

Transcript of Hearing - Day 3

Date: April 14, 2022
Case: Reflections Park, LLC

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                            HEARING
                                                                          8
                                                                                                   (None marked)
                             (Day 3)
10
                     (Conducted Virtually)
          Before Hearing Examiner Lynn A. Robeson Hannan
12
                      Rockville, Maryland
13
                    Tuesday, April 14, 2022
                         9:33 a.m. EST
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                                                                                          PROCEEDINGS
                     APPEARANCES
        ON BEHALF OF APPLICANT, REFLECTIONS PARK, LLC:
                                                                                 HEARING EXAMINER ROBESON-HANNAN: This is the
             JODY KLINE, ESQUIRE
                                                                              continuation of the case of application number CU 21-06
             MILLER, MILLER & CANBY
                                                                              Reflection Park Inc., a continuation of the hearings that
             200 B Monroe Street
                                                                              began April 12th. The Applicant requests a cemetery --
             Rockville, Maryland 20859
                                                                              permission to operate a cemetery at 16621 New Hampshire
             Phone: (301) 762-5212
                                                                              Avenue, Silver Spring, Maryland. I think -- are there any
                                                                              preliminary matters?
             TIMOTHY M. SULLIVAN, ESQ.
                                                                                 MR. KLEIN: Nothing from the Applicant.
             BEVERIDGE & DIAMOND PC
                                                                                 HEARING EXAMINER ROBESON-HANNAN: Mr. Brown?
                                                                          10
             201 N. Charles Street, Suite 2210
                                                                                 MR. BROWN: None.
                                                                          11
12
             Baltimore, Maryland 2101
                                                                          12
                                                                                 HEARING EXAMINER ROBESON-HANNAN: I did receive from
13
             Phone: (410) 230-4150
                                                                          13 Mr. Brown, and I think he copied all parties a copy of the
14
                                                                          14 COBAR regulations that I requested yesterday as well as -- I
15 ON BEHALF OF CITIZENS IN OPPOSITION:
                                                                          15 think he also included 76 -- Council Bill 7621, just for the
16
             DAVID BROWN, ESQ.
                                                                          16 record, and I will --
17
             KNOPF & BROWN
                                                                          17
                                                                                 MR. BROWN: Actually --
18
             401 E. Jefferson Street
                                                                          18
                                                                                 HEARING EXAMINER ROBESON-HANNAN: I'm sorry?
19
             Rockville, MD 20850
                                                                                 MR. BROWN: Actually what I -- the other thing that I
20
             Phone: (301) 545-6100
                                                                          20 included was a summary from the zoning -- I think it's from
21
                                                                          21 the zoning handbook in Baltimore County summarizing where in
22 ALSO PRESENT:
23
        GUS B. BAUMAN, ESQ.
                                                                          22 the RC zone cemeteries -- green burial cemeteries were and
        BEVERIDGE & DIAMOND
24
                                                                          23
                                                                              were not allowed.
25
                                                                                 HEARING EXAMINER ROBESON-HANNAN: Okay. Do you have
                                                                          24
                                                                          25 any objection to that coming in Mr. Klein or Mr. Sullivan?
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Conducted on April 14, 2022 439 441 1 way I can keep better track. Okay. MR. KLEIN: We received the material and have no 2 objections. Dr. Moore, the Board of Appeals remand was limited to HEARING EXAMINER ROBESON-HANNAN: Okay, thank you. impact on the environment, whether it's ground -- so we're Now, I am not going to include Mr. -- at the end of the not going to hear traffic or anything else like that. So if hearing I'm going to accept everything as an exhibit that in you could keep your testimony to the remand request, that our record with the exception of Mr. Desmond Brown's expert would be helpful. report, because that wasn't filed timely. Okay. So -- I'm DR. MOORE: All right. I will do that. All right. So for someone to give a little background for me. I'm a 8 sorry. clinical psychologist, PhD. I exclusively do clinical work The other thing I just briefly had was -- forgive me. 10 The other thing I briefly had was Mr. Buglass from WSSC 10 now, but in the earlier part of my career I did 11 neuropsychological testing of children and adults. With 11 emailed Nana Johnson and I last night asking whether I 12 thought he was trying to schedule a meeting for Thursday and 12 children largely with learning disabilities and attention 13 I simply -- he asked if the trial -- he thought the hearing 13 deficit disorders and things like that. And I also work as 14 would continue to Thursday and I responded simply, no. And 14 a volunteer as a commissioner on the Montgomery County 15 I will put that email in the record. So I didn't get a 15 Commission of Common Ownership Communities, although I'm 16 chance to do that last night, but I will put it in the 16 here strictly as a resident now. 17 record. All right. And why do I even care about this? Why am I here? So 17 18 With that, I think that we had -- I see Dr. Linda 18 I wasn't aware of the cemetery until some neighbors came and 19 contacted me, reached out for some assistance due to their 19 Moore. We can see you very clearly now as opposed to 20 yesterday. Would you -- are you ready to proceed with your 20 concerns. Hampshire Greens is a very multinational, 21 testimony? You have to unmute Dr. Moore. 21 multiethnic, multiracial community. And the neighbors that DR. MOORE: Yes, I am. 22 reached out to me were concerned because they had 23 HEARING EXAMINER ROBESON-HANNAN: Thank you. Please 23 experienced cemeteries that would be somewhat similar to 24 raise your right hand. 24 this in their countries of origin and did not believe they 25 Do you solemnly affirm under penalties of perjury that 25 should be located in a residential area and were concerned 440 442 the statements you're about to make are the truth, the whole about the health impacts of the cemetery. truth, and nothing but the truth? I therefore started looking into it more closely and Thank you. Please state your name, street address, and the more I looked the more concerned I got. One reason email address for the record. being that I have a grandson who started attending Camp DR. MOORE: My name is Linda Moore; M-O-O-R-E. I live Sonshine at age 5. Camp Sonshine is one of the abutting at 16602 Doral Hill Court. That's D, as in David, O-R-A-L. properties which also uses Ednor Park. They serve hundreds, Hill; H-I-L-L, Court, Ashton, Maryland 20861. And that is hundreds of children each summer. When I picked my grandson Hampshire Greens, which is a confronting property to the up from camp, he was covered from head to toe in dirt with a 9 cemetery. And my email address, I will say it and then random assortment of cuts and scrapes and bumps and bruises 10 spell it out. It's LSMoorePhd@gmail.com. It's; L, as a 11 Linda, S as in Sam, M-O-O-R-E, P as in Paul, H as in Harry, 10 because he had such a wonderful time there. 12 Das in David, at gmail.com. Given that, some of the environmental issues became HEARING EXAMINER ROBESON-HANNAN: Thank you. And what 13 12 more concerning for me. Yesterday Mr. Sullivan told Mr. 14 would you like to say? 13 Willingheimer [sic], I think I have his name correct, DR. MOORE: All right. Well first thing --15 14 George, that he should listen to the testimony yesterday and MR. KLEIN: Madam Chair, I have my hand up with --16 15 he believed that the end of the day his concerns would be HEARING EXAMINER ROBESON-HANNAN: Oh, I'm sorry. I 17 16 relieved. However, I find actually that I'm more concerned. 18 missed it. 17 There are only a few green cemeteries in the country and no MR. KLEIN: Fine. I merely will ask if you could 18 evidence that any of them have been tested by the Applicants 20 repeat your announcement as to the parameters of the 19 was presented. 21 testimony to be heard today so that everybody, Dr. Moore and 22 anybody else is reminded what it is we're looking for, 20 Dr. Dawson did not discuss antibiotic resistant 21 bacteria in the soil or any really antimicrobial resistant

