shuttle bus was deleted, there's nothing 4 to keep that from being resurrected at any time as far as I 5 know. And where's the nearest place to park legally? Our 6 street and the main street that runs through the 7 neighborhood, Stable Lane. Last weekend when it was really 8 nice, overflow from the park was several blocks into Stable 9 Way, bumper to bumper parked, even at intersections. Now 10 that's the daytime. It's a public street. As long as they 11 don't block intersections or crosswalks, it's something 12 that you can live with. But for this to be at night when 13 people are trying to sleep, I don't think that anybody in 14 the neighborhood would've moved there if they would've 15 known, if there was an existing facility like this. I was 16 trying to think of something comparable and my mind came to 17 medical instance. If I own a respiratory therapy center for 18 asthmatics, I would not want an incinerator next door, no 19 way, no how. But if an incinerator was there, would I set 20 up my facility there? Not in a million years. So I can't 21 say that whoever is there first has all the rights. But 22 this is zoned for housing and I expected, when I moved 23 here, that nothing more than a few more houses would be 24 built. I don't know exactly how many it's zoned for but 25 it's a few houses, people that go to sleep at night. Not</p>
<p style="text-align: right;">10</p> <p>1 down. Very often this took until eleven o'clock at night. 2 Sometimes even during the week. Now I walk my dog between 3 nine and ten at night, almost every night. Every house on 4 the street is dark. People are in bed asleep or in quiet 5 time. But the noise from that patio, which is all the way 6 out on MacArthur Blvd, carries several blocks away through 7 four rows of houses and townhouses and to another street. 8 And it's ridiculous. If I had've know that it was going to 9 turn into that I would've stepped up to the plate back then 10 but I was told otherwise. Now their planning to remove, on 11 this particular proposal, plans to remove half of the 12 intervening foliage, half of the distance and put in a 13 party palace. I know it's being submitted as a country inn 14 but this is three miles from the beltway. It's not the 15 country. There may be some overnight apartments available, 16 probably for the people at the party, to continue their 17 party. That does not make it an inn. It's quite simply, as 18 a banquet facility, it's for parties; loud, noisy parties. 19 I don't know quiet parties. People celebrating things make 20 a lot of noise. They drink a lot. They drive, MacArthur 21 Blvd is a very unsafe road at night. When it's wet or snowy 22 or icy, it's even more dangerous. The ingress and egress 23 for this proposal is within twenty yards of blind curves on 24 either side. And if I'm not mistaken, when I last looked at 25 a site plan the approach to MacArthur Blvd was below grade.</p>	<p style="text-align: right;">12</p> <p>1 people that party into the wee hours and this proposal has 2 people going to one-thirty in the morning every night of 3 the week as a possibility. And then there was no mention of 4 outside catering. Well if there's outside catering, those 5 catering trucks are going to have to come back to home base 6 and then they're going to have to unload. And unloading 7 trucks full of dishes and glasses and silverware and 8 cooking equipment and serving equipment and tables and 9 chairs and who knows what else, that's going to be 10 happening well after hours too, maybe until two or three 11 o'clock in the morning. And to clean up for any party 12 that's going on there is going to also be after the party 13 closes. So this is going to be noise less than fifty yards 14 from my bedroom window, well into the wee hours of the 15 morning on any given night. And by the time the police get 16 there they will quiet down. But the damage is done. People 17 have to choose, people choose to live in an environment 18 that's quiet and peaceful and suburban and residential and 19 not have something erected right on top of the that's going 20 to destroy their quality of life. 21 LYNN A. ROBESON: Okay. Thank you. I just have one 22 question. You said it's several, several hundred yards. 23 You're talking about the Old Angler's Inn? 24 DR. ALAN GOLDEN: No. I'm- 25 LYNN A. ROBESON: Because then you said it's fifty</p>

Transcript of Hearing
Conducted on February 24, 2017

4 (13 to 16)

13	<p>1 yards so I just want to know which-</p> <p>2 DR. ALAN GOLDEN: I'm saying several hundred yards was</p> <p>3 where my first house was.</p> <p>4 LYNN A. ROBESON: Oh, I get it, okay.</p> <p>5 DR. ALAN GOLDEN: This new place is directly, on the</p> <p>6 map, probably the second closest house to this property.</p> <p>7 And if I can think of, guesstimate that it's a hundred</p> <p>8 yards from the back of my house to MacArthur Blvd. More</p> <p>9 than half of that distance is going to be lost and the</p> <p>10 facility is in the direct line of sight with my home.</p> <p>11 LYNN A. ROBESON: Okay. I understand now. I have one</p> <p>12 question. Have you signed, once you testify you're</p> <p>13 technically a party to the case which means you're entitled</p> <p>14 to get all of the notices? You're entitled to-</p> <p>15 DR. ALAN GOLDEN: I get them now.</p> <p>16 LYNN A. ROBESON: Well that changes once we've has a</p> <p>17 hearing. So did you put your name and address down there?</p> <p>18 DR. ALAN GOLDEN: I did.</p> <p>19 LYNN A. ROBESON: Okay, let me ask you something else</p> <p>20 then. Do you want to be in, you will get notice of future</p> <p>21 hearings. Do you want to be in on the scheduling aspect of,</p> <p>22 sometimes we have conversations between for instance, the</p> <p>23 attorneys.</p> <p>24 DR. ALAN GOLDEN: I can fit into whatever is being</p> <p>25 scheduled.</p>	15	<p>1 LYNN A. ROBESON: I can't see, am I missing?</p> <p>2 DR. ALAN GOLDEN: Flossy? Flossy? Sit. Up.</p> <p>3 LYNN A. ROBESON: Oh, there is a little puppy!</p> <p>4 DR. ALAN GOLDEN: Yeah, she's also a service animal.</p> <p>5 LYNN A. ROBESON: Oh I didn't know she was, for the</p> <p>6 record, he's pointing to a really cute little, what is it?</p> <p>7 DR. ALAN GOLDEN: Cava chon.</p> <p>8 LYNN A. ROBESON: Cava chon.</p> <p>9 DR. ALAN GOLDEN: And she's already bored. You saw her</p> <p>10 yawn.</p> <p>11 LYNN A. ROBESON: Okay. Well she's very well behaved.</p> <p>12 DR. ALAN GOLDEN: Most of the time, yes.</p> <p>13 LYNN A. ROBESON: Okay, with that, thank you. And I</p> <p>14 just wanted to clarify that. Mr. Kline can now ask you</p> <p>15 questions if he wishes and anybody else can ask.</p> <p>16 DR. ALAN GOLDEN: I promise she won't bite you. Any</p> <p>17 questions sir?</p> <p>18 JODY S. KLINE ESQ: Actually what I suggest is, Mr.</p> <p>19 Brown brought a copy of the site book. Just verify then</p> <p>20 which one, would you have a conversation with the doctor</p> <p>21 and help him understand the dimensions of your site, ask</p> <p>22 him the questions?</p> <p>23 DAVID BROWN: Yes.</p> <p>24 JODY S. KLINE ESQ: Let me ask the questions.</p> <p>25 LYNN A. ROBESON: Yeah, why don't you, yes.</p>
14	<p>1 LYNN A. ROBESON: Okay, that's just what I wanted. You</p> <p>2 will get notified of the hearings. From now on though, you</p> <p>3 may not get a written notice of the hearing. We announce</p> <p>4 what happens at the hearing. I mean we announce any future</p> <p>5 dates at the hearing itself and I'm just explaining to you</p> <p>6 because you can, transcripts of our hearings our posted on</p> <p>7 OZHAs website so you can go, I think we have ten calendar</p> <p>8 days, transcripts are-</p> <p>9 DR. ALAN GOLDEN: I'm aware of that.</p> <p>10 LYNN A. ROBESON: Okay.</p> <p>11 DR. ALAN GOLDEN: And also I'll be kept informed by</p> <p>12 the neighborhood organization.</p> <p>13 LYNN A. ROBESON: Okay. I just wondered if I just</p> <p>14 schedule with Mr. Kline, Mr. Brown and Mr. Chen, are you</p> <p>15 okay with that?</p> <p>16 DR. ALAN GOLDEN: That's fine. My best day is Friday</p> <p>17 but outside of that-</p> <p>18 LYNN A. ROBESON: I can see.</p> <p>19 DR. ALAN GOLDEN: No, this is one (inaudible). I'm a</p> <p>20 children's dentist.</p> <p>21 LYNN A. ROBESON: Well that's very nice.</p> <p>22 DR. ALAN GOLDEN: Dr. Alan (inaudible).</p> <p>23 LYNN A. ROBESON: Okay.</p> <p>24 DR. ALAN GOLDEN: And that's why, that's why Flossy</p> <p>25 works for me.</p>	16	<p>1 JODY S. KLINE ESQ: The question would be, after</p> <p>2 reviewing the plan, would you like to reconsider your</p> <p>3 testimony about the proximity of the back of your house</p> <p>4 fifty feet from the proposed-</p> <p>5 DR. ALAN GOLDEN: I said fifty yards.</p> <p>6 JODY S. KLINE ESQ: Fifty yards. Thank you.</p> <p>7 DR. ALAN GOLDEN: I'm not sure of the exact</p> <p>8 dimensions.</p> <p>9 JODY S. KLINE ESQ: Mr. Brown can help you with that.</p> <p>10 DR. ALAN GOLDEN: Okay.</p> <p>11 DAVID BROWN: Dr. Golden, I want to show you Exhibit</p> <p>12 9. This is the existing area map and the conditional use</p> <p>13 plan.</p> <p>14 LYNN A. ROBESON: I have a scale. Can you read a</p> <p>15 scale?</p> <p>16 DAVID BROWN: First of all I want to, just to orient</p> <p>17 you. This is called Block A with houses numbered from</p> <p>18 twenty-five to forty-five on the north side of Stable Way.</p> <p>19 Are you in that block?</p> <p>20 DR. ALAN GOLDEN: Yes.</p> <p>21 DAVID BROWN: What house number is yours?</p> <p>22 DR. ALAN GOLDEN: I believe its number 38.</p> <p>23 DAVID BROWN: Okay. Now I want to show you a graphic</p> <p>24 scale on here. One inch equals a hundred feet. You can</p> <p>25 take, you can take this scale for example, and this much</p>

Transcript of Hearing
Conducted on February 24, 2017

5 (17 to 20)

<p>17</p> <p>1 would be-</p> <p>2 DR. ALAN GOLDEN: That's a hundred yards.</p> <p>3 DAVID BROWN: This much would be a hundred yards,</p> <p>4 right here.</p> <p>5 DR. ALAN GOLDEN: Okay.</p> <p>6 DAVID BROWN: So just kind of using that as a start</p> <p>7 and if you can mark it off, mark it off in any greater</p> <p>8 detail that you want.</p> <p>9 DR. ALAN GOLDEN: That's fine.</p> <p>10 DAVID BROWN: Do you want to reconsider your</p> <p>11 testimony?</p> <p>12 DR. ALAN GOLDEN: I don't know where the buildings</p> <p>13 would be, exactly on this property.</p> <p>14 LYNN A. ROBESON: Is there a site plan? Does his</p> <p>15 property show up on the site plan?</p> <p>16 JODY S. KLINE ESQ: Well I have a conditional use</p> <p>17 plan. I thought that was here on the table. Maybe that's</p> <p>18 (inaudible).</p> <p>19 LYNN A. ROBESON: Can you give me an exhibit number?</p> <p>20 DR. ALAN GOLDEN: Okay now, I can correct my</p> <p>21 testimony. It seems to be approximately, from my house to</p> <p>22 MacArthur Blvd, 220 yards.</p> <p>23 LYNN A. ROBESON: Okay.</p> <p>24 DR. ALAN GOLDEN: So I guess-</p> <p>25 LYNN A. ROBESON: Yards?</p>	<p>19</p> <p>1 JODY S. KLINE ESQ: Okay, so we're at forty-one,</p> <p>2 forty, thirty-nine, thirty-eight. Show the existing house</p> <p>3 here.</p> <p>4 LYNN A. ROBESON: So you're on lot thirty-eight as</p> <p>5 shown on 72B?</p> <p>6 JODY S. KLINE ESQ: And I'll go ahead and mark this.</p> <p>7 DR. ALAN GOLDEN: It's either thirty-eight or thirty-</p> <p>8 nine.</p> <p>9 LYNN A. ROBESON: Okay why don't you, we're going to</p> <p>10 have to introduce it as an exhibit if you are-</p> <p>11 JODY S. KLINE ESQ: (inaudible) I mean it's already in</p> <p>12 the record but I agree we will mark it up.</p> <p>13 LYNN A. ROBESON: Yes. That's what I'm, that's all I'm</p> <p>14 saying.</p> <p>15 JODY S. KLINE ESQ: This is forty-one, forty, thirty-</p> <p>16 nine, so this should be your residence, correct? So I'm</p> <p>17 just writing in (inaudible) residence.</p> <p>18 DR. ALAN GOLDEN: Now this is-</p> <p>19 JODY S. KLINE ESQ: Alright, so let me do it this way.</p> <p>20 So you can see right here this is the northeast corner of</p> <p>21 the building (inaudible) the Country Inn and there is a</p> <p>22 dimension running to the outer property line and the</p> <p>23 dimension is 255 feet, correct?</p> <p>24 DR. ALAN GOLDEN: Okay?</p> <p>25 JODY S. KLINE ESQ: Okay. So it was brought-</p>
<p>18</p> <p>1 DR. ALAN GOLDEN: Yes, 220 yards from my house to</p> <p>2 MacArthur Blvd.</p> <p>3 LYNN A. ROBESON: To MacArthur Blvd.</p> <p>4 DR. ALAN GOLDEN: To MacArthur Blvd.</p> <p>5 DR. ALAN GOLDEN: I don't have the building sited on</p> <p>6 this property.</p> <p>7 LYNN A. ROBESON: Yeah I don't, I don't know. Why</p> <p>8 don't you, I'm looking at Exhibit 72e, which I don't even</p> <p>9 know if that's the most recent.</p> <p>10 JODY S. KLINE ESQ: (inaudible)</p> <p>11 LYNN A. ROBESON: Okay. What exhibit is that?</p> <p>12 JODY S. KLINE ESQ: 72E. Doctor, please come over</p> <p>13 here, okay?</p> <p>14 DR. ALAN GOLDEN: Thank you. Oh, can I have that</p> <p>15 little piece of paper? I'm sure this will be the same.</p> <p>16 LYNN A. ROBESON: Well I can get a scale.</p> <p>17 JODY S. KLINE ESQ: And I can read a scale.</p> <p>18 DAVID BROWN: We have the dimensions.</p> <p>19 LYNN A. ROBESON: Oh you have the dimensions.</p> <p>20 DAVID BROWN: Actually it's the same scale.</p> <p>21 JODY S. KLINE ESQ: So doctor, let me just, so what</p> <p>22 this is this is a copy of the Conditional Use Plan that</p> <p>23 shows the footprint of the building. You said your</p> <p>24 residence was lot number what?</p> <p>25 DR. ALAN GOLDEN: I believe it was thirty-eight.</p>	<p>20</p> <p>1 LYNN A. ROBESON: Is that, did you say feet? I'm</p> <p>2 sorry.</p> <p>3 JODY S. KLINE ESQ: Yes ma'am.</p> <p>4 LYNN A. ROBESON: Okay, go ahead.</p> <p>5 DR. ALAN GOLDEN: Right here, 255 feet from here to</p> <p>6 right behind my house.</p> <p>7 JODY S. KLINE ESQ: Okay.</p> <p>8 DR. ALAN GOLDEN: If you add that much more you've got</p> <p>9 another hundred feet.</p> <p>10 JODY S. KLINE ESQ: So you would say then to the back</p> <p>11 of your house it's probably in the range of 350-</p> <p>12 DR. ALAN GOLDEN: 400-</p> <p>13 JODY S. KLINE ESQ: 400 feet. Okay.</p> <p>14 DR. ALAN GOLDEN: About 250 to 355 feet.</p> <p>15 JODY S. KLINE ESQ: Okay. That's the only question.</p> <p>16 DR. ALAN GOLDEN: So then I could, I'll have to</p> <p>17 correct my testimony to say that, a hundred yards from the</p> <p>18 site, from the building.</p> <p>19 LYNN A. ROBESON: Okay.</p> <p>20 DR. ALAN GOLDEN: Oh, and the dumpster? It is directly</p> <p>21 over from my house.</p> <p>22 JODY S. KLINE ESQ: Okay. Thanks. No further questions</p> <p>23 ma'am.</p> <p>24 LYNN A. ROBESON: Okay, thank you.</p> <p>25 DR. ALAN GOLDEN: Can I make an additional comment?</p>

