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

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WINFIELD M. KELLY, JR. :
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A hearing in the above-entitled matter was held on
March 3, 2021, at the Prince George's County Office of
Zoning, County Administration Building, Room 2174, Upper
Marlboro, Maryland 20772 before:

Maurene McNeil
Hearing Examiner

A P P E A R A N C E S

On Behalf of the Applicant:

Russell Shipley, Esq.

On Behalf of People's Zoning:

Stan Brown

* * * * *

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P R O C E E D I N G S

1
2 MS. MCNEIL: It's very important that only the
3 people speaking should have their mikes on. It's also
4 important that you only have one thing on in your office at
5 a time with audio, so it won't mess up the recording. If
6 for any reason you have to leave the hearing, you can get
7 back in on the same link that was mailed to you; and if for
8 any reason we have to continue the hearing, we will have a
9 new link.

10 And the applicant is going to put on their case.
11 If anyone here wants to cross-examine a witness, please let
12 us know in the chat and we will call on you at the
13 appropriate time. Also, if anyone here would like to
14 testify and not the applicant's witness, put that in the
15 chat and we'll call on you at the appropriate time as well.
16 Thank you all for being here today.

17 I'm thrown off a little, though. What, my time
18 says 11:58. Am I slow?

19 COURT REPORTER: No.

20 MS. MCNEIL: Okay. So, we're starting now, but we
21 might have to just keep talking procedurally until 12:00
22 because that's the time that we told folks to come on. All
23 right, Ms. Rawlings.

24 MS. RAWLINGS: I am ready. Just to clarify any
25 confusion on exhibits, there are 25 exhibits listed and

1 marked as exhibits. There are a couple binders on there
2 also listed, so please disregard those; disregard all of
3 those, and you'll see they're numbered Exhibit 1 through 25,
4 and that's it.

5 MS. MCNEIL: Thank you, ma'am.

6 MS. RAWLINGS: You're welcome.

7 MS. MCNEIL: Okay. I apologize. If I hurry up
8 and wait, well, what I, while we're all in here, Mr.
9 Abdullah, do you think you're going to want to testify?

10 MR. ABDULLAH: Good afternoon, everyone. I'm here
11 on behalf of DPIE because, you know, the site, some
12 improvement or any development in that area is involving
13 DPIE rural 2, so I just want to, you know, share DPIE's
14 information. DPIE is a part, or whatever requirement is
15 with the group basically.

16 MS. MCNEIL: Okay. So, you will want to testify?
17 And, Mr. Meinert, Meinert, would you like to testify as
18 well?

19 MR. MEINERT: No, Madam Examiner. I'm just here
20 to observe.

21 MS. MCNEIL: Okay. You both still have the right
22 to cross-examine if anything comes up.

23 MR. MEINERT: Thank you.

24 MS. MCNEIL: And now I have 11:59. Man, time goes
25 so slowly when you want it to move. I'm going to go off for

1 one minute. See you all in a second.

2 (Recess.)

3 MS. MCNEIL: So, if counsel would identify
4 themselves for the record?

5 MR. BROWN: Stan Brown, People's Zoning counsel.

6 MR. SHIPLEY: Russell Shipley, attorney for
7 Winfield Kelly.

8 MS. MCNEIL: And, Mr. Shipley, just before you
9 start, I'm not sure that I said we're here for authorization
10 to build within a right-of-way requested by applicant,
11 Winfield Kelly, Jr., and it's within a proposed right-of-way
12 on CN zoned property located at 16200 Old Central Avenue,
13 Upper Marlboro, Maryland. And now, Mr. Shipley, you may
14 begin.

15 MR. SHIPLEY: Yes, I'm going to thank you, Madam
16 Hearing Examiner and this is my first Zoom hearing for you.
17 And everybody else, I hope I don't ruin it for everybody.
18 If I can destroy it, if I can mess up the hearing, I will
19 probably do it, but it will be accidental.

20 I represent Mr. Kelly and I terribly hope that
21 anyone Zoom call with you today will be my three witnesses,
22 Paul Woodburn from Banderas (indiscernible), civil engineer
23 (indiscernible). My next witness after him will be Mike
24 Lenhart, the traffic engineer; and my last witness will be
25 my land planner, John Ferrante.

1 My first witness will be Winfield Kelly, but
2 unfortunately, he is going to join us by telephone and he is
3 undergoing, he's probably just finishing up a, his three
4 jobs a week analysis; and he's calling from his phone. So,
5 in order to keep the hearing going, if it's okay with you, I
6 wanted to make an opening statement and then call Mr.
7 Whitmore. I'll call Mr. Kelly, call in as soon as he's
8 available, and I really would like him to be the first
9 witness, but (indiscernible) when he gets on the phone if
10 that's okay.

11 MS. MCNEIL: Mr. Shipley, because it's your first
12 Zoom hearing, I don't know if everyone else is having -- I'm
13 having trouble hearing you. So, I don't know if Ms. Taylor
14 is near you and can help turn off -- so, you, I do --

15 MR. SHIPLEY: Can you hear me better now?

16 MS. MCNEIL: Yes. Thank you. I did hear that
17 we're going to call, you going to call, Mr. Kelly is going
18 to call in at some point to testify?

19 MR. SHIPLEY: He's going to call in as soon as --

20 MS. MCNEIL: Okay.

21 MR. SHIPLEY: -- (indiscernible) which is going to
22 be momentarily hopefully. And I do want to say that I
23 appreciate you accommodating his handicap. I know you had
24 originally scheduled this for 9:00, 9:00 a.m., but to
25 accommodate him, you postpone it until 12 o'clock.

1 Well, so I want to just say to open that the
2 second property you describe is located at the southwest
3 corner of the intersection of 301 and Central Avenue, 214;
4 and I know you described its address as Upper Marlboro,
5 Maryland, but it is virtually surrounded by the city of
6 Bowie; but it's not in the city. But I had John Ferrante
7 contact Mr. Meinert when we filed this application to make
8 him aware of what we were proposing and I believe send him a
9 copy of our application, statement of (indiscernible).

10 The property is zoned, as we say, CM. Mr. Kelly
11 bought the property bought the property in the early 1960s.
12 It was already zoned C-2. It was owned, owned by a
13 gentleman by the name of Al Sears and he had a house and
14 raised his family on the property, and it had a small barn
15 on the property. He used to race horses. And he converted
16 the barn into a restaurant and a tavern. So, when Mr. Kelly
17 purchased the property in the early '60s, the tavern was
18 there and the property was already zoned commercial.

19 He remodeled the barn and made it much fancier,
20 turned it into a table-cloth style restaurant.
21 (Indiscernible) for approximately two years. It was burned
22 down in a fire. He always had trouble there. It was the
23 water was not good and the septic system did not work well,
24 and after the fire destroyed the building, when he attempted
25 to rebuild it, he found out that the property would not

1 perc. It was no available water and sewer.

2 So, actually, I didn't see one of the, Exhibit No.
3 23 is a, say, well, a couple of his tax bills. Since that
4 time, he has patiently waited for an opportunity to develop
5 the property and has not been able to do so. It was
6 subdivided by a surveyor named (indiscernible) in I believe
7 1986. Well, the subdivision application was submitted to
8 Park and Planning. Among the addressees of the application
9 was the State Highway Administration. At that time, they
10 asked for a building which (indiscernible) and I believe
11 they asked for advance back to the part of the old road, the
12 Old Central Avenue. Mr. Kelly, I believe, accommodated and
13 in 1986, the preliminary plan was approved. The
14 development, I believe, was approximately 60,000 square feet
15 of commercial property.

16 It, as I say, was not placed in reservation, a
17 small part of the property was reserved to accommodate an
18 access system to create 301 and Central Avenue in the
19 southwest quadrant of the intersection and that is on the
20 plat. I believe in 1980, or three years later, that was
21 planned and recorded; and at this time, we're attempting to
22 put up one building on the property and, of course,
23 according to the zoning ordinance, the Planning Board
24 recommends disapproval of the building permit because all or
25 a portion of the property is impacted by the County's master

1 plan to violate it. At that point, we got 30 days to appeal
2 that recommendation and ask for leave for the counsel, and
3 that we did. Mr. Kelly filed that application and refer it
4 to you for a hearing.

5 If Mr. Kelly testifies, he'll say that what he
6 wants to develop this property is important, the zoning, and
7 accommodates many future roads taking by the State Highway
8 Administration, and he has paid approximately a million and
9 a half to \$2 million in real estate taxes over the years,
10 which has created quite a hardship for him.

11 So, with that, I'd like to call my first witness,
12 Mr. Paul Woodburn.

13 Mr. Woodburn, would you state your name and
14 address?

15 MS. MCNEIL: He's forgotten, Mr. Woodburn, and
16 you, you have to unmute, Mr. Woodburn. And then do you
17 swear or affirm under the penalties of perjury that the
18 testimony you shall give will be the truth and nothing but
19 the truth?

20 MR. WOODBURN: Yes.

21 MS. MCNEIL: Thanks.

22 MR. SHIPLEY: Mr. Woodburn, by the way, you have
23 submitted a resume which is Exhibit No. 23, is that correct?

24 MR. WOODBURN: Yes.

25 MR. SHIPLEY: Now what is your full name and

1 address?

2 MR. WOODBURN: Paul Woodburn. I'm with Ben Dyer
3 Associates, site civil engineer for the project, 11721
4 Woodmore Road, Mitchellville, Maryland.

5 MR. SHIPLEY: And (indiscernible), you prepared a
6 resume of your qualifications as a civil engineer, which is
7 Exhibit No. 22.

8 Madam Examiner, I would submit Mr. Woodburn's
9 qualifications.

10 MR. BROWN: No objection.

11 MS. MCNEIL: I apologize. And I should know, Mr.
12 Woodburn, but what are you moving him as an expert in? What
13 is his area of expertise?

14 MR. WOODBURN: Civil engineering site.

15 MS. MCNEIL: Civil engineering? Thank you, Mr.
16 Woodburn. You'll be accepted as an expert in the area of
17 civil engineering.

18 MR. SHIPLEY: Mr. Woodburn, as such, you're
19 familiar with the conditions imposed by the plat of the
20 subdivision of subject property when the Planning Board
21 approved it in 1986?

22 MR. WOODBURN: Yes.

23 MR. SHIPLEY: And one of those conditions was not
24 to violate a building restriction line to show there are to
25 accommodate future road improvements at the intersection of

1 301 and 214?

2 MR. WOODBURN: Right.

3 MR. SHIPLEY: Is that correct?

4 MR. WOODBURN: There is a building restriction
5 line that was a requirement of the plat recordation, I think
6 it was plat 146 at 42. The building restriction line is, is
7 shown and recorded in the northern, I'd say central portion
8 of the property, and the proposed building restriction line
9 was adhered to with the application, the current building
10 permit application.