22 organisms, which there, I understand numerous that are

23 present and which will be present at the graves or from 24 necro-leachate from corpses. Like all bacteria, antibiotic-25 resistant bacteria will feed on nitrogen. They eat, they

HEARING EXAMINER ROBESON-HANNAN: Yes. Yes. I will do

25 that. And if you could, but your hand doon Mr. Klein. That

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1 grow, they proliferate. In addition to groundwater, surface MR. KLEIN: Objection. I don't see any relevance to water, and soil contamination, they can migrate and be that in the subject matter we're discussing. 3 carried by other bacteria, wild animals, other organisms, HEARING EXAMINER ROBESON-HANNAN: I'm going to sustain 3 people to other areas. that. This concerns me for the children at Camp Sonshine. 5 DR. MOORE: Well, the bottom line for me is I don't see While Dr. Dawson did discuss mercury in the soil, I did not how the ordinary citizen can really represent themself in hear her discuss the issue of methylation of mercury by this type of situation. How are our interests going to be 8 anaerobic bacteria methylated mercury is actually harmful to protected? Mr. Remein as testified to the environmental pregnant women, lactating women, fetuses, and young children damage our area has already suffered and the real-life 10 in very small quantities. Mercury is also bio-accumulative. shortcomings of scientific modeling. Our water supply is 11 That means that the longer you live, and the larger you are, already polluted. Recent laws have prohibited the use of 12 the more a person will accumulate the mercury in their body. fertilizers and pesticides on residential lawns. We should 13 It's not just from fillings, but also from the fish we eat, not open the door. And make no mistake that given the high 14 from water we consume, and the occupations that people work return on investments of green cemeteries, this would be 15 at. All these will also increase the accumulation of more like opening a floodgate to an entirely unavoidable and 16 mercury in the body. new source of pollution in our drinking water watersheds. Let's see. We heard about dilution yesterday. One of The fact remains, Reflection Park is situated in a 18 the biggest sources of mercury is from mercury 18 drinking water watershed and residential neighborhood. The 19 bio-accumulated in the ocean by tuna and other large fish. plan is to bury between 8000 to over 10,000 bodies at a 20 In my mind I don't know how much more dilute something can density of 600 bodies per acre on 40 acres, assuming they 21 get that in the ocean, and still it's an issue. It has been will not permit body stacking, which has not been 22 estimated that up to 10 percent of American women are established. Reflection Park does not meet the criteria 23 childbearing -- of childbearing age carry enough mercury in developed by Baltimore County for location, size, or density 24 their bloodstream to put a developing child at increased of a green cemetery. 25 risk of developmental problems. We also see warnings of 25 Further, under oath in July, Reflection Park stated 444 1 eating tuna and large fish to pregnant and lactating women they plan a burial depth of 3-1/2 feet to 4 feet and due to the potential health risk to the child. groundcover of only 18 inches to 24 inches, which does not Dr. Dawson also used models to predict risk. Her meet criteria recommended by the World Health Organization 4 analogy was, as I recall, of a GPS to explain the use of and/or the Panama -- Pan American, I'm sorry, Health 5 modeling. She also mentioned that it has improved over the Organization, PAHO, of burial depth of 5 to 10 feet and 6 past 10 years, basically underscoring that the quality of a groundcover of 3 feet or a minimum distance from wells of 7 model is a function of the quality of the data that's 820 feet. 8 entered into the model. In this case a cemetery and her Personally, given my professional and personal 9 analysis, there is no data from green cemeteries. As much experience over the years, I find I'm more convinced by the 10 as the data is needed, in reality I question who's going to testimony of academics and volunteers. I'm now in fact more 11 volunteer to have their green cemetery tested to see if it's concerned that I was before the hearing of the potentially 12 polluting, which creates a problem. 12 catastrophic consequences posed by this cemetery. And I Weather forecasting is another example of modeling, and 13 more firmly convinced it poses an unacceptable level of risk 14 we all know how accurate that is. However, if the weather 14 to public health and welfare, especially that of pregnant 15 forecast is wrong, you get wet. If the modeling Dr. Dawson women, lactating women, young children, and fetuses, and 16 has used is wrong, even if the probability is small, the 16 that it should not be approved. 17 consequences to pregnant women, lactating women, and babies Thank you for your time and for allowing me to speak 18 can be catastrophic. I do not have the experience to and all the work, thought, and careful consideration that 19 evaluate her report. However, from professional experience, 19 has been put into this hearing.

20 I'm aware of the strategies used in the opposing arguments.

22 Applicant's disregard for public health and safety. This

23 seems to me to be a David and Goliath situation. In his

25 for the Stanford report that they mentioned yesterday.

I'm disappointed by what appears to me to be the

24 article reported that Dr. Dawson's company was paid \$35,000

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questions for Dr. Moore?

25 you for your testimony.

