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ORIGINAL

Transcript of Hearing

Date: January 15, 2020

Case: Maria Volpe Trustee/Sandra Carey Trustee

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PRINCE GEORGE'S COUNTY

OFFICE OF THE ZONING HEARING EXAMINER

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IN RE: MARIA VOLPE, TRUSTEE :  ORIGINAL
SANDRA CAREY, TRUSTEE : Case No.: A-10051
v. : 2017 CA 000109 V
----- x

REZONING HEARING

Before

MAURENE MCNEILL, ZONING HEARING EXAMINER

Wednesday, January 15, 2020

Job No.: 283628
Pages: 1 - 186
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1 Hearing before HEARING EXAMINER MAURENE

2 MCNEILL, held at:

3 Prince George's County Office of the

4 Zoning Hearing Examiner

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14 Pursuant to Notice, before Fatima Bah,

15 Notary Public in and for the State of Maryland.

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A P P E A R A N C E S

ON BEHALF OF THE PETITIONER:

ARTHUR HORNE, ESQ.

RUSSELL W. SHIPLEY, ESQ.

LAW OFFICES OF SHIPLEY HORNE

ON BEHALF OF PRINCE GEORGE'S COUNTY:

STAN BROWN, ESQ.

PEOPLE'S ZONING COUNSEL

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21
22

C O N T E N T S

PAGE

OPENING STATEMENTS	5
TESTIMONY OF JEFFERY LUGWICK	14
TESTIMONY OF JACOB MCCARTHY	56
TESTIMONY OF RYAN MCCALESTER	83
TESTIMONY OF MICHAEL LENHART	136
TESTIMONY OF FRANCIS SIBERHOLZ	144

E X H I B I T S

Exhibit 39	Westphalia Sector Plan	22
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1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
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P R O C E E D I N G S

HEARING EXAMINER MCNEILL: Now, good morning everyone. It's January 15, 2020, and I'm Maurene McNeil. I'll be the hearing examiner today. We are here for a special exception -- I mean, for zoning map amendment, I'm sorry; A10051. I hope I pronounce correctly; Maria Volpe, trustee, and Sandra Carey, trustee, and is known as the Caroso Property.

MR. HORNE: Carosa Property.

HEARING EXAMINER MCNEILL: Carosa Property. Is anyone here in opposition to this request? No? Okay. And if counsel would identify themselves with the record.

MR. HORNE: For the record, Arthur Horne from the law offices of Shipley Horne. I'm here with Russell W. Shipley.

MR. BROWN: And its Stan Brown, People's Zoning Council.

HEARING EXAMINER MCNEILL: Okay. Mr. Horne, Mr. Shipley, please explain why we are here today.

MR. HORNE: Okay. I will start off and turn

1 it over to Mr. Shipley. Again, good morning and
2 happy new year. We are here representing the
3 applicant. Actually the Anna Carosa trust. Just
4 by way of background, if you're interested, you
5 are talking about Carosa. Carosa is a family that
6 built a lot of properties in Prince George's
7 County including Iversen Mall. And the Carosa
8 family trust happened to own a lot of property in
9 this area and also Westphalia. And after he built
10 Iversen Mall, he actually purchased the property
11 that we are talking about here to build another
12 mall at this location. And just ended up dying
13 and ends up going into a trust and the family has
14 owned it for well over 60 years.

15 As you mentioned Madam Chairman, the request
16 we are here for today is to zone the property, the
17 60 acres from RR to MST. Although the park in
18 planning staff correctly stated in the
19 application, at least the prerequisite requirement
20 for the deputy counsel to rezone the property MST
21 by being located at a major intersection. Park
22 and planning recommends denial because the

1 proposed development would substantially impair
2 the goals, policy, and purposes of the general
3 plan and the master plan.

4 The applicant today, through its exhibits and
5 testimony, will demonstrate that the park and
6 planning staff was incorrect in its analysis
7 because the premise that the residential low
8 density is the best for this site is based off
9 incorrect and faulty information regarding
10 availability of the site and the specific location
11 within subregion 6 as it relates to the master
12 plan and recommendations.

13 The evidence today will show that the
14 proposed mixed-use development resulting from the
15 MST zone is quote, more substantial -- more
16 sustainable given the context of the adjacent
17 freeway and subject property location adjacent to
18 the major interchange on that freeway and the
19 character of the nearby existing plants
20 development, end quote.

21 Now that quote came from the zoning hearing
22 examiner's decision at A-10044, October 2018,

1 which was rezoning RR property right next to a
2 major freeway such as Pennsylvania Avenue.

3 HEARING EXAMINER MCNEILL: What number again?

4 MR. HORNE: A-0044, October 2018. The team
5 today consists of Mr. Jeff Lugwick.

6 HEARING EXAMINER MCNEILL: That can't be
7 right. Is that right? Number doesn't sound
8 right.

9 MR. HORNE: A --

10 HEARING EXAMINER MCNEILL: No 1?

11 MR. HORNE: A-100 --

12 HEARING EXAMINER MCNEILL: Okay. Only here
13 0044. Oh my, that couldn't have been me. That
14 must've been Barry.

15 MR. HORNE: Yeah.

16 HEARING EXAMINER MCNEILL: Okay.

17 MR. HORNE: 10044. The people today consists
18 of Mr. Jeff Lugwick, who is the senior vice
19 president of the NMA companies. Mr. Lugwick has
20 over 40 years of commercial leasing and
21 development experience and is wearing two hats
22 today. First, Jeff on behalf of his clients, the

1 applicant, the Anna Carosa Trust, both of the
2 individuals who signed the application are over 80
3 years old and don't get out much.

4 But he can speak for the trust concerning the
5 history of the site and development industry in
6 and around the subject property.

7 Second, as a commercial broker with over 40
8 years of experience, he is an expert on commercial
9 development and the leasing and can speak to
10 commercial development and leasing portions
11 concerning the subject site. As an individual who
12 has been accepted as an expert in commercial
13 brokerage in the court system, we're going
14 yesterday that he be accepted here in front of
15 this administrative hearing.

16 Mr. Ryan McCalister is a registered landscape
17 architect and MPA from Dubarry and is an expert
18 that has been previously accepted by this body.
19 Mr. McCalister will testify that he visited the
20 site, reviewed and studied all the development
21 requirements associated with the site including,
22 but not limited to, noise regulations,

1 environmental regulations, 300 foot lot depth of
2 Pennsylvania Avenue, environmental site features,
3 suitability of the land types for the site. Mr.
4 McCalister's testimony from the direct site visit
5 and research will contradict park in planning
6 staff's assertion based simply on information
7 received from PG analysts.

8 Mr. Jacob McCarthy -- you may know Milt
9 McCarthy, but this is Jacob McCarthy. He is an
10 environmental technician. Through his education
11 and experience has followed in his father's
12 footsteps in analyzing sites and environmental --
13 for environmental purposes with reference to
14 regulations concerning the Army Corps of
15 Engineers, the Maryland Department of Environment,
16 and Prince George's County government.

17 Mr. McCarthy will be offered as an expert
18 having reviewed and analyzed over 100 properties
19 were McCarthy and Associates and their
20 environmental services. Mr. McCarthy visited the
21 subject site and has prepared a letter analyzing
22 his findings that there are no regulated features

1 on this site.

2 Mr. Michael Lenhart has been accepted as a
3 traffic engineer before this body on dozens upon
4 dozens of cases. He's analyze the traffic
5 associated with the proposed rezoning and the plan
6 proffered by the applicant. The evidence will
7 show that park and planning staff agrees with Mr.
8 Lenhart's study that rezoning the property to MST
9 will not be a substantial impact to the impact of
10 intersections in the area.

11 And additionally, Mr. Lenhart's study
12 demonstrates that traffic generated by rezoning
13 will not be injurious to the health, safety, and
14 welfare of the community as the increase in
15 traffic, cause any intersection to fail as a
16 result of this change zone.

17 Finally, Francis Siberholz, the Land Center,
18 will testify. Mr. Siberholz has been accepted as
19 an expert land planner before this body on
20 numerous occasions. He will analyze the
21 requirements of the MST zone and demonstrate how
22 the subject property meets the zoning requirements

1 and how rezoning a property MST will not be an
2 impairment to the master plan.

3 Mr. Siberholz will analyze park and planning
4 staff recommendations and demonstrate how park and
5 planning's staff's conclusions were incorrect in
6 this matter.

7 Madame Examiner, we've refiled quite a few
8 exhibits here. Mostly resumes, but others that
9 are -- they are exhibits that we will be doing
10 with reference to the testimony.

11 HEARING EXAMINER MCNEILL: And you're up to
12 37 exhibits. So I'm assuming most, if not all
13 came from you and you have no objection to any of
14 them.

15 MR. HORNE: No objection to all of that.

16 HEARING EXAMINER MCNEILL: I have a question.
17 Also and put them on my sheet. 27, is this a
18 different staff report than the one in the record?

19 MR. HORNE: No, 27 is actually -- if you open
20 it up though, it is in blue, Mr. Siberholz's
21 response to the staff --

22 HEARING EXAMINER MCNEILL: I got you. Thank

1 you.

2 MR. HORNE: So it his testimony, it doesn't
3 cover everything, you'll want to -- he's going to
4 adopt what he had with in there as contrary to
5 what the staff's findings are.

6 HEARING EXAMINER MCNEILL: Okay.

7 MR. HORNE: And I think we have at least five
8 people you might swear in.

9 HEARING EXAMINER MCNEILL: And before we
10 start, Mr. Brown, do you have any questions about
11 the affidavits or anything?

12 MR. BROWN: No.

13 HEARING EXAMINER MCNEILL: Application?

14 MR. BROWN: The trustees are fine.

15 HEARING EXAMINER MCNEILL: Okay. First
16 witness.

17 MR. HORNE: I will turn it over to Mr.
18 Shipley.

19 MR. SHIPLEY: Thank you. Mr. Lugwick, Jeff
20 Lugwick.

21 HEARING EXAMINER MCNEILL: Good morning, Mr.
22 Lugwick.

1 MR. LUGWICK: Good morning.

2 HEARING EXAMINER MCNEILL: do you swear or
3 affirm under the penalties of perjury that the
4 testimony you give will be the truth and nothing
5 but the truth?

6 MR. LUGWICK: I do.

7 MR. SHIPLEY: Okay. Please state your name
8 and business address for the record.

9 MR. LUGWICK: My name is Jeffrey D. Lugwick.
10 And my business address is 10100 Business Parkway
11 in Lanham, Maryland.

12 MR. SHIPLEY: Okay. Has this resume been
13 marked as an exhibit?

14 HEARING EXAMINER MCNEILL: Yes.

15 MR. HORNE: It is Exhibit 22.

16 HEARING EXAMINER MCNEILL: It's 22.

17 MR. SHIPLEY: Okay. Referring to Exhibit
18 22 -- do you need a copy of it?

19 MR. LUGWICK: Sure.

20 MR. SHIPLEY: Would you please state your
21 educational and professional experience with
22 reference to the development of commercial real

1 estate in Prince George's County?

2 MR. LUGWICK: Yes, during that I became a
3 licensed realtor in 1977, attended classes at the
4 University of Maryland. I've also attended
5 classes through NAI Global and other professional
6 organizations including the Lipsey Program down at
7 the Darden School of Business at UVA. I am the
8 past chairman of NAI Global, which is the largest
9 managed network of commercial real estate
10 companies in the world with 350 offices in 60
11 countries.

12 I have served several years as the NAI
13 Global's business development committee's chair
14 when we looked at projects around the country when
15 developing, and trying to make positive impact in
16 positive changes. I guess that's Mr. Shipley,
17 should I talk about some of these other
18 affiliations; they don't really pertain to
19 commercial real estate.

20 MR. SHIPLEY: They are in your resume?

21 MR. LUGWICK: They are.

22 MR. SHIPLEY: Okay. Well, I don't think you

1 need to describe them.

2 MR. LUGWICK: Okay.

3 MR. SHIPLEY: And are you a real estate
4 broker licensed in the state of Maryland?

5 MR. LUGWICK: Yes, I am.

6 MR. SHIPLEY: And how long have you been so
7 licensed in the state of Maryland?

8 MR. LUGWICK: I've been licensed since 1977.
9 So I guess going on 43 years.

10 MR. SHIPLEY: And are you a broker in any
11 other state?

12 MR. LUGWICK: I'm a licensed associate broker
13 in the state of Virginia.

14 MR. SHIPLEY: Okay. And have you ever
15 qualified for any administrative agencies of the
16 state or any federal or state courts or other
17 judicial or administrative bodies?

18 MR. LUGWICK: Yes, sir. I was certified with
19 the United States Bankruptcy Court as an expert
20 for commercial real estate and development, taking
21 over felt commercial projects on behalf of the
22 trustees for the creditors.

1 MR. SHIPLEY: We would offer Mr. Lugwick as
2 an expert in the field of commercial real estate
3 development and as a Maryland broker.

4 HEARING EXAMINER MCNEILL: Any questions.

5 MR. BROWN: You are offering him as an expert
6 in commercial real estate?

7 MR. SHIPLEY: Yes.

8 MR. BROWN: Okay. Mr. Lugwick, is it Lugwick
9 or Lugwick? I heard you say --

10 MR. LUGWICK: It's both.

11 MR. BROWN: It differently from the way they
12 say it. Usually because --

13 HEARING EXAMINER MCNEILL: Well, he knows.

14 MR. BROWN: He would know, right.

15 MR. LUGWICK: Well interestingly, the
16 recordings usually muffle Lugwick and it comes up
17 a lot of different things. Sometimes lovely. The
18 worst was lug nut. So whenever I'm describing it,
19 I try and do a little German emphasis on it so
20 it's clear and understand.

21 HEARING EXAMINER MCNEILL: That's fine.

22 MR. BROWN: All right.

1 MR. LUGWICK: But I go by Lugwick.

2 MR. BROWN: Lugwick, okay, excellent. Just a
3 couple of quick questions. On your education, is
4 that University of Maryland. Did you graduate
5 from University of Maryland?

6 MR. LUGWICK: I did not.

7 MR. BROWN: Okay. And with regards to the
8 Darden school, did you get a certificate there?

9 MR. LUGWICK: I did get a certificate in that
10 program.

11 MR. BROWN: Okay. And you indicated a moment
12 ago that you were hired by the bankruptcy court
13 concerning certain real estate proceedings. You
14 were not qualified as an expert. You are merely
15 hard to exist the bankruptcy court, correct?

16 MR. LUGWICK: Actually, was qualified as an
17 expert because this was earlier -- I guess early
18 90s when the RTC was here. So I spent a lot of
19 time in court testifying on behalf of the trustee
20 and the creditors committees on the real estate,
21 which required me to be recognized by the court as
22 an expert on that in those services.

1 MR. BROWN: I see. Okay. No objection.
2 Based on his training and experience I think he
3 qualifies.

4 HEARING EXAMINER MCNEILL: Okay. You will be
5 accepted as an expert in the field of commercial
6 real estate development.

7 MR. SHIPLEY: And you represent the trustees
8 of the Carosa trust, Ms. Carey will, who I
9 understand lives in California, and Ms. Volpe who
10 lives in Washington DC?

11 MR. LUGWICK: Yes, sir. I represented the
12 family for 25 years and I've handled all of the
13 real estate holdings, taking them through some of
14 the early development processes or entitlement
15 processes. As they've gone through -- essentially
16 selling off many of the assets their father had
17 acquired 60 years ago.

18 MR. SHIPLEY: And how long have you
19 represented the trust?

20 MR. LUGWICK: Right around 25 years.

21 MR. SHIPLEY: And I assume you visited the
22 site and you are familiar with the site?

1 MR. LUGWICK: Yes, sir. I walked the site on
2 numerous occasions including walking it after we
3 had the selective timber harvest in the early
4 2000s under civil culture.

5 MR. SHIPLEY: And the property consists of
6 about 60 acres?

7 MR. LUGWICK: Yes, sir.

8 MR. SHIPLEY: It's very linear with the
9 frontage on Route four on the north side and Old
10 Marlborough Pike on the south side over
11 approximately 8/10 of a mile?

12 MR. LUGWICK: Yes, sir.

13 MR. SHIPLEY: And as a variable depth of
14 somewhere around 600 or 800 feet?

15 MR. LUGWICK: Yes, sir.

16 MR. SHIPLEY: Ryan, the exhibits that I want
17 to show Mr. Lugwick. Had this been marked?

18 MR. HORNE: 38.

19 HEARING EXAMINER MCNEILL: 38.

20 MR. HORNE: Actually, this may just be a
21 blowup of one that's already inserted. Yeah.

22 MR. SHIPLEY: Mr. Lugwick --

1 MR. HORNE: Hold on a second Russ. That is
2 just simply a blowup of -- let's see --

3 HEARING EXAMINER MCNEILL: This one? 34?
4 This?

5 MR. HORNE: 34, yeah. That's --

6 HEARING EXAMINER MCNEILL: So 38 is a blowup
7 of Westphalia.

8 MR. HORNE: Okay. All right.

9 MR. SHIPLEY: This is the Westphalia sector
10 plan?

11 MR. HORNE: Yes.

12 MR. LUGWICK: Yes, sir.

13 MR. HORNE: And modified.

14 MR. LUGWICK: Yes, sir.

15 MR. SHIPLEY: Are you familiar with that?

16 MR. LUGWICK: I'm very familiar with it.
17 Yes, sir.

18 MR. SHIPLEY: And also -- has this been
19 marked?

20 MR. HORNE: No.

21 MR. SHIPLEY: Okay. I would like to show
22 you -- well, should I mark this first?

1 HEARING EXAMINER MCNEILL: Yes. It would be
2 39.

3 MR. SHIPLEY: 39.

4 (Exhibit 39 was introduced into the record.)

5 HEARING EXAMINER MCNEILL: What -- you are
6 going to tell me what a snapper is?

7 MR. HORNE: Yeah.

8 MR. SHIPLEY: A snapper is the infamous
9 Amazon proposal.

10 HEARING EXAMINER MCNEILL: Oh.

11 MR. HORNE: That was the codename.

12 MR. SHIPLEY: And we are not -- it is not a
13 part of our basic plan.

14 MR. HORNE: This is already in the record.

15 MR. SHIPLEY: Yeah. I'm showing you what's
16 been marked as proposed exhibit number 39, which
17 is entitled Westphalia center snapper and the
18 illustrations that are in that. When you familiar
19 with this proposed development?

20 MR. LUGWICK: Yes sir, I am.

21 HEARING EXAMINER MCNEILL: And is that
22 proposed development encumber approximately how

1 many acres?

2 MR. LUGWICK: Approximately 80 acres.

3 MR. SHIPLEY: And does that sector plan also
4 include any property that was previously owned by
5 the Carosa family?

6 MR. LUGWICK: Yes, sir. In fact, a portion
7 of what was the snapper site was actually Carosa
8 property. Madam Chair, if it's okay, I will just
9 roll over here and share with you --

10 MR. SHIPLEY: Yes.

11 HEARING EXAMINER MCNEILL: Just make sure
12 that is that mic on.

13 UNIDENTIFIED SPEAKER: You have to turn --
14 you have to turn the mic on.

15 MR. LUGWICK: So, sorry. So the subject
16 property is designated as number R on this
17 particular map, but the family also owned the
18 property that's designated as T. They had sold --
19 I sold for them 10 or 12 years for them, 50 acres
20 for the Henson Valley Montessori School, which
21 later sold it to Galilee Baptist Church, and 37
22 acres to Antioch Baptist Church. And we are

1 currently helping them with their development
2 plans. Over in the Westphalia planning area --

3 HEARING EXAMINER MCNEILL: Excuse me one
4 second Mr. Lugwick. Is that the Antioch Baptist
5 Church currently on -- what is that?

6 MR. LUGWICK: Yes, ma'am. Right down here on
7 upper Marlborough.

8 HEARING EXAMINER MCNEILL: I just want to
9 state for the record --

10 MR. LUGWICK: Old Marlborough Road.

11 HEARING EXAMINER MCNEILL: I have no problem
12 being here, but my mother is a member of that
13 church.

14 MR. LUGWICK: Okay.

15 HEARING EXAMINER MCNEILL: She is a 91-year-
16 old member, hasn't been there much in years.
17 Sorry mom. Okay.

18 MR. LUGWICK: Sure. Most of the property
19 designated out to this point was formerly owned by
20 the Carosa family. And the property designated B
21 on this map was also owned by the Carosa family.
22 In 2006, we sold the property to a developer out

1 of Virginia Beach. Sadly, he lost the property in
2 2009 and we then resell the property for Wells
3 Fargo Bank in 2013 to include all of the
4 Westphalia town center.

5 So just to summarize, the town center portion
6 of the Westphalia town was previously the Carosa
7 property. And Mr. Carosa, Anthony, had actually
8 shown the vision of a 10 or 15 story high-rise
9 office building on this site here with a big
10 bridge connecting over to this town center that he
11 wanted to build.

12 MR. SHIPLEY: And describe what you mean by
13 this site here.

14 MR. LUGWICK: Oh, I'm sorry. The subject
15 property the which we are here for today, the
16 Carosa property, I've seen the artist renderings
17 of the 15 story glass office building. He really
18 had a great vision for what Westphalia would
19 ultimately become.

20 MR. SHIPLEY: And --

21 HEARING EXAMINER MCNEILL: So Mr. Shipley,
22 I'm sorry. I misunderstood. I haven't had enough

1 copy. So R is actually across Pennsylvania
2 Avenue. It is in that part of Carosa? Yes.

3 MR. LUGWICK: That's correct. Yes, ma'am.

4 HEARING EXAMINER MCNEILL: All right.

5 MR. LUGWICK: But 39 originally when Mr.
6 Carosa bought those properties to develop, he saw
7 them as being developed together because they were
8 on a major highway and on an interchange. And
9 those are typically the places that development
10 occurs, successful development occurs.

11 MR. SHIPLEY: Okay. And I would like to show
12 you what's already in the record as exhibit number
13 32, and ask if you would describe what that is.

14 MR. LUGWICK: Sure.

15 MR. SHIPLEY: If you wouldn't mind turning it
16 around so the hearing examiner could --

17 MR. LUGWICK: So --

18 MR. HORNE: You got to spin your microphone
19 back.

20 MR. LUGWICK: Oh, sorry. The -- this Exhibit
21 32 is called, for the time being, Hope Center.
22 It's owned by the Antioch Baptist Church. I sold

1 it to them about 15 years ago. And I've been
2 working with them for the last three years to help
3 them come up with a concept plan. In two -- about
4 10 years ago -- or maybe it was eight, we had --
5 were successful in helping them rezone the
6 property from RA, rural agricultural, to MST. A
7 lot of these old low density residential zones
8 were considered parking zones for future use. But
9 in fact, interestingly, the Westphalia town center
10 was originally zoned RA also. It had a park
11 there.

12 Currently, this is a conceptual site plan
13 that has been accepted by part and planning. So
14 it's in the process for Royal Farms on the corner.

15 HEARING EXAMINER MCNEILL: Okay. Excuse me.
16 So R 32 is this up here?

17 MR. HORNE: Yes.

18 MR. SHIPLEY: Yeah.

19 HEARING EXAMINER MCNEILL: That's the same as
20 that?

21 MR. HORNE: Yes.

22 MR. SHIPLEY: Yeah, that --

1 HEARING EXAMINER MCNEILL: Oh, okay. All
2 right.

3 MR. SHIPLEY: It's a larger version.

4 HEARING EXAMINER MCNEILL: I got you.

5 MR. LUGWICK: Better color on that page,
6 Madam Chair. So the corner lot at Wood Yard Road
7 and Marlborough Pike is for Royal Farms. They
8 have -- they've been under contract. They are
9 taking the -- they are in the development process.
10 They are responsible for developing it. And then
11 there was room for one additional commercial pad
12 site adjacent to the Royal Farms on Marlborough
13 Pike. Most development was to be at signalized
14 intersections, at corners especially.

15 And then for future use, the hotel site and
16 an assisted living facility as part of the
17 community. And then was indicated in blue is
18 where the New Antioch Baptist Church helps to
19 build their new facility at some point in time in
20 the future. So I've been kind of incidental
21 working with the engineers with Royal Forms to
22 develop this plan to submit to the county.

1 MR. BROWN: And this property is where on the
2 Westphalia center?

3 MR. LUGWICK: Sir, it's item number T.

4 MR. BROWN: T?

5 MR. LUGWICK: Property T.

6 MR. BROWN: Okay.

7 MR. SHIPLEY: It's basically on the east side
8 of Wood Yard Road, right?

9 MR. LUGWICK: That -- yes, sir.

10 MR. SHIPLEY: And on the south side of
11 Pennsylvania Avenue?

12 MR. LUGWICK: Yes, on the south side. In his
13 kitty corner to the subject property, to the
14 Carosa property.

15 MR. SHIPLEY: Can you provide the zoning
16 hearing examiner a summary of --

17 HEARING EXAMINER MCNEILL: Excuse me -- I
18 keep interrupting you.

19 MR. SHIPLEY: I'm sorry. That's a right.

20 HEARING EXAMINER MCNEILL: And that's been --
21 it's been accepted by the planning board?

22 MR. SHIPLEY: Yes.

1 HEARING EXAMINER MCNEILL: It's -- and it's a
2 conceptual site plan?

3 MR. LUGWICK: Yeah, the CDP by parking
4 planning.

5 HEARING EXAMINER MCNEILL: Do you all know a
6 number for that?

7 MR. HORNE: CDP number? No.

8 MR. LUGWICK: I could get it.

9 MR. BROWN: It's been rezoned and it hasn't
10 been --

11 MR. SHIPLEY: Yeah, and that's zoned MST.

12 HEARING EXAMINER MCNEILL: Okay. So we will
13 leave the record open and get that --

14 MR. HORNE: We will get that, yes.

15 MR. SHIPLEY: Now can you provide the zoning
16 hearing examiner a summary of the real estate
17 activity that has taken place in the area of the
18 subject property over the last dozen years or so?

19 MR. LUGWICK: Yes, sir. Madam Chair, I've --
20 let's start with the Michael Company 26 years ago,
21 I was assigned to Pennsylvania Avenue corridor.
22 My first cold calls 26 years ago was to the Carosa

1 family and we developed this long-term
2 relationship from it. But I've worked in this
3 corridor for the last 25 years. Mr. Shipley asked
4 that I limit it to 12.

5 I sold a lot of the properties here and been
6 involved with them. Just starting with having
7 sold property T. There is a corner lot across
8 Pennsylvania Avenue from the subject property,
9 across Marlborough Pike from the Antioch Baptist
10 Church property, item T, that we sold to a group
11 that is trying to develop it now also. This is
12 the Westphalia town center. As you know, it's on
13 through a lot of changes and iterations. We were
14 involved in selling all of it, actually twice.

15 And Madam Chair, I was the first person that
16 was -- the first project manager to come up with a
17 conceptual plan for the Westphalia town center.
18 The owners, the Westphalia family and the adjacent
19 property, the Presidential Corporate Center,
20 chipped in because it makes sense that they be
21 developed together. And we actually did a master
22 plan for a high density, urban community that

1 would help encompass -- you know, be the center
2 focus point for this whole community.

3 The buildings that were formerly known as
4 Washington Plaza, is now known as Police Plaza,
5 which is in Westphalia. I represented the owners
6 of that when we sold that to the county.

7 Likewise, the Police Federal Credit Union. Going
8 up Westphalia Road, we have worked -- just my own
9 personal projects, the item, property G, which was
10 the old Pepco turban maintenance facility, a very
11 unique building that was built -- it's now
12 partially obsolete -- to maintain a service,
13 turbines for power plants. That's being razed and
14 a new 325,000 foot distribution facility for a
15 company and is currently here in Prince George's
16 County that has outgrown their current space.
17 They are going to be moving there. That's in the
18 process of -- is been zoned, rezoned, and is going
19 through the approval process.

20 We also have part of parcel nine, we just put
21 under contract, to a developer, part of project --
22 property N. We represented the Suit (ph) family

1 in the cell to park and planning for 110 acres of
2 parkland.

3 Now our company has also been involved with a
4 lot of other properties in the area. But in
5 essence, the vision of Westphalia is beginning to
6 materialize. You are seeing different projects
7 like a property designated as E. That's
8 currently -- they are building houses there now.
9 They have broken ground. They completed the
10 project. Everything in the county takes a while
11 to get through the process, usually two, three,
12 four years before one can actually start going
13 vertical with construction. So we are seeing the
14 areas that C and H are also now being developed.

15 The big interchange is one of the best things
16 is happening in the area. We been working on that
17 for -- literally for 18 years and is now under
18 construction. And Dower House Road improvements
19 are being made also. So this whole area is being
20 developed. But what's lacking is a service. A
21 neighborhood could -- what we would define in our
22 business as neighborhood convenience. You may

1 have the opportunity to drive up and down Central
2 Avenue from time to time. And at Hall Road where
3 the library is, that's a project our company --

4 HEARING EXAMINER MCNEILL: And the credit
5 union.

6 MR. LUGWICK: And the credit union. That's a
7 project our company did. But that little center
8 there where there is the Dunkin' Donuts and a
9 drycleaner and a barbershop and a salon and a
10 little restaurant or a local restaurateur, we
11 would call that a neighborhood convenience center.
12 It's not -- over in the Westphalia town center,
13 they have a big retail power center, like what you
14 might see at Vista Gardens or Vista Marketplace in
15 Largo with big box stores, restaurants. But the
16 neighborhood convenience where you can pop in and
17 take care of those needs.

18 And there's a reason for it, that we don't
19 have those services there. Most restaurateurs,
20 most companies, most developers look at
21 demographics; how many people, how many rooftops,
22 with their income, with the likelihood that if I

1 go here that I can be successful. While the
2 census doesn't count anything in Andrews. Andrews
3 is like a big lake. There is no buying power.
4 There's no people. There is no services that
5 could be generated from there according to census
6 data tracts. Part of our job working in Prince
7 George's County is to be to educate folks that
8 there really is a market there.

9 So right now, Parkside is building out very
10 quickly. Last year they had 300 lots taken down.
11 So that -- I mean, is turning out to be a really
12 nice community. The Westphalia town center, they
13 are now picking up a head of steam and the Walton
14 company has sold half of the lots to one group who
15 is moving dirt right now so that they will be will
16 have new sections open. And it looks like there
17 close to making the deal or they have just made
18 the deal with Dr. Horton, who is our nation's
19 largest homebuilder, for the rest of the remaining
20 lots. My instinct is we will see the Westphalia
21 numbers begin to accelerate now that you got
22 different high-quality people in there that have

1 big tracts.

2 The townhouse project down in section C right
3 off of Wood Yard or Parkway, that project is now
4 moving forward. NVR has bought all the lots.
5 They are in there pushing dirt and that will be
6 another couple hundred townhouses. Prices have
7 really done a great job there. We are very
8 impressed at -- towns are now pushing over 400.
9 Single-family homes are now pushing over 600. And
10 that begins to build a tax base that's really
11 vibrant and robust. But they do lacks and
12 services and that's why we think that the Carosa
13 property, the subject property, is ideal because
14 it's -- the best part is it's on the going home
15 side.

16 Typically, folks that want to capture
17 commuters, that commuter traffic, you want to be
18 on the -- like rule number one, beyond the going
19 home side. And rule number two, if you are on a
20 major intersection. Rule number three, if you
21 have a signalized intersection. These are three
22 big components that help you get past the 100

1 different projects to go before these users every
2 day. And because when folks are going to work,
3 they are in a hurry. But when they are coming
4 home, they got to stop off and pick up things or
5 get some food.

6 There is -- this is a restaurant desert. I
7 mean, all of Upper Marlborough is somewhat of a
8 restaurant desert. And I've got some experience
9 with that. I represented the rows Company in
10 Largo when we had to restaurants, BMT Soundstage
11 and Applebee's. And 20 years ago, Madam Chair, I
12 did the first public -- according to the Washing
13 Post, the first public service website called
14 VoteForRestaurants.com. And it was for Prince
15 Georgians to vote for their favorite restaurants
16 to go in Largo.

17 HEARING EXAMINER MCNEILL: I voted.

18 MR. LUGWICK: I got 20 --

19 HEARING EXAMINER MCNEILL: We still didn't
20 get Cheesecake.

21 MR. LUGWICK: We didn't get Cheesecake. But
22 I will tell you Madam Chair, that I had a personal

1 conversation with --

2 HEARING EXAMINER MCNEILL: And stop calling
3 me that before the real Madam Chair tries to kill
4 me or something. So I'm Madam ZAT or Ms. McNeill,
5 either one.

6 MR. LUGWICK: All right Madam McNeill, Ms.
7 McNeill. The -- I actually did speak with the
8 chairman of Cheesecake Factory and it got a little
9 heated. His office is in Beverly Hills. So I
10 felt it was okay to get him a little excited while
11 he was in Beverly Hills because they were number
12 one. But we had 25,000 Prince Georgians vote and
13 we had 12,500 write an essay.

14 You may recall, if you could talk directly to
15 a restaurateur, tell them why you think they
16 should locate here. Well, you know the end of the
17 day, the Cordish companies asked, because Internet
18 was rather new, and they asked if they could post
19 my website on their website because Ross only had
20 lots for sale and Cordish only had restaurant pad
21 sites for lease. So we agreed. And to make a
22 long story short, we had 18 restaurants by the

1 time the smoke cleared.

2 We proved -- but the argument that I had the
3 first year that I marketed it was there is no
4 restaurants there so they must not be a market.
5 If it's not there already, the must not be a
6 market. So we are not interested. Then we had to
7 prove to them that there was indeed a market and
8 there was a hole in the market. And that's what
9 we need here.

10 I think one of the things that are concept
11 plan that we had submitted for the Carosa property
12 was a couple of nice restaurant pad, a couple of
13 nice hotel pads, and it would -- a small
14 neighborhood convenience center, those kind of
15 things that will attract is going home folks who
16 normally just drive to the county will stop and
17 get some of their tax money as they are going
18 through.

19 MR. SHIPLEY: So is it your testimony that
20 only a part of the site is designed for commercial
21 use?

22 MR. LUGWICK: Yes, sir.

1 MR. SHIPLEY: Approximately how many square
2 feet of commercial use will be provided by this
3 site?

4 MR. LUGWICK: So our initial analysis was
5 about 20 acres of the site would be for commercial
6 use. And with two hotel pad site that 2-1/2 acres
7 each, 2 restaurant pad sites at 2-1/2 acres each,
8 a gas station site, and a 30,000 foot neighborhood
9 convenience site. So the square footage, each
10 hotel is about 100,000 feet. Each restaurant is
11 about 1000 feet. And the 30,000 feet. So maybe
12 250,000 feet to 260,000 feet of total development,
13 but about a third of the property.

14 MR. SHIPLEY: Now what is that exhibit
15 number?

16 MR. HORNE: 31.

17 MR. SHIPLEY: Exhibit 31, but you point to
18 the specific area that you were just talking
19 about?

20 MR. LUGWICK: Yes, sir. This is the area we
21 got designated as number one, neighborhood
22 commercial retail, about 21.6 acres.

1 MR. SHIPLEY: And in this exhibit that's been
2 introduced as Exhibit 32 for the record, point out
3 again where that is in reference to that exhibit.

4 MR. LUGWICK: Oh, sure. The exhibit that is
5 mentioned by Mr. Shipley, the property is right
6 here.

7 MR. SHIPLEY: Right.

8 MR. LUGWICK: Kitty corner on this in a
9 section right here is where the Royal Farms will
10 go, right where that block is.

11 MR. SHIPLEY: Now are you -- and that exhibit
12 shows what Royal Farms is proposing in his
13 conceptual plan?

14 MR. LUGWICK: Yes, sir.

15 MR. SHIPLEY: And you think -- or the two
16 sides commercially competitive or complementary?

17 MR. LUGWICK: I believe there complementary.
18 There is a phenomenon where if one national or
19 superregional company finds that a site or a
20 neighborhood is ideal for them or acceptable to
21 them, it automatically becomes of interest to
22 every other type of user. It's kind of like in

1 the old days we used to see if the McDonald's went
2 on one corner, the Burger King was going to go on
3 the other corner. McDonald's proved that there
4 was a market there.

5 MR. SHIPLEY: Okay. And you do not consider
6 the commercial on the site would be competitive
7 with the north side of Pennsylvania Avenue where
8 the Westphalia power center is?

9 MR. LUGWICK: No, sir because as of a
10 completely different nature. A power center is
11 mostly comprised of big boxes. So you know, a
12 Home Depot, a grocery store, and Office Depot, a
13 Target, those kind of big boxes, that's a power
14 center. And that's what they got designated with
15 various pad sites. And I believe -- is my strong
16 belief that when we can demonstrate that
17 restaurants will be -- are interested in coming to
18 that marketplace and they can be successful, much
19 like we did with the Olive Garden at Ritchie
20 Station. I'm not sure if you are familiar with
21 the project, but that's one of the most successful
22 on gardens in their franchise now. It just proves

1 if you do quality restaurants, people will go out
2 and use them.

3 MR. BROWN: They need some more waitresses,
4 man. I stand for line and hours in that damn
5 place.

6 MR. SHIPLEY: You want a recess?

7 MR. LUGWICK: Is that never-ending bread
8 bowl.

9 MR. SHIPLEY: You want a recess and have them
10 address that?

11 MR. BROWN: No.

12 MR. SHIPLEY: Okay. You mentioned earlier,
13 Vista West. And you said the difference between
14 Vista West and Vista Gardens power center are
15 comparable to what you were talking about with
16 reference to this commercial side versus the power
17 center across the road. Would you give us a
18 little detail as to how -- you were the developer
19 on both those sites that Vista -- how they compare
20 and how they successfully evolved?

21 MR. LUGWICK: Yes, sir. So the Vista
22 Marketplace on Martin Luther King Jr. Boulevard

1 and Lotsford Vista Road is about a 400,000 foot
2 power center. And it's got those big boxes that I
3 just mentioned. In fact, I just didn't say
4 Shoppers, but as some big boxes there, has some
5 restaurants. And it's got a small center where
6 there is a bunch of restaurants, you know, a
7 Chipotle and the Ledo's, but also a salon, a cell
8 phone store, and some offices up above.

9 So when that center was built, it takes a
10 while to get things through the process. But a
11 project very similar to what we were proposing for
12 Carosa is right across the street. So it's got
13 about 110 townhouses. It has a Wawa gas station,
14 two or three more restaurant pad sites because of
15 the demand in the marketplace, and a hotel.

16 So what happens is that they begin to
17 complement each other because the retail center
18 itself serves as a draw, it's like a destination,
19 right. People go to a -- when people go to Vista
20 Gardens or Ritchie Station, they're going there
21 for a reason. They are going there for a
22 particular store and they are shopping there.

1 It's a destination. Whereas the site that Vista
2 West and I believe that this site also, is a site
3 that's more service-oriented.

4 In the commercial real estate business, they
5 had the breakdowns of neighborhood service and
6 power centers, grocery anchored shopping centers,
7 which -- the difference between a power center and
8 a grocery anchored shopping center, even though
9 they may both have grocery stores, a grocery
10 anchored center will have a lot of smaller stores.
11 But the two properties complement each other and
12 we believe that likewise, will complement was
13 ultimately planned for the retail at Westphalia.

14 MR. SHIPLEY: Now the properties on the south
15 side of Old Marlborough Pike, according to that
16 exhibit, what exists on the south side of
17 Marlborough Pike directly across the street from
18 the subject property?

19 MR. LUGWICK: To the -- in the middle of
20 what's designated as number two on the exhibit, it
21 shows North Marwood Boulevard. That's a senior
22 housing project that has billows and then one

1 building of multistory active adult living.
2 There's a few older homes. There is one that
3 drives on Marlborough Pike going towards Wood Yard
4 Road. And then the new cut through, what they are
5 designating as Marlborough Pike, has a new
6 residential subdivision of single-family homes.
7 Then on the corner they have a new subdivision of
8 townhomes.

9 MR. SHIPLEY: An annual expense of the
10 marketing expert, why do you feel the subject
11 property is not been developed for residential
12 similar to that?

13 MR. LUGWICK: We actually looked at this
14 property over the last 25 years evaluating it
15 every four or five years. And the RR zone was a
16 rural presidential, 25,000 square foot lots. And
17 it was considered a zone to be parked in. Well,
18 because of the proximity of Pennsylvania Avenue,
19 there was a requirement that the lot depth of the
20 lots be 300 feet. So to get any kind of density
21 out of it, one would have to have about 75 foot
22 wide lots that are 300 feet long and are kind of

1 like bowling alleys almost.

2 We went to the market with builders and
3 literally they felt it was going to be very
4 expensive to develop because of the limited
5 develop ability for RR zoned properties. And so
6 financially it's never been feasible. So every
7 five years we kind of look -- go back to the
8 property and see what would be the best thing to
9 do.

10 MR. SHIPLEY: Okay. And I just have one or
11 two more questions. Do you feel that the proposed
12 commercial aspect of this development is
13 complementary to Royal Farms and the major center
14 across the street and is needed in the community?

15 MR. LUGWICK: Yes sir, I do.

16 MR. SHIPLEY: And can you point to another
17 property on the south side of Route 4 between the
18 Beltway and the Calver County line which would
19 provide this type of service?

20 MR. LUGWICK: Mr. Shipley, there is not a
21 single property from the Beltway to the Calver
22 County line that provides these kind of services.

1 There is a bank and some offices at the Millwood
2 Office Park, but absent that, one has to go almost
3 18 miles for gas. And there's no restaurants.
4 It's like a restaurant desert.

5 MR. SHIPLEY: And if you travel south on Wood
6 Yard Road past the air base and all the way to
7 Branch Avenue on the south, is there anything that
8 is similar to this that has been developed that
9 provides the necessary commercial needs of the
10 community?

11 MR. LUGWICK: No sir, there is not.

12 MR. SHIPLEY: That's all the questions I
13 have.

14 MR. BROWN: Mr. Lugwick, just one or two
15 questions. You indicated that retailers, I will
16 use the word, like to have or be on the side of
17 the folks, commuters coming home from work. And
18 I'm looking at the neighborhood commercial retail
19 of 21.6 acres at Pennsylvania Avenue and Wood Yard
20 Road. Just eyeballing it, it doesn't look like
21 that commercial retail would be accessible to
22 Pennsylvania Avenue, would it?

1 MR. LUGWICK: Well sir, yes. Not -- like you
2 can't pull --

3 MR. BROWN: Right in?

4 MR. LUGWICK: Right in, because Pennsylvania
5 Avenue is a controlled access freeway.

6 MR. BROWN: Right.

7 MR. LUGWICK: But when one takes the rent
8 right here, this is the signalized intersection.
9 There's actually a dedicated right turn lane
10 already in existence here. So one can come in.
11 And from a retailing standpoint, you make right
12 turns. So you come in, you don't have to wait at
13 the light. There is already a dedicated right
14 turn lane. You would pull in and there would be
15 several access points to the commercial property.
16 So that one came out -- when one comes out from
17 whatever service they get, they can go right,
18 straight, or they can turn left onto Marlborough
19 Pike to go to be at a traffic signal, make a left
20 turning movement, and then a right, and then there
21 right back on Pennsylvania Avenue.

22 HEARING EXAMINER MCNEILL: So that's not

1 what's there now? It's ramps on Wood Yard?

2 MR. LUGWICK: Yes, ma'am. Those are all
3 there now. That's all been approved. The rep has
4 been upgraded. The right turn lane is in place.

5 HEARING EXAMINER MCNEILL: But did you say we
6 have a term from Wood Yard into this property? Or
7 they have to get on old -- what is that?

8 MR. HORNE: Old Marlborough Pike.

9 MR. LUGWICK: Yes, ma'am. So when one is
10 exiting from Pennsylvania Avenue, they exit onto
11 Wood Yard Road for short distance and --

12 HEARING EXAMINER MCNEILL: Okay. I -- and so
13 no turn from Wood Yard. You gotta get on it?

14 MR. SHIPLEY: Right.

15 MR. LUGWICK: Right. And then there is a
16 right turn lane already before the traffic light.
17 So it's a dedicated lane so that one would come in
18 and just make the right turn and go right in
19 without having to stop. So it makes it very
20 convenient turning movement. I'm not a traffic
21 engineer.

22 HEARING EXAMINER MCNEILL: I to say, where is

1 Mr. Lenhart. He will talk about all that traffic
2 right now coming off of old Marlborough Pike
3 trying to get onto Osborne or Wood Yard that keeps
4 me from moving. So looking at your property,
5 where again is Antioch? Is it still on that side?
6 Oh, wait a minute.

7 MR. LUGWICK: It's right -- so it's kitty
8 corner. So this is Marlborough Pike going
9 through.

10 HEARING EXAMINER MCNEILL: So doesn't touch
11 your property? Is really on -- what's that? The
12 buck --

13 MR. LUGWICK: It's across the road for the
14 property.

15 HEARING EXAMINER MCNEILL: Okay. Where they
16 have a little farm now?

17 MR. LUGWICK: Where they have a little farm
18 now. Yes, ma'am.

19 MR. SHIPLEY: It would be on the east side of
20 Wood Yard Road and on the -- is it on the south
21 side of Osborn Road?

22 MR. LUGWICK: Yes, sir.

1 MR. SHIPLEY: Okay. And that's on the south
2 side of Marlborough Pike? Old Marlborough Pike?
3 Well, no it's not. Because old Marlborough Pike
4 is on the north side. It goes around -- at Wood
5 Yard Road, old Marlborough Pike is on the south
6 side of Route 4 and east of Wood Yard Road is
7 actually on the north side of Route 4.

8 MR. LUGWICK: Okay. I just say it's near the
9 buck house.

10 MR. SHIPLEY: Pardon me?

11 MR. LUGWICK: Right. That's a great
12 landmark.

13 HEARING EXAMINER MCNEILL: I know what I
14 wanted to ask you. Isn't there a hotel further
15 down? What are we -- what street is that? Old
16 Marlborough Pike and Tucker's Restaurant?

17 MR. LUGWICK: Sure next to --

18 HEARING EXAMINER MCNEILL: There's a lot of
19 little kind of restaurants. I mean --

20 MR. LUGWICK: Sure, there is. They built
21 a -- and so in the hotel brand business, and we
22 sold a lot of hotels over the last three years,

1 there is the bottom brand, which is the Red Roof
2 Inn, Economy. And that's one of those type.
3 That's the economy scale motel.

4 And then when you go down 30 -- or down 4
5 down to 301, there is nothing else. Because you
6 know, with the equestrian center, it's so
7 successful. They have so many wonderful programs
8 going on there. It's almost like every weekend.
9 There is a little motel north up by Beach Tree and
10 there is a little motel south, Fort Bragg Motel, I
11 think they call it. But we sold at a hotel, like
12 I said, right outside of Andrew's on Allentown
13 Road. And there is a stay bridge right outside
14 the old Alexandria Ferry Road gate. So the stay
15 bridge is a limited service extended-stay. So it
16 just has better -- has maybe a little kitchenette
17 and it comes with some cups and saucers and you
18 can get a free breakfast when you go down.

19 Andrews doesn't have -- when they built that
20 200 room hotel on base, that was a high-security
21 hotel with skiff throughout. So normal humans
22 don't get to stay there. That's government

1 operations only. That stay bridge is full all the
2 time. This property being outside of the Pearl
3 Harbor gate, which is ideal for some of the 21,000
4 employees at Andrews and the folks that are
5 looking to come out.

6 But to go to a hotel like that, nowadays
7 everybody so sensitive about -- well, if one has a
8 security clearance, one doesn't want to lose it
9 because that's their job. If one gets a DUI, then
10 one can lose their security clearance. But if one
11 is stationed there for three months, staying in a
12 hotel and they want to go out have something to
13 eat and enjoy themselves, they want to have
14 restaurants right next door to them. And that's
15 how one gets the better quality Residence Inns or
16 Marriott Courtyards or the Hilton Garden In. You
17 know, the better quality limited service extended-
18 stay. And so that's why we think this is going to
19 be fantastic.

20 Most communities love hotels because of the
21 hotel tax. In addition to property taxes, they
22 generate a lot of other taxes. But those are the

1 kind of things that I think heretofore, folks
2 haven't really sold the community on, not the
3 community of people, but the business prospect
4 that we want to bring to the area, of why the
5 relationship with Andrews is so important. We got
6 a gate right there. We got a brand-new gate right
7 there. I mean, it's a fully upgraded Pearl Harbor
8 gate. And there's a lot of folks, a lot of
9 business that could come off the base.

10 HEARING EXAMINER MCNEILL: Is that off Dower
11 House?

12 MR. LUGWICK: It's right off Dower House.
13 That's right. And as part of the idea is that
14 Andrews has been like an island with a fence
15 around it for all these years and not a lot of
16 benefit came to Prince George's County off the
17 base. And so by providing services, restaurants
18 where they can go out for lunch, hotels where they
19 can have their people stay and get some food,
20 neighborhood convenience where they can get their
21 assorted sundries and toiletries and things like
22 that, those are all things that attract people.

1 HEARING EXAMINER MCNEILL: Okay, thank you.

2 MR. BROWN: That's it for us.

3 MR. SHIPLEY: Thank you.

4 MR. LUGWICK: Thank you. Thank you, very
5 much. Very nice meeting everybody.

6 MR. SHIPLEY: We call Mr. McCarthy. Oh,
7 there you are. Would you state your full name and
8 address please?

9 MR. MCCARTHY: My name is Jacob McCarthy. My
10 address is 404 Fairmount Drive in Edgewater
11 Maryland, 21037.

12 HEARING EXAMINER MCNEILL: Mr. McCarthy, do
13 you swear or affirm that the testimony you are
14 about to give will be the truth and nothing but
15 the truth?

16 MR. MCCARTHY: Yes.

17 MR. SHIPLEY: Okay. Is this in?

18 HEARING EXAMINER MCNEILL: Yes.

19 MR. HORNE: Yes.

20 MR. SHIPLEY: What number?

21 HEARING EXAMINER MCNEILL: Exhibit 24.

22 MR. SHIPLEY: What is your profession or

1 occupation?

2 MR. MCCARTHY: My occupation currently is an
3 environmental technician. I used to be a wetland
4 ecologist, which is basically the same thing, just
5 different terminology.

6 MR. SHIPLEY: And where have you been
7 employed? Where is your employment background?

8 MR. MCCARTHY: Doing what I currently do, I
9 worked for McCarthy and Associates for about four
10 and a half years. And then that was under my
11 father, Milt McCarthy. And he sold his business
12 to Bay Engineering and they formed a new company
13 Bay Environmental, September 2018. And I've been
14 with them ever since.

15 MR. SHIPLEY: And tell us your educational
16 background.

17 MR. MCCARTHY: I went to school at Saulsberry
18 for planning and geographic information systems,
19 dual track. Was in a couple of honor societies.
20 Graduated cum laude. Took some soils classes and
21 other miscellaneous environmental classes while at
22 university.

1 MR. SHIPLEY: And --

2 MR. HORNE: I was going to say you left off
3 Clemson since they --

4 MR. MCCARTHY: Yeah. I didn't graduate from
5 Clemson. That was right out of high school. I
6 had too much fun down there.

7 MR. SHIPLEY: And have you previously
8 evaluated properties for environmental features as
9 to the site?

10 MR. MCCARTHY: That is correct.

11 MR. SHIPLEY: And how many times have you --
12 and so you visited and analyzed properties
13 generally?

14 MR. MCCARTHY: For the Carosa property, I've
15 been out there three times. I had to actually
16 drop by yesterday while it was raining just to see
17 what the hydrology was doing during the rain
18 event. But throughout working for McCarthy and
19 Associates and Bay Environmental, I've probably
20 looked at over 100 various properties in every
21 county in Maryland from Prince George's,
22 Montgomery, to Charles, Worchester, Dorchester,

1 Frederick.

2 MR. SHIPLEY: And are you familiar with the
3 rules and regulations concerning environmental
4 features and determinations as set forth by the
5 Army Corps of Engineers, the Maryland Department
6 of the Environment, and the Prince George's County
7 government?

8 MR. MCCARTHY: Yes.

9 MR. SHIPLEY: And we've marked an exhibit as
10 to your professional resume. Have you previously
11 qualified before any court or administrative
12 agencies as an expert in the field of making
13 environmental judgments?

14 MR. MCCARTHY: I've never qualified prior,
15 no.

16 MR. SHIPLEY: We would like to propose Mr.
17 McCarthy is an expert in the field of
18 environmental use work.

19 HEARING EXAMINER MCNEILL: I'm just listening
20 to the title. What do you think your expertise
21 would be called? It can't be environmental
22 judgment.

1 MR. MCCARTHY: Wetland consultant,
2 environmental technician is probably the best one
3 I can think of. But it's kind of a very niche
4 field of work. So it's a little difficult to
5 describe it accurately on a very professional
6 level just because I haven't ever met anyone else
7 who kind of does what I do.

8 MR. SHIPLEY: Have you submitted reports
9 that -- I'm sorry.

10 HEARING EXAMINER MCNEILL: Right, I'm trying
11 to see --

12 MR. SHIPLEY: No, this is --

13 HEARING EXAMINER MCNEILL: Do you want a voir
14 dire?

15 MR. BROWN: Well, I agree with the examiner.
16 I mean, we need to determine exactly what it is
17 you want to be qualified as. As I recall, the
18 term is used, environmental engineer. Would you
19 consider yourself an environmental engineer?

20 MR. MCCARTHY: I would not consider myself an
21 engineer. I don't have the license for any
22 education dealing with engineering. I'm

1 basically -- go out to the sides and just evaluate
2 them based on the criteria that's in the wetland
3 handbook from the Army Corps of Engineers based on
4 section 404 laws and Maryland Department of the
5 environment and the Prince George County
6 environmental technical manual.

7 MR. BROWN: Would you consider yourself an
8 environmental planner?

9 MR. MCCARTHY: Honestly, I would not. I
10 mostly deal with regulators, with agencies such as
11 Maryland Department of the Environment and the
12 Army Corps of Engineers. We do environmental
13 field evaluations and report our findings if there
14 are any regulated natural features that would fall
15 under their jurisdiction.

16 MR. BROWN: So --

17 HEARING EXAMINER MCNEILL: How about wetland
18 evaluation and delineation?

19 MR. BROWN: Your title at Bay Environmental
20 is environmental technician.

21 MR. MCCARTHY: Yes, sir.

22 MR. BROWN: So you clearly consider yourself

1 an environmental technician.

2 MR. MCCARTHY: Yes, sir.

3 MR. BROWN: And so --

4 HEARING EXAMINER MCNEILL: Expert in
5 environmental --

6 MR. BROWN: Exactly. Would you be willing to
7 seek to qualify him as an environmental
8 technician?

9 MR. SHIPLEY: Yes. And I would ask
10 additionally ask him; have you had experience
11 submitting reports evaluating property for steep
12 slopes or wetlands that have been accepted by
13 clients who have been accepted by government
14 agencies --

15 MR. MCCARTHY: Yes, sir.

16 MR. SHIPLEY: As preparatory to issuing
17 permits --

18 MR. MCCARTHY: That is correct. We --

19 MR. SHIPLEY: To build or develop property?

20 MR. MCCARTHY: I submitted probably over 50
21 natural resource studies, wetland delineation
22 reports, critical area reports, Bald Eagle

1 surveys, a little bit of everything.

2 MR. SHIPLEY: And they've been done in
3 connection with asking for permits from the Corps
4 of Engineers, state and county, and have been
5 accepted by those agencies --

6 MR. MCCARTHY: That is correct.

7 MR. SHIPLEY: In reliance on either issuing
8 or denying the permit? Is that correct?

9 MR. MCCARTHY: That is correct.

10 MR. SHIPLEY: So for that limited purpose, I
11 think that's all I want to get out of him.

12 MR. BROWN: And have you ever sought to be
13 qualified as an environmental technician or
14 wetland ecologist prior to today?

15 MR. MCCARTHY: No, sir.

16 MR. BROWN: And you've worked as a wetland
17 ecologist or environmental technician from June
18 2014 until the current date, correct?

19 MR. MCCARTHY: That is correct.

20 HEARING EXAMINER MCNEILL: Now, are you
21 saying the professional terminology changed from
22 wetland ecologist to environmental technician?

1 They are the same? Could we call you a wetland
2 ecologist?

3 MR. MCCARTHY: Yeah, I think you could. You
4 could go with either one.

5 HEARING EXAMINER MCNEILL: Okay.

6 HEARING EXAMINER MCNEILL: Okay.

7 MR. MCCARTHY: Under my father's old
8 business, which it kind of thought that sounded
9 good. And then when he sold to do business, they
10 kind of set what my job title was. So it changed.

11 HEARING EXAMINER MCNEILL: I agree with your
12 dad.

13 MR. MCCARTHY: Okay.

14 HEARING EXAMINER MCNEILL: If you have a
15 strong objection, I would accept him as an expert
16 in the area of wetland ecology.

17 MR. BROWN: Okay.

18 MR. SHIPLEY: I don't have any objection to
19 that.

20 HEARING EXAMINER MCNEILL: Thank you.

21 MR. SHIPLEY: When you say you visited the
22 site two or three times. In that connection, did

1 you prepare an exhibit in the form of a letter
2 addressed to Dubarry on January 2, 2020?

3 MR. MCCARTHY: That is correct.

4 MR. SHIPLEY: Is that in the record?

5 MR. HORNE: It is. It is Exhibit 28.

6 MR. SHIPLEY: And attached to that letter,
7 and therefore I seem as a part of that exhibit,
8 are a series of photographs of the site?

9 MR. MCCARTHY: Yes, I took numerous
10 photographs.

11 MR. SHIPLEY: And I'm going to ask you to go
12 over them, but to try to save time a little bit,
13 those pictures were taken generally when? What
14 week? What month?

15 MR. MCCARTHY: I believe I was out there --
16 could I refer to the --

17 MR. SHIPLEY: You want to refer to the
18 letter?

19 MR. MCCARTHY: To the letter? Yeah, December
20 27 was when I was actually out on site for the
21 first time evaluating the channels.

22 MR. SHIPLEY: And there is a series of about

1 20, 22 photographs. They were all taken by you?

2 MR. MCCARTHY: Correct.

3 MR. SHIPLEY: And you will describe in your
4 testimony that they accurately betray what you saw
5 with your eyes when you were taking the pictures?

6 MR. MCCARTHY: That is correct.

7 MR. SHIPLEY: Okay. With that as a
8 background, would you describe the contents of the
9 letter and the import of the pictures?

10 MR. MCCARTHY: The letter goes through a
11 little bit of background about the PG County laws
12 that apply to the -- what defines a regulated
13 stream channel. And the environmental technical
14 manual, it refers to the subsection 27 of the
15 Prince Georges County zoning law, which refers to
16 subsection 24, which is the subdivision portion of
17 the code. And they define a stream as any channel
18 that has water flowing through it on a -- or
19 regularly for an annual basis or during the
20 growing season, and has a defined bed and banks
21 and just a few other minor criteria.

22 When I was out on site evaluating all the

1 channels that exist, I cannot find evidence of any
2 regulated environmental streams out there, any
3 features that would be regulated. Everything was
4 an ephemeral channel, which only runs during or
5 after -- immediately after a rain event or
6 precipitation. All the channels I saw had no
7 defined bed and banks, no significant scouring or
8 evidence of leaf litter being moved due to
9 overland flows. There was no evidence of
10 groundwater connection.

11 Most of the channels were very shallow
12 depressions. There were a few that were a little
13 more in size, just due to the nature of the
14 landscape position. Most of those were
15 immediately abutting route 4 along the roadway.

16 MR. BROWN: Those were man-made channels,
17 what they?

18 MR. MCCARTHY: Those were -- that's correct.

19 MR. SHIPLEY: Or they made in conjunction
20 with building route 4?

21 MR. MCCARTHY: I believe so.

22 MR. SHIPLEY: Okay.

1 MR. MCCARTHY: It appears there is a series
2 of culverts that have concrete armoring along the
3 channel to prevent erosion from happening. I'm
4 assuming they were put in in the late 60s, early
5 70s, but I can't tell you exactly when. But that
6 seems to be historically when that sort of
7 protective measure was fairly popular with the
8 Corps of Engineers and other agencies when they
9 designed that kind of thing.

10 MR. SHIPLEY: So in your examinations, you
11 didn't find anything that would impede the
12 development of the property in the zone that's
13 been requested and with the development has been
14 proposed?

15 MR. MCCARTHY: That is correct.

16 MR. SHIPLEY: And are you familiar with --

17 HEARING EXAMINER MCNEILL: Wait, wait, wait.
18 Is that correct? You mean anything, stream,
19 environmental that would --

20 MR. MCCARTHY: That is correct.

21 HEARING EXAMINER MCNEILL: I have to watch
22 (inaudible 01:05:48). He is so good. Go ahead.

1 MR. SHIPLEY: And are you familiar with the
2 green infrastructure plan?

3 MR. MCCARTHY: I'm familiar with it, yes.

4 MR. SHIPLEY: And staff refers to that on
5 page 18, which I think was in Exhibit B.

6 HEARING EXAMINER MCNEILL: Would that be the
7 staff report?

8 MR. SHIPLEY: Of the staff report. And if
9 you would, take a look at this paragraph.
10 According to the countywide green infrastructure
11 plan of the approved Prince George County resource
12 conservation plan of 2017, the majority of the
13 site fall within regulated areas and evaluation
14 areas. Based on available information, the
15 regulated areas include the headwaters of streams,
16 associated stream buffers, and adjacent steep
17 slopes, which comprise the primary management
18 area, PMA.

19 MR. BROWN: That's not page 18.

20 MR. HORNE: Page 8.

21 HEARING EXAMINER MCNEILL: Eight.

22 MR. SHIPLEY: I said -- I thought I said a.

1 MR. HORNE: You said 18.

2 HEARING EXAMINER MCNEILL: 18.

3 MR. SHIPLEY: I'm sorry. I'm sorry. Page 8.
4 I looked at eight and thought I said eight. And
5 you are saying that that doesn't seem to be
6 correct with reference to this property?

7 MR. MCCARTHY: That is not as incorrect in my
8 opinion. A lot of the PG County --

9 MR. SHIPLEY: I guess you can't say that.
10 You must say Prince Georges. Okay. I'm exempt
11 because I'm an octogenarian. Most people have to
12 say Prince Georges since Winnie Kelly came to town
13 and he left. Go ahead. I'm sorry.

14 MR. MCCARTHY: No, a lot of the mapping and
15 the geographic information systems that these rely
16 on are based on Lidar and just elevation, digital
17 elevation models that aren't confirmed in the
18 field. Just because there is a depression does
19 not mean that it's a regulated natural resource.

20 MR. SHIPLEY: And going to the bottom of page
21 8; regulated environmental features, according to
22 information available on PT Atlas, there are

1 regulated environmental features as defined in
2 section 25-118B-63.1 on the site. A found
3 delineation of all regulated environmental
4 features will be determined at a later stage of
5 development. Do you feel that that is an accurate
6 statement based on your personal examination and
7 the photographs which you have taken to support
8 it?

9 MR. MCCARTHY: No, I don't.

10 MR. SHIPLEY: Okay, it does not. Okay. And
11 then again on page 3 -- 13, 13, under the heading
12 of environment they talk about the preservation or
13 restoration of regulated areas designed in the
14 green infrastructure network through the
15 development review process for new land
16 development policies. And then it says,
17 approximately 10 acres are designated as regulated
18 areas and 47 acres as evaluation areas by the
19 resource conservation plan. That's when the staff
20 concludes that approximately 56 acres of the
21 property is impacted by environmental constraints.
22 Do you agree or disagree with that statement?

1 MR. MCCARTHY: I disagree with that
2 statement.

3 MR. SHIPLEY: For the reasons you've already
4 set forth?

5 MR. MCCARTHY: That is correct.

6 MR. SHIPLEY: And did you find any 100 year
7 floodplain?

8 MR. MCCARTHY: No, I did not. However, the
9 floodplain is more of an engineering calculation.
10 I don't normally look for a floodplain that falls
11 outside of just the immediate vicinity of the
12 area.

13 MR. SHIPLEY: How about steep slopes?

14 MR. MCCARTHY: There were some fairly steep
15 areas on site, not as much as it shows on the
16 county PG Atlas website. But this whole site has
17 been historically manipulated during the
18 construction of route 4. And there is evidence of
19 old logging trails, earthen burns that were
20 obviously constructed on site, and the personal
21 areas that were obviously excavated using
22 equipment back when they were putting route 4 in.

1 MR. SHIPLEY: Is that exhibit number --

2 MR. SHIPLEY: Let's make your --

3 HEARING EXAMINER MCNEILL: A smaller one is,
4 but I would think we would need that larger one as
5 well. Maybe not. I thought I saw it. 40?

6 MR. HORNE: That's the new one.

7 HEARING EXAMINER MCNEILL: Oh, I thought I
8 saw something.

9 MR. HORNE: What it is, that is Exhibit 12A
10 and it has a bunch of attachments which include
11 the aerial map. That's what I think that is.
12 That one is 1965.

13 MR. BROWN: 1965.

14 MR. SHIPLEY: So that would be -- Madam
15 Chairman, that would be 12A, 12P.

16 HEARING EXAMINER MCNEILL: I think they might
17 like that one as well. So 30 would be the blowup
18 of 12A I mean 40. I'm sorry.

19 MR. SHIPLEY: Did you say 12P?

20 MR. HORNE: Yes.

21 HEARING EXAMINER MCNEILL: Yeah, I'm sorry,
22 12P.

1 MR. SHIPLEY: 1965 aerial map?

2 MR. HORNE: Yes.

3 MR. SHIPLEY: And that's what you're looking
4 at, Mr. McCarthy?

5 MR. MCCARTHY: That is correct.

6 MR. SHIPLEY: Would you point out what you
7 just talked about in terms of the disturbed areas
8 or steep slopes?

9 MR. MCCARTHY: Sure. You can see little
10 trails and excavated areas. Everything that's
11 been cleared is obviously in white compared to the
12 forest that's in the gray. There is trails and
13 access roads and just borrough pits, this whole
14 area down -- and this portion of the property was
15 excavated to supply building material for the
16 roadway. It appears to me, anyway. But there is
17 a lot of historic equipment tracks and very linear
18 dishes that exist throughout the property, but
19 they've been here probably since construction
20 ceased on Route 4.

21 MR. SHIPLEY: Okay. Thank you, Mr. McCarthy.
22 That's all the questions I have.

1 MR. BROWN: Mr. McCarthy, concerning page 8
2 of the staff report in the green infrastructure
3 plan, do you have a copy of the green of a
4 structure plan with you today?

5 MR. MCCARTHY: I do not.

6 MR. BROWN: Mr. Shipley, Mr. Horne, if we
7 could get a copy of the green infrastructure plan,
8 specifically that illustrates the staff's position
9 that the majority of the site falls within
10 regulated areas and evaluation areas. I'm
11 assuming common sense, there is an illustration
12 that they are pointing to in that plan. I mean,
13 there is an illustration of this property, right?
14 In that plan?

15 MR. SHIPLEY: I would assume, yeah.

16 MR. BROWN: I would assume. I would like to
17 see that photograph in the green infrastructure
18 plan of this property, so we can have an idea what
19 it is they are talking about.

20 MR. SHIPLEY: Right.

21 MR. BROWN: And Mr. McCarthy, same thing with
22 regards to the next to the last paragraph on page

1 8. Counsel asked you questions on it concerning
2 PG Atlas. Staff says according information
3 available on PG Atlas. They are regulated
4 environmental features as defined in 25-118B-63.1.
5 I would like to have a printout of PG Atlas of
6 this property.

7 MR. MCCARTHY: Okay.

8 MR. BROWN: So we can determine whether in
9 fact there are regulated environmental features,
10 or as you say, they are not.

11 MR. MCCARTHY: If you will refer to --

12 HEARING EXAMINER MCNEILL: That's this.

13 MR. BROWN: Okay. We'll let me ask you this,
14 if this is it. I'm showing you what's been marked
15 as Exhibit 12A

16 HEARING EXAMINER MCNEILL: It's not A.

17 MR. BROWN: Do you recognize that document?

18 HEARING EXAMINER MCNEILL: Q.

19 MR. BROWN: I'm sorry.

20 MR. MCCARTHY: This is the first I'm
21 personally seen of it, but this looks like data
22 that is readily available on PG Atlas.

1 MR. BROWN: And the property is illustrated
2 on that first page?

3 MR. MCCARTHY: Correct.

4 MR. BROWN: All right. Look through that.
5 Take your time and tell me if you see regulated
6 environmental features on PG Atlas 12A.

7 MR. MCCARTHY: So far, I've only seen aerial
8 photographs, which are not indicative of any
9 regulated features. Going back to the history, it
10 goes from 2018, the most recent aerial, to 1938.

