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VIA ELECTRONIC DELIVERY

Ms. Khandikile Sokoni, Esq.
Office of Zoning and Administrative Hearings
100 Maryland Avenue, Suite 200
Rockville, Maryland 20850

Re: Objections to Opponents' Testimony Related to Transportation
Glenmont Forest Remand - LMA No. H-149 (the "Application")

Hearing Examiner Sokoni,

On behalf of Glenmont Forest Investors, LP (the "Applicant"), we are submitting this pre-hearing objection to certain information submitted by Michele Rosenfeld, Esq., on behalf of Glen Way Gardens Condominium, Inc., Vicki Vergagni, and James E. Johnston (collectively, the "Opponents"). Specifically, the Applicant objects to the information submitted and any testimony planned to be offered at the hearing by Opponents regarding pedestrian traffic, including but not limited to walkability to the Metro and pedestrian activity on Greenery Lane (along with any associated concerns related thereto).

Judge Kevin Hessler's Order (Case No. C-15-CV-24-005724) issued in connection with this Application (Exhibit No. 71) expressly limited the issues on remand to (1) school adequacy and (2) compatibility with the surrounding neighborhood, particularly with respect to the larger community to the north of the Property (*i.e.* the Glen Way Gardens Condominium). The Judge found that "...there is substantial evidence to the -- about traffic concerns the -- to the point that I cannot conclude there is an arbitrary and capricious action on behalf of either the examiner or the council with regard to that issue." (Transcript at page 60, lines 3-8) (*See Attachment A* for excerpts of the Court Transcript, Exhibit 72). In making this determination, the Judge was responding to, in part, the "assertion that the council did not consider the pedestrian concerns raised relating to the pedestrian traffic and the shortcut to the Glenmont Metro Station." (Transcript at page 57, lines 4-7). The Judge disagreed. The Judge was clear that the issues "...regarding whether the transportation facilities are inadequate with respect to pedestrian, bicycle and transit facilities, and that the vehicular transportation system is unsafe, and whether the public safety and welfare will be eroded by the project, and the pedestrian concerns raised relating to the **pedestrian traffic and the shortcuts to the Glenmont Metro Station**" were "...preserved and may be addressed by the petitioners at other stages of the process, including the **preliminary**

plan stage.” (Emphasis Added) (Transcript, page 71, lines 20-25, carried over to page 72, lines 1-5). However, these issues were not included in the Judge’s limited remand. Therefore, the Opponent’s information submitted regarding the walkability to Metro (Exhibits 86.a.II-V, VII), walking paths to Metro (Exhibit 86.1.VI), bus routes (Exhibit 86.a.XIV), and Pedestrian Level of Comfort (Exhibits 86.a.II-V and XVI) are not appropriate considerations before the Hearing Examiner this Remand.

In sum, we object to any transportation related testimony in this case and request that the Hearing Examiner issue a ruling making the limits of Opponents testimony clear. Thank you in advance for your consideration.

Sincerely,


Elizabeth C. Rogers


Steven A. Robins

Attachment A

<p>57</p> <p>1 And there's also an additional general 2 assertion that the public safety and welfare will be 3 eroded by the project. And there is a more specific 4 assertion that the council did not consider the 5 pedestrian concerns raised relating to the 6 pedestrian traffic and the shortcut to the Glenmont 7 Metro Station. 8 The general claims were not directly and 9 expressly raised in the argument before the council, 10 although the more specific concern about pedestrian 11 traffic and the shortcuts to Metro Station was 12 raised by Petitioner Ver- -- Ver- -- Vergagni. 13 The record reflects that there were 14 comments made about it during the hearing, and 15 correspondence was submitted to the examiner 16 outlining in some detail the concerns about the 17 anticipated problems related to both vehicle and 18 foot traffic, and the adequacy of measures to 19 address them. 20 Respondents argue that there was sufficient 21 evidence in the record to support the council's 22 finding regarding transportation adequacy. They 23 mentioned that there were multiple expert witnesses 24 who testified before the hearing examiner, including 25 a traffic engineer, and that the examiner had the</p>	<p>59</p> <p>1 memo is accurate -- are accurate, and the concerns 2 and points outlined, for example, in the letter to 3 the examiner submitted by Mr. Robbins [ph] on behalf 4 of the board of directors of Glen Wayes Gardens 5 Condominium Association are valid, which it appears 6 they might be, then the petitioners may well be able 7 to make their case about transportation inadequacy 8 at the preliminary plan stage. 9 The Court notes that, in their memo in 10 support of their contention, that there is evidence 11 in the record that the transportation facilities are 12 inadequate with respect to the pedestrian, bi- -- 13 bicycle, and transportation facilities, and 14 vehicular transportation system is unsafe. 15 The petitioners assert in support of that 16 that applicant's traffic expert Ann Randall [ph] 17 submitted a local area transportation review, LATR 18 study, that identified multiple unmitigated 19 deficiencies in sidewalk conditions, pedestrian 20 safety, and bicycle stress levels. 21 And in particular, they found that the 22 project lies within a, quote, high injury network, 23 close quote, with 531 crashes in the recent five 24 year period. The examina- -- the examiner, they 25 contend, made no findings that the deficiencies were</p>
<p>58</p> <p>1 benefit of the expert's reports that were submitted. 2 This is true. And because of that, it's 3 difficult to find that there was an absence of 4 substantial evidence to support the currently 5 expressed general concerns about transportation 6 adequacy. 7 The Court reviewed the testimony of the 8 applicant's traffic expert and is unable to agree 9 with the petitioners that there is insufficient 10 evidence to support the council's finding about 11 traffic adequacy, even though the petitioners and 12 the participants in the examiner hearing raised many 13 good points and arguments that are worthy of further 14 consideration. 15 The Court also takes note of the fact that 16 its ruling -- in its ruling about the sufficiency of 17 the evidence before the examiner and the council to 18 support the general transportation adequacy for 19 purposes of determining approval of the application 20 does not at all foreclose the ability of the 21 petitioners to raise issues about transportation 22 adequacy during the preliminary plan stage, which 23 comes after the council's approval of the local map 24 amendment application. 25 And if the assertions made in petitioners'</p>	<p>60</p> <p>1 mitigated or acceptable under the applicable 2 regulation. 3 However, I think there is substantial 4 evidence to the -- about traffic concerns the -- to 5 the point that I cannot conclude there is an 6 arbitrary and capricious action on behalf of either 7 the examiner or the council with regard to that 8 issue. So, those conditions that the petitioners 9 raised continue to be viable and can be addressed at 10 other stages of the process. 11 The petitioners claim, just for the sake of 12 completeness, I'll address this argument, that the 13 hearing examiner and planning board improperly 14 deferred mitigation measures to the preliminary 15 phase plan, and they argue that that deferral was 16 legally impermissible because the statute mandated 17 present findings. They cite the Maryland Reclamation 18 versus Harford County case, 342, Maryland 476. 19 Unless I missed something, I did not see 20 that that case supported that contention and it 21 appears that the traffic issues may be further 22 addressed at the preliminary plan phase. So, my 23 conclusion on this issue is that for purposes of the 24 application phase, which is what's before me, cannot 25 be said that there was no substantial evidence in</p>

