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Transcript of Hearing

Date: April 22, 2022

Case: Major Modification Audubon Naturalist Society

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2 (5 to 8)

<p>5</p> <p>1 PROCEEDINGS</p> <p>2 THE HEARING EXAMINER: You will see at</p> <p>3 the top that I am recording this session. It's</p> <p>4 recorded anyway by the court reporter so he can</p> <p>5 produce a transcript. So, but we record these</p> <p>6 because at times it's difficult to make out what</p> <p>7 we're saying if people talk at the same time. So</p> <p>8 this recording is a backup to the recording -- to</p> <p>9 his official transcription.</p> <p>10 This is a public hearing in the matter</p> <p>11 of Board of Appeals Case CBA 2643-A, the</p> <p>12 application of Audubon Naturalist Society to</p> <p>13 modify an existing special exception for a</p> <p>14 charitable and philanthropic institution located</p> <p>15 at 8940 Jones Mill Road, Chevy Chase, Maryland.</p> <p>16 For those of you who haven't been to</p> <p>17 one of our hearings before, my name is Lynn</p> <p>18 Hannan. I'm the hearing examiner, which means I</p> <p>19 will listen to your testimony and evidence today</p> <p>20 and make a recommendation to the Board on whether</p> <p>21 to approve this application.</p> <p>22 If you disagree with my</p> <p>23 recommendation, you may request oral argument to</p> <p>24 the Board of Appeals within ten days of the date</p> <p>25 of the decision.</p>	<p>7</p> <p>1 you could wait to be recognized, that helps reduce</p> <p>2 some of the garbled transcript.</p> <p>3 So is there anyone here, if you could</p> <p>4 raise your hand, use the raise your hand button,</p> <p>5 all I'm asking now is is there anyone not</p> <p>6 represented by an attorney who would like to</p> <p>7 testify today?</p> <p>8 Okay, I see Ms. Nelson-Drake. I see</p> <p>9 Mr. Rutsch, or Rutsch. Okay. So what I'll do,</p> <p>10 then, is go through the order of -- that the</p> <p>11 hearing takes.</p> <p>12 For remote hearings, we ask that you</p> <p>13 not interrupt while someone else is speaking</p> <p>14 unless you have an objection.</p> <p>15 So the procedure. What you say will</p> <p>16 be under oath and subject to cross-examination.</p> <p>17 You may be asked questions about your testimony,</p> <p>18 and the proceedings follow a certain order, and</p> <p>19 one is an opening statement, if anyone wishes; the</p> <p>20 applicant's testimony, questions from the --</p> <p>21 anyone who wishes to ask questions; opposition</p> <p>22 testimony; and rebuttal, applicant's rebuttal; and</p> <p>23 a closing statement, if you wish.</p> <p>24 If someone has time constraints,</p> <p>25 please let me know, and we may be able to take</p>
<p>6</p> <p>1 Would the parties please identify</p> <p>2 themselves for the record.</p> <p>3 MR. KLINE: Good morning again. For</p> <p>4 the record, this is Jody Kline. I'm an attorney</p> <p>5 with the law firm of Miller, Miller, Canby with</p> <p>6 offices at 200B Monroe Street in Rockville.</p> <p>7 And do you need my email address?</p> <p>8 THE HEARING EXAMINER: No.</p> <p>9 MR. KLINE: Okay. Thank you.</p> <p>10 THE HEARING EXAMINER: Just don't</p> <p>11 write "attached image" on your email. Okay,</p> <p>12 I'm --</p> <p>13 MR. KLINE: Sorry if I overlooked it.</p> <p>14 Thank you.</p> <p>15 THE HEARING EXAMINER: And is there --</p> <p>16 are there other parties -- is there anyone here --</p> <p>17 one thing about Microsoft Teams is it's difficult</p> <p>18 to sort out when people are talking at the same</p> <p>19 time. There is a People button at the top. No,</p> <p>20 it's a Reactions button. I'm sorry. Let me</p> <p>21 just -- whoops. I apologize.</p> <p>22 At the top, there is a Reactions</p> <p>23 button. If you can raise your hand if you wish to</p> <p>24 speak, then I -- that's much easier. I can see</p> <p>25 everybody who is raising their hand. And then if</p>	<p>8</p> <p>1 your testimony out of order.</p> <p>2 Are there any -- now, if -- could you</p> <p>3 please lower your hands for the moment, unless</p> <p>4 you're asking to speak.</p> <p>5 Thank you very much. You guys are</p> <p>6 good.</p> <p>7 Are there any procedural matters?</p> <p>8 MR. KLINE: Nothing from the</p> <p>9 petitioner's point of view.</p> <p>10 THE HEARING EXAMINER: Anyone else</p> <p>11 have a procedural issue?</p> <p>12 Okay, hearing none, we will go --</p> <p>13 Mr. Kline, do you have an opening statement?</p> <p>14 MR. KLINE: Not an opening statement</p> <p>15 per se in terms of reviewing the facts of the</p> <p>16 case, but I had a question and what I guess I call</p> <p>17 just sort of a -- as a couple suggestions in terms</p> <p>18 of process.</p> <p>19 And I say that because this is on</p> <p>20 remand from the Board of Appeals. It was not</p> <p>21 originally your case. And I wondered if you felt</p> <p>22 it would be valuable to have any kind of an</p> <p>23 overview presentation to understand the nature</p> <p>24 play area that's driving all this.</p> <p>25 I know you're very good about reading</p>

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<p>9</p> <p>1 the record in advance of the hearing. Would it be 2 unnecessary to go through a little bit of 3 overview? 4 And if so, then what I would do is I 5 would take the issues that were identified by the 6 group that met in the community meeting when we 7 identified what needed to be resolved quickly and 8 what might need to be the subject of further 9 discussion. 10 So I guess I'm really asking you what 11 would you like us to do in terms of giving you 12 more background if you feel you need any. 13 THE HEARING EXAMINER: I have read the 14 staff report, the hearing examiner's report, the 15 post-remand submissions and the transcript. 16 So I don't feel like I need an 17 overview. Just looking at -- I would prefer to 18 get to the issues, unless someone has different 19 issues, if you want to give an overview of the 20 areas. 21 I think there was a PowerPoint where 22 you summarized the areas of disagreement or the 23 questions to be resolved as well. 24 MR. KLINE: That is correct. And I 25 don't know if Ms. Behanna had a chance to get that</p>	<p>11</p> <p>1 were you going to say something? 2 MR. RUTSCH: Yeah, I'm going to turn 3 my screen on. 4 THE HEARING EXAMINER: Thank you. 5 MR. RUTSCH: Okay. I don't think you 6 can see me. There you go. My name is Robert 7 Rutsch, and I am with my mother separately. She 8 is Janet Rutsch, and she is in a property that is 9 adjacent to -- 10 THE HEARING EXAMINER: Okay, let me 11 stop you. I'm sorry. You're not under oath right 12 now. 13 MR. RUTSCH: I'm not. 14 THE HEARING EXAMINER: So -- 15 MR. RUTSCH: Procedurally -- 16 THE HEARING EXAMINER: Did you have 17 any comments on the procedural issue? That's what 18 we're doing right now. 19 MR. RUTSCH: So having read the 20 transcript from the hearing that unfortunately was 21 not -- the neighbors were not notified, there are 22 just a few specific items that I think that the 23 neighbors, myself particularly, have questions for 24 Attorney Kline relative to what's happening that 25 were not actually spelled out in the hearing.</p>
<p>10</p> <p>1 information to you. She was working late last 2 night -- 3 THE HEARING EXAMINER: She did. I -- 4 I -- yeah. She did. And it's on the website. 5 I'm just looking for it. 6 MR. KLINE: Well, that's exactly the 7 way I thought we would process it, sort of, I 8 guess, from the easiest -- or the most easily 9 disposed of questions first preceding the most 10 difficult ones. 11 And the only thing I really want to 12 suggest is, since each one of those questions is 13 sort of very discrete and involves different 14 people, I was going to suggest that if there were 15 to be any cross-examination of the witnesses that 16 I would be putting on to address those issues 17 maybe conducted on that subject at that time 18 rather than waiting until the end and having to go 19 back and go through all five or six of the 20 subjects. I think it would be more efficient that 21 way. 22 THE HEARING EXAMINER: Okay. Does 23 anyone -- okay. Does anyone have any objection to 24 proceeding like that? 25 Okay. Hearing none -- Mr. Rutsch,</p>	<p>12</p> <p>1 Okay? 2 So I think what -- I think what I got 3 from Mr. Kline is that we had a limited -- as a 4 result of this Community Liaison Council meeting, 5 we've limited the concerning areas to specific 6 items and are not concerned about others. Okay? 7 I think that's what he was trying to accomplish. 8 MR. KLINE: No, I was going to say the 9 result of the community meeting was a list of 10 issues that we talked about that evening. I think 11 Audubon's goal today is to try to answer any 12 questions that come up. 13 I think I'd probably go through the 14 list from that meeting first. If there are other 15 issues that seem relevant, we're not going to 16 object to that. 17 MR. RUTSCH: Okay. I think -- so from 18 our perspective, the neighbors, we -- during that 19 meeting we covered many things, and the one area 20 of which we have the most contention is the 21 parking lot. 22 And that was not covered whatsoever 23 during that meeting. It was essentially because 24 it was clear to the host, Audubon Society, and to 25 Mr. Kline, that we were not going to come to any</p>

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<p>13</p> <p>1 agreement on that. Literally, we did not discuss 2 the parking lot for even a moment during that 3 Community Liaison Committee meeting. 4 THE HEARING EXAMINER: All right. Let 5 me get back to order. The order is I think the 6 question on the table, because I -- I can't have 7 any testimony. The question on the table is 8 whether we should address the areas of 9 disagreement. 10 What I'm hearing is that -- that the 11 area -- the major area of disagreement -- and I'm 12 sharing my screen. Do you see this? This is 13 exhibit -- 14 MR. KLINE: It's part of 36A, I 15 believe. 16 THE HEARING EXAMINER: Yeah. So is 17 this -- okay, I'm going to put Mr. Rutsch under 18 oath because it's getting beyond procedural 19 issues. 20 Mr. Rutsch, would you raise your right 21 hand. 22 Do you solemnly affirm under penalties 23 of perjury that the statements you're about to 24 make are the truth, the whole truth, and nothing 25 but the truth?</p>	<p>15</p> <p>1 THE HEARING EXAMINER: You can proffer 2 it, yes. 3 MR. KLINE: Sure. Yeah. You did have 4 up page 25, which was the last page of the 5 PowerPoint presentation that was -- 6 THE HEARING EXAMINER: Now, this 7 should -- it should still be up. Is it still up? 8 MR. KLINE: Yes, ma'am. 9 THE HEARING EXAMINER: Okay. Go 10 ahead. 11 MR. KLINE: Sure. And it was 12 constructed during the meeting to list the areas 13 of consensus and the areas that would be 14 warranting more discussion. 15 So it was just a summary of the things 16 that would come up today, and we were going to 17 address everything that's on there, and maybe not 18 necessarily the same order, but certainly address 19 everything that's on there, plus anything else 20 that comes up. 21 THE HEARING EXAMINER: Let's -- let's 22 get the order of proceedings. I think, given that 23 we -- I hear what the community is concerned 24 about, so it sounds like the issues -- I do think 25 Mr. Kline's proposed approach is to deal -- have</p>
<p>14</p> <p>1 MR. RUTSCH: I do. 2 THE HEARING EXAMINER: Okay. And 3 before I get to that, I see Ms. Nelson-Drake 4 raising her hand. Do you have anything to say on 5 the procedural matter? 6 MS. NELSON-DRAKE: No, I'm fine with 7 it. But I did want to add to Mr. Rush's comment 8 about the parking lot in the Audubon that still 9 under dispute is the parking situation along 10 Brierly, on which I live. 11 So, but I'm fine with Mr. Kline's 12 approach. He can bring it up, and, you know, 13 let's have a discussion. 14 THE HEARING EXAMINER: Okay. Would 15 you -- thank you. You guys are good at Teams. 16 You put your hand right down. So I appreciate 17 that. 18 So I guess what we're going to do 19 is -- let's do this. So we can at least identify 20 the issues. And I'm sharing -- I'm going to share 21 my screen -- okay. Is this -- is this -- this is 22 page 25 of -- I think it's not marked. Well, let 23 me -- 24 MR. KLINE: Would you like some 25 clarification, Madam Hearing Examiner?</p>	<p>16</p> <p>1 the applicant present testimony on each issue and 2 allow cross-examination on each issue, because I'm 3 hearing consensus on what the issues are. 4 So, Mr. Kline, do you have an opening 5 statement, or do you wish to just start addressing 6 the issues? 7 MR. KLINE: The latter. As I said, 8 since you don't need to be educated on all the 9 benefits of nature play area, we'll just go ahead 10 and get right into the issues. 11 THE HEARING EXAMINER: No, I -- okay, 12 thank you. 13 MR. KLINE: Could I call my first 14 witness, then, please? 15 THE HEARING EXAMINER: Yes, you may. 16 MR. KLINE: Ms. Lisa Alexander, would 17 you please go online and introduce yourself. 18 THE HEARING EXAMINER: Well, raise 19 your right hand, please. 20 Do you solemnly affirm under penalties 21 of perjury that the statements you're about to 22 make are the truth, the whole truth, and nothing 23 but the truth? 24 MS. ALEXANDER: I do. 25 THE HEARING EXAMINER: Please state</p>

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<p>17</p> <p>1 your name and address for the record.</p> <p>2 MS. ALEXANDER: My name is Lisa</p> <p>3 Alexander. I'm the executive director of the</p> <p>4 Audubon Naturalist Society located at 8940 Jones</p> <p>5 Mills Road in Chevy Chase, Maryland.</p> <p>6 THE HEARING EXAMINER: Okay. Go</p> <p>7 ahead, Mr. Kline.</p> <p>8 DIRECT EXAMINATION</p> <p>9 BY MR. KLINE:</p> <p>10 Q Ms. Alexander, would you please</p> <p>11 explain for the people listening today your role</p> <p>12 with Audubon Naturalist Society.</p> <p>13 A Yes. I'm the executive director, which is</p> <p>14 sometimes known as the chief cook and bottle washer,</p> <p>15 but one of my biggest responsibilities is oversight</p> <p>16 of our headquarters, Nature Sanctuary Woodend at 8940</p> <p>17 Jones Mill Road.</p> <p>18 And the project that we're talking about</p> <p>19 today is part of a suite of projects that we call</p> <p>20 Nature for All, trying to make nature more accessible</p> <p>21 to all people in the region.</p> <p>22 Q Ms. Alexander, Condition No. 4 in the</p> <p>23 Board of Appeals' decision of November 10, 2021,</p> <p>24 reads: The applicant must provide at least 18</p> <p>25 vehicle parking spaces on site.</p>	<p>19</p> <p>1 BY MR. KLINE:</p> <p>2 Q Ms. Alexander, Condition No. 1 in the</p> <p>3 Board of Appeals' decision I mentioned a moment</p> <p>4 ago, dated November 10, 2021, had a number of</p> <p>5 hours of operation for the different components of</p> <p>6 the programs at Woodend, the Audubon property.</p> <p>7 And would you explain to the audience</p> <p>8 today what was the question that came up in the</p> <p>9 context of those hours of operation and why there</p> <p>10 was some confusion about what the condition meant?</p> <p>11 A Right. So there was concern. When we</p> <p>12 mentioned that the nature play space would be closed</p> <p>13 periodically for brief periods of time during</p> <p>14 programming that ANS had scheduled with local area</p> <p>15 schools, there was a concern that that meant that the</p> <p>16 entire sanctuary would be closed to the public and</p> <p>17 specifically that the accessible trail would be</p> <p>18 closed during those times.</p> <p>19 And so we just want to clarify that, no,</p> <p>20 that's just the operation of the nature play space</p> <p>21 itself when there would be naturalist educators from</p> <p>22 Audubon Naturalist Society and an area school field</p> <p>23 trip using the play space. That's when we would</p> <p>24 close the play space features to the public.</p> <p>25 But the rest of the sanctuary and the</p>
<p>18</p> <p>1 At the community meeting that was</p> <p>2 conducted by Audubon, a question was raised about</p> <p>3 that text and that commission. Would you please</p> <p>4 describe the discussion and why there was some</p> <p>5 concern about that language?</p> <p>6 A Yes. I think the "at least" phrase is</p> <p>7 what caused people concern. They were worried that</p> <p>8 more than 18 parking spaces would be installed.</p> <p>9 The plan that we submitted includes 18</p> <p>10 parking spaces, and we would be more than happy to</p> <p>11 have that language change to say "no more than" 18</p> <p>12 parking spaces so as to put a cap.</p> <p>13 Q Thank you.</p> <p>14 MR. KLINE: On that subject, I have no</p> <p>15 further questions of Ms. Alexander, but she is</p> <p>16 available to answer any questions from the public,</p> <p>17 those who raised the issue.</p> <p>18 THE HEARING EXAMINER: Yes. Is there</p> <p>19 anyone that would like to ask Ms. Alexander</p> <p>20 questions?</p> <p>21 Okay, seeing none, Mr. Kline, do you</p> <p>22 want to call your next witness?</p> <p>23 MR. KLINE: That will remain being</p> <p>24 Ms. Alexander.</p> <p>25 ///</p>	<p>20</p> <p>1 accessible trail would be open to the public as they</p> <p>2 always are during our regular operating hours.</p> <p>3 Q Does there need to be any adjustment</p> <p>4 in the language of the condition to make that</p> <p>5 clearer, or is your statement an adequate</p> <p>6 explanation?</p> <p>7 A I -- I guess I would leave that up to our</p> <p>8 hearing examiner about whether the language needs to</p> <p>9 be changed.</p> <p>10 But we would have no objection to the</p> <p>11 language being changed to put an emphasis on the fact</p> <p>12 that the nature play space would be the only area</p> <p>13 closed for programming. When we're open to the</p> <p>14 general public, the rest of the sanctuary would</p> <p>15 remain open, and the accessible trail would remain</p> <p>16 open.</p> <p>17 Q Thank you.</p> <p>18 MR. KLINE: I have no further</p> <p>19 questions of Ms. Alexander on that, on that issue,</p> <p>20 but she is available to answer any questions.</p> <p>21 THE HEARING EXAMINER: Okay. I see a</p> <p>22 hand raised by Ms. Drake. Ms. Drake, do you have</p> <p>23 some questions?</p> <p>24 You're muted.</p> <p>25 MS. NELSON-DRAKE: I don't have a</p>

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<p>21</p> <p>1 question, and I was satisfied with the Audubon's 2 response since I was the one who raised the 3 concern about public -- 4 THE HEARING EXAMINER: Okay, you're 5 not under -- 6 MS. NELSON-DRAKE: What do you want me 7 to do? 8 THE HEARING EXAMINER: Why don't we 9 just do this. Why don't you raise your right 10 hand. 11 Do you solemnly affirm under penalties 12 of perjury that the statements you're about to 13 make are the truth, the whole truth, and nothing 14 but the truth? 15 MS. NELSON-DRAKE: Yes. 16 THE HEARING EXAMINER: Go ahead. 17 MS. NELSON-DRAKE: So as a matter of 18 the language, I was the one who objected to the 19 original language in the amendment because I 20 thought it just was too global. 21 And I would support using the same 22 language that Ms. Alexander did in the final 23 agreement, specifying that the rest of the 24 sanctuary and the nature trail would be accessible 25 to the republic, just -- to the public and that</p>	<p>23</p> <p>1 could go ahead and let you know if they have any 2 suggestions of the language. 3 But Ms. Alexander will write something 4 up, and I'll transmit it to you sometime next week 5 and copy everybody involved. 6 THE HEARING EXAMINER: And I see 7 Mr. -- let me just say one thing. I see someone 8 in the chat, and we do not use -- I didn't say 9 this at the beginning. We do not use the chat 10 function. I didn't turn it off. But we do not 11 use it because it's ex parte. The parties can't 12 follow the chat and testify at the same time. So 13 please do not use the chat. I apologize. 14 Mr. Rutsch, you had your hand up. 15 MR. RUTSCH: Thank you. What I think 16 we have from the Office of Zoning and 17 Administrative Hearings on May 28th, the Planning 18 Board issued a report with the following 19 recommended conditions. And I'm going to -- 20 MR. KLINE: Could we -- I don't think 21 this is a cross-examination question, so -- 22 THE HEARING EXAMINER: No, this is -- 23 Mr. Rutsch, this is the time for just questions, 24 just about this condition. 25 MR. RUTSCH: Okay. Well, my question</p>
<p>22</p> <p>1 just the kids play space would not be during those 2 restricted hours. That to me is much more clear. 3 THE HEARING EXAMINER: Okay. Well, 4 now I -- the conditional use only covers -- does 5 it cover the -- it doesn't cover the entire 6 property, does it? 7 MR. KLINE: Well, this is -- this is a 8 major modification. 9 THE HEARING EXAMINER: Oh, that's 10 true. You're right. Okay. Mr. Kline, I'm going 11 to ask you if you can draft -- I -- I am feeling, 12 you know, without all the background, I'm going to 13 ask you to draft a condition along the lines of 14 what Ms. Nelson-Drake suggested, unless we just 15 specify -- I guess I'm struggling with is 16 "sanctuary" defined anywhere? Just how to make it 17 clear that that area is open to the public. 18 So that's what I'm struggling with. 19 And I don't have the intimate knowledge of the 20 case to think of that. 21 MR. KLINE: That was going to be my 22 suggestion, and just so everybody who's listening, 23 is we would submit something to you in writing, 24 and we would copy everybody who is participating 25 today so anybody who had any comments about it</p>	<p>24</p> <p>1 is there are a number of conditions, which I think 2 Mr. Kline can address, but one of the conditions 3 that was new and is not part of the submission is 4 that the applicant must dedicate 70 feet of public 5 right of way along Jones Mill Road. 6 I don't see that anywhere in the major 7 modification, and it has never been discussed with 8 the community, as far as what is happening along 9 Jones Mill Road -- 10 MR. KLINE: As I have said, I -- 11 THE HEARING EXAMINER: That -- that -- 12 MR. KLINE: -- object because it's 13 beyond the scope of the cross-examination. 14 THE HEARING EXAMINER: It is. 15 MR. KLINE: I would be glad to answer 16 it separately if you'd like me to do so at this 17 time. 18 THE HEARING EXAMINER: We will -- we 19 will get -- you will have the chance to express 20 all these concerns. What we're doing now is just 21 focusing on the issue of whether conditions should 22 specify that the entire sanctuary is open as 23 opposed to the hours of operation for the -- the 24 play area. 25 Okay. Are there any other questions</p>