11 MR. SHIPLEY: Now the building in question is
12 located where on the property?

13 MR. WOODBURN: The building is, I would say, south
14 central portion of Parcel A of the property.

15 MR. SHIPLEY: And how, how many square foot, feet
16 is in that building?

17 MR. WOODBURN: It is around, I don't have that
18 exactly right in front of me, 16,000 square feet, I believe,
19 is that correct? It's a little over 16,000 square feet of
20 the total proposed subdivision, which is around 60,000
21 square feet.

22 MR. SHIPLEY: And what is the (indiscernible) of
23 the subdivision?

24 MR. WOODBURN: I didn't hear you, I'm sorry.

25 MR. SHIPLEY: What is the proposed total square

1 footage of the development of the subdivision?

2 MR. WOODBURN: Approximately 60,000 square feet
3 every (indiscernible).

4 MR. SHIPLEY: This is supposed, this is an
5 application to approve a particular building permit, but
6 the, I would like you to speak to the building --

7 MR. WOODBURN: Whoops.

8 MR. SHIPLEY: -- whether or not (indiscernible)
9 would adversely affect the property the state needs for any
10 future improvements to the ramp system?

11 MS. MCNEIL: Mr. Shipley, you might have to
12 (indiscernible). We only heard the end of it.

13 MR. SHIPLEY: Okay. Mr. Woodburn, can you hear me
14 all right?

15 MR. WOODBURN: Yes. Thank you.

16 MR. SHIPLEY: When you're addressing the issue of
17 whether or not the, the proposed building interferes with
18 the desire of the state to have the adjacent property, did
19 you take the building -- and also the site plan
20 (indiscernible)?

21 MR. WOODBURN: Yes, the building restriction line,
22 which was placed on the plat, was subject to an alignment
23 which the State Highway currently uses, I think, and Mr.
24 Lenhart will (indiscernible) in 1999.

25 MR. SHIPLEY: Do you have an opinion with respect

1 to that, as to whether or not if this building permit is
2 granted, will it interfere with the state's --

3 MR. WOODBURN: Based on that, yeah, based on that
4 layout, it will not. It will be outside of the one that
5 says the road construction provided.

6 MR. SHIPLEY: So, in your professional judgment,
7 this will meet the, that criteria of the ordinance in
8 question with reference to this building permit application?

9 MR. WOODBURN: Correct.

10 MR. SHIPLEY: And also, the development of the
11 overall site?

12 MR. WOODBURN: Correct.

13 MR. SHIPLEY: I believe that's all the questions I
14 have for this witness.

15 MR. WOODBURN: I think there's an exhibit which we
16 showed, too, that probably ought to be, Russ, that you might
17 want to mention. I don't know what number is it, but it
18 shows the approved DPIE, Department of Permits Inspection
19 Enforcement, approved stormwater concept plan, site
20 development, so a concept plan; and it shows the state
21 alignment and proposed road construction, which is outside
22 of the building restriction line, which is, appears to line
23 up with why the building restriction line was placed on the
24 original plat in the first place.

25 MR. SHIPLEY: And I believe that would probably

1 be, Madam Examiner, Exhibits 3A and B.

2 MR. WOODBURN: I believe Mr. Lenhart will probably
3 opine more on that as well.

4 MS. MCNEIL: Ms. Bah, if you could pull up Exhibit
5 3A?

6 COURT REPORTER: I need to be made a presenter.

7 MR. WOODBURN: This isn't the exhibit I was
8 referring to but, however, you can in this exhibit see the
9 building restriction line, which is in the top side of the
10 sheet.

11 COURT REPORTER: This is 3A. So, is there another
12 3A?

13 MS. MCNEIL: He was saying you can see the
14 building restriction line at the top part, but I would need
15 it to be, well, here you go.

16 MR. WOODBURN: Are these in order? Maybe it's at
17 the end of this list? I don't know.

18 MS. MCNEIL: This is 3A. Yeah, let me see 3A.

19 MR. WOODBURN: It's not this one. John Ferrante,
20 do you know what the last exhibit we sent down, list? Can
21 you unmute?

22 MR. FERRANTE: Yeah, not exactly. I'm looking in
23 their list that they have up on the screen now.

24 MR. WOODBURN: Okay.

25 MR. FERRANTE: It was, they were submitted

1 Wednesday, so they probably are at the back.

2 MR. WOODBURN: Okay.

3 MR. SHIPLEY: How about Exhibit 25? Say, Paul,
4 I'm referring to Exhibit 25.

5 MS. MCNEIL: No, the last exhibit is a site plan.

6 MR. WOODBURN: There you go. That's it. Thank
7 you.

8 COURT REPORT: So, it's not 3A, it's Exhibit 25?

9 MR. WOODBURN: 25.

10 MR. SHIPLEY: Exhibit 25.

11 MS. MCNEIL: Okay.

12 MR. SHIPLEY: Would you explain that?

13 MR. WOODBURN: This --

14 MS. MCNEIL: And is there a way, oh, I have to
15 increase it on my side, Ms. Bah? I think, Mr. Shipley, you
16 aren't the only one new to the Zooming. So, if I want to
17 make it larger, I'm doing it on my own, but is there a way
18 for you to make --

19 MR. SHIPLEY: I, I don't know if we can make that
20 larger.

21 COURT REPORTER: I don't think I have control of
22 the document.

23 MR. WOODBURN: I think I can --

24 MS. MCNEIL: Is it possible to give Mr. Woodburn
25 control over the document? Okay. You have it now.

1 COURT REPORTER: Is this bigger?

2 MS. MCNEIL: Does that work? Can you see him?

3 MR. WOODBURN: Could you just pan it to the left a
4 little bit? I think it's fine for now. I think I can walk
5 you through this based off of this. I don't think we need
6 to Zoom in, as long as you can read it, the note, the box at
7 the top. Can everybody read that? Basically, what this
8 depicts is the, I've taken the approved DPIE stormwater
9 concept site development plan, which is the basis for the
10 building permit application for the first building. The
11 first building is kind of central and into the south on the
12 sheet, it's a darker box, and it's kind of centered. And
13 overlaid on top of that, kind of in a lighter shade, you can
14 see and there's an arrow pointing in box describing the
15 overly of the State Highway Administration 1999 master plan
16 layout; and below you'll see an arc line, kind of in the
17 middle; it's a long line. There's two dashes, another arc
18 line. That is the building restriction line and the State
19 Highway anticipated taking for the improvements of the, for
20 301. And below that arc, there's a smaller building box
21 which shows, that would be the closest building to that
22 building restriction line, which you can see, and we
23 anticipate to stay outside of that line as platted.

24 To the right side, that, that's what this was for,
25 to show you that; and to the right side of the sheet there's

1 a purple colored area. If you could pan over to that, I'd
2 appreciate it. Perfect. So, this is an inset of the
3 current master plan. So, if you go into County's master
4 plan, or look at the County master plan, or go into the GIS
5 website, this is what you'll see, the purple shows what the
6 master plan right-of-way is; hence, why we're before you.
7 And then the box up there describes it. Beneath is this, is
8 the entire development shown. You can kind of see where we
9 are and those outlines of current 214, the ramps, et cetera.

10 So, you can kind of see where the State Highway
11 with their layout was going to look like on the left and
12 with current County's master plan was depicting as the take
13 master plan right-of-way. Any questions on that?

14 MR. SHIPLEY: Well --

15 MS. MCNEIL: Now one, Mr. Woodburn. From what I
16 was reading, and I mean please set me straight on this, but
17 I thought that the master plan of transportation sort of
18 mirrored 301 access and that it's P.G. Atlas that has taken
19 more of the property, is that not correct?

20 MR. WOODBURN: I guess that's a way to put it,
21 yeah. Yes.

22 MR. SHIPLEY: Now I think Mr. Lenhart will address
23 that more specifically --

24 MR. WOODBURN: Right.

25 MR. SHIPLEY: -- because he, he will be able to

1 explain how that happened because the P.G. Atlas map more or
2 less says that the whole nine acres is impacted by the 1999
3 master plan; and that's really not direct. That's overbroad
4 and, and Mr. Lenhart actually tells that on December 24,
5 which is the transportation report he filed last week.

6 MS. MCNEIL: Thank you. Mr. Brown, do you have
7 questions?

8 MR. BROWN: Yes, very briefly.

9 Mr. Woodburn, you testified that your entire
10 original proposed development was approximately 60,000
11 square feet return to the building, is that, that correct?

12 MR. WOODBURN: Well, the current, you're referring
13 to the original in the preliminary plan went through, or
14 current?

15 MR. BROWN: The original preliminary plan, right.

16 MR. WOODBURN: I, I don't have that in front of
17 me. I don't know what the original adequacy of facilities
18 when through. I don't recall.

19 MR. BROWN: The only reason I ask is in looking at
20 the application to deal with the right-of-way, the applicant
21 suggests you have to construct a 10,050 square-foot building
22 and the second page of the application demonstrates that
23 building; and the document that we have in front of us now
24 shows these additional structures in parking. So, I'm
25 confused as to whether or not the applicant is requesting to

1 build in the right-of-way only with 10,050 square feet
2 building and parking, or was he requesting to build in the
3 right-of-way all of what I see now on Exhibit 25?

4 MR. SHIPLEY: If Mr. Brown, if I could address
5 that, I'm really glad you brought that up because that's,
6 that's a dilemma that presents itself by the provisions of
7 the application of the zoning ordinance. And Section 27-
8 259(g), we're actually appealing the recommendation of
9 disapproval of a building permit application. Right now
10 we're only making one application. What I'd like to be able
11 to illustrate (indiscernible) provision is that we don't
12 agree upon the state's plan for the entire project because I
13 would like, if possible, to avoid having to file an appeal
14 every time you want to build a building and it goes through
15 a 6-month process, et cetera.

16 The, the ultimate, and what I'm trying to
17 illustrate, that the P.G. Atlas draft is long and that is
18 also (indiscernible) staff at the Park and Planning
19 depending on the zoning plans that we're finding. My, the
20 staff the ability to say we're not going to recommend denial
21 of a building permit No. 2 because the hearing on building
22 permit No. 1 illustrates that we shouldn't recommend
23 (indiscernible). If I'm stating that when --

24 MR. BROWN: All right. And I think I understand,
25 I mean the record here needs to be clear on that point

1 because I was assuming that down the road you would want to
2 complete what's illustrated on the original SDP showing
3 these, what looks like two or three buildings; so, really I
4 guess your strategy here is since this one building permit,
5 16977 2020 CGE was denied based upon the right-of-way issue,
6 resolve that issue with regards to the current building
7 permit and hopefully not have to read this amended right-of-
8 way for any future building. That's basically what you're
9 saying?

