

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

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SUIT & FOREST OI, LLC : Case No. ZMA-2023-002  
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A hearing in the above-entitled matter was held on August 7, 2024, at the Prince George's County Office of Zoning, County Administration Building, Upper Marlboro, Maryland 20772, via Zoom videoconference, before:

Maurene McNeil  
Hearing Examiner

Transcribed by: Ashley Bennett  
eScribers, LLC  
Phoenix, Arizona

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1 A P P E A R A N C E S

2

3 On Behalf of the Applicant:

4 Matthew Gordon, Esq.

5 On Behalf of People's Zoning Counsel:

6 Stan Brown, Esq.

7 Also appearing:

8 Sara Rawlings-Windsor, Assistant  
9 Graham McSweeney, Paralegal

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12 Page

13 Testimony of Dan Berger 6

14 Testimony of Kevin Foster 23

15 Testimony of Kim Smallwood 58

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19 Exhibits Page

20 Applicant's Exhibits 1 through 96 are  
21 submitted into evidence 18

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1                                   P R O C E E D I N G S

2                                   MS. MCNEIL:   Okay.   Good morning  
3   again, everyone.   I'm Maurene McNeil, I'll be the  
4   zoning hearing examiner today.   And today is  
5   August 7th, 2024.   And we are here on a zoning  
6   matter in the case, and I -- Suit Road -- give me  
7   one second.   We're here on a zoning matter in the  
8   case 2023-002.   The Applicant is Suit & Forest OI,  
9   LLC.   And the property is located in District  
10   Heights, Maryland, 4110 Suit Road.   They're  
11   requesting to rezone their entire 14.19 acres from  
12   the split zoning of RSF95/IEE to IE in its  
13   entirety.   And the property is also located within  
14   the MIO overlay zone.

15                                  So if counsel can identify  
16   themselves for the record, we can begin.

17                                 MR. GORDON:   Good morning, Madam  
18   Examiner.   I'm Matthew Gordon on behalf of the  
19   Applicant, Suit & Forest OI, LLC, which is an  
20   affiliate of Open Industrial.

21                                 MR. BROWN:   Good morning, Stan  
22   Brown, People's Zoning Counsel.

23                                 MS. MCNEIL:   Okay.   Before we start  
24   I see a lot of names.   Is there anyone here today  
25   that is opposed to this request?   If you are,

1 yeah, just come on camera and tell me your name.

2 So I don't see anyone, and so we will begin.

3 Mr. Gordon. You're muted.

4 MR. GORDON: Yeah, I'm trying -- I  
5 was trying to unmute it. Sorry about that. Thank  
6 you, Madam Examiner.

7 So the applicant, Suit & Forest OI,  
8 LLC, which is affiliated with Open Industrial,  
9 they purchased this property several years ago,  
10 and in doing so they conducted some research about  
11 the history of the split zoning, and we've come to  
12 find out that there was a mistake that's been made  
13 really since the late 1990s.

14 There was a road -- Suit Road was  
15 supposed to be extended through the property in  
16 accordance with the 1985 Master Plan. And then in  
17 the late '90s when there was a preliminary planned  
18 subdivision that was filed, planning staff  
19 reviewed it and they provided referrals as they do  
20 with any application to agencies -- outside  
21 agencies. And Federal agencies responded that  
22 there was no plans or funding to ever complete  
23 this roadway project, to extend it through the  
24 property.

25 And the split zoning from 1985

1 was -- on one side was single-family residential  
2 or a transition on the smaller portion of the  
3 property. And then the other portion of property  
4 was industrially zoned, and it was -- the split  
5 zoning followed the center line of the roadway,  
6 and it was intended to be sort of a buffer.

7                   And then fast forward to the '90s  
8 when they determined -- the planning board  
9 determined that there was -- that this roadway  
10 would not be constructed.

11                   In 2010, the next time they studied  
12 this property comprehensively through the master  
13 plan process, the roadway was removed from the  
14 County's plans. I believe it actually was removed  
15 in 2009 through the kind of functional master plan  
16 of highways. And at that time they did not make  
17 the correction to make the whole property zoned  
18 industrial, even though the whole basis for the  
19 split zoning was the fact that this roadway was  
20 supposed to go through the property.

21                   So I think the planning staff did  
22 an excellent job in their staff report, and we  
23 agree with their findings. But we have two  
24 witnesses today that we would like to put on to  
25 give some historical background both on the

1 property and Open Industrial, the first being Dan  
2 Berger from Open Industrial, and then we also have  
3 our land planner who's been recognize as an expert  
4 in land planning, who will testify to the master  
5 plans, and the various policies and  
6 recommendations.

7 MS. MCNEIL: You're going to call  
8 Mr. Berger?

9 MR. GORDON: Yes.

10 MS. MCNEIL: Okay.

11 MR. BERGER: Good morning.

12 MS. MCNEIL: Good morning. Mr.  
13 Berger, do you swear or affirm, under the  
14 penalties of perjury, that the testimony you shall  
15 give will be the truth and nothing but the truth?

16 MR. BERGER: Yes.

17 MR. GORDON: Please state your  
18 name, business address, and occupation for the  
19 record.

20 MR. BERGER: Yes. So Dan Berger, 2  
21 Bethesda Metro Center, Suite 500, Bethesda,  
22 Maryland 20814. And I'm the director of  
23 development.

24 MR. GORDON: What is your  
25 professional and educational background?

1                   MR. BERGER: So professionally I've  
2 been involved in the construction development  
3 industries for my entire career. I hold a  
4 bachelor's degree, and I've completed several  
5 master's level courses in real estate.

6                   MR. GORDON: What is Open  
7 Industrial's experience in the Greater Washington  
8 D.C. metropolitan area, and Prince George's County  
9 in particular?

10                  MR. BERGER: So Open Industrial  
11 owns, manages approximately 27 properties within  
12 the Greater Washington D.C. Metro area. In Prince  
13 George's County, specifically, in addition to 4110  
14 Suit Road, we also own and manage Old Ritchie Road  
15 in Capitol Heights, Ritchie Road in Capitol  
16 Heights, Grey Eagle Drive in Upper Marlboro,  
17 Quigley Place in Temple Hills, (indiscernible) and  
18 Old Gunpowder in Laurel, and Old Marlboro Pike in  
19 Upper Marlboro.

20                  MR. GORDON: Madam Examiner, would  
21 it be possible to pull up pages 45 through 47 of  
22 the record? Thank you.

23                  MR. BROWN: We can't hear --

24                  MR. GORDON: I think you're muted.

25                  MR. BROWN: -- you, you're muted.

1 MS. MCNEIL: I'm glad I was muted,  
2 but I'll still tell on myself. Because Sara is  
3 our new assistant, and I called her by the wrong  
4 name, but I admit it on the record.

5 Sara, will you be able to pull up  
6 by that page, or do you need an exhibit number?

7 MS. RAWLINGS-WINDSOR: No, I got  
8 it. Just give me one second.

9 MS. MCNEIL: Okay.

10 MR. GORDON: I thought it might be  
11 easier when I was going through it, you can just  
12 punch in the page number. But if the exhibit  
13 number is easier we can do that too.

14 MS. MCNEIL: She's probably great  
15 every way. You'd have a problem if I had to pull  
16 it up.

17 MR. GORDON: I said she's probably  
18 better than me, I know that much.

19 MS. RAWLINGS-WINDSOR: What was the  
20 page number again? I'm sorry.

21 MR. GORDON: 45, please. And  
22 hopefully it corresponds with -- okay. Thank you.

23 BY MR. GORDON:

24 MR. GORDON: Mr. Berger, are you  
25 familiar with this document that's on the screen?



1 MR. BERGER: Yes.

2 MR. GORDON: Okay. And does this  
3 fairly and accurately describe the business model  
4 of Open Industrial?

5 MR. BERGER: Yes, it does.

6 MR. GORDON: Okay.

7 Could you go to the next slide,  
8 please?

9 And what does this image  
10 illustrate?

11 MR. BERGER: This illustrates our  
12 portfolio of properties within the -- the  
13 Washington D.C. metro area.

14 MR. GORDON: Okay.

15 Could you go to the next slide,  
16 please.

17 Mr. Berger, what does this  
18 slide illustrate?

19 MR. BERGER: An example of -- of  
20 our -- you know, some properties in our portfolio,  
21 and you know, just particularly highlighting, you  
22 know, the tenant mix, and the condition of -- of  
23 our properties.

