



Transcript of Hearing - Day 4

Date: March 16, 2026

Case: Notley Assemblage, LLC (H-159)

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<p style="text-align: center;">1</p> <p>1 BEFORE THE HEARING EXAMINER</p> <p>2 FOR MONTGOMERY COUNTY, MARYLAND</p> <p>3 Office of Zoning and Administrative Hearings</p> <p>4 100 Maryland Avenue, Suite 200</p> <p>5 Rockville, Maryland 20850</p> <p>6</p> <p>7 IN THE MATTER OF:)</p> <p>8 NOTLEY ASSEMBLAGE LLC,)</p> <p>9 Applicant.) Zoning Application No. H-159</p> <p>10 -----)</p> <p>11</p> <p>12</p> <p>13 HEARING - DAY 4</p> <p>14 Rockville, Maryland</p> <p>15 Monday, March 16, 2026</p> <p>16 9:31 a.m.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21 Job No.: 623511</p> <p>22 Pages: 1 - 140</p> <p>23 Transcribed by: Darby Talbott</p> <p>24</p> <p>25</p>	<p style="text-align: center;">3</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>1 ON BEHALF OF THE APPLICANT:</p> <p>2</p> <p>3 ELIZABETH C. ROGERS, ESQUIRE</p> <p>4 ERIN E. GIRARD, ESQUIRE</p> <p>5 LERCH, EARLY & BREWER</p> <p>6 7600 Wisconsin Avenue, Suite 700</p> <p>7 Bethesda, Maryland 20814</p> <p>8 (301) 841-3845</p> <p>9 ON BEHALF OF KYLE SMIDDIE and GREATER COLESVILLE</p> <p>10 CITIZENS ASSOCIATION:</p> <p>11 MICHELE M. ROSENFELD, ESQUIRE</p> <p>12 THE LAW OFFICE OF MICHELE ROSENFELD LLC</p> <p>13 1 Research Court, Suite 450</p> <p>14 Rockville, Maryland 20850</p> <p>15 (301) 204-0913</p> <p>16 JONY ALEXANDER GUISAO-OSPINA</p> <p>17 MONTGOMERY COUNTY OFFICE OF ZONING AND</p> <p>18 ADMINISTRATIVE HEARINGS</p> <p>19 100 Maryland Avenue</p> <p>20 County Office Building, Room 200</p> <p>21 Rockville, Maryland 20850</p> <p>22 (240) 777-6660</p> <p>23</p> <p>24</p> <p>25</p>																																														
<p style="text-align: center;">2</p> <p>1 Hearing, before HEARING EXAMINER KHANDIKILE</p> <p>2 MVUNGA SOKONI, held at the offices of:</p> <p>3</p> <p>4</p> <p>5 OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS</p> <p>6 100 Maryland Avenue</p> <p>7 Suite 200</p> <p>8 Rockville, Maryland 20850</p> <p>9 (240) 777-7900</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14 Pursuant to Agreement, before Marcellous Grant,</p> <p>15 Notary Public in and for the State of Maryland.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: center;">4</p> <p style="text-align: center;">C O N T E N T S</p> <p>1</p> <p>2</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 80%;">3 SPEAKERS</td> <td style="width: 20%; text-align: right;">PAGE</td> </tr> <tr> <td>4</td> <td></td> </tr> <tr> <td>5 Heidi Otradovec</td> <td style="text-align: right;">13</td> </tr> <tr> <td>6 James Touhey</td> <td style="text-align: right;">17</td> </tr> <tr> <td>7 David Dunmire</td> <td style="text-align: right;">63</td> </tr> <tr> <td>8 Clay Nuquist</td> <td style="text-align: right;">70</td> </tr> <tr> <td>9 Joshua Sloan</td> <td style="text-align: right;">95</td> </tr> <tr> <td>10 Dung Phan</td> <td style="text-align: right;">95</td> </tr> <tr> <td>11 Katie Wagner</td> <td style="text-align: right;">113</td> </tr> <tr> <td>12</td> <td></td> </tr> <tr> <td>13</td> <td></td> </tr> <tr> <td>14</td> <td></td> </tr> <tr> <td>15</td> <td></td> </tr> <tr> <td>16</td> <td></td> </tr> <tr> <td>17</td> <td></td> </tr> <tr> <td>18</td> <td></td> </tr> <tr> <td>19</td> <td></td> </tr> <tr> <td>20</td> <td></td> </tr> <tr> <td>21</td> <td></td> </tr> <tr> <td>22</td> <td></td> </tr> <tr> <td>23</td> <td></td> </tr> <tr> <td>24</td> <td></td> </tr> <tr> <td>25</td> <td></td> </tr> </table>	3 SPEAKERS	PAGE	4		5 Heidi Otradovec	13	6 James Touhey	17	7 David Dunmire	63	8 Clay Nuquist	70	9 Joshua Sloan	95	10 Dung Phan	95	11 Katie Wagner	113	12		13		14		15		16		17		18		19		20		21		22		23		24		25	
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<p style="text-align: right;">5</p> <p>1 PROCEEDINGS 2 HEARING EXAMINER SOKONI: Good 3 morning, everybody. Convening for Day 4 of 4 hearings in this matter. And the weather seems to 5 have plagued us. So I just -- I sent out a hasty 6 email this morning. I've been watching the 7 weather since yesterday. I know the school 8 district has announced an early closing for today. 9 So just as a preliminary matter, I was 10 going to throw it out there, we take safety very 11 seriously, so based on the school early closing, 12 I'm going to take the position that we should also 13 end early. 14 But I'm hoping people have brought 15 calendars so we can -- let's plow through as much 16 as we can, and at some point we'll take a break 17 and open our calendars and then get dates for the 18 next hearings. 19 So this is Local Map Amendment 20 Case No. H-159 reconvening for the fourth day of 21 hearings. 22 I would like to draw everyone's 23 attention to an email that I had shared. I'm 24 getting some glare, but if you could kindly pull 25 up Exhibit -- kindly pull up Exhibit 110.</p>	<p style="text-align: right;">7</p> <p>1 And so I just want to make sure people 2 understand that; that if the hearing examiner is 3 not letting you into this group email, I'm not 4 being unnecessarily harsh, you can become a party 5 of record by testifying or by sending in a written 6 request that is signed. And then you are given 7 permission to be a part of the -- to be one of the 8 parties of record. 9 The other thing I do want to reiterate 10 is I hope people understand the Planning 11 process -- there was a whole process of Planning. 12 That is independent of the OZAH process. And I 13 just want people to be clear. If you wanted to be 14 a party of record in the OZAH hearing, it's a 15 whole separate process, and you would testify here 16 at OZAH. 17 So I do get the sense some people may 18 be mixed up about I testified there and so I 19 thought I was a party of record. And I just want 20 to be clear, that is not -- that's a whole 21 separate process. Planning serves in an advisory 22 role. The board sends a report to OZAH for us to 23 consider. 24 And in this process, I just want to 25 reiterate, the final decision is actually made by</p>
<p style="text-align: right;">6</p> <p>1 EQUIPMENT TECH: Is it 110? 2 HEARING EXAMINER SOKONI: 110, yes. 3 EQUIPMENT TECH: Is it A, B, C? 4 HEARING EXAMINER SOKONI: Let's go to 5 110C. 6 EQUIPMENT TECH: One second here. All 7 right. 8 HEARING EXAMINER SOKONI: Okay. So I 9 will outline the process for proceeding today. A 10 couple of just public service announcements. 11 Firstly, I just want to remind everyone, 12 especially people participating on Zoom, if you 13 did not provide -- I'll back up a little bit. 14 You become a party of record 15 automatically by testifying at one of these 16 hearings. You could also become a party of record 17 by submitting a written request to become a party 18 of record. That should be signed, and that 19 requires specific permission. 20 I do want to just mention the emails 21 we have going on, that's not a neighborhood 22 listserv. I get requests to be added, you know, 23 can I be added? And I just want to mention to 24 people, as a legal matter, that is going to 25 parties of record and attorneys.</p>	<p style="text-align: right;">8</p> <p>1 the District Council. So the hearing examiner 2 writes a report and recommendation to the District 3 Council, and they will make the final vote. So 4 there'll be a process there as well. 5 Back to the proceeding at hand. I 6 just want to draw attention to the process we had 7 outlined, and I'd like to stick to that. I do 8 also -- I should mention, I sent a hasty email 9 this morning. My advice is if you have a to-do 10 list and you take care of something on your to-do 11 list, maybe cross it off. 12 So very early this morning, I said, 13 oh, I need to respond to Mr. Clay Nuquist, and 14 realized after I sent the email about the weather 15 and I threw in the Clay Nuquist email, and I 16 realized, no, I already responded to him on 17 March 6th. 18 So better to respond to him twice than 19 not at all. But if you're confused about that 20 second part of this morning's email, that's what 21 that was. 22 All right. So let's jump right in. I 23 do have a question for counsel. We have a whole 24 lot of exhibits. I think we ended last time 25 having not officially admitted. At every</p>

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<p style="text-align: right;">9</p> <p>1 proceeding, we have an exhibit list. There's 2 copies at counsels' table. There should be copies 3 at the entrance. 4 And so I will say that, when we met 5 last time on January 15, the exhibit list ended at 6 95. And as of today, we're at Exhibit 100 and -- 7 it's a cumulative list. As of today, we have -- 8 we're up to 112. 9 So some of these exhibits, at least 10 the ones -- I do know that, when we met on the 11 15th, the list had been updated through 95. But 12 at that hearing we did not officially admit the 13 new exhibits into the record. 14 So we could do sort of an omnibus, add 15 it all in, or if you want to go piecemeal and do 16 it as you go, that's also an option. 17 Are there any preferences? 18 MS. ROGERS: (Inaudible) just clarify 19 where we left off with the last hearing? You said 20 95? 21 HEARING EXAMINER SOKONI: So the 22 exhibit list you had on January 15 ended at 23 Exhibit 95. However, not all of those exhibits 24 were officially entered into the record. We tend 25 to enter them into the record at each hearing, and</p>	<p style="text-align: right;">11</p> <p>1 MS. ROSENFELD: Yeah, to 2 cross-examine, correct. 3 HEARING EXAMINER SOKONI: So what I 4 would say is, maybe in the interest of efficiency, 5 how about we proceed with the public -- we at 6 least have a few members of the public who need to 7 get their testimony in. 8 And before the conclusion of today, I 9 think I would like us to enter all exhibits into 10 the record or have a discussion of any objections. 11 All right. Okay. So back, I think, 12 Exhibit 110C, again, we're starting with Heidi -- 13 could I have a sound check on Zoom? 14 Can you hear us, and can you see us? 15 Okay, I see a thumbs up. Thank you. 16 Okay. Heidi, last name spelled 17 O-T-R-A-D-O-V-E-C. 18 UNIDENTIFIED SPEAKER: She's here in 19 person. 20 HEARING EXAMINER SOKONI: Okay, thank 21 you. 22 UNIDENTIFIED SPEAKER: I don't see 23 that one on Zoom. 24 HEARING EXAMINER SOKONI: Yes. If you 25 could please -- please take a -- you may -- you</p>
<p style="text-align: right;">10</p> <p>1 so we could work back and see. 2 The list ended at 95. But I noted on 3 the transcript, I think at page 298 -- I looked 4 back to see whether we had officially entered them 5 into the record, and I saw a statement where I 6 said we did not get to entering all the exhibits 7 today, but we can defer that as a preliminary 8 matter at the next hearing. 9 So, for sure, Exhibits 96 to 112 10 definitely have not been entered into the record 11 officially. And it also appears to me that 95, 12 going back -- I'd have to go back and look where. 13 It's wherever we ended at Hearing No. 2. So 14 anything between Hearing 2 and Hearing 3, those 15 also did not get entered into the record. 16 MS. ROSENFELD: The only one I think I 17 had objected to was No. 82, and that was subject 18 to cross-examination, which may happen today or 19 may happen at the next hearing. 20 I don't have objections to any of the 21 other exhibits through 95. It will take a moment 22 to look at the others. 23 HEARING EXAMINER SOKONI: And am I 24 recalling correctly that you did not object to its 25 inclusion, but you requested to cross-examine?</p>	<p style="text-align: right;">12</p> <p>1 may sit at the table. And before you start to 2 testify, just press the -- you know how the 3 microphone has a red/green? You press that, it 4 goes green, and you may proceed. 5 MS. OTRADOVEC: Thank you. 6 Do I need to be sworn in or something? 7 HEARING EXAMINER SOKONI: Yes, if you 8 may raise your right hand. 9 Please confirm that the testimony that 10 you will provide today is the truth, the whole 11 truth, and nothing but the truth. 12 MS. OTRADOVEC: I do. 13 HEARING EXAMINER SOKONI: Thank you. 14 MS. OTRADOVEC: Thank you so much for 15 giving me the opportunity. I know it rescheduled 16 a few times. My name is Heidi Otradovec. I'm 17 here to express my strong opposition to this 18 proposed development on behalf of my family. 19 My family lives at 13746 Notley Road, 20 directly across from the Colesville Manor Park. 21 We moved here four years ago, after more than a 22 year of searching for the right home, one that 23 offered open spaces and a sense of being in the 24 country while still close to the conveniences that 25 we enjoy.</p>

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<p>13</p> <p>1 What follows are the ways that this 2 development would directly and personally affect 3 our home and our family. 4 Two years into living here, we 5 discovered a serious water drainage problem. 6 During rainstorms, our basement and backyard 7 flooded with intrusive water. It flows down 8 Notley Road into our driveway toward the front of 9 our home and along both sides of the house. 10 It also flows downhill through the 11 neighboring yards directly into our backyard. 12 During heavy rain, the effect is like streams on 13 either side of my home and a swamp in the 14 backyard. Last year, we spent thousands of 15 dollars to have our foundation excavated and 16 waterproofed. 17 The interior flooding has stopped, but 18 the exterior flooding continues. We are deeply 19 concerned about how replacing nine acres of green 20 space northeast of our home with concrete and 21 pavement will further direct water toward our 22 property. 23 I have the lived experience of 24 navigating Notley Road every day. During peak 25 hours and sometimes on weekends, we often wait</p>	<p>15</p> <p>1 and sometimes well above the speed limit, and 2 drivers are often inattentive. 3 During the January snowstorm, as we 4 were shoveling our driveway, I had to jump out of 5 the way several times because cars came very close 6 to the edge of the road, the shoulder. And adding 7 more cars will be a lot more dangerous for all of 8 us. 9 During our first April there, we came 10 home to find cars parked in our front lawn, 11 crowding our driveway entrance and exit, filling 12 the Colesville Manor parking lot and lining both 13 sides of Notley Road for the Cambodian festival. 14 Pedestrians walked along the roadside where there 15 are no sidewalks, creating both safety hazards and 16 significant traffic backups on the already narrow 17 road. 18 This happens a few times a year with 19 different various annual festivals in the area. 20 There's simply not enough space to accommodate the 21 guest parking for occupants of these 130 units 22 without that overflow spilling into our 23 neighborhood. 24 The festival falls on April 19th this 25 year, and I respectfully invite you to drive</p>
<p>14</p> <p>1 several minutes to pull out of our own driveway. 2 As a resident of the neighborhood, I never choose 3 to turn east on Notley knowing the amount of 4 traffic I would encounter. Travel to Bethesda for 5 work, and taking Notley west to Sherwood Forest is 6 far more direct. 7 As others have noted, a new traffic 8 light at Notley and New Hampshire will not resolve 9 the bottleneck. It will simply add another 10 stopping point where commuters back up onto the 11 already narrow road. Coming home in the evenings, 12 I likewise avoid Randolph to New Hampshire and 13 instead take Sherwood Forest home. 14 Adding 300 or more cars to the 15 equation, in my opinion, my lived experience, will 16 unquestionably increase delays and congestion. 17 I'm not a traffic engineer. I've not conducted a 18 formal study. But I live here. 19 I live there, and I experience this 20 road every single day. Our neighborhood roads are 21 not equipped to absorb the volume of additional 22 traffic. 23 Safety on Notley Road is already a 24 genuine concern. Checking the mail or putting out 25 garbage cans feels very hazardous. Cars move fast</p>	<p>16</p> <p>1 through and see the conditions for yourself. 2 Finally, I want to speak about what 3 this development would mean for the character of 4 our neighborhood. 5 When I step outside my door, I see 6 open space and mature trees. The thought of 7 looking out instead and seeing a 50-foot building 8 and feeling the claustrophobia that would come 9 with it is distressing. We are real people living 10 real lives here. We raise our children, we enjoy 11 our open-space properties, and we work hard to 12 afford our homes. 13 Whatever's decided, we will remain 14 here to live with the outcome. The developers 15 will profit and move on, and we remain. I invite 16 you to come to our community, sit on my front 17 porch for a while and witness life on Notley Road 18 and then imagine it with the development that's 19 added and the lived experience that we're all 20 trying to convey. 21 I respectfully and adamantly urge you 22 to not approve or recommend the zoning change that 23 would allow this development to proceed. 24 Thank you. 25 HEARING EXAMINER SOKONI: Any</p>

