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Transcript of Administrative Hearing

Date: September 3, 2019
Case: 1784 Capital Holdings, LLC

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Transcript of Administrative Hearing
Conducted on September 3, 2019

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1 OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS 2 FOR MONTGOMERY COUNTY, MARYLAND 3 -----x 4 IN RE: : 5 THE APPLICATION OF, : Case No.: CU 19-03 6 1784 CAPITAL HOLDINGS, LLC : 7 -----x 8 9 10 HEARING 11 Rockville, Maryland 12 Tuesday, September 3, 2019 13 9:33 a.m. 14 15 16 17 18 19 20 21 22 23 Job: 261398 24 Pages: 1 - 223 25 Transcribed by: Molly Bugher	1 A P P E A R A N C E S 2 FOR MONTGOMERY COUNTY OFFICE OF ZONING AND 3 ADMINISTRATIVE HEARINGS: 4 MARTIN GROSSMAN, HEARING EXAMINER 5 6 FOR THE APPLICANT: 7 ERIN E. GIRARD, ESQUIRE 8 LINOWES AND BLOCHER LLP 9 7200 Wisconsin Ave Suite 800 10 Bethesda, MD 20814 11 Phone: 301.654.0504 12 13 FOR THE TOWN OF KENSINGTON: 14 MICHELE ROSENFELD, ESQUIRE 15 THE LAW OFFICE OF MICHELE ROSENFELD LLC 16 1 Research Ct, Suite 450 17 Rockville, MD 20850 18 Phone: 301.204.0913 19 20 21 22 23 24 25
1 Conditional Use Hearing held at: 2 Montgomery County Office of Zoning and Administrative 3 Hearings: 4 100 Maryland Avenue 5 County Office Building 6 Room 200 7 Rockville, MD 8 Phone: 240.777.6660 9 10 11 12 13 14 15 Pursuant to agreement before Miles Tag, a reporter and 16 notary public, in and for the State of Maryland. 17 18 19 20 21 22 23 24 25	1 C O N T E N T S 2 PAGE 3 Transcript of proceedings 5 4 Opening Statement 5 Ms. Rosenfeld 30 6 TESTIMONY: 7 Mayor Furman 33 8 Conor Crimmins 101 9 Darin Bartram 127 10 Michelle Bach 166 11 Brian Biddle 178 12 Patrick Phillips 203 13 EXHIBITS 14 EXHIBITS INTRODUCED AT HEARING: 15 NUMBER DESCRIPTION PAGE 16 Exhibit 107 2012 Kensington Sector Plan 34 17 Exhibit 108 Memorandum 37 18 Exhibit 109 technical staff Report 69 19 Exhibit 110 Montgomery County Planning Board 70 20 Resolution 21 Exhibit 111 technical staff Report 74 22 Exhibit 112 Montgomery County Planning Board Review 75 23 Exhibit 113 Urban Land Institute TAP Report 112 24 Exhibit 114 Comparison of Spandrel windows and 170 25 traditional windows

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<p>5</p> <p>1 PROCEEDINGS</p> <p>2 HEARING EXAMINER GROSSMAN: Counsel ready?</p> <p>3 MS. GIRARD: Yes.</p> <p>4 MS. ROSENFELD: Yes, thank you.</p> <p>5 HEARING EXAMINER GROSSMAN: All right. Court reporter</p> <p>6 ready? I will call the case. This is the resumption of a</p> <p>7 public hearing which was on August 9 and resumed on August</p> <p>8 20, 2019 in the matter of CU 19-03, an application by 1784</p> <p>9 Capital Holdings, LLC; pursuant to Zoning Ordinance Section</p> <p>10 59.3.6.8.D.2.V for a conditional use to allow construction</p> <p>11 and use of 126,955 square foot self-storage facility to be</p> <p>12 known as Kensington Storage at 10619 Connecticut Avenue on</p> <p>13 the southeast corner of the intersection of Connecticut</p> <p>14 Avenue, and that's Maryland 185, and Plyers Mill Road</p> <p>15 Kensington, Maryland.</p> <p>16 The Applicant's revised plan would also include a</p> <p>17 restaurant and artist studio space. The site, which is</p> <p>18 identified as part of Lot 2, Lauraner Knowles Estate,</p> <p>19 consists of 1.06 acre property owned by Mountain View</p> <p>20 Burleson LLC, under Tax ID Number 13-0102136. The Applicant</p> <p>21 is the contract purchaser. It is in the CRT 2.5 C2.0 R2.0 H75</p> <p>22 commercial residential town zone, and it's subject to the</p> <p>23 2012 Kensington Sector Plan.</p> <p>24 This hearing is conducted by the Office of Zoning and</p> <p>25 Administrative hearings. My name is Martin Grossman. I'm the</p>	<p>7</p> <p>1 than August 27, 2019. On August 28, 2019 the Applicant moved</p> <p>2 to further amend its plans by reducing the number of parking</p> <p>3 space, providing additional landscaping, and a truck</p> <p>4 circulation plan, a second revised justification statement,</p> <p>5 and a request for a waiver of parking lot screening</p> <p>6 requirements.</p> <p>7 The Town of Kensington has opposed to the application</p> <p>8 amendment as untimely under Zoning Ordinance Section</p> <p>9 5973.1.D.3. Proposals for conditions if the application is</p> <p>10 granted were provided by technical staff and that both</p> <p>11 parties. technical staff reviewed the signage amendments and</p> <p>12 continues to oppose the application.</p> <p>13 We will hear argument on the Town of Kensington's</p> <p>14 opposition to the amendment of the application as untimely,</p> <p>15 and on issues regarding proposed conditions. We will also</p> <p>16 hear testimony from the Town of Kensington's witnesses and</p> <p>17 possibly closing arguments depending on how we resolve the</p> <p>18 opposition to the application amendment.</p> <p>19 All right. I'll remind if there are any people here,</p> <p>20 who were not here in early year proceedings, we proceed here</p> <p>21 pretty much the way a court room does. All witnesses are</p> <p>22 sworn in, subject to cross-examination. Everything is taken</p> <p>23 down by a court reporter, and I've ordered transcripts in the</p> <p>24 past which have been posted on our website.</p> <p>25 This is an application for a conditional use, not a</p>
<p>6</p> <p>1 Hearing Examiner. Which means I will take further evidence</p> <p>2 here and write a report and a decision in this case. Will the</p> <p>3 parties identify themselves, please?</p> <p>4 MS. GIRARD: Erin Girard with the Linowes and Blocher,</p> <p>5 on behalf of the Applicant.</p> <p>6 MS. ROSENFELD: Michelle Rosenfeld, here on behalf of</p> <p>7 the Town of Kensington.</p> <p>8 HEARING EXAMINER GROSSMAN: All right. And are there</p> <p>9 any people who are here today who wish to offer testimony who</p> <p>10 are not being called by one of the two parties? I see no</p> <p>11 hands in the audience so let me go a little further about the</p> <p>12 background here.</p> <p>13 This hearing was begun on August 9, 2019 and resumed on</p> <p>14 August 20, 2019. The Hearing Examiner addressed preliminary</p> <p>15 matters as set forth in Exhibit 93, the testimony from one</p> <p>16 community member present to and from all the Applicant's</p> <p>17 witnesses. Given the late hour all counsel agreed to a</p> <p>18 hearing resumption date of September 3, 2019; that is today,</p> <p>19 which was announced on the public record so no written notice</p> <p>20 was needed.</p> <p>21 Copies of amendments to the application for signage</p> <p>22 were filed and forwarded to the Planning Department for</p> <p>23 comment. And that was at the - they were filed at the August</p> <p>24 20 proceeding. The parties were instructed to submit all</p> <p>25 responses to matters raised at the 8/20 hearing, no later</p>	<p>8</p> <p>1 variance. A conditional use is a that it permitted by the</p> <p>2 zoning ordinance if conditions specified in the zoning</p> <p>3 ordinance are met.</p> <p>4 Okay. Let's turn to some preliminary matters here, and</p> <p>5 I think it makes sense that the first issue is the Town of</p> <p>6 Kensington's opposition to Applicant's motion to amend the</p> <p>7 application. And by the way, that does not include the</p> <p>8 signage plans because they were filed at the hearing that</p> <p>9 includes the - and those are in Exhibit 87. It includes the</p> <p>10 matters that were filed since that time. Okay. Let me turn</p> <p>11 first to the Applicant, since it is your motion to amend. Do</p> <p>12 you wish to proceed Ms. Girard?</p> <p>13 MS. GIRARD: Sure. It was our understanding at the</p> <p>14 conclusion of the hearing on the 20th, in which we had a</p> <p>15 number of preliminary matters, including please point to</p> <p>16 where the plans - you discussed the plan's compliance with</p> <p>17 that relevant section that's (inaudible) of the transcript.</p> <p>18 But we subsequently went back and the responses that were due</p> <p>19 on the 27th. And so we submitted everything that we had</p> <p>20 available to us on the 27th, unfortunately, there was some</p> <p>21 coordination that still needed to occur between the landscape</p> <p>22 architect and the civil engineer that caused us a 24 hour</p> <p>23 delay.</p> <p>24 So the revised plans themselves were not filed until</p> <p>25 the 28th, and we apologize for that. But we understood that</p>

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<p style="text-align: right;">9</p> <p>1 that to be one day late and as we said in our response, we're 2 happy to leave the record open for an additional day to 3 compensate the Town for that time. We're also happy to call 4 whatever witnesses Ms. Rosenfeld would like to speak to 5 regarding those revisions. 6 But in our mind, it really was a simple change of 7 adding the landscape islands in the service parking area and 8 shortening the length of the parking spaces on the east side 9 of the plans to allow for the overhang that's allowed by the 10 code. We weren't doing anything that requires a waiver or an 11 exception to we're just modifying that to increase the buffer 12 along the east side of the property where the service parking 13 is. 14 HEARING EXAMINER GROSSMAN: Well, you are asking for a 15 waiver of certain requirements? 16 MS. GIRARD: Of certain things. I'm just saying that 17 the parking space only is not one of those things. The 18 primary one that we did add was the tree canopy. The code 19 calls for a 25 percent tree canopy, and as we noted in our 20 filing on the 28th, due to the overhang of the building, we 21 obviously cannot landscape or plant canopy trees underneath 22 that overhang which already covers approximately 45 percent 23 of the surface parking area. 24 We have maximized to the degree we could to 19 percent, 25 the canopy, on those spaces that are exposed, so we're over</p>	<p style="text-align: right;">11</p> <p>1 for the maximum width of the two-way driveway access. 2 HEARING EXAMINER GROSSMAN: All right. This is the 3 second revised statement? 4 MS. GIRARD: Correct. 5 HEARING EXAMINER GROSSMAN: And that's Exhibit 99-E. 6 and you say - what page is that on? 7 MS. GIRARD: Page 17. 8 HEARING EXAMINER GROSSMAN: Okay. 9 MS. GIRARD: Which, as I understood it, the two issues 10 as far as circulation were; one, so if you - on page 16 of 11 the statement we address corner lot condition and the 12 requirement of 59.6.1.4.E to have one driveway access on the 13 lesser classified street and we've included a request on page 14 16 for that to provide for the Connecticut Avenue access. And 15 then on page 17, as I just mentioned, we request - 16 We note that we're willing, at the time of the 17 preliminary plan to work with SHA to reduce that width so 18 that was in compliance as far as the driveway is concerned, 19 but as the testimony reflected, you know, it was our 20 understanding that SHA might be able to overrule the county. 21 And if that's the case, we're seeking a waiver. 22 HEARING EXAMINER GROSSMAN: I see that now. By the way, 23 while we're at it, I noticed that there is an error 24 apparently on page 2 on your second revised statement. It 25 refers to 58 parking spaces and as I understand it now, you</p>
<p style="text-align: right;">10</p> <p>1 60 percent as far as coverage of the surface parking area by 2 either tree canopy or building area to reduce the heat island 3 effect and what intent of the code seems to be. But we did 4 include the justification for that in our revised statement 5 of justification. 6 HEARING EXAMINER GROSSMAN: While you're on the waiver 7 question, I noticed you have asked for a waiver of certain 8 parking requirements, parking lot screening requirements 9 under 59.6.2.10. Isn't there also a need for alternative 10 compliance under 59.6.8 for the failure to meet all the 11 access requirements in 59.6.1? Sorry to throw all the numbers 12 at you, but we talked about this the last time - 13 MS. GIRARD: We did. 14 HEARING EXAMINER GROSSMAN: - and staff pointed out 15 that there was an issue regarding lack of compliance with all 16 of the access requirements in the code, which your expert 17 addressed as necessary, but wouldn't it also require an 18 alternative compliance that's not covered by the parking lot 19 waiver provision under 59.6.2. Because that only covers 20 things under that division, that is the 59.6.2 division. It 21 does not cover an alternative to requirements under 59.6.1, 22 nor under 59.6.3, 4, et cetera. So wouldn't that also be 23 needed? 24 MS. GIRARD: We did include, on page 17, of our revised 25 statement a request for alternate compliance under 59.6.8.1</p>	<p style="text-align: right;">12</p> <p>1 are actually seeking 53 parking spaces? 2 MS. GIRARD: Yes. I apologize for that. We didn't know 3 that we were dropping the parking spaces until the last 4 minute when we got the plan. So I apologize that that was not 5 picked up here. 6 HEARING EXAMINER GROSSMAN: So if everybody is 7 agreeable I would go to 99-E, assuming I can find it. And 8 correct that in ink on that page. Is that an agreeable thing 9 to do since that properly reflects what you're seeking? That 10 is you're seeking 53 parking spaces, not 58. 11 MS. GIRARD: 53 standard, and 2 loading, correct. 12 HEARING EXAMINER GROSSMAN: Well, it's 53 total I 13 believe, isn't it? Including the loading? 14 MS. GIRARD: There's an ADA space that's - 15 HEARING EXAMINER GROSSMAN: There were e ADA spaces, 2 16 loading spaces, but isn't the total, including all of those, 17 53? Or am I mistaken? 18 MS. GIRARD: 56, we believe it's 56, if you include the 19 loading spaces and the ADA. 20 HEARING EXAMINER GROSSMAN: I'll tell you what. I mean 21 all of that's between the minimum and the maximum allowed, 22 but I'll ask you to straighten that out during a break and 23 make sure that we have the right number. So I won't make any 24 changes on that page until you've actually straightened that 25 out and tell me whether or not you have - whether the 53</p>

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<p>13</p> <p>1 includes the loading and ADA spaces or not. Okay?</p> <p>2 MS. GIRARD: Sure.</p> <p>3 HEARING EXAMINER GROSSMAN: And there's one other that</p> <p>4 you mentioned. You gave me electronic version of the signage</p> <p>5 plan. The electronic version has an error on pages 3 and 4.</p> <p>6 The signage plans electronically on those pages are screwed</p> <p>7 up. They don't display what your signage says. So maybe you</p> <p>8 could redo the electronics and send that again?</p> <p>9 MS. GIRARD: Absolutely.</p> <p>10 HEARING EXAMINER GROSSMAN: All right. Are you finished</p> <p>11 with your argument regarding the motion to amend?</p> <p>12 MS. GIRARD: I am. In addition to what I said in the</p> <p>13 email which just is that our understanding was that the rule</p> <p>14 cited to by the Town didn't apply once the hearing had begun</p> <p>15 so that those noticing requirements didn't apply, and we</p> <p>16 believed that the 27th was the deadline. And as I said, we</p> <p>17 were 24 hours over, and we're willing to make up that in any</p> <p>18 way that the Hearing Examiner feels is appropriate.</p> <p>19 HEARING EXAMINER GROSSMAN: Right. You correctly</p> <p>20 referred to the fact that OZHA has rules. council approved</p> <p>21 rules for these kinds of land-use proceedings under Rule</p> <p>22 22.OC allows an amendment to be made during the public</p> <p>23 hearing without written notice. However, of course, there</p> <p>24 must be sufficient notice with due process -</p> <p>25 MS. GIRARD: Yes.</p>	<p>15</p> <p>1 our objection with respect to the submitted plans and ask for</p> <p>2 an opportunity to supplement the record by the 9th of</p> <p>3 September, in writing, with respect to the waivers.</p> <p>4 HEARING EXAMINER GROSSMAN: Well, certainly. I will</p> <p>5 give you more time if you needed it. Frankly, I don't think</p> <p>6 that the offer of a day was very generous.</p> <p>7 MS. GIRARD: I was offering a day because we were a day</p> <p>8 late, but I'm not going to fall on our sword over the number.</p> <p>9 HEARING EXAMINER GROSSMAN: But if September 9th is</p> <p>10 what you need, that would be fine. You don't need a further</p> <p>11 hearing proceeding is what you're telling me?</p> <p>12 MS. ROSENFELD: We are not requesting a further</p> <p>13 proceeding hearing on the waivers.</p> <p>14 HEARING EXAMINER GROSSMAN: All right. I think that's</p> <p>15 very reasonable. And there may be, we're talking - we are at</p> <p>16 September 3 now, really we haven't heard back from technical</p> <p>17 staff as to the August 28 amendment and waiver request so I</p> <p>18 have to give them time as well to respond. I usually give</p> <p>19 them 10 days for this kind of mid-hearing change. So what I</p> <p>20 would -</p> <p>21 MS. ROSENFELD: Could I proffer that we would respond,</p> <p>22 say within five business days of Park and Planning of any</p> <p>23 submission of any supplemental comments? Or -</p> <p>24 HEARING EXAMINER GROSSMAN: Yeah. The only problem is I</p> <p>25 don't want to have to issue an order in writing, that I then</p>
<p>14</p> <p>1 HEARING EXAMINER GROSSMAN: By the way, that particular</p> <p>2 provision and that application of allowing an amendment in</p> <p>3 the course of the hearing, it was challenged in court and it</p> <p>4 was upheld, in the Brandywine case in 237 MD. App. 195, 215</p> <p>5 to 216, and 184 8th 3d 48 at 61. It was a 2018 case. But once</p> <p>6 again, of course, there is always the kicker of the fact that</p> <p>7 the other party is entitled, and the community is entitled,</p> <p>8 to adequate notice and an opportunity to respond. And now</p> <p>9 I'll hear from Ms. Rosenfeld.</p> <p>10 MS. ROSENFELD: Yes. Thank you, Mr. Grossman. Yes, in</p> <p>11 the benefit of time I did some - and having received Ms.</p> <p>12 Girard's opposition, I also looked at the Brandywine case.</p> <p>13 And we withdraw our objection with respect to the amended</p> <p>14 plans.</p> <p>15 That having been said, the waiver request that were</p> <p>16 included, I recognize that they were raised as potential</p> <p>17 issues in the last hearing, but I would ask that we have</p> <p>18 until Monday, September 9th to respond to the waiver requests</p> <p>19 in writing. We would to have the benefit of any Park and</p> <p>20 Planning input that they might provide in advance of that and</p> <p>21 in addition they do require some thought and analysis. We did</p> <p>22 receive the waiver request with very, very little time to</p> <p>23 prepare given the interceding holiday.</p> <p>24 HEARING EXAMINER GROSSMAN: Right.</p> <p>25 MS. ROSENFELD: And so we would, like I said, withdraw</p>	<p>16</p> <p>1 send out because that requires a lot of mailings and so on.</p> <p>2 So what I prefer to do is set a specific time and it seems to</p> <p>3 me that we could say - it's now September 3 so by September</p> <p>4 10, let's say, for a response from technical staff to the</p> <p>5 amendments filed August 28, and the waiver request connected</p> <p>6 thereto, and also, the alternative compliance request</p> <p>7 connected thereto.</p> <p>8 And then how much time do you want after that? Do you</p> <p>9 want until the end of that week, would that be sufficient?</p> <p>10 The 10th is a Tuesday, so do you want until that Friday to</p> <p>11 respond?</p> <p>12 MS. ROSENFELD: I would ask until the following Monday.</p> <p>13 HEARING EXAMINER GROSSMAN: To the following Monday.</p> <p>14 Okay. So that would be, let me pull out a calendar here just</p> <p>15 so we don't make you file on a Sunday. Okay. So you would</p> <p>16 have until September 16 for your filed response.</p> <p>17 MS. GIRARD: For clarification, not knowing what staff</p> <p>18 are going to say, will the Applicant have an ability to</p> <p>19 respond during that time as well?</p> <p>20 HEARING EXAMINER GROSSMAN: Yeah, I don't see why not.</p> <p>21 Why don't we say that you would respond by that Friday.</p> <p>22 MS. GIRARD: Okay.</p> <p>23 HEARING EXAMINER GROSSMAN: So that would be by</p> <p>24 September 13. And make sure you email your response to Ms.</p> <p>25 Rosenfeld.</p>

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<p>17</p> <p>1 MS. GIRARD: Sure.</p> <p>2 HEARING EXAMINER GROSSMAN: The Applicant's response to</p> <p>3 staff, and any staff comments. And then 9/16 would be an</p> <p>4 opposition response. And then it seems to me we could close</p> <p>5 the record effective close of business on that date. Does</p> <p>6 that make sense to everybody?</p> <p>7 MS. ROSENFELD: Uh-huh.</p> <p>8 HEARING EXAMINER GROSSMAN: Okay. So the record would</p> <p>9 close, assuming we finish today, which I hope we will, on</p> <p>10 September 16, 2019 at the close of business. OZHA, by the</p> <p>11 way, at that point will be, assuming everything goes as they</p> <p>12 tell me it's going, we will be in new facilities at that</p> <p>13 time. Supposedly keeping our same telephone numbers but</p> <p>14 located at the Broome School on Twinbrook Parkway is the</p> <p>15 plan, maybe for a year. They fixed the air conditioner by the</p> <p>16 way, now that we don't need it probably. But last time we</p> <p>17 were here we didn't have the benefit of air-conditioning.</p> <p>18 Okay.</p> <p>19 Let's see if there are any other. All right, before we</p> <p>20 get to the proposed conditions, are there any further</p> <p>21 thoughts on the legal questions that came up the last time,</p> <p>22 which I raised the last time about the impacts of sections</p> <p>23 24-201(b) and (c) and how to interpret them? That's a</p> <p>24 Maryland code provision under the land use article. Any</p> <p>25 further comments on that? Seeing nothing, we'll go on to the</p>	<p>19</p> <p>1 So I don't see why the conditions as to how that</p> <p>2 property, which is 90 percent currently planned, or</p> <p>3 essentially 90 percent storage, which is the conditional use,</p> <p>4 how that would function. So I don't know. I haven't examined</p> <p>5 the details of the proposals for the conditions to see how</p> <p>6 they would impact it. I would think that I would have the</p> <p>7 authority to govern that to the extent it affects the</p> <p>8 conditional use.</p> <p>9 If there were some provisions there about the internal</p> <p>10 functionings, for example, of a restaurant, if that is not</p> <p>11 conditional usable, as a permitted - an absolute permitted</p> <p>12 use that might be a different issue. But I would look at</p> <p>13 that. I understand you expressed concerns. I don't</p> <p>14 necessarily buy your juxtaposition of what you consider</p> <p>15 staff's approach to the whole application and not - you're</p> <p>16 suggesting that they haven't considered these other uses in</p> <p>17 their evaluation versus the condition.</p> <p>18 But I understand the concern you raised about whether</p> <p>19 or not uses that may be permitted uses. I haven't looked into</p> <p>20 that question as to whether that restaurant proposed there,</p> <p>21 and whether artist studios proposed there, are permitted</p> <p>22 uses. You are saying that they are permitted uses?</p> <p>23 MS. GIRARD: I am.</p> <p>24 HEARING EXAMINER GROSSMAN: Okay.</p> <p>25 MS. GIRARD: Yes, they're permitted uses. And as I</p>
<p>18</p> <p>1 next point. Are there any responses to the proposed</p> <p>2 conditions by technical staff, and by the parties? I'll start</p> <p>3 out with the Applicant.</p> <p>4 MS. GIRARD: And Mr. Grossman, you probably saw our</p> <p>5 email regarding staff's proposed conditions.</p> <p>6 HEARING EXAMINER GROSSMAN: Yes.</p> <p>7 MS. GIRARD: As I noted in the email, the Applicant is</p> <p>8 agreeable to, you know, some language regarding the first two</p> <p>9 floors, but we're a little confused by the staff's very</p> <p>10 deliberate attempt to not discuss the first two floors as far</p> <p>11 as sector plan compliance is concerned, but then trying to</p> <p>12 impose conditions on them. And I'm going to be honest, I have</p> <p>13 looked at it every which way and the code is not entirely</p> <p>14 clear if you have a conditional use that sitting on top of</p> <p>15 two permitted uses, or those permitted uses are part of - you</p> <p>16 know, proper subject of conditions regarding the conditional</p> <p>17 use or not.</p> <p>18 HEARING EXAMINER GROSSMAN: Well, all right. I guess</p> <p>19 there is an interesting question. I can't impose a condition</p> <p>20 that govern those who are not before me. I don't have that</p> <p>21 authority. However, I can impose conditions that govern the</p> <p>22 Applicant and the conditional use holders that may succeed</p> <p>23 the Applicant. And to that extent that whoever owns that</p> <p>24 property and functions on that property, I think is within</p> <p>25 the control of the condition.</p>	<p>20</p> <p>1 noted, I don't think the Applicant's adverse to certain</p> <p>2 conditions regarding those first two floors. But I</p> <p>3 think - and we have - we share similar concerns with some of</p> <p>4 the requests of the Town. There needs to be a reasonableness</p> <p>5 to some of them as far as the realities of the market and</p> <p>6 leasing and what have you. And we are happy to discuss those.</p> <p>7 But I just wanted to be clear because frankly I wasn't 100</p> <p>8 percent sure as to how the conditions would relate to those</p> <p>9 permitted uses.</p> <p>10 HEARING EXAMINER GROSSMAN: Well, when you say you</p> <p>11 would like to discuss that, this is the opportunity, I</p> <p>12 suppose, to input on any of these questions because once the</p> <p>13 record closes there will be no more input and then I'll just</p> <p>14 have to decide. So if you have specific concerns about</p> <p>15 specific conditions that were proposed by the Town of</p> <p>16 Kensington, or by the technical staff then you have to voice</p> <p>17 them. And if you aren't ready to do that, you can wait until</p> <p>18 a break and then cogitate that.</p> <p>19 MS. GIRARD: That's fine. Yeah I was thinking -</p> <p>20 HEARING EXAMINER GROSSMAN: And bring it up before we</p> <p>21 leave here today.</p> <p>22 MS. GIRARD: Sure. We can speak more specifically. I</p> <p>23 wanted to establish that first question as to whether we were</p> <p>24 going to put them on and were happy to propose some that may</p> <p>25 be strike a middle ground.</p>

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<p>21</p> <p>1 HEARING EXAMINER GROSSMAN: Okay. All right. Ms. 2 Rosenfeld?</p> <p>3 MS. ROSENFELD: I'd like to respond to that question 4 about the scope of the Hearing Examiner's authority to impose 5 conditions on the permitted uses. The Applicant is here with, 6 and is presenting, to the Hearing Examiner what it views as a 7 cohesive, single application. In the permitted uses are part 8 of the parking requirements. They are part of the layout. 9 They are part of the - and they are material to the 10 Applicants argument that this is a mixed-use project, and 11 therefore complies with the sector plan. And so to the extent 12 that it is an integral part of what is before the Hearing 13 Examiner to review then it's our view that you would have the 14 ability to the impose whatever conditions are appropriate 15 with respect to the permitted uses to ensure compatibility 16 with the sector plan, to ensure conformance with the overall 17 zoning requirements, and compatibility with the surrounding 18 neighborhood and all of the other findings that you need to 19 make. So we think that there possibly could be applications 20 where it would not be within your purview, but in this 21 particular case the Applicant has put those uses squarely 22 before you as a material part of the application itself. And 23 we think you have the authority to impose conditions.</p> <p>24 HEARING EXAMINER GROSSMAN: I might agree with you as a 25 general proposition. Of course the devil is in the detail</p>	<p>23</p> <p>1 But we don't use it that, the thing that's number one in both 2 of your submissions any more at the request of the Department 3 of Permitting Services. In any event, all right. Once again, 4 everybody can, in their final filing can say something more 5 about the responses to conditions, or if there are specific 6 problems with ones suggested by either side the other side 7 can certainly say so that I have the benefit of that.</p> <p>8 MS. GIRARD: And I'm happy to go through the Towns a 9 little more specifically if that would help. It might help 10 facilitate where we agree and where we don't for those 11 submissions.</p> <p>12 HEARING EXAMINER GROSSMAN: Okay. Do you want to do 13 that now, or do you want to do that offline with counsel for 14 the Town? What's your preference there?</p> <p>15 MS. GIRARD: Whichever.</p> <p>16 HEARING EXAMINER GROSSMAN: Ms. Rosenfeld, what do you 17 feel about that? Do you want to have an on the record 18 discussion of that now, or do you want to talk and see if you 19 can all can agree on a set of conditions if, in 20 fact - recognizing that the Town has specified that they in 21 no way consent to this application, but if you granted these 22 would be conditions that they would find appropriate?</p> <p>23 MS. ROSENFELD: I think it would be efficient to have 24 an off-line discussion with Ms. Girard and see where we could 25 agree. And where we can't agree, we can submit to you our</p>
<p>22</p> <p>1 there about the word appropriate that you used. That's the 2 real rub here, what is appropriate? What level of detail is 3 appropriate for the Hearing Examiner to try to put limits on 4 something that would be a permitted use because it is tied in 5 with the conditional use. So that would be a question. I'll 6 be happy to hear from everybody on that and maybe in your 7 findings to that something, censure going to have filings you 8 can say something about that issue as well. What about 9 conditions -</p> <p>10 MS. ROSENFELD: And if I could just follow up briefly. 11 We think that the conditions that we have proposed are 12 appropriate and likewise the conditions and that staff has 13 recommended. If the Applicant has concerns or raise 14 opposition to those then we would like an opportunity to 15 address that opposition.</p> <p>16 HEARING EXAMINER GROSSMAN: Okay. By the way, everybody 17 has suggested a first condition of the Applicant is bound by 18 their statements and so on and so forth. That used to be a 19 standard that we put in. And it was actually in the old code. 20 We took it out in the last couple of years at the request of 21 the Department of Permitting Services because it was too 22 difficult for enforcement purposes since so many things would 23 be said in transcripts and so on. So we don't use that as a 24 condition, a general condition anymore. Of course, there are 25 general conditions about following all regulations and so on.</p>	<p>24</p> <p>1 differing versions.</p> <p>2 HEARING EXAMINER GROSSMAN: Okay. Maybe even a joint 3 submission of proposed conditions and with a list of one said 4 that the Town may want that you don't agree to, Ms. Girard, 5 and vice a versa.</p> <p>6 MS. GIRARD: Okay. That makes sense.</p> <p>7 MS. ROSENFELD: That's agreeable to me.</p> <p>8 HEARING EXAMINER GROSSMAN: All right. And do it at the 9 same time as you make your filings. All right. Let's see. Was 10 there anything else? Here are my notes. Well, any other 11 preliminary matters?</p> <p>12 MS. ROSENFELD: Mr. Grossman, I actually have several. 13 I contacted Ms. Girard last week requesting invoices to 14 document the fees associated with the delay.</p> <p>15 HEARING EXAMINER GROSSMAN: Yes.</p> <p>16 MS. ROSENFELD: Just given time constraints she's not 17 been able to provide them. She will, and we assumed that were 18 going to be able to resolve that issue between counsel. If 19 not, then we would likely submit something to you.</p> <p>20 HEARING EXAMINER GROSSMAN: Okay.</p> <p>21 MS. ROSENFELD: And I will submit we would file that 22 with you before the 16th, or by the 16th.</p> <p>23 HEARING EXAMINER GROSSMAN: Certainly. That seems 24 reasonable.</p> <p>25 MS. ROSENFELD: I just wanted the record to note that</p>

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<p>25</p> <p>1 were still in discussions on that issue.</p> <p>2 HEARING EXAMINER GROSSMAN: I understand.</p> <p>3 MS. ROSENFELD: Another point, in reviewing the</p> <p>4 transcript from the 20th, there are significant blocks of</p> <p>5 time where it appears I'm questioning, for example, Mr.</p> <p>6 McKone, where, in fact, it's Ms. Girard, and times when my</p> <p>7 questions are attributed to her. We would -</p> <p>8 HEARING EXAMINER GROSSMAN: I know that's a problem I</p> <p>9 have found, especially sometimes on the 48 hour turnaround,</p> <p>10 but also it's just because it's done by recording rather</p> <p>11 than -</p> <p>12 MS. ROSENFELD: And I've discussed this with Ms. Girard</p> <p>13 and with the recording specialist, and what we would propose</p> <p>14 is that we - Ms. Girard and I jointly work with Planet Depos</p> <p>15 and come up with a corrected version that we could submit for</p> <p>16 the record to replace the current transcript.</p> <p>17 HEARING EXAMINER GROSSMAN: That would be great.</p> <p>18 MS. ROSENFELD: It would be exceedingly difficult</p> <p>19 should this go up on appeal, and I have no idea -</p> <p>20 HEARING EXAMINER GROSSMAN: Right.</p> <p>21 MS. GIRARD: But</p> <p>22 MS. ROSENFELD: But it would be exceedingly difficult</p> <p>23 to try and write a brief based on the transcript that we</p> <p>24 have.</p> <p>25 HEARING EXAMINER GROSSMAN: Right. Yes. That would be</p>	<p>27</p> <p>1 HEARING EXAMINER GROSSMAN: Okay.</p> <p>2 MS. ROSENFELD: I have no other preliminary matters.</p> <p>3 HEARING EXAMINER GROSSMAN: All right. Do you have any</p> <p>4 response on those issues?</p> <p>5 MS. GIRARD: No.</p> <p>6 HEARING EXAMINER GROSSMAN: All right then. I think</p> <p>7 we're at the point. Do you have an opening statement to make,</p> <p>8 Ms. Rosenfeld? We don't have anything further. It would be</p> <p>9 essentially the Applicant has rested as far as witnesses is</p> <p>10 concerned, correct?</p> <p>11 MS. GIRARD: Right.</p> <p>12 HEARING EXAMINER GROSSMAN: Okay.</p> <p>13 MS. ROSENFELD: I actually would like to call the</p> <p>14 Applicant's witness for further cross-examination with</p> <p>15 respect to the truck turning -</p> <p>16 HEARING EXAMINER GROSSMAN: Okay.</p> <p>17 MS. ROSENFELD: - radius exhibit that was filed.</p> <p>18 HEARING EXAMINER GROSSMAN: All right.</p> <p>19 MS. ROSENFELD: And I don't know if you have a large</p> <p>20 copy of that exhibit, or a full-size copy you?</p> <p>21 MS. GIRARD: We do have a large copy.</p> <p>22 MS. ROSENFELD: Okay.</p> <p>23 MS. GIRARD: We can have Mr. Clark speak to it perhaps,</p> <p>24 but Mr. Foxx, as I noted in my filing, he's not here today.</p> <p>25 HEARING EXAMINER GROSSMAN: Okay.</p>
<p>26</p> <p>1 wonderful if you folks would do that. As far as both</p> <p>2 transcripts really, to the extent that you see errors in the</p> <p>3 earlier one as well.</p> <p>4 MS. ROSENFELD: Okay. And my final issue, there are</p> <p>5 arguments in submissions provided by the Applicant to the</p> <p>6 Planning Board and that are in the record before you that</p> <p>7 discusses zoning by plebiscite. And it's our view that there</p> <p>8 has been no zoning by plebiscite with respect to the Town's</p> <p>9 actions. I can speak briefly to it now.</p> <p>10 My real question is whether or not that is an issue for</p> <p>11 you, and if it is, then I would submit a legal memorandum</p> <p>12 responding to the arguments that Ms. Girard has made, again,</p> <p>13 before the 16th. But my first question is whether or not</p> <p>14 that's an issue that you expect you would be considering in</p> <p>15 ruling on?</p> <p>16 HEARING EXAMINER GROSSMAN: No. I don't consider</p> <p>17 the - a position taken by resolution of the Town of</p> <p>18 Kensington to be zoning by plebiscite. Especially, given the</p> <p>19 statutory recognition of the Town of Kensington's ability to</p> <p>20 take a position on zoning and land-use matters given by the</p> <p>21 state of Maryland by statute. So I do not consider that to be</p> <p>22 the concern that's addressed in the cases that say you</p> <p>23 shouldn't zone by plebiscite.</p> <p>24 MS. ROSENFELD: Okay. Thank you. In that case, I will</p> <p>25 not be filing a supplemental legal memorandum.</p>	<p>28</p> <p>1 MS. GIRARD: He's out of town but we can - I'm trying</p> <p>2 to think of the best way to do it. I didn't know that you</p> <p>3 were going to need him today.</p> <p>4 MS. ROSENFELD: Oh, I'm - okay. Okay. Is he qualified</p> <p>5 to speak to the exhibit?</p> <p>6 UNIDENTIFIED SPEAKER: I've not looked at the exhibit.</p> <p>7 MS. ROSENFELD: Okay.</p> <p>8 MS. GIRARD: Michelle -</p> <p>9 HEARING EXAMINER GROSSMAN: Why don't we do this. Why</p> <p>10 don't we give the witness an opportunity to look at the</p> <p>11 exhibit during a break.</p> <p>12 MS. ROSENFELD: Okay.</p> <p>13 MS. GIRARD: Okay.</p> <p>14 HEARING EXAMINER GROSSMAN: Would you - -</p> <p>15 MS. GIRARD: We're thinking Mr. Biddle actually. I'm</p> <p>16 looking at the wrong people, our traffic engineer would</p> <p>17 probably be more logical than our landscape architect.</p> <p>18 HEARING EXAMINER GROSSMAN: Right.</p> <p>19 MS. GIRARD: He will look at it now and -</p> <p>20 HEARING EXAMINER GROSSMAN: Mr. Biddle will.</p> <p>21 MS. GIRARD: And we can call him after he's had a</p> <p>22 chance to review.</p> <p>23 HEARING EXAMINER GROSSMAN: All right. So let me know</p> <p>24 after the break when it's appropriate to call him. Is there</p> <p>25 any other of Applicant's witness you wanted further cross-</p>