24 MR. GORDON: Okay. And what types  
25 of tenants typically operate at your -- or

1 businesses at your properties?

2 MR. BERGER: So the smaller  
3 regional businesses as well as, you know, credit  
4 tons like Carter-CAT, IMPACT Rentals, those types  
5 of businesses.

6 MR. GORDON: And what types of  
7 operations do those business conduct typically?

8 MR. BERGER: It can be anything  
9 from contractors yards to rental equipment yards,  
10 landscapers, basically anyone that needs some  
11 office space, and outdoor storage to store, you  
12 know, materials that are critical to their  
13 business.

14 MR. GORDON: Okay. Thank you.

15 Could you go to the next page  
16 please, Sara?

17 Are you familiar with the property  
18 located at 4110 Suit Road?

19 MR. BERGER: Yes.

20 MR. GORDON: And does this image on  
21 the screen fairly and accurately illustrate the  
22 subject property?

23 MR. BERGER: Yes, for the most  
24 part.

25 MR. GORDON: Okay. Yeah, is it out

1 of date, I guess?

2 MR. BERGER: A little outdated,  
3 yes.

4 MR. GORDON: Okay. When did you --  
5 when did Suit & Forest OI, LLC purchase the  
6 property?

7 MR. BERGER: January of 2022.

8 MR. GORDON: And can you describe  
9 the use of the property at the time of that  
10 purchase?

11 MR. BERGER: So as you can see from  
12 this arial image the property, when we purchased  
13 it, was, you know, demised in such a way to allow  
14 for, sort of, individual outdoor storage lots.  
15 The previous owner had allowed, you know, the  
16 storage to encroach on the residential portion of  
17 the site, and you know, just in general was -- was  
18 poorly maintained and managed for the most part.

19 MR. GORDON: And what, if anything,  
20 has Open Industrial done since purchasing the  
21 property?

22 MR. BERGER: Since we've acquired  
23 the property we've cleared the site of all tenants  
24 that were -- that were operating there under the  
25 prior ownership. And eventually we've cleaned up

1 the encroachments as well as all the miscellaneous  
2 material and debris that were left behind, and  
3 that are sort of portrayed in this -- in this  
4 arial.

5 MR. GORDON: And has Open  
6 Industrial been operating any business activities  
7 at the property since you've purchased it?

8 MR. BERGER: No, it's been a  
9 cleanup effort, for the most part, since we've  
10 acquired it.

11 MR. GORDON: Okay.

12 Sara, could you please pull up page  
13 21 of the record?

14 Mr. Berger, are you familiar  
15 with this document?

16 MR. BERGER: Yes.

17 MR. GORDON: And what does this  
18 document illustrate?

19 MR. BERGER: This illustrates OI's  
20 acceptance into the voluntary cleanup program as  
21 outlined from Maryland Department of the  
22 Environment.

23 MR. GORDON: And can you just give  
24 a high level background of what that means for the  
25 property?

1 MR. BERGER: Yeah, so the  
2 acceptance into the -- into the program by MDE is  
3 essentially based on a future commercial use of  
4 the property. So any future use and the  
5 remediation efforts will be based on -- on that  
6 future use.

7 MR. GORDON: And when you say  
8 remediation what is that have to deal with?

9 MR. BERGER: So our acceptance into  
10 the program, as mentioned, will be based on the  
11 future commercial use, so this criteria,  
12 essentially, will require that upon completion of  
13 the program that, you know, the land use or deed  
14 restriction be placed on the property to allow for  
15 only nonresidential use, and also, likely, will  
16 require ground water use restrictions.

17 MR. GORDON: And is the need for  
18 these cleanup efforts stemming from any actions  
19 that Open Industrial undertook since you've owned  
20 the property?

21 MR. BERGER: No. The -- the  
22 environmental impacts were -- were associated with  
23 the prior ownership.

24 Sara, could you please pull page  
25 360 as well?

1 MS. MCNEIL: Mr. Gordon --

2 MR. GORDON: Yes.

3 MS. MCNEIL: --I just -- it took a  
4 little coffee to realize this, but down the road  
5 people will be looking at exhibits as well, we may  
6 even go back to paper, who knows. And so it might  
7 be great if you could do both. I understand that  
8 you're --

9 MR. GORDON: Okay.

10 MS. MCNEIL: -- pulling up a page,  
11 but we should know the exhibit.

12 MR. GORDON: Okay.

13 MS. MCNEIL: Thank you.

14 MR. GORDON: Yeah. So this one  
15 would be, let's see --

16 MR. MCSWEENEY: Exhibit 60, page  
17 360?

18 MR. GORDON: Thanks Graham Yeah,  
19 Exhibit 60, page 360.

20 So Dan, what does this document  
21 illustrate?

22 MR. BERGER: Oh, so this is a  
23 document from ECS who's our environmental  
24 consultant for the property. This illustrates,  
25 essentially, the future use of what UCS

1 anticipates the closure -- requiring the closure  
2 for the voluntary cleanup program, and what that  
3 will entail. And that acceptance and closure, as  
4 mentioned previously, will require a deed and land  
5 use restriction, and most likely ground water use  
6 restriction.

7 MR. BROWN: Mr. Gordon, let me  
8 interrupt just for a second here.

9 This particular Exhibit 60 authored  
10 by, it looks like, Michael Bell. Does Mr. Bell  
11 plan to testify today?

12 MR. GORDON: No, we're just  
13 offering it sort of as background information of  
14 what the voluntary cleanup process entails, and  
15 what the likely results are.

16 MR. BROWN: Uh-huh. I mean this is  
17 a rezoning case, do we really need to have this  
18 background information on the MDE and the  
19 voluntary cleanup program?

20 MS. MCNEIL: It's crazy because the  
21 screen is up, so I can't see myself. But I was a  
22 little interested in some of this information  
23 because one of the requirements is to show that  
24 what they're doing will not harm the adjacent  
25 properties. And I was assuming they were showing

1 that it may improve the adjacent properties by  
2 doing this.

3 MR. GORDON: Yes.

4 MS. MCNEIL: So I agree that it  
5 shouldn't go too far, Mr. Brown, but I would  
6 appreciate just a little more on this topic.

7 MR. BROWN: Yeah, no, I don't have  
8 a problem with it, I just didn't want to get too  
9 involved in this and we don't have the actual  
10 persons who authored these letters that are not  
11 government employees.

12 MR. GORDON: All right, yeah.  
13 Understood. This was all the extent of it, but  
14 essentially, to conclude, I think this is really  
15 all I had for Mr. Berger. But this was kind of  
16 the goal of Open Industrial entering into the  
17 voluntary cleanup program, what's the intent.

18 MR. BROWN: All right, thank you.

19 MR. GORDON: Dan?

20 MR. BERGER: Yes.

21 MR. GORDON: Sorry, I'll ask it  
22 again. So what is Open Industrial's intentions in  
23 entering into this voluntary cleanup program?

24 MR. BERGER: It's to -- to clean up  
25 the environmental impacts that were associated



1 with the prior ownership, you know, and to, as  
2 you mentioned, you know, remove the possibility of  
3 any harm to -- to the general public.

4 MR. GORDON: Okay.

5 And then, Madam Examiner, do I need  
6 to offer the particular ones we went through into  
7 the record, or -- I mean I know they're already,  
8 technically, in the record, but --

9 MS. MCNEIL: Right. This is a good  
10 time to mention that generally everything that has  
11 been previously provided to us will be in the  
12 record unless anyone objects to any of it. We do  
13 have multiple copies of things, but when you read  
14 the new zoning ordinance it sort of requires  
15 staff, Park and Planning staff, their technical  
16 staff, to send everything that they've reviewed.  
17 And I don't have to cite to all of this in my  
18 decision, but the reason it's in here is an  
19 abundance of caution until, perhaps, we get down  
20 the road and amend the zoning ordinance again.