Transcript of Hearing
Conducted on February 24, 2017

6 (21 to 24)

21	1 LYNN A. ROBESON: Absolutely. Well, first, before, you 2 can wrap it all up, do you, do Mr. Chen or Mr. Brown have 3 any questions? 4 DAVID BROWN: No questions. 5 WILLIAM J. CHEN: No questions. 6 LYNN A. ROBESON: Okay, go ahead. 7 DR. ALAN GOLDEN: I noticed that the dumpster 8 enclosure is in direct line of sight to my home as well. 9 LYNN A. ROBESON: Okay. 10 DR. ALAN GOLDEN: The dumpster, the dumpsters for Old 11 Angler's Inn are located on MacArthur Blvd along with, from 12 what I've been told, illegal parking from his employees, 13 wood piles and other debris from the restaurant. Very often 14 those dumpsters are left open. 15 LYNN A. ROBESON: Okay. 16 DR. ALAN GOLDEN: And I've seen, personally seen 17 animals going in and out of them. Having a small dog, now 18 she doesn't go out by herself, don't need predators coming 19 in and out and since the patio opened, and that's pretty 20 much about the same time we started getting visits from a 21 large number of turkey vultures which we never had before. 22 LYNN A. ROBESON: Okay. Any other questions from 23 anyone? Okay, thank you very much Mr. Golden. Make sure you 24 sign the sign in sheet out in the hall. 25 DR. ALAN GOLDEN: I did.	23	1 LYNN A. ROBESON: I had 170, Site Plan marked to show 2 a joint, abutting owner's residence. 3 DR. ALAN GOLDEN: I could sign that. Would that help? 4 LYNN A. ROBESON: No you're fine. Actually I didn't 5 say, did you mark whose residence it was? 6 JODY S. KLINE ESQ: I marked this lot as Golden 7 residence and I put the date of the testimony just to 8 recall- 9 LYNN A. ROBESON: Okay, that's fine. So I'm going to 10 call it Site Plan marked to show abutting owner's 11 residence. And we'll have it handy at the next hearing so 12 we can have everybody on the one exhibit. 13 JODY S. KLINE ESQ: I'd rather have Flossie's 14 footprint. 15 DR. ALAN GOLDEN: She might be on your (inaudible). 16 LYNN A. ROBESON: Okay, more information. So with 17 that, Mr. Golden thank you for testifying and you can be 18 excused. You may leave if you want. You can hang around. 19 Anyone else that wishes to testify today? Alright, seeing 20 none we will get, I have two motions; I have two matters 21 pending which is Mr. Kline's motion to amend to reduce the 22 application to a total of 160 people permitted at events. I 23 also have a motion from Mr. Kline to amend his pre-hearing 24 statement. As for the pre-hearing statement, I'm going to 25 allow you to amend this given that we are now postponing
22	1 LYNN A. ROBESON: Okay. Did you have anything else? 2 JODY S. KLINE ESQ: No I have no questions. I'll just 3 go ahead; do you want to put an exhibit number on this? 4 LYNN A. ROBESON: Yeah, I think we need to. It would 5 be Exhibit- 6 DR. ALAN GOLDEN: Thank you very much. 7 LYNN A. ROBESON: Thank you for taking the time to 8 come out. So 170, any objections? 9 DAVID BROWN: Excuse me. 10 LYNN A. ROBESON: Yes sir? 11 WILLIAM J. CHEN: Might it be just easier if I suspect 12 Mr. Kline in the future probably would want to have other 13 people who would testify, probably identify their residence 14 and use the same exhibit? And because of that is it easier 15 to let Mr. Kline, we can mark it, I have no problem marking 16 it as 170 and have Mr. Kline hang on to it. 17 LYNN A. ROBESON: Well I can't let him hang on to it 18 but for the hearing, what I can do is make sure it's 19 available- 20 WILLIAM J. CHEN: Fine, that works. 21 LYNN A. ROBESON: I just don't, I'm not supposed to 22 give things to- 23 WILLIAM J. CHEN: No problem. 24 LYNN A. ROBESON: So,- 25 JODY S. KLINE ESQ: So the number you had was?	24	1 the case. And there's not the surprise, initially I was a 2 little reluctant but now that it's going to be postponed we 3 are well within the timeframe of the notice that would be 4 required. As to the motion to amend, I understand Mr. 5 Chen's arguments about the moving target. My position is 6 that that is in some way part of the process. I think that 7 the objection here is the major; you know a lot of times 8 when we have amendments it's sort of like moving a wall 9 back or adding landscaping. So I think that the objection 10 arises a little bit, and maybe I'm wrong but from the major 11 nature, I'm still going to allow it because as I said we 12 are postponing the case now and there is time for Staff to 13 review it and I'm sympathetic to the moving target 14 argument, particularly in general motions to amend are 15 built in to the process to be able to let the applicant 16 address community concerns. At some point when you have big 17 amendments it becomes more in the nature of changing the 18 application. But I don't want to preclude the ability, this 19 could be just as well a condition of approval and I don't 20 want to preclude by rejecting an amendment and even, I had 21 a case in the Court of Appeals, (inaudible) Citizen's 22 Association where we argued that something was an amendment 23 that couldn't be made and the other side argued that's a 24 condition of approval. And I lost that case. So I don't 25 want to preclude the ability to impose a condition of

Transcript of Hearing
Conducted on February 24, 2017

7 (25 to 28)

<p style="text-align: right;">25</p> <p>1 approval. I think that part of the issue of what's going on 2 here is reposed. When do, does everybody get reposed? What 3 I'm trying to do is balance two things in this case. One is 4 the fact that Angler's Inn was (inaudible) so the, until 5 last August or July I think. And so for all intents and 6 purposes the process weren't able to begin until August. 7 I'm also balancing against that, the communities right, 8 it's nobody's sitting here's fault, that it sat so long but 9 I'm also trying to balance the right to repose. If this had 10 gone through a normal process, you know, if it had been 11 prosecuted all the way up from day one, it would either be 12 approved or denied. If it was even denied the neighborhood 13 would at least have eighteen months where they didn't have 14 to deal with it. Now they've been dealing with it and 15 fighting it for quite a while. So that is what I'm trying 16 to balance. It doesn't mean, depending on the nature of 17 changes in the future and, I'm going to accept it for now 18 because we are postponing the case. It doesn't mean that 19 every amendment, and this is something, so, that's my 20 reason for accepting the amendment. So now we're going to 21 move on unless anybody has anything to say about that 22 ruling, you may. I have everything in the record. We're 23 going to move on to scheduling the case. So what I'm 24 getting from Staff, and I did have another conversation 25 last night-</p>	<p style="text-align: right;">27</p> <p>1 was going to forward the email. She did forward the email. 2 WILLIAM J. CHEN: The last one I got from Staff was 3 the one that contained the site distance. 4 LYNN A. ROBESON: No, there's, oh, for some reason I 5 did, I'm exhibitizing this. Now I've told you our word for 6 getting these on the record and I see that- 7 JODY S. KLINE ESQ: Madam Hearing Examiner? Can I 8 maybe try and- 9 LYNN A. ROBESON: Okay, well let me, no let me do it. 10 I got an email from Staff, from Elcibit yesterday. It's the 11 email, I think, that everybody else got about timing, the 12 timing of when Staff could review the case. 13 JODY S. KLINE ESQ: No, it doesn't ring a bell to any 14 of us, I don't think. 15 LYNN A. ROBESON: Huhh? 16 JODY S. KLINE ESQ: I don't believe any of the counsel 17 recognizes this memo. 18 WILLIAM J. CHEN: Yeah, we didn't get it. 19 LYNN A. ROBESON: I'm so sorry. She didn't CC the 20 parties and I didn't, I am so sorry. Okay, what I'm going 21 to do, first of all, I have a response from, I'm trying to 22 keep this case under control, okay? I'm really trying. I'm 23 going to give you what I have. I'm going to take a five 24 minute break. What they, Elcibit responded to me about her 25 outstanding items. She CC'd, she didn't even CC Jody Kline.</p>
<p style="text-align: right;">26</p> <p>1 WILLIAM J. CHEN: Excuse me if I may. 2 LYNN A. ROBESON: Yes? 3 WILLIAM J. CHEN: When you refer to Staff, you've done 4 it several times, you're talking about the Staff from 5 Maryland-National Capital Park and Planning Commission? 6 LYNN A. ROBESON: Yes. Yes. They didn't give me, as I 7 understand it there are still some things that Staff needs 8 to deal with the sound issues, including floor plan. 9 JODY S. KLINE ESQ: Oh, okay. 10 LYNN A. ROBESON: When I say deal with I mean to come 11 to a final recommendation. There's an amendment which I 12 asked that they, it's just a proposed amendment as I 13 understand, just a concept, that you submitted to them. 14 JODY S. KLINE ESQ: What subject? 15 LYNN A. ROBESON: Eleven parking spaces? So- 16 WILLIAM J. CHEN: Excuse me, what are we talking 17 about? 18 LYNN A. ROBESON: This came in yesterday. 19 WILLIAM J. CHEN: All I saw yesterday was a letter 20 from Mr. Kline about do not set hearing dates. 21 JODY S. KLINE ESQ: There is no application to- 22 LYNN A. ROBESON: No, I know that. 23 JODY S. KLINE ESQ: I was just trying to clarify about 24 what Mr. Chen was asking. 25 LYNN A. ROBESON: Well maybe she didn't, I thought she</p>	<p style="text-align: right;">28</p> <p>1 I'm going to let you read that. She also mentioned in the 2 email that she had received an email. They, Staff, there 3 was an email to Rich Weaver to Mr. Kline yesterday evening 4 with a possible revision to the plan, attentive revision to 5 the plan showing eleven more parking spaces. I am going to, 6 I'm going to take a break. I'm going to give you Exhibit 1 7 WILLIAM J. CHEN: Can we make copies? 8 LYNN A. ROBESON: Absolutely. This was ten o'clock. 9 We're short staffed and it, this was my bad and I 10 apologize. I am going to leave this with you. 11 WILLIAM J. CHEN: I don't think the Examiner has to 12 apologize for this. 13 LYNN A. ROBESON: I'm going to leave this with you. 14 There's another exhibit that I thought was in here that I'm 15 going to get for you that shows, it's just, apparently it's 16 just attentive sketch. As I understand it, they explained 17 to me that it was a sketch that I asked her to forward to 18 us for this hearing. So, I do have, to be honest with you I 19 don't, I do have some questions. Why we sat there Tuesday 20 and nobody mentioned that this was in the offing. I don't 21 care, and I also say that I want to get this case done. I'm 22 trying to weigh equities, alright? I want to get it done. 23 In a normal case you would have the ability to adjust to 24 comments from the Planning Board and everybody else. But 25 I'm also weighing, unfortunately you're in the middle of a</p>

Transcript of Hearing
Conducted on February 24, 2017

8 (29 to 32)

<p>29</p> <p>1 case that sat for a long time. So I understand that. Now 2 for whatever reason there is an exhibit, this is one, why 3 don't I do this. I'm missing the extra Exhibit 168 and I 4 think it's on the Exhibit List. 5 DAVID BROWN: It is. 6 LYNN A. ROBESON: I put it on the Exhibit List. 7 DAVID BROWN: It is. 8 LYNN A. ROBESON: I'm going to get it. Alright, you 9 can think about it. My question is, my real question is, 10 how are we going to get through this and try to be fair to 11 the applicant, to respond to legitimate concerns but also 12 to try to conclude the case. That's my question. I'm going 13 to tell you today, and I don't have the benefit of a full 14 staff report here. I'm going to give to you today, to both 15 sides, my concern about their evidence as, based on my 16 review of the file to try and give people guidance. To try 17 to give you guidance as to what I'll be looking for. Okay? 18 I'm going to do it on the record so everybody is on notice 19 that this is coming through and where I'm coming from to 20 try and give you an opportunity instead of going through 21 the process and reacting later to what people say. I'm 22 going to try to give you a heads up. I'm a little 23 handicapped because I don't have a complete staff report. 24 And then we can talk about the time you think you need to 25 make, to address some of these concerns.</p>	<p>31</p> <p>1 appreciate your being, I really do appreciate your being 2 accommodating. I really do. I just want to keep everything; 3 it's my job to take care of the record. I've clearly done a 4 poor job. So let me go and make copies and we'll handle it. 5 I don't want anybody in trouble. 6 WILLIAM J. CHEN: So we're in recess ma'am? 7 LYNN A. ROBESON: You're recessed. I'm going to, let's 8 say twenty, if you have the time, twenty minutes, okay? 9 Thank you and I apologize. 10 LYNN A. ROBESON: For the record it's 10:50. Okay, so 11 we're now at the point, I believe I've covered everything. 12 We're now at the point of, well maybe before we start I 13 should say there's one other consideration I balanced. So 14 you all know the wavelength that I'm, my concerns about 15 this case. The other thing, a couple of years ago there was 16 a streamlining initiative in which special exceptions were 17 roundly criticized because of the length of time they take. 18 And that is one reason that the Counsel came up with 19 limited uses and took away some, in some of the more urban 20 zones. There are not as many special exceptions as I 21 understand it. I don't deal with the urban zones too much. 22 So, and we do a report, OZHA does a report to the Counsel 23 quarterly about our processing times for special 24 exceptions. And so that is the other thing. I due process, 25 I'm going to take whatever time I need, due process wise,</p>
<p>30</p> <p>1 JODY S. KLINE ESQ: What I wrote the Hearing Examiner 2 yesterday, it was to ask for the opportunity to do exactly 3 what you just wanted, so you kind of explained why I think 4 we would like to amend the application. Going back to where 5 we were. We sat down on Tuesday. I said, 'we're not 6 touching this application again.' 7 LYNN A. ROBESON: Well, yeah. So I was a little 8 surprised to find this email. 9 JODY S. KLINE ESQ: Correct. 10 LYNN A. ROBESON: So what I'm gonna do, and I'm a bad 11 exhibitizer. I'm really bad at it. I have learned to admire 12 Ms. Forbes at our office because I clearly am not up to the 13 task. What I'm gonna do is go and get all of the exhibits, 14 because there is one missing which is the email with the 15 potential changes. 16 WILLIAM J. CHEN: Is that 169? 17 LYNN A. ROBESON: Well let me get it because I have it 18 marked. I must have just not put it in here. There was an 19 email from Mr. Kline to Mr. Weaver. Yes. Alright, so I 20 have, you can look at 167. Let me get the other one and 21 then I can, well let me do this. 22 JODY S. KLINE ESQ: If you will, if you will allow us, 23 I'll just go to the Board of Appeals and make copies and 24 deliver it to- 25 LYNN A. ROBESON: No, no. I'll do it, okay? I</p>	<p>32</p> <p>1 and the Planning Board, I understand their rationale for 2 wanting to see it because it is right up against a major 3 national resource. But, I'm just going to be on the record. 4 Those are my bosses and I don't think that they would want 5 me to eliminate due process. But I do think, and I'm sure 6 they wouldn't. But, so, we're going to, I want to give 7 everyone a fair shake with the considerations that I've 8 just outlined. Now Mr. Kline, do you want to take it, do 9 you have a suggestion about the timing of this? 10 JODY S. KLINE ESQ: And I think you're talking about 11 the dates for the hearings but what I want to do is kind of 12 explain why I wrote you yesterday because on last Tuesday 13 when we met I felt pretty strongly that the applicant had 14 his case and we all agreed that we had moved dates 15 (inaudible) when we walked in. In conversations with the 16 staff at Park and Planning Comissions- 17 LYNN A. ROBESON: Just a second. I can't, they can't 18 have cross talks so just- 19 JODY S. KLINE ESQ: Well I- 20 LYNN A. ROBESON: Well let him- 21 WILLIAM J. CHEN: Okay. You made a reference to, he 22 wrote you yesterday and I'm trying to find that. 23 LYNN A. ROBESON: Oh God. You know, you don't have 24 that either? He did write to me. Did you copy it? 25 WILLIAM J. CHEN: Well is that the memo that said,</p>

