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Transcript of Hearing

Date: October 30, 2020

Case: Flournoy Dev't Group

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Conducted on October 30, 2020

1 (1 to 4)

1	3
1 OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS	1 C O N T E N T S
2 FOR MONTGOMERY COUNTY, MARYLAND	2 PAGE
3 -----x	3 OPENING STATEMENTS 5
4 In Re: : Case No. CU 29-09	4 TESTIMONY OF KENNETH JONES 15
5 FLOURNOY DEVELOPMENT GROUP :	5 TESTIMONY OF BRIAN CONNELLY 57
6 -----x	6 TESTIMONY OF COLLEEN BOWERS 69
7	7 TESTIMONY OF JANET MEYER 85
8 HEARING	8 TESTIMONY OF KATHERINE WAGNER 112
9 Derek Baumgartner, Hearing Examiner	9 TESTIMONY OF CHARLIE SABIN 119
10 Held Virtually	10 TESTIMONY OF PANKAJ SHUKLA 127
11 Friday, October 30, 2020	11 TESTIMONY OF MATHEW JACOB 133
12 9:37 a.m.	12 CLOSING STATEMENT 138
13	13
14	14 E X H I B I T S
15	15 EXHIBIT DESCRIPTION PAGE
16	16 Exhibit 5-A Resume Kenneth Jones 15
17	17 Exhibit 5-C Resume Colleen Bowers 69
18	18 Exhibit 5-D Resume Meyers 86
19	19 Exhibit 5-F Resume Wagner 113
20	20 Exhibit 10 Traffic Statement 115
21	21 Exhibit 12-G Plans 89
22	22 Exhibit 13-A Stormwater Management 41
23 Job: 332722	23 Exhibit 26-A Resume Charlie Sabin 120
24 Pages: 1 - 143	24 Exhibit 28 Conditional Use Plan 22
25 Transcribed by: Molly Bugher	25 Exhibit 29 Utility Plan 32

2	4
1 A P P E A R A N C E S	1 E X H I B I T S
2 ON BEHALF OF APPLICANT, FLOURNOY DEVELOPMENT GROUP:	2 (Continued)
3 CASEY CIRNER, ESQUIRE	3 EXHIBIT DESCRIPTION PAGE
4 MILES & STOCKBRIDGE	4 Exhibit 30-C Photometric Plan 92
5 11 N. Washington Street	5 Exhibit 31-A/B Stormwater plans 39
6 Suite 700	6 Exhibit 33 Stormwater Concept Plan 42
7 Rockville, Maryland 20850-4229	7 Exhibit 34 Fire Access Plan 46
8 Phone: (301) 762-1600	8 Exhibit 35 Fire Access 30
9	9 Exhibit 38 Photos 52
10	10 Exhibit 42 Renderings 135
11	11 Exhibit 43 Drainage Study 40
12	12
13	13
14	14
15	15
16	16
17	17
18	18
19	19
20	20
21	21
22	22
23	23
24	24
25	25

Transcript of Hearing
Conducted on October 30, 2020

2 (5 to 8)

5	7
<p>1 P R O C E E D I N G S</p> <p>2 HEARING EXAMINER BAUMGARDNER: We are -- it is October</p> <p>3 30th this is the Montgomery County Office of Zoning and</p> <p>4 Administrative Hearings. This is a public hearing and we</p> <p>5 are going to be hearing case number CU 20-09 requesting a</p> <p>6 conditional use for a residential care facility for over 16</p> <p>7 persons. The property in question is located at 19115</p> <p>8 Liberty Mill Road in Germantown, Maryland located in</p> <p>9 Montgomery County.</p> <p>10 This session is being recorded. We also have a court</p> <p>11 reporter on the line or on the call as well, so we have a</p> <p>12 double recording just to make sure that we pick up and if</p> <p>13 our recording fails, we have the court reporter, which is</p> <p>14 always important. We are -- my name is Derek Baumgardner,</p> <p>15 I am the hearing examiner for this case, which means that I</p> <p>16 will listen to you today, take evidence, and write a</p> <p>17 decision based upon the facts which are presented today.</p> <p>18 You may request an appeal of that decision to the board of</p> <p>19 appeals within 10 days of the date of that decision.</p> <p>20 As you by -- no doubt see we are using a virtual</p> <p>21 platform utilizing something called Microsoft Teams. If</p> <p>22 you have any questions about this platform, if you are</p> <p>23 having trouble with access, if you get kicked off and you</p> <p>24 need to get back on please give our office a call at</p> <p>25 (240) 777-6663, again that's (240) 777-6663. You can also</p>	<p>1 once, you raise your hand, if you click it a second time,</p> <p>2 you lower your hand. If you do use that feature you raise</p> <p>3 your hand, you ask your question, you make your objection,</p> <p>4 and I address that, please remember to then lower your</p> <p>5 hand, otherwise I don't know if I've taken care of that</p> <p>6 question or if you have another question that's come up as</p> <p>7 a result of that exchange.</p> <p>8 The chat feature in Microsoft Teams has been disabled,</p> <p>9 so there is no way for anyone to communicate with me, and</p> <p>10 there is no way for other participants on the public</p> <p>11 hearing to communicate with each other on the Microsoft</p> <p>12 Teams platform. We do that so we don't run afoul of the</p> <p>13 ex-parte communication rules in Montgomery County, and</p> <p>14 because it's just fair to all parties that there is no</p> <p>15 conversations going on behind the scenes at all.</p> <p>16 During the hearing please avoid cross-talk, so both</p> <p>17 for the recording and for the benefit of the court</p> <p>18 reporter, we will have a general procedure that we're going</p> <p>19 to follow when folks cross-talk or you anticipate a</p> <p>20 question, or you anticipate an answer, and you have two</p> <p>21 people talking, it makes it very difficult for the court</p> <p>22 reporter and everyone else on the session to be able to</p> <p>23 understand who's speaking, so please avoid doing that.</p> <p>24 All parties who are interested in giving testimony</p> <p>25 today will be given that opportunity, so don't feel the</p>
6	8
<p>1 go to our website at</p> <p>2 www.montgomerycountymd.gov/OZAH/virtual-meeting.html</p> <p>3 Just to go over a couple of ground rules for virtual</p> <p>4 hearings. Number one, please mute yourselves when you are</p> <p>5 not providing testimony or giving any evidence or speaking.</p> <p>6 We have been using something in Microsoft Teams called the</p> <p>7 "raise your hand feature" which is a way to virtually raise</p> <p>8 your hand if you have an objection to testimony, if you</p> <p>9 have a question, if there is something that you need to</p> <p>10 bring to my attention. I will do my best to be able to</p> <p>11 look at the screen and to be able to look at all of you</p> <p>12 during the hearing, but if you're off screen, if you click</p> <p>13 on that "raise your hand" feature it alerts me that there</p> <p>14 is some issue or some question.</p> <p>15 To operate the "raise your hand" feature there are two</p> <p>16 methods. If you put your cursor towards the middle bottom</p> <p>17 of your screen, a toolbar will pop up, there will be an</p> <p>18 image or a figure of a small hand, you click on that to</p> <p>19 raise your hand, you click on it a second time to lower</p> <p>20 your hand. Also on that toolbar will be an option that</p> <p>21 says "show participants" if you click on that, you will</p> <p>22 have on the right-hand side of your screen you will have a</p> <p>23 list of everyone participating in today's hearing, if you</p> <p>24 find your name there should also be that little hand to the</p> <p>25 right of your name, same thing applies, if you click that</p>	<p>1 need to jump in, because you feel like you're not going to</p> <p>2 be heard. if you would like to be heard, you will be given</p> <p>3 that opportunity.</p> <p>4 Can the parties please identify themselves for the</p> <p>5 record.</p> <p>6 MS. CIRNER: Yes, good morning Casey Cirner with Miles</p> <p>7 & Stockbridge on behalf of the Applicant, Flournoy</p> <p>8 Development Group, LLC. and I can introduce the rest of</p> <p>9 the Applicant's team. We have in the order I intend to</p> <p>10 call them as witnesses, however, if you have a different</p> <p>11 preference I'm happy to reorganize that order.</p> <p>12 So first would be Ken Jones, a civil engineer with</p> <p>13 Macris, Hendricks & Glasscock.</p> <p>14 Brian Donnelly is also with us, also with Macris,</p> <p>15 Hendricks & Glasscock, he is our expert in landscape</p> <p>16 architecture site planning, site engineering, and site</p> <p>17 design.</p> <p>18 Colleen Bowers also with MHG, she's a professional</p> <p>19 landscape architect expert.</p> <p>20 Janet Meyer, a registered architect with BCT</p> <p>21 Architects is with us.</p> <p>22 Katie Wagner, professional traffic engineer with</p> <p>23 Grove, Slade; and Charlie Sabin the Director of Senior</p> <p>24 Housing Development for the Applicant.</p> <p>25 MR. SABIN: Good morning.</p>

Transcript of Hearing
Conducted on October 30, 2020

3 (9 to 12)

9	11
<p>1 HEARING EXAMINER BAUMGARDNER: Thank you all very much</p> <p>2 for being here, and thank you, Counsel. Are there -- it</p> <p>3 looks like we have the Affidavit of posting for this</p> <p>4 conditional use in the file, so that is good,</p> <p>5 MS. CIRNER: Thank you</p> <p>6 HEARING EXAMINER BAUMGARDNER: I am also going to have</p> <p>7 the exhibits up here on my screen. Counsel or anyone else,</p> <p>8 if you would like me to share those documents with everyone</p> <p>9 else, please let me know, and I can pull that up and share</p> <p>10 those exhibits just as if we were in an in-person hearing.</p> <p>11 The nature -- the way that we're going to proceed here</p> <p>12 today, is that all witnesses will be put under oath, their</p> <p>13 -- the general procedure will be there will be counsel will</p> <p>14 be giving an opening statement if they wish to give one.</p> <p>15 The Applicant will then put on their case in chief of their</p> <p>16 conditional use, any of their witnesses are open to cross</p> <p>17 examination, if anyone has any questions of those</p> <p>18 witnesses.</p> <p>19 I would advise that cross examination is merely for</p> <p>20 questions of those witnesses, it is not the opportunity for</p> <p>21 you to testify, if there are folks in the community that</p> <p>22 would like to testify, then we will hear from any community</p> <p>23 members, either in opposition or in support of the project.</p> <p>24 We will then turn it back to the Applicant to make any</p> <p>25 closing remarks if they wish to do so. Are there any</p>	<p>1 issues, we have provided you with a statement of concern</p> <p>2 about some of the items that we would, we hope that will</p> <p>3 get addressed as part of this hearing and as part of the</p> <p>4 project. We will come to that statement, as even when you</p> <p>5 permit, but it is related to our concerns ourselves of the</p> <p>6 things that the destruction will you know, would</p> <p>7 potentially have some impact on our residence, and just</p> <p>8 wanted to make sure that those concerns are getting</p> <p>9 addressed.</p> <p>10 HEARING EXAMINER BAUMGARDNER: I understand, Mr.</p> <p>11 Jacob, did you have anything to add before we get started?</p> <p>12 MR. JACOB: No, no we put the affidavit together so</p> <p>13 you have that on record, so we will get to that when you</p> <p>14 let us do that.</p> <p>15 HEARING EXAMINER BAUMGARDNER: Great. Well thank you</p> <p>16 both very much. I have reviewed all the exhibits, that</p> <p>17 were submitted -- is anyone else hearing that feedback?</p> <p>18 Looks like it's stopped for now. Hopefully, that continues</p> <p>19 to not be an issue. so I have reviewed all the exhibits</p> <p>20 that were submitted for this case, including those exhibits</p> <p>21 that were submitted by the community members, I would like</p> <p>22 to, to commend the community members for really giving a</p> <p>23 very thorough and articulate and very reasonable set of</p> <p>24 questions, and I would ask counsel to address those during</p> <p>25 your presentation. I have them listed as site lighting,</p>
10	12
<p>1 preliminary matters that that anyone needs to bring to my</p> <p>2 attention before we get started?</p> <p>3 MR. SHUKLA: Good morning, sir, Mr. Baumgardner we</p> <p>4 were just trying to make sure we also introduce ourselves.</p> <p>5 My name is Pankaj Shukla, I live in a property -- along the</p> <p>6 proposed project, I live in 18923 Porterfield Way in</p> <p>7 Germantown.</p> <p>8 HEARING EXAMINER BAUMGARDNER: Okay, and we will, for</p> <p>9 the benefit of the court reporter, that gentleman is on the</p> <p>10 list for the participants list --</p> <p>11 MR. STODDARD: Good morning.</p> <p>12 HEARING EXAMINER BAUMGARDNER: And we will get to the</p> <p>13 community testimony at the close of the Applicant's case.</p> <p>14 Going through the list of folks, there is another hand</p> <p>15 raised for a Mr. Jacob?</p> <p>16 MR. JACOB: Yeah. Good morning, Mr. Baumgardner.</p> <p>17 This is Matthew Jacob. I live at 189214 Porterfield Way.</p> <p>18 I am Pankaj's neighbor, on the south side of the property.</p> <p>19 HEARING EXAMINER BAUMGARDNER: Thank you for joining</p> <p>20 us. Would either of the community members -- are you</p> <p>21 planning on testifying here today, or merely just listening</p> <p>22 in?</p> <p>23 MR. SHUKLA: Well, we have, you know, we have met with</p> <p>24 the, the Applicant, when they held their community meeting.</p> <p>25 We are very much in support of the project, but we have</p>	<p>1 the building lighting, the existing fence on a portion of</p> <p>2 the property, landscaping issues, the presence of a</p> <p>3 generator in the facility, and then any storm water</p> <p>4 management issues that might come up. So if can simply</p> <p>5 address those during your presentation that would be fine.</p> <p>6 I would advise counsel that you are welcome to get</p> <p>7 right to the point with your witnesses. I don't anticipate</p> <p>8 this hearing taking six hours, it would be great if we</p> <p>9 finished up by noon or so. I think we can get everything</p> <p>10 in that we need to get in by around 12:30, if we don't</p> <p>11 we'll take a break for lunch, but I will turn it over to</p> <p>12 the Applicant and their attorney to present their case in</p> <p>13 chief.</p> <p>14 MS. CIRNER: Good morning, thank you again, Casey</p> <p>15 Cirner with Miles & Stockbridge on behalf of the Applicant</p> <p>16 and we're very pleased to be here today to present this</p> <p>17 conditional use for a 125 bed residential care facility,</p> <p>18 that will serve and provide assisted-living as well as</p> <p>19 memory care. We introduced the Applicants team and we are</p> <p>20 in receipt of Mr. Shukla and Mr. Jacob's communication.</p> <p>21 And we do plan on addressing that through the testimony and</p> <p>22 I will try to ask as many narrative questions as possible</p> <p>23 and please feel free to hurry me along if you need.</p> <p>24 The Applicant has put a lot of thought and effort into</p> <p>25 this project, in the design and has solicited feedback and</p>

Transcript of Hearing
Conducted on October 30, 2020

4 (13 to 16)

<p style="text-align: right;">13</p> <p>1 incorporated that feedback from the private and public</p> <p>2 sectors into this application. As Mr. Shukla mentioned, we</p> <p>3 had a community meeting pre-covid, luckily, February 26th</p> <p>4 and we discussed some of their concerns and the concerns</p> <p>5 that we received from them at that time, we have addressed</p> <p>6 them in the application.</p> <p>7 We also had a community, a meeting the principal of</p> <p>8 Germantown Elementary School as well as the facilities</p> <p>9 planner, Seth Adams, with MCPS, and in addition, we filed a</p> <p>10 concept plan with Montgomery County, with Park and</p> <p>11 Planning, to obtain technical comments from the development</p> <p>12 review committee. And we met with technical staff at Park</p> <p>13 and Planning and subsequently the Planning Board approved,</p> <p>14 or reviewed the application and voted unanimously to</p> <p>15 recommend approval of the conditional use on October 8,</p> <p>16 2020.</p> <p>17 We're in agreement with technical staff's report,</p> <p>18 except there was a typo that was corrected at the hearing</p> <p>19 and that was on page 16, and it refers to a eight foot</p> <p>20 boundary fence being proposed. We're also in agreement</p> <p>21 with technical staff's conditions and the Planning Board's</p> <p>22 October 23, 2020 letter and believe that the documents and</p> <p>23 plans and the expert's reports satisfy the Applicant's</p> <p>24 burden, however we do have testimony from our six witnesses</p> <p>25 today to add additional support and satisfy our burden of</p>	<p style="text-align: right;">15</p> <p>1 Mr. Jones, if you would just briefly explain your</p> <p>2 profession and your expertise and whether you've previously</p> <p>3 testified and qualified as an expert in those fields before</p> <p>4 the hearing examiner.</p> <p>5 MR. JONES: Yes, I am a civil engineer, with expertise</p> <p>6 in water resources and environmental engineering. I have</p> <p>7 testified as an expert civil engineer before the Montgomery</p> <p>8 County hearing examiner, the most recent I guess, testimony</p> <p>9 was on March, in March of 2019. it was case number LMAH-</p> <p>10 129.</p> <p>11 MS. CIRNER: So Mr. Jones's resume is in the record as</p> <p>12 exhibit 5-A and unless you would like me to ask him some</p> <p>13 additional voir dire questions, I would like to move him to</p> <p>14 be admitted as an expert in civil engineering, with a sub-</p> <p>15 expertise in water resources and environmental engineering.</p> <p>16 HEARING EXAMINER BAUMGARDNER: . Jones is admitted as</p> <p>17 an expert in the fields of civil engineering and what was</p> <p>18 that second one counsel? water resources, you said?</p> <p>19 MS. CIRNER: Yes, water resources, civil engineering,</p> <p>20 and environmental engineering.</p> <p>21 HEARING EXAMINER BAUMGARDNER: He is so designated.</p> <p>22 MS. CIRNER: Thank you, Mr. Jones are you familiar</p> <p>23 with the properties that is the subject of this</p> <p>24 application?</p> <p>25 MR. JONES: Yes.</p>
<p style="text-align: right;">14</p> <p>1 proof, as well as to respond to Mr. Jacob's and Mr.</p> <p>2 Shukla's concerns.</p> <p>3 So with that I would like to call our first witness,</p> <p>4 Ken Jones, oh and before I do that, just as a housekeeping</p> <p>5 matter, I have three witnesses that I'll need to qualify as</p> <p>6 experts. Ms. Bowers, Ms. Meyers and Ms. Wagner.</p> <p>7 HEARING EXAMINER BAUMGARDNER: Thank you</p> <p>8 MS. CIRNER: Okay, so, I would like to call our first</p> <p>9 witness, Ken Jones.</p> <p>10 Mr. Jones can you please state your name, business</p> <p>11 address for the record?</p> <p>12 MR. JONES: Jones</p> <p>13 yes, Kenneth Jones business address is 9220 Wightman</p> <p>14 Road Suite 120, Montgomery Village, Maryland.</p> <p>15 MS. CIRNER: And briefly explain --</p> <p>16 HEARING EXAMINER BAUMGARDNER: Mr. Jones --</p> <p>17 I'm sorry Counsel, Mr. Jones, can you raise your right</p> <p>18 hand please?</p> <p>19 And sir do you swear or affirm under penalties of</p> <p>20 perjury that the testimony you're about to give is the</p> <p>21 truth, the whole truth and nothing but the truth?</p> <p>22 MR. JONES: Yes</p> <p>23 HEARING EXAMINER BAUMGARDNER: Thank you, Counsel, you</p> <p>24 may proceed.</p> <p>25 MS. CIRNER: Thank you.</p>	<p style="text-align: right;">16</p> <p>1 MS. CIRNER: And the surrounding area?</p> <p>2 MR. JONES: Yes.</p> <p>3 MS. CIRNER: And have you visited the site and the</p> <p>4 surrounding area?</p> <p>5 MR. JONES: Yes, multiple times, I was there most</p> <p>6 recently on -- earlier this week on the 27th.</p> <p>7 MS. CIRNER: And are you familiar with the R-200</p> <p>8 zoning classification of the subject property in both the</p> <p>9 general and specific requirements of the zoning ordinance</p> <p>10 with respect to a residential care facility, as a</p> <p>11 conditional use of the R-200 zone?</p> <p>12 MR. JONES: Yes.</p> <p>13 MS. CIRNER: And are you familiar with the standards</p> <p>14 for granting a conditional use?</p> <p>15 MR. JONES: Yes.</p> <p>16 MS. CIRNER: And how about chapter 19 of the</p> <p>17 Montgomery County code and the state and county storm water</p> <p>18 management requirements?</p> <p>19 MR. JONES: Yes.</p> <p>20 MS. CIRNER: There was a prior conditional use for a</p> <p>21 residential care facility approved for this property. Was</p> <p>22 your firm engaged to provide services to that applicant,</p> <p>23 for that specific conditional use, and if so can you please</p> <p>24 briefly explain your role?</p> <p>25 MR. JONES: Yes, we were. MHG provided civil</p>

Transcript of Hearing
Conducted on October 30, 2020

5 (17 to 20)

17	<p>1 engineering, land surveying, and landscape architecture</p> <p>2 services in support of the previous conditional use</p> <p>3 approval; as well as then the subsequent preliminary plan.</p> <p>4 I was the assistant project manager of the previous</p> <p>5 project.</p> <p>6 MS. CIRNER: And has your firm been employed by the</p> <p>7 current Applicant to provide certain services with respect</p> <p>8 to the conditional use application, and if so, can you</p> <p>9 describe those for us?</p> <p>10 MR. JONES: Yes, MHG is engaged to provide a similar</p> <p>11 scope of services in support of this application and</p> <p>12 through the entitlement process. So our scope includes the</p> <p>13 site plan for conditional use, landscape plan, land use and</p> <p>14 planning report, forest conservations, storm water</p> <p>15 management design, storm drainage studies sediment</p> <p>16 control, water and sewer design, and fire department access</p> <p>17 plan.</p> <p>18 MS. CIRNER: So you have analyzed the suitability of</p> <p>19 the subject property for the proposed conditional use from</p> <p>20 a civil engineering and site design perspective.</p> <p>21 MR. JONES: Yes.</p> <p>22 MS. CIRNER: Mr. Baumgardner, would you mind sharing</p> <p>23 exhibit 11-D which is the existing conditions plan?</p> <p>24 HEARING EXAMINER BAUMGARDNER: Yes. Let's see if it</p> <p>25 loads. So you should be seeing what's marked as 11-A</p>	19	<p>1 MR. JONES: Yes, so the subject property, is an</p> <p>2 unrecorded parcel P515; it's located in Germantown in the</p> <p>3 southeast quadrant of the Dawson Farm Road. The Dawson</p> <p>4 Farm Road runs generally west to east, and Liberty Mill</p> <p>5 Road which runs generally north to south at this location.</p> <p>6 It's approximately 3.6 acres in size, and it is zoned R-</p> <p>7 200.</p> <p>8 There is right here, in the northwest corner an</p> <p>9 existing single family house located on site, as well as a</p> <p>10 loop driveway, right here with access off of Liberty Mill</p> <p>11 Road. There's a number of detached sheds and an attached</p> <p>12 garage located on the property as well. Liberty Mill Road,</p> <p>13 according to the 2019 Montgomery County master plan of</p> <p>14 highways and transit ways is a primary residential street</p> <p>15 with a master plan 70 foot right-of-way.</p> <p>16 There is a five-foot concrete sidewalk along Liberty</p> <p>17 Mill Road, along the property frontage. Dawson Farm Road</p> <p>18 is up here on the north. It's a divided roadway with on</p> <p>19 street bike lanes. It's a 100 foot master plan right-of-</p> <p>20 way and there's an 8 foot asphalt path along the property</p> <p>21 frontage on the south side of Dawson Farm Road that</p> <p>22 continues east and west of this property.</p> <p>23 The existing contours are shown here in general.</p> <p>24 The, I guess, runoff from the site flows from the northwest</p> <p>25 down toward the southeast, this southeast property corner.</p>
18	<p>1 through G, whenever it decides to load. Can everyone see</p> <p>2 this? it says Liberty Mill Road, Chestnut Ridge Parcel</p> <p>3 P515?</p> <p>4 MS. CIRNER: Yes.</p> <p>5 MR. JONES: Yes.</p> <p>6 HEARING EXAMINER BAUMGARDNER: For the benefit of all</p> <p>7 those who have joined us, we are waiting for an exhibit to</p> <p>8 load on my computer. Let's try this. And Counsel I can</p> <p>9 pull these up, not on the sharing file and review them if</p> <p>10 you would like to continue testimony, or your examination</p> <p>11 of the witness, or we can wait for this to load, it's up to</p> <p>12 you.</p> <p>13 MS. CIRNER: Well, we can proceed.</p> <p>14 MR. JONES: I also have the PDFs up and I can share my</p> <p>15 screen if we want to refer to these as conditions plan, if</p> <p>16 that's all right.</p> <p>17 HEARING EXAMINER BAUMGARDNER: That's fine.</p> <p>18 MR. JONES: Okay. Let's just do it that way then, at</p> <p>19 least for this exhibit. Can everybody see my screen?</p> <p>20 MS. CIRNER: Yes, thank you.</p> <p>21 HEARING EXAMINER BAUMGARDNER: Yes.</p> <p>22 MR. JONES: Uh-huh.</p> <p>23 MS. CIRNER: So Mr. Jones using this exhibit 11-D can</p> <p>24 you please describe the existing conditions of the</p> <p>25 property?</p>	20	<p>1 There are no -- there is no existing forest on site</p> <p>2 although there are a number of larger trees are on the</p> <p>3 property perimeter, which are shown here as well as on the</p> <p>4 approved ARI, so there's a few here along the south</p> <p>5 property line. Some smaller trees along the east, and then</p> <p>6 there's a couple of very large trees up here at the-- right</p> <p>7 near to the intersection that are located -- two are</p> <p>8 located in the front yard of the existing house and then</p> <p>9 there's also a large tree located just off to the north of</p> <p>10 the existing house.</p> <p>11 There is a intermittent stream that is technically off</p> <p>12 site. It becomes, I guess, an intermittent stream again</p> <p>13 for the approved NRI, just off site, to the southeast here.</p> <p>14 and then there's a stream valley buffer that is associated</p> <p>15 with that designation, so while the stream is off site, the</p> <p>16 stream valley buffer, which is designated by this line type</p> <p>17 right here actually extends onto this southeast corner of</p> <p>18 the property.</p> <p>19 There are a number of existing easements on site most</p> <p>20 of which are WCCS easements associated with the existing</p> <p>21 sewer infrastructure, so there's a sewer line that crosses</p> <p>22 Liberty Mill Road here, and then actually runs on the</p> <p>23 property to the south before it hangs a quick left and</p> <p>24 runs along the south property line, in this direction. So</p> <p>25 there are existing easements that have been previously</p>

Transcript of Hearing
Conducted on October 30, 2020

6 (21 to 24)

<p style="text-align: right;">21</p> <p>1 conveyed associated with that infrastructure. There is 2 also a storm drain outflow right here, which again, this is 3 off site, there is a storm drain easement right by portion 4 -- a portion of the storm drain easement that extends on 5 site, again previously granted associated with that that 6 storm drain pipe. 7 So I know that Mr. Shukla and Mr. Jacob have submitted 8 a statement of concern. Just for everyone's orientation, 9 this is Mr. Shukla's home right here, which is I guess not 10 -- which is across that, this is -- so the property 11 boundary, the southern property boundary is right here. 12 And then there's sort of a thin sliver of, I guess, 13 property that is owned by the Fountain Hills Community 14 Association, before you actually get to the property that's 15 owned by Mr. Shukla, right here. And then the property 16 that is owned by Mr. Jacob right over here. 17 There's a single family homes community here to the 18 south. This structure right here is, I guess, was formerly 19 a post office, it is now being operated as a church. There 20 is a town home community to the east, and I think Casey 21 mentioned Germantown Elementary School is located on the 22 opposite side of Liberty Mill Road to the west. 23 This existing storm drain outflow that I mentioned 24 conveys runoff, mostly from the western side and northern 25 of the, mostly to the northwest of the property including</p>	<p style="text-align: right;">23</p> <p>1 MS. CIRNER: Sorry, no go ahead, I was just going to 2 ask the question again. 3 MR. JONES: So as Casey mentioned a residential care 4 community is proposed on the property. The building is 5 three stories, above a lower level parking garage. Access 6 to the parking garage is right here. There's a number of 7 exterior amenities spaces that are located around the 8 exterior of the building, there's a I guess, a patio area 9 in the back here, a small park to the west, and then this 10 is an elevated courtyard as well. 11 The existing house will be removed with this 12 development. This is a corner lot we've got frontage 13 along Dawson Farm Road and Liberty Mill Road, so in terms 14 of applying development standards, both of those are 15 considered front yards. And then for the purposes of this 16 design the south property line is considered a side and 17 then the east property line is considered to be the rear 18 property line. 19 So the specific development standards for the R-200 20 zone are listed on this, on this sheet. The project 21 conforms with R-200 standards for lot size, coverage, and 22 setbacks, and I can go through each one of those 23 individually if we need to. let me know. 24 MS. CIRNER: I think, do you agree with the technical 25 staff's analysis that the proposed use meets the</p>
<p style="text-align: right;">22</p> <p>1 runoff from the elementary school, so it's conveyed by 2 storm drain before it gets to here. The total discharge 3 to this outflow under existing conditions is approximately 4 20 acres. 5 It discharges, once it daylight, I guess, there is a 6 fairly substantial channel that you can see that it's sort 7 of defined by the contours in this area, it's approximately 8 6 feet deep depending upon where exactly within that 9 channel you are. And there are some riprap stabilization 10 here right at the storm drain outfall. That channel 11 continues along this line before short of hanging -- 12 bending to the southeast, where, again, it becomes that -- 13 designated as an intermittent stream. 14 MS. CIRNER: Mr. Jones would you mind pulling up 15 conditional use plan Exhibit 28 and walking us through the 16 proposed residential care facility. 17 MR. JONES: Yes I can continue to control this or Mr. 18 Baumgardner if you want to pull that one up, either way is 19 fine with me. 20 HEARING EXAMINER BAUMGARDNER: It is still loading on 21 my screen, so you're welcome to pull it up. 22 MR. JONES: All right, so this is Exhibit 28 the 23 conditional use site. 24 MS. CIRNER: So could you -- 25 MR. JONES: Yeah, go ahead --</p>	<p style="text-align: right;">24</p> <p>1 development standards for the R-200 zone as well as the 2 specific standards related to a residential care facility? 3 MR. JONES: Yes I do, and I guess just to highlight 4 where the, the additional standards, I guess of 5 conditional uses in the R-200 zone as it relates to 6 residential care facilities, in this case, I guess applies 7 with respect to the lot size, minimum lot size for R-200 is 8 20,000 square feet, but in the case of a residential care 9 facility the minimum lot size is 2 acres. After 10 dedication, the total lot size of the proposed development 11 is 3.59 acres, so obviously that is achieved. 12 And then also the density, the density for the R-200 13 zone is based upon dwelling units. In the case of the 14 residential care facility, it's a function of the number of 15 beds. Based upon the lot size the maximum density that 16 could be achieved for residential care would be 130 beds, 17 and 125 are being proposed and so we conform to that 18 density requirement. 19 MS. CIRNER: Okay. Thank you, can you please touch on 20 the parking and bicycle requirements for the proposed use? 21 MR. JONES: Yes. So for residential care the vehicle 22 parking requirements are based upon the number of beds, and 23 the number of employees. And so doing that math yields a 24 total of 49 parking spaces, vehicle parking spaces 25 required. We're providing in excess of that, there's</p>

Transcript of Hearing
Conducted on October 30, 2020

7 (25 to 28)

<p style="text-align: right;">25</p> <p>1 actually 73 parking spaces that are proposed. Most of 2 those are in the underground parking garage, although there 3 are 10 surface parking spaces located right here, which 4 then obviously means there's 63 parking spaces within the 5 garage. The dimensions of the parking spaces and the 6 associated drive aisles conform to Montgomery County 7 standards for parking spaces. 8 There is also a bicycle parking requirement which is 9 based on the number of employees. And based on 35 10 employees there is one short-term bike parking space 11 required and four long-term bike parking spaces that are 12 required. We're providing six short-term bike parking 13 spaces, which are racks which are located right here, 14 adjacent to that park. And then there are 10 long-term 15 bike parking spaces, which would typically be intended for, 16 you know, for employees who want to bike here, I guess to, 17 as far as transport before a shift, and those are located 18 within the building. 19 MS. CIRNER: Great. can you please highlight the 20 proposed retaining walls, and associated topography of the 21 site? 22 MR. JONES: Yes. So you know, with the case of this 23 project, and in general we try to maintain at least 24 overall the existing drainage pattern and modify that as 25 little as we can. So we are continuing to have, I guess,</p>	<p style="text-align: right;">27</p> <p>1 up being about 10 to 12 feet high then right where this-- 2 at the lowest point or I guess at the highest point of the 3 wall, but it also serves to screen that service drive from, 4 from the adjacent properties. 5 MS. CIRNER: And-- 6 MR. JONES: There was also-- 7 MS. CIRNER: Sorry, didn't mean to interrupt you but 8 is that where the dumpsters for trash pickup and recycling 9 will be located? 10 MR. JONES: Yes. 11 MS. CIRNER: Okay. Please go on. 12 MR. JONES: And then there's also a retaining wall 13 here along the northwest corner of the property adjacent 14 to the outdoor patio area. So this is approximately five 15 feet in height. Throughout this area, this allows us to 16 have a little outdoor patio area here and then it's located 17 below the existing grade out front, at the corner. 18 So I mentioned previously that there are a number of 19 larger trees around the perimeter, particularly in this 20 northeast corner. What that retaining wall also allows us 21 to do is actually to retain those three trees so there's a 22 very large tree right here; and again the two other large 23 trees that are in the northwest corner that, you know, are 24 obviously beneficial they provide a benefit I think to this 25 property as well as the community. And so it's a</p>
<p style="text-align: right;">26</p> <p>1 generally fall from the northwest to the southeast. But in 2 order to, I guess, create, you know, usable spaces around 3 the building both for vehicular as well as amenities spaces 4 we do have some retaining walls that are being utilized. 5 So, I guess, the drive aisle, starting there, you 6 know, grade drops down west to east throughout the drive 7 aisle and then on the south side of that drive aisle, 8 beginning here, just sort of to the west of the main entry 9 to the building, is a retaining wall that allows us to, you 10 know, flatten that drive aisle, so that it's safe to drive 11 on. I guess, down to the bottom here where this meets at 12 it's sort of its highest point, which would be at this 13 corner, but this is generally three to five feet in height 14 and it's located outside of that WSSC easement because we 15 can't put the wall up on the WSSC easement. 16 There is also a retaining wall here, this is a service 17 drive so generally this is where all our deliveries would 18 be headed towards and there's a retaining wall here, 19 because the delivery entrance is down at the garage level, 20 and grade here, as you can -- which is about, this is a 464 21 to get into the garage, we have a similar elevation right 22 here. But of course up at this point of the site near the 23 main entrance our grade is approximately 10 feet above 24 that, and so in order to achieve this lower access for 25 vehicles we need a retaining wall there too. And that ends</p>	<p style="text-align: right;">28</p> <p>1 priority to try to do what we could to design our site in 2 such a way that those could be retained, and we were able 3 to achieve that. There are, I think, a couple of perimeter 4 trees as well, which we actually incorporated into the 5 screening design, which our landscape architect I think can 6 speak to more specifically. 7 MS. CIRNER: Great and can you talk to us about access 8 and site distance. I know the existing conditions provide 9 for two access points in the proposed development will 10 consolidate those into a single access point? 11 MR. JONES: Yes, that's correct. The existing -- I 12 pointed it out on the existing entrance plan, and you can 13 see them here, they're a little bit lighter but this is 14 the upper entrance and then the lower entrance, that loop 15 driveway that exists currently. As you can see, the new 16 entrance is located to the south and part of the reason we 17 did that was to extend that, that entrance further away 18 from the intersection. 19 So we have looked at site distance at this location. 20 MHG prepared a site distance analysis and found that, you 21 know, based upon the roadway speed, there's adequate site 22 distance at this location, more than adequate site distance 23 actually. And that's been approved, by DOT. We also 24 submitted, in association with that, a design exception, 25 because it is less than 100 feet between this proposed</p>

Transcript of Hearing
Conducted on October 30, 2020

8 (29 to 32)

<p style="text-align: right;">29</p> <p>1 entrance, and this existing entrance to that -- what was 2 formerly a post office, which is now functioning as a 3 church. It's 67 feet. So we submitted a design exception 4 to DOT, for that being less than 100 feet, and that was 5 also accepted. 6 MS. CIRNER: So DOT approved that exception? 7 MR. JONES: Correct 8 MS. CIRNER: Okay, great, Can you touch on offsite 9 improvements as well as fire access? 10 MR. JONES: Yes, so we are proposing improvements 11 within both the Liberty Mill and Dawson Farm rights of way. 12 The bikeways master plan calls for an asphalt side path 13 along Liberty Mill Road. The bikeways master plan itself 14 doesn't specify which side of Liberty Mill Road it should 15 be located on and so this was a question we had for Park 16 and Planning at the concept plan stage that we went 17 through. And given the fact that there is an elementary 18 school on the western side, they recommended, and we 19 agreed, to, to put the asphalt path on that side of Liberty 20 Mill Road. So that is included within the scope of this 21 development. 22 We also obviously have our entrance improvements here 23 just to put our entrance out into the roadway there's an 24 existing bus stop located right here at the corner which I 25 guess again is part of that concept plan review, DOT asked</p>	<p style="text-align: right;">31</p> <p>1 ways to determine whether any additional dedication will 2 need to be made at the time of preliminary plan amendment? 3 MR. JONES: Yes, we did. I'm gonna refer back to the 4 conditional use site plan. Exhibit 28, I believe. 5 MS. CIRNER: Yep. 6 MR. JONES: Yes. So Dawson Farm Road, as I previously 7 mentioned, is a hundred foot master plan right-of-way road 8 and that, that right-of-way already exists. So as you can 9 see here, here's the roadway center line, 50 feet this 10 side, 50 feet that side so no additional dedication is 11 proposed to the Dawson Farm right-of-way. 12 Liberty Mill is a little bit of an odd case, because 13 this was previously a state right-of-way, when it was the 14 location of 118, but of course 118 is now located to the 15 west and then this right-of-way which was previously 16 controlled by the state, then became controlled by 17 Montgomery County. So there is -- and then that was 18 incorporated into the 2019 master plan of highways and 19 transit ways. The recommendation for Liberty Mill Road is 20 70 feet and the existing right-of-way is actually slightly 21 larger than that, that's about 75 feet under existing 22 conditions. 23 And we are proposing a, a little bit of additional 24 dedication approximately six feet the purpose of which is 25 to ensure that that five foot public sidewalk, that is</p>
<p style="text-align: right;">30</p> <p>1 that we improve; make it larger and so that is also 2 included within the development scope. 3 There was also an offsite storm drain easement. 4 There's an offsite storm drain out-fall, storm drain 5 management out-fall proposed, which I'll get into a little 6 bit more detail later, but that is located offsite as well 7 and an easement that is not currently existing, but is 8 proposed. 9 MS. CIRNER: And, has the fire marshal approved the 10 proposed fire access to the facility? 11 MR. JONES: Yes. DPS fire water supply and fire 12 access has approved this plan. This is Exhibit 35. 13 MS. CIRNER: Okay. Thank you 14 MR. JONES: I believe, yes. So this shows how a fire 15 truck would be able to access the site. That loop 16 driveway, that we have for drop offs actually also serves 17 as a hammerhead turnaround for the fire truck, and so this 18 allows the fire truck to get far enough inside the site 19 that they can also get around the full perimeter of the 20 building in less than their maximum hose lengths and would 21 allow them to do so. There is a proposed fire hydrant 22 located right here, which is within 100 feet of the 23 buildings fire department connection in accordance with 24 that FPA. 25 MS. CIRNER: And did you analyze the existing right of</p>	<p style="text-align: right;">32</p> <p>1 located on Liberty Mill, is included within the public 2 rights-of-way. Additionally this was the, the amount of 3 dedication that was also proposed as part of the previous 4 iteration of the preliminary plan. So this proposed 5 dedication in total it's 1,622 square feet but that's 6 subject to review by Park and Planning at time of 7 preliminary plan. 8 There's also a small amount of dedication proposed, 9 you really can't see it because it is quite small, but the 10 truncation here at the intersection, there's a little bit 11 of a dedication, that's, that's proposed there as well 12 that's included in this 1,622 square foot number. 13 MS. CIRNER: Can I -- now switching to the utility 14 plan, which is Exhibit 29, can you briefly summarize how 15 the residential care facility will be adequately served by 16 wet and dry utilities? 17 MR. JONES: Yes. so there is a existing gas main, 18 which is here in yellow, located within Liberty Mill Road 19 and so if there is a gas connection proposed that is 20 available for connection. There are overhead utility lines 21 in Liberty Mill Road, and there is also I guess, an 22 underground electric line that's located in Dawson Farm 23 Road which could be accessed for both electrical service 24 as well as telecommunications. 25 For water service there is a 12 inch main, located</p>

Transcript of Hearing
Conducted on October 30, 2020

9 (33 to 36)

<p>33</p> <p>1 down here that we are proposing in blue here, you can see 2 an 8 inch connection down Liberty Mill Road to connect to 3 that that existing water main. There's also actually a 24 4 inch main within Liberty Mill Road, but WSSC does not 5 permit connections to large diameter mains, and 24 inches 6 would fall into that category when there's other options 7 available. Because it impacts too many people when it has 8 to be shut down in order to make that connection, so we're 9 extending down to this water line here for water service 10 and that provides, obviously, domestic and fire water 11 service to the building, it also feeds that hydrant that I 12 mentioned earlier.</p> <p>13 As far as sewer service again there's a number of 14 existing sewer easements on site and so we've got a short 15 way to go in order to connect sewer. The sewer outlet is-- 16 the sanitary sewer outlet is proposed right here, sort of 17 out of the service drive area, which would then connect 18 into this existing sewer manhole.</p> <p>19 I should mention that the final configuration of, of 20 water and sewer is subject to review by WSSC. And then 21 the dry utilities by, I guess, Washington Gas as well as 22 the electric utility. So, those, those final locations 23 would be determined at the permit stage.</p> <p>24 MS. CIRNER: Okay. And just for purpose to clarify-- 25 MR. JONES: And --</p>	<p>35</p> <p>1 little bit. So this is the original storm water management 2 concept plan as it was submitted to DPS and I think as well 3 as OZHA which exhibit is this Casey, if you don't mind? 4 MS. CIRNER: This is exhibit 13-A, and this is the 5 proposed storm water management concept that was shared at 6 the community meeting to Mr. Shukla and Mr. Jacob. 7 MR. JONES: Yes. So with this original design 8 management of the proposed rooftop was provided by a 9 combination of one bioswale, which is located up here, to 10 the north; and a number of micro bio-retention facilities, 11 here, here, and we had some I guess, more structural 12 facilities located around the building as well. Management 13 of a -- the lower portion, of the drive aisle, which is 14 this area right here, was provided by this facility, which 15 is a landscape infiltration facility.</p> <p>16 MS. CIRNER: And where is that facility located? 17 MR. JONES: That's in the south, I guess, in the 18 eastern side of the site.</p> <p>19 MS. CIRNER: Thank you.</p> <p>20 MR. JONES: And we used a landscape infiltration 21 facility because, one of the issues, I guess, in terms of a 22 storm drain on this site is depth to outfall, and so this, 23 you know, again, similar to the existing topography, this 24 is the lower side of the site. And one of the advantages 25 of landscape infiltration facility relative to a micro-bio-</p>
<p>34</p> <p>1 MS. CIRNER: Oh, sorry -- 2 MR. JONES: Yes. 3 HEARING EXAMINER BAUMGARDNER: Just real quick, going 4 back to that, that six foot dedication along Liberty Mill 5 Road, how does that preserve that five foot sidewalk again? 6 MR. JONES: So I'm zooming in, I'm going back to the 7 conditional use site plan Exhibit 28. so, this is, 8 actually I take that back. Let's go here. So, this, 9 sorry, this is the existing conditions plan, 11-D this -- 10 let me highlight it. This is the existing property line, 11 right there. And the back of the sidewalk is actually back 12 here. So right now, the sidewalk is located on private 13 property.</p> <p>14 HEARING EXAMINER BAUMGARDNER: Got it.</p> <p>15 MR. JONES: So this heavier dark line right here is 16 located behind that, and that would provide, I guess, 17 basically a one-foot buffer between the back edge of the 18 sidewalk, and the, and the resulting property line.</p> <p>19 HEARING EXAMINER BAUMGARDNER: Yeah, thank you.</p> <p>20 MR. JONES: Uh-huh So, storm water management. The 21 storm water concept has been approved by DPS and we -- 22 storm water management is provided using environmental site 23 design practices, as required by both the state and the 24 county. We went through a couple of iterations on the 25 storm water management concept which I'm gonna get into a</p>	<p>36</p> <p>1 retention facility, is it doesn't actually have an 2 underdrain. When you add in a underdrain, it creates an 3 inherent depth to the section, that you need to provide a 4 storm drain outlet for. In the case -- in cases where you 5 do have good infiltration rights so you know we could 6 analyze the soil, we did a geotechnical engineering report, 7 and the geotech found that there was good infiltration 8 rates in this area, so rather than having that underdrain, 9 you would be able to just allow this facility to naturally 10 drain into the substrate below it which allowed us to 11 outfall the storm drain on site and outside of this stream 12 valley buffer.</p> <p>13 There was a portion of the upper drive aisle which is, 14 essentially this area right here, which was unmanaged. 15 Because the total -- this has a maximum drainage area to 16 it, which is 20,000 square feet. So you can see here we 17 were right up at that ceiling -- 19,680 square feet. So we 18 were unable to bring in this additional area, unless we 19 change the intent of that facility, but again we, we went 20 with the last infiltration, because of not having a 21 adequate invert on site in order to achieve that.</p> <p>22 MS. CIRNER: Let me interrupt you for one second.</p> <p>23 MR. JONES: Uh-huh.</p> <p>24 MS. CIRNER: This proposed concept plan, even though 25 it didn't treat the upper portion of the drive did comply</p>

Transcript of Hearing
Conducted on October 30, 2020

10 (37 to 40)