21 So everything is in unless you --

22 MR. GORDON: Okay.

23 MS. MCNEIL: -- object or unless  
24 Mr. Brown objects. And we, at this point, have 91  
25 exhibits, but many of them are duplicative.

1                   (Exhibit marked Applicant's Exhibits 1-  
2 96 are admitted into evidence.)

3                   MR. BROWN: Since we apparently  
4 don't have any opposition to the case, I'm not  
5 going to object to this Exhibit 60, but typically  
6 I would object if that gentleman is not here to  
7 testify. But I'll reserve it, and possibly not.

8                   MS. MCNEIL: No. And I do  
9 understand. I'm only overruling because I don't  
10 believe it's -- that it's really germane what's in  
11 the letter with the fact --

12                  MR. BROWN: I agree with that, too.

13                  MS. MCNEIL: Right. No, but the  
14 fact that they participated in this program and  
15 are cleaning up the lot because they want to  
16 improve the conditions of the site. That's all.

17                  MR. BROWN: Right.

18                  MS. MCNEIL: Okay.

19                  MR. GORDON: You know it was really  
20 more just for background not to the findings  
21 for -- the required findings for the Council or  
22 the Hearing Examiner's recommendations on the  
23 application.

24                  MS. MCNEIL: And it's not for  
25 change or mistake, it's --

1 MR. GORDON: No, it's not. No.

2 MS. MCNEIL: -- not a section that  
3 they were required to satisfy.

4 MR. GORDON: Yeah, we just think  
5 overall, essentially, the goal of Mr. Berger  
6 testifying, explaining is that it's going to be in  
7 the public interest because they're a good  
8 corporate citizen and they're cleaning the  
9 property up, and they will manage it and maintain  
10 it much better than the prior owner.

11 MR. BROWN: Okay. All right. No  
12 objection.

13 MR. GORDON: So with that I think  
14 we can go to Mr. Foster from GLW.

15 MR. BROWN: Before you --

16 MR. GORDON: Unless there's  
17 questions from Mr. Brown.

18 MR. BROWN: Before you do dismiss  
19 Mr. Berger, let me ask a couple of questions  
20 please.

21 MR. BERGER: Yes.

22 MR. BROWN: I'm a little bit slow  
23 and so I apologize. But when you were asked that  
24 you were employed by Open Industrial, I am  
25 assuming, and I didn't see it in this voluminous

1 paperwork, Open Industrial is Suit & Forest OI,  
2 LLC; is that correct?

3 MR. BERGER: That's correct.

4 MR. BROWN: All right. So there's  
5 not a separate entity called Open Industrial  
6 separate from Suit & Forest?

7 MR. BERGER: No, that's the  
8 property level entity.

9 MR. BROWN: Got you.

10 I may have missed it in the filing  
11 as well, but did we have the certificate of good  
12 standing from the State of Maryland in this file?

13 MR. GORDON: I don't believe it's  
14 there, but we can supplement, that shouldn't be an  
15 issue.

16 MR. BROWN: Yeah, that's required.  
17 So we need the certificate of good standing for  
18 Suit & Forest OI, LLC. And in terms of ethics  
19 affidavits, did we have an ethics affidavit in  
20 this file from Suit & Forest?

21 MR. GORDON: That is there. Let me  
22 tell the exhibit number. With all the  
23 duplicates --

24 MS. MCNEIL: Right, right. One is  
25 Exhibit 11.

1 MR. GORDON: Okay. So there --

2 MS. MCNEIL: One is Exhibit 24.

3 MR. GORDON: All right. So we'll  
4 go with 11, which would be page -- okay, you  
5 got -- yep, Sara's good.

6 MR. BROWN: All right. That's fine  
7 if it's in there.

8 And then the last question I had  
9 concerning the voluntary cleanup program, you  
10 mentioned about the remediation that apparently  
11 has started, you didn't tell us what was  
12 remediated. What was it? Truck fluids, so what?

13 MR. BERGER: So it's generally soil  
14 and ground water contaminations associated with  
15 the prior uses, which would be, you know,  
16 petroleum type products of the most part, and  
17 organic compounds.

18 MR. BROWN: Uh-huh. So has the  
19 remediation been completed?

20 MR. BERGER: It has not.

21 MR. BROWN: Okay. All right. No  
22 other questions. Thank you.

23 MS. MCNEIL: I have one based on  
24 that. So it appears that the natural resource  
25 inventory has not been included, just applied for.

1 Was that needed because of the remediation as  
2 well, and it is not approved yet because of the  
3 remediation?

4 MR. BERGER: I believe we  
5 originally, and I know that Kevin may be able to  
6 speak to it, or if we've got others from GLW, but  
7 with the checklist and things for the application  
8 that they originally, Environmental Planning,  
9 wanted us to include more, and then when they  
10 understood that it was just the ZMA with no real  
11 development plan associated with it, it was our  
12 option but we had already started the NRI process  
13 so we just decided -- I think we've completed it,  
14 and have approval. But Kevin may be able to jump  
15 in and confirm.

16 MS. MCNEIL: Okay. Thank you.

17 So is it okay for Ms. Rawlings-  
18 Windsor to take these down?

19 MR. GORDON: Yes. Thank you.

20 MS. MCNEIL: And do you have any --

21 MR. GORDON: We're going to call --  
22 sorry. I was going to say we will call Mr. Kevin  
23 Foster.

24 MS. MCNEIL: Mr. Foster. Good  
25 morning.

1                   Do you swear or affirm, under  
2 penalties of perjury, that the testimony you shall  
3 give will be the truth and nothing but the truth?

4                   MR. FOSTER: I do.

5                   MR. GORDON: Good morning, Mr.  
6 Foster. Can you please state your address for the  
7 record?

8                   MR. FOSTER: Kevin Foster,  
9 Gutschick, Little & Weber, 3909 National Drive,  
10 Burtonsville, 20866.

11                  MR. GORDON: And what is your  
12 occupation?

13                  MR. FOSTER: I'm principal at the  
14 firm, I'm also a landscape architect, and  
15 certified land planner.

16                  MR. GORDON: And how long have you  
17 been engaged as a certified land planner?

18                  MR. FOSTER: I've been working in  
19 the industry for almost 38 years. I've been a  
20 certified land planner for probably just over 30.

21                  MR. GORDON: And what is your  
22 professional and educational background?

23                  MR. FOSTER: I have a ornamental  
24 horticulture degree from Delaware Valley College,  
25 and a master's in landscape architecture from the

1 University of Virginia, a member of the American  
2 Planning Association, and I'm a certified planner.

3 MR. GORDON: Are you a member of --  
4 oh, okay, so you already -- you're a member of  
5 professional societies or organizations?

6 MR. FOSTER: Yes.

7 MR. GORDON: Okay.

8 MR. FOSTER: APA and AICP.

9 MR. GORDON: And please review your  
10 work experience in the field of land planning at a  
11 higher level.

12 MR. FOSTER: Yeah, I've -- I've  
13 worked extensively in Prince George's County,  
14 Montgomery County, and Howard Counties for the  
15 last 38 years in planning, landscape architecture  
16 projects, and I've testified in numerous cases in  
17 all three counties as well.

18 MR. GORDON: Sara, could you please  
19 pull up Exhibit 90, which is also page 670?

20 MS. MCNEIL: While she's doing  
21 that, I've misspoken, we actually have 97  
22 exhibits.

23 MS. RAWLINGS-WINDSOR: Is my screen  
24 showing?

25 MS. MCNEIL: I have everyone



1 frozen.

2 MR. GORDON: Yeah, it looks just  
3 like -- I don't know, it's the page from that  
4 public where you can review the video.

5 MS. MCNEIL: So we may have to take  
6 a break to make sure this is being recorded  
7 properly.

8 Sara, if you hear me, could we take  
9 a five minute break?

10 MS. RAWLINGS-WINDSOR: Yeah.

11 MS. MCNEIL: Thank you all, we'll  
12 be right back.

13 (Whereupon a recess was taken)

14 MS. RAWLINGS-WINDSOR: You should  
15 be -- you should be okay, now.

16 MS. MCNEIL: Okay. Can you all  
17 hear me?

18 MR. GORDON: Yes.

19 MS. MCNEIL: All right. Let's  
20 proceed. Technology.

21 MR. GORDON: Thank you.

22 Mr. Foster, and what does this  
23 document illustrate?

24 MR. FOSTER: This is my resume that  
25 goes over my education, work experience, and then

1 the next two pages would be the cases I've  
2 testified in.

