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Transcript of Hearing

Date: November 20, 2020

Case: Isaac M. Lopez Group Day Care

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Transcript of Hearing
Conducted on November 20, 2020

1 (1 to 4)

<p style="text-align: right;">1</p> <p>1 OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS</p> <p>2 FOR MONTGOMERY COUNTY, MARYLAND</p> <p>3 -----x</p> <p>4 In Re: :</p> <p>5 ISAAC M. LOPEZ : Case No. CU 21-02</p> <p>6 GROUP DAYCARE :</p> <p>7 -----x</p> <p>8 HEARING</p> <p>9 Before Hearing Examiner Derek Baumgardner</p> <p>10 Conducted Virtually</p> <p>11 Friday, November 20th, 2020</p> <p>12 9:31 a.m. EST</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 Job No. 337247</p> <p>24 Pages: 1-22</p> <p>25 Transcribed by: Megan Wunsch, AAERT CET</p>	<p style="text-align: right;">3</p> <p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 ON BEHALF OF THE PETITIONER:</p> <p>4 ISAAC M. LOPEZ, PRO SE</p> <p>5 SANDRA MEDRANO, PRO SE</p> <p>6</p> <p>7 Also Present:</p> <p>8 Mario Panameno, Spanish Interpreter</p> <p>9 Nana Yaa A. Johnson, OZAH Staff</p> <p>10 Jon Frey, IT Staff</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>
<p style="text-align: right;">2</p> <p>1 Hearing In Re Isaac M. Lopez Group Daycare held</p> <p>2 virtually.</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8 Pursuant to agreement, before Lee Utterback, AAERT CER,</p> <p>9 E-Notary Public in and for the State of Maryland.</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>	<p style="text-align: right;">4</p> <p>1 C O N T E N T S</p> <p>2 WITNESSES PAGE</p> <p>3 Testimony of Isaac M. Lopez and Sandra Medrano 12</p> <p>4</p> <p>5 E X H I B I T S</p> <p>6 (Exhibits marked prior to hearing; retained.)</p> <p>7 HEARING EXHIBITS PAGE</p> <p>8 Exhibit 1 Exhibit Application 7</p> <p>9 Exhibit 2 MNCPPC Checklist 7</p> <p>10 Exhibit 3 Letter of Authorization 7</p> <p>11 Exhibit 4 Statement of Operations 7</p> <p>12 Exhibit 5 Parking Statement 7</p> <p>13 Exhibit 6 Existing Features (Pictures of Daycare</p> <p>14 both inside and outside) 7</p> <p>15 Exhibit 7 Record Plat 2770 7</p> <p>16 Exhibit 8 Site Plan 7</p> <p>17 Exhibit 9 Certified Zoning Map 7</p> <p>18 Exhibit 10 List of Adjoining and Confronting</p> <p>19 Property Owner 7</p> <p>20 Exhibit 11 Civic and Homeowners Association 7</p> <p>21 Exhibit 12 Traffic Statement 7</p> <p>22 Exhibit 13 Proposed Future Unloading and Loading</p> <p>23 Schedule 7</p> <p>24 Exhibit 14 Articles of Organization 7</p> <p>25 EXHIBITS CONTINUED ON FOLLOWING PAGE</p>