HEARING EXAMINER ROBESON-HANNAN: Thank you for your

21 testimony. Mr. Brown, she is not your witness, but you are

MR. BROWN: I have no questions other than to say thank

22 the -- going first in this hearing. Do you have any

449 DR. MOORE: You're welcome. HEARING EXAMINER ROBESON-HANNAN: Do you see a parcel HEARING EXAMINER ROBESON-HANNAN: Mr. Klein or Mr. C? No? DR. MOORE: No. Sullivan, do you have any questions? MR. KLEIN: Madam Hearing Examiner, I would defer to HEARING EXAMINER ROBESON-HANNAN: Do you see a P --Mr. Sullivan since most of Dr. Moore's comments are a little DR. MOORE: Yes, keep going. Go up, up. Go up. bit more scientific and technical in nature. And as you There. Okay, yes. So that's -see, he is the more expertise in the subject than I do. So HEARING EXAMINER ROBESON-HANNAN: So it's marked on --I will defer to Mr. Sullivan if he feels any crossgo ahead. examination questions are necessary. Thank you. DR. MOORE: So you move up. I guess move east now. I HEARING EXAMINER ROBESON-HANNAN: Well, I'm not taking 10 wish there was a way I could do this. So stop. Stop. No. 11 a position on Mr. Sullivan's expertise, okay? Go ahead Mr. 11 Okay. Go straight up. Okay. This is -- where you are 12 right now, the little hand keeps moving. That is Ednor MR. SULLIVAN: I just have one question. Thank you for 13 13 Park, which Camp Sonshine uses. And immediately next to 14 your time and testimony today, Dr. Moore. You had mentioned 14 that on the west side is Camp Sonshine. 15 the model that Dr. Dawson discussed yesterday. It's the 15 (Crosstalk) 16 Csoil model that's been the EPA approved model for 16 DR. MOORE: So that -- where your -- where the little 17 undertaking the type of assessment she did. Do you have any 17 white hand is right now --18 specific concerns about that model? HEARING EXAMINER ROBESON-HANNAN: Okay. Just is -- I'm DR. MOORE: Well, I have concerns about the quality of 19 pointing to a kind of green area west of Ednor -- or, I'm 20 the data, for one thing, that goes into the model. 20 sorry. Yeah, west of Ednor --21 HEARING EXAMINER ROBESON-HANNAN: I'm asking about the DR. MOORE: That's Ednor Park. 22 HEARING EXAMINER ROBESON-HANNAN: Okay. So is Camp 22 model itself, I'm sorry. The model itself, do you have any 23 concerns, specific concerns about that model? Not the data 23 Sonshine on this exhibit? 24 inputs, but the model itself. 24 DR. MOORE: Yes. So first thing, Camp Sonshine uses DR. MOORE: Frankly, I'm not qualified to evaluate 25 Ednor Park and it's right next to it. So if you bring the 448 450 1 that. And I don't have the money to get another hand back down, straight down, go straight down right now. hydrogeologist to give me an opinion on it. Okay. It's really -- okay. Move to the left. Keep going. So you're still on -- stop. All right. That is Camp MR. SULLIVAN: Thank you. I have no further questions. HEARING EXAMINER ROBESON-HANNAN: I've got -- I did Sonshine, that corner where you just moved. Stop, yeah. So have a question. Dr. Moore, I'm going to show you what's 5 that is -marked as Exhibit 12, which is the vicinity map. Do you see HEARING EXAMINER ROBESON-HANNAN: So that's marked -- I that? Is Camp Sonshine on this map? just need -- I'm just trying to identify it for the record. DR. MOORE: Yes. And that's marked as parcel -- okay. I'm trying to read it. HEARING EXAMINER ROBESON-HANNAN: Can you describe --Parcel D. Hold on. Parcel D, -- Living Word -- or parcel 10 and you can't say here, here, and here because the 10 D. 11 transcript doesn't know what it is, that is. But if north 11 DR. MOORE: Yeah, it's held --12 is up --12 HEARING EXAMINER ROBESON-HANNAN: It's part of this DR. MOORE: Yes, north, northwest. So you see the 13 parcel D. 14 first -- it's interesting, the shape of the cemetery 14 DR. MOORE: It's held at the Living Word Christian 15 property, I've heard it described as many different things 15 church. 16 of the last two days. I refer to it as a flag stem plot. 16 HEARING EXAMINER ROBESON-HANNAN: Okay. 17 HEARING EXAMINER ROBESON-HANNAN: Yeah. 17 DR. MOORE: Okay. 18 DR. MOORE: So at the -- on the flag part in the most 18 HEARING EXAMINER ROBESON-HANNAN: Gotcha. 19 left corner. DR. MOORE: So they use both their property and the 20 HEARING EXAMINER ROBESON-HANNAN: Okay. Left is --20 Ednor Park property. And that -- actually that corner that DR. MOORE: Yeah, go back down, from what I'm seeing 21 you were just at, that's where -- that part of the property, 22 now. If you can, pull the image down. So northwest. 22 or that area where the camp is, when I would pick my HEARING EXAMINER ROBESON-HANNAN: Okay. So it's grandson up when he was in the five-year-old program, he is 24 northwest. Would it be this --24 a little older now, that's what they would have the younger

25 kids actually, over in that area.

DR. MOORE: No.

HEARING EXAMINER ROBESON-HANNAN: Okay. I just wanted

- 2 to orient for the record where Camp Sonshine is.
- 3 DR. MOORE: Okay.
- 4 HEARING EXAMINER ROBESON-HANNAN: Do the parties have
- 5 any questions based on my question?
- MR. SULLIVAN: I do, Madam Hearing Examiner.
- 7 (Inaudible).
- 8 HEARING EXAMINER ROBESON-HANNAN: I'm sorry. I can
- 9 understand you. You do not?
- 10 MR. SULLIVAN: I do.
- 11 HEARING EXAMINER ROBESON-HANNAN: Oh, okay. Go ahead.
- MR. SULLIVAN: And I would ask if you could, to go to
- 13 Exhibit 97 that we discussed at length yesterday. And I
- 14 would pull up Exhibit Gwhich is at page 51 of 141 of the
- 15 PDF.
- 16 HEARING EXAMINER ROBESON-HANNAN: Okay. Just a second.
- 17 MR. SULLIVAN: Right there. And I would ask --
- 18 HEARING EXAMINER ROBESON-HANNAN: Okay. Go ahead.
- 19 MR. SULLIVAN: Yeah, thank you. Dr. Moore, can you --
- 20 on this map can you --
- 21 And can we maybe increase it a little bit?
- 22 So Dr. Moore, on this map can you identify where Camp
- 23 Sonshine is?
- 24 DR. MOORE: Sure. Well again, it's a little -- I mean,
- 25 if you look at the lot or at the flag, and you know, it's

