

1 THE PRINCE GEORGE'S COUNTY PLANNING BOARD OF
2 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

3
4
5 T R A N S C R I P T
6 O F
7 R E G U L A R M E E T I N G

8
9 SUFFRAGE POINT
10 Detailed Site Plan,

11 DSP-21001

12 January 12, 2023

13 VOLUME 1 of 1

14
15 PRESENT:

16 PETER A. SHAPIRO, Chairman

17 DOROTHY F. BAILEY, Vice-Chairman

18 A. SHUANISE WASHINGTON, Commissioner

19 WILLIAM M. DOERNER, Commissioner

20 MANUEL R. GERALDO, Commissioner
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22
23
24
25

P R O C E E D I N G S

1
2 CHAIRMAN: So we have one more before us, which is
3 Item 9. Item 9 is going to, I imagine, take us a good chunk
4 of time. I just want to check in with you commissioners
5 around this. I'm thinking, let's see what we can do for
6 about a half hour and then we can take a lunch break at
7 12:30. Will that work for folks? And maybe we'll take
8 about a half hour, forty-five-minute lunchbreak and see how
9 we do. And then we'll pick it back up after that. Will
10 that work for you all?

11 VICE CHAIRMAN: Fine, fine.

12 CHAIRMAN: Okay. So then let's go and see where
13 the first half hour of this takes us and then we'll make a
14 decision from there. So what's before us is Item 9. This
15 is a detailed site plan DSP-21001 Suffrage Point. This was
16 continued from January 5th, 2023, Planning Board meeting.
17 The attorney for the applicant is Mr. Rivera. Ms. Kosack is
18 going to give the staff report and then we'll have a number
19 of speakers in support and in opposition. We'll run through
20 that hearing process like we normally do. And let me turn
21 it over to Ms. Kosack for the staff report.

22 Take it away.

23 MS. KOSACK: Good morning, Mr. Chair. Can you
24 hear me?

25 CHAIRMAN: I can hear you fine. Thanks for

1 checking.

2 MS. KOSACK: Okay. Thank you. Good morning, Mr.
3 Chair and members of the Board. For the record, my name is
4 Jill Kosack from the urban design section. The item before
5 you is number 9, DSP-21001, for Suffrage Point. The DSP
6 proposes to develop forty-one single-family attached
7 dwelling units on the lower parcel of the project formerly
8 known as Magruder Pointe. Staff is recommending approval
9 with conditions for DSP-21001 for Suffrage Point. The
10 applicant has submitted revised conditions into the record
11 and staff is in agreement with those. However, the
12 applicant will be requesting further revisions relative to
13 the deletion of condition 1-H and applicant's proposed
14 condition 3, and which staff is in agreement with those.
15 But again, the applicant will speak further to that.

16 With that, next slide, please.

17 The site is located in Planning Area 68 and
18 Council District 2, and is within the municipal limits of
19 the City of Hyattsville.

20 Next slide, please.

21 The subject DSP is for what is known as the lower
22 parcel of the Suffrage Point property, which is located
23 between 40th Place and Driscoll Park. I would like to point
24 out that there are outdated references in the staff report
25 to Magruder Park. Those will be updated to the current

1 name, which is Driscoll Park, in the final drafting of the
2 resolution.

3 Next slide, please. Next slide, please.

4 The subject property and much of the existing
5 neighborhood to the north and east is in the current RSF-65
6 zone. The park property to the west and south is in the AG
7 and R-O-S zones. The property was previously in the R-55
8 zone, as rezoned via the approved CSP-18002. As permitted
9 by Section 27-1704(b) of the zoning ordinance, projects,
10 such as this DSP, with prior approvals, are allowed to
11 continue to be reviewed under the prior zoning ordinance for
12 the development of the property.

13 Next slide, please.

14 The subject property is currently not in any
15 overlay zones. However, under the prior zoning ordinance,
16 which this DSP is being reviewed under, the property is
17 within the traditional residential neighborhood character
18 area of the Gateway Arts District sector plan and SMA
19 development district overlay zone that's shown on the right.

20 Next slide, please.

21 The aerial shows -- (sound) -- oh. The aerial
22 shows the site is -- (sound).

23 CHAIRMAN: One second. It looks like we got some
24 background noise. Okay. Please continue.

25 MS. KOSACK: The aerial shows the site is vacant

1 and has been cleared and graded, pursuant to the approved
2 detail site plan 18005, which included infrastructure
3 development of the subject lower parcel in relation to the
4 development of the upper parcel.

5 Next slide, please. The next slide, please.
6 Thank you.

7 The site has little slope and was largely within
8 the existing flood plain. However, a flood plain fill
9 waiver was approved in 2018 by DPIE for fill and
10 compensatory storage in the flood plain on site, and to
11 reduce the area of the flood plain on site. The proposed
12 flood plain line shown on the detail site plan matches the
13 DPIE-approved flood plain delineation plan. All impacts to
14 the regulated environmental features on the property were
15 approved with preliminary plan of subdivision 4-21052. The
16 entire Suffrage Point property is exempt from the woodland
17 conservation ordinance, as it had less than 10,000 square
18 feet of woodland on site and had no previously approved tree
19 conservation plans prior to the CSP. Therefore, there were
20 no requirements on the property relative to preservation or
21 replacement of specimen trees.

22 Next slide, please.

23 This map shows the adjacent master plan rights-of-
24 way, which includes Hamilton Street to the west of the
25 property, which is a collector roadway.

1 Next slide, please. Next slide, please. I'm
2 sorry. Are we able to move to the next slide? Thank you.

3 This enlarged aerial, again, shows the
4 infrastructure development that has already been occurring
5 on the property, pursuant to the approved DSP-18005. This
6 slide is the subject site plan, which proposes development
7 of this lower parcel with forty-one single-family attached
8 dwelling units. The layout and development amount is
9 consistent with the recently approved preliminary plan of
10 subdivision 4-21052 and CSP-18002. The proposed forty-one
11 single-family attached dwelling units are located in two
12 rows. One fronting the public roads to the east, and one
13 fronting the park land to the west, with an intervening
14 parcel for compensatory flood plain storage. A twenty-two-
15 foot-wide public alley, which provides access to all of the
16 garages, runs between the townhouse rows and has an access
17 point at either end. One off Gallatin Street and the other
18 off 40th Place.

19 All of these townhouse units will have first-floor
20 two-car interior garages. Parcel C, located in the upper
21 left-hand corner, and D, located in the middle left side of
22 this image, are proposed to be dedicated to the City of
23 Hyattsville as they requested and required by the
24 preliminary plan of subdivision to accommodate the existing
25 and future improvements to Driscoll Park. Parcel B-2, in

1 the lower left corner of the property, will be used mainly
2 for compensatory flood plain storage and will be owned by
3 the HOA.

4 The city had requested a public use easement over
5 this parcel and the applicable -- the applicant is amenable
6 to providing it. However, because the easement is not
7 required by any subdivision or zoning ordinance regulations,
8 it should not be conditioned by the DSP, but rather, will
9 remain as a finding only. This is relative to applicant's
10 proposed deletion of conditions 1-H and new condition 3.

11 Next slide, please.

12 The submitted landscape plan demonstrates
13 conformance to all applicable D-D-O standards relative to
14 landscaping, as was required with the approval of CSP-18002.
15 And it conforms to the tree canopy coverage ordinance with
16 fifteen percent tree canopy in proposed plantings shown on
17 site. Overall, the DSP conforms to the sixty applicable D-
18 D-O standards, except for 5, for which the applicant has
19 requested amendments and staff recommends approval, as
20 outlined in the staff report. These D-D-O amendments are
21 similar to those approved with DSP-18005 for the upper
22 parcel relative to townhouse lot size, front yard impervious
23 area, and driveway width.

24 Next slide, please.

25 This is a submitted viewshed exhibit that shows

1 the relationship of the proposed townhouses on the right
2 with Driscoll Park on the left, and the compensatory flood
3 plain storage on parcel B-2 in between. The grade change
4 and proposed landscaping will help to screen the townhouses
5 from the park.

6 Next slide, please.

7 This image shows an illustrative rendering of the
8 development from the park property, showing the change in
9 elevation and the proposed architecture that would be
10 visible.

11 Next slide, please.

12 The DSP includes two proposed architectural
13 models. The Isabella on the left and Chelsea on the right,
14 which are identical to what was approved with DSP-18005 for
15 the upper parcel of Suffrage Point. The two townhouse
16 models have a base finished square footage of 1,599 and
17 1,799 square feet. And they both have an interior rear-
18 loaded two-car garage. The total finished gross floor area,
19 with all options, can be up to 2,280 square feet. The
20 models are designed with pitched or flat roofs, and with
21 single or double porches with railings across the front.

22 Next slide, please.

23 The following slides provide various elevations
24 showing the potential townhouse groups. And again, these
25 are similar to what was shown and approved with DSP-18005.

1 Next slide, please.

2 Again, these are potential townhouse groupings and
3 front -- front and rear elevations.

4 Next slide, please.

5 Again, these are black and white elevations of the
6 potential townhouse groups.

7 Next slide, please.

8 These are the elevations for the Isabella model,
9 which will be used for end units within the community.
10 Staff report includes a condition requiring additional front
11 architectural elevations for a total of five that would have
12 to show compatibility with the neighborhood and allow for
13 additional variety and integration amongst the forty-one
14 dwelling units. Additionally, as conditioned, highly
15 visible end units will require a minimum of the water table
16 or first floor finished with brick or other masonry. And
17 with a minimum of three architectural features, again,
18 similar to what was approved with DSP-18005.

19 Next slide, please.

20 These elevations are for the Chelsea model, which
21 is to be used on interior lots. The rear composite
22 elevation on the bottom shows the optional rear personnel
23 doors adjacent to the garage doors. These will be mandatory
24 for lots 26, 27, 32, 33, and 34, as conditioned in the staff
25 report, in order to allow for sufficient fire access to

1 these units from the alley, which will serve as a fire
2 access road in the community. On other lots, it will remain
3 as an option.

4 Next slide, please.

5 As conditioned with this application and the
6 preliminary plan of subdivision, interpretive signage is to
7 be provided on the property to commemorate the site of the
8 WSSC headquarters and the site of the 1913 suffragist rally.
9 The applicant submitted this exhibit as what is intended.
10 However, staff will continue to work with the applicant and
11 historic preservation staff to determine the final location
12 of wording prior to certification of the DSP. And -- and
13 work with the city, as well.

14 Next slide, please. Oh, next slide, please.

15 With that, the urban design section recommends the
16 Planning Board adopt the findings of staff and approve DSP-
17 21001 for Suffrage Point, including the five amendments to
18 D-D-O standards, subject to the one condition, which has
19 multiple subparts found on pages 22 through 23 of the staff
20 report. Multiple conditions, as recommended by the City of
21 Hyattsville and agreed to by the applicant, have been
22 included relative to lighting and landscaping. Again, the
23 applicant has submitted revised conditions into the record,
24 but will be further modifying that request to include the
25 deletion of condition 1-H and the deletion of applicant's

1 proposed condition 3, and staff is in agreement with these
2 changes.

3 This concludes staff's presentation.

4 CHAIRMAN: Thank you, Ms. Kosack.

5 Commissioners, questions for staff?

6 VICE CHAIRMAN: I don't have a question, but I got
7 distracted and I would like to go back to slide 13, I think.
8 I think she referenced the park and I kind of forgot where
9 that park is. Okay. Oh, it's not 13, it's 9.

10 CHAIRMAN: Uh-huh.

11 MS. KOSACK: Yes.

12 CHAIRMAN: Ms. Kosack.

13 MS. KOSACK: Driscoll -- Driscoll Park is seen in
14 the left side of this image. You can see existing
15 facilities. Applicant's proposed parcels C and D will be
16 dedicated to the city to include some of the existing park
17 facilities that overlap onto this property.

18 VICE CHAIRMAN: And --

19 COMMISSIONER WASHINGTON: Ms. Kosack, look at the
20 part right below the number 2. Isn't that where it's
21 located on the slide? That's where the --

22 MS. KOSACK: Correct.

23 COMMISSIONER WASHINGTON: -- park is?

24 MS. KOSACK: Correct.

25 COMMISSIONER WASHINGTON: Yeah.

1 MS. KOSACK: Those are park facilities right there
2 under the number 2, yes.

3 COMMISSIONER WASHINGTON: Right.

4 VICE CHAIRMAN: And the townhouses are --

5 MS. KOSACK: Going to be in -- in the -- right
6 where outparcel 1 is written.

7 VICE CHAIRMAN: Okay.

8 MS. KOSACK: There will be a row of townhouses
9 underneath that.

10 VICE CHAIRMAN: Fine. Thank you. Thank you very
11 much.

12 CHAIRMAN: Thank you, Commissioner -- thank you
13 Commissioner Bailey.

14 Other questions for staff?

15 MR. SMITH: I have a couple questions.

16 CHAIRMAN: I see you raising your hand but now is
17 not the time for you to speak. So right now, the
18 commissioners are here to have questions for Ms. Kosack.

19 MR. SMITH: Mr. Chair, I don't mind going after
20 the commissioners, but under your rules, any person of
21 record has the right to cross-examine or ask questions about
22 of a -- of a previous witness. And that's what I would like
23 to do.

24 CHAIRMAN: So you want to be able to cross staff?

25 MR. SMITH: Is -- is -- is staff a witness or not?

1 Can I ask clarifying questions or not?

2 CHAIRMAN: Yeah. Hold the thought one second.

3 Let me see if there's questions for staff from commissioners
4 and then we'll hear from our counsel, Mr. Warner, for his
5 view on this, as well. Thank you, Mr. Smith.

6 So other questions for staff, Commissioners?

7 COMMISSIONER DOERNER: Yeah. I have a couple that
8 I can shoot off.

9 CHAIRMAN: Okay.

10 COMMISSIONER DOERNER: Ask them one because it --
11 I think Commissioner Geraldo was going to ask it if I don't.

12 VICE CHAIRMAN: (Indiscernible).

13 (Laughter.)

14 COMMISSIONER DOERNER: Let me go ahead and ask.
15 Ms. Kosack, if you could just describe why the three-foot
16 sidewalks were adequate and the staff requires as opposed
17 to, like, five-foot or six-foot sidewalks?

18 COMMISSIONER GERALDO: Uh-huh.

19 COMMISSIONER DOERNER: If there's anything kind of
20 in that area that has a three-foot (indiscernible). And
21 then I have a couple of other questions but I'll start
22 there.

23 MS. KOSACK: Yes. The three-foot width was
24 referring to the lead walk on the individual townhouse lots
25 that lead -- that connects from the public sidewalk and the

1 sidewalks that run throughout the community to the front
2 door of the houses. So it's not a sidewalk that's used for,
3 you know, public access or -- or traversing of the property
4 or along the frontage. It's the lead walk that's on the
5 individual townhouse lot. And that is typical for
6 townhouses in -- in urban area for the lead walk. Again,
7 you know, the -- the pavement that connects your front door
8 to the public sidewalk to be three-foot wide. That's a
9 typical lead walk width.

10 COMMISSIONER DOERNER: Okay. And I have no
11 problem with that. I think that's what I got in front of my
12 house. So yeah, I'm fine with that. I just didn't -- I
13 didn't read that correctly then, probably. In terms of
14 the -- the security options that you've got on page 6 in the
15 staff report, and -- and lighting, I wanted to find out --
16 and you may not know this. I might have to go to Mr.
17 Rivera. But I wanted to find out if the garage lights are
18 going to have motion activation or at least a rough-in to do
19 that, so you could also, potentially, have like an outdoor
20 camera? Because there's -- there's a number of devices on
21 the market now that have outdoor flood lights that can
22 activate cameras.

23 We've been having issues in our townhome
24 development community in Hyattsville with packaged stuff.
25 With people going through garages and -- and grabbing stuff

1 in there. And they're -- they're explicitly or
2 intentionally not using the lead sidewalks -- those three-
3 foot sidewalks. They're going in the alleyways, so it --
4 because we have lots of front door security alarms and --
5 and -- and cameras. And then they realize that they're not
6 getting seen if go through the alleyway. So I just wanted
7 to find out if -- what kind of lighting is going to be in
8 the alleyway areas on the garages.

9 MS. KOSACK: Yes. As far as the --

10 CHAIRMAN: And if you don't have the
11 (indiscernible) of the staff, we can certainly hear from the
12 applicant on this matter, as well. But Ms. Kosack.

13 MS. KOSACK: Yes, yes. I would have to defer to
14 the applicant as far as the lights that are mounted on the
15 houses. However, I can state that the alleyway is a public
16 alleyway and will be lit to public roadway standards. There
17 was a photometric plan that was submitted, so there are
18 public lights that will light the alley, itself. But as far
19 as the garage mounted lights, I'd have to defer to the
20 applicant.

21 COMMISSIONER DOERNER: Okay. So yeah, I'll wait
22 for Mr. Rivera to cover that then. And also whether or not
23 they have, like, rough-ins or something to install cameras
24 if the owners wanted to do that.

25 Can we flip the slides to slide -- it looks on 19

1 right now. Can we flip them to 12? There -- there's one
2 thing that you mentioned on the grade change. And I wanted
3 to find out -- because I can't see that quite well on my
4 screen. What is the difference in the grade between, like,
5 the lower-level area where you'd have the park and kind of
6 the -- the water catchment versus the homes. Like, what's
7 the building -- kind of the elevation there at base. And
8 then is that -- has it -- is that going to be changed then?
9 Because I think, I was trying to, like, visually recall. I
10 think it's around the same elevation right now. So I don't
11 know if they're actually increasing the -- the base
12 elevation right there and -- and adding more grade or -- or
13 not. Do you know?

14 MS. KOSACK: Yes. As part of the grading of the
15 property, the area where the house is -- will be located
16 will be elevated above what was existing on the property.
17 That was relevant to the -- the flood plain fill waiver that
18 was granted to allow fill in that area to elevate those
19 houses. I probably would have to turn to the applicant for
20 specifics, but I believe the difference between the grades
21 on parcels B-2 and the finished floor elevation of the
22 houses will be approximately twenty feet, so there will be
23 quite a bit of difference. In front of the houses, it'll be
24 more about fifteen feet of difference. But once you
25 actually get into the houses, the finished floor will be

1 about twenty feet higher than the grade in the compensatory
2 storage parcel B-2. But again, the applicant can confirm
3 that.

4 COMMISSIONER DOERNER: Okay. Yeah. I -- I can
5 wait for the applicant to -- to mention that then. In terms
6 of the -- the regulated environmental features that are in
7 that -- that area, what -- can you go over what they are? I
8 know I can flip through the staff report and probably find
9 them. But -- but I'm interested in just kind of hearing
10 what they are.

11 MS. KOSACK: Yes. The environmental section, you
12 may be able to point to that more quickly than me. I
13 believe most of it was relevant to the hundred-year flood
14 plain on the property. I'm not sure if -- if it -- if the
15 environmental staff is present.

16 CHAIRMAN: Do we have someone from environmental?
17 Is there somebody from environmental then?

18 MR. JUBA: Yes. Hi. This is Marc Juba, for the
19 record. Good afternoon, Chairman and members of the Board.
20 Basically, the site is primarily within -- a primary
21 management area that's associated with the flood plain
22 that's on site. And there is a small stream that's located
23 to the southwest that goes offsite that's also associated
24 with some wetlands and wetland buffer. And that was what
25 was on site prior to the grading for the compensatory

1 storage that's there now.

2 COMMISSIONER DOERNER: Now can -- and to what --
3 to what extent do we -- so one of the conditions that we
4 have to define for the DSV is that these -- these wetland
5 environmental features have been preserved and/or restored.
6 So that on the natural state to the fullest extent possible.
7 To what extent do we think that's actually going to happen?

8 And then my other question is just more like kind
9 of procedural of how it happens? Because there's a lot of
10 flooding down there now and I realize it's a flood zone --
11 it's a flood plain right down there. But there's also been
12 a lot of run off from the surrounding areas and I think
13 we'll probably hear from that in some of the -- the
14 opponent's testimonies. To what extent do we take that into
15 consideration? Because it -- I'm not really sure if
16 that's -- if it's being preserved during the process of
17 actual developing. And if it's not, like, what kind of
18 remedies are there for -- for us?

19 MR. JUBA: So with regards to the regulating
20 environmental features on the site, I know at the time of
21 the DPS, the Board looked at the proposed impacts in the
22 exhibits that were presented by the applicant and they were
23 approved. Most of the area that was approved was already
24 impacted on site from the previous parking lot that was
25 there.

1 Impacts off site, obviously, don't fall in the
2 pre -- the purview of the Board. And I think the only off-
3 site impact that the applicant was proposing was to do a
4 connection for the outfall going off site for the
5 compensatory storage. I know that from a standpoint of
6 flood plain storage on site, I know graphically looking at
7 it, it's -- covers a larger area than what is proposed once
8 a compensatory storage facility was being put in there. But
9 according to DPIE, with this exhibit here, they're actually
10 increasing the compensity (phonetic sp.) for flood plain
11 storage that's on site. So from that standpoint, they're
12 actually -- there's going to be less likelihood of flood --
13 you know, flood as from where running off site with the
14 compensatory storage than without it being on site.

15 But in terms of the site with this design, other
16 than, you know, it -- I mean, additional, I guess,
17 vegetation surrounding the stormwater management facility,
18 which really is in DPIE's purview, I don't think there's
19 much else that can be added to the site, in terms of
20 additional mitigation for the impacts of the flood plain.
21 And again, DPIE regulates the flood plain, itself, and also
22 controls whether or not the issue of the waiver for the
23 site, not Park and Planning.

24 COMMISSIONER DOERNER: Okay. So do we -- I guess,
25 let me ask it a little bit differently and I'll give you

1 kind of some context. Like I -- I like to go walking
2 around. There's a nice kind of like boggy, marshy area in
3 the park that's nearby that -- that floods when -- when
4 there's a lot of rains. And there's some kind of low-level
5 walking, like, planks and stuff that you can get up in
6 there. That's all downstream from this. And -- and I am
7 concerned that, even if it's off site, it's not necessarily
8 my concern of what's going to be there later because I think
9 that's better than what they have right now. It's a parking
10 lot and it's all impervious surface right -- right there and
11 it's got a lot of run off and it's not controlled at all.
12 And what's going to be put in will be much better than
13 what's existing there now, in terms of being able to hold
14 and clean the water and -- and not have any issues. But in
15 the process of how we get from where we are now or where we
16 used to be before this -- when it was a parking lot and it
17 wasn't raised or anything, and we get to the point of the
18 compensatory stormwater being there, if this is approved,
19 what do we do? So how do we stop -- what is the Planning
20 Board's ability or what would happen with DPIE or others if
21 they don't do a good job and it does start polluting the
22 streams and stuff in the area that I like to go and walk in
23 the -- and the park is completely ruined. Because it's --
24 it's pretty sensitive over there and I want to make sure
25 that the process of -- of kind of going from this DSP to the

1 final construction, we don't have a lot of run off and the
2 treatment is being done properly. Because I'm -- I'm not
3 convinced that it necessarily has been on the upper parcel
4 and that's -- that's a really big concern to me. Because
5 if -- if it hasn't happened in the upper parcel, how do we
6 know it'll happen in the bottom parcel?