11 HEARING EXAMINER MCNEILL: It says it goes to
12 38.

13 MR. MCCARTHY: 1938. So it shows basically
14 the evolution of the property from when it was --
15 looks to be farmed back in the 30s to when Route 4
16 was being constructed and the site was being used
17 for construction access and material to when it
18 was left fallow from some time in the late 60s,
19 early 70s. And then the tree, forest is starting
20 to grow back. But I don't see anything that would
21 indicate regulated environmental features based
22 off these.

1 If you refer to the letter and the supporting
2 documents that I prepared in my January 2 letter
3 to Mr. Ryan McCalister of Dubarry, I had prepared
4 a lidar digital elevation model that was found
5 from PG County, the PG -- Prince George's Atlas.
6 And on that exhibit, it shows where the county is
7 considering the stream channels on it. And I
8 believe that's in front of it.

9 MR. BROWN: Show me that page in your
10 exhibit.

11 MR. MCCARTHY: Okay.

12 MR. BROWN: All right.

13 MR. MCCARTHY: So this is an elevation model.
14 The darker the color, the steeper the gradient and
15 generally lower the elevation. All these blue
16 lines exist on PG Atlas as a regulated
17 environmental feature, the stream channels. But
18 in the field, they're just simply ephemeral
19 depressions created in uplands.

20 The forest composition is dominated by
21 American Beech, Red Oak, White Oak, and other
22 upland species. Down in this area there is a

1 pretty significant component of Sweetgum and Red
2 Maple, which is to be expected in highly disturbed
3 areas. But every blue line that was featured on
4 this came from the PG Atlas digital elevation
5 model as a regulated environmental feature. But
6 in the field, they do not represent what is
7 actually out there.

8 MR. BROWN: So you don't know whether or not
9 the staff was looking at this version of PG Atlas
10 or not?

11 MR. MCCARTHY: I cannot attest to that, no.
12 But that is a layer that is available publicly on
13 the PG Atlas GIS program. So I'm assuming at some
14 point they probably looked at it to --

15 MR. BROWN: And that's probably what they are
16 referring to in the second to last paragraph on
17 page 8?

18 MR. MCCARTHY: I would assume so. And so --

19 HEARING EXAMINER MCNEILL: What page is --
20 I'm so sorry.

21 MR. BROWN: No, go ahead.

22 HEARING EXAMINER MCNEILL: Those pages are

1 numbered. So can you put a star and maybe your
2 initials on this if you want?

3 MR. MCCARTHY: Sure.

4 HEARING EXAMINER MCNEILL: Just so I know
5 that's in the record. That's when we were
6 referring to that those blue toward -- toward
7 Route 4? Lines were probably -- staff thought of
8 that as a regulated environmental feature.

9 MR. BROWN: And the blue lines you said are
10 just ephemeral depressions. They look more like,
11 to me, drainage from Route 4.

12 MR. MCCARTHY: Actually, the site slopes this
13 way. So all --

14 MR. BROWN: Toward -- toward route 4?

15 MR. MCCARTHY: Towards Route 4. So all of
16 these features are draining the interior of the
17 property down to Colbert's that fall under 4 and
18 drained North onto the Westphalia property. There
19 is a series I think of four different culverts,
20 all of which are I think 30 to 42 inches. And all
21 of them had concrete armoring along the slopes
22 along --

1 MR. BROWN: Yeah. You had a couple of
2 photographs of those in this. Would you show this
3 to me?

4 MR. MCCARTHY: Sure. So this is typical
5 of --

6 MR. SHIPLEY: But the number -- say what the
7 numbers are.

8 MR. MCCARTHY: Okay.

9 HEARING EXAMINER MCNEILL: They don't have
10 it.

11 MR. BROWN: Take a second and number all of
12 your pages.

13 HEARING EXAMINER MCNEILL: All of your pages.
14 Thank you.

15 MR. MCCARTHY: Sorry about that. Sorry.

16 MR. SHIPLEY: He does have numbers on the
17 pictures, I think.

18 HEARING EXAMINER MCNEILL: Oh, okay. It's
19 easier to number it to refer to a page.

20 MR. BROWN: While we are waiting to get a
21 numbered; the gentleman from Dubarry, I'm sorry.
22 What was your name again?

1 MR. SHIPLEY: McAlister.

2 MR. BROWN: Yeah, you were out when I asked
3 him did he have the green infrastructure plan.
4 Since he submitted this information to you, do you
5 have the green infrastructure plan with you today?

6 MR. MCCALLISTER: Yes, sir.

7 MR. BROWN: I thought you did. Could you
8 bring it up here, please?

9 MR. MCCALLISTER: Yeah.

10 HEARING EXAMINER MCNEILL: Find a moment to
11 try to get one. Mr. Ryan McCalister?

12 MR. MCCALLISTER: Yes, ma'am.

13 HEARING EXAMINER MCNEILL: Mr. McAlister, do
14 you swear or affirm under the penalties of perjury
15 that the testimony you give will be the truth and
16 nothing but the truth?

17 MR. MCCALISTER: I do.

18 HEARING EXAMINER MCNEILL: He doesn't have
19 any questions yet.

20 MR. HORNE: I --

21 HEARING EXAMINER MCNEILL: But I just wanted
22 to --

1 MR. HORNE: Yeah, he's our next witness.

2 MR. MCCARTHY: Okay. So on pages 15, 19, 20,
3 25, though show all of the --

4 MR. BROWN: Culverts.

5 MR. MCCARTHY: Culverts that cross under
6 Route 4 and drained North onto the Westphalia
7 property.

8 MR. BROWN: And what page of your letter is
9 the ephemeral depression that you described?

10 MR. MCCARTHY: On pages -- on page 2 is my
11 writeup of the field visit for photographs of the
12 channels themselves. Page 12, 13, 16, 17, 21, 22,
13 24, and 26 all have photographs of the ephemeral
14 channels.

15 MR. BROWN: All right. Have you seen --

16 HEARING EXAMINER MCNEILL: Are you saying
17 ephemeral channels?

18 MR. MCCARTHY: Yes, ma'am.

19 HEARING EXAMINER MCNEILL: Ephemeral?

20 MR. MCCARTHY: Ephemeral.

21 HEARING EXAMINER MCNEILL: Okay.

22 MR. BROWN: Have you seen the green

1 infrastructure plan?

2 MR. MCCARTHY: I've seen it. I've not read
3 it in its entirety.

4 MR. BROWN: All right. Again going back to
5 page 8 of the staff report, the third paragraph
6 where Mr. Shipley asked you about the green
7 infrastructure plan and the staff concluded that
8 the majority of the site fall within related areas
9 and evaluation areas, just look through it
10 quickly.

11 MR. MCCARTHY: Okay.

12 MR. BROWN: See if you see any illustrations
13 that show the majority of the site falls within
14 regulation areas and evaluation areas.

15 MR. MCCARTHY: Looks like this page here
16 would demonstrate that as a regulated area on
17 their green infrastructure plan.

18 MR. BROWN: All right. It looks to me like
19 that particular rendering is almost identical to
20 the ephemeral depressions that you described in
21 your letter.

22 MR. MCCARTHY: That is correct.

1 MR. BROWN: And so basically what they are
2 saying is, those ephemeral depressions are
3 regulated areas and evaluation areas and you are
4 saying they are not.

5 MR. MCCARTHY: That is correct.

6 MR. BROWN: All right.

7 MR. MCCARTHY: By County code, they are --

8 HEARING EXAMINER MCNEILL: Don't move. What
9 page is that? You don't have numbers either?

10 MR. MCCARTHY: They don't have numbers.

11 MR. SHIPLEY: What pages it next to?

12 MR. MCCARTHY: It is at the very last page as
13 an attachment to the green infrastructure plan.

14 HEARING EXAMINER MCNEILL: And that's the
15 subject property?

16 MR. BROWN: Yeah.

17 MR. MCCARTHY: Yes. Yes, ma'am.

18 MR. HORNE: Mr. McCalister is --

19 MR. MCCARTHY: Yeah, that's --

20 HEARING EXAMINER MCNEILL: Okay.

21 MR. MCCARTHY: I'm assuming provided by Mr.
22 McCalister, his --

1 HEARING EXAMINER MCNEILL: Oh, okay.

2 MR. MCCARTHY: Because all of these channels
3 match up to the ones that show up on green on the
4 stuff I've pulled in my letter from, but they are
5 calling them as stream channels. They're not
6 stream channels. They are not regulated features.
7 They are ephemeral drainage soils and ditches that
8 just convey groundwaters off-site to the north.

9 MR. BROWN: Okay. But the mere fact that
10 they, on the illustration, run across Pennsylvania
11 Avenue, and to your knowledge there are not any
12 stream crossings underneath Pennsylvania Avenue,
13 are there?

14 MR. MCCARTHY: No. No, sir.

15 MR. BROWN: So it's almost a physical
16 impossibility for those to be streams or stream
17 channels?

18 MR. MCCARTHY: That is correct.

19 MR. BROWN: All right. Also with regards to
20 page 13, the environmental paragraph that Mr.
21 Shipley solicited answers from you concerning the
22 subregion six master plan where staff concluded

1 approximately 10.74 acres are designated as
2 regulated areas and 47 acres as evaluation areas
3 by the 2017 approved Prince George's County
4 resource conservation plan, the countywide
5 functional master plan. Have you seen the
6 conservation plan?

7 MR. MCCARTHY: I have not, but on this it
8 shows that these -- the darker green here is the
9 regulated area, and the lighter green is the
10 evaluation area. So for this property, that
11 appears to be about fairly accurate.

12 MR. BROWN: Of the conservation plan?

13 MR. MCCARTHY: I've not seen the conservation
14 plan.

15 HEARING EXAMINER MCNEILL: That's --

16 MR. BROWN: Yeah, I'm going to ask him.

17 HEARING EXAMINER MCNEILL: Mr. McCalister's
18 under oath. Have you seen it?

19 MR. BROWN: Have you seen the county's
20 resource conservation plan as it relates to this
21 property?

22 MR. MCCALLISTER: I have reviewed the

1 county's plan, yes.

2 MR. BROWN: Do you have it in your materials
3 today?

4 MR. MCCALLISTER: I don't have it with me
5 today.

6 MR. BROWN: All right. So Mr. Horne, Mr.
7 Shipley, would also like to get a copy of the
8 resource conservation plan that illustrates this
9 property. I think it's going to show what Mr.
10 McCarthy just said, that is consistent with the
11 green infrastructure plan and that those, what I
12 would consider almost man-made depressions, are
13 not regulated environmental areas. But I want to
14 have all three in the record.

15 MR. HORNE: Okay.

16 HEARING EXAMINER MCNEILL: The pages -- as he
17 said, the pages that address your property,
18 because the Council can take official notice of
19 the documents, as I would. And I will contact
20 them without putting those entire books into the
21 record.

22 MR. BROWN: Okay. All right.

1 MR. HORNE: Got it.

2 MR. BROWN: No other questions. Thank you.

3 HEARING EXAMINER MCNEILL: Thank you.

4 MR. SHIPLEY: Thank you. Thank you, very
5 much.

6 HEARING EXAMINER MCNEILL: I guess I was
7 going to try to clarify for the record --

8 MR. HORNE: Hold on. Hold on a second.

9 HEARING EXAMINER MCNEILL: Come back. I was
10 going to try to clarify for the record what are
11 regulated environmental features. And I mean, you
12 know, but I have it in subtitle 25, but --

13 MR. MCCARTHY: That includes wetlands,
14 streams, steep slopes, a number of various
15 features.

16 HEARING EXAMINER MCNEILL: But you don't
17 think the staff -- and this is sort of -- I mean,
18 we shouldn't even be asking you what the staff
19 thought. But you don't think they're basing it on
20 slopes?

21 MR. MCCARTHY: I don't believe they are
22 basing it on slopes alone, no, because the slopes

1 have to be abutting a stream or another feature to
2 be -- to be included in the buffer, I believe is
3 correct.

4 HEARING EXAMINER MCNEILL: Okay. Thank you.

5 MR. MCCARTHY: Yeah.

6 HEARING EXAMINER MCNEILL: I sure hope this
7 is all being recorded. I sent Fatimah away. So
8 if you all would forgive me and maybe don't talk
9 for at least two minutes, I will get Susie. Wait
10 a minute. I forget we have modern conveniences.
11 Keep going. So is McCalister next?

12 MR. HORNE: Yeah, he's back up. Yeah, he's
13 coming back up.

14 MR. SHIPLEY: Now your --

15 MR. HORNE: While we're waiting --

16 MR. HORNE: For the exhibit. It's 18007.

17 HEARING EXAMINER MCNEILL: 18007. I can't
18 believe I've written as much --

19 MR. SHIPLEY: So we don't have any documents
20 for him or anything?

21 HEARING EXAMINER MCNEILL: So CSP --

22 MR. HORNE: No, we got the green

1 infrastructure plan.

2 HEARING EXAMINER MCNEILL: 18007.

3 MR. HORNE: And the PG at less, we got that
4 as well, right?

5 MR. SHIPLEY: Yeah.

6 MR. HORNE: So we just need that conservation
7 plan.

8 MR. SHIPLEY: Thank you, very much.

9 MR. MCCALISTER: Make sure I have all my
10 materials.

11 HEARING EXAMINER MCNEILL: And as is coming
12 up, Mr. Horne or Mr. Shipley, will somebody tell
13 me what's the noise contour? Somebody will be
14 speaking to 30 question that's what that is, the
15 noise contour?

16 MR. HORNE: Yeah, it's a blowup of the site
17 plan. So you can't see it at the bottom of this.
18 This is a blow up to be able to --

19 HEARING EXAMINER MCNEILL: Okay.

20 MR. SHIPLEY: Do you have questions for him?

21 MR. HORNE: Yeah.

22 HEARING EXAMINER MCNEILL: Thank you.

1 MR. HORNE: Do you have his resume?

2 MR. SHIPLEY: That's in the record.

3 MR. HORNE: Yeah.

4 HEARING EXAMINER MCNEILL: Exhibit 23?

5 MR. HORNE: 23. So we're still waiting on --

6 HEARING EXAMINER MCNEILL: No, I hope we are
7 going.

8 MR. HORNE: Okay.

9 MR. SHIPLEY: And he's qualified for a zoning
10 and -- landscape architect.

11 HEARING EXAMINER MCNEILL: And he is already
12 sworn in. So you're asking that he be accepted as
13 an expert in --

14 MR. SHIPLEY: Land planning.

15 MR. HORNE: Landscape architect.

16 HEARING EXAMINER MCNEILL: Expert landscape
17 architect. And he has been accepted as such in
18 the past?

19 MR. SHIPLEY: Yeah.

20 HEARING EXAMINER MCNEILL: Mr. Brown, so you
21 have any questions?

22 MR. BROWN: No objections, no.

1 HEARING EXAMINER MCNEILL: Okay.

2 MR. SHIPLEY: You've been sworn. Please give
3 us your name and address.

4 MR. MCCALISTER: Yes, my name is Ryan
5 McCalister. I'm with Dubarry Engineers, 4601
6 Forbes Boulevard, Suite 300, Lanham, Maryland,
7 20706.

8 MR. SHIPLEY: And you been accepted as a
9 professional landscape architect?

10 MR. MCCALISTER: Yes, sir.

11 MR. SHIPLEY: And your resumes in the record?

12 MR. MCCALISTER: I believe have a copy of it,
13 yes.

14 MR. SHIPLEY: Are you familiar with the
15 property which is the subject of this application?

16 MR. MCCALISTER: Yes, sir. We prepare the
17 documents, plans, and exhibits for today's hearing
18 as well as in the case record.

19 MR. SHIPLEY: And have you visited the
20 property?

21 MR. MCCALISTER: Yes, I visited it on January
22 6 of 2020.

1 MR. SHIPLEY: And would you basically
2 describe the property?

3 MR. MCCALISTER: Yeah.

4 MR. SHIPLEY: And use any exhibits that you
5 prepared or have been introduced or you would like
6 to introduce.

7 MR. MCCALISTER: Yeah. The property, based
8 on exhibit -- what number that is --

9 HEARING EXAMINER MCNEILL: That one?

10 MR. MCCALISTER: Yeah, which is the rezoning
11 plan for the case.

12 MR. BROWN: Did we mark that?

13 HEARING EXAMINER MCNEILL: I haven't seen
14 that file.

15 MR. HORNE: No, not the large one. So that
16 would be 41.

17 HEARING EXAMINER MCNEILL: 41.

18 MR. BROWN: I'll just write on it until she
19 brings the thing.

20 HEARING EXAMINER MCNEILL: Thank you.

21 MR. HORNE: So Mr. McCalister, you can spin
22 that microphone around so you can --

1 MR. MCCALISTER: Okay. Okay. The property
2 is approximately 60 acres made up of three
3 parcels, parcel 35, parcel 32, parcel 92,
4 referenced them basically from east to west along
5 the property. It fronts on Pennsylvania Avenue,
6 Woodyard Road, and Marlborough Pike. The property
7 is approximately 550 feet wide. It's roughly
8 about 40 -- 100 feet long. I've walked the full
9 site, not a straight direction, but kind of
10 crisscrossing patterns in a grid to survey the
11 site for all the many features of it.

12 The site itself slips down from Marlborough
13 Pike to Pennsylvania Avenue. It exists of partial
14 woodlands. It exists in some clearing areas. And
15 generally, the site remains bank and at this time
16 with some existing improvements from the past.
17 The number of features based on some of the plans
18 that are shown on this exhibit, which I think
19 there will be more questions on, which I'll be
20 happy to describe as we go through the testimony.

21 MR. SHIPLEY: And are there existing
22 environmental features or conditions found on the

1 site such as woodlands, streams, wetlands, and
2 other regulated environmental features?

3 MR. MCCALISTER: Yeah. So when I reviewed
4 the site on January 6, we examined the conditions
5 for a number of aspects based on Prince George's
6 County regulations. In regards to the
7 environmental technical manual, also in future
8 preparation of a natural resource inventory plan,
9 we evaluated both the environmental features as
10 well as the woodlands on site, also soils,
11 topography. Basically, a number of things were
12 found. The site does have previous improvements.
13 This is consistent with some of the historic
14 aerials, which I will talk about in a second.

15 But some of the changes that we found were in
16 with the canopy and the force coverage based on
17 previous clearing areas. We found evidence of hay
18 grass or pasture grass in isolated areas which
19 have been planted based on farming, previous
20 farming activities, which would not normally be
21 seen on the property unless farming was previously
22 done on the property. Without evidence of

1 existing infrastructure improvements including two
2 wells, visible underground infrastructure from the
3 wells moving north on the site, which was evidence
4 of where we believe the single-family houses were
5 located.

6 MR. BROWN: Show me where that is on that
7 Exhibit 41.

8 MR. MCCALISTER: Yeah, the first well was
9 right about in here at the top of this ridgeline.
10 The second well was underneath the parcel 32
11 designation. There was another property fronting
12 out the back of it overlooking Pennsylvania
13 Avenue. We believe the five houses had driveways
14 off of Marlborough Pike that you can tell from the
15 clearing. There is some clearing here that goes
16 along Marlborough Pike running from the entrance,
17 which should be the midpoint of the site, carrying
18 to the east.

19 We believe that there was a house up here.
20 You can see kind of this flat spot that's been
21 improved upon to make way for a house pad. We
22 believe there was also previously a house pad down

1 in the lower part of the eastern corner, and those
2 were consistent with the aerial photographs and
3 the topography that we found on site.

4 A lot of the trees that we found were planted
5 for landscape or reforestation purposes. We saw
6 isolated Virginia pine stands, which appear to be
7 a plan up to clearing associated with Pennsylvania
8 Avenue, which would not normally be found on site.
9 The pattern was also not irregular. It was
10 consistent with horizontal grid spacing, which
11 makes us think that it was a reinforced station
12 that was used after the construction.

13 We found evidence of construction debris,
14 asphalt, concrete, debris materials, which we
15 believe were from the Pennsylvania Avenue
16 construction. We saw evidence of wildlife.
17 Typically we see deer out on the sides. We do not
18 see any that they were out there except for a
19 couple of squirrels. The property itself was
20 typical with a lot of improved or previously
21 improved sites found in the county. It was not
22 what would be considered a pristine natural area,

1 untouched. We found evidence of all these
2 improvements.

3 The existing drainage ways were dry. Even
4 with the amount of rain leading up to our site
5 visit, which was three days of rain beforehand,
6 the drainage ditches were dry. We checked for
7 specimen trees. These were limited to two
8 isolated areas, which were here, and through here.
9 Again, those were mostly beech, red oak, white
10 oak, sweetgum, which is consistent with previous
11 disturbance as well as that's where disturbance
12 had been done during the Pennsylvania Avenue
13 construction. So we believe that that was again,
14 planted during that time.

15 The disturbance was consistent with the 1965
16 aerial, post Pennsylvania Avenue. And then
17 consistent with what the pre-Pennsylvania Avenue
18 construction was in 1938. That aerial was
19 submitted in the record as well. And the other
20 aerial photographs which show the farming and
21 clearing activities for the single-family detached
22 houses.

1 MR. SHIPLEY: Okay. Are there any streams
2 running for the property?

3 MR. MCCALISTER: So we walked the site. That
4 was a question as evidenced in the staff report as
5 if these were regulated streams. We concur with
6 Bay Engineering's or Bay Environmental's report.
7 Natural resource inventories under the county code
8 can be prepared by a licensed landscape architect.
9 As a licensed landscape architect in reviewing
10 these based on the county code, I believe as well
11 that the information that's been provided by Bay
12 is consistent with county code regulations and the
13 determination that these are not regulated
14 environmental streams. These are drainage
15 ditches, ephemeral ditches, if you will, which are
16 also not related by the county code.

17 MR. BROWN: But an ER study that hasn't been
18 done to date.

19 MR. MCCALISTER: No, sir. We were doing this
20 based on that we were actually evaluating it for a
21 future NRI that would be prepared based on the
22 rules and relations of an NRI.

1 HEARING EXAMINER MCNEILL: So you have to
2 prepare one?

3 MR. MCCALISTER: We would do that in the next
4 phase of development if this rezoning plan was
5 approved, yes.

6 MR. SHIPLEY: When you hear when Mr. McCarthy
7 testified and reference was made to the comments
8 of the staff that were on page 8 and page 13 of
9 the staff report?

10 MR. MCCALISTER: Yes, sir.

11 MR. SHIPLEY: In your investigation, did you
12 find that there were any regulated areas or
13 evaluated areas on the site based on the county's
14 green infrastructure plan that you have there?

15 MR. MCCALISTER: Again, we went to the same
16 analysis in which staff did. We believe the
17 information that we are presenting today is more
18 accurate. Reading through the green
19 infrastructure plan, page 1 of the green
20 infrastructure plan defines the regulated areas
21 containing environmentally extensive features such
22 as streams, wetlands, buffers, the 100 year

1 floodplain, steep slopes that are currently
2 regulated under the county land development
3 process. The code sites which were previously
4 given, 24 and 27, also defined what a regulated
5 stream is. Based on the staff --

6 HEARING EXAMINER MCNEILL: Excuse me one
7 second. And that's not different from 25, right?

8 MR. MCCALISTER: No, ma'am.

9 HEARING EXAMINER MCNEILL: Okay.

10 MR. MCCALISTER: The definition that the
11 green infrastructure plan size is consistent with
12 the county code. The difference is that the level
13 of accuracy that was used for the mapping and for
14 the determination of these features. And so our
15 on-site field determinations are more accurate
16 versus what was provided by staff, which they
17 reference of their staff report, was directly from
18 PG Atlas, the website.

19 The PG Atlas information the green
20 infrastructure plan was developed from, the 2000
21 aerial photos. And so -- and that cited directly
22 in dependencies where the data source comes from

1 in the green infrastructure plan. The green
2 infrastructure plan also utilizes digital
3 elevation models and topography. So the
4 difference is that no field inspections were
5 completed as part of the crafting of that plan.
6 They used the state model, which utilize
7 information been derived at the local level to
8 make these determinations.

9 Staff that site that there will be using the
10 2005 aerials. And at that time, they will also be
11 looking at more updated information, which will be
12 included, which will include the steep slopes.
13 Steep slopes were not included in the green
14 infrastructure plan. So that's why we believe
15 that was really the drainage ditch features of
16 topography that were placed based on an aerial
17 photo.

18 A couple citations I found were also that --
19 page 17 of the green infrastructure plan notes
20 that the green infrastructure plan that worked map
21 conceptual in nature and illustrates a generalized
22 pattern for green infrastructure conservation in

1 the county. Paragraph four also illustrates the
2 year 2000 aerial photographs were used in the GIS
3 database is also being updated.

4 Page 35, table 3 suggests also that there is
5 locations appropriate for flexible design
6 standards and it acknowledges all three of the
7 tiers within the county, the rule, developing, and
8 developed. Now acknowledging that this plan was
9 written before the general plan and the tier
10 designation was changed --

11 MR. BROWN: Why is that relevant?

12 MR. MCCALISTER: It's relevant because what
13 the table 3 acknowledges is that the flexibility
14 for development, this property -- the table sites
15 this property is located in the developed tear and
16 that also there is flex ability for regulated
17 environmental features. We believe that there are
18 no regulated environmental features as well as
19 there is flexible design standards to allow for
20 the development of this property.

21 MR. BROWN: So you want it both ways here.
22 There are no regulated development features. But

1 there is flexibility to allow development on the
2 regulated environmental features.

3 MR. MCCALISTER: The green infrastructure
4 plan suggest that the flexible design standards
5 recognize the --

6 MR. BROWN: But the flexible design standards
7 are essentially what I'm saying is really not
8 relevant to your argument because you're saying
9 there are no related features on site.

10 MR. MCCALISTER: Yes, but the flexible design
11 centers acknowledge that those features, they use
12 a broad brush to paint the regulated environmental
13 features. And so it just further concurrence and
14 that our belief is that the features are not
15 regulated.

16 HEARING EXAMINER MCNEILL: Anything in that
17 plan it says development shall follow -- you know,
18 that the plan is paramount and if the plan says
19 there are environmental -- regulated environmental
20 features, then there are -- and there are -- it
21 doesn't say that. That's why you are doing
22 substantially impaired. I'm just making sure.

1 This little sentence in the beginning. Because
2 I'll tell you, I never read that whole book. I
3 will now.

4 MR. MCCALISTER: Yes, we've read it and a lot
5 more detail. In regard -- staff does site as
6 regarding to be environmental features, but then
7 also goes into the evaluation area and why the
8 property is designated because it has, from what
9 they are describing in the plan is related
10 environmental features, evaluation areas
11 containing environmentally sensitive features such
12 as interior force, colonial water bird nesting,
13 site unique habitats.

14 We've done the research. In order for the
15 property to account for interior force, it has to
16 have at least 50 acres of forest as well as be at
17 least 600 feet wide. This property has less than
18 1 percent of interior forest habitat. The
19 property goes from 530 feet, which is evidenced on
20 the rezoning plan, Exhibit 41, with a dimension of
21 529. Moving east through the site along
22 Marlborough Pike, it gets up to about, right about

1 here, a maximum of about 710 feet. And so there
2 is about 100 feet of area, which could be
3 concluded as having forest interior dwelling
4 species, which once again, this is such a small
5 area compared to the overall site.

6 What we also found was that there are no
7 unique habitats. There's no bays, pecosins, there
8 is no designated areas of environmental
9 significance that we can find on any other natural
10 resource plans. So a lot of this information was
11 used to make this determination, but for the
12 evaluations and for the regular areas that we -- I
13 think we believe have more accurate information,
14 which is why those inconsistencies with the
15 information that staff had available to them at
16 the time this report was drafted.

17 MR. SHIPLEY: How about the slopes?

18 MR. MCCALISTER: Yeah. We have an exhibit
19 that illustrates moments again, what staff was
20 looking at for the PG Atlas website.

21 HEARING EXAMINER MCNEILL: It's 37. Got an
22 extra? Thank you. That's good.

1 MR. MCCALISTER: So when we walked to the
2 side and we review these areas, these areas are
3 consistent with the improvements and changes from
4 Pennsylvania Avenue, which is also shown on the
5 1965 aerial. The area starting from, let's say
6 the southeastern portion of the site moving west,
7 the initial hillside there was a haul road, which
8 was taken from Pennsylvania Avenue out to
9 Marlborough Pike. The drainage ditches were cut
10 in to allow the drainage and so it didn't flow
11 across Pennsylvania Avenue.

12 And as you keep going further, we establish a
13 ridgeline there. That area was the previous
14 single-family house that was there as well and
15 that was evidenced in the 1938 aerial. Why steep
16 slopes are important is because based on the
17 definition for a PMA or primary management area,
18 is steep slopes are only regulated within the PMA
19 only if they are adjacent to a 100 year floodplain
20 or regulated streams. And we concur that if it's
21 not a regular stream, then there is also not
22 regulated steep slopes, which would be no PMA on

1 this property.

2 MR. SHIPLEY: And McCalister, did Dubarry
3 prepare the survey of the property and the site
4 plans filed with application?

5 MR. MCCALISTER: We did. We prepared the
6 plans, evaluate the site conditions, and prepared
7 the rezoning plan in front of you today.

8 MR. SHIPLEY: And there is something called
9 the MIO, military installation (inaudible) zone.

10 MR. MCCALISTER: Yeah.

11 MR. SHIPLEY: Did you contribute to the
12 preparation of the rezoning plan that examined the
13 MIOS zone with reference to its impact on this
14 property?

15 MR. MCCALISTER: Yes. As evidenced on
16 Exhibit 41, the bottom left-hand corner of the
17 rezoning plan, there is an overlay of the MIOZ
18 zones. These are based on the joint base Andrews
19 plan, which was adopted by Council. The surface
20 areas are determined based on the flight patterns
21 for Joint Base Andrews. These relate to the
22 height of buildings or building height within the

1 zones. The property falls starting from the
2 western portion within area -- surface area deed.
3 The building height there is limited to 150 feet.
4 That's probably -- I'm approximating here, but say
5 3 percent of the property, maybe even less than
6 that.

7 Moving east, the rest of the property is in
8 service area E. There is a determination is made
9 based on building height. In this case, it allows
10 for greater than 150 feet in the zone.

11 We worked with park and planning staff
12 actually quite a bit in the beginning of the pre-
13 application process to make these determinations.
14 We wanted to make sure very early on that we had
15 their concurrence on these heights. We spoke with
16 the area planner, Mr. John Wouten, and worked
17 through how all the calculations were in an
18 acceptable format for his review and analysis. So
19 I believe we have concurrence with park and
20 planning staff as well, the information that
21 sided, because the information for this exhibit is
22 also listed -- is listed in the rezoning plan. It

1 is also listed in the statement of justification
2 prepared by Shipley Horne, which we helped them
3 prepare regarding this section to make sure it was
4 clear because it is a rather lengthy formula for
5 the surface area E.

6 MR. SHIPLEY: Okay. And there's also a
7 forest impact boundary related to the 65 dB sound
8 levels extending from the south side of Maryland
9 Route 4 to the subject property. Would you
10 describe that?

11 MR. MCCALISTER: So there's actually two
12 noise contours on this map. There is the noise
13 contours from the joint base Andrews military
14 installation overlay zone. Those contours are
15 based on the flight patterns again, that was
16 crafted between Park and planning and the joint
17 base Andrews area plan. Those noise areas are
18 delineated between 70 and 65 dB.

19 The exhibit that's on the rezoning plan,
20 Exhibit 41, there is a detailed inset showing
21 where those noise contours fall within the
22 property. That is completely separate than the

1 noise contours that are shown from Pennsylvania
2 Avenue. County code requires that arterial
3 roadways or greater, which Pennsylvania Avenue is
4 a master plan freeway, that noise contours are
5 slated for the 65 dB limit.

6 In this case, we use the park in planning
7 noise model, which is an Excel spreadsheet. It's
8 based on the number of trips per day. It
9 calculates a soft surface area from the centerline
10 of the right-of-way to which the expected 65 DBA
11 noise contour can be generated. In this case, we
12 used 2017 SHA trip data, populated that to the
13 soft contour, which is 491 feet from the
14 centerline of Pennsylvania Avenue. And you can
15 see that here on the rezoning plan.

16 MR. SHIPLEY: The witness is pointing to what
17 exhibit?

18 MR. MCCALISTER: Exhibit 41, the rezoning
19 plan.

20 MR. SHIPLEY: And you're describing a line
21 that parallels the property through the middle
22 south of Route 4?

1 MR. MCCALISTER: Yeah. So the line parallel
2 south of Route 4 is the part in planning noise
3 model for Pennsylvania Avenue. The MIOZ noise
4 contours run opposite and perpendicular to the
5 Pennsylvania Avenue noise line. The MIOZ lines
6 run north to south through the properties starting
7 from east to west You have the 65 dB limit
8 contour. A little bit further heading to the
9 West, you have the 70 foot decibel limit contour.

10 MR. SHIPLEY: And this needs to be studied
11 further. If the property is actually developed,
12 you would have to do more detail to determine --

13 MR. MCCALISTER: Yes, as the project moves
14 through the development process, it needs to
15 become more refined based on actual phase I and
16 phase II noise studies, typically completed by a
17 sound, noise, and vibration engineer. They will
18 make those determinations for both the existing
19 noise levels as well as the mitigation practices
20 that are used for future development.

21 MR. SHIPLEY: The application process, you're
22 familiar with section 24-121A4. That requires any

1 loss adjacent to a planned roadway, freeway or
2 higher classification plotted with a depth of 300
3 feet.

4 MR. MCCALISTER: Yes, I am aware of that. We
5 show this on our conceptual land use plan, If I
6 can turn to that exhibit.

7 MR. SHIPLEY: And what exhibit number is
8 that?

9 MR. HORNE: 31 is one that is turned in.
10 That's the blowup of 31.

11 MR. SHIPLEY: This is the blowup of Exhibit
12 31?

13 HEARING EXAMINER MCNEILL: Yeah. I'm looking
14 through my glasses thinking perhaps I can use the
15 larger one. So that will be --

16 MR. MCCALISTER: 42?

17 HEARING EXAMINER MCNEILL: Yes.

18 MR. SHIPLEY: Okay. Now based upon your
19 professional experience --

20 MR. MCCALISTER: Do you want me to show
21 everyone where the 300 foot --

22 MR. SHIPLEY: Yes. Right.

1 MR. MCCALISTER: So the 300 foot lot depth is
2 illustrated on Exhibit 31, 300 feet back in the
3 right-of-way on Pennsylvania Avenue. It runs east
4 to west 300 feet back from the right-of-way and
5 parallel with Pennsylvania Avenue. It's important
6 to note that this is a lot depth requirement. Is
7 not a building restriction line. So while the
8 property or properties in future development
9 proposals would have to meet this, whether it be
10 parcels or lots, that means the square footage of
11 the acreage and the areas would have to be that
12 deep.

13 MR. BROWN: In the RR zone? Not in the MST?

14 MR. MCCALESTER: For both zones. I believe
15 it is a subdivision regulation for arterial
16 roadways or greater.

17 HEARING EXAMINER MCNEILL: As far as single-
18 family development in any of those students, or
19 any residential?

20 MR. MCCALESTER: It's a rule for any type of
21 development is a large along arterial roadway or
22 greater.

1 HEARING EXAMINER MCNEIL: Any?

2 MR. MCCALESTER: Yes. So we have properties
3 in other areas where master plan roadways of
4 arterial roadways or greater, in this case a
5 freeway classification is higher than an arterial,
6 would be subject to this requirement. So it's a
7 based on the road classification, not the use.

8 MR. SHIPLEY: Based upon your professional
9 experience as a landscape architect, and being
10 cognizant of the Prints George's County plans and
11 the combined impact of being near the military
12 base and the noise boundary zone extending from
13 Route 4 and subdivision regulations 350 what would
14 that impact be on the layout of the design of an
15 RR zone, single-family?

16 MR. MCCALESTER: So in the current zone RR,
17 the 300 foot lot depth still has to be maintained.
18 The RR zone has a maximum density requirement of
19 2.17 billions per acre. We have estimated at that
20 zone that would generate roughly about 160 lots.
21 The we have done schematic studies to figure out
22 how many lots would actually be practicable when

1 you take into account roads, storm water, school
2 water and other features of the site used for land
3 development to make it -- to the site to improve
4 based on standard construction practices.

5 So we can't go down some of the steep slopes.
6 We have to negate the landforms to allow for roads
7 that are safe. With that, we conclude around 100
8 lots would be practical in this situation. Based
9 on all of the requirements, because of the noise
10 contours from joint Base Andrews, as well as
11 Pennsylvania Avenue, noise mitigation would likely
12 be required.

13 This was typical with other types of
14 development along the Beltway, or master plan
15 freeways which require sound walls to mitigate the
16 sound levels less than 65 decibels. So not only
17 for the lot that would be potentially backing
18 Pennsylvania Avenue, you have the 300 foot lot
19 depth requirement provides for safety, and the
20 health, safety, and welfare of residents so they
21 don't walk out their house and experienced very
22 high noise volume.

1 And you see those throughout when you drive
2 these types of roads. You see the big sound
3 walls. These are very, very expensive. They are
4 also very large infrastructure that has to be
5 improved upon the land in order to make the area
6 usable for residential type developments. Those
7 types of features are consistent with recreational
8 areas and areas that are used for public open
9 space.

10 When we have areas for different types of
11 development as townhouses, condos, other types of
12 higher density types of residential type
13 development we have more flexibility to move the
14 spaces around to allow for medication. This case,
15 the 300 foot lot depth pushes those features back
16 beyond the noise line and so it constrains any
17 potential development on the property.

18 Commercial is not subject to the noise
19 regulations as well as institutional. Again, if
20 there is public open space that is going to be
21 utilized. So if you have or a playground those
22 kind of features would be mitigated to shield the

1 noise for public safety. So the introduction of
2 commercial and institutional uses allows for the
3 use of this property without thereby any detriment
4 to the public's health, safety, and welfare based
5 on County code.

6 Some of the RR zone, based on the
7 infrastructure improvements, there's a very high
8 cost of infrastructure with a very low density.
9 So, our belief is that the reason why this
10 property hasn't been developed is because the
11 density is so low, with the infrastructure, so
12 high, along with the roads and storm water that
13 necessitate to improve upon this property, it
14 hasn't been cost-effective for anyone to develop
15 it. And I believe witness, Mr. Jeff Lowe, also
16 spoke to, he had had very hard problems with
17 developing this property.

18 From our standpoint and looking at the
19 requirements and what the constraints on the
20 property the other types of plan uses allow more
21 flexibility, they reduce the infrastructure costs,
22 it will be consistent with other types of

1 development that are commonly found around master
2 plan roadways, arterial or greater, those consist
3 of higher densities, less infrastructure, and a
4 mix of land uses in order to transition from a
5 higher classification roadway into single-family
6 detached and lower density areas.

7 MR. SHIPLEY: I would like to mark this for
8 identification. It's called consumer plan,
9 conceptual consumer --

10 MR. HORNE: Is that in already?

11 HEARING EXAMINER MCNEIL: I think it is 29.
12 Yeah it is 29.

13 MR. SHIPLEY: I'm showing you a copy of
14 Exhibit number 29 of the conceptual sewer for the
15 property. Could you testify as to how that
16 accommodates the proposed uses?

17 MR. MCCALESTER: Yeah. So Duberry prepared a
18 conceptual sewer study. The area right remains
19 without the sanitary sewer. This is in this case,
20 this area it's a very hard to sewer in this area
21 because of the shallow existing sanitary sewer
22 that is out there, as well as some of the features

1 of where the existing sewer is located.

2 So we evaluate a number of options under this
3 study as part of Duberry to look at how we could
4 make the property serviceable. In this case, we
5 presented three options and there are variations
6 of each of those options. I can go through those
7 options, really just kind of you get the
8 recommendations, which is essentially option 1
9 which allows for sewer to connect at the -- we
10 will say the northern side of the property.

11 It would run either within the right-of-way
12 or on the property of the Caruso property parallel
13 with Pennsylvania Avenue. It would cross under
14 Pennsylvania Avenue and connect to existing
15 sanitary sewer which is located on the Westphalia
16 Town Center Property where there currently is
17 existing sewer on the other side.

18 What this shows is that the property is
19 developable. There is not any infrastructure that
20 prohibits the development of the property. And
21 that it could be adequately served by existing
22 infrastructure that is already in place with

1 minimal utility extensions to serve the property.

2 MR. SHIPLEY: And your opinions are based on
3 the fact that you participated in the preparation
4 of the application, the study of the MXD zone, the
5 study of the MRU study, the setback requirement,
6 the noise requirements, the sewer and water
7 service that this 60 acres could accommodate the
8 uses which are proposed which would be
9 approximately 30,000 square feet of retail
10 shopping, approximately 180 townhouses, a hotel
11 with 220 rooms, general office space of
12 approximately 60,000 square feet and a sanctuary
13 that would accommodate 250 seats?

14 MR. MCCALESTER: Yes, I concur with all of
15 those. There's nothing that would prohibit the
16 development of this property and the uses that you
17 described.

18 MR. SHIPLEY: Based upon your testimony?

19 MR. MCCALESTER: Yes, sir.

20 MR. SHIPLEY: Thank you, sir. That's all the
21 questions I have.

22 MR. BROWN: You told us about the military

1 installation overlay zone, and the restraints on
2 property with regards to the decibel level related
3 to aircraft from Andrews, correct?

4 MR. MCCALESTER: Yes, sir.

5 MR. BROWN: And you also told us about the
6 noise levels for Pennsylvania Avenue and its
7 constraint on development as well, right?

8 MR. MCCALESTER: Yes, sir.

9 MR. BROWN: I know the acronym, but I can't
10 think of the work, is it called AICUZ, are you
11 familiar with that?

12 MR. MCCALESTER: That --

13 MR. BROWN: What does it stand for?

14 MR. MCCALESTER: Yeah, the AICUZ?

15 MR. BROWN: Yeah.

16 MR. MCCALESTER: I --

17 MR. BROWN: Airport something.

18 MR. MCCALESTER: Yeah.

19 MR. BROWN: Anyway, you understand what we're
20 talking about?

21 MR. MCCALESTER: Yes.

22 MR. BROWN: My question is this.

1 MR. HORNE: It's a Jeopardy question.

2 MR. BROWN: Right, exactly.

3 MR. MCCALESTER: It was as an airport so it
4 relates to the same types of features for the --

5 HEARING EXAMINER MCNEIL: Basis for the
6 implementation of the NIO Zone.

7 MR. MCCALESTER: Right, yes.

8 MR. BROWN: And so my question is are there
9 any constraints on this property from AICUZ in
10 that there is a requirement that provides you may
11 not have uses which are people in intensive in the
12 aircraft flyover zones? This property, I would
13 assume, would be within some of those flyover
14 zones because 1, you've already looked at the
15 decibel level. So do you know whether or not this
16 property is impacted by those requirements?

17 MR. MCCALESTER: Yeah. So the last detail on
18 Exhibit 41, which is the rezoning plan identifies
19 the airspace safety zones. In this case, these
20 are zones in which if there was a crash, or if a
21 plane can take off there is adequate space
22 provided within a certain delta from the airport.

1 In this case, the safety zones because the runways
2 were on north to south, the other features, which
3 are the noise and the height are to the east and
4 the west.

5 The proposed property of this application is
6 not within the safety limit for the Joint Base
7 Andrews Plan. And so there is no effect, or no
8 detriment to the health, safety, and public
9 welfare based on what the installation is
10 determined to be within the safety zones. We have
11 seen other projects like that, this is not one of
12 them.

13 HEARING EXAMINER MCNEIL: So the only thing
14 you are impacted by is the height and noise?

15 MR. MCCALESTER: Yes, ma'am. The height and
16 the noise& planes since they are very high up
17 can't have a building height that very far exceeds
18 FAA airspace, or military airspace, as well as the
19 noise is generated from planes taking off. Which
20 is a 360 degree sound, if you think of that coming
21 from a point versus a linear direction of a plane
22 taking off along the runway.

1 HEARING EXAMINER MCNEIL: So --

2 MR. HORNE: You should note the hazards that
3 were here.

4 MR. MCCALESTER: So I do have the airspace
5 requirements in front of me, which is map 10 which
6 is the Joint Base Andrews aware facility, noise
7 and accident potential zones, and it is consistent
8 with the delineation shown on the Exhibit 41
9 rezoning plan.

10 MR. HORNE: And what's that book called?

11 MR. MCCALESTER: This is the Subregion 6F
12 approved Master plan and sectional map amendment.

13 MR. HORNE: And what page are you reading
14 from?

15 MR. MCCALESTER: This is page 60. And it is
16 map 10. And that illustrates the clear zones,
17 the accident potential zones, as well as the
18 noise -- 65 DBA noise contour.

19 MR. HORNE: Does that impact the subject
20 property? In what way does that --

21 MR. MCCALESTER: The safety zones don't
22 impact the subject property. The noise zones and

1 the building height restrictions do.

2 MR. HORNE: All right. Okay.

3 HEARING EXAMINER MCNEIL: Can I piggyback on
4 that just one question because I had one earlier.
5 So the noise contours, it looks like a lot of the
6 property would fall within the noise contours of
7 the MOIZ but what do you have to do to mitigate
8 for that noise? Because it is running -- the
9 noise from Pennsylvania Avenue, as you said
10 earlier, it is running essentially parallel.

11 MR. MCCALESTER: Yes.

12 HEARING EXAMINER MCNEIL: This noise is
13 running --

14 MR. BROWN: Perpendicular.

15 HEARING EXAMINER MCNEIL: Right. It is
16 taking up most of the site from what I am looking
17 at, so what do you have to do to mitigate the
18 MOIZ?

19 MR. MCCALESTER: Right. So there is a small
20 area, probably about a third of the site, that
21 goes from the 70 DBA to the 65. At the time of
22 future development plans when the noise engineer

1 has evaluated both the existing noise contours,
2 the Phase 2 is to submit a mitigation plan to
3 mitigate the noise. And typically, these are
4 associated with increased building standards. The
5 building construction, the windows, the doors, the
6 level of insulation, and if double pane or triple
7 pane windows need to be used to lessen the sound,
8 interior noise elevations are medicated to 45
9 decibels. Exterior noise levels are medicated to
10 65.

11 HEARING EXAMINER MCNEIL: And that was the
12 part for your institutional uses? You moved that
13 part -- you moved that map when it looks like --

14 MR. MCCALESTER: Yes, ma'am.

15 HEARING EXAMINER MCNEIL: Okay.

16 MR. MCCALESTER: Because the building would
17 serve as the mitigation of that noise.

18 HEARING EXAMINER MCNEIL: And then the noise
19 contour from Pennsylvania Avenue is not on that --
20 yes it is on that.

21 MR. MCCALESTER: It is only Exhibit 41 which
22 is the also a map.

1 HEARING EXAMINER MCNEIL: What do you have to
2 do within that boundary?

3 MR. MCCALESTER: Again, you would still have
4 to mitigate that noise level. The different --

5 HEARING EXAMINER MCNEIL: You may have to do
6 a wall or something like --

7 MR. MCCALESTER: It may require a wall. The
8 difference is that based on these uses we have
9 more flexibility for the commercial uses because
10 those don't have to be mitigated because there is
11 no open public space. You are walking from your
12 car to the building. The buildings will be
13 mitigated but the county code does not require
14 those open spaces to be mitigated. So there is
15 far less infrastructure that has to be developed,
16 and the flexibility uses requires far less
17 mitigation.

18 HEARING EXAMINER MCNEIL: So you're not going
19 to have any housing within that line?

20 HEARING EXAMINER MCNEIL: Yes, let's call it
21 a setback. Within the setback from forward the
22 noise setback, yes.

1 MR. MCCALESTER: You would. You could. We
2 just have to mitigate it. And that's where it is
3 a number of things. We could mitigate it through
4 landforms by building a berm. That may be a wall.
5 It could be a parking structure in front of there
6 to separate the uses. So we typically design
7 these in a number of ways and it offers
8 flexibility. But yes, you do have to still
9 mitigate those.

10 HEARING EXAMINER MCNEIL: And finally, for
11 me, and a less standard test, if the staff are
12 correct about their analysis of regulated
13 features, wouldn't that apply if you developed it
14 as RR?

15 MR. MCCALESTER: If --

16 HEARING EXAMINER MCNEIL: If their thought
17 that only 10 acres are developable?

18 MR. MCCALESTER: I think I follow your logic;
19 I want to make sure I understand it. So in this
20 case, staff is saying they concur, or recommend
21 approval because of the environment features in
22 the increased density. In either case, the

1 regulated features, we still believe, are not
2 regulated. And so you could --

3 HEARING EXAMINER MCNEIL: No, I mean if they
4 were right.

5 MR. MCCALESTER: Okay.

6 HEARING EXAMINER MCNEIL: If they were right
7 how much could you develop as houses under their
8 analysis?

9 MR. MCCALESTER: It would be far less based
10 on --

11 HEARING EXAMINER MCNEIL: Then even what you
12 said earlier?

13 MR. MCCALESTER: Yeah. So we equate that to
14 about 100 or 120 lots. In this case with the 1,
15 2, 3, 4, 5, 6 streams, each one of those would
16 have stream buffers. I believe the minimum stream
17 buffer, don't quote me on this, I believe it is 75
18 feet. So you are looking at 150 feet in each
19 direction times 6. That really starts to absorb
20 the developable area. The only thing that is
21 allowed in those areas is road crossings, or storm
22 drain outfalls. But we couldn't place lots, we

1 couldn't place houses. And we can't improve the
2 site to go into those environmental areas. So
3 based on that, if this was all regulated the use
4 of the property would be diminished, just doing
5 some quick math, just based on an approximate
6 percentage, almost 75 percent because you really
7 would be only left with about 15 percent on the
8 ends, which is at Wood Yard and Marlborough Pike
9 which does not have any regulated features. And
10 then all the way to the west, which is one usable
11 lot, that lot is about 8 acres. So we are at
12 about maybe 15 to 18 acres total of 60.

13 HEARING EXAMINER MCNEIL: So your answer to
14 that question is bringing up -- what do you mean
15 by the six streams would be regulated features if
16 there aren't any?

17 MR. BROWN: Well, you had asked him --

18 HEARING EXAMINER MCNEIL: I know. I just
19 want to make that clear because if I am reading
20 this record I will go what?

21 MR. MCCALESTER: No. You had asked me they
22 were regulated. If the features shown on the

1 rezoning plan and all of the information on the PG
2 Atlas as well as all the documents and plans from
3 the green infrastructure plan, it would severely
4 diminish the develop ability of the site.

5 HEARING EXAMINER MCNEIL: And the things
6 they -- just to repeat again, things they consider
7 streams you consider -- I love it -- ephemeral
8 depressions?

9 MR. MCCALESTER: Yes. Yes the drainage ditch
10 is an ephemeral depression.

11 HEARING EXAMINER MCNEIL: You learn things
12 all your life. Thank you all.

13 MR. MCCALESTER: And ephemeral ditch is
14 actually cited in the environmental technical
15 manual that they are nonregulated. And again, we
16 concur based on the information that is outlined
17 from green infrastructure plan how the data was
18 developed, that no real field inspections had
19 taken place to, I guess, is to classify those
20 streams and this is typically done when you're
21 doing a broad-based plan for an entire county.
22 The plan cites a number of acres of the entire

1 county that they went through. They also utilize
2 state mapping information so the data, again, it's
3 just more accurate that we are presenting today.
4 That would be confirmed when a natural resource
5 inventory plan is prepared and submitted at a
6 future date.

7 HEARING EXAMINER MCNEIL: And just in case
8 this question came up. You -- if they were doing
9 that today, and you all knew you wanted to develop
10 the property, you would have an opportunity to go
11 to some type of hearing on the plan and counter
12 what they are saying about your site, correct?

13 MR. MCCALESTER: I believe through the public
14 input process, yes.

15 HEARING EXAMINER MCNEIL: But the last one
16 was 2010?

17 MR. MCCALESTER: I believe so, yes. The plan
18 was updated.

19 MR. MCCALESTER: So at that time, according
20 to Mr. Ludwig, they just didn't have any plan to
21 develop the site at that point?

22 MR. MCCALESTER: Yeah.

1 HEARING EXAMINER MCNEIL: Correct, Mr.
2 Lugwick?

3 MR. LUGWICK: Yes, ma'am.

4 HEARING EXAMINER MCNEIL: All right. Thank
5 you.

6 MR. SHIPLEY: Thank you.

7 HEARING EXAMINER MCNEIL: Can we have five
8 minutes before your last one? Do you want me to
9 break?

10 MR. HORNE: Oh no. Did you say? Did you
11 want? Did I want five minutes, or --

12 HEARING EXAMINER MCNEIL: I'm taking five
13 minutes. But if you wanted 15 I was just
14 asking --

15 MR. SHIPLEY: I know, we only have two
16 witnesses left and Mike McCarthy will be very
17 short and so after you come back we can --

18 HEARING EXAMINER MCNEIL: Thank you.

19 MR. SHIPLEY: I wouldn't want to object to
20 that.

21 (A brief recess was taken.)

22 MR. SHIPLEY: Call Mr. Mike Lenhart.

1 HEARING EXAMINER MCNEIL: Mr. Lenhart, do you
2 swear or affirm under the penalties of perjury
3 that the testimony shall give will be the truth,
4 and nothing but the truth?

5 MR. LENHART: I do.

6 MR. SHIPLEY: And you have been qualified
7 on -- I see you have only qualified about 14 other
8 counties in Maryland, what happened to Prince
9 George's?

10 MR. LENHART: I'm still trying to work my way
11 through the others.

12 MR. SHIPLEY: Okay. We submit Mr. Lenhart
13 with his qualifications as a traffic expert.

14 HEARING EXAMINER MCNEIL: Okay.

15 MR. SHIPLEY: And what is your position
16 with -- oh, have you been sworn?

17 HEARING EXAMINER MCNEIL: He has been sworn.
18 And he's been accepted as an expert in the area of
19 transportation plan is that what you wanted him
20 for today?

21 MR. SHIPLEY: Yes.

22 HEARING EXAMINER MCNEIL: Okay.

1 MR. SHIPLEY: Okay. Can you describe to the
2 CAT your -- well, we don't have to do that. Did
3 you prepare the traffic studies for the
4 development of this property?

5 MR. LENHART: Yes, I did.

6 MR. SHIPLEY: And that's Exhibit 1, Traffic
7 Report?

8 MR. LENHART: Yes.

9 MR. SHIPLEY: Are you familiar with prior
10 approvals concerning the property as they pertain
11 to the subject site?

12 MR. LENHART: Yes.

13 MR. SHIPLEY: Particularly with reference to
14 the trip counts for the project?

15 MR. LENHART: Yes.

16 MR. SHIPLEY: Did you prepare the prior
17 traffic which for the project as part of the past
18 entitlement application?

19 MR. LENHART: The past entitlement
20 application?

21 MR. SHIPLEY: Did you prepare the prior
22 traffic report for the project as part of past

1 entitlement applications?

2 UNIDENTIFIED SPEAKER: No. I think that's
3 Dwight.

4 MR. SHIPLEY: Okay.

5 MR. LENHART: Yes.

6 MR. SHIPLEY: Okay. Did you prepare the
7 traffic study in this case?

8 MR. LENHART: Yes, yes. We did prepare that
9 traffic impact study for this case. In the study
10 was dated June 20, 2019 which was revised August
11 27, 2019 as part of this case. The revision was
12 to address the state highway administration
13 comments, and in that traffic impact study we
14 conducted a scoping agreement with the Park and
15 planning staff, the transportation staff, where we
16 obtained an approved scope and agreement. We
17 conducted traffic counts at the study
18 intersections, added approved background
19 development as required, in the scoping agreement,
20 and then the site trips for the assumed uses, for
21 the purposes of this rezoning application, we
22 conducted levels of service analyses at all study

1 intersections, and that was submitted for review
2 and ultimately staff reviewed and agreed with our
3 findings of that report.

4 MR. SHIPLEY: And you're familiar with the
5 technical staff's report?

6 MR. LENHART: Yes.

7 MR. SHIPLEY: Which indicates that there are
8 no traffic problems with respect to this
9 application?

10 MR. LENHART: That's correct.

11 MR. SHIPLEY: And you are familiar with the
12 application and the traffic that would be
13 generated by the development proposed thereon?

14 MR. LENHART: Yes, that's correct.

15 MR. SHIPLEY: And do you know of any proposed
16 changes to the Pennsylvania Avenue, Route 4 in the
17 vicinity of the proposed development?

18 MR. LENHART: The Route 4 at Maryland 223
19 interchange, which is the Wood Yard interchange,
20 is proposed to be reconstructed through tax
21 increment financing, or TIF, by the Westphalia
22 Development. They are going to redevelop the

1 interchange. They are going to realign a couple
2 of the interchange ramps, and rebuild those ramps.
3 Our traffic study, at the time we prepared the
4 study, we were not certain of the status of that
5 TIF. We understood it had been approved, but to
6 be conservative, we prepared the study based on
7 the existing configuration of the interchange, and
8 also based on the proposed reconstruction of the
9 interchange through that TIF. That way we had it
10 with and without the changes to ensure that the
11 network would operate adequately in both
12 scenarios, and in fact, we found that it does.

13 MR. SHIPLEY: Okay. And that was all part of
14 your agreement with the staff?

15 MR. LENHART: Correct.

16 MR. SHIPLEY: Okay. And in your opinion
17 would the roadway network be adequate to safely
18 handle the traffic generated by the project?

19 MR. LENHART: Yes, it will.

20 MR. SHIPLEY: Okay. And in your opinion does
21 the subject request satisfy all transportation
22 requirements set forth in the zoning ordinance

1 concerning the approval of the zoning map request
2 for the MST zone?

3 MR. LENHART: Yes, it will. And staff agreed
4 in the report.

5 MR. SHIPLEY: That's all the questions we
6 have.

7 HEARING EXAMINER MCNEIL: Mr. Lenhart, on
8 page 15 of the staff report this is about the
9 study, the totally agreed with your study. In
10 fact, the it looks as though two intersections did
11 better if this were approved. But they know that
12 number four -- I don't know how it would be that
13 exhibit.

14 MR. LENHART: This, I think, is the same.

15 HEARING EXAMINER MCNEIL: Okay. To promote
16 the effective and optimum use --

17 HEARING EXAMINER MCNEIL: -- of transit. Do
18 you agree with this? They are saying that -- it
19 says to promote the effective and optimum use of
20 transit and reduce automobile use by locating the
21 mix of residential and nonresidential uses in
22 proximity to one another, and to transit

1 facilitate walking, bicycling, and transit use.
2 You are saying that you all don't need this goal
3 of the Master plan because transit can't mean --
4 so I just wonder what you think about that
5 comment.

6 MR. LENHART: No, I disagree with that.
7 Transit doesn't just mean potential rail and bus
8 transit. There is park-and-ride facilities and
9 other things that could serve as transit type
10 uses. And there are other MST zoned properties
11 even adjacent to this use right around the corner
12 of the 223 and Marlborough Pike intersection. So
13 I don't agree with their position.

14 MR. BROWN: I guess what they are saying
15 though is the location of the subject property is
16 not in proximity to other mixed-use developments.
17 So they seem to be using the term development as
18 the existing development as opposed to MST rezoned
19 but then they come right back at the end of that
20 paragraph and say that the northern and eastern
21 zones are mixed use zones so it is contradictory.
22 I agree with what you are saying, it is right next

1 to MST zoned property.

2 MR. LENHART: And I do know that the Hope
3 Village project which is the east side of Wood
4 Yard Road south side of Marlborough Pike, it's on
5 the opposite quadrant of that signalized
6 intersection is L AC.

7 MR. BROWN: No, down there.

8 MR. LENHART: Below Marlborough Pike. It is
9 owned by a church and it's going through a CSP and
10 preliminary plan process.

11 HEARING EXAMINER MCNEIL: Is that the one we
12 discussed? Is it the Antioch?

13 MR. HORNE: Yes. Yes.

14 MR. LENHART: Yes, and it is owned MST.

15 HEARING EXAMINER MCNEIL: Do you all know --
16 and Francis is probably the one for this, that is
17 the MST they were talking about to the east?

18 MR. HORNE: Yes.

19 HEARING EXAMINER MCNEIL: See, I didn't know
20 all of that was approved. So what other MST is
21 there. So they did discuss it as being adjacent
22 to --

1 MR. HORNE: Well, Westphalia is East also but
2 for some reason --

3 MR. SHIPLEY: Westphalia is to the north.

4 MR. LENHART: It's to the north. Northwest.

5 HEARING EXAMINER MCNEIL: Okay. So that's
6 it.

7 MR. LENHART: All right, thank you.

8 HEARING EXAMINER MCNEIL: Thank you. Okay,
9 Mr. Siberholz, do you swear or affirm under the
10 penalties of perjury that the testimony shall give
11 will be the truth, and nothing but the truth?

12 MR. SIBERHOLZ: Yes, I do.

13 MR. LUGWICK: can I add something an answer
14 Mr. Brown's question to Ryan? It's ACRUZ is air
15 installation compatible use zone.

16 HEARING EXAMINER MCNEIL: Very good.

17 MR. BROWN: Thank you.

18 MR. LUGWICK: That concludes my testimony.

19 HEARING EXAMINER MCNEIL: Okay. So the end
20 of it was owned? It doesn't exist, MIO zone?

21 MR. BROWN: No, it still exists.

22 HEARING EXAMINER MCNEIL: Not the zone, the

1 zone is the MIO zone.

2 MR. BROWN: Well it's not zone, but it's
3 regulations for the military.

4 Landscape engineer: That's the hazard zone
5 that extends off the runway.

6 MR. SHIPLEY: Mr. Siberholz, would you state
7 your full name and address, please?

8 MR. SIBERHOLZ: It's Francis Silver. My
9 business address is -- I'm employed by Shipley &
10 Horn, PA. And it's a 1101 Mercantile Lane, Suite
11 240, Largo Maryland.

12 MR. SHIPLEY: Of the plans that are before
13 you do have any extra copies of the one that you
14 put your answers on in the staff report? Yes,
15 thank you because that's already in the record,
16 isn't it?

17 HEARING EXAMINER MCNEIL: Yes, Exhibit 27.

18 MR. SHIPLEY: Mr. Siberholz, you're familiar
19 with the property that is the subject of this
20 application?

21 MR. SIBERHOLZ: Yes sir, I am.

22 MR. SHIPLEY: Would you briefly describe it?

1 MR. SIBERHOLZ: It's been described by
2 previous -- Mr. McCalister as well as Mr. Lugwick
3 as a slightly over 60 acre property that fronts --
4 has dual frontage. To the north of the property
5 is Maryland Route 4, Pennsylvania Avenue. And to
6 the south is old Marlborough Pike. It actually
7 has tried frontage, it also has at the end of this
8 property fronts on Wood Yard Road, which is
9 Marilyn Route 223.

10 You don't need me to go into topographic
11 and --

12 MR. SHIPLEY: No.

13 MR. SIBERHOLZ: Do you want me to describe
14 what surrounds it?

15 MR. SHIPLEY: Well, in a minute, just in
16 reference to the subject property, it's currently
17 zoned RR?

18 MR. SIBERHOLZ: That's correct. It's RR.

19 MR. SHIPLEY: Do you know when this property
20 became part of the Maryland Washington regional
21 district?

22 MR. SIBERHOLZ: That was in 1961.

1 MR. SHIPLEY: What was the zone that was
2 applied to it in 1961?

3 MR. SIBERHOLZ: Accurately, it was April 24,
4 1961 it was part of the annexation -- a Prince
5 George's County annexation as chapter 484. And
6 I'm sorry, what was your question, sir?

7 MR. SHIPLEY: My question is what zone was it
8 classified?

9 MR. SIBERHOLZ: It was placed in an RR, or
10 will residential zone and that was those annex
11 properties as sort of a holding category, and as
12 time progressed where it was deemed appropriate
13 other properties that were annexed, they were
14 rezoned as --

15 MR. SHIPLEY: As far as you know, this
16 property has never been subject to prior
17 reasoning?

18 MR. SIBERHOLZ: No, sir. It's been RR -- as
19 I said it began in 1961. After that we had the
20 1993 approved Master plan sectional map amendment
21 of subregion 6 and after that it's been -- the
22 2013 subregion 6 Master plan sectional map

1 amendment. And essentially, even the staff in
2 their report acknowledges that with few exceptions
3 there was really no -- of select properties around
4 the county there is few changes to future land use
5 pattern in subregion 6. So this, as well as many
6 of the RR zoned properties are just -- weren't
7 really looked at.

8 MR. SHIPLEY: Now you defined the
9 neighborhood of the subject property in your
10 statement of justification, which is Exhibit
11 number 3. Would you tell us what that
12 neighborhood is? Do you have the exhibit?

13 MR. SIBERHOLZ: I do not. There are copies,
14 I think it is the top sheet. The neighborhood --

15 MR. HORNE: It's 12-A.

16 MR. SIBERHOLZ: The neighborhood
17 immediately -- Melwood Road and -- I can't show it
18 here because it doesn't extend far. The
19 neighborhood, contrary to the staff's neighborhood
20 which they made the boundary on Pennsylvania
21 Avenue. That's the northern boundary of the
22 neighborhood. And they don't see, I guess, they

1 don't see the influence of the Westphalia Town
2 Center one the property. But looking at it from a
3 realistic perspective, the neighborhood extends up
4 into Westphalia Town Center and it goes up Melwood
5 Road, Central Park Drive, and Spring Drive. And
6 then this sort of define the northern boundary.
7 To the west, it picks up and Dower House road then
8 goes Dower House Road to McCormick Drive and
9 extending across Wood Yard Road to the south.
10 There is a large major Pepco right-of-way to the
11 east of the property and follow that right-of-way
12 to the intersect at the beginning. And the reason
13 for that boundary is that the neighborhood is more
14 than just the immediate boundary. And this is a
15 dilemma that I have had in the 13 years that I
16 have been presenting before the zoning hearing
17 examiner, is that whatever neighborhood I picked,
18 it seems to be the wrong one because in prior
19 cases I have typed neighborhood and I've suggested
20 it's broad. That is not the reason I chose that
21 neighborhood. It's just that the -- because of
22 the nature of this use it will have a symbiotic

1 relationship with not only the MST that is
2 currently proposed for development immediately
3 across Wood Yard Road diagonally to the east. The
4 LAC, when that develops it's also it's very tight
5 relationship with its greater surroundings. And
6 to the west, I mean I would like to expand a
7 little if I may. To the west, I had it coming
8 down to Dower House Road. But what's immediately
9 to the west of Dower House Road we have Joint Base
10 Andrews, we have the Pearl Harbor gate that is
11 releasing and traffic and citizens who need
12 services. And from a perspective of that they can
13 jump right onto Route 4, or come down Old
14 Marlborough Pike immediately into the property as
15 a developed use that provides the services.

16 HEARING EXAMINER MCNEIL: Mr. Siberholz, if I
17 may, for purposes of any decision that I write you
18 staffs neighborhood.

19 MR. SIBERHOLZ: Yes, ma'am.

20 HEARING EXAMINER MCNEIL: So as I'm looking
21 at your -- I'll be explaining in your -- okay so
22 you did write what you think it should be.

1 MR. SIBERHOLZ: And maybe just a little
2 background information. What we have here is
3 based on the staff report we received; I expanded
4 my statement of justification still stands. I
5 expanded on that to address comments by the staff
6 who seem to be aggressive in looking for reasons
7 to support their case. But you should do but --

8 MR. SHIPLEY: In your opinion doesn't
9 change -- her ultimate opinion wouldn't change
10 whether it is your neighborhood or their
11 neighborhood?

12 MR. SIBERHOLZ: No, sir.

13 MR. SHIPLEY: I would just like to point out
14 a matter of case law. Of course the definition of
15 the neighborhood is generally associated with
16 changing the zoning of one Euclidean
17 classification to another. Courts have generally
18 ruled that, as staff suggests, intersections and
19 major roadway are a logical demarcation lines to
20 define neighborhoods. And the principal
21 difference between Mr. Siberholz's definition and
22 the staff's definition if they restricted the

1 neighborhood to the south side of Route 4 and the
2 west side of Wood Yard Road, and he expands it out
3 further.

4 The courts have ruled over the years that
5 even if you take their neighborhood that doesn't
6 mean you have to ignore things that influence that
7 area or that intersection. If I have made that
8 abundantly clear.

9 HEARING EXAMINER MCNEIL: That is clear. And
10 also a change or mistake isn't the test with this
11 is zone is it?

12 MR. SHIPLEY: Yes. So I don't want to get
13 hung up on that issue. Mr. silver, there is a --
14 number one, and you addressed this in Exhibit 3.
15 The is critical criteria for approval of a map
16 amendment set forth in Section 27, 213; "a. The
17 criteria for approval of an MST zone." And then
18 it says the "District Council shall only place
19 land in the X zone is, at least, one of the
20 following two criteria are met." Which you
21 describe succinctly, how this application needs
22 one of those tests?

