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OFFICE OF THE ZONING HEARING EXAMINER
FOR PRINCE GEORGE'S COUNTY

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MANOKEEK : Case No. A-9960-C
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A hearing in the above-entitled matter was held on
November 17, 2021, at the Prince George's County Office of
Zoning, 14741 Governor Oden Bowie Drive, Room L-200, Upper
Marlboro, Maryland 20772 before:

Joyce Nichols
Hearing Examiner

A P P E A R A N C E S

On Behalf of the Applicant:

Edward Gibbs, Esq.

On Behalf of People's Zoning:

Stan Brown

* * * * *

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MS. NICHOLS: All right, good morning, everybody, it is the 17th of November. We are here for aa amendment of conditions for A-9960 for Manokeek. And Mr. Gibbs, are you going to present the case? Is Mr. Haller going to be your expert witness or --

MR. GIBBS: I, listen, I told a point of personal privilege, I told Mr. Haller last night that I didn't want to embarrass either one of us by trying to qualify him as an expert, if he didn't get qualified, because I how stringent People's Zoning Council is on getting experts qualified. So I told Mr. Haller he was just going to be a fact witness, and he's very happy with that.

MR. BROWN: And you know I was chomping at the bit to cross-examine him, right?

MR. GIBBS: I understand that's absolutely true, but I will say this, and I'm going to, rarely do I make any kind of an opening statement in a hearing like this, but of the contorted factual history, I'm going to make a short statement and I will say that I'm sorry to inconvenience Mr. Haller to have to be a fact witness in the case, but the sad reality it, and is indeed quite sad. That there's just no one left other than Mr. Haller, and I don't mean to comment any adverse fashion on the case, but there's just no one left who is available or alive to be able to give us the

1 history from back in the 90s and early 2000s on this
2 project. But yes, I represent really Caruso Homes and the
3 two limited liability companies who are relevant to this
4 discussion, who own, who hold title to properties down in
5 the project that for lack of a better term, was always known
6 as Signature Club at Manning Village. And so we are seeking
7 to delete condition five from the Council decision approving
8 with conditions a rezoning to the MXT zone for a 12-acre
9 parcel known familiarly at that time as the Vincent
10 property, identified as parcel 25, in which now has been
11 platted as out parcel A, out parcel B, and out parcel B a
12 second time. So three out parcels, only two of which Caruso
13 controls.

14 MS. NICHOLS: And stop for a second. So we're
15 dealing with A --

16 MR. GIBBS: Well the rezoning applied to a 12-acre
17 parcel known as the Vincent property.

18 MS. NICHOLS: Right.

19 MR. GIBBS: It's been the subject of record plats
20 that recorded three separate out parcels. We are only
21 interested in out parcels A and B, and if someone could
22 assist me by pulling up the zoning map which is in the
23 record, it's in binder 1. It was Exhibit C in my original
24 submittal letter that I filed with a parcel dated June 21st,
25 2021, as Exhibit C to that package. And it's toward the end

1 of binder 1, as I was looking through the binders last
2 night. I don't know if someone on the screen here can pull
3 that up. Yeah, there we go.

4 MS. NICHOLS: Do you happen to know the exhibit
5 number?

6 MR. GIBBS: Well here's the problem, it's Exhibit
7 10, transmittal memo to McNeil from Clerk of 8-26-21. I
8 asked your staff and you all told me that my letter was
9 Exhibit 10.

10 MS. NICHOLS: Okay, so it's here. Do you see it
11 on the screen?

12 MR. GIBBS: Yeah, I see the letter, and if you
13 could go to Exhibit C at the end of that letter there. A is
14 the order and see that's the problem with these binders
15 because this is not in order, it's just not in order. Is
16 this binder 1?

17 MS. NICHOLS: Yes.

18 MR. GIBBS: Go all the way down to almost the end
19 of binder 1, because the zoning map is going to be critical
20 for everybody during this hearing.

21 MS. NICHOLS: Do you mean all the way to the
22 bottom of Exhibit 10, because --

23 MR. GIBBS: Way to the bottom of the binder.
24 That's where I saw it. You have many documents in the
25 binder. Unfortunately, they're just not in order.

1 MS. NICHOLS: Oh, there it is.

2 MR. GIBBS: You just went by it. Right there,
3 that.

4 MS. NICHOLS: Okay.

5 MR. GIBBS: Okay, and if I don't know whether we
6 can full screen that map or not.

7 MS. NICHOLS: Yeah, let me see if I can do that.

8 MS. BAH: You have a zoom in button.

9 MR. GIBBS: I can't keep holding the screen.

10 MS. NICHOLS: Yeah, but on your computer, there's
11 a zoom in button and you can --

12 MR. GIBBS: There we go, this is the better way to
13 show it. Okay, that's fine, just like that, that's good.

14 MS. NICHOLS: All right, sorry.

15 MR. GIBBS: The say you had it was better.

16 MS. NICHOLS: Okay, let me go back then.

17 MR. GIBBS: That's fine, you can leave it like
18 that. If you can just take it the way it was before, just
19 that last one back previous, no, no. Right there, that's
20 fine, okay. So looking at this map just to orient everyone.
21 So the main roadway running up in the northwest corner, that
22 is Indianhead Highway, Maryland 210. And coming off in a
23 southeast, what appears to be a southeasterly direction is
24 Berry Road. Then the other road, the much smaller road also
25 running in a north, I guess northeast direction and parallel

1 to Indianhead Highway is Manning Road. So the property that
2 we're talking about that was the subject of the condition,
3 if you'll look at the northwest quadrant of the intersection
4 of Berry Road and Manning Road, you will see two out parcels
5 there labelled. Out parcel A is the larger, and out parcel
6 B is the smaller, and those are the properties which my
7 client owns, which were the subject of the condition when
8 the old Vincent property was rezoned to the MXT zone. Now,
9 there is another portion, everything -- out parcel A and out
10 parcel B is about seven and a half acres. The balance of
11 what was originally the Vincent property, another five acres
12 is the oddly shaped parcel directly east of out parcel A.
13 That's five acres, and that also was platted as an out
14 parcel, and that's called out parcel B as well. However,
15 the Caruso entity does not own that out parcel. And for
16 purposes of this hearing, only out parcels A and out parcel
17 B are relevant, because that is where, if there was going to
18 be community amenity outside of the development. It was
19 going to be on out parcel A or out parcel B. And we'll move
20 into that when Mr. Haller testifies. But this is the
21 property, the balance of all the property in the fuchsia
22 purple color is what was originally known as Signature Club
23 at Manning Village. And Mr. Haller is just going to give us
24 a brief summary of how that was zoned, but that was all
25 comprehensibly zoned MXT pursuant to an SMA. The section

1 just sort of like a semi-circle which is located south of
2 Berry Road, that was called pod 1 in the original conceptual
3 site plan. And that is the site of Manning Village Shopping
4 Center. The parcel that you see all lotted out immediately
5 north of Berry Road and east of Indianhead Highway, in
6 somewhat of a flag shape, that was pod 2, and it was
7 originally a single lot. And that is the site of the
8 residential component of Signature Club development. And
9 then if you go all the way up across Manning Road, there is
10 as you can see on the screen here, it says out parcel B and
11 lot 12. Out parcel B is the parcel above, lot 12 is that
12 larger parcel and that was pod 3. And in the original CSP,
13 that was proposed for commercial development as well. So
14 three pods, all zoned MXT, and then the quote, unquote,
15 Vincent property, 12 acres, in the middle there which was
16 zoned pursuant to zoning map and then an application A-
17 9960C. And that rezoning application contained a condition,
18 condition 5, which states a conceptual site plan shall show
19 the proposed community center in a more prominent location.
20 And that is a condition which we are requesting to be
21 deleted because when the original conceptual site plan was
22 approved for pod 1, 5, 2, and pod 3. There was a condition
23 that was going to require consideration for a public amenity
24 on pod 2, the residential component. And Mr. Haller is
25 going to explain how that came to be potentially moved out