7 MR. JUBA: I think the interim processes of
8 sediment control would best be answered by the applicant
9 and -- and DPIE. And also, for how the sediment control
10 would be monitored post-construction.

11 COMMISSIONER DOERNER: Okay. All right. That's
12 fine then. I can go ahead and I'll wait for the applicant
13 to -- to kind of talk about those things later on then.

14 CHAIRMAN: Thank you, Commissioner.

15 So after we hear from other questioners -- other
16 questions, then, Mr. Smith, you and other parties will have
17 the opportunity to cross-examine staff, as well as the
18 applicant will, as well. But let's continue on to see if
19 there's questions from -- and I'll ask Mr. Warner to weigh
20 in on that, as well. But other questions for staff at this
21 point?

22 COMMISSIONER GERALDO: I just have a follow-up to
23 Mr. -- Commissioner Doerner's questions. Because it was --
24 he was correct that it was concerns that I had, especially
25 when any potential violations of the Clean Water Act. So I

1 see that the waiver for the one-hundred-year flood plain was
2 entered in 2018. And so as an environmental for the -- I
3 guess, for the environmental office, what is the likelihood
4 that that could have worsened since 2018, given the climate
5 change?

6 MR. JUBA: I think that would be --

7 MS. KOSACK: I think that would --

8 MR. JUBA: -- a question more for DPIE about how
9 they came to issue the waiver and how they will go forward
10 prior to permit to reverify the waiver for stormwater
11 management on the site.

12 COMMISSIONER GERALDO: So is that -- is that
13 something that will happen? They will verify? Because
14 it's -- you know, it's more than four years old and that's a
15 concern that I had. So is -- is -- would that be part of
16 the process, that DPIE would, in fact, reverify it?

17 MR. JUBA: Yeah. With regards to the stormwater
18 management plan, as well as the waiver that's being issued
19 for the site, DPIE is -- requires the applicant, actually,
20 to do a final stormwater management plan. And at that time,
21 they would cross-reference to verify if the waiver is still
22 valid, I would think. But they're required to have both a
23 final plan and a valid waiver at time of final permit for --
24 for grading permit.

25 COMMISSIONER GERALDO: So I guess then, my

1 question then is, what would they do -- what would DPIE do
2 to determine whether or not that valid -- that waiver was
3 still valid four years later? I mean, do they do -- do you
4 know if they do any testing? Do they do any analysis? Do
5 they look at the data?

6 MR. JUBA: Given that I'm not part of DPIE, I
7 can't really answer exactly what process they go through.
8 But I do know that they do have reviewers that do look at
9 the final design plans prior to permit to verify that
10 everything should be in line with the state and county
11 regulations. But if you have any further questions, I would
12 recommend directing them to the site regulation at DPIE and
13 they'd be able to answer more regarding their process.

14 COMMISSIONER GERALDO: Okay. Thank you.

15 COMMISSIONER DOERNER: Let me ask you one last
16 question and this actually probably as good as I -- related
17 to what Commissioner Geraldo was -- was kind going on.
18 The -- I realize that these homes, and particular on this
19 slide that is still up, are going to be raised up and out of
20 the flood plain later. But do we have any kind of
21 conditions from -- or -- or any sort of an acknowledgement
22 by the applicant that future homeowners are going to know
23 that they used to be in a flood plain?

24 So being in a flood plain is certainly unsafe.
25 It -- it's not -- not a good place to be. And we're just

1 sort of trusting that all these mitigations are going to be
2 done properly. But is the property owner going to actually
3 tell? People are going to come and buy something on the --
4 hey, you used to be in a flood plain before. We got a
5 waiver from DPIE, so we didn't actually go through some of
6 the normal procedures. And we think we fixed everything
7 fine and we -- we've covered everything, but it -- it did
8 used to be a flood plain.

9 MS. KOSACK: You know --

10 CHAIRMAN: Ms. Kosack, do you know what the
11 requirement notifications are?

12 MS. KOSACK: I -- I don't know from a permitting
13 perspective what the requirement notifications are --

14 MR. WARNER: I do.

15 MS. KOSACK: -- for the -- oh, go ahead. Thank
16 you.

17 CHAIRMAN: Mr. Warner.

18 MR. WARNER: Right. The 2018 -- David Warner,
19 principal counsel. The 2018 flood plain waiver letter cited
20 in the staff report lays out the notification requirements.
21 They're also in the county code 32-206(h), I believe. But
22 as a condition of getting that waiver, it's required that
23 the owners be notified of the existence of it. That their
24 insurance premiums may go up. Of any flood hazards that
25 they may face and any -- importantly enough for your

1 question, any responsibilities of the owner to maintain
2 flood proofing, stream modification, or have any involvement
3 that's part of the covenants associated with that waiver.
4 So yes. There is notification and I believe that is
5 required to be in the deed. But the owner -- the applicant
6 can confirm that. But it is a requirement of the county
7 code.

8 CHAIRMAN: Thank you for that.

9 MR. WARNER: It's a condition of the waiver.

10 COMMISSIONER DOERNER: So I think my question
11 might be a little bit different -- just slightly nuance from
12 that. So if -- if you build grade -- if you build above
13 grade and they're out of the flood plain then, because
14 they've changed it, you don't always have to get, like, a
15 coverage and other flood insurance to the same degree. So
16 then, even if they got the initial waiver that had been done
17 when it was in the flood plain, if they do mitigation so
18 they're no longer in it or it's no longer considered to be a
19 flood plain, do they still have to notify the -- the owners
20 that it used to be -- prior to this recent mitigation, it
21 used to be in the flood plain? Because that's really the
22 concern that I have is, say they come in and they build all
23 these homes and then they flood like crazy, because things
24 didn't work like they had, I'd be really mad if I was buying
25 a million-dollar house, I came into the county, and I'm in a

1 flood zone and my house is flooded.

2 I mean, I'd want to be able to have a put back, so
3 that way the developer would have to buy back the house if I
4 hadn't even been told about that. And that's really my
5 concern -- concern is that, like, I don't want to have what
6 looks to be really high-quality development and -- and --
7 and really nice homes attracting people here and then they
8 flood. And then they -- if they didn't get any sort of a
9 notification of it or they weren't aware that it used to be,
10 literally, in a flood zone and -- and in one of the more --
11 more precarious places to be located. So do we know if --
12 if they do all these mitigations that they're -- if they're
13 still going to have to notify, or is that kind of waived
14 from the waiver?

15 MR. WARNER: I'll try and answer that to some
16 degree, because I -- I as well, don't advise the county on
17 that issue. But it would seem curious to me that a home
18 built on high ground and outside of the flood plain
19 designated by the county would have any flooding, because
20 that's the whole point of the structure not being built in
21 the flood plain. So it shouldn't flood, right? But I don't
22 know that you would have to go back and say well, you know,
23 this used to be in a flood plain. It's not anymore, but
24 we're going to let you know. I'm not sure that that would
25 sound like a reasonable requirement. But again, probably

1 have to require the -- you know, an expert from the county
2 to give us more information on that.

3 But one thing I'll just add, as well, is that --
4 is that with regard to the flood plain waiver, DPIE could
5 not have issued it in 2018 unless they were able to make
6 findings that there were no additional threats to public
7 safety. That there would be no increase in flood elevations
8 or discharges. And they had to find that there would be no
9 other adverse impacts on private or public property,
10 upstream or downstream. So they couldn't even have got this
11 waiver without DPIE making that finding. Now, as
12 Commissioner Geraldo points out, stuff's happened since that
13 time. But before you today, it's a valid waiver that the
14 applicant can rely on. So --

15 COMMISSIONER DOERNER: And I'm not disputing
16 that's a valid waiver. And I wouldn't argue on the point
17 that yeah, if you're outside the flood plain and you a high
18 enough building elevation that that would be kind of
19 unreasonable to ask -- to have some sort of a disclosure
20 that really doesn't have any impact. However, but for them
21 having been in a flood plain and assuming that they actually
22 do the proper techniques, and there's no soil kind of
23 issues, and we know that there's some Christiana complex
24 soil in this area, and there wasn't a study done on it
25 exactly where it is.

1 Like, let's just hypothetically think, like, maybe
2 they -- they put some of these homes on top of that. It
3 sinks in and these homes now are all of a sudden a little
4 bit below it and maybe some of their mitigations didn't
5 work. If these homes had already been on higher area that
6 wasn't reclaimed from a flood zone, I think I would agree
7 with you. But given that -- that it's being reclaimed land
8 or built up on the flood zone, I don't know. And it -- it
9 strikes me as a bit -- bit precarious. And it's a risk that
10 the developer takes and the developer may -- may do a
11 fantastic job at this and if it's approved because it all
12 went through. It may be perfectly fine and doing an awesome
13 job at -- at building new area. But I -- I still think that
14 there might be reason to actually have some sort of a
15 notification to these people. And it doesn't sound like we
16 know whether there has to be notification or not.

17 CHAIRMAN: But I think -- let me jump in here
18 Stuart (phonetic sp.). Because I'm not disagreeing with you
19 at all and I share the concerns for the future homeowners of
20 the neighborhood, all the things that you're talking about.
21 And it really is a permitting and enforcement issue. That
22 it's a DPIE issue and not ours.

23 COMMISSIONER DOERNER: I understand that.

24 CHAIRMAN: So I -- I mean we can take this
25 forum -- we can take this opportunity to share our concerns

1 around it loud and clear. But I just want to be clear to
2 the public and to us that we don't control DPIE. And
3 it's -- that's their process.

4 COMMISSIONER DOERNER: No, that -- that's totally
5 true. And they're the ones who did the waiver. But in the
6 county code, it -- it says in the county code after, like,
7 one of the sections that -- that we have in this case, which
8 is 24.130(b)(5), it -- after that, in the county code, in
9 24.131(4), as I was kind of reading through and trying to --
10 to -- to strengthen my understanding of some of the
11 environmental features. It says, on -- on a (indiscernible)
12 plan, the planning board may require that the owner of the
13 property on which unsafe conditions have been found exists,
14 shall notify any potential purchaser of such conditions.
15 I -- I think that should be a condition of --

16 CHAIRMAN: It is. If they do what they need to do
17 and DPIE permits that and the enforcement's done adequately,
18 then it's not unsafe land.

19 COMMISSIONER DOERNER: We don't know that. They
20 waived it.

21 CHAIRMAN: But that's not for us to determine.
22 DPIE has taken a position on this. That's what we're
23 working with. So what I'm hearing you --

24 COMMISSIONER DOERNER: I don't think --

25 CHAIRMAN: -- say --

1 COMMISSIONER DOERNER: But we haven't had -- I
2 mean, this is all magical. We don't know that this land is
3 safe, necessarily, yet. As of now, it's still a flood
4 plain. And -- and --

5 MR. WARNER: Commissioner Doerner, we're not --

6 COMMISSIONER DOERNER: (Indiscernible).

7 MR. WARNER: None of us here are engineers. Not
8 to interrupt you. And the planning department isn't staffed
9 with a geological engineer. And that's why the code
10 requires us to refer this kind of thing to the engineers at
11 the county. And they have told you in a valid permit that
12 there are no additional threats to public safety in the
13 permit. They had to make that finding. So that's what you
14 can go -- you don't have any other evidence, other than --
15 you know, you can certainly have your personal opinion. But
16 we really have to rely on the evidence --

17 CHAIRMAN: We can have our concerns.

18 MR. WARNER: -- we have before us.

19 CHAIRMAN: Right.

20 COMMISSIONER WASHINGTON: And --

21 CHAIRMAN: We can have our concurrence. But that
22 is not -- it is not -- once DPIE has issued this permit,
23 it's not an issue before us anymore.

24 COMMISSIONER WASHINGTON: Mr. Chairman and -- and
25 this is my understanding and I'm going to just -- I state

1 it, perhaps, for clarification. But isn't there also a role
2 for FEMA relative to the finalization of a compensatory
3 storage issue? And I don't know if that's a certification
4 role or validation role. But it's even -- I think it's FEMA
5 and DPIE. I mean, it's still not us but if there's just
6 added assurance, knowing that there's also a federal
7 component or federal agency involved in verifying and
8 validating this, as well. That's it for -- I just wanted to
9 offer that.

10 CHAIRMAN: I appreciate that.

11 And Mr. Warner, you may want to weigh in on -- or
12 staff may want to weigh in on this too -- but my -- I think
13 the piece here that complicates it is that, based upon the
14 assumed mitigation, this won't be in a flood plain. And so
15 that it changes the criteria for which we and even FEMA and
16 others evaluate this. Now, again --

17 MR. WARNER: The structures won't be in a flood
18 plain. In fact -- right.

19 CHAIRMAN: Say again.

20 MR. WARNER: They're not allowed -- the structures
21 are not allowed to be in the flood plain. Exactly.

22 CHAIRMAN: Right.

23 MR. JUBA: I also wanted to -- to -- to say to Mr.
24 Doerner, that with regards to the Christiana clays, at time
25 of building permit for structural review, once they're

1 looking at the final architecture at DPIE, they have got to
2 look at the soils at that time too, to make sure there's not
3 going to be a safety issue. So and if they require -- a lot
4 of times DPIE will require geotechnical reports, if they
5 think that there's going to be an issue related to slopes
6 ability failure with regards to how the buildings are being
7 placed on top of the proposed slope. So one would presume
8 that, at time of building permit, they would be looking at
9 that as they're supposed to.

10 The other thing too, is I know for our
11 geotechnical expert from our section, since this site was
12 previously graded out and had the parking lot placed on it,
13 presumably, a lot of those soils would have already been
14 excavated and removed off site. And if there is a concern,
15 as I said, it should be addressed by DPIE at time of
16 structural review.

17 CHAIRMAN: And thank you, Mr. Jube.

18 I just want us -- I want us commissioners to be
19 mindful that I don't want to go too far down this road,
20 because this is not what is before us. I know we're going
21 to hear a lot of this from folks in the community. There's
22 no doubt about it. Lots of concerns. I think we, as
23 residents, we can share this concern but it's not what's
24 before us with this DSP. Because that -- this is an
25 enforcement permitting issue related to DPIE, not the

1 Planning Board.

2 COMMISSIONER DOERNER: Yeah. But I'm -- I'm not
3 asking about enforcement of or permitting or challenging
4 DPIE, per se. What I'm looking at is stuff that's before
5 us, in terms of the environmental nature of this and having
6 contact sensitive development. And since this was in a
7 flood plain before -- and I wouldn't ask for this if --
8 like, if this was next to a flood plain or somewhere else.
9 But since we're reclaiming a flood plain and we're building
10 it up, it should work. But I think we should probably
11 require the applicant or the developer to notify the
12 potential purchasers that this used to be a flood plain
13 before. And on subsequent changes and the transactions on
14 subsequent sales, it doesn't necessarily have to be there.
15 But I think the initial purchasers need to know about that,
16 because we're just hopeful that DPIE may or may --

17 CHAIRMAN: Hold that thought.

18 COMMISSIONER DOERNER: This isn't about FEMA at
19 this point.

20 CHAIRMAN: Hold that thought for a sec,
21 Commissioner.

22 Mr. Warner, can we -- could we, if it comes to
23 this and we're in a position to approve this, can we
24 condition the approval with that kind of a --

25 COMMISSIONER DOERNER: Section 24.1304 of the

1 county code.

2 MR. WARNER: That's the subdivision regulations.
3 And I'll note that you already approved the subdivision.
4 And when you approved the subdivision, you determined that
5 the soils posed no problem to the development. You already
6 examined that and approved the soils. So that issue's been
7 raised and dealt with and you approved it.

8 CHAIRMAN: Hold the thought. Hold the thought.

9 MR. WARNER: But no. I don't agree that a
10 notification requirement. You could certainly ask --

11 CHAIRMAN: David.

12 MR. WARNER: -- the applicant to proffer it.

13 CHAIRMAN: Mr. Warner.

14 MR. WARNER: (Indiscernible) you could add as a
15 condition.

16 CHAIRMAN: Dave, can you hear me okay?

17 MR. WARNER: Yeah. Sorry. I just wanted to
18 finish my sentence.

19 CHAIRMAN: All right. Thank you. I know but I
20 didn't want you to finish your sentence.

21 MR. WARNER: Oh. Okay.

22 CHAIRMAN: So that the Commissioner Doerner is
23 asking a different question --

24 MR. WARNER: Okay.

25 CHAIRMAN: -- by which I want to know what the

1 answer is to this question, which is can we -- setting aside
2 what we've already approved, can we condition this DSP
3 that's before us, saying that we want them to do an
4 additional level of notification, based upon our, dare I
5 say, whim? That we have these concerns, because it was in a
6 flood plain. Can we condition a notification on this? Do
7 we have that authority?

8 MR. WARNER: That's what I was saying. I don't
9 see what authority you would rely on to do that, no.

10 CHAIRMAN: Okay.

11 MR. WARNER: But you could certainly ask the
12 applicant to proffer that.

13 CHAIRMAN: Okay.

14 MR. WARNER: But I don't see how it's related to
15 the design of this project.

16 CHAIRMAN: Okay. Thank you for that. So we -- if
17 the applicant agrees or essentially, it becomes a proffer,
18 then we could do it. But we don't have the authority to do
19 it without their consent?

20 MR. WARNER: Not with the evidence we have in --

21 CHAIRMAN: That's --

22 MR. WARNER: Not with the evidence we have in our
23 record that it's safe.

24 CHAIRMAN: Okay. Thank you.

25 VICE CHAIRMAN: Well --

1 CHAIRMAN: Mr. Doerner, anything further on that?

2 COMMISSIONER DOERNER: Yeah. I would just
3 disagree with our -- our legal counsel. That I don't think
4 he is the one who is making the determination that it's
5 necessarily safe. So if we think that there's an issue with
6 it. Like, one of the things we have to do is, we have to
7 find that the regulated environmental features have been
8 preserved and/or restored to the natural state, to the
9 fullest extent possible. And if we're not sure, I may not
10 say that -- we -- we're -- I'm not saying that, like, it's
11 not going to happen and that they're not going to do,
12 necessarily, a good job and it's going to be an absolute
13 disaster. I'm just saying that we're not sure at this point
14 and that seems like a reasonable ask to put into place, as
15 we're having development. Because if this goes sour and
16 it's not good, it's going to go really, really bad. And it
17 strikes me as, at least for due diligence and -- and -- on
18 our part, if we're allowing people to reclaim flood plains
19 and build on top of it, then we should at least have that
20 kind of condition in there as sort of a safety measure and
21 good practice.

22 CHAIRMAN: Okay. All right. Well, we'll see what
23 the applicant has to say about it. Because you're using the
24 word ask, for me, suggests that this a request of the
25 applicant or something the applicant may proffer. And then

1 it's moot, because then, they're going to do it anyhow. But
2 what I'm hearing from our counsel is that we can't require
3 it. So let's hold the thought. I'm sure this will come
4 back around.

5 Other questions -- Commissioners, other questions
6 for staff? And then let's talk about the schedule for
7 today. No other questions for staff.

8 So it's 12:45. I want to take a lunch break. So
9 I think it makes more sense to take a lunch break now. When
10 we come back from lunch, then we'll have the ability from
11 any parties of record. Anyone with standing to cross staff.
12 That's both for the folks in opposition, as well as the
13 applicant. Anyone with standing can cross. So we'll go
14 through the cross process and I'll explain that. And then
15 we'll hear from -- the applicants will have that same
16 opportunity, and then we'll hear from other folks who have
17 signed up to speak, okay?

18 So it's 12:45. Why don't we take a break until
19 1:30. Is that okay, Commissioners?

20 COMMISSIONER GERALDO: Fine.

21 CHAIRMAN: Then we'll pick this back up at 1:30.
22 See everybody in forty-five minutes. We are in recess.

23 COMMISSIONER GERALDO: Thank you.

24 (Off record.)

25 CHAIRMAN: Good afternoon, everybody. We are back

1 from recess. We are on Item 9 of our agenda -- the final
2 item of our agenda. This is detail site plan DSP-21001,
3 Suffrage Point. This is continued from January 5th, 2023,
4 Planning Board meeting. We have heard from staff and we are
5 at the point where we're inviting folks to take the
6 opportunity to cross-examine staff.

7 Mr. Smith, before you go, are there any other
8 folks in opposition that you're aware of, or are there other
9 folks who want to speak, who also want to cross-examine
10 staff? And just to be clear, cross-examination is not
11 testimony, right? It's not. Cross-examination is the
12 opportunity to ask for clarifications or questions from
13 staff and not to be argument -- obviously, not to be
14 hostile, but not to be argumentative or conclusory in your
15 statements. This really is an opportunity just to ask
16 questions, based upon what staff has presented in their
17 testimony.

18 So given that, who else? Ms. Wolf, are you
19 looking to cross, as well?

20 MS. WOLF: No. I just want to present -- I just
21 want to share some -- a very small amount of my own
22 information. Thank you.

23 CHAIRMAN: So you absolutely have the opportunity
24 to do that, but that will come later than cross.

25 Mr. Smith, anyone else who wants to cross? Okay.

1 All right. So Mr. Smith, you can take it away. I think you
2 know the drill. I will step in if you're providing
3 testimony or if it feels too argumentative or conclusory,
4 but feel free. The floor is yours and you can cross-examine
5 Ms. Kosack and Mr. Juba, who are the staff members who
6 presented.

7 MR. SMITH: Okay. Thanks, Mr. Chair. I have a
8 number of questions. I'll try to present them
9 nonargumentatively.

10 This is for Ms. Kosack. Because one of the issues
11 that can be at play here is the effect of a project on -- on
12 viewsheds and on the public's ability to see certain
13 features in the community. This question is for Ms. Kosack.
14 Based on the slides you presented, it appears that the base
15 of the townhouse that is closest to the parks, could be ten
16 to twelve feet above the grade -- the waterline stormwater
17 basin. So my questions are, how high would the roof lines
18 be above the current and proposed grades? And has Planning
19 analyzed what impact that, in the development on the upper
20 parcel, would have on other neighbor's views of the park,
21 and the forest and stream valleys and the Northwest Branch
22 Stream Valley Park? Preservation of the viewsheds is -- is
23 one of the issues here.

24 CHAIRMAN: And before we -- before we discuss it.
25 Before we do that.

1 Mr. Warner, are you on the line?

2 MR. WARNER: I am. Sorry. You can't see me.

3 CHAIRMAN: Okay. Thank you. So a question for
4 you. So I didn't hear Ms. Kosack say anything about
5 viewsheds at all. She did talk about elevations and there's
6 questions around elevations in the staff report. So help me
7 to determine -- Mr. Smith is going to have the opportunity
8 to talk about this when he has the opportunity to talk. But
9 in terms of cross-examination, I'm wondering whether this is
10 appropriate for cross.