- 1 Dr. Dawson had determined when she created this
- 2 potentiometric map. It appears to me that --
- BR. MOORE: (Inaudible) groundwater.
 - MR. SULLIVAN: Yeah. It appears to me that Ednor Park
- 5 or Camp Sonshine is -- if it were surface water, we would
- 6 call it upstream. But with groundwater we would call it up
- 7 gradient from the proposed cemetery location. Would you
- agree with that?
- 9 DR. MOORE: Well actually, if you go to Figure E --
- 10 MR. SULLIVAN: Well based --
- 11 DR. MOORE: If you --
- 12 MR. SULLIVAN: On this map right now. We can go to --
- 13 weekend -- I'm talking about this map here.
- 14 DR. MOORE: Yeah, this -- no. As far as I can see,
- 15 this map is not showing elevations. Because one of the
- 16 things that happened that I noticed yesterday --
- 17 MR. SULLIVAN: I'm sorry --
- 18 (Crosstalk)
- 19 DR. MOORE: Was that it actually went down. I thought
- 20 it was higher.

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- 21 MR. SULLIVAN: I'm asking about this figure. This
- 22 figure shows that Ednor Park and Camp Sonshine would be up
- 23 gradient of the groundwater flow that Dr. Dawson determined
- 24 in this figure, correct?
- DR. MOORE: No. I don't see how that shows that. I

1 the bottom being the pole of the flag and the top part being

- 2 the flag, right? And you go to the -- let's see -- the
- 3 first corner on the left of the extended out flag part.
- 4 MR. SULLIVAN: Is it near where that circle is right
- 5 there? Or the oval? Not a circle. The oval right there?
- 6 DR. MOORE: Yup. So (inaudible). All right. So it
- 7 abuts --
- 8 HEARING EXAMINER ROBESON-HANNAN: (Inaudible)
- 9 interrupt. Just stop. The oval that is being referred to
- 10 is near a marking called 480, just for the record. Go
- 11 ahead.
- DR. MOORE: Yes. So on the -- so along the red line,
- 13 north of the red line is -- you know, up until -- I guess
- 14 approximately where that TP-14 might be.
- 15 MR. SULLIVAN: Okay. Do you recall the discussion of
- 16 this figure yesterday?
- 17 DR. MOORE: Was that a borehole or --
- 18 MR. SULLIVAN: Well, the figure itself is --
- 19 DR. MOORE: Oh, yeah. In terms of the flow of water?
- 20 MR. SULLIVAN: The groundwater to --
- 21 DR. MOORE: Underground water, yes.
- 22 MR. SULLIVAN: All right. So is it -- the blue lines
- 23 are showing the groundwater flow, correct?
- 24 DR. MOORE: Correct.
- 25 MR. SULLIVAN: The direction of groundwater flow that

- 1 mean, it's just showing the underground water flow. And I
- 2 don't know the direction of the things that essentially sort
- 3 of go from Northwestern to Northeast.
- 4 MR. SULLIVAN: So I'm just trying --
- 5 DR. MOORE: -- the blue lines.
- 6 MR. SULLIVAN: Do you see a line where it says, it
- 7 looks like SB-1 coming off of the oval that we discussed
- 8 that is near a marking that says 480? Do you see that?
- 9 There is a line that goes across the screen.
- 10 DR. MOORE: Yes.
- 11 MR. SULLIVAN: Do you see that?
- 12 DR. MOORE: Yes.
- 13 MR. SULLIVAN: And do you see -- if you follow that
- 14 line to the east, right near marking that says TP-25. And
- 15 there appears to be an arrow there. Do you see that?
- 16 DR. MOORE: I do see that.
- MR. SULLIVAN: So then does this figure not represent
- 18 that from SP-1 across to SP-25, the groundwater in that area
- 19 flows --
- 20 DR. MOORE: Well, what are the other -- what are the
- 21 lines that transect it represent?
- MR. SULLIVAN: That's what I'm saying. That line there
- 23 with the arrow on it is showing the direction of groundwater
- 24 flow.
- 25 DR. MOORE: Under groundwater flow.

