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Transcript of Hearing

Date: November 6, 2025

Case: Notley Road

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Transcript of Hearing
Conducted on November 6, 2025

1 (1 to 4)

1	3
1 M A R Y L A N D:	1 A P P E A R A N C E S
2 IN THE MONTGOMERY COUNTY OFFICE OF ZONING AND	2
3 ADMINISTRATIVE HEARINGS	3 ON BEHALF OF APPLICANT:
4 -----X	4 ELIZABETH ROGERS, ESQUIRE
5 In re NOTLEY ROAD :	5 ERIN E. GIRARD, ESQUIRE
6 : Case No.: H-159	6 Lerch, Early & Brewer
7 :	7 7600 Wisconsin Avenue, Suite 700
8 :	8 Bethesda, MD 20814
9 :	9
10 -----X	10 ON BEHALF OF WITNESS:
11	11 MICHELE ROSENFELD, ESQUIRE
12 HEARING	12 The Law Office of Michele Rosenfeld, LLC
13 BEFORE HEARING EXAMINER KHANDIKILE SOKONI	13 1 Research Court, Suite 450
14 Rockville, Maryland	14 Rockville, MD 20850
15 Thursday, November 06, 2025	15 (301) 204-0913
16 9:33 a.m.	16
17	17 HEARING EXAMINER:
18	18 KHANDIKILE SOKONI
19	19 Montgomery County Office of Zoning and
20	20 Administrative Hearings
21	21 County Office Building
22 Job No: 607808	22 100 Maryland Ave, Room 200
23 Pages: 1 - 335	23 Rockville, MD 20850
24 Recorded by: Jamie Ogihara, CER	24 (240) 777-6660
25 Transcribed by: Deborah S. Anderson, CET-998	25
2	4
1 Hearing, held mixed-remote:	1 A P P E A R A N C E S (Cont'd)
2	2
3	3 ALSO APPEARING:
4	4 Candace Anderson, Community Member, via Zoom
5	5 Laura Boerum, Community Member, via Zoom
6 Montgomery County Office of Zoning and	6 Alison Canning, Community Member, via Zoom
7 Administrative Hearings	7 Francis Choi, Community Member, via Zoom
8 County Office Building	8 Patrick Corey, Community Member
9 100 Maryland Ave, Room 200	9 Toni Deboeck, Community Member, via Zoom
10 Rockville, MD 20850	10 Christina Eaglin, Community Member, via Zoom
11	11 Lisa Edwards, Community Member, via Zoom
12	12 Wendy Fleit, Community Member
13	13 Ed French, Community Member
14	14 Greg Golden, Community Member, via Zoom
15 Pursuant to agreement, before Jamie Ogihara,	15 Debra Gonski, Community Member
16 Notary Public in and for the State of Maryland.	16 Austin Holloway-Jones, Community Member, via Zoom
17	17 Stephanie Helsing, President, Greater Silver Spring
18	18 Chamber of Commerce, via Zoom
19	19 Destiny Igiebor, Community Member, via Zoom
20	20 Logan B. Kelso, PE, Witness
21	21 Ivonne Lindey, Community Member, via Zoom
22	22 Ayana Machen, Community Member, via Zoom
23	23 Oscar Navarrete, Community Member, via Zoom
24	24 Sylviane Nguyen, Community Member, via Zoom
25	25 Keith Nusbaum, Pro Se Opposition

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2 (5 to 8)

5	7
1 A P P E A R A N C E S (Cont'd)	1 E X H I B I T S
2 Heidi Otradovec, Community Member, via Zoom	2 (Retained by the Hearing Examiner)
3 Regina Ottaviani, Community Member, via Zoom	3 APPLICANT'S PAGE
4 Dung Phan, Community Member, via Zoom	4 Exhibit 01 through 37 and 39 through 72 54
5 Hong Phan, Community Member, via Zoom	5 Exhibit 48 Circulation Plan for Traffic 254
6 Gayle Rankine, Community Member, via Zoom	6 Exhibit 70-B Amendment to Floating Zone Plan 116
7 Reena Shah, Community Member, via Zoom	7 Exhibit 73 Email 11/3/25 Hearing Examiner to
8 Kyle Smiddie, Community Member	8 Parties 55
9 Joshua 'Josh' Sloan, Witness	9 Exhibit 74 Full-Size Aerial View w/ Boundary 138
10 Ernesto Torres, Community Member, via Zoom	10 Exhibit 75 Full-Size Height Comparison 149
11 James Touhey, Community Member	11 Exhibit 76 Prerequisite Analysis 208
12 Danielle Turnipseed, Community Member, via Zoom	12 Exhibit 77 Full-Size Green Cover Exhibit 237
13 Katie Wagner, Witness	13 Exhibit 78 Illustration of Canopy Coverage 313
14 Natalie Walker, Community Member	14
15 Dan Wilhelm, President, Greater Colesville Citizens	15
16 Association	16
17	17
18	18
19	19
20	20
21	21
22	22
23	23
24	24
25	25

6	8
1 C O N T E N T S	1 P R O C E E D I N G S
2 PAGE	2 HEARING EXAMINER SOKONI: Good morning,
3 Opening Statements	3 everybody. This is application for Local Map
4 By Ms. Rogers (Notley Assemblage) 84	4 Amendment case number H-159. The Applicant is
5 By Ms. Rosenfeld (GCCA) 89	5 Notley Assemblage, LLC.
6 By Mr. Nusbaum (Party of Record) 93	6 I just want to do a check with the Zoom.
7 Applicant's Witnesses:	7 Are we good? Do we have folks on Zoom? We have a
8 JOSHUA SLOAN	8 sound check, and everything's working? Thank you
9 Direct Examination (Rogers) 104	9 very much.
10 Cross-Examination (Nusbaum) 253	10 All right. I will open the hearing now.
11 Cross-Examination (Rosenfeld) 274	11 This is a public hearing of the application in LMA
12 Redirect Examination (Rogers) 308	12 case number H-159.
13 Cross-Examination (Walker) 319	13 The application is amended for a Local
14 Cross-Examination (Corey) 320	14 Map Amendment submitted by the Applicant, Notley
15 Further Redirect Examination (Rogers) 321	15 Assemblage, LLC. The Local Map Amendment proposes
16 Further Direct Examination (Rogers) 328	16 to change the zoning of the subject property from
17	17 the present classification of R-2 -- of the R-200
18	18 zone to CRNF 1.0, C-0.0, R-1.0 with a height of 50
19	19 feet, H-50.
20	20 The property that is the subject of this
21	21 application is part of Lot 1, part of Lot 2, and
22	22 Lots 3 to 5 in the Price subdivision, as recorded
23	23 among the Montgomery County records, at Plot 1767
24	24 and two unrecorded parcels, P-500 and P-525, in
25	25 Beall's Manor, located at 13707, 13711, 13715,

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3 (9 to 12)

9	<p>1 13719, 13727, and 13733 Notley Road and 13704 New 2 Hampshire Avenue, Silver Spring, Maryland 20904. 3 The Applicant has presented a Floating Zone Plan 4 issued on April 17th, 2025, bearing professional 5 cell number 3716 of Joshua C. Sloan. 6 By way of introduction, my name is 7 Khandikile Sokoni, S-O-K-O-N-I. And I'm the 8 Hearing Examiner in this case, which means that I 9 will hear the testimony, review the evidence, and 10 render a report and recommendation for submission 11 to the District Council on the criteria set forth 12 for Local Map Amendments in Article 59, Section 13 7.2.1. The ultimate decision is to be made by the 14 District Council. 15 My report and recommendation will be 16 issue -- is supposed to be issued within 45 days 17 after the record closes. We'll get to this a 18 little bit later. In terms of scheduling, I may 19 be asking for an extension. 20 Any party of record, or aggrieved party, 21 may, within ten days after I issue a report and 22 recommendation to the District Council, file a 23 written request with the District Council to 24 present oral argument. Any party who submits a 25 request for oral argument must send a copy of the</p>	11	<p>1 HEARING EXAMINER SOKONI: Thank you. 2 MS. GIRARD: Erin Girard, also with 3 Lerch, Early, on behalf of the Applicant. 4 MS. ROSENFELD: Good morning. Michele 5 Rosenfeld with the Law Office of Michele 6 Rosenfeld, LLC, here on behalf of Greater 7 Colesville Citizens Association; Dan Wilhelm, 8 president; and Kyle Notley, an abutting property 9 owner. 10 HEARING EXAMINER SOKONI: Thank you. 11 Could I also identify any other parties 12 of record who may be present either on Zoom -- or 13 I'll start with the room. Any party of record 14 present? 15 MR. NUSBAUM: Keith Nusbaum. 16 THE COURT REPORTER: Thank you. Do we 17 need any spellings? Do you need a spelling? 18 Okay. Anyone else in the room a party 19 of record? 20 MR. PHAN: I would like to testify. I'm 21 sorry. I'd -- I would like to testify. Is that 22 considered to be a party of record? 23 HEARING EXAMINER SOKONI: You -- are you 24 planning to testify? 25 MR. PHAN: Yes.</p>
10	<p>1 request to all parties of record. 2 And that's a good segue to just remind 3 everybody we have a sign-in sheet at the entrance. 4 Please clearly print your name, your contact 5 information, and indicate if you're accepting 6 service by email. 7 That will be our primary form of 8 communicating with you. If you prefer to not 9 receive anything by email, please indicate how we 10 are to reach you. 11 Given the amount of time estimated by 12 the parties for presentation of the cases, both 13 the case in chief and the case in opposition, I 14 anticipate that we'll need more than one day of 15 hearing. And like I stated earlier, for reasons 16 I'd already communicated by email, I will be 17 asking for -- if we have to postpone to a second 18 date, then I'll be asking for an extension on the 19 45 days. 20 At this point, I would like to identify 21 the parties, the Applicant, and in -- and the 22 Opposition. 23 MS. ROGERS: Good morning. For the 24 record, Elizabeth Rogers with the law firm of 25 Lerch, Early & Brewer, representing the Applicant.</p>	12	<p>1 HEARING EXAMINER SOKONI: Okay. And did 2 you present any request to be a party of record or 3 not? 4 MR. PHAN: Yes. I did send email, like, 5 some time ago. That's several weeks ago. 6 HEARING EXAMINER SOKONI: Okay. Could 7 you just give us your name, please? 8 MR. PHAN: Yes. My first name, D-, as 9 in David, U-N-G, and last name P-H-A-N, and from 10 13734 Notley Road. 11 HEARING EXAMINER SOKONI: Uh-huh. And I 12 believe you would have just sent in a community 13 letter, not necessarily a request to be a party of 14 record? 15 MR. PHAN: I did in my email. I 16 actually specifically said I'd like to be a party 17 of record. 18 HEARING EXAMINER SOKONI: Okay. Thank 19 you very much. 20 MR. PHAN: Thank you. 21 HEARING EXAMINER SOKONI: Yes, sir? 22 MR. SMIDDIE: I may just want to clarify 23 for you, Hearing Examiner, that some community 24 members may be confused about a party of record 25 for this hearing and a party of record for the</p>

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4 (13 to 16)

13	<p>1 Planning Board.</p> <p>2 HEARING EXAMINER SOKONI: Okay.</p> <p>3 MR. SMIDDIE: I know that that confuses</p> <p>4 me, and I just want to clarify --</p> <p>5 HEARING EXAMINER SOKONI: Thank --</p> <p>6 MR. SMIDDIE: -- that for you.</p> <p>7 HEARING EXAMINER SOKONI: Thank you.</p> <p>8 MR. SMIDDIE: But then I know there are</p> <p>9 many people who want to testify today who are</p> <p>10 online.</p> <p>11 HEARING EXAMINER SOKONI: Thank --</p> <p>12 MR. SMIDDIE: Just to tell you that.</p> <p>13 HEARING EXAMINER SOKONI: Thank you very</p> <p>14 much.</p> <p>15 MR. SMIDDIE: You're welcome.</p> <p>16 HEARING EXAMINER SOKONI: So we will --</p> <p>17 if you're planning to testify, just let me know</p> <p>18 you're planning to testify in the -- I just want</p> <p>19 to clarify --</p> <p>20 Thank you so much for that.</p> <p>21 MR. SMIDDIE: You're welcome.</p> <p>22 HEARING EXAMINER SOKONI: I just want to</p> <p>23 make it clear to everyone present, the OZAH</p> <p>24 hearing is a separate -- it's a standalone and</p> <p>25 separate hearing from whatever happened at the</p>	15	<p>1 Commerce.</p> <p>2 HEARING EXAMINER SOKONI: Could you</p> <p>3 kindly spell your last name?</p> <p>4 MS. HELSING: Yes, H-E-L-S-I-N-G.</p> <p>5 HEARING EXAMINER SOKONI: Thank you. I</p> <p>6 saw --</p> <p>7 MS. EDWARDS: Lisa Edwards.</p> <p>8 HEARING EXAMINER SOKONI: One second,</p> <p>9 please. Do we have -- anyone signing into Zoom</p> <p>10 would have registered as they signed in; is that</p> <p>11 correct? Was there a registration process as</p> <p>12 people signed in? Do you have a tabulation? No.</p> <p>13 Okay. The next person on Zoom, please.</p> <p>14 MS. EAGLIN: Christina Eaglin,</p> <p>15 E-A-G-L-I-N.</p> <p>16 HEARING EXAMINER SOKONI: Sorry. Could</p> <p>17 you kindly say the first name again?</p> <p>18 MS. EAGLIN: Christina,</p> <p>19 C-H-R-I-S-T-I-N-A, Eaglin, E-A-G-L-I-N. And good</p> <p>20 morning.</p> <p>21 HEARING EXAMINER SOKONI: You're welcome</p> <p>22 -- good morning.</p> <p>23 MS. CANNING: Alison Canning,</p> <p>24 A-L-I-S-O-N, last name Canning, C-A-N-N-I-N-G.</p> <p>25 HEARING EXAMINER SOKONI: Slower on the</p>
14	<p>1 Planning Board, so I just want to make sure that</p> <p>2 everyone's clear on that.</p> <p>3 If you're planning to testify -- so,</p> <p>4 Mr. Phan, you are planning to testify on Zoom?</p> <p>5 MR. PHAN: Yes. Yes, I am.</p> <p>6 HEARING EXAMINER SOKONI: Thank you.</p> <p>7 Do we have anyone else? Any --</p> <p>8 MS. OTTAVIANI: Yes. I'm willing to</p> <p>9 testify.</p> <p>10 HEARING EXAMINER SOKONI: Your name,</p> <p>11 please?</p> <p>12 MS. OTTAVIANI: Regina, R-E-G-I-N-A,</p> <p>13 Ottaviani, O-T-T-A-V-I-A-N-I.</p> <p>14 HEARING EXAMINER SOKONI: Anyone else?</p> <p>15 MS. HELSING: I'd also -- oh.</p> <p>16 MR. DEBOECK: I'm willing to testify.</p> <p>17 HEARING EXAMINER SOKONI: And please,</p> <p>18 anyone on Zoom, when you speak, please turn on</p> <p>19 your camera and unmute yourself.</p> <p>20 MR. DEBOECK: All right.</p> <p>21 HEARING EXAMINER SOKONI: So sorry for</p> <p>22 the interruption.</p> <p>23 The next person on Zoom?</p> <p>24 MS. HELSING: Stephanie Helsing on</p> <p>25 behalf of the Greater Silver Spring Chamber of</p>	16	<p>1 last name, please.</p> <p>2 MS. CANNING: Sure. C-A-N-N-I-N-G.</p> <p>3 HEARING EXAMINER SOKONI: Also planning</p> <p>4 to testify?</p> <p>5 MS. CANNING: Yes, please.</p> <p>6 MR. HOLLOWAY-JONES: Austin</p> <p>7 Holloway-Jones.</p> <p>8 HEARING EXAMINER SOKONI: Sorry. Could</p> <p>9 you kindly say that again?</p> <p>10 MR. HOLLOWAY-JONES: Austin</p> <p>11 Holloway-Jones.</p> <p>12 HEARING EXAMINER SOKONI: Are you</p> <p>13 planning to testify?</p> <p>14 MR. HOLLOWAY-JONES: Yes.</p> <p>15 MS. BOERUM: Laura Boerum.</p> <p>16 HEARING EXAMINER SOKONI: Last name,</p> <p>17 please spell.</p> <p>18 MS. BOERUM: Yes. B-, as in boy,</p> <p>19 O-E-R-U-M, as in Mary.</p> <p>20 HEARING EXAMINER SOKONI: Planning to</p> <p>21 testify?</p> <p>22 MS. BOERUM: Yes, please.</p> <p>23 HEARING EXAMINER SOKONI: Thank you.</p> <p>24 MS. EDWARDS: Lisa Edwards, L-I-S-A</p> <p>25 E-D-W-A-R-D-S, on behalf of Lisa and Chris Edwards</p>

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5 (17 to 20)

17	<p>1 and family, abutting property owner.</p> <p>2 MR. DEBOECK: Toni Deboeck. Sorry.</p> <p>3 HEARING EXAMINER SOKONI: Sorry. Who</p> <p>4 was -- after Lisa Edwards, who was next?</p> <p>5 MR. DEBOECK: Toni Deboeck. Last name</p> <p>6 is D-E-B-O-E-C-K.</p> <p>7 HEARING EXAMINER SOKONI: Okay.</p> <p>8 MR. DEBOECK: We live at 1 --</p> <p>9 HEARING EXAMINER SOKONI: Sorry. Kindly</p> <p>10 spell the last name again slowly.</p> <p>11 MR. DEBOECK: Certainly. D-E-B-O-E-C-K.</p> <p>12 HEARING EXAMINER SOKONI: Thank you.</p> <p>13 MR. DEBOECK: We live at 13811 Shannon</p> <p>14 Drive, so we're abutting property owner, and I'm</p> <p>15 planning to testify.</p> <p>16 MS. SHAH: Reena Shah. I'm planning to</p> <p>17 testify as well, and I live on -- I'm also</p> <p>18 abutting property owner.</p> <p>19 MS. OTRADOVEC: Heidi Otradovec. I am a</p> <p>20 property owner across the street from the</p> <p>21 property -- proposed property.</p> <p>22 HEARING EXAMINER SOKONI: Sorry. One</p> <p>23 second. Could you just give me a moment, please?</p> <p>24 MS. OTRADOVEC: Sure.</p> <p>25 HEARING EXAMINER SOKONI: So just so I'm</p>	19	<p>1 across from the posed -- proposed site.</p> <p>2 HEARING EXAMINER SOKONI: This is --</p> <p>3 MS. MACHEN: And I would --</p> <p>4 HEARING EXAMINER SOKONI: This is --</p> <p>5 MS. MACHEN: And I would like to</p> <p>6 testify.</p> <p>7 HEARING EXAMINER SOKONI: Thank you.</p> <p>8 This is a question for people on Zoom:</p> <p>9 So far, starting with David Phan all the way to</p> <p>10 Faye (phonetic) gave me the address. But between</p> <p>11 David Phan and Heidi, did everyone receive a</p> <p>12 notice in the mail? That would indicate to me we</p> <p>13 already have your address on record?</p> <p>14 It -- let's put it this way.: If you --</p> <p>15 if -- I'm going to assume each of you so far</p> <p>16 received a notice in the mail. And if --</p> <p>17 MS. MACHEN: Yes.</p> <p>18 HEARING EXAMINER SOKONI: -- any of you</p> <p>19 did not, just let me know.</p> <p>20 MS. MACHEN: I did not.</p> <p>21 MS. EDWARDS: Yes, I did not.</p> <p>22 HEARING EXAMINER SOKONI: Okay. So --</p> <p>23 MS. MACHEN: I didn't.</p> <p>24 HEARING EXAMINER SOKONI: Okay. So the</p> <p>25 people who said that --</p>
18	<p>1 clear, after Toni D-E-B-O-E-C-K, the abutting</p> <p>2 property owner, who was next?</p> <p>3 MS. SHAH: Reena, R-E-E-N-A, last name</p> <p>4 Shah, S-H-A-H. And I'm also a abutting property</p> <p>5 owner.</p> <p>6 HEARING EXAMINER SOKONI: Next one.</p> <p>7 MS. OTRADOVEC: I'm sorry. I was next.</p> <p>8 Heidi Otradovec. Last name is O-T-R-A-D-, as in</p> <p>9 David, O-V-, as in Victor --</p> <p>10 HEARING EXAMINER SOKONI: Sorry. Could</p> <p>11 you start the last name again? Heidi?</p> <p>12 MS. OTRADOVEC: Sure. Otradovec, O-T-,</p> <p>13 as in Tom, R-A-D-, as in David, O-V-, as in</p> <p>14 Victor, E-C, as in cat. I plan to testify as</p> <p>15 well, property owner across the street on Notley</p> <p>16 Road.</p> <p>17 HEARING EXAMINER SOKONI: And just --</p> <p>18 it's a late request, but going -- can anyone</p> <p>19 who -- once you give your name, kindly also</p> <p>20 provide your address, you know, where you're</p> <p>21 located relative to the property, if you're</p> <p>22 planning to testify.</p> <p>23 MS. MACHEN: Ayana Machen. That's</p> <p>24 A-Y-A-N-A, last name M-A-C-H-E-N. I live at 13601</p> <p>25 Petwyn, P-E-T-W-Y-N, Court, which is directly</p>	20	<p>1 MR. WILHELM: Let's start again.</p> <p>2 HEARING EXAMINER SOKONI: Okay. Just</p> <p>3 the people --</p> <p>4 MS. EDWARDS: Sorry.</p> <p>5 HEARING EXAMINER SOKONI: -- who said</p> <p>6 you did not, can I have an address, please? So --</p> <p>7 MS. EDWARDS: Can you clarify what that</p> <p>8 notice is when you say, received the notice</p> <p>9 about --</p> <p>10 HEARING EXAMINER SOKONI: So what I'm</p> <p>11 trying to get at is whether we have your address</p> <p>12 on record already. Then I don't need to waste</p> <p>13 time getting your address again, so --</p> <p>14 MS. EDWARDS: Do you want to call out</p> <p>15 the individual names and ask us to give you our</p> <p>16 addresses so that it will be faster?</p> <p>17 MS. NGUYEN: I'm so sorry for</p> <p>18 interrupting. Excuse me. Before we get to the</p> <p>19 address, I also would like to testify. I received</p> <p>20 a notice in the mail, and I'm also a residence</p> <p>21 owner living off 330 --</p> <p>22 HEARING EXAMINER SOKONI: Okay.</p> <p>23 MS. NGUYEN: -- Flannery Lane, --</p> <p>24 HEARING EXAMINER SOKONI: And --</p> <p>25 MS. NGUYEN: -- Silver Spring.</p>

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6 (21 to 24)

<p>21</p> <p>1 HEARING EXAMINER SOKONI: Okay. And the 2 person speaking is? 3 MS. NGUYEN: Sylviane, S-Y-L-V-, as in 4 Victor, I-A-N-E, and my last name is Nguyen, 5 spelled N-G-U-Y-E-N. I'm also a residence owner, 6 live off 330 Flannery Lane, Silver Spring, 7 Maryland 20904, a community at the intersection of 8 New Hampshire and Notley Road. 9 HEARING EXAMINER SOKONI: Okay. And 10 could you just go over the spelling of your first 11 name again? 12 MS. NGUYEN: Sure. Spelled S-Y-L-V-, as 13 in Victor, I-A-N-E, and my last name is Nguyen, 14 N-G-U- -- 15 HEARING EXAMINER SOKONI: Okay. I got 16 the -- 17 MS. NGUYEN: -- Y-E-N. 18 HEARING EXAMINER SOKONI: I got the last 19 name and the address. Thank you. 20 MS. NGUYEN: Thank you. 21 HEARING EXAMINER SOKONI: I just want to 22 go back to Faye. I think the speaker before that 23 was Faye, right? 24 MR. SMIDDIE: It was Ayana. 25 HEARING EXAMINER SOKONI: Ayana?</p>	<p>23</p> <p>1 If we could pause for a moment? And 2 before Sylviane -- so the last person I have 3 recorded is Sylviane N-G-U-Y-E-N at 30 Flannery 4 Lane. The people who have given names so far, is 5 there anyone whose address we don't have? 6 So the way I'll put it to you is, if you 7 received a notice from OZAH, I don't need to 8 capture your address again because I could just go 9 look at the -- we have the mailing list in the 10 record. But if you're appearing, and you did not 11 get anything from OZAH, I need an address so we 12 know how to reach you. 13 MS. OTTAVIANI: This is Regina 14 Ottaviani. I don't think I got a notice. 15 HEARING EXAMINER SOKONI: Could I 16 please -- 17 MS. OTTAVIANI: So -- 18 HEARING EXAMINER SOKONI: -- have an 19 address? 20 MS. OTTAVIANI: Sure. 606 Notley Road, 21 directly across from the proposed development. 22 HEARING EXAMINER SOKONI: Okay. I 23 have -- 24 MS. CANNING: This is Alison Canning. 25 HEARING EXAMINER SOKONI: Hang on a</p>
<p>22</p> <p>1 MR. SMIDDIE: A-Y-A-N-A. Sorry, Hearing 2 Officer. Ayana Machen. 3 HEARING EXAMINER SOKONI: Ayana. 4 MS. MACHEN: Ayana, yes. 5 HEARING EXAMINER SOKONI: Okay. Did -- 6 MS. MACHEN: A-Y-A-N-A. 7 HEARING EXAMINER SOKONI: Did -- I just 8 want to make sure I captured an -- do I have an 9 address? Did you receive something from OZAH in 10 the mail? 11 MS. MACHEN: No, I did not. 12 HEARING EXAMINER SOKONI: Okay. Could I 13 kindly -- Ayana, your last name again? 14 MS. MACHEN: It's Machen, M-A-C-H-E-N. 15 And the address is 13601 Petwyn, which is P-, as 16 in Paul, E-T-, as in tree, W-Y-N, as in Nancy. 17 Excuse me, Petwyn. 18 HEARING EXAMINER SOKONI: Petwyn? 19 MS. MACHEN: Yes, Court. 20 HEARING EXAMINER SOKONI: Okay. Silver 21 Spring? 22 MS. MACHEN: Silver Spring, 20904, 23 directly across from the proposed site. 24 HEARING EXAMINER SOKONI: Thank you very 25 much.</p>	<p>24</p> <p>1 second, I have a request for -- in the room, 2 everyone should have signed in. There was a sign- 3 in sheet at the entrance. 4 For everyone on Zoom, could you kindly 5 send an email to OZAH at montgomerycountymd. -- I 6 believe it's gov. I receive emails, but I should 7 actually know my email address. One second. Yes. 8 There we go. 9 So if you would kindly send an email to 10 O-Z-A-H@montgomerycountymd.gov so that if you're 11 accepting service by email, then we will have your 12 email address. And we can send notices to you by 13 email. And if we don't get an email from you, 14 then the only way we'll reach you is by snail 15 mail. 16 Okay. Let's pick up where we left 17 on Zoom. After Sylviane, who's next on Zoom 18 wishing to testify? 19 MS. OTTAVIANI: My name is -- 20 MS. CANNING: Alison Canning. 21 HEARING EXAMINER SOKONI: Sorry? 22 MS. CANNING: I don't believe I got a 23 notice. My name's Alison Canning. I don't 24 believe I've got a notice. I wanted to provide my 25 address.</p>

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7 (25 to 28)

25	1 HEARING EXAMINER SOKONI: Okay. Alison 2 Canning, your address, please. 3 MS. CANNING: 13713 Sherwood Forest 4 Drive. 5 HEARING EXAMINER SOKONI: 13713? 6 MS. CANNING: Yes. 7 HEARING EXAMINER SOKONI: And the 8 Street? Street, please. 9 MS. CANNING: Sherwood Forest Drive. 10 HEARING EXAMINER SOKONI: Silver Spring, 11 Maryland? 12 MS. CANNING: Yes, 20904, at the corner 13 of Notley and Sherwood Forest. 14 HEARING EXAMINER SOKONI: Thank you very 15 much. 16 And of course, for everyone, if you send 17 us an email, then we'll just -- we'll email you 18 everything. 19 Next on Zoom. 20 MS. EDWARDS: This is Lisa Edwards. 21 I'm -- I believe we got a notice, but I just want 22 it to be of record anyway to make sure that we did 23 receive it. I know we've gotten different things, 24 so our address is 329 Greenspring Lane. 25 HEARING EXAMINER SOKONI: Sorry. 329 --	27	1 MS. SHAH: -- address is at 3 -- 2 HEARING EXAMINER SOKONI: Sorry. A 3 little slower. I'm writing your name, please. 4 MS. SHAH: Okay. Reena Shah. I've 5 already said I was -- 6 HEARING EXAMINER SOKONI: Oh, yes, yes, 7 yes. Sorry. I had you already, yes. 8 MS. SHAH: Yes. So our address is 328 9 Greenspring Lane, Silver Spring, Maryland 20904. 10 HEARING EXAMINER SOKONI: Could you 11 please spell your street address -- your street? 12 MS. SHAH: G-R-E-E-N-S-P-R-I-N-G, all 13 one word, and we are directly behind the proposed 14 site. 15 HEARING EXAMINER SOKONI: Okay. Thank 16 you very much. 17 Next on Zoom. 18 MR. HOLLOWAY-JONES: I'd like to give my 19 address, Austin Holloway-Jones. 20 HEARING EXAMINER SOKONI: Uh-huh. 21 MR. HOLLOWAY-JONES: My address is 13815 22 Notley Road. 23 HEARING EXAMINER SOKONI: Okay. Thank 24 you. 25 MS. KIBALAMA: To testify, Destiny.
26	1 MS. EDWARDS: Greenspring. It's one 2 word, G-R-E-E-N-S-P-R-I-N-G Lane, Silver Spring, 3 Maryland 20904. And when we leave our backyard, 4 we are on the subject property. 5 HEARING EXAMINER SOKONI: Thank you very 6 much. 7 Anyone else who was previously -- anyone 8 before Sylviane who did not -- who thinks that I 9 need to have their mailing address? 10 MS. BOERUM: I'm going to give mine, if 11 I may, please. Laura Boerum. 12 HEARING EXAMINER SOKONI: Uh-huh. 13 MS. BOERUM: 601 Orchard, O-R-C-H-A-R-D, 14 Way, W-A-Y. We are catty-cornered to the 15 property. 16 MS. SHAH: And I'll give mine as well. 17 HEARING EXAMINER SOKONI: Okay. Could 18 you just pause one second? I just want to make 19 sure that Staff can help me track these. 20 (Pause in proceedings.) 21 HEARING EXAMINER SOKONI: Thank you. 22 You may proceed. 23 MS. SHAH: My name is Reena Shah, and 24 my -- 25 HEARING EXAMINER SOKONI: Sorry.	28	1 Last name is K-I-B-, as in boy, A-L-A-M-, as in 2 Mary, A. Address is 313 Greenspring Lane, 3 G-R-E-E-N-spring Lane, Silver Spring, Maryland 4 20904. 5 HEARING EXAMINER SOKONI: And your first 6 name again, please? 7 MS. KIBALAMA: Destiny, D-E-S-T-I-N-Y. 8 HEARING EXAMINER SOKONI: Thank you very 9 much. 10 MR. NAVARRETE: Oscar Navarrete, 11 O-S-C-A-R, last name N-A-V-, as in Victor, 12 A-R-R-E-T-E. I live at -- 13 HEARING EXAMINER SOKONI: Was that E -- 14 MR. NAVARRETE: -- 13432 -- 15 HEARING EXAMINER SOKONI: Was that E-T-E 16 or E-P-E? 17 MR. NAVARRETE: E-T-E, T, as in Thomas. 18 HEARING EXAMINER SOKONI: Okay. 19 MR. NAVARRETE: I live at 13432 Bregman 20 Road in the Morningside community, abutting the 21 proposed development. 22 HEARING EXAMINER SOKONI: Okay. Thank 23 you. 24 MR. TORRES: My name's Ernesto Torres. 25 HEARING EXAMINER SOKONI: Could you

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29	<p>1 please spell your names?</p> <p>2 MR. TORRES: E-R-N-E-S-T-O, last name</p> <p>3 T-, as in Tom, O-R-R-E-S.</p> <p>4 HEARING EXAMINER SOKONI: Address,</p> <p>5 please?</p> <p>6 MR. TORRES: I live at 13701 New</p> <p>7 Hampshire Avenue, at the corner of New -- Notley</p> <p>8 and New Hampshire.</p> <p>9 HEARING EXAMINER SOKONI: Okay. Thank</p> <p>10 you very much.</p> <p>11 MS. ANDERSON: Hi. My name's Candace</p> <p>12 Anderson. I just sent an email. But for</p> <p>13 announcing myself here, I'd like to testify. I</p> <p>14 can spell my name for you if you're ready.</p> <p>15 HEARING EXAMINER SOKONI: Candace</p> <p>16 Anderson? Uh-huh.</p> <p>17 MS. ANDERSON: Yes. C-A-N-D-, as in</p> <p>18 dog, A-C-E, last name A-N-D-E-R-S-O-N.</p> <p>19 HEARING EXAMINER SOKONI: Address,</p> <p>20 please.</p> <p>21 MS. ANDERSON: 13512 Sherwood Forest</p> <p>22 Drive, silver Spring 20904.</p> <p>23 HEARING EXAMINER SOKONI: Thank you.</p> <p>24 MS. PHAN: Yeah. My name is Hong Phan,</p> <p>25 H-O-N-G and P-H-A-N.</p>	31	<p>1 MS. PHAN: And an N.</p> <p>2 HEARING EXAMINER SOKONI: Okay. And</p> <p>3 your address, please?</p> <p>4 MS. PHAN: 13734 Notley Road, right</p> <p>5 directly from the development sites.</p> <p>6 HEARING EXAMINER SOKONI: Thank you.</p> <p>7 MS. PHAN: Thank you.</p> <p>8 HEARING EXAMINER SOKONI: And just so</p> <p>9 I'm clear, people identifying themselves wish to</p> <p>10 speak? So you wish to testify, right?</p> <p>11 MR. NAVARRETE: Yes.</p> <p>12 HEARING EXAMINER SOKONI: Okay. Because</p> <p>13 I don't need to record everybody on Zoom. I just</p> <p>14 need to record you if you wish to testify.</p> <p>15 Next?</p> <p>16 MR. HOLLOWAY-JONES: Yes, I do.</p> <p>17 HEARING EXAMINER SOKONI: Okay. Name,</p> <p>18 please? Next?</p> <p>19 Okay. Hearing no more --</p> <p>20 MS. TURNIPSEED: I wish to testify.</p> <p>21 Excuse me.</p> <p>22 HEARING EXAMINER SOKONI: Do -- and you</p> <p>23 -- your name, please?</p> <p>24 MS. TURNIPSEED: My name is Danielle</p> <p>25 Turnipseed.</p>
30	<p>1 HEARING EXAMINER SOKONI: Sorry. Was</p> <p>2 that H-O-M, M for Mary?</p> <p>3 MS. PHAN: No, Hong, spelled H-O-N-,</p> <p>4 like Nancy --</p> <p>5 HEARING EXAMINER SOKONI: Uh-huh.</p> <p>6 MS. PHAN: -- G, like George, and last</p> <p>7 name is Phan, P-, like Peter, H-, Henry, A- to</p> <p>8 Apple --</p> <p>9 HEARING EXAMINER SOKONI: Okay.</p> <p>10 Address, please.</p> <p>11 Did we lose people on Zoom?</p> <p>12 (Pause in proceedings.)</p> <p>13 HEARING EXAMINER SOKONI: Hi, Nana. Can</p> <p>14 we please have IT? The Zoom has -- the system has</p> <p>15 crashed. Can we have IT here, please?</p> <p>16 (Whereupon, a recess was taken at</p> <p>17 10:03 a.m.)</p> <p>18 HEARING EXAMINER SOKONI: Apologies for</p> <p>19 that -- for the zoom interruption. So I believe</p> <p>20 we were with Hong?</p> <p>21 MS. PHAN: Yes.</p> <p>22 HEARING EXAMINER SOKONI: Okay.</p> <p>23 MS. PHAN: You got my name?</p> <p>24 HEARING EXAMINER SOKONI: Yes. Could</p> <p>25 you please just -- I believe P-H-A- --</p>	32	<p>1 HEARING EXAMINER SOKONI: Can you kindly</p> <p>2 spell your last name?</p> <p>3 MS. TURNIPSEED: Yes.</p> <p>4 T-U-R-N-I-P-S-E-E-D.</p> <p>5 HEARING EXAMINER SOKONI: Address,</p> <p>6 please?</p> <p>7 MS. TURNIPSEED: 14306 Royal Forest</p> <p>8 Lane.</p> <p>9 HEARING EXAMINER SOKONI: Okay. Is that</p> <p>10 also zip code 20904?</p> <p>11 Ms. TURNIPSEED: Yes. I'm right in --</p> <p>12 Royal Forest is right off of Notley.</p> <p>13 HEARING EXAMINER SOKONI: Thank you very</p> <p>14 much.</p> <p>15 Next on Zoom? Anyone else on Zoom</p> <p>16 wishing to testify?</p> <p>17 Okay. And a reminder, if anyone on --</p> <p>18 MR. WILHELM: Someone's trying to speak.</p> <p>19 HEARING EXAMINER SOKONI: Oh, someone's</p> <p>20 trying to speak?</p> <p>21 MS. LINDLEY: Ivonne, I-V-O-N-N-E. Last</p> <p>22 name is Lindley, L-I-N-D-L-E-Y.</p> <p>23 HEARING EXAMINER SOKONI: Address,</p> <p>24 please?</p> <p>25 MS. LINDLEY: 13918 Notley Road, Silver</p>

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<p>33</p> <p>1 Spring, 20904.</p> <p>2 HEARING EXAMINER SOKONI: Thank you.</p> <p>3 MS. LINDLEY: Thank you.</p> <p>4 HEARING EXAMINER SOKONI: Next on Zoom?</p> <p>5 Okay. I believe that's the end of the</p> <p>6 list of people on Zoom Wishing to testify? One</p> <p>7 more? There's a raised hand?</p> <p>8 MR. CHOI: Hi. I would like to testify,</p> <p>9 too, as well, Francis Choi.</p> <p>10 HEARING EXAMINER SOKONI: Could you</p> <p>11 please spell your --</p> <p>12 MR. CHOI: F- --</p> <p>13 HEARING EXAMINER SOKONI: Could you</p> <p>14 kindly spell your names?</p> <p>15 MR. CHOI: F-R-A-N-C-I-S C-H-O-I. And I</p> <p>16 live on 13464 Bregman Road, Silver Spring,</p> <p>17 Maryland.</p> <p>18 HEARING EXAMINER SOKONI: Thank you.</p> <p>19 Anyone else on Zoom wishing to testify?</p> <p>20 Okay. Thank you very much. A reminder</p> <p>21 to the folks on Zoom: If you could also send us</p> <p>22 an email to OZAH, O-Z-A-H@montgomerycountymd.gov?</p> <p>23 That way, we would, if you -- that way, we would</p> <p>24 have your email address and can send you notices</p> <p>25 by email.</p>	<p>35</p> <p>1 I should also mention we disable the</p> <p>2 Zoom chat function, so if you need to say</p> <p>3 something, you have to raise your hand. If you</p> <p>4 feel like we haven't -- you know, it doesn't</p> <p>5 appear like anyone has -- because there's a lot</p> <p>6 going on, in case we miss you, then please feel</p> <p>7 free to just unmute yourself and speak.</p> <p>8 You will not -- if you're on Zoom,</p> <p>9 you'll not be able to share your screen. So if</p> <p>10 there's anything you need to refer to, any of the</p> <p>11 exhibits that are in the record, just let us know.</p> <p>12 And we'll have a Zoom operator pull that up for</p> <p>13 us.</p> <p>14 Okay. With that aside, I should also</p> <p>15 mention the nature of the proceeding. This is an</p> <p>16 administrative proceeding, which means, in</p> <p>17 contrast with a court proceeding, it's more</p> <p>18 informal. But we do have some formalities.</p> <p>19 As far as procedure goes, all testimony</p> <p>20 is under oath. You will be asked -- you could be</p> <p>21 asked questions about your testimony -- that's</p> <p>22 cross-examination -- and the order of things will</p> <p>23 be the Applicant -- well, both parties, the</p> <p>24 Applicant and the Opposing Party, can give --</p> <p>25 Opposing Counsel can give opening statements, and</p>
<p>34</p> <p>1 And I feel like skipping over the Zoom</p> <p>2 details here because I think we've tested out the</p> <p>3 Zoom, so I'll skip over the fact that when you</p> <p>4 want to speak, you have to -- unless you're</p> <p>5 speaking, please mute yourself. Otherwise, if</p> <p>6 we -- you cannot testify unless you have your</p> <p>7 camera on.</p> <p>8 And I should have mentioned at the</p> <p>9 outset that Zoom -- our Zoom function runs best on</p> <p>10 Safari on -- sorry. One second. It -- our Zoom</p> <p>11 interacts best with Microsoft Edge or Chrome.</p> <p>12 We're not marketing for them, but we just happen</p> <p>13 to know that those are the platforms that have</p> <p>14 optimal performance with Zoom.</p> <p>15 For the -- this is a hybrid hearing, of</p> <p>16 course, so we have people both in the hearing room</p> <p>17 physically as well as on Zoom. We ask that you</p> <p>18 not interrupt while someone else is speaking.</p> <p>19 This proceeding is being transcribed</p> <p>20 word-for-word by a court reporter, and when we</p> <p>21 have cross-talk, it's very difficult for the</p> <p>22 cross -- for the court reporter to track what</p> <p>23 people are saying. The only time you can</p> <p>24 interrupt when someone else is speaking is if</p> <p>25 you're raising a legal objection to testimony.</p>	<p>36</p> <p>1 then the Applicant goes first with presentation of</p> <p>2 their case in chief.</p> <p>3 Then we have Opposing Parties who</p> <p>4 proceed with their factual case in opposition.</p> <p>5 Then we have any other interested persons that</p> <p>6 wish to present fact or testimony will have an</p> <p>7 opportunity to -- you can cross -- well, we'll get</p> <p>8 to that. I think we'll address that as we go.</p> <p>9 There is an opportunity for</p> <p>10 cross-examination. We have a lot of participation</p> <p>11 here, so I'll have to keep things under control.</p> <p>12 We do have counsel for at least one -- two</p> <p>13 Opposition parties.</p> <p>14 Cross-examination is limited to</p> <p>15 testimony, so just remember when it's -- when you</p> <p>16 have an opportunity for cross-examination, that's</p> <p>17 not your opportunity to give your case in chief.</p> <p>18 It's just the opportunity to ask questions about</p> <p>19 the testimony you just heard. Then the parties</p> <p>20 will have an opportunity for closing statements.</p> <p>21 I should mention that -- you know, I did</p> <p>22 say it's an administrative proceeding. Approval</p> <p>23 of the application is based on criteria that are</p> <p>24 set forth in the zoning ordinance. The use</p> <p>25 standards are set out in Section 59-7.3.1, so, you</p>

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10 (37 to 40)

<p>37</p> <p>1 know, all testimony will address those criteria. 2 The Hearing Examiner has the authority 3 to exclude any testimony that is irrelevant, 4 repetitive, or unreliable. I do want to jump here 5 to some preliminary matters that we need to 6 dispose of. 7 I know that there were two objections 8 that were submitted in writing. There were two 9 objections that I had indicated will be argued 10 this morning before we delve into the substance of 11 the hearing. 12 Before we get to those objections -- and 13 these are the objections that were presented by 14 Elizabeth Rogers, attorney for the Applicant -- 15 are there any other preliminary matters that we 16 need to address? I'll get to those two objections 17 in a moment, but I just want to make sure I am 18 clear on any other preliminaries. If anyone has 19 any preliminary issue they would like us to 20 address before we jump into the case, this is your 21 opportunity. 22 Yes, Ms. -- 23 MS. ROSENFELD: Yes. I have a couple of 24 procedural questions. Are the -- I believe that 25 there are people in the room, not on Zoom, who</p>	<p>39</p> <p>1 MS. RANKINE: Yes, ma'am. 2 HEARING EXAMINER SOKONI: Okay. And I 3 mentioned to everyone on Zoom earlier, if you 4 could send an email -- if you want to receive 5 things via email, you could also email us at OZAH, 6 O-Z-A-H, ozah@montgomerycountymd.gov. That way -- 7 if you don't send us an email, you're going to get 8 any notices by snail mail. 9 Back to the room, I saw a show of hands. 10 Three people? One, two, three, four. If you 11 could kindly just -- if you could each just step 12 forward to the mike, press the button, give me 13 your name, address, and just let me know? 14 UNIDENTIFIED SPEAKER: Can you take mine 15 online real quick while you're -- while you 16 waiting for them to come up? 17 HEARING EXAMINER SOKONI: If you could 18 please pause on Zoom? I'm now dealing with people 19 in the room. 20 Yes, sir? 21 MR. COREY: Patrick Corey, 41 Shaw 22 Avenue, Silver Spring, Maryland 20904. 23 HEARING EXAMINER SOKONI: And you wish 24 to testify? 25 MR. COREY: Yes.</p>
<p>38</p> <p>1 also intend to testify. 2 Do you record that now? Or does that 3 happen when you take community testimony? 4 HEARING EXAMINER SOKONI: We'll get to 5 that when we take community testimony. I believe 6 everyone -- if there are people in -- you're 7 right. I did -- I focused on the Zoom people. 8 And no offense to the people in the 9 room. You're equally important. So maybe by show 10 of hands, who in the room wishes to testify? 11 Okay. Could -- 12 MS. RANKINE: I'm sorry. I'm on Zoom. 13 I couldn't get on earlier. I'd like to testify. 14 This is Gayle Rankine. 15 HEARING EXAMINER SOKONI: Your name -- 16 on Zoom, your name again? Gayle? 17 MS. RANKINE: Gayle Rankine. 18 HEARING EXAMINER SOKONI: Could you 19 kindly spell your last name? 20 MS. RANKINE: R-A-N-K-I-N-E. 21 HEARING EXAMINER SOKONI: Address, 22 please? 23 MS. RANKINE: 13709 Stoner Drive. 24 HEARING EXAMINER SOKONI: Is that Silver 25 Spring with a zip of 20904?</p>	<p>40</p> <p>1 HEARING EXAMINER SOKONI: Yes. 2 MS. GONSKI: Debra Gonski, D-E-B-R-A 3 G-O-N-S-K-I, 10 Stonegate, S-T-O-N-E-G-A-T-E, 4 Drive, Silver Spring, Maryland 20905, and also 5 representing the Stonegate Citizens Association, 6 which did receive a notice in the snail mail. 7 MR. TOUHEY: James Touhey, T-O-U-H-E-Y, 8 13905 Overton Lane, Colesville 20904. 9 HEARING EXAMINER SOKONI: Thank you very 10 much. 11 MR. NUSBAUM: I just want to clarify. 12 I'm not part the record, so I want -- you got my 13 information, I believe? 14 HEARING EXAMINER SOKONI: Correct? 15 MR. NUSBAUM: Okay. 16 HEARING EXAMINER SOKONI: Correct. 17 Back to the folks on Zoom. Was there -- 18 I see a raised hand. You may unmute yourself. 19 MR. GOLDEN: Yes. I finally got on the 20 recommended system, so I'd like to testify. I may 21 run out of time, so if you don't see me later -- 22 but I would like to testify and be on record. 23 Greg Golden, G-R-E-G G-O-L-D-E-N. 24 HEARING EXAMINER SOKONI: Your address? 25 MR. GOLDEN: I'm not sure if I'm on</p>