1 MR. SIBERHOLZ: We've -- so the criteria 1 is
2 the entire tract is located within the vicinity of
3 either a major intersection or a major
4 interchange, being the intersection or interchange
5 in which at least two of the streets forming an
6 intersection are classified if the master plan is
7 arterial or higher classified street reasonably
8 expected to be in place in the foreseeable future.
9 That was part one of that criteria. The second
10 part is, or a major transit stop or station
11 reasonably expected to be placed within the
12 foreseeable future. Well, as we heard, and as was
13 familiar with the property in this location, heard
14 the testimony of Mr. Michael Lenhart, that the
15 property that test. It's in the interchange of
16 Maryland Route 4, Pennsylvania Avenue and Wood
17 Yard Road -- Maryland 223. Pennsylvania Avenue is
18 classified in the master plan of transportation as
19 a freeway, which is above arterial. And Wood Yard
20 Road is a -- classified as an arterial road.

21 MR. SHIPLEY: And the subsequent provisions
22 of the ordinance generally require a rezoning

1 application to conform to the purposes of the zone
2 which are generally the 15 purposes that you
3 address in your statement of justification and the
4 staff addresses in its staff report?

5 MR. SIBERHOLZ: Yes, sir.

6 MR. SHIPLEY: And then the second or third
7 phase that it needs to conform to the specific
8 requirements of an MST zone, which are set forth
9 in about 10 items contained in 27.542(a) of the
10 zoning ordinance. Would you care to respond to
11 this?

12 MR. SIBERHOLZ: Would you like me to respond
13 to those?

14 MR. SHIPLEY: Yes.

15 MR. SIBERHOLZ: On page 28 of the
16 embellished --

17 HEARING EXAMINER MCNEIL: That would be
18 Exhibit 27.

19 MR. SIBERHOLZ: 27, thank you.

20 MR. SHIPLEY: This is Exhibit 27?

21 HEARING EXAMINER MCNEIL: Yes.

22 MR. SIBERHOLZ: Okay. On page 28 below the

1 conclusion I address that the application is in
2 keeping with the general purposes of the zoning
3 ordinance at section 27102 as follows. The first
4 is to protect and promote the health, safety,
5 morals, comfort, convenience, and welfare of the
6 present and future inhabitants of the county.
7 Approval of this MST application request for the
8 subject property will allow the planning and
9 construction of a complementary mix of uses which
10 will better respond to both positive and negative
11 impacts of the subject property's location at the
12 end of an interchange of a high-volume, high
13 classification roadway and it benefits the
14 efficient use of public investment both in -- as
15 Mr. McCalister had addressed the cost of public
16 improvements to water and sewer. And the subject
17 property provide both neighborhood and passersby
18 can be of additional commercial activity and the
19 proximity of a high classification roadway in the
20 vicinity. And as Mr. Ludwick explained, the use
21 of a hotel and restaurant facility in close
22 location to Andrews Air Force Base with its

1 employees and contractors provide a vital service
2 to them.

3 The second standard is implement the general
4 plan, area master plan and functional master plan.
5 The purpose is addressed in the zoning ordinance
6 by the criteria MX T to be found in the section
7 27--213 a 2, the extent to which the approval of
8 the MST zone at the subject property does not
9 substantially impair the general plan, Master plan
10 are functional master plan. And I address that in
11 this document.

12 MR. SHIPLEY: And they disagreed with you on
13 that?

14 MR. SIBERHOLZ: Yes, they do.

15 MR. SHIPLEY: They do agree with you that you
16 meet one of the essential criteria of 27-213.

17 MR. SIBERHOLZ: That is correct. They do
18 agree with the proximity -- it meets criteria
19 number 1.

20 MR. SHIPLEY: And you only have to be one of
21 the two?

22 MR. SIBERHOLZ: Yes, sir.

1 MR. SHIPLEY: Okay. Now, so we will
2 hopefully be out of here before dark. You wrote a
3 statement of justification in which you address
4 the neighborhood, then the general criteria.

5 MR. SIBERHOLZ: Yes, sir.

6 MR. SHIPLEY: 15 of them?

7 MR. SIBERHOLZ: Yes, sir.

8 MR. SHIPLEY: And the specific criteria for
9 this request, which is 10. Unless there are any
10 questions I want to go --

11 MR. BROWN: No, we don't have any.

12 MR. SHIPLEY: Okay. So let's just
13 concentrate on your exhibit number 27, which is
14 basically the staff report, as amended by you, and
15 the staff report is repeated verbatim and black
16 print, and your responses are printed in the
17 blueprint?

18 MR. SIBERHOLZ: Yes, sir, that is correct.

19 MR. SHIPLEY: Okay. Will you run the hearing
20 examiner and the Council briefly through your
21 responses to the staff report's recommendations or
22 disapprovals.

1 HEARING EXAMINER MCNEIL: And just before you
2 do, this is really for Mr. Horn who's probably
3 going to give me the answer at the end. So the
4 statement of justification is signed by you
5 though, correct? It was July 2, 2019?

6 MR. HORNE: Yes.

7 HEARING EXAMINER MCNEIL: But Mr. Siberholz,
8 you are saying this is your document?

9 MR. SIBERHOLZ: Yes.

10 HEARING EXAMINER MCNEIL: So we can rely upon
11 it. In this document, and Mr. Siberholz's
12 document you reference exhibits different from our
13 exhibit numbers. Would you be able to either
14 leave the record open so we can make it clear?
15 What happens is when you gave it to staff at some
16 point things separated. So I'm not sure what you
17 call Exhibit 3 -- I know it is not our Exhibit 3.
18 But I am hoping we have it in this record.

19 MR. HORNE: Okay.

20 HEARING EXAMINER MCNEIL: So you understand
21 Mr. Horn? Okay, Mr. Siberholz.

22 MR. HORNE: If the staff report is not in the

1 record I don't think there is a record.

2 HEARING EXAMINER MCNEIL: The staff report is
3 but I don't know where we separated. I don't know
4 why it can't all come in the same order to us.
5 Okay.

6 MR. SIBERHOLZ: Can you clarify for my
7 purpose what you're going to go through the --

8 MR. SHIPLEY: Pardon me?

9 MR. SIBERHOLZ: Can you clarify for me; you
10 said go through the staff report and the responses
11 to it -- there is -- I expanded the staff report
12 by probably more than double in size with my
13 responses. So I address the -- so you just want
14 me to walk through?

15 MR. SHIPLEY: Yes, just go through the
16 very -- as concisely, without of course rereading
17 everything in it. But I think we all understand
18 the Exhibit 57 is the staff report in black print,
19 and your responses in blueprint.

20 MR. SIBERHOLZ: That's correct.

21 MR. SHIPLEY: Okay. And just, I think, a way
22 to try to economize the time a little bit. Do you

1 feel comfortable in going forward in answering
2 that question?

3 MR. SIBERHOLZ: Certainly. So to begin with
4 I relate the neighborhood description, I described
5 that the staffs neighborhood is tighter and I
6 provide the boundaries of the neighborhood and
7 then I give an explanation on the nearby -- the
8 reason for those boundaries.

9 We agree with the staff statement of what the
10 request of this application use. It is to rezone
11 the subject site of 60.02 acres from RR to MST and
12 then the staff in addressing the general plan and
13 the master plan requirements sort of duplicate
14 their words. They -- in the beginning, which is
15 typical of the planning offices staff reports is
16 they do that. They give a general plan, an area
17 master plan, and then they go into the
18 environmental discussions. But all those items
19 are discussed in further on in the discussion
20 relating to these criteria for an MST zone.

21 So if I may start there with have I have
22 already explained that the -- on two criteria the

1 subject property, the first one the proximity to a
2 major intersection or interchange of an arterial
3 or higher rated roadway and it meets that test.

4 In the discussion of the second -- okay
5 that's the staff then goes into explaining again
6 why the property -- they don't believe the
7 property meets the test of -- the general plan or
8 the master plan and the purpose is addressed in
9 the zoning ordinance by approvable of an MST found
10 in 27.213 2, the extent of which the approval of
11 the MST zone at the subject property does not
12 substantially impair the general plan for the
13 functional master plan. The approval of the MX T-
14 zone at this property -- the subject property will
15 allow for planning and construction of
16 complementary mix of uses which will better
17 respond to both positive and the impacts of the
18 property's location. I previously stated that,
19 and it will better address the high volume of
20 traffic and the negative impacts of the traffic
21 both to -- as well as the negative impacts of its
22 proximity to Joint Base Andrews because of the

1 noise.

2 It's not practical or probably cost
3 effective, if I may say that to continue -- in
4 history has proven this property has been RR zoned
5 since 1961 and there is no activity. It's not a
6 proper zone for that use for that property because
7 of the impact from the adjoining uses on the
8 property as well as the cost to develop it.

9 The applicant is confident that the location
10 of residential commercial retail, and office
11 institutional uses provide opportunity for a
12 sustainable community structure that strengthens
13 the sense of community identity, and provides for
14 a broad range of development opportunities.

15 The rezoning of the subject property will
16 facilitate opportunities for future development
17 that will provide an effective transition between
18 Pennsylvania Avenue. So the mixed-use development
19 on the subject site provides a buffer to the
20 neighboring residential uses on the south side of
21 Old Marlborough Pike from the property.

22 Essentially they will be building the sound

1 barrier that Mr. Ryan discussed in his testimony.
2 And the walls of the commercial buildings,
3 institutional buildings, and townhouses, will be
4 that sound barrier as well as the extensive
5 landscaping that they are going to be required to
6 put on the property as part of the CSP and the DSP
7 review and development process.

8 HEARING EXAMINER MCNEIL: Did you review --
9 not to throw you off, and it may be in here. But
10 did you review the MST approval for the church
11 that is nearby?

12 MR. SIBERHOLZ: No.

13 HEARING EXAMINER MCNEIL: Does anybody know
14 that case number because what interchanges did
15 they rely on? The same ones?

16 MR. HORNE: Well, we can bring Mr. Ludwick
17 back up. You know he was part of that.

18 HEARING EXAMINER MCNEIL: Well actually it is
19 better if you could just -- I can leave it open.
20 I can look it up. But if you knew the case
21 numbers.

22 MR. LUGWICK: They were rezoned as part of --

1 HEARING EXAMINER MCNEIL: The sub?

2 MR. LUGWICK: The subregion. Okay. So
3 they --

4 HEARING EXAMINER MCNEIL: So they were MST.
5 Okay.

6 MR. HORNE: But I think Mike Lenhart also was
7 the engineer on that. And even with that, I think
8 something may have been submitted. They had to
9 consider it, but I will check.

10 HEARING EXAMINER MCNEIL: Thank you. Okay.
11 I'm sorry. Go ahead.

12 MR. SIBERHOLZ: --

13 HEARING EXAMINER MCNEIL: What page you to?

14 MR. SIBERHOLZ: 19.

15 HEARING EXAMINER MCNEIL: 19. Okay.

16 MR. SIBERHOLZ: And to continue the proposed
17 use will enhance the economic status of the
18 county. The rezoning of the property to MST will
19 facilitate development that could provide
20 residential, commercial, and an institutional, mix
21 of uses which would generate tax revenue as well
22 as jobs for County residents.

1 In response to the standard 2 of the section
2 would you like me to read the standard? I provide
3 a response at the rezoning of the subject property
4 will facilitate the concentration of development
5 and mix of uses along general plan corridor
6 will -- which will reduce sprawl. The general
7 plan corridor which was a carryover from the 2002
8 general plan and is discussed in the planned 2035,
9 extends along Pennsylvania Avenue showed its
10 boundaries extending to here. So the property is
11 influenced as part of the general plan corridor.
12 With over 61,000 average daily traffic count going
13 up and down that corridor every single day it's
14 undoubtedly a general plan corridor.

15 It will reduce sprawl. The transition to
16 Pennsylvania Avenue along the -- as I said, will
17 reduce impact. There are -- sidewalks will be
18 designed to facilitate access around and through
19 the property and will connect with a buddy
20 residential community and the approval of the
21 subject application will be keeping with the
22 purpose of MST because it will allow increased mix

1 of medium density residential, and retail
2 commercial uses, in a compact, moderately dense
3 configuration.

4 HEARING EXAMINER MCNEIL: Probably it will
5 but to the other residential community? When you
6 have a crosswalk at the cross the street, right?

7 MR. SIBERHOLZ: Yes.

8 HEARING EXAMINER MCNEIL: Does that side have
9 sidewalks?

10 MR. SIBERHOLZ: No, I don't believe there are
11 any sidewalks there. And as far as transportation
12 the Prince George's transportation bus?

13 MR. SHIPLEY: No bus.

14 MR. SIBERHOLZ: No bus. Has stops along
15 here. So standard 3 of that section is conserve
16 the value of land and buildings by maximizing
17 public, and private development potential inherent
18 in the location of the zone. And it continues,
19 and the location of the property is in keeping
20 with its purpose of the MST zone because the
21 property is located in the vicinity of a major
22 interchange and will allow for return of public

1 investment and major infrastructure component by
2 allowing it to maximize its development potential.

3 So standard 4. If I could summarize these?

4 MR. SHIPLEY: Yeah.

5 MR. SIBERHOLZ: Okay. So the summary would
6 be that the development of this property is
7 efficient, practical use, a valuable land
8 resource. Every piece of land in every piece of
9 land in Prince George's County is a resource that
10 should be utilized to the best public benefit. In
11 this case, I find it difficult to rationalize how
12 property that has this location such a high impact
13 area to that property is recommended for a single-
14 family development which are by the nature of the
15 development and what you would be able to put on
16 there, they would be very large lots, large
17 houses, which nobody will want to have because of
18 its proximity.

19 This provides an effective use in the master
20 plan -- the general plan stating that -- or the
21 staff refers to the general plan statement that
22 MST development should be only be in metro areas

1 or metro transit areas, regional transit areas,
2 correction. It's sort of a guideline, it's not an
3 exclusive -- they may only be fair. It's just
4 that is the goal and one of the reasons that is
5 the goal is to help support ridership one the 91
6 metro stations -- well how many there are in
7 Prince George's County, but there are 91 in the
8 network.

9 This site is an efficient -- can be well-
10 designed, compatible use with not only the single-
11 family residential and townhouse community to the
12 south as well as diagonally to the -- off of the
13 property to the southwest, we see there is an
14 industrial zone. All the industrial begins here,
15 and extends towards Dower House Road where across
16 Dower House, of course, is Joint Base Andrews.

17 It's designed to not only interface with --
18 provide a buffer to the residential development to
19 the south across Old Marlborough Pike, it will
20 have a symbiotic relationship with the Westphalia
21 Town Center. As Mr. Ludwick explained Westphalia
22 town center is designed as a power center, and

1 this provides a little more convenient uses. So
2 that's in response to the section 27.542, the
3 purposes of the MST zone.

4 And my testimony in its entirety is
5 represented in this report. It discusses
6 transportation and the staff respond to that --
7 well, actually Michael Lenhart responded to that,
8 that there is no issue with transportation,
9 particularly considering the scheduled
10 improvements to both of the interchange
11 immediately adjoining the subject property at
12 Pennsylvania Avenue, and Wood Yard Road. But as
13 well as the upgrades to Dower House and
14 Pennsylvania Avenue to a full interchange. So
15 that will further alleviate any impacts of the
16 high volume of traffic that is visiting that
17 corridor every day.

18 MR. SHIPLEY: Okay. Now also Mr. McCarthy
19 and Mr. McCalister addressed the issue of the
20 military institution overlay and the staff didn't
21 seem to even comment on that. But you also
22 address that in your statement of justification.

1 MR. SIBERHOLZ: That's correct.

2 MR. SHIPLEY: And you examine that document
3 and found compliance?

4 MR. SIBERHOLZ: Yes. And Mr. McCalister
5 assisted me with that.

6 MR. SHIPLEY: All right. Okay.

7 MR. SIBERHOLZ: In calculating the numbers
8 that are represented in the statement of
9 justification.

10 MR. SHIPLEY: And in reference to the
11 technical staff report on page 11 which is
12 technical staff report as Exhibit 16 they have a
13 statement in here that says -- that refer to the
14 sector plan of Westphalia. No, I'm sorry, the
15 2014 general plan which is quote plan 2035
16 indicates that medium to high density housing,
17 mixed-use, a commercial development in this area
18 of Prince George's County is to be located within
19 the Westphalia local town center north of Maryland
20 5, from the subject property, and other regional
21 transit districts and local centers, and nowhere
22 else.

1 That phrase, and nowhere else, that's not
2 really a part of the 2014 plan, is it?

3 MR. SIBERHOLZ: No. I think that's an
4 inferred statement.

5 MR. SHIPLEY: And doesn't it fly in the face
6 of the general requirement of 27.213 which says
7 you have to meet one of two criteria; one relates
8 to transit districts. And the other relates to
9 being on major freeways.

10 MR. SIBERHOLZ: Yes, most definitely.

11 MR. SHIPLEY: And this is totally
12 inconsistent with that? It can't be read in the
13 context of that zoning requirement.

14 MR. SIBERHOLZ: That's correct, sir.

15 MR. SHIPLEY: And that you and the staff
16 agree that we meet that criteria?

17 MR. SIBERHOLZ: Yes.

18 MR. SHIPLEY: And just as a land planner, it
19 would be your opinion that the development of this
20 property in the RR zone which has pertain to them
21 for 60 years would be an appropriate land use?

22 MR. SIBERHOLZ: Both history as well as the

1 discussions as presented today and in prior
2 testimony it would be.

3 MR. SHIPLEY: And to the immediate west of
4 this property is CO and --

5 MR. SIBERHOLZ: Immediately to the west is a
6 CO and --

7 MR. SHIPLEY: And immediately to the north is
8 the Westphalia town center

9 MR. SIBERHOLZ: Yes, sir.

10 MR. SHIPLEY: Immediately to the south is RT,
11 and a special exception for adult living and
12 immediately to the southeast is the so-called
13 rural farms MST zoned property?

14 MR. SIBERHOLZ: Yes, sir.

15 MR. SHIPLEY: So this is a strange looking
16 doughnut without a hole in the doughnut or
17 something. A stripe in the doughnut.

18 MR. SIBERHOLZ: It's an éclair. This is the
19 center.

20 MR. SHIPLEY: I declare that I have exhausted
21 the subject and the listeners.

22 HEARING EXAMINER MCNEIL: Questions?

1 MR. BROWN: No questions.

2 MR. SHIPLEY: He agrees with me.

3 HEARING EXAMINER MCNEIL: He doesn't have a
4 question about anything, and maybe Mr. Ludwick
5 will be tickled by this, but at least this
6 application answered a question for me. Because I
7 thought the Royal Farm was going to be near the
8 existing Antioch. And I was like that's terrible
9 intersection. That's near you. I was like what
10 the --

11 MR. SHIPLEY: No.

12 (Crosstalk)

13 HEARING EXAMINER MCNEIL: They are. Oh,
14 sorry. Really?

15 MR. HORNE: One's right there on Wells, right
16 across from the --

17 HEARING EXAMINER MCNEIL: From the auction
18 house?

19 MR. HORNE: The auction house, yeah.

20 MR. SHIPLEY: Right at the corner, and Jay
21 Addison absolutely.

22 HEARING EXAMINER MCNEIL: Oh well. Strike

1 from the record. Go ahead. So thank you, Mr.
2 Siberholz.

3 MR. SIBERHOLZ: Thank you. It's always a
4 pleasure.

5 MR. HORNE: They may have questions.

6 HEARING EXAMINER MCNEIL: No, no. We're
7 good.

8 MR. BROWN: We didn't have any.

9 HEARING EXAMINER MCNEIL: Do you have other
10 witnesses?

11 MR. SHIPLEY: No, that's it.

12 HEARING EXAMINER MCNEIL: Mr. Ludwick, can I
13 get one more thing from you that I meant to ask?
14 And I think you addressed it but I'm just going to
15 one more time. And that's on page 10 of the staff
16 report, if anybody has it to show it to you.
17 Number two, the staff -- it's right here.

18 I have to go from memory, but they sort of
19 implied that it would detract -- oh no, it's on
20 page 16. I'm sorry. Number 9. If you were to
21 approve this here it's sort of says here it's sort
22 of detracts from any other economic development,

1 like across to Westphalia. And I know you pointed
2 out that traffic is coming home this way, and this
3 is not a power center, et cetera. But is -- but
4 in your experience is it even true that -- and I'm
5 thinking of myself as a shopper, but I want to
6 hear the expert answer. Do you find that all
7 types of retail -- if you have one type it makes
8 the other go under? Or do you find that we
9 shoppers tend to just go to all of them?

10 MR. LUGWICK: I think the shoppers -- I find
11 that the shoppers will go to all of it. They
12 really want to have a variety of choices. And I
13 think the other thing that happens is a power
14 center is big, just by nature, it's 4 or 500,000
15 feet. So the amount of pre-leasing that one has
16 to do to make it financeable is profound. Whereas
17 when you get these neighborhood convenience
18 centers, you only need a couple of small users to
19 go ahead and make the whole project financeable.

20 So it really is, one is a large scale, and
21 when they're a power center the key will be trying
22 to get a grocery anchor. Generally speaking,

1 that's the kickoff. Because then the grocery
2 anchor becomes a destination. In this instance, I
3 don't think we impact Westphalia town center at
4 all because they are quite a ways down the road.

5 And my experience has been, like I said with
6 the Inglewood restaurant park, is that that
7 actually stimulated the development of the
8 Boulevard at Cap Center with all the restaurants
9 that they had there. Because it begins to prove
10 the markets in there. That is always a challenge
11 is that the first one in demonstrate that the
12 market is there. Once everyone knows that there's
13 a market there then they can begin to -- kind of
14 like lemmings almost.

15 You know if -- and I used the example
16 earlier. If a McDonald's goes on a street corner
17 somewhere everybody else wants to be on the other
18 corners because obviously McDonald's knows what
19 they're doing. And that same holds true with a
20 project like this where it will demonstrate that a
21 market is there for this type of convenience. I
22 think the real challenge as they have with the

1 Westphalia town center is that big retail is
2 undergoing some really dramatic changes. The
3 traditional brick-and-mortar stores are having a
4 harder time competing against the online
5 retailers, and so there is a lot of these bigger
6 stores that today they're just not sure exactly
7 what they want to be tomorrow. They are kind
8 of -- the kind of believe they are not going to be
9 what they are today. But they are not sure
10 exactly what they are going to be. And one of
11 the, I think, best argument is yes, we can buy
12 things online. Convenience things online. But
13 there still that shopping experience where I go
14 out to the store, and my wife goes out to the
15 store, my daughters really go out to the stores
16 because they want to be part of that shopping
17 experience. So their issues on developing that
18 site are completely different from this. And this
19 will have a complementary effect.

20 HEARING EXAMINER MCNEIL: And you think it
21 will have a negative impact on the Royal Farm that
22 has been approved, or those other small uses, I

1 mentioned, like Tucker and whatever that little
2 restaurant is near the church to the west?

3 MR. LUGWICK: No, I -- so with gas stations
4 and convenience stores, which is really what they
5 are. It's a convenience store that sell gas. If
6 you think about almost any major highway that was
7 developed over the last 50 years. Like one goes
8 down Branch Avenue, for example, inside the
9 Beltway. You will see intersections where there
10 is a gas station on this corner, and a gas station
11 on that corner, the gas station on this corner.
12 And so they are catching different traffic going
13 at different times of the day.

14 HEARING EXAMINER MCNEIL: I would agree with
15 you.

16 MR. LUGWICK: And so -- right. Right appear
17 at 725, and 301 as we know they -- and it does
18 have a tendency to do, and bring value to the
19 consumer. If there is one gas station, like,
20 what -- we're not mentioning any particular gas
21 stations, but there is one in the 202 area, and
22 then there is nothing else for 10 miles. Their

1 prices have a tendency to be higher because they
2 have no competition. When you have gas
3 stations --

4 HEARING EXAMINER MCNEIL: I used to live
5 there; I know exactly where you're talking about.
6 I never went there. Oh sorry, gas station. Go
7 ahead.

8 MR. LUGWICK: But when you get a couple of
9 gas stations together they end up -- the price has
10 a tendency to come down because they all want to
11 compete for the business, and the consumer ends up
12 winning at the end of the day. As far as
13 restaurants go, a restaurant like Tucker's is
14 going to get a certain clientele. They are going
15 to get a lunch crowd, maybe get a breakfast crowd.
16 But the restaurants we are talking about are
17 quality restaurants. Sit down -- not sure white
18 tablecloth is the right definition. That's
19 actually a definition of a more high -- a much
20 higher end. And when one is going through getting
21 restaurants, what happens is first you have to get
22 a couple of the, what they call the fast casual

1 restaurants, you know, I think the Italian
2 restaurant, Olive Garden, and Richie's Station is
3 an example of a fast casual. And all the
4 restaurants talk, and so the key is how do they do
5 production wise? How do they do with volume? Are
6 they a \$3 million a year, or are they a 4 million,
7 or a \$5 million a year restaurant? And once it
8 hits a certain threshold then all of a sudden
9 everybody wants to be there to give them a choice.
10 Right? So that you maybe have a nice place that
11 has fish or a nice place that has state, or a nice
12 place that has Italian, or a nice place, you know,
13 or Cheesecake Factory. I mean so I don't think
14 that they impact like a Tucker's because they are
15 serving a different clientele. That dinner crowd
16 is going to probably account for 70, 75 percent of
17 all of their revenue. There's lunches, -- lunch
18 is important because that 25 percent ends up kind
19 of being the profit margin in the operations. But
20 I don't see them causing any challenges or
21 problems with Royal Farms. And then next to it we
22 have an offer in on the property already. They

1 want to do a medical -- a 15,000 foot medical
2 office building and a Dunkin Donuts.

3 HEARING EXAMINER MCNEIL: That's the LAT?

4 MR. LUGWICK: On -- note on the Antioch site.

5 They want to do a 15,000 foot medical office
6 building because that's another whole. Children's
7 National Medical Center was the office building
8 that's adjacent -- its own CO up to the property
9 line on the west side; 9440 is that old Dutch
10 colonial looking multi-story office building.
11 Children's National Medical Center has been in
12 there a long time, and they are moving out. So
13 what we try and do is we try and figure out where
14 is the hole, and let's fill it. So one of the
15 holes is medical. And the developer that has the
16 offer on the property next to the Royal Farms
17 believes that there is a strong market there for a
18 medical. And so do a medical building, do a
19 Dunkin donuts, and almost nothing stops people
20 from getting to a Dunkin Donuts. They can see the
21 sign and they are going to go and have a good
22 latte and --

1 HEARING EXAMINER MCNEIL: Okay. Thank you so
2 much. Last thing, I promise. Anybody who knows.
3 Do you know what the matrix -- the decision matrix
4 and the rewrite is putting on this property? It
5 just stays RR? Do you all know?

6 MR. HORNE: Yes, it stays RR.

7 HEARING EXAMINER MCNEIL: Okay. All right.
8 Anything further?

9 MR. HORNE: No, I don't think so.

10 HEARING EXAMINER MCNEIL: So we left the
11 record open before. If you could, tell me what
12 the corresponding exhibit number is now to what
13 you filed earlier. And I think Mr. Brown still
14 has one more thing that you might not have given
15 us yet. We got the CSP number. Yeah, any
16 portions of the green infrastructure plan has to--

17 MR. HORNE: The green infrastructure plan
18 that's still out there.

19 MR. BROWN: And the conservation plan.

20 HEARING EXAMINER MCNEIL: Yes, the resource
21 conservation plan.

22 MR. SHIPLEY: Madam Examiner, I haven't had

1 the chance to check with information services.

2 It's not a printed copy so it's --

3 HEARING EXAMINER MCNEIL: they are all
4 online.

5 UNIDENTIFIED SPEAKER: If you would allow me,
6 I would download them and --

7 HEARING EXAMINER MCNEIL: That would be good.
8 Print them and then give it to us.

9 MR. LUGWICK: Yes. And we can have them here
10 by --

11 HEARING EXAMINER MCNEIL: Yeah, don't send me
12 an email back linking to the site.

13 MR. LUGWICK: Yes, the information here
14 actually answers your previous questions about
15 where the problems -- it's a little bit more
16 explicit in your questions about and I will
17 provide that all.

18 MR. HORNE: We would do that expeditiously,
19 certainly we know your time frame that you have
20 for this --

21 HEARING EXAMINER MCNEIL: Yeah, we have to
22 hurry.

1 MR. HORNE: But because of the zoning rewrite
2 in order to even maintain it if you decide -- or
3 if the Council decides to rezone it MST we have to
4 have a CSP in to keep that MST zoning as well. So
5 time is still of the essence. So I'm surprised
6 that's what -- you will probably be getting a lot
7 more rezoning applications here in the near
8 future.

9 HEARING EXAMINER MCNEIL: I think it's going
10 to be a lot less because I have to hold them if we
11 don't issue a decision by say April. So if you
12 know anybody with any out there they better
13 already be -- have a staff report essentially.

14 MR. HORNE: Well, there are some of the
15 system.

16 HEARING EXAMINER MCNEIL: With the staff
17 report?

18 MR. HORNE: No, not with a staff report.

19 HEARING EXAMINER MCNEIL: Well, that's not my
20 call.

21 MR. HORNE: Yeah.

22 HEARING EXAMINER MCNEIL: We'll deal with

1 today's issues. It's really about today. Not
2 tomorrow.

3 MR. SHIPLEY: Thank you very much.

4 MR. HORNE: Thank you so much.

5 (The recording concluded.)

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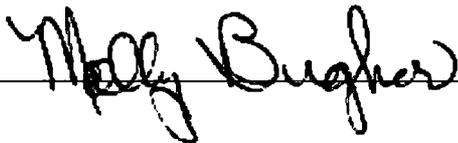
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Transcript of Hearing
Conducted on January 15, 2020

A			
a4	absorb	107:13, 134:3	activity
113:22	131:19	accurately	30:17, 155:18,
ability	abundantly	60:5, 66:4,	162:5
47:5, 104:16,	152:8	147:3	actual
133:4, 186:6	abutting	acknowledge	113:15
able	67:15, 90:1	105:11	actually
91:18, 158:13,	ac	acknowledges	6:3, 6:10,
167:15	143:6	104:6, 104:13,	12:19, 18:16,
about	accelerate	148:2	20:20, 23:7,
6:5, 6:11,	35:21	acknowledging	25:7, 26:1,
13:10, 15:17,	accept	104:8	31:14, 31:21,
20:6, 27:1,	64:15	acquired	33:12, 38:7,
27:3, 40:5,	acceptable	19:17	46:13, 49:9,
40:10, 40:11,	41:20, 110:18	acre	52:7, 58:15,
40:13, 40:19,	accepted	116:19, 146:3	65:20, 79:7,
40:22, 43:15,	9:12, 9:14,	acreage	80:12, 100:20,
44:1, 44:13,	9:18, 11:2,	115:11	110:12, 111:11,
46:21, 51:1,	11:18, 19:5,	acres	113:11, 116:22,
54:7, 56:14,	27:13, 29:21,	6:17, 20:6,	133:14, 146:6,
57:9, 61:17,	62:12, 62:13,	23:1, 23:2,	163:18, 169:7,
65:22, 66:11,	63:5, 92:12,	23:19, 23:22,	176:7, 179:19,
71:12, 72:13,	92:17, 93:8,	33:1, 40:5,	183:14
74:7, 75:19,	136:18	40:6, 40:7,	add
81:15, 84:6,	access	40:22, 48:19,	144:13
87:11, 95:8,	49:5, 49:15,	71:17, 71:18,	added
96:14, 97:9,	74:13, 77:17,	71:20, 87:1,	138:18
106:22, 107:1,	165:18	87:2, 95:2,	addison
107:2, 107:17,	accessible	106:16, 122:7,	173:21
116:20, 122:22,	48:21	130:17, 132:11,	addition
123:5, 123:20,	accident	132:12, 133:22,	54:21
127:20, 130:12,	126:7, 126:17	160:11	additional
131:14, 132:7,	accommodate	acronym	28:11, 155:18
132:11, 132:12,	122:7, 122:13	123:9	additionally
134:12, 136:7,	accommodates	across	11:11, 62:10
141:8, 142:4,	120:16	26:1, 31:7,	address
143:17, 154:9,	according	31:9, 43:17,	14:8, 14:10,
173:4, 178:6,	35:5, 37:12,	44:12, 45:17,	43:10, 56:8,
179:5, 179:16,	45:15, 69:10,	47:14, 51:13,	56:10, 88:17,
183:14, 183:16,	70:21, 76:2,	86:10, 108:11,	93:3, 138:12,
185:1	134:19	149:9, 150:3,	145:7, 145:9,
above	account	168:15, 168:19,	151:5, 154:3,
44:8, 153:19	106:15, 117:1,	173:16, 175:1	155:1, 156:10,
absent	180:16	acruz	157:3, 159:13,
48:2	accuracy	144:14	161:19, 169:22
absolutely	102:13	active	addressed
173:21	accurate	46:1	65:2, 152:14,
	71:5, 87:11,	activities	155:15, 156:5,
	101:18, 102:15,	96:20, 99:21	161:8, 169:19,

Transcript of Hearing
Conducted on January 15, 2020

<p>174:14 addresses 154:4 addressing 160:12 adequate 124:21, 140:17 adequately 121:21, 140:11 adjacent 7:16, 7:17, 28:12, 31:18, 69:16, 108:19, 114:1, 142:11, 143:21, 181:8 adjoining 162:7, 169:11 administration 138:12 administrative 9:15, 16:15, 16:17, 59:11 adopt 13:4 adopted 109:19 adult 46:1, 172:11 aerial 73:11, 74:1, 77:7, 77:10, 98:2, 99:16, 99:18, 99:20, 102:21, 103:16, 104:2, 108:5, 108:15 aerials 96:14, 103:10 affidavits 13:11 affiliations 15:18 affirm 14:3, 56:13, 82:14, 136:2, 144:9 after 6:9, 20:2,</p>	<p>67:5, 98:12, 135:17, 147:19, 147:21 again 6:1, 8:3, 41:3, 51:5, 71:11, 81:22, 84:4, 99:9, 99:13, 101:15, 107:4, 107:19, 111:15, 118:19, 129:3, 133:6, 133:15, 134:2, 161:5 against 177:4 agencies 16:15, 59:12, 61:10, 62:14, 63:5, 68:8 aggressive 151:6 ago 18:12, 19:17, 27:1, 27:4, 30:20, 30:22, 37:11 agree 60:15, 64:11, 71:22, 141:18, 142:13, 142:22, 156:15, 156:18, 160:9, 171:16, 178:14 agreed 38:21, 139:2, 141:3, 141:9 agreement 138:14, 138:16, 138:19, 140:14 agrees 11:7, 173:2 agricultural 27:6 ahead 68:22, 70:13, 79:21, 164:11, 174:1, 175:19, 179:7</p>	<p>aicuz 123:10, 123:14, 124:9 air 48:6, 144:14, 155:22 aircraft 123:3, 124:12 airport 123:17, 124:3, 124:22 airspace 124:19, 125:18, 126:4 alexandria 53:14 all 9:20, 12:12, 12:15, 17:22, 19:12, 21:8, 25:3, 26:4, 28:1, 30:5, 31:14, 36:4, 37:7, 38:6, 48:6, 48:12, 50:2, 50:3, 51:1, 54:1, 55:15, 55:22, 63:11, 66:1, 66:22, 67:6, 71:3, 74:22, 77:4, 78:12, 78:15, 80:13, 80:15, 80:20, 81:11, 81:13, 83:3, 83:13, 83:15, 84:4, 84:18, 85:6, 86:2, 86:19, 88:6, 88:14, 88:22, 90:7, 90:8, 91:9, 95:11, 99:1, 104:6, 110:17, 117:9, 122:14, 122:20, 127:2, 132:3, 132:10, 133:1, 133:2,</p>	<p>133:12, 134:9, 135:4, 138:22, 140:13, 140:21, 141:5, 142:2, 143:15, 143:20, 144:7, 159:4, 159:17, 160:18, 168:14, 170:6, 175:6, 175:9, 175:11, 176:4, 176:8, 179:10, 180:3, 180:8, 180:17, 182:5, 182:7, 183:3, 183:17 allentown 53:12 alleviate 169:15 alleys 47:1 allow 104:19, 105:1, 108:10, 117:6, 118:14, 119:20, 155:8, 161:15, 165:22, 166:22, 183:5 allowed 131:21 allowing 167:2 allows 110:9, 119:2, 121:9 almost 47:1, 48:2, 53:8, 84:19, 86:15, 88:12, 132:6, 176:14, 178:6, 181:19 alone 89:22 along 67:15, 68:2, 80:21, 80:22, 95:4, 97:16, 106:21, 115:21,</p>
---	--	--	---

Transcript of Hearing
Conducted on January 15, 2020

<p>117:14, 119:12, 125:22, 165:5, 165:9, 165:16, 166:14 already 20:21, 22:14, 26:12, 39:5, 49:10, 49:13, 50:16, 72:3, 92:11, 120:10, 121:22, 124:14, 145:15, 160:22, 180:22, 184:13 also 6:9, 12:17, 15:4, 21:18, 23:3, 23:17, 24:21, 27:10, 31:11, 32:20, 33:3, 33:14, 33:19, 44:7, 45:2, 86:19, 88:7, 96:7, 96:10, 97:22, 98:9, 100:16, 102:4, 103:2, 103:10, 103:18, 104:1, 104:3, 104:4, 104:16, 106:7, 107:6, 108:4, 108:21, 110:22, 111:1, 111:6, 118:4, 119:15, 123:5, 128:22, 134:1, 140:8, 144:1, 146:7, 150:4, 152:10, 164:6, 169:18, 169:21 although 6:17 always 174:3, 176:10 amazon 22:9 amended 157:14 amendment 5:6, 126:12,</p>	<p>147:20, 148:1, 152:16 american 78:21 amount 99:4, 175:15 analyses 138:22 analysis 7:6, 40:4, 101:16, 110:18, 130:12, 131:8 analysts 10:7 analyze 11:4, 11:20, 12:3 analyzed 10:18, 58:12 analyzing 10:12, 10:21 anchor 175:22, 176:2 anchored 45:6, 45:8, 45:10 andrew's 53:12 andrews 35:2, 53:19, 54:4, 55:5, 55:14, 109:18, 109:21, 111:13, 111:17, 117:10, 123:3, 125:7, 126:6, 150:10, 155:22, 161:22, 168:16 anna 6:3, 9:1 annex 147:10 annexation 147:4, 147:5 annexed 147:13 annual 46:9, 66:19</p>	<p>another 6:11, 36:6, 47:16, 90:1, 97:11, 141:22, 151:17, 181:6 answer 132:13, 144:13, 158:3, 175:6 answered 173:6 answering 160:1 answers 86:21, 145:14, 183:14 anthony 25:7 antioch 23:22, 24:4, 26:22, 28:18, 31:9, 51:5, 143:12, 173:8, 181:4 any 11:15, 12:13, 13:10, 16:10, 16:15, 16:16, 17:4, 23:4, 46:20, 59:11, 60:21, 61:14, 64:18, 66:17, 67:1, 67:2, 72:6, 77:8, 82:19, 84:12, 86:11, 90:19, 92:21, 94:4, 98:18, 100:1, 101:12, 107:9, 113:22, 115:18, 115:19, 115:20, 116:1, 118:16, 119:3, 121:19, 124:9, 129:19, 132:9, 132:16, 134:20, 139:15, 145:13, 150:17, 157:9, 157:11, 166:11, 169:15,</p>	<p>174:8, 174:22, 178:6, 178:20, 180:20, 182:15, 184:12, 186:9 anybody 163:13, 174:16, 182:2, 184:12 anyone 5:12, 60:6, 119:14 anything 13:11, 35:2, 48:7, 68:11, 68:18, 77:20, 90:20, 105:16, 173:4, 182:8 anyway 74:16, 123:19 appear 98:6, 178:16 appears 68:1, 74:16, 87:11 applebee's 37:11 applicant 6:3, 7:4, 9:1, 11:6, 162:9 application 6:19, 9:2, 13:13, 93:15, 109:4, 110:13, 113:21, 122:4, 125:5, 137:18, 137:20, 138:21, 139:9, 139:12, 145:20, 152:21, 154:1, 155:1, 155:7, 160:10, 165:21, 173:6 applications 138:1, 184:7 applied 147:2 apply 66:12, 130:13 appropriate 104:5, 147:12,</p>
--	---	---	---

Transcript of Hearing
Conducted on January 15, 2020

<p>171:21 approvable 161:9 approval 32:19, 130:21, 141:1, 152:15, 152:17, 155:7, 156:7, 161:10, 161:13, 163:10, 165:20 approvals 137:10 approve 174:21 approved 50:3, 69:11, 87:3, 101:5, 126:12, 138:16, 138:18, 140:5, 141:11, 143:20, 147:20, 177:22 approximate 132:5 approximately 20:11, 22:22, 23:2, 40:1, 71:17, 71:20, 87:1, 95:2, 95:7, 122:9, 122:10, 122:12 approximating 110:4 april 147:3, 184:11 architect 9:17, 92:10, 92:15, 92:17, 93:9, 100:8, 100:9, 116:9 area 6:9, 11:10, 24:2, 30:17, 33:4, 33:16, 33:19, 40:18, 40:20, 55:4, 62:22, 64:16, 69:18, 72:12, 74:14, 78:22,</p>	<p>84:16, 87:9, 87:10, 98:22, 106:7, 107:2, 107:5, 108:5, 108:13, 108:17, 110:2, 110:8, 110:16, 111:5, 111:17, 112:9, 118:5, 120:18, 120:20, 127:20, 131:20, 136:18, 152:7, 156:4, 160:16, 167:13, 170:17, 178:21 areas 33:14, 69:13, 69:14, 69:15, 71:13, 71:18, 72:15, 72:21, 74:7, 74:10, 75:10, 79:3, 84:8, 84:9, 84:14, 85:3, 87:2, 88:13, 95:14, 96:17, 96:18, 99:8, 101:12, 101:13, 101:20, 106:10, 107:8, 107:12, 108:2, 109:20, 111:17, 115:11, 116:3, 118:8, 118:10, 120:6, 131:21, 132:2, 167:22, 168:1 aren't 70:17, 132:16 argument 39:2, 105:8, 177:11 armoring 68:2, 80:21 army 10:14, 59:5, 61:3, 61:12 around 9:6, 15:14, 19:20, 20:14,</p>	<p>26:16, 52:4, 55:15, 94:22, 117:7, 118:14, 120:1, 142:11, 148:3, 165:18 arterial 112:2, 115:15, 115:21, 116:4, 116:5, 120:2, 153:7, 153:19, 153:20, 161:2 arthur 3:3, 5:15 artist 25:16 asked 31:3, 38:17, 38:18, 76:1, 82:2, 84:6, 132:17, 132:21 asking 63:3, 89:18, 92:12, 135:14 aspect 47:12 aspects 96:5 asphalt 98:14 assertion 10:6 assets 19:16 assigned 30:21 assisted 28:16, 170:5 associate 16:12 associated 9:21, 11:5, 69:16, 98:7, 128:4, 151:15 associates 10:19, 57:9, 58:19 assorted 55:21</p>	<p>assume 19:21, 75:15, 75:16, 79:18, 124:13 assumed 138:20 assuming 12:12, 68:4, 75:11, 79:13, 85:21 atlas 70:22, 72:16, 76:2, 76:3, 76:5, 76:22, 77:6, 78:5, 78:16, 79:4, 79:9, 79:13, 102:18, 102:19, 107:20, 133:2 attached 65:6 attachment 85:13 attachments 73:10 attended 15:3, 15:4 attest 79:11 attract 39:15, 55:22 auction 173:17, 173:19 audio 186:7 august 138:10 automatically 41:21 automobile 141:20 availability 7:10 available 69:14, 70:22, 76:3, 76:22, 79:12, 107:15 avenue 8:2, 10:2,</p>
---	--	--	---

Transcript of Hearing
Conducted on January 15, 2020

<p>26:2, 29:11, 30:21, 31:8, 34:2, 42:7, 46:18, 48:7, 48:19, 48:22, 49:5, 49:21, 50:10, 86:11, 86:12, 95:5, 95:13, 97:13, 98:8, 98:15, 99:12, 99:16, 99:17, 108:4, 108:8, 108:11, 112:2, 112:3, 112:14, 113:3, 113:5, 115:3, 115:5, 117:11, 117:18, 121:13, 121:14, 123:6, 127:9, 128:19, 139:16, 146:5, 148:21, 153:16, 153:17, 162:18, 165:9, 165:16, 169:12, 169:14, 178:8 average 165:12 aware 114:4, 126:6 away 90:7</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>b 71:2, 76:4 back 26:19, 47:7, 49:21, 72:22, 77:9, 77:15, 77:20, 84:4, 89:9, 90:12, 90:13, 97:12, 115:2, 115:4, 118:15, 135:17, 142:19, 163:17, 183:12 background 6:4, 57:7,</p>	<p>57:16, 66:8, 66:11, 138:18, 151:2 backing 117:17 bah 2:14 bald 62:22 bank 25:3, 48:1, 95:15 bankruptcy 16:19, 18:12, 18:15 banks 66:20, 67:7 baptist 23:21, 23:22, 24:4, 26:22, 28:18, 31:9 barbershop 34:9 barrier 163:1, 163:4 barry 8:14 base 36:10, 48:6, 53:20, 55:9, 55:17, 109:18, 109:21, 111:13, 111:17, 116:12, 117:10, 125:6, 126:6, 150:9, 155:22, 161:22, 168:16 based 7:8, 10:6, 19:2, 61:2, 61:3, 69:14, 70:16, 71:6, 77:21, 94:7, 95:17, 96:5, 96:16, 96:19, 100:10, 100:20, 100:21, 101:13, 102:5, 103:16,</p>	<p>108:16, 109:18, 109:20, 110:9, 111:15, 112:8, 113:15, 114:18, 116:7, 116:8, 117:4, 117:8, 119:4, 119:6, 122:2, 122:18, 125:9, 129:8, 131:9, 132:3, 132:5, 133:16, 140:6, 140:8, 151:3 basic 22:13 basically 29:7, 57:4, 61:1, 77:13, 85:1, 94:1, 95:4, 96:11, 157:14 basing 89:19, 89:22 basis 66:19, 124:5 bay 57:12, 57:13, 58:19, 61:19, 100:6, 100:11 bays 107:7 beach 25:1, 53:9 became 15:2, 146:20 because 6:22, 7:7, 17:12, 18:17, 26:7, 31:20, 36:13, 37:2, 38:11, 38:17, 38:19, 42:9, 44:14, 44:17, 46:18, 47:4, 49:4, 52:3, 53:5, 54:9, 54:20, 60:6, 70:11, 70:18,</p>	<p>86:2, 88:18, 89:22, 104:12, 105:8, 106:1, 106:8, 108:16, 110:21, 111:4, 117:9, 119:10, 120:21, 124:14, 125:1, 127:4, 127:8, 128:16, 129:9, 129:10, 130:21, 132:6, 132:19, 142:3, 145:15, 148:18, 149:18, 149:21, 161:22, 162:6, 163:14, 165:22, 166:20, 167:17, 173:6, 176:1, 176:4, 176:9, 176:18, 177:16, 179:1, 179:10, 180:14, 180:18, 181:6, 184:1, 184:10 become 25:19, 113:15 becomes 41:21, 176:2 bed 66:20, 67:7 beech 78:21, 99:9 been 8:13, 8:14, 9:12, 9:18, 11:2, 11:18, 14:12, 16:6, 16:8, 20:17, 21:18, 22:16, 24:16, 27:1, 27:13, 28:8, 28:20, 29:20, 29:21, 30:9, 30:10, 31:5, 32:18, 33:3, 33:16, 41:1, 46:11, 47:6, 48:8, 50:3,</p>
---	--	---	--

Transcript of Hearing
 Conducted on January 15, 2020

<p>50:4, 55:14, 57:6, 57:13, 58:15, 62:12, 62:13, 63:2, 63:4, 68:13, 72:17, 74:11, 74:19, 76:14, 92:17, 93:2, 93:8, 94:5, 96:19, 97:20, 99:12, 100:11, 100:17, 103:7, 119:10, 119:14, 136:6, 136:16, 136:17, 136:18, 140:5, 146:1, 147:16, 147:18, 147:21, 149:16, 162:4, 164:8, 176:5, 177:22, 181:11 before 1:9, 2:1, 2:14, 11:3, 11:19, 13:9, 33:12, 37:1, 38:3, 50:16, 59:11, 104:9, 135:8, 145:12, 149:16, 157:2, 158:1, 182:11 beforehand 99:5 began 147:19 begin 35:21, 44:16, 160:3, 176:13 beginning 33:5, 106:1, 110:12, 149:12, 160:14 begins 36:10, 168:14, 176:9 behalf 3:2, 3:8, 8:22, 16:21, 18:19</p>	<p>being 6:21, 24:12, 26:7, 26:21, 32:13, 33:14, 33:19, 54:2, 67:8, 77:16, 90:7, 104:3, 116:9, 116:11, 143:21, 153:4, 171:9, 180:19 belief 42:16, 105:14, 119:9 believe 41:17, 42:15, 45:2, 45:12, 65:15, 67:21, 78:8, 89:21, 90:2, 90:18, 93:12, 97:4, 97:13, 97:19, 97:22, 98:15, 99:13, 100:10, 101:16, 103:14, 104:17, 107:13, 110:19, 115:14, 119:15, 131:1, 131:16, 131:17, 134:13, 134:17, 161:6, 166:10, 177:8 believes 181:17 below 143:8, 154:22 beltway 47:18, 47:21, 117:14, 178:9 benefit 55:16, 167:10 benefits 155:13 berm 130:4 best 7:8, 33:15, 36:14, 47:8, 60:2, 167:10,</p>	<p>177:11, 186:6 betray 66:4 better 28:5, 53:16, 54:15, 54:17, 141:11, 155:10, 161:16, 161:19, 163:19, 184:12 between 43:13, 45:7, 47:17, 111:16, 111:18, 151:21, 162:17 beverly 38:9, 38:11 beyond 36:18, 118:16 bicycling 142:1 big 25:9, 33:15, 34:13, 34:15, 35:3, 36:1, 36:22, 42:11, 42:13, 44:2, 44:4, 118:2, 175:14, 177:1 bigger 177:5 billions 116:19 billows 45:22 bird 106:12 bit 63:1, 65:12, 66:11, 110:12, 113:8, 159:22, 183:15 black 157:15, 159:18 block 41:10 blow 91:18 blowup 20:21, 21:2,</p>	<p>21:6, 73:17, 91:16, 114:10, 114:11 blue 12:20, 28:17, 78:15, 79:3, 80:6, 80:9 blueprint 157:17, 159:19 bmt 37:10 board 29:21 bodies 16:17 body 9:18, 11:3, 11:19 book 106:2, 126:10 books 88:20 borough 74:13 both 9:1, 17:10, 43:19, 45:9, 96:9, 104:21, 113:18, 115:14, 128:1, 140:11, 155:10, 155:14, 155:17, 161:17, 161:21, 169:10, 171:22 bottom 53:1, 70:20, 91:17, 109:16 bought 26:6, 36:4 boulevard 43:22, 45:21, 93:6, 176:8 boundaries 160:6, 160:8, 165:10 boundary 111:7, 116:12, 129:2, 148:20,</p>
---	--	---	---

Transcript of Hearing
Conducted on January 15, 2020

<p>148:21, 149:6, 149:13, 149:14 bowie 2:5 bowl 43:8 bowling 47:1 box 34:15 boxes 42:11, 42:13, 44:2, 44:4 bragg 53:10 branch 48:7, 178:8 brand 52:21, 53:1 brand-new 55:6 bread 43:7 break 135:9 breakdowns 45:5 breakfast 53:18, 179:15 brick-and-mortar 177:3 bridge 25:10, 53:13, 53:15, 54:1 brief 135:21 briefly 145:22, 157:20 bring 55:4, 82:8, 163:16, 178:18 bringing 132:14 brings 94:19 broad 105:12, 149:20, 162:14</p>	<p>broad-based 133:21 broken 33:9 broker 9:7, 16:4, 16:10, 16:12, 17:3 brokerage 9:13 brown's 144:14 brush 105:12 buck 51:12, 52:9 buddy 165:19 buffer 90:2, 131:17, 162:19, 168:18 buffers 69:16, 101:22, 131:16 bugher 1:22, 186:3 build 6:11, 25:11, 28:19, 36:10, 62:19 builders 47:2 building 25:9, 25:17, 32:11, 33:8, 35:9, 46:1, 67:20, 74:15, 109:22, 110:3, 110:9, 115:7, 125:17, 127:1, 128:4, 128:5, 128:16, 129:12, 130:4, 162:22, 181:2, 181:6, 181:7, 181:10, 181:18 buildings 32:3, 109:22,</p>	<p>129:12, 163:2, 163:3, 166:16 built 6:6, 6:9, 32:11, 44:9, 52:20, 53:19 bunch 44:6, 73:10 burger 42:2 burns 72:19 bus 142:7, 166:12, 166:13, 166:14 business 14:8, 14:10, 15:7, 15:13, 33:22, 45:4, 52:21, 55:3, 55:9, 57:11, 64:8, 64:9, 145:9, 179:11 buy 177:11 buying 35:3</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>ca 1:6 calculates 112:9 calculating 170:7 calculation 72:9 calculations 110:17 california 19:9 call 34:11, 53:11, 56:6, 64:1, 129:20, 135:22, 158:17, 179:22, 184:20 called 26:21, 37:13,</p>	<p>59:21, 109:8, 120:8, 123:10, 126:10 calling 38:2, 86:5 calls 30:22 calver 47:18, 47:21 came 7:21, 12:13, 49:16, 55:16, 70:12, 79:4, 134:8 can't 8:6, 49:2, 59:21, 68:5, 70:9, 90:17, 91:17, 117:5, 123:9, 125:17, 132:1, 142:3, 148:17, 159:4, 171:12 cannot 67:1, 79:11 canopy 96:16 cap 176:8 capture 36:16 car 129:12 care 34:17, 154:10 carey 1:5, 5:8, 19:8 carosa 5:10, 5:11, 6:3, 6:5, 6:7, 9:1, 19:8, 23:5, 23:7, 24:20, 24:21, 25:6, 25:7, 25:16, 26:2, 26:6, 29:14, 30:22, 36:12, 39:11, 44:12, 58:14</p>
---	--	---	---

Transcript of Hearing
 Conducted on January 15, 2020

<p>caroso 5:8 carrying 97:17 carryover 165:7 caruso 121:12 case 1:5, 93:18, 94:11, 110:9, 112:6, 112:11, 116:4, 118:14, 120:19, 121:4, 124:19, 125:1, 130:20, 130:22, 131:14, 134:7, 138:7, 138:9, 138:11, 151:7, 151:14, 163:14, 163:20, 167:11, 186:9 cases 11:4, 149:19 casual 179:22, 180:3 cat 137:2 catching 178:12 category 147:11 cause 11:15 causing 180:20 cdp 30:3, 30:7 ceased 74:20 cell 33:1, 44:7 census 35:2, 35:5 center 11:17, 22:17, 25:4, 25:5, 25:10, 26:21,</p>	<p>27:9, 29:2, 31:12, 31:17, 31:19, 32:1, 34:7, 34:11, 34:12, 34:13, 35:12, 39:14, 42:8, 42:10, 42:14, 43:14, 43:17, 44:2, 44:5, 44:9, 44:17, 45:7, 45:8, 45:10, 47:13, 53:6, 121:16, 149:2, 149:4, 168:21, 168:22, 170:19, 172:8, 172:19, 175:3, 175:14, 175:21, 176:3, 176:8, 177:1, 181:7, 181:11 centerline 112:9, 112:14 centers 45:6, 105:11, 170:21, 175:18 central 34:1, 149:5 certain 18:13, 124:22, 140:4, 179:14, 180:8 certainly 160:3, 183:19 certificate 18:8, 18:9, 186:1 certified 16:18 certify 186:3 cetera 175:3 chair 15:13, 23:8, 28:6, 30:19, 31:15, 37:11, 37:22, 38:3</p>	<p>chairman 6:15, 15:8, 38:8, 73:15 challenge 176:10, 176:22 challenges 180:20 chance 183:1 change 11:16, 151:9, 152:10 changed 63:21, 64:10, 104:10 changes 15:16, 31:13, 96:15, 108:3, 139:16, 140:10, 148:4, 177:2 changing 151:16 channel 66:13, 66:17, 67:4, 68:3 channels 65:21, 67:1, 67:6, 67:11, 67:16, 78:7, 78:17, 83:12, 83:14, 83:17, 86:2, 86:5, 86:6, 86:17 chapter 147:5 character 7:19 charles 58:22 check 164:9, 183:1 checked 99:6 cheesecake 37:20, 37:21, 38:8, 180:13 children's 181:6, 181:11</p>	<p>chipotle 44:7 chipped 31:20 choice 180:9 choices 175:12 chose 149:20 church 23:21, 23:22, 24:5, 24:13, 26:22, 28:18, 31:10, 143:9, 163:10, 178:2 citations 103:18 cited 102:21, 133:14 cites 133:22 citizens 150:11 civil 20:4 clarify 89:7, 89:10, 159:6, 159:9 classes 15:3, 15:5, 57:20, 57:21 classification 114:2, 116:5, 116:7, 120:5, 151:17, 155:13, 155:19 classified 147:8, 153:6, 153:7, 153:18, 153:20 classify 133:19 clear 17:20, 111:4, 126:16, 132:19, 152:8, 152:9, 158:14</p>
---	--	--	--

Transcript of Hearing
Conducted on January 15, 2020

<p>clearance 54:8, 54:10 cleared 39:1, 74:11 clearing 95:14, 96:17, 97:15, 98:7, 99:21 clearly 61:22 clemson 58:3, 58:5 clientele 179:14, 180:15 clients 8:22, 62:13 close 35:17, 155:21 code 66:17, 85:7, 100:7, 100:10, 100:12, 100:16, 102:3, 102:12, 112:2, 119:5, 129:13 codename 22:11 cognizant 116:10 colbert's 80:17 cold 30:22 colonial 106:12, 181:10 color 28:5, 78:14 com 37:14 combined 116:11 come 27:3, 31:16, 49:10, 49:12, 50:17, 54:5, 55:9, 89:9, 135:17, 142:19, 150:13, 159:4,</p>	<p>179:10 comes 17:16, 49:16, 53:17, 102:22 comfort 155:5 comfortable 160:1 coming 37:3, 42:17, 48:17, 51:2, 90:13, 91:11, 125:20, 150:7, 175:2 comment 142:5, 169:21 comments 101:7, 138:13, 151:5 commercial 8:20, 9:7, 9:8, 9:10, 9:12, 14:22, 15:9, 15:19, 16:20, 16:21, 17:2, 17:6, 19:5, 28:11, 39:20, 40:2, 40:5, 40:22, 42:6, 43:16, 45:4, 47:12, 48:9, 48:18, 48:21, 49:15, 118:18, 119:2, 129:9, 155:18, 162:10, 163:2, 164:20, 166:2, 170:17 commercially 41:16 committee's 15:13 committees 18:20 common 75:11 commonly 120:1 communities 54:20</p>	<p>community 11:14, 28:17, 31:22, 32:2, 35:12, 47:14, 48:10, 55:2, 55:3, 162:12, 162:13, 165:20, 166:5, 168:11 commuter 36:17 commuters 36:17, 48:17 compact 166:2 companies 8:19, 15:10, 34:20, 38:17 company 30:20, 32:15, 33:3, 34:3, 34:7, 35:14, 37:9, 41:19, 57:12 comparable 43:15 compare 43:19 compared 74:11, 107:5 compatible 144:15, 168:10 compete 179:11 competing 177:4 competition 179:2 competitive 41:16, 42:6 complement 44:17, 45:11, 45:12 complementary 41:16, 41:17, 47:13, 155:9, 161:16, 177:19 completed 33:9, 103:5,</p>	<p>113:16 completely 42:10, 111:22, 177:18 compliance 170:3 component 79:1, 167:1 components 36:22 composition 78:20 comprise 69:17 comprised 42:11 concentrate 157:13 concentration 165:4 concept 27:3, 39:10 conceptual 27:12, 30:2, 31:17, 41:13, 103:21, 114:5, 120:9, 120:14, 120:18 concerning 9:4, 9:11, 10:14, 18:13, 59:3, 75:1, 76:1, 86:21, 137:10, 141:1 concisely 159:16 conclude 117:7 concluded 84:7, 86:22, 107:3, 185:5 concludes 71:20, 144:18 conclusion 155:1 conclusions 12:5 concrete 68:2, 80:21,</p>
--	--	--	---

Transcript of Hearing
 Conducted on January 15, 2020

<p>98:14 concur 100:5, 108:20, 122:14, 130:20, 133:16 concurrence 105:13, 110:15, 110:19 conditions 95:22, 96:4, 109:6 condos 118:11 conducted 138:14, 138:17, 138:22 confident 162:9 configuration 140:7, 166:3 confirmed 70:17, 134:4 conform 154:1, 154:7 conjunction 67:19 connect 121:9, 121:14, 165:19 connecting 25:10 connection 63:3, 64:22, 67:10 conservation 69:12, 71:19, 87:4, 87:6, 87:12, 87:13, 87:20, 88:8, 91:6, 103:22, 182:19, 182:21 conservative 140:6 conserve 166:15 consider 42:5, 60:19, 60:20, 61:7,</p>	<p>61:22, 88:12, 133:6, 133:7, 164:9 considered 27:8, 46:17, 98:22 considering 78:7, 169:9 consist 120:2 consistent 88:10, 96:13, 98:2, 98:10, 99:10, 99:15, 99:17, 100:12, 102:11, 108:3, 118:7, 119:22, 126:7 consists 8:5, 8:17, 20:5 constrains 118:16 constraint 123:7 constraints 71:21, 119:19, 124:9 constructed 72:20, 77:16 construction 33:13, 33:18, 72:18, 74:19, 77:17, 98:12, 98:13, 98:16, 99:13, 99:18, 117:4, 128:5, 155:9, 161:15 consultant 60:1 consumer 120:8, 120:9, 178:19, 179:11 contact 88:19 contained 154:9 containing 101:21, 106:11</p>	<p>contents 66:8 context 7:16, 171:13 continue 162:3, 164:16 continues 166:18 contour 91:13, 91:15, 112:11, 112:13, 113:8, 113:9, 126:18, 128:19 contours 111:12, 111:13, 111:14, 111:21, 112:1, 112:4, 113:4, 117:10, 127:5, 127:6, 128:1 contract 28:8, 32:21 contractors 156:1 contradict 10:5 contradictory 142:21 contrary 13:4, 148:19 contribute 109:11 controlled 49:5 convenience 33:22, 34:11, 34:16, 39:14, 40:9, 55:20, 155:5, 175:17, 176:21, 177:12, 178:4, 178:5 conveniences 90:10 convenient 50:20, 169:1 conversation 38:1 convey 86:8</p>	<p>copies 145:13, 148:13 copy 14:18, 26:1, 75:3, 75:7, 88:7, 93:12, 120:13, 183:2 cordish 38:17, 38:20 corner 27:14, 28:6, 29:13, 31:7, 41:8, 42:2, 42:3, 46:7, 51:8, 98:1, 109:16, 142:11, 173:20, 176:16, 178:10, 178:11 corners 28:14, 176:18 corporate 31:19 corps 10:14, 59:5, 61:3, 61:12, 63:3, 68:8 correct 18:15, 26:3, 58:10, 62:18, 63:6, 63:8, 63:9, 63:18, 63:19, 65:3, 66:2, 66:6, 67:18, 68:15, 68:18, 68:20, 70:6, 72:5, 74:5, 77:3, 84:22, 85:5, 86:18, 90:3, 123:3, 130:12, 134:12, 135:1, 139:10, 139:14, 140:15, 146:18, 156:17, 157:18, 158:5, 159:20, 170:1, 171:14, 186:4 correction 168:2</p>
--	--	--	--

Transcript of Hearing
 Conducted on January 15, 2020

<p>correctly 5:7, 6:18 corresponding 182:12 corridor 30:21, 31:3, 165:5, 165:7, 165:11, 165:13, 165:14, 169:17 cost 119:8, 155:15, 162:2, 162:8 cost-effective 119:14 costs 119:21 could 26:16, 30:8, 33:21, 35:5, 38:14, 38:18, 55:9, 64:1, 64:3, 64:4, 65:16, 75:7, 82:7, 107:2, 120:15, 121:3, 121:21, 122:7, 130:1, 130:3, 130:5, 131:2, 131:7, 142:9, 163:19, 164:19, 167:3, 182:11 couldn't 8:13, 131:22, 132:1 council 5:19, 88:18, 109:19, 152:18, 157:20, 184:3 counsel 3:10, 5:13, 6:20, 76:1, 186:8 count 35:2, 165:12 counter 134:11 counties 136:8</p>	<p>countries 15:11 country 15:14 counts 137:14, 138:17 county 1:1, 2:3, 3:8, 6:7, 10:16, 15:1, 28:22, 32:6, 32:16, 33:10, 35:7, 39:16, 47:18, 47:22, 55:16, 58:21, 59:6, 61:5, 63:4, 66:11, 66:15, 69:11, 70:8, 72:16, 78:5, 78:6, 85:7, 87:3, 96:6, 98:21, 100:7, 100:10, 100:12, 100:16, 102:2, 102:12, 104:1, 104:7, 112:2, 116:10, 119:5, 129:13, 133:21, 134:1, 147:5, 148:4, 155:6, 164:18, 164:22, 167:9, 168:7, 170:18 county's 87:19, 88:1, 101:13 countywide 69:10, 87:4 couple 18:3, 36:6, 39:12, 57:19, 81:1, 98:19, 103:18, 140:1, 175:18, 179:8, 179:22 course 151:14, 159:16, 168:16</p>	<p>court 9:13, 16:19, 18:12, 18:15, 18:19, 18:21, 59:11 courts 16:16, 151:17, 152:4 courtyards 54:16 cover 13:3 coverage 96:16 crafted 111:16 crafting 103:5 crash 124:20 created 78:19 credit 32:7, 34:4, 34:6 creditors 16:22, 18:20 crisscrossing 95:10 criteria 61:2, 66:21, 152:15, 152:17, 152:20, 153:1, 153:9, 156:6, 156:16, 156:18, 157:4, 157:8, 160:20, 160:22, 171:7, 171:16 critical 62:22, 152:15 cross 83:5, 121:13, 166:6 crossings 86:12, 131:21 crosstalk 173:12 crosswalk 166:6</p>	<p>crowd 179:15, 180:15 csp 90:21, 143:9, 163:6, 182:15, 184:4 culture 20:4 culverts 68:2, 80:19, 83:4, 83:5 cum 57:20 cups 53:17 current 32:16, 63:18, 116:16 currently 24:1, 24:5, 27:12, 32:15, 33:8, 57:2, 57:8, 102:1, 121:16, 146:16, 150:2 cut 46:4, 108:9</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>dad 64:12 daily 165:12 damn 43:4 darden 15:7, 18:8 dark 157:2 darker 78:14, 87:8 data 35:6, 76:21, 102:22, 112:12, 133:17, 134:2 database 104:3 date 63:18, 100:18,</p>
---	--	---	---