3 MR. GORDON: And have you  
4 testified -- I see it says you've testified before  
5 the hearing -- the Prince George's County  
6 hearing -- zoning hearing examiner?

7 MR. FOSTER: Yes, I have, on three  
8 different occasions.

9 MR. GORDON: And have you been  
10 recognized as an expert in land planning?

11 MR. FOSTER: Yes, I have.

12 MR. GORDON: And Madam Examiner,  
13 we'd like to offer Mr. Foster as an expert in land  
14 planning.

15 MS. MCNEIL: Assuming Peoples  
16 Zoning Counsel has no voir dire?

17 MR. BROWN: No objection.

18 MS. MCNEIL: Okay. Then you will  
19 be accepted as an expert in land planning.

20 MR. FOSTER: Thank you.

21 MR. GORDON: Thank you.

22 Mr. Foster, are you familiar with  
23 the property that's subject to the zoning map  
24 amendment application?

25 MR. FOSTER: Yes, I am.

1 MR. GORDON: And are you familiar  
2 with the surrounding area, and the CMA application  
3 materials?

4 MR. FOSTER: Yes, sir, I am.

5 MR. GORDON: Sara, could you please  
6 bring up Exhibit 96? Thank you.

7 Mr. Foster, what does this image  
8 illustrate?

9 MR. FOSTER: This image is the  
10 zoning map arial of the subject property outlined  
11 in blue. And it also shows the surrounding  
12 properties and road network in the area.

13 MR. GORDON: And can you please  
14 describe the existing conditions and the  
15 surrounding vicinity of the subject property?

16 MR. FOSTER: Sure. Just to orient  
17 everyone, the gray areas are typically the roads,  
18 the one going east west or right to left is  
19 Suitland Parkway. The purplish line going from  
20 lower left to the top is the -- is the beltway.  
21 And the other large gray line running across the  
22 site is Pennsylvania Avenue. The area -- the  
23 large gray area to the south, you can see the  
24 runways, its Andrews Air Force Base. The subject  
25 property is a split zoned, and what we -- I think

1 zoom in with one of the other zoning maps we'll be  
2 able to see that a little clearer.

3 MR. GORDON: Okay.

4 MR. FOSTER: That exhibit is the --  
5 the zoning map.

6 MR. GORDON: Yeah, can we do it  
7 with the concept plan? Does that work, because  
8 that kind of shows as well.

9 MR. FOSTER: Yeah.

10 MR. GORDON: Could we do Exhibit  
11 73, please, Sara?

12 MR. FOSTER: So yeah, this is  
13 the -- well, actually is the zoning map available?  
14 Because I really need to --

15 MR. GORDON: Oh --

16 MR. FOSTER: -- describe the area.

17 MR. GORDON: -- maybe 77. Sorry.

18 MR. FOSTER: Yeah.

19 MR. GORDON: Or do you want the  
20 aerial?

21 MR. FOSTER: Don't we have a color  
22 of the zoning map somewhere?

23 MR. GORDON: Maybe it's the 78. I  
24 don't know which one. Try that. No.

25 MR. FOSTER: That's

1 (indiscernible).

2 MR. MCSWEENEY: It's Exhibit 96.

3 MR. GORDON: But that's the --  
4 that's the one we just had that's zoomed out.

5 MR. MCSWEENEY: The current zoning  
6 map is 13.

7 MR. FOSTER: Okay.

8 MR. GORDON: It's not going to give  
9 you the color. But why don't we just work from  
10 the --

11 MR. FOSTER: Sure. The surrounding  
12 areas -- well, currently, I think, we previously  
13 talked about what was on this site, which is  
14 basically contractors yards that are being cleaned  
15 up. The larger RSFA property to the northwest of  
16 the subject property is wooded, it is owned by  
17 PEPCO, it's currently not being used. The area is  
18 along Suit Road to the opposite side of Suit Road  
19 from the subject property are zoned RSF 95, and is  
20 currently single family detached houses along  
21 there. Some of those houses are being used for  
22 some -- other than residential uses, it looks like  
23 on site with a couple of businesses operating out  
24 of there. And then the areas along Forestville  
25 Road to the east of the subject property are all

1 zoned IE, and are industrial uses which would  
2 certainly be appropriate for the location adjacent  
3 to Andrews Air Force Base.

4 MR. GORDON: Okay. And have you  
5 analyzed the suitability of the subject property  
6 for satisfying the required findings under section  
7 27 3601E of the Prince George's County Zoning  
8 ordinance?

9 MR. FOSTER: I have.

10 MR. GORDON: And what does that --  
11 what's the standard for a zoning map application?

12 MR. FOSTER: The standard for a  
13 zoning map amendment application there's basically  
14 three, you know, in determining whether to adopt  
15 or disapprove a proposed zoning map amendment, the  
16 District Council may include many factors. But no  
17 zoning map should be -- amendment shall be granted  
18 without the application demonstrating either that  
19 there's been a substantial change in the character  
20 of the neighborhood, that there was a mistake in  
21 the original zoning for the land, and subject to  
22 the amendment which has never been a subjected of  
23 an adopted sectional map amendment, or there was a  
24 mistake in the current sectional map amendment.

25 And in this case, I think number three

1 applies to this property.

2 MR. GORDON: And what was the most,  
3 I guess, current sectional map amendment for the  
4 property?

5 MR. FOSTER: That was the 2021  
6 countywide sectional map amendment.

7 MR. GORDON: And what changes were  
8 made through that process to the property?

9 MR. FOSTER: That sectional map  
10 amendment was basically used to implement the --  
11 the new zoning codes, so it translated all of the  
12 old zoning classifications to the new zoning  
13 classifications in the county.

14 MR. GORDON: And that's reflected  
15 on what the changes that were made on the screen  
16 right now, on Exhibit 13?

17 MR. FOSTER: That is correct.

18 MR. GORDON: Okay. And have you  
19 analyzed the historical basis for this split  
20 zoning that's reflected on the screen?

21 MR. FOSTER: I have.

22 MR. GORDON: And what was sort of  
23 the genesis of the split zoning for the property?

24 MR. FOSTER: It originated back in  
25 1985 with the Suit/and-District Heights Master

1 Plan of the sectional map amendment, and that  
2 basically, on the highways plans, are a part of  
3 that master plan designated Suit Road as a part of  
4 a future interchange for getting onto Suitland  
5 Parkway. And I think we probably have a --

6 MR. GORDON: Yeah.

7 MR. FOSTER: -- exhibit that --

8 MR. GORDON: Sara, could you please  
9 bring up Exhibit 86? Okay.

10 And are you familiar with this  
11 document?

12 MR. FOSTER: Yes. This is part of  
13 the 1985 Suit/and-District Heights Master Plan.

14 MR. GORDON: Could you go to the  
15 next page, Sara, please? I guess the maps all --  
16 it's not oriented correctly. You know what to  
17 make it easier I think I'm just going to go to,  
18 let's see, it would be, for the exhibit, I think  
19 we have it as part of the community meeting  
20 presentation. So it should be Exhibit 8, but then  
21 it will be page 49.

22 Are you familiar with this  
23 document, Mr. Foster?

24 MR. FOSTER: Yes, I am.

25 MR. GORDON: Okay. And can you --



1 what does this document illustrate?

2 MR. FOSTER: This document  
3 illustrates the number of parts of the 1985 Master  
4 Plan put into one exhibit. In the upper left-hand  
5 corner, from the circulation transportation  
6 section, it talks about the intersection of  
7 Suitland Parkway and Forestville Road. And the  
8 Suit Road is to be used as a -- as the on-ramp,  
9 basically, to Suitland Parkway.

10 In the upper right hand corner is part of  
11 that exhibit, and it shows Capital Beltway,  
12 Forestville Road, Suitland Parkway to the bottom.  
13 And in red it generally shows where Suit Road is  
14 and that -- where it's going to become the on-  
15 ramp, basically, to Suitland Parkway. And that  
16 basically is the genesis of the zoning map that's  
17 in front of you.