Transcript of Hearing
Conducted on February 24, 2017

9 (33 to 36)

<p>33</p> <p>1 'please don't set hearings'?</p> <p>2 JODY S. KLINE ESQ: Correct.</p> <p>3 WILLIAM J. CHEN: Okay, fine.</p> <p>4 LYNN A. ROBESON: I thought I had failed again. So can</p> <p>5 you, can you begin again?</p> <p>6 JODY S. KLINE ESQ: Well let me try and get through,</p> <p>7 try and get to the quick part. What I'm trying, I want to</p> <p>8 do is just give a background as to-</p> <p>9 LYNN A. ROBESON: So you had discussion with Staff?</p> <p>10 JODY S. KLINE ESQ: And it probably goes, actually let</p> <p>11 me go even further than that. I believe, after the Planning</p> <p>12 Board hearing last Thursday I believe Mr. Chen or Mr. Brown</p> <p>13 saw the Chairman approach me and told me that he believed</p> <p>14 that this site needed more parking. Those of, these</p> <p>15 gentlemen were here. I think you've listened to the tape.</p> <p>16 The Chairman-</p> <p>17 LYNN A. ROBESON: Part of it. I didn't-</p> <p>18 JODY S. KLINE ESQ: Well I'll characterize it this</p> <p>19 way. The Chairman made a number of comments. He felt</p> <p>20 parking was, there should be more parking but there were no</p> <p>21 other board members who (inaudible) at all. So I was</p> <p>22 actually just (inaudible), from conversations with Staff,</p> <p>23 the Chairman made it clear that he definitely wanted more</p> <p>24 parking. And so what I envisioned is that when this comes</p> <p>25 back to board, even if we had gone with the package we all</p>	<p>35</p> <p>1 part of the conditional use application but we're just</p> <p>2 telling you when you come in for, either an application to</p> <p>3 build the driveway to the Country Inn or (inaudible) sub-</p> <p>4 division, we will be looking at trying to improve the</p> <p>5 conditions of the existing restaurant driveways. And one of</p> <p>6 those recommendations did affect the layout for the</p> <p>7 conditional use and that would be if you-, I don't have</p> <p>8 that plan but basically they suggested we eliminate a</p> <p>9 drive-, the northern most driveway which leads into the</p> <p>10 service area for the restaurant, and connect it to the</p> <p>11 driveway that supposed to be to the Country Inn and</p> <p>12 basically put all the traffic to all of the activities on</p> <p>13 the north end of the restaurant to that one driveway. So</p> <p>14 what I, my thought was to file, was to request permission</p> <p>15 to file a plan that would show how more parking could be</p> <p>16 achieved on the property and how I would give you two</p> <p>17 plans. One would not show a connection from the service</p> <p>18 area to the new drive, the rest of the Country Inn</p> <p>19 driveway. Would not show it because I still think we might</p> <p>20 be able to convince DOT that's not a necessary change. But</p> <p>21 if I lost I didn't want to have to come back to you after</p> <p>22 you approved this conditional use permit, and through the</p> <p>23 preliminary plan we lost, and I had to come back and amend</p> <p>24 the application again. This happened to me last year with</p> <p>25 the (inaudible) case that Mr. Grossman heard.</p>
<p>34</p> <p>1 agreed upon the other day, when it got to the Planning</p> <p>2 Board the Chairman would adamantly demand that there be</p> <p>3 more parking. And my, I've had three experiences in the</p> <p>4 last two years where I've tried to resist the Chairman and</p> <p>5 I have not been successful. So my reading of the tea leaves</p> <p>6 was that the recommendation of the Planning Board would be,</p> <p>7 we can't recommend it unless you get more parking. Then I</p> <p>8 would then be in a position where I would come to you and</p> <p>9 say, 'they're telling me I need more parking'. I don't want</p> <p>10 to ask for another extension a week before the ten days</p> <p>11 before the hearing. So what I was trying to do is get ahead</p> <p>12 of the curve of what I think is an inevitable</p> <p>13 recommendation from the Planning Board for more parking by</p> <p>14 filing an application early enough that it hopefully didn't</p> <p>15 delay everything on the other end and everybody would have</p> <p>16 that date certain. We knew what all the things were. The</p> <p>17 letter that arrived from the Department of Transportation</p> <p>18 kind of compounded that in a sense that you received the</p> <p>19 letter from DOT that said,-</p> <p>20 LYNN A. ROBESON: Everybody has a copy of the DOT</p> <p>21 letter, correct?</p> <p>22 DAVID BROWN: Yes.</p> <p>23 LYNN A. ROBESON: Okay, go ahead.</p> <p>24 JODY S. KLINE ESQ: Alright. That DOT letter basically</p> <p>25 said we understand that the restaurant's operations are not</p>	<p>36</p> <p>1 LYNN A. ROBESON: No I heard that.</p> <p>2 JODY S. KLINE ESQ: Okay, we got to, we got to the</p> <p>3 hearing. The Chairman adamantly wanted to have a pedestrian</p> <p>4 pathway.</p> <p>5 LYNN A. ROBESON: Well it also happened in Friend's</p> <p>6 House.</p> <p>7 JODY S. KLINE ESQ: Okay. Yeah, I'm sorry. Good</p> <p>8 example. That's a very good point. So I was trying to get</p> <p>9 ahead of the curve and say if you let me modify or ask to</p> <p>10 modify these things now it will I think, in the long run</p> <p>11 hopefully not delay us on the other end. And I wanted to, I</p> <p>12 wasn't aware that Staff was going to take, I think an</p> <p>13 overly conservative position of how long it was going to</p> <p>14 take to get things done. I'm leading to the (inaudible) of</p> <p>15 your question. The plan that you passed out was, I</p> <p>16 actually, Mr. Brown just asked me a question. "What's the</p> <p>17 debt increase", I actually never studied it. I just asked</p> <p>18 the engineers after talking to staff, is it possible to get</p> <p>19 any more parking on the site and this was delivered to me</p> <p>20 and I just gave it to Mr. (inaudible). It is possible and</p> <p>21 more importantly it's possible without modifying the limits</p> <p>22 of disturbance which would mean we would not have to amend</p> <p>23 the Forest Conservation Plan which was supposed to be</p> <p>24 approved yesterday (inaudible). So all that was, the</p> <p>25 engineers told me that the revisions to the plan that was</p>

Transcript of Hearing
Conducted on February 24, 2017

10 (37 to 40)

<p>37</p> <p>1 represented by some combination of parking spaces without 2 getting into where they are- 3 LYNN A. ROBESON: Staff told you this yesterday? 4 JODY S. KLINE ESQ: No, I'm sorry. 5 LYNN A. ROBESON: Who told you what yesterday? 6 JODY S. KLINE ESQ: My engineers. My engineers had 7 told how long it would take to file a revised conditional 8 use plan showing the two things I've talked about; some 9 additional parking or all of the additional but a 10 (inaudible) seems to be best. Plus a plan that would 11 connect the service area to the Country Inn driveway so 12 there would be one less driveway on MacArthur Blvd. And 13 they tell me that can be done in two weeks. What this 14 (inaudible) is saying is rather than pick a date now, she'd 15 rather all that got in and then she decide how long it 16 would take her get to the Planning Board and I read this as 17 six months as being an outlandishly conservative period of 18 time to get it done. 19 LYNN A. ROBESON: Well you know, I got to go, I, they, 20 Staff doesn't work for me. I can't just say to Staff, I 21 have to take what they say at face value. I can't say- 22 JODY S. KLINE ESQ: Then let's leave it (inaudible) 23 LYNN A. ROBESON: You know they don't work for me. 24 They don't report to me. Very clearly they don't report to 25 me so-</p>	<p>39</p> <p>1 WILLIAM J. CHEN: Well, I'll start. Mr. Kline can say 2 that Staff has everything that they need. But he's also 3 said that his client needs two weeks to file a new plan. 4 And he's even saying that it's one of the alternative plans 5 one with one access that will accommodate Old Angler's Inn 6 and one, presumably that would not accommodate Old Angler's 7 Inn. I'm disappointed to say the least. This is coming in 8 at the last minute. I mean, the email to Staff was Tuesday 9 night. I think it was at 9:15? We had meetings that 10 morning. This new, this is a new plan. The parking does 11 require a new plan and we're now at a point where, and 12 don't get me wrong, but you're correct that you cannot 13 control the Staff and the Staff is going to do what the 14 Staff, and I mean the Park and Planning Commission staff. 15 And now what I'm fearful of is if we accept Mr. Kline's 16 prognostication work and saying that they have everything 17 they need, we're going to come down the road again at some 18 date that you're going to set and we're going to have a 19 repeat that the Staff is going to say we're not done yet or 20 the Board, it's going to go to the Board. The Board is 21 going to say we're not done yet. And I thought what we were 22 trying to do on Tuesday the 22nd was to obviate that kind 23 of a problem, that there would be a deadline. And I 24 remember we talked about this. There would be a deadline 25 and there would be, this is the application. No more</p>
<p>38</p> <p>1 JODY S. KLINE ESQ: The, what I'm proposing is the 2 scope of modification that we believe could be done 3 efficiently and can be filed within two weeks and does not 4 record any other changes other than what I just described, 5 that is to the condition- 6 LYNN A. ROBESON: Well to me that sounds a little 7 unrealistic because they still want Staff on your 8 acoustical. Let me hear from, I understand, I understand. 9 JODY S. KLINE ESQ: I will just say emphatically that 10 they have everything they need to ana-, and in fact- 11 LYNN A. ROBESON: Well that's not my call. That's 12 their call. When I push- 13 JODY S. KLINE ESQ: Can I say this? 14 LYNN A. ROBESON: Yes. 15 JODY S. KLINE ESQ: The only thing they need are than 16 the acoustical issues, the floor plan. You told me about 17 the floor plans the other day. That's easily taken care of. 18 There's no acoustical information still needed to be 19 provided, only the floor plan. 20 LYNN A. ROBESON: Well what I, whatever. I understand. 21 I understand and I understand your concern. I have to, when 22 Staff says six months; I have tried to set deadlines in 23 this case. So, I'm not here. They're not here to say-. Why 24 don't I hear from the two gentlemen over here? Mr. Brown 25 and Mr. Chen, do you want to say, contribute to this?</p>	<p>40</p> <p>1 changes. In fact, even the memo that Staff says, it says 2 the same thing. This is their memo, I guess to you of 12:59 3 yesterday. Their last, I think I've got it, I may not but, 4 this is part of Exhibit 167 but I'm reading where their 5 saying themselves that they're looking for a finalized 6 submission plan. What I'm hearing is that we're now back 7 in, there's going to be more revisions and we're down the 8 road and you can't control what the Staff is going to do, 9 when they're going to do it or the Planning Board, what 10 they decide to do. And so I don't know where we are now. I 11 think that we, I reiterate I think this is a moving target. 12 I think that this latest one has been initiated by the 13 applicant in trying to be responsive to an inappropriately, 14 absolutely inappropriately comment by the Chairman of the 15 Planning Board. To say to an applicant's legal counsel, 16 after a hearing you need more parking is an absolute 17 improper statement to be made by a- 18 LYNN A. ROBESON: Well that is a (inaudible) of 19 judicial proceeding. My- 20 WILLIAM J. CHEN: Excuse me. It's part of it and under 21 any circumstances it's inappropriate because they are 22 participating in a (inaudible) judicial proceeding when 23 they give a recommendation and they know what they're 24 doing. And then, but on top of it 25 LYNN A. ROBESON: Well I can tell you right now that</p>

Transcript of Hearing
Conducted on February 24, 2017

11 (41 to 44)

<p>41</p> <p>1 Legal Staff of the Planning Department strongly disagrees 2 with you. 3 WILLIAM J. CHEN: Well. Okay fine. We know how they 4 operate. 5 LYNN A. ROBESON: Let me, let me just 6 WILLIAM J. CHEN: And it just, the problem is then 7 counsel for the applicant picks up on it and we have now 8 another change and that's what we've been, it's all well 9 and good for you to say, and I respect your comment that 10 the applicant was pro se for the first year or so. Well 11 they don't get any breaks for that. They shouldn't. There 12 was a DRC meeting in May of '15 where they were there. 13 Their engineers were there. I mean, excuse me. They have, 14 during the break Mr. Brown had comments. They have 15 continually gotten breaks and the community is playing 16 catch up constantly and that's where we are. So, I'll leave 17 it to you. I think the April dates are blown off in light 18 of what these memos- 19 LYNN A. ROBESON: Mr. Brown? 20 DAVID BROWN: I'm very much in sympathy with Mr. Chen. 21 The process is one where an application is submitted to the 22 Planning Board for a recommendation one way or the other. I 23 don't see where an applicant is entitled to constantly 24 change the application in the hopes of obtaining a 25 favorable recommendation from the Planning Board. I think</p>	<p>43</p> <p>1 that. 2 DAVID BROWN: So I have, I have some dates from my 3 clients in May where most of them can be here and where we 4 can make this work. But to me today has got to be the drop 5 dead for this case. 6 LYNN A. ROBESON: Well let me do this Mr. Kline. 7 Before, you'll get a, I'll give you a chance to respond. 8 I'm going to tell you my concerns about the application. 9 I'm going to tell both sides my concerns with the evidence 10 submitted today. I'm doing this a little blind because 11 normally by this time I would have a Staff report, okay? 12 But I have every letter in the file and exhibitized them. 13 My concerns are, wait, I have them written down. Noise. 14 WILLIAM J. CHEN: I mean we have yet to have a quasi- 15 judicial hearing. This is a- 16 LYNN A. ROBESON: This is a quasi-judicial hearing. 17 WILLIAM J. CHEN: Yes! And why is the Hearing Officer, 18 before we even have the first day of an evidentiary 19 hearing, telling the applicant the issues that the Hearing 20 Officer has identified? 21 LYNN A. ROBESON: So far. 22 WILLIAM J. CHEN: I was speaking that. 23 LYNN A. ROBESON: Well I guess it's in fairness; I'm 24 trying to be fair to both parties. I'm going to tell him my 25 concerns, which are general. But, and this is just general</p>
<p>42</p> <p>1 that, I think the Planning Board should not be subjected to 2 a moving target. They are not entitled to continually 3 adjust the project to the point where the Planning Board 4 signs off on it. That's not the process. You're the final 5 decision maker on whether or not the project does or does 6 not comply with the standards for a conditional use. And we 7 want to see this end. I think we've been quite tolerant of 8 the continuous change process but I agree with you that 9 the, that the county counsel is expecting these matters to 10 be resolved expeditiously. And sometimes you just can't 11 change a sow's ear into a silver purse. As you know we are 12 taking the position that this whole thing is out of order 13 because this isn't an allowed use in the zone. It's an 14 amalgam of things that do not amount to a Country Inn and 15 that's going to be our position all the way through 16 regardless of how, how the chess pieces on the board are 17 re-arranged so we're anxious to get this thing over with as 18 soon as possible. Mr. Chen says, and as I read from this 19 test phase letter, she wants complete plans by next Monday 20 in order to have, in order to- 21 LYNN A. ROBESON: Well I think she wants it but that's 22 not pra-, 23 DAVID BROWN: In order to meet that April 17th 24 hearing. 25 LYNN A. ROBESON: Yes I understand. But she recognizes</p>	<p>44</p> <p>1 concerns. Hours of operation? No, not 1:30. Intensity? Too 2 much. Noise? Too much. We need to address parking. I guess 3 my problem is, my feeling is the applicant, to me is a no 4 brainer. No brainers. And so the applicant should be in 5 there anticipating these issues and not simply waiting for 6 the hearing process to define them. Did I mention hours? 7 Parking? (inaudible). That's, I mean, my first take on the 8 application is way too much. So, to the extent that gives 9 you a favor, if that favors you, in my opinion in order to 10 get this case reasonably scheduled you, now you've got the 11 road issue and I don't think that Staff, I don't think that 12 you can simply look at this case like you plot down this 13 Angler's Inn in, I mean this catering facility in 14 isolation. I think you've got to look at the combined 15 effect of what's going on in the neighborhood; including 16 everything else that's there including The Angler's Inn. 17 And I disagree with Ms. Presnell that we don't look at all 18 at The Angler's Inn because, and I don't even know what the 19 non-conforming, Mr. Brown raised an issue. I was very 20 concerned reading the noise report about, you know I saw 21 two decibel measurements after whatever, I think the cutoff 22 of the county code is five, but I can't remember for sure. 23 Two decibel measurements at seventy-seven decibels or one 24 in seventy-one and seventy-seven and I see this back and 25 forth about we're going to put, we're going to have soft</p>