11 MR. WARNER: Well, the staff report does contain a
12 discussion on architecture and discusses a height, I
13 believe. So it sounds to me like something that, if Ms.
14 Kosack has, you know, knowledge of it, she probably can
15 answer. And she may not have talked about it, but I think
16 she's able to talk about the things in the staff report
17 that, you know, she authored. I just would remind the
18 questioner to -- one question at a time, as well. No
19 compound questions, as it becomes hard to follow. Which one
20 is she answering? So --

21 CHAIRMAN: Thank you.

22 MR. SMITH: I will try to that. But I do want to
23 give that -- let me just frame the question very simply.
24 Has Planning could docket and prove an analysis of the
25 project impact on the views of other folks who are living in

1 the community? Their views of these public natural
2 resources. Thank you.

3 CHAIRMAN: Okay. Thank you.

4 Ms. Kosack?

5 MS. KOSACK: The short answer is no. I'm not
6 aware of any requirements relative to the neighborhood's
7 views of the park or relative to that.

8 CHAIRMAN: Thank you.

9 MR. SMITH: Appreciate it.

10 CHAIRMAN: Thank you, Ms. Kosack.

11 CHAIRPERSON SHAPIRO: Next question, Mr. Smith
12 under cross.

13 MR. SMITH: Sure. Ms. Kosack, in your testimony,
14 you stated quite correctly that the D2 would be largely used
15 by Werrlein for its storm water management and flood
16 mitigation projects or infrastructure. And that's an issue
17 we raised from beginning. But one of the rationales for
18 approving this project was to meet a sector planning goal of
19 expanding open space. So how do these two facts square?
20 You've acknowledged now that Werrlein plans to use a
21 majority of that area for its own storm water management.
22 But how does that square with expanding public open space,
23 which was one of the rationales for approving this project
24 all along?

25 MS. KOSACK: Well, it --

1 CHAIRPERSON SHAPIRO: I'm not -- I mean, well, go
2 ahead, Ms. Kosack if you feel appropriate to answer.

3 MS. KOSACK: I was just going to state, it's my
4 understanding that the compensatory storage parcel will not
5 be a permanently wet feature. It'll be an intermittent wet
6 area. And it will, the rest of the time, be an open green
7 space, as you stated. But the applicant could probably
8 confirm relative to that storage facility.

9 MR. SMITH: Okay. My next question is, Ms.
10 Kosack, you stated in your presentation that the lower
11 parcel has been developed in accordance with the floodplain
12 waiver letter, I think that's what you said. And then the
13 TSR planning claims that the project would comply with the
14 storm water management plan. Given Werrlein's history of
15 violations, and it goes back three-and-a-half years now, and
16 this gets some of Comm. Doerner's concerns, I think, what
17 evidence is there in the record to support these assertions
18 that Werrlein has been complying with the waiver letter and
19 the permits and the storm water management plan and has been
20 developing these parcels in accordance?

21 Is there any specific evidence you could point to?

22 CHAIRPERSON SHAPIRO: I'm going to stop right
23 there, because what I'm hearing in the question, maybe, Mr.
24 Smith you want to reframe it, but what I'm hearing in the
25 question is you're asking whether Ms. Kosack, how she

1 handles the fact that you don't believe that Werrlein is a
2 good faith actor.

3 MR. SMITH: Well, I could do it more narrowly, but
4 I think there is a context here. And I think that Comm.
5 Doerner has gotten to that context. There's a long history
6 of violations on this site including dumping sediment into
7 our local streams. So --

8 CHAIRPERSON SHAPIRO: I need to stop you because -
9 -

10 MR. SMITH So the more I hear about that --

11 CHAIRPERSON SHAPIRO: -- this --

12 MR. SMITH: -- this goes specifically to exactly
13 what Ms. Kosack said during her presentation, she claimed
14 that the lower parcel was being developed in accordance with
15 the floodplain waiver letter. Now, there are other
16 authorities that come into play.

17 CHAIRPERSON SHAPIRO: But this is testimony --

18 MR. SMITH: But what evidence --

19 CHAIRPERSON SHAPIRO: -- Mr. Smith.

20 MR. SMITH: Let me ask.

21 CHAIRPERSON SHAPIRO: What's your question?

22 MR. SMITH: What evidence can she provide to
23 support that assertion, specific evidence in the record that
24 we can look at and ask questions about?

25 CHAIRPERSON SHAPIRO: Which assertion?

1 MR. SMITH: That Werrlein has developed a lower
2 parcel in accordance with the floodplain waiver letter --

3 MR. RIVERA: (Indiscernible) --

4 MR. SMITH: -- and/or the stormwater management
5 plan.

6 CHAIRPERSON SHAPIRO: And Mr. Rivera, you'll have
7 an opportunity to cross as well. You'll obviously, have an
8 opportunity to testify and have rebuttal, but now is not the
9 opportunity for you.

10 MR. RIVERA: Thank you.

11 MS. KOSACK: I would just state our authority on
12 that issue is the referral from DPIE that was received and
13 stated that this detailed site plan is in conformance with
14 the site development concept plan. That will be, you know,
15 implemented through later permitting.

16 CHAIRPERSON SHAPIRO: Thank you.

17 Mr. Smith?

18 MR. SMITH: Yeah. Comm. Doerner got into this
19 issue asking whether or not climate change had been taken
20 into account, I think. And it was asserted that we should
21 rely on DPIE's work here on their approvals. So my
22 question, is there any evidence -- can they point to
23 evidence in the record, Mr. Warner or Ms. Kosack, evidence
24 in the record that Werrlein's plans or DPIE's approvals take
25 into account the issues that Comm. Doerner has raised about

1 storm water flooding, protection of our natural resources
2 and climate change. Where can we see that climate change
3 has been taken into account here?

4 CHAIRPERSON SHAPIRO: So your question is related
5 -- if I understand on cross, that Ms. Kosack testified and
6 some staff report that issues related to climate change were
7 taken into account and you're asking for the evidence for
8 that?

9 MR. SMITH: My point is that we're being asked or
10 told that we should rely on DPIE's work on Werrlein's plans
11 and DPIE's approvals. And Comm. Doerner has raised this
12 issue about climate change, and I think rightly so. And
13 we're still told to rely on DPIE's work and Werrlein's
14 plans.

15 CHAIRPERSON SHAPIRO: But this is testimony, this
16 is not cross-examination. So if you have a question for Ms.
17 Kosack, related to that, feel free. But it really literally
18 needs to be a question to Ms. Kosack related to what she
19 testified on.

20 MR. SMITH: Okay (indiscernible) --

21 CHAIRPERSON SHAPIRO: You're going to have plenty
22 of opportunity to testify and to make all sorts of points
23 that you want to make. This is not the forum for that.
24 This moment is not the forum for that.

25 MR. SMITH: Okay. Thank you. Ms. Kosack and Mr.

1 Warner have suggested we should rely on the floodplain
2 waiver letter. Are they aware of the fact that in the
3 floodplain waiver letter DPIE gave an address that's a mile
4 north of this property in University Park and in a different
5 watershed?

6 MS. KOSACK: No. This is the floodplain waiver
7 that was provided as applicable to this property.

8 MR. SMITH: Okay. Take a look at it. That's what
9 it says. Are you aware of the fact that it gives a permit
10 number for a permit from 2014 for a property in Capital
11 Heights?

12 MS. KOSACK: No. No, again, this is what was
13 provided relative to this property.

14 MR. SMITH: Okay. So floodplain waiver letter
15 relative to this property that gives the wrong address and
16 the wrong permit number? That's the point.

17 Third, are you aware of the fact that in that
18 floodplain waiver letter, DPIE stated explicitly that having
19 the waiver letter -- having the waiver did not relieve
20 Werrlein of obtaining all of the required state and federal
21 permits to work in the floodplain?

22 MS. KOSACK: Yes. I'm aware it says that.

23 MR. SMITH: Okay. To your knowledge, does
24 Werrlein have the required state federal permit to work in
25 the floodplain?

1 MS. KOSACK: I do not enforce permits or review --

2 MR. SMITH: I didn't ask you that question. I
3 didn't ask -- you want us to rely on a floodplain waiver
4 letter that sets --

5 MS. KOSACK: I am not aware because I do not
6 enforce permits or review permits.

7 MR. SMITH: Okay.

8 CHAIRPERSON SHAPIRO: Okay. Let's move on, Mr.
9 Smith.

10 MR. SMITH: Okay. So there's no evidence on the
11 record. Okay. Thank you. One of the rationales for
12 approving at nine units per acre was that it would increase
13 -- the density would be only slightly higher than the
14 densities in nearby R55 communities. You presented a slide
15 that show the layout of Werrlein's Townhouses on the lower
16 parcel and now you say that the density would be 12.3
17 townhouses per acre. How does that affect this assertion
18 that the actual density of the project would only be
19 slightly higher than the density in the surrounding R55
20 properties?

21 MR. GERALDO: The density issue was resolved with
22 the latest approval of CSP 18002 and this site plan is in
23 conformance with that.

24 MR. SMITH? It's resolved for now. It's subject
25 to a court challenge right now. In orienting the counsel on

1 July 12th.

2 CHAIRPERSON SHAPIRO: Mr. Smith. Mr. Smith.

3 MR. SMITH: Yeah.

4 CHAIRPERSON SHAPIRO: Just please be mindful.

5 That's clearly not cross-examination.

6 MR. SMITH: Excuse me?

7 CHAIRPERSON SHAPIRO: That's clearly not cross-
8 examination. So I know it's in your head, but if you could
9 keep it focused on cross. You're going to have plenty of
10 opportunity to testify. You know you will. So this is a
11 moment just to focus on cross-examination from what you
12 heard in testimony.

13 MR. SMITH: Okay. I'll let it go there, Mr.
14 Chairman.

15 CHAIRPERSON SHAPIRO: Thank you. I appreciate it.

16 MR. SMITH: Thank you.

17 CHAIRPERSON SHAPIRO: (Indiscernible) --

18 MR. WARNER: Mr. Chairman.

19 CHAIRPERSON SHAPIRO: Yeah. Mr. Warner.

20 MR. WARNER: I feel like I should just interrupt
21 real quickly, principal counsel, David Warner, because I
22 have firsthand knowledge of one of the things that Mr. Smith
23 asked about, which was the address used on the floodplain
24 waiver letter, because I had the same question. I looked up
25 that address. I'm like, where is that. But I read through

1 the whole floodplain waiver letter and clearly, everything
2 in it has to do with this site.

3 But they -- I think they used either 40th Avenue
4 instead of 40th Street or Gallatin Avenue instead of
5 Gallatin Street. I think they missed their streets and
6 avenues. But everything talks about the northwest branch,
7 identifies the property so there was nothing in the
8 floodplain waiver to cause any question as to its
9 applicability to this particular property.

10 CHAIRPERSON SHAPIRO: So your interpretation of
11 that is it was a technical error?

12 MR. WARNER: Yeah.

13 CHAIRPERSON SHAPIRO: All right. Thank you.

14 So Mr. Smith, that goes to one of the questions
15 that you had. If there's no further cross by Mr. Smith, Mr.
16 Rivera, do you have any cross-examination of either of
17 staff? That's what this is for.

18 MR. RIVERA: For the record, Norman Rivera. No,
19 not at this time. Thank you.

20 CHAIRPERSON SHAPIRO: Thank you, Mr. Rivera.

21 Okay. So there's no more cross-examination for
22 staff. I'm going to turn it to the applicants. And Mr.
23 Rivera, you can take it away.

24 MR. RIVERA: Great. Thank you, Mr. Chairman,
25 members of the board and staff, guests. Let me start with

1 my original presentation and then we can go into some of the
2 questions that were raised in discussion so I could clarify
3 some points without belaboring them.

4 As Ms. Kosack said a few hours ago, the staff and
5 I have been working together carefully along with the city.
6 As a result, tactical staff report has been properly
7 documented with proper findings of facts and conclusions and
8 conditions that we all agreed to. We incorporated our
9 negotiations with the city and to your staff report and the
10 two conditions that she said that we would ask to be deleted
11 are only related to us and the city with respect to parcel B
12 in terms of whether or not it will be a public use easement.

13 But if you want, Mr. Chair, I could just go
14 through what those conditions were that we all agreed to or
15 just cut to the conditions that we seek to delete that were
16 already agreed upon that Ms. Kosack referred to. And that
17 condition 1H --

18 CHAIRPERSON SHAPIRO: I was on mute, Mr. Rivera.
19 Why don't you -- you know, keep it brief, but why don't you
20 go through all the conditions, but just keep it brief.

21 MR. RIVERA: Yeah. Makes sense. Thank you.

22 So condition first, 1F, I added some clarifying
23 words in 1F. 1F states, "Revised the site plan to provide a
24 sidewalk connection to the abutting property, Driscoll Park,
25 at Parcel D from the site." And then I added the words, "as

1 shown on the city of Hyattsville, entitled City of
2 Hyattsville Condition 1 Exhibit, general location of
3 pedestrian connection from site to abutting property,
4 Driscoll Park, shown in purple. That's exactly what the
5 city submitted to the record, so I'm just outlining in
6 detail exactly what that is so we use the right exhibit.
7 And that was a clarifying addition to 1F.

8 1G relates to the interpretive signage that was
9 Parcel C. And that is something we're working on with the
10 city and your staff historic preservation to do the wording
11 and the location of that work to be done. The preliminary
12 plan, as approved by the planning board, gave the HPC review
13 and comment but not approval authority. So I just clarified
14 that it wasn't approval. We deleted the word approval and
15 then substituted review and comment, which is what the board
16 already approved in 4-1052. So that was 1G that we -- Jill
17 and I have agreed to and the city.

18 Condition 1H is the one, the first of two that we
19 wish to delete. It states, "Revised the DSP to show a
20 public use easement over Parcel B2, the open-space parcel
21 located adjacent to Driscoll Park." And we're asking for
22 that staff condition to be deleted. And I had proposed
23 (audio interference) that clarified some other aspects of
24 what the public use easement would be. But in point of fact
25 the preliminary plan said in their conditions of approval 4C

1 and 7 that the DSP is a time for a determination to be made.

2 But at this point in time, we've determined it is
3 not appropriate to do the actual condition to show the
4 easement because we're not sure it is an easement yet of the
5 parameters of said easement. So we don't want to have park
6 and planning involved in the middle of a negotiation,
7 because this would be between the applicant and the city as
8 to the extent of the public use easement that would be
9 placed over parcel B2.

10 The way the construction of the compensatory
11 storage process will work is that the 2018 DPIE approval,
12 referred to many times today, had 14 conditions of approval,
13 one of which requires us to get federal, state, and other
14 local permitting later. And one of them is the notice. So
15 notice was covered by condition 11, floodplain waiver, which
16 is already in the county code 32-206H, which requires the
17 owner to provide -- execute covenants, to provide notice,
18 potential for higher insurance premium rates commensurate
19 with any increased risks with rates up to \$25 per \$100 in
20 coverage. The flood (audio interference) and any
21 responsibilities of the owner to maintain flood proofing or
22 street modification, facilities or systems, and these
23 covenants are recorded.

24 At the end of the day, once the work is done, this
25 floodplain waiver is a permission to do the work later. And

1 then once it is actually done, as was stated earlier, the
2 area where the construction of the actual homes will be will
3 not be in the floodplain. So as, I think, Comm. Doerner
4 said, we don't need to have notice for something that isn't
5 going to be in effect at that time, because they won't be in
6 the floodplain. That would be if the floodplain. That
7 would be if the floodplain was left where there was some
8 other construction. But regardless, we still have to do
9 that notice that would be in the home records.

10 And there are several other conditions, but the
11 DSP relies upon a concept plan approval, which is dated
12 March 22, 2022 which has one of its conditions that we'd
13 have to get the floodplain waiver approval, but then we have
14 to do the work subsequent to DSP approval, record plat.
15 Then we file technical plans with DPIE and MDE who then
16 review and approve it. Then we do the work. Then it gets
17 certified inspected and the whole time, that work would be
18 bonded and permitted.

19 So the practical issue is that we have to actually
20 get all those approvals, do the work, get it bonded,
21 permitted, do that. They, the feds and the state, actually
22 certify, and DPIE, that we did it correctly, because they
23 then say okay, exactly this is what happened and this is the
24 flood plain and it's not related to the construction of the
25 homes because there are several conditions of the waiver

1 approval that say you cannot have a home in the floodplain
2 and their setback, et cetera, requirements. So the whole
3 purpose of the regulatory agency is to prevent any damage
4 from flooding so that the flooding -- floodplain rather,
5 will be concentrated in a small area of this parcel
6 southwest side so that it in effect controls all the
7 floodplain storage that used to be provided all over the
8 whole parking lot because it was just a flat surface. The
9 work will allow the floodplain to be reworked, if you will,
10 to be located to that area of the site, thus keeping any
11 homes or any other structural issues away from the
12 floodplain.

13 So after that is all said and done, and we're
14 going to work with the city as we go through this, and your
15 staff, that we'll determine at the end of the day how much
16 of that land is appropriate for a public use easement. That
17 way, the city know what they're getting and we know what
18 we're doing, and it's not a commission responsibility to
19 enforce or deal with those. As you stated earlier, DPIE and
20 other agencies have that regulatory authority so it wouldn't
21 be appropriate for us to have conditions 1H and 3 when it's
22 really under the purview of DPIE and other agencies.

23 So that is the genesis and the logic behind my
24 request to delete 1H and 3. With that, we do concur with
25 all the other conditions that I briefly went through. So

1 that is our position on the filed staff report. And then I
2 can be happy to dive in (indiscernible) questions that the
3 board may have. Sorry, I had to drink water.

4 I did make some notes, and I don't want to repeat
5 what was already said, but there are a number of factors
6 that came up today that I think the Chair brought up and Mr.
7 Warner about, for example, I'll just start as a list I wrote
8 down.

9 MR. DOERNER: Before you jump in, real quick, just
10 for my clarification on the condition 3 that you want to
11 delete, can you just read that over just so I can make sure
12 I'm -- I'm, like, flipping back and forth in your applicant
13 exhibit and then our staff report, so I see which one you're
14 talking about?

15 MR. RIVERA: Sure. Our proposed new condition 3
16 was not anywhere in the staff's report. It was the
17 condition --

18 MR. DOERNER: I just want to -- at the very bottom
19 of your exhibit?

20 MR. RIVERA: Yes, sir.

21 MR. DOERNER: Okay.

22 MR. RIVERA: So it's bolded, highlighted. That
23 was going to say, "The applicant will dedicate Parcel C and
24 D to the City of Hyattsville" (audio interference)
25 "structure to allow additional space for intersection

1 improvements at Gallatin Street entrance to Driscoll Park.
2 So there's an area at the top left-hand corner of the site
3 where the city contemplates in the future a possible circle
4 or some type of other facility to facilitate actually better
5 access to the park." So that's an element of the eventual
6 (audio interference) we work out with the city.

7 "And that the applicant will maintain ownership of
8 parcel B2, but access to the parcel shall be granted to the
9 general public." And that's where we have to do the actual
10 work to figure out where that access should be. And it
11 shall be used by the public, permitted at the city's
12 discretion", so they're the ones that make that
13 determination, "under a separate MOU that will A, have
14 indemnification and hold harmless the suffrage point H away
15 from liability, assign grounds and tree shrub maintenance
16 responsibility to the city", because there was a request by
17 the city to take control of this area for public use and it
18 was agreed to. And since that's the case, it shouldn't be
19 the HOA's responsibility to maintain that area, which could
20 be extensively used by people that are going to be other
21 than residents of our community.

22 So all that being said, that was very detailed,
23 but it's really just between the applicant and the city.
24 And we just wanted to make it clear to that park and
25 planning's jurisdiction on this DSP is limited to the

1 findings for that approval, but everything else goes beyond
2 to the city or the other permitting agencies.

3 MR. DOERNER: So are you saying that you don't
4 want to have that new condition 3 in there anymore or you
5 still want to keep it in?

6 MR. RIVERA: We want to -- I actually asked for
7 it. And now I'm asking for it to not be in part of this
8 approval. Ms. Kosack and I agree that 1H and this, our
9 proposed 3 are appropriate to be in the board's
10 determination today.

11 CHAIRPERSON SHAPIRO: Are not appropriate.

12 MR. DOERNER: Correct. Yeah.

13 MR. RIVERA: Correct.

14 CHAIRPERSON SHAPIRO: Right.

15 MR. DOERNER: Okay. Thank you, sir. That's what
16 I was confused on so thank you.

17 MR. RIVERA: Yeah, it's hard to -- there's a lot
18 of moving parts here.

19 So and I was going to go back to some points that
20 were discussed earlier. It would be probably better for me
21 to try to clarify. As Mr. Warner stated, the
22 (indiscernible) and the regulated environmental features
23 were dealt with and approved by the board and environmental
24 planning session staff at the time of the preliminary plan,
25 which is what the jurisdiction of the board is at that time

1 of the subdivision process. The whole site had zero
2 controls, which includes the former headquarters site up the
3 hill where the existing units are now being built, and the
4 lower lot, which was the parking lot for the WSSC
5 headquarters.

6 So it was built say in the '50s, '60s, and there
7 was no stormwater management, sediment erosion control, or
8 any type of environmental controls. It was just built and
9 the result was there was uncontrolled runoff, sediment, et
10 cetera that went south downstream through the streams to the
11 bog. So our approvals, the floodplain waiver, the ultimate
12 technical plans, all the grading, and all that we make sure
13 that this new site is a vast improvement by providing modern
14 business practices for storm water management, sediment
15 erosion control, et cetera.

16 So the site will be tremendously benefitted
17 including the surrounding area, because our treatment
18 facilities are going to be sized to take care of the water
19 that flows down the hill from the rest of the city, which
20 also is fairly older and did not have storm water
21 management. So we happen to be downstream and our
22 facilities will take care of that water before it goes to
23 the bog or to the stream. Our outfalls will have treatment
24 facilities to stop silt, to tweak out any chemicals and
25 other sediment so that it's vastly improved over the

1 existing prior situation.

2 And again, DPIE enforces all the constructive
3 activities. We did do rough grading on the lower lot. You
4 can see it here because we needed an approval to move the
5 former gravel -- former pavement that was there, which is C.
6 And that was one of the elements of the 2018 floodplain
7 waiver. DPIE acknowledged that that had to be done because
8 of the infill redevelopment project that will improve that
9 area by it. And we raised the bill what was raise the
10 parking lot.

11 We did have weekly inspection meetings with
12 (indiscernible) and DPIE. It's a very visible site.
13 Obviously, there are a lot of eyes on this place so we
14 worked closely with the city and all the inspectors to make
15 sure if they see something we take care of it. So it's up
16 to us to do that and we work with the community regulatory
17 agencies to do that.

18 I think you very well put, Mr. Warner, that the
19 solution on notice, which is Section 32-206(h) of the county
20 code, so that's a DPIE enforcement issue. And the final --
21 the stormwater management approval also has 14 conditions.
22 And a lot of these are things that are prospective in
23 nature. Once we get DSP plat and we do construction, some
24 of these other conditions do apply. So at this point in
25 time, the board's jurisdiction stops at this point and DPIE

1 would take over after plat.