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<p>29</p> <p>1 examination of?</p> <p>2 MS. ROSENFELD: I also had some cross-examination with</p> <p>3 respect to the new landscaping plan that was filed. And I do</p> <p>4 think that that falls within Mr. Fox's expertise.</p> <p>5 MS. GIRARD: Mr. Clark.</p> <p>6 MR. CLARK: Mr. Clark.</p> <p>7 MS. ROSENFELD: I'm sorry.</p> <p>8 MR. CLARK: I'm whoever you want, actually.</p> <p>9 HEARING EXAMINER GROSSMAN: So shall we recall?</p> <p>10 MS. ROSENFELD: We can postpone that and call him later</p> <p>11 in the day after he's had a chance to - it would be easiest,</p> <p>12 I think, if we just brought him up once.</p> <p>13 MS. GIRARD: Well, no we would have -</p> <p>14 HEARING EXAMINER GROSSMAN: No, it's a different</p> <p>15 witness.</p> <p>16 MS. GIRARD: Right.</p> <p>17 HEARING EXAMINER GROSSMAN: Mr. Biddle, I think, is</p> <p>18 going to testify regarding the truck turning.</p> <p>19 MS. GIRARD: Right.</p> <p>20 MS. ROSENFELD: Okay.</p> <p>21 HEARING EXAMINER GROSSMAN: And then Mr. Clark</p> <p>22 regarding landscaping.</p> <p>23 MS. GIRARD: Mr. Clark regarding landscaping.</p> <p>24 MS. ROSENFELD: Okay.</p> <p>25 HEARING EXAMINER GROSSMAN: So do you want to have Mr.</p>	<p>31</p> <p>1 plan recommendation itself. As a municipality they had a</p> <p>2 significant role, and as you recognized by virtue of the</p> <p>3 state law they have - there is a recognition and that their</p> <p>4 views on land use and zoning actions should be given weight.</p> <p>5 We will, I think, show you that the application does not</p> <p>6 conform with the recommendations of the sector plan. We</p> <p>7 intend to show you that the definition of mixed-use is</p> <p>8 proffered by Mr. Phillips, is not the appropriate one to</p> <p>9 apply in this particular case. And as well, that the argument</p> <p>10 that this is the use that should be here because of no other,</p> <p>11 better use could possibly be located on this property, also,</p> <p>12 is not the correct standard to use.</p> <p>13 HEARING EXAMINER GROSSMAN: Do you have a - I mean he</p> <p>14 posed something by the Urban Land Institute as it a</p> <p>15 definition of mixed-use which this project would meet, he</p> <p>16 testified. Is there another definition and some recognized</p> <p>17 authority of a mixed use that you're going to proffer to me?</p> <p>18 MS. ROSENFELD: Yes, there is.</p> <p>19 HEARING EXAMINER GROSSMAN: Okay.</p> <p>20 MS. ROSENFELD: And we also agree with staff's</p> <p>21 recommendation that there are inherent adverse effects that</p> <p>22 case that justify denial and we also will be elaborating on -</p> <p>23 HEARING EXAMINER GROSSMAN: Inherent or non-inherent?</p> <p>24 MS. ROSENFELD: I'm sorry. Non-inherent adverse</p> <p>25 effects, and we will be elaborating on staffs analysis in</p>
<p>30</p> <p>1 Clark now? What's your preference?</p> <p>2 MS. ROSENFELD: Let me just do all of the cross-</p> <p>3 examination at once.</p> <p>4 HEARING EXAMINER GROSSMAN: Okay.</p> <p>5 MS. ROSENFELD: I think that would be best.</p> <p>6 HEARING EXAMINER GROSSMAN: So you want to proceed with</p> <p>7 an opening statement or you want to proceed with your first</p> <p>8 witness? How do you want to proceed?</p> <p>9 MS. ROSENFELD: I think I would like to make a very</p> <p>10 brief opening statement.</p> <p>11 HEARING EXAMINER GROSSMAN: Okay.</p> <p>12 MS. ROSENFELD: Just to give you sort of a summary of</p> <p>13 what to expect. First of all, we do agree with the findings</p> <p>14 of the Planning Board staff Report and the planning board</p> <p>15 with respect to conformance to the sector plan and the</p> <p>16 grounds for their opposition, and recommendation of denial of</p> <p>17 this project. We do agree that the Planning Board's</p> <p>18 determination get deference. They are an administrative</p> <p>19 agency that has great expertise in reviewing and analyzing</p> <p>20 sector plans and we think that their testimony, accordingly,</p> <p>21 should be given weight. In addition to that, we do think that</p> <p>22 the Town's resolution and the Town's testimony should carry</p> <p>23 great weight. As you will hear, the Town has participated</p> <p>24 both in before the inception of the Kensington Sector Plan</p> <p>25 and was very, very involved in the development of the sector</p>	<p>32</p> <p>1 that regard.</p> <p>2 HEARING EXAMINER GROSSMAN: Okay.</p> <p>3 MS. ROSENFELD: So in summary, what we intend to show</p> <p>4 is that the project should be denied because of a lack of</p> <p>5 conformance with the sector plan and because of the - several</p> <p>6 adverse effects on - resulting from non-inherent operational</p> <p>7 and physical characteristics of the project.</p> <p>8 HEARING EXAMINER GROSSMAN: Okay.</p> <p>9 MS. ROSENFELD: Okay.</p> <p>10 HEARING EXAMINER GROSSMAN: You may call your first</p> <p>11 witness.</p> <p>12 MS. ROSENFELD: I will call my first witness, she's</p> <p>13 sitting to my left. Mayor Tracey Furman.</p> <p>14 HEARING EXAMINER GROSSMAN: Okay. Mayor Furman, would</p> <p>15 you be kind enough to take the position of honor? Be careful</p> <p>16 not to trip on any wires that may be laid out there.</p> <p>17 MAYOR FURMAN: I'll be careful.</p> <p>18 HEARING EXAMINER GROSSMAN: Okay. Will you state your</p> <p>19 full name and your business address?</p> <p>20 MAYOR FURMAN: Tracey Furman, 3710 Mitchell Street,</p> <p>21 Kensington, Maryland 20895.</p> <p>22 THE COURT REPORTER: I'm sorry, could you say the</p> <p>23 address for me again?</p> <p>24 MAYOR FURMAN: 3710 Mitchell Street, Kensington,</p> <p>25 Maryland 20895.</p>

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<p>33</p> <p>1 HEARING EXAMINER GROSSMAN: Would you raise your right 2 hand, please? 3 Do you swear or affirm to tell the truth, the whole 4 truth, and nothing but the truth, under penalty of perjury? 5 MAYOR FURMAN: I do. 6 HEARING EXAMINER GROSSMAN: All right. And are you here 7 today testifying in your individual capacity, or officially 8 as the mayor of the Town of Kensington? 9 MAYOR FURMAN: As the mayor of Kensington. 10 HEARING EXAMINER GROSSMAN: Okay. All right. You may 11 proceed. 12 MS. ROSENFELD: Would you state your name and business 13 address for the record, please? 14 MAYOR FURMAN: Tracey Furman, 3710 Mitchell Street, 15 Kensington, Maryland 20895. 16 MS. ROSENFELD: And would you spell your first and last 17 names, please? 18 MAYOR FURMAN: Tracey, T-R-A-C-E-Y, Furman, 19 F-U-R-M-A-N. 20 MS. ROSENFELD: And you are currently the mayor of the 21 Town of Kensington? 22 MAYOR FURMAN: Yes. 23 MS. ROSENFELD: And when were you elected? 24 MAYOR FURMAN: I was elected in 2014? 2016. '16, sorry. 25 I was a town council person before that.</p>	<p>35</p> <p>1 aware of the Kensington Sector Plan? 2 MAYOR FURMAN: When it first - Park and Planning was 3 holding community meetings in the town because they were 4 going to be doing the sector plan rewrite, and as a resident 5 I became - would attend some of the community meetings. 6 MS. ROSENFELD: Okay. And could you just describe the 7 scope of your participation, if any, in the process? 8 MAYOR FURMAN: At the time I was just a resident. 9 MS. ROSENFELD: Okay. Do you know if the Town 10 participated in the development of what ultimately became the 11 2012 approved and adopted Kensington Sector Plan? 12 MAYOR FURMAN: The town, at the time, Mayor Fosselman 13 put together a revitalization committee and that was a 14 committee of residents who followed the plan carefully. Then, 15 you know, your average resident would - this was a long 16 process of people became more involved as we went along. 17 MS. ROSENFELD: Okay. And where you will revitalization 18 committee? 19 MAYOR FURMAN: I was not. 20 MS. ROSENFELD: Is anybody currently in an official 21 capacity with the town? 22 MAYOR FURMAN: councilmember Bartram was on the 23 revitalization committee. 24 MS. ROSENFELD: And do you know, in reviewing the 25 records related to the adoption of the Kensington Sector</p>
<p>34</p> <p>1 MS. ROSENFELD: And when did you first take a seat as a 2 town council person? 3 MAYOR FURMAN: That would've been in 2014. 4 MS. ROSENFELD: So were you - did you hold your first 5 position as an official with the town of Kensington after the 6 May 2012 adoption of the Kensington Sector Plan? 7 MAYOR FURMAN: That would be correct, yes. 8 MS. ROSENFELD: Okay. Since you have been a town 9 official, have you any occasions to review, or apply the 10 Kensington Sector Plan? 11 MAYOR FURMAN: Multiple times. 12 MS. ROSENFELD: Okay. So you are generally familiar 13 with the document? 14 MAYOR FURMAN: Yes. 15 MS. ROSENFELD: Okay. Mr. Grossman, it appears to be 16 that there is not a complete copy of the sector plan in the 17 record, and I would like to introduce that. 18 HEARING EXAMINER GROSSMAN: All right. I have a copy 19 myself that I've been looking at but - 20 MS. ROSENFELD: Okay. 21 HEARING EXAMINER GROSSMAN: - certainly if there's not 22 one in the record fully that will be fine. Thank you. And 23 that will be Exhibit 107. 2012 Kensington Sector Plan. 24 (Exhibit 107 was introduced into the record.) 25 MS. ROSENFELD: Mayor Furman, when did you first become</p>	<p>36</p> <p>1 Plan, do you know if the Town actively participated in this 2 adoption of the sector plan or - 3 MAYOR FURMAN: Absolutely. 4 MS. ROSENFELD: And can you describe just generally how 5 the Town participated? 6 MAYOR FURMAN: Well, Mayor Fosselman has a planning 7 background something was very in tune on the process, and he 8 was definitely instrumental in getting the plan moved along 9 with Planning. And we had many people in the town who were,, 10 in the business of development, and they were of assistance. 11 But, you know, there was multiple meetings and worked closely 12 with Planning. 13 MS. ROSENFELD: And are you familiar with the provision 14 of a state law that provides that the planning board and the 15 district council would need to overrule by a supermajority 16 land use planning our zoning actions contrary to a town 17 resolution? 18 MAYOR FURMAN: Yeah. I mean at the time it was called 19 Article 28. It since has been given a new number, which I'm 20 afraid I don't remember what that is. But we - 21 HEARING EXAMINER GROSSMAN: There are two provisions 22 that were talking about here. Both in land-use Article 23 Section 24-201 (b) and (c) and (b), zoning actions to 24 overrule a resolution of the Town of Kensington in a zoning 25 action would take a two-thirds majority of the Planning Board</p>

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<p>37</p> <p>1 and the Montgomery County council sitting as district 2 council, presumably. And the next section (c) refers to other 3 land use decisions. That only references the Planning Board 4 and a two-thirds majority of the Planning Board, the council 5 not been involved in that. So they were conflated. I 6 (inaudible) a little bit in your question, Ms. Rosenfeld. But 7 it's really - it's not - the council is not involved in both 8 of those subsections.</p> <p>9 MS. ROSENFELD: Correct. I agree.</p> <p>10 HEARING EXAMINER GROSSMAN: Just in the one involving 11 zoning matters.</p> <p>12 MS. ROSENFELD: Correct. Ms. Furman, I'm going to show 13 you a memorandum dated February 24, 2012 from Marlene 14 Michelson, senior legislative analyst to the Montgomery 15 County council on the Kensington Sector Plan. Mr. Grossman, I 16 would like to have this marked as an exhibit as well.</p> <p>17 HEARING EXAMINER GROSSMAN: All right.</p> <p>18 MS. GIRARD: Is that in this one that I have?</p> <p>19 MS. ROSENFELD: Right.</p> <p>20 MS. GIRARD: Okay.</p> <p>21 HEARING EXAMINER GROSSMAN: All right. This will be 22 Exhibit 108. And this is - is everything contained in this 23 February 24, 2012 - 24 (Exhibit 108 was introduced into the record.) 25 MS. ROSENFELD: Yes. Mr. Grossman, I will proffer that</p>	<p>39</p> <p>1 MS. ROSENFELD: Okay. And if draw your attention to 2 page 4, the bottom of page 4 the goal of the Town of 3 Kensington. Do you know, having reviewed this, whether the 4 Town and the District council was familiar with the 5 supermajority requirement of the land use code at that time?</p> <p>6 MAYOR FURMAN: Yes.</p> <p>7 MS. ROSENFELD: Okay. And if I could draw your 8 attention to page 5 which talks about design guidelines. I'm 9 sorry. Page 5 under crosscutting policy issues the section 10 numbered 1, moderately priced dwelling units. Do you know if 11 the Town of Kensington responded, or in any way weighed in on 12 the issue of moderately priced dwelling units during the 13 course of the sector plan process?</p> <p>14 MAYOR FURMAN: Yes. We adopted a resolution supporting 15 moderately priced dwelling units within the town.</p> <p>16 MS. ROSENFELD: Okay. And do you know if the Town also 17 adopted an ordinance to implement moderately priced dwelling 18 units?</p> <p>19 MAYOR FURMAN: I believe we did, yes.</p> <p>20 MS. ROSENFELD: Okay.</p> <p>21 HEARING EXAMINER GROSSMAN: Was that - I mean the 22 particular bolded section right under 1 here on page 5, says, 23 "FED committee recommendation. The Town of Kensington shall 24 take whatever action is necessary to ensure that MPDU use 25 will be provided in new residential developments in</p>
<p>38</p> <p>1 the submission before you is the entire County council and 2 memorandum, as well as all of the attachments.</p> <p>3 HEARING EXAMINER GROSSMAN: Okay. So this February 24, 4 2012 County council - or Kensington - let's see it's the 5 memorandum.</p> <p>6 MS. ROSENFELD: And Mr. Grossman -</p> <p>7 HEARING EXAMINER GROSSMAN: Yes?</p> <p>8 MS. ROSENFELD: - the have yellow highlighting. I will 9 submit to you that that yellow highlighting was added by me.</p> <p>10 HEARING EXAMINER GROSSMAN: Okay.</p> <p>11 MS. ROSENFELD: That that is not in the original 12 version.</p> <p>13 HEARING EXAMINER GROSSMAN: All right. So this is a 14 February 24, 2012 memorandum from Marlene Michelson who then 15 was senior legislative analyst to the County council, re 16 Kensington Sector Plan. And I'll put parents with highlights 17 added by Town of Kensington counsel. And that counsel is 18 C-O-U-N-S-E-L. Okay.</p> <p>19 MS. ROSENFELD: Okay. Ms. Furman, are you generally 20 familiar with what has been marked as Exhibit 108?</p> <p>21 MAYOR FURMAN: The Sector Plan?</p> <p>22 MS. ROSENFELD: The -</p> <p>23 MAYOR FURMAN: Oh, in this one?</p> <p>24 MS. ROSENFELD: The memorandum dated February 24th.</p> <p>25 MAYOR FURMAN: Yes, I'm sorry.</p>	<p>40</p> <p>1 Kensington."</p> <p>2 MS. ROSENFELD: That's correct.</p> <p>3 HEARING EXAMINER GROSSMAN: It doesn't say in all 4 developments, it just says in residential developments.</p> <p>5 MS. ROSENFELD: Well, in residential, yes. I agree. I 6 agree with you. And Ms. Furman, if draw your attention to 7 circle 6 toward the back of the report, ordinance number 0- 8 01-2012. Could you identify for the record what that 9 ordinance is?</p> <p>10 MAYOR FURMAN: Well, it's accepting that the Town will 11 allow for moderate income housing to come into the town of 12 Kensington, and that we will - well, we will make it a 13 requirement that all development have whatever the - at least 14 the minimum that the Town requires.</p> <p>15 MS. ROSENFELD: Okay. And is it your -</p> <p>16 MAYOR FURMAN: Or the County requires, excuse me.</p> <p>17 MS. ROSENFELD: And is it your understanding that this 18 action was taken as a part of, and in support of the 19 Kensington Sector Plan process?</p> <p>20 MAYOR FURMAN: Yes.</p> <p>21 MS. ROSENFELD: Okay. And if I could draw your 22 attention to the next paragraph below that says, design 23 guidelines. Do you have any knowledge as to whether or not 24 the Town of Kensington supported the design guidelines that 25 were adopted as part of the Kensington Sector Plan?</p>

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<p style="text-align: right;">41</p> <p>1 HEARING EXAMINER GROSSMAN: Where is that, Counsel? 2 What pages that on? 3 MS. ROSENFELD: Page 5. The next - there's not a 4 number, but it - 5 HEARING EXAMINER GROSSMAN: Are you talking about on 6 circle five or - 7 MS. ROSENFELD: I'm sorry. Page 5 of the May 8 memorandum. 9 HEARING EXAMINER GROSSMAN: Okay. Yeah, the County 10 council, when it acts, as its record, they use a circled 11 number at the bottom of the page as identified. Which makes 12 it difficult because there's nothing that you can type from a 13 normal computer that has a circle, a number in it. I found 14 after I looked. 15 MS. ROSENFELD: Right. 16 HEARING EXAMINER GROSSMAN: But in any event, that's 17 the way that those are numbered. Now, you are back to? 18 MS. ROSENFELD: Back to page 5 of the May memorandum. 19 HEARING EXAMINER GROSSMAN: Page 5. Okay. 20 MS. ROSENFELD: And I'll draw your attention, Mr. 21 Grossman, to the last two sentences on the page. 22 HEARING EXAMINER GROSSMAN: Yes. 23 MS. ROSENFELD: The FED committee asked the Town 24 council of Kensington to indicate whether they support the 25 guidelines. The town council reviewed them and supported them</p>	<p style="text-align: right;">43</p> <p>1 about three percent of apartment housing stock. And they are 2 very old, and it was an opportunity to generate additional 3 residents into the town to create this and - to support 4 restaurants and the things that we wanted to come into the 5 town. 6 MS. ROSENFELD: And so is it your position that this 7 was yet another resolution adopted in support of the vision 8 and goals of the Kensington Sector Plan? 9 MAYOR FURMAN: Yes. 10 MS. ROSENFELD: Okay. And if I could draw your 11 attention to circle 12, resolution number R-05-2012. And do 12 you recognize this is another town resolution associated with 13 the adoption of the Kensington Sector Plan? 14 MAYOR FURMAN: Yes. 15 MS. ROSENFELD: And could you speak briefly to what the 16 goal of this resolution was? 17 MAYOR FURMAN: There had been some minor amendments to 18 the sector plan and we were just supporting those particular 19 amendments that the FED committee had made. 20 MS. ROSENFELD: Okay. And if I could, finally draw your 21 attention to circle 19, Resolution number 06. R-06-2012. And 22 the date of this resolution is January 30 of 2012. And I will 23 draw your attention to the fourth whereas clause. And it 24 says, "Whereas, the council has voted per resolution number 25 R-05-2012 to support the sector plan and the concepts</p>
<p style="text-align: right;">42</p> <p>1 as indicated by the resolution on circle 9. 2 HEARING EXAMINER GROSSMAN: Okay. 3 MS. ROSENFELD: And Ms. Furman, if I could draw your 4 attention to, now, circle 9, at the back of the memorandum, 5 resolution number R-02-2012. Do you recognize that is a town 6 resolution? 7 MAYOR FURMAN: Yes. 8 MS. ROSENFELD: And would you explain for the record 9 what this resolution adopted? 10 MAYOR FURMAN: The design guidelines was a separate 11 document from the sector plan, but it was a compliment to the 12 sector plan. It was to help developers when they come into 13 the town to - we have a historic district and a non-historic 14 district and how these two can live together and what can you 15 do to complement. So we absolutely supported this particular 16 document. 17 MS. ROSENFELD: And if I could turn your attention to 18 the next page, circle 10, resolution number R-03-2012. Do you 19 recognize this is a resolution of the Town of Kensington? 20 MAYOR FURMAN: Yes. 21 MS. ROSENFELD: And could you explain what this 22 resolution was adopted to achieve? 23 MAYOR FURMAN: The village center was the - we wanted 24 to center where we were creating additional residents to 25 bring more energy into the town. And right now we only have</p>	<p style="text-align: right;">44</p> <p>1 proposed by the County council staff." So this appears to be 2 a resolution following the council vote. Could you explain 3 for the record your understanding of what this town 4 resolution was intended to demonstrate? 5 MAYOR FURMAN: The Town did not want to be the next in 6 Bethesda. So we wanted heights lower than what Bethesda had, 7 and we brought them down. But there is a point where you 8 can't go any further because then it's not an economically 9 viable development. So the Town wanted to say we are 10 satisfied with where it is. We don't want to go any further 11 down because then we would not be seeing development. So 12 despite what some people think, we do want development in 13 Kensington, we just want the right development. 14 HEARING EXAMINER GROSSMAN: So did the - where it is is 15 75 feet? Is that what you're saying? 16 MAYOR FURMAN: On some properties. Not all the 17 properties, but 75 feet is the highest in the town. And we 18 didn't want to go lower because it just doesn't make it 19 economically viable. 20 HEARING EXAMINER GROSSMAN: Okay. 21 MS. ROSENFELD: And to your knowledge was the final 22 sector plan adopted in accordance with this resolution number 23 R-06-2012? 24 MAYOR FURMAN: I'm pretty sure it did, yes. 25 MS. ROSENFELD: Okay.</p>

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<p>45</p> <p>1 HEARING EXAMINER GROSSMAN: Just for clarity. We 2 referred to council staff in some of these documents. That's 3 not the same as technical staff of the Planning Department 4 for the record. This is the staff of the County council. 5 MS. ROSENFELD: That's correct. And so, Ms. Furman, 6 could you summarize the Town's involvement in the development 7 of the sector plan and any endorsement you might have made of 8 it? 9 HEARING EXAMINER GROSSMAN: And before you answer that, 10 could you also supply me with an electronic copy of Exhibit 11 108? 12 MS. ROSENFELD: I certainly will. 13 HEARING EXAMINER GROSSMAN: Hopefully in PDF - a 14 searchable PDF. 15 MS. ROSENFELD: I can send you what's on the county 16 website. 17 HEARING EXAMINER GROSSMAN: All right. 18 MAYOR FURMAN: Can you repeat the question? 19 MS. ROSENFELD: Based on the resolutions that we have 20 just gone through, could you describe the Town's, and more 21 generally the Town's role in the development and adoption of 22 the Sector Plan? 23 MAYOR FURMAN: The Town was at the table. We were a 24 partner with this, with Planning. 25 MS. ROSENFELD: Okay.</p>	<p>47</p> <p>1 MAYOR FURMAN: It was not in a resolution, but I 2 believe in the Sector Plan residential is definitely 3 mentioned as an option for that. Residential and commercial 4 office space. 5 HEARING EXAMINER GROSSMAN: As an option? 6 MAYOR FURMAN: Yeah. 7 HEARING EXAMINER GROSSMAN: But you just testified that 8 the Town's preference - 9 MAYOR FURMAN: I think that was the preference. But no, 10 it's not - we did not vote on it. 11 HEARING EXAMINER GROSSMAN: Okay. 12 MAYOR FURMAN: If that was your question. 13 HEARING EXAMINER GROSSMAN: Yes, it was. 14 MAYOR FURMAN: Yes. 15 MS. ROSENFELD: As mayor, do you review development 16 applications that are proposed for within the Town 17 boundaries? 18 MAYOR FURMAN: Usually they come to me first just as an 19 introductory and then they immediately are sent to our 20 development review board. 21 MS. ROSENFELD: And would you describe briefly at what 22 stage you get involved and your role when they are presented 23 to you? 24 MAYOR FURMAN: I sometimes attend the development 25 review boards on the sidelines, just as a - doing that more</p>
<p>46</p> <p>1 HEARING EXAMINER GROSSMAN: With Planning, you mean? 2 MAYOR FURMAN: With the Planning staff. 3 HEARING EXAMINER GROSSMAN: The Planning staff of the 4 Planning Department or are you talking about the council 5 staff? 6 MAYOR FURMAN: We were in concert with the - while we 7 were doing the sector Plan with the Planning staff, and then 8 as it moved up to be adopted by the council we were in with 9 them as well. 10 HEARING EXAMINER GROSSMAN: Okay. 11 MS. ROSENFELD: Okay. As mayor, strike that. Based on 12 your understanding of the Exhibit 108, and the resolutions 13 that are attached to 108, do you know if the recommendations 14 specific to TC-5, which is the Huggins property, which is the 15 property that's the subject of this application, do you know 16 if the Town supported the recommendations that are in the 17 current adopted sector Plan for that property? 18 MAYOR FURMAN: I think originally there might have been 19 a higher height limit on the property, but it was - it came 20 to the conclusion that we wanted it at the 75 feet. And also 21 we wanted it for the - we were really looking for a 22 residential apartment with mixed-use at the bottom. That was 23 the original intent. 24 HEARING EXAMINER GROSSMAN: Is that stated in some 25 resolution of the Town?</p>	<p>48</p> <p>1 is a resident sometimes just because I want to hear what's 2 going on. All the councilmembers are allowed to go as long as 3 they sit on the sides, or, I mean, it's informal in a way. So 4 sometimes you're technically at the table, but it's really 5 the development review board who is in charge of the meeting. 6 MS. ROSENFELD: And can you explain what the 7 development review board is? 8 MAYOR FURMAN: It's a committee that the Town put 9 together after the Sector Plan was passed in because we felt 10 before - and we didn't get very many, when developments came 11 to the town they just came to the council and we would just 12 be looking at a set of plans, and we would say yeah, this is 13 okay, or this is not. Usually it was housing for a new house 14 or something. But we decided once the Sector Plan was passed 15 development was going to come our way and we needed to create 16 a process in which when a developer came to us that it could 17 be vetted. And that's why we created the development review 18 board. That was created by Mayor Fosselman, the previous 19 mayor. And we did go for a couple of years where we 20 didn't - the development review board was pretty much just 21 sitting idle, you know, waiting for that first development. 22 MS. ROSENFELD: And so is it fair to characterize the 23 development review board as a means to implement the 24 recommendations of the Sector Plan? 25 MAYOR FURMAN: It is a means to evaluate, to see if it</p>

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<p>49</p> <p>1 meets it. To hear about the projects. We do work closely with 2 the Planning staff because we technically don't have a zoning 3 authority. So we are looking at it as, you know, does it fit 4 in within our sector plan. What do they want to do. 5 It's - and then if it goes - then it goes back to Planning 6 and they talk about it and they make the changes, and 7 sometimes it will come back to us to look at it. We now, have 8 asked that a Planning staff member, to our meetings so they 9 are at the table all at the same time. And then, because 10 sometimes there were some mixed messages that maybe someone 11 received. So we find that is more streamlined to all be at 12 the table at the same time. And eventually, they have to go 13 to a community meeting. And then, they will come to the 14 council, do a presentation and the council will vote on 15 whether they support the project. 16 MS. ROSENFELD: And when you say Planning staff, are 17 you talking about the Technical Planning staff of the 18 Montgomery County - 19 MAYOR FURMAN: Yes. Technical planning staff will come 20 and either sit on the sidelines or they will be at the table, 21 it depends on the project. 22 MS. ROSENFELD: Okay. And just let me finish my 23 question before you - 24 MAYOR FURMAN: I'm sorry. 25 MS. ROSENFELD: - answer. That's okay. Just so the</p>	<p>51</p> <p>1 them regarding more than design and the guidelines. 2 MS. ROSENFELD: Okay. Do you know if there needs to be 3 a finding of conformance with the Sector Plan even for by 4 right projects? 5 MAYOR FURMAN: I don't believe. They have to fit the 6 FRA and the heights and that sort of thing. 7 MS. ROSENFELD: Okay. 8 HEARING EXAMINER GROSSMAN: Was that your question? Was 9 your question whether the Town of Kensington had to have a 10 review, even if it's by right? Or whether the - 11 MS. ROSENFELD: Whether Park and Planning has a review. 12 HEARING EXAMINER GROSSMAN: Okay. 13 MS. ROSENFELD: For conformance with the sector plan. 14 HEARING EXAMINER GROSSMAN: Even if it's by right? 15 MS. ROSENFELD: Even if it's by right, correct. With 16 respect to the role of planning Boards technical staff in 17 evaluating development projects within the Town. Could you 18 describe what role you see technical staff as serving with 19 respect to its participation in the Town's development 20 committee process? 21 MAYOR FURMAN: I think - well, were not expert in 22 design. So I think particularly, I use the Solera as an 23 example. We saw four renditions of their design and each time 24 they were working with planning staff specifically. And then 25 they would come back to us and get our feedback on what we</p>
<p>50</p> <p>1 record is clear, you are talking about the technical staff of 2 the Montgomery County planning board? 3 MAYOR FURMAN: Yes. 4 MS. ROSENFELD: When you say planning staff? 5 MAYOR FURMAN: Yes. 6 MS. ROSENFELD: Okay. Thank you. In the past year or 18 7 months or so have you reviewed any - I'm talking about you 8 now in your capacity as mayor, have you reviewed other 9 development applications within the town of Kensington? 10 MAYOR FURMAN: Well, me as mayor, really the reviews 11 are through the development review board. Have I done an 12 introductory meeting? Yes. 13 MS. ROSENFELD: And what projects would those be? 14 MAYOR FURMAN: That would be the Solera Reserve project 15 on Metropolitan Avenue. That would be the Knowles Station on 16 Detrick and Knowles. That would be the Kensington Knowles 17 Manor senior apartment on Knowles Avenue, and then the 10619. 18 MS. ROSENFELD: The 106 - oh this current one. 19 MAYOR FURMAN: Yes. 20 MS. ROSENFELD: And in your - let me ask more generally 21 then, in the Town's review of those other projects, the 22 Solera Reserve and the Knowles Station, were those also 23 reviewed for conformance with the Kensington Sector Plan? 24 MAYOR FURMAN: The Knowles Station was by right so 25 Technical Planning did not have a lot. But we did meet with</p>	<p>52</p> <p>1 saw. And the technical staff at planning has been - has just 2 been excellent because their vision is into with - I mean 3 they have the experience and the knowledge and the - you 4 know, that we lack as far as, you know, designing a building. 5 We are not architects. So, you know, we know what the sector 6 plan calls for, but when you get into the details of 7 designing a building that's where they know how to do it. 8 That's their job. So we do rely on them to - working with the 9 Applicant to create a building that will fit in with the 10 town's vision. So I don't know if I'm answering your 11 question, but, you know, our development review board has 12 some people in the field but not to the level of planning 13 technical staff. 14 MS. ROSENFELD: And do you look to the planning board 15 technical staff for guidance on whether or not a project 16 forms with the recommendations of the Kensington Sector Plan? 17 MAYOR FURMAN: I think it's - I mean it's pretty easy 18 to look at the sector plan and know how high it is or in that 19 particular zone, and what is the FAR. We get that part. We 20 understand, you know, what is allowed. How high it can be, 21 and what is the FAR. So that we know. We've got that pretty 22 well. Pretty clear. 23 MS. ROSENFELD: Okay. And what about with respect to 24 other recommendations? For example, you know, the overall 25 vision of the sector plan that's on page 1 of the sector</p>

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<p>53</p> <p>1 plan.</p> <p>2 MAYOR FURMAN: The vision?</p> <p>3 MS. ROSENFELD: Yes.</p> <p>4 MAYOR FURMAN: I have it - do you have the -</p> <p>5 HEARING EXAMINER GROSSMAN: The sector plan?</p> <p>6 MAYOR FURMAN: So I can - I haven't read the vision in</p> <p>7 a while but I think - I just want to make sure that I - do</p> <p>8 you have a page on that?</p> <p>9 MS. ROSENFELD: Page 1.</p> <p>10 MAYOR FURMAN: And for those who don't have it in front</p> <p>11 of them, the - we're trying to create the vibrancy of the</p> <p>12 neighborhood. You know, where people get out and walk. Where</p> <p>13 people are connected. Where people - that the - pedestrian</p> <p>14 friendly. That's what new design is supposed to bring us, or</p> <p>15 new development is supposed to bring us. Which currently, we</p> <p>16 don't have in every area. So the vision - and then we have a</p> <p>17 historic areas as I mentioned before and how does the</p> <p>18 historic area work with the non-historic area in creating</p> <p>19 what should be a vision of connectivity. Because right now</p> <p>20 we're so divided by Connecticut Avenue and the railroad</p> <p>21 tracks. But the biggest thing was to create more people to</p> <p>22 give it a vibrancy of an outdoor - where you see people</p> <p>23 walking around. Where you see kind of like that downtown</p> <p>24 Bethesda thing where people are out at night, and people are</p> <p>25 walking around, and they feel that connection to the town.</p>	<p>55</p> <p>1 conclusions here?</p> <p>2 MS. ROSENFELD: I'm going to proffer that the</p> <p>3 questioning is intended to see if the town relies on the</p> <p>4 planning staff with respect to its expertise. Or, if the town</p> <p>5 independently comes up with its recommendation. I think the</p> <p>6 question has been answered as -</p> <p>7 HEARING EXAMINER GROSSMAN: I'm not sure how exactly</p> <p>8 that impacts on anything I have to decide. So if it relies on</p> <p>9 the planning staff versus if it doesn't rely on the planning</p> <p>10 staff for expertise. How does that affect anything that I</p> <p>11 decide?</p> <p>12 MS. ROSENFELD: I think that to the extent that the</p> <p>13 town would incorporate or adopt the recommendations of the</p> <p>14 planning staff or the planning board, it goes to the weight.</p> <p>15 I think the planning staff and planning Board recommendations</p> <p>16 carry great weight, but it would carry even greater weight if</p> <p>17 the town were adopting them as its own.</p> <p>18 HEARING EXAMINER GROSSMAN: I see. Okay.</p> <p>19 MAYOR FURMAN: I mean we do send letters for every</p> <p>20 project to the staff, to planning staff saying that we</p> <p>21 support, or we don't support a project.</p> <p>22 HEARING EXAMINER GROSSMAN: Okay.</p> <p>23 MAYOR FURMAN: And we stated our reasons why we</p> <p>24 support, we don't support. And the planning staff want to</p> <p>25 hear from us.</p>
<p>54</p> <p>1 MS. ROSENFELD: And so with respect to the vision on</p> <p>2 page 1 and some of the other recommendations in the sector</p> <p>3 plan, does the town rely on planning staff to advise you on</p> <p>4 whether or not a project conforms with the sector plan? Do</p> <p>5 you bring your own independent assessment? Can you explain to</p> <p>6 me how the town develops its conclusion with respect to</p> <p>7 conformance or nonconformance with the sector plan?</p> <p>8 MAYOR FURMAN: Well, I'm probably going to end up</p> <p>9 repeating myself. When a project comes to us we look at it</p> <p>10 and see if it conforms with the sector plan. Once we've done</p> <p>11 that, then we - if it's not conforming, we listen to what do</p> <p>12 they want to do. You know, if you want me to - I didn't</p> <p>13 mention that we have a townhouse project that actually is</p> <p>14 also being - and it's - part of it conforms, and then there's</p> <p>15 another part that's not conforming. And this is a problem</p> <p>16 because they basically would want us to rezone, and we do not</p> <p>17 want to change our sector plan. So it's a very important to</p> <p>18 us, I mean we worked really hard on this.</p> <p>19 HEARING EXAMINER GROSSMAN: By this, you held up</p> <p>20 Exhibit 107, the sector plan.</p> <p>21 MAYOR FURMAN: The sector plan, I'm sorry.</p> <p>22 HEARING EXAMINER GROSSMAN: Ms. Rosenfeld, can you</p> <p>23 explain to me why this particular line of questioning is</p> <p>24 relevant? Why does it make a difference whether or not the</p> <p>25 town was relying on the planning staff to reach any</p>	<p>56</p> <p>1 MS. ROSENFELD: Are you familiar with the storage</p> <p>2 facility conditional use application under consideration</p> <p>3 today?</p> <p>4 MAYOR FURMAN: Yes.</p> <p>5 MS. ROSENFELD: And does the town have a position on</p> <p>6 whether the application substantially conforms to the</p> <p>7 recommendations of the sector plan?</p> <p>8 MAYOR FURMAN: We don't think it does.</p> <p>9 MS. ROSENFELD: And could you please explain why you</p> <p>10 reached that conclusion?</p> <p>11 MAYOR FURMAN: Because A, it's a conditional use. And</p> <p>12 we don't feel that it's going to create the vibrancy and the</p> <p>13 neighborhood feel that we are wanting in that location.</p> <p>14 MS. ROSENFELD: And is that because of certain</p> <p>15 characteristics of its particular use?</p> <p>16 MAYOR FURMAN: I think that particular use will create</p> <p>17 a dead zone. Particularly, while they are suggesting a</p> <p>18 restaurant and the artist studios on the second floor, the</p> <p>19 balance of the building will sit there just a dark hole, and</p> <p>20 will not create the people, whether it's in an office</p> <p>21 building or if it's in an apartment, that will help bring</p> <p>22 that vibrancy to that corner.</p> <p>23 MS. ROSENFELD: Do you have any views on whether or not</p> <p>24 this is what's been described as an autocentric type of use?</p> <p>25 MAYOR FURMAN: That people would just drive to it? I</p>