1 of pod 2 onto out parcel A and B. So that's kind of the
2 history. Mr. Haller is going to discuss his conversations
3 and meetings with the Act Team Development District
4 Commission. I'm very happy to see Chairman Cliff Woods here
5 with us today on behalf of the Commission. Both Mr. Haller
6 and I have had extensive involvement with Mr. Woods. But
7 essentially, Mr. Haller's involvement ended when Mr. Don
8 Franyo (phonetic sp.) passed away, and the project stalled
9 and was taken back via foreclosure by Premier Bank. Several
10 years later, my involvement commenced when a client of mine
11 signed a contract with the bank to buy the entire project,
12 not the shopping center, but everything else. And then my
13 client brought Caruso Homes into the deal and Caruso is now
14 the residential, prime residential developer and builder,
15 although they have another builder in there as well building
16 homes on pod 2. And I had a number of conversations and
17 meetings with the Accokeek Commission folks over the course
18 of Caruso's involvement in securing changes to the default
19 site plan that have been approved, which we will explain to
20 you in detail. And which led to the community amenity being
21 identified as the club house that's being built on pod 2 and
22 satisfying that condition by agreeing to be a covenant to
23 allow the Commission to have access to the Act Community
24 which then makes the requirement for any other amenity moot.
25 So I know that's a little complicated and we're going to

1 flush it out a little bit better for you during the course
2 of testimony from just three witnesses, Mr. Haller relative
3 to his involvement with the history of the property, Mr.
4 Nick Cintron with Caruso Homes who will discuss their
5 involvement after they became the contract owner, and then
6 Mr. Mark Ferguson who is our expert in the field of land
7 planning. I think that is going to be all of the witnesses
8 we will need. Would it be inappropriate for me now to
9 request that the exhibits listed on the exhibit sheet be
10 accepted into evidence?

11 MS. NICHOLS: They're all accepted, thank you.

12 MR. GIBBS: Okay, great, thank you. Well with
13 that being said, I would like to go ahead and call Mr.
14 Haller as my first witness.

15 MS. NICHOLS: All right, Mr. Haller, I'm going to
16 ask you to raise your right hand. I know this is unusual
17 and repeat after me. Do you solemnly swear or affirm in the
18 matter now pending to tell the truth, the whole truth, and
19 nothing but the truth? You're muted, Tom.

20 MR. HALLER: I will

21 MS. NICHOLS: Okay, will you please state your
22 name and your business address for the record?

23 MR. HALLER: My name is Thomas Haller, my business
24 address is 1300 Carol Way Court, Suite 102, Largo, Maryland
25 20774.

1 MS. NICHOLS: Okay, because this is an unusual
2 situation, I want you to affirm for me that you are not her
3 in an attorney representative capacity, you are here only as
4 a fact witness.

5 MR. HALLER: That is correct, I'm here only as a
6 fact witness.

7 MS. NICHOLS: Okay, thank you very much. Okay,
8 Mr. Gibbs.

9 MR. GIBBS: Okay, thank you very much. Good
10 morning, Mr. Haller, pleasure to see you here today. And
11 please don't talk too loud because your voice will come
12 right through the wall in my office. So with that being
13 said, thank you for taking the time Mr. Haller to be here.
14 Let me ask you this. Are you familiar generally with a
15 development called Signature Club at Manning Village?

16 MR. HALLER: Yes, I am.

17 MR. GIBBS: And did you at any time represent an
18 owner of any of the properties making up all or a portion of
19 that development?

20 MR. HALLER: Yes, at one time I was land use
21 attorney for a TSC Numa Mad Woman Associates (phonetic sp.).
22 It was one of the early developers of the project.

23 MR. GIBBS: And is it fair to say that they did
24 not own the shopping center Fortune Five One, but rather the
25 residential portion, is that correct?

1 MR. HALLER: Yeah, they did not develop the
2 shopping center portion, that was developed separately, but
3 it was part of the original overall property that became
4 Signature Club.

5 MR. GIBBS: Okay, thank you. Now, could you just
6 briefly give us a little bit of background about how
7 Signature Club got sown, when that occurred, and to your
8 knowledge, when the initial conceptual site plan was --

9 MR. HALLER: Sure. So I did work for Mr. Don
10 Franyo. Mr. Franyo was a developer in Prince George's
11 County, he was involved in several projects. Several of
12 them in the Largo area as well as this project down here.
13 He was brought into the project by Bob Newman and his wife,
14 Vicki Sotak (phonetic sp.) who were the property owners, but
15 they didn't have the access to capital that Mr. Franyo had.
16 So Mr. Franyo came in to help guide them through the
17 development process and he asked me to assist, starting in
18 late 2003 and the beginning of 2004, and prior to that time,
19 you had referenced this, there was the larger property it's
20 been known by different names over time. Many years ago
21 this property was known as covert track and it was actually
22 rezoned in the sub-region 5, section Ackerman in 1993, to
23 the MXT zone. But it was an unusually shaped property. If
24 I could ask that, that zoning map be put back up that we
25 were referring to previously, I think it would be helpful if

1 we retrace the steps there. There it is. So and you had
2 mentioned previously the original property was known which
3 was as I mentioned in 1993 was referred to as a covert
4 track, was all of the land on the south and west side of
5 Berry Road. On the north side of Berry Road and butting
6 Indianhead Highway, and then on the east side of Manning
7 Road. It was an unusually shaped track of land, and at the
8 time it was zoned, Berry Road did not exist, it was a master
9 plan road that did not exist. Between the time that the
10 property got rezoned in 1993 and somewhere in the vicinity
11 around 1998, the road got constructed and the intersections
12 were realigned. So what ended up happening was that access
13 to the properties on the north and east side of Berry Road
14 became complicated because both Indianhead Highway and Berry
15 Road are limited access highways. Access was denied and so
16 because the properties came to a point right at the
17 intersection of Manning Road and Berry Road, access to those
18 properties was constrained. And so the development of the
19 property commenced, or the approvals, and this predated my
20 involvement, but just for a historical context, there was a
21 conceptual site plan that was approved for the entire MXT
22 tract, at that time, it was known as Manokeek. And that
23 property, by the time the highway takings had occurred,
24 consisted of about 97 acres. And in the conceptual site
25 plan the property was divided into three pods, each of which

1 were separated by public roads. So pod 1 is the south and
2 west side of the portion of the property, south and west of
3 Berry Road. And that was designated as all commercial
4 development. The property that was designated as pod 2,
5 which is the one shown on this exhibit as being lotted out,
6 was designated as predominantly residential and it was
7 actually designated as for up to 800 units of residential
8 and 70,000 square feet of commercial space. And then pod 3,
9 which is on the east side of Manning Road, was designated
10 again as all commercial use. And that conceptual site plan
11 was approved, and when that conceptual site plan was
12 approved, there was a condition that was put in, it said at
13 the time of detailed site plan, that consideration of a
14 community amenity in pod 2 could be addressed and so
15 subsequent to that, the development of a commercial center
16 began and the planning for the development of pod 2 then
17 commenced. I was brought in by Mr. Franyo because access to
18 pod 2 was complicated by the fact that it brought in
19 predominantly on the new access highways. And so he was
20 able to acquire through the TSC movement entity, the
21 property that was known as the Vincent property, which is
22 the property which is the subject of this application and
23 that was a triangular shaped property, as you can see, which
24 it was bisected by Manning Road. And so he acquired that
25 property with the intention of using that to provide access