2 Now those are my clarifications that I wrote down
3 to the discussions this morning. And let me see if there's
4 anything else missed. I think we had talked the view sheds.
5 There is no view shed criteria. We provided that view sheds
6 exhibit to show the city and anybody who was interested what
7 the relationship is between the units as it goes downhill
8 where the compensatory storage facility would be. So it's
9 not a code requirement for view sheds. It was a luxury to
10 show folks exactly what is going to be down there.

11 Let's see. Density, we discussed density briefly.
12 It's in accord with the DSP and -- I mean the CSP. So the
13 density was set with the CSP and the prior preliminary plan.
14 I think that's all I had at this juncture and I can try to
15 answer any more specific questions.

16 I know you had some last week, Mr. Doerner. I'd
17 be happy to try to go through those as well.

18 CHAIRPERSON SHAPIRO: Thank you, Mr. Rivera. I'm
19 sorry. Keep going.

20 MR. RIVERA: So one of the questions I wrote down
21 and Ms. Kosack helped me, was one, the floodplain waiver.
22 I've already discussed that. What are the mechanics of it?
23 What's the purpose of it? How does that work? Again, it's
24 a prospective thing. DPIE approves it, but we do the work.
25 And there are other conditions and enforcement mechanisms to

1 make sure that that occurs. Were there complaints with DPIE
2 filed during construction? We're not aware of any and we
3 work with DPIE and MDE officials in weekly meetings or more,
4 if there are anything that does -- anything does come up, we
5 take care of it.

6 The next question was about the MOU, but once I
7 delete condition 3, if the board agrees, which is our
8 proffered condition, then the MOU will be between us and the
9 city. What park and planning's jurisdiction is to make sure
10 that what is done there is in accord with the preliminary
11 plan, which created Parcel B2. We do intend and condition
12 1E of the preliminary plan requires us to dedicate parcels C
13 and D, which are small parcels on the borderline with the
14 park that contains some city facilities. We're happy to
15 deed that to the city at the appropriate time, which will be
16 after we do all this work then we make sure it's all
17 dedicated.

18 The last thing I heard was trees. And we had
19 about 15 total trees taken down on the entire site, which is
20 the upper lot and lower lot as we call it. They are going
21 to be replaced with more than 300 trees and more than 500
22 shrubs with our new (indiscernible) and approved -- will be
23 approved, hopefully, landscape plans, so to be highly
24 vegetated and a very high-quality look to the whole site.
25 So that's what I had as to questions from Mr. Doerner. And

1 that would conclude what I have to say at this point. Thank
2 you.

3 CHAIRPERSON SHAPIRO: Thank you, Mr. Rivera.

4 Commissioners, questions for the applicant, for
5 Mr. Rivera, the applicant's attorney?

6 MS. WASHINGTON: Just one. Mr. Rivera,
7 appreciating your comments with regards to condition 1H,
8 proposition 1H and new condition 3, would you be okay with
9 that appropriately being included as one of the findings if
10 counsel and staff agreed that that's an appropriate place to
11 put it? Just so that we don't lose context --

12 MR. RIVERA: Yes.

13 MS. WASHINGTON: -- of it or -- okay.

14 MR. RIVERA: Yes, Commissioner. That was also in
15 the findings for the underlying preliminary plan because in
16 the City of Hyattsville referral, they expressed concerns,
17 the staff and I addressed those. They are in your findings.
18 And the preliminary plan will then be augmented or
19 supplemented the findings for this DSP. But we --

20 MS. WASHINGTON: That's great. Yeah, because I
21 think this provides just a bit more detail than the
22 preliminary plan. We can --

23 MR. RIVERA: This plan (indiscernible) --

24 MS. WASHINGTON: Okay. Thank you.

25 That's all I have, Mr. Chairman.

1 CHAIRPERSON SHAPIRO: Thank you, Commissioner.
2 Commissioners, other commissioners, questions?

3 MR. GERALDO: Yeah, I have a question to Mr.
4 Rivera. So I was look -- reading the code section and --
5 for the basis of getting a waiver of 32-206(h) and the
6 requirement that the developer advise --

7 MR. RIVERA: Yes.

8 MR. GERALDO: -- and notify. Right. So I would
9 think that would be an appropriate condition of this
10 development. That that language would be incorporated into
11 one of the conditions.

12 MR. RIVERA: I would suggest, and I appreciate
13 that if there is a condition that the condition -- the
14 applicant abide by conditions of the actual DPIE document
15 because they're the ones that will enforce it. But you can
16 certainly make sure that as a condition of your approval,
17 that we have to make that a condition to address all of
18 these 14 conditions including notice of the floodplain
19 waiver.

20 MR. GERALDO: Yep. Yes. I think that would be an
21 appropriate condition. And you know, and the same token, it
22 would provide the notice that Commissioner Doerner was
23 concerned about.

24 MS. WASHINGTON: I guess I have a clarifying
25 question. So we're going to add a condition that says we're

1 going to do -- adhere to all the conditions? Did I miss --
2 did I say that right or -- I'm sorry.

3 MR. GERALDO: I don't -- I mean, the only one that
4 I was talking about Comm. Washington, was the required
5 notification language that's set forth in the code.

6 MS. WASHINGTON: I know. But I mean -- so we're
7 adding a condition that basically says you have to follow
8 code and the law? I mean, I'm just wondering as a practical
9 matter.

10 MR. GERALDO: That they have to abide -- a
11 condition is that they abide by 32-206(h).

12 MS. WASHINGTON: But that's the law.

13 MR. GERALDO: Right. I understand that's the law.
14 But I'm -- it is the law.

15 MS. WASHINGTON: I'm just wondering. I'm asking
16 through -- for clarification and two for precedent. Okay?
17 Because arguably, we could say in every case we here that
18 it's incumbent upon you to basically follow code and follow
19 the law. I mean, we just assume that --

20 MR. GERALDO: Well --

21 MS. WASHINGTON: -- because how do we -- how -- I
22 mean, what is the -- how do we one -- I mean, what's the
23 recourse if they don't do it? We're not an enforcement
24 agency.

25 MR. GERALDO: Well, at that point, it's in -- it's

1 in the -- if there's some mess-up on the part of DPIE or
2 they then see it in reviewing the development, they'll see
3 the language in there.

4 MS. WASHINGTON: But they're going to see it
5 anyway.

6 MR. GERALDO: So let me give you an example. Let
7 me give you an example. When I was on the board of airport
8 zoning appeals, we would have cases where properties were
9 within the flight zone. And we required -- and it was even
10 more stringent on that. We would require the developer to
11 notify homeowners that your home will be within the flight
12 zone. And it's a -- it's just a double level of protection.
13 And that -- we would require that in the contract. All I'm
14 saying here is since it's a part -- since they have to
15 follow it, it should be a condition that they follow it.

16 MR. RIVERA: If I could --

17 CHAIRPERSON SHAPIRO: If I can, Mr. Geraldo, I
18 share the concerns of Comm. Washington which is if they
19 don't do what you're suggesting they do, they are in
20 violation, regardless of whether we say it or not.

21 MS. WASHINGTON: Right.

22 MR. GERALDO: I think that it should be a
23 condition. That's what I'm saying. Since it's a
24 requirement and since there's been so much concern about
25 flooding and building a home on a floodplain, I just think

1 it's an appropriate condition.

2 CHAIRPERSON SHAPIRO: Where our counsel landed on
3 this was, if we suggest this and if the applicant is willing
4 to agree to it or proffer it, then problem solved. But it's
5 complicated -- it's not appropriate for us to mandate this
6 because it's not really our jurisdiction.

7 But let me ask Mr. Rivera, I mean you hear loud
8 and clear the sentiments of the board. I don't disagree
9 with my fellow commissioners here. I think that given what
10 we're hearing in the community and given the reality of that
11 land, that extra layer of notification, I imagine, can only
12 be helpful. I don't know where you are with that and if
13 that's comfortable enough for your client.

14 MR. RIVERA: We can have a condition that -- we
15 will proffer that we will include this statement in our
16 sales and contact documents, which is very similar to what
17 Commissioner Geraldo said about the airport. Like College
18 Park has student housing. And there's notifications that,
19 by the way, you're near an airport, or if you in the flight
20 path at St. Andrews. Here, at the end of the day, the work
21 won't be in a floodplain, but in those situations, you're
22 still in the flight path no matter what. But in the
23 interest of compromise and the spirit of this, we do want to
24 make sure nobody is surprised.

25 So we can add a page to our sales contract and say

1 you hereby are being notified that this area was the subject
2 of a floodplain fill pursuant to the permanent XYZ and the
3 2018 letter. So and they have to actually initial that
4 along with the many pages of things you have to acknowledge
5 when you buy a home. We'd be happy to do that.

6 CHAIRPERSON SHAPIRO: But as a -- commissioners,
7 as a proffer, that feels adequate to me.

8 MS. WASHINGTON: Yeah. Me too.

9 MR. GERALDO: Thank you, Mr. Rivera.

10 MR. RIVERA: You're welcome.

11 CHAIRPERSON SHAPIRO: All right. Thank you.

12 Other questions for the applicant, commissioners?

13 MR. DOERNER: Yes, I have a couple of questions if
14 Comm. Geraldo is done.

15 MR. GERALDO: Yep. I'm finished. Thank you,
16 Comm. Doerner.

17 MR. DOERNER: Okay. So going back -- Mr. Rivera,
18 going back to today, not last week when I -- when I raised
19 other questions. Earlier today, I asked something about on
20 the back side of the houses where you've got garages and
21 motion -- where you have flood lights that are beyond the
22 garages. Are you going to have those as motion detectors?
23 Because one of the concerns that the city had raised before
24 and that has happened in these common areas is people
25 walking through and stealing stuff and doing things like

1 that.

2 So what will you have on the back of those garages
3 besides, like, any other public lighting that -- and I'm not
4 worried about the photometric aspect of it. I'm more
5 interested in just like how is it going to trigger an
6 enhanced kind of public safety?

7 MR. RIVERA: Yeah. So that's a good question. We
8 did discuss that as well. These homes will have, one,
9 they're going to have EV infrastructure in all the garages
10 so to make it more sustainable, one. And two, as to safety
11 aspects, we're going to have standard features with the --
12 you know, the Ring doorbell system so that it does have a
13 camera and lighting so that the residents themselves are
14 assured that they could do that. Because I think I motion
15 light can just flash and if somebody happened to see it,
16 then they know somebody was there. But as I understand with
17 the Ring, you can watch that remotely wherever you are. So
18 I think that's probably more effective and gets to the
19 point.

20 MR. DOERNER: Yeah. Yeah. Ring and there's a
21 couple companies that have outdoor flood lights that are
22 triggered by motion that the video will come on. And I'm
23 pretty sure, I know, like, Nest does and I think Ring does
24 as well. And there's a few others. So I think that would
25 be directly upon what I'm -- what I was interested in, as

1 long as it's not just the doorbell on the front of the
2 house, but also on, like, the back of the house so you add
3 the rough in for that, because that's really where I'm more
4 interested in. Like, I know people will do the front doors
5 with the --

6 MR. RIVERA: Right.

7 MR. DOERNER: -- this kind of like doorbells, but
8 -- and it's really the back ones also where -- at least in
9 my neighborhood, we've had people going back into those
10 alleys and doing the various things.

11 CHAIRPERSON SHAPIRO: So if I can, I'm going to
12 advocate for you, Mr. Doerner. I think Mr. Rivera, it feels
13 appropriate that if you -- this is not a high-ticket expense
14 item and the technology as clear as can be. If you just
15 have motion-detected flood lights in the backs of the --
16 Ring provides that product for every one you do, I think
17 this issue's going to go away. I think Comm. Doerner would
18 be satisfied.

19 MR. RIVERA: Yes, we could do that, Mr. Chair.

20 CHAIRPERSON SHAPIRO: Okay. Thank you.

21 MR. RIVERA: (Audio interference) any particular
22 product, but we will have --

23 CHAIRPERSON SHAPIRO: Oh, don't -- we're not
24 advocating the product. I don't think -- you know, we don't
25 get a piece of any of it so whichever one you do is fine.

1 MR. RIVERA: (Audio interference) with, but we'll
2 have them do that. We want to make this as safe as
3 possible.

4 CHAIRPERSON SHAPIRO: Thank you, Mr. Rivera.
5 Okay. Mr. Doerner, additional questions?

6 MR. DOERNER: Yeah. So when I was looking at the
7 floodplain waiver, I know that one of the requirements is
8 that you have to be, like, 25 feet away from the actual
9 floodplain or, like -- or the boundary of it as part of the
10 waiver. But what's not in there is the actual, like, base
11 flood elevation or the bottom of the structures, like, how
12 high that is going to be in elevation. Like, there's some
13 mentions in the waiver about what they believe is the
14 floodplain elevation and then in the 100-year manifest,
15 like, above that. Do you know how high then -- because I
16 know in the staff report we have -- it's going to be, like
17 15 or 25 feet above when the existing level is right now for
18 the park. But that still could be, like, at two feet. And
19 then even if you're 15 above, you're actually below the 100-
20 year floodplain.

21 So I wanted to find out, like, what is the
22 elevation that you're going to be hitting at relative to the
23 100-year (audio interference), which I'd have to go back and
24 look, but I think it was around 23 feet, like, where you're
25 at.

1 MR. RIVERA: Yes. We do have that answer too. So
2 the bottom of the compensatory storage area is the elevation
3 of 18. The slabs for the towns that adjoin the park are
4 about 20 -- I have to walk over here real quick, 32. Delta
5 between 18 and 32 is from the slab of the home -- of the
6 homes to 18 of the bottom of that compensatory storage age.
7 And --

8 MR. DOERNER: Okay. And you're not going to have
9 --

10 MR. RIVERA: -- no home --

11 MR. DOERNER: Sorry.

12 MR. RIVERA: Um-hum. And no home could actually
13 be in the floodplain, but there is also a buffer requirement
14 of 25 feet from that or more. And we have adequate buffers
15 there as well. So in the illustrative that you saw, I think
16 it was one of the last slides of the PowerPoint, you saw how
17 we had these double-high porches with the slope down to
18 where the kids were enjoying the play area down there where
19 the open space will be. So it's going to be an amenity once
20 we finish with all that work.

21 See, that actually is very illustrative of what
22 the end result will be. So that difference between 30 and
23 18 is in that grassy area and any house would have to be two
24 feet above any floodplain, but they're not going to be in
25 the floodplain, but if -- they have to be two feet up --

1 over.

2 MR. DOERNER: Okay. And then are you going to
3 have any basements? I mean, looking at this diagram right
4 here, are any of those homes going to have, like, levels
5 that are below the base flood level that you just mentioned
6 of the 32 feet? And if they are, what's the floor level
7 going to be? Is that still going to be above the 18 feet or
8 20 -- 23 feet, whatever it is, in terms of the height of the
9 flooding?

10 MR. RIVERA: Yes. Good question. There are no
11 basements. These are all on slab. That whole row that you
12 see in the illustrative is lots -- was lots 21 through 41.
13 Wait, I just lost that page, 24 to 41. Basically, that
14 whole row will have no basements. They're on slab. And the
15 units go two stories up --

16 MR. DOERNER: Okay.

17 MR. RIVERA: -- from the slab. And they're
18 downhill from the units behind the alley, which are even
19 further uphill.

20 MR. DOERNER: Yeah. Okay. Something else that's
21 in the backup, the 85 documents we got or something, there
22 are some pictures in there where it actually shows some of
23 the flooding that's happened and some email exchanges, it
24 looks like with the Maryland Department of Environment where
25 it appears, and I just was going through and

1 (indiscernible). I didn't and go and actually, like, follow
2 up on them later on to see the certainty of it. But it
3 appears like your client, in developing the upper lot, some
4 of the sediment and other kind of run off has begun to go
5 down into this lot and elsewhere.

6 I'm hoping you can provide us a little bit of
7 explanation of, like, what's happening on the site, how
8 you're remedying those, and then how we're not going to get
9 into that kind of a situation if this particular lot is
10 approved.

11 MR. RIVERA: Yeah. It's a good question. We
12 discussed that at length as well. So the upper lot where
13 the building was was raised and we actually recycled as much
14 of the concrete and pavement up there as we could. And then
15 when we grade, we have to provide what they call super silt
16 fence along the southern border, which happens to be the
17 downhill side crossing Gallatin. That is where any sediment
18 would go. I can't say that 100 percent no sediment ever
19 left the site.

20 Super silt fence is a series of fences with lots
21 of protection to stop anything from going through there.
22 Sometimes, there is something that leaks and we have to get
23 it up and we have street cleaners go out there and get it
24 up, because again, we have weekly meetings with inspectors
25 and obviously, the community notifies us and we drive there

1 to do the work or they do and we get that cleaned up. But
2 at the end of the day, that super silt fence will be gone
3 from the upper lot because the remaining homes up there are
4 finished and constructed, final stormwater management,
5 sediment erosion controls will be in, certified by DPIE, and
6 that will prevent anything. But sometimes during
7 construction, things can happen, but we do take care of it
8 right away.

9 Early on, when there's, you know, rough grading
10 and all that, work to take down the building, there was
11 certainly more exposure. We actually have a lot of units
12 going up there. Almost all the basements are poured so it's
13 stabilized, if you will, which then protects the lower lot.
14 The lower lot is downstream, obviously, where the parking
15 was.

16 And there was a very woefully undersized pipe that
17 used to take water from the WSSC building, just piped it
18 across the street. But when we took out the pavement out of
19 the parking lot, it was supposed to be, like, a 34-inch
20 pipe, but it ended up being 24. So it just backed up. That
21 all is going to be taken out with our new construction. So
22 they're all going to be properly sized to take care of our
23 total water. We have to take care of all the upstream water
24 and not have any impact downstream as well. So ultimately,
25 when this project is finished up and down, everything will

1 be fine in terms of those issues.

2 MR. DOERNER: So on that lower lot, is there some
3 stuff that you're going to be putting -- like, are you going
4 to be putting in the silt nets down below, or how are you
5 going to stop that from going downstream? Because, I mean
6 some of the pictures --

7 MR. RIVERA: Yes.

8 MR. DOERNER: -- are not very pretty. And it
9 looks like some of the sediment from the upper site actually
10 clogged up the drains that go straight into the Chesapeake
11 right there. And that lower lot feeds into the playground
12 that I use down there with my kids. And then also, like, a
13 watershed region that I like to go walking around in. And
14 what I don't want to see is, like, an agreement that after
15 the fact will be totally fine and everything will be fixed,
16 but in the meantime, getting to that fact, we're going to
17 destroy the entire watershed down there.

18 And that's really my concern is that, like, I want
19 to make sure whatever mitigations you're putting in, those
20 are adequate, because to me just looking at the pictures
21 that were in there from the Maryland Department of
22 Environment, it looks like it wasn't adequate in that upper
23 lot and it doesn't paint a very good picture of your client
24 and how they haven't really done anything to fully control
25 for the runoff and the environmental damage. So what else

1 can you do on that lower lot to make sure it doesn't mess up
2 the park, the wetlands down there, which are super
3 sensitive, and then feed in, so like the (indiscernible) and
4 other stuff that just slightly evens out from there.

5 MR. RIVERA: Yeah. Again, we're going to have the
6 super silt fence. That has already been installed. And
7 there's temporary sediment traps in the bottom southwest
8 corner. You could have probably seen in that ariel. But
9 there already is -- and that was an older photo. Everything
10 gets upgraded from time to time. And once this DSP gets
11 approved, if it does, and we proceed to technical approval,
12 DPIE makes more refined calculations to make sure that
13 whatever measures we take will control anything adequately
14 and then we have to implement those as part of our final
15 grade permits and them ultimate finish out.

16 So if there are any particular items that you know
17 or some staff can tell us, we'll do that, but we're there
18 every day. And I will make sure -- my client's listening
19 right here, and he'll make sure that we take care of that.

20 We did, for example, work with park and planning
21 with the Parks Department There was an outfall from the
22 lower -- this lower parking lot that went into the stream
23 that was, again, undersized and not adequate. So we got
24 permission at easement from park and planning to add riprap,
25 more piping, buffering, landscaping down there. So that --

1 -- we did that over a year ago or so to make sure that that
2 water was already being treated before it went into the bog
3 and to the stream valley. But we continue to do those
4 things as we work through the site and with DPIE.

5 MR. DOERNER: Okay. I'm hearing you saying that
6 you continue to do this and that you're receptive to hearing
7 any kind of feedback about, like, what's happening there and
8 that you guys are putting in adequate fencing and netting
9 and stuff. But what I'm trying to express is, even with
10 that, I don't think that was enough. Like, if you look at
11 the pictures over what, a six-month period from, like, last
12 summer all the way up until December 22nd of last year, you
13 guys filed on all of the -- on every single one of the
14 visits from the MDE, whether or not you're actually in
15 compliance with not polluting, having the right permits, a
16 variety of things that were in there. Some of them got
17 better over time.

18 But what I'm concerned about is, I don't know if
19 it's completely adequate. And I don't -- I'm not an
20 environmental scientist so I -- I'll be the first one to
21 day, like, I don't know what the right fix is, but I do know
22 is that whatever you did wasn't sufficient. And maybe the
23 explanation is that it was that pipe that you guys brought
24 out that was just too small. But the mitigations you had
25 around the upper site didn't work and I really don't want to

1 see that happen on this lower site because you're getting
2 closer and closer to the watershed area that's extremely
3 delicate in the park back there. We have a number of
4 species of plants and other things that are native to that
5 area that would probably not last if they got flooded a lot
6 and got polluted like I had seen in some of those pictures.

7 So are there other mitigations you can put in
8 place that will improve that? Because even if you say,
9 like, you have weekly site visits, yeah you did, but you got
10 dinged every single week it seemed, when I was looking into
11 those exhibits.

12 MR. RIVERA: Well, I'm now aware that there were
13 actually violations or anything, but we did hire a third-
14 party inspector that we rely upon to do independent
15 inspections. And they share that information with us and
16 interested parties. You know, it is an enforcement issue
17 with DPIE and MDE. That's all I could really say. You
18 know, somebody could think that it looks bad, but it's not
19 technically bad. It's being taken care of. But that is
20 part of the --

21 CHAIRPERSON SHAPIRO: If I can --

22 MR. RIVERA: Yes.

23 CHAIRPERSON SHAPIRO: Let me jump in, because
24 Comm. Doerner, I'm certainly sensitive to everything you're
25 saying. We're hearing it loud and clear from the community

1 and, you know, those of us in the area can speak to this
2 from firsthand experience. But I just want to make sure
3 that we're staying with what's in our purview. And so we
4 have this platform and I think the applicant is hearing us
5 loud and clear. But it's not something -- we don't permit
6 or enforce this.

7 MR. DOERNER: So, yeah, I mean, I agree that we're
8 not the permitting party that actually does this. And I
9 appreciate that clarification. But part of our approvals in
10 this process is that we have to be convinced that this site
11 is going to go back to, and be restored properly, to the
12 prior conditions and that it's not going to be worsened in
13 any way.