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<p>17</p> <p>1 cross-examination? 2 MS. ROGERS: No. 3 HEARING EXAMINER SOKONI: Any? 4 MS. ROSENFELD: No. Thank you. 5 HEARING EXAMINER SOKONI: Thank you 6 very much. 7 I have Mr. Touhey going next. 8 Mr. Touhey, I'd like to thank you once 9 again for very kindly allowing others to go ahead 10 of you because we had more flexibility. So thank 11 you very much. 12 MR. TOUHEY: My pleasure, ma'am. 13 I think I'd like to -- 14 HEARING EXAMINER SOKONI: If you will 15 kindly raise your right hand and promise that 16 you -- everything you testify to will be the 17 truth, the whole truth, and nothing but the truth. 18 MR. TOUHEY: I do. 19 HEARING EXAMINER SOKONI: Thank you. 20 MR. TOUHEY: I think I'd like to start 21 out by exhibits, and I am responsible for 22 submitting a number of exhibits, and I want to 23 make sure that the ones that I've referred to 24 either in my written statements or in my testimony 25 today make it into the record.</p>	<p>19</p> <p>1 So I'd move for the admission of 2 Exhibit 85, which includes the written statement 3 and also the tabs attached to it. 4 With regard to Exhibit 90, which I 5 believe is the next set of exhibits, I would feel 6 comfortable -- I believe I refer to 90G, 90H, and 7 so I would move to the admission of 90G and 90H. 8 HEARING EXAMINER SOKONI: Are you 9 waiving admission -- you submitted -- we put them 10 under the caption of Exhibit 90, but there was A, 11 B, C, D, E, F, G, H, I, and J. 12 MR. TOUHEY: Yeah. A through F and I 13 and J, I do not believe I am going to refer to in 14 my oral testimony, and I don't refer to those 15 exhibits, so far as I can recall, in my written 16 submissions. 17 So I would be -- I'd be happy to 18 withdraw those. So all that would go in would be 19 90G, as in Gregory, and 90H, as in Harold. 20 HEARING EXAMINER SOKONI: Any 21 objections to those exhibits? 22 Exhibit 85, which is a December 2nd, 23 2025, submission by James G. Touhey, and 24 Exhibits 90G and 90H are admitted into the record. 25 MR. TOUHEY: Then Exhibit 91 is email</p>
<p>18</p> <p>1 And so based upon -- 2 HEARING EXAMINER SOKONI: We can 3 certainly do that. And I just wanted to mention a 4 member of staff slipped me one of the older lists. 5 So at the last -- we last convened on 6 January 15th. And on January 15, the list went up 7 to 95. The hearing prior to that, we went up to 8 Exhibit 84. 9 And so I would like to believe, and I 10 can confirm this by looking at the transcript, I 11 believe we had everything admitted through 12 Exhibit 84. 13 So I think what's in question now is 14 85 through the present has not officially been 15 admitted. And everything between 85 and 95 were 16 up on the record on January 15; we just did not 17 officially enter them into the record. 18 So I -- yes, I agree, Mr. Touhey, you 19 could at least address your exhibits. Could you 20 identify them on the list and -- 21 MR. TOUHEY: Yes. Beginning at 85, 22 that is the original submission that I submitted 23 on the 2nd and I requested it be admitted. It's 24 going to be primarily from that written statement 25 that I deliver my oral testimony today.</p>	<p>20</p> <p>1 exchange between the two of us. 2 My recollection is it was regarding 3 the technical possibility of having a video and 4 audio recording of the DRC meeting admitted. So 5 if you don't want that in the record, I don't see 6 any reason for it to be in the record. 7 92, however, is the video and audio 8 recording. Although I don't refer to them in my 9 oral testimony or in my written submissions, I 10 would request that that be admitted if for no 11 other reason than to indicate that Ms. Lindsey was 12 identified as the lead reviewer for the 13 preliminary forest conservation plan. 14 HEARING EXAMINER SOKONI: Are there 15 any objections to Exhibits 91 and 92? 16 Without objection, Exhibits 91 and 92 17 are admitted. 18 MR. TOUHEY: Now, I see here 19 Exhibit 94, which is a letter and slides that 20 Mr. Deboeck, he actually testified, and I thought 21 those were admitted at the last hearing. And if 22 not, I'd move for their admission. I will refer 23 and do refer to those in my testimony. 24 HEARING EXAMINER SOKONI: They were 25 available. We did not officially admit them. And</p>

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<p>21</p> <p>1 so unless there's an objection -- any objections? 2 MS. ROGERS: No. 3 MS. ROSENFELD: No objection. 4 HEARING EXAMINER SOKONI: Exhibit 94, 5 which is a letter to the hearing examiner from 6 Mr. -- from Toni F. Deboeck, that's admitted. 7 MR. TOUHEY: Okay. Moving down to 8 Exhibit 97, which is a collective exhibit. One is 9 the Montgomery County Planning brochure about 10 development review process and applicants -- for 11 applicants and neighbors. And B is Montgomery 12 County Planning staff's report issued in the 13 matter of the Corso Chevy Chase case. I refer to 14 those in my written submissions, and I would 15 request that they be admitted. 16 HEARING EXAMINER SOKONI: Any 17 objections? 18 MS. ROGERS: No. 19 MS. ROSENFELD: No. 20 HEARING EXAMINER SOKONI: Exhibit 97, 21 A and B, are admitted. 22 MR. TOUHEY: There was a reference to 23 me in the Planning department's memorandum 24 responding to your email about the misnumbering of 25 the LMA and indication that they had not received</p>	<p>23</p> <p>1 supplemental written submission that I sent on 2 February 27th, 2026. And as I indicated in the 3 email colloquy, what I plan to do there is pretty 4 much confine my oral testimony today to my 5 original written submission and then let that 6 written -- supplemental written submission, which 7 is kind of a legal brief, primarily, kind of stand 8 on its own. 9 I may touch on a couple points very 10 briefly in my oral testimony today. So I would 11 request that 112 also be admitted. 12 HEARING EXAMINER SOKONI: And that 13 exhibit, 112, is admitted. 14 MR. TOUHEY: Thank you. All right. 15 And with that, if I could turn to my testimony. 16 Can I proceed? 17 HEARING EXAMINER SOKONI: You may 18 proceed. I just want to clarify. Exhibit 112 is 19 a supplemental written submission. 20 MR. TOUHEY: Yes, ma'am. 21 HEARING EXAMINER SOKONI: Are you -- 22 are you simply -- 23 MR. TOUHEY: It's not -- not -- 24 HEARING EXAMINER SOKONI: -- adding 25 to, or is it -- is it -- are you saying it stands</p>
<p>22</p> <p>1 an email from me requesting to be made a party of 2 record. 3 And in response to that, Ms. Rosenfeld 4 submitted a copy of the -- a CC of the email that 5 I had sent to Mr. -- to the Planning department, 6 but also copying Mr. Smiddie as proof that, in 7 fact, the email was sent. And I did plan to 8 address that very briefly today in my oral 9 testimony. 10 HEARING EXAMINER SOKONI: Is that 11 Exhibit 107? 12 MR. TOUHEY: 107. 13 HEARING EXAMINER SOKONI: Exhibit 107 14 is admitted. 15 MR. TOUHEY: I believe the next set of 16 exhibits that I am responsible for submitting are 17 Exhibits 111, A through E, and I refer to those in 18 my supplemental written submission. So I would 19 request that they be admitted. 20 HEARING EXAMINER SOKONI: Any 21 objections? 22 MS. ROGERS: No. 23 HEARING EXAMINER SOKONI: Those are 24 admitted. 25 MR. TOUHEY: And finally, the</p>	<p>24</p> <p>1 alone? 2 MR. TOUHEY: It stands alone, and it 3 supplements the original written submission that I 4 made. So it doesn't replace it, it supplements 5 it. 6 HEARING EXAMINER SOKONI: Sounds good. 7 Thank you. 8 MR. TOUHEY: Yes, ma'am. 9 HEARING EXAMINER SOKONI: You may 10 proceed. 11 MR. TOUHEY: Okay. Thank you. 12 I think where I left off last time 13 when I interrupted my testimony was discussing the 14 email that I had sent back on August 9th, 2025, to 15 Mr. Leftwich and also to Ms. Amy Lindsey of the 16 Planning staff requesting to be made a party of 17 record in the -- before the Planning Board's 18 proceeding. 19 And thereafter, after I testified or 20 finished, interrupted my testimony, another 21 witness testified that, in fact, the information 22 about the wrong H-59 designation for the LMA had 23 come from the Planning department and that had 24 been disseminated to members of the public, and 25 that's sort of how that all happened.</p>

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<p>25</p> <p>1 I wanted to make a couple things 2 clear, is that I had not shared with anybody, any 3 witnesses, any attorneys, what I had noodled out 4 at the last hearing, which was the reason why my 5 email referenced H-59 as opposed to H-159, was as 6 a result of the wrong information that had been 7 disseminated to the public. 8 And so I just wanted to make clear to 9 you that I wasn't trying to orchestrate some 10 response on the part of the community. It's just 11 what I had figured out was the reason why my email 12 referenced H-59. 13 The second thing was that after the 14 Planning department -- excuse me -- responded to 15 your inquiry, I saw the reference in there that -- 16 to them not receiving my email. And I wanted to 17 reiterate today that I, in fact, sent that email 18 to the Planning department. I can't account for 19 why they didn't receive it. 20 I did note, however, that their 21 memorandum was initialed by Mr. Leftwich and two 22 other individuals, but didn't include Ms. Lindsey. 23 I don't know how they searched for my email. I 24 don't know whether they asked Ms. Lindsey whether 25 she'd received the copy. And so I don't know why</p>	<p>27</p> <p>1 regard to the email snafu that had occurred. 2 Next, I want to turn to the harm to my 3 property as a result of this proposed 4 redevelopment. As I think I may have mentioned 5 before, I live on approximately three acres of 6 land that's located at 13905 Overton Lane. I live 7 there with my wife. We've lived there for almost 8 30 years, 29 years, and we're in our 30th year. 9 It's located approximately a quarter 10 mile away from the subject property as the crow 11 flies. And it's approximately 100 feet lower in 12 elevation from the highest point on the subject 13 property. 14 I believe the highest point on the 15 subject property is 465 feet. And the lowest 16 point on my property, which is basically the 17 streambed, is 355 feet. So it's about 100 feet 18 difference. And it's basically -- 19 HEARING EXAMINER SOKONI: I believe 20 you had an image of your property. 21 MR. TOUHEY: I did, I did. And, in 22 fact -- let's see. It would be Exhibit 85, and 23 Tab A, I believe, is the tab that had the image of 24 my property. 25 And it's basically a pipe stem or a</p>
<p>26</p> <p>1 they didn't -- at least Mr. Leftwich didn't get my 2 email. 3 And so my concern and the reason why I 4 raised it at the last hearing remains the same. I 5 don't know how many other people are in the same 6 situation that I found myself in where I had sent 7 an email, and I sent it to Mr. Leftwich and to 8 Ms. Lindsey, and yet I wasn't made a party of 9 record, and as a result of which my opposition to 10 the proposed redevelopment was not noted. I was 11 not made a party of record. 12 I persevered. I don't know how many 13 other people may have not been made parties of 14 record and didn't persevere and continue on with 15 this. 16 And so I still have the same concern. 17 So that's basically what I wanted to say with 18 regard to that. 19 But I did want to assure the hearing 20 examiner that I did send them that email. And the 21 email addresses that I sent them to, I think, are 22 noted on the carbon copy that Mr. Smiddie gave to 23 his attorney. And it is, I believe, 107, if I'm 24 not mistaken, Exhibit 107. 25 Okay. That's all I wanted to say with</p>	<p>28</p> <p>1 flagpole lot. I don't have any frontage. I have 2 a long driveway that connects my lot up to Overton 3 Lane. And what appears to be green on the screen 4 but is -- I believe, if I can get up, I can point 5 it out. 6 This is my house, my lot. 7 HEARING EXAMINER SOKONI: You're 8 point -- 9 MR. TOUHEY: This is Overton Lane. 10 HEARING EXAMINER SOKONI: You're 11 pointing to the red -- or red or orange -- 12 MR. TOUHEY: Yes. This red 13 rectangular object is the house. The yellow 14 polygon, the top, the narrow strip that runs up to 15 Overton Lane. And then that yellow octagon is the 16 extent of my lot. 17 And then there's a irregular line that 18 goes across the property from right to left. It's 19 in blue. And that's the path of the stream. And 20 it flows from right to left. So it flows in this 21 direction. 22 HEARING EXAMINER SOKONI: Can we 23 maximize the image? 24 MR. TOUHEY: Now, in relation to the 25 neighborhood -- if we could turn to Tab 85E, as in</p>

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<p style="text-align: right;">29</p> <p>1 Edward. Okay. Can we zoom out a little bit? 2 HEARING EXAMINER SOKONI: I know we 3 have Zoom participants on the top panel, but can 4 we maximize the -- 5 MR. TOUHEY: This is good, right here. 6 Okay. Again, if you look on the left-hand side of 7 this, first, this is a detail of the applicant's 8 surrounding neighborhood plan. And on the 9 left-hand side, this -- again, this polygon that 10 is outlined in yellow is my property. Overton 11 Lane runs where that pipe stem runs up to the 12 road. That's Overton Lane. And then Shannon 13 Drive is about halfway across, runs here. 14 And then in between Overton and 15 Shannon Drive is Leibig Road. And that forms at 16 least part of the western boundary of their 17 surrounding neighborhood delineation. So that's 18 like this. 19 And then it turns toward the northeast 20 and, according to their narrative, follows 21 basically the path of the stream, that tributary, 22 which continues past the boundary and connects 23 with my property about 60 feet after their 24 boundary turns and turns south. 25 So am I making myself relatively</p>	<p style="text-align: right;">31</p> <p>1 standing on my property line to take this picture. 2 And this is the beginning of very bad 3 erosion in the stream. That erosion you're seeing 4 there is not on my property. It's on the adjacent 5 owner's property. But that's where the erosion 6 starts. And I think you'll see why briefly. 7 But in any event, if you can go back 8 to 85E. Right there. Okay. 9 Okay. That picture's taken -- I'm 10 standing right here, and it's looking in that 11 direction. So it's where that stream crosses, 12 right at the point where their surrounding 13 neighborhood boundary stops following the stream 14 and starts following Leibig Road. 15 So that's the point at which that 16 picture's taken. And that point right there is 17 where that culvert is that's depicted in the 18 photograph I was just referring to. 19 Tab down. Now, the next set of 20 photos, Tabs N through S, N as in Nancy through S, 21 we can just briefly run through those. 22 This is taken -- these series of 23 photographs are taken in sequence. The photograph 24 that I just took is further upstream. This is my 25 property now. And this is the stream running</p>
<p style="text-align: right;">30</p> <p>1 clear? 2 HEARING EXAMINER SOKONI: You are. 3 MR. TOUHEY: Okay. So it struck me 4 when I saw this. Why did the surrounding 5 neighborhood not include my property when it's 6 following the stream until it gets to about 60 7 feet from my property, and then it runs down 8 Leibig Road? 9 And it caused me consternation that I 10 wasn't included in the surrounding neighborhood, 11 particularly because of what's happening to my 12 stream as a result of runoff. 13 And I believe the runoff, and I'll 14 describe it, is coming from up here on that 15 subject property and is running that 100 -- 16 running downhill, basically, more than 100 feet. 17 I'd like to turn next to Exhibit 85, 18 Tab M. Okay. Now, and if we can go back and 19 forth to the 85, Tab E, I can point out where this 20 is in relation to that surrounding neighborhood. 21 This, by the way, is taken -- I'm 22 taking this from my property. This is a private 23 road that connects with Leibig Road to a house 24 that is adjacent to my property. And this is the 25 stream just before it reaches my property. I'm</p>	<p style="text-align: right;">32</p> <p>1 through my property. And you can see the erosion 2 that's occurring on the bank of that stream as a 3 result of very heavy flow during heavy storm 4 events. And it is undercutting this bank here. 5 You can go to the next slide. This is 6 further up. You can see it's undercut. 7 Next slide. This is taken -- 8 basically pivoted around from the same spot I took 9 that photo. This is undercutting of that bank. 10 Next slide, please. This is a little 11 further downstream. Again, undercutting that 12 bank. This is probably three foot tall here of 13 undercut. You can see the roots hanging down. 14 I'm talking very severe erosion. 15 Next slide, please. 16 Actually, can we go back to that 17 slide? This is our house in the background. I've 18 got several trees that are being undercut here. 19 That tree's being undercut. I'm going to have to 20 have riprap after I get permission from the 21 Environmental Division to try to save that tree 22 because that tree is in danger of going. 23 And I've lost five or six trees along 24 this stream as a result of the erosion. I've 25 lived there 30 years. I bet I've spent \$40,000</p>

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<p>33</p> <p>1 just to deal with trees as a result of the erosion 2 that's occurring. 3 We can go to the next slide. Now, 4 this is on the other side of my house downstream. 5 And about 10, 12 years ago, because of the severe 6 erosion that was occurring, we had a contractor 7 come in and put some very heavy stone in to 8 protect the house. 9 And so this is some of that stone. So 10 that was another 12,000 to have that work done. 11 We also had to have some drywood work done. So 12 the 12,000 included the drywood work. But in any 13 event, we spent a lot of money. 14 Next slide, please. And this is at 15 the other end of my property as the stream exits 16 my property and goes onto the property of the 17 adjacent neighbor on the other side. 18 And, again, you can see the severe 19 erosion -- my property line ends right about 20 here -- the severe erosion that's occurring and 21 continues to occur on this house. This house is 22 vacant. At some point that house is going to fall 23 down that hill as a result of the erosion that's 24 occurring. That house has been vacant for about 25 eight years or so.</p>	<p>35</p> <p>1 And this is showing how the water 2 enters the crick -- or the creek, rather, that 3 flows through my property. It's running down 4 Leibig Road, a ditch, an asphalted ditch on Leibig 5 Road. 6 Now I'll show this in succeeding 7 photographs. And it runs into the stream right 8 there. This is not on my property. My property's 9 about right here. 10 And this is just kind of moderate 11 flow. This isn't heavy flow. This is just kind 12 of what it does when there's a moderate slope. 13 But it flows and enters there. And 14 you can see that's where the erosion starts. And 15 it continues down toward my property, you know, 16 the photographs I showed just a moment ago. 17 Can we go to Tab B? Okay. I wandered 18 around and stood at the top of that culvert just 19 to show the flow of water that's entering the 20 stream from that culvert. So this is looking in 21 the opposite direction toward my property from 22 that private road. Can we go back and I'll show 23 you where I was standing to take this? 24 I was standing right here looking in 25 this direction to take that photograph. So it's</p>
<p>34</p> <p>1 So, I mean, we're talking a lot of 2 erosion that is occurring in that stream. 3 Now, these photographs were taken, I 4 believe, in November before I was going to testify 5 for the first time and then it's been postponed. 6 So that set of photographs was taken in November. 7 I took more recently a set of 8 photographs. And if we can turn to photographs at 9 111A. Specifically Tab A. Is there a way of 10 rotating this? Keep rotating it. There we go. 11 Okay. This is the same view that was 12 in Tab M, I believe, Exhibit 85. But it's taken 13 in -- let me rotate this. Just a second. Took 14 this on February 20th. So it was after the big 15 snowstorm we had. But it was melting that day, 16 and there was also some precipitation. So I 17 figured it'd be good because it showed how water's 18 flowing. 19 So this is -- corresponds to 20 Exhibit 85, Tab M. Same view, taken from 21 approximately the same spot. I'm standing on my 22 property. It's looking at the culvert. This is 23 Leibig Road. This is the private road that 24 connects Leibig Road to an adjacent neighbor's 25 house.</p>	<p>36</p> <p>1 showing the flow of water down into the stream. 2 Can we go to Tab 2C? Now, Tab 2C is 3 looking up Leibig Road. And I mentioned that 4 there's an asphalted ditch along Leibig Road. You 5 can see the water that's flowing down there. This 6 is where I was standing in the immediately 7 preceding photograph. And this is looking up 8 Leibig Road. 9 You can see the water flowing down 10 that ditch toward my stream. It flows into the 11 stream right here. You can see the splashes. 12 It's cut off from this photograph, but that's 13 where it's entering the stream. 14 Can we go to the next photograph. 15 Walking further up Leibig, this is taken from the 16 same direction as that immediately last 17 photograph. And this is showing where the water 18 flows across Leibig Road into this ditch here. 19 Next photograph, please. And this is 20 where it flows into Leibig Road. If you can go 21 back to 2D. That photograph is taken right up 22 here where the arrow currently is. And the water 23 flows across this fellow's property into Leibig, 24 down Leibig, into the asphalted ditch, down the 25 asphalted ditch, into the stream about 60 feet</p>