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<p style="text-align: right;">5</p> <p style="text-align: center;">E X H I B I T S</p> <p>HEARING EXHIBITS PAGE</p> <p>Exhibit 15 Forest Conservation Law Exemption 7</p> <p>Exhibit 16 Certificate of Registration 7</p> <p>Exhibit 17 Affidavit of Compliance 7</p> <p>Exhibit 18 SDAT Property 7</p> <p>Exhibit 19 Existing/Proposed Interior Features Plan 7</p> <p>Exhibit 20 7/27/20- Email from Lynn Robeson Hannan to Applicant; Re resubmit plans label areas 7</p> <p>Exhibit 21 7/28/20- Not an Exhibit 7</p> <p>Exhibit 22 7/28/20- Not an Exhibit 7</p> <p>Exhibit 23 7/28/20- Applicants Acceptance of Requirements for Posting of Sign 7</p> <p>Exhibit 24 10/13/20- Notice of Public Hearing 7</p> <p>Exhibit 25 10/23/20- Opposition to Conditional Use from Azucendra Calindres 7</p> <p>Exhibit 26 11/2/20- Technical Staff Report 7</p> <p>Exhibit 27 11/5/20- Email from Applicant; Re: Spoke with Azucendra Calindres prior to the Conditional Use Application, sent photos as proof 7</p> <p>Exhibit 27(a) Adjoining and Confronting Property Owners 7</p> <p>Exhibit 27(b) Photos of Backyard 7</p> <p>Exhibit 27(c) Photo of Fence 7</p> <p>EXHIBITS CONTINUED ON FOLLOWING PAGE</p>	<p style="text-align: right;">7</p> <p style="text-align: center;">P R O C E E D I N G S</p> <p>(Exhibits marked prior to hearing.)</p> <p>(Mario Panameno, Interpreter, translating the Spanish language into the English language and the English language into the Spanish language for Isaac M. Lopez and Sandra Medrano.)</p> <p>HEARING EXAMINER BAUMGARDNER: And, folks, we are going to get started here today. We are going to open our hearing to let everyone know at the hearing --</p> <p>(Technical interruption.)</p> <p>HEARING EXAMINER BAUMGARDNER: We're going to get started here today, if everyone can turn their cameras back on.</p> <p>(Interpreter, Ms. Medrano, and Mr. Lopez speaking in Spanish.)</p> <p>INTERPRETER: Continue.</p> <p>HEARING EXAMINER BAUMGARDNER: And just to let everyone know that this hearing is being recorded, both audio and video.</p> <p>AUTOMATED VOICE: This meeting is being recorded and/or transcribed.</p> <p>HEARING EXAMINER BAUMGARDNER: And, as you can tell, we have Mr. Panameno here, who is a Spanish-language translator; he's translating from English to Spanish and Spanish to English. We will get him sworn in shortly.</p>
<p style="text-align: right;">6</p> <p style="text-align: center;">E X H I B I T S</p> <p>HEARING EXHIBITS PAGE</p> <p>Exhibit 27(d) Photo of Garbage Can 7</p> <p>Exhibit 27(e) Photo of Tree Cut and Poison Removal 7</p> <p>Exhibit 28 Revised Conditional Use Plan 7</p> <p>Exhibit 29 11/18/20- Affidavit of Posting 7</p>	<p style="text-align: right;">8</p> <p>MS. MEDRANO: Okay. Question: My camera is not working right now. Is there a problem with that?</p> <p>HEARING EXAMINER BAUMGARDNER: If you can fix that problem, that would be preferred, but we can proceed without the camera if that's necessary.</p> <p>MR. LOPEZ: Yeah, it's okay. So I'm -- I'm seeing everybody here.</p> <p>HEARING EXAMINER BAUMGARDNER: All right. So first things first, I'm going to do an introduction. We will go through the rules of the hearing. We will swear our translator in and any witnesses, and we will get to the substantive part of the hearing.</p> <p>So this is a public hearing of the Montgomery County Office of Zoning and Administrative Hearings in Case No. CU 21-02, requesting a conditional use for a group daycare located at 12917 Parkland Drive, Rockville, Maryland, located in Montgomery County, Maryland.</p> <p>And, Mr. Translator, can I get you to raise your right hand please?</p> <p>INTERPRETER: Sure.</p> <p>HEARING EXAMINER BAUMGARDNER: And, sir, do you swear or affirm under the penalties of perjury that you will translate accurately and correctly throughout the course of this proceeding?</p> <p>INTERPRETER: Yes, I do, sir.</p>

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3 (9 to 12)