Transcript of Hearing
Conducted on February 24, 2017

12 (45 to 48)

<p>45</p> <p>1 rock and we're going to do this. You don't have to answer 2 now. But in my opinion you have serious concerns to address 3 and I don't, Staff I would think would recommend approval. 4 I'm not sure I agree with what I've seen in the Staff 5 report. I think Normandy Farms is distinguishable. I'm not 6 sure I agree. I don't have a complete Staff report and I 7 don't have anything on (inaudible) yet. But my, no, you can 8 come in in a minute. Mr. Golden why, why- 9 WILLIAM J. CHEN: I want to say, I don't want to say 10 anything but- 11 LYNN A. ROBESON: No I'm talking to Mr. Golden who's 12 behind you. Mr. Golden, do you want to have a seat while I 13 finish this? 14 Dr. Alan Golden: Sure. 15 LYNN A. ROBESON: That's my overall impression, way 16 too much, pushing the envelope. Part of me, so I'm going to 17 let you, and again, I haven't heard the evidence. Those are 18 my concerns just from reading the file. I don't want you to 19 defend them now because I haven't made a dec-, this is not, 20 I don't have any evidence. That's my concerns from reading 21 the file. I'm trying to do it, to give you this information 22 so that you can think of it so we don't get to hearing 23 whenever and we go through a large series. I'm, so that's 24 my initial take. As far as the opposition, what I'm not 25 sure of is, I got, there's a lot of petitions, both for and</p>	<p>47</p> <p>1 control, she said six months. Last time I gave six months. 2 So I guess, I am thinking of, and I'll hear from everybody 3 again. I am thinking of saying, you go back, Mr. Kline, 4 your applicant. You go back and think through this 5 application. You and Staff work together so that by 'x' 6 date there are no, there is no supplement. There are no 7 additions. There are no modifications. I also say that, I 8 would also suggest that Mr. Regis, I don't know if you had 9 outreach or no outreach with the community. I would also 10 suggest that he go back to the community and, it's not my, 11 I can't make everybody get along but I am suggesting that 12 in whatever time period I'm going to set, if you work, 13 really get back in there and take the community seriously. 14 And that means maybe, I don't know what it means. So my 15 proposal is, I will set one last date and by that date, 16 that means that you have answered all of Staff's questions. 17 There are no supplements. There are no further questions. 18 There are no further submittals. That proceeds to the 19 Planning Board. If the Planning Board has questions or, 20 typically you go to the Planning Board and you get, do 21 this, move the wall back a little or add some landscaping. 22 I will let you respond to those concerns if they want to 23 prove that but no major changes. Nothing like reducing the 24 venue in half, the number of people attending events it 25 has. And I am going to write a letter to the Planning Board</p>
<p>46</p> <p>1 against, a lot of testimony about how many support, how 2 many people oppose. As you know I can't consider that. My 3 con-, it's not zoning by (inaudible) as the old cases used 4 to say. I can only consider what's relevant, the standards 5 of approval that are listed in the Staff report so, to the 6 extent that I'll accept them in the record and people can 7 testify but I just, I know you know that the number of 8 people in support and against is not relevant to what I 9 have to do legally. I'd like to see more, if there is any 10 more, about the 2014 zoning ordinance. I don't know if 11 there is or there isn't. I would like to know if there's 12 any, I think you have a statement in there if I'm recalling 13 correctly that says there weren't any changes to the use 14 intended. Is there any documentation for that? So, I'm 15 just, that's what I've got so far. And again, it's general 16 because I don't have any evidence or testimony but I do, I 17 am giving you, I guess an uninformed, a less than a, well- 18 This is solely based on my read of what's in my record. So 19 with that, if you want time to think that through or not, 20 I'll let you respond and then what I'm thinking, and as I 21 said, I thought I have set a drop dead date before and it 22 didn't happen. I thought the 24th would be the drop dead 23 deadline. We would be having a hearing on the merits today. 24 I understand Staff's position that they want to do a 25 complete Staff report. I have talked to Elcibit. I don't</p>	<p>48</p> <p>1 saying this is what we're going to do. I don't care if 2 Staff has questions. I don't care if you have more 3 questions. This is what we're going to do. Now I'll let you 4 comment because you've been, well I'll let you comment. 5 Okay, why don't you comment on this and when I say six 6 months it, you know I said, I went by what Staff said 7 before and I clearly, you know if Staff says six months I'm 8 going to go for six months. I can't, I'm tired of fighting 9 with them. 10 JODY S. KLINE ESQ: I have no comments at all. I 11 appreciate your, you normally start a hearing with some of 12 the things you would have told us today. You want to make 13 sure we address them. I appreciate knowing in advance. No 14 comments about any of those. Where I'm, I guess I need to 15 get some guidance in the sense of, do people see the logic 16 in my suggestion, do we amend the application now, which I 17 can do within two weeks? 18 LYNN A. ROBESON: No, I don't want an amendment 19 because to me you've got some, in my mind you have some 20 significant, what I want you to do is go back. I don't want 21 it amended now. I want you, and when I say you I mean 22 JODY S. KLINE ESQ: I understand. 23 LYNN A. ROBESON: I want you to go back to the 24 community and back to the applicant, given that my input 25 and think through this application instead of haphazardly,</p>

Transcript of Hearing
Conducted on February 24, 2017

13 (49 to 52)

49	<p>1 I just told you I think it's on steroids for the reasons I 2 outlined. I'm, as Mr. Chen said, I'm at a loss because I 3 don't have a Staff report but I definitely see, to me, some 4 of the concerns that are being raised are very legitimate. 5 So what I would like you to do, and that's, I can't give 6 you particular guidance as more particular guidance because 7 I don't have anything, you know I don't have a Staff 8 report. I don't have anything else in front of me. I would 9 like you to go back and think this application through and 10 the applicant should think this application through so 11 that-. So, I have to go with Staff. Staff, I discussed it 12 further with Elcibit last night and I don't want any more 13 piece meals. I don't. I don't think that the record 14 adequately, today, addresses the whole mix of what's going 15 on there. So you can respond to what I said. 16 JODY S. KLINE ESQ: Well I think maybe I had higher, 17 maybe I was more concerned about the hearing dates. What 18 I'm trying to get a sense is, is are you suspending in the 19 scheduling any hearing date to allow us to process- 20 LYNN A. ROBESON: I do want to do that. What I'm 21 saying, what I'm asking you to do, you just heard from me 22 for the first time so you may or may not have had a chance 23 to assimilate it. What I'm saying to you is, I would like 24 to build in enough time so that you can think through all. 25 Speaking with Staff last night, I am suggesting that we set</p>	51	<p>1 get the interview done. It's up to you to address all of 2 their questions and if the Planning Board isn't ready at 3 this point then we're going to go forward without their 4 recommendation. 5 JODY S. KLINE ESQ: Let me, just to make sure I'm 6 getting the message. You want to have a, you'd like to have 7 a public hearing when? When would you like to see your 8 public hearing? 9 LYNN A. ROBESON: Well I want to know how long it's 10 going to take you. What I was thinking is you have 11 everything into Staff and that includes rethinking or 12 really thinking about the application and not just waiting 13 for agencies to make a comment. I told you what my concern 14 is. This is too much. But again I'm not deciding but that 15 is my impression and I'm trying to be fair to you to get 16 this process done. 17 JODY S. KLINE ESQ: I'm just trying to access, I 18 understand what you want me to get done. I'm just wondering 19 how quickly you want me to get it done. 20 LYNN A. ROBESON: Well I want to know from you how 21 quickly can you get it done. 22 JODY S. KLINE ESQ: Okay. 23 LYNN A. ROBESON: That's what I want to know from you 24 and I want to know, unfortunately we're stuck at the public 25 hearing today and no, this is my, I have to schedule a date</p>
50	<p>1 a time, maybe July. You come in with all, and really look 2 at, you've got some input from some people. I wish you had 3 more but I can only suggest that you'd be conservative 4 rather than not conservative. You have some input from 5 people. I'm saying craft, take a look at your application. 6 I say a date, say July 15th. I picked that out of the air. 7 July 15th you will have amended your plan, addressed all of 8 Staff's issues, worked with the community and from July 9 15th Staff gets a chance to review and no more, no 10 supplemental information. I don't know how else to control 11 this case without dismissing it. 12 JODY S. KLINE ESQ: And would July 15th date, when 13 WILLIAM J. CHEN: That's Saturday. 14 JODY S. KLINE ESQ: you want to have 15 LYNN A. ROBESON: No, I picked July 15th 16 JODY S. KLINE ESQ: I'm just asking, is that when you 17 want everything in to start the review process or that's 18 when you want a hearing? That's what I'm trying to- 19 LYNN A. ROBESON: Well I want, oh no, what I'm saying 20 is take some time. 21 JODY S. KLINE ESQ: Yeah, I understand that. 22 LYNN A. ROBESON: What I want to say is, and this is 23 the last go around. That's why I'm going to write the 24 Planning Board and say this is the last go around. So if 25 Staff, the Planning Board wants input it's up to Staff to</p>	52	<p>1 today. So I guess I'll ask you. Is July 1st a reasonable 2 date for you to accomplish all of this? 3 JODY S. KLINE ESQ: And be here for a public hearing 4 on July 1st? 5 LYNN A. ROBESON: No, I'm talking about your 6 information to Staff, everything to Staff. 7 JODY S. KLINE ESQ: The answer is yes ma'am 8 LYNN A. ROBESON: Okay, what's your estimate? Can you 9 do it in a shorter timeframe? 10 JODY S. KLINE ESQ: I would think so. 11 LYNN A. ROBESON: So do you have a suggestion? 12 JODY S. KLINE ESQ: No because I need to spend time 13 with the client because so much of this is more of an 14 outreach and I need to talk to the engineers about what 15 flows on that. So I think we could definitely do July 1st. 16 I think probably could be done earlier but I just wouldn't 17 be position to give you a hard date right now. 18 Dr. Alan Golden: July 1st is a Saturday. 19 LYNN A. ROBESON: Well it's also my birthday so that 20 more important. So it's not July 1st but- 21 WILLIAM J. CHEN: That's just the filing though. We're 22 just going to have a filing. I thought of that. Your 23 hypothetical July 1st- 24 LYNN A. ROBESON: It is, thank you. It is 25 hypothetical.</p>

Transcript of Hearing
Conducted on February 24, 2017

14 (53 to 56)

53	<p>1 WILLIAM J. CHEN: It's just a filing. It's not a</p> <p>2 hearing.</p> <p>3 LYNN A. ROBESON: So, and we're looking at the realm</p> <p>4 of July 1st for everything in and no more Staff questions.</p> <p>5 You've got, you are aggressively, and when I say you I mean</p> <p>6 the applicant. You're aggressively addressing the</p> <p>7 application. So I won't accept any supplemental materials</p> <p>8 after July 1st. What I'm trying to do is give you time,</p> <p>9 flexibility to address this but also control the drop dead.</p> <p>10 So that gives you March.</p> <p>11 WILLIAM J. CHEN: Four and a half months.</p> <p>12 LYNN A. ROBESON: That is, you got, I was throwing out</p> <p>13 hypothetical dates. That's a long time. So do you think</p> <p>14 some date in May this is accomplishable?</p> <p>15 JODY S. KLINE ESQ: I think May is probably premature.</p> <p>16 LYNN A. ROBESON: June 1st? June 1st?</p> <p>17 JODY S. KLINE ESQ: I-</p> <p>18 LYNN A. ROBESON: June 15th?</p> <p>19 JODY S. KLINE ESQ: I, July 1st yes. Earlier than that</p> <p>20 I just need to talk to my client.</p> <p>21 LYNN A. ROBESON: Well I have to do something today.</p> <p>22 What I'm going to do, I'm going to give July 1st as the</p> <p>23 drop dead date and let me just be clear. No, I haven't let</p> <p>24 Mr. Holden speak. Golden, I'm sorry. By the way I did have</p> <p>25 a conversation with Mr. Golden in the hallway. I asked him</p>	55	<p>1 far as the criteria of approval, like (inaudible). I can't</p> <p>2 just count on numbers.</p> <p>3 Dr. Alan Golden: Right. Okay. But bottom line is, no</p> <p>4 matter how many, no matter how many details he changes in</p> <p>5 his proposal, how many weeks, how many, oh we're not going</p> <p>6 to approve this so you should do that. No matter how many</p> <p>7 changes there are at this moving target and finally we're</p> <p>8 going to have a drop dead date. But no matter all of that</p> <p>9 stuff. This doesn't belong here. This is a quiet</p> <p>10 residential neighborhood with, it's suburban. It's not</p> <p>11 country. This is not an Inn. It's a loud party palace</p> <p>12 that's going to run for who knows how long and if past</p> <p>13 performances are any indication that whatever time limits</p> <p>14 that you may put on, God forbid if it were approved, will</p> <p>15 be widely ignored regularly. I can feel that from my</p> <p>16 experience in the past. It doesn't belong here. There, it's</p> <p>17 completely out of character with the neighborhood. There's</p> <p>18 no place for it here. It should be, if they wanted noise,</p> <p>19 people would have moved into downtown Bethesda, downtown</p> <p>20 Gaithersburg with a rocking town center. But this is</p> <p>21 Potomac, it's quiet. Even the commercial centers are dead</p> <p>22 after nine or ten o'clock at night, even on a weekend with</p> <p>23 restaurants operating. No noise. It's quiet. This will be a</p> <p>24 disturbance that anybody within earshot, which could be</p> <p>25 maybe a mile or more. So whatever the details they may come</p>
54	<p>1 where he got his cavachon because I thought it was the same</p> <p>2 place I got my labradoodle and it was. Okay, just put</p> <p>3 disclosure. Okay so, Mr. Golden, did you have something to</p> <p>4 say and I'm going to let both Mr. Chen and Mr. Brown</p> <p>5 respond.</p> <p>6 Dr. Alan Golden: Yes I did. Yes I do, excuse me. I</p> <p>7 can see your frustration and I can understand your</p> <p>8 frustration and we share that frustration because this has</p> <p>9 been a moving target from day one. The applicant's cozy</p> <p>10 relationship with the Planning Staff troubles me greatly. I</p> <p>11 don't know for-</p> <p>12 LYNN A. ROBESON: Well did characterize it.</p> <p>13 Dr. Alan Golden: No, I'm hearing, what I'm hearing</p> <p>14 seems that there's a less than hands, arm's length-</p> <p>15 LYNN A. ROBESON: Well I don't have any, that can be</p> <p>16 your opinion. I'm not endorsing it.</p> <p>17 Dr. Alan Golden: Well that's not the issue. There's</p> <p>18 only so many nights before the apple is gone and we're on</p> <p>19 our second or third apple now. And the frustration of the</p> <p>20 neighborhood, where I know that you stated there are people</p> <p>21 for and against this, that there's not a single person in</p> <p>22 the immediate neighborhood that's in favor of this project.</p> <p>23 Now I realize you're not allowed to take the neighbor's</p> <p>24 opinions into account.</p> <p>25 LYNN A. ROBESON: Well I can take their opinions, as</p>	56	<p>1 with to try pigeon hole this thing into some category that</p> <p>2 might be a special exception, it's ridiculous.</p> <p>3 LYNN A. ROBESON: Okay, I do-</p> <p>4 Dr. Alan Golden: And that is my opinion.</p> <p>5 LYNN A. ROBESON: Okay. I understand your opinion. Now</p> <p>6 I do understand your opinion. One thing that, I have no</p> <p>7 idea yet whether or not this is going, I will approve it or</p> <p>8 not but I don't have the information. If I am, as I said,</p> <p>9 I'm hoping I see something scaled down. If there is an</p> <p>10 approval of condition use, and I'm not saying there will be</p> <p>11 or won't be. I'm trying to tell you what can happen, which</p> <p>12 is that we put conditions of approval on, I don't know</p> <p>13 what's going on, I don't know how Old Angler's Inn, if they</p> <p>14 were a non-conforming use, I'm not entirely sure how they</p> <p>15 got the patio. With this application, with this application</p> <p>16 we have the ability to put conditions of approval on the</p> <p>17 application. So what, if the community, you may want to</p> <p>18 think about, if it is approved, again I'm not saying it's</p> <p>19 going to be approved. You may want to think about</p> <p>20 (inaudible). Conditions that can be placed on the approval</p> <p>21 that are easily enforceable. That's what I'm saying to you.</p> <p>22 There are ways to craft conditions to say, I can't think of</p> <p>23 it right now applicable to this case but I'm saying, there</p> <p>24 are conditions you can place so that you limit the use in a</p> <p>25 manner that is enforceable. So I'm just telling you that so</p>