10 MR. SHIPLEY: That's correct.

11 MR. BROWN: All right.

12 MS. MCNEIL: Okay. For what it's worth, Mr.
13 Shipley, we can leave the record open to get your legal
14 memoranda on that, but if you look at 27-259(g), the heading
15 is, I'm sorry, H, conditions placed on approval, it says if
16 the counsel authorizes the issuance of the permit, it shall
17 specify the exact location, ground area, height extent and
18 character of the structure to be allowed. So, even though
19 it, under that language, I would think that even though it's
20 a hardship on you all, the counsel wants to know what's
21 being built. So --

22 MS. SHIPLEY: Yeah, but --

23 MS. MCNEIL: You don't have to; we don't have to
24 belabor it right now. I just want you to know what I'm
25 thinking. So, if you're thinking differently, I would like

1 to leave the record open at the end for you to submit your -
2 -

3 MR. SHIPLEY: I would appreciate that opportunity,
4 but I'm aware of that subsection; and if the staff in
5 response to a subsequent building for the application
6 doesn't recommend that the DPIE, that it be disapproved,
7 then the counsel will never ask for a judge, I'm sorry --

8 MS. MCNEIL: Well, that's true. That's, that's
9 beyond us here today. I did want you to know, Mr. Shipley,
10 if you're finished with Mr. Woodburn -- oh, Mr. Brown, did
11 you have other questions? I'm sorry.

12 MR. BROWN: I can't really see the building
13 restriction line, but I guess, Mr. Woodburn, what you're
14 telling us is the building restriction line, I'm assuming,
15 runs along the perimeter of the property parallel to all
16 roadway, including the path, is that correct?

17 MR. WOODBURN: Yes, it's very close to that State
18 Highway 1999 roadway depicted on the stormwater concept
19 plan, right. It also shows it on the plat, which I don't
20 know what exhibit that is, but you could look at the plat
21 and you could see it very easily; but it's on the north side
22 of the property.

23 MR. BROWN: So, it would be on, it's only on the
24 north side of the property next to the ramp?

25 MR. WOODBURN: Correct, yes.

1 MR. BROWN: And it's approximately what depth from
2 the ramp?

3 MR. WOODBURN: The proposed ramp, you mean?

4 MR. BROWN: Yes, the proposed ramp?

5 MR. WOODBURN: It looks like it's about 50 feet
6 from the ramp.

7 MR. BROWN: Uh-huh. So -- all right. So, you
8 said proposed ramp. So, there's no ramp there now? I
9 thought there was.

10 MR. WOODBURN: The state, okay, so the master
11 plan, and that's what we're talking about, right, it
12 proposes to basically wipe out what's there now and build a
13 new ramp.

14 MR. BROWN: All right.

15 MR. WOODBURN: So, the ramp that you're used to
16 seeing that's circular, that goes away.

17 MR. BROWN: I got you.

18 MR. WOODBURN: Yeah.

19 MR. BROWN: All right. No other questions. Thank
20 you.

21 MS. MCNEIL: Mr. Shipley, I was going to tell you
22 that we have a guest, and perhaps that's Mr. Kelly? Can
23 anyone on the phone identify themselves? They left. Okay.
24 They left, Mr. Shipley. Well, you can call your next
25 witness if you're ready.

1 MR. SHIPLEY: Okay. Do you want me to call my
2 next witness? Is Mr. Kelly on the line?

3 MS. MCNEIL: There was someone on the line, but
4 they disappeared. They may come back.

5 MR. SHIPLEY: Okay. Well, actually, that's all
6 the questions I have of Mr. Woodburn.

7 MS. MCNEIL: Okay. So, who is your next witness?
8 Thank you, Mr. Woodburn.

9 MR. SHIPLEY: Okay. He can leave. Can Mr.
10 Woodburn be excused now?

11 MS. MCNEIL: I don't have other questions other
12 than that. And I haven't seen -- Mr. Abdullah, Mr. Meinert,
13 do you have questions of Mr. Woodburn?

14 MR. ABDULLAH: Good afternoon, everyone. I'm Mr.
15 Mariwan Abdullah with DPIE. My address, 9400 Capricorn
16 Place, Largo, Maryland 20774. So, I'm with DPIE permitting
17 agency. I know Mr. Woodburn showed the concept plan that's
18 approved by DPIE. DPIE's jurisdiction here is kind of
19 limited.

20 THE COURT: Well, wait, wait a minute, Mr., Mr.
21 Abdullah. Right now, I just wonder, do you have any
22 questions of Mr. Woodburn?

23 MR. ABDULLAH: No, no, no, I'm sorry, no. I don't
24 have.

25 MS. MCNEIL: Okay. Okay. We'll get back if you

1 do want to testify.

2 Mr. Meinert, do you have questions of Mr.
3 Woodburn?

4 MR. MEINERT: No, ma'am, no questions.

5 MS. MCNEIL: Okay. Then I think we're good, Mr.
6 Shipley.

7 MR. SHIPLEY: Okay. Is Mr. Lenhart here, Mike
8 Lenhart?

9 MR. LENHART: Yes, I am here. Good afternoon.

10 MS. MCNEIL: Mr. Lenhart, do you swear or affirm
11 under the penalties of perjury that the testimony you shall
12 give will be the truth and nothing but the truth?

13 MR. LENHART: I do.

14 MS. MCNEIL: And, Mr. Shipley, unfortunately, Mr.
15 Lenhart has had to see me virtually, so if you're, if you're
16 trying to move him as an expert in transportation planning,
17 I'll allow that; but if it's anything else, I will not allow
18 it.

19 MR. SHIPLEY: Okay. Is that okay with you, Mr.
20 Lenhart, that you're a traffic expert?

21 MR. LENHART: Certainly.

22 MR. SHIPLEY: Okay. And what is your name and,
23 full name and address?

24 MR. LENHART: My name is Michael Lenhart at 645
25 Baltimore-Annapolis Boulevard, Suite 214, Severna Park,

1 Maryland 21146, with Lenhart Traffic Consulting.

2 MR. SHIPLEY: And you've been retained by Mr.
3 Kelly to make out a report concerning this application?

4 MR. LENHART: That's correct.

5 MR. SHIPLEY: And you're familiar with the
6 requirements of proof that come up in Section 27-259(g) of
7 the (indiscernible) approval of a building permit which has
8 been applied for which may be affected by a future state
9 road and which has, therefore, been recommended for denial
10 by the staff for the Park and Planning Commission?

11 MR. LENHART: Yes.

12 MR. SHIPLEY: And in response to that, what
13 documents have you (indiscernible) or familiarized yourself
14 with in preparation of your report?

15 MR. LENHART: So, we reviewed the Prince George's
16 County P.G. Atlas, GIS system, particularly, the
17 transportation master plan layer of the GIS system. We have
18 reviewed the 1999 State Highway's access management plan at
19 the U.S. 301 corridor, and the, the Prince George's County
20 2009 master plan of transportation.

21 MR. SHIPLEY: Okay. And are, are you also
22 familiar with P.G. Atlas and how it deals with
23 (indiscernible)?

24 MR. LENHART: Yes.

25 MR. SHIPLEY: This shows items as your background

1 documents that you consulted, did you compose a
2 transportation report, which has been accepted in the record
3 as Exhibit No. 24?

4 MR. LENHART: Yes, we have.

5 MR. SHIPLEY: Now as a result of your being
6 retained by Mr. Kelly, I've looked at the criteria of the
7 ordinance. I looked at the various consulting documents
8 that you examined in preparation of the report. Have you
9 formed a professional opinion as to whether or not this
10 request, you, nonetheless, the, getting a building permit
11 with the approval of the district counsel reached the
12 criteria of the ordinance?

13 MR. LENHART: Yes, we have, and we believe it does
14 meet the criteria.

15 MR. SHIPLEY: And would you assertively state and
16 refer to the report, if you would, the reasons for that
17 opinion?

18 MR. LENHART: Certainly. I'll run through my
19 report here briefly. So, the 20 section, I'm sorry, Section
20 27-259(g) states that the district council shall only
21 approve the request if it finds that four items can be met.
22 One is that the entire property cannot yield the reasonable
23 return to the owner unless the permit is granted. The
24 second item is that reasonable justice and equity are served
25 by issuing the permit. The third item is the interest of

1 the County is balanced with the interest of the property
2 owner and the fourth item is that the integrity of the
3 functional master plan of transportation, general plan and
4 area master plan is preserved. And so, are you able to put
5 Exhibit 24 up and share 24? I can kind of walk through some
6 of the exhibits and analysis with (indiscernible).

7 MR. SHIPLEY: Madam Examiner, can --

8 MS. MCNEIL: I was checking to see. Ms. Bah,
9 would you be able to pull up Exhibit 24? Thank you.

10 MR. LENHART: And are you able to make me
11 presenter so I can kind of move around on that?

12 MS. MCNEIL: As you are now a presenter.

13 MR. LENHART: Okay. I don't see that document. I
14 do have, oh, wait a minute. Okay. Okay. It looks like I
15 have control now. And I will say, does everyone else see
16 the, the notice on the screen that the computer is about to
17 restart?

18 MS. MCNEIL: Yes.

19 MR. LENHART: Oh, okay.

20 COURT REPORTER: Yeah, it is. It's my computer.
21 I've been trying to click out of it and I can't.

22 MR. LENHART: You, would you want me to try to
23 snooze that?

24 COURT REPORTER: Yeah, if you need to, you can do
25 it. I don't think I can. I've been trying for the last few

1 minutes.

2 MS. MCNEIL: We've had a lot of computer issues
3 this morning, unfortunately.

4 COURT REPORTER: Yeah, it's not working.

5 MR. LENHART: Okay. I'm looking for that Exhibit
6 24 again. Hold on a second. Let me, oh, there it is.
7 Okay. Sorry, I think we're both overruling each other here.
8 All right. I'm going to zoom in here. So, what we've done,
9 we've looked at the, this is a snip of the 2009 Prince
10 George's County master plan of transportation; and you can
11 see here, I'm going to zoom in on this, we have included an
12 overlay of the property here highlighted in yellow. This is
13 the property location. The, the black dash lines are,
14 represent the future interchange reconstruction here, and
15 these black lines, if you compare these to the 1999 State
16 Highway's access control plan, these are identical. These
17 ramps and interchange movements, this off to the right-hand
18 side of the screen where my cursor is, you can see that is
19 the future relocated Route 301 freeway; and the black dashed
20 lines are all the ramp movements associated with the, the
21 new interchange.

22 And so, you can see in the north section of the
23 Winfield Kelly property, there's a little corner of the
24 property that is immediately to the west of the existing
25 ramp. There's a loop ramp. If you were driving southbound

1 on 301, there's a loop ramp, if you can see my cursor, that
2 you can take to go eastbound on 214. That loop ramp creates
3 a carve-out of the Winfield Kelly property and adjacent to
4 the west-hand side of that loop ramp, immediately south of
5 Maryland 214, that dashed black line cuts across the corner
6 of that property. That is the future ramp from eastbound
7 214 to southbound Route 301, and it also goes to northbound
8 301; but that ramp is the subject of the actual impact on
9 this property as it relates to the 2009 master plan of
10 transportation.