9	11
1 HEARING EXAMINER BAUMGARDNER: Thank you very much.	1 property and the proposed use of the property.
2 INTERPRETER: You're welcome.	2 And, Señor Lopez, can you please raise your right
3 HEARING EXAMINER BAUMGARDNER: My name is Derek	3 hand?
4 Baumgardner. I am the hearing examiner for this case, which	4 MR. LOPEZ (in English): Okay.
5 means that I will listen to you today, take evidence, and	5 HEARING EXAMINER BAUMGARDNER: And, sir, do you
6 write a decision based upon my findings. If any party does	6 swear or affirm under the penalties of perjury that the
7 not like my decision, you can appeal that decision to the	7 testimony you're about to give is the truth, the whole
8 Board of Appeals within ten days of the written decision.	8 truth, and nothing but the truth?
9 As you can tell, we are using a virtual hearing	9 MR. LOPEZ: Yes, I swear.
10 platform called Microsoft Teams. If you have any problems	10 HEARING EXAMINER BAUMGARDNER: Thank you. Please
11 with the technology or with logging in or if you are unable	11 provide a background of the operation and explain what the
12 to communicate here, I have a phone number for you to call	12 proposed group daycare will look like.
13 for our office: 240-777-6663.	13 MS. MEDRANO: Okay. So I have a question.
14 In addition to the audio and video recording, we are	14 Although, you know, all the paperwork is -- refers to Mr.
15 joined by Mr. Utterback who is a court reporter. It is	15 Lopez, who is my husband, refers to him as the owner and --
16 important for the court reporter that we only speak one at a	16 the owner, then but I'm the person who runs the operation.
17 time.	17 HEARING EXAMINER BAUMGARDNER: So what was filed
18 Moving on to the rules for this virtual hearing.	18 with our office was filed under Mr. Lopez's name.
19 Please make sure that you are muted in Teams when you are	19 MS. MEDRANO (in English): Okay.
20 not speaking. All parties will be given the opportunity to	20 MR. LOPEZ (in English): Okay.
21 speak, so please don't feel the need to interrupt others	21 HEARING EXAMINER BAUMGARDNER: So if the application
22 when they're speaking; you will have your opportunity.	22 is approved, [technical interruption] follow under his name,
23 Can the applicant or applicants identify themselves	23 but the operator could be someone else, including yourself.
24 for the record?	24 INTERPRETER: I'm sorry, can you -- there was --
25 MR. LOPEZ: Good morning. This is Isaac Lopez.	25 there was -- you got cut off. Can you --
10	12
1 MS. MEDRANO: Good morning. I am Sandra Medrano,	1 HEARING EXAMINER BAUMGARDNER: Sure. So if the
2 and I'm Isaac Lopez's wife.	2 application is approved, the conditional use would follow
3 HEARING EXAMINER BAUMGARDNER: Buenos días.	3 under the name of Mr. Lopez, but the operator could be
4 We have also on the line Mr. Frey, who is part of	4 someone else, including Ms. Medrano.
5 county staff for technical purposes. We have the court	5 HEARING EXAMINER BAUMGARDNER: But if you break any
6 reporter, we have the translator, we have a member of our	6 --
7 staff, and then we have one call-in participant.	7 MS. MEDRANO AND MR. LOPEZ: We understand. Thank
8 Can the call-in participant, if you're going to be	8 you.
9 providing testimony, please provide your name.	9 HEARING EXAMINER BAUMGARDNER: But if you break any
10 INTERPRETER: Go ahead, sir.	10 rules, the County would come after your husband.
11 (No response.)	11 MS. MEDRANO (in English): I understand. Sorry.
12 HEARING EXAMINER BAUMGARDNER: All right. So that	12 HEARING EXAMINER BAUMGARDNER: Since we're getting
13 looks like that's all of the individuals we have logged in	13 into this already, if Ms. Medrano can raise her right hand,
14 here today.	14 and I will swear her in now as well.
15 So we are going to start the substantive portion of	15 MS. MEDRANO (in English): Okay.
16 the hearing. The way that this works is that the applicant	16 HEARING EXAMINER BAUMGARDNER: And, ma'am, do you
17 will go first. We ask that you provide a background of you	17 swear or affirm under the penalties of perjury that the
18 and your operation and then a description of what you would	18 testimony you're about to give is the truth, the whole
19 like to be approved under this application, and then I may	19 truth, and nothing but the truth?
20 have some questions regarding your description.	20 MS. MEDRANO: Sure, I do. I -- I swear.
21 Any member of the public is welcome to join, either	21 HEARING EXAMINER BAUMGARDNER: Muchas gracias.
22 via Teams or calling in, to ask questions; however, there is	22 Either Mr. Lopez or Ms. Medrano, you can begin to
23 no one logged in from the community right now.	23 describe the use of the property.
24 I will turn it over to the applicant, Mr. Lopez, to	24 TESTIMONY OF ISAAC M. LOPEZ AND SANDRA MEDRANO
25 provide an opening statement about the current use of the	25 MS. MEDRANO: Okay, okay. So, right now, the