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<p>25</p> <p>1 solely related to a condition -- or related to 2 clarifying that the balance of the sanctuary will 3 be open to the public and the hours of operation 4 for the play area don't apply to the sanctuary? 5 Are there any other questions on that? 6 Okay. Seeing none, Mr. Kline, call 7 your next witness, please. 8 MR. KLINE: Thank you. I'm complete 9 with Ms. Alexander at this point in time. 10 On the PowerPoint, the list of issues 11 you had up on the screen earlier, there was a 12 reference to some questions that were raised about 13 the timing of the traffic study. 14 Ms. Nicole White, the applicant's 15 traffic engineer, is available. But I think I can 16 proffer the information that she would say and, 17 since it's (indiscernible) hearing of consensus, I 18 thought that might be a little faster way to do 19 it. Would you be okay with that? 20 THE HEARING EXAMINER: No, I'd rather 21 have Ms. White testify and then allow anyone to 22 have -- to ask questions. 23 MR. KLINE: Very good. 24 THE HEARING EXAMINER: Ms. White, 25 please raise your right hand.</p>	<p>27</p> <p>1 The text in the PowerPoint 2 presentation under Areas of Consensus reads: The 3 traffic impact study was conducted in October 4 2019, before the COVID pandemic affected traffic 5 counts. In a community meeting and in 6 correspondence to the parties, the question was 7 raised whether the traffic study and the counts 8 were done during the COVID impacts. 9 Could you please describe when the 10 counts were done, when the report was published, 11 and was it in advance of any constraints that 12 occurred due to COVID restrictions? 13 A Sure. We conducted traffic counts in 14 October 2019, and the study was submitted in December 15 2020. The revised study was submitted at that time. 16 But the counts were conducted prior to the -- any 17 impacts associated with COVID. 18 Q So your traffic study was not 19 influenced in any way by COVID impacts? 20 A That is correct. 21 MR. KLINE: That would conclude my 22 questions of Ms. White on that subject. 23 THE HEARING EXAMINER: Any questions 24 of Ms. White just on that -- questions just on 25 that subject?</p>
<p>26</p> <p>1 Do you solemnly affirm under penalties 2 of perjury that the statements you're about to 3 make are the truth, the whole truth, and nothing 4 but the truth? 5 MS. WHITE: I do. 6 DIRECT EXAMINATION 7 BY MR. KLINE: 8 Q Ms. White, you were asked to perform a 9 traffic impact analysis -- 10 THE HEARING EXAMINER: Wait. She 11 needs to state her name and -- 12 MR. KLINE: Sorry. 13 THE HEARING EXAMINER: -- business 14 address for the record. 15 MS. WHITE: Sure. Sorry about that. 16 Nicole White. Principal of Symmetra Design with 17 an office at 727 15th Street northwest, 18 Washington, D.C. 19 BY MR. KLINE: 20 Q And, Ms. White, did you qualify as an 21 expert in traffic engineering and transportation 22 planning before Mr. Baumgardner at the original 23 hearing? 24 A Yes, I did. 25 Q Thank you.</p>	<p>28</p> <p>1 Okay, seeing none, thank you, 2 Ms. White. You can be excused -- 3 MR. KLINE: Well, actually, not -- not 4 yet because I think the next question probably 5 involves her as well. 6 THE HEARING EXAMINER: Oh, okay. 7 MR. KLINE: Sure. 8 THE HEARING EXAMINER: Go ahead. 9 BY MR. KLINE: 10 Q Ms. White, I realize you don't have 11 the quick access to the -- the -- the areas of 12 each consensus (indiscernible) but let me just 13 read to you the last bullet on that chart that the 14 hearing examiner had up earlier, and it reads: 15 Traffic Study. Do we want an additional traffic 16 study to look at traffic holistically for the 17 entire neighborhood? 18 And that was discussion that occurred 19 in response to some of the questions about whether 20 what was done was adequate to address the more 21 global traffic issues. 22 Would you -- I guess I'd like to ask 23 you, before you filed the TIS, would you explain 24 the steps you took to work out a scoping program 25 with Park and Planning Commission to make sure it</p>

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<p>29</p> <p>1 was adequate to address all the issues associated 2 with the proposed use? 3 A Sure, absolutely. So we submitted a 4 scoping form to coordinate the appropriate scope of 5 the study with Park and Planning. We received 6 comments -- we submitted that in September of 2019. 7 We received comments from Park and Planning and 8 submitted a revised scoping form in October of 2019. 9 And so the study that was submitted is in response to 10 that scoping process. 11 Q And the TIS that was prepared and 12 submitted into the record was prepared in 13 accordance with the guidelines of -- I'm sorry, 14 the local area transportation guidelines? 15 A That is correct. 16 Q And was accepted by the staff as being 17 complete and comprehensive? 18 A That is correct. 19 THE HEARING EXAMINER: Just a minute. 20 Mr. Kline, instead of using the acronym TIS, can 21 you say what that is? 22 BY MR. KLINE: 23 Q And correct me if I'm wrong, 24 Ms. White, but traffic impact study -- 25 A That's --</p>	<p>31</p> <p>1 use of the playground, I think. And I'm saying 2 that there's going to be an increase in the use of 3 the Audubon. 4 And I'm not saying it needs to be done 5 now, but I do think it needs to be done at some 6 point. Especially if we're having biking, bike 7 lanes on Jones Mill Road, I'm thinking of it as 8 maybe an accident waiting to happen. That's all. 9 And I'm sorry if that was a statement. 10 THE HEARING EXAMINER: Well, let -- 11 raise your right hand. 12 MS. ROSENBERG: Okay. 13 THE HEARING EXAMINER: Is that your 14 right hand? 15 MS. ROSENBERG: Oh, sorry. This is my 16 right hand. I had a pen in it. Okay. 17 THE HEARING EXAMINER: Do you solemnly 18 affirm under penalties of perjury that the 19 statements you have made and will make, if any, 20 are the truth, the whole truth, and nothing but 21 the truth? 22 MS. ROSENBERG: Yes. I -- 23 THE HEARING EXAMINER: Thank you. 24 MS. ROSENBERG: I solemnly swear. Go 25 ahead.</p>
<p>30</p> <p>1 Q -- or transportation? Okay. 2 A Yes. 3 Q Traffic impact study. Thank you. 4 THE HEARING EXAMINER: Okay. 5 MR. KLINE: I had no further questions 6 of Ms. White on that subject, but that was of 7 particular interest to Ms. Rosenberg. So I hope, 8 if we haven't answered her question, she could ask 9 Ms. White at this time about the traffic impact 10 study. 11 THE HEARING EXAMINER: Her hand is up. 12 You're on mute, Ms. Rosenberg. 13 MS. ROSENBERG: I'm now unmuted. 14 Thank you for taking my question. I wanted you to 15 define the scope of the traffic impact study 16 because, my understanding, it was, if I'm reading 17 this right, a limited scope around certain hours, 18 during the school hours or the use by other 19 schools. 20 What I was raising is if down the line 21 there should be a larger scope to include the 22 entire time the Audubon is open, and that includes 23 the use in the evenings. That was my -- that was 24 the broad -- that was the question I had. 25 So, I mean, this is just around the</p>	<p>32</p> <p>1 THE HEARING EXAMINER: Ms. White, can 2 you respond to that? 3 MS. WHITE: I'm sorry, so I heard a 4 statement, but I'm not clear, forgive me, on what 5 the -- the question was. So is the question 6 should a study be done that looks at traffic 7 conditions outside of the time period scoped with 8 Park and Planning? 9 MS. ROSENBERG: Yes. 10 MS. WHITE: I think that the time 11 period is consistent with time periods where all 12 traffic impact studies are conducted, and it's 13 during the peak times of the day, during the 14 morning and the evening. 15 So I think it's consistent with all of 16 the other traffic studies that are conducted and, 17 in fact, is such a low trip generator that a 18 traffic study actually wasn't warranted in this 19 case. It was below the threshold for a traffic 20 study. So I think it's absolutely appropriate, 21 given the scope of this project. 22 MS. ROSENBERG: Okay. Thank you very 23 much. Could you describe the scope to everybody 24 since we don't have your report? 25 MS. WHITE: Oh, okay, sure. So the</p>

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<p>33</p> <p>1 scope of the study, we -- part of the coordination 2 with Park and Planning was to determine what 3 intersections we would study as part of the 4 traffic study and also what background 5 improvements and regional growth rate we would 6 use. 7 And so we coordinated with Park and 8 Planning to study five intersections in the 9 surrounding area. We coordinated on which 10 background projects, so projects that were 11 approved but not a part of existing traffic 12 conditions, would need to be included. So that 13 was all coordinated during that scoping process. 14 MS. ROSENBERG: So did you include the 15 entrance and the exit -- 16 MS. WHITE: Yes, we did. 17 MS. ROSENBERG: -- to the Audubon? I 18 mean -- 19 MS. WHITE: Yes, we did. 20 MS. ROSENBERG: -- could you 21 describe -- you know, would you put for the record 22 actually where -- what those intersections were? 23 MS. WHITE: Sure. The entrance at 24 Jones Mill Road and at Brierly Road. Do you -- 25 you want the list of all of the intersections, or</p>	<p>35</p> <p>1 THE HEARING EXAMINER: What are those, 2 and what are -- what are those? 3 MS. WHITE: Yeah, I was about to 4 elaborate. Sorry. So for the -- 5 THE HEARING EXAMINER: Oh, sorry. 6 MS. WHITE: Okay. No problem. So for 7 the morning, that would typically include the time 8 period between 6 a.m. and 9 a.m. And for the 9 evening it would typically include the time period 10 between 4 p.m. and 7 p.m. 11 So during those peak morning and 12 evening periods, you would examine the highest 13 level of traffic during the morning peak hour and 14 the highest level of traffic during the evening 15 peak hour. 16 In the case of this project, the 17 proposed use would not generate traffic during the 18 morning peak hour. And so our focus was on the 19 evening peak hour, between the 4 p.m. and 7 p.m. 20 time period. 21 And so Park and Planning did agree 22 with that approach. So we did counts from 6 to 23 9 a.m. and 4 to 7 p.m., but there were no 24 additional trips added between 6 to 9 a.m. because 25 it was the after-care program that was the focus</p>
<p>34</p> <p>1 were you just asking about the entrances to the 2 site? 3 MS. ROSENBERG: Just to the site for 4 now. I pulled up the study, so I can see what the 5 other intersections were. 6 MS. WHITE: Okay, great. Yeah, so we 7 did include both entrances to the site, at Jones 8 Mill Road and also at Brierly Road. 9 THE HEARING EXAMINER: I heard -- 10 well, any more questions, Ms. Rosenberg? 11 MS. ROSENBERG: No, no thank you. 12 THE HEARING EXAMINER: I heard -- I 13 think it may be helpful to clarify why -- the 14 times that are studied and why that is. 15 MS. WHITE: So that is consistent with 16 the guidelines -- 17 THE HEARING EXAMINER: No, first -- 18 first say -- because I think I heard Ms. Rosenberg 19 say that -- something about holistic times during 20 the day. But could you address what times were 21 studied and why? 22 MS. WHITE: Sure. We studied -- 23 typically a study would include the morning peak 24 hour and the evening peak hour, the evening peak 25 period. So we would study conditions from --</p>	<p>36</p> <p>1 in the play space. 2 MR. KLINE: Madam Hearing Examiner, 3 could I ask Ms. White to amp her -- yeah, amplify 4 her answer to point out that she's not expected to 5 count traffic on Saturdays and Sundays or holidays 6 or even Mondays and Fridays? 7 MS. WHITE: Yeah, so our -- 8 THE HEARING EXAMINER: Was that a 9 question? 10 MR. KLINE: There was a question mark 11 at the end of that, yes, ma'am. 12 MS. WHITE: I heard the inflection in 13 your voice, Jody, so I'm clear on the question. 14 So there are guidelines as to when 15 data should be collected. So from a Tuesday 16 through the Thursday and when schools are in 17 session is when we would collect data. 18 And so to your point, Mr. Kline, so 19 the times when you would do a weekend analysis is 20 if there was some sort of heavy retail/commercial 21 development that was a high-traffic generator 22 during the weekend. 23 In this case, it was just not 24 warranted to do any sort of weekend analysis. So 25 typically the vast majority of projects would look</p>

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<p>37</p> <p>1 at that morning and evening peak period. 2 THE HEARING EXAMINER: Why are the 3 peak periods chosen? 4 MS. WHITE: So the -- 5 THE HEARING EXAMINER: Is that the 6 maximum? Is that the highest amount of traffic on 7 the road, is that -- 8 MS. WHITE: Right. Exactly. So if 9 you can address the traffic issues during that 10 time, if you understand the operations during the 11 peak time of the morning and the peak time in the 12 evening, then the assumption in the industry is 13 that the other time periods when traffic -- it's 14 not during the commuter peak period, that traffic 15 operations would be better than what you're 16 evaluating during that peak time in the morning 17 and at peak time in the evening. 18 THE HEARING EXAMINER: Ms. Rosenberg, 19 do you have any other questions? 20 MS. ROSENBERG: I just put my hand 21 down. I -- I don't at this time. I -- I think 22 that she answered everything. This is limited 23 around the use of the school times. It's -- it's 24 not limited around the use of the playground. 25 MS. WHITE: No, it does include</p>	<p>39</p> <p>1 REDIRECT EXAMINATION 2 BY MR. KLINE: 3 Q Ms. White, would you go back and 4 elaborate on why you ended up doing a full TIS 5 when you initially concluded that you were exempt 6 from having to do so? 7 A At the request of the Audubon Naturalist 8 Society. They wanted to be responsive to the 9 community. So even though -- so in accordance with 10 the guidelines, if you generate fewer than 50 11 peak-hour person trips during those peak periods, 12 then a traffic study is not required. 13 However, they wanted to, I guess, go the 14 extra mile, if you will, and have us look at a study. 15 Q Thank you. 16 MR. KLINE: No further questions. 17 THE HEARING EXAMINER: Thank you. 18 Anyone else have questions? 19 All right, seeing none, is there -- is 20 Ms. White still on your agenda, Mr. Kline, or 21 should she be excused? 22 MR. KLINE: I'm going to ask her to 23 remain available because there may be some other 24 questions that would come up and she would be the 25 best to answer --</p>
<p>38</p> <p>1 traffic associated with the play space as well, 2 but we're looking at the most intense times of 3 background traffic during that time period. 4 MS. ROSENBERG: But the use of the 5 playground will be -- and the use of the Audubon 6 will be Saturday/Sundays. It's -- it's varied, 7 you know. 8 So that's what I'm saying. This is 9 limited. Jody just said that Saturday and Sundays 10 are off the table, evenings. So this is a limited 11 scope. So you answered my question. Thank you. 12 MS. WHITE: I wouldn't call it 13 limited. I mean, I would call it consistent with 14 guidelines, you know, for doing traffic studies. 15 THE HEARING EXAMINER: Yeah, I -- I -- 16 I have to say she is right that the -- well, any 17 other questions? 18 MR. KLINE: One redirect if -- when 19 the time is appropriate. 20 THE HEARING EXAMINER: Okay. Any 21 other questions from the community? 22 Okay, seeing none, Mr. Kline, do you 23 have a redirect? 24 MR. KLINE: Yeah. 25 ///</p>	<p>40</p> <p>1 THE HEARING EXAMINER: Understood. 2 Okay. Anyone else? 3 Okay, seeing none, Mr. Kline, you can 4 call your next witness. 5 MR. KLINE: Thank you. I'd like to 6 say we're going to kind roll now into what, I 7 guess, I'll call the more, quote, contested 8 issues. So everybody will want to be paying a 9 little more attention at this point in time. 10 So I'd like to call Ms. Alice Sturm. 11 THE HEARING EXAMINER: Okay, 12 Ms. Sturm, can you turn your camera on, please. 13 MS. STURM: Hello. 14 THE HEARING EXAMINER: Good morning. 15 MS. STURM: Good morning. 16 THE HEARING EXAMINER: Can you please 17 raise your right hand. 18 Do you solemnly affirm under penalties 19 of perjury that the statements you're about to 20 make are the truth, the whole truth, and nothing 21 but the truth? 22 MS. STURM: I do. 23 THE HEARING EXAMINER: Go ahead, 24 Mr. Kline. 25 ///</p>

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<p>41</p> <p>1 DIRECT EXAMINATION</p> <p>2 BY MR. KLINE:</p> <p>3 Q Ms. Sturm, would you please basically</p> <p>4 describe your background for us.</p> <p>5 THE HEARING EXAMINER: Well, she needs</p> <p>6 to -- can you state your name and business</p> <p>7 address -- I mean your business address for the</p> <p>8 record, please?</p> <p>9 MS. STURM: Yes. My name is Alice</p> <p>10 Sturm. I work for the Audubon Naturalist Society,</p> <p>11 which is located at -- I think we've all heard</p> <p>12 it -- 8940 Jones Mill Road in Chevy Chase,</p> <p>13 Maryland.</p> <p>14 THE HEARING EXAMINER: Okay, go ahead.</p> <p>15 MR. KLINE: Thank you.</p> <p>16 BY MR. KLINE:</p> <p>17 Q Ms. Sturm, what is your role at</p> <p>18 Audubon or why were you engaged by Audubon?</p> <p>19 A So I'm a land -- I'm a licensed landscape</p> <p>20 architect and serve as an in-house landscape</p> <p>21 architect and also as the garden program manager.</p> <p>22 Q Thank you.</p> <p>23 MR. KLINE: I'm -- I would like to</p> <p>24 qualify Ms. Sturm as an expert, provide her résumé</p> <p>25 into the record. But I realize a lot of people</p>	<p>43</p> <p>1 Q Okay. And your role at -- or can you</p> <p>2 give us a little bit more explanation of what your</p> <p>3 role is at Audubon Naturalist Society?</p> <p>4 A Yeah, so since August, I've been serving</p> <p>5 as the landscape architect for the nature play space.</p> <p>6 And then, additionally, I work in the</p> <p>7 Sustainable and Ecological Landscaping program,</p> <p>8 providing educational opportunities to professionals</p> <p>9 as well as homeowners, managing the existing</p> <p>10 heritage, like cultural landscapes as well as the</p> <p>11 meadows, and providing consults to interested parties</p> <p>12 about sustainable and ecological landscaping.</p> <p>13 Q As I look at your résumé, it looks</p> <p>14 like you have been hands-on involved in landscape</p> <p>15 architecture since at least 2016. Can you kind of</p> <p>16 walk us through your work experience and the</p> <p>17 things you did, the various places you were</p> <p>18 working?</p> <p>19 A Sure. So prior to going back to school to</p> <p>20 get a master of landscape architecture, I worked at a</p> <p>21 variety of organic farms as well as a tree nursery.</p> <p>22 So that was an, you know, introduction to the field.</p> <p>23 When I went back to study for my master's</p> <p>24 of landscape architecture, during that time I also</p> <p>25 worked for a variety of institutions and design</p>
<p>42</p> <p>1 had not seen that, so I was going to ask some</p> <p>2 questions so everybody had an understanding of</p> <p>3 what her background is.</p> <p>4 THE HEARING EXAMINER: Fine.</p> <p>5 BY MR. KLINE:</p> <p>6 Q Ms. Sturm, would you just give us,</p> <p>7 first of all, your academic training and your</p> <p>8 licensing and registrations, whatever it is you</p> <p>9 carry?</p> <p>10 A Yes. So I received a master of landscape</p> <p>11 architecture from Cornell University. That's a</p> <p>12 professional degree. And then subsequently after</p> <p>13 fulfilling the Maryland state work requirements as</p> <p>14 well as passing the licensure exams administered by</p> <p>15 the Council of Landscape Architects Record Board, I</p> <p>16 qualified as a licensed landscape architect in the</p> <p>17 state of Maryland.</p> <p>18 Q The hearing examiner always likes to</p> <p>19 stump the witnesses by saying: Do you remember</p> <p>20 what your license number is?</p> <p>21 A It's 4132.</p> <p>22 Q Thank you. And what professional</p> <p>23 associations do you belong to and are involved in?</p> <p>24 A The American Society of Landscape</p> <p>25 Architects.</p>	<p>44</p> <p>1 firms, both as a pro bono design consultant for</p> <p>2 communities in Upstate New York, I worked for the</p> <p>3 Smithsonian Institution as an in-house landscape</p> <p>4 design staff, and I worked for the, let's see, State</p> <p>5 University of New York at Binghamton, also on campus</p> <p>6 design issues.</p> <p>7 And let's see. I think that's what I did</p> <p>8 while I was in school.</p> <p>9 Subsequent to graduation, I moved to the</p> <p>10 state of Maryland, who I worked for Mahan Rykiel</p> <p>11 Associates, which is a full service landscape</p> <p>12 architecture firm --</p> <p>13 Q Could -- could you slow it -- could</p> <p>14 you slow down and say that name, and probably</p> <p>15 better spell it for us as well.</p> <p>16 A Sure. Yes. A little tricky. Mahan</p> <p>17 Rykiel Associates. M-A-H-A-N, space, R-Y-K-I-E-L.</p> <p>18 I worked there as first a landscape</p> <p>19 designer, subsequently was promoted to landscape</p> <p>20 architect. On a variety of projects, my focus in</p> <p>21 practice groups was play, specifically nature play;</p> <p>22 institutional designs, such as university campuses as</p> <p>23 well as primary, secondary educational campuses; and</p> <p>24 also retail and commercial projects.</p> <p>25 I worked there for three and a half years,</p>

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<p>45</p> <p>1 four years, and then I left.</p> <p>2 I also had a private practice doing</p> <p>3 freelance work as an LLC on, again, small</p> <p>4 institutional and residential landscape design.</p> <p>5 Q And you're currently associated --</p> <p>6 well, what was your last employment, and then was</p> <p>7 it the same line of work?</p> <p>8 A Yes. Mm-hmm.</p> <p>9 Q And the name of that firm --</p> <p>10 A That was Mahan Rykiel Associates.</p> <p>11 Q Oh, okay. Thank you.</p> <p>12 A And then as my personal LLC, Goldsturm</p> <p>13 Land Design, I also have taken on landscape</p> <p>14 architecture projects.</p> <p>15 Q All right. Thank you. I thought</p> <p>16 maybe Goldsturm was another firm.</p> <p>17 A It is, but it's me.</p> <p>18 Q Have you ever been asked to qualify as</p> <p>19 an expert in the field of landscape architecture</p> <p>20 before a board or hearing examiner such as this or</p> <p>21 a planning commission or a court of law?</p> <p>22 A No, I have not.</p> <p>23 Q Okay.</p> <p>24 MR. KLINE: Notwithstanding she hasn't</p> <p>25 qualified before, Madam Hearing Examiner, I would</p>	<p>47</p> <p>1 THE HEARING EXAMINER: Yes, I'm -- I'm</p> <p>2 going there.</p> <p>3 (Exhibit 8B, previously marked, was</p> <p>4 retained by counsel.)</p> <p>5 THE HEARING EXAMINER: I think I have</p> <p>6 it. Let me just -- I have to reduce it. Okay.</p> <p>7 MR. KLINE: We'll give you a second</p> <p>8 here, Ms. Sturm, until it comes up on the screen.</p> <p>9 THE HEARING EXAMINER: Now you should</p> <p>10 be seeing it. Is this not it?</p> <p>11 MS. STURM: Yes. If you could scroll</p> <p>12 down to page 3, that's the one that shows the</p> <p>13 proposed planting immediately associated. That's</p> <p>14 it.</p> <p>15 BY MR. KLINE:</p> <p>16 Q Great, great. So, to set a</p> <p>17 foundation, this is in essence the landscape plan</p> <p>18 for -- associated with the nature play area and</p> <p>19 the parking area associated with that, correct?</p> <p>20 A Yes.</p> <p>21 Q Okay. Did you have any hand in the</p> <p>22 preparations of this drawing?</p> <p>23 A I did not.</p> <p>24 Q Would you explain your familiarity</p> <p>25 with it.</p>
<p>46</p> <p>1 like to offer her as an expert in landscape</p> <p>2 architecture because of her academic background,</p> <p>3 her professional associations and the scope of</p> <p>4 work since, I guess, the last six years dealing</p> <p>5 with, in particular, nature-related landscaping</p> <p>6 issues.</p> <p>7 She has a unique expertise for this</p> <p>8 matter. I'd like to so offer her.</p> <p>9 THE HEARING EXAMINER: Anyone disagree</p> <p>10 that Ms. Sturm is -- should be -- should not be --</p> <p>11 does anyone feel that Ms. Sturm should not be</p> <p>12 qualified as an expert?</p> <p>13 Okay, seeing none, I'm going to</p> <p>14 qualify her as an expert in landscape</p> <p>15 architecture.</p> <p>16 MR. KLINE: Fine. While I ask</p> <p>17 Ms. Sturm my first question -- or my next</p> <p>18 question, could I ask if you could put up on the</p> <p>19 screen an exhibit that I think is a good</p> <p>20 foundation start?</p> <p>21 It would be Exhibit 8B, which is the</p> <p>22 land -- I'm sorry, the planting plan, in essence,</p> <p>23 the landscape plan for the parking area and the</p> <p>24 nature play area.</p> <p>25 8B, as in boy.</p>	<p>48</p> <p>1 A Yes. So I was brought on board subsequent</p> <p>2 to the preparation of these drawings. I've become</p> <p>3 familiar with them since my involvement with the</p> <p>4 project.</p> <p>5 Q Are you -- do you have an</p> <p>6 understanding of what I'll call I guess the theme</p> <p>7 or the program that the original landscape</p> <p>8 architect was trying to achieve on this -- with</p> <p>9 these two features?</p> <p>10 A I do, yes.</p> <p>11 Q So looking at Exhibit 8B, could you</p> <p>12 kind of walk us through what is shown on here and</p> <p>13 what the -- what the plan is trying to accomplish?</p> <p>14 A Yes. So --</p> <p>15 Q And actually, before I do that,</p> <p>16 let's -- first of all, so that Mr. and Ms. Rutsch</p> <p>17 are familiar, would you locate the Rutsch</p> <p>18 residence relative to the parking lot on the upper</p> <p>19 part of the page.</p> <p>20 A Sure. So due to the framing of this view,</p> <p>21 it's not visible, nor is the property line. But the</p> <p>22 ANS property line is located at its closest point 36</p> <p>23 feet from the corner of the parking lot. It's shown</p> <p>24 as the topmost corner, the northernmost corner.</p> <p>25 Q Okay. Very good. So --</p>