14 And the only way that I can do this in good faith
15 right now is looking at what they're doing on the upper lot.
16 And even if it's not a permit violation, per what Mr. Rivera
17 said, there was DPIE stop orders in there and there were
18 consistent letters from MDE stating that they were in
19 violation of certain aspects of their reviews. So what I'm
20 trying to do is I'm just trying to figure out, we have these
21 environmental features which are sensitive, and are they
22 going to be properly preserved and restored?

23 And yeah, we can look at the very beginning and
24 say it's a parking lot and it was -- it was in terrible
25 condition. Like, no argument there. Like, it's the worst

1 possible thing that you could have. And almost anything you
2 do to that parking lot will improve the area. Like, it
3 doesn't matter what you do. Like, any -- just ripping it up
4 would probably be better than having it there. But in
5 getting to, like, what looks to be a really good concept
6 plan afterwards, I'm worried about the middle turn, because
7 that's when you destroy everything around there. And if
8 you're not careful in getting to that point, you're just
9 going to destroy all of the environmental features around
10 there that are protected and at that point, it's too late
11 and you can't do much about it.

12 And there hasn't, it seems to be -- it hasn't
13 worked completely in the pictures that are in the documents.
14 There's extreme flooding and there's blocking up the streets
15 and stuff. I just am looking for some sort of more
16 proactive outreach from the applicant or maybe other layers
17 of mitigations they can put in there. I'm not necessarily
18 stopping them from developing it, but other things that
19 would make it a little bit better so that way I don't walk
20 down to the park one day and find it completely flooded and
21 messed up and dirty and have all sorts of issues there.
22 Because then at that point, even if I can't -- I don't have,
23 like, the authority to enforce the code violations, I sure
24 as hell am going to go and raise some voices about this.

25 Because we are right now in the process of

1 approving this. And one of the things we have to do is we
2 have to weigh the environmental features and the
3 preservation and restoration of them to the fullest extent
4 possible, and that's what I'm trying to do. And that -- I
5 mean, that's in our staff report. So this certainly falls
6 within our purview there. And I'm looking for ways that I
7 can be convinced to get over the line to be supportive of
8 this application that they are actually going to do that.
9 And I'm just not hearing them yet.

10 CHAIRPERSON SHAPIRO: Thank you.

11 MR. DOERNER: And this -- and it has to be context
12 sensitive too is what I would say. Like, in that context
13 sense of it isn't just the residential homes looking like
14 other residential homes in the area. Like context sensitive
15 also means you're pulling something out of a floodplain and
16 you're filling that in, which is a dicey thing to do.
17 Risky. Maybe really great and maybe really improve that
18 area. But you have to be aware that when you're doing that,
19 you have to be careful to not mess up stuff

20 MS. RIVERA: We agree. I mean, the floodplain
21 compensatory storage was done and approved by the city Park
22 and Planning of West side still. This is just basically the
23 same sort of concept. But again, we hear your concerns.
24 MDE has told us, we're the most highly visited site by their
25 people. So I don't think -- I think your concerns have been

1 heard as well as with DPIE and us.

2 MR. DOERNER: So how do you not win that award?
3 That's what I want to see you go is not win that award of
4 the most visited site. The putting in enough things that
5 can protect against it so you're okay in doing this
6 construction development.

7 MR. RIVERA: Yeah. We do improve, but hopefully,
8 the award would be that they don't have to inspect it
9 anymore one day. You know, we just have to keep continuing
10 and the regulatory agencies that have that jurisdiction will
11 make sure we do it. But we're not going to just wait for
12 them to tell us to do it. We're proactive.

13 MR. DOERNER: And that's what I'm looking for, Mr.
14 Rivera, is how are you going to be proactive, more so than
15 what you were doing in that upper lot, because it wasn't
16 working well enough in that upper lot? And that's what I'm
17 trying to get you to is, like, throw me a bone. Convince me
18 that what you're going to do is actually going to work and
19 not mess up the rest of the area down there, because it
20 hasn't worked completely in the upper lot. And they're
21 beautiful homes that you guys are developing. So no
22 argument there. I'm just worried about the process in
23 getting to that.

24 MR. RIVERA: Yeah. My client just told me, you
25 know, we're going to increase our staffing levels and our

1 vigilance. So that's something that's on us and we will do.

2 MR. DOERNER: Okay. We might need to have
3 somebody out there 24/7 then, but okay.

4 CHAIRPERSON SHAPIRO: Thank you Comm. Doerner.
5 Any other questions for the applicant? Other
6 commissioners, questions for the applicant?

7 Okay. All right. So let's continue on with our
8 process.

9 Mr. Smith, we actually do not afford, at least in
10 my experience and I'll check with our attorney as well, but
11 we don't afford the opportunity to cross the applicant's
12 attorney. So there is no cross for Mr. Rivera.

13 Mr. Warner, do you want to weigh in on that? Mr.
14 -- yeah.

15 MR. WARNER: That's correct.

16 CHAIRPERSON SHAPIRO: Okay.

17 Mr. Smith? I can't hear you. You're on mute.

18 MR. SMITH: And some people may prefer that, Mr.
19 Chair. How is the applicant's attorney representing the
20 applicant not a witness? Your rules allow persons of -- any
21 person of record to cross any witness. How is Mr. Rivera,
22 by the way should be registered as a lobbyist for this case,
23 I don't know what he is. How is he not a witness?

24 CHAIRPERSON SHAPIRO: He's the attorney for the
25 applicant. It's clear as day.

1 MR. SMITH: No. How is the attorney for the
2 applicant not a witness in this case? He's presenting their
3 case. He's answering questions that should be subject to
4 cross. You just allowed Comm. Doerner to ask, and I think
5 you should have, a number of questions. Mr. Rivera has
6 made a number of statements on the record that are -- that
7 really are questionable or (indiscernible) --

8 CHAIRPERSON SHAPIRO: Mr. Smith. You're going to
9 have plenty of opportunity to testify.

10 MR. SMITH: -- should be subject to cross.

11 CHAIRPERSON SHAPIRO: You're going to have plenty
12 of opportunity to testify. The issue is around a process
13 and does a party of record have the right to cross the
14 attorney for an applicant. And my own experience, and our
15 attorney concurs, is no.

16 MR. SMITH: So according to that -- that ruling,
17 you don't state anywhere in your rules the attorney for the
18 applicant is not a witness, but --

19 CHAIRPERSON SHAPIRO: We're stating it now.

20 MR. SMITH: So the applicant can hide behind their
21 attorney and their attorney on behalf of the applicant can
22 make --

23 CHAIRPERSON SHAPIRO: Mr. Smith. I understand
24 you're not happy with -- I understand you're not happy with
25 our --

1 MR. SMITH: I just don't (Indiscernible)--

2 CHAIRPERSON SHAPIRO: -- our process.

3 MR. SMITH: -- on how that doesn't work,
4 especially when the applicant's attorney -- the applicant is
5 allowed to rebut opponent's testimony afterwards, but
6 opponents are not allowed to rebut the applicant's
7 testimony. There's a fundamental bias in the way the
8 process is built. Thank you.

9 CHAIRPERSON SHAPIRO: There's no more questions
10 for the applicant.

11 Thank you, Mr. Rivera. We're going to go to the
12 sign-up sheet. Let me -- we have some folks in support,
13 folks in opposition. I don't think we have anybody
14 undeclared. Can I just check with my staff? But also for
15 folks who are online, is there anybody who's undeclared on
16 this?

17 THE CHAIRMAN: Imagine that, but I just want to
18 make sure.

19 Okay. So why don't we go through, start with
20 folks who are in support, and then we will hear from the
21 opposition. And I'll talk to the folks from the opposition
22 around managing the time in a second. For individuals,
23 we'll have three minutes to speak.

24 For the folks who are in opposition, again, Mr.
25 Smith, and others, when we get to you, we'll talk about how

1 we manage the time.

2 So what I have for folks who are in support, I
3 have -- I just see who's here.

4 I have a Kate Calloway?

5 MS. CALLOWAY: Here.

6 THE CHAIRMAN: Okay. I have a David Rease? Not
7 here.

8 And I have a Jorge Aguilar-Barrantes?

9 MR. AGUILAR-BARRANTES: Here.

10 THE CHAIRMAN: Okay. So we have two folks who are
11 in support. That's who I have on my speakers list.

12 Am I missing anybody?

13 MR. REASE: David Rease is here.

14 THE CHAIRMAN: David Rease is here. Okay. So we
15 have three folks who are in support. I'm going to go
16 through the list as it's listed here, and we'll give you
17 three minutes each.

18 I'll start with Ms. Calloway, if you could, when
19 you come to the floor, state your name and address for the
20 record? And you have three minutes, and we'll put a clock
21 up there just to help guide the time. And thank you for
22 coming before us to testify.

23 MS. CALLOWAY: Of course. Good afternoon,
24 everyone. My name is Kate, and I live at 4025 Hamilton
25 Street in Hyattsville. And I'm not here for a long speech.

1 I just wanted to say that we've -- my husband and
2 I have worked with Werrlein for a couple years now, and we
3 are lucky to have secured a home in the Suffrage Point
4 development and you know, they're -- I mean, I think that --
5 well, I'm in support, obviously, of the addition down below.
6 And I think that Werrlein, as a company, really does have
7 the communities best interests in mind as they continue with
8 their development, so I'm definitely in support. Thanks.

9 THE CHAIRMAN: Thank you. Thank you, Ms.
10 Calloway. Much appreciate.

11 Mr. Rease? David Rease?

12 MR. REASE: Hi. Good afternoon. David Rease,
13 5206 41st Avenue Hyattsville.

14 First, thank you to the Planning Board for your
15 leadership and diligence, seriously, in ensuring that we
16 develop land responsibly in Prince George's County.

17 And here, we have the opportunity to support
18 responsible population growth, while providing options for
19 people to reside in urban areas. And this project will
20 expand the socio-economic diversity in the area, something
21 that will benefit the entire community. Townhomes and homes
22 that are close together and use less land, that are also
23 near connected transportation systems, speak to people who
24 are progressive and environmentally responsible. It's the
25 way our nation, state, and county needs to continue moving.

1 Further, your assurance through everything that
2 I've seen today on display and your democratic process,
3 ensures that there will be transparency regarding the
4 history of the land, i.e. floodplains, and will allow for
5 consumers to make informed decisions. This project,
6 featuring high quality housing by a developer who has gone
7 to great lengths to ensure that they're responsible to
8 environmental concerns, needs to go forward.

9 So thank you all for your support in moving this
10 project forward. I look forward to seeing the new,
11 beautiful townhomes.

12 THE CHAIRMAN: Thank you, Mr. Rease. I appreciate
13 it.

14 I may have missed a fourth person who signed up
15 and who's a proponent. That's Mitchell Bernard.

16 You're signing up in support of this project; is
17 that correct?

18 MR. BERNARD: Yeah, that is correct.

19 THE CHAIRMAN: Okay. Great. So then I have two
20 more speakers.

21 I have Jorge Aguilar-Barrantes.

22 Are you with us?

23 MR. AGUILAR-BARRANTES: Yes. Hi.

24 Can you hear me?

25 THE CHAIRMAN: Yes, we can. We can hear you and

1 see you.

2 MR. AGUILAR-BARRANTES: Good afternoon, Mr.
3 Chairman and Board Members, my name is Jorge
4 Aguilar-Barrantes. I live in 4208 Farragut Street,
5 Hyattsville, Maryland. I'm not going to be taking too long.

6 When I first moved to Hyattsville, one of the
7 reasons to move from DC to Hyattsville was how Hyattsville,
8 this area, was full of families, beautiful houses. It was a
9 great neighborhood, so we -- my husband and I, we made the
10 decision to move there.

11 So we saw the new development coming to the area,
12 and it's not -- this project is not only showing that nice
13 architecture, but also in how it blends into the new
14 neighborhood and also it's characteristics. So the area was
15 already beautiful, but now, it looks gorgeous, and I'm here
16 in favor -- in support through the development.

17 And not only that, like that area, there's an
18 apartment complex in there -- or an apartment building, it's
19 called Top of the Park. This building is beautiful. It's
20 located in four-zero-zero (sic) Gallatin Street, and it
21 blends very nicely with all this new structure. So I'm here
22 in favor with the development.

23 THE CHAIRMAN: Thank you, Mr. Barrantes.
24 Appreciate you taking the time to come speak to us.

25 Finally, for the partisan support, we have

1 Mitchell Bernard.

2 MR. BERNARD: All right. Good afternoon,
3 everyone. And thanks for taking the time to be with me
4 today. So yes, Mitchell Bernard. I live on Hamilton Street
5 across from the new development. I have been in the
6 Hyattsville area for -- for about seven years.

7 And yeah, I just wanted to voice my support for
8 the project. From everything that I've seen in watching
9 this project grow, I've been very impressed at the efforts
10 that Werrlein has taken to make this look like an
11 established neighborhood. It's -- I think it's very
12 (indiscernible) from house to house, and you know, I don't
13 think there's many other projects I've seen that have gone
14 through this efforts to make it look like it's an
15 established project.

16 I also want to kind of just state as well, like,
17 you know, listening to all the discussion back and forth, it
18 was, I think, very reassuring to hear Mr. Rivera mention
19 about, you know, what the current project does and how
20 that's going to benefit the sewer and runoff as compared to
21 what was in place, you know, prior to Werrlein taking over.
22 So I think that's great to hear, especially as it relates
23 to -- to the runoff.

24 And then one last point I just want to kind of
25 note here is I've been in the Hyattsville area, and we moved

1 houses about four years ago. We moved into a Werrlein home,
2 and you know, this is just my personal experience, right?
3 But as a builder, they've been just tremendous to work with,
4 right? Pre-moving-in and then after moving in, right?

5 Like, if any issues had came up over the four
6 years, right, they -- they've always kind of been there to
7 assist with anything. And it's usually me just kind of
8 asking a question like hey, you know, do you know if there's
9 someone I can contact, right, about something that's came up
10 in the -- hey, you know we'll fix that for you, right? So
11 again, that's just my personal experience, right? They've
12 really gone above and beyond, and made sure that everyone is
13 in a good position.

14 So I kind of feel like the same thing would apply,
15 right, to these new homes. And you know, I think that
16 Werrlein would be the last group or company, right, to -- to
17 want to see anyone be in a bad position. Thank you.

18 THE CHAIRMAN: Thank you very much, Mr. Mitchell.
19 Appreciate it.

20 Don't see any other folks who signed up in
21 support, so for the folks who are in opposition, I just want
22 to manage our time a little bit.

23 First of all, I believe we have Mr. Chandler, and
24 Ms. Simmons from City of Hyattsville. I'm going to give
25 them the opportunity to go first if they're here.

1 Mr. Chandler, Ms. Simmons, are you here?

2 MS. SIMMONS: Hello. This is Holly Simmons. I am
3 in attendance, but Mr. Chandler is not on the line.

4 THE CHAIRMAN: Okay. Hold on, Ms. Simmons for one
5 sec. So we'll have Ms. Simmons go first, then after that,
6 from the opposition, I see we have Mr. Smith. Irene Marsh,
7 I've seen on. She's here. I think video issues, but she's
8 here.

9 Julie Wolf and cat are here. Shannon (phonetic)
10 Fricklas, I've seen her on the line too, she's here.

11 Ms. Fricklas? Shanna Fricklas. Apologies.

12 MS. FRICKLAS: Yeah. I'm here.

13 THE CHAIRMAN: Okay. And then Andrew Tsui. Did I
14 pronounce that right? Okay. So not Mr. Tsui.

15 So after Ms. Simmons goes -- from the City of
16 Hyattsville, there are one, two, three, four folks who are
17 speaking. Let me suggest this, which is the -- the
18 applicant took about twenty minutes to do their
19 presentation, setting aside questions. Let me give you all
20 the same amount of time and you can manage the time as you
21 see fit amongst the four of you. I know -- I'm going to
22 make an assumption that Mr. Smith has a lot to say, a lot of
23 materials to prepare, so if you all can sort of think about
24 that. The other folks have up to three minutes to speak,
25 and the balance of that twenty minutes I'll give over to Mr.

1 Smith.

2 Okay, Mr. Smith? Will that work for you?

3 MR. SMITH: I think yes, we should share. And
4 perhaps my neighbors should go first, and I will do my best
5 to fit my comments within the remainder.

6 THE CHAIRMAN: Okay. Thank you.

7 So that's what we'll do. So I'll start with Holly
8 Simmons from City of Hyattsville.

9 And I'm not going to put a time limit on you. I
10 respect your role with the city, and take it away. And if
11 you go for about an hour it'll annoy us, but beyond that,
12 take it away.

13 MS. SIMMONS: Noted.

14 Good afternoon, Mr. Chair and Members of the
15 Board. For the record, Holly Simmons, city planner with the
16 City of Hyattsville. Speaking on behalf of the Hyattsville
17 City Council. As expressed in previous correspondence and
18 oral testimony, the City of Hyattsville has and continues to
19 be in firm opposition to this development.

20 In 2018, the city opposed the parent case for this
21 development which enabled the rezoning of the subject parcel
22 from O-S to R-55, and allotted density for the site which is
23 inconsistent with the goals and intent of the gateway arts
24 district sector plan. In April 2022, the city also opposed
25 the preliminary planned subdivision for the site.

1 Now, regarding the subject ESP, the city sent a
2 letter to the Planning Board dated December 7th, 2022, which
3 is included in the backup material for today's meeting. The
4 Hyattsville City Council voted in opposition to the
5 applicant's detailed site plan and requests the Board deny
6 the application.

7 However, in the event the Board approves the
8 application, the city has requested conditions pertaining to
9 pedestrians connections; signage; dedication of parcels, C,
10 D, and B-2; lighting; and plantings be adopted by the
11 Planning Board as conditions of approval. City staff
12 appreciates that these requested conditions are generally
13 reflected in the recommendations provided in the MNCPPC
14 staff report.

15 Staff has reviewed the applicant's revised
16 condition language included in the backup. For condition
17 1(g) which pertains to historic and interpretive signage to
18 be located on site, we disagree with the applicant's
19 suggested language that the signage be subject only to
20 review and comment by the historic preservation section
21 staff. While we understand this would be consistent with
22 the language adopted at the time of preliminary plan, we
23 think it is appropriate that the signage be subject to
24 approval by the planning director.

25 Finally, we believe the delineation of conditions

1 pertaining to parcel B-2 would be inappropriate. Providing
2 public access to parcel B-2 is a position that has proffered
3 by the applicant throughout the review process as a public
4 benefit. This is a commitment the applicant made both to
5 the Planning Board and to the city.

6 And the city specifically requested in its
7 December 7th correspondence to the Board that, quote, parcel
8 B-2 be dedicated as a public use easement in which the
9 applicant shall retain ownership of parcel B-2, but access
10 of the parcel shall be granted to the general public.

11 Parcel B-2 shall primarily serve to provide compensatory
12 storage for the subject parcel that shall be used by the
13 public and permitted at the city's discretion under a
14 separate memorandum of understanding, end quote. There's
15 obligation to reflect this in the conditions to ensure
16 public use of the land.

17 Thank you for this opportunity to comment.

18 THE CHAIRMAN: Thank you, Ms. Simmons.

19 Commissioners, questions for the City of
20 Hyattsville as represented by Ms. Simmons?

21 UNIDENTIFIED SPEAKER 2: Yeah. Two -- two quick
22 questions for her.

23 (Audio interference) one question on parcel B-2.
24 Where are y'all at in the negotiations? Because one of
25 things that it seemed like Mr. Guerrera was saying is the he

1 wanted it to -- to remove it as a condition and put it as
2 staff finding just because you continue to go through the
3 negotiations. So I want to find out if -- if you all were
4 kind of at the same page finally.

5 And then the other part of it is in his new
6 condition 3, that we're not -- he doesn't want to -- that
7 he's stricken now, so he doesn't want that included. The
8 very last part of that was about assigned the grounds and
9 tree or shrub maintenance to the city, where I think the
10 city's position in one of these letters or something that's
11 on the backup was that they didn't want to maintain the
12 maintenance on that for something that's on private land.
13 And when I heard the surveyor talk about that condition
14 today, it sounded like the city was -- was reassuming the
15 responsibility for that and not the HOA.

16 So I wanted to find out what -- what the state was
17 on that, if you had come to an agreement on it?

18 MS. SIMMONS: No. We're still in a point of
19 disagreement. And you have accurately identified the crux
20 of that disagreement. We generally agree with the entirety
21 of the applicant's proposed condition 3, except for the
22 final reference to the city which we do believe should be
23 the HOA or simply left out of the condition entirely, as we
24 will not be assuming responsibility for maintenance of
25 landscaping or vegetation on private property.

1 UNIDENTIFIED SPEAKER 2: Okay. So what happens --
2 so say -- walk me through a thought exercise. What happens
3 if we strike that last part because it goes into our
4 findings or maybe it stays in the condition, and there's no
5 reference to the HOA or to the city -- then let's walk
6 forward a year from now, and it looks crazy, there's all
7 sorts of shrubs around, and it just doesn't look really
8 nice.

9 What do we do about that? Is it -- how is it
10 enforceable? Is it going to be owned by the HOA and the
11 HOA's not going to touch it because it has a PUE on top of
12 it or how does that work?

13 MS. SIMMONS: Our position -- and so what had been
14 agreed is that it will remain in the H -- in the applicant's
15 ownership with the easement over it. I do understand, you
16 know, as I said, there's a disagreement on who would be
17 maintaining the vegetation on site, the applicant has stated
18 that they perceive that to be the city's responsibility, and
19 we do not agree, as we would not be maintaining those
20 grounds.

21 So an agreement would need to be reached. We're
22 not at agreement at this point in time. It's -- you know,
23 it would be sheer speculation for me to say what happens a
24 year from now because I simply -- I simply can't tell the
25 future.

1 UNIDENTIFIED SPEAKER 2: Okay. But if the city
2 has -- has access to that and the public is actually
3 accessing and you got your citizens using the part of the
4 park, why wouldn't the city go ahead and take over the --
5 the maintenance of that?

6 MS. SIMMONS: So my understanding is --

7 UNIDENTIFIED SPEAKER 2: (Indiscernible)

8 MS. SIMMONS: -- that it was discussed that the
9 city would be responsible for maintenance when it was being
10 considered that the city would take ownership, but just --
11 my understanding is, as a matter of policy, the city is not
12 maintaining vegetation or landscaping, plantings, what have
13 you on private property, regardless of whether there is an
14 easement over them or not.

15 UNIDENTIFIED SPEAKER 2: And how many places does
16 the city have an easement over private property where it has
17 access? There --

18 MS. SIMMONS: Like nowhere.

19 UNIDENTIFIED SPEAKER 2: -- (audio interference)?
20 I mean, I -- I think the answer is probably no, to my
21 question.

22 To me that sounds like a really weird issue
23 because you want -- you want the usage for the park, agree
24 that the ownership is still private on the underlying parcel
25 itself, but you want to use the parcel and have access to it

1 for your citizens, but then you don't want to take over any
2 of the maintenance.