<p>37</p> <p>1 with the county and state requirements for storm water 2 management correct?</p> <p>3 MR. JONES: Yes, that's correct, so we were able to, 4 sort of, offset, I guess, the immediate management of this 5 upper drive aisle, by over-compensation in the other 6 impervious areas on site. And so, yes we met the storm 7 water management requirements for development with the 8 initial concept plan.</p> <p>9 However, DPS in their review of the concept had a bit 10 of an issue, I guess, with the fact that this, they didn't 11 disagree that we weren't meeting our overall ESD 12 requirement, environmental site design requirement, but 13 they did ask if it -- we could demonstrate that essentially 14 that it was not feasible to change this, to manage this 15 upper drive aisle area. And so, what we ended up 16 proposing, was we took out that landscape infiltration 17 facility, and used instead, a biofilter. The biofilter 18 can, can take in a larger drainage area, it can take in up 19 to an acre. and so under this scenario then, we're able to 20 treat -- provide management of this upper drive aisle as 21 well as continue to provide management at the lower drive 22 aisle within this biofilter in the eastern side of the 23 site.</p> <p>24 MS. CIRNER: Let me interrupt you for one second. 25 This is the storm water management concept plan</p>	<p>39</p> <p>1 He agreed that this encroachment in the stream valley 2 buffer was acceptable in order to provide additional 3 management of the upper drive aisle, if that's what DPS was 4 looking to achieve. I'm going to switch to the forest 5 conservation plan,</p> <p>6 HEARING EXAMINER BAUMGARDNER: And Counsel or Mr. 7 Jones, you would accept, the granting of that easement from 8 the association as a condition of any approval?</p> <p>9 MS. CIRNER: We would accept the granting of the 10 easement, as a condition of approval of the storm water 11 management concept plan. However, we believe that we can, 12 address the storm water management concept and adequately 13 treat the impervious surfaces of the proposed development, 14 even under the original concept plan, if for some reason, 15 we are unable to get the easement from the homeowner's 16 association, cause that, that's the last piece of the 17 puzzle.</p> <p>18 HEARING EXAMINER BAUMGARDNER: Okay. Thank you.</p> <p>19 MR. JONES: So this is the forest conservation plan 20 which was submitted in support. Casey, what exhibit number 21 is this please?</p> <p>22 MS. CIRNER: That is Exhibit 31-A and 31-B.</p> <p>23 MR. JONES: So this is 31-A so typically Park and 24 Planning would require that the stream valley buffer, be 25 placed in a forest conservation easement. I can discuss</p>
<p>38</p> <p>1 Exhibit 33 that you're referring to, correct?</p> <p>2 MR. JONES: Correct, yes, thank you, this is Exhibit 3 33, this is the approved storm water management concept 4 plan. And so this plan provides management of the upper 5 drive aisle as well, by using a different type of facility 6 down here, but of course, this is a biofilter now, and it 7 has that under drain. So because we're not able to outflow 8 that on site, there is a storm drain outfall from that 9 facility that actually needs to extend off site, down here 10 in order to provide a positive outlet from, from the under 11 drain for this facility. So this is off site, this is in 12 an area that an easement would be required in order to 13 construct this, and so this piece of property is owned by 14 the Fountain Hills Community Association. An initial 15 request for the granting of that storm water management 16 outfall easement has been submitted to the HOA, it has not 17 yet been granted.</p> <p>18 MS. CIRNER: And now this proposed concept plan and 19 the outfall, it encroaches into the storm, the stream 20 valley buffer, excuse me, have you discussed those impacts 21 with Park and Planning, and what were their response?</p> <p>22 MR. JONES: Yes so Park and Planning, including Park 23 and Planning environmental reviewed the conditional use 24 plan and this is one of the issues that we talked about 25 with the environmental reviewer, which was Doug Johnson.</p>	<p>40</p> <p>1 the forest conservation requirements overall a little bit 2 more, but one of the I guess the tradeoffs of providing 3 this cut through, I guess you would call it, for the stream 4 valley buffer in order to create the storm drain outfall, 5 is they asked us to provide additional buffer area to 6 compensate for essentially their removal of this piece, and 7 so you can see here, the hatching, the sort of, hexagon 8 hatching, I guess that extends beyond the stream valley 9 buffer here, and here is additional area intended to offset 10 this piece which was reviewed and accepted at least 11 preliminarily by, by Park and Planning.</p> <p>12 MS. CIRNER: Okay. Thank you. Now, did you prepare a 13 drainage study?</p> <p>14 MR. JONES: We have the drainage study is not one of 15 the, I guess the requirements of the conditional use 16 application but it is a requirement of a, a preliminary 17 plan and so we -- this hasn't been reviewed by the County 18 yet, but we have prepared a drainage study. This is 19 Exhibit Number 43. so, as I mentioned previously there is 20 approximately 20 acres, that drains to that existing storm 21 drain outflow, you can see the existing drainage divides 22 here, and then this is the existing conditions without any 23 proposed development.</p> <p>24 The existing drainage area to this storm drain 25 outfall, which we designated as study point 1 on the, on</p>

Transcript of Hearing
Conducted on October 30, 2020

11 (41 to 44)

<p>41</p> <p>1 the drainage study, is 20.08 acres. and we looked at the 2 max, peak discharge of the number of storm events for the 3 purposes of storm drain design. unless you have a 4 significant piece of infrastructure downstream of the 5 outfall, such as, you know, a major highway or, a railway 6 line or something like that, typically just the 10 year 7 storm is what is used to analyze the -- that's it's the 8 capacity of the storm drain systems are designed for, and 9 so for the purposes of comparing apples to apples, I'm 10 gonna use the, the 10 year discharge. And so, the existing 11 10 year discharge to the outfall is 47.0 cfs, that's cubic 12 feet per second. Under the original concept design the 13 upper drive aisle in not treating it, and sending it to 14 that landscape infiltration facility in the back it was 15 instead going to this storm drain outfall.</p> <p>16 So under that scenario there was a slight increase to 17 the total drainage area to this point, it was 20.3 acres, 18 as opposed to 20.08 under the existing condition, and the 19 10 year peak discharge increased slightly to 48.3 cfs, so 20 while --</p> <p>21 MS. CIRNER: And is this -- I'm sorry to interrupt, 22 you're currently referring to Exhibit 13-A, the storm water 23 management concept plan that was originally submitted to 24 DPS.</p> <p>25 MR. JONES: Yes, I am. 13-A. Thank you. So as I</p>	<p>43</p> <p>1 original storm management design that was submitted to DPS, 2 the drainage area increased slightly to 20.30 acres.</p> <p>3 MR. JONES: Correct.</p> <p>4 MS. CIRNER: And now under the approved storm water 5 management concept plan, the drainage area decreased to 6 20.03 acres and that, that decreased below the existing 7 conditions.</p> <p>8 MR. JONES: Correct.</p> <p>9 MS. CIRNER: Okay. Now, are you aware that Mr. Shukla 10 and Mr. Jacob in their statement of concern asked that all 11 of the storm water that would be discharged into the 12 outfall point in the HOA property near the rear of their 13 homes, that it would be moved to the southeast corner and 14 discharged out of the outfall.</p> <p>15 MR. JONES: Yes.</p> <p>16 MS. CIRNER: And did you analyze that request and if 17 so, can you explain whether it can or cannot be addressed?</p> <p>18 MR. JONES: Yes, we did analyze that request so, the 19 service drive right here, as I mentioned previously, it 20 'slower. it's basically the same elevation here as it is 21 in the back of the site. And so, in order to then take 22 this, the drainage from this inlet, and kick it over to 23 this outfall, I do not consider that to be feasible, 24 because it's too low. So, if we were to redirect 25 additional runoff from the site to this outfall location, I</p>
<p>42</p> <p>1 mentioned this is a slight increase to both the drainage 2 area, as well as peak 10 year discharge, to this outfall.</p> <p>3 But based on how small a percentage of it is, essentially 1 4 -- the additional drainage area is 1 percent of the total 5 drainage area. And so for the purposes of trying to 6 determine the net change you know, this is effectively 7 comparable as far as I would be concerned.</p> <p>8 Under the current proposed storm water concept plan, 9 Exhibit Number 33 that it's further reduced because of that 10 upper drainage area, like I said, now we're taking it to 11 this biofilter in the back, which means it is not coming 12 out of this outfall. And so, in that case, the total 13 drainage area would be to this storm drain outfall, would 14 be 20.03 acres, so that is a very slight decrease from the 15 existing condition and the 10 year peak discharge would be 16 47.2 cfs, which would be a very slight increase, from the 17 existing discharge.</p> <p>18 And again, that's, that's such a small difference, 19 both in terms of area and discharge that I would consider 20 those to be effectively equivalent, and you wouldn't see 21 any difference in the flow discharges as a result.</p> <p>22 MS. CIRNER: So just to summarize Mr. Jones, the 23 existing conditions the drainage area is 20.08 acres.</p> <p>24 MR. JONES: Correct</p> <p>25 MS. CIRNER: And under the proposed conditions of the</p>	<p>44</p> <p>1 do not consider it feasible to do that with the outflow. I 2 think this is -- with the service drive area, which is a 3 small area, albeit, but I don't think that it's feasible to 4 get this area to the east. So this would need to continue 5 to outfall in this direction.</p> <p>6 However, the majority of the other drainage on site, 7 which I guess, includes the drainage from around the 8 courtyard, as you can see there's a 12 inch HDPE storm 9 drain line that collects runoff from the sort of western 10 portion of the site. I think it is feasible to convey that 11 runoff past this outfall and then further downstream to the 12 east, to the eastern outfall, the new outfall.</p> <p>13 And this would, I guess -- you would be able to direct 14 a total of 0.80 acres away from this outfall and then 15 towards this outfall, which would result in a total 16 drainage area of -- a reduction, I guess. A reduction in 17 total drainage area to this outflow would become 19.22 18 acres. And the 10-year peak discharge would be 45.1 cfs.</p> <p>19 So it would result in a reduction both in drainage 20 area as well as discharge. The area of reduction would be 21 about 5 percent of the total drainage area. The impact of 22 this though is that it would send additional runoff, that 23 .8 acres would then tog to this bio-filter facility. The 24 maximum drainage area for which is typically one acre. So 25 if we did make that change, we would need to go back to DPS</p>

Transcript of Hearing
Conducted on October 30, 2020

12 (45 to 48)

<p>45</p> <p>1 and ask if that would be acceptable, they would need to 2 review that change to the, to the drainage area 3 configuration. 4 In my personal and professional opinion this 5 additional drainage area could be accommodated, and the 6 storm water management facility would not be adversely 7 impacted. But that is subject to further review and 8 approval by MCDPS. 9 MS. CIRNER: Okay. So just let me make sure that I 10 understand correctly. So in response to Mr. Shukla and Mr. 11 Jacob's concern, all of the water on the driveway, except 12 for the service drive, and actually everything except for 13 the service drive, could be shifted to the ESD facilities 14 on the east side of the building and then discharged out of 15 that outfall, which is proposed to be located on the 16 homeowner's association property, correct? 17 MR. JONES: Correct. 18 MS. CIRNER: And so this design ultimately is 19 contingent upon the homeowner's association granting that 20 easement, correct? 21 MR. JONES: Correct. 22 MS. CIRNER: Okay. Do you have anything else you'd 23 like to add with respect to the storm drainage or storm 24 water management concept plans that have been proposed? 25 MR. JONES: No, I think I covered everything.</p>	<p>47</p> <p>1 MS. CIRNER: And then, finally since you worked on the 2 prior conditional use, can you just briefly explain the 3 prior approvals and whether those will need conforming 4 amendments for this proposed project in the event that the 5 conditional use is granted? 6 MR. JONES: Yes. So the previously approved 7 preliminary plan and the associated forest conservation 8 plan will both need to be amended. We've discussed that 9 process with Park and Planning, and their review of the 10 concept plan for this development. The record plat 11 associated with those previously approvals was never 12 implemented so this is still an unrecorded parcel, P515 and 13 a plat would be required once the subsequent amended 14 preliminary plans approved by Park and Planning. 15 MS. CIRNER: Okay. And finally, Mr. Jones I'm going 16 to ask you a series of questions that will be based on your 17 expert opinion and based on your testimony and the plans 18 and documents submitted. So in your expert opinion, and 19 based on your testimony on the plans and documents from a 20 civil engineering perspective, will the proposed building 21 comply with the development standards for the R-200 zone? 22 MR. JONES: Yes. 23 MS. CIRNER: And will the proposed building comply 24 with the use standards for residential care facility? 25 MR. JONES: Yes.</p>
<p>46</p> <p>1 MS. CIRNER: Okay. Then let's talk about adequate 2 public facilities. So will the proposed residential care 3 facility be adequately served by the police, and fire, and 4 other facilities? 5 MR. JONES: Yes. So the law enforcement services for 6 the site will be serviced by the fifth police district with 7 the district station is located approximately 2.3 miles 8 away, in Germantown. There are two fire departments in the 9 immediate vicinity of this site there, the Germantown 10 King's View Fire Department is about six-tenths of a mile 11 away, and the Germantown volunteer fire department is about 12 1.8 miles away from the site. As far as fire access I 13 already presented, I think, the fire access plan, which is 14 Exhibit Number 34, which shows how a fire truck would 15 maneuver through the property based upon the requirements 16 of the NFPA, as well as Montgomery County standards for 17 fire access. The water supply, there's adequate perimeter 18 a walkable perimeter around the building that is also less 19 than the maximum hose length that's required for Montgomery 20 County fire access design criteria. 21 MS. CIRNER: Okay. And are you in agreement with 22 technical staff's determination that the proposed 23 residential care facility will be adequately served by 24 public and, public facilities and services? 25 MR. JONES: Yes.</p>	<p>48</p> <p>1 MS. CIRNER: And will the conditional use comply with 2 Article 59.6 of the zoning ordinance? 3 MR. JONES: Yes. 4 MS. CIRNER: And will the conditional use be 5 harmonious with and not alter the character of the 6 surrounding neighborhood in a manner inconsistent with the 7 master plan, based on your analysis? 8 MR. JONES: Yes. 9 MS. CIRNER: And you are familiar with that 1989 10 Germantown Master Plan that is applicable to the subject 11 property, correct? 12 MR. JONES: Yes. 13 MS. CIRNER: Now, in your expert opinion, and based on 14 your testimony and the plans and documents from a civil 15 engineering perspective, will the parking and loading be 16 safe, efficient, and compliant with the requirements of the 17 zoning ordinance? 18 MR. JONES: Yes. 19 MS. CIRNER: And will the conditional use be served by 20 adequate public facilities and services including water, 21 sanitary sewers, storm drainage, and storm water 22 management? 23 MR. JONES: Yes. 24 MS. CIRNER: And finally is the conditional use and 25 developments suitable for the site and compatible with the</p>

Transcript of Hearing
Conducted on October 30, 2020

13 (49 to 52)

<p>49</p> <p>1 neighborhood?</p> <p>2 MR. JONES: Yes.</p> <p>3 MS. CIRNER: All right. Thank you. that's all I have</p> <p>4 for Mr. Jones.</p> <p>5 HEARING EXAMINER BAUMGARDNER: All right, thank you</p> <p>6 both very much. Mr. Shukla, I see you have your hand</p> <p>7 raised. did you have any questions for Mr. Jones?</p> <p>8 MR. SHUKLA: Yes, a quick question, and first of all</p> <p>9 thank you Mr. Jones for explaining the three different</p> <p>10 plans including a recommendation of plan and listening to</p> <p>11 us, and working with us. I had a --</p> <p>12 MR. JONES: My pleasure.</p> <p>13 MR. SHUKLA: I had a question for you, you have said</p> <p>14 that the, your alternate plan that is the one which has the</p> <p>15 requirement of the Fountain Hills homeowner's association</p> <p>16 to granting the easement. What is the date by which you</p> <p>17 need the easement, and I know you approach the Fountain</p> <p>18 Hills community association, I have actually spoken with a</p> <p>19 board member, you know we are having a problem with the</p> <p>20 board, and hopefully we have an election next week, not</p> <p>21 referring to the national election, our own election, and</p> <p>22 hopefully we will have a change in the board next week.</p> <p>23 but I wanted to understand, what is the time deadline that</p> <p>24 would be required?</p> <p>25 MR. JONES: Well, as I mentioned the storm water</p>	<p>51</p> <p>1 preliminary plan hearing, but we're happy to provide that</p> <p>2 to you once we have formally filed the preliminary plan</p> <p>3 amendment, and once the Planning Board hearing date is</p> <p>4 issued, but we can anticipate hopefully that would be</p> <p>5 somewhere in February, March timeframe.</p> <p>6 MR. SHUKLA: Okay. We have time, and we'll have a new</p> <p>7 board by that time, which will be much more proactive.</p> <p>8 Second question for Mr. Jones, is the revised plan</p> <p>9 that you said you will have to go back to for permission if</p> <p>10 you were to redirect some additional water, this is the</p> <p>11 last one based on our request that you said would cover the</p> <p>12 19.2 reduce it to by about 5 percent covering 19.22 acres -</p> <p>13 -</p> <p>14 MR. JONES: Uh-huh.</p> <p>15 MR. SHUKLA: -- as opposed to. Will that -- is</p> <p>16 something that you are planning to take in front of the</p> <p>17 approving authorities? Is it WSSC or it the County you're</p> <p>18 referring to county agencies?</p> <p>19 MR. JONES: It's the County, the storm water</p> <p>20 management concept is ruled by Montgomery County department</p> <p>21 of permitting services.</p> <p>22 MR. SHUKLA: Okay.</p> <p>23 MR. JONES: So what I would likely, if we would move</p> <p>24 forward with this redirection of the drainage I would</p> <p>25 likely submit a, what's it, I guess it's called a</p>
<p>50</p> <p>1 management concept has been approved so obviously it wasn't</p> <p>2 necessary to grant the easement in order to proceed with</p> <p>3 that approval. You would not need, you know, it would be</p> <p>4 trespassing, for the developer to extend anything onto that</p> <p>5 HOA property, you know, to implement this storm drain</p> <p>6 outfall if that easement was not yet granted. So it</p> <p>7 certainly would need to be obtained prior to any to</p> <p>8 breaking ground.</p> <p>9 MR. SHUKLA: Okay.</p> <p>10 MR. JONES: In the outside, you know, for so that I</p> <p>11 can sleep at night, we'd like to have it before that point.</p> <p>12 I think in general it would be our preference to have it</p> <p>13 prior to the preliminary plan going to the Planning Board.</p> <p>14 Would you agree with that Casey?</p> <p>15 MS. CIRNER: Yes, I would agree with that and I also</p> <p>16 believe that we would probably need the easement, it would</p> <p>17 be great to have it at preliminary plan, but I think that</p> <p>18 the last, worst case scenario we would need it as part of</p> <p>19 the sediment control permit approval.</p> <p>20 MR. JONES: Yes.</p> <p>21 MS. CIRNER: Which would have to occur prior to</p> <p>22 construction commencing. so ---</p> <p>23 MR. JONES: I agree.</p> <p>24 MR. SHUKLA: Is there a date?</p> <p>25 MS. CIRNER: We do not yet have a date for the</p>	<p>52</p> <p>1 reconfirmation of the storm water management concept. In</p> <p>2 my opinion it doesn't substantially change, you know, the</p> <p>3 concept, the way in which storm water management would be</p> <p>4 managed, you just happen to increase the drainage area to</p> <p>5 that lower biofilter, so I would start with the</p> <p>6 reconfirmation request to DPS, and they would essentially,</p> <p>7 if that was approved update their concept approval letter.</p> <p>8 MR. SHUKLA: Okay. And just, you know, while I saw</p> <p>9 your 10 year numbers and understand that all of the</p> <p>10 including the existing and including whatever the</p> <p>11 originally proposed plan, all of them with minor</p> <p>12 differences in the 10 year cfs numbers, would still meet</p> <p>13 the you know, the requirements you know, I wanted to ask</p> <p>14 you if you have seen the pictures that will, in my</p> <p>15 statement of concern?</p> <p>16 MR. JONES: I have.</p> <p>17 MR. SHUKLA: Okay. And so just for the record, for</p> <p>18 this meeting Mr. Baumgardner, if I can just share my screen</p> <p>19 and show those 2 pictures. They are in the Exhibit 38.</p> <p>20 HEARING EXAMINER BAUMGARDNER: Before we get into</p> <p>21 that, Mr. Shukla, is this something that would be better</p> <p>22 addressed, during your testimony at the end of the</p> <p>23 Applicant's case? or is this something that would be</p> <p>24 better served through a questioning of Mr. Jones' right</p> <p>25 now?</p>

Transcript of Hearing
Conducted on October 30, 2020

14 (53 to 56)

53	<p>1 MR. SHUKLA: I suppose it can wait. That is fine.</p> <p>2 HEARING EXAMINER BAUMGARDNER: I just didn't want to</p> <p>3 confuse the Applicant's case with any community</p> <p>4 testimonies, so we can certainly hear that shortly.</p> <p>5 MR. SHUKLA: I understand, that's fine. then I'm --</p> <p>6 those were the questions I had, sorry, one unrelated</p> <p>7 question related to storm water management, but Mr. Jones,</p> <p>8 you mentioned there's a retaining wall on the driveway</p> <p>9 leading to the parking.</p> <p>10 MR. JONES: Uh-huh.</p> <p>11 MR. SHUKLA: I may have missed it, what is the height</p> <p>12 of the wall? the height? towards the paving of the</p> <p>13 property.</p> <p>14 MR. JONES: Yes, it's I'm going to share my screen</p> <p>15 again, this is going back to the conditional use site plan,</p> <p>16 is it 28? Exhibit 28?</p> <p>17 MS. CIRNER: Yes.</p> <p>18 MR. JONES: Exhibit 28,</p> <p>19 MS. CIRNER: Yes Exhibit 28.</p> <p>20 MR. JONES: So to, to directly answer your question,</p> <p>21 it is three to five feet in height. You know, it begins</p> <p>22 here at grade I guess --</p> <p>23 MS. CIRNER: We can't see your screen</p> <p>24 MR. SHUKLA: You are not sharing the screen.</p> <p>25 MR. JONES: Oh shoot, hold on.</p>	55	<p>1 needs to be revised, or amended, does OZAH have the</p> <p>2 authority to approve a conditional use before that</p> <p>3 amendment or that revision occurs? In other words, if the</p> <p>4 application is approved would you have to come back for an</p> <p>5 amendment or does OZAH have the authority to approve it</p> <p>6 with that revision?</p> <p>7 MS. CIRNER: I would say that OZAH has the authority</p> <p>8 to approve it, the only application requirement for a</p> <p>9 conditional use is that the storm water management concept</p> <p>10 plan is filed. That is the only application document we</p> <p>11 need to submit with our conditional use application</p> <p>12 package. So it's typically, we file the application and we</p> <p>13 file the draft plan. Luckily in this case we were able to</p> <p>14 obtain concept approval before coming to OZAH, which makes</p> <p>15 everything a little bit cleaner for us.</p> <p>16 But typically the storm water management concept plan</p> <p>17 is really reviewed at the time of preliminary plan, as well</p> <p>18 as reviewed at the time of sediment control permit, so</p> <p>19 typically in my experience if there's a preliminary plan</p> <p>20 required subsequent to a conditional use typically OZAH</p> <p>21 will receive into the record any changes to the plans that</p> <p>22 are required as part of the preliminary plan. So I</p> <p>23 typically, if I get the preliminary plan approved and if</p> <p>24 there's any changes represented on that plan, I just submit</p> <p>25 them into the record to OZAH, but it does not require a</p>
54	<p>1 MR. SHUKLA: I will lower my hand after that because</p> <p>2 it think it was my last questions, thank you, and I'll let</p> <p>3 you speak.</p> <p>4 MR. JONES: Thank you, so yes, opposite Mr. Shukla's</p> <p>5 and Mr. Jacob's properties, the retaining wall is</p> <p>6 approximately three to five feet high, in height, along</p> <p>7 this line, and the drive aisle is higher, so</p> <p>8 MR. SHUKLA: Sorry,</p> <p>9 we are still not seeing the --</p> <p>10 HEARING EXAMINER BAUMGARDNER: I am seeing it now.</p> <p>11 MS. CIRNER: I am too.</p> <p>12 HEARING EXAMINER BAUMGARDNER: It may be off your</p> <p>13 screen Mr. Shukla because of the number of attendees.</p> <p>14 MR. JACOB: Yes, I can see it.</p> <p>15 MR. SHUKLA: Okay.</p> <p>16 MS. CIRNER: So --</p> <p>17 MR. JONES: The retaining wall is three to five feet</p> <p>18 in height opposite of Mr. Jacob's property.</p> <p>19 MR. SHUKLA: Okay. Thank you.</p> <p>20 MS. CIRNER: Thank you.</p> <p>21 HEARING EXAMINER BAUMGARDNER: Are there any other</p> <p>22 questions of Mr. Jones from folks who are attending with us</p> <p>23 today?</p> <p>24 Seeing none, I have one final question for Counsel, or</p> <p>25 Mr. Jones. If the storm water management concept plan</p>	56	<p>1 modification. In my experience it's usually a condition</p> <p>2 that says that if there's any changes pursuant to the</p> <p>3 preliminary plan, those plans will be submitted to OZAH.</p> <p>4 HEARING EXAMINER BAUMGARDNER: Thank you. Was there</p> <p>5 any redirect to Mr. Jones?</p> <p>6 MS. CIRNER: I don't have any redirect, but will I</p> <p>7 have the opportunity to call him in response to any</p> <p>8 questions or testimony that Mr. Shukla or Mr. Jacob give?</p> <p>9 HEARING EXAMINER BAUMGARDNER: Yes.</p> <p>10 MS. CIRNER: Okay. Thank you.</p> <p>11 HEARING EXAMINER BAUMGARDNER: Your next witness?</p> <p>12 MS. CIRNER: Okay. Mr. Donnelly, can you please state</p> <p>13 your name, occupation, and business address for the record?</p> <p>14 MR. DONNELLY: My name's Brian Donnelly, I work for</p> <p>15 Micris, Hendricks & Glasscock 9220 Wightman Road, Suite 120</p> <p>16 Montgomery Village in Maryland.</p> <p>17 HEARING EXAMINER BAUMGARDNER: Mr. Donnelly, do you</p> <p>18 have the ability to be on a camera?</p> <p>19 I'm seeing your initials, and I can hear you, but I</p> <p>20 cannot see you.</p> <p>21 MR. JACOB: I can see Mr. Donnelly.</p> <p>22 MS. CIRNER: Yeah, I can too.</p> <p>23 HEARING EXAMINER BAUMGARDNER: Ah, he's back, there he</p> <p>24 is, I'm not sure why that was doing that but he is now on</p> <p>25 my screen.</p>

Transcript of Hearing
Conducted on October 30, 2020

15 (57 to 60)

<p>57</p> <p>1 Mr. Donnelly can you raise your right hand please?</p> <p>2 And sir, you swear or affirm under penalties of</p> <p>3 perjury that the testimony you are about to give is the</p> <p>4 truth, the whole truth, and nothing but the truth?</p> <p>5 MR. DONNELLY: Yes.</p> <p>6 HEARING EXAMINER BAUMGARDNER: Thank you.</p> <p>7 Counsel, you may proceed.</p> <p>8 MS. CIRNER: Thank you.</p> <p>9 Mr. Donnelly have you previously testified before the</p> <p>10 hearing examiner in Montgomery County as an expert, and if</p> <p>11 so, what was your expertise?</p> <p>12 MR. DONNELLY: Yeah, I've testified a number of times</p> <p>13 before the hearing examiner and have been qualified as both</p> <p>14 a site planner, a site engineer, and a landscape architect.</p> <p>15 MS. CIRNER: Okay. I would like to -- Mr. Donnelly's</p> <p>16 resume is in the record as Exhibit 5-B and unless you'd</p> <p>17 like me to ask him any additional questions, I move him as</p> <p>18 an expert witness in site planning, site engineering and</p> <p>19 landscape architecture.</p> <p>20 HEARING EXAMINER BAUMGARDNER: Mr. Donnelly is so</p> <p>21 admitted as an expert witness in site planning, site</p> <p>22 engineering, and landscape architecture.</p> <p>23 MS. CIRNER: Thank you.</p> <p>24 Mr. Donnelly are you familiar with the property that</p> <p>25 is the subject of this conditional use application and the</p>	<p>59</p> <p>1 MS. CIRNER: And so have you analyzed the suitability</p> <p>2 of the subject property for the proposed conditional use</p> <p>3 from a site planning, landscape architecture and site</p> <p>4 engineering perspective?</p> <p>5 MR. DONNELLY: Yes.</p> <p>6 MS. CIRNER: And has your report been submitted to the</p> <p>7 hearing examiner, and that's exhibit 8 and 8-A through G,</p> <p>8 and that's the land planning report?</p> <p>9 MR. DONNELLY: Yes. yeah, the land planning report</p> <p>10 was submitted as part of the initial package, and as Park</p> <p>11 and Planning was writing the staff report, they extracted</p> <p>12 the majority of the report into their, accepted into their</p> <p>13 staff report and findings.</p> <p>14 MS. CIRNER: Okay. And I'm going to ask you if we</p> <p>15 could use exhibit 11-B, which is the neighborhood plan, I</p> <p>16 think that was actually one of the ones that would populate</p> <p>17 HEARING EXAMINER BAUMGARDNER: Let me pull it up right</p> <p>18 now. it should be on your screens right now.</p> <p>19 MR. DONNELLY: Yeah, that's actually the zoning</p> <p>20 exhibit.</p> <p>21 MS. CIRNER: Yeah, yes, that's the one.</p> <p>22 MR. DONNELLY: I think we need 11-C, oh, there you go.</p> <p>23 MS. CIRNER: There you go.</p> <p>24 MR. DONNELLY: 11-C,</p> <p>25 I think it is.</p>
<p>58</p> <p>1 surrounding area?</p> <p>2 MR. DONNELLY: Yes.</p> <p>3 MS. CIRNER: And have you visited both the site and</p> <p>4 the surrounding area?</p> <p>5 MR. DONNELLY: Yes.</p> <p>6 MS. CIRNER: And are you familiar with the Germantown</p> <p>7 1989 master plan?</p> <p>8 MR. DONNELLY: Yes.</p> <p>9 MS. CIRNER: And how about the R-200 zoning</p> <p>10 classification on the subject property and both the general</p> <p>11 and the specific requirements of the zoning ordinance with</p> <p>12 respect to a residential care facility as a conditional use</p> <p>13 in the R-200 zone?</p> <p>14 MR. DONNELLY: Yes.</p> <p>15 MS. CIRNER: And are you familiar with the standards</p> <p>16 for granting a conditional use?</p> <p>17 MR. DONNELLY: Yes I am.</p> <p>18 MS. CIRNER: And has your firm been employed by the</p> <p>19 Applicant to provide certain services with the respect to</p> <p>20 the conditional use and if so could you please briefly</p> <p>21 describe those?</p> <p>22 MR. DONNELLY: Yes, our firm has been engaged to</p> <p>23 receive the entitlements through the, through the property</p> <p>24 which would include civil engineering some land planning,</p> <p>25 survey and landscape architecture work.</p>	<p>60</p> <p>1 MS. CIRNER: 11-B, yes. so this is the neighborhood</p> <p>2 plan, can you please review for the hearing examiner, the</p> <p>3 findings and the conclusions of your land planning report</p> <p>4 pertaining to the surrounding neighborhood, including the</p> <p>5 locations of any specialized exceptions or conditional uses</p> <p>6 that have been implemented in the neighborhood.</p> <p>7 MR. DONNELLY: Yes ma'am, I defined the neighborhood,</p> <p>8 bounded on the north side by the single family residential</p> <p>9 properties immediately to the north of Dawson Farm Road,</p> <p>10 and that would extend essentially along the rear yard to</p> <p>11 those properties until it borders the north side of Great</p> <p>12 Seneca Highway, and that would define the, the southern</p> <p>13 border. And then the western border is defined by the</p> <p>14 limits of the single family residential properties to, to</p> <p>15 the south. And to the northwest the neighborhood is bound</p> <p>16 by Germantown road. The, the neighborhood generally</p> <p>17 consists of a mixed use of residential units both</p> <p>18 townhouses and single family detached, immediately to the</p> <p>19 north, is the elementary school, which is a fairly dense</p> <p>20 large mass building.</p> <p>21 Immediately to the southwest is commercial property</p> <p>22 previously the post office, and now functioning as a, as a</p> <p>23 church. The area has a pretty diverse mixture of</p> <p>24 residential units, but for the most part they're two to</p> <p>25 three story massing elements. There's only one other</p>

Transcript of Hearing
Conducted on October 30, 2020

16 (61 to 64)

61	<p>1 special exception that's been approved within this area, 2 and that is to the south, it's a, daycare facility. That's 3 on Matinee Heights Road. The overall property is within 4 the Germantown Master Plan the master plan approved in 5 1989, as part of that master plan, since it's more than 25 6 years old a majority of the recommendations have already 7 been implemented over the time and as the neighborhood has 8 evolved.</p> <p>9 One of the big components of that master plan was to 10 retain the R-200 zones if they look more specifically at 11 the -- Copper Village. In the Copper Village Community, we 12 are part of the sub-region which is called c1-2 within the 13 master plan. That area, the overall master plan 14 recommended the more dense developments closer to the 15 larger highways and the larger arterial vehicular 16 thoroughfares. There is some specific language within the 17 master plan, that suggests that this is an appropriate use.</p> <p>18 Just, I'll just read a section out of the master plan. 19 "Because of its location in a residential area and adjacent 20 to an arterial road, it would be suitable for a child, 21 elderly daycare or religious facility or similar use." So 22 they're describing the general area and a care facility 23 would be an appropriate use for this for this location.</p> <p>24 HEARING EXAMINER BAUMGARDNER: And what page of the 25 master plan were you just reading from?</p>	63	<p>1 southeast. The building will incorporate residential 2 features that will be described in later testimony by the 3 architect, but generally residential features with 4 materials fenestration, and rhythm of design.</p> <p>5 I'm going over your outline trying to see if I've 6 covered everything.</p> <p>7 MS. CIRNER: Yeah, I think, I just want to clarify a 8 few points. You mentioned that there was a special 9 exception in the neighborhood and that was S2471, I 10 believe, and I just want to confirm that that was never 11 implemented.</p> <p>12 MR. DONNELLY: Correct.</p> <p>13 MS. CIRNER: That's actually the first project --</p> <p>14 MR. DONNELLY: It was approved but never implemented 15 that's correct.</p> <p>16 MS. CIRNER: Okay. Thank you. and then to answer the 17 hearing examiner's question, it's page 63 of the master 18 plan, and Mr. Donnelly could you just touch on the 19 surrounding transit facilities in the area?</p> <p>20 MR. DONNELLY: Yeah, there's a MARC train immediately 21 to the north that's within walkable distance, so between 22 the mass transit to the north on the MARC train there's 23 also bus routes that come up and down Farm Road, and 24 Liberty Mill Road to provide mass transit. there-- the 25 proposed site also, as Mr. Jones explained, provides</p>
62	<p>1 MR. DONNELLY: That's a great question. If I can find 2 that page, I was actually reading it out of the planning 3 report.</p> <p>4 HEARING EXAMINER BAUMGARDNER: Okay, that's fine.</p> <p>5 MR. DONNELLY: The second element that's mentioned in 6 the master plan is it calls for a general broadening of the 7 mixed use housing types in the master plan, and providing 8 additional elderly facilities within the overall Germantown 9 Master Plan. There's kind of a -- somewhat of a shortfall 10 within this area for elderly care facilities, so this is a 11 very appropriate use, given its need and demand for senior 12 facilities.</p> <p>13 As far as the general character of the facility, this 14 property provides a good transitional use between the 15 arterial -- yeah, maybe the next slide down, the yellow, 16 yeah, that's, which exhibit is that? that would be..</p> <p>17 HEARING EXAMINER BAUMGARDNER: For the record, I'm 18 just showing exhibit 11-C, I believe, would that be the 19 correct one?</p> <p>20 MR. DONNELLY: Yes. that was what I was looking for - 21 - the exhibit number. So the property provides a good 22 transitional use between Dawson Farm Road and the adjoining 23 residential facilities to the south. The massing and 24 building type would be very similar in massing to both the 25 elementary school and the townhouses immediately to the</p>	64	<p>1 pedestrian connectivity to both Liberty Town, and 2 ultimately Farm Road. which has access to a hiker/biker 3 trail along the south side of Farm Road.</p> <p>4 MS. CIRNER: And we're looking currently at exhibit 5 11-C, and I see that the surrounding zoning is R-200, 6 however, it has kind of a starring pattern over the area 7 within the Fountain Hills community and just want to 8 confirm that that represents the TDR overlay of 6.4 and 9 that that allows an increase density in that residential 10 area, is that correct?</p> <p>11 MR. DONNELLY: That's correct, that's correct.</p> <p>12 MS. CIRNER: And now do you agree with the technical 13 staff's determination that the proposed residential care 14 facility substantially conforms to the master plan?</p> <p>15 MR. DONNELLY: Yes.</p> <p>16 MS. CIRNER: And do you agree with technical staff's 17 conclusion that the proposed residential care facility will 18 satisfy the development's standards for the R-200 zone, and 19 the zoning requirements for the residential care facility?</p> <p>20 MR. DONNELLY: Yes.</p> <p>21 MS. CIRNER: And now, based on your testimony, and all 22 the materials that have been submitted in your expert 23 report does the conditional use comply with the standards 24 and requirements for a residential care facility in 25 Articles 59.4, 59.3, and 59.6 of the zoning ordinance?</p>

Transcript of Hearing
Conducted on October 30, 2020

17 (65 to 68)

<p>65</p> <p>1 MR. DONNELLY: Yes. it does.</p> <p>2 MS. CIRNER: And in your expert opinion will the</p> <p>3 conditional use substantially conform to the 1989</p> <p>4 Germantown Master Plan?</p> <p>5 MR. DONNELLY: Yes, it not only conforms, it actually</p> <p>6 implements a big portion of that plan to provide the senior</p> <p>7 housing.</p> <p>8 MS. CIRNER: Okay. And in your expert opinion and</p> <p>9 based on your testimony and the materials submitted into</p> <p>10 the application and into the record, will the conditional</p> <p>11 use be harmonious with and not alter the character of the</p> <p>12 surrounding neighborhood in a manner inconsistent with that</p> <p>13 master plan?</p> <p>14 MR. DONNELLY: Yes, and it also would result in a</p> <p>15 noninherent adverse effect to the neighborhood.</p> <p>16 MS. CIRNER: And in your expert opinion, and based on</p> <p>17 your testimony and all the materials submitted for this</p> <p>18 application, will the conditional use, when evaluated in</p> <p>19 conjunction with existing and approved conditional uses in</p> <p>20 a neighboring residential detached zone, will it increase</p> <p>21 the number, intensity, or scope of conditional uses</p> <p>22 sufficiently to affect the area adversely or alter the</p> <p>23 predominantly residential nature of the area?</p> <p>24 MR. DONNELLY: No, it will not adversely effect, it's</p> <p>25 really the only special exception in the area or</p>	<p>67</p> <p>1 conditional use and development suitable for the site and</p> <p>2 compatible with the neighborhood?</p> <p>3 MR. DONNELLY: Yes.</p> <p>4 MS. CIRNER: Do you have anything else you'd like to</p> <p>5 add Mr. Donnelly?</p> <p>6 MR. DONNELLY: Not at this point, I'll just be</p> <p>7 available for any kind of questions if there are any.</p> <p>8 MS. CIRNER: Okay, great.</p> <p>9 HEARING EXAMINER BAUMGARDNER: And are there any other</p> <p>10 questions for Mr. Donnelly from anyone else on the line? I</p> <p>11 don't see any hands raised, or anyone indicating to me that</p> <p>12 they have a question. are you finished with Mr. Donnelly?</p> <p>13 MS. CIRNER: Yes, that's all I have for Mr. Donnelly.</p> <p>14 HEARING EXAMINER BAUMGARDNER: Great, if there is no</p> <p>15 objection from anyone, we are going to take a five-minute</p> <p>16 break, allow folks to use the restroom, grab a cup of</p> <p>17 coffee, whatever you need to do. the time is 11:07, we'll</p> <p>18 reconvene at 11:12 am. does that work for everyone?</p> <p>19 MS. CIRNER: Yes, thank you.</p> <p>20 HEARING EXAMINER BAUMGARDNER: Okay, a five-minute</p> <p>21 break, we're going go off the record for a short 5 minutes</p> <p>22 and be back at 11:12, 11:13 am.</p> <p>23 (Recess)</p> <p>24 HEARING EXAMINER BAUMGARDNER: All right everyone. It</p> <p>25 looks like we have everyone back I believe. Is the court</p>
<p>66</p> <p>1 conditional use in the area.</p> <p>2 MS. CIRNER: And in your expert opinion and based on</p> <p>3 your testimony and all the materials in the record, will</p> <p>4 the conditional use be served by adequate public</p> <p>5 facilities?</p> <p>6 MR. DONNELLY: Yes.</p> <p>7 MS. CIRNER: And in your expert opinion and based on</p> <p>8 your testimony and all the materials submitted for this</p> <p>9 application, will the conditional use cause undo harm to</p> <p>10 the neighborhood, as a result of a noninherent adverse</p> <p>11 effect alone, or the combination of an inherent noninherent</p> <p>12 adverse effect in any of the following categories:</p> <p>13 enjoyment --</p> <p>14 MR. DONNELLY: I'm sorry, you cut out.</p> <p>15 MS. CIRNER: No, that's ok, I was just going to name</p> <p>16 all of the different categories, which are, use, peaceful</p> <p>17 enjoyment, economic value, or development of adjoining or</p> <p>18 confronting properties for the general neighborhood,</p> <p>19 traffic, odors, dust elimination, or lack of parking, and</p> <p>20 the health, safety or welfare of neighboring residents,</p> <p>21 visitors or employees.</p> <p>22 MR. DONNELLY: Yeah, the development should not impact</p> <p>23 any of those conditions or characters.</p> <p>24 MS. CIRNER: And in your expert opinion and based on</p> <p>25 your testimony and materials in the record, is the</p>	<p>68</p> <p>1 reporter back on the line?</p> <p>2 COURT REPORTER: I'm here, yes.</p> <p>3 HEARING EXAMINER BAUMGARDNER: All right. Thank you</p> <p>4 so much, sir. The time is 11:13 a.m. We will reconvene</p> <p>5 this hearing for a conditional use before the Montgomery</p> <p>6 County Office of Zoning and Administrative Hearings on</p> <p>7 conditional use 2009, Floumoy Development Group.</p> <p>8 And Ms. Cimer, I will turn it back over to you.</p> <p>9 MS. CIRNER: Great. Thank you. I would like to call</p> <p>10 Ms. Colleen Bowers.</p> <p>11 Ms. Bowers, can you state you name, occupation, and</p> <p>12 business address for the record?</p> <p>13 MS. BOWERS: Yes. Colleen Bowers, landscape</p> <p>14 architect, and the address is 9220 Wightman Road, Suite</p> <p>15 120, Montgomery Village, Maryland.</p> <p>16 HEARING EXAMINER BAUMGARDNER: And Ms. Bowers, can you</p> <p>17 increase your volume, if possible? You are a little bit</p> <p>18 low.</p> <p>19 MS. BOWERS: Yes. Hang on one second.</p> <p>20 HEARING EXAMINER BAUMGARDNER: Thank you.</p> <p>21 MS. BOWERS: So much talking. Can everybody hear me?</p> <p>22 HEARING EXAMINER BAUMGARDNER: Yes. Ms. Bowers, can</p> <p>23 you raise your right hand please?</p> <p>24 Do you swear or affirm under the penalties of perjury</p> <p>25 that the testimony you're about to give is the truth, the</p>

Transcript of Hearing
Conducted on October 30, 2020

18 (69 to 72)

<p>69</p> <p>1 whole truth and nothing but the truth?</p> <p>2 MS. BOWERS: Yes.</p> <p>3 HEARING EXAMINER BAUMGARDNER: Thank you.</p> <p>4 MS. CIRNER: So Ms. Bowers's resume is Exhibit 5-C.</p> <p>5 And since she has not qualified yet before the hearing</p> <p>6 examiner as an expert, I would like to ask her a few</p> <p>7 questions. So how long have you been a practicing</p> <p>8 landscape architect?</p> <p>9 MS. BOWERS: Since 2011.</p> <p>10 MS. CIRNER: And can you please explain your</p> <p>11 educational background?</p> <p>12 MS. BOWERS: Yes, I have a bachelors in landscape</p> <p>13 architecture with a minor in horticulture from Virginia</p> <p>14 Polytechnic Institute and State University.</p> <p>15 MS. CIRNER: And do you hold any certifications</p> <p>16 related to your occupation?</p> <p>17 MS. BOWERS: Yes, I have been a licensed landscape</p> <p>18 architect since 2017.</p> <p>19 MS. CIRNER: And are you familiar with the Montgomery</p> <p>20 County regulations including the zoning ordinance?</p> <p>21 MS. BOWERS: Yes.</p> <p>22 MS. CIRNER: And are you familiar with the standards</p> <p>23 and requirements for conditional uses?</p> <p>24 MS. BOWERS: Yes.</p> <p>25 MS. CIRNER: And are you familiar with those</p>	<p>71</p> <p>1 you briefly explain what your role was?</p> <p>2 MS. BOWERS: My role would be creating the landscape</p> <p>3 plans. So that includes detailed planting plans, hard</p> <p>4 scape plans, planting details, and lighting plans for the</p> <p>5 conditional use.</p> <p>6 MS. CIRNER: Okay. And Hearing Examiner Baumgardner,</p> <p>7 would you mind pulling up and sharing your screen with</p> <p>8 landscape plan 30-A?</p> <p>9 HEARING EXAMINER BAUMGARDNER: So Counsel, was that</p> <p>10 Exhibit 14 or Exhibit 30?</p> <p>11 MS. CIRNER: It's Exhibit 30. Yes, we subsequently</p> <p>12 revised them in response to technical staff's comments. I</p> <p>13 know these are big plans, big files.</p> <p>14 HEARING EXAMINER BAUMGARDNER: Yeah, I'm just -- I'm</p> <p>15 not sure why we are having -- and this is on our end -- and</p> <p>16 why we are having issues with the -- I guess I don't have</p> <p>17 enough process power here, which is unfortunate. While I</p> <p>18 see if I can troubleshoot this, you're welcome to proceed</p> <p>19 with your testimony.</p> <p>20 MS. CIRNER: Great. So Ms. Bowers, can you please</p> <p>21 describe the proposed landscaping for the building and the</p> <p>22 parking facility?</p> <p>23 MS. BOWERS: Yeah, it's a little difficult without the</p> <p>24 plan, but I will start with what I think everybody is</p> <p>25 familiar with and I'm just going to kind of start at the</p>
<p>70</p> <p>1 requirements pertaining to landscaping in landscape</p> <p>2 screening for conditional uses and parking facilities?</p> <p>3 MS. BOWERS: Yes.</p> <p>4 MS. CIRNER: And have you ever previously testified</p> <p>5 before any other governmental bodies? And if so, can you</p> <p>6 please briefly explain?</p> <p>7 MS. BOWERS: No.</p> <p>8 MS. CIRNER: Okay. Well, I would like to move that</p> <p>9 Ms. Bowers be admitted as an expert in landscape</p> <p>10 architecture based on her resume and her experience as well</p> <p>11 as her background and certification.</p> <p>12 HEARING EXAMINER BAUMGARDNER: She is so admitted as</p> <p>13 an expert in landscape architecture.</p> <p>14 MS. CIRNER: Thank you. Ms. Bowers, are you familiar</p> <p>15 with the R-200 zoning classification of the subject</p> <p>16 property in both the general and specific requirements of</p> <p>17 the zoning ordinance with respect to a residential care</p> <p>18 facility as a conditional use in the R-200 zone?</p> <p>19 MS. BOWERS: Yes.</p> <p>20 MS. CIRNER: And we already established you are</p> <p>21 familiar with the conditional use standards as well as the</p> <p>22 general landscaping requirements in Article 59.6. And you</p> <p>23 are also employed by MHG and we have heard testimony from</p> <p>24 your colleagues that your firm was retained to prepare the</p> <p>25 entitlements in the conditional use application. So can</p>	<p>72</p> <p>1 front and work through the landscape plan. So beginning</p> <p>2 with the front entrance and the parking lot, there are</p> <p>3 specific requirements for screening that we have.</p> <p>4 MS. SHUKLA: I'm sorry to interrupt, but I have</p> <p>5 downloaded the exhibits yesterday. And if it is any help,</p> <p>6 I can put it up on my end Mr. Baumgardner, if that's okay.</p> <p>7 HEARING EXAMINER BAUMGARDNER: Thank you, Mr. Shukla.</p> <p>8 I do have it up on my screen. So I can see it. But we are</p> <p>9 having an issue with the sharing feature. So I think we're</p> <p>10 good to go for now and I'll continue to see if I can figure</p> <p>11 out --</p> <p>12 MS. BOWERS: Would you like me --</p> <p>13 HEARING EXAMINER BAUMGARDNER: What the sharing</p> <p>14 feature is -- why that's not cooperating.</p> <p>15 MR. SHUKLA: Okay.</p> <p>16 HEARING EXAMINER BAUMGARDNER: But we can proceed with</p> <p>17 the testimony here today.</p> <p>18 MS. CIRNER: Ms. Bowers, were you going to offer to</p> <p>19 share your screen? No?</p> <p>20 MS. BOWERS: Yeah, let me -- I can try to see if I can</p> <p>21 get it to show up on mine.</p> <p>22 HEARING EXAMINER BAUMGARDNER: Sure.</p> <p>23 MS. BOWERS: Give me one second. Can everyone see</p> <p>24 that?</p> <p>25 MS. CIRNER: Part of it.</p>