11 Now I'm not sure how to zoom back out using these.
12 There you go. Thank you. That's good. Thank you.

13 Now I will look at the next page. This is the
14 State Highway Administration's U.S. 301 access control
15 study. This is obtained directly from the State Highway
16 plans and we have, again, outlined the Winfield Kelly
17 property as it relates to those plans. This is the ramp
18 movement that you see going eastbound to get off of 214 to
19 go south on the future, let me see, I don't know if you can
20 see my cursor, the ramp, eastbound 214 to go south onto the
21 future 301 freeway, and it also flies over 301 and continues
22 north onto Route 301. That ramp does not exist today, but
23 under the state's plan and the master plan of
24 transportation, that would cut across a small portion of the
25 Winfield Kelly at this location. It would, it would

1 eliminate the existing loop ramp that goes from southbound
2 301 to eastbound 214, and that new loop ramp gets
3 constructed over at the relocated 301 and 197 interchange,
4 which is several hundred feet or so to the east of the
5 existing interchange. And so, you can see how the, the new
6 ramp impacts the Winfield Kelly property at that location.

7 If we look at, then the Prince George's P.G. Atlas
8 master plan of transportation, this layer, I have added the
9 outline of the Winfield Kelly property onto this, this
10 exhibit, and you can see from the P.G. Atlas layer when the
11 technicians took the 2009 master plan of transportation and
12 implemented it into the GIS system. It looks like someone
13 simply acknowledged that the ramp appears to impact the
14 Winfield Kelly property, therefore, they placed the master
15 plan exhibit over the entirety of the property. I don't
16 know why or what the thoughts were in doing that, but based
17 on the prior two exhibits, which is the 2009 master plan of
18 transportation, and the State Highway plan, it's obvious and
19 evident that the master plan of transportation does not
20 actually impact the whole property; it only impacts the
21 small corner behind the building restriction line that Mr.
22 Woodburn discussed, and I will also show you exactly where
23 that building restriction line is.

24 And so, this is a copy of the subdivision plat,
25 the existing subdivision plat from Mr. Kelly's parcel A

1 dated April 1989, and you can see a red line that I've
2 highlighted on this plat. That red line is the building
3 restriction line, and so if I, I don't have, in my exhibit I
4 don't have a copy of the entire site plan that's Exhibit 25,
5 but I can show you on the site plan exactly where that
6 building restriction line lies if you are able to pull the
7 site plan up, Exhibit 25.

8 Okay. Do I have control now? I think so.

9 COURT REPORTER: You should have control.

10 MR. LENHART: Okay. Yeah, I think -- there we go.

11 So, you can see the existing building restriction line is
12 labeled and listed and shown right here. That's what
13 matches up with what is on the plat. This dark line that
14 runs to the north of the building restriction line is the
15 future right-of-way as designed on SHA's 1999 access control
16 study, and the 2009 master plan of transportation, it's map
17 20 out of the master plan of transportation, simply shows
18 just a large dashed line. There's no real scale to it. It
19 appears to be very vague in nature in terms of where that's
20 located. This SHA plan is a much more detailed engineering
21 plan and you can see exactly where State Highway has
22 identified. They have their future right-of-way; and so,
23 that is behind the building restriction line. If we can
24 agree, and it is my opinion that this right-of-way line
25 establishes the extent of the future master plan of

1 transportation requirements that's identified in the State
2 Highway plan, and that's identified on the 2009 master plan
3 of transportation, then anything that's built to the south
4 of the building restriction line in the buildable area of
5 the property will be outside of the master plan right-of-
6 way.

7 The only thing that encumbers this property is the
8 fact that the P.G. Atlas master plan of transportation, the
9 GIS layer, for whatever reason labels the entire property as
10 encumbered by the master plan, and we don't believe that
11 that is, in fact, the case based upon these documents.

12 If you can go back to Exhibit 24 please? Thank
13 you. Thank you. So, I would just like to summarize our
14 findings and opinions here. So, going back to the zoning
15 ordinance requirements, which are the 27-259(g), Part A,
16 says that the entire property cannot yield a reasonable
17 return to the owner unless the permit is granted. So, based
18 on P.G. Atlas interpretation of the master plan, the entire
19 property is encumbered. Therefore, they wouldn't be able to
20 pull any building permit anywhere within the property which
21 --

22 MR. BROWN: I would object to that, Mr. Lenhart.
23 You're qualified as an expert in transportation engineering
24 and you should only be allowed to testify with regards to
25 subsection D concerning the integrity of the functional

1 master plan, general plan, and area master plan, not on the
2 issue of economics, but whether or not the (indiscernible)
3 can generate a reasonable return.

4 MR. LENHART: Understood. I could offer, however,
5 that I believe I am an expert in subdivision process and
6 reservation of right-of-way, and how that is, how that is
7 granted, or the process and the time at which that is
8 granted, and how it occurs, and since we're beyond the point
9 as an approved subdivision here. We're beyond the point of
10 where a reservation can be requested, which when, a
11 reservation is when a property goes through a preliminary
12 plan of subdivision and it gets referred out for
13 reservation; if it's determined that it should be reserved,
14 it comes off the tax rolls and the state has the opportunity
15 to either buy the property, or to, or not buy the property.
16 If they decide not to buy the property, it goes back on the
17 tax rolls and the applicant has the ability to move forward,
18 develop the property, and without the threat of reservation
19 or the inability to develop the property.

20 What happens when, in this case, this is beyond
21 the subdivision stage, if the right to a building permit is
22 denied, it essentially eliminates the ability for this
23 applicant to do anything with the property. It stays on the
24 tax rolls because it's beyond the reservation process, and
25 so I agree with you. I'm not qualified to say is there a

1 reasonable return based on whatever they're doing; but if, I
2 would say that if the request is denied, they would have
3 zero return and the property is basically useless. So,
4 that, that's my thoughts and my input as it relates to that.

5 The, the others, B, C and D, I mean, again, the
6 master plan of transportation, we do not believe that the
7 integrity is impeded; the documents that we have shown from
8 the 2009 master plan of transportation, that's the County's
9 own document, and the State Highway's plan both show that
10 the majority of this site is not impacted by the master
11 plan. I can't opine as to why the P.G. Atlas layer was
12 shown as a full encumbrment, encumbrance of the property,
13 but, you know, I believe that it's a mistake that it was
14 because the documents that it was based upon do not show an
15 impact to the majority of the property.

16 MS. MCNEIL: Mr. Lenhart, could I ask you
17 something about that? First, is there any way to appeal
18 what they put in the P.G. Atlas? Like if you had seen this,
19 caught this earlier and you were in the beginning stages of
20 working with this applicant, could you say, hey, why have
21 you all taken all of this land?

22 MR. LENHART: Certainly. We can -- yeah, I don't
23 think there's a formal process for an appeal, but certainly
24 we could go to them and say we think there might be an error
25 here, could you, you know, take a look at these facts and

1 issues, and correct it if you agree.

2 MS. MCNEIL: And then my other thing is to your
3 last statement, and that is are the two documents the, to
4 your knowledge, are the two documents the only things they
5 would have looked at? In other words, is there something
6 else out there that we haven't mentioned yet, other than the
7 access control study and the 2009 master plan of
8 transportation?

9 MR. LENHART: I'm not aware, yeah, I'm not aware
10 of anything else that there would be, and it is apparent to
11 me that the 2009 master plan of transportation, the map 20,
12 is based upon the State Highway's 1999 plan.

13 MS. MCNEIL: Okay. Thank you.

14 MR. LENHART: Certainly.

15 MS. MCNEIL: Mr. Shipley, do you have other
16 questions of the witness?

17 MR. SHIPLEY: Just a couple. So, therefore, Mr.
18 Lenhart, referring specifically to subsection D, it's your
19 opinion for the reasons stated previously that the integrity
20 of the (indiscernible) master plan of transportation
21 (indiscernible) master plan is preserved?

22 MR. LENHART: I, I heard part of what your
23 question was, but I believe that you asked if I believe that
24 the integrity of the master plan is preserved and, yes, I do
25 believe that it is with the granting of this permit request.

1 MR. SHIPLEY: And your opinion would relate not
2 only to this particular building, but of the site plan which
3 you reviewed and which is Exhibit No. 25?

4 MR. LENHART: Yes, that's correct. I believe that
5 anything that is not located within that building
6 restriction line would be outside of the master plan of
7 transportation and would not impact the integrity of the
8 master plan.

9 MR. SHIPLEY: And as a matter of fact, even though
10 the property that the state might want in the future is
11 slightly of a different configuration, it actually reduces
12 what the state needs from what it already has?

13 MR. LENHART: That's correct. The, the State
14 Highway's right-of-way is less impactful than what the
15 existing building restriction line is.

16 MR. SHIPLEY: Yes. And have you examined or do
17 you know and can testify as to whether or not the State
18 Highway Administration has any current capital improvement
19 program for any five or 10-year program that shows that they
20 can, you know, build this new ramp and flyover system?

21 MR. LENHART: There is, and there has been for
22 quite some time, a 301 CIP project in the state budget. It
23 does not have funding for -- I, I, it is my understanding
24 that they have limited budget for right-of-way acquisitions
25 as needed; they do not have any money budgeted at this point

1 for project planning, design or construction; and,
2 particularly, at this location, they do not have any funding
3 for any of those items; however, if this permit is granted
4 and, again, this building is outside of the right-of-way
5 that the need, but if it were inside the right-of-way, even
6 if the permit were granted, the State Highway has the
7 ability for quick take and I am aware of other locations,
8 particularly up at 301 and 197, where the projects were
9 entitled and the building permit was issued, and it was in
10 the southwest quadrant of 301 at 197 and State Highway
11 issued a quick take of that property almost immediately
12 after the building permit was issued so that it would
13 prevent structures from being built in that location.

14 So, they do have that ability. They do monitor
15 things that are impacting State Highway's right-of-ways for
16 future needs; and this, this would not frustrate that
17 process.

18 MR. SHIPLEY: Thank you, Mr. Lenhart. I believe
19 that's all the questions I have.

20 THE COURT: Mr. Brown, anymore?

21 MR. BROWN: Yes, just a few. Mr. Lenhart, I
22 thought I heard Mr. Shipley say earlier that the property
23 owner initially purchased this property was in the 1960s,
24 Mr. Shipley?

25 MR. SHIPLEY: Yes, sir.

1 MR. BROWN: And since the 1960s, Mr. Lenhart, if
2 you know, has this property owner sought to apply for a
3 building permit on this seven acres?

4 MR. LENHART: I, I'm not aware of, I mean I -- I
5 couldn't say the history.

6 MR. BROWN: Right. Well, I understand. Now, Mr.
7 Shipley, do you know if the property owner has ever applied
8 for a building permit before the current building permit was
9 (indiscernible)?

10 MR. SHIPLEY: I do not think he has, but
11 ultimately, he's going to be on the phone in a minute; but I
12 do not think we have (indiscernible) do anything until we're
13 on the (indiscernible) available.