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<p>57</p> <p>1 think with the improvements to the pedestrian sidewalks 2 getting you there I think it will not be autocratic as much 3 as - hopefully it would be a more pedestrian friendly area, 4 you know, and this particular area people drive. We do have 5 where the Knowles Station is, I'm happy to say that a lot of 6 people walk to it because of its proximity. 7 MS. ROSENFELD: With respect to the storage use itself, 8 is it your understanding that would walk to the storage 9 units? 10 MAYOR FURMAN: No. I think you're going to be driving 11 to visit your stuff or drop off your stuff. So that's - in 12 that line yeah, it's just going to create more traffic that 13 way. And truck traffic as well. 14 MS. ROSENFELD: Okay. And is it your view that a 15 residential - strike that. Have you reviewed the planning 16 Board technical staff report for this project that was 17 presented to the planning board? It's Exhibit 59 in the 18 record. 19 MAYOR FURMAN: I have, but it's not fresh in my memory, 20 I would have to look at it again. 21 MS. ROSENFELD: When you reviewed it, did you concur 22 with the technical staffs conclusions with respect to 23 conformance with the sector plan? 24 MAYOR FURMAN: Yes. 25 MS. ROSENFELD: And did you agree with the technical</p>	<p>59</p> <p>1 HEARING EXAMINER GROSSMAN: Okay. 2 MAYOR FURMAN: Of what the planning commissioners were 3 discussing? 4 MS. ROSENFELD: Yes. 5 MAYOR FURMAN: Well, there were certainly two out of 6 the five that were there were in support of it. They thought 7 it was a good use. The other three did not feel that it form 8 to the sector plan. 9 HEARING EXAMINER GROSSMAN: I'm going to say, I don't 10 know whether you have an objection to that. I mean it's 11 clearly - if it's offered to prove the truth of what's being 12 asserted, it's hearsay, and probably unnecessary hearsay. If, 13 in fact, you wanted to introduce the record of the planning 14 department discussion, and I'm not sure how helpful that 15 would be given, you know, the way it went back and forth, I 16 guess, rather than, or in addition to the letter, that's 17 something that's available. I don't know that it's helpful 18 for us to have a witness discuss her recollection of an 19 exchange. 20 MS. ROSENFELD: I have no further questions on that, 21 along those lines. 22 HEARING EXAMINER GROSSMAN: Okay. 23 MS. ROSENFELD: Were you here for testimony of the 24 Applicant's architect when she was describing the type of 25 windows that would be used -</p>
<p>58</p> <p>1 staffs assessment of adverse, non-inherent impacts resulting 2 from the project? 3 MAYOR FURMAN: Yes. 4 MS. ROSENFELD: And did you attend the planning Board 5 hearing? 6 MAYOR FURMAN: I did. 7 MS. ROSENFELD: And you heard the planning Board 8 discussion with respect to recommendations - the final vote 9 recommending denial of this project? 10 MAYOR FURMAN: Yes. 11 MS. ROSENFELD: And have you reviewed the planning 12 board's transmittal letter to the Hearing Examiner? 13 MAYOR FURMAN: Yes, I did. 14 MS. ROSENFELD: Okay. Do you agree with the planning 15 board's conclusions that this project should be denied? 16 MAYOR FURMAN: I do. 17 MS. ROSENFELD: And did you hear discussion during the 18 course of the hearing regarding conformance with the sector 19 plan? 20 MAYOR FURMAN: Yes. 21 MS. ROSENFELD: And can you elaborate on what you heard 22 during those discussions? 23 HEARING EXAMINER GROSSMAN: Now, were talking about the 24 planning board session? 25 MS. ROSENFELD: The planning board session.</p>	<p>60</p> <p>1 MAYOR FURMAN: Yes. 2 MS. ROSENFELD: - in the upper floors of the project? 3 And did you understand her testimony to indicate that there 4 would be no light coming out of the building? 5 MAYOR FURMAN: Yes. 6 MS. ROSENFELD: Do you have an opinion as to what 7 impact that would have visually, particularly at night with 8 respect to the size of the building? 9 HEARING EXAMINER GROSSMAN: This is just specifically 10 as to the storage - as to the floors that will be occupied by 11 storage? 12 MS. ROSENFELD: That's correct. 13 HEARING EXAMINER GROSSMAN: Not as to the two levels 14 that would be artist studios and the restaurant? 15 MS. ROSENFELD: I believe that the floor that is going 16 to be occupied in front with artist studio space, and in the 17 back by storage units, there will be no light coming from 18 those windows associated with the storage unit half of the - 19 HEARING EXAMINER GROSSMAN: Right. I think the 20 testimony was about no light, false windows, was about those 21 that were occupied by storage. 22 MS. ROSENFELD: Correct. 23 HEARING EXAMINER GROSSMAN: Not by the - so I 24 just - your question was broader that's all. 25 MS. ROSENFELD: Okay. Correct. Did you hear the</p>

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<p style="text-align: right;">61</p> <p>1 architect's testimony in that regard?</p> <p>2 MAYOR FURMAN: Yes.</p> <p>3 MS. ROSENFELD: Do you have an opinion as to whether or</p> <p>4 not that type of visual impact is consistent with the vision</p> <p>5 of the sector plan?</p> <p>6 MAYOR FURMAN: I mean it doesn't show that there's</p> <p>7 anything going on. At night it would just be a dark building</p> <p>8 so there would be lifelessness.</p> <p>9 MS. ROSENFELD: And do you have an opinion as to</p> <p>10 whether or not that's conforming to the recommendations of</p> <p>11 the sector plan?</p> <p>12 MAYOR FURMAN: Well, my personal opinion is it doesn't.</p> <p>13 MS. ROSENFELD: If I could draw your attention back to</p> <p>14 page 1 of the sector plan? Which describes the second full</p> <p>15 sentence describes Kensington's town center. My first</p> <p>16 question okay, is this property located within Kensington's</p> <p>17 town center?</p> <p>18 MAYOR FURMAN: Yes.</p> <p>19 MS. ROSENFELD: So the first sentence reads,</p> <p>20 "Kensington's town center will be a lively and active place</p> <p>21 with streets and that are welcoming and comfortable for</p> <p>22 residents, workers, and visitors." It goes on to say -</p> <p>23 MAYOR FURMAN: Was that a question?</p> <p>24 MS. ROSENFELD: I'm getting there. Sorry. Would, in</p> <p>25 your opinion, does the building with so many dark windows,</p>	<p style="text-align: right;">63</p> <p>1 somehow, architecturally it could be arrange to have some</p> <p>2 lighting there so it wouldn't be dark, would that alleviate</p> <p>3 that concern?</p> <p>4 MAYOR FURMAN: I believe it would - I mean I am not the</p> <p>5 expert speaking, but I mean it sounds like if you were to put</p> <p>6 some lights periodically within the front that would give an</p> <p>7 implied liveliness, I guess.</p> <p>8 HEARING EXAMINER GROSSMAN: Okay.</p> <p>9 MAYOR FURMAN: I (inaudible) to say that. It doesn't</p> <p>10 put any people in there but -</p> <p>11 HEARING EXAMINER GROSSMAN: I mean, I guess this ties</p> <p>12 in with an overall question I have as to - I understand the</p> <p>13 concerns you stressed, both in writing and here today. And I</p> <p>14 wondered, first of all, the building itself, the style.</p> <p>15 Forget about the fact that it contains storage, 90 percent of</p> <p>16 it or thereabouts, of storage. Is the building itself</p> <p>17 offensive to the Town of Kensington? Is there some -</p> <p>18 MAYOR FURMAN: Are you talking about design?</p> <p>19 HEARING EXAMINER GROSSMAN: Yeah, the design of the</p> <p>20 building.</p> <p>21 MAYOR FURMAN: Well, the first design looked like a</p> <p>22 prison.</p> <p>23 HEARING EXAMINER GROSSMAN: Not the first. Well, the</p> <p>24 design that's before me now.</p> <p>25 MAYOR FURMAN: Okay. Having talked to the planning</p>
<p style="text-align: right;">62</p> <p>1 would that be consistent with that sentence of the vision?</p> <p>2 MAYOR FURMAN: Not at night, no.</p> <p>3 MS. ROSENFELD: Okay.</p> <p>4 HEARING EXAMINER GROSSMAN: Could it be rectified if</p> <p>5 they put some lights in the windows? If they weren't dark?</p> <p>6 MAYOR FURMAN: I guess what you're trying not to see is</p> <p>7 of the doors, water obviously storage doors.</p> <p>8 HEARING EXAMINER GROSSMAN: You mean the back?</p> <p>9 MAYOR FURMAN: So it reveals - well, anywhere in the</p> <p>10 building.</p> <p>11 HEARING EXAMINER GROSSMAN: But when you said doors,</p> <p>12 I'm not sure exactly what you mean.</p> <p>13 MAYOR FURMAN: Well, it reveals a storage locker type</p> <p>14 of door, so the role, you know, which is obviously not an</p> <p>15 apartment door that very end. So I think you -</p> <p>16 HEARING EXAMINER GROSSMAN: Well, are you suggesting</p> <p>17 that would be somehow visible from the front of the building,</p> <p>18 or the sides of the building?</p> <p>19 MAYOR FURMAN: I'm saying if you change the window out.</p> <p>20 If that what you were suggesting?</p> <p>21 HEARING EXAMINER GROSSMAN: I see. No, I was asking</p> <p>22 whether or not - right now one of your concerns expressed is</p> <p>23 that the building, it would be a dark this cinch at night</p> <p>24 because all of the floors, which is to say most of the</p> <p>25 floors, would be dark at night, false windows. And if,</p>	<p style="text-align: right;">64</p> <p>1 staff, they are - and because we -</p> <p>2 HEARING EXAMINER GROSSMAN: Well, I don't want the</p> <p>3 planning staff's opinion now. I want the town of Kensington's</p> <p>4 feeling about the building itself.</p> <p>5 MAYOR FURMAN: How it looks now?</p> <p>6 HEARING EXAMINER GROSSMAN: Well, not how it looks now</p> <p>7 because -</p> <p>8 MAYOR FURMAN: Well, how it looks on the process</p> <p>9 design -</p> <p>10 HEARING EXAMINER GROSSMAN: The plans, yes.</p> <p>11 MAYOR FURMAN: No. We think it needs improvement.</p> <p>12 HEARING EXAMINER GROSSMAN: And is there a level,</p> <p>13 getting back to the actual contents of the building, is there</p> <p>14 a level of restaurant and other non-storage capacity that</p> <p>15 could be infused in that building that would satisfy the Town</p> <p>16 of Kensington in terms of its occupation in the town center?</p> <p>17 MAYOR FURMAN: Well, we like the idea of a restaurant.</p> <p>18 We have some major concerns regarding the fact that the</p> <p>19 Applicant has said, under testimony, that they only have one</p> <p>20 mixed use so they're not really - and even then he, you know,</p> <p>21 they wanted a full floor and they only got him down to 3,800</p> <p>22 square feet. And were very concerned that ultimately we would</p> <p>23 get, you know, a subway and some insurance agent or something</p> <p>24 on the first floor.</p> <p>25 HEARING EXAMINER GROSSMAN: But I'm saying, what if</p>

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17 (65 to 68)

<p>65</p> <p>1 there were a higher percentage of the building were devoted 2 to things other than storage? 3 MAYOR FURMAN: Oh, instead of like - 4 HEARING EXAMINER GROSSMAN: Right now it's at - 5 MAYOR FURMAN: - 11 percent? 6 HEARING EXAMINER GROSSMAN: Well, yes. If it were 7 instead of 11 percent, what if it were 20 percent? Would that 8 satisfy the town of Kensington? 9 MAYOR FURMAN: Well, I can't - I mean we are a - 10 HEARING EXAMINER GROSSMAN: Or any percent that - I 11 mean you - 12 MAYOR FURMAN: - a council of - would any percentage? 13 HEARING EXAMINER GROSSMAN: Yes. 14 MAYOR FURMAN: Well, I think in our conditions we've 15 given you what we would, you know, if you were to rule 16 against us what we would say, all right, we have to do this 17 or this is what we would require. That would be a full second 18 floor of retail. Or, half of the second half of the third 19 floor, plus the whole bottom is - 20 HEARING EXAMINER GROSSMAN: What percentage of the 21 building would that be? 22 MAYOR FURMAN: I've never done the math on that. Would 23 that be more like 15 percent? 24 HEARING EXAMINER GROSSMAN: Well, right now, the plan 25 before me is the one that the Applicant has a right to have</p>	<p>67</p> <p>1 MAYOR FURMAN: Okay. Well I appreciate that. Because, 2 you know, we have a town council and, you know, it's not for 3 me necessarily to sit there and say oh, well, I'll take the 4 floor of apartments. I'm good with that. That's not what 5 I - I don't think we should - I should be doing that. 6 HEARING EXAMINER GROSSMAN: Okay. 7 MAYOR FURMAN: I think it should be a consultation as 8 we are a team. 9 HEARING EXAMINER GROSSMAN: I understand. I had two 10 thoughts going into this. One is the question of whether or 11 not the building itself was offensive to the town of 12 Kensington in terms of its design. You mentioned one thing 13 about the windows, and the darkness at night. I understand, I 14 just wondered also whether in terms of the volume of it that 15 was occupied by things other than storage, whether there was 16 some tipping point beyond which the town of Kensington, 17 whether or not it was residential in there, would you 18 consider that to be a kind of usage for the town center that 19 would be appropriate under the sector plan. So those were 20 my - 21 MAYOR FURMAN: Well, I mean I think architecturally it 22 still needs some work. 23 HEARING EXAMINER GROSSMAN: Okay. 24 MAYOR FURMAN: But it's definitely better than the 25 other two that we saw previously.</p>
<p>66</p> <p>1 that plan considered and no other. So if there is a condition 2 that the Town of Kensington proposed which differs from their 3 proposal, I can't approve that and put a - and approve their 4 proposal and put a condition that changes it in effect. So 5 I'm asking you if there is some level of things other than 6 storage in this proposed building that would satisfy the town 7 of Kensington and feel that it does conform with the 8 recommendations of the sector plan. I'm not saying that 9 they - they have a right to have me rule exactly as they 10 presented it, with 10, or 11 percent of things other than 11 storage. But they may consider varying that depending on what 12 you say here. I don't know. 13 MAYOR FURMAN: So you're saying, like, if we said we 14 would take two floors of apartments? 15 HEARING EXAMINER GROSSMAN: Whatever. And you tell me. 16 Is that there a percentage of the building that was not 17 storage that would satisfy the Town of Kensington? I'm going 18 to let you think about that and come back later and give me 19 an answer to that because I, to some extent - since I 20 presented it to you now on the witness stand, I don't want to 21 be unfair to you in answering that. But it's something you 22 might answer. Whether they would be interested or not in any 23 change, I have no idea. And as I said, I will consider the 24 plan that's before me here unless they tell me to change it. 25 Okay?</p>	<p>68</p> <p>1 HEARING EXAMINER GROSSMAN: Yeah but they're not before 2 me. 3 MAYOR FURMAN: I know. I know. I understand. 4 HEARING EXAMINER GROSSMAN: And I don't even think 5 about them. 6 MAYOR FURMAN: I'm just saying. 7 HEARING EXAMINER GROSSMAN: Okay. All right. I'm sorry. 8 Go ahead, Counsel. 9 MS. ROSENFELD: That's quite all right. Were you at the 10 last hearing where Mr. Phillips testified? 11 MAYOR FURMAN: Yes. 12 MS. ROSENFELD: Did you hear his testimony about the 13 statement in his report that, "Kensington does not currently 14 represent an established submarket for moderate density 15 multi-family, or for multi-tenant office." And Mr. Grossman, 16 that's the last hearing's transcript at page 307. 17 HEARING EXAMINER GROSSMAN: Okay. 18 MS. ROSENFELD: And did you hear him define moderate 19 density multi-family as, "four to six story residential with 20 retail on the ground floor,"? 21 MAYOR FURMAN: Yes. 22 MS. ROSENFELD: Okay. And Mr. Grossman that's at 23 transcript 38. 24 HEARING EXAMINER GROSSMAN: 308? 25 MS. ROSENFELD: I'm sorry 308.</p>

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18 (69 to 72)

<p>69</p> <p>1 HEARING EXAMINER GROSSMAN: Yeah.</p> <p>2 MS. ROSENFELD: And I would like to enter into the</p> <p>3 record a staff report - Planning Board technical staff for</p> <p>4 Kensington Manor Senior Housing, and a Planning Board</p> <p>5 resolution in connection with that development.</p> <p>6 HEARING EXAMINER GROSSMAN: Once again, I would like</p> <p>7 electronic copies as well in text searchable PDFs.</p> <p>8 MS. ROSENFELD: Mr. Grossman, I'll just proffer all</p> <p>9 submit electronic copies of everything that I introduced</p> <p>10 today.</p> <p>11 HEARING EXAMINER GROSSMAN: All right. Thank you. Don't</p> <p>12 trip on those wires.</p> <p>13 MS. ROSENFELD: I'm sorry it's not stapled.</p> <p>14 HEARING EXAMINER GROSSMAN: Okay. All right.</p> <p>15 MS. ROSENFELD: Mr. Grossman, (inaudible) the stapled</p> <p>16 copy.</p> <p>17 HEARING EXAMINER GROSSMAN: All right. Thank you. All</p> <p>18 right. So we have Exhibit - I need to find my exhibit list.</p> <p>19 Here it is. Exhibit 109 is the technical staff report on</p> <p>20 Kensington Manor Senior Housing. And that was dated October</p> <p>21 1, 2018.</p> <p>22 (Exhibit 109 was introduced into the record.)</p> <p>23 HEARING EXAMINER GROSSMAN: And then, Exhibit 110 is</p> <p>24 the November 20, 2018 resolution of the Planning Board on</p> <p>25 Kensington Manor Senior Housing. A sketch plan. Okay.</p>	<p>71</p> <p>1 MAYOR FURMAN: I believe they are doing 25 percent</p> <p>2 MPDUs, but potentially they could go as high as 90 percent.</p> <p>3 MS. ROSENFELD: And how do you know they could go as</p> <p>4 high as 90 percent?</p> <p>5 MAYOR FURMAN: That's what the developer had stated.</p> <p>6 MS. ROSENFELD: Had proffered?</p> <p>7 MAYOR FURMAN: Yeah.</p> <p>8 MS. ROSENFELD: And so the height of this building</p> <p>9 falls between four and six story residential?</p> <p>10 MAYOR FURMAN: Uh-huh.</p> <p>11 MS. ROSENFELD: Component?</p> <p>12 MAYOR FURMAN: Yes.</p> <p>13 MS. ROSENFELD: Mr. Phillips had defined moderate</p> <p>14 density multi-family as four to six story residential with</p> <p>15 retail on the ground floor. Are you aware of anything in the</p> <p>16 sector plan that requires that residential housing include</p> <p>17 retail on the ground floor?</p> <p>18 MAYOR FURMAN: I don't believe it does.</p> <p>19 MS. ROSENFELD: Okay. If I could draw your attention</p> <p>20 back to page 1 of the sector plan under vision. The vision</p> <p>21 includes a sentence that says, "the town center will also</p> <p>22 broaden housing choices for an array of ages and incomes." Do</p> <p>23 you see that?</p> <p>24 MAYOR FURMAN: Yes.</p> <p>25 MS. ROSENFELD: Is it the position of the town that the</p>
<p>70</p> <p>1 (Exhibit 110 was introduced into the record.)</p> <p>2 MS. ROSENFELD: Okay. Ms. Furman, are you - Mayor</p> <p>3 Furman, are you familiar with the Kensington Manor Senior</p> <p>4 Housing development project that's the subject of this staff</p> <p>5 Report and Planning Board resolution at Exhibits 109 and 110?</p> <p>6 MAYOR FURMAN: Yes.</p> <p>7 MS. ROSENFELD: And can you just generally</p> <p>8 describe - summarize what that development proposal is?</p> <p>9 MAYOR FURMAN: It's a 5 story, 94 unit apartment</p> <p>10 building for seniors. A senior being 62 and above. And now</p> <p>11 that I'm almost that age it's not that old anymore.</p> <p>12 HEARING EXAMINER GROSSMAN: I passed you more than a</p> <p>13 decade ago.</p> <p>14 MS. ROSENFELD: And do you know how many stories -</p> <p>15 MAYOR FURMAN: That was five stories.</p> <p>16 MS. ROSENFELD: Five stories. Okay. And can you</p> <p>17 describe what kind of parking is provided with this</p> <p>18 development?</p> <p>19 MAYOR FURMAN: They provide underground parking.</p> <p>20 MS. ROSENFELD: And the senior housing, you said it's</p> <p>21 for age 62 and above?</p> <p>22 MAYOR FURMAN: Correct.</p> <p>23 MS. ROSENFELD: And do you know if there are any</p> <p>24 moderately priced dwelling units associated with this</p> <p>25 project?</p>	<p>72</p> <p>1 Kensington Manor project is consistent with that</p> <p>2 recommendation?</p> <p>3 MAYOR FURMAN: Yes, it does. And our letter supporting</p> <p>4 the project, we say that in the last line of our letter.</p> <p>5 MS. ROSENFELD: In your experience, do all projects</p> <p>6 have to satisfy all recommendations in a sector plan to be</p> <p>7 consistent with the plan?</p> <p>8 MAYOR FURMAN: That's what we would prefer, yes.</p> <p>9 MS. ROSENFELD: Okay. In this case, is there a</p> <p>10 requirement that this include retail on the first floor to be</p> <p>11 consistent with the sector plan?</p> <p>12 MAYOR FURMAN: It does not need to have it.</p> <p>13 MS. ROSENFELD: Okay.</p> <p>14 HEARING EXAMINER GROSSMAN: So what am I to conclude</p> <p>15 from this? I don't understand the reference to this other</p> <p>16 project. What does that - how does that bear on what I have</p> <p>17 to decide?</p> <p>18 MS. ROSENFELD: Mr. Phillips had testified that</p> <p>19 Kensington does not currently represent an established</p> <p>20 submarket for moderate density multi-family. And I understood</p> <p>21 his testimony to be in support of the position that this</p> <p>22 project should be approve because nothing else could be built</p> <p>23 at this location.</p> <p>24 HEARING EXAMINER GROSSMAN: I see. So you're suggesting</p> <p>25 that this sketch plan or the plans for the Kensington Manor</p>

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19 (73 to 76)

<p style="text-align: right;">73</p> <p>1 Senior housing shows that there could be some other kind of 2 project for this site? 3 MS. ROSENFELD: That's correct. And in addition, he had 4 defined moderate density multifamily as residential with 5 retail on the ground floor, and I believe that the testimony 6 you heard from Mayor Furman is that a residential building in 7 and of itself can satisfy the vision of the sector plan and 8 be consistent with it. 9 HEARING EXAMINER GROSSMAN: Right. Although all sides 10 seem to want to address this issue, all sites seem to agree 11 with what we said earlier. I don't remember if it was the 12 first day or the second day of the hearing that my job is not 13 to consider whether or not there is alternatives here that 14 could be there, but rather to consider whether the plan 15 that's proposed to me by the Applicant, and under the entire 16 record, meets the zoning ordinance requirements, which 17 include of course, consideration of the applicable master 18 plan, in this case the Kensington Sector Plan, not whether or 19 not there could be residential there. 20 MS. ROSENFELD: And I completely agree with you. 21 HEARING EXAMINER GROSSMAN: Everybody completely agrees 22 with me - 23 MS. ROSENFELD: I know. 24 HEARING EXAMINER GROSSMAN: 25 HEARING EXAMINER GROSSMAN: - but everybody keeps on</p>	<p style="text-align: right;">75</p> <p>1 Planning Board resolution for the same project. Okay. 2 (Exhibit 112 was introduced into the record.) 3 MS. ROSENFELD: Ms. Furman, I'll just ask you briefly. 4 Could you summarize for the record the scope of the Solera 5 Reserve Project? 6 MAYOR FURMAN: I believe it's a six-story - is it six? 7 Sorry. A six-story building with 300 units. It is an 8 independent assisted living memory care facility. 9 MS. ROSENFELD: Okay. And can you describe the kind of 10 parking that's provided? 11 MAYOR FURMAN: They also provide underground parking. 12 MS. ROSENFELD: And given the fact that it's described 13 as senior living, do you know what type of residents are 14 anticipated at this location? 15 MAYOR FURMAN: Well, I anticipate people who want to, 16 with the independent care, probably people more in their late 17 70s, although moving in - and then those who need assisted 18 living and then those who need memory care. 19 MS. ROSENFELD: And is this property also located 20 within the town center? 21 MAYOR FURMAN: Yes. 22 MS. ROSENFELD: And do you have an opinion as to 23 whether or not this project is consistent with the vision 24 statement in the sector plan that, "the town center will also 25 broaden housing choices for an array of ages and incomes."</p>
<p style="text-align: right;">74</p> <p>1 trying to put on evidence that - 2 MS. ROSENFELD: But I can't help but feel compelled to 3 include record rebuttal evidence. 4 HEARING EXAMINER GROSSMAN: I understand. 5 MS. ROSENFELD: Should here come a time when some other 6 deciding body disagrees with what everybody here agrees is 7 not relevant - 8 HEARING EXAMINER GROSSMAN: I understand. 9 MS. ROSENFELD: In your decision making. And so in that 10 regard, if you'll indulge me I do have one other resolution 11 and staff report that I would like to introduce in support of 12 this rebuttal testimony. 13 HEARING EXAMINER GROSSMAN: All right. 14 MS. ROSENFELD: And Mr. Grossman, for the moment I will 15 introduce the Planning Board resolution. 16 HEARING EXAMINER GROSSMAN: All right. 17 MS. ROSENFELD: Mr. Grossman, I'm going to hand you the 18 resolution and staff report. 19 HEARING EXAMINER GROSSMAN: All right. 20 MS. ROSENFELD: I'll hand those to you at this point. 21 HEARING EXAMINER GROSSMAN: Thank you. All right. So I 22 have here Exhibit 111, is the March 26, 2018 technical staff 23 report on Solera Reserve at Kensington sketch plan. 24 (Exhibit 111 was introduced into the record.) 25 HEARING EXAMINER GROSSMAN: And 112 is the May 3, 2018</p>	<p style="text-align: right;">76</p> <p>1 And that's page 1. 2 MAYOR FURMAN: Yes. 3 MS. ROSENFELD: Okay. Ms. Furman, do you have an 4 opinion as to whether or not this project substantially 5 conforms with the recommendations of the Kensington Sector 6 Plan? 7 HEARING EXAMINER GROSSMAN: What are you referring to 8 is this project? You discussed the one before me or the 9 other - 10 MS. ROSENFELD: Point well taken. Do you have an 11 opinion as to whether or not the application for CU-19-03, 12 the self-storage unit project before the Hearing 13 Examiner - do you have an opinion as to whether or not that 14 project substantially conforms with the recommendations of 15 the applicable master plan? 16 MAYOR FURMAN: I do not think it does. 17 MS. ROSENFELD: Okay. And could you summarize why you 18 reach that conclusion? 19 MAYOR FURMAN: I think it's the conditional use just 20 doesn't bring about the vitality on that - in our town 21 center. We need to have more residential, and let me throw in 22 my personal opinion of apartments that can have younger 23 singles, or, you know, couples. That would be my personal 24 opinion that I would like to see in that spot. That will 25 bring the vitality that we need into the town.</p>

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20 (77 to 80)

<p>77</p> <p>1 MS. ROSENFELD: And it's your opposition based on the 2 fact that it's conditional use, or is it based on the fact 3 that this particular use that it's a storage unit facility? 4 MAYOR FURMAN: Say the question one more time. 5 MS. ROSENFELD: Is your opposition based on the type of 6 proceeding, because it's a conditional use, or, is it based 7 on the type of use itself? The fact that it is a self-storage 8 facility that's being proposed? 9 MAYOR FURMAN: I'm going to say it's both. 10 HEARING EXAMINER GROSSMAN: I'm not sure I understand. 11 Why would the Town of Kensington oppose a conditional use if 12 it, in fact, fulfilled the goals of the sector plan? Why is 13 the fact that it's a conditional use make any difference to 14 you whatever? 15 MAYOR FURMAN: Well, she asked me a question and that's 16 what I answered. 17 HEARING EXAMINER GROSSMAN: I understand that. But I'm 18 asking you a question, so try to answer that one. 19 MAYOR FURMAN: I think when I - of the conditional use 20 that the storage, falling into that area - 21 HEARING EXAMINER GROSSMAN: No, forget about storage. 22 She asked you to separate out the question of conditional use 23 versus the particular type of use, storage facility. And she 24 asked you whether or not the fact that it's a conditional use 25 makes a difference to you versus the storage part of it. And</p>	<p>79</p> <p>1 opposed to permitted by right? 2 MAYOR FURMAN: I think every use has to be weighed. And 3 I think we can this particular Applicant that opportunity to 4 come in with his conditional use in state what they wanted to 5 do. So, you know, it was not dismissed immediately, if this 6 is a conditional use we don't want it. 7 MS. ROSENFELD: Okay. Thank you. That answers my 8 question. 9 HEARING EXAMINER GROSSMAN: All right. Thank you. 10 MS. ROSENFELD: Okay. I have no further questions of 11 this witness. 12 HEARING EXAMINER GROSSMAN: Okay. Cross-examination? 13 MS. GIRARD: Okay. I apologize in advance, it's kind of 14 my nature to jump around a little bit. But I'm just going in 15 the order of my notes. 16 HEARING EXAMINER GROSSMAN: You don't have to 17 apologize. 18 MS. GIRARD: It's a little disjointed for me as well. 19 But going back to the beginning of the testimony about the 20 sector plan itself. Do you know what studies, if any, worked 21 on regarding the - you mentioned at the height to be 22 important for economic viability. Do you know, were studies 23 done to support that, or how was - 24 MAYOR FURMAN: I don't know if studies were done for 25 that.</p>
<p>78</p> <p>1 you said both, and I'm not sure I understand why it's both. 2 Why is it the fact that it's a conditional use? 3 MAYOR FURMAN: Well, I think if you were asking 4 me - but I know it's different now, but if you had asked me 5 do I want a gas station there, I would say no. If you asked 6 me if I wanted something that's - doesn't fall within the 7 sector plan, then I would say I want to follow the sector 8 plan. 9 HEARING EXAMINER GROSSMAN: That's not what I'm asking. 10 MAYOR FURMAN: Okay. 11 HEARING EXAMINER GROSSMAN: Maybe I'm not making myself 12 clear. 13 MAYOR FURMAN: Well, maybe I don't know as clearly as I 14 should on, you know, the variety of conditional uses that are 15 out there that would be considered. How's that? 16 HEARING EXAMINER GROSSMAN: All right. That's fine, 17 thank you. 18 MS. ROSENFELD: If I could follow up. So, for example, 19 and I'm talking hypothetically. I don't know if this is a 20 conditional use in this particular zone. But hypothetically, 21 for example, if a conditional use for a day care center, 22 which would have more activated presence. 23 MAYOR FURMAN: Oh, I see. 24 MS. ROSENFELD: Would you be opposed to that per se 25 just because it hypothetically, could be a conditional use as</p>	<p>80</p> <p>1 MS. GIRARD: Okay. And just to be clear, in your 2 testimony it seems like you were saying that residential 3 apartments were recommended for this property in particular? 4 MAYOR FURMAN: It was just listed as an option. 5 MS. GIRARD: For this property in particular? 6 MAYOR FURMAN: I don't think in the sector plan is says 7 that. It gives a whole list, and then there is, in the plan, 8 it gives what options there are that they would recommend. 9 MS. GIRARD: Okay. 10 MAYOR FURMAN: But under that - 11 HEARING EXAMINER GROSSMAN: Can you tell me a page 12 reference to that in the sector plan? 13 MAYOR FURMAN: It would probably be easier for 14 somebody - 15 MS. ROSENFELD: It's wherever it's listed. 16 HEARING EXAMINER GROSSMAN: Are you talking about page 17 27? CC 5, Huggins Property? 18 MAYOR FURMAN: That's it. I'm getting there. Yeah. 19 HEARING EXAMINER GROSSMAN: Okay. 20 MAYOR FURMAN: So it does not mention specifically 21 residential under that, but in the - 22 HEARING EXAMINER GROSSMAN: It says, may - well, just 23 to read it since it's not all that long. 24 MAYOR FURMAN: Right. 25 HEARING EXAMINER GROSSMAN: "Approximately 1 acre</p>

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21 (81 to 84)

<p style="text-align: right;">81</p> <p>1 Huggins property currently zoned C2 may also support mixed- 2 use development." By the way, it's no longer zoned C2. "If 3 any development should include street-level shops on 4 Connecticut Avenue and Plyers Mill Road. Parking facilities 5 for this property should be to the rear with the access from 6 Plyers Mill Road. Joint development of this property and the 7 adjoining properties to the ease for single mixed-use 8 development would be desirable. This property is recommended 9 for," and then they name the zone. 10 MAYOR FURMAN: And there's another section which I'm 11 sorry, I don't have marked, but there is another section in 12 the sector plan, and when the councilmembers come up they'll 13 be able to point it out where it talks about the underground 14 parking for any structure that's over a certain height, as 15 well as residential and office space. 16 HEARING EXAMINER GROSSMAN: Okay. So they're 17 going - the other witnesses will tell me the sections that 18 talk about residential - 19 MAYOR FURMAN: That's right. 20 HEARING EXAMINER GROSSMAN: Will they also be telling 21 me about your definition of mixed-use? 22 MS. ROSENFELD: They certainly will. 23 HEARING EXAMINER GROSSMAN: Okay. That's fine, thank 24 you. 25 MS. GIRARD: Okay. You seem to suggest that the use in</p>	<p style="text-align: right;">83</p> <p>1 MS. GIRARD: Do you recall the initial meeting with the 2 Applicant and the DRB was the project received favorably? 3 MAYOR FURMAN: I think it was received in a way of, 4 well, this is what you've got, and this is what our thoughts 5 are on it. I don't think it was necessarily favorable. I 6 think it was more of, we have, you know, here are our 7 thoughts on the project. 8 MS. GIRARD: Do you - 9 HEARING EXAMINER GROSSMAN: This way it will - 10 MS. GIRARD: Let me see if I can find it in these. Are 11 you familiar with a May 30, 2018 letter that came subsequent 12 to that meeting from Mr. TJ Monahan to - it was addressed to 13 me - 14 MAYOR FURMAN: Uh-huh. 15 MS. GIRARD: - on behalf of the Applicant that 16 discussed about the DRB's preliminary thoughts on the 17 project? 18 MAYOR FURMAN: Uh-huh, I am familiar with that. 19 MS. GIRARD: And this is 62-F. 20 MS. ROSENFELD: Could I take a look, Erin? 21 MS. GIRARD: Oh, I'm sorry. 22 MS. ROSENFELD: That's okay. 23 MS. GIRARD: Just the highlighted portion. 24 HEARING EXAMINER GROSSMAN: Exhibit 62-F? 25 MS. GIRARD: Yes.</p>
<p style="text-align: right;">82</p> <p>1 particular is problematic as far as sector plan compliance is 2 involved; is that true? 3 MAYOR FURMAN: I think it was problematic because of 4 the use, especially at night where it was dark. 5 MS. GIRARD: Okay. And you mentioned the process that 6 you typically will take Applicants through, and did you meet 7 with the Applicant in March 2018? Do you recall? Were you in 8 that - 9 MAYOR FURMAN: I met with the Applicant. I don't know 10 what the date was, but yeah. 11 MS. GIRARD: And was there a DRB meeting around that 12 same time? 13 HEARING EXAMINER GROSSMAN: DRB standing for? 14 MAYOR FURMAN: The development review board. 15 HEARING EXAMINER GROSSMAN: The Town of Kensington's? 16 MS. GIRARD: Correct. 17 MAYOR FURMAN: Again, I don't have the dates, but yeah. 18 I mean one followed soon after. 19 MS. GIRARD: Do you recall at all, if it was of the 20 DRB, the Town of Kensington development review board's 21 position at the time that the self-storage use was 22 inconsistent with the sector plan? 23 MAYOR FURMAN: I think at the time, I think we wanted 24 to hear what the project was about. I mean we hadn't even 25 gotten to heights and all that other things.</p>	<p style="text-align: right;">84</p> <p>1 HEARING EXAMINER GROSSMAN: As in Frank? 2 MS. GIRARD: And I'm drawing your attention to Exhibit 3 62-F. Are you familiar with that letter? 4 MAYOR FURMAN: Yes. 5 MS. GIRARD: And can you read me the highlighted 6 portion on the first page, please? 7 MAYOR FURMAN: It says, "the DRB was unanimously in 8 favor of the preliminary design." 9 MS. GIRARD: Do you recall, are there any references, 10 and you can take your time to read it, is there any reference 11 to the use itself being problematic from a sector plan 12 conformance issue? 13 MAYOR FURMAN: It doesn't specifically say that, but 14 it's not very - it doesn't like the new presentation. 15 MS. GIRARD: Do you remember what one of the - with 16 regard to windows in particular. Do you have a recollection 17 as to the DRB's position regarding window reveals versus not? 18 MAYOR FURMAN: They did not want reveals. 19 MS. GIRARD: So they were in favor of opaque windows? 20 MAYOR FURMAN: They were in favor of just not 21 having - I don't recall the opaque. It was - there was a 22 discussion, there's all sorts of methods in - so that you 23 could light a window but you couldn't see through a window. 24 And we didn't have the expertise on what kind of window that 25 would be. I don't think there was ever an intent to darken</p>

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22 (85 to 88)