Transcript of Hearing
Conducted on October 30, 2020

19 (73 to 76)

73	<p>1 MS. BOWERS: Well, hang on. I think we got a --</p> <p>2 HEARING EXAMINER BAUMGARDNER: It's slightly</p> <p>3 offscreen.</p> <p>4 MS. BOWERS: Technical difficulties. Is that any</p> <p>5 better?</p> <p>6 HEARING EXAMINER BAUMGARDNER: I think mine might be</p> <p>7 up. Let me see if I can -- we will try this.</p> <p>8 MS. BOWERS: My computer also tends to freeze.</p> <p>9 HEARING EXAMINER BAUMGARDNER: Let's see if this</p> <p>10 works. Can we see that exhibit folks?</p> <p>11 MR. SHUKLA: Yes.</p> <p>12 MS. BOWERS: Yes.</p> <p>13 MS. CIRNER: Yes.</p> <p>14 HEARING EXAMINER BAUMGARDNER: All right.</p> <p>15 MS. CIRNER: Thank you.</p> <p>16 MS. BOWERS: Okay, thank you.</p> <p>17 HEARING EXAMINER BAUMGARDNER: Sure.</p> <p>18 MS. BOWERS: So again, starting with the front</p> <p>19 entrance parking and then building screening. At the front</p> <p>20 entrance there is a requirement that we have a three-foot</p> <p>21 hedge along that front row of parking to screen from the</p> <p>22 right-of-way any lighting. We also have the requirement to</p> <p>23 provide canopy trees and shade for the parking area, which</p> <p>24 you can see we have a few American Beeches and things like</p> <p>25 that along the parking. And then the --</p>	75	<p>1 Then we have an upper courtyard that will be available</p> <p>2 for the residents. This area is -- the idea is smaller,</p> <p>3 more intimate gathering space with shaded seating, lawn for</p> <p>4 activities, and a large community garden. And then</p> <p>5 finally, kind of the main area outdoor space available for</p> <p>6 the residents will be in the rear of the building between</p> <p>7 that and the retaining wall. This courtyard has a bunch of</p> <p>8 amenities in it.</p> <p>9 There is the outdoor extension of the dining area with</p> <p>10 seating opportunities for large and small groups, and</p> <p>11 outdoor patio with a fireplace, shaded pergola, a fountain,</p> <p>12 and ample seating for lounging and relaxing. A formal lawn</p> <p>13 for yoga, croquet, things like that, and then a garden walk</p> <p>14 with planting bed, butterfly garden, space to create some</p> <p>15 seasonal interest.</p> <p>16 And finally, I think around as you come back towards</p> <p>17 the front of the building towards the community park, there</p> <p>18 is a space for more games like a bocce court. And that's</p> <p>19 the overall landscape plan.</p> <p>20 HEARING EXAMINER BAUMGARDNER: And the main outdoor</p> <p>21 area for residents of the facility, is that along the</p> <p>22 northern border where I'm indicating with this cursor right</p> <p>23 now?</p> <p>24 MS. BOWERS: Correct, yes.</p> <p>25 MS. CIRNER: So Ms. Bowers, are you aware that prior</p>
74	<p>1 HEARING EXAMINER BAUMGARDNER: And that's along the</p> <p>2 southern edge of the property; is that correct?</p> <p>3 MS. BOWERS: Correct, yes. And so then following</p> <p>4 along all of the, what used to be the post office and now</p> <p>5 back to Mr. Shukla and Mr. Jacob's properties, it's all</p> <p>6 screening that is required under the zoning ordinance. For</p> <p>7 every 100 linear feet, we have to provide a minimum 12 foot</p> <p>8 depth along that buffer. That's just the minimum. And</p> <p>9 then 2 canopy trees, 4 understory or evergreen trees, 8</p> <p>10 large shrubs, and 12 medium shrubs. So all of that can be</p> <p>11 seen along that southwest property line.</p> <p>12 And then back up towards the entrance is the community</p> <p>13 park. This is a space to be both used by residents on the</p> <p>14 property, but also for the public. So we put in a small</p> <p>15 natural play element, especially since is across the street</p> <p>16 from an elementary school. There are gardens, birdfeeders,</p> <p>17 and little seated areas for everyone to enjoy.</p> <p>18 If we then move sort of back on the property, back to</p> <p>19 requirements of the zoning ordinance, that southeastern</p> <p>20 property line also requires screening. So again, the same</p> <p>21 requirements as the other one per hundred linear feet. We</p> <p>22 have to provide trees, shrubs. Then that whole area of</p> <p>23 storm water management will also all be planted with</p> <p>24 landscape plants. It's not really accessible. It's more</p> <p>25 aesthetics visual for residents and for the neighborhood.</p>	76	<p>1 to the hearing, Mr. Shukla and Mr. Jacobs have raised some</p> <p>2 concerns about the type and extent of landscaping being</p> <p>3 proposed along that southern property boundary near their</p> <p>4 properties?</p> <p>5 MS. BOWERS: Yes.</p> <p>6 MS. CIRNER: And how do you propose to address their</p> <p>7 concerns? I know the landscape plan addresses some of</p> <p>8 their concerns with respect to seasonality of materials as</p> <p>9 well as the size of the materials that will be planted as</p> <p>10 they previously expressed it to us that they wanted larger</p> <p>11 plant materials planted. So could you please touch on</p> <p>12 those as well as addressing the new concerns they raised in</p> <p>13 their October statement of concern?</p> <p>14 MS. BOWERS: Sure. Yes. We received the statement of</p> <p>15 concern. And I understand it can be difficult to have your</p> <p>16 property backing up to that -- you know, a new facility</p> <p>17 like this. So while we are required to put a certain</p> <p>18 amount of plantings in that area specifically along the</p> <p>19 backs of their properties, we took into account that they</p> <p>20 had some concerns.</p> <p>21 All of the plant sizes have been adjusted to give a</p> <p>22 more significant size upon initial installation of the</p> <p>23 plants. Any shrubs to be put in will have a 3 to 4 foot</p> <p>24 minimum height, while trees are also larger. Any of the</p> <p>25 shade trees listed on the plan will be at 2-½ to 3 inch</p>

Transcript of Hearing
Conducted on October 30, 2020

20 (77 to 80)

<p>77</p> <p>1 upon planting, which means they are about 14 to 15 feet 2 tall. And then evergreens in any of the smaller flowering 3 trees will also be a little larger at I think the minimum 4 is seven feet and most of them will be more within the 5 eight to nine foot range.</p> <p>6 MS. CIRNER: Ms. Bowers, let me interrupt you real 7 quickly. What's the typical planting material sizes that 8 you install for projects?</p> <p>9 MS. BOWERS: We usually, in general, unless there is a 10 specific height requirement by the zoning ordinance such as 11 on the hedge at the front of the parking lot, which is a 12 three-foot minimum, generally they leave that up to us as 13 the landscape architects. So in general, we would 14 normally, in an area like this, maybe start the shrubs out 15 at like a two foot. The trees might be at more of a 2 to 16 2-1/2 caliper. So that would put them at 10 feet, 11 feet 17 tall. And then again, with the evergreens and flowering 18 trees, we would maybe be putting them in at five feet or 19 six feet. So we try to increased everything a little bit 20 to give them a better size upon initial planting.</p> <p>21 MS. CIRNER: Okay. Thank you. What else can you tell 22 us about that landscape area?</p> <p>23 MS. BOWERS: So in that area specifically, I know we 24 tried very hard. There is an existing 24 inch mulberry on 25 the plans that's towards the rear of their properties. We</p>	<p>79</p> <p>1 Tupelo, these mines are properly were actually replaced 2 with American Beech, Red Oak. And we added -- I believe we 3 only added one plant species which would be an American 4 Hophornbeam. And again these still -- while still 5 deciduous and meeting the requirements of the zoning 6 ordinance, they provide a little more coverage so that in 7 the fall and winter when leaves start falling, these will 8 hold onto them well into January, February. The oaks in 9 particular can hold onto their leaves pretty much year- 10 round.</p> <p>11 And then other trees specifically on their properties, 12 we've chosen evergreen trees of red cedar and loblolly 13 pine, both of these are fast growth trees, again for the 14 specific reason of filling in that area quickly. And that 15 will help with any of the deciduous trees that are also 16 mixed in there giving them time to grow in.</p> <p>17 Finally, as far as the shrub species, they were all 18 picked so that they will be at full growth a minimum of 19 about five feet. A lot of them can get the six or seven 20 feet. And again, a mix of evergreen and deciduous.</p> <p>21 Evergreen shrubs specifically behind the properties include 22 cherry laurel, which is a fast growth, ink berry, 23 rhododendron and mountain laurel, which are all more of a 24 medium to fast growth. And then a few small -- a few 25 deciduous shrubs also mixed in there as well.</p>
<p>78</p> <p>1 are doing everything we can to keep that one in place. So 2 again, that's just really good for letting the new plants 3 get established. And when we are putting the new plantings 4 in, a lot of them are planted in a triangular, which is a 5 staggered pattern. This also helps rather than just having 6 a straight line of plantings; it provides a lot more depth 7 and variety and you're going to get better coverage from 8 the plantings because they overlap one another. So it's a 9 more substantial screen.</p> <p>10 Another thing we were taking into account as far as 11 the seasonality, so evergreen versus deciduous, we tried to 12 provide as many evergreens as we could under the 13 constraints of the planting per linear foot obviously, for 14 both trees and shrubs. But we do have a couple of 15 deciduous species in there. I know since they gave us 16 their statement of concern in October, we have switched out 17 a few tree species for the specific reason that they are 18 not evergreen, they are deciduous. And we're going to 19 maintain them as deciduous trees because we need this shade 20 trees and the understory trees.</p> <p>21 But we've gone ahead and chosen species, and excuse my 22 Latin, they are marcescent species, which means that while 23 they are deciduous, they will actually retain their foliage 24 longer than normal. So where we did have a few species, I 25 think we had some magnolias, a couple of serviceberry's,</p>	<p>80</p> <p>1 So we really wanted to try to provide not just 2 variety. But even thinking about the deciduous shrubs, I 3 know that back in there we've planted some Virginia Sweet 4 Spire and hydrangea, which once they lose their leaves it 5 will provide a pretty dense branching habit to help with 6 the screening.</p> <p>7 MS. CIRNER: So these changes that you have 8 articulated, do they need to be updated on the landscape 9 plan?</p> <p>10 MS. BOWERS: They have been updated on the landscape 11 plan.</p> <p>12 MS. CIRNER: They have? We submitted that to the 13 hearing examiner?</p> <p>14 MS. BOWERS: I --</p> <p>15 MS. CIRNER: I don't think we have, but I think we 16 would need to.</p> <p>17 MS. BOWERS: Yeah, I don't believe it's been submitted 18 yet.</p> <p>19 MS. CIRNER: Okay.</p> <p>20 MS. BOWERS: And again, I think it was a total of five 21 or six trees just along the back of those two properties 22 that we switched out based on Mr. Shukla and Mr. Jacob's 23 concerns.</p> <p>24 MS. CIRNER: Okay, great. Do you have anything else 25 to add with respect to the landscaping that's being</p>

Transcript of Hearing
Conducted on October 30, 2020

21 (81 to 84)

<p>81</p> <p>1 proposed Ms. Bowers?</p> <p>2 MS. BOWERS: Looking through my notes here quickly, I</p> <p>3 think the only thing that I hadn't really touched on the</p> <p>4 little bit that might have been -- that may be of concern,</p> <p>5 would be some of the lighting plan. Most of the lighting</p> <p>6 for the property is located on the building or is for the</p> <p>7 rear courtyard area. It's a lot of sort of ambience</p> <p>8 lighting, low wattage, things like that.</p> <p>9 But we do obviously have to like the parking lot for</p> <p>10 cars. So there will be a few pole lights, but they are all</p> <p>11 located on the north side near the building. There are</p> <p>12 none along the curb that's near the adjacent properties.</p> <p>13 That was very intentional. Again, there is a photo metrics</p> <p>14 that was submitted because we want to make sure that when</p> <p>15 they are installed there is no light foot candles that are</p> <p>16 getting to the property line. And again, I don't see any</p> <p>17 of that lighting conflicting just because we've provided a</p> <p>18 lot of screening along the property line.</p> <p>19 MS. CIRNER: Okay, great. So in your expert opinion</p> <p>20 and based on your testimony, and the plans of documents in</p> <p>21 the record, from the landscape architecture perspective,</p> <p>22 does the proposed landscaping satisfy the parking facility</p> <p>23 and the general landscaping requirements in the zoning</p> <p>24 ordinance?</p> <p>25 MS. BOWERS: Yes.</p>	<p>83</p> <p>1 residential care facility cause any undue harm to the</p> <p>2 neighborhood resulting from noise, odor, dust elimination,</p> <p>3 or as to the use and peaceful enjoyment of those properties</p> <p>4 or the general neighborhood?</p> <p>5 MS. BOWERS: No.</p> <p>6 MS. CIRNER: Okay, thank you. That's all I have for</p> <p>7 Ms. Bowers.</p> <p>8 HEARING EXAMINER BAUMGARDNER: Are there any questions</p> <p>9 for Ms. Bowers? The first-hand I saw raised was Mr. Jacob.</p> <p>10 You're welcome to ask your question, sir.</p> <p>11 MR. JACOB: Ms. Bowers, this is Matthew Jacob. I live</p> <p>12 at -- right across on the southern border of the property.</p> <p>13 And I haven't seen your revised document. So I am looking</p> <p>14 at the old document showing the landscape, the trees and</p> <p>15 everything. A few things now we can talk about and the</p> <p>16 rest of them can be when we have our discussion later</p> <p>17 regarding your letter.</p> <p>18 Some of this -- most of the trees shown in the old</p> <p>19 one, they shed their leaves during wintertime. Now I see</p> <p>20 you have done some work in revising them and I would like</p> <p>21 to get a copy of it whenever you are ready to submit it to</p> <p>22 the County. Would you mind sharing that with us? And</p> <p>23 maybe we may have some additional comments at that time.</p> <p>24 MS. BOWERS: No, absolutely. We will share it with</p> <p>25 you. And yes, since we've made the update, I will make</p>
<p>82</p> <p>1 MS. CIRNER: And will the proposed landscaping provide</p> <p>2 screening that ensures compatibility with the surrounding</p> <p>3 neighborhood?</p> <p>4 MS. BOWERS: Yes.</p> <p>5 MS. CIRNER: And will the proposed structure have</p> <p>6 suitable landscaping and landscape screening?</p> <p>7 MS. BOWERS: Yes.</p> <p>8 MS. CIRNER: And in your expert opinion and based on</p> <p>9 your testimony and the plans and documents in the record,</p> <p>10 from the landscape architecture perspective, will the</p> <p>11 proposed residential care facility be harmonious with and</p> <p>12 not alter the character of the surrounding neighborhood in</p> <p>13 a manner inconsistent with the master plan?</p> <p>14 MS. BOWERS: Yes.</p> <p>15 MS. CIRNER: And in your expert opinion and based on</p> <p>16 your testimony, and the plans and the documents in the</p> <p>17 record, from your landscape architecture perspective, will</p> <p>18 the proposed residential care facility pose any undue harm</p> <p>19 to the neighborhood as to the use, peaceful enjoyment, or</p> <p>20 development of surrounding properties or the general</p> <p>21 neighborhood?</p> <p>22 MS. BOWERS: No.</p> <p>23 MS. CIRNER: And finally, in your expert opinion and</p> <p>24 based on the testimony, and plans and documents in the</p> <p>25 record, from your perspective, will the proposed</p>	<p>84</p> <p>1 sure that everyone gets a copy.</p> <p>2 MR. JACOB: And the second comment is, depending on</p> <p>3 how you took care of the trees there, I know the county</p> <p>4 requirements have a minimum, which I understand you</p> <p>5 probably have met. But will you be able to add some</p> <p>6 additional ones in case we have some issues with -- in</p> <p>7 order to give us a better coverage especially on the</p> <p>8 understory because these trees are going to go tall like</p> <p>9 15, 20 feet. Some of them even 30 feet high. Once it goes</p> <p>10 up, then you have the bottom piece all open. And have you</p> <p>11 considered that also in your design?</p> <p>12 MS. BOWERS: Yes. And thank you for pointing that</p> <p>13 out. I do know that that's where, to the zoning ordinance,</p> <p>14 I think they do a very good job having us provide not only</p> <p>15 the trees, but the shrubs. And that's why the shrubs in</p> <p>16 particular I think are going to be very important in that</p> <p>17 area. Again, we provided some, mostly evergreen for the</p> <p>18 shrubs. And that was intentional. Specifically, a cherry</p> <p>19 laurel.</p> <p>20 The species that we have on there, it's a species that</p> <p>21 is a relatively fast growth. And when it's given space as</p> <p>22 we've given it, it can get six to seven feet high. But</p> <p>23 unlike the trees, it won't thin out on the bottom. It will</p> <p>24 be full shrub at probably about five feet wide from ground</p> <p>25 to the top. The other ones, ink berries, again, they don't</p>

Transcript of Hearing
Conducted on October 30, 2020

22 (85 to 88)

<p>85</p> <p>1 get quite as tall. They're going to be more like five 2 feet. But again, the idea with those and the 3 rhododendrons, the mountain laurels, those are not -- they 4 don't get extremely leggy. They will stay dense. They 5 will stay kind of rounded, if you want to say gumdrop 6 shape. But the idea is when the trees that are deciduous 7 get a little bit taller, that those shrubs will still be 8 there. Their main job will be to screen everything from 9 the ground to about six to seven feet.</p> <p>10 MR. JACOB: Okay. I guess that's probably all I have 11 for now. We can probably discuss more when we get to our 12 testimony part. Thank you.</p> <p>13 HEARING EXAMINER BAUMGARDNER: Thank you, Mr. Jacob. 14 Were there any other questions from folks who are attending 15 here today? I don't see any other hands raised. Ms. 16 Cirner, any questions for Ms. Bowers based upon Mr. Jacob's 17 question?</p> <p>18 MS. CIRNER: No, not at this time. Thank you.</p> <p>19 HEARING EXAMINER BAUMGARDNER: All right. Thank you 20 for your testimony, Ms. Bowers.</p> <p>21 MS. BOWERS: Thank you.</p> <p>22 MS. CIRNER: I would like to call Ms. Janet Meyer 23 next. Ms. Meyer, can you state your name, occupation, and 24 business address for the record?</p> <p>25 MS. MEYER: Yes, my name is Janet Meyer. I work at</p>	<p>87</p> <p>1 MS. MEYER: Yes, that's essentially been the core of 2 my career. I've been really focusing on senior living 3 facilities for over 20 years.</p> <p>4 MS. CIRNER: Okay. And have -- are you familiar with 5 the Montgomery County regulations including the zoning 6 ordinance and the general and specific requirements for 7 residential care facilities?</p> <p>8 MS. MEYER: Yes, I am.</p> <p>9 MS. CIRNER: I would like to move Ms. Meyer as an 10 expert in architecture.</p> <p>11 HEARING EXAMINER BAUMGARDNER: Ms. Meyer is so 12 admitted as an expert in architecture.</p> <p>13 MS. CIRNER: Thank you. Ms. Meyer, you familiar with 14 the conditional use application that is before us today?</p> <p>15 MS. MEYER: I am. And maybe just a pause, Mr. 16 Baumgardner, I know that you swore in others previously.</p> <p>17 MS. CIRNER: Oh.</p> <p>18 HEARING EXAMINER BAUMGARDNER: Yes.</p> <p>19 MS. MEYER: Is that something that you need to do with 20 me as well?</p> <p>21 HEARING EXAMINER BAUMGARDNER: You are absolutely 22 right.</p> <p>23 Can you please raise your right hand?</p> <p>24 Do you swear or affirm under the penalties of perjury 25 that the testimony you're about to give is the truth, the</p>
<p>86</p> <p>1 BCP Design Group. We are located at 100 N. Charles Street, 2 Baltimore, Maryland, 21201.</p> <p>3 MS. CIRNER: And Ms. Meyer's resume is in the record 4 as exhibit 5-D. However, I do need to ask her some 5 questions about her background as she has not qualified to 6 testify as an expert in Montgomery County before the 7 Hearing Examiner.</p> <p>8 HEARING EXAMINER BAUMGARDNER: Okay.</p> <p>9 MS. CIRNER: So Ms. Meyer, how long have you been an 10 architect?</p> <p>11 MS. MEYER: I have been practicing since 1998 and 12 licensed since 2001 in the state of Maryland.</p> <p>13 MS. CIRNER: And can you please describe your 14 educational background?</p> <p>15 MS. MEYER: I have a bachelor of arts in art history 16 from Dickinson College and a master of architecture from 17 the University of Maryland.</p> <p>18 MS. CIRNER: And do you hold any certifications 19 related to your occupation?</p> <p>20 MS. MEYER: As I just mentioned, I am a licensed 21 architect in the State of Maryland and I received that 22 licensing initially in 2001 and I have continually updated 23 with the necessary requirements.</p> <p>24 MS. CIRNER: And have you worked on senior housing 25 facilities in the past?</p>	<p>88</p> <p>1 whole truth and nothing but the truth?</p> <p>2 MS. MEYERS: Yes.</p> <p>3 HEARING EXAMINER BAUMGARDNER: Thank you.</p> <p>4 MS. CIRNER: Thank you, Ms. Meyer. Let's see; you are 5 familiar with the property that is subject of this 6 application today and you're familiar with the requisite 7 zoning ordinance standards. Are you also familiar with the 8 noise requirements in the Montgomery County code as well as 9 the lighting and parking requirements?</p> <p>10 MS. MEYER: Yes, I'm familiar with both.</p> <p>11 MS. CIRNER: And can you please explain, briefly, your 12 role in this conditional use application?</p> <p>13 MS. MEYER: So I am a principal at BCP Architects and 14 I am leading the effort for the design, documentation, and 15 construction administration for the project. So we will 16 also coordinate and direct all the consultants that are 17 associated with the building.</p> <p>18 MS. CIRNER: And Hearing Examiner Baumgardner, is it 19 possible to pull up Exhibits 12-G and 12-H?</p> <p>20 HEARING EXAMINER BAUMGARDNER: Let's give it a try.</p> <p>21 MS. CIRNER: Those are some big ones I know.</p> <p>22 MS. MEYER: And if it doesn't work, I did take some 23 time -- Casey, you will have to guide me to the specifics 24 because I don't have the exhibit numbers on what I pulled 25 up. But I do have what we had provided to you for the</p>

Transcript of Hearing
Conducted on October 30, 2020

23 (89 to 92)

<p style="text-align: right;">89</p> <p>1 plans and elevations and the like.</p> <p>2 HEARING EXAMINER BAUMGARDNER: It looks like it is</p> <p>3 coming up, which is nice. Okay. You should have 12-G up</p> <p>4 on your screen.</p> <p>5 MS. MEYER: Right. So Casey, you want me to talk</p> <p>6 through the overall concept of the building materials,</p> <p>7 height, all those things?</p> <p>8 Great. I think you are on mute, but I will assume</p> <p>9 that is a yes.</p> <p>10 MS. CIRNER: Yes, thank you. Sorry.</p> <p>11 MS. MEYER: Okay. So the overall project that we have</p> <p>12 worked with Flournoy to develop is a 125 bed assisted</p> <p>13 living and memory care community. We really worked to</p> <p>14 develop the site plan and site to very much make this</p> <p>15 project harmonious with the surrounding communities in</p> <p>16 materials and scale as well as working with the site</p> <p>17 amenities of the wonderful existing trees that are on the</p> <p>18 site, maintaining those as well as the grade.</p> <p>19 The site does slope down towards the southeast. And</p> <p>20 so we have worked to tuck the parking below the building</p> <p>21 that you can see in this rendering so that it maximizes the</p> <p>22 ability of green space and minimizes surface area for</p> <p>23 parking other than some accessory parking spaces that Mr.</p> <p>24 Jones alluded to earlier as well as the drive aisles.</p> <p>25 The building itself is three stories with an average</p>	<p style="text-align: right;">91</p> <p>1 again, really making it so that you have a residential feel</p> <p>2 and very much not a commercial or institutional nature from</p> <p>3 an architectural perspective.</p> <p>4 HEARING EXAMINER BAUMGARDNER: Ms. Cirner, are you</p> <p>5 still with us?</p> <p>6 MS. CIRNER: I am, thank you. I was asking the</p> <p>7 questions to myself. Ms. Meyer, can you please --</p> <p>8 HEARING EXAMINER BAUMGARDNER: No problem.</p> <p>9 MS. CIRNER: Can you please give us a brief overview</p> <p>10 of the interior floor plans?</p> <p>11 MS. MEYER: Yes. And I'm happy to go into detail on</p> <p>12 any of these plans. Essentially as you come into the entry</p> <p>13 of the building -- and I believe if you scroll the other</p> <p>14 direction, the floor plans are in the earlier portion of</p> <p>15 this package. Keep going. One more. There you go.</p> <p>16 So our lower-level garage has 63 spaces in back of</p> <p>17 house. This is our main first floor that the main entrance</p> <p>18 to the community is on the left-hand side with major</p> <p>19 amenities of living space, dining space that open up to</p> <p>20 that northern terrace. Second floor has additional --</p> <p>21 second floor has additional amenity spaces. Both the first</p> <p>22 and the second floor have our assisted living residences,</p> <p>23 which are a combination of studios and one-bedrooms, and</p> <p>24 really provide great opportunities for our residents from</p> <p>25 the socialization and connectivity standpoint which is</p>
<p style="text-align: right;">90</p> <p>1 height above grade plane of 42 feet. That is measured to</p> <p>2 the midpoint of the sloped roof. We have worked to use a</p> <p>3 sloped roof that actually has a bathtub, if you will, on</p> <p>4 top. It can then conceal all of our mechanical equipment</p> <p>5 so that you have a residential scale and style of roofline</p> <p>6 while hiding any equipment so that it's not obtrusive on</p> <p>7 the remainder of the site.</p> <p>8 We have really worked to minimize the scale of the</p> <p>9 building especially to the south and the neighbors, by</p> <p>10 creating projections as you can see in this rendering, that</p> <p>11 break the scale down of a larger building into three</p> <p>12 smaller wings. The façades of the building will be likely</p> <p>13 a stone veneer on a good portion of it as well as cement</p> <p>14 board siding that is a very low maintenance product that</p> <p>15 will allow for ease for the developer and operator, but at</p> <p>16 the same time make for a good appearance throughout the</p> <p>17 longevity of this with minimal requirements of maintenance.</p> <p>18 We are really trying to maximize the amount of natural</p> <p>19 light through wonderful, expansive windows for our</p> <p>20 residents. All of them are facing south and getting direct</p> <p>21 light in for an aging population that may not necessarily</p> <p>22 be able to be outside is really important to us. And then</p> <p>23 you will see in the image that we have a nice large green</p> <p>24 roof terrace that is concealing the below grade garage that</p> <p>25 will be a wonderful amenity for the residents as well. But</p>	<p style="text-align: right;">92</p> <p>1 really very much important part of these communities. The</p> <p>2 third floor on the left-hand side holds additional assisted</p> <p>3 living residences and a lounge.</p> <p>4 And on the right-hand side is our secure memory care</p> <p>5 area. So memory care residents will be contained here</p> <p>6 essentially, and secured, for their safety have a wonderful</p> <p>7 great room, living room space, and a large exterior terrace</p> <p>8 so that they will have easy access to the outside, but at</p> <p>9 the same time not be at risk for elopement or escaping, if</p> <p>10 you will.</p> <p>11 MS. CIRNER: Thank you, Ms. Meyer. Hearing Examiner</p> <p>12 Baumgardner, would you mind pulling up Exhibit 30-C, which</p> <p>13 is the photometric plan which is the lighting? And Ms.</p> <p>14 Bowers touched on a lighting plan, but Ms. Meyer, could you</p> <p>15 please further elaborate on what's proposed as to lighting</p> <p>16 for the facility?</p> <p>17 MS. MEYER: Yes. So we are essentially proposing</p> <p>18 varying lighting that really ultimately helps with site</p> <p>19 safety and the required lighting for our parking and drive</p> <p>20 areas. There are sites lighting poles that on the</p> <p>21 photometric plan you can see the larger circles in a</p> <p>22 turquoise blue color that run down the edge of the drive</p> <p>23 I'll.</p> <p>24 And then on the surrounding site we have building</p> <p>25 lighting, code required, at egress points along the</p>

Transcript of Hearing
Conducted on October 30, 2020

24 (93 to 96)

<p style="text-align: right;">93</p> <p>1 building as well as some lighting up in the North inside up 2 on the terrace. The red zigzag lines, if you will are 3 overhead Tivoli lights or garden lights that you may often 4 see to provide a wonderful ambient light for residents that 5 might be for outdoor dining or activities. And then the 6 remainder of the lighting is really low voltage lighting 7 for landscape lighting paths as well as some architectural 8 building lighting that very much is ambient and just 9 provides a little bit of a decorative and very much sort of 10 residential nature to this project. 11 MS. CIRNER: And did technical -- oh, sorry. Keep 12 going. 13 MS. MEYER: Now, I was going to say that the way that 14 we have developed the lighting and what is shown on the 15 photometric plan is that we have no light spread off of the 16 property line which is partially because of the site 17 placement of the building and that we do have a fair amount 18 of distance between the edge of the building. But we've 19 also strategically placed, especially the site lighting, on 20 the northern side of the driveway rather than on the 21 southern side so that again, we have essentially 0 foot 22 candles by the time we get to the edge of the property line 23 on all locations. 24 MS. CIRNER: So in your opinion, will the building and 25 in the site lighting maintain a residential appearance and</p>	<p style="text-align: right;">95</p> <p>1 MS. MEYER: So what our experience is, is that once a 2 light comes on, the eye really get used to that ambient 3 lighting level that is in place and if you use a motion 4 sensor, it ultimately becomes a flickering so that the 5 light goes down and then if motion is sensed, then the 6 light comes on. So it actually may make it more concerning 7 that if you see light levels go higher, and then lower and 8 then higher, depending on if the car goes by or a person 9 walks by. So it is that has been our experience that 10 really not have a motion sensor lighting is really 11 beneficial to everybody, especially we have residents that 12 will be living in three stories and really adjacent, right 13 adjacent to these light fixtures or some of these light 14 fixtures, the site lighting poles. So by putting them on a 15 dimmer, that could be, I think, a little bit disconcerting 16 for our residents that it's 10 feet away from their window, 17 if you will. 18 MS. CIRNER: Okay. But in general, the lighting is of 19 residential nature? 20 MS. MEYER: It is, absolutely. 21 MS. CIRNER: Okay. And now Mr. Shukla and Mr. Jacob 22 also raised concerns about the generator. Can you give us 23 an overview of the generator at least with the information 24 you know at this point? 25 MS. MEYER: Yes. So we are required by building code,</p>
<p style="text-align: right;">94</p> <p>1 be compatible with the neighborhood? 2 MS. MEYER: Yes. 3 MS. CIRNER: And are you aware that Mr. Shukla and Mr. 4 Jacob have requested that they be included in any decision 5 to change the proposed lighting at the construction phase 6 of the residential care facility? 7 MS. MEYER: I am. 8 MS. CIRNER: And do you anticipate any substantive 9 changes that would affect the lighting being provided and 10 the foot candles that are proposed at the property line? 11 MS. MEYER: No, I don't anticipate any change from a 12 wattage standpoint and a light level standpoint. We may 13 look at adjustments to the architectural character or look 14 at elements from a budget and value engineering standpoint, 15 but all of those, we would certainly want to maintain the 16 lighting levels not only for those residents that are 17 outside of our property, but for the 125 residents that 18 will be living in this community. 19 MS. CIRNER: So you could technically change the 20 actual fixture without changing the wattage of the lighting 21 being provided? 22 MS. MEYER: Correct. 23 MS. CIRNER: Okay. And in your expert opinion, is the 24 installation of motor -- motion sensors counterproductive 25 to mitigating impacts of site lighting?</p>	<p style="text-align: right;">96</p> <p>1 and especially from a life safety standpoint for assisted 2 living to provide certain loads on a generator for this 3 type of project. We are proposing that generator be 4 installed interior to the building. We are actually 5 planning on installing it in an enclosed room adjacent to 6 our garage. So that room will be designed with a sound 7 attenuation, and insulation so that the noise of that 8 generator will not only meet the minimum or the maximum 9 noise levels that are required by the Montgomery County 10 noise ordinance, but all the more for the residents that 11 will be living essentially directly above and around this 12 generator. 13 Generators are required to be tested once a month for 14 a minimum of 30 minutes. So we would be required to do 15 that. But other than that, it would really only be running 16 in an emergency situation. And again, we would be 17 mitigating that sound as required by Montgomery County 18 code, but also for the benefit of our residents. 19 MS. CIRNER: So in your opinion, do you think a 20 hospital grade muffler or a level III sound attenuation 21 enclosure is really necessary for this facility? 22 MS. MEYER: So I would say that we would be looking at 23 any sound enclosure if it was an exterior generator. But 24 we are not going to be using -- a generator enclosure is 25 not necessary when we're doing it on the inside of the</p>

Transcript of Hearing
Conducted on October 30, 2020

25 (97 to 100)

<p style="text-align: right;">97</p> <p>1 building --</p> <p>2 (Crosstalk)</p> <p>3 MS. MEYER: -- because the room that will be provided</p> <p>4 essentially becomes that enclosure and will be providing</p> <p>5 the necessary sound attenuation there.</p> <p>6 Mufflers, we may find that it is required. A hospital</p> <p>7 grade muffler is -- it can reduce your DBAs by up to 40,</p> <p>8 where residential, you may only need 15 to 25. So with</p> <p>9 that and the distance between the property line, which is</p> <p>10 over 100 feet from the edge of the building to the property</p> <p>11 line to the south, we don't necessarily think that a</p> <p>12 hospital grade muffler or level III enclosure are</p> <p>13 necessary. But again, we will be providing the sound</p> <p>14 attenuation required for not only was required by the code,</p> <p>15 but again, we have 125 residents that will be living in</p> <p>16 this building that will be very sensitive to this as well.</p> <p>17 And we absolutely want to meet the needs of that challenge</p> <p>18 for everybody's benefit.</p> <p>19 MS. CIRNER: Okay. Thank you, Ms. Meyer. A couple of</p> <p>20 final questions for you. Mr. Shukla and Mr. Jacob also</p> <p>21 requested an eight-foot high fence to be installed along</p> <p>22 the property boundary near their home. What is your</p> <p>23 understanding of that request? And using -- or could you</p> <p>24 just explain what your thoughts are?</p> <p>25 MS. MEYER: Yeah. So our understanding of the request</p>	<p style="text-align: right;">99</p> <p>1 wonderful landscaping in this southern boundary so that it</p> <p>2 provides that buffer and that limitation of a cut through,</p> <p>3 but making it again, a very residential design solution.</p> <p>4 MS. CIRNER: So thank you. So just some final</p> <p>5 questions. In your expert opinion, does the lighting in</p> <p>6 the parking and the garage comply with Article 59.6 of the</p> <p>7 Montgomery County zoning ordinance?</p> <p>8 MS. MEYER: Yes.</p> <p>9 MS. CIRNER: And in your expert opinion and based on</p> <p>10 your testimony, the documents in the record, from an</p> <p>11 architectural perspective, will the proposed residential</p> <p>12 care community be well related to the surrounding area in</p> <p>13 its siting, scale, bulk, height, materials, and textures?</p> <p>14 And will have a residential appearance where appropriate?</p> <p>15 MS. MEYER: Yes.</p> <p>16 MS. CIRNER: And in your expert opinion from an</p> <p>17 architectural perspective, will the proposed conditional</p> <p>18 use be compatible with and in harmony with the character of</p> <p>19 the surrounding neighborhood and not alter the character of</p> <p>20 that surrounding neighborhood considering the design,</p> <p>21 scale, and the look and the materials that are proposed?</p> <p>22 MS. MEYER: Yes.</p> <p>23 MS. CIRNER: And in your expert opinion from an</p> <p>24 architectural perspective, will the proposed conditional</p> <p>25 use cause any undue harm to the use of abutting or</p>
<p style="text-align: right;">98</p> <p>1 is really to prevent any cut through of pedestrians that</p> <p>2 are cutting across the site. As we alluded to earlier and</p> <p>3 Mr. Jones pointed out on an earlier exhibit, we do, on the</p> <p>4 southern side of the building, have a retaining wall that</p> <p>5 is in height from three feet to five feet, moving</p> <p>6 essentially from almost north to south, if you will.</p> <p>7 And code requires that we have a 42 inch high guard</p> <p>8 rail on top of that wall at any portion that is 30 inches</p> <p>9 above grade. So it is our anticipation that along that</p> <p>10 southern boundary, we have a -- our retaining wall and then</p> <p>11 a railing, a decorative railing above it. So that would</p> <p>12 really mitigate any necessity of an additional eight-foot</p> <p>13 high fence because that would prohibit pretty -- in my</p> <p>14 opinion, to a good degree, anybody being able to easily</p> <p>15 cross through the property.</p> <p>16 MS. CIRNER: And why is a chain-link fence not</p> <p>17 particularly your preference for a senior housing</p> <p>18 community?</p> <p>19 MS. MEYER: Well again, you're using the word</p> <p>20 community, which is what we love. We consider everything</p> <p>21 that we design a community and not a facility. And we feel</p> <p>22 that a chain-link fence has very much of a more</p> <p>23 institutional or commercial nature to it. And we certainly</p> <p>24 want to create a much more residential feel. And so the</p> <p>25 hope is that we use, again, a decorative guard rail and</p>	<p style="text-align: right;">100</p> <p>1 confronting properties or the general neighborhood in the</p> <p>2 following categories; health, safety, or welfare and noise,</p> <p>3 odor, dust, illumination, glare, or physical activity on</p> <p>4 the property?</p> <p>5 MS. MEYER: No.</p> <p>6 MS. CIRNER: Okay. Thank you. That's all the</p> <p>7 questions I have for Ms. Meyer.</p> <p>8 HEARING EXAMINER BAUMGARDNER: Are there any questions</p> <p>9 from anyone else who is participating here today for Ms.</p> <p>10 Meyer? I see Mr. Jacob has raised his hand. You're</p> <p>11 welcome to ask your question, sir.</p> <p>12 MR. JACOB: Ms. Meyer, thank you for a good</p> <p>13 explanation of all the facilities outside and inside. What</p> <p>14 -- I have a few questions. One question is for Mr.</p> <p>15 Baumgardner. Do we want to touch on these items now or do</p> <p>16 we want to touch on it towards the end?</p> <p>17 HEARING EXAMINER BAUMGARDNER: What was the first part</p> <p>18 of your question, sir?</p> <p>19 MR. JACOB: Do we want to raise these items now or do</p> <p>20 we want to wait until we get the chance to talk?</p> <p>21 HEARING EXAMINER BAUMGARDNER: So if you have any</p> <p>22 questions about what Ms. Meyer had testified about, now</p> <p>23 would be your time. If there is testimony that you would</p> <p>24 like to provide in terms of your opinion of the plans or</p> <p>25 any of the impacts of the lighting or things like that, we</p>

Transcript of Hearing
Conducted on October 30, 2020

26 (101 to 104)

101	<p>1 will wait until Ms. Meyer's testimony is completed and then</p> <p>2 we will give you the opportunity to provide that testimony.</p> <p>3 MR. JACOB: Okay. Then I may have a few questions</p> <p>4 now.</p> <p>5 HEARING EXAMINER BAUMGARDNER: Okay.</p> <p>6 MR. JACOB: The first question is mainly regarding the</p> <p>7 generator. I hear that's going to be planned to be in a</p> <p>8 room adjacent to the garage, or within the garage I guess.</p> <p>9 Now it is your expectation that that will provide enough</p> <p>10 sound attenuation. We do not have any documents showing a</p> <p>11 sound study showing how much sound is going to get to our</p> <p>12 property. So normally it would be nice to have somebody do</p> <p>13 a study, assuming that it's inside the building and that</p> <p>14 sound transmission numbers in dB.</p> <p>15 So in a normal building when you have a room without</p> <p>16 any sound attenuation panels inside, sound is going to give</p> <p>17 you too much sound attenuation. So we would like to also</p> <p>18 be kind of made aware of what kind of provisions you're</p> <p>19 providing inside that room. Or maybe a calculation showing</p> <p>20 how much is the sound coming to our property. That's on --</p> <p>21 that's the first one. Second one is mainly regarding the</p> <p>22 lighting.</p> <p>23 HEARING EXAMINER BAUMGARDNER: One second Mr. Jacob.</p> <p>24 Ms. Cirner, did you have something?</p> <p>25 MS. CIRNER: Yes, I just wanted to interject for one</p>	103	<p>1 are proposing our generator currently in our plan.</p> <p>2 So if you imagine that, we're going to be putting a</p> <p>3 design together that has not yet been completed, that will</p> <p>4 really look to mitigate sound, again, not only to the</p> <p>5 property line, but to the residents that are directly</p> <p>6 above, not only from a -- I guess a vibration, but also the</p> <p>7 throw of the sound from that room. I noise study: I mean,</p> <p>8 it may be something that we work with Mr. Sabin and the</p> <p>9 development team to bring in an acoustical engineer to help</p> <p>10 us with that study. Whether we ultimately believe that</p> <p>11 that's necessary, we have not discussed. But at the same</p> <p>12 time, again, we are going to make sure that we provide the</p> <p>13 proper sound mitigation for our residents primarily, and of</p> <p>14 course meet code maximums if you will.</p> <p>15 HEARING EXAMINER BAUMGARDNER: Mr. Jacob, does that</p> <p>16 answer your question?</p> <p>17 MR. JACOB: Well, my issue is, as of now, there is no</p> <p>18 generator shown on the building plans. So we are assuming</p> <p>19 that that is going to be in the garage, which is a</p> <p>20 statement made by Ms. Meyer. Okay. So we take that for</p> <p>21 granted now it is going to be inside the building. But if</p> <p>22 it changes the location, then that is going to have an</p> <p>23 effect on our property sound noise levels. Second is they</p> <p>24 are suggesting that we will meet Montgomery County sound</p> <p>25 requirements, yes, but what is our recourse if they don't?</p>
102	<p>1 second on Mr. Jacob's notion that we were somehow required</p> <p>2 to provide a noise study. That was never an issue that was</p> <p>3 raised previously, nor was it raised by technical staff,</p> <p>4 who is typically the agency that would require such a</p> <p>5 study. We do believe what we are being proposed will</p> <p>6 comply with the Montgomery County code and will provide</p> <p>7 adequate attenuation.</p> <p>8 HEARING EXAMINER BAUMGARDNER: Okay, thank you.</p> <p>9 Ms. Meyer, can you offer any thoughts on either the</p> <p>10 need or desire for any kind of noise study or give any</p> <p>11 thoughts in response to Mr. Jacob's question regarding any</p> <p>12 testing or any ability to test for noise from the proposed</p> <p>13 generator?</p> <p>14 MS. MEYER: So the Montgomery County code requires</p> <p>15 that we have a maximum of 55 DBA at night and 65 DBA during</p> <p>16 the day. That equates, according to my research, to normal</p> <p>17 conversation at the property line. So as you get closer to</p> <p>18 the generator, obviously that would be -- it would be</p> <p>19 louder.</p> <p>20 So ultimately, you know, the enclosure that we are</p> <p>21 creating certainly would maximize the sound attenuation and</p> <p>22 sound insulation for the building, hitting no greater of a</p> <p>23 DBA at the property line then, again, what's required by</p> <p>24 code. We do have residents that will be directly above.</p> <p>25 We have a resident room essentially directly above where we</p>	104	<p>1 HEARING EXAMINER BAUMGARDNER: Sure. So the -- and</p> <p>2 this is kind of getting into -- it's not really a question</p> <p>3 for Ms. Meyer. But certainly anything that is required</p> <p>4 under county code would have to be -- apply here. So if</p> <p>5 they were things that were out of county code, they would</p> <p>6 be subject to enforcement by the county.</p> <p>7 The first part of your question, if the generator is</p> <p>8 indicated in testimony is indicating that the generator</p> <p>9 would be in a room in the facility, that would be a</p> <p>10 requirement if the application is approved. And so if</p> <p>11 something would change, they would have to come back to</p> <p>12 this agency for approval of something like that. I don't</p> <p>13 know if that answers your questions, but again, we want to</p> <p>14 keep this to questions that Ms. Meyer can answer regarding</p> <p>15 the application.</p> <p>16 MR. JACOB: Okay.</p> <p>17 HEARING EXAMINER BAUMGARDNER: And you will certainly</p> <p>18 be able to provide any testimony very shortly regarding</p> <p>19 those concerns.</p> <p>20 MR. JACOB: Regarding the generator, I have one more</p> <p>21 additional thing and another one for the lighting. The</p> <p>22 testing of the generator, we had indicated in our request</p> <p>23 that be done during daytime on a weekday because the code</p> <p>24 allowed -- wants you to test it once a month, but it</p> <p>25 doesn't tell you when. So if you schedule it on a weekday</p>

Transcript of Hearing
Conducted on October 30, 2020

27 (105 to 108)