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11 (41 to 44)

<p>41</p> <p>1 record.</p> <p>2 HEARING EXAMINER SOKONI: Your address,</p> <p>3 please?</p> <p>4 MR. GOLDEN: I'm not sure -- 334 Scott,</p> <p>5 S-C-O-T-T, Drive, Silver Spring, Maryland 20904.</p> <p>6 Thank you.</p> <p>7 HEARING EXAMINER SOKONI: Thank you.</p> <p>8 I believe I've recorded -- I have a</p> <p>9 record of everyone who wishes to testify. The</p> <p>10 only other preliminary issue is on scheduling.</p> <p>11 Thank you very much for everyone's --</p> <p>12 thanks for bearing with us and for all your, you</p> <p>13 know, responses regarding a second date, which I</p> <p>14 believe we may very well need. We landed on</p> <p>15 December 2nd at 9:30 a.m.</p> <p>16 Yes?</p> <p>17 MS. ROSENFELD: Yes. A couple of things</p> <p>18 on scheduling. First, I'd like to update our --</p> <p>19 the prehearing submission. We estimated a</p> <p>20 day-and-a-half of time.</p> <p>21 I don't think we'll need that much time.</p> <p>22 I'm guessing in the neighborhood closer to six</p> <p>23 hours, just so that you're aware for purposes of</p> <p>24 scheduling.</p> <p>25 And I also would like to ask if there</p>	<p>43</p> <p>1 -- the order of things is, the Applicant presents</p> <p>2 their case in chief first because, you know,</p> <p>3 that's -- there may be concerns raised that will</p> <p>4 be addressed in the course of the application.</p> <p>5 Should we then -- I'm comfortable with -- I'm very</p> <p>6 sympathetic to the fact that people take time off</p> <p>7 from work and that we need to -- I would like to</p> <p>8 accommodate that as best as I can.</p> <p>9 Can we agree that it's very likely that</p> <p>10 community testimony will come at the second</p> <p>11 hearing? It's unlikely that will be at the first</p> <p>12 hearing. That way, if anyone feels that they</p> <p>13 don't -- they're not able to sit through the whole</p> <p>14 of today, then they can be prepared to come and</p> <p>15 testify on December 2nd.</p> <p>16 MS. ROSENFELD: I think that's fair, and</p> <p>17 I think that's a reasonable accommodation. And so</p> <p>18 perhaps, if the community could speak starting</p> <p>19 9:30 on the 2nd, assuming the Applicant has</p> <p>20 finished its case, or soon thereafter, as the</p> <p>21 Applicant is --</p> <p>22 HEARING EXAMINER SOKONI: So I will</p> <p>23 confirm that at the conclusion of -- well, I guess</p> <p>24 people will have left, but I believe we -- I think</p> <p>25 it's fair to say we can accommodate that community</p>
<p>42</p> <p>1 could be some accommodation of the community</p> <p>2 members who are here to testify. Many of them</p> <p>3 work. Some of them may not be able to sit through</p> <p>4 two full days of hearings.</p> <p>5 Is there an opportunity to perhaps allow</p> <p>6 some to testify this morning or to set a time</p> <p>7 specific so that people know when they would be</p> <p>8 heard? I don't know if that's possible, but I'm</p> <p>9 putting it out there, given the number of people</p> <p>10 who wish to be heard in this case.</p> <p>11 HEARING EXAMINER SOKONI: That is noted.</p> <p>12 Is there any response to that? Any</p> <p>13 objection?</p> <p>14 MS. ROGERS: We understand, you know,</p> <p>15 that people have jobs, and they want to</p> <p>16 participate. But I think it'd be prejudicial to</p> <p>17 the Applicant to allow Opposition testimony before</p> <p>18 even allowed to present a case in chief.</p> <p>19 HEARING EXAMINER SOKONI: Could we then</p> <p>20 say it's unlikely -- do the Applicants believe you</p> <p>21 will use up the whole day for your case in chief?</p> <p>22 The -- what I'm wondering is, should --</p> <p>23 MS. ROGERS: Most of it.</p> <p>24 HEARING EXAMINER SOKONI: Most of it.</p> <p>25 So maybe I could -- how about we go with -- it is</p>	<p>44</p> <p>1 members will speak at the outset on the 2nd.</p> <p>2 MS. ROSENFELD: Thank you.</p> <p>3 HEARING EXAMINER SOKONI: That's -- I</p> <p>4 will confirm that at the end of today's hearing</p> <p>5 just because I don't know what's going to happen.</p> <p>6 But for now, for all present, we'll try our very</p> <p>7 best to ensure that community testimony will go</p> <p>8 first at the hearing on December 2nd.</p> <p>9 So we are -- we're not going to send a</p> <p>10 new notice of hearing because the second date has</p> <p>11 been announced in a public hearing. We'll</p> <p>12 convene, same location in the OZAH -- in the Board</p> <p>13 of Appeals hearing room, where we are today, on</p> <p>14 December 2nd at 9:30 a.m. And the link for</p> <p>15 participation by Zoom will be available on the</p> <p>16 hearing website, just like you were able to access</p> <p>17 it today.</p> <p>18 Was that it as far as preliminaries?</p> <p>19 MS. ROSENFELD: Yes. Thank you. I</p> <p>20 appreciate that.</p> <p>21 HEARING EXAMINER SOKONI: You're</p> <p>22 welcome.</p> <p>23 Before I get into addressing the</p> <p>24 objections, I also just want to address exhibits.</p> <p>25 We have exhibits that have been posted online.</p>

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12 (45 to 48)

<p>45</p> <p>1 Routinely, we put those up, but they're not 2 officially in the record until they're moved into 3 the record in the hearing. So I would like to 4 find out if anyone has any objection. 5 Putting aside -- I know we have the 6 objections to a prehearing statement that -- and 7 we'll address that shortly. So aside for the 8 object -- from the objections that have already 9 been presented in writing, is there any other 10 objection to the inclusion of anything that's on 11 the website now? 12 So if you went to the hearing website, 13 we have a list of exhibits. And I believe, at the 14 last count, we were at Exhibit 71. 15 And there will actually be a late 16 addition which was -- not a late addition. There 17 was an email communication I sent out around 18 scheduling and some questions I presented to 19 Ms. Rogers. 20 That email, I see, did not make it into 21 the record online. It was my email of 22 November 3rd. I have asked Staff to post that, 23 and that will likely become Exhibit 72. 24 So do I have any object -- yes, 25 Ms. Rosenfeld?</p>	<p>47</p> <p>1 the report will also testify. 2 HEARING EXAMINER SOKONI: Okay. Does 3 that address your concern? 4 MS. ROSENFELD: I'm not sure because it 5 covers a variety of topics. It covers the design; 6 it covers the zoning and land uses; it covers 7 architecture; it covers Master Plan compliance, 8 civil engineering. There is -- there's just the 9 zoning ordinance conformance. 10 Perhaps if, as each expert takes the 11 stand, they can be specific as to which elements 12 of this they should be the ones asked 13 cross-examination questions. That would help, but 14 it's hard for me to guess which expert would be 15 speaking to any piece of this. 16 HEARING EXAMINER SOKONI: Okay. What I 17 would do on that is, we were given at least one 18 name. You provided a name of a person who would 19 testify. I will hold ruling on that objection 20 with regard to Exhibit 38. 21 I would like, then, to move everything 22 else into the record. And with regard to Exhibit 23 38, during the course of today's testimony, I 24 would like the Applicants to just let us know who 25 will be -- who's ascribing to -- who's the</p>
<p>46</p> <p>1 MS. ROSENFELD: Before I make a formal 2 objection, I think I'd like a clarification on the 3 record. Exhibit 38, which is the updated Land Use 4 Report submitted into the record by the Applicant, 5 it is undated; it is unsigned; there is no author 6 that is given any attribution for this document. 7 It covers a broad spectrum of topics, 8 including some that I assume will be addressed by 9 their experts. And it is unclear to me who I 10 would cross-examine on this document as a whole, 11 so I'd like the record to be clear on that point. 12 And depending on the response here, I may or may 13 not object to its admission. 14 HEARING EXAMINER SOKONI: Could you 15 kindly pull up Exhibit 38? And I'll give an 16 opportunity for a response? 17 MS. ROGERS: Yes. And that's noted. 18 That will be presented by Josh Sloan, and he can 19 validate that he's the author and the date on 20 which it was prepared. 21 HEARING EXAMINER SOKONI: Okay. Thank 22 you. 23 MS. ROSENFELD: Thank you very much. 24 MS. ROGERS: Oh, and who else 25 contributed -- the other people who contributed to</p>	<p>48</p> <p>1 author -- or, you know, who are the authors and 2 exactly who -- if you could provide the names of 3 who will be testifying regarding the contents of 4 the land -- the revised Land Use Report. 5 MS. ROGERS: Sure. 6 HEARING EXAMINER SOKONI: So I'll hold 7 off on -- I'll wait until we get to the 8 Applicant's case in chief to nail that down. And 9 if a recess is needed to address that, let me 10 know. 11 MS. ROSENFELD: Thank you. I have no 12 objections to any of the other exhibits. 13 HEARING EXAMINER SOKONI: Thank you. So 14 I have one objection to Exhibit 38 on which I'm 15 reserving for now until later. 16 Any other objections? 17 MR. NUSBAUM: Do you want me to come up 18 and speak into the microphone? 19 HEARING EXAMINER SOKONI: Yes, please. 20 MR. NUSBAUM: Thank you, Madam Hearing 21 Examiner. Keith Nusbaum, party of record. I 22 guess there were a couple of things. 23 I had sent an email regarding several of 24 the exhibits, including Exhibit 47 -- I believe it 25 was 45 -- that are very low-resolution documents</p>

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13 (49 to 52)

<p>49</p> <p>1 that do not show the same detail that's available, 2 for example, on the MC Atlas Parks and Planning 3 Commission, specifically with respect to the 4 recreation plan. So none of the information is 5 readable as far as the calculations on Exhibit 47. 6 So I have to ask that either those exhibits be 7 re-uploaded with proper resolution or that those 8 be removed from the record. 9 HEARING EXAMINER SOKONI: I'll give the 10 Applicant an opportunity to respond. I do want to 11 mention we do have the paper version. The hard 12 copy is available for inspection -- 13 MR. NUSBAUM: Okay. 14 HEARING EXAMINER SOKONI: -- if that 15 helps. 16 MR. NUSBAUM: I haven't looked at it. 17 HEARING EXAMINER SOKONI: And -- 18 MR. NUSBAUM: I could look at it and see 19 if it is also of sufficient resolution, but I have 20 not looked at it yet. 21 HEARING EXAMINER SOKONI: Okay. 22 MS. ROGERS: And we would object to any 23 of those exhibits not being part of the record. 24 We did submit multiple iterations of them to OZAH. 25 I think there was a file size issue, and</p>	<p>51</p> <p>1 MR. NUSBAUM: And that's what -- is the 2 hard copy a full size? Or -- 3 HEARING EXAMINER SOKONI: It's a full- 4 size map. 5 MR. NUSBAUM: Or is it -- 6 HEARING EXAMINER SOKONI: It's -- 7 MR. NUSBAUM: It's not the -- it's not 8 eight-and-a-half-by-eleven? It's a full size? 9 HEARING EXAMINER SOKONI: It's a full 10 size. 11 MR. NUSBAUM: Okay. 12 HEARING EXAMINER SOKONI: So the -- I 13 have the file here with me, but the file has been 14 -- and we do make that information available on 15 the website that the physical file is as -- is 16 available in the OZAH office, so I'll overrule 17 that objection. 18 MR. NUSBAUM: Okay. 19 HEARING EXAMINER SOKONI: We'll keep 20 that in the record. 21 MR. NUSBAUM: And there was one other 22 thing. I believe there was an email that you had 23 sent out extending the timeline after the deadline 24 for exhibits had already passed, moving it from, I 25 believe it was, the 29th of October to November</p>
<p>50</p> <p>1 we were asked to compress the files to make them 2 more accessible to those online. And that's what 3 we did. 4 HEARING EXAMINER SOKONI: Uh-huh. 5 MS. ROGERS: And we do also have hard 6 copies, and OZAH has hard copies, as you would 7 note for the record. So we would object to those 8 not being included. 9 As Mr. Nusbaum noted, there also have 10 been available for review through Park and 11 Planning's website. As he noted, the quality was 12 legible on that site as well. 13 HEARING EXAMINER SOKONI: Are you able 14 to confirm that it's exactly the same document -- 15 that this exhibit is identical to what was on the 16 Park and Planning site? 17 MS. ROGERS: So the only one -- and I 18 looking at Mr. Sloan, I know the Floating Zone 19 Plan is one that we just recently introduced to 20 update the binding elements, which our experts 21 will testify to the changes with that. And there 22 was no material change in the recreation plan. 23 HEARING EXAMINER SOKONI: Okay. 24 MS. ROGERS: And Mr. Nusbaum could look 25 at the hard copy during this proceeding.</p>	<p>52</p> <p>1 3rd. 2 I don't see that email on the record. I 3 might have missed it, but I didn't see it there. 4 And I would also just object to the fact 5 that it was after the exhibits were filed -- were 6 supposed to be filed, and none were filed by the 7 Applicant at that time. And then the extension 8 was given after the deadline. 9 HEARING EXAMINER SOKONI: Sorry. Could 10 you say that again? That the -- 11 MR. NUSBAUM: It's my understanding that 12 the exhibits were due to OZAH on October 29th, 13 Wednesday, by noon. Applicant did not produce any 14 documents to OZAH prior to that date. And then 15 after that, they were given an extension until 16 November 3rd. 17 HEARING EXAMINER SOKONI: So we -- an 18 extension was not requested. We were giving an 19 extension because -- and I explained in the email 20 that planning -- usually, planning meets earlier 21 than they met in this case. 22 MR. NUSBAUM: Yes. 23 HEARING EXAMINER SOKONI: So I was 24 concerned about giving everyone an opportunity to 25 get everything in for --</p>

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14 (53 to 56)

53	<p>1 MR. NUSBAUM: This is just for the 2 record. 3 HEARING EXAMINER SOKONI: Okay. 4 MR. NUSBAUM: I understand. But just 5 for the record, so I have it on there, that I 6 do -- 7 HEARING EXAMINER SOKONI: Okay. 8 MR. NUSBAUM: -- object to those 9 exhibits. 10 HEARING EXAMINER SOKONI: Sure. The 11 comment is noted. I think it's overruled. I 12 rule -- 13 MR. NUSBAUM: Okay. That's fine. 14 HEARING EXAMINER SOKONI: Everything 15 that came in -- we try very hard to make 16 accommodations for everyone to get everything in. 17 MR. NUSBAUM: I completely understand. 18 HEARING EXAMINER SOKONI: So -- 19 MR. NUSBAUM: I just want it on the 20 record. Thank you. 21 HEARING EXAMINER SOKONI: Okay. So the 22 only objection that I'm reserving on is in regard 23 to inclusion of Exhibit 38. We'll address it 24 during the course of the case in chief. 25 In that case, all exhibits -- Exhibits 1</p>	55	<p>1 well as some specific questions that I had 2 presented to the Applicant. And I'm admitting 3 that as Exhibit 73 without objection. 4 (Applicant's Exhibit 73, was admitted 5 into evidence and retained by the Hearing 6 Examiner.) 7 HEARING EXAMINER SOKONI: I've noted the 8 email extending deadlines. We usually treat 9 scheduling stuff like that as administrative, but 10 I'm happy to include it. So I will see if I can 11 locate that, and I'll address that at the same -- 12 later on in the proceeding. 13 MR. NUSBAUM: Thank you. 14 HEARING EXAMINER SOKONI: Thank you. 15 So the -- I'll go back now to the two 16 objections that were presented in writing. There 17 were -- I will give parties a very brief -- do 18 Counsel -- do you need an opportunity to argue 19 those? I've got written objections. Did you want 20 to argue those? 21 MS. ROSENFELD: Not if you're ruling in 22 my favor. 23 MS. ROGERS: We did prepare some -- 24 HEARING EXAMINER SOKONI: Okay. 25 MS. ROGERS: -- additional remarks.</p>
54	<p>1 through 37, 39 through 72 -- which were posted on 2 the website prior to the hearing today, are 3 admitted into the record. 4 (Applicant's Exhibits 1 through 37 5 and 39 through 72, were admitted into evidence and 6 retained by the Hearing Examiner.) 7 HEARING EXAMINER SOKONI: As I 8 mentioned, there is an email. And are you able to 9 kind of pull up the OZAH website? And I just want 10 to make sure that the -- there's an -- what I 11 asked Staff to include was actually my email, so I 12 wonder if that addresses what you were concerned 13 about. 14 Okay. I do not see it up yet, so I 15 will -- I've been told before I need to refresh, 16 so just one second. 17 Are you able to pull up the -- our list 18 of exhibits online? I had asked Staff to add my 19 email. Yes. I hit refresh, like they told me to, 20 and it's there. 21 So Exhibit 73 is a late addition that 22 was added today. That was my email, Email from 23 Hearing Examiner Sokoni to parties regarding 24 questions to be addressed at the hearing. 25 Okay. That one addressed scheduling as</p>	56	<p>1 HEARING EXAMINER SOKONI: Wonderful. So 2 I will give -- just to recap, the two objections 3 that would be -- that I indicated would be argued 4 this morning are Exhibits 58 and 59. Exhibit 5 58 -- if you could kindly pull that up? Exhibit 6 58 is a letter dated October 27th, 2025, from 7 Applicant's attorney, Ms. Elizabeth Rogers, 8 regarding objections to the qualifications of 9 Mr. Daniel Wilhelm as an expert witness. 10 Exhibit 59 -- if you could kindly pull 11 that up as well -- is also a letter dated October 12 27th, 2025, from the Applicant's attorney, 13 Ms. Elizabeth Rogers, regarding objections to the 14 prehearing statement marked Exhibit 55. That was 15 submitted by Mr. Keith Nusbaum. 16 At this point, I'll invite oral argument 17 on those objections. Let's start with the 18 objecting party, Ms. Rogers and Ms. -- 19 MS. ROGERS: Great. Good morning. 20 Again, for the record, Elizabeth Rogers with the 21 law firm of Lerch, Early & Brewer here with my 22 co-Counsel, Erin Girard. 23 The Applicant has raised two procedural 24 objections. As the Hearing Examiner has noted, we 25 object to the Opposition's request to qualify</p>

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15 (57 to 60)

57	<p>1 Mr. Wilhelm as an expert, and we respectfully 2 request the Hearing Examiner issue a ruling 3 appropriately limiting the scope of Mr. Nusbaum's 4 participation to what the rules would allow of an 5 individual not represented by counsel. We'll 6 address each of these in turn.</p> <p>7 We object to the qualification of 8 Mr. Dan Wilhelm as an expert on the basis that he 9 does not have the requisite knowledge, skill, 10 experience, training, or education to qualify as 11 an expert in this land use proceeding. The 12 Opposition's prehearing statement states that 13 Michele Rosenfeld intends to present him as an 14 expert, but it does not identify the field in 15 which he's being offered as an expert.</p> <p>16 Rather, Ms. Rosenfeld indicates an 17 intention to have Mr. Wilhelm testify as an expert 18 on five topics. In doing so, it appears the 19 Opposition tends -- intends to broadly classify 20 him as an expert in multiple areas of expertise, 21 including both issues related to land use planning 22 and transportation planning. These are two very 23 different technical and highly specialized areas.</p> <p>24 And in my career, I have not seen an 25 individual before this body qualified as an expert</p>	59	<p>1 education in land use, transportation, civil 2 engineering, architecture, or related field. 3 Mr. Wilhelm's education and training and 4 employment history are in electrical engineering 5 and program management. We would argue there's 6 really no skill involved in this land use 7 proceeding under which Mr. Wilhelm could seek to 8 qualify as an expert, so that leaves knowledge or 9 experience.</p> <p>10 Maryland courts have consistently held 11 that expert qualification under Rule 5-7.0.2 12 requires a witness to possess specialized and 13 sufficient knowledge, more than just a casual 14 familiarity. To be qualified as an expert in land 15 use of transportation planning, one must hold some 16 specialized technical competency in the subject, 17 not familiarity or general involvement as a 18 citizen advocate in the planning process.</p> <p>19 Mr. Wilhelm possesses no specialized 20 knowledge or experience that would allow him to 21 render an expert opinion on the topics that 22 Opposition seeks to qualify him in. While 23 Mr. Wilhelm's civic involvement and participation 24 in committees and task force is commendable, it 25 does not confer that specialized knowledge or</p>
58	<p>1 in both of those. For that very reason, this, in 2 and of itself, is a red herring and a thinly 3 veiled attempt to make the opinions of Mr. Wilhelm 4 carry additional weight, which is not the 5 intention of the rules.</p> <p>6 The qualification as an expert is 7 intended to be reserved for those select 8 individuals that truly possess the requisite 9 skill, knowledge, training, or experience to opine 10 on land use issues with credibility to assist the 11 fact finder. The bar is set high, given the 12 weight that is afforded to expert testimony.</p> <p>13 To suggest that Mr. Wilhelm's testimony 14 should be given the same weight as someone who has 15 formal educational training, professional 16 certifications, and has spent years, if not 17 decades, working on land use matters and 18 participating in administrative land use hearings 19 over the course of their career would be directly 20 at odds with the intent of such a qualification.</p> <p>21 Under Maryland Rule 5-7.0.2, expert qualification 22 requires specialized knowledge, skill, experience, 23 training, or education.</p> <p>24 We'll start with the easier of the two. 25 Mr. Wilhelm's CV includes no relevant training or</p>	60	<p>1 experience required to interpret Master Plans or 2 draw technical planning conclusions, like 3 compatibility, in this proceeding.</p> <p>4 The advisory committees listed on 5 Mr. Wilhelm's resum and those task forces are 6 really simply more formalized mechanisms to gather 7 public input. They confer no specialized 8 knowledge.</p> <p>9 For example, based on the guidelines on 10 the County's websites for the MCDOT Citizens 11 Advisory Committees, those were specifically 12 convened, I quote, to provide opportunities for 13 community members to learn about and provide input 14 on Flash BRT projects, end quote. The stated 15 purpose on the County's website for the CACs 16 included community engagement, involvement, and 17 information sharing among stakeholders.</p> <p>18 We would note that Mr. Wilhelm's 19 designated role in these committees and task force 20 is almost exclusively through his role at the 21 Great -- with the Greater Colesville Citizens 22 Association or as a resident. For example, the 23 White Oak Science Gateway Master Plan Citizen 24 Advisory Committee notes that he represented GCCA 25 and clarifies that the CAC members -- this is</p>

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16 (61 to 64)

61	<p>1 from -- a quote from the White Oak Master Plan, 2 the 2014 one, Members provide input during the 3 planning process on the issues and concerns of 4 organizations and associations they represent. 5 This comports with Mr. Wilhelm's own 6 admission on his CV that the experience in these 7 committees and task forces is rooted in advocacy. 8 We would note that the word advocacy is used to 9 describe all five of his roles listed under his 10 current involvement section on his CV, and several 11 listed under his civic involvement. 12 And as Mr. Wilhelm's resum expressly 13 notes, his role in GCCA under -- the umbrella 14 under which he participated in many of these 15 committees and task forces, was, quote, advocate 16 for local citizens in land use and zoning matters. 17 Experts are not advocates. Rather, they provide 18 objective unbiased information based on their 19 professional analysis of fact. 20 The test is not whether Mr. Wilhelm has 21 general knowledge about land use process, but 22 whether he is sufficiently familiar with the 23 subject to render an expert opinion. 24 Participation in land use proceedings via his role 25 through GCCA does not afford him with that</p>	63	<p>1 that a transportation consultant or engineer would 2 typically speak to. Mr. Wilhelm certainly may 3 testify as a layperson, in fact, if he plans to 4 testify as to transportation offerings that are 5 currently available. That's something a layperson 6 can understand and does not require expert 7 testimony. 8 But if he intends to go beyond those lay 9 observations, he lacks the necessary 10 qualifications to do so. He should also not be 11 able to testify as an expert in Master Plan 12 conformance compatibility or these technical 13 transportation issues without the requisite 14 knowledge or experience to draw those conclusions. 15 As such, we respectfully request the Hearing 16 Examiner decline to qualify Mr. Wilhelm as an 17 expert and make clear that his testimony is 18 limited to that of a lay opinion. 19 The second issue we raised an objection 20 to was with respect to Mr. Keith Nusbaum. The 21 Applicant respectfully requests that the Hearing 22 Examiner eliminate his -- limit his participation 23 to that permitted of an individual member of the 24 public. 25 Pursuant to his prehearing statement and</p>
62	<p>1 knowledge needed to render expert opinion. 2 Advocating for special interests of a 3 community is completely different than objectively 4 analyzing how a specific application conforms to 5 the County's policy and regulations. To qualify 6 him as an expert based on his participation would 7 be a slippery slope that would open the floodgates 8 for other active members of the community to 9 testify as experts. 10 We would also note he has no expertise 11 to speak about the consistency of this application 12 to previously zone CRNF applications. To our 13 knowledge, Mr. Wilhelm nor GCCA -- to our 14 knowledge, neither of them offered any testimony 15 on those prior CRNF zone applications. And so he 16 would have no more experience or knowledge than a 17 layperson to opine on that issue. 18 Similarly, transportation planning is a 19 highly specialized area of expertise. We see 20 nothing in Mr. Wilhelm's experience that would 21 afford him with the specialized knowledge or 22 experience needed to opine on these issues beyond 23 his lay observations. 24 As the Hearing Examiner is aware, 25 transportation adequacy is a very technical issue</p>	64	<p>1 subsequent email correspondence, Mr. Nusbaum is 2 appearing pro se in his own capacity as an 3 individual party of record. His prehearing 4 statement indicates an intention to participate in 5 the hearing in a role that is reserved for counsel 6 representing organized opposition, which is not 7 permitted by the rules. 8 Being a party of record does not afford 9 Mr. Nusbaum with additional rights to call 10 witnesses and present evidence, as all individuals 11 that testify before OZAH are deemed parties of 12 record, pursuant to Rule 3.1.A, allowing all 13 parties of record to call witnesses or present 14 evidence would be contrary to the order that the 15 rules are intending to create. 16 By email dated September 4th, 2025, 17 Hearing Examiner Byrne confirmed the only rule 18 that would apply to Mr. Nusbaum is Rule 3.5. 19 While Rule 3.5 would allow Mr. Nusbaum to testify 20 as an individual member of the public and submit 21 written pertinent material, Mr. Nusbaum does not 22 fall within one of the other three categories 23 under that rule. 24 He's confirmed he is not being 25 represented by counsel. Second, he is not</p>

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17 (65 to 68)

<p>65</p> <p>1 appearing as part of organized opposition, as he 2 would suggest. 3 The rules refer to persons appearing as 4 part of organized opposition. Persons is plural, 5 and organized does not mean tidy in this context. 6 It means persons united and affiliated in some 7 type of a group. 8 One individual representing themselves 9 does not qualify as organized opposition. To read 10 the rule this way would suggest that all 11 individuals who participate at OZAH must similarly 12 be classified as organized opposition, which would 13 in turn require that all those individuals file 14 prehearing statements. 15 This is clearly not the intent of the 16 rule. This interpretation would also completely 17 negate the last sentence of Rule 3.5, which 18 discusses individual members of the public, 19 ascribing it no meaning, contrary to the rules of 20 statutory interpretation. 21 And, lastly, the third prong. 22 Mr. Nusbaum has indicated -- not indicated any 23 intention to introduce expert evidence. While 24 there will be opportunities for Mr. Nusbaum and 25 other individuals to cross-examine any witnesses</p>	<p>67</p> <p>1 that those rules seek to create. We therefore 2 respectfully request the Hearing Examiner issue a 3 rulemaking that limits Mr. Nusbaum's 4 participation. 5 Thank you very much for your 6 consideration of these requests. We look forward 7 to putting on our case in chief. 8 HEARING EXAMINER SOKONI: Thank you. 9 Response by Ms. Rosenfeld? 10 MS. ROSENFELD: Yes, thank you. The 11 Applicant invites the Hearing Examiner to 12 disregard Mr. Wilhelm's deep and extensive 13 knowledge and experience in matters pertaining to 14 land use resulting from his decades of 15 participation in land use proceedings through both 16 his role as president of GCCA as well as his other 17 roles as an individual in the various committees 18 that are listed on his CV. His extensive 19 experience and knowledge in land use and zoning 20 matters includes county Master Plans, subdivision 21 and site plans, conditional use applications, 22 rezoning cases, and county and state legislative 23 proceedings. 24 The same Maryland Rule 5-7.0.2 that 25 Ms. Rogers cites requires, in order for someone to</p>
<p>66</p> <p>1 that testify during the hearing, subject to the 2 Hearing Examiner's authority to establish 3 procedures for the reasonable regulation of 4 cross-examination. 5 For all of these reasons, we would 6 object to any attempt by Mr. Nusbaum to call his 7 own witnesses. His participation should be 8 limited in scope to narrative, lay testimony, and 9 written submissions, as allowed by Rule 3.5. 10 Additionally, while we don't object to 11 his submission of materials that he feels relevant 12 for the record, we would object to any expert 13 testimony he plans to offer. To our knowledge, 14 Mr. Nusbaum does not have any of the necessary 15 credentials, experience, or background to qualify 16 as an expert in transportation, engineering, or 17 land planning. As such, he cannot testify as an 18 expert regarding the contents of the Maryland 19 Department of Transportation State Highway 20 Administration turning movement summary report, 21 which he indicated he planned to introduce. 22 Mr. Nusbaum's participation is limited 23 to what OZAH Rules of Procedure permit of an 24 individual member of the public. To permit 25 further participation would jeopardize the order</p>	<p>68</p> <p>1 qualify as an expert, a determination as to 2 whether the witness is qualified as an expert by 3 knowledge, skill, experience, training, or 4 education. And we submit that Mr. Wilhelm has -- 5 qualifies as an expert by virtue of his knowledge, 6 his skill, and his experience accrued over decades 7 of experience and participation in these land use 8 and zoning proceedings. 9 We are requesting that he be recognized 10 as an expert in five areas. The first is Master 11 Plan, the second inconsistency with other CRFN 12 zones, with respect to the lack of public transit 13 in the vicinity of the subject property, the 14 general inadequacy of the road network in the 15 vicinity of the subject property, and lack of 16 compatibility with the neighborhood. 17 I want to make very clear that we are 18 not offering Mr. Wilhelm as an expert in 19 transportation adequacy for purposes of the 20 transportation study and report that was provided. 21 We are looking for his qualification with respect 22 to public transit matters only and public 23 transportation. 24 When you take a look at Mr. Wilhelm's 25 experience, he's -- has served as president of</p>

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18 (69 to 72)

<p>69</p> <p>1 GCCA since as early as 1981, and he has been 2 involved in land use and zoning matters, including 3 Master Plans and subdivisions, and other county 4 and state and legislative proceedings since that 5 time. In that role, he has been exposed to 6 reviewing, opining on, and offering 7 interpretations as to Master Plans in those 8 various proceedings.</p> <p>9 With his -- with respect to his 10 experience with LabQuest, he's an executive 11 committee member and secretary and has been since 12 2011 a member. This is a committee that is 13 responsible for, among other things, the 14 implementation of the White Oak Master Plan and 15 the -- with respect to his role on MCDOT CAC, he 16 was a member involved in three different studies, 17 all related to the eastern side of the County, the 18 New Hampshire Avenue BRT study, the U.S. 29 BRT 19 Phase 2 study, and the old Columbia Pike study. 20 He also has been involved in the Fairland/Briggs 21 Chaney Master Plan Implementation Advisory 22 Committee, and he also has been involved in the 23 East County Citizens Advisory Board.</p> <p>24 In all of those roles, he has been 25 responsible for review, evaluation, and, in some</p>	<p>71</p> <p>1 a more flexible way to evaluate and assess the 2 expertise of any witness.</p> <p>3 And that flexibility is broadened in 4 this particular instance in this proceeding 5 because this is an administrative proceeding and 6 not a judicial proceeding. And so for that 7 reason, the rule should be read more broadly than 8 it would in a judicial proceeding relating to, for 9 example, a scientific or medical expert. We would 10 ask that for purposes of the record, we have an 11 opportunity to voir dire Mr. Wilhelm so that he 12 can elaborate on his experience on the record as a 13 proffer, should the Hearing Examiner determine 14 that that would be appropriate, if there is still 15 some question as to the scope and relevance of his 16 skill, knowledge, and training and experience.</p> <p>17 HEARING EXAMINER SOKONI: Could everyone 18 on Zoom please mute yourselves?</p> <p>19 Thank you very much for the 20 presentation. A question. Could you just clarify 21 for me? I'm trying -- I want to make sure I 22 understand you are -- you're making a distinction 23 between his -- you said you're not presenting him 24 as a transportation expert -- the distinction --</p> <p>25 MS. ROSENFELD: Yes.</p>
<p>70</p> <p>1 places, recommendation of application of the 2 Master Plan in those various roles. I would ask 3 that -- the Applicant submitted that this would be 4 a slippery slope, that to accept Mr. Wilhelm as an 5 expert in this case would essentially open the 6 floodgates to allowing any citizen who 7 participates on a regular basis in land use and 8 zoning affairs as an expert.</p> <p>9 That is not correct. We are asking for 10 a determination with respect to Mr. Wilhelm based 11 on his decades of experience in these fields, as 12 it relates to this particular case and the 13 subjects that we have identified. That's a 14 case-by-case determination made based on the 15 expertise, knowledge, and skill of any particular 16 individual, and does not open the floodgates in 17 any other case because this would not set a 18 precedent because Mr. Wilhelm's knowledge and 19 skill is specific to what he has learned and the 20 experience that he has gained over the decades.</p> <p>21 We would submit that the rule is read 22 far more broadly than the Applicant would suggest. 23 The rule originally had been based on something 24 called the Frye test. It's now been moved to the 25 Daubert test, which, under the Maryland Rules, is</p>	<p>72</p> <p>1 HEARING EXAMINER SOKONI: -- you're 2 making between transportation and transit?</p> <p>3 MS. ROSENFELD: Sure. There is -- 4 there's an extensive transportation study prepared 5 by a transportation engineer. With respect to the 6 congestion levels, the backup at various traffic 7 lights, it's a very technical document. And I'm 8 sorry I don't have the reference right now.</p> <p>9 We are not presenting Mr. Wilhelm for 10 purposes of any of that CLV traffic congestion 11 vehicular analysis. We are offering him as an 12 expert for the limited purpose of the availability 13 of public transit and public transportation 14 facilities. And I would submit to the Hearing 15 Examiner that in Exhibit 57.J, under -- which is 16 Mr. Wilhelm's CV, under Paragraph 3 in particular, 17 his participation in the MCDOT CAC, where he was 18 involved in three recent studies involving various 19 transit facilities that he -- that in addition to 20 the other experience that he has, qualifies him in 21 that particular realm.</p> <p>22 HEARING EXAMINER SOKONI: Thank you. I 23 want to give the Applicants an opportunity to 24 respond to the objection -- to the -- to that 25 response.</p>

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19 (73 to 76)

<p>73</p> <p>1 MS. ROGERS: Thank you. We would just 2 note that expert qualification is intended to 3 provide an opportunity for those areas of the case 4 that require an expert opinion. Someone 5 testifying to their lay opinion regarding what 6 available public transportation there is 7 something that does not qualify or warrant expert 8 testimony. And courts are clear where it's not 9 something that -- if it's something that a 10 layperson can testify to, that's something that 11 doesn't require qualification of an expert. And 12 so I guess I'm a little unclear as to what 13 Ms. Rosenfeld intends to qualify him as an expert 14 on in that capacity because just generally 15 speaking to what transit availability there is in 16 the area is not something that I think there's any 17 expert qualification needed to testify on. 18 Additionally, I would just like to 19 reiterate -- and I do have copies if it's helpful 20 for the Hearing Examiner regarding what the intent 21 is of that CAC committee -- it was to learn about 22 and provide input and share information among 23 stakeholders and provide just a transparent 24 community involvement. Again, just because 25 Mr. Wilhelm participated in those committees does</p>	<p>75</p> <p>1 matter -- and this is not to predict how I would 2 rule -- I am struggling a little bit with the 3 issue of expertise. I am seeing a lot of involved 4 and -- involvement and participation, all very 5 noble things. But I'm not sure -- I'm trying 6 to -- I do think, in fairness, he should be given 7 an opportunity to testify to his skills and his 8 qualification. 9 But I do think -- I mean, looking at the 10 resum , which is -- I think it's a commendable 11 resum . And I see lots of -- what I'm struggling 12 with here is the legal core of whether there's 13 enough here to be an -- a technical expert. I am 14 struggling with that a little bit. 15 But I do think it's appropriate for him 16 to be able to testify because for example, you 17 know, just -- your Exhibit 57.J -- thank you for 18 referring to that -- you know, the summary of 19 professional experience, there's a total of 46 20 years. And that's a lot of experience, I agree, a 21 total of 46 years of experience in the 22 communications and defense industries as an 23 electrical engineer. His formal education is in 24 electrical engineering and program manager before 25 retiring at the end of 2015, worked for USAF,</p>
<p>74</p> <p>1 not mean that he has any specialized knowledge 2 beyond just a layperson to opine on those issues 3 under the qualification of an expert. The same is 4 true of the Master Plan. 5 Yes. We acknowledge Mr. Wilhelm has a 6 lot of involvement in the community planning 7 process. But as I mentioned, those formal task 8 forces and committees which he served on were 9 mechanisms to get public input where he was 10 advocating on behalf of his community. That does 11 not grant him specialized knowledge or experience 12 to testify under the qualification of an expert. 13 HEARING EXAMINER SOKONI: Uh-huh. 14 MS. ROGERS: Thank you. 15 HEARING EXAMINER SOKONI: So I'm 16 inclined -- thank you so much for the arguments on 17 both sides. I'm inclined to reserve ruling on the 18 qualification of expertise. 19 I do want to grant you the opportunity 20 to voir dire him. I think it would be helpful to 21 have Mr. Wilhelm's -- when we get to that point 22 where you would be looking to introduce him as an 23 expert to -- I would like to have his testimony on 24 his qualifications. 25 I will say, just as a preliminary</p>	<p>76</p> <p>1 several communication carriers, assistant. 2 So, clearly, a lot of professional skill 3 as an electrical engineer, but you're not 4 presenting him as an expert in electrical 5 engineering. You know, I see all these laudable 6 civic engagement and civic participation, but we 7 have a legal determination about whether you can 8 qualify as an expert on that. So I'm just being 9 forthright with what I am sensing. 10 But I certainly am open to getting his 11 testimony because, you know, when you say you were 12 involved with Planning Staff and some other 35 13 residents in a two -- you know, over a two-year 14 period on the transportation policy, maybe he can 15 shed some light on what the involvement -- 16 MS. ROSENFELD: Sure. 17 HEARING EXAMINER SOKONI: -- what the 18 technical aspects of that involvement are. 19 MS. ROSENFELD: Thank you. 20 HEARING EXAMINER SOKONI: So -- 21 MS. ROSENFELD: And -- 22 HEARING EXAMINER SOKONI: -- I will 23 reserve on that. I do -- I actually -- I'm ready 24 to make a ruling on the first objection. So the 25 objection of Ms. Rogers to Mr. Nusbaum's</p>

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20 (77 to 80)

<p>77</p> <p>1 prehearing -- oh, sorry.</p> <p>2 MR. NUSBAUM: That's okay.</p> <p>3 HEARING EXAMINER SOKONI: We didn't -- I</p> <p>4 didn't mean to skip over you.</p> <p>5 MR. NUSBAUM: No, that's okay. If</p> <p>6 you're going to --</p> <p>7 HEARING EXAMINER SOKONI: Did you want</p> <p>8 to --</p> <p>9 MR. NUSBAUM: If you're going to rule in</p> <p>10 my favor --</p> <p>11 HEARING EXAMINER SOKONI: No, no, no,</p> <p>12 no, no.</p> <p>13 MR. NUSBAUM: -- I don't need to talk</p> <p>14 anymore.</p> <p>15 HEARING EXAMINER SOKONI: Sorry, sorry,</p> <p>16 sorry. You should have an opportunity to speak,</p> <p>17 too.</p> <p>18 MR. NUSBAUM: Thank you. I would just</p> <p>19 say that Applicant here is attempting to segregate</p> <p>20 individuals into a lower-tier status of party of</p> <p>21 record. It fundamentally opposes due process</p> <p>22 before a hearing board like this.</p> <p>23 Land Use Rule 3.5 sets forth that an</p> <p>24 individual who wants to appear in organized</p> <p>25 opposition is required to file a prehearing</p>	<p>79</p> <p>1 that category, and I would ask you to rule against</p> <p>2 this objection.</p> <p>3 HEARING EXAMINER SOKONI: Thank you.</p> <p>4 Did anyone want to chime in or respond</p> <p>5 to Mr. Nusbaum's comments?</p> <p>6 MS. ROGERS: I think we covered most of</p> <p>7 it in our oral argument remarks. The only thing I</p> <p>8 would note is that we would object to the</p> <p>9 categorization of the -- how Ms. Hearing Examiner</p> <p>10 Byrne's email was portrayed. She was identifying</p> <p>11 exactly what the rules required, as we believe</p> <p>12 we've outlined in our remarks.</p> <p>13 The rules did require three different</p> <p>14 categories. She was merely letting Mr. Nusbaum</p> <p>15 know what those three categories were, and we do</p> <p>16 not believe he qualifies for one of those three</p> <p>17 categories to appear, you know, as if he was</p> <p>18 Opposition counsel in this proceeding.</p> <p>19 HEARING EXAMINER SOKONI: Thank you.</p> <p>20 MS. ROSENFELD: May I just chime in --</p> <p>21 HEARING EXAMINER SOKONI: Yes.</p> <p>22 MS. ROSENFELD: -- for a moment? I do</p> <p>23 think that to read Rule 3.5 as restrictively as</p> <p>24 the Applicant is suggesting is prejudicial to a</p> <p>25 person who is both an attorney who wants to appear</p>
<p>78</p> <p>1 statement, which I did timely and submitted</p> <p>2 exhibits with that. Ms. Rogers is correct that</p> <p>3 the rule then goes on to talk about individuals</p> <p>4 who also want to testify.</p> <p>5 There are essentially two categories:</p> <p>6 those who want to appear as party of record, who</p> <p>7 want to have all of the rights and actions of a</p> <p>8 party of record -- calling witnesses, introducing</p> <p>9 expert witnesses, cross-examination, opening and</p> <p>10 closing statements -- and then there are</p> <p>11 individuals who do -- who choose not to do that.</p> <p>12 And those individuals have the right to testify</p> <p>13 and present written evidence without submitting a</p> <p>14 prehearing statement. I'm here based on my</p> <p>15 request on August 11th, 2025, to be a party of</p> <p>16 record and to appear in organized opposition,</p> <p>17 which is one of the categories set forth in</p> <p>18 Rule 3.5.</p> <p>19 I would further state that Hearing</p> <p>20 Examiner and Director Byrne previously set forth</p> <p>21 in her communication on September 4th: The</p> <p>22 persons attending to appear in organized</p> <p>23 opposition are required to file for a prehearing</p> <p>24 statement. It says nothing about what --</p> <p>25 requiring counsel to represent them. I fall under</p>	<p>80</p> <p>1 as a party of record. And it seems as if this is</p> <p>2 written to assure that the Applicant and the</p> <p>3 Hearing Examiner is aware of what those types of</p> <p>4 submissions and materials would be, subject to</p> <p>5 discussion at the hearing. And I do think that</p> <p>6 they are reading it more narrowly than this rule</p> <p>7 was intended to provide.</p> <p>8 MS. GIRARD: With all due respect, I</p> <p>9 don't understand -- if the reason that Mr. Nusbaum</p> <p>10 is not being represented by Ms. Rosenfeld is</p> <p>11 because he thinks he should have a separate role,</p> <p>12 I don't know why Ms. Rosenfeld is defending his</p> <p>13 position. And to the point that there's</p> <p>14 attorneys, just because you're an attorney</p> <p>15 shouldn't give you special status in front of this</p> <p>16 body. I would just respond that way.</p> <p>17 HEARING EXAMINER SOKONI: Thank you all</p> <p>18 for your arguments for -- I've noted and very</p> <p>19 carefully followed all the arguments on the</p> <p>20 objections. Like I said, I'm going to reserve on</p> <p>21 the expert qualification.</p> <p>22 The objection Ms. Rogers presented in</p> <p>23 writing the Exhibit 50 -- let's see. Was that 59?</p> <p>24 I believe it's 50 -- yes, Exhibit 59, which was</p> <p>25 the objection to Mr. Nusbaum's role. It is my</p>