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13	<p>1 basement of the house of the property is used for the family</p> <p>2 quarters, and then the first floor is set up for the -- for</p> <p>3 the daycare.</p> <p>4 HEARING EXAMINER BAUMGARDNER: What I'm going to do</p> <p>5 is share my screen, the plans that were submitted to our</p> <p>6 office. So can everyone see the plans that I have on the</p> <p>7 screen right now?</p> <p>8 MS. MEDRANO AND MR. LOPEZ: Yes.</p> <p>9 HEARING EXAMINER BAUMGARDNER: So can you -- can you</p> <p>10 describe for me what I'm looking at?</p> <p>11 MS. MEDRANO: Okay, all right. So what we have here</p> <p>12 is, on the left side, we have a parking now, on -- that's</p> <p>13 the hallway. Okay? Where you see the car. Then -- that's</p> <p>14 right.</p> <p>15 Then, up front, on the front lawn, you see a small</p> <p>16 playground. Yes. It was suggested to us by the Department</p> <p>17 of Education to do a playground here -- to do the playground</p> <p>18 here -- to install the playground here because it's flat,</p> <p>19 the surface is flat; whereas, in the back, the surface is --</p> <p>20 it's -- it has an inclination, so this is better for the</p> <p>21 children.</p> <p>22 And then you have the layout of the -- of the house</p> <p>23 next.</p> <p>24 INTERPRETER: (Spanish speaking.)</p> <p>25 MS. MEDRANO (in English): Okay.</p>	15
14	<p>1 HEARING EXAMINER BAUMGARDNER: And there's a fence</p> <p>2 that surrounds the front of the property; correct?</p> <p>3 MS. MEDRANO AND MR. LOPEZ: Yes.</p> <p>4 HEARING EXAMINER BAUMGARDNER: And how tall is that</p> <p>5 fence?</p> <p>6 MS. MEDRANO AND MR. LOPEZ: Okay. So the fence,</p> <p>7 it's a little over 3 feet tall. Okay? And the gate, it was</p> <p>8 approved by the County. They came and checked it out, and</p> <p>9 they said it was good.</p> <p>10 (Exhibit 8 and Exhibit 28 introduced.)</p> <p>11 HEARING EXAMINER BAUMGARDNER: So, for the benefit</p> <p>12 of the court reporter, I'm looking at the revised</p> <p>13 conditional use plan and the current site plan, which are</p> <p>14 part of the record in this case.</p> <p>15 MR. LOPEZ (in English): Okay.</p> <p>16 HEARING EXAMINER BAUMGARDNER: The Planning</p> <p>17 Department reviewed your application and approved it with</p> <p>18 conditions; is that correct?</p> <p>19 MS. MEDRANO: Yes.</p> <p>20 HEARING EXAMINER BAUMGARDNER: And I'm looking at</p> <p>21 the conditions that include no more than 12 children and two</p> <p>22 non-resident employees.</p> <p>23 MS. MEDRANO AND MR. LOPEZ: Yes, correct.</p> <p>24 HEARING EXAMINER BAUMGARDNER: And the hours of</p> <p>25 operation are Monday through Friday, 7 a.m. to 6 p.m.?</p>	16
	<p>1 MS. MEDRANO AND MR. LOPEZ: Correct.</p> <p>2 HEARING EXAMINER BAUMGARDNER: And that -- the drop-</p> <p>3 off and pickup times of the children are staggered in the</p> <p>4 morning and late afternoon, evening?</p> <p>5 MS. MEDRANO AND MR. LOPEZ: Correct.</p> <p>6 HEARING EXAMINER BAUMGARDNER: They also recommend</p> <p>7 that there's no more than eight children playing outside at</p> <p>8 any one time?</p> <p>9 MS. MEDRANO AND MR. LOPEZ: Yes.</p> <p>10 HEARING EXAMINER BAUMGARDNER: And that the outside</p> <p>11 playtime cannot begin prior to nine o'clock A.M.?</p> <p>12 MS. MEDRANO: Correct.</p> <p>13 HEARING EXAMINER BAUMGARDNER: And that any signs on</p> <p>14 the property must obey county code?</p> <p>15 MS. MEDRANO AND MR. LOPEZ: Correct.</p> <p>16 HEARING EXAMINER BAUMGARDNER: In your opinion,</p> <p>17 would increasing the number of children from eight to up to</p> <p>18 12, is the current house compatible for that use?</p> <p>19 MS. MEDRANO: Okay. Yes. So that's correct. We</p> <p>20 are requesting the amount of children to be increased from</p> <p>21 eight to 12.</p> <p>22 HEARING EXAMINER BAUMGARDNER: And are there any</p> <p>23 structural alterations planned for the property to</p> <p>24 accommodate 12 children?</p> <p>25 INTERPRETER: I'm sorry.</p>	