Transcript of Hearing
Conducted on January 15, 2020

<p>134:6 dated 138:10 daughters 177:15 day 37:2, 38:17, 112:8, 165:13, 169:17, 178:13, 179:12 days 42:1, 99:5 db 111:7, 111:18, 112:5, 113:7 dba 112:10, 126:18, 127:21 dc 19:10 deal 35:17, 35:18, 61:10, 184:22 dealing 60:22 debris 98:13, 98:14 december 65:19 decibel 113:9, 123:2, 124:15 decibels 117:16, 128:9 decide 184:2 decides 184:3 decision 7:22, 150:17, 182:3, 184:11 declare 172:20 dedicated 49:9, 49:13, 50:17 deed 110:2</p>	<p>deemed 147:12 deep 115:12 deer 98:17 define 33:21, 66:17, 149:6, 151:20 defined 66:20, 67:7, 71:1, 76:4, 102:4, 148:8 defines 66:12, 101:20 definitely 171:10 definition 102:10, 108:17, 151:14, 151:21, 151:22, 179:18, 179:19 degree 125:20 delineated 111:18 delineation 61:18, 62:21, 71:3, 126:8 delta 124:22 demand 44:15 demarcation 151:19 demographics 34:21 demonstrate 7:5, 11:21, 12:4, 42:16, 84:16, 176:11, 176:20 demonstrates 11:12 denial 6:22 dense 166:2</p>	<p>densities 120:3 density 7:8, 27:7, 31:22, 46:20, 116:18, 118:12, 119:8, 119:11, 120:6, 130:22, 166:1, 170:16 denying 63:8 department 10:15, 59:5, 61:4, 61:11 dependencies 102:22 depot 42:12 depression 70:18, 83:9, 133:10 depressions 67:12, 78:19, 80:10, 84:20, 85:2, 88:12, 133:8 depth 10:1, 20:13, 46:19, 114:2, 115:1, 115:6, 116:17, 117:19, 118:15 deputy 6:20 derived 103:7 describe 16:1, 25:12, 26:13, 60:5, 66:3, 66:8, 94:2, 95:20, 111:10, 137:1, 145:22, 146:13, 152:21 described 83:9, 84:20, 122:17, 146:1, 160:4</p>	<p>describing 17:18, 106:9, 112:20 description 160:4 desert 37:6, 37:8, 48:4 design 104:5, 104:19, 105:4, 105:6, 105:10, 116:14, 130:6 designated 23:16, 23:18, 24:19, 24:20, 33:7, 40:21, 42:14, 45:20, 71:17, 87:1, 106:8, 107:8 designating 46:5 designation 97:11, 104:10 designed 39:20, 68:9, 71:13, 165:18, 168:10, 168:17, 168:22 destination 44:18, 45:1, 176:2 detached 99:21, 120:6 detail 43:18, 106:5, 113:12, 124:17 detailed 111:20 determination 100:13, 102:14, 107:11, 110:8 determinations 59:4, 102:15, 103:8, 110:13, 113:18 determine 60:16, 76:8,</p>
--	---	---	---

Transcript of Hearing
Conducted on January 15, 2020

<p>113:12 determined 71:4, 109:20, 125:10 detract 174:19 detracts 174:22 detriment 119:3, 125:8 develop 26:6, 28:22, 31:11, 47:4, 47:5, 62:19, 119:14, 131:7, 133:4, 134:9, 134:21, 162:8 developable 121:19, 130:17, 131:20 developed 26:7, 31:1, 31:21, 33:14, 33:20, 46:11, 48:8, 102:20, 104:8, 104:15, 113:11, 119:10, 129:15, 130:13, 133:18, 150:15, 178:7 developer 24:22, 32:21, 43:18, 181:15 developers 34:20 developing 15:15, 28:10, 104:7, 119:17, 177:17 development 7:1, 7:14, 7:20, 8:21, 9:5, 9:9, 9:10, 9:20, 14:22, 15:13, 16:20, 17:3, 19:6, 19:14, 22:19, 22:22, 24:1, 26:9,</p>	<p>26:10, 28:9, 28:13, 40:12, 47:12, 68:12, 68:13, 71:5, 71:15, 71:16, 101:4, 102:2, 104:14, 104:20, 104:22, 105:1, 105:17, 113:14, 113:20, 115:8, 115:18, 115:21, 117:3, 117:14, 118:11, 118:13, 118:17, 120:1, 121:20, 122:16, 123:7, 127:22, 137:4, 138:19, 139:13, 139:17, 139:22, 142:17, 142:18, 150:2, 162:14, 162:16, 162:18, 163:7, 164:19, 165:4, 166:17, 167:2, 167:6, 167:14, 167:15, 167:22, 168:18, 170:17, 171:19, 174:22, 176:7 developments 118:6, 142:16 develops 150:4 diagonally 150:3, 168:12 difference 43:13, 45:7, 102:12, 103:4, 129:8, 151:21 different 12:18, 17:17, 33:6, 35:22, 37:1, 42:10, 57:5, 80:19, 102:7, 118:10, 129:4, 158:12, 177:18, 178:12, 178:13, 180:15</p>	<p>differently 17:11 difficult 60:4, 167:11 digital 70:16, 78:4, 79:4, 103:2 dilemma 149:15 dimension 106:20 diminish 133:4 diminished 132:4 dinner 180:15 dire 60:14 direct 10:4 direction 95:9, 125:21, 131:19 directly 38:14, 45:17, 102:17, 102:21 dirt 35:15, 36:5 disagree 71:22, 72:1, 142:6 disagreed 156:12 disapprovals 157:22 discuss 143:21 discussed 143:12, 160:19, 163:1, 165:8 discusses 169:5 discussion 160:19, 161:4 discussions 160:18, 172:1 dishes 74:18</p>	<p>distance 50:11 distribution 32:14 district 146:21, 152:18 districts 170:21, 171:8 disturbance 99:11, 99:15 disturbed 74:7, 79:2 ditch 103:15, 133:9, 133:13 ditches 86:7, 99:6, 100:15, 108:9 document 76:17, 156:11, 158:8, 158:11, 158:12, 170:2 documents 78:2, 88:19, 90:19, 93:17, 133:2 doing 12:9, 57:8, 58:17, 100:19, 105:21, 132:4, 133:21, 134:8, 176:19 dominated 78:20 done 36:7, 63:2, 96:22, 99:12, 100:18, 106:14, 116:21, 133:20 donuts 34:8, 181:2, 181:19, 181:20 door 54:14 doors 128:5 dorchester 58:22</p>
---	--	--	--

Transcript of Hearing
 Conducted on January 15, 2020

<p>double 128:6, 159:12 doughnut 172:16, 172:17 dower 33:18, 55:10, 55:12, 149:7, 149:8, 150:8, 150:9, 168:15, 168:16, 169:13 down 15:6, 24:6, 34:1, 35:10, 36:2, 52:15, 53:4, 53:5, 53:18, 58:6, 74:14, 78:22, 80:17, 95:12, 97:22, 117:5, 143:7, 150:8, 150:13, 165:13, 176:4, 178:8, 179:10, 179:17 download 183:6 dozen 30:18 dozens 11:3, 11:4 dr 35:18 drafted 107:16 drain 131:22 drainage 80:11, 86:7, 99:3, 99:6, 100:14, 103:15, 108:9, 108:10, 133:9 drained 80:18, 83:6 draining 80:16 dramatic 177:2 draw 44:18</p>	<p>drive 2:5, 34:1, 39:16, 56:10, 118:1, 149:5, 149:8 drives 46:3 driveways 97:13 drop 58:16 dry 99:3, 99:6 drycleaner 34:9 dsp 163:6 dual 57:19, 146:4 dubarry 9:17, 65:2, 78:3, 81:21, 93:5, 109:2 duberry 120:17, 121:3 due 67:8, 67:13 dui 54:9 dunkin 34:8, 181:2, 181:19, 181:20 duplicate 160:13 during 15:2, 58:17, 66:19, 67:4, 72:17, 99:12, 99:14 dutch 181:9 dwelling 107:3 dwight 138:3 dying 6:12</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>each 40:7, 40:9,</p>	<p>40:10, 44:17, 45:11, 121:6, 131:15, 131:18 eagle 62:22 earlier 18:17, 43:12, 127:4, 127:10, 131:12, 176:16, 182:13 early 18:17, 19:14, 20:3, 68:4, 77:19, 110:14 earthen 72:19 easier 81:19 east 29:7, 51:19, 52:6, 95:4, 97:18, 106:21, 110:7, 113:7, 115:3, 125:3, 143:3, 143:17, 144:1, 149:11, 150:3 eastern 98:1, 142:20 eat 54:13 eclair 172:18 ecologist 57:4, 63:14, 63:17, 63:22, 64:2 ecology 64:16 economic 164:17, 174:22 economize 159:22 economy 53:2, 53:3 edgewater 56:10 educate 35:7</p>	<p>education 10:10, 18:3, 60:22 educational 14:21, 57:15 effect 125:7, 177:19 effective 141:16, 141:19, 162:3, 162:17, 167:19 efficient 155:14, 167:7, 168:9 eight 27:4, 69:21, 70:4 either 38:5, 63:7, 64:4, 85:9, 121:11, 130:22, 153:3, 158:13 elevation 70:16, 70:17, 78:4, 78:13, 78:15, 79:4, 103:3 elevations 128:8 else 53:5, 60:6, 170:22, 171:1, 176:17, 178:22 email 183:12 embellished 154:16 emphasis 17:19 employed 57:7, 145:9, 186:9 employees 54:4, 156:1 employment 57:7 encompass 32:1</p>
---	--	---	---

Transcript of Hearing
 Conducted on January 15, 2020

<p>encumber 22:22 end 7:20, 38:16, 142:19, 144:19, 146:7, 155:12, 158:3, 179:9, 179:12, 179:20 ended 6:12 ends 6:13, 132:8, 179:11, 180:18 engineer 11:3, 50:21, 60:18, 60:19, 60:21, 113:17, 127:22, 145:4, 164:7 engineering 57:12, 60:22, 72:9 engineering's 100:6 engineers 10:15, 28:21, 59:5, 61:3, 61:12, 63:4, 68:8, 93:5 enhance 164:17 enjoy 54:13 enough 25:22 ensure 140:10 entire 88:20, 133:21, 133:22, 153:2 entirety 84:3, 169:4 entitled 22:17 entitlement 19:14, 137:18, 137:19, 138:1 entrance 97:16</p>	<p>environment 10:15, 59:6, 61:5, 61:11, 71:12, 130:21 environmental 10:1, 10:2, 10:10, 10:12, 10:13, 10:20, 57:3, 57:13, 57:21, 58:8, 58:19, 59:3, 59:13, 59:18, 59:21, 60:2, 60:18, 60:19, 61:6, 61:8, 61:12, 61:19, 61:20, 62:1, 62:5, 62:7, 63:13, 63:17, 63:22, 66:13, 67:2, 68:19, 70:21, 71:1, 71:3, 71:21, 76:4, 76:9, 77:6, 77:21, 78:17, 79:5, 80:8, 86:20, 88:13, 89:11, 95:22, 96:2, 96:7, 96:9, 100:14, 104:17, 104:18, 105:2, 105:12, 105:19, 106:6, 106:10, 107:8, 132:2, 133:14, 160:18 environmental's 100:6 environmentally 101:21, 106:11 ephemeral 67:4, 78:18, 80:10, 83:9, 83:13, 83:17, 83:19, 83:20, 84:20, 85:2, 86:7, 100:15, 133:7, 133:10,</p>	<p>133:13 equate 131:13 equestrian 53:6 equipment 72:22, 74:17 er 100:17 erosion 68:3 especially 28:14 esq 3:3, 3:4, 3:9 essay 38:13 essence 33:5, 184:5 essential 156:16 essentially 19:15, 105:7, 121:8, 127:10, 148:1, 162:22, 184:13 establish 108:12 estate 15:1, 15:9, 15:19, 16:3, 16:20, 17:2, 17:6, 18:13, 18:20, 19:6, 19:13, 30:16, 45:4 estimated 116:19 et 175:3 euclidean 151:16 evaluate 61:1, 109:6, 121:2 evaluated 58:8, 96:9, 101:13, 128:1</p>	<p>evaluating 46:14, 62:11, 65:21, 66:22, 100:20 evaluation 61:18, 69:13, 71:18, 75:10, 84:9, 84:14, 85:3, 87:2, 87:10, 106:7, 106:10 evaluations 61:13, 107:12 even 45:8, 89:18, 99:3, 110:5, 131:11, 142:11, 148:1, 152:5, 164:7, 169:21, 175:4, 184:2 event 58:18, 67:5 ever 16:14, 57:14, 60:6, 63:12 every 37:1, 41:22, 46:15, 47:6, 53:8, 58:20, 79:3, 165:13, 167:8, 169:17 everybody 54:7, 56:5, 176:17, 180:9 everyone 5:3, 114:21, 176:12 everything 13:3, 33:10, 63:1, 67:3, 74:10, 159:17 evidence 7:13, 11:6, 67:1, 67:8, 67:9, 72:18, 96:17, 96:22, 97:3, 98:13, 98:16, 99:1</p>
--	--	---	--

Transcript of Hearing
 Conducted on January 15, 2020

<p>evidenced 100:4, 106:19, 108:15, 109:15 evolution 77:14 evolved 43:20 exactly 60:16, 62:6, 68:5, 124:2, 177:6, 177:10, 179:5 examination 71:6 examinations 68:10 examine 170:2 examined 96:4, 109:12 examiner's 7:22 example 176:15, 178:8, 180:3 excavated 72:21, 74:10, 74:15 exceeds 125:17 excel 112:7 excellent 18:2 except 98:18 exception 5:5, 172:11 exceptions 148:2 excited 38:10 exclusive 168:3 excuse 24:3, 27:15, 29:17, 102:6 exempt 70:10</p>	<p>exhausted 172:20 exhibit 4:11, 14:13, 14:15, 14:17, 22:4, 22:16, 26:12, 26:20, 40:14, 40:17, 41:1, 41:2, 41:3, 41:4, 41:11, 45:16, 45:20, 56:21, 59:9, 65:1, 65:5, 65:7, 69:5, 73:1, 73:9, 76:15, 78:6, 78:10, 90:16, 92:4, 94:8, 95:18, 97:7, 106:20, 107:18, 109:16, 110:21, 111:19, 111:20, 112:17, 112:18, 114:6, 114:7, 114:11, 115:2, 120:14, 124:18, 126:8, 128:21, 137:6, 141:13, 145:17, 148:10, 148:12, 152:14, 154:18, 154:20, 157:13, 158:13, 158:17, 159:18, 170:12, 182:12 exhibits 7:4, 12:8, 12:9, 12:12, 20:16, 93:17, 94:4, 158:12 exist 18:15, 67:1, 74:18, 78:16, 144:20 existence 49:10 existing 7:19, 95:16,</p>	<p>95:21, 97:1, 99:3, 113:18, 120:21, 121:1, 121:14, 121:17, 121:21, 128:1, 140:7, 142:18, 173:8 exists 45:16, 95:13, 95:14, 144:21 exit 50:10 exiting 50:10 expand 150:6 expanded 151:3, 151:5, 159:11 expands 152:2 expected 79:2, 112:10, 153:8, 153:11 expeditiously 183:18 expense 46:9 expensive 47:4, 118:3 experience 8:21, 9:8, 10:11, 14:21, 19:2, 37:8, 62:10, 114:19, 116:9, 175:4, 176:5, 177:13, 177:17 experienced 117:21 expert 9:8, 9:12, 9:17, 10:17, 11:19, 16:19, 17:2, 17:5, 18:14, 18:17, 19:5, 46:10, 59:12, 59:17,</p>	<p>62:4, 64:15, 92:13, 92:16, 136:13, 136:18, 175:6 expertise 59:20 explain 5:21 explained 155:20, 160:22, 168:21 explaining 150:21, 161:5 explanation 160:7 explicit 183:16 export 18:22 extend 148:18 extended 54:17 extended-stay 53:15 extending 111:8, 116:12, 149:9, 165:10 extends 145:5, 149:3, 165:9, 168:15 extensions 122:1 extensive 101:21, 163:4 extent 156:7, 161:10 exterior 128:9 extra 107:22, 145:13 eyeballing 48:20 eyes 66:5</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>faa 125:18</p>
---	--	--	---

Transcript of Hearing
Conducted on January 15, 2020

<p>face 171:5 facilitate 142:1, 162:16, 164:19, 165:4, 165:18 facilities 142:8 facility 28:16, 28:19, 32:10, 32:14, 126:6, 155:21 fact 23:6, 27:9, 44:3, 76:9, 86:9, 122:3, 140:12, 141:10 factory 38:8, 180:13 fail 11:15 fair 168:3 fairly 68:7, 72:14, 87:11 fairmount 56:10 fall 61:14, 69:13, 80:17, 84:8, 111:21, 127:6 fallow 77:18 falls 72:10, 75:9, 84:13, 110:1 familiar 19:22, 21:15, 21:16, 22:18, 42:20, 59:2, 68:16, 69:1, 69:3, 93:14, 113:22, 123:11, 137:9, 139:4, 139:11, 145:18, 153:13 family 6:5, 6:8, 6:13,</p>	<p>19:12, 23:5, 23:17, 24:20, 24:21, 31:1, 31:18, 32:22, 115:18, 167:14, 168:11 fantastic 54:19 far 77:7, 115:17, 125:17, 129:15, 129:16, 131:9, 147:15, 148:18, 166:11, 179:12 fargo 25:3 farm 51:16, 51:17, 173:7, 177:21 farmed 77:15 farming 96:19, 96:20, 96:21, 99:20 farms 27:14, 28:7, 28:12, 41:9, 41:12, 47:13, 172:13, 180:21, 181:16 fast 179:22, 180:3 father 19:16, 57:11 father's 10:11, 64:7 fatima 2:14 fatimah 90:7 faulty 7:9 favorite 37:15 feasible 47:6 feature 78:17, 79:5,</p>	<p>80:8, 90:1 featured 79:3 features 10:2, 10:22, 58:8, 59:4, 61:14, 67:3, 70:21, 71:1, 71:4, 76:4, 76:9, 77:6, 77:9, 77:21, 80:16, 86:6, 89:11, 89:15, 95:11, 95:17, 95:22, 96:2, 96:9, 101:21, 102:14, 103:15, 104:17, 104:18, 104:22, 105:2, 105:9, 105:11, 105:13, 105:14, 105:20, 106:6, 106:10, 106:11, 117:2, 118:7, 118:15, 118:22, 120:22, 124:4, 125:2, 130:13, 130:21, 131:1, 132:9, 132:15, 132:22 federal 16:16, 32:7 feel 46:10, 47:11, 71:5, 160:1 feet 20:14, 40:2, 40:10, 40:11, 40:12, 46:20, 46:22, 95:7, 95:8, 106:17, 106:19, 107:1, 107:2, 110:3, 110:10, 112:13, 114:3, 115:2, 115:4, 122:9, 122:12, 131:18, 175:15</p>	<p>felt 16:21, 38:10, 47:3 fence 55:14 ferry 53:14 few 12:7, 46:2, 66:21, 67:12, 148:2, 148:4 field 17:2, 19:5, 59:12, 59:17, 60:4, 61:13, 70:18, 78:18, 79:6, 83:11, 102:15, 103:4, 133:18 figure 116:21, 181:13 file 94:14 filed 109:4, 182:13 fill 181:14 finally 11:17, 130:10 financeable 175:16, 175:19 financial 186:10 financially 47:6 financing 139:21 find 67:1, 68:11, 72:6, 82:10, 101:12, 107:9, 167:11, 175:6, 175:8, 175:10 findings 10:22, 13:5, 61:13, 139:3 finds 41:19</p>
---	--	---	---

Transcript of Hearing
 Conducted on January 15, 2020

<p>fine 13:14, 17:21 first 8:22, 13:15, 21:22, 30:22, 31:15, 31:16, 37:12, 37:13, 39:3, 65:21, 76:20, 77:2, 97:8, 155:3, 161:1, 176:11, 179:21 fish 180:11 five 13:7, 46:15, 47:7, 97:13, 135:7, 135:11, 135:12 flat 97:20 flex 104:16 flexibility 104:13, 105:1, 118:13, 119:21, 129:9, 129:16, 130:8 flexible 104:5, 104:19, 105:4, 105:6, 105:10 flight 109:20, 111:15 floodplain 72:7, 72:9, 72:10, 102:1, 108:19 flow 108:10 flowing 66:18 flows 67:9 fly 171:5 flyover 124:12, 124:13</p>	<p>focus 32:2 folks 35:7, 36:16, 37:2, 39:15, 48:17, 54:4, 55:1, 55:8 follow 105:17, 130:18, 149:11 followed 10:11 following 152:20 follows 155:3 food 37:5, 55:19 foot 10:1, 32:14, 40:8, 44:1, 46:16, 46:21, 113:9, 114:21, 115:1, 116:17, 117:18, 118:15, 181:1, 181:5 footage 40:9, 115:10 footsteps 10:12 forbes 93:6 force 96:16, 106:12, 106:15, 155:22 foregoing 186:4 foreseeable 153:8, 153:12 forest 74:12, 77:19, 78:20, 106:16, 106:18, 107:3, 111:7 forget 90:10 forgive 90:8</p>	<p>form 65:1 format 110:18 formed 57:12 formerly 24:19, 32:3 forming 153:5 forms 28:21 formula 111:4 fort 53:10 forth 59:4, 72:4, 140:22, 152:16, 154:8 forward 36:4, 129:21, 160:1 found 71:2, 78:4, 95:22, 96:12, 96:15, 96:17, 98:3, 98:4, 98:8, 98:13, 98:21, 99:1, 103:18, 107:6, 120:1, 140:12, 156:6, 161:9, 170:3 four 20:9, 33:12, 46:15, 57:9, 80:19, 104:1, 141:12 frame 183:19 franchise 42:22 francis 4:8, 11:17, 143:16, 145:8 frederick 59:1</p>	<p>free 53:18 freeway 7:17, 7:18, 8:2, 49:5, 112:4, 114:1, 116:5, 153:19 freeways 117:15, 171:9 front 9:14, 78:8, 109:7, 126:5, 130:5 frontage 20:9, 146:4, 146:7 fronting 97:11 fronts 95:5, 146:3, 146:8 full 54:1, 56:7, 95:8, 145:7, 169:14 fully 55:7 fun 58:6 functional 87:5, 156:4, 156:10, 161:13 further 52:14, 105:13, 108:12, 113:8, 113:11, 152:3, 160:19, 169:15, 182:8 future 27:8, 28:15, 28:20, 96:7, 100:21, 113:20, 115:8, 127:22, 134:6, 148:4, 153:8, 153:12, 155:6, 162:16, 184:8</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>galilee 23:21</p>
---	---	--	---

Transcript of Hearing
Conducted on January 15, 2020

<p>garden 42:19, 54:16, 180:2</p> <p>gardens 34:14, 42:22, 43:14, 44:20</p> <p>gas 40:8, 44:13, 48:3, 178:3, 178:5, 178:10, 178:11, 178:19, 178:20, 179:2, 179:6, 179:9</p> <p>gate 53:14, 54:3, 55:6, 55:8, 150:10</p> <p>gave 158:15</p> <p>general 7:2, 104:9, 122:11, 155:2, 156:3, 156:9, 157:4, 160:12, 160:16, 161:7, 161:12, 165:5, 165:6, 165:8, 165:11, 165:14, 167:20, 167:21, 170:15, 171:6</p> <p>generalized 103:21</p> <p>generally 58:13, 65:13, 78:15, 95:15, 151:15, 151:17, 153:22, 154:2, 175:22</p> <p>generate 54:22, 116:20, 164:21</p> <p>generated 11:12, 35:5, 112:11, 125:19, 139:13, 140:18</p> <p>gentleman 81:21</p> <p>geographic 57:18, 70:15</p>	<p>george 61:5, 69:11</p> <p>george's 1:1, 2:3, 3:8, 6:6, 10:16, 15:1, 32:15, 35:7, 55:16, 58:21, 59:6, 78:5, 87:3, 96:5, 116:10, 136:9, 147:5, 166:12, 167:9, 168:7, 170:18</p> <p>georges 66:15, 70:10, 70:12</p> <p>georgians 37:15, 38:12</p> <p>german 17:19</p> <p>getting 179:20, 181:20, 184:6</p> <p>gis 79:13, 104:2</p> <p>give 14:4, 43:17, 56:14, 82:15, 93:2, 136:3, 144:10, 158:3, 160:7, 160:16, 180:9, 183:8</p> <p>given 7:16, 102:4, 182:14</p> <p>glass 25:17</p> <p>glasses 114:14</p> <p>global 15:5, 15:8</p> <p>global's 15:13</p> <p>go 18:1, 35:1, 37:1, 37:16, 41:10, 42:2, 43:1, 44:19,</p>	<p>47:7, 48:2, 49:17, 49:19, 50:18, 53:4, 53:18, 54:6, 54:12, 55:18, 61:1, 64:4, 65:11, 68:22, 70:13, 79:21, 95:20, 117:5, 121:6, 132:2, 132:20, 134:10, 146:10, 157:10, 159:7, 159:10, 159:15, 160:17, 164:11, 174:1, 174:18, 175:8, 175:9, 175:11, 175:19, 177:13, 177:15, 179:6, 179:13, 181:21</p> <p>goal 142:2, 168:4, 168:5</p> <p>goals 7:2</p> <p>goes 52:4, 66:10, 77:10, 77:11, 97:15, 106:7, 106:19, 127:21, 149:4, 149:8, 161:5, 176:16, 177:14, 178:7</p> <p>going 6:13, 9:13, 13:3, 16:9, 22:6, 32:7, 32:17, 32:18, 33:12, 36:14, 36:18, 37:2, 39:15, 39:17, 42:2, 44:20, 44:21, 46:3, 47:3, 51:8, 53:8, 54:18, 58:2, 65:11, 70:20, 77:9, 84:4, 87:16,</p>	<p>88:9, 89:7, 89:10, 90:11, 92:7, 108:12, 118:20, 129:18, 139:22, 140:1, 143:9, 158:3, 159:7, 160:1, 163:5, 165:12, 173:7, 174:14, 177:8, 177:10, 178:12, 179:14, 179:20, 180:16, 181:21, 184:9</p> <p>gone 19:15</p> <p>good 5:2, 6:1, 13:21, 14:1, 64:9, 68:22, 107:22, 144:16, 174:7, 181:21, 183:7</p> <p>gotta 50:13</p> <p>government 10:16, 53:22, 59:7, 62:13</p> <p>governor 2:5</p> <p>gradient 78:14</p> <p>graduate 18:4, 58:4</p> <p>graduated 57:20</p> <p>grass 96:18</p> <p>gray 74:12</p> <p>great 25:18, 36:7, 52:11</p> <p>greater 110:10, 112:3, 115:16, 115:22, 116:4, 120:2, 150:5</p> <p>green 69:2, 69:10,</p>
---	---	---	--

Transcript of Hearing
 Conducted on January 15, 2020

71:14, 75:2, 75:3, 75:7, 75:17, 82:3, 82:5, 83:22, 84:6, 84:17, 85:13, 86:3, 87:8, 87:9, 88:11, 90:22, 101:14, 101:18, 101:19, 102:11, 102:19, 103:1, 103:13, 103:19, 103:20, 103:22, 105:3, 133:3, 133:17, 182:16, 182:17 grid 95:10, 98:10 grocery 42:12, 45:6, 45:8, 45:9, 175:22, 176:1 ground 33:9 groundwater 67:10 groundwaters 86:8 group 31:10, 35:14 grow 77:20 growing 66:20 guess 15:16, 16:9, 18:17, 70:9, 89:6, 133:19, 142:14, 148:22 guideline 168:2	hall 34:2 handbook 61:3 handle 140:18 handled 19:12 happened 6:8, 136:8 happening 33:16, 68:3 happens 44:16, 158:15, 175:13, 179:21 happy 6:2, 95:20 harbor 54:3, 55:7, 150:10 hard 18:15, 119:16, 120:20 harder 177:4 harvest 20:3 hats 8:21 haul 108:7 hay 96:17 hazard 145:4 hazards 126:2 head 35:13 heading 71:11, 113:8 headwaters 69:15 health 11:13, 117:20, 119:4, 125:8, 155:4 hear 101:6, 175:6	heard 17:9, 153:12, 153:13 heated 38:9 height 109:22, 110:3, 110:9, 125:3, 125:14, 125:15, 125:17, 127:1 heights 110:15 held 2:2 help 27:2, 32:1, 36:22, 168:5 helped 111:2 helping 24:1, 27:5 helps 28:18 henson 23:20 here 5:5, 5:12, 5:16, 5:21, 6:2, 6:11, 6:16, 8:12, 9:14, 12:8, 18:18, 23:9, 24:6, 24:12, 25:9, 25:13, 25:15, 27:16, 31:5, 32:15, 35:1, 38:16, 39:9, 41:6, 41:9, 49:8, 49:10, 74:19, 82:8, 84:15, 87:8, 97:9, 97:15, 97:19, 99:8, 104:21, 107:1, 110:4, 112:15, 126:3, 148:18, 151:2, 157:2, 163:9, 165:10,	166:15, 168:14, 170:13, 174:17, 174:21, 183:9, 183:13, 184:7 hereby 186:3 heretofore 55:1 high 31:22, 58:5, 117:22, 119:7, 119:12, 125:16, 155:12, 155:19, 161:19, 167:12, 169:16, 170:16, 179:19 high-quality 35:22 high-rise 25:8 high-security 53:20 high-volume 155:12 higher 114:2, 116:5, 118:12, 120:3, 120:5, 153:7, 161:3, 179:1, 179:20 highly 79:2 highway 26:8, 138:12, 178:6 hills 38:9, 38:11 hillside 108:7 hilton 54:16 hired 18:12 historic 74:17, 96:13 historically 68:6, 72:17 history 9:5, 77:9,
H			
habitat 106:18 habitats 106:13, 107:7 half 35:14, 57:10			

Transcript of Hearing
Conducted on January 15, 2020

<p>162:4, 171:22 hits 180:8 hold 21:1, 89:8, 184:10 holding 147:11 holdings 19:13 holds 176:19 hole 39:8, 172:16, 181:14 holes 181:15 home 36:14, 36:19, 37:4, 39:15, 42:12, 48:17, 175:2 homebuilder 35:19 homes 36:9, 46:2, 46:6 honestly 61:9 honor 57:19 hope 5:6, 26:21, 90:6, 92:6, 143:2 hopefully 157:2 hoping 158:18 horizontal 98:10 horn 145:10, 158:2, 158:21 horne 3:3, 3:5, 5:10, 5:15, 5:16, 5:20, 5:22, 8:4,</p>	<p>8:9, 8:11, 8:15, 8:17, 12:15, 12:19, 13:2, 13:7, 13:17, 14:15, 20:18, 20:20, 21:1, 21:5, 21:8, 21:11, 21:13, 21:20, 22:7, 22:11, 22:14, 26:18, 27:17, 27:21, 30:7, 30:14, 40:16, 50:8, 56:19, 58:2, 65:5, 69:20, 70:1, 73:6, 73:9, 73:20, 74:2, 75:6, 82:20, 83:1, 85:18, 88:6, 88:15, 89:1, 89:8, 90:12, 90:15, 90:16, 90:22, 91:3, 91:6, 91:12, 91:16, 91:21, 92:1, 92:3, 92:5, 92:8, 92:15, 94:15, 94:21, 111:2, 114:9, 120:10, 124:1, 126:2, 126:10, 126:13, 126:19, 127:2, 135:10, 143:13, 143:18, 144:1, 148:15, 158:6, 158:19, 158:22, 163:16, 164:6, 173:15, 173:19, 174:5, 182:6, 182:9, 182:17, 183:18, 184:1, 184:14, 184:18, 184:21, 185:4 horton 35:18</p>	<p>hotel 28:15, 39:13, 40:6, 40:10, 44:15, 52:14, 52:21, 53:11, 53:20, 53:21, 54:6, 54:12, 54:21, 122:10, 155:21 hotels 52:22, 54:20, 55:18 hours 43:4 house 33:18, 52:9, 55:11, 55:12, 97:19, 97:21, 97:22, 108:14, 117:21, 149:7, 149:8, 150:8, 150:9, 168:15, 168:16, 169:13, 173:18, 173:19 houses 33:8, 97:4, 97:13, 99:22, 131:7, 132:1, 167:17 housing 45:22, 129:19, 170:16 however 72:8 humans 53:21 hundred 36:6 hung 152:13 hurry 37:3, 183:22 hydrology 58:17</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>idea 55:13, 75:18</p>	<p>ideal 36:13, 41:20, 54:3 identical 84:19 identification 120:8 identifies 124:18 identify 5:13 identity 162:13 ignore 152:6 ii 113:16 illustrated 77:1, 115:2 illustrates 75:8, 88:8, 103:21, 104:1, 107:19, 126:16 illustration 75:11, 75:13, 86:10 illustrations 22:18, 84:12 immediate 72:11, 149:14, 172:3 immediately 67:5, 67:15, 148:17, 150:2, 150:8, 150:14, 169:11, 172:5, 172:7, 172:10, 172:12 impact 11:9, 15:15, 109:13, 111:7, 116:11, 116:14, 126:19, 126:22, 138:9, 138:13, 162:7, 165:17, 167:12, 176:3, 177:21, 180:14 impacted 71:21, 124:16,</p>
--	---	---	---

Transcript of Hearing
 Conducted on January 15, 2020

125:14 impacts 155:11, 161:17, 161:20, 161:21, 169:15 impair 7:1, 156:9, 161:12 impaired 105:22 impairment 12:2 impede 68:11 implement 156:3 implementation 124:6 implied 174:19 import 66:9 important 55:5, 108:16, 115:5, 180:18 impossibility 86:16 impressed 36:8 improve 117:3, 119:13, 132:1 improved 97:21, 98:20, 98:21, 118:5 improvements 33:18, 95:16, 96:12, 97:1, 99:2, 108:3, 119:7, 155:16, 169:10 inches 80:20 incidental 28:20 include 23:4, 25:3, 69:15, 73:10,	103:12 included 90:2, 103:12, 103:13 includes 89:13 including 6:7, 9:21, 15:6, 20:2, 97:1 income 34:22 inconsistencies 107:14 inconsistent 171:12 incorrect 7:6, 7:9, 12:5, 70:7 increase 11:14 increased 128:4, 130:22, 165:22 increment 139:21 indeed 39:7 indicate 77:21 indicated 18:11, 28:17, 48:15 indicates 139:7, 170:16 indicative 77:8 individual 9:11 individuals 9:2 industrial 168:14 industry 9:5 infamous 22:8 inferred 171:4	influence 149:1, 152:6 influenced 165:11 information 7:9, 10:6, 57:18, 69:14, 70:15, 70:22, 76:2, 82:4, 100:11, 101:17, 102:19, 103:7, 103:11, 107:10, 107:13, 107:15, 110:20, 110:21, 133:1, 133:16, 134:2, 151:2, 183:1, 183:13, 186:7 infrastructure 69:2, 69:10, 71:14, 75:2, 75:7, 75:17, 82:3, 82:5, 84:1, 84:7, 84:17, 85:13, 88:11, 91:1, 97:1, 97:2, 101:14, 101:19, 101:20, 102:11, 102:20, 103:1, 103:2, 103:14, 103:19, 103:20, 103:22, 105:3, 118:4, 119:7, 119:8, 119:11, 119:21, 120:3, 121:19, 121:22, 129:15, 133:3, 133:17, 167:1, 182:16, 182:17 inglewood 176:6 inhabitants 155:6 inherent 166:17 initial 40:4, 108:7	initials 80:2 injurious 11:13 inn 53:2 inns 54:15 input 134:14 inserted 20:21 inset 111:20 inside 178:8 inspections 103:4, 133:18 installation 109:9, 111:14, 123:1, 125:9, 144:15 instance 176:2 instinct 35:20 institution 169:20 institutional 118:19, 119:2, 128:12, 162:11, 163:3, 164:20 insulation 128:6 intensive 124:11 interchange 7:18, 26:8, 33:15, 139:19, 140:1, 140:2, 140:7, 140:9, 153:4, 153:15, 155:12, 161:2, 166:22, 169:10, 169:14 interchanges 163:14 interest 41:21, 186:10
--	---	--	--

Transcript of Hearing
Conducted on January 15, 2020

<p>interested 6:4, 39:6, 42:17 interestingly 17:15, 27:9 interface 168:17 interior 80:16, 106:12, 106:15, 106:18, 107:3, 128:8 internet 38:17 interrupting 29:18 intersect 149:12 intersection 6:21, 11:15, 36:20, 36:21, 49:8, 142:12, 143:6, 152:7, 153:3, 153:4, 153:6, 161:2, 173:9 intersections 11:10, 28:14, 138:18, 139:1, 141:10, 151:18, 178:9 introduce 94:6 introduced 22:4, 41:2, 94:5 introduction 119:1 inventories 100:7 inventory 96:8, 134:5 investigation 101:11 investment 155:14, 167:1 involved 31:6, 31:14, 33:3</p>	<p>irregular 98:9 island 55:14 isolated 96:18, 98:6, 99:8 issue 152:13, 169:8, 169:19, 184:11 issues 177:17, 185:1 issuing 62:16, 63:7 italian 180:1, 180:12 item 29:3, 31:10, 32:9 items 154:9, 160:18 iterations 31:13 itself 44:18, 95:12, 98:19 iversen 6:7, 6:10</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>jacob 4:5, 10:8, 10:9, 56:9 january 1:11, 5:3, 65:2, 78:2, 93:21, 96:4 jay 173:20 jeff 8:5, 8:18, 8:22, 13:19, 119:15 jeffery 4:4 jeffrey 14:9 jeopardy 124:1</p>	<p>job 1:20, 35:6, 36:7, 54:9, 64:10 jobs 164:22 john 110:16 joint 109:18, 109:21, 111:13, 111:16, 117:10, 125:6, 126:6, 150:9, 161:22, 168:16 jr 43:22 judgment 59:22 judgments 59:13 judicial 16:17 july 158:5 jump 150:13 june 63:17, 138:10 jurisdiction 61:15 justification 111:1, 148:10, 151:4, 154:3, 157:3, 158:4, 169:22, 170:9</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>keep 29:18, 90:11, 108:12, 184:4 keeping 155:2, 165:21, 166:19 keeps 51:3 kelly 70:12 key 175:21, 180:4</p>	<p>kickoff 176:1 kill 38:3 kind 28:20, 39:14, 41:22, 42:13, 46:20, 46:22, 47:7, 47:22, 52:19, 55:1, 60:3, 60:7, 64:8, 64:10, 68:9, 95:9, 97:20, 118:22, 121:7, 176:13, 177:7, 177:8, 180:18 king 42:2, 43:22 kitchenette 53:16 kitty 29:13, 41:8, 51:7 knew 134:9, 163:20 know 10:8, 17:14, 30:5, 31:12, 32:1, 38:16, 42:11, 44:6, 52:13, 53:6, 54:17, 79:8, 80:4, 89:12, 105:17, 123:9, 124:15, 132:18, 135:15, 139:15, 141:11, 141:12, 143:2, 143:15, 143:19, 146:19, 147:15, 158:17, 159:3, 163:13, 163:17, 175:1, 176:15, 178:17, 179:5, 180:1, 180:12, 182:3, 182:5, 183:19, 184:12</p>
--	---	--	--

Transcript of Hearing
Conducted on January 15, 2020

<p>knowledge 86:11</p> <p>known 5:8, 32:3, 32:4</p> <p>knows 17:13, 176:12, 176:18, 182:2</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>lac 150:4</p> <p>lacking 33:20</p> <p>lacks 36:11</p> <p>lake 35:3</p> <p>land 10:3, 11:17, 11:19, 71:15, 92:14, 102:2, 114:5, 117:2, 118:5, 120:4, 148:4, 152:19, 166:16, 167:7, 167:8, 167:9, 171:18, 171:21</p> <p>landforms 117:6, 130:4</p> <p>landmark 52:12</p> <p>landscape 9:16, 67:14, 92:10, 92:15, 92:16, 93:9, 98:5, 100:8, 100:9, 116:9, 145:4</p> <p>landscaping 163:5</p> <p>lane 49:9, 49:14, 50:4, 50:16, 50:17, 145:10</p> <p>lanham 14:11, 93:6</p> <p>large 94:15, 115:21,</p>	<p>118:4, 149:10, 167:16, 175:20</p> <p>larger 28:3, 73:4, 114:15</p> <p>largest 15:8, 35:19</p> <p>largo 34:15, 37:10, 37:16, 145:11</p> <p>last 27:2, 30:18, 31:3, 35:10, 46:14, 52:22, 75:22, 79:16, 85:12, 124:17, 134:15, 135:8, 178:7, 182:2</p> <p>lat 181:3</p> <p>late 68:4, 77:18</p> <p>later 23:21, 71:4</p> <p>latte 181:22</p> <p>laude 57:20</p> <p>law 3:5, 5:16, 66:15, 151:14</p> <p>laws 61:4, 66:11</p> <p>layer 79:12</p> <p>layout 116:14</p> <p>leading 99:4</p> <p>leaf 67:8</p> <p>learn 133:11</p> <p>lease 38:21</p> <p>leasing 8:20, 9:9, 9:10</p> <p>least 6:19, 13:7,</p>	<p>90:9, 106:16, 106:17, 152:19, 153:5, 173:5</p> <p>leave 30:13, 158:14, 163:19</p> <p>ledo's 44:7</p> <p>left 49:18, 49:19, 58:2, 70:13, 77:18, 132:7, 135:16, 182:10</p> <p>left-hand 109:16</p> <p>lemmings 176:14</p> <p>lengthy 111:4</p> <p>lenhart 4:7, 11:2, 51:1, 135:22, 136:1, 136:5, 136:10, 136:12, 137:5, 137:8, 137:12, 137:15, 137:19, 138:5, 138:8, 139:6, 139:10, 139:14, 139:18, 140:15, 140:19, 141:3, 141:7, 141:14, 142:6, 143:2, 143:8, 143:14, 144:4, 144:7, 153:14, 164:6, 169:7</p> <p>lenhart's 11:8, 11:11</p> <p>less 91:3, 106:17, 110:5, 117:16, 120:3, 129:15, 129:16, 130:11, 131:9, 184:10</p> <p>lessen 128:7</p> <p>let's 21:2, 30:20,</p>	<p>73:2, 108:5, 129:20, 157:12, 181:14</p> <p>letter 10:21, 65:1, 65:6, 65:18, 65:19, 66:9, 66:10, 78:1, 78:2, 83:8, 84:21, 86:4</p> <p>level 60:6, 102:12, 103:7, 123:2, 124:15, 128:6, 129:4</p> <p>levels 111:8, 113:19, 117:16, 123:6, 128:9, 138:22</p> <p>library 34:3</p> <p>license 60:21</p> <p>licensed 15:3, 16:4, 16:7, 16:8, 16:12, 100:8, 100:9</p> <p>lidar 70:16, 78:4</p> <p>life 133:12</p> <p>light 49:13, 50:16</p> <p>lighter 87:9</p> <p>likelihood 34:22</p> <p>likely 117:11</p> <p>likewise 32:7, 45:12</p> <p>limit 31:4, 112:5, 113:7, 113:9, 125:6</p> <p>limited 9:22, 47:4,</p>
---	--	--	--

Transcript of Hearing
 Conducted on January 15, 2020

<p>53:15, 54:17, 63:10, 99:7, 110:3 line 43:4, 47:18, 47:22, 79:3, 112:20, 113:1, 113:5, 115:7, 118:16, 129:19, 181:9 linear 20:8, 74:17, 125:21 lines 78:16, 80:7, 80:9, 113:5, 151:19 linking 183:12 lipsey 15:6 listed 110:22, 111:1 listeners 172:21 listening 59:19 literally 33:17, 47:3 litter 67:8 little 17:19, 34:7, 34:10, 38:8, 38:10, 43:18, 51:16, 51:17, 52:19, 53:9, 53:10, 53:16, 60:4, 63:1, 65:12, 66:11, 67:12, 74:9, 106:1, 113:8, 150:7, 151:1, 159:22, 169:1, 178:1, 183:15 live 179:4 lives 19:9, 19:10</p>	<p>living 28:16, 46:1, 172:11 local 34:10, 103:7, 170:19, 170:21 locate 38:16 located 6:21, 97:5, 104:15, 121:1, 121:15, 153:2, 166:21, 170:18 locating 141:20 location 6:12, 7:10, 7:17, 142:15, 153:13, 155:11, 155:22, 161:18, 162:9, 166:18, 166:19, 167:12 locations 104:5 logging 72:19 logic 130:18 logical 151:19 long 16:6, 19:18, 38:22, 46:22, 95:8, 181:12 long-term 31:1 look 34:20, 47:7, 48:20, 69:9, 72:10, 77:4, 80:10, 84:9, 121:3, 163:20 looked 15:14, 46:13, 58:20, 70:4, 79:14, 124:14, 148:7 looking 48:18, 51:4,</p>	<p>54:5, 74:3, 79:9, 103:11, 107:20, 114:13, 119:18, 127:16, 131:18, 149:2, 150:20, 151:6, 172:15, 181:10 looks 35:16, 76:21, 77:15, 84:15, 84:18, 127:5, 128:13, 141:10 lose 54:8, 54:10 loss 114:1 lost 25:1 lot 6:6, 6:8, 10:1, 17:17, 18:18, 27:7, 28:6, 31:5, 31:7, 31:13, 33:4, 45:10, 46:19, 52:18, 52:22, 54:22, 55:8, 55:15, 70:8, 70:14, 74:17, 98:4, 98:20, 106:4, 107:10, 115:1, 115:6, 116:17, 117:17, 117:18, 118:15, 127:5, 132:11, 177:5, 184:6, 184:10 lots 35:10, 35:14, 35:20, 36:4, 38:20, 46:16, 46:20, 46:22, 115:10, 116:20, 116:22, 117:8, 131:14, 131:22, 167:16 lotsford 44:1</p>	<p>love 54:20, 133:7 lovely 17:17 low 7:7, 27:7, 119:8, 119:11 lowe 119:15 lower 78:15, 98:1, 120:6 ludwick 155:20, 163:16, 168:21, 173:4, 174:12 ludwig 134:20 lug 17:18 lunch 55:18, 179:15, 180:17 lunches 180:17 luther 43:22</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>ma'am 24:6, 26:3, 50:2, 50:9, 51:18, 82:12, 83:18, 85:17, 102:8, 125:15, 128:14, 135:3, 150:19 madam 6:15, 23:8, 28:6, 30:19, 31:15, 37:11, 37:22, 38:3, 38:4, 38:6, 73:14, 182:22 madame 12:7 made 33:19, 35:17,</p>
--	---	---	---

Transcript of Hearing
 Conducted on January 15, 2020

<p>67:19, 95:2, 101:7, 110:8, 148:20, 152:7 maintain 32:12, 184:2 maintained 116:17 maintenance 32:10 major 6:21, 7:18, 8:2, 26:8, 36:20, 47:13, 149:10, 151:19, 153:3, 153:10, 161:2, 166:21, 167:1, 171:9, 178:6 majority 69:12, 75:9, 84:8, 84:13 make 15:15, 23:11, 38:21, 49:11, 49:19, 50:18, 73:2, 91:9, 97:21, 103:8, 107:11, 110:13, 110:14, 111:3, 113:18, 117:3, 118:5, 121:4, 130:19, 132:19, 158:14, 175:16, 175:19 makes 31:20, 50:19, 98:11, 175:7 making 35:17, 59:12, 105:22 mall 6:7, 6:10, 6:12 man 43:4 man-made 67:16, 88:12 managed 15:9</p>	<p>management 69:17, 108:17 manager 31:16 manipulated 72:17 manual 61:6, 66:14, 96:7, 133:15 many 19:16, 23:1, 34:21, 40:1, 53:7, 58:11, 95:11, 116:22, 148:5, 168:6 map 5:6, 23:17, 24:21, 73:11, 74:1, 103:20, 111:12, 126:5, 126:12, 126:16, 128:13, 128:22, 141:1, 147:20, 147:22, 152:15 maple 79:2 mapping 70:14, 102:13, 134:2 margin 180:19 maria 1:4, 5:7 marilyn 146:9 mark 21:22, 94:12, 120:7 marked 14:13, 20:17, 21:19, 22:16, 59:9, 76:14 market 35:8, 39:4, 39:6, 39:7, 39:8, 42:4, 47:2, 176:12, 176:13, 176:21,</p>	<p>181:17 marketed 39:3 marketing 46:10 marketplace 34:14, 42:18, 43:22, 44:15 markets 176:10 marlboro 2:7 marlborough 20:10, 24:7, 24:10, 28:7, 28:12, 31:9, 37:7, 45:15, 45:17, 46:3, 46:5, 49:18, 50:8, 51:2, 51:8, 52:2, 52:3, 52:5, 52:16, 95:6, 95:12, 97:14, 97:16, 106:22, 108:9, 132:8, 142:12, 143:4, 143:8, 146:6, 150:14, 162:21, 168:19 marriott 54:16 martin 43:22 marwood 45:21 maryland 2:15, 10:15, 14:11, 15:4, 16:4, 16:7, 17:3, 18:4, 18:5, 56:11, 58:21, 59:5, 61:4, 61:11, 93:6, 111:8, 136:8, 139:18, 145:11, 146:5, 146:20, 153:16,</p>	<p>153:17, 170:19 master 7:3, 7:11, 12:2, 31:21, 86:22, 87:5, 112:4, 116:3, 117:14, 120:1, 126:12, 142:3, 147:20, 147:22, 153:6, 153:18, 156:4, 156:9, 156:10, 160:13, 160:17, 161:8, 161:13, 167:19 match 86:3 material 74:15, 77:17 materialize 33:6 materials 88:2, 91:10, 98:14 math 132:5 matrix 182:3 matter 12:6, 151:14 maurene 1:10, 2:1, 5:3 maximize 167:2 maximizing 166:16 maximum 107:1, 116:18 maybe 27:4, 40:11, 53:16, 73:5, 80:1, 90:8, 110:5, 132:12, 151:1, 173:4, 179:15, 180:10 mcalister 82:1, 82:13 mccalester 4:6, 115:14,</p>
---	--	--	---

Transcript of Hearing
Conducted on January 15, 2020

<p>115:20, 116:2, 116:16, 120:17, 122:14, 122:19, 123:4, 123:8, 123:12, 123:14, 123:16, 123:18, 123:21, 124:3, 124:7, 124:17, 125:15, 126:4, 126:11, 126:15, 126:21, 127:11, 127:19, 128:14, 128:16, 128:21, 129:3, 129:7, 130:1, 130:15, 130:18, 131:5, 131:9, 131:13, 132:21, 133:9, 133:13, 134:13, 134:17, 134:19, 134:22 mccalister 9:16, 9:19, 78:3, 82:11, 82:17, 85:18, 85:22, 90:11, 91:9, 93:4, 93:5, 93:10, 93:12, 93:16, 93:21, 94:3, 94:7, 94:10, 94:21, 95:1, 96:3, 97:8, 100:3, 100:19, 101:3, 101:10, 101:15, 102:8, 102:10, 104:12, 105:3, 105:10, 106:4, 107:18, 108:1, 109:2, 109:5, 109:10, 109:15, 111:11, 112:18, 113:1, 113:13, 114:4, 114:16, 114:20, 115:1, 146:2, 155:15, 169:19, 170:4</p>	<p>mccalister's 10:4, 87:17 mccallister 82:6, 82:9, 82:12, 87:22, 88:4 mccormick 149:8 mcdonald's 42:1, 42:3, 176:16, 176:18 mcneil 5:4, 116:1, 120:11, 124:5, 125:13, 126:1, 127:3, 127:12, 127:15, 128:11, 128:15, 128:18, 129:1, 129:5, 129:18, 129:20, 130:10, 130:16, 131:3, 131:6, 131:11, 132:13, 132:18, 133:5, 133:11, 134:7, 134:15, 135:1, 135:4, 135:7, 135:12, 135:18, 136:1, 136:14, 136:17, 136:22, 141:7, 141:15, 141:17, 143:11, 143:15, 143:19, 144:5, 144:8, 144:16, 144:19, 144:22, 145:17, 150:16, 150:20, 152:9, 154:17, 154:21, 158:1, 158:7, 158:10, 158:20, 159:2, 163:8, 163:13, 163:18, 164:1, 164:4, 164:10, 164:13, 164:15, 166:4, 166:8, 172:22, 173:3, 173:13, 173:17,</p>	<p>173:22, 174:6, 174:9, 174:12, 177:20, 178:14, 179:4, 181:3, 182:1, 182:7, 182:10, 182:20, 183:3, 183:7, 183:11, 183:21, 184:9, 184:16, 184:19, 184:22 md 2:7 mean 5:5, 25:12, 35:11, 37:7, 52:19, 55:7, 60:16, 68:18, 70:19, 73:18, 75:12, 89:11, 89:17, 131:3, 132:14, 142:3, 142:7, 150:6, 152:6, 180:13 means 115:10 meant 174:13 measure 68:7 medical 181:1, 181:5, 181:7, 181:11, 181:15, 181:18 medicated 128:8, 128:9 medication 118:14 medium 166:1, 170:16 meet 115:9, 156:16, 171:7, 171:16 meeting 56:5 meets 11:22, 156:18, 161:3, 161:7 melwood 148:17, 149:4</p>	<p>member 24:12, 24:16 memory 174:18 mentioned 6:15, 41:5, 43:12, 44:3, 178:1 mentioning 178:20 mercantile 145:10 mere 86:9 merely 18:14 met 60:6, 152:20 metro 167:22, 168:1, 168:6 mic 23:12, 23:14 michael 4:7, 11:2, 30:20, 153:14, 169:7 microphone 26:18, 94:22 middle 45:19, 112:21 midpoint 97:17 might 13:8, 34:14, 73:16, 182:14 mike 135:16, 135:22, 164:6 mile 20:11 miles 48:3, 178:22 military 109:9, 111:13, 116:11, 122:22, 125:18, 145:3, 169:20</p>
--	--	--	--

Transcript of Hearing
Conducted on January 15, 2020

<p>million 180:6, 180:7 millwood 48:1 milt 10:8, 57:11 mind 26:15 minimal 122:1 minimum 131:16 minor 66:21 minute 51:6, 90:10, 146:15 minutes 90:9, 135:8, 135:11, 135:13 mio 109:9, 144:20, 145:1 mios 109:13 mioz 109:17, 113:3, 113:5 miscellaneous 57:21 mistake 152:10 misunderstood 25:22 mitigate 117:15, 127:7, 127:17, 128:3, 129:4, 130:2, 130:3, 130:9 mitigated 118:22, 129:10, 129:13, 129:14 mitigation 113:19, 117:11, 128:2, 128:17, 129:17 mix 120:4, 141:21,</p>	<p>155:9, 161:16, 164:20, 165:5, 165:22 mixed 142:21 mixed-use 7:14, 142:16, 162:18, 170:17 model 78:4, 78:13, 79:5, 103:6, 112:7, 113:3 models 70:17, 103:3 moderately 166:2 modern 90:10 modified 21:13 moiz 127:7, 127:18 molly 1:22, 186:3 mom 24:17 moment 18:11, 82:10 moments 107:19 money 39:17 montessori 23:20 montgomery 58:22 month 65:14 months 54:11 morals 155:5 more 7:15, 43:3, 44:14, 45:3, 47:11, 67:13, 72:9, 80:10, 95:19, 101:17,</p>	<p>102:15, 103:11, 106:5, 107:13, 113:12, 113:15, 118:13, 119:20, 129:9, 134:3, 149:13, 159:12, 169:1, 174:13, 174:15, 179:19, 182:14, 183:15, 184:7 morning 5:2, 6:1, 13:21, 14:1 most 12:12, 24:18, 28:13, 34:19, 34:20, 42:21, 54:20, 67:11, 67:14, 70:11, 77:10, 127:16, 171:10 mostly 12:8, 42:11, 61:10, 99:9 motel 53:3, 53:9, 53:10 mother 24:12 move 85:8, 118:13 moved 67:8, 128:12, 128:13 movement 49:20, 50:20 moves 113:13 moving 32:17, 35:15, 36:4, 51:4, 97:3, 106:21, 108:6, 110:7, 181:12 mpa 9:17 mru 122:5</p>	<p>mst 6:17, 6:20, 7:15, 11:8, 11:21, 12:1, 27:6, 30:11, 115:13, 141:2, 142:10, 142:18, 143:1, 143:14, 143:17, 143:20, 150:1, 152:17, 154:8, 155:7, 156:8, 160:11, 160:20, 161:9, 161:11, 163:10, 164:4, 164:18, 165:22, 166:20, 167:22, 169:3, 172:13, 184:3, 184:4 much 9:3, 24:16, 42:18, 56:5, 58:6, 72:15, 89:5, 90:18, 91:8, 131:7, 179:19, 182:2, 185:3, 185:4 muffle 17:16 multi-story 181:10 multistory 46:1 must 39:4, 39:5, 70:10 must've 8:14 mx 156:6, 161:13 mxd 122:4 myself 60:20, 175:5</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>nai 15:5, 15:8,</p>
---	--	---	--

Transcript of Hearing
Conducted on January 15, 2020

<p>15:12 name 14:7, 14:9, 56:7, 56:9, 81:22, 93:3, 93:4, 145:7 nation's 35:18 national 41:18, 181:7, 181:11 natural 61:14, 62:21, 70:19, 96:8, 98:22, 100:7, 107:9, 134:4 nature 42:10, 67:13, 103:21, 149:22, 167:14, 175:14 near 52:8, 116:11, 173:7, 173:9, 178:2, 184:7 nearby 7:19, 160:7, 163:11 necessary 48:9 necessitate 119:13 need 14:18, 16:1, 39:9, 43:3, 60:16, 73:4, 91:6, 128:7, 142:2, 146:10, 150:11, 175:18 needed 47:14 needs 34:17, 48:9, 113:10, 113:14, 152:21, 154:7 negate 117:6 negative 155:10, 161:20,</p>	<p>161:21, 177:21 neighborhood 33:21, 33:22, 34:11, 34:16, 39:14, 40:8, 40:21, 41:20, 45:5, 48:18, 55:20, 148:9, 148:12, 148:14, 148:16, 148:19, 148:22, 149:3, 149:13, 149:17, 149:19, 149:21, 150:18, 151:10, 151:11, 151:15, 152:1, 152:5, 155:17, 157:4, 160:4, 160:5, 160:6, 175:17 neighborhoods 151:20 neighboring 162:20 neither 186:8 nesting 106:12 network 15:9, 71:14, 140:11, 140:17, 168:8 never 47:6, 59:14, 106:2, 147:16, 179:6 never-ending 43:7 new 6:2, 28:18, 28:19, 32:14, 35:16, 38:18, 46:4, 46:5, 46:7, 57:12, 71:15, 73:6 next 8:1, 52:17, 54:14, 75:22, 83:1, 85:11,</p>	<p>90:11, 101:3, 142:22, 180:21, 181:16 nice 35:12, 39:12, 39:13, 56:5, 180:10, 180:11, 180:12 niche 60:3 nine 32:20 nio 124:6 nma 8:19 nobody 167:17 noise 9:22, 91:13, 91:15, 111:12, 111:17, 111:21, 112:1, 112:4, 112:7, 112:11, 113:2, 113:3, 113:5, 113:16, 113:17, 113:19, 116:12, 117:9, 117:11, 117:22, 118:16, 118:18, 119:1, 122:6, 123:6, 125:3, 125:14, 125:19, 126:6, 126:18, 126:22, 127:5, 127:6, 127:8, 127:9, 127:12, 127:22, 128:1, 128:3, 128:8, 128:9, 128:17, 128:18, 129:4, 129:22, 162:1 noises 125:16 nonregulated 133:15 nonresidential 141:21</p>	<p>normal 53:21 normally 39:16, 72:10, 96:20, 98:8 north 20:9, 42:7, 45:21, 52:4, 52:7, 53:9, 80:18, 83:6, 86:8, 97:3, 113:6, 125:2, 144:3, 144:4, 146:4, 170:19, 172:7 northern 121:10, 142:20, 148:21, 149:6 northwest 144:4 notary 2:15 note 115:6, 126:2, 181:4 notes 103:19 nothing 14:4, 53:5, 56:14, 82:16, 122:15, 136:4, 144:11, 178:22, 181:19 notice 2:14, 88:18 nowadays 54:6 nowhere 170:21, 171:1 nri 100:21, 100:22 number 8:3, 8:7, 22:16, 23:16, 26:12, 29:3, 30:6, 30:7, 36:18, 36:19, 36:20, 38:11,</p>
--	---	--	--

Transcript of Hearing
 Conducted on January 15, 2020

<p>40:15, 40:21, 45:20, 56:20, 73:1, 81:6, 81:11, 81:19, 89:14, 94:8, 95:17, 96:5, 96:11, 112:8, 114:7, 120:14, 121:2, 130:3, 130:7, 133:22, 141:12, 148:11, 152:14, 156:19, 157:13, 163:14, 174:17, 174:20, 182:12, 182:15</p> <p>numbered 80:1, 81:21</p> <p>numbers 35:21, 81:7, 81:16, 85:9, 85:10, 158:13, 163:21, 170:7</p> <p>numerous 11:20, 20:2, 65:9</p> <p>nut 17:18</p> <p>nvr 36:4</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>oak 78:21, 99:9, 99:10</p> <p>oath 87:18</p> <p>object 135:19</p> <p>objection 12:13, 12:15, 19:1, 64:15, 64:18</p> <p>objections 92:22</p> <p>obsolete 32:12</p> <p>obtained 138:16</p>	<p>obviously 72:20, 72:21, 74:11, 176:18</p> <p>occasions 11:20, 20:2</p> <p>occupation 57:1, 57:2</p> <p>occurs 26:10</p> <p>october 7:22, 8:4</p> <p>octogenarian 70:11</p> <p>oden 2:5</p> <p>off-site 86:8</p> <p>offer 17:1, 180:22, 181:16</p> <p>offered 10:17</p> <p>offering 17:5</p> <p>offers 130:7</p> <p>office 1:2, 2:3, 25:9, 25:17, 38:9, 42:12, 48:2, 122:11, 162:10, 181:2, 181:5, 181:7, 181:10</p> <p>offices 3:5, 5:16, 15:10, 44:8, 48:1, 160:15</p> <p>official 88:18</p> <p>oh 8:13, 22:10, 25:14, 26:20, 28:1, 41:4, 51:6, 56:6, 73:7, 81:18, 86:1, 135:10, 136:16, 173:13, 173:22, 174:19,</p>	<p>179:6</p> <p>old 9:3, 20:9, 24:10, 24:16, 27:7, 32:10, 42:1, 45:15, 50:7, 50:8, 51:2, 52:2, 52:3, 52:5, 52:15, 53:14, 64:7, 72:19, 146:6, 150:13, 162:21, 168:19, 181:9</p> <p>older 46:2</p> <p>olive 42:19, 180:2</p> <p>on-site 102:15</p> <p>once 107:4, 176:12, 180:7</p> <p>one 12:18, 20:21, 21:3, 24:3, 28:11, 33:12, 33:15, 35:14, 36:18, 38:5, 38:12, 39:10, 40:21, 41:18, 42:2, 42:21, 45:22, 46:2, 46:21, 47:10, 48:2, 48:14, 49:7, 49:10, 49:16, 50:9, 50:17, 53:2, 54:7, 54:8, 54:9, 54:10, 54:15, 60:2, 64:4, 73:3, 73:4, 73:6, 73:12, 73:17, 82:11, 94:9, 94:15, 101:2, 102:6, 114:9, 114:15, 125:11,</p>	<p>127:4, 131:15, 132:10, 134:15, 135:8, 141:22, 143:11, 143:16, 145:13, 149:2, 149:18, 151:16, 152:14, 152:19, 152:22, 153:9, 156:16, 156:20, 161:1, 168:4, 168:5, 171:7, 174:13, 174:15, 175:7, 175:15, 175:20, 176:11, 177:10, 178:7, 178:19, 178:21, 179:20, 181:14, 182:14</p> <p>one's 173:15</p> <p>ones 86:3, 163:15</p> <p>online 177:4, 177:12, 183:4</p> <p>only 8:12, 38:19, 38:20, 39:20, 54:1, 67:4, 77:7, 108:18, 108:19, 117:16, 125:13, 128:21, 130:17, 131:20, 132:7, 135:15, 136:7, 150:1, 152:18, 156:20, 167:22, 168:3, 168:10, 168:17, 175:18</p> <p>open 12:19, 30:13, 35:16, 118:8, 118:20, 129:11, 129:14, 158:14, 163:19, 182:11</p> <p>opening 4:3</p> <p>operate 140:11</p>
---	--	---	---

Transcript of Hearing
Conducted on January 15, 2020

<p>operations 54:1, 180:19</p> <p>opinion 70:8, 140:16, 140:20, 151:8, 151:9, 171:19</p> <p>opinions 122:2</p> <p>opportunities 162:14, 162:16</p> <p>opportunity 34:1, 134:10, 162:11</p> <p>opposed 142:18</p> <p>opposite 113:4, 143:5</p> <p>opposition 5:12</p> <p>optimum 141:16, 141:19</p> <p>option 121:8</p> <p>options 121:2, 121:5, 121:6, 121:7</p> <p>order 106:14, 118:5, 120:4, 159:4, 184:2</p> <p>ordinance 140:22, 153:22, 154:10, 155:3, 156:5, 161:9</p> <p>organizations 15:6</p> <p>originally 26:5, 27:10</p> <p>osborn 51:21</p> <p>osborne 51:3</p> <p>other 15:5, 15:17, 16:11, 16:16, 33:4, 41:22, 42:3, 44:17, 45:11, 54:22,</p>	<p>57:21, 66:21, 68:8, 78:21, 89:2, 96:2, 99:19, 107:9, 116:3, 117:2, 117:13, 118:11, 119:20, 119:22, 121:17, 125:2, 125:11, 136:7, 142:9, 142:10, 142:16, 143:20, 147:13, 166:5, 170:20, 171:8, 174:9, 174:22, 175:8, 175:13, 176:17, 177:22</p> <p>others 12:8, 136:11</p> <p>otherwise 186:10</p> <p>out 9:3, 24:19, 24:22, 35:9, 35:11, 41:2, 43:1, 46:21, 49:16, 54:5, 54:12, 55:18, 58:5, 58:15, 61:1, 63:11, 65:15, 65:20, 66:22, 67:2, 74:6, 79:7, 82:2, 97:12, 98:17, 98:18, 108:8, 116:21, 117:21, 120:22, 151:13, 152:2, 157:2, 175:2, 177:14, 177:15, 181:12, 181:13, 182:18, 184:12</p> <p>outcome 186:11</p> <p>outfalls 131:22</p> <p>outgrown 32:16</p> <p>outlined 133:16</p>	<p>outside 53:12, 53:13, 54:2, 72:11</p> <p>over 6:1, 6:14, 8:20, 9:2, 9:7, 10:18, 13:17, 16:21, 20:10, 23:9, 24:2, 25:10, 30:18, 34:12, 36:8, 36:9, 46:14, 52:22, 58:20, 62:20, 65:12, 146:3, 152:4, 165:12, 178:7</p> <p>overall 107:5</p> <p>overland 67:9</p> <p>overlay 109:17, 111:14, 123:1, 169:20</p> <p>overlooking 97:12</p> <p>own 6:8, 32:8, 181:8</p> <p>owned 6:14, 23:4, 23:17, 24:19, 24:21, 26:22, 143:9, 143:14, 144:20</p> <p>owners 31:18, 32:5</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>pa 145:10</p> <p>pad 28:11, 38:20, 39:12, 40:6, 40:7, 42:15, 44:14, 97:21, 97:22</p> <p>pads 39:13</p>	<p>page 4:2, 28:5, 69:5, 69:19, 69:20, 70:3, 70:20, 71:11, 75:1, 75:22, 77:2, 78:9, 79:17, 79:19, 81:19, 83:8, 83:10, 83:12, 84:5, 84:15, 85:9, 85:12, 86:20, 101:8, 101:19, 103:19, 104:4, 126:13, 126:15, 141:8, 154:15, 154:22, 164:13, 170:11, 174:15, 174:20</p> <p>pages 1:21, 79:22, 81:12, 81:13, 83:2, 83:10, 85:11, 88:16, 88:17</p> <p>paint 105:12</p> <p>pane 128:6, 128:7</p> <p>paragraph 69:9, 75:22, 79:16, 84:5, 86:20, 104:1, 142:20</p> <p>parallel 113:1, 115:5, 121:12, 127:10</p> <p>parallels 112:21</p> <p>paramount 105:18</p> <p>parcel 32:20, 95:3, 97:10</p> <p>parcels 95:3, 115:10</p> <p>pardon 52:10, 159:8</p>
---	---	--	---