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<p>49</p> <p>1 THE HEARING EXAMINER: What is the 2 northernmost corner here? 3 MS. STURM: So it's -- 4 THE HEARING EXAMINER: It doesn't 5 really have a corner. Is this -- the corner on 6 the northeast? 7 MS. STURM: So the part that's -- so 8 the property line is basically a little bit above 9 the page, so to speak. So the corner that shows 10 before the turnaround T but that has a parking 11 spot, there are two trees on either side, is the 12 closest point. 13 Q And Mrs. Rutsch did write in and 14 explain where her house was located. So could you 15 help the hearing examiner kind of draw her cursor 16 to the approximate center of the footprint of the 17 Rutsch residence? 18 A So if you hover your cursor over the 19 parking area and then go a little bit to the left, 20 up -- 21 THE HEARING EXAMINER: You have to 22 use -- the transcript doesn't know left or right. 23 So you have to use directions -- 24 MS. STURM: So north. The house is 25 north of the parking area.</p>	<p>51</p> <p>1 provide planting that screens the parking in a way 2 that is in keeping with the predominantly native 3 woodland that is immediately adjacent to it. 4 The larger evergreen species clustered to 5 the north are intended to screen the parking area 6 year-round where it is closer to the property line. 7 So where the parking area is within 75 feet of the 8 parking line, there are large evergreens. 9 And then the area that is further than 75 10 feet is screened with a variety of deciduous shrubs 11 of -- and trees of various sizes that are flowering 12 and provide screening. 13 This is in addition to the existing 25 14 mature trees that are along this property line that 15 will not be impacted by this construction. Of the 16 existing 25 trees, 17 are evergreen and mature. 17 So that is the existing context that would 18 buffer any neighbor from the proposed parking. But 19 the intention was to supplement it immediately 20 adjacent to the parking. 21 And then additionally, over the past two 22 years as part of our in-house continual planting and 23 supplementing of wooden areas, an additional 32 24 evergreens, a mix of native species -- holly, pine, 25 and cedar -- have been planted in 2019/2020, in</p>
<p>50</p> <p>1 THE HEARING EXAMINER: Okay. And how 2 far is -- how far is it from the parking area? 3 MS. STURM: The property line is 36 4 feet north of the northern edge of the parking 5 area. I'm not familiar with the exact setback of 6 the house from the property line. 7 THE HEARING EXAMINER: Okay. 8 BY MR. KLINE: 9 Q What I wanted to do, Ms. Sturm, is 10 get -- Ms. Rutsch's point was her house is not 11 immediately north, it's slightly offset to the 12 west, I guess you would say. 13 A I believe it's north and slightly west. 14 And so the main view from the house is of the 15 northwestern edge of the parking lot. 16 Q Thank you. So going back to where I 17 started, can you describe the landscaping theme 18 and the published species, what the author of this 19 plan was trying to accomplish? 20 A Yes. So this is a -- I mean, it's a 21 proposed permeable Gravel-Lok parking space between 22 to the -- it's to the west of the restored native 23 meadow and to the east of an existing area -- a 24 wooded area. 25 And so the goal of the parking is to</p>	<p>52</p> <p>1 addition to 25 shrubs in 2019/2020. So the screening 2 is a combination of the distance, the existing mature 3 trees. 4 The parking lot was sited to avoid 5 impacting any of the existing trees as well as to 6 avoid impacting our restored meadow. And then there 7 are additional plantings we've been doing, both 8 restorative, you know, just as part of restoration, 9 in addition to, you know, be responsive to the 10 concerns of neighbors. 11 And then the plan -- this plan itself 12 shows the most proximal level of screening. And, 13 again, that is focused with evergreens where it is 14 closer to the property line and a combination of 15 evergreens and flowering species where it is a little 16 bit further. 17 Q I believe that most of our discussion 18 this morning will probably be focused more on the 19 parking area because talking about the Rutsches' 20 residence. But carry us down below the entrance 21 road to the landscaping that's shown around the 22 play area, the nature play area itself, and what 23 you tried to -- or what was tried to be 24 accomplished there. 25 A Sure. So similarly, the planting is, I</p>

<p style="text-align: right;">53</p> <p>1 mean, of course, designed to make an attractive and 2 pleasant experience for people using the nature play 3 area but also to screen the nature play area from 4 other areas of the sanctuary, from neighbors and from 5 Jones Mill Road, with, again, a variety of a 6 combination of evergreens, shade trees, and then a 7 ground-plane level of shrubs and smaller trees so 8 that it is -- again, the appearance for both folks 9 using the site as well as driving past as well as 10 neighbors is in keeping with a largely wooded and 11 natural landscaped sanctuary with, of course, meadows 12 and also woods.</p> <p>13 Q So we're looking at kind of a 14 satellite view of all this right now. And before 15 I take you to the photo montage that you prepared, 16 is there anything else about this Exhibit 8B you 17 want to mention before we go into what it really 18 looks like, where the rubber hits the road?</p> <p>19 A No, I just -- I would point out that while 20 the largest existing vegetation is shown in a small 21 symbol on the survey, I would note that the size of 22 the survey symbols does not reflect the size of the 23 mature vegetation and that also it is not a complete 24 representation of all of the vegetation that is 25 existing because it only shows the largest trees.</p>	<p style="text-align: right;">55</p> <p>1 intended to show.</p> <p>2 A So this is intended to show the location 3 of the proposed parking area in context in the 4 existing landscape with a variety of cars of 5 different sizes, with some of the existing vegetation 6 shown behind -- and this is a photograph, you know, 7 it was layered onto a photograph -- but without any 8 of the proposed proximal screening.</p> <p>9 Q So if we walked out in the field today 10 and didn't have those cars there, that's what we 11 would be seeing?</p> <p>12 A Yes.</p> <p>13 Q Okay.</p> <p>14 A Without any of the parking area, yeah.</p> <p>15 Q Yeah, right. Sure.</p> <p>16 A Things would be a little greener now 17 because this photo was taken in the winter -- or 18 early spring. But, yes.</p> <p>19 MR. KLINE: Madam Hearing Examiner, 20 could you scroll to the second photograph.</p> <p>21 Q Okay, Ms. Sturm, tell us what this 22 shows us.</p> <p>23 A This shows what we would expect the 24 landscape to look like at or immediately after 25 installation. For purpose of convenience, all plants</p>
<p style="text-align: right;">54</p> <p>1 MR. KLINE: Madam Hearing Examiner, 2 could you scroll down one notch so we can get more 3 of the parking lot shown.</p> <p>4 Maybe one more half tick. Thank you.</p> <p>5 BY MR. KLINE:</p> <p>6 Q So, Ms. Sturm -- whoops. Ms. Sturm, 7 so I guess what you're saying is where there are 8 indications of other trees in the field, that's 9 not necessarily representative of the number of 10 those trees nor their actual size?</p> <p>11 A Yes, especially north of the parking area, 12 where unfortunately this image does not show all the 13 way to the property line.</p> <p>14 Q Fine. Thank you.</p> <p>15 MR. KLINE: Madam Hearing Examiner, 16 could I have you bring up Exhibit 58, which was 17 the first of my submissions with -- together, I 18 guess, constituting a photo montage.</p> <p>19 Thank you.</p> <p>20 (Exhibit 58, previously marked, was 21 retained by counsel.)</p> <p>22 BY MR. KLINE:</p> <p>23 Q Ms. Sturm, why don't you work with the 24 hearing examiner to walk us through the sequence 25 of these three photographs to explain what they're</p>	<p style="text-align: right;">56</p> <p>1 are shown in summer.</p> <p>2 Q And these are representations of the 3 trees and shrubs that are shown on the landscaping 4 plan, 8B, that we looked at earlier?</p> <p>5 A Yes. At the sizes they are specified at.</p> <p>6 Q Right, okay.</p> <p>7 A So, you know, if they were delivered to 8 the site at a different size, we would not accept 9 them. So this is the installation size.</p> <p>10 MR. KLINE: And could you then take us 11 to the third photograph, Madam Hearing Examiner.</p> <p>12 A This is what we would reasonably expect 13 the plants to look like at maturity. So between five 14 and ten years.</p> <p>15 Q Ms. Rutsch was kind enough to respond 16 to these and say, "Yeah, but it doesn't really -- 17 doesn't really show what I'm going to be looking 18 at," in other words, the reverse of what we're 19 looking at.</p> <p>20 Could you explain why you'd had 21 difficulty creating an exhibit showing that and 22 what you did to try to address Ms. Rutsch's 23 concerns?</p> <p>24 A Sure. So our intention was to take these 25 views from a spot that would be identifiable on the</p>

<p style="text-align: right;">57</p> <p>1 survey as well as to people visiting the site. So</p> <p>2 the view was taken from the existing large black</p> <p>3 walnut tree which is the shown on the survey</p> <p>4 immediately north of the existing driveway entrance.</p> <p>5 And also we wanted the images to be sort</p> <p>6 of -- you know, of general interest and value to</p> <p>7 folks who want to understand more about the landscape</p> <p>8 planting.</p> <p>9 So this is the angle that we used.</p> <p>10 However, I do appreciate the point that it does not</p> <p>11 show from the opposite side. It's immediately</p> <p>12 perpendicular. So in order to try to --</p> <p>13 Q Ms. Sturm, if I could -- if I could</p> <p>14 interrupt you for a second, and while you're</p> <p>15 talking, maybe the hearing examiner could pull up</p> <p>16 for us Exhibit 59, which was your response that I</p> <p>17 think you're about to describe to Mrs. Rutsch's</p> <p>18 valid concern.</p> <p>19 (Exhibit 59, previously marked, is</p> <p>20 attached to the transcript.)</p> <p>21 A Yes, very valid. So in response I made</p> <p>22 another version of this where I did not show any of</p> <p>23 the planting that is proposed between the ANS</p> <p>24 driveway and the parking area but only what is beyond</p> <p>25 the parking area, in essence between the proposed</p>	<p style="text-align: right;">59</p> <p>1 at an expected rate.</p> <p>2 Q You've seen Ms. Rutsch's memo -- or</p> <p>3 memo on the subject from Monday. Will she be able</p> <p>4 to see any of the parking in the parking lot with</p> <p>5 what you expect to -- what you'll be installing</p> <p>6 and its eventual maturity?</p> <p>7 A So at installation, from the property</p> <p>8 line, it's -- I can't speak to from the house, but</p> <p>9 from the property line, from the fence, I expect at</p> <p>10 installation there will be a filtered view of</p> <p>11 portions of the parking area because the size the</p> <p>12 plants are installed at will not fully be meeting.</p> <p>13 Within five years, I would expect the area</p> <p>14 that's between 36 feet and 75 feet away from the</p> <p>15 parking area should be fully invisible at all times</p> <p>16 of the year due to the, again, expected growth rate</p> <p>17 of the Virginia cedars.</p> <p>18 The area that is more to the west of the</p> <p>19 parking area that's between 75 and 95 feet away from</p> <p>20 the property line is screened most proximally by</p> <p>21 deciduous shrubs and trees. So I would expect from</p> <p>22 spring through fall it to be fully screened.</p> <p>23 There is a good amount of existing</p> <p>24 vegetation, both evergreen and deciduous, between in</p> <p>25 that -- especially that more distant area to the west</p>
<p style="text-align: right;">58</p> <p>1 parking area and the property line.</p> <p>2 Q So the green -- the new plantings that</p> <p>3 we see on the north side of the parking lot,</p> <p>4 that's the red cedar that we're wrapping around</p> <p>5 that you showed us in 8B; correct?</p> <p>6 A Yes.</p> <p>7 Q And, I'm sorry, you probably said</p> <p>8 this, but that's represent --</p> <p>9 THE HEARING EXAMINER: Sorry, I just</p> <p>10 have one question. What -- is this at maturity?</p> <p>11 MS. STURM: This is at planting.</p> <p>12 THE HEARING EXAMINER: At planting.</p> <p>13 Okay.</p> <p>14 BY MR. KLINE:</p> <p>15 Q But you were about to say in the next</p> <p>16 photograph --</p> <p>17 A The next photograph is at five years.</p> <p>18 And, again, while we can guarantee the sizes of the</p> <p>19 planting at installation because we would not accept</p> <p>20 plants delivered to the site at a size other than</p> <p>21 that specified, of course, this is what one would</p> <p>22 reasonably expect the size to be at five years.</p> <p>23 But, you know -- and I do think it's</p> <p>24 reasonable to expect, especially given that there is</p> <p>25 the same type of plant nearby doing well and growing</p>	<p style="text-align: right;">60</p> <p>1 in between.</p> <p>2 But I do think it's conceivable that in</p> <p>3 five years, standing directly at the property line,</p> <p>4 there might be a filtered view of portions of the</p> <p>5 parking area in winter in five years.</p> <p>6 Q Does the angle of the parking lot</p> <p>7 itself slightly oriented to the northeast, does</p> <p>8 that actually accomplish some advantages in terms</p> <p>9 of screening because of the location and the</p> <p>10 overlapping of the trees?</p> <p>11 A It does, because the parking lot is viewed</p> <p>12 at an angle, a lot of the proximal screening appears</p> <p>13 more dense from the -- is -- you know, is dense from</p> <p>14 the perspective of the property line compared to how</p> <p>15 it would be viewed fully perpendicularly.</p> <p>16 But then I would say the main advantage is</p> <p>17 the distance. You know, it is 36 feet at its closest</p> <p>18 point. At the further areas, where it's 75 to 90</p> <p>19 feet, I think the existing mature vegetation as well</p> <p>20 as the screening plants that have been -- or the</p> <p>21 restoration plants that have been installed</p> <p>22 2019/2020, which is largely evergreen, I think will</p> <p>23 provide a lot of screening beyond the proximal</p> <p>24 screening that is shown on this plan. Although, of</p> <p>25 course, the proximal screening is what we're, you</p>

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Conducted on April 22, 2022

16 (61 to 64)

<p>61</p> <p>1 know, really intending to do screening as well.</p> <p>2 MR. KLINE: I actually have no further</p> <p>3 questions, Ms. Sturm, at this point in time, but</p> <p>4 I'm sure Mr. Rutsch and Ms. Rutsch would probably</p> <p>5 like to ask some questions.</p> <p>6 THE HEARING EXAMINER: Mr. Rutsch's</p> <p>7 hand up. Mr. Rutsch?</p> <p>8 MR. RUTSCH: If you could go back to</p> <p>9 the exhibit.</p> <p>10 THE HEARING EXAMINER: Oh. I jumped</p> <p>11 the gun. All right.</p> <p>12 MR. RUTSCH: Ms. Sturm, can you</p> <p>13 identify my mother's house in this picture?</p> <p>14 MS. STURM: I believe it's the one</p> <p>15 with the chimney and the roof that you can see.</p> <p>16 MR. RUTSCH: That's correct.</p> <p>17 No further questions.</p> <p>18 THE HEARING EXAMINER: Okay. Anything</p> <p>19 else?</p> <p>20 Mr. Rutsch, do you mind putting your</p> <p>21 hand down?</p> <p>22 Anyone else have any questions?</p> <p>23 Hearing none, Mr. Kline, do you have</p> <p>24 some redirect based on that -- Mr. Rutsch's</p> <p>25 question?</p>	<p>63</p> <p>1 was no need to discuss parking on Brierly Road in</p> <p>2 the context of the nature play space, which is why</p> <p>3 you just don't see it mentioned at all.</p> <p>4 It did come up, however, when we --</p> <p>5 when we started hearing from the people who had</p> <p>6 not had an opportunity to participate in the</p> <p>7 original hearing, and certainly at the community</p> <p>8 meeting.</p> <p>9 So, and you know the zoning ordinance</p> <p>10 as well as I do, that was not basically within the</p> <p>11 scope of the review that Mr. Bumgardner conducted,</p> <p>12 and I suppose we could argue it should be the</p> <p>13 subject of debate at another time.</p> <p>14 But Audubon does not want to leave</p> <p>15 this meeting without trying to answer all the</p> <p>16 questions of the people that are here today and</p> <p>17 that are writing in. So we want to try and</p> <p>18 basically talk to you about why there is parking</p> <p>19 on -- or why there was parking on Brierly Road and</p> <p>20 what Audubon has done to address that issue.</p> <p>21 And in that regard, I'd like to call</p> <p>22 Ms. Amy Ritsko-Warren.</p> <p>23 THE HEARING EXAMINER: Okay,</p> <p>24 Ms. Warren, can you raise your right hand.</p> <p>25 Do you solemnly affirm under penalties</p>
<p>62</p> <p>1 MR. KLINE: No. No, I think -- I</p> <p>2 would like to reserve Ms. Sturm for some potential</p> <p>3 rebuttal, if need be, because I imagine we will</p> <p>4 have more discussion on this subject.</p> <p>5 THE HEARING EXAMINER: Okay. That's</p> <p>6 fine. Thank you, Ms. Sturm.</p> <p>7 MS. STURM: Thank you.</p> <p>8 THE HEARING EXAMINER: Go ahead,</p> <p>9 Mr. Kline.</p> <p>10 MR. KLINE: Yeah, so the last subject</p> <p>11 that's kind of -- well, it's not even on the list,</p> <p>12 and it deals with parking on Brierly. And I guess</p> <p>13 I just want to put this in context.</p> <p>14 The record is absolutely void of any</p> <p>15 discussion about parking on Brierly Road. No</p> <p>16 one -- well, because there's no connection with</p> <p>17 the nature play space, this was a major</p> <p>18 modification for the nature play space area, which</p> <p>19 you see in the pretty large drawings, it's</p> <p>20 essentially more located toward the Jones Mill</p> <p>21 Road entrance, and we assume that's where probably</p> <p>22 most of the attendees will be coming from.</p> <p>23 But nobody is going to park on Brierly</p> <p>24 Road and walk the -- whatever it is, a half mile</p> <p>25 or so to get to the nature play space. So there</p>	<p>64</p> <p>1 of perjury that the statements you're about to</p> <p>2 make are the truth, the whole truth, and nothing</p> <p>3 but the truth?</p> <p>4 MS. RITSKO-WARREN: I do.</p> <p>5 THE HEARING EXAMINER: Okay. State</p> <p>6 your name and address for the record, please.</p> <p>7 MS. RITSKO-WARREN: My name is Amy</p> <p>8 Ritsko-Warren, spelled R-I-T-S-K-O, hyphen,</p> <p>9 W-A-R-R-E-N. I am the deputy director for</p> <p>10 administration for the Audubon Naturalist Society</p> <p>11 at 8940 Jones Mill Road in Chevy Chase, Maryland.</p> <p>12 THE HEARING EXAMINER: Okay.</p> <p>13 Mr. Kline?</p> <p>14 DIRECT EXAMINATION</p> <p>15 BY MR. KLINE:</p> <p>16 Q Ms. Ritsko-Warren, I'm going to kind</p> <p>17 of give you carte blanche to address this subject</p> <p>18 the way you feel it flows best, but I guess we</p> <p>19 ought to start with how it came up, and I guess</p> <p>20 I'll say why it occurs, and what you're doing to</p> <p>21 address that issue.</p> <p>22 A Sure. So we have parking on several</p> <p>23 different parking lots existing on the sanctuary at</p> <p>24 8940 Jones Mill Road. But occasionally we have</p> <p>25 events that are -- draw lots of people. And so</p>