<p style="text-align: right;">85</p> <p>1 the window such that no light would come out of them. So I 2 think that was the discussion. We did not want - in a typical 3 storage building you have a hallway with windows so you can 4 see in, and you see all the garage door type things that you 5 would see in a storage. And that's what we were trying to 6 avoid. 7 MS. GIRARD: In your knowledge, and obviously I know 8 that the Town has submitted a packet of information into the 9 record. But do you recall at what point the Town began 10 expressing to the Applicant issues with compliance with the 11 sector plan in particular? 12 MAYOR FURMAN: I think it became when the council 13 discussed the project there was discussion about the sector 14 plan. You all had filed before we felt you were ready to 15 file. And then you held a community meeting and it became 16 more clear to us that this project was not in conformance 17 with our sector plan. 18 MS. GIRARD: And do you, again, do you know when the 19 Town first started tying their disapproval to the sector plan 20 itself? 21 MAYOR FURMAN: It was sometime in 2018. I want to say 22 in the - let's see. I believe you all filed in September 23 2018; is that correct? 24 MS. GIRARD: That's correct. 25 MAYOR FURMAN: And then the Town met at our town</p>	<p style="text-align: right;">87</p> <p>1 the County council because we were objecting to the project. 2 HEARING EXAMINER GROSSMAN: Okay. 3 MAYOR FURMAN: To the District Counsel. 4 MS. GIRARD: Oh, here it is, 62-G. 5 HEARING EXAMINER GROSSMAN: Okay. 6 MAYOR FURMAN: Well, it does mention the sector plan 7 more in the fact that we have two additional self-storage 8 units, or self-storage businesses within 150 feet of the one 9 that is being proposed. And that it does not conform with the 10 recommendations of our sector plan as designed. 11 MS. GIRARD: And can you summarize, just in your 12 perusal of the letter what the Town's primary concerns were 13 as expressed in that letter? 14 MAYOR FURMAN: That we did not want an additional self- 15 storage facility and that we did not want - and that it did 16 not fit within the sector plan. Prior to that October action 17 you mentioned in your testimony that the Town has a process 18 for reviewing applications and that it goes to the DRB and 19 then, I believe you mentioned that the Applicant does a 20 presentation to the mayor and council? 21 MAYOR FURMAN: Typically they do, yeah. 22 MS. GIRARD: Do you know if - 23 MAYOR FURMAN: They don't have to. 24 MS. GIRARD: - occurred in the case prior to this? 25 MAYOR FURMAN: I do not believe that you actually</p>
<p style="text-align: right;">86</p> <p>1 meeting in October 2018 and we - that's when the 2 town - because the development review board is not a 3 decision-maker. They just make recommendations. And they 4 recommended to the Town not approving this project. 5 MS. GIRARD: And is there a reference, to your 6 knowledge, to the sector plan issues you've noted today in 7 that letter? 8 MAYOR FURMAN: In this letter? 9 MS. GIRARD: In the letter of October 17th from 10 the - I'm assuming that's what you're referring to. 11 MAYOR FURMAN: No. I'm talking about the Town meeting 12 in October 2018. 13 MS. GIRARD: Correct. And coming out of that meeting in 14 the town issue a letter on October 17, 2018 regarding the 15 project? 16 MAYOR FURMAN: I believe we did, and I would have to 17 have the letter in front of me to say. 18 HEARING EXAMINER GROSSMAN: What exhibit number is 19 that? 20 MS. GIRARD: Let me find it. This one. 21 HEARING EXAMINER GROSSMAN: There's a letter sent to 22 OZHA by the Town. 23 MAYOR FURMAN: It was issued by the Town of Kensington 24 on October 17th, to the Honorable Hans Reamer. I think we 25 were under the impression that that time that it would go to</p>	<p style="text-align: right;">88</p> <p>1 gave - you did to community meetings, but you did not 2 actually come to the Town. 3 MS. GIRARD: Do you recall if the Applicant was invited 4 to do a presentation in October to the mayor and council 5 prior to that action? 6 MAYOR FURMAN: No, they were not invited. 7 HEARING EXAMINER GROSSMAN: So where you going with 8 this, Counsel? I'm just not sure? 9 MS. GIRARD: Again, I'm just going through her 10 testimony as it was presented as far as, you know, what the 11 evolution of the Townsend thoughts on sector plan compliance 12 and where they stand today and I'm going to - 13 HEARING EXAMINER GROSSMAN: Well, I'm not stopping you. 14 I'm just trying to understand how it ties in with what I have 15 to decide. So let's say the Town came to this conclusion 16 later than this, or tied it in with the sector plan later, 17 although they mention the sector plan in this particular 18 exhibit, 62-G. How do I factor that in and what I'm deciding? 19 Why does it make a difference to what I decide whether the 20 Town initially opposed to it because it had - it didn't 21 conform to the sector plan, or later concluded that. Why does 22 that make a difference? 23 MS. GIRARD: It actually makes a difference in my mind 24 as to why they believe it does not conform with the sector 25 plan. Because it goes to the weight that should be accorded</p>

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23 (89 to 92)

<p>89</p> <p>1 their opinion as to sector plan compliance.</p> <p>2 HEARING EXAMINER GROSSMAN: I see. Okay. So it's a</p> <p>3 weight question?</p> <p>4 MS. GIRARD: Correct.</p> <p>5 HEARING EXAMINER GROSSMAN: Okay.</p> <p>6 MS. GIRARD: And one of the follow-up questions I'm</p> <p>7 going to have, this was alluded, whether the Town - the Town</p> <p>8 seems to be making independent findings regarding sector plan</p> <p>9 compliance rather than just relying on planning staff in the</p> <p>10 planning board. So I'm exploring those as far as why the Town</p> <p>11 believes it doesn't comply with the sector plan.</p> <p>12 HEARING EXAMINER GROSSMAN: Yes. And it's fine for you</p> <p>13 to do that. I just wanted to try to figure out how that</p> <p>14 factored into what I am deciding, and you are telling me</p> <p>15 well, it goes to the weight that I should give the Town of</p> <p>16 Kensington's interpretation.</p> <p>17 MS. GIRARD: Interpretation, exactly. Yes.</p> <p>18 HEARING EXAMINER GROSSMAN: Okay.</p> <p>19 MS. GIRARD: You had mentioned, and we now have in the</p> <p>20 record information from the Solera project and the Knowles</p> <p>21 Manor project for Kensington Manor, sorry. It used to be</p> <p>22 Knowles Manor. So those are the two primary - let me ask you.</p> <p>23 Are those the two primary projects that have been evaluated</p> <p>24 by the Town with regard to sector plan compliance is the</p> <p>25 adoption of the sector plan?</p>	<p>91</p> <p>1 that - to rebut Mr. Phillips testimony that these types of</p> <p>2 projects are not feasible in the Town of Kensington. We</p> <p>3 didn't delve into the financing or speculate as to how they</p> <p>4 are being funded.</p> <p>5 HEARING EXAMINER GROSSMAN: Well, I -</p> <p>6 MS. ROSENFELD: I'm just noting it for the record.</p> <p>7 HEARING EXAMINER GROSSMAN: I understand. I'm just</p> <p>8 saying that you all want to present evidence on stuff that</p> <p>9 you all agree is not relevant. But go ahead. The objection is</p> <p>10 overruled.</p> <p>11 MS. GIRARD: So -</p> <p>12 MAYOR FURMAN: I'm not an expert on financing. I mean I</p> <p>13 know they're getting some sort of tax credits, but I don't</p> <p>14 know the financial scheme of it. I have no idea.</p> <p>15 MS. GIRARD: Okay. And as far as you did reference that</p> <p>16 that the project might not be as autocratic as some because</p> <p>17 of the pedestrian and bicycle improvements.</p> <p>18 MAYOR FURMAN: For the - which one?</p> <p>19 MS. GIRARD: For the proposed use.</p> <p>20 MAYOR FURMAN: For the - well, the proposed use there,</p> <p>21 what we envision is that it would be more pedestrian friendly</p> <p>22 and that people would come to it walking, not driving, is</p> <p>23 that what you mean? Any project there.</p> <p>24 MS. GIRARD: Right.</p> <p>25 MAYOR FURMAN: Yeah.</p>
<p>90</p> <p>1 MAYOR FURMAN: They are the primary ones, yes.</p> <p>2 MS. GIRARD: The primary ones. And they are both senior</p> <p>3 housing, are they not?</p> <p>4 MAYOR FURMAN: Correct.</p> <p>5 MS. GIRARD: Do you, of the Kensington Manor, that</p> <p>6 is - you mentioned its affordability, do you know how that</p> <p>7 project is being financed?</p> <p>8 MAYOR FURMAN: Through government agencies, I believe;</p> <p>9 through federal and state and county.</p> <p>10 MS. GIRARD: And do you know, is the Applicant in that</p> <p>11 case getting tax credits, for example?</p> <p>12 MAYOR FURMAN: I assume.</p> <p>13 MS. ROSENFELD: Objection. Again, this is all going to</p> <p>14 financing.</p> <p>15 HEARING EXAMINER GROSSMAN: Yeah.</p> <p>16 MS. GIRARD: They opened the door.</p> <p>17 HEARING EXAMINER GROSSMAN: Yeah, well, I'm going to</p> <p>18 agree with both of you on that. That is - and disagree with</p> <p>19 both of you on it at the same time. I mean I think it's far</p> <p>20 afield. It really will bear on what I have to decide, but on</p> <p>21 the other hand you did open the door entering in these other</p> <p>22 projects, so I'm not going to limit her cross-examination. So</p> <p>23 overruled.</p> <p>24 MS. ROSENFELD: And just for the record, I brought</p> <p>25 those projects in for the purpose of demonstrating, you know,</p>	<p>92</p> <p>1 MS. GIRARD: And so you're familiar with the proposed</p> <p>2 conditional use that were all here to discuss.</p> <p>3 MAYOR FURMAN: Right.</p> <p>4 MS. GIRARD: And are you familiar with the proposed</p> <p>5 improvements to pedestrian and bicycle -</p> <p>6 MAYOR FURMAN: Would it be an improvement over what's</p> <p>7 there now? Is that what you're asking?</p> <p>8 MS. GIRARD: And would it be in compliance with the</p> <p>9 sector plan?</p> <p>10 MAYOR FURMAN: I don't think the State has weighed in</p> <p>11 on it yet. Hopefully it would be. I mean they'll make sure it</p> <p>12 is.</p> <p>13 MS. GIRARD: I mean in terms of the separated bike</p> <p>14 lanes, pedestrian path and the open space at the front of the</p> <p>15 project, is it your understanding - what is your opinion as</p> <p>16 to how that might comply with the objectives of the sector</p> <p>17 plan that speaks to open spaces?</p> <p>18 MAYOR FURMAN: I believe the outdoor space in the</p> <p>19 sidewalks and the bike lanes in the sort of thing is in</p> <p>20 compliance. It's not probably completed, but in that realm</p> <p>21 of -</p> <p>22 MS. GIRARD: Okay.</p> <p>23 MAYOR FURMAN: I've just seen these too often where you</p> <p>24 think it's done and it's not done because another agency</p> <p>25 comes in and makes changes, as you know.</p>

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24 (93 to 96)

<p>93</p> <p>1 MS. GIRARD: Right.</p> <p>2 MAYOR FURMAN: Yeah, so what is there now may not be</p> <p>3 what's there when they finish with it.</p> <p>4 MS. GIRARD: Okay. With regard to, again, flipping back</p> <p>5 to the windows. I know we discussed that a little bit before,</p> <p>6 and we did discuss, and correct me if I'm wrong, the Town's</p> <p>7 desire that they not be - you wouldn't see the storage</p> <p>8 facilities themselves?</p> <p>9 MAYOR FURMAN: We didn't want reveals, right.</p> <p>10 MS. GIRARD: Right. And so is it the Town's opinion</p> <p>11 that something like an office building where you may, or may</p> <p>12 not be able to see vacant office space, or even the glaring</p> <p>13 lights of the ceiling lights at night, that that's preferable</p> <p>14 to more opaque windows?</p> <p>15 MAYOR FURMAN: I think that we would - say the question</p> <p>16 one more time. I just want to make sure I'm clear on it.</p> <p>17 MS. GIRARD: If it was proposed office building, for</p> <p>18 instance.</p> <p>19 MAYOR FURMAN: Oh, what I be asking for opaque windows?</p> <p>20 MS. GIRARD: Well, I'm saying, so if not being able to</p> <p>21 see in the windows is problematic, is it there for the Town's</p> <p>22 position that being able to see in the windows, even if it's</p> <p>23 an office building that hasn't vacant space and/or, you know,</p> <p>24 there's no one in there but a light or two maybe on that</p> <p>25 that's preferable?</p>	<p>95</p> <p>1 were referring again, back to Kensington Manor and Solera,</p> <p>2 and you mentioned that Kensington Manor in particular, even</p> <p>3 though it was all residential, it was found to be compliant</p> <p>4 with the sector plan because it was resident didn't show. Do</p> <p>5 you know why the Town in that case, didn't ask for more mixed</p> <p>6 use?</p> <p>7 MAYOR FURMAN: I think particularly in that particular</p> <p>8 location it just created more - it was on a congested street</p> <p>9 with very - at an intersection, which are very well aware of.</p> <p>10 MS. GIRARD: Painfully. And is Plyers Mill and</p> <p>11 Connecticut Avenue also not a very - I believe the testimony</p> <p>12 was that that is - not our expert testimony, but there is a</p> <p>13 perception, certainly in the letters that -</p> <p>14 MAYOR FURMAN: Does Kensington have a problem with</p> <p>15 traffic, yeah.</p> <p>16 MS. GIRARD: That there is a community -</p> <p>17 MAYOR FURMAN: Kensington has a problem with traffic,</p> <p>18 yes, absolutely.</p> <p>19 MS. GIRARD: Okay. I believe that's all I have. Thank</p> <p>20 you.</p> <p>21 HEARING EXAMINER GROSSMAN: All right. Any reader</p> <p>22 correct?</p> <p>23 MS. ROSENFELD: Yes, thank you. If I could draw your</p> <p>24 attention back to Exhibit 62-F.</p> <p>25 MAYOR FURMAN: Which was what?</p>
<p>94</p> <p>1 MAYOR FURMAN: I guess what we would like is people</p> <p>2 living there to show the type of activity, which you can't do</p> <p>3 in a storage. There would be no activity. But I think the</p> <p>4 question, I think I was at the DRB meeting is there are</p> <p>5 probably products out there that we don't know about and what</p> <p>6 could be used. So I don't feel like we were just going to</p> <p>7 well, were just going to put opaque windows in. So this is</p> <p>8 where the Planning's technical staff would come in and say</p> <p>9 well, these types of products are here that could give you</p> <p>10 what they're looking for. They could provide a little bit of</p> <p>11 light, yet you can't see into them.</p> <p>12 MS. GIRARD: So there may be a solution where it looks</p> <p>13 like there's lamps on.</p> <p>14 MAYOR FURMAN: Correct. It could be - right.</p> <p>15 MS. GIRARD: Okay.</p> <p>16 MAYOR FURMAN: There could be solutions out there.</p> <p>17 MS. GIRARD: Okay. In your opinion, if the self-storage</p> <p>18 unit was not there, the first two floors with the artist</p> <p>19 studio space and restaurant, does the town believe, or in</p> <p>20 your personal opinion, would that comply with the sector</p> <p>21 plan?</p> <p>22 MAYOR FURMAN: If it's just those two floors?</p> <p>23 MS. GIRARD: Yes.</p> <p>24 MAYOR FURMAN: Yes.</p> <p>25 MS. GIRARD: And just one more question, I believe. We</p>	<p>96</p> <p>1 MS. ROSENFELD: Which was the letter -</p> <p>2 MAYOR FURMAN: The Town letter?</p> <p>3 MS. ROSENFELD: The town letter, yes. Correct.</p> <p>4 MAYOR FURMAN: Okay.</p> <p>5 MS. GIRARD: No, this one. I'm sorry. You have the</p> <p>6 other one.</p> <p>7 MS. ROSENFELD: Could I -</p> <p>8 MAYOR FURMAN: Oh yeah.</p> <p>9 MS. ROSENFELD: Can I just fall yours?</p> <p>10 MS. GIRARD: Sure.</p> <p>11 MS. ROSENFELD: There was the sentence that Ms. Girard</p> <p>12 drew to your attention that you spoke about the DRB was</p> <p>13 unanimously in favor of the preliminary design. Did the DRB</p> <p>14 go on there from there, however, and raise concerns about the</p> <p>15 new design that was presented?</p> <p>16 MAYOR FURMAN: Yes.</p> <p>17 MS. ROSENFELD: Okay. And - no further questions on</p> <p>18 that. You mentioned that the Solera and Kensington Manor</p> <p>19 projects were the most significant projects that you reviewed</p> <p>20 for - that the Town has reviewed for compliance with the</p> <p>21 sector plan. Is there any other project that you've reviewed</p> <p>22 recently for compliance with the sector plan? Is there</p> <p>23 anything else pending?</p> <p>24 MAYOR FURMAN: That would be the townhouse - a</p> <p>25 townhouse project that right now got caught in the</p>

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25 (97 to 100)

<p>97</p> <p>1 moratorium, so it's kind of on hold, but we have been 2 reviewing it. 3 MS. ROSENFELD: Okay. And did you review it for 4 conformance with the sector plan? 5 MAYOR FURMAN: Yes. 6 MS. ROSENFELD: And did you determine whether or not it 7 conformed with the sector plan? 8 MAYOR FURMAN: The developer would like to put more 9 houses that are - he has - my DRB committee can define it 10 better, but he's wanting us to go and change the zoning on a 11 portion of the property and I have told him that it is not 12 likely we would do that. The council has not weighed in on 13 it. He's not come before the council yet. So - but it's very 14 unlikely that he would do it. So he was advised not to spend 15 any money on this through his attorneys, until he comes to 16 the Town to see if we would support it. But more than likely 17 we would not. 18 MAYOR FURMAN: Okay. Ms. Girard asked you some 19 questions about conformance with the sector plan with respect 20 to elements of this project, one under consideration for 21 things like bike lanes and pedestrian paths and open space. 22 Does your testimony that those elements of this project 23 conform with the sector plan, change your view that other 24 elements of this project do not conform with the sector plan? 25 MAYOR FURMAN: It doesn't change my view.</p>	<p>99</p> <p>1 writing that would change, or has changed the Town's view 2 with respect to nonconformance to the sector plan as 3 summarized in that letter - 4 MAYOR FURMAN: Nothing has changed our - 5 MS. ROSENFELD: - and in your testimony? 6 MAYOR FURMAN: Nothing has changed our point of view. 7 MS. ROSENFELD: So you still stand by the testimony 8 that was submitted - 9 MAYOR FURMAN: Correct. 10 MS. ROSENFELD: - to the Planning Board? 11 MAYOR FURMAN: Correct. 12 MS. ROSENFELD: Okay. 13 HEARING EXAMINER GROSSMAN: Ms. Rosenfeld, you limited 14 your question to the attachment to Exhibit 66. Isn't the same 15 question applicable to 66 itself? Which is the statement of 16 the Town of Kensington? 17 MS. ROSENFELD: Yes, it is. 18 HEARING EXAMINER GROSSMAN: Okay. And the answer will 19 be the same? 20 MAYOR FURMAN: Yes. 21 HEARING EXAMINER GROSSMAN: Okay. 22 MS. ROSENFELD: There also was a question as to whether 23 the restaurant and art gallery standing alone, in your 24 opinion, do they conform with the recommendations of the 25 sector plan, and your answer to that was yes, correct?</p>
<p>98</p> <p>1 MS. ROSENFELD: Okay. And in the record, Exhibit 66, 2 which was the statement of the Town of Kensington, that 3 includes a letter dated July 10th, 2019 to Mr. Casey Anderson 4 from the Town signed by you. Mr. Grossman, may I approach the 5 witness? 6 HEARING EXAMINER GROSSMAN: Yes. What's the exhibit 7 number on that? 8 MS. ROSENFELD: It's Exhibit Number 66. And I'm going 9 to mention reference two exhibits attached to that. They're 10 not paginated. 11 HEARING EXAMINER GROSSMAN: Okay. 12 MS. ROSENFELD: The first is a July 10th, 2019 letter 13 from Mayor Furman to Mr. Casey Anderson regarding conditional 14 use application CU 19-03. And the second is testimony of 15 Tracey Furman, Mayor, Town of Kensington, dated July 25th, 16 2019. Mayor Furman, I'm going to ask you to take a look at 17 both of these documents. And I will ask you if they summarize 18 the Town's view with respect to the lack of conformance with 19 the sector plan, this application's lack of conformance with 20 the sector plan. Have you had a chance to review both of 21 those documents, Mayor Furman? 22 MAYOR FURMAN: Uh-huh, yes. 23 MS. ROSENFELD: And having sat through the conditional 24 use proceedings up until this point, is there anything that 25 you have heard, or any testimony that's been received in</p>	<p>100</p> <p>1 MAYOR FURMAN: Correct. 2 MS. ROSENFELD: Does that modify your opinion with 3 respect to the conformance of the storage facility use itself 4 and its' compliance, or non-compliance with the sector plan? 5 MAYOR FURMAN: It does not conform with sector plan. 6 MS. ROSENFELD: All right. Mr. Grossman, I have no 7 further questions. 8 HEARING EXAMINER GROSSMAN: Any re-cross? 9 MS. GIRARD: No. 10 HEARING EXAMINER GROSSMAN: All right. Thank you, Mayor 11 Furman, I appreciate it. I think we should take a five-minute 12 break and come back at noon, unless you want to break for 13 lunch now. I will leave that to Counsel. Do you want to 14 continue? 15 MS. ROSENFELD: I don't care either way. I find to 16 continue. Could we make it a 10 minute break though? 17 HEARING EXAMINER GROSSMAN: Sure. Okay. 18 MS. ROSENFELD: Thank you. 19 HEARING EXAMINER GROSSMAN: So we'll come back at 5 20 after 12. 21 (Off the record at 11:51 a.m.) 22 (On the record at 12:07 p.m.) 23 HEARING EXAMINER GROSSMAN: A couple of people have 24 asked if we could put the conditional use site plan up on a 25 board. Some people have not been here on earlier sessions. Do</p>

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26 (101 to 104)

<p>101</p> <p>1 we have a copy of that we can put up on a board for people?</p> <p>2 UNIDENTIFIED SPEAKER: Sure.</p> <p>3 HEARING EXAMINER GROSSMAN: Thank you. Okay. Ms.</p> <p>4 Rosenfeld, your next witness?</p> <p>5 MS. ROSENFELD: Okay. Yes. I would like to call council</p> <p>6 member Conor Crimmins to the stand please.</p> <p>7 HEARING EXAMINER GROSSMAN: All right. All right, sir.</p> <p>8 Would you state your full name and your address please?</p> <p>9 MR. CRIMMINS: Conor Crimmins, 3710 Mitchell Street,</p> <p>10 Kensington, Maryland 20895.</p> <p>11 HEARING EXAMINER GROSSMAN: And you should probably</p> <p>12 spell your name for the record.</p> <p>13 MR. CRIMMINS: First name is Conor, C-O-N-O-R. The last</p> <p>14 name is Crimmins, C-R-I-M-M-I-N-S.</p> <p>15 HEARING EXAMINER GROSSMAN: Okay. And only one in in</p> <p>16 Conor?</p> <p>17 MR. CRIMMINS: Yes, sir.</p> <p>18 HEARING EXAMINER GROSSMAN: All right. Could you raise</p> <p>19 your right hand, please?</p> <p>20 Do you swear or affirm to tell the truth, the whole</p> <p>21 truth, and nothing but the truth under the penalty of</p> <p>22 perjury?</p> <p>23 MR. CRIMMINS: I do.</p> <p>24 HEARING EXAMINER GROSSMAN: You may proceed then,</p> <p>25 Counsel.</p>	<p>103</p> <p>1 MS. ROSENFELD: And was the makeup of the development</p> <p>2 review board consistent throughout its review of conditional</p> <p>3 use 19-03?</p> <p>4 MR. CRIMMINS: The structure was consistent. Membership</p> <p>5 and roles adjusted slightly during the review of this</p> <p>6 application.</p> <p>7 MS. ROSENFELD: And were you on the board throughout</p> <p>8 the review of this application?</p> <p>9 MR. CRIMMINS: I was.</p> <p>10 MS. ROSENFELD: Okay. You heard Ms. Girard ask</p> <p>11 questions about the evolution of the Town's analysis of this</p> <p>12 project, didn't you?</p> <p>13 MR. CRIMMINS: I did.</p> <p>14 MS. ROSENFELD: You were here? Would you describe</p> <p>15 briefly from your point of view the review process from the</p> <p>16 time this application was filed with the Town through the</p> <p>17 development of the final recommendations that were presented</p> <p>18 to the planning board and are here before the -</p> <p>19 MR. CRIMMINS: Sure. The Applicant first introduced the</p> <p>20 application by sending it to our mayor, Mayor Furman, who</p> <p>21 subsequently advised him to meet with the development review</p> <p>22 board. That was in March of 2018. I am currently the chair of</p> <p>23 the development review board and have been since January</p> <p>24 2019, but I was not chair at that time. However, at that time</p> <p>25 the chair reached out to the development review board to</p>
<p>102</p> <p>1 MS. ROSENFELD: Okay. Thank you. councilmember</p> <p>2 Crimmins, could you please state for the record your current</p> <p>3 position with the Town of Kensington?</p> <p>4 MR. CRIMMINS: I am an elected councilmember to the</p> <p>5 Town of Kensington and I sit on several committees.</p> <p>6 MS. ROSENFELD: Okay. And when were you elected?</p> <p>7 MR. CRIMMINS: I was first elected in 2017.</p> <p>8 MS. ROSENFELD: Okay. And with respect to the</p> <p>9 committees that you're on, the one that I think would be</p> <p>10 relevant would be the development committee; is that correct?</p> <p>11 MR. CRIMMINS: Correct. The development review board.</p> <p>12 MS. ROSENFELD: The development review board. I would</p> <p>13 you please explain what the development review board is, and</p> <p>14 who sits on that board?</p> <p>15 MR. CRIMMINS: Sure. The development review board is a</p> <p>16 standing committee of the Town. It was established through</p> <p>17 resolution, and subsequently, the structure of it has been</p> <p>18 updated through further resolutions of the mayor in the town</p> <p>19 council. Currently, in its stated format, the DRB has seven</p> <p>20 members of which two are councilmembers, elected</p> <p>21 councilmembers. Two are residents of the town. Two are from</p> <p>22 the professional category, meaning they are either</p> <p>23 architects, engineers developers, land use attorneys,</p> <p>24 somebody in the professional field. And the last is a member</p> <p>25 from Kensington's business community.</p>	<p>104</p> <p>1 schedule a development review board meeting, and we</p> <p>2 subsequently found a date in early April 2018 where the</p> <p>3 Applicant came in. They reviewed their proposal with us, they</p> <p>4 went through their site elevations. They went through their</p> <p>5 initial plan. The development review board, you know, its</p> <p>6 purpose is to review projects as they are presented to the</p> <p>7 town. Through the resolution as is stated, the purpose is to</p> <p>8 look specifically at conformance to the sector plan, to the</p> <p>9 CRT, and CRN zones. To conformance to the design guidelines</p> <p>10 and then as to act as an advisory committee to the town</p> <p>11 council and to the mayor. So we don't take any official</p> <p>12 action other than advising the council. Our role is to work</p> <p>13 with Applicants, review projects, and ask questions of them.</p> <p>14 Engage with the Applicants, and you don't have a constructive</p> <p>15 dialogue. From time to time Applicants have asked the</p> <p>16 development review board, for instance, for a letter to help</p> <p>17 provide greater detail and the development review board has</p> <p>18 done that. In this specific application, we met with the</p> <p>19 Applicant in that April timeframe. We did development review</p> <p>20 board. We subsequently discussed that with the Applicant. The</p> <p>21 Applicant revised some of their plan and presented it back to</p> <p>22 the development review board in late May. We subsequently</p> <p>23 sent the development review board under the chair at that</p> <p>24 time, TJ Monahan sent a letter back to the Applicant stating</p> <p>25 that in its current status at that time, what would be kind</p>

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27 (105 to 108)

<p>105</p> <p>1 of the second revision, the plan had changed such that the 2 DRB was no longer supportive of the project, and could not 3 support it in its current state. So that letter went out in 4 May 2018. We did not hear back from the Applicant until we 5 were given notice that they had filed their conditional use 6 in September. At that time the mayor then asked the 7 development review board for an official report to the 8 council at our next upcoming council meeting, which was 9 October 8th. TJ Monahan as the chair was not able to be 10 present so the responsibility came to me to give the official 11 report from the DRB. I subsequently did. There was 12 discussion. As a result of that discussion, having to do with 13 a number of factors, not conforming with the sector plan, its 14 proposed mix of uses being disproportional to what the Town 15 was looking for, architectural problems with it, a lack of 16 back and forth with the Applicant, it wasn't then taken up 17 through counsel that we write a letter of opposition. We 18 voted on that, it was unanimous, four to zero. We then 19 drafted that letter and sent it to Hans Riemer who was 20 president of the county council, and that letter went out in 21 October of 2017. There was then the first - 22 MS. ROSENFELD: 2017? 23 MR. CRIMMINS: I'm sorry, 2018. There was then the 24 first community meeting that the Applicant held at town hall 25 where they received input from other parts of the community.</p>	<p>107</p> <p>1 to our feeling. And there are members of the DRB from the 2 professional category of our membership who were fairly 3 adamant that this was not a good fit, that it did not conform 4 to the sector plan, specifically as it was called for as a 5 conditional use. So those professional members of our DRB 6 committee are the ones that we rely on most heavily with very 7 specific technical expertise. And so they provided their 8 professional observations. And then likewise, at times, we 9 may consult with the county planning's technical staff as 10 well to get specific expertise that may not pertain to DRB, 11 that we may not have, or that it just is not in our purview. 12 HEARING EXAMINER GROSSMAN: Mr. Crimmins, what 13 professions were these professionals? 14 MR. CRIMMINS: Sure. At the time we had to members that 15 were in the professional category. TJ Monahan is an 16 architect, a licensed architect within the state of Maryland. 17 And Chris Bruch is the CEO of Donohoe Construction, a rather 18 large land developer. 19 HEARING EXAMINER GROSSMAN: All right. And you 20 mentioned a four to zero vote. 21 MR. CRIMMINS: Yes, sir. 22 HEARING EXAMINER GROSSMAN: But you tell me that there 23 are seven members of this committee. 24 MR. CRIMMINS: The four to - let me clarify. The four 25 to zero vote is of the town council.</p>
<p>106</p> <p>1 After that, there was some back and forth between the 2 Applicant and the town via email to try and schedule a 3 further development review board to take a look at revisions 4 that they were trying to make. We met in January of 2019 for 5 a development review board. Again, we provided, you know, the 6 purpose of the development review board was to review the 7 plans and that they had at that time, look to its conformance 8 to the sector plan, design guidelines for the zone, how 9 they're going to use it, and whether or not it really meets 10 the vision and the spirit of what we have, are looking for 11 within that area of town. We again, you know, proffered that 12 it really wasn't the best fit. And ultimately, that led to 13 their actual filing of an application in late May. So we, as 14 a development review board, only met with this team twice. 15 MS. ROSENFELD: And with respect to your review and 16 analysis of conformance with the sector plan, is that an 17 analysis and that the review board undertakes independently? 18 Do your members look at the sector plan and determine whether 19 or not you think there is conformance with the sector plan? 20 MR. CRIMMINS: Yes. So when we review the project in a 21 development review board, the Applicant is there. Discuss the 22 project with the Applicant and we have an opportunity to ask 23 questions, as best as answers can be provided immediately, 24 there is a, you know, back and forth, a discussion, a 25 dialogue. Then there can be some discussion within the DRB as</p>	<p>108</p> <p>1 HEARING EXAMINER GROSSMAN: Okay. 2 MR. CRIMMINS: So the DRB doesn't take official action. 3 So it made a recommendation. I provided the DR B report to 4 the town council during the town council's October 2018 5 session. 6 HEARING EXAMINER GROSSMAN: Okay. 7 MR. CRIMMINS: Then after dialogue amongst the mayor 8 and the council the motion was taken up to oppose the 9 development and to draft a letter to the county council. And 10 that boat was of the town council. 11 HEARING EXAMINER GROSSMAN: Okay. 12 MR. CRIMMINS: And it was four to nothing. Four to 13 zero. 14 HEARING EXAMINER GROSSMAN: I get you. Thank you. 15 MR. CRIMMINS: Very good. 16 HEARING EXAMINER GROSSMAN: Go ahead. 17 MS. ROSENFELD: You mentioned that you look to the 18 technical staff of the planning board for assistance in 19 evaluating these projects. Do you rely exclusively on the 20 technical staff for your determination as to compliance with 21 the sector plan? 22 MR. CRIMMINS: No. I mean we - we as residents, as 23 elected members of the town, we also look at, you know, our 24 personal and professional opinions in that capacity as to 25 conformance to the plan.</p>

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28 (109 to 112)

109	<p>1 MS. ROSENFELD: So you view them as a resource -</p> <p>2 MR. CRIMMINS: Yes.</p> <p>3 MS. ROSENFELD: - but not as the deciding -</p> <p>4 MR. CRIMMINS: Correct.</p> <p>5 MS. ROSENFELD: - opinion. Okay.</p> <p>6 HEARING EXAMINER GROSSMAN: I would ask Applicant to</p> <p>7 move that back a little bit because I think there's one lady</p> <p>8 here that can't see the witness probably because of the plan.</p> <p>9 Maybe move it back all the way further to the wall, if you</p> <p>10 can. Does that help at all, ma'am?</p> <p>11 UNIDENTIFIED SPEAKER: (No audible response).</p> <p>12 HEARING EXAMINER GROSSMAN: You're out there in the</p> <p>13 wilderness.</p> <p>14 MS. ROSENFELD: She knows (inaudible) is.</p> <p>15 HEARING EXAMINER GROSSMAN: I'm not sure we'll</p> <p>16 UNIDENTIFIED SPEAKER: I will just shift slightly.</p> <p>17 HEARING EXAMINER GROSSMAN: Yes, move over one chair,</p> <p>18 that would be good. And then everybody can see you. Thank</p> <p>19 you. Is that better?</p> <p>20 UNIDENTIFIED SPEAKER: I wasn't going to say a word.</p> <p>21 MS. ROSENFELD: In your review of the sector plan</p> <p>22 itself, on page 21 of the sector plan, there is discussion of</p> <p>23 the town center.</p> <p>24 MR. CRIMMINS: Yes.</p> <p>25 MS. ROSENFELD: The town center.</p>	111	<p>1 heights of buildings. The parking area that would be needed</p> <p>2 if left to a surface slot would eat up much of the buildable</p> <p>3 land area. So as a part of the sector plan it was</p> <p>4 specifically called out that four buildings that propose five</p> <p>5 or six stories that they would also have some sort of</p> <p>6 structured parking. And so the DRB has talked with the</p> <p>7 Applicant through our review of this process that it was</p> <p>8 our - to conform to the sector plan it was our recommendation</p> <p>9 that they have a parking structure, preferably underground</p> <p>10 parking structure.</p> <p>11 MS. ROSENFELD: And is there also - does the sector</p> <p>12 plan also contemplate reducing autocentric types of uses?</p> <p>13 Would underground parking further that goal of reducing the</p> <p>14 impact of automobile use in the town?</p> <p>15 MR. CRIMMINS: Could you -</p> <p>16 MS. ROSENFELD: If you -</p> <p>17 HEARING EXAMINER GROSSMAN: It was a leading question</p> <p>18 already.</p> <p>19 MS. ROSENFELD: I'm sorry. Does the sector plan seek to</p> <p>20 minimize what are referenced as autocentric uses in the town?</p> <p>21 MR. CRIMMINS: Is there - can you point me to the</p> <p>22 section you're talking about?</p> <p>23 MS. ROSENFELD: I can't right at the moment. I'll</p> <p>24 either come back to this -</p> <p>25 MR. CRIMMINS: Sure.</p>
110	<p>1 MR. CRIMMINS: Okay.</p> <p>2 MS. ROSENFELD: And the second full paragraph includes</p> <p>3 a sentence that says, "properties with the potential to</p> <p>4 support mixed use developments with parking structures could</p> <p>5 have five to six story building. While most other properties</p> <p>6 that do not mix uses would have street activating retail and</p> <p>7 services in one or two story buildings with surface parking."</p> <p>8 Did the committee, or do you, have an opinion as to whether</p> <p>9 or not this project is consistent with that recommendation of</p> <p>10 the sector plan?</p> <p>11 HEARING EXAMINER GROSSMAN: What page are you on? I'm</p> <p>12 sorry.</p> <p>13 MS. ROSENFELD: Page 21. The middle of the second full</p> <p>14 paragraph.</p> <p>15 HEARING EXAMINER GROSSMAN: Thanks. I see. Okay.</p> <p>16 MR. CRIMMINS: It is the opinion of the DRB that this</p> <p>17 project does not conform to the sector plan specifically as</p> <p>18 to its parking, pursuant to this paragraph.</p> <p>19</p> <p>20 MS. ROSENFELD: And could you just elaborate? It may</p> <p>21 seem self-evident, but could you elaborate just a little bit</p> <p>22 on why?</p> <p>23 MR. CRIMMINS: Sure. The intent of the sector plan is</p> <p>24 to help bring both retail and residential and commercial uses</p> <p>25 into our town center. But in doing so with certain size and</p>	112	<p>1 MS. ROSENFELD: - line of questioning with you later or</p> <p>2 we will move on. There has been discussion about the</p> <p>3 definition - the proper definition of mixed use in the</p> <p>4 context of this particular project. Have you heard the</p> <p>5 testimony and the discussions on that point?</p> <p>6 MR. CRIMMINS: I have.</p> <p>7 MS. ROSENFELD: Mr. Grossman, I would like to submit</p> <p>8 into the record a document entitled Technical Assistance</p> <p>9 Panel Report Developing and Providing (inaudible) Strategy</p> <p>10 for the Town of Kensington.</p> <p>11 HEARING EXAMINER GROSSMAN: All right, this will be -</p> <p>12 MS. ROSENFELD: Prepared by the Urban Land Institute.</p> <p>13 HEARING EXAMINER GROSSMAN: All right. Exhibit 113.</p> <p>14 (Exhibit 113 was received into the record.)</p> <p>15 UNIDENTIFIED SPEAKER: It's not 111?</p> <p>16 HEARING EXAMINER GROSSMAN: No. We had - 111 was the</p> <p>17 March 26th, 2018 technical staff Report on Solera Reserve at</p> <p>18 Kensington Sketch Plan. And 112 was a May 3, 2018 Planning</p> <p>19 Board Resolution of the Reserve at Kensington - Solera</p> <p>20 Reserve at Kensington. Exhibit 113 will be the Urban Land</p> <p>21 Institute Technical Assistance Panel Report on Developing a</p> <p>22 Revitalization Strategy for the Town of Kensington, dated</p> <p>23 November 12 to 13, 2008. Okay.</p> <p>24 MS. ROSENFELD: councilmember Crimmins, have you seen</p> <p>25 this document marked as Exhibit 113 before today?</p>

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29 (113 to 116)