18 It shows that curved line on the subject  
19 property with R80 on one side, and I1 on the  
20 other, the center line of the road was the split  
21 between the zoning. And then R80 was going to  
22 tend to be a buffer for the residential areas to  
23 the northwest and the industrial to the east.

24 MR. GORDON: And Mr. Foster, have  
25 you reviewed the preliminary planned subdivision

1 4-96112?

2 MR. FOSTER: Yes, I have.

3 MR. GORDON: And did you -- did  
4 staff and/or the planning board make any findings  
5 relative to the Suit Road extension as a part of  
6 that application?

7 MR. FOSTER: Yes, they did. And  
8 what they found was after referrals to the Federal  
9 Government -- let's see, do we have that as an  
10 exhibit?

11 MR. GORDON: Yeah. Can we --

12 MR. FOSTER: Sorry.

13 MR. GORDON: -- do, let's see, I  
14 believe the staff report is Exhibit -- let's see,  
15 hearing resolution --

16 MR. MCSWEENEY: 64.

17 MR. GORDON: Is it 64? Not that  
18 staff report. The --

19 MR. MCSWEENEY: Oh, 94 the -- for  
20 the --

21 MR. GORDON: Yeah, for the  
22 resolution

23 MR. MCSWEENEY: It would be page  
24 496.

25 MR. GORDON: Yeah, 94, please.

1 Thank you.

2 MR. FOSTER: It should be about --

3 MR. GORDON: And it's --

4 MR. FOSTER: -- page 5 then.

5 MR. GORDON: Yeah, if you go back  
6 one page maybe, for this transfer, okay.

7 MR. FOSTER: Yeah, well, basically  
8 what's -- what's in that exhibit is the resolution  
9 for the preliminary plan was submitted for the  
10 subject property. And staff concluded that based  
11 off feedback from the Federal Government, all  
12 other agencies "while the expanded reconfiguration  
13 at Suitland Parkway and Rena Road interchange will  
14 remain in the Suit/and-District Heights Master  
15 Plan until superseded. Transportation staff  
16 believes that there is virtually no chance that  
17 the interchange will be constructed as shown on  
18 the plan".

19 So they basically determined  
20 that -- that what was shown in the District  
21 Heights Suitland master plan was no longer viable  
22 and would not be built.

23 MR. GORDON: And as part of the  
24 planning board's approval of this preliminary plan  
25 did they continue to reserve, or did they require

1 reservation of land for the Suit Road to be  
2 extended?

3 MR. FOSTER: They did not.

4 MR. GORDON: Okay.

5 And then, Sara, could you please  
6 pull Exhibit, let's see, 87?

7 Mr. Foster, are you familiar with  
8 this document?

9 MR. FOSTER: I am, this is the  
10 Subregion 4 Master Plan approved in 2010.

11 MR. GORDON: And have you analyzed  
12 it relative to the subject property?

13 MR. FOSTER: I have.

14 MR. GORDON: And what  
15 recommendations, if any, did the 2010 Subregion 4  
16 Master Plan make regarding the subject property?

17 MR. FOSTER: Well, the  
18 transportation map, which, I think, is probably at  
19 the very end of that document, it clearly shows  
20 that the interchange where Suit Road extended at  
21 Suitland Parkway is not included in the highways  
22 master plan section of Subregion 4 Master Plan.  
23 But the split zoning of the property was still  
24 shown in the sectional map amendment as part of  
25 this master plan update.

1 MR. GORDON: Okay. So it  
2 removed -- it eliminated the transportation  
3 recommendation to extend Suit Road through the  
4 property?

5 MR. FOSTER: Yes. It removed that,  
6 but it -- as part of the activity -- sectional map  
7 amendment that implemented the Subregion 4 Master  
8 Plan of the subject property did not change the  
9 zoning. It did change zonings to properties  
10 around us, so clearly there was some analysis of  
11 this area, but it did not change the subject  
12 property.

13 MR. GORDON: And to the -- what are  
14 some of the zoning changes that it made  
15 surrounding the property? And I guess it may be  
16 easier to go look at Exhibit -- I thought it was  
17 9, I guess it's not 9. But the -- the current  
18 zoning map, Exhibit 13, for that discussion.

19 Yeah, like, for the properties to  
20 the northwest, and then any of the surrounding  
21 properties, what changes, if anything, did it --

22 MR. FOSTER: Right, so --

23 MR. GORDON: -- did that --

24 MR. FOSTER: -- so the properties  
25 to the northwest, the PEPCO property, it was -- it

1 was zoned R80 at the time, and it was then changed  
2 to RT. So it was rezoned to townhouses, and I  
3 think they talked about it being a buffer, really,  
4 between the industrial areas of Forestville Road,  
5 and the residential areas to the north. And then  
6 there were also properties to the east of us that  
7 were rezoned to I1 industrial.

8 MR. GORDON: The ones, the lots  
9 that are fronting on Forestville?

10 MR. FOSTER: Yes.

11 MR. GORDON: Okay. And in your  
12 evaluation of the various master plans -- I'm  
13 sorry, let me go back.

14 Can you please, the document now  
15 that I'd like to pull up, of course I got to look  
16 at what was the exhibit. It would be, let's see,  
17 Exhibit 59. I think it's an attachment to the  
18 justification statement, and it's page 344.

19 Are you familiar with this  
20 document, Mr. Foster?

21 MR. FOSTER: Yes, I am.

22 MR. GORDON: And what does this  
23 document illustrate?

24 MR. FOSTER: This was the notice  
25 for the hearings for the countywide map amendment

1 that was to implement the new zoning code -- well,  
2 the zoning classifications for the properties in  
3 Prince George's County for the new zoning code.

4 MR. GORDON: Okay.

5 And could you go to the next page,  
6 Sara, please?

7 And what was the intent in terms of  
8 the application of new zoning -- of the new zoning  
9 classifications on account of what basis?

10 MR. FOSTER: The intent was to  
11 translate, basically, a direct translation from  
12 the old zoning code to the new zoning code of  
13 zoning classifications for all properties in  
14 Prince George's County.

15 MR. GORDON: And so with that in  
16 the instance of this subject property, the zoning  
17 that they were translating would have been based  
18 on the 2010 Master Plan?

19 MR. FOSTER: Yes, it would.

20 MR. GORDON: Okay. And were  
21 your -- in your opinion were the assumptions  
22 underlying the 2010 Master Plan's recommendations  
23 correct?

24 MR. FOSTER: No, they were not,  
25 because they didn't take into account the fact

1 that the interchange, Suit Road extended, was  
2 removed from the master plan of highways, and that  
3 was not reflected in the changes on the subject  
4 property.

5 MR. GORDON: And is it -- in your  
6 review of the 2010 Master Plan, is it clear that  
7 they were aware -- that the Council was aware of  
8 these facts at that time?

9 MR. FOSTER: Yes.

10 MR. GORDON: And have you reviewed  
11 the planning staff report and their  
12 recommendations to the planning board?

13 MR. FOSTER: Yes, I have.

14 MR. GORDON: And do you know what  
15 their conclusions were relative to whether there  
16 was a mistake in the most recent sectional map  
17 amendment?

18 MR. FOSTER: Yes, they -- they also  
19 concluded in the staff report that they thought  
20 there was a mistake in the most recent countywide  
21 sectional map amendment.

22 MR. GORDON: Could we pull up --  
23 let me just make sure, more exhibits. Exhibit 73,  
24 the concept plan again, please.

25 And Mr. Foster, what does this



1 exhibit illustrate in terms of the various design  
2 details?

3 MR. FOSTER: It's a general  
4 illustration of how the property would be  
5 redeveloped showing landscape buffers that would  
6 be appropriate for redevelopment of the property,  
7 and then, basically creating a cul de sac at the  
8 end of Suit Road to terminate the public right of  
9 way where it's no longer going to continue over to  
10 Suitland Parkway.