Transcript of Hearing
Conducted on January 15, 2020

<p>park 6:17, 6:21, 7:5, 10:5, 11:7, 12:3, 12:4, 27:10, 33:1, 48:2, 110:11, 110:19, 111:16, 112:6, 138:14, 149:5, 176:6 park-and-ride 142:8 parked 46:17 parking 27:8, 30:3, 130:5 parkland 33:2 parkside 35:9 parkway 14:10, 36:3 part 22:13, 26:2, 27:13, 28:16, 32:20, 32:21, 35:6, 36:14, 39:20, 55:13, 65:7, 98:1, 103:5, 113:2, 121:3, 128:12, 128:13, 137:17, 137:22, 138:11, 140:13, 146:20, 147:4, 153:9, 153:10, 163:6, 163:17, 163:22, 165:11, 171:2, 177:16 partial 95:13 partially 32:12 participated 122:3 particular 23:17, 44:22, 84:19, 178:20</p>	<p>particularly 137:13, 169:9 parties 186:9 passersby 155:17 past 15:8, 36:22, 48:6, 92:18, 95:16, 137:17, 137:19, 137:22 pasture 96:18 pattern 98:9, 103:22, 148:5 patterns 95:10, 109:20, 111:15 pearl 54:2, 55:7, 150:10 pecosins 107:7 penalties 14:3, 82:14, 136:2, 144:10 pennsylvania 8:2, 10:2, 26:1, 29:11, 30:21, 31:8, 42:7, 46:18, 48:19, 48:22, 49:4, 49:21, 50:10, 86:10, 86:12, 95:5, 95:13, 97:12, 98:7, 98:15, 99:12, 99:16, 108:4, 108:8, 108:11, 112:1, 112:3, 112:14, 113:3, 113:5, 115:3, 115:5, 117:11, 117:18, 121:13, 121:14, 123:6, 127:9, 128:19, 139:16,</p>	<p>146:5, 148:20, 153:16, 153:17, 162:18, 165:9, 165:16, 169:12, 169:14 people 8:17, 13:8, 34:21, 35:4, 35:22, 43:1, 44:19, 55:3, 55:19, 55:22, 70:11, 124:11, 181:19 people's 3:10, 5:18 pepco 32:10, 149:10 percent 106:18, 110:5, 132:6, 132:7, 180:16, 180:18 percentage 132:6 perhaps 114:14 perjury 14:3, 82:14, 136:2, 144:10 permit 63:8 permits 62:17, 63:3 perpendicular 113:4, 127:14 person 31:15 personal 32:9, 37:22, 71:6, 72:20 personally 76:21 perspective 149:3, 150:12 pertain 15:18, 137:10, 171:20 petitioner 3:2</p>	<p>pg 10:7, 66:11, 70:8, 72:16, 76:2, 76:3, 76:5, 76:22, 77:6, 78:5, 78:16, 79:4, 79:9, 79:13, 91:3, 102:18, 102:19, 107:20, 133:1 ph 32:22 phase 101:4, 113:15, 113:16, 128:2, 154:7 phenomenon 41:18 phone 2:8, 44:8 photo 103:17 photograph 75:17 photographs 65:8, 65:10, 66:1, 71:7, 77:8, 81:2, 83:11, 83:13, 98:2, 99:20, 104:2 photos 102:21 phrase 171:1 physical 86:15 pick 37:4 picked 149:17 picking 35:13 picks 149:7 pictures 65:13, 66:5,</p>
---	--	---	--

Transcript of Hearing
 Conducted on January 15, 2020

<p>66:9, 81:17 piece 167:8 piggyback 127:3 pike 20:10, 28:7, 28:13, 31:9, 45:15, 45:17, 46:3, 46:5, 49:19, 50:8, 51:2, 51:8, 52:2, 52:3, 52:5, 52:16, 95:6, 95:13, 97:14, 97:16, 106:22, 108:9, 132:8, 142:12, 143:4, 143:8, 146:6, 150:14, 162:21, 168:19 pine 98:6 pits 74:13 place 30:17, 43:5, 50:4, 121:22, 131:22, 132:1, 133:19, 152:18, 153:8, 180:10, 180:11, 180:12 placed 103:16, 147:9, 153:11 places 26:9 plane 124:21, 125:21 planes 125:16, 125:19 planned 45:13, 114:1, 165:8 planner 11:19, 61:8, 110:16, 171:18 planning 6:18, 6:22,</p>	<p>7:6, 10:5, 11:7, 12:3, 24:2, 27:13, 29:21, 30:4, 33:1, 57:18, 92:14, 110:11, 110:20, 111:16, 112:6, 113:2, 138:15, 155:8, 160:15, 161:15 planning's 12:5 plans 24:2, 93:17, 95:17, 107:10, 109:4, 109:6, 116:10, 127:22, 133:2, 145:12 planted 96:19, 98:4, 99:14 plants 7:19, 32:13 playground 118:21 plaza 32:4 please 5:21, 14:7, 14:20, 56:8, 82:8, 93:2, 145:7 pleasure 174:4 plotted 114:2 pma 69:18, 108:17, 108:18, 108:22 point 24:19, 28:19, 32:2, 40:17, 41:2, 47:16, 74:6, 79:14, 125:21, 134:21, 151:13, 158:16 pointed 175:1</p>	<p>pointing 75:12, 112:16 points 49:15 police 32:4, 32:7 policies 71:16 policy 7:2 pop 34:16 popular 68:7 populated 112:12 portion 23:6, 25:5, 66:16, 74:14, 108:6, 110:2 portions 9:10, 182:16 position 67:14, 75:8, 136:15, 142:13 positive 15:15, 15:16, 155:10, 161:17 post 37:13, 38:18, 99:16 potential 118:17, 126:7, 126:17, 142:7, 166:17, 167:2 potentially 117:17 power 32:13, 34:13, 35:3, 42:8, 42:10, 42:13, 43:14, 43:16, 44:2, 45:6, 45:7, 168:22, 175:3, 175:13, 175:21 practicable 116:22</p>	<p>practical 117:8, 162:2, 167:7 practices 113:19, 117:4 pre 110:12 pre-leasing 175:15 pre-pennsylvania 99:17 precipitation 67:6 preliminary 143:10 premise 7:7 preparation 96:8, 109:12, 122:3 preparatory 62:16 prepare 65:1, 93:16, 101:2, 109:3, 111:3, 137:3, 137:16, 137:21, 138:6, 138:8 prepared 10:21, 78:2, 78:3, 94:5, 100:8, 100:21, 109:5, 109:6, 111:2, 120:17, 134:5, 140:3, 140:6 prerequisite 6:19 present 155:6 presented 121:5, 172:1 presenting 101:17, 134:3, 149:16 preservation 71:12 president 8:19</p>
---	--	---	---

Transcript of Hearing
 Conducted on January 15, 2020

<p>presidential 31:19, 46:16 pretty 79:1 prevent 68:3 previous 96:12, 96:17, 96:19, 99:10, 108:13, 146:2, 183:14 previously 9:18, 23:4, 25:6, 58:7, 59:10, 96:21, 97:22, 98:20, 102:3, 161:18 price 179:9 prices 36:6, 179:1 primary 69:17, 108:17 prince 1:1, 2:3, 3:8, 6:6, 10:16, 15:1, 32:15, 35:6, 37:14, 38:12, 55:16, 58:21, 59:6, 61:5, 66:15, 69:11, 70:10, 70:12, 78:5, 87:3, 96:5, 136:8, 147:4, 166:12, 167:9, 168:7, 170:18 principal 151:20 print 157:16, 159:18, 183:8 printed 157:16, 183:2 printout 76:5 prints 116:10</p>	<p>prior 59:14, 63:14, 137:9, 137:16, 137:21, 147:16, 149:18, 172:1 pristine 98:22 private 166:17 probably 58:19, 60:2, 62:20, 74:19, 79:14, 79:15, 80:7, 110:4, 127:20, 143:16, 158:2, 159:12, 162:2, 166:4, 180:16, 184:6 problem 24:11 problems 119:16, 139:8, 180:21, 183:15 proceedings 18:13, 186:5 process 27:14, 28:9, 32:18, 32:19, 33:11, 44:10, 71:15, 102:3, 110:13, 113:14, 113:21, 134:14, 143:10, 163:7 processes 19:14, 19:15 production 180:5 profession 56:22 professional 14:21, 15:5, 59:10, 60:5, 63:21, 93:9, 114:19, 116:8 proffered 11:6 profit 180:19</p>	<p>profound 175:16 program 15:6, 18:10, 79:13 programs 53:7 progressed 147:12 prohibit 122:15 prohibits 121:20 project 31:16, 32:21, 33:10, 34:3, 34:7, 36:2, 36:3, 42:21, 44:11, 45:22, 113:13, 137:14, 137:17, 137:22, 140:18, 143:3, 175:19, 176:20 projects 15:14, 16:21, 32:9, 33:6, 37:1, 125:11 promise 182:2 promote 141:15, 141:19, 155:4 pronounce 5:7 proper 162:6 properties 6:6, 10:18, 26:6, 31:5, 33:4, 45:11, 45:14, 47:5, 58:8, 58:12, 58:20, 113:6, 115:8, 116:2, 142:10, 147:11, 147:13, 148:3, 148:6 property's 155:11, 161:18</p>	<p>proposal 22:9 proposals 115:9 propose 59:16 proposed 7:1, 7:14, 11:5, 22:16, 22:19, 22:22, 47:11, 68:14, 120:16, 122:8, 125:5, 139:13, 139:15, 139:17, 139:20, 140:8, 150:2, 164:16 proposing 41:12, 44:11 prospect 55:3 protect 155:4 protective 68:7 prove 39:7, 176:9 proved 39:2, 42:3 proven 162:4 proves 42:22 provide 29:15, 30:15, 47:19, 155:17, 156:1, 160:6, 162:11, 162:17, 164:19, 165:2, 168:18, 183:17 provided 40:2, 85:21, 100:11, 102:16, 124:22 provides 47:22, 48:9, 117:19, 124:10, 150:15, 162:13, 162:19, 167:19,</p>
--	---	--	---

Transcript of Hearing
Conducted on January 15, 2020

<p>169:1 providing 55:17 provisions 153:21 proximity 46:18, 141:22, 142:16, 155:19, 156:18, 161:1, 161:22, 167:18 pt 70:22 public 2:15, 37:12, 37:13, 118:8, 118:20, 119:1, 125:8, 129:11, 134:13, 155:14, 155:15, 166:17, 166:22, 167:10 public's 119:4 publicly 79:12 pull 49:2, 49:14 pulled 86:4 purchased 6:10 purpose 63:10, 156:5, 159:7, 161:8, 165:22, 166:20 purposes 7:2, 10:13, 98:5, 138:21, 150:17, 154:1, 154:2, 155:2, 169:3 pursuant 2:14 pushes 118:15 pushing 36:5, 36:8, 36:9 put 12:17, 32:20,</p>	<p>68:4, 80:1, 145:14, 163:6, 167:15 putting 72:22, 88:20, 182:4</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>quadrant 143:5 qualifications 136:13 qualified 16:15, 18:14, 18:16, 59:11, 59:14, 60:17, 63:13, 92:9, 136:6, 136:7 qualifies 19:3 qualify 62:7 quality 43:1, 54:15, 54:17, 179:17 question 12:16, 91:14, 100:4, 123:22, 124:1, 124:8, 127:4, 132:14, 134:8, 144:14, 147:6, 147:7, 160:2, 173:4, 173:6 questions 13:10, 17:4, 18:3, 47:11, 48:12, 48:15, 74:22, 76:1, 82:19, 89:2, 91:20, 92:21, 95:19, 122:21, 141:5, 157:10, 172:22, 173:1, 174:5, 183:14, 183:16 quick 18:3, 132:5</p>	<p>quickly 35:10, 84:10 quite 12:7, 110:12, 176:4 quote 7:15, 7:20, 7:21, 131:17, 170:15</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>ra 27:6, 27:10 rail 142:7 rain 58:17, 67:5, 99:4, 99:5 raining 58:16 ramps 50:1, 140:2 range 162:14 rated 161:3 rather 38:18, 111:4 rationalize 167:11 razed 32:13 read 84:2, 106:2, 106:4, 165:2, 171:12 readily 76:22 reading 101:18, 126:13, 132:19 real 14:22, 15:9, 15:19, 16:3, 16:20, 17:2, 17:6, 18:13, 18:20, 19:6, 19:13, 30:16,</p>	<p>38:3, 45:4, 133:18, 176:22 realign 140:1 realistic 149:3 really 15:18, 25:17, 35:8, 35:11, 36:7, 36:10, 51:11, 55:2, 103:15, 105:7, 121:7, 131:19, 132:6, 148:3, 148:7, 158:2, 171:2, 173:14, 175:12, 175:20, 177:2, 177:15, 178:4, 185:1 realtor 15:3 reason 34:18, 44:21, 119:9, 144:2, 149:12, 149:20, 160:8 reasonably 153:7, 153:11 reasoning 147:17 reasons 72:3, 151:6, 168:4 rebuild 140:2 recall 38:14, 60:17 received 10:7, 151:3 recent 77:10 recess 43:6, 43:9, 135:21 recognize 76:17, 105:5 recognized 18:21</p>
---	--	---	--

Transcript of Hearing
Conducted on January 15, 2020

<p>recommend 130:20</p> <p>recommendations 7:12, 12:4, 121:8, 157:21</p> <p>recommended 167:13</p> <p>recommends 6:22</p> <p>reconstructed 139:20</p> <p>reconstruction 140:8</p> <p>record 5:14, 5:15, 12:18, 14:8, 22:4, 22:14, 24:9, 26:12, 30:13, 41:2, 65:4, 80:5, 88:14, 88:21, 89:7, 89:10, 92:2, 93:11, 93:18, 99:19, 132:20, 145:15, 158:14, 158:18, 159:1, 174:1, 182:11, 186:4</p> <p>recorded 90:7, 186:5</p> <p>recording 185:5, 186:7</p> <p>recordings 17:16</p> <p>recreational 118:7</p> <p>red 53:1, 78:21, 79:1, 99:9</p> <p>redevelop 139:22</p> <p>reduce 119:21, 141:20, 165:6, 165:15, 165:17</p> <p>refer 65:16, 65:17, 76:11, 78:1,</p>	<p>81:19, 170:13</p> <p>reference 10:13, 12:10, 14:22, 41:3, 43:16, 70:6, 101:7, 102:17, 109:13, 137:13, 146:16, 158:12, 170:10</p> <p>referenced 95:4</p> <p>referring 14:17, 79:16, 80:6</p> <p>refers 66:14, 66:15, 69:4, 167:21</p> <p>refiled 12:7</p> <p>refined 113:15</p> <p>reforestation 98:5</p> <p>regard 106:5</p> <p>regarding 7:9, 106:6, 111:3</p> <p>regards 18:7, 75:22, 86:19, 96:6, 123:2</p> <p>regional 146:20, 168:1, 170:20</p> <p>registered 9:16</p> <p>regular 107:12, 108:21</p> <p>regularly 66:19</p> <p>regulated 10:22, 61:14, 66:12, 67:2, 67:3, 69:13, 69:15, 70:19, 70:21, 71:1, 71:3, 71:13,</p>	<p>71:17, 75:10, 76:3, 76:9, 77:5, 77:9, 77:21, 78:16, 79:5, 80:8, 84:16, 85:3, 86:6, 87:2, 87:9, 88:13, 89:11, 96:2, 100:5, 100:13, 101:12, 101:20, 102:2, 102:4, 104:16, 104:18, 104:22, 105:2, 105:12, 105:15, 105:19, 108:18, 108:20, 108:22, 130:12, 131:1, 131:2, 132:3, 132:9, 132:15, 132:22</p> <p>regulation 84:14, 115:15</p> <p>regulations 9:22, 10:1, 10:14, 59:3, 96:6, 100:12, 116:13, 118:19, 145:3</p> <p>regulators 61:10</p> <p>reinforced 98:11</p> <p>relate 109:21, 160:4</p> <p>related 84:8, 100:16, 105:9, 106:9, 111:7, 123:2, 186:8</p> <p>relates 7:11, 87:20, 124:4, 171:7, 171:8</p> <p>relating 160:20</p> <p>relations 100:22</p>	<p>relationship 31:2, 55:5, 150:1, 150:5, 168:20</p> <p>releasing 150:11</p> <p>relevant 104:11, 104:12, 105:8</p> <p>reliance 63:7</p> <p>rely 70:15, 158:10, 163:15</p> <p>remaining 35:19</p> <p>remains 95:15, 120:18</p> <p>rendering 84:19</p> <p>renderings 25:16</p> <p>rent 49:7</p> <p>rep 50:3</p> <p>repeat 133:6</p> <p>repeated 157:15</p> <p>report 12:18, 61:13, 69:7, 69:8, 75:2, 84:5, 100:4, 100:6, 101:9, 102:17, 107:16, 137:7, 137:22, 139:3, 139:5, 141:4, 141:8, 145:14, 148:2, 151:3, 154:4, 157:14, 157:15, 158:22, 159:2, 159:10, 159:11, 159:18, 169:5, 170:11, 170:12, 174:16, 184:13, 184:17,</p>
---	---	---	---

Transcript of Hearing
 Conducted on January 15, 2020

<p>184:18 report's 157:21 reports 60:8, 62:11, 62:22, 160:15 represent 19:7, 79:6 represented 19:11, 19:19, 32:5, 32:22, 37:9, 169:5, 170:8 representing 6:2 request 5:12, 6:15, 140:21, 141:1, 155:7, 157:9, 160:10 requested 68:13 require 117:15, 129:7, 129:13, 153:22 required 18:21, 117:12, 138:19, 163:5 requirement 6:19, 46:19, 115:6, 116:6, 116:18, 117:19, 122:5, 124:10, 171:6, 171:13 requirements 9:21, 11:21, 11:22, 117:9, 119:19, 122:6, 124:16, 126:5, 140:22, 154:8, 160:13 requires 112:2, 113:22, 129:16 rereading 159:16 research 10:5, 106:14</p>	<p>resell 25:2 residence 54:15 residential 7:7, 27:7, 46:6, 46:11, 115:19, 118:6, 118:12, 141:21, 147:10, 162:10, 162:20, 164:20, 165:20, 166:1, 166:5, 168:11, 168:18 residents 117:20, 164:22 resource 62:21, 69:11, 70:19, 71:19, 87:4, 87:20, 88:8, 96:8, 100:7, 107:10, 134:4, 167:8, 167:9, 182:20 respect 139:8 respond 154:10, 154:12, 155:10, 161:17, 169:6 responded 169:7 response 12:21, 165:1, 165:3, 169:2 responses 157:16, 157:21, 159:10, 159:13, 159:19 responsible 28:10 rest 35:19, 110:7 restaurant 34:10, 37:6, 37:8, 38:20, 39:12, 40:7, 40:10, 44:14,</p>	<p>48:4, 52:16, 155:21, 176:6, 178:2, 179:13, 180:2, 180:7 restauranteur 38:15 restauranteurs 34:19 restaurants 34:15, 37:10, 37:15, 38:22, 39:4, 42:17, 43:1, 44:5, 44:6, 48:3, 52:19, 54:14, 55:17, 176:8, 179:13, 179:16, 179:17, 179:21, 180:1, 180:4 restaurateur 34:10 restoration 71:13 restraints 123:1 restricted 151:22 restriction 115:7 restrictions 127:1 result 11:16 resulting 7:14 resume 14:12, 15:20, 59:10, 92:1 resumes 12:8, 93:11 retail 34:13, 40:22, 44:17, 45:13, 48:18, 48:21, 122:9, 162:10, 166:1, 175:7, 177:1 retailers 48:15, 177:5</p>	<p>retailing 49:11 return 166:22 revenue 164:21, 180:17 review 71:15, 108:2, 110:18, 139:1, 163:7, 163:8, 163:10 reviewed 9:20, 10:18, 87:22, 96:3, 139:2 reviewing 100:9 revised 138:10 revision 138:11 rewrite 182:4, 184:1 rezone 6:20, 27:5, 160:10, 184:3 rezoned 30:9, 32:18, 142:18, 147:14, 163:22 rezoning 1:8, 8:1, 11:5, 11:8, 11:12, 12:1, 94:10, 101:4, 106:20, 109:7, 109:12, 109:17, 110:22, 111:19, 112:15, 112:18, 124:18, 126:9, 133:1, 138:21, 153:22, 162:15, 164:18, 165:3, 184:7 richie's 180:2 ridership 168:5 ridgeline 97:9, 108:13</p>
---	---	---	---

Transcript of Hearing
 Conducted on January 15, 2020

<p>right 8:1, 8:7, 8:8, 17:14, 17:22, 19:20, 21:8, 24:6, 26:4, 28:2, 29:8, 29:19, 35:9, 35:15, 36:2, 38:6, 41:5, 41:7, 41:9, 41:10, 44:12, 44:19, 49:3, 49:4, 49:6, 49:8, 49:9, 49:11, 49:13, 49:17, 49:20, 49:21, 50:4, 50:14, 50:15, 50:16, 50:18, 51:2, 51:7, 52:11, 53:12, 53:13, 54:14, 55:6, 55:12, 55:13, 58:5, 60:10, 75:13, 75:20, 77:4, 78:12, 83:15, 84:4, 84:18, 85:6, 86:19, 88:6, 88:22, 91:4, 97:9, 102:7, 106:22, 114:22, 120:18, 123:7, 124:2, 124:7, 127:2, 127:15, 127:19, 131:4, 131:6, 135:4, 142:11, 142:19, 142:22, 144:7, 150:13, 166:6, 170:6, 173:15, 173:20, 174:17, 178:16, 179:18, 180:10, 182:7 right-of-way 112:10, 115:3, 115:4, 121:11,</p>	<p>149:10, 149:11 ritchie 42:19, 44:20 road 24:10, 28:6, 29:8, 32:8, 33:18, 34:2, 43:17, 44:1, 46:4, 48:6, 48:20, 50:11, 51:13, 51:20, 51:21, 52:5, 52:6, 53:13, 53:14, 95:6, 108:7, 116:7, 131:21, 143:4, 146:8, 148:17, 149:5, 149:7, 149:8, 149:9, 150:3, 150:8, 150:9, 152:2, 153:17, 153:20, 168:15, 169:12, 176:4 roads 74:13, 117:1, 117:6, 118:2, 119:12 roadway 67:15, 74:16, 114:1, 115:21, 120:5, 140:17, 151:19, 155:13, 155:19, 161:3 roadways 112:3, 115:16, 116:3, 116:4, 120:2 robust 36:11 roll 23:9 roof 53:1 rooftops 34:21 room 2:6, 28:11,</p>	<p>53:20 rooms 122:11 ross 38:19 roughly 95:7, 116:20 route 20:9, 47:17, 52:6, 52:7, 67:15, 67:20, 72:18, 72:22, 74:20, 77:15, 80:7, 80:11, 80:14, 80:15, 83:6, 111:9, 112:22, 113:2, 116:13, 139:16, 139:18, 146:5, 146:9, 150:13, 152:1, 153:16 rows 37:9 royal 27:14, 28:7, 28:12, 28:21, 41:9, 41:12, 47:13, 173:7, 177:21, 180:21, 181:16 rr 6:17, 8:1, 46:15, 47:5, 115:13, 116:15, 116:16, 116:18, 119:6, 130:14, 146:17, 146:18, 147:9, 147:18, 148:6, 160:11, 162:4, 171:20, 182:5, 182:6 rt 172:10 rtc 18:18 rule 36:18, 36:19, 36:20, 104:7,</p>	<p>115:20 ruled 151:18, 152:4 rules 59:3, 100:22 run 86:10, 113:4, 113:6, 121:11, 157:19 running 97:16, 100:2, 127:8, 127:10, 127:13 runs 67:4, 115:3 runway 125:22, 145:5 runways 125:1 rural 27:6, 46:16, 172:13 russ 21:1 russell 3:4, 5:17 ryan 4:6, 9:16, 20:16, 78:3, 82:11, 93:4, 144:14, 163:1</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>sadly 25:1 safe 117:7 safely 140:17 safety 11:13, 117:19, 117:20, 119:1, 119:4, 124:19, 125:1, 125:6, 125:8, 125:10, 126:21, 155:4 said 43:13, 53:12,</p>
---	--	--	---

Transcript of Hearing
Conducted on January 15, 2020

<p>69:22, 70:1, 70:4, 80:9, 88:10, 88:17, 127:9, 131:12, 147:19, 159:10, 165:16, 176:5, 186:5 sale 38:20 salon 34:9, 44:7 same 27:19, 57:4, 64:1, 75:21, 101:15, 124:4, 141:14, 159:4, 163:15, 176:19 sanctuary 122:12 sandra 1:5, 5:8 sanitary 120:19, 120:21, 121:15 satisfy 140:21 saucers 53:17 saulsberry 57:17 save 65:12 saw 26:6, 66:4, 67:6, 73:5, 73:8, 98:5, 98:16 say 17:9, 17:12, 44:3, 50:5, 50:22, 52:8, 58:2, 64:21, 70:9, 70:10, 70:12, 73:19, 76:10, 81:6, 105:21, 108:5, 110:4, 121:10, 135:10, 142:20,</p>	<p>162:3, 184:11 saying 63:21, 70:5, 83:16, 85:2, 85:4, 105:7, 105:8, 130:20, 134:12, 141:18, 142:2, 142:14, 142:22, 158:8 says 71:16, 76:2, 77:11, 105:17, 105:18, 141:19, 152:18, 170:13, 171:6, 174:21 scale 53:3, 175:20 scenarios 140:12 scheduled 169:9 schematic 116:21 school 15:7, 18:8, 23:20, 57:17, 58:5, 117:1 scope 138:16 scoping 138:14, 138:19 scouring 67:7 screen 78:7 season 66:20 seats 122:13 second 9:7, 21:1, 24:4, 79:16, 81:11, 89:8, 96:14, 97:10, 102:7, 153:9, 154:6, 156:3, 161:4 section 36:2, 41:9,</p>	<p>61:4, 71:2, 111:3, 113:22, 152:16, 155:3, 156:6, 165:1, 166:15, 169:2 sectional 126:12, 147:20, 147:22 sections 35:16 sector 4:11, 21:9, 23:3, 170:14 security 54:8, 54:10 see 19:1, 21:2, 34:14, 35:20, 42:1, 47:8, 58:16, 60:11, 74:9, 75:17, 77:5, 77:20, 84:12, 91:17, 97:20, 98:17, 98:18, 112:15, 118:1, 118:2, 136:7, 143:19, 148:22, 149:1, 168:13, 178:9, 180:20, 181:20 seeing 33:6, 33:13 seek 62:7 seem 65:7, 70:5, 142:17, 151:6, 169:21 seems 68:6, 149:18 seen 25:16, 76:21, 77:7, 83:15, 83:22, 84:2, 87:5, 87:13, 87:18, 87:19, 94:13, 96:21, 125:11</p>	<p>select 148:3 selective 20:3 sell 178:5 selling 19:16, 31:14 send 183:11 senior 8:18, 45:21 sense 31:20, 75:11, 162:13 sensitive 54:7, 106:11 sent 90:7 sentence 106:1 separate 111:22, 130:6 separated 158:16, 159:3 september 57:13 series 65:8, 65:22, 68:1, 80:19 serve 122:1, 128:17, 142:9 served 15:12, 121:21 serves 44:18 service 32:12, 33:20, 37:13, 45:5, 47:19, 49:17, 53:15, 54:17, 110:8, 122:7, 138:22, 156:1 service-oriented 45:3 serviceable 121:4</p>
--	--	--	---

Transcript of Hearing
 Conducted on January 15, 2020

<p>services 10:20, 18:22, 34:19, 35:4, 36:12, 47:22, 55:17, 150:12, 150:15, 183:1 servicing 180:15 set 59:4, 64:10, 72:4, 140:22, 152:16, 154:8 setback 122:5, 129:21, 129:22 several 15:12, 49:15 severely 133:3 sewer 120:14, 120:18, 120:19, 120:20, 120:21, 121:1, 121:9, 121:15, 121:17, 122:6, 155:16 sha 112:12 shall 105:17, 136:3, 144:10, 152:18 shallow 67:11, 120:21 share 23:9 sheet 12:17, 148:14 shield 118:22 shopper 175:5 shoppers 44:4, 175:9, 175:10, 175:11 shopping 44:22, 45:6, 45:8, 122:10, 177:13, 177:16</p>	<p>short 38:22, 50:11, 135:17 should 15:17, 21:22, 38:16, 97:17, 126:2, 150:22, 151:7, 167:10, 167:22 shouldn't 89:18 show 7:13, 11:7, 20:17, 21:21, 26:11, 78:9, 81:2, 83:3, 84:13, 86:3, 88:9, 97:6, 99:20, 114:5, 114:20, 148:17, 174:16 showed 165:9 showing 22:15, 76:14, 111:20, 120:13 shown 25:8, 95:18, 108:4, 112:1, 126:8, 132:22 shows 41:12, 45:21, 72:15, 77:13, 78:6, 87:8, 121:18 siberholz 4:8, 11:17, 11:18, 12:3, 144:9, 144:12, 145:6, 145:8, 145:18, 145:21, 146:1, 146:13, 146:18, 146:22, 147:3, 147:9, 147:18, 148:13, 148:16, 150:16, 150:19, 151:1, 151:12, 153:1,</p>	<p>154:5, 154:12, 154:15, 154:19, 154:22, 156:14, 156:17, 156:22, 157:5, 157:7, 157:18, 158:7, 158:9, 158:21, 159:6, 159:9, 159:20, 160:3, 163:12, 164:12, 164:14, 164:16, 166:7, 166:10, 166:14, 167:5, 170:1, 170:4, 170:7, 171:3, 171:10, 171:14, 171:17, 171:22, 172:5, 172:9, 172:14, 172:18, 174:2, 174:3 siberholz's 12:20, 151:21, 158:11 side 20:9, 20:10, 29:7, 29:10, 29:12, 36:15, 36:19, 42:7, 43:16, 45:15, 45:16, 47:17, 48:16, 51:5, 51:19, 51:21, 52:2, 52:4, 52:6, 52:7, 108:2, 111:8, 121:10, 121:17, 143:3, 143:4, 152:1, 152:2, 162:20, 166:8, 181:9 sided 110:21 sides 41:16, 61:1, 98:17 sidewalks 165:17, 166:9, 166:11</p>	<p>sign 181:21 signal 49:19 signalized 28:13, 36:21, 49:8, 143:5 signature-bi6ds 186:12 signed 9:2, 158:4 significance 107:9 significant 67:7, 79:1 silver 145:8, 152:13 similar 44:11, 46:12, 48:8 simply 10:6, 21:2, 78:18 since 16:8, 57:14, 58:3, 70:12, 74:19, 82:4, 125:16, 162:5 single 47:21, 115:17, 165:13, 167:13, 168:10 single-family 36:9, 46:6, 97:4, 99:21, 108:14, 116:15, 120:5 sir 16:18, 19:11, 20:1, 20:7, 20:12, 20:15, 21:12, 21:14, 21:17, 22:20, 23:6, 29:3, 29:9, 30:19, 39:22, 40:20, 41:14, 42:9, 43:21, 47:15,</p>
--	--	---	--

Transcript of Hearing
 Conducted on January 15, 2020

<p>48:11, 49:1, 51:22, 61:21, 62:2, 62:15, 63:15, 82:6, 86:14, 93:10, 93:16, 100:19, 101:10, 122:19, 122:20, 123:4, 123:8, 145:21, 147:6, 147:18, 151:12, 154:5, 156:22, 157:5, 157:7, 157:18, 171:14, 172:9, 172:14 sit 179:17 site 7:8, 7:10, 9:5, 9:11, 9:20, 9:21, 10:2, 10:3, 10:4, 10:21, 11:1, 19:22, 20:1, 23:7, 25:9, 25:13, 27:12, 28:12, 28:15, 30:2, 39:20, 40:3, 40:5, 40:6, 40:8, 40:9, 41:19, 42:6, 45:1, 45:2, 58:9, 64:22, 65:8, 65:20, 66:22, 69:13, 71:2, 72:15, 72:16, 72:20, 75:9, 77:16, 80:12, 84:8, 84:13, 91:16, 95:9, 95:11, 95:12, 95:15, 96:1, 96:4, 96:10, 96:12, 97:3, 97:17, 98:3, 98:8, 99:4, 100:3, 101:13,</p>	<p>103:9, 105:9, 106:5, 106:13, 106:21, 107:5, 108:6, 109:3, 109:6, 117:2, 117:3, 127:16, 127:20, 132:2, 133:4, 134:12, 134:21, 137:11, 138:20, 160:11, 162:19, 168:9, 177:18, 181:4, 183:12 sites 10:12, 38:21, 40:7, 42:15, 43:19, 44:14, 98:21, 102:3, 104:14 situation 117:8 six 86:22, 132:15 size 67:13, 102:11, 159:12 skiff 53:21 slated 112:5 slightly 146:3 slips 95:12 slopes 62:12, 69:17, 72:13, 74:8, 80:12, 80:21, 89:14, 89:20, 89:22, 102:1, 103:12, 103:13, 107:17, 108:16, 108:18, 108:22, 117:5 small 39:13, 44:5, 107:4, 127:19, 175:18, 177:22</p>	<p>smaller 45:10, 73:3 smoke 39:1 snapper 22:6, 22:8, 22:17, 23:7 so-called 172:12 societies 57:19 soft 112:9, 112:13 soils 57:20, 86:7, 96:10 sold 23:18, 23:19, 23:21, 24:22, 26:22, 31:5, 31:7, 31:10, 32:6, 35:14, 52:22, 53:11, 55:2, 57:11, 64:9 solicited 86:21 some 15:17, 19:13, 28:19, 37:5, 37:8, 39:17, 43:3, 44:4, 44:8, 48:1, 53:17, 54:3, 55:19, 57:20, 72:14, 77:18, 79:13, 95:14, 95:16, 95:17, 96:13, 96:15, 97:15, 117:5, 119:6, 120:22, 124:13, 132:5, 134:11, 144:2, 158:15, 177:2, 184:14 somebody 91:12, 91:13 something 38:4, 54:12,</p>	<p>73:8, 109:8, 123:17, 129:6, 144:13, 164:8, 172:17 sometimes 17:17 somewhat 37:7 somewhere 20:14, 176:17 sorry 5:6, 23:15, 24:17, 25:14, 25:22, 26:20, 29:19, 60:9, 70:3, 70:13, 73:18, 73:21, 76:19, 79:20, 81:15, 81:21, 147:6, 164:11, 170:14, 173:14, 174:20, 179:6 sort 68:6, 89:17, 147:11, 149:6, 160:13, 168:2, 174:18, 174:21 sought 63:12 sound 8:7, 111:7, 113:17, 117:15, 117:16, 118:2, 125:20, 128:7, 162:22, 163:4 sounded 64:8 soundstage 37:10 source 102:22 south 20:10, 29:10, 29:12, 45:14, 45:16, 47:17, 48:5, 48:7, 51:20, 52:1, 52:5, 53:10,</p>
---	---	--	---

Transcript of Hearing
Conducted on January 15, 2020

<p>111:8, 112:22, 113:2, 113:6, 125:2, 143:4, 146:6, 149:9, 152:1, 162:20, 168:12, 168:19, 172:10 southeast 172:12 southeastern 108:6 southwest 168:13 space 32:16, 118:9, 118:20, 122:11, 124:21, 129:11 spaces 118:14, 129:14 spacing 98:10 speak 9:4, 9:9, 38:7 speaker 23:13, 138:2, 183:5 speaking 91:14, 175:22 special 5:5, 172:11 species 78:22, 107:4 specific 7:10, 40:18, 154:7, 157:8 specifically 75:8 specimen 99:7 spent 18:18 spin 26:18, 94:21 spoke 110:15, 119:16 spot 97:20 sprawl 165:6, 165:15</p>	<p>spreadsheet 112:7 spring 149:5 square 40:1, 40:9, 46:16, 115:10, 122:9, 122:12 squirrels 98:19 staff 6:18, 7:6, 11:7, 12:4, 12:18, 12:21, 69:4, 69:7, 69:8, 71:19, 75:2, 76:2, 79:9, 80:7, 84:5, 84:7, 86:22, 89:17, 89:18, 100:4, 101:8, 101:9, 101:16, 102:5, 102:16, 102:17, 103:9, 106:5, 107:15, 107:19, 110:11, 110:20, 130:11, 130:20, 138:15, 139:2, 140:14, 141:3, 141:8, 145:14, 148:1, 151:3, 151:5, 151:18, 154:4, 157:14, 157:15, 157:21, 158:15, 158:22, 159:2, 159:10, 159:11, 159:18, 160:9, 160:12, 160:15, 161:5, 167:21, 169:6, 169:20, 170:11, 170:12, 171:15, 174:15, 174:17, 184:13, 184:16, 184:18 staff's 10:6, 12:5,</p>	<p>13:5, 75:8, 139:5, 148:19, 151:22 staffs 150:18, 160:5 stage 71:4 stan 3:9, 5:18 stand 43:4, 123:13 standard 117:4, 130:11, 156:3, 165:1, 165:2, 166:15, 167:3 standards 104:6, 104:19, 105:4, 105:6, 128:4 standpoint 49:11, 119:18 stands 98:6, 151:4 star 80:1 start 5:22, 13:10, 30:20, 33:12, 160:21 starting 31:6, 77:19, 108:5, 110:1, 113:6 starts 131:19 state 2:15, 14:7, 14:20, 16:4, 16:7, 16:11, 16:13, 16:16, 24:9, 56:7, 63:4, 103:6, 134:2, 138:12, 145:6, 180:11 stated 6:18, 161:18 statement 71:6, 71:22,</p>	<p>72:2, 111:1, 148:10, 151:4, 154:3, 157:3, 158:4, 160:9, 167:21, 169:22, 170:8, 170:13, 171:4 statements 4:3 states 16:19 stating 167:20 station 40:8, 42:20, 44:13, 44:20, 98:11, 153:10, 178:10, 178:11, 178:19, 179:6, 180:2 stationed 54:11 stations 168:6, 178:3, 178:21, 179:3, 179:9 status 140:4, 164:17 stay 53:13, 53:14, 53:22, 54:1, 54:18, 55:19 staying 54:11 stays 182:5, 182:6 steam 35:13 steep 62:11, 69:16, 72:13, 72:14, 74:8, 89:14, 102:1, 103:12, 103:13, 108:15, 108:18, 108:22, 117:5 steeper 78:14</p>
---	--	--	---

Transcript of Hearing
Conducted on January 15, 2020

<p>still 37:19, 51:5, 92:5, 116:17, 129:3, 130:8, 131:1, 136:10, 144:21, 151:4, 177:13, 182:13, 182:18, 184:5 stimulated 176:7 stop 37:4, 38:2, 39:16, 50:19, 153:10 stops 166:14, 181:19 store 42:12, 44:8, 44:22, 177:14, 177:15, 178:5 stores 34:15, 45:9, 45:10, 177:3, 177:6, 177:15, 178:4 storm 117:1, 119:12, 131:21 story 25:8, 25:17, 38:22 straight 49:18, 95:9 strange 172:15 stream 66:13, 66:17, 68:18, 69:16, 78:17, 86:5, 86:6, 86:12, 86:16, 90:1, 102:5, 108:21, 131:16 streams 67:2, 69:15, 86:16, 89:14, 96:1, 100:1, 100:5, 100:14,</p>	<p>101:22, 108:20, 131:15, 132:15, 133:7, 133:20 street 44:12, 45:17, 47:14, 52:15, 153:7, 166:6, 176:16 streets 153:5 strengthens 162:12 strike 173:22 stripe 172:17 strong 42:15, 64:15, 181:17 structure 75:4, 130:5, 162:12 students 115:18 studied 9:20, 113:10 studies 62:21, 113:16, 116:21, 137:3 study 11:8, 11:11, 100:17, 120:18, 121:3, 122:4, 122:5, 138:7, 138:9, 138:13, 138:17, 138:22, 140:3, 140:4, 140:6, 141:9 stuff 86:4 sub 164:1 subdivision 46:6, 46:7, 66:16, 115:15, 116:13 subject 7:17, 9:6,</p>	<p>9:11, 10:21, 11:22, 23:15, 25:14, 29:13, 30:18, 31:8, 36:13, 45:18, 46:10, 85:15, 93:15, 111:9, 116:6, 118:18, 126:19, 126:22, 137:11, 140:21, 142:15, 145:19, 146:16, 147:16, 148:9, 155:8, 155:11, 155:16, 156:8, 160:11, 161:1, 161:11, 161:14, 162:15, 162:19, 165:3, 165:21, 169:11, 170:20, 172:21 submit 28:22, 128:2, 136:12 submitted 39:11, 60:8, 62:20, 82:4, 99:19, 134:5, 139:1, 164:8 submitting 62:11 subregion 7:11, 86:22, 126:11, 147:21, 147:22, 148:5, 164:2 subsection 66:14, 66:16 subsequent 153:21 substantial 7:15, 11:9 substantially 7:1, 105:22, 156:9, 161:12 subtitle 89:12 successful 26:10, 27:5,</p>	<p>35:1, 42:18, 42:21, 53:7 successfully 43:20 succinctly 152:21 sudden 180:8 suggest 105:4 suggested 149:19 suggests 104:4, 151:18 suit 32:22 suitability 10:3 suite 93:6, 145:10 summarize 25:5, 167:3 summary 29:16, 30:16, 167:5 sundries 55:21 superregional 41:19 supply 74:15 support 71:7, 151:7, 168:5 supporting 78:1, 186:7 sure 14:19, 23:11, 24:18, 26:14, 41:4, 42:20, 52:17, 52:20, 74:9, 80:3, 81:4, 90:6, 91:9, 105:22, 110:14, 111:3, 130:19, 158:16, 177:6, 177:9, 179:17</p>
--	---	--	---

Transcript of Hearing
Conducted on January 15, 2020

<p>surface 109:19, 110:2, 111:5, 112:9 surprised 184:5 surroundings 150:5 surrounds 146:14 survey 95:10, 109:3 surveys 63:1 susie 90:9 sustainable 7:16, 162:12 swear 13:8, 14:2, 56:13, 82:14, 136:2, 144:9 sweetgum 79:1, 99:10 sworn 92:12, 93:2, 136:16, 136:17 sybiotic 149:22, 168:20 system 9:13, 184:15 systems 57:18, 70:15</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>t 161:13 table 104:4, 104:13, 104:14 tablecloth 179:18 take 34:17, 69:9, 77:5, 81:11, 88:18, 117:1, 124:21, 152:5 taken 30:17, 35:10,</p>	<p>65:13, 66:1, 71:7, 108:8, 133:19, 135:21 takes 33:10, 44:9, 49:7 taking 16:20, 19:13, 28:9, 66:5, 125:19, 125:22, 127:16, 135:12 talk 15:17, 38:14, 51:1, 71:12, 90:8, 96:14, 180:4 talked 74:7 talking 6:5, 6:11, 40:18, 43:15, 75:19, 123:20, 143:17, 179:5, 179:16 target 42:13 tax 36:10, 39:17, 54:21, 139:20, 164:21 taxes 54:21, 54:22 team 8:4 tear 104:15 technical 61:6, 66:13, 96:7, 133:14, 139:5, 170:11, 170:12 technician 10:10, 57:3, 60:2, 61:20, 62:1, 62:8, 63:13, 63:17, 63:22 tell 22:6, 37:22,</p>	<p>38:15, 57:15, 68:5, 77:5, 91:12, 97:14, 106:2, 148:11, 182:11 tend 175:9 tendency 178:18, 179:1, 179:10 term 50:6, 60:18, 142:17 terminology 57:5, 63:21 terms 74:7 terrible 173:8 test 130:11, 152:10, 153:15, 161:3, 161:7 testified 101:7 testify 9:19, 11:18, 120:15 testifying 18:19 testimony 4:4, 4:5, 4:6, 4:7, 4:8, 7:5, 10:4, 12:10, 13:2, 14:4, 39:19, 56:13, 66:4, 82:15, 95:20, 122:18, 136:3, 144:10, 144:18, 153:14, 163:1, 169:4, 172:2 tests 152:22 thank 12:22, 13:19, 56:1, 56:3, 56:4, 64:20,</p>	<p>74:21, 81:14, 89:2, 89:3, 89:4, 90:4, 91:8, 91:22, 94:20, 107:22, 122:20, 133:12, 135:4, 135:6, 135:18, 144:7, 144:8, 144:17, 145:15, 154:19, 164:10, 174:1, 174:3, 182:1, 185:3, 185:4 themselves 5:13, 54:13, 83:12 thereby 119:3 therefore 65:7 thereon 139:13 thing 47:8, 57:4, 68:9, 75:21, 94:19, 125:13, 131:20, 174:13, 175:13, 182:2, 182:14 things 17:17, 33:15, 37:4, 39:10, 39:15, 44:10, 55:1, 55:21, 55:22, 96:11, 130:3, 133:5, 133:6, 133:11, 142:9, 152:6, 158:16, 177:12 think 13:7, 15:22, 19:2, 36:12, 38:15, 39:10, 41:15, 53:11, 54:18, 55:1, 59:20, 60:3, 63:11, 64:3, 69:5, 73:4,</p>
--	--	---	---

Transcript of Hearing
Conducted on January 15, 2020

<p>73:11, 73:16, 80:19, 80:20, 81:17, 88:9, 89:17, 89:19, 95:18, 98:11, 107:13, 120:11, 123:10, 125:20, 130:18, 138:2, 141:14, 142:4, 148:14, 150:22, 159:1, 159:17, 159:21, 164:6, 164:7, 171:3, 174:14, 175:10, 175:13, 176:3, 176:22, 177:11, 177:20, 178:6, 180:1, 180:13, 182:9, 182:13, 184:9 thinking 114:14, 175:5 third 40:13, 84:5, 127:20, 154:6 thought 64:8, 69:22, 70:4, 73:5, 73:7, 80:7, 82:7, 89:19, 130:16, 173:7 three 27:2, 33:11, 36:20, 36:21, 44:14, 52:22, 54:11, 58:15, 64:22, 88:14, 95:2, 99:5, 104:6, 121:5 threshold 180:8 through 7:4, 10:10, 15:5, 19:13, 19:15, 31:13, 32:19, 33:11, 39:18, 44:10, 46:4, 51:9,</p>	<p>66:10, 66:18, 71:14, 77:4, 84:9, 95:20, 99:8, 101:18, 106:21, 110:17, 112:21, 113:6, 113:14, 114:14, 121:6, 130:3, 134:1, 134:13, 136:11, 139:20, 140:9, 143:9, 157:20, 159:7, 159:10, 159:14, 159:15, 165:18, 179:20 throughout 53:21, 58:18, 74:18, 118:1 throw 163:9 tickled 173:5 tier 104:9 tiers 104:7 tif 139:21, 140:5, 140:9 tight 150:4 tighter 160:5 timber 20:3 time 18:19, 26:21, 28:19, 34:2, 39:1, 54:2, 65:12, 65:21, 77:5, 77:18, 95:15, 99:14, 103:10, 107:16, 127:21, 134:19, 140:3, 147:12, 159:22, 174:15, 177:4, 181:12, 183:19, 184:5</p>	<p>times 58:11, 58:15, 64:22, 131:19, 178:13 title 59:20, 61:19, 64:10 to- 182:16 today 5:4, 5:21, 6:16, 7:4, 7:13, 8:5, 8:17, 8:22, 25:15, 63:14, 75:4, 82:5, 88:3, 88:5, 101:17, 109:7, 134:3, 134:9, 136:20, 172:1, 177:6, 177:9, 185:1 today's 93:17, 185:1 together 26:7, 31:21, 179:9 toiletries 55:21 told 122:22, 123:5 tomorrow 177:7, 185:2 took 57:20, 65:9 top 97:9, 148:14 topographic 146:10 topography 96:11, 98:3, 103:3, 103:16 total 40:12, 132:12 totally 141:9, 171:11 touch 51:10 toward 80:6, 80:14</p>	<p>towards 46:3, 80:15, 168:15 town 25:4, 25:5, 25:6, 25:10, 27:9, 31:12, 31:17, 34:12, 35:12, 70:12, 121:16, 149:1, 149:4, 168:21, 168:22, 170:19, 172:8, 176:3, 177:1 townhomes 46:8 townhouse 36:2, 168:11 townhouses 36:6, 44:13, 118:11, 122:10, 163:3 towns together 36:8 track 57:19 tracks 74:17 tract 153:2 tracts 35:6, 36:1 traditional 177:3 traffic 11:3, 11:4, 11:12, 11:15, 36:17, 49:19, 50:16, 50:20, 51:1, 136:13, 137:3, 137:6, 137:17, 137:22, 138:7, 138:9, 138:13, 138:17, 139:8, 139:12, 140:3, 140:18, 150:11, 161:20, 165:12, 169:16,</p>
--	---	--	---

Transcript of Hearing
Conducted on January 15, 2020

<p>175:2, 178:12 trails 72:19, 74:10, 74:12 training 19:2 transcribed 1:22, 186:6 transcriber 186:1 transcript 186:4 transit 141:17, 141:20, 141:22, 142:1, 142:3, 142:7, 142:8, 142:9, 153:10, 168:1, 170:21, 171:8 transition 120:4, 162:17, 165:15 transportation 136:19, 138:15, 140:21, 153:18, 166:11, 166:12, 169:6, 169:8 travel 48:5 tree 53:9, 77:19 trees 98:4, 99:7 tried 146:7 tries 38:3 trip 112:12, 137:14 triple 128:6 trips 112:8, 138:20 true 175:4, 176:19, 186:4 trust 6:3, 6:8, 6:13,</p>	<p>9:1, 9:4, 19:8, 19:19 trustee 1:4, 1:5, 5:7, 5:8, 18:19 trustees 13:14, 16:22, 19:7 truth 14:4, 14:5, 56:14, 56:15, 82:15, 82:16, 136:3, 136:4, 144:11 try 17:19, 65:12, 82:11, 89:7, 89:10, 159:22, 181:13 trying 15:15, 31:11, 51:3, 60:10, 136:10, 175:21 tucker 178:1 tucker's 52:16, 179:13, 180:14 turban 32:10 turbines 32:13 turn 5:22, 13:17, 23:13, 23:14, 49:9, 49:14, 49:18, 50:4, 50:13, 50:16, 50:18, 114:6 turned 114:9 turning 26:15, 35:11, 49:20, 50:20 turns 49:12 twice 31:14</p>	<p>two 8:21, 27:3, 33:11, 36:19, 40:6, 41:15, 44:14, 45:11, 45:20, 47:11, 48:14, 64:22, 90:9, 97:1, 99:7, 111:11, 135:15, 141:10, 152:20, 153:5, 156:21, 160:22, 171:7, 174:17 type 41:22, 47:19, 53:2, 115:20, 118:6, 118:12, 134:11, 142:9, 175:7, 176:21 typed 149:19 types 10:3, 117:13, 118:2, 118:7, 118:10, 118:11, 118:12, 119:20, 119:22, 124:4, 175:7 typical 81:4, 98:20, 117:13, 160:15 typically 26:9, 36:16, 98:17, 113:16, 128:3, 130:6, 133:20</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>ultimate 151:9 ultimately 25:19, 45:13, 139:2 under 14:3, 20:4, 28:8, 32:21, 33:17, 57:10, 61:15, 64:7,</p>	<p>71:11, 80:17, 82:14, 83:5, 87:18, 100:7, 102:2, 121:2, 121:13, 131:7, 136:2, 144:9, 175:8 undergoing 177:2 underground 97:2 underneath 86:12, 97:10 understand 17:20, 19:9, 123:19, 130:19, 158:20, 159:17 understood 140:5 undoubtedly 165:14 unidentified 23:13, 138:2, 183:5 union 32:7, 34:5, 34:6 unique 32:11, 106:13, 107:7 united 16:19 university 15:4, 18:4, 18:5, 57:22 unless 96:21, 157:9 until 63:18, 94:18 untouched 99:1 updated 103:11, 104:3, 134:18 upgraded 50:4, 55:7 upgrades 169:13</p>
---	--	--	--

Transcript of Hearing
Conducted on January 15, 2020

<p>upland 78:22</p> <p>uplands 78:19</p> <p>upper 2:7, 24:7, 37:7</p> <p>urban 31:22</p> <p>usable 118:6, 132:10</p> <p>use 27:8, 28:15, 39:21, 40:2, 40:6, 43:2, 48:16, 59:18, 94:4, 105:11, 112:6, 114:5, 114:14, 116:7, 119:3, 132:3, 141:16, 141:19, 141:20, 142:1, 142:11, 142:21, 144:15, 148:4, 149:22, 150:15, 155:14, 155:20, 160:10, 162:6, 164:17, 167:7, 167:19, 168:10, 171:21</p> <p>user 41:22</p> <p>users 37:1, 175:18</p> <p>uses 119:2, 119:20, 120:4, 120:16, 122:8, 122:16, 124:11, 128:12, 129:8, 129:9, 129:16, 130:6, 138:20, 141:21, 142:10, 155:9, 161:16, 162:7, 162:11, 162:20, 164:21, 165:5, 166:2, 169:1, 177:22</p> <p>using 72:21, 103:9,</p>	<p>142:17</p> <p>usually 17:12, 17:16, 33:11</p> <p>utility 122:1</p> <p>utilize 103:6, 134:1</p> <p>utilized 118:21, 167:10</p> <p>utilizes 103:2</p> <p>uva 15:7</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>valley 23:20</p> <p>valuable 167:7</p> <p>value 166:16, 178:18</p> <p>variable 20:13</p> <p>variations 121:5</p> <p>variety 175:12</p> <p>various 42:15, 58:20, 89:14</p> <p>verbatim 157:15</p> <p>version 28:3, 79:9</p> <p>versus 43:16, 102:16, 125:21</p> <p>vertical 33:13</p> <p>vibrant 36:11</p> <p>vibration 113:17</p> <p>vice 8:18</p> <p>vicinity 72:11, 139:17,</p>	<p>153:2, 155:20, 166:21</p> <p>village 143:3</p> <p>virginia 16:13, 25:1, 98:6</p> <p>visible 97:2</p> <p>vision 25:8, 25:18, 33:5</p> <p>visit 10:4, 83:11, 99:5</p> <p>visited 9:19, 10:20, 19:21, 58:12, 64:21, 93:19, 93:21</p> <p>visiting 169:16</p> <p>vista 34:14, 43:13, 43:14, 43:19, 43:21, 44:1, 44:19, 45:1</p> <p>vital 156:1</p> <p>voir 60:13</p> <p>volpe 1:4, 5:7, 19:9</p> <p>volume 117:22, 161:19, 169:16, 180:5</p> <p>vote 37:15, 38:12</p> <p>voted 37:17</p> <p>voteforrestauran- ts 37:14</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>wait 49:12, 51:6, 68:17, 90:9</p>	<p>waiting 81:20, 90:15, 92:5</p> <p>waitresses 43:3</p> <p>walk 117:21, 159:14</p> <p>walked 20:1, 95:8, 100:3, 108:1</p> <p>walking 20:2, 129:11, 142:1</p> <p>wall 129:6, 129:7, 130:4</p> <p>walls 117:15, 118:3, 163:2</p> <p>walton 35:13</p> <p>want 13:3, 20:16, 24:8, 36:16, 36:17, 43:6, 43:9, 54:8, 54:12, 54:13, 55:4, 60:13, 60:17, 63:11, 65:17, 80:2, 88:13, 104:21, 114:20, 130:19, 132:19, 135:8, 135:11, 135:19, 146:13, 152:12, 157:10, 159:13, 167:17, 175:5, 175:12, 177:7, 177:16, 179:10, 181:1, 181:5</p> <p>wanted 25:11, 52:14, 82:21, 110:14, 134:9, 135:13, 136:19</p> <p>wants 176:17, 180:9</p> <p>washing 37:12</p>
--	--	---	--

Transcript of Hearing
Conducted on January 15, 2020

<p>washington 19:10, 32:4, 146:20</p> <p>watch 68:21</p> <p>water 66:18, 106:12, 117:1, 117:2, 119:12, 122:6, 155:16</p> <p>wawa 44:13</p> <p>way 6:4, 17:11, 48:6, 80:13, 97:21, 126:20, 132:10, 136:10, 140:9, 159:21, 175:2</p> <p>ways 99:3, 104:21, 130:7, 176:4</p> <p>we'll 76:13, 184:22</p> <p>we're 9:13, 90:15, 92:5, 123:19, 174:6, 178:20</p> <p>we've 12:7, 59:9, 106:4, 106:14, 153:1</p> <p>wearing 8:21</p> <p>website 37:13, 38:19, 72:16, 102:18, 107:20</p> <p>wednesday 1:11</p> <p>week 65:14</p> <p>weekend 53:8</p> <p>welfare 11:14, 117:20, 119:4, 125:9, 155:5</p>	<p>wells 25:2, 97:2, 97:3, 173:15</p> <p>went 42:1, 47:2, 57:17, 101:15, 134:1, 179:6</p> <p>weren't 148:6</p> <p>west 43:13, 43:14, 45:2, 95:4, 108:6, 113:7, 113:9, 115:4, 125:4, 132:10, 149:7, 150:6, 150:7, 150:9, 152:2, 172:3, 172:5, 178:2, 181:9</p> <p>western 110:2</p> <p>westphalia 4:11, 6:9, 21:7, 21:9, 22:17, 24:2, 25:4, 25:6, 25:18, 27:9, 29:2, 31:12, 31:17, 31:18, 32:5, 32:8, 33:5, 34:12, 35:12, 35:20, 42:8, 45:13, 80:18, 83:6, 121:15, 139:21, 144:1, 144:3, 149:1, 149:4, 168:20, 168:21, 170:14, 170:19, 172:8, 175:1, 176:3, 177:1</p> <p>wetland 57:3, 60:1, 61:2, 61:17, 62:21, 63:14, 63:16, 63:22, 64:1, 64:16</p>	<p>wetlands 62:12, 89:13, 96:1, 101:22</p> <p>whatever 49:17, 149:17, 178:1</p> <p>whenever 17:18</p> <p>whereas 45:1, 175:16</p> <p>whether 76:8, 79:8, 115:9, 124:15, 151:10</p> <p>white 74:11, 78:21, 99:9, 179:17</p> <p>whole 32:2, 33:19, 72:16, 74:13, 106:2, 175:19, 181:6</p> <p>wide 46:22, 95:7, 106:17</p> <p>wife 177:14</p> <p>wildlife 98:16</p> <p>willing 62:6</p> <p>windows 128:5, 128:7</p> <p>winnie 70:12</p> <p>winning 179:12</p> <p>wise 180:5</p> <p>within 7:11, 69:13, 75:9, 84:8, 84:13, 104:7, 108:18, 109:22, 110:2, 111:21, 121:11, 124:13, 124:22, 125:6, 125:10, 127:6,</p>	<p>129:2, 129:19, 129:21, 153:2, 153:11, 170:18</p> <p>without 50:19, 88:20, 96:22, 119:3, 120:19, 140:10, 159:16, 172:16</p> <p>witness 13:16, 83:1, 112:16, 119:15</p> <p>witnesses 135:16, 174:10</p> <p>wonder 142:4</p> <p>wonderful 53:7</p> <p>wood 28:6, 29:8, 36:3, 46:3, 48:5, 48:19, 50:1, 50:6, 50:11, 50:13, 51:3, 51:20, 52:4, 52:6, 132:8, 139:19, 143:3, 146:8, 149:9, 150:3, 152:2, 153:16, 153:19, 169:12</p> <p>woodlands 95:14, 96:1, 96:10</p> <p>woodyard 95:6</p> <p>worchester 58:22</p> <p>word 48:16</p> <p>words 160:14</p> <p>work 37:2, 48:17, 59:18, 60:4, 123:10, 136:10</p> <p>worked 31:2, 32:8, 57:9, 63:16,</p>
--	---	--	---

Transcript of Hearing
Conducted on January 15, 2020

<p>103:20, 110:11, 110:16 working 27:2, 28:21, 33:16, 35:6, 58:18 world 15:10 worst 17:18 wouldn't 26:15, 130:13, 135:19, 151:9 wouten 110:16 write 38:13, 94:18, 150:17, 150:22 writeup 83:11 written 90:18, 104:9 wrong 149:18 wrote 157:2</p> <hr/> <p style="text-align: center;">y</p> <hr/> <p>yard 28:6, 29:8, 36:3, 46:3, 48:6, 48:19, 50:1, 50:6, 50:11, 50:13, 51:3, 51:20, 52:5, 52:6, 132:8, 139:19, 143:4, 146:8, 149:9, 150:3, 152:2, 153:17, 153:19, 169:12 yeah 8:15, 20:21, 21:5, 22:7, 22:15, 27:18, 27:22, 30:3, 30:11, 58:4, 64:3, 65:19,</p>	<p>73:21, 75:15, 81:1, 82:2, 82:9, 83:1, 85:16, 85:19, 87:16, 90:5, 90:12, 91:5, 91:16, 91:21, 92:3, 92:19, 94:3, 94:7, 94:10, 96:3, 97:8, 107:18, 109:10, 113:1, 114:13, 120:12, 120:17, 123:14, 123:15, 123:18, 124:17, 131:13, 134:22, 167:4, 173:19, 182:15, 183:11, 183:21, 184:21 year 6:2, 24:15, 35:10, 39:3, 72:6, 101:22, 104:2, 108:19, 180:6, 180:7 years 6:14, 8:20, 9:3, 9:8, 15:12, 16:9, 19:12, 19:17, 19:20, 23:19, 24:16, 27:1, 27:2, 27:4, 30:18, 30:20, 30:22, 31:3, 33:12, 33:17, 37:11, 46:14, 46:15, 47:7, 52:22, 55:15, 57:10, 149:15, 152:4, 171:21, 178:7 yesterday 9:14, 58:16 yourself 60:19, 61:7, 61:22</p> <hr/> <p style="text-align: center;">z</p> <hr/> <p>zat 38:4</p>	<p>zone 6:16, 7:15, 11:16, 11:21, 46:15, 46:17, 68:12, 109:9, 109:13, 110:10, 111:14, 115:13, 116:12, 116:15, 116:16, 116:18, 116:20, 119:6, 122:4, 123:1, 124:6, 141:2, 144:15, 144:20, 144:22, 145:1, 145:2, 145:4, 147:1, 147:7, 147:10, 152:11, 152:17, 152:19, 154:1, 154:8, 156:8, 160:20, 161:11, 161:14, 162:6, 166:18, 166:20, 168:14, 169:3, 171:20 zoned 27:10, 30:11, 32:18, 47:5, 142:10, 143:1, 146:17, 148:6, 162:4, 172:13 zones 27:7, 27:8, 109:18, 110:1, 115:14, 124:12, 124:14, 124:19, 124:20, 125:1, 125:10, 126:7, 126:16, 126:17, 126:21, 126:22, 142:21 zoning 1:2, 1:10, 2:4, 3:10, 5:6, 5:19, 7:21, 11:22, 29:15, 30:15, 66:15, 92:9, 140:22, 141:1, 149:16, 151:16,</p>	<p>154:10, 155:2, 156:5, 161:9, 171:13, 184:1, 184:4</p> <hr/> <p style="text-align: center;">\$</p> <hr/> <p>\$3 180:6 \$5 180:7</p> <hr/> <p style="text-align: center;">.</p> <hr/> <p>.3644 2:8</p> <hr/> <p style="text-align: center;">0</p> <hr/> <p>000109 1:6 0044 8:4, 8:13 01 68:22 05 68:22</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>10 20:11, 23:19, 25:8, 27:4, 71:17, 126:5, 126:16, 130:17, 154:9, 157:9, 174:15, 178:22 10.74 87:1 100 8:11, 10:18, 36:22, 58:20, 72:6, 95:8, 101:22, 107:2, 108:19, 117:7, 131:14 100,000 40:10 1000 40:11 10044 7:22, 8:17</p>
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Transcript of Hearing
Conducted on January 15, 2020

<p>10051 1:5, 5:6 10100 14:10 11 170:11 110 33:1, 44:13 1101 145:10 118 71:2, 76:4 12 23:19, 31:4, 73:9, 73:15, 73:18, 73:19, 73:22, 76:15, 77:6, 83:12, 148:15 12,500 38:13 120 131:14 121 113:22 13 71:11, 83:12, 86:20, 101:8, 149:15 136 4:7 14 4:4, 136:7 144 4:8 14741 2:5 15 1:11, 5:3, 25:8, 25:17, 27:1, 83:2, 132:7, 132:12, 135:13, 141:8, 154:2, 157:6 15,000 181:1, 181:5 150 110:3, 110:10,</p>	<p>131:18 16 83:12, 170:12, 174:20 160 116:20 17 83:12, 103:19 18 33:17, 38:22, 48:3, 69:5, 69:19, 70:1, 70:2, 132:12 180 122:10 18007 90:16, 90:17, 91:2 186 1:21 19 83:2, 138:10, 164:14, 164:15 1938 77:10, 77:13, 99:18, 108:15 1961 146:22, 147:2, 147:4, 147:19, 162:5 1965 73:12, 73:13, 74:1, 99:15, 108:5 1977 15:3, 16:8 1993 147:20</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>2-1 40:6, 40:7 2.17 116:19 20 37:11, 37:18, 40:5, 66:1, 83:2, 138:10</p>	<p>200 53:20 2000 20:4, 102:20, 104:2 2002 165:7 2005 103:10 2006 24:22 2009 25:2 2010 134:16 2013 25:3, 147:22 2014 63:18, 170:15, 171:2 2017 1:6, 69:12, 87:3, 112:12 2018 7:22, 8:4, 57:13, 77:10 2019 138:10, 138:11, 158:5 202 178:21 2020 1:11, 5:3, 65:2, 93:22 2035 165:8, 170:15 20706 93:7 20772 2:7 21 83:12 21,000 54:3 21.6 40:22, 48:19 21037 56:11</p>	<p>213 152:16, 156:7, 156:16 2173 2:6 22 4:11, 14:15, 14:16, 14:18, 66:1, 83:12 220 122:11 223 139:18, 142:12, 146:9, 153:17 23 92:4, 92:5 24 56:21, 66:16, 83:13, 102:4, 113:22, 147:3 240 145:11 25 19:12, 19:20, 31:3, 46:14, 71:2, 76:4, 83:3, 89:12, 102:7, 180:18 25,000 38:12, 46:16 250 122:13 250,000 40:12 26 30:20, 30:22, 83:13 260,000 40:12 27 12:17, 12:19, 65:20, 66:14, 102:4, 138:11, 145:17, 152:16, 154:18, 154:19, 154:20, 156:7, 156:16, 157:13 27.213 161:10, 171:6</p>
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Transcript of Hearing
Conducted on January 15, 2020

<p>27.542 154:9, 169:2 27102 155:3 28 65:5, 154:15, 154:22 283628 1:20 29 120:11, 120:12, 120:14</p> <hr style="width: 50%; margin: 0 auto;"/> <p style="text-align: center;">3</p>	<p>360 125:20 37 12:12, 23:21, 107:21 38 20:18, 20:19, 21:6, 77:12 39 4:11, 22:2, 22:3, 22:4, 22:16, 26:5</p> <hr style="width: 50%; margin: 0 auto;"/> <p style="text-align: center;">4</p>	<p>106:16, 178:7 500,000 175:14 529 106:21 530 106:19 550 95:7 56 4:5, 71:20 57 159:18</p> <hr style="width: 50%; margin: 0 auto;"/> <p style="text-align: center;">6</p>	<p>710 107:1 725 178:17 75 46:21, 131:17, 132:6, 180:16</p> <hr style="width: 50%; margin: 0 auto;"/> <p style="text-align: center;">8</p>
<p>30 53:4, 73:17, 77:15, 80:20, 91:14 30,000 40:8, 40:11, 122:9 300 10:1, 35:10, 46:20, 46:22, 93:6, 114:2, 114:21, 115:1, 115:2, 115:4, 116:17, 117:18, 118:15 301 53:5, 178:17 301.952 2:8 31 40:16, 40:17, 114:9, 114:10, 114:12, 115:2 32 26:13, 26:21, 27:16, 41:2, 95:3, 97:10 325,000 32:14 34 21:3, 21:5 35 95:3, 104:4 350 15:10, 116:13</p>	<p>40 8:20, 9:7, 73:5, 73:18, 95:8 400 36:8 400,000 44:1 404 56:10, 61:4 41 94:16, 94:17, 97:7, 106:20, 109:16, 111:20, 112:18, 124:18, 126:8, 128:21 42 80:20, 114:16 43 16:9 45 128:8 4601 93:5 47 71:18, 87:2 48 68:22 484 147:5 491 112:13</p> <hr style="width: 50%; margin: 0 auto;"/> <p style="text-align: center;">5</p>	<p>60 6:14, 6:17, 15:10, 19:17, 20:6, 68:4, 77:18, 95:2, 122:7, 126:15, 132:12, 146:3, 171:21 60,000 122:12 60.02 160:11 600 20:14, 36:9, 106:17 61,000 165:12 63.1 71:2, 76:4 65 111:7, 111:18, 112:5, 112:10, 113:7, 117:16, 126:18, 127:21, 128:10 6f 126:11</p> <hr style="width: 50%; margin: 0 auto;"/> <p style="text-align: center;">7</p>	<p>8 70:21 80 9:2, 23:2 800 20:14 83 4:6</p> <hr style="width: 50%; margin: 0 auto;"/> <p style="text-align: center;">9</p>
<p>70 68:5, 77:19, 111:18, 113:9, 127:21, 180:16</p>	<p>90 18:18 91 24:15, 168:5, 168:7 92 95:3 9440 181:9</p>		

NOTICE

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- Photographs**.....
- Video Tape**.....
- Oversize Drawing/Document**..
- Other**..... CD

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PRINCE GEORGE'S COUNTY

OFFICE OF THE ZONING HEARING EXAMINER

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ORIGINAL

IN RE: MARIA VOLPE, TRUSTEE :

SANDRA CAREY, TRUSTEE : Case No.: A-10051

v. : 2017 CA 000109 V

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REZONING HEARING

REVISED

Before

MARUENE MCNEIL, ZONING HEARING EXAMINER

Wednesday, January 15, 2020

Job No.: 283628

Pages: 1 - 186

Transcribed by: Molly Bugher

1 Hearing before HEARING EXAMINER MARUENE
2 MCNEIL, held at:
3 Prince George's County Office of the
4 Zoning Hearing Examiner
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6 Room 2173
7 Upper Marlboro, MD 20772
8 Phone: 301.952.3644

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 Pursuant to Notice, before Fatima Bah,
Notary Public in and for the State of Maryland.