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455 457 MR. SULLIVAN: Yes. Yes, under groundwater flow, 1 under groundwater flow. MR. SULLIVAN: Okay, thank you. And then there is 2 correct. Yes, do you see that? DR. MOORE: But are you saying though -- are you also another line that is north of that, it looks like on the saying that none of this property, this flow goes into the figure. And I'm going to try to orient that to you where underground, into that stream that is north? there is a dot that says TP-14. And then this line appears HEARING EXAMINER ROBESON-HANNAN: You must stop. to be curved a bit, and ends where there is a point where MR. SULLIVAN: I just lost the picture. the cursor is right now. And that would be up near, it HEARING EXAMINER ROBESON-HANNAN: Now I -- you -- this looks like one of the Ednor tributaries. Do you see that? is a -- I don't know if this is Microsoft Teams or what, but DR. MOORE: Yes. 10 I just -- this happens too much. So both of you --10 MR. SULLIVAN: Okay. Do you have an understanding of 11 DR. MOORE: (Inaudible). 11 what that line means? DR. MOORE: Yes. Underground water flow. HEARING EXAMINER ROBESON-HANNAN: Both of you stop. 13 Now, because I can't run the hearing if you continue to talk MR. SULLIVAN: Okay. Thank you. And then, can we 13 14 scroll so we can see the -- Madam Hearing Examiner, to see 14 like that, over me asking you to stop. Mr. Sullivan, you are stating facts without a question. 15 the key at the bottom of this? And so do you see Dr. Moore, down at the bottom in the 16 MR. SULLIVAN: I will stop. 17 HEARING EXAMINER ROBESON-HANNAN: And it's been a while 17 legend, there's a marking that says future burial locations; 18 since I said stop. Both parties please, when I try to 18 do you see that? 19 interrupt, I'm not going to raise my hand. Take a deep 19 DR. MOORE: Yes. 20 breath and let me interrupt. I wanted to stop Mr. Sullivan 20 MR. SULLIVAN: And do you see that there's a light pink 21 because he was essentially testifying without a -- there was 21 shading next to it? 22 a question there. 2.2. DR. MOORE: Yes. 23 So Mr. Sullivan, I apologize for interrupting. I know 23 MR. SULLIVAN: Okay. And so -- now if we can just pick 24 this is important to everybody. 24 the legend out and go back so we can see the whole property? I apologize for interrupting to you too, Dr. Moore. 25 Thank you. 456 458 Now please, if I try to jump in, please stop. Mr. Do you see where those light pink shadings are on 1 Sullivan, if you can remember your question after that, can the -- within the proposed boundary of the cemetery? 3 you say it in the form of a question? DR. MOORE: Yes. MR. SULLIVAN: It was -- I -- what I was -- thank you 4 MR. SULLIVAN: Okay. And do you see that the pink 5 Madam Hearing Examiner. I was trying to ensure that we were shadings -- do you see any pink shadings at the corner of 6 looking at the same line before asking the question. And the property -- do you see any pink shadings adjacent to now I can't see the figure right now. So it's hard to know. Ednor Park? 8 Okay, there we go. 8 DR. MOORE: Adjacent to Ednor Park, yes. HEARING EXAMINER ROBESON-HANNAN: You should be able to 9 MR. SULLIVAN: Where is that? Can you show us on the MR. SULLIVAN: Yes, thank you. So I'm just trying -- I 10 figure where you can see that? 11 12 was trying to orient us to ensure that we were looking at DR. MOORE: Well, let me describe it. Do you see where 11 13 the same line I was looking at. And that line begins at --12 TP-20 is? 14 near where there is a marking, SP-1 and appears to go to MR. SULLIVAN: Yes. 13 15 where there is a marking that says TP-25. And I was going 14 DR. MOORE: All right. And then, you know, immediately 16 as Dr. Moore if she sees that line. 15 to the left there is, I don't know we'll call it a little So Dr. Moore, do you see that line? 16 foot of the pink shading? 18 DR. MOORE: Yes. 17 MR. SULLIVAN: Okay. That's --MR. SULLIVAN: And do you see the arrow on that -- what 18 DR. MOORE: And then --20 appears to be an arrow on that line just above the marking 19 MR. SULLIVAN: Go ahead. 21 that says TP-25? 22 20 DR. MOORE: -- just on the other side of the red line DR. MOORE: Yes.

25

21 is Ednor Park.

24 boundary?

DR. MOORE: No.

MR. SULLIVAN: Okay. And the proposed shading it

23 doesn't touch the red line though, does it? The property

MR. SULLIVAN: Okay. So do you have any understanding

DR. MOORE: That that is referring to, at that place,

24 as to what that line means?

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MR. SULLIVAN: So it's fair to say that it's set back

2 some distance from the property boundary, correct?

3 DR. MOORE: Some distance, uh-huh.

4 MR. SULLIVAN: Thank you. I have no further questions.

HEARING EXAMINER ROBESON-HANNAN: Mr. Brown, do you

6 have any questions based on those questions?

7 MR. BROWN: No questions.

8 HEARING EXAMINER ROBESON-HANNAN: Okay. Dr. Moore,

9 thank you very much for your participation. And you can be

10 excused as a witness, but you're welcome to stay on for the

11 rest of the hearing.

12 DR. MOORE: Thank you for the opportunities.

13 HEARING EXAMINER ROBESON-HANNAN: All right. Now, can

14 we -- does anyone have anything else? Is there anyone in

15 the -- on this hearing that would like to testify? That

16 hasn't -- not represented by Mr. Brown or Mr. Kline?

17 Okay. Seeing none, hearing none, cleanup matters.

18 What I'm planning to do is refer this to WSSC and DEP.

19 I will get any questions -- I have to absorb some of the

20 testimony, but it's -- I'm going to get the questions out

21 very quickly to WSSC and DEP. I will give them three weeks

22 unless they disagree with that or they need more time. Is

23 there any other -- are there any other wrap-up matters?

MR. BROWN: Ms. Robson, you asked me yesterday whether

25 or not we had any rebuttal witnesses and I said I would

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answer that question as well as the question about closing

2 argument this morning.

HEARING EXAMINER ROBESON-HANNAN: Yes, that's correct.

MR. KLINE: I conferred with my clients. We have no

5 rebuttal witnesses.

6 HEARING EXAMINER ROBESON-HANNAN: Okay.

MR. KLINE: However, I do want to report to you that,

8 notwithstanding the long length of this hearing, we have

9 prepared a short closing argument that I would like to

10 deliver this morning. My guess would be it's going to run

11 somewhere in the neighborhood of 10 minutes.

2 HEARING EXAMINER ROBESON-HANNAN: That's fine. What is

13 10 minutes in 3 days?

MR. BROWN: There you go.

15 HEARING EXAMINER ROBESON-HANNAN: Mr. Kline, do you

16 have a closing argument that you would like to give? Or Mr.

17 Sullivan?

MR. KLINE: The answer would be yes, we'll reserve that

19 right. I guess I would like to hear what Mr. Brown has to

20 say first. But we, yesterday, thought maybe it was

21 exhaustive factor yesterday. But I think we will reserve

22 that right, and I can think you can assume we probably will

23 want to say something.

24 HEARING EXAMINER ROBESON-HANNAN: All right. Anything

25 else? Okay. Hearing nothing, or none, Dr. Brown -- there's

1 a lot of doctors in this case. I apologize. Mr. Brown, why

2 don't you go ahead?

MR. BROWN: Thank you, Hearing Examiner Robeson. I

want to start with a little bit of an off-script aside and

relate a story to you.

When I was first retained on this matter my clients

were concerned about whether I should, in addition, to

8 asking for a remand ask that the matter be assigned to

9 another hearing examiner. They were concerned that you

10 might have a closed mind about this on account of the fact

11 that you had already issued a ruling on this. I told them

12 that that is a very legitimate concern because in my

13 experience it's sometimes difficult for government

14 officials, once they have pronounced something to open their

15 mind up to possible change.

6 But I also told them that I had really no worries about

17 that concern in this particular case, with this particular

18 hearing examiner. And, in fact, I told them that my

19 preference would be that it stay with her because some other

20 hearing examiner might feel obliged to give undue deference

21 to her earlier opinion on this matter without giving it a

22 fresh look.