11 MR. GORDON: And do those landscape  
12 buffers exist today?

13 MR. FOSTER: They do not.

14 MR. GORDON: Okay. In your opinion  
15 will approval of this zoning map amendment be  
16 detrimental to the public health, safety, and  
17 welfare?

18 MR. FOSTER: No, it will not,  
19 actually. I think it's probably beneficial to the  
20 public interests for the health, safety, and  
21 welfare of the public. One, because they're --  
22 you're cleaning up the site to begin with. And  
23 you know, we're -- we're no longer having  
24 residential -- you know, less residential in an  
25 airport noise zone area, so I mean I think that's

1 definitely in the public interest as well.

2 MR. GORDON: And on that point have  
3 you evaluated the suitability of this RSF 95 zone  
4 portion of the site for residential uses?

5 MR. FOSTER: I have.

6 MR. GORDON: And what were your  
7 findings on the feasibility of adding residential  
8 uses?

9 MR. FOSTER: Well, the -- the shape  
10 of the property certainly does not make it helpful  
11 for residential redevelopment. The fact that  
12 there's a cleanup of environmental concerns on the  
13 site that are going to preclude residential in  
14 this area, and the fact that it's within the  
15 military noise zone is another reason why it would  
16 not be very suitable for residential.

17 MR. GORDON: And what about the  
18 property that RSF 95 zone, its proximity to  
19 Suitland Parkway and then the -- I think you said  
20 to the northwest, the vacant properties owned by  
21 PEPCO, how does that relate to suitability for  
22 residential uses?

23 MR. FOSTER: Right. Well, you  
24 know, again we'll have noise issues along Suitland  
25 Parkway, so that's, you know, another impingement

1 on doing residential. And at this point we don't  
2 really know what PEPCO is going to be doing  
3 with -- with their property up there.

4 MR. GORDON: And did the 2010  
5 Master Plan make any more general recommendations  
6 about preserving industrial uses?

7 MR. FOSTER: Yes, there were a  
8 number of recommendations about preserving and  
9 industrial uses, and this portion of Prince  
10 George's County is an important part of the 2010  
11 Master Plan.

12 MR. GORDON: Okay. So is it your  
13 opinion that there were facts available to the  
14 Council in 2010 that would have allowed for this  
15 property to be comprehensibly rezoned for  
16 industrial?

17 MR. FOSTER: Yes, I do.

18 MR. GORDON: Thank you, Mr. Foster.

19 That's all I have for him, Madam  
20 Examiner, People's Zoning Counsel.

21 MS. MCNEIL: Mr. Brown, just before  
22 you -- unless -- I just -- I want to do something  
23 with this exhibit that's up, the concept plan. Is  
24 that okay, or do you have questions about it as  
25 well?

1 MR. BROWN: Oh no, you can go  
2 ahead.

3 MS. MCNEIL: Okay. Mr. Foster, the  
4 landscape buffer shown on this concept plan, are  
5 these the ones that would be required under the  
6 current landscape manual?

7 MR. FOSTER: Yes, that is my  
8 understanding.

9 MS. MCNEIL: Okay. Does the  
10 current general plan have any recommendations as  
11 to industrial uses within this area or within the  
12 County?

13 MR. FOSTER: Yes, the -- I think  
14 the general plan did have recommendations for  
15 reporting and strengthening industrial uses within  
16 this area if we can.

17 MS. MCNEIL: Okay. And then  
18 lastly, if it -- whenever you all go to permit,  
19 will you also be required to meet any neighborhood  
20 compatibility standards to protect the residential  
21 uses to the, what is that, west?

22 MR. FOSTER: Yes, we will have to  
23 comply with the neighborhood compatibility  
24 standards in the new zoning code.

25 MS. MCNEIL: Wait, I did have one

1 more. I shouldn't have said lastly. And I know  
2 in the record this is spelled out but I wanted to  
3 get it from you as well. You could not rezone in  
4 this manner if this property lied within the MIO  
5 safety zones, so does it fall within the safety  
6 zone?

7 MR. FOSTER: This is just outside  
8 of that safety zone.

9 MS. MCNEIL: Okay. Thank you.

10 Mr. Brown.

11 MR. BROWN: Yes, Mr. Foster, as I  
12 understand your argument, I'm looking at page 18  
13 of the technical staff report, which is identical  
14 to the exhibit that's up in front of us, that  
15 shows the current zoning for this property is RSF  
16 95, and the IE zone; is that correct?

17 MR. FOSTER: Yes.

18 MR. BROWN: And that's subject to  
19 the new countywide map amendment. And the prior  
20 zoning prior to the 2021 and 2022 final adoption,  
21 zoning for this property was R80 and I1, correct?

22 MR. FOSTER: Correct.

23 MR. BROWN: All right. And so the  
24 mistake is, as you allege and the staff concurred  
25 with, is that the District Council was not aware

1 of the removal of the roadway project from the  
2 2010 Master Plan, and as it may when they adopted  
3 the county wide map amendment, correct?

4 MR. FOSTER: Correct.

5 MR. BROWN: And you conclude that  
6 the countywide map amendment is the most recent  
7 sectional map amendment that would then make the  
8 change or mistake argument, item number 3 which  
9 you based your argument on, there was a mistake in  
10 the current sectional map amendment; is that  
11 correct?

12 MR. FOSTER: That's correct.

13 MR. BROWN: And I know you're not  
14 aware of this, however, yesterday the Appellate  
15 Court of Maryland issued an opinion on a Maryland  
16 zoning case entitled County Council of Prince  
17 George's vs. Robin Dale Land LLC, et al, for four  
18 properties which did not get the property that  
19 they thought was most similar to their prior zone.  
20 It's an 87 page opinion, and I can email it to you  
21 and your attorney so that you can review it later.  
22 But essentially what the Court said is the 2021  
23 and adopted 2022 countywide map amendment is not a  
24 sectional map amendment. They have concluded that  
25 the countywide map amendment was no more, and I

1 won't quote the exact language. I'll just  
2 paraphrase.

3                   In summary, the District Council  
4 points to nothing in the legislative history of  
5 the prior resolution that suggests that hundreds  
6 of thousands of zoning reclassifications  
7 implemented by the resolution countywide map  
8 amendment were based on the criteria identified by  
9 our Supreme Court as the hallmarks of  
10 comprehensive rezoning. Nor were those  
11 reclassifications based upon a consideration of  
12 the statutory criteria for sectional map  
13 amendments set out in the County's Zoning  
14 Ordinance. Additionally, the District Council  
15 points to nothing in the legislative history of  
16 the countywide map amendment that supports the  
17 sets that the term has been used in Maryland  
18 appellate opinions.

19                   And then finally they concluded,  
20 neither the District Council, the planning board,  
21 nor their respective staffs need the hundreds of  
22 thousands of zoning reclassifications from the  
23 countywide sectional map as anything other than a  
24 technical non-substantive process.

25                   The point being, since your

1 argument is based upon what is now, as of  
2 yesterday, no longer the most recent sectional map  
3 amendment 2021, 2022, your argument must be  
4 revised to find a mistake. And I guess I have to  
5 ask you the question, was 2010 the most recent  
6 master plan sectional map amendment that affected  
7 this property if we agree for the sake of  
8 argument, based upon this new case, that the 2021  
9 countywide map amendment is not a sectional map  
10 amendment?

11 MR. FOSTER: Yes. The 2010  
12 Subregion 4 Master Plan and sectional map  
13 amendment would then be the most recent.

14 MR. BROWN: And so my question then  
15 to you is, and I think you'll agree, your mistake  
16 argument that the District Council either was not  
17 aware or did not take into consideration the  
18 removal of the subject roadway that was supposed  
19 to bisect this property. They did not take that  
20 information into consideration in 2010 as well; is  
21 that correct?

22 MR. FOSTER: That is correct.

23 MR. BROWN: I know there is a  
24 provision in the zoning ordinance that requires a  
25 time period for the mistake argument, I think it



1 may be six years or so but I don't recall exactly  
2 what it is, but you don't know yourself whether or  
3 not if we look at 2010 SMA as the critical SMA  
4 it's not barred by a time period exclusion, is it?