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17	19
<p>1 and I think this will be a good -- a good help to the</p> <p>2 community.</p> <p>3 HEARING EXAMINER BAUMGARDNER: And are you aware of</p> <p>4 any other daycare establishments, businesses, or other</p> <p>5 institutional uses, like schools or office buildings, within</p> <p>6 the immediate vicinity of this property?</p> <p>7 MS. MEDRANO: Okay. So across the street from us,</p> <p>8 we have Wheaton Woods. This is an elementary school.</p> <p>9 HEARING EXAMINER BAUMGARDNER: And, lastly, this</p> <p>10 property is on county water and county sewer; correct?</p> <p>11 MS. MEDRANO AND MR. LOPEZ: Yes.</p> <p>12 HEARING EXAMINER BAUMGARDNER: And increasing the</p> <p>13 children from eight to 12 will not have any undue stress on</p> <p>14 either of those systems; correct?</p> <p>15 MS. MEDRANO AND MR. LOPEZ: Correct.</p> <p>16 HEARING EXAMINER BAUMGARDNER: Those are all the</p> <p>17 questions I have. Do you have any final comments on this</p> <p>18 application?</p> <p>19 MS. MEDRANO: No, we don't. I would like to thank</p> <p>20 you for taking the time to review our application.</p> <p>21 HEARING EXAMINER BAUMGARDNER: You're welcome.</p> <p>22 (Exhibit 29 and Exhibit 25 introduced.)</p> <p>23 HEARING EXAMINER BAUMGARDNER: For the record, the</p> <p>24 OZAH record also has a affidavit of posting so that the</p> <p>25 property was posted correctly.</p>	<p>1 HEARING EXAMINER BAUMGARDNER: Can't quite tell if</p> <p>2 Mr. Panameno is still with us or not.</p> <p>3 Can everyone else hear me?</p> <p>4 (No response.)</p> <p>5 HEARING EXAMINER BAUMGARDNER: Okay. We might have</p> <p>6 lost --</p> <p>7 INTERPRETER: I'm sorry, sir. Something is -- is</p> <p>8 happening here.</p> <p>9 HEARING EXAMINER BAUMGARDNER: That's okay. Let's</p> <p>10 see if we can get Mr. Panameno back.</p> <p>11 INTERPRETER: I'm here.</p> <p>12 HEARING EXAMINER BAUMGARDNER: Okay.</p> <p>13 INTERPRETER: Yes.</p> <p>14 HEARING EXAMINER BAUMGARDNER: So I can see you, and</p> <p>15 I can hear you.</p> <p>16 INTERPRETER: Okay.</p> <p>17 HEARING EXAMINER BAUMGARDNER: Can you hear me?</p> <p>18 INTERPRETER: Yes, I can, sir.</p> <p>19 HEARING EXAMINER BAUMGARDNER: All right. Well,</p> <p>20 we're going to close this hearing. Are there any final</p> <p>21 questions?</p> <p>22 MS. MEDRANO: Okay. No. Everything is clear in</p> <p>23 everything that you told us today. Thank you very much.</p> <p>24 HEARING EXAMINER BAUMGARDNER: I would like to thank</p> <p>25 our court reporter, and I'd like to thank our translator for</p>
18	20