Transcript of Hearing
Conducted on February 24, 2017

15 (57 to 60)

<p>57</p> <p>1 you know.</p> <p>2 Dr. Alan Golden: I understand. I, however I still</p> <p>3 think that there is no amount of limitations of use that</p> <p>4 would make this acceptable in this neighborhood.</p> <p>5 LYNN A. ROBESON: I understand that and I just have</p> <p>6 no, I don't know what we're going to end up with and so,</p> <p>7 Jim can you-</p> <p>8 DREW FINLEY: I apologize, am I allowed-</p> <p>9 LYNN A. ROBESON: Yeah, but you have to come and</p> <p>10 identify yourself for the record. No, you have to come up</p> <p>11 so the mike gets you.</p> <p>12 Dr. Alan Golden: I'll take my seat. Thank you very</p> <p>13 much for your (inaudible).</p> <p>14 LYNN A. ROBESON: Okay. Go ahead.</p> <p>15 DREW FINLEY: Yeah, I'm Drew Finley. I'm the Treasurer</p> <p>16 for the The River Falls, HOA and part of the</p> <p>17 JODY S. KLINE ESQ: Can I just say this. If he speaks</p> <p>18 today, I would object to him speaking at a later hearing.</p> <p>19 LYNN A. ROBESON: Why?</p> <p>20 JODY S. KLINE ESQ: Because he only gets one shot to</p> <p>21 testify.</p> <p>22 DREW FINLEY: No, I just want to comment on the</p> <p>23 procedural aspects, not the (inaudible) of which I will</p> <p>24 testify later.</p> <p>25 LYNN A. ROBESON: Well, okay. I'm going to do two</p>	<p>59</p> <p>1 DREW FINLEY: The timing of things as I've heard</p> <p>2 today.</p> <p>3 LYNN A. ROBESON: Okay, go ahead.</p> <p>4 DREW FINLEY: The history, as I recall is this</p> <p>5 application was filed in March 2015. Admissions were meant</p> <p>6 to go to the Planning Staff and ultimately (inaudible) end</p> <p>7 up in a hearing, if I recall, September of that year, was</p> <p>8 the initial timetable. What I heard today from Mr. Kline,</p> <p>9 the applicants, is that after two years, since then, the</p> <p>10 suggestion was to basically file, what I count as three</p> <p>11 different plans. One the original plan as it exists, one</p> <p>12 with new parking and no access to the (inaudible) parking</p> <p>13 lot and one with the new parking and access to the old</p> <p>14 parking lot because he said that that might be where the</p> <p>15 issues reside and was asking basically then to work through</p> <p>16 the process, figure out which plan fit it as they went</p> <p>17 through the remainder of the process.</p> <p>18 JODY S. KLINE ESQ: (inaudible) please.</p> <p>19 DREW FINLEY: I know here that, okay we're not going</p> <p>20 to follow that process and that what we're suggesting is to</p> <p>21 start near the end of February, which is approximately two</p> <p>22 year to give him a certain amount of time to basically</p> <p>23 refile an application and completely redo it based upon</p> <p>24 things that you identified earlier and that we will then</p> <p>25 have a hearing sometime after that, which would likely be</p>
<p>58</p> <p>1 things. I'm not aware of this one chance to testify rule.</p> <p>2 There's a case (inaudible). We just took Mr. Golden's, I</p> <p>3 just said, oh you're saying because there is a second</p> <p>4 hearing? I'm going to, is it going to be procedural?</p> <p>5 DREW FINLEY: Yeah, I just want to give</p> <p>6 JODY S. KLINE ESQ: I'm okay with that.</p> <p>7 LYNN A. ROBESON: No, just a second.</p> <p>8 DREW FINLEY: -a sense of-</p> <p>9 LYNN A. ROBESON: Just, no, stop. You need to state</p> <p>10 your name and address for the record.</p> <p>11 DREW FINLEY: Sure.</p> <p>12 LYNN A. ROBESON: Please, and then I'm going to swear</p> <p>13 you in just in case you say something. But we're going to</p> <p>14 keep this, we're going to keep this to procedural. Okay,</p> <p>15 first raise your right hand. Do you solemnly affirm under</p> <p>16 penalties of perjury that the statement that you're about</p> <p>17 to make are the truth, the whole truth and nothing but the</p> <p>18 truth?</p> <p>19 DREW FINLEY: Yeah.</p> <p>20 LYNN A. ROBESON: Okay, state your name and address</p> <p>21 for the record.</p> <p>22 DREW FINLEY: I'm Drew Finley. 7810 Stable Way.</p> <p>23 LYNN A. ROBESON: And it's my understanding that</p> <p>24 you're going to address the procedural issues regarding</p> <p>25 this postponement.</p>	<p>60</p> <p>1 Septemberish, Octoberish (inaudible). So it looks to me the</p> <p>2 timing is very similarly to what we had originally two</p> <p>3 years ago where it was filed March 15th and the hearing was</p> <p>4 going to be September. Now we're talking about at the end</p> <p>5 of February and the applicant redoing the application,</p> <p>6 basically a redo, a restart and doing the hearing sometime</p> <p>7 in September. It just sounds a lot like the same after two</p> <p>8 years and the frustration that Mr. Brown has expressed is</p> <p>9 that after two years it looks and feels to me like</p> <p>10 basically a restart or redo.</p> <p>11 LYNN A. ROBESON: I understand. I understand. I</p> <p>12 understand your frustration. You have no idea of the level</p> <p>13 of my frustration in this case. It's, it is, and I</p> <p>14 understand the community's concern. It appears that the</p> <p>15 Planning Board does want an opportunity. There's a legal</p> <p>16 iss-, there's a doctrine for failure to prosecute a case,</p> <p>17 okay? And it's a Maryland rule and you can dismiss a case</p> <p>18 for failure to prosecute a case. It's a lenient standard</p> <p>19 because the applicant has rights too. Now it's in my</p> <p>20 discretion but it, the case law in my mind is fairly</p> <p>21 lenient as far as when to get it going or, if you sit on it</p> <p>22 too long they are fairly lenient about letting you start up</p> <p>23 again. I know Mr. Chen is going to poke holes in that</p> <p>24 rationale but I understand the community's frustration. All</p> <p>25 I can tell, I think that the applicant has sped up. I can't</p>

Transcript of Hearing
Conducted on February 24, 2017

16 (61 to 64)

61	<p>1 say he hasn't been following up on the application. My</p> <p>2 issue is that the applicant is, he does have a right to</p> <p>3 prosecute and application. What I'm going to do this time</p> <p>4 is set a date. I don't care what the Planning Board says. I</p> <p>5 don't care what Staff says. I don't care if there's any</p> <p>6 more questions. Everything is going to be in there and I</p> <p>7 wanted to tell you the normal process for these</p> <p>8 applications. I don't have our, we do a report to the</p> <p>9 counsel every, semi-annually. That's two times a year,</p> <p>10 semi-annually. We do a report and we, the code says okay,</p> <p>11 we have to schedule an initial hearing in 120 days. Well it</p> <p>12 initially said we had to send notice of the hearing out</p> <p>13 within five days of the date the application was filed.</p> <p>14 OZHA recommended an amendment to that to take away the five</p> <p>15 day requirement because no case was being resolved in the</p> <p>16 120 days. Staff needs more time. So what I'm telling,</p> <p>17 trying to convey to you is that it's, it is a normal part</p> <p>18 of the process to see these cases postponed from their</p> <p>19 initial hearing date. This case, or it is a, I won't say</p> <p>20 normal. I'll say typical. This case is, and usually the</p> <p>21 request for postponement is at the request of the applicant</p> <p>22 to address issues raised by staff. So the code</p> <p>23 contemplates, oh this is going to be done in 120 days, more</p> <p>24 likely than not it is not. This case is unusual because of</p> <p>25 the time that this was pending without, when just the owner</p>	63	<p>1 failure to prosecute because they want to give an applicant</p> <p>2 the opportunity to pursue his rights. Now I know Mr. Chen</p> <p>3 and Mr. Brown disagree that I should be extending this at</p> <p>4 all. I, this case is unusual because it sat dormant for so</p> <p>5 long, alright? If you counted from the time when Mr. Kline</p> <p>6 began prosecuting the case, from August 2016 to now would</p> <p>7 not be abnormal, alright?</p> <p>8 DREW FINLEY: Which is approximately six months, seven</p> <p>9 months.</p> <p>10 LYNN A. ROBESON: Yes.</p> <p>11 DREW FINLEY: Okay.</p> <p>12 LYNN A. ROBESON: It would not be abnormal. I am,</p> <p>13 again, I'm going to allow him, I'm going to give him a drop</p> <p>14 dead date. I will trumpet to the world this time in case</p> <p>15 anybody misunderstands the Planning Board, including Staff.</p> <p>16 I am going to trumpet to the world that there won't be</p> <p>17 supplemental information. Now, he has, the applicant has</p> <p>18 the right to, it's a due process case. So he has the right</p> <p>19 to respond during the hearing process to criticisms or</p> <p>20 concerns. I have the right to condition. What I am trying</p> <p>21 to convey is that Staff's part will be done on July 1st and</p> <p>22 there will be no supplements. There will be no additional</p> <p>23 questions. We are proceeding on July, I have, in my opinion</p> <p>24 I have covered the applicant's due process right to amend</p> <p>25 the application well more. They do, and let me just back up</p>
62	<p>1 was not represented. The owner has been responding to this.</p> <p>2 So I guess what I'm saying to you is this is, the process,</p> <p>3 this process, right or wrong. I'm not, and I don't control</p> <p>4 a lot of the process. Right or wrong this process lasts</p> <p>5 more than 120 days. So what I'm saying to you is that from</p> <p>6 August, from the August timeframe when it was beginning to</p> <p>7 be prosecuted-</p> <p>8 WILLIAM J. CHEN: You mean 2016?</p> <p>9 LYNN A. ROBESON: Huhh?</p> <p>10 WILLIAM J. CHEN: You mean 2016?</p> <p>11 LYNN A. ROBESON: Yes. From the August 2016 when it</p> <p>12 was beginning to be prosecuted it, I gave six months to</p> <p>13 Staff in August because I thought that's more than 120</p> <p>14 days. But it's not unusual if you count it from six months,</p> <p>15 or if you count it from August 2016, for a case to take</p> <p>16 this long to resolve. So-</p> <p>17 DREW FINLEY: You mean like starting sixteen months</p> <p>18 after he filed originally?</p> <p>19 LYNN A. ROBESON: Well what I'm, what I'm trying to</p> <p>20 explain to you is no, no, not two years even though</p> <p>21 Planning Staff seems to, well-</p> <p>22 DREW FINLEY: August 16th is fifteen months after the</p> <p>23 original filing.</p> <p>24 LYNN A. ROBESON: Huhh?? No! What I'm saying to you is</p> <p>25 courts have been reluctant to grant failure, motions for</p>	64	<p>1 a little bit and take a moment and explain how the process</p> <p>2 works. The applicant has due process rights that apply to</p> <p>3 this case. He has the right to, subject to this and other</p> <p>4 things, to respond to people's concerns that are raised at</p> <p>5 the public hearing. Now I think, and I don't want any due</p> <p>6 process claims up at the Circuit Court. I think, you know</p> <p>7 another bite at the apple addresses all those due process</p> <p>8 claims but he's still going to have the ability to, if we</p> <p>9 get, say he relooks at it. Mr. Kline and the applicant</p> <p>10 really is going to have the ability to say, oh maybe we</p> <p>11 should adjust this or add landscaping or put a sound wall.</p> <p>12 I don't know what the things are going to be. I can't deny</p> <p>13 them the ability to do that. So what I am, what I think I</p> <p>14 am, I think Mr. Kline, I think the applicant's due process</p> <p>15 rights are covered if by saying all the material that Staff</p> <p>16 wants have to be into Staff. He's had, by 'x' date. Staff</p> <p>17 can review it. Staff can make recommendations. But in the</p> <p>18 typical process, if you have a well thought through</p> <p>19 application the revisions are minor. They're not like come</p> <p>20 in for 240 and go down to 160. That's what I, Mr. Kline, I</p> <p>21 denied your motion to amend on the traffic, or on the, I</p> <p>22 can't even remember what it was. Yes. Because you know, and</p> <p>23 what I'm saying to the applicant, anticipate and be</p> <p>24 realistic and take into account the community's concerns.</p> <p>25 No you're not, I'm not requiring to be a mind reader but</p>

Transcript of Hearing
Conducted on February 24, 2017

17 (65 to 68)