<p>113</p> <p>1 MR. CRIMMINS: I have.</p> <p>2 MS. ROSENFELD: And have you reviewed it and are you</p> <p>3 familiar with it?</p> <p>4 MR. CRIMMINS: I am.</p> <p>5 MS. ROSENFELD: And can you please describe, for the</p> <p>6 record, your understanding of how this document was generated</p> <p>7 and what its purpose was?</p> <p>8 MR. CRIMMINS: Sure. In preparation for revising</p> <p>9 Kensington Sector Plan, the town began a formed</p> <p>10 revitalization committee and began work on trying to</p> <p>11 determine what ways to update the then plan, which was, I</p> <p>12 believe it was last published in 1978. Part of that was in</p> <p>13 2008 the Town engaged with the Urban Land Institute to form a</p> <p>14 technical assistance panel in which members of ULI's</p> <p>15 Washington, DC area team came out to the Town of Kensington.</p> <p>16 They met with members of the revitalization committee, the</p> <p>17 town council, the mayor, the local business community,</p> <p>18 residents, they did site visits. They walked in the town.</p> <p>19 They looked at specific areas. They talked about specific</p> <p>20 concerns. They did small group breakouts to discuss what the</p> <p>21 vision for the future would be and what were limiting</p> <p>22 constraints. What were opportunities for success. As a result</p> <p>23 of that ULI published this 2008 technical assistance, or TAP</p> <p>24 report that helped to coalesce all of the dialogue and</p> <p>25 information from those two day workshops into a report that</p>	<p>115</p> <p>1 would like to see is that buildings combine ground level</p> <p>2 retail with office space and/or residential units to create</p> <p>3 mixed use.</p> <p>4 MS. ROSENFELD: And do you have a page number for that?</p> <p>5 MR. CRIMMINS: That is on page 10.</p> <p>6 MS. ROSENFELD: Okay.</p> <p>7 MR. CRIMMINS: Let me just make sure of that.</p> <p>8 HEARING EXAMINER GROSSMAN: On the top of page 15.</p> <p>9 MR. CRIMMINS: Yes.</p> <p>10 MS. ROSENFELD: And page 15 does reiterate that</p> <p>11 definition, does it not?</p> <p>12 MR. CRIMMINS: That is correct.</p> <p>13 MS. ROSENFELD: And did you hear Mr. Phillips testify</p> <p>14 about ULI's general definition of mixed use?</p> <p>15 MR. CRIMMINS: I did.</p> <p>16 MS. ROSENFELD: A very specific mixed use. Did you also</p> <p>17 hear his testimony with respect to the fact that there are</p> <p>18 many different definitions of mixed use?</p> <p>19 MR. CRIMMINS: I did.</p> <p>20 MS. ROSENFELD: Okay. Do you have an opinion as to</p> <p>21 whether or not this definition of mixed use as reflected on</p> <p>22 page 10 and 15, "buildings combining ground-level retail with</p> <p>23 office space and/or residential units," do you have an</p> <p>24 opinion as to whether or not that was developed specifically</p> <p>25 with Kensington in mind?</p>
<p>114</p> <p>1 would help to advise the town as it went forward in modifying</p> <p>2 the sector plan. So the fact that this was published in 2008,</p> <p>3 it was one of the contributing reports that help to advise</p> <p>4 the development of the 2012 approved sector plan.</p> <p>5 MS. ROSENFELD: And so was it your understanding that</p> <p>6 this was developed specifically to help lay the groundwork</p> <p>7 for what became the 2013 sector plan?</p> <p>8 MR. CRIMMINS: Yes.</p> <p>9 MS. ROSENFELD: 2012, 2013 sector plan.</p> <p>10 HEARING EXAMINER GROSSMAN: 2012.</p> <p>11 MR. CRIMMINS: 2012.</p> <p>12 MS. ROSENFELD: It is 2012. Right. Correct, the design</p> <p>13 guidelines were 2013. And in your review of this document was</p> <p>14 there any discussion of mixed-use projects and what they were</p> <p>15 envisioned to be?</p> <p>16 MR. CRIMMINS: Yes. In a couple of different areas in</p> <p>17 the report they acknowledge that Kensington, at the time, did</p> <p>18 not have any mixed use developments within the town. They</p> <p>19 also talked to the fact that one of the contributing factors</p> <p>20 to that was in the current zoning at the time, and many of</p> <p>21 the properties within the central core of the town were zoned</p> <p>22 for commercial use, whether that be C1, C2, et cetera. They</p> <p>23 then went on to discuss specifically that since the town had</p> <p>24 no mixed-use zones, and no methodology or process in place to</p> <p>25 approve it, and I'm quoting here from it, that what they</p>	<p>116</p> <p>1 MR. CRIMMINS: Yes. This definition with the TAP report</p> <p>2 is directly from the Town of Kensington's engagement with ULI</p> <p>3 and was specific to our town.</p> <p>4 MS. ROSENFELD: And do you have an opinion as to</p> <p>5 whether or not when the sector plan itself references mixed</p> <p>6 use this would be the concept in mind -</p> <p>7 MR. CRIMMINS: Yes.</p> <p>8 MS. ROSENFELD: - for purposes of the sector plan?</p> <p>9 MR. CRIMMINS: Correct. The definition in the ULI</p> <p>10 report is the definition that we were working off of as a</p> <p>11 DRB, as it related to the sector plan.</p> <p>12 HEARING EXAMINER GROSSMAN: Do you happen to have that</p> <p>13 page reference in Mr. Phillips' testimony? Hold on, where he</p> <p>14 defines - because my note is not entirely clear.</p> <p>15 MS. ROSENFELD: I do not have it at the moment but, Mr.</p> <p>16 Grossman, I can provide it to you during our next break.</p> <p>17 HEARING EXAMINER GROSSMAN: Okay. What's your</p> <p>18 recollection of what he said was a mixed use?</p> <p>19 MS. ROSENFELD: I can do you one better, if you will</p> <p>20 give me just a moment.</p> <p>21 HEARING EXAMINER GROSSMAN: All right.</p> <p>22 MS. ROSENFELD: If I can refer you to Exhibit 62-H.</p> <p>23 HEARING EXAMINER GROSSMAN: Okay.</p> <p>24 MS. ROSENFELD: On the first page of his memorandum he</p> <p>25 discusses the proposal. Heading Number 1 says, "the proposal</p>

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30 (117 to 120)

<p>117</p> <p>1 is a mixed use development." And the second sentence in that 2 paragraph says, "yet, frequently what is characterized as 3 'mixed use' is simply a combination of two uses, such as a 4 conventional office or apartment building with ground floor 5 retail. While specific definitions vary, one of the strictest 6 tests is the definition first posed by the Urban Land 7 Institute in 1976 which required a mixed use project to offer 8 'three or more revenue producing uses; significant functional 9 and physical integration; and conformance to a coherent 10 plan'." And I proffer to you that the ULI report and 11 councilmember Crimmins' testimony demonstrates that the ULI 12 itself found a locale specific definition for mixed-use in 13 its analysis leading up to the drafting and preparation of 14 the Kensington Sector Plan. 15 HEARING EXAMINER GROSSMAN: Okay. I'm actually looking 16 for 62-H in here. And I should have it. It's somewhat - ah, 17 here we go. 18 MS. ROSENFELD: And I'll - 19 HEARING EXAMINER GROSSMAN: So it's your contention 20 that the better definition, at least as applicable here, 21 would it be the more recent one than the 1976 one referenced 22 in 62-H. Is that - 23 MS. ROSENFELD: That's correct because the definition 24 of mixed use in the Urban Land Institute Technical Assistance 25 Panel Report from 2008, as you heard Mr. Crimmins testify,</p>	<p>119</p> <p>1 was there correspondence back and forth between - 2 MR. CRIMMINS: There was. 3 MS. GIRARD: And is it your understanding that the 4 plans were adjusted from the original meeting with the DR be 5 until today, or even, until the January meeting to try to 6 address some of the comments of the DRB? 7 MR. CRIMMINS: Yes, the plans have changed over time. 8 MS. GIRARD: Particularly with regard, for instance, 9 the retail and incorporation of artist studio space? 10 MR. CRIMMINS: It has changed since the initial plan, 11 yes. 12 MS. GIRARD: And is it also your understanding that in 13 those communications with the town that the Applicant 14 addressed the issue of the underground parking and why it 15 might not be feasible in this location? 16 MR. CRIMMINS: Not sufficiently. There was an email, to 17 my recollection, that simply said the Applicant believed it 18 to be too costly. But there was no evidence or reports or any 19 other things provided to demonstrate that. 20 MS. GIRARD: Sure you're not aware of a - I don't 21 believe it was a DRB meeting, but I believe it was a town and 22 council meeting where the Applicant went into a little bit 23 more detail? 24 MR. CRIMMINS: But again, I saw no report. 25 MS. GIRARD: Okay.</p>
<p>118</p> <p>1 was developed after representatives of the Town of Kensington 2 and members of ULI went on specific site visits, analyzed the 3 town as a whole and then developed recommendations that they 4 thought should be taken into consideration with the sector 5 plan as it was developed. 6 HEARING EXAMINER GROSSMAN: And so it's your contention 7 that this, the definition as provided in this Technical 8 Assistance Panel Report of a ground floor retail plus office 9 and/or residential use is not complied with by the current 10 proposal? 11 MS. ROSENFELD: That's correct. 12 HEARING EXAMINER GROSSMAN: Okay. 13 MS. ROSENFELD: That this informs how the sector plan 14 recommendation for mixed-use should be read and applied. 15 HEARING EXAMINER GROSSMAN: I understand. 16 MS. ROSENFELD: Okay. Can I have one moment, please? 17 HEARING EXAMINER GROSSMAN: Sure. 18 MS. ROSENFELD: Mr. Grossman, I haven't no further 19 questions of this witness. 20 HEARING EXAMINER GROSSMAN: All right. Cross- 21 examination? 22 MS. GIRARD: Sure. Mr. Crimmins, you noted that the DRB 23 be only met with the development team twice; is that correct? 24 MR. CRIMMINS: Yes, ma'am. 25 MS. GIRARD: Do you know if outside of those meetings</p>	<p>120</p> <p>1 MS. ROSENFELD: Objection. Beyond the scope of direct. 2 HEARING EXAMINER GROSSMAN: What was your question 3 again? 4 MS. GIRARD: If he was aware of a meeting of the mayor 5 and council where it was discussed in further detail why 6 underground parking was not - 7 HEARING EXAMINER GROSSMAN: No, I think that's within 8 the scope of cross-examination. Overruled. 9 MS. GIRARD: And your answer was that you didn't see a 10 written report? 11 MR. CRIMMINS: I saw no other evidence that stated as 12 such; just verbal testimony by the Applicant. 13 MS. GIRARD: Okay. You cite to page 21 of the sector 14 plan to talk about the parking structure is needed under the 15 sector plan. And does the section you're citing to 16 specifically say underground parking, or just parking 17 structure? 18 MR. CRIMMINS: Would you like me to read it? 19 MS. GIRARD: Sure. 20 MR. CRIMMINS: It simply - it says, "the properties 21 with potential to support mixed use developments with parking 22 structures could have 5 to 6 story buildings." Would you like 23 me to go on? 24 MS. GIRARD: So the word underground is not in 25 there - that segment.</p>

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<p>121</p> <p>1 MR. CRIMMINS: That's correct.</p> <p>2 MS. GIRARD: And on page 27 of the sector plan, where</p> <p>3 it talks about the Huggins property specifically. As a</p> <p>4 reference to parking there, and where parking should be</p> <p>5 located?</p> <p>6 MR. CRIMMINS: Mid paragraph. It says, "parking</p> <p>7 facilities for this property should be to the rear with</p> <p>8 access from Plyers Mill Road."</p> <p>9 MS. GIRARD: Okay. So there's no mention here of</p> <p>10 structured parking?</p> <p>11 MR. CRIMMINS: There is not.</p> <p>12 MS. GIRARD: And are you aware, does the sector</p> <p>13 plan - I know we have gone through the URL report. Does the</p> <p>14 sector plan itself define what is meant by mixed use?</p> <p>15 MR. CRIMMINS: Is there a -</p> <p>16 MS. GIRARD: Does it define mixed use?</p> <p>17 MR. CRIMMINS: The sector plan? I don't have it</p> <p>18 memorized. If there is a specific section you would like to</p> <p>19 directly to?</p> <p>20 MS. GIRARD: I'm just asking. You were drawing our</p> <p>21 attention to -</p> <p>22 MR. CRIMMINS: Right.</p> <p>23 MS. GIRARD: - this panel. So I'm wondering if you have</p> <p>24 similar language in the sector plan.</p> <p>25 MR. CRIMMINS: I would have to review it for that</p>	<p>123</p> <p>1 should consider the drafting the sector plan in terms of what</p> <p>2 our mixed uses?</p> <p>3 MS. GIRARD: I think it's a couple of things. One I do</p> <p>4 think that this - there's reference here to the mixed-use</p> <p>5 zone. In my opinion, how I read it, it's referring to the</p> <p>6 zoning and I think everyone would agree that a CRT zone is a</p> <p>7 mixed use zone, as we typically refer to it. I think there's</p> <p>8 a disconnect in that this wasn't a document produced by the</p> <p>9 Town.</p> <p>10 For instance in any of the legislative history that we</p> <p>11 talked about earlier today to say this is what we mean by</p> <p>12 mixed-use. I think - and will have Mr. Phillips address this.</p> <p>13 I think there's a disconnect in the argument there. And we</p> <p>14 can flesh that out more</p> <p>15 HEARING EXAMINER GROSSMAN: With an expert. Well, it's</p> <p>16 ironic that it comes from the Urban Land Institute in which</p> <p>17 Mr. Phillips, I believe, now heads.</p> <p>18 MS. GIRARD: Right. Previously head, yeah.</p> <p>19 HEARING EXAMINER GROSSMAN: All right. And so different</p> <p>20 from the definition he suggested earlier. But in any event,</p> <p>21 it is something to consider certainly.</p> <p>22 MS. GIRARD: Yeah. And I think he's probably more</p> <p>23 appropriate to (inaudible) that.</p> <p>24 HEARING EXAMINER GROSSMAN: All right.</p> <p>25 MS. GIRARD: I'm happy to argue it, but I don't think -</p>
<p>122</p> <p>1 specific language.</p> <p>2 MS. GIRARD: Okay. And the language you do site to, on</p> <p>3 pages 10 and I believe 15. Is this purporting to be a</p> <p>4 definition of mixed use, or is it more talking about desired</p> <p>5 zoning?</p> <p>6 HEARING EXAMINER GROSSMAN: What page are you talking</p> <p>7 about here?</p> <p>8 MS. ROSENFELD: The ones that he cited to, 10 and 15.</p> <p>9 HEARING EXAMINER GROSSMAN: Okay.</p> <p>10 MR. CRIMMINS: I just re-read it. Could you ask the</p> <p>11 question again?</p> <p>12 MS. GIRARD: I'm just asking if these two citations</p> <p>13 that you are drawing our attention to, are they purporting to</p> <p>14 be definitions? Mixed use as defined, or are they speaking</p> <p>15 more to zoning issues? For instance, it says currently there</p> <p>16 are no mixed-use zone. So is it your testimony that these are</p> <p>17 intended to be definitions as to what is meant by the term,</p> <p>18 or are you more extrapolating based on the sentence?</p> <p>19 MR. CRIMMINS: It does not indicate in the document</p> <p>20 that they are specifically a definition.</p> <p>21 MS. GIRARD: Okay. That's all I had.</p> <p>22 HEARING EXAMINER GROSSMAN: But doesn't - I mean</p> <p>23 whether or not it's called eight definition, I'm actually</p> <p>24 addressing this to counsel. As Ms. Rosenthal suggested isn't</p> <p>25 this particular document informing how the Town of Kensington</p>	<p>124</p> <p>1 HEARING EXAMINER GROSSMAN: All right. Any re-direct?</p> <p>2 MS. ROSENFELD: Yes. On - just several questions. With</p> <p>3 respect to the mixed-use definition as provided in the</p> <p>4 technical assistance panel report, regardless of whether it's</p> <p>5 a definition that goes to the ultimate zoning of the</p> <p>6 property, do you have an opinion as to whether or not the</p> <p>7 reference to buildings combining ground-level retail with</p> <p>8 office space and residential units reflects the goals of the</p> <p>9 Town with respect to how it would like to see the town center</p> <p>10 developed?</p> <p>11 MR. CRIMMINS: Yes, I believe that is the definition</p> <p>12 that I specifically, and, you know, the DRB has been working</p> <p>13 off of it is the mixed use, especially in the town center is</p> <p>14 ground-floor retail with either commercial, residential, or</p> <p>15 in some cases perhaps even a hotel above.</p> <p>16 MS. ROSENFELD: And on the cover page it says this</p> <p>17 report was sponsored by the Town of Kensington. Do you have</p> <p>18 any knowledge as to how this report came to be?</p> <p>19 MR. CRIMMINS: It was a - to my understanding, the</p> <p>20 previous mayor Pete Fosselman engaged with ULI to ask ULI to</p> <p>21 come at the behest of the town to perform this technical</p> <p>22 assistance panel and produce this report.</p> <p>23 MS. ROSENFELD: And do you know who actually wrote the</p> <p>24 report?</p> <p>25 MR. CRIMMINS: I believe - I do not know specifically</p>

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<p>125</p> <p>1 who may have typed authored it, but it does provide of the 2 background of those members of ULI that participated in the 3 production of this report. 4 MS. ROSENFELD: Okay. 5 HEARING EXAMINER GROSSMAN: On page 3 it lists some 6 people, Brian Cullen, Andrew Brown, Patricia Harris, Lisa 7 Rother, Megan Welch, and Jason Stewart. 8 MS. ROSENFELD: And there are additional 9 acknowledgments on page 5. I would proffer that as well, 10 additional participants. 11 HEARING EXAMINER GROSSMAN: Stakeholder participation. 12 MR. CRIMMINS: And page 7 has a further list as well. 13 HEARING EXAMINER GROSSMAN: All right. I know 14 (crosstalk) 15 MS. ROSENFELD: So a well-rounded panel. Okay. If I 16 turn your attention to page 21 of the sector plan. 17 MR. CRIMMINS: Yes. 18 MS. ROSENFELD: The paragraph referencing parking 19 structures. Properties with potential to support mixed-use 20 developments with parking structures could have 5 to 6 story 21 buildings. Do you know if parking structures are defined in 22 the zoning code as a particular type of parking - 23 MR. CRIMMINS: I do not. 24 MS. ROSENFELD: - a means of providing parking? And on 25 page 27, parking facilities. Do you know if parking</p>	<p>127</p> <p>1 MS. ROSENFELD: - in the definitions. I'm working from 2 memory now, so I would be more comfortable simply providing 3 them to you. 4 HEARING EXAMINER GROSSMAN: That's fine. Okay. 5 MS. ROSENFELD: I have no further questions of this 6 witness. 7 HEARING EXAMINER GROSSMAN: Any re-cross? 8 MS. GIRARD: No. 9 HEARING EXAMINER GROSSMAN: All right. Thank you very 10 much, Mr. Crimmins, appreciate it. 11 MS. ROSENFELD: Your indulgence one moment, please? 12 HEARING EXAMINER GROSSMAN: Sure. 13 MS. ROSENFELD: I would like to call my next witness, 14 councilmember Darin Bartram, please. 15 HEARING EXAMINER GROSSMAN: Okay. Mr. Bartram, would 16 you state your full name and address and spell your name, 17 please? 18 MR. BARTRAM: Sure. It's Darin Bartram. The first name 19 is D-A-R-I-N. Last name is Bartram, B-A-R-T-R-A-M. And my 20 address at home is 3515 Faragut, F-A-R-A-G-U-T Avenue, 21 Kensington, Maryland 20895. 22 HEARING EXAMINER GROSSMAN: Would you raise your right 23 hand, please? 24 Do you swear or affirm to tell the truth, the whole 25 truth and nothing but the truth under penalty of perjury?</p>
<p>126</p> <p>1 facilities are a defined term in the zoning code? 2 MR. CRIMMINS: I do not. 3 MS. ROSENFELD: Do you know if parking facilities and 4 parking structures are different? 5 MR. CRIMMINS: I do not. 6 MS. ROSENFELD: Okay. Mr. Grossman, I would like to 7 proffer that I will provide those definitions for the record. 8 HEARING EXAMINER GROSSMAN: Okay. 9 MS. ROSENFELD: I believe they are different things and 10 I think they - 11 HEARING EXAMINER GROSSMAN: Directly in the zoning 12 ordinance? 13 MS. ROSENFELD: In the zoning code itself, yes. 14 HEARING EXAMINER GROSSMAN: You're talking about the 15 zoning code? 16 MS. ROSENFELD: And I think parking facilities 17 generally are referred to as surface parking, and parking 18 structures are generally referred to as underground parking. 19 Or parking incorporated with in a building. 20 HEARING EXAMINER GROSSMAN: And do you have a 21 definition site to that? Just talking about in the list of 22 definitions at the very beginning? 23 MS. ROSENFELD: In the list I believe they are both 24 listed - 25 HEARING EXAMINER GROSSMAN: Okay.</p>	<p>128</p> <p>1 MR. BARTRAM: I do. 2 HEARING EXAMINER GROSSMAN: All right. You may proceed, 3 Counsel. 4 MS. ROSENFELD: Yes. Thank you. 5 councilman Bartram, could you please explain, for the 6 record, your current position with the Town of Kensington? 7 MR. BARTRAM: Sure. I am an elected town council 8 member, and I serve on a number of committees, including the 9 development review board. 10 MS. ROSENFELD: Okay. And when were you elected? 11 MR. BARTRAM: I was first elected to town council in 12 2013. 13 MS. ROSENFELD: Okay. And are you familiar with the 14 Town of Kensington Sector Plan adopted in May 2012? 15 MR. BARTRAM: Yes, I am. 16 MS. ROSENFELD: Okay. Were you involved in the 17 development of that Kensington Sector Plan before it was 18 adopted? 19 MR. BARTRAM: I was. 20 MS. ROSENFELD: Okay. 21 MR. BARTRAM: I served on the revitalization committee 22 since around 2010, 2011 timeframe. And so that was when the 23 sector plan was being developed, a draft was being produced 24 and we, as the town were commenting on it. So I was both 25 involved as a resident and as a revitalization committee</p>

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33 (129 to 132)

<p>129</p> <p>1 member.</p> <p>2 MS. ROSENFELD: Okay. And what was your role as a</p> <p>3 member of the revitalization committee?</p> <p>4 MR. BARTRAM: I'm not sure if there was a specific</p> <p>5 role. The committee had 15 members, all residents of the</p> <p>6 town. It was just a variety of backgrounds brought together</p> <p>7 to consider what the county draft was proposing, compare it</p> <p>8 to what the prior development approach from 1978 called for,</p> <p>9 and to make our recommendations for changes.</p> <p>10 MS. ROSENFELD: So would the recommendations of the</p> <p>11 revitalization committee have been considered by the planning</p> <p>12 board and/or district council as part of the development of</p> <p>13 this sector plan?</p> <p>14 MR. BARTRAM: I think it would have first gone to the</p> <p>15 town council for being given a voice. And the recommendations</p> <p>16 would've been to the town council. And then the town council</p> <p>17 would have spoken to the county.</p> <p>18 MS. ROSENFELD: Okay. And at the time of the planning</p> <p>19 board draft and the sector plan before the county council</p> <p>20 were under consideration, did you follow that process? Were</p> <p>21 you familiar with what was going on at the time?</p> <p>22 MR. BARTRAM: I became very involved with it. Very</p> <p>23 familiar with the process. Very familiar with the reason we</p> <p>24 were shifting from the 1978 development approach to the</p> <p>25 vision that's envisioned in the sector plan.</p>	<p>131</p> <p>1 storage facility itself is consistent with the</p> <p>2 recommendations of the sector plan to animate and vitalize</p> <p>3 the downtown?</p> <p>4 MR. BARTRAM: I don't believe the two basement floors,</p> <p>5 or the four upper floors have any ability to animate the town</p> <p>6 whatsoever. I believe that the proposed use of a restaurant</p> <p>7 on part of the first floor and a proposed use of artist</p> <p>8 studio on part of the second floor have an ability to animate</p> <p>9 somewhat.</p> <p>10 MS. ROSENFELD: Okay. Were you present at the time that</p> <p>11 Mr. McKone testified about the easement that has easement</p> <p>12 been entered in - the future easement that's been entered</p> <p>13 into the record for access across the adjoining property?</p> <p>14 MR. BARTRAM: I was. That was at the last session of</p> <p>15 this hearing.</p> <p>16 MS. ROSENFELD: Correct. Do you have any opinion as to</p> <p>17 whether or not that easement, use of that easement would in</p> <p>18 and of itself, constitute an adverse non-inherent</p> <p>19 characteristic of the development?</p> <p>20 MR. BARTRAM: Having given it a fair amount of thought</p> <p>21 over the past couple of months, I've realized that there are</p> <p>22 a lot of problems with this easement. The county staff,</p> <p>23 planning staff pointed out that the intersection at</p> <p>24 Metropolitan and Plyers Mill was extremely challenging. And I</p> <p>25 believe the recommendation was that any entrance onto</p>
<p>130</p> <p>1 MS. ROSENFELD: So is it fair to say that you have a</p> <p>2 deep familiarity with the sector plan and its</p> <p>3 recommendations?</p> <p>4 MR. BARTRAM: I believe I do.</p> <p>5 MS. ROSENFELD: Okay. You heard the testimony of</p> <p>6 councilmember Crimmins with respect to the mixed-use</p> <p>7 definition in the ULI report, did you not? You were here in</p> <p>8 the room?</p> <p>9 MR. BARTRAM: Yes.</p> <p>10 MS. ROSENFELD: And would you agree with his</p> <p>11 characterization of the definition of mixed use as it is</p> <p>12 stated in the ULI report?</p> <p>13 MR. BARTRAM: I do. And I participated, and I don't</p> <p>14 remember now if it was two or three day sessions with the</p> <p>15 local ULI members in that workshop. And so trying to bring</p> <p>16 people downtown was the central goal to what we were looking</p> <p>17 to do for Kensington. We saw restaurant after restaurant open</p> <p>18 and go under because our downtown could go dead at night. We</p> <p>19 had antique stores that would close at 5:00. We had - the</p> <p>20 only thing that seemed to stay open in downtown Kensington</p> <p>21 were gas stations. And so we were looking to bring more</p> <p>22 people downtown, have a greater variety of residents who</p> <p>23 would support businesses and help them thrive.</p> <p>24 MS. ROSENFELD: And so just from a more global</p> <p>25 perspective, do you have an opinion as to whether or not the</p>	<p>132</p> <p>1 Metropolitan should be placed far from it.</p> <p>2 The result of an easement into that adjacent property</p> <p>3 is that you would have a lot of cross traffic from the</p> <p>4 proposed storage facility - the project into the existing</p> <p>5 parking lot next door before it exits onto Metropolitan. For</p> <p>6 that easement to exist and be far enough away from the</p> <p>7 intersection, I believe would significantly impact the</p> <p>8 ability of that adjacent property to redevelop.</p> <p>9 MS. ROSENFELD: And what would that be - can you</p> <p>10 explain why you think it would impact the ability?</p> <p>11 MR. BARTRAM: Well, it would require traffic to</p> <p>12 traverse across a large section of that. Unfortunately, we</p> <p>13 have no sense of what that easement would look like. It's not</p> <p>14 on the plans. It's not part of this application, other than</p> <p>15 this amorphous, there will be an easement.</p> <p>16 If you combine the need for an easement with the</p> <p>17 planning staff's concerns about exit onto Metropolitan you</p> <p>18 realize that that easement and the access would need to be</p> <p>19 significantly further down Metropolitan. Or you would be</p> <p>20 exacerbating the currently untenable situation at the</p> <p>21 intersection of Metropolitan and Plyers Mill.</p> <p>22 MS. ROSENFELD: And I also believe that there was a</p> <p>23 proffer it that that easement ultimately would be recorded in</p> <p>24 the land records; is that correct?</p> <p>25 MR. BARTRAM: That's my understanding.</p>

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<p>133</p> <p>1 MS. ROSENFELD: And so to the extent that there would</p> <p>2 be a legal encumbrance on the adjoining property, do you have</p> <p>3 an opinion as to whether or not that legal encumbrance on the</p> <p>4 adjoining property would constitute a non-inherent, adverse</p> <p>5 impact?</p> <p>6 HEARING EXAMINER GROSSMAN: I'm going to stop you. I</p> <p>7 mean there was no objection to the last question asking for</p> <p>8 his opinion, and none to this one, but I have a concern about</p> <p>9 asking this witness for opinion testimony of that sort</p> <p>10 without his being qualified as an expert and offered as an</p> <p>11 expert. So you're asking him for opinion testimony. We don't</p> <p>12 generally allow opinion testimony -</p> <p>13 MS. ROSENFELD: Okay.</p> <p>14 HEARING EXAMINER GROSSMAN: - from lay witnesses on</p> <p>15 this sort of more technical thing.</p> <p>16 MS. ROSENFELD: Well -</p> <p>17 MR. BARTRAM: Without offering an opinion as to -</p> <p>18 HEARING EXAMINER GROSSMAN: Well, hold on a second,</p> <p>19 sir.</p> <p>20 MR. BARTRAM: Sorry.</p> <p>21 MS. ROSENFELD: I do think that the town, and the town</p> <p>22 officials have the ability to express their views with</p> <p>23 respect to inherent, and non-inherent adverse impacts. I</p> <p>24 would suggest to you -</p> <p>25 HEARING EXAMINER GROSSMAN: They have the ability to</p>	<p>135</p> <p>1 With respect to the legal encumbrance of an easement,</p> <p>2 do you have an opinion as to whether or not that</p> <p>3 potentially - whether or not that constitutes a non-inherent,</p> <p>4 adverse impact resulting from this project?</p> <p>5 MR. BARTRAM: Well, in my non-expert opinion, I believe</p> <p>6 it does. But I think the other view that I would like to</p> <p>7 offer is contrasting the 1978 sector plan with the current</p> <p>8 sector plan. In the old approach the suggestion which exists</p> <p>9 at this lot next door is that buildings would be set back and</p> <p>10 parking would be in front of the building. So you would pull</p> <p>11 off the street into parking and walk into the building.</p> <p>12 The different approach that we're taking with the</p> <p>13 sector plan is we put parking either in the rear or beneath</p> <p>14 the building. And we move the buildings closer to the street.</p> <p>15 So they're closer to the sidewalk, closer to making it more</p> <p>16 of a town feel. If you have this easement current across that</p> <p>17 existing parking lot, that impacts the ability of the project</p> <p>18 next door to redevelop consistent with our sector plan, which</p> <p>19 is moving the buildings towards the street and putting the</p> <p>20 parking in the rear.</p> <p>21 HEARING EXAMINER GROSSMAN: So that's your sense of the</p> <p>22 non-inherent effect on other development. What about the fact</p> <p>23 that just in this particular proposed development the parking</p> <p>24 would be in the rear, which is consistent with your - the</p> <p>25 desire of the plan, is it not?</p>
<p>134</p> <p>1 express their views. I'm not sure whether or not that</p> <p>2 constitutes admissible evidence on those points for me to</p> <p>3 consider, if they're not from somebody who is qualified as an</p> <p>4 expert who's been offered, and qualified as an expert in land</p> <p>5 planning, or some relevant field of expertise.</p> <p>6 I'll hear him answer your question, but I will take it</p> <p>7 in the context that I have suggested that it is the -</p> <p>8 MS. ROSENFELD: Okay.</p> <p>9 HEARING EXAMINER GROSSMAN: - opinion of a town</p> <p>10 official.</p> <p>11 MS. ROSENFELD: Of a lay person.</p> <p>12 HEARING EXAMINER GROSSMAN: But it's not to be taken as</p> <p>13 an expert opinion on this provision.</p> <p>14 MS. ROSENFELD: And I'm not offering it as an expert</p> <p>15 opinion.</p> <p>16 HEARING EXAMINER GROSSMAN: I know.</p> <p>17 MS. ROSENFELD: I haven't qualified him -</p> <p>18 HEARING EXAMINER GROSSMAN: But generally we don't hear</p> <p>19 opinions from non-experts on technical matters. But I'm going</p> <p>20 to hear him because of his position. But once again, it's</p> <p>21 going to have that limitation on its value to me.</p> <p>22 MS. ROSENFELD: Okay. Give me one moment, please.</p> <p>23 HEARING EXAMINER GROSSMAN: Do you want to repeat your</p> <p>24 question on -</p> <p>25 MS. ROSENFELD: Yes, I would repeat the question.</p>	<p>136</p> <p>1 MR. BARTRAM: Well, at the - when I look at the sector</p> <p>2 plan language I believe that for - it should be in the rear.</p> <p>3 It should be a structured parking for such a large building.</p> <p>4 HEARING EXAMINER GROSSMAN: I understand the</p> <p>5 distinction.</p> <p>6 MR. BARTRAM: So what we have - I'm sorry.</p> <p>7 HEARING EXAMINER GROSSMAN: Where it's located, in</p> <p>8 terms of its - it's not the strip mall kind of thing, you</p> <p>9 have a different -</p> <p>10 MR. BARTRAM: Correct. It's not in front of the</p> <p>11 building.</p> <p>12 HEARING EXAMINER GROSSMAN: Right. And well, I had from</p> <p>13 my question, you mentioned that you do consider the fact of</p> <p>14 the restaurant and the proposed artist studios would animate</p> <p>15 to some degree the area. What's your overall opinion? Is that</p> <p>16 sufficient to overcome the rest of the building being</p> <p>17 storage?</p> <p>18 MR. BARTRAM: I believe it's not. I believe that this</p> <p>19 is a minimal contribution to revitalization on a prime core</p> <p>20 door in town.</p> <p>21 HEARING EXAMINER GROSSMAN: Okay. All right. Thank you.</p> <p>22 MS. ROSENFELD: If I could draw your attention to page</p> <p>23 27 of the sector plan, there is an image on the right hand</p> <p>24 side, Huggins property. The parking access onto Metropolitan</p> <p>25 area, that parking lot, are you familiar with what retail</p>

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35 (137 to 140)

<p>137</p> <p>1 uses use that parking lot. That existing parking lot? The one 2 that will remain.</p> <p>3 MR. BARTRAM: Sure. There is currently a 7-Eleven, a 4 Baskin-Robbins Ice Cream Store and a Manny's Pizza and sub 5 shop.</p> <p>6 MS. ROSENFELD: And do you have the sector plan in 7 front of you?</p> <p>8 MR. BARTRAM: I do.</p> <p>9 MS. ROSENFELD: Okay. And you have page 27?</p> <p>10 MR. BARTRAM: I do.</p> <p>11 MS. ROSENFELD: Okay. If you look at that parking lot, 12 there is a long rectangular structure perpendicular to the 13 northern most façade of that building, facing Metropolitan; 14 do you know what that is?</p> <p>15 MR. BARTRAM: I believe that may be, at least a 16 trailer, part of a tractor trailer, not an 18 wheeler. I go 17 to this 7-Eleven a lot, it has an ATM machine for my bank. I 18 also by ice cream, so I go there a lot. But I know -</p> <p>19 HEARING EXAMINER GROSSMAN: Do you buy the ice cream at 20 the 7-Eleven rather than the Baskin-Robbins?</p> <p>21 MR. BARTRAM: Well, Baskin-Robbins is expensive.</p> <p>22 HEARING EXAMINER GROSSMAN: All right.</p> <p>23 MR. BARTRAM: But I will tell you that a lot of times 24 when I go there there is a tractor trailer backed into that 25 lot that cuts across most of the parking lot. And so it makes</p>	<p>139</p> <p>1 say filed as a supplemental, whatever came in on August 28 - 2 MS. GIRARD: 101-A.</p> <p>3 HEARING EXAMINER GROSSMAN: - should have been 4 exhibitized.</p> <p>5 MS. ROSENFELD: Oh, I don't have the most updated.</p> <p>6 MS. GIRARD: I believe it's 101-A.</p> <p>7 HEARING EXAMINER GROSSMAN: Okay.</p> <p>8 MS. ROSENFELD: I apologize, Mr. Grossman. I was 9 working from an old exhibit list. I would like to -</p> <p>10 HEARING EXAMINER GROSSMAN: Yes, 109 (inaudible) 11 exhibit.</p> <p>12 MS. ROSENFELD: - approach the witness and provide him 13 with a copy of Exhibit 101-A.</p> <p>14 HEARING EXAMINER GROSSMAN: Okay. About your during 15 that, I just want to make sure I understand smut thing on the 16 adjacent property whose development you said might be 17 adversely affected by it. But the easement that we're talking 18 about is not on the property you're talking about being 19 affected? It's a different property? Or is it on the property 20 that you were talking about being affected?</p> <p>21 MR. BARTRAM: The Applicant's exit, alternative exit 22 from Connecticut Avenue is through the property next door -</p> <p>23 MS. ROSENFELD: Mr. Grossman -</p> <p>24 MS. ROSENFELD: - onto Metropolitan access.</p> <p>25 MS. ROSENFELD: - give this to the witness and perhaps</p>
<p>138</p> <p>1 access to other parking spaces difficult.</p> <p>2 MS. ROSENFELD: And you can you describe generally the 3 activity in that parking lot? Is it just one tractor-trailer? 4 Are there other large vehicles that use that parking lot?</p> <p>5 MR. BARTRAM: Well, in mornings when I'm commuting to 6 work on Plyers Mill that lot is almost always full of a 7 variety of vans, contractors. It's a busy time, a lot of 8 people getting coffee, the lot is full.</p> <p>9 MS. ROSENFELD: Okay. And can you describe the types of 10 vehicles that use it?</p> <p>11 MR. BARTRAM: This morning there were county big 12 trucks, big commercial trucks usually it's a collection of 13 white vans.</p> <p>14 MS. ROSENFELD: Okay. And do you have any sense for the 15 types of delivery vehicles that serve as the Baskin-Robbins 16 the 7-Eleven and the Manny's Pizza?</p> <p>17 MR. BARTRAM: Well, I'm certain that the 7-Eleven 18 receives frequent 18-wheeler deliveries. I've never seen a 19 delivery that I could identify specific to Manny's or Baskin- 20 Robbins.</p> <p>21 MS. ROSENFELD: Okay. I would like to introduce - I 22 don't think it's been exhibited yet. Yes, I'd like to 23 introduce the truck turning radius diagram that was filed as 24 a supplemental.</p> <p>25 HEARING EXAMINER GROSSMAN: Now, it would be - when you</p>	<p>140</p> <p>1 he could show you.</p> <p>2 HEARING EXAMINER GROSSMAN: Sure.</p> <p>3 MS. ROSENFELD: And I have here what's -</p> <p>4 MR. BARTRAM: So I'll try to put it up.</p> <p>5 HEARING EXAMINER GROSSMAN: That would be the -</p> <p>6 MR. BARTRAM: Traffic -</p> <p>7 HEARING EXAMINER GROSSMAN: Hold on one second. The 8 newest -</p> <p>9 MS. ROSENFELD: The site plan?</p> <p>10 HEARING EXAMINER GROSSMAN: The newest site plan</p> <p>11 MS. ROSENFELD: Dated 8/28/19?</p> <p>12 HEARING EXAMINER GROSSMAN: Yes. And that would be 13 Exhibit - just so we're clear.</p> <p>14 MS. GIRARD: 101-B.</p> <p>15 HEARING EXAMINER GROSSMAN: That's what I was about to 16 say.</p> <p>17 MR. BARTRAM: So this is the site plan.</p> <p>18 HEARING EXAMINER GROSSMAN: Right.</p> <p>19 MR. BARTRAM: And one entrance is off Connecticut. 20 Plyers Mill is up here.</p> <p>21 HEARING EXAMINER GROSSMAN: Up here being to the north?</p> <p>22 MR. BARTRAM: I'm sorry. To the north. The exit from 23 the rear of the property goes onto the - an adjacent 24 property, privately owned.</p> <p>25 HEARING EXAMINER GROSSMAN: Yes.</p>