<p style="text-align: right;">65</p> <p>1 they -- the overflow parking has -- because there's</p> <p>2 no parking on Jones Mill Road, the overflow parking</p> <p>3 has gone to Brierly Road, which is a neighborhood</p> <p>4 street.</p> <p>5 So we heard the concerns I think primarily</p> <p>6 from Ms. Nelson-Drake at the last community meeting,</p> <p>7 and so we have taken several operational steps to</p> <p>8 address that in the effort to make sure that</p> <p>9 everybody parks -- everybody who is coming to Audubon</p> <p>10 for something at Audubon is parking on our property</p> <p>11 rather than on the neighborhood streets.</p> <p>12 So the first thing we did, we had asked in</p> <p>13 the past -- when we have rental events, we have</p> <p>14 caterers and DJs and florists and other support</p> <p>15 staff, other vendors who come to the site for the</p> <p>16 duration of the event, and they drive individually,</p> <p>17 for the most part. They're catering people who show</p> <p>18 up in their own cars who work at the event.</p> <p>19 And in the past we had asked them to park</p> <p>20 along Brierly Road to save the parking on site for</p> <p>21 the guests of the event.</p> <p>22 And at the beginning of this season of</p> <p>23 events, we changed our ask of our vendors and have</p> <p>24 asked them to park inside the Woodend property. And</p> <p>25 when I said Woodend, that's the sanctuary's name for</p>	<p style="text-align: right;">67</p> <p>1 times they would park in ways that was not the most</p> <p>2 efficient.</p> <p>3 And so this spring we striped those spots</p> <p>4 and so they can park the most efficiently. So far</p> <p>5 this spring we have had six events on site, and from</p> <p>6 the -- we have each come and ensured that at the time</p> <p>7 when all of the guests have arrived and all of the</p> <p>8 vendors are there that all of the cars are parked on</p> <p>9 site and had checked with the parking attendants.</p> <p>10 And in our experience with these first six</p> <p>11 events for this season, we have not had cars parking</p> <p>12 on Brierly Road.</p> <p>13 Q So do you believe that these measures</p> <p>14 you've already taken are adequate to address the</p> <p>15 off-site parking issue that had been addressed by</p> <p>16 some of your neighbors?</p> <p>17 A We do.</p> <p>18 Q Do you have other options available to</p> <p>19 you should -- should this not play out or some</p> <p>20 unique circumstances were to come up?</p> <p>21 A Yes. We do have other ideas of how we can</p> <p>22 get more -- the first idea is to get more parking on</p> <p>23 the site, not building another parking lot, but using</p> <p>24 some of our grassy areas for extra parking when it's</p> <p>25 needed.</p>
<p style="text-align: right;">66</p> <p>1 the Audubon Naturalist Society property at 8940 Jones</p> <p>2 Mill Road.</p> <p>3 So that was the first step that we have</p> <p>4 taken, is to ask our vendors to park on site rather</p> <p>5 than parking on Brierly.</p> <p>6 In order to make sure this happens and to</p> <p>7 help with parking in general, we took a separate</p> <p>8 step, which is to hire parking attendants. We</p> <p>9 currently have -- for every event, we have three</p> <p>10 hired parking attendants who are at the sanctuary</p> <p>11 from the time -- actually, it's an hour before the</p> <p>12 vendors arrive, which is before the start of the</p> <p>13 event, to an hour after the guests have arrived.</p> <p>14 And so they are ensuring that -- they're</p> <p>15 directing the traffic, directing the parking to</p> <p>16 ensure that all vendors do park on the site, and they</p> <p>17 are helping everybody park very efficiently so that</p> <p>18 there aren't any spaces left open. So that's the</p> <p>19 second step.</p> <p>20 The third step that we have taken is that</p> <p>21 we do have on the Brierly Road exit -- so from our</p> <p>22 property, our drive that exits out Brierly Road, we</p> <p>23 have a paved strip and we have a gravel strip, and</p> <p>24 the gravel strip has always been used for parking,</p> <p>25 but it was never striped. So people would park -- at</p>	<p style="text-align: right;">68</p> <p>1 We are also -- in the past there is one</p> <p>2 parking lot that is down by the Teale Center that is</p> <p>3 enclosed in a 15-foot brick wall. It's part of the</p> <p>4 original historic site. And we have traditionally</p> <p>5 not used that for event parking because it is further</p> <p>6 away from the mansion where the events are typically</p> <p>7 held.</p> <p>8 But we are directing our parking</p> <p>9 attendants to use those spaces if they're needed. So</p> <p>10 there are another -- I believe it's 15 -- maybe it's</p> <p>11 12 spaces in that space.</p> <p>12 We also have considered some trade</p> <p>13 agreements with the North Chevy Chase Pool, which is</p> <p>14 right down the street from us. They have a parking</p> <p>15 lot as well. So if they were amenable to that, we</p> <p>16 would negotiate using some of those parking spots.</p> <p>17 But we haven't needed that yet.</p> <p>18 Q Ms. Ritsko-Warren, would you kindly</p> <p>19 elaborate on the Uber phenomenon and how it's kind</p> <p>20 of helped you?</p> <p>21 A Yes. One of the things that our parking</p> <p>22 attendants have shared with us is that many guests</p> <p>23 are arriving by Uber. So, many of the vendors who</p> <p>24 are working the event do drive because they are not</p> <p>25 drinking, but other guests who attend will take Uber.</p>

Transcript of Hearing
Conducted on April 22, 2022

18 (69 to 72)

<p style="text-align: right;">69</p> <p>1 Usually if they're from out of town, they're staying 2 at a hotel, they will Uber to the site and Uber off 3 the site. And even the local guests are tending to 4 Uber if it's going to be a late night. 5 Q And in addition to maybe identifying 6 other mitigation strategies, was it Audubon's 7 plans to use the CLC that was imposed by the Board 8 of Appeals at an earlier modification as a forum 9 when problems come up so that you address them and 10 get ahead of any -- any -- any spillover 11 occurring? 12 A Yes. The CLC that Jody is referring to is 13 our community liaison group. We do have biannual 14 meetings that are held generally sometime around 15 March and sometime around September. 16 They are sent -- notices are sent out to 17 the -- all of the lists of emails that we have for 18 the neighbors who have asked to be on the list as 19 well as the community groups, LISTSERVs and that kind 20 of thing. 21 And we do hold these meetings twice a year 22 to share the changes that are coming on the sanctuary 23 as well as address any questions or concerns from the 24 neighbors. 25 MR. KLINE: Madam Hearing Examiner, I</p>	<p style="text-align: right;">71</p> <p>1 They are directing people where to go. And so 2 they will -- they will know not to use that lot. 3 MR. RUTSCH: How about signage? 4 MS. RITSKO-WARREN: We haven't gotten 5 that far, but we would certainly consider it. 6 MR. RUTSCH: Okay. In terms of 7 restricting the hours, the amount of time in the 8 parking lot? 9 MS. RITSKO-WARREN: Yes, I think we 10 would be open to some signage there. There is 11 currently -- there are -- as you know, there are 12 currently two accessible parking spots that are 13 there already that are associated with the trail. 14 And there is no current signage about 15 those spots. But there is also signage coming 16 into the sanctuary listing the hours. The 17 sanctuary is open dawn to dusk for non-private 18 events. 19 MR. RUTSCH: Okay. I've looked at the 20 handicapped spaces. Those handicapped spaces 21 actually say \$250 fine and so on, which is typical 22 of county parking spaces. But since this is 23 private property, who will enforce that? 24 MS. RITSKO-WARREN: For the 25 handicapped spots? We have not had an issue with</p>
<p style="text-align: right;">70</p> <p>1 don't have any more questions -- direct questions 2 for Ms. Ritsko-Warren, but she is available to 3 answer any questions from the neighbors. 4 THE HEARING EXAMINER: Mr. Rutsch? 5 And then we'll get to Ms. Nelson-Drake. 6 Mr. Rutsch, go ahead. 7 MR. RUTSCH: This new parking space 8 that's being proposed for the playscape, will it 9 be used for parking for weddings? 10 MS. RITSKO-WARREN: The new parking 11 area is not lit. There's no lighting there. 12 There's actually no electricity there at all. So 13 the plan is not to -- to use that because it's 14 not -- it would not be safe for people returning 15 in the evenings after dark. 16 MR. RUTSCH: Is there lighting in the 17 remainder of your parking spaces? 18 MS. RITSKO-WARREN: Yes. 19 MR. RUTSCH: Okay. Will you be 20 somehow restricting access to the parking lot so 21 that people who ignore the fact that there's no 22 lighting there will not be able to access it 23 during, say, a wedding event? 24 MS. RITSKO-WARREN: Well, the parking 25 attendants are basically taking care of that.</p>	<p style="text-align: right;">72</p> <p>1 that thus far. If we -- if we had an issue, I'm 2 not sure how we would address that. We would look 3 to -- to our legal counsel, I think, to give us 4 advice on that. 5 MR. RUTSCH: My point is that it is -- 6 it's misdirecting because it indicates that you're 7 going to fine them \$250, as if the county would be 8 able to do that, and I don't think you have the 9 ability to fine anyone. 10 I mean, certainly you could put up a 11 sign that says: If you park here, you'll be 12 towed. 13 So one of the things that I would love 14 to see, since Mr. Kline is going to try to expand 15 on the conditions that were specified in the 16 zoning administrative hearing conditions, I think 17 that it would be useful for the community to have 18 signs that say "No parking after dusk" or "Two 19 hour maximum parking" and "Towing will be 20 enforced," that type of thing. 21 You know, my concern again is if 22 there's a parking slot open -- and here I know 23 that Jan Nelson-Drake has -- has -- has 24 (inaudible) irresponsible to the way in which the 25 parking on Brierly has created a nuisance within</p>

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19 (73 to 76)

<p>73</p> <p>1 the community. I'd like -- I'm very happy to hear 2 you're being responsive to that, but I'm concerned 3 that operating in an additional area for parking 4 is going to be used by the guests. 5 The other is, is there a consideration 6 of reducing the capacity for these kinds of events 7 in order to mitigate that problem? 8 MS. RITSKO-WARREN: I think we would 9 look at -- there are solutions in terms if parking 10 is the problem as opposed to the number of people 11 attending the events, that we would look at how we 12 offer parking on the site. 13 We currently do tell renters that 14 there are 60 spots on site. And so if they 15 anticipate that a lot of people will be driving, 16 you know, we do -- sometimes they do bring small 17 buses and bus people from hotels. Sometimes they 18 really highly recommend their guests carpool or do 19 take Uber. 20 So I think that's the way we would 21 address the parking issue rather than limiting the 22 capacity of the event itself. If the parking is 23 the issue. 24 MR. RUTSCH: You know, relative to 25 that, one of things that -- you know, now that</p>	<p>75</p> <p>1 might say, it's not just my concern -- seriously, 2 and I'm encouraged by the steps you have taken. 3 And you said that there haven't been 4 any events where people had parked on Brierly. 5 And actually, because I'm retired and my house 6 overlooks the property, I have to disagree with 7 that. 8 There was one, only one that I can 9 remember, in the last few months where people -- 10 it was a large group, and people did park on both 11 sides of Brierly. And I knew that they had to be 12 attending the event because they had out-of-state 13 license plates, and they all disappeared when the 14 event was gone. 15 But I am encouraged by the steps 16 you're taking, particularly trying to get parking 17 arranged with the pool. Because I've lived here 18 for 30 years, and when you had all the big fairs, 19 which, boy, I miss those, there were so many 20 people coming to those that you did have buses 21 bringing people in, and people would park down by 22 the school, by -- by the pool, et cetera. 23 But the other thing that the Audubon 24 did to try to help the neighborhood cope with the 25 incredible traffic was to give out tape to put in</p>
<p>74</p> <p>1 I've spent the last six years dealing with these 2 various development issues, I don't get any sense 3 that at any point in time a modification was made 4 to the property to create a wedding environment, a 5 wedding event, corporate events. 6 So I'm a little bit frustrated that 7 throughout this process the nature sanctuary has 8 turned into a place that hosts events, as well as 9 the summer camps turned into the preschool, which 10 is -- that was subject to modification, and I see 11 that has been modified. 12 So I'm a little bit concerned that 13 there's no -- there's no restrictions on capacity 14 and the potential impact on the surrounding 15 community. 16 I guess that's not a question, that's 17 a statement. And I'll put my hand down and let 18 someone else speak. Thank you. Thank you, Amy. 19 THE HEARING EXAMINER: 20 Ms. Nelson-Drake? 21 MS. NELSON-DRAKE: Can you hear me? 22 MR. KLINE: Yes. 23 MS. NELSON-DRAKE: First of all, I 24 want to thank Amy and the staff at the Audubon for 25 taking my concerns -- on behalf of my neighbors, I</p>	<p>76</p> <p>1 front of our houses so that people could not park 2 there. And I would encourage you to think about 3 that again. 4 It was -- I think it was you who told 5 me that you encourage visitors to park only on the 6 Audubon side of Brierly Road, but they don't; and 7 you did admit that you have no way of enforcing 8 that, which is unfortunate. 9 So this will probably be a continuing 10 discussion. 11 And if I could get the hearing 12 examiner to go back to the PowerPoint slide. 13 There was a picture that I sent in as evidence of 14 Brierly Road during an Audubon Naturalist Society 15 event. 16 THE HEARING EXAMINER: No -- was 17 this -- 18 MS. NELSON-DRAKE: It was just before 19 the slide that talked about the issues that hadn't 20 been resolved. When you were flipping through, I 21 saw it there. The bunch of cars on the road. 22 THE HEARING EXAMINER: Yes. I saw 23 that. I'm just trying to find the exhibit. For 24 some reason, I'm not seeing it. 25 MS. NELSON-DRAKE: It was in the</p>

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20 (77 to 80)

<p>77</p> <p>1 PowerPoint that Mr. Kline provided.</p> <p>2 THE HEARING EXAMINER: Oh, I'm sorry.</p> <p>3 MS. RITSKO-WARREN: And while we're</p> <p>4 pulling that up, Ms. Nelson-Drake, I would thank</p> <p>5 you for the information about the event. If -- if</p> <p>6 you can -- and we're working really hard on making</p> <p>7 sure people park on Brierly -- off Brierly, excuse</p> <p>8 me, on the site.</p> <p>9 So if you do see -- like the event</p> <p>10 that you said you saw many cars on the -- if it's</p> <p>11 possible for you to just drop me an email and say</p> <p>12 "On this date we saw this," because it's a</p> <p>13 communication process for us as well to make sure</p> <p>14 that everybody that we have coming on site knows.</p> <p>15 And that was a breakdown in</p> <p>16 communication if that -- if that happened this</p> <p>17 year. So that would be super helpful, and we can</p> <p>18 make sure that we get that communicated properly.</p> <p>19 MS. NELSON-DRAKE: I'd be happy to do</p> <p>20 that.</p> <p>21 MS. RITSKO-WARREN: Thank you.</p> <p>22 THE HEARING EXAMINER: Exhibit 36A, is</p> <p>23 this what you submitted?</p> <p>24 MS. NELSON-DRAKE: It is. And that is</p> <p>25 what our street from the --</p>	<p>79</p> <p>1 old.</p> <p>2 MR. KLINE: Well, Ms. --</p> <p>3 THE HEARING EXAMINER: Did someone</p> <p>4 else say something?</p> <p>5 MR. KLINE: Mr. Kline opened his</p> <p>6 mouth, and I shouldn't have. I apologize.</p> <p>7 THE HEARING EXAMINER: Okay.</p> <p>8 MS. NELSON-DRAKE: Oh, and I want to</p> <p>9 clarify one other thing. The reason that I</p> <p>10 brought this up was because when I received the</p> <p>11 notification of the amendment as a confronting</p> <p>12 neighbor last year, I read it, and I noticed that</p> <p>13 under "Parking" on that amendment, they also -- it</p> <p>14 was stipulated that visitors -- and it didn't say</p> <p>15 visitors just to the play space, it said visitors</p> <p>16 should not park on neighborhood streets.</p> <p>17 And I was very encouraged at first by</p> <p>18 that. But -- so, again, it was -- the wording was</p> <p>19 not clear. And that opened the door for me to</p> <p>20 bring up this concern about Brierly.</p> <p>21 And I have no other questions. I'm</p> <p>22 going to be hopeful and watchful, and I really do</p> <p>23 appreciate having you there, and we just want to</p> <p>24 make sure that we continue to be good neighbors.</p> <p>25 Thank you.</p>
<p>78</p> <p>1 THE HEARING EXAMINER: It's page --</p> <p>2 page 26 of 36A. Go ahead.</p> <p>3 MS. NELSON-DRAKE: This is what our</p> <p>4 house -- what Brierly Road looked like from our</p> <p>5 house during an event, and obviously people were</p> <p>6 parking on both sides.</p> <p>7 And as you can see, it reduces the</p> <p>8 road to one lane for traffic, which means it's a</p> <p>9 game of dare trying to get back to your house and</p> <p>10 hoping and praying that nobody else is coming from</p> <p>11 the other direction.</p> <p>12 This happened quite a bit. Not so</p> <p>13 much during the pandemic, I have to admit, because</p> <p>14 people were not having big events, but this is</p> <p>15 what we hope to prevent.</p> <p>16 MS. RITSKO-WARREN: This photo was</p> <p>17 from our February -- so this -- this was a</p> <p>18 photo -- I don't know if you know when it was</p> <p>19 taken, but it was prior to this year.</p> <p>20 MS. NELSON-DRAKE: I wish I did know</p> <p>21 when it was taken. My husband found this, and it</p> <p>22 didn't have a date on it. It was -- I can't tell</p> <p>23 you when it was taken. But it was, you know, in</p> <p>24 the last 30 years, but probably more recently.</p> <p>25 Looking at the cars, you can tell they're not that</p>	<p>80</p> <p>1 THE HEARING EXAMINER: Ms. Rosenberg?</p> <p>2 MS. ROSENBERG: Hello, I just have</p> <p>3 really two comments. One is the CLC liaison</p> <p>4 group, if you could stipulate that when it was put</p> <p>5 together that not only would you hold two meetings</p> <p>6 a year but the CLC can ask for -- the other</p> <p>7 members can ask for a meeting at any time.</p> <p>8 That was in the original agreement.</p> <p>9 So if there is problems that arise, anybody could</p> <p>10 ask for a meeting at any time.</p> <p>11 Could you, you know, state that and</p> <p>12 confirm that? That's my memory when it was put</p> <p>13 together. So I just wanted to add that so it</p> <p>14 doesn't -- so everybody is aware, and maybe</p> <p>15 Mr. Kline could go back to the original agreement.</p> <p>16 And then I was wondering if you could</p> <p>17 put together a layout of where the 60 spaces are</p> <p>18 where people can park, and when you have a</p> <p>19 renter's event, that they get that layout so they</p> <p>20 know that they shouldn't park by the playground,</p> <p>21 using the playground parking, they'll know where</p> <p>22 the 60 spaces are assigned to them inside your</p> <p>23 property.</p> <p>24 MS. RITSKO-WARREN: Yes, so address --</p> <p>25 to address your first request, I was not with the</p>

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21 (81 to 84)

<p>81</p> <p>1 Audubon Naturalist Society when the CLC was 2 formed, so I will -- I'll punt that question 3 either back to Mr. Kline or Ms. Alexander. 4 But to answer your second question, at 5 this time, as I said, we have parking 6 attendants -- and when I say "parking attendants," 7 I mean three people. I mean three live bodies are 8 on site telling people where to park at this time. 9 So if -- if we ever didn't have that, 10 we would definitely provide the renters with a 11 layout of the parking. 12 But at this time, as you pull in for 13 an event at Woodend, a person is standing at each 14 of the -- there's one person standing at the 15 Brierly exit, there's one person standing at the 16 lower area by Teale, and then there's one person 17 standing up by the mansion. So they are being 18 directed as to where to park at this time. 19 MS. ROSENBERG: Which raised just 20 another question. What constitutes an event? How 21 many people attending? 22 MS. RITSKO-WARREN: At this time, it 23 is all of our weekend events because we weren't 24 sure how much parking assistance we would need. I 25 do anticipate, you know, for a smaller, you</p>	<p>83</p> <p>1 it's -- it's a -- it's a complicated legal issue 2 that I think I'm probably the better -- the best 3 spokesman to put it forward. 4 THE HEARING EXAMINER: Okay. I -- 5 okay. Why don't we have the -- well, why don't 6 you address it and -- and we'll just go with this. 7 MR. KLINE: Sure. Well, could I draw 8 everyone's attention to Condition No. 3 in the 9 Board of Appeals' decision, and I'll try and do a 10 quick just summary of it. 11 The applicant must dedicate 70 feet of 12 public right of way to achieve a full master plan 13 of right away width along Jones Mill Road. 14 Madam Hearing Examiner, and for the 15 benefit of everybody else, the Audubon property is 16 unsubdivided property. That means it's not been 17 planted in the land record of Montgomery County. 18 Under the Montgomery County 19 Subdivision Regulations, one cannot get a building 20 permit to construct a building on a piece of 21 property unless it is a subdivided parcel of land. 22 The scope of the improvements within 23 the nature play area are not structurally such 24 that they would need a building permit. There is 25 actually one feature, a very attractive one, but</p>
<p>82</p> <p>1 know -- it's very difficult right now. We're 2 still coming out of COVID. We were very small 3 events, ten-people weddings for a while, and 4 then -- and then it has gotten back up. 5 But it's -- it's -- you know, that's 6 something that we're definitely going to be 7 continuing to monitor. But at this time, it is 8 all of our weekend events. 9 MS. ROSENBERG: I had mute on. Thank 10 you very much, Amy. 11 THE HEARING EXAMINER: Anyone else? 12 Seeing none, Mr. Kline, do you have 13 any follow-up questions? 14 MR. KLINE: No redirect. Thank you. 15 THE HEARING EXAMINER: Okay. Are we 16 moving to another subject? 17 MR. KLINE: I think that we've 18 disposed of the subjects that the petitioner 19 wanted to address. We could either let everybody 20 else talk, or if you wanted to, I could try and 21 answer Mr. Rutsch's question about the right of 22 way issue, Condition No. 3. 23 THE HEARING EXAMINER: Do you have a 24 witness that can do that or -- 25 MR. KLINE: Not -- not really because</p>	<p>84</p> <p>1 most of the improvements would not have triggered 2 building permit process. 3 When Maryland-National Capital Park 4 and Planning Commission got the application, they 5 hate -- excuse me, they hate to pass up an 6 opportunity to get right of way in accordance with 7 the master plan. 8 So a -- there was a suggested 9 recommended condition that we would go through the 10 subdivision process, dedicate the right of way and 11 build basically a walkway -- and I can't remember 12 if it was a bikeway or a sidewalk -- along Jones 13 Mill Road and some shoulder improvements to the 14 road itself. 15 The cost for that was in excess of a 16 million dollars. It would have made the nature 17 play space program impossible, unfeasible. We 18 went back to the Park and Planning Commission and 19 said we just can't do it. We don't need to do it. 20 So we don't think it ought to be a discretionary 21 condition, but we -- we break our backs. 22 Eventually, after some back and forth, 23 we worked out a compromise where we would go ahead 24 and dedicate, volunteer to dedicate, not go 25 through subdivision, but record a</p>

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22 (85 to 88)

<p>85</p> <p>1 platinum [phonetic] dedication for the land area 2 within the master plan, the right of way, so the 3 public knew that they had control of the land that 4 they ultimately want. 5 And the arrangement with the 6 Department of Transportation basically says that 7 if and when we finally do need a building permit, 8 we will go back in and subdivide the property, and 9 that will trigger review of what we have to 10 actually construct at that point in time. 11 So it was a win-win from the public 12 sector side because they got control of the land 13 area. They know they won eventually, but Audubon 14 does not have to spend the money until it has the 15 ability to collect that money and go ahead and do 16 it. 17 And at some point in time, we want to 18 have that grand -- I can't remember the name -- 19 the where was an attractive name of the feature on 20 the property that would trigger a building permit, 21 then they're going to have to basically pony up at 22 that time with the improvements requested by the 23 Department of Transportation. 24 So this is a fairly -- Condition No. 3 25 is a fairly typical condition that comes up in a</p>	<p>87</p> <p>1 get it faster. Take a look at No. 54. It's 2 described as Report and Recommendation of 3 September 30, '21. 4 (Exhibit 54, previously marked, was 5 retained by counsel.) 6 THE HEARING EXAMINER: Okay. 7 MR. KLINE: On page 3 of the -- you've 8 actually got the hearing examiner's report, but 9 that -- it's probably -- it's in there as well. 10 THE HEARING EXAMINER: Is it 3 you're 11 talking about? 12 MR. KLINE: Yes, ma'am. 13 THE HEARING EXAMINER: Now, why do you 14 have to do that within 60 days of approval of the 15 modification if you're not triggering subdivision? 16 MR. KLINE: It was a compromise 17 between the Department of Transportation, Park and 18 Planning Commission, and the applicant that would 19 give them, as I say, the control of the right of 20 way. But it was in lieu of them saying you must 21 go through subdivision and give us the right away. 22 THE HEARING EXAMINER: Why -- how can 23 they make you go through subdivision if you're not 24 triggering anything with the -- is there anything 25 that would trigger --</p>
<p>86</p> <p>1 conditional use application when subdivision is 2 required, but it's been modified so that only the 3 dedication will occur, but the improvements will 4 not necessarily occur until sometime in the future 5 dictated by other events. 6 I hope that answers your question -- 7 THE HEARING EXAMINER: When you said 8 Condition No. 3, which -- what are you referring 9 to? The -- the -- 10 MR. KLINE: Yeah, that -- that -- 11 that's -- 12 THE HEARING EXAMINER: Go ahead. 13 MR. KLINE: Yeah, that -- well, that's 14 in the Board of Appeals' decision dated November 15 10, 2021, Condition No. 3, which is included in 16 Mr. Bumgardner's recommendation and the Planning 17 Board's recommendation. 18 THE HEARING EXAMINER: So that's an 19 existing condition? 20 MR. KLINE: Yes, ma'am. If you're 21 looking for the -- let's see, I think the exhibit 22 number would be -- 23 THE HEARING EXAMINER: The typical 24 stuff, appendix, but -- 25 MR. KLINE: Yeah, no, I think we can</p>	<p>88</p> <p>1 MR. KLINE: Madam Hearing Examiner, I 2 thought I saw a little glimmer of recognition on 3 your face. As I said, Park and Planning and DOT 4 do not like to pass up an opportunity to get right 5 of way for free -- 6 THE HEARING EXAMINER: I -- I get it. 7 And I actually had the -- well, I saw -- I think I 8 saw this issue raised in your postponement request 9 of the first hearing. 10 MR. KLINE: Thank you, that is -- that 11 is correct. We did have to postpone everything 12 because of the -- I mean, it was a killer 13 condition, and we needed time to negotiate a 14 solution. And we thought it was a reasonable 15 compromise, as did the public sector as well. 16 THE HEARING EXAMINER: Mr. Rutsch, he 17 looks like he's ready to speak. If you don't 18 object, Mr. Kline. 19 MR. KLINE: No, I don't. 20 THE HEARING EXAMINER: Mr. Rutsch, 21 what would you like to say? I think you're on 22 mute, Mr. -- Mr. Rutsch? I think you're muted. 23 No, you're still -- I -- you're still 24 on mute. 25 Okay, now try it. I don't see the</p>