14 MR. LENHART: I thought, if I may offer, or ask
15 Mr. Shipley, I thought, Mr. Shipley, that you indicated to
16 me, unless I'm confusing something else, that he had built a
17 restaurant, or an inn, or something, many, many years ago
18 that burned down within a couple of years?

19 MR. SHIPLEY: Yes, he, he, he, he took over that
20 existing restaurant and refurbished it and upgraded it and
21 then it was burned down in a fire; and that was,
22 (indiscernible).

23 MR. BROWN: With, it goes to the issue of 27-259
24 that Mr. Lenhart was attempting to testify about reasonable
25 return. I just need to know, you know, how can you suggest

1 today he cannot receive a reasonable return if he's not
2 authorized to build the right-of-way the last 60-plus years
3 and made no attempt to apply for a building permit, but
4 let's get to the issue concerning Mr. Lenhart. Concerning
5 subsection D, the integrity of a functional master plan of
6 transportation, general plan and area master plan. The
7 master plan of transportation you referred to, Mr. Lenhart,
8 was adopted in 2009, is that correct?

9 MR. LENHART: Yes.

10 MR. BROWN: You don't know whether that's proposed
11 to be updated anytime soon, do you?

12 MR. LENHART: Off the top of my head, I couldn't
13 say.

14 MR. BROWN: All right. And the preliminary plan
15 that was approved and has a reported plat, that was in 1989,
16 correct?

17 MR. LENHART: I believe that was the date of, of
18 that document. Yeah, it's, it's --

19 MR. BROWN: Correct.

20 MR. LENHART: -- right in here; yes, April 1989.

21 MR. BROWN: Refresh my memory. So, preliminary
22 plat that has an approved record plat is effective forever,
23 it does not terminate after a certain number of years?

24 MR. LENHART: I would defer that to Mr. Shipley,
25 but as far as I understand, once it's platted, it's vested.

1 MR. BROWN: And that's the general understanding,
2 but, Mr. Shipley, you don't need to answer right now, but so
3 it concerns me that we have a preliminary plat that was
4 recorded in 1989, and at that time, the State Highway
5 Administration did not request a reservation, nor did they
6 take the property; but yet on page 6 of your application,
7 you state the following with regards to subsection D, a
8 reasonable adjustment in equity of surveys for the permit
9 and you state, the development currently proposed will take
10 up to 9,000 square feet on the 7-acre property. Therefore,
11 we've explained 4,249 square feet available and vacant, and
12 undisturbed should additional acquisition be required by FHA
13 in the future.

14 So, to me, that implies even if we stay for the
15 sake of argument there is a valid record plat from 1989, you
16 envision, Mr. Lenhart, the possibility that the remainder or
17 portions of this property can still be taken by SHA, is that
18 not correct?

19 MR. LENHART: They could if the state determines
20 that they need it for something in the future. Based on all
21 of the current documents of record, there is no indication
22 that the state needs it and I would opine that the building
23 restriction line that was applied in 1989, and I don't know
24 this; I don't have documents going back this far; but I
25 would opine that the 1999 plan that the state prepared was

1 actually anticipated long before because that building
2 restriction line appears to reflect exactly what they did in
3 '99. So, there must have been some anticipation of, of the
4 need for that in the future, and that's why it was
5 established. And, again, that's an opinion. I don't have
6 data back that far to back that up.

7 MR. BROWN: All right. Also, looking at the
8 application, page 7, the following reference was made.

9 MS. MCNEIL: One second, Mr. Brown. Do you know
10 which exhibit that is, so I can look back later?

11 MR. BROWN: The very first document.

12 MS. MCNEIL: I see my exhibits. It's the first
13 one? Okay. Thanks.

14 MR. BROWN: The document.

15 MS. MCNEIL: I'm sorry.

16 MR. BROWN: That's all right. So, the question,
17 Mr. Lenhart, is in that, what was stated by Mr. Shipley on
18 page 7, he states, since all of the right-of-way dedication
19 requested by SHA during the review of preliminary plan was
20 being conveyed to the operating agency, the Planning Board
21 was able to find that the integrity of the partial master
22 plan of transportation, general plan, a master plan was
23 being preserved and that the subdivision from outside meant
24 that we required subtitle 24. That was in 1989.

25 MR. SHIPLEY: Mr. Brown, if you, there doesn't

1 have to be, the preliminary plan of a subdivision does
2 appear in the 1980s. That's --

3 MR. BROWN: Well, he's not, right, he's --

4 MR. SHIPLEY: (Indiscernible) but what
5 (indiscernible).

6 MR. BROWN: Right.

7 MR. SHIPLEY: (Indiscernible) request to
8 extensions they recorded in '89. But once there's a process
9 in 1986, the subdivision application was referred about
10 others from the State Highway Administration and the State
11 Highway Administration did not ask that it be placed in
12 reservation; they did not indicate that at, required the
13 dedication; but they did, they did ask for dedication, I
14 believe, and I think John Ferrante can elaborate on this a
15 little more. They, they asked for Kelly to (indiscernible)
16 take behind where some of the former road met, the whole
17 Branch Avenue; and then they also asked the Planning Board
18 to impose the building restriction line that is on that
19 preliminary plan and is listed as a condition in the
20 resolution of approval, the circular area. They ask that
21 that be a building restriction line.

22 And then after that, or at the time of preliminary
23 plan, as I recall, Mr. Kelly did propose a, the development
24 of a subdivision that was a gas station, a boatel and
25 convenience commercial, a bunch of things that would take up

1 about 60,000 square feet; but, of course, he never was able
2 to accomplish that for many reasons, including the lack of
3 available public sewer and water; and that's why I noted
4 above it never took place.

5 I believe literally, once the plat recorded, it's
6 a permanent 10, the plat, where you, even though this long
7 period of time is taking place; 30 years have gone by.

8 MR. BROWN: So, Mr. Lenhart, with regards to the
9 requirement related to integrity of the general plan and the
10 area master plan, it's your opinion that all general plans
11 that have been updated since 1986, and whatever the current
12 general plan is, that this particular request to build a
13 right-of-way infringe upon the integrity of the general
14 plan, is that correct?

15 MR. LENHART: That's correct. It does not
16 frustrate the ability for the state and County to realize
17 and implement that interchange as planned.

18 MR. BROWN: And the same would go to the area
19 master plan you've indicated, I think there's a mistake,
20 with regards to the frustration related to the master plan
21 (indiscernible)?

22 MR. LENHART: I'm sorry, Mr. Brown, I didn't
23 understand that question.

24 MR. BROWN: I'll withdraw it. It's confusing to
25 me, too.

1 Mr. Shipley, one other question to you, if you
2 would just explain it real quickly? Looking at page 4, you
3 mentioned earlier that the original preliminary plan was
4 approved in 1986 and I see several extensions; and then you
5 say on this page, the final plat, limited plan is extended
6 until April 1989, and the final plat was recorded in May of
7 1990. The recorded plat is allowed to be reported after the
8 preliminary plan extension had expired?

9 MR. SHIPLEY: No, I think that's, I think what
10 happened, I wasn't involved in the case then. It, what
11 would have to be, I think, probably within one year and that
12 can be extended; and I'm not cognizant right now with the
13 ordinance, setbacks, there's a (indiscernible) you could
14 apply for and receive; but I understand from your reviewing
15 the history of the subdivision that the (indiscernible) in
16 1986 and the applicant asked the Planning Board to extend
17 the time for recording the final plat, and that was done on
18 one or two successive (indiscernible) filed a report in
19 1989.

20 MR. BROWN: Now if you could put in the record
21 before the record closes, you know, the date of the
22 extensions and the date of the final recorded plat, because
23 just looking at, you know, the top of my head here, it
24 doesn't look like you know what the (indiscernible) We need
25 to have in the record, though, that, in fact, we have a

1 valid report of a final plat because in talking to Mr.
2 Lenhart and others, it was predicated on (indiscernible) a
3 preliminary plan, all right?

4 MR. SHIPLEY: Well, you're suggesting that we
5 supplement the record with some indication of the validity
6 of the plat?

7 MR. BROWN: Right, yes.

8 MR. SHIPLEY: Well, we would be glad to do that,
9 but --

10 MR. BROWN: That's fine. I mean I have no other
11 questions, Mr. Lenhart.

12 MR. LENHART: Thank you.

13 MR. SHIPLEY: Thank you. I have no other --

14 MS. MCNEIL: So, Mr. Shipley, do you have another
15 witness?

16 MR. SHIPLEY: Is Mr. Kelly, I think, unless
17 somebody knows, I don't have any other questions for Mr.
18 Lenhart. My next witness would be Mr. Kelly if he's on the
19 line; and if not, John Ferrante.

20 MS. MCNEIL: I don't see anyone now. If you
21 wanted to take like a 5-minute break to see if he's coming,
22 we can go with Mr. Ferrante first, and then maybe take that
23 5-minute break.

24 MR. SHIPLEY: Yeah. Okay.

25 MS. MCNEIL: Okay. Hi, Mr. Ferrante. Do you

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

4 MR. FERRANTE: Yes.

5 MR. SHIPLEY: Did he answer? I can't hear, John.

6 MS. MCNEIL: He was sworn-in, Mr. Shipley, and so
7 now he's waiting for you.

8 MR. SHIPLEY: Okay. Mr. Ferrante, what's your
9 full name and address please?

10 MR. FERRANTE: (Indiscernible.)

11 MR. SHIPLEY: Can you hear him?

12 MS. MCNEIL: No, we didn't. You have to do it
13 again. Your full name and address, Mr. Ferrante?

14 MR. FERRANTE: (Indiscernible.)

15 MS. MCNEIL: Who else is technically savvy here?
16 I believe you have two mikes open. I guess your cellphone
17 on or, are you -- who knows how to help Mr. Ferrante?

18 MR. SHIPLEY: (Indiscernible) he's at home.

19 MS. MCNEIL: Right, but he's talking through a
20 headphone and something else is going giving that feedback.

21 MR. SHIPLEY: Mr. Ferrante, can you hear me?

22 MR. FERRANTE: (No audible response.)

23 MS. MCNEIL: You're muted.

24 MR. SHIPLEY: Mr. Ferrante, can you hear me?

25 MR. FERRANTE: (Indiscernible.)

1 MS. MCNEIL: Mr. Shipley, because we're having
2 technical difficulties, why don't we take the 5-minute break
3 now so we can figure out how to help Mr. Ferrante and see if
4 Mr. Kelly is coming?

5 MR. SHIPLEY: Okay.

6 MS. MCNEIL: I think we can just mute your mikes
7 and your video and come back.

8 MR. SHIPLEY: Okay. Thank you.

9 (Recess.)