<p>65</p> <p>1 you've had notice to me to, I think it should be scaled 2 back and I think you need to address noise. I think you 3 need the, oh one other thing I was going to say is I think, 4 you know, on the top of my head I think you have a non- 5 inherent adverse condition that puts you in the higher 6 standard of undue harm. So I don't know what Staff's going 7 to say. 8 DREW FINLEY: And I appreciate that and- 9 LYNN A. ROBESON: So I, you know it's for laymen. I'm 10 not trying to defend anybody. What I'm trying to do is to 11 explain to you there's some tools here that you can use 12 which is, if the application comes back, I have restraints. 13 Perhaps I erred on the side of ultimate caution. I am 14 trying to balance the two issues and I understand your 15 frustration in the case. 16 DREW FINLEY: May I add then where in this calculation 17 of yours, and I understand the balancing and it's very 18 difficult. But where in this analysis does the burden on 19 the community in terms of cost and time? I mean, as I 20 understand it, now a new, essentially a new application 21 will be put in. It will not be minor adjustments if they 22 listen to your concerns. It's, for us it's going to be 23 starting all over, reviewing the applications and incurring 24 the cost and time that we add, on multiple times already. 25 And so I just simply ask where in the whole (inaudible) of</p>	<p>67</p> <p>1 Court of Appeals using the county's conflict (inaudible) 2 service and I think I'm, if I had just invited of the 3 neighborhood to come and talk I'm sure it would be 4 productive but maybe these gentlemen's assistance I could 5 get some professional assistance. We'd have a little bit 6 more productive dialog and the start-up time for that, 7 which I think could be very valuable, but that's something 8 I'm not going to be forced on that. I'm not familiar with 9 that so I'm concerned about moving the day forward because 10 I'm not sure I can get all of my community outreach 11 completed in a meaningful way if I don't, I said July 1st, 12 I'm comfortable with that but I don't, my strategy of how 13 to get a dialog with the neighborhood kind of gets, so I'll 14 have to accomplish if you move it closer. 15 LYNN A. ROBESON: Well I have the neighborhood here. 16 We have Mr. Brown here. Mr. Brown do you think the 17 neighborhood will be responsive to this? 18 DAVID BROWN: I think that Mr. Golden has reflected 19 well. He added too that the neighborhood toward this 20 particular (inaudible) of uses on this property. The notion 21 for example that parties are going to end at nine o'clock 22 at night versus one-thirty in the morning would be helpful 23 but not decisive, in my judgement. I'm not really able to 24 speak to that hypothetical right now but based upon 25 everything that I've heard from my clients, they would like</p>
<p>66</p> <p>1 this does that come into play? 2 LYNN A. ROBESON: That is a factor to be considered. 3 Which, when I thought we were going to have the hearing 4 would be, which is why I kept the hearing going even though 5 the planning board, I was trying to push it through. How 6 significant, what I'd like, how significant do you think, 7 Mr. Kline, the alterations are going to be? 8 JODY S. KLINE ESQ: I just can't answer that right 9 now. 10 LYNN A. ROBESON: Well we can do this. I can set an 11 earlier date and you can, we can set an earlier date for 12 submission. That's going to reduce the number of changes 13 that can be made and, and we can do it that way. Mr. Chen, 14 I'd like you to weigh in. 15 WILLIAM J. CHEN: I object to what you're doing. 16 You're telling the applicant what to do. 17 LYNN A. ROBESON: I'm not telling him. Okay I do this 18 in every case. I do this frequently. So, I understand your 19 position. I'm not, we don't have to discuss it. Mr. Brown? 20 DAVID BROWN: I'm not objecting to a reasonable effort 21 to bring this to a conclusion. 22 WILLIAM J. CHEN: I agree with that. 23 LYNN A. ROBESON: Well then what I'll do- 24 JODY S. KLINE ESQ: Can I say this? In terms of the 25 case, I'm having very good success in a matter of, for the</p>	<p>68</p> <p>1 to see this property be used towards its primary purpose, 2 which is half acre residential zoning. 3 LYNN A. ROBESON: Well I understand that but he does, 4 the zoning code permits him to do otherwise. It's this 5 process, I understand everyone's objections. 6 DAVID BROWN: The problem my clients are having is 7 that they're hearing from me that this is not a proper 8 conditional use for the zone and we don't have any 9 definitive decision that. We don't even have a Planning 10 Board recommendation on that (inaudible) point. Maybe if 11 there's a, maybe if the Planning Board does weigh in on 12 that, that would add- 13 LYNN A. ROBESON: Well what Mr. Chen, if we do that, 14 that is what I was thinking as far as proceeding with the 15 hearing on that issue alone. Now, which is, is a Country 16 Inn permitted, a Country Inn with a banquet facility is 17 what I'm understanding. 18 Dr. Alan Golden: There's no Country Inn. 19 DAVID BROWN: We're willing to limit a hearing, if 20 you're willing to conduct a hearing limited to that issue, 21 we can get that over with in the next month or so. 22 WILLIAM J. CHEN: I agree with him. 23 LYNN A. ROBESON: Mr. Kline? 24 JODY S. KLINE ESQ: I'm willing to have the argument 25 amongst ourselves. I don't think you have, I think it would</p>

Transcript of Hearing
Conducted on February 24, 2017

18 (69 to 72)

<p>69</p> <p>1 be valuable to have the Planning Board's comments on it but 2 that's not something they're going to do within the 3 timeframe we're talking about. So you'd either have to ask 4 Staff if they could submit sort of a memo on, just on their 5 own.</p> <p>6 LYNN A. ROBESON: Well haven't they already done that, 7 on that issue? They've already said it is. So that is a 8 somewhat, I could do something like this, okay? My take, I 9 didn't see all of the Planning Board here. My take was that 10 the Planning Board was agreeing, was disagreeing with Mr. 11 Brown that it was not an appropriate use of zone. That 12 would at least get us through one issue. It's not going to 13 preclude the Planning Board from commenting but at least 14 we'll have the testimony if it, and it could be 15 supplemented. I just did a case where we had a partial 16 summary judgement and I have a Planning Board 17 recommendation. We did a partial summary judgement 18 proceeding about what zone applied to the use because 19 nobody could figure out what was grandfathered and what 20 wasn't grandfathered and they said let's get this issue 21 done so we know how to proceed. We could do something like 22 that and that would address, I have Staff's approval. The 23 Planning Board, from a statutory requirement, their duty is 24 met. If anybody wants to follow up on this, unless you want 25 to get rid of the banquet facility totally and just make it</p>	<p>71</p> <p>1 and I'm not sure what a motion for a summary disposition 2 is. I don't know however, that it is the same as the motion 3 of summary judgement. If you're contemplation is that there 4 would be a hearing on a specific legal issue, I'd ask #1, 5 that you state it so that the lawyers would know what is 6 the legal issue to be addressed. I also would ask, do you 7 contemplate that therefore that there would be no evidence 8 that would be received on that legal issue?</p> <p>9 LYNN A. ROBESON: Yeah, that is, we've done it before 10 just like a motion for summary judgement with affidavits. I 11 see what you're saying</p> <p>12 WILLIAM J. CHEN: When you say affidavit, you do have 13 evidence?</p> <p>14 LYNN A. ROBESON: Well I guess what you're saying is 15 right now we don't have enough definition of, I understand. 16 Alright, what we're going to do, we're going to do this. 17 July 1st, no June 30th, June 30th, no other chances. You 18 have everything that Staff needs to complete its Staff 19 report. No supplemental questions, no nothing, so June 20 30th. If you have time, you can talk to the neighborhood. I 21 leave that to you. We need to pick a date in, June 30th, we 22 need to schedule a public hearing. If it's June 30th, Staff 23 want's 120 days.</p> <p>24 WILLIAM J. CHEN: Are you suggesting you count out 120 25 days from June 30th?</p>
<p>70</p> <p>1 a restaurant. Why can't we proceed like that?</p> <p>2 JODY S. KLINE ESQ: You make the decisions. I would 3 just, I thought I understood these gentlemen to say they 4 didn't think the Planning Board had addressed it concisely 5 or thoroughly as they had expected.</p> <p>6 LYNN A. ROBESON: Well I have a recommendation from 7 them. It's deferral or denied.</p> <p>8 JODY S. KLINE ESQ: Well you, you want the Planning 9 Board's recommendation of what they think is the legal 10 issue that can be raised in this case. If you think it's in 11 the Staff report that you've got, then we can just go ahead 12 and have an argument ourselves. If you think you'd like to 13 have more on that information then we ought to think of 14 some way we can get Park and Planning to opine on this.</p> <p>15 LYNN A. ROBESON: Well I have Staff's recommendation. 16 It's already in it.</p> <p>17 JODY S. KLINE ESQ: But if you think that's adequate 18 from what their position is then that's fine.</p> <p>19 LYNN A. ROBESON: I mean that's the one issue, I think 20 in the case that has been relatively well defined. Mr. 21 Chen, you got a problem with that?</p> <p>22 WILLIAM J. CHEN: You have authority for summary 23 disposition motions. The reason why I draw a distinction 24 is, my understanding of a motion for summary judgement is a 25 circumstance where there are no material facts to dispute</p>	<p>72</p> <p>1 LYNN A. ROBESON: No. I'm just looking to see the 2 months. I say we try for a hearing in September.</p> <p>3 WILLIAM J. CHEN: The only comment I have on that 4 Madam Examiner, (inaudible) pre-hearing conflicts and that 5 is, I think it needs to be a string of days, just begin-</p> <p>6 LYNN A. ROBESON: Okay, what we'll do, I'm going to 7 call Staff.</p> <p>8 WILLIAM J. CHEN: Park and Planning Commission Staff?</p> <p>9 LYNN A. ROBESON: Yes. Whenever I say Staff, that's 10 how we refer, I'm going to call Elcibit (inaudible) right 11 now. I'm going to outline the plan. I want you to look at 12 the dates of September.</p> <p>13 WILLIAM J. CHEN: Okay I understood but I am back that 14 I think we need to be looking at a circumstance 15 (inaudible). You're going to be conducting a, probably a 16 two week hearing, because I think that's what it's going to 17 be.</p> <p>18 LYNN A. ROBESON: I agree. So you look at your 19 calendars, okay?</p> <p>20 WILLIAM J. CHEN: How long a break do you want to 21 take? Half hour or what do you want to do?</p> <p>22 LYNN A. ROBESON: Yeah, well if you, I don't know how 23 long, you probably didn't schedule that long in but this 24 hearing, if you want to take a lunch break then we can do 25 that and come back at one or I'm going to give you a half</p>

Transcript of Hearing
Conducted on February 24, 2017

19 (73 to 76)

<p>73</p> <p>1 hour.</p> <p>2 WILLIAM J. CHEN: I'd like to go back to my office</p> <p>3 because I had scheduled an hour this morning.</p> <p>4 LYNN A. ROBESON: Nothing in this case was simple.</p> <p>5 Okay, we'll come back at one.</p> <p>6 LYNN A. ROBESON: If you could, I did, are we on the</p> <p>7 record? I did talk to Rich Weaver. He gave me a little bit</p> <p>8 different, more aggressive time frame. I've written it here</p> <p>9 and I'd like you to come get it and I'll introduce it as a</p> <p>10 new exhibit. And there was a, I didn't realize that they</p> <p>11 were closer to making a recommendation that I thought.</p> <p>12 Sometimes when they use words like study, I really don't</p> <p>13 know what that means. So he thinks that if this is the</p> <p>14 timeframe that we discussed that he believes it's</p> <p>15 realistic. And I didn't realize that the application,</p> <p>16 they're closer to being able to make a recommendation than</p> <p>17 I thought. I just kept hearing the things that were not so,</p> <p>18 that still needed to be done. So he felt that if you can</p> <p>19 get, based on what you have now, you can get everything</p> <p>20 they're requesting, or changes even like the parking, okay?</p> <p>21 If you get everything that you want to make up to date,</p> <p>22 4/1/2017, I'm going to set it because he says they're ready</p> <p>23 to go, Mr. Findley made a good point that why should, we're</p> <p>24 this far in the process, we're going to go from where we're</p> <p>25 going to go. Okay, so 4/1/17. A Planning Board date, he</p>	<p>75</p> <p>1 LYNN A. ROBESON: Well I think that, to allow we would</p> <p>2 have to do it during the OZHA hearing but maybe after all</p> <p>3 the testimony. You follow what I'm saying? But what I want</p> <p>4 you to say is, the cost of the OZHA hearings, we haven't</p> <p>5 had a hearing on the merit yet. The cost of the OZHA</p> <p>6 hearing would have been the cost anyway unless you have a</p> <p>7 reason to include that. So, what I guess I'm referring to</p> <p>8 is the cost between April 1st, or now what we may want to</p> <p>9 do, if you want to wait until April 1st to file amendments</p> <p>10 and then we don't have to have piecemeal amendments. We</p> <p>11 don't have to have you review every little thing that you</p> <p>12 change. If you want to wait to April 1st to file amendments</p> <p>13 then there is still, there's still a lot of time for you to</p> <p>14 address the amendments. You know what, that I'm not even</p> <p>15 going to worry about. I just want to get through the case.</p> <p>16 WILLIAM J. CHEN: So everything is fine? You're</p> <p>17 holding to the first date for final submission of the</p> <p>18 application?</p> <p>19 LYNN A. ROBESON: Yes. There are no, at the Staff</p> <p>20 level, there are no supplements, no answering questions, no</p> <p>21 changes as of April 1st.</p> <p>22 JODY S. KLINE ESQ: With regard to your note about the</p> <p>23 cost of review. Do you treat anything that's changed</p> <p>24 between now and April 1st, is that in a different category</p> <p>25 of any changes regarding (inaudible) by the Planning Board</p>
<p>74</p> <p>1 feels comfortable committing to a Planning Board date of</p> <p>2 7/13, which is a Thursday. I am going to, let me make</p> <p>3 clear. After 4/1, no more submissions to Staff, no more</p> <p>4 amendments between 4/1 and July 13th. So whatever you do,</p> <p>5 answer all their questions. 7/13, he was a little more</p> <p>6 aggressive on their review time. 7/13 Planning Board. What</p> <p>7 I'm going to do at the Planning Board is permit changes</p> <p>8 only requested by the Planning Board or its, I guess I have</p> <p>9 to allow you guys to suggest them but as of right I'm only,</p> <p>10 I don't want to, I can't negate their review.</p> <p>11 JODY S. KLINE ESQ: You given me a safety-</p> <p>12 LYNN A. ROBESON: So only questions by the Planning</p> <p>13 Board. You have thirty days to change the plans. That's</p> <p>14 8/13. You have thirty days to change the plans to address</p> <p>15 concerns by the Planning Board. We're going to schedule an</p> <p>16 OZHA public hearing in September and the parties, all the</p> <p>17 parties; you can submit your costs of additional review. If</p> <p>18 you wish to re-coop those costs, or file a motion for</p> <p>19 sanctions based on the costs, we'll get through and see</p> <p>20 where we are at the end this time. If you want to file a</p> <p>21 motion, just keep records of your costs and you're more</p> <p>22 than willing to file a motion for sanctions. We'll rule on</p> <p>23 that at that time.</p> <p>24 WILLIAM J. CHEN: Would those motions be filed after</p> <p>25 the OZHA hearing?</p>	<p>76</p> <p>1 request?</p> <p>2 LYNN A. ROBESON: I can't rule on it</p> <p>3 JODY S. KLINE ESQ: Okay.</p> <p>4 LYNN A. ROBESON: Separate out your, separate out your</p> <p>5 costs and separate out your, categorize your costs and we</p> <p>6 can argue that later, okay?</p> <p>7 JODY S. KLINE ESQ: Okay.</p> <p>8 LYNN A. ROBESON: So, just to be clear. As of April</p> <p>9 1st, everything to Planning Staff, no more changes. As of,</p> <p>10 the Planning Board date will be 7/13. They have some kind</p> <p>11 of criteria that they need, their report has to be out.</p> <p>12 But, for the purposes of the party review, the Planning</p> <p>13 Board date is 7/13/2017. 8/12 to accept only changes</p> <p>14 requested by the Planning Board. I will consider other</p> <p>15 changes if the applicants want to make changes, I mean if</p> <p>16 the opposition wants to make changes.</p> <p>17 WILLIAM J. CHEN: The opposition make changes?</p> <p>18 LYNN A. ROBESON: No, no, no. I mean, if you want to</p> <p>19 respond to requests from the opposition.</p> <p>20 JODY S. KLINE ESQ: I see.</p> <p>21 LYNN A. ROBESON: Okay?</p> <p>22 WILLIAM J. CHEN: Okay is, what's on, by the way,</p> <p>23 excuse me Madam Examiner. This docket, what exhibit number</p> <p>24 is it?</p> <p>25 LYNN A. ROBESON: It will be, you don't trust me to</p>

Transcript of Hearing
Conducted on February 24, 2017

20 (77 to 80)