1 to what became Signature Club at Manning Village. So he
2 brought me in. At the time he acquired that property, it
3 was zoned rural residential RR, and he requested that I
4 prepare a zoning map amendment application to rezone the
5 property to the MXT zone. And that zoning map amendment
6 application was A9960, which is the subject of today's
7 hearing. So we filed that rezoning application early in
8 2004 and it took a while to process through and did not
9 complete until around January of 2006. While that
10 application was being processed, Mr. Franyo was also
11 processing a revision to the conceptual site plan for pod 2,
12 and a detailed site plan. So the conceptual site plan for
13 pod 2 which was referenced as CSP99050-01 proposed to reduce
14 the developed residential density from 800 to 315 units and
15 proposed to eliminate the commercial component on pod 2
16 primarily because of the difficulty of access. And the
17 retail site on it was fine, which was retail site plan
18 04063, they were filed the same day and were processed
19 concurrently for approval of pod 2. So the plan for pod 2
20 was an elderly community, an age-restricted community. Mr.
21 Franyo had been involved in the development of Collington
22 Episcopal Life Care Center in Largo and wanted to do a
23 similar age-restricted community there. And his desire was
24 to have a gated community so that nobody who did not live in
25 the community would have access to it. So at the same time

1 that the conceptual and the detailed site plan were being
2 processed for Signature Club, the rezoning of the Vincent
3 property was ongoing. And so Mr. Franyo inherited the
4 condition that it indicated that desired to have the amenity
5 that was within pod 2, and that was potentially problematic
6 because if the community was going to be gated, he would not
7 be able to give access to the community building to the
8 community. So during the course of 2005 and 2006, early
9 2006, we had several meetings with the Accokeek Development
10 Review Corridor Commission. I think Mr. Woods was actually
11 involved in many of those meetings even back then. And we
12 had a conversation about putting the community amenity on
13 the Vincent property because we couldn't give access to the
14 community building in the Signature Club. So when the
15 revision of the conceptual site plan was approved, the
16 condition that was enclosed in the original CSP was
17 retained, which simply said that at the time that the CSP is
18 done, that consideration shall be given to providing the
19 community amenity in pod 2, but then when the detailed site
20 plan was done, a condition was added that we worked on with
21 Park and Planning staff and with Mr. John Patterson who was
22 at the time, president of the Accokeek Development Review
23 Portal Commission to say that the location of a community
24 amenity in pod 2 would be included if it was deemed
25 appropriate through conversations with the Accokeek

1 Development Review Portal Commission. So they wanted to
2 provide flexibility because at the time the Vincent property
3 had not been rezoned and we couldn't even really propose to
4 move it out of pod 2 on the Vincent property unless the
5 property was rezoned. So what ended up happening was is
6 that the Vincent property ended up getting rezoned after the
7 Planning Board approved the site plans for the Signature
8 Club. And then there were a series of meetings with the
9 ADRDC in 2006 and in early 2007, and at that time, Mr.
10 Franyo indicated a desire to provide the community amenity
11 on the Vincent property rather than in pod 2. And so we had
12 had some conversations with him about that, and then in
13 March of 2007, Mr. Patterson wrote a letter to the Planning
14 Board indicating to them that they were working with us and
15 agreed that because Signature Club is a gated community and
16 would not have public access, that the community amenity
17 should be moved to the Vincent property and that letter was
18 written to satisfy the requirement of condition 3 of the
19 detailed site plan, and to allow the building permit to be
20 issued for the Signature Club. So that was in early 2007.

21 MR. GIBBS: Just a second, Mr. Haller. And I
22 would note that, that letter from President Patterson to Mr.
23 Haller is Exhibit 2 on the exhibit list. Thank you very
24 much, you can continue please.

25 MR. HALLER: And so at that point in time,

1 development of the senior community at Signature Club
2 commenced and of course, shortly after that, the recession
3 hit, development stopped. It was then basically mothballed
4 for a few years and then Mr. Franyo passed away and then the
5 Newman's were not able to sustain the development and it
6 went into foreclosure. So my involvement essentially ended
7 once they started the development of the Signature Club in
8 terms of any land use type approvals. And then from that
9 point on, it just went into a hiatus because of the economy.

10 MR. GIBBS: So your involvement ended at that
11 point and is it fair to say that the exact nature of the
12 community center had not really been resolved at that point
13 in time only that it could be moved outside of pod 2 onto
14 the Vincent property, is that correct?

15 MR. HALLER: That's correct. There were some
16 discussions about what the form could take. There were
17 concerns about maintenance and who would own it and how it
18 would function, but the primary issue was that it just
19 couldn't be in the gated community. And so it was agreed
20 that when the Vincent property was developed, that it could
21 be moved there. But we always had maintained a flexibility,
22 and I think the letters indicate the desire to keep a
23 flexibility even potentially keep it in the Signature Club
24 only because there was no guarantee that it could be built
25 but there was a promise that the community would be given

1 access to a community facility.

2 MR. GIBBS: Okay, thank you very much. I have no
3 further questions of Mr. Haller at this time.

4 MR. BROWN: No questions, thank you.

5 MS. NICHOLS: All right, I have no questions
6 either. Thank you very much Mr. Haller, I hope you enjoyed
7 your experience.

8 MR. HALLER: I did very much, I did very much,
9 thank you.

10 MS. NICHOLS: Okay, thank you. All right, Mr.
11 Gibbs, your next witness?

12 MR. GIBBS: Yes, I'd like to call Mr. Nick Cintron
13 as my next witness please. If we could leave that map up,
14 it would be great.

15 MS. NICHOLS: Great. Sir, I need you to raise
16 your, thank you very much. Do you solemnly swear in the
17 matter now pending to tell the truth, the whole truth, and
18 nothing but the truth?

19 MR. CINTRON: I will.

20 MS. NICHOLS: Thank you. State your name and the
21 business address for the record.

22 MR. CINTRON: My name is Nicholas Cintron, my
23 business address is 2120 Baldwin Avenue, Suite 200 in
24 Crofton, Maryland 21114.

25 MR. GIBBS: Thanks. Mr. Cintron, so by whom are

1 you employed?

2 MR. CINTRON: I'm employed with Caruso Homes.

3 MR. GIBBS: Okay, and have you been present online
4 here during the virtual hearing and have you listened to all
5 of the testimony from Mr. Haller who preceded you?

6 MR. CINTRON: Yes, I have.

7 MR. GIBBS: And are you in fact familiar with this
8 hearing involving a request to delete condition 5, which was
9 attached to the removal of A9966?

10 MR. CINTRON: Yes.

11 MR. GIBBS: Okay, thank you. Now, is there a
12 Caruso entity which controls pod 2 which is the 57-acre
13 parcel that is lotted out on the zoning map?

14 MR. CINTRON: Yes, that is Signature 2016
15 residential which is controlled by Caruso Homes Inc., the
16 managing member.

17 MR. GIBBS: Okay, so that's a Signature 2016
18 Residential, LLC, correct?

19 MR. CINTRON: Correct.

20 MR. GIBBS: And Caruso does in fact control that
21 LLC, correct?

22 MR. CINTRON: That's correct.

23 MR. GIBBS: Okay, and then on this map, there are
24 also two out parcels identified which are immediately west,
25 southwest of the larger 57-acre tract called out parcel A

1 and out parcel B. Is there a Caruso Homes entity which owns
2 and controls those two out parcels?