5 MR. FOSTER: I do not know.

6 MR. BROWN: Madam Examiner -- go  
7 ahead, Mr. Gordon.

8 MR. GORDON: I was just going to  
9 say to clarify for the record, we were arguing in  
10 the alternative, that the 2010 Master Plan, there  
11 was a mistake made there, and that the 2021 SMA,  
12 the mistake was further compounded and it was  
13 predicated on that. And we were aware of the  
14 District Council's decision, I think from earlier  
15 this year, denying a ZMA and saying that the  
16 current sectional map amendment was 2021.

17 And I agree that it really is the  
18 sectional map amendment, in this case, 2010, that  
19 that's where the mistake was made, but we wanted  
20 to argue in the alternative given the District  
21 Council's decision, their basis.

22 MR. BROWN: All right. Yeah, I  
23 mean I think that's what you're going to have to  
24 do. It's really the 2010 SMA.

25 But Mr. Foster, I may have heard

1 you incorrectly, but I thought I heard you say  
2 that it was your opinion the District Council was  
3 not aware of the removal of the subject roadway  
4 from the 2010 Master Plan and SMA. Should it be  
5 the opposite, that they were aware?

6 MR. FOSTER: Well, the 2010  
7 Sectional Map Amendment is where the interchange  
8 was taken out of the highway's planning --

9 MR. BROWN: Right.

10 MR. FOSTER: -- but yet -- but yet  
11 the zoning was not changed to reflect that.

12 MR. BROWN: All right. Just so  
13 we're clear, was the roadway project taken out of  
14 the Master Plan and SMA prior to the adoption of  
15 the master plan SMA? I know they were both done  
16 in 2010, but was it before or after the adoption  
17 of the 2010 SMA?

18 MR. FOSTER: It was done before.

19 MR. BROWN: All right. And you  
20 don't have to give it to me right now, but if you  
21 could find the exact date that that was removed,  
22 that would be helpful, because that would go to  
23 the issue of whether or not the District Council  
24 was aware of that fact, if it existed, when they  
25 adopted the 2010 master plan and SMA.

1 MR. FOSTER: Okay.

2 MS. MCNEIL: Wait a second. Just  
3 for my clarification. So you wanted to know the  
4 exact date that it was removed from the master  
5 plan of transportation?

6 MR. BROWN: Correct, from the  
7 functional maps plan, right.

8 MR. GORDON: And if we pull up -- I  
9 guess, the technical staff report is Exhibit 64,  
10 and then, let's see if I can find the reference.

11 (Pause)

12 MR. GORDON: If you go to page 11  
13 of the staff report. In the second paragraph,  
14 just for the record, we would just offer that the  
15 last sentence of the second paragraph states that  
16 the 2009 approved county wide master plan of  
17 transportation does not recommend the extension of  
18 Suit Road. And then that was reconfirmed by the  
19 2010 Subregion 4 Master Plan.

20 MS. MCNEIL: And it's also  
21 mentioned, as they -- and they cited it in the  
22 planning board resolution --

23 MR. BROWN: Yeah, I see it.

24 MS. MCNEIL: -- preliminary plan.

25 MR. BROWN: Yeah, I see it. All

1 right. So just for the record, you guys are  
2 stipulating that the 2010 Sectional Map Amendment  
3 is the applicable plan that we will be evaluating  
4 in the state, correct?

5 MR. GORDON: Correct. It's --

6 MR. FOSTER: Correct.

7 MR. BROWN: And would you also not  
8 stipulate that on page 9 of the staff report, the  
9 initial arguments you made concerning remediation  
10 of preexisting environmental factors, and the  
11 other two bullet points there are not applicable  
12 for a change of a state argument in this case,  
13 correct?

14 MR. GORDON: Correct, we agree.  
15 We've just -- that's public interest, the general  
16 public health, safety, welfare for background.

17 MR. BROWN: All right.

18 MS. MCNEIL: And it's required  
19 elsewhere in that section 3601. Staff just  
20 didn't -- just glossed over that fact.

21 MR. GORDON: Yes, I agree.

22 MR. BROWN: All right. No other  
23 questions. Thank you.

24 MR. GORDON: Can I just, really  
25 quickly?

1                   So Mr. Foster, so in 2010 when the  
2 Council was reviewing the Subregion 4 Master Plan,  
3 there was evidence that they were aware that this  
4 roadway was no longer recommended for being  
5 continued through the subject property?

6                   MR. FOSTER: Yeah, the 2009 master  
7 plan of highways had already been --

8                   MR. GORDON: Yeah.

9                   MR. FOSTER: -- updated to not show  
10 it.

11                  MR. GORDON: Okay. So there is  
12 evidence that they understood that, and then  
13 again, what was your finding on the basis for the  
14 split zoning that was in effect when they were  
15 looking at the 2010 Master Plan?

16                  MR. FOSTER: The basis for the  
17 split zoning was based on the 1985 Master Plan  
18 that laid out the -- the interchange from Suit  
19 Road.

20                  MR. GORDON: Okay. And so there  
21 were -- there were facts -- it was reasonably  
22 foreseeable, and that there were facts that  
23 existed at that time to indicate to the Council  
24 that the basis for the split zoning was no longer  
25 relevant?

1 MR. FOSTER: That's correct.

2 MR. GORDON: Okay.

3 Nothing further.

4 MS. MCNEIL: Ms. Rawlings-Windsor,  
5 you can take down the exhibits. Thank you.

6 So anything in closing, or any  
7 other witnesses?

8 MR. GORDON: That's all we have.  
9 And I appreciate your time. And we will -- again,  
10 we agree with the planning board's findings, and I  
11 appreciate the People's Zoning Counsel bringing up  
12 that opinion that I wasn't aware of. Who can keep  
13 up with all the different zoning cases and  
14 opinions that seem to be going on these days.

15 But we -- in general, we argue that  
16 the 2010 Master Plan, there was an error made at  
17 that time, and then that error in 2021 it just  
18 continued. And I'm not aware of any time basis  
19 that limits this application under the zoning  
20 ordinance or common law or the state law.

21 So I think we meet the criteria  
22 that there was a mistake because this roadway was  
23 the whole basis for the split zoning, and the  
24 Council made decisions in 2010 by rezoning the  
25 property to the west of us, the PEPCO owned

1 properties to allow for townhouses as the  
2 residential buffer. So there was no longer any  
3 need for this portion, the RSF 95 portion of the  
4 site to serve as a buffer. And it would be in the  
5 public interest to allow the applicant to complete  
6 it's clean up, and have the whole site  
7 comprehensively rezoned IE so that modern  
8 environmental standards can be met, and landscape  
9 buffers can be provided, and just a more cohesive  
10 development can occur that will be more compatible  
11 with the surrounding properties.

12 MS. MCNEIL: Okay. Well, we are  
13 leaving the record open for the certificate of  
14 good standing. And if you think you can do that  
15 in a week, if you also want to submit anything in  
16 writing as a legal argument based on that new  
17 decision, I'm not saying you have to, but none of  
18 us have read the entire 87 pages yet, so I would  
19 leave the record open for that as well if you  
20 would like to submit anything. If you see any  
21 reason --

22 MR. GORDON: Sure.

23 MS. MCNEIL: -- it should be  
24 addressed.

25 MR. GORDON: I think we can get the

1 certificate by the end of the week. So I --

2 MR. MCSWEENEY: We already have it,  
3 actually.

4 MR. GORDON: Okay. So we can --

5 MS. MCNEIL: Thanks for --

6 MR. GORDON: Show off.

7 MS. MCNEIL: -- all your work, Mr.  
8 McSweeney.

9 MR. GORDON: He's showing off  
10 again.

11 All right. So we'll provide that,  
12 and then if you want to keep the record open until  
13 even just Monday, I think that will give us enough  
14 time to review the decision, and see if we want to  
15 put something short and succinct in writing  
16 relative to that.

17 MS. MCNEIL: Okay. And I thank you  
18 all for being here today. And the record will  
19 close when we receive those items. And have the  
20 rest of your summer a nice summer. Hopefully not  
21 too hot.