<p>1 And also in the record we have one letter from a</p> <p>2 community member with some neighborhood complaints, but</p> <p>3 those complaints do not apply to the proposed conditional</p> <p>4 use.</p> <p>5 MR. LOPEZ (in English): Okay.</p> <p>6 HEARING EXAMINER BAUMGARDNER: At this time, if</p> <p>7 there are no final comments from the applicant, I am going</p> <p>8 to close this case. The time is 10:03 a.m.</p> <p>9 I will keep this record open for ten days following</p> <p>10 today's hearing, if there are any final comments. After</p> <p>11 which time, I will issue a written decision. And, as I</p> <p>12 mentioned at the opening of this hearing, any party to this</p> <p>13 hearing not liking that decision can file an appeal to the</p> <p>14 Board of Appeals within 30 days.</p> <p>15 Are there any questions?</p> <p>16 INTERPRETER: I'm sorry, sir. Something --</p> <p>17 HEARING EXAMINER BAUMGARDNER: That's all right.</p> <p>18 INTERPRETER: -- happened.</p> <p>19 HEARING EXAMINER BAUMGARDNER: That's okay. Are you</p> <p>20 still with us?</p> <p>21 (Interpreter, Ms. Medrano, and Mr. Lopez speaking in</p> <p>22 Spanish.)</p> <p>23 HEARING EXAMINER BAUMGARDNER: Are there any final</p> <p>24 questions?</p> <p>25 (No response.)</p>	<p>1 being with us today.</p> <p>2 INTERPRETER: You're very welcome, sir.</p> <p>3 MS. MEDRANO (in English): Thank you.</p> <p>4 HEARING EXAMINER BAUMGARDNER: And I hope everyone</p> <p>5 has a good morning.</p> <p>6 (Interpreter, Ms. Medrano, and Mr. Lopez speaking in</p> <p>7 Spanish.)</p> <p>8 HEARING EXAMINER BAUMGARDNER: This closes</p> <p>9 Conditional Use CU 21-02 of the Office of Zoning and</p> <p>10 Administrative Hearings for Montgomery County, Maryland.</p> <p>11 The hearing examiner will keep the record open for ten days</p> <p>12 and then issue a decision in this case.</p> <p>13 Thank you all very much for your time.</p> <p>14 (Off the record at 10:06 a.m.)</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>

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CERTIFICATE OF COURT REPORTER - E-NOTARY PUBLIC

I, Lee Utterback, AAERT CER, the officer before whom the foregoing proceedings were taken, do hereby certify that said proceedings were electronically recorded by me; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

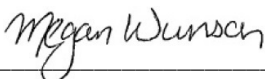


Lee Utterback, AAERT CER, Court Reporter

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CERTIFICATE OF TRANSCRIBER

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



Megan Wunsch, AAERT CET
November 25, 2020

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