3 And then if a liability comes up, and somebody
4 gets hurt because of the lack of maintenance, does that fall
5 back upon the city or does that fall back upon the
6 applicant? I think it -- it's a -- it's a hairy thing.

7 THE CHAIRMAN: Mr. Doerner, if I could step in. I
8 think Ms. Simmons has stated the city's position. I'm not
9 sure she can negotiate with us on this. I think your point
10 is clear and I agree with you a hundred percent. I don't
11 know where Ms. Simmons can go with this because all she's
12 doing is delivering a message on behalf of the city.

13 UNIDENTIFIED SPEAKER 2: Yeah. No. I think the
14 city has -- has some challenges there.

15 THE CHAIRMAN: Yeah.

16 COMMISSIONER DOERNER: Okay.

17 THE CHAIRMAN: I'm with you around concerns around
18 this issue because we don't want this to fall -- get caught
19 in the middle. So let's continue to dwell on that as we go
20 through the process. We can talk to Mr. Rivera about that
21 later on too.

22 UNIDENTIFIED SPEAKER 2: Yeah. I think we need to
23 figure out how we're going to write up this -- the findings
24 if this gets approved to reflect this, and be careful about
25 who actually deals with that.

1 THE CHAIRMAN: I mean, I -- you know -- well,
2 let's get -- let's deliberate on that when we get to that
3 point, but I'm -- I have some thoughts about that, but let's
4 hold it now, and continue where we are in our process.

5 If you have other questions for Ms. Simmons, or do
6 other Commissioners have questions for the City of
7 Hyattsville?

8 VICE CHAIR BAILEY: My question was of a similar
9 nature, Mr. Chairman, so we'll hold that during discussion.
10 That's fine.

11 THE CHAIRMAN: Okay. Thank you.

12 Other questions for Ms. Simmons?

13 Ms. Simmons, thank you. I'm sure you -- it would
14 be helpful if you stayed on the line even if you won't be
15 speaking for a bit.

16 So now, let's go to the other parties in
17 opposition. Mr. Smith has asked to go last. I don't have
18 any concerns around that. Let me go through the rest of the
19 list in the order that I have them on my sheet. So we'll
20 start with Ms. Marsh.

21 Irene Marsh, you have up to three minutes. We'll
22 start the clock for you. I know you've been having some
23 issues with your video. Turn it on if you want to, but
24 there's no requirement for it, and let's see if we can hear
25 you.

1 Ms. Marsh? There we go. Try speaking now Ms.
2 Marsh. We're almost there. I can hear some noise. We're
3 getting close.

4 We're not going to forget Ms. Marsh, but let's
5 come back to her and see if she can figure out the
6 technology or perhaps we can help in some way. So we'll
7 move on to Ms. Wolf.

8 Julie Wolf, you have three minutes to speak --

9 MS. WOLF: Cool.

10 THE CHAIRMAN: -- and the floor is yours.

11 MS. WOLF: Can I have -- offer to Ms. Fricklas to
12 go first? Because I believe she has a time restriction.

13 THE CHAIRMAN: Oh, yeah, absolutely.

14 MS. WOLF: Thank you.

15 THE CHAIRMAN: Thanks for -- for being mindful of
16 the others.

17 So Ms. Fricklas, you go first.

18 MS. FRICKLAS: Thank you so much, Julie and to the
19 rest of the Planning Board.

20 My name is Shanna Fricklas. I reside at 5008
21 (audio interference) Place in Hyattsville, four doors down
22 from the disputed site where (audio interference) its way
23 towards developing the lower parcel. I'm a member of
24 Sustainable Hyattsville along with the other Hyattsville
25 residents in a petitioner in two cases challenging county

1 approval for this project. First, upon Planning Board's
2 approval of PPS 421052 for the lower parcel as second
3 district council October 2022 approval for the 12.3
4 townhomes per acre in response to the court's remand of CSP
5 18002.

6 I'm also a lawyer and work in the Capitol Hill
7 area. First, I would like to request that the Planning
8 Board follow precedent and proper procedure to ensure
9 completeness of the record by holding the record open for
10 written comments and sharing testimony until a final
11 decision is made, as is general practice. We plead for you
12 to keep (audio interference) in mind as you consider the
13 potential impacts that this project poses to my home and to
14 the local community.

15 I purchased my house in May 2021, the same month
16 that Werrlein began tear into both parcels even though they
17 hadn't even applied for state/federal form letter or
18 floodplain wetland permit. From what I have gathered, in
19 almost my two years here, there is not the development the
20 city -- this is not a development that the city wants.

21 Werrlein proposed development is not in the public
22 interest, and it is detrimental to the local community and
23 the environment. I believe that Werrlein's consistent and
24 persistent violations should inherently prevent them from
25 being rewarded with additional opportunities to build in my

1 community, and I hope that you will take into account
2 Werrlein's deplorable track record and violations going back
3 more than three and a half years as you've considered this
4 detailed site plan.

5 I hope that you also consider the apparent failure
6 of the partner agency in which you had relied, DPIE, to hold
7 Werrlein accountable and stop them from discharging sediment
8 pollution into our local streams and wetlands. Along with
9 the other Sustainable Hyattsville volunteers, I have
10 personally documented a number of those violations with
11 photos and videos that were submitted for the record. The
12 city has opposed this project at every turn, since 2018.
13 And I think that it's a travesty that the Planning Board and
14 the District Council are not showing respect for the city's
15 well-founded opposition to a project that our former mayor,
16 Candace Hollingsworth, has stated fails to meet any
17 reasonable public needs test.

18 None of my neighbors support this project, many of
19 whom are immigrants with children and multiple jobs --
20 cannot take the time to be here to testify. While I am an
21 attorney and I know I cannot represent them here, I can tell
22 you that we share many of the same concerns about this
23 project. While your staff stated that, for example, there's
24 a walk that is typical for an urban area. This is not an
25 urban area, and this forcing of townhomes to this

1 quintessential higher density is not actually reflective of
2 the detached homes in the neighborhood.

3 MDE has first inspected that in 2021, and they
4 found that there is not the required environmental permits.
5 MDE confirmed that Werrlein was operating without any
6 permits and otherwise was in violation of the Clean Water
7 Act on multiple accounts; thirty times. Never has found
8 Werrlein to be in compliance, and that includes MDE's most
9 recent inspection on December 15th.

10 And DPIE began inspecting the site for stormwater
11 compliance only after Sustainable Hyattsville engaged MDE
12 and let them know that Werrlein was violating the law in
13 multiple ways. And since June 9th, 2021, DPIE has been
14 (audio interference) nearly sixty times, and again, has
15 found Werrlein to be out of compliance or in violation in
16 more than half of those (audio interference). And DPIE has
17 already reported to you two issues of findings of violations
18 despite all of these findings of noncompliance, and issued
19 five stop work orders, and in fact, gave Werrlein a failing
20 review as recently as December 15th, 2022, as well.

21 They've continued discharging significant sediment
22 loads into the Trumbull Trail Tributary that Will Doerner
23 mentioned enjoy as do I, which is right, abutting the back
24 of my property. Gallatin Stret has been flooded,
25 dangerously, a number of times with sediment-laden

1 stormwater from Werrlein's site, forcing the city to close
2 the street. And it was so bad that it actually limits
3 access to my property and is dangerous.

4 Many of us in the community wonder why DPIE hasn't
5 taken effective action or shut Werrlein down or revoked
6 Werrlein's permits. And that should certainly make you
7 question being able to rely on DPIE's due diligence, because
8 as a planning board, it is on you to not ignore these
9 serious issues.

10 According to longtime Hyattsville residents,
11 before Werrlein tore up to two parcels, Gallatin rarely
12 flooded, and when it did, it flooded with clear stormwater
13 and drained really quickly. What we've seen since Werrlein
14 commenced work on the upper parcel have been distinctly
15 different. Sediment-filled water, often draining very
16 slowly, and their, quote/unquote, stormwater management
17 stopgap had been piling coarse gravel and wood in front of
18 storm drains. That is clearly on making the problem worse.
19 The Planning Board has an affirmative responsibility to
20 protect our communities, our parks, our environment, our
21 streams, and our wetlands.

22 Legally, the burden of proof that this project
23 will not cause harm and will comply with the laws falls
24 entirely on the applicant, and they have yet to prove that.
25 Local residents should not have to load the record every

1 time with evidence that the project already is causing harm
2 and Werrlein has been fairly -- failing to comply, but we
3 have stacked the record with that evidence. Does that seem
4 fair?

5 Finally, as someone who is planning to have a
6 family soon, I share the view of many of my neighbors, a
7 diverse and growing community would have been much better
8 served by a walkable new elementary school, or a community
9 center, rather than being jammed with million dollar plus
10 townhomes.

11 Now, the road which I live on, a thoroughfare
12 between Rhode Island Avenue and Queens Chapel, is already
13 overburdened and unsafe to the extent it's hard for me to
14 even pull out of my driveway sometimes in the morning. I'm
15 constantly hearing traffic. In fact, the stop signs that
16 are on my street were recently just equipped with LED lights
17 because clearly the community must have voiced concern
18 regarding this unsafely trafficked, narrow, winding,
19 thoroughfare. And in fact, there was an accident right in
20 front of my house, running into the fence because it is that
21 dangerous. The project would only increase this congestion
22 and unsafe conditions of this road, obviously.

23 I, like our former mayor Hollingsworth, do not see
24 this project meeting any legitimate public interest test,
25 and Werrlein's deplorable environmental track record gives

1 me little hope that they will act in good faith as they
2 continue building. Every step along the way, all we've seen
3 is Werrlein acting for what appears to be a blatant
4 disregard for the law. And if you vote for this project,
5 you would be condoning, if not encouraging their behavior
6 and setting bad precedent.

7 Please vote for fairness and vote in opposition to
8 this project for the sake of my community. Thank you. And
9 sorry for going over time.

10 THE CHAIRMAN: That's all right. Thank you, Ms.
11 Fricklas. Appreciate you taking the time. I know it's been
12 a long day.

13 Irene Smith -- I mean -- I'm sorry, Irene Marsh,
14 can we try you again? Can we hear you? Ms. Marsh? No.
15 Unfortunately, nope. We're having trouble.

16 Ms. Marsh, can we hear you now?

17 Okay. Ms. Wolf, I'll turn it over to you.

18 MS. WOLF: Thank you.

19 While I'm introducing myself, since there's not
20 much time, I want to call your attention to page 28 of the
21 additional materials that were submitted on January 4th.
22 I'm assuming you all have that in front of you since I'm not
23 able to share my screen. This --

24 Okay. So first, my name is Julie Wolf. I live
25 directly across from both lots at 4008 Hamilton, so I've

1 overlooked this project from the beginning. Earlier this
2 morning, someone said they're not an environmental
3 scientist. I am an environmental scientist, and so I'm
4 speaking today as an environmental scientist who specializes
5 in soil science and climate change.

6 So briefly, I want -- I agree with what everyone
7 else whose -- I'm also a member of Sustainable Hyattsville.
8 I agree with what my compatriots have mentioned, but I want
9 to talk about this map that I've presented for you on page
10 28. I downloaded this directly from NOAA the National
11 Oceanic and Atmospheric Administration, and the red
12 coloration is from them. And what that's showing is
13 shallow, coastal flooding currently. And what I want you to
14 see, the yellow arrow is pointing to the lower lot, as it
15 is, and the upper lot -- you can see this is an older map,
16 so it's bare soil. This entire -- both upper and lower lots
17 drains into a part of the Northwest branch that is already
18 subject to coastal flooding, and so as they raise the lower
19 lot, there's going to be nowhere for the water to go.

20 Werrlein claims that they're going to build
21 sufficient capacity into that very small Southwest corner,
22 but I contend that this is putting the park, a very
23 important public resource, into direct risk of being
24 inundated repeatedly, and I find that to be completely
25 unacceptable.

1 I have other things, but I -- I think I'll just
2 leave it at that in the interest of (audio interference).
3 Thank you.

4 THE CHAIRMAN: Thank you, Ms. Wolf. Appreciate
5 your time.

6 So Mr. Smith, let's just round this down a little
7 bit to give you the benefit of the doubt, let's give you
8 twelve minutes -- up to twelve minutes, and take it away.

9 MR. SMITH: (Indiscernible)

10 THE CHAIRMAN: Let me try one more time.

11 Ms. Marsh?

12 MR. SMITH: Excuse me?

13 THE CHAIRMAN: Irene Marsh, do we have you?

14 No, unfortunately.

15 All right. Mr. Smith, so we'll put twelve minutes
16 on the clock. The time is yours. Take it away.

17 MR. SMITH: But excuse me, Mr. Chair, before we
18 start, I think it would be fair if -- if the opponents get
19 the same amount -- aggregate amount of time as the
20 proponents including Mr. Rivera and the local residents who
21 testified in favor. Think you have premises on Mr. Rivera's
22 (indiscernible) --

23 THE CHAIRMAN: So you're saying -- you're saying
24 add in the four people who spoke as well, as well as Mr.
25 Rivera?

1 MR. SMITH: Sure. They're all -- they're all
2 proponents.

3 THE CHAIRMAN: Yeah. That's -- that's -- that's
4 fair. So let's bump you up to twenty minutes.

5 MR. SMITH: Okay. I will do my best with that.
6 Thank you. Right.

7 Good afternoon, Planning Commissioners and staff,
8 and (audio interference) Smith. I reside at 4204 Farragut
9 Street in Hyattsville and I serve on the Board of
10 Sustainable Hyattsville. As an individual and on behalf of
11 Sustainable (audio interference) submit these comments and
12 urge the Planning Board to deny Werrlein's application for
13 Suffrage Point DSP-21001 as well as all variances and
14 amendments to the DDOZ standards that Werrlein is
15 requesting.

16 On July 26th, 2018, in his testimony on DSP-18002,
17 Werrlein's attorney, Norman Rivera, thanked the planning
18 staff for rescuing the project. We submit it is not the
19 plan of the Department or the plan of the job to rescue a
20 project, unfortunately, that is precisely what's happened
21 with each of Werrlein's applications including CSP-1 --
22 18002, the two preliminary plans in DSP-18005.

23 As part of our framing, I always say that section
24 27-104 of the ordinance states that the -- that the
25 requirement -- the requirements that were laid out in the

1 ordinance are the (audio interference) appropriate subtitle.

2 And 27-142 states that the burden of proof in any
3 zoning case shall be the applicants. It's the applicant's
4 responsibility to -- to demonstrate that a project is legal
5 and compliant, and in the public interest. It's not -- it's
6 not the local community, all volunteers, to make the case
7 the it's not. It's also not the Planning staff's job to --
8 to make the case. Based on the evidence that we placed on
9 the record for this and pairing applications, you have solid
10 grounds to deny Werrlein's application.

11 We're asking you not to rescue the applicant who
12 has failed to meet the minimum requirements laid out in the
13 ordinance, lobby the Planning Department to calculate
14 density in a way that violates the ordinance, and
15 persistently and flagrantly violated county, state, and
16 environmental laws since July of 2019. Werrlein's
17 violations and the County's failures to follow and enforce
18 the law have been so egregious that sustainable Hyattsville
19 and the Anacostia Riverkeeper notified Werrlein and the
20 county in October that we intend to sue the -- (sound)
21 (audio interference)

22 Can we -- can we -- can we pause the clock please?

23 THE CHAIRMAN: Mr. Smith.

24 MR. SMITH: My dog is responding to a siren going
25 by. I can't control him on that.

1 THE CHAIRMAN: Don't even worry about it. Take a
2 second. Let the dog do what the dog has to do. I'm
3 stopping the clock.

4 MR. SMITH: Hold on a second. I'm going to put
5 him outside. Sorry.

6 THE CHAIRMAN: That's -- Mr. Smith, take your
7 time. Don't worry about it.

8 Anybody like to guess the size of that dog?

9 (Laughter.)

10 THE CHAIRMAN: Either big or a small dog with a
11 big attitude.

12 MR. SMITH: Yeah. Yeah. Well, thank you. I'm
13 ready again.

14 THE CHAIRMAN: Take it away.

15 MR. SMITH: You can also say that the dogs in our
16 community also oppose the project. That's what that was
17 about.

18 We've -- we've provided a copy of our notice of
19 intent as one of our exhibits. Please take that very
20 seriously. Take a look at it. We laid out three and a half
21 years of clear violations and failure to enforce. We quite
22 possibly would not have needed to file that notice of intent
23 if the Planning Board had taken it more seriously; its
24 responsibility to protect the environment, and give due
25 consideration of the concerns that we've raised and the

1 evidence we provided in prior occasions.

2 And I -- I really appreciate the comments and
3 questions that have come from commissioners today about
4 these issues. Werrlein's behavior here has been disturbing
5 to say the least. Your consideration should be much more
6 than a box-checking exercise and a blind reliance on a
7 partnerage, DPIE, that has committed basic errors in the
8 floodplain waiver letter on which you've relied -- allowed
9 Werrlein to violate the law for three and a half years, and
10 operated on the property without required county, state, and
11 federal permits, failed to account for climate change as you
12 reviewed Werrlein's plans, and failed to inspect and enforce
13 for nearly two years after allowing Werrlein to tear up the
14 upper parcel, and failed to take effective action to protect
15 our community and local streams and wetlands from -- and
16 that -- that wetland is on park -- on park property, by the
17 way -- from more lines and numerous discharges, sediment,
18 perhaps other pollutions. While -- may not have the
19 authority over permits and enforcement, you do have an
20 affirmative responsibility and a right -- a right to take a
21 close hard look the way that the applicant's track record
22 and works provide evidence that this project will not harm
23 the environment or that the applicant is in compliance.

24 I'll just note the sensitive location of the
25 property. You know the deal. It's in the floodplain, it's

1 next to a wetland, it -- it -- it sits on top of a
2 tributary, it's -- that feeds into the -- the Northwest
3 branch and the Anacostia are impaired waters under the clean
4 water act for sediment and other pollutants. This is an
5 environmental justice site because it's surrounded by
6 communities that are -- have high percentages of folks with
7 low income or are persons of color. And the (indiscernible)
8 communities as well. It's next to our parks and it's next
9 to our homes.

10 Without taking that close, hard look, you cannot
11 make an informed finding that this project and this
12 application meet the purposes of the zoning ordinance. And I
13 would just highlight, one purpose is 1, 2, 3, 6, 7, 10, 11,
14 13, 14, and 15. All of which speak to protecting the public
15 wellbeing and the environment, including preventing floods.

16 Werrlein has provided no -- no proof, covenant,
17 agreement, or plan for maintaining the land if it is
18 available for public use, but owned by the HOA. That is
19 required under section 27.282 under detailed site plans.
20 Instead, Werrlein has repeatedly sought to present its storm
21 weather facilities, which may be under-designed and
22 nonprotected as public open space, and to find a way to make
23 the public responsible for maintaining Werrlein's stormwater
24 and floodplain -- flood mitigation infrastructure on the
25 lower parcel, and then to have us indemnify the HOA, it's --

1 if harm results from not just failure to -- the city's
2 alleged failure -- potential failure to maintain the
3 grounds, but the failure of the infrastructure itself.

4 DSP -- the DSP fails to conform with the CSP and
5 the council's final decision in order on at least two
6 critical points. First, Werrlein lacks the required
7 floodplain authorizations. In condition 2(a) of its final
8 decision and order of June 19, the District Council
9 stipulated at the time of the detailed site plan, Werrlein
10 must demonstrate that it has all required floodplain
11 authorizations. Werrlein has not received the required
12 state/federal authorization to alter the floodplain, or
13 the -- or the site-adjacent nontitle wetland, or the
14 Northwest Tributary. Therefore, this planning board should
15 not have accepted DSP -- this DSP for review and may not
16 legally approve it without violating the CSP.

17 In fact, the planning board should not have
18 accepted DSP-18005 for review and should not have approved
19 it. In advancing this property, the planning board -- the
20 Planning Department has repeatedly relied on the floodplain
21 waiver letter. I have pointed out some error in that letter.
22 They're clear errors and they're sloppy. The Planning
23 Department should have caught those errors to -- and ask
24 questions about that -- about that, and yet it did not,
25 apparently.

1 I'll also point out that condition 1 of the -- of
2 that waiver letter states that this approval does not
3 relieve the applicant of responsibility for obtaining any
4 other approvals, licenses, or permits in accordance with
5 federal, state, or local requirements, and does not
6 authorize commitment on the proposed project. Werrlein
7 doesn't have the required state/federal authorization, and
8 yet Werrlein, in May of 2021, tore up the lower parcel, and
9 prior to that, had torn up the upper parcel despite not have
10 the required state/federal stormwater permit or county --
11 county (indiscernible) permits or approved stormwater
12 management plan.

13 You can find all of -- you can find much of this
14 information on publicly accessible website and databases,
15 MPE's and DPIE's. Second point of nonconforming, Werrlein
16 calculated -- calculated, according to this zoning
17 ordinances are all the provisions and acreages presented by
18 Werrlein in previous plans. The -- stopped by Werrlein for
19 the entire project for the lower parcel, and the upper
20 parcel would be -- I'm sorry.

21 The density for the entire project would be 16.1
22 houses and townhouses per acre. For townhouses on the upper
23 parcel, 17.9 units per acre, and for townhouses on the lower
24 parcel, 33 units per acre. This is based on Werrlein and
25 the planning department's previous presentations of the

1 floodplain area as 3.02 acres. Suddenly, we have a -- we're
2 relying on a much smaller floodplain area, one that hadn't
3 been subject to public review, one that wasn't presented to
4 the District Council on July 12th.

5 These densities radically exceed the maximum
6 allowed under zoning ordinance and not at the 12.3 approved
7 by the council on -- on -- in October 2022 and any density
8 in the -- in the surrounding R-55, RSF-65 community. We've
9 laid out our calculations, and our written comments and
10 we've laid them out for the planning Board before. These
11 are simple calculations.

12 That becomes complex when somebody wants to either
13 ignore the law or find a novel way to figure out a way to
14 keep this project alive, and that's what we have yet again.
15 Suddenly, we're relying on a floodplain delineation that has
16 been the subject of review, it probably does not take into
17 account the realities of climate change. There's no
18 evidence in the record that Werrlein, in its plans, has
19 taken climate change into its account -- into account, or
20 that DPIE, in its approvals and reviews, has taken climate
21 change into account.

22 We have placed abundant evidence in the record
23 that -- that climate change is bringing more severe storms,
24 that the trend is upward for overall precipitation and the
25 frequency of severe storms, that floodplain delineations

1 that have been relied on historically have been relied on in
2 this case, probably are badly obsolete and nonprotective,
3 and that the situation is likely only to get worse. We
4 provided that information.

5 We included a report that's -- that MDE points to
6 on its website, and looking at the kinds of data that
7 engineers rely on in designing floodplain facilities, and
8 agencies rely on in reviewing those plans and making
9 approvals or denials. All this information is publicly
10 available. We've brought it up before with you all at
11 times. We're bringing it up again.