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<p>37</p> <p>1 before it enters my property. 2 Can we go to F. This is up on 3 Shannon. And very briefly, if we can go to 4 Exhibit 85E, Tab E. Right here. Okay. The house 5 where the water enters Leibig, if you're flowing 6 across the property, is right here. So the water 7 is coming down this hill, entering Leibig, right 8 here, flowing down Leibig toward the stream and 9 entering the stream here. 10 Okay. Now, the last photograph that 11 we had up on the screen that I'll ask the 12 gentleman to go back to in a second was taken up 13 on Shannon. And it is -- there's a conveyance 14 pipe that runs up under Shannon right here and 15 enters into a riprap storm drainage feature that's 16 right here. 17 If we can go back to that exhibit, 18 which was 2, Tab 2F, 111A, 2F. 19 Okay. See right here there's some 20 riprap. You barely see it. But this conveyance 21 pipe flows under Shannon and is located on a 22 narrow strip of land that the County actually 23 owns. And I'm going to very briefly describe sort 24 of the property that surrounds this in just a 25 moment after I return to my seat.</p>	<p>39</p> <p>1 the page as it goes, sir. 2 MR. TOUHEY: Huh. 3 EQUIPMENT TECH: A single page down. 4 MR. TOUHEY: 94A maybe? Okay. Yeah. 5 All right. This is the exhibit that 6 Mr. Deboeck prepared and depicts the flowage off 7 the subject property, which is this kind of bright 8 yellow-green octagon that's cut off here. And I 9 want to direct your attention to this object here, 10 which are the two rectangles connected by a 11 straight line that crosses Shannon. 12 That's that conveyance pipe that takes 13 all this water that's running off the property, 14 sends it down this way, and ultimately jumps into 15 my stream. I call it my stream because it crosses 16 my property. 17 And I think of the sort of three 18 different paths of water off the subject property 19 that have been described. You got water that's 20 flowing onto adjacent properties to the north and 21 to the west. That's going down into my stream. 22 You got some that's going off into Notley, which 23 the prior witness just described and has caused 24 her a lot of problem. And then there's some that 25 flows into the New Hampshire Avenue right-of-way.</p>
<p>38</p> <p>1 But can we go to the next slide too? 2 This is the other side of Shannon. And this is an 3 inlet. It then flow -- leads to a drainage 4 conveyance pipe that goes under Shannon and 5 exits -- go back to 2F -- exits here but connects 6 to a drainage pipe that takes the water down to 7 this riprap here. And the water then flows across 8 that property. 9 If we can go to Tab 2E, Exhibit 85. 10 So here's the conveyance. Here's the location of 11 the conveyance pipe. It flows out into the riprap 12 drainage culvert that's right here, flows down the 13 hill across these intervening properties, enters 14 Leibig, flows down Leibig, enters the stream here 15 and causes all that erosion that's occurring on 16 the stream. 17 And the erosion doesn't stop at the 18 property boundary. It continues down onto 19 adjacent properties. I'm just the one that's 20 making noise about it. 21 Now, I'd ask that you look 22 at Exhibit 94. And this is Mr. Deboeck's letter 23 to you. Can you go down at least one page? Down. 24 Down. 25 EQUIPMENT TECH: That's as far down</p>	<p>40</p> <p>1 Now, I've got a series of pictures in 2 Exhibit 111A that shows the flow of water that 3 runs into Notley along the Neighborhood Park but 4 originates up on this subject property. And the 5 only point I want to make is that very little 6 water is flowing in the New Hampshire Avenue. 7 Most of the water that's flowing off that subject 8 property is flowing to the north and the west and 9 down Notley to the west. Very little water is 10 flowing into the New Hampshire Avenue 11 right-of-way. 12 And that's for a couple reasons. One 13 is that 70 percent of the subject property is on 14 the Northwest Branch side of the divide. Only 30 15 percent is on the Paint Branch side. And that's 16 indicated in their own NRI. 17 The other point is that there's a 18 steep falloff on this side of the property that 19 just continues going downhill. This end of the 20 property forms a big basin here. It doesn't flow 21 into the New Hampshire Avenue right-of-way. It 22 pools down here and soaks into the ground, which 23 is a good thing. It's a great thing that it's 24 soaking into the ground. 25 A lot of the water that falls on this</p>

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<p style="text-align: right;">41</p> <p>1 side of the property, the Northwest Branch side, 2 also soaks into the ground, which is a great 3 thing. But some of it runs off, and it causes no 4 end of problems to us folks that are on this side 5 of that subject property. 6 You know, sort of the severe flooding 7 that occurs, and I've had some severe flooding. 8 I've had flooding that has completely overflowed 9 my banks and has, on that large diagram of my 10 property, basically covered the entire width of 11 the property. 12 I've had that twice in 30 years, 13 usually following a hurricane. Usually it stays 14 within the banks, but what it does to the banks is 15 severely erode those banks. 16 The people that live adjacent to the 17 subject property have -- or -- or very close to it 18 have enormous flooding problems. 19 Now, if I understand correctly, what 20 the applicant is proposing to do is to solve that 21 problem, the problem for those of us on the north 22 and the west side of the property, by regrading 23 the property, capturing all that water, and 24 sending it over the New Hampshire Avenue side of 25 the property, and then sending it down to a State</p>	<p style="text-align: right;">43</p> <p>1 Well, I meant E. I apologize. 2 EQUIPMENT TECH: No worries, no 3 worries. There we go. 4 MR. TOUHEY: Okay, if you go up just a 5 tad. Right there's fine. 6 This whole neighborhood sort of right 7 here that surrounds their property, it's about 18 8 acres. And what happened was back in about the 9 mid-'60s, the board of schools acquired those 18 10 acres. They were going to put a junior high 11 school on that property. 12 Come about the mid-'70s, demographics 13 had changed, and they didn't need to put a high 14 school there anymore. So they canceled the high 15 school, and they conveyed all that property to the 16 County. So the government, County, owned all 17 this. 18 WSSC wanted to put in a water tower, 19 and they wanted to put the water tower right here. 20 And it led to enormous opposition in the 21 neighborhood, ground-roots objections to it, led 22 by the man I bought my house from, Mr. Bailey 23 [phonetic]. 24 And it was successful. They persuaded 25 the County to persuade WSSC not to put in a water</p>
<p style="text-align: right;">42</p> <p>1 Highway Administration pond that's down the other 2 side of Notley Road, on the other side of New 3 Hampshire Avenue. 4 I don't think that's a tenable 5 solution to the problem, but that appears to be 6 what they are proposing to do. But they're only 7 doing it up to a 10-year-event storm. And what 8 people are calling 10-year-event storms aren't 9 occurring just every 10 years now. They're 10 occurring more frequently, or at least the numbers 11 are getting higher in terms of the rain events 12 that we're getting. 13 And so I'm getting a lot of erosion 14 that their proposed stormwater management plan and 15 their storm drainage plan just won't handle. And 16 so it's going to continue to happen. 17 I'd also kind of like to describe sort 18 of how this neighborhood sort of came to be that 19 I've been talking about. 20 Can we go back to Tab M of 85. 21 Okay. Yeah, Tab M was the diagram. 22 EQUIPMENT TECH: You said M. 23 MR. TOUHEY: M, yes. 24 EQUIPMENT TECH: Yeah. 25 MR. TOUHEY: Yeah.</p>	<p style="text-align: right;">44</p> <p>1 tower there and instead to put in an underground 2 reservoir. 3 And so the County took about 1.7 acres 4 and deeded it to WSSC. That's that parcel right 5 there. And WSSC exchanged the property up by 6 Colesville School up New Hampshire Avenue with the 7 County, and that was the consideration. And so 8 that was in '79, I believe. 9 In 1980, the County took the 10 remaining -- the remainder of the 18 acres, so 18 11 less 1.7, and deeded it to a developer, Crystal 12 Development Company. Crystal Development Company 13 then deeded to the Maryland-National Park -- 14 Capital Park and Planning Commission this L-shaped 15 parcel that basically surrounds on two sides the 16 WSSC parcel. And those two parcels together 17 comprise what everybody calls Colesville Manor 18 Neighborhood Park right there. 19 The developer got a easement from the 20 folks who own this property to put in that culvert 21 and riprap and the pipe that runs under Shannon. 22 Shannon at the time didn't connect from up here 23 down to Notley. 24 Then in '87, sort of the last piece of 25 the puzzle, was the developer deeded to the County</p>

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<p style="text-align: right;">45</p> <p>1 back again a narrow strip of land right where that 2 culvert connects up to that conveyance ditch. 3 And so all this property here, which 4 basically is on the downward slope running down to 5 the stream valley, was owned by the County. The 6 County gave it to the developer. And then Zoning 7 approved the drainage plan here, and all the water 8 runs down into that stream. 9 So it's not just what's going to 10 happen on the subject property. It's how they're 11 dealing with water. The County is dealing with 12 water on that adjacent property that runs all the 13 way down to my stream. And it's a nightmare. 14 And nobody -- you know, everybody's 15 talking about, well, this is just a preliminary 16 step. This is the first step in the planning. 17 Well, if they get over this hurdle, it's the last 18 time that the District Council gets to consider 19 this. Everything else is going to go to the 20 Planning Board. 21 And the Planning Board, at least in my 22 estimation, has had their thumb on the side of the 23 developer in this whole proceeding. And so I am 24 very concerned that that's what's afoot here. 25 MS. ROGERS: Madam hearing examiner, I</p>	<p style="text-align: right;">47</p> <p>1 We're kind of learning how to deal 2 with retirement. I don't have another job. Part 3 of our recreation is to walk around the 4 neighborhood. It's also the way we get our 5 exercise. 6 And so I do a lot of walking around 7 the neighborhood. And I'm very concerned with 8 what the addition of 130 new units at the corner 9 of New Hampshire and Notley is going to do to 10 vehicular traffic on Notley where there is -- 11 except for a very short segment at the end of New 12 Hampshire and Notley, the intersection of New 13 Hampshire and Notley, on the south side of that 14 intersection there's, I don't know, 300, 400 feet 15 of sidewalk. 16 They're proposing to put in another 17 400 to 500 feet of sidewalk on the opposite side. 18 So essentially adding another 100 feet of sidewalk 19 to connect New Hampshire down to Colesville Manor 20 Neighborhood Park. But no more sidewalks on 21 Notley. 22 I walk up and down Notley to go to the 23 Neighborhood Park, which I go to on occasion. I 24 walk to Colesville Center shopping center on a 25 fairly frequent basis. And I also walk -- there's</p>
<p style="text-align: right;">46</p> <p>1 would just chime in to ask that Mr. Touhey's 2 testimony should be directed to the subject 3 application and not other broader issues within 4 the neighborhood. And if he can please explain 5 his testimony and start to show relevance of this 6 testimony to this case. 7 MR. TOUHEY: That subject property is 8 affecting the adjacent properties. They have 9 proposed to deal with it in a certain way, which I 10 don't think is a tenable way of dealing with it. 11 And part of the problem is is how the drainage on 12 the north and the west sides of the subject 13 property currently exists and has existed for 25, 14 30 years. 15 And they're not going to deal with it. 16 We're going to be left to deal with it. And so 17 it's how the subject property, if approved, is 18 going to affect my neighborhood. So with all due 19 respect, I do believe that this goes to their 20 application. 21 Now, enough said about erosion and 22 flooding and stormwater. Now I'd kind of like to 23 turn to pedestrian safety. I'm 69. My wife's 68. 24 As part of our recreation -- I've been retired a 25 little over a year, as has my wife.</p>	<p style="text-align: right;">48</p> <p>1 a little circuit I take where I walk up to 2 Shannon, walk up to Colesville Manor Drive, walk 3 up New Hampshire, turn left on the ICC pathway, 4 take it down to Notley, and then walk back Notley 5 to Overton. It's roughly two miles, and it's a 6 nice little exercise. 7 But there's maybe 150, 200 feet of 8 sidewalk that I have while I'm walking along 9 Notley. All the other times, I have to either 10 walk up on people's lawns, but very frequently you 11 can't do that because of the banks that -- you 12 know, there's no place to walk on lawns along much 13 of Notley. And so you have to walk into the 14 street to do this. 15 And I do it, but you're taking your 16 life in your hands to do it. You get in a lot of 17 traffic there, and it's not a very comfortable 18 experience. 19 Now, I submitted an exhibit, the 20 Pedestrian Level of Comfort, 90B. So if I didn't 21 move to admit that, I moved to admit it now. 90B? 22 Is that it? 23 HEARING EXAMINER SOKONI: 90B is one 24 of the ones you struck? 25 MR. TOUHEY: Yeah. That's not the one</p>

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<p style="text-align: right;">49</p> <p>1 I wanted. I wrote down the wrong one. 2 HEARING EXAMINER SOKONI: That's all 3 right. So -- 4 MR. TOUHEY: Let me -- let me -- 5 HEARING EXAMINER SOKONI: So in 90, 6 you requested admission of 90G and H, and you 7 struck everything else. 8 MR. TOUHEY: 90H. I mistook my H for 9 a B. 10 HEARING EXAMINER SOKONI: So A, B, C, 11 D, E, F remains struck, and you're referring to G 12 and H? 13 MR. TOUHEY: Yes, ma'am. This is off 14 the County's website. And just to orient you, 15 there's -- this is New Hampshire. This is Notley. 16 And it's color-coded. So anytime you see red, 17 it's undesirable. If it's a solid red line, 18 there's actually a pathway or a sidewalk. And if 19 it's a dotted red line, it's no pathway or 20 sidewalk. 21 So I live here, where that blue marker 22 is. And so when I want to walk to, say, the 23 shopping center, there's a couple different ways I 24 can take. But this is Overton, which is somewhat 25 comfortable to walk on because there's nobody</p>	<p style="text-align: right;">51</p> <p>1 on Notley, but also Sherwood Forest. 2 And why do I say that? Well, I've 3 lived there 30 years. And how you get out of that 4 neighborhood, even if you're on the very edge of 5 the neighborhood, really depends on where you're 6 going. 7 So like today, to drive here, I exited 8 my driveway, went to Overton. Took a right onto 9 Notley, and took Notley to Bonifant. Took 10 Bonifant all the way over to -- turned into 11 Bel Pre, and then Norwood, turned left on 12 Norwood -- or Norbeck, I forget the name of the 13 road there, but took that over to (inaudible) from 14 here. 15 I would be crazy to take Randolph 16 because of all the lights on Randolph and a bunch 17 of roads that -- where you got stoplights and 18 whatnot. It would take me forever. 19 And so to come to Rockville, that's 20 the route I take. And so it's the route I'll take 21 to return tonight, driving. 22 If I'm going to Wheaton, I turn left 23 onto Notley, right onto Sherwood Forest, up to 24 Randolph, turn right on Randolph, drive to 25 Wheaton-Glenmont.</p>
<p style="text-align: right;">50</p> <p>1 drives on it. But there's no sidewalks. Walk 2 down to the corner of Notley, and I can either -- 3 I have to turn left on Notley to get to the 4 shopping center. 5 So I turn left, and I can either walk 6 all the way up to New Hampshire and then turn 7 right on New Hampshire and walk down to the 8 shopping center, or I can -- when I get to 9 Sherwood Forest, I can turn right on Sherwood 10 Forest. 11 And Sherwood Forest is right here, 12 right where the word Colesville ends, and it winds 13 around and, although it's cut off, winds down to 14 Randolph, turn -- so I walk all the way down to 15 Sherwood Forest and then turn left on Randolph and 16 get to the shopping center that way. 17 Frequently, I take both routes, 18 depending, you know -- coming and going. So it's 19 one big circle. You get more exercise that way. 20 My point, however, is on Notley, 21 almost the entire length, there's no sidewalk, and 22 there's a lot of vehicular traffic. And on 23 Sherwood Forest, there's not a whole lot of 24 traffic now, but if they put 130 houses here, 25 there's going to be a lot more traffic, not only</p>	<p style="text-align: right;">52</p> <p>1 Now, I sat and listened to the traffic 2 engineer's testimony about how people drive. It's 3 not the way I drive. It's not the way anybody I 4 know drives. It's like where you're going really 5 determines what route you're going to take and how 6 many traffic lights and whatnot. 7 And so if you put all those new 8 housing units where they want to put them, it's 9 going to increase the traffic all along Notley. 10 It's going to increase the traffic all along 11 Sherwood Forest. 12 And it's also going to, I think, 13 increase the wait time for those people that turn 14 out onto Notley to go to New Hampshire Avenue 15 because they're no longer going to be able to, 16 like, make a right-hand turn without stopping or, 17 you know, entering traffic as traffic allows. 18 It's going to be a right-turn light there. 19 And, yes, it will help for those 20 making a left-hand turn onto New Hampshire Avenue 21 to go north. That's about it. 22 And so, to sum up, what I'm seeing is 23 is that what they're proposing is benefits for 24 some future potential residents of their planned 25 development. But everybody else in the</p>