77	<p>1 exhibitize and I don't blame you.</p> <p>2 JODY S. KLINE ESQ: The next one is 171.</p> <p>3 LYNN A. ROBESON: Yes, it is 171. I'll call it</p> <p>4 Timeline Based on Hearing Examiner's Discussion with Mr.</p> <p>5 Rich Weaver.</p> <p>6 WILLIAM J. CHEN: Then to come back to my question.</p> <p>7 LYNN A. ROBESON: Just give me one moment. Okay, so,</p> <p>8 and that's, okay.</p> <p>9 WILLIAM J. CHEN: Now this timeline and its provisions</p> <p>10 for the benchmarks that you've identified do not apply to</p> <p>11 any motions to amend the application that the applicant may</p> <p>12 file with your office, as I read this document. And I say</p> <p>13 that because we've had motions to amend and don't forget</p> <p>14 there is also a rule that the report says, you've got up</p> <p>15 until ten days before the hearing.</p> <p>16 LYNN A. ROBESON: Well, you can also make, I mean our</p> <p>17 rules contemplate that you can make motions at the hearing.</p> <p>18 WILLIAM J. CHEN: That's a matter of dispute. But I</p> <p>19 am-</p> <p>20 LYNN A. ROBESON: I know, I know it's a matter. I know</p> <p>21 that. So, yes?</p> <p>22 JODY S. KLINE ESQ: Well I read this and what you said</p> <p>23 is, I no longer have to ask for a motion to amend. Your</p> <p>24 just like Jody, you can amend. You said to have it done by</p> <p>25 April 1st and you cannot amend after that unless the</p>	79	<p>1 that changes the limits of disturbance. There's a mandatory</p> <p>2 requirement that it go to the arborist for thirty, the</p> <p>3 arborist has thirty days to review. So just to be clear,</p> <p>4 what I'm suggesting is a final packet on April 1st. No</p> <p>5 changes after that. 7/13 will the Planning Board hearing.</p> <p>6 If the Planning Board wants a change and on, by April 1st,</p> <p>7 I need a motion to, I mean I need your request for a motion</p> <p>8 to amend, alright?</p> <p>9 WILLIAM J. CHEN: Based upon what the Planning Board</p> <p>10 says?</p> <p>11 LYNN A. ROBESON: No, no, no. April 1st everything is</p> <p>12 into Staff, no supplemental, nothing. I get on April 1st a</p> <p>13 motion to amend with everything, the complete package so</p> <p>14 we're not piece meal all the time, okay?</p> <p>15 WILLIAM J. CHEN: April 1st is a Saturday. Oh, I</p> <p>16 thought I had that taken care of!</p> <p>17 WILLIAM J. CHEN: It's April Fool's Day actually.</p> <p>18 LYNN A. ROBESON: No, that's what I feel like. I</p> <p>19 thought I checked all these dates. You are correct! You're</p> <p>20 absolutely correct!</p> <p>21 WILLIAM J. CHEN: Not all the time.</p> <p>22 LYNN A. ROBESON: So I'm going to change it to the</p> <p>23 following Monday which will be April 3rd, but I can't</p> <p>24 change, I did check the Planning Board date. That is a</p> <p>25 Thursday, okay? So, April 3rd everything is in to Staff. I</p>
78	<p>1 Planning Board requires it in which case I would still come</p> <p>2 to you and tell you we're going to amend.</p> <p>3 LYNN A. ROBESON: That's correct. What I'm saying is,</p> <p>4 well what I'm saying is, you will, I'm recommending,</p> <p>5 instead of filing every iteration with us before April 1</p> <p>6 that you wait until April 1 and get, and file the whole</p> <p>7 amended package with us. After that time, and I will send</p> <p>8 out a notice of motion to amend once there is a coherent</p> <p>9 package to send out. So, there will be a motion to amend on</p> <p>10 what has been filed on April 1st. Okay, after April 1st</p> <p>11 there are no amendments, no amendments. There are no</p> <p>12 amendments all the way up to the Planning Board hearing. If</p> <p>13 the Planning Board wants to require, recommends an</p> <p>14 amendment, you have thirty days to make those amendments.</p> <p>15 JODY S. KLINE ESQ: But I will still file a motion to</p> <p>16 amend.</p> <p>17 LYNN A. ROBESON: You would still file a motion to</p> <p>18 amend because the public hearing hasn't; I mean the merits</p> <p>19 of the public hearing has not occurred.</p> <p>20 JODY S. KLINE ESQ: And that's a clever way of</p> <p>21 handling it because it gives me a safety valve in case</p> <p>22 something comes up but I was worried on the other system.</p> <p>23 It would not have allowed us to respond.</p> <p>24 LYNN A. ROBESON: The only reason I'm, yes, and some</p> <p>25 of the, he was concerned if something happens that expands,</p>	80	<p>1 have a motion to amend, we send it out. 7/13 is the</p> <p>2 Planning Board review. After that I'm only going to accept</p> <p>3 changes requested by the Planning Board for-</p> <p>4 WILLIAM J. CHEN: It's a Sunday.</p> <p>5 LYNN A. ROBESON: How? No! I checked that. July?</p> <p>6 WILLIAM J. CHEN: No, August. I thought you were</p> <p>7 talking about August 13th.</p> <p>8 LYNN A. ROBESON: No, I meant-, I'm, all I can is</p> <p>9 we're very short staffed and we're picking up clerical</p> <p>10 duties and I have a large decision in another case of Jody</p> <p>11 Kline's which may be, I hate to break the news to you hear</p> <p>12 but I may need an extension. Okay-</p> <p>13 WILLIAM J. CHEN: August 13th is a Sunday.</p> <p>14 LYNN A. ROBESON: No, the Planning Board hearing,</p> <p>15 which I cannot change, July 13th. Okay, August 13th I will</p> <p>16 accept changes requested by the Planning Board.</p> <p>17 WILLIAM J. CHEN: That's a Sunday.</p> <p>18 LYNN A. ROBESON: Ahh geez, 14th. August 14th, I will</p> <p>19 accept changes requested by the Planning Board or requested</p> <p>20 by, or requested by the, if requested by the opposition.</p> <p>21 Alright, so now we're at the Public Hearing. Yes?</p> <p>22 JODY S. KLINE ESQ: Can I (inaudible) a little bit</p> <p>23 because if we, we'll basically be submitting something Park</p> <p>24 and Planning Commission at least by August 14th. The</p> <p>25 Planning Commission will be gone on recess at that time.</p>

Transcript of Hearing
Conducted on February 24, 2017

21 (81 to 84)

81	1 Staff will be there apparently. I would not be surprised 2 that (inaudible) would say, what I want to do is look at 3 that submission, make sure it complies with the Planning 4 Board's recommendations and write a supplemental report to 5 send to you. 6 LYNN A. ROBESON: Well this is what I discussed with 7 her supervisor. 8 JODY S. KLINE ESQ: I understand. 9 LYNN A. ROBESON: So if she can submit, I mean I have 10 to, if there is a change requested by the Planning Board I 11 have to get a supplemental report. 12 JODY S. KLINE ESQ: Well that's my point. So that's 13 automatically going to push it into September before the 14 Planning Board can be there. 15 LYNN A. ROBESON: It doesn't have to go back to the 16 Planning Board. 17 JODY S. KLINE ESQ: So it's going to come- 18 LYNN A. ROBESON: The only thing, it can be to the 19 Planning Board or Planning Staff. That's the way it works. 20 JODY S. KLINE ESQ: Okay. 21 LYNN A. ROBESON: So, I'm not changing it. 22 JODY S. KLINE ESQ: Alright, might I suggest you do 23 add a date when we anticipate a Staff report will be 24 transmitted by the end of the month of August or something 25 like that.	83	1 cannot change on September 13th. 2 WILLIAM J. CHEN: How about the 18th to the end of the 3 month, 18th, week of the 18th? 4 LYNN A. ROBESON: I can do that. 5 WILLIAM J. CHEN: I've got (inaudible) on the 20th and 6 (inaudible) on the 29th. 7 LYNN A. ROBESON: Well I tell you what. This far in 8 advance I could probably move this doctor's appointment so 9 I will try to do that. So let's look at the- 10 WILLIAM J. CHEN: It's Grandparent's Day on the 10th. 11 LYNN A. ROBESON: No, no. I don't want to be there. I 12 understand how nice it is. Well, you know, can we take, 13 (inaudible) goes from 14 WILLIAM J. CHEN: It begins at sundown. 15 LYNN A. ROBESON: Well I'm not going to say don't take 16 off for whatever period of time that you want to observe it 17 but we could start earlier on the 6th. 18 WILLIAM J. CHEN: I'm just thinking, I'm just thinking 19 of what this is. Some of us, don't you have some, usually 20 there's somebody that 21 JODY S. KLINE ESQ: Well I was going to say that the 22 first week of September right after Labor Day is pretty, I 23 don't have any problems starting on the 11th and pushing 24 like heck but the week of the- 25 LYNN A. ROBESON: The other option, the other option
82	1 LYNN A. ROBESON: That's their internal time frame. 2 I'm setting up these time frames. Their internal time 3 frames, they have to get a Staff report to the Planning 4 Board- 5 WILLIAM J. CHEN: No, no, you're not, that's not what 6 he's talking about. He is saying, let's assume that you're- 7 LYNN A. ROBESON: Oh, I see what you're saying. 8 WILLIAM J. CHEN: After they make the revisions- 9 LYNN A. ROBESON: So you make a revision, I need a 10 Staff report right after Labor Day. 11 JODY S. KLINE ESQ: Seven days before you-? 12 LYNN A. ROBESON: No, no. Yeah, okay. 13 WILLIAM J. CHEN: Whether you like it or not you're 14 going to get a Staff report after August 14th. 15 LYNN A. ROBESON: Well they have to,- 16 WILLIAM J. CHEN: You can't control that. You're not 17 going to be able to control that. 18 LYNN A. ROBESON: Right, I know that. I'm going to put 19 a guideline in here that we get a Staff report by, well we 20 haven't set the hearing date yet. So let's set the hearing 21 date, supplemental Staff report I mean. So let's set the 22 hearing date. 23 WILLIAM J. CHEN: I think you've got to have two 24 weeks, straight. 25 LYNN A. ROBESON: I have a Doctor's appointment I	84	1 is the week, beginning the two weeks on the 15th. 2 WILLIAM J. CHEN: Of September? 3 LYNN A. ROBESON: Yes, because I agree with you. It's 4 hard on Labor Day. 5 WILLIAM J. CHEN: You won't have people and there's- 6 Okay, that works. (inaudible) is Friday, the 29th at 7 sundown that probably works. 8 LYNN A. ROBESON: So, what about the two weeks 9 beginning, we're into October. What about the two weeks 10 beginning September 25th? Now I have to go out of the 11 country in November for like, ten days. That may just; I'm 12 mentioning that in case there's a delay in the decision 13 because of that. It's going to- 14 WILLIAM J. CHEN: You're not telling us the hearing 15 date is in November? 16 LYNN A. ROBESON: No. 17 WILLIAM J. CHEN: I've got bad days in November. 18 LYNN A. ROBESON: No, no, no, no. I'm just saying as 19 far as getting the decision out because I know there's 20 thirty days, I know it's going to be a long hearing. Okay, 21 so how are we for the two weeks beginning September 25th 22 through October 6th? 23 WILLIAM J. CHEN: I'm good. 24 JODY S. KLINE ESQ: Open. 25 DAVID BROWN: That's fine with me.

Transcript of Hearing
Conducted on February 24, 2017

22 (85 to 88)

<p>85</p> <p>1 LYNN A. ROBESON: And that gives Staff more 2 flexibility to do a supplemental report if they need to. So 3 this is not going to change. Nothing is going to change, 4 alright? So whatever it is we are marching forward with 5 this. 6 WILLIAM J. CHEN: (inaudible)? 7 LYNN A. ROBESON: No, I'm going to announce, I'm going 8 to issue a scheduling order. As far as these dates I have 9 to announce the date of the public hearing now. Okay so, 10 WILLIAM J. CHEN: You're going to be following, I 11 think, you're gonna follow up with (inaudible)? 12 LYNN A. ROBESON: I am. I'm also going to alert the 13 Planning Board directly that this is the case. This is the 14 game plan and we'll just go from here. And 15 so, with that, anything else from anybody? 16 DAVID BROWN: Yes, two items. None of them, neither of 17 them affect anything that you've just decided. 18 LYNN A. ROBESON: Good. 19 DAVID BROWN: First of all, I want to put on the 20 record something that I said in our pre-hearing conference 21 the other day and it's to express agreement with a 22 statement that you made earlier today, which was that you 23 were concerned about the combined effect on the 24 neighborhood of both the, this particular project and the 25 continued operation of the Old Angler's Inn. And I had said</p>	<p>87</p> <p>1 LYNN A. ROBESON: Yes? 2 DAVID BROWN: I have talked further with my clients 3 before one o'clock (inaudible). Our thinking has 4 crystalized more with regard to the issue of the resolution 5 of the Country Inn zone question. And it's in part 6 significantly influenced by the prospect of my clients 7 having to pay for me to sit here for two weeks in a 8 hearing. This is not welcome news to them. They are not 9 deep pocket people. 10 LYNN A. ROBESON: I know. 11 DAVID BROWN: So, what our plan is, and I'm just 12 making Mr. Kline very aware, as well as Mr. Chen very aware 13 that once this moving target has stopped, which I now see 14 to be April 1st, we will have a clear statement, hopefully, 15 of what the nature of the operation is, what it's size and 16 location is and everything will be fixed. In our view, 17 whether or not this is a Country Inn depends upon an 18 interpretation of those documents. 19 LYNN A. ROBESON: Of which documents? 20 DAVID BROWN: The statement of operations- 21 LYNN A. ROBESON: Oh, I see. 22 DAVID BROWN: And the documentation as to what is 23 going to built on the property. 24 LYNN A. ROBESON: Right. 25 DAVID BROWN: Everything is said of undisputed facts,</p>
<p>86</p> <p>1 that I wanted to understand more clearly and conclusively 2 the nature and propriety of the ways in which the 3 commercial use of the NR zone property had bled over into 4 the R200 zone property. After our meeting Mr. Kline told me 5 that he would provide me the available documentation on 6 that. I didn't get a particular date from him but I would 7 like to ask now, on the record, when I can expect to get 8 that because otherwise I'm going to have to use whatever 9 procedural devices that are available to me to force the 10 issue, to force disclosure of that information. 11 JODY S. KLINE ESQ: I stand by my commitment. I'll 12 provide it. Let's say, give me three weeks and I say that 13 partly because I need to go to DPS and dig out some of the 14 information myself. So, three weeks from- 15 LYNN A. ROBESON: Yeah, I was going to, well wait. Or 16 I'm checking exactly when these time frames are because I 17 keep scheduling things, so three weeks from Monday. Monday 18 is the 27th. Three weeks would be the 20th, March 20th. 19 DAVID BROWN: That's fine with me. 20 LYNN A. ROBESON: Okay, and I can include that in the 21 scheduling order. 22 DAVID BROWN: Okay. 23 LYNN A. ROBESON: And I'll just say info on non- 24 conforming status of Old Angler's Inn. Alright- 25 DAVID BROWN: I have one other item</p>	<p>88</p> <p>1 looking at it from the point of view of the applicant. So 2 we will be filing a motion to dismiss this application 3 sometime after April 1st and before the time that the 4 Planning Board hearing date takes place in the hope and 5 expectation that you will be able to resolve that question 6 in advance of the hearing. 7 JODY S. KLINE ESQ: Which hearing is that? 8 LYNN A. ROBESON: The public hearing, the September- 9 DAVID BROWN: The OZHA hearing in September. 10 DAVID BROWN: And our goal, frankly, because we 11 believe it is not a Country Inn, is that we will obviate a 12 ten day hearing as a result. But I just want Mr. Kline to 13 understand that that is how we intend to proceed. 14 LYNN A. ROBESON: Now, give me the time, I think what 15 Mr. Kline said before is that the Planning Board should be 16 able to have the opportunity to weigh in on whether it's a 17 Country Inn or not. So I would prefer if you waited until 18 after the Planning Board weighs in because, July 13th, yes. 19 And I understand, I totally understand. That's why I'm 20 asking you to keep costs but if it's going back to the 21 Planning Board I would prefer to get their input on the 22 Country Inn because there are going to be amendments and 23 the Planning Board also has the possibility of imposing or 24 restricting conditions that may change someone's mind. So, 25 I would say that to you.</p>

Transcript of Hearing
Conducted on February 24, 2017

23 (89 to 92)