23 I'm very happy to say that I feel that my clients

24 concern has been -- their initial concern was completely

25 unfounded by the way that you have conducted this hearing in

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a fair and open matter. And not only has that been great

2 for the public confidence in the process, but also

3 vindicated my advice to my clients so we're very thankful

4 for that. And with that, I would like to go on to briefly

5 explain to you why with a fresh look at this case you should

6 conclude that the application should be denied.

You've heard a lot of technical, scientific testimony

8 in this case. From the Applicants' side you have well-

9 orchestrated presentations by paid experts who know how to

10 ably present a story of minimized risks that their clients'

11 intended activity presents to the health, safety, and

12 welfare of the nearby citizenry. And they did quite a job

13 of that.

14 My clients had barely had the resources to recruit

15 witnesses on a volunteer basis to counter this. Those

16 witnesses had to be genuinely concerned enough to volunteer

17 their time, which they did for the entire day we presented

18 our case, and for months before that. In presentation

19 points the Applicants scored better than we did, and

20 certainly some concerns you might have had about locating a

21 green burial cemetery this close to the Rocky Gorge

22 Reservoir were addressed.

23 In particular, the Applicant demonstrated that their

24 computer modeling showed that perhaps much of the leachate

25 from the green burial bodies would be absorbed, or

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neutralized, in the soil before it got to the surface

2 streams and the Rocky Gorge Reservoir. Reasonable minds can

3 differ, and we did differ, on whether the inputs to that

computer model were really as conservative as they claim.

But perhaps those were not dispositive issues.

But you also heard, in detail, about the new rules of

the road for green and natural cemeteries in Baltimore

County, a place whose climate, soil, water, and land

development in many places is similar to this, the Cloverly

10 area of Montgomery County. We did this, not to claim that

11 this case should be controlled by Baltimore County zoning

12 regulations, but primarily to underscore the seriousness

13 with which a nearby sister county in Maryland is taking up

14 the question of where green burial cemeteries should be

15 located.

We think if you look at those new regulations you will

17 come away convinced that all else equal, this application

18 will almost certainly be denied if the land at issue here

19 were located in Baltimore County. But of course, we're not

20 in Baltimore County, we are in Montgomery County. And the

21 Baltimore County rules do not directly apply.

What does apply in Montgomery County is a much less

23 specific, yet all encompassing provision applicable to

24 cemeteries of any type. Section 59.3.5.4.8.2(a) states for

25 cemeteries, quote; the proposed location must be compatible

with adjacent land uses and will not adversely affect the 2 public health, safety, and welfare of the inhabitants of the

area.

This statutory language is somewhat open ended when it

comes to deciding what constitutes an adverse effect on

public health and safety to the local inhabitants. The one

thing about the wording of this provision is unmistakably

8 clear. It is up to the Applicant to demonstrate that there

9 is no adverse effect. It is not up to concerned inhabitants

10 of the area to demonstrate that there is an absence of an

11 adverse effect, or that there is an adverse effect.

I submit that the sensible way for you to administer

13 this provision is, in the first instance, to accept an

14 applicant's generalized presentation of compliance in the

15 absence of some cogent evidence presented in the course of

16 the case by the inhabitants of the area that there would be

17 a public health or safety problem. PWPA certainly has met

18 any obligation it had to present a cogent issue of public

19 health and safety in this case.

At that point, the burden shifts back to the Applicant

21 to demonstrate that there is no adverse effect on public

22 health and safety. In other words, unless and until

23 Montgomery County spells out in greater detail, like

24 Baltimore County has done, what is necessary for an adequate

25 showing of no adverse effect you should use the Montgomery

County provision as a shorthand description of your

authority, if not obligation, to take into account the same

public health and safety considerations that Baltimore

County has addressed with greater precision.

Now, let me turn to the substance of that issue. We

ask you to carefully consider first and foremost, the

secondhand therapies both inorganic chemotherapies and

hormone therapies described by Dr. O'Keefe and Dr.

Mullowney. They testified that many of these agents are

10 very dangerous even in microscopic amounts, do not readily

11 biodegrade in the ground, cannot be removed by water

12 treatment plants, will be taken downhill by gravity, have

13 long half-lives, some extending to multiple months, and

14 survived to affect innocent, unsuspecting people including

15 children, infants, and fetuses still in their mother's wombs

16 with devastating consequences.

Some of these chemicals are toxic enough in small

18 quantities that they are not allowed in trash headed to a

19 landfill. Yet burying bodies containing them in the ground

20 is exactly what a green cemetery does in a non-trivial

21 number of cadavers. Baltimore County recognizes that this

22 can be done in some locations but not all. The same is true

23 in Montgomery County.

Now, the Applicants' witnesses argued that few bodies

25 laden with these drugs and secondhand therapies, they seem

464 to accept 2 percent as a percentage, will get into the

cemetery. And of those few which do, very little will

escape the 4 to 6 feet of dirt below the graves. This

ignores the testimony of our witnesses that these drugs and

chemicals do not readily biodegrade along their journey from

grave to reservoir whatever the time it takes.

In the same vein, the Applicants' witnesses fault our

experts for failing to do a site specific analysis

documenting their concerns. Well, it's true, they did not

10 do this sort of computer model that Dr. Dawson did, but they

11 did know this about the site; it was uphill from the Rocky

12 Gorge Reservoir, less than 2 miles away on land that

13 includes streams that drain directly into the reservoir.

More detailed information about soil conditions, depth

15 of groundwater, and the like, would surely affect the

16 calculations on how long it would take for toxic, non-

17 biodegradable chemicals to reach the reservoir. But the

18 time of such arrival is simply irrelevant. Sooner or later,

19 these chemicals will reach the drinking water supply.