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21 (81 to 84)

81	<p>1 ruling that whatever the -- it's my ruling that 2 that objection is overruled. Whatever the OZAH 3 rules prescribed in Rule 3.3 and 3.4 regarding 4 representation of groups by Counsel and submission 5 of prehearing statements by Counsel for such 6 parties, I believe, must not be construed to limit 7 the rights of individual parties. 8 While one could argue that Mr. Nusbaum 9 was not required to submit a prehearing statement, 10 I do not see why he should be punished for 11 submitting one. His prehearing statement is 12 admitted into the record. 13 Rule 3.5 actually specifically says -- 14 let me just pull it up here. Rule 3.5 15 specifically provides that Nothing in this section 16 is intended to limit the rights of individual 17 members of the public to testify during the 18 hearing or -- and I emphasize or -- to submit 19 pertinent written materials at any time while the 20 record remains open for that purpose. 21 So my position is that he submitted -- 22 he didn't have to. He wasn't required to -- in 23 the same way that the rules are prescribing what 24 attorneys for groups and attorneys for -- you 25 know, who are representing organized opposition</p>	83	<p>1 I'm not comfortable. 2 This is an administrative hearing. We 3 do have large latitude. And of course, I'll have 4 to rein things in if things get out of control. 5 I'm just not comfortable treating a pro 6 se party of record who chooses this level of 7 participation -- I don't think they should be 8 punished because they don't have an attorney. So 9 I'm comfortable within the rules. 10 I already told Mr. Nusbaum he couldn't 11 file a subpoena. He was not timely, and so -- you 12 know, and I will enforce those rules. But I don't 13 think he should be treated as lesser than because 14 he has no attorney. 15 With that, I think we've disposed of all 16 the preliminaries. Maybe we can jump into case in 17 chief. 18 Both parties get an opportunity to do 19 their -- an opening statement. In fact, I 20 shouldn't say, both parties. All parties have an 21 opportunity to do an opening statement. 22 And then, of course, the Applicants have 23 their case in chief so I open it up for opening 24 statement, starting with the Applicant's Counsel. 25 OPENING STATEMENT FOR NOTLEY ASSEMBLAGE, LLC</p>
82	<p>1 should do. They must submit a prehearing 2 statement, which should outline these things. 3 Lay parties are not required to do that. 4 He chose to do that, and I don't think he should 5 be punished for it. So his prehearing statement 6 is admitted. 7 MS. GIRARD: Just to be clear, we 8 weren't objecting to his submission of a 9 prehearing statement at all. That was -- I just 10 want to make clear our objection was to his intent 11 to call witnesses and to cross-examine witnesses 12 in -- as if he were in organized opposition. So 13 it -- to the extent that he was intending to call 14 witnesses that were not already being called it -- 15 and opening and closing statements to act as a 16 part -- as in that capacity. 17 The prehearing statement, we don't have 18 any problem with, and we don't have any problem 19 with submitting materials and testifying, none of 20 that. It was really just kind of going beyond 21 that to the extent he was going to act as 22 Opposition Counsel or the Applicant. That's -- 23 HEARING EXAMINER SOKONI: And thank you 24 so much for the clarification. Even then, I do 25 stand by the overruling of the objection because</p>	84	<p>1 MS. ROGERS: Thank you very much. 2 Again, for the record, Elizabeth Rogers with Lerch, 3 Early & Brewer, representing the Notley 4 Assemblage, LLC, the Applicant in this case with 5 my colleague Erin Girard as co-Counsel. 6 With us on behalf of Notley Assemblage, 7 LLC, is Kenny Bodey with Brian Stewart Development 8 on behalf of the Applicant. We have Joshua Sloan, 9 Logan Kelso with VIKA, our land planner, landscape 10 architect, and civil engineer, respectively, and 11 Katie Wagner with Grove Slade, our traffic 12 engineer. 13 As the Hearing Examiner is aware of our 14 map application material, we are here today to 15 request approval of a Local Map Amendment to 16 rezone the properties located in the northwest 17 quadrant of New Hampshire Avenue, Notley Road, 18 from the R-200 zone with commercial-residential 19 neighborhood floating zone CRNF 1.0, C-0.0, R-1.0 20 H-50' to allow for the redevelopment of this 21 underutilized corridor-fronting property with a 22 compatible residential development containing up 23 to 130 units. 24 This Local Map Amendment is the first 25 step in a multi-step process. As the Hearing</p>

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22 (85 to 88)

85	<p>1 Examiner is aware, there are very specific and</p> <p>2 narrow findings that must be made at this stage</p> <p>3 for approval of a Local Map Amendment. Many of</p> <p>4 the details, with respect to parking and tree</p> <p>5 preservation and final determination of adequate</p> <p>6 public facilities, are premature at this stage and</p> <p>7 will be addressed with the subsequent preliminary</p> <p>8 plan and site plan applications. Nonetheless, the</p> <p>9 Applicant has advanced the conceptual design at</p> <p>10 this early stage beyond the level of detail that</p> <p>11 is typically seen with a Floating Zone Plan to</p> <p>12 demonstrate how the project will be compatible</p> <p>13 with the surrounding properties on this</p> <p>14 corridor-focused property in East County, which</p> <p>15 directly addresses the County's housing needs for</p> <p>16 both more housing and diverse housing.</p> <p>17 This Local Map Amendment is, to our</p> <p>18 knowledge, the first to implement the</p> <p>19 corridor-focused development and vision by Thrive</p> <p>20 Montgomery 2050, the County's General Plan.</p> <p>21 Thrive sets forth a new vision for the County.</p> <p>22 As you will hear from our experts today,</p> <p>23 while the White -- 1997 White Oak Master Plan</p> <p>24 remains valid, as confirmed by Maryland's courts,</p> <p>25 its recommendation remains in effect only to the</p>	87	<p>1 attention to the proposed design to ensure its</p> <p>2 compatibility with the surrounding neighborhood.</p> <p>3 The proposed residential development is located</p> <p>4 along New Hampshire Avenue, a six-lane divided</p> <p>5 highway not in the middle of a low-density</p> <p>6 residential community, as opponents have tried to</p> <p>7 portray.</p> <p>8 Through our witnesses today, we will</p> <p>9 demonstrate the proposed heights are compatible</p> <p>10 with the surrounding neighborhood and the</p> <p>11 underlying R-200 zone. The setbacks propose a</p> <p>12 compatible transition to the surrounding</p> <p>13 neighborhood. Ample open space will be provided</p> <p>14 onsite, including both formal open space in</p> <p>15 addition to HOA parcels and individual lots which</p> <p>16 provide additional green area, and that the</p> <p>17 proposed density is also compatible with the</p> <p>18 surrounding neighborhood, which contains a</p> <p>19 diversity of residential commercial uses at</p> <p>20 varying densities.</p> <p>21 As courts have recognized compatibility,</p> <p>22 as shown in a floating zone case through</p> <p>23 conformance with express ordinance standards, our</p> <p>24 expert testimony today, in combination with the</p> <p>25 information already contained in the record, will</p>
86	<p>1 extent they are not inconsistent with the</p> <p>2 subsequently adopted General Plan, just Thrive</p> <p>3 2050. We have cited a case in our October 20th</p> <p>4 letter to the Planning Board to that effect, which</p> <p>5 is Exhibit 65, in the record.</p> <p>6 As discussed in detail in the record,</p> <p>7 and as we will confirm through our testimony</p> <p>8 today, this Local Map Amendment is in substantial</p> <p>9 conformance with the goals and recommendations of</p> <p>10 the 1997 White Oak Master Plan, Thrive Montgomery</p> <p>11 2050, and the numerous other county Functional</p> <p>12 Master Plans, all of which conformance with is</p> <p>13 required by 7.2.1.E of the zoning ordinance. Park</p> <p>14 and Planning's Technical Staff and the Planning</p> <p>15 Board have agreed.</p> <p>16 As we will demonstrate today, the</p> <p>17 proposed CRNF zone is appropriate for this</p> <p>18 property. It is compatible with the surrounding</p> <p>19 development, and it's in the public interest.</p> <p>20 Our testimony will confirm that there</p> <p>21 are adequate public facilities and services to</p> <p>22 accommodate the proposed development, although</p> <p>23 formal determination of adequate public facilities</p> <p>24 will come with a subsequent preliminary plan of</p> <p>25 subdivision application. We have paid particular</p>	88	<p>1 confirm that this Local Map Amendment complies</p> <p>2 with all development standards required under</p> <p>3 Division 5.3. It complies with the prerequisites</p> <p>4 under Division 5.13.D, and it satisfies all of the</p> <p>5 findings contained in 7.2.1.E of the zoning</p> <p>6 ordinance.</p> <p>7 The project will not substantially or</p> <p>8 will not adversely affect the surrounding roadway</p> <p>9 network. To the contrary, the project will</p> <p>10 substantially improve pedestrian safety and</p> <p>11 connectivity and will not generate traffic that</p> <p>12 exceeds applicable critical lane volumes, and our</p> <p>13 experts will testify to that.</p> <p>14 In some through our witnesses today, we</p> <p>15 will demonstrate that this Local Map Amendment</p> <p>16 satisfies all standards and requirements and</p> <p>17 findings necessary for the District Council to</p> <p>18 approve the LMA. The Montgomery County Planning</p> <p>19 Board agreed with this. The Planning Board</p> <p>20 reviewed the application and voted and -- to</p> <p>21 recommend approval of the LMA at their regularly</p> <p>22 scheduled hearing on October 30th. Their</p> <p>23 transmittal record is -- letter is in the record</p> <p>24 at Exhibit 30, and it confirms that the LMA meets</p> <p>25 all the required findings in 7.2.1.E.</p>

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23 (89 to 92)

89	<p>1 We plan to call three witnesses. We</p> <p>2 have Joshua Sloan with VIKA as a landscape</p> <p>3 architect and land planner; Logan Kelso, also with</p> <p>4 VIKA as a civil engineer; and Katie Wagner with</p> <p>5 Grove Slade as our transportation engineer.</p> <p>6 We have taken note of the questions that</p> <p>7 the Hearing Examiner provided via email, and we</p> <p>8 will address those in our testimony today. And</p> <p>9 after other opening remarks are given, we're ready</p> <p>10 to proceed with our case in chief and calling our</p> <p>11 first witness.</p> <p>12 HEARING EXAMINER SOKONI: Thank you very</p> <p>13 much.</p> <p>14 Ms. Rosenfeld?</p> <p>15 OPENING STATEMENT FOR GCCA</p> <p>16 MS. ROSENFELD: Good morning. Thank</p> <p>17 you. I'm here on behalf of the Greater Colesville</p> <p>18 Citizens Association, Dan Wilhelm, president, and</p> <p>19 Kyle Smiddie -- not Kyle Motley, as I referred to</p> <p>20 him earlier -- a confronting property owner who</p> <p>21 lives at 30 -- 334 Flannery Lane. There are</p> <p>22 multiple reasons why this proposed LMA should be</p> <p>23 denied, starting with the fact that it's a</p> <p>24 threshold matter. It does not qualify for</p> <p>25 rezoning because it does not have the requisite</p>	91	<p>1 None had exclusive access, ingress and egress</p> <p>2 only, to a minor residential road.</p> <p>3 The rezoning does not substantially</p> <p>4 conform with the 1997 approved and adopted White</p> <p>5 Oak Master Plan. The White Oak Master Plan</p> <p>6 provides that there should be limited organic</p> <p>7 redevelopment or infill development within</p> <p>8 existing residential communities.</p> <p>9 This is not that. This is significantly</p> <p>10 different from the surrounding neighborhood, and</p> <p>11 that would be the neighborhood as delineated</p> <p>12 either by the Applicant, by Planning Staff, or by</p> <p>13 my clients.</p> <p>14 Additionally, it does not substantially</p> <p>15 conform with the Thrive Montgomery 2050 plan,</p> <p>16 which has very clear goals of -- while on the one</p> <p>17 hand focusing development along certain corridors,</p> <p>18 this is not one of those corridors. Those</p> <p>19 corridors are identified in the plan. This is not</p> <p>20 that.</p> <p>21 It also encourages development as</p> <p>22 complete communities within an abutting existing</p> <p>23 commercial centers. This does not satisfy that</p> <p>24 either. We'll go through that in great detail</p> <p>25 when we testify later.</p>
90	<p>1 minimum to prerequisites necessary, even to be</p> <p>2 eligible for consideration.</p> <p>3 And as we'll explain during our</p> <p>4 testimony first, the site does not have vehicular</p> <p>5 access to a non-residential road, as required by</p> <p>6 Zoning Code 59-1.3.D; and it does not have the --</p> <p>7 there's no evidence in the record that it has the</p> <p>8 required existing water and sewer infrastructure</p> <p>9 that's adequate to support the proposed rezoning.</p> <p>10 Beyond that, the CRNF zone is not</p> <p>11 intended for or appropriately located at this</p> <p>12 site. It's a mixed-use zone intended to offer</p> <p>13 mixed-use development compatible with adjacent</p> <p>14 development. This rezoning is far more dense than</p> <p>15 the surrounding exclusively-residential community,</p> <p>16 predominantly R-200 zoning.</p> <p>17 A look at the prior CRNF rezonings that</p> <p>18 have been approved by the County Council -- there</p> <p>19 are five -- confirm that this one does not match</p> <p>20 the predominant characteristics of those other</p> <p>21 communities. The -- those other rezonings were</p> <p>22 within. They redeveloped existing institutional</p> <p>23 commercial buildings, and they're bounded by major</p> <p>24 highways and/or a metro rail line and/or were an</p> <p>25 edge condition to an urban area such as a CBD.</p>	92	<p>1 The proposed rezoning is not compatible</p> <p>2 with the existing adjacent development. The</p> <p>3 height and the massing of the buildings are</p> <p>4 incompatible with the existing neighborhood. It's</p> <p>5 surrounded by an existing low-density neighborhood</p> <p>6 with considerable open space, is in parts heavily</p> <p>7 tree, and is served exclusively by neighborhood</p> <p>8 roads.</p> <p>9 The existing single-family residential</p> <p>10 structures do not exceed 40 feet in height. The</p> <p>11 proposed height for this project is 50.</p> <p>12 And while the Applicant told you that</p> <p>13 Park and Planning agreed that this LMA is</p> <p>14 appropriate at this location, what they failed to</p> <p>15 mention is that the Planning Board endorsed in</p> <p>16 concept the Staff's recommendations that existing</p> <p>17 vegetation along certain boundaries and within</p> <p>18 certain interior portions of the site be preserved</p> <p>19 and protected, that there be additional open</p> <p>20 space, and that the density proposed is too high.</p> <p>21 So we think that once the Hearing</p> <p>22 Examiner better understands the board's comments</p> <p>23 during the hearing, you'll appreciate and agree</p> <p>24 with us that this rezoning at this location as</p> <p>25 proposed does not satisfy the Master Plan, does</p>

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24 (93 to 96)

93	<p>1 not satisfy the standards of the zoning code, is</p> <p>2 not compatible with the surrounding neighborhood,</p> <p>3 and should be denied. Thank you.</p> <p>4 HEARING EXAMINER SOKONI: Thank you.</p> <p>5 So I'll turn it over to the Applicant's</p> <p>6 Counsel to present your case in chief. Mr. -- oh,</p> <p>7 sorry. Please, please.</p> <p>8 OPENING STATEMENT FOR KEITH NUSBAUM, PARTY OF</p> <p>9 RECORD</p> <p>10 MR. NUSBAUM: Thank you. Ms. Hearing</p> <p>11 Examiner, again, my name is Keith Nusbaum, and I'm</p> <p>12 here as a party of record in organized deposition</p> <p>13 to Local Map Amendment H-159. As addressed in my</p> <p>14 prehearing statement, the Hearing Examiner should</p> <p>15 not recommend this application because it is</p> <p>16 materially flawed. I intend to provide evidence</p> <p>17 and testimony later to fully describe this</p> <p>18 reasoning, but I would like to provide a short</p> <p>19 preview of some of the key points now.</p> <p>20 First, however, I would like to provide</p> <p>21 some context for this hearing and the application.</p> <p>22 The citizens of Montgomery County have a social</p> <p>23 contract with their government.</p> <p>24 As Commissioner Bartley stated at the</p> <p>25 Planning Board meeting on October 30th last week,</p>	95	<p>1 months doing dedicated work to analyze this</p> <p>2 proposal and took to -- and took in countless</p> <p>3 community comments through meetings, flyers, and</p> <p>4 web notifications.</p> <p>5 Likewise, if someone's seeking to make</p> <p>6 specific changes to a parcel or parcels, as the</p> <p>7 Applicant is proposing here, there are processes</p> <p>8 and rules that must be followed. And the</p> <p>9 government has the duty under the social contract</p> <p>10 with citizens to faithfully uphold those rules in</p> <p>11 making its determination.</p> <p>12 I bring this up because I, like many of</p> <p>13 my neighbors, chose to move to Colesville based on</p> <p>14 the contract with this -- based on this contract</p> <p>15 with the government. I have stayed in my house</p> <p>16 for more than 15 years with the understanding that</p> <p>17 any development, such as that proposed, would need</p> <p>18 to go through the proper process.</p> <p>19 I have joined community groups; I've</p> <p>20 participated in neighborhood activities and</p> <p>21 events; I've made hundreds of thousands of dollars</p> <p>22 in renovations to enhance my home. I've done all</p> <p>23 of this with the knowledge that the White Oak</p> <p>24 Master Plan, as drafted, looks to maintain the</p> <p>25 community of which I am part.</p>
94	<p>1 Zoning is a promise from the government to the</p> <p>2 citizens. It is a promise that the citizens can</p> <p>3 rely on the zoning and the associated regulations</p> <p>4 and that the government will ensure that the</p> <p>5 actions related to zoning follow those</p> <p>6 regulations.</p> <p>7 While I appreciate that zoning can</p> <p>8 change, and I recognize -- I also recognize that</p> <p>9 there are processes in the County by which that</p> <p>10 can happen, and there are rules and regulations</p> <p>11 that the citizens, developers, and the government,</p> <p>12 including OZAH and the District Council, must</p> <p>13 follow in effectuating those changes. The</p> <p>14 County's seeking to make broad changes to the</p> <p>15 zoning regulations or more localized Sector Plan</p> <p>16 or master changes. There's a process for that, a</p> <p>17 deliberative process that takes time with</p> <p>18 analysis, debate, understanding, and, ultimately,</p> <p>19 a decision.</p> <p>20 Facts are determined based on data</p> <p>21 gathered during the process, and those facts are</p> <p>22 analyzed and examined in detail by dozens of</p> <p>23 zoning professionals. There's a prime example of</p> <p>24 how this just -- was just accomplished in</p> <p>25 ZTA 25-02. The council and their Staff spent</p>	96	<p>1 There has been no change in the last</p> <p>2 almost 30 years to the Colesville part of the</p> <p>3 White Oak Master Plan. And yet the community of</p> <p>4 Colesville has continued to evolve, diversify,</p> <p>5 expand, and thrive with this Master Plan, not</p> <p>6 despite it.</p> <p>7 The community is built on the ideas in</p> <p>8 the Master Plan. To allow this Applicant to</p> <p>9 hijack the zoning ordinance under the political</p> <p>10 arguments that the County needs more housing at</p> <p>11 all costs destroys all that I and the community</p> <p>12 have done.</p> <p>13 As Commissioner Bartley also stated at</p> <p>14 the October 30th hearing, that -- in the County's</p> <p>15 need and want to produce more housing, the County</p> <p>16 government errs in valuing future residents</p> <p>17 greater than it values current residents. It is</p> <p>18 the current residents who maintain the community,</p> <p>19 maintain the beauty here, and enhance the</p> <p>20 community with their human interactions,</p> <p>21 lifestyle, and culture. The government must value</p> <p>22 what Colesville has become through proper zoning</p> <p>23 administration and ensure Applicant meets its</p> <p>24 burden and follows all of the necessary zoning</p> <p>25 requirements.</p>

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25 (97 to 100)

<p style="text-align: right;">97</p> <p>1 I also want to make clear for the record 2 that I am in favor of redevelopment of the 3 property at issue here, but I want the development 4 to be part of the community, not in spite of the 5 community. In fact, I support the development of 6 townhouses on the site, but in the density that is 7 permitted by the zoning regulations, not that 8 sought by the Applicant.</p> <p>9 Zoning regulations permit up to 4.36 10 units per acre based on the underlying R-200 11 zoning. This would allow the potential for 43 12 townhouses or other residences to be built on the 13 property. This would be compatible with the 14 community, and, quite frankly, the community 15 wouldn't be -- would embrace this as thoughtful 16 redevelopment supporting the work that East County 17 residents have done to elevate an area that had 18 previously been neglected by the County 19 government.</p> <p>20 Instead, Applicant is requesting more 21 than 13 units per acre, which is not permitted by 22 the zoning ordinance. And this density would be 23 significantly greater than any similar 24 developments in the area and would create a 25 striking difference from the thoughtful</p>	<p style="text-align: right;">99</p> <p>1 Council in 2014, when they enacted this Floating 2 Zone Plan that current -- that is currently in 3 place, showed that for single-use residential 4 properties, the council established residential 5 detached townhouse and apartment floating zones. 6 When one is looking to establish, and I quote, 7 mixed-use centers and mixed-use development, the 8 CRNF zone is appropriate.</p> <p>9 But it is not appropriate when 10 single-use residential is the sole purpose. This 11 is highlighted to an even greater extent when the 12 surrounding community is examined to see that 13 there is no commercial and -- or employment zoning 14 nearby that could provide for the broad mixed-use 15 definition Applicant seeks to employ.</p> <p>16 Applicant has argued and will continue 17 to argue not that their project is mixed-use, but 18 that mixed use is not required for CRNF. They are 19 wrong.</p> <p>20 To support their position, Applicant 21 cites previous instances where CRNF zoning was 22 single use. The previous decisions by this office 23 and the District Council are not persuasive.</p> <p>24 In those cases, there was no opposition 25 to this issue. There was no analysis of this</p>
<p style="text-align: right;">98</p> <p>1 development my community has undertaken so far. 2 My case in chief will show that the 3 application fails to meet the requirements for the 4 Local Map Amendment to a CRNF's floating zone, as 5 required by Montgomery County Code 7.2.1.E. The 6 evidence to be presented will establish that the 7 application fails to meet the necessary two 8 prerequisites in each category.</p> <p>9 A clear reading of the zoning ordinance 10 will also show that the Applicant's decision to 11 seek CRNF zone is contrary to law and cannot be 12 permitted to proceed based on the present filing. 13 The undisputed evidence will show that 14 Applicant -- or is seeking to develop a single-use 15 residential property with covenants in perpetuity 16 for the same.</p> <p>17 They are attempting to do this using a 18 zoning plan that was intended for and specifically 19 requires mixed use. This was not a mistake. They 20 are attempting an end-run round, the zoning 21 regulations, so that they can dramatically 22 increase the density of townhouses able to be 23 built on this property.</p> <p>24 The plain reading of the Montgomery 25 County Code, and the intent by the District</p>	<p style="text-align: right;">100</p> <p>1 issue, and there was no mention of the issue in 2 any transcript, report, or resolution in those 3 cases.</p> <p>4 The Supreme Court of Maryland made 5 its -- made clear in its decision in Rochkind v. 6 Stevenson, 471 Md. 1, that when a precedent has 7 not been fully addressed or adequately analyzed, 8 and when a deliberative body never had the 9 occasion to scrutinize the issue, the court treats 10 the matter as effectively requiring fresh on the 11 merits treatment. This is the situation in which 12 we find ourselves today. And this body cannot 13 rely on any of the prior zoning examples cited by 14 Applicant, as none of them contained full analysis 15 of the issue.</p> <p>16 Ultimately, this is an issue of first 17 impression for this office. And I must make clear 18 the purpose of CRNF zones, as articulated in the 19 plain reading of the zoning ordinance, is for 20 mixed-use development. And those seeking 21 single-use development should utilize the 22 appropriate zoning category.</p> <p>23 Before concluding, I would also like to 24 address Applicant's burdens before this body. 25 Zoning Ordinance Article 59-7.1.1 sets forth that</p>

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26 (101 to 104)

<p>101</p> <p>1 the Applicant has the burden of production and the 2 burden of proof and is required to submit evidence 3 sufficient to satisfy these burdens by 4 preponderance of the evidence on all questions of 5 fact. This burden is defined in Maryland as to 6 prove something is more likely than not. 7 In other words, preponderance of the 8 evidence means it's such evidence, when considered 9 and compared with that opposed to it, has more 10 convincing force and produces in your mind a 11 belief that it is more likely true. If you 12 believe that the evidence is even balanced on the 13 issue, then your finding on the issue must be 14 against the party who has the burden of proving 15 it, the Applicant. 16 If you find the evidence presented by 17 Applicant to be lacking, erroneous, ambiguous, 18 unsupported, speculative, incomplete, or evenly 19 balanced with that presented by the Opposition, 20 the Applicant's burdens have not been met. 21 Likewise, you find that the evidence presented by 22 myself and the rest of those speaking against and 23 appearing in organized opposition to be more 24 convincing, and that it shows our position more 25 likely to be true, the Applicant's burdens have</p>	<p>103</p> <p>1 you could kindly raise your hand? 2 (The oath was administered.) 3 MS. ROGERS: Thank you. Mr. Sloan has 4 been previously qualified before this body on 5 numerous occasions as an expert. But in light of 6 the fact that the Hearing Examiner's ruling -- 7 reserving her ruling on qualifying Mr. Dan 8 Wilhelm, we would like to proceed with our voir 9 dire of Mr. Sloan for the record so that it's 10 clear, his extensive professional and educational 11 history. 12 MS. ROSENFELD: We will stipulate to his 13 expertise. 14 HEARING EXAMINER SOKONI: Thank you. 15 He's qualified as -- on that basis. 16 MS. ROGERS: We would like to ask -- 17 HEARING EXAMINER SOKONI: You would 18 still -- 19 MS. ROGERS: -- some of those questions 20 so that it's clear for the record in terms of the 21 degree of -- if Mr. Wilhelm's going to be under 22 voir dire, we would like it just to be clear for 23 the record how Mr. Sloan has been qualified in the 24 past. 25 HEARING EXAMINER SOKONI: So you're</p>
<p>102</p> <p>1 not been met. 2 For the Hearing Examiner to recommend 3 approval, and for the District Council to approve 4 this application, the council and you must find 5 that the Applicants have met their evidentiary 6 burdens on all questions of fact with respect to 7 each element of the necessary findings of the 8 zoning ordinance. 9 In conclusion, the evidence in this case 10 will show that a full and complete analysis of 11 each of the factors of Section 7.2.1.E can only 12 support a finding that Applicants cannot beat 13 their burden, and the application fails. For 14 these reasons, the Hearing Examiner should 15 recommend disapproval by the District Council. 16 Thank you. 17 HEARING EXAMINER SOKONI: Thank you. 18 I'll turn it over to Applicant's Counsel 19 to start their case in chief. And if you could 20 kindly step down from the counsel table, just so 21 you allow space for your witnesses? 22 MS. ROGERS: Thank you. Now we're going 23 to call our first witness, Mr. Joshua Sloan. 24 (Witness summoned.) 25 HEARING EXAMINER SOKONI: Mr. Sloan, if</p>	<p>104</p> <p>1 welcome to. 2 MS. ROGERS: Okay. Thank you. 3 HEARING EXAMINER SOKONI: She was -- 4 MS. ROGERS: Okay. 5 HEARING EXAMINER SOKONI: Yes, thank 6 you. 7 MS. ROGERS: We will be brief. 8 Whereupon, 9 JOSHUA SLOAN, 10 called as a witness for the Applicant, 11 having been duly sworn, testified as follows: 12 DIRECT EXAMINATION 13 BY MS. ROGERS 14 Q But, Mr. Sloan, can you please explain 15 what is your primary occupation? 16 A I'm a landscape architect and land 17 planner. 18 Q And how long have you been employed as a 19 professional land planner and landscape architect? 20 A I've been a landscape architect for 21 about 29 years and a land planner for about a 22 little over half that time. 23 Q And can you please describe your 24 professional educational background and 25 professional designations and accreditations</p>

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27 (105 to 108)

<p>105</p> <p>1 you've received?</p> <p>2 A Yes. I have a bachelor's degree in</p> <p>3 biology, studying plant ecology; I have a Master's</p> <p>4 of Landscape Architecture; I'm licensed in</p> <p>5 Maryland and Virginia as a landscape architect;</p> <p>6 and I am a member of the American Institute of</p> <p>7 Certified Planners.</p> <p>8 Q You -- and who is your current employer?</p> <p>9 And what's your employer's address?</p> <p>10 A VIKa Maryland, 20251 Century Boulevard,</p> <p>11 Suite 400, Germantown, Maryland 20874.</p> <p>12 Q And what's your current position at VIKa</p> <p>13 and the responsibilities?</p> <p>14 A I'm vice president and director of</p> <p>15 planning and landscape architecture.</p> <p>16 Q And have you previously worked as a</p> <p>17 planner with the Maryland National Capital Park</p> <p>18 and Planning Commission?</p> <p>19 A Yes. I worked on Staff as a planner and</p> <p>20 up to supervisor for seven years.</p> <p>21 Q And in that role and your time at Park</p> <p>22 and Planning, did you work on -- in connection</p> <p>23 with the zoning ordinance rewrite?</p> <p>24 A Yes. I spent a good amount of time</p> <p>25 before 2014, when the current zoning ordinance was</p>	<p>107</p> <p>1 Master Plans and Functional Plans, design</p> <p>2 guidelines, other elements that are required to be</p> <p>3 looked at, to make sure it complies with each of</p> <p>4 the pieces of the regulatory framework that we</p> <p>5 look at.</p> <p>6 Q And did you prepare a written report</p> <p>7 that was part of this application for the</p> <p>8 submission of the Local Map Amendment?</p> <p>9 A Yes. The Land Use Report that we spoke</p> <p>10 of earlier I worked on, my role in that was for</p> <p>11 most of the report, especially the urban design</p> <p>12 elements, the landscape architecture, the planning</p> <p>13 elements, everything but the technical elements of</p> <p>14 civil engineering and transportation planning.</p> <p>15 Q And have you made a personal inspection</p> <p>16 of the Local Map Amendment site and familiar with</p> <p>17 the area surrounding the property?</p> <p>18 A Yes.</p> <p>19 MS. ROGERS: Are you familiar --</p> <p>20 actually, sorry. So we did submit into the record</p> <p>21 a PowerPoint presentation that will kind of track</p> <p>22 with our testimony to make things easier. If we</p> <p>23 could pull it up?</p> <p>24 THE WITNESS: 68.</p> <p>25 MS. ROGERS: 68. Thank you.</p>
<p>106</p> <p>1 adopted, working on and writing and presenting and</p> <p>2 discussing that -- the ordinance that was adopted</p> <p>3 eventually over about a five-year period.</p> <p>4 Q And just for the record, have you</p> <p>5 testified before this body before --</p> <p>6 A Several times.</p> <p>7 Q -- in rezoning? Thank you.</p> <p>8 MS. ROGERS: And we would just note for</p> <p>9 the record that his -- Mr. Sloan's resum 's</p> <p>10 submitted in connection with our prehearing</p> <p>11 statement, Exhibit 52.</p> <p>12 Q Mr. Sloan, are you familiar with the</p> <p>13 Local Map Amendment that's before the Hearing</p> <p>14 Examiner today?</p> <p>15 A Yes.</p> <p>16 Q Can you please describe your</p> <p>17 responsibilities with respect to this LMA</p> <p>18 application?</p> <p>19 A So in -- with respect to this</p> <p>20 application, I really worked on this -- the</p> <p>21 overall design of the project, worked with my team</p> <p>22 and our colleagues, working on the development</p> <p>23 standards, the general requirements, the zoning</p> <p>24 ordinance, applicability, and adherence to those</p> <p>25 requirements, and reviewing all of the necessary</p>	<p>108</p> <p>1 So just for the Hearing Examiner, we</p> <p>2 would include in this presentation to try to make</p> <p>3 it -- today's proceeding a little bit more</p> <p>4 organized. We have identified those records that</p> <p>5 are -- or documents already in the record as such.</p> <p>6 And where we have a new exhibit that should be</p> <p>7 appropriately given a separate exhibit number,</p> <p>8 we've indicated as much.</p> <p>9 HEARING EXAMINER SOKONI: And this</p> <p>10 PowerPoint is Exhibit --</p> <p>11 MS. ROGERS: 68 in the record.</p> <p>12 HEARING EXAMINER SOKONI: -- 68. Okay.</p> <p>13 Thank you.</p> <p>14 MS. ROGERS: Thank you. So the image up</p> <p>15 on the screen is an excerpt from Exhibit 56 that's</p> <p>16 already in the record.</p> <p>17 Q Mr. Sloan, are you familiar with this</p> <p>18 surrounding neighborhood boundaries that were</p> <p>19 identified by Staff in their Staff Report?</p> <p>20 A Yes. Staff Report had a boundary for</p> <p>21 the community neighborhood that was part of</p> <p>22 Exhibit 56, their report, and it indicates the</p> <p>23 neighborhood boundary as I-200 -- sorry, Maryland</p> <p>24 Route 200 on the north, the Northwest Branch</p> <p>25 Stream Valley to the west, and then runs along the</p>

<p>109</p> <p>1 South Beaumont Road through the neighborhood lots 2 to Sherwood Forest Road and down to Randolph, 3 Randolph over, and then up the east side of the -- 4 on the east side about three lots deep, east of 5 New Hampshire Avenue, and back to -- by Maryland 6 200. 7 Q And do you agree with Staff's 8 delineation? 9 A I understand their reasoning. We 10 typically use major transportation corridors and 11 environmental boundaries, such as stream valleys 12 and major routes, to delineate a neighborhood so 13 that we can make our comparisons and analysis. I 14 think it's a little overly broad because there is 15 very little conductivity once you're left -- once 16 you're east -- or, sorry, west of Notley Road and 17 Sherwood Forest. So the impacts are not 18 significant in those areas, if any. 19 We went a little further to the east to 20 a natural drainage divide and tributary. That 21 said, I don't think the analysis changes in any 22 material way. It's more of the same to either 23 side of those. 24 MS. ROGERS: And if we can go to the 25 next slide, please?</p>	<p>111</p> <p>1 impacts. 2 We did not go far -- as far north as 3 Staff did. And as I noted, we went to a separate 4 tributary on the west side and then down Sherwood 5 Forest. 6 That said, it's a similar type of 7 community. It has a mix of uses. There are a 8 number of institutional uses; there are 9 special-exception commercial uses; there are 10 commercial-only zoning uses; there are townhouses 11 and a significant number of detached houses of 12 various sizes from R-90 lots to R-200 to RE-1, 13 which is a residential estate zoning. 14 Q And are you comfortable accepting 15 Staff's defined neighborhood boundary? 16 A I'm comfortable with Staff's boundary. 17 I don't think it changes our analysis of the 18 findings. 19 MS. ROGERS: If we can go to the next 20 slide, please? 21 Q So we're looking at Exhibit 57-D on the 22 screen. Mr. Sloan, Opposition suggests 23 alternative surrounding boundary in their 24 September 17th submission. 25 In your professional opinion, is this</p>
<p>110</p> <p>1 Q So, Mr. Sloan, you were beginning to 2 speak to -- but can you describe -- again, with 3 this exhibit up on the record -- what the 4 Applicant's proposed neighborhood boundary was? 5 A Sure. We typically look starting about 6 at a radius of about a quarter-mile to a half-mile 7 for the natural connectivity. 8 HEARING EXAMINER SOKONI: So sorry to 9 interrupt. Just so I can follow when I read the 10 transcript, what you're referring to now is 11 Exhibit 23. 12 THE WITNESS: Exhibit 23. 13 HEARING EXAMINER SOKONI: Although we 14 are putting up the PowerPoint, we are actually 15 looking at Exhibit 23. 16 MS. ROGERS: Yes, thank you. We'll 17 clarify moving forward. Thank you very much. 18 THE WITNESS: Thank you. 19 A Okay. So back to Exhibit 23, the 20 Applicant's proposed neighborhood. We established 21 the boundary on the east side based on a tributary 22 and then a rough radius of a quarter-mile to a 23 half-a-mile, which is a typical walking distance 24 for folks, and involves any vehicular 25 connectivity, visual impacts, and also functional</p>	<p>112</p> <p>1 boundary appropriate for the subject application? 2 A So looking at Exhibit 57-D, I do not 3 believe this is appropriate. While they retained 4 the boundaries based on the limits we established 5 mostly to the east, north, and west, the line to 6 the south is not even a quarter-mile away and does 7 not follow the standard boundaries that we work, 8 with Staff in particular, based on natural 9 environmental divides or major transportation 10 routes. 11 Q So just to reiterate for the record, 12 does the southern line follow established planning 13 principles in terms of how boundaries are drawn 14 when delineating neighborhoods? 15 A It does not. It cuts through the 16 neighborhood in a way that we would not do in a 17 standard delineation of a neighborhood. 18 MS. ROGERS: Thank you. Next slide, 19 please. 20 Q This is Exhibit 10, the certified zoning 21 map. Mr. Sloan, have you reviewed the official 22 zoning vicinity map for the property and the 23 surrounding area? 24 A I have. 25 Q And what is the existing zoning</p>

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29 (113 to 116)

<p>113</p> <p>1 classification of the property?</p> <p>2 A So the property is R-200.</p> <p>3 Q And sorry to jump back, but going back</p> <p>4 to the surrounding neighborhood, just to be clear,</p> <p>5 you showed Staff's boundary. Was Staff -- before</p> <p>6 them, before the Planning Board deliberation, did</p> <p>7 the Staff have the benefit of seeing Opposition's</p> <p>8 proposed boundary?</p> <p>9 A They did.</p> <p>10 Q And did Staff accept Opposition's</p> <p>11 proposed boundaries?</p> <p>12 A They did not. They expanded on both.</p> <p>13 Q Thank you. Sorry to jump out of order.</p> <p>14 You've noted for the record the existing zoning</p> <p>15 classification of the property. What's the</p> <p>16 proposed zoning classification of the property?</p> <p>17 A Proposed zoning is CRN -- floating zone</p> <p>18 CRNF 1.0, C-0, R-1.0, H-50.</p> <p>19 Q Are residential uses permitted in the</p> <p>20 CRNF zone?</p> <p>21 A They are. There are several residential</p> <p>22 uses allowed, including single-unit living,</p> <p>23 two-unit living, townhouse living.</p> <p>24 MS. ROGERS: Thank you. We can go to</p> <p>25 the next slide. So for the record, this is the</p>	<p>115</p> <p>1 updated to reflect the Planning Board's proposed</p> <p>2 binding elements and setbacks.</p> <p>3 HEARING EXAMINER SOKONI: Okay. And</p> <p>4 just in summary, could you just -- what's the big</p> <p>5 -- what's the difference between what the</p> <p>6 people -- what the public saw and this new plan?</p> <p>7 MS. ROGERS: Sure. So these new plans</p> <p>8 simply update the binding elements to reflect what</p> <p>9 Planning Staff had recommended in their planning</p> <p>10 report that were adopted by the Planning Board.</p> <p>11 So both of those, the lists of the proposed</p> <p>12 binding elements, had been available to the public</p> <p>13 since the posting of the Staff Report, which was</p> <p>14 submitted to OZAH early as well with Exhibit 56.</p> <p>15 And the Planning Board chose to accept</p> <p>16 Staff's recommended binding elements, and so the</p> <p>17 Applicant has merely reflected those binding</p> <p>18 elements that were part of the public record and</p> <p>19 recommended by the Planning Board on our drawings.</p> <p>20 And then the only other change was that one of</p> <p>21 those binding elements recommended a change to the</p> <p>22 setbacks on the north and west property boundaries</p> <p>23 so that there would be a 30-foot setback,</p> <p>24 particularly to the north, directly where the</p> <p>25 property abuts other single-family homes.</p>
<p>114</p> <p>1 revised Floating Zone Plan that we did submit.</p> <p>2 But when we submitted our PowerPoint, we didn't</p> <p>3 have an exhibit number, so this is Exhibit 70-B.</p> <p>4 THE WITNESS: 70-B?</p> <p>5 MS. ROGERS: Yeah.</p> <p>6 THE WITNESS: And do we have the full</p> <p>7 size here?</p> <p>8 MS. ROGERS: And we do have the full</p> <p>9 size and signed copies of the updated Floating</p> <p>10 Zone Plan to give to the Hearing Examiner today,</p> <p>11 for your record.</p> <p>12 HEARING EXAMINER SOKONI: Okay. I'm</p> <p>13 sorry to be overly formal, but could you --</p> <p>14 because it came in, you know, so close in time to</p> <p>15 the hearing, could you just formally move to have</p> <p>16 it -- because you can certainly amend the Floating</p> <p>17 Zone Plan without the -- you know, without us</p> <p>18 having to have mailed notice to everybody, as long</p> <p>19 as it's done in a public hearing. So do you want</p> <p>20 to officially move so that I can rule on that</p> <p>21 motion?</p> <p>22 MS. ROGERS: Yes. We would like to</p> <p>23 officially move that the Floating Zone Plan be</p> <p>24 amended with what was submitted with Exhibit 70 on</p> <p>25 November 3rd, as the Floating Zone Plan was just</p>	<p>116</p> <p>1 HEARING EXAMINER SOKONI: Uh-huh.</p> <p>2 MS. ROGERS: And that's the only change</p> <p>3 shown on the plan itself, is that setback is now</p> <p>4 reflected along that northern property boundary.</p> <p>5 HEARING EXAMINER SOKONI: And it's now a</p> <p>6 30-foot setback. What was it before?</p> <p>7 THE WITNESS: It was about 24 or 23.</p> <p>8 HEARING EXAMINER SOKONI: Are there any</p> <p>9 objections to inclusion -- to admission into the</p> <p>10 record of this amended Floating Zone Plan?</p> <p>11 MS. ROSENFELD: No objections.</p> <p>12 HEARING EXAMINER SOKONI: Okay.</p> <p>13 Amendment granted.</p> <p>14 (Applicant's Exhibit 70-B, was admitted</p> <p>15 into evidence and retained by the Hearing</p> <p>16 Examiner.)</p> <p>17 MS. ROGERS: Thank you.</p> <p>18 Can we go to the next slide? Just</p> <p>19 because I think it's easier to see.</p> <p>20 So this is a rendered plan reflecting</p> <p>21 the Floating Zone Plan that we had presented to</p> <p>22 the Montgomery County Planning Board. This was</p> <p>23 included within our presentation at Exhibit 68.</p> <p>24 I would just note for the record this is</p> <p>25 just a more easy-to-read plan. This one does not</p>

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30 (117 to 120)

<p>117</p> <p>1 reflect the technical 30-foot setback on the 2 northern boundary that our amended Floating Zone 3 Plan reflects, but otherwise reflects the 4 concepts. 5 THE WITNESS: It is in the record. It's 6 50-B. 7 MS. ROGERS: Thank you. So this is 8 already -- in the record, my mistake, is 50-B. 9 HEARING EXAMINER SOKONI: Uh-huh. 10 MS. ROGERS: It's been there for a 11 while. 12 Q So, Mr. Sloan, can you please briefly 13 explain the planning concepts for the proposed 14 development on this property? 15 A Yes. So as Ms. Rogers has noted, this 16 layout is significantly the same as what was 17 previously -- what was -- what is presented in the 18 amended application except for the stick of six 19 units on the north, which is now shifted to the 20 south. Otherwise, it is identical. 21 So the general concept of this plan is 22 to provide the most dense area of the plan along 23 New Hampshire Avenue, where we have units fronting 24 along the street. We're providing an upgraded 25 streetscape that matches the streetscape that's</p>	<p>119</p> <p>1 create further setbacks than is typically required 2 for townhouses so that we have over 40 feet from 3 the curb of the road to the buildings. And in 4 that area, we're dedicating right of way. And 5 within that right of way, we're looking at 6 designing this double row of trees so that we have 7 significant landscape within the right of way. 8 HEARING EXAMINER SOKONI: And, Mr. 9 Sloan, feel free to walk up to the -- you are 10 welcome to walk up if you want to go and point at 11 anything. 12 THE WITNESS: That would be great. I'd 13 like to do that. 14 HEARING EXAMINER SOKONI: Not to 15 interrupt your flow, but it's -- when you say west 16 and east and -- 17 THE WITNESS: Yes. 18 HEARING EXAMINER SOKONI: -- where -- 19 THE WITNESS: So I'll point and try to 20 remember that the transcript also has to be -- 21 A Okay. So I described putting the 22 predominant density and any potential larger units 23 on the east side on New Hampshire Avenue and then 24 coming along Notley at the bottom of the screen, 25 breaking up the units into smaller sticks of</p>
<p>118</p> <p>1 been built to the north that includes a shared-use 2 path, a side path, a larger tree panel, and then 3 dedication and further setbacks of the units in 4 the newly designed lots. All of the units along 5 New Hampshire Avenue and Notley are rear-load 6 townhouse or some other type of, like, triplex or 7 something that we have that we're thinking of so 8 that you have front doors, front yards, and 9 landscape and sidewalk between the buildings and 10 Notley Road in New Hampshire Avenue. That's key 11 to getting eyes -- what they call eyes on the 12 street, making sure that the people have 13 front-yards visibility to the street, which 14 include -- which improves pedestrian safety. 15 Once we establish that higher density on 16 the east side towards New Hampshire, the units 17 that are all along Notley are specifically broken 18 up into smaller sets of sticks that you don't 19 typically see in townhouse development. And this 20 is to replicate the widths of the detached homes 21 and the spacing between them along the way. We 22 work with Staff on this spacing and how to break 23 this up adequately. 24 As we go along, the streetscape on 25 Notley itself, we discussed early on a way to</p>	<p>120</p> <p>1 townhouses. Typically, we're doing eight to 2 twelve townhouses together or something. But 3 here, we're doing three to five, depending on the 4 unit size that might go in there. 5 And then along Notley, we've got a tree 6 panel that's ten-foot side path, another tree 7 panel before you get to the property itself, the 8 private property. And we've set the units back 9 further than is typically required for townhouses 10 so that we can have a deeper front yard. 11 Once you get to the west side of the 12 site -- we originally had larger internal open 13 space, but we heard a lot of feedback that getting 14 to this park the -- both the physical access and 15 the sidewalk -- doesn't exist today -- and that it 16 is a little underutilized. And we were -- it was 17 suggested to try to enhance this park field, so we 18 put a larger -- the largest area of our required 19 common open space adjacent to the existing park. 20 It's about 18,000 square feet with some parking 21 along that -- along the street that's running 22 north-south on the west side of our project. 23 Then once you get into the project, 24 there is another stick of townhouses -- or several 25 sticks of townhouses running east-west to take</p>