10 MR. SHIPLEY: Yeah, you know, I want to please
11 call --

12 UNIDENTIFIED SPEAKER: You recording, Susie?

13 MR. SHIPLEY: -- (indiscernible), but just a
14 moment. Mr. Kelly is on the phone. Can you put him on
15 speaker?

16 MS. MCNEIL: Yeah.

17 MR. KELLY: Yes?

18 MR. SHIPLEY: You're on the (intelligible).

19 MS. MCNEIL: Okay. All right. Thanks. Are we
20 back on the record?

21 MR. SHIPLEY: Yeah.

22 COURT REPORTER: Yes.

23 MR. SHIPLEY: (Indiscernible), he's on the
24 telephone. If you could swear him in, I'll, I'll --

25 MS. MCNEIL: Okay. Mr. Kelly?

1 MR. KELLY: Yes.

2 MS. MCNEIL: Good afternoon.

3 MR. KELLY: Good afternoon.

4 MS. MCNEIL: Do you swear, do you swear or affirm
5 under the penalties of perjury that the testimony you shall
6 give will be the truth and nothing but the truth?

7 MR. KELLY: I do.

8 MS. MCNEIL: Mr. Shipley.

9 MR. SHIPLEY: Mr. Kelly, would you please state
10 your full name and address?

11 MR. KELLY: Yeah, Winfield Kelly, 11506 Chambers
12 Court, Woodstock, Maryland.

13 MR. SHIPLEY: Okay. And are you the sole owner of
14 the property which is approximately a little less than eight
15 acres in southwest corner of the intersection of, of Central
16 Avenue and 301 (indiscernible)?

17 MR. KELLY: Yes, yes, I am.

18 MR. SHIPLEY: And approximately how long have you
19 owned that property?

20 MR. KELLY: Oh, my goodness, since, the early 60s,
21 1960, I think, '61.

22 MR. SHIPLEY: And who did you purchase that
23 property from?

24 MR. KELLY: You're garbling up, Russell.

25 MR. SHIPLEY: Okay. Who did you purchase the

1 property from?

2 MR. KELLY: Evelyn Sears, the, the owner is Evelyn
3 Sears.

4 MR. SHIPLEY: Now (indiscernible).

5 (Discussion off the record.)

6 COURT REPORTER: There's a lot of background
7 noise. Everybody needs to turn off their mike if you're not
8 --

9 MR. KELLY: Yeah, I don't know what, I don't know
10 what's going on. I can't hear. Is that better?

11 MR. SHIPLEY: Can you hear me now?

12 MR. KELLY: That's better, Russell, yes.

13 MR. SHIPLEY: Okay. And how Al Sears was the
14 owner of the property and he had died. When you bought the
15 property, what was it zoned?

16 MR. KELLY: It was, it was zoned C-1, I believe,
17 or C-1 or C-2, whatever it was in that year; and they had,
18 they had a restaurant up on the corner. They took an old
19 barn and turned it into a restaurant; and they did some
20 horse farming on the rest of it.

21 MR. SHIPLEY: Okay. Now when you bought the
22 property, did you do anything with the restaurant?

23 MR. KELLY: Say that again, Russell, I can't quite
24 hear you.

25 MR. SHIPLEY: What did you do when you bought the

1 property? Did you --

2 MR. KELLY: I converted, I converted the -- yeah,
3 I turned the barn up on the corner, improved the restaurant
4 and operated it as a restaurant for several years.

5 MR. SHIPLEY: What happened to it?

6 MR. KELLY: Well, it had a fire and there is no
7 water down there, and they weren't able to get the, the
8 firetrucks there soon enough to save it, so we lost the
9 building.

10 MR. SHIPLEY: Now and did you attempt to re-
11 establish the building or --

12 MR. KELLY: Yeah. We -- yes, we went, we went
13 through a lot of, a lot of ways to try to get it, the
14 property to perc, but we couldn't get the property to perc,
15 so we didn't have any, we didn't have any sewer; so, we
16 couldn't, couldn't develop it.

17 MR. SHIPLEY: Okay. Did there come a time in the
18 early 80s where you hired Stanley (indiscernible), the
19 surveyor, to submit a preliminary plan of subdivision?

20 MR. KELLY: Yes. Yes, we were trying to get that
21 done, and even trying to find some way to get the property
22 used; and, again, trying to get the septic to work.

23 MR. SHIPLEY: Now the record shows that the
24 preliminary plan of the subdivision was approved in 1986 and
25 it was recorded among the land records in 1989. Do you have

1 any independent recollection of why it took that period from
2 '86 to '89 to actually record the plat?

3 MR. KELLY: I'm sorry, but I'm sorry, Russell, I
4 can't, I can't remember that.

5 MR. SHIPLEY: Okay. Now whatever attempt you made
6 since 1989 to develop this property for some commercial use?

7 MR. KELLY: Are you asking me if I kept trying to
8 develop it?

9 MR. SHIPLEY: Yes.

10 MR. KELLY: We looked, we looked at, we looked at
11 a number of ways to try to get it done, including, we
12 finally got water to the front of the property, but still no
13 sewer; but we never were able to get that problem fixed.

14 MR. SHIPLEY: Okay. Until now?

15 MR. KELLY: Until now, across the street, there's
16 a huge development going up by Ken Michaels, about 800
17 acres, and we now have sewer and water right across the
18 street; so, we just have to build it. We've got, I think
19 they've got the approval of the sewer and water, but we
20 haven't, obviously, I haven't built it yet. We were going
21 to build a plan to build it.

22 MR. SHIPLEY: And the developer across the street,
23 do you know, is that called Carrington?

24 MR. KELLY: Yes, it was. It may have a different
25 name now. Ken Michaels has owned that property for a lot of

1 years and he was developing it.

2 MR. SHIPLEY: Okay. Now in the meantime, apart
3 from how many we, we just submitted for the record an
4 exhibit number 23, some tax bills from 2018 to 2021, but can
5 you approximate how much you paid in taxes to maintain the
6 property?

7 MR. KELLY: I'm not sure, but I paid taxes from
8 the very beginning; and the taxes at some points were, were
9 quite high. They were in the 50, \$60,000 range for a while,
10 but we finally got the County to realize we couldn't develop
11 it and they reduced it to 23,000; so, but I think probably a
12 million and a half, maybe \$2 million.

13 MR. SHIPLEY: And, and at the current time,
14 through (indiscernible) attempting to initiate the
15 development of the property, and that's why you're applying
16 for this relief from the recommendation of denial by the
17 staff?

18 MR. KELLY: Yes, I think that's correct.

19 MR. SHIPLEY: I think that's all the questions I
20 have.

21 MS. MCNEIL: Mr. Brown, do you have any questions?

22 MR. BROWN: Just one or two. Good afternoon, Mr.
23 Kelly.

24 MR. KELLY: Good afternoon. Sorry I'm a little
25 garbled. I, I, I'm in a, I have a test for work I have to

1 do three times a week and I just got out of it, so I'm a
2 little late.

3 MR. BROWN: All right. Well, I'm not going to
4 hold you. The only question I had was with regards to what
5 Mr. Shipley just asked you. The reason the property had not
6 been developed since the day you initially purchased it,
7 because of the water and sewer lines were too far from the
8 property to make it economical to develop, is that correct?

9 MR. KELLY: Yeah, I guess that's it. We really
10 just couldn't get, we couldn't get the property. It was
11 about, about the same eight acres. We couldn't get it to
12 perc no matter what we did and --

13 MR. BROWN: Right.

14 MR. KELLY: -- to find a mechanism, we couldn't
15 find a mechanism to give us sewer so we could get, so we
16 could get the, get the work done.

17 MR. BROWN: Uh-huh. So, now that the Carrington
18 project is adjacent or just next door to your property, the
19 water and sewer line will be available, and so your only
20 impediment to construction in terms of the land use
21 regulations right now would be requesting authority to
22 building the right-of-way, is that correct?

23 MR. KELLY: I think we've gotten approval by the
24 sanitary commission to build it, but we have to actually get
25 in and get it done, and we haven't, I haven't gotten the

1 approval from the contractor to get that done yet, but
2 that's our plan.

3 MR. BROWN: All right. No other questions. Thank
4 you.

5 MS. MCNEIL: Thank you. So, no one else has
6 questions of Mr. Kelly? Do you have any more, Mr. Shipley?

7 MR. SHIPLEY: No, I think that's it.

8 MS. MCNEIL: Okay. Then thank you, Mr. Kelly.
9 You can stay if you'd like.

10 MR. KELLY: Thank you all for, thanks, thanks for
11 being so patient.

12 MS. MCNEIL: No problem.

13 MR. SHIPLEY: Thank you (indiscernible) if you
14 want. I'd like to recall just for a moment Paul Woodburn if
15 I can?

16 MR. KELLY: Did you say Paul Woodburn?

17 MS. MCNEIL: If only --

18 MR. KELLY: Yes, Paul Woodburn is the engineer on
19 the property.

20 MR. SHIPLEY: Right. Correct.

21 MS. MCNEIL: Mr. Shipley, you're recalling Mr.
22 Woodburn?

23 MR. SHIPLEY: Yes, I'd like to. I think he's
24 still --

25 MS. MCNEIL: Okay. Mr. Woodburn, you're still

1 under oath.

2 MR. WOODBURN: Thank you.

3 MR. SHIPLEY: Mr. Woodburn, would you like to add
4 anything to what Mr. Kelly said with reference to what
5 attempts he's made over the years to try to do something
6 with this property?

7 MR. WOODBURN: Sure. I don't, I don't mind adding
8 a little bit to this. So, back in the exact date that the
9 90s, a developer called Mannequin, who is still around, had
10 their property purchased called South Lake Carrington. It
11 was called Collington Center North actually at the time, and
12 then the Michael Companies, Ken Michael, who Mr. Kelly
13 referred to, bought the property, I believe, in 2000. With
14 the development that Mannequin was going to do was in the
15 EIA zone for that property and it's industrial, and it was
16 going to bring sewer to the Kelly property. The project
17 didn't get off the ground. The Michael Companies bought the
18 property. They were going to bring sewer to the, to the
19 property; and as you know, it's taken a long time to get to
20 that project starting.

21 The project is underway, clear and graded. We've
22 applied for and have retained permits for two of the three
23 contracts to bring sewer to Mr. Kelly. We've also obtained
24 plan approval for Mr. Kelly to tie into the South
25 Lake/Carrington development; but without sewer, as Mr. Kelly

1 referred to, he could not develop his property reasonably.
2 I, maybe it's a quarter to three quarters of a mile to get
3 to sewer on the other side of the railroad tracks going last
4 to this property. So, yes, to develop this property we
5 needed sewer, and I think we're finally going to get it.
6 So, that, I think that helps a little bit in where things
7 have gone for the past at least 30 years.

8 MR. SHIPLEY: And as a civil engineer, it's, of
9 course, impossible to give any financial return on this
10 investment unless it's subdivided and sewer to public water,
11 and getting building permits, and the property has been
12 relatively useless, is that correct?

13 MR. WOODBURN: Yeah, any use --

14 MR. SHIPLEY: (Indiscernible.)

15 MR. WOODBURN: -- from the sewer, a building,
16 yeah, a building permit can't be issued without sewer.

17 MR. SHIPLEY: Right. And I think all the
18 buildings from the property that were originally there, the
19 old house, the barn, they're all gone, right?