20 So the Applicant has a convenient backup argument. If

21 any of these chemicals do actually enter the \$5 billion --

22 I'm sorry, 5 billion gallon Rocky Gorge Reservoir, the size

23 of that body of water will safely dilute it. This is

24 asserted, not demonstrated. In the end, you should ask

25 yourself, if this green burial cemetery in this location is

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as risk-free as the Applicant would like you to believe, why

2 has Baltimore County concluded that green burial cemeteries 2

- 3 so proximate to a major public drinking water supply would,
- 4 literally mayor act and on the amount? The Applicant and
- 4 literally, never get under the ground? The Applicant and
- 5 that the application should be denied.
- Finally, I have to make a point or two about something
- 7 I am very reluctant to mention, for fear it will sound like
- 8 a concession to application approval. We are, by no means,
- 9 conceding, but I would be remiss if I did not address what
- 10 needs to be done if you nevertheless decide to approve the 11 application.
- 12 First, the removal and replanting of trees in the
- 13 actual burial areas should be closely regulated for the
- 14 foreseeable future of the cemetery so as to continuously
- 15 maximize the forest cover. Once forest cover is removed so
- 16 that new gravesites can be developed, then, upon fulfilling
- 17 that purpose they should be reforested with diverse
- 18 hardwoods at a scale comparable to the Applicant's original
- 19 submission to the Planning Board.
- You can see the scope of forest devastation allowed by
- 21 the Planning Board; over 25 acres in sheet L-8.01 of the
- 22 approved preliminary forest conservation plan. But the
- 23 landscape plan sheet L-2.04 shows how and where the new
- 24 hardwoods are to be interspersed with the gravesites. It is
- 25 critical that this aspect of future cemetery operations be
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- 1 addressed here and now, in the proper form for it to be
- 2 spelled out. The second point, given that the approval
- 3 would place great faith, we say undue faith, in the
- 4 Applicants' Computer modeling, there should be an on-going
- 5 reality check. Monitoring wells should be placed and
- 6 operated within, and around the cemetery to provide
- 7 continuous evidence of the presence or absence of bio
- 8 contamination, or cytotoxic hormonal pollutants.
- Thanks very much.
- 10 HEARING EXAMINER ROBESON-HANNAN: Mr. Brown, I'm just
- 11 writing that last point.
- 12 Mr. Kline, or Mr. Sullivan, do you have a closing
- 13 point?
- MR. KLINE: I would like to make some comments, and I
- 15 guess I would like to ask for the luxury of having Mr.
- 16 Sullivan maybe address some of the more technical,
- 17 scientific should I not be able to accurately address them;
- 18 if you don't mind?
- 19 HEARING EXAMINER ROBESON-HANNAN: No, that's fine.
- 20 MR. KLINE: Thank you very much. Because I think --
- 21 you know my style and basically that is, you know, for three
- 22 days I have been living with this opinion of the Board of
- 23 Appeals basically directing us to what we should be
- 24 studying, and it's relevant that our study is to be on the
- 25 potential impact of necro-leachate on the groundwater, the

- 1 reservoir, and the Patuxent watershed. And for three days,
- 2 well, 2-1/2 days I guess you would say, that's what we have
- 3 clearly dug into. And I have been leaving this building
- 4 every night telling people I'm getting a graduate course in
- 5 water contamination and microbiology at the level we're
- dealing with.
- 7 So there's no question that the remand precipitated a
- 8 level of science and research that I've never had in a
- 9 zoning case before. So I think it's absolutely clear that
- 10 you have before you the evidence you need in order to make a
- 11 decision as compared to Dr. Morris's feeling that our
- 12 decision didn't have that foundation. What you had is, in
- 13 our case, Dr. Dawson and Dr. Pleyas giving you both reports,
- 14 twice I might add, twice. And then how many, maybe seven or
- 15 eight hours of testimony in what I thought were just
- 16 fantastically detailed and thorough, and analyzed based on
- 17 solid, professional standards and advice.
- 18 So what you ended up with were expert reports and
- 19 testimony that were, and I will stress the same term that
- 20 Mr. Brown used, site specific. They were based on the
- 21 evidence in the quote, industry, if you could use that
- 22 phrase, or the science itself. They were site specific and
- 23 they were thoroughly discussed and presented scientific
- 24 assessments about what happens when the human body basically
- 25 deteriorates through the process.

..

- 1 We tried to emphasize that you did have information, on
- 2 the other side, although I might classifies it as more scare
- 3 information that it was technically supportive --
- 4 supportable. But they were blanket generalizations that
- 5 that basically said, if any microbe that gets a mile or two
- 6 away to the reservoir is potentially fatal. And we have a
- 7 tremendous amount of testimony explaining why that is one,
- 8 not possible because of the transmission or the
- 9 transmissivity, and then secondly, the dilution factor as
- 10 well.
- 11 But it was, nevertheless, from my point of view, and I
- 12 hope from yours as well very compelling, very well based
- 13 scientific evidence, confirming that the record shows an
- 14 overwhelming amount of evidence that there would be no
- 15 adverse impact by Reflection Park on the water features in
- 16 the surrounding area.
- 17 I keep hearing that Baltimore County should be a mentor
- 18 for Montgomery County, or at least a lesson for us. But
- 19 when you take a look at the materials that we submitted to
- 20 you about Montgomery County -- I'm sorry, Baltimore County,
- 21 when you take a look at what's the purpose clause of the RC4
- 22 zone, it's basically to protect the water reservoirs. Do
- 23 you know how -- the only way you can get classified as an
- 24 RC4 property in Baltimore County? It's to be located within
- 25 200 feet of the reservoir itself.