<p>121</p> <p>1 advantage of the alley that's serving the units on 2 Notley, and then a second road. And that second 3 road serves several purposes. 4 One, it provides a significant area for 5 parallel parking for guests. Another, it provides 6 fire access, which we have to provide to all of 7 these units. And then the third, it provides 8 pedestrian connectivity. 9 In between those east-west-running 10 units, we have a linear open space. That linear 11 open space abuts the senior-living building to our 12 north, and this is primarily because of, one, 13 utility infrastructure and fire access, technical 14 reasons; but it's also because this grading that 15 we have to do on this side. 16 I don't know if I should get into the 17 grading in greater detail. Or should I do it now? 18 I can do it now. 19 Q You can touch on high-level. 20 A Let me touch on it real quickly. 21 Currently, a lot of this layout is driven by 22 grades. So there's a significant ridge line that 23 runs to -- just to the west of New Hampshire 24 Avenue in this part of Colesville, and mostly in 25 the water splits, you know, roughly 50-50 towards</p>	<p>123</p> <p>1 additional rear-load units and a small park 2 feature to connect east to west all the way to the 3 park through sidewalks, crosswalks. There are a 4 couple of spaces where we punched through 5 north-south so that there's connectivity 6 throughout, and we provided a significant 7 pedestrian area. 8 Another thing that we might get into 9 detail later, but working with this -- working 10 with Staff and hearing concerns about parking, we 11 changed this from our original submission 12 significantly by providing full driveway spaces 13 for all of our units. So each of our units have 14 both garage spaces and driveway spaces. 15 The larger units will have at least four 16 spaces. The -- some units will have two spaces at 17 minimum, plus the overflow area for onsite 18 parking -- on-street parking side. 19 Okay. Another element of pulling the 20 setbacks and creating this green space on the -- 21 to north and the west is that we can decrease our 22 limits of disturbance for grading. And that will 23 allow us to ensure that we can save all of the 24 offsite trees that are large, 24 inches or 25 greater, as well as we're looking at saving some</p>
<p>122</p> <p>1 the east and towards the west. 2 What we're doing, as part of our 3 stormwater concept though, is moving that grade 4 line to the west so that we can take advantage of 5 an existing storm drain system and alleviate some 6 concerns about drainage and runoff to the west. 7 So that ridge line moving to the west allows us -- 8 it requires us to provide some significant open 9 space where we can put stormwater facilities that 10 are integrated into our pedestrian open-space 11 plan, seating areas, things like that, so a 12 natural amenity where we can keep a nice green 13 screen and put a lot of planting stormwater. 14 The tab of the property, as I call it -- 15 that is to the west of the Senior Living building. 16 That's where we transition to a different type of 17 unit that has front yards with driveways and then 18 has backyards to the backyards of our abutting 19 neighbors to the west and to the north. This is 20 where we pulled the buildings back to at least 30 21 feet of a setback, which is what is required for 22 an R-200 zone property. 23 So these are front-load units around the 24 perimeter on the north side of the site, and then 25 there's a small internal block with some</p>	<p>124</p> <p>1 of the perimeter trees that are on our property 2 itself. 3 There are some large walnuts, pines, 4 things like that, that we're looking at saving at 5 the site plan level of detailed grading and forest 6 conservation. But we're starting to think about 7 it and address those concerns now. So look at 8 the -- 9 Q Want to go to the next -- walk through 10 some of the next exhibits to elaborate further? 11 A Yeah. 12 Q Okay. 13 A Could you look at the next exhibit, 14 please? I'm sorry. 15 MS. ROSENFELD: Ms. Hearing Examiner, 16 I'm not sure if the people on Zoom can hear. Can 17 we just verify, since he's no longer sitting at 18 the mike? 19 HEARING EXAMINER SOKONI: Can we just 20 have a check on zoom? Can you -- can people -- 21 can someone on zoom signal if they can hear the 22 witness speak? 23 UNIDENTIFIED SPEAKER: We are hearing 24 very clearly. We cannot see what he's pointing 25 to.</p>

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32 (125 to 128)

<p>125</p> <p>1 HEARING EXAMINER SOKONI: I understand 2 that. That's one of the downsides to the Zoom 3 participation, but -- okay. You can hear him. 4 UNIDENTIFIED SPEAKER: Thank you. 5 HEARING EXAMINER SOKONI: Okay. 6 A I'll keep trying to describe for the 7 transcript and for people on Zoom. This is just a 8 really quick exhibit on something that we -- that 9 I noted we have worked with Staff significantly on 10 with breaking up these sticks of townhouses, and 11 we just wanted to see, are we in relative 12 comparison to the size of detached zones. 13 And we have a large range of detached 14 zones because we have several different zones -- 15 R-90, R-200 -- we have R-200 zones that were 16 developed under an old, optional method that 17 allows under 20,000-square-foot lots just to our 18 north, so there's quite a diversity of housing 19 sizes and lot sizes around us. And this is just a 20 quick exhibit that shows some of those 21 relationships and the numbers that we're looking 22 at to set up this replicated staggering of units. 23 HEARING EXAMINER SOKONI: And is this -- 24 what you're pointing at now, is that an exhibit 25 that's already in the record?</p>	<p>127</p> <p>1 greater width of a hundred feet measured from the 2 foundation and group of units or buildings? 3 A Correct. Staff and the Planning Board 4 recommended a binding element of -- as noted, that 5 no stick of townhouses along Notley have of total 6 length greater than 100 feet. We're not there 7 with these, but -- except that we're still going 8 to work on maintaining this pattern of the smaller 9 groups of townhouses. 10 Q And so just for the record, before we 11 move on, in your professional opinion, as 12 currently designed and shown in the Floating Zone 13 Plan, are the widths of the homes -- stick of 14 units along Notley Road designed to be in keeping 15 with the character of the surrounding existing 16 residential homes? 17 A Yes. The width as designed is in 18 keeping with the residential character of the 19 neighborhood via being residential. 20 Q Thank you. 21 A Okay. 22 Q Do you want to go to the next slide? 23 A Yeah. If we could look at the next 24 slide? These are from the landscape renderings 25 that went in the record originally. I don't</p>
<p>126</p> <p>1 MS. ROGERS: This is in the record with 2 our PowerPoint of Exhibit 68. 3 HEARING EXAMINER SOKONI: Okay. 4 MS. ROGERS: So we weren't going to give 5 this one an additional, separate exhibit number -- 6 HEARING EXAMINER SOKONI: Okay. So 7 this -- 8 MS. ROGERS: -- unless the Hearing 9 Examiner would like. 10 HEARING EXAMINER SOKONI: This only 11 shows up in the PowerPoint. 12 THE WITNESS: Correct. 13 HEARING EXAMINER SOKONI: It's not a 14 separate -- 15 MS. ROGERS: Correct. 16 HEARING EXAMINER SOKONI: Okay. Thank 17 you. 18 Q And -- 19 A And -- 20 Q Go ahead. 21 A -- go to the next one? 22 Q Well, no. So I was going to ask, 23 Mr. Sloan, just for the record, is there a binding 24 element that controls the maximum width of an 25 assemblage of units along Notley Road to have no</p>	<p>128</p> <p>1 remember which. 2 Q I don't -- 3 A So these are excerpts from -- 4 Q I think -- 5 A -- Exhibit 50. 6 Q Hold on one second. 7 A Did you remember it? Or do you have 8 those on you? 9 Q I think these might have changed 10 slightly in terms of us compiling them onto one, 11 so we'll just refer -- 12 A Okay. 13 Q -- to them as Exhibit 68, included with 14 our PowerPoint. 15 A Okay. So this is an image looking at 16 the proposed development from the west side along 17 the front of Notley, where, as I mentioned from 18 the 3D rendering at the bottom, from right to 19 left, there's a tree panel, a ten-foot side path, 20 a separate tree panel. You can't really see the 21 property line, but then private property to the 22 unit fronts themselves. 23 MS. ROGERS: Want to go to the next 24 slide? 25 THE WITNESS: The next slide is looking</p>

<p>129</p> <p>1 out just to show the depth of the front yards that 2 we're providing. I don't think there's anything 3 else to add on this one. If we could go to the 4 next?</p> <p>5 A So landscape screening is required to be 6 provided under the code, whether you're providing 7 townhouses that are abutting detached homes. It's 8 required at two different -- there are two 9 different choices built into the code.</p> <p>10 One's smaller in width and has -- 11 requires a fence; one is the larger of the two, is 12 ten feet deep, does not require a fence. We're -- 13 we've combined these, and we're proposing to have 14 a privacy fence and then ten feet of landscape 15 buffering along those two property lines.</p> <p>16 Q And, Mr. Sloan, with this exhibit up 17 on -- for the record, is the now proposed 30-foot 18 setback to the north and west, where the property 19 abuts single family homes -- although not 20 required, does it now meet what the underlying R-2 21 zone would have required for a rear setback?</p> <p>22 A Correct. Yes, it does.</p> <p>23 Q And the setback along Notley Road, which 24 I believe you testified to, was more -- was -- 25 well, you could testify to what the dimension is</p>	<p>131</p> <p>1 goes from the road in our new side path to the 2 park itself, where there's a playground in an open 3 lawn space, some seating areas, and the natural 4 woods that surrounds it.</p> <p>5 THE WITNESS: Can we see the next slide? 6 MS. ROGERS: Next slide, please.</p> <p>7 A This is a rendering that we did showing 8 where the park is today. There's a small parking 9 field. The playgrounds are to the north and the 10 left side, middle side of the image, and then our 11 development is to the east, or to the right side.</p> <p>12 THE WITNESS: Okay. And the next slide.</p> <p>13 A We also have internal open spaces. 14 We're looking at a seating area with a significant 15 kind of shade structure, focal point at the 16 terminus of our central drive. And we're looking 17 at ways to pedestrianize it, make it even safer 18 and more -- and to slow vehicles down, things like 19 that, by raising and creating a tabletop or 20 different kind of paving pattern at that node at 21 the end of the drive.</p> <p>22 Q And, Mr. Sloan, for the record, will 23 open-space design and location be finalized at the 24 time of site plan?</p> <p>25 A Yes. We're -- so we're required to have</p>
<p>130</p> <p>1 behind the back of curb and how that relates to 2 the underlying R-200 zone?</p> <p>3 A Yes. So the R-200 -- let's see if I 4 could -- which ones? So the R-200 zone -- 5 where's -- sorry. I've gotten ahead of myself a 6 little bit.</p> <p>7 Yes. So the R-200 zone, these -- the 8 setback from the curb to the front of the building 9 is about 44 feet now, and that is to replicate 10 what is required under the R-200 zone. We're 11 abutting R-90 zones, R-200 -- or confronting R-90, 12 R-200, so there are buildings that set -- that are 13 set back from the curb for several different 14 things, from 30 feet to the curb line up to 60 15 feet on the larger lots, so well within that range 16 that's around us today, and therefore compatible 17 in terms of residential design parameters that we 18 could be looking at.</p> <p>19 MS. ROGERS: We can go to the next 20 slide, please.</p> <p>21 A So this is a rendering of the park space 22 looking from our west driveway entrance into the 23 site towards the park in the northwest. And so 24 this is where we're expanding the park by about 25 18,000 square feet and creating a walkway that</p>	<p>132</p> <p>1 a ten percent common open space, and there are 2 specific delineations and requirements for that. 3 We're going to be developing all of that with the 4 site plan, although we're ensuring that we have at 5 least a ten percent minimum now of common open 6 space, not necessarily all of our open space, 7 which is much more significant.</p> <p>8 MS. ROGERS: Our next slide, please.</p> <p>9 Q Mr. Sloan, can you also testify, as 10 you're giving kind of this broad overview of the 11 development, to the enhancements regarding 12 circulation for the proposed project?</p> <p>13 A So the slide up -- that is up now is 14 existing conditions. On the top is New Hampshire 15 Avenue. On the bottom are two views and Notley 16 Road.</p> <p>17 Our frontage right now on Notley Road 18 has no sidewalk or any kind of side path. New 19 Hampshire Avenue has an undersized sidewalk, and 20 then it has a striped, signed bike path on both 21 sides of New Hampshire Avenue that runs roughly 22 from the ICC down to the shopping center. Those 23 are existing facilities.</p> <p>24 Our proposal is to create, as I noted, a 25 significant tree buffer, then side paths of</p>

<p>133</p> <p>1 varying sizes, eleven feet wide on New Hampshire, 2 ten feet wide on Notley Road -- those are both 3 required by complete streets -- and match what has 4 been built to the north of us on New Hampshire. 5 So these will significantly improve pedestrian 6 safety and connectivity across our frontage and 7 availability from New Hampshire Avenue to get to 8 the park without vehicular conflicts. 9 We do -- are also consolidating the 10 driveways. As has been mentioned before, there's 11 a driveway on New Hampshire Avenue; there are 12 several on Notley Road. We'll be consolidating 13 all those to two on Notley Road, and we'll address 14 the question about the prerequisite things later. 15 MS. ROGERS: Go to the next slide, 16 please. 17 A So this is a slide that shows the 18 neighborhood boundary overlaid with some 19 delineations of pedestrian and bicycle 20 connectivity that probably only I can see, so I'll 21 just -- 22 HEARING EXAMINER SOKONI: One second. 23 Can we zoom that out as -- 24 MS. ROSENFELD: And is this another 25 exhibit?</p>	<p>135</p> <p>1 We'll be putting in our side path. 2 We'll be upgrading the side path on New Hampshire. 3 But there are existing pedestrian routes and 4 bicyclist routes that get you from our property 5 down to Randolph Road, the shopping center, the 6 two bus lines that are there now, the future BRT 7 station. 8 HEARING EXAMINER SOKONI: Just want to 9 make sure I can follow. We have some blue 10 delineation and some pink. 11 THE WITNESS: Blue -- 12 HEARING EXAMINER SOKONI: What's the 13 significance? 14 THE WITNESS: Blue dashed is a proposed 15 pedestrian; blue solid is an existing pedestrian; 16 orange dashed is a bicyclist proposed; orange 17 solid is a bicyclist existing. 18 HEARING EXAMINER SOKONI: Thank you. 19 MS. ROGERS: Next slide, please. 20 A A little more technical. It's 21 cross-sectioned to just show some of the elements 22 that we're proposing on Notley Road. It provides 23 the dimensions that the Staff recommended we 24 follow, a seven-foot tree panel, ten-foot side 25 path, five-foot-six-inch right now tree panel,</p>
<p>134</p> <p>1 HEARING EXAMINER SOKONI: Is there -- is 2 this -- 3 THE WITNESS: This will be part of the 4 PowerPoint Exhibit -- 5 HEARING EXAMINER SOKONI: But do -- 6 THE WITNESS: -- over on 58. 7 HEARING EXAMINER SOKONI: Is the -- 8 MS. ROGERS: 68. 9 HEARING EXAMINER SOKONI: -- Applicant's 10 conservation plan, it might be easier to see if we 11 pull up the one in the packet. 12 A So the one we have in the record, it 13 really only shows this site. One thing that I 14 want to just reiterate is that there are the 15 Master Plan -- the White Oak Master Plan 16 recommended on street, signed, striped bike 17 lanes -- those were built -- those were put in. 18 But under the new planning policies, 19 these are supposed to be upgraded. And as 20 development comes in piece by piece, we're 21 getting -- the developers are paying for the 22 installation of these elements. 23 So there are very few sidewalks around. 24 There are sidewalks on the confronting properties 25 on Notley Road.</p>	<p>136</p> <p>1 plus a maintenance buffer until we get to our 2 property line. That's on Notley, and I think the 3 next one is probably New Hampshire. 4 MS. ROGERS: Next slide, please. 5 A I'm sorry. Yeah. Yes. This is -- so 6 this is New Hampshire. This has a larger tree 7 panel, eight-foot tree panel, an eleven-foot side 8 path, two-foot maintenance buffer, and then front 9 yards. These front yards are probably less than 10 what we'll do on Notley because we are trying to 11 create that street presence, which has a 12 significant impact on pedestrian buffer. 13 Q So, Mr. Sloan, in your professional 14 opinion, will the proposed redevelopment improve 15 connectivity and pedestrian safety within the 16 existing neighborhood? 17 A Connectivity and pedestrian safety will 18 be significantly improved along the planned route. 19 Q And in your professional opinion, will 20 the proposed development impact the character of 21 the surrounding neighborhood? 22 A I think we can use the next slide while 23 I answer this. So this is an aerial view of the 24 neighborhood boundary in black on it, superimposed 25 over an -- yeah, of an aerial. And it has a</p>

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137	<p>1 quarter-mile and half-mile radius.</p> <p>2 MS. ROGERS: And, Mr. -- sorry,</p> <p>3 Mr. Sloan.</p> <p>4 We do have this as a full-size plan to</p> <p>5 submit into the record in hard copy today, if the</p> <p>6 Hearing Examiner would like this to be a separate</p> <p>7 exhibit outside of our PowerPoint exhibit.</p> <p>8 HEARING EXAMINER SOKONI: Is the</p> <p>9 PowerPoint the first place -- we don't previously</p> <p>10 have it on --</p> <p>11 MS. ROGERS: Correct.</p> <p>12 THE WITNESS: I didn't -- no.</p> <p>13 HEARING EXAMINER SOKONI: I would like a</p> <p>14 full size. This is very difficult to see.</p> <p>15 THE WITNESS: Yeah.</p> <p>16 HEARING EXAMINER SOKONI: So yes.</p> <p>17 Unless there are any objections, I would say we --</p> <p>18 MS. ROSENFELD: No objections.</p> <p>19 HEARING EXAMINER SOKONI: Thank you.</p> <p>20 Yes. And then could you kindly just</p> <p>21 send the standalone electronically?</p> <p>22 MS. ROGERS: Yes.</p> <p>23 HEARING EXAMINER SOKONI: So that will</p> <p>24 be entered into the record as Exhibit 70 -- I want</p> <p>25 to say 74. I believe that would be because</p>	139	<p>1 have to find where someone has talked about it to</p> <p>2 understand what it is. Perhaps they could update</p> <p>3 that to say what the implications are and what</p> <p>4 they're talking about, what the purpose of this --</p> <p>5 HEARING EXAMINER SOKONI: So I think</p> <p>6 I'll let the Applicant's presentation flow --</p> <p>7 MS. FLEIT: Uh-huh.</p> <p>8 HEARING EXAMINER SOKONI: -- as well as</p> <p>9 you just explain to us -- you know, just explain</p> <p>10 to us what we are looking at.</p> <p>11 THE WITNESS: Yes.</p> <p>12 MS. ROGERS: Uh-huh.</p> <p>13 THE WITNESS: Okay. So this exhibit</p> <p>14 shows the proposed property -- well, not the</p> <p>15 proposed property, the existing property where the</p> <p>16 proposed development is in relation to the</p> <p>17 overall -- the area of the neighborhood. And it</p> <p>18 shows quarter-mile radius from -- or at the</p> <p>19 intersection of Notley and New Hampshire, where we</p> <p>20 are, and a half-mile radius. And this is really</p> <p>21 to delineate.</p> <p>22 The area that we typically would see as</p> <p>23 a walkshed is a community center expanse to</p> <p>24 determine the character of the neighborhood. And</p> <p>25 you can see that this is a highly wooded</p>
138	<p>1 Exhibit 73 was my email on --</p> <p>2 MS. ROGERS: Uh-huh.</p> <p>3 HEARING EXAMINER SOKONI: -- November</p> <p>4 3rd.</p> <p>5 MS. ROGERS: Yes.</p> <p>6 HEARING EXAMINER SOKONI: Let's mark</p> <p>7 that as Exhibit 74.</p> <p>8 MS. ROGERS: Was 74 going to be the</p> <p>9 scheduling email?</p> <p>10 HEARING EXAMINER SOKONI: 73 was going</p> <p>11 to be the -- 73 is the scheduling email, so 74.</p> <p>12 And what would you title this? This is the --</p> <p>13 MS. ROGERS: It's --</p> <p>14 HEARING EXAMINER SOKONI: -- aerial</p> <p>15 view?</p> <p>16 MS. ROGERS: It's aerial view --</p> <p>17 THE WITNESS: Aerial view with --</p> <p>18 MS. ROGERS: -- with the neighborhood</p> <p>19 boundary.</p> <p>20 (Applicant's Exhibit 74 was marked for</p> <p>21 identification, admitted into evidence, and</p> <p>22 retained by the Hearing Examiner.)</p> <p>23 MS. FLEIT: Excuse me. Just -- it's</p> <p>24 hard to understand what that's out -- what that is</p> <p>25 about just looking at what they presented. You</p>	140	<p>1 neighborhood with lots of different kind of --</p> <p>2 with lots of trees with different-sized lots, with</p> <p>3 some very large buildings. It has parks; it has</p> <p>4 natural areas.</p> <p>5 HEARING EXAMINER SOKONI: Sorry to</p> <p>6 interrupt you. Just because of the concern that</p> <p>7 was raised, I happen to have the benefit of my</p> <p>8 hard-copy print --</p> <p>9 THE WITNESS: Yeah.</p> <p>10 HEARING EXAMINER SOKONI: -- before me.</p> <p>11 So there's -- on this document, which will now be</p> <p>12 Exhibit 6 -- 74, and we're going to have a full</p> <p>13 size --</p> <p>14 THE WITNESS: Yeah.</p> <p>15 HEARING EXAMINER SOKONI: -- placed in</p> <p>16 the record online and I believe -- have you -- do</p> <p>17 you have the hard copy for me?</p> <p>18 MS. ROGERS: We do --</p> <p>19 THE WITNESS: Yeah.</p> <p>20 MS. ROGERS: -- today, yeah.</p> <p>21 HEARING EXAMINER SOKONI: But there's a</p> <p>22 sort of -- those two big -- those two red circles</p> <p>23 inside the smaller red circle. There's the --</p> <p>24 THE WITNESS: Here's the --</p> <p>25 HEARING EXAMINER SOKONI: -- sort of a</p>

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<p>141</p> <p>1 black -- it says, Site. And that's -- 2 THE WITNESS: Yeah. 3 HEARING EXAMINER SOKONI: -- the 4 project, right? Could you just point that out to 5 people? 6 THE WITNESS: Yes. The project 7 boundary -- and I can't point to anyone on the 8 Zoom, but it is -- there's a red dot that's in the 9 middle of the two radii. It is to the northwest 10 of that red dot. 11 It's kind of easily to -- easy to see 12 because of the large senior building to the north 13 and then the Buddhist temple and then the other 14 senior building. We're just to the south of that 15 in the L shape. 16 And so, you know, as a planner urban 17 designer, we're really looking at this -- to the 18 fabric of the neighborhood to ensure the 19 character -- to ensure that the character is 20 maintained and not adversely impacted. These are 21 residential uses replacing residential uses. 22 They are -- as one of the commissioners 23 said, townhouses are residential in nature, and 24 they're -- they are not inherently negative 25 impacts to detached homes. There are several</p>	<p>143</p> <p>1 As I noted, we see setbacks in this 2 abutting neighborhood of 30 feet from the curb to 3 60 feet from the curb, where -- 44 feet right near 4 the median of that. The rear setbacks were 30 5 feet; the R-90 allows 25; the R-200 allows 30. So 6 we're similar in setbacks; we're similar in 7 massing length; and then we have the 8 30-foot-minimum rear setbacks. 9 In terms of density, there's quite a 10 diversity of density within a quarter-mile. 11 Within half-a-mile, there's even more. 12 As I would have mentioned earlier, we 13 have right abutting that are confronting us. We 14 have R-90 zoning; we have R-200 zoning; we have 15 R-200 zoning that was developed under a method 16 that allows for 15,000-square-foot lots. So not 17 everything is a 20,000-square-foot lot just in -- 18 just adjacent to us. But then there is also 19 townhouse plan development zoning to our south. 20 The Senior Living to the north -- it can 21 be analyzed in a couple of different ways. We're 22 abutting it. It was found to be compatible with 23 the detached homes that surround it when it went 24 through grid special exception. 25 It does have about 31.6 units per acre.</p>
<p>142</p> <p>1 townhouse communities throughout Colesville, and 2 this will be another one of them that will fit 3 into the fabric. 4 This shows reinvestment in private 5 property. This provides opportunities for 6 housing, including affordable housing, and it does 7 significantly improve the public realm of 8 frontages, in particular along our street. 9 It does provide more eyes on the street 10 and eyes on the park. There have been concerns 11 raised about crime. 12 Typically, when we see ownership of 13 housing and a little more density, we actually can 14 increase the safety of the neighborhood because 15 those people are taking ownership, and they're 16 watching their neighbors and their own right of 17 property themselves. As I described, we 18 specifically laid out the massing of the units in 19 collaboration with whomever -- who would work with 20 us to incorporate the feedback to decrease the 21 unit frontages along Notley Road in particular to 22 set these back further so that we're accommodating 23 setbacks that are typical of larger lot 24 development. 25 Oh, thank you.</p>	<p>144</p> <p>1 They are Senior Living buildings. They have -- 2 they don't have, obviously, a school impact. 3 But the more important thing, really, 4 for compatibility, in my mind, is how this 5 building sits in the fabric of the neighborhood, 6 and it's a very large building. Modifications 7 were made; it was remanded; it was denied in the 8 first round. 9 Modifications were made to make it a 10 little bit smaller. It was only a few thousand 11 square feet in a couple units. 12 I don't think it materially changed 13 between the denial and approval, but that's my 14 opinion on that one. It was not my case. 15 It covers about 25 percent of the 16 property. It's an incredibly large building, and 17 it has a .83 FAR. An FAR is a measurement of 18 floor area ratio, which is all the gross floor 19 area that's livable on the -- in the building 20 divided by the size of the lot. 21 So this is a .83 FAR building just to 22 the north of us, which is compatible with the 23 neighborhood. And that's usually done by several 24 elements that are really done at site plan, 25 architecturally urban design lines. You</p>

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<p>145</p> <p>1 articulate the building; you have setbacks. 2 If the building modulates as it goes 3 forward, you have residential elements like what 4 we would call punched windows, so, you know, 5 regular sash windows that you think of in a 6 detached film. You have a sloped roof, those kind 7 of things. 8 It also has 93 surface parking spaces, 9 so it takes up a lot of space. But we think we're 10 compatible with it. We think it's compatible with 11 the neighborhood, and we're a good, actually, 12 transition between those two things. 13 The Silver Spring Healthcare Center is a 14 little bit less dense further to the north. 15 That's another property that was developed with 16 about 18.9 units per acre. But, really, the way 17 to look at that is through the massing and the 18 size of the building in relation to the 19 neighborhood. 20 And then we have townhouse community 21 about .2 miles to our south next to the Park & 22 Ride facility parking lot on New Hampshire Avenue. 23 That's at the bottom of the ring that's on the 24 middle ring on our site. 25 That has a townhouse density that's, you</p>	<p>147</p> <p>1 work -- walk through my thinking on how we look 2 and consider the elements of compatibility from a 3 urban design massing density perspective. This is 4 just highlighting some of those things. 5 From top to bottom, there is the Silver 6 Spring Healthcare Center, the Cambodian Buddhist 7 temple, and then the -- it's called Wilshire 8 Senior Living Building. 9 Q Uh-huh. 10 A And you can see some of those elements 11 that I mentioned. We're dealing with residential 12 care for a lot with these kind of buildings 13 through articulation of the building, that front 14 and back, providing balconies, porches, decks, 15 providing punched windows, providing modified 16 roofs with -- especially the gable roofs, which is 17 a peaked roof rather than a flat roof. So these 18 expressed a lot of elements of residential 19 character and help with compatibility. 20 So we'll be looking at those kind of 21 elements when these townhouses are designed. 22 They're not designed yet; they're placeholders; 23 they are footprints where buildings can go. But 24 that kind of articulation, those peak elements -- 25 peak roofs, those elements will be brought into</p>
<p>146</p> <p>1 know, visually for anyone walking by it fast. It 2 is about 11 units per acre after it donated some 3 land for open space. 4 HEARING EXAMINER SOKONI: Is that the 5 full size? 6 MS. ROGERS: This is the -- 7 THE WITNESS: That's the full size. 8 MS. ROGERS: -- full-size plan. 9 HEARING EXAMINER SOKONI: May I -- turn 10 it around? 11 MS. ROGERS: Uh-huh. 12 HEARING EXAMINER SOKONI: Thank you. 13 THE WITNESS: Is the sections already in 14 as an exhibit? 15 MS. ROGERS: That's -- 16 HEARING EXAMINER SOKONI: Exhibit 74. 17 This will be Exhibit 74. 18 THE WITNESS: Do -- the sections that 19 we're going to look at next? There's more. Okay. 20 MS. ROGERS: To the clerk, and then I'll 21 look for it. We'll just look at the plat, and we 22 can go down and (inaudible.) 23 THE WITNESS: Can we go to the next 24 slide, please? 25 A So we use the overall area to kind of</p>	<p>148</p> <p>1 it. 2 THE WITNESS: The next slide, please. 3 A The surrounding commercial uses -- we do 4 have some special exception offices, things like 5 that on New Hampshire Avenue. We have several 6 religious institutions, and then, of course, the 7 Colesville Center to our south, which we'll 8 probably talk about a little bit more under some 9 other findings and topics. But these are just 10 images of that for now. 11 MS. ROGERS: Next slide, please. 12 THE WITNESS: Next slide. 13 A This is the image of the adjacent park. 14 I think we can -- I don't this has anything 15 additional that I haven't said. This is the 16 certified zoning map. Then we can get to the 17 next -- 18 MS. ROGERS: Go on to the next slide, 19 yeah. 20 THE WITNESS: All right. 21 MS. ROGERS: So this also is in our 22 PowerPoint, but we do have similarly a full-sized 23 copy that we would request be separately 24 exhibit-ized for the record and for clarity 25 purposes in terms of scale.</p>

<p>149</p> <p>1 HEARING EXAMINER SOKONI: Any objections 2 to entering it into the record -- 3 MS. ROSENFELD: No objection. 4 HEARING EXAMINER SOKONI: -- as Exhibit 5 74 -- 75? 6 MS. ROSENFELD: No objection. 7 HEARING EXAMINER SOKONI: So the full- 8 size document titled Project Provides Compatible 9 Heights. Is that -- that's what it's titled on 10 the PowerPoint. 11 And do you want a different name for it? 12 MS. ROGERS: We can just maybe call it 13 Height Comparison for -- 14 HEARING EXAMINER SOKONI: Height 15 Comparison. Okay. So Exhibit 75 is entered into 16 the record as Height Comparison. In the 17 PowerPoint, it has the caption Project Provides 18 Compatible Heights. 19 (Applicant's Exhibit 75 was marked for 20 identification, admitted into evidence, and 21 retained by the Hearing Examiner.) 22 MS. ROGERS: Thank you. 23 THE WITNESS: 75? 24 MS. ROGERS: Uh-huh. 25 HEARING EXAMINER SOKONI: 75.</p>	<p>151</p> <p>1 on the high point of the ridge, and most of them 2 are using retaining walls to terrace their 3 properties. 4 And they're sitting up quite high. They 5 actually cut into the slope in the property right 6 to our northwest -- or to our, sorry, northeast, 7 the Senior Living building. That finished floor 8 sits at 46 -- I can't read it on the screen. 9 Oh, thank you. 10 Q You can look at the full-size copy, if 11 you need it, but it's -- okay. 12 A Yes. So 460, and that's just -- for 13 purposes of this discussion, it's just a relative 14 number. It's the feet above sea level that this 15 building sits, so it just sits at 460. It's 16 approved at a height of 47.8 inches, and that's to 17 typically the median level of the pitched roof, so 18 in between the top of the roof and the eaves that 19 overhang the side of the house or the building. 20 It's approved at 47.8, but the 21 surrounding neighborhood to the west -- for 22 example, the unit just to our west in the top 23 corner -- it sits at an elevation of 446. So its 24 effective height is -- the building is actually 67 25 feet above our neighbor here.</p>
<p>150</p> <p>1 THE WITNESS: Okay. 2 MS. ROGERS: Yeah. 3 A So talking to Exhibit 75, the image on 4 the screen shows two cross-sections run through 5 our property, which is delineated by the thin 6 vertical lines on either section. And then the 7 bottom right has a planned view, shows where those 8 sections were taken. 9 And in red, which you can more easily 10 read on the full-size print, are spot elevations 11 of the existing grades that are around our 12 property. As I noted, we have to significantly 13 regrade our property to deal with infrastructure 14 engineering constraints and to move a lot of water 15 to an existing storm drain system and onto our 16 east and reduce runoff to the west and north. 17 So we -- during that regrading, I think 18 there's some confusion about the elevation of some 19 of these existing buildings. There is -- as I 20 noted earlier, there's a ridge line that runs down 21 to the west of New Hampshire Avenue in this part 22 of Colesville. And it runs along New Hampshire, 23 and then it goes to the east down further south. 24 This is basically where all of those 25 institutional uses are sitting right now. They're</p>	<p>152</p> <p>1 Our buildings are proposed at four 2 stories. We've requested a height of 50 feet 3 because it's measured in different ways. 4 But within that four stories, we're 5 typically going to be around 45-ish feet. And 6 that is sort of below the overall limit, but it 7 also steps with grade as we go down. 8 Likewise, there's an unusual situation 9 going north-south where we're basically -- I cut 10 this section right along the ridge line, so it's 11 almost 460 all the way across. And it's a weird 12 situation where the road actually comes in and 13 you -- and this -- probably speaking about 14 someone's house here, but where you come in on the 15 first floor, but then there's an exposed basement. 16 And so for a small section, you're -- 17 you have three -- or four stories, including the 18 pitched roof. It's just an -- that's where the 19 ridge line is. Everything else slopes it down. 20 And so at the end of Notley Road, we're 21 at 442 on the east side and 452 on the west side. 22 So everything around here except for this ridge 23 line through the middle of the site to the first 24 unit to our south is below this building here, and 25 our height is in between that building and their</p>

<p>153</p> <p>1 heights. So that's probably a very long-winded 2 way of saying that it's my opinion that these 3 building heights and the stories proposed are 4 compatible with the neighborhood and fit into the 5 fabric of the neighborhood, based on those 6 different building types around us.</p> <p>7 Q Just following up on that, Mr. Sloan, 8 can you also testify regarding how our heights 9 relate to the heights allowed by the base R-200 10 zone?</p> <p>11 A Yeah. The R-200 zone allows heights up 12 to 50 feet once you are over 40 -- or 40,000 13 square feet. We have -- several of the lots 14 confronting us are over 40,000 square feet. If 15 they wanted to tear down, rebuild, or sell to 16 someone who wanted to, they could build to 25 17 percent building coverage and 50-foot building 18 height by right.</p> <p>19 MS. ROGERS: And if we could go up to 20 the certified zoning map, just one slide up?</p> <p>21 Q Mr. Sloan, could you also just briefly 22 describe the height relationship of the Silver 23 Spring Healthcare Center as it relates to the 24 homes immediately behind it?</p> <p>25 A Yeah. So the Silver Spring Healthcare</p>	<p>155</p> <p>1 all of the buildings to our west. They're about 2 that grade along the ridge, but taller than 3 everything to the west. I'm not sure why the one 4 building to our north -- it stepped down towards 5 New Hampshire rather than on the other side. I 6 don't know if that is on --</p> <p>7 Q Thank you. You can -- I don't know what 8 slide you want to continue on regarding -- if you 9 could touch on some of the environmental aspects, 10 as it relates to your analysis regarding character 11 of the surrounding neighborhood?</p> <p>12 A Sure. So our civil engineer, I believe, 13 also will speak to some technical aspects of 14 stormwater management, but we work very closely on 15 layout and design so that I can accommodate the 16 technical requirements to assure that we meet the 17 standards and mitigate concerns that we heard 18 about flooding in the neighborhood.</p> <p>19 In the grading discussion -- so let's see. 20 Is there -- it was not on this slide. Maybe just 21 the overall plan again.</p> <p>22 MS. ROGERS: Can you just go a few 23 slides up? And keep going.</p> <p>24 THE WITNESS: Keep going.</p> <p>25 MS. ROGERS: That one.</p>
<p>154</p> <p>1 Center is another one that sits sort of on this 2 ridge line that's to the west of New Hampshire 3 Avenue. So it has an approved height of 41 feet.</p> <p>4 As you come down to Pleasant Grove, 5 Pleasant Grove actually, at that cul-de-sac, sits 6 at an elevation 20 feet below it. So it's about 7 60 feet above the grade of this street here.</p> <p>8 So again, this is -- this relationship 9 where all these things are going down. They're 10 all going down to this tributary that runs 11 eventually to the northwest branch.</p> <p>12 So I think there's been some things in 13 the record that I don't think accurately depict 14 the building heights around us. And we wanted to 15 make sure that that was clear.</p> <p>16 Q And just last question just to kind of 17 summarize your testimony. The heights of those 18 institutional buildings, as they relate to the 19 senior families behind them, are actually have a 20 tall -- do they actually have a taller perceived 21 height when you account for these grades than 22 their --</p> <p>23 A Yes.</p> <p>24 Q -- approved height?</p> <p>25 A Yeah. Senior buildings sit taller than</p>	<p>156</p> <p>1 THE WITNESS: I could just use that, 2 yeah.</p> <p>3 MS. ROGERS: That's great.</p> <p>4 A So we're looking again back at the 5 illustrative conceptual layout plan. It does not 6 reflect the shift to the north but otherwise is 7 very similar, so --</p> <p>8 MS. ROGERS: Exhibit 50-B, just for the 9 record.</p> <p>10 A 50-B. So we did hear concerns about 11 flooding to the north -- or to the west of us. As 12 I've noted, a lot of that is because of where the 13 ridge line is, it separates two watersheds and -- 14 I'm trying to throw stones -- the -- a lot of the 15 houses are built within what we would now consider 16 protected street-valley area. So given that 17 that's the existing condition, and we have to 18 make -- ensure that it does not get any worse, 19 we've spent significant time on storm drain 20 studies, grading, and layout at an early stage of 21 stormwater facilities.</p> <p>22 So, currently, there are no stormwater 23 facilities onsite. The site surface drains to 24 our -- to the roads and to our surrounding 25 neighbors. And our civil engineer will talk a</p>

<p>157</p> <p>1 little bit more about the details of how we're 2 dealing with that. 3 We are showing that we can save with the 4 modifications that we made, all of the existing 5 offsite specimen trees. So those are trees that 6 are 30 inches or greater that would require a 7 variance if we had to take them down or even 8 impact them. There are some perimeter trees on 9 our site that we're trying to also look at saving, 10 but we're discussing this with Staff because our 11 goal is to think long-term about environmental 12 benefits when we redevelop the site. 13 As a landscape architect, when I'm 14 thinking about design and working with my 15 colleagues, right now, we've got -- for example, 16 several of the specimen trees are walnuts; there 17 are pine trees, white pines; there's a cherry. A 18 lot of them are in fair or poor condition, and if 19 we save them now, get approved, get built, and 20 they die, they can just be taken out. 21 In my professional opinion, we should be 22 looking at -- let's take these down now. Let's 23 mitigate a requirement, which is more trees than 24 we're taking down so that we can get, one, more 25 trees that will live longer and provide canopy and</p>	<p>159</p> <p>1 Plan for this property? 2 A So this site is within the 1997 White 3 Oak Master Plan boundary. 4 Q And have you reviewed the 1997 White Oak 5 Master Plan? 6 A I have. 7 Q And based on your review of the Master 8 Plan, is it your professional -- in your 9 professional opinion, is a proposed development 10 and substantial conformance with the applicable 11 goals and recommendations contained therein? And 12 can you walk us through that? 13 A Yes, initially, I do believe it's in 14 substantial conformance with the overall goals and 15 recommendations. I agree with Staff's analysis 16 and the Planning Board recommendation letter. 17 As we've noted in some of our 18 submissions, and I'll reiterate, the Master Plan 19 is almost 30 years old, and it does have a 20 specific provision that says the original 21 circumstances of the time of the plan adoption 22 will change over time and that specifics of a 23 Master Plan may become less relevant as time goes 24 on. 25 And as we've also noted, there is case</p>
<p>158</p> <p>1 shade in the longer term; and two, can we get 2 species that are more beneficial, what we call, 3 ecological services, who are providing the 4 insects, the birds, the mammal -- small mammal 5 population with some kind of benefit longer-term 6 than walnuts and white pines. 7 There are a lot of trees that are much 8 more beneficial, and we'd like to repopulate what 9 we do to serve with those kind of species. So 10 that's off the table for now, but just to -- so we 11 think ahead, and everyone understands our 12 direction. That's where we're going to be looking 13 when we get to the forest conservation -- final 14 Forest Conservation Plan and the variants. 15 So that, and then just overall the 16 number of replanting trees, the new screening, the 17 stormwater, dealing with not only water quality 18 stormwater -- we didn't speak about this -- but 19 also attenuation for flooding will have an 20 improvement overall environmental. 21 Q Thank you. I think you can probably sit 22 down because we're going to move to Master Plan 23 conformance. 24 A Up here. 25 Q Mr. Sloan, what is the relevant Master</p>	<p>160</p> <p>1 law that says, when a comprehensive plan is 2 adopted after an area Master Plan, that any of the 3 recommendations that are not -- that are in direct 4 contrast to that comprehensive plan, a 5 comprehensive plan supersedes. 6 This Master Plan was created under the 7 previous General Plan, the Wedges and Corridors 8 Plan. And that specifically was redirecting 9 growth. 10 And I have a quote here, Page 6, 11 supports the land use goal and wedges of -- goal 12 and Wedges and Corridors concept supporting 13 directing the major portion of Montgomery County's 14 future growth to the urban ring in I-270 corridor. 15 And the new comprehensive plan, Thrive 2050, noted 16 that that removal of the eastern portion of the 17 County as a location suitable for corridor focus 18 development, discourage public and private 19 investment in this area. 20 That's Page 3, and then has some other 21 references on -- similar references on Pages 12 22 and 68 of the -- of Thrive. And Thrive seeks to 23 correct this mistake by focusing investment and 24 encouragement -- encouraging development along 25 corridors in the east county to establish the</p>

<p>161</p> <p>1 foundation for complete communities and create a 2 more prosperous and equitable future in all parts 3 of the County, Page 77. 4 So in my reading of this, in my 5 analysis, the Thrive 2050 plan supersedes some of 6 the recommendations of the White Oak Master Plan. 7 That said, I still think it substantially conforms 8 to a lot of what the White Oak Master Plan said. 9 It just didn't have the correct tools in place to 10 accomplish those things. 11 First of all, the Master Plan had no 12 specific recommendations regarding the site. It 13 has a section -- has several sections that outline 14 recommendations for several sites. This was not 15 one of them. 16 It does have a focus on commercial 17 centers. And I'm sorry I'm quoting a lot here, 18 but, This plan encourages development in the 19 commercial centers that will strengthen their 20 function and sense of place. That's in Page Roman 21 Numeral -- small Roman Numeral xii. 22 One of the problems with it, though, is, 23 this was old Euclidean zoning that only -- that 24 specifically recommended that there is no mix of 25 uses, that they have single-use zoning. And I</p>	<p>163</p> <p>1 our west, but we can at least upgrade our site and 2 hopefully spur reinvestment in some areas around 3 us. 4 There's not a lot in the environment for 5 this part of the Master Plan. A lot of-- there 6 is a section of the Master Plan that is focused on 7 a special protection area in the upper paint 8 branch. We're not in that area. 9 But there is a recommendation to improve 10 air quality by encouraging pedestrian bicycle and 11 transit access and existing in new development. 12 That's from Roman numeral -- small Roman numeral 13 Page xviii. And I think infill density at this 14 kind of site within a ten-minute walk of the 15 proposed BRT station that is at the intersection 16 of two BRT lines, and the existing M42 and M44 17 buses is appropriate and will help, and people 18 can -- will be able to walk safely to those 19 facilities. 20 Again, density goal in the existing 21 White Oak Master Plan says, Higher density 22 residential development will be located around 23 commercial centers and provide convenient access 24 to shopping and transit. That's Page 13. 25 It just didn't put the zoning in place.</p>
<p>162</p> <p>1 think that's one of the problems that Thrive 2 recognized in a lot of the Master Plans in between 3 this one and the current Thrive Plan sought to 4 remedy. 5 And further on those commercial centers, 6 they're encouraged -- the commercial areas 7 encourage and provide opportunities for residents 8 of the plan areas, communities to come together, 9 interact. Commercial centers are -- of the future 10 are attractive, pedestrian-friendly, and 11 accessible by many different means of 12 transportation. 13 A lot of the investment that didn't 14 happen and the upgrades that didn't happen in New 15 Hampshire Avenue, areas like Randolph Road, are 16 because there was not the -- what we would call 17 and consider a critical density to really look 18 towards a private reinvestment that would create 19 these safe and attractive pedestrian connections. 20 We're starting to see that implemented 21 project-by-project along New Hampshire Avenue. I 22 think this one will help that. 23 There are several recommendations about 24 walkability and safety for neighborhoods. We 25 can't address everything in the neighborhood to</p>	<p>164</p> <p>1 This is something that we can do with the current 2 code that wasn't done then. 3 Regarding that housing goal, Maintain 4 housing for people of varying incomes, ages, 5 lifestyles, continue to provide a variety of 6 housing that will permit households with changing 7 needs, to find suitable accommodations within the 8 White Oak Master Plan area, Page 18. We've had 9 the Senior Living facilities go in. We've got 10 some expansion of the diversity of type of units 11 and housing that's gone in. This is going to 12 compliment that, I think, very well. 13 Regarding the transportation goals, not 14 specifically the technical elements, but general 15 elements, improving the convenience and safety of 16 all modes of travel within and through White Oak 17 Master Plan area, improvement, street enhance, not 18 disrupt neighborhood character. I think the 19 streetscape can be improved significantly with new 20 street trees with the expanded side paths that are 21 putting in and will enhance these modes of travel 22 and, hopefully, better support the future BRT and 23 the existing bus lines that are there. 24 Increased use of carpools and transit 25 within and through White Oak Master Plan by</p>