<p>105</p> <p>1 during normal hours, then that eliminates the issue of 2 having noise coming to our site during nighttime. 3 HEARING EXAMINER BAUMGARDNER: Is that something that 4 you would agree to Ms. Meyer; that the generator would be 5 tested during daytime hours? 6 MS. MEYER: Yes, it's something that we have discussed 7 with our overall team, that it would be done midday. And a 8 suggestion was to have it 1:00 p.m. on a Friday, which is 9 potentially a time that would be amenable to everybody, and 10 again, during working hours. But I would surmise that an 11 agreeable time would be -- you know, no problems there. 12 Again, all the more, we have 125 residents that will be 13 living in this building and we are not going to want to 14 disrupt them at off-hours either. 15 MR. JACOB: Okay. I think that sounds good. One 16 comment on the lighting. I know Ms. Meyer said that there 17 is a chance that they can use a different manufacturer for 18 the lighting fixtures. I believe it's a yellow one which 19 is on the parking lot. Now if they change the 20 manufacturer, we would like to know that the lighting 21 distribution pattern -- so does each fixture have multiple 22 lighting distributing patterns. So the lighting 23 distribution pattern doesn't change. If it changes that 24 will alter the light level or the photometric data which is 25 provided on the sheet. So as long as that is -- they kind</p>	<p>107</p> <p>1 not completely be turned off when there is no use? 2 MS. MEYER: So we have not looked at providing any 3 additional dimmers at this time. I think one of the 4 concerns that we have from turning the lights completely 5 off at night, especially our site lighting, is that we do 6 have staff that does shift change at around -- and Mr. 7 Sabin may need to correct me on this, but typically shift 8 change is around 11:00 p.m. and then again at 6:00 a.m. or 9 7:00 a.m. And so depending on time of year, it is 10 certainly dark at those times and that really would -- we 11 would then have to bring the lighting levels back up. So 12 that we equate to flickering on, flickering off that we may 13 find more disruptive than leaving an ambient level of 14 lighting on for safety and security at all times. 15 MR. SHUKLA: Has that been an experience? Has that 16 been ever tested? Or are you just supposing that? 17 MS. MEYER: I'm supposing that. So I can't say that I 18 can testify to the benefits or detriments. But it's our 19 feeling that the flickering of light from dimming to higher 20 levels may be of concern to an eye that would then 21 otherwise get use to a constant lighting level. 22 MR. SHUKLA: Okay. But assuming that we are inside of 23 our homes, so are the community residents in your property, 24 in the Applicant property. We are not expecting them to be 25 outside and experiencing this on/off or dimming and</p>
<p>106</p> <p>1 of stay with the same kind of distribution pattern, then we 2 should be okay. 3 MS. MEYER: I guess my response to that would be that 4 we have provided an exhibit of our photometric plan as part 5 of today's hearing. And again, if we changed -- and that's 6 what we are required to follow. If we end up changing it, 7 and it would change the outcome of that photometric plan, 8 then we would be required to submit that for which then you 9 would certainly be aware of. 10 MR. JACOB: Okay, thank you. 11 HEARING EXAMINER BAUMGARDNER: Any other questions for 12 Ms. Meyer? Mr. Shukla? 13 MR. SHUKLA: Yeah, let me unmute. 14 MS. MEYER: Ms. Meyer, thank you for your 15 presentation. Just two questions. One is on the lighting 16 first. You mentioned that the motion sensors may be more 17 disruptive of lights coming in and going out. Will you 18 have any other sensors such as darkness sensors and maybe 19 dim the light as opposed to completely turn it off? Like 20 we have in our homes, we outside lights which are 25 21 percent unless there is some motion. They come on 22 automatically during dark hours and then go off 23 automatically when the light is sufficient to -- you know, 24 in the morning. Will you have such photo sensors for the 25 darkness turn on control? And also, can it be dimmed if</p>	<p>108</p> <p>1 brightening, right? So it's just we are trying to see -- 2 both our bedrooms fall on that side of the property, our 3 master bedroom. So we're just trying to make sure that we 4 don't have needless light throughout the night. Then 5 that's really the main concern. I don't know if you've 6 seen our property before, but you may not have realized 7 that our master bedrooms fall towards the edge, for that -- 8 facing the proposed facility. 9 MS. MEYER: Right. 10 MR. SHUKLA: Okay. 11 MS. MEYER: No, and I am aware that location. And 12 again, the way that we've proposed the lighting and the 13 lighting levels that we have proposed for the site, we feel 14 are the minimum requirements for safety and security for 15 our residents and our staff. But we are not anticipating 16 lighting it up like a used parking lot, car parking lot. 17 So the intent is really to make the overall feel of our 18 community very residential in scale, and have streetlights, 19 if you will, that again provide just enough foot candles 20 for safety and security and no more at night. 21 MR. SHUKLA: Okay. But will you be open to actually 22 putting the dimming sensors? Let's get some real 23 experience as opposed to having a guesswork at that, right? 24 And then they can be turned off if they are indeed 25 disruptive or an issue.</p>

Transcript of Hearing
Conducted on October 30, 2020

28 (109 to 112)

109	<p>1 MS. MEYER: Casey, I would have to defer that to</p> <p>2 ownership.</p> <p>3 HEARING EXAMINER BAUMGARDNER: Yeah.</p> <p>4 MS. CIRNER: Yeah, I just wanted to raise an objection</p> <p>5 to Mr. Shukla's indication that maybe Ms. Meyer did not</p> <p>6 have enough expertise to surmise about the dimmer switches.</p> <p>7 And that is something that we could talk with the Applicant</p> <p>8 about. However, you have heard that it may be somewhat</p> <p>9 counterproductive.</p> <p>10 HEARING EXAMINER BAUMGARDNER: I understand the</p> <p>11 objection. I didn't take the question that way. I heard</p> <p>12 the question as; could Ms. Meyer opine on something like</p> <p>13 the switch idea as something that would be possible. So I</p> <p>14 didn't quite -- I didn't conclude from Mr. Shukla's</p> <p>15 question that it was a challenge to Ms. Meyer's ability or</p> <p>16 knowledge of that particular item. So I will overrule the</p> <p>17 objection with the understanding that I didn't hear the</p> <p>18 question that way.</p> <p>19 MR. SHUKLA: And you are --</p> <p>20 MS. CIRNER: Thank you.</p> <p>21 MR. SHUKLA: And Mr. Baumgardner, you are absolutely</p> <p>22 right. It was no way questioning her expertise. It was</p> <p>23 simply experience versus just -- that's why I asked the</p> <p>24 question, is this a position or is this experience. So</p> <p>25 just making sure that we have the right experience-based</p>	111	<p>1 MS. MEYER: So in review of the landscape plan that</p> <p>2 Ms. Bowers presented, there are a good number of shrubs,</p> <p>3 and again, trees all along the edge of that retaining wall.</p> <p>4 So at a certain point, they will grow up to ultimately</p> <p>5 screen the retaining wall, and if not all, at least a</p> <p>6 portion of that guard rail as well. From a -- you know,</p> <p>7 what it looks like, we really have not gotten into the</p> <p>8 details of it, but we certainly want to make it look</p> <p>9 decorative, very residential in feel, and again, make it so</p> <p>10 that it's attractive equally for our residents that will be</p> <p>11 immediately looking at it.</p> <p>12 HEARING EXAMINER BAUMGARDNER: Okay. Any other</p> <p>13 questions for Ms. Meyer at this time?</p> <p>14 MR. SHUKLA: No, thank you.</p> <p>15 MS. CIRNER: I just have one brief question for Ms.</p> <p>16 Meyer.</p> <p>17 HEARING EXAMINER BAUMGARDNER: Sure.</p> <p>18 MS. CIRNER: Ms. Meyer, the proposed landscaping, will</p> <p>19 that help screen the proposed lighting from Mr. Shukla and</p> <p>20 Mr. Jacob's properties?</p> <p>21 MS. MEYER: Yes, it most definitely will.</p> <p>22 MS. CIRNER: Okay. Thank you. That's it.</p> <p>23 HEARING EXAMINER BAUMGARDNER: All right. Any other</p> <p>24 witnesses Ms. Cirner?</p> <p>25 MS. CIRNER: I have two witnesses, just very briefly,</p>
110	<p>1 information. It was in no way questioning her experience.</p> <p>2 I have one other question related to the fence versus</p> <p>3 wall. Ms. Meyer, we understand your comment related to the</p> <p>4 chain-link fence versus the wall and the retaining guard</p> <p>5 rail. Clearly we don't have a chain-link preference. The</p> <p>6 idea simply is to make any trespassing from there, blocking</p> <p>7 any people just wandering into the properties from the back</p> <p>8 and just from our own security point of view. The</p> <p>9 retaining wall is between three to five feet from what I</p> <p>10 understand. And then on top of it you are saying there</p> <p>11 will be a 42 inch, about 3-1/2 feet tall guard rail.</p> <p>12 This question may actually then go on to Ms. Bowers.</p> <p>13 On this bit of the guard rail, is there any cover? Like</p> <p>14 ground cover, vegetation cover, or something like that? Or</p> <p>15 is it a hard guard rail? What type of the guard rail is</p> <p>16 it? I don't think, as I say, we don't really have a chain-</p> <p>17 link preference. So that's perfectly fine. The</p> <p>18 combination of the wall and the guardrail if that's</p> <p>19 sufficiently high. So I would think if you make the wall</p> <p>20 sufficiently tall, five feet, and then on top of it after</p> <p>21 three feet, then the eight feet, that combination would</p> <p>22 more than meet our intention of what we were raising.</p> <p>23 HEARING EXAMINER BAUMGARDNER: So Ms. Meyer, if you</p> <p>24 know, are there any screening or landscape elements that</p> <p>25 will be on or near the guardrail?</p>	112	<p>1 Ms. Wagner and the Applicant's representative, Mr. Sabin.</p> <p>2 HEARING EXAMINER BAUMGARDNER: All right. And how</p> <p>3 long do you think it will take to go to those two</p> <p>4 witnesses?</p> <p>5 MS. CIRNER: Probably 20 minutes.</p> <p>6 HEARING EXAMINER BAUMGARDNER: All right. Do we have</p> <p>7 any objection to just going through with those two</p> <p>8 witnesses? Or do you folks want to take a lunch break?</p> <p>9 How is everyone feeling?</p> <p>10 MS. CIRNER: I'm okay to power through.</p> <p>11 MR. SHUKLA: I'm okay to continue too.</p> <p>12 HEARING EXAMINER BAUMGARDNER: Okay. Let's call our</p> <p>13 fifth witness.</p> <p>14 MS. CIRNER: Okay, Ms. Wagner, can you please state</p> <p>15 your name and business address for the record?</p> <p>16 MS. WAGNER: Katherine Wagner, 1140 Connecticut</p> <p>17 Avenue, Suite 600, Washington, D.C.</p> <p>18 MS. CIRNER: Okay. And I will also allow the Hearing</p> <p>19 Examiner to swear you in.</p> <p>20 HEARING EXAMINER BAUMGARDNER: Ms. Wagner, please</p> <p>21 raise your right hand.</p> <p>22 Do you swear or affirm under the penalties of perjury</p> <p>23 that the testimony you're about to give is the truth, the</p> <p>24 whole truth, and nothing but the truth?</p> <p>25 MS. WAGNER: I do.</p>

Transcript of Hearing
Conducted on October 30, 2020

29 (113 to 116)

<p>113</p> <p>1 HEARING EXAMINER BAUMGARDNER: Thank you.</p> <p>2 MS. CIRNER: And Ms. Wagner, your resumes in the</p> <p>3 record as Exhibit 5-F, but I'm going to ask you a few</p> <p>4 questions about your experience and your educational</p> <p>5 background. So you have not previously testified before</p> <p>6 the Montgomery County hearing examiner. But how long have</p> <p>7 you been a practicing traffic engineer?</p> <p>8 MS. WAGNER: Over 11 years.</p> <p>9 MS. CIRNER: And can you please describe your</p> <p>10 educational background?</p> <p>11 MS. WAGNER: Yes, I have my bachelor of science in</p> <p>12 civil engineering from Gonzaga University in Spokane,</p> <p>13 Washington.</p> <p>14 MS. CIRNER: And you hold any sort of certifications</p> <p>15 related to your occupation?</p> <p>16 MS. WAGNER: Yes, I'm a licensed professional engineer</p> <p>17 in the State of Maryland and I also have my PTOE, which is</p> <p>18 the professional traffic operations engineer certification.</p> <p>19 MS. CIRNER: And are you familiar with the Montgomery</p> <p>20 County regulations including the zoning ordinance, the</p> <p>21 local area traffic review requirements and the subdivision</p> <p>22 staging policy?</p> <p>23 MS. WAGNER: Yes.</p> <p>24 MS. CIRNER: And are you familiar with the standards</p> <p>25 and requirements for conditional uses?</p>	<p>115</p> <p>1 MS. CIRNER: And have you analyzed the suitability of</p> <p>2 the subject property for the proposed conditional use from</p> <p>3 a transportation planning standpoint?</p> <p>4 MS. WAGNER: Yes.</p> <p>5 MS. CIRNER: And did you prepare a report summarizing</p> <p>6 this analysis? And what type of report did you prepare?</p> <p>7 MS. WAGNER: I prepared -- yes, I did prepare a</p> <p>8 report. And I prepared a transportation statement</p> <p>9 summarizing the number of person trips and vehicle trips to</p> <p>10 be generated by the proposed facility, and also summarized</p> <p>11 information related to the use of the facility related to</p> <p>12 shuttle information.</p> <p>13 MS. CIRNER: And was your traffic statement</p> <p>14 (inaudible) by technical staff at Park and Planning?</p> <p>15 MS. WAGNER: Yes.</p> <p>16 MS. CIRNER: And I would just like to note that that</p> <p>17 traffic statement is in the record as Exhibit 10. Based on</p> <p>18 your analysis and report, can you please explain whether</p> <p>19 the traffic generated from the proposed residential care</p> <p>20 facility will conflict with the traffic generated by</p> <p>21 Germantown Elementary School? Actually, let me just back</p> <p>22 up. Can you just describe your findings and conclusions</p> <p>23 first of your traffic statement and give us an overview of</p> <p>24 the multimodal transportation network?</p> <p>25 MS. WAGNER: Yes. The project was compared to the</p>
<p>114</p> <p>1 MS. WAGNER: Yes.</p> <p>2 MS. CIRNER: And have you testified before any other</p> <p>3 governing bodies? And if so, can you please briefly</p> <p>4 explain?</p> <p>5 MS. WAGNER: The planning -- I've testified at</p> <p>6 planning board hearings the Montgomery County as well as</p> <p>7 the public space commission in D.C.</p> <p>8 MS. CIRNER: And so based on Ms. Wagner's</p> <p>9 qualification and resume, I would like to move her as an</p> <p>10 expert in transportation, planning, and traffic</p> <p>11 engineering.</p> <p>12 MS. WAGNER: Ms. Wagner is so designated as an expert</p> <p>13 in traffic engineering. And what was the second?</p> <p>14 MS. CIRNER: Traffic -- transportation planning.</p> <p>15 MS. WAGNER: Transportation planning. She is so</p> <p>16 designated.</p> <p>17 MS. CIRNER: Thank you. Ms. Wagner, are you familiar</p> <p>18 with the subject conditional use application and the</p> <p>19 property?</p> <p>20 MS. WAGNER: Yes.</p> <p>21 MS. CIRNER: And are you familiar with the 1989</p> <p>22 Germantown Master Plan and the master plans of highways and</p> <p>23 transit ways and recommendations that they may have with</p> <p>24 respect to the subject property?</p> <p>25 MS. WAGNER: Yes.</p>	<p>116</p> <p>1 number of person trips that would be generated by the</p> <p>2 existing single-family house compared to the proposed</p> <p>3 assisted-living facility based on the number of employees</p> <p>4 that will be using the -- the number of employees on site</p> <p>5 at one time. And so it was determined that there would be</p> <p>6 less than the 50 person trips triggering a full LATR study</p> <p>7 during either the AM or PM peak hour.</p> <p>8 We also, as I indicated earlier, that there would be</p> <p>9 shuttle operations to and from the site for residents to</p> <p>10 get to medical appointments, shopping trips, and then also</p> <p>11 excursions for the residents. They, the facility, operates</p> <p>12 with 35 employees, at most, on-site at one time. Most</p> <p>13 employees on-site operate with three shift changes</p> <p>14 occurring at 7:00 a.m., 3:00 p.m., and 11:00 p.m. And the</p> <p>15 adjacent elementary school has a start time of 9:25 and an</p> <p>16 end time of 3:45. So these shift changes do not conflict</p> <p>17 with the arrival and dismissal of the students at the</p> <p>18 elementary school.</p> <p>19 In addition, the schools have buses that arrive on</p> <p>20 campus approximately at 9:15 in the morning. And yes, the</p> <p>21 residential shuttle is occurring during that time period,</p> <p>22 but there are very few residential shuttle trips that will</p> <p>23 be occurring at the same time. As far as the multimodal</p> <p>24 facilities go in the area, we kind of heard about it</p> <p>25 previously. There is a MARC train within walking -- within</p>

Transcript of Hearing
Conducted on October 30, 2020

30 (117 to 120)

117	<p>1 half a mile of the site. There are bus facilities adjacent</p> <p>2 to the site on Dawson Farm Road. There are also adjacent</p> <p>3 bus facility or bus stops on Germantown Road in Great</p> <p>4 Seneca. There are also plenty of bike and potentially in</p> <p>5 facilities nearby with a side path on Dawson Farm Road.</p> <p>6 And I guess this table summarizes the -- I talked</p> <p>7 about the person trips that would be generated by the site.</p> <p>8 There will also be -- and that's what's required to be</p> <p>9 submitted and is part of the LATR. Then we also looked at</p> <p>10 the number of vehicle trips that would be generated by the</p> <p>11 site and that will be 22 vehicle trips in the morning peak</p> <p>12 hour and 31 trips being generated in the PM peak hour.</p> <p>13 Casey, you are on mute.</p> <p>14 MS. CIRNER: Thank you. Prior to this hearing, were</p> <p>15 you able to check the accident data for Liberty Mill Road?</p> <p>16 MS. WAGNER: Yes.</p> <p>17 MS. CIRNER: And what were your findings? There were</p> <p>18 no vehicular -- well, there were just some pedestrian and</p> <p>19 cyclist incidents south of the site near -- sorry --</p> <p>20 MS. CIRNER: At Klopper Road?</p> <p>21 MS. WAGNER: Yes, yes. At Klopper Road. Thank you.</p> <p>22 Just south of the site there were three incidents since</p> <p>23 2015.</p> <p>24 MS. CIRNER: Okay, thank you. So in your expert</p> <p>25 opinion from a traffic and transportation engineering</p>	119	<p>1 Wagner with regard to traffic or the transportation issues</p> <p>2 for this use? Seeing no hands raised, hearing no</p> <p>3 indication, thank you for your testimony.</p> <p>4 MS. WAGNER: You're welcome.</p> <p>5 MS. CIRNER: Thank you. My last witness I would like</p> <p>6 to call is Mr. Charlie Sabin. Mr. Sabin, please state your</p> <p>7 name and business address for the record.</p> <p>8 MR. SABIN: Yes, I'm Charlie Sabin with Flournoy</p> <p>9 Development Group, 1100 Brookstone Centre Parkway,</p> <p>10 Columbus, Georgia, 31917. And I'm the director of senior</p> <p>11 housing development.</p> <p>12 MR. BAUMGARDNER: Mr. Sabin, can you raise your right</p> <p>13 hand, please?</p> <p>14 MR. SABIN: Sure.</p> <p>15 MR. BAUMGARDNER: And sir, do you swear or affirm</p> <p>16 under penalties of perjury that the testimony you're about</p> <p>17 to give is the truth, the whole truth, and nothing but the</p> <p>18 truth?</p> <p>19 MR. SABIN: Yes, sir.</p> <p>20 (OATH ADMINISTERED)</p> <p>21 HEARING EXAMINER BAUMGARDNER: Thank you. Counsel.</p> <p>22 MS. CIRNER: Mr. Sabin, we are not qualifying you as</p> <p>23 an expert, but could you briefly summarize your experience</p> <p>24 with senior housing communities?</p> <p>25 MR. SABIN: Yes, I've been a general contractor and</p>
118	<p>1 standpoint, will the proposed conditional use be served by</p> <p>2 adequate public facilities from a public roads and traffic</p> <p>3 perspective?</p> <p>4 MS. WAGNER: Yes.</p> <p>5 MS. CIRNER: And in your expert opinion from a traffic</p> <p>6 and transportation engineering standpoint, is it your</p> <p>7 opinion that the proposed improvements would -- will not</p> <p>8 cause any undue harm as to traffic or not have lack in</p> <p>9 parking?</p> <p>10 MS. WAGNER: Yes.</p> <p>11 MS. CIRNER: And will the proposed improvements cause</p> <p>12 any undue harm as to the use and peaceful enjoyment or</p> <p>13 development potential of the abutting and confronting</p> <p>14 properties or general neighborhood from a transportation</p> <p>15 perspective?</p> <p>16 MS. WAGNER: Correct.</p> <p>17 MS. CIRNER: And finally, in your expert opinion from</p> <p>18 a transportation standpoint, is it your opinion that the</p> <p>19 proposed conditional use will have a detrimental effect on</p> <p>20 vehicular and pedestrian traffic safety?</p> <p>21 MS. WAGNER: No.</p> <p>22 MS. CIRNER: Okay, thank you. I have no further</p> <p>23 questions for Ms. Wagner.</p> <p>24 HEARING EXAMINER BAUMGARDNER: Are there any questions</p> <p>25 from anyone else who is participating here today for Ms.</p>	120	<p>1 developer since 1982, and began focusing my efforts on</p> <p>2 senior housing development in 2004. So I've been on all</p> <p>3 sides of development, construction, and operations. Over</p> <p>4 the last nine years I've been involved in bringing over</p> <p>5 1,000 senior residential units online throughout the</p> <p>6 Southeast and mid-Atlantic regions of the United States.</p> <p>7 I've also lived in two communities located in Virginia that</p> <p>8 had assisted living and memory care primarily to understand</p> <p>9 the residential experience myself. So that's it.</p> <p>10 MS. CIRNER: I would like to note that your resume is</p> <p>11 Exhibit 26-A in the record. You attended the February 26</p> <p>12 community meeting that we held as the representative for</p> <p>13 the Applicant, correct?</p> <p>14 MR. SABIN: Yes.</p> <p>15 MS. CIRNER: And can you briefly explain the feedback</p> <p>16 you received from Mr. Shukla and Mr. Jacob and how you</p> <p>17 incorporated that the back into the conditional use</p> <p>18 application?</p> <p>19 MR. SABIN: Yes, Mr. Shukla and Mr. Jacob, I thought</p> <p>20 they were very reasonable folks at the meeting. I thought</p> <p>21 they posed thoughtful questions and I learned a few things</p> <p>22 that night. So I believe, as evidenced in this hearing</p> <p>23 today, that our engineering team, our landscape team, the</p> <p>24 architectural team, we've all tried to take into</p> <p>25 consideration their concerns as best we could. I think</p>

Transcript of Hearing
Conducted on October 30, 2020

31 (121 to 124)

<p>121</p> <p>1 that's evident in the exhibits.</p> <p>2 MS. CIRNER: Thank you. Is it correct that they</p> <p>3 requested that the Applicant install a stop sign for</p> <p>4 exiting traffic at the facility? And that that Applicant</p> <p>5 has incorporated that into the plans?</p> <p>6 MR. SABIN: Yes.</p> <p>7 MS. CIRNER: And was -- did their feedback also</p> <p>8 request a no public parking sign at the 10 surface spaces?</p> <p>9 And was that incorporated into the request?</p> <p>10 MR. SABIN: Yes.</p> <p>11 MS. CIRNER: Okay. And Ms. Meyer touched on why the</p> <p>12 Applicant's preferences to utilize the retaining wall with</p> <p>13 the guard rail on top in lieu of a fence. Do you have</p> <p>14 anything to add to that?</p> <p>15 MR. SABIN: I do. When I hear the word guard rail, it</p> <p>16 -- I want to cringe because it makes me think of a big,</p> <p>17 galvanized guard rail out on a DOT roadway. And so thank</p> <p>18 you for the opportunity to explain this.</p> <p>19 We have done this before where we've had a retaining</p> <p>20 wall and we have installed a decorative fence, as Ms. Meyer</p> <p>21 said earlier. But we want it to look residential. We</p> <p>22 don't want it -- we don't want it to look, like I mentioned</p> <p>23 earlier, like a guard rail that you would think of. And so</p> <p>24 just -- I know we don't have a design yet, but I can assure</p> <p>25 everyone here that the owner's intent is to do something</p>	<p>123</p> <p>1 you would hate to think that a resident is just going to go</p> <p>2 stay in a building and it prohibits them from enjoying the</p> <p>3 community.</p> <p>4 We've been to the property so many times, especially</p> <p>5 late in the afternoon. We've seen families walking by with</p> <p>6 their children in strollers or on their scooters. And we</p> <p>7 just think that that little park area there is a nice</p> <p>8 place. It will be a nice stop of point for people in the</p> <p>9 community as well as residents to go out and enjoy that.</p> <p>10 We would love to think that there is -- we are building</p> <p>11 community within the community.</p> <p>12 MS. CIRNER: Thank you, Mr. Sabin. One last question.</p> <p>13 Mr. Shukla and Mr. Jacob asked that the generator for the</p> <p>14 building be tested only during the weekday during the</p> <p>15 afternoon. And I wanted to confirm that you are amenable</p> <p>16 to that request.</p> <p>17 MR. SABIN: Yeah. No -- there is no problem with</p> <p>18 that. And by the way, a little bit further to that end. I</p> <p>19 would like to discuss the generator for a second especially</p> <p>20 as it's been brought up today. One of the communities that</p> <p>21 I lived in in Virginia actually had a generator that was</p> <p>22 under the parking in the -- included in that same parking</p> <p>23 area, very similar design. And because -- and I know we</p> <p>24 don't have that portion designed yet, but I can assure them</p> <p>25 that number one, it's going to be in a concrete enclosure</p>
<p>122</p> <p>1 that looks very pleasing in the community and very</p> <p>2 residential in nature. And I also think Mr. Shukla didn't</p> <p>3 -- was under the -- may not have been under the</p> <p>4 understanding that we were doing this retaining wall. And</p> <p>5 so I think it may have been a little misunderstanding on</p> <p>6 that. But I will let him speak to that if he chooses.</p> <p>7 MS. CIRNER: And do you think that that retaining wall</p> <p>8 with a decorative fencing or railing on the top will</p> <p>9 address Mr. Shukla's concerns about residents maybe, or</p> <p>10 through traffic?</p> <p>11 MR. SABIN: Yeah, I believe it will meet both of our</p> <p>12 concerns. My concern would obviously be a resident walking</p> <p>13 out into that drive aisle and falling over. So from that</p> <p>14 standpoint, I wouldn't want to see that happen. And</p> <p>15 obviously, nobody is going to be crossing over into their</p> <p>16 yard. So I believe we both will be -- both needs and</p> <p>17 desires will be met with that.</p> <p>18 MS. CIRNER: Okay, thank you. Now the proposed</p> <p>19 facility includes an outdoor amenity space. Well, a couple</p> <p>20 of outdoor amenity spaces. But could you please elaborate</p> <p>21 on the park design feature that's on the west side of the</p> <p>22 building along the Rudy Mill Road?</p> <p>23 MR. SABIN: Sure. Over the years we've tended to --</p> <p>24 we've seen big changes in senior living overall. But</p> <p>25 probably the biggest aspect, and maybe as I get older too,</p>	<p>124</p> <p>1 because of the fire safety requirements that will be</p> <p>2 imposed through code and what have you.</p> <p>3 I actually lived over one of these generators and it</p> <p>4 was not a problem at all. I didn't -- and I don't think it</p> <p>5 will be for them or the community either. But we can -- we</p> <p>6 will definitely do the testing at a time during the day</p> <p>7 that is acceptable to them and to us. So we can work that</p> <p>8 out.</p> <p>9 MS. CIRNER: Okay. Thank you, Mr. Sabin. Before</p> <p>10 asking my final few questions, do you have anything else</p> <p>11 that you would like to add?</p> <p>12 MR. SABIN: No.</p> <p>13 MS. CIRNER: Okay. So based on your testimony and</p> <p>14 familiarity with the plans and expert reports submitted</p> <p>15 with this proposed residential care facility, do you</p> <p>16 believe that the conditional use will be in harmony with</p> <p>17 the character of the surrounding neighborhood?</p> <p>18 MR. SABIN: I do.</p> <p>19 MS. CIRNER: And in your opinion, do you believe that</p> <p>20 the proposed residential care facility will have any</p> <p>21 adverse effects on the health, safety, or welfare of</p> <p>22 neighboring residents, visitors, or employees?</p> <p>23 MR. SABIN: No.</p> <p>24 MS. CIRNER: And do you believe it will cause any</p> <p>25 undue harm to the peaceful enjoyment, economic value, or</p>

Transcript of Hearing
Conducted on October 30, 2020

32 (125 to 128)

125	<p>1 development potential of abutting or confronting properties</p> <p>2 for the general neighborhood?</p> <p>3 MR. SABIN: No.</p> <p>4 MS. CIRNER: And if the hearing examiner grants</p> <p>5 approval of this application, is it your intention to</p> <p>6 operate the improvements in accordance with the conditions</p> <p>7 and full compliance with the plans and specifications that</p> <p>8 have been submitted?</p> <p>9 MR. SABIN: Yes.</p> <p>10 MS. CIRNER: And are you an agreement with the</p> <p>11 conditions of approval proposed by technical staff?</p> <p>12 MR. SABIN: Yes.</p> <p>13 MS. CIRNER: Okay. That's all that I have for Mr.</p> <p>14 Sabin.</p> <p>15 HEARING EXAMINER BAUMGARDNER: Are there any questions</p> <p>16 from any else who has joined us or who has been in this</p> <p>17 hearing for the last couple of hours for Mr. Sabin? Seeing</p> <p>18 none and hearing none, I see Ms. Meyer --</p> <p>19 MS. CIRNER: I think Mr. -- sorry. I think Mr. Shukla</p> <p>20 has a question.</p> <p>21 HEARING EXAMINER BAUMGARDNER: There we go. Mr.</p> <p>22 Shukla, yes please.</p> <p>23 MR. SHUKLA: Yes, I was just going to comment on Mr.</p> <p>24 Sabin's comment about the chain-link fence versus -- you</p> <p>25 know, we are of course happy with a retaining wall and</p>	127	<p>1 HEARING EXAMINER BAUMGARDNER: Thank you. Any other</p> <p>2 questions for Mr. Sabin? Ms. Cirner, any follow-up</p> <p>3 questions for this witness?</p> <p>4 MS. CIRNER: No, thank you.</p> <p>5 HEARING EXAMINER BAUMGARDNER: All right. Thank you</p> <p>6 for your testimony, sir. Ms. Cirner, were there any other</p> <p>7 witnesses that you would like to call?</p> <p>8 MS. CIRNER: No, those were all of our witnesses for</p> <p>9 today unless we need to recall some following the testimony</p> <p>10 of Mr. Shukla and Mr. Jacob.</p> <p>11 HEARING EXAMINER BAUMGARDNER: Sure. Turning over to</p> <p>12 that portion of the hearing. Mr. Shukla and Mr. Jacob had</p> <p>13 indicated earlier that they were interested in testifying.</p> <p>14 Would either of you two gentlemen still like to testify</p> <p>15 about any of the matters before me today?</p> <p>16 Mr. Shukla, Mr. Jacob? Are you still there?</p> <p>17 MR. SHUKLA: Yes, I was just unmuting myself.</p> <p>18 HEARING EXAMINER BAUMGARDNER: Sure. We will start</p> <p>19 with you, sir. Can you please raise your right hand?</p> <p>20 Sir, do you swear or affirm under the penalties of</p> <p>21 perjury that the testimony you're about to give is the</p> <p>22 truth, the whole truth, and nothing but the truth?</p> <p>23 MR. SHUKLA: Yes, I do.</p> <p>24 HEARING EXAMINER BAUMGARDNER: And what is your full</p> <p>25 name, sir?</p>
126	<p>1 guard rail or a chain-link. The background of the chain-</p> <p>2 link, so you know, was a previous memory care facility that</p> <p>3 was approved. Even the chain-link fence was fought over.</p> <p>4 They were just going to use the existing -- you know, a</p> <p>5 decorated fence and they were going to repair it in patches</p> <p>6 they were going to just use that. So we were just going by</p> <p>7 that guideline.</p> <p>8 MR. SABIN: Right.</p> <p>9 MR. SHUKLA: We are of course happy to have a more</p> <p>10 presentable and more secured wall and a guard rail above</p> <p>11 it. So no contention there whatsoever.</p> <p>12 MR. SABIN: Really not a guardrail, really.</p> <p>13 MR. SHUKLA: Thank you.</p> <p>14 MS. WAGNER: Thank you. And if it's okay that I</p> <p>15 speak, I wanted to clarify my testimony on saying a guard</p> <p>16 rail. Guardrail is actually the proper building code</p> <p>17 terminology of what is required because of the height of</p> <p>18 the -- the change in grade between the retaining wall and</p> <p>19 the grade below. So it technically is called a guardrail,</p> <p>20 but I absolutely agree with Mr. Sabin in that it is very</p> <p>21 much intended to be an attractive feature. It's not</p> <p>22 supposed to be the thing that yes, brings to your mind</p> <p>23 something that is very ugly and obtrusive. So I just sort</p> <p>24 of wanted to clarify that perspective -- my testimony. I</p> <p>25 agree with you.</p>	128	<p>1 HEARING EXAMINER BAUMGARDNER: My name is Pankaj</p> <p>2 Shukla.</p> <p>3 HEARING EXAMINER BAUMGARDNER: And what is your</p> <p>4 address?</p> <p>5 MR. SHUKLA: 18923 Porterfield Way, Germantown.</p> <p>6 HEARING EXAMINER BAUMGARDNER: All right sir, you're</p> <p>7 welcome to provide any testimony that you would like to</p> <p>8 provide.</p> <p>9 MR. SHUKLA: Okay. So first of all I want to say</p> <p>10 thank you for having this hearing and inviting us, and too,</p> <p>11 for the Applicant not only in today's discussion, but all</p> <p>12 the way going back to February, they've been very easy to</p> <p>13 work with us. So I appreciate that good, neighborly</p> <p>14 conduct and hopefully it will continue through the</p> <p>15 construction and phase and beyond that.</p> <p>16 I think from a -- as some of the new design has not</p> <p>17 been submitted. So we may revisit some of the concerns.</p> <p>18 But for the most part what we had discussed in our</p> <p>19 statement of concerns are getting addressed. I will, just</p> <p>20 to highlight very quickly a few things. And I don't know</p> <p>21 if Mr. Jacob would want to speak on any of this topic. On</p> <p>22 the site lighting, I think we discussed -- would appreciate</p> <p>23 if Ms. Meyer would look at the dimming sensor. Even 50</p> <p>24 percent dimming may be of value. And that has those types</p> <p>25 of sensors are shutoff-able meaning if you do find after a</p>

Transcript of Hearing
Conducted on October 30, 2020

33 (129 to 132)

<p>129</p> <p>1 few months of use it is deceptive then we can -- we are 2 open to having that -- then turned off. But I would think 3 that if it works, then it would be really beneficial to all 4 of us to but the residents of the community in the building 5 as well as neighbors like us. So that's one thing. 6 I think on the retaining wall and the fence 7 discussion, we have had enough. The only comment I would 8 make on that is we would appreciate if it's uniformly high 9 rather than three to five feet, at least five feet and 10 preferably six feet high. That in itself would cut off a 11 lot of the -- not just the noise, but also the visual 12 distractions or some of the other concerns that we've that. 13 So that's another topic that we would like to discuss. I 14 know Ms. Bowers presented on the landscaping, but we would 15 like to see the new plan. I do not think that was part of 16 the exhibit from what I understand, but appreciate her 17 accommodations in changing to the evergreens or at least 18 less deciduous in terms of the number of months. 19 My final discussion really is around storm water 20 management. I do want to share these pictures and I just 21 want to highlight the screen just so -- they are part of 22 the exhibit. I think the exhibit was 38. This picture has 23 been attached. So this is the existing channel. Mr. 24 Jones, in one of the studies he was mentioning the study 25 point. So I've not pulled the -- let me see if I can show</p>	<p>131</p> <p>1 Fountain Hills Association. Then it will actually slightly 2 ease the water burden. 3 This may not be a question Mr. Baumgardner pertaining 4 to the Applicant, but maybe to the county because this is 5 County's property. Perhaps at some other point I can you 6 mediate with you or whoever you suggest in any kind of 7 retaining wall or anything that can be built to protect 8 further erosion. I wish I had taken additional pictures, 9 but let me show you one other picture that might just give 10 an idea. So this is a picture from back of my walkout door 11 from my basement. These are the two trees. I don't know 12 if my pointer can be seen. 13 HEARING EXAMINER BAUMGARDNER: Yes. 14 MR. SHUKLA: Yeah, I don't think I have a way to -- 15 but the left tree is the first tree, is this particular 16 tree on the left. And this other tree is the second 17 picture here. Okay. And they're both -- that's a slightly 18 taller than my house. I would guess somewhere in the 35, 19 40 feet height maybe, you know, give or take 5 feet. I 20 would measure it at that height. And should they fall, at 21 least the first tree wood, my morning room, which is 22 actually jutting out about 12 feet further out compared to 23 my master bedroom and the basement. So anything that can 24 be done to retain and prevent erosion. And as I say, I'm 25 not sure if this is related to this Applicant per se, but</p>
<p>130</p> <p>1 that are you able to see the -- but it -- 2 HEARING EXAMINER BAUMGARDNER: Yes. 3 MR. SHUKLA: But it's at this point. I don't know if 4 you can see my cursor. 5 HEARING EXAMINER BAUMGARDNER: I can, yes. 6 MR. SHUKLA: Yeah. So it's looking over that. So 7 these two pictures are taken from about middle of my 8 property line facing that study point. And this trees, 20 9 years ago when we moved, they were firmly planted. This 10 erosion hasn't happened overnight. But despite in this 20 11 years, I don't think we've had very many 10, 25 year rain 12 events. As you can see, these trees are precariously 13 balanced, both of these trees. One of them we actually had 14 to cut it down because it would have fallen on our 15 property. 16 This is, as it is leaning, it is going to lean towards 17 my, in this particular case, both of these are facing 18 towards my property. And they are tall enough to be 19 causing damage to my property. So the whole concern that I 20 had raised in the -- in our statement related to the -- the 21 storm water management was any additional water in this 22 channel would aid to this erosion and further undermine the 23 stability of these trees. So I appreciate Mr. Jones trying 24 to rework. And actually it looks like the third plan he is 25 redesigning is workable with both the County and the</p>	<p>132</p> <p>1 something that I'm just reaching out to County. That would 2 be helpful. 3 As to the other concern that Mr. Jones raised and I 4 was asking about the date, we've had somewhat unresponsive 5 board and we are trying to change that as a community. So 6 we are building a more -- a new set of candidates who are 7 actually going to be elected hopefully on November 4, which 8 is when the next board meeting is. And I've already raised 9 with the previous board, Mr. Jones, the need to invite you 10 so you can -- as you had offered to be in a board meeting 11 and present. And I will reraise it as soon as -- at the 12 next board meeting again. And then facilitate in any way 13 we can for you to have the easement to take the water flow 14 further down the -- our property line towards the south 15 edge of our property. I think those were the main 16 statements/comments that I wanted to make. I don't have 17 anything else. I'm going to stop sharing my screen. If 18 there are any other questions or comments, I'm available. 19 HEARING EXAMINER BAUMGARDNER: Thank you, sir. The 20 tree issue in that channel which you raised, is not 21 relevant to these proceedings, but I certainly can't 22 comment on it and they don't have an impact on this 23 conditional use. 24 MR. SHUKLA: Yes. 25 HEARING EXAMINER BAUMGARDNER: But I will say that</p>

Transcript of Hearing
Conducted on October 30, 2020

34 (133 to 136)

133	<p>1 that is a serious problem. I would recommend reaching out</p> <p>2 to DPS on Monday. You can call our office on Monday as</p> <p>3 well and we can help get you to the right phone number to</p> <p>4 call for folks. Just looking at those photos when I was</p> <p>5 reviewing this file and then seeing them here today, that</p> <p>6 is certainly a problem that you should address quickly as</p> <p>7 we approach winter. But again, for the record, that</p> <p>8 discussion does not impact this conditional use application</p> <p>9 here today.</p> <p>10 MR. SHUKLA: Understood.</p> <p>11 HEARING EXAMINER BAUMGARDNER: Mr. Jacob, are you</p> <p>12 still with us?</p> <p>13 MR. JACOB: Yes, I am.</p> <p>14 HEARING EXAMINER BAUMGARDNER: Would you like to</p> <p>15 provide any additional testimony, sir?</p> <p>16 MR. JACOB: Yeah, a couple of items.</p> <p>17 MR. BAUMGARDNER: All right. Can you -- there you</p> <p>18 are, sir. Can you raise your right hand, please?</p> <p>19 And do you swear or affirm under the penalties of</p> <p>20 perjury that the testimony you're about to give is the</p> <p>21 truth, the whole truth, and nothing but the truth?</p> <p>22 MR. JACOB: I do.</p> <p>23 HEARING EXAMINER BAUMGARDNER: And what is your full</p> <p>24 name, sir?</p> <p>25 MR. JACOB: Matthew Jacob.</p>	135	<p>1 amendment process. And we are assuming we get an</p> <p>2 affirmative not here, but the -- what is that Casey? About</p> <p>3 six months? Seven months?</p> <p>4 MS. CIRNER: Yeah, the preliminary plan amendment and</p> <p>5 the record plat approval and the forest conservation plan</p> <p>6 amendment could be about six more months.</p> <p>7 MR. DONNELLY: Right. So our intent is to continue</p> <p>8 moving forward and to build. Now we are still in</p> <p>9 conceptual. I believe Casey, were the renderings part of</p> <p>10 the record today? I --</p> <p>11 MS. CIRNER: Yes, the renderings were submitted into</p> <p>12 the record as Exhibit 42, and we are happy to provide you a</p> <p>13 copy of those.</p> <p>14 MR. DONNELLY: Sure. Yeah. So we're still tweaking</p> <p>15 it and we obviously wanted to see what we were going to</p> <p>16 need to do today. But I think I opened the door for you</p> <p>17 all back in February and I -- you know, that door is still</p> <p>18 open and will be. I very much would appreciate your help</p> <p>19 Mr. Jacob, and Mr. Shukla's help getting this easement in</p> <p>20 place. As you know, we've heard very little from the</p> <p>21 homeowners association. So any help you can give us there,</p> <p>22 we will appreciate.</p> <p>23 But we want to be good neighbors and we want to have a</p> <p>24 good project at the end of the day that everyone is happy</p> <p>25 with. I can assure you that, historically over 42 years,</p>
134	<p>1 HEARING EXAMINER BAUMGARDNER: And what is your</p> <p>2 address?</p> <p>3 MR. JACOB: 18921 Porterfield Way.</p> <p>4 HEARING EXAMINER BAUMGARDNER: All right, sir. You're</p> <p>5 welcome to testify about any matters that you wish.</p> <p>6 MR. JACOB: Well, I think we already covered most of</p> <p>7 the items. Only I just wanted to highlight a few of the</p> <p>8 items we already discussed. One is I am assuming that Ms.</p> <p>9 Meyer -- oh, no. Okay, let's see. Yeah. The Applicant is</p> <p>10 going to share with us a revised landscape plan showing the</p> <p>11 new trees they have picked and maybe give us a chance to</p> <p>12 comment if we have or maybe have a discussion so that we</p> <p>13 get educated on what -- I'm not an arborist, so I don't</p> <p>14 know more -- that much about the trees. But I'm expecting</p> <p>15 to get an idea about what they have picked. I'm sure they</p> <p>16 did pick good ones. So we like to see that.</p> <p>17 The second item was mainly, during the actual design</p> <p>18 of the -- this project, I'm hoping that Charlie is going to</p> <p>19 have us a little bit involved in the final outcome of the</p> <p>20 design to have an idea what we are going to see behind</p> <p>21 those properties. That's a request. So that would be</p> <p>22 nice. And I also would like to see, do you have any idea</p> <p>23 about the timeline for design and construction?</p> <p>24 MR. DONNELLY: We are -- right now we are --</p> <p>25 obviously, we've got to go through the preliminary plan</p>	136	<p>1 that's -- I've been doing this. So --</p> <p>2 MR. JACOB: Okay. One last comment I have is, during</p> <p>3 construction, I know it's a residential area. You may have</p> <p>4 restrictions from the County on working on weekends, things</p> <p>5 like those. You are probably aware of it, right?</p> <p>6 MR. DONNELLY: I can't -- I wouldn't say that I am,</p> <p>7 not working on Saturday or Sunday. Usually it -- we will</p> <p>8 address that obviously when it comes but I'm not there yet</p> <p>9 where I was aware of the restrictions of working on</p> <p>10 Saturdays. Very seldom do our contractors work Sunday.</p> <p>11 And generally on Saturdays it's a very limited crew and</p> <p>12 only half a day.</p> <p>13 MR. JACOB: Okay.</p> <p>14 MR. DONNELLY: But you know, whatever the County --</p> <p>15 whatever the mandate is, that's what our general contractor</p> <p>16 will have to comply with. But does that answer your</p> <p>17 concern?</p> <p>18 MR. JACOB: Well, that is a concern mainly when you</p> <p>19 are working outside mainly. When you are finishing</p> <p>20 interior, it's not too much of a noise producing effort.</p> <p>21 Most of the outside one, yes, that may be a concern. I'm</p> <p>22 sure sometimes what happens is you are in a hurry to finish</p> <p>23 the project and you want to run over time and things like</p> <p>24 those. That maybe could develop into an issue I guess.</p> <p>25 MR. DONNELLY: This is not my first project in</p>

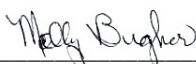
Transcript of Hearing
Conducted on October 30, 2020

35 (137 to 140)