471 473 That doesn't happen in this situation. We are at least thing that you think should be addressed before I adjourn the hearing? 1.7 miles away, and depending on different parts of the MR. KLINE: I'm sorry, have we moved for entry of all 3 reservoir, even greater. So what Baltimore County thought, the documents into the record so everything is incorporated? in part, was important. And what they defined as being HEARING EXAMINER ROBESON-HANNAN: Thank you, Mr. Kline. 5 proximate was within 200 feet of the reservoir, and we are Yes, I will accept everything in the record except for the 6 nowhere close to that. And you heard all the evidence about statement -- or the submission by Dr. Desmond Brown. And what happens from the moment whenever the necro-leachate is that will be excluded. leaving the body until it gets to a water form what happens MR. BROWN: I think, but I am not completely positive in that timeframe, both in terms of elimination and 10 that you have -- you may or may not have legible copies of 10 dilution. 11 the two documents that are referred to at the close of my So I would say that with regard to the evidence it was 11 argument. They are part of the full-size documents that are in the Planning Board development activity website. But 12 conclusively and compellingly demonstrated through very they -- you know it's very difficult to download them on a 13 strong scientific evidence that the proposal will have no computer and read them legibly, but I would just like to 14 effect, adverse effect, on the water features in the request that those two documents the Applicant provide 15 surrounding area. legible copies of them for the record. Mr. Remein said that he was impressed by the level of HEARING EXAMINER ROBESON-HANNAN: Which are the two 17 effort on both sides of trying to basically address the 19 documents you're speaking of? 18 issues to solve the problem. And I believe as it relates to MR. BROWN: One of them is sheet L-8.01 from the 19 what Mr. Brown basically commented, in terms of additional preliminary conservation -- preliminary forest conservation 20 conditions that you should be considering, as we indicated 22 plan package, and the other one is sheet L-2 from the 21 yesterday, the Applicant is prepared through the process he landscape plan, L-2.04. HEARING EXAMINER ROBESON-HANNAN: Well, they may be in 22 has yet to go through to work with the community to come up 25 the -- if you can just hold on, they may already be in the 23 with solutions to be able to deliver what they view as being 24 the appropriate -- well, not the appropriate, what they want 25 their -- what their mission is to accomplish and what they 472 474 want this to look like, and function, and have no adverse environment impact. MR. BROWN: That's what I'm hoping. HEARING EXAMINER ROBESON-HANNAN: I have to move to a So you, in the end, you have an overwhelming body of evidence, site specific with great detail on this subject different -- I apologize, my Adobe Pro is -that overwhelms anything that you've heard to the contrary 5 MR. KLINE: If they do exist they would be Exhibit 38, which was amended plans, I don't have a date for that. I in terms of what might happen on a speculative basis. So that having been said, that concludes my comments. Maybe Mr. Sullivan would like to say something about the more HEARING EXAMINER ROBESON-HANNAN: I -- yeah, I'm familiar with that. So let me -scientific related matters. HEARING EXAMINER ROBESON-HANNAN: Mr. Sullivan? 10 10 MR. KLINE: So 38-Q is the landscape west, L-2.02. And MR. SULLIVAN: I think Mr. Kline covered things pretty 11 38-I is the overall FCP, L-8.01. 11 12 wall, and I don't really have anything to add to that. I 12 HEARING EXAMINER ROBESON-HANNAN: Right. 13 think you might be pleased to hear that. 13 MR. KLINE: So the materials are in the record, Mr. HEARING EXAMINER ROBESON-HANNAN: Okay. Since the --14 Brown. 15 in the order of proceeding, Mr. Brown, do you have any 15 MR. BROWN: Thank you. HEARING EXAMINER ROBESON-HANNAN: And I do see them. 16 rebuttal closing statements? 16 17 MR. BROWN: I would just ask that you take a close look 17 So they are in the record. 18 at the Baltimore County regulations and decide for yourself 18 Anything else? 19 MR. BROWN: Appreciate it. 19 whether or not this is a comparable situation to those where 20 burial cemeteries of this type are not allowed. That's all. 20 HEARING EXAMINER ROBESON-HANNAN: All right. Hearing HEARING EXAMINER ROBESON-HANNAN: All right. I want to 21 nothing --22 say thank you to all the parties, all of them for their time 22 MR. KLINE: Thank you for your patience. 23 and effort and education and presentations. It is an 23 HEARING EXAMINER ROBESON-HANNAN: -- I'm going to 24 important issue and I appreciate everyone's time. Okay. So 24 adjourn this hearing. And leave the record open. I will 25 now, we get to -- are we at the final -- is there any other 25 be -- you will be copied on every communication with DEP and

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14 15 16 17 18 19 20 21 22 23	WSSC and all of the parties will be copied so you're fully aware of the communication. And I did have this very short response to whether Mr. Buglass – someday I have to learn how to pronounce that. I told him I did not think this would go into tomorrow. So I will put that in the record with copies to the parties. So we're going to leave the record open. Right now, I will try and get any questions I have out by Friday, all right, which would be the 15th. And that means that I'm going to ask WSS – the two government agencies whether they are able to respond by May 6th. Now, do the parties wish to have time to respond to the two government agencies recommendations? MR. KLINE: The answer is yes, we should. We did before although when – the first time around there were no comments at all, but we would like to reserve the opportunity to respond. HEARING EXAMINER ROBESON-HANNAN: I understand. We did do that last time. MR. KLINE: All right. HEARING EXAMINER ROBESON-HANNAN: Mr. Brown, do you feel the same? MR. BROWN: Anytime Mr. Klein is given an opportunity to respond, I would like one. HEARING EXAMINER ROBESON-HANNAN: Okay. So how long do 476 you think you need to respond? MR. KLINE: Well, we'll all be sitting on the edge of our chairs waiting to get this, so I would say a week would be more than adequate. HEARING EXAMINER ROBESON-HANNAN: Mr. Brown, that would be 5/13. MR. BROWN: That's fine.	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 1 2 3 4 5 6 7	other than thank you for your patience and your endurance. HEARING EXAMINER ROBESON-HANNAN: Well, we all endured. So Mr. Brown, any further anything else? MR. BROWN: No. We look forward to your fresh appraisal of the record. HEARING EXAMINER ROBESON-HANNAN: It will be fresh. There's a lot to chew on, on this one. Okay. I do appreciate your presentations and I will with that I'm going to adjourn the hearing and leave the record open as described. All right. Thank you. (The recording was concluded 10:38 a.m.) 478 CERTIFICATE OF TRANSCRIBER I, Molly Bugher, 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 as provided; and that I am neither counsel for, related to, nor employed by			
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3	our chairs waiting to get this, so I would say a week would					
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7	MR. BROWN: That's fine. HEARING EXAMINER ROBESON-HANNAN: Okay. So we will	7	and of the parties to this case and have no interest,			
8	hopefully close the record and I do want to make one	8	financial or otherwise, in its outcome.			
10	thing clear to everyone, the record is not open right now	9	•			
11	for additional comments or testimony from outside. The only	10				
12	thing the record is open for is to receive the transcript	11				
13	which should be coming beginning from April 10 days from	12	711 00 112 11			
14	April 12th. So it's open to receive the transcript. It's		Molly Bugher			
15	open only to receive agency comments and responses to the		Date: April 25, 2022			
16	agency comments.	15				
17	But it's not open for other reasons and we will not	16				
18	accept submissions any submissions relating to traffic or even environmental things. This was the time to get that in	17				
19 20	there, and we did have I do want to thank the citizens	18				
21	that came and so it will only be open for the limited	19				
22	purpose of receiving the transcript, receiving the agency	20				
23	comments, and receiving the responses to the agency	21				
24	comments. All right.	22				
25	MR. KLINE: No. No further comments from the Applicant	23				
1		24				
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