3 MR. CINTRON: Its more in the same entity called
4 Signature Land Holding, LLC.

5 MR. GIBBS: Okay, so the two different LLCs for
6 two different ownerships, both controlled by Caruso Homes?

7 MR. CINTRON: Correct.

8 MR. GIBBS: Okay, thank you. And so you then
9 recognize the zoning map which is on the screen and are
10 familiar with the zoning of all the properties, correct?

11 MR. CINTRON: Correct.

12 MR. GIBBS: Could you answer yes, or no?

13 MR. CINTRON: Yes, yes.

14 MR. GIBBS: And out parcels A and B are now zoned
15 MXT, consistent with the balance of the Signature Club
16 profits, correct?

17 MR. CINTRON: Correct, yes, they are.

18 MR. GIBBS: Okay. Now can you explain briefly how
19 Caruso came to be involved in these properties that you just
20 identified?

21 MR. CINTRON: And you and Mr. Haller mentioned,
22 the property went into foreclosure, at which point we were
23 presented with an opportunity to become the owner of the
24 property in order to develop it for single family and
25 townhouse residential units.

1 MR. GIBBS: Okay, and you're aware that
2 originally, the original detailed site plan for the pod 2
3 57-acre parcel had proposed development as an age-restricted
4 senior gated community, is that correct?

5 MR. CINTRON: Yes, that's my understanding.

6 MR. GIBBS: And did Caruso Homes have any desire
7 to develop the property in that manner?

8 MR. CINTRON: No, we had always thought it was
9 more appropriate to do market rates singles and bounds as
10 those to 55 and over.

11 MR. GIBBS: Okay and how did you, on behalf of
12 Caruso Homes, proceed to seek the entitlement approvals to
13 convert a project from an age-restricted gated community to
14 a market rate single family detached and townhome community?

15 MR. CINTRON: We thought that the reconsideration
16 of the original preliminary subdivision plan, which I
17 believe was plan 4-0103, it didn't change the density, we
18 merely changed it from condominium units to ways that can be
19 ultimately conveyed to the homeowners.

20 MR. GIBBS: So you heard Mr. Haller testify that a
21 conversion that he undertook was to reduce the residential
22 density from 800 units to 315, and are you saying that your
23 proposal on behalf of Caruso was to maintain 315 units, but
24 just to change the nature?

25 MR. CINTRON: Correct, yes.

1 MR. GIBBS: And did you also file a revision to
2 the previously approved detailed site plan in order to
3 secure this approval?

4 MR. CINTRON: Yes, we did.

5 MR. GIBBS: And was that known as the 04 revision
6 to DSP04063?

7 MR. CINTRON: Yes, it was.

8 MR. GIBBS: Okay, and that was in fact ultimately
9 approved, correct?

10 MR. CINTRON: Yes, it was ultimately approved.

11 MR. GIBBS: Now, if you know at all, upon to the
12 57-acres, is that development currently ongoing?

13 MR. CINTRON: Yes, we currently opened the
14 property and are building homes on that property along with
15 the builder I just mentioned previously.

16 MR. GIBBS: Okay. Now during the course of
17 processing the reconsideration for the preliminary plan and
18 the revision to the detailed site plan, did you and other
19 representatives of Caruso Homes have the opportunity to meet
20 with the Accokeek Development Review District Commission?

21 MR. CINTRON: Yes, we did. We met with them to
22 discuss our development proposal and to show them the layout
23 and architecture that was intended to be utilized on the
24 type. We also had discussions with them concerning the
25 community building which will be constructing within the

1 same 57-acre lotted parcel.

2 MR. GIBBS: Okay, and the actual detailed site
3 plan revision, which was approved, and the plan for which is
4 now as part of the record of this case, the certified plan,
5 does that in fact show a community club house building
6 located within pod 2 on the 57 acres.

7 MR. CINTRON: Yes.

8 MR. GIBBS: Okay, now during this time, you were,
9 I assume, aware of the existence of condition number 5 which
10 by that time, had discussed and required the possibility of
11 community amenity being located outside of pod 2, correct?

12 MR. CINTRON: Yes, we were.

13 MR. GIBBS: And you're aware that, that involved
14 the potential for the amenity to be constructed on out
15 parcels A and B?

16 MR. CINTRON: Yes, correct.

17 MR. GIBBS: And were you also aware that, that had
18 occurred as a result of the community being gated and issues
19 with access that Mr. Haller discussed during his testimony?

20 MR. CINTRON: We were, yes.

21 MR. GIBBS: So did you discuss with the Commission
22 of the Accokeek Development New District Commission, and
23 from here on out I might say Accokeek Commission just to
24 shorten that. But did you discuss with the Accokeek
25 Commission the possibility that the community amenity could

1 be satisfied with your clubhouse inside of pod 2, as was the
2 original envisioned process in conceptual site plan?

3 MR. CINTRON: Yes, we did. We proposed it since
4 the B would neither be gated nor restricted. A community
5 building would be assessable to the admission on that 57-
6 acre parcel for the reason we suggested that we provide them
7 access to our clubhouse 18 times per --

8 MR. GIBBS: Okay, and how did you propose to
9 commemorate and formalize this arrangement?

10 MR. CINTRON: It was commemorated and finalized in
11 the homeowners association's Declaration of Covenants,
12 Conditions and Restrictions.

13 MR. GIBBS: And specifically, that's a very long
14 document, some 54 pages, but do you know which article
15 memorializes and guarantees the writer the permission to use
16 the clubhouse within the community?

17 MR. CINTRON: Yes, there was a provision written
18 exclusively to memorialize that concept. I believe its
19 Article 17 of the Declaration of Covenants.

20 MR. GIBBS: Thank you very much. Examiner Nichols
21 and People's Zoning Council Brown, I would note that the
22 entire Declaration of Covenants is an exhibit that's in the
23 record. It was attached to my original letter of June 21st,
24 2021. The entire document as reported is in fact an exhibit
25 and that letter which now is an exhibit in the record of

1 these proceedings. Has the Accokeek Commission been
2 apprised from the existence of the recorded covenants which
3 guarantees this right to the Commission?

4 MR. CINTRON: Yes, they have.

5 MR. GIBBS: Now, has Caruso, through the entity
6 that owns out parcels A and B, which would be Signature Land
7 Holdings, LLC, has Caruso processed any land development
8 entitlement with respect to out parcels A and B?

9 MR. CINTRON: They intend to develop 70
10 residential townhomes which will be live, work units on out
11 parcels A and B.

12 MR. GIBBS: Okay, and have you gained an approval
13 of the very first entitlement requirement in the MXT zone
14 which would be a conceptual site plan?

15 MR. CINTRON: Yes.

16 MR. GIBBS: And that conceptual site plan was, and
17 its CSP20001, Examiner Nichols and that too was filed as a
18 record in the proceedings and what I filed is the Technical
19 Staff Report in that case, which is Exhibit 35, and the
20 Planning Board resolution approve CSP200001 which occurred
21 in July of this year. Also, to that approval which I filed,
22 I don't see it marked as a separate exhibit, but it is the
23 notice from the District Council that the Council elected
24 not to review that CSP and therefore it is administratively
25 filed. That too is part of the record of these proceedings.

1 And so when that CSP was being reviewed Mr. Cintron, did
2 staff bring to your attention the fact that condition 5 that
3 was attached to the original zoning was still in effect?

4 MR. CINTRON: Yes.

5 MR. GIBBS: And I would direct your attention,
6 you're familiar with the resolution, but this issue was
7 actually addressed in condition 2B in Planning Board
8 resolution number 2021-86 approving the CSP. And I'd like
9 to read condition 2B into the record for you to listen to,
10 if that's okay. And that condition which appears on page 19
11 of the resolution states prior to acceptance of a
12 preliminary plan of subdivision, the applicant shall, and
13 then B, sub-B says, provide preliminary details of the
14 proposed community center as part of a private recreational
15 facility package if required, or provide written evidence
16 that the condition from zoning map amendment application
17 A9960C required one, has been removed or revised. Are you
18 familiar with that condition?