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A P P E A R A N C E S

ON BEHALF OF THE PETITIONER:

ARTHUR HORNE, ESQ.

RUSSELL W. SHIPLEY, ESQ.

LAW OFFICES OF SHIPLEY HORNE

ON BEHALF OF PRINCE GEORGE'S COUNTY:

STAN BROWN, ESQ.

PEOPLE'S ZONING COUNSEL

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C O N T E N T S

PAGE

OPENING STATEMENTS	5
TESTIMONY OF JEFFERY LUGWICK	14
TESTIMONY OF JACOB MCCARTHY	56
TESTIMONY OF RYAN MCCALESTER	83
TESTIMONY OF MICHAEL LENHART	136
TESTIMONY OF FRANCIS SIBERHOLZ	144

E X H I B I T S

Exhibit 39	Westphalia Sector Plan	22
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1
2
3
4
5
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9
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P R O C E E D I N G S

HEARING EXAMINER MCNEIL: Now, good morning everyone. It's January 15, 2020, and I'm Maruene McNeil. I'll be the hearing examiner today. We are here for a special exception -- I mean, for zoning map amendment, I'm sorry; A10051. I hope I pronounce correctly; Maria Volpe, trustee, and Sandra Carey, trustee, and is known as the Caroso Property.

MR. HORNE: Carosa Property.

HEARING EXAMINER MCNEIL: Carosa Property. Is anyone here in opposition to this request? No? Okay. And if counsel would identify themselves with the record.

MR. HORNE: For the record, Arthur Horne from the law offices of Shipley Horne. I'm here with Russell W. Shipley.

MR. BROWN: And its Stan Brown, People's Zoning Council.

HEARING EXAMINER MCNEIL: Okay. Mr. Horne, Mr. Shipley, please explain why we are here today.

MR. HORNE: Okay. I will start off and turn

1 it over to Mr. Shipley. Again, good morning and
2 happy new year. We are here representing the
3 applicant. Actually the Anna Carosa trust. Just
4 by way of background, if you're interested, you
5 are talking about Carosa. Carosa is a family that
6 built a lot of properties in Prince George's
7 County including Iversen Mall. And the Carosa
8 family trust happened to own a lot of property in
9 this area and also Westphalia. And after he built
10 Iversen Mall, he actually purchased the property
11 that we are talking about here to build another
12 mall at this location. And just ended up dying
13 and ends up going into a trust and the family has
14 owned it for well over 60 years.

15 As you mentioned Madam Chairman, the request
16 we are here for today is to zone the property, the
17 60 acres from RR to MST. Although the park in
18 planning staff correctly stated in the
19 application, at least the prerequisite requirement
20 for the deputy counsel to rezone the property MST
21 by being located at a major intersection. Park
22 and planning recommends denial because the

1 proposed development would substantially impair
2 the goals, policy, and purposes of the general
3 plan and the master plan.

4 The applicant today, through its exhibits and
5 testimony, will demonstrate that the park and
6 planning staff was incorrect in its analysis
7 because the premise that the residential low
8 density is the best for this site is based off
9 incorrect and faulty information regarding
10 availability of the site and the specific location
11 within subregion 6 as it relates to the master
12 plan and recommendations.

13 The evidence today will show that the
14 proposed mixed-use development resulting from the
15 MST zone is quote, more substantial -- more
16 sustainable given the context of the adjacent
17 freeway and subject property location adjacent to
18 the major interchange on that freeway and the
19 character of the nearby existing plants
20 development, end quote.

21 Now that quote came from the zoning hearing
22 examiner's decision at A-10044, October 2018,

1 which was rezoning RR property right next to a
2 major freeway such as Pennsylvania Avenue.

3 HEARING EXAMINER MCNEIL: What number again?

4 MR. HORNE: A-0044, October 2018. The team
5 today consists of Mr. Jeff Lugwick.

6 HEARING EXAMINER MCNEIL: That can't be
7 right. Is that right? Number doesn't sound
8 right.

9 MR. HORNE: A --

10 HEARING EXAMINER MCNEIL: No 1?

11 MR. HORNE: A-100 --

12 HEARING EXAMINER MCNEIL: Okay. Only here
13 0044. Oh my, that couldn't have been me. That
14 must've been Barry.

15 MR. HORNE: Yeah.

16 HEARING EXAMINER MCNEIL: Okay.

17 MR. HORNE: 10044. The people today consists
18 of Mr. Jeff Lugwick, who is the senior vice
19 president of the NMA companies. Mr. Lugwick has
20 over 40 years of commercial leasing and
21 development experience and is wearing two hats
22 today. First, Jeff on behalf of his clients, the

1 applicant, the Anna Carosa Trust, both of the
2 individuals who signed the application are over 80
3 years old and don't get out much.

4 But he can speak for the trust concerning the
5 history of the site and development industry in
6 and around the subject property.

7 Second, as a commercial broker with over 40
8 years of experience, he is an expert on commercial
9 development and the leasing and can speak to
10 commercial development and leasing portions
11 concerning the subject site. As an individual who
12 has been accepted as an expert in commercial
13 brokerage in the court system, we're going
14 yesterday that he be accepted here in front of
15 this administrative hearing.

16 Mr. Ryan McCalister is a registered landscape
17 architect and MPA from Dubarry and is an expert
18 that has been previously accepted by this body.
19 Mr. McCalister will testify that he visited the
20 site, reviewed and studied all the development
21 requirements associated with the site including,
22 but not limited to, noise regulations,

1 environmental regulations, 300 foot lot depth of
2 Pennsylvania Avenue, environmental site features,
3 suitability of the land types for the site. Mr.
4 McCalister's testimony from the direct site visit
5 and research will contradict park in planning
6 staff's assertion based simply on information
7 received from PG analysts.

8 Mr. Jacob McCarthy -- you may know Milt
9 McCarthy, but this is Jacob McCarthy. He is an
10 environmental technician. Through his education
11 and experience has followed in his father's
12 footsteps in analyzing sites and environmental --
13 for environmental purposes with reference to
14 regulations concerning the Army Corps of
15 Engineers, the Maryland Department of Environment,
16 and Prince George's County government.

17 Mr. McCarthy will be offered as an expert
18 having reviewed and analyzed over 100 properties
19 were McCarthy and Associates and their
20 environmental services. Mr. McCarthy visited the
21 subject site and has prepared a letter analyzing
22 his findings that there are no regulated features

1 on this site.

2 Mr. Michael Lenhart has been accepted as a
3 traffic engineer before this body on dozens upon
4 dozens of cases. He's analyze the traffic
5 associated with the proposed rezoning and the plan
6 proffered by the applicant. The evidence will
7 show that park and planning staff agrees with Mr.
8 Lenhart's study that rezoning the property to MST
9 will not be a substantial impact to the impact of
10 intersections in the area.

11 And additionally, Mr. Lenhart's study
12 demonstrates that traffic generated by rezoning
13 will not be injurious to the health, safety, and
14 welfare of the community as the increase in
15 traffic, cause any intersection to fail as a
16 result of this change zone.

17 Finally, Francis Siberholz, the Land Center,
18 will testify. Mr. Siberholz has been accepted as
19 an expert land planner before this body on
20 numerous occasions. He will analyze the
21 requirements of the MST zone and demonstrate how
22 the subject property meets the zoning requirements

1 and how rezoning a property MST will not be an
2 impairment to the master plan.

3 Mr. Siberholz will analyze park and planning
4 staff recommendations and demonstrate how park and
5 planning's staff's conclusions were incorrect in
6 this matter.

7 Madame Examiner, we've refiled quite a few
8 exhibits here. Mostly resumes, but others that
9 are -- they are exhibits that we will be doing
10 with reference to the testimony.

11 HEARING EXAMINER MCNEIL: And you're up to
12 37 exhibits. So I'm assuming most, if not all
13 came from you and you have no objection to any of
14 them.

15 MR. HORNE: No objection to all of that.

16 HEARING EXAMINER MCNEIL: I have a question.
17 Also and put them on my sheet. 27, is this a
18 different staff report than the one in the record?

19 MR. HORNE: No, 27 is actually -- if you open
20 it up though, it is in blue, Mr. Siberholz's
21 response to the staff --

22 HEARING EXAMINER MCNEIL: I got you. Thank

1 you.

2 MR. HORNE: So it his testimony, it doesn't
3 cover everything, you'll want to -- he's going to
4 adopt what he had with in there as contrary to
5 what the staff's findings are.

6 HEARING EXAMINER MCNEIL: Okay.

7 MR. HORNE: And I think we have at least five
8 people you might swear in.

9 HEARING EXAMINER MCNEIL: And before we
10 start, Mr. Brown, do you have any questions about
11 the affidavits or anything?

12 MR. BROWN: No.

13 HEARING EXAMINER MCNEIL: Application?

14 MR. BROWN: The trustees are fine.

15 HEARING EXAMINER MCNEIL: Okay. First
16 witness.

17 MR. HORNE: I will turn it over to Mr.
18 Shipley.

19 MR. SHIPLEY: Thank you. Mr. Lugwick, Jeff
20 Lugwick.

21 HEARING EXAMINER MCNEIL: Good morning, Mr.
22 Lugwick.

1 MR. LUGWICK: Good morning.

2 HEARING EXAMINER MCNEIL: do you swear or
3 affirm under the penalties of perjury that the
4 testimony you give will be the truth and nothing
5 but the truth?

6 MR. LUGWICK: I do.

7 MR. SHIPLEY: Okay. Please state your name
8 and business address for the record.

9 MR. LUGWICK: My name is Jeffrey D. Lugwick.
10 And my business address is 10100 Business Parkway
11 in Lanham, Maryland.

12 MR. SHIPLEY: Okay. Has this resume been
13 marked as an exhibit?

14 HEARING EXAMINER MCNEIL: Yes.

15 MR. HORNE: It is Exhibit 22.

16 HEARING EXAMINER MCNEIL: It's 22.

17 MR. SHIPLEY: Okay. Referring to Exhibit
18 22 -- do you need a copy of it?

19 MR. LUGWICK: Sure.

20 MR. SHIPLEY: Would you please state your
21 educational and professional experience with
22 reference to the development of commercial real

1 estate in Prince George's County?

2 MR. LUGWICK: Yes, during that I became a
3 licensed realtor in 1977, attended classes at the
4 University of Maryland. I've also attended
5 classes through NAI Global and other professional
6 organizations including the Lipsey Program down at
7 the Darden School of Business at UVA. I am the
8 past chairman of NAI Global, which is the largest
9 managed network of commercial real estate
10 companies in the world with 350 offices in 60
11 countries.

12 I have served several years as the NAI
13 Global's business development committee's chair
14 when we looked at projects around the country when
15 developing, and trying to make positive impact in
16 positive changes. I guess that's Mr. Shipley,
17 should I talk about some of these other
18 affiliations; they don't really pertain to
19 commercial real estate.

20 MR. SHIPLEY: They are in your resume?

21 MR. LUGWICK: They are.

22 MR. SHIPLEY: Okay. Well, I don't think you

1 need to describe them.

2 MR. LUGWICK: Okay.

3 MR. SHIPLEY: And are you a real estate
4 broker licensed in the state of Maryland?

5 MR. LUGWICK: Yes, I am.

6 MR. SHIPLEY: And how long have you been so
7 licensed in the state of Maryland?

8 MR. LUGWICK: I've been licensed since 1977.
9 So I guess going on 43 years.

10 MR. SHIPLEY: And are you a broker in any
11 other state?

12 MR. LUGWICK: I'm a licensed associate broker
13 in the state of Virginia.

14 MR. SHIPLEY: Okay. And have you ever
15 qualified for any administrative agencies of the
16 state or any federal or state courts or other
17 judicial or administrative bodies?

18 MR. LUGWICK: Yes, sir. I was certified with
19 the United States Bankruptcy Court as an expert
20 for commercial real estate and development, taking
21 over felt commercial projects on behalf of the
22 trustees for the creditors.

1 MR. SHIPLEY: We would offer Mr. Lugwick as
2 an expert in the field of commercial real estate
3 development and as a Maryland broker.

4 HEARING EXAMINER MCNEIL: Any questions.

5 MR. BROWN: You are offering him as an expert
6 in commercial real estate?

7 MR. SHIPLEY: Yes.

8 MR. BROWN: Okay. Mr. Lugwick, is it Lugwick
9 or Lugwick? I heard you say --

10 MR. LUGWICK: It's both.

11 MR. BROWN: It differently from the way they
12 say it. Usually because --

13 HEARING EXAMINER MCNEIL: Well, he knows.

14 MR. BROWN: He would know, right.

15 MR. LUGWICK: Well interestingly, the
16 recordings usually muffle Lugwick and it comes up
17 a lot of different things. Sometimes lovely. The
18 worst was lug nut. So whenever I'm describing it,
19 I try and do a little German emphasis on it so
20 it's clear and understand.

21 HEARING EXAMINER MCNEIL: That's fine.

22 MR. BROWN: All right.

1 MR. LUGWICK: But I go by Lugwick.

2 MR. BROWN: Lugwick, okay, excellent. Just a
3 couple of quick questions. On your education, is
4 that University of Maryland. Did you graduate
5 from University of Maryland?

6 MR. LUGWICK: I did not.

7 MR. BROWN: Okay. And with regards to the
8 Darden school, did you get a certificate there?

9 MR. LUGWICK: I did get a certificate in that
10 program.

11 MR. BROWN: Okay. And you indicated a moment
12 ago that you were hired by the bankruptcy court
13 concerning certain real estate proceedings. You
14 were not qualified as an expert. You are merely
15 hard to exist the bankruptcy court, correct?

16 MR. LUGWICK: Actually, was qualified as an
17 expert because this was earlier -- I guess early
18 90s when the RTC was here. So I spent a lot of
19 time in court testifying on behalf of the trustee
20 and the creditors committees on the real estate,
21 which required me to be recognized by the court as
22 an expert on that in those services.

1 MR. BROWN: I see. Okay. No objection.
2 Based on his training and experience I think he
3 qualifies.

4 HEARING EXAMINER MCNEIL: Okay. You will be
5 accepted as an expert in the field of commercial
6 real estate development.

7 MR. SHIPLEY: And you represent the trustees
8 of the Carosa trust, Ms. Carey will, who I
9 understand lives in California, and Ms. Volpe who
10 lives in Washington DC?

11 MR. LUGWICK: Yes, sir. I represented the
12 family for 25 years and I've handled all of the
13 real estate holdings, taking them through some of
14 the early development processes or entitlement
15 processes. As they've gone through -- essentially
16 selling off many of the assets their father had
17 acquired 60 years ago.

18 MR. SHIPLEY: And how long have you
19 represented the trust?

20 MR. LUGWICK: Right around 25 years.

21 MR. SHIPLEY: And I assume you visited the
22 site and you are familiar with the site?

1 MR. LUGWICK: Yes, sir. I walked the site on
2 numerous occasions including walking it after we
3 had the selective timber harvest in the early
4 2000s under civil culture.

5 MR. SHIPLEY: And the property consists of
6 about 60 acres?

7 MR. LUGWICK: Yes, sir.

8 MR. SHIPLEY: It's very linear with the
9 frontage on Route four on the north side and Old
10 Marlborough Pike on the south side over
11 approximately 8/10 of a mile?

12 MR. LUGWICK: Yes, sir.

13 MR. SHIPLEY: And as a variable depth of
14 somewhere around 600 or 800 feet?

15 MR. LUGWICK: Yes, sir.

16 MR. SHIPLEY: Ryan, the exhibits that I want
17 to show Mr. Lugwick. Had this been marked?

18 MR. HORNE: 38.

19 HEARING EXAMINER MCNEIL: 38.

20 MR. HORNE: Actually, this may just be a
21 blowup of one that's already inserted. Yeah.

22 MR. SHIPLEY: Mr. Lugwick --

1 MR. HORNE: Hold on a second Russ. That is
2 just simply a blowup of -- let's see --

3 HEARING EXAMINER MCNEIL: This one? 34?
4 This?

5 MR. HORNE: 34, yeah. That's --

6 HEARING EXAMINER MCNEIL: So 38 is a blowup
7 of Westphalia.

8 MR. HORNE: Okay. All right.

9 MR. SHIPLEY: This is the Westphalia sector
10 plan?

11 MR. HORNE: Yes.

12 MR. LUGWICK: Yes, sir.

13 MR. HORNE: And modified.

14 MR. LUGWICK: Yes, sir.

15 MR. SHIPLEY: Are you familiar with that?

16 MR. LUGWICK: I'm very familiar with it.
17 Yes, sir.

18 MR. SHIPLEY: And also -- has this been
19 marked?

20 MR. HORNE: No.

21 MR. SHIPLEY: Okay. I would like to show
22 you -- well, should I mark this first?

1 HEARING EXAMINER MCNEIL: Yes. It would be
2 39.

3 MR. SHIPLEY: 39.

4 (Exhibit 39 was introduced into the record.)

5 HEARING EXAMINER MCNEIL: What -- you are
6 going to tell me what a snapper is?

7 MR. HORNE: Yeah.

8 MR. SHIPLEY: A snapper is the infamous
9 Amazon proposal.

10 HEARING EXAMINER MCNEIL: Oh.

11 MR. HORNE: That was the codename.

12 MR. SHIPLEY: And we are not -- it is not a
13 part of our basic plan.

14 MR. HORNE: This is already in the record.

15 MR. SHIPLEY: Yeah. I'm showing you what's
16 been marked as proposed exhibit number 39, which
17 is entitled Westphalia center snapper and the
18 illustrations that are in that. When you familiar
19 with this proposed development?

20 MR. LUGWICK: Yes sir, I am.

21 HEARING EXAMINER MCNEIL: And is that
22 proposed development encumber approximately how

1 many acres?

2 MR. LUGWICK: Approximately 80 acres.

3 MR. SHIPLEY: And does that sector plan also
4 include any property that was previously owned by
5 the Carosa family?

6 MR. LUGWICK: Yes, sir. In fact, a portion
7 of what was the snapper site was actually Carosa
8 property. Madam Chair, if it's okay, I will just
9 roll over here and share with you --

10 MR. SHIPLEY: Yes.

11 HEARING EXAMINER MCNEIL: Just make sure
12 that is that mic on.

13 UNIDENTIFIED SPEAKER: You have to turn --
14 you have to turn the mic on.

15 MR. LUGWICK: So, sorry. So the subject
16 property is designated as number R on this
17 particular map, but the family also owned the
18 property that's designated as T. They had sold --
19 I sold for them 10 or 12 years for them, 50 acres
20 for the Henson Valley Montessori School, which
21 later sold it to Galilee Baptist Church, and 37
22 acres to Antioch Baptist Church. And we are

1 currently helping them with their development
2 plans. Over in the Westphalia planning area --

3 HEARING EXAMINER MCNEIL: Excuse me one
4 second Mr. Lugwick. Is that the Antioch Baptist
5 Church currently on -- what is that?

6 MR. LUGWICK: Yes, ma'am. Right down here on
7 upper Marlborough.

8 HEARING EXAMINER MCNEIL: I just want to
9 state for the record --

10 MR. LUGWICK: Old Marlborough Road.

11 HEARING EXAMINER MCNEIL: I have no problem
12 being here, but my mother is a member of that
13 church.

14 MR. LUGWICK: Okay.

15 HEARING EXAMINER MCNEIL: She is a 91-year-
16 old member, hasn't been there much in years.
17 Sorry mom. Okay.

18 MR. LUGWICK: Sure. Most of the property
19 designated out to this point was formerly owned by
20 the Carosa family. And the property designated B
21 on this map was also owned by the Carosa family.
22 In 2006, we sold the property to a developer out

1 of Virginia Beach. Sadly, he lost the property in
2 2009 and we then resell the property for Wells
3 Fargo Bank in 2013 to include all of the
4 Westphalia town center.

5 So just to summarize, the town center portion
6 of the Westphalia town was previously the Carosa
7 property. And Mr. Carosa, Anthony, had actually
8 shown the vision of a 10 or 15 story high-rise
9 office building on this site here with a big
10 bridge connecting over to this town center that he
11 wanted to build.

12 MR. SHIPLEY: And describe what you mean by
13 this site here.

14 MR. LUGWICK: Oh, I'm sorry. The subject
15 property the which we are here for today, the
16 Carosa property, I've seen the artist renderings
17 of the 15 story glass office building. He really
18 had a great vision for what Westphalia would
19 ultimately become.

20 MR. SHIPLEY: And --

21 HEARING EXAMINER MCNEIL: So Mr. Shipley,
22 I'm sorry. I misunderstood. I haven't had enough

1 copy. So R is actually across Pennsylvania
2 Avenue. It is in that part of Carosa? Yes.

3 MR. LUGWICK: That's correct. Yes, ma'am.

4 HEARING EXAMINER MCNEIL: All right.

5 MR. LUGWICK: But 39 originally when Mr.
6 Carosa bought those properties to develop, he saw
7 them as being developed together because they were
8 on a major highway and on an interchange. And
9 those are typically the places that development
10 occurs, successful development occurs.

11 MR. SHIPLEY: Okay. And I would like to show
12 you what's already in the record as exhibit number
13 32, and ask if you would describe what that is.

14 MR. LUGWICK: Sure.

15 MR. SHIPLEY: If you wouldn't mind turning it
16 around so the hearing examiner could --

17 MR. LUGWICK: So --

18 MR. HORNE: You got to spin your microphone
19 back.

20 MR. LUGWICK: Oh, sorry. The -- this Exhibit
21 32 is called, for the time being, Hope Center.
22 It's owned by the Antioch Baptist Church. I sold

1 it to them about 15 years ago. And I've been
2 working with them for the last three years to help
3 them come up with a concept plan. In two -- about
4 10 years ago -- or maybe it was eight, we had --
5 were successful in helping them rezone the
6 property from RA, rural agricultural, to MST. A
7 lot of these old low density residential zones
8 were considered parking zones for future use. But
9 in fact, interestingly, the Westphalia town center
10 was originally zoned RA also. It had a park
11 there.

12 Currently, this is a conceptual site plan
13 that has been accepted by part and planning. So
14 it's in the process for Royal Farms on the corner.

15 HEARING EXAMINER MCNEIL: Okay. Excuse me.
16 So R 32 is this up here?

17 MR. HORNE: Yes.

18 MR. SHIPLEY: Yeah.

19 HEARING EXAMINER MCNEIL: That's the same as
20 that?

21 MR. HORNE: Yes.

22 MR. SHIPLEY: Yeah, that --

1 HEARING EXAMINER MCNEIL: Oh, okay. All
2 right.

3 MR. SHIPLEY: It's a larger version.

4 HEARING EXAMINER MCNEIL: I got you.

5 MR. LUGWICK: Better color on that page,
6 Madam Chair. So the corner lot at Wood Yard Road
7 and Marlborough Pike is for Royal Farms. They
8 have -- they've been under contract. They are
9 taking the -- they are in the development process.
10 They are responsible for developing it. And then
11 there was room for one additional commercial pad
12 site adjacent to the Royal Farms on Marlborough
13 Pike. Most development was to be at signalized
14 intersections, at corners especially.

15 And then for future use, the hotel site and
16 an assisted living facility as part of the
17 community. And then was indicated in blue is
18 where the New Antioch Baptist Church helps to
19 build their new facility at some point in time in
20 the future. So I've been kind of incidental
21 working with the engineers with Royal Forms to
22 develop this plan to submit to the county.

1 MR. BROWN: And this property is where on the
2 Westphalia center?

3 MR. LUGWICK: Sir, it's item number T.

4 MR. BROWN: T?

5 MR. LUGWICK: Property T.

6 MR. BROWN: Okay.

7 MR. SHIPLEY: It's basically on the east side
8 of Wood Yard Road, right?

9 MR. LUGWICK: That -- yes, sir.

10 MR. SHIPLEY: And on the south side of
11 Pennsylvania Avenue?

12 MR. LUGWICK: Yes, on the south side. In his
13 kitty corner to the subject property, to the
14 Carosa property.

15 MR. SHIPLEY: Can you provide the zoning
16 hearing examiner a summary of --

17 HEARING EXAMINER MCNEIL: Excuse me -- I
18 keep interrupting you.

19 MR. SHIPLEY: I'm sorry. That's a right.

20 HEARING EXAMINER MCNEIL: And that's been --
21 it's been accepted by the planning board?

22 MR. SHIPLEY: Yes.

1 HEARING EXAMINER MCNEIL: It's -- and it's a
2 conceptual site plan?

3 MR. LUGWICK: Yeah, the CDP by parking
4 planning.

5 HEARING EXAMINER MCNEIL: Do you all know a
6 number for that?

7 MR. HORNE: CDP number? No.

8 MR. LUGWICK: I could get it.

9 MR. BROWN: It's been rezoned and it hasn't
10 been --

11 MR. SHIPLEY: Yeah, and that's zoned MST.

12 HEARING EXAMINER MCNEIL: Okay. So we will
13 leave the record open and get that --

14 MR. HORNE: We will get that, yes.

15 MR. SHIPLEY: Now can you provide the zoning
16 hearing examiner a summary of the real estate
17 activity that has taken place in the area of the
18 subject property over the last dozen years or so?

19 MR. LUGWICK: Yes, sir. Madam Chair, I've --
20 let's start with the Michael Company 26 years ago,
21 I was assigned to Pennsylvania Avenue corridor.
22 My first cold calls 26 years ago was to the Carosa

1 family and we developed this long-term
2 relationship from it. But I've worked in this
3 corridor for the last 25 years. Mr. Shipley asked
4 that I limit it to 12.

5 I sold a lot of the properties here and been
6 involved with them. Just starting with having
7 sold property T. There is a corner lot across
8 Pennsylvania Avenue from the subject property,
9 across Marlborough Pike from the Antioch Baptist
10 Church property, item T, that we sold to a group
11 that is trying to develop it now also. This is
12 the Westphalia town center. As you know, it's on
13 through a lot of changes and iterations. We were
14 involved in selling all of it, actually twice.

15 And Madam Chair, I was the first person that
16 was -- the first project manager to come up with a
17 conceptual plan for the Westphalia town center.
18 The owners, the Westphalia family and the adjacent
19 property, the Presidential Corporate Center,
20 chipped in because it makes sense that they be
21 developed together. And we actually did a master
22 plan for a high density, urban community that

1 would help encompass -- you know, be the center
2 focus point for this whole community.

3 The buildings that were formerly known as
4 Washington Plaza, is now known as Police Plaza,
5 which is in Westphalia. I represented the owners
6 of that when we sold that to the county.

7 Likewise, the Police Federal Credit Union. Going
8 up Westphalia Road, we have worked -- just my own
9 personal projects, the item, property G, which was
10 the old Pepco turban maintenance facility, a very
11 unique building that was built -- it's now
12 partially obsolete -- to maintain a service,
13 turbines for power plants. That's being razed and
14 a new 325,000 foot distribution facility for a
15 company and is currently here in Prince George's
16 County that has outgrown their current space.
17 They are going to be moving there. That's in the
18 process of -- is been zoned, rezoned, and is going
19 through the approval process.

20 We also have part of parcel nine, we just put
21 under contract, to a developer, part of project --
22 property N. We represented the Suit (ph) family

1 in the cell to park and planning for 110 acres of
2 parkland.

3 Now our company has also been involved with a
4 lot of other properties in the area. But in
5 essence, the vision of Westphalia is beginning to
6 materialize. You are seeing different projects
7 like a property designated as E. That's
8 currently -- they are building houses there now.
9 They have broken ground. They completed the
10 project. Everything in the county takes a while
11 to get through the process, usually two, three,
12 four years before one can actually start going
13 vertical with construction. So we are seeing the
14 areas that C and H are also now being developed.

15 The big interchange is one of the best things
16 is happening in the area. We been working on that
17 for -- literally for 18 years and is now under
18 construction. And Dower House Road improvements
19 are being made also. So this whole area is being
20 developed. But what's lacking is a service. A
21 neighborhood could -- what we would define in our
22 business as neighborhood convenience. You may

1 have the opportunity to drive up and down Central
2 Avenue from time to time. And at Hall Road where
3 the library is, that's a project our company --

4 HEARING EXAMINER MCNEIL: And the credit
5 union.

6 MR. LUGWICK: And the credit union. That's a
7 project our company did. But that little center
8 there where there is the Dunkin' Donuts and a
9 drycleaner and a barbershop and a salon and a
10 little restaurant or a local restaurateur, we
11 would call that a neighborhood convenience center.
12 It's not -- over in the Westphalia town center,
13 they have a big retail power center, like what you
14 might see at Vista Gardens or Vista Marketplace in
15 Largo with big box stores, restaurants. But the
16 neighborhood convenience where you can pop in and
17 take care of those needs.

18 And there's a reason for it, that we don't
19 have those services there. Most restauranters,
20 most companies, most developers look at
21 demographics; how many people, how many rooftops,
22 with their income, with the likelihood that if I

1 go here that I can be successful. While the
2 census doesn't count anything in Andrews. Andrews
3 is like a big lake. There is no buying power.
4 There's no people. There is no services that
5 could be generated from there according to census
6 data tracts. Part of our job working in Prince
7 George's County is to be to educate folks that
8 there really is a market there.

9 So right now, Parkside is building out very
10 quickly. Last year they had 300 lots taken down.
11 So that -- I mean, is turning out to be a really
12 nice community. The Westphalia town center, they
13 are now picking up a head of steam and the Walton
14 company has sold half of the lots to one group who
15 is moving dirt right now so that they will be will
16 have new sections open. And it looks like there
17 close to making the deal or they have just made
18 the deal with Dr. Horton, who is our nation's
19 largest homebuilder, for the rest of the remaining
20 lots. My instinct is we will see the Westphalia
21 numbers begin to accelerate now that you got
22 different high-quality people in there that have

1 big tracts.

2 The townhouse project down in section C right
3 off of Wood Yard or Parkway, that project is now
4 moving forward. NVR has bought all the lots.
5 They are in there pushing dirt and that will be
6 another couple hundred townhouses. Prices have
7 really done a great job there. We are very
8 impressed at -- towns are now pushing over 400.
9 Single-family homes are now pushing over 600. And
10 that begins to build a tax base that's really
11 vibrant and robust. But they do lacks and
12 services and that's why we think that the Carosa
13 property, the subject property, is ideal because
14 it's -- the best part is it's on the going home
15 side.

16 Typically, folks that want to capture
17 commuters, that commuter traffic, you want to be
18 on the -- like rule number one, beyond the going
19 home side. And rule number two, if you are on a
20 major intersection. Rule number three, if you
21 have a signalized intersection. These are three
22 big components that help you get past the 100

1 different projects to go before these users every
2 day. And because when folks are going to work,
3 they are in a hurry. But when they are coming
4 home, they got to stop off and pick up things or
5 get some food.

6 There is -- this is a restaurant desert. I
7 mean, all of Upper Marlborough is somewhat of a
8 restaurant desert. And I've got some experience
9 with that. I represented the rows Company in
10 Largo when we had to restaurants, BMT Soundstage
11 and Applebee's. And 20 years ago, Madam Chair, I
12 did the first public -- according to the Washing
13 Post, the first public service website called
14 VoteForRestaurants.com. And it was for Prince
15 Georgians to vote for their favorite restaurants
16 to go in Largo.

17 HEARING EXAMINER MCNEIL: I voted.

18 MR. LUGWICK: I got 20 --

19 HEARING EXAMINER MCNEIL: We still didn't
20 get Cheesecake.

21 MR. LUGWICK: We didn't get Cheesecake. But
22 I will tell you Madam Chair, that I had a personal

1 conversation with --

2 HEARING EXAMINER MCNEIL: And stop calling
3 me that before the real Madam Chair tries to kill
4 me or something. So I'm Madam ZAT or Ms. McNeil,
5 either one.

6 MR. LUGWICK: All right Madam McNeil, Ms.
7 McNeil. The -- I actually did speak with the
8 chairman of Cheesecake Factory and it got a little
9 heated. His office is in Beverly Hills. So I
10 felt it was okay to get him a little excited while
11 he was in Beverly Hills because they were number
12 one. But we had 25,000 Prince Georgians vote and
13 we had 12,500 write an essay.

14 You may recall, if you could talk directly to
15 a restaurateur, tell them why you think they
16 should locate here. Well, you know the end of the
17 day, the Cordish companies asked, because Internet
18 was rather new, and they asked if they could post
19 my website on their website because Ross only had
20 lots for sale and Cordish only had restaurant pad
21 sites for lease. So we agreed. And to make a
22 long story short, we had 18 restaurants by the

1 time the smoke cleared.

2 We proved -- but the argument that I had the
3 first year that I marketed it was there is no
4 restaurants there so they must not be a market.
5 If it's not there already, the must not be a
6 market. So we are not interested. Then we had to
7 prove to them that there was indeed a market and
8 there was a hole in the market. And that's what
9 we need here.

10 I think one of the things that are concept
11 plan that we had submitted for the Carosa property
12 was a couple of nice restaurant pad, a couple of
13 nice hotel pads, and it would -- a small
14 neighborhood convenience center, those kind of
15 things that will attract is going home folks who
16 normally just drive to the county will stop and
17 get some of their tax money as they are going
18 through.

19 MR. SHIPLEY: So is it your testimony that
20 only a part of the site is designed for commercial
21 use?

22 MR. LUGWICK: Yes, sir.

1 MR. SHIPLEY: Approximately how many square
2 feet of commercial use will be provided by this
3 site?

4 MR. LUGWICK: So our initial analysis was
5 about 20 acres of the site would be for commercial
6 use. And with two hotel pad site that 2-1/2 acres
7 each, 2 restaurant pad sites at 2-1/2 acres each,
8 a gas station site, and a 30,000 foot neighborhood
9 convenience site. So the square footage, each
10 hotel is about 100,000 feet. Each restaurant is
11 about 1000 feet. And the 30,000 feet. So maybe
12 250,000 feet to 260,000 feet of total development,
13 but about a third of the property.

14 MR. SHIPLEY: Now what is that exhibit
15 number?

16 MR. HORNE: 31.

17 MR. SHIPLEY: Exhibit 31, but you point to
18 the specific area that you were just talking
19 about?

20 MR. LUGWICK: Yes, sir. This is the area we
21 got designated as number one, neighborhood
22 commercial retail, about 21.6 acres.

1 MR. SHIPLEY: And in this exhibit that's been
2 introduced as Exhibit 32 for the record, point out
3 again where that is in reference to that exhibit.

4 MR. LUGWICK: Oh, sure. The exhibit that is
5 mentioned by Mr. Shipley, the property is right
6 here.

7 MR. SHIPLEY: Right.

8 MR. LUGWICK: Kitty corner on this in a
9 section right here is where the Royal Farms will
10 go, right where that block is.

11 MR. SHIPLEY: Now are you -- and that exhibit
12 shows what Royal Farms is proposing in his
13 conceptual plan?

14 MR. LUGWICK: Yes, sir.

15 MR. SHIPLEY: And you think -- or the two
16 sides commercially competitive or complementary?

17 MR. LUGWICK: I believe there complementary.
18 There is a phenomenon where if one national or
19 superregional company finds that a site or a
20 neighborhood is ideal for them or acceptable to
21 them, it automatically becomes of interest to
22 every other type of user. It's kind of like in

1 the old days we used to see if the McDonald's went
2 on one corner, the Burger King was going to go on
3 the other corner. McDonald's proved that there
4 was a market there.

5 MR. SHIPLEY: Okay. And you do not consider
6 the commercial on the site would be competitive
7 with the north side of Pennsylvania Avenue where
8 the Westphalia power center is?

9 MR. LUGWICK: No, sir because as of a
10 completely different nature. A power center is
11 mostly comprised of big boxes. So you know, a
12 Home Depot, a grocery store, and Office Depot, a
13 Target, those kind of big boxes, that's a power
14 center. And that's what they got designated with
15 various pad sites. And I believe -- is my strong
16 belief that when we can demonstrate that
17 restaurants will be -- are interested in coming to
18 that marketplace and they can be successful, much
19 like we did with the Olive Garden at Ritchie
20 Station. I'm not sure if you are familiar with
21 the project, but that's one of the most successful
22 on gardens in their franchise now. It just proves

1 if you do quality restaurants, people will go out
2 and use them.

3 MR. BROWN: They need some more waitresses,
4 man. I stand for line and hours in that damn
5 place.

6 MR. SHIPLEY: You want a recess?

7 MR. LUGWICK: Is that never-ending bread
8 bowl.

9 MR. SHIPLEY: You want a recess and have them
10 address that?

11 MR. BROWN: No.

12 MR. SHIPLEY: Okay. You mentioned earlier,
13 Vista West. And you said the difference between
14 Vista West and Vista Gardens power center are
15 comparable to what you were talking about with
16 reference to this commercial side versus the power
17 center across the road. Would you give us a
18 little detail as to how -- you were the developer
19 on both those sites that Vista -- how they compare
20 and how they successfully evolved?

21 MR. LUGWICK: Yes, sir. So the Vista
22 Marketplace on Martin Luther King Jr. Boulevard

1 and Lotsford Vista Road is about a 400,000 foot
2 power center. And it's got those big boxes that I
3 just mentioned. In fact, I just didn't say
4 Shoppers, but as some big boxes there, has some
5 restaurants. And it's got a small center where
6 there is a bunch of restaurants, you know, a
7 Chipotle and the Ledo's, but also a salon, a cell
8 phone store, and some offices up above.

9 So when that center was built, it takes a
10 while to get things through the process. But a
11 project very similar to what we were proposing for
12 Carosa is right across the street. So it's got
13 about 110 townhouses. It has a Wawa gas station,
14 two or three more restaurant pad sites because of
15 the demand in the marketplace, and a hotel.

16 So what happens is that they begin to
17 complement each other because the retail center
18 itself serves as a draw, it's like a destination,
19 right. People go to a -- when people go to Vista
20 Gardens or Ritchie Station, they're going there
21 for a reason. They are going there for a
22 particular store and they are shopping there.

1 It's a destination. Whereas the site that Vista
2 West and I believe that this site also, is a site
3 that's more service-oriented.

4 In the commercial real estate business, they
5 had the breakdowns of neighborhood service and
6 power centers, grocery anchored shopping centers,
7 which -- the difference between a power center and
8 a grocery anchored shopping center, even though
9 they may both have grocery stores, a grocery
10 anchored center will have a lot of smaller stores.
11 But the two properties complement each other and
12 we believe that likewise, will complement was
13 ultimately planned for the retail at Westphalia.

14 MR. SHIPLEY: Now the properties on the south
15 side of Old Marlborough Pike, according to that
16 exhibit, what exists on the south side of
17 Marlborough Pike directly across the street from
18 the subject property?

19 MR. LUGWICK: To the -- in the middle of
20 what's designated as number two on the exhibit, it
21 shows North Marwood Boulevard. That's a senior
22 housing project that has billows and then one

1 building of multistory active adult living.
2 There's a few older homes. There is one that
3 drives on Marlborough Pike going towards Wood Yard
4 Road. And then the new cut through, what they are
5 designating as Marlborough Pike, has a new
6 residential subdivision of single-family homes.
7 Then on the corner they have a new subdivision of
8 townhomes.

9 MR. SHIPLEY: An annual expense of the
10 marketing expert, why do you feel the subject
11 property is not been developed for residential
12 similar to that?

13 MR. LUGWICK: We actually looked at this
14 property over the last 25 years evaluating it
15 every four or five years. And the RR zone was a
16 rural presidential, 25,000 square foot lots. And
17 it was considered a zone to be parked in. Well,
18 because of the proximity of Pennsylvania Avenue,
19 there was a requirement that the lot depth of the
20 lots be 300 feet. So to get any kind of density
21 out of it, one would have to have about 75 foot
22 wide lots that are 300 feet long and are kind of

1 like bowling alleys almost.

2 We went to the market with builders and
3 literally they felt it was going to be very
4 expensive to develop because of the limited
5 develop ability for RR zoned properties. And so
6 financially it's never been feasible. So every
7 five years we kind of look -- go back to the
8 property and see what would be the best thing to
9 do.

10 MR. SHIPLEY: Okay. And I just have one or
11 two more questions. Do you feel that the proposed
12 commercial aspect of this development is
13 complementary to Royal Farms and the major center
14 across the street and is needed in the community?

15 MR. LUGWICK: Yes sir, I do.

16 MR. SHIPLEY: And can you point to another
17 property on the south side of Route 4 between the
18 Beltway and the Calver County line which would
19 provide this type of service?

20 MR. LUGWICK: Mr. Shipley, there is not a
21 single property from the Beltway to the Calver
22 County line that provides these kind of services.

1 There is a bank and some offices at the Millwood
2 Office Park, but absent that, one has to go almost
3 18 miles for gas. And there's no restaurants.
4 It's like a restaurant desert.

5 MR. SHIPLEY: And if you travel south on Wood
6 Yard Road past the air base and all the way to
7 Branch Avenue on the south, is there anything that
8 is similar to this that has been developed that
9 provides the necessary commercial needs of the
10 community?

11 MR. LUGWICK: No sir, there is not.

12 MR. SHIPLEY: That's all the questions I
13 have.

14 MR. BROWN: Mr. Lugwick, just one or two
15 questions. You indicated that retailers, I will
16 use the word, like to have or be on the side of
17 the folks, commuters coming home from work. And
18 I'm looking at the neighborhood commercial retail
19 of 21.6 acres at Pennsylvania Avenue and Wood Yard
20 Road. Just eyeballing it, it doesn't look like
21 that commercial retail would be accessible to
22 Pennsylvania Avenue, would it?

1 MR. LUGWICK: Well sir, yes. Not -- like you
2 can't pull --

3 MR. BROWN: Right in?

4 MR. LUGWICK: Right in, because Pennsylvania
5 Avenue is a controlled access freeway.

6 MR. BROWN: Right.

7 MR. LUGWICK: But when one takes the rent
8 right here, this is the signalized intersection.
9 There's actually a dedicated right turn lane
10 already in existence here. So one can come in.
11 And from a retailing standpoint, you make right
12 turns. So you come in, you don't have to wait at
13 the light. There is already a dedicated right
14 turn lane. You would pull in and there would be
15 several access points to the commercial property.
16 So that one came out -- when one comes out from
17 whatever service they get, they can go right,
18 straight, or they can turn left onto Marlborough
19 Pike to go to be at a traffic signal, make a left
20 turning movement, and then a right, and then there
21 right back on Pennsylvania Avenue.

22 HEARING EXAMINER MCNEIL: So that's not

1 what's there now? It's ramps on Wood Yard?

2 MR. LUGWICK: Yes, ma'am. Those are all
3 there now. That's all been approved. The rep has
4 been upgraded. The right turn lane is in place.

5 HEARING EXAMINER MCNEIL: But did you say we
6 have a term from Wood Yard into this property? Or
7 they have to get on old -- what is that?

8 MR. HORNE: Old Marlborough Pike.

9 MR. LUGWICK: Yes, ma'am. So when one is
10 exiting from Pennsylvania Avenue, they exit onto
11 Wood Yard Road for short distance and --

12 HEARING EXAMINER MCNEIL: Okay. I -- and so
13 no turn from Wood Yard. You gotta get on it?

14 MR. SHIPLEY: Right.

15 MR. LUGWICK: Right. And then there is a
16 right turn lane already before the traffic light.
17 So it's a dedicated lane so that one would come in
18 and just make the right turn and go right in
19 without having to stop. So it makes it very
20 convenient turning movement. I'm not a traffic
21 engineer.

22 HEARING EXAMINER MCNEIL: I to say, where is

1 Mr. Lenhart. He will talk about all that traffic
2 right now coming off of old Marlborough Pike
3 trying to get onto Osborne or Wood Yard that keeps
4 me from moving. So looking at your property,
5 where again is Antioch? Is it still on that side?
6 Oh, wait a minute.

7 MR. LUGWICK: It's right -- so it's kitty
8 corner. So this is Marlborough Pike going
9 through.

10 HEARING EXAMINER MCNEIL: So doesn't touch
11 your property? Is really on -- what's that? The
12 buck --

13 MR. LUGWICK: It's across the road for the
14 property.

15 HEARING EXAMINER MCNEIL: Okay. Where they
16 have a little farm now?

17 MR. LUGWICK: Where they have a little farm
18 now. Yes, ma'am.

19 MR. SHIPLEY: It would be on the east side of
20 Wood Yard Road and on the -- is it on the south
21 side of Osborn Road?

22 MR. LUGWICK: Yes, sir.

1 MR. SHIPLEY: Okay. And that's on the south
2 side of Marlborough Pike? Old Marlborough Pike?
3 Well, no it's not. Because old Marlborough Pike
4 is on the north side. It goes around -- at Wood
5 Yard Road, old Marlborough Pike is on the south
6 side of Route 4 and east of Wood Yard Road is
7 actually on the north side of Route 4.

8 MR. LUGWICK: Okay. I just say it's near the
9 buck house.

10 MR. SHIPLEY: Pardon me?

11 MR. LUGWICK: Right. That's a great
12 landmark.

13 HEARING EXAMINER MCNEIL: I know what I
14 wanted to ask you. Isn't there a hotel further
15 down? What are we -- what street is that? Old
16 Marlborough Pike and Tucker's Restaurant?

17 MR. LUGWICK: Sure next to --

18 HEARING EXAMINER MCNEIL: There's a lot of
19 little kind of restaurants. I mean --

20 MR. LUGWICK: Sure, there is. They built
21 a -- and so in the hotel brand business, and we
22 sold a lot of hotels over the last three years,

1 there is the bottom brand, which is the Red Roof
2 Inn, Economy. And that's one of those type.
3 That's the economy scale motel.

4 And then when you go down 30 -- or down 4
5 down to 301, there is nothing else. Because you
6 know, with the equestrian center, it's so
7 successful. They have so many wonderful programs
8 going on there. It's almost like every weekend.
9 There is a little motel north up by Beach Tree and
10 there is a little motel south, Fort Bragg Motel, I
11 think they call it. But we sold at a hotel, like
12 I said, right outside of Andrew's on Allentown
13 Road. And there is a stay bridge right outside
14 the old Alexandria Ferry Road gate. So the stay
15 bridge is a limited service extended-stay. So it
16 just has better -- has maybe a little kitchenette
17 and it comes with some cups and saucers and you
18 can get a free breakfast when you go down.

19 Andrews doesn't have -- when they built that
20 200 room hotel on base, that was a high-security
21 hotel with skiff throughout. So normal humans
22 don't get to stay there. That's government

1 operations only. That stay bridge is full all the
2 time. This property being outside of the Pearl
3 Harbor gate, which is ideal for some of the 21,000
4 employees at Andrews and the folks that are
5 looking to come out.

6 But to go to a hotel like that, nowadays
7 everybody so sensitive about -- well, if one has a
8 security clearance, one doesn't want to lose it
9 because that's their job. If one gets a DUI, then
10 one can lose their security clearance. But if one
11 is stationed there for three months, staying in a
12 hotel and they want to go out have something to
13 eat and enjoy themselves, they want to have
14 restaurants right next door to them. And that's
15 how one gets the better quality Residence Inns or
16 Marriott Courtyards or the Hilton Garden In. You
17 know, the better quality limited service extended-
18 stay. And so that's why we think this is going to
19 be fantastic.

20 Most communities love hotels because of the
21 hotel tax. In addition to property taxes, they
22 generate a lot of other taxes. But those are the

1 kind of things that I think heretofore, folks
2 haven't really sold the community on, not the
3 community of people, but the business prospect
4 that we want to bring to the area, of why the
5 relationship with Andrews is so important. We got
6 a gate right there. We got a brand-new gate right
7 there. I mean, it's a fully upgraded Pearl Harbor
8 gate. And there's a lot of folks, a lot of
9 business that could come off the base.

10 HEARING EXAMINER MCNEIL: Is that off Dower
11 House?

12 MR. LUGWICK: It's right off Dower House.
13 That's right. And as part of the idea is that
14 Andrews has been like an island with a fence
15 around it for all these years and not a lot of
16 benefit came to Prince George's County off the
17 base. And so by providing services, restaurants
18 where they can go out for lunch, hotels where they
19 can have their people stay and get some food,
20 neighborhood convenience where they can get their
21 assorted sundries and toiletries and things like
22 that, those are all things that attract people.

1 HEARING EXAMINER MCNEIL: Okay, thank you.

2 MR. BROWN: That's it for us.

3 MR. SHIPLEY: Thank you.

4 MR. LUGWICK: Thank you. Thank you, very
5 much. Very nice meeting everybody.

6 MR. SHIPLEY: We call Mr. McCarthy. Oh,
7 there you are. Would you state your full name and
8 address please?

9 MR. MCCARTHY: My name is Jacob McCarthy. My
10 address is 404 Fairmount Drive in Edgewater
11 Maryland, 21037.

12 HEARING EXAMINER MCNEIL: Mr. McCarthy, do
13 you swear or affirm that the testimony you are
14 about to give will be the truth and nothing but
15 the truth?

16 MR. MCCARTHY: Yes.

17 MR. SHIPLEY: Okay. Is this in?

18 HEARING EXAMINER MCNEIL: Yes.

19 MR. HORNE: Yes.

20 MR. SHIPLEY: What number?

21 HEARING EXAMINER MCNEIL: Exhibit 24.

22 MR. SHIPLEY: What is your profession or

1 occupation?

2 MR. MCCARTHY: My occupation currently is an
3 environmental technician. I used to be a wetland
4 ecologist, which is basically the same thing, just
5 different terminology.

6 MR. SHIPLEY: And where have you been
7 employed? Where is your employment background?

8 MR. MCCARTHY: Doing what I currently do, I
9 worked for McCarthy and Associates for about four
10 and a half years. And then that was under my
11 father, Milt McCarthy. And he sold his business
12 to Bay Engineering and they formed a new company
13 Bay Environmental, September 2018. And I've been
14 with them ever since.

15 MR. SHIPLEY: And tell us your educational
16 background.

17 MR. MCCARTHY: I went to school at Saulsberry
18 for planning and geographic information systems,
19 dual track. Was in a couple of honor societies.
20 Graduated cum laude. Took some soils classes and
21 other miscellaneous environmental classes while at
22 university.

1 MR. SHIPLEY: And --

2 MR. HORNE: I was going to say you left off
3 Clemson since they --

4 MR. MCCARTHY: Yeah. I didn't graduate from
5 Clemson. That was right out of high school. I
6 had too much fun down there.

7 MR. SHIPLEY: And have you previously
8 evaluated properties for environmental features as
9 to the site?

10 MR. MCCARTHY: That is correct.

11 MR. SHIPLEY: And how many times have you --
12 and so you visited and analyzed properties
13 generally?

14 MR. MCCARTHY: For the Carosa property, I've
15 been out there three times. I had to actually
16 drop by yesterday while it was raining just to see
17 what the hydrology was doing during the rain
18 event. But throughout working for McCarthy and
19 Associates and Bay Environmental, I've probably
20 looked at over 100 various properties in every
21 county in Maryland from Prince George's,
22 Montgomery, to Charles, Worcester, Dorchester,

1 Frederick.

2 MR. SHIPLEY: And are you familiar with the
3 rules and regulations concerning environmental
4 features and determinations as set forth by the
5 Army Corps of Engineers, the Maryland Department
6 of the Environment, and the Prince George's County
7 government?

8 MR. MCCARTHY: Yes.

9 MR. SHIPLEY: And we've marked an exhibit as
10 to your professional resume. Have you previously
11 qualified before any court or administrative
12 agencies as an expert in the field of making
13 environmental judgments?

14 MR. MCCARTHY: I've never qualified prior,
15 no.

16 MR. SHIPLEY: We would like to propose Mr.
17 McCarthy is an expert in the field of
18 environmental use work.

19 HEARING EXAMINER MCNEIL: I'm just listening
20 to the title. What do you think your expertise
21 would be called? It can't be environmental
22 judgment.

1 MR. MCCARTHY: Wetland consultant,
2 environmental technician is probably the best one
3 I can think of. But it's kind of a very niche
4 field of work. So it's a little difficult to
5 describe it accurately on a very professional
6 level just because I haven't ever met anyone else
7 who kind of does what I do.

8 MR. SHIPLEY: Have you submitted reports
9 that -- I'm sorry.

10 HEARING EXAMINER MCNEIL: Right, I'm trying
11 to see --

12 MR. SHIPLEY: No, this is --

13 HEARING EXAMINER MCNEIL: Do you want a voir
14 dire?

15 MR. BROWN: Well, I agree with the examiner.
16 I mean, we need to determine exactly what it is
17 you want to be qualified as. As I recall, the
18 term is used, environmental engineer. Would you
19 consider yourself an environmental engineer?

20 MR. MCCARTHY: I would not consider myself an
21 engineer. I don't have the license for any
22 education dealing with engineering. I'm

1 basically -- go out to the sides and just evaluate
2 them based on the criteria that's in the wetland
3 handbook from the Army Corps of Engineers based on
4 section 404 laws and Maryland Department of the
5 environment and the Prince George County
6 environmental technical manual.

7 MR. BROWN: Would you consider yourself an
8 environmental planner?

9 MR. MCCARTHY: Honestly, I would not. I
10 mostly deal with regulators, with agencies such as
11 Maryland Department of the Environment and the
12 Army Corps of Engineers. We do environmental
13 field evaluations and report our findings if there
14 are any regulated natural features that would fall
15 under their jurisdiction.

16 MR. BROWN: So --

17 HEARING EXAMINER MCNEIL: How about wetland
18 evaluation and delineation?

19 MR. BROWN: Your title at Bay Environmental
20 is environmental technician.

21 MR. MCCARTHY: Yes, sir.

22 MR. BROWN: So you clearly consider yourself

1 an environmental technician.

2 MR. MCCARTHY: Yes, sir.

3 MR. BROWN: And so --

4 HEARING EXAMINER MCNEIL: Expert in
5 environmental --

6 MR. BROWN: Exactly. Would you be willing to
7 seek to qualify him as an environmental
8 technician?

9 MR. SHIPLEY: Yes. And I would ask
10 additionally ask him; have you had experience
11 submitting reports evaluating property for steep
12 slopes or wetlands that have been accepted by
13 clients who have been accepted by government
14 agencies --

15 MR. MCCARTHY: Yes, sir.

16 MR. SHIPLEY: As preparatory to issuing
17 permits --

18 MR. MCCARTHY: That is correct. We --

19 MR. SHIPLEY: To build or develop property?

20 MR. MCCARTHY: I submitted probably over 50
21 natural resource studies, wetland delineation
22 reports, critical area reports, Bald Eagle

1 surveys, a little bit of everything.

2 MR. SHIPLEY: And they've been done in
3 connection with asking for permits from the Corps
4 of Engineers, state and county, and have been
5 accepted by those agencies --

6 MR. MCCARTHY: That is correct.

7 MR. SHIPLEY: In reliance on either issuing
8 or denying the permit? Is that correct?

9 MR. MCCARTHY: That is correct.

10 MR. SHIPLEY: So for that limited purpose, I
11 think that's all I want to get out of him.

12 MR. BROWN: And have you ever sought to be
13 qualified as an environmental technician or
14 wetland ecologist prior to today?

15 MR. MCCARTHY: No, sir.

16 MR. BROWN: And you've worked as a wetland
17 ecologist or environmental technician from June
18 2014 until the current date, correct?

19 MR. MCCARTHY: That is correct.

20 HEARING EXAMINER MCNEIL: Now, are you
21 saying the professional terminology changed from
22 wetland ecologist to environmental technician?

1 They are the same? Could we call you a wetland
2 ecologist?

3 MR. MCCARTHY: Yeah, I think you could. You
4 could go with either one.

5 HEARING EXAMINER MCNEIL: Okay.

6 HEARING EXAMINER MCNEIL: Okay.

7 MR. MCCARTHY: Under my father's old
8 business, which it kind of thought that sounded
9 good. And then when he sold to do business, they
10 kind of set what my job title was. So it changed.

11 HEARING EXAMINER MCNEIL: I agree with your
12 dad.

13 MR. MCCARTHY: Okay.

14 HEARING EXAMINER MCNEIL: If you have a
15 strong objection, I would accept him as an expert
16 in the area of wetland ecology.

17 MR. BROWN: Okay.

18 MR. SHIPLEY: I don't have any objection to
19 that.

20 HEARING EXAMINER MCNEIL: Thank you.

21 MR. SHIPLEY: When you say you visited the
22 site two or three times. In that connection, did

1 you prepare an exhibit in the form of a letter
2 addressed to Dubarry on January 2, 2020?

3 MR. MCCARTHY: That is correct.

4 MR. SHIPLEY: Is that in the record?

5 MR. HORNE: It is. It is Exhibit 28.

6 MR. SHIPLEY: And attached to that letter,
7 and therefore I seem as a part of that exhibit,
8 are a series of photographs of the site?

9 MR. MCCARTHY: Yes, I took numerous
10 photographs.

11 MR. SHIPLEY: And I'm going to ask you to go
12 over them, but to try to save time a little bit,
13 those pictures were taken generally when? What
14 week? What month?

15 MR. MCCARTHY: I believe I was out there --
16 could I refer to the --

17 MR. SHIPLEY: You want to refer to the
18 letter?

19 MR. MCCARTHY: To the letter? Yeah, December
20 27 was when I was actually out on site for the
21 first time evaluating the channels.

22 MR. SHIPLEY: And there is a series of about

1 20, 22 photographs. They were all taken by you?

2 MR. MCCARTHY: Correct.

3 MR. SHIPLEY: And you will describe in your
4 testimony that they accurately betray what you saw
5 with your eyes when you were taking the pictures?

6 MR. MCCARTHY: That is correct.

7 MR. SHIPLEY: Okay. With that as a
8 background, would you describe the contents of the
9 letter and the import of the pictures?

10 MR. MCCARTHY: The letter goes through a
11 little bit of background about the PG County laws
12 that apply to the -- what defines a regulated
13 stream channel. And the environmental technical
14 manual, it refers to the subsection 27 of the
15 Prince Georges County zoning law, which refers to
16 subsection 24, which is the subdivision portion of
17 the code. And they define a stream as any channel
18 that has water flowing through it on a -- or
19 regularly for an annual basis or during the
20 growing season, and has a defined bed and banks
21 and just a few other minor criteria.

22 When I was out on site evaluating all the

1 channels that exist, I cannot find evidence of any
2 regulated environmental streams out there, any
3 features that would be regulated. Everything was
4 an ephemeral channel, which only runs during or
5 after -- immediately after a rain event or
6 precipitation. All the channels I saw had no
7 defined bed and banks, no significant scouring or
8 evidence of leaf litter being moved due to
9 overland flows. There was no evidence of
10 groundwater connection.

11 Most of the channels were very shallow
12 depressions. There were a few that were a little
13 more in size, just due to the nature of the
14 landscape position. Most of those were
15 immediately abutting route 4 along the roadway.

16 MR. BROWN: Those were man-made channels,
17 what they?

18 MR. MCCARTHY: Those were -- that's correct.

19 MR. SHIPLEY: Or they made in conjunction
20 with building route 4?

21 MR. MCCARTHY: I believe so.

22 MR. SHIPLEY: Okay.

1 MR. MCCARTHY: It appears there is a series
2 of culverts that have concrete armoring along the
3 channel to prevent erosion from happening. I'm
4 assuming they were put in in the late 60s, early
5 70s, but I can't tell you exactly when. But that
6 seems to be historically when that sort of
7 protective measure was fairly popular with the
8 Corps of Engineers and other agencies when they
9 designed that kind of thing.

10 MR. SHIPLEY: So in your examinations, you
11 didn't find anything that would impede the
12 development of the property in the zone that's
13 been requested and with the development has been
14 proposed?

15 MR. MCCARTHY: That is correct.

16 MR. SHIPLEY: And are you familiar with --

17 HEARING EXAMINER MCNEIL: Wait, wait, wait.
18 Is that correct? You mean anything, stream,
19 environmental that would --

20 MR. MCCARTHY: That is correct.

21 HEARING EXAMINER MCNEIL: I have to watch
22 (inaudible 01:05:48). He is so good. Go ahead.

1 MR. SHIPLEY: And are you familiar with the
2 green infrastructure plan?

3 MR. MCCARTHY: I'm familiar with it, yes.

4 MR. SHIPLEY: And staff refers to that on
5 page 18, which I think was in Exhibit B.

6 HEARING EXAMINER MCNEIL: Would that be the
7 staff report?

8 MR. SHIPLEY: Of the staff report. And if
9 you would, take a look at this paragraph.
10 According to the countywide green infrastructure
11 plan of the approved Prince George County resource
12 conservation plan of 2017, the majority of the
13 site fall within regulated areas and evaluation
14 areas. Based on available information, the
15 regulated areas include the headwaters of streams,
16 associated stream buffers, and adjacent steep
17 slopes, which comprise the primary management
18 area, PMA.

19 MR. BROWN: That's not page 18.

20 MR. HORNE: Page 8.

21 HEARING EXAMINER MCNEIL: Eight.

22 MR. SHIPLEY: I said -- I thought I said a.

1 MR. HORNE: You said 18.

2 HEARING EXAMINER MCNEIL: 18.

3 MR. SHIPLEY: I'm sorry. I'm sorry. Page 8.
4 I looked at eight and thought I said eight. And
5 you are saying that that doesn't seem to be
6 correct with reference to this property?

7 MR. MCCARTHY: That is not as incorrect in my
8 opinion. A lot of the PG County --

9 MR. SHIPLEY: I guess you can't say that.
10 You must say Prince Georges. Okay. I'm exempt
11 because I'm an octogenarian. Most people have to
12 say Prince Georges since Winnie Kelly came to town
13 and he left. Go ahead. I'm sorry.

14 MR. MCCARTHY: No, a lot of the mapping and
15 the geographic information systems that these rely
16 on are based on Lidar and just elevation, digital
17 elevation models that aren't confirmed in the
18 field. Just because there is a depression does
19 not mean that it's a regulated natural resource.

20 MR. SHIPLEY: And going to the bottom of page
21 8; regulated environmental features, according to
22 information available on PT Atlas, there are

1 regulated environmental features as defined in
2 section 25-118B-63.1 on the site. A found
3 delineation of all regulated environmental
4 features will be determined at a later stage of
5 development. Do you feel that that is an accurate
6 statement based on your personal examination and
7 the photographs which you have taken to support
8 it?

9 MR. MCCARTHY: No, I don't.

10 MR. SHIPLEY: Okay, it does not. Okay. And
11 then again on page 3 -- 13, 13, under the heading
12 of environment they talk about the preservation or
13 restoration of regulated areas designed in the
14 green infrastructure network through the
15 development review process for new land
16 development policies. And then it says,
17 approximately 10 acres are designated as regulated
18 areas and 47 acres as evaluation areas by the
19 resource conservation plan. That's when the staff
20 concludes that approximately 56 acres of the
21 property is impacted by environmental constraints.
22 Do you agree or disagree with that statement?

1 MR. MCCARTHY: I disagree with that
2 statement.

3 MR. SHIPLEY: For the reasons you've already
4 set forth?

5 MR. MCCARTHY: That is correct.

6 MR. SHIPLEY: And did you find any 100 year
7 floodplain?

8 MR. MCCARTHY: No, I did not. However, the
9 floodplain is more of an engineering calculation.
10 I don't normally look for a floodplain that falls
11 outside of just the immediate vicinity of the
12 area.

13 MR. SHIPLEY: How about steep slopes?

14 MR. MCCARTHY: There were some fairly steep
15 areas on site, not as much as it shows on the
16 county PG Atlas website. But this whole site has
17 been historically manipulated during the
18 construction of route 4. And there is evidence of
19 old logging trails, earthen burns that were
20 obviously constructed on site, and the personal
21 areas that were obviously excavated using
22 equipment back when they were putting route 4 in.

1 MR. SHIPLEY: Is that exhibit number --

2 MR. SHIPLEY: Let's make your --

3 HEARING EXAMINER MCNEIL: A smaller one is,
4 but I would think we would need that larger one as
5 well. Maybe not. I thought I saw it. 40?

6 MR. HORNE: That's the new one.

7 HEARING EXAMINER MCNEIL: Oh, I thought I
8 saw something.

9 MR. HORNE: What it is, that is Exhibit 12A
10 and it has a bunch of attachments which include
11 the aerial map. That's what I think that is.
12 That one is 1965.

13 MR. BROWN: 1965.

14 MR. SHIPLEY: So that would be -- Madam
15 Chairman, that would be 12A, 12P.

16 HEARING EXAMINER MCNEIL: I think they might
17 like that one as well. So 30 would be the blowup
18 of 12A I mean 40. I'm sorry.

19 MR. SHIPLEY: Did you say 12P?

20 MR. HORNE: Yes.

21 HEARING EXAMINER MCNEIL: Yeah, I'm sorry,
22 12P.

1 MR. SHIPLEY: 1965 aerial map?

2 MR. HORNE: Yes.

3 MR. SHIPLEY: And that's what you're looking
4 at, Mr. McCarthy?

5 MR. MCCARTHY: That is correct.

6 MR. SHIPLEY: Would you point out what you
7 just talked about in terms of the disturbed areas
8 or steep slopes?

9 MR. MCCARTHY: Sure. You can see little
10 trails and excavated areas. Everything that's
11 been cleared is obviously in white compared to the
12 forest that's in the gray. There is trails and
13 access roads and just borrough pits, this whole
14 area down -- and this portion of the property was
15 excavated to supply building material for the
16 roadway. It appears to me, anyway. But there is
17 a lot of historic equipment tracks and very linear
18 dishes that exist throughout the property, but
19 they've been here probably since construction
20 ceased on Route 4.

21 MR. SHIPLEY: Okay. Thank you, Mr. McCarthy.
22 That's all the questions I have.

1 MR. BROWN: Mr. McCarthy, concerning page 8
2 of the staff report in the green infrastructure
3 plan, do you have a copy of the green of a
4 structure plan with you today?

5 MR. MCCARTHY: I do not.

6 MR. BROWN: Mr. Shipley, Mr. Horne, if we
7 could get a copy of the green infrastructure plan,
8 specifically that illustrates the staff's position
9 that the majority of the site falls within
10 regulated areas and evaluation areas. I'm
11 assuming common sense, there is an illustration
12 that they are pointing to in that plan. I mean,
13 there is an illustration of this property, right?
14 In that plan?

15 MR. SHIPLEY: I would assume, yeah.

16 MR. BROWN: I would assume. I would like to
17 see that photograph in the green infrastructure
18 plan of this property, so we can have an idea what
19 it is they are talking about.

20 MR. SHIPLEY: Right.

21 MR. BROWN: And Mr. McCarthy, same thing with
22 regards to the next to the last paragraph on page

1 8. Counsel asked you questions on it concerning
2 PG Atlas. Staff says according information
3 available on PG Atlas. They are regulated
4 environmental features as defined in 25-118B-63.1.
5 I would like to have a printout of PG Atlas of
6 this property.

7 MR. MCCARTHY: Okay.

8 MR. BROWN: So we can determine whether in
9 fact there are regulated environmental features,
10 or as you say, they are not.

11 MR. MCCARTHY: If you will refer to --

12 HEARING EXAMINER MCNEIL: That's this.

13 MR. BROWN: Okay. We'll let me ask you this,
14 if this is it. I'm showing you what's been marked
15 as Exhibit 12A

16 HEARING EXAMINER MCNEIL: It's not A.

17 MR. BROWN: Do you recognize that document?

18 HEARING EXAMINER MCNEIL: Q.

19 MR. BROWN: I'm sorry.

20 MR. MCCARTHY: This is the first I'm
21 personally seen of it, but this looks like data
22 that is readily available on PG Atlas.

1 MR. BROWN: And the property is illustrated
2 on that first page?

3 MR. MCCARTHY: Correct.

4 MR. BROWN: All right. Look through that.
5 Take your time and tell me if you see regulated
6 environmental features on PG Atlas 12A.

7 MR. MCCARTHY: So far, I've only seen aerial
8 photographs, which are not indicative of any
9 regulated features. Going back to the history, it
10 goes from 2018, the most recent aerial, to 1938.

11 HEARING EXAMINER MCNEIL: It says it goes to
12 38.

13 MR. MCCARTHY: 1938. So it shows basically
14 the evolution of the property from when it was --
15 looks to be farmed back in the 30s to when Route 4
16 was being constructed and the site was being used
17 for construction access and material to when it
18 was left fallow from some time in the late 60s,
19 early 70s. And then the tree, forest is starting
20 to grow back. But I don't see anything that would
21 indicate regulated environmental features based
22 off these.