137	<p>1 Montgomery County, but I'm not aware of any restrictions on</p> <p>2 time. But certainly we are sensitive to residents and</p> <p>3 neighborhoods.</p> <p>4 HEARING EXAMINER BAUMGARDNER: Mr. Sabin, I have to</p> <p>5 stop you. Ms. Cirner, did you have anything to add?</p> <p>6 MS. CIRNER: Yeah, I just wanted to add real briefly</p> <p>7 that I believe what Mr. Jacob is alluding to is the noise</p> <p>8 restrictions for construction and the later start times</p> <p>9 that are required on the weekend, it's not a prohibition</p> <p>10 against construction.</p> <p>11 MR. JACOB: Correct.</p> <p>12 HEARING EXAMINER BAUMGARDNER: Okay. Any other</p> <p>13 questions for -- or I'm sorry, any further testimony from</p> <p>14 you Mr. Jacob?</p> <p>15 MR. JACOB: No, I don't. I'm done. Thank you.</p> <p>16 HEARING EXAMINER BAUMGARDNER: Well, thank you. Thank</p> <p>17 you, very much. Ms. Cirner, were there any witnesses that</p> <p>18 you wanted to recall?</p> <p>19 MS. CIRNER: Ms. Meyer, did you have something you</p> <p>20 would like to add?</p> <p>21 HEARING EXAMINER BAUMGARDNER: She disappeared from</p> <p>22 us.</p> <p>23 MS. CIRNER: Sorry. No, my phone is charging on the</p> <p>24 floor. I realized I had to unmute it. I apologize. No, I</p> <p>25 was only going to state the same as you, that the</p>	139	<p>1 mentioned earlier in today's hearing, in within the next 10</p> <p>2 days. If that's not possible, we can certainly extend that</p> <p>3 for a short period of time. After that, after the record</p> <p>4 closes, our office has 30 days to issue that report and</p> <p>5 recommendation. Folks have 10 days after that report is</p> <p>6 issued to file any appeal with the board of appeals if you</p> <p>7 find that necessary. Were there any questions or cleanup</p> <p>8 issues here today?</p> <p>9 MS. CIRNER: I have one question. I just want to</p> <p>10 confirm that the record is open until November 9, would be</p> <p>11 the 10th day.</p> <p>12 HEARING EXAMINER BAUMGARDNER: That is correct.</p> <p>13 MS. CIRNER: Okay. And I also just want to make sure</p> <p>14 that all of the exhibits are moved into evidence.</p> <p>15 HEARING EXAMINER BAUMGARDNER: That is correct. All</p> <p>16 exhibits previously received have been admitted into</p> <p>17 evidence and are part of the record on this case. No</p> <p>18 exhibits were added today or were introduced today to add</p> <p>19 to the record. So the record will complete with the</p> <p>20 exhibits that are listed on OZHA's website, which is for</p> <p>21 anyone to review.</p> <p>22 MS. CIRNER: And just for clarification, the revised</p> <p>23 plans we will be submitting is the revised landscape and</p> <p>24 lighting plan. And I believe that that was really the only</p> <p>25 plan we have to revise and resubmit.</p>
138	<p>1 construction requirements really are part of the noise</p> <p>2 ordinance. And having reviewed that when we were</p> <p>3 discussing the generator, I can talk to that. So I think</p> <p>4 you've covered it clearly.</p> <p>5 MS. CIRNER: Okay. Mr. Jones, do you have anything</p> <p>6 you would like to add in response to Mr. Shukla's</p> <p>7 testimony?</p> <p>8 MR. JONES: No, I agree with Mr. Baumgardner regarding</p> <p>9 the concerns that Mr. Shukla has with the current condition</p> <p>10 of the channel.</p> <p>11 MS. CIRNER: Okay, thank you. I think Mr.</p> <p>12 Baumgardner, we have no further witnesses.</p> <p>13 HEARING EXAMINER BAUMGARDNER: All right. That</p> <p>14 concludes our hearing today. I wanted to thank everyone</p> <p>15 involved, both counsel, the Applicant, your witnesses, and</p> <p>16 Mr. Shukla, Mr. Jacob. Projects always work so much better</p> <p>17 when folks are willing to work together. As much of you</p> <p>18 know in this field, that's not always the case. It is</p> <p>19 certainly refreshing hearing when folks are willing to sit</p> <p>20 down at the table and work things out together so the</p> <p>21 projects come off better.</p> <p>22 As I mentioned at the beginning of the hearing, I will</p> <p>23 render a decision in this case. We will hold the record</p> <p>24 open for 10 days after today's date. It will be great if</p> <p>25 we can get that -- those revised plans that we had</p>	140	<p>1 HEARING EXAMINER BAUMGARDNER: That's correct.</p> <p>2 MS. CIRNER: Okay.</p> <p>3 HEARING EXAMINER BAUMGARDNER: That's what I recall</p> <p>4 from the testimony.</p> <p>5 MS. CIRNER: Okay. And the revised stormwater concept</p> <p>6 we assume would track now with the preliminary plan.</p> <p>7 HEARING EXAMINER BAUMGARDNER: That's correct.</p> <p>8 MS. CIRNER: Okay. Okay. Thank you.</p> <p>9 HEARING EXAMINER BAUMGARDNER: I thank you all very</p> <p>10 much and have a good rest of your afternoon. And have a</p> <p>11 good weekend.</p> <p>12 MS. CIRNER: Yeah.</p> <p>13 MR. SHUKLA: Sorry. May I ask a clarifying question</p> <p>14 Mr. Baumgardner?</p> <p>15 HEARING EXAMINER BAUMGARDNER: Sure.</p> <p>16 MR. SHUKLA: The last comment related to the storm</p> <p>17 water management, I -- it's left me a bit confused as to</p> <p>18 where we are leaving it. My understanding is that the last</p> <p>19 plan that Mr. Jones suggested which was based on our</p> <p>20 recommendation of moving the water further down the</p> <p>21 property edge would be considered and would be discussed</p> <p>22 with the County and we will facilitate related, whatever</p> <p>23 access is required on the Fountain Hills property. Is that</p> <p>24 where we are leaving it?</p> <p>25 HEARING EXAMINER BAUMGARDNER: That is correct.</p>

Transcript of Hearing
Conducted on October 30, 2020

36 (141 to 144)

<p>141</p> <p>1 MR. SHUKLA: Okay.</p> <p>2 HEARING EXAMINER BAUMGARDNER: So the conditional use</p> <p>3 approval or disapproval is certainly part of what we</p> <p>4 consider in storm water management. But the preliminary</p> <p>5 plan will come after this process. So the Applicant would</p> <p>6 have to submit that a long with their preliminary plan</p> <p>7 process, which will be reviewed by staff and by the</p> <p>8 Planning Board. And you will certainly have the ability to</p> <p>9 provide input if that plan did not meet your approval.</p> <p>10 MR. SHUKLA: Okay. All right. Thank you.</p> <p>11 HEARING EXAMINER BAUMGARDNER: All right. Anything</p> <p>12 else from participants, counsel, or the Applicant?</p> <p>13 MS. CIRNER: No. Thank you very much for your time</p> <p>14 and happy Halloween.</p> <p>15 HEARING EXAMINER BAUMGARDNER: Thank you all very</p> <p>16 much. Happy Halloween to everyone.</p> <p>17 MR. SHUKLA: Happy Halloween. Take care.</p> <p>18 HEARING EXAMINER BAUMGARDNER: This concludes our</p> <p>19 hearing on conditional use 20-09 for the property at 19115,</p> <p>20 Liberty Mill Road, Germantown Maryland. I also want to</p> <p>21 thank our court reporter for sticking with us and I hope</p> <p>22 everyone has a great day.</p> <p>23 MR. SHUKLA: Thank you. Take care.</p> <p>24 HEARING EXAMINER BAUMGARDNER: Thank you.</p> <p>25 MS. CIRNER: Thanks. Take care.</p>	<p>143</p> <p>1 CERTIFICATE OF TRANSCRIBER</p> <p>2 I, Molly Bugher, do hereby certify that the foregoing</p> <p>3 transcript is a true and correct record of the recorded</p> <p>4 proceedings; that said proceedings were transcribed to the</p> <p>5 best of my ability from the audio recording as provided;</p> <p>6 and that I am neither counsel for, related to, nor employed</p> <p>7 by and of the parties to this case and have no interest,</p> <p>8 financial or otherwise, in its outcome.</p> <p>9</p> <p>10</p> <p>11 </p> <p>12 _____</p> <p>13 Molly Bugher</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>142</p> <p>1 COURT REPORTER: Have a good Halloween.</p> <p>2 (The recording was concluded.)</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

A			
<p>ability 56:18, 89:22, 102:12, 109:15, 141:8, 143:5</p> <p>able 6:10, 6:11, 7:22, 28:2, 30:15, 36:9, 37:3, 37:19, 38:7, 44:13, 55:13, 84:5, 90:22, 98:14, 104:18, 117:15, 130:1</p> <p>about 5:22, 11:2, 14:20, 16:16, 26:20, 27:1, 28:7, 31:21, 38:24, 44:21, 46:1, 46:10, 46:11, 51:12, 57:3, 58:9, 68:25, 76:2, 77:1, 77:22, 79:19, 80:2, 83:15, 84:24, 85:9, 86:5, 87:25, 95:22, 100:22, 109:6, 109:8, 110:11, 112:23, 113:4, 116:24, 117:7, 119:16, 122:9, 125:24, 127:15, 127:21, 130:7, 131:22, 132:4, 133:20, 134:5, 134:14, 134:15, 134:23, 135:2, 135:6</p> <p>above 23:5, 26:23, 90:1, 96:11, 98:9, 98:11, 102:24, 102:25,</p>	<p>103:6, 126:10</p> <p>absolutely 83:24, 87:21, 95:20, 97:17, 109:21, 126:20</p> <p>abutting 99:25, 118:13, 125:1</p> <p>accept 39:7, 39:9</p> <p>acceptable 39:2, 45:1, 124:7</p> <p>accepted 29:5, 40:10, 59:12</p> <p>access 4:7, 4:8, 5:23, 17:16, 19:10, 23:5, 26:24, 28:7, 28:9, 28:10, 29:9, 30:10, 30:12, 30:15, 46:12, 46:13, 46:17, 46:20, 64:2, 92:8, 140:23</p> <p>accessed 32:23</p> <p>accessible 74:24</p> <p>accessory 89:23</p> <p>accident 117:15</p> <p>accommodated 45:5</p> <p>accommodations 129:17</p> <p>accordance 30:23, 125:6</p> <p>according 19:13, 102:16</p> <p>account 76:19, 78:10</p> <p>achieve 26:24, 28:3, 36:21, 39:4</p>	<p>achieved 24:11, 24:16</p> <p>acoustical 103:9</p> <p>acre 37:19, 44:24</p> <p>acres 19:6, 22:4, 24:9, 24:11, 40:20, 41:1, 41:17, 42:14, 42:23, 43:2, 43:6, 44:14, 44:18, 44:23, 51:12</p> <p>across 21:10, 74:15, 83:12, 98:2</p> <p>activities 75:4, 93:5</p> <p>activity 100:3</p> <p>actual 94:20, 134:17</p> <p>actually 20:17, 20:22, 21:14, 25:1, 27:21, 28:4, 28:23, 30:16, 31:20, 33:3, 34:8, 34:11, 36:1, 38:9, 45:12, 49:18, 59:16, 59:19, 62:2, 63:13, 65:5, 78:23, 79:1, 90:3, 95:6, 96:4, 108:21, 110:12, 115:21, 123:21, 124:3, 126:16, 130:13, 130:24, 131:1, 131:22, 132:7</p> <p>adams 13:9</p> <p>add 11:11, 13:25,</p>	<p>36:2, 45:23, 67:5, 80:25, 84:5, 121:14, 124:11, 137:5, 137:6, 137:20, 138:6, 139:18</p> <p>added 79:2, 79:3, 139:18</p> <p>addition 13:9, 116:19</p> <p>additional 13:25, 15:13, 24:4, 31:1, 31:10, 31:23, 36:18, 39:2, 40:5, 40:9, 42:4, 43:25, 44:22, 45:5, 51:10, 57:17, 62:8, 83:23, 84:6, 91:20, 91:21, 92:2, 98:12, 104:21, 107:3, 130:21, 131:8, 133:15</p> <p>additionally 32:2</p> <p>address 7:4, 11:24, 12:5, 14:11, 14:13, 39:12, 56:13, 68:12, 68:14, 76:6, 85:24, 112:15, 119:7, 122:9, 128:4, 133:6, 134:2, 136:8</p> <p>addressed 11:3, 11:9, 13:5, 43:17, 52:22, 128:19</p> <p>addresses 76:7</p> <p>addressing 12:21, 76:12</p> <p>adequate 28:21, 28:22,</p>

<p>36:21, 46:1, 46:17, 48:20, 66:4, 102:7, 118:2 adequately 32:15, 39:12, 46:3, 46:23 adjacent 25:14, 27:4, 27:13, 61:19, 81:12, 95:12, 95:13, 96:5, 101:8, 116:15, 117:1, 117:2 adjoining 62:22, 66:17 adjusted 76:21 adjustments 94:13 administered 119:20 administration 88:15 administrative 1:1, 5:4, 68:6 admitted 15:14, 15:16, 57:21, 70:9, 70:12, 87:12, 139:16 advantages 35:24 adverse 65:15, 66:10, 66:12, 124:21 adversely 45:6, 65:22, 65:24 advise 9:19, 12:6 aesthetics 74:25 affect 65:22, 94:9 affidavit 9:3, 11:12 affirm 14:19, 57:2,</p>	<p>68:24, 87:24, 112:22, 119:15, 127:20, 133:19 affirmative 135:2 afoul 7:12 after 24:9, 54:1, 110:20, 128:25, 138:24, 139:3, 139:5, 141:5 afternoon 123:5, 123:15, 140:10 again 5:25, 12:14, 20:12, 21:2, 21:5, 22:12, 23:2, 27:22, 29:25, 33:13, 34:5, 35:23, 36:19, 42:18, 53:15, 73:18, 74:20, 77:17, 78:2, 79:4, 79:13, 79:20, 80:20, 81:13, 81:16, 84:17, 84:25, 85:2, 91:1, 93:21, 96:16, 97:13, 97:15, 98:19, 98:25, 99:3, 102:23, 103:4, 103:12, 104:13, 105:10, 105:12, 106:5, 107:8, 108:12, 108:19, 111:3, 111:9, 132:12, 133:7 against 137:10 agencies 51:18 agency 102:4, 104:12 aging 90:21</p>	<p>ago 130:9 agree 23:24, 50:14, 50:15, 50:23, 64:12, 64:16, 105:4, 126:20, 126:25, 138:8 agreeable 105:11 agreed 29:19, 39:1 agreement 13:17, 13:20, 46:21, 125:10 ah 56:23 ahead 22:25, 23:1, 78:21 aid 130:22 aisle 26:5, 26:7, 26:10, 35:13, 36:13, 37:5, 37:15, 37:20, 37:22, 38:5, 39:3, 41:13, 54:7, 122:13 aisles 25:6, 89:24 albeit 44:3 alerts 6:13 all 6:11, 7:14, 7:15, 7:24, 9:1, 9:12, 11:16, 11:19, 18:6, 18:16, 22:22, 26:17, 43:10, 45:11, 49:3, 49:5, 49:8, 52:9, 52:11, 64:21, 65:17, 66:3, 66:8,</p>	<p>66:16, 67:13, 67:24, 68:3, 73:14, 74:4, 74:5, 74:10, 74:23, 76:21, 79:17, 79:23, 81:10, 83:6, 84:10, 85:10, 85:19, 88:16, 89:7, 90:4, 90:20, 93:23, 94:15, 96:10, 100:6, 100:13, 105:12, 107:14, 111:3, 111:5, 111:23, 112:2, 112:6, 120:2, 120:24, 124:4, 125:13, 127:5, 127:8, 128:6, 128:9, 128:11, 129:3, 133:17, 134:4, 135:17, 138:13, 139:14, 139:15, 140:9, 141:10, 141:11, 141:15 allow 30:21, 36:9, 67:16, 90:15, 112:18 allowed 36:10, 104:24 allows 26:9, 27:15, 27:20, 30:18, 64:9 alluded 89:24, 98:2 alluding 137:7 almost 98:6 alone 66:11 along 10:5, 12:23, 19:16, 19:17,</p>
--	---	---	--

19:20, 20:4, 20:5, 20:24, 22:11, 23:13, 27:13, 29:13, 34:4, 54:6, 60:10, 64:3, 73:21, 73:25, 74:1, 74:4, 74:8, 74:11, 75:21, 76:3, 76:18, 80:21, 81:12, 81:18, 92:25, 97:21, 98:9, 111:3, 122:22 already 31:8, 46:13, 61:6, 70:20, 132:8, 134:6, 134:8 also 5:10, 5:25, 6:20, 6:24, 8:14, 8:18, 9:6, 10:4, 13:7, 13:20, 18:14, 20:9, 21:2, 24:12, 25:8, 26:16, 27:3, 27:12, 27:20, 28:23, 29:5, 29:22, 30:1, 30:3, 30:16, 30:19, 32:3, 32:8, 32:21, 33:3, 33:11, 46:18, 50:15, 63:23, 63:25, 65:14, 70:23, 73:8, 73:22, 74:14, 74:20, 74:23, 76:24, 77:3, 78:5, 79:15, 79:25, 84:11, 88:7, 88:16, 93:19, 95:22, 96:18, 97:20, 101:17,	103:6, 106:25, 112:18, 113:17, 115:10, 116:8, 116:10, 117:2, 117:4, 117:8, 117:9, 120:7, 121:7, 122:2, 129:11, 134:22, 139:13, 141:20 also- 27:6 alter 48:5, 65:11, 65:22, 82:12, 99:19, 105:24 alternate 49:14 although 20:2, 25:2 always 5:14, 138:16, 138:18 ambience 81:7 ambient 93:4, 93:8, 95:2, 107:13 amenable 105:9, 123:15 amended 47:8, 47:13, 55:1 amendment 31:2, 51:3, 55:3, 55:5, 135:1, 135:4, 135:6 amendments 47:4 amenities 23:7, 26:3, 75:8, 89:17, 91:19 amenity 90:25, 91:21, 122:19, 122:20 american 73:24, 79:2,	79:3 amount 32:2, 32:8, 76:18, 90:18, 93:17 ample 75:12 analysis 23:25, 28:20, 48:7, 115:6, 115:18 analyze 30:25, 36:6, 41:7, 43:16, 43:18 analyzed 17:18, 59:1, 115:1 and- 27:5 another 7:6, 10:14, 78:8, 78:10, 104:21, 129:13 answer 7:20, 53:20, 63:16, 103:16, 104:14, 136:16 answers 104:13 anticipate 7:19, 7:20, 12:7, 51:4, 94:8, 94:11 anticipating 108:15 anticipation 98:9 anybody 98:14 anyone 7:9, 9:7, 9:17, 10:1, 11:17, 67:10, 67:11, 67:15, 100:9, 118:25, 139:21 anything 11:11, 45:22,	50:4, 67:4, 80:24, 104:3, 121:14, 124:10, 131:7, 131:23, 132:17, 137:5, 138:5, 141:11 apologize 137:24 appeal 5:18, 139:6 appeals 5:19, 139:6 appearance 90:16, 93:25, 99:14 apples 41:9 applicable 48:10 applicant 2:2, 8:7, 8:24, 9:15, 9:24, 10:24, 12:12, 12:15, 12:24, 16:22, 17:7, 58:19, 107:24, 109:7, 120:13, 121:3, 121:4, 128:11, 131:4, 131:25, 134:9, 138:15, 141:5, 141:12 applicant's 8:9, 10:13, 13:23, 52:23, 53:3, 112:1, 121:12 applicants 12:19 application 13:2, 13:6, 13:14, 15:24, 17:8, 17:11, 40:16, 55:4, 55:8, 55:10, 55:11, 55:12, 57:25, 65:10, 65:18, 66:9,
--	--	--	--

<p>70:25, 87:14, 88:6, 88:12, 104:10, 104:15, 114:18, 120:18, 125:5, 133:8 applies 6:25, 24:6 apply 104:4 applying 23:14 appointments 116:10 appreciate 128:13, 128:22, 129:8, 129:16, 130:23, 135:18, 135:22 approach 49:17, 133:7 appropriate 61:17, 61:23, 62:11, 99:14 approval 13:15, 17:3, 39:8, 39:10, 45:8, 50:3, 50:19, 52:7, 55:14, 104:12, 125:5, 125:11, 135:5, 141:3, 141:9 approvals 47:3, 47:11 approve 55:2, 55:5, 55:8 approved 13:13, 16:21, 20:4, 20:13, 28:23, 29:6, 30:9, 30:12, 34:21, 38:3, 43:4, 47:6, 47:14, 50:1, 52:7, 55:4, 55:23, 61:1, 61:4, 63:14,</p>	<p>65:19, 104:10, 126:3 approving 51:17 approximately 19:6, 22:3, 22:7, 26:23, 27:14, 31:24, 40:20, 46:7, 54:6, 116:20 arborist 134:13 architect 8:19, 8:20, 28:5, 57:14, 63:3, 68:14, 69:8, 69:18, 86:10, 86:21 architects 8:21, 77:13, 88:13 architectural 91:3, 93:7, 94:13, 99:11, 99:17, 99:24, 120:24 architecture 8:16, 17:1, 57:19, 57:22, 58:25, 59:3, 69:13, 70:10, 70:13, 81:21, 82:10, 82:17, 86:16, 87:10, 87:12 area 16:1, 16:4, 22:7, 23:8, 27:14, 27:15, 27:16, 33:17, 35:14, 36:8, 36:14, 36:15, 36:18, 37:15, 37:18, 38:12, 40:5, 40:9, 40:24, 41:17, 42:2, 42:4, 42:5, 42:10,</p>	<p>42:13, 42:19, 42:23, 43:2, 43:5, 44:2, 44:3, 44:4, 44:16, 44:17, 44:20, 44:21, 44:24, 45:2, 45:5, 52:4, 58:1, 58:4, 60:23, 61:1, 61:13, 61:19, 61:22, 62:10, 63:19, 64:6, 64:10, 65:22, 65:23, 65:25, 66:1, 73:23, 74:22, 75:2, 75:5, 75:9, 75:21, 76:18, 77:14, 77:22, 77:23, 79:14, 81:7, 84:17, 89:22, 92:5, 99:12, 113:21, 116:24, 123:7, 123:23, 136:3 areas 37:6, 74:17, 92:20 ari 20:4 around 12:10, 23:7, 26:2, 27:19, 30:19, 35:12, 44:7, 46:18, 75:16, 96:11, 107:6, 107:8, 129:19 arrival 116:17 arrive 116:19 art 86:15 arterial 61:15, 61:20, 62:15</p>	<p>article 48:2, 70:22, 99:6 articles 64:25 articulate 11:23 articulated 80:8 arts 86:15 asked 29:25, 40:5, 43:10, 109:23, 123:13 asking 91:6, 124:10, 132:4 aspect 122:25 asphalt 19:20, 29:12, 29:19 assistant 17:4 assisted 89:12, 91:22, 92:2, 96:1, 120:8 assisted-living 12:18, 116:3 associated 20:14, 20:20, 21:1, 21:5, 25:6, 25:20, 47:7, 47:11, 88:17 association 21:14, 28:24, 38:14, 39:8, 39:16, 45:16, 45:19, 49:15, 49:18, 131:1, 135:21 assume 89:8, 140:6 assuming 101:13, 103:18,</p>
--	--	--	--

Transcript of Hearing
Conducted on October 30, 2020

41

107:22, 134:8, 135:1 assure 121:24, 123:24, 135:25 attached 19:11, 129:23 attended 120:11 attendees 54:13 attending 54:22, 85:14 attention 6:10, 10:2 attenuation 96:7, 96:20, 97:5, 97:14, 101:10, 101:16, 101:17, 102:7, 102:21 attorney 12:12 attractive 111:10, 126:21 audio 143:5 authorities 51:17 authority 55:2, 55:5, 55:7 automatically 106:22, 106:23 available 32:20, 33:7, 67:7, 75:1, 75:5, 132:18 avenue 112:17 average 89:25 avoid 7:16, 7:23 aware 43:9, 75:25, 94:3, 101:18, 106:9, 108:11,	136:5, 136:9, 137:1 away 28:17, 44:14, 46:8, 46:11, 46:12, 95:16 <hr/> B <hr/> b 39:22, 59:15, 60:1 bachelor 86:15, 113:11 bachelors 69:12 back 5:24, 9:24, 23:9, 31:3, 34:4, 34:6, 34:8, 34:11, 34:17, 41:14, 42:11, 43:21, 44:25, 51:9, 53:15, 55:4, 56:23, 67:22, 67:25, 68:1, 68:8, 74:5, 74:12, 74:18, 75:16, 80:3, 80:21, 91:16, 104:11, 107:11, 110:7, 115:21, 120:17, 128:12, 131:10, 135:17 background 69:11, 70:11, 86:5, 86:14, 113:5, 113:10, 126:1 backing 76:16 backs 76:19 balanced 130:13 baltimore 86:2 based 5:17, 24:13,	24:15, 24:22, 25:9, 28:21, 42:3, 46:15, 47:16, 47:17, 47:19, 48:7, 48:13, 51:11, 64:21, 65:9, 65:16, 66:2, 66:7, 66:24, 70:10, 80:22, 81:20, 82:8, 82:15, 82:24, 85:16, 99:9, 114:8, 115:17, 116:3, 124:13, 140:19 basement 131:11, 131:23 basically 34:17, 43:20 bathtub 90:3 baumgartner 1:9 bcp 86:1, 88:13 bct 8:20 became 31:16 because 7:14, 8:1, 26:14, 26:19, 28:25, 31:12, 32:9, 33:7, 35:21, 36:15, 36:20, 38:7, 42:9, 43:24, 54:1, 54:13, 61:19, 78:8, 78:19, 81:14, 81:17, 84:8, 88:24, 93:16, 97:3, 98:13, 104:23, 121:16, 123:23, 124:1, 126:17, 130:14, 131:4	become 44:17 becomes 20:12, 22:12, 95:4, 97:4 bed 12:17, 75:14, 89:12 bedroom 108:3, 131:23 bedrooms 108:2, 108:7 beds 24:15, 24:16, 24:22 beech 79:2 beeches 73:24 been 6:6, 7:8, 17:6, 20:25, 28:23, 34:21, 38:16, 38:17, 40:17, 45:24, 50:1, 57:13, 58:18, 58:22, 59:6, 60:6, 61:1, 61:7, 64:22, 69:7, 69:17, 76:21, 80:10, 80:17, 81:4, 86:9, 86:11, 87:1, 87:2, 95:9, 103:3, 107:15, 107:16, 113:7, 119:25, 120:2, 120:4, 122:3, 122:5, 123:4, 123:20, 125:8, 125:16, 128:12, 128:17, 129:23, 136:1, 139:16 before 10:2, 11:11, 14:4, 15:3, 15:7, 20:23,
--	---	---	--

<p>21:14, 22:2, 22:11, 25:17, 50:11, 52:20, 55:2, 55:14, 57:9, 57:13, 68:5, 69:5, 70:5, 86:6, 87:14, 108:6, 113:5, 114:2, 121:19, 124:9, 127:15 began 120:1 beginning 26:8, 72:1, 138:22 begins 53:21 behalf 2:2, 8:7, 12:15 behind 7:15, 34:16, 79:21, 134:20 being 5:10, 9:2, 13:20, 21:19, 24:17, 26:4, 27:1, 29:4, 76:2, 80:25, 94:9, 94:21, 98:14, 102:5, 117:12 believe 13:22, 30:14, 31:4, 39:11, 50:16, 62:18, 63:10, 67:25, 79:2, 80:17, 91:13, 102:5, 103:10, 105:18, 120:22, 122:11, 122:16, 124:16, 124:19, 124:24, 135:9, 137:7, 139:24 below 27:17, 36:10, 43:6, 89:20,</p>	<p>90:24, 126:19 bending 22:12 beneficial 27:24, 95:11, 129:3 benefit 7:17, 10:9, 18:6, 27:24, 96:18, 97:18 benefits 107:18 berries 84:25 berry 79:22 best 6:10, 120:25, 143:5 better 52:21, 52:24, 73:5, 77:20, 78:7, 84:7, 138:16, 138:21 between 28:25, 34:17, 62:14, 62:22, 63:21, 75:6, 93:18, 97:9, 110:9, 126:18 beyond 40:8, 128:15 bicycle 24:20, 25:8 big 61:9, 65:6, 71:13, 88:21, 121:16, 122:24 biggest 122:25 bike 19:19, 25:10, 25:11, 25:12, 25:15, 25:16, 117:4 biker 64:2 bikeways 29:12, 29:13</p>	<p>bio-filter 44:23 bio-retention 35:10 biofilter 37:17, 37:22, 38:6, 42:11, 52:5 bioswale 35:9 birdfeeders 74:16 bit 28:13, 30:6, 31:12, 31:23, 32:10, 35:1, 37:9, 40:1, 55:15, 68:17, 77:19, 81:4, 85:7, 93:9, 95:15, 110:13, 123:18, 134:19, 140:17 blocking 110:6 blue 33:1, 92:22 board 5:18, 13:13, 49:19, 49:20, 49:22, 50:13, 51:3, 51:7, 90:14, 114:6, 132:5, 132:8, 132:9, 132:10, 132:12, 139:6, 141:8 board's 13:21 bocce 75:18 bodies 70:5, 114:3 border 60:13, 75:22, 83:12 borders 60:11</p>	<p>both 7:16, 11:16, 16:8, 23:14, 26:3, 29:11, 32:23, 34:23, 42:1, 42:19, 44:19, 47:8, 49:6, 57:13, 58:3, 58:10, 60:17, 62:24, 64:1, 70:16, 74:13, 78:14, 79:13, 88:10, 91:21, 108:2, 122:11, 122:16, 130:13, 130:17, 130:25, 131:17, 138:15 bottom 6:16, 26:11, 84:10, 84:23 bound 60:15 boundary 13:20, 21:11, 76:3, 97:22, 98:10, 99:1 bounded 60:8 bowers 3:6, 3:17, 8:18, 14:6, 68:10, 68:11, 68:13, 68:16, 68:19, 68:21, 68:22, 69:2, 69:9, 69:12, 69:17, 69:21, 69:24, 70:3, 70:7, 70:9, 70:14, 70:19, 71:2, 71:20, 71:23, 72:12, 72:18, 72:20, 72:23, 73:1, 73:4, 73:8, 73:12, 73:16, 73:18, 74:3,</p>
---	---	---	--

75:24, 75:25, 76:5, 76:14, 77:6, 77:9, 77:23, 80:10, 80:14, 80:17, 80:20, 81:1, 81:2, 81:25, 82:4, 82:7, 82:14, 82:22, 83:5, 83:7, 83:9, 83:11, 83:24, 84:12, 85:16, 85:20, 85:21, 92:14, 110:12, 111:2, 129:14 bowers's 69:4 branching 80:5 break 12:11, 67:16, 67:21, 90:11, 112:8 breaking 50:8 brian 3:5, 8:14, 56:14 brief 91:9, 111:15 briefly 14:15, 15:1, 16:24, 32:14, 47:2, 58:20, 70:6, 71:1, 88:11, 111:25, 114:3, 119:23, 120:15, 137:6 brightening 108:1 bring 6:10, 10:1, 36:18, 103:9, 107:11 bringing 120:4 brings 126:22	broadening 62:6 brookstone 119:9 brought 123:20 budget 94:14 buffer 20:14, 20:16, 34:17, 36:12, 38:20, 39:2, 39:24, 40:4, 40:5, 40:9, 74:8, 99:2 bugher 1:25, 143:2, 143:13 build 135:8 building 12:1, 23:4, 23:8, 25:18, 26:3, 26:9, 30:20, 33:11, 35:12, 45:14, 46:18, 47:20, 47:23, 60:20, 62:24, 63:1, 71:21, 73:19, 75:6, 75:17, 81:6, 81:11, 88:17, 89:6, 89:20, 89:25, 90:9, 90:11, 90:12, 91:13, 92:24, 93:1, 93:8, 93:17, 93:18, 93:24, 95:25, 96:4, 97:1, 97:10, 97:16, 98:4, 101:13, 101:15, 102:22, 103:18, 103:21, 105:13, 122:22, 123:2, 123:10, 123:14, 126:16, 129:4,	132:6 buildings 30:23 built 131:7 bulk 99:13 bunch 75:7 burden 13:24, 13:25, 131:2 bus 29:24, 63:23, 117:1, 117:3 buses 116:19 business 14:10, 14:13, 56:13, 68:12, 85:24, 112:15, 119:7 butterfly 75:14 <hr/> c <hr/> c 4:4, 59:22, 59:24, 62:18, 64:5, 92:12 calculation 101:19 caliper 77:16 call 5:11, 5:24, 8:10, 14:3, 14:8, 40:3, 56:7, 68:9, 85:22, 112:12, 119:6, 127:7, 133:2, 133:4 called 5:21, 6:6, 51:25, 61:12, 126:19 calls 29:12, 62:6	camera 56:18 campus 116:20 can't 26:15, 32:9, 53:23, 107:17, 132:21, 136:6 candidates 132:6 candles 81:15, 93:22, 94:10, 108:19 cannot 43:17, 56:20 canopy 73:23, 74:9 capacity 41:8 car 95:8, 108:16 care 5:6, 7:5, 12:17, 12:19, 16:10, 16:21, 22:16, 23:3, 24:2, 24:6, 24:8, 24:14, 24:16, 24:21, 32:15, 46:2, 46:23, 47:24, 58:12, 61:22, 62:10, 64:13, 64:17, 64:19, 64:24, 70:17, 82:11, 82:18, 83:1, 84:3, 87:7, 89:13, 92:4, 92:5, 94:6, 99:12, 115:19, 120:8, 124:15, 124:20, 126:2, 141:17, 141:23, 141:25 career 87:2 cars 81:10
---	--	---	--

<p>case 1:4, 5:5, 5:15, 9:15, 10:13, 11:20, 12:12, 15:9, 24:6, 24:8, 24:13, 25:22, 31:12, 36:4, 42:12, 50:18, 52:23, 53:3, 55:13, 84:6, 130:17, 138:18, 138:23, 139:17, 143:7</p> <p>cases 36:4</p> <p>casey 2:3, 8:6, 12:14, 21:20, 23:3, 35:3, 39:20, 50:14, 88:23, 89:5, 109:1, 117:13, 135:2, 135:9</p> <p>categories 66:12, 66:16, 100:2</p> <p>category 33:6</p> <p>cause 39:16, 66:9, 83:1, 99:25, 118:8, 118:11, 124:24</p> <p>causing 130:19</p> <p>cedar 79:12</p> <p>ceiling 36:17</p> <p>cement 90:13</p> <p>center 31:9</p> <p>centre 119:9</p> <p>certain 17:7, 58:19, 76:17, 96:2,</p>	<p>111:4</p> <p>certainly 50:7, 53:4, 94:15, 98:23, 102:21, 104:3, 104:17, 106:9, 107:10, 111:8, 132:21, 133:6, 137:2, 138:19, 139:2, 141:3, 141:8</p> <p>certificate 143:1</p> <p>certification 70:11, 113:18</p> <p>certifications 69:15, 86:18, 113:14</p> <p>certify 143:2</p> <p>cfs 41:11, 41:19, 42:16, 44:18, 52:12</p> <p>chain 110:16, 126:1</p> <p>chain-link 98:16, 98:22, 110:4, 110:5, 125:24, 126:1, 126:3</p> <p>challenge 97:17, 109:15</p> <p>chance 100:20, 105:17, 134:11</p> <p>change 36:19, 37:14, 42:6, 44:25, 45:2, 49:22, 52:2, 94:5, 94:11, 94:19, 104:11, 105:19, 105:23, 106:7, 107:6, 107:8, 126:18, 132:5</p> <p>changed 106:5</p>	<p>changes 55:21, 55:24, 56:2, 80:7, 94:9, 103:22, 105:23, 116:13, 116:16, 122:24</p> <p>changing 94:20, 106:6, 129:17</p> <p>channel 22:6, 22:9, 22:10, 129:23, 130:22, 132:20, 138:10</p> <p>chapter 16:16</p> <p>character 48:5, 62:13, 65:11, 82:12, 94:13, 99:18, 99:19, 124:17</p> <p>characters 66:23</p> <p>charging 137:23</p> <p>charles 86:1</p> <p>charlie 3:9, 3:23, 8:23, 119:6, 119:8, 134:18</p> <p>chat 7:8</p> <p>check 117:15</p> <p>cherry 79:22, 84:18</p> <p>chestnut 18:2</p> <p>chief 9:15, 12:13</p> <p>child 61:20</p> <p>children 123:6</p> <p>chooses 122:6</p> <p>chosen 78:21, 79:12</p>	<p>church 21:19, 29:3, 60:23</p> <p>circles 92:21</p> <p>civil 8:12, 15:5, 15:7, 15:14, 15:17, 15:19, 16:25, 17:20, 47:20, 48:14, 58:24, 113:12</p> <p>cl-2 61:12</p> <p>clarification 139:22</p> <p>clarify 63:7, 126:15, 126:24</p> <p>clarifying 140:13</p> <p>clarify- 33:24</p> <p>classification 16:8, 58:10, 70:15</p> <p>cleaner 55:15</p> <p>cleanup 139:7</p> <p>clearly 110:5, 138:4</p> <p>click 6:12, 6:18, 6:19, 6:21, 6:25, 7:1</p> <p>close 10:13</p> <p>closer 61:14, 102:17</p> <p>closes 139:4</p> <p>closing 3:12, 9:25</p> <p>code 16:17, 88:8, 92:25, 95:25, 96:18, 97:14,</p>
--	---	--	--

<p>98:7, 102:6, 102:14, 102:24, 103:14, 104:4, 104:5, 104:23, 124:2, 126:16 coffee 67:17 colleagues 70:24 collects 44:9 colleen 3:6, 3:17, 8:18, 68:10, 68:13 college 86:16 color 92:22 columbus 119:10 combination 35:9, 66:11, 91:23, 110:18, 110:21 come 7:6, 11:4, 12:4, 55:4, 63:23, 75:16, 91:12, 104:11, 106:21, 138:21, 141:5 comes 95:2, 95:6, 136:8 coming 42:11, 55:14, 89:3, 101:20, 105:2, 106:17 commencing 50:22 commend 11:22 comment 84:2, 105:16, 110:3, 125:23, 125:24, 129:7, 132:22, 134:12,</p>	<p>136:2, 140:16 comments 13:11, 71:12, 83:23, 132:16, 132:18 commercial 60:21, 91:2, 98:23 commission 114:7 committee 13:12 communicate 7:9, 7:11 communication 7:13, 12:20 communities 89:15, 92:1, 119:24, 120:7, 123:20 community 9:21, 9:22, 10:13, 10:20, 10:24, 11:21, 11:22, 13:3, 13:7, 21:13, 21:17, 21:20, 23:4, 27:25, 35:6, 38:14, 49:18, 53:3, 61:11, 64:7, 74:12, 75:4, 75:17, 89:13, 91:18, 94:18, 98:18, 98:20, 98:21, 99:12, 107:23, 108:18, 120:12, 122:1, 123:3, 123:9, 123:11, 124:5, 129:4, 132:5 comparable 42:7 compared 115:25, 116:2, 131:22 comparing 41:9</p>	<p>compatibility 82:2 compatible 48:25, 67:2, 94:1, 99:18 compensate 40:6 complete 139:19 completed 101:1, 103:3 completely 106:19, 107:1, 107:4 compliance 125:7 compliant 48:16 comply 36:25, 47:21, 47:23, 48:1, 64:23, 99:6, 102:6, 136:16 components 61:9 computer 18:8, 73:8 conceal 90:4 concealing 90:24 concept 4:6, 13:10, 29:16, 29:25, 34:21, 34:25, 35:2, 35:5, 36:24, 37:8, 37:9, 37:25, 38:3, 38:18, 39:11, 39:12, 39:14, 41:12, 41:23, 42:8, 43:5, 45:24, 47:10, 50:1, 51:20, 52:1, 52:3, 52:7, 54:25, 55:9, 55:14, 55:16,</p>	<p>89:6, 140:5 conceptual 135:9 concern 11:1, 21:8, 43:10, 45:11, 52:15, 76:13, 76:15, 78:16, 81:4, 107:20, 108:5, 122:12, 130:19, 132:3, 136:17, 136:18, 136:21 concerned 42:7 concerning 95:6 concerns 11:5, 11:8, 13:4, 14:2, 76:2, 76:7, 76:8, 76:12, 76:20, 80:23, 95:22, 104:19, 107:4, 120:25, 122:9, 122:12, 128:17, 128:19, 129:12, 138:9 conclude 109:14 concluded 142:2 concludes 138:14, 141:18 conclusion 64:17 conclusions 60:3, 115:22 concrete 19:16, 123:25 condition 39:8, 39:10, 41:18, 42:15, 56:1, 138:9 conditional 3:24, 5:6, 9:4, 9:16, 12:17, 13:15, 16:11,</p>
---	--	--	---

16:14, 16:20, 16:23, 17:2, 17:8, 17:13, 17:19, 22:15, 22:23, 24:5, 31:4, 34:7, 38:23, 40:15, 47:2, 47:5, 48:1, 48:4, 48:19, 48:24, 53:15, 55:2, 55:9, 55:11, 55:20, 57:25, 58:12, 58:16, 58:20, 59:2, 60:5, 64:23, 65:3, 65:10, 65:18, 65:19, 65:21, 66:1, 66:4, 66:9, 67:1, 68:5, 68:7, 69:23, 70:2, 70:18, 70:21, 70:25, 71:5, 87:14, 88:12, 99:17, 99:24, 113:25, 114:18, 115:2, 118:1, 118:19, 120:17, 124:16, 132:23, 133:8, 141:2, 141:19 conditions 13:21, 17:23, 18:15, 18:24, 22:3, 28:8, 31:22, 34:9, 40:22, 42:23, 42:25, 43:7, 66:23, 125:6, 125:11 conduct 128:14 configuration 33:19, 45:3 confirm 63:10, 64:8, 123:15, 139:10	conflict 115:20, 116:16 conflicting 81:17 conform 24:17, 25:6, 65:3 conforming 47:3 conforms 23:21, 64:14, 65:5 confronting 66:18, 100:1, 118:13, 125:1 confuse 53:3 confused 140:17 conjunction 65:19 connect 33:2, 33:15, 33:17 connecticut 112:16 connection 30:23, 32:19, 32:20, 33:2, 33:8 connections 33:5 connectivity 64:1, 91:25 connelly 3:5 conservation 39:5, 39:19, 39:25, 40:1, 47:7, 135:5 conservations 17:14 consider 42:19, 43:23, 44:1, 98:20, 141:4 consideration 120:25	considered 23:15, 23:16, 23:17, 84:11, 140:21 considering 99:20 consists 60:17 consolidate 28:10 constant 107:21 constraints 78:13 construct 38:13 construction 50:22, 88:15, 94:5, 120:3, 128:15, 134:23, 136:3, 137:8, 137:10, 138:1 consultants 88:16 contained 92:5 contention 126:11 contingent 45:19 continually 86:22 continue 18:10, 22:17, 37:21, 44:4, 72:10, 112:11, 128:14, 135:7 continued 4:2 continues 11:18, 19:22, 22:11 continuing 25:25 contours 19:23, 22:7 contractor 119:25, 136:15	contractors 136:10 control 17:16, 22:17, 50:19, 55:18, 106:25 controlled 31:16 conversation 102:17 conversations 7:15 convey 44:10 conveyed 21:1, 22:1 conveys 21:24 cooperating 72:14 coordinate 88:16 copper 61:11 copy 83:21, 84:1, 135:13 core 87:1 corner 19:8, 19:25, 20:17, 23:12, 26:13, 27:13, 27:17, 27:20, 27:23, 29:24, 43:13 correct 28:11, 29:7, 37:2, 37:3, 38:1, 38:2, 42:24, 43:3, 43:8, 45:16, 45:17, 45:20, 45:21, 48:11, 62:19, 63:12, 63:15, 64:10, 64:11, 74:2, 74:3, 75:24,
---	--	---	--

<p>94:22, 107:7, 118:16, 120:13, 121:2, 137:11, 139:12, 139:15, 140:1, 140:7, 140:25, 143:3 corrected 13:18 correctly 45:10 could 22:24, 24:16, 28:1, 28:2, 32:23, 36:5, 37:13, 45:5, 45:13, 58:20, 59:15, 63:18, 76:11, 78:12, 92:14, 94:19, 95:15, 97:23, 109:7, 109:12, 119:23, 120:25, 122:20, 135:6, 136:24 counsel 9:2, 9:7, 9:13, 11:24, 12:6, 14:17, 14:23, 15:18, 18:8, 39:6, 54:24, 57:7, 71:9, 119:21, 138:15, 141:12, 143:6 counterproductive 94:24, 109:9 county 1:2, 5:3, 5:9, 7:13, 13:10, 15:8, 16:17, 19:13, 25:6, 31:17, 34:24, 37:1, 40:17, 46:16, 46:20, 51:17, 51:18, 51:19, 51:20, 57:10, 68:6, 69:20, 83:22, 84:3, 86:6,</p>	<p>87:5, 88:8, 96:9, 96:17, 99:7, 102:6, 102:14, 103:24, 104:4, 104:5, 104:6, 113:6, 113:20, 114:6, 130:25, 131:4, 132:1, 136:4, 136:14, 137:1, 140:22 county's 131:5 couple 6:3, 20:6, 28:3, 34:24, 78:14, 78:25, 97:19, 122:19, 125:17, 133:16 course 26:22, 31:14, 38:6, 103:14, 125:25, 126:9 court 5:10, 5:13, 7:17, 7:21, 10:9, 67:25, 68:2, 75:18, 141:21, 142:1 courtyard 23:10, 44:8, 75:1, 75:7, 81:7 cover 51:11, 110:13, 110:14 coverage 23:21, 78:7, 79:6, 84:7 covered 45:25, 63:6, 134:6, 138:4 covering 51:12 create 26:2, 40:4, 75:14, 98:24 creates 36:2</p>	<p>creating 71:2, 90:10, 102:21 crew 136:11 cringe 121:16 criteria 46:20 croquet 75:13 cross 9:16, 9:19, 98:15 cross-talk 7:16, 7:19 crosses 20:21 crossing 122:15 crosstalk 97:2 cu 1:4, 5:5 cubic 41:11 cup 67:16 curb 81:12 current 17:7, 42:8, 138:9 currently 28:15, 30:7, 41:22, 64:4, 103:1 cursor 6:16, 75:22, 130:4 cut 40:3, 66:14, 98:1, 99:2, 129:10, 130:14 cutting 98:2 cyclist 117:19</p>	<p>D d 17:23, 18:23, 34:9 damage 130:19 dark 34:15, 106:22, 107:10 darkness 106:18, 106:25 data 105:24, 117:15 date 5:19, 49:16, 50:24, 50:25, 51:3, 132:4, 138:24 dawson 19:3, 19:17, 19:21, 23:13, 29:11, 31:6, 31:11, 32:22, 60:9, 62:22, 117:2, 117:5 day 102:16, 124:6, 135:24, 136:12, 139:11, 141:22 daycare 61:2, 61:21 daylights 22:5 days 5:19, 138:24, 139:2, 139:4, 139:5 daytime 104:23, 105:5 db 101:14 dba 102:15, 102:23 dbas 97:7 deadline 49:23</p>
---	---	--	--

<p>deceptive 129:1</p> <p>decides 18:1</p> <p>deciduous 78:11, 78:15, 78:18, 78:19, 78:23, 79:5, 79:15, 79:20, 79:25, 80:2, 85:6, 129:18</p> <p>decision 5:17, 5:18, 5:19, 94:4, 138:23</p> <p>decorated 126:5</p> <p>decorative 93:9, 98:11, 98:25, 111:9, 121:20, 122:8</p> <p>decrease 42:14</p> <p>decreased 43:5, 43:6</p> <p>dedication 24:10, 31:1, 31:10, 31:24, 32:3, 32:5, 32:8, 32:11, 34:4</p> <p>deep 22:8</p> <p>defer 109:1</p> <p>define 60:12</p> <p>defined 22:7, 60:7, 60:13</p> <p>definitely 111:21, 124:6</p> <p>degree 98:14</p> <p>deliveries 26:17</p> <p>delivery 26:19</p>	<p>demand 62:11</p> <p>demonstrate 37:13</p> <p>dense 60:19, 61:14, 80:5, 85:4</p> <p>density 24:12, 24:15, 24:18, 64:9</p> <p>department 17:16, 30:23, 46:10, 46:11, 51:20</p> <p>departments 46:8</p> <p>depending 22:8, 84:2, 95:8, 107:9</p> <p>depth 35:22, 36:3, 74:8, 78:6</p> <p>derek 1:9, 5:14</p> <p>describe 17:9, 18:24, 58:21, 71:21, 86:13, 113:9, 115:22</p> <p>described 63:2</p> <p>describing 61:22</p> <p>description 3:15, 4:3</p> <p>design 8:17, 12:25, 17:15, 17:16, 17:20, 23:16, 28:1, 28:5, 28:24, 29:3, 34:23, 35:7, 37:12, 41:3, 41:12, 43:1, 45:18, 46:20, 63:4, 84:11, 86:1, 88:14, 98:21, 99:3,</p>	<p>99:20, 103:3, 121:24, 122:21, 123:23, 128:16, 134:17, 134:20, 134:23</p> <p>designated 15:21, 20:16, 22:13, 40:25, 114:12, 114:16</p> <p>designation 20:15</p> <p>designed 41:8, 96:6, 123:24</p> <p>desire 102:10</p> <p>desires 122:17</p> <p>despite 130:10</p> <p>destruction 11:6</p> <p>detached 19:11, 60:18, 65:20</p> <p>detail 30:6, 91:11</p> <p>detailed 71:3</p> <p>details 71:4, 111:8</p> <p>determination 46:22, 64:13</p> <p>determine 31:1, 42:6</p> <p>determined 33:23, 116:5</p> <p>detrimental 118:19</p> <p>detriments 107:18</p> <p>develop 89:12, 89:14, 136:24</p> <p>developed 93:14</p> <p>developer 50:4, 90:15,</p>	<p>120:1</p> <p>development 1:5, 2:2, 8:8, 8:24, 13:11, 23:12, 23:14, 23:19, 24:1, 24:10, 28:9, 29:21, 30:2, 37:7, 39:13, 40:23, 47:10, 47:21, 66:17, 66:22, 67:1, 68:7, 82:20, 103:9, 118:13, 119:9, 119:11, 120:2, 120:3, 125:1</p> <p>development's 64:18</p> <p>developments 48:25, 61:14</p> <p>diameter 33:5</p> <p>dickinson 86:16</p> <p>difference 42:18, 42:21</p> <p>differences 52:12</p> <p>different 8:10, 38:5, 49:9, 66:16, 105:17</p> <p>difficult 7:21, 71:23, 76:15</p> <p>difficulties 73:4</p> <p>dim 106:19</p> <p>dimensions 25:5</p> <p>dimmed 106:25</p> <p>dimmer 95:15, 109:6</p> <p>dimmers 107:3</p>
--	---	---	--