<p style="text-align: right;">89</p> <p>1 DAVID BROWN: I understand your preference. I will</p> <p>2 discuss with my clients and we will decide on the timing of</p> <p>3 our motion.</p> <p>4 LYNN A. ROBESON: That's fine. I mean, that's totally</p> <p>5 up to you. We all have to do what we have to do. So, that's</p> <p>6 fine.</p> <p>7 DAVID BROWN: If we see, for example, that we cannot</p> <p>8 foresee anything happening at the Planning Board that would</p> <p>9 change the basic parameters of our motion, we would</p> <p>10 probably argue that you already have the considered views</p> <p>11 of the Staff on this matter and in some respects a rubber</p> <p>12 stamp on that Staff view, which is typically what you get</p> <p>13 from the Planning Board would be (inaudible). But we will</p> <p>14 make that judgement when the time comes.</p> <p>15 LYNN A. ROBESON: Okay.</p> <p>16 DAVID BROWN: And I want to further, just make clear</p> <p>17 that the way we envision this matter to be resolved is we</p> <p>18 file a motion, Mr. Kline files a response. If Mr. Kline</p> <p>19 feels that there are some facts that we have not properly</p> <p>20 characterized or considered that are favorable to him, he</p> <p>21 can bring those facts out in his response. Then perhaps we</p> <p>22 would have an opportunity for reply and then, or an</p> <p>23 argument on the motion.</p> <p>24 LYNN A. ROBESON: Okay, the other thing you can do is</p> <p>25 stipulate the facts. So, if possible, I'm just saying, if</p>	<p style="text-align: right;">91</p> <p>1 procedure as to when it will be filed and he has an</p> <p>2 advantage over me that he knows he's going to call his</p> <p>3 witnesses.</p> <p>4 LYNN A. ROBESON: I already thought of that and it</p> <p>5 was, but what I am going to do is, because there really is</p> <p>6 no discovery. He, you're correct, he should've filed it</p> <p>7 regardless of whether it's postponed or not. But what I'm</p> <p>8 going to allow everyone to do, and maybe this is something</p> <p>9 for the scheduling order, but we're going to, what I would</p> <p>10 like is we modified, once we have a clearer idea of the</p> <p>11 application I would like pre-hearing statements in the same</p> <p>12 time frames that are required for public hearings. So the</p> <p>13 pre-hearing statements, if we begin on the 25th, Mr.</p> <p>14 Kline's would be due on, thirty days in advance which would</p> <p>15 be August 29th. No, I'm, August 28th, by my calculations.</p> <p>16 JODY S. KLINE ESQ: Well if you just say thirty days</p> <p>17 in advance of the hearing we can figure out when it is.</p> <p>18 LYNN A. ROBESON: No, I, technically it will be August</p> <p>19 28th. So we'll say Mr. Kline's is due 8/28.</p> <p>20 WILLIAM J. CHEN: Oppositions is 9/15. No, wait a</p> <p>21 minute, it's 20. I miscounted.</p> <p>22 JODY S. KLINE ESQ: It looks like it's probably the</p> <p>23 7th of September?</p> <p>24 LYNN A. ROBESON: I have the sixth, the fifth.</p> <p>25 JODY S. KLINE ESQ: Well it should be, twenty days in</p>
<p style="text-align: right;">90</p> <p>1 possible. That's another option to remove disputes of fact.</p> <p>2 DAVID BROWN: Because our thinking is that whether or</p> <p>3 not it is a country in does not depend upon the hours of</p> <p>4 operation or the number of, the number of people. There's</p> <p>5 240 or 160 and that sort of thing.</p> <p>6 LYNN A. ROBESON: I understand.</p> <p>7 DAVID BROWN: Alright.</p> <p>8 LYNN A. ROBESON: Well I do understand because it was</p> <p>9 a little bit of, that was a thought of mine. Okay, you will</p> <p>10 file it when you can file it. If there is a dispute of</p> <p>11 facts I can't grant it obviously. But we will look at that</p> <p>12 when, and I can't determine the timing of your filing so we</p> <p>13 will certainly give it consideration when it comes in.</p> <p>14 Alright? Yes sir?</p> <p>15 JODY S. KLINE ESQ: So why, when (inaudible) is</p> <p>16 completed, you finished?</p> <p>17 DAVID BROWN: Yes.</p> <p>18 JODY S. KLINE ESQ: Can you straighten out for us the</p> <p>19 pre-hearing submissions? You've seen the correspondence</p> <p>20 I've sent to Mr. Chen saying I thought it would be</p> <p>21 appropriate for him to file his pre-hearing statement. He</p> <p>22 said the hearing dates had moved so, implicitly I guess</p> <p>23 he's saying that he can move it to correlate with that date</p> <p>24 and my response was, my response now is or do you have a</p> <p>25 date certain that are unrelated to the, your rules of</p>	<p style="text-align: right;">92</p> <p>1 advance, okay. But I do reiterate my request that Mr. Chen</p> <p>2 file one now so he's in the same position as Mr. Brown and</p> <p>3 I are.</p> <p>4 WILLIAM J. CHEN: Well I can respond to that.</p> <p>5 LYNN A. ROBESON: I'm sure you will.</p> <p>6 WILLIAM J. CHEN: I walked out of the hearing, the</p> <p>7 pre-hearing conference on Tuesday understanding that there</p> <p>8 was going to be a change in hearing dates (inaudible), that</p> <p>9 would be applicable and that's why I didn't file one. I can</p> <p>10 file one promptly, probably by Monday. However, I'm very</p> <p>11 confident that whatever I file on Monday will be</p> <p>12 supplemented by what I file on the fifth.</p> <p>13 JODY S. KLINE ESQ: I understand that. That's true.</p> <p>14 LYNN A. ROBESON: So are you saying-</p> <p>15 JODY S. KLINE ESQ: No, I'd like to know who his team</p> <p>16 is at this point in time with the understanding that things</p> <p>17 may change. He may want to add to it.</p> <p>18 LYNN A. ROBESON: Alright, Mr. Chen can you file-</p> <p>19 WILLIAM J. CHEN: I will file a pre-hearing</p> <p>20 (inaudible) but Mr. Kline just said, Mr. Chen's quote,</p> <p>21 unquote team. I will file a statement on probably Monday</p> <p>22 but that is not a restriction my witnesses who I will call,</p> <p>23 or identify rather, in my September five filing. And he's</p> <p>24 in the same position quite frankly. The applicant can file</p> <p>25 whatever they want to file on the 28th of August, as far as</p>


Transcript of Hearing
Conducted on February 24, 2017

24 (93 to 96)

93	<p>1 their team or whether they add or delete from their current</p> <p>2 filing. And I will file a pre-hearing statement on Monday.</p> <p>3 LYNN A. ROBESON: What does it matter to you who is on</p> <p>4 his team? I mean, to me there is a land planner, probably.</p> <p>5 Well you know the cast of characters. Does it matter to you</p> <p>6 who it is?</p> <p>7 JODY S. KLINE ESQ: Yes, it does. It will basically</p> <p>8 advise me of those areas of the application where they</p> <p>9 think there are weaknesses and we need to be-</p> <p>10 WILLIAM J. CHEN: Oh, I believe I'm entitled to that.</p> <p>11 LYNN A. ROBESON: Well,-</p> <p>12 JODY S. KLINE ESQ: Well no, but just by-</p> <p>13 WILLIAM J. CHEN: And I am, there is NO restriction on</p> <p>14 how I may (inaudible) the rules. The supplement, whatever I</p> <p>15 file, as soon as possible.</p> <p>16 JODY S. KLINE ESQ: I have no problem with adding</p> <p>17 people. I just would like to know who he has additionally</p> <p>18 identified as an expert.</p> <p>19 LYNN A. ROBESON: I, you know what, okay, just a</p> <p>20 second. I understand what you're saying. There is no</p> <p>21 discovery process here except for our subpoena power. I'm</p> <p>22 not going to require him to file it. We're all going to</p> <p>23 move, if you get it on September 20th, or whatever the date</p> <p>24 is, 8/28, that's what the process requires. Yes sir?</p> <p>25 JODY S. KLINE ESQ: Well what I was going to say is</p>	95	<p>1 anticipate that what I file will disclose witnesses,</p> <p>2 including, I'm sure and expert will be included in what I</p> <p>3 file. But as you just repeated we now don't know what is</p> <p>4 the application so I don't know that, who I'm going to call</p> <p>5 as an expert because given the Examiner's direction this</p> <p>6 morning, we could have a radically different application-</p> <p>7 LYNN A. ROBESON: Well I hope we don't. I did not</p> <p>8 realize that Staff was much closer, well, first of all, I</p> <p>9 gave you my comments to heart, my initial off the cuff</p> <p>10 comments. I'm not, I've heard all of the discussion on both</p> <p>11 sides. I'm not going to let, require Mr. Chen to file a</p> <p>12 pre-hearing submission now because it is premature and I</p> <p>13 have no formal discovery process. Hopefully our dates will</p> <p>14 simplify the motions to amend, the review periods, because</p> <p>15 nobody has to review something. Hopefully this will be a</p> <p>16 simplified process, alright? And I'm, certainly we all know</p> <p>17 the typical the cast of characters so it's not the, perhaps</p> <p>18 the identity of the person but it's the underlying issue</p> <p>19 that's an issue. Okay, so I'm not going to require him to</p> <p>20 do it, alright></p> <p>21 WILLIAM J. CHEN: There was one issue that I had. That</p> <p>22 is submissions to Staff, this latest exhibit that we got,</p> <p>23 literally Mr. Brown and I saw for the first time this</p> <p>24 morning when you gave us a copy.</p> <p>25 LYNN A. ROBESON: Well that was, I had it last night.</p>
94	<p>1 you did have dates (inaudible) to when it was going to be</p> <p>2 filed and I believe that puts me in a procedural</p> <p>3 disadvantage that he knows who I'm going to call as a</p> <p>4 witness and I do not know who he's going to call as a</p> <p>5 witness until September 5th. And Mr. Brown was courteous</p> <p>6 enough to file his a day early and so I know what he's</p> <p>7 going to be doing but I don't know what Mr. Chen's going to</p> <p>8 be doing. I think that procedurally puts me at a</p> <p>9 disadvantage and I think he's taking advantage, I'm sorry,</p> <p>10 Mr. (inaudible) counsel is taking advantage of (inaudible)</p> <p>11 hearing dates. I'm not saying you can't change and add or</p> <p>12 delete. I would just like to know who they have initially</p> <p>13 identified.</p> <p>14 LYNN A. ROBESON: Well I would, I understand. I know</p> <p>15 what you're saying. I'm not going to impose a process that</p> <p>16 we don't have, particularly as the list, and my feeling is</p> <p>17 premature, because we don't even know what the case is</p> <p>18 right now, alright? I'm not going to require him to submit</p> <p>19 it and you can raise that on appeal.</p> <p>20 WILLIAM J. CHEN: I would just add that your last</p> <p>21 comment was very pertinent because I will tell you that,</p> <p>22 what has been changes and moving has had an impact on</p> <p>23 adding and deleting possible witness and scrambling, quite</p> <p>24 bluntly trying to find witness based upon the move when</p> <p>25 something came up. So I will file something and I do</p>	96	<p>1 WILLIAM J. CHEN: Yeah, but we didn't. That's my</p> <p>2 point.</p> <p>3 LYNN A. ROBESON: I know and, but partially that was</p> <p>4 my fault because I didn't understand your-</p> <p>5 WILLIAM J. CHEN: No it's not. No it's not. That is</p> <p>6 not, if I may interrupt and I apologize. That was not your</p> <p>7 fault. The position is that if the applicant is filing</p> <p>8 material with the Staff, part of the problem that Mr. Brown</p> <p>9 and I both had has been to respond to things when the Staff</p> <p>10 has got information that we don't know about and going into</p> <p>11 meetings and the Staff saying, well we've got this and we</p> <p>12 haven't seen it so I don't know how we can deal with that</p> <p>13 because, and I'm mainly concerned about the period of time</p> <p>14 between, after the filing has been made on April 3rd and</p> <p>15 then what is going to be coming out in July and before the</p> <p>16 Board. I mean, I just alerting the Examiner that this is</p> <p>17 the type of thing that causes a lot of problems for</p> <p>18 opposition and it impacts even witnesses. Sometimes things</p> <p>19 have been filed and I've alluded to it a moment ago where,</p> <p>20 oh this is a change. I've got to find, if I can, somebody</p> <p>21 to address it. That happens and that has happened in this</p> <p>22 case on a regular basis.</p> <p>23 LYNN A. ROBESON: Well, Mr. Kline, why, it would be</p> <p>24 public record anyway. If they travelled down to Park and</p> <p>25 Planning and asked for all these communications, they would</p>

Transcript of Hearing
Conducted on February 24, 2017

25 (97 to 100)

<p>97</p> <p>1 be able to get it. Do you have a problem with CC'ing them</p> <p>2 on your dealings with Planning Staff?</p> <p>3 JODY S. KLINE ESQ: I'm going to say, no I don't have</p> <p>4 a problem with that.</p> <p>5 LYNN A. ROBESON: Okay. So, and it would help me too,</p> <p>6 well if you don't want to send it to me, you don't have to</p> <p>7 send it to me. I'll look at the package on April 1st. But</p> <p>8 in order to get through the case I think we should proceed</p> <p>9 on that basis. Otherwise, and I understand that you may</p> <p>10 have a trial balloon you want to upload, or anything like</p> <p>11 that, but it is difficult for me too, when I don't know</p> <p>12 about this stuff. So if, now you are free, now that we have</p> <p>13 freed you to amend the plan, it might be, it might be, I</p> <p>14 was trying to push through a hearing today. But now that we</p> <p>15 have freed you to amend the plan, maybe it's easiest to</p> <p>16 keep everybody apprised by doing that.</p> <p>17 JODY S. KLINE ESQ: Yes ma'am.</p> <p>18 LYNN A. ROBESON: Alright, anything else? Wow! It's</p> <p>19 only two o'clock. With that, and this isn't even testimony.</p> <p>20 Hopefully we will have a clear (inaudible). With that I am</p> <p>21 going to continue this hearing to September 25th, which is</p> <p>22 a Monday, at nine-thirty am, at this roof. If it appears</p> <p>23 that we have, it may move up to the seventh floor if it</p> <p>24 looks like we're going to have a lot of witnesses, but for</p> <p>25 the purposes right now, it will be here in this room,</p>	<p>99</p> <p>1 CERTIFICATE OF TRANSCRIBER</p> <p>2 I, Susan Wilson, do hereby certify that</p> <p>3 the foregoing transcript is a true and correct record</p> <p>4 of the recorded proceedings; that said proceedings were</p> <p>5 transcribed to the best of my ability from the audio</p> <p>6 recording as provided; and that I am neither counsel</p> <p>7 for, related to, nor employed by any of the parties to</p> <p>8 this case and have no interest, financial or otherwise,</p> <p>9 in its outcome.</p> <p>10</p> <p>11 </p> <p>12 _____</p> <p>13 SUSAN WILSON</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>98</p> <p>1 September 25th at nine-thirty. I'll be getting out a</p> <p>2 scheduling order probably Monday, with the dates that we've</p> <p>3 discussed on the record. No, don't say anything. Are you</p> <p>4 going to say something?</p> <p>5 WILLIAM J. CHEN: The only thing I was going to</p> <p>6 observe was that Monday, the ninth of October is Columbus</p> <p>7 Day, which is usually a holiday. I think you're closed on</p> <p>8 that day.</p> <p>9 DAVID BROWN: We're finished in two weeks, not three</p> <p>10 weeks.</p> <p>11 WILLIAM J. CHEN: I understand.</p> <p>12 LYNN A. ROBESON: Wait, Monday the ninth of what?</p> <p>13 WILLIAM J. CHEN: October?</p> <p>14 (inaudible)</p> <p>15 LYNN A. ROBESON: I will say this to the Citizens</p> <p>16 Association, to get through this case, it would be helpful</p> <p>17 not to have, well this is how many, well I'll accept them,</p> <p>18 the petitions and things like that but I'm not going to</p> <p>19 spend a lot of time on how many people support or oppose</p> <p>20 because I will spend the time on anything that relates to</p> <p>21 the criteria for approving the Staff report, alright, so</p> <p>22 hopefully, because it's going to be a long case anyway.</p> <p>23 Alright, anything else? Seeing none, we are continued until</p> <p>24 September 25th at nine-thirty. Thank you.</p> <p>25 (Off the record.)</p>	