<p>165</p> <p>1 providing services and facilities, establishing 2 policies that encourage their use. I think one of 3 those policies is increased infill density. 4 In terms of the communities, the 5 complete communities idea that Thrive has, there's 6 a thing in the White Oak -- there's an element of 7 the White Oak Master Plan talking about livable 8 communities. And I think one of the elements that 9 was missing is some transitional -- transitional 10 density in a village or neighborhood center that 11 is appropriate and will encourage that. 12 So the commercial center -- for example, 13 for Colesville -- a quote is from the Master Plan. 14 It functions as a focal point for community 15 interaction. It's ideal for centralized services 16 and shopping. However, they must be 17 user-friendly, quote within a quote. 18 Their location at a major intersection 19 poses a problem, and that places a local resident 20 who generally must drive to local shopping center 21 and services in competition through vehicle 22 movement. So we need to start creating these 23 streets as much more pedestrian-friendly. And you 24 can only do that through reinvestment. 25 A lot of it's going to be through</p>	<p>167</p> <p>1 number of those goals -- you know, were there a 2 significant -- was there a significant focus in 3 the 1997 Master Plan regarding enhancing the 4 character and creating community here through 5 these streetscape improvements for safety and 6 walkability? 7 A Yeah. There's a significant section -- 8 well, it's sort of spread out throughout. Page 32 9 of the Master Plan does recognize that it supports 10 transit at Colesville. Page 53 of the Master Plan 11 says, Provide streetscape improvements to 12 strengthen the vitality of adjoining commercial 13 areas, enhanced community identity, pedestrian 14 circulation, improve roadway experience in 15 general. 16 Page 54, just past that, Enable 17 pedestrians to safely and easily use bus stops or 18 community facilities, improve safety for 19 pedestrians crossing main roads in the White Oak 20 masterplan area. We may talk about that later, 21 but we're looking at the installation of a signal 22 at Notley Road, a vehicular signal, a pedestrian 23 signal at the intersection of Notley Road and New 24 Hampshire. 25 In my mind, that's a cliché but a game</p>
<p>166</p> <p>1 private reinvestment because we don't have the tax 2 dollars necessarily to fund everything. But once 3 you put in the impact taxes and the private 4 development and can get some CIP projects and a 5 new BRT system, you could start seeing significant 6 transformation of the Colesville Center to meet 7 this vision of the Master Plan. 8 It does support transit at Colesville. 9 There's been a Park-N-Ride there. The BRT system 10 was meant to go initially up to the Park-N-Ride. 11 It still shows that on some maps, and 12 other maps it only goes to the intersection of 13 Randolph and New Hampshire. Either way it's .3 14 miles from our site. It's easily walkable for 15 transit users. 16 There's several other quotes. I think 17 they all cover the same thing, but I think they're 18 important to reiterate the fact that there were a 19 lot of goals for creating a sense of place around 20 Colesville Center that haven't gelled yet and that 21 are starting to come on board. And I think Staff, 22 the Planning Board, the County Council recognized 23 that the tools in place weren't there and that 24 Thrive can help implement that. 25 Q And just to that last point, you made a</p>	<p>168</p> <p>1 changer for how people can move from the east side 2 to the west side of New Hampshire Avenue. Right 3 now, you have to walk the distance between lights, 4 and potential crossing is .8 miles. 5 That'll cut that in half. .4 miles is a 6 much more easily walkable distance for people to 7 safely cross New Hampshire Avenue. That will 8 significantly improve pedestrian bicyclist ability 9 to cross safely and use the corridor to transit to 10 parks, to services, the commercial services. 11 Q And just to reiterate for the record, 12 did you prepare -- as part of that Land Use Report 13 that you've already testified that you prepared, 14 was there a section regarding Master Plan 15 conformance? 16 A There is a section regarding Master Plan 17 conformance that has a detailed opinion on my -- 18 my detailed opinion. 19 Q Okay. Does the 2014 White Oak Science 20 Gateway Master Plan have any bearing on the review 21 of this application? 22 A It does not. The property is not within 23 the plan boundaries of the White Oak Science 24 Gateway Master Plan. It's not even within the 25 boundaries of the study area, which, for an area</p>

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<p>169</p> <p>1 Master Plan, is larger because they're trying to 2 get the bigger context for these smaller Sector 3 Plan-type area plans. 4 The Science Gateway Master Plan was 5 clear it amended portions of this '97 White Oak 6 Master Plan. It was -- this property was not 7 included in that area to be amended, and 8 subsequent Master Plan updates recommendations 9 contained therein are limited to those properties 10 in the relevant boundaries. 11 They are not -- they have no further 12 effect on properties outside of that boundary. 13 They don't imply any kind of confirmation of 14 those. They only deal with the recommendation 15 that the area is within their boundary. 16 And this isn't unusual -- this isn't 17 atypical for the -- how the County has been 18 proceeding. As I noted, I was on Staff in the 19 late 2000s until 2013. 20 And one of the things that we recognized 21 in that late 2000s period was that the large area 22 plans could not change quickly enough or be 23 updated for emerging, fast-moving policy issues. 24 So there were significant demographic changes that 25 were catching up to us. There were significant</p>	<p>171</p> <p>1 testimony has already given his opinion on that 2 point, so I just think -- 3 MS. ROGERS: But I think he's -- 4 MS. ROSENFELD: -- he's elaborating. 5 MS. ROGERS: All he's elaborating on is 6 from a professional -- as a planning professional, 7 how he has seen this play out in practice and 8 further confirming why it's not relevant. 9 HEARING EXAMINER SOKONI: I'll overrule 10 the objection. I'll let it in and attach whatever 11 weight I deem appropriate at the time of decision. 12 A Okay. Now, I'm not going to have a lot 13 to add to what I said. It was just, when we 14 started doing the plans like White Flint, Chevy 15 Chase Lake, Glenmont -- 16 MR. NUSBAUM: Objection. 17 A -- Kensington. 18 HEARING EXAMINER SOKONI: Yeah. There 19 is an objection by Mr. Nusbaum. 20 MR. NUSBAUM: His statement continues to 21 say, we, as though he's speaking on behalf of 22 Planning Staff. I would ask that he be directed 23 to speak as to his experience, not representing 24 what Planning Staff has done in the past. 25 MS. ROGERS: Mr. Sloan is testifying</p>
<p>170</p> <p>1 new policies and planning ideas that were coming 2 out, and so we started focusing on smaller Sector 3 Plan areas. 4 MS. ROSENFELD: Objection. Objection. 5 I think this really is getting beyond the scope of 6 his report and what -- his testimony. 7 MS. ROGERS: We would overrule that. I 8 mean, Mr. Sloan is directly responding to 9 Opposition's testimony that there's some relevance 10 to the 2014 White Oak Science Gateway Master Plan. 11 And what Mr. Sloan's testimony is intended to 12 elicit here is that -- what planning practices are 13 and how those subsequent smaller area plans that 14 don't include -- don't have any bearing on 15 properties outside of them. 16 So that is something that Opposition has 17 relied on in their documents to date that it is 18 important Mr. Sloan clarify for the record for the 19 Hearing Examiner as to why that plan boundary that 20 Opposition is suggesting has some influence on the 21 Hearing Examiner's consideration of this 22 application actually does not. So it's directly 23 related to issues that Opposition has raised in 24 their written materials. 25 MS. ROSENFELD: And I think his</p>	<p>172</p> <p>1 regarding what he specifically, personally did 2 when he was a member of Planning Staff in the 3 2000s as a professional county employee for the 4 Maryland National Capital Park and Planning 5 Commission to, again, address what I just 6 mentioned as to how these plans are looked at from 7 a professional planning perspective. 8 HEARING EXAMINER SOKONI: Okay. 9 Overruled. 10 A In either case, it was the County 11 Council and the Planning Board that approved and 12 adopted a series of smaller plans. And those 13 smaller plans were meant to address very specific 14 areas that needed to keep up with changing 15 policies and changing priorities for the County. 16 And then they looked at more finite 17 planning elements, things like transit corridors, 18 urban design guidelines, contact-sensitive 19 streets, these kinds of elements to deal with 20 broadier issues. Those are Functional Plans and 21 guidelines that go along with them. 22 That was a way to deal with change 23 quickly in smaller areas. It did not imply any 24 confirmation of the recommendations for areas that 25 were left out of those smaller area plans and</p>

<p>173</p> <p>1 floating zones which were also adopted near the 2 same time finally put into practice in 2014. 3 In one of the intent statements, it says 4 specifically that this is a mechanism for smaller 5 changes within area plans that are not updated 6 with comprehensive plans. And they're meant to 7 deal with policy change in between sectional map 8 amendments and comprehensive map amendments. So 9 this is the mechanism that is part of the public 10 process and is part of the rules that are in the 11 code that is allowed to be proposed for a 12 property. 13 And so that is, in summary, my way of 14 addressing the question about whether or not 15 the -- sorry, the whole name of it -- White Oak 16 Science Gateway Master Plan is relevant to this 17 site. It is not -- 18 Q Thank you. 19 A -- relevant. 20 Q And what is the relevant General Plan 21 for this property? 22 A So this plan is under the Thrive 23 Montgomery 2050. 24 Q And have you reviewed Thrive Montgomery 25 2050?</p>	<p>175</p> <p>1 Plan that says -- and I'll quote from Page 163 -- 2 All new residential and non-resident develop -- 3 residential development should be located in 4 existing and planned population business centers 5 near existing and planned transit, such as metro 6 rail stations and the bus rapid transit corridors. 7 All of these plans are within the County's 8 priority funding areas, and this property is 9 within the County's priority funding area, as 10 established by the state. 11 It is -- the site is less than a 12 ten-minute walk from the proposed BRT station at 13 the intersection of the two corridors, Corridor 4 14 and Corridor 8. And the Thrive recognize that 15 opportunities for increased housing diversity 16 outside the defined growth areas will now allow 17 neighborhoods to evolve over time to address 18 current and future housing needs and become 19 racially and socioeconomically integrated. 20 And I think the key is that along these 21 corridors, you have specific communities that are 22 either mapped as centers or not. And there are 23 two ideas related to this complete communities 24 that I want to highlight, and that is the complete 25 communities concept itself and the 15-minute</p>
<p>174</p> <p>1 A Yes. 2 Q And based on your review of the General 3 Plan and your professional opinion, is the 4 proposed development in substantial conformance 5 with the goals and recommendations contained in 6 Thrive Montgomery 2050? 7 A In my opinion, the plan is in 8 conformance with the General Plan, and I agree 9 with Staff and the Planning Board's recommendation 10 letter that it is. It comprehensively amended the 11 Wedges and Corridors Plan, which had been updated 12 over about five decades, when Wedges and Corridors 13 was first adopted, but not significantly addressed 14 a lot of the policy issues that the County Council 15 and the Planning Board -- and the planning 16 department deemed was necessary to address. 17 So there are two elements of the General 18 Plan that are particularly relevant for this 19 property. One is corridor-focused growth, and the 20 other is complete communities. 21 There is a map that's been alluded to 22 about corridors -- about corridor-focused areas. 23 And there is, I think, a light blue color that has 24 been -- that's on that map. 25 But there is also language in the Thrive</p>	<p>176</p> <p>1 living that is described in Thrive. 2 So complete communities is defined on 3 Page 85 as places that include a range of land 4 uses, infrastructure services, amenities allow 5 them to meet a wide range of needs for a variety 6 of people, and include housing suitable for 7 different household types, income levels, and 8 preferences, helping to support racial and 9 socioeconomic integration. So I think this is a 10 update to the White Oak Master Plan's concept of 11 livable communities that creates a greater focus 12 on current policy concerns and with a hindsight 13 that the separation of uses and suppressed density 14 around neighborhood centers leads to a lack of 15 reinvestment that Thrive had noted. 16 So the related concept of 15-minute 17 living, I think, is important here because 18 Colesville Center becomes one -- is a center on 19 one of the -- in the growth map. It's a way per 20 Thrive of imagining existing communities to 21 maximize their attractiveness and efficiency by 22 mixing housing offices and retail uses -- so 23 services, infrastructure, facilities and 24 amenities -- to serve the daily needs of people 25 who live or work there are within walking</p>

<p>177</p> <p>1 distance.</p> <p>2 While a literal or rigid application of</p> <p>3 15-minute living may not be practical outside of</p> <p>4 the corridor-focused growth areas, the concept is</p> <p>5 a useful way to generate concrete recommendations</p> <p>6 to make communities more complete and help them</p> <p>7 succeed. And again, limited organic</p> <p>8 development beyond the corridors and defined</p> <p>9 growth areas should be allowed to increase the</p> <p>10 diversity of housing types in existing residential</p> <p>11 neighborhoods and make these areas more complete,</p> <p>12 particularly near existing centers of activity or</p> <p>13 development, Page 86.</p> <p>14 In my opinion, there are different</p> <p>15 scales of these neighborhood centers, and they're</p> <p>16 called village centers, neighborhood centers.</p> <p>17 There are small -- there are other terms. And in</p> <p>18 this area, 15-minute living may not be the guiding</p> <p>19 principle.</p> <p>20 I focus my analysis on what I</p> <p>21 consider -- what I would say call ten-minute</p> <p>22 living, the area that you can walk within five to</p> <p>23 ten minutes to get to services, to get to transit,</p> <p>24 to get to park facilities. And that's an area</p> <p>25 that we've basically defined as a walkshed within</p>	<p>179</p> <p>1 project.</p> <p>2 And, finally, this is a way to spur</p> <p>3 reinvestment in East County that Thrive</p> <p>4 recommends. Establish -- and another quote from</p> <p>5 Thrive: Established foundation for complete</p> <p>6 communities and create more prosperous and</p> <p>7 equitable future in all parts of the County, as I</p> <p>8 noted earlier that that is specifically focused on</p> <p>9 a specific focus for previous lack of reinvestment</p> <p>10 in East County.</p> <p>11 Q Thank you. What are the other relevant</p> <p>12 plans for this property that you've evaluated?</p> <p>13 A So when we have to do our analysis of</p> <p>14 planning objectives, we have to look at the area</p> <p>15 plan, the General Plan, and all applicable --</p> <p>16 other applicable plans, such as the Functional</p> <p>17 Plans, that govern elements of redevelopment in</p> <p>18 development in the County. Particularly important</p> <p>19 one is the Master Plan of Highways and</p> <p>20 Transitways. It was last updated in 2025.</p> <p>21 The Master Plan of Highways and</p> <p>22 Transitways establishes the recommended right of</p> <p>23 way for every property and the street</p> <p>24 classification -- or for every road -- for most</p> <p>25 roads, not every road. For each road that we're</p>
<p>178</p> <p>1 which our plan is -- or our property is included.</p> <p>2 So this is a smaller-scale application</p> <p>3 around Colesville Center as a focus of a livable</p> <p>4 community, and it should be prioritized along</p> <p>5 walkable routes centered on this crossroads. The</p> <p>6 types of housing that are allowed here, Thrive</p> <p>7 2050 makes it clear that despite the varying needs</p> <p>8 and conditions of different parts of the County,</p> <p>9 the concept of encouraging more diversity of use</p> <p>10 in form is relevant in almost every location, and</p> <p>11 that's in Page 85.</p> <p>12 It insert -- it encourages the</p> <p>13 production of more housing to better match supply</p> <p>14 with demand, Page 132. We are providing that.</p> <p>15 We are along a major corridor where</p> <p>16 additional housing can assist in development of</p> <p>17 complete communities and Thrive's vision, that</p> <p>18 plan for a wide range of housing types to meet</p> <p>19 diverse needs mentioned on Page 132. And we are</p> <p>20 providing that through provision of a different</p> <p>21 housing type to promote racial and economic</p> <p>22 diversity, economic housing, inequity in housing</p> <p>23 in every neighborhood, as recommended on Page 133.</p> <p>24 And we have agreed to the binding element of</p> <p>25 providing 15 percent MPDUs on this site in this</p>	<p>180</p> <p>1 dealing with, it does, and the classification of</p> <p>2 that road. There is actually -- as we found out,</p> <p>3 there's a mistake in the Master Plan of Highways</p> <p>4 map regarding Notley Road classification.</p> <p>5 But the table that it was adopted for</p> <p>6 the Master Plan of Highways and Transitways is</p> <p>7 correct. It's a neighborhood connector.</p> <p>8 Regardless, the recommendation was for a</p> <p>9 70-foot right of way with two travel lanes. We'll</p> <p>10 note that there are actually three lanes on -- at</p> <p>11 the intersection of New Hampshire Avenue, and</p> <p>12 that's because there's the dedicated left-turn</p> <p>13 lane, which we anticipate maintaining with the new</p> <p>14 signal at that intersection.</p> <p>15 It requires a ten-foot side path on the</p> <p>16 street per the classification, which, once you get</p> <p>17 the classification from the Master Plan of</p> <p>18 Highways and Transitways, you have to look at</p> <p>19 complete streets for the recommendations there.</p> <p>20 You also have to look at the Bicycle Master Plan,</p> <p>21 which is older than Thrive, but Staff still uses.</p> <p>22 In this case, the Bicycle Master Plan</p> <p>23 did not make any recommendations. They're</p> <p>24 different from complete streets, so it's kind of</p> <p>25 moot.</p>

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<p>181</p> <p>1 But we are providing the recommended</p> <p>2 70-foot right of way and ten-foot side path with</p> <p>3 the tree panels, as required along Notley. New</p> <p>4 Hampshire Avenue is a boulevard with six lanes,</p> <p>5 plus additional turn lanes as necessary.</p> <p>6 And under complete streets, an 11-foot</p> <p>7 side path is required with the tree panel. And we</p> <p>8 are providing both dedication to a 120-foot right</p> <p>9 of way and an 11-foot side path with the tree</p> <p>10 panel tying into what was built to our north</p> <p>11 recently.</p> <p>12 Q Thank you. And so based on your review</p> <p>13 of the Functional Master Plans that are relevant,</p> <p>14 it's your professional opinion that this project</p> <p>15 is in substantial conformance with all of the plan</p> <p>16 recommendations?</p> <p>17 A The plan is in conformance with those</p> <p>18 recommendations.</p> <p>19 Q And did the Maryland National Capital</p> <p>20 Park and Planning Commission Staff and the</p> <p>21 Planning Board, in making their recommendation,</p> <p>22 agree with your conclusion that the project is in</p> <p>23 substantial conformance with the goals and</p> <p>24 recommendations of the Master Plan, the General</p> <p>25 Plan, and the Functional Plans, all of which must</p>	<p>183</p> <p>1 Examiner on that.</p> <p>2 (Counsels confer.)</p> <p>3 MS. ROGERS: I mean, we're comfortable</p> <p>4 with sort -- I know we were trying to kind of get</p> <p>5 as much testimony in today as we can, so we're</p> <p>6 comfortable with a short break. You know, I'll</p> <p>7 defer to the Hearing -- I think we need at least a</p> <p>8 comfort break of probably, like, 15 minutes for</p> <p>9 people to be able to get food and water. We're --</p> <p>10 the 30-minute break --</p> <p>11 HEARING EXAMINER SOKONI: What I'm --</p> <p>12 MS. ROGERS: If --</p> <p>13 HEARING EXAMINER SOKONI: I'm looking</p> <p>14 here -- let's do a half-hour break.</p> <p>15 MS. ROSENFELD: I'll take 30.</p> <p>16 HEARING EXAMINER SOKONI: Let's do a</p> <p>17 30-minute break. And so it's almost 1:10. Let's</p> <p>18 reconvene at 1:40.</p> <p>19 And just before we go off on break, I</p> <p>20 hope at some point -- I was going to raise the</p> <p>21 question, we still have the outstanding issue of</p> <p>22 the revised land use plan, so I just don't want to</p> <p>23 lose sight of that.</p> <p>24 At some point, you should address</p> <p>25 your involvement and exactly who the author is.</p>
<p>182</p> <p>1 be found with a rezoning?</p> <p>2 A Staff did agree with our analysis, and</p> <p>3 they made a recommendation that it was in</p> <p>4 conformance with the Master Plan, General Plan,</p> <p>5 and Functional Plans.</p> <p>6 MS. ROGERS: I'm just going to let the</p> <p>7 Hearing Examiner know we were going to next move</p> <p>8 on to development standards. We do have a</p> <p>9 significant more amount of testimony from</p> <p>10 Mr. Sloan, so I just want to check with you to see</p> <p>11 if -- how you'd like to handle that.</p> <p>12 HEARING EXAMINER SOKONI: I know we had</p> <p>13 -- we lost a few people, so I feel like that's a</p> <p>14 signal that people might need a break. What I</p> <p>15 was -- I came prepared to -- I know you had asked</p> <p>16 if we could, you know, power through most of --</p> <p>17 you know, sort of have condensed breaks. I'm</p> <p>18 totally fine with that.</p> <p>19 We actually have a caf' down the</p> <p>20 hallway, which is a new addition. So it's easy to</p> <p>21 grab a bite.</p> <p>22 So what level of before -- I think this</p> <p>23 would be a good place to take a break. What is --</p> <p>24 what are you comfortable with duration-wise?</p> <p>25 MS. ROSENFELD: I defer to the Hearing</p>	<p>184</p> <p>1 And we can talk about whether you want to submit a</p> <p>2 signed one with dates and stuff.</p> <p>3 MS. ROGERS: Okay.</p> <p>4 HEARING EXAMINER SOKONI: Okay.</p> <p>5 MS. ROGERS: Okay.</p> <p>6 HEARING EXAMINER SOKONI: We'll take a</p> <p>7 half-an-hour recess. We'll reconvene at 1:40 p.m.</p> <p>8 Just -- I should mention -- maybe people</p> <p>9 are already familiar with the building -- we do</p> <p>10 have restrooms right, you know, next -- near the</p> <p>11 elevators. And, you know, you can feel free to go</p> <p>12 to other floors.</p> <p>13 Like, third floor is a public floor.</p> <p>14 You could go up there as well. And the -- we have</p> <p>15 restrooms both on the right side and the left</p> <p>16 side.</p> <p>17 (Whereupon, a recess was taken at</p> <p>18 1:09 p.m.)</p> <p>19 HEARING EXAMINER SOKONI: Thank you.</p> <p>20 Just checking with folks on Zoom. Just</p> <p>21 want to have a signal from folks on Zoom. Can you</p> <p>22 hear us? Can you see us? We are resuming from</p> <p>23 the --</p> <p>24 UNIDENTIFIED SPEAKER: Yes.</p> <p>25 HEARING EXAMINER SOKONI: -- lunch</p>

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<p>185</p> <p>1 recess. Okay. So --okay. Okay. We're waiting 2 for our star witness, Mr. Sloan. So as soon as 3 Mr. Sloan resumes the stand, we'll pick up from 4 where we left off before the recess. 5 And just a reminder for folks on Zoom, 6 if anyone joined, a reminder that if you're going 7 to testify, you have to unmute yourself and put on 8 your camera. Otherwise, please mute yourself, and 9 you don't have to have your camera on. And the 10 Zoom works best with Internet Explorer and Edge. 11 All right. So the Applicant has -- 12 where we -- before we went on break, the Applicant 13 was -- we're back on the record. 14 The Applicant was doing the case in 15 chief, and we had Mr. Sloan, who already took -- 16 already administered the oath. And we're going to 17 resume from where we left off. 18 MS. ROGERS: Great. Thank you. I 19 wanted to pick up, before we dive into the -- our 20 questions relating to the development standards 21 on -- I think the issue the Madam Hearing Examiner 22 was raising as we were leaving for lunch, just to 23 make sure it was explicitly clear for the record 24 regarding the contents of the Land Use Report? 25 HEARING EXAMINER SOKONI: Correct. So</p>	<p>187</p> <p>1 there was a question online. 2 HEARING EXAMINER SOKONI: Sorry. 3 Q I think -- so, Mr. Sloan, as you were 4 testifying to the Land Use Report, there are 5 elements in here related to civil engineering and 6 stuff that our traffic engineer has contributed 7 to. And so you're testifying to -- aside from 8 specific elements, this is a document that you 9 have prepared and reviewed and are -- reflects 10 your analysis and that the three witnesses will 11 each testify in their testimony today that they've 12 contributed to this collaborative document and 13 will submit a signed copy with all three 14 respective expert witnesses signing and dating it 15 for the record? 16 HEARING EXAMINER SOKONI: Okay. 17 A Correct. These elements, except for the 18 two that I mentioned, are mine. 19 HEARING EXAMINER SOKONI: Okay. All 20 right. And so we will provide -- we'll keep 21 the -- the record will remain open anyway because 22 we are going to adjourn to a second date in 23 December. And so prior to that, you submit -- 24 MS. ROGERS: Yes. 25 HEARING EXAMINER SOKONI: -- a</p>
<p>186</p> <p>1 we're talking about Exhibit 38. 2 MS. ROGERS: Correct. 3 HEARING EXAMINER SOKONI: Yeah. 4 DIRECT EXAMINATION CONTINUED 5 BY MS. ROGERS: 6 Q So, Mr. Sloan, to be clear for the 7 record, I know you mentioned at the outset of your 8 testimony that -- besides for some of the 9 technical aspects of the Land Use Report, that the 10 Land Use Report is a document that you have 11 prepared and reviewed. And this provides your 12 analysis. 13 Can you, for the record, clarify that? 14 A Yes. So to be clear, the recommendation 15 in the Land Use Report is -- for each element, 16 aside from civil engineering-specific or 17 transportation engineering-specific, reflects my 18 recommendation and opinion -- professional 19 opinion. And I can submit a signed copy, or if 20 this -- 21 HEARING EXAMINER SOKONI: So did you 22 prepare the -- are you the author of the revised 23 Land Use Report? 24 MS. ROGERS: So it -- 25 THE WITNESS: I'm sorry. I thought</p>	<p>188</p> <p>1 replacement Exhibit 38, which we'll just label -- 2 MS. ROGERS: Which will only have a date 3 and signatures added, but otherwise not 4 substantively changed what's in the records. 5 HEARING EXAMINER SOKONI: Sounds good. 6 MS. ROSENFELD: Ms. Hearing Examiner? 7 HEARING EXAMINER SOKONI: Yes? 8 MS. ROSENFELD: If we could have clarity 9 on this -- 10 HEARING EXAMINER SOKONI: Could you -- 11 Counsel, could you please press the -- yeah. 12 MS. ROSENFELD: Michele Rosenfeld. For 13 clarity, could the Applicant identify, either by 14 subject or pages, the engineering and the traffic 15 sections of the Land Use Report where others 16 helped? 17 THE WITNESS: So I'll run through by 18 Roman. They're sort of an outline numbering. 19 MS. ROSENFELD: Uh-huh. Sure. 20 THE WITNESS: So Section 4, under 21 Proposed Development E Civil Engineering -- 22 MS. ROSENFELD: Uh-huh. 23 THE WITNESS: -- the Natural Resources 24 Inventory and forced-hand delineation was 25 completed and approved under my authority. The</p>

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<p>189</p> <p>1 stormwater management concept plan, sediment and 2 erosion control, and the infrastructure elements 3 of adequate public facilities was analyzed under 4 the civil engineer. 5 MS. ROSENFELD: Okay. 6 THE WITNESS: The analysis of schools, I 7 completed; police, fire rescue, distances, I 8 completed, and other services; and traffic study 9 and analysis was done by the transportation 10 expert, so -- 11 MS. ROSENFELD: I'm sorry. Where's the 12 traffic? 13 THE WITNESS: 4(i), so 4(e), 4(i). Is 14 there another section? Oh, and (e) on the Page 2, 15 which is the LATR elements. 16 MS. ROSENFELD: Okay. And you 17 completed, you said, the schools and the other 18 services? 19 THE WITNESS: Schools and other services 20 except for infrastructure, water and sewer -- 21 MS. ROSENFELD: Okay. 22 THE WITNESS: -- storm drain. 23 MS. ROSENFELD: Okay. Great. Thank 24 you. 25 HEARING EXAMINER SOKONI: Okay. Mr.</p>	<p>191</p> <p>1 A Yes. So I'm going to run through the 2 three objectives, and some of this is -- I already 3 testified to discussing the Master Plan, the 4 General Plan, Functional Master Plans. But I'll 5 summarize here that under the first, by furthering 6 the goals of the General Plan, Applicable Master 7 Plan, and Functional Master Plan, it's my opinion 8 that as described earlier, the project furthers 9 the goal of the Master Plan Thrive 2050 and the 10 applicable Functional Master Plans by creating 11 infill residential uses near existing and planned 12 transit services and amenities along a major 13 corridor, providing a diversity of housing, 14 including affordable units; improving bicycle and 15 pedestrian connectivity; ensuring compatible 16 design features and standards, such as setbacks 17 and restrictions on building width and height, 18 which will further articulate at a site plan 19 level, if we are lucky enough to get there; and 20 supporting the livable and complete communities 21 envisioned for the Colesville Neighborhood Center. 22 Secondly, by ensuring that the proposed 23 uses are in balance with and supported by existing 24 and planned infrastructure in the General Plan, 25 Applicable Master Plan, Functional Master Plan</p>
<p>190</p> <p>1 Sloan, thank you for those clarifications. 2 And you may proceed with -- Ms. Rogers, 3 you may proceed with your case in chief. 4 MS. ROGERS: Thank you very much. 5 Q Okay. So we're moving, as I mentioned, 6 to development standards. Mr. Sloan, are you 7 familiar with the zoning ordinance for Montgomery 8 County, including its provisions related to the 9 CRNF zone? 10 A I am. 11 Q I'm going to ask a series of questions 12 based on your knowledge of the zoning ordinance 13 and your familiarity with the project and also 14 your professional expertise. Section 59-5.1.2 15 sets forth the intents and purposes of the 16 floating zones. 17 Did you evaluate these in connection 18 with this proposed LMA? 19 A I did. 20 Q There are three intents of the zones. 21 The first is to implement comprehensive planning 22 objectives. This is under 5-1.2.A. 23 In your professional opinion, can you 24 please explain how the proposed project furthers 25 this goal?</p>	<p>192</p> <p>1 staging, and applicable public facilities 2 requirements, some of this will be covered by 3 others. 4 But from my perspective, it is supported 5 by the existing infrastructure and will provide 6 compatible infill development and furtherance of 7 smart growth principles and design elements and is 8 supported by existing utilities; schools; and 9 public facilities -- public safety facilities, 10 including the MC, Fire and Rescue Station 24; 11 which is .5 miles to the south; and the MC Police 12 Department, 3D, which is 2.7 miles to the south 13 that will -- that are the closest to servicing the 14 site. 15 Excuse me. And third, by allowing 16 design flexibility to integrate development into 17 circulation networks, land use patterns, and 18 natural features within and connected to the 19 property. The project is built to the standards 20 of the CRNF zone, which allows multiple 21 residential uses with flexibility to meet 22 community needs and ensure compatibility. 23 Development enhances the compatibility 24 for existing circulation network and improve 25 safety and walkability on both frontages, and</p>

<p>193</p> <p>1 within the neighborhood's residential, 2 institutional, and commercial land use pattern is 3 within the neighborhood's residential 4 institutional commercial land use pattern. 5 Building on the livable and complete community's 6 concepts by maintaining the residential use, but a 7 density that will support existing and proposed 8 transit and neighborhood center services. 9 And while there are no high-priority 10 environmental features on this site, aside from 11 the specimen trees that I mentioned earlier, the 12 design is focused on increasing open space 13 adjacent to an existing park, replacing total 14 canopy to approximately 90 percent of the existing 15 canopy. And we did an analysis of that with -- 16 based on our conceptual plans that we can submit 17 to the record, if necessary, comparing an existing 18 canopy to a 20-year projected growth for average 19 species that we intend to plant, but with more 20 biodiversity and with species that provide more 21 ecological services than the existing lawn trees 22 and evergreen hedges. 23 Q Thank you. The second intent is to 24 encourage the appropriate use of land. This is 25 under 5-1.2.B.</p>	<p>195</p> <p>1 and evolving population. So this allows for a 2 diverse housing type in the neighborhood, 3 including the building typology that we've set 4 forth and accepted as binding elements for, I 5 think it's, townhouses, triplexes, two-unit 6 living, which are specifically going to be 7 allocated towards New Hampshire Avenue and in 8 the -- and in smaller units towards the transition 9 towards the smaller, single-family detached units. 10 The third is ensuring the development 11 satisfies basic sustainability requirements, 12 including open-space standards and environmental 13 protection and mitigation. And this is another 14 element that refers specifically to the 15 development standards that the project must comply 16 with. 17 So a lot of the elements about 18 compatibility, sustainability, and standards is -- 19 are baked into the zone that we have to comply 20 with. And then there are further elements that we 21 add onto that, like increasing setbacks and things 22 through binding elements or restricting uses. 23 So this project promotes sustainability 24 and smart-growth principles through infill 25 redevelopment already served by existing</p>
<p>194</p> <p>1 Can you please describe how this project 2 promotes the appropriate use of land and the 3 identified criteria for that intent? 4 A Sure. So I'll quote the sections -- 5 each section first and then summarize my 6 testimony, most of it which I've given already. 7 First is providing flexible applicability to 8 respond to changing economic, demographic, and 9 planning trends that occur between comprehensive 10 district or sectional map amendments. So this is 11 one that I refer to earlier. 12 The rezoning process is specifically 13 meant to be able to deal with these elements 14 between area plans and new comprehensive plans. 15 This is exactly what the project accomplishes. 16 The Master Plan is almost 30 years old. 17 There have been significant changes in planning 18 and demographic trends. There have been council 19 resolutions on housing needs and targets. The 20 adoption of Thrive 2050 of course sets forth a 21 very different vision than the plan for Wedges and 22 Corridors, and this project complies with those. 23 Second is allowing various uses, 24 building types, and densities, as determined by 25 property size and base zones, to serve a diverse</p>	<p>196</p> <p>1 infrastructure and near commercial services and 2 existing and planned transit. It provides the 3 minimum ten percent common open space, but it also 4 has substantial additional green area through HOA 5 parcels and individual yards. 6 And should we introduce the updated open 7 space plan that has some of those? 8 Q I think we'll get to it. I need to have 9 an open space -- 10 A Okay. 11 Q -- to question. 12 A It has stormwater facilities being 13 provided where none currently exist. We are 14 protecting all offsite trees, and onsite trees 15 will be evaluated, as I noticed with -- as I noted 16 with the final Forest Conservation Plan. 17 Q Thank you. And, lastly, the intent 18 statement requires that established neighborhoods 19 be protected. This is 5-1.2.C. 20 In your professional opinion, can you 21 explain how the project protects and is compatible 22 with the existing surrounding neighborhood? 23 A So I think this one, again, has three 24 subsections that I'll quote and then respond to. 25 The first is establishing compatible relationships</p>

<p>197</p> <p>1 between new development and existing neighborhoods 2 through limits on applicability density and uses. 3 So this -- the floating zones were 4 adopted specifically with limits on what was 5 allowed in terms of density and which uses were 6 allowed and whether or not the zone was 7 applicable. This is limited to a residential use 8 and the -- there are parameters controlling 9 massing and height along Notley Road, as it was 10 brought up at the public -- at the Planning Board 11 hearing. Townhouses are residential in nature and 12 compatible with detached homes. 13 The second is providing development 14 standards and general compatibility standards to 15 protect the character of adjacent neighborhoods. 16 Again, this is built into the fabric of the zoning 17 ordinance, specifically as development standards 18 and compatibility standards that we must meet, in 19 terms of setbacks and height. We are maintaining 20 the appropriate minimum setbacks and creating 21 private yards and public space between the streets 22 and the property boundaries and internal units, 23 where the site abuts or confronts single-unit 24 residential buildings with expanded setbacks. 25 We are establishing a maximum height</p>	<p>199</p> <p>1 together to really respond to the unique 2 circumstances of any individual site, such as 3 allowing where private front yard space, or 4 creating the park next to an existing park. We're 5 expanding the setback between the property line 6 and buildings. So for those reasons, I find that 7 it does protect the character of the neighborhood. 8 Q Thank you. Section 5-3.2 sets forth the 9 purposes of the CR floating zones. Can you please 10 describe how the project satisfies these purposes? 11 A Sure. Unlike a lot of the areas of the 12 zoning ordinance, the floating zones have this 13 very detailed and specific set of purposes that -- 14 for each category. One thing that I would note 15 out front is that the R-200 zone allows multiple 16 floating zones. The CRNF is one of those. 17 And the Council determined that the CRNF 18 is appropriate -- is an appropriate floating zone 19 if it meets certain standards and prerequisites, 20 which are laid out in the code. That's under 21 section 5.3.2, which determines which floating 22 zones you can request and which limits there are. 23 The other thing is that the purpose 24 clauses are meant to create -- meant to address a 25 broad family of zones. The CRNF zones, the CR</p>
<p>198</p> <p>1 that's comparable and compatible with surrounding 2 buildings and allow development standards. We are 3 providing the screening and adhering to the 4 compatibility standards for heightened setbacks 5 that are established by the code. We're exceeding 6 those. 7 And third, allowing design flexibility 8 to provide mitigation of any negative impacts 9 found to be caused by the new use. Staff did not 10 determine that there were any negative impacts, 11 nor did the Planning Board in their recommendation 12 to us. I did not find any of my professional 13 analysis. 14 The flexibility in the zoning standards 15 under the CRNF zone will allow the builder to 16 provide things like porches, yards, lead walks, 17 architectural features that minimize the sense of 18 building massing and create units that are in 19 character with a residential neighborhood. We 20 also have the building length restrictions that 21 are a binding element. 22 The common open space is a development 23 standard that has flexibility in the 24 implementation that is -- that allows the -- 25 excuse me, the development team and Staff to work</p>	<p>200</p> <p>1 zones, and the CRT zones -- well, CR floating -- 2 CRT floating zones, they're established by 3 creating specific maximum density, commercial 4 density, residential density, and height. And 5 each one of those combinations is technically a 6 different zone that can be mapped. 7 And so the purpose clauses are broad 8 because they need to cover so many different 9 things from -- with a CRR of zero to a CRR of 8.0 10 FAR. So they cover that broad family. 11 In each case, this -- every purpose 12 clause does not need to be met. There are 13 numerous developments that are zoned with allowed 14 C and R densities of zero to all the way up to, as 15 I noted, eight. And in the CRNF, of course, does 16 not allow it up to go up to eight. It's much more 17 limited. 18 It does not require a mix of uses. It 19 allows a mix of uses in centers and communities. 20 And in some cases, we make the planning 21 determination that horizontal mixed use is as 22 important as vertical mixed use, where we're 23 trying to limit and create compatible building 24 typologies. And so a townhouse development next 25 to a commercial center, for example, is mix of</p>

<p>201</p> <p>1 uses in that community. And the CR zones allow 2 you to develop under those -- under that scenario. 3 We provided a list of numerous CRNF 4 zones where only residential or commercial uses 5 are permitted. And we provided a map in -- I 6 think in our PowerPoint that has all the areas 7 where CRN -- or a CRNF zone has been established 8 with a zero that shows that the District 9 Council -- the County Council has determined that 10 the CRN is appropriate in some locations with a 11 zero FAR. And they've done this not only in 12 rezonings, but also in comprehensive and sectional 13 map amendments. 14 MS. ROGERS: If you could pull back up 15 the Applicant's PowerPoint, Exhibit 68? And -- 16 THE WITNESS: And I'll mention it. 17 MS. ROGERS: And -- sorry. If you 18 scroll down? Sorry. I don't know the page 19 number. I'll tell you when to stop. 20 THE WITNESS: Oh, there it is. 21 MS. ROGERS: Sorry. One more up. 22 Uh-huh. Thank you. 23 THE WITNESS: I had a lot of exhibits on 24 the Master Plan. 25 Q Uh-huh.</p>	<p>203</p> <p>1 uses. That is part of the allowing development of 2 mixed-use centers and communities, not specific 3 properties always with a range of densities and 4 heights flexible enough to respond to various 5 settings. And this is one of those settings where 6 it's appropriate to not mix vertically the uses, 7 but horizontally through the community and around 8 the village center. 9 Second use -- a second part of that is 10 allowing flexibility and uses for a site. As 11 noted, we've asked for the flexibility in building 12 typology, which would not always be allowed with a 13 townhouse floating zone or apartment floating 14 zone. 15 Those are different, and they implement 16 densities and heights at different standards. So 17 under all of the numerous regulations that go 18 along with the rezoning that we're allowed to ask 19 for under the R-200, part of that is that 20 flexibility and uses that we're requesting and is 21 set as one of the binding elements. 22 And then, finally, providing mixed-use 23 development that is compatible with adjacent 24 development. As I have hopefully detailed in my 25 previous testimony, compatibility does not mean</p>
<p>202</p> <p>1 A So again, going to Exhibit 68, we have a 2 map on a page titled Existing CRN/CRNF Zones 3 Applicability of CRNF Zone at C Equals Zero. 4 These are all areas. The map actually shows all 5 areas of CR zones and CRNF zones that have a zero 6 FAR for commercial. 7 And we've also note -- we'd also note 8 that there's even more flexibility in floating 9 zones for establishing no mix of uses as a zone -- 10 as part of the zone that is mapped. And the 11 District Council -- what are they? The County 12 Council. I have to use the District Council, 13 whatever it is, has zoned to CRTF -- CRT floating 14 zone with a zero commercial. 15 If this was a Euclidean CRT Zone, it 16 would not be allowed to have a zero. But the 17 council has found through that precedent that the 18 flexibility built into the floating zones allows 19 for zero FAR. 20 The CRF -- the floating zones establish 21 maximums that are allowed to be asked for. They 22 do not establish minimums, and none has to be 23 provided. 24 And we've done several properties that 25 have been resumed without a commercial mix of</p>	<p>204</p> <p>1 the same. It means it has elements that work in 2 harmony with. 3 And per my earlier testimony, I 4 discussed the height and density elements that are 5 compatible. And then I've also discussed the fact 6 that we can look at further design elements in 7 urban design features when we get to site plan. 8 The other piece of that is, of course, 9 the setbacks, the building placement where we're 10 pushing more of our massing towards New Hampshire 11 to internal to the site, where we're keeping off 12 of the property boundary. And then those massing 13 limits that I've discussed several times. 14 Q Okay. Want to put the examples -- 15 A Yeah. 16 MS. ROGERS: We can go two slides. 17 Thank you. Can you go to two slides down? If you 18 go one more slide up. 19 So this is, again, in our -- I know 20 there's been testimony submitted. I know even the 21 Hearing Examiner had a question on this, so we put 22 together a prerequisite analysis, given that we've 23 received a question. This would be another one 24 that we feel like is appropriate to separately 25 identify, and we can submit it as a separate</p>