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<p style="text-align: right;">53</p> <p>1 neighborhood, it's at our expense. And the 2 Planning staff and the Planning Board were utterly 3 unimpressed. 4 And so that basically sums up my 5 testimony. I would respectfully request that you 6 recommend disapproval of this proposed rezoning. 7 Thank you. 8 HEARING EXAMINER SOKONI: Thank you 9 for your testimony. 10 Any cross-examination? 11 MS. ROGERS: Yes. Sorry. 12 HEARING EXAMINER SOKONI: Ms. Rogers, 13 you may proceed with cross-examination. 14 MS. ROGERS: Thank you. 15 Good morning. 16 MR. TOUHEY: Good morning. 17 MS. ROGERS: A couple questions on -- 18 for you on a couple different aspects of your 19 testimony. Regarding notice, you're a member of 20 the Greater Colesville Civic Association; correct? 21 MR. TOUHEY: I am. 22 MS. ROGERS: And the Greater 23 Colesville Civic Association released a 24 significant amount of testimony on their social 25 media pages and websites about this application?</p>	<p style="text-align: right;">55</p> <p>1 about these proceedings and this application? 2 MR. TOUHEY: Yes, I agree. 3 MS. ROGERS: And do you have any 4 personal knowledge of anyone else that didn't 5 receive -- that requested to be a party of record 6 that was not made a party of record? 7 MR. TOUHEY: I do not. 8 MS. ROGERS: Regarding some of your 9 testimony, do you have -- on the stream, do you 10 have any professional educational training in 11 environmental issues or related subjects? 12 MR. TOUHEY: I have no professional 13 training. However, in the course of my career as 14 an attorney, I did have occasion to handle cases 15 involving flooding and hydrology, et cetera. 16 MS. ROGERS: But you weren't the 17 expert in those -- 18 MR. TOUHEY: I am not the expert. 19 MS. ROGERS: -- proceedings? 20 MR. TOUHEY: I am not the expert. 21 MS. ROGERS: So these are just your 22 personal opinions and/or lay observations? 23 MR. TOUHEY: Lay observations, yes. 24 MS. ROGERS: And do you have any 25 professional basis for your observation regarding</p>
<p style="text-align: right;">54</p> <p>1 MR. TOUHEY: They did. 2 MS. ROGERS: And are you aware that 3 the community also created their own website to 4 provide information and alerts about important 5 dates and hearings? 6 MR. TOUHEY: I am. 7 MS. ROGERS: And there were signs 8 posted on this property, providing links to the 9 proceedings, the application proceedings; correct? 10 MR. TOUHEY: I saw the signs. I can't 11 say I read them. 12 MS. ROGERS: And you are -- are you 13 aware that Planning staff met with certain members 14 of the community for a site visit? 15 MR. TOUHEY: I heard that they did. 16 MS. ROGERS: Are you aware that 17 Planning staff attended a supplemental meeting 18 with the community at Westover Elementary School 19 to discuss the application? 20 MR. TOUHEY: I am. 21 MS. ROGERS: And did you attend that 22 meeting? 23 MR. TOUHEY: I did. 24 MS. ROGERS: So you would agree there 25 was a substantial amount of information provided</p>	<p style="text-align: right;">56</p> <p>1 the drainage divide that feeds your property? 2 MR. TOUHEY: Does my -- I'm sorry? 3 MS. ROGERS: Well, I'll ask it a 4 different way. 5 More specifically, do you know how 6 many total acres of land drain towards your 7 property? 8 MR. TOUHEY: Well, in addition to the 9 70 percent of the 10 acres, I would think that at 10 least another 18 acres drain to my property. 11 So, yeah, let's do that. 12 MS. ROGERS: But is that based on -- 13 MR. TOUHEY: That's just me doing the 14 math, knowing the area that I described. And that 15 would be an underestimation. So there is more 16 than, I'd say, 30 acres of property that drains 17 toward my stream. Or drains toward the stream 18 that enters my property. 19 MS. ROGERS: And are you aware that 20 your house and site improvements are built within 21 a plotted floodplain building restriction line? 22 MR. TOUHEY: Yes. The house was built 23 in 1939. 24 MS. ROGERS: And your written 25 testimony states that stormwater issues will only</p>

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<p style="text-align: right;">57</p> <p>1 become worse if the applicant's proposed rezoning 2 is approved. 3 That's just your lay opinion; correct? 4 You have no professional basis for that opinion? 5 MR. TOUHEY: It's based upon my lay 6 observations and my common sense. 7 MS. ROGERS: I wanted to ask about one 8 thing in your written testimony regarding the 9 drainage divide. 10 On page 14 of your letter -- 11 MR. TOUHEY: Which -- which one? 12 MS. ROGERS: The -- 13 MR. TOUHEY: 14, that would be the 14 second one. 15 MS. ROGERS: That should be, yes, 16 Exhibit 112. 17 MR. TOUHEY: Okay. 18 MS. ROGERS: On page 14, you state, 19 quote, that Mr. Kelso -- when you said Mr. Kelso, 20 quote, initially maintained that most of subject 21 property drains towards the east, end quote. 22 But then you go on to allege that, 23 quote -- that he, quote, was forced to admit 24 during cross-examination that, in fact, most of it 25 drains towards the west.</p>	<p style="text-align: right;">59</p> <p>1 MR. TOUHEY: Yes, I believe that -- I 2 stand corrected. I think that was the part that I 3 was relying on. 4 MS. ROGERS: But those two answers 5 from Mr. Kelso are referring to different things, 6 you agree, correct, one being the SHA contract 7 drawings and one being topographic information? 8 MR. TOUHEY: I'm not sure I 9 understand. 10 MS. ROGERS: Well, I'm asking you. 11 Are the answers from Mr. Kelso -- is one referring 12 to SHA contract drawings? 13 MR. TOUHEY: Yes, one -- 14 MS. ROGERS: And is one -- 15 MR. TOUHEY: -- one -- what you read 16 the first time refers to the SHA contract 17 drawings. 18 MS. ROGERS: Okay. And the second 19 answer specifically refers to topographic 20 information? 21 MR. TOUHEY: Yes. And I believe it 22 was referring to the NRI or SNRI. I would add 23 that no numbers in -- although Mr. Kelso referred 24 to the SHA contract drawings, nothing was produced 25 or admitted.</p>
<p style="text-align: right;">58</p> <p>1 But that's not an accurate 2 representation of Mr. Kelso's testimony, is it? 3 MR. TOUHEY: I thought it was. 4 MS. ROGERS: If I direct your 5 attention to page 553 of the transcript from the 6 December 2nd hearing, Mr. Nusbaum asked, I quote: 7 Are there storm drains on the property that 8 currently drain to the state pond where you're 9 looking to put that water? 10 Mr. Kelso then answered, and I quote: 11 The existing contract drawing from the SHA -- from 12 SHA, when designing the state pond, included the 13 greater majority of the whole property. 14 So in that answer, Mr. Kelso's 15 referencing the SHA contract drawings; correct? 16 MR. TOUHEY: I don't believe that's 17 the point at which I was relying for that 18 testimony. I believe it was a page or two before 19 that. 20 MS. ROGERS: Well, then on the next 21 page, on 554, Mr. Nusbaum continues to ask 22 Mr. Kelso about the drainage divide, and Mr. Kelso 23 responds that the existing topographic would 24 suggest that the greater majority does not 25 currently drain to the MSHA pond.</p>	<p style="text-align: right;">60</p> <p>1 MS. ROGERS: Those are all my 2 questions. Thank you. 3 HEARING EXAMINER SOKONI: Anyone else 4 wish to cross-examine Mr. Touhey? 5 Anyone on Zoom? 6 Mr. Nusbaum, I see a raised hand. Is 7 that for cross-examination? 8 MR. NUSBAUM: Yes. I just have one 9 follow-up question for Mr. Touhey. 10 HEARING EXAMINER SOKONI: You may come 11 forward. 12 MR. NUSBAUM: Good morning, 13 Mr. Touhey. 14 MR. TOUHEY: Good morning. 15 MR. NUSBAUM: Ms. Rogers, in her 16 second part of that question, asked you if 17 Mr. Kelso identified that the majority of the 18 drainage went to the State Highway pond; is that 19 correct? 20 MR. TOUHEY: Yes. 21 MR. NUSBAUM: And your recollection is 22 that Mr. Kelso said the majority did not go to the 23 State pond; is that correct? 24 MR. TOUHEY: Correct. 25 MR. NUSBAUM: So the majority of the</p>

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<p style="text-align: right;">61</p> <p>1 stormwater went to the west, towards the Northwest 2 Branch and your property; correct? 3 MR. TOUHEY: Correct. 4 MR. NUSBAUM: Thank you. 5 HEARING EXAMINER SOKONI: Mr. Nusbaum, 6 if you would kindly come back and, for the record, 7 provide your full name. 8 MR. NUSBAUM: Sorry. Keith Nusbaum, 9 K-E-I-T-H, N-U-S-B-A-U-M. Thank you. 10 HEARING EXAMINER SOKONI: Anyone on 11 Zoom? Hearing none, you may stand down. 12 MR. TOUHEY: Thank you, Your Honor. 13 You've been very kind. 14 HEARING EXAMINER SOKONI: You're very 15 welcome. 16 According to my notes, this is where 17 we have Mr. Dunmire. 18 Mr. Dunmire, are you David Dunmire, I 19 believe? 20 MR. DUNMIRE: Yes, I'm here. 21 HEARING EXAMINER SOKONI: On Zoom? 22 MR. DUNMIRE: Yes. 23 HEARING EXAMINER SOKONI: Okay. 24 Camera on, please. 25 MR. DUNMIRE: Is it on?</p>	<p style="text-align: right;">63</p> <p>1 You may proceed with your testimony. 2 MR. DUNMIRE: My name is David 3 Dunmire, and I have been a resident of Colesville 4 for nearly four decades. I'm also a long-standing 5 member of two conservation organizations, the Eyes 6 of Paint Branch and the Potomac Patuxent Chapter 7 of Trout Unlimited, both of which focus on 8 preserving and protecting the Paint Branch 9 Watershed. 10 Today, I am testifying as an 11 individual, and I am not representing any group. 12 The subject property for the proposed 13 development spans two watersheds. The eastern 14 portion, approximately one third of the property, 15 drains to the Paint Branch Watershed. The Paint 16 Branch is a Use Class III watershed, indicative of 17 the highest water quality rating. 18 The western portion of the property, 19 the remaining two thirds, drains to the Northwest 20 Branch Watershed. 21 Exhibit 81, which is the final land 22 use report, states, and I quote: The applicant is 23 proposing to regrade the site, including storm 24 infrastructure, such that the majority of the site 25 conveys to New Hampshire Avenue in a closed system</p>
<p style="text-align: right;">62</p> <p>1 HEARING EXAMINER SOKONI: Not yet. 2 MR. DUNMIRE: I'm seeing a message to 3 start my video. Should I do that? 4 HEARING EXAMINER SOKONI: Yes, please. 5 MR. DUNMIRE: Here we go. 6 HEARING EXAMINER SOKONI: There we go. 7 Could you -- 8 MR. DUNMIRE: Good morning. 9 HEARING EXAMINER SOKONI: Good 10 morning. 11 MR. DUNMIRE: My name is -- 12 HEARING EXAMINER SOKONI: Please raise 13 your right hand. First of all, please provide 14 your full name. 15 MR. DUNMIRE: David Dunmire. 16 HEARING EXAMINER SOKONI: Spelling, 17 please. 18 MR. DUNMIRE: D-A-V-I-D, 19 D-U-N-M-I-R-E. 20 HEARING EXAMINER SOKONI: Thank you, 21 sir. And raising your right hand, do you confirm 22 that your testimony will be the truth, the whole 23 truth, and nothing but the truth? 24 MR. DUNMIRE: Yes, I do. 25 HEARING EXAMINER SOKONI: Thank you.</p>	<p style="text-align: right;">64</p> <p>1 (underground structures and pipes). This network 2 also includes stormwater management facilities 3 (micro-bioretenion), which convey the 10-year 4 storm event through the storm infrastructure to 5 New Hampshire Avenue. End quote. 6 The stated intent of this approach is 7 to reduce the impact of stormwater runoff to 8 Notley Road and nearby residences. While I agree 9 that the existing stormwater problem needs to be 10 addressed, this approach is problematic as 11 proposed. 12 Globally proposing to pipe the 13 majority of the stormwater runoff underground to 14 New Hampshire Avenue may resolve the stormwater 15 runoff problem for this site, but this stormwater 16 does not just go away. Eventually, this 17 stormwater will come out of the ground, and there 18 will be environmental impacts at that location. 19 This approach would, in effect, change 20 the boundary between these two watersheds. 21 The senior environmental review 22 specialist who testified at a hearing on 23 January 15th, Greg Golden, who is retired from the 24 Maryland Department of Natural Resources, had this 25 to say about the proposed stormwater approach:</p>

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<p>65</p> <p>1 Changing watershed boundaries -- I'm quoting 2 now -- Changing watershed boundaries is something 3 that should only be done after much thought and 4 with great care. 5 The stormwater pipe to New Hampshire 6 Avenue from this development will most likely end 7 up in one or both of the two existing stormwater 8 management facilities located in the residential 9 development on the east side of New Hampshire 10 Avenue. Both of these facilities are located in 11 the Paint Branch Watershed, end of quote. 12 The proposed plan states that 13 infrastructure will convey the 10-year storm event 14 through the infrastructure to New Hampshire 15 Avenue. When a storm occurs that is more severe 16 than a 10-year storm, the capacity of the planned 17 stormwater management system will be exceeded. 18 Where will this stormwater go? If the 19 site is regraded so that the stormwater conveys to 20 New Hampshire Avenue, this means that this excess 21 stormwater will most likely drain downhill, 22 directly impact property owners on the east side 23 of New Hampshire Avenue, and ultimately drain to 24 the Paint Branch Tributary. 25 The scant information provided by the</p>	<p>67</p> <p>1 Trout Waters; that is, the ability to support 2 propagation and survival of natural trout 3 populations and their associated food organisms. 4 Montgomery County Code also states 5 this resource is afforded the highest order of 6 protection through its designation by the State of 7 Maryland as Use III waters. 8 And those are just two of the many 9 indications of representation of the importance of 10 this natural resource. 11 The existing stormwater-runoff 12 problems on this site and the resulting flooding 13 problems in the Northwest Branch Watershed are 14 well documented. The subject proposes -- subject 15 plan proposes to regrade the site so that the 16 majority of the runoff drains to the Paint Branch 17 Watershed. 18 Further, the proposed development will 19 add more impermeable surface area, which will 20 result in more runoff. 21 In summary, the stormwater management 22 approach for this development needs to address the 23 existing flooding problem in the Northwest Branch 24 Watershed, honor the existing boundaries, and deal 25 with runoff from each watershed within their</p>
<p>66</p> <p>1 applicant on stormwater management for the 2 proposed development does not even mention these 3 issues. Given that there is an existing problem 4 with stormwater from this site, it is important to 5 address stormwater solutions for the proposed 6 development up front, rather than deferring until 7 after other design decisions have been made, and 8 implementation to the fullest extent practicable 9 becomes significantly less than what it was 10 prior -- at prior points of the project. 11 Before proceeding any further with a 12 plan that dumps stormwater from the proposed 13 development site into the Paint Branch Watershed, 14 the applicant needs to quantify these impacts. 15 The Paint Branch Watershed is well 16 known for its high water quality and habitat, 17 evidenced by large numbers and varieties of 18 species of plants and animals that live there. 19 This widespread diversity and natural beauty are 20 atypical and consequently highly valued by many. 21 The Upper Paint Branch has a long 22 history of environmental protection. In 1974, 23 Paint Branch and all of its tributaries upstream 24 of the Capital Beltway were officially designated 25 by the State of Maryland as Use III, or Natural</p>	<p>68</p> <p>1 respective watersheds; provide controls for the 2 additional runoff that results from new impervious 3 surface being added; identify where stormwater 4 discharges will occur as well as the resulting 5 impacts; address where the runoff from storms that 6 are more severe than 10-year storms will go. 7 These measures are necessary to ensure 8 that the Use III Paint Branch is afforded the 9 highest order of protection as required by state 10 and local law. 11 The only way these numerous and 12 interrelated problems can be adequately addressed 13 is to define solutions early in the process before 14 other priorities significantly limit the potential 15 solutions faced. 16 Consequently, the proposed zoning 17 change should not be approved until these issues 18 are addressed. 19 Thank you for the opportunity to 20 testify. 21 HEARING EXAMINER SOKONI: Thank you 22 for your testimony. If you could remain 23 available, is there any cross-examination? 24 MS. ROGERS: No. 25 HEARING EXAMINER SOKONI: None in the</p>

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<p style="text-align: right;">69</p> <p>1 room. 2 Any cross-examination from people on 3 Zoom? 4 Hearing none, you may stand down. 5 You're free to turn off your camera now. Thank 6 you. 7 This is the point where we invite -- 8 is it Mr. Sloan who will be -- Clay. Clay 9 Nuquist. Yes. 10 Clay Nuquist? 11 MR. NUQUIST: Yes. I think I'm -- let 12 me turn on my light real quick. Just a second. 13 Other than being dark outside, I'm sorry, my room 14 is a little dark. 15 HEARING EXAMINER SOKONI: That's all 16 right, that's all right. We believe you're there. 17 If you would kindly raise your right 18 hand. Did you spell your last name? 19 MR. NUQUIST: First name is Clay, 20 C-L-A-Y; and last name is N-U-Q-U-I-S-T. 21 HEARING EXAMINER SOKONI: That was 22 deliberate. I believe it was a reminder to all of 23 us to turn off our phones. The notification -- 24 someone has notifications that keep going off. So 25 if that could also be silenced, that would be</p>	<p style="text-align: right;">71</p> <p>1 to the south of this proposed townhouse 2 development. 3 At the time that I had completed, I 4 was commenting on some of the parking availability 5 and other issues. So I'll just continue on from 6 where I was at at that time. 7 So you have heard testimony concerning 8 how the spillover resident and visitor parking 9 from this proposed development will be at a 10 premium for those that will seek to find anyplace 11 to park, whether along the shoulder or on Notley 12 Road. 13 Even if as proposed, there will be No 14 Parking signs in place, but that would require 15 further demand upon the Montgomery County Police 16 deputies to routinely patrol (inaudible) or there 17 would be parking within Wilshire Retirement 18 facility situated directly to the north of this 19 proposed townhouse development. The parking in 20 Wilshire is in place for those that reside, the 21 visiting family or friends and the employee staff, 22 not for the general public. 23 Finally, all of the surrounding 24 residential communities will have a parking 25 impact, which will then reduce the parking</p>
<p style="text-align: right;">70</p> <p>1 helpful. 2 Okay. Thank you. Sorry about that. 3 Kindly raise your right hand. I think you spelled 4 your names for us. 5 Will you kindly confirm that the 6 testimony you will provide is the truth, the whole 7 truth, and nothing but the truth? 8 MR. NUQUIST: I do. 9 HEARING EXAMINER SOKONI: Thank you. 10 You may proceed with your testimony. 11 MR. NUQUIST: I initially started my 12 testimony on the last meeting date, which was on 13 January 15th of 2026. I think I started at about 14 5:00 p.m. after such a long day of testimony, and 15 at about 5:35 I was asked to take a pause so that 16 one final person could testify and that I would be 17 given an opportunity to complete my testimony. So 18 the hearing examiner gracefully allowed me to 19 continue on with my testimony. 20 As I said previously, I've been -- my 21 wife and I have been residents of Colesville for 22 over 37 years, and we've been residents of the 23 Morningside community for 32 1/2 years, living on 24 Bregman Road in Silver Spring in a single-family 25 home in the Morningside community, which is just</p>	<p style="text-align: right;">72</p> <p>1 available for their visiting family and friends, 2 as testified by the Notley Road and Colesville 3 residents on 1/15/2026. 4 Also, as previously testified on 5 1/15/2026, when any of the religious communities 6 have their celebrations, it should be noted that 7 the demand for multiple Montgomery County Police 8 deputies must be present to direct the parking and 9 pedestrians in and out of that facility as well as 10 redirect spillover parking traffic up -- traffic 11 lining up on the northbound and southbound sides 12 of New Hampshire Avenue and also those that seek 13 to enter all of the other residential communities 14 situated to the north, south, east, and west sides 15 along New Hampshire Avenue, including Notley Road, 16 Petwyn Court, Colesville Manor Drive, Shannon 17 Drive, Greenspring Street, Orchard Way, Hobbs 18 Road, Midland Road, Copley Road, Flannery Lane, 19 and Bregman Road. 20 I'm sure the residents of this 21 proposed townhouse development would not be in 22 favor of having the general park -- public use 23 their visitor parking spaces during these events. 24 One of the other issues is the 25 applicant is stating that there's going to be an</p>