12 And we really have to ask, especially given the
13 concern you've expressed here today, that you pay attention
14 and you see this as a reason to deny this application. The
15 fact that Werrlein proceeded without having the required
16 permits, the fact that DPIE allowed Werrlein to do that.
17 The fact that DPIE did not inspect at all. There's no
18 evidence on DPIE's website that they inspected this site at
19 all between July of 2019 and June of 2020. And they
20 inspected only after we raised hell at a hearing with you,
21 on DSP-18005, showing evidence that Werrlein was dumping
22 large loads of sediment on Gallatin Street.

23 Now, we have documented dozens of instances where
24 Werrlein has dumped -- has left the site in a degraded
25 condition, likely to discharge. That's a violation of the

1 law. Werrlein has discharged sediment onto the street, into
2 the storm system, into a tributary, and this has been from
3 both parcels. I know Mr. -- Mr. -- I understand Mr. Doerner
4 spoke this on -- the failures on the upper parcel, but we
5 documented discharges from the lower parcel as well, going
6 back a couple of years. And this is because of Werrlein's
7 behavior.

8 So we can say on the one hand, anything is better
9 than an asphalt parking lot. We never argued that it should
10 stay an asphalt parking lot. But there's no evidence
11 anywhere that this property was discharging sediment --
12 well, pollution into that tributary, into the county-owned
13 bog, or into the Northwest branch prior to Werrlein ripping
14 up the upper parcel, and then ripping up both the upper
15 parcel and the lower parcel, and doing it without the
16 required permits. County, state, and federal permits. No
17 evidence at all that that happened. So I hope you take that
18 under due consideration as well.

19 I -- I can walk you through some of the -- some of
20 the climate issues. We provided a report done by the RAND
21 Corporation, funded by Maryland and Virginia and other
22 entities, looking at the reliability of the precipitation
23 data. They're typically used and have been used. And they
24 found that the -- the data that -- that had the tool usually
25 relied on by engineers and -- and environmental agencies,

1 and that was Atlas 14 contains no data any more recent than
2 2000, and that the -- the -- you call it intensity,
3 duration, and frequency curves that are relied on over the
4 past ten, twenty years, probably underpredicted and -- for
5 probably even more likely that we would predict the impacts
6 from storms.

7 And so again, we ask you to take that into
8 account, and if you don't, then it's hard -- it's hard to
9 see how you -- we can rely on you to make informed decisions
10 about projects that can have significant impacts on people's
11 property, on human health and human life, and on the
12 environment. Again, going back to this -- the -- it's --
13 it's clear that now, the Planning Department and Werrlein
14 are aligned with a floodplain area of 1.29 acres, which is
15 about sixty percent smaller than the 3.02 acres that they
16 presented -- they presented all along, right up until this
17 application. Not only in these applications, but also in
18 the storm water management plan. This -- this trigger
19 doesn't appear anywhere in the previous applications, in the
20 stormwater management plan, in the floodplain study, in
21 DPIE's floodplain waiver letter, in the natural resources
22 inventory, or any previous planning (indiscernible) on the
23 project. It just appeared, pretty much, out of nowhere and
24 hasn't been vetted, and it's likely to be incorrect due to
25 climate change.

1 I'm trying to just cover all the issues quickly.
2 We have an awful lot of this in our written comments.
3 (Indiscernible).

4 As you review Werrlein's application request, we
5 ask you to fully account for climate change as fully as
6 possible and to apply for the -- to apply the best available
7 data information, analysis, science. We know you're not
8 engineers, we know you're not scientists, but you convene as
9 a quasidicial (sic) body and you should be making decisions
10 that are well-informed, balanced, and in the public
11 interest.

12 We have presented the information over and over
13 and over, showing that climate change is a serious issue,
14 that Werrlein has been violating the law. And -- and
15 looking at these failures, you have to either -- you have to
16 either assume that the plans themselves are inadequate --
17 the solar plans themselves are inadequate or DPIE's review
18 was inadequate, or Werrlein has been violating, and/or DPIE
19 has been failing to enforce a law sufficiently to protect
20 our local streams and wetlands.

21 And it's -- at each point that we've raised these
22 issues along the way -- concerns about an unlawful method of
23 calculating density, concerns about impacts on traffic
24 (indiscernible), concerns about impacts on the environment,
25 concerns about climate change, concerns about Werrlein's

1 egregious track record going to -- back to at least July
2 2019. At each point, these issues has just been kicked --
3 the can's been kicked down the road. The pollution's been
4 washed downstream.

5 And it's -- and the Planning Board, unfortunately,
6 in some ways, and don't take offense, but you've been in the
7 position of basically enabling an applicant rather than
8 taking an objective look at some of these really critical
9 issues. And I know your job is difficult. I know you have
10 a lot of applications. I know you have a lot of people
11 bringing information to you, but still, we ask that you
12 finally take a look -- a hard, close, look at whether you
13 can rely on Werrlein's statements that they're going to
14 protect the environment and have been, or whether you can
15 rely on DPIE's work.

16 And once you're -- understand the need and desire
17 to rely on a sister agency -- a partner agency, but once
18 you've been presented with abundant evidence that agency has
19 not been doing its job to the point that two nonprofits feel
20 compelled to take that agency and the applicant to federal
21 court. We don't do that lightly. It's costing us a lot in
22 time, energy, and money, but we're doing it because we think
23 it's the right thing.

24 When you're -- when you're faced with that kind of
25 abundant evidence, we have to ask you to -- to work

1 responsibly, backing the public's interest, and deny this
2 application. Take this information seriously account
3 because beyond the narrow, black and white letter of certain
4 requirements in the law, there is this broader mission that
5 you're supposed to fulfill to make sure that these
6 applications actually serve the public interest and don't
7 endanger the public interest, don't endanger our resources,
8 don't endanger our homes.

9 So I have to ask you, take that very seriously and
10 look at the fact that Werrlein, to this day, after tearing
11 up the parcel, does not have the required authorization from
12 the states and the feds to alter the floodplain. In fact,
13 they didn't even apply for that until late July or early
14 August of 2021, and they did so only after we brought MDE on
15 the site because we weren't seeing DPIE enforce the law.

16 And I'll also point out to you that even after
17 Werrlein was instructed by MDE to stop grading and stabilize
18 all the exposed stockpiles of soil and construction -- on
19 site, Werrlein refused. They continued working, and DPIE
20 did not issue a hard stop work order. That's -- that's
21 pretty outrageous.

22 And Mr. Doerner, you're familiar with this site,
23 you've seen the massive stockpiles that Werrlein left
24 littering that site for two years, fully exposed to the
25 elements. We could show you pictures over time, both Google

1 satellite photos and ground photos showing that there was
2 significant losses of mass from those piles. There's only
3 one place that goes. It goes into our storm system, into
4 our streams, into the county-owned bog, and into the
5 Northwest branch of the Anacostia. Again, there are
6 environmental justice issues here. There's an impaired body
7 of water.

8 And I'm coming up -- seven, six, five -- thank you
9 for your time. Please deny this application.

10 THE CHAIRMAN: Thank you, Mr. Smith. Appreciate
11 that.

12 Folks, I'm going to ask to -- what's left to -- we
13 may have questions for Mr. Smith, but I'm going to ask for
14 about a five minute break, I need a bio break.

15 So we'll come -- and then after questions from Mr.
16 Smith from commissioners, the applicant will have the
17 opportunity -- and any of the witnesses will have the
18 opportunity to -- wait, there's no cross on Mr. Smith. The
19 applicant can? If the applicant wants to. But the short of
20 it is all that's left after that, after our questions is the
21 applicant's rebuttal and then close, okay? But let's take a
22 five minute break. I'll see you all back here at 3:35.

23 (Pause.)

24 THE CHAIRMAN: A little bio break and a little
25 kibbitzing on the side, so -- not amongst commissioners, but

1 with some of the staff.

2 So we are -- Mr. Smith, the other folks in the
3 opposition have concluded their testimony.

4 Let me start with commissioners. Any questions
5 for Mr. Smith, Ms. Wolf, Ms. Fricklas? Keep in mind, Ms.
6 Marsh, who we have not been able to figure out technology
7 issues with, we do have Ms. Marsh's letter in the record so
8 we -- her voice has been heard. Just to be clear for the
9 record, we have -- we have seen her letter.

10 So Commissioners, questions for the parties in
11 opposition? Okay. If there's none, then I'm going to turn
12 it over to Mr. Rivera.

13 Mr. Rivera, you have -- this is your time to
14 rebut, and then close, and then we'll begin our
15 deliberation.

16 COMMISSIONER DOERNER: Before we jump over, can --
17 can I just ask one question? I don't know who, necessarily,
18 on the opponents side would be appropriate.

19 I guess I can ask Mr. -- Mr. Smith one -- one
20 question.

21 In terms of the state, federal, or other approvals
22 that were needed prior to commencing work, do they have
23 those now, do you know? Or are they still without the --
24 some sort of necessary approvals?

25 MR. SMITH: I'm sorry. Was that Commissioner --

1 I'm having a little trouble with my speakers.

2 Is that Commissioner Doerner?

3 COMMISSIONER DOERNER: Yes.

4 MR. SMITH: And was your question whether Werrlein
5 has the required state/federal authorization in operating
6 the floodplain?

7 COMMISSIONER DOERNER: Yeah, because you had said
8 before that -- that after getting the floodplain waiver,
9 that they had to get certain state, federal, or other
10 approvals before commencing, and I was just wanting to find
11 out if they have them now or not.

12 MR. SMITH: So just as a little background, that
13 condition -- that condition is clearly stipulated in -- in
14 the floodplain waiver letter that Werrlein was not relieved.
15 They were obtaining those authorizations. It's a matter of
16 state and federal law that they're required.

17 And the short answer is no, as of right before
18 this hearing or -- I checked in the East database and their
19 application is still listed as pending, so they -- as far as
20 I know, they do not have that approval.

21 COMMISSIONER DOERNER: Okay. And then the other
22 question I wanted to find out -- there's a -- we have a lot
23 of backup, so I'm trying to -- and it's not -- some of it's
24 actually well-named so we can see who, like, provided
25 certain testimony, but some of them were like documents that

1 it's hard to kind of like, see chain of custody or who
2 submitted it.

3 So there's one item on Opponent Exhibit 84 that's
4 135 pages of printout from the Maryland Department of
5 Environment, the Water and Science Administration Compliance
6 Program. And these look like they're inspection reports or
7 they're NPDES construction activities and NPDES meaning the
8 the National Pollutant Discharge Elimination Systems. And I
9 guess, there it talks about inspection findings, there's
10 some stop-work orders, and then there's like, inspection
11 items, status, and comments, and that goes from it looks
12 like June of 2021 -- June 2nd of 2021 up until, I think,
13 mid-December, like a month ago, December 15th, 2022.

14 Do you know who submitted those and then how they
15 got those reports?

16 MR. SMITH: I could speak to that.

17 Would you like me to respond to --

18 COMMISSIONER DOERNER: (Audio Interference). Yup.

19 MR. SMITH: I submitted those. I received them
20 from staff on MDE's compliance team that covers this area.
21 We've been in regular contact with them, providing them with
22 evidence. We're the first ones who brought them on the
23 scene when Werrlein apparently appeared not to have either
24 the required stormwater permit, or the floodplain or wetland
25 permit.

1 And in some cases, a couple of these reports are
2 available now for download from MDE's website, and if you
3 would like, probably afterwards, I can send you the URL
4 where you can search for the -- MDE's inspection history. I
5 can also send -- I don't think we provided a summary of
6 DPIE's inspections and findings. I meant to, but I had the
7 blue screen of death several times as I preparing my -- my
8 comments.

9 These are publicly available databases. I can't
10 say they're all entirely complete or accurate, but that's
11 where we get a lot of this information. We do our research.
12 We don't have DPIE's reports. It's often a wrestling match
13 to get documents DPIE for us, but some of MDE's reports are
14 now available for public deadline -- download through that
15 online database. They're -- they're trying to catch up on
16 getting reports themselves posted rather than just the
17 summaries of the -- the line item spreadsheet summaries in
18 an inspection. But yeah, these go back from MDE's first
19 inspection on the morning of June 2nd of 2021, through
20 December 15th of 2022.

21 And as Ms. Fricklas stated in her testimony -- and
22 they're looking for two major matters: compliance with the
23 Clean Water Act and wetland Maryland law, section 402 of the
24 Clean Water Act, which deals with pollutant discharges, the
25 National Pollution Discharge Elimination System and in

1 compliance with relevant Maryland law, but also in
2 compliance with section 404 of the Clean Water Act, which
3 deals with impacts on wetlands and floodplains and streams.
4 And they -- they have -- they have never found Werrlein to
5 be in compliance under either one of those federal statutes
6 or the relevant Maryland law. Thank you.

7 COMMISSIONER DOERNER: Okay. So and just -- so
8 thank you. That was helpful. I don't need you to send
9 anything else. I can find them. I just didn't know where
10 you were getting them. Like, I can go and search because
11 I'd just be interested in finding them on my own. It'll
12 help me to remember where they're -- where they're at for
13 other cases.

14 But in -- and I actually was going to ask about
15 okay, do you have the same thing for DPIE, so you said no on
16 that. In terms of, like, regulatory authority, what --
17 what -- and I have another question after that as well, but
18 in terms of regulatory authority, what authority does the
19 Maryland Department of Environment have then? Even though
20 they're doing these inspections and stuff, like what kind of
21 powers do they have particularly in these cases?

22 And then on the other -- the follow-up to that is
23 did you share any of this information before with the staff?
24 Because I don't think we've seen any of this kind of
25 information, to this extent, before in prior cases, or at

1 least I don't recollect on seeing any of these kinds of
2 reports in -- in prior hearings related to this case.

3 MR. SMITH: Okay. So -- so there are a few
4 questions in there. I'll answer the last one first. We
5 provided a lot of this information, I believe, including
6 photographs and videos, with staff -- and our comments on
7 preliminary plan of subdivision 21052, dealing with the
8 lower parcel.

9 And I'll say here, I would much prefer to be doing
10 this differently. I do appreciate staff's efforts to
11 provide access to a Dropbox where we could submit the
12 documents. I would like to have given you a much more
13 distilled set of comments and have distilled our photos and
14 videos down to a subset. I didn't do that. Blue screen of
15 death. I'm entirely volunteer. Those are reasons. They're
16 not good excuses.

17 But yeah, my recollection is we did, and we
18 certainly provided them in the record in our court case on
19 the upper parcel, so -- so staff have had -- through one
20 route or another have had access to some of this
21 information.

22 As far as the regulatory authority, the way it
23 works -- and so I'm not an environmental attorney, but I
24 have friends who are, some of whom are recommending -- are
25 representing us in court. As I understand it, the Clean

1 Water Act is the overarching law. It's -- it is -- it is
2 enforced and -- and administered by U.S. EPA. They have the
3 highest authority on these issues. They can and do delegate
4 authority to the states, and they have to MDE. And MDE may
5 delegate authority to counties, in some cases,
6 municipalities. But ultimately, the authority rests with
7 the USCPA and MDE.

8 MDE is in a position -- with respect to the
9 construction-related stormwater permit that Werrlein did not
10 apply for before tearing up the site. And the non-titled
11 wetland and floodplain disruption authorization, Werrlein
12 did not apply for before -- MDE -- those permits are
13 considered joint state/federal permits, and where we're
14 looking at wetlands and water of the United States, there's
15 also a role for the US Army Corps of Engineers, especially
16 when you get to dredge and fill wetlands or floodplains.

17 COMMISSIONER DOERNER: I think that --

18 MR. SMITH: The way --

19 COMMISSIONER DOERNER: I think that answered my
20 question.

21 MR. SMITH: MDE had the authority -- has the
22 authority to stop work. Unfortunately, that process has
23 been politicized and that authority has been withdrawn from
24 frontline inspectors, and it's practically sitting in the
25 secretary's office, where Werrlein has been lobbying MDE not

1 to enforce.

2 COMMISSIONER DOERNER: Okay.

3 MR. SMITH: Thank you.

4 COMMISSIONER DOERNER: Little bit more than what I
5 asked about.

6 MR. SMITH: It was, but I thank you for the
7 opportunity.

8 COMMISSIONER DOERNER: Okay. No, that's all the
9 questions that I had. I wasn't sure about those things, so
10 I wanted to ask a little bit more. Thank you.

11 THE CHAIRMAN: Thank you. Thank you, Commissioner
12 Dorner.

13 Any commissioners -- any other questions for Mr.
14 Smith? None? Okay.

15 Then let me turn it to Mr. Rivera for your
16 rebuttal and then close.

17 COMMISSIONER WASHINGTON: Mr. Chairman?

18 THE CHAIRMAN: I don't know how you want to manage
19 those things. If they're together or separate for you.

20 Commissioner Washington, yes?

21 COMMISSIONER WASHINGTON: Thank you, Mr. Chairman.

22 If appropriate, I'd like to pose a few questions for Mr.

23 Rivera in light of the citizen testimony, for him to

24 consider as part of his rebuttal and/or close, if

25 appropriate?

1 THE CHAIRMAN: Sure.

2 COMMISSIONER WASHINGTON: Okay. Great. Well,
3 first, thank you to the citizens, opponents and proponents.
4 It's been a very enlightening afternoon. A long afternoon,
5 but productive nonetheless, and the thousand plus pages you
6 all provided was -- made for a very interesting read, but
7 the -- the commentary on top of it had been very
8 instructive.

9 And so with that, Mr. Rivera, as part of your
10 final presentation, just a couple of -- a few things
11 actually. The first is, as it relates to the nonalignment
12 with the City of Hyattsville. And I would be less -- less
13 than honest if I didn't say that when the issue came up with
14 regards to -- and this was a part of your initial
15 presentation -- when I was seeking clarity on your desire to
16 withdraw 1(h) and proffered condition number 3, and asking
17 whether having them incorporated as a finding would be
18 appropriate. It seems to me that you knew that there was
19 not alignment with regards to, I think, in particular,
20 proffered condition number 3, in terms of the agreement to
21 maintain. That would have been a more appropriate time, I
22 think, to raise that.

23 The second is this recurring theme of
24 noncompliance with regards to, you know, what's happening on
25 the site. Kind of the erosion/sediment control issues,

1 moving forward without necessary permit of approvals, and
2 then I think the recent question, my colleague just asked
3 Mr. Smith with regards to the MDE reports, are all quite
4 concerning. And I've not heard anything from the applicant
5 with regards to, one, acknowledging them, two, you know, if
6 problems happen, problems occur in the course -- in context
7 of anybody doing business.

8 But most importantly, what are you plans to
9 address them? What have you done to mitigate and/or correct
10 those issues?

11 And then finally, what has been -- what has been
12 and what is your level of engagement? You know, it's clear
13 that the citizens have been actively involved and engaged in
14 this issue, and much more than just a peripheral
15 involvement. They've been doing research, engagement, so
16 I'm just concerned -- I'm not concerned. I'm questioning or
17 asking what is the level of ongoing engagement with the
18 community? And I thought -- and it would be helpful for me
19 to pose these questions at the top, so that hopefully you
20 can address them as part of your close. Thank you.

21 And thank you, Mr. Chairman.

22 THE CHAIRMAN: Thank you, Commissioner.

23 All right. Mr. Rivera, the floor is yours for
24 rebuttal and then close.

25 MR. RIVERA: All right. Thank you.

1 For the record, Norman Rivera. I'll start with
2 the first one. The nonalignment with the city is
3 essentially a historic issue. The city has always been
4 opposed, generally, as an opening statement. If you look at
5 their letters on the conceptual site plan to the Board and
6 to the District Council when appropriate, you know, the
7 preliminary plans, they always start off with, while we were
8 opposed -- we are opposed, but they say we have conditions
9 that they want the Board and the staff to consider.

10 So that is the way that the city poses their
11 position to the -- to us and to the county, but we always
12 have worked through with those conditions. So the
13 nonalignment is basically their basic position that they
14 don't want the project first of all, but obviously, part of
15 it is already constructed and there are certain permits in
16 place for this site.

17 We always try to work with the city. For example,
18 on the B-2 parcel, that we had an agreement with the city
19 that they were going to purchase -- very low price -- that
20 area because they wanted to add it to their park. Over the
21 years, they've changed their mind from not wanting to buy
22 it, and now, they want to use it an easement. And as the
23 commissioners pointed out, they'll use it, but there's not
24 maintenance costs associated with it.

25 So there are certain non-alignments on specific

1 issues. We wish they would support it with conditions which
2 is more typical, but nonetheless, we're going to work with
3 the city and the community as we always have. We just can't
4 agree to everything that is brought up. That doesn't make
5 either side wrong. It's just a negotiation point with the
6 community -- with the city as well. You know, we'll strive
7 to keep more work with the city because it's in our best
8 interest, and that's what we want to do.

9 COMMISSIONER WASHINGTON: While -- while I
10 appreciate that response Mr. -- but again, I'm getting -- at
11 the heart of this is transparency, okay?

12 MR. RIVERA: Okay.

13 COMMISSIONER WASHINGTON: I mean, clearly what we
14 were agreeing on in your initial presentation was to
15 essentially codify a -- a proffered condition as a finding,
16 when in fact, whether your proffered it or not, there was
17 one key element of that, which is the maintenance. And
18 quite frankly, I could -- you know, I think we all could
19 argue both sides of that, but it was not a matter that was
20 finalized. So that's really my point, so --

21 MR. RIVERA: We thought we had that point ironed
22 out.

23 COMMISSIONER WASHINGTON: Okay.

24 MR. RIVERA: We just surprised to hear today
25 because they all met on site and that was an item that was

1 specifically discussed. So I just reiterated what I was
2 told. I was not there, but I'm trying to be as transparent
3 as possible on that -- any issue, really.

4 On the noncompliance issues, Mr. Smith -- and the
5 permits, too, raise a lot of --

6 THE CHAIRMAN: Let me step in, Mr. Rivera, for a
7 process issue.

8 Commissioners, if we can, let's leave this time to
9 Mr. Rivera for his rebuttal and close, and then under
10 deliberation, we may have questions. We can enter into more
11 of a dialogue at that point.

12 So take it away. It's your time for rebuttal and
13 then close.

14 MR. RIVERA: Thank you.

15 So as we discussed at length earlier today, the
16 Planning Board and the Commission has a certain
17 jurisdiction, and this is a detailed site plan. It's not a
18 construction document. Once it is approved -- when
19 approved, if approved, you get certified. It becomes part
20 of a process, if you will, to go on to the technical parts
21 of the permit process. Well, Mr. Smith and others allege
22 that we didn't have this permit or that permit. There is no
23 proof that that actually is true. We have every permit we
24 have to have to do the work because we do this in the broad
25 light of day in the middle of the City of Hyattsville.

1 We're not going to do work without a permit.

2 If there are -- if there is work that causes some
3 kind of issue, like sediment, then an inspector will violate
4 you and make you clean it up. It's really that simple, and
5 they're always there. MDE inspects this site constantly
6 because of the diligence that Mr. Smith and others -- by
7 alerting them to what they think are problems. So we're not
8 trying to get away with anything.