19 MR. CINTRON: Yes.

20 MR. GIBBS: Okay, and for a fact, prior to this
21 condition actually being imposed, this request had been
22 filed about a month earlier seeking to remove condition 5,
23 correct?

24 MR. CINTRON: Correct, yes.

25 MR. GIBBS: But since it had not been removed, did

1 the CSP also have to show a symbol on out parcels A and B of
2 the potential that a community facility would be there, if
3 the condition was not removed?

4 MR. CINTRON: Yes, it did.

5 MR. GIBBS: Okay. Now, referring you back to your
6 contacts with the Accokeek Commission, are you aware whether
7 or not there has been any further and subsequent contact
8 with the Commission by representatives of Caruso Homes in
9 the processing of your conceptual site plan and the
10 processing of this request to remove condition 5?

11 MR. CINTRON: Yes, through you, Mr. Gibbs, as our
12 counsel, have been in contact with the ADAC to discuss a
13 separate agreement VHOA the developer, and the ADAC to
14 further memorialize and commemorate, and clarify the
15 understanding with respect to their youth clubhouse.

16 MR. GIBBS: And did that arise as a result of a
17 question from someone as to whether or not Article 7 came in
18 the recorded covenants could be amended to possibly curtail
19 the regular use of the clubhouse?

20 MR. CINTRON: It did.

21 MR. GIBBS: Okay, and as a result of that, have
22 you taken any steps to memorialize a separate individual
23 agreement with the Commission that would guarantee their
24 perpetual access to the clubhouse for no charge?

25 MR. CINTRON: Yes, that's right. We drafted a

1 side agreement which has been shared with the ADRCA which
2 memorializes that their use of the club house eight times
3 per year which would be separate from the declaration
4 covenants, so it could not be removed with a majority or 60
5 percent support of the membership either way.

6 MR. GIBBS: And how recently have you forwarded
7 that document through me to the Commission?

8 MR. CINTRON: I recall it was either yesterday or
9 two days ago.

10 MR. GIBBS: Well that was an amendment to the
11 agreement, correct? I mean the original was forwarded
12 before that?

13 MR. CINTRON: Yes, that's correct, I apologize,
14 yes.

15 MR. GIBBS: And who is, and by the way, Examiner
16 Nichols and Mr. Brown, that independent three-party
17 agreement is part of the record as well. It's not yet
18 signed, but it is in the record as Exhibit 37, and it's
19 entitled draft clubhouse use agreement. And if I can make a
20 proffer in that regard. So I attended meetings with the
21 Commission to discuss the CSD and the revision to the
22 condition, to delete condition 5. And at my most recent
23 meeting which was about a month ago, which is to confirm in
24 emails that are part of the record which I submitted. The
25 Commission indicated that were happy with the arrangement

1 but there was a question about whether or not the HOA
2 covenants states statute could ever be amended, and their
3 rights could be withdrawn from them without their
4 permission. And so we agreed to prepare a separate
5 agreement which would be in the form of a contractual right
6 between the Commission and Signature 2016 Residential
7 because they owned the property on which the clubhouse is
8 built, and the homeowners association, so it's a three-party
9 agreement which would ensure the perpetual use of the
10 clubhouse for no charge for the 18 years that were agreed
11 upon. And that is Exhibit 37, and I'm hoping that Mr. Woods
12 can verify all of that when he says a few words after we
13 complete our presentation. So on behalf of Signature 2016
14 Residential, can you confirm that you have been authorized
15 to represent that they will in fact sign that agreement as
16 soon as it is approved by the commission?

17 MR. CINTRON: Yes, I can confirm that they will
18 sign it once it's been by the Commission.

19 MR. GIBBS: And does 2016 Residential LLC still
20 control the HOA?

21 MR. CINTRON: Yes, it does.

22 MR. GIBBS: And so will that entity also sign to
23 bind the homeowners' associates?

24 MR. CINTRON: Yes, it will.

25 MR. GIBBS: Okay, thank you very much and I have

1 no further question of Mr. Cintron.

2 MS. NICHOLS: Okay, Mr. Brown.

3 MR. BROWN: Yes, good morning Mr. Cintron, how are
4 you?

5 MR. CINTRON: I'm well Mr. Brown, how are you?

6 MR. BROWN: I'm well. A couple of questions. You
7 mentioned Signature 2016 Residential, LLC and I just pulled
8 it up on the State Department of Assessment of Taxation
9 website, as well as you mentioned Signature Land Holdings,
10 LLC, and I looked at that on the website while you were
11 testifying. I did not see in the record, a certificate of
12 good standing for those two entities. They are in good
13 standing, but I didn't see it in the record? Mr. Gibbs, do
14 you have a copy of that?

15 MR. GIBBS: Unfortunately, I don't have it with me
16 today, but I'll be happy if the Hearing Examiner would be
17 kind enough to hold the record open, I'll be happy to submit
18 that.

19 MR. BROWN: And concerning the proposed covenant
20 signatory is Exhibit 37, I don't have it in front of me, but
21 who are the three signatories again on that document?

22 MR. CINTRON: The ADRDC kicked it over for
23 redistrict, the signatory club home association, as well as
24 the declarant who is also the developer, Signature 2016
25 Residential, LLC.

1 MR. BROWN: All right. I'm a little confused on
2 who the HOA is and there are two different HOAs here,
3 because at one point you testified that Signature 2016
4 Residential controls the HOA, and then at another point, Mr.
5 Gibbs proffered that there may be some difficulty legally of
6 course, for the subject condition to be changed unless you
7 have 60 percent of the HOA members voting to do that. So
8 I'm like which is it, is it two different entities or are we
9 talking about the same entity on that issue?

10 MR. CINTRON: So Signature 2016 Residential, LLC
11 controls the HOA by virtue of the fact that it owns
12 controlling share of the lots within the community, and
13 controls all the Board seats for the HOA until such time as
14 a sufficient number of homeowners move in, that it no longer
15 maintains a majority control of its lot ownership.

16 MR. BROWN: I mean that's my question, maybe I
17 didn't understand, so none of that HOA development has been
18 developed as of today's date, is that correct?

19 MR. CINTRON: I'm not sure I understand the
20 question, Mr. Brown, could you ask?

21 MR. BROWN: Yeah, you just indicated that
22 Signature 2016 Residential owns a majority of the lots. What
23 percentage of the lots have actually been constructed?

24 MR. CINTRON: I can't say off the top of my head
25 how many have been constructed, but I can certainly get back

1 to you on that number. I know as last week, we were well
2 above that 50 percent threshold.

3 MR. BROWN: You're well above the 60 percent?

4 MR. CINTRON: Yes.

5 MR. BROWN: Okay.

6 MR. GIBBS: If I could just interject Mr. Brown.
7 I think that the HOA covenants, the residential development
8 of those 315 units were obviously as in every case required
9 to have a homeowners' association. And so the master
10 developer of the project obviously creates the HOA documents
11 and records them. And that at a certain point in time,
12 control of the HOA will be turned over to the association
13 itself, but that's typically when virtually all of the
14 community has been developed, constructed and homeowners are
15 settled and moved in. And they have not reached that point
16 yet. So Signature 2016 Residential, LLC still has the
17 controlling votes in the HOA and therefore that is why they
18 can sign the agreement.

19 MR. BROWN: I understand, I agree, I just
20 misunderstood. I thought that Signature Club property on
21 the zoning app we're looking at which says 57-acre tract, I
22 thought those allotted parcels, if you will, had all been
23 constructed, but that's not the case.