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<p style="text-align: right;">73</p> <p>1 excessive tree removal and a minimal tree 2 replantation, even though the developer states 3 that in 20 years there will be 90 percent coverage 4 within the minimal 10 percent green space and 5 other tree plantings that are being offered as 6 proposed. 7 All the issues that I previously have 8 brought up and these that I just stated will 9 greatly affect the surrounding Notley Road and 10 adjacent Colesville residential communities, 11 environmentally, economically, and physically. 12 At a meeting with the developer, 13 members of the Montgomery County Planning Board 14 and Colesville residents held on July 15th, 2025, 15 it was obvious the developer hadn't planned for 16 the impact response from the community at this 17 meeting. The developer would not provide requests 18 for an estimated real estate value or potential 19 sizes, number of bedrooms, height and parking, 20 stating it was at that time still in the planning 21 stage. 22 There were questions about the 23 availability for mass transit around Colesville, 24 since Montgomery County has modified and canceled 25 bus routes on New Hampshire Avenue used by the</p>	<p style="text-align: right;">75</p> <p>1 sidewalks on both northbound and southbound sides, 2 including all the way down to the Colesville 3 Center shopping center area and beyond, are 4 covered with the plowed snow/slush remnants. They 5 are not shoveled, cleared, nor salted to enhance 6 the melting, remaining unwalkable and unsafe until 7 fully melted. 8 Pedestrians are forced to walk in the 9 roadway of New Hampshire Avenue, placing 10 themselves in danger of being hit by traffic. 11 Discussion also led to the developer, 12 not from Maryland, but from Virginia, has not 13 constructed residential units in Montgomery 14 County, only commercial, but stated they have 15 constructed residential units in College Park. 16 That is in Prince George's County, not Montgomery 17 County. 18 Since this meeting, the developer 19 presented at the Montgomery County Planning and 20 Hearing Board meeting on October 30th, 2025, they 21 have made some changes: to decrease the number of 22 townhouses from 150 to 130; to include more green 23 space, but only at the minimum required 10 24 percent; reduced height adjustments to a max of 50 25 feet, although the Montgomery County Planning</p>
<p style="text-align: right;">74</p> <p>1 current residents of the Colesville community and 2 will also not be in use for the added Colesville 3 residents of this proposed 130-townhouse 4 development. 5 This was also commented on by members 6 of the Montgomery County Planning Board and the 7 developer with reference to the future BRT, but it 8 has been a topic for many years, dating back since 9 2011 to 2013, and it still is only in the planning 10 stages with no suggestions as to a date when it 11 will be built and available. 12 And what measures does Montgomery 13 County have in place in relation to the BRT plan 14 to ensure all the sidewalks on New Hampshire 15 Avenue are updated, widened, and maintained, as 16 well as cleaning the ice and snow to be safe for 17 all Colesville residents who will need to walk to 18 make use of the BRT station. 19 Over the 32 1/2 years that I have 20 observed that when Montgomery County snowplows 21 clear the snow off of New Hampshire Avenue, and 22 this includes the most recent snow that we had in 23 January, resulting in the loss of one lane in each 24 direction. 25 Also it is noted that the narrow</p>	<p style="text-align: right;">76</p> <p>1 Board chair made a recommendation that the height 2 should be reduced to 45 feet; changes in the 3 setbacks; and widening of the sidewalk of New 4 Hampshire Avenue and the planned sidewalk only on 5 the north side of Notley Road. 6 But these sidewalk additions only 7 include the area for the townhouses that are 8 fronted on New Hampshire Avenue and Notley Road 9 down to Colesville Manor Neighborhood Park. There 10 are no plans to improve Notley Road with widening, 11 resurfacing, and south side sidewalks. 12 These changes are all minimal and 13 still do not address the much needed affordable 14 housing availability of Montgomery County and 15 those desiring supporting and seeking more 16 individuals to support for this (inaudible) change 17 to accommodate this new proposed townhouse 18 community. 19 Montgomery County has stated there 20 must be more affordable housing provided. This 21 proposed Notley Road townhouse development design 22 is extremely similar to the townhouse development 23 that was recently constructed in the Glenmont area 24 across from the Glenmont Metro Station located at 25 Layhill Road and Glenallan Avenue and adjacent to</p>

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<p style="text-align: right;">77</p> <p>1 Georgia Avenue. 2 While that community was planned well 3 to take advantage of the proximity and access to 4 the metro train and bus line station with parking 5 garages, multiple driving routes, as well as 6 access ease for commuting on the much larger roads 7 of Layhill, Glenallan, and Georgia Avenue for the 8 residents, it is still a very dense community and 9 there are not options for the Montgomery County 10 residents seeking affordable housing. 11 The townhouses built within that 12 community, all of them with no backyards, some 13 with shortened two-car, single-lane, two-car 14 garages, some that have shortened driveways, 15 single-lane one-car garages with a single-lane 16 partial inset for parking or storage. 17 These shortened driveways are not long 18 enough to correctly park an extra vehicle or two, 19 even if the inset is used for storage or any 20 vehicle, causing all of the extra vehicles parked 21 on these driveways to impede into the alleyway or 22 to be parked at an angle. 23 90 percent of these sold for \$550,000. 24 The 10 percent of the townhouses that were 25 allocated for MPDU affordable housing sold for</p>	<p style="text-align: right;">79</p> <p>1 on 8.9 acres, and that was documented on 2 Exhibit 30. 3 Morningside townhouse community is not 4 a direct comparison. Morningside has 130 5 townhouses that are 35 to 38 years old. None of 6 them are fronted on Bregman, ten with backyards 7 and seven with sides facing Bregman Road, situated 8 on four different roads to enter and exit onto 9 Bregman Road: 63 on Silver Moon; 23 on Suncroft, 10 32 on Dawn View Court, and 13 on Morning Breeze 11 Court. 12 It is not similar to the proposed 13 townhouse development on an area 2.85 acres 14 smaller in size, requiring all 130 townhouse 15 residents to enter and leave from the two provided 16 private roads directly onto Notley Road, with 32 17 townhouses fronted on Notley Road and 13 18 townhouses fronted on New Hampshire Avenue. 19 There are those that have stated they 20 enjoy living in townhouse communities, like 21 Morningside and others, which have both front and 22 back yards and basements, all well -- as well as 23 numerous playground areas with gyms, slides, and 24 bars, tennis courts, and plenty of green space for 25 children to play in and around their townhouses,</p>
<p style="text-align: right;">78</p> <p>1 about \$120,000 to \$130,000. 2 In another comparison, in Morningside 3 Community, built in 1988 to 1991, there are 19 of 4 the two-level townhouses that were allotted for 5 MPDU affordable housing that sold for \$59,000 to 6 \$61,000, which some of these are now being sold 7 near or above \$400,000. 8 And the other 111 townhomes on the 9 four roads leading into the townhouse complexes 10 from Bregman Road originally sold for 11 approximately 177 to 238 K, depending on options, 12 and now they're selling for upwards of 515 K to 13 over 550,000. 14 These are 35- to 38-year-old homes, 15 not new construction. Even though these recent 16 sale prices positively increase the value of all 17 of our properties within the Colesville area, 18 whether townhouses or detached houses, we all 19 purchase these homes with the desire to increase 20 values, not decrease values, to positively benefit 21 as an investment to homeownership. 22 The applicant has made direct 23 comparison references to the Morningside 24 townhouses on 11.82 acres of land immediately to 25 the south of their proposed townhouse development</p>	<p style="text-align: right;">80</p> <p>1 also be in close proximity to detached houses that 2 may have children to play with them with. 3 I'm extremely disappointed some are 4 stating how the current Morningside and Colesville 5 communities are raising this in issue to those 6 that select to live in townhouses. 7 Many homeowners in townhouses and 8 detached houses within Morningside and Colesville 9 communities have come and gone by choice to larger 10 homes or other communities, and I do not believe 11 the current owners and their children within the 12 Morningside community and other Colesville 13 communities are making this primarily an issue for 14 people living in townhouses. 15 Over the 32 1/2 years living in 16 Morningside, we have had as many as 60 to 100 17 children, most who live in the townhouses, come to 18 our detached house to receive trick-or-treats on 19 Halloween each and every year, except for COVID, 20 2020. 21 This Notley townhouse development, as 22 designed, will not provide a backyard to any of 23 the townhouses for children to play and provides a 24 few small play areas for use by all residents, 25 including the children within the development.</p>

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<p style="text-align: right;">81</p> <p>1 This proposed townhouse developer has 2 stated it will also be providing a walkable access 3 sidewalk created within the 10 percent green space 4 on the western side of the property and a sidewalk 5 along the north side of north Notley Road and the 6 west side of New Hampshire Avenue for children and 7 families to traverse in order to play at the 8 Colesville Manor Neighborhood Park, located 9 adjacent to the western side of the property on 10 Notley Road, and the aforementioned minimal green 11 space areas for use of all residents. 12 The developer also mentioned the 13 10-minute half-mile walkable route to the 14 Colesville Local Park on Hobbs Drive to the north 15 on the opposite east side of New Hampshire Avenue 16 for children and families to traverse. 17 Noting there are no sidewalks on Hobbs 18 Drive. That's on Exhibit 76, page 11. Also 19 referring to Exhibit 98, the Montgomery County 20 Pedestrian Plan that documents the level of 21 comfort along New Hampshire Avenue and Hobbs 22 Drive. 23 When the traffic signal and crosswalks 24 of Notley Road and New Hampshire Avenue is 25 installed and operating, the children and families</p>	<p style="text-align: right;">83</p> <p>1 to stop at to ensure the intersection and 2 crosswalk are clear for the vehicles of Notley 3 Road to enter both north and southbound and the 4 pedestrians to cross New Hampshire Avenue without 5 interference. 6 Until a traffic signal with crosswalks 7 is installed and operating in Notley Road and New 8 Hampshire Avenue intersection, the children and 9 families will have to walk to the closest traffic 10 signal with a crosswalk southward to the opposite 11 direction on a narrow sidewalk on the west side of 12 New Hampshire Avenue to Midland Road traffic light 13 intersection at the Colesville Center shopping 14 center, Colesville Park and the ride-and-park lot 15 and the Giant Food Gas Station and use the 16 crosswalk timed with the traffic light to cross 17 the east side of New Hampshire Avenue, then 18 traverse north on New Hampshire Avenue on that 19 narrow sidewalk on the east side (inaudible). 20 Once again, noting any safety issue of heavy 21 traffic and icy conditions on the sidewalk. 22 This is not within the one-half miles 23 as the applicant documented, but it's, in fact, 24 .88 miles as -- .88 miles. Take note also, if the 25 timing of this traffic light is too long, the</p>
<p style="text-align: right;">82</p> <p>1 will have to wait until the traffic signal changes 2 to cross the six lanes of New Hampshire Avenue, 3 then traverse on the currently extremely narrow 4 sidewalks on the east side of New Hampshire 5 Avenue, alongside that heavily traveled road, to 6 walk to the park. 7 And as stated, the sidewalk will not 8 be shoveled or cleared of snow, ice, and slush 9 during the winter and the loss of the right lane, 10 both northbound and southbound, due to not being 11 cleared or snowplowed. This again was noted 12 during the winter snow and sleet storm that was on 13 the weekend of January 24th to 25th. 14 If the timing of this traffic light is 15 too long of a wait, there is concern that the 16 children and families will attempt to cross New 17 Hampshire Avenue against the light or walk further 18 northward on the west side of New Hampshire Avenue 19 and attempt to cross anywhere there is not a 20 sidewalk when there is a break in traffic. 21 I did not hear any testimony or 22 documentation of the traffic study that the Notley 23 Road-New Hampshire Avenue intersection will be 24 modified and enlarged to ensure it is actually an 25 intersection with lines on the road for vehicles</p>	<p style="text-align: right;">84</p> <p>1 children and the families may attempt to cross the 2 six lanes of New Hampshire Avenue against the 3 light when there is a break in traffic. 4 And also take note, depending on the 5 timing of the traffic light for pedestrian 6 traffic, each time pedestrians select the button 7 to request the light to change to allow them to 8 cross New Hampshire Avenue, then there will be 9 further backup delays for the traffic to 10 accommodate the pedestrians. 11 I am also concerned, when the 12 development is completed and turned over to the 13 HOA, where will the landscaping company move and 14 store all the snow accumulation being plowed out 15 of the alleyways within the community, especially 16 with the threat of snow, even in the event of a 17 major snowstorm with substantial portions of sleet 18 and ice. 19 Unless the snow removal policy is 20 specifically written into the bylaws of the HOA, I 21 can predict that the snow removal could be pushed 22 out of the community and piled up onto Notley 23 Road, since there will only be the 10 percent 24 allotted for green space within the community to 25 store the plowed snow.</p>

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<p style="text-align: right;">85</p> <p>1 Also, the HOA bylaw should include 2 that it is the sole responsibility of each 3 townhouse owner and habitant fronted on Notley 4 Road and New Hampshire Avenue or the landscaping 5 company as contracted by the HOA to clear the snow 6 and ice on sidewalks created by the developer 7 directly in front of each of the townhouses within 8 24 hours after each snow and ice event and remain 9 cleared as directed by the Montgomery County law 10 to ensure the safety for all who traverse on those 11 sidewalks, not just the townhouse residents. 12 As a comparison, within the 13 Morningside community, there is limited space for 14 plowed snow storage. So the current contracted 15 landscaping company plows the snow accumulated on 16 the roads and parking areas from out of the four 17 townhouse areas situated on Silver Moon, Suncroft, 18 Dawn View, and Morning Breeze, and is piled up not 19 only on the common grounds on the east side of 20 Bregman Road, near all the parked cars, but also 21 across the street on the west side of Bregman Road 22 on the common grounds in front of stand-alone 23 houses, sometimes leaving the snow piled in the 24 street and also blocking the mailboxes, even 25 though they've been directed to lift the snow off</p>	<p style="text-align: right;">87</p> <p>1 malls, the Morningside Community townhouses, with 2 documentation of December 29th and February 17th, 3 and the stand-alone houses, as well as within the 4 Sherwood Forest, Notley Road, and Cloverleaf 5 [phonetic] communities. 6 On December 12th of 2025, an assault 7 and forcible rape occurred in a residence, and on 8 2/4/2026, a theft and fraud occurred, both within 9 the 13700 block of New Hampshire Avenue; and on 10 January 2nd, January 24th, February 6th, and 11 February 13th, there were assaults in the 13900 12 block of New Hampshire Avenue. 13 Noting that all six of these events 14 are located near the intersection with Notley 15 Road, adjacent to where this new proposed 16 townhouse community is to be constructed. 17 So, yes, there is concern that adding 18 130 homes on a dense area within the community 19 could pose a threat for even more crime in this 20 area, but it's not because of the new residents 21 occupying the townhouses in this development, but 22 because of the opportunity for more homes for the 23 current criminal activity to choose from. 24 I heard testimony to the Montgomery 25 County Board -- Planning Board that Colesville</p>
<p style="text-align: right;">86</p> <p>1 of Bregman Road and not block the mailboxes for 2 mail delivery. 3 Then when the Montgomery County 4 snowplows arrive to plow Bregman Road, they just 5 go around these plows, leaving them on Bregman 6 Road to freeze, melt, refreeze, which creates 7 severe drainage problems and black ice with the 8 stormwater management drainage currently in place. 9 As stand-alone townhouse homeowners 10 within the community and Bregman Road, our bylaws 11 state it is each of our own responsibility to 12 clear the sidewalks in front of our own housing 13 property within 24 hours after each event. 14 Lastly, for some to make a statement 15 that the Colesville community is stating that this 16 new proposed townhouse development will bring the 17 wrong kind of people to encourage an increase in 18 crime just because this is a townhouse development 19 is ludicrous. 20 Throughout the entire year of 2025, 21 beginning in January, and including early 2026, as 22 recently as the last few days, there has been an 23 increase in the crime rate already within the 24 entire Colesville area, including the Colesville 25 Center shopping center and other adjacent strip</p>	<p style="text-align: right;">88</p> <p>1 residents are being childish with our objections 2 to this proposed townhouse development. 3 As current owners of single-family 4 detached houses and townhouses, we are not being 5 childish about townhouses in Montgomery County, a 6 reference that was made about the homeowners with 7 the Morningside, Notley Road, and Colesville 8 communities who have erected signs and carry the 9 signs and wear the shirts to not support this 10 proposed townhouse development. 11 The message doesn't state anything 12 about being against townhouses, but are making a 13 statement against how the congestion for such a 14 dense townhouse development, as proposed, would 15 affect the current Notley Road, Colesville 16 community. 17 Colesville residents do not support 18 this townhouse construction, as proposed, because 19 it does not support the mixed-use zoning 20 requirements, the current 2050 master plan, the 21 White Oak master plan to provide the much-needed 22 housing and MPDU affordable housing that others 23 are testifying to support the zoning change. 24 It is also being constructed with the 25 primary entrance and exit lanes directly onto</p>