9 In fact, I was just speaking to my client -- this
10 DSP approval will allow us to continue the work with MDE to
11 provide conditional emergency stormwater management controls
12 for this parcel. The longer we wait for this approval, the
13 longer that emergency work gets done and the longer it waits
14 to have all the other regulatory environmental control put
15 in place, so I understand you want to make sure you're doing
16 the right thing and we have all the facts, but the approval
17 will allow us to continue to work.

18 The Board's jurisdiction ends basically right here
19 at building permit on another process, but MDE, the state,
20 local, and the federal officials will continue to monitor
21 this site. We work with them. They have the actual
22 enforcement power to make sure that the various codes that
23 are required are in conformance with -- our work is in
24 conformance with those.

25 So -- and the condition of approval is -- you

1 know, those things are also prospective. And we have to
2 continue the process to work with that. We're happy to
3 provide, you know, in the future some evidence of what our
4 permits are, but it is reviewed by DPIE as part of
5 everything they review constantly.

6 What was the last question? The level of
7 engagement. So we are -- while you were all discussing the
8 other point, my client wanted to make sure that we emphasize
9 that we heard this, we're going to redouble our efforts to
10 add personnel, more equipment, whatever it takes to make
11 sure that the community is aware that we are taking
12 proactive steps to address all of these issues.

13 So that's all we can continue to do and that's
14 what we will do, and we'll be happy to continue meeting with
15 Ms. Simmons and the rest of the city staff on those city
16 issues as we proceed. But we really -- we're seeking to
17 move forward so that we can actually do the construction
18 documents and get those permits to do the work that actually
19 solves the environmental issues for this site and the
20 community around it. Thank you.

21 And that's really my, somewhat, rebuttal and my
22 closing because we do, in sum, agree that we should
23 remove -- I request that we remove condition 1(h), which Ms.
24 Kosack agreed to.

25 I'm sorry that you thought I wasn't being

1 transparent on that maintenance element, but as, I think,
2 Commissioner Doerner pointed out, it's not really equitable
3 to use the property to not help pay for the maintenance and
4 put it on the HOA when it could be used by the general
5 public at no cost to the general public -- to the city. So
6 that was really a pragmatic, practical issue that we were
7 faced with. You can't grant an easement that nobody
8 maintains. We're -- have to be -- pay for that maintenance
9 in the future, and it's just the HOA, not the city.

10 But we -- we ask for your support. We have a
11 proper staff report with proper findings of -- findings of
12 facts and conclusions, and with those conditions that we
13 went through, and I'd be happy to address any questions if
14 it comes up in your deliberations.

15 THE CHAIRMAN: Thank you, Mr. Rivera.

16 So that's your rebuttal and close, right?

17 MR. RIVERA: Yes, sir.

18 THE CHAIRMAN: Okay. Good. Thank you.

19 So under -- commissioners, under deliberation, let
20 me go first. I've got a few comments and questions and then
21 suggestions for how we move forward. And if we want to take
22 more time today based on your questions, we can do that too,
23 but let me -- couple things.

24 One, Mr. Rivera, on the signage issue and this --
25 we've had so many issues and this was a while back. I want

1 to make sure I'm tracking this one.

2 Do you have any concerns with if -- on the signage
3 issue, if there's approval at the staff level on the
4 planning department -- in other words if planning director
5 approval is required for the signage issue? Is that okay
6 with you?

7 MR. RIVERA: Yes.

8 THE CHAIRMAN: I'm not talking about City of
9 Hyattsville. I'm talking about for the planning director.

10 MR. RIVERA: Right. All the interpretive signage
11 for the -- the WCC building and the suffrage movement, that
12 would be --

13 THE CHAIRMAN: Right.

14 MR. RIVERA: That's fine.

15 THE CHAIRMAN: Okay. All right. I just want to
16 check, and commissioners, I'm not sure if that resolves it
17 for you, but I'm comfortable with that. I trust our staff
18 in this process. I also assume our staff will work in
19 collaboration with the City of Hyattsville, but the final
20 decision would be with the planning director just to
21 expedite that process.

22 So commissioners, if there's no objection, does
23 that resolve this issue? Yeah? Thumbs up?

24 (No audible response.)

25 THE CHAIRMAN: Okay. Okay. Good. So that's one.

1 On the landscaping issue, Mr. Rivera, I don't
2 think you'll be happy to hear this, but my view on this is
3 yes, what makes the most sense -- I -- I kind of join with
4 Commissioner Doerner. I think what makes the most sense is
5 for the City of Hyattsville to do this. I don't have the
6 authority to make the City of Hyattsville do anything, even
7 if it makes sense for me to do it. I certainly can't make
8 the HOA do it. So the folks we have some authority over
9 that's related to this is you all.

10 So what -- what that means for me is I -- I'm more
11 inclined to say, you know, this is your issue to solve. If
12 you can't figure out whether it's the HOA or the city then,
13 you -- you have to maintain it. I imagine you will find a
14 way for either the HOA or the city to do it, but I don't
15 want to leave this issue hanging and so that means that the
16 buck stops with you all.

17 MR. RIVERA: Understood, but that's one of the key
18 factors in determining whether or not we grant the public
19 easement which was the request of the city.

20 THE CHAIRMAN: Well, if you want to pull back on
21 the grant, then that's something for us to consider and
22 maybe that's -- you know, at the risk of sort of suggesting
23 a negotiating strategy, that certainly would get the city's
24 attention, but it also might be hard for us to stomach, so I
25 don't know where you want to go with that.

1 You know, on the spot, maybe you have to make a
2 quick decision about that or maybe you need some time to
3 talk about it with your clients. I really don't know. But
4 we -- I don't want to -- I don't want to force -- try to
5 force the city or the HOA to do something that we don't have
6 the authority to do.

7 MR. RIVERA: I just got the indication that --
8 that we'll work it out. At the end of the day, if it's us,
9 it's us.

10 THE CHAIRMAN: Okay. Thank you.

11 And I'm assuming it won't be you, but I just don't
12 know where else we can go. So thank you, Mr. Rivera. Okay.
13 So that resolved those two issues.

14 So this bigger issue -- and this is my suggestion,
15 commissioners, this bigger issue around the stormwater
16 management piece and the violations and -- I'm having
17 trouble making sense of it. I hear the data around the
18 violations. I'm not even sure exactly how to put those
19 violations in the context of what we're doing. I don't know
20 how it is relative to other developments. You know, I'm
21 hearing two competing stories around this. What I would
22 like to do is get more information around this. I recognize
23 that this isn't quite in our purview.

24 But, Commissioner Doerner, to your point, it's not
25 quite a square peg in a round hole, you know, we are --

1 there are environmental standards that we're mindful of, and
2 so can this fit into that.

3 So here's a suggestion. Let's give ourselves a
4 little bit of time, even if it's just a few weeks, and allow
5 staff to gather some more information around the violations.
6 They can help clarify our -- very succinctly clarify our
7 authority in relation to it even more. They can work with
8 MDE and DPIE to gather more information around this. So we
9 do some of this legwork to help us make sense of what's
10 going on with this violation issue.

11 It would give Mr. Rivera and his team the
12 opportunity was well. In fairness, it would give them the
13 opportunity to clarify their views on this because I'm
14 hearing loud and clear they have a different perspective on
15 this. And so it feels fair to allow both sides the
16 opportunity to bring more information to it. The way I
17 think we can do that that is fair to all parties is we could
18 continue this hearing as a limited scope public hearing just
19 related to these stormwater issues and the stormwater
20 enforcement issues. And I mean narrowly focused on these
21 issues around enforcement and violations. Just for us to
22 make sense of.

23 The staff may come back in a report to us in a few
24 weeks and say here's all the information you asked for and
25 we want to remind you this isn't in your purview. And

1 that's fine if that's what staff tells us. But I do think
2 information would be helpful for me, and I'm certainly
3 hearing it from some of my colleagues, that it would helpful
4 for us to get this information as we deliberate.

5 So again, limited scope public hearing on this one
6 issue related to making sense of what's going on with the
7 enforcement and permitting issues for us. We can come back
8 at --

9 Mr. Rivera, if this is comfortable with you too,
10 we could come back on February 2nd. Again, limited scope
11 public hearing, but -- but both sides would have the
12 opportunity -- Mr. Smith and others would have the
13 opportunity to respond to the materials as well. We'll hear
14 both sides at the limited scope public hearing, and then we
15 can deliberate those.

16 So that is my suggestion and I'm curious to see --
17 first of all, let me start with Mr. Rivera because you need
18 to authorize this -- because there is a time line that we're
19 working against, so you'd need to authorize the extension
20 until February 2nd.

21 Does that work for you?

22 MR. RIVERA: Yes, Mr. Chair. The action date is
23 the 17th of January for the seventy-day review period on
24 this -- this site plan. I can grant a waiver of the 70-day
25 mandatory hearing requirement to continue the case to

1 February 2nd on the limited scope as you just annunciated.
2 And that also gives us time -- so thank you for that
3 opportunity -- to get with MDE, DPIE, our experts, because I
4 don't want to leave this unturned and unsolved. I want to
5 have the facts. This permit did that, you know -- all this
6 work was done pursuant to a valid permit. Whatever the case
7 may be. That way it's clear on the record, once and for all
8 that --

9 THE CHAIRMAN: Um-hum.

10 MR. RIVERA: -- it is what it is. Excuse me. So
11 I would agree to February 2nd.

12 THE CHAIRMAN: Okay. So that would give us -- so
13 the attorney for the applicant concurs to waive the
14 statutory deadline up to seventy days, so we would go until
15 February 2nd. That gives them three weeks and our team
16 three weeks to do this research. The opposition also has
17 time. This is a -- this is a limited scope public hearing,
18 and all parties will be able to weigh in and get the
19 information as always.

20 So -- so thank you for --

21 MR. WARNER: Chancellor Chair?

22 THE CHAIRMAN: Yes?

23 COMMISSIONER GERALDO: Mr. Chair?

24 THE CHAIRMAN: Yes, Mr. Warner?

25 MR. WARNER: Just a point, just to -- from the

1 ease of administration from a staff perspective. You could
2 remind those that had submitted evidence of violations, they
3 don't need to submit that again. It'll get carried forward.
4 They just need to submit new information.

5 THE CHAIRMAN: Thank you. So that's -- I would
6 join with Mr. -- our Principal Counsel Warner's remarks and
7 what's in the record is in the record and we will continue
8 to work with that.

9 Commissioner Geraldo?

10 COMMISSIONER GERALDO: Yeah. Just a question.

11 Could we have our principal counsel, Mr. Warner,
12 involved in that as well? Because I want to know what the
13 remedy is.

14 THE CHAIRMAN: Sure. Absolutely.

15 COMMISSIONER GERALDO: (Audio interference).

16 THE CHAIRMAN: So we'll involve our own staff.
17 Make sure it's a collaborative effort on our side as well.

18 COMMISSIONER GERALDO: Um-hum.

19 THE CHAIRMAN: Thank you for that.

20 Mr. Warner, you have another job too.

21 Mr. Hunt, as development review division chief,
22 any questions or concerns around this?

23 MR. HUNT: No, sir. I think we're clear on this
24 side.

25 THE CHAIRMAN: Okay. So Commissioners, is there

1 any objection to this process?

2 COMMISSIONER DOERNER: So I think it would be good
3 to -- to continue the case because I mean, honestly, if
4 we're going to vote on it today, I'm going to vote no,
5 purely on this issue because it -- on page 21 in the staff
6 report, item 17-4, we have to have a finding that can say
7 that the regulated environmental features have been
8 preserved and/or restored in a natural state to fullest
9 extent possible.

10 And I mean, respectfully, Mr. Rivera, like, you
11 haven't convinced me to that. And when I -- when I look at
12 Opponent Exhibit 84, it's damning. I mean, there's just a
13 lot of really bad information about your -- on the lower lot
14 about you polluting on site and in the stormwater, and I'm
15 just not convinced that you're actually trying and I -- I
16 would like you to me there. I asked you for that. I said
17 throw me a bone, like, help me figure out, like, how you're
18 actually going to do something different than what you've
19 been doing in the past because what you've been doing in the
20 past doesn't work for me. Not going to get my vote.

21 And -- and I love everything else about site.
22 Like, I like the houses. I've been around and looked at
23 them. I think that they're beautiful. I really like all
24 the other features. We didn't even talk about the really
25 good environmental features of these houses, like the solar

1 panels. You mentioned the EVs. There's a lot of other
2 stuff that these houses have that are just really nice, and
3 I think in terms of like, quality, they're going to be
4 fantastic. They're going to be a little bit pricier than
5 some of the houses around the area, but they're really nice.
6 But it's not context-sensitive in the environmental sense,
7 and that's really what kills me in not being able to get to
8 the point where like you might want me to be in voting in
9 favor of the project.

10 So I don't know if -- if to the 2nd is enough
11 time, but to get me over the hump, like, you know, I'm
12 looking at the NPDES reports, and I see on there that you're
13 out of compliance and that you had violations from there. I
14 don't want to see any of those like, I want to see --
15 because some of them are really basic, when you go back. And
16 it says that like, has the site designed, installed, and
17 maintained effective erosion controls and sediment controls
18 to minimize the (indiscernible) of pollutants. The status
19 is out of compliance and the comment is no. Like, I want
20 that to say yes. And I want that to say that -- that all
21 these other items are fine, that you guys are actually
22 trying to work with them and do it.

23 Because you can say -- put a bunch of people on
24 site, and they could just be standing there doing nothing
25 because that's apparently what it seems like they're doing

1 now. Because when I look at the pictures, like, there's a
2 bunch of stuff that's not been fixed and not been addressed.
3 So either you need to find new crew that are maintaining
4 that site and looking at it, or you need to make a really
5 big adjustment in terms of the kind of mitigations we do in
6 it. I would like to also see the NC weather report for the
7 construction activity that's -- that's referenced in there
8 just to know, kind of like what was written up. I don't
9 know if that gives you enough time to address those things.

10 And that's really one of my big sticking points on
11 this, like, I -- I was in favor and not in favor of other
12 parts of this project earlier -- in the earlier stages.
13 Right now, like, the environmental part and just the runoff
14 is really the hanging point on me, because I think it's
15 going to be beautiful. And if I had enough money to buy
16 these homes, maybe I would consider doing so because I like
17 the walkability of the park and the area around there, but I
18 want to make sure in the process of getting there -- and for
19 me to get these homes for -- for others to buy, that we're
20 not ruining everything around there that's on site and then
21 downstream from there because maybe it's not going to happen
22 upstream, but I'm not convinced you're doing a good job
23 downstream.

24 Some of the pictures, when I was going through
25 this report -- you had mentioned, like, the marsh area that

1 I like to walk around, has the boardwalk and stuff, which
2 probably needs the City of Hyattsville took so long to fix
3 because some of the -- the planks and stuff are kind of
4 messed up and got holes in there. But in that area, that --
5 that's where the colored water was and the polluted water.

6 So that just -- it really pains me to see that
7 because I did look through all the -- all the pages. I
8 skimmed through as much as I could as quickly as I could.
9 And I really want you to -- to address those so there's a
10 status that there's no violations on all of those. And if
11 you can get to that point, if you need a couple of extra
12 weeks on that, fine.

13 That's really my big sticking point on this kind
14 of stuff is that -- to make sure you're really in compliance
15 and you are being a good neighbor, not just saying oh, we're
16 trying to do this, but then you walk out the door and you
17 don't actually do it because that's kind of the impression
18 I'm getting right now, is that you're saying what we -- we
19 need to hear, but then you're not actually walking to walk,
20 and I want you to actually do that so that way, everyone
21 feels comfortable with a project like this.

22 THE CHAIRMAN: Thank you, Commissioner. Much
23 appreciated. So let's -- let's stick with February 2nd, but
24 to your point, you know, we'll see what happens on February
25 2nd, and hopefully we'll have enough information to make a

1 decision. You know, we -- we'll -- you know, we'll see.
2 It's three weeks, so we'll see.

3 Any -- Commissioners, any other questions about
4 our process?

5 COMMISSIONER WASHINGTON: No. I think this is a
6 good outcome, Mr. Chairman.

7 THE CHAIRMAN: Okay. Thank you all.

8 Mr. Smith, I'm going to grant you to courtesy of a
9 comment at this point to see if it's going to be helpful for
10 us.

11 What is it you'd like to join in with? You're on
12 mute, sir.

13 MR. SMITH: And once again, many people might
14 prefer that, but here I go.

15 Just a process question. So we're continuing into
16 February 2nd, the planning board will hear testimony on the
17 2nd?

18 THE CHAIRMAN: To the limited scope public
19 hearing, just to the issues related to this stormwater
20 enforcement issue with MDE and DPIE. That is the scope of
21 the hearing, and yes, we will be taking testimony on the
22 2nd.

23 MR. SMITH: And so we have until the last day in
24 January to submit additional written comments?

25 THE CHAIRMAN: Mr. Warner, help me with that. Is

1 that accurate?

2 MR. WARNER: Yup.

3 THE CHAIRMAN: That's a yup.

4 MR. WARNER: Tuesday the 31st, right? At noon.

5 MR. SMITH: I -- I would like to suggest
6 because -- because this stormwater enforcement issue is so
7 central to the questions of environmental impact and impacts
8 on the community that the subject may not just be well, is
9 Werrlein complying or aren't they, and will they comply or
10 won't they, but -- they -- does this project meet all the
11 requirements that it needs to meet? Environmental
12 requirements and the protection of public -- public welfare
13 and all that so -- focused on the storm --

14 THE CHAIRMAN: I hear you. Mr. Smith --

15 MR. SMITH: Focused on the storm --

16 THE CHAIRMAN: -- I hear you, but we're not --
17 we're not expanding it to that scope. It's beyond what this
18 limited scope public hearing is going to be. It's just
19 beyond it. That -- in essence, what you want to do -- and I
20 hear you loud and clear. I would if I were you too. You
21 want to open it back up for the larger discussion. Where
22 I'm at and I believe the majority of my Commissioners are is
23 that this is a limited scope and it's limited to the
24 enforcement issues. Are they in compliance, help us
25 understand what's going on with DPIE, with MDE. That's

1 the -- that is the limited scope of this public hearing,
2 okay?

3 MR. SMITH: I don't think that's appropriate, but
4 that's -- that's your call and we'll argue our case when we
5 get there in writing and at the --

6 THE CHAIRMAN: Okay.

7 MR. SMITH: Thank you.

8 THE CHAIRMAN: Thank you.

9 Any other questions or comments from
10 Commissioners? Seeing none.

11 So Mr. Warner, do we need a -- I guess we do need
12 a motion. The motion would be to continue this -- to
13 continue this hearing as a limited scope public hearing,
14 limited to the stormwater enforcement permitting --
15 enforcement and permitting issues related to MDE and DPIE.

16 So is there a motion to that effect? And we'll
17 continue it to February 2nd.

18 COMMISSIONER DOERNER: The Board motion is --

19 COMMISSIONER WASHINGTON: Mr. Chairman, I move
20 to -- I'm sorry?

21 THE CHAIRMAN: (Indiscernible) so moved.

22 COMMISSIONER WASHINGTON: Oh. I didn't know if
23 there was a question or --

24 THE CHAIRMAN: Yeah, that --

25 MR. WARNER: He said it perfect. The way he

1 phrased it was perfect. I thought he was asking me if that
2 was appropriate. I said -- was just confirming I thought --
3 sorry.

4 THE CHAIRMAN: So that's the motion that I
5 suggest. If there's a so moved, but Mr. Doerner, before we
6 do that, I think Mr. Doerner, you had a question before
7 there's a motion?

8 COMMISSIONER DOERNER: Yeah, we have the local
9 municipality we haven't even asked anything about with
10 regard to this. So I mean, in deference to local
11 authorities, whether they be cities or counties or whatever,
12 I think we should probably ask the city of Hyattsville if
13 that works with them and if it gives them enough time to
14 actually convene or -- or do anything related to the issues
15 we're talking about.

16 THE CHAIRMAN: Ms. Simmons, you've heard where
17 we're going with this.

18 Any concerns from your side or do you have the
19 authority to even tell us if you have any concerns from your
20 side?

21 MS. SIMMONS: I wouldn't feel comfortable taking a
22 position on that. No. But thank you. I appreciate it.

23 THE CHAIRMAN: All right. Mr. Doerner, I think
24 that's where we're at.

25 Okay. Is there a motion?

1 COMMISSIONER WASHINGTON: --

2 THE CHAIRMAN: Wait. Before that --

3 (Laughter.)

4 THE CHAIRMAN: Hold on one second. Bear with me
5 one --

6 COMMISSIONER GERALDO: Hold up, Commissioner
7 Washington.

8 THE CHAIRMAN: Okay.

9 COMMISSIONER WASHINGTON: So moved, Mr. Chairman.

10 (Laughter.)

11 COMMISSIONER GERALDO: Second.

12 VICE CHAIR BAILEY: Second, Mr. Chairman.

13 THE CHAIRMAN: We have a motion by Commissioner
14 Washington.

15 I think Commissioner Geraldo beat you to it, Vice
16 Chair Bailey.

17 So we have a motion by Commissioner Washington, a
18 second by Commissioner Geraldo.

19 Any discussion on the motion? Seeing none, I'll
20 call the roll.

21 Commissioner Washington?

22 COMMISSIONER WASHINGTON: Aye.

23 THE CHAIRMAN: Commissioner Geraldo?

24 COMMISSIONER GERALDO: Vote aye.

25 THE CHAIRMAN: Vice Chair Bailey? She is frozen.

1 I don't know if we're going to get a vote out of her.

2 I vote aye as well. That's four/zero, and with a
3 technical issue on the fifth vote, so we'll take it as no
4 vote, though I imagine we know how she was going, but it's
5 actually not a vote. So the votes are four to zero, with
6 one four commissioners participating.

7 COMMISSIONER DOERNER: (Audio interference) you
8 didn't call on me.

9 THE CHAIRMAN: Ms. Bailey, was that a yes?

10 VICE CHAIR BAILEY: Yes, my screen has left me. I
11 don't know what happened.

12 THE CHAIRMAN: All right. Hold on one second.
13 Say yes very loud.

14 VICE CHAIR BAILEY: Yes.

15 THE CHAIRMAN: All right. Did everybody hear her?
16 That was her on her phone, so we now have the vote as five
17 to zero for the continuance to February 2nd.

18 I want to thank everybody for your time and effort
19 today. Appreciate all the involvement from folks in the
20 community and the city as well. We will see you on this
21 issue on February 7th.

22 And Mr. Hunt, is there any further business to
23 come before us today?

24 MR. HUNT: Mr. Chairman, no other business items
25 before the Planning Board today.

1 THE CHAIRMAN: Okay. Seeing no further business,
2 without objection, folks, we are adjourned. Thanks,
3 everybody.

4 MR. SMITH: Thank you.

5 MS. SIMMONS: Thank you all.

6 (Whereupon, the proceedings were concluded.)
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REGULAR MEETING

January 12, 2023



By: _____ Date: April 19, 2023

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