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205	<p>1 standalone PDF following today's hearing --</p> <p>2 HEARING EXAMINER SOKONI: Uh-huh.</p> <p>3 MS. ROGERS: -- as a separate exhibit.</p> <p>4 Can we identify this as Exhibit 76?</p> <p>5 HEARING EXAMINER SOKONI: And what's the</p> <p>6 description of it?</p> <p>7 MS. ROGERS: Prerequisite analysis.</p> <p>8 HEARING EXAMINER SOKONI: Okay. Any</p> <p>9 objections?</p> <p>10 MS. ROSENFELD: I just want to make sure</p> <p>11 that we're talking about the prerequisites</p> <p>12 analysis that's in --</p> <p>13 MS. ROGERS: Yes.</p> <p>14 MS. ROSENFELD: -- the PowerPoint.</p> <p>15 Okay. And how many pages is that?</p> <p>16 (Pause in proceedings.)</p> <p>17 MS. ROGERS: It's 17 pages.</p> <p>18 MS. ROSENFELD: Okay. Well, what's the</p> <p>19 last sheet?</p> <p>20 MS. ROGERS: The last sheet is this one</p> <p>21 with --</p> <p>22 THE WITNESS: The letter from MD --</p> <p>23 MS. ROGERS: -- the MD --</p> <p>24 MS. ROSENFELD: Page number?</p> <p>25 MS. GIRARD: There's no page numbers.</p>	207	<p>1 are looking at the 17 pages that start at Page 40</p> <p>2 of the PDF and run through --</p> <p>3 MS. ROGERS: Page 56.</p> <p>4 HEARING EXAMINER SOKONI: Okay. So this</p> <p>5 will get -- it's the prerequisites analysis, and</p> <p>6 it's entered into the record as Exhibit 76.</p> <p>7 MS. ROGERS: Thank you.</p> <p>8 HEARING EXAMINER SOKONI: Is there no --</p> <p>9 an objection?</p> <p>10 MR. NUSBAUM: Yeah. I would object to</p> <p>11 entering this as an exhibit to the extent that</p> <p>12 this is a late amendment, essentially, to the</p> <p>13 revised -- excuse me, the revised Land Use Report.</p> <p>14 And in the revised Land Use Report, Applicant sets</p> <p>15 forth specific prerequisites that it believes it</p> <p>16 satisfies and --</p> <p>17 HEARING EXAMINER SOKONI: I requested</p> <p>18 clarification. And this was in the PD -- the PDF</p> <p>19 that was provided -- timely provided was</p> <p>20 addressing a question I had raised on</p> <p>21 prerequisites.</p> <p>22 MR. NUSBAUM: I believe your question</p> <p>23 was very specific on this certain prerequisite,</p> <p>24 and this is adding prerequisites that were not in</p> <p>25 the Land Use Report.</p>
206	<p>1 MS. ROGERS: In our PowerPoint.</p> <p>2 HEARING EXAMINER SOKONI: So it has no</p> <p>3 page numbers, but are we able to tell from the</p> <p>4 PDF? Can we -- so does the PDF give us a range of</p> <p>5 --</p> <p>6 MS. ROGERS: Uh-huh. So this is the</p> <p>7 cover page that I counted.</p> <p>8 THE WITNESS: The --</p> <p>9 MS. ROGERS: On the --</p> <p>10 THE WITNESS: -- Page 40 of the PDF.</p> <p>11 MS. ROGERS: And you should go all the</p> <p>12 way down to 57, then, or -- yeah. Oh, one more up</p> <p>13 at 56. I think I counted wrong. Four --</p> <p>14 HEARING EXAMINER SOKONI: That's fine.</p> <p>15 MS. ROGERS: Yeah, 17, because it</p> <p>16 starts -- and there's, like, three more --</p> <p>17 THE WITNESS: Uh-huh. There it is.</p> <p>18 MS. ROGERS: -- in the back.</p> <p>19 MS. ROSENFELD: Oh, there.</p> <p>20 HEARING EXAMINER SOKONI: So did we say</p> <p>21 it starts at -- it's a 17-page -- the -- what you</p> <p>22 will provide a hard copy of. And by the way, also</p> <p>23 a separate --</p> <p>24 MS. ROGERS: PDF.</p> <p>25 HEARING EXAMINER SOKONI: -- PDF. We</p>	208	<p>1 HEARING EXAMINER SOKONI: I think it's</p> <p>2 timely. It's --</p> <p>3 MR. NUSBAUM: Okay.</p> <p>4 HEARING EXAMINER SOKONI: It's allowed</p> <p>5 in.</p> <p>6 (Applicant's Exhibit 76 was marked for</p> <p>7 identification, admitted into evidence, and</p> <p>8 retained by the Hearing Examiner.)</p> <p>9 MS. ROGERS: Thank you.</p> <p>10 HEARING EXAMINER SOKONI: You may</p> <p>11 proceed.</p> <p>12 MS. ROGERS: You can go back to Page 40.</p> <p>13 Sorry. Did I skip something? Yeah.</p> <p>14 HEARING EXAMINER SOKONI: All right.</p> <p>15 MS. ROGERS: Sorry.</p> <p>16 HEARING EXAMINER SOKONI: Just for</p> <p>17 clarity -- and I know we do have laypeople, so I</p> <p>18 just want to be clear. You know, it's -- there's</p> <p>19 a process here. Things come from the Planning</p> <p>20 Board -- there's a transmitter, there's a</p> <p>21 recommendation -- and I'm reviewing things up</p> <p>22 until close to the hearing.</p> <p>23 MS. ROGERS: Uh-huh.</p> <p>24 HEARING EXAMINER SOKONI: So if we raise</p> <p>25 questions -- and we expect parties to respond and</p>

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<p>209</p> <p>1 be responsive to clarification, so I wouldn't -- 2 I'm not treating this as an amendment to the 3 application. It's simply providing clarifying 4 information that was requested by the Hearing 5 Examiner. 6 MS. ROGERS: Okay. 7 HEARING EXAMINER SOKONI: I hope that -- 8 MS. ROGERS: Here. 9 HEARING EXAMINER SOKONI: -- helps folks 10 understand what this is about. 11 MS. GIRARD: It also was in the record 12 as part of the PowerPoint, it's worth noting. 13 We're just pulling them out as a separate exhibit. 14 So this has been in the record. And at 15 the beginning, everyone agreed there would -- with 16 one exception that we were okay with the exhibits 17 in the record. So this is just excerpted. 18 HEARING EXAMINER SOKONI: Sure. And I 19 thought that the -- I thought the objection was to 20 the fact that this came in -- so the -- I just 21 want to be clear. You were not objecting to the 22 PDF, were you, Mr. -- 23 MR. NUSBAUM: I'm objecting to the 24 additional prerequisites that were not in the 25 original Land Use Report.</p>	<p>211</p> <p>1 requirement? 2 A So given the R-200 base zoning, the 3 tracked area larger than three acres, the total 4 maximum allowed on the property is 1.25 FAR -- and 5 I explained what FAR was for those who may not 6 understand it earlier -- with a commercial and 7 residential each limited to a maximum of one FAR. 8 The CRNF zone that we are requesting is 9 to a maximum FAR of one with a maximum residential 10 of one within that cap and, of course, a 11 commercial of zero, as I've discussed earlier. 12 Per question that we received, we did do an 13 approximate calculation of our gross floor area so 14 that we could analyze the square footage of the 15 property for the project. 16 Right now, we don't have architecture. 17 We have building footprints that'll sort establish 18 what we call, like, a building restriction line 19 almost, but an overall building coverage. If you 20 took that to a typical townhouse construction, 21 four stories, that may -- might result in an FAR 22 of about .8, but because the -- which is about 23 340,000 square feet total gross floor area of the 24 footprint. And that's basically multiplying by 25 3.6 to allow for garages.</p>
<p>210</p> <p>1 HEARING EXAMINER SOKONI: But these were 2 in the PDF that was timely provided. Are you in 3 agreement that this was timely provided by -- on 4 Monday? 5 MR. NUSBAUM: As an exhibit, yes. 6 HEARING EXAMINER SOKONI: Yes. And is 7 that what you're objecting to? 8 MR. NUSBAUM: I'll withdraw. 9 HEARING EXAMINER SOKONI: Okay. 10 Q Okay. So I think we concluded with the 11 purposes. Mr. Sloan, A couple of questions 12 regarding the applicability of the CRNF zone. 13 Section 5-1.3.A of the zoning ordinance 14 prohibits a floating zone from being approved for 15 a property that's located in agricultural or rural 16 residential zone. Is this property located in 17 agricultural or rural residential zone? 18 A It's not. 19 Q Is a floating zone recommended for the 20 property in the Master Plan? 21 A It is not. 22 Q Since a floating zone is not recommended 23 by the Master Plan, pursuant to Section 24 5-3.5.A(2), what is the maximum density for this 25 site? And does the LMA comply with this</p>	<p>212</p> <p>1 Many units have rooftop terraces. Some 2 have roof pitches that -- some have bay windows. 3 So that's a ballpark figure average for those 4 kinds of townhouses. 5 But because the zoning only allows you 6 to request increments of .0 -- or .25, we asked 7 for the 1.0. But of course, we're restricted by 8 the binding element on the number of units, so we 9 can't go beyond that. 10 Q Pursuant to Section 5-1.3.C(2)(b), when 11 requesting a commercial or residential 12 neighborhood floating zone for a property with a 13 residential base zone, the property must, one, 14 front on a non-residential street or must confront 15 or abut property that is in a commercial, 16 residential, employment, or industrial zone; and 17 two, must satisfy a minimum of two prerequisites 18 for each category under Section 5-1.3.D. 19 Does the property front on a 20 non-residential street both confront or abut 21 property in a commercial, residential, employment, 22 or industrial zone? 23 A Yes, it does. It fronts on New 24 Hampshire Avenue, which is classified as a 25 boulevard.</p>

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<p>213</p> <p>1 MS. ROGERS: If we could go down to the 2 next slide, please? Thank you. 3 Q And does the property satisfy a minimum 4 of two prerequisites from each category? 5 A It does. 6 Q And can you please walk through those 7 prerequisites that this project complies with? 8 A Sure. So we agree with Staff's finding 9 and recommendation and with the Planning Board 10 recommendation that at least two of each of the 11 category -- two in each category of prerequisites 12 are met. And I'll start with the next slide. It 13 outlines the five prerequisites that are available 14 in the first category of transit and 15 infrastructure. 16 Since there were questions about this, 17 we reanalyzed these and submitted to the record on 18 the 3rd our updated analysis and clarification 19 that -- to answer any questions that there were. 20 So we do -- we are not within -- the first 21 category does not apply to us. We're not within 22 75 percent of -- or 70 -- at least 75 percent of 23 the site is not within any of these distances from 24 the various levels of transit that are defined in 25 the zoning ordinance.</p>	<p>215</p> <p>1 at the time, the site had access onto a 2 residential street and onto a major -- onto a 3 downtown boulevard or boulevard. I don't remember 4 what Connecticut is, a non-residential street. 5 And it was specifically -- a binding 6 element was placed on that project so that it 7 could only access off of Connecticut Avenue in the 8 future. So this is meant to determine whether or 9 not the site is in a location that is appropriate 10 for a rezoning. It does not determine the design 11 elements of the site into the future. 12 HEARING EXAMINER SOKONI: Do you mind if 13 I interrupt with a question? So can we -- I just 14 want to go to the part of the Staff Report which 15 addressed this issue. And I just want to have 16 some clarification. So the Staff Report is 17 exhibit -- 18 MS. ROGERS: 56. 19 HEARING EXAMINER SOKONI: -- 56? Could 20 we please pull that up, Exhibit 56? And I'm 21 trying to find the section that addressed this. 22 It might have been Page, maybe, 19, yes? 23 THE WITNESS: Page 24 is their -- 24 HEARING EXAMINER SOKONI: Page -- yes. 25 THE WITNESS: -- analysis of the</p>
<p>214</p> <p>1 But we do, in fact, meet four of the 2 other prerequisites. We submitted with two, but 3 we meet four. And I'll run through those. 4 THE WITNESS: If you can go to the 5 first -- or the next slide, please? 6 A So frontage and access -- the 7 prerequisite says, The site has frontage on and 8 vehicular bicycle and pedestrian access to at 9 least two roads, at least one of which is 10 non-residential. New Hampshire Avenue, as I've 11 noted, is a non-residential street. 12 It has access to vehicular access today 13 on New Hampshire Avenue and Notley. It has 14 bicycle pedestrian access on both frontages, and 15 we'll retain them. 16 MR. SMIDDIE: (Inaudible.) 17 HEARING EXAMINER SOKONI: So no 18 interruptions, please. 19 A So the site is a snapshot of the 20 property today. Whether it has a specific access 21 point in the future is determined through the 22 preliminary and site plan process. 23 A site can be rezoned with access only 24 onto one road. 7100 Connecticut Avenue is an 25 example of that, a rezoning that was approved that</p>	<p>216</p> <p>1 prerequisite. 2 HEARING EXAMINER SOKONI: So at the 3 bottom of Page 24, the Staff Report says, The 4 property has frontage on Notley Road and New 5 Hampshire Avenue. Both roadways provide vehicle 6 and pedestrian access. New Hampshire Avenue is 7 classified as a boulevard, which is a 8 non-residential roadway. 9 Then on to Page 25, The project will not 10 require any upgrades or the installation of a pump 11 station. The property has frontage of Notley Road 12 and New Hampshire, both roadways. 13 Could you help break down Staff's 14 analysis for -- what are they saying? 15 THE WITNESS: Yes. So what I think is 16 important is the paragraph before the bold -- 17 italic heading -- 18 HEARING EXAMINER SOKONI: Oh, yes. 19 THE WITNESS: -- Transit Infrastructure. 20 HEARING EXAMINER SOKONI: You're right. 21 THE WITNESS: To address the second 22 requirement of the CRNF zones, that second 23 requirement being prerequisites -- 24 HEARING EXAMINER SOKONI: Correct. 25 THE WITNESS: -- Staff concurs that the</p>

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<p>217</p> <p>1 subject application meets the following 2 prerequisites in the categories listed below. And 3 one of those is that it has frontage and vehicular 4 bicycle pedestrian access to at least two roads. 5 And they note that it has frontage on 6 both roads, and they provide vehicle and 7 pedestrian access. It does not say whether or not 8 they have to in the future, and we don't have a 9 binding element that says we can't. We still need 10 to explore that through more technical design. 11 I understand that DOT asked for us to 12 remove a vehicular access that was providing 13 emergency access on New Hampshire Road. We did 14 that in our iteration, but that's a state road. 15 And at the end of the day, SHA will have us 16 determine whether or not we may have access there. 17 But the fact remains, we don't need to 18 provide future access onto these. We're 19 establishing that the site meets this condition. 20 One little follow-up there. The 21 prerequisites have differences on what is -- 22 applies to -- on what applies to what. In some 23 cases they, say the site, and that is, Okay. Does 24 the site -- is the site in this area that's -- has 25 X -- meets X, Y, or Z requirement?</p>	<p>219</p> <p>1 A The prerequisite is intended to look at 2 the property's conditions today. And I agree with 3 Staff that we meet this prerequisite, that it has 4 currently the access that it's necessary to 5 qualify. 6 HEARING EXAMINER SOKONI: So you think 7 it's assessing the property as it is today, 8 regardless of what it will be in the future? 9 THE WITNESS: That's correct. 10 Q And just to reiterate, when you were 11 giving the example of the Corso rezoning at 7100 12 Connecticut Avenue, did that property take 13 advantage of this finding out -- or this 14 prerequisite? 15 A It did. And it only -- 16 Q And did the property -- at the time of 17 the rezoning and its snapshot in time, that 18 existing condition, did it have two access points? 19 A It did. It had curb cuts on Residential 20 Street to the north and Connecticut Avenue. 21 Q And did the future development in that 22 case provide for vehicular access on more than one 23 street? 24 A No. It had a binding element that it 25 could only provide vehicular access on one street.</p>
<p>218</p> <p>1 In other places, it says the project. 2 So that is -- that's the future-oriented thing. 3 When the project is built, will it do this, and 4 those are separate things that are outlined in the 5 prerequisite table and what we've always followed 6 when we've submitted applications. 7 HEARING EXAMINER SOKONI: True. But at 8 the LMA stage, I mean, we have to look at what 9 you're proposing to determine whether you meet the 10 requirement. You know, I can't assess a possible 11 hypothetical in the future if that's not what 12 you're presenting here. 13 Q And, Mr. Sloan, to clarify for the 14 record, are you -- your professional opinion about 15 the way that this is worded and has been 16 interpreted in the past, that the prerequisite is 17 looking at a snapshot in time as to what the 18 property has today in order to determine those 19 properties that are appropriate for rezonings, 20 irrespective of what the future development would 21 hold. So to the Hearing Examiner's question, this 22 prerequisite, in your professional opinion -- is 23 it intending to look at future development? Or is 24 it intending to look at the property's conditions 25 today?</p>	<p>220</p> <p>1 Q So in your professional opinion, based 2 on your interpretation of the code and previous 3 rezoning applications, this binding element -- I 4 mean this prerequisite, I'm sorry, is intending to 5 look at the properties existing conditions to 6 determine areas that are appropriate for rezonings 7 and not dictate future development on the site, 8 this category that we're talking about? 9 A This specific category, correct. 10 HEARING EXAMINER SOKONI: Thank you. 11 MS. ROGERS: If we can go back to the 12 Applicant's presentation? 13 THE WITNESS: If we can go to the next 14 slide, please? 15 A So in terms of infrastructure, my 16 colleague Logan Kelso will speak more to this. 17 These are images from WSSC, is what they call 200 18 maps showing where existing infrastructure is 19 today. 20 The top one shows the existing sewer 21 that's out there in Notley Road and New Hampshire 22 Avenue and Petwyn Court. The bottom one shows 23 where existing water is. 24 The top -- the sewer line is an 25 eight-inch line. The water line is a 10-inch</p>

<p>221</p> <p>1 line. Plus, there's a 24-inch line, and we'll 2 speak to the capacity of these types of lines with 3 my colleague's testimony. 4 THE WITNESS: Signalize intersection is 5 next, if you could just go to the next slide, 6 please? 7 A And on this one, I'll be relying on the 8 testimony of my colleague Katie Wagner about the 9 signalize intersection within a quarter-mile of 10 our boundary. The next category is schools. And 11 this prerequisite is that -- the gist of it is 12 that the project will not result in school 13 utilization rate greater than 120 percent. 14 THE WITNESS: And we've analyzed, based 15 on the fiscal year '26 annual school test that the 16 schools -- oh, sorry. Could you go to the next 17 slide? I'm looking down at my notes. 18 A The school districts that this project 19 are in, Westover Elementary School is at 107.2 20 percent capacity under the 120 standard; White Oak 21 Middle School is at 84.5 percent; Springbrook High 22 School is at 87 percent. We have a specific 23 breakdown of the number of students that this 24 project is yield based on the generation rates for 25 this area, 27 elementary school students, 15</p>	<p>223</p> <p>1 is adjacent -- oh, sorry. Next slide, please. 2 A So this is a small inset map of the site 3 with images of two points along New Hampshire 4 Avenue, and then the little excerpt in the top 5 left image of the 1997 White Oak Master Plan. 6 This is along PB Route 40 -- no. PB -- 7 HEARING EXAMINER SOKONI: 23? 8 A Sorry. Forgot the number of bicyclist 9 route, PB-23, which is -- which was recommended in 10 the Master Plan as a signed, striped bike lane 11 along New Hampshire Avenue, both sides. That was 12 completed, it was striped, it was signed. Those 13 are images of the signs just north of our site and 14 down by the shopping center. 15 We're, of course, proposing the 16 shared-use path, the 11-foot shared-use path 17 that's being -- or side path that's being built 18 along New Hampshire Avenue, which will upgrade 19 this system and make it much more pedestrian and 20 bicyclist-friendly. 21 THE WITNESS: If you can go to the next 22 one, please? 23 A Oh, sorry. And the point of that is, 24 the commercial services are one quarter-mile away. 25 We will go to the next one, which is pertinent.</p>
<p>222</p> <p>1 middle school students, 22 high school students. 2 And based on these projections, we will 3 not trigger the -- we will not meet that capacity 4 limit of 120 percent. It will be significantly 5 below that. Further, we don't even require a 6 utilization premium payment, which can be 7 triggered at interim development -- or interim 8 percentages. 9 Okay. The next category is vicinity and 10 facilities. 11 Q Uh-huh. 12 A So depending on how -- I'll just 13 reiterate something on that. On the first 14 category, depending on how the Hearing Examiner 15 and the Counsel eventually find on the access with 16 roads, vehicular and pedestrian, whatnot, there 17 are three other categories that we meet, if not 18 all of the four. 19 Vicinity and facilities, there are, 20 again, five prerequisites that may be met. And as 21 we'll run through, we meet four of these out of 22 the five. And again, this is to answer the 23 questions that have been raised in testimony that 24 has been submitted to the record. 25 THE WITNESS: The first is that the site</p>	<p>224</p> <p>1 This -- is there one up? Sorry. Did -- 2 oh, okay. Yes. So that's related to that. This 3 is -- okay. That's (inaudible-audio break.) 4 The second prerequisite -- I don't have 5 a separate exhibit for this. Is that -- do we? 6 Q I think they might be out of order. 7 One second. 8 THE WITNESS: Oh, it is. Sorry. Could 9 you go down three slides, to where it says, 10 grocery store? Thank you. Sorry. I got those 11 out of order. 12 A The second prerequisite is that a 13 grocery store is within one quarter-mile of the 14 site. We walked the site, of course, when we were 15 out there as well as the typical means that we 16 developed this. It was just relying on online GIS 17 information. 18 The giant shop -- the giant in the 19 shopping center to the south -- that shopping 20 center is within one quarter-mile. I understand 21 that the testimony that's been submitted says that 22 you have to be at the front door of the grocery 23 store to get there. 24 That's not the case. It's not the way 25 that we have interpreted this.</p>

<p>225</p> <p>1 When a development standard is 2 established to get from a particular facility or 3 property to a front door, it says it in the zoning 4 ordinance. That is not the -- and there are 5 several cases of that where it says, for example, 6 if you're providing offsite parking, it has to be, 7 I think it is, a quarter-mile from that parking 8 facility to the door of the establishment that 9 you're serving. 10 This does not say that, and it's not the 11 intent of the floating zone proximity discussion. 12 This is meant to provide guidance on sites that 13 are within the services that are reasonably 14 walkable. 15 We walk to the front door, it's seven 16 minutes at a reasonable pace, not a fast pace, and 17 certainly meets the intent of this prerequisite. 18 And we are within -- we're less than -- bless 19 you -- quarter-mile to the property with the 20 shopping center. 21 THE WITNESS: If you can go back up two 22 slides? There's some -- sorry. 23 Q One more up, right? 24 A Oh, yeah, school proximity. 25 Q Uh-huh.</p>	<p>227</p> <p>1 next slide? Thank you. 2 A We dug into this quite a bit because the 3 way the mapping function online works, which is 4 what we're required to submit when we submit a 5 recreation facilities plan, we have to go onto 6 their site; we have to put in our site -- we have 7 to go onto their website, put in our property with 8 our intended use. It generates a map for us. 9 If you put the pin on the right side of 10 our site, it picks up Colesville Local Park. If 11 you put it on the left side of our site, it picks 12 up our adjacent neighbor, the Colesville Local 13 Park -- 14 Q Manor? 15 A Or Manor Neighborhood Park. But it 16 never picks up both of them, which is odd. So we 17 analyze them both, and either one puts us over the 18 requirement for 30 percent of our recreation 19 demand for our proposed use because of the 20 facilities that are there and the intended use 21 that we've provided. 22 So the clearer one is obviously the one 23 right next to us. The one submitted in the 24 recreation exhibit that we've had to -- we had to 25 submit for the application is -- picks up the</p>
<p>226</p> <p>1 A So it was not the focus of this. We did 2 not think we would get questions on the other 3 prerequisites. Staff agreed with us. 4 And I have not had questions like that 5 before, so it was good to look at. But we did 6 look at the other two prerequisites in case, of 7 course, the Hearing Examiner and the Council 8 decides they disagree with our interpretation of 9 the grocery proximity. 10 So the site -- as we've noted, where a 11 signal is intended to go at the intersection of 12 New Hampshire Avenue, Notley Road, even under the 13 published recreation guidelines and the mapping 14 capabilities on that, you can walk to with -- you 15 can walk to a school, the Kids MCS Colesville 16 Center, offering pre-K to 12 programming, and the 17 Casa de Montessori are .4 miles away along New 18 Hampshire Avenue. 19 And the crossing, of course, will be 20 much -- much safer once the light is installed. 21 So that's another prerequisite that we meet in 22 case it's found that the pedestrian route to the 23 grocery store is not found applicable. 24 THE WITNESS: And then, finally, the 25 recreation facilities, we -- if you can go to the</p>	<p>228</p> <p>1 park, as noted on the slide that's up right now 2 and shows that we meet the 30 percent requirement. 3 If, however, you just walk across the -- 4 you walk through the sidewalk that we're providing 5 right next door, we analyze the Colesville Manor 6 Park. Again, everything not being as -- 7 MS. ROGERS: Next slide, please. 8 A Oh, sorry. I didn't -- yeah. The tools 9 we're given are as good as they are, and sometimes 10 we have to make corrections. This problematically 11 says that there's a handball court on this park 12 and provides credit for that. There's not a 13 handball court, but there is a lawn area that's 14 listed on the park's website -- we went to the 15 park's website to actually determine what was 16 there and then walk the site, of course -- and 17 then it provides the -- it talks about the 18 benches, which are seating areas under the 19 recreation guidelines, but provides no credit. 20 So we had to fix the calculations, and 21 the fixed calculations are the bulleted items 22 below. When you take out the handball court, 23 provide the open lawn, and add the two seating 24 areas, you have a recreation supply going per 25 category of tots equals 18, children equals 23,</p>

<p>229</p> <p>1 teens equals 23, young adults equals 35, adults 2 equals 34, seniors equals 15. These are formulas 3 established by the planning department that we 4 have to follow.</p> <p>5 So when the bullets on the left side, 6 under my -- under the recreation facility's 7 heading, this is where we divide -- determine the 8 percentage that is applicable. When you divide 9 our demand, which is the left number by the 10 supply, which are the ones that I just ran out, 11 you get for those respective categories 100 12 percent, 79 percent, 110 percent, 51 percent, 36 13 percent, 107 percent, all of -- above the 30 14 percent recreation demand that this prerequisite 15 requires. So it was not a detailed analysis that 16 I've had to do before, but it was worth doing and, 17 I think, shows that we certainly meet the -- this 18 prerequisite.</p> <p>19 Q So just because that was a lot of 20 testimony, I'll just jump in real quick with the 21 question. In terms of your detailed analysis, 22 where you've gone in and independently verified 23 the recreation calculations, in terms of 24 facilities for each of the parks, both through 25 information available on the park website and your</p>	<p>231</p> <p>1 run through them real quickly. First are limits 2 of disturbance.</p> <p>3 THE WITNESS: If you go down one slide?</p> <p>4 A And this depicts just a small version of 5 the NRI, the Natural Resources Inventory, which is 6 in full -- there's a full-sized document in the 7 record, which was approved by Staff. And it 8 establishes all of the pertinent regulated 9 environmental features on and within 100 feet of 10 the site.</p> <p>11 Our limits of disturbance will not 12 overlap any stream, wetland, or environmental 13 buffer. We have no slopes greater than 25 14 percent. The small areas by Notley Road where we 15 have slopes over 15 percent do not have erodible 16 soils, and so we meet the first prerequisite.</p> <p>17 THE WITNESS: And then on to the next 18 slide.</p> <p>19 A So there is no forest onsite. We have 20 adjacent forest in the park that we're keeping our 21 limits of disturbance away from, and so we meet 22 that requirement -- or we meet that prerequisite.</p> <p>23 THE WITNESS: And then third, part of a 24 requirement of submitting a Natural Resources 25 Inventory, if you can go to the next slide?</p>
<p>230</p> <p>1 own independent evaluation of the site, does the 2 Colesville Manor Park alone satisfy the 3 prerequisite to meet 30 percent of the recreation 4 demand on their Planning Board's recreation 5 guidelines?</p> <p>6 A It does.</p> <p>7 Q And is that park within 8 three-quarters-mile of our property?</p> <p>9 A Yes.</p> <p>10 Q And then the Colesville --</p> <p>11 A Yes.</p> <p>12 Q -- Local Park that you've also analyzed 13 and provided testimony to -- is that within 14 three-quarters-mile of our property?</p> <p>15 A It is.</p> <p>16 Q And does that park on its own as well 17 meet more than 30 percent of the recreation demand 18 under the Planning Board's recreation guidelines?</p> <p>19 A It does.</p> <p>20 Q Thank you.</p> <p>21 THE WITNESS: Okay. If you could go to 22 the next slide, please? Oh, sorry. Can -- if you 23 can go down to that?</p> <p>24 A So environmental resources -- I don't 25 think there's specific questions on this, but I'll</p>	<p>232</p> <p>1 A We have to submit for -- to DNR whether 2 or not they have any records or concerns about 3 environment -- endangered species and habitats on 4 the property. They had -- they -- part of our NRI 5 showed -- is a letter from Maryland DNR saying 6 that there are no official records of endangered 7 species.</p> <p>8 We also have to do an inventory onsite 9 if we find any. And we did not find any 10 endangered species onsite.</p> <p>11 Q Thank you. And did Maryland National 12 Capital Park and Planning Commission Staff and the 13 Planning Board agree that the project satisfies 14 the minimum two prerequisites from each category?</p> <p>15 A They did. They agreed with the two for 16 each category we submitted, and we've since, based 17 on the questions, offered more.</p> <p>18 Q Thank you. How are the development 19 standards handled under the CRN floating zone?</p> <p>20 A So the floating zones have a set of 21 development standards that are established with 22 the rezoning. Then they have a set of development 23 standards that they leave to the site plan 24 process. And then there are sections of the code 25 that are prescriptive, like open space and</p>

<p style="text-align: right;">233</p> <p>1 screening and parking, that every application has 2 to meet. 3 MS. ROGERS: If we can go down a slide? 4 Q Mr. Sloan, do the compatibility 5 requirements in Section 4.1.8 of the code apply to 6 this property? 7 A They do. So we have to comply with the 8 height and setback compatibility requirements that 9 are in section 4.1.8 of the zoning ordinance, the 10 exhibit that's on the screen right now. This 11 shows when a project has to -- when it abuts a 12 single-family detached zone property that is 13 improved with -- is vacant or improved with a 14 residential use in this case. 15 So the setback compatibility requirement 16 does not apply townhouses or determined or not -- 17 do not require setback compatibility when they 18 abut detached homes when. But it does have to 19 comply with the height compatibility, and so 20 there's kind of -- there's a little back-and-forth 21 that's in the code. 22 You first have to determine what the 23 setback is to determine what the height 24 compatibility angular -- where the height 25 compatibility angular plane is set. So when you</p>	<p style="text-align: right;">235</p> <p>1 they apply to our abutting properties. 2 THE WITNESS: The second piece is the 3 confronting properties, if you can go to the next 4 slide? 5 A The confronting properties, because that 6 right of way is under one -- under 80 feet -- or 7 80 feet or -- is less than 80 feet, then the 8 height compatibility does apply here also as well 9 as the setback, the front setback. 10 Q And just to clarify, when you're talking 11 about the confronting and the right of way, you're 12 talking about Notley Road? 13 A Notley Road, yes, yes. We have no 14 setback -- we have no compatibility requirements 15 across New Hampshire Avenue because it's 80 feet 16 or greater. So going through the setback, 17 compatibility, again, it does not apply to a 18 townhouse building type abutting a residential 19 detached zone. But you have to establish what the 20 front setback is. 21 In this case, it ends up being ten feet. 22 Also, there's a minimum ten-foot front setback 23 from the right of way to the fronts of these 24 buildings. I've noted we're much further beyond 25 that.</p>
<p style="text-align: right;">234</p> <p>1 refer to 4.1.8.A(1), and it does not apply, then 2 you go to the standard method development 3 standards in Division 4.4 to determine your 4 setback. 5 In this case, it's ten feet. The 6 setback required is ten feet. And I've got more 7 detail on -- in what was submitted for the record 8 about how we get there. 9 And ten feet from the property line, you 10 go to the height that's allowed in the abutting 11 property. I noted before that some R-200 12 properties allow you to have 50 feet, have height. 13 In this case, these properties were 14 developed under an old, optional method of 15 development that's not allowed anymore. But they 16 were allowed to have 15,000-square-foot lots, and 17 their height is under 35 feet. 18 So our angular plane therefore, in my 19 opinion, starts at 35 feet. And given that we're 20 30 feet away from the property line, we'll be well 21 under this angular plane, if the final height is 22 allowed to 50 feet, but with -- certainly within 23 our four stories that we're projecting. So 24 that's -- those are the setback, compatibility -- 25 setback and height compatibility requirements, how</p>	<p style="text-align: right;">236</p> <p>1 But in this case, it's a little bit odd 2 because the R-200 lots are different sizes and so 3 different -- they're allowed to build at different 4 heights. So in some cases, we have an angular 5 plane that starts at 40 feet. In some cases, we 6 have an angular plane that starts at 50 feet. 7 In any case, we're going to be less than 8 that. The R-90 lots that are actually the 9 backyards of those face towards Notley, there's an 10 HOA parcel between the lots and Notley Road right 11 of way. 12 So it's an odd situation where I don't 13 think, technically, this applies. But if it did, 14 we would still meet it, so we're quite comfortable 15 that we have met all those compatibility standards 16 in the code. 17 Q And with the binding element -- or the 18 height of the zone limited to 50 feet, will the 19 further refinement, as you're mentioning in the 20 analysis, when the final design of these units is 21 confirmed at time of site plan, need to comply 22 with Section 4.1.8? 23 A It will. 24 MS. ROGERS: You can go to the next 25 slide. This is another exhibit that, again, was</p>

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<p>237</p> <p>1 in our PowerPoint of Exhibit 68 that I think would 2 be helpful to give a separate exhibit number for. 3 And we have a full-size copy for it. 4 This is just a green cover exhibit that looks at 5 the open space, another green area onsite. 6 HEARING EXAMINER SOKONI: Any objection? 7 MS. ROSENFELD: No objection. 8 MS. ROGERS: But this can be Exhibit -- 9 MS. GIRARD: 77. 10 MS. ROGERS: -- 77. 11 HEARING EXAMINER SOKONI: And just so we 12 can track it, it's the full-size version of what's 13 in the PD -- in the PowerPoint. We can describe 14 it as Green Cover. 15 MS. ROGERS: Green Cover Exhibit. 16 HEARING EXAMINER SOKONI: Uh-huh. Thank 17 you. 18 (Applicant Exhibit 77 was marked for 19 identification, admitted into evidence, and 20 retained by the Hearing Examiner.) 21 Q Mr. Sloan, can you please explain how 22 the project will satisfy open-space requirements 23 onsite? 24 A Yeah. So this is one of the 25 prescriptive standards in the code. It's</p>	<p>239</p> <p>1 area, gathering area, then across -- walks across 2 the street to where the Staff recommended, and we 3 agreed and changed our plan to reflect a large -- 4 our larger, open space, which really expands the 5 usable area and access to the existing park. 6 So those are the three areas that we 7 will define our common open space. We'll have to 8 submit more detailed analysis of this with any 9 site plan showing how we meet the guidelines and 10 working with Staff in the community on upgrades 11 and changes. 12 We also wanted to highlight kind of per 13 the board discussion about open space that there 14 has to be a good balance between private yards, 15 common open space, other open spaces. And so 16 we've basically calculated everything that is not 17 vehicular paving or building footprint, what in 18 some zones we used to call a green area, 19 everything that's not a building or for a vehicle. 20 And when you do that, we get 21 significantly more open space. We have private 22 yards where people can have decks and patios. We 23 have the common open space that will be set aside 24 for, in some cases, areas that stormwater 25 management will go -- or did I say common open</p>
<p>238</p> <p>1 established by the tracked area and the number of 2 frontages for the project. Although, the size of 3 the tracked area establishes how much space is 4 required, it's actually calculated on the site. 5 And so in this case, there -- ten 6 percent of the site must be set aside to common 7 open space. And common open space is a very -- 8 has a set of guidelines in the code that we 9 follow. It's on the right side, our 10 description -- our narrative of that is on the 11 right side of this full-size plan. 12 But what we also wanted to -- well, 13 there are three elements of our -- I'll start with 14 this. The three elements of our open --common 15 open space are the linear park along the north, 16 where we abut the -- or the Senior Living 17 building. And we've established that with 18 crosswalks and a sidewalk that connects to Notley 19 towards New Hampshire so that you can have 20 multiple ways of walking around the site to 21 encourage pedestrian activity and sociability. 22 That linear park connects to a small 23 lawn space that's in sort of our little -- our 24 island of the project that's in the tab that goes 25 to the north of the property. That small seating</p>	<p>240</p> <p>1 space? It'll be HOA space that will have to -- 2 that will provide, as I started saying, stormwater 3 management in some cases, the required screening 4 in some cases, and will have streetscape, of 5 course. 6 And then we have significant green area 7 along our streetscape improvements. None of those 8 go into our ten percent calculation. Only in this 9 exhibit, the dark green, which in the slide on 10 screen is that -- the bright green, overall, when 11 you calculate these spaces, our -- we have about 12 25 percent coverage -- building coverage on our 13 site, which is about what the Senior Living 14 building to our north has. 15 Although, they didn't have to dedicate 16 on New Hampshire Avenue, which is odd. They put 17 their streetscape improvements in a public 18 improvement easement, and so they're able to 19 calculate their denominator, I guess. It goes up 20 compared to ours. 21 We're calculating it only on our site 22 after dedications to be conservative about how 23 we're considering our open space. So that's a 24 description of our open space and how we comply 25 with the code.</p>

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<p>241</p> <p>1 Q And although you've begun to provide 2 this analysis now, will the final design and 3 location of that open space be finalized with the 4 subsequent site plan?</p> <p>5 A It will.</p> <p>6 Q Thank you. And can you also describe, 7 although parking is another one that we've 8 identified will be finalized in time of site plan, 9 how parking -- you've begun to look at it, and how 10 adequate parking will be provided onsite?</p> <p>11 MS. ROGERS: We can go to the next 12 slide, please.</p> <p>13 A Thank you. So this was one of the 14 earlier concerns that was raised with the 15 previous -- with the initial plan that was 16 submitted and presented to the community and 17 Staff. It's been General Planning practice that 18 we're pushed to decrease parking to increase 19 walkability and bicycle transportation.</p> <p>20 But there is now some recognition in -- 21 and a push by DOT, in particular, that in some 22 areas, more parking is needed than we were 23 providing over the last few years. We think this 24 is one of those cases where it's a good idea, and 25 we changed our plan significantly.</p>	<p>243</p> <p>1 THE WITNESS: Oh, it -- sorry. It 2 exceeds that -- we are exceeding the code 3 requirement of 243 by 180. A lot of numbers. 4 Sorry.</p> <p>5 HEARING EXAMINER SOKONI: So the code 6 would require 200 and --</p> <p>7 THE WITNESS: 243. And we're -- 8 coincidentally, 423.</p> <p>9 HEARING EXAMINER SOKONI: 423. And so 10 you're saying you're 180 over?</p> <p>11 THE WITNESS: Correct.</p> <p>12 Q Thank you. And are public benefits 13 required for the proposed project?</p> <p>14 A No. The CRN floating zone does not 15 require public benefits.</p> <p>16 Q Did Park and Planning Staff and the 17 Planning Board agree with your evaluation that 18 proposed project meets the development standards 19 of the CRNF zone?</p> <p>20 A They did their conclusions on Page 31 of 21 the Staff Report.</p> <p>22 Q And in your professional opinion, does 23 the proposed Floating Zone Plan satisfy applicable 24 code requirements?</p> <p>25 A The plan does satisfy all applicable</p>
<p>242</p> <p>1 And this -- the color coding on the 2 exhibit that's on this screen right now, green are 3 areas where you'll have driveway parking at least 4 18 feet in depth; blue are areas within the 5 buildings where you'll have a parking -- a garage 6 parking space that are typically 20 feet in depth 7 at least; and then purple bands along the street 8 are where we're proposing to have our on-street 9 parallel-parking spaces.</p> <p>10 For the market rate unit that we're 11 proposing, we don't have demising walls; we don't 12 have architecture, but we're estimating based on 13 average unit sizes. We'll typically have two 14 garage spaces and two driveway spaces available.</p> <p>15 MPDUs will generally have one garage 16 space and one driveway space. And then we've got, 17 I think, 30 parallel parking spaces. (Witness 18 reviews document.) Yeah, 30 additional.</p> <p>19 So with this layout, we can accommodate 20 423 parking spaces for the proposed number of 21 units. The code requirement is 180. That's low, 22 so we are significantly above that and think it's 23 more appropriate for --</p> <p>24 HEARING EXAMINER SOKONI: You said the 25 number --</p>	<p>244</p> <p>1 code requirements.</p> <p>2 MS. ROGERS: And next, I'm going to move 3 to the requisite findings for approval of a 4 floating zone. We are nearing the end of 5 Mr. Sloan's testimony, finally.</p> <p>6 Q As you know, if map change to apply a 7 floating zone to an individual property requires 8 approval of a Local Map Amendment, the District 9 Council must approve the Local Map Amendment and 10 speak specific findings contained in Section 11 59-7.2.1.E. Have you had an opportunity to review 12 these criteria and evaluate them?</p> <p>13 A I have.</p> <p>14 Q I'll walk through each in turn. With 15 regards to the specific findings, Section 16 7.2.1.E(2)(a) requires a proposed Floating Zone 17 Plan substantially conform with the 18 recommendations of the Applicable Master Plan, 19 General Plan, and other applicable county plans.</p> <p>20 Can you please confirm if you believe 21 this finding is met?</p> <p>22 A I do believe this finding is met. I 23 agree with Staff and the Planning Board's 24 recommendation. As I previously testified -- and 25 I'll try to be briefer and summarize here with a</p>

<p>245</p> <p>1 couple bullet points -- one, by creating infill 2 residential housing near existing and planned 3 transit and services and amenities along a major 4 corridor, providing a diversity of housing, 5 including affordable units, improving pedestrian 6 and bicyclist connectivity, ensuring compatible 7 design features and standards such as setbacks, 8 restrictions on building length and height, and 9 supporting a livable and complete community 10 envisioned for the Colesville Neighborhood Center. 11 And I want to reiterate that that is in 12 conformance with all of the applicable plans -- 13 the '97 Master Plan, the General Plan, Thrive 14 2050, and the Functional Master Plans -- which, in 15 particular, focus on the streetscape and the 16 rights of way. 17 Q Section 7.2.1.E(2)(b) requires a 18 proposed Floating Zone Plan further the public 19 interest. In your professional opinion, is the 20 project and the public interest? 21 A I agree with Technical Staff and the 22 Planning Board's recommendation that this project 23 is in the public interest. As they noticed -- and 24 I'll try to paraphrase again with a few brief 25 bullets -- it is introducing new housing to a</p>	<p>247</p> <p>1 Board at the time of preliminary plan. But the 2 Local Map Amendment that we've submitted -- it is 3 under review today -- confirms there is adequate 4 public facilities to accommodate the proposed 5 development. 6 I've reviewed in detail the school 7 capacity under the 2020-2024 GIP -- or, sorry, the 8 fiscal year 2026-'27 student generation rates and 9 in the infill impact areas. Unless requested, I'm 10 not going to go through those again. 11 We will testify to traffic as -- and 12 public infrastructure for water and sewer. But 13 also, I noted before that this neighborhood is 14 served by fire and police protection, MC Fire and 15 Rescue Station 24 and MC Police Department. 3D 16 are the closest facilities to our property. 17 Q Thank you. Section 7.2.1.E(2)(c) 18 requires a Floating Zone Plan satisfy the intents 19 and purposes of the zone. Again, I know you 20 testified on this, but can you please reconfirm 21 for the record, in your professional opinion, 22 whether this finding is satisfied? 23 A The finding is satisfied. I'll 24 summarize with briefest bullets I can. 25 It implements comprehensive planning</p>
<p>246</p> <p>1 well-established community, has not experienced 2 residential development in over two decades. In 3 addition to market rate units, the project 4 includes government-regulated affordable housing 5 with 15 percent of the units designated as MPDUs 6 where none currently exist, enhancing the 7 diversity of housing options in the area. 8 The proposed streetscape improvements 9 along Notley and New Hampshire Avenue will create 10 safe and accessible pedestrian bicycle 11 connections, addressing a current gap in 12 infrastructure. The enhancements will improve 13 connectivity to proposal Manor Neighborhood Park, 14 encouraging greater utilization of this public 15 amenity and potentially spurring further community 16 investment engagement. 17 In doing additional research and 18 analysis on this, we want to note that the council 19 has previously evaluated broadly the adequacy of 20 public facilities under the public interest 21 finding. So I just wanted to run through that. 22 It is important to note that, of course, 23 we have a preliminary plan that would follow an 24 approval of any rezoning and that adequate public 25 facilities test is determined by the Planning</p>	<p>248</p> <p>1 objectives. It encourages appropriate use of 2 land, ensures protection of established 3 neighborhoods, implements appropriate density and 4 height based on the flexibility of the standards 5 and uses allowed by the zone, provides compatible 6 development, meets the prerequisites for rezoning, 7 and meets the development standards and general 8 requirements of the zoning ordinance. 9 Q Section 7-2.1.E(2)(d) requires a 10 proposed floating zone be compatible with existing 11 and approved adjacent development. Can you please 12 confirm -- explain how the project satisfies this 13 requirement? 14 A I agree with Planning Staff and the 15 Planning Board recommendation. Given feedback 16 from the community and Planning Staff in 17 particular, we have worked hard to make 18 modifications to this plan to ensure that it is 19 compatible with the surrounding neighborhood. 20 We have changed our open space concept 21 to provide augmentation of the existing park 22 rather than focusing completely inwardly. We've 23 increased the streetscape plantings in green area 24 beyond what we previously proposed. 25 The units on Notley are oriented and</p>

<p>249</p> <p>1 designed to decrease typical townhouse massing and 2 the building lengths and increase the spacing 3 between the sticks. We've increased setbacks 4 beyond what's -- what is required, and then we 5 are -- we have changed the plan and our limits of 6 disturbance to preserve offsite trees and provide 7 significant new planting area. 8 Staff agreed and found compatibility in 9 their discussion, which is on Pages 32 and 33. 10 And the Planning Board transmittal specifically 11 confirmed this also. 12 Q Section 7.2.1.E(2)(e) requires a 13 Floating Zone Plan will not -- will generate 14 traffic that does not exceed the critical lane 15 volumes. Katie Wagner will discuss this finding 16 in her testimony. 17 Section 7.2.1.E(2)(f) requires a finding 18 of the proposed Floating Zone Plan when it's 19 applied -- when you're applying a non-residential 20 floating zone to a property under -- previously 21 under a residential detached zone, that it will 22 not adversely affect the character of the 23 surrounding neighborhood. Is this finding met? 24 A It is met. We still have a lot of 25 design to do with -- if we get through, we'll be</p>	<p>251</p> <p>1 and we agree with the Planning Board's majority 2 recommendation. 3 Q And just to reiterate for the record, 4 you testified in detail today regarding some of 5 the more specific portions of that analysis 6 regarding density and height and open space? 7 A In terms of density, height, open space, 8 I do not believe this will adversely impact the 9 neighborhood. 10 Q In summary, is your professional opinion 11 that the Floating Zone Plan permits the council to 12 make all the necessary findings under Section 13 7-2.1 of the zoning ordinance? 14 A It does. 15 Q And in your professional opinion, does 16 the proposed Floating Zone Plan satisfy applicable 17 code requirements? 18 A It does. 19 Q And do you agree with the findings from 20 Park and Planning Technical Staff and their Staff 21 Report and Planning Board? 22 A I do. 23 Q Anything else further you'd like to add 24 at this time? 25 A No.</p>
<p>250</p> <p>1 going to site plan. And then we'll be dealing 2 with issues such as style and materiality, the 3 kind of things like siding, windows, roofing, 4 materials, and design, those kinds of things. But 5 we have taken initial steps to ensure that this 6 project will enhance the neighborhood and will not 7 adversely impact it. 8 I agree with Technical Staff, and I 9 think they pushed us hard, and they worked hard on 10 this analysis. They noted several important 11 elements that we -- that they believe meets this 12 finding as well. The location and activation of 13 open spaces, the concentration of density toward 14 New Hampshire Avenue, establishing appropriate 15 setbacks, minimizing impacts to offsite trees, and 16 providing affordable housing. 17 Given that this is an all-residential, 18 single-family typology, it's hard to think of a 19 way that this -- in terms of design and building 20 use -- or use and building type, it will adversely 21 affect the property. I do not believe it does. 22 As one of the Planning Board members, 23 the notion of townhouses next to detached homes, 24 we have to get over this idea that they are always 25 incompatible. They're not. They're both housing,</p>	<p>252</p> <p>1 MS. ROGERS: That concludes our 2 questions for Ms. Sloan -- Mr. Sloan at this time. 3 HEARING EXAMINER SOKONI: Thank you very 4 much. This would be the time for 5 cross-examination. 6 MS. ROSENFELD: Yes. Do you mind if we 7 could take a five-minute health break -- 8 HEARING EXAMINER SOKONI: Sure. 9 MS. ROSENFELD: -- before we start? 10 HEARING EXAMINER SOKONI: Absolutely. 11 MS. ROSENFELD: Thank you. 12 HEARING EXAMINER SOKONI: Yeah. 13 MS. ROSENFELD: It's been a long -- 14 HEARING EXAMINER SOKONI: Yes, it has. 15 It has, yeah. 16 (Whereupon, a recess was taken at 17 3:09 p.m.) 18 HEARING EXAMINER SOKONI: Go back on the 19 record and we'll open things up for 20 cross-examination just so I, you know -- I want to 21 manage expectations here. 22 Ms. Rosenfeld, you will go first. 23 MS. ROSENFELD: And I -- 24 HEARING EXAMINER SOKONI: Ms. -- 25 MR. COREY: Right, there's people --</p>