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<p>89</p> <p>1 Notley Road, a small, rural, residential road that 2 will not be able to handle the added number of 3 vehicles from 130 townhouses, with no plans for 4 improvement. 5 All of these contributing factors 6 brought forth by myself and the other testimony 7 from the homeowners on and around Notley Road and 8 Colesville community ought to be taken into 9 consideration to assist with the decision to vote 10 to deny this H-159 zoning change. 11 The Colesville community is extremely 12 concerned with the impact upon the community with 13 the changes to the zoning to allow the 14 construction of these 130 townhouses on Notley 15 Road. 16 If this does get approved, at least 17 the hearing examiner and the County Council should 18 direct the developer to work with the community 19 and not against the community. 20 This is just my opinion. I am not 21 testifying as an expert opinion. This is just my 22 observations. And I thank you all for the 23 opportunity to speak by -- by -- to speak to -- to 24 the hearing examiner. 25 Thank you very much for your</p>	<p>91</p> <p>1 was an email. So, actually, let me back up. 2 Let's say 84, 87. I'm skipping over 3 91 because, although it was an email exchange, 4 Mr. Touhey has already entered it. We've already 5 entered it. 91 was an email, but that's been 6 entered already at Mr. Touhey's request. 7 So we're looking at 84, 87, 100, 102, 8 105, 108, 110, and 113. And 113 is not on your 9 list, but it's online, and that's the email I sent 10 this morning warning about the weather and 11 inadvertently revisiting the -- Clay Nuquist's 12 request. 13 MS. ROSENFELD: I have no objection to 14 admission. 15 HEARING EXAMINER SOKONI: So those 16 exhibits are in the record. So we're working our 17 way through. We still have some that have not 18 been addressed, but we'll take care of those as we 19 go along. 20 I do have -- there's a -- there's an 21 Exhibit 88, a letter to the hearing examiner with 22 attached documents submitted by Toni Deboeck. 23 Are you in the room or on Zoom? 24 MR. TOUHEY: On Zoom, from what I'm 25 seeing. Your Honor, I'd move the admission of</p>
<p>90</p> <p>1 attention. 2 HEARING EXAMINER SOKONI: Thank you, 3 sir. Thank you very much. 4 Any cross-examination? 5 Before you stand down, any 6 cross-examination? None? 7 Okay. So my proposal now is, I 8 think -- it's -- it's 11:35. My proposal, I was 9 going to sneak in a 10-minute break and allow 10 counsel to just look at exhibits. 11 I did want to -- Mr. Touhey took care 12 of his own exhibits. I would like to, unless 13 there's any objection, at least to all the emails 14 with the hearing examiner, and I'm highlighting 15 those -- those would be Exhibits 87, 87, 100, 102, 16 105, 108, 110. And the latest addition is 113, 17 which would not be on the prints you have, but is 18 online, unless the email was sent this morning. 19 MS. ROSENFELD: I'm sorry, would you 20 read those numbers one more time? 21 HEARING EXAMINER SOKONI: No problem. 22 So I would like to -- at least at the disposal of 23 entering into the record exhibits that are email 24 exchanges with the hearing examiner. Those would 25 be 87, 91 -- and by the way, I've skipped over 84,</p>	<p>92</p> <p>1 Mr. Deboeck -- 2 HEARING EXAMINER SOKONI: I saw that, 3 and I did want -- I had a question. We usually do 4 not accept letters that are not signed, and that 5 one is not signed. I'm happy to accept it, but I 6 just was going to request that we get a -- if that 7 letter could be signed. 8 MR. TOUHEY: I'd move to admit it 9 subject to that condition. 10 HEARING EXAMINER SOKONI: Okay. So 11 let's -- how about we take a ten-minute break and 12 the -- just to revisit what we have. At least 13 we've disposed of the public testimony that was 14 outstanding. 15 And so on that list of -- I think the 16 next would have been the cross-examination by your 17 expert -- Ms. Rosenfeld cross-examining Mr. Sloan. 18 MS. ROGERS: Maybe if Mr. Sloan 19 testifying, responding to Mr. Phan's question -- 20 HEARING EXAMINER SOKONI: Phan's 21 question. 22 MS. ROGERS: -- about the driveway 23 location; right? 24 MS. ROSENFELD: Followed by my cross. 25 HEARING EXAMINER SOKONI: Followed by</p>

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<p>93</p> <p>1 your cross. Okay. 2 So do -- can we take a ten-minute 3 break just before we pivot to that? I'm just 4 trying to figure out the timing. Do we have a 5 estimate? Do you know how long? I mean, 6 Mr. Phan's question was very specific, so -- 7 MS. ROGERS: I think our -- we don't 8 anticipate it being a very long discussion. 9 HEARING EXAMINER SOKONI: Okay. So 10 let's take a ten-minute break, come back and see 11 if we can dispose of admission of exhibits and 12 then move to Mr. Sloan testifying in response to 13 Mr. Phan's question. 14 And then we also have the 15 cross-examination. Let's at least try and work 16 through that. We might not get to the 17 opposition's case-in-chief, but let's see how it 18 goes. 19 Okay. We are recessed for ten 20 minutes. 21 (A recess was taken.) 22 HEARING EXAMINER SOKONI: Welcome 23 back, and we're back -- we're back on the record 24 now. 25 A couple of reminders. For everyone</p>	<p>95</p> <p>1 would just request that Toni Deboeck's letter be 2 signed. Thank you very much. 3 And Mr. Sloan's taking the stand to 4 address Mr. Phan's questions. 5 Could you remember to use -- yes, 6 thank you. 7 Raise your right hand and confirm that 8 your testimony will be the truth, the whole truth, 9 and nothing but the truth. 10 MR. SLOAN: Yes, ma'am. 11 HEARING EXAMINER SOKONI: And your 12 full name for the record, please. 13 MR. SLOAN: Joshua Sloan. 14 HEARING EXAMINER SOKONI: Is Mr. Phan 15 either in the room or on Zoom? 16 MR. PHAN: Sorry, yes, I am on Zoom. 17 I cannot change my name. It only allows sign-in, 18 and I -- I tried to figure out how to change, but 19 I put the -- I could not. 20 HEARING EXAMINER SOKONI: Could you 21 please confirm the spelling of your name for us? 22 MR. PHAN: Yes. D-U-N-G; last name, 23 P-H-A-N. I'm the regular user, like 24 R-E-G-U-S-E-R. 25 HEARING EXAMINER SOKONI: So on Zoom</p>
<p>94</p> <p>1 in the room, we have a sign-out sheet -- a sign-in 2 sheet at the entrance. That's our way to track 3 attendance. It's important that you sign in. 4 On Zoom, I just would like to ask 5 everyone on Zoom, please make sure your name 6 appears -- the way your name appears on your Zoom 7 is what you have for the attendance. So if it 8 says, you know, T's iPhone, that's all we have. 9 We'll have no idea what your first and last name 10 is. 11 So please adjust your name on Zoom so 12 we can track attendance. And if you're on Zoom 13 and testify, of course, we'll have your name, 14 we'll have your full name. So thank you. 15 So I think we will now turn it over 16 to -- did we want to dispose of the exhibits? Had 17 a chance to look at them? Any -- 18 MS. ROSENFELD: I think we can make 19 this easy. I conferred with Ms. Rogers, and we 20 both have no objection to admission of all of the 21 exhibits that are on the exhibit list. 22 HEARING EXAMINER SOKONI: Thank you 23 very much. Okay. Wonderful. So all exhibits 24 through 113 are now admitted. 25 One caveat from Exhibit 88 is that I</p>	<p>96</p> <p>1 you are appearing as R-E-G-U-S-E-R, but that is 2 not your actual name. We have recorded your name. 3 MR. PHAN: Yeah, sorry about that. 4 HEARING EXAMINER SOKONI: That's all 5 right. 6 So you had requested the applicant's 7 engineer to come back and testify about the 8 location of your driveway. Could you just recap 9 or restate what your concern or question was? 10 MR. PHAN: Okay, yes. I live on 11 Notley Road, 13734 Notley Road, and I have four 12 concerns. The proposed -- let me back up a little 13 bit. 14 The proposed west access point is 15 aligned directly with my driveway, creates a 16 consistent safety hazard for my family and my 17 neighbor. It will result in daily traffic 18 conflict between our driveway, the townhouse 19 vehicle, and the true traffic on Notley Road. 20 This, you recall, Exhibit 48, 21 circulation plan. You want me to walk through 22 that again or just focus on four concerns 23 globally? 24 HEARING EXAMINER SOKONI: I believe 25 that's -- I'm assuming your client understands the</p>

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<p style="text-align: right;">97</p> <p>1 question.</p> <p>2 MR. PHAN: Okay. So can I have the</p> <p>3 circulation plan as Exhibit 48 displayed?</p> <p>4 HEARING EXAMINER SOKONI: Could we</p> <p>5 please call up Exhibit 48?</p> <p>6 MR. PHAN: Yes. Can you scroll down</p> <p>7 further to the bottom. And then that's -- on the</p> <p>8 left side, you see the access point right there.</p> <p>9 Yeah, it directly go across through the driveway</p> <p>10 area. The property, just an additional -- to the</p> <p>11 left -- left. So, yeah, you just pass it. Right</p> <p>12 there. A little bit to the left. Slowly. Yeah.</p> <p>13 Right there.</p> <p>14 So directly below that access point,</p> <p>15 which is south of that access point, that's my</p> <p>16 property right there. You see the U-shaped</p> <p>17 driveway in the gray area.</p> <p>18 So under the County Zoning Code,</p> <p>19 Section 6.1.3: Any development must ensure safe</p> <p>20 entry -- oh, I didn't start my video. Right?</p> <p>21 Sorry about that.</p> <p>22 Any development must ensure safe entry</p> <p>23 and exit for vehicles, pedestrians, and cyclists</p> <p>24 to and from the development and abutting site.</p> <p>25 This plan, personally, I think, failed</p>	<p style="text-align: right;">99</p> <p>1 saying you have a -- you have a drawing or you</p> <p>2 have an image you would like to submit?</p> <p>3 MR. PHAN: I have. I have a drawing</p> <p>4 that I would like to submit.</p> <p>5 HEARING EXAMINER SOKONI: So if you</p> <p>6 could send that to the OZAH mailbox,</p> <p>7 ozah@montgomerycountymd.gov, and we'll mark that</p> <p>8 for inclusion. We'll post it up on the website</p> <p>9 and then you can address admitting it into the</p> <p>10 record at the next hearing.</p> <p>11 MR. PHAN: Okay. Okay. I will do</p> <p>12 that. So for now I just talk; right?</p> <p>13 HEARING EXAMINER SOKONI: You can</p> <p>14 just -- but let us know what -- what -- the</p> <p>15 exhibit that you will provide, what are you --</p> <p>16 what does it look like?</p> <p>17 MR. PHAN: I have a different</p> <p>18 scenario, like when, like, the vehicle exits in</p> <p>19 the townhome community, turn directly our path,</p> <p>20 like, when we -- from our driveway, we turn left</p> <p>21 or right, and they -- whether they come into the</p> <p>22 west on Notley road into the community or they</p> <p>23 coming from the -- so then they come up from the</p> <p>24 east to the west and from the west to the east,</p> <p>25 and then waiting to turn left into the community.</p>
<p style="text-align: right;">98</p> <p>1 to meet that standard.</p> <p>2 So I have four concerns, serious</p> <p>3 concerns.</p> <p>4 The first one, traffic conflict. The</p> <p>5 vehicle exiting the townhome community might turn</p> <p>6 directly into our path as we enter or exit our</p> <p>7 driveway.</p> <p>8 I did not show a picture, actually, to</p> <p>9 simulate the situation, but if you want, I can</p> <p>10 display that now and then ask for it to be</p> <p>11 admitted as an exhibit later. Is that okay with</p> <p>12 you?</p> <p>13 HEARING EXAMINER SOKONI: I don't</p> <p>14 believe that you're -- you're not able to share --</p> <p>15 we do not accept exhibits that way. You could --</p> <p>16 you could -- you couldn't call it up -- you</p> <p>17 couldn't share your screen.</p> <p>18 The way to do it is to send it to us</p> <p>19 and then we could have called it up. You're</p> <p>20 welcome to submit it into the record. That can be</p> <p>21 taken care of at the next hearing. And then</p> <p>22 we'll --</p> <p>23 MR. PHAN: Okay. For the content,</p> <p>24 yeah.</p> <p>25 HEARING EXAMINER SOKONI: Are you</p>	<p style="text-align: right;">100</p> <p>1 So that's different scenario I</p> <p>2 depicted in my drawing. So I can describe that</p> <p>3 for now so I think Mr. Sloan will understand. If</p> <p>4 he has question, he can cross-examine me after I</p> <p>5 talk.</p> <p>6 So the vehicle --</p> <p>7 MS. ROGERS: Wait. Madam Hearing</p> <p>8 Examiner --</p> <p>9 HEARING EXAMINER SOKONI: Can you</p> <p>10 pause, Mr. Phan, for a second?</p> <p>11 MR. PHAN: Yes.</p> <p>12 MS. ROGERS: I was under the --</p> <p>13 Mr. Phan testified previously during community</p> <p>14 testimony. We brought Mr. Sloan back up to -- he</p> <p>15 had asked a question of Ms. Wagner regarding why</p> <p>16 the driveway was aligned where it was, and we said</p> <p>17 that Mr. Sloan was in charge of the proposed</p> <p>18 conceptual layout for the floating zone plan and</p> <p>19 that we would agree to bring him back up to answer</p> <p>20 that question.</p> <p>21 My understanding is that that's what</p> <p>22 we're doing right now. We're not having</p> <p>23 additional testimony. Mr. Sloan is answering that</p> <p>24 question.</p> <p>25 MR. PHAN: Right. Have he listened to</p>

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<p>101</p> <p>1 the recording like in the previous meeting? Or 2 he -- 3 MS. ROGERS: Mr. Sloan has been at 4 every hearing. 5 HEARING EXAMINER SOKONI: So, 6 Mr. Phan, your question has been presented. I 7 think you had raised -- let's start with you 8 raised the concern about the location -- you know, 9 you were wondering why the -- your driveway -- why 10 the entrance to the development, proposed 11 development, aligns directly opposite your 12 driveway. 13 MR. PHAN: Right. But he didn't 14 hear -- he has not heard the whole background 15 information, my concern before. That would be my 16 last question after I present the background 17 information. 18 So I just wonder if he listened to the 19 recording in the previous meeting when I went 20 through those four concerns. 21 HEARING EXAMINER SOKONI: I believe he 22 was present. 23 MS. ROGERS: Mr. Sloan has been 24 present at every hearing. 25 MR. PHAN: No, he was not. Only the</p>	<p>103</p> <p>1 other and very clearly ensure that they're -- each 2 knows what the other's doing and can see the 3 turning movements that are proceeding. 4 So that's one. We typically do this 5 with intersections, just like we did with our 6 eastern entrance, and we did it in this case on 7 the western side too. 8 And that's also because there are two 9 options for Mr. Phan to leave his property. He 10 has, as he noted, the U-shaped driveway. So he 11 could use both of them, if one's not busy, or 12 whatever. 13 The other is we were working on the 14 urban design elements of the project at the same 15 time. We originally had more internal open space 16 when we submitted this plan, and staff directed us 17 to put more of the open space towards the front 18 and adjacent to the existing park. 19 They also wanted us to have a road 20 next to that park because they feel it has more of 21 a public-facing, public-appearing feel to it when 22 you have sidewalks, parked cars, and access 23 directly from the road. 24 So that requirement of putting the 25 open space there, making the connection, putting</p>
<p>102</p> <p>1 traffic engineer was present. 2 MS. ROGERS: He's been present at 3 every hearing. It was the traffic consultant was 4 the one that was answering questions when Mr. Phan 5 asked his question, and we said that was -- she 6 hadn't testified to the layout, and we graciously 7 agreed to bring Mr. Sloan back up, even though his 8 direct/cross had already ended for the limited 9 purpose of him being questioned on why the 10 driveway alignment was laid out this way with our 11 floating zone plan. 12 HEARING EXAMINER SOKONI: So, 13 Mr. Phan, my suggestion is let's at least get 14 that -- that was a question you raised. How about 15 we get that question addressed. 16 Why was the -- Mr. Phan says his 17 driveway aligns directly opposite the entrance to 18 the proposed development. Why so? 19 MR. SLOAN: Correct. So we provided 20 the layout and location of this driveway entrance 21 where we did for several reasons. 22 One, it's actually safer to align 23 driveways directly opposing each other. And 24 that's so when one person is leaving a road and 25 they're facing another person, they can see each</p>	<p>104</p> <p>1 the road, that sort of worked from the west to the 2 east. 3 And then we had to design the road 4 exactly, fine-tune it, which we haven't completely 5 done, and we will at site plan, to the best, 6 safest alignment, which I described as being 7 directly aligned with someone so that you could 8 face each other when you're leaving onto Notley 9 Road. 10 MR. PHAN: Can I -- so I agree with 11 that part, the people facing, like, coming out of 12 the community, like, facing my driveway, they can 13 see, and we can see them. 14 But you forgot about the -- how about 15 the part that the people queuing up on the -- when 16 they going home, right? They go turning left into 17 the community, and they queuing up, like, a whole 18 bunch of car on that lane. 19 I wouldn't be able to see from my 20 driveway to going left, turning left, turning 21 west. And the same thing, if I turning right too, 22 I have problem too, like, because other people 23 blocking it. 24 So the focus is, like, not just from 25 the people facing each other from the community,</p>