<p style="text-align: right;">69</p> <p>1 compatibility with respect to the larger community 2 to the north of the property, i.e. the community 3 where the petitioners live, and who offered direct 4 testimony in connection with the compatibility 5 issues. 6 Any finding of compatibility with the 7 surrounding area, specifically the area to the north 8 where the petitioners live, is not supported by 9 substantial evidence. So, the Court will vacate the 10 county's resolution. 11 That would be resolution number 20-616, 12 which approved the application of Glenmont Forest 13 Investors, LP, seeking to rezone certain land 14 located at the southeast quadrant of the 15 intersection of Randolph Road and Georgia Avenue, 16 Silver Spring, Maryland, more specifically approving 17 map amendment H149. 18 The Court will remand the matter to the 19 council with instructions that the matter be 20 returned to the examiner for further proceedings to 21 further consider the issues of school adequacy and 22 compatibility with the surrounding neighborhood, 23 specifically the community to the north of the 24 proposed development. 25 Further proceedings consistent with this</p>	<p style="text-align: right;">71</p> <p>1 examiner to the council with respect to 2 compatibility with the larger community to the north 3 of the property. 4 And so that the council will have an 5 adequate record upon which to make re- -- any 6 required determination about this issue in 7 connection with its consideration of the 8 respondents' application. 9 At the further proceedings to be conducted 10 by the examiner, the examiner will make reasonable 11 accommodations for -- for the opportunities for 12 participants, permitted participants, to cross- 13 examine any experts called in those proceedings. 14 Which, and I hasten to add, the examiner in the 15 exercise of sound discretion and consistent with the 16 discretion to regulate the proceedings may deem 17 appropriate. 18 As far as the issue of adequacy of 19 transportation facilities, that is the concerns of 20 the petitioners regarding whether the transportation 21 fili- -- facilities are inadequate with respect to 22 pedestrian, bicycle, and transit facilities, and 23 that the vehicular transportation system is unsafe, 24 and whether the public safety and welfare will be 25 eroded by the project, and the pedestrian concerns</p>
<p style="text-align: right;">70</p> <p>1 Court's decision shall be conducted on remand. Those 2 proceedings shall include further consideration and 3 findings with regard to the issue of school adequacy 4 and compatibility with the community to the -- the 5 community to the north of the affected area. 6 With respect to the school adequacy, the 7 examiner is to permit further testimony and evidence 8 by the parties and other permitted participants 9 regarding that issue so that an adequate factual 10 basis can be developed to support recommendations 11 made by the examiner to the council consistent with 12 the evidence presented. 13 And so that the council will have an 14 adequate record upon which to make any required 15 determination about the issue in connection with its 16 consideration of the respondents' application and 17 the required public interest factor. 18 With respect to compatibility with the 19 surrounding neighborhood, the matter is also 20 remanded so that if they wish, further testimony and 21 evidence can be submitted regarding this issue by 22 the respondent, the petitioners, and any member of 23 the public withstanding, so that the -- or permitted 24 participant, so that an adequate factual basis can 25 be developed to support recommendations made by the</p>	<p style="text-align: right;">72</p> <p>1 raised relating to the pedestrian traffic and the 2 shortcuts to the Glenmont Metro Station. 3 Those issues are preserved and may be 4 addressed by the petitioners at other stages of the 5 process, including the preliminary plan stage. That 6 concludes my ruling, unless you have questions. 7 Okay. Thank you. 8 Interesting issue. Well-briefed, well- 9 presented. I want to commend the lawyers on that. 10 Okay. We'll stay in recess. 11 BAILIFF: All rise. 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>