20 MR. WOODBURN: They're gone, correct.

21 MR. SHIPLEY: It's just a blank piece of property.

22 MR. WOODBURN: That's correct.

23 MR. SHIPLEY: And so, it's an empty piece of
24 property? Can you hear me?

25 MR. WOODBURN: I didn't hear that last statement.

1 MR. SHIPLEY: It's just an empty piece of
2 property?

3 MR. WOODBURN: Correct. There's no buildings or
4 structures currently on the property.

5 MR. SHIPLEY: And it's zoned C-F?

6 MR. WOODBURN: Correct. It's C-M.

7 MR. SHIPLEY: Thank you. That's all I have of
8 this witness.

9 MS. MCNEIL: Mr. Brown?

10 MR. BROWN: No questions. Thank you.

11 MR. SHIPLEY: Do you want me to call my next
12 witness then?

13 MS. MCNEIL: Yes. I believe we were going to hear
14 from Mr. Ferrante?

15 MR. SHIPLEY: Yes. John Ferrante is my last
16 witness and I think he's straightened out the
17 (indiscernible).

18 MR. FERRANTE: Can everybody hear me okay?

19 MS. MCNEIL: Yes. I believe you were already
20 sworn, Mr. Ferrante, so --

21 MR. SHIPLEY: I didn't get to hear you. If you're
22 ready to be sworn in? Did you get that you have been sworn
23 in?

24 MR. FERRANTE: Yes, sir, I have.

25 MS. MCNEIL: I think he was, yes. Uh-huh.

1 MR. SHIPLEY: Okay. What is your full name and
2 address?

3 MR. FERRANTE: John Ferrante. The address is 1101
4 Mercantile Lane, Unit 240, Upper Marlboro, Maryland 20774.

5 MR. SHIPLEY: And you submitted a resume in this
6 case, and which is marked as Exhibit No. 20.

7 MR. FERRANTE: That's correct.

8 MR. SHIPLEY: And you are a professional witness
9 as a land planner?

10 MR. FERRANTE: That's correct.

11 MR. SHIPLEY: I would submit his qualifications.

12 MR. BROWN: No objection.

13 MR. SHIPLEY: And, Mr. Ferrante --

14 MS. MCNEIL: He will be accepted as an expert in
15 land use planning.

16 MR. SHIPLEY: Thank you. Sorry. Mr. Ferrante,
17 are you, you know I signed the application, it would
18 certainly appear that you had a hand in its authorship,
19 right?

20 MR. FERRANTE: That's correct.

21 MR. SHIPLEY: The statement of (indiscernible)
22 case?

23 MR. FERRANTE: Yes.

24 MR. SHIPLEY: So, and, and that's based on your
25 examination of the facts and circumstances that pertain to

1 this document?

2 MR. FERRANTE: That's correct.

3 MR. SHIPLEY: And your knowledge of the history of
4 the property as to what it's zoned and when it was
5 subdivided, and it's plat report?

6 MR. FERRANTE: That's correct.

7 MR. SHIPLEY: And you're aware that through Bender
8 and Associates, the building permit application was required
9 for and pursuant to the provisions of our local ordinance,
10 it was recommended for disapproval by the state, the
11 Planning Board because it appeared it was a current master
12 plan (indiscernible)?

13 MR. FERRANTE: That's correct. We actually had to
14 request a denial because they put everything on hold, so we
15 asked them to deny it so we could meet the requirements of
16 27-259.

17 MR. SHIPLEY: And are you familiar with the
18 requirements of 27-259?

19 MR. FERRANTE: I am.

20 MR. SHIPLEY: And would you happen to, you, you,
21 that includes a recitation of that history of the
22 preliminary plan, the subdivision, which was approved in
23 1986, is that correct?

24 MR. FERRANTE: That's correct.

25 MR. SHIPLEY: Are you aware that the final plat

1 was not recorded until 1959?

2 MR. FERRANTE: '89, correct.

3 MR. SHIPLEY: Or 1980, and '89, is that correct?

4 MR. FERRANTE: That is correct.

5 MR. SHIPLEY: Is that -- and you're familiar with
6 the fact that you're normally supposed to file a preliminary
7 plan for a certain time period than the time, the time
8 period can be extended and so forth. To your own personal
9 knowledge, are you aware that this, these expenses did not
10 exceed what was legally provided and that the plat is
11 legally recorded, the plat was recorded in accordance with
12 the extensions, it was granted, or recorded?

13 MR. FERRANTE: I do agree on that and, just to
14 clarify, Mr. Brown's comment -- I understood that the, the
15 time period he was speaking of, the plat only has to be
16 submitted prior to the expiration of, of the validity
17 period. It does not have to be recorded.

18 MR. SHIPLEY: And so, you know of your own
19 knowledge whether it was submitted prior to the expiration
20 of the expansion of the plan by the Planning Board?

21 MR. FERRANTE: I don't believe the staff would
22 have signed off or recorded the plat had it not been.

23 MR. SHIPLEY: But that's something that you could
24 actually verify --

25 MR. FERRANTE: I think it --

1 MR. SHIPLEY: -- if you were given an opportunity?

2 MR. FERRANTE: I think we could try. The, the
3 preliminary plan records for this case were badly damaged by
4 the CAB flood, so we were a little limited with the
5 documents we could get, but as a practice, the subdivision
6 section, having worked there for many years, they're allowed
7 to accept submissions of plats within the validity period,
8 but in many cases, the recordation extends beyond it.

9 MR. SHIPLEY: Uh-huh. Well, going to the merits
10 of the case, you say you're familiar with the criteria to be
11 approved?

12 MR. FERRANTE: Yes.

13 MR. SHIPLEY: And that criteria is set forth in
14 Section 27-259(d), sub A through D?

15 MR. FERRANTE: That's correct.

16 MR. SHIPLEY: Okay. Based upon that criteria, do
17 you feel that the, the issuance of this particular building
18 permit and also the development of the property as shown by
19 the plat plan which has been submitted by Ben Dyer
20 (indiscernible) 25 meets that, those criteria?

21 MR. FERRANTE: Yes, I do believe it does.

22 MR. SHIPLEY: Now referring to your statement
23 (indiscernible) testimony you want to give, please explain
24 why you reached that conclusion.

25 MR. FERRANTE: Absolutely. Just to back up to 27-

1 259(b) (1), which requires the denied permit, I just wanted
2 to note for the record that the permit was denied on
3 November 4th of 2020 and the subject request was submitted
4 to the clerk of the council's office on November 30, 2020,
5 within 30 calendar days of the denial.

6 Moving on to 27-259(g), the criteria for approval,
7 the district council shall only approve the request if it
8 finds that the entire property cannot yield a reasonable
9 return to the owner unless the permit is granted. As we
10 discussed here today, the entire property is located within
11 the proposed right-of-way as shown on pgatlas.com, as
12 currently undeveloped. As a result, the property cannot
13 yield any return unless the permit is granted.

14 B, reasonable justice and equity are served by
15 issuing the permit. The preliminary plan records were able
16 to obtain from 1986 demonstrated that the preliminary plan,
17 which is 4-86018, was approved on April 10, 1986. The land
18 use quantities that were approved with that preliminary plan
19 were a motel with 150 rooms, a 3,200 square-foot restaurant
20 with 100 seats, a 13,500 square-foot restaurant with 110
21 seats, a 2,400 square-foot bank, a self-service gas station,
22 two retail buildings consisting of 1,500 square foot each,
23 and a 2,400 square-foot car wash with eight bays.

24 The final plat was recorded in land records on May
25 8, 1989. Although no development has occurred on the

1 property since the time the prior preliminary plan was
2 approved, this applicant did obtain approval of preliminary
3 plan and recorded a final plat within the specified validity
4 period. As a result, the subject property should be
5 entitled to a specific amount of development.

6 In the referral for the 1986 preliminary plan,
7 Park and Planning's Transportation Section did identify the
8 northern section of the property was affected by
9 construction plans for the U.S. 301 Maryland 214
10 interchange. However, at that time, neither the
11 Transportation Section of Park and Planning, or State
12 Highway, requested acquisition of the property, or that it
13 be placed in reservation.

14 When the final plat for Mr. Kelly was recorded in
15 land records, building restriction lines were established
16 along portions of the northern property line abutting the
17 214 right-of-way, and all requested right-of-way dedication
18 associated with the interchange, and along Old Central
19 Avenue, was properly conveyed.

20 The applicant has paid taxes on this commercially
21 zoned property for several decades with no return and has
22 already obtained approval of a preliminary plan which
23 included dedicating a significant portion of the property to
24 State Highway as needed to implement the current ramps, and
25 the Maryland 301/214 interchange. As a result, reasonable

1 justice and equity are served by issuing a permit.

2 C, the interest of the County is balanced with the
3 interest to the property owner. The applicant has already
4 incurred expenses by applying for an obtaining approval of a
5 preliminary plan that was required to develop the property.
6 As a result, the applicant will incur a financial hardship
7 if the property is unable to be developed in some manner.
8 As previously stated, the applicant has paid a significant
9 amount of taxes to Prince George's County over a period of
10 several decades and has been able to use the property in
11 accordance with its underlying CM zoning designation due to
12 its location within the master plan right-of-way.

13 The interest of the County and the state will be
14 generally served by the applicant's request as all
15 previously requested right-of-way dedications associated
16 with the interchange on Old Central Avenue has already been
17 conveyed to the operating agency.

18 And, finally, D, the integrity of the functional
19 master plan of transportation, general plan and area master
20 plan is preserved. As noted in Mr. Lenhart's testimony, the
21 use 301 access control study prepared by State Highway in
22 1999 is their latest concept for potential interchange
23 improvements. The study further demonstrates that the
24 subject property is not proposed for further acquisition by
25 State Highway, and should also be noted that at no time

1 State Highway has contacted the applicant, either purchased
2 the property, or to request further acquisition.

3 Since all the right-of-way dedication requested by
4 State Highway during the review of the preliminary plan was
5 conveyed out to the operating agency, as Mr. Brown noted,
6 the Planning Board was able to find that the integrity of
7 the master plan, general plan, area master plan was being
8 preserved; that the subdivision met the legal requirements
9 of subtitle 24.

10 The development currently proposed has been
11 designed to meet all current stormwater management zoning
12 ordinance, landscape manual, wild and conversation ordinance
13 requirements, and will respect the established ability
14 restriction lines that are shown on a recorded plat.
15 Therefore, preserving the integrity of the master plan,
16 general plan, and area master plan.

17 MS. MCNEIL: Mr. Shipley, may I ask a question
18 right here, and that's about the area master plan, which is
19 the Bowie master plan, is that correct? You're muted, Mr.
20 Ferrante.