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<p style="text-align: right;">105</p> <p>1 facing my driveway and me facing the community, 2 but also when we turning left or right, you can 3 see situation people queuing up on the lane. And 4 I wouldn't be able to see it on the other side if 5 they want to turn left. Right? 6 HEARING EXAMINER SOKONI: Are 7 you understanding the concern? 8 MR. PHAN: Imagine that you have, 9 like, several car, like three or four or five car 10 going from the west to the east, waiting to turn 11 left into the community at that access point. 12 Because directly in front of my driveway, they 13 blocking my view. I cannot see. Turning left. 14 I cannot -- even try to use the other, 15 you know, the U-shaped driveway, the other 16 entrance, I cannot turn left either because there 17 are cars on -- on -- you know, on -- on the other 18 side. 19 Do you see what I'm saying? 20 MS. ROGERS: I'm personally not sure 21 I'm following the question. Also, I'm not trying 22 to be difficult, I would also note, though, that 23 Mr. Sloan hasn't testified to traffic queuing 24 issues. That was Ms. Wagner's testimony. And 25 sight distance was something that Mr. Kelso</p>	<p style="text-align: right;">107</p> <p>1 MR. SLOAN: Yeah. As Ms. Rogers was 2 describing, we work as a team. We each have our 3 own respective professional expertise. 4 And so, unfortunately, I do a piece, 5 we confer with our transportation engineer and 6 planner, they do a piece, and our civil engineer 7 does a piece, and each makes sure that they're -- 8 that the safe, adequate, and efficient elements of 9 our driveway locations is met for their piece. 10 HEARING EXAMINER SOKONI: So when you 11 say the location, having them directly aligned is 12 safer -- 13 MR. SLOAN: That's right. 14 HEARING EXAMINER SOKONI: How so? 15 What makes it safer? 16 MR. SLOAN: It's safer because if you 17 are -- if you are skewed, you won't necessarily be 18 able to determine the vehicle that's exiting 19 across from you, their turning movement, as easily 20 as you will if it's in front of you. 21 The question on queuing is really 22 beyond my scope. But if people are in the 23 right-of-way, they have the right-of-way, and 24 that's -- whether a car's there or not isn't going 25 to change the location, the road. Won't change</p>
<p style="text-align: right;">106</p> <p>1 testified to. 2 So I also want to make sure that we're 3 being respectful of what the expert is being asked 4 to respond to. 5 So if Mr. Phan could try to ask the 6 question again and see if it's something within 7 Mr. Sloan's expertise. But he's testified to the 8 principles that drove our site layout. 9 MR. PHAN: So you don't have the 10 traffic engineer currently in attendance? Because 11 the question is something, like, comprehensive, 12 they're not, like, specific to certain -- it did 13 not -- this cannot be -- it's not discrete. It's 14 not -- you cannot separate. They go together. 15 The traffic, the access point, the 16 alignment, all those things go together. 17 HEARING EXAMINER SOKONI: Actually, I 18 was going to -- just for my understanding, I was 19 going to follow up. Are you saying -- because you 20 mentioned -- if you're saying, Mr. Sloan, that 21 from a safety standpoint having -- I mean, I 22 understand what you're saying is if the driveways 23 are aligned, it's safer. But in making that 24 determination, you don't factor in queuing or 25 traffic?</p>	<p style="text-align: right;">108</p> <p>1 that. 2 It could be -- if you shifted to the 3 east, you'd still have a queuing line in front. 4 If you shifted to the west, you'd have a queuing 5 line further. But then you'd be even more 6 disadvantaged because you wouldn't be able to see 7 what's happening with the person across from you. 8 MR. PHAN: Well, if you shifted, you 9 don't need to see the person across from you 10 because the access point is from different 11 location. I don't even need to see that, right, 12 when I'm going out because the access point is, 13 like, either further down or further -- somewhere 14 down towards the east. 15 How does that not impact me? 16 You know, like, if you leave it the way right now, 17 I -- when I'm coming home, turning left into my 18 driveway, be the entrance, I still have problem 19 because it's blocking my view. I cannot with the 20 queuing vehicle sitting on Notley Road. 21 Or when I'm coming out from my 22 driveway, turning left, which is going west, I 23 get -- my view gets blocked too. 24 HEARING EXAMINER SOKONI: It sounds to 25 me like there's more than just the driveway</p>

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<p>109</p> <p>1 location. There's a circulation issue as well? 2 MR. PHAN: No, I think this has to do 3 with alignment because this is all focused on, 4 like, when we're facing each other, like going 5 out, like going out of the community and going out 6 of the driveway. Yes, I agree with him on that. 7 But he didn't say anything about 8 people coming home and I'm coming out. Right? 9 People queuing. 10 This is a lot of traffic. So imagine 11 that, like, three or four cars queuing on Notley 12 Road, waiting to turn left into that access point. 13 And then people coming home, right, from -- into 14 the community, turning right too. 15 And I -- the first scenario would be 16 when I'm going out from a driveway, left. 17 HEARING EXAMINER SOKONI: So 18 understood. 19 MR. PHAN: Blocked because of queuing 20 vehicle. 21 HEARING EXAMINER SOKONI: Okay. 22 Understood, Mr. Phan. So Mr. Sloan has answered 23 the question on driveway location, but there's an 24 additional -- you know, from the standpoint of the 25 resident, we're parsing -- it feels like splitting</p>	<p>111</p> <p>1 lack of, like, reasonable alternatives. So maybe 2 reconsider another option too, you know, not just 3 focus on the alignment with the driveway. 4 HEARING EXAMINER SOKONI: But just so 5 I understand you, so if you're -- we'll have Ms. 6 Wagner testify to the queuing issue, but just on 7 the alignment issue, are you satisfied -- I heard 8 you say you're satisfied with the response, but 9 you still would like the entrance point moved? 10 MR. PHAN: No. I'm not satisfied with 11 the response because I partially agree with him on 12 just when -- just one out of many scenario, you 13 know, many situation. He just focus on the one 14 situation when the two drivers, like one from the 15 community, facing my driveway. That's the only 16 situation. 17 HEARING EXAMINER SOKONI: I see. 18 MR. PHAN: Because there are more than 19 one situation in that access point. Right? 20 Turning left, turning right, the people coming 21 home, you know, queuing, all those things. 22 HEARING EXAMINER SOKONI: Okay. So 23 hopefully Ms. Wagner can speak to that. 24 He's saying he understands the direct 25 alignment, facing each other, but once you get</p>
<p>110</p> <p>1 hairs. So I think he is -- 2 MS. ROGERS: So what I was going to 3 offer with, Ms. Wagner is here. Queuing is within 4 her expertise. Although out of order, we're happy 5 to have her come up and try to see if we can 6 address the question with Mr. Sloan and Ms. Wagner 7 in tandem. 8 HEARING EXAMINER SOKONI: That would 9 be helpful. 10 MR. PHAN: Yeah. And there are plenty 11 of room along Notley Road, like other people are 12 not into -- directly into people driveway. You 13 can combine the two access points together. 14 That's another option. I know there's some other 15 things you have to consider. 16 Oh. Like, one of the things I'm 17 suggesting, I don't know -- I'm not the expert, 18 but I'm suggesting, like, the State Highway 19 Administration, do they consider exception too? 20 Right? Just like you are asking state zoning 21 exception right now from the county. 22 So do they have exception too? Do 23 they consider that? Because we're talking about 24 safety here. And then we are -- you talk about 25 the (inaudible) the limit. So this -- there's a</p>	<p>112</p> <p>1 into turning and queuing, he's not in agreement 2 that -- 3 MR. PHAN: Yeah. And that also -- 4 HEARING EXAMINER SOKONI: -- that is 5 still safe. 6 MR. PHAN: I'm sorry, Examiner. So 7 only -- I think that we might run into the same 8 issue again if only one of them present in the 9 next meeting because they -- 10 HEARING EXAMINER SOKONI: Ms. Wagner 11 is here today. So we are asking if she would come 12 up now and just -- Ms. Wagner, if you would kindly 13 come up. 14 Please press the button on the 15 microphone and provide your name for the record. 16 MS. WAGNER: Katherine, or Katie, 17 Wagner with Gorove Slade. 18 HEARING EXAMINER SOKONI: Thank you. 19 If you raise your right hand, or raise your hand, 20 and confirm that your testimony will be the truth, 21 the whole truth, and nothing but the truth. 22 MS. WAGNER: Yes, I will. 23 HEARING EXAMINER SOKONI: Thank you. 24 She was -- Ms. Wagner was present. 25 Did you understand his concerns and</p>

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<p>113</p> <p>1 his questions?</p> <p>2 MS. WAGNER: I heard the questions. I</p> <p>3 do not understand the concerns. I've been sitting</p> <p>4 here listening, trying to follow what exactly</p> <p>5 queuing issues he's concerned about blocking his</p> <p>6 driveway.</p> <p>7 From what I am hearing, it sounds like</p> <p>8 it's a sight distance issue for his driveway that</p> <p>9 may be existing today, but would love for him to</p> <p>10 explain a little bit further what queues he is</p> <p>11 anticipating to be blocking his sight distance.</p> <p>12 MR. PHAN: Hmm. So if you look at the</p> <p>13 circulation map, right, and imagine that you have,</p> <p>14 like, three, four, five cars waiting, going from</p> <p>15 the west to the east, and want to turn left into</p> <p>16 the community.</p> <p>17 Right? So far, so good? Four or five</p> <p>18 cars queuing, waiting there to turn left --</p> <p>19 MS. WAGNER: Yes.</p> <p>20 MR. PHAN: -- into that access point.</p> <p>21 Right? And my driveway is right there, on the</p> <p>22 left entrance. And wait from there to turn left.</p> <p>23 Because the car queuing right there, I cannot see</p> <p>24 the other lane. Yes?</p> <p>25 MS. WAGNER: Yes. And so my response</p>	<p>115</p> <p>1 analysis.</p> <p>2 HEARING EXAMINER SOKONI: And that</p> <p>3 analysis specifically factors in the driveway</p> <p>4 location?</p> <p>5 MS. WAGNER: Yes, it does. Yes, it</p> <p>6 does. And that's found -- that's in the -- in the</p> <p>7 traffic study.</p> <p>8 MR. PHAN: So what -- what's the</p> <p>9 reason that you said cannot combine the two</p> <p>10 together, the access point? Like, the other one</p> <p>11 is the public. The east access point, that is</p> <p>12 not, like, into any one driveway. Right?</p> <p>13 So what's the reason -- you can open</p> <p>14 up, like combine them, just like the other two big</p> <p>15 property above the development, you know, the</p> <p>16 retirement community and there's another one up</p> <p>17 there. They all use a big access point. They</p> <p>18 combine them into one, and there's people coming</p> <p>19 in and out from that and without hitting any one</p> <p>20 driveway.</p> <p>21 And if you do combine them into the</p> <p>22 east access point and make them larger, just my</p> <p>23 suggestion, then you are not, like, blocking any</p> <p>24 one driveway in that sense.</p> <p>25 MR. SLOAN: It's generally -- we do</p>
<p>114</p> <p>1 to you would be this is going to be -- operate</p> <p>2 like a normal four-way intersection. And so if</p> <p>3 there are cars that will be turning left into the</p> <p>4 driveway, they will be on Notley Road and will</p> <p>5 have the right-of-way.</p> <p>6 Your driveway should act as a stop</p> <p>7 control movement. And so you need to yield to</p> <p>8 vehicles on Notley Road just like you do today,</p> <p>9 where if there are cars traveling on Notley Road,</p> <p>10 you need to yield to those vehicles traveling on</p> <p>11 Notley Road.</p> <p>12 So I don't think that queuing will be</p> <p>13 blocking your drive -- blocking your view because</p> <p>14 you will need to yield to those vehicles.</p> <p>15 MR. PHAN: Agreed, that part, because</p> <p>16 we don't have that many -- much traffic right now.</p> <p>17 But, like, if there's 130-some townhome in there,</p> <p>18 that would be different. So that's going to be a</p> <p>19 burden on my family and my neighbor. That's what</p> <p>20 I'm talking about --</p> <p>21 MS. WAGNER: So we -- sorry to</p> <p>22 interrupt you. We did do a queuing study at this</p> <p>23 intersection and do not anticipate queues. We ran</p> <p>24 traffic models and do not anticipate this queue.</p> <p>25 And that is shown in the traffic study queuing</p>	<p>116</p> <p>1 try to provide more than one location for our</p> <p>2 driveways so that we can give people a choice of</p> <p>3 where -- which way they're going. If they're</p> <p>4 going west or east, they could use either</p> <p>5 driveway.</p> <p>6 We also need these corridors for</p> <p>7 infrastructure such as water and sewer and storm</p> <p>8 drain lines and things. And so we're going to</p> <p>9 have this corridor, and it makes the most sense to</p> <p>10 make it a multifunctional corridor and to allow us</p> <p>11 to disperse trips better for circulation.</p> <p>12 MR. PHAN: Sorry, I don't understand</p> <p>13 that. What did you -- can you explain a little</p> <p>14 bit about the corridor? You mean for water and</p> <p>15 sewage?</p> <p>16 MR. SLOAN: So there are corridors for</p> <p>17 our infrastructure that have easements over them</p> <p>18 such as water or sewer. We could have storm drain</p> <p>19 infrastructure. We could have dry utility</p> <p>20 infrastructure, like electric, phone lines, gas</p> <p>21 lines, whatever it may be.</p> <p>22 So we typically put those into</p> <p>23 roadways. And with the layout that we have here,</p> <p>24 we can take advantage and put the roads over those</p> <p>25 layouts of the infrastructure because we do want</p>

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<p>117</p> <p>1 to provide people with an option for circulation 2 and not have just one entrance so that we can have 3 some cars go one way, some cars go another. 4 Because they will have a different distribution 5 pattern for trips. 6 MR. PHAN: So is that a requirement by 7 the County or the State to have the utility lines 8 under the roadway? 9 MR. SLOAN: It is not a requirement to 10 have them underneath the road right-of-way. But 11 there are subdivision regulations and fire code 12 regulations that do require us to have the number 13 of driveways also. 14 MR. PHAN: The two large property 15 above, north of development, they, I think, appear 16 to be doing fine with just one large access point. 17 Right? Each of them. 18 MR. SLOAN: I didn't sign this or 19 analyze them. 20 MR. PHAN: Okay. Well, I mean -- 21 HEARING EXAMINER SOKONI: So the goal 22 here is not to -- we may not like the response, 23 but the goal was to get the question answered. 24 And I believe the question has been answered. 25 Does --</p>	<p>119</p> <p>1 HEARING EXAMINER SOKONI: Okay. Mr. 2 Touhey, you had a raised hand? 3 MR. TOUHEY: Yes. I just wanted to 4 ask a question, clarification about the stop sign. 5 Will that be a stop sign stopping traffic coming 6 out the driveway, or will it be a stop sign 7 stopping traffic on Notley? I didn't understand 8 what the answer was. 9 MS. WAGNER: The stop sign will not be 10 on Notley. The stop sign will be for traffic 11 coming out of the proposed development. 12 HEARING EXAMINER SOKONI: Ms. 13 Rosenfeld, you had some follow-up as well? 14 MS. ROSENFELD: Yes. Mr. Touhey asked 15 my first. 16 HEARING EXAMINER SOKONI: You need to 17 press the green button. Yeah. Thank you. 18 MS. ROSENFELD: Thank you. 19 Mr. Touhey asked my first question. 20 My second question is where in your 21 report is the queuing analysis as it relates to 22 this particular driveway? I see it for Petwyn, 23 but I don't see it for this particular -- this 24 other access. 25 MS. WAGNER: The queuing analysis is</p>
<p>118</p> <p>1 MR. PHAN: Can I have one more 2 question? 3 HEARING EXAMINER SOKONI: Sorry? 4 MR. PHAN: Can I have one more 5 question? 6 HEARING EXAMINER SOKONI: Sure. 7 MR. PHAN: Do the -- will a stop sign 8 be put at that access point if we go with this 9 plan? 10 MR. SLOAN: Yes. One more thing that 11 I wanted to mention just so Mr. Phan is aware. 12 Section 6.13 doesn't technically apply to this 13 property because of the development building types 14 that are being proposed. But that's -- we're 15 still designing it like it would. 16 HEARING EXAMINER SOKONI: What was the 17 answer to the question will there be a stop sign? 18 MR. SLOAN: Oh. Sorry. Yes, there 19 will be a stop sign. 20 MR. PHAN: Okay. Thank you. 21 HEARING EXAMINER SOKONI: Okay. 22 Any -- I'd like to -- I see raised hands. Is 23 that -- 24 MS. ROSENFELD: I just have a couple 25 of cross-examination questions and follow-up.</p>	<p>120</p> <p>1 in the LATR Exhibit 52A on Table 7. 2 MS. ROSENFELD: Thank you. And is 3 that in the main report or in the appendix? 4 MS. WAGNER: The main report. 5 It's Intersection 5. 6 MS. ROSENFELD: Intersection 5. Okay. 7 Thank you. 8 HEARING EXAMINER SOKONI: Mr. Phan, 9 are we -- did you have any further concerns? 10 MR. PHAN: Yeah. I mean, the other 11 four concern -- but, like, they block -- because 12 of the queuing, they're going to block my 13 driveway. I cannot get in and out for a long 14 time. 15 And then the -- you know, the noise, 16 the traffic pouring out. This one, like during 17 nighttime, early daytime, the car pointing 18 directly the light -- the headlight into my house, 19 you know, that type of thing, engine noise. 20 And not just that. I mean, not just 21 the safety for my family and my neighbor, but also 22 for the future pedestrian and cyclist too. They 23 have to cross that particular path of walk path. 24 Right? And they could create a walk path on that 25 side, sidewalk. So that's (inaudible).</p>