<p>dimming 107:19, 107:25, 108:22, 128:23, 128:24</p> <p>dining 75:9, 91:19, 93:5</p> <p>dire 15:13</p> <p>direct 44:13, 88:16, 90:20</p> <p>direction 20:24, 44:5, 91:14</p> <p>directly 53:20, 96:11, 102:24, 102:25, 103:5</p> <p>director 8:23, 119:10</p> <p>disabled 7:8</p> <p>disagree 37:11</p> <p>disappeared 137:21</p> <p>disapproval 141:3</p> <p>discharge 22:2, 41:2, 41:10, 41:11, 41:19, 42:2, 42:15, 42:17, 42:19, 44:18, 44:20</p> <p>discharged 43:11, 43:14, 45:14</p> <p>discharges 22:5, 42:21</p> <p>disconcerting 95:15</p> <p>discuss 39:25, 85:11, 123:19, 129:13</p> <p>discussed 13:4, 38:20,</p>	<p>47:8, 103:11, 105:6, 128:18, 128:22, 134:8, 140:21</p> <p>discussing 138:3</p> <p>discussion 83:16, 128:11, 129:7, 129:19, 133:8, 134:12</p> <p>dismissal 116:17</p> <p>disrupt 105:14</p> <p>disruptive 106:17, 107:13, 108:25</p> <p>distance 28:8, 28:19, 28:20, 28:22, 63:21, 93:18, 97:9</p> <p>distractions 129:12</p> <p>distributing 105:22</p> <p>distribution 105:21, 105:23, 106:1</p> <p>district 46:6, 46:7</p> <p>diverse 60:23</p> <p>divided 19:18</p> <p>divides 40:21</p> <p>document 55:10, 83:13, 83:14</p> <p>documentation 88:14</p> <p>documents 9:8, 13:22, 47:18, 47:19, 48:14, 81:20, 82:9, 82:16, 82:24, 99:10,</p>	<p>101:10</p> <p>doing 7:23, 24:23, 56:24, 78:1, 96:25, 122:4, 136:1</p> <p>domestic 33:10</p> <p>done 83:20, 104:23, 105:7, 121:19, 131:24, 137:15</p> <p>donnelly 8:14, 56:12, 56:14, 56:17, 56:21, 57:1, 57:5, 57:9, 57:12, 57:20, 57:24, 58:2, 58:5, 58:8, 58:14, 58:17, 58:22, 59:5, 59:9, 59:19, 59:22, 59:24, 60:7, 62:1, 62:5, 62:20, 63:12, 63:14, 63:18, 63:20, 64:11, 64:15, 64:20, 65:1, 65:5, 65:14, 65:24, 66:6, 66:14, 66:22, 67:3, 67:5, 67:6, 67:10, 67:12, 67:13, 134:24, 135:7, 135:14, 136:6, 136:14, 136:25</p> <p>donnelly's 57:15</p> <p>door 131:10, 135:16, 135:17</p> <p>dot 28:23, 29:4, 29:6, 29:25, 121:17</p>	<p>double 5:12</p> <p>doubt 5:20</p> <p>doug 38:25</p> <p>down 19:25, 26:6, 26:11, 26:19, 33:1, 33:2, 33:8, 33:9, 38:6, 38:9, 62:15, 63:23, 89:19, 90:11, 92:22, 95:5, 130:14, 132:14, 138:20, 140:20</p> <p>downloaded 72:5</p> <p>downstream 41:4, 44:11</p> <p>dps 30:11, 34:21, 35:2, 37:9, 39:3, 41:24, 43:1, 44:25, 52:6, 133:2</p> <p>draft 55:13</p> <p>drain 21:2, 21:3, 21:4, 21:6, 21:23, 22:2, 22:10, 30:3, 30:4, 35:22, 36:4, 36:10, 36:11, 38:7, 38:8, 38:11, 40:4, 40:21, 40:24, 41:3, 41:8, 41:15, 42:13, 44:9, 50:5</p> <p>drainage 4:11, 17:15, 25:24, 36:15, 37:18, 40:13, 40:14, 40:18,</p>
---	---	--	---

<p>40:21, 40:24, 41:1, 41:17, 42:1, 42:4, 42:5, 42:10, 42:13, 42:23, 43:2, 43:5, 43:22, 44:6, 44:7, 44:16, 44:17, 44:19, 44:21, 44:24, 45:2, 45:5, 45:23, 48:21, 51:24, 52:4 drains 40:20 drive 25:6, 26:5, 26:6, 26:7, 26:10, 26:17, 27:3, 33:17, 35:13, 36:13, 36:25, 37:5, 37:15, 37:20, 37:21, 38:5, 39:3, 41:13, 43:19, 44:2, 45:12, 45:13, 54:7, 89:24, 92:19, 92:22, 122:13 driveway 19:10, 28:15, 30:16, 45:11, 53:8, 93:20 drop 30:16 drops 26:6 dry 32:16, 33:21 dumpsters 27:8 during 6:12, 7:16, 11:24, 12:5, 52:22, 83:19, 102:15, 104:23, 105:1, 105:2,</p>	<p>105:5, 105:10, 106:22, 116:7, 116:21, 123:14, 124:6, 134:17, 136:2 dust 66:19, 83:2, 100:3 dwelling 24:13</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>each 7:11, 23:22, 105:21 earlier 16:6, 33:12, 89:24, 91:14, 98:2, 98:3, 116:8, 121:21, 121:23, 127:13, 139:1 ease 90:15, 131:2 easement 21:3, 21:4, 26:14, 26:15, 30:3, 30:7, 38:12, 38:16, 39:7, 39:10, 39:15, 39:25, 45:20, 49:16, 49:17, 50:2, 50:6, 50:16, 132:13, 135:19 easements 20:19, 20:20, 20:25, 33:14 easily 98:14 east 19:4, 19:22, 20:5, 21:20, 23:17, 26:6, 44:4, 44:12, 45:14 eastern 35:18, 37:22,</p>	<p>44:12 easy 92:8, 128:12 economic 66:17, 124:25 edge 34:17, 74:2, 92:22, 93:18, 93:22, 97:10, 108:7, 111:3, 132:15, 140:21 educated 134:13 educational 69:11, 86:14, 113:4, 113:10 effect 65:15, 65:24, 66:11, 66:12, 103:23, 118:19 effectively 42:6, 42:20 effects 124:21 efficient 48:16 effort 12:24, 88:14, 136:20 efforts 120:1 egress 92:25 eight 13:19, 77:5, 110:21 eight-foot 97:21, 98:12 either 9:23, 10:20, 22:18, 102:9, 105:14, 116:7, 124:5, 127:14 elaborate 92:15, 122:20 elderly 61:21, 62:8, 62:10</p>	<p>elected 132:7 election 49:20, 49:21 electric 32:22, 33:22 electrical 32:23 element 62:5, 74:15 elementary 13:8, 21:21, 22:1, 29:17, 60:19, 62:25, 74:16, 115:21, 116:15, 116:18 elements 60:25, 94:14, 110:24 elevated 23:10 elevation 26:21, 43:20 elevations 89:1 eliminates 105:1 elimination 66:19, 83:2 elopement 92:9 else 7:22, 9:7, 9:9, 11:17, 45:22, 67:4, 67:10, 77:21, 80:24, 100:9, 118:25, 124:10, 125:16, 132:17, 141:12 emergency 96:16 employed 17:6, 58:18, 70:23, 143:6 employees 24:23, 25:9, 25:10, 25:16, 66:21, 116:3,</p>
---	--	---	---

<p>116:4, 116:12, 116:13, 124:22 enclosed 96:5 enclosure 96:21, 96:23, 96:24, 97:4, 97:12, 102:20, 123:25 encroaches 38:19 encroachment 39:1 end 52:22, 71:15, 72:6, 100:16, 106:6, 116:16, 123:18, 135:24 ended 37:15 ends 26:25 enforcement 46:5, 104:6 engaged 16:22, 17:10, 58:22 engineer 8:12, 8:22, 15:5, 15:7, 57:14, 103:9, 113:7, 113:16, 113:18 engineering 8:16, 15:6, 15:14, 15:15, 15:17, 15:19, 15:20, 17:1, 17:20, 36:6, 47:20, 48:15, 57:18, 57:22, 58:24, 59:4, 94:14, 113:12, 114:11, 114:13, 117:25, 118:6, 120:23 enjoy 74:17, 123:9</p>	<p>enjoying 123:2 enjoyment 66:13, 66:17, 82:19, 83:3, 118:12, 124:25 enough 30:18, 71:17, 101:9, 108:19, 109:6, 129:7, 130:18 ensure 31:25 ensures 82:2 entitlement 17:12 entitlements 58:23, 70:25 entrance 26:19, 26:23, 28:12, 28:14, 28:16, 28:17, 29:1, 29:22, 29:23, 72:2, 73:19, 73:20, 74:12, 91:17 entry 26:8, 91:12 environmental 15:6, 15:15, 15:20, 34:22, 37:12, 38:23, 38:25 equally 111:10 equate 107:12 equates 102:16 equipment 90:4, 90:6 equivalent 42:20 erosion 130:10, 130:22, 131:8, 131:24 escaping 92:9</p>	<p>esd 37:11, 45:13 especially 74:15, 84:7, 90:9, 93:19, 95:11, 96:1, 107:5, 123:4, 123:19 esquire 2:3 essentially 36:14, 37:13, 40:6, 42:3, 52:6, 60:10, 87:1, 91:12, 92:6, 92:17, 93:21, 96:11, 97:4, 98:6, 102:25 established 70:20, 78:3 evaluated 65:18 even 11:4, 36:24, 39:14, 80:2, 84:9, 126:3, 128:23 event 47:4 events 41:2, 130:12 ever 70:4, 107:16 evergreen 74:9, 78:11, 78:18, 79:12, 79:20, 79:21, 84:17 evergreens 77:2, 77:17, 78:12, 129:17 every 74:7 everybody 18:19, 68:21, 71:24, 95:11, 105:9</p>	<p>everybody's 97:18 everyone 6:23, 7:22, 9:8, 18:1, 67:18, 67:24, 67:25, 72:23, 74:17, 84:1, 112:9, 121:25, 135:24, 138:14, 141:16, 141:22 everyone's 21:8 everything 12:9, 45:12, 45:25, 55:15, 63:6, 77:19, 78:1, 83:15, 85:8, 98:20 evidence 5:16, 6:5, 139:14, 139:17 evidenced 120:22 evident 121:1 evolved 61:8 ex-parte 7:13 exactly 22:8 examination 9:17, 9:19, 18:10 examiner's 63:17 except 13:18, 45:11, 45:12 exception 28:24, 29:3, 29:6, 61:1, 63:9, 65:25 exceptions 60:5 excess 24:25</p>
---	--	--	---

exchange 7:7 excursions 116:11 excuse 38:20, 78:21 exhibit 3:15, 3:16, 3:17, 3:18, 3:19, 3:20, 3:21, 3:22, 3:23, 3:24, 3:25, 4:3, 4:4, 4:5, 4:6, 4:7, 4:8, 4:9, 4:10, 4:11, 15:12, 17:23, 18:7, 18:19, 18:23, 22:15, 22:22, 30:12, 31:4, 32:14, 34:7, 35:3, 35:4, 38:1, 38:2, 39:20, 39:22, 40:19, 41:22, 42:9, 46:14, 52:19, 53:16, 53:18, 53:19, 57:16, 59:7, 59:15, 59:20, 62:16, 62:18, 62:21, 64:4, 69:4, 71:10, 71:11, 73:10, 86:4, 88:24, 92:12, 98:3, 106:4, 113:3, 115:17, 120:11, 129:16, 129:22, 135:12 exhibits 9:7, 9:10, 11:16, 11:19, 11:20, 72:5, 88:19, 121:1, 139:14, 139:16, 139:18, 139:20 existing 12:1, 17:23,	18:24, 19:9, 19:23, 20:1, 20:8, 20:10, 20:19, 20:20, 20:25, 21:23, 22:3, 23:11, 25:24, 27:17, 28:8, 28:11, 28:12, 29:1, 29:24, 30:7, 30:25, 31:20, 31:21, 32:17, 33:3, 33:14, 33:18, 34:9, 34:10, 35:23, 40:20, 40:21, 40:22, 40:24, 41:10, 41:18, 42:15, 42:17, 42:23, 43:6, 52:10, 65:19, 77:24, 89:17, 116:2, 126:4, 129:23 exists 28:15, 31:8 exiting 121:4 expansive 90:19 expectation 101:9 expecting 107:24, 134:14 experience 55:19, 56:1, 70:10, 95:1, 95:9, 107:15, 108:23, 109:23, 109:24, 110:1, 113:4, 119:23, 120:9 experience-based 109:25 experiencing 107:25 expert 8:15, 8:19,	15:3, 15:7, 15:14, 15:17, 47:17, 47:18, 48:13, 57:10, 57:18, 57:21, 64:22, 65:2, 65:8, 65:16, 66:2, 66:7, 66:24, 69:6, 70:9, 70:13, 81:19, 82:8, 82:15, 82:23, 86:6, 87:10, 87:12, 94:23, 99:5, 99:9, 99:16, 99:23, 114:10, 114:12, 117:24, 118:5, 118:17, 119:23, 124:14 expert's 13:23 expertise 15:2, 15:5, 15:15, 57:11, 109:6, 109:22 experts 14:6 explain 14:15, 15:1, 16:24, 43:17, 47:2, 69:10, 70:6, 71:1, 88:11, 97:24, 114:4, 115:18, 120:15, 121:18 explained 63:25 explaining 49:9 explanation 100:13 expressed 76:10 extend 28:17, 38:9, 50:4, 60:10, 139:2	extending 33:9 extends 20:17, 21:4, 40:8 extension 75:9 extent 76:2 exterior 23:7, 23:8, 92:7, 96:23 extracted 59:11 extremely 85:4 eye 95:2, 107:20 <hr/> <p style="text-align: center;">F</p> <hr/> facilitate 132:12, 140:22 facilities 13:8, 24:6, 35:10, 35:12, 45:13, 46:2, 46:4, 46:24, 48:20, 62:8, 62:10, 62:12, 62:23, 63:19, 66:5, 70:2, 86:25, 87:3, 87:7, 100:13, 116:24, 117:1, 117:5, 118:2 facility 5:6, 12:3, 12:17, 16:10, 16:21, 22:16, 24:2, 24:9, 24:14, 30:10, 32:15, 35:14, 35:15, 35:16, 35:21, 35:25, 36:1, 36:9, 36:19, 37:17, 38:5, 38:9, 38:11, 41:14,
--	--	---	---

<p>44:23, 45:6, 46:3, 46:23, 47:24, 58:12, 61:2, 61:21, 61:22, 62:13, 64:14, 64:17, 64:19, 64:24, 70:18, 71:22, 75:21, 76:16, 81:22, 82:11, 82:18, 83:1, 92:16, 94:6, 96:21, 98:21, 104:9, 108:8, 115:10, 115:11, 115:20, 116:3, 116:11, 117:3, 121:4, 122:19, 124:15, 124:20, 126:2 facing 90:20, 108:8, 130:8, 130:17 fact 29:17, 37:10 facts 5:17 fails 5:13 fair 7:14, 93:17 fairly 22:6, 60:19 fall 26:1, 33:6, 79:7, 108:2, 108:7, 131:20 fallen 130:14 falling 79:7, 122:13 familiar 15:22, 16:7, 16:13, 48:9, 57:24, 58:6, 58:15, 69:19, 69:22, 69:25, 70:14, 70:21,</p>	<p>71:25, 87:4, 87:13, 88:5, 88:6, 88:7, 88:10, 113:19, 113:24, 114:17, 114:21 familiarity 124:14 families 123:5 family 19:9, 21:17, 60:8, 60:14, 60:18 far 25:17, 30:18, 33:13, 42:7, 46:12, 62:13, 78:10, 79:17, 116:23 farm 19:3, 19:4, 19:17, 19:21, 23:13, 29:11, 31:6, 31:11, 32:22, 60:9, 62:22, 63:23, 64:2, 64:3, 117:2, 117:5 fast 79:13, 79:22, 79:24, 84:21 façades 90:12 feasible 37:14, 43:23, 44:1, 44:3, 44:10 feature 6:13, 6:15, 7:2, 7:8, 72:9, 72:14, 122:21, 126:21 features 63:2, 63:3 feature" 6:7 february 13:3, 51:5,</p>	<p>79:8, 120:11, 128:12, 135:17 feedback 11:17, 12:25, 13:1, 120:15, 121:7 feeds 33:11 feel 7:25, 8:1, 12:23, 91:1, 98:21, 98:24, 108:13, 108:17, 111:9 feeling 107:19, 112:9 feet 22:8, 24:8, 26:13, 26:23, 27:1, 27:15, 28:25, 29:3, 29:4, 30:22, 31:9, 31:10, 31:20, 31:21, 31:24, 32:5, 36:16, 36:17, 41:12, 53:21, 54:6, 54:17, 74:7, 74:21, 77:1, 77:4, 77:16, 77:18, 77:19, 79:19, 79:20, 84:9, 84:22, 84:24, 85:2, 85:9, 90:1, 95:16, 97:10, 98:5, 110:9, 110:11, 110:20, 110:21, 129:9, 129:10, 131:19, 131:22 fence 12:1, 13:20, 97:21, 98:13, 98:16, 98:22, 110:2, 110:4, 121:13, 121:20, 125:24, 126:3,</p>	<p>126:5, 129:6 fencing 122:8 fenestration 63:4 few 20:4, 63:8, 69:6, 73:24, 78:17, 78:24, 79:24, 81:10, 83:15, 100:14, 101:3, 113:3, 116:22, 120:21, 124:10, 128:20, 129:1, 134:7 field 138:18 fields 15:3, 15:17 fifth 46:6, 112:13 figure 6:18, 72:10 file 9:4, 18:9, 55:12, 55:13, 133:5, 139:6 filed 13:9, 51:2, 55:10 files 71:13 filling 79:14 final 33:19, 33:22, 54:24, 97:20, 99:4, 124:10, 129:19, 134:19 finally 47:1, 47:15, 48:24, 75:5, 75:16, 79:17, 82:23, 118:17 financial 143:8 find 6:24, 62:1,</p>
--	--	---	--

<p>97:6, 107:13, 128:25, 139:7 findings 59:13, 60:3, 115:22, 117:17 fine 12:5, 18:17, 22:19, 53:1, 53:5, 62:4, 110:17 finish 136:22 finished 12:9, 67:12 finishing 136:19 fire 4:7, 4:8, 17:16, 29:9, 30:9, 30:10, 30:11, 30:14, 30:17, 30:18, 30:21, 30:23, 33:10, 46:3, 46:8, 46:10, 46:11, 46:12, 46:13, 46:14, 46:17, 46:20, 124:1 fireplace 75:11 firm 16:22, 17:6, 58:18, 58:22, 70:24 firmly 130:9 first 8:12, 14:3, 14:8, 49:8, 63:13, 91:17, 91:21, 100:17, 101:6, 101:21, 104:7, 106:16, 115:23, 128:9, 131:15, 131:21, 136:25 first-hand 83:9</p>	<p>five 26:13, 27:14, 31:25, 34:5, 53:21, 54:6, 54:17, 77:18, 79:19, 80:20, 84:24, 85:1, 98:5, 110:9, 110:20, 129:9 five-foot 19:16 five-minute 67:15, 67:20 fixture 94:20, 105:21 fixtures 95:13, 95:14, 105:18 flatten 26:10 flickering 95:4, 107:12, 107:19 floor 91:10, 91:14, 91:17, 91:20, 91:21, 91:22, 92:2, 137:24 flournoy 1:5, 2:2, 8:7, 68:7, 89:12, 119:8 flow 42:21, 132:13 flowering 77:2, 77:17 flows 19:24 focusing 87:2, 120:1 foliage 78:23 folks 7:19, 9:21, 10:14, 54:22, 67:16, 73:10, 85:14, 112:8, 120:20, 133:4,</p>	<p>138:17, 138:19, 139:5 follow 7:19, 106:6 follow-up 127:2 following 66:12, 74:3, 100:2, 127:9 foot 13:19, 19:15, 19:19, 19:20, 31:7, 31:25, 32:12, 34:4, 34:5, 74:7, 76:23, 77:5, 77:15, 78:13, 81:15, 93:21, 94:10, 108:19 foregoing 143:2 forest 17:14, 20:1, 39:4, 39:19, 39:25, 40:1, 47:7, 135:5 formal 75:12 formally 51:2 formerly 21:18, 29:2 forward 51:24, 135:8 fought 126:3 found 28:20, 36:7 fountain 21:13, 38:14, 49:15, 49:17, 64:7, 75:11, 131:1, 140:23 four 25:11 fpa 30:24 free 12:23</p>	<p>freeze 73:8 friday 1:11, 105:8 front 20:8, 23:15, 27:17, 51:16, 72:1, 72:2, 73:18, 73:19, 73:21, 75:17, 77:11 frontage 19:17, 19:21, 23:12 full 30:19, 79:18, 84:24, 116:6, 125:7, 127:24, 133:23 function 24:14 functioning 29:2, 60:22 further 28:17, 42:9, 44:11, 45:7, 92:15, 118:22, 123:18, 130:22, 131:8, 131:22, 132:14, 137:13, 138:12, 140:20</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>g 3:21, 88:19, 89:3 galvanized 121:17 games 75:18 garage 19:12, 23:5, 23:6, 25:2, 25:5, 26:19, 26:21, 90:24, 91:16, 96:6, 99:6, 101:8, 103:19</p>
---	--	---	---

<p>garden 75:4, 75:13, 75:14, 93:3 gardens 74:16 gas 32:17, 32:19, 33:21 gathering 75:3 gave 78:15 general 7:18, 9:13, 16:9, 19:23, 25:23, 50:12, 58:10, 61:22, 62:6, 62:13, 66:18, 70:16, 70:22, 77:9, 77:13, 81:23, 82:20, 83:4, 87:6, 95:18, 100:1, 118:14, 119:25, 125:2, 136:15 generally 19:4, 19:5, 26:1, 26:13, 26:17, 60:16, 63:3, 77:12, 136:11 generated 115:10, 115:19, 115:20, 116:1, 117:7, 117:10, 117:12 generator 12:3, 95:22, 95:23, 96:2, 96:3, 96:8, 96:12, 96:23, 96:24, 101:7, 102:13, 102:18, 103:1, 103:18, 104:7, 104:8, 104:20, 104:22, 105:4, 123:13,</p>	<p>123:19, 123:21, 138:3 generators 96:13, 124:3 gentleman 10:9 gentlemen 127:14 georgia 119:10 geotech 36:7 geotechnical 36:6 germantown 5:8, 10:7, 13:8, 19:2, 21:21, 46:8, 46:9, 46:11, 48:10, 58:6, 60:16, 61:4, 62:8, 65:4, 114:22, 115:21, 117:3, 128:5, 141:20 getting 11:8, 81:16, 90:20, 104:2, 128:19, 135:19 give 5:24, 9:14, 14:20, 56:8, 57:3, 68:25, 72:23, 76:21, 77:20, 84:7, 87:25, 88:20, 91:9, 95:22, 101:2, 101:16, 102:10, 112:23, 115:23, 119:17, 127:21, 131:9, 131:19, 133:20, 134:11, 135:21 given 7:25, 8:2, 29:17, 62:11, 84:21, 84:22 giving 6:5, 7:24,</p>	<p>9:14, 11:22, 79:16 glare 100:3 glasscock 8:13, 8:15, 56:15 go 6:1, 6:3, 22:25, 23:1, 23:22, 27:11, 33:15, 34:8, 44:25, 51:9, 59:22, 59:23, 67:21, 72:10, 84:8, 91:11, 91:15, 95:7, 106:22, 110:12, 112:3, 116:24, 123:1, 123:9, 125:21, 134:25 goes 84:9, 95:5, 95:8 going 5:5, 7:15, 7:18, 8:1, 9:6, 9:11, 10:14, 23:1, 34:3, 34:6, 39:4, 41:15, 47:15, 50:13, 53:14, 53:15, 59:14, 63:5, 66:15, 67:15, 67:21, 71:25, 72:18, 78:7, 78:18, 84:8, 84:16, 85:1, 91:15, 93:12, 93:13, 96:24, 101:7, 101:11, 101:16, 103:2, 103:12, 103:19, 103:21, 103:22, 105:13, 106:17, 112:7, 113:3, 122:15, 123:1, 123:25,</p>	<p>125:23, 126:4, 126:5, 126:6, 128:12, 130:16, 132:7, 132:17, 134:10, 134:18, 134:20, 135:15, 137:25 gone 78:21 gonna 31:3, 34:25, 41:10 gonzaga 113:12 good 8:6, 8:25, 9:4, 10:3, 10:11, 10:16, 12:14, 36:5, 36:7, 62:14, 62:21, 72:10, 78:2, 84:14, 90:13, 90:16, 98:14, 100:12, 105:15, 111:2, 128:13, 134:16, 135:23, 135:24, 140:10, 140:11, 142:1 gotten 111:7 gov 6:2 governing 114:3 governmental 70:5 grab 67:16 grade 26:6, 26:20, 26:23, 27:17, 53:22, 89:18, 90:1, 90:24, 96:20, 97:7, 97:12, 98:9, 126:18, 126:19 grant 50:2</p>
---	--	--	---

<p>granted 21:5, 38:17, 47:5, 50:6, 103:21</p> <p>granting 16:14, 38:15, 39:7, 39:9, 45:19, 49:16, 58:16</p> <p>grants 125:4</p> <p>great 11:15, 12:8, 25:19, 28:7, 29:8, 50:17, 60:11, 62:1, 67:8, 67:14, 68:9, 71:20, 80:24, 81:19, 89:8, 91:24, 92:7, 117:3, 138:24, 141:22</p> <p>greater 102:22</p> <p>green 89:22, 90:23</p> <p>ground 6:3, 50:8, 84:24, 85:9, 110:14</p> <p>group 1:5, 2:2, 8:8, 68:7, 86:1, 119:9</p> <p>groups 75:10</p> <p>grove 8:23</p> <p>grow 79:16, 111:4</p> <p>growth 79:13, 79:18, 79:22, 79:24, 84:21</p> <p>guard 98:7, 98:25, 110:4, 110:11, 110:13, 110:15,</p>	<p>111:6, 121:13, 121:15, 121:17, 121:23, 126:1, 126:10, 126:15</p> <p>guardrail 110:18, 110:25, 126:12, 126:16, 126:19</p> <p>guess 15:8, 19:24, 20:12, 21:9, 21:12, 21:18, 22:5, 23:8, 24:3, 24:4, 24:6, 25:16, 25:25, 26:2, 26:5, 26:11, 27:2, 29:25, 32:21, 33:21, 34:16, 35:11, 35:17, 35:21, 37:4, 37:10, 40:2, 40:3, 40:8, 40:15, 44:7, 44:13, 44:16, 51:25, 53:22, 71:16, 85:10, 101:8, 103:6, 106:3, 117:6, 131:18, 136:24</p> <p>guesswork 108:23</p> <p>guide 88:23</p> <p>guideline 126:7</p> <p>gumdrop 85:5</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>h 88:19</p> <p>habit 80:5</p> <p>half 117:1, 136:12</p> <p>halloween 141:14, 141:16,</p>	<p>141:17, 142:1</p> <p>hammerhead 30:17</p> <p>hand 6:7, 6:8, 6:18, 6:19, 6:20, 6:24, 7:1, 7:2, 7:3, 7:5, 10:14, 14:18, 49:6, 54:1, 57:1, 68:23, 87:23, 100:10, 112:21, 119:13, 127:19, 133:18</p> <p>hands 67:11, 85:15, 119:2</p> <p>hand" 6:13, 6:15</p> <p>hang 68:19, 73:1</p> <p>hanging 22:11</p> <p>hangs 20:23</p> <p>happen 52:4, 122:14</p> <p>happened 130:10</p> <p>happens 136:22</p> <p>happy 8:11, 51:1, 91:11, 125:25, 126:9, 135:12, 135:24, 141:14, 141:16, 141:17</p> <p>hard 71:3, 77:24, 110:15</p> <p>harm 66:9, 82:18, 83:1, 99:25, 118:8, 118:12, 124:25</p> <p>harmonious 48:5, 65:11, 82:11, 89:15</p>	<p>harmony 99:18, 124:16</p> <p>hatching 40:7, 40:8</p> <p>hate 123:1</p> <p>hdpe 44:8</p> <p>headed 26:18</p> <p>health 66:20, 100:2, 124:21</p> <p>hear 9:22, 53:4, 56:19, 68:21, 101:7, 109:17, 121:15</p> <p>heard 8:2, 70:23, 109:8, 109:11, 116:24, 135:20</p> <p>hearings 1:1, 5:4, 6:4, 68:6, 114:6</p> <p>heavier 34:15</p> <p>hedge 73:21, 77:11</p> <p>height 26:13, 27:15, 53:11, 53:12, 53:21, 54:6, 54:18, 76:24, 77:10, 89:7, 90:1, 98:5, 99:13, 126:17, 131:19, 131:20</p> <p>heights 61:3</p> <p>held 1:10, 10:24, 120:12</p> <p>help 72:5, 79:15, 80:5, 103:9, 111:19, 133:3, 135:18, 135:19,</p>
--	---	--	--

135:21 helpful 132:2 helps 78:5, 92:18 hendricks 8:13, 8:15, 56:15 here 9:2, 9:7, 9:11, 10:21, 12:16, 19:8, 19:10, 19:18, 19:23, 20:3, 20:4, 20:6, 20:13, 20:17, 20:22, 21:2, 21:9, 21:11, 21:15, 21:16, 21:17, 21:18, 22:2, 22:10, 23:6, 23:9, 25:3, 25:13, 25:16, 26:8, 26:11, 26:16, 26:18, 26:20, 26:22, 27:13, 27:16, 27:22, 28:13, 29:22, 29:24, 30:22, 31:9, 32:10, 32:18, 33:1, 33:9, 33:16, 34:8, 34:12, 34:15, 35:9, 35:11, 35:14, 36:14, 36:16, 38:6, 38:9, 40:7, 40:9, 40:22, 43:19, 43:20, 53:22, 68:2, 71:17, 72:17, 81:2, 85:15, 92:5, 100:9, 104:4, 118:25, 121:25, 131:17, 133:5, 133:9, 135:2, 139:8	here's 31:9 hereby 143:2 hexagon 40:7 hiding 90:6 high 27:1, 54:6, 84:9, 84:22, 97:21, 98:7, 98:13, 110:19, 129:8, 129:10 higher 54:7, 95:7, 95:8, 107:19 highest 26:12, 27:2 highlight 24:3, 25:19, 34:10, 128:20, 129:21, 134:7 highway 41:5, 60:12 highways 19:14, 31:18, 61:15, 114:22 hiker 64:2 hills 21:13, 38:14, 49:15, 49:18, 64:7, 131:1, 140:23 historically 135:25 history 86:15 hitting 102:22 hoa 38:16, 43:12, 50:5 hold 53:25, 69:15, 79:8, 79:9, 86:18, 113:14,	138:23 holds 92:2 home 21:9, 21:20, 97:22 homeowner's 39:15, 45:16, 45:19, 49:15 homeowners 135:21 homes 21:17, 43:13, 106:20, 107:23 hope 11:2, 98:25, 141:21 hopefully 11:18, 49:20, 49:22, 51:4, 128:14, 132:7 hophornbeam 79:4 hoping 134:18 horticulture 69:13 hose 30:20, 46:19 hospital 96:20, 97:6, 97:12 hour 116:7, 117:12 hours 12:8, 105:1, 105:5, 105:10, 106:22, 125:17 house 19:9, 20:8, 20:10, 23:11, 91:17, 116:2, 131:18 housekeeping 14:4 housing 8:24, 62:7, 65:7, 86:24,	98:17, 119:11, 119:24, 120:2 however 8:10, 13:24, 37:9, 39:11, 44:6, 64:6, 86:4, 109:8 html 6:2 hundred 31:7, 74:21 hurry 12:23, 136:22 hydrangea 80:4 hydrant 30:21, 33:11 <hr/> I <hr/> idea 75:2, 85:2, 85:6, 109:13, 110:6, 131:10, 134:15, 134:20, 134:22 identify 8:4 iii 96:20, 97:12 illumination 100:3 image 6:18, 90:23 imagine 103:2 immediate 37:4, 46:9 immediately 60:9, 60:18, 60:21, 62:25, 63:20, 111:11 impact 11:7, 44:21, 66:22, 132:22, 133:8 impacted 45:7 impacts 33:7, 38:20,
---	---	---	---

94:25, 100:25 impervious 37:6, 39:13 implement 50:5 implemented 47:12, 60:6, 61:7, 63:11, 63:14 implements 65:6 important 5:14, 84:16, 90:22, 92:1 imposed 124:2 improve 30:1 improvements 29:9, 29:10, 29:22, 118:7, 118:11, 125:6 in-person 9:10 inch 32:25, 33:2, 33:4, 44:8, 76:25, 77:24, 98:7, 110:11 inches 33:5, 98:8 incidents 117:19, 117:22 include 58:24, 79:21 included 29:20, 30:2, 32:1, 32:12, 94:4, 123:22 includes 17:12, 44:7, 71:3, 122:19 including 11:20, 21:25, 38:22, 48:20, 49:10, 52:10, 60:4, 69:20, 87:5, 113:20	inconsistent 48:6, 65:12, 82:13 incorporate 63:1 incorporated 13:1, 28:4, 31:18, 120:17, 121:5, 121:9 increase 41:16, 42:1, 42:16, 52:4, 64:9, 65:20, 68:17 increased 41:19, 43:2, 77:19 indeed 108:24 indicated 104:8, 104:22, 116:8, 127:13 indicating 67:11, 75:22, 104:8 indication 109:5, 119:3 individually 23:23 infiltration 35:15, 35:20, 35:25, 36:5, 36:7, 36:20, 37:16, 41:14 information 95:23, 110:1, 115:11, 115:12 infrastructure 20:21, 21:1, 41:4 inherent 36:3, 66:11 initial 37:8, 38:14, 59:10, 76:22, 77:20 initially 86:22	initials 56:19 ink 79:22, 84:25 inlet 43:22 input 141:9 inside 30:18, 93:1, 96:25, 100:13, 101:13, 101:16, 101:19, 103:21, 107:22 install 77:8, 121:3 installation 76:22, 94:24 installed 81:15, 96:4, 97:21, 121:20 installing 96:5 instead 37:17, 41:15 institute 69:14 institutional 91:2, 98:23 insulation 96:7, 102:22 intend 8:9 intended 25:15, 40:9, 126:21 intensity 65:21 intent 36:19, 108:17, 121:25, 135:7 intention 110:22, 125:5 intentional 81:13, 84:18 interest 75:15, 143:7 interested 7:24, 127:13	interior 91:10, 96:4, 136:20 interject 101:25 intermittent 20:11, 20:12, 22:13 interrupt 27:7, 36:22, 37:24, 41:21, 72:4, 77:6 intersection 20:7, 28:18, 32:10 intimate 75:3 introduce 8:8, 10:4 introduced 12:19, 139:18 invert 36:21 invite 132:9 inviting 128:10 involved 120:4, 134:19, 138:15 is- 33:15 issue 6:14, 11:19, 37:10, 72:9, 102:2, 103:17, 105:1, 108:25, 132:20, 136:24, 139:4 issued 51:4, 139:6 issues 11:1, 12:2, 12:4, 35:21, 38:24, 71:16, 84:6, 119:1, 139:8 item 109:16, 134:17
---	--	---	---

items 11:2, 100:15, 100:19, 133:16, 134:7, 134:8 iteration 32:4 iterations 34:24 itself 29:13, 89:25, 129:10	111:20 jacobs 76:1 janet 3:7, 8:20, 85:22, 85:25 january 79:8 job 1:23, 84:14, 85:8 johnson 38:25 joined 18:7, 125:16 joining 10:19 jones's 15:11 jump 8:1 jutting 131:22	106:1, 116:24, 131:6 king's 46:10 klopper 117:20, 117:21 know 7:5, 9:9, 10:23, 11:6, 21:7, 23:23, 25:16, 25:22, 26:2, 26:6, 26:10, 27:23, 28:8, 28:21, 35:23, 36:5, 41:5, 42:6, 49:17, 49:19, 50:3, 50:5, 50:10, 52:2, 52:8, 52:13, 53:21, 71:13, 76:7, 76:16, 77:23, 78:15, 80:3, 84:3, 84:13, 87:16, 88:21, 95:24, 102:20, 104:13, 105:11, 105:16, 105:20, 106:23, 108:5, 110:24, 111:6, 121:24, 123:23, 125:25, 126:2, 126:4, 128:20, 129:14, 130:3, 131:11, 131:19, 134:14, 135:17, 135:20, 136:3, 136:14, 138:18 knowledge 109:16	59:9, 60:3 landscape 8:15, 8:19, 17:1, 17:13, 28:5, 35:15, 35:20, 35:25, 37:16, 41:14, 57:14, 57:19, 57:22, 58:25, 59:3, 68:13, 69:8, 69:12, 69:17, 70:1, 70:9, 70:13, 71:2, 71:8, 72:1, 74:24, 75:19, 76:7, 77:13, 77:22, 80:8, 80:10, 81:21, 82:6, 82:10, 82:17, 83:14, 93:7, 110:24, 111:1, 120:23, 134:10, 139:23 landscaping 12:2, 70:1, 70:22, 71:21, 76:2, 80:25, 81:22, 81:23, 82:1, 82:6, 99:1, 111:18, 129:14 lanes 19:19 language 61:16 large 20:6, 20:9, 27:22, 33:5, 60:20, 74:10, 75:4, 75:10, 90:23, 92:7 larger 20:2, 27:19, 30:1, 31:21, 37:18, 61:15, 76:10, 76:24, 77:3, 90:11,
<hr/> J	<hr/> K	<hr/> L	
jacob 3:11, 10:15, 10:16, 10:17, 11:11, 11:12, 21:7, 21:16, 35:6, 43:10, 54:14, 56:8, 56:21, 83:9, 83:11, 84:2, 85:10, 85:13, 94:4, 95:21, 97:20, 100:10, 100:12, 100:19, 101:3, 101:6, 101:23, 103:15, 103:17, 104:16, 104:20, 105:15, 106:10, 120:16, 120:19, 123:13, 127:10, 127:12, 127:16, 128:21, 133:11, 133:13, 133:16, 133:22, 133:25, 134:3, 134:6, 135:19, 136:2, 136:13, 136:18, 137:7, 137:11, 137:14, 137:15, 138:16 jacob's 12:20, 14:1, 45:11, 54:5, 54:18, 74:5, 80:22, 85:16, 102:1, 102:11,	katherine 3:8, 112:16 katie 8:22 keep 78:1, 91:15, 93:11, 104:14 ken 8:12, 14:4, 14:9 kenneth 3:4, 3:16, 14:13 kick 43:22 kicked 5:23 kind 62:9, 64:6, 67:7, 71:25, 75:5, 85:5, 101:18, 102:10, 104:2, 105:25,	lack 66:19, 118:8 land 17:1, 17:13, 58:24, 59:8,	

<p>92:21 last 36:20, 39:16, 50:18, 51:11, 54:2, 119:5, 120:4, 123:12, 125:17, 136:2, 140:16, 140:18 late 123:5 later 30:6, 63:2, 83:16, 137:8 latin 78:22 latr 116:6, 117:9 laurel 79:22, 79:23, 84:19 laurels 85:3 law 46:5 lawn 75:3, 75:12 leading 53:9, 88:14 lean 130:16 leaning 130:16 learned 120:21 least 18:19, 25:23, 40:10, 95:23, 111:5, 129:9, 129:17, 131:21 leave 77:12 leaves 79:7, 79:9, 80:4, 83:19 leaving 107:13, 140:18, 140:24 left 20:23, 131:15,</p>	<p>131:16, 140:17 left-hand 91:18, 92:2 leggy 85:4 length 46:19 lengths 30:20 less 28:25, 29:4, 30:20, 46:18, 116:6, 129:18 let's 17:24, 18:8, 18:18, 34:8, 46:1, 73:9, 88:4, 88:20, 108:22, 112:12, 134:9 letter 13:22, 52:7, 83:17 letting 78:2 level 23:5, 26:19, 94:12, 95:3, 96:20, 97:12, 105:24, 107:13, 107:21 levels 94:16, 95:7, 96:9, 103:23, 107:11, 107:20, 108:13 liberty 5:8, 18:2, 19:4, 19:10, 19:12, 19:16, 20:22, 21:22, 23:13, 29:11, 29:13, 29:14, 29:19, 31:12, 31:19, 32:1, 32:18, 32:21, 33:2, 33:4, 34:4, 63:24,</p>	<p>64:1, 117:15, 141:20 licensed 69:17, 86:12, 86:20, 113:16 licensing 86:22 lieu 121:13 life 96:1 light 81:15, 90:19, 90:21, 93:4, 93:15, 94:12, 95:2, 95:5, 95:6, 95:7, 95:13, 105:24, 106:19, 106:23, 107:19, 108:4 lighter 28:13 lighting 11:25, 12:1, 71:4, 73:22, 81:5, 81:8, 81:17, 88:9, 92:13, 92:14, 92:15, 92:18, 92:19, 92:20, 92:25, 93:1, 93:6, 93:7, 93:8, 93:14, 93:19, 93:25, 94:5, 94:9, 94:16, 94:20, 94:25, 95:3, 95:10, 95:14, 95:18, 99:5, 100:25, 101:22, 104:21, 105:16, 105:18, 105:20, 105:22, 106:15, 107:5, 107:11, 107:14, 107:21, 108:12, 108:13, 108:16, 111:19, 128:22, 139:24</p>	<p>lights 81:10, 93:3, 106:17, 106:20, 107:4 likely 51:23, 51:25, 90:12 limitation 99:2 limited 136:11 limits 60:14 line 5:11, 20:5, 20:16, 20:21, 20:24, 22:11, 23:16, 23:17, 23:18, 31:9, 32:22, 33:9, 34:10, 34:15, 34:18, 41:6, 44:9, 54:7, 67:10, 68:1, 74:11, 74:20, 78:6, 81:16, 81:18, 93:16, 93:22, 94:10, 97:9, 97:11, 102:17, 102:23, 103:5, 130:8, 132:14 linear 74:7, 74:21, 78:13 lines 32:20, 93:2 link 110:17, 126:2 list 6:23, 10:10, 10:14 listed 11:25, 23:20, 76:25, 139:20 listen 5:16 listening 10:21, 49:10</p>
--	--	---	---

<p>little 6:24, 25:25, 27:16, 28:13, 30:5, 31:12, 31:23, 32:10, 35:1, 40:1, 55:15, 68:17, 71:23, 74:17, 77:3, 77:19, 79:6, 81:4, 85:7, 93:9, 95:15, 122:5, 123:7, 123:18, 134:19, 135:20</p> <p>live 10:5, 10:6, 10:17, 83:11</p> <p>lived 120:7, 123:21, 124:3</p> <p>living 87:2, 89:13, 91:19, 91:22, 92:3, 92:7, 94:18, 95:12, 96:2, 96:11, 97:15, 105:13, 120:8, 122:24</p> <p>llc 8:8</p> <p>lmah 15:9</p> <p>load 18:1, 18:8, 18:11</p> <p>loading 22:20, 48:15</p> <p>loads 17:25, 96:2</p> <p>loblolly 79:12</p> <p>local 113:21</p> <p>located 5:7, 5:8, 19:2, 19:9, 19:12, 20:7, 20:8, 20:9, 21:21,</p>	<p>23:7, 25:3, 25:13, 25:17, 26:14, 27:9, 27:16, 28:16, 29:15, 29:24, 30:6, 30:22, 31:14, 32:1, 32:18, 32:22, 32:25, 34:12, 34:16, 35:9, 35:12, 35:16, 45:15, 46:7, 81:6, 81:11, 86:1, 120:7</p> <p>location 19:5, 28:19, 28:22, 31:14, 43:25, 61:19, 61:23, 103:22, 108:11</p> <p>locations 33:22, 60:5, 93:23</p> <p>long 69:7, 86:9, 105:25, 112:3, 113:6, 141:6</p> <p>long-term 25:11, 25:14</p> <p>longer 78:24</p> <p>longevity 90:17</p> <p>look 6:11, 61:10, 94:13, 99:21, 103:4, 111:8, 121:21, 121:22, 128:23</p> <p>looked 28:19, 41:1, 107:2, 117:9</p> <p>looking 39:4, 62:20, 64:4, 81:2, 83:13, 96:22, 111:11, 130:6, 133:4</p>	<p>looks 9:3, 11:18, 67:25, 89:2, 111:7, 122:1, 130:24</p> <p>loop 19:10, 28:14, 30:15</p> <p>lose 80:4</p> <p>lot 12:24, 23:12, 23:21, 24:7, 24:9, 24:10, 24:15, 72:2, 77:11, 78:4, 78:6, 79:19, 81:7, 81:9, 81:18, 105:19, 108:16, 129:11</p> <p>louder 102:19</p> <p>lounge 92:3</p> <p>lounging 75:12</p> <p>love 98:20, 123:10</p> <p>low 43:24, 68:18, 81:8, 90:14, 93:6</p> <p>lower 6:19, 7:2, 7:4, 23:5, 26:24, 28:14, 35:13, 35:24, 37:21, 52:5, 54:1, 95:7</p> <p>lower-level 91:16</p> <p>lowest 27:2</p> <p>luckily 13:3, 55:13</p> <p>lunch 12:11, 112:8</p> <hr/> <p>M</p> <hr/> <p>ma'am 60:7</p>	<p>macris 8:13, 8:14</p> <p>made 31:2, 83:25, 101:18, 103:20</p> <p>magnolias 78:25</p> <p>main 26:8, 26:23, 32:17, 32:25, 33:3, 33:4, 75:5, 75:20, 85:8, 91:17, 108:5, 132:15</p> <p>mainly 101:6, 101:21, 134:17, 136:18, 136:19</p> <p>mains 33:5</p> <p>maintain 25:23, 78:19, 93:25, 94:15</p> <p>maintaining 89:18</p> <p>maintenance 90:14, 90:17</p> <p>major 41:5, 91:18</p> <p>majority 44:6, 59:12, 61:6</p> <p>make 5:12, 7:3, 9:24, 10:4, 11:8, 30:1, 33:8, 44:25, 45:9, 81:14, 83:25, 89:14, 90:16, 95:6, 103:12, 108:3, 108:17, 110:6, 110:19, 111:8, 111:9, 129:8, 132:16, 139:13</p> <p>makes 7:21, 55:14, 121:16</p>
--	--	---	---

making 91:1, 99:3, 109:25 manage 37:14 managed 52:4 management 3:22, 12:4, 16:18, 17:15, 30:5, 34:20, 34:22, 34:25, 35:1, 35:5, 35:8, 35:12, 37:2, 37:4, 37:7, 37:20, 37:21, 37:25, 38:3, 38:4, 38:15, 39:3, 39:11, 39:12, 41:23, 43:1, 43:5, 45:6, 45:24, 48:22, 50:1, 51:20, 52:1, 52:3, 53:7, 54:25, 55:9, 55:16, 74:23, 129:20, 130:21, 140:17, 141:4 manager 17:4 mandate 136:15 maneuver 46:15 manhole 33:18 manner 48:6, 65:12, 82:13 manufacturer 105:17, 105:20 many 12:22, 33:7, 78:12, 123:4, 130:11 marc 63:20, 63:22,	116:25 marcescent 78:22 march 15:9, 51:5 marked 17:25 marshal 30:9 maryland 1:2, 2:7, 5:8, 14:14, 56:16, 68:15, 86:2, 86:12, 86:17, 86:21, 113:17, 141:20 mass 60:20, 63:22, 63:24 massing 60:25, 62:23, 62:24 master 19:13, 19:15, 19:19, 29:12, 29:13, 31:7, 31:18, 48:7, 48:10, 58:7, 61:4, 61:5, 61:9, 61:13, 61:17, 61:18, 61:25, 62:6, 62:7, 62:9, 63:17, 64:14, 65:4, 65:13, 82:13, 86:16, 108:3, 108:7, 114:22, 131:23 material 77:7 materials 63:4, 64:22, 65:9, 65:17, 66:3, 66:8, 66:25, 76:8, 76:9, 76:11, 89:6, 89:16, 99:13, 99:21	math 24:23 mathew 3:11 matinee 61:3 matter 14:5 matters 10:1, 127:15, 134:5 matthew 10:17, 83:11, 133:25 max 41:2 maximize 90:18, 102:21 maximizes 89:21 maximum 24:15, 30:20, 36:15, 44:24, 46:19, 96:8, 102:15 maximums 103:14 maybe 62:15, 77:14, 77:18, 83:23, 87:15, 101:19, 106:18, 109:5, 122:9, 122:25, 131:4, 131:19, 134:11, 134:12, 136:24 mcdps 45:8 mcps 13:9 mean 27:7, 103:7 meaning 128:25 means 5:15, 25:4, 42:11, 77:1, 78:22	measure 131:20 measured 90:1 mechanical 90:4 medical 116:10 medicate 131:6 medium 74:10, 79:24 meet 52:12, 96:8, 97:17, 103:14, 103:24, 110:22, 122:11, 141:9 meeting 10:24, 13:3, 13:7, 35:6, 37:11, 52:18, 79:5, 120:12, 120:20, 132:8, 132:10, 132:12 meets 23:25, 26:11 member 49:19 members 9:23, 10:20, 11:21, 11:22 memory 12:19, 89:13, 92:4, 92:5, 120:8, 126:2 mention 33:19 mentioned 13:2, 21:21, 21:23, 23:3, 27:18, 31:7, 33:12, 40:19, 42:1, 43:19, 49:25, 53:8, 62:5, 63:8, 86:20, 106:16, 121:22, 138:22, 139:1
--	---	---	---