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<p>253</p> <p>1 HEARING EXAMINER SOKONI: And --</p> <p>2 MR. COREY: -- that couldn't hear you.</p> <p>3 HEARING EXAMINER SOKONI: Yes. So you</p> <p>4 would go first. Now, we try to avoid -- we don't</p> <p>5 want testimony that's repetitive. And so, you</p> <p>6 know, people will gauge as we have the</p> <p>7 cross-examination. If everything's covered, you</p> <p>8 know, there's no need to come and ask the same</p> <p>9 question that's been asked already.</p> <p>10 So you would go first and then from</p> <p>11 there, you know -- we'll take it from there and</p> <p>12 see who else needs to do cross-examination.</p> <p>13 MS. ROSENFELD: And if I may offer, I</p> <p>14 spoke with Mr. Nusbaum in the -- during the break</p> <p>15 and he only has about, he says maybe five or so</p> <p>16 minutes of cross-examination. I'm happy to let</p> <p>17 him go first.</p> <p>18 HEARING EXAMINER SOKONI: Sure.</p> <p>19 MS. ROSENFELD: Mine will be more</p> <p>20 lengthy.</p> <p>21 HEARING EXAMINER SOKONI: Okay.</p> <p>22 MS. ROSENFELD: Thank you.</p> <p>23 CROSS-EXAMINATION</p> <p>24 BY MR. NUSBAUM:</p> <p>25 Q All right. I was optimistic. I started</p>	<p>255</p> <p>1 If we could move to the Applicant's</p> <p>2 presentation on Page 48?</p> <p>3 A I can't see so well there.</p> <p>4 Q Okay. Thank you.</p> <p>5 So I'd like to discuss the bicycle route</p> <p>6 that you discussed. You alleged it provides</p> <p>7 access to commercial services. In your testimony,</p> <p>8 you showed this slide with two photos and then a</p> <p>9 map at the bottom of the screen. Let's focus on</p> <p>10 the map first. It has orange-dotted lines. Those</p> <p>11 lines are a proposed 11-foot-wide side path</p> <p>12 bikeway; is that correct?</p> <p>13 A Let me get there.</p> <p>14 Q Okay.</p> <p>15 MS. ROGERS: You can keep going.</p> <p>16 A Oh, keep going?</p> <p>17 So the two orange lines -- there are</p> <p>18 sections of dashed and solid lines along New</p> <p>19 Hampshire Avenue, yes.</p> <p>20 Q Correct. So the solid lines that</p> <p>21 appear, I believe, in front of the retirement home</p> <p>22 -- retirement community, that is where there is a</p> <p>23 current side path. And the dashed lines</p> <p>24 represent, proposed or master-planned side paths;</p> <p>25 is that correct?</p>
<p>254</p> <p>1 my questions with, good morning, but I guess we're</p> <p>2 past that point. So good afternoon, Mr. Sloan.</p> <p>3 I'd like it if we could start with Exhibit 48.</p> <p>4 If we could pull that up.</p> <p>5 This is the circulation plan that you</p> <p>6 provided for traffic movement in the project,</p> <p>7 correct?</p> <p>8 A Correct.</p> <p>9 HEARING EXAMINER SOKONI: Could you</p> <p>10 kindly expand it? Is that the -- is that the</p> <p>11 furthest? Okay. Sorry. And it's Exhibit 48,</p> <p>12 mm-hmm.</p> <p>13 Q And the purple arrows that are on this</p> <p>14 map indicate the direction of vehicle traffic for</p> <p>15 each of the lanes?</p> <p>16 A They do.</p> <p>17 Q Okay. And so based on this map, the</p> <p>18 front and only entrances in and out of the</p> <p>19 property are on Notley Road, correct?</p> <p>20 A The proposed vehicular accesses are only</p> <p>21 on Notley.</p> <p>22 Q Okay. Nothing onto New Hampshire</p> <p>23 Avenue?</p> <p>24 A Correct.</p> <p>25 Q Okay.</p>	<p>256</p> <p>1 A Correct.</p> <p>2 Q Okay. So the -- where the dashed lines</p> <p>3 are there is not a side path bike lane at that</p> <p>4 point?</p> <p>5 A There's not a side path bike lane on</p> <p>6 those areas that are dashed.</p> <p>7 Q Okay. Instead, there's a striped bike</p> <p>8 way along New Hampshire Avenue, right?</p> <p>9 A Straight and signed bike way.</p> <p>10 Q Okay. And it appears that this map was</p> <p>11 pulled from the Master Bikeway's website, which if</p> <p>12 you proper -- or if you can click there, it will</p> <p>13 show a blue line that starts on New Hampshire</p> <p>14 Avenue just south of Bonifant, crosses the ICC,</p> <p>15 and goes past your property. And that blue line</p> <p>16 indicates that that's a striped and signed</p> <p>17 bikeway; is that correct?</p> <p>18 A I don't know. I haven't looked at that.</p> <p>19 Q Okay. Let's look at -- let's look at</p> <p>20 your pictures then. If we can look at the top</p> <p>21 picture, that's a photo of that striped section</p> <p>22 and a sign designating the bike lane, correct?</p> <p>23 A Correct.</p> <p>24 Q Okay. And that's on New Hampshire</p> <p>25 Avenue?</p>

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<p>257</p> <p>1 A That's right.</p> <p>2 Q And that's north of your property</p> <p>3 looking southbound towards where the property is?</p> <p>4 A Correct.</p> <p>5 Q Okay. The photo below that is south of</p> <p>6 the property next to the Colesville Park & Ride</p> <p>7 and the bus stop for the Colesville Park & Ride;</p> <p>8 is that correct?</p> <p>9 A That's right.</p> <p>10 Q Okay. So that's just north of the</p> <p>11 Colesville Shopping Center, but between your</p> <p>12 property and the Colesville Shopping Center?</p> <p>13 A Yes.</p> <p>14 Q Okay. I just wanted to highlight, the</p> <p>15 bus routes that are served -- that serve that Park</p> <p>16 & Ride are no longer in operation, correct?</p> <p>17 A That's right. I believe it ends at</p> <p>18 Randolph now.</p> <p>19 Q Okay. So not -- there is no riding of a</p> <p>20 bus going to that bus stop?</p> <p>21 A That's my understanding.</p> <p>22 Q Okay. In that photo, there's a sign</p> <p>23 right beyond the bus stop.</p> <p>24 Are you able to read what that sign</p> <p>25 says?</p>	<p>259</p> <p>1 when it puts a bikeway up there?</p> <p>2 A Well, I can interpret it.</p> <p>3 Q Okay. How would you interpret it?</p> <p>4 A That there is a bikeway along New</p> <p>5 Hampshire Avenue.</p> <p>6 Q Okay. I believe the second thing that</p> <p>7 you have listed there is a large diamond field,</p> <p>8 baseball.</p> <p>9 Is that located at the Colesville Local</p> <p>10 Park?</p> <p>11 A Those are the facilities that are</p> <p>12 located within anything in the purple amorphous</p> <p>13 shape that's within the half-mile orange, I'll</p> <p>14 call it, radius on the plan.</p> <p>15 Q Okay. My question was, do you know if</p> <p>16 that is -- that large diamond baseball field is</p> <p>17 the one that's located at the Colesville Local</p> <p>18 Park?</p> <p>19 A Oh, I did not walk up there, no.</p> <p>20 Q Third, you have a large rectangular</p> <p>21 soccer field. Do you know if that is the one</p> <p>22 that's located at the Colesville Local Park?</p> <p>23 A I did not walk up to the Colesville</p> <p>24 Local Park.</p> <p>25 Q Okay. Fourth, you have a preserved</p>
<p>258</p> <p>1 A It says, Bike Lane Ends.</p> <p>2 Q Okay. So at that point next to the Park</p> <p>3 & Ride is where the bikeway that currently exists</p> <p>4 ceases, correct.</p> <p>5 A It's actually a little odd because there</p> <p>6 is further striping beyond this sign that actually</p> <p>7 crosses a turn lane and keeps going to the south,</p> <p>8 but that's what the sign says at the shopping</p> <p>9 center.</p> <p>10 Q Okay. We can -- we can put this one</p> <p>11 aside momentarily and we can go back to</p> <p>12 Exhibit 47, which is the recreation plan. And I</p> <p>13 know it might be challenging to see based on</p> <p>14 what's up here, but we'll try our best.</p> <p>15 I'm sorry it's very small there, but on</p> <p>16 Exhibit 47, you identify several features of the</p> <p>17 existing offsite parks that are on a -- on a list</p> <p>18 there. The first one, you have a bikeway. I</p> <p>19 assume that's the bikeway that goes from the site</p> <p>20 that you have for that quarter mile down to the</p> <p>21 Park & Ride?</p> <p>22 A This is actually generated by MNCPPC</p> <p>23 website that we have to put our analysis into. We</p> <p>24 don't generate that list. It's automated.</p> <p>25 Q So you don't know what it's referencing</p>	<p>260</p> <p>1 historic site. That's the old Colesville</p> <p>2 Elementary School that's adjacent to Colesville</p> <p>3 Local Park, I assume?</p> <p>4 A I don't know.</p> <p>5 Q Okay. Next you list a trail system.</p> <p>6 Do you know where that's located?</p> <p>7 A Again, I didn't list these. These are</p> <p>8 generated by the system that we have to use for</p> <p>9 our recreation adequacy findings.</p> <p>10 Q Okay. Was this -- Exhibit 47, I believe</p> <p>11 you said was prepared by you though, correct?</p> <p>12 A That's right.</p> <p>13 Q Okay. And prepared -- or prepared by</p> <p>14 you or Mika (phonetic). But you aren't aware of</p> <p>15 what the trail system that you list on Exhibit 47</p> <p>16 is?</p> <p>17 MS. ROGERS: I would object. Mr. Sloan</p> <p>18 has answered that question twice now that these</p> <p>19 are generated by Park & Planning's website and a</p> <p>20 tool that he's required to use.</p> <p>21 HEARING EXAMINER SOKONI: Sustained.</p> <p>22 Q All right. There's two playgrounds</p> <p>23 listed.</p> <p>24 Was one of those playgrounds the one at</p> <p>25 Colesville Local Park?</p>

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<p>261</p> <p>1 MS. ROGERS: I'm sorry. Mr. Sloan just 2 testified that -- Mr. Nusbaum continues to ask the 3 same question regarding every single facility on 4 this. Mr. Sloan has answered the question 5 regarding how these facilities were generated and 6 that he has not walked that Colesville Local Park. 7 HEARING EXAMINER SOKONI: What are you 8 trying to get to? 9 MR. NUSBAUM: I would like to establish 10 where these facilities are. It seems that the 11 witness has put forth an exhibit identifying 12 numerous recreational facilities that they can't 13 identify where they are. 14 HEARING EXAMINER SOKONI: So he's 15 explained that if he did not -- I mean -- 16 MR. NUSBAUM: He created Exhibit 47, and 17 he's presented it to you as fact, and now he's 18 telling me that he doesn't even know where these 19 facilities are located. 20 MS. ROGERS: Well, he's -- object. He's 21 explained for the record that these are generated 22 using Park & Planning's recreation facility 23 analysis tool. He provided in depth and detailed 24 testimony on that in his direct testimony as to 25 how these were generated and his analysis of them.</p>	<p>263</p> <p>1 their web tool -- 2 Q Yes. 3 A -- is to create a boundary based on 4 walkability to facilities within a half-mile 5 radius. 6 Q Okay. So a half-mile radius is what the 7 tool uses based on what you were saying in 8 walkability. 9 Are you aware of what the written 10 recreation guidelines say to determine the 11 distance for a facility? 12 A Yes. That's the walkability portion of 13 that. 14 Q Correct. So it's within a ten-minute 15 walk. Does that sound familiar? 16 A It's within a half-mile radius, a walk 17 within a half-radius. 18 Q I believe if we looked to the actual 19 recreation guidelines, it talks about it being 20 within a ten-mile walk. Does that sound -- 21 A Ten minute. 22 Q Or ten-minute walk, excuse me. 23 MS. ROGERS: We would object. 24 Mr. Nusbaum is providing testimony in his 25 question.</p>
<p>262</p> <p>1 And he's answered Mr. Nusbaum's questions two or 2 three times now. They're the same question. 3 MR. NUSBAUM: They're not the same 4 question. I've asked about playgrounds and soccer 5 fields and baseball fields and the historic 6 elementary school. They're all separate 7 questions. I can go through the entire list and 8 if he knows where any of them are, or if he can 9 just say he doesn't know where any of them are, we 10 can move on. 11 HEARING EXAMINER SOKONI: Okay. I mean, 12 since he's asking about different facilities, the 13 answer may be the same, but that's -- 14 You can go ahead and ask. 15 MR. NUSBAUM: Thank you. 16 Q So there are two playgrounds listed. Is 17 one of those playgrounds at the Colesville Local 18 Park? 19 A I didn't walk the Colesville Local Park. 20 Q Okay. So let's go -- you talked earlier 21 about the web tool and creating these charts. 22 Are you aware of how the MNCPPC web tool 23 calculates what recreation facilities are included 24 for a given property? 25 A The described methodology that's on</p>	<p>264</p> <p>1 HEARING EXAMINER SOKONI: Mr. Nusbaum, 2 you need to -- your questions need to be limited 3 to testimony that the witness provided. 4 MR. NUSBAUM: The witness testified -- 5 HEARING EXAMINER SOKONI: One 6 testimony -- 7 MR. NUSBAUM: -- about the recreation 8 plan and how the web tool calculates distances. 9 I'm trying to get some clarification on that 10 because it is not the same as what is in code. 11 The code talks about a three-quarters of a mile 12 walking distance, pedestrian route, not ten 13 minutes and not a half-mile radius. 14 A That's right. 15 MS. ROGERS: Mr. Sloan answered your 16 question. You can testify what you think the code 17 says when you give your testimony later. But you 18 need to ask Mr. Sloan questions for him to answer 19 and not provide testimony in your questions. 20 MR. NUSBAUM: I believe I asked him if 21 it said it was a ten-mile walk. 22 A Ten-minute walk. 23 MR. NUSBAUM: Or a ten-minute walk, 24 excuse me. 25 HEARING EXAMINER SOKONI: And what was</p>

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<p>265</p> <p>1 his response? He--</p> <p>2 MR. NUSBAUM: It was yes and then there</p> <p>3 was an objection before I answered another</p> <p>4 question or asked another question.</p> <p>5 A No, you said it's a ten-minute walk. I</p> <p>6 said it's a --</p> <p>7 HEARING EXAMINER SOKONI: And he said it</p> <p>8 was a --</p> <p>9 MS. ROGERS: He said --</p> <p>10 A I said within a half-mile boundary --</p> <p>11 HEARING EXAMINER SOKONI: Half mile.</p> <p>12 A -- there is a walking path within that.</p> <p>13 Q Okay.</p> <p>14 A Any facilities that are within that</p> <p>15 half-mile boundary that are walkable can be</p> <p>16 counted.</p> <p>17 Q Okay. Can we go to Page 51 of this</p> <p>18 presentation?</p> <p>19 With respect to the recreation</p> <p>20 facilities, we noted that there were some errors</p> <p>21 on what the web tool provided such as the handball</p> <p>22 court. You then added two things that were -- or</p> <p>23 you added two categories: one, two seating areas</p> <p>24 and another, a large open lawn.</p> <p>25 Can you identify what the two seating</p>	<p>267</p> <p>1 A -- so there it is.</p> <p>2 MR. NUSBAUM: Let's move to, I think</p> <p>3 it's two -- one slide up on this presentation.</p> <p>4 Keep going, sorry. School proximity. Thank you.</p> <p>5 Q For the school proximity, you testified</p> <p>6 today that there are two schools within the half</p> <p>7 mile route from the site; is that correct?</p> <p>8 A That's right.</p> <p>9 Q This wasn't included in the original</p> <p>10 revised land use report. It was just added today,</p> <p>11 correct?</p> <p>12 A It was submitted to the record on the</p> <p>13 3rd.</p> <p>14 Q Okay. On Page 34 of this document, if</p> <p>15 you wouldn't mind going to it, this is the White</p> <p>16 Oak Master Plan Pedestrian Circulation Route; is</p> <p>17 that correct?</p> <p>18 A Give me a sec? What page are we?</p> <p>19 Q Thirty-four.</p> <p>20 A Okay.</p> <p>21 Q Okay. So I'd like to draw your</p> <p>22 attention to the legend at the bottom. You see</p> <p>23 that there's a black square that represents</p> <p>24 schools?</p> <p>25 A That's right.</p>
<p>266</p> <p>1 areas are?</p> <p>2 A Yeah, the recreation guidelines make</p> <p>3 clear that you either need a picnic table or two</p> <p>4 benches to qualify as a seating area.</p> <p>5 Q Okay. So the record -- so the web tool</p> <p>6 put down four benches, and you said -- and your</p> <p>7 determination was that that's equal to two seating</p> <p>8 areas because that's four sets of benches or two</p> <p>9 sets of benches, excuse me?</p> <p>10 A That's my math.</p> <p>11 Q Okay. And then you list a large open</p> <p>12 lawn. Does the recreation guideline set forth a</p> <p>13 category of large open lawn?</p> <p>14 A It does.</p> <p>15 Q Okay. In the current guidelines are you</p> <p>16 aware that there's a large open grass area?</p> <p>17 A I don't remember that.</p> <p>18 Q Okay. How about an open grass area of</p> <p>19 lawn?</p> <p>20 A I don't remember that term.</p> <p>21 Q Okay. But you recall a, large open</p> <p>22 lawn, as the term that's in the recreation</p> <p>23 guidelines?</p> <p>24 A I guess that's what I wrote --</p> <p>25 Q Okay.</p>	<p>268</p> <p>1 Q Okay. And you'll see the square on the</p> <p>2 map itself to the south and west of the site is</p> <p>3 the Westover Elementary School, correct?</p> <p>4 A Well, it's not labeled.</p> <p>5 Q Okay. There's a school to the -- to the</p> <p>6 south and west; is that correct?</p> <p>7 A Yes.</p> <p>8 Q Okay. And that school is more than a</p> <p>9 half mile from the property; is that correct?</p> <p>10 A I don't know.</p> <p>11 Q Okay. South and slightly east, there's</p> <p>12 another school. Can you see that?</p> <p>13 A Are you referring to the one on Cannon</p> <p>14 Road?</p> <p>15 Q Yes.</p> <p>16 A Yes, I see that.</p> <p>17 Q Is that more than a half a mile from the</p> <p>18 property?</p> <p>19 A I don't know.</p> <p>20 Q And to the east and just slightly south,</p> <p>21 there's another school. Do you see that one?</p> <p>22 A Below Fairland Road?</p> <p>23 Q Yes.</p> <p>24 A Yes.</p> <p>25 Q Okay. Do you know if that one's more</p>

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<p>269</p> <p>1 than -- or more or less than a half a mile?</p> <p>2 A I don't.</p> <p>3 Q Okay.</p> <p>4 If you can go back to Number 49,</p> <p>5 Page 49.</p> <p>6 So you testified earlier that you</p> <p>7 identified two schools that were located at the</p> <p>8 Colesville Elementary School which closed in 1977.</p> <p>9 As such, the school doesn't appear on the Master</p> <p>10 Plan map that we just looked at. The Master Plan</p> <p>11 in fact shows no schools within a half a mile of</p> <p>12 the property; isn't that correct?</p> <p>13 A That map on the Master Plan?</p> <p>14 Q Correct.</p> <p>15 A It does not show this school.</p> <p>16 Q The space in the Colesville Elementary</p> <p>17 School, you assert is now used by two different</p> <p>18 schools: Kids MCS Colesville Center childcare</p> <p>19 center, and the Casa de Montessori; is that</p> <p>20 correct?</p> <p>21 A Correct.</p> <p>22 Q So for the Kids MCS Colesville Center,</p> <p>23 it's your understanding that Coleville Center</p> <p>24 qualifies as a school under this prerequisite?</p> <p>25 A Yes.</p>	<p>271</p> <p>1 this project provided an important mix -- or an</p> <p>2 important horizontally-mixed-use opportunity.</p> <p>3 Do you remember that?</p> <p>4 A I think it was more along the lines of</p> <p>5 it is part of a horizontal-mixed-use community.</p> <p>6 Q Can you define a horizontal-mixed-use</p> <p>7 community for us?</p> <p>8 A When a variety of uses are adjacent to</p> <p>9 each other, not on top of each other.</p> <p>10 Q And the uses -- the zoning that's</p> <p>11 currently surrounding this project on all sides is</p> <p>12 what?</p> <p>13 A If we could bring up the zoning map</p> <p>14 again and I can run through them.</p> <p>15 Q Okay. That's fine.</p> <p>16 I believe that's in this presentation if</p> <p>17 we go forward with a few slides. The other</p> <p>18 direction please. There we go. That should work</p> <p>19 fine.</p> <p>20 All right. On all sides of the</p> <p>21 property, what is the current zoning?</p> <p>22 A To the north we have R-200. To the east</p> <p>23 we have RE-2 -- RE-1, sorry. To the south we have</p> <p>24 R-200, R-90. I'm assuming you don't want me to go</p> <p>25 further south?</p>
<p>270</p> <p>1 Q And what about Casa de Montessori?</p> <p>2 A Yes.</p> <p>3 Q Are you aware that the Department of</p> <p>4 Education classifies and licensed the Coleville</p> <p>5 Center Childcare Center as just that, a childcare</p> <p>6 center and not as a school?</p> <p>7 A No.</p> <p>8 MR. NUSBAUM: Madam Hearing Examiner, do</p> <p>9 you mind, can I present evidence -- or an exhibit</p> <p>10 rebuttal?</p> <p>11 HEARING EXAMINER SOKONI: You can</p> <p>12 reserve that for your -- you will have an</p> <p>13 opportunity to present your case in chief.</p> <p>14 MR. NUSBAUM: Okay.</p> <p>15 HEARING EXAMINER SOKONI: So I will give</p> <p>16 you --</p> <p>17 MR. NUSBAUM: So I will be able to</p> <p>18 introduce this as rebuttal evidence at that point?</p> <p>19 HEARING EXAMINER SOKONI: Yes, you may.</p> <p>20 MR. NUSBAUM: Okay. Thank you.</p> <p>21 Q Likewise, are you aware that the</p> <p>22 Maryland Department of Education classifies the</p> <p>23 licensed Casa de Montessori as a childcare center?</p> <p>24 A No.</p> <p>25 Q You mentioned during your testimony that</p>	<p>272</p> <p>1 Q No, that's fine, just adjacent to the</p> <p>2 property. And so all of the property adjacent to</p> <p>3 yours is also residential?</p> <p>4 A Abutting and confronting, yes.</p> <p>5 Q Okay. I'd like to ask you, in the</p> <p>6 compatibility section you discussed the use of</p> <p>7 green space next to the park, large setbacks,</p> <p>8 trees, and then continued to say that all of those</p> <p>9 will be finalized in the site plan; is that</p> <p>10 correct?</p> <p>11 A With the caveat that we also set up the</p> <p>12 framework that those would be built on with the</p> <p>13 rezoning plan.</p> <p>14 Q What do you -- I'm sorry, what do you</p> <p>15 mean by you set up the framework?</p> <p>16 A So some of the elements are not going to</p> <p>17 be able to be changed at site plan. For example,</p> <p>18 the setback is a binding element or the</p> <p>19 orientation or width and length of the unit sticks</p> <p>20 and the primary open space adjacent to the part.</p> <p>21 I think those are pretty well-baked into the</p> <p>22 rezoning.</p> <p>23 Q Okay. But after, if you do obtain this</p> <p>24 element, after that, there is no obligation for</p> <p>25 you or the developer to maintain, you know, the</p>

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<p>273</p> <p>1 front setback that you established, where trees 2 are going to be located beyond what is in the 3 zoning regulations, and the binding elements, 4 correct?</p> <p>5 A I would say that they set the framework, 6 that's correct.</p> <p>7 Q Okay. One other thing I wanted to 8 discuss was the Master Plan that you had talked 9 about. The Thrive Master Plan, it says on Page 2 10 that it sets a vision for the country -- for the 11 county with broad countywide recommendations that 12 are to provide guidance.</p> <p>13 Are you aware of that?</p> <p>14 A If we can find the quote?</p> <p>15 Q That's on Page 2.</p> <p>16 A Are you looking for me to remember a 17 direct quote?</p> <p>18 Q No, you don't need to find us a direct 19 quote. My question is, you talked about -- or you 20 discussed how the Thrive Montgomery Plan 21 supersedes the White Oak Plan for certain 22 attributes; is that correct?</p> <p>23 A Anything in the area plan that is 24 substantial -- that would not allow substantial 25 conformance with Thrive would be superseded.</p>	<p>275</p> <p>1 Q I'm sorry. I apologize. Let me get to 2 the correct page. This is the updated conceptual 3 layout plan. It's about -- I think it's about PDF 4 Page 7.</p> <p>5 A That plan has not been updated. I think 6 we noted that.</p> <p>7 Q Oh, it has not been updated. Okay. Do 8 you have a -- which would be the better page? 9 Okay.</p> <p>10 A 70-B.</p> <p>11 Q Okay, that's fine. I can work from that 12 one, 70-B?</p> <p>13 A Sorry, one up. Yep.</p> <p>14 Q And I believe that you had said that the 15 setback along the northern boundary was going to 16 be 30 feet; is that correct?</p> <p>17 A The northern boundary, where it abuts 18 detached units?</p> <p>19 Q That's correct.</p> <p>20 A Yes.</p> <p>21 Q And along the north --</p> <p>22 HEARING EXAMINER SOKONI: And I'm sorry, 23 Ms. Rosenberg, just so I can follow this in the 24 transcript, what you're referring to is in the 25 primary record as Exhibit --</p>
<p>274</p> <p>1 Q Okay. Despite the fact that fraud -- 2 that Thrive talks about community-wide policies 3 and providing guidance, not specifics, on setting 4 plans and boundaries?</p> <p>5 A Correct. That's what the General Plan 6 does.</p> <p>7 MR. NUSBAUM: Okay. 8 I have no further questions.</p> <p>9 MS. ROSENFELD: That's five minutes in 10 lawyer time.</p> <p>11 HEARING EXAMINER SOKONI: I'm sorry?</p> <p>12 MS. ROSENFELD: That's five minutes in 13 lawyer time.</p> <p>14 HEARING EXAMINER SOKONI: Yes. Yes, --</p> <p>15 A But who's counting?</p> <p>16 CROSS-EXAMINATION</p> <p>17 BY MS. ROSENFELD:</p> <p>18 Q Mr. Sloan, if I could, I'd like to draw 19 your attention -- I'm going to start with 20 Exhibit 68, the PowerPoint. And I do have some 21 questions about some of the exhibits.</p> <p>22 You had said that the setback along the 23 northern edge of the property was going to be set 24 at 30 feet; is that correct?</p> <p>25 A The north and --</p>	<p>276</p> <p>1 A 70-B</p> <p>2 HEARING EXAMINER SOKONI: 70-B, that's 3 the updated floating zone?</p> <p>4 A Yes.</p> <p>5 HEARING EXAMINER SOKONI: Yes. 6 MS. ROSENFELD: Correct.</p> <p>7 HEARING EXAMINER SOKONI: Mm-hmm.</p> <p>8 Q And do you have PDF page for what you're 9 looking at on the screen?</p> <p>10 HEARING EXAMINER SOKONI: Six?</p> <p>11 MS. ROSENFELD: Six.</p> <p>12 A Six, I think.</p> <p>13 Q Yep.</p> <p>14 HEARING EXAMINER SOKONI: Page 6 of 81.</p> <p>15 MS. ROSENFELD: Okay. Okay. Thank you.</p> <p>16 Q And then for the green space or the open 17 space, the -- I think you called it the linear 18 open space between the Wilshire senior housing 19 development and the northern boundary or interior 20 to the project where you have that linear open 21 space, what is the width of that linear open 22 space?</p> <p>23 A I think right now we have a conceptual 24 width of 48 feet or so, plus or minus.</p> <p>25 Q Okay.</p>

<p>277</p> <p>1 A That's based on my memory.</p> <p>2 Q And do you have -- are you able to tell</p> <p>3 me the setback between that northern boundary in</p> <p>4 the building on the Senior Housing Wilshire</p> <p>5 project?</p> <p>6 A The northern boundary in the building on</p> <p>7 -- the senior living building?</p> <p>8 Q Correct.</p> <p>9 A No.</p> <p>10 Q Okay. And you said that the setback</p> <p>11 fronting along Notley was going to be</p> <p>12 approximately 45 feet or so?</p> <p>13 A The units are set about, I think,</p> <p>14 44 feet from the curb.</p> <p>15 Q Okay. Would you agree that there is a</p> <p>16 sizable setback between the northern boundary</p> <p>17 along the linear -- the linear open space and the</p> <p>18 Wilshire building?</p> <p>19 A Sizable?</p> <p>20 Q Correct.</p> <p>21 A It's about, I think, 48 feet where the</p> <p>22 building fronts --</p> <p>23 Q Between the northern boundary. The</p> <p>24 northern boundary of the linear open space?</p> <p>25 A From the linear open space from that</p>	<p>279</p> <p>1 Q So if there were fewer units or if they</p> <p>2 were reconfigured a little differently, you would</p> <p>3 be able to provide a greater buffer along the</p> <p>4 perimeter of the project that directly abuts or</p> <p>5 confronts existing single family homes?</p> <p>6 A It depends on whether or not we end up</p> <p>7 having to save those specimen trees and still get</p> <p>8 our utilities around them.</p> <p>9 Q And when you say -- when you describe</p> <p>10 the specimen trees, can you point me on this plan</p> <p>11 to exactly what location you are talking about?</p> <p>12 A So if you see the central feature that</p> <p>13 kind of looks darker, a lot of little hatching</p> <p>14 that's right at the terminus of our entry road?</p> <p>15 Q Okay.</p> <p>16 A There's specimen trees along that</p> <p>17 northern property line that Staff has asked us to</p> <p>18 look at and try to preserve. So that would</p> <p>19 require us to keep a significant amount of open</p> <p>20 space on that side and not put any kind of paving</p> <p>21 there.</p> <p>22 Q Okay. So would that mean you would need</p> <p>23 to shift your LOD closer to Notley -- your limited</p> <p>24 disturbance closer to Notley to reserve those</p> <p>25 trees?</p>
<p>278</p> <p>1 property line to the north to the units?</p> <p>2 Q Correct.</p> <p>3 A It's bigger than the one that's to this</p> <p>4 -- between the buildings and Notley Road, yes.</p> <p>5 Q Okay. Is there a reason why you placed</p> <p>6 the widest open space buffer between the proposed</p> <p>7 units and the Wilshire, as opposed to adding some</p> <p>8 of that additional open space between the</p> <p>9 residential units, either to the north or to the</p> <p>10 south across from Notley?</p> <p>11 A It's something to -- we can explore</p> <p>12 further. But it is generally governed by the</p> <p>13 distance we can have between a road and the front</p> <p>14 of the building, and so we need two frontages to</p> <p>15 get emergency access to housing. And pushing the</p> <p>16 -- shrinking that space and adding it to the south</p> <p>17 wouldn't allow us to do that. It's also because</p> <p>18 of the stormwater system and our need to regrade</p> <p>19 the site is changing a lot of that. So looked at</p> <p>20 and revised, but no further. Or in the --</p> <p>21 Q So --</p> <p>22 A The final thing is that this is also the</p> <p>23 area where you have existing specimen trees that</p> <p>24 Staff asked us to move our LOD from and we still</p> <p>25 need to work on that.</p>	<p>280</p> <p>1 A We may.</p> <p>2 Q Okay. When you talk about a larger unit</p> <p>3 along New Hampshire, can you explain to me what</p> <p>4 you mean when you say, a larger unit?</p> <p>5 A So that's the area where we are not as</p> <p>6 restricted for the height compatibility standard.</p> <p>7 And where Staff had initially asked us to look at</p> <p>8 things like two-over-twos that at the hearing as</p> <p>9 you know, was revised and did not -- was not</p> <p>10 included as one of the allowed elements. But it's</p> <p>11 a place where we might do something like triplexes</p> <p>12 instead of townhouses.</p> <p>13 Q And so would that change -- I assume</p> <p>14 that would change the layout of what we're looking</p> <p>15 at here as far as the parking paths and the length</p> <p>16 of the sticks along New Hampshire?</p> <p>17 A Not necessarily. They're actually quite</p> <p>18 efficient and we might be able to tighten things</p> <p>19 up.</p> <p>20 Q And are the units that are fronting</p> <p>21 along New Hampshire and the ones that are parallel</p> <p>22 closer to the Wilshire, are all of those MPDU</p> <p>23 units?</p> <p>24 A No.</p> <p>25 Q No? Okay. They look to me like they</p>

<p>281</p> <p>1 only have one exterior parking pad. Is that --</p> <p>2 A No, they -- I think they vary. But we</p> <p>3 haven't set demising walls so, you know, it</p> <p>4 depends. If there are five units or six units,</p> <p>5 it'll vary.</p> <p>6 Q Okay. And how many bedrooms do you</p> <p>7 expect to have in the MPDU units?</p> <p>8 A I think by law they have to have three,</p> <p>9 but I don't know. We don't have architecture.</p> <p>10 Q Okay. And when you were describing for</p> <p>11 purposes of compatibility, some of the different</p> <p>12 characteristics of the architecture, you had</p> <p>13 mentioned things like peaked roofs and different</p> <p>14 types of window features.</p> <p>15 Am I remembering your testimony</p> <p>16 correctly?</p> <p>17 A That those are elements that we can --</p> <p>18 that we'll be looking at when we actually design</p> <p>19 the buildings? Yes.</p> <p>20 Q And what's the purpose of looking at</p> <p>21 those architectural features?</p> <p>22 A We typically use those architectural</p> <p>23 features to enhance the residential nature of the</p> <p>24 buildings.</p> <p>25 Q Okay. At one point did I hear you</p>	<p>283</p> <p>1 Q Okay. Going to the next page, the</p> <p>2 compatible massing along Notley. To the south,</p> <p>3 those are existing single family homes; is that</p> <p>4 correct?</p> <p>5 A On this --</p> <p>6 Q To the south of Notley?</p> <p>7 A Oh, you're looking at the --</p> <p>8 Q On the compatible massing exhibit.</p> <p>9 A Sorry, I'm not keeping up.</p> <p>10 Q Well, right now I'm talking about the --</p> <p>11 A The --</p> <p>12 Q -- compatible massing exhibit.</p> <p>13 A The dark gray shade are existing,</p> <p>14 correct.</p> <p>15 Q Okay. To the south of Notley?</p> <p>16 A That's right.</p> <p>17 Q And the numbers in blue along Notley,</p> <p>18 those generally are showing the width of those</p> <p>19 structures as they are built today?</p> <p>20 A That's right.</p> <p>21 Q And did I understand your testimony</p> <p>22 correctly that for the lighter gray rectangles</p> <p>23 above Notley to the north, you have offered those</p> <p>24 as possible representative building widths?</p> <p>25 A That's right.</p>
<p>282</p> <p>1 testify that some of these units might be -- might</p> <p>2 have terrace rooftops?</p> <p>3 A We have done a lot of projects that have</p> <p>4 three stories and then a popup -- not a full four</p> <p>5 story, but a rooftop terrace instead of say a</p> <p>6 deck, but who knows?</p> <p>7 Q Okay. Is there any -- is there any</p> <p>8 design that would allow for a 50-foot structure</p> <p>9 with a rooftop at the top of that 50 feet?</p> <p>10 A I don't think we -- no, because that</p> <p>11 would be considered in part of the height. If</p> <p>12 there -- if for example, if you had a stairwell or</p> <p>13 an elevator overrun, that would be habitable</p> <p>14 space, and I don't think that would be allowed.</p> <p>15 Q You think it would not be allowed by</p> <p>16 zoning then?</p> <p>17 A I don't think so.</p> <p>18 Q And even if --</p> <p>19 A I would have to check that.</p> <p>20 Q -- it were to have a rooftop terrace</p> <p>21 that --</p> <p>22 A On the fifth floor?</p> <p>23 Q That's my question to you.</p> <p>24 A I don't think it's allowed. We</p> <p>25 should -- could look it up.</p>	<p>284</p> <p>1 Q Duplex, triplex, perhaps a small stick</p> <p>2 of town homes; is that correct?</p> <p>3 A Any of the building types that are</p> <p>4 allowed under the binding elements.</p> <p>5 Q Okay. And right now there's a proposed</p> <p>6 binding element that says none of those structures</p> <p>7 along Notley would exceed a hundred feet in width;</p> <p>8 is that correct?</p> <p>9 A That's what I remember.</p> <p>10 Q Is there anything about this exhibit</p> <p>11 that limits the width of these structures to what</p> <p>12 is being shown on this compatible massing exhibit?</p> <p>13 A That 100 feet.</p> <p>14 Q It would be 100 feet. So this exhibit</p> <p>15 does not necessarily reflect what a series of</p> <p>16 100-foot units would look like if they were</p> <p>17 fronting on Notley; is that correct?</p> <p>18 A It does not.</p> <p>19 Q Okay.</p> <p>20 A It is per the numbers.</p> <p>21 Q Okay. So you don't have an exhibit at</p> <p>22 the moment that would show the hearing examiner</p> <p>23 what that would look like for her to make a</p> <p>24 determination as to compatibility, do you?</p> <p>25 A I wouldn't say determination of</p>

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<p>285</p> <p>1 compatibility, but it's certainly a determination 2 of what 100-foot unit lengths would look like. 3 Q Well, with all -- 4 A In my mind they're different things. 5 Those are -- those could still be compatible. 6 Q They could be. But this exhibit is 7 titled Compatible Massing Along Notley. What I'm 8 asking is, do you have an exhibit that shows what 9 100-foot wide buildings would look like for 10 purposes of the hearing examiner's ability to 11 evaluate compatibility based on the proffered 12 binding element? 13 A We don't have 100-foot length 14 footprints. 15 Q Okay. I would like to turn your 16 attention to the exhibit titled Streetscape 17 Improvements, Notley. On mine, I think it's about 18 Page 17. And this is titled Streetscape 19 Improvements, Notley. 20 Is this drawing to scale? 21 A Not as printed out, no. 22 Q Okay. So it -- 23 A Did we do a full scale of this? 24 Q There are some dimensions on here 25 though; is that correct?</p>	<p>287</p> <p>1 goes beyond -- 2 A Somewhere. 3 Q -- the image somewhere? 4 A Correct. 5 Q Okay. Thank you. 6 I'd like to look at -- I think this was 7 separately marked as Exhibit 74. It's a large 8 map, aerial view, with neighborhood boundaries. 9 HEARING EXAMINER SOKONI: Now even -- we 10 got a larger size, but it's in Exhibit 68, right? 11 MS. ROSENFELD: It is in Exhibit 68. In 12 my numbering it's about Page 19. 13 HEARING EXAMINER SOKONI: So if you 14 could kindly pull it up? 15 UNIDENTIFIED SPEAKER: That's it, 16 correct? 17 HEARING EXAMINER SOKONI: Yeah. Is that 18 the one with the red circles? 19 MS. ROSENFELD: Yes. 20 HEARING EXAMINER SOKONI: Yeah. 21 MS. ROSENFELD: Yes. So that's when we 22 independently labeled 74, Exhibit 74. 23 HEARING EXAMINER SOKONI: Correct. 24 MS. ROSENFELD: That's correct? 25 HEARING EXAMINER SOKONI: And I just</p>
<p>286</p> <p>1 A There are dimensions on it, yes. 2 Q And so they show the width of, for 3 example, the streetscaping from the centerline 4 over to -- 5 A The front of the unit. 6 Q -- the property line. 7 A Oh, the property line? Yes. 8 Q And then again, dimensions from the 9 property line over to the building face. 10 A We didn't break that out, but you can 11 deduce it from the 55 minus 35. 12 Q Correct. And is the height of the 13 building as shown on that plan representative of 14 what -- of what a 50-foot tall building would look 15 like? 16 A No, we were focused, sorry, on the 17 horizontal dimensioning, so that's just 18 representative of where the building face is. 19 Q Okay. Are you able to offer an opinion 20 as to whether or not as it's shown on here it 21 would be taller or shorter than 50 feet? 22 A Well, if you just took the 55 feet 23 that's on there and you turned it vertically, that 24 goes above the picture frame. 25 Q Okay. So the height of the building</p>	<p>288</p> <p>1 want to mention for the benefit -- this doesn't 2 help folks who are on Zoom. I left these here -- 3 earlier on, someone said they just could, they 4 could barely see. If anyone -- if you wanted to 5 look at them, they're here. Because you're right, 6 it's hard to make out what that says. 7 But, sorry, you may proceed. 8 MS. ROSENFELD: Quite all right. 9 Q And I have several questions about this 10 exhibit. First, there are as you testified, two 11 concentric circles, 0.25 miles and 0.5 miles from 12 a red dot. 13 Can you identify for the record where 14 that red dot is located? 15 A It is the northwest corner of Notley 16 Road and New Hampshire Avenue. 17 Q Okay. And is there a reason why you 18 chose that dot in that location? 19 A The reason why I chose that dot? In 20 terms of the -- 21 Q Let me -- let me start with a different 22 question. Are you the one who chose where that 23 dot is located? 24 A Yes. 25 Q Okay. So why did you put it there?</p>

<p>289</p> <p>1 A It's an organizing principle framework 2 for me to start thinking about connectivity for 3 the neighborhood. 4 Q Mm-hmm. Okay. And if you were to -- is 5 there any vehicular access at that corner to 6 either Notley or New Hampshire? 7 A No. 8 Q Would there, under the proposed 9 development? 10 A Near it or at it? 11 Q At that corner? 12 A No, there would not be access off of a 13 corner of an intersection. 14 Q Okay. And none along New Hampshire, 15 correct? 16 A Either direction. It can't be on the 17 corner, no. 18 Q Okay. And if we were to go west along 19 Notley to the first proposed ingress/egress, what 20 would happen to the location of these circles? 21 Would they also move west? 22 A I don't see how they wouldn't. 23 Q I'd be happy to answer for you, but I'll 24 let you do that. 25 A I need geometry, I don't know.</p>	<p>291</p> <p>1 north? 2 A Day 1 or day 20? Day 50? 2 years, 3 10 years or right away? 4 Q When you clear and grade the site. 5 A There will be fewer trees on site. 6 Q Okay. And would the site look more like 7 the Wilshire or more like the surrounding existing 8 residential housing, single-family housing 9 developments? 10 A When it's cleared and graded, it won't 11 look like either. That's building and -- 12 Q In terms of tree and vegetation 13 coverage? 14 A There will be less, significantly less 15 vegetation coverage internal to the site -- 16 Q Okay. 17 A -- after clearing. 18 Q Okay. And at this point, are you in a 19 position to say -- I did think you talked about 20 how much tree cover you expected after built out 21 and replanting. 22 A Yep. 23 Q Can you tell me what that number was 24 again? 25 A We anticipate based on our illustrative</p>
<p>290</p> <p>1 Q And then if that were to shift would 2 that -- would the commercial center remain within 3 that circle or are you in a position to tell that? 4 A I'm not. I mean, we can certainly 5 estimate it and as far as you go west until you go 6 up about 0.05 miles, it will be. 7 Q Okay. And then looking at this aerial 8 image, would you agree that there is a lot of 9 vegetation, a lot of trees in this -- the 10 neighborhood boundary, both circles? 11 A Yeah, I think I specifically said that 12 this is a well-tree-canopied neighborhood, 13 especially in the stream valleys. 14 Q Mm-hmm. And one exception to that is 15 the -- is the Wilshire Senior Housing Project, 16 correct? 17 A And in the commercial center. There are 18 some exceptions, but generally. 19 Q Okay. When this project is built out, 20 and I would like -- and going back to the 21 landscape, going back to the amended plan exhibit, 22 in terms of remaining tree coverage and 23 vegetation, would the finished project look more 24 like the Wilshire or more like the existing 25 residential developments to the west and the</p>	<p>292</p> <p>1 or concept plan for replanting, about 90 percent 2 canopy coverage of the site at 20 years average 3 growth based on standard and average ornamental 4 trees and shade trees, not counting like 5 evergreens and things. 6 Q Ninety percent coverage of the entire 7 site? 8 A That's right. 9 Q Going to the photos of the surrounding 10 conditions, which I believe is the next page, 11 starting from the top, the Silver Spring 12 Healthcare Center project that you show here in 13 the photograph, do you know -- do you know what 14 underlying zone that is? 15 A R-200. 16 Q And do you know how that was developed? 17 A Special exception. 18 Q Okay. And the Cambodian Temple, do you 19 know the underlying zone? 20 A R-200. 21 Q And are houses of worship allowed by 22 right in residential zones? 23 A They are. 24 Q And the Wilshire to the south, the 25 underlying zone?</p>