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23 (89 to 92)

<p style="text-align: right;">89</p> <p>1 mute button.</p> <p>2 MR. RUTSCH: Okay. Based on what you</p> <p>3 just said, is it your understanding that the</p> <p>4 County will subsequently put in curbs and</p> <p>5 sidewalks?</p> <p>6 MR. KLINE: The way I would answer it</p> <p>7 is someday there will be curbs -- well, maybe not</p> <p>8 curbs, but certainly sidewalks, walkways and maybe</p> <p>9 some widening improvements on the shoulders.</p> <p>10 Who's going to do that will be determined in the</p> <p>11 future.</p> <p>12 MR. RUTSCH: Okay. So the fact that</p> <p>13 the previous modification for the two-space</p> <p>14 pullout handicapped spots and the two bathroom</p> <p>15 facilities -- does not the two bathroom facilities</p> <p>16 qualify as a structure?</p> <p>17 MR. KLINE: We've never had the</p> <p>18 Department of Permitting Services require us to go</p> <p>19 through the subdivision process to implement any</p> <p>20 of the previous improvement approvals.</p> <p>21 MR. RUTSCH: Okay. So what you're</p> <p>22 saying is that a building was built without a</p> <p>23 building permit or a subdivision; is that correct?</p> <p>24 MR. KLINE: I would not classify a</p> <p>25 bathroom as a building. DPS apparently has some</p>	<p style="text-align: right;">91</p> <p>1 Society were improved such that people could walk</p> <p>2 to the playscape area and the play area and to the</p> <p>3 sanctuary as a whole on sidewalks along Jones Mill</p> <p>4 Road and potentially also have off the side of</p> <p>5 Jones Mill Road parking, meaning -- I can't</p> <p>6 remember whether it's a cut-in or a cut-out, in</p> <p>7 terms of where people could park, then the</p> <p>8 playscape area would have the same kind of access</p> <p>9 that the play area approximately two blocks away,</p> <p>10 notoriously called by Audubon Society as the</p> <p>11 Purple Playground, it would have a similar amount</p> <p>12 of parking along Jones Mill Road that that</p> <p>13 playground has, which would mitigate the need to</p> <p>14 put an 18-space parking lot in the restored</p> <p>15 meadow.</p> <p>16 Understand my point?</p> <p>17 MR. KLINE: I don't, but I -- but I'll</p> <p>18 call a witness who will be able to respond to it</p> <p>19 better than I can when you're finished.</p> <p>20 MR. RUTSCH: Okay, that's my point.</p> <p>21 THE HEARING EXAMINER: Okay. Well,</p> <p>22 we're kind of going wild here on the order, but,</p> <p>23 Mr. Rutsch, I'm going to ask you, do you have --</p> <p>24 would you like to hear from Mr. Kline's witness?</p> <p>25 MR. RUTSCH: If it can answer the</p>
<p style="text-align: right;">90</p> <p>1 kind of exceptions for that.</p> <p>2 MR. RUTSCH: It looks a lot like a</p> <p>3 building to me.</p> <p>4 THE HEARING EXAMINER: Well, okay. So</p> <p>5 Mr. Rutsch, what is -- I need to know what the</p> <p>6 point of your -- what is the relevance of these,</p> <p>7 you know, whether there's a building on the site</p> <p>8 or not? Are you saying -- this is the conditional</p> <p>9 use, so --</p> <p>10 MR. RUTSCH: Okay, so this particular</p> <p>11 project that we're currently under the special</p> <p>12 modification was delayed as result of a desire for</p> <p>13 both community and it appears National Park and</p> <p>14 Planning to provide to the public access to the</p> <p>15 property and this new playscape and play area</p> <p>16 sidewalks along Jones Bridge Road.</p> <p>17 Now, in the development of the</p> <p>18 property that my mother lives in on LeVelle Drive,</p> <p>19 the same developer put sidewalks and streets on</p> <p>20 LeVelle Drive, also built the houses that front</p> <p>21 Jones Mill Road, did not put in curbs or sidewalks</p> <p>22 there, and people pull over on the side or have</p> <p>23 asphalt or gravel.</p> <p>24 My point is that if the property</p> <p>25 beyond the fence that belongs to the Audubon</p>	<p style="text-align: right;">92</p> <p>1 question about, you know, usage of the Jones Mill</p> <p>2 frontage outside their fence. I mean, the fence</p> <p>3 was created to be a deer fence, not to create the</p> <p>4 public from accessing the nature sanctuary or in</p> <p>5 this case this newly created playscape.</p> <p>6 I'm sure that the fence is going to</p> <p>7 be -- assist the play area and preventing from</p> <p>8 kids from going out to the street, but it's a</p> <p>9 significant distance from the playscape area to</p> <p>10 Jones Mill Road.</p> <p>11 But if there were parking beyond the</p> <p>12 fence, along Jones Mill Road, which there's</p> <p>13 parking at the edge of the property to the north</p> <p>14 along Jones Mill Road, then the need for parking</p> <p>15 in the restored meadow in the area directly behind</p> <p>16 my mom's house would be significantly reduced.</p> <p>17 THE HEARING EXAMINER: Understand. We</p> <p>18 can hear -- Mr. Kline, if you have a witness that</p> <p>19 can speak to Mr. Rutsch's testimony, I think it</p> <p>20 would be helpful -- if we're going by issue, I</p> <p>21 think it would be helpful to bring that witness</p> <p>22 on.</p> <p>23 MR. KLINE: I agree. This is the best</p> <p>24 time to handle it.</p> <p>25 THE HEARING EXAMINER: Mr. Rutsch, do</p>

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24 (93 to 96)

<p style="text-align: right;">93</p> <p>1 you mind putting your hand up -- putting your hand 2 down? Thank you. 3 Go ahead, Mr. Kline. 4 MR. KLINE: Ms. Alexander, could you 5 or Ms. Pearce please try and address Mr. Rutsch's 6 question better than I'm capable of doing it? 7 And so, Ms. Pearce, would you please 8 introduce yourself and let the hearing examiner 9 swear you in. 10 THE HEARING EXAMINER: Ms. Pearce? 11 MS. PEARCE: Yes, hello. 12 THE HEARING EXAMINER: Please raise 13 your right hand. 14 Do you solemnly affirm under penalties 15 of perjury that the statements you're about to 16 make are the truth, the whole truth, and nothing 17 but the truth? 18 MS. PEARCE: I do. 19 THE HEARING EXAMINER: Please state 20 your name and address for the record. 21 MS. PEARCE: My name is Alison, 22 A-L-I-S-O-N, Pearce, P-E-A-R-C-E. And I am the 23 deputy director for programs with the Audubon 24 Naturalist Society at 8940 Jones Mill Road, Chevy 25 Chase, Maryland.</p>	<p style="text-align: right;">95</p> <p>1 you probably know, the property was designed by John 2 Russell Pope, who was the preeminent architect of his 3 time in the early 20th century, and they're 4 particularly interested in particular sight lines and 5 views, and they're particularly interested in your 6 arrival at the property. 7 And so the current parking plan was 8 developed first in consultation with the Historic 9 Preservation Commission. So that's the first point. 10 I would also like to point out, as I have 11 pointed out throughout this process to our neighbors, 12 that the new proposed parking is not in the restored 13 meadow. As Ms. Sturm -- 14 Q What does -- what does that -- what 15 does that mean? What's the point? 16 A So we had a project that restored a 17 quarter acre of meadow from an unimproved state. And 18 so what our open fields are at Woodend are old 19 agricultural fields that we stopped managing, 20 clearly, as agricultural fields, and we manage them 21 for habitat. 22 And so some of them we mow annually and 23 allow the vegetation to grow, which is a mix of 24 nonnative vegetation and some native vegetation, like 25 goldenrods, that can persist.</p>
<p style="text-align: right;">94</p> <p>1 DIRECT EXAMINATION 2 BY MR. KLINE: 3 Q And why do you have familiarity with 4 the -- basically the -- why are you the right 5 person to answer Mr. Rutsch's question? 6 A Sure. So I've been the project manager 7 for the Nature for All improvements at Woodend. And 8 so I've been the one dealing with permitting as well 9 as with Park and Planning through the major 10 modification process. 11 Q Using Mr. Rutsch's theory, would -- if 12 we had gone through the formal subdivision 13 process, would it have relieved the need for 14 parking on the property to serve the nature play 15 area? 16 A No, I don't believe so. 17 The other thing I would like to point out 18 is that, in addition to our special exception, we are 19 a historic property. And so the first thing that we 20 need to do to get approval for any changes is to go 21 to the Montgomery County Historic Preservation 22 Commission. 23 And we had earlier versions of parking 24 plans that we presented to the Historic Preservation 25 Commission, and they rejected. And so they are -- as</p>	<p style="text-align: right;">96</p> <p>1 In this particular quarter acre, we took a 2 more intensive management approach and removed the 3 existing vegetation and replanted entirely with 4 native plant species of grasses and wildflowers. 5 As Ms. Sturm pointed out, the proposed 6 parking is designed to avoid that area. Mr. Rutsch 7 has repeatedly averred that we are replacing it with 8 parking, and he has been told in the past that that 9 is not true. 10 So I do not think that parking along Jones 11 Mill Road would be practical or accepted by Historic 12 Preservation. 13 And I'm not sure what Mr. Rutsch was 14 trying to get at with the fence. The fence does not 15 prevent pedestrian access to the property. We have 16 pedestrian gates that allow for pedestrian access and 17 align with our trail that connects to the Rock Creek 18 Trail. 19 Q Would parking along Jones Mill Road be 20 convenient? 21 A It would not be accessible to the nature 22 play space, no. 23 Q When you say not accessible, what -- 24 what do you mean? 25 A So there is -- you know, if he's talking</p>

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25 (97 to 100)

<p style="text-align: right;">97</p> <p>1 about parking on the south side of our driveway, 2 there's a significant slope between that area and the 3 entrance to the property. 4 Q Okay. 5 MR. KLINE: I have no further 6 questions, but she's available for Mr. Rutsch. 7 MR. RUTSCH: Can I speak? 8 THE HEARING EXAMINER: Yes. Do you 9 have questions of Ms. Pearce? 10 MR. RUTSCH: Yes. Yes, I do. 11 So I guess she's saying it's not 12 accessible, but I'm saying if the park -- if -- if 13 the roadway area were developed and sidewalks put 14 in, the -- it would be reasonable to think that 15 the sidewalks would enter the two gates that enter 16 from that side. 17 There are people who already walk -- 18 have worn a path from up towards Jones Bridge Road 19 and from the houses in that direction and then 20 back towards Woodhollow Road to the north, who 21 have worn a path through the grass that lead to 22 those two gates, and those are gates that are 23 there for pedestrian access. 24 I have another picture. I don't know 25 that I can -- is there -- I haven't used Teams</p>	<p style="text-align: right;">99</p> <p>1 So during the 50-year period, this 2 area directly behind my mom's house, where the 3 parking lot would be located, at various times has 4 had vegetation as high as six to eight feet tall, 5 and from time to time has been essentially hayed 6 like a field would be hayed. 7 So when she says that it was formerly 8 agricultural area, I think they treated it that 9 way. 10 Now, I know that some effort was made 11 to return the meadow to actual state, and I have 12 a -- I have a -- a screen shot from the Audubon 13 Society Web page that specifically shows the 14 restored meadow. And I'd like to show that 15 picture. And it's from their website. 16 THE HEARING EXAMINER: Let's focus on 17 what -- the topic we're on now. We have to keep 18 some order. And you will get a chance to testify. 19 Do you have any questions of her on the parking on 20 Jones Bridge Road? 21 MR. RUTSCH: No, I have no further 22 questions. 23 THE HEARING EXAMINER: I'm not sure I 24 understand your point, Mr. Rutsch, why you 25 think -- and I'm not as familiar. Why do you</p>
<p style="text-align: right;">98</p> <p>1 like I've used Zoom. Can I share my screen to 2 show a picture or put it in this drawer? 3 THE HEARING EXAMINER: Is it in the 4 record? 5 MR. RUTSCH: Is it in the record? 6 THE HEARING EXAMINER: Have you 7 submitted it to OZAH? 8 MR. RUTSCH: I have not submitted it 9 to the record. 10 MR. KLINE: I'm not sure I would 11 object to him showing a photo, but I just don't 12 think -- unless it's going to be used in 13 cross-examination of Ms. Pearce, I think it's 14 probably premature and maybe ought to be part of 15 his statement he can make later. 16 MR. RUTSCH: What I wish to show, 17 because Alison and I disagree -- now, I -- I don't 18 know the exact part of the, quote/unquote, 19 restored meadow that has been restored and which 20 part of the meadow has not been restored. 21 Now, my mom has lived in this house 22 for 50 years, almost as long as the Audubon 23 Society, originally the Audubon Society of 24 Washington, D.C., was gifted the Woodend Mansion 25 and property.</p>	<p style="text-align: right;">100</p> <p>1 think the parking on Jones Bridge would alleviate 2 the traffic problem -- the parking problem? 3 MR. RUTSCH: Okay, so -- so, as I 4 said, if you compare the play area that's 5 approximately one and a half blocks from the 6 entrance on Jones Mill Road to the play area that 7 will be created if this modification is approved, 8 I think -- actually, the play area I think has 9 already been approved -- there's the opportunity 10 to put pull-off by the side of Jones Mill Road 11 spaces, which would allow people to park and have 12 easy access and I would say as close access to the 13 playscape through one of the pedestrian gates at 14 the entrance of the Audubon Society as the parking 15 lot that's being proposed for the meadow, whether 16 the meadow has been restored or not. But that 17 is -- let's face it, that's part of the meadow. 18 My point is a number of spaces -- 19 they're proposing 18 parking -- 20 THE HEARING EXAMINER: We don't want 21 to get into -- please, let's not get into the 22 meadow. Let's finish with this. 23 Mr. Kline, Ms. Pearce, do you want to 24 respond? 25 MS. PEARCE: I do. There's one other</p>

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26 (101 to 104)

<p>101</p> <p>1 reason that that is not feasible. That area is 2 currently in a forest conservation easement with 3 the County. 4 THE HEARING EXAMINER: Okay. 5 MR. RUTSCH: Okay. I have one 6 additional question for -- 7 THE HEARING EXAMINER: Is it a 8 question? 9 MR. RUTSCH: Yes, it's a question. 10 THE HEARING EXAMINER: Okay. 11 MR. RUTSCH: Alison, when you went 12 before the Historic Preservation Commission to 13 request the parking with your initial request, was 14 the community notified of that, that event? 15 MS. PEARCE: So community notification 16 for those events is the responsibility of the 17 Historic Preservation Commission, and they have 18 ensured us that they followed their procedures. 19 MR. RUTSCH: Okay. And you're aware 20 that they did not notify the community? 21 MS. PEARCE: No, I am not aware of 22 that. 23 MR. RUTSCH: Okay, we made them 24 aware -- 25 MS. PEARCE: I'm aware that you</p>	<p>103</p> <p>1 THE HEARING EXAMINER: Ms. Alexander, 2 can you turn your camera on, please. 3 MS. ALEXANDER: I am having technical 4 difficulties. I'll see if my camera will work. 5 Oh, it does. Good. 6 THE HEARING EXAMINER: Okay. You're 7 still under oath, of course. 8 MS. ALEXANDER: Yes. I just wanted to 9 add that parking on Jones Mill Road is not a part 10 of this modification application. The only 11 relationship between this application is the 12 deeding of the right of way to the County. 13 So future improvements are 14 undetermined at this time and would be in the 15 hands of the County. 16 THE HEARING EXAMINER: Okay. I 17 apologize. I'm writing. Okay. Any questions of 18 Ms. Alexander? 19 Okay. Seeing none, so we've dealt 20 with parking on Jones Bridge. Are there other 21 issues? And the dedication of the right of way. 22 Are there other issues that you wanted to present, 23 Mr. Kline? 24 MR. KLINE: I believe that the 25 petitioner has gone through all the issues that we</p>
<p>102</p> <p>1 contend that. 2 MR. RUTSCH: No, we don't just 3 contend, they -- they didn't notify us. 4 MS. PEARCE: How would I be aware -- 5 THE HEARING EXAMINER: Okay, this 6 isn't the time for argument. So let's -- I think 7 we've gone through that issue as much as possible. 8 Is there anything else related to 9 parking on Jones Bridge? 10 MR. KLINE: Only to remind you that 11 it's actually Jones Mill Road. 12 THE HEARING EXAMINER: I'm -- I'm 13 sorry. Okay. I see Ms. Lisa Alexander -- 14 MR. KLINE: That was our -- that was 15 our first witness, and I guess Ms. Alexander -- 16 THE HEARING EXAMINER: She has her 17 hand up. 18 MR. KLINE: Yeah. As executive 19 director, she probably would like to supplement 20 Ms. Pearce's comments -- 21 THE HEARING EXAMINER: Fine. 22 MR. KLINE: Could she be recalled, 23 please? 24 THE HEARING EXAMINER: Yes. 25 MS. ALEXANDER: Thank you.</p>	<p>104</p> <p>1 identified in the -- basically in the list that 2 you had up earlier and then the additional 3 question that Mr. Rutsch brought up about the 4 right of way. 5 So I would say that that completes our 6 presentation in chief. And we'd be glad to hear 7 what the neighbors have to say, which I think, 8 because of the format we used, hopefully a lot of 9 these things -- I thought of each as doing a 10 little checkoff, so I'm hoping we've been able to 11 check most of them off now. But we'll see. 12 THE HEARING EXAMINER: Let's -- 13 let's -- I'm going to try and break, if we have 14 to, for lunch at 12:30. So let's just take a 15 five-minute break and we'll come back with those 16 for the community. 17 All right. So if we can be back by -- 18 well, ten minutes. If we can be back by 11:50, 19 and we'll start with those who want to testify. 20 I do see a hand up from 21 Ms. Nelson-Drake. Is that something for now? 22 MS. NELSON-DRAKE: Yeah, I can't stay 23 much longer. I don't have any other concerns. 24 THE HEARING EXAMINER: Okay. Well, 25 we'll -- we'll go ahead and -- do you want to</p>

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27 (105 to 108)

<p>105</p> <p>1 testify or --</p> <p>2 MS. NELSON-DRAKE: No, I have no other</p> <p>3 issues that I want to bring up at this time.</p> <p>4 THE HEARING EXAMINER: Okay. How many</p> <p>5 people would like to testify in this? I see</p> <p>6 Mr. Rutsch. So let's take a ten-minute break.</p> <p>7 We'll go back on the record and we'll see where it</p> <p>8 goes from there. Okay? So we'll see you back at</p> <p>9 11:50.</p> <p>10 (A recess was taken.)</p> <p>11 THE HEARING EXAMINER: Okay.</p> <p>12 Mr. Rutsch, you look prepared. Do you want to</p> <p>13 testify now?</p> <p>14 MR. RUTSCH: Yes.</p> <p>15 THE HEARING EXAMINER: Okay. Go</p> <p>16 ahead.</p> <p>17 MR. RUTSCH: Actually, if I could,</p> <p>18 could the court reporter turn off his video?</p> <p>19 Thank you.</p> <p>20 Okay. I'll try to identify myself a</p> <p>21 little bit more because I didn't, if that's</p> <p>22 helpful.</p> <p>23 I represent myself and my mother. Can</p> <p>24 you hear me?</p> <p>25 THE HEARING EXAMINER: Yeah. Did we</p>	<p>107</p> <p>1 The concern that we have, objections</p> <p>2 that we have are clearly about the parking lot.</p> <p>3 And as we already saw in the exhibits with the</p> <p>4 landscape architect, they are directly behind my</p> <p>5 mom's house and will significantly alter the</p> <p>6 nature and character of the property of my</p> <p>7 mother's neighbor.</p> <p>8 I'm going to try and cover basically</p> <p>9 four specific issues. First is prior assurances</p> <p>10 that we have had about what would happen. The</p> <p>11 second is the location, which I discussed a little</p> <p>12 bit with Alison. The third is the size and</p> <p>13 necessity for the parking lot. And the fourth is</p> <p>14 the use of the lot for other than stated purposes.</p> <p>15 I'll start with assurances. Because I</p> <p>16 got involved in the -- in the Board of Appeals</p> <p>17 when a modification was requested by Audubon</p> <p>18 Society to put up a deer fence, and we</p> <p>19 participated, negotiated, worked with Audubon</p> <p>20 Society to try and reduce the size of the fence</p> <p>21 surrounding the property to allow them to keep the</p> <p>22 deer out but not to impact the neighbors.</p> <p>23 And we ended up with a compromise</p> <p>24 there. But during the course of that hearing,</p> <p>25 which was on November 16, 2016, on record I</p>
<p>106</p> <p>1 get your name and address for the -- or address</p> <p>2 for the record?</p> <p>3 MR. RUTSCH: That's what I was going</p> <p>4 to do.</p> <p>5 THE HEARING EXAMINER: Oh, I'm sorry.</p> <p>6 MR. RUTSCH: My name's Robert Rutsch,</p> <p>7 and I represent my mother, Janet. She is 89,</p> <p>8 going on 90 this year. Her home is at 9001</p> <p>9 LeVelle Drive in Chevy Chase. My name, Robert</p> <p>10 Rutsch, R-U-T-S-C-H. My mother is Janet, same</p> <p>11 last name. And I'm a trustee for the property.</p> <p>12 My mom has lived at this property</p> <p>13 since 1972, about 50 years now, and has watched as</p> <p>14 the -- the nature sanctuary has slowly gone from</p> <p>15 being primarily a quiet place for bird watching</p> <p>16 for the Audubon Society of the Washington, D.C.,</p> <p>17 into a variety of other uses, some of which, as I</p> <p>18 noted earlier, have been part of special</p> <p>19 modifications to allow, such as the school and the</p> <p>20 camp.</p> <p>21 And improvements that we certainly</p> <p>22 have no opposition to, we have no opposition to</p> <p>23 the playscape. I think the improvements to the</p> <p>24 water and so forth have been something that we</p> <p>25 have not been opposed to.</p>	<p>108</p> <p>1 testified about the long-range plan, the 50-year</p> <p>2 long-range plan that the Audubon Society had</p> <p>3 published, and my mom and I both commented on</p> <p>4 that. And in that 50-year plan was a plan to put</p> <p>5 an education center and a parking lot directly</p> <p>6 behind my mom's house, essentially in the same</p> <p>7 location, although of different size than the</p> <p>8 parking lot that's currently being proposed.</p> <p>9 At the end of that meeting, Lisa</p> <p>10 Alexander specifically stopped me and told me they</p> <p>11 had no plans to pursue building that -- the</p> <p>12 building or the parking lot at that time.</p> <p>13 On March 29, 2017, at a Community</p> <p>14 Liaison Committee meeting, we had -- the Community</p> <p>15 Liaison Committee was created at the direction of</p> <p>16 the Board of Appeals as a result of the hearing</p> <p>17 about the fence, and we began to have semiannual</p> <p>18 meetings.</p> <p>19 So during a meeting in 2017, March 29,</p> <p>20 there was a question from Judith Gold, and Lisa</p> <p>21 Alexander -- regarding parking. Lisa Alexander</p> <p>22 said, and I quote, increasing parking is not in</p> <p>23 the plans for this minute, unquote.</p> <p>24 On April 18th, less than a month</p> <p>25 later, 2017, I had the following exchange also at</p>