<p>mentioning 129:24 merely 9:19, 10:21 met 10:23, 13:12, 37:6, 84:5, 122:17 methods 6:16 metrics 81:13 meyer 3:7, 8:20, 85:22, 85:23, 85:25, 86:9, 86:11, 86:15, 86:20, 87:1, 87:8, 87:9, 87:11, 87:13, 87:15, 87:19, 88:4, 88:10, 88:13, 88:22, 89:5, 89:11, 91:7, 91:11, 92:11, 92:14, 92:17, 93:13, 94:2, 94:7, 94:11, 94:22, 95:1, 95:20, 95:25, 96:22, 97:3, 97:19, 97:25, 98:19, 99:8, 99:15, 99:22, 100:5, 100:7, 100:10, 100:12, 100:22, 102:9, 102:14, 103:20, 104:3, 104:14, 105:4, 105:6, 105:16, 106:3, 106:12, 106:14, 107:2, 107:17, 108:9, 108:11, 109:1, 109:5, 109:12, 110:3, 110:23, 111:1, 111:13,</p>	<p>111:16, 111:18, 111:21, 121:11, 121:20, 125:18, 128:23, 134:9, 137:19 meyer's 86:3, 101:1, 109:15 meyers 3:18, 14:6, 88:2 mhg 8:18, 16:25, 17:10, 28:20, 70:23 micris 56:15 micro 35:10 micro-bio 35:25 microsoft 5:21, 6:6, 7:8, 7:11 mid-atlantic 120:6 midday 105:7 middle 6:16, 130:7 midpoint 90:2 might 12:4, 73:6, 77:15, 81:4, 93:5, 131:9 mile 46:10, 117:1 miles 2:4, 8:6, 12:15, 46:7, 46:12 mill 5:8, 18:2, 19:4, 19:10, 19:12, 19:17, 20:22, 21:22, 23:13, 29:11,</p>	<p>29:13, 29:14, 29:20, 31:12, 31:19, 32:1, 32:18, 32:21, 33:2, 33:4, 34:4, 63:24, 117:15, 122:22, 141:20 mind 17:22, 22:14, 35:3, 71:7, 83:22, 92:12, 126:22 mine 72:21, 73:6 mines 79:1 minimal 90:17 minimize 90:8 minimizes 89:22 minimum 24:7, 24:9, 74:7, 74:8, 76:24, 77:3, 77:12, 79:18, 84:4, 96:8, 96:14, 108:14 minor 52:11, 69:13 minutes 67:21, 96:14, 112:5 missed 53:11 misunderstanding 122:5 mitigate 98:12, 103:4 mitigating 94:25, 96:17 mitigation 103:13 mix 79:20 mixed 60:17, 62:7,</p>	<p>79:16, 79:25 mixture 60:23 modification 56:1 modify 25:24 molly 1:25, 143:2, 143:13 monday 133:2 montgomery 1:2, 5:3, 5:9, 7:13, 13:10, 14:14, 15:7, 16:17, 19:13, 25:6, 31:17, 46:16, 46:19, 51:20, 56:16, 57:10, 68:5, 68:15, 69:19, 86:6, 87:5, 88:8, 96:9, 96:17, 99:7, 102:6, 102:14, 103:24, 113:6, 113:19, 114:6, 137:1 montgomerycounty- md 6:2 month 96:13, 104:24 months 129:1, 129:18, 135:3, 135:6 more 28:6, 28:22, 30:6, 35:11, 40:2, 51:7, 61:5, 61:10, 61:14, 74:24, 75:3, 75:18, 76:22, 77:4, 77:15, 78:6, 78:9, 79:6, 79:23, 85:1,</p>
--	--	--	--

Transcript of Hearing
Conducted on October 30, 2020

64

85:11, 91:15, 95:6, 96:10, 98:22, 98:24, 104:20, 105:12, 106:16, 107:13, 108:20, 110:22, 126:9, 126:10, 132:6, 134:14, 135:6 morning 8:6, 8:25, 10:3, 10:11, 10:16, 12:14, 106:24, 116:20, 117:11, 131:21 most 15:8, 16:5, 20:19, 25:1, 60:24, 77:4, 81:5, 83:18, 111:21, 116:12, 128:18, 134:6, 136:21 mostly 21:24, 21:25, 84:17 motion 94:24, 95:3, 95:5, 95:10, 106:16, 106:21 motor 94:24 mountain 79:23, 85:3 move 15:13, 51:23, 57:17, 70:8, 74:18, 87:9, 114:9 moved 43:13, 130:9, 139:14 moving 98:5, 135:8, 140:20 much 9:1, 10:25, 11:16, 49:6,	51:7, 68:4, 68:21, 79:9, 89:14, 91:2, 92:1, 93:8, 93:9, 98:22, 98:24, 101:11, 101:17, 101:20, 126:21, 134:14, 135:18, 136:20, 137:17, 138:16, 138:17, 140:10, 141:13, 141:16 muffler 96:20, 97:7, 97:12 mufflers 97:6 mulberry 77:24 multimodal 115:24, 116:23 multiple 16:5, 105:21 mute 6:4, 89:8, 117:13 myself 91:7, 120:9, 127:17 <hr/> N <hr/> name 5:14, 6:24, 6:25, 10:5, 14:10, 56:13, 66:15, 68:11, 85:23, 85:25, 112:15, 119:7, 127:25, 128:1, 133:24 name's 56:14 narrative 12:22 national 49:21 natural 74:15, 90:18	naturally 36:9 nature 9:11, 65:23, 91:2, 93:10, 95:19, 98:23, 122:2 near 20:7, 26:22, 43:12, 76:3, 81:11, 81:12, 97:22, 110:25, 117:19 nearby 117:5 necessarily 90:21, 97:11 necessary 50:2, 86:23, 96:21, 96:25, 97:5, 97:13, 103:11, 139:7 necessity 98:12 need 5:24, 6:9, 8:1, 12:10, 12:23, 14:5, 23:23, 26:25, 31:2, 36:3, 44:4, 44:25, 45:1, 47:3, 47:8, 49:17, 50:3, 50:7, 50:16, 50:18, 55:11, 59:22, 62:11, 67:17, 78:19, 80:8, 80:16, 86:4, 87:19, 97:8, 102:10, 107:7, 127:9, 132:9, 135:16 needless 108:4 needs 10:1, 38:9, 55:1, 97:17, 122:16	neighbor 10:18 neighborhood 48:6, 49:1, 59:15, 60:1, 60:4, 60:6, 60:7, 60:15, 60:16, 61:7, 63:9, 65:12, 65:15, 66:10, 66:18, 67:2, 74:25, 82:3, 82:12, 82:19, 82:21, 83:2, 83:4, 94:1, 99:19, 99:20, 100:1, 118:14, 124:17, 125:2 neighborhoods 137:3 neighboring 65:20, 66:20, 124:22 neighborly 128:13 neighbors 90:9, 129:5, 135:23 neither 143:6 net 42:6 network 115:24 never 47:11, 63:10, 63:14, 102:2 new 28:15, 44:12, 51:6, 76:12, 76:16, 78:2, 78:3, 128:16, 129:15, 132:6, 134:11 next 49:20, 49:22, 56:11, 62:15, 85:23, 132:8,
---	---	--	---

132:12, 139:1 nfda 46:16 nice 89:3, 90:23, 101:12, 123:7, 123:8, 134:22 night 50:11, 102:15, 107:5, 108:4, 108:20, 120:22 nighttime 105:2 nine 77:5, 120:4 nobody 122:15 noise 83:2, 88:8, 96:7, 96:9, 96:10, 100:2, 102:2, 102:10, 102:12, 103:7, 103:23, 105:2, 129:11, 136:20, 137:7, 138:1 none 54:24, 81:12, 125:18 noninherent 65:15, 66:10, 66:11 noon 12:9 normal 78:24, 101:15, 102:16, 105:1 normally 77:14, 101:12 north 19:5, 19:18, 20:9, 35:10, 60:8, 60:9, 60:11, 60:19, 63:21, 63:22, 81:11, 93:1, 98:6 northeast 27:20	northern 21:24, 75:22, 91:20, 93:20 northwest 19:8, 19:24, 21:25, 26:1, 27:13, 27:23, 60:15 note 115:16, 120:10 notes 81:2 nothing 14:21, 57:4, 69:1, 88:1, 112:24, 119:17, 127:22, 133:21 notion 102:1 november 132:7, 139:10 nri 20:13 number 5:5, 6:4, 15:9, 19:11, 20:2, 20:19, 23:6, 24:14, 24:22, 24:23, 25:9, 27:18, 32:12, 33:13, 35:10, 39:20, 40:19, 41:2, 42:9, 46:14, 54:13, 57:12, 62:21, 65:21, 111:2, 115:9, 116:1, 116:3, 116:4, 117:10, 123:25, 129:18, 133:3 numbers 52:9, 52:12, 88:24, 101:14 <hr/> O <hr/> oak 79:2 oaks 79:8	oath 9:12, 119:20 objection 6:8, 7:3, 67:15, 109:4, 109:11, 109:17, 112:7 obtain 13:11, 55:14 obtained 50:7 obtrusive 90:6, 126:23 obviously 24:11, 25:4, 27:24, 29:22, 33:10, 50:1, 78:13, 81:9, 102:18, 122:12, 122:15, 134:25, 135:15, 136:8 occupation 56:13, 68:11, 69:16, 85:23, 86:19, 113:15 occur 50:21 occurring 116:14, 116:21, 116:23 occurs 55:3 october 1:11, 5:2, 13:15, 13:22, 76:13, 78:16 odd 31:12 odor 83:2, 100:3 odors 66:19 off-hours 105:14 offer 72:18, 102:9 offered 132:10	office 1:1, 5:3, 5:24, 21:19, 29:2, 60:22, 68:6, 74:4, 133:2, 139:4 offs 30:16 offscreen 73:3 offset 37:4, 40:9 offsite 29:8, 30:3, 30:4, 30:6 often 93:3 oh 14:4, 34:1, 53:25, 59:22, 87:17, 93:11, 134:9 ok 66:15 okay 10:8, 14:8, 18:18, 24:19, 27:11, 29:8, 30:13, 33:24, 39:18, 40:12, 43:9, 45:9, 45:22, 46:1, 46:21, 47:15, 50:9, 51:6, 51:22, 52:8, 52:17, 54:15, 54:19, 56:10, 56:12, 57:15, 59:14, 62:4, 63:16, 65:8, 67:8, 67:20, 70:8, 71:6, 72:6, 72:15, 73:16, 77:21, 80:19, 80:24, 81:19, 83:6, 85:10, 86:8, 87:4, 89:3,
---	---	---	---

<p>89:11, 94:23, 95:18, 95:21, 97:19, 100:6, 101:3, 101:5, 102:8, 103:20, 104:16, 105:15, 106:2, 106:10, 107:22, 108:10, 108:21, 111:12, 111:22, 112:10, 112:11, 112:12, 112:14, 112:18, 117:24, 118:22, 121:11, 122:18, 124:9, 124:13, 125:13, 126:14, 128:9, 131:17, 134:9, 136:2, 136:13, 137:12, 138:5, 138:11, 139:13, 140:2, 140:5, 140:8, 141:1, 141:10</p> <p>old 61:6, 83:14, 83:18</p> <p>older 122:25</p> <p>on-site 116:12, 116:13</p> <p>once 7:1, 22:5, 47:13, 51:2, 51:3, 80:4, 84:9, 95:1, 96:13, 104:24</p> <p>one 6:4, 9:14, 15:18, 22:18, 23:22, 25:10, 35:9, 35:21, 35:24, 36:22, 37:24, 38:24, 40:2, 40:14, 44:24, 49:14, 51:11, 53:6, 54:24, 59:16, 59:21, 60:25,</p>	<p>61:9, 62:19, 68:19, 72:23, 74:21, 78:1, 78:8, 79:3, 83:19, 91:15, 100:14, 101:21, 101:23, 101:25, 104:20, 104:21, 105:15, 105:18, 106:15, 107:3, 110:2, 111:15, 116:5, 116:12, 123:12, 123:20, 123:25, 124:3, 129:5, 129:24, 130:13, 131:9, 134:8, 136:2, 136:21, 139:9</p> <p>one-bedrooms 91:23</p> <p>one-foot 34:17</p> <p>ones 59:16, 84:6, 84:25, 88:21, 134:16</p> <p>online 120:5</p> <p>only 55:8, 55:10, 60:25, 65:5, 65:25, 79:3, 81:3, 84:14, 94:16, 96:8, 96:15, 97:8, 97:14, 103:4, 103:6, 123:14, 128:11, 129:7, 134:7, 136:12, 137:25, 139:24</p> <p>open 9:16, 84:10, 91:19, 108:21, 129:2, 135:18, 138:24, 139:10</p> <p>opened 135:16</p> <p>opening 3:3, 9:14</p>	<p>operate 6:15, 116:13, 125:6</p> <p>operated 21:19</p> <p>operates 116:11</p> <p>operations 113:18, 116:9, 120:3</p> <p>operator 90:15</p> <p>opine 109:12</p> <p>opinion 45:4, 47:17, 47:18, 48:13, 52:2, 65:2, 65:8, 65:16, 66:2, 66:7, 66:24, 81:19, 82:8, 82:15, 82:23, 93:24, 94:23, 96:19, 98:14, 99:5, 99:9, 99:16, 99:23, 100:24, 117:25, 118:5, 118:7, 118:17, 118:18, 124:19</p> <p>opportunities 75:10, 91:24</p> <p>opportunity 7:25, 8:3, 9:20, 56:7, 101:2, 121:18</p> <p>opposed 41:18, 51:15, 106:19, 108:23</p> <p>opposite 21:22, 54:4, 54:18</p> <p>opposition 9:23</p> <p>option 6:20</p> <p>options 33:6</p>	<p>order 8:9, 8:11, 26:2, 26:24, 33:8, 33:15, 36:21, 38:10, 38:12, 39:2, 40:4, 43:21, 50:2, 84:7</p> <p>ordinance 16:9, 48:2, 48:17, 58:11, 64:25, 69:20, 70:17, 74:6, 74:19, 77:10, 79:6, 81:24, 84:13, 87:6, 88:7, 96:10, 99:7, 113:20, 138:2</p> <p>orientation 21:8</p> <p>original 35:1, 35:7, 39:14, 41:12, 43:1</p> <p>originally 41:23, 52:11</p> <p>other 7:10, 7:11, 27:22, 33:6, 37:5, 44:6, 46:4, 54:21, 55:3, 60:25, 67:9, 70:5, 74:21, 79:11, 84:25, 85:14, 85:15, 89:23, 91:13, 96:15, 106:11, 106:18, 110:2, 111:12, 111:23, 114:2, 127:1, 127:6, 129:12, 131:5, 131:9, 131:16, 132:3, 132:18, 137:12</p> <p>others 87:16</p>
--	--	---	--

Transcript of Hearing
Conducted on October 30, 2020

67

<p>otherwise 7:5, 107:21, 143:8 ourselves 10:4, 11:5 out 27:17, 28:12, 29:23, 33:17, 37:16, 42:12, 43:14, 45:14, 61:18, 62:2, 66:14, 72:11, 77:14, 78:16, 80:22, 84:13, 84:23, 98:3, 104:5, 106:17, 121:17, 122:13, 123:9, 124:8, 131:22, 132:1, 133:1, 138:20 out-fall 30:4, 30:5 outcome 106:7, 134:19, 143:8 outdoor 27:14, 27:16, 75:5, 75:9, 75:11, 75:20, 93:5, 122:19, 122:20 outfall 22:10, 35:22, 36:11, 38:8, 38:16, 38:19, 40:4, 40:25, 41:5, 41:11, 41:15, 42:2, 42:12, 42:13, 43:12, 43:14, 43:23, 43:25, 44:5, 44:11, 44:12, 44:14, 44:15, 45:15, 50:6 outflow 21:2, 21:23, 22:3, 38:7,</p>	<p>40:21, 44:1, 44:17 outlet 33:15, 33:16, 36:4, 38:10 outline 63:5 outside 26:14, 36:11, 50:10, 90:22, 92:8, 94:17, 100:13, 106:20, 107:25, 136:19, 136:21 over 5:6, 6:3, 12:11, 21:16, 43:22, 61:7, 63:5, 64:6, 68:8, 87:3, 97:10, 113:8, 120:3, 120:4, 122:13, 122:15, 122:23, 124:3, 126:3, 127:11, 130:6, 135:25, 136:23 over-compensation 37:5 overall 25:24, 37:11, 40:1, 61:3, 61:13, 62:8, 75:19, 89:6, 89:11, 105:7, 108:17, 122:24 overhead 32:20, 93:3 overlap 78:8 overlay 64:8 overnight 130:10 overrule 109:16 overview 91:9, 95:23,</p>	<p>115:23 own 49:21, 110:8 owned 21:13, 21:15, 21:16, 38:13 owner's 121:25 ownership 109:2 ozah 6:2, 55:1, 55:5, 55:7, 55:14, 55:20, 55:25, 56:3 ozha 35:3 ozha's 139:20</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>P 19:2 package 55:12, 59:10, 91:15 page 3:2, 3:15, 4:3, 13:19, 61:24, 62:2, 63:17 pages 1:24 panels 101:16 pankaj 3:10, 10:5, 128:1 pankaj's 10:18 parcel 18:2, 19:2, 47:12 park 13:10, 13:12, 23:9, 25:14, 29:15, 32:6, 38:21, 38:22, 39:23, 40:11,</p>	<p>47:9, 47:14, 59:10, 74:13, 75:17, 115:14, 122:21, 123:7 parking 23:5, 23:6, 24:20, 24:22, 24:24, 25:1, 25:2, 25:3, 25:4, 25:5, 25:7, 25:8, 25:10, 25:11, 25:12, 25:15, 48:15, 53:9, 66:19, 70:2, 71:22, 72:2, 73:19, 73:21, 73:23, 73:25, 77:11, 81:9, 81:22, 88:9, 89:20, 89:23, 92:19, 99:6, 105:19, 108:16, 118:9, 121:8, 123:22 parkway 119:9 part 11:3, 28:16, 29:25, 32:3, 50:18, 55:22, 59:10, 60:24, 61:5, 61:12, 72:25, 85:12, 92:1, 100:17, 104:7, 106:4, 117:9, 128:18, 129:15, 129:21, 135:9, 138:1, 139:17, 141:3 partially 93:16 participants 7:10, 10:10, 141:12 participants" 6:21 participating 6:23, 100:9,</p>
---	---	--	---

<p>118:25 particular 79:9, 84:16, 109:16, 130:17, 131:15 particularly 27:19, 98:17 parties 7:14, 7:24, 8:4, 143:7 past 44:11, 86:25 patches 126:5 path 19:20, 29:12, 29:19, 117:5 paths 93:7 patio 23:8, 27:14, 27:16, 75:11 pattern 25:24, 64:6, 78:5, 105:21, 105:23, 106:1 patterns 105:22 pause 87:15 paving 53:12 pdfs 18:14 peaceful 66:16, 82:19, 83:3, 118:12, 124:25 peak 41:2, 41:19, 42:2, 42:15, 44:18, 116:7, 117:11, 117:12 pedestrian 64:1, 117:18, 118:20 pedestrians 98:1</p>	<p>penalties 14:19, 57:2, 68:24, 87:24, 112:22, 119:16, 127:20, 133:19 people 7:21, 33:7, 110:7, 123:8 percent 42:4, 44:21, 51:12, 106:21, 128:24 percentage 42:3 perfectly 110:17 pergola 75:11 perhaps 131:5 perimeter 20:3, 27:19, 28:3, 30:19, 46:17, 46:18 period 116:21, 139:3 perjury 14:20, 57:3, 68:24, 87:24, 112:22, 119:16, 127:21, 133:20 permission 51:9 permit 11:5, 33:5, 33:23, 50:19, 55:18 permitting 51:21 person 95:8, 115:9, 116:1, 116:6, 117:7 personal 45:4 persons 5:7 perspective 17:20, 47:20,</p>	<p>48:15, 59:4, 81:21, 82:10, 82:17, 82:25, 91:3, 99:11, 99:17, 99:24, 118:3, 118:15, 126:24 pertaining 60:4, 70:1, 131:3 phase 94:5, 128:15 phone 2:8, 133:3, 137:23 photo 81:13, 106:24 photometric 4:4, 92:13, 92:21, 93:15, 105:24, 106:4, 106:7 photos 4:9, 133:4 physical 100:3 pick 5:12, 134:16 picked 79:18, 134:11, 134:15 pickup 27:8 picture 129:22, 131:9, 131:10, 131:17 pictures 52:14, 52:19, 129:20, 130:7, 131:8 piece 38:13, 39:16, 40:6, 40:10, 41:4, 84:10 pine 79:13 pipe 21:6</p>	<p>place 78:1, 95:3, 123:8, 135:20 placed 39:25, 93:19 placement 93:17 plane 90:1 planned 101:7 planner 13:9, 57:14 planning 8:16, 10:21, 13:11, 13:13, 13:21, 17:14, 29:16, 32:6, 38:21, 38:22, 38:23, 39:24, 40:11, 47:9, 47:14, 50:13, 51:3, 51:16, 57:18, 57:21, 58:24, 59:3, 59:8, 59:9, 59:11, 60:3, 62:2, 96:5, 114:5, 114:6, 114:10, 114:14, 114:15, 115:3, 115:14, 141:8 plans 3:21, 4:5, 13:23, 45:24, 47:14, 47:17, 47:19, 48:14, 49:10, 55:21, 56:3, 71:3, 71:4, 71:13, 77:25, 81:20, 82:9, 82:16, 82:24, 89:1, 91:10, 91:12, 91:14, 100:24, 103:18, 114:22, 121:5, 124:14, 125:7, 138:25,</p>
---	---	---	--

139:23 plant 76:11, 76:21, 79:3 planted 74:23, 76:9, 76:11, 78:4, 80:3, 130:9 planting 71:3, 71:4, 75:14, 77:1, 77:7, 77:20, 78:13 plantings 76:18, 78:3, 78:6, 78:8 plants 74:24, 76:23, 78:2 plat 47:10, 47:13, 135:5 platform 5:21, 5:22, 7:12 play 74:15 please 5:24, 6:4, 7:4, 7:16, 7:23, 8:4, 9:9, 12:23, 14:10, 14:18, 16:23, 18:24, 24:19, 25:19, 27:11, 39:21, 56:12, 57:1, 58:20, 60:2, 68:23, 69:10, 70:6, 71:20, 76:11, 86:13, 87:23, 88:11, 91:7, 91:9, 92:15, 112:14, 112:20, 113:9, 114:3, 115:18, 119:6, 119:13, 122:20, 125:22, 127:19, 133:18	pleased 12:16 pleasing 122:1 pleasure 49:12 plenty 117:4 pm 116:7, 117:12 point 12:7, 26:12, 26:22, 27:2, 28:10, 40:25, 41:17, 43:12, 50:11, 67:6, 95:24, 110:8, 111:4, 123:8, 129:25, 130:3, 130:8, 131:5 pointed 28:12, 98:3 pointer 131:12 pointing 84:12 points 28:9, 63:8, 92:25 pole 81:10 poles 92:20, 95:14 police 46:3, 46:6 policy 113:22 polytechnic 69:14 pop 6:17 populate 59:16 population 90:21 porterfield 10:6, 10:17, 128:5, 134:3	portion 12:1, 21:3, 21:4, 35:13, 36:13, 36:25, 44:10, 65:6, 90:13, 91:14, 98:8, 111:6, 123:24, 127:12 pose 82:18 posed 120:21 position 109:24 positive 38:10 possible 12:22, 68:17, 88:19, 109:13, 139:2 post 21:19, 29:2, 60:22, 74:4 posting 9:3 potential 118:13, 125:1 potentially 11:7, 105:9, 117:4 power 71:17, 112:10 practices 34:23 practicing 69:7, 86:11, 113:7 pre-covid 13:3 precariously 130:12 predominantly 65:23 preferably 129:10 preference 8:11, 50:12, 98:17, 110:5,	110:17 preferences 121:12 preliminarily 40:11 preliminary 10:1, 17:3, 31:2, 32:4, 32:7, 40:16, 47:7, 47:14, 50:13, 50:17, 51:1, 51:2, 55:17, 55:19, 55:22, 55:23, 56:3, 134:25, 135:4, 140:6, 141:4, 141:6 prepare 40:12, 70:24, 115:5, 115:6, 115:7 prepared 28:20, 40:18, 115:7 presence 12:2 present 12:12, 12:16, 132:11 presentable 126:10 presentation 11:25, 12:5, 106:15 presented 5:17, 46:13, 111:2, 129:14 preserve 34:5 pretty 60:23, 79:9, 80:5, 98:13 prevent 98:1, 131:24 previous 17:2, 17:4, 32:3, 126:2, 132:9
--	--	---	---

<p>previously 15:2, 20:25, 21:5, 27:18, 31:6, 31:13, 31:15, 40:19, 43:19, 47:6, 47:11, 57:9, 60:22, 70:4, 76:10, 87:16, 102:3, 113:5, 116:25, 139:16 primarily 103:13, 120:8 primary 19:14 principal 13:7, 88:13 prior 16:20, 47:2, 47:3, 50:7, 50:13, 50:21, 75:25, 117:14 priority 28:1 private 13:1, 34:12 proactive 51:7 probably 50:16, 84:5, 84:24, 85:10, 85:11, 112:5, 122:25, 136:5 problem 49:19, 91:8, 123:17, 124:4, 133:1, 133:6 problems 105:11 procedure 7:18, 9:13 proceed 9:11, 14:24, 18:13, 50:2, 57:7, 71:18, 72:16 proceedings 132:21, 143:4</p>	<p>process 17:12, 47:9, 71:17, 135:1, 141:5, 141:7 producing 136:20 product 90:14 profession 15:2 professional 8:18, 8:22, 45:4, 113:16, 113:18 prohibit 98:13 prohibition 137:9 prohibits 123:2 project 9:23, 10:6, 10:25, 11:4, 12:25, 17:4, 17:5, 23:20, 25:23, 47:4, 63:13, 88:15, 89:11, 89:15, 93:10, 96:3, 115:25, 134:18, 135:24, 136:23, 136:25 projections 90:10 projects 77:8, 138:16, 138:21 proof 14:1 proper 103:13, 126:16 properly 79:1 properties 15:23, 27:4, 54:5, 60:9, 60:11, 60:14, 66:18, 74:5,</p>	<p>76:4, 76:19, 77:25, 79:11, 79:21, 80:21, 81:12, 82:20, 83:3, 100:1, 110:7, 111:20, 118:14, 125:1, 134:21 property 5:7, 10:5, 10:18, 12:2, 16:8, 16:21, 17:19, 18:25, 19:1, 19:12, 19:17, 19:20, 19:22, 19:25, 20:3, 20:5, 20:18, 20:23, 20:24, 21:10, 21:11, 21:13, 21:14, 21:15, 21:25, 23:4, 23:16, 23:17, 23:18, 27:13, 27:25, 34:10, 34:13, 34:18, 38:13, 43:12, 45:16, 46:15, 48:11, 50:5, 53:13, 54:18, 57:24, 58:10, 58:23, 59:2, 60:21, 61:3, 62:14, 62:21, 70:16, 74:2, 74:11, 74:14, 74:18, 74:20, 76:3, 76:16, 81:6, 81:16, 81:18, 83:12, 88:5, 93:16, 93:22, 94:10, 94:17, 97:9, 97:10, 97:22, 98:15, 100:4, 101:12, 101:20, 102:17, 102:23, 103:5, 103:23,</p>	<p>107:23, 107:24, 108:2, 108:6, 114:19, 114:24, 115:2, 123:4, 130:8, 130:15, 130:18, 130:19, 131:5, 132:14, 132:15, 140:21, 140:23, 141:19 propose 76:6 proposed 10:6, 13:20, 17:19, 22:16, 23:4, 23:25, 24:10, 24:17, 24:20, 25:1, 25:20, 28:9, 28:25, 30:5, 30:8, 30:10, 30:21, 31:11, 32:3, 32:4, 32:8, 32:11, 32:19, 33:16, 35:5, 35:8, 36:24, 38:18, 39:13, 40:23, 42:8, 42:25, 45:15, 45:24, 46:2, 46:22, 47:4, 47:20, 47:23, 52:11, 59:2, 63:25, 64:13, 64:17, 71:21, 76:3, 81:1, 81:22, 82:1, 82:5, 82:11, 82:18, 82:25, 92:15, 94:5, 94:10, 99:11, 99:17, 99:21, 99:24, 102:5, 102:12, 108:8, 108:12, 108:13, 111:18, 111:19, 115:2, 115:10, 115:19, 116:2, 118:1,</p>
---	---	---	--

<p>118:7, 118:11, 118:19, 122:18, 124:15, 124:20, 125:11 proposing 29:10, 31:23, 33:1, 37:16, 92:17, 96:3, 103:1 protect 131:7 provide 12:18, 16:22, 17:7, 17:10, 27:24, 28:8, 34:16, 36:3, 37:20, 37:21, 38:10, 39:2, 40:5, 51:1, 58:19, 63:24, 65:6, 73:23, 74:7, 74:22, 78:12, 79:6, 80:1, 80:5, 82:1, 84:14, 91:24, 93:4, 96:2, 100:24, 101:2, 101:9, 102:2, 102:6, 103:12, 104:18, 108:19, 128:7, 128:8, 133:15, 135:12, 141:9 provided 11:1, 16:25, 34:22, 35:8, 35:14, 81:17, 84:17, 88:25, 94:9, 94:21, 97:3, 105:25, 106:4, 143:5 provides 33:10, 38:4, 62:14, 62:21, 63:25, 78:6, 93:9, 99:2 providing 6:5, 24:25,</p>	<p>25:12, 40:2, 62:7, 97:4, 97:13, 101:19, 107:2 provisions 101:18 ptoe 113:17 public 5:4, 7:10, 13:1, 31:25, 32:1, 46:2, 46:24, 48:20, 66:4, 74:14, 114:7, 118:2, 121:8 pull 9:9, 18:9, 22:18, 22:21, 59:17, 88:19 pulled 88:24, 129:25 pulling 22:14, 71:7, 92:12 purpose 31:24, 33:24 purposes 23:15, 41:3, 41:9, 42:5 pursuant 56:2 put 6:16, 9:12, 9:15, 11:12, 12:24, 26:15, 29:19, 29:23, 72:6, 74:14, 76:17, 76:23, 77:16 putting 77:18, 78:3, 95:14, 103:2, 108:22 puzzle 39:17</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>quadrant 19:3</p>	<p>qualification 114:9 qualified 15:3, 57:13, 69:5, 86:5 qualify 14:5 qualifying 119:22 question 5:7, 6:9, 6:14, 7:3, 7:6, 7:20, 23:2, 29:15, 49:8, 49:13, 51:8, 53:7, 53:20, 54:24, 62:1, 63:17, 67:12, 83:10, 85:17, 100:11, 100:14, 100:18, 101:6, 102:11, 103:16, 104:2, 104:7, 109:11, 109:12, 109:15, 109:18, 109:24, 110:2, 110:12, 111:15, 123:12, 125:20, 131:3, 139:9, 140:13 questioning 52:24, 109:22, 110:1 questions 5:22, 9:17, 9:20, 11:24, 12:22, 15:13, 47:16, 49:7, 53:6, 54:2, 54:22, 56:8, 57:17, 67:7, 67:10, 69:7, 83:8, 85:14, 85:16, 86:5, 91:7, 97:20, 99:5, 100:7, 100:8, 100:14, 100:22, 101:3, 104:13, 104:14,</p>	<p>106:11, 106:15, 111:13, 113:4, 118:23, 118:24, 120:21, 124:10, 125:15, 127:2, 127:3, 132:18, 137:13, 139:7 quick 20:23, 34:3, 49:8 quickly 77:7, 79:14, 81:2, 128:20, 133:6 quite 32:9, 85:1, 109:14</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>r 16:7, 16:11, 19:6, 23:19, 23:21, 24:1, 24:5, 24:7, 24:12, 47:21, 58:9, 58:13, 61:10, 64:5, 64:18, 70:15, 70:18 racks 25:13 rail 98:8, 98:25, 110:5, 110:11, 110:13, 110:15, 111:6, 121:13, 121:15, 121:17, 121:23, 126:1, 126:10, 126:16 railing 98:11, 122:8 railway 41:5 rain 130:11 raise 6:7, 6:19, 7:1, 7:2, 14:17,</p>
--	--	--	---

<p>57:1, 68:23, 87:23, 100:19, 109:4, 112:21, 119:12, 127:19, 133:18 raised 10:15, 49:7, 67:11, 76:1, 76:12, 83:9, 85:15, 95:22, 100:10, 102:3, 119:2, 130:20, 132:3, 132:8, 132:20 raising 110:22 range 77:5 rates 36:8 rather 36:8, 78:5, 93:20, 129:9 reaching 132:1, 133:1 read 61:18 reading 61:25, 62:2 ready 83:21 real 34:3, 77:6, 108:22, 137:6 realized 108:6, 137:24 really 11:22, 32:9, 55:17, 65:25, 74:24, 78:2, 80:1, 81:3, 87:2, 89:13, 90:8, 90:18, 90:22, 91:1, 91:24, 92:1, 92:18, 93:6, 95:2, 95:10, 95:12, 96:15,</p>	<p>96:21, 98:1, 98:12, 103:4, 104:2, 107:10, 108:5, 108:17, 110:16, 111:7, 126:12, 129:3, 129:19, 138:1, 139:24 rear 23:17, 43:12, 60:10, 75:6, 77:25, 81:7 reason 28:16, 39:14, 78:17, 79:14 reasonable 11:23, 120:20 recall 127:9, 137:18, 140:3 receipt 12:20 receive 55:21, 58:23 received 13:5, 76:14, 86:21, 120:16, 139:16 recent 15:8 recently 16:6 recess 67:23 recommend 13:15, 133:1 recommendation 31:19, 49:10, 139:5, 140:20 recommendations 61:6, 114:23 recommended 29:18, 61:14 reconfirmation 52:1, 52:6 reconvene 67:18, 68:4 record 8:5, 11:13,</p>	<p>14:11, 15:11, 47:10, 52:17, 55:21, 55:25, 56:13, 57:16, 62:17, 65:10, 66:3, 66:25, 67:21, 68:12, 81:21, 82:9, 82:17, 82:25, 85:24, 86:3, 99:10, 112:15, 113:3, 115:17, 119:7, 120:11, 133:7, 135:5, 135:10, 135:12, 138:23, 139:3, 139:10, 139:17, 139:19, 143:3 recorded 5:10, 143:3 recording 5:12, 5:13, 7:17, 142:2, 143:5 recourse 103:25 recycling 27:8 red 79:2, 79:12, 93:2 redesigning 130:25 redirect 43:24, 51:10, 56:5, 56:6 redirection 51:24 reduce 51:12, 97:7 reduced 42:9 reduction 44:16, 44:19, 44:20 refer 18:15, 31:3 referring 38:1, 41:22,</p>	<p>49:21, 51:18 refers 13:19 refreshing 138:19 regard 119:1 regarding 83:17, 101:6, 101:21, 102:11, 104:14, 104:18, 104:20, 138:8 regions 120:6 registered 8:20 regulations 69:20, 87:5, 113:20 related 11:5, 24:2, 53:7, 69:16, 86:19, 99:12, 110:2, 110:3, 113:15, 115:11, 130:20, 131:25, 140:16, 140:22, 143:6 relates 24:5 relative 35:25 relatively 84:21 relaxing 75:12 relevant 132:21 religious 61:21 remainder 90:7, 93:6 remarks 9:25 remember 7:4 removal 40:6</p>
--	--	---	--

<p>removed 23:11 render 138:23 rendering 89:21, 90:10 renderings 4:10, 135:9, 135:11 reorganize 8:11 repair 126:5 repaired 115:8 replaced 79:1 report 13:17, 17:14, 36:6, 59:6, 59:8, 59:9, 59:11, 59:12, 59:13, 60:3, 62:3, 64:23, 115:5, 115:6, 115:8, 115:18, 139:4, 139:5 reporter 5:11, 5:13, 7:18, 7:22, 10:9, 68:1, 68:2, 141:21, 142:1 reports 13:23, 124:14 representative 112:1, 120:12 represented 55:24 represents 64:8 request 5:18, 38:15, 43:16, 43:18, 51:11, 52:6, 97:23, 97:25, 104:22, 121:8, 121:9, 123:16,</p>	<p>134:21 requested 94:4, 97:21, 121:3 requesting 5:5 require 39:24, 55:25, 102:4 required 24:25, 25:11, 25:12, 34:23, 38:12, 46:19, 47:13, 49:24, 55:20, 55:22, 74:6, 76:17, 92:19, 92:25, 95:25, 96:9, 96:13, 96:14, 96:17, 97:6, 97:14, 102:1, 102:23, 104:3, 106:6, 106:8, 117:8, 126:17, 137:9, 140:23 requirement 24:18, 25:8, 37:12, 40:16, 49:15, 55:8, 73:20, 73:22, 77:10, 104:10 requirements 16:9, 16:18, 24:20, 24:22, 37:1, 37:7, 40:1, 40:15, 46:15, 48:16, 52:13, 58:11, 64:19, 64:24, 69:23, 70:1, 70:16, 70:22, 72:3, 74:19, 74:21, 79:5, 81:23, 84:4, 86:23, 87:6, 88:8, 88:9, 90:17, 103:25, 108:14, 113:21,</p>	<p>113:25, 124:1, 138:1 requires 74:20, 98:7, 102:14 requisite 88:6 reraise 132:11 research 102:16 residence 11:7 residences 91:22, 92:3 resident 102:25, 122:12, 123:1 residential 5:6, 12:17, 16:10, 16:21, 19:14, 22:16, 23:3, 24:2, 24:6, 24:8, 24:14, 24:16, 24:21, 32:15, 46:2, 46:23, 47:24, 58:12, 60:8, 60:14, 60:17, 60:24, 61:19, 62:23, 63:1, 63:3, 64:9, 64:13, 64:17, 64:19, 64:24, 65:20, 65:23, 70:17, 82:11, 82:18, 83:1, 87:7, 90:5, 91:1, 93:10, 93:25, 94:6, 95:19, 97:8, 98:24, 99:3, 99:11, 99:14, 108:18, 111:9, 115:19, 116:21, 116:22, 120:5, 120:9, 121:21, 122:2,</p>	<p>124:15, 124:20, 136:3 residents 66:20, 74:13, 74:25, 75:2, 75:6, 75:21, 90:20, 90:25, 91:24, 92:5, 93:4, 94:16, 94:17, 95:11, 95:16, 96:10, 96:18, 97:15, 102:24, 103:5, 103:13, 105:12, 107:23, 108:15, 111:10, 116:9, 116:11, 122:9, 123:9, 124:22, 129:4, 137:2 resources 15:6, 15:15, 15:18, 15:19 respect 16:10, 17:7, 24:7, 45:23, 58:12, 58:19, 70:17, 76:8, 80:25, 114:24 respond 14:1 response 38:21, 45:10, 56:7, 71:12, 102:11, 106:3, 138:6 rest 8:8, 83:16, 140:10 restrictions 136:4, 136:9, 137:1, 137:8 restroom 67:16 resubmit 139:25 result 7:7, 42:21, 44:15, 44:19,</p>
--	--	--	--

Transcript of Hearing
Conducted on October 30, 2020

74

65:14, 66:10 resulting 34:18, 83:2 resume 3:16, 3:17, 3:18, 3:19, 3:23, 15:11, 57:16, 69:4, 70:10, 86:3, 114:9, 120:10 resumes 113:2 retain 27:21, 61:10, 78:23, 131:24 retained 28:2, 70:24 retaining 25:20, 26:4, 26:9, 26:16, 26:18, 26:25, 27:12, 27:20, 53:8, 54:5, 54:17, 75:7, 98:4, 98:10, 110:4, 110:9, 111:3, 111:5, 121:12, 121:19, 122:4, 122:7, 125:25, 126:18, 129:6, 131:7 retention 36:1 review 13:12, 18:9, 29:25, 32:6, 33:20, 37:9, 45:2, 45:7, 47:9, 60:2, 111:1, 113:21, 139:21 reviewed 11:16, 11:19, 13:14, 38:23, 40:10, 40:17, 55:17, 55:18, 138:2, 141:7 reviewer 38:25	reviewing 133:5 revise 139:25 revised 51:8, 55:1, 71:12, 83:13, 134:10, 138:25, 139:22, 139:23, 140:5 revising 83:20 revision 55:3, 55:6 revisit 128:17 rework 130:24 rhododendron 79:23 rhododendrons 85:3 rhythm 63:4 ridge 18:2 right 6:25, 12:7, 14:17, 18:16, 19:8, 19:10, 20:6, 20:17, 21:2, 21:3, 21:9, 21:11, 21:15, 21:16, 21:18, 22:10, 22:22, 23:6, 25:3, 25:13, 26:21, 27:1, 27:22, 29:24, 30:22, 30:25, 33:16, 34:11, 34:12, 34:15, 35:14, 36:14, 36:17, 43:19, 49:3, 49:5, 52:24, 57:1, 59:17, 59:18, 67:24, 68:3,	68:23, 73:14, 75:22, 83:12, 85:19, 87:22, 87:23, 89:5, 95:12, 108:1, 108:9, 108:23, 109:22, 109:25, 111:23, 112:2, 112:6, 112:21, 119:12, 126:8, 127:5, 127:19, 128:6, 133:3, 133:17, 133:18, 134:4, 134:24, 135:7, 136:5, 138:13, 141:10, 141:11 right-hand 6:22, 92:4 right-of 19:19 right-of-way 19:15, 31:7, 31:8, 31:11, 31:13, 31:15, 31:20, 73:22 rights 29:11, 36:5 rights-of-way 32:2 riprap 22:9 risk 92:9 road 5:8, 14:14, 18:2, 19:3, 19:4, 19:5, 19:11, 19:12, 19:17, 19:21, 20:22, 21:22, 23:13, 29:13, 29:14, 29:20, 31:6, 31:7, 31:19, 32:18, 32:21, 32:23, 33:2, 33:4, 34:5, 56:15,	60:9, 60:16, 61:3, 61:20, 62:22, 63:23, 63:24, 64:2, 64:3, 68:14, 117:2, 117:3, 117:5, 117:15, 117:20, 117:21, 122:22, 141:20 roads 118:2 roadway 19:18, 28:21, 29:23, 31:9, 121:17 rockville 2:7 role 16:24, 71:1, 71:2, 88:12 roof 90:2, 90:3, 90:24 roofline 90:5 rooftop 35:8 room 92:7, 96:5, 96:6, 97:3, 101:8, 101:15, 101:19, 102:25, 103:7, 104:9, 131:21 round 79:10 rounded 85:5 routes 63:23 row 73:21 rudy 122:22 ruled 51:20 rules 6:3, 7:13
---	---	---	--