1 If you refer to the letter and the supporting
2 documents that I prepared in my January 2 letter
3 to Mr. Ryan McCalister of Dubarry, I had prepared
4 a lidar digital elevation model that was found
5 from PG County, the PG -- Prince George's Atlas.
6 And on that exhibit, it shows where the county is
7 considering the stream channels on it. And I
8 believe that's in front of it.

9 MR. BROWN: Show me that page in your
10 exhibit.

11 MR. MCCARTHY: Okay.

12 MR. BROWN: All right.

13 MR. MCCARTHY: So this is an elevation model.
14 The darker the color, the steeper the gradient and
15 generally lower the elevation. All these blue
16 lines exist on PG Atlas as a regulated
17 environmental feature, the stream channels. But
18 in the field, they're just simply ephemeral
19 depressions created in uplands.

20 The forest composition is dominated by
21 American Beech, Red Oak, White Oak, and other
22 upland species. Down in this area there is a

1 pretty significant component of Sweetgum and Red
2 Maple, which is to be expected in highly disturbed
3 areas. But every blue line that was featured on
4 this came from the PG Atlas digital elevation
5 model as a regulated environmental feature. But
6 in the field, they do not represent what is
7 actually out there.

8 MR. BROWN: So you don't know whether or not
9 the staff was looking at this version of PG Atlas
10 or not?

11 MR. MCCARTHY: I cannot attest to that, no.
12 But that is a layer that is available publicly on
13 the PG Atlas GIS program. So I'm assuming at some
14 point they probably looked at it to --

15 MR. BROWN: And that's probably what they are
16 referring to in the second to last paragraph on
17 page 8?

18 MR. MCCARTHY: I would assume so. And so --

19 HEARING EXAMINER MCNEIL: What page is --
20 I'm so sorry.

21 MR. BROWN: No, go ahead.

22 HEARING EXAMINER MCNEIL: Those pages are

1 numbered. So can you put a star and maybe your
2 initials on this if you want?

3 MR. MCCARTHY: Sure.

4 HEARING EXAMINER MCNEIL: Just so I know
5 that's in the record. That's when we were
6 referring to that those blue toward -- toward
7 Route 4? Lines were probably -- staff thought of
8 that as a regulated environmental feature.

9 MR. BROWN: And the blue lines you said are
10 just ephemeral depressions. They look more like,
11 to me, drainage from Route 4.

12 MR. MCCARTHY: Actually, the site slopes this
13 way. So all --

14 MR. BROWN: Toward -- toward route 4?

15 MR. MCCARTHY: Towards Route 4. So all of
16 these features are draining the interior of the
17 property down to Colbert's that fall under 4 and
18 drained North onto the Westphalia property. There
19 is a series I think of four different culverts,
20 all of which are I think 30 to 42 inches. And all
21 of them had concrete armoring along the slopes
22 along --

1 MR. BROWN: Yeah. You had a couple of
2 photographs of those in this. Would you show this
3 to me?

4 MR. MCCARTHY: Sure. So this is typical
5 of --

6 MR. SHIPLEY: But the number -- say what the
7 numbers are.

8 MR. MCCARTHY: Okay.

9 HEARING EXAMINER MCNEIL: They don't have
10 it.

11 MR. BROWN: Take a second and number all of
12 your pages.

13 HEARING EXAMINER MCNEIL: All of your pages.
14 Thank you.

15 MR. MCCARTHY: Sorry about that. Sorry.

16 MR. SHIPLEY: He does have numbers on the
17 pictures, I think.

18 HEARING EXAMINER MCNEIL: Oh, okay. It's
19 easier to number it to refer to a page.

20 MR. BROWN: While we are waiting to get a
21 numbered; the gentleman from Dubarry, I'm sorry.
22 What was your name again?

1 MR. SHIPLEY: McAlister.

2 MR. BROWN: Yeah, you were out when I asked
3 him did he have the green infrastructure plan.
4 Since he submitted this information to you, do you
5 have the green infrastructure plan with you today?

6 MR. MCCALLISTER: Yes, sir.

7 MR. BROWN: I thought you did. Could you
8 bring it up here, please?

9 MR. MCCALLISTER: Yeah.

10 HEARING EXAMINER MCNEIL: Find a moment to
11 try to get one. Mr. Ryan McCalister?

12 MR. MCCALLISTER: Yes, ma'am.

13 HEARING EXAMINER MCNEIL: Mr. McAlister, do
14 you swear or affirm under the penalties of perjury
15 that the testimony you give will be the truth and
16 nothing but the truth?

17 MR. MCCALISTER: I do.

18 HEARING EXAMINER MCNEIL: He doesn't have
19 any questions yet.

20 MR. HORNE: I --

21 HEARING EXAMINER MCNEIL: But I just wanted
22 to --

1 MR. HORNE: Yeah, he's our next witness.

2 MR. MCCARTHY: Okay. So on pages 15, 19, 20,
3 25, though show all of the --

4 MR. BROWN: Culverts.

5 MR. MCCARTHY: Culverts that cross under
6 Route 4 and drained North onto the Westphalia
7 property.

8 MR. BROWN: And what page of your letter is
9 the ephemeral depression that you described?

10 MR. MCCARTHY: On pages -- on page 2 is my
11 writeup of the field visit for photographs of the
12 channels themselves. Page 12, 13, 16, 17, 21, 22,
13 24, and 26 all have photographs of the ephemeral
14 channels.

15 MR. BROWN: All right. Have you seen --

16 HEARING EXAMINER MCNEIL: Are you saying
17 ephemeral channels?

18 MR. MCCARTHY: Yes, ma'am.

19 HEARING EXAMINER MCNEIL: Ephemeral?

20 MR. MCCARTHY: Ephemeral.

21 HEARING EXAMINER MCNEIL: Okay.

22 MR. BROWN: Have you seen the green

1 infrastructure plan?

2 MR. MCCARTHY: I've seen it. I've not read
3 it in its entirety.

4 MR. BROWN: All right. Again going back to
5 page 8 of the staff report, the third paragraph
6 where Mr. Shipley asked you about the green
7 infrastructure plan and the staff concluded that
8 the majority of the site fall within related areas
9 and evaluation areas, just look through it
10 quickly.

11 MR. MCCARTHY: Okay.

12 MR. BROWN: See if you see any illustrations
13 that show the majority of the site falls within
14 regulation areas and evaluation areas.

15 MR. MCCARTHY: Looks like this page here
16 would demonstrate that as a regulated area on
17 their green infrastructure plan.

18 MR. BROWN: All right. It looks to me like
19 that particular rendering is almost identical to
20 the ephemeral depressions that you described in
21 your letter.

22 MR. MCCARTHY: That is correct.

1 MR. BROWN: And so basically what they are
2 saying is, those ephemeral depressions are
3 regulated areas and evaluation areas and you are
4 saying they are not.

5 MR. MCCARTHY: That is correct.

6 MR. BROWN: All right.

7 MR. MCCARTHY: By County code, they are --

8 HEARING EXAMINER MCNEIL: Don't move. What
9 page is that? You don't have numbers either?

10 MR. MCCARTHY: They don't have numbers.

11 MR. SHIPLEY: What pages it next to?

12 MR. MCCARTHY: It is at the very last page as
13 an attachment to the green infrastructure plan.

14 HEARING EXAMINER MCNEIL: And that's the
15 subject property?

16 MR. BROWN: Yeah.

17 MR. MCCARTHY: Yes. Yes, ma'am.

18 MR. HORNE: Mr. McCalister is --

19 MR. MCCARTHY: Yeah, that's --

20 HEARING EXAMINER MCNEIL: Okay.

21 MR. MCCARTHY: I'm assuming provided by Mr.
22 McCalister, his --

1 HEARING EXAMINER MCNEIL: Oh, okay.

2 MR. MCCARTHY: Because all of these channels
3 match up to the ones that show up on green on the
4 stuff I've pulled in my letter from, but they are
5 calling them as stream channels. They're not
6 stream channels. They are not regulated features.
7 They are ephemeral drainage soils and ditches that
8 just convey groundwaters off-site to the north.

9 MR. BROWN: Okay. But the mere fact that
10 they, on the illustration, run across Pennsylvania
11 Avenue, and to your knowledge there are not any
12 stream crossings underneath Pennsylvania Avenue,
13 are there?

14 MR. MCCARTHY: No. No, sir.

15 MR. BROWN: So it's almost a physical
16 impossibility for those to be streams or stream
17 channels?

18 MR. MCCARTHY: That is correct.

19 MR. BROWN: All right. Also with regards to
20 page 13, the environmental paragraph that Mr.
21 Shipley solicited answers from you concerning the
22 subregion six master plan where staff concluded

1 approximately 10.74 acres are designated as
2 regulated areas and 47 acres as evaluation areas
3 by the 2017 approved Prince George's County
4 resource conservation plan, the countywide
5 functional master plan. Have you seen the
6 conservation plan?

7 MR. MCCARTHY: I have not, but on this it
8 shows that these -- the darker green here is the
9 regulated area, and the lighter green is the
10 evaluation area. So for this property, that
11 appears to be about fairly accurate.

12 MR. BROWN: Of the conservation plan?

13 MR. MCCARTHY: I've not seen the conservation
14 plan.

15 HEARING EXAMINER MCNEIL: That's --

16 MR. BROWN: Yeah, I'm going to ask him.

17 HEARING EXAMINER MCNEIL: Mr. McCalister's
18 under oath. Have you seen it?

19 MR. BROWN: Have you seen the county's
20 resource conservation plan as it relates to this
21 property?

22 MR. MCCALLISTER: I have reviewed the

1 county's plan, yes.

2 MR. BROWN: Do you have it in your materials
3 today?

4 MR. MCCALLISTER: I don't have it with me
5 today.

6 MR. BROWN: All right. So Mr. Horne, Mr.
7 Shipley, would also like to get a copy of the
8 resource conservation plan that illustrates this
9 property. I think it's going to show what Mr.
10 McCarthy just said, that is consistent with the
11 green infrastructure plan and that those, what I
12 would consider almost man-made depressions, are
13 not regulated environmental areas. But I want to
14 have all three in the record.

15 MR. HORNE: Okay.

16 HEARING EXAMINER MCNEIL: The pages -- as he
17 said, the pages that address your property,
18 because the Council can take official notice of
19 the documents, as I would. And I will contact
20 them without putting those entire books into the
21 record.

22 MR. BROWN: Okay. All right.

1 MR. HORNE: Got it.

2 MR. BROWN: No other questions. Thank you.

3 HEARING EXAMINER MCNEIL: Thank you.

4 MR. SHIPLEY: Thank you. Thank you, very
5 much.

6 HEARING EXAMINER MCNEIL: I guess I was
7 going to try to clarify for the record --

8 MR. HORNE: Hold on. Hold on a second.

9 HEARING EXAMINER MCNEIL: Come back. I was
10 going to try to clarify for the record what are
11 regulated environmental features. And I mean, you
12 know, but I have it in subtitle 25, but --

13 MR. MCCARTHY: That includes wetlands,
14 streams, steep slopes, a number of various
15 features.

16 HEARING EXAMINER MCNEIL: But you don't
17 think the staff -- and this is sort of -- I mean,
18 we shouldn't even be asking you what the staff
19 thought. But you don't think they're basing it on
20 slopes?

21 MR. MCCARTHY: I don't believe they are
22 basing it on slopes alone, no, because the slopes

1 have to be abutting a stream or another feature to
2 be -- to be included in the buffer, I believe is
3 correct.

4 HEARING EXAMINER MCNEIL: Okay. Thank you.

5 MR. MCCARTHY: Yeah.

6 HEARING EXAMINER MCNEIL: I sure hope this
7 is all being recorded. I sent Fatimah away. So
8 if you all would forgive me and maybe don't talk
9 for at least two minutes, I will get Susie. Wait
10 a minute. I forget we have modern conveniences.
11 Keep going. So is McCalister next?

12 MR. HORNE: Yeah, he's back up. Yeah, he's
13 coming back up.

14 MR. SHIPLEY: Now your --

15 MR. HORNE: While we're waiting --

16 MR. HORNE: For the exhibit. It's 18007.

17 HEARING EXAMINER MCNEIL: 18007. I can't
18 believe I've written as much --

19 MR. SHIPLEY: So we don't have any documents
20 for him or anything?

21 HEARING EXAMINER MCNEIL: So CSP --

22 MR. HORNE: No, we got the green

1 infrastructure plan.

2 HEARING EXAMINER MCNEIL: 18007.

3 MR. HORNE: And the PG at less, we got that
4 as well, right?

5 MR. SHIPLEY: Yeah.

6 MR. HORNE: So we just need that conservation
7 plan.

8 MR. SHIPLEY: Thank you, very much.

9 MR. MCCALISTER: Make sure I have all my
10 materials.

11 HEARING EXAMINER MCNEIL: And as is coming
12 up, Mr. Horne or Mr. Shipley, will somebody tell
13 me what's the noise contour? Somebody will be
14 speaking to 30 question that's what that is, the
15 noise contour?

16 MR. HORNE: Yeah, it's a blowup of the site
17 plan. So you can't see it at the bottom of this.
18 This is a blow up to be able to --

19 HEARING EXAMINER MCNEIL: Okay.

20 MR. SHIPLEY: Do you have questions for him?

21 MR. HORNE: Yeah.

22 HEARING EXAMINER MCNEIL: Thank you.

1 MR. HORNE: Do you have his resume?

2 MR. SHIPLEY: That's in the record.

3 MR. HORNE: Yeah.

4 HEARING EXAMINER MCNEIL: Exhibit 23?

5 MR. HORNE: 23. So we're still waiting on --

6 HEARING EXAMINER MCNEIL: No, I hope we are
7 going.

8 MR. HORNE: Okay.

9 MR. SHIPLEY: And he's qualified for a zoning
10 and -- landscape architect.

11 HEARING EXAMINER MCNEIL: And he is already
12 sworn in. So you're asking that he be accepted as
13 an expert in --

14 MR. SHIPLEY: Land planning.

15 MR. HORNE: Landscape architect.

16 HEARING EXAMINER MCNEIL: Expert landscape
17 architect. And he has been accepted as such in
18 the past?

19 MR. SHIPLEY: Yeah.

20 HEARING EXAMINER MCNEIL: Mr. Brown, so you
21 have any questions?

22 MR. BROWN: No objections, no.

1 HEARING EXAMINER MCNEIL: Okay.

2 MR. SHIPLEY: You've been sworn. Please give
3 us your name and address.

4 MR. MCCALISTER: Yes, my name is Ryan
5 McCalister. I'm with Dubarry Engineers, 4601
6 Forbes Boulevard, Suite 300, Lanham, Maryland,
7 20706.

8 MR. SHIPLEY: And you been accepted as a
9 professional landscape architect?

10 MR. MCCALISTER: Yes, sir.

11 MR. SHIPLEY: And your resumes in the record?

12 MR. MCCALISTER: I believe have a copy of it,
13 yes.

14 MR. SHIPLEY: Are you familiar with the
15 property which is the subject of this application?

16 MR. MCCALISTER: Yes, sir. We prepare the
17 documents, plans, and exhibits for today's hearing
18 as well as in the case record.

19 MR. SHIPLEY: And have you visited the
20 property?

21 MR. MCCALISTER: Yes, I visited it on January
22 6 of 2020.

1 MR. SHIPLEY: And would you basically
2 describe the property?

3 MR. MCCALISTER: Yeah.

4 MR. SHIPLEY: And use any exhibits that you
5 prepared or have been introduced or you would like
6 to introduce.

7 MR. MCCALISTER: Yeah. The property, based
8 on exhibit -- what number that is --

9 HEARING EXAMINER MCNEIL: That one?

10 MR. MCCALISTER: Yeah, which is the rezoning
11 plan for the case.

12 MR. BROWN: Did we mark that?

13 HEARING EXAMINER MCNEIL: I haven't seen
14 that file.

15 MR. HORNE: No, not the large one. So that
16 would be 41.

17 HEARING EXAMINER MCNEIL: 41.

18 MR. BROWN: I'll just write on it until she
19 brings the thing.

20 HEARING EXAMINER MCNEIL: Thank you.

21 MR. HORNE: So Mr. McCalister, you can spin
22 that microphone around so you can --

1 MR. MCCALISTER: Okay. Okay. The property
2 is approximately 60 acres made up of three
3 parcels, parcel 35, parcel 32, parcel 92,
4 referenced them basically from east to west along
5 the property. It fronts on Pennsylvania Avenue,
6 Woodyard Road, and Marlborough Pike. The property
7 is approximately 550 feet wide. It's roughly
8 about 40 -- 100 feet long. I've walked the full
9 site, not a straight direction, but kind of
10 crisscrossing patterns in a grid to survey the
11 site for all the many features of it.

12 The site itself slips down from Marlborough
13 Pike to Pennsylvania Avenue. It exists of partial
14 woodlands. It exists in some clearing areas. And
15 generally, the site remains bank and at this time
16 with some existing improvements from the past.
17 The number of features based on some of the plans
18 that are shown on this exhibit, which I think
19 there will be more questions on, which I'll be
20 happy to describe as we go through the testimony.

21 MR. SHIPLEY: And are there existing
22 environmental features or conditions found on the

1 site such as woodlands, streams, wetlands, and
2 other regulated environmental features?

3 MR. MCCALISTER: Yeah. So when I reviewed
4 the site on January 6, we examined the conditions
5 for a number of aspects based on Prince George's
6 County regulations. In regards to the
7 environmental technical manual, also in future
8 preparation of a natural resource inventory plan,
9 we evaluated both the environmental features as
10 well as the woodlands on site, also soils,
11 topography. Basically, a number of things were
12 found. The site does have previous improvements.
13 This is consistent with some of the historic
14 aerials, which I will talk about in a second.

15 But some of the changes that we found were in
16 with the canopy and the force coverage based on
17 previous clearing areas. We found evidence of hay
18 grass or pasture grass in isolated areas which
19 have been planted based on farming, previous
20 farming activities, which would not normally be
21 seen on the property unless farming was previously
22 done on the property. Without evidence of

1 existing infrastructure improvements including two
2 wells, visible underground infrastructure from the
3 wells moving north on the site, which was evidence
4 of where we believe the single-family houses were
5 located.

6 MR. BROWN: Show me where that is on that
7 Exhibit 41.

8 MR. MCCALISTER: Yeah, the first well was
9 right about in here at the top of this ridgeline.
10 The second well was underneath the parcel 32
11 designation. There was another property fronting
12 out the back of it overlooking Pennsylvania
13 Avenue. We believe the five houses had driveways
14 off of Marlborough Pike that you can tell from the
15 clearing. There is some clearing here that goes
16 along Marlborough Pike running from the entrance,
17 which should be the midpoint of the site, carrying
18 to the east.

19 We believe that there was a house up here.
20 You can see kind of this flat spot that's been
21 improved upon to make way for a house pad. We
22 believe there was also previously a house pad down

1 in the lower part of the eastern corner, and those
2 were consistent with the aerial photographs and
3 the topography that we found on site.

4 A lot of the trees that we found were planted
5 for landscape or reforestation purposes. We saw
6 isolated Virginia pine stands, which appear to be
7 a plan up to clearing associated with Pennsylvania
8 Avenue, which would not normally be found on site.
9 The pattern was also not irregular. It was
10 consistent with horizontal grid spacing, which
11 makes us think that it was a reinforced station
12 that was used after the construction.

13 We found evidence of construction debris,
14 asphalt, concrete, debris materials, which we
15 believe were from the Pennsylvania Avenue
16 construction. We saw evidence of wildlife.
17 Typically we see deer out on the sides. We do not
18 see any that they we were out there except for a
19 couple of squirrels. The property itself was
20 typical with a lot of improved or previously
21 improved sites found in the county. It was not
22 what would be considered a pristine natural area,

1 untouched. We found evidence of all these
2 improvements.

3 The existing drainage ways were dry. Even
4 with the amount of rain leading up to our site
5 visit, which was three days of rain beforehand,
6 the drainage ditches were dry. We checked for
7 specimen trees. These were limited to two
8 isolated areas, which were here, and through here.
9 Again, those were mostly beech, red oak, white
10 oak, sweetgum, which is consistent with previous
11 disturbance as well as that's where disturbance
12 had been done during the Pennsylvania Avenue
13 construction. So we believe that that was again,
14 planted during that time.

15 The disturbance was consistent with the 1965
16 aerial, post Pennsylvania Avenue. And then
17 consistent with what the pre-Pennsylvania Avenue
18 construction was in 1938. That aerial was
19 submitted in the record as well. And the other
20 aerial photographs which show the farming and
21 clearing activities for the single-family detached
22 houses.

1 MR. SHIPLEY: Okay. Are there any streams
2 running for the property?

3 MR. MCCALISTER: So we walked the site. That
4 was a question as evidenced in the staff report as
5 if these were regulated streams. We concur with
6 Bay Engineering's or Bay Environmental's report.
7 Natural resource inventories under the county code
8 can be prepared by a licensed landscape architect.
9 As a licensed landscape architect in reviewing
10 these based on the county code, I believe as well
11 that the information that's been provided by Bay
12 is consistent with county code regulations and the
13 determination that these are not regulated
14 environmental streams. These are drainage
15 ditches, ephemeral ditches, if you will, which are
16 also not related by the county code.

17 MR. BROWN: But an ER study that hasn't been
18 done to date.

19 MR. MCCALISTER: No, sir. We were doing this
20 based on that we were actually evaluating it for a
21 future NRI that would be prepared based on the
22 rules and relations of an NRI.

1 HEARING EXAMINER MCNEIL: So you have to
2 prepare one?

3 MR. MCCALISTER: We would do that in the next
4 phase of development if this rezoning plan was
5 approved, yes.

6 MR. SHIPLEY: When you hear when Mr. McCarthy
7 testified and reference was made to the comments
8 of the staff that were on page 8 and page 13 of
9 the staff report?

10 MR. MCCALISTER: Yes, sir.

11 MR. SHIPLEY: In your investigation, did you
12 find that there were any regulated areas or
13 evaluated areas on the site based on the county's
14 green infrastructure plan that you have there?

15 MR. MCCALISTER: Again, we went to the same
16 analysis in which staff did. We believe the
17 information that we are presenting today is more
18 accurate. Reading through the green
19 infrastructure plan, page 1 of the green
20 infrastructure plan defines the regulated areas
21 containing environmentally extensive features such
22 as streams, wetlands, buffers, the 100 year

1 floodplain, steep slopes that are currently
2 regulated under the county land development
3 process. The code sites which were previously
4 given, 24 and 27, also defined what a regulated
5 stream is. Based on the staff --

6 HEARING EXAMINER MCNEIL: Excuse me one
7 second. And that's not different from 25, right?

8 MR. MCCALISTER: No, ma'am.

9 HEARING EXAMINER MCNEIL: Okay.

10 MR. MCCALISTER: The definition that the
11 green infrastructure plan size is consistent with
12 the county code. The difference is that the level
13 of accuracy that was used for the mapping and for
14 the determination of these features. And so our
15 on-site field determinations are more accurate
16 versus what was provided by staff, which they
17 reference of their staff report, was directly from
18 PG Atlas, the website.

19 The PG Atlas information the green
20 infrastructure plan was developed from, the 2000
21 aerial photos. And so -- and that cited directly
22 in dependencies where the data source comes from

1 in the green infrastructure plan. The green
2 infrastructure plan also utilizes digital
3 elevation models and topography. So the
4 difference is that no field inspections were
5 completed as part of the crafting of that plan.
6 They used the state model, which utilize
7 information been derived at the local level to
8 make these determinations.

9 Staff that site that there will be using the
10 2005 aerials. And at that time, they will also be
11 looking at more updated information, which will be
12 included, which will include the steep slopes.
13 Steep slopes were not included in the green
14 infrastructure plan. So that's why we believe
15 that was really the drainage ditch features of
16 topography that were placed based on an aerial
17 photo.

18 A couple citations I found were also that --
19 page 17 of the green infrastructure plan notes
20 that the green infrastructure plan that worked map
21 conceptual in nature and illustrates a generalized
22 pattern for green infrastructure conservation in

1 the county. Paragraph four also illustrates the
2 year 2000 aerial photographs were used in the GIS
3 database is also being updated.

4 Page 35, table 3 suggests also that there is
5 locations appropriate for flexible design
6 standards and it acknowledges all three of the
7 tiers within the county, the rule, developing, and
8 developed. Now acknowledging that this plan was
9 written before the general plan and the tier
10 designation was changed --

11 MR. BROWN: Why is that relevant?

12 MR. MCCALISTER: It's relevant because what
13 the table 3 acknowledges is that the flexibility
14 for development, this property -- the table sites
15 this property is located in the developed tear and
16 that also there is flex ability for regulated
17 environmental features. We believe that there are
18 no regulated environmental features as well as
19 there is flexible design standards to allow for
20 the development of this property.

21 MR. BROWN: So you want it both ways here.
22 There are no regulated development features. But

1 there is flexibility to allow development on the
2 regulated environmental features.

3 MR. MCCALISTER: The green infrastructure
4 plan suggest that the flexible design standards
5 recognize the --

6 MR. BROWN: But the flexible design standards
7 are essentially what I'm saying is really not
8 relevant to your argument because you're saying
9 there are no related features on site.

10 MR. MCCALISTER: Yes, but the flexible design
11 centers acknowledge that those features, they use
12 a broad brush to paint the regulated environmental
13 features. And so it just further concurrence and
14 that our belief is that the features are not
15 regulated.

16 HEARING EXAMINER MCNEIL: Anything in that
17 plan it says development shall follow -- you know,
18 that the plan is paramount and if the plan says
19 there are environmental -- regulated environmental
20 features, then there are -- and there are -- it
21 doesn't say that. That's why you are doing
22 substantially impaired. I'm just making sure.

1 This little sentence in the beginning. Because
2 I'll tell you, I never read that whole book. I
3 will now.

4 MR. MCCALISTER: Yes, we've read it and a lot
5 more detail. In regard -- staff does site as
6 regarding to be environmental features, but then
7 also goes into the evaluation area and why the
8 property is designated because it has, from what
9 they are describing in the plan is related
10 environmental features, evaluation areas
11 containing environmentally sensitive features such
12 as interior force, colonial water bird nesting,
13 site unique habitats.

14 We've done the research. In order for the
15 property to account for interior force, it has to
16 have at least 50 acres of forest as well as be at
17 least 600 feet wide. This property has less than
18 1 percent of interior forest habitat. The
19 property goes from 530 feet, which is evidenced on
20 the rezoning plan, Exhibit 41, with a dimension of
21 529. Moving east through the site along
22 Marlborough Pike, it gets up to about, right about

1 here, a maximum of about 710 feet. And so there
2 is about 100 feet of area, which could be
3 concluded as having forest interior dwelling
4 species, which once again, this is such a small
5 area compared to the overall site.

6 What we also found was that there are no
7 unique habitats. There's no bays, pecosins, there
8 is no designated areas of environmental
9 significance that we can find on any other natural
10 resource plans. So a lot of this information was
11 used to make this determination, but for the
12 evaluations and for the regular areas that we -- I
13 think we believe have more accurate information,
14 which is why those inconsistencies with the
15 information that staff had available to them at
16 the time this report was drafted.

17 MR. SHIPLEY: How about the slopes?

18 MR. MCCALISTER: Yeah. We have an exhibit
19 that illustrates moments again, what staff was
20 looking at for the PG Atlas website.

21 HEARING EXAMINER MCNEIL: It's 37. Got an
22 extra? Thank you. That's good.

1 MR. MCCALISTER: So when we walked to the
2 side and we review these areas, these areas are
3 consistent with the improvements and changes from
4 Pennsylvania Avenue, which is also shown on the
5 1965 aerial. The area starting from, let's say
6 the southeastern portion of the site moving west,
7 the initial hillside there was a haul road, which
8 was taken from Pennsylvania Avenue out to
9 Marlborough Pike. The drainage ditches were cut
10 in to allow the drainage and so it didn't flow
11 across Pennsylvania Avenue.

12 And as you keep going further, we establish a
13 ridgeline there. That area was the previous
14 single-family house that was there as well and
15 that was evidenced in the 1938 aerial. Why steep
16 slopes are important is because based on the
17 definition for a PMA or primary management area,
18 is steep slopes are only regulated within the PMA
19 only if they are adjacent to a 100 year floodplain
20 or regulated streams. And we concur that if it's
21 not a regular stream, then there is also not
22 regulated steep slopes, which would be no PMA on

1 this property.

2 MR. SHIPLEY: And McCalister, did Dubarry
3 prepare the survey of the property and the site
4 plans filed with application?

5 MR. MCCALISTER: We did. We prepared the
6 plans, evaluate the site conditions, and prepared
7 the rezoning plan in front of you today.

8 MR. SHIPLEY: And there is something called
9 the MIO, military installation (inaudible) zone.

10 MR. MCCALISTER: Yeah.

11 MR. SHIPLEY: Did you contribute to the
12 preparation of the rezoning plan that examined the
13 MIOS zone with reference to its impact on this
14 property?

15 MR. MCCALISTER: Yes. As evidenced on
16 Exhibit 41, the bottom left-hand corner of the
17 rezoning plan, there is an overlay of the MIOZ
18 zones. These are based on the joint base Andrews
19 plan, which was adopted by Council. The surface
20 areas are determined based on the flight patterns
21 for Joint Base Andrews. These relate to the
22 height of buildings or building height within the

1 zones. The property falls starting from the
2 western portion within area -- surface area deed.
3 The building height there is limited to 150 feet.
4 That's probably -- I'm approximating here, but say
5 3 percent of the property, maybe even less than
6 that.

7 Moving east, the rest of the property is in
8 service area E. There is a determination is made
9 based on building height. In this case, it allows
10 for greater than 150 feet in the zone.

11 We worked with park and planning staff
12 actually quite a bit in the beginning of the pre-
13 application process to make these determinations.
14 We wanted to make sure very early on that we had
15 their concurrence on these heights. We spoke with
16 the area planner, Mr. John Wouten, and worked
17 through how all the calculations were in an
18 acceptable format for his review and analysis. So
19 I believe we have concurrence with park and
20 planning staff as well, the information that
21 sided, because the information for this exhibit is
22 also listed -- is listed in the rezoning plan. It

1 is also listed in the statement of justification
2 prepared by Shipley Horne, which we helped them
3 prepare regarding this section to make sure it was
4 clear because it is a rather lengthy formula for
5 the surface area E.

6 MR. SHIPLEY: Okay. And there's also a
7 forest impact boundary related to the 65 dB sound
8 levels extending from the south side of Maryland
9 Route 4 to the subject property. Would you
10 describe that?

11 MR. MCCALISTER: So there's actually two
12 noise contours on this map. There is the noise
13 contours from the joint base Andrews military
14 installation overlay zone. Those contours are
15 based on the flight patterns again, that was
16 crafted between Park and planning and the joint
17 base Andrews area plan. Those noise areas are
18 delineated between 70 and 65 dB.

19 The exhibit that's on the rezoning plan,
20 Exhibit 41, there is a detailed inset showing
21 where those noise contours fall within the
22 property. That is completely separate than the

1 noise contours that are shown from Pennsylvania
2 Avenue. County code requires that arterial
3 roadways or greater, which Pennsylvania Avenue is
4 a master plan freeway, that noise contours are
5 slated for the 65 dB limit.

6 In this case, we use the park in planning
7 noise model, which is an Excel spreadsheet. It's
8 based on the number of trips per day. It
9 calculates a soft surface area from the centerline
10 of the right-of-way to which the expected 65 DBA
11 noise contour can be generated. In this case, we
12 used 2017 SHA trip data, populated that to the
13 soft contour, which is 491 feet from the
14 centerline of Pennsylvania Avenue. And you can
15 see that here on the rezoning plan.

16 MR. SHIPLEY: The witness is pointing to what
17 exhibit?

18 MR. MCCALISTER: Exhibit 41, the rezoning
19 plan.

20 MR. SHIPLEY: And you're describing a line
21 that parallels the property through the middle
22 south of Route 4?

1 MR. MCCALISTER: Yeah. So the line parallel
2 south of Route 4 is the part in planning noise
3 model for Pennsylvania Avenue. The MIOZ noise
4 contours run opposite and perpendicular to the
5 Pennsylvania Avenue noise line. The MIOZ lines
6 run north to south through the properties starting
7 from east to west You have the 65 dB limit
8 contour. A little bit further heading to the
9 West, you have the 70 foot decibel limit contour.

10 MR. SHIPLEY: And this needs to be studied
11 further. If the property is actually developed,
12 you would have to do more detail to determine --

13 MR. MCCALISTER: Yes, as the project moves
14 through the development process, it needs to
15 become more refined based on actual phase I and
16 phase II noise studies, typically completed by a
17 sound, noise, and vibration engineer. They will
18 make those determinations for both the existing
19 noise levels as well as the mitigation practices
20 that are used for future development.

21 MR. SHIPLEY: The application process, you're
22 familiar with section 24-121A4. That requires any

1 loss adjacent to a planned roadway, freeway or
2 higher classification plotted with a depth of 300
3 feet.

4 MR. MCCALISTER: Yes, I am aware of that. We
5 show this on our conceptual land use plan, If I
6 can turn to that exhibit.

7 MR. SHIPLEY: And what exhibit number is
8 that?

9 MR. HORNE: 31 is one that is turned in.
10 That's the blowup of 31.

11 MR. SHIPLEY: This is the blowup of Exhibit
12 31?

13 HEARING EXAMINER MCNEIL: Yeah. I'm looking
14 through my glasses thinking perhaps I can use the
15 larger one. So that will be --

16 MR. MCCALISTER: 42?

17 HEARING EXAMINER MCNEIL: Yes.

18 MR. SHIPLEY: Okay. Now based upon your
19 professional experience --

20 MR. MCCALISTER: Do you want me to show
21 everyone where the 300 foot --

22 MR. SHIPLEY: Yes. Right.

1 MR. MCCALISTER: So the 300 foot lot depth is
2 illustrated on Exhibit 31, 300 feet back in the
3 right-of-way on Pennsylvania Avenue. It runs east
4 to west 300 feet back from the right-of-way and
5 parallel with Pennsylvania Avenue. It's important
6 to note that this is a lot depth requirement. Is
7 not a building restriction line. So while the
8 property or properties in future development
9 proposals would have to meet this, whether it be
10 parcels or lots, that means the square footage of
11 the acreage and the areas would have to be that
12 deep.

13 MR. BROWN: In the RR zone? Not in the MST?

14 MR. MCCALESTER: For both zones. I believe
15 it is a subdivision regulation for arterial
16 roadways or greater.

17 HEARING EXAMINER MCNEIL: As far as single-
18 family development in any of those students, or
19 any residential?

20 MR. MCCALESTER: It's a rule for any type of
21 development is a large along arterial roadway or
22 greater.

1 HEARING EXAMINER MCNEIL: Any?

2 MR. MCCALESTER: Yes. So we have properties
3 in other areas where master plan roadways of
4 arterial roadways or greater, in this case a
5 freeway classification is higher than an arterial,
6 would be subject to this requirement. So it's a
7 based on the road classification, not the use.

8 MR. SHIPLEY: Based upon your professional
9 experience as a landscape architect, and being
10 cognizant of the Prints George's County plans and
11 the combined impact of being near the military
12 base and the noise boundary zone extending from
13 Route 4 and subdivision regulations 350 what would
14 that impact be on the layout of the design of an
15 RR zone, single-family?

16 MR. MCCALESTER: So in the current zone RR,
17 the 300 foot lot depth still has to be maintained.
18 The RR zone has a maximum density requirement of
19 2.17 billions per acre. We have estimated at that
20 zone that would generate roughly about 160 lots.
21 The we have done schematic studies to figure out
22 how many lots would actually be practicable when

1 you take into account roads, storm water, school
2 water and other features of the site used for land
3 development to make it -- to the site to improve
4 based on standard construction practices.

5 So we can't go down some of the steep slopes.
6 We have to negate the landforms to allow for roads
7 that are safe. With that, we conclude around 100
8 lots would be practical in this situation. Based
9 on all of the requirements, because of the noise
10 contours from joint Base Andrews, as well as
11 Pennsylvania Avenue, noise mitigation would likely
12 be required.

13 This was typical with other types of
14 development along the Beltway, or master plan
15 freeways which require sound walls to mitigate the
16 sound levels less than 65 decibels. So not only
17 for the lot that would be potentially backing
18 Pennsylvania Avenue, you have the 300 foot lot
19 depth requirement provides for safety, and the
20 health, safety, and welfare of residents so they
21 don't walk out their house and experienced very
22 high noise volume.

1 And you see those throughout when you drive
2 these types of roads. You see the big sound
3 walls. These are very, very expensive. They are
4 also very large infrastructure that has to be
5 improved upon the land in order to make the area
6 usable for residential type developments. Those
7 types of features are consistent with recreational
8 areas and areas that are used for public open
9 space.

10 When we have areas for different types of
11 development as townhouses, condos, other types of
12 higher density types of residential type
13 development we have more flexibility to move the
14 spaces around to allow for medication. This case,
15 the 300 foot lot depth pushes those features back
16 beyond the noise line and so it constrains any
17 potential development on the property.

18 Commercial is not subject to the noise
19 regulations as well as institutional. Again, if
20 there is public open space that is going to be
21 utilized. So if you have or a playground those
22 kind of features would be mitigated to shield the

1 noise for public safety. So the introduction of
2 commercial and institutional uses allows for the
3 use of this property without thereby any detriment
4 to the public's health, safety, and welfare based
5 on County code.

6 Some of the RR zone, based on the
7 infrastructure improvements, there's a very high
8 cost of infrastructure with a very low density.
9 So, our belief is that the reason why this
10 property hasn't been developed is because the
11 density is so low, with the infrastructure, so
12 high, along with the roads and storm water that
13 necessitate to improve upon this property, it
14 hasn't been cost-effective for anyone to develop
15 it. And I believe witness, Mr. Jeff Lowe, also
16 spoke to, he had had very hard problems with
17 developing this property.

18 From our standpoint and looking at the
19 requirements and what the constraints on the
20 property the other types of plan uses allow more
21 flexibility, they reduce the infrastructure costs,
22 it will be consistent with other types of

1 development that are commonly found around master
2 plan roadways, arterial or greater, those consist
3 of higher densities, less infrastructure, and a
4 mix of land uses in order to transition from a
5 higher classification roadway into single-family
6 detached and lower density areas.

7 MR. SHIPLEY: I would like to mark this for
8 identification. It's called consumer plan,
9 conceptual consumer --

10 MR. HORNE: Is that in already?

11 HEARING EXAMINER MCNEIL: I think it is 29.
12 Yeah it is 29.

13 MR. SHIPLEY: I'm showing you a copy of
14 Exhibit number 29 of the conceptual sewer for the
15 property. Could you testify as to how that
16 accommodates the proposed uses?

17 MR. MCCALESTER: Yeah. So Duberry prepared a
18 conceptual sewer study. The area right remains
19 without the sanitary sewer. This is in this case,
20 this area it's a very hard to sewer in this area
21 because of the shallow existing sanitary sewer
22 that is out there, as well as some of the features

1 of where the existing sewer is located.

2 So we evaluate a number of options under this
3 study as part of Duberry to look at how we could
4 make the property serviceable. In this case, we
5 presented three options and there are variations
6 of each of those options. I can go through those
7 options, really just kind of you get the
8 recommendations, which is essentially option 1
9 which allows for sewer to connect at the -- we
10 will say the northern side of the property.

11 It would run either within the right-of-way
12 or on the property of the Caruso property parallel
13 with Pennsylvania Avenue. It would cross under
14 Pennsylvania Avenue and connect to existing
15 sanitary sewer which is located on the Westphalia
16 Town Center Property where there currently is
17 existing sewer on the other side.

18 What this shows is that the property is
19 developable. There is not any infrastructure that
20 prohibits the development of the property. And
21 that it could be adequately served by existing
22 infrastructure that is already in place with

1 minimal utility extensions to serve the property.

2 MR. SHIPLEY: And your opinions are based on
3 the fact that you participated in the preparation
4 of the application, the study of the MXD zone, the
5 study of the MRU study, the setback requirement,
6 the noise requirements, the sewer and water
7 service that this 60 acres could accommodate the
8 uses which are proposed which would be
9 approximately 30,000 square feet of retail
10 shopping, approximately 180 townhouses, a hotel
11 with 220 rooms, general office space of
12 approximately 60,000 square feet and a sanctuary
13 that would accommodate 250 seats?

14 MR. MCCALESTER: Yes, I concur with all of
15 those. There's nothing that would prohibit the
16 development of this property and the uses that you
17 described.

18 MR. SHIPLEY: Based upon your testimony?

19 MR. MCCALESTER: Yes, sir.

20 MR. SHIPLEY: Thank you, sir. That's all the
21 questions I have.

22 MR. BROWN: You told us about the military

1 installation overlay zone, and the restraints on
2 property with regards to the decibel level related
3 to aircraft from Andrews, correct?

4 MR. MCCALESTER: Yes, sir.

5 MR. BROWN: And you also told us about the
6 noise levels for Pennsylvania Avenue and its
7 constraint on development as well, right?

8 MR. MCCALESTER: Yes, sir.

9 MR. BROWN: I know the acronym, but I can't
10 think of the work, is it called AICUZ, are you
11 familiar with that?

12 MR. MCCALESTER: That --

13 MR. BROWN: What does it stand for?

14 MR. MCCALESTER: Yeah, the AICUZ?

15 MR. BROWN: Yeah.

16 MR. MCCALESTER: I --

17 MR. BROWN: Airport something.

18 MR. MCCALESTER: Yeah.

19 MR. BROWN: Anyway, you understand what we're
20 talking about?

21 MR. MCCALESTER: Yes.

22 MR. BROWN: My question is this.

1 MR. HORNE: It's a Jeopardy question.

2 MR. BROWN: Right, exactly.

3 MR. MCCALESTER: It was as an airport so it
4 relates to the same types of features for the --

5 HEARING EXAMINER MCNEIL: Basis for the
6 implementation of the NIO Zone.

7 MR. MCCALESTER: Right, yes.

8 MR. BROWN: And so my question is are there
9 any constraints on this property from AICUZ in
10 that there is a requirement that provides you may
11 not have uses which are people in intensive in the
12 aircraft flyover zones? This property, I would
13 assume, would be within some of those flyover
14 zones because 1, you've already looked at the
15 decibel level. So do you know whether or not this
16 property is impacted by those requirements?

17 MR. MCCALESTER: Yeah. So the last detail on
18 Exhibit 41, which is the rezoning plan identifies
19 the airspace safety zones. In this case, these
20 are zones in which if there was a crash, or if a
21 plane can take off there is adequate space
22 provided within a certain delta from the airport.

1 In this case, the safety zones because the runways
2 were on north to south, the other features, which
3 are the noise and the height are to the east and
4 the west.

5 The proposed property of this application is
6 not within the safety limit for the Joint Base
7 Andrews Plan. And so there is no effect, or no
8 detriment to the health, safety, and public
9 welfare based on what the installation is
10 determined to be within the safety zones. We have
11 seen other projects like that, this is not one of
12 them.

13 HEARING EXAMINER MCNEIL: So the only thing
14 you are impacted by is the height and noise?

15 MR. MCCALESTER: Yes, ma'am. The height and
16 the noise& planes since they are very high up
17 can't have a building height that very far exceeds
18 FAA airspace, or military airspace, as well as the
19 noise is generated from planes taking off. Which
20 is a 360 degree sound, if you think of that coming
21 from a point versus a linear direction of a plane
22 taking off along the runway.

1 HEARING EXAMINER MCNEIL: So --

2 MR. HORNE: You should note the hazards that
3 were here.

4 MR. MCCALESTER: So I do have the airspace
5 requirements in front of me, which is map 10 which
6 is the Joint Base Andrews aware facility, noise
7 and accident potential zones, and it is consistent
8 with the delineation shown on the Exhibit 41
9 rezoning plan.

10 MR. HORNE: And what's that book called?

11 MR. MCCALESTER: This is the Subregion 6F
12 approved Master plan and sectional map amendment.

13 MR. HORNE: And what page are you reading
14 from?

15 MR. MCCALESTER: This is page 60. And it is
16 map 10. And that illustrates the clear zones,
17 the accident potential zones, as well as the
18 noise -- 65 DBA noise contour.

19 MR. HORNE: Does that impact the subject
20 property? In what way does that --

21 MR. MCCALESTER: The safety zones don't
22 impact the subject property. The noise zones and

1 the building height restrictions do.

2 MR. HORNE: All right. Okay.

3 HEARING EXAMINER MCNEIL: Can I piggyback on
4 that just one question because I had one earlier.
5 So the noise contours, it looks like a lot of the
6 property would fall within the noise contours of
7 the MOIZ but what do you have to do to mitigate
8 for that noise? Because it is running -- the
9 noise from Pennsylvania Avenue, as you said
10 earlier, it is running essentially parallel.

11 MR. MCCALESTER: Yes.

12 HEARING EXAMINER MCNEIL: This noise is
13 running --

14 MR. BROWN: Perpendicular.

15 HEARING EXAMINER MCNEIL: Right. It is
16 taking up most of the site from what I am looking
17 at, so what do you have to do to mitigate the
18 MOIZ?

19 MR. MCCALESTER: Right. So there is a small
20 area, probably about a third of the site, that
21 goes from the 70 DBA to the 65. At the time of
22 future development plans when the noise engineer

1 has evaluated both the existing noise contours,
2 the Phase 2 is to submit a mitigation plan to
3 mitigate the noise. And typically, these are
4 associated with increased building standards. The
5 building construction, the windows, the doors, the
6 level of insulation, and if double pane or triple
7 pane windows need to be used to lessen the sound,
8 interior noise elevations are medicated to 45
9 decibels. Exterior noise levels are medicated to
10 65.

11 HEARING EXAMINER MCNEIL: And that was the
12 part for your institutional uses? You moved that
13 part -- you moved that map when it looks like --

14 MR. MCCALESTER: Yes, ma'am.

15 HEARING EXAMINER MCNEIL: Okay.

16 MR. MCCALESTER: Because the building would
17 serve as the mitigation of that noise.

18 HEARING EXAMINER MCNEIL: And then the noise
19 contour from Pennsylvania Avenue is not on that --
20 yes it is on that.

21 MR. MCCALESTER: It is only Exhibit 41 which
22 is the also a map.

1 HEARING EXAMINER MCNEIL: What do you have to
2 do within that boundary?

3 MR. MCCALESTER: Again, you would still have
4 to mitigate that noise level. The different --

5 HEARING EXAMINER MCNEIL: You may have to do
6 a wall or something like --

7 MR. MCCALESTER: It may require a wall. The
8 difference is that based on these uses we have
9 more flexibility for the commercial uses because
10 those don't have to be mitigated because there is
11 no open public space. You are walking from your
12 car to the building. The buildings will be
13 mitigated but the county code does not require
14 those open spaces to be mitigated. So there is
15 far less infrastructure that has to be developed,
16 and the flexibility uses requires far less
17 mitigation.

18 HEARING EXAMINER MCNEIL: So you're not going
19 to have any housing within that line?

20 HEARING EXAMINER MCNEIL: Yes, let's call it
21 a setback. Within the setback from forward the
22 noise setback, yes.

1 MR. MCCALESTER: You would. You could. We
2 just have to mitigate it. And that's where it is
3 a number of things. We could mitigate it through
4 landforms by building a berm. That may be a wall.
5 It could be a parking structure in front of there
6 to separate the uses. So we typically design
7 these in a number of ways and it offers
8 flexibility. But yes, you do have to still
9 mitigate those.

10 HEARING EXAMINER MCNEIL: And finally, for
11 me, and a less standard test, if the staff are
12 correct about their analysis of regulated
13 features, wouldn't that apply if you developed it
14 as RR?

15 MR. MCCALESTER: If --

16 HEARING EXAMINER MCNEIL: If their thought
17 that only 10 acres are developable?

18 MR. MCCALESTER: I think I follow your logic;
19 I want to make sure I understand it. So in this
20 case, staff is saying they concur, or recommend
21 approval because of the environment features in
22 the increased density. In either case, the

1 regulated features, we still believe, are not
2 regulated. And so you could --

3 HEARING EXAMINER MCNEIL: No, I mean if they
4 were right.

5 MR. MCCALESTER: Okay.

6 HEARING EXAMINER MCNEIL: If they were right
7 how much could you develop as houses under their
8 analysis?

9 MR. MCCALESTER: It would be far less based
10 on --

11 HEARING EXAMINER MCNEIL: Then even what you
12 said earlier?

13 MR. MCCALESTER: Yeah. So we equate that to
14 about 100 or 120 lots. In this case with the 1,
15 2, 3, 4, 5, 6 streams, each one of those would
16 have stream buffers. I believe the minimum stream
17 buffer, don't quote me on this, I believe it is 75
18 feet. So you are looking at 150 feet in each
19 direction times 6. That really starts to absorb
20 the developable area. The only thing that is
21 allowed in those areas is road crossings, or storm
22 drain outfalls. But we couldn't place lots, we

1 couldn't place houses. And we can't improve the
2 site to go into those environmental areas. So
3 based on that, if this was all regulated the use
4 of the property would be diminished, just doing
5 some quick math, just based on an approximate
6 percentage, almost 75 percent because you really
7 would be only left with about 15 percent on the
8 ends, which is at Wood Yard and Marlborough Pike
9 which does not have any regulated features. And
10 then all the way to the west, which is one usable
11 lot, that lot is about 8 acres. So we are at
12 about maybe 15 to 18 acres total of 60.

13 HEARING EXAMINER MCNEIL: So your answer to
14 that question is bringing up -- what do you mean
15 by the six streams would be regulated features if
16 there aren't any?

17 MR. BROWN: Well, you had asked him --

18 HEARING EXAMINER MCNEIL: I know. I just
19 want to make that clear because if I am reading
20 this record I will go what?

21 MR. MCCALESTER: No. You had asked me they
22 were regulated. If the features shown on the

1 rezoning plan and all of the information on the PG
2 Atlas as well as all the documents and plans from
3 the green infrastructure plan, it would severely
4 diminish the develop ability of the site.

5 HEARING EXAMINER MCNEIL: And the things
6 they -- just to repeat again, things they consider
7 streams you consider -- I love it -- ephemeral
8 depressions?

9 MR. MCCALESTER: Yes. Yes the drainage ditch
10 is an ephemeral depression.

11 HEARING EXAMINER MCNEIL: You learn things
12 all your life. Thank you all.

13 MR. MCCALESTER: And ephemeral ditch is
14 actually cited in the environmental technical
15 manual that they are nonregulated. And again, we
16 concur based on the information that is outlined
17 from green infrastructure plan how the data was
18 developed, that no real field inspections had
19 taken place to, I guess, is to classify those
20 streams and this is typically done when you're
21 doing a broad-based plan for an entire county.
22 The plan cites a number of acres of the entire

1 county that they went through. They also utilize
2 state mapping information so the data, again, it's
3 just more accurate that we are presenting today.
4 That would be confirmed when a natural resource
5 inventory plan is prepared and submitted at a
6 future date.

7 HEARING EXAMINER MCNEIL: And just in case
8 this question came up. You -- if they were doing
9 that today, and you all knew you wanted to develop
10 the property, you would have an opportunity to go
11 to some type of hearing on the plan and counter
12 what they are saying about your site, correct?

13 MR. MCCALESTER: I believe through the public
14 input process, yes.

15 HEARING EXAMINER MCNEIL: But the last one
16 was 2010?

17 MR. MCCALESTER: I believe so, yes. The plan
18 was updated.

19 MR. MCCALESTER: So at that time, according
20 to Mr. Ludwig, they just didn't have any plan to
21 develop the site at that point?

22 MR. MCCALESTER: Yeah.

1 HEARING EXAMINER MCNEIL: Correct, Mr.
2 Lugwick?

3 MR. LUGWICK: Yes, ma'am.

4 HEARING EXAMINER MCNEIL: All right. Thank
5 you.

6 MR. SHIPLEY: Thank you.

7 HEARING EXAMINER MCNEIL: Can we have five
8 minutes before your last one? Do you want me to
9 break?

10 MR. HORNE: Oh no. Did you say? Did you
11 want? Did I want five minutes, or --

12 HEARING EXAMINER MCNEIL: I'm taking five
13 minutes. But if you wanted 15 I was just
14 asking --

15 MR. SHIPLEY: I know, we only have two
16 witnesses left and Mike McCarthy will be very
17 short and so after you come back we can --

18 HEARING EXAMINER MCNEIL: Thank you.

19 MR. SHIPLEY: I wouldn't want to object to
20 that.

21 (A brief recess was taken.)

22 MR. SHIPLEY: Call Mr. Mike Lenhart.

1 HEARING EXAMINER MCNEIL: Mr. Lenhart, do you
2 swear or affirm under the penalties of perjury
3 that the testimony shall give will be the truth,
4 and nothing but the truth?

5 MR. LENHART: I do.

6 MR. SHIPLEY: And you have been qualified
7 on -- I see you have only qualified about 14 other
8 counties in Maryland, what happened to Prince
9 George's?

10 MR. LENHART: I'm still trying to work my way
11 through the others.

12 MR. SHIPLEY: Okay. We submit Mr. Lenhart
13 with his qualifications as a traffic expert.

14 HEARING EXAMINER MCNEIL: Okay.

15 MR. SHIPLEY: And what is your position
16 with -- oh, have you been sworn?

17 HEARING EXAMINER MCNEIL: He has been sworn.
18 And he's been accepted as an expert in the area of
19 transportation plan is that what you wanted him
20 for today?

21 MR. SHIPLEY: Yes.

22 HEARING EXAMINER MCNEIL: Okay.

1 MR. SHIPLEY: Okay. Can you describe to the
2 CAT your -- well, we don't have to do that. Did
3 you prepare the traffic studies for the
4 development of this property?

5 MR. LENHART: Yes, I did.

6 MR. SHIPLEY: And that's Exhibit 1, Traffic
7 Report?

8 MR. LENHART: Yes.

9 MR. SHIPLEY: Are you familiar with prior
10 approvals concerning the property as they pertain
11 to the subject site?

12 MR. LENHART: Yes.

13 MR. SHIPLEY: Particularly with reference to
14 the trip counts for the project?

15 MR. LENHART: Yes.

16 MR. SHIPLEY: Did you prepare the prior
17 traffic which for the project as part of the past
18 entitlement application?

19 MR. LENHART: The past entitlement
20 application?

21 MR. SHIPLEY: Did you prepare the prior
22 traffic report for the project as part of past

1 entitlement applications?

2 UNIDENTIFIED SPEAKER: No. I think that's
3 Dwight.

4 MR. SHIPLEY: Okay.

5 MR. LENHART: Yes.

6 MR. SHIPLEY: Okay. Did you prepare the
7 traffic study in this case?

8 MR. LENHART: Yes, yes. We did prepare that
9 traffic impact study for this case. In the study
10 was dated June 20, 2019 which was revised August
11 27, 2019 as part of this case. The revision was
12 to address the state highway administration
13 comments, and in that traffic impact study we
14 conducted a scoping agreement with the Park and
15 planning staff, the transportation staff, where we
16 obtained an approved scope and agreement. We
17 conducted traffic counts at the study
18 intersections, added approved background
19 development as required, in the scoping agreement,
20 and then the site trips for the assumed uses, for
21 the purposes of this rezoning application, we
22 conducted levels of service analyses at all study

1 intersections, and that was submitted for review
2 and ultimately staff reviewed and agreed with our
3 findings of that report.

4 MR. SHIPLEY: And you're familiar with the
5 technical staff's report?

6 MR. LENHART: Yes.

7 MR. SHIPLEY: Which indicates that there are
8 no traffic problems with respect to this
9 application?

10 MR. LENHART: That's correct.

11 MR. SHIPLEY: And you are familiar with the
12 application and the traffic that would be
13 generated by the development proposed thereon?

14 MR. LENHART: Yes, that's correct.

15 MR. SHIPLEY: And do you know of any proposed
16 changes to the Pennsylvania Avenue, Route 4 in the
17 vicinity of the proposed development?

18 MR. LENHART: The Route 4 at Maryland 223
19 interchange, which is the Wood Yard interchange,
20 is proposed to be reconstructed through tax
21 increment financing, or TIF, by the Westphalia
22 Development. They are going to redevelop the

1 interchange. They are going to realign a couple
2 of the interchange ramps, and rebuild those ramps.
3 Our traffic study, at the time we prepared the
4 study, we were not certain of the status of that
5 TIF. We understood it had been approved, but to
6 be conservative, we prepared the study based on
7 the existing configuration of the interchange, and
8 also based on the proposed reconstruction of the
9 interchange through that TIF. That way we had it
10 with and without the changes to ensure that the
11 network would operate adequately in both
12 scenarios, and in fact, we found that it does.

13 MR. SHIPLEY: Okay. And that was all part of
14 your agreement with the staff?

15 MR. LENHART: Correct.

16 MR. SHIPLEY: Okay. And in your opinion
17 would the roadway network be adequate to safely
18 handle the traffic generated by the project?

19 MR. LENHART: Yes, it will.

20 MR. SHIPLEY: Okay. And in your opinion does
21 the subject request satisfy all transportation
22 requirements set forth in the zoning ordinance

1 concerning the approval of the zoning map request
2 for the MST zone?

3 MR. LENHART: Yes, it will. And staff agreed
4 in the report.

5 MR. SHIPLEY: That's all the questions we
6 have.

7 HEARING EXAMINER MCNEIL: Mr. Lenhart, on
8 page 15 of the staff report this is about the
9 study, the totally agreed with your study. In
10 fact, the it looks as though two intersections did
11 better if this were approved. But they know that
12 number four -- I don't know how it would be that
13 exhibit.

14 MR. LENHART: This, I think, is the same.

15 HEARING EXAMINER MCNEIL: Okay. To promote
16 the effective and optimum use --

17 HEARING EXAMINER MCNEIL: -- of transit. Do
18 you agree with this? They are saying that -- it
19 says to promote the effective and optimum use of
20 transit and reduce automobile use by locating the
21 mix of residential and nonresidential uses in
22 proximity to one another, and to transit

1 facilitate walking, bicycling, and transit use.
2 You are saying that you all don't need this goal
3 of the Master plan because transit can't mean --
4 so I just wonder what you think about that
5 comment.

6 MR. LENHART: No, I disagree with that.
7 Transit doesn't just mean potential rail and bus
8 transit. There is park-and-ride facilities and
9 other things that could serve as transit type
10 uses. And there are other MST zoned properties
11 even adjacent to this use right around the corner
12 of the 223 and Marlborough Pike intersection. So
13 I don't agree with their position.

14 MR. BROWN: I guess what they are saying
15 though is the location of the subject property is
16 not in proximity to other mixed-use developments.
17 So they seem to be using the term development as
18 the existing development as opposed to MST rezoned
19 but then they come right back at the end of that
20 paragraph and say that the northern and eastern
21 zones are mixed use zones so it is contradictory.
22 I agree with what you are saying, it is right next

1 to MST zoned property.

2 MR. LENHART: And I do know that the Hope
3 Village project which is the east side of Wood
4 Yard Road south side of Marlborough Pike, it's on
5 the opposite quadrant of that signalized
6 intersection is L AC.

7 MR. BROWN: No, down there.

8 MR. LENHART: Below Marlborough Pike. It is
9 owned by a church and it's going through a CSP and
10 preliminary plan process.

11 HEARING EXAMINER MCNEIL: Is that the one we
12 discussed? Is it the Antioch?

13 MR. HORNE: Yes. Yes.

14 MR. LENHART: Yes, and it is owned MST.

15 HEARING EXAMINER MCNEIL: Do you all know --
16 and Francis is probably the one for this, that is
17 the MST they were talking about to the east?

18 MR. HORNE: Yes.

19 HEARING EXAMINER MCNEIL: See, I didn't know
20 all of that was approved. So what other MST is
21 there. So they did discuss it as being adjacent
22 to --

1 MR. HORNE: Well, Westphalia is East also but
2 for some reason --

3 MR. SHIPLEY: Westphalia is to the north.

4 MR. LENHART: It's to the north. Northwest.

5 HEARING EXAMINER MCNEIL: Okay. So that's
6 it.

7 MR. LENHART: All right, thank you.

8 HEARING EXAMINER MCNEIL: Thank you. Okay,
9 Mr. Siberholz, do you swear or affirm under the
10 penalties of perjury that the testimony shall give
11 will be the truth, and nothing but the truth?

12 MR. SIBERHOLZ: Yes, I do.

13 MR. LUGWICK: can I add something an answer
14 Mr. Brown's question to Ryan? It's ACRUZ is air
15 installation compatible use zone.

16 HEARING EXAMINER MCNEIL: Very good.

17 MR. BROWN: Thank you.

18 MR. LUGWICK: That concludes my testimony.

19 HEARING EXAMINER MCNEIL: Okay. So the end
20 of it was owned? It doesn't exist, MIO zone?

21 MR. BROWN: No, it still exists.

22 HEARING EXAMINER MCNEIL: Not the zone, the

1 zone is the MIO zone.

2 MR. BROWN: Well it's not zone, but it's
3 regulations for the military.

4 Landscape engineer: That's the hazard zone
5 that extends off the runway.

6 MR. SHIPLEY: Mr. Siberholz, would you state
7 your full name and address, please?

8 MR. SIBERHOLZ: It's Francis Silver. My
9 business address is -- I'm employed by Shipley &
10 Horn, PA. And it's a 1101 Mercantile Lane, Suite
11 240, Largo Maryland.

12 MR. SHIPLEY: Of the plans that are before
13 you do have any extra copies of the one that you
14 put your answers on in the staff report? Yes,
15 thank you because that's already in the record,
16 isn't it?

17 HEARING EXAMINER MCNEIL: Yes, Exhibit 27.

18 MR. SHIPLEY: Mr. Siberholz, you're familiar
19 with the property that is the subject of this
20 application?

21 MR. SIBERHOLZ: Yes sir, I am.

22 MR. SHIPLEY: Would you briefly describe it?

1 MR. SIBERHOLZ: It's been described by
2 previous -- Mr. McCalister as well as Mr. Lugwick
3 as a slightly over 60 acre property that fronts --
4 has dual frontage. To the north of the property
5 is Maryland Route 4, Pennsylvania Avenue. And to
6 the south is old Marlborough Pike. It actually
7 has tried frontage, it also has at the end of this
8 property fronts on Wood Yard Road, which is
9 Marilyn Route 223.

10 You don't need me to go into topographic
11 and --

12 MR. SHIPLEY: No.

13 MR. SIBERHOLZ: Do you want me to describe
14 what surrounds it?

15 MR. SHIPLEY: Well, in a minute, just in
16 reference to the subject property, it's currently
17 zoned RR?

18 MR. SIBERHOLZ: That's correct. It's RR.

19 MR. SHIPLEY: Do you know when this property
20 became part of the Maryland Washington regional
21 district?

22 MR. SIBERHOLZ: That was in 1961.

1 MR. SHIPLEY: What was the zone that was
2 applied to it in 1961?

3 MR. SIBERHOLZ: Accurately, it was April 24,
4 1961 it was part of the annexation -- a Prince
5 George's County annexation as chapter 484. And
6 I'm sorry, what was your question, sir?

7 MR. SHIPLEY: My question is what zone was it
8 classified?

9 MR. SIBERHOLZ: It was placed in an RR, or
10 will residential zone and that was those annex
11 properties as sort of a holding category, and as
12 time progressed where it was deemed appropriate
13 other properties that were annexed, they were
14 rezoned as --

15 MR. SHIPLEY: As far as you know, this
16 property has never been subject to prior
17 reasoning?

18 MR. SIBERHOLZ: No, sir. It's been RR -- as
19 I said it began in 1961. After that we had the
20 1993 approved Master plan sectional map amendment
21 of subregion 6 and after that it's been -- the
22 2013 subregion 6 Master plan sectional map

1 amendment. And essentially, even the staff in
2 their report acknowledges that with few exceptions
3 there was really no -- of select properties around
4 the county there is few changes to future land use
5 pattern in subregion 6. So this, as well as many
6 of the RR zoned properties are just -- weren't
7 really looked at.

8 MR. SHIPLEY: Now you defined the
9 neighborhood of the subject property in your
10 statement of justification, which is Exhibit
11 number 3. Would you tell us what that
12 neighborhood is? Do you have the exhibit?

13 MR. SIBERHOLZ: I do not. There are copies,
14 I think it is the top sheet. The neighborhood --

15 MR. HORNE: It's 12-A.

16 MR. SIBERHOLZ: The neighborhood
17 immediately -- Melwood Road and -- I can't show it
18 here because it doesn't extend far. The
19 neighborhood, contrary to the staff's neighborhood
20 which they made the boundary on Pennsylvania
21 Avenue. That's the northern boundary of the
22 neighborhood. And they don't see, I guess, they

1 don't see the influence of the Westphalia Town
2 Center one the property. But looking at it from a
3 realistic perspective, the neighborhood extends up
4 into Westphalia Town Center and it goes up Melwood
5 Road, Central Park Drive, and Spring Drive. And
6 then this sort of define the northern boundary.
7 To the west, it picks up and Dower House road then
8 goes Dower House Road to McCormick Drive and
9 extending across Wood Yard Road to the south.
10 There is a large major Pepco right-of-way to the
11 east of the property and follow that right-of-way
12 to the intersect at the beginning. And the reason
13 for that boundary is that the neighborhood is more
14 than just the immediate boundary. And this is a
15 dilemma that I have had in the 13 years that I
16 have been presenting before the zoning hearing
17 examiner, is that whatever neighborhood I picked,
18 it seems to be the wrong one because in prior
19 cases I have typed neighborhood and I've suggested
20 it's broad. That is not the reason I chose that
21 neighborhood. It's just that the -- because of
22 the nature of this use it will have a symbiotic

1 relationship with not only the MST that is
2 currently proposed for development immediately
3 across Wood Yard Road diagonally to the east. The
4 LAC, when that develops it's also it's very tight
5 relationship with its greater surroundings. And
6 to the west, I mean I would like to expand a
7 little if I may. To the west, I had it coming
8 down to Dower House Road. But what's immediately
9 to the west of Dower House Road we have Joint Base
10 Andrews, we have the Pearl Harbor gate that is
11 releasing and traffic and citizens who need
12 services. And from a perspective of that they can
13 jump right onto Route 4, or come down Old
14 Marlborough Pike immediately into the property as
15 a developed use that provides the services.

16 HEARING EXAMINER MCNEIL: Mr. Siberholz, if I
17 may, for purposes of any decision that I write you
18 staffs neighborhood.

19 MR. SIBERHOLZ: Yes, ma'am.

20 HEARING EXAMINER MCNEIL: So as I'm looking
21 at your -- I'll be explaining in your -- okay so
22 you did write what you think it should be.

1 MR. SIBERHOLZ: And maybe just a little
2 background information. What we have here is
3 based on the staff report we received; I expanded
4 my statement of justification still stands. I
5 expanded on that to address comments by the staff
6 who seem to be aggressive in looking for reasons
7 to support their case. But you should do but --

8 MR. SHIPLEY: In your opinion doesn't
9 change -- her ultimate opinion wouldn't change
10 whether it is your neighborhood or their
11 neighborhood?

12 MR. SIBERHOLZ: No, sir.

13 MR. SHIPLEY: I would just like to point out
14 a matter of case law. Of course the definition of
15 the neighborhood is generally associated with
16 changing the zoning of one Euclidean
17 classification to another. Courts have generally
18 ruled that, as staff suggests, intersections and
19 major roadway are a logical demarcation lines to
20 define neighborhoods. And the principal
21 difference between Mr. Siberholz's definition and
22 the staff's definition if they restricted the

1 neighborhood to the south side of Route 4 and the
2 west side of Wood Yard Road, and he expands it out
3 further.

4 The courts have ruled over the years that
5 even if you take their neighborhood that doesn't
6 mean you have to ignore things that influence that
7 area or that intersection. If I have made that
8 abundantly clear.

9 HEARING EXAMINER MCNEIL: That is clear. And
10 also a change or mistake isn't the test with this
11 is zone is it?

12 MR. SHIPLEY: Yes. So I don't want to get
13 hung up on that issue. Mr. silver, there is a --
14 number one, and you addressed this in Exhibit 3.
15 The is critical criteria for approval of a map
16 amendment set forth in Section 27, 213; "a. The
17 criteria for approval of an MST zone." And then
18 it says the "District Council shall only place
19 land in the X zone is, at least, one of the
20 following two criteria are met." Which you
21 describe succinctly, how this application needs
22 one of those tests?