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<p style="text-align: right;">121</p> <p>1 So I don't understand how Mr. Sloan 2 not accept that, like, the safety -- the code I 3 mentioned earlier doesn't apply to my house 4 because the different type of development they are 5 building. 6 I mean, it doesn't matter, any 7 development they're building, they should -- they 8 should consider the existing safety -- safety of 9 the existing resident too. Right? 10 So we -- safety -- our safety is as 11 much should be concerned and taken into account as 12 much as the community resident. 13 So that's how I feel. So that's what 14 the (inaudible) is about. You don't just focus on 15 one particular population, but you need to focus 16 on everyone. You don't just, like, trying to do 17 something and people -- let people leave. They 18 don't have the option of leaving the community, 19 especially the existing one. 20 That's how I feel. But thank you for 21 asking. Thank you. 22 HEARING EXAMINER SOKONI: Thank you, 23 Mr. Phan. 24 Did you -- did -- Mr. Sloan, 25 Ms. Wagner, did you have any further response to</p>	<p style="text-align: right;">123</p> <p>1 driveway needs to yield to the Notley traffic that 2 does have the thruway. 3 MR. TOUHEY: That's a new rule of the 4 road to me. Never heard that one. 5 HEARING EXAMINER SOKONI: I think that 6 part of the testimony is complete. 7 The next stage is -- that part of the 8 testimony is complete -- we need to avoid any 9 crosstalk; otherwise, the court reporter cannot 10 track who is saying what. 11 I think that part of the testimony is 12 complete. So your witness has been standing. 13 MS. ROGERS: I think next up you 14 wanted potentially Mr. Sloan to stay -- 15 HEARING EXAMINER SOKONI: 16 Cross-examination of Mr. Sloan, yes. 17 So, Ms. Rosenthal, you had -- this was 18 specifically with regard to particular exhibits. 19 So a particular exhibit that had been entered into 20 the record that you -- 21 MS. ROSENFELD: That is correct. It's 22 specific to Exhibit 82. 23 Yes, thank you. And is it possible to 24 also show the bottom portion of that? Is it 25 possible to show the entire exhibit? Perfect.</p>
<p style="text-align: right;">122</p> <p>1 anything Mr. Phan had to say? 2 MS. ROGERS: I don't think (inaudible) 3 additional questions. Mr. Phan testified 4 previously. So -- 5 HEARING EXAMINER SOKONI: Thank you 6 very much. 7 Oh. Sorry, Mr. Touhey. You have 8 something additional? 9 MR. TOUHEY: I just have one more 10 question about the stop sign. Now that they 11 testified that the stop sign would be on the 12 driveway coming out of the community, who will 13 have the right-of-way with regard to Mr. Phan's 14 driveway and that driveway? Because he won't have 15 a stop sign. 16 Will he have the right-of-way out of 17 his driveway? 18 MS. WAGNER: These are just the rules 19 of the road. The first vehicle that goes there, 20 you observe when you're arriving to a stop sign. 21 So these are just the normal rules of the road. 22 Mr. Phan should act as he has a stop 23 sign at his driveway. He can put one there if he 24 needs to remind himself that he needs a stop sign, 25 but he does need to observe traffic and act as his</p>	<p style="text-align: right;">124</p> <p>1 Thank you. 2 Mr. Sloan, what is the title of this 3 exhibit? 4 MR. SLOAN: Notley Road Massing 5 Exhibit. 6 MS. ROSENFELD: And can you explain 7 why this exhibit was prepared and introduced into 8 the record? 9 MR. SLOAN: So my recollection is that 10 there was a question about the massing we showed 11 on the floating zone plan, which had several -- 12 one, two, three, four, five, six, seven, eight, 13 nine -- nine sticks of townhouses facing Notley 14 Road, one side unit facing New Hampshire Avenue. 15 And these were all at 80 feet or less. 16 And the question was raised about a 17 binding element that we have proposed that allows 18 up to 100 feet in stick length for these 19 townhouses, and we were not showing what that 20 possible impact could be. 21 So I read that as we should provide an 22 exhibit comparing the two because we can have 23 fewer sticks that are a little bit longer with 24 more open space between them, or we can have lots 25 of little sticks that are shorter in length but</p>

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<p>125</p> <p>1 have smaller gaps between them. And that's the 2 purpose that I understood and tried to provide. 3 MS. ROSENFELD: And at the 4 November 6th hearing, and I'm looking at 5 transcript page 285, the question that I presented 6 related to an exhibit that was under discussion at 7 the time, which is Exhibit 68, page 008. 8 And my question regarding that exhibit 9 was, quote: But this exhibit is titled Compatible 10 Massing Along Notley. What I'm asking is do you 11 have an exhibit that shows what 100-foot-wide 12 buildings would look like for purposes of the 13 hearing examiner's ability to evaluate 14 compatibility based on the proper binding element? 15 End quote. 16 Was it that discussion that prompted 17 the production of Exhibit 82, as you recall? 18 MR. SLOAN: I believe so. 19 MS. ROSENFELD: When we look at 20 Exhibit 82, the numbers that are shown in green, 21 that reflects -- does that reflect the building 22 widths if they were at or approximately 100 feet? 23 MR. SLOAN: There from -- there -- one 24 is 92, one is 96, four are 100 feet. And then the 25 end unit did not change. It's 40 feet.</p>	<p>127</p> <p>1 MS. ROSENFELD: And does Exhibit 82 2 show that proposed compatibility given the -- in 3 light of the longer sticks? 4 MR. SLOAN: Exhibit 82 is the other 5 one that we were just looking at? 6 MS. ROSENFELD: 82 is the one that we 7 were just looking at. 8 MR. SLOAN: No, I relied on this being 9 in the record for comparison's sake. 10 MS. ROSENFELD: Is there any exhibit 11 in the record that would show the hearing examiner 12 the compatibility or lack thereof with respect to 13 the longer sticks in relationship to the existing 14 single-family homes across Notley Road? 15 MR. SLOAN: We did not provide the 16 100-foot sticks in green as a comparison to the 17 existing homes, no. 18 MS. ROSENFELD: And if we were to 19 compare the widths in particular along the lower 20 right-hand side of Exhibit 68, page 008, with the 21 widths that are shown on Exhibit 82, are you able 22 to compare what those numbers are? 23 MR. TOUHEY: I'm trying to follow. So 24 the ones across the street, the existing homes in 25 the R-90 zone?</p>
<p>126</p> <p>1 MS. ROSENFELD: And then the units 2 that are shown below in blue, do those reflect the 3 building widths and locations of the existing 4 homes across Notley Road? 5 MR. SLOAN: No. Those reflect the 6 floating zone plan, a schematic based on the 7 floating zone plan that's been presented. 8 MS. ROSENFELD: And so what, in your 9 view, does this exhibit purport to show? 10 MR. SLOAN: The difference between a 11 lot of smaller sticks, up to 80 feet in width, 12 with sticks that are allowed up to the binding 13 element of 100 feet. 14 MS. ROSENFELD: Okay. If we could go 15 back to Exhibit 68, PDF page 008. Correct, the 16 one that has the blue numbers. 17 And what is the title of that exhibit? 18 MR. SLOAN: Compatible Massing Along 19 Notley. 20 MS. ROSENFELD: And what was the 21 purpose of presenting this exhibit? 22 MR. SLOAN: We were showing the 23 proposed schematics of the townhouse in various 24 sticks in comparison to the widths of the units 25 across Notley Road.</p>	<p>128</p> <p>1 MS. ROSENFELD: Correct. And it might 2 help if I give you a hard copy of Exhibit 82. 3 If we were to look at the easternmost 4 four structures on Exhibit 68, page 008, what are 5 the widths of those structures? 6 MR. SLOAN: So the lower right are 7 42-and-change to 51-and-change. 8 MS. ROSENFELD: Okay. 9 MR. SLOAN: And the townhomes in the 10 additional massing exhibit comparison were up 11 to -- were two sticks of 100 feet. They are not 12 identical. 13 MS. ROSENFELD: Okay. And then in 14 Exhibit 82, when you look at the sticks below, are 15 they shown at that 42, 47, 51 feet? Or are they 16 shown as larger? 17 MR. SLOAN: They're -- they're 18 shown -- they're the exact -- what's up on the top 19 screen here. 20 MS. ROSENFELD: If we could go back to 21 Exhibit 82, please. 22 HEARING EXAMINER SOKONI: Is -- is 23 there any way to have them side by side? 24 EQUIPMENT TECH: I don't know -- 25 HEARING EXAMINER SOKONI: We can split</p>

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<p>129</p> <p>1 screen them? 2 EQUIPMENT TECH: No. 3 MS. ROSENFELD: So what are the 4 relative widths of the easternmost footprints 5 shown on Exhibit 82 in blue? 6 MR. SLOAN: They're 48 to 80. 7 MS. ROSENFELD: Okay. So they're 8 larger than what currently is existing on Notley 9 Road; correct? 10 MR. SLOAN: They were showing -- meant 11 to show what's currently on Notley Road. 12 MS. ROSENFELD: Okay. And do you -- I 13 may have asked this, and I apologize if I'm 14 repeating myself. Do you have an exhibit in the 15 record that shows 100-foot sticks contrasted with 16 the existing building footprints across the road 17 on Notley Road? 18 MR. SLOAN: Not on the same sheet, no. 19 MS. ROSENFELD: And if I were to try 20 and superimpose Exhibit 82 over Exhibit 68, 8, 21 are -- is that -- are they concurrently scaled? 22 Is it possible to -- not that that's ideal, but 23 how would the hearing examiner be able to make 24 that assessment? 25 MR. SLOAN: Make which assessment?</p>	<p>131</p> <p>1 MR. SLOAN: I do. 2 MS. ROSENFELD: And when you are 3 discussing that, are you talking about the 4 townhouse use? 5 MR. SLOAN: I'm talking about the 6 townhouse as a building type. 7 MS. ROSENFELD: And is -- 8 MS. ROGERS: Sorry, Ms. Rosenfeld, 9 just to be clear, the question should be related 10 to the exhibit; correct? 11 MS. ROSENFELD: It is. 12 MS. ROGERS: I want to make sure. 13 Okay. 14 MS. ROSENFELD: It is. 15 And is compatibility limited -- are 16 compatibility considerations limited only to use? 17 Or are they also -- do they also encompass the 18 size and massing and height of building 19 structures? 20 MR. SLOAN: Compatibility is 21 multi-factor. 22 MS. ROSENFELD: And so it would 23 include the height and the width and the massing 24 of structures; is that correct? 25 MR. SLOAN: Among other things.</p>
<p>130</p> <p>1 MS. ROSENFELD: How would -- 2 MR. SLOAN: We know the 100 feet is 3 compatible with the units that are below them? 4 MS. ROSENFELD: With the existing 5 footprints of the houses on Notley Road. 6 MR. SLOAN: How would they make that 7 assessment? By looking at the exhibits and the 8 testimony provided. 9 MS. ROSENFELD: But you don't have a 10 single sheet that would show the 100-foot sticks 11 and how they relate to the existing single-family 12 homes across Notley, do you? 13 MR. SLOAN: Correct. 14 MS. ROSENFELD: Okay. In your -- and 15 Exhibit 82 is not titled a Compatibility Massing 16 Along Notley Exhibit, it's just a Massing Exhibit; 17 correct? 18 MR. SLOAN: Correct. 19 MS. ROSENFELD: And in your testimony 20 also on November 6th, when you were talking about 21 compatibility on page 197, on November 6th, lines 22 10 and 11 -- and I'm quoting you: Townhouses are 23 residential in nature and compatible with detached 24 homes. End quote. 25 Do you agree with that statement?</p>	<p>132</p> <p>1 MS. ROSENFELD: Okay. 2 Okay. Ms. Hearing Examiner, I have no 3 further questions. 4 HEARING EXAMINER SOKONI: Thank you. 5 Do you have any -- did you have any -- 6 thank you very much, Mr. Sloan. 7 We're at 12:45. I believe school's 8 out. What is left now is the opposition's 9 case-in-chief. 10 I believe it would be unwise to start 11 that now. I think we should really have it 12 winding down. So maybe what we focus on now is 13 trying to pick an alternative date. 14 Question. How does -- what are your 15 calendars like for this Thursday or this Friday? 16 MS. ROSENFELD: I'm out of town both 17 days. I'm out of town most of this week. 18 HEARING EXAMINER SOKONI: Mr. Nusbaum, 19 would you like to come to the table as we compare 20 notes on dates? 21 MR. NUSBAUM: Sure. 22 HEARING EXAMINER SOKONI: So it sounds 23 like the rest of this week is out. 24 Sorry, Ms. Rosenfeld, did you say 25 you're out the rest of this week?</p>

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<p>133</p> <p>1 MS. ROSENFELD: I'm out between the 2 19th and the Tuesday, the 24th. And I'm gone 3 again Friday, the 27th. 4 HEARING EXAMINER SOKONI: 19th to 5 24th? 6 MS. ROSENFELD: Correct. 7 HEARING EXAMINER SOKONI: And? 8 MS. ROSENFELD: I have a Planning 9 Board hearing the 26th, and I'm out of town again 10 on the 27th. 11 HEARING EXAMINER SOKONI: Ms. Rogers, 12 what are your conflicts for March? 13 MS. ROGERS: I have, in fact, every 14 single day. My major conflicts is I am out of 15 town the 27th through April 6th. 16 HEARING EXAMINER SOKONI: Your major 17 conflict is -- 18 MS. ROGERS: 27th through April 6th. 19 Back on the 7th. 20 HEARING EXAMINER SOKONI: So your 21 conflicts match mine. 22 MS. ROGERS: I have a lot of other 23 conflicts -- 24 HEARING EXAMINER SOKONI: Okay. So we 25 can rule that one out.</p>	<p>135</p> <p>1 the next date. Might be easier too. 2 MS. ROGERS: Did I hear any conflicts 3 for the 25th? I'm checking with Erin as well. 4 She's on remotely today, but -- 5 HEARING EXAMINER SOKONI: The only 6 problem we have, the 25th is a Wednesday. We 7 don't have access to the -- the Board of Appeals 8 sits here on Wednesdays. So we try to -- we don't 9 schedule hearings on Wednesdays. 10 MS. ROGERS: Even in the upstairs 11 room, if we still can't do that? 12 HEARING EXAMINER SOKONI: I wouldn't 13 be able to confirm that right this minute, and the 14 council has their own schedule, so -- 15 MR. NUSBAUM: My next available date, 16 I think, works as April 7th, Tuesday. 17 MS. ROSENFELD: That works for me. 18 HEARING EXAMINER SOKONI: I would 19 like, if we're getting -- if we're looking at 20 after the break, I have to move it to the 21 following week. We have to start looking at at 22 least April 13th, the week of April 13th. 23 MS. ROGERS: And, Madam Hearing 24 Examiner, you were writing things out. It sounded 25 like the only two potentials were Wednesdays. Is</p>
<p>134</p> <p>1 Mr. Nusbaum, what are your conflicts 2 for March? 3 MR. NUSBAUM: I'm not available the 4 24th, and then the 26th through April 6th as well. 5 HEARING EXAMINER SOKONI: And you said 6 you're not available the 24th? 7 MR. NUSBAUM: Correct. 8 HEARING EXAMINER SOKONI: How's 9 tomorrow? 10 MS. ROSENFELD: I have a trial 11 scheduled. 12 MR. NUSBAUM: I'm not available 13 tomorrow. 14 HEARING EXAMINER SOKONI: Ms. 15 Rosenfeld, I thought your conflicts are on the 16 19th? Sorry. 17 MS. ROSENFELD: Yes. I didn't realize 18 you were asking for a comprehensive -- 19 HEARING EXAMINER SOKONI: Oh, sorry. 20 MS. ROSENFELD: -- comprehensive, day 21 by day. 22 HEARING EXAMINER SOKONI: Could I -- 23 MS. ROSENFELD: But -- 24 HEARING EXAMINER SOKONI: Maybe let me 25 have -- let me get proposals from -- proposals for</p>	<p>136</p> <p>1 that what you have before the break? The 18th and 2 25th when you were writing (inaudible) down? 3 HEARING EXAMINER SOKONI: So I have 4 Ms. Rosenfeld conflicted for March 19 to 24, 5 conflicted for 26 and for 27. 6 Ms. Rogers, I have you conflicted for 7 March 27 through April 6. 8 Mr. Nusbaum has a conflict 24, 26, and 9 April 6. 10 Now, the 25th is a Wednesday. I see 11 the 18th and the 25th. They're both a problem 12 because they're Wednesdays. 13 MR. NUSBAUM: The week you were 14 looking at, I'm available both the 13th and the 15 17th in April. 16 HEARING EXAMINER SOKONI: Okay. So 17 April -- Monday, April 13th, and Friday, April 18 17th. 19 MS. ROSENFELD: I'm available both of 20 those days. 21 HEARING EXAMINER SOKONI: Ms. Rogers, 22 what does that look like for you? 23 MS. ROSENFELD: And the 13th and the 24 17th also work for both of my witnesses. 25 HEARING EXAMINER SOKONI: April 16</p>

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<p style="text-align: right;">137</p> <p>1 or -- sorry. Sorry. Wrong -- wrong month. 2 I'm looking at April 13 and April 17. 3 MR. NUSBAUM: Good. 4 HEARING EXAMINER SOKONI: Ms. Rogers? 5 MS. ROGERS: Those are good for me and 6 for Ms. Girard. I was just looking for clarity 7 depending on how much we get through for our 8 experts. 9 HEARING EXAMINER SOKONI: Okay. And 10 while you work through that, let me check our OZAH 11 calendar. 12 OZAH calendar, 13 and 17 work. We 13 have a hearing on the 16th. 14 Okay. So for now, Monday, April 13th, 15 and Friday, April 17th, both work on my 16 (inaudible). 17 Could we go off the record for a few 18 minutes? 19 (Off the record.) 20 HEARING EXAMINER SOKONI: After 21 checking calendars and conflicts, at this point we 22 are going to reserve two dates in April: Monday, 23 April 13th, at 9:30 in this very location, the 24 dates on hearing room at 100 Maryland Avenue, 25 Suite 200. And we will also reserve Friday, April</p>	<p style="text-align: right;">139</p> <p>1 CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC 2 I, Marcellous Grant, the officer 3 before whom the foregoing proceedings were taken, 4 do hereby certify that any witness(es) in the 5 foregoing proceedings were fully sworn; that the 6 proceedings were recorded by me and thereafter 7 reduced to typewriting by a qualified 8 transcriptionist; that said digital audio 9 recording of said proceedings are a true and 10 accurate record to the best of my knowledge, 11 skills, and ability; and that I am neither counsel 12 for, related to, nor employed by any of the 13 parties to this case and have no interest, 14 financial or otherwise, in its outcome. 15 16 <i>Marcellous T. Dixon-Grant</i> 17 _____ 18 MARCELLOUS GRANT, 19 NOTARY PUBLIC FOR THE STATE OF MARYLAND 20 21 22 23 24 25</p>
<p style="text-align: right;">138</p> <p>1 17th, which we may very well not need, but we are 2 going to set that aside as well. And for both 3 dates, the hearing will start at 9:30, same 4 location. 5 I trust that the public is taking 6 notes. So because we have decided on these new 7 dates within a public hearing, no official -- no 8 notice will be mailed out. No notice will go. We 9 may send emails. But please mark your calendars 10 because no official notice of hearing will be sent 11 out. 12 With that, due to the inclement 13 weather policy that we try to follow with the -- 14 sorry, not the (inaudible) but the Montgomery 15 County Public School calendar, the hearing is 16 adjourned. 17 (Off the record at 12:53 p.m.) 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">140</p> <p>1 CERTIFICATE OF TRANSCRIBER 2 3 I, Darby Talbott, do hereby 4 certify that this transcript was prepared from the 5 digital audio recording of the foregoing 6 proceeding; that said transcript is a true and 7 accurate record of the proceedings to the best of 8 my knowledge, skills, and ability; and that I am 9 neither counsel for, related to, nor employed by 10 any of the parties to the case and have no 11 interest, financial or otherwise, in its outcome. 12 13 14 <i>Darby Talbott</i> 15 _____ 16 DARBY TALBOTT 17 MARCH 20, 2026 18 19 20 21 22 23 24 25</p>

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