<p>run 7:12, 92:22, 136:23 running 96:15 runoff 19:24, 21:24, 22:1, 43:25, 44:9, 44:11, 44:22 runs 19:4, 19:5, 20:22, 20:24</p> <hr/> <p>S</p> <hr/> <p>sabin 3:9, 3:23, 8:23, 8:25, 103:8, 107:7, 112:1, 119:6, 119:8, 119:12, 119:14, 119:19, 119:22, 119:25, 120:14, 120:19, 121:6, 121:10, 121:15, 122:11, 122:23, 123:12, 123:17, 124:9, 124:12, 124:18, 124:23, 125:3, 125:9, 125:12, 125:14, 125:17, 126:8, 126:12, 126:20, 127:2, 137:4 sabin's 125:24 safe 26:10, 48:16 safety 66:20, 92:6, 92:19, 96:1, 100:2, 107:14, 108:14, 108:20, 118:20, 124:1, 124:21 said 15:18, 42:10,</p>	<p>49:13, 51:9, 51:11, 105:16, 121:21, 143:4 same 6:25, 43:20, 74:20, 90:16, 92:9, 103:11, 106:1, 116:23, 123:22, 137:25 sanitary 33:16, 48:21 satisfy 13:23, 13:25, 64:18, 81:22 saturday 136:7 saturdays 136:10, 136:11 saw 52:8, 83:9 say 55:7, 85:5, 93:13, 96:22, 107:17, 110:16, 128:9, 131:24, 132:25, 136:6 saying 110:10, 126:15 says 6:21, 18:2, 56:2 scale 89:16, 90:5, 90:8, 90:11, 99:13, 99:21, 108:18 scape 71:4 scenario 37:19, 41:16, 50:18 scenes 7:15 schedule 104:25 school 13:8, 21:21, 22:1, 29:18,</p>	<p>60:19, 62:25, 74:16, 115:21, 116:15, 116:18 schools 116:19 science 113:11 scooters 123:6 scope 17:11, 17:12, 29:20, 30:2, 65:21 screen 6:11, 6:12, 6:17, 6:22, 9:7, 18:15, 18:19, 22:21, 27:3, 52:18, 53:14, 53:23, 53:24, 54:13, 56:25, 71:7, 72:8, 72:19, 73:21, 78:9, 85:8, 89:4, 111:5, 111:19, 129:21, 132:17 screening 28:5, 70:2, 72:3, 73:19, 74:6, 74:20, 80:6, 81:18, 82:2, 82:6, 110:24 screens 59:18 scroll 91:13 se 131:25 seasonal 75:15 seasonality 76:8, 78:11 seated 74:17 seating 75:3, 75:10,</p>	<p>75:12 second 6:19, 7:1, 15:18, 36:22, 37:24, 41:12, 51:8, 62:5, 68:19, 72:23, 84:2, 91:20, 91:21, 91:22, 101:21, 101:23, 102:1, 103:23, 114:13, 123:19, 131:16, 134:17 section 36:3, 61:18 sectors 13:2 secure 92:4 secured 92:6, 126:10 security 107:14, 108:14, 108:20, 110:8 sediment 17:15, 50:19, 55:18 see 5:20, 17:24, 18:1, 18:19, 22:6, 28:13, 28:15, 31:9, 32:9, 33:1, 36:16, 40:7, 40:21, 42:20, 44:8, 49:6, 53:23, 54:14, 56:20, 56:21, 63:5, 64:5, 67:11, 71:18, 72:8, 72:10, 72:20, 72:23, 73:7, 73:9, 73:10, 73:24, 81:16, 83:19, 85:15, 88:4, 89:21, 90:10, 90:23, 92:21,</p>
---	--	--	--

<p>93:4, 95:7, 100:10, 108:1, 122:14, 125:18, 129:15, 129:25, 130:1, 130:4, 130:12, 134:9, 134:16, 134:20, 134:22, 135:15 seeing 17:25, 54:9, 54:10, 54:24, 56:19, 119:2, 125:17, 133:5 seen 52:14, 74:11, 83:13, 108:6, 122:24, 123:5, 131:12 seldom 136:10 send 44:22 sending 41:13 seneca 60:12, 117:4 senior 8:23, 62:11, 65:6, 86:24, 87:2, 98:17, 119:10, 119:24, 120:2, 120:5, 122:24 sensed 95:5 sensitive 97:16, 137:2 sensor 95:4, 95:10, 128:23 sensors 94:24, 106:16, 106:18, 106:24, 108:22, 128:25 series 47:16 serious 133:1</p>	<p>serve 12:18 served 32:15, 46:3, 46:23, 48:19, 52:24, 66:4, 118:1 serves 27:3, 30:16 service 26:16, 27:3, 32:23, 32:25, 33:9, 33:11, 33:13, 33:17, 43:19, 44:2, 45:12, 45:13 serviceberry's 78:25 serviced 46:6 services 16:22, 17:2, 17:7, 17:11, 46:5, 46:24, 48:20, 51:21, 58:19 session 5:10, 7:22 set 11:23, 132:6 setbacks 23:22 seth 13:9 seven 77:4, 79:19, 84:22, 85:9, 135:3 sewer 17:16, 20:21, 33:13, 33:14, 33:15, 33:16, 33:18, 33:20 sewers 48:21 shade 73:23, 76:25, 78:19</p>	<p>shaded 75:3, 75:11 shape 85:6 share 9:8, 9:9, 18:14, 52:18, 53:14, 72:19, 83:24, 129:20, 134:10 shared 35:5 sharing 17:22, 18:9, 53:24, 71:7, 72:9, 72:13, 83:22, 132:17 shed 83:19 sheds 19:11 sheet 23:20, 105:25 shift 25:17, 107:6, 107:7, 116:13, 116:16 shifted 45:13 shoot 53:25 shopping 116:10 short 22:11, 33:14, 67:21, 139:3 short-term 25:10, 25:12 shortfall 62:9 shortly 53:4, 104:18 should 6:24, 17:25, 29:14, 33:19, 59:18, 66:22, 89:3, 106:2, 131:20, 133:6</p>	<p>show 52:19, 72:21, 129:25, 131:9 showing 62:18, 83:14, 101:10, 101:11, 101:19, 134:10 shown 19:23, 20:3, 83:18, 93:14, 103:18 shows 30:14, 46:14 shrub 79:17, 84:24 shrubs 74:10, 74:22, 76:23, 77:14, 78:14, 79:21, 79:25, 80:2, 84:15, 84:18, 85:7, 111:2 shukla 3:10, 10:3, 10:5, 10:23, 12:20, 13:2, 21:7, 21:15, 35:6, 43:9, 45:10, 49:6, 49:8, 49:13, 50:9, 50:24, 51:6, 51:15, 51:22, 52:8, 52:17, 52:21, 53:1, 53:5, 53:11, 53:24, 54:1, 54:8, 54:13, 54:15, 54:19, 56:8, 72:4, 72:7, 72:15, 73:11, 74:5, 76:1, 80:22, 94:3, 95:21, 97:20, 106:12, 106:13, 107:15, 107:22, 108:10, 108:21, 109:19, 109:21,</p>
--	---	---	--

<p>111:14, 111:19, 112:11, 120:16, 120:19, 122:2, 123:13, 125:19, 125:22, 125:23, 126:9, 126:13, 127:10, 127:12, 127:16, 127:17, 127:23, 128:2, 128:5, 128:9, 130:3, 130:6, 131:14, 132:24, 133:10, 138:9, 138:16, 140:13, 140:16, 141:1, 141:10, 141:17, 141:23 shukla's 14:2, 21:9, 54:4, 109:5, 109:14, 122:9, 135:19, 138:6 shut 33:8 shutoff-able 128:25 shuttle 115:12, 116:9, 116:21, 116:22 side 6:22, 10:18, 19:21, 21:22, 21:24, 23:16, 26:7, 29:12, 29:14, 29:18, 29:19, 31:10, 35:18, 35:24, 37:22, 45:14, 60:8, 60:11, 64:3, 81:11, 91:18, 92:2, 92:4, 93:20, 93:21, 98:4, 108:2, 117:5, 122:21 sides 120:3 sidewalk 19:16, 31:25,</p>	<p>34:5, 34:11, 34:12, 34:18 siding 90:14 sign 121:3, 121:8 signature-2qmyb 143:11 significant 41:4, 76:22 similar 17:10, 26:21, 35:23, 61:21, 62:24, 123:23 simply 12:4, 109:23, 110:6 since 47:1, 61:5, 69:5, 69:9, 69:18, 74:15, 78:15, 83:25, 86:11, 86:12, 117:22, 120:1 single 19:9, 21:17, 28:10, 60:8, 60:14, 60:18 single-family 116:2 sir 10:3, 14:19, 57:2, 68:4, 83:10, 100:11, 100:18, 119:15, 119:19, 127:6, 127:19, 127:20, 127:25, 128:6, 132:19, 133:15, 133:18, 133:24, 134:4 sit 138:19 site 8:16, 11:25, 16:3, 17:13, 17:20, 19:9, 19:24, 20:1,</p>	<p>20:12, 20:13, 20:15, 20:19, 21:3, 21:5, 22:23, 25:21, 26:22, 28:1, 28:8, 28:19, 28:20, 28:21, 28:22, 30:15, 30:18, 31:4, 33:14, 34:7, 34:22, 35:18, 35:22, 35:24, 36:11, 36:21, 37:6, 37:12, 37:23, 38:8, 38:9, 38:11, 43:21, 43:25, 44:6, 44:10, 46:6, 46:9, 46:12, 48:25, 53:15, 57:14, 57:18, 57:21, 58:3, 59:3, 63:25, 67:1, 89:14, 89:16, 89:18, 89:19, 90:7, 92:18, 92:24, 93:16, 93:19, 93:25, 94:25, 95:14, 98:2, 105:2, 107:5, 108:13, 116:4, 116:9, 117:1, 117:2, 117:7, 117:11, 117:19, 117:22, 128:22 sites 92:20 siting 99:13 situation 96:16 six 12:8, 13:24, 25:12, 31:24, 34:4, 77:19, 79:19, 80:21,</p>	<p>84:22, 85:9, 129:10, 135:3, 135:6 six-tenths 46:10 size 19:6, 23:21, 24:7, 24:9, 24:10, 24:15, 76:9, 76:22, 77:20 sizes 76:21, 77:7 slade 8:23 sleep 50:11 slide 62:15 slight 41:16, 42:1, 42:14, 42:16 slightly 31:20, 41:19, 43:2, 73:2, 131:1, 131:17 sliver 21:12 slope 89:19 sloped 90:2, 90:3 slower 43:20 small 6:18, 23:9, 32:8, 32:9, 42:3, 42:18, 44:3, 74:14, 75:10, 79:24 smaller 20:5, 75:2, 77:2, 90:12 socialization 91:25 soil 36:6 solicited 12:25</p>
--	---	---	---

<p>solution 99:3 some 6:14, 11:2, 11:7, 13:4, 15:12, 20:5, 22:9, 26:4, 35:11, 39:14, 51:10, 58:24, 61:16, 75:14, 76:1, 76:7, 76:20, 78:25, 80:3, 81:5, 83:18, 83:20, 83:23, 84:5, 84:6, 84:9, 84:17, 86:4, 88:21, 88:22, 89:23, 93:1, 93:7, 95:13, 99:4, 106:21, 108:22, 117:18, 127:9, 128:16, 128:17, 129:12, 131:5 somebody 101:12 somehow 102:1 something 5:21, 6:6, 6:9, 41:6, 51:16, 52:21, 52:23, 87:19, 101:24, 103:8, 104:11, 104:12, 105:3, 105:6, 109:7, 109:12, 109:13, 110:14, 121:25, 126:23, 132:1, 137:19 sometimes 136:22 somewhat 62:9, 109:8, 132:4 somewhere 51:5, 131:18</p>	<p>soon 132:11 sorry 14:17, 23:1, 27:7, 34:1, 34:9, 41:21, 53:6, 54:8, 66:14, 72:4, 89:10, 93:11, 117:19, 125:19, 137:13, 137:23, 140:13 sort 21:12, 22:6, 26:8, 26:12, 33:16, 37:4, 40:7, 44:9, 74:18, 81:7, 93:9, 113:14, 126:23 sothis 34:15 sound 96:6, 96:17, 96:20, 96:23, 97:5, 97:13, 101:10, 101:11, 101:14, 101:16, 101:17, 101:20, 102:21, 102:22, 103:4, 103:7, 103:13, 103:23, 103:24 sounds 105:15 south 10:18, 19:5, 19:21, 20:4, 20:23, 20:24, 21:18, 23:16, 26:7, 28:16, 35:17, 60:15, 61:2, 62:23, 64:3, 90:9, 90:20, 97:11, 98:6, 117:19, 117:22, 132:14 southeast 19:3, 19:25,</p>	<p>20:13, 20:17, 22:12, 26:1, 43:13, 63:1, 89:19, 120:6 southeastern 74:19 southern 21:11, 60:12, 74:2, 76:3, 83:12, 93:21, 98:4, 98:10, 99:1 southwest 60:21, 74:11 space 25:10, 74:13, 75:3, 75:5, 75:14, 75:18, 84:21, 89:22, 91:19, 92:7, 114:7, 122:19 spaces 23:7, 24:24, 25:1, 25:3, 25:4, 25:5, 25:7, 25:11, 25:13, 25:15, 26:2, 26:3, 89:23, 91:16, 91:21, 121:8, 122:20 speak 28:6, 54:3, 122:6, 126:15, 128:21 speaking 6:5, 7:23 special 61:1, 63:8, 65:25 specialized 60:5 species 78:15, 78:17, 78:21, 78:22, 78:24, 79:3, 79:17, 84:20 specific 16:9, 16:23,</p>	<p>23:19, 24:2, 58:11, 61:16, 70:16, 72:3, 77:10, 78:17, 79:14, 87:6 specifically 28:6, 61:10, 76:18, 77:23, 79:11, 79:21, 84:18 specifications 125:7 specifics 88:23 specify 29:14 speed 28:21 spire 80:4 spokane 113:12 spoken 49:18 spread 93:15 square 24:8, 32:5, 32:12, 36:16, 36:17 stability 130:23 stabilization 22:9 staff 13:12, 59:11, 59:13, 102:3, 107:6, 108:15, 115:14, 125:11, 141:7 staff's 13:17, 13:21, 23:25, 46:22, 64:13, 64:16, 71:12 stage 29:16, 33:23 staggered 78:5</p>
---	--	--	---

staging 113:22 standards 16:13, 23:14, 23:19, 23:21, 24:1, 24:2, 24:4, 25:7, 46:16, 47:21, 47:24, 58:15, 64:18, 64:23, 69:22, 70:21, 88:7, 113:24 standpoint 91:25, 94:12, 94:14, 96:1, 115:3, 118:1, 118:6, 118:18, 122:14 starring 64:6 start 52:5, 71:24, 71:25, 77:14, 79:7, 116:15, 127:18, 137:8 started 10:2, 11:11 starting 26:5, 73:18 state 14:10, 16:17, 31:13, 31:16, 34:23, 37:1, 56:12, 68:11, 69:14, 85:23, 86:12, 86:21, 112:14, 113:17, 119:6, 137:25 statement 3:12, 3:20, 9:14, 11:1, 11:4, 21:8, 43:10, 52:15, 76:13, 76:14, 78:16, 103:20, 115:8, 115:13, 115:17, 115:23, 128:19, 130:20	statements 3:3, 132:16 states 120:6 station 46:7 stay 85:4, 85:5, 106:1, 123:2 sticking 141:21 still 22:20, 47:12, 52:12, 54:9, 79:4, 85:7, 91:5, 127:14, 127:16, 133:12, 135:8, 135:14, 135:17 stockbridge 2:4, 8:7, 12:15 stoddard 10:11 stone 90:13 stop 29:24, 121:3, 123:8, 132:17, 137:5 stopped 11:18 stops 117:3 stories 23:5, 89:25, 95:12 storm 12:3, 16:17, 17:14, 17:15, 21:2, 21:3, 21:4, 21:6, 21:23, 22:2, 22:10, 30:3, 30:4, 34:20, 34:21, 34:22, 34:25, 35:1, 35:5, 35:22, 36:4, 36:11, 37:1, 37:6, 37:25, 38:3, 38:8, 38:15, 38:19, 39:10, 39:12, 40:4, 40:20, 40:24, 41:2, 41:3, 41:7, 41:8, 41:15, 41:22, 42:8, 42:13, 43:1, 43:4, 43:11, 44:8, 45:6, 45:23, 48:21, 49:25, 50:5, 51:19, 52:1, 52:3, 53:7, 54:25, 55:9, 55:16, 74:23, 129:19, 130:21, 140:16, 141:4 stormwater 3:22, 4:5, 4:6, 140:5 story 60:25 straight 78:6 strategically 93:19 stream 20:11, 20:12, 20:14, 20:15, 20:16, 22:13, 36:11, 38:19, 39:1, 39:24, 40:3, 40:8 street 2:5, 19:14, 19:19, 74:15, 86:1 streetlights 108:18 strollers 123:6 structural 35:11 structure 21:18, 82:5	students 116:17 studies 17:15, 129:24 studios 91:23 study 4:11, 40:13, 40:14, 40:18, 40:25, 41:1, 101:11, 101:13, 102:2, 102:5, 102:10, 103:7, 103:10, 116:6, 129:24, 130:8 style 90:5 sub 15:14 sub-region 61:12 subdivision 113:21 subject 15:23, 16:8, 17:19, 19:1, 32:6, 33:20, 45:7, 48:10, 57:25, 58:10, 59:2, 70:15, 88:5, 104:6, 114:18, 114:24, 115:2 submit 51:25, 55:11, 55:24, 83:21, 106:8, 141:6 submitted 11:17, 11:20, 11:21, 21:7, 28:24, 29:3, 35:2, 38:16, 39:20, 41:23, 43:1, 47:18, 56:3, 59:6, 59:10, 64:22, 65:9, 65:17, 66:8, 80:12,
---	---	--

80:17, 81:14, 117:9, 124:14, 125:8, 128:17, 135:11 submitting 139:23 subsequent 17:3, 47:13, 55:20 subsequently 13:13, 71:11 substantial 22:6, 78:9 substantially 52:2, 64:14, 65:3 substantive 94:8 substrate 36:10 sufficient 106:23 sufficiently 65:22, 110:19, 110:20 suggest 131:6 suggested 140:19 suggesting 103:24 suggestion 105:8 suggests 61:17 suitability 17:18, 59:1, 115:1 suitable 48:25, 61:20, 67:1, 82:6 suite 2:6, 14:14, 56:15, 68:14, 112:17 summarize 32:14, 42:22, 119:23	summarized 115:10 summarizes 117:6 summarizing 115:5, 115:9 sunday 136:7, 136:10 supply 30:11, 46:17 support 9:23, 10:25, 13:25, 17:2, 17:11, 39:20 suppose 53:1 supposed 126:22 supposing 107:16, 107:17 sure 5:12, 10:4, 11:8, 45:9, 56:24, 71:15, 72:22, 73:17, 76:14, 81:14, 84:1, 103:12, 104:1, 108:3, 109:25, 111:17, 119:14, 122:23, 127:11, 127:18, 131:25, 134:15, 135:14, 136:22, 139:13, 140:15 surface 25:3, 89:22, 121:8 surfaces 39:13 surmise 105:10, 109:6 surrounding 16:1, 16:4, 48:6, 58:1, 58:4, 60:4, 63:19, 64:5, 65:12, 82:2, 82:12, 82:20,	89:15, 92:24, 99:12, 99:19, 99:20, 124:17 survey 58:25 surveying 17:1 swear 14:19, 57:2, 68:24, 87:24, 112:19, 112:22, 119:15, 127:20, 133:19 sweet 80:3 switch 39:4, 109:13 switched 78:16, 80:22 switches 109:6 switching 32:13 swore 87:16 systems 41:8 <hr/> T <hr/> t's 19:18 table 117:6, 138:20 take 5:16, 12:11, 34:8, 37:18, 43:21, 51:16, 67:15, 88:22, 103:20, 109:11, 112:3, 112:8, 120:24, 131:19, 132:13, 141:17, 141:23, 141:25 taken 7:5, 130:7, 131:8 taking 12:8, 42:10,	78:10 talk 28:7, 46:1, 83:15, 89:5, 100:20, 109:7, 138:3 talked 38:24, 117:6 talking 7:21, 68:21 tall 77:2, 77:17, 84:8, 85:1, 110:11, 110:20, 130:18 taller 85:7, 131:18 tdr 64:8 team 8:9, 12:19, 103:9, 105:7, 120:23, 120:24 teams 5:21, 6:6, 7:8, 7:12 technical 13:11, 13:12, 13:17, 13:21, 23:24, 46:22, 64:12, 64:16, 71:12, 73:4, 93:11, 102:3, 115:14, 125:11 technically 20:11, 94:19, 126:19 telecommunicatio- ns 32:24 tell 77:21, 104:25 tended 122:23 tends 73:8 terminology 126:17
--	--	---	---

Transcript of Hearing
Conducted on October 30, 2020

81

terms 23:13, 35:21, 42:19, 100:24, 129:18 terrace 90:24, 91:20, 92:7, 93:2 test 102:12, 104:24 tested 96:13, 105:5, 107:16, 123:14 testified 15:3, 15:7, 57:9, 57:12, 70:4, 100:22, 113:5, 114:2, 114:5 testify 9:21, 9:22, 86:6, 107:18, 127:14, 134:5 testifying 10:21, 127:13 testimonies 53:4 testimony 3:4, 3:5, 3:6, 3:7, 3:8, 3:9, 3:10, 3:11, 6:5, 6:8, 7:24, 10:13, 12:21, 13:24, 14:20, 15:8, 18:10, 47:17, 47:19, 48:14, 52:22, 56:8, 57:3, 63:2, 64:21, 65:9, 65:17, 66:3, 66:8, 66:25, 68:25, 70:23, 71:19, 72:17, 81:20, 82:9, 82:16, 82:24, 85:12, 85:20, 87:25, 99:10, 100:23, 101:1, 101:2,	104:8, 104:18, 112:23, 119:3, 119:16, 124:13, 126:15, 126:24, 127:6, 127:9, 127:21, 128:7, 133:15, 133:20, 137:13, 138:7, 140:4 testing 102:12, 104:22, 124:6 textures 99:13 th 5:3, 13:3, 16:6, 139:11 thank 9:1, 9:2, 9:5, 10:19, 11:15, 12:14, 14:7, 14:23, 14:25, 15:22, 18:20, 24:19, 30:13, 34:19, 35:19, 38:2, 39:18, 40:12, 41:25, 49:3, 49:5, 49:9, 54:2, 54:4, 54:19, 54:20, 56:4, 56:10, 57:6, 57:8, 57:23, 63:16, 67:19, 68:3, 68:9, 68:20, 69:3, 70:14, 72:7, 73:15, 73:16, 77:21, 83:6, 84:12, 85:12, 85:13, 85:18, 85:19, 85:21, 87:13, 88:3, 88:4, 89:10, 91:6, 92:11, 97:19, 99:4, 100:6, 100:12, 102:8, 106:10,	106:14, 109:20, 111:14, 111:22, 113:1, 114:17, 117:14, 117:21, 117:24, 118:22, 119:3, 119:5, 119:21, 121:2, 121:17, 122:18, 123:12, 124:9, 126:13, 126:14, 127:1, 127:4, 127:5, 128:10, 132:19, 137:15, 137:16, 138:11, 138:14, 140:8, 140:9, 141:10, 141:13, 141:15, 141:21, 141:23, 141:24 thanks 141:25 the- 20:6 themselves 8:4 there- 63:24 thin 21:12, 84:23 thing 6:25, 78:10, 81:3, 104:21, 126:22, 129:5 things 11:6, 73:24, 75:13, 81:8, 83:15, 89:7, 100:25, 104:5, 120:21, 128:20, 136:4, 136:23, 138:20 think 12:9, 21:20, 23:24, 27:24, 28:3, 28:5, 35:2, 44:2, 44:3, 44:10, 45:25, 46:13,	50:12, 50:17, 54:2, 59:16, 59:22, 59:25, 63:7, 71:24, 72:9, 73:1, 73:6, 75:16, 77:3, 78:25, 80:15, 80:20, 81:3, 84:14, 84:16, 89:8, 95:15, 96:19, 97:11, 105:15, 107:3, 110:16, 110:19, 112:3, 120:25, 121:16, 121:23, 122:2, 122:5, 122:7, 123:1, 123:7, 123:10, 124:4, 125:19, 128:16, 128:22, 129:2, 129:6, 129:15, 129:22, 130:11, 131:14, 132:15, 134:6, 135:16, 138:3, 138:11 thinking 80:2 third 92:2, 130:24 this- 27:1 thorough 11:23 thoroughfares 61:16 thought 12:24, 120:19, 120:20 thoughtful 120:21 thoughts 97:24, 102:9, 102:11 three 14:5, 23:5, 26:13, 27:21, 49:9, 53:21,
--	--	---	---

Transcript of Hearing
Conducted on October 30, 2020

82

54:6, 54:17, 60:25, 89:25, 90:11, 95:12, 98:5, 110:9, 110:21, 116:13, 117:22, 129:9 three-foot 73:20, 77:12 through 10:14, 12:21, 17:12, 18:1, 22:15, 23:22, 29:17, 34:24, 40:3, 46:15, 52:24, 58:23, 59:7, 72:1, 81:2, 89:6, 90:19, 98:1, 98:15, 99:2, 112:7, 112:10, 122:10, 124:2, 128:14, 134:25 throughout 26:6, 27:15, 90:16, 108:4, 120:5 throw 103:7 time 6:19, 7:1, 13:5, 31:2, 32:6, 49:23, 51:6, 51:7, 55:17, 55:18, 61:7, 67:17, 68:4, 79:16, 83:23, 85:18, 88:23, 90:16, 92:9, 93:22, 100:23, 103:12, 105:9, 105:11, 107:3, 107:9, 111:13, 116:5, 116:12, 116:15, 116:16, 116:21, 116:23, 124:6, 136:23, 137:2, 139:3, 141:13	timeframe 51:5 timeline 134:23 times 16:5, 57:12, 107:10, 107:14, 123:4, 137:8 tivoli 93:3 today 5:16, 5:17, 7:25, 9:12, 10:21, 12:16, 13:25, 54:23, 72:17, 85:15, 87:14, 88:6, 100:9, 118:25, 120:23, 123:20, 127:9, 127:15, 133:5, 133:9, 135:10, 135:16, 138:14, 139:8, 139:18 today's 6:23, 106:5, 128:11, 138:24, 139:1 tog 44:23 together 11:12, 103:3, 138:17, 138:20 took 37:16, 76:19, 84:3 toolbar 6:17, 6:20 top 84:25, 90:4, 98:8, 110:10, 110:20, 121:13, 122:8 topic 128:21, 129:13 topography 25:20, 35:23 total 22:2, 24:10,	24:24, 32:5, 36:15, 41:17, 42:4, 42:12, 44:14, 44:15, 44:17, 44:21, 80:20 touch 24:19, 29:8, 63:18, 76:11, 100:15, 100:16 touched 81:3, 92:14, 121:11 toward 19:25 towards 6:16, 26:18, 44:15, 53:12, 74:12, 75:16, 75:17, 77:25, 89:19, 100:16, 108:7, 130:16, 130:18, 132:14 town 21:20, 64:1 townhouses 60:18, 62:25 track 140:6 tradeoffs 40:2 traffic 3:20, 8:22, 66:19, 113:7, 113:18, 113:21, 114:10, 114:13, 114:14, 115:13, 115:17, 115:19, 115:20, 115:23, 117:25, 118:2, 118:5, 118:8, 118:20, 119:1, 121:4, 122:10 trail 64:3 train 63:20, 63:22, 116:25	transcribed 1:25, 143:4 transcriber 143:1 transcript 143:3 transit 19:14, 31:19, 63:19, 63:22, 63:24, 114:23 transitional 62:22 transitionary 62:14 transmission 101:14 transport 25:17 transportation 114:10, 114:14, 114:15, 115:3, 115:8, 115:24, 117:25, 118:6, 118:14, 118:18, 119:1 trash 27:8 treat 36:25, 37:20, 39:13 treating 41:13 tree 20:9, 27:22, 78:17, 131:15, 131:16, 131:21, 132:20 trees 20:2, 20:5, 20:6, 27:19, 27:21, 27:23, 28:4, 73:23, 74:9, 74:22, 76:24, 76:25, 77:3, 77:15, 77:18, 78:14, 78:19, 78:20, 79:11, 79:12,
--	--	--	--

79:13, 79:15, 80:21, 83:14, 83:18, 84:3, 84:8, 84:15, 84:23, 85:6, 89:17, 111:3, 130:8, 130:12, 130:13, 130:23, 131:11, 134:11, 134:14 trespassing 50:4, 110:6 triangular 78:4 tried 77:24, 78:11, 120:24 triggering 116:6 trips 115:9, 116:1, 116:6, 116:10, 116:22, 117:7, 117:10, 117:11, 117:12 trouble 5:23 troubleshoot 71:18 truck 30:15, 30:17, 30:18, 46:14 true 143:3 truncation 32:10 truth 14:21, 57:4, 68:25, 69:1, 87:25, 88:1, 112:23, 112:24, 119:17, 119:18, 127:22, 133:21 try 12:22, 18:8, 25:23, 28:1, 72:20, 73:7, 77:19, 80:1,	88:20 trying 10:4, 42:5, 63:5, 90:18, 108:1, 108:3, 130:23, 132:5 tuck 89:20 tupelo 79:1 turn 9:24, 12:11, 68:8, 106:19, 106:25 turnaround 30:17 turned 107:1, 108:24, 129:2 turning 107:4, 127:11 turquoise 92:22 tweaking 135:14 two 6:15, 7:20, 20:7, 27:22, 28:9, 46:8, 60:24, 77:15, 80:21, 106:15, 111:25, 112:3, 112:7, 120:7, 127:14, 130:7, 131:11 type 20:16, 38:5, 62:24, 76:2, 96:3, 110:15, 115:6 types 62:7, 128:24 typical 77:7 typically 25:15, 39:23, 41:6, 44:24, 55:12, 55:16,	55:19, 55:20, 55:23, 102:4, 107:7 typo 13:18 <hr/> U <hr/> ugly 126:23 uh-huh 18:22, 34:20, 36:23, 51:14, 53:10 ultimately 45:18, 64:2, 92:18, 95:4, 102:20, 103:10, 111:4 unable 36:18, 39:15 unanimously 13:14 under 9:12, 14:19, 22:3, 31:21, 37:19, 38:7, 38:10, 39:14, 41:12, 41:16, 41:18, 42:8, 42:25, 43:4, 57:2, 68:24, 74:6, 78:12, 87:24, 104:4, 112:22, 119:16, 122:3, 123:22, 127:20, 133:19 underdrain 36:2, 36:8 underground 25:2, 32:22 undermine 130:22 understand 7:23, 11:10, 45:10, 49:23, 52:9, 53:5, 76:15, 84:4, 109:10, 110:3,	110:10, 120:8, 129:16 understanding 97:23, 97:25, 109:17, 122:4, 140:18 understood 133:10 understory 74:9, 78:20, 84:8 undo 66:9 undue 82:18, 83:1, 99:25, 118:8, 118:12, 124:25 unfortunate 71:17 uniformly 129:8 united 120:6 units 24:13, 60:17, 60:24, 120:5 university 69:14, 86:17, 113:12 unless 15:12, 36:18, 41:3, 57:16, 77:9, 106:21, 127:9 unlike 84:23 unmanaged 36:14 unmute 106:13, 137:24 unmuting 127:17 unrecorded 19:2, 47:12 unrelated 53:6 unresponsive 132:4
---	--	---	---

<p>until 60:11, 100:20, 101:1, 139:10 update 52:7, 83:25 updated 80:8, 80:10, 86:22 upper 28:14, 36:13, 36:25, 37:5, 37:15, 37:20, 38:4, 39:3, 41:13, 42:10, 75:1 usable 26:2 use 3:24, 5:6, 7:2, 9:4, 9:16, 12:17, 13:15, 16:11, 16:14, 16:20, 16:23, 17:2, 17:8, 17:13, 17:19, 22:15, 22:23, 23:25, 24:20, 31:4, 34:7, 38:23, 40:15, 41:10, 47:2, 47:5, 47:24, 48:1, 48:4, 48:19, 48:24, 53:15, 55:2, 55:9, 55:11, 55:20, 57:25, 58:12, 58:16, 58:20, 59:2, 59:15, 60:17, 61:17, 61:21, 61:23, 62:7, 62:11, 62:14, 62:22, 64:23, 65:3, 65:11, 65:18, 66:1, 66:4, 66:9, 66:16, 67:1, 67:16, 68:5,</p>	<p>68:7, 70:18, 70:21, 70:25, 71:5, 82:19, 83:3, 87:14, 88:12, 90:2, 95:3, 98:25, 99:18, 99:25, 105:17, 107:1, 107:21, 114:18, 115:2, 115:11, 118:1, 118:12, 118:19, 119:2, 120:17, 124:16, 126:4, 126:6, 129:1, 132:23, 133:8, 141:2, 141:19 uses 24:5, 60:5, 65:19, 65:21, 69:23, 70:2, 113:25 using 5:20, 6:6, 18:23, 34:22, 38:5, 96:24, 97:23, 98:19, 116:4 usually 56:1, 77:9, 136:7 utilities 32:16, 33:21 utility 3:25, 32:13, 32:20, 33:22 utilize 121:12 utilized 26:4 utilizing 5:21</p> <hr/> <p>v</p> <hr/> <p>valley 20:14, 20:16, 36:12, 38:20, 39:1, 39:24,</p>	<p>40:4, 40:8 value 66:17, 94:14, 124:25, 128:24 variety 78:7, 80:2 varying 92:18 vegetation 110:14 vehicle 24:21, 24:24, 115:9, 117:10, 117:11 vehicles 26:25 vehicular 26:3, 61:15, 117:18, 118:20 veneer 90:13 versus 78:11, 109:23, 110:2, 110:4, 125:24 vibration 103:6 vicinity 46:9 view 46:10, 110:8 village 14:14, 56:16, 61:11, 68:15 virginia 69:13, 80:3, 120:7, 123:21 virtual 5:20, 6:3 virtual-meeting 6:2 virtually 1:10, 6:7 visited 16:3, 58:3 visitors 66:21, 124:22 visual 74:25, 129:11</p>	<p>voir 15:13 voltage 93:6 volume 68:17 volunteer 46:11 voted 13:14</p> <hr/> <p>w</p> <hr/> <p>wagner 3:8, 3:19, 8:22, 14:6, 112:1, 112:14, 112:16, 112:20, 112:25, 113:2, 113:8, 113:11, 113:16, 113:23, 114:1, 114:5, 114:12, 114:15, 114:17, 114:20, 114:25, 115:4, 115:7, 115:15, 115:25, 117:16, 117:21, 118:4, 118:10, 118:16, 118:21, 118:23, 119:1, 119:4, 126:14 wagner's 114:8 wait 18:11, 53:1, 100:20, 101:1 waiting 18:7 walk 75:13 walkable 46:18, 63:21 walking 22:15, 116:25, 122:12, 123:5 walkout 131:10 walks 95:9</p>
--	---	--	---

<p>wall 26:9, 26:15, 26:16, 26:18, 26:25, 27:3, 27:12, 27:20, 53:8, 53:12, 54:5, 54:17, 75:7, 98:4, 98:8, 98:10, 110:3, 110:4, 110:9, 110:18, 110:19, 111:3, 111:5, 121:12, 121:20, 122:4, 122:7, 125:25, 126:10, 126:18, 129:6, 131:7</p> <p>walls 25:20, 26:4</p> <p>wandering 110:7</p> <p>want 18:15, 22:18, 25:16, 53:2, 63:7, 63:10, 64:7, 81:14, 85:5, 89:5, 94:15, 97:17, 98:24, 100:15, 100:16, 100:19, 100:20, 104:13, 105:13, 111:8, 112:8, 121:16, 121:21, 121:22, 122:14, 128:9, 128:21, 129:20, 129:21, 135:23, 136:23, 139:9, 139:13, 141:20</p> <p>wanted 11:8, 49:23, 52:13, 76:10, 80:1, 101:25, 109:4, 123:15, 126:15, 126:24, 132:16, 134:7, 135:15, 137:6, 137:18, 138:14</p>	<p>wants 104:24</p> <p>washington 2:5, 33:21, 112:17, 113:13</p> <p>water 12:3, 15:6, 15:15, 15:18, 15:19, 16:17, 17:14, 17:16, 30:11, 32:25, 33:3, 33:9, 33:10, 33:20, 34:20, 34:21, 34:22, 34:25, 35:1, 35:5, 37:1, 37:7, 37:25, 38:3, 38:15, 39:10, 39:12, 41:22, 42:8, 43:4, 43:11, 45:6, 45:11, 45:24, 46:17, 48:20, 48:21, 49:25, 51:10, 51:19, 52:1, 52:3, 53:7, 54:25, 55:9, 55:16, 74:23, 129:19, 130:21, 131:2, 132:13, 140:17, 140:20, 141:4</p> <p>wattage 81:8, 94:12, 94:20</p> <p>way 6:7, 7:9, 7:10, 9:11, 10:6, 10:17, 18:18, 19:20, 22:18, 28:2, 29:11, 33:15, 52:3, 93:13, 108:12, 109:11, 109:18, 109:22, 110:1, 123:18, 128:5, 128:12, 131:14,</p>	<p>132:12, 134:3</p> <p>ways 19:14, 31:1, 31:19, 114:23</p> <p>wccs 20:20</p> <p>we'll 12:11, 51:6, 67:17</p> <p>we're 7:18, 9:11, 12:16, 13:17, 13:20, 24:25, 25:12, 33:8, 37:19, 38:7, 42:10, 51:1, 64:4, 67:21, 72:9, 78:18, 96:25, 103:2, 108:3, 135:14</p> <p>we've 23:12, 33:14, 47:8, 78:21, 79:12, 80:3, 81:17, 83:25, 84:22, 93:18, 108:12, 120:24, 121:19, 122:23, 122:24, 123:4, 123:5, 129:12, 130:11, 132:4, 134:25, 135:20</p> <p>website 6:1, 139:20</p> <p>week 16:6, 49:20, 49:22</p> <p>weekday 104:23, 104:25, 123:14</p> <p>weekend 137:9, 140:11</p> <p>weekends 136:4</p> <p>welcome 12:6, 22:21, 71:18, 83:10, 100:11, 119:4,</p>	<p>128:7, 134:5</p> <p>welfare 66:20, 100:2, 124:21</p> <p>went 29:16, 34:24, 36:19</p> <p>weren't 37:11</p> <p>west 19:4, 19:22, 21:22, 23:9, 26:6, 26:8, 31:15, 122:21</p> <p>western 21:24, 29:18, 44:9, 60:13</p> <p>wet 32:16</p> <p>whatever 52:10, 67:17, 136:14, 136:15, 140:22</p> <p>whatsoever 126:11</p> <p>whenever 18:1, 83:21</p> <p>whether 15:2, 31:1, 43:17, 47:3, 103:10, 115:18</p> <p>whoever 131:6</p> <p>whole 14:21, 57:4, 69:1, 74:22, 88:1, 112:24, 119:17, 127:22, 130:19, 133:21</p> <p>wide 84:24</p> <p>wightman 14:13, 56:15, 68:14</p> <p>willing 138:17, 138:19</p> <p>window 95:16</p>
---	--	---	--

windows 90:19 wings 90:12 winter 79:7, 133:7 wintertime 83:19 wish 9:14, 9:25, 131:8, 134:5 within 5:19, 22:8, 25:4, 25:18, 29:11, 29:20, 30:2, 30:22, 32:1, 32:18, 33:4, 37:22, 61:1, 61:3, 61:12, 61:16, 62:8, 62:10, 63:21, 64:7, 77:4, 101:8, 116:25, 123:11, 139:1 without 40:22, 71:23, 94:20, 101:15 witness 14:3, 14:9, 18:11, 56:11, 57:18, 57:21, 112:13, 119:5, 127:3 witnesses 8:10, 9:12, 9:16, 9:18, 9:20, 12:7, 13:24, 14:5, 111:24, 111:25, 112:4, 112:8, 127:7, 127:8, 137:17, 138:12, 138:15 wonderful 89:17, 90:19, 90:25, 92:6, 93:4, 99:1	wood 131:21 word 98:19, 121:15 words 55:3 work 56:14, 58:25, 67:18, 72:1, 83:20, 85:25, 88:22, 103:8, 124:7, 128:13, 136:10, 138:16, 138:17, 138:20 workable 130:25 worked 47:1, 86:24, 89:12, 89:13, 89:20, 90:2, 90:8 working 49:11, 89:16, 105:10, 136:4, 136:7, 136:9, 136:19 works 73:10, 129:3 worst 50:18 wouldn't 42:20, 122:14, 136:6 write 5:16 writing 59:11 wssc 26:14, 26:15, 33:4, 33:20, 51:17 www 6:2	yards 23:15 yeah 10:16, 22:25, 34:19, 56:22, 57:12, 59:9, 59:19, 59:21, 62:15, 62:16, 63:7, 63:20, 66:22, 71:14, 71:23, 72:20, 80:17, 97:25, 106:13, 109:3, 109:4, 122:11, 123:17, 130:6, 131:14, 133:16, 134:9, 135:4, 135:14, 137:6, 140:12 year 41:6, 41:10, 41:11, 41:19, 42:2, 42:15, 44:18, 52:9, 52:12, 79:9, 107:9, 130:11 years 61:6, 87:3, 113:8, 120:4, 122:23, 130:9, 130:11, 135:25 yellow 32:18, 62:15, 105:18 yep 31:5 yesterday 72:5 yields 24:23 yoga 75:13 yourselves 6:4	zone 16:11, 23:20, 24:1, 24:5, 24:13, 47:21, 58:13, 64:18, 65:20, 70:18 zoned 19:6 zones 61:10 zoning 1:1, 5:3, 16:8, 16:9, 48:2, 48:17, 58:9, 58:11, 59:19, 64:5, 64:19, 64:25, 68:6, 69:20, 70:15, 70:17, 74:6, 74:19, 77:10, 79:5, 81:23, 84:13, 87:5, 88:7, 99:7, 113:20 zooming 34:6 <hr/> . <hr/> .8 44:23 <hr/> 0 <hr/> 0.80 44:14 00 105:8, 107:8, 107:9, 116:14 07 67:17 09 1:4, 5:5, 141:19 <hr/> 1 <hr/> 1 105:8 1,000 120:5
	<hr/> Y <hr/> yard 20:8, 60:10, 122:16	<hr/> Z <hr/> zigzag 93:2	

Transcript of Hearing
Conducted on October 30, 2020

87

<p>1,622 32:5, 32:12 1.8 46:12 10 3:20, 5:19, 25:3, 25:14, 26:23, 27:1, 41:6, 41:10, 41:11, 41:19, 42:2, 42:15, 44:18, 52:9, 52:12, 77:16, 95:16, 115:17, 121:8, 130:11, 138:24, 139:1, 139:5, 139:11 100 19:19, 28:25, 29:4, 30:22, 74:7, 86:1, 97:10 11 2:5, 17:23, 17:25, 18:23, 34:9, 59:15, 59:22, 59:24, 60:1, 62:18, 64:5, 67:17, 67:22, 68:4, 77:16, 107:8, 113:8, 116:14 1100 119:9 112 3:8 113 3:19 1140 112:16 115 3:20 118 31:14 119 3:9 11:12 am 67:18</p>	<p>11:13 am 67:22 12 3:21, 12:10, 27:1, 32:25, 44:8, 67:22, 74:7, 74:10, 88:19, 89:3, 131:22 120 3:23, 14:14, 56:15, 68:15 125 12:17, 24:17, 89:12, 94:17, 97:15, 105:12 127 3:10 129 15:10 13 3:22, 35:4, 41:22, 41:25, 68:4 130 24:16 133 3:11 135 4:10 138 3:12 14 71:10, 77:1 143 1:24 15 3:4, 3:16, 77:1, 84:9, 97:8, 116:20 16 5:6, 13:19 1600 2:8 18921 134:3 189214 10:17</p>	<p>18923 10:6, 128:5 19 16:16 19,680 36:17 19.2 51:12 19.22 44:17, 51:12 19115 5:7, 141:19 1982 120:1 1989 48:9, 58:7, 61:5, 65:3, 114:21 1998 86:11 <hr/>2<hr/>2-1 77:16 2-1¹/₂ 76:25 2.3 46:7 20 5:5, 22:4, 40:20, 84:9, 87:3, 112:5, 130:8, 130:10, 141:19 20,000 24:8, 36:16 20.03 42:14, 43:6 20.08 41:1, 41:18, 42:23 20.3 41:17 20.30 43:2 200 16:7, 16:11, 19:7, 23:19,</p>	<p>23:21, 24:1, 24:5, 24:7, 24:12, 47:21, 58:9, 58:13, 61:10, 64:5, 64:18, 70:15, 70:18 2001 86:12, 86:22 2004 120:2 2009 68:7 2011 69:9 2015 117:23 2017 69:18 2019 15:9, 19:13, 31:18 2020 1:11, 13:16, 13:22 20850 2:7 21201 86:2 22 3:24, 117:11 23 13:22 24 33:3, 33:5, 77:24 240 5:25 2471 63:9 25 61:5, 97:8, 106:20, 116:15, 130:11 26 3:23, 13:3, 120:11 27 16:6</p>
--	---	---	---

Transcript of Hearing
Conducted on October 30, 2020

88

<p>28 3:24, 22:15, 22:22, 31:4, 34:7, 53:16, 53:18, 53:19</p> <p>29 1:4, 3:25, 32:14</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>3 116:14, 116:16</p> <p>3-1 110:11</p> <p>3.59 24:11</p> <p>3.6 19:6</p> <p>30 1:11, 4:4, 4:8, 5:3, 12:10, 71:8, 71:10, 71:11, 84:9, 92:12, 96:14, 98:8, 139:4</p> <p>301 2:8</p> <p>31 4:5, 39:22, 39:23, 117:12</p> <p>31917 119:10</p> <p>32 3:25</p> <p>33 4:6, 38:1, 38:3, 42:9</p> <p>332722 1:23</p> <p>34 4:7, 46:14</p> <p>35 4:8, 25:9, 30:12, 116:12, 131:18</p> <p>37 1:12</p> <p>38 4:9, 52:19,</p>	<p>129:22</p> <p>39 4:5</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>40 4:11, 97:7, 131:19</p> <p>41 3:22</p> <p>42 4:6, 4:10, 90:1, 98:7, 110:11, 135:12, 135:25</p> <p>4229 2:7</p> <p>43 4:11, 40:19</p> <p>45 116:16</p> <p>45.1 44:18</p> <p>46 4:7</p> <p>464 26:20</p> <p>47.0 41:11</p> <p>47.2 42:16</p> <p>48.3 41:19</p> <p>49 24:24</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>5-a 3:16, 15:12</p> <p>5-b 57:16</p> <p>5-c 3:17, 69:4</p> <p>5-d 3:18, 86:4</p> <p>5-f 3:19, 113:3</p> <p>50 31:9, 31:10,</p>	<p>116:6, 128:23</p> <p>515 18:3, 19:2, 47:12</p> <p>52 4:9</p> <p>55 102:15</p> <p>57 3:5</p> <p>59.3 64:25</p> <p>59.4 64:25</p> <p>59.6 48:2, 64:25, 70:22, 99:6</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>6 107:8</p> <p>6.4 64:8</p> <p>600 112:17</p> <p>63 25:4, 63:17, 91:16</p> <p>65 102:15</p> <p>6663 5:25</p> <p>67 29:3</p> <p>69 3:6, 3:17</p> <hr/> <p style="text-align: center;">7</p> <hr/> <p>7 107:9, 116:14</p> <p>70 19:15, 31:20</p> <p>700 2:6</p> <p>73 25:1</p> <p>75 31:21</p>	<p>762 2:8</p> <p>777 5:25</p> <hr/> <p style="text-align: center;">8</p> <hr/> <p>8-a 59:7</p> <p>85 3:7</p> <p>86 3:18</p> <p>89 3:21</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>9 1:12, 116:15, 116:20</p> <p>92 4:4</p> <p>9220 14:13, 56:15, 68:14</p> <hr/> <p style="text-align: center;">"</p> <hr/> <p>"raise 6:7, 6:13, 6:15</p> <p>"show 6:21</p>
---	---	--	--