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28 (109 to 112)

<p>109</p> <p>1 a CLC meeting, in which I said the following: In 2 your 50-year plan, there is a building and parking 3 lot in my mom's backyard. 4 To which Diane Lill replied: These 5 buildings and parking won't happen. Once 6 something goes in a plan, it is a statement of 7 intentions. 8 To which I replied: You say it, but 9 it is in your plan. If you're not going to do it, 10 why would you put it in the plan? 11 Then on July 13, 2017, I have an email 12 thread in which one of the other neighbors, Pamela 13 Haton, was involved, where we had the following. 14 Now, this is a thread of several emails between 15 Pamela, myself, my -- well, my mother, I don't 16 know that I was involved in it, but my mother, 17 Pamela, and members of the -- of the Audubon 18 Society. 19 The first was -- here's the question 20 from Pamela: As you're well aware, the parking 21 location is a concern of the neighbors, both the 22 number of parking spaces and the location. Does 23 your current proposal take place -- take the place 24 of the parking that was proposed by Janet Rutsch's 25 home?</p>	<p>111</p> <p>1 entranceway. 2 And that proposal was not acceptable, 3 Historic Preservation, because of the impact on 4 the viewscape. Unfortunately, because there was 5 no notification given to the community, and 6 Audubon Society failed to give us any heads up, we 7 were not able to testify, because we would have 8 encouraged them to reconsider. 9 Once that was modified to the current 10 location and shape and size, it also increased 11 from 10 spaces to 12 spaces to 15 spaces, and now 12 to 18 spaces. From my transcript and information 13 that I have from the Historic Preservation 14 Commission, they were anticipating 16 spaces, and 15 somewhere along the line it became 18 spaces. So 16 I don't know whether this is consistent with what 17 the Historic Preservation Commission has proposed. 18 But I'm frustrated that we're -- the 19 Board of Appeals requested that Audubon Society 20 communicate with the community, with the Community 21 Liaison Committee, and in the end they didn't give 22 us any notification of their intentions. 23 And I think that's been true 24 throughout the process. So I don't feel that the 25 Community Liaison Council is working in the manner</p>
<p>110</p> <p>1 This is in reference to the newly 2 proposed parking that we're looking at now. 3 If not, when do you propose to build 4 both the education visitors center and the parking 5 next to it? 6 To which Lisa Alexander replied -- I 7 guess this was directed at Diane Lill. Lisa 8 responded: Although Diane is away on vacation, I 9 can competently say that her response was 10 specifically about parking near the Rutsch's 11 property line that was associated with the 12 buildings shown in the 50-year master plan. That 13 building and its associated parking is not on the 14 drawing board at this time or in the foreseeable 15 future. 16 And I'm going to go through now 17 quickly the issues surrounding notification. So 18 we created a Community Liaison Committee to try 19 and get the Audubon Society to communicate their 20 intentions to the community, and right after that 21 assurance from Lisa, the Audubon Society applied 22 for a Historic Preservation review of parking. 23 The initial parking proposal, which certainly 24 would have been much more acceptable to us, was to 25 create 15 spaces that were angled parking off the</p>	<p>112</p> <p>1 that it was intended by the Board of Appeals. 2 The other -- and this -- this -- this 3 was part of the record of the previous appeal that 4 created the restroom area -- was a description of 5 essentially Audubon Society choosing to do 6 modifications in a piecemeal fashion that allowed 7 them to get approval for each individual phase of 8 their development projects piece by piece in ways 9 that allowed them to ultimately do what is a major 10 modification. 11 Now, I realize this a major 12 modification. I think we're at a point where as a 13 major modification we have to take into 14 consideration what exactly the impact and use of 15 this parking lot will have on the property and in 16 general according to the -- the -- the zoning 17 ordinance, the substantial change of the nature, 18 character, intensity of use of the property. 19 So my view, you know, I know there's 20 some dispute with Alison about the meadow itself, 21 I would love to share from their website a picture 22 of what they describe as their meadow, or I can 23 submit that subsequently if that's the appropriate 24 way. 25 THE HEARING EXAMINER: (Inaudible) have</p>

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29 (113 to 116)

<p>113</p> <p>1 to submit it subsequently.</p> <p>2 MR. RUTSCH: Okay, I'll do it that</p> <p>3 way.</p> <p>4 THE HEARING EXAMINER: Okay? Unless</p> <p>5 Mr. Kline has an objection to doing it that way.</p> <p>6 I have to close my meeting door for a</p> <p>7 minute or my cat will get in. I'll be right back.</p> <p>8 All right. Joys of remote hearings.</p> <p>9 Okay. Go ahead, Mr. Rutsch.</p> <p>10 MR. RUTSCH: Okay. So in talking</p> <p>11 about the location, we've seen in the exhibit that</p> <p>12 Mr. Kline pulled up where it is located, and that</p> <p>13 is, as noted, directly behind the 150-foot fence</p> <p>14 line between my mom's property.</p> <p>15 Her property is raised somewhat, so</p> <p>16 I'm concerned that even with plantings and so</p> <p>17 forth, this parking lot will not be shaded from</p> <p>18 her view, and certainly noises and sound from it</p> <p>19 will project into her area.</p> <p>20 So I think that that -- turning what</p> <p>21 has been for 50 years, whether it is a restored or</p> <p>22 unrestored meadow, into a parking lot is, in fact,</p> <p>23 by definition, I think -- clearly is a change in</p> <p>24 the nature, character, intensity of use.</p> <p>25 With regard to that location, I</p>	<p>115</p> <p>1 but she has still had -- have you had somebody</p> <p>2 jump? Okay. No, no deer have jumped into her</p> <p>3 yard.</p> <p>4 So the concern was the surrounding</p> <p>5 neighbors were going to have to have a 10-foot</p> <p>6 fence, which was reduced to 8-foot, and our</p> <p>7 argument was that the primary source of deer was,</p> <p>8 in fact, Rock Creek Park, and the 10-foot fence</p> <p>9 that's along the entrance facing Rock Creek Park,</p> <p>10 which is the Jones Mill Road entrance, I think has</p> <p>11 substantially reduced that. So it's been</p> <p>12 effective. But that's what put us in this</p> <p>13 position.</p> <p>14 The next is the size of the existing</p> <p>15 property and the use of the -- excuse me, the size</p> <p>16 and the use of the proposed parking lot. So as I</p> <p>17 said, the parking space has -- in this lot has</p> <p>18 increased from the angled parking of 10 to 15 to</p> <p>19 16 and now 18, and I hope not more than 18 has</p> <p>20 already been resolved.</p> <p>21 But my issue with that in general is</p> <p>22 why there's a necessity for a parking lot of that</p> <p>23 size.</p> <p>24 The indications are under the</p> <p>25 conditions of the property, and I'm going to</p>
<p>114</p> <p>1 have -- I'd love to play this, and, again,</p> <p>2 probably inappropriate at this time, but the</p> <p>3 Audubon Society created about an hourlong</p> <p>4 presentation film that they have shown and is</p> <p>5 posted online called "The Land of Woodend."</p> <p>6 And in the first minute of "The Land</p> <p>7 of Woodend," it's the voice of Lisa Alexander,</p> <p>8 although she doesn't identify herself, where she</p> <p>9 says the following: There's a time in July and</p> <p>10 August when I enter the sanctuary, and the</p> <p>11 restored meadow is alive with swallowtails,</p> <p>12 goldfinches and house wrens, and it is humming</p> <p>13 with pollinators, bees and wasps, and flies and</p> <p>14 butterflies. It's fabulous, and it just makes me</p> <p>15 stop and think this is possible.</p> <p>16 Where she's standing is directly where</p> <p>17 the parking lot will be located. The meadow was</p> <p>18 one of the key items that was used to justify the</p> <p>19 10-foot deer fence that surrounds the property</p> <p>20 that we were opposed to.</p> <p>21 Now, I do think that the fence has</p> <p>22 been effective at keeping the deer out, and I will</p> <p>23 note for the record now that since the deer fence</p> <p>24 went up, we -- my mom has not had any deer jump</p> <p>25 from her yard into the Audubon Society's property,</p>	<p>116</p> <p>1 summarize this, is that the property, the</p> <p>2 playscape for which the parking lot is proposed,</p> <p>3 is limited to academic programming during the day,</p> <p>4 8:30 to 2:00 during the school year; for summer</p> <p>5 camp and activities, from 9:00 to 4:00 during the</p> <p>6 summer months.</p> <p>7 So the general public has access to</p> <p>8 this parking lot and the playscape basically from</p> <p>9 dawn to 8:30 during the school year and after</p> <p>10 2 p.m. during the school year and before 10:00 and</p> <p>11 after 4:00 during the summer months.</p> <p>12 During the day when the school and the</p> <p>13 camp are in session, school kids get dropped off</p> <p>14 at preschool, campers get dropped off at camp, and</p> <p>15 there's no particular need to have anyone parking</p> <p>16 in order to go to school, go to camp, or to use</p> <p>17 the playscape.</p> <p>18 So I'm anticipating that this parking</p> <p>19 lot is either going to be empty or it's going to</p> <p>20 be used for something other than its proposed</p> <p>21 purpose.</p> <p>22 And that is the reason why we have</p> <p>23 complained about using the parking lot for</p> <p>24 weddings and other events as overflow parking.</p> <p>25 And I think the other issue for us is</p>

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30 (117 to 120)

<p>117</p> <p>1 anticipating that in the 50-year plan, there would 2 be a building. So it's -- it's not -- it's fairly 3 obvious to us that the location of this parking 4 lot will allow or encourage further development of 5 the educational center, which is directly next to 6 it.</p> <p>7 Now, I don't know how it's going to be 8 shoehorned in or whether it will be in front of 9 the parking, behind the parking, but there's been 10 no indication that they will not continue to 11 develop, and this parking lot I think helps them 12 in this development process in terms of adding 13 additional space for preschool and campers.</p> <p>14 As we noted earlier, we've asked for 15 signage. No commitment there. We've asked for 16 barriers for periods of time when the parking lot 17 should not be used, including during events and 18 wedding events.</p> <p>19 And I think that's all I really have 20 at this point. I guess our issue, again, is the 21 expectation that further development will occur if 22 the parking lot is built. And the need for a 23 parking lot of this size -- actually, I skipped 24 over this. I apologize. I'm going to go back to 25 the need under the conditions when the playscape</p>	<p>119</p> <p>1 noticed that there was a person in our last CLC 2 meeting named Joanie, and nobody seemed to 3 recognize the -- the implied note. This was a 4 friend of mine who was watching and chose to call 5 herself Joanie, that she has a song, "Big Yellow 6 Taxi," that says: Take paradise and put a parking 7 lot.</p> <p>8 And that I think is what's happening 9 right here, and it's very frustrating to me.</p> <p>10 I also think that at this point the 11 lack of forthcomingness of the Audubon Society to 12 communicate with the Community Liaison Committee, 13 not -- telling us there was not going to be a 14 parking lot numerous times and then turning around 15 and going to the Historic Preservation Commission 16 and asking for a parking lot in the location that 17 they knew the committee had a complaint about.</p> <p>18 The fact that the Historic 19 Preservation did not communicate with us I realize 20 is not ANS's fault. We complained to Historic 21 Preservation Commission, we asked the -- and the 22 Community Liaison Council, we asked numerous times 23 if they would go back to the Historic Preservation 24 Commission and try to find an alternative 25 solution. They refused to do that.</p>
<p>118</p> <p>1 would be available to the public.</p> <p>2 I note that there are five spaces 3 directly up the drive, five angled spaces which 4 are 15-minute drop-off during the camp and school 5 day, but that otherwise would be available for 6 users of the playscape to park, for those from the 7 public who would be coming there after hours.</p> <p>8 So the -- one of the arguments that 9 the Audubon Society has made is that this 10 playscape area will be attractive to school 11 visits, school field trips and so forth, and they 12 have space now for bus drop-off, and they have 13 handicapped spaces. And I think that would be 14 sufficient for most public schools.</p> <p>15 And the question is is 18 spaces 16 excessive for the needs of those who would 17 presumably be carpooling from schools that are not 18 able to use school buses to have a field trip to 19 this play area.</p> <p>20 So I just think all in all, the lack 21 of desire to have pedestrian access, the excessive 22 size of the parking lot all indicate that this is 23 too much; and as well as the conversion of what 24 previously was green space and what's described as 25 a nature sanctuary to use of a parking lot -- I</p>	<p>120</p> <p>1 Now, I understand that Mr. Kline's 2 time and the time of the employees of the Audubon 3 Society is valuable. And when they get through 4 one of the first hoops to do their development, 5 they don't wish to go back and jump through those 6 hoops again. But I don't know that the Community 7 Liaison Council is working in the manner that it 8 is intended to work.</p> <p>9 We do not seem to get from the 10 Community Liaison Council anything other than 11 presentations from ANS, and we don't get -- we 12 typically don't get any acknowledgment or response 13 to the concerns.</p> <p>14 Now, I do see some changes recently. 15 For example, when the complaint was made about the 16 parking along Brierly, clearly there's been some 17 effort, and I applaud that effort. But I'd like 18 to have the Audubon Society continue to try and 19 communicate with us what their plans are.</p> <p>20 And I think that -- I do think that 21 somewhere here there is going to be an education 22 building built.</p> <p>23 And despite the fact that we've gotten 24 all these denials about the education building and 25 the parking lot, here we have a parking lot. So</p>

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31 (121 to 124)

<p>121</p> <p>1 what we're anticipating is that there'll be an 2 education building. 3 Now, I mentioned this in 2016 relative 4 to the fence. The fence basically, by pushing it 5 up against the lot line, allowed development and 6 building -- buildings and parking spaces. Now we 7 have parking spaces. 8 And each time that I brought this up, 9 there's been a complaint from the board saying 10 that this is not a consideration of the hearing. 11 But each time I've said it, amazingly enough, it 12 happens on the next hearing. 13 So I'm getting a little bit 14 frustrated. My mom is. She's 89 years old. I'm 15 looking at the plantings that the landscape 16 architect put there. Certainly even after her 17 five-year growth period, my mom is going to be 18 looking at a parking lot where currently, for 50 19 years, she's been looking at a meadow. 20 And I will point out that I just 21 looked out back. I'm at her house right now. I 22 looked out back at the trees that were planted 23 that were required in the fence proposal, and what 24 we currently have are about four scruffy plants 25 that are approximately five feet tall and really</p>	<p>123</p> <p>1 THE HEARING EXAMINER: Okay. I just 2 have one cleanup issue. Mr. Rutsch, did you have 3 a photo you wanted to show or submit? You have to 4 do both. But I didn't want it to get lost in the 5 hearing. 6 MR. RUTSCH: Okay. Should I put it in 7 this drawer? Is that how it works? Open the 8 share tray? 9 THE HEARING EXAMINER: Open the share 10 tray, yes. 11 MR. RUTSCH: Okay. 12 THE HEARING EXAMINER: Up at the top 13 there's a -- a little -- there you go. 14 MR. RUTSCH: Okay, this, this is a 15 screen shot from Audubon Society's Web page, as 16 you can see, and it specifically shows in 2013 -- 17 it says: ANS completed an intensive restoration 18 on the core acre of meadow by the entrance at 19 Jones Mill Road. The efforts resulted in the 20 planting of 75 native grasses and four species in 21 over 3,000 (indiscernible) and containers. 22 And as you'll see to the right, this 23 is a simple diagram. That's the meadow. And if 24 you can see my cursor, I don't know whether you 25 can, my cursor is pointing at my mom's house.</p>
<p>122</p> <p>1 don't do anything to hide the fence. 2 So that's all I have. If you have any 3 questions for me, I'd be happy to respond. 4 THE HEARING EXAMINER: We'll be 5 turning over to Mr. Kline. Thank you for your 6 testimony. I'm going to turn it over to Mr. Kline 7 to see if he has questions. 8 Mr. Kline, you're on mute. 9 MR. KLINE: Sorry. 10 THE HEARING EXAMINER: That's okay. 11 MR. KLINE: I don't have any 12 questions, but I certainly do want to present 13 rebuttal testimony. What I would like to suggest 14 is -- there's an awful lot there to digest. 15 Certainly Ms. Alexander and Ms. Pearce would 16 probably like to address some of it. 17 You were talking about breaking at 18 12:30 lunch. Could I suggest we break now, allow 19 my clients to organize their comments, and then 20 we'll come back at whatever you say, 1:30, and 21 I'll put on some rebuttal testimony? 22 But I don't have any questions for 23 Mr. Rutsch because he's been candid and 24 predictable because he's shared with us his 25 thoughts for a long time.</p>	<p>124</p> <p>1 THE HEARING EXAMINER: Okay. The 2 transcript doesn't know what cursor is -- 3 MR. RUTSCH: It's on the north side -- 4 THE HEARING EXAMINER: But -- 5 MR. RUTSCH: -- at the right-hand side 6 of the screen. 7 THE HEARING EXAMINER: Northwestern 8 side, yes. 9 MR. RUTSCH: Basically -- 10 THE HEARING EXAMINER: I think it's 11 northwestern. 12 MR. RUTSCH: Right-hand side of the 13 screen, the screen shot shows -- one, two, three, 14 four, five, six -- seven houses. It's the middle 15 house of the seven houses. 16 THE HEARING EXAMINER: That's helpful. 17 Thank you. 18 MR. RUTSCH: Okay. I have another 19 picture which is -- this is the original proposal 20 to the Historic Preservation Commission from the 21 Audubon Society which shows the original proposal 22 that we would have found much more attractive and 23 also would have not required the -- the demolition 24 of at least some portion of the meadow. 25 THE HEARING EXAMINER: Now, I'm not</p>

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32 (125 to 128)

<p>125</p> <p>1 seeing that second photo.</p> <p>2 MR. RUTSCH: Okay. Oh, I have to put</p> <p>3 it in -- hold on. I have to put it in the folder.</p> <p>4 Sorry, I switched screens instead of putting it in</p> <p>5 there. So I'm going to -- I'm going to stop</p> <p>6 sharing. I'm going to start sharing. And let's</p> <p>7 look at this one.</p> <p>8 Is that showing up?</p> <p>9 THE HEARING EXAMINER: Yes.</p> <p>10 MR. RUTSCH: It says historic --</p> <p>11 THE HEARING EXAMINER: And what is --</p> <p>12 can you scroll down a little bit? There, that</p> <p>13 helps. Now, what is this showing us?</p> <p>14 MR. RUTSCH: Okay. So on the east</p> <p>15 side, that's the entrance. And along the road,</p> <p>16 that's the entrance road, the entrance driveway of</p> <p>17 the Audubon Society.</p> <p>18 This was the original proposal to the</p> <p>19 Historic Area Work Permit pre-consultation. So</p> <p>20 this was done very soon after we were told that</p> <p>21 no, no parking space would be -- this is from June</p> <p>22 21, 2017, and on April 18th, there was indication</p> <p>23 that no parking space would happen.</p> <p>24 So, you know, six weeks later, a</p> <p>25 proposal was sent to them.</p>	<p>127</p> <p>1 THE HEARING EXAMINER: No, that's</p> <p>2 okay.</p> <p>3 MR. RUTSCH: Probably don't want that.</p> <p>4 THE HEARING EXAMINER: No.</p> <p>5 MR. RUTSCH: Okay.</p> <p>6 THE HEARING EXAMINER: No.</p> <p>7 MR. RUTSCH: Her voice is much nicer</p> <p>8 than mine, I must say. Okay. I'm going to close</p> <p>9 this so you don't have to see that anymore.</p> <p>10 And I have nothing further except to</p> <p>11 say I have -- I have limitations on my time. My</p> <p>12 wife unfortunately is due for cancer treatment at</p> <p>13 3 o'clock at Sibley Hospital.</p> <p>14 THE HEARING EXAMINER: I'm sorry.</p> <p>15 MR. RUTSCH: So I'm going to have to</p> <p>16 be out by at the latest 2 o'clock. So if we take</p> <p>17 a break and you're looking for response from me, I</p> <p>18 don't know that I'll be able to participate much</p> <p>19 longer.</p> <p>20 THE HEARING EXAMINER: Why don't we --</p> <p>21 Mr. Kline, what's your -- when do you have to</p> <p>22 leave, Mr. Rutsch? 2:00?</p> <p>23 MR. RUTSCH: 2 o'clock at the latest.</p> <p>24 THE HEARING EXAMINER: Okay. What if</p> <p>25 we take a 20-minute break for lunch, Mr. Kline?</p>
<p>126</p> <p>1 Now, we were not allowed to -- not --</p> <p>2 we were not notified, either by ANS or by Historic</p> <p>3 Preservation, of this proposal. And Historic</p> <p>4 Preservation's desire was to not change the</p> <p>5 viewscape or -- I don't actually think you can see</p> <p>6 this from the -- from the historic mansion, but,</p> <p>7 in fact, their view of it was that as you drove in</p> <p>8 the entrance, you wanted to have this beautiful</p> <p>9 drive up towards the historic mansion, and having</p> <p>10 parking along the side here was considered no</p> <p>11 good.</p> <p>12 I don't know the exact circumstances</p> <p>13 because we weren't there.</p> <p>14 I'm going to go to another picture</p> <p>15 that's -- I think it's --</p> <p>16 THE HEARING EXAMINER: (Inaudible) you</p> <p>17 can get all these pictures back and email them.</p> <p>18 MR. RUTSCH: Yes.</p> <p>19 The final one I think is similar to</p> <p>20 what we've seen earlier in the exhibits from --</p> <p>21 yeah, here is -- so here is -- instead -- this was</p> <p>22 the next thing. This is what we've been looking</p> <p>23 at. So I don't think that's new.</p> <p>24 I could play the video for you of</p> <p>25 Lisa, it's pretty --</p>	<p>128</p> <p>1 Is that acceptable to you?</p> <p>2 MR. KLINE: It's okay with me. Does</p> <p>3 it give Ms. Alexander and Ms. Pearce an adequate</p> <p>4 amount of time to get organized? And I'll have to</p> <p>5 ask them to respond.</p> <p>6 THE HEARING EXAMINER: Can you respond</p> <p>7 verbally? Because --</p> <p>8 MS. PEARCE: Yes, I think that's</p> <p>9 plenty. Mm-hmm.</p> <p>10 THE HEARING EXAMINER: Okay. So we'll</p> <p>11 come back at 12:40. And, Mr. Rutsch, we will get</p> <p>12 you out of here in time.</p> <p>13 MR. RUTSCH: Thank you very much.</p> <p>14 THE HEARING EXAMINER: Okay. We're</p> <p>15 off the record.</p> <p>16 (A recess was taken.)</p> <p>17 THE HEARING EXAMINER: Mr. Kline, did</p> <p>18 you have witnesses that you would like to present?</p> <p>19 MR. KLINE: The answer is yes, and</p> <p>20 thank you for the break. This probably -- when</p> <p>21 you're not all together, it's a little hard to do</p> <p>22 this from a distance. So they're a little bit --</p> <p>23 THE HEARING EXAMINER: Yeah.</p> <p>24 ///</p> <p>25 ///</p>