21 MR. FERRANTE: Yes, I believe you're correct. It
22 is the Bowie master plan.

23 MS. MCNEIL: Okay. You're saying that staff found
24 that the integrity of that master plan was being preserved
25 at the time of subdivision, but can you tell us that as an

1 expert witness right now that approving this still preserves
2 that master plan because no one has really talked about that
3 master plan. It could be that master plan is totally fine,
4 but we need to know something about why the integrity of
5 that one is preserved.

6 MR. FERRANTE: Absolutely. Just to back up to the
7 original Planning Board resolution actually made that
8 finding, that, that, that it was in compliance with what the
9 master plan and general plan as modified. The current
10 alignment, as Mr. Lenhart and Mr. Woodburn have testified
11 to, with the building restriction line that's in place, all
12 the development will be outside the proposed -- any current
13 plan that we have that shows the alignment of 301 from State
14 Highway, it will preserve the integrity of that plan. It
15 will not conflict with it.

16 MS. MCNEIL: Because when, devil, devil's
17 advocate. What if, if correct, what P.G. Atlas has, that
18 all the properties within, and that's, that's subsequent to
19 the Planning Board's approval. I just want to hear you
20 still agree that today --

21 MR. FERRANTE: I actually --

22 MS. MCNEIL: -- this is not (indiscernible).

23 MR. FERRANTE: It's actually very, it's not
24 infrequent to see these properties that are located in the
25 medium be entirely placed in the right-of-way. I've seen it

1 along other stretches of 301 in there, and I don't know if,
2 you know, I can't guess at why they, they do that, but it's
3 certainly, you know, the applicable plan we have in place
4 only encumbers the northern portion of the property. So,
5 so, what, you know, the plans that we have in place show
6 that the proposed development would not conflict in any way
7 to the master plan alignment that's currently proposed by
8 State Highway.

9 MS. MCNEIL: I can't believe I don't know this off
10 the top, but what year was that master plan, Bowie? Was it
11 '90 or --

12 MR. FERRANTE: I think the last was 2006. I will
13 pull it up here for you.

14 MS. MCNEIL: Okay. That's okay. Thank you.

15 MR. FERRANTE: Uh-huh.

16 MR. SHIPLEY: Now is it your testimony that it
17 complies also with the current (indiscernible) master plan?

18 MR. FERRANTE: I do.

19 MR. SHIPLEY: And in this process that you kept
20 the city approval for a, did you contact the city of Bowie
21 when this application was first filed so they, they could be
22 aware of the pendency of this application that, and in the
23 case that you would be having to attend any stakeholder's
24 meetings, mayor city council meetings, and I think that Mr.
25 Lenhart was on call, he might still be here, but did you

1 contact Mr. Lenhart with regard to this application when it
2 was first (indiscernible).

3 MR. FERRANTE: Yes, I did.

4 MR. SHIPLEY: I think that's all the questions I
5 have.

6 MS. MCNEIL: Mr. Brown?

7 MR. BROWN: No questions. Thank you.

8 MS. MCNEIL: Mr. Abdullah or Mr. Meinert, do you
9 have any questions?

10 MR. ABDULLAH: No questions. I just have one
11 question for Paul if I have a chance to go back to it, so --

12 MS. MCNEIL: Okay. One second. Mr. Shipley, do
13 you have other questions of Mr. Ferrante?

14 MR. SHIPLEY: No, I don't believe so.

15 MS. MCNEIL: Thank you, Mr. Ferrante. Can we
16 recall Mr. Woodburn so Mr. Abdullah can ask his question, or
17 did he leave me? No, he's here.

18 MR. SHIPLEY: If he's around.

19 MS. MCNEIL: Okay. Mr. Abdullah, you may ask your
20 question.

21 MR. ABDULLAH: Yeah, good afternoon, gentleman.
22 Sorry, Paul, to come back. About (indiscernible) concept,
23 here's my understanding. This one has been approved for
24 Carrington back then because all was included, but now
25 Carrington has been annexed to city of Bowie, and now this

1 property is actually entirely as shown within that state
2 right-of-way, so the cars are restriction of the state
3 right-of-only only concept and stormwater management. So,
4 my understanding, probably we need to have a separate
5 concept for this property with the, followed by stormwater
6 management impairment. So, I just want to bring that to
7 your attention.

8 MR. WOODBURN: Obviously, I wouldn't agree, but we
9 have an approved concept that's valid; and we filed for
10 permanence against that concept. Just because part of it
11 got put in the city of Bowie, I can understand maybe pulling
12 it out if that's something; but as part of the South Lake
13 development, it was, the understanding was that our concept
14 would be re-approved by DPIE and maintained with DPIE for
15 the overall development, and that's what transpired, and
16 it's current and active.

17 MR. ABDULLAH: But guarantee at this moment, too;
18 but guarantees, as you understand, that side is with the
19 city of Bowie, so it's not with --

20 MR. WOODBURN: Yeah, yeah, well, I understand; but
21 it was decided with the annexation, and I don't want to
22 debate that for this hearing, but it was decided at the
23 annexation that this overall stormwater concept would remain
24 with the County, and that's the way it was reapproved.

25 MR. ABDULLAH: Okay.

1 MS. MCNEIL: So, Mr. Woodburn, Mr. Woodburn --

2 MR. WOODBURN: Yes?

3 MS. MCNEIL: -- it don't mean he's correct. Do
4 you think that has any bearing on the approval of this
5 request?

6 MR. WOODBURN: No.

7 MS. MCNEIL: It would just be another reason to
8 hold up your permit, but it would be a --

9 MR. WOODBURN: Right. It's, it, I think what he's
10 saying is that it may be a further discussion as part of the
11 permit process as needed --

12 MR. ABDULLAH: Yes.

13 MR. WOODBURN: -- but I don't think it has any
14 bearing on this hearing.

15 MR. ABDULLAH: No, no, no, it's not. Uh-huh.

16 MS. MCNEIL: Okay.

17 MR. WOODBURN: Yeah.

18 MS. MCNEIL: Thank you both.

19 MR. ABDULLAH: Thank you.

20 MR. WOODBURN: Okay. Thanks. Thanks, Mariwan.

21 MS. MCNEIL: Mr. Shipley, any, any further
22 witnesses?

23 MR. SHIPLEY: No, no, no.

24 MS. MCNEIL: Okay. And, Mr. Abdullah, would you
25 like to testify on anything?

1 MR. ABDULLAH: No. I just have to, want to be
2 here with, as a, you know, DPIE had a couple questions for
3 Paul, so thanks.

4 MS. MCNEIL: Okay. And I don't see the city of
5 Bowie anymore, so okay. Anything further, Mr. Brown?

6 MR. BROWN: No, nothing further; and I really
7 don't need anything additional on that bottom plat as well.
8 I know I --

9 MS. MCNEIL: Do you have anything you want to say
10 in closing, Mr. Shipley?

11 MR. SHIPLEY: I'm sure you hope not. No, I think
12 we went through enough, and, and so I don't have anything
13 further to say, thing to say.

14 MS. MCNEIL: Okay. And --

15 MR. SHIPLEY: (Indiscernible.)

16 MS. MCNEIL: And really, I said --

17 MR. SHIPLEY: (Indiscernible.)

18 MS. MCNEIL: Go ahead.

19 MR. SHIPLEY: Yes. I'm sorry, go ahead.

20 MS. MCNEIL: All I was going to say, as earlier I
21 said, if you want to just submit some legal memo on, on an
22 issue, but I think I heard you say that your issue will be
23 taken up with DPIE, so you don't have to submit anything
24 further to me either.

25 MR. SHIPLEY: Okay. You don't want me to address

1 your issue that, of Section H?

2 MS. MCNEIL: You can, but I --

3 MR. SHIPLEY: Which is a subsection --

4 MS. MCNEIL: -- thought I heard you say that you
5 think you would be able to convince DPIE --

6 MR. SHIPLEY: Well, hopefully, yeah, and the
7 staff, more importantly, the staff --

8 MS. MCNEIL: Right.

9 MR. SHIPLEY: Because I, I would just, I just, I
10 would just request -- I realize that you're in a position by
11 virtue of the law, is limited to this building permit; but
12 if you could in your finding of the decision draw a
13 conclusion as to testimony, that you're satisfied with the
14 testimony, that the requirements of this section have been
15 satisfied as to the site plan that's Exhibit 25.

16 MS. MCNEIL: You, hold up, you didn't leave the
17 record open.

18 MR. SHIPLEY: Well, I mean I would be glad to
19 address that. We're not asking you to rule on that, that,
20 that's all additional building permits shall be issued; but
21 what we would ask that you put in, if you felt comfortable
22 including in your decision that it would appear that the
23 site plan, which is Exhibit No. 25, satisfies the notion
24 that the effort, discernment of the property from the
25 standpoint of this impact on the state roads is the specific

1 plan of the state roads and not (indiscernible), then that
2 would be, that would help us avoid not having to file a case
3 under this section, a subsequent building permit,
4 (indiscernible); and then if Mr. Brown wants me to get it,
5 you're satisfied with what Paul and John said about the time
6 between 1986 when the preliminary was approved
7 (indiscernible) 1989 (indiscernible), I'd be happy to
8 furnish that.

9 MS. MCNEIL: Okay. Well, I'll leave it like this.
10 If you would like to submit something in the next say two
11 weeks, you may do so on that issue. I would certainly
12 address the issue or whatever decision I come up with, but I
13 cannot say exactly what you just said until, you know, until
14 I read further because I really think the issue is the
15 council needs to know exactly what's proposed and then make
16 a decision; and that site plan, you don't have any permits
17 for it. You could change your mind. You could propose
18 something. You know, I think that's why they wrote it that
19 way, and they want to know what's going to be built, and
20 then they make a decision.

21 So, I mean that's how I feel right now. If you
22 want to say more, you can; but either way, I'll address it
23 in my decision and you would have a right to appeal whatever
24 I say. How is that, just the best I can say.

25 MR. SHIPLEY: That's all I can ask.

1 MS. MCNEIL: All right.

2 MR. SHIPLEY: Thank you for all of your time and I
3 appreciate --

4 MS. MCNEIL: So, everything is good? Anything
5 further? Okay. Now thank you all for being here and I
6 thank staff as well. Take care, everyone.

7 MR. FERRANTE: Thank you.

8 MR. WOODBURN: Thank you.

9 (Whereupon, the hearing was concluded.)

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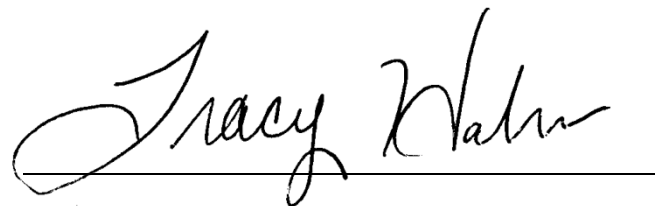
C E R T I F I C A T E

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:

WINFIELD M. KELLY, JR.

Case No.

By:

A handwritten signature in cursive script that reads "Tracy Hahn". The signature is written in black ink and is positioned above a horizontal line.

Tracy Hahn, Transcriber