24 MR. GIBBS: No, it's not. It's active in
25 development and construction at the moment.

1 MR. BROWN: All right. And I asked you this
2 question a moment ago, signatories on Exhibit 37, who are
3 they again, Mr. Cintron?

4 MR. CINTRON: It would be the Signature Club
5 Homeowners Association, Signature 2016 Residential, LLC as
6 the developer and other declarant under the HOA declaration
7 of covenants. And of course, the ADRCA.

8 MR. BROWN: Okay.

9 MR. GIBBS: And Mr. Brown, what we want to do is
10 we wanted to take this commitment, it still exists in the
11 covenant itself, but as Article 17 is ripe, and it has been
12 conferred to the Accokeek Commission, but because our
13 statutory HOA documents can always be amended by the 60
14 percent consent of the homeowners, we wanted to create a
15 different document, an independent contractual document
16 supported by consideration which would be outside of the HOA
17 and be an independently enforceable contract and couldn't
18 just be changed at the whim of 60 percent of the HOA.

19 MR. BROWN: And since the Examiner and the
20 District Council cannot enforce a separate contract, you
21 merely want the Examiner and the Council ultimately to take
22 notice of such a document, is that correct?

23 MR. GIBBS: That's correct.

24 MR. BROWN: All right. I have no other questions.

25 MS. NICHOLS: All right. Any further follow up,

1 Mr. Gibbs?

2 MR. GIBBS: No, none at all, thank you very much.

3 MS. NICHOLS: All right, thank you, Mr. Cintron.

4 MR. CINTRON: Thank you.

5 MR. GIBBS: And my final witness would be Mr. Mark
6 Ferguson.

7 MS. NICHOLS: Mr. Ferguson, there you are.

8 MR. FERGUSON: Good morning, Madam Examiner.

9 MS. NICHOLS: Good morning, sir, how are you?

10 MR. FERGUSON: I'm well, thank you.

11 MS. NICHOLS: Excellent, we're going to be
12 neighbors soon.

13 MR. FERGUSON: Oh, lucky me.

14 MS. NICHOLS: Yeah, lucky you. All right, I need
15 to ask you, do you solemnly swear or affirm in the matter
16 now pending to tell the truth, the whole truth, and nothing
17 but the truth?

18 MR. FERGUSON: Yes, I do.

19 MS. NICHOLS: Thank you, please state your name
20 and address for the record.

21 MR. FERGUSON: My name is Mark Ferguson, and my
22 address is 9500 Medical Center Drive, Suite 4A, Largo,
23 Maryland 20774.

24 MS. NICHOLS: Thank you, and I will note for the
25 record that you have previously qualified as an expert in

1 the field of land planning and that designation will
2 continue today.

3 MR. FERGUSON: Thank you, Madam Examiner.

4 MS. NICHOLS: Thank you.

5 MR. GIBBS: Thank you very much, and I'll simply
6 note for the record that Mr. Ferguson's resume is Exhibit
7 34, and his land planning analysis report is Exhibit 33.
8 Mr. Ferguson, good to see you today.

9 MR. FERGUSON: Thank you.

10 MR. GIBBS: And so Mr. Ferguson, have you been
11 retained as the applicant's expert in the field of land
12 planning for this case?

13 MR. FERGUSON: Yes, I have.

14 MR. GIBBS: And have you been present through this
15 virtual hearing, did you hear all the testimony from Mr.
16 Haller and Mr. Cintron?

17 MR. FERGUSON: Yes, I have.

18 MR. GIBBS: And have you made an independent
19 review and analysis of the documents filed as exhibits ins
20 this case, and also conducted independent research and
21 analysis of the facts surrounding condition 5 of A9960 and
22 the development entitlements for the surrounding properties
23 comprised as Signature Club?

24 MR. FERGUSON: Yes, I have.

25 MR. GIBBS: And as a result of that, have you had

1 an opportunity then to prepare a written report which
2 analyses your findings and presents conclusions as to
3 whether or not in your view as an expert, there are facts
4 which could support positive findings as set for in section
5 27105 to constitute good cause to delete condition 5?

6 MR. FERGUSON: Yes, I did.

7 MR. GIBBS: And those statements are all contained
8 in your land planning analysis, is that correct?

9 MR. FERGUSON: They are, that's correct.

10 MR. GIBBS: Could you maybe in just a couple of
11 sentences just, I don't want you to go through your report
12 because it speaks for itself, and it's very thorough, and it
13 is now part of the record. If you could just give us a two
14 or three sentence summary of what your thoughts are?

15 MR. FERGUSON: Well, I think the history has been
16 laid out very completely by Mr. Haller and Mr. Cintron. And
17 they speak to the substantive change in the conditions that
18 whereas before you had a gated community and today you no
19 longer do. So leaving condition 5 in place would
20 essentially require the creation of a redundant facility.
21 And the development on the Vincent property as described by
22 Mr. Cintron is not large, 74 houses including four of which
23 are lift work, it's not large, and that's not really large
24 enough to reasonably support a community facility on its
25 own. And the maintenance operation of that facility would

1 really be an undue burden on those homeowners were condition
2 5 left in place, and a requirement placed for a duplicate
3 facility. So I think recognizing the fact that these two
4 communities found that there was an intent, not just to
5 grant the access to the facility to the Accokeek Commission,
6 but also to incorporate the owners of parcels A and B, the
7 Vincent property into the homeowners' association of the
8 original Signature Club. There will be the use of this one
9 facility for everybody and therefore no need for two.

10 MR. GIBBS: Okay, thank you very much. I have no
11 further questions for Mr. Ferguson.

12 MS. NICHOLS: Mr. Brown, can I just interject one
13 question here before you go. And Mr. Ferguson, I direct
14 your attention to Exhibit 14 which is the original approval
15 of A9960, and as I understand your testimony today, you
16 agree that conditions 1 through 7 will continue in effect
17 with the exclusion of condition number 5, is that correct?

18 MR. FERGUSON: That is correct, yes.

19 MS. NICHOLS: Okay wonderful, thank you. Thank
20 you, Mr. Brown.

21 MR. BROWN: Yes. Mr. Ferguson, good morning.

22 MR. FERGUSON: Good morning, Mr. Brown.

23 MR. BROWN: I just have one question. I read your
24 report, but in a nutshell, the good cause in which you are
25 opining on is not or is it the tract that the small number

1 of lots cannot support a community center on the existing
2 lotted subdivision?

3 MR. FERGUSON: That's a component, but
4 principally, the history shows that the intent was to
5 provide a facility for the development, the Signature Club,
6 and then secondly, to provide access to the community
7 through a community facility and from a very specifically,
8 to the Accokeek Commission for their use in their meetings.
9 The history that led to condition 5 was the intent that
10 toned for a gated community which would have inhibited
11 access to the Signature Club's facility by members of the
12 outside community including the Accokeek Commission. So
13 once the development character changed, there was really no
14 need for a redundant facility.

15 MR. BROWN: Well what was the proposed square
16 footage of the original facility on the gated community?

17 MR. FERGUSON: So I can't, I can't speak to that
18 and certainly that was really only definitely established
19 with the approval of the most recent detailed site plan.

20 MR. BROWN: I'm not understanding of the
21 comparison between what will be proposed now at the new
22 location, and what was proposed at the original gated
23 location in terms of square footage.

24 MR. FERGUSON: No, I never made that comparison.
25 I relay on in forming my opinion, was the evidence of the

1 discussions between the Accokeek Commission and the
2 developers, that, that facility would be sufficient to meet
3 their intent. I didn't go any further than that.