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<p>141</p> <p>1 MR. BARTRAM: At which point, there is some easement</p> <p>2 that would allow the property - the drivers to exit onto</p> <p>3 Metropolitan.</p> <p>4 HEARING EXAMINER GROSSMAN: Right.</p> <p>5 MR. BARTRAM: It doesn't - there's no easement laid</p> <p>6 out.</p> <p>7 HEARING EXAMINER GROSSMAN: I understand. It's not</p> <p>8 diagrammed there, but what I'm asking is - so the easement</p> <p>9 we're talking about is on the very property that you are</p> <p>10 suggesting would be impaired?</p> <p>11 MR. BARTRAM: Correct.</p> <p>12 HEARING EXAMINER GROSSMAN: So the owner of that</p> <p>13 property would be the one that would be giving - would be</p> <p>14 granting the easement; isn't that true?</p> <p>15 MR. BARTRAM: That's correct.</p> <p>16 HEARING EXAMINER GROSSMAN: So if it's their property</p> <p>17 that is theoretically being impaired and they are willing to</p> <p>18 grant the easement there, doesn't that vitiate the question</p> <p>19 of an adverse impact?</p> <p>20 MS. ROSENFELD: No. And let me explain why.</p> <p>21 HEARING EXAMINER GROSSMAN: Okay.</p> <p>22 MS. ROSENFELD: Mr. Bartram, is it - one of the goals</p> <p>23 of the sector plan to encourage redevelopment of the</p> <p>24 properties in the town center?</p> <p>25 MR. BARTRAM: It is.</p>	<p>143</p> <p>1 owner or the purchaser, a succeeding purchase however it was</p> <p>2 phrased. But I just wonder whether or not the agreement of</p> <p>3 the abutting landowner to an easement on his or its property</p> <p>4 vitiates the concern about an adverse impact on development</p> <p>5 because that - on the abutting lot because that abutting</p> <p>6 landowner is agreeing to it.</p> <p>7 MS. ROSENFELD: Well, I think that the willingness of</p> <p>8 the abutting landowner to burden its property to become the</p> <p>9 servient property to the subject property is one thing. And</p> <p>10 that's a matter of private contractual agreement between the</p> <p>11 two property owners.</p> <p>12 HEARING EXAMINER GROSSMAN: Right.</p> <p>13 MS. ROSENFELD: Ultimately if this project moves</p> <p>14 forward there will be two different property owners. That</p> <p>15 stands separate and alone, and apart from the requirement to</p> <p>16 make a finding that the project conforms to the sector plan</p> <p>17 and that it does not have - create an adverse, non-inherent</p> <p>18 effect with respect to, among other things, the development</p> <p>19 potential of abutting properties.</p> <p>20 HEARING EXAMINER GROSSMAN: Well -</p> <p>21 MS. ROSENFELD: And so if -</p> <p>22 HEARING EXAMINER GROSSMAN: I agree with the first part</p> <p>23 of the sentence. It stands apart from the question of can</p> <p>24 Kensington plan compliance. I don't know that it stands apart</p> <p>25 from the section of that sentence that deals with the impact</p>
<p>142</p> <p>1 MS. ROSENFELD: And under the findings the Hearing</p> <p>2 Examiner must make is a finding that the proposed use will</p> <p>3 not cause undue harm to the neighborhood as a result of a</p> <p>4 non-inherent adverse effect alone, are the combination of an</p> <p>5 inherent and a non-inherent adverse effect in any of the</p> <p>6 following categories. The use, peaceful enjoyment, economic</p> <p>7 value, our development potential of abutting and confronting</p> <p>8 properties, or the general neighborhood. Under that standard,</p> <p>9 do you have an opinion as to whether the easement, the</p> <p>10 imposition of an easement on the abutting property</p> <p>11 constitutes a non-inherent adverse effect that -</p> <p>12 MR. BARTRAM: I believe it - I'm sorry. I believe it</p> <p>13 would affect the development potential of the site next door,</p> <p>14 which, while it is currently owned by somebody who may not</p> <p>15 have an intent to redevelop it, a future owner could</p> <p>16 certainly. And that maybe 10 or 15 years down the road when</p> <p>17 the leases, which are apparently long-term leases on some of</p> <p>18 the buildings, expire.</p> <p>19 MS. ROSENFELD: And if -</p> <p>20 HEARING EXAMINER GROSSMAN: But I don't know that that</p> <p>21 addresses my question directly because you're suggesting that</p> <p>22 if somebody grants an easement, an owner grants an easement,</p> <p>23 I don't know what the term of the easement would be, or</p> <p>24 whether it would be terminable even though it would be</p> <p>25 recorded in the land records, it might need terminal by the</p>	<p>144</p> <p>1 on abutting property development.</p> <p>2 MS. ROSENFELD: I think it -</p> <p>3 HEARING EXAMINER GROSSMAN: Because the abutting</p> <p>4 property is owned by somebody who has expressed a willingness</p> <p>5 to have an easement.</p> <p>6 MS. ROSENFELD: But I think it does, and if I can play</p> <p>7 this out. Once the storage facility is constructed and has</p> <p>8 the benefit of this ingress/egress easement, that is part of</p> <p>9 this approval. That is part of the conditional use. That is</p> <p>10 part of what is required here. And so as long as that need</p> <p>11 for ingress/egress remains, meaning as long as this property</p> <p>12 remains developed in this configuration, there is not going</p> <p>13 to be the ability to redevelop the abutting property in a way</p> <p>14 that would be consistent with the sector plan requirements.</p> <p>15 It's going to mandate that this portion of the property,</p> <p>16 whichever portion is subject to the easement, has to remain</p> <p>17 open and available for ingress and egress.</p> <p>18 HEARING EXAMINER GROSSMAN: I understand your point on</p> <p>19 that. I'm going to give counsel for the Applicant the</p> <p>20 opportunity to respond.</p> <p>21 Do you want to respond on that point?</p> <p>22 MS. GIRARD: Yeah. I mean I think it's a - we're making</p> <p>23 generalizations as far as what easements are and aren't, as</p> <p>24 far as them being able to move at a future date. I agree</p> <p>25 wholeheartedly with your thoughts that if the adjacent owner</p>

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<p>145</p> <p>1 is actually consenting to that impact, I don't think that 2 that's - you know, I think that the standards for the 3 conditional use are meant to protect the general public and 4 adjacent properties that aren't necessarily consenting to the 5 impacts. Which, in this case, it would be. And I don't think 6 you can say is not would be at the very edge of that 7 property. And I don't agree that it would inhibit any future 8 development.</p> <p>9 HEARING EXAMINER GROSSMAN: Well, Ms. Rosenfeld is 10 saying that it does. Because once you incorporated into the 11 conditional use it would impinge on further development of 12 that property, apparently even by future landowners. They 13 would take it subject to the conditional use. I mean that's 14 what is being argued here.</p> <p>15 MS. GIRARD: You would take it subject to the 16 easement -</p> <p>17 HEARING EXAMINER GROSSMAN: Right.</p> <p>18 MS. GIRARD: - which we have projects all the time that 19 have easements that you either work around or you adjust. So 20 it could either be adjusted, or, I don't think there's 21 anything in the record to preclude if a future 22 landowner - again, it would depend on the language of the 23 easement, but we could very well come back in for an 24 amendment to have access to Plyers Mill Road.</p> <p>25 HEARING EXAMINER GROSSMAN: And I think we can all</p>	<p>147</p> <p>1 adjacent property owner is financially interested in this 2 transaction moving forward. There is a common owner between 3 the two properties. So even if you were to find that normally 4 consent in an arm's length transaction between two property 5 owners might vitiate the burdening of that property; when in 6 this case you have an overlapping owner who wants this deal 7 to go through. I'm not sure that you can still disregard the 8 impact on that adjacent property.</p> <p>9 HEARING EXAMINER GROSSMAN: One could also argue that 10 it makes it even less of an impact that you have joint 11 ownership and you don't have to worry about the effect on the 12 adjacent property is a joint ownership. I don't know. That 13 cuts both ways I don't know if I want to slice the salami 14 that finally anyway on this point. But go ahead. Let's go to 15 the next question.</p> <p>16 MS. ROSENFELD: If we could go back to - yes, but 17 before I get there, did you hear - you were here for the last 18 hearing; is that correct?</p> <p>19 MR. BARTRAM: That's correct.</p> <p>20 MS. ROSENFELD: And did you hear the discussion about 21 different size vehicles? The WB-30s, and WB-40s, and the 67s 22 and the different size trucks? In observing the vehicles that 23 access the parking lot on the abutting property, do you have 24 sense as to whether vehicles access that parking lot that are 25 greater than 30 feet in length?</p>
<p>146</p> <p>1 agree that it wouldn't necessarily be fatal, but it 2 might - her suggestion is that it does have an adverse 3 impact. I question whether it had even an adverse impact on 4 the abutting property because the abutting property owner was 5 consenting. She is suggesting that it goes beyond that, even 6 with the consent. It has some adverse impact, which is not 7 inherent.</p> <p>8 MS. GIRARD: We would argue that it ends with the 9 consent.</p> <p>10 HEARING EXAMINER GROSSMAN: Okay. All right. I 11 understand both points of view. All right. Go ahead. Next 12 question.</p> <p>13 MR. BARTRAM: If I could just complete the thought?</p> <p>14 HEARING EXAMINER GROSSMAN: Well, there really is no 15 question pending so I feel that completed the thought on less 16 you have -</p> <p>17 MS. ROSENFELD: Would you like to conclude that 18 thought?</p> <p>19 HEARING EXAMINER GROSSMAN: There you go.</p> <p>20 MR. BARTRAM: I don't want - I believe that there 21 is - it talks about the potential for future development in 22 the legal standard. I'll let you handle that legal standard.</p> <p>23 HEARING EXAMINER GROSSMAN: Thank you.</p> <p>24 MR. BARTRAM: But I would like to point out that as we 25 heard, and I believe it's - I hope is part of the record, the</p>	<p>148</p> <p>1 MR. BARTRAM: There are 18-wheelers that access the 2 parking lot adjacent to the subject property.</p> <p>3 MS. ROSENFELD: Okay. And is it your understanding that 4 the easement is an ingress/egress easement that vehicles 5 can - from Metropolitan Avenue can enter the abutting 6 property and then access the subject property, and then from 7 there go to Connecticut Avenue?</p> <p>8 MR. BARTRAM: No. My - the access of 18-wheelers into 9 these, I'll call it the 7-Eleven lot is extremely difficult 10 and it involves backing the 18-wheeler into the parking lot, 11 leaving it cross-wise across the open space in the parking 12 lot.</p> <p>13 MS. ROSENFELD: Okay. And then with respect to other 14 vehicles, let's say just a regular car. Is it your 15 understanding that a regular car could leave Metropolitan 16 Avenue and then access the subject property through the 17 abutting property and out to Connecticut?</p> <p>18 MR. BARTRAM: They cannot. As the site currently 19 exists.</p> <p>20 MS. ROSENFELD: Okay. But as its proposed with this 21 ingress/egress easement would they be able to?</p> <p>22 MR. BARTRAM: If they obtain the egress then I could 23 access the 7-Eleven lot from Metropolitan and continue on to 24 Connecticut Avenue and exit onto Connecticut.</p> <p>25 MS. ROSENFELD: Okay. How many intersections are</p>

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<p>149</p> <p>1 there - let me - is there a signalized intersection at 2 Connecticut Avenue and Plyers Mill Road? 3 MR. BARTRAM: Yes. 4 MS. ROSENFELD: And is there a signalized intersection 5 at Plyers Mill Road and Metropolitan Avenue? 6 MR. BARTRAM: There is a blinking red light, a stop 7 sign basically. 8 MS. ROSENFELD: Do you have an opinion as to whether 9 vehicular traffic would use the subject property and the 10 abutting property as a cut through to avoid those two 11 signalized intersections? 12 HEARING EXAMINER GROSSMAN: Let's not - once again, 13 asking for an opinion on that which is more like a diction I 14 think in here. You're asking - he can - you can ask him 15 whether or not in his experience he has observed cut through 16 traffic, if you tell. 17 MS. ROSENFELD: Okay. Well, there wouldn't be cut 18 through traffic now because - 19 HEARING EXAMINER GROSSMAN: Well, I don't think you can 20 ask him to speculate on that. 21 MS. ROSENFELD: Okay. Have you observed cut through 22 traffic? 23 MR. BARTRAM: Every time I'm at that intersection there 24 is somebody who, to get around the light at Connecticut and 25 Plyers Mill, cuts into the Connecticut Avenue egress to the</p>	<p>151</p> <p>1 HEARING EXAMINER GROSSMAN: We do have a large one. 2 MS. ROSENFELD: We do. 3 HEARING EXAMINER GROSSMAN: Do you want to put one up 4 on the board? 5 MS. GIRARD: You want it on the board? 6 MS. ROSENFELD: Yeah, please. 7 MS. GIRARD: We have Mr. Biddle reviewing it so we 8 need - 9 HEARING EXAMINER GROSSMAN: Let me ask you a question 10 while she's posting that. I don't want people - the cafeteria 11 portion of it will close. The sandwich part of it at 2:00. So 12 how much longer do you expect for this witness? 13 MS. ROSENFELD: Less than 10 minutes. 14 HEARING EXAMINER GROSSMAN: Okay. 15 MS. ROSENFELD: And maybe closer to five. 16 HEARING EXAMINER GROSSMAN: Okay. Let's see if we can 17 finish up with this witness and then go to lunch so they 18 can - you were going to give me a small copy of it? 19 MS. ROSENFELD: Oh I apologize. I got so excited about 20 the large one that I forgot what I was doing. 21 HEARING EXAMINER GROSSMAN: Thank you. 22 MS. ROSENFELD: And while we're waiting for that, Mr. 23 Bartram, are you a member of the traffic committee for the 24 town? 25 MR. BARTRAM: I am.</p>
<p>150</p> <p>1 property cuts across the property, and exits onto Plyers 2 Mill, which is where the current second access to that 3 property is. 4 MS. ROSENFELD: And do you have a concern that once the 5 property is redeveloped and there is a marked drive laying 6 through the subject property off the abutting property that 7 that might increase - that cut through traffic might 8 increase? 9 MR. BARTRAM: I believe, just as the current cut 10 through provides relief from waiting for a traffic light, 11 that is often extremely congested, that traffic would use the 12 new route to get to Metropolitan. 13 MS. ROSENFELD: And do you have a concern that that cut 14 through traffic might increase? 15 MR. BARTRAM: That's - all speculate - 16 HEARING EXAMINER GROSSMAN: I don't know that 17 (crosstalk) 18 MS. ROSENFELD: You don't have to speculate. 19 MR. BARTRAM: I don't know that it could increase a 20 lot - 21 MS. ROSENFELD: If you don't know, that's fine. Okay. 22 Back to Exhibit 101-A. Mr. Grossman, I have an extra copy. 23 HEARING EXAMINER GROSSMAN: Okay. That would be 24 helpful. I have the big one here but - 25 MS. ROSENFELD: Do we have a large one?</p>	<p>152</p> <p>1 MS. ROSENFELD: And so can you describe your role in 2 that capacity? 3 MR. BARTRAM: I'm one of two chairs of the traffic 4 committee, and I've been in that role for probably six years 5 or more. 6 MS. ROSENFELD: And what does the traffic committee do? 7 MR. BARTRAM: Traffic. We review problems with parking, 8 with movement,, pretty much in the gamut, pedestrian safety. 9 MS. ROSENFELD: Okay. So you do have some familiarity 10 with traffic and transportation issues in the Town of 11 Kensington? 12 MR. BARTRAM: In addition to having lived within two 13 blocks of this site for the past 22 years. 14 MS. ROSENFELD: Okay. 15 MR. BARTRAM: So I also have familiarity through the 16 town. 17 MS. ROSENFELD: I would like to draw your attention to 18 Exhibit 101-A, the truck turning exhibit that was filed. If I 19 could draw your attention to the parking lot on the abutting 20 property that we've been talking about now for some time, do 21 you see in red, the truck turning radius that's reflected on 22 this exhibit? 23 MR. BARTRAM: I do. 24 MS. ROSENFELD: Okay. And do you - I think the 25 Applicant indicated that this was just on the periphery of</p>

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<p>153</p> <p>1 the property. Does this take - does the truck turning radius 2 require most of the open parking area in that parking lot? 3 MR. BARTRAM: Well, in the drawing it appears that the 4 truck swings quite a ways into the intersection before 5 heading up to Metropolitan. 6 MS. ROSENFELD: Okay. And if I could draw your 7 attention to page 27 of the sector plan, if you have it 8 handy. 9 MR. BARTRAM: Yes. 10 MS. ROSENFELD: And I'm going back now to the figure on 11 the right-hand side titled Huggins property, and were going 12 back to that trailer that I think you described. 13 MR. BARTRAM: Yes. 14 MS. ROSENFELD: In your layperson opinion, would it 15 appear to you that the truck reflected in the truck turning 16 radius would be able to clear the trailer that's at that 17 location right now? 18 MR. BARTRAM: It doesn't appear that it would be able 19 to clear. However, I will tell you that that truck in that 20 picture is not representative of where the 18-wheelers 21 usually stop and park. Usually they are much further out, and 22 much further across the entire parking lot. So even if they 23 could possibly ask week by the trailer that's depicted in 24 that picture, I think it's a virtually impossible that they 25 could get by the parked 18-wheeler making a delivery to the</p>	<p>155</p> <p>1 what's in the sector plan is recommendations, should, instead 2 of musts. I believe that the parking is surface parking that 3 is not necessarily to the rear. It's to the side and to the 4 rear. I believe that the property - that the activation up 5 top doesn't exist on floors two through six. That's not in 6 line with what we were looking for with the sector plan with 7 revitalizing downtown. With activating it with providing a 8 variety of residential options for people who wanted to live 9 in Kensington. 10 MS. ROSENFELD: All right. And in your layperson 11 opinion, do you have an opinion as to whether or not this 12 project will cause undue harm to the neighborhood as a result 13 of a non-inherent, adverse effect, either alone or in 14 combination with inherent adverse effects? Specifically with 15 respect to the use, peaceful enjoyment, economic value or 16 development potential of abutting properties or the general 17 neighborhood? 18 MR. BARTRAM: I believe it would not. I don't want to 19 offer a legal conclusion. I'm just a - 20 HEARING EXAMINER GROSSMAN: You can answer the 21 question. Nobody has objected to it. 22 MR. BARTRAM: No. No. I don't believe it qualifies for 23 a conditional use. 24 HEARING EXAMINER GROSSMAN: I don't think that was the 25 question that was asked.</p>
<p>154</p> <p>1 7-Eleven. 2 MS. ROSENFELD: And given the amount of use by other 3 types of vehicles, the vans and the other delivery vehicles 4 that you described, in your - based on your observation, is 5 there often enough clearance in this parking lot for that 6 truck to make that turn? 7 MR. BARTRAM: No. This is a tough parking lot that is 8 often very congested. And I won't belittle the parking - the 9 driving abilities of a U-Haul driver too much, but I've 10 driven them. I'm an amateur. I - even if this is the turning 11 radius that the engineers provide, I know as an amateur 12 driver of these trucks I need more. 13 MS. ROSENFELD: You were here earlier for the testimony 14 provided by Mayor Furman and councilmember Crimmins, correct? 15 MR. BARTRAM: Yes. 16 MS. ROSENFELD: And you are also a member at the 17 development review board; is that correct? 18 MR. BARTRAM: I am. 19 MS. ROSENFELD: In your opinion does the subject 20 property conform to the recommendations of the Kensington 21 Sector Plan? 22 MR. BARTRAM: I believe it does not. 23 MS. ROSENFELD: And in your words, could you just 24 summarize briefly why not? 25 MR. BARTRAM: Sure. I believe that even though a lot of</p>	<p>156</p> <p>1 MS. ROSENFELD: Right. 2 MR. BARTRAM: Well the issue right but I'm not sure of 3 what the terms of what the standard conditional use are. 4 HEARING EXAMINER GROSSMAN: That's one standard. 5 MR. BARTRAM: Okay. 6 HEARING EXAMINER GROSSMAN: And there are many. 7 MR. BARTRAM: I don't. I believe that it presents non- 8 inherent adverse effects on neighboring properties. 9 MS. ROSENFELD: As you described earlier in your 10 testimony? 11 MR. BARTRAM: Yes. 12 MS. ROSENFELD: Okay. I have no further questions, Mr. 13 Grossman. 14 HEARING EXAMINER GROSSMAN: All right. Shall we 15 postpone the cross-examination until after lunch? 16 MS. GIRARD: Sure. 17 HEARING EXAMINER GROSSMAN: Okay. I think that's why 18 it's for people who - so we'll break until 2:15 for lunch. 19 (Off the record at 1:27 p.m.) 20 (On the record at 2:22 p.m.) 21 HEARING EXAMINER GROSSMAN: We're ready for cross- 22 examination. You may begin, Ms. Girard. 23 MS. GIRARD: Mr. Bartram, when we were talking about 24 access from Metropolitan, do you know, do you recall if the 25 Applicant had any conversations with the Town and the DRB</p>

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<p>157</p> <p>1 regarding that access point?</p> <p>2 MR. BARTRAM: I remember in the first DRB meeting March</p> <p>3 2018 or so that that was presented as - or as your intention.</p> <p>4 MS. GIRARD: Do you remember it being a point of</p> <p>5 discussion as to whether the town preferred Plyers Mill or</p> <p>6 Metropolitan?</p> <p>7 MR. BARTRAM: I don't recall.</p> <p>8 MS. GIRARD: And with regard to the easement, in your</p> <p>9 experience with easements, can it be adjusted?</p> <p>10 MR. BARTRAM: I don't know that I have experience with</p> <p>11 easements.</p> <p>12 MS. GIRARD: So you likewise couldn't say whether a</p> <p>13 standard easement, for instance, have provisions regarding it</p> <p>14 needs to be free access, that it can't be blocked?</p> <p>15 MR. BARTRAM: I have not seen an easement for this</p> <p>16 project so I can't -</p> <p>17 MS. GIRARD: With a standard easement, have you looked</p> <p>18 at many other easements?</p> <p>19 MR. BARTRAM: No.</p> <p>20 MS. GIRARD: And with regard to your analysis of the</p> <p>21 non-inherent adverse effects, have you done a study of what</p> <p>22 typically are inherent versus non-inherent in conditional use</p> <p>23 cases?</p> <p>24 MR. BARTRAM: No. My understanding is they're highly</p> <p>25 fact specific?</p>	<p>159</p> <p>1 Connecticut, can you see through the site to know that that's</p> <p>2 a cut through? That you can cut through the parking lot and</p> <p>3 go out to Plyers Mill?</p> <p>4 HEARING EXAMINER GROSSMAN: Can you see it from where?</p> <p>5 MS. GIRARD: If I'm a car sitting going northbound on</p> <p>6 Connecticut Avenue how would I know - how do you suppose</p> <p>7 these people know to cut through to get to Plyers Mill?</p> <p>8 MR. BARTRAM: Well, when the gas station was fully</p> <p>9 operational, people would cut through either in front of the</p> <p>10 gas station or go behind it. So one, you can see, one you</p> <p>11 can't.</p> <p>12 MS. GIRARD: Okay.</p> <p>13 MR. BARTRAM: It's just people are familiar with the</p> <p>14 neighborhood.</p> <p>15 MS. GIRARD: And in the proposed condition, would you</p> <p>16 say that that cut through would be much more circuitous?</p> <p>17 MR. BARTRAM: It's longer, sure. And more turns, sure.</p> <p>18 MS. GIRARD: More turns. And do you think - well, and</p> <p>19 certainly from eight visual standpoint, would it be evident</p> <p>20 that that's a potential cut through?</p> <p>21 MR. BARTRAM: Well, just out of curiosity, because I</p> <p>22 have lived here and commuted here and that with, you know,</p> <p>23 hundreds of thousands of rush hours, I watch cars leave</p> <p>24 Connecticut Avenue on Armory Street, drive up Armory, turn</p> <p>25 left onto Warner, cut through the Safeway parking lot, and</p>
<p>158</p> <p>1 MS. GIRARD: They're highly?</p> <p>2 MR. BARTRAM: Fact specific, unique to a particular</p> <p>3 project, as opposed to a list of 20.</p> <p>4 MS. GIRARD: Right. And so did you look at other - no?</p> <p>5 And you've commented quite a bit about the traffic you've</p> <p>6 observed at the adjacent - let's call it the 7-Eleven parking</p> <p>7 lot. And I believe you mentioned that you saw it primarily</p> <p>8 during the morning commute; is that true?</p> <p>9 MR. BARTRAM: Well, no. But what I meant to say, I see</p> <p>10 it all the time because I go through on weekends, on the</p> <p>11 morning commute, afternoon commute. What I'm saying is it's</p> <p>12 particularly bad at the morning commute, which it seems that</p> <p>13 contractors are loading up with food for the day or coffee.</p> <p>14 MS. GIRARD: Approximately what time would you say that</p> <p>15 is?</p> <p>16 MR. BARTRAM: I usually go through about 7:00 to 8:00.</p> <p>17 MS. GIRARD: And do you have any sense of what the</p> <p>18 traffic demands would be on the proposed project at that time</p> <p>19 of day?</p> <p>20 MR. BARTRAM: No.</p> <p>21 MS. GIRARD: And you haven't done any study as far as</p> <p>22 traffic use of that -</p> <p>23 MR. BARTRAM: I (inaudible).</p> <p>24 MS. GIRARD: And with regard to the cut-through</p> <p>25 traffic, in the current condition, if you were northbound on</p>	<p>160</p> <p>1 come back out to Connecticut. So people are desperate to</p> <p>2 avoid congestion in this town. And that route that I just</p> <p>3 described is like 10 times longer than this.</p> <p>4 MS. GIRARD: Okay. And then with regard to sector plan</p> <p>5 compliance, you spoke of -</p> <p>6 HEARING EXAMINER GROSSMAN: I think we have a question</p> <p>7 from the audience.</p> <p>8 MS. ADELMAN: I'm sorry, Mr. Grossman. Could we ask the</p> <p>9 witness to speak a little louder?</p> <p>10 MR. BARTRAM: I will try. I'm sorry about that.</p> <p>11 HEARING EXAMINER GROSSMAN: All right. Is there -</p> <p>12 MR. BARTRAM: I saw the microphone and I think it's</p> <p>13 being recorded, but I know, I'll try.</p> <p>14 MS. ADELMAN: Thank you.</p> <p>15 MS. GIRARD: With regard to sector plan compliance, you</p> <p>16 spoke of the sector plan calling for animation of the town.</p> <p>17 And the way you described it and perhaps it's the</p> <p>18 primary - would you say in your mind that's the primary</p> <p>19 objective or primary recommendation of the sector plan?</p> <p>20 MR. BARTRAM: Well, I don't know that it's ever</p> <p>21 described as that. I would say the difference in the approach</p> <p>22 from 1978 to 2012 is very much year towards increasing the</p> <p>23 activity, the vibrancy of the downtown area.</p> <p>24 MS. GIRARD: And in your opinion is that best</p> <p>25 accomplished through residential? Is that what I heard you</p>

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<p>161</p> <p>1 say?</p> <p>2 MR. BARTRAM: I think - and I don't know about best. I</p> <p>3 think either residential optimally, or commercial bring in a</p> <p>4 lot of people who spend the day, who might even bring in more</p> <p>5 people to frequent the business, and those people then shop</p> <p>6 at the local stores, or eat at the local restaurants. So</p> <p>7 either of those alternatives increases the level of activity</p> <p>8 in the town.</p> <p>9 MS. GIRARD: And I believe you also reference the need</p> <p>10 for revitalization. Would you agree that the conversion of</p> <p>11 the corner from the existing gas station to a use, and I</p> <p>12 understand your stance on self-storage, but the first two</p> <p>13 floors the public plaza, the improved streetscape with shade</p> <p>14 trees, is that - would you not characterize that as a</p> <p>15 revitalization?</p> <p>16 MS. ROSENFELD:</p> <p>17 MR. BARTRAM: To the extent where replacing, I'm</p> <p>18 guessing a 60-year-old gas station new buildings, sure.</p> <p>19 Absolutely.</p> <p>20 MS. GIRARD: That's all I have.</p> <p>21 HEARING EXAMINER GROSSMAN: Any redirect?</p> <p>22 MS. ROSENFELD: Yes, Mr. Grossman. With respect to the</p> <p>23 question about revitalization, is revitalization unto</p> <p>24 itself - does that necessarily satisfy the recommendations of</p> <p>25 the sector plan?</p>	<p>163</p> <p>1 storage facility that's been considered.</p> <p>2 HEARING EXAMINER GROSSMAN: I think that's what was</p> <p>3 said.</p> <p>4 MS. ROSENFELD: Is that correct? Okay. So even if you -</p> <p>5 HEARING EXAMINER GROSSMAN: I don't know if it's true,</p> <p>6 but that's what was said.</p> <p>7 MS. ROSENFELD: I think that's what the record</p> <p>8 reflects.</p> <p>9 HEARING EXAMINER GROSSMAN: Right.</p> <p>10 MS. ROSENFELD: So assuming that's true, even if you</p> <p>11 had tried to do some study, or some analysis to look for</p> <p>12 other non-inherent impacts, adverse impacts associated with</p> <p>13 conditional use, for a storage facility, you would not have</p> <p>14 been able to find them; would you agree?</p> <p>15 HEARING EXAMINER GROSSMAN: I'm not sure what that</p> <p>16 question -</p> <p>17 MS. ROSENFELD: I realize that was (inaudible).</p> <p>18 HEARING EXAMINER GROSSMAN: That's a - let's not ask</p> <p>19 that question now.</p> <p>20 MS. ROSENFELD: Okay.</p> <p>21 HEARING EXAMINER GROSSMAN: It's just too speculative</p> <p>22 on a speculation.</p> <p>23 MS. ROSENFELD: Okay. Okay. All right. I shall withdraw</p> <p>24 that question.</p> <p>25 HEARING EXAMINER GROSSMAN: All right.</p>
<p>162</p> <p>1 MR. BARTRAM: Not at all.</p> <p>2 MS. ROSENFELD: Okay .</p> <p>3 MR. BARTRAM: And in just thinking back to the last</p> <p>4 hearing, and I guess I'm sorry, I'm forgetting - Patrick will</p> <p>5 have a chance to come back up here and maybe address it more.</p> <p>6 But we were talking about the - I think he described it as</p> <p>7 the magic of self-storage being we get the big building, but</p> <p>8 we don't have the parking demand and that's why we didn't</p> <p>9 need underground parking. To me there's no value in a big</p> <p>10 building. It's only the uses to which that building is put.</p> <p>11 Whether it's office space for people or residences.</p> <p>12 So that, when I talk about revitalization, at its most</p> <p>13 simple level it's replacing an old building with a new</p> <p>14 building. But once you replace it with that building it's</p> <p>15 going to be there a while, and so I think to replace a vacant</p> <p>16 site, or even, I guess a farmers market right now, with a</p> <p>17 building that's going to be there and for six of the eight</p> <p>18 levels of the dead is - it would be a terrible thing for the</p> <p>19 community.</p> <p>20 MS. ROSENFELD: Okay. Thank you. And Ms. Girard asked</p> <p>21 you about whether you had looked for - than any kind of study</p> <p>22 or analysis with respect to non-inherent uses. I believe that</p> <p>23 there was testimony earlier in this hearing last time,</p> <p>24 perhaps - earlier in this hearing, not today. Where the</p> <p>25 representation was this was the first conditional use for a</p>	<p>164</p> <p>1 MS. ROSENFELD: And I have no further questions.</p> <p>2 HEARING EXAMINER GROSSMAN: Okay. Any -</p> <p>3 MS. GIRARD: I just had one follow-up question about</p> <p>4 the revitalization question. And I understand you just said</p> <p>5 replacing one building with another may be in its simplest</p> <p>6 terms is revitalization. But what about the replacement of</p> <p>7 one building with another building that includes significant</p> <p>8 public benefits, including streetscape, public plaza, ground</p> <p>9 floor retail, et cetera; isn't that more than just a standard</p> <p>10 one-for-one?</p> <p>11 MR. BARTRAM: On a spectrum, leaving things where they</p> <p>12 are is probably a zero because it's no revitalization.</p> <p>13 Increasing - replacing it with a bad building that may have</p> <p>14 some places to sit down on it is maybe better, but it also</p> <p>15 blocks the potential for that site for future redevelopment</p> <p>16 with, in my view, a good building and good public amenities.</p> <p>17 MS. GIRARD: Can you just expand on what you mean by a</p> <p>18 bad building?</p> <p>19 MR. BARTRAM: I believe self-storage does not</p> <p>20 contribute to the revitalization. It doesn't contribute to</p> <p>21 the vibrancy of town. It is dead space. And it's a dead space</p> <p>22 that conveys itself through the signage, through the blacked</p> <p>23 out windows, through the lack of activity going to and from</p> <p>24 the site.</p> <p>25 MS. GIRARD: So it's in the use itself that you find</p>

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165	<p>1 objectionable?</p> <p>2 MR. BARTRAM: From a furthering the sector plan</p> <p>3 perspective, yes. It's not that I'm morally opposed to self-</p> <p>4 storage, I've used it a lot, but it's not here. If you look</p> <p>5 at the Applicants other plan in Bethesda it's in an</p> <p>6 industrial zone. That's where the planning staff self-storage</p> <p>7 to go. I'm speculating, but that's why in the CRT it's a</p> <p>8 conditional use because you have an additional burden to meet</p> <p>9 to put it there. I would prefer self-storage to be in</p> <p>10 industrial zones.</p> <p>11 HEARING EXAMINER GROSSMAN: Thank you, sir. I</p> <p>12 appreciate you for coming and contributing.</p> <p>13 All right, did you have any further witnesses? You had</p> <p>14 some cross-examination that you wanted to do.</p> <p>15 MS. ROSENFELD: I have cross-examination, but I have no</p> <p>16 further witnesses, thank you.</p> <p>17 HEARING EXAMINER GROSSMAN: All right. Shall we proceed</p> <p>18 to that? The other witnesses you wanted to call back for</p> <p>19 additional cross-examination on the amendment?</p> <p>20 MS. ROSENFELD: Yes, I would. I think I see Michelle</p> <p>21 Bach is here. I just have some questions about the revised</p> <p>22 parking layout.</p> <p>23 HEARING EXAMINER GROSSMAN: Okay.</p> <p>24 MS. ROSENFELD: And she's the best one to answer those</p> <p>25 questions?</p>	167	<p>1 intersection at Metropolitan and Plyers Mill Road?</p> <p>2 MS. BACH: Yes.</p> <p>3 MS. ROSENFELD: Okay. And was there any other</p> <p>4 dimensional reduction in width or depth of any of the other</p> <p>5 parking spaces?</p> <p>6 MS. BACH: No.</p> <p>7 MS. ROSENFELD: And do you know the final count of</p> <p>8 parking spaces?</p> <p>9 MS. BACH: Yes. There are 56 total. That comprises 51</p> <p>10 standards stalls, 2 loading stalls, and 3 ADA stalls.</p> <p>11 MS. ROSENFELD: And in this new parking layout is there</p> <p>12 any provision for a loading zone for deliveries to the future</p> <p>13 restaurant site?</p> <p>14 MS. BACH: Well, we have the two interior loading</p> <p>15 stalls.</p> <p>16 HEARING EXAMINER GROSSMAN: So let me - so there's 56</p> <p>17 total now.</p> <p>18 MS. BACH: Yes.</p> <p>19 HEARING EXAMINER GROSSMAN: Previously I saw 57</p> <p>20 actually as the number. Was that 57 composed - but I was told</p> <p>21 we lost 4 spaces in this redo. So I'm a little confused. Can</p> <p>22 you straighten me out? What did you start out with?</p> <p>23 MS. BACH: We started out with 60 total.</p> <p>24 HEARING EXAMINER GROSSMAN: By started out I mean -</p> <p>25 MS. BACH: In the -</p>
166	<p>1 HEARING EXAMINER GROSSMAN: All right. Ms. Bach.</p> <p>2 Lucky you. You've been invited back.</p> <p>3 MS. BACH: And just for convenience I will -</p> <p>4 HEARING EXAMINER GROSSMAN: You're still under oath.</p> <p>5 MS. ROSENFELD: I will provide another copy of - so you</p> <p>6 can -</p> <p>7 (Crosstalk)</p> <p>8 MS. ROSENFELD: My first question, if you know, is this</p> <p>9 truck turning radius template laid over the revised - the</p> <p>10 latest revised parking lot layout?</p> <p>11 MS. BACH: Yes, it is.</p> <p>12 MS. ROSENFELD: Okay. And I recall - I seem to recall</p> <p>13 that there were - it was a reduction in the depth of some of</p> <p>14 the parking spaces. Can you identify for me on this exhibit</p> <p>15 where that depth has been reduced, and from what to what?</p> <p>16 MS. BACH: The parking stalls running south to north on</p> <p>17 the east side of the property were 18 feet in depth and now</p> <p>18 they are 16.</p> <p>19 MS. ROSENFELD: And those would -</p> <p>20 MS. BACH: With an overhang.</p> <p>21 MS. ROSENFELD: Would those be the ones adjacent to the</p> <p>22 abutting property that we've talked about with the 7-Eleven?</p> <p>23 MS. BACH: Yes.</p> <p>24 MS. ROSENFELD: Okay. And is that for the full length,</p> <p>25 from the B&O Railroad right-of-way right up to the</p>	168	<p>1 HEARING EXAMINER GROSSMAN: In the plan that was before</p> <p>2 me -</p> <p>3 MS. BACH: Yes.</p> <p>4 HEARING EXAMINER GROSSMAN: - for this decision.</p> <p>5 MS. BACH: 60.</p> <p>6 HEARING EXAMINER GROSSMAN: So you really started out</p> <p>7 with 60?</p> <p>8 MS. BACH: Yes.</p> <p>9 HEARING EXAMINER GROSSMAN: 57 plus 3?</p> <p>10 MS. BACH: Yes.</p> <p>11 HEARING EXAMINER GROSSMAN: Okay. And the three are</p> <p>12 ADA?</p> <p>13 MS. BACH: Yes.</p> <p>14 HEARING EXAMINER GROSSMAN: And the two loading were</p> <p>15 already included in that?</p> <p>16 MS. BACH: Included in the 57.</p> <p>17 HEARING EXAMINER GROSSMAN: Okay. And then by dropping</p> <p>18 down to 56 you did lose the four spaces?</p> <p>19 MS. BACH: Yes.</p> <p>20 HEARING EXAMINER GROSSMAN: Okay. All right. I</p> <p>21 understand now.</p> <p>22 MS. ROSENFELD: I have no further questions.</p> <p>23 HEARING EXAMINER GROSSMAN: Okay. Any - I don't know</p> <p>24 what you would call it. A re-direct, re-cross?</p> <p>25 MS. GIRARD: I was going to ask. I was going to call</p>