22 MS. SMALLWOOD: Madam Hearing  
23 Examiner?

24 MS. MCNEIL: Yes, ma'am.

25 MS. SMALLWOOD: Hello, I'm a



1 participant, my name is Ms. Smallwood, I'm a  
2 resident of Suit Road. And I appreciate being  
3 able to attend this hearing. It was very  
4 informative today. And I just wanted to inquire  
5 about the activities in terms of the environmental  
6 cleanup. The -- I heard about the voluntary  
7 cleanup program that they are participating in.  
8 And I'm specifically interested not only because  
9 of the environment but more so that because I live  
10 adjacent to the property, like right next door.  
11 Since November --

12 MR. BROWN: Madam Examiner --

13 MS. MCNEIL: Wait, wait, wait one  
14 second, Ms. Smallwood. When we started I asked if  
15 anyone was opposed because folks that are opposed  
16 have a right to question the witnesses.

17 MS. SMALLWOOD: Yes. I'm not  
18 opposed -- I'm not opposed --

19 MS. MCNEIL: Okay.

20 MS. SMALLWOOD: -- I just wanted to  
21 make a statement. I'm not -- I'm not --

22 MS. MCNEIL: Well, wait a minute,  
23 wait a minute.

24 MS. SMALLWOOD: I'm sorry.

25 MS. MCNEIL: And to make a

1 statement, I just need to swear you, and you need  
2 to come on camera.

3 MS. SMALLWOOD: Oh, okay. Yes,  
4 ma'am. Okay.

5 MS. MCNEIL: Hi there.

6 MS. SMALLWOOD: Hello.

7 MS. MCNEIL: Do you swear or  
8 affirm, under penalties of perjury, that the  
9 testimony you shall give will be the truth and  
10 nothing but the truth?

11 MS. SMALLWOOD: Yes, I do.

12 MS. MCNEIL: Okay. Start by giving  
13 us your address, and then you can proceed.

14 MS. SMALLWOOD: Hi, my address is  
15 4020 Suit Road, District Heights, Maryland 20747.

16 MS. MCNEIL: And what would you  
17 like to tell me about this application and your  
18 concerns, if any?

19 MS. SMALLWOOD: My concerns are  
20 that in my area I have been -- in my -- excuse me.  
21 In my residence, in my -- on my property I have  
22 been experiencing vibration underground, and it's  
23 been affecting the floors of my home whereby I  
24 feel vibration throughout my entire home. And I  
25 also feel it, you know, day and night, night and

1 day. And I'm just wondering, in terms of the  
2 environmental cleanup or whatever is happening in  
3 this particular area, does that have anything to  
4 do with the vibration that I've started to feel  
5 since November of 2022?

6 MS. MCNEIL: So Mr. Gordon, do you  
7 have any witnesses that can testify as to the  
8 impact that the remediation might have on adjacent  
9 properties?

10 MR. GORDON: I don't, unless Mr.  
11 Berger can testify, generally, what it entails.  
12 But I would just put on the record that I've  
13 spoken with Ms. Smallwood a number of times. She  
14 attended our community meeting, and I've reached  
15 out to DPIE to kind of try to see, and I think she  
16 may have spoken with them about things that are  
17 not this property but surrounding utilities and  
18 construction work.

19 And so we've had Mr. Berger go to  
20 the site a number of times to see if there's,  
21 like, unauthorized activities occurring on the  
22 site, and we're sort of stumped. We don't think  
23 it has anything to do with this property because  
24 it has been vacant for two years. And I think the  
25 remediation is pretty limited to taking samples

1 from the soil. It's not an intensive kind of  
2 industrial activity. But we could probably  
3 supplement the record with something in writing  
4 from the consultant on what that entails if that  
5 would be helpful.

6 MR. BERGER: That's correct, just  
7 to piggyback off what Matt said. We haven't -- we  
8 have not started any work on the site other than,  
9 you know, what we previously discussed as our --  
10 our cleanup efforts which -- which were done long  
11 ago.

12 MR. GORDON: And you say -- when  
13 you say cleanup efforts, you mean not the MD  
14 voluntary --

15 MR. BERGER: Correct.

16 MR. GORDON: -- you mean just  
17 removing debris --

18 MR. BERGER: Debris.

19 MR. GORDON: -- and stuff like  
20 that?

21 MR. BERGER: Removing -- removing  
22 debris, correct.

23 MR. GORDON: So I think the  
24 voluntary clean -- we have to -- I guess Suit &  
25 Forest OI, LLC has been preliminary accepted into

1 the program, and they have to go through some more  
2 steps, and then MD will say, here are the actions  
3 that you take to complete the program, if that  
4 makes sense.

5 So they haven't been doing any of  
6 those activities to date that would have resulted  
7 in any impacts to neighboring properties.

8 MS. MCNEIL: Does the program  
9 require you to notify adjacent property owners in  
10 any way of what you're doing?

11 MR. BERGER: We would --

12 MS. MCNEIL: MDE program I mean.

13 MR. BERGER: As far as the  
14 voluntary cleanup program, I believe there are  
15 requirements to -- for posting signage.

16 MR. GORDON: And I would just --  
17 I'll put on the record we're happy to -- we'll put  
18 some regular mail, email, we're going to continue  
19 to keep Ms. Smallwood up to date. So whenever  
20 they get their plan approved, and what that  
21 entails we can send her information and say,  
22 here's what the contractors are going to be doing,  
23 when they're going to be there. That's not an  
24 issue.

25 MS. MCNEIL: Mr. Brown, do you have

1 anything?

2 MR. BROWN: I don't. Thank you.

3 MS. MCNEIL: Okay. So Ms.  
4 Smallwood, at this point Counsel has proffered and  
5 they will keep you in the loop on what they're  
6 doing. And they're stating that nothing they've  
7 done thus far should have affected the grounds,  
8 sub grounds to the degree that it would have  
9 impacted your property.

10 MS. SMALLWOOD: Okay. Thank you.  
11 I heard the statement there. I just wanted it to  
12 be officially on the record because there is  
13 activity in the neighborhood, in the area of their  
14 property, and I'm not sure if it's on their  
15 property or not, but it's -- it's back there where  
16 their property is.

17 So again, I'm just stating for the  
18 record that there is activity, and I'm not sure if  
19 they're aware of it. Just by driving on the  
20 streets or around just looking, you will not be  
21 able to see, but if someone would go back there to  
22 look.

23 And I'll just continue to follow-up  
24 with DPIE, and others to solve this great mystery,  
25 because I have done what I consider my due

1 diligence by having master electricians, plumbers,  
2 and others to come to my property to see if  
3 there's something wrong here so that, if so, then  
4 I can correct it. But that has not -- the  
5 findings have been no, there's nothing wrong  
6 because at certain times this vibration stops, it  
7 shuts off. But that's very few times, because  
8 most days and nights it's running all day, all  
9 night, and it's very annoying, and not only that  
10 the feeling that it creates in my body and through  
11 my legs and stuff as I'm sitting on my furniture  
12 or either lying in my bed, which is very few times  
13 that I can lie down because it's a -- it's an  
14 annoying feeling.

15                   So I just want to go on the record  
16 to say that there's something going on around here  
17 that is beyond a residential living. And I just  
18 wanted to make that a point for today's call.

19                   So thank you very much, I  
20 appreciate that. But the quest continues,  
21 especially for me, because I'm dealing with this,  
22 and it's -- it's very annoying. It's affecting my  
23 quality of life, my enjoyment, my peace, and the  
24 noise level -- it sounds like a construction zone  
25 going on, especially at night. But again,

1 somehow, someday it will be resolved. I've got to  
2 figure out a way to get somebody out here to  
3 figure out what's going on.

4 MS. MCNEIL: Okay. Well, I'm sorry  
5 about all of that, and I appreciate you coming out  
6 today.

7 MS. SMALLWOOD: Thank you very  
8 much.

9 MS. MCNEIL: Thank you. Okay.  
10 Then the hearing is over, and we await those  
11 documents from you, Mr. Gordon.

12 And thank you all for being here  
13 today.

14

15 (Whereupon, the proceedings were  
16 concluded.)

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## 1 C E R T I F I C A T E

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3

4 I, Ashley Bennett, certify that the foregoing  
5 transcript is a true and accurate record of the  
6 proceedings.

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\_\_\_\_\_

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19 Date: August 16, 2024

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