4 MR. BROWN: Yeah, I don't doubt their conclusion
5 that it would be sufficient, but I just wondered whether
6 there's something in the record that gives that apple-to-
7 apple comparison of the two facilities?

8 MR. FERGUSON: Yeah, I can't speak to that, yes.

9 MR. BROWN: Mr. Cintron, can you address that
10 issue in terms of square footage of the facility?

11 MR. CINTRON: I'm not aware of what the proposed
12 facility's square footage was supposed to be, but I believe
13 that the currently proposed clubhouse is going to be built
14 forthwith is around 3,000 square feet. I think that the
15 square footage, if I could walk down the hall for a second.

16 MR. BROWN: Yes.

17 MR. CINTRON: Would that be permissible?

18 MR. BROWN: Yeah, sure, absolutely, go ahead.

19 MR. CINTRON: Okay.

20 MS. NICHOLS: Mr. Brown, you're actually asking
21 the square footage of the residential component, not
22 comparing the square footage of the one community center
23 versus 2, is that correct?

24 MR. BROWN: That's correct.

25 MS. NICHOLS: That's what I thought, okay. While

1 Mr. Cintron is checking that, either Mr. Gibbs or Mr.
2 Ferguson, could I just ask you to look at Exhibit No. 6
3 which appear to be a hearing examiner decision that nothing
4 to do with this property, or if it does, will you let me
5 know if it does, or how it does?

6 MR. GIBBS: Well yes, I will, and let me just say
7 that at the conclusion, I have prepared a brief memorandum
8 addressing the issue of good cause. And I inserted what is
9 Exhibit 6, which is the hearing examiner's, yes, the hearing
10 examiner's decision in A9613 which is of course Woodmore
11 Towne Center. That is a case where I processed a request to
12 revise conditions attached to the original rezoning, and I
13 only attached that decision for purposes of the discussion
14 of what constitutes wood costs.

15 MS. NICHOLS: All right.

16 MR. GIBBS: And what I would ask for relief to do
17 is to submit the memo of law that I have that discusses the
18 K, construction company case. This is not defined in our
19 ordinance, but our K case does talk about what constitutes
20 good cause. And the memo is not lengthy, but I would like
21 to have the opportunity to submit it because I think it is
22 on point as to the fact that their interpretation by the
23 Court of Appeals as into the test is whether or not there
24 are additional facts appearing which show a change in
25 conditions or other considerations materially affecting the

1 merits intervening since the initial decision. And so I
2 have a brief discussion of the facts that have occurred
3 which we believe materially affect the initial condition
4 that was added as number 5. I'd like to be able to put that
5 in if I could.

6 MS. NICHOLS: That's fine.

7 MR. GIBBS: Thank you.

8 MS. NICHOLS: Mr. Cintron is back.

9 MR. CINTRON: As I answer overcome by events, or
10 are we still interested?

11 MS. NICHOLS: We're still waiting for your answer.

12 MR. CINTRON: So the exterior which includes like
13 some openings for picnic tables and barbeque grills and that
14 sort of thing is 3,888 square feet, a total footprint of the
15 interior is 2,000 square feet.

16 MR. BROWN: All right, so Mr. Ferguson, once Mr.
17 Gibbs submits his memorandum concerning what constitutes
18 good cause, you of course are willing to review that
19 document and either accept the factual components that he
20 puts in that legal memorandum, is that correct?

21 MR. FERGUSON: I am. I did however review Mr.
22 Gibb's letter which I believe has a summary of the argument
23 and my testimony was sort of adding towards that, so I'm
24 confident that my opinion's unlikely to change.

25 MR. BROWN: I have no further questions.

1 MR. GIBBS: And in my letter, I quote the K case
2 as well. It just puts a little more meat on it, thank you.

3 MS. NICHOLS: Right. All right, any redirect of
4 Mr. Ferguson?

5 MR. GIBBS: None, thank you.

6 MS. NICHOLS: All right, Mr. Ferguson, a pleasure
7 to see you.

8 MR. FERGUSON: Likewise Madam Examiner. Look
9 forward to seeing you out in the --

10 MS. NICHOLS: Exactly, right, sir.

11 MR. GIBBS: Before I conclude, first of all, I'm
12 hoping that Mr. Woods will be interested in making a few
13 comments, but I would simply like to direct the hearing
14 Examiner's attention and the People's Zoning Council's
15 attention to certain documents that are in the record that I
16 put in. The first is my letter of December 6th of 2017
17 which is Exhibit No. 1, which is a letter from me to Mr.
18 Woods who I had been meeting with as part of the Commission.
19 And confirming our commitment to provide access to the
20 clubhouse in Signature Club on the 57 acres which you know,
21 it's kind of interesting that we've come full circle. The
22 original CSP suggested that the community amenity be located
23 in pod 2 which is the 57-acres, and then it got moved out
24 because of the gated community aspect, and now it's back
25 where it started. So that is Exhibit 1. And then I have an

1 email from me to Mr. Woods dated May 28th, further
2 confirming meetings I have had with the Commission and
3 discussing the covenant that had been recorded, in
4 particular, referencing Article 17 of the covenants and
5 including an excerpt from the covenants that included
6 Article 17. Exhibit 28 to the record, my email to Mr. Woods
7 of June 30th, 2021, confirming that I had attended a meeting
8 of the Commission to discuss the status of the development
9 and once again confirming the commitment in the covenants.
10 And also providing information to address a question they
11 and relative to where exactly the clubhouse is to be located
12 within the community. Exhibit 29, my email to Mr. Woods
13 dated October 18 of 2021. Again, confirming to him where we
14 were in the process and asking to meet with him again. And
15 coincidentally, when we talked on the phone, there was a
16 meeting on the 20th that I attended two days later. Then
17 finally, I think there is one other email, maybe that's the
18 last one. Excuse me, Exhibit 30 which was the again, a
19 letter from me to Mr. Woods dated October 22nd, 2021,
20 confirming the meeting and expressing our commitment to
21 provide an additional document to make sure that their
22 rights could not be disturbed in terms of use of the
23 clubhouse. So I just wanted to bring that to the attention
24 of the hearing Examiner. I know you probably looked at them
25 all already.

1 MS. NICHOLS: I have.

2 MR. GIBBS: They show a course of conduct where we
3 have been in continuous contact with the Commission and
4 quite frankly have done everything that we have committed to
5 do. So with that being said, I have nothing further to add
6 and look forward to hopefully hearing Mr. Woods make a few
7 comments.

8 MS. NICHOLS: All right, thank you very much. Mr.
9 Woods, would you like to testify today? Mr. Woods, are you
10 still with us?

11 MR. WOODS: Hello, can you hear me?

12 MS. NICHOLS: Yes, we can hear you now. Do you
13 have video?

14 MR. WOODS: Just some general comments.

15 MS. NICHOLS: Sir, listen, do you have video, are
16 you video enabled?

17 MR. WOODS: I'm sorry?

18 MS. NICHOLS: Can you turn on your video?

19 MR. WOODS: Is it on?

20 MS. NICHOLS: No.

21 MR. WOODS: I just did.

22 MS. NICHOLS: That's your audio. Now, can you
23 turn on your video?

24 MR. WOODS: Can you see it, I just clicked the
25 video, I'm not sure if it's on or not.

1 MS. NICHOLS: Not so far.

2 MR. WOODS: Maybe I can get it on, oh here we go.

3 MS. NICHOLS: There we go, awesome sir. Okay, now
4 I need you to, I need you swear you in, so would you raise
5 your right hand.

6 MR. WOODS: Yes.

7 MS. NICHOLS: Do you solemnly swear or affirm in
8 the matter now pending to tell the truth, the whole truth,
9 and nothing but the truth?