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<p>169</p> <p>1 her back anyway to talk about the windows.</p> <p>2 HEARING EXAMINER GROSSMAN: Okay.</p> <p>3 MS. GIRARD: So for efficiency should we just do that</p> <p>4 now, and then we can take (inaudible)?</p> <p>5 MS. ROSENFELD: That works for me.</p> <p>6 MS. GIRARD: Okay.</p> <p>7 Ms. Bach, you were here for the - you've been here for</p> <p>8 both hearings, right?</p> <p>9 MS. BACH: Yes.</p> <p>10 MS. GIRARD: And you've heard a lot of testimony</p> <p>11 regarding the windows?</p> <p>12 MS. BACH: Yes.</p> <p>13 MS. GIRARD: Did you prepare an exhibit subsequent to</p> <p>14 the last hearing to show examples of the type of windows?</p> <p>15 MS. BACH: Yes.</p> <p>16 MS. GIRARD: And is this that exhibit?</p> <p>17 MS. BACH: Yes.</p> <p>18 MS. GIRARD: Okay. I don't have a larger board. Okay.</p> <p>19 Well, for something like this.</p> <p>20 HEARING EXAMINER GROSSMAN: All right. Let me see if I</p> <p>21 can find the exhibit list. It's buried here. Here it is. All</p> <p>22 right. So this is Exhibit 114. This is a new exhibit,</p> <p>23 correct?</p> <p>24 MS. GIRARD: Correct.</p> <p>25 HEARING EXAMINER GROSSMAN: And it's called store front</p>	<p>171</p> <p>1 left-hand corner as we're facing it.</p> <p>2 MS. BACH: Okay. So these - I mean they're a little</p> <p>3 harder to see. But the two windows on the red brick are</p> <p>4 spandrel windows. They're fake windows. Going across there's</p> <p>5 three more under this red self-storage sign, those are also</p> <p>6 fake. These store front right below it is real, as well as</p> <p>7 the hard corner which is on the very edge of that photo.</p> <p>8 HEARING EXAMINER GROSSMAN: Okay.</p> <p>9 MS. BACH: As you're going to the next image which is</p> <p>10 the top middle, this is actually a combination. On the</p> <p>11 rounded rotunda of the front the bottom lower panes are real</p> <p>12 and the top four panes with the arch are spandrel windows. It</p> <p>13 looks a lot like there is a shade pulled on the window.</p> <p>14 HEARING EXAMINER GROSSMAN: Okay.</p> <p>15 MS. BACH: With the whole first floor is real windows</p> <p>16 because it's the active storefront.</p> <p>17 HEARING EXAMINER GROSSMAN: What about the one that</p> <p>18 looks like - it looks like a turret and then you have three</p> <p>19 right in the middle of it.</p> <p>20 MS. BACH: Yeah, that's what I'm explaining. Yeah.</p> <p>21 Sorry.</p> <p>22 HEARING EXAMINER GROSSMAN: Those ones under the -</p> <p>23 MS. BACH: Yeah, those ones are fake windows.</p> <p>24 HEARING EXAMINER GROSSMAN: These are fake.</p> <p>25 MS. BACH: The one right below it. In the same long</p>
<p>170</p> <p>1 and spandrel window design integration. I'm not sure what</p> <p>2 that means. Can you give me a simpler statement as to what</p> <p>3 this is?</p> <p>4 (Exhibit 114 was introduced into the record.)</p> <p>5 MS. BACH: You could say spandrel window exhibit, if</p> <p>6 you want.</p> <p>7 HEARING EXAMINER GROSSMAN: I'm not sure what that</p> <p>8 means either, but maybe you'll explain it.</p> <p>9 MS. BACH: A spandrel window is another name for a faux</p> <p>10 window. A fake window.</p> <p>11 HEARING EXAMINER GROSSMAN: Okay.</p> <p>12 MS. BACH: And when we actually order the windows</p> <p>13 they're from a manufacturer that are called spandrel windows.</p> <p>14 HEARING EXAMINER GROSSMAN: Okay. So spandrel we'll</p> <p>15 say. Faux is spelled F-A-U-X or?</p> <p>16 MS. BACH: Yes.</p> <p>17 HEARING EXAMINER GROSSMAN: Okay.</p> <p>18 MS. BACH: All these exhibits have real and spandrel</p> <p>19 windows on them, which is why it was called regular store</p> <p>20 front and spandrel windows are in the title.</p> <p>21 HEARING EXAMINER GROSSMAN: And so I guess you should</p> <p>22 point out, which are the real ones and which are the spandrel</p> <p>23 ones?</p> <p>24 MS. BACH: So -</p> <p>25 HEARING EXAMINER GROSSMAN: Let's start with the upper</p>	<p>172</p> <p>1 window is real also.</p> <p>2 HEARING EXAMINER GROSSMAN: Okay.</p> <p>3 MS. BACH: So it was actually a split portion of a</p> <p>4 window.</p> <p>5 MS. GIRARD: The above ones are fake? The lower ones</p> <p>6 are real?</p> <p>7 MS. BACH: Yeah the lower ones are real. So because</p> <p>8 it's one large window it kind of looks like there is a shade</p> <p>9 pulled over the window.</p> <p>10 HEARING EXAMINER GROSSMAN: Is it possible to have a</p> <p>11 spandrel window which shows light through it you cannot see</p> <p>12 what's behind it?</p> <p>13 MS. BACH: Not a spandrel window, no.</p> <p>14 HEARING EXAMINER GROSSMAN: Well, any kind of that is</p> <p>15 not really providing light into the facility but would allow</p> <p>16 light be shown, as if it were, you know, at night? It</p> <p>17 wouldn't look dead?</p> <p>18 MS. BACH: From the back, no. It would have to be lit</p> <p>19 from the front.</p> <p>20 HEARING EXAMINER GROSSMAN: In front of the window?</p> <p>21 MS. BACH: In front of the window.</p> <p>22 HEARING EXAMINER GROSSMAN: I see.</p> <p>23 MS. BACH: Spandrel, fake, faux windows have the same</p> <p>24 depth as a standard storefront window. So the only difference</p> <p>25 is the back of the window is painted whatever color the owner</p>

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<p>173</p> <p>1 has chosen.</p> <p>2 HEARING EXAMINER GROSSMAN: I see.</p> <p>3 MS. BACH: So it's a real window, is painted on the</p> <p>4 back.</p> <p>5 HEARING EXAMINER GROSSMAN: Do you ever put a light on</p> <p>6 the outside facing the window that would reflect off the</p> <p>7 window to give some sense of light on there? Do you ever do</p> <p>8 that?</p> <p>9 MS. BACH: Yeah. So we could add - I have in other</p> <p>10 buildings depending on how high we need to illuminate the</p> <p>11 building. You could add exterior lighting whether it's a wall</p> <p>12 pack or a sconce of some sort. That helps wash the building</p> <p>13 and illuminate the windows to give us a more reflectivity at</p> <p>14 night.</p> <p>15 HEARING EXAMINER GROSSMAN: So you're saying it doesn't</p> <p>16 actually - the lighting doesn't actually face of the window</p> <p>17 and reflect off, but it's some kind of wall lighting which,</p> <p>18 in general, lights the building and picks up the -</p> <p>19 MS. BACH: Lights the building up. The only way to</p> <p>20 light the physical window is to make the window operable from</p> <p>21 the outside essentially tax the window onto the front of the</p> <p>22 façade. It's not a very - it's a doable, but it's not a very</p> <p>23 clean construction.</p> <p>24 HEARING EXAMINER GROSSMAN: Okay.</p> <p>25 MS. GIRARD: And so with regard to the lighting at</p>	<p>175</p> <p>1 MS. BACH: I believe as you're approaching the site</p> <p>2 you'll see the first and second floor as an active space</p> <p>3 whether it's daylight or nighttime. And if the concern is</p> <p>4 nighttime, you would see, you know, restaurant activity or</p> <p>5 whatever commercial use is there. And the artist studio</p> <p>6 lights up from that pedestrian or vehicular activity.</p> <p>7 Perspective wise, just a normal human perspective,</p> <p>8 looking any further up from a third floor, fourth floor and</p> <p>9 up, you wouldn't really have to be tilting your head back and</p> <p>10 looking up which as a passenger in a vehicle going by, you</p> <p>11 won't be able to do. As a pedestrian standing on the</p> <p>12 sidewalk, sure, you could do that if you're looking up</p> <p>13 towards the sky. But a terminal line of sight you would be</p> <p>14 first and second floor.</p> <p>15 MS. GIRARD: That's all I had.</p> <p>16 HEARING EXAMINER GROSSMAN: Okay.</p> <p>17 Did you have any re whatever?</p> <p>18 MS. ROSENFELD: Well, just a couple of questions on the</p> <p>19 exhibit. Are these actual photos, or are these renderings?</p> <p>20 MS. BACH: No, these are actual photos. All built</p> <p>21 within the last two years.</p> <p>22 MS. ROSENFELD: Okay. And the middle photo on the</p> <p>23 bottom that you were talking about, are those real windows?</p> <p>24 Is that entire panel on the lower floor with the open sign,</p> <p>25 is that entire panel real windows?</p>
<p>174</p> <p>1 night, it's hard to visualize. So at night with these wall</p> <p>2 packs of lighting, down lighting, whatever, would the</p> <p>3 windows - what would they look like? Would they still be</p> <p>4 reflective? Would they be - you know would the light be</p> <p>5 reflecting off them? Would they have more character than a</p> <p>6 dark hole?</p> <p>7 MS. BACH: So the windows will be reflective because it</p> <p>8 is true standard glass. So anything that's on them, you know</p> <p>9 in our renders you see the sky reflecting off of the window.</p> <p>10 You see that in some of these examples. On the bottom middle</p> <p>11 one you can see the sky reflecting out of the top window. The</p> <p>12 same thing will happen at night, the lights will reflect off</p> <p>13 of - the building lights will reflect off of any window</p> <p>14 glazing that's around it. As far as activity goes, it will</p> <p>15 still look like a black window. There's - it's still painted.</p> <p>16 You won't see any active movement or anything from it.</p> <p>17 MS. GIRARD: And in - for taking the middle image on</p> <p>18 the bottom for instance, so that the bottom floor there is</p> <p>19 transparent and then in this project there's two floors of</p> <p>20 transparent windows along the front of the building; is that</p> <p>21 correct?</p> <p>22 MS. BACH: Yes.</p> <p>23 MS. GIRARD: And given the setback of the building</p> <p>24 From a pedestrian, vehicular standpoint of viewers of the</p> <p>25 building as they're going past, what would that look like?</p>	<p>176</p> <p>1 MS. BACH: Yes, and the one above that is spandrel,</p> <p>2 fake.</p> <p>3 MS. ROSENFELD: Okay. And then when you were talking</p> <p>4 about somebody standing in front of the building would have</p> <p>5 to look way up, this building fronts on Connecticut and</p> <p>6 Plyers Mill, and so people - would people have a review of</p> <p>7 this building as their driving along Connecticut Avenue, say</p> <p>8 from a quarter of a mile away or as they approach it?</p> <p>9 MS. BACH: Sure. Sure. Because you know perspective</p> <p>10 comes into play.</p> <p>11 MS. ROSENFELD: Okay .</p> <p>12 MS. BACH: So sure you would see the height of the</p> <p>13 building coming up to it.</p> <p>14 MS. ROSENFELD: So if you were driving at nighttime</p> <p>15 would somebody have an impression of the building as being</p> <p>16 animated or not animated based on the lighting?</p> <p>17 MS. BACH: I think you would have an impression of it</p> <p>18 being animated for the first 20, 22 feet are building, and</p> <p>19 then above that, I mean it would be dark beyond whatever the</p> <p>20 elimination of the signing from below is illuminating up.</p> <p>21 MS. ROSENFELD: Okay. So when you say the first 20 or</p> <p>22 22 feet you're talking about the first two floors?</p> <p>23 MS. BACH: Yes.</p> <p>24 MS. ROSENFELD: Okay. And so the visual image of the</p> <p>25 top floors beyond the first and second floor, as a dark mass,</p>

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<p>177</p> <p>1 my words, would that be an accurate description? Would it be 2 a dark mass? 3 MS. BACH: It would be dark, but I don't think it's 4 going to be pitch dark. I don't think driving down as active 5 roads are, any building is ever completely dark that you 6 don't see anything. So it will not be an active illuminated 7 glazing like the first two, it would be darker. 8 MS. ROSENFELD: Okay. And that would be the case from - 9 MS. BACH: Three through six floors. 10 MS. ROSENFELD: Right. And I was going to say from 11 sundown to sunrise? 12 MS. BACH: Yes. 13 MS. ROSENFELD: Okay. I have no further questions. 14 HEARING EXAMINER GROSSMAN: Okay. Thank you very much. 15 Who's next on the agenda? 16 MS. ROSENFELD: I believe - 17 HEARING EXAMINER GROSSMAN: That you have other 18 questions? 19 MS. GIRARD: To Mr. Clark? 20 HEARING EXAMINER GROSSMAN: I mean you were going to 21 address the truck thing, but I think that has already been 22 addressed. 23 MS. ROSENFELD: No, it hasn't. 24 HEARING EXAMINER GROSSMAN: Okay. Not - 25 MS. ROSENFELD: I was - I really think all the</p>	<p>179</p> <p>1 HEARING EXAMINER GROSSMAN: No, he's got a copy of it. 2 MR. BIDDLE: I've got a small one that I worked from 3 before. 4 MS. ROSENFELD: Okay. Mr. Grossman, may I approach? It 5 will be easier for me to ask certain questions. 6 HEARING EXAMINER GROSSMAN: . And if you want a 7 pointer, I have one. It's a laser pointer, I have one of 8 those two. 9 MS. ROSENFELD: Very good. 10 MR. BIDDLE: I'm old school, fingers. 11 HEARING EXAMINER GROSSMAN: You've got a pointer 12 pointer. 13 MS. ROSENFELD: Okay. Looking - I forgot this exhibit 14 number. 60? 15 HEARING EXAMINER GROSSMAN: No, it's one of the new 16 ones. It's 101-A I think, isn't it? 17 MR. BIDDLE: That sounds - 18 HEARING EXAMINER GROSSMAN: Yeah, 101, I think. 19 MR. BIDDLE: A. 20 HEARING EXAMINER GROSSMAN: The truck turning exhibit 21 is 101-A. 22 MS. ROSENFELD: Okay. Looking at Exhibit 101-A, I see 23 here that the turning (inaudible) that you have here says SU- 24 30. 25 MR. BIDDLE: Uh-huh.</p>
<p>178</p> <p>1 landscaping issues are going to be addressed through the 2 waiver. I don't believe I have any specific questions. 3 HEARING EXAMINER GROSSMAN: Okay. 4 MS. ROSENFELD: But I do have questions about the truck 5 turning radii. 6 HEARING EXAMINER GROSSMAN: Did you want to call Mr. 7 Biddle down? 8 MS. ROSENFELD: Yes. I would like to call Mr. Biddle 9 back. 10 HEARING EXAMINER GROSSMAN: Okay. You must've been 11 looking forward to it I understand. 12 MS. ROSENFELD: That makes two of us. 13 HEARING EXAMINER GROSSMAN: What your step. 14 MR. BIDDLE: That's not what (inaudible). 15 HEARING EXAMINER GROSSMAN: All right. Mr. Biddle state 16 your full name, please. 17 MR. BIDDLE: Brian Anthony Biddle. 18 HEARING EXAMINER GROSSMAN: All right. And you're still 19 under oath from your prior testimony. 20 MR. BIDDLE: Uh-huh. 21 HEARING EXAMINER GROSSMAN: You may proceed. 22 MS. ROSENFELD: Thank you. Thank you Mr. Biddle. I 23 appreciate you coming back. I have some questions about the 24 truck turning exhibit. Do you have a copy, or should I turn 25 this so that - the large one -</p>	<p>180</p> <p>1 MS. ROSENFELD: Is that correct? And does that mean 2 it's a 30 foot truck? 3 MR. BIDDLE: That's a single unit 30 as defined by 4 AASHTO. 5 MS. ROSENFELD: And is that the size of the typical U- 6 Haul truck that was discussed earlier in the testimony? 7 MR. BIDDLE: No, it is not. 8 MS. ROSENFELD: Okay. What is this? 9 MR. BIDDLE: That is the size of truck that would be 10 like a smaller moving van. That would be designated as a 11 heavy truck. A U-Haul truck is typically dropped on a Ford 12 F650 chassis, which is 21 feet long. 13 MS. ROSENFELD: Okay. 14 MR. BIDDLE: And that's the standard, boxy U-Haul 15 truck. Now U-Haul does have SU-30s in their fleet. But the 16 typical person using - renting a U-Haul would get that 17 smaller variety, and as Mr. Fox testified last time the 30, I 18 believe, requires a commercial driver's license. 19 MS. ROSENFELD: Looking at this - I also believe his 20 testimony earlier said that larger trucks also, from time to 21 time would access the site; is that correct? 22 MR. BIDDLE: Did I say that, or Brian Fox? 23 MS. ROSENFELD: I believe Mr. McKone testified that 24 from time to time trucks larger than this would make 25 deliveries.</p>

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<p>181</p> <p>1 MR. BIDDLE: There possibly could be the smaller WB-40, 2 which is, the WB stands for wheelbase. That's the smallest 3 tractor-trailer combination may make deliveries to a 4 restaurant. Our opinion is we had seen them at any self- 5 storage unit, and that was the purpose of the supplemental 6 truck memo that we brought last time. 7 MS. ROSENFELD: Okay. And do you know if the size of 8 trucks that deliver products to restaurant users? 9 MR. BIDDLE: That, I would defer to the owner, 10 operator. But typically 40s are servicing - the WB-40 is 11 servicing a larger restaurant. I've seen them as the SU-30s 12 delivering to restaurants. 13 MS. ROSENFELD: Okay. And for alcohol deliveries? 14 MR. BIDDLE: SU-30s. 15 MS. ROSENFELD: To the county? 16 MR. BIDDLE: Yeah. 17 MS. ROSENFELD: Okay. And larger? 18 MR. BIDDLE: They could be. 19 MS. ROSENFELD: Could be. All right. So you don't know 20 for sure whether or not, for example, a semi-tractor trailer 21 would make food deliveries to this particular site? 22 MR. BIDDLE: For the site, I think it could be done 23 with a 30. 24 MS. ROSENFELD: Do you have any experience in how food 25 deliveries are made to restaurants? Do you know if they're</p>	<p>183</p> <p>1 run here, this is a standard add on to any of the computer 2 aided drafting tools. This is auto-turn. The two red lines 3 that you have are the envelope of the vehicle which reflects 4 overhangs. So the plot Boler did not put the plot out that 5 actually tracks the wheels. That can be done, but that's the 6 overhang. So that can clear a standard SHA curb. 7 MS. ROSENFELD: And so that would be the case as well 8 leaving the site and going northbound? 9 MR. BIDDLE: Uh-huh. 10 MS. ROSENFELD: And this does not reflect any turning 11 radii for any vehicle larger than 30 foot? 12 MR. BIDDLE: That's correct. 13 MS. ROSENFELD: Okay. And so when we see the - looking 14 at the northern ingress/egress the truck template leaving the 15 site going into the adjoining parking lot, it looks to me as 16 if it's clipping the curb here, but you're saying that's the 17 overhang? 18 MR. BIDDLE: That's what it appears on this. 19 MS. ROSENFELD: And what is the clearance between the 20 overhang and the wheelbase? How much distance? 21 MR. BIDDLE: Clearance for the bottom of the vehicle to 22 the - I would say off the top of my head I don't - bring 23 that - I don't have my AASHTO ring book which has pages of 24 these things. That's why I have them on my shelf, but I know 25 that they can clear a standard SHA curb, which is eight</p>
<p>182</p> <p>1 single destinations are if they take large semi's and go from 2 one restaurant or store - 3 MR. BIDDLE: That I do not. 4 MS. ROSENFELD: - to another? 5 MR. BIDDLE: I do not. But, you know, all the 6 experience that I have, you know, all throughout Maryland, 7 mostly the operator would schedule that off a - yeah, we see 8 trucks stopping on Route 1. A lot of the major state highways 9 off hours to make deliveries. 10 MS. ROSENFELD: Do you also see them during regular 11 hours? 12 MR. BIDDLE: Typically not. 13 MS. ROSENFELD: Typically not? 14 MR. BIDDLE: No. 15 MS. ROSENFELD: Okay. But you didn't evaluate this 16 particular facility with respect to the specific needs of 17 restaurant delivery? 18 MR. BIDDLE: No. 19 MS. ROSENFELD: Okay. If I were to look at the entrance 20 northbound - 21 MR. BIDDLE: Uh-huh. 22 MS. ROSENFELD: - Connecticut in two the site, it 23 appears to me as if the wheelbase clips the curb on the north 24 and south side of the entrance both. 25 MR. BIDDLE: That's not correct. The template that's</p>	<p>184</p> <p>1 inches. So I would assume that it's, you know, 10, 12 inches. 2 And I know that the county's standard curb is less than eight 3 so - 4 MS. ROSENFELD: Right. My question is a little 5 different. I think I didn't make myself clear. 6 HEARING EXAMINER GROSSMAN: You mean the width of the 7 truck? 8 MS. ROSENFELD: How much room is there between the 9 outer part of the tire and the overhang that we that the 10 tires would actually 're talking about here? Are you saying 11 there's no chance that the tires would actually clip these 12 curbs? 13 MR. BIDDLE: I looked at this right when we left. I 14 think the way Boler has this, they don't have this run on 15 the tightest turn. The minimum turning radius for an SU-30 is 16 42 feet. Minimum turning radius for an F650, which is a U- 17 Haul truck is 36 feet. I scaled from, you know, just the 18 drawing, that's a 20 scale drawing that we're not at the 19 minimum. So I think there's room. You know, auto turn is a 20 tool to help aid in design. So I think they could make the 21 plot - move the lines away a little bit. It's an iterative 22 thing. 23 MS. ROSENFELD: Which lines? The curb lines or the 24 black lines? 25 MR. BIDDLE: No, no, no, the red. The red outlines. You</p>

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<p>185</p> <p>1 know, they could also turn on the actual tire paths see that 2 the tires don't hit any of the curbs. 3 MS. ROSENFELD: But that's not what we have here? 4 MR. BIDDLE: No, we just have the outline of the 5 vehicle. 6 MS. ROSENFELD: So when I look at the northernmost bay. 7 There's a truck path it looks to me that drags southward and 8 then out and the up onto Connecticut Avenue, correct? 9 MR. BIDDLE: Uh-huh. 10 MS. ROSENFELD: Is there a turning radius also for the 11 southern - the more southern bay? Is there anything on here 12 that shows the truck leaving the southern bay and entering 13 the parking lot going out to Connecticut Avenue - has 14 adequate turning radius to make that movement? 15 MR. BIDDLE: Forgive me. I'm getting older - 16 MS. ROSENFELD: That's okay. 17 MR. BIDDLE: - and I didn't bring my magnifying glass 18 today. But - 19 MS. ROSENFELD: That's why I wanted the large exhibit. 20 MR. BIDDLE: You're suggesting someone turning here, 21 being able to make this turn. 22 HEARING EXAMINER GROSSMAN: I can't see where here is. 23 That's what I wanted - 24 MR. BIDDLE: Coming out of the inside - 25 MS. ROSENFELD: The other bay.</p>	<p>187</p> <p>1 out area. 2 MS. ROSENFELD: The striped out area be the pedestrian 3 pathway? 4 MR. BIDDLE: Yeah. Well, what he can do, he also has a 5 little bit more room, he can pull out and make a swing. 6 Again, it's an iterative tool and yeah. I would tell you that 7 my experience with this tool, and I have dealt with truck 8 operators in a different life. It just overcompensates for 9 what a real truck driver could do. And I know this might be 10 a - like a U-Haul situation, but it has to be 30 - we 11 wouldn't anticipate anybody going there. From all the trucks. 12 We always have this question on what kind of trucks are 13 anticipated. It's in the U-Haul, it's the pickup trucks, it's 14 the normal Joe Q. resident that are going to self-storage 15 typically. 16 MS. ROSENFELD: And again, but your speaking only to 17 the U-Haul piece. You are not here to - you haven't done 18 any - have you done any study or analysis as to what kinds of 19 trucks actually deliver to restaurants? 20 MR. BIDDLE: No. I don't have that in the document, but 21 I would just suspect that WB-40s, we've talked or SU-30 22 depending on the operator. 23 MS. ROSENFELD: Okay. But you - asked and answered. 24 When - going now to the truck turning radius, leaving the 25 abutting property and onto Metropolitan Avenue, there is</p>
<p>186</p> <p>1 MR. BIDDLE: They don't have that path on here, but 2 they could run it. 3 MS. ROSENFELD: But standing here today, can you 4 testify that there is enough room for turning radius for a 5 truck in the southern bay to move in this direction and go 6 north? 7 MR. BIDDLE: I can give you a page. I gave our team 8 member a tool. I forgot all my stips. Thank you. This is a 20 9 scale plot. And we would have like a 42 foot radius. So if 10 you just pull this down, he would probably be in this hatched 11 out area, but he wouldn't be impacting the ADA parking spot. 12 MS. ROSENFELD: But that hatched out area is the safe 13 space for somebody using the ADA space.. 14 MR. BIDDLE: Uh-huh. 15 MS. ROSENFELD: As a pedestrian access, correct? 16 MR. BIDDLE: Yeah, but they would, you know rules of 17 the road they would have to wait. 18 MS. ROSENFELD: And then - don't leave yet. I have the 19 same question for the north bay next to it, to the north. Is 20 there - does this exhibit show the turning radius for a truck 21 exiting the northernmost bay and heading up to the abutting 22 parking lot? 23 MR. BIDDLE: It does not. He did the same thing to 24 basically shift this. And were shifting over like 11 or 12 25 feet. It might be close there, but again it's in the striped</p>	<p>188</p> <p>1 nothing here that demonstrates what the radius requirements 2 would be to enter onto Metropolitan Avenue. Do you - can you 3 speak to that? Is there adequate clearance there? 4 MR. BIDDLE: Well, much like this version of coming 5 out, what this is showing is the truck is going to come out 6 and it's going to swing into two lanes to get out. It would 7 probably be something of the same, I think the angle of this 8 truck, you know, depending on where they are growing, they 9 are going to figure out the best way to position their 10 vehicle. 11 This is not the tightest turning radius, so if I wanted 12 to go to the left, I would swing out, and then improve my 13 trajectory to turn left. If I wanted to go right I would 14 probably take that bearing as well. 15 MS. ROSENFELD: Okay. 16 MR. BIDDLE: But they haven't run it and they probably 17 should have. I was trying to get a gauge for why they didn't, 18 but that can be done. 19 MS. ROSENFELD: Well, and to turn right here, it's one 20 lane into the right-hand aisle, is that correct? 21 MR. BIDDLE: Yeah. 22 MS. ROSENFELD: And then a double lane into the left? 23 MR. BIDDLE: Uh-huh. 24 MS. ROSENFELD: And so am I understanding your 25 testimony correctly that to make the right-hand turn here</p>

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<p>189</p> <p>1 they might have to make a similar movement and cross more 2 than one lane? 3 MR. BIDDLE: Yeah. 4 MS. ROSENFELD: And so on Metropolitan Avenue in order 5 for them to do that they would have to cross into oncoming 6 traffic, wouldn't they? 7 MR. BIDDLE: They would wait for the turn. 8 MS. ROSENFELD: Well, I'm not - that wasn't my 9 question. They would have to cross into oncoming traffic 10 lane, correct? 11 MR. BIDDLE: They wouldn't make the maneuver until the 12 gap was available. 13 MS. ROSENFELD: I understand that. But that wasn't my 14 question. My question was would they need to physically turn 15 into the oncoming traffic lane? 16 MR. BIDDLE: They would have to occupy the space of the 17 roadway to make the turn, and that might be on the other side 18 of the double yellow. 19 MS. ROSENFELD: Okay. And do you have any idea for what 20 distance that they would have to occupy on the other side of 21 the double yellow? 22 MR. BIDDLE: I would have to run it. And you would have 23 to change up the bearing again. You would have iterative 24 approach to this tool. 25 MS. ROSENFELD: Okay. And to the extent that this is a</p>	<p>191</p> <p>1 heading. 2 HEARING EXAMINER GROSSMAN: Okay. Go ahead. 3 MS. ROSENFELD: May I - I do have one other question. 4 For this more northern bound bay, when you said they would 5 need to swing into the striped area here - 6 MR. BIDDLE: They might. They might. Or they can come 7 out. I would - we've looked at a number of these and 8 generally speaking there's never more than one truck there. 9 They may be able to pull - if they're in the northern spot 10 they may be able to pull right to then swing. They have room 11 on the other - the way this template - I see some room on the 12 other side. So as it's drawn, if you just move that vehicle 13 path up, it will look like it would go into the striped area. 14 But again, it's an iterative tool and you can play with it a 15 little bit to minimize that impact. 16 HEARING EXAMINER GROSSMAN: What does that mean by the 17 way? You've use of the term iterative tool a number of times, 18 what is an iterative tool? 19 MR. BIDDLE: You get into the program, and you drive 20 the truck, and it starts to have impacts then you can, you 21 know, retrace it, redraw it. 22 HEARING EXAMINER GROSSMAN: Okay. So by iterative tool 23 you mean a computer tool that allows you to change the 24 dynamics while you're - 25 MR. BIDDLE: It's a design tool.</p>
<p>190</p> <p>1 template for an SU-30, if it was an SU-40, or a larger 2 vehicle, would they have to turn farther into the turning 3 lane to - into the oncoming lanes? 4 MR. BIDDLE: I think you're referring to a WB-40? 5 MS. ROSENFELD: A WB-40. 6 MR. BIDDLE: Yeah. A WB-40, and an SU-30 I believe half 7 the same turning radius. 8 MS. ROSENFELD: Okay. 9 MR. BIDDLE: It's just the track of the trailer because 10 it's on the - it's a combination vehicle. 11 MS. ROSENFELD: Okay. And if the restaurant had larger 12 vehicles with the impact into the time and distance into the 13 oncoming lanes be greater than this? 14 MR. BIDDLE: The larger the wheelbase, the larger their 15 radius. 16 MS. ROSENFELD: Okay. 17 MR. BIDDLE: And the need for turning. 18 MS. ROSENFELD: Mr. Grossman, just one moment, please? 19 HEARING EXAMINER GROSSMAN: Sure. 20 MS. ROSENFELD: Okay. 21 HEARING EXAMINER GROSSMAN: I take it that you're not 22 suggesting that I could - if I approve this I should require 23 them to remove the restaurant because the trucks would be too 24 large? 25 MS. ROSENFELD: That would not be the direction I'm</p>	<p>192</p> <p>1 HEARING EXAMINER GROSSMAN: Okay. 2 MS. ROSENFELD: So it allows you to change the base 3 assumptions, basically? 4 MR. BIDDLE: Know the assumptions of radii and the 5 turning speeds and that, those are set. It's just you 6 can - it's like driving a vehicle, and you leave your spot 7 and your turning the wheel first, or you back out until it's 8 that - there are an infinite number of possibilities on how 9 anybody can drive. So that's what I mean by iterative. 10 So if you want him to be parked there all the way in 11 the back of the dock and then do a hard left to get out he's 12 going to go over that striped area. But he's got all the 13 parking area, the drive aisle, that area in the front of him 14 that he can pull out and then make the turn. He will probably 15 hit the striped in that regard. If you want him to miss all 16 of it he may have to pull - if he's trying to go left he may 17 have to pull right and then swing the vehicle right, like 18 most truck drivers will do. 19 MS. ROSENFELD: So when you talk about the striped area 20 on the - to the north of the northernmost bay, there is a 21 little rectangle here. Would that indicate a support pole? 22 MR. BIDDLE: That, I don't know. I would defer to - I 23 guess it is. 24 MS. ROSENFELD: Okay. So that would limit the ability 25 to swing out over that striped area, right?</p>

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<p>193</p> <p>1 MR. BIDDLE: Right here?</p> <p>2 MS. ROSENFELD: Uh-huh.</p> <p>3 MR. BIDDLE: Yeah, it might.</p> <p>4 MS. ROSENFELD: Okay. And then what would be the</p> <p>5 solution if, for example, there were vehicles parked directly</p> <p>6 across from the Bay, the loading bays, that overhung this</p> <p>7 outer parking area or were larger, even with standard parking</p> <p>8 lot?</p> <p>9 MR. BIDDLE: I would just go the other route.</p> <p>10 MS. ROSENFELD: What if the parking lot is full?</p> <p>11 MR. BIDDLE: Well, the template here shows that in a</p> <p>12 worst-case situation I can turn and come out to Connecticut.</p> <p>13 I would just go the other way. And I think any reasonable</p> <p>14 driver would do the same thing.</p> <p>15 MS. ROSENFELD: All right. I have no further questions,</p> <p>16 Mr. Grossman.</p> <p>17 HEARING EXAMINER GROSSMAN: All right. Mr. Biddle, I</p> <p>18 noticed they reduced the size of the parking spaces along the</p> <p>19 eastern front of the parking lot to 16 feet. Do you know why</p> <p>20 that was done?</p> <p>21 MR. BIDDLE: I do not.</p> <p>22 HEARING EXAMINER GROSSMAN: Okay. Is 16 feet, does that</p> <p>23 meet the minimum standards for a parking space?</p> <p>24 MR. BIDDLE: That's not my forte, but I think that it's</p> <p>25 18. But I'm not entirely sure.</p>	<p>195</p> <p>1 radius, they would have ample room. I don't think they would</p> <p>2 be turning into the stripes. For the typical, what you see</p> <p>3 going to self-storage.</p> <p>4 HEARING EXAMINER GROSSMAN: And for a 30 foot?</p> <p>5 MR. BIDDLE: I think they may have to encroach into the</p> <p>6 stripes.</p> <p>7 HEARING EXAMINER GROSSMAN: Would that be safe, or not</p> <p>8 safe in your opinion?</p> <p>9 MR. BIDDLE: Well, let me back up. I think they</p> <p>10 encroach on striped for the path all have been run, I think</p> <p>11 that there are options to turn out one way or the other.</p> <p>12 HEARING EXAMINER GROSSMAN: Okay.</p> <p>13 MR. BIDDLE: And is it safe or not? I think that, you</p> <p>14 know, prudent people go - you don't see people go to self-</p> <p>15 storage generally by themselves so they will have other</p> <p>16 people in the truck. They have mirrors, they would be able to</p> <p>17 see the pedestrians. So I -</p> <p>18 HEARING EXAMINER GROSSMAN: Well, I mean I - one of the</p> <p>19 findings I have to make is a safety finding. And so that's</p> <p>20 why I'm asking the question. In your opinion, is this a safe</p> <p>21 setup? Give, you know that you may have the parking lot full?</p> <p>22 MR. BIDDLE: I think that Boler has done a truck</p> <p>23 template for something that is probably not going to be seen.</p> <p>24 And that for what the reality is going to be it's going to be</p> <p>25 more than safe. I think they have - and there's a couple of</p>
<p>194</p> <p>1 HEARING EXAMINER GROSSMAN: All right. Well, I guess it</p> <p>2 goes to the question of how far out a car might stick. What's</p> <p>3 the length of an average sedan, for example? Or a station</p> <p>4 wagon?</p> <p>5 MR. BIDDLE: I should have brought my AASHTO book. I</p> <p>6 think they're 16 feet, I think.</p> <p>7 HEARING EXAMINER GROSSMAN: So if you don't pull right,</p> <p>8 all the way in there you're going to stick out the end. Would</p> <p>9 that interfere with that turning radius?</p> <p>10 MR. BIDDLE: It could be. But you know, one of the</p> <p>11 other things in the truck mem that highlighted is that the</p> <p>12 bulk of the larger truck activity is a Saturday. And we don't</p> <p>13 really see that on a weekday. Which you would anticipate, you</p> <p>14 know, weekend - it's a morning weekend thing. And the</p> <p>15 restaurants peak and I don't know really what the arch base</p> <p>16 peak would be, but I don't think that they would - I don't</p> <p>17 think the parking lot would be full when someone was going to</p> <p>18 be -</p> <p>19 HEARING EXAMINER GROSSMAN: Well, let's say it is full.</p> <p>20 In your opinion, does the truck turning diagram represent a</p> <p>21 safe and efficient passage for vehicles on the site, given</p> <p>22 the questions that were brought up about this.</p> <p>23 MR. BIDDLE: For the type of vehicle we would</p> <p>24 anticipate, which is a boxy you call truck, which again, is</p> <p>25 21 feet in length and has a much tighter 36 foot turning</p>	<p>196</p> <p>1 other things they may need to run to make everybody happy,</p> <p>2 but I think that in the end they will be able to show that it</p> <p>3 will work.</p> <p>4 HEARING EXAMINER GROSSMAN: All right. Ms. Girard, what</p> <p>5 exactly was the reason for reducing the size of the parking</p> <p>6 spaces on the eastern edge there to 16 feet?</p> <p>7 MS. GIRARD: Right. And I want to ask him, but I can</p> <p>8 maybe just proffer that the relevant code section is</p> <p>9 59.625.E.2 that reads, "a parking space may be reduced by 2</p> <p>10 feet in length where the overhang will not conflict with</p> <p>11 pedestrian, bicycle, or vehicular circulation. And along that</p> <p>12 eastern property line as Ms. Bach testified to, the parking</p> <p>13 spaces were - the two feet came off right along the property</p> <p>14 line just to provide a little more of a buffer area between</p> <p>15 the pavement and the adjacent building.</p> <p>16 So rather than have pavement there the front of the car</p> <p>17 is going to overhang so we just moved to the curb back a</p> <p>18 little bit so that the front of the car just overhangs into</p> <p>19 the green space area.</p> <p>20 HEARING EXAMINER GROSSMAN: I see.</p> <p>21 MR. BIDDLE: So that the back of the vehicle</p> <p>22 theoretically has a typical spot, right?</p> <p>23 MS. GIRARD: Correct.</p> <p>24 HEARING EXAMINER GROSSMAN: So all right. So let me see</p> <p>25 if I understand it correctly you're saying that you, in</p>