<p>129</p> <p>1 REDIRECT EXAMINATION</p> <p>2 BY MR. KLINE:</p> <p>3 Q What would you like to say,</p> <p>4 Ms. Ritsko-Warren? But, listen, I think</p> <p>5 Mr. Rutsch gave us a good sort of checklist or</p> <p>6 sequence.</p> <p>7 So there were questions about</p> <p>8 basically notification, what the community was</p> <p>9 learning. You seem to be the secretary, the</p> <p>10 keeper of the calendar.</p> <p>11 So, Ms. Ritsko-Warren, could you just</p> <p>12 try and -- without getting into too much detail,</p> <p>13 just elaborate on what the efforts are of Audubon</p> <p>14 to keep its neighborhood informed through the CLC</p> <p>15 and other steps?</p> <p>16 A Absolutely. So as I mentioned earlier in</p> <p>17 my testimony, we have biannual meetings with the CLC,</p> <p>18 and those are emailed out to all of the neighbors for</p> <p>19 whom we had email addresses and the LISTSERVs for the</p> <p>20 neighborhood.</p> <p>21 The first meeting where this particular</p> <p>22 parking configuration was presented, both in a</p> <p>23 PowerPoint and discussed and reflected in the minutes</p> <p>24 of the meeting, was February 22, 2018. That was</p> <p>25 prior to Historic Preservation seeing this particular</p>	<p>131</p> <p>1 We have -- the meetings are held for 90</p> <p>2 minutes, and we have limited our presentations</p> <p>3 portion of the meeting. Usually we try to keep it to</p> <p>4 30 minutes. If there's a lot to present, sometimes</p> <p>5 it goes to 45. But in general we leave the -- at</p> <p>6 least the last 30 minutes. We try to leave the last</p> <p>7 45 minutes to hour for community questions.</p> <p>8 It is an open Q&A session. Any neighbor</p> <p>9 who is present can ask a question. And that is</p> <p>10 reflected in the minutes for all of those meetings.</p> <p>11 So we do have the questions and answers in all of our</p> <p>12 minutes that are circulated to the community.</p> <p>13 MR. KLINE: Following the format we</p> <p>14 used before, Madam Hearing Examiner, I have no</p> <p>15 further questions of Ms. Ritsko-Warren. You could</p> <p>16 either ask the questions yourself or let</p> <p>17 Mr. Rutsch ask any cross-examination if he'd like.</p> <p>18 THE HEARING EXAMINER: Do you have</p> <p>19 cross-examination? Do you have questions?</p> <p>20 MR. RUTSCH: I have none.</p> <p>21 THE HEARING EXAMINER: Thank you,</p> <p>22 Ms. Warren -- Ritsko-Warren. I'm sorry.</p> <p>23 Mr. Kline, your next witness?</p> <p>24 MR. KLINE: Yeah, yeah, let's get to</p> <p>25 the important stuff, and that is where it's</p>
<p>130</p> <p>1 parking configuration.</p> <p>2 Historic Preservation first saw the</p> <p>3 parking configuration in March of that year in a</p> <p>4 pre-consultation hearing. And that was when they</p> <p>5 gave us their positive feedback on that particular</p> <p>6 parking configuration, and we moved forward and</p> <p>7 applied for a historic area work permit for this</p> <p>8 particular parking configuration in May of 2018.</p> <p>9 As I mentioned, we have biannual meetings.</p> <p>10 So we continued with a phone meeting and two meetings</p> <p>11 in the following year. So there have been eight</p> <p>12 meetings since that first presentation that have</p> <p>13 included this particular parking configuration over</p> <p>14 the last four years.</p> <p>15 Q What measures has the CLC -- have you</p> <p>16 taken in terms of managing the CLC to try and</p> <p>17 improve the communication of information to the</p> <p>18 community?</p> <p>19 A Yes. Mr. Rutsch did bring to our</p> <p>20 attention some of his concerns about how the CLC was</p> <p>21 run. I can't give you a date on that, but I do</p> <p>22 remember it was some in-person meetings, so it was</p> <p>23 pre-COVID, so it must have been in 2019, perhaps,</p> <p>24 maybe '18 and '19, and we did adjust our format of</p> <p>25 the meetings to address his concerns.</p>	<p>132</p> <p>1 located and how big it is.</p> <p>2 REDIRECT EXAMINATION</p> <p>3 BY MR. KLINE:</p> <p>4 Q So, Ms. Alexander, could you step in</p> <p>5 and give us the benefit of the research you've</p> <p>6 done, which I know you did personally, and your</p> <p>7 staff, to conclude where this should go and how</p> <p>8 big it should be.</p> <p>9 A Yes. So first let me say to Bob Rutsch</p> <p>10 that, yes, I feel certain I told you that we would</p> <p>11 not build an education building while I was executive</p> <p>12 director. And so I just want to affirm that is</p> <p>13 correct.</p> <p>14 And the location of this parking area was</p> <p>15 determined by proximity to the nature play space.</p> <p>16 That's why we first proposed parking right along the</p> <p>17 driveway, because that would be in close proximity to</p> <p>18 the nature play space.</p> <p>19 When Historic Preservation rejected that</p> <p>20 proposal, we wanted to first protect the restored</p> <p>21 meadow and, second, keep the parking close to the</p> <p>22 nature play space. So that's why it swung into the</p> <p>23 position that it did.</p> <p>24 In addition, you'll notice it has sort of</p> <p>25 a dogleg look to it. The reason it's angled that way</p>

<p style="text-align: right;">133</p> <p>1 is to protect mature trees. We didn't want to cut 2 down mature trees to just make a perpendicular 3 parking lot. 4 I don't know if it's been mentioned before 5 in this hearing, but the parking lot will be a 6 permeable surface. So rainwater will percolate right 7 into the parking area. 8 The size of the parking lot was determined 9 in consultation -- 10 Q Ms. Alexander, before you leave 11 that -- 12 A Yes. 13 Q -- I realize there seems to be a 14 disagreement about whether this is or is not a 15 restored meadow. But why do you feel so adamantly 16 that that's the case? 17 A Well, so this is a big, you know, field. 18 It was originally a big field in -- at the front of 19 the property. And I was one of the very people who 20 planted those 3,000 meadow plants that went into the 21 restored meadow. 22 But if you can imagine, the field is about 23 cut in half, and half of the field was unrestored, 24 just kind of poor habitat, post-agricultural land; 25 and half of the field, nearest to the driveway, is</p>	<p style="text-align: right;">135</p> <p>1 And when we looked at the number of 2 parking spaces that the recreational fields were 3 specified to have, that seemed like entirely too 4 many. 5 So in consultation with the Park and 6 Planning staff, we wanted to find a number that 7 wasn't 45, that was something that would accommodate 8 the public, be enough spaces that it would 9 accommodate the public, but not go to that County 10 standard for recreational fields. So that's how we 11 ended up on 18 spaces. 12 And the size of the lot has been the same 13 since we submitted to it Historic Preservation in 14 2018. 15 Q You've already got a couple features 16 out there. And based on the interest you've got 17 on that, do you feel that 18 spaces is -- was a 18 right number? It's not an overparking for what 19 you ultimately expect for the full program? 20 A I think it's our best estimate, Jody. I 21 would say that until we actually, you know, open the 22 nature play space, we won't know for certain. 23 But I feel confident that by consulting 24 with Park and Planning, that we got a good look at 25 what we didn't want to do, which was we didn't want</p>
<p style="text-align: right;">134</p> <p>1 restored. 2 So I had a personal vested interest in 3 making sure that we didn't disturb those 3,000 native 4 plants that I helped put in the ground myself. So 5 the parking location does completely avoid the 6 restored portion of that field. 7 And so the wildflowers that are in bloom 8 now will be in bloom for the next 10 years, 20 years. 9 It's wonderful to see. 10 Q I interrupted you, and you were 11 talking about the size of the -- the number of 12 spaces. 13 A Yes. 14 Q Explain to us how you came to that 15 number and why you feel it's essential to support 16 the nature play space. 17 A So when we first were thinking about the 18 nature play space, we wanted to consult with Parks 19 and Planning to find out if there was a standard in 20 the county for number of parking spaces for a play 21 area. 22 And the County staff told us that, no, the 23 only standard that the County has is a parking 24 standard for recreational fields. So things like 25 soccer fields and baseball diamonds.</p>	<p style="text-align: right;">136</p> <p>1 to go to that large parking standard for recreational 2 areas. We wanted to do something in a smaller, but 3 accommodating to the public, footprint. 4 Q And I guess the last thing I'd say in 5 order to try and address the allegation that this 6 is really nothing more than the camel's nose under 7 the tent for something bigger, what measures are 8 you able to implement to ensure that this doesn't 9 have a potential use for beyond what was the 10 intended use, to use Mr. Rutsch's phrase? 11 A Yeah, well, I think one of the first 12 things was mentioned earlier in this hearing, and 13 that is that this parking area is not illuminated. 14 So it will be very dark after dark. And 15 so for anything that's happening in the evening at 16 our headquarters, it would not be particularly 17 desirable. 18 But I would say that we would be happy to, 19 you know, think of other ways we could sign the 20 parking area, no parking after dusk, maybe we could 21 engage with the towing company, you know, to say you 22 could be towed. 23 I'm a little hesitant to suggest a barrier 24 because we've had the experience of people just 25 driving right through barriers. But that might be</p>

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<p>137</p> <p>1 something we could also consider for after dark. 2 So we're open to adding additional 3 measures to the parking to ensure that it's just used 4 for the play area, and the play space is available 5 dawn to dusk. 6 Q And would you confirm that the nature 7 play area is the drive -- the exclusive driving 8 force for the location/size of the parking lot 9 that we talked about today? 10 A Absolutely. 11 MR. KLINE: I have no further 12 questions for Ms. Alexander. 13 THE HEARING EXAMINER: If there were a 14 sign at the playground parking area, just "No 15 Event Parking," just in case your three parking 16 attendants -- you know, just some kind of warning 17 sign that -- that this isn't for events and you 18 don't want to park there anyway because it's not 19 lit. But just something like "No Event Parking," 20 do you have objection to that? 21 MS. ALEXANDER: I think we might find 22 it confusing if the wording said "No Event 23 Parking" because what if there's a field trip 24 where parents are accompanying? They might say, 25 "Am I not supposed to park here?"</p>	<p>139</p> <p>1 MS. ALEXANDER: -- a dialing down from 2 that bigger standard to think about what would be 3 reasonable. 4 MR. KLINE: Explain to the hearing 5 examiner who you were talking to at the Parks 6 Planning department. 7 MS. ALEXANDER: So I was talking to 8 Scott Wippel, who I don't think is any longer with 9 Parks and Planning. Is he? 10 MR. KLINE: He's still there, just a 11 different location. 12 MS. ALEXANDER: In a different 13 location. Yeah. But he was my go-to. 14 THE HEARING EXAMINER: A Preservation 15 person? 16 MS. ALEXANDER: He was at 17 Preservation, and then he went over to Parks and 18 Planning. And so since I knew him so well from 19 Historic Preservation, when he got to Parks and 20 Planning, I said, "Can you help me with this 21 issue?" Because he was familiar with the project. 22 THE HEARING EXAMINER: Okay. All 23 right. 24 Ms. Rosenberg, are you raising your 25 hand to testify, or do you have a question for</p>
<p>138</p> <p>1 So I -- I think we would want to work 2 on the wording carefully. You know, parking for 3 play space only, no parking after dusk, 4 unauthorized use, that kind of thing. 5 THE HEARING EXAMINER: Maybe parking 6 for play space only is a better term. 7 MR. KLINE: That is the simplest 8 answer. That's right. 9 THE HEARING EXAMINER: And that way 10 you don't have to depend solely on the parking 11 attendants directing traffic. 12 And how did you come up with the 18 13 spaces? 14 MS. ALEXANDER: It was just a 15 conversation about, you know, how many cars on a 16 gorgeous Saturday afternoon could you imagine 17 coming, you know. 18 When you go to local play areas, you 19 can see a lot of them have as many play spaces as 20 for recreational use, ball fields and soccer 21 fields. So that's not a good approximation. 22 THE HEARING EXAMINER: Right. 23 MS. ALEXANDER: And so it was just 24 basically -- 25 MR. KLINE: Now, Ms. Alexander --</p>	<p>140</p> <p>1 Ms. Alexander? 2 MS. ROSENBERG: I have a question. 3 THE HEARING EXAMINER: Okay. Go 4 ahead. 5 MS. ROSENBERG: My question is how 6 often will the -- I know that the play space is 7 for field trips, but it also will be used for 8 events. So do you have -- if I wanted to rent out 9 the play area for an event, is there a cap on the 10 number of people who can use it? 11 MS. ALEXANDER: I'm not sure that 12 renting out the play area is in our suite of 13 planning right now. I don't know -- 14 MS. ROSENBERG: For birthday parties? 15 MS. ALEXANDER: Oh, for birthday 16 parties. Alison Pearce is probably the best 17 person to speak to birthday parties. 18 THE HEARING EXAMINER: Wait. I didn't 19 see that. And maybe you can correct me. But I 20 didn't see birthday parties in the definition in 21 the request -- in the modification request. Am I 22 wrong? 23 I see summer camp, general public 24 visitation, summer visitation, year-round 25 visitation, and weekend visitation.</p>

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<p>141</p> <p>1 MS. PEARCE: So I don't think we would 2 be proposing any change in our birthday party 3 program. It would not be increasing as a result 4 of the nature play space. 5 Certainly -- so our birthday parties 6 are -- take place at the Teale Center. So on the 7 weekends when that is not used for preschool, 8 sometimes like a Saturday morning, there will be a 9 birthday party typically for up to 15 children in 10 the morning. 11 They certainly may visit the play 12 space, but I don't think it would be a change in 13 operation of that program or where those people 14 park. They would be parking where they do now, 15 which is in the enclosed historic parking that Amy 16 described that's associated with that building and 17 has existed, you know, since long before we owned 18 the property. 19 MS. ALEXANDER: And may I just add a 20 clarifying comment, that birthday parties would 21 not be renting the nature play space. 22 MS. PEARCE: No. 23 MS. ALEXANDER: So that's not part of 24 it. That's not an option for them. Would -- 25 would a birthday party attendant perhaps stay</p>	<p>143</p> <p>1 take them there. 2 MS. ALEXANDER: But what we're saying 3 is that we are not planning to do that. 4 MS. ROSENBERG: Okay. That -- that -- 5 thank you for that clarification. 6 THE HEARING EXAMINER: Mr. Rutsch? 7 MR. RUTSCH: Yeah. So I'd just like 8 to -- if that's the case, since we are going to be 9 issuing conditions, I think that should be in the 10 conditions. 11 THE HEARING EXAMINER: Okay. That use 12 of the play space shall not be part of a birthday 13 party package? 14 MR. RUTSCH: All right. So -- so one 15 of the issues that, you know, the neighbors have 16 is that the Audubon Naturalist Society Woodend is 17 a nature sanctuary, but in addition to being a 18 nature sanctuary, it is an event location for 19 weddings and other commercial events on weekends 20 that people pay to attend and serve alcohol and so 21 on, so forth. So that's why we don't want the 22 parking lot to be used for that. 23 And if we have paid participants 24 coming in, say, on a weekend for a birthday party 25 when the Audubon Society is saying that they're</p>
<p>142</p> <p>1 afterwards and play at the nature play space? I 2 can imagine that happening. 3 But that's not our birthday party 4 package. What you get is a visit to our Teale 5 Center, which is a nature classroom, and a 6 naturalist who takes you on a hike. 7 MS. ROSENBERG: Thank you for that 8 clarification. So they wouldn't be using the play 9 space as part of the -- as part of the birthday 10 party package. 11 MS. ALEXANDER: That's correct. But 12 again, Katie, I would say that, you know, it 13 would -- it wouldn't surprise me if people who 14 attended a birthday party then might stay to 15 play at the nature play space. 16 MS. ROSENBERG: Of course. But it 17 wouldn't be that they're -- they're going to be 18 renting out the play space and taking a hike and 19 going to the Teale Center. It's not going to be 20 part of your birthday party package. 21 MS. ALEXANDER: Correct. 22 MS. PEARCE: Right. So this space 23 would not be reserved just for that group. 24 MS. ROSENBERG: Well, but it would 25 be -- it could be a part of your package if you</p>	<p>144</p> <p>1 going to have the playscape available to the 2 public, I think what I just heard was that both 3 Amy and -- excuse me, Lisa and Alison both said 4 these paid events, like birthday parties, would 5 not restrict the use of the playscape and would 6 more than likely not use the parking lot because 7 they're going to be in the Teale Center, and 8 there's parking closer to the Teale Center, which 9 is the former carriage house for the management. 10 If I could comment, I'm not going to 11 have -- I can just make another -- this was sort 12 of a cross to what Lisa just said, I think -- 13 unless you have something else to say about 14 birthday parties or -- or if Katie does. 15 When you talk about fields, 16 recreational fields, I think we're just talking 17 about soccer games, you know, Little League 18 baseball games, so on, so forth, that have, you 19 know, 18, 20, 20-plus players plus parents and so 20 on. We're talking 50, 60 people. 21 So I don't know that this is 22 particularly comparable. I do see how you came up 23 with the number, but I'm kind of frustrated 24 because, again, we were not -- we're not privy to 25 the meetings or negotiations with the Historic</p>

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<p>145</p> <p>1 Preservation Committee, but their -- their 2 transcript of the records from June 12th of 2017 3 preliminary consultation, page 56, there were 4 numerous questions about how the parking lot was 5 determined, including one where Mr. Legg 6 [phonetic] said -- no, that's not him. 7 Mr. Firestone said: As somebody who's 8 done a fair amount of studying of parking, I'm 9 going to disagree with the other commissioners 10 about parking studies because when you're looking 11 at parking, my experience has been that most of 12 them are pure fiction and fantasy. So, you know, 13 it's a best guess. I suspect 15 is probably a 14 decent number. 15 In that same consultation, there was a 16 request to do a -- you know, a more detailed study 17 to determine how much parking was going to be 18 needed for this. And I suppose that's what 19 Ms. Alexander is discussing that she communicated 20 with the park service and recreation, so on. 21 But I just -- I just saw creep from 22 the original proposal, the diagonal spaces that 23 were, I believe, 14, the original proposal that 24 said 10, then it became 16, and now it's 18. And 25 we already have two handicapped spaces plus a bus</p>	<p>147</p> <p>1 Because from what I see from my window 2 and from viewing that area, she knows better where 3 they planted plants, but the whole area, as far as 4 I'm concerned, is considered a meadow. So whether 5 it's been restored or unrestored, for 50 years, 6 it's been an open green space. And once again, as 7 I point out, it's being turned into a parking lot. 8 And I don't think that that is 9 consistent with the nature of the property as it 10 was donated by Mrs. Wells to be a bird sanctuary, 11 to be a nature sanctuary. 12 So what we're having is this constant 13 creep of document. And Lisa has made the case to 14 me numerous times that different people experience 15 nature in different ways, and I have to say I 16 think the playground is going to be a nice 17 playground, I just am frustrated that throughout 18 this process, Community Liaison Council, when 19 we've expressed our concern, opposition, dismay, 20 that no one has ever once said maybe we should 21 reconsider where we're putting this parking lot, 22 maybe we should reconsider the size, location, 23 shape of this parking lot. Everything has plowed 24 forward against opposition. 25 Now, I may be just opposition of one,</p>
<p>146</p> <p>1 pullout. 2 So in the end, we're going to have, 3 you know, 20 spaces including the handicapped, 4 plus a bus pull-off, and at the latest Community 5 Liaison Council meeting on the 2nd of February, 6 the Audubon Society reported that they have -- 7 already have 62 spaces plus three other 8 handicapped spaces on the property. So we're 9 looking at a property that's going to have 80 10 spaces to park. 11 And, again, I think that there is 12 (inaudible) parking on the weekend if -- now, I 13 recognize that they want the parking to be in 14 close proximity to the playscape, but there's also 15 a wonderful path, renovated path, pools and ponds 16 and so forth, that people park up next to mansion 17 and walk through the woods to get to the desirable 18 playscape, then they don't need to park in this 19 area that is being converted. 20 Further, I have to say when -- when 21 Lisa talks about planting the restored field, 22 since that was done in 2013, it's remarkable to me 23 to think that somehow the part that got turned 24 into a parking lot didn't get restored and the 25 part that's being left behind did get restored.</p>	<p>148</p> <p>1 but I know several other people, including Katie, 2 has been very supportive of this. And, again, I 3 didn't hear anything from either Lisa or -- or Amy 4 about future plans for expanding the school. I 5 mean, is that completely off the table? Because 6 if it is, I'd like it to be on record. 7 THE HEARING EXAMINER: I think she 8 said there won't -- well, I'll let her answer 9 that. 10 MS. ALEXANDER: Yeah, so we are 11 currently a licensed preschool, and we are at 12 capacity for our license. So it's not possible 13 for us to expand the school. The license is in 14 part based on square footage, and so that limits 15 the number of children that we can welcome. 16 MR. RUTSCH: I understand that. 17 That's where we are now. But, again, in your 18 50-year plan that I referenced going back to 2016, 19 and with you by email, where you said "We're not 20 going to do this, we're not going to do this, 21 we're not going to do this, we're not putting a 22 parking lot behind your mom's house," and now 23 we're putting a parking lot behind my mom's house. 24 So are you committing to me that 25 you're not going to build an expanded facility</p>