10 MR. WOODS: I do.

11 MS. NICHOLS: Thank you. Would you please state
12 your name and address for the record?

13 MR. WOODS: Okay, my name is Clifford L. Woods,
14 Jr., I live in 2101 Dublin Way in Accokeek, Maryland.

15 MS. NICHOLS: All right, thank you. What would
16 you like to say today?

17 MR. WOODS: Well I just want to say that I've been
18 on this Commission since it began in 1998, I believe. I was
19 a member of this Commission, and we've come a long way.
20 We've worked with the property developers, and we've come a
21 long way as Mr. Gibbs said. I think Mr. Gibbs gave a good
22 account of everything that has been happening since that
23 time, which was lofty. And on behalf of the ADRCA, I think
24 he's explained exactly what we wanted, we've accomplished
25 those things for the community center. The reason why we

1 are so happy that we will have in place, because since 1998,
2 we have not had one place in the community that we could
3 meet. We don't have the finances to rent every month to
4 have meetings, and that's been a problem for us also. But
5 we have managed to have our meetings in one way or another.
6 So I commend Mr. Gibbs for his presentation. It was very
7 thorough and he covered just about every aspect that we
8 talked about.

9 MS. NICHOLS: All right, thank you, Mr. Woods.
10 Mr. Gibbs, do you have any question of Mr. Woods?

11 MR. GIBBS: No, I think Mr. Woods correctly went
12 over everything we've done. So you're satisfied with the
13 arrangement that we've worked out with the Commission, we've
14 had many conversations, correct?

15 MR. WOODS: That's correct, very satisfied, yeah.
16 We've worked together and we accomplished a lot in the last
17 few years especially.

18 MR. GIBBS: We will, I can confirm, will continue
19 to work with you, sir, and with the Commission. Thank you
20 very much for taking the time to be here today, we
21 appreciate it, thank you.

22 MS. NICHOLS: Mr. Brown, do you have any questions
23 of Mr. Woods?

24 MR. BROWN: Yes, Mr. Woods, good morning. You are
25 an officer of the Accokeek Development and Review District

1 Commission, is that correct?

2 MR. WOODS: Yes, I am the Chairman, correct.

3 MR. BROWN: Chairman, okay. And you guys had a
4 meeting where you discussed this application to amend
5 condition 5, is that correct?

6 MR. WOODS: Yes, we did.

7 MR. BROWN: And approximately when was that
8 meeting?

9 MR. WOODS: Oh gee, I can't tell you the dates.

10 MR. BROWN: Well approximately what month?

11 MR. WOODS: Well we discussed this throughout the
12 year, so recently we had discussions last month. We invited
13 Mr. Gibbs into our meeting and also to discuss this
14 property. And it's been off and on, some through telephone
15 calls, some through emails, and some --

16 MR. BROWN: I don't doubt that you and Mr. Gibbs
17 have communicated quite a bit by email as well as on the
18 telephone, but we need something in the record from the
19 Accokeek Commission of the documents. You know they
20 conducted a meeting and they have authorized you or someone,
21 or to sign the documents noted at Exhibit 37, and that you
22 as the Commission, are in support of this application. Is
23 it possible you can get a very brief letter to that effect?

24 MR. WOODS: Yes, I can get you something.

25 MR. GIBBS: Mr. Brown, not to interrupt, but my

1 email which is Exhibit 29, which was an email of October
2 18th to Mr. Wood for requesting the opportunity to meet with
3 them again to discuss what we're doing here today, and then
4 my letter of October 22nd, 2021, which is Exhibit 30,
5 confirming that I did meet with them. In actuality, I can
6 proffer the meeting occurred on October 20th and I do have
7 in my possession an email from Mr. Woods to me, well
8 actually to many people including me, confirming that the
9 Commission was meeting on October 20th, and I appear on the
10 agenda. So I'm happy to scan that email in and then of
11 course that doesn't say what you want Mr. Woods to say, but
12 it does confirm when we met with the Commission to discuss
13 this very issue. And then I think his letter could confirm
14 everything that we did discuss.

15 MR. BROWN: Yeah, that would be helpful. I think
16 that would complete the record on that issue.

17 MR. GIBBS: Okay. I would just like to add, would
18 you also wish for us, if you want to hold the record open
19 for us in addition to my memo, Mr. Wood's letter and the
20 certificate of good standing for the two LLCs, would you
21 also like us to submit a copy of the recorded agreement that
22 results from Exhibit 37?

23 MR. BROWN: Yeah, I think if you can get a copy of
24 what's recorded, in short order, we'd like that in the
25 record.

1 MR. GIBBS: I know it's going to take a couple
2 weeks, but I think the Commission has agreed to the form of
3 that document at this point. They had wanted one other
4 provision in there about their formation being pursuant to
5 the County Executive's directive, and we've added that. So
6 we're ready to sign it and we're going to federal express an
7 original document to them, they can sign and we can record
8 right away. I think we can get it fully in about two weeks,
9 I think we can. And what we'll do is we'll send a copy of
10 the fully signed agreement, a certificate of good standing,
11 my little memo of law, and then Mr. Woods will get his
12 letter to you.

13 MR. BROWN: Yeah, you can dispense with Madam
14 Examiner, I won't need the recorded document as long as we
15 have the signed document in the record, that's fine.

16 MR. GIBBS: Okay, that's great. Thank you, and
17 I'll also scan in Mr. Wood's email of October 20th to date.

18 MR. BROWN: Right. Okay, I have nothing further.

19 MS. NICHOLS: All right then, let me go over the
20 exhibits with you Mr. Gibbs, if I could.

21 MR. GIBBS: Sure.

22 MS. NICHOLS: You provided two certificates of
23 good standing, one from each of the LLCs. Your third is the
24 memorandum of law in which you discuss good cause and the K
25 Construction Company case. Four will be a confirmatory

1 optic Mr. Ferguson, that he has reviewed your memo with
2 regard to K Construction, and it no way changes his opinion
3 with regard to his finding of good cause. The next one is
4 the letter from the ADRDC with regard to the meetings, the
5 authority to be present today, and the support of the
6 deletion of condition number 5. You can probably help with
7 that. One is the email that you referenced which confirms
8 the meeting that I believe you had on the 22nd, I may have a
9 wrong date, the meeting that you had --

10 MR. GIBBS: Yes.

11 MS. NICHOLS: And then the last one is the signed
12 agreement which commemorates Exhibit 37.

13 MR. GIBBS: Correct.

14 MS. NICHOLS: Okay, so all of those, the hearing
15 in this matter will deem to be concluded, the record will be
16 kept open for inclusion into the record of all of these
17 documents.

18 MR. GIBBS: Sounds good, that's accurate.

19 MS. NICHOLS: I'm sorry?

20 MR. GIBBS: I was just going to say thank you very
21 much.

22 MS. NICHOLS: Okay, thank you, sir. If there's
23 nothing further, the matter will be deemed, the hearing will
24 be deemed concluded today and the record will remain open,
25 and upon receipt of the documents, a decision will be

1 forthcoming.

2 MR. GIBBS: Great, thank you so much. Have a nice
3 day everyone, take care.

4 MS. NICHOLS: And Happy Holidays, if I don't see
5 you all before then.

6 (Whereupon, the hearing was concluded.)

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C E R T I F I C A T E

DEPOSITION SERVICES, INC., hereby certifies that
the attached pages represent an accurate transcript of the
electronic sound recording of the proceedings before the
Prince George's County Office of the Zoning Hearing Examiner
in the matter of:

MANOKEEK

Case No. A-9960-C

By:



Pat Purnell, Transcriber

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