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<p>197</p> <p>1 effect, have 18 feet but what's happening is -</p> <p>2 MS. GIRARD: The front two feet are grass. Very pretty</p> <p>3 grass -</p> <p>4 HEARING EXAMINER GROSSMAN: Okay. And that's the</p> <p>5 overhang -</p> <p>6 MS. GIRARD: - is what I meant to say.</p> <p>7 HEARING EXAMINER GROSSMAN: No, I'm not - not the</p> <p>8 building overhead. It's not the building overhang, it's the</p> <p>9 car overhang that you're talking about. A different overhang.</p> <p>10 MS. GIRARD: Yes. Yes. And I apologize for the</p> <p>11 confusion.</p> <p>12 HEARING EXAMINER GROSSMAN: It's not (inaudible).</p> <p>13 MS. GIRARD: You're right.</p> <p>14 HEARING EXAMINER GROSSMAN: Okay. All right. Yes, I was</p> <p>15 confused but I didn't understand what you were saying before.</p> <p>16 Okay. Now I understand that better. I understand why you</p> <p>17 remove some parking spots to have the islands with the tree</p> <p>18 canopy, but I didn't understand the reduction in the size of</p> <p>19 the spaces.</p> <p>20 MS. GIRARD: It's just to get a -</p> <p>21 HEARING EXAMINER GROSSMAN: The normal space is defined</p> <p>22 as 18 feet, but you can reduce it by the 2 feet pursuant to</p> <p>23 that section you cited?</p> <p>24 MS. GIRARD: Correct. It reads, where - "a parking</p> <p>25 space may reduce by two feet in length where the overhang</p>	<p>199</p> <p>1 MR. BIDDLE: I base a lot of that on I'm a user.</p> <p>2 MS. ROSENFELD: Okay. So is this testimony with respect</p> <p>3 to human behavior at self-storage parking lots is that within</p> <p>4 the expertise that you are here to speak?</p> <p>5 MR. BIDDLE: Uh-huh.</p> <p>6 HEARING EXAMINER GROSSMAN: Is that a yes or a no?</p> <p>7 MR. BIDDLE: Yeah.</p> <p>8 MS. ROSENFELD: It is. Well, Mr. Grossman, I would</p> <p>9 object to accepting his testimony as an expert on those</p> <p>10 grounds. He is -</p> <p>11 HEARING EXAMINER GROSSMAN: I'm going to allow it. It</p> <p>12 will go to the weight.</p> <p>13 MS. ROSENFELD: I have no other questions.</p> <p>14 HEARING EXAMINER GROSSMAN: Okay. All right.</p> <p>15 MS. GIRARD: I guess, starting with the last question</p> <p>16 first, as part of your profession do you also have occasion</p> <p>17 to observe driving patterns, what people do in a typical</p> <p>18 situation?</p> <p>19 MR. BIDDLE: My profession is based on human factors. I</p> <p>20 design signs, I design traffic control devices all based on</p> <p>21 human factors. Everything we do is based on human factors.</p> <p>22 There's hard-core engineering, there's hard-core human</p> <p>23 factors.</p> <p>24 MS. GIRARD: So in that regard, it's not just your</p> <p>25 personal opinion? It's what you - it's also based on</p>
<p>198</p> <p>1 will not conflict with pedestrian, bicycle or vehicular</p> <p>2 circulation."</p> <p>3 HEARING EXAMINER GROSSMAN: Okay.</p> <p>4 MS. GIRARD: And since that's a buffer area none of</p> <p>5 those would apply.</p> <p>6 HEARING EXAMINER GROSSMAN: I understand. Thank you.</p> <p>7 All right.</p> <p>8 MS. ROSENFELD: Mr. Grossman.</p> <p>9 HEARING EXAMINER GROSSMAN: Yes.</p> <p>10 MS. ROSENFELD: I have a couple of follow-up questions.</p> <p>11 HEARING EXAMINER GROSSMAN: Okay.</p> <p>12 MS. ROSENFELD: You testified that you thought that</p> <p>13 this parking layout was safe based on human behavior. I think</p> <p>14 if I'm quoting you correctly, you say people generally don't</p> <p>15 go to self-storage alone and that people would be looking out</p> <p>16 for each other. Have you done any studies, or do you have any</p> <p>17 literature or articles to cite in support of that statement?</p> <p>18 MR. BIDDLE: I don't. But when we - I don't know if we</p> <p>19 still have it, but when we did the studies before, we did</p> <p>20 video capture. So we document everything, but I think we just</p> <p>21 documented the truck activity. But I don't know we still have</p> <p>22 that. We can pull that, but I don't.</p> <p>23 MS. ROSENFELD: Did you do any formal analysis of how</p> <p>24 many people were there, and how many people were there alone,</p> <p>25 and how many people -</p>	<p>200</p> <p>1 observations in your professional capacity?</p> <p>2 MR. BIDDLE: Yeah. And that's why I said if we still</p> <p>3 had the video we count hundreds of things a week. That takes</p> <p>4 up a lot of service space. If we had those videos still we</p> <p>5 could document actual people activity.</p> <p>6 MS. GIRARD: And as far as - we spent a lot of time</p> <p>7 talking about trucks pulling out and maybe clipping this</p> <p>8 right to area. In your opinion, you know, driving partially</p> <p>9 over the striped area just to pull out, does that make it</p> <p>10 unsafe if a vehicle performs that maneuver?</p> <p>11 MR. BIDDLE: No.</p> <p>12 MS. GIRARD: Okay. And there was testimony earlier</p> <p>13 about, you know, the lay person driving a U-Haul and not</p> <p>14 being a very good truck driver and maybe needing a little bit</p> <p>15 more space than the average person. Does the truck turning</p> <p>16 movement account for that in any way as far as -</p> <p>17 MR. BIDDLE: It does - -</p> <p>18 MR. BIDDLE: - the size of the truck and the red area?</p> <p>19 MR. BIDDLE: If you have a CDL you can go get an SU-30.</p> <p>20 I doubt that you do. You're going to go to U-Haul and you're</p> <p>21 going to get one of their smaller trucks. So this envelope is</p> <p>22 basically like trying to figure out how to drive a regular</p> <p>23 sedan by way of having a limousine.</p> <p>24 HEARING EXAMINER GROSSMAN: All right what is a CDL?</p> <p>25 MR. BIDDLE: Commercial driver's license.</p>

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<p>201</p> <p>1 HEARING EXAMINER GROSSMAN: Okay.</p> <p>2 MS. GIRARD: So in other words if I'm driving it in a</p> <p>3 smaller vehicle I have a little more margin of error?</p> <p>4 MR. BIDDLE: You have a factor of safety based on that</p> <p>5 envelope.</p> <p>6 MS. GIRARD: But this, as it shown is really - it's</p> <p>7 assuming that I have a commercial driver's license?</p> <p>8 MR. BIDDLE: Uh-huh.</p> <p>9 MS. GIRARD: And therefore I have some level of</p> <p>10 expertise beyond what the typical person has?</p> <p>11 MR. BIDDLE: Uh-huh.</p> <p>12 MS. GIRARD: Okay. And in your observations and in your</p> <p>13 knowledge, and in a semi-urban setting like this, is it</p> <p>14 standard for trucks exiting a property to cross lanes of</p> <p>15 traffic, perhaps the centerline once in a while to be able</p> <p>16 to -</p> <p>17 MR. BIDDLE: Yeah. Some jurisdictions in Maryland have</p> <p>18 requirements on the auto turn and it basically say in urban</p> <p>19 areas, don't hit a building, or any utility poles. You know,</p> <p>20 sometimes you jump a curb. That's not this jurisdiction, but</p> <p>21 it is not outside the realm of possibly to jump over a double</p> <p>22 yellow.</p> <p>23 MS. GIRARD: Okay. And -</p> <p>24 HEARING EXAMINER GROSSMAN: I just want to make sure I</p> <p>25 understand what you're saying. Are you saying in this</p>	<p>203</p> <p>1 HEARING EXAMINER GROSSMAN: Okay. Thank you, sir.</p> <p>2 MR. BIDDLE: Uh-huh.</p> <p>3 HEARING EXAMINER GROSSMAN: All right. Who's next on</p> <p>4 our agenda?</p> <p>5 MS. ROSENFELD: I have no further witnesses to call.</p> <p>6 HEARING EXAMINER GROSSMAN: Okay.</p> <p>7 MS. GIRARD: We were going to recall Patrick Phillips.</p> <p>8 HEARING EXAMINER GROSSMAN: Okay. Is Mr. Phillips your</p> <p>9 last rebuttal?</p> <p>10 MS. GIRARD: As far as I know. I'm going to flip</p> <p>11 through my notes while he is starting to talk.</p> <p>12 HEARING EXAMINER GROSSMAN: Welcome back Mr. Phillips.</p> <p>13 THE WITNESS: Thank you. State your full name for the</p> <p>14 record, please?</p> <p>15 THE WITNESS: Yes, it's Patrick L. Phillips,</p> <p>16 P-H-I-L-L-I-P-S.</p> <p>17 HEARING EXAMINER GROSSMAN: All right. And you are</p> <p>18 still under oath from your last testimony.</p> <p>19 MS. GIRARD: And Mr. Phillips, you've been present this</p> <p>20 morning for a couple of points, but particularly with regard</p> <p>21 to the TAP study done by ULN, how that impacts or doesn't</p> <p>22 impact your interpretation of what a mixed-use building is.</p> <p>23 Can you speak to that?</p> <p>24 THE WITNESS: Sure. I think the definitional issue has</p> <p>25 been a little bit misinterpreted. In my memorandum report</p>
<p>202</p> <p>1 jurisdiction we do or do not allow you to jump over the</p> <p>2 double yellow?</p> <p>3 MR. BIDDLE: They will allow it, but in some you can go</p> <p>4 take up the whole width of the road.</p> <p>5 HEARING EXAMINER GROSSMAN: I see. Okay.</p> <p>6 MR. BIDDLE: And in some you may have to jump over</p> <p>7 curbs for certain maneuvers. Special permit loads, that kind</p> <p>8 of stuff.</p> <p>9 HEARING EXAMINER GROSSMAN: All right.</p> <p>10 MS. GIRARD: And I'm not sure if you saw it, but in the</p> <p>11 Applicant's proffered conditions as submitted last week, are</p> <p>12 you aware of the Applicant agreed to a restriction on WB-40s</p> <p>13 accessing the property?</p> <p>14 MR. BIDDLE: I know we talked about it last time. But I</p> <p>15 didn't know that was proffered.</p> <p>16 MS. GIRARD: Okay. So although they may be could go</p> <p>17 through that, that's not what's contemplated. And as far as</p> <p>18 you know, SU-30?</p> <p>19 MR. BIDDLE: Uh-huh. That's a standard -</p> <p>20 MS. GIRARD: SU-30 is the largest vehicle that would be</p> <p>21 accessing this property. And in your opinion, this exhibit</p> <p>22 would show that it can operate safe and efficiently</p> <p>23 throughout the property?</p> <p>24 MR. BIDDLE: Yes. Uh-huh.</p> <p>25 MS. GIRARD: That's all I had.</p>	<p>204</p> <p>1 which is an exhibit in the record, I point out that the old</p> <p>2 definition that ULN posited back in 1976 and it's a very</p> <p>3 strict definition. It's very difficult to meet these days.</p> <p>4 It's three or more uses - revenue producing uses that are</p> <p>5 functionally and economically integrated, and that coherent</p> <p>6 to a plan.</p> <p>7 And then I said, you know, even under that very strict</p> <p>8 definition, this project. But in practice, what's called</p> <p>9 mixed use these days is most often an office building, or a</p> <p>10 residential building with retail or restaurants, or some</p> <p>11 combination at the ground level. So the parlance has evolved</p> <p>12 over the last 40 years to include projects like the ones</p> <p>13 described in the sector plan as well as, in my view, this</p> <p>14 particular project that the Applicant has proposed.</p> <p>15 So I think the discussion around the definition is</p> <p>16 somewhat beside the point. But I would strongly make the</p> <p>17 argument that proposed project, which consists of three</p> <p>18 revenue producing uses that are physically and economically</p> <p>19 integrated in a coherent plan actually is a mixed-use</p> <p>20 project.</p> <p>21 MS. GIRARD: And -</p> <p>22 THE WITNESS: By either definition, the older or the</p> <p>23 newer one.</p> <p>24 MS. GIRARD: Right. And you have seen the TAP report</p> <p>25 that was cited to this morning?</p>

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<p>205</p> <p>1 THE WITNESS: I have.</p> <p>2 MS. GIRARD: And are you aware of any language in the</p> <p>3 sector plan that defines mixed use in that same way, or -</p> <p>4 THE WITNESS: I'm not. I mean, I think it's implicit,</p> <p>5 probably largely. As I acknowledge in my memorandum report,</p> <p>6 but I think that the sector plan is, as it should be, largely</p> <p>7 agnostic as to use. I think there is a presumption,</p> <p>8 particularly for a lay audience reading the sector plan that</p> <p>9 we're talking about apartment or condominium buildings or</p> <p>10 office buildings with ground floor retail. Because that's</p> <p>11 typically what we see around the region and we think of as</p> <p>12 mixed use.</p> <p>13 The sector plan and the ULI TAP study don't</p> <p>14 specifically address the question of whether the combination</p> <p>15 is being proposed here is, in fact, mixed use.</p> <p>16 MS. GIRARD: And just reiterating, perhaps from your</p> <p>17 earlier testimony, and in your opinion, does the self-storage</p> <p>18 use present a finding of sector plan compliance in this case?</p> <p>19 THE WITNESS: I'm sorry. Could you restate it?</p> <p>20 MS. GIRARD: In your opinion has somewhat best</p> <p>21 testified to by the Town, does the self-storage use itself</p> <p>22 preclude a finding of sector plan compliance?</p> <p>23 THE WITNESS: No. I don't believe it does. I think the</p> <p>24 key here is that the - is the economic integration of this</p> <p>25 project. And that is that, as I previously testified, it's</p>	<p>207</p> <p>1 mixed use.</p> <p>2 THE WITNESS: I would interpret that as a nonexclusive</p> <p>3 definition. I think that the examples that they give are</p> <p>4 certainly mixed use. I think there are others. What about a</p> <p>5 hotel for example? Would that be considered mixed use? I</p> <p>6 think it would. I similarly think that a self-storage</p> <p>7 facility with ground floor retail would be considered a</p> <p>8 mixed-use legitimately.</p> <p>9 HEARING EXAMINER GROSSMAN: Well, I don't know about</p> <p>10 that analogy because the hotel, of course, provides lots of</p> <p>11 people going in and out, where the problem that's been raised</p> <p>12 here is the question of whether or not the storage facility,</p> <p>13 the 89 to 90 percent of this property would provide</p> <p>14 sufficient activation. And once again, the concern that I</p> <p>15 have is in interpreting the sector plan and what was meant in</p> <p>16 the sector plan.</p> <p>17 Doesn't this language upon which the testimony by the</p> <p>18 officials of the town of Kensington, this language having</p> <p>19 been relied upon and their concept of mixed use and helping</p> <p>20 to design the sector plan, isn't that - doesn't that tell me</p> <p>21 about what was in the planners' heads in terms of what they</p> <p>22 considered mixed use? That is ground floor retail plus office</p> <p>23 and/or residential above?</p> <p>24 THE WITNESS: Yes. I think that those are certainly the</p> <p>25 town has in mind again, at the time, I think that the sector</p>
<p>206</p> <p>1 the cash flow from the self-storage that enables those uses</p> <p>2 that are highly desirable from the standpoint of the sector</p> <p>3 plan. Specifically the arts uses and the restaurant.</p> <p>4 MS. GIRARD: And in your opinion does that go so far as</p> <p>5 to also include the physical improvements including the -</p> <p>6 THE WITNESS: Oh yeah. Yeah.</p> <p>7 MS. GIRARD: - public plaza and -</p> <p>8 THE WITNESS: Yeah, exactly. I think those additional</p> <p>9 costs incurred by the developer would be harder to support</p> <p>10 without that additional revenue.</p> <p>11 MS. GIRARD: Okay. And with regard to - you were here</p> <p>12 for the testimony regarding inherent and non-inherent -</p> <p>13 HEARING EXAMINER GROSSMAN: Before you get into that</p> <p>14 can we address the mixed use - I understand your testimony</p> <p>15 that mixed use is not defined in the sector plan and it's</p> <p>16 somewhat flexible concept if I understand it that's evolved</p> <p>17 somewhat. But I want to give you an opportunity to address a</p> <p>18 concern that I have and I think the reason why it was raised</p> <p>19 the way it was by the opposition here is that in the ULI's</p> <p>20 Technical Assistance Panel Report sponsored by the Town of</p> <p>21 Kensington and going towards the -</p> <p>22 How they were going to revise their sector plan, mixed</p> <p>23 use is referred to as ground floor retail. And then office</p> <p>24 and/or residential above. But you would agree that by that</p> <p>25 definition of mixed use this proposal does not - is not a</p>	<p>208</p> <p>1 plan was produced certainly at the time of the ULI TAP a</p> <p>2 combination of self-storage and his other ground floor uses,</p> <p>3 arts and restaurants wasn't anticipated. I think as I</p> <p>4 testified in my - in the previous hearing, the self-storage</p> <p>5 industry has evolved in a way that they are seeking much more</p> <p>6 urban locations and they're having to come up with new</p> <p>7 solutions. I think this is a good example of that.</p> <p>8 The TAP report makes the point that this is a long-term</p> <p>9 view of the development of downtown Kensington and that the</p> <p>10 town should anticipate shifts in the marketplace. And I think</p> <p>11 this is an example of that. I think that, you know, there's</p> <p>12 two ways to activate this corner in this part of downtown</p> <p>13 Kensington. One is to generate new residence and employees.</p> <p>14 And it obviously would do that if you had an apartment</p> <p>15 building or an office building, or a hotel. And that spending</p> <p>16 power and activity, those people would subsequently, one</p> <p>17 hopes, generate opportunities for restaurants and retail.</p> <p>18 The other approach is to create a new destination for</p> <p>19 people who already live or work in the area. Or who may be</p> <p>20 attracted to the area in the future. And I think that's what</p> <p>21 this project does. It's the latter strategy. They're both</p> <p>22 legitimate. I see fundamental physical and economic</p> <p>23 challenges to first option on this particular site.</p> <p>24 HEARING EXAMINER GROSSMAN: Yeah. I'm not - I mean I</p> <p>25 think those are important considerations. But one of my</p>

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<p style="text-align: right;">209</p> <p>1 focuses and maybe my main focus has to be interpreting the 2 sector plan. And so that's why I have concerns or at least 3 have to give my attention to the fact that the Town of 4 Kensington was relying on something by the Urban Land 5 Institute in terms of what a mixed use was when they framed, 6 or attempted to - contributed to framing the sector plan. And 7 so that's why I wanted to give you an opportunity to respond 8 to it.</p> <p>9 That whether or not it's sensible to limit themselves 10 in that way, which is what you're in effect saying, that it's 11 not sensible to have that kind of a limit is another 12 question. But one of the questions I have to decide is what 13 did they mean by the sector plan because that's what I'm 14 applying.</p> <p>15 Okay. Have you got other questions?</p> <p>16 MS. GIRARD: Just a follow-up to that. Mr. Phillips, 17 because you cited to the ULI definition from 1979, and this 18 is a ULI endorsed, for a better term, document, I mean do you 19 agree with the interpretation that the document was meant to 20 redefine, or recast what ULI otherwise considered to be a 21 mixed use?</p> <p>22 THE WITNESS: Well, I think it recognize the reality of 23 the industry that in most cases when we think about mixed use 24 and trying to characterize mixed-use, it's that combination 25 of uses that they proposed. You know, I'm sort of a stickler</p>	<p style="text-align: right;">211</p> <p>1 revenue which is the new use that you are referencing? When I 2 asked that question -</p> <p>3 MR. PHILLIPS: I can clarify. I'm thinking of the old 4 one from the 1970s as the very restrictive and hard to meet 5 one, which is three revenue producing uses integrated in such 6 a way that -</p> <p>7 HEARING EXAMINER GROSSMAN: Right.</p> <p>8 MR. PHILLIPS: And the newer one, I think the reality 9 of the way development has evolved, the way we think about 10 this using common language, and mixed-use tends to be either 11 residential or commercial buildings that have restaurants or 12 ground for retailers or some combination.</p> <p>13 HEARING EXAMINER GROSSMAN: Okay.</p> <p>14 MS. GIRARD: And when you refer to newer one, are you 15 saying the newer definition or the newer understanding? Or 16 both?</p> <p>17 MR. PHILLIPS: I think both, yeah. If you look at the 18 definition of mixed-use, you will find any number of 19 definitions. So it's really more about the understanding of 20 it. But I would say - I would suggest that the evolution of 21 the self-storage industry currently suggests that in 5 or 10 22 years, we will be thinking about self-storage with ground 23 floor retail and restaurants as mixed-use. Certainly the 24 industry itself is characterizing it that way now.</p> <p>25 MS. GIRARD: Okay. And we also heard testimony this</p>
<p style="text-align: right;">210</p> <p>1 for the older definition, but I recognize that things change 2 and things evolve. And so I think we all know what they 3 meant, which was a culmination of uses again, that can 4 activate the ground floor, that can generate pedestrian 5 activity, they can serve as a destination, that can change 6 the image of downtown Kensington.</p> <p>7 MS. GIRARD: So in that way it was more - are you 8 saying it's more a reference to what, at the time, was more, 9 you know -</p> <p>10 MR. PHILLIPS: If you -</p> <p>11 MS. GIRARD: Commonly understood to be mixed-use?</p> <p>12 MR. PHILLIPS: The older definition and the -</p> <p>13 MS. GIRARD: The newer one.</p> <p>14 MR. PHILLIPS: Yeah, I think it's a recognition 15 of - that's what we mean when we think about mixed-use these 16 days.</p> <p>17 MS. GIRARD: And that's what we met at the time of 18 2008?</p> <p>19 MR. PHILLIPS: Yeah. I would suggest.</p> <p>20 HEARING EXAMINER GROSSMAN: For my review we've had 21 three different ones here. So I'm not sure what you mean by 22 the newer one. Are you referring to the one that is suggested 23 in the technical assistance panel report? Or are you talking 24 about one you suggested in the testimony the last time? 25 Essentially, any two uses that - two or three uses that raise</p>	<p style="text-align: right;">212</p> <p>1 morning, this afternoon, whatever it is, about inherent, non- 2 inherent, adverse impact. I don't believe you covered that in 3 your independent analysis, but did you review what was 4 characterized as the non—or the inherent adverse impacts in 5 this statement of justification that's included, the amended 6 one, well, all of them, but 19 of the amended one that is -</p> <p>7 HEARING EXAMINER GROSSMAN: 99-E? You are talking about 8 your revised (crosstalk) -</p> <p>9 MS. GIRARD: Yes, 99-E. And as a professional planner, 10 do you agree with that analysis which what you have thoughts 11 on what was -</p> <p>12 MR. PHILLIPS: Yes, I have. I think that the 13 inherent - the inherent impacts that are identified in the 14 statement are certainly present at some level. I think the 15 configuration of the site in the design of the buildings in 16 the parking and loading mitigate those impacts to the extent 17 possible. In terms of non-inherent impacts, I think I 18 testified last time around, that I thought this was a 19 significant improvement over the status quo with respect to 20 its impact on the neighborhood.</p> <p>21 I see that the neighborhood that we've been discussing 22 in detail with respect to along Metropolitan, as a 23 neighborhood that is - will clearly undergo some longer-term 24 transition here. But I don't see any non-inherent adverse 25 impacts on that particular neighborhood as a result of this</p>

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<p style="text-align: right;">213</p> <p>1 project.</p> <p>2 MS. GIRARD: And so do you agree or not agree with Mr.</p> <p>3 Bartram's testimony about the adjacent easement being a</p> <p>4 adverse -</p> <p>5 MR. PHILLIPS: I have found - I agree that the</p> <p>6 voluntary nature of the easement, participation of the</p> <p>7 adjacent landowners suggests to me that there is probably a</p> <p>8 beneficial impact on that property. Longer-term, this entire</p> <p>9 corner could conceivably be redeveloped and that easement</p> <p>10 would be renegotiated. So there's a malleable things.</p> <p>11 MS. GIRARD: Okay. That's all I have.</p> <p>12 HEARING EXAMINER GROSSMAN: Any cross exam?</p> <p>13 MS. ROSENFELD: Yes. With respect to the easement and</p> <p>14 it being renegotiated, the easement is not simply a contract</p> <p>15 between two parties. In this particular case it is proffered</p> <p>16 as a condition of approval under proposed condition number</p> <p>17 eight. And so in order for that easement to be relocated or</p> <p>18 extinguished, it would require the approval of the Hearing</p> <p>19 Examiner or the Board of Appeals.</p> <p>20 In that respect, let's assume for a moment at that</p> <p>21 request were denied with that potentially become an</p> <p>22 impediment to the way, or whether the adjoining property</p> <p>23 could be developed?</p> <p>24 MR. PHILLIPS: Yes, but there are so many of the</p> <p>25 contingencies involved in that kind of process as well. And</p>	<p style="text-align: right;">215</p> <p>1 provide the town citizens and officials with a market-based,</p> <p>2 'outsider's perspective,' albeit one informed by both</p> <p>3 presentations and numerous one-on-one discussions with town</p> <p>4 residents, elected officials, and stakeholders of the types</p> <p>5 of redevelopment that may be foster by the new sector plan in</p> <p>6 order to attract new business and revenue and to create a</p> <p>7 vibrant mixed-use community for residents and visitors."</p> <p>8 And the section below that is titled, market potential.</p> <p>9 And it talks about four different types of uses; smaller</p> <p>10 scale retail, professional or medical office, limited service</p> <p>11 hotel, and 1,600 additional multi-family units. And there was</p> <p>12 a note that says, "this figure assumes the current or</p> <p>13 projected population of the town over long-term period,</p> <p>14 example 20 years, will gradually transition from a 97 to 3</p> <p>15 percent ratio of single-family residential to multi-family</p> <p>16 residential, to an 80-20 ratio."</p> <p>17 As a land planner reading those categories, do any of</p> <p>18 those categories suggests you a self-storage facility?</p> <p>19 MR. PHILLIPS: No, they don't address that.</p> <p>20 MS. ROSENFELD: Okay. Reading this executive summary as</p> <p>21 a whole, is it reasonable to read this as saying that the</p> <p>22 types of uses here are the types of uses that are being</p> <p>23 suggested or recommended to create a vibrant mixed-use</p> <p>24 community for residents and visitors?</p> <p>25 MR. PHILLIPS: I think when having served on many of</p>
<p style="text-align: right;">214</p> <p>1 it would be one of those.</p> <p>2 MS. ROSENFELD: Well, I - but I'm talking about this</p> <p>3 specific contingency. For example, right now this project</p> <p>4 depends on ingress and egress to Metropolitan Avenue through</p> <p>5 the adjoining property. That could not be extinguished</p> <p>6 without the approval of a regulatory body. Would that be a</p> <p>7 potential impediment to how or whether the adjoining parcel</p> <p>8 can redevelop?</p> <p>9 MR. PHILLIPS: A potential impediment? Yes, but I don't</p> <p>10 think it would preclude the redevelopment.</p> <p>11 MS. ROSENFELD: Returning for a moment to the ULI</p> <p>12 report.</p> <p>13 HEARING EXAMINER GROSSMAN: Exhibit 113?</p> <p>14 MS. ROSENFELD: Exhibit 113. And Mr. Grossman, I</p> <p>15 proffered that the town had paid \$12,000 to ULI for this</p> <p>16 report. I would submit that -</p> <p>17 HEARING EXAMINER GROSSMAN: That's not really relevant</p> <p>18 to anything.</p> <p>19 MS. ROSENFELD: I don't know if it's germane or not.</p> <p>20 Okay. I'm just proffering it.</p> <p>21 Do you have the report in front of you, the UIL report?</p> <p>22 MR. PHILLIPS: I do, yes.</p> <p>23 MS. ROSENFELD: Okay. If we turn to page 13, under the</p> <p>24 executive summary, the panel's recommendation, the second</p> <p>25 full sentence says, "it is the panel's hope that it can</p>	<p style="text-align: right;">216</p> <p>1 these panels over the years, when you come in with a group</p> <p>2 with a very limited amount of time and a small budget, you</p> <p>3 need to initially establish, okay, what's the envelope of</p> <p>4 support and development that we have to deal with here and</p> <p>5 then move on to questions about how to replace it, how we</p> <p>6 make it happen, and so forth.</p> <p>7 So I think this is - this is an educated guess as to</p> <p>8 the viability and the quantity. Although they don't specify</p> <p>9 the time that's the economists the secret. You know, you</p> <p>10 never make a forecast that includes both a quantity and a</p> <p>11 timeframe because then you will be held to it. There's no</p> <p>12 timeframe on this, but I think that's what they were doing</p> <p>13 here.</p> <p>14 It wasn't comprehensive. It didn't address a number of</p> <p>15 uses, institutional uses for example. But it serves as a</p> <p>16 baseline for them to move forward with their planning and</p> <p>17 recommendations. I think that's what is.</p> <p>18 MS. ROSENFELD: Okay. I have no further questions.</p> <p>19 HEARING EXAMINER GROSSMAN: Any redirect?</p> <p>20 MS. GIRARD: Just one question.</p> <p>21 So the TAP was done in 2008?</p> <p>22 MR. PHILLIPS: Yeah.</p> <p>23 MS. GIRARD: Is that correct?</p> <p>24 MR. PHILLIPS: Yeah.</p> <p>25 HEARING EXAMINER GROSSMAN: And by the tap you mean</p>

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<p>217</p> <p>1 this technical assistance final report?</p> <p>2 MS. GIRARD: Yes.</p> <p>3 And as you noted was self-storage in this type of</p> <p>4 setting contemplated generally back in 2008?</p> <p>5 MR. PHILLIPS: No, this is a fairly recent trend in the</p> <p>6 industry.</p> <p>7 MS. GIRARD: That's all.</p> <p>8 HEARING EXAMINER GROSSMAN: Any re-cross has said that</p> <p>9 one question?</p> <p>10 MS. ROSENFELD: You continue to reference the trend in</p> <p>11 the self-storage industry.</p> <p>12 MR. PHILLIPS: Right.</p> <p>13 MS. ROSENFELD: What is being discussed here though, is</p> <p>14 the appropriate mix of uses in a mixed-use project in</p> <p>15 Kensington on this property. Where in the sector plan, or the</p> <p>16 ULI report, or the zoning code, do you see a basis for</p> <p>17 suggesting that the self-storage use component of this</p> <p>18 complies with this sector plan?</p> <p>19 MR. PHILLIPS: Well again, I think you have to look at</p> <p>20 the self-storage use component of this in the context of the</p> <p>21 integrated project on this particular location. And I think</p> <p>22 that the recommendations of both of the ULI report as well as</p> <p>23 a sector plan talk about activating the street, talk about</p> <p>24 generating an identity and image that's different than what</p> <p>25 we see today. And I think this project does that. Self-</p>	<p>219</p> <p>1 HEARING EXAMINER GROSSMAN: I'm pretty flexible. I</p> <p>2 mean, I don't want proposed findings of fact and conclusions</p> <p>3 or law, or anything like that.</p> <p>4 MS. GIRARD: I'm not suggesting that.</p> <p>5 HEARING EXAMINER GROSSMAN: But if you want to make a</p> <p>6 closing argument in written form, that's fine.</p> <p>7 MS. GIRARD: Yeah.</p> <p>8 MS. ROSENFELD: To be submitted on the last day, the</p> <p>9 16th I think it was?</p> <p>10 HEARING EXAMINER GROSSMAN: That's agreeable with me.</p> <p>11 MS. GIRARD: That is with me too. Then we can kind of</p> <p>12 collect everything in a final statement.</p> <p>13 MS. ROSENFELD: Right, because we're still waiting for</p> <p>14 information until then.</p> <p>15 HEARING EXAMINER GROSSMAN: Okay. So now we have, on</p> <p>16 September 10, technical staffs' responses to the amended</p> <p>17 application, the portions that were amended. And I spoke to</p> <p>18 Ms. Tellebaum during the break and she understands that staff</p> <p>19 will respond by the 10th. By September 13, applicants</p> <p>20 response to any staff comments by September 16. Opposition to</p> <p>21 response to all of this and then also written closing</p> <p>22 arguments by both sides by the 16th. And the record will</p> <p>23 close on the 16th at the close of business. That's agreeable</p> <p>24 with everybody?</p> <p>25 MS. GIRARD: Yes, that's agreeable.</p>
<p>218</p> <p>1 storage is the mechanism, particularly the economic mechanism</p> <p>2 that enables them.</p> <p>3 MS. ROSENFELD: I've no further questions.</p> <p>4 HEARING EXAMINER GROSSMAN: Okay, thank you, sir.</p> <p>5 MR. PHILLIPS: Thank you.</p> <p>6 HEARING EXAMINER GROSSMAN: I appreciate you returning</p> <p>7 and further educating.</p> <p>8 MR. PHILLIPS: My pleasure.</p> <p>9 HEARING EXAMINER GROSSMAN: All right. So we are</p> <p>10 finished with our witnesses. And you wish to make a closing</p> <p>11 statement? Or arguments, I guess we could call it?</p> <p>12 MS. GIRARD: I was going to suggest, and I actually</p> <p>13 haven't run this by Ms. Rosenfeld so she could scream and</p> <p>14 tell me I'm crazy, I think giving all of the issues in the</p> <p>15 case and all the questions the Hearing Examiner raise, I</p> <p>16 would suggest perhaps a written closing statement would be</p> <p>17 more appropriate.</p> <p>18 MS. ROSENFELD: Well, could we -</p> <p>19 MS. GIRARD: I just don't want to bounce all over the</p> <p>20 place on some of the issues. But I will defer to -</p> <p>21 HEARING EXAMINER GROSSMAN: What's your preference?</p> <p>22 MS. ROSENFELD: I happily accept that suggestion.</p> <p>23 HEARING EXAMINER GROSSMAN: Okay, two happy attorneys</p> <p>24 at one time. That's amazing.</p> <p>25 MS. GIRARD: Hopefully you agree.</p>	<p>220</p> <p>1 HEARING EXAMINER GROSSMAN: Okay. Do we have anything</p> <p>2 further that we need to address before we adjourn?</p> <p>3 MS. GIRARD: I don't think so.</p> <p>4 HEARING EXAMINER GROSSMAN: Anybody?</p> <p>5 MS. ROSENFELD: Not from the Town's point of view.</p> <p>6 HEARING EXAMINER GROSSMAN: All right. I want to thank,</p> <p>7 first of all, all of the community members for their</p> <p>8 participation. I want to thank the witnesses and counsel for</p> <p>9 their excellent - on both sides, for their excellent</p> <p>10 presentation for their opposite points of view. Thank you.</p> <p>11 MS. ROSENFELD: Thank you.</p> <p>12 MS. GIRARD: Thank you.</p> <p>13 HEARING EXAMINER GROSSMAN: And the Town of Kensington.</p> <p>14 All right. We are adjourned.</p> <p>15 Before we adjourned theoretically I realized that I had</p> <p>16 not asked whether or not anybody wants to move the exhibits</p> <p>17 into evidence. So I offer you that opportunity now.</p> <p>18 MS. GIRARD: Sure, I will move all of the exhibits into</p> <p>19 the record.</p> <p>20 HEARING EXAMINER GROSSMAN: Any objection.</p> <p>21 MS. ROSENFELD: No, objection.</p> <p>22 HEARING EXAMINER GROSSMAN: Okay. All the exhibits and</p> <p>23 that is, right now, 1 through 114 and their subparts will be</p> <p>24 admitted and I will also admit the additional statements that</p> <p>25 will be filed, which don't have numbers yet that the</p>

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1 response to the -- by the technical staff to the August f28,
2 2018 amendments to the application. The Applicant's response
3 to staff's comments. The opposition's response to staff and
4 to the Applicant's comments, and the written closing
5 arguments that all will be filed on September 16, 2019. All
6 will be admitted.

7 MS. ROSENFELD: Thank you.

8 MS. GIRARD: Thank you.

9 HEARING EXAMINER GROSSMAN: Thank you. Sorry about the
10 little glitch.


11 MS. GIRARD: That's okay. We're just glad that we were
12 both still here.

13 (Off the record at 3:52 p.m.)

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1 CERTIFICATE OF TRANSCRIBER

2 I, Molly Bugher, do hereby certify that the foregoing
3 transcript is a true and correct record of the recorded
4 proceedings; that said proceedings were transcribed to the
5 best of my ability from the audio recording and supporting
6 information; and that I am neither counsel for, related to,
7 nor employed by any of the parties to this case and have no
8 interest, financial or otherwise, in its outcome.

9
10 

11 _____
12 Molly Bugher

13 DATE: September 5, 2019