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<p>149</p> <p>1 to -- for your students? Because it's in your 2 50-year plan, so I'm expecting that to happen. It 3 may be that -- 4 MR. KLINE: Objection to the question. 5 I think what we've got on a table is a proposal, 6 and prospective proposals will come before you if 7 need be. 8 MR. RUTSCH: But, again, what I 9 pointed out over and over -- 10 MR. KLINE: Objection. 11 MR. RUTSCH: I understand that you're 12 objecting, but I'm allowed to make my statement. 13 THE HEARING EXAMINER: No -- 14 MR. RUTSCH: What I'm pointing out -- 15 THE HEARING EXAMINER: No. You can't. 16 You have to wait for me to rule on the objection. 17 Okay? 18 MR. KLINE: Because he shouldn't make 19 his statement, he should be asking questions of 20 Ms. Alexander, who he's cross-examining. 21 THE HEARING EXAMINER: Right. So I'll 22 give you a chance to -- I -- I -- I do hear the 23 things you're saying, which is how do we know 24 whether something's going to happen, and we'll get 25 to that. But the scope was the parking area. And</p>	<p>151</p> <p>1 Teale Center over to the playscape. That's 2 reasonable. But if the Teale Center is going to 3 be using the parking lot for teacher parking, 4 drop-off, and so on, that's not consistent with 5 what is being proposed. 6 THE HEARING EXAMINER: You're 7 proposing -- not sure it's a question -- let me 8 go -- let me get to that. 9 And, Ms. Alexander, I think what 10 Mr. Rutsch is getting at is how do we know that 11 this isn't a building block for future 12 development. Can you address that. 13 MS. ALEXANDER: So -- 14 THE HEARING EXAMINER: I know it's -- 15 I know, Mr. Kline, that it's not on the table, but 16 I will ask her to just make a statement on it. 17 MS. ALEXANDER: So I will make this 18 statement. I think this is a fair statement to 19 make, and I've made it to Mr. Rutsch before. We 20 do have a 50-year master plan for the nature 21 sanctuary. It is a plan that blocks in a 22 building, an additional education building. 23 And what I've said to Mr. Rutsch that 24 I can aver before this hearing is that we will not 25 build an education building in that location while</p>
<p>150</p> <p>1 so for now we're going to stick to that. 2 I think she was brought on to talk 3 about -- addressing the concerns about the 4 parking -- well, actually, you did talk about the 5 long-term -- she was there to address the meetings 6 that included but not necessarily the whole future 7 plans of the school. 8 So if you want to make a comment, 9 supplemental comment, you can. 10 MS. PEARCE: Is that me? 11 THE HEARING EXAMINER: No. 12 MR. RUTSCH: Okay. So I think what 13 I'm saying is that our perception is that the 14 parking lot is being proposed for a specific 15 purpose and is likely to be used otherwise. 16 We have had a question at one point 17 whether educational personnel would be able to 18 park there. So if they're not allowed to park 19 there, I'd like to have that in the conditions. 20 If -- if they're -- you know, again, 21 in the long-range plan, this parking lot is 22 conveniently located, with access in the design, 23 steps and so forth, to the Teale Center. Now, it 24 makes sense if the Teale Center, the education 25 part of their property, is going to walk from the</p>	<p>152</p> <p>1 I'm executive director. 2 And there -- the only reason that that 3 parking ended up where it ended up for this nature 4 play space was because our original proposal to 5 the Historic Preservation Commission was rejected. 6 They wanted a different location that 7 didn't impinge on the viewshed of the historic 8 property, and we wanted to protect that restored 9 meadow from being disturbed. 10 So that's why you end up with the 11 parking area where it is. 12 MR. RUTSCH: Okay. One final 13 question. Is -- haven't you reported to at least 14 the CLC that your intention is to retire very soon 15 from the Audubon Society? Because what you're 16 saying -- 17 MS. ALEXANDER: That would be -- that 18 would be a surprise to me, Bob. 19 MR. RUTSCH: I thought -- 20 MS. ALEXANDER: And my board of 21 directors. 22 MR. RUTSCH: I thought at one of 23 the -- one of the recent meetings you said that 24 you had reached retirement age and you would be 25 stepping down shortly. That's my understanding.</p>

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<p>153</p> <p>1 MS. ALEXANDER: Well, don't age me. 2 I'm not 65 yet. 3 MR. RUTSCH: Okay. Well, okay, then I 4 have no further question. 5 THE HEARING EXAMINER: Ms. Alexander, 6 if at some point in the future there is a 7 modification, it would go through the modification 8 process, correct? A modification for an 9 educational building? 10 MS. ALEXANDER: Absolutely. Yeah. 11 There's no way for us to do any increased use 12 impact on our nature sanctuary without going 13 through the modification process, either minor or 14 major. And certainly if there were a new 15 building, I think that would qualify as a major 16 modification. 17 THE HEARING EXAMINER: I missed what 18 you said. I just want to make sure I'm clear. I 19 missed what you said about the parking location 20 was driven by the HPC. Where was the original 21 parking location proposed? I think Mr. Rutsch had 22 a photo. But can you just tell me where that was? 23 MS. ALEXANDER: Yes, so we proposed -- 24 there's a long grassy area along the driveway, on 25 the north side of the driveway, and we had</p>	<p>155</p> <p>1 decision, is essentially putting a parking lot in 2 a place that the community does not like for some 3 ephemeral concept of what an architect had in mind 4 a hundred years ago? 5 THE HEARING EXAMINER: Mr. Kline has a 6 hand up. Mr. Kline, did you want to say 7 something? 8 MR. KLINE: Well, I -- I don't believe 9 there's a foundation that the community does not 10 support the parking in this location. I'd ask 11 Ms. Alexander to comment on that herself. 12 But I understand Mr. Rutsch doesn't 13 like it, and I believe Ms. Rosenberg has supported 14 that. But I don't believe there is anybody else 15 who's told Audubon that they have a problem with 16 the parking. 17 Ms. Alexander, am I right on that? 18 MS. ALEXANDER: I believe there may be 19 one additional neighbor who expressed concern to 20 us about the parking area, but that would be 3 21 total of the 19 confronting and adjoining 22 neighbors that we have. 23 MR. KLINE: So I would say that the 24 hearing examiner look at the letter that arrived 25 on April the 13th from an adjacent property owner</p>
<p>154</p> <p>1 proposed putting angled parking all along the 2 driveway. 3 But Historic Preservation rejected 4 that because it impacted the viewshed that they 5 thought the architect, John Russell Pope, intended 6 for the property. 7 And so then the current location of 8 the property was based on really three things: 9 The fact that HPC rejected that driveway parking, 10 that we wanted to protect the restored meadow from 11 being disturbed, and also the location of existing 12 mature trees that we didn't want to have to remove 13 to add parking. 14 THE HEARING EXAMINER: I just wanted 15 to make sure I got all three of those. 16 MR. RUTSCH: So -- and I've got an 17 additional question. 18 THE HEARING EXAMINER: Yes. 19 MR. RUTSCH: So throughout this 20 process, knowing that the community had no 21 opportunity to be involved in the decision-making 22 of the Historic Preservation Commission, why have 23 we not considered the possibility of going to back 24 to Historic Preservation Commission, indicating to 25 them that the community is unhappy with the</p>	<p>156</p> <p>1 who thought everything for this program, including 2 the parking lot, was very beneficial and would not 3 have an adverse effect on certainly properties. 4 And I'd give you -- I'd give you an 5 exhibit number for that, but I'm not sure it ever 6 got into the record. 7 THE HEARING EXAMINER: Well, I want to 8 make sure that Mr. Rutsch can leave. Let me do 9 this. Mr. Kline, do you -- do you have any other 10 witnesses you'd like to put on? And, Mr. Rutsch, 11 I'm going to give you a chance for a wrap-up 12 statement. But I have Ms. -- I see 13 Ms. Rosenberg's hand raised. 14 MS. ROSENBERG: I just don't want 15 people to speak for me. I'm here, and I can speak 16 for myself. And I never opposed the parking lot, 17 I am opposing the -- I have always questioned the 18 process, the process of informing neighbors. 19 I do respect the Rutsches' decision, 20 that I do think it changes the character of their 21 backyard. I do worry about having people use it 22 in the evening, late at night, regardless if 23 there's lights, if you can't control that. 24 These are just questions that are 25 asked. And I think they're very important</p>

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<p>157</p> <p>1 questions for people who abut the property. 2 So, no, I don't expect people in the 3 whole larger community to be raising their hands 4 in opposition to a parking lot. But I think that 5 good questions should be asked, and they should be 6 welcomed in terms of the size and the time and the 7 use of the parking spaces. 8 But don't speak for whether I am for 9 or against something for me. I make my own 10 decisions. 11 THE HEARING EXAMINER: I understand. 12 And thank you, Ms. Rosenberg. 13 Mr. Kline, did you have any other 14 witnesses you want to get on? 15 MR. KLINE: No, the only reason I 16 called the people I did was to respond to anything 17 Mr. Rutsch had to say, and I guess I'd reserve 18 that, depending on what he has to say. But I 19 think we're probably getting to the point where 20 we're wrapping it up. 21 THE HEARING EXAMINER: In response, do 22 you have -- do you want to make some final 23 comments, Mr. Rutsch? And take your time, I 24 mean -- 25 MR. RUTSCH: No, I -- I have to say, I</p>	<p>159</p> <p>1 that they might have determined that the other 2 parking proposal was preferable. 3 And I'm frustrated throughout this 4 process that Audubon Society has refused to even 5 consider going back to them. And we asked the 6 Historic Preservation Commission to reopen the 7 hearing, they also refused. So I presume that 8 would have come from the petitioner, ANS. 9 Other than that, I think I've done -- 10 I think I've covered all the issues that I'm 11 concerned about. 12 Again, I just want to point out, which 13 maybe I didn't say so clearly, that my mom and I, 14 no opposition to the playscape itself, I think -- 15 I've seen some of the developments happen lately. 16 I know that the Audubon Society is attempting to 17 restore the property to something that probably 18 has nothing -- doesn't look at all like what it 19 looked like a hundred years ago or even 50 years 20 ago when my mom's house was built, but I do think 21 that what they're doing is beneficial to the 22 public in general. 23 And, you know, we're supportive of 24 those kinds of things. It's just taking a 25 nature -- calling yourself a nature sanctuary and</p>
<p>158</p> <p>1 think I -- I know I rapidly ran through my 2 statement. Again, I -- I've been -- I'm a little 3 frustrated by the -- I hate to call it this, but I 4 find it evasive that there's no idea as to whether 5 there's going to be a building built here, because 6 I see -- I really do see this parking lot as being 7 a stepping stone. 8 And I realize that's not under 9 consideration. But I do note that the last 10 meeting in which the restrooms and so forth were 11 approved, the -- the transcript shows that the 12 board member, one board member said, you know, "I 13 see this as being the piecemeal attempt to do the 14 kinds of things that ANS wishes to do." And I'm a 15 little frustrated about that. 16 I certainly would appreciate if in the 17 future we're going -- ANS is going to do for the 18 development, particularly in front of the Historic 19 Preservation Commission, we would love to have an 20 opportunity to communicate with them because 21 I'm -- again, I do think that if the Historic 22 Preservation Commission had to weigh between the 23 100-year-ago architect's viewshed versus the 24 viewshed of living people who get to look at a 25 parking lot where a meadow used to be, I think</p>	<p>160</p> <p>1 building parking -- essentially expanding the 2 parking by one-third, from 60 to 80, it just seems 3 like a change in -- again, zoning says that all 4 the time, it's a change in the use -- the nature, 5 character, intensity of use. I think, you know, 6 that's a significant change. 7 THE HEARING EXAMINER: Okay. Do you 8 have an objection to a signage at the front -- at 9 the entrance to the 18-space parking lot? Do you 10 have an objection to a signage saying -- I think 11 Ms. Alexander had some language -- parking only 12 for play space area or something like that? 13 MR. RUTSCH: I think that'd be fine. 14 I would really love to see them limit the parking 15 to two hours or some shorter-term period of time. 16 I don't think your average -- I think this 17 playscape is intended for people age 3 to, say, 12 18 or 14. 19 I don't think the average, say, 20 8-year-old is going to survive at a play area like 21 that for more than two hours. So I think a 22 two-hour parking limit would be appropriate. And 23 I think that it would help mitigate the -- the 24 number of people who are parked there throughout 25 the day using other parts of the facility for</p>

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<p>161</p> <p>1 other activities.</p> <p>2 THE HEARING EXAMINER: I'm going to</p> <p>3 let -- Ms. Alexander, do you have any comments on</p> <p>4 a two-hour limitations or --</p> <p>5 MS. ALEXANDER: I guess I would just</p> <p>6 say that I'm not sure that that would serve the</p> <p>7 purpose that we're trying to achieve with the</p> <p>8 nature play space, which is trying to connect</p> <p>9 children of all abilities to nature.</p> <p>10 And if kids are in it and excited</p> <p>11 about it and exploring it, I wouldn't want their</p> <p>12 parents to have to say, "Oh, now we have to go</p> <p>13 because we'll get towed if we stay any longer."</p> <p>14 I would rather just say parking, you</p> <p>15 know, for play space use only, and we can monitor</p> <p>16 that, just like we are doing with the parking on</p> <p>17 Brierly.</p> <p>18 We're really trying to be good</p> <p>19 neighbors and respond to our neighbors. And so we</p> <p>20 can monitor it. It's -- you know, it's -- it will</p> <p>21 be a long time before its finished should we get</p> <p>22 to approval. So it will be a while before we can</p> <p>23 test it. But if we see the uses are not as we</p> <p>24 expect, we can continue to make changes.</p> <p>25 THE HEARING EXAMINER: Wrap-up,</p>	<p>163</p> <p>1 right. So we're looking maybe at two conditions</p> <p>2 about limiting the parking area for use by the</p> <p>3 play space -- a signage limiting the parking area</p> <p>4 for use by the play space only and a condition</p> <p>5 saying that the play space won't be rented for</p> <p>6 the -- for birthday parties, with the</p> <p>7 understanding that people may wander down, you</p> <p>8 know. But then by that time hopefully they'll be</p> <p>9 at the Teale Center -- they'll be parked at the</p> <p>10 Teale Center.</p> <p>11 So do you -- are you okay with those</p> <p>12 conditions, Ms. Alexander?</p> <p>13 MR. KLINE: Ms. Alexander?</p> <p>14 MS. ALEXANDER: Yes, absolutely.</p> <p>15 THE HEARING EXAMINER: Mr. Kline, do</p> <p>16 you mind trying to draft those, just because I'm</p> <p>17 not as familiar with the record of this case? And</p> <p>18 we have a lot of other cases, and there's only one</p> <p>19 of me. Which is maybe a bad thing.</p> <p>20 MR. KLINE: Yeah, no, we're glad to</p> <p>21 submit something for your review and for the</p> <p>22 review and comment by the other parties today.</p> <p>23 THE HEARING EXAMINER: Okay.</p> <p>24 Mr. Rutsch, last -- last statements? Or did I</p> <p>25 give that to you? It's 1:30.</p>
<p>162</p> <p>1 Mr. Kline?</p> <p>2 MR. KLINE: I would make a closing --</p> <p>3 a brief closing statement, and then --</p> <p>4 THE HEARING EXAMINER: What about --</p> <p>5 what about a condition saying that it won't be</p> <p>6 part of the birthday rental package?</p> <p>7 MS. ALEXANDER: That would be fine,</p> <p>8 that we wouldn't be renting the play space as part</p> <p>9 of the birthday party package.</p> <p>10 Again, I would just say that I think</p> <p>11 it is something we could anticipate that people</p> <p>12 who are using the Teale Center for birthday</p> <p>13 parties and going on a hike with a naturalist</p> <p>14 might hang out after the party is over and use the</p> <p>15 play space. But I think we can -- we can say that</p> <p>16 the space itself would not be rented for birthday</p> <p>17 party use.</p> <p>18 THE HEARING EXAMINER: Yeah, if you</p> <p>19 could get me -- not being familiar with your</p> <p>20 Audubon Naturalist Society, can you get me</p> <p>21 language that would do that? I don't know if</p> <p>22 "birthday party package" is the right term. Do</p> <p>23 you think you could do that?</p> <p>24 MS. ALEXANDER: Mm-hmm. Absolutely.</p> <p>25 THE HEARING EXAMINER: Okay. All</p>	<p>164</p> <p>1 MR. RUTSCH: I think you did. I'm</p> <p>2 good. I've done -- I've said what I need to say,</p> <p>3 and I think -- obviously, as we knew from the</p> <p>4 Community Liaison Committee that we were going to</p> <p>5 have an area that we disagreed on, and I knew that</p> <p>6 that was the case, and I think that it's been --</p> <p>7 we've tried to be as cordial as we can be, and,</p> <p>8 you know, we're going to go forward.</p> <p>9 I mean, I would love to see this</p> <p>10 parking lot reduced in size, at least somewhat. I</p> <p>11 do think that, you know, the -- the lack of</p> <p>12 responsiveness to our concerns over a long period</p> <p>13 of time, I think that it would -- I would feel</p> <p>14 much better if the size were back to the original</p> <p>15 proposal to the Historic Preservation of, say,</p> <p>16 (inaudible). But I know that that's -- I don't</p> <p>17 know that that's something that's negotiable in</p> <p>18 this type of a thing.</p> <p>19 But I do appreciate the opportunity to</p> <p>20 communicate on behalf of my mom, and thank you.</p> <p>21 THE HEARING EXAMINER: And I see</p> <p>22 Ms. Rosenberg's hand up. Is -- are -- is that up</p> <p>23 from before or --</p> <p>24 MS. ROSENBERG: No, I apologize. I</p> <p>25 forgot to take it down. I'm good. Thank you very</p>

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<p>165</p> <p>1 much for -- to everybody. 2 THE HEARING EXAMINER: Okay. And 3 Mr. Kline, any final words? 4 MR. KLINE: A quickie wrap-up if I 5 could, please. 6 THE HEARING EXAMINER: Okay. 7 MR. KLINE: We covered a lot of ground 8 today. I didn't expect I was going to be here 9 this long today. But I do think we accomplished 10 what the Board of Appeals wanted us to do, and 11 that was to go back, answer some of the questions, 12 clarify some of the issues, and even explain how 13 we were improving our operations based on this 14 whole process we just went through. 15 When we get to the parking lot issue, 16 which is really the -- probably the toughest issue 17 to deal with here, I want to remind everybody 18 we're dealing with the pre-October 31, 2014, 19 zoning ordinance. So it basically says special 20 exceptions are not inherently incompatible with 21 adjacent single-family residential uses. 22 And Section 59E in that ordinance 23 prescribes a set of standards that are supposed to 24 make sure that those two things can be, in fact, 25 compatible.</p>	<p>167</p> <p>1 Mr. Bumgardner originally thought it would be 2 approved. 3 And with the conditions that you're 4 talking about, I think we can hopefully get a 5 little higher level of comfort to the Rutsches so 6 that they know that it won't be misused to their 7 detriment. 8 Thank you very much for listening to 9 us. 10 THE HEARING EXAMINER: If we can, a 11 little bit of the deadline -- time frames, the -- 12 you were going to get -- I think the applicant was 13 going to get some conditions to us or for review, 14 with copies to everybody that's in the meeting. 15 Is -- when do you think you'd be able 16 to do that? Now, I've got to leave the record 17 open for ten days anyway, as you know, to receive 18 the transcript. So when -- when do you think you 19 could do that? 20 MR. KLINE: Well, I'm going to be 21 relying on Audubon to help me, but I would say -- 22 I'll say next Thursday, which would give you 23 your -- then give everybody else three to five 24 days to be able to comment before the ten day. 25 Ms. Alexander, Ms. Ritsko-Warren, you</p>
<p>166</p> <p>1 And I would say, if you remember back, 2 A, B, and the -- in the photo montage that 3 Ms. Sturm looked at, because the parking plan 4 basically does what the zoning ordinance wanted to 5 do in spades. 6 There's a 36-foot separation from the 7 edge of the parking to the common property line, 8 and I don't know how much further to the house. 9 But that's a generous separation for a parking lot 10 in a residential zone for a, quote, special 11 exception use. 12 And you saw the generous plantings and 13 the richness of the landscaping plan that meets 14 the zoning ordinance standards as determined by 15 staff at Maryland-National Capital Park and 16 Planning Commission. 17 So you heard Ms. Sturm say that 18 eventually there will be substantial amount of 19 vegetation that should obscure totally in some 20 cases but in most cases substantially a view from 21 the Rutsch residence of the parking lot and 22 certainly of the nature play area. 23 So for those reasons, we don't believe 24 that the proposal has an adverse effect on the 25 Rutsch property and can be approved as</p>	<p>168</p> <p>1 think we could get something written up by next 2 Thursday? 3 I'll take -- I believe that said 4 thumbs up. So the answer is yes. 5 THE HEARING EXAMINER: Can you say it 6 on the record, please, for the -- 7 MR. KLINE: Yeah -- 8 MS. ALEXANDER: Yes. Absolutely. We 9 can get it done by next Thursday. 10 THE HEARING EXAMINER: The Board of 11 Appeals won't see the thumbs up. 12 MR. KLINE: I understand. The 13 applicant will request the -- or the applicant 14 offers that it will submit suggested text for 15 signage and other issues it asks us to address by 16 the close of business next Thursday, which I 17 guess -- 18 THE HEARING EXAMINER: I have the 19 suggested text for signage and the provision that 20 they won't use it for part -- they won't rent it 21 out for birthday parties -- or it won't be -- 22 however it's worded. That's what I have, is the 23 two proposed conditions. 24 So that would be by Thursday, 4/28. 25 And then by Monday -- or, no, I think the ten days</p>

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<p>169</p> <p>1 is May -- Monday, May 2nd. So -- so if the 2 party -- if anyone in this meeting has comments on 3 the conditions that you receive on Thursday, 4 you -- you would submit those comments by Monday, 5 May 2nd. All right? 6 Now, Mr. Kline, do you have the email 7 addresses? I know you've -- I'm assuming you have 8 the email addresses of everybody that's 9 participated in this hearing. 10 MR. KLINE: Well, I had the email 11 addresses for the five people that the Board of 12 Appeals asked us to work with. I've noticed there 13 has been someone -- Joseph Lorete, is that a 14 neighbor or -- 15 THE HEARING EXAMINER: That's the 16 court reporter. 17 MR. KLINE: Okay. But he doesn't want 18 to hear from me. So the answer is yes, I believe 19 I have email addresses for everybody who 20 participated today. 21 THE HEARING EXAMINER: Okay. So 22 Mr. Kline will send proposed conditions to me and 23 to the parties in this case on Thursday, April 24 28th. And the parties have -- have till May 2nd 25 to email back comments they have on the proposed</p>	<p>171</p> <p>1 you should do so immediately, and you will get an 2 emailed copy of the decision. Otherwise, you'll 3 get it mailed. 4 But I've read that First Class mail is 5 now five days -- or something like that. So you 6 may want -- please, get your email in to our 7 office if you want notification of the decision. 8 Okay. With nothing else, I'm going to 9 close this public hearing -- or with the record 10 open to receive the items we've gone over. 11 And, Mr. Rutsch, my best to your wife. 12 Hopefully we got you out of here in time. He may 13 be gone. Okay. 14 Okay. Thank you. 15 You're on mute, Mr. Rutsch. 16 MR. RUTSCH: Thank you. I think I'm 17 going to have time. I appreciate it. 18 THE HEARING EXAMINER: Okay. Good. 19 All right, thank you, everyone, and 20 the record will -- the hearing is adjourned. The 21 record is open for ten -- till May 2nd. Thanks, 22 everyone. Bye-bye. 23 (Off the record at 1:38 p.m.) 24 25</p>
<p>170</p> <p>1 conditions. 2 The record is open till May 2nd to 3 receive those comments and the proposed 4 conditions, the comments and the transcript of 5 this hearing. After that, the record would -- 6 will be closed. 7 If anybody -- please do not 8 communicate with me unless you copy all parties. 9 We have a couple of cases where the record is open 10 where I'm getting emails from individuals, and I 11 can't recognize those. So please do not email me 12 without copying everybody that's at this hearing. 13 As you know, from experience, you have 14 ten days to appeal -- or to request oral argument 15 from the Board of Appeals base after my decision 16 is issued. And you've been through that, so I 17 know you know that. So with that -- 18 MR. KLINE: Madam Hearing Examiner, 19 you may want to remind them how long it will take 20 you to publish that. 21 THE HEARING EXAMINER: Well, we 22 have -- we have 30 days to publish our decision. 23 And so you will get an email notification. 24 If -- if -- if we -- if you have not 25 provided your email to Sara Behanna of our office,</p>	<p>172</p> <p>1 CERTIFICATE OF COURT REPORTER 2 I, Joe Lorete, the officer before whom 3 the foregoing proceedings were taken, do hereby 4 certify that said proceedings were electronically 5 recorded by me; and that I am neither counsel for, 6 related to, nor employed by any of the parties to 7 this case and have no interest, financial or 8 otherwise, in its outcome. 9 10 11 <i>Joe Lorete</i> 12 _____ 13 Joe Lorete, Court Reporter 14 15 16 17 18 19 20 21 22 23 24 25</p>

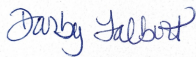
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I, Darby Talbott, do hereby certify
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this case and have no interest, financial or
otherwise, in its outcome.



Darby Talbott

May 2, 2022

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