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<p>293</p> <p>1 A R-200.</p> <p>2 Q And that was developed pursuant to what</p> <p>3 kind of approval?</p> <p>4 A I believe that's also a special</p> <p>5 exception.</p> <p>6 Q Okay. And are you familiar with the</p> <p>7 concept that special uses that are allowed by</p> <p>8 special exception, are presumptively compatible</p> <p>9 with surrounding neighborhoods?</p> <p>10 A Yes.</p> <p>11 Q Okay. Is there a presumption of</p> <p>12 compatibility with a floating zone?</p> <p>13 A No.</p> <p>14 Q Okay. I'd like to go to the next -- I</p> <p>15 think the next one is surrounding commercial uses.</p> <p>16 This is the -- what I think you have</p> <p>17 described as the commercial center; is that</p> <p>18 correct?</p> <p>19 A That's right.</p> <p>20 Q And there is a giant grocery store in</p> <p>21 here.</p> <p>22 A There is.</p> <p>23 Q Do you know whether or not, grocery</p> <p>24 store, is a defined term in the zoning ordinance?</p> <p>25 A It's not. It used to be. It isn't now.</p>	<p>295</p> <p>1 Q Okay. And to your knowledge, was there</p> <p>2 any agency or any, for example, Department of</p> <p>3 Transportation that prohibited access to either of</p> <p>4 those?</p> <p>5 A I don't know --</p> <p>6 Q Okay.</p> <p>7 A -- if it was prohibited by agency. I</p> <p>8 don't know. I looked at the binding element in</p> <p>9 the resolution, sorry.</p> <p>10 Q Okay. And at the moment, to the best of</p> <p>11 your knowledge, either Department of</p> <p>12 Transportation or State Highway Administration has</p> <p>13 disallowed access to New Hampshire Avenue; is that</p> <p>14 correct?</p> <p>15 A I have not seen anything where State</p> <p>16 Highway opined. I think we're still going to go</p> <p>17 through that process.</p> <p>18 Q Okay. But at the moment, DOT has?</p> <p>19 A DOT requested it, but they don't have</p> <p>20 any authority over access on the New Hampshire.</p> <p>21 Q So is it -- from a regulatory</p> <p>22 perspective, is it possible to have access to New</p> <p>23 Hampshire?</p> <p>24 A It may be, but it may be limited some</p> <p>25 way.</p>
<p>294</p> <p>1 Q You said it's not.</p> <p>2 A Grocery store is not.</p> <p>3 Q Grocery store is not?</p> <p>4 A I don't believe so.</p> <p>5 Q Okay.</p> <p>6 A But that's my memory.</p> <p>7 Q Okay. Just asking. When we were</p> <p>8 talking about frontage and access to a</p> <p>9 nonresidential street, you made mention of another</p> <p>10 project called 7100 Connecticut Avenue. I believe</p> <p>11 it was called The CORSO --</p> <p>12 A The CORSO --</p> <p>13 Q -- Project. Could you remind me again</p> <p>14 what residential -- what street access the site</p> <p>15 had at the time that it was proposed for those</p> <p>16 rezoning?</p> <p>17 A There is a curb cut on the road to the</p> <p>18 north that the name escapes me. And a curb cut</p> <p>19 separated by immediately, Connecticut Avenue, and</p> <p>20 then stubbed out frontage to the south, but it</p> <p>21 didn't have a curb cut.</p> <p>22 Q Okay. And the curb cut to the north and</p> <p>23 the stubbed out to the south, were those both to</p> <p>24 residential streets?</p> <p>25 A Yes.</p>	<p>296</p> <p>1 Q Okay.</p> <p>2 A I mean, it may be allowed, but it may be</p> <p>3 limited in some way, for example, emergency</p> <p>4 vehicular access.</p> <p>5 Q Okay. And at the time that The CORSO</p> <p>6 Project was approved, did I understand correctly</p> <p>7 that the access was directed only to Connecticut</p> <p>8 Avenue because of a binding element that the</p> <p>9 council adopted to prohibit access to the two</p> <p>10 residential streets?</p> <p>11 A Yes.</p> <p>12 Q And is Connecticut Avenue a major</p> <p>13 vehicular transportation corridor?</p> <p>14 A Yes.</p> <p>15 Q And is New Hampshire also a major</p> <p>16 vehicular transportation corridor?</p> <p>17 A Yes.</p> <p>18 MS. ROSENFELD: Indulgence, one moment</p> <p>19 please.</p> <p>20 HEARING EXAMINER SOKONI: Sorry?</p> <p>21 MS. ROSENFELD: Your indulgence. One</p> <p>22 moment, please.</p> <p>23 HEARING EXAMINER SOKONI: No problem.</p> <p>24 Q You testified earlier that -- and</p> <p>25 turning now to the Master Plans. I believe you</p>

<p>297</p> <p>1 testified earlier that there's case law that 2 interprets the impact of an amendment to the 3 General Plan and how it relates to other Master 4 Plans are; do you recall that -- 5 A Yes. 6 Q -- testimony? Do you happen to have the 7 name of that case? 8 A So I referred to the submission that the 9 Applicant made. Did not reference the specific, 10 but looking back now, it's Exhibit 65 where we 11 entered into the record this statement that refers 12 to Archers Glen Partners, Inc v. Garner and MNCPPC 13 v. Greater Baden-Aquasco Citizens Association. 14 Q Okay. And are you generally familiar 15 with the process by which Master Plans are 16 adopted? 17 A I am. 18 Q Okay. And can you -- once the Planning 19 Board makes a -- prepares a draft Master Plan and 20 transmits that to the district counsel, can you 21 explain the process from that point forward? 22 A So there's a hearing, then there are 23 numerous council committee meetings, and then it's 24 sent as a draft. Lots of changes are made, lots 25 of testimonies that revisions are done, edited</p>	<p>299</p> <p>1 Q Okay. Would you read them into the 2 record please? 3 A (Reading): 4 General Plan -- 1969 General Plan on 5 wedges and corridors for physical development 6 of Washington -- oh, sorry -- Maryland, 7 Washington Regional District in Montgomery 8 County, as amended; 93 General Plan, 9 Refinement Of The Goals and Objectives for 10 Purple Line Functional Plan, as amended; 11 2011 Housing Element to the General Plan, as 12 amended; 2013 Countywide Transit Corridors, 13 Functional Plan, Master Plan, as amended; the 14 2018 Master Plan of Highways and Transit 15 ways, as amended; 2018 Energized Public 16 Spaces Functional Master Plan, as amended; 17 and the 2018 Master Plan, as amended. 18 Q Okay. And do you happen to also have 19 the Master Plan of Highways with you today? 20 A I don't. 21 Q Okay. Do you happen to know if the 22 resolution adopting the Master Plan of Highways 23 specifically references not only the General Plan 24 and some of the Functional Plans, but very 25 specific Master Plans, including the 1997 White</p>
<p>298</p> <p>1 transcripts of the, or drafts of the Master Plan 2 are done with all the brackets and whatnot until 3 it becomes -- and then it goes up for a vote and 4 then gets a -- that's the approval and then 5 adoption, goes back to the Planning Board. I 6 think that's the rough outline. 7 Q Mm-hmm. Okay. And then the Planning 8 Board does the final adoption; is that correct? 9 A The Planning Board adopts. 10 Q Okay. And I believe you have -- did I 11 see that you had the Thrive? 12 One moment, please. 13 Yes, you have the Thrive Plan. 14 A Yep. 15 Q And do you have the Council Resolution 16 approving the Thrive Plan? 17 A Yeah, I think it's one of the 18 appendices, right? 19 Q It should be. 20 A Yep. 21 Q Okay. All right. In Paragraph 2 of the 22 Thrive Plan, does it specify which plans are 23 amended as a result of the adoption of Thrive? 24 A So there is a list of plans in 25 Paragraph 2.</p>	<p>300</p> <p>1 Oak Plan? 2 A I don't have that list. 3 Q Okay. Do you have any reason to think 4 that the council is not specific in its resolution 5 as to which plans are and are not being amended 6 when it adopts a Master Plan amendment? 7 A A Master Plan amendment or the General 8 Plan amendment or Functional Plan amendment? 9 Q Any of them. 10 A So what's the question? Sorry. 11 Q Do you think the district council is 12 deliberate in its list of which plans are being 13 amended, Master Plan, General Plan, Sector Plan, 14 when it identifies those plans in its adopting 15 resolution? 16 A Sorry I'm taking my time, just thinking 17 that through. 18 Q Sorry what? 19 A Because I'm not sure that -- well, at 20 least in terms of what I've understood, the 21 Planning Board and the Planning Staff, whose 22 direction we generally follow, Thrive has become 23 the overarching guiding document without regard to 24 this list of specific plans. 25 And they have made us at least analyze</p>

<p>301</p> <p>1 each submission that we have made under Thrive, 2 even though it's not listed here. So I would 3 follow Staff and the Planning Board's guidance on 4 that and say it was not deliberate that those area 5 plans were left out.</p> <p>6 Q Okay. So what I understand is your 7 interpretation of Thrive is based on policy 8 guidance from the Planning Board and perhaps other 9 people at Planning Staff as it affects -- as it 10 relates to other Master Plans and not the specific 11 language of the council resolution.</p> <p>12 Is that a fair assessment, fair 13 characterization?</p> <p>14 A Policy guidance -- policy that's been 15 established by the Planning Board and Staff in the 16 plans that I've submitted and had reviewed and had 17 commented on, the approval resolutions that I've 18 received, and also legal counsel on how these 19 things are done because I am not that -- I'm 20 wearing a couple hats today, but not the lawyer's.</p> <p>21 Q Okay. All right. Well, thank you. You 22 used several terms in your testimony about Thrive, 23 one was complete communities.</p> <p>24 Do you have a definition for complete 25 communities?</p>	<p>303</p> <p>1 don't know that it is broad. It's not the term 2 that I would have used.</p> <p>3 Q No? Okay. The next sentence says, 4 (reading):</p> <p>5 The specific mix of uses, amenities, 6 parks, public facilities, and building types 7 and complete communities vary depending on 8 factors such as the size and location of the 9 neighborhood or community, proximity to 10 transit, variation features such as 11 topography and environmental resources and 12 other factors unique to the history and 13 context of each place.</p> <p>14 Is that correct?</p> <p>15 A That's the quote.</p> <p>16 Q Okay. So complete communities don't get 17 plopped down anywhere, correct? They need to be 18 tailored to the specific location where they're 19 being proposed?</p> <p>20 A Well, it's not that the complete 21 community gets dropped down anywhere, it's that 22 the communities should be complete based on 23 various factors, including their context and 24 history.</p> <p>25 Q Okay. And does this site have proximity</p>
<p>302</p> <p>1 A I think I tried to quote something that 2 defined it in the General Plan that I can pull up 3 again. So what I had used is my working 4 definition in the testimony was per Page 85, 5 Places that include the range -- or sorry, do you 6 -- did you want just yes or no or?</p> <p>7 Q No. You can go ahead --</p> <p>8 A Okay.</p> <p>9 Q -- and read it please.</p> <p>10 A (Reading):</p> <p>11 Places that include the range of land 12 uses, infrastructure, services, and amenities 13 allow them to meet a wide range of needs for 14 a variety of people and include housing...</p> <p>15 -- And there's an ellipsis in there --</p> <p>16 ...Housing suitable for different 17 household types, income levels, and 18 preferences, helping to support racial and 19 socioeconomic integration, Page 85.</p> <p>20 Q Okay.</p> <p>21 A Oh.</p> <p>22 Q That's a pretty broad description, 23 wouldn't you agree?</p> <p>24 A I don't know. A broad description? I 25 think it's holistic in thinking of a place. I</p>	<p>304</p> <p>1 to transit?</p> <p>2 A It has proximity to transit existing and 3 importantly, more importantly I think, proposed.</p> <p>4 Q And the proposed transit that you have 5 in mind?</p> <p>6 A Is the BRT system.</p> <p>7 Q Okay. And what is the time frame for 8 the BRT?</p> <p>9 A It's not exactly known.</p> <p>10 Q Okay. Are we talking years, decades?</p> <p>11 A No way to know.</p> <p>12 Q Okay. And is that the only --</p> <p>13 A For me to know.</p> <p>14 Q -- transit that you have in mind when 15 you say proximity to transit?</p> <p>16 A You can take the M44 or the M42 to the 17 intersection. I'm trying to remember which one 18 runs which way. But there are two bus lines now 19 that run to the intersection of Randolph and New 20 Hampshire.</p> <p>21 Q Do they run past this site?</p> <p>22 A They do not.</p> <p>23 Q Okay. All right. You also had a 24 discussion about the 2017 White Oak Science 25 Gateway Plan.</p>

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<p>305</p> <p>1 A Yes.</p> <p>2 Q And I believe your testimony was that</p> <p>3 that plan did not make any changes to the 1997</p> <p>4 White Oak Plan; is that correct?</p> <p>5 A It changed everything within its</p> <p>6 boundary. It did not change elements that are</p> <p>7 outside of the boundary with respect to this</p> <p>8 property in particular.</p> <p>9 Q And I think you also testified that some</p> <p>10 of these smaller Master Plans were designed to</p> <p>11 allow the county to focus redevelopment or change</p> <p>12 land use goals within targeted areas where change</p> <p>13 was desired; is that correct?</p> <p>14 A To address emerging issues on a quicker</p> <p>15 time frame in certain areas.</p> <p>16 Q And what were the emerging issues at the</p> <p>17 White Oak Science Gateway Plan?</p> <p>18 A Oh, I mean in particular, work around</p> <p>19 the government facilities and increasing mix of</p> <p>20 uses were some key elements. But I have not done</p> <p>21 a plan within that boundary, an application within</p> <p>22 that boundary to analyze it fully.</p> <p>23 Q Do you know if there was a focus on</p> <p>24 adding housing within that plan?</p> <p>25 MS. ROGERS: We would object to the --</p>	<p>307</p> <p>1 Are we okay to have a marathon?</p> <p>2 Okay. Thank you. Just checking in and</p> <p>3 making sure you're okay.</p> <p>4 MS. ROSENFELD: One moment, please,</p> <p>5 while I just go through my notes one --</p> <p>6 HEARING EXAMINER SOKONI: Sure.</p> <p>7 MS. ROSENFELD: -- more time, I believe.</p> <p>8 HEARING EXAMINER SOKONI: No problem.</p> <p>9 MS. ROSENFELD: If I'm not done, I'm</p> <p>10 almost done.</p> <p>11 HEARING EXAMINER SOKONI: And,</p> <p>12 Ms. Rogers, while Ms. Rosenfeld checks -- while</p> <p>13 she regroups, do you have any -- you have</p> <p>14 additional witnesses for your case in chief,</p> <p>15 right?</p> <p>16 MS. ROGERS: (No audible reply.)</p> <p>17 MS. ROSENFELD: Ms. Hearing Examiner, I</p> <p>18 have no further questions for this witness.</p> <p>19 HEARING EXAMINER SOKONI: Thank you.</p> <p>20 MS. ROSENFELD: Thank you.</p> <p>21 HEARING EXAMINER SOKONI: I assume you</p> <p>22 have redirect, just guessing.</p> <p>23 MS. ROGERS: We do, yeah.</p> <p>24 THE WITNESS: I thought I was -- thought</p> <p>25 I could wait.</p>
<p>306</p> <p>1 what Mr. Sloan testified to is that that was not</p> <p>2 applicable here. He's not -- like, that's not</p> <p>3 applicable and he doesn't analyze it in connection</p> <p>4 with this property because his testimony was that</p> <p>5 it didn't apply.</p> <p>6 MS. ROSENFELD: Well, and I think he was</p> <p>7 also testifying that these limited plans are done</p> <p>8 for specific reasons, so I think it's fair to</p> <p>9 explore whether or not he knows why it was</p> <p>10 adopted.</p> <p>11 MS. ROGERS: Why?</p> <p>12 MS. ROSENFELD: Or what it achieved.</p> <p>13 MS. ROGERS: I think Mr. Sloan just your</p> <p>14 previous question, that he has not thoroughly</p> <p>15 analyzed that plan because he hasn't done a</p> <p>16 project within that plan boundary.</p> <p>17 MS. ROSENFELD: Okay. No more questions</p> <p>18 on that topic.</p> <p>19 May I have one moment?</p> <p>20 HEARING EXAMINER SOKONI: Yes, you may.</p> <p>21 MS. ROSENFELD: Just to --</p> <p>22 HEARING EXAMINER SOKONI: And while you</p> <p>23 have that one moment, I just want to check in with</p> <p>24 the court reporter because someone alerted me that</p> <p>25 you usually are only scheduled till four.</p>	<p>308</p> <p>1 MS. ROGERS: You thought you were done.</p> <p>2 REDIRECT EXAMINATION</p> <p>3 BY MS. ROGERS:</p> <p>4 Q Mr. Sloan, I wanted to go back to the --</p> <p>5 your testimony regarding the existing bike lane on</p> <p>6 New Hampshire Avenue. And your -- is your</p> <p>7 testimony that you provided earlier that the bike</p> <p>8 lane goes down to at least the intersection of</p> <p>9 Randolph and Midland, that signalized access point</p> <p>10 to the grocery store?</p> <p>11 A Correct.</p> <p>12 Q So I don't know if the hearing examiner</p> <p>13 wants me to put the exhibit back up, but.</p> <p>14 HEARING EXAMINER SOKONI: Yes, please.</p> <p>15 MS. ROGERS: If we go down? How about</p> <p>16 we try ten slides down and keep going, sorry.</p> <p>17 Right there. Thank you very much.</p> <p>18 Q So, Mr. Sloan, Mr. Nusbaum had asked you</p> <p>19 about what that sign said in the photo, and you</p> <p>20 said it says, Bike Lane Ends. But in your</p> <p>21 observation, you commented that the bike lane</p> <p>22 continued past. But does that spot -- where even</p> <p>23 if the bike lane ended there, gets you to the</p> <p>24 access to the commercial shopping center?</p> <p>25 A That's right. There's a sidewalk on the</p>

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<p>309</p> <p>1 lower-right side that you can see, and you can 2 take that to the -- 3 Q So in -- 4 A -- shopping center. 5 Q -- in your professional opinion and 6 evaluation of this, is there a bicycle lane 7 existing today that takes you to a commercial 8 shopping center within the requisite distance of 9 the prerequisite? 10 A There is. 11 Q And your testimony regarding the 12 shared-use path, is that relevant to the existing 13 condition? 14 A It's not. It's an upgrade to the 15 existing condition. 16 Q Thank you. Touching on the recreation 17 analysis again, I wanted to reiterate for the 18 record based on your professional opinion, do 19 either of the parks when considered on their own 20 substantially exceed the 30 percent recreation 21 guidelines demand points required by the 22 prerequisite? 23 A Either park on its own exceeds the 24 demand required by the prerequisite of 30 percent, 25 that's correct.</p>	<p>311</p> <p>1 in the PowerPoint please? Almost there. Stop on 2 that. Thank you. 3 So this was the slide where we just -- 4 it's labeled, Compatible Massing Along Notley in 5 the Applicant's PowerPoint presentation. I wanted 6 to clarify a few things here. The dimensions 7 shown on the plan represent the conceptual layout 8 the Applicant has presented with this floating 9 zone plan, correct? 10 A Correct. 11 Q And if you were to do sticks of town 12 homes that were a hundred feet wide, would there 13 be fewer overall kind of building masses along 14 Notley Road? 15 A Yes. In combining any of these, you 16 would simply just -- you'd push them together and 17 you'd have more open space between the unit sticks 18 that are longer. 19 Q And the binding element as it's worded 20 in exhibit -- I'll just take Exhibit 56, but it's 21 also on the revised floating zone plan, but that 22 Staff's report. How was a hundred feet measured? 23 A Reading from the Staff report, the 24 binding element says (reading): 25 No assemblage of attached units or a</p>
<p>310</p> <p>1 Q And does the prerequisite for schools 2 require that it be a public or a private school? 3 A It does not. 4 Q Regarding your testimony regarding a 5 third -- could you just elaborate, with the third 6 story terrace, again, you were hypothetically 7 speaking to what the architecture could be at time 8 of site plan, but would that allow a transition of 9 height for those units? 10 A Yes. It's hard for me not to play 11 designer and think about the future. So the unit 12 types that I was referencing are popular now. 13 They have three stories and then the fourth story 14 is terraced back. So it actually decreases the 15 bulk and height of the unit on that side where the 16 terrace is to a three-story unit. 17 Q But to be clear for the record, the 18 final architecture has not yet been designed and 19 will be designed at time of site plan? 20 A That's right. We'll have to submit 21 elevations and footprints at that time. 22 Q And there was some questioning regarding 23 the spacing of the units along Notley Road. 24 If we can go to that exhibit? I think 25 it's in front of this, so up. If we can scroll up</p>	<p>312</p> <p>1 singular building along Notley Road may have 2 a combined width greater than 100 feet 3 measured along the foundation of the group of 4 units or building. 5 Q So is there, for example, with some of 6 these sticks of units and what they're showing as, 7 I guess is there -- my question to you is there's 8 multiple parameters as to how that width can be 9 measured. But it's intending -- is this intending 10 to provide some flexibility for some of those 11 final design elements -- 12 (Speaker noise from Zoom.) 13 MS. ROGERS: -- final design elements. 14 (Speaker noise from Zoom.) 15 HEARING EXAMINER SOKONI: Could we -- 16 could we just mute everybody? 17 UNIDENTIFIED SPEAKER: Sorry. 18 HEARING EXAMINER SOKONI: On Zoom, 19 please make sure muted. Thank you. 20 Q But within the parameters of that 21 binding element, will the final widths and kind of 22 the number of sticks of units along Notley be 23 finalized at time of site plan? 24 A It will be finalized and fine-tuned when 25 we finally get architecture that can't exceed that</p>

<p>313</p> <p>1 100 feet in building length, one end to the other. 2 Q I am sorry, I can't read my writing. 3 HEARING EXAMINER SOKONI: That's okay. 4 MS. ROGERS: Can you? 5 HEARING EXAMINER SOKONI: That's fine. 6 Q I'd like to turn to canopy coverage. 7 Ms. Rosenfeld asked you a question about canopy 8 coverage and we -- 9 Actually, if we can scroll down again. 10 We had a slide in here that we didn't 11 cover in your direct testimony that -- 12 A Yeah. 13 Q -- I think would help provide 14 documentation for the record on her question. 15 There. Right there, Canopy coverage. 16 And we have this as a full-size plan to 17 submit today. If we could also separately number 18 this since it's responding to Ms. Rosenfeld's 19 question. 20 HEARING EXAMINER SOKONI: Any objection? 21 MS. ROSENFELD: No objection. 22 HEARING EXAMINER SOKONI: This will be 23 the canopy coverage exhibit will be entered as 24 Exhibit 78, and I'll call it illustration of 25 canopy coverage.</p>	<p>315</p> <p>1 which would be -- 2 HEARING EXAMINER SOKONI: Are you able 3 to expand this any further? It's hard to -- 4 A Sorry, and my primary concern with the 5 existing canopy is that, as I noted earlier, a lot 6 of these trees are in fair or poor condition. And 7 if we lose them without having to replace them 8 through the regulatory process, the -- it'll be on 9 the HOA to decide whether or not they replace 10 them. 11 And that, you know, why not take care of 12 it now and make something better for the longer 13 term future is why we think we should -- we want 14 to do a complete -- a comprehensive planting plan 15 along with saving the offsite trees, obviously 16 that are not ours. So does that clarify it? 17 Q Yeah. So in terms of the proposed 18 redevelopment, will there be kind of, as you 19 measure it as a professional in terms of at a 20 certain year of growth, will there end up being a 21 substantial amount of canopy coverage within the 22 site? 23 A There will. And just so it's on the 24 record, we have to use the Trees Technical Manual 25 that's published by Park & Planning to determine</p>
<p>314</p> <p>1 (Applicant's Exhibit 78 was marked for 2 identification, admitted into evidence, and 3 retained by the Hearing Examiner.) 4 Q Mr. Sloan, could you just with this 5 exhibit -- 6 HEARING EXAMINER SOKONI: Where is the 7 full-size? 8 MS. ROGERS: Oh. 9 HEARING EXAMINER SOKONI: Okay. Sure. 10 Sorry about that. 11 Thank you. 12 Q Okay. Mr. Sloan, you provided testimony 13 regarding kind of the various open spaces and 14 green areas that will be provided in connection 15 with any redevelopment of this site. 16 Could you also please provide a little 17 bit of detail regarding this canopy coverage 18 exhibit? 19 A Yes, and I want to make sure that what I 20 said is clear and correct that based on our layout 21 of ornamental and shade trees is projected that at 22 20-year canopy calculation, which is what we have 23 to do for common open space, but we have used it 24 more generally that we can replace 90 percent of 25 the existing canopy coverage not of this site,</p>	<p>316</p> <p>1 an eventual 20-year canopy to make our 2 calculations for open space. That's what we used. 3 Q Thank you. A couple quick follow-ups on 4 Master Plan I wanted to clarify. In your 5 professional opinion, is the 1997 White Oak Master 6 Plan still valid, but only to the extent that it 7 doesn't -- it's not inconsistent with Thrive? 8 A That's right. It does have several 9 valid points that I hope I picked up on in my 10 earlier testimony. 11 Q So the fact that the 1997 Plan isn't 12 listed in the preamble to Thrive as being one that 13 was entirely superseded by Thrive is -- in your 14 opinion, is it still valid? 15 A It still is valid. 16 Q And your testimony earlier, which we 17 won't repeat in detail, was getting to the 18 portions -- the specific recommendations of the 19 1997 plan that were inconsistent with Thrive what 20 you tested -- was what your professional opinion 21 is, that those are the ones that are superseded by 22 Thrive? 23 A That's right. 24 Q And just to reiterate, Section 721-E, 25 the finding the district council has to make, is</p>

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<p>317</p> <p>1 that just about the 1999 -- 1997 Plan or also 2 Thrive in other county plans? 3 A It's also the General Plan and the 4 Functional Master Plans. 5 Q You testified that the existing bus lane 6 lines that are within Randolph Road -- that there 7 are existing bus lines within Randolph Road. Are 8 those walkable to this site? 9 A They are. 10 Q And that -- is that based on kind of 11 General Planning principles as to what distance 12 is, you know, considered walkable to transit? 13 A Yes. As I noted, Thrive takes a 14 15-minute walkable community. I prefer a 15 10-minute just because knowing human nature, not 16 everyone will walk as far as I will. 17 Q And is access to transit the only 18 element that's discussed in complete communities, 19 or are there other factors that Thrive looks for 20 in what's appropriate for establishing complete 21 communities? 22 A There's several other factors: 23 services, housing diversity and types, amenities, 24 parks, and open space, for example. 25 MS. ROGERS: Those are all of our</p>	<p>319</p> <p>1 CROSS-EXAMINATION 2 BY MS. WALKER: 3 Q Hey, Mr. Sloan, question for you is, did 4 you measure the distance from the site to the edge 5 of the grocery store, not to the edge of the 6 shopping complex? 7 A We did three measure -- oh, sorry. We 8 did three measurements. We walked from -- we 9 walked to the edge of the property that the 10 grocery store is on, then to the building itself, 11 and then to the grocery store entrance. 12 Q Do you have those three distances? 13 A 1,220 feet to the property, 1,317 feet 14 to the building, 1,720 feet, I think, to the door. 15 Q Are those -- 16 A Those are -- 17 Q Are those distances in the record? 18 A No. 19 Q No? 20 A No, they're not required to meet the 21 prerequisite in my opinion. 22 MS. WALKER: Okay. 23 HEARING EXAMINER SOKONI: Have some 24 redirect on that, or? 25 MR. COREY: Could I ask from where you</p>
<p>318</p> <p>1 questions. Thank you. 2 HEARING EXAMINER SOKONI: Thank you. 3 Cross-examination? 4 MS. WALKER: Is it possible to ask a 5 question? 6 HEARING EXAMINER SOKONI: Do we have -- 7 just one moment. I just want to make sure we -- 8 I'm presuming, I mean, those present are parties 9 of record so, you have some questions for 10 cross-examination? 11 MS. WALKER: I have one question for 12 Mr. Sloan. 13 HEARING EXAMINER SOKONI: Sure. Would 14 you -- are you able to come forward? 15 MS. WALKER: Yep. Yep. My -- 16 HEARING EXAMINER SOKONI: Could you 17 please state your name? 18 MS. WALKER: Yeah, my name is Natalie 19 Walker and I'm a resident in the community. 20 HEARING EXAMINER SOKONI: Your address 21 please? 22 MS. WALKER: 13809 Overton Lane, Silver 23 Spring, Maryland 20904. Okay? 24 HEARING EXAMINER SOKONI: Yep. 25 MS. WALKER: All right.</p>	<p>320</p> <p>1 measured? 2 HEARING EXAMINER SOKONI: You may. Do 3 you mind coming forward and stating your name, 4 please? 5 MR. COREY: Yes, Patrick Corey, 41 Shaw 6 20904. 7 HEARING EXAMINER SOKONI: Thank you. 8 CROSS-EXAMINATION 9 BY MR. COREY: 10 Q You can measure it from the closest 11 edge, or you can measure it from the middle. You 12 can measure it from the furthest point. 13 Where did you measure it from? 14 A From the sidewalk at the northwest 15 corner of Notley and New Hampshire. 16 Q So the closest one? 17 UNIDENTIFIED SPEAKER: Southeast. 18 A Northeast. 19 UNIDENTIFIED SPEAKER: Southeast. 20 A Southeast. 21 MR. COREY: Thank you so much. 22 MS. ROGERS: Mr. Sloan testified to the 23 quadrant of the intersection. 24 HEARING EXAMINER SOKONI: Thank you. 25 MS. ROGERS: I will ask one follow-up</p>

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<p>321</p> <p>1 question to that.</p> <p>2 FURTHER REDIRECT EXAMINATION</p> <p>3 BY MS. ROGERS:</p> <p>4 Q So, Mr. Sloan, does the prerequisite</p> <p>5 dictate where you need to measure? Or does it</p> <p>6 measure from some portion along the property</p> <p>7 frontage to the commercial service containing the</p> <p>8 grocery store?</p> <p>9 A We have always used these prerequisite</p> <p>10 to measure from site to site.</p> <p>11 MS. ROGERS: Thank you.</p> <p>12 HEARING EXAMINER SOKONI: Doing a check</p> <p>13 with folks on Zoom, was there anyone on Zoom who</p> <p>14 had questions for Mr. Sloan?</p> <p>15 Hearing none, I know you have two more</p> <p>16 witnesses. My hope -- even though the court</p> <p>17 reporter assures me that he's doing okay, my hope</p> <p>18 is to not keep everyone here beyond 5:00 p.m.</p> <p>19 A 5:15?</p> <p>20 HEARING EXAMINER SOKONI: Oh.</p> <p>21 A In lawyer time?</p> <p>22 HEARING EXAMINER SOKONI: What's the</p> <p>23 hope? What's the --</p> <p>24 MS. ROGERS: We won't be able to get</p> <p>25 through our two additional witnesses --</p>	<p>323</p> <p>1 my concerns is we may -- I know we had already</p> <p>2 identified December 2nd as a subsequent day.</p> <p>3 Is it looking like we would need more</p> <p>4 than -- at this rate --</p> <p>5 MS. GIRAD: That's exactly what I just</p> <p>6 whispered to her.</p> <p>7 HEARING EXAMINER SOKONI: At this</p> <p>8 rate --</p> <p>9 MS. GIRAD: I think at this rate we</p> <p>10 definitely should set in a third date so that we</p> <p>11 don't lose it. And also we would request -- I</p> <p>12 know we had said about the Community going first</p> <p>13 on the 2nd, but perhaps they could go -- I think</p> <p>14 we would at least like to get through our next two</p> <p>15 experts. So maybe we could set like after lunch</p> <p>16 on the 2nd for the Community.</p> <p>17 HEARING EXAMINER SOKONI: You know, my</p> <p>18 concern about that is we announced it this morning</p> <p>19 -- and I know I did; I put a caveat there. I</p> <p>20 am -- I would be concerned; people are taking time</p> <p>21 off from work. And so people who show up on</p> <p>22 the -- on the 2nd on the understanding that they</p> <p>23 are being first.</p> <p>24 MS. ROGERS: I think we're thinking is</p> <p>25 we could at lunch, it would also align with when</p>
<p>322</p> <p>1 HEARING EXAMINER SOKONI: You will not?</p> <p>2 MS. ROGERS: -- in that amount of time.</p> <p>3 HEARING EXAMINER SOKONI: And so</p> <p>4 would -- I suppose we should have defined what a</p> <p>5 like, you know, what's a marathon hearing. Were</p> <p>6 you hoping to complete all your witnesses today?</p> <p>7 MS. ROGERS: We were hoping to get</p> <p>8 beyond that today. Mr. Sloan's testimony has</p> <p>9 taken longer than we had with all the cross</p> <p>10 anticipated that it would take, so I think --</p> <p>11 HEARING EXAMINER SOKONI: I mean --</p> <p>12 MS. ROGERS: I understand what time it</p> <p>13 is. We're --</p> <p>14 HEARING EXAMINER SOKONI: Yes, I agree.</p> <p>15 MS. ROGERS: -- fine breaking and</p> <p>16 needing to -- if we need to take our witnesses at</p> <p>17 the beginning of --</p> <p>18 HEARING EXAMINER SOKONI: Yes.</p> <p>19 MS. ROGERS: -- the next hearing.</p> <p>20 HEARING EXAMINER SOKONI: Yes. I am</p> <p>21 actually concerned about -- I'm not sure I should</p> <p>22 keep people's -- Staff -- long, you know, beyond a</p> <p>23 certain number of hours. I'm fine to stay on, but</p> <p>24 I'm a little bit concerned about stretching things</p> <p>25 beyond 5:00 p.m. And in that case, my -- one of</p>	<p>324</p> <p>1 people could potentially take lunch breaks. That</p> <p>2 give us a chance to get through our other two</p> <p>3 remaining witnesses.</p> <p>4 HEARING EXAMINER SOKONI: Any objections</p> <p>5 to that? Moving the Community testimony from</p> <p>6 first thing in the morning to lunchtime?</p> <p>7 MS. ROSENFELD: Yeah. There were --</p> <p>8 there were quite a few people who were online this</p> <p>9 morning who I think have an expectation that they</p> <p>10 can start at the beginning of the next hearing.</p> <p>11 I'm just concerned that if we flip that now that</p> <p>12 they may not be able to appear and testify.</p> <p>13 MS. GIRAD: I mean, perhaps, you know --</p> <p>14 and I know they're all -- they're coordinated</p> <p>15 enough to wear the same shirt, so hopefully word</p> <p>16 could get out, and people could let us know if</p> <p>17 there's people who have particular problems.</p> <p>18 Our concern is that we have, I mean,</p> <p>19 maybe not so much on the technical, but definitely</p> <p>20 on traffic. Based on what we're hearing at the</p> <p>21 Planning Board, we know that we're going to get</p> <p>22 quite a bit of testimony on that, and we really</p> <p>23 would prefer to have our expert address that</p> <p>24 before we hear opposition.</p> <p>25 HEARING EXAMINER SOKONI: That's fair.</p>

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<p>325</p> <p>1 So I think I -- here's the thing. I mean, today 2 was scheduled for a full-day hearing and I was 3 trying to accommodate people as much as possible, 4 but I think it's reasonable to expect that, you 5 know, you reassess where you are at the end of the 6 day. 7 Let's plan on having Community testimony 8 start at lunch, like after the lunch break on 9 December 2nd. That should allow, because you 10 usually actually don't have Community testimony 11 until -- the case in chief has to run. Wherever 12 you land by lunchtime on December 2nd, whether 13 you're finished or not, we're going to 14 accommodate -- 15 MS. GIRAD: Yep. 16 HEARING EXAMINER SOKONI: -- community 17 testimony. 18 MS. ROSENFELD: That's fair. 19 MS. GIRAD: That's fair. 20 MS. ROSENBERG: Because then at least we 21 know we can present, you know, what we definitely 22 want to get done before the Community speaks. 23 We'll strategize to -- 24 HEARING EXAMINER SOKONI: Sure. 25 MS. ROSENFELD: -- make sure we get</p>	<p>327</p> <p>1 HEARING EXAMINER SOKONI: I know you're 2 ready to go. And I'm sorry, I just -- and maybe 3 this is something to be addressed by a different 4 witness. So I just want to be clear, you know, we 5 have the -- so we have the various binding 6 elements, right? 7 You have the one that has a max of 130 8 dwelling units. Then you have one that says, you 9 know, no stick will be more -- this is the E, you 10 know, the fifth one. No stick will be more than a 11 hundred feet. And consistently, one of the -- and 12 I'm not getting ahead of the Community testimony, 13 but of course we have all these letters in the 14 record, and consistently I keep hearing like, this 15 is too much. This is too much for this place. 16 So you also have a binding element in 17 here which says the use of the property is limited 18 to residential with the following building types: 19 townhouse, triplex, duplex, and detached house, 20 but there's no number on how many is which. You 21 know, so for instance, even if you had the max of 22 130 units, if you're dealing with 130 units, big 23 difference if it's a, you know, triplex versus 24 townhouse. 25 So is there -- is that something you</p>
<p>326</p> <p>1 through as much as we can on that. 2 HEARING EXAMINER SOKONI: Sure. Okay. 3 MS. ROGERS: And, Ms. Hearing Examiner, 4 for people who cannot accommodate that time, we 5 would ask that if we do set in a third day that 6 they be allowed to testify first thing in the 7 morning. I would hope that we, the opposition, is 8 in presenting our case by then certainly. 9 HEARING EXAMINER SOKONI: Yeah. 10 MS. ROSENFELD: And we would make 11 accommodations in our time to allow that. 12 HEARING EXAMINER SOKONI: Sure. Okay. 13 MS. ROSENFELD: Okay. Thank you. 14 HEARING EXAMINER SOKONI: So and I need 15 to check with Staff. I know that we -- when I 16 collected the dates -- let's see. We'll announce 17 the subsequent date on December 2nd. And I 18 suppose, depending on how we are doing that day, I 19 think just think ahead to whatever you had 20 indicated was your, you know, your availability 21 that week. Let's try and keep calendars open 22 because I think we're going to need a third day. 23 You know, Mr. Sloan, before I let you 24 go, just for the -- sorry, I know you were -- 25 A Ready to go.</p>	<p>328</p> <p>1 could just opine on or help us understand without 2 limiting -- it can be any of these, right? It can 3 be duplex, triplex, townhouse, detached, but we 4 don't really know the exact number of which ones 5 could change when you get to site plan; is that 6 correct? 7 A That is -- that is correct. And I'm not 8 sure how to answer the question though. 9 MS. ROGERS: Can I ask a follow up 10 question? 11 HEARING EXAMINER SOKONI: Sure. 12 FURTHER REDIRECT EXAMINATION 13 BY MS. ROGERS: 14 Q So, Mr. Sloan, you know, part of the 15 testimony at the Planning Board regarding the 16 flexibility of uses, does that permit design 17 flexibility to accommodate some of these other 18 concerns we have heard in terms of wanting to 19 maximize the open space and preserve trees, and 20 give you flexibility to then accommodate different 21 unit sizes within these typologies to balance 22 those different objectives at site plan 23 A It does. The different unit -- the unit 24 typologies allow you to do a couple things. One, 25 you can set a transition horizontally, say from</p>

<p>329</p> <p>1 the west to east to New Hampshire Avenue. The 2 ability to do things like triplexes, which are -- 3 allow you to actually shrink a building footprint 4 and still accommodate the same number of parking. 5 So that flexibility helps ensure that we are going 6 to meet the goals of increasing open space and 7 saving perimeter trees. I don't know how to put 8 numbers on those.</p> <p>9 HEARING EXAMINER SOKONI: And, you know, 10 so maybe I should phrase this differently. Is 11 there a reason why the Applicant could not commit 12 to numbers now in terms of how many units you have 13 of this, this, and this?</p> <p>14 A Percentage?</p> <p>15 Q And I mean, my question purely comes -- 16 I mean, sometimes an applicant will say, I am 17 doing 120 townhouses.</p> <p>18 A Yeah.</p> <p>19 Q And you know upfront what you're dealing 20 with. But then we -- this could change. Does 21 that --</p> <p>22 A It's partly tied into transportation, 23 isn't it? Or we have tested it the most --</p> <p>24 MS. ROGERS: Katie --</p> <p>25 A Okay.</p>	<p>331</p> <p>1 just give a quick summary on the Forest 2 Conservation Plan that was --</p> <p>3 A Sure.</p> <p>4 HEARING EXAMINER SOKONI: -- before the 5 Planning Board?</p> <p>6 A So the -- so the Forest Conservation 7 Plan is done in two steps. A preliminary Forest 8 Conservation Plan that has to be submitted with 9 the first application, regardless of what type it 10 is. That was submitted and heard by the Planning 11 Board. A final Forest Conservation Plan will come 12 later, if we get to site plan.</p> <p>13 The preliminary Forest Conservation Plan 14 does two things. One, it establishes the amount 15 of, in this case, afforestation that is required. 16 So when a site does not have any forest on it a 17 calculation is made based on the requested zoning 18 and the size of the property to determine how much 19 new forest has to be planted on the site, on 20 another site, or a fee in lieu paid.</p> <p>21 That number is established, but it may 22 change a final Forest Conservation Plan because 23 it's tied directly to our limits of disturbance. 24 And we have -- we have limits of disturbance 25 beyond our property, for example, utility tie-ins.</p>
<p>330</p> <p>1 MS. ROGERS: Katie will testify to that. 2 I know you're trying to be helpful. You know, I 3 don't think because we're at the rezoning stage, 4 the Applicant has considered that yet. But 5 hearing the Hearing Examiner's question can be 6 something the Applicant, you know, takes as a 7 question that to be addressed with future 8 testimony.</p> <p>9 HEARING EXAMINER SOKONI: Sure. Okay. 10 I would have -- that would be helpful to just 11 understand.</p> <p>12 MS. ROGERS: Yeah.</p> <p>13 HEARING EXAMINER SOKONI: I know you had 14 some testimony on the canopy and thank you so much 15 for the -- for the large drawing. Do you have 16 a -- is a different witness going to speak to the 17 Forest Conservation Plan? There was a Forest 18 Conservation Plan. Can I ask a question now or is 19 there a different witness who -- okay.</p> <p>20 MS. ROGERS: Mr. Sloan is --</p> <p>21 A No, it's me.</p> <p>22 MS. ROGERS: -- is the most appropriate 23 witness for that.</p> <p>24 HEARING EXAMINER SOKONI: Okay. 25 Perfect. Thank you. Could you just -- could you</p>	<p>332</p> <p>1 So it establishes the initial number for 2 afforestation, and it also establishes the 3 approximate limits of disturbance and number of 4 specimen trees that might require a variance.</p> <p>5 We submitted the variance. Staff and 6 the Planning Board said we need more to determine 7 whether or not a variance can be approved on this 8 site. And we don't feel comfortable doing it 9 until you have a site plan with a detailed grading 10 plan, detailed infrastructure. No point in making 11 this finding now. We'll wait.</p> <p>12 And so that's where we are in the 13 process and I think the afforestation requirement 14 was -- it's on the plan. I don't want to try to 15 remember it.</p> <p>16 HEARING EXAMINER SOKONI: All right. 17 Thank you.</p> <p>18 (Witness excused.)</p> <p>19 HEARING EXAMINER SOKONI: I believe -- 20 anything to be addressed before I close the 21 hearing?</p> <p>22 Okay. Well, we had -- I think we did 23 have the marathon today, so thank you so much for 24 your patience and, so we'll reconvene 9:30 a.m. on 25 December 2nd.</p>

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<p>333</p> <p>1 Thank you very much. The hearing is 2 closed. 3 (Off the record at 4:55 p.m.) 4 /// 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>335</p> <p>1 CERTIFICATE OF TRANSCRIBER 2 I, Deborah S. Anderson, do hereby certify 3 that the foregoing pages, to the best of my 4 ability, are a true and correct transcription from 5 the official electronic sound recording and 6 annotations of the proceeding take on November 6, 7 2025, in the above-entitled matter; and that I am 8 neither counsel for, related to, nor employed by 9 any of the parties to this case and have no 10 interest, financial or otherwise, in its outcome. 11 12 13 <i>Deborah Anderson</i> 14 _____ 15 Deborah S. Anderson, CET-998 16 November 17, 2025 17 18 19 20 21 22 23 24 25</p>
<p>334</p> <p>1 CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC 2 I, Jamie Ogihara, the officer 3 before whom the foregoing deposition was taken, do 4 hereby certify that said proceedings were 5 electronically recorded by me; that the foregoing 6 transcript, to the best of my ability, knowledge 7 and belief, is a true and accurate record of the 8 proceedings; and that I am neither counsel for, 9 related to, nor employed by any of the parties to 10 this case and have no interest, financial or 11 otherwise, in its outcome. 12 13 <i>Jamie Ogihara</i> 14 _____ 15 Jamie Ogihara, Notary Public 16 for the State of Maryland 17 18 19 20 21 22 23 24 25</p>	

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210:24	129:19, 197:23,	50:2, 162:11,	278:10
a-c-e	233:11, 275:17,	246:10	act
29:18	279:4	accommodate	82:15, 82:21
a-l-a-m	abutting	43:8, 43:25,	actions
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a-l-i-s-o-n	17:14, 17:18,	242:19, 247:4,	activation
15:24	18:1, 18:4,	325:3, 325:14,	250:12
a-n-d-e-r-s-o-n	28:20, 91:22,	326:4, 328:17,	active
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