1 MR. SIBERHOLZ: We've -- so the criteria 1 is
2 the entire tract is located within the vicinity of
3 either a major intersection or a major
4 interchange, being the intersection or interchange
5 in which at least two of the streets forming an
6 intersection are classified if the master plan is
7 arterial or higher classified street reasonably
8 expected to be in place in the foreseeable future.
9 That was part one of that criteria. The second
10 part is, or a major transit stop or station
11 reasonably expected to be placed within the
12 foreseeable future. Well, as we heard, and as was
13 familiar with the property in this location, heard
14 the testimony of Mr. Michael Lenhart, that the
15 property that test. It's in the interchange of
16 Maryland Route 4, Pennsylvania Avenue and Wood
17 Yard Road -- Maryland 223. Pennsylvania Avenue is
18 classified in the master plan of transportation as
19 a freeway, which is above arterial. And Wood Yard
20 Road is a -- classified as an arterial road.

21 MR. SHIPLEY: And the subsequent provisions
22 of the ordinance generally require a rezoning

1 application to conform to the purposes of the zone
2 which are generally the 15 purposes that you
3 address in your statement of justification and the
4 staff addresses in its staff report?

5 MR. SIBERHOLZ: Yes, sir.

6 MR. SHIPLEY: And then the second or third
7 phase that it needs to conform to the specific
8 requirements of an MST zone, which are set forth
9 in about 10 items contained in 27.542(a) of the
10 zoning ordinance. Would you care to respond to
11 this?

12 MR. SIBERHOLZ: Would you like me to respond
13 to those?

14 MR. SHIPLEY: Yes.

15 MR. SIBERHOLZ: On page 28 of the
16 embellished --

17 HEARING EXAMINER MCNEIL: That would be
18 Exhibit 27.

19 MR. SIBERHOLZ: 27, thank you.

20 MR. SHIPLEY: This is Exhibit 27?

21 HEARING EXAMINER MCNEIL: Yes.

22 MR. SIBERHOLZ: Okay. On page 28 below the

1 conclusion I address that the application is in
2 keeping with the general purposes of the zoning
3 ordinance at section 27102 as follows. The first
4 is to protect and promote the health, safety,
5 morals, comfort, convenience, and welfare of the
6 present and future inhabitants of the county.
7 Approval of this MST application request for the
8 subject property will allow the planning and
9 construction of a complementary mix of uses which
10 will better respond to both positive and negative
11 impacts of the subject property's location at the
12 end of an interchange of a high-volume, high
13 classification roadway and it benefits the
14 efficient use of public investment both in -- as
15 Mr. McCalister had addressed the cost of public
16 improvements to water and sewer. And the subject
17 property provide both neighborhood and passersby
18 can be of additional commercial activity and the
19 proximity of a high classification roadway in the
20 vicinity. And as Mr. Ludwick explained, the use
21 of a hotel and restaurant facility in close
22 location to Andrews Air Force Base with its

1 employees and contractors provide a vital service
2 to them.

3 The second standard is implement the general
4 plan, area master plan and functional master plan.
5 The purpose is addressed in the zoning ordinance
6 by the criteria MX T to be found in the section
7 27--213 a 2, the extent to which the approval of
8 the MST zone at the subject property does not
9 substantially impair the general plan, Master plan
10 are functional master plan. And I address that in
11 this document.

12 MR. SHIPLEY: And they disagreed with you on
13 that?

14 MR. SIBERHOLZ: Yes, they do.

15 MR. SHIPLEY: They do agree with you that you
16 meet one of the essential criteria of 27-213.

17 MR. SIBERHOLZ: That is correct. They do
18 agree with the proximity -- it meets criteria
19 number 1.

20 MR. SHIPLEY: And you only have to be one of
21 the two?

22 MR. SIBERHOLZ: Yes, sir.

1 MR. SHIPLEY: Okay. Now, so we will
2 hopefully be out of here before dark. You wrote a
3 statement of justification in which you address
4 the neighborhood, then the general criteria.

5 MR. SIBERHOLZ: Yes, sir.

6 MR. SHIPLEY: 15 of them?

7 MR. SIBERHOLZ: Yes, sir.

8 MR. SHIPLEY: And the specific criteria for
9 this request, which is 10. Unless there are any
10 questions I want to go --

11 MR. BROWN: No, we don't have any.

12 MR. SHIPLEY: Okay. So let's just
13 concentrate on your exhibit number 27, which is
14 basically the staff report, as amended by you, and
15 the staff report is repeated verbatim and black
16 print, and your responses are printed in the
17 blueprint?

18 MR. SIBERHOLZ: Yes, sir, that is correct.

19 MR. SHIPLEY: Okay. Will you run the hearing
20 examiner and the Council briefly through your
21 responses to the staff report's recommendations or
22 disapprovals.

1 HEARING EXAMINER MCNEIL: And just before you
2 do, this is really for Mr. Horn who's probably
3 going to give me the answer at the end. So the
4 statement of justification is signed by you
5 though, correct? It was July 2, 2019?

6 MR. HORNE: Yes.

7 HEARING EXAMINER MCNEIL: But Mr. Siberholz,
8 you are saying this is your document?

9 MR. SIBERHOLZ: Yes.

10 HEARING EXAMINER MCNEIL: So we can rely upon
11 it. In this document, and Mr. Siberholz's
12 document you reference exhibits different from our
13 exhibit numbers. Would you be able to either
14 leave the record open so we can make it clear?
15 What happens is when you gave it to staff at some
16 point things separated. So I'm not sure what you
17 call Exhibit 3 -- I know it is not our Exhibit 3.
18 But I am hoping we have it in this record.

19 MR. HORNE: Okay.

20 HEARING EXAMINER MCNEIL: So you understand
21 Mr. Horn? Okay, Mr. Siberholz.

22 MR. HORNE: If the staff report is not in the

1 record I don't think there is a record.

2 HEARING EXAMINER MCNEIL: The staff report is
3 but I don't know where we separated. I don't know
4 why it can't all come in the same order to us.
5 Okay.

6 MR. SIBERHOLZ: Can you clarify for my
7 purpose what you're going to go through the --

8 MR. SHIPLEY: Pardon me?

9 MR. SIBERHOLZ: Can you clarify for me; you
10 said go through the staff report and the responses
11 to it -- there is -- I expanded the staff report
12 by probably more than double in size with my
13 responses. So I address the -- so you just want
14 me to walk through?

15 MR. SHIPLEY: Yes, just go through the
16 very -- as concisely, without of course rereading
17 everything in it. But I think we all understand
18 the Exhibit 57 is the staff report in black print,
19 and your responses in blueprint.

20 MR. SIBERHOLZ: That's correct.

21 MR. SHIPLEY: Okay. And just, I think, a way
22 to try to economize the time a little bit. Do you

1 feel comfortable in going forward in answering
2 that question?

3 MR. SIBERHOLZ: Certainly. So to begin with
4 I relate the neighborhood description, I described
5 that the staffs neighborhood is tighter and I
6 provide the boundaries of the neighborhood and
7 then I give an explanation on the nearby -- the
8 reason for those boundaries.

9 We agree with the staff statement of what the
10 request of this application use. It is to rezone
11 the subject site of 60.02 acres from RR to MST and
12 then the staff in addressing the general plan and
13 the master plan requirements sort of duplicate
14 their words. They -- in the beginning, which is
15 typical of the planning offices staff reports is
16 they do that. They give a general plan, an area
17 master plan, and then they go into the
18 environmental discussions. But all those items
19 are discussed in further on in the discussion
20 relating to these criteria for an MST zone.

21 So if I may start there with have I have
22 already explained that the -- on two criteria the

1 subject property, the first one the proximity to a
2 major intersection or interchange of an arterial
3 or higher rated roadway and it meets that test.

4 In the discussion of the second -- okay
5 that's the staff then goes into explaining again
6 why the property -- they don't believe the
7 property meets the test of -- the general plan or
8 the master plan and the purpose is addressed in
9 the zoning ordinance by approvable of an MST found
10 in 27.213 2, the extent of which the approval of
11 the MST zone at the subject property does not
12 substantially impair the general plan for the
13 functional master plan. The approval of the MX T-
14 zone at this property -- the subject property will
15 allow for planning and construction of
16 complementary mix of uses which will better
17 respond to both positive and the impacts of the
18 property's location. I previously stated that,
19 and it will better address the high volume of
20 traffic and the negative impacts of the traffic
21 both to -- as well as the negative impacts of its
22 proximity to Joint Base Andrews because of the

1 noise.

2 It's not practical or probably cost
3 effective, if I may say that to continue -- in
4 history has proven this property has been RR zoned
5 since 1961 and there is no activity. It's not a
6 proper zone for that use for that property because
7 of the impact from the adjoining uses on the
8 property as well as the cost to develop it.

9 The applicant is confident that the location
10 of residential commercial retail, and office
11 institutional uses provide opportunity for a
12 sustainable community structure that strengthens
13 the sense of community identity, and provides for
14 a broad range of development opportunities.

15 The rezoning of the subject property will
16 facilitate opportunities for future development
17 that will provide an effective transition between
18 Pennsylvania Avenue. So the mixed-use development
19 on the subject site provides a buffer to the
20 neighboring residential uses on the south side of
21 Old Marlborough Pike from the property.

22 Essentially they will be building the sound

1 barrier that Mr. Ryan discussed in his testimony.
2 And the walls of the commercial buildings,
3 institutional buildings, and townhouses, will be
4 that sound barrier as well as the extensive
5 landscaping that they are going to be required to
6 put on the property as part of the CSP and the DSP
7 review and development process.

8 HEARING EXAMINER MCNEIL: Did you review --
9 not to throw you off, and it may be in here. But
10 did you review the MST approval for the church
11 that is nearby?

12 MR. SIBERHOLZ: No.

13 HEARING EXAMINER MCNEIL: Does anybody know
14 that case number because what interchanges did
15 they rely on? The same ones?

16 MR. HORNE: Well, we can bring Mr. Ludwick
17 back up. You know he was part of that.

18 HEARING EXAMINER MCNEIL: Well actually it is
19 better if you could just -- I can leave it open.
20 I can look it up. But if you knew the case
21 numbers.

22 MR. LUGWICK: They were rezoned as part of --

1 HEARING EXAMINER MCNEIL: The sub?

2 MR. LUGWICK: The subregion. Okay. So
3 they --

4 HEARING EXAMINER MCNEIL: So they were MST.
5 Okay.

6 MR. HORNE: But I think Mike Lenhart also was
7 the engineer on that. And even with that, I think
8 something may have been submitted. They had to
9 consider it, but I will check.

10 HEARING EXAMINER MCNEIL: Thank you. Okay.
11 I'm sorry. Go ahead.

12 MR. SIBERHOLZ: --

13 HEARING EXAMINER MCNEIL: What page you to?

14 MR. SIBERHOLZ: 19.

15 HEARING EXAMINER MCNEIL: 19. Okay.

16 MR. SIBERHOLZ: And to continue the proposed
17 use will enhance the economic status of the
18 county. The rezoning of the property to MST will
19 facilitate development that could provide
20 residential, commercial, and an institutional, mix
21 of uses which would generate tax revenue as well
22 as jobs for County residents.

1 In response to the standard 2 of the section
2 would you like me to read the standard? I provide
3 a response at the rezoning of the subject property
4 will facilitate the concentration of development
5 and mix of uses along general plan corridor
6 will -- which will reduce sprawl. The general
7 plan corridor which was a carryover from the 2002
8 general plan and is discussed in the planned 2035,
9 extends along Pennsylvania Avenue showed its
10 boundaries extending to here. So the property is
11 influenced as part of the general plan corridor.
12 With over 61,000 average daily traffic count going
13 up and down that corridor every single day it's
14 undoubtedly a general plan corridor.

15 It will reduce sprawl. The transition to
16 Pennsylvania Avenue along the -- as I said, will
17 reduce impact. There are -- sidewalks will be
18 designed to facilitate access around and through
19 the property and will connect with a buddy
20 residential community and the approval of the
21 subject application will be keeping with the
22 purpose of MST because it will allow increased mix

1 of medium density residential, and retail
2 commercial uses, in a compact, moderately dense
3 configuration.

4 HEARING EXAMINER MCNEIL: Probably it will
5 but to the other residential community? When you
6 have a crosswalk at the cross the street, right?

7 MR. SIBERHOLZ: Yes.

8 HEARING EXAMINER MCNEIL: Does that side have
9 sidewalks?

10 MR. SIBERHOLZ: No, I don't believe there are
11 any sidewalks there. And as far as transportation
12 the Prince George's transportation bus?

13 MR. SHIPLEY: No bus.

14 MR. SIBERHOLZ: No bus. Has stops along
15 here. So standard 3 of that section is conserve
16 the value of land and buildings by maximizing
17 public, and private development potential inherent
18 in the location of the zone. And it continues,
19 and the location of the property is in keeping
20 with its purpose of the MST zone because the
21 property is located in the vicinity of a major
22 interchange and will allow for return of public

1 investment and major infrastructure component by
2 allowing it to maximize its development potential.

3 So standard 4. If I could summarize these?

4 MR. SHIPLEY: Yeah.

5 MR. SIBERHOLZ: Okay. So the summary would
6 be that the development of this property is
7 efficient, practical use, a valuable land
8 resource. Every piece of land in every piece of
9 land in Prince George's County is a resource that
10 should be utilized to the best public benefit. In
11 this case, I find it difficult to rationalize how
12 property that has this location such a high impact
13 area to that property is recommended for a single-
14 family development which are by the nature of the
15 development and what you would be able to put on
16 there, they would be very large lots, large
17 houses, which nobody will want to have because of
18 its proximity.

19 This provides an effective use in the master
20 plan -- the general plan stating that -- or the
21 staff refers to the general plan statement that
22 MST development should be only be in metro areas

1 or metro transit areas, regional transit areas,
2 correction. It's sort of a guideline, it's not an
3 exclusive -- they may only be fair. It's just
4 that is the goal and one of the reasons that is
5 the goal is to help support ridership one the 91
6 metro stations -- well how many there are in
7 Prince George's County, but there are 91 in the
8 network.

9 This site is an efficient -- can be well-
10 designed, compatible use with not only the single-
11 family residential and townhouse community to the
12 south as well as diagonally to the -- off of the
13 property to the southwest, we see there is an
14 industrial zone. All the industrial begins here,
15 and extends towards Dower House Road where across
16 Dower House, of course, is Joint Base Andrews.

17 It's designed to not only interface with --
18 provide a buffer to the residential development to
19 the south across Old Marlborough Pike, it will
20 have a symbiotic relationship with the Westphalia
21 Town Center. As Mr. Ludwick explained Westphalia
22 town center is designed as a power center, and

1 this provides a little more convenient uses. So
2 that's in response to the section 27.542, the
3 purposes of the MST zone.

4 And my testimony in its entirety is
5 represented in this report. It discusses
6 transportation and the staff respond to that --
7 well, actually Michael Lenhart responded to that,
8 that there is no issue with transportation,
9 particularly considering the scheduled
10 improvements to both of the interchange
11 immediately adjoining the subject property at
12 Pennsylvania Avenue, and Wood Yard Road. But as
13 well as the upgrades to Dower House and
14 Pennsylvania Avenue to a full interchange. So
15 that will further alleviate any impacts of the
16 high volume of traffic that is visiting that
17 corridor every day.

18 MR. SHIPLEY: Okay. Now also Mr. McCarthy
19 and Mr. McCalister addressed the issue of the
20 military institution overlay and the staff didn't
21 seem to even comment on that. But you also
22 address that in your statement of justification.

1 MR. SIBERHOLZ: That's correct.

2 MR. SHIPLEY: And you examine that document
3 and found compliance?

4 MR. SIBERHOLZ: Yes. And Mr. McCalister
5 assisted me with that.

6 MR. SHIPLEY: All right. Okay.

7 MR. SIBERHOLZ: In calculating the numbers
8 that are represented in the statement of
9 justification.

10 MR. SHIPLEY: And in reference to the
11 technical staff report on page 11 which is
12 technical staff report as Exhibit 16 they have a
13 statement in here that says -- that refer to the
14 sector plan of Westphalia. No, I'm sorry, the
15 2014 general plan which is quote plan 2035
16 indicates that medium to high density housing,
17 mixed-use, a commercial development in this area
18 of Prince George's County is to be located within
19 the Westphalia local town center north of Maryland
20 5, from the subject property, and other regional
21 transit districts and local centers, and nowhere
22 else.

1 That phrase, and nowhere else, that's not
2 really a part of the 2014 plan, is it?

3 MR. SIBERHOLZ: No. I think that's an
4 inferred statement.

5 MR. SHIPLEY: And doesn't it fly in the face
6 of the general requirement of 27.213 which says
7 you have to meet one of two criteria; one relates
8 to transit districts. And the other relates to
9 being on major freeways.

10 MR. SIBERHOLZ: Yes, most definitely.

11 MR. SHIPLEY: And this is totally
12 inconsistent with that? It can't be read in the
13 context of that zoning requirement.

14 MR. SIBERHOLZ: That's correct, sir.

15 MR. SHIPLEY: And that you and the staff
16 agree that we meet that criteria?

17 MR. SIBERHOLZ: Yes.

18 MR. SHIPLEY: And just as a land planner, it
19 would be your opinion that the development of this
20 property in the RR zone which has pertain to them
21 for 60 years would be an appropriate land use?

22 MR. SIBERHOLZ: Both history as well as the

1 discussions as presented today and in prior
2 testimony it would be.

3 MR. SHIPLEY: And to the immediate west of
4 this property is CO and --

5 MR. SIBERHOLZ: Immediately to the west is a
6 CO and --

7 MR. SHIPLEY: And immediately to the north is
8 the Westphalia town center

9 MR. SIBERHOLZ: Yes, sir.

10 MR. SHIPLEY: Immediately to the south is RT,
11 and a special exception for adult living and
12 immediately to the southeast is the so-called
13 rural farms MST zoned property?

14 MR. SIBERHOLZ: Yes, sir.

15 MR. SHIPLEY: So this is a strange looking
16 doughnut without a hole in the doughnut or
17 something. A stripe in the doughnut.

18 MR. SIBERHOLZ: It's an éclair. This is the
19 center.

20 MR. SHIPLEY: I declare that I have exhausted
21 the subject and the listeners.

22 HEARING EXAMINER MCNEIL: Questions?

1 MR. BROWN: No questions.

2 MR. SHIPLEY: He agrees with me.

3 HEARING EXAMINER MCNEIL: He doesn't have a
4 question about anything, and maybe Mr. Ludwick
5 will be tickled by this, but at least this
6 application answered a question for me. Because I
7 thought the Royal Farm was going to be near the
8 existing Antioch. And I was like that's terrible
9 intersection. That's near you. I was like what
10 the --

11 MR. SHIPLEY: No.

12 (Crosstalk)

13 HEARING EXAMINER MCNEIL: They are. Oh,
14 sorry. Really?

15 MR. HORNE: One's right there on Wells, right
16 across from the --

17 HEARING EXAMINER MCNEIL: From the auction
18 house?

19 MR. HORNE: The auction house, yeah.

20 MR. SHIPLEY: Right at the corner, and Jay
21 Addison absolutely.

22 HEARING EXAMINER MCNEIL: Oh well. Strike

1 from the record. Go ahead. So thank you, Mr.
2 Siberholz.

3 MR. SIBERHOLZ: Thank you. It's always a
4 pleasure.

5 MR. HORNE: They may have questions.

6 HEARING EXAMINER MCNEIL: No, no. We're
7 good.

8 MR. BROWN: We didn't have any.

9 HEARING EXAMINER MCNEIL: Do you have other
10 witnesses?

11 MR. SHIPLEY: No, that's it.

12 HEARING EXAMINER MCNEIL: Mr. Ludwick, can I
13 get one more thing from you that I meant to ask?
14 And I think you addressed it but I'm just going to
15 one more time. And that's on page 10 of the staff
16 report, if anybody has it to show it to you.
17 Number two, the staff -- it's right here.

18 I have to go from memory, but they sort of
19 implied that it would detract -- oh no, it's on
20 page 16. I'm sorry. Number 9. If you were to
21 approve this here it's sort of says here it's sort
22 of detracts from any other economic development,

1 like across to Westphalia. And I know you pointed
2 out that traffic is coming home this way, and this
3 is not a power center, et cetera. But is -- but
4 in your experience is it even true that -- and I'm
5 thinking of myself as a shopper, but I want to
6 hear the expert answer. Do you find that all
7 types of retail -- if you have one type it makes
8 the other go under? Or do you find that we
9 shoppers tend to just go to all of them?

10 MR. LUGWICK: I think the shoppers -- I find
11 that the shoppers will go to all of it. They
12 really want to have a variety of choices. And I
13 think the other thing that happens is a power
14 center is big, just by nature, it's 4 or 500,000
15 feet. So the amount of pre-leasing that one has
16 to do to make it financeable is profound. Whereas
17 when you get these neighborhood convenience
18 centers, you only need a couple of small users to
19 go ahead and make the whole project financeable.

20 So it really is, one is a large scale, and
21 when they're a power center the key will be trying
22 to get a grocery anchor. Generally speaking,

1 that's the kickoff. Because then the grocery
2 anchor becomes a destination. In this instance, I
3 don't think we impact Westphalia town center at
4 all because they are quite a ways down the road.

5 And my experience has been, like I said with
6 the Inglewood restaurant park, is that that
7 actually stimulated the development of the
8 Boulevard at Cap Center with all the restaurants
9 that they had there. Because it begins to prove
10 the markets in there. That is always a challenge
11 is that the first one in demonstrate that the
12 market is there. Once everyone knows that there's
13 a market there then they can begin to -- kind of
14 like lemmings almost.

15 You know if -- and I used the example
16 earlier. If a McDonald's goes on a street corner
17 somewhere everybody else wants to be on the other
18 corners because obviously McDonald's knows what
19 they're doing. And that same holds true with a
20 project like this where it will demonstrate that a
21 market is there for this type of convenience. I
22 think the real challenge as they have with the

1 Westphalia town center is that big retail is
2 undergoing some really dramatic changes. The
3 traditional brick-and-mortar stores are having a
4 harder time competing against the online
5 retailers, and so there is a lot of these bigger
6 stores that today they're just not sure exactly
7 what they want to be tomorrow. They are kind
8 of -- the kind of believe they are not going to be
9 what they are today. But they are not sure
10 exactly what they are going to be. And one of
11 the, I think, best argument is yes, we can buy
12 things online. Convenience things online. But
13 there still that shopping experience where I go
14 out to the store, and my wife goes out to the
15 store, my daughters really go out to the stores
16 because they want to be part of that shopping
17 experience. So their issues on developing that
18 site are completely different from this. And this
19 will have a complementary effect.

20 HEARING EXAMINER MCNEIL: And you think it
21 will have a negative impact on the Royal Farm that
22 has been approved, or those other small uses, I

1 mentioned, like Tucker and whatever that little
2 restaurant is near the church to the west?

3 MR. LUGWICK: No, I -- so with gas stations
4 and convenience stores, which is really what they
5 are. It's a convenience store that sell gas. If
6 you think about almost any major highway that was
7 developed over the last 50 years. Like one goes
8 down Branch Avenue, for example, inside the
9 Beltway. You will see intersections where there
10 is a gas station on this corner, and a gas station
11 on that corner, the gas station on this corner.
12 And so they are catching different traffic going
13 at different times of the day.

14 HEARING EXAMINER MCNEIL: I would agree with
15 you.

16 MR. LUGWICK: And so -- right. Right appear
17 at 725, and 301 as we know they -- and it does
18 have a tendency to do, and bring value to the
19 consumer. If there is one gas station, like,
20 what -- we're not mentioning any particular gas
21 stations, but there is one in the 202 area, and
22 then there is nothing else for 10 miles. Their

1 prices have a tendency to be higher because they
2 have no competition. When you have gas
3 stations --

4 HEARING EXAMINER MCNEIL: I used to live
5 there; I know exactly where you're talking about.
6 I never went there. Oh sorry, gas station. Go
7 ahead.

8 MR. LUGWICK: But when you get a couple of
9 gas stations together they end up -- the price has
10 a tendency to come down because they all want to
11 compete for the business, and the consumer ends up
12 winning at the end of the day. As far as
13 restaurants go, a restaurant like Tucker's is
14 going to get a certain clientele. They are going
15 to get a lunch crowd, maybe get a breakfast crowd.
16 But the restaurants we are talking about are
17 quality restaurants. Sit down -- not sure white
18 tablecloth is the right definition. That's
19 actually a definition of a more high -- a much
20 higher end. And when one is going through getting
21 restaurants, what happens is first you have to get
22 a couple of the, what they call the fast casual

1 restaurants, you know, I think the Italian
2 restaurant, Olive Garden, and Richie's Station is
3 an example of a fast casual. And all the
4 restaurants talk, and so the key is how do they do
5 production wise? How do they do with volume? Are
6 they a \$3 million a year, or are they a 4 million,
7 or a \$5 million a year restaurant? And once it
8 hits a certain threshold then all of a sudden
9 everybody wants to be there to give them a choice.
10 Right? So that you maybe have a nice place that
11 has fish or a nice place that has state, or a nice
12 place that has Italian, or a nice place, you know,
13 or Cheesecake Factory. I mean so I don't think
14 that they impact like a Tucker's because they are
15 serving a different clientele. That dinner crowd
16 is going to probably account for 70, 75 percent of
17 all of their revenue. There's lunches, -- lunch
18 is important because that 25 percent ends up kind
19 of being the profit margin in the operations. But
20 I don't see them causing any challenges or
21 problems with Royal Farms. And then next to it we
22 have an offer in on the property already. They

1 want to do a medical -- a 15,000 foot medical
2 office building and a Dunkin Donuts.

3 HEARING EXAMINER MCNEIL: That's the LAT?

4 MR. LUGWICK: On -- note on the Antioch site.
5 They want to do a 15,000 foot medical office
6 building because that's another whole. Children's
7 National Medical Center was the office building
8 that's adjacent -- its own CO up to the property
9 line on the west side; 9440 is that old Dutch
10 colonial looking multi-story office building.
11 Children's National Medical Center has been in
12 there a long time, and they are moving out. So
13 what we try and do is we try and figure out where
14 is the hole, and let's fill it. So one of the
15 holes is medical. And the developer that has the
16 offer on the property next to the Royal Farms
17 believes that there is a strong market there for a
18 medical. And so do a medical building, do a
19 Dunkin donuts, and almost nothing stops people
20 from getting to a Dunkin Donuts. They can see the
21 sign and they are going to go and have a good
22 latte and --

1 HEARING EXAMINER MCNEIL: Okay. Thank you so
2 much. Last thing, I promise. Anybody who knows.
3 Do you know what the matrix -- the decision matrix
4 and the rewrite is putting on this property? It
5 just stays RR? Do you all know?

6 MR. HORNE: Yes, it stays RR.

7 HEARING EXAMINER MCNEIL: Okay. All right.
8 Anything further?

9 MR. HORNE: No, I don't think so.

10 HEARING EXAMINER MCNEIL: So we left the
11 record open before. If you could, tell me what
12 the corresponding exhibit number is now to what
13 you filed earlier. And I think Mr. Brown still
14 has one more thing that you might not have given
15 us yet. We got the CSP number. Yeah, any
16 portions of the green infrastructure plan has to--

17 MR. HORNE: The green infrastructure plan
18 that's still out there.

19 MR. BROWN: And the conservation plan.

20 HEARING EXAMINER MCNEIL: Yes, the resource
21 conservation plan.

22 MR. SHIPLEY: Madam Examiner, I haven't had

1 the chance to check with information services.

2 It's not a printed copy so it's --

3 HEARING EXAMINER MCNEIL: they are all
4 online.

5 UNIDENTIFIED SPEAKER: If you would allow me,
6 I would download them and --

7 HEARING EXAMINER MCNEIL: That would be good.
8 Print them and then give it to us.

9 MR. LUGWICK: Yes. And we can have them here
10 by --

11 HEARING EXAMINER MCNEIL: Yeah, don't send me
12 an email back linking to the site.

13 MR. LUGWICK: Yes, the information here
14 actually answers your previous questions about
15 where the problems -- it's a little bit more
16 explicit in your questions about and I will
17 provide that all.

18 MR. HORNE: We would do that expeditiously,
19 certainly we know your time frame that you have
20 for this --

21 HEARING EXAMINER MCNEIL: Yeah, we have to
22 hurry.

1 MR. HORNE: But because of the zoning rewrite
2 in order to even maintain it if you decide -- or
3 if the Council decides to rezone it MST we have to
4 have a CSP in to keep that MST zoning as well. So
5 time is still of the essence. So I'm surprised
6 that's what -- you will probably be getting a lot
7 more rezoning applications here in the near
8 future.

9 HEARING EXAMINER MCNEIL: I think it's going
10 to be a lot less because I have to hold them if we
11 don't issue a decision by say April. So if you
12 know anybody with any out there they better
13 already be -- have a staff report essentially.

14 MR. HORNE: Well, there are some of the
15 system.

16 HEARING EXAMINER MCNEIL: With the staff
17 report?

18 MR. HORNE: No, not with a staff report.

19 HEARING EXAMINER MCNEIL: Well, that's not my
20 call.

21 MR. HORNE: Yeah.

22 HEARING EXAMINER MCNEIL: We'll deal with

1 today's issues. It's really about today. Not
2 tomorrow.

3 MR. SHIPLEY: Thank you very much.

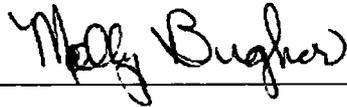
4 MR. HORNE: Thank you so much.

5 (The recording concluded.)
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CERTIFICATE OF TRANSCRIBER

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Transcript of Hearing
Conducted on January 15, 2020

A			
a4	absorb	107:13, 134:3	activity
113:22	131:19	accurately	30:17, 155:18,
ability	abundantly	60:5, 66:4,	162:5
47:5, 104:16,	152:8	147:3	actual
133:4, 186:6	abutting	acknowledge	113:15
able	67:15, 90:1	105:11	actually
91:18, 158:13,	ac	acknowledges	6:3, 6:10,
167:15	143:6	104:6, 104:13,	12:19, 18:16,
about	accelerate	148:2	20:20, 23:7,
6:5, 6:11,	35:21	acknowledging	25:7, 26:1,
13:10, 15:17,	accept	104:8	31:14, 31:21,
20:6, 27:1,	64:15	acquired	33:12, 38:7,
27:3, 40:5,	acceptable	19:17	46:13, 49:9,
40:10, 40:11,	41:20, 110:18	acre	52:7, 58:15,
40:13, 40:19,	accepted	116:19, 146:3	65:20, 79:7,
40:22, 43:15,	9:12, 9:14,	acreage	80:12, 100:20,
44:1, 44:13,	9:18, 11:2,	115:11	110:12, 111:11,
46:21, 51:1,	11:18, 19:5,	acres	113:11, 116:22,
54:7, 56:14,	27:13, 29:21,	6:17, 20:6,	133:14, 146:6,
57:9, 61:17,	62:12, 62:13,	23:1, 23:2,	163:18, 169:7,
65:22, 66:11,	63:5, 92:12,	23:19, 23:22,	176:7, 179:19,
71:12, 72:13,	92:17, 93:8,	33:1, 40:5,	183:14
74:7, 75:19,	136:18	40:6, 40:7,	add
81:15, 84:6,	access	40:22, 48:19,	144:13
87:11, 95:8,	49:5, 49:15,	71:17, 71:18,	added
96:14, 97:9,	74:13, 77:17,	71:20, 87:1,	138:18
106:22, 107:1,	165:18	87:2, 95:2,	addison
107:2, 107:17,	accessible	106:16, 122:7,	173:21
116:20, 122:22,	48:21	130:17, 132:11,	addition
123:5, 123:20,	accident	132:12, 133:22,	54:21
127:20, 130:12,	126:7, 126:17	160:11	additional
131:14, 132:7,	accommodate	acronym	28:11, 155:18
132:11, 132:12,	122:7, 122:13	123:9	additionally
134:12, 136:7,	accommodates	across	11:11, 62:10
141:8, 142:4,	120:16	26:1, 31:7,	address
143:17, 154:9,	according	31:9, 43:17,	14:8, 14:10,
173:4, 178:6,	35:5, 37:12,	44:12, 45:17,	43:10, 56:8,
179:5, 179:16,	45:15, 69:10,	47:14, 51:13,	56:10, 88:17,
183:14, 183:16,	70:21, 76:2,	86:10, 108:11,	93:3, 138:12,
185:1	134:19	149:9, 150:3,	145:7, 145:9,
above	account	168:15, 168:19,	151:5, 154:3,
44:8, 153:19	106:15, 117:1,	173:16, 175:1	155:1, 156:10,
absent	180:16	acruz	157:3, 159:13,
48:2	accuracy	144:14	161:19, 169:22
absolutely	102:13	active	addressed
173:21	accurate	46:1	65:2, 152:14,
	71:5, 87:11,	activities	155:15, 156:5,
	101:18, 102:15,	96:20, 99:21	161:8, 169:19,

Transcript of Hearing
Conducted on January 15, 2020

<p>174:14 addresses 154:4 addressing 160:12 adequate 124:21, 140:17 adequately 121:21, 140:11 adjacent 7:16, 7:17, 28:12, 31:18, 69:16, 108:19, 114:1, 142:11, 143:21, 181:8 adjoining 162:7, 169:11 administration 138:12 administrative 9:15, 16:15, 16:17, 59:11 adopt 13:4 adopted 109:19 adult 46:1, 172:11 aerial 73:11, 74:1, 77:7, 77:10, 98:2, 99:16, 99:18, 99:20, 102:21, 103:16, 104:2, 108:5, 108:15 aerials 96:14, 103:10 affidavits 13:11 affiliations 15:18 affirm 14:3, 56:13, 82:14, 136:2, 144:9 after 6:9, 20:2,</p>	<p>67:5, 98:12, 135:17, 147:19, 147:21 again 6:1, 8:3, 41:3, 51:5, 71:11, 81:22, 84:4, 99:9, 99:13, 101:15, 107:4, 107:19, 111:15, 118:19, 129:3, 133:6, 133:15, 134:2, 161:5 against 177:4 agencies 16:15, 59:12, 61:10, 62:14, 63:5, 68:8 aggressive 151:6 ago 18:12, 19:17, 27:1, 27:4, 30:20, 30:22, 37:11 agree 60:15, 64:11, 71:22, 141:18, 142:13, 142:22, 156:15, 156:18, 160:9, 171:16, 178:14 agreed 38:21, 139:2, 141:3, 141:9 agreement 138:14, 138:16, 138:19, 140:14 agrees 11:7, 173:2 agricultural 27:6 ahead 68:22, 70:13, 79:21, 164:11, 174:1, 175:19, 179:7</p>	<p>aicuz 123:10, 123:14, 124:9 air 48:6, 144:14, 155:22 aircraft 123:3, 124:12 airport 123:17, 124:3, 124:22 airspace 124:19, 125:18, 126:4 alexandria 53:14 all 9:20, 12:12, 12:15, 17:22, 19:12, 21:8, 25:3, 26:4, 28:1, 30:5, 31:14, 36:4, 37:7, 38:6, 48:6, 48:12, 50:2, 50:3, 51:1, 54:1, 55:15, 55:22, 63:11, 66:1, 66:22, 67:6, 71:3, 74:22, 77:4, 78:12, 78:15, 80:13, 80:15, 80:20, 81:11, 81:13, 83:3, 83:13, 83:15, 84:4, 84:18, 85:6, 86:2, 86:19, 88:6, 88:14, 88:22, 90:7, 90:8, 91:9, 95:11, 99:1, 104:6, 110:17, 117:9, 122:14, 122:20, 127:2, 132:3, 132:10, 133:1, 133:2,</p>	<p>133:12, 134:9, 135:4, 138:22, 140:13, 140:21, 141:5, 142:2, 143:15, 143:20, 144:7, 159:4, 159:17, 160:18, 168:14, 170:6, 175:6, 175:9, 175:11, 176:4, 176:8, 179:10, 180:3, 180:8, 180:17, 182:5, 182:7, 183:3, 183:17 allentown 53:12 alleviate 169:15 alleys 47:1 allow 104:19, 105:1, 108:10, 117:6, 118:14, 119:20, 155:8, 161:15, 165:22, 166:22, 183:5 allowed 131:21 allowing 167:2 allows 110:9, 119:2, 121:9 almost 47:1, 48:2, 53:8, 84:19, 86:15, 88:12, 132:6, 176:14, 178:6, 181:19 alone 89:22 along 67:15, 68:2, 80:21, 80:22, 95:4, 97:16, 106:21, 115:21,</p>
---	--	--	---

Transcript of Hearing
Conducted on January 15, 2020

<p>117:14, 119:12, 125:22, 165:5, 165:9, 165:16, 166:14 already 20:21, 22:14, 26:12, 39:5, 49:10, 49:13, 50:16, 72:3, 92:11, 120:10, 121:22, 124:14, 145:15, 160:22, 180:22, 184:13 also 6:9, 12:17, 15:4, 21:18, 23:3, 23:17, 24:21, 27:10, 31:11, 32:20, 33:3, 33:14, 33:19, 44:7, 45:2, 86:19, 88:7, 96:7, 96:10, 97:22, 98:9, 100:16, 102:4, 103:2, 103:10, 103:18, 104:1, 104:3, 104:4, 104:16, 106:7, 107:6, 108:4, 108:21, 110:22, 111:1, 111:6, 118:4, 119:15, 123:5, 128:22, 134:1, 140:8, 144:1, 146:7, 150:4, 152:10, 164:6, 169:18, 169:21 although 6:17 always 174:3, 176:10 amazon 22:9 amended 157:14 amendment 5:6, 126:12,</p>	<p>147:20, 148:1, 152:16 american 78:21 amount 99:4, 175:15 analyses 138:22 analysis 7:6, 40:4, 101:16, 110:18, 130:12, 131:8 analysts 10:7 analyze 11:4, 11:20, 12:3 analyzed 10:18, 58:12 analyzing 10:12, 10:21 anchor 175:22, 176:2 anchored 45:6, 45:8, 45:10 andrew's 53:12 andrews 35:2, 53:19, 54:4, 55:5, 55:14, 109:18, 109:21, 111:13, 111:17, 117:10, 123:3, 125:7, 126:6, 150:10, 155:22, 161:22, 168:16 anna 6:3, 9:1 annex 147:10 annexation 147:4, 147:5 annexed 147:13 annual 46:9, 66:19</p>	<p>another 6:11, 36:6, 47:16, 90:1, 97:11, 141:22, 151:17, 181:6 answer 132:13, 144:13, 158:3, 175:6 answered 173:6 answering 160:1 answers 86:21, 145:14, 183:14 anthony 25:7 antioch 23:22, 24:4, 26:22, 28:18, 31:9, 51:5, 143:12, 173:8, 181:4 any 11:15, 12:13, 13:10, 16:10, 16:15, 16:16, 17:4, 23:4, 46:20, 59:11, 60:21, 61:14, 64:18, 66:17, 67:1, 67:2, 72:6, 77:8, 82:19, 84:12, 86:11, 90:19, 92:21, 94:4, 98:18, 100:1, 101:12, 107:9, 113:22, 115:18, 115:19, 115:20, 116:1, 118:16, 119:3, 121:19, 124:9, 129:19, 132:9, 132:16, 134:20, 139:15, 145:13, 150:17, 157:9, 157:11, 166:11, 169:15,</p>	<p>174:8, 174:22, 178:6, 178:20, 180:20, 182:15, 184:12, 186:9 anybody 163:13, 174:16, 182:2, 184:12 anyone 5:12, 60:6, 119:14 anything 13:11, 35:2, 48:7, 68:11, 68:18, 77:20, 90:20, 105:16, 173:4, 182:8 anyway 74:16, 123:19 appear 98:6, 178:16 appears 68:1, 74:16, 87:11 applebee's 37:11 applicant 6:3, 7:4, 9:1, 11:6, 162:9 application 6:19, 9:2, 13:13, 93:15, 109:4, 110:13, 113:21, 122:4, 125:5, 137:18, 137:20, 138:21, 139:9, 139:12, 145:20, 152:21, 154:1, 155:1, 155:7, 160:10, 165:21, 173:6 applications 138:1, 184:7 applied 147:2 apply 66:12, 130:13 appropriate 104:5, 147:12,</p>
--	---	---	---

Transcript of Hearing
 Conducted on January 15, 2020

171:21 approvable 161:9 approval 32:19, 130:21, 141:1, 152:15, 152:17, 155:7, 156:7, 161:10, 161:13, 163:10, 165:20 approvals 137:10 approve 174:21 approved 50:3, 69:11, 87:3, 101:5, 126:12, 138:16, 138:18, 140:5, 141:11, 143:20, 147:20, 177:22 approximate 132:5 approximately 20:11, 22:22, 23:2, 40:1, 71:17, 71:20, 87:1, 95:2, 95:7, 122:9, 122:10, 122:12 approximating 110:4 april 147:3, 184:11 architect 9:17, 92:10, 92:15, 92:17, 93:9, 100:8, 100:9, 116:9 area 6:9, 11:10, 24:2, 30:17, 33:4, 33:16, 33:19, 40:18, 40:20, 55:4, 62:22, 64:16, 69:18, 72:12, 74:14, 78:22,	84:16, 87:9, 87:10, 98:22, 106:7, 107:2, 107:5, 108:5, 108:13, 108:17, 110:2, 110:8, 110:16, 111:5, 111:17, 112:9, 118:5, 120:18, 120:20, 127:20, 131:20, 136:18, 152:7, 156:4, 160:16, 167:13, 170:17, 178:21 areas 33:14, 69:13, 69:14, 69:15, 71:13, 71:18, 72:15, 72:21, 74:7, 74:10, 75:10, 79:3, 84:8, 84:9, 84:14, 85:3, 87:2, 88:13, 95:14, 96:17, 96:18, 99:8, 101:12, 101:13, 101:20, 106:10, 107:8, 107:12, 108:2, 109:20, 111:17, 115:11, 116:3, 118:8, 118:10, 120:6, 131:21, 132:2, 167:22, 168:1 aren't 70:17, 132:16 argument 39:2, 105:8, 177:11 armoring 68:2, 80:21 army 10:14, 59:5, 61:3, 61:12 around 9:6, 15:14, 19:20, 20:14,	26:16, 52:4, 55:15, 94:22, 117:7, 118:14, 120:1, 142:11, 148:3, 165:18 arterial 112:2, 115:15, 115:21, 116:4, 116:5, 120:2, 153:7, 153:19, 153:20, 161:2 arthur 3:3, 5:15 artist 25:16 asked 31:3, 38:17, 38:18, 76:1, 82:2, 84:6, 132:17, 132:21 asking 63:3, 89:18, 92:12, 135:14 aspect 47:12 aspects 96:5 asphalt 98:14 assertion 10:6 assets 19:16 assigned 30:21 assisted 28:16, 170:5 associate 16:12 associated 9:21, 11:5, 69:16, 98:7, 128:4, 151:15 associates 10:19, 57:9, 58:19 assorted 55:21	assume 19:21, 75:15, 75:16, 79:18, 124:13 assumed 138:20 assuming 12:12, 68:4, 75:11, 79:13, 85:21 atlas 70:22, 72:16, 76:2, 76:3, 76:5, 76:22, 77:6, 78:5, 78:16, 79:4, 79:9, 79:13, 102:18, 102:19, 107:20, 133:2 attached 65:6 attachment 85:13 attachments 73:10 attended 15:3, 15:4 attest 79:11 attract 39:15, 55:22 auction 173:17, 173:19 audio 186:7 august 138:10 automatically 41:21 automobile 141:20 availability 7:10 available 69:14, 70:22, 76:3, 76:22, 79:12, 107:15 avenue 8:2, 10:2,
---	--	--	--

Transcript of Hearing
 Conducted on January 15, 2020

26:2, 29:11, 30:21, 31:8, 34:2, 42:7, 46:18, 48:7, 48:19, 48:22, 49:5, 49:21, 50:10, 86:11, 86:12, 95:5, 95:13, 97:13, 98:8, 98:15, 99:12, 99:16, 99:17, 108:4, 108:8, 108:11, 112:2, 112:3, 112:14, 113:3, 113:5, 115:3, 115:5, 117:11, 117:18, 121:13, 121:14, 123:6, 127:9, 128:19, 139:16, 146:5, 148:21, 153:16, 153:17, 162:18, 165:9, 165:16, 169:12, 169:14, 178:8 average 165:12 aware 114:4, 126:6 away 90:7 <hr/> <p style="text-align: center;">B</p> <hr/> b 71:2, 76:4 back 26:19, 47:7, 49:21, 72:22, 77:9, 77:15, 77:20, 84:4, 89:9, 90:12, 90:13, 97:12, 115:2, 115:4, 118:15, 135:17, 142:19, 163:17, 183:12 background 6:4, 57:7,	57:16, 66:8, 66:11, 138:18, 151:2 backing 117:17 bah 2:14 bald 62:22 bank 25:3, 48:1, 95:15 bankruptcy 16:19, 18:12, 18:15 banks 66:20, 67:7 baptist 23:21, 23:22, 24:4, 26:22, 28:18, 31:9 barbershop 34:9 barrier 163:1, 163:4 barry 8:14 base 36:10, 48:6, 53:20, 55:9, 55:17, 109:18, 109:21, 111:13, 111:17, 116:12, 117:10, 125:6, 126:6, 150:9, 155:22, 161:22, 168:16 based 7:8, 10:6, 19:2, 61:2, 61:3, 69:14, 70:16, 71:6, 77:21, 94:7, 95:17, 96:5, 96:16, 96:19, 100:10, 100:20, 100:21, 101:13, 102:5, 103:16,	108:16, 109:18, 109:20, 110:9, 111:15, 112:8, 113:15, 114:18, 116:7, 116:8, 117:4, 117:8, 119:4, 119:6, 122:2, 122:18, 125:9, 129:8, 131:9, 132:3, 132:5, 133:16, 140:6, 140:8, 151:3 basic 22:13 basically 29:7, 57:4, 61:1, 77:13, 85:1, 94:1, 95:4, 96:11, 157:14 basing 89:19, 89:22 basis 66:19, 124:5 bay 57:12, 57:13, 58:19, 61:19, 100:6, 100:11 bays 107:7 beach 25:1, 53:9 became 15:2, 146:20 because 6:22, 7:7, 17:12, 18:17, 26:7, 31:20, 36:13, 37:2, 38:11, 38:17, 38:19, 42:9, 44:14, 44:17, 46:18, 47:4, 49:4, 52:3, 53:5, 54:9, 54:20, 60:6, 70:11, 70:18,	86:2, 88:18, 89:22, 104:12, 105:8, 106:1, 106:8, 108:16, 110:21, 111:4, 117:9, 119:10, 120:21, 124:14, 125:1, 127:4, 127:8, 128:16, 129:9, 129:10, 130:21, 132:6, 132:19, 142:3, 145:15, 148:18, 149:18, 149:21, 161:22, 162:6, 163:14, 165:22, 166:20, 167:17, 173:6, 176:1, 176:4, 176:9, 176:18, 177:16, 179:1, 179:10, 180:14, 180:18, 181:6, 184:1, 184:10 become 25:19, 113:15 becomes 41:21, 176:2 bed 66:20, 67:7 beech 78:21, 99:9 been 8:13, 8:14, 9:12, 9:18, 11:2, 11:18, 14:12, 16:6, 16:8, 20:17, 21:18, 22:16, 24:16, 27:1, 27:13, 28:8, 28:20, 29:20, 29:21, 30:9, 30:10, 31:5, 32:18, 33:3, 33:16, 41:1, 46:11, 47:6, 48:8, 50:3,
---	--	---	--

Transcript of Hearing
Conducted on January 15, 2020

<p>50:4, 55:14, 57:6, 57:13, 58:15, 62:12, 62:13, 63:2, 63:4, 68:13, 72:17, 74:11, 74:19, 76:14, 92:17, 93:2, 93:8, 94:5, 96:19, 97:20, 99:12, 100:11, 100:17, 103:7, 119:10, 119:14, 136:6, 136:16, 136:17, 136:18, 140:5, 146:1, 147:16, 147:18, 147:21, 149:16, 162:4, 164:8, 176:5, 177:22, 181:11 before 1:9, 2:1, 2:14, 11:3, 11:19, 13:9, 33:12, 37:1, 38:3, 50:16, 59:11, 104:9, 135:8, 145:12, 149:16, 157:2, 158:1, 182:11 beforehand 99:5 began 147:19 begin 35:21, 44:16, 160:3, 176:13 beginning 33:5, 106:1, 110:12, 149:12, 160:14 begins 36:10, 168:14, 176:9 behalf 3:2, 3:8, 8:22, 16:21, 18:19</p>	<p>being 6:21, 24:12, 26:7, 26:21, 32:13, 33:14, 33:19, 54:2, 67:8, 77:16, 90:7, 104:3, 116:9, 116:11, 143:21, 153:4, 171:9, 180:19 belief 42:16, 105:14, 119:9 believe 41:17, 42:15, 45:2, 45:12, 65:15, 67:21, 78:8, 89:21, 90:2, 90:18, 93:12, 97:4, 97:13, 97:19, 97:22, 98:15, 99:13, 100:10, 101:16, 103:14, 104:17, 107:13, 110:19, 115:14, 119:15, 131:1, 131:16, 131:17, 134:13, 134:17, 161:6, 166:10, 177:8 believes 181:17 below 143:8, 154:22 beltway 47:18, 47:21, 117:14, 178:9 benefit 55:16, 167:10 benefits 155:13 berm 130:4 best 7:8, 33:15, 36:14, 47:8, 60:2, 167:10,</p>	<p>177:11, 186:6 betray 66:4 better 28:5, 53:16, 54:15, 54:17, 141:11, 155:10, 161:16, 161:19, 163:19, 184:12 between 43:13, 45:7, 47:17, 111:16, 111:18, 151:21, 162:17 beverly 38:9, 38:11 beyond 36:18, 118:16 bicycling 142:1 big 25:9, 33:15, 34:13, 34:15, 35:3, 36:1, 36:22, 42:11, 42:13, 44:2, 44:4, 118:2, 175:14, 177:1 bigger 177:5 billions 116:19 billows 45:22 bird 106:12 bit 63:1, 65:12, 66:11, 110:12, 113:8, 159:22, 183:15 black 157:15, 159:18 block 41:10 blow 91:18 blowup 20:21, 21:2,</p>	<p>21:6, 73:17, 91:16, 114:10, 114:11 blue 12:20, 28:17, 78:15, 79:3, 80:6, 80:9 blueprint 157:17, 159:19 bmt 37:10 board 29:21 bodies 16:17 body 9:18, 11:3, 11:19 book 106:2, 126:10 books 88:20 borough 74:13 both 9:1, 17:10, 43:19, 45:9, 96:9, 104:21, 113:18, 115:14, 128:1, 140:11, 155:10, 155:14, 155:17, 161:17, 161:21, 169:10, 171:22 bottom 53:1, 70:20, 91:17, 109:16 bought 26:6, 36:4 boulevard 43:22, 45:21, 93:6, 176:8 boundaries 160:6, 160:8, 165:10 boundary 111:7, 116:12, 129:2, 148:20,</p>
--	---	---	--

Transcript of Hearing
 Conducted on January 15, 2020

<p>148:21, 149:6, 149:13, 149:14 bowie 2:5 bowl 43:8 bowling 47:1 box 34:15 boxes 42:11, 42:13, 44:2, 44:4 bragg 53:10 branch 48:7, 178:8 brand 52:21, 53:1 brand-new 55:6 bread 43:7 break 135:9 breakdowns 45:5 breakfast 53:18, 179:15 brick-and-mortar 177:3 bridge 25:10, 53:13, 53:15, 54:1 brief 135:21 briefly 145:22, 157:20 bring 55:4, 82:8, 163:16, 178:18 bringing 132:14 brings 94:19 broad 105:12, 149:20, 162:14</p>	<p>broad-based 133:21 broken 33:9 broker 9:7, 16:4, 16:10, 16:12, 17:3 brokerage 9:13 brown's 144:14 brush 105:12 buck 51:12, 52:9 buddy 165:19 buffer 90:2, 131:17, 162:19, 168:18 buffers 69:16, 101:22, 131:16 bugher 1:22, 186:3 build 6:11, 25:11, 28:19, 36:10, 62:19 builders 47:2 building 25:9, 25:17, 32:11, 33:8, 35:9, 46:1, 67:20, 74:15, 109:22, 110:3, 110:9, 115:7, 125:17, 127:1, 128:4, 128:5, 128:16, 129:12, 130:4, 162:22, 181:2, 181:6, 181:7, 181:10, 181:18 buildings 32:3, 109:22,</p>	<p>129:12, 163:2, 163:3, 166:16 built 6:6, 6:9, 32:11, 44:9, 52:20, 53:19 bunch 44:6, 73:10 burger 42:2 burns 72:19 bus 142:7, 166:12, 166:13, 166:14 business 14:8, 14:10, 15:7, 15:13, 33:22, 45:4, 52:21, 55:3, 55:9, 57:11, 64:8, 64:9, 145:9, 179:11 buy 177:11 buying 35:3</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>ca 1:6 calculates 112:9 calculating 170:7 calculation 72:9 calculations 110:17 california 19:9 call 34:11, 53:11, 56:6, 64:1, 129:20, 135:22, 158:17, 179:22, 184:20 called 26:21, 37:13,</p>	<p>59:21, 109:8, 120:8, 123:10, 126:10 calling 38:2, 86:5 calls 30:22 calver 47:18, 47:21 came 7:21, 12:13, 49:16, 55:16, 70:12, 79:4, 134:8 can't 8:6, 49:2, 59:21, 68:5, 70:9, 90:17, 91:17, 117:5, 123:9, 125:17, 132:1, 142:3, 148:17, 159:4, 171:12 cannot 67:1, 79:11 canopy 96:16 cap 176:8 capture 36:16 car 129:12 care 34:17, 154:10 carey 1:5, 5:8, 19:8 carosa 5:10, 5:11, 6:3, 6:5, 6:7, 9:1, 19:8, 23:5, 23:7, 24:20, 24:21, 25:6, 25:7, 25:16, 26:2, 26:6, 29:14, 30:22, 36:12, 39:11, 44:12, 58:14</p>
--	---	--	--

Transcript of Hearing
 Conducted on January 15, 2020

<p>caroso 5:8 carrying 97:17 carryover 165:7 caruso 121:12 case 1:5, 93:18, 94:11, 110:9, 112:6, 112:11, 116:4, 118:14, 120:19, 121:4, 124:19, 125:1, 130:20, 130:22, 131:14, 134:7, 138:7, 138:9, 138:11, 151:7, 151:14, 163:14, 163:20, 167:11, 186:9 cases 11:4, 149:19 casual 179:22, 180:3 cat 137:2 catching 178:12 category 147:11 cause 11:15 causing 180:20 cdp 30:3, 30:7 ceased 74:20 cell 33:1, 44:7 census 35:2, 35:5 center 11:17, 22:17, 25:4, 25:5, 25:10, 26:21,</p>	<p>27:9, 29:2, 31:12, 31:17, 31:19, 32:1, 34:7, 34:11, 34:12, 34:13, 35:12, 39:14, 42:8, 42:10, 42:14, 43:14, 43:17, 44:2, 44:5, 44:9, 44:17, 45:7, 45:8, 45:10, 47:13, 53:6, 121:16, 149:2, 149:4, 168:21, 168:22, 170:19, 172:8, 172:19, 175:3, 175:14, 175:21, 176:3, 176:8, 177:1, 181:7, 181:11 centerline 112:9, 112:14 centers 45:6, 105:11, 170:21, 175:18 central 34:1, 149:5 certain 18:13, 124:22, 140:4, 179:14, 180:8 certainly 160:3, 183:19 certificate 18:8, 18:9, 186:1 certified 16:18 certify 186:3 cetera 175:3 chair 15:13, 23:8, 28:6, 30:19, 31:15, 37:11, 37:22, 38:3</p>	<p>chairman 6:15, 15:8, 38:8, 73:15 challenge 176:10, 176:22 challenges 180:20 chance 183:1 change 11:16, 151:9, 152:10 changed 63:21, 64:10, 104:10 changes 15:16, 31:13, 96:15, 108:3, 139:16, 140:10, 148:4, 177:2 changing 151:16 channel 66:13, 66:17, 67:4, 68:3 channels 65:21, 67:1, 67:6, 67:11, 67:16, 78:7, 78:17, 83:12, 83:14, 83:17, 86:2, 86:5, 86:6, 86:17 chapter 147:5 character 7:19 charles 58:22 check 164:9, 183:1 checked 99:6 cheesecake 37:20, 37:21, 38:8, 180:13 children's 181:6, 181:11</p>	<p>chipotle 44:7 chipped 31:20 choice 180:9 choices 175:12 chose 149:20 church 23:21, 23:22, 24:5, 24:13, 26:22, 28:18, 31:10, 143:9, 163:10, 178:2 citations 103:18 cited 102:21, 133:14 cites 133:22 citizens 150:11 civil 20:4 clarify 89:7, 89:10, 159:6, 159:9 classes 15:3, 15:5, 57:20, 57:21 classification 114:2, 116:5, 116:7, 120:5, 151:17, 155:13, 155:19 classified 147:8, 153:6, 153:7, 153:18, 153:20 classify 133:19 clear 17:20, 111:4, 126:16, 132:19, 152:8, 152:9, 158:14</p>
---	--	--	--

Transcript of Hearing
Conducted on January 15, 2020

<p>clearance 54:8, 54:10 cleared 39:1, 74:11 clearing 95:14, 96:17, 97:15, 98:7, 99:21 clearly 61:22 clemson 58:3, 58:5 clientele 179:14, 180:15 clients 8:22, 62:13 close 35:17, 155:21 code 66:17, 85:7, 100:7, 100:10, 100:12, 100:16, 102:3, 102:12, 112:2, 119:5, 129:13 codename 22:11 cognizant 116:10 colbert's 80:17 cold 30:22 colonial 106:12, 181:10 color 28:5, 78:14 com 37:14 combined 116:11 come 27:3, 31:16, 49:10, 49:12, 50:17, 54:5, 55:9, 89:9, 135:17, 142:19, 150:13, 159:4,</p>	<p>179:10 comes 17:16, 49:16, 53:17, 102:22 comfort 155:5 comfortable 160:1 coming 37:3, 42:17, 48:17, 51:2, 90:13, 91:11, 125:20, 150:7, 175:2 comment 142:5, 169:21 comments 101:7, 138:13, 151:5 commercial 8:20, 9:7, 9:8, 9:10, 9:12, 14:22, 15:9, 15:19, 16:20, 16:21, 17:2, 17:6, 19:5, 28:11, 39:20, 40:2, 40:5, 40:22, 42:6, 43:16, 45:4, 47:12, 48:9, 48:18, 48:21, 49:15, 118:18, 119:2, 129:9, 155:18, 162:10, 163:2, 164:20, 166:2, 170:17 commercially 41:16 committee's 15:13 committees 18:20 common 75:11 commonly 120:1 communities 54:20</p>	<p>community 11:14, 28:17, 31:22, 32:2, 35:12, 47:14, 48:10, 55:2, 55:3, 162:12, 162:13, 165:20, 166:5, 168:11 commuter 36:17 commuters 36:17, 48:17 compact 166:2 companies 8:19, 15:10, 34:20, 38:17 company 30:20, 32:15, 33:3, 34:3, 34:7, 35:14, 37:9, 41:19, 57:12 comparable 43:15 compare 43:19 compared 74:11, 107:5 compatible 144:15, 168:10 compete 179:11 competing 177:4 competition 179:2 competitive 41:16, 42:6 complement 44:17, 45:11, 45:12 complementary 41:16, 41:17, 47:13, 155:9, 161:16, 177:19 completed 33:9, 103:5,</p>	<p>113:16 completely 42:10, 111:22, 177:18 compliance 170:3 component 79:1, 167:1 components 36:22 composition 78:20 comprise 69:17 comprised 42:11 concentrate 157:13 concentration 165:4 concept 27:3, 39:10 conceptual 27:12, 30:2, 31:17, 41:13, 103:21, 114:5, 120:9, 120:14, 120:18 concerning 9:4, 9:11, 10:14, 18:13, 59:3, 75:1, 76:1, 86:21, 137:10, 141:1 concisely 159:16 conclude 117:7 concluded 84:7, 86:22, 107:3, 185:5 concludes 71:20, 144:18 conclusion 155:1 conclusions 12:5 concrete 68:2, 80:21,</p>
--	--	--	---

Transcript of Hearing
Conducted on January 15, 2020

<p>98:14 concur 100:5, 108:20, 122:14, 130:20, 133:16 concurrence 105:13, 110:15, 110:19 conditions 95:22, 96:4, 109:6 condos 118:11 conducted 138:14, 138:17, 138:22 confident 162:9 configuration 140:7, 166:3 confirmed 70:17, 134:4 conform 154:1, 154:7 conjunction 67:19 connect 121:9, 121:14, 165:19 connecting 25:10 connection 63:3, 64:22, 67:10 conservation 69:12, 71:19, 87:4, 87:6, 87:12, 87:13, 87:20, 88:8, 91:6, 103:22, 182:19, 182:21 conservative 140:6 conserve 166:15 consider 42:5, 60:19, 60:20, 61:7,</p>	<p>61:22, 88:12, 133:6, 133:7, 164:9 considered 27:8, 46:17, 98:22 considering 78:7, 169:9 consist 120:2 consistent 88:10, 96:13, 98:2, 98:10, 99:10, 99:15, 99:17, 100:12, 102:11, 108:3, 118:7, 119:22, 126:7 consists 8:5, 8:17, 20:5 constrains 118:16 constraint 123:7 constraints 71:21, 119:19, 124:9 constructed 72:20, 77:16 construction 33:13, 33:18, 72:18, 74:19, 77:17, 98:12, 98:13, 98:16, 99:13, 99:18, 117:4, 128:5, 155:9, 161:15 consultant 60:1 consumer 120:8, 120:9, 178:19, 179:11 contact 88:19 contained 154:9 containing 101:21, 106:11</p>	<p>contents 66:8 context 7:16, 171:13 continue 162:3, 164:16 continues 166:18 contour 91:13, 91:15, 112:11, 112:13, 113:8, 113:9, 126:18, 128:19 contours 111:12, 111:13, 111:14, 111:21, 112:1, 112:4, 113:4, 117:10, 127:5, 127:6, 128:1 contract 28:8, 32:21 contractors 156:1 contradict 10:5 contradictory 142:21 contrary 13:4, 148:19 contribute 109:11 controlled 49:5 convenience 33:22, 34:11, 34:16, 39:14, 40:9, 55:20, 155:5, 175:17, 176:21, 177:12, 178:4, 178:5 conveniences 90:10 convenient 50:20, 169:1 conversation 38:1 convey 86:8</p>	<p>copies 145:13, 148:13 copy 14:18, 26:1, 75:3, 75:7, 88:7, 93:12, 120:13, 183:2 cordish 38:17, 38:20 corner 27:14, 28:6, 29:13, 31:7, 41:8, 42:2, 42:3, 46:7, 51:8, 98:1, 109:16, 142:11, 173:20, 176:16, 178:10, 178:11 corners 28:14, 176:18 corporate 31:19 corps 10:14, 59:5, 61:3, 61:12, 63:3, 68:8 correct 18:15, 26:3, 58:10, 62:18, 63:6, 63:8, 63:9, 63:18, 63:19, 65:3, 66:2, 66:6, 67:18, 68:15, 68:18, 68:20, 70:6, 72:5, 74:5, 77:3, 84:22, 85:5, 86:18, 90:3, 123:3, 130:12, 134:12, 135:1, 139:10, 139:14, 140:15, 146:18, 156:17, 157:18, 158:5, 159:20, 170:1, 171:14, 186:4 correction 168:2</p>
---	---	--	--

Transcript of Hearing
Conducted on January 15, 2020

<p>correctly 5:7, 6:18</p> <p>corresponding 182:12</p> <p>corridor 30:21, 31:3, 165:5, 165:7, 165:11, 165:13, 165:14, 169:17</p> <p>cost 119:8, 155:15, 162:2, 162:8</p> <p>cost-effective 119:14</p> <p>costs 119:21</p> <p>could 26:16, 30:8, 33:21, 35:5, 38:14, 38:18, 55:9, 64:1, 64:3, 64:4, 65:16, 75:7, 82:7, 107:2, 120:15, 121:3, 121:21, 122:7, 130:1, 130:3, 130:5, 131:2, 131:7, 142:9, 163:19, 164:19, 167:3, 182:11</p> <p>couldn't 8:13, 131:22, 132:1</p> <p>council 5:19, 88:18, 109:19, 152:18, 157:20, 184:3</p> <p>counsel 3:10, 5:13, 6:20, 76:1, 186:8</p> <p>count 35:2, 165:12</p> <p>counter 134:11</p> <p>counties 136:8</p>	<p>countries 15:11</p> <p>country 15:14</p> <p>counts 137:14, 138:17</p> <p>county 1:1, 2:3, 3:8, 6:7, 10:16, 15:1, 28:22, 32:6, 32:16, 33:10, 35:7, 39:16, 47:18, 47:22, 55:16, 58:21, 59:6, 61:5, 63:4, 66:11, 66:15, 69:11, 70:8, 72:16, 78:5, 78:6, 85:7, 87:3, 96:6, 98:21, 100:7, 100:10, 100:12, 100:16, 102:2, 102:12, 104:1, 104:7, 112:2, 116:10, 119:5, 129:13, 133:21, 134:1, 147:5, 148:4, 155:6, 164:18, 164:22, 167:9, 168:7, 170:18</p> <p>county's 87:19, 88:1, 101:13</p> <p>countywide 69:10, 87:4</p> <p>couple 18:3, 36:6, 39:12, 57:19, 81:1, 98:19, 103:18, 140:1, 175:18, 179:8, 179:22</p> <p>course 151:14, 159:16, 168:16</p>	<p>court 9:13, 16:19, 18:12, 18:15, 18:19, 18:21, 59:11</p> <p>courts 16:16, 151:17, 152:4</p> <p>courtyards 54:16</p> <p>cover 13:3</p> <p>coverage 96:16</p> <p>crafted 111:16</p> <p>crafting 103:5</p> <p>crash 124:20</p> <p>created 78:19</p> <p>credit 32:7, 34:4, 34:6</p> <p>creditors 16:22, 18:20</p> <p>crisscrossing 95:10</p> <p>criteria 61:2, 66:21, 152:15, 152:17, 152:20, 153:1, 153:9, 156:6, 156:16, 156:18, 157:4, 157:8, 160:20, 160:22, 171:7, 171:16</p> <p>critical 62:22, 152:15</p> <p>cross 83:5, 121:13, 166:6</p> <p>crossings 86:12, 131:21</p> <p>crosstalk 173:12</p> <p>crosswalk 166:6</p>	<p>crowd 179:15, 180:15</p> <p>csp 90:21, 143:9, 163:6, 182:15, 184:4</p> <p>culture 20:4</p> <p>culverts 68:2, 80:19, 83:4, 83:5</p> <p>cum 57:20</p> <p>cups 53:17</p> <p>current 32:16, 63:18, 116:16</p> <p>currently 24:1, 24:5, 27:12, 32:15, 33:8, 57:2, 57:8, 102:1, 121:16, 146:16, 150:2</p> <p>cut 46:4, 108:9</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>dad 64:12</p> <p>daily 165:12</p> <p>damn 43:4</p> <p>darden 15:7, 18:8</p> <p>dark 157:2</p> <p>darker 78:14, 87:8</p> <p>data 35:6, 76:21, 102:22, 112:12, 133:17, 134:2</p> <p>database 104:3</p> <p>date 63:18, 100:18,</p>
--	--	--	--

Transcript of Hearing
Conducted on January 15, 2020

<p>134:6 dated 138:10 daughters 177:15 day 37:2, 38:17, 112:8, 165:13, 169:17, 178:13, 179:12 days 42:1, 99:5 db 111:7, 111:18, 112:5, 113:7 dba 112:10, 126:18, 127:21 dc 19:10 deal 35:17, 35:18, 61:10, 184:22 dealing 60:22 debris 98:13, 98:14 december 65:19 decibel 113:9, 123:2, 124:15 decibels 117:16, 128:9 decide 184:2 decides 184:3 decision 7:22, 150:17, 182:3, 184:11 declare 172:20 dedicated 49:9, 49:13, 50:17 deed 110:2</p>	<p>deemed 147:12 deep 115:12 deer 98:17 define 33:21, 66:17, 149:6, 151:20 defined 66:20, 67:7, 71:1, 76:4, 102:4, 148:8 defines 66:12, 101:20 definitely 171:10 definition 102:10, 108:17, 151:14, 151:21, 151:22, 179:18, 179:19 degree 125:20 delineated 111:18 delineation 61:18, 62:21, 71:3, 126:8 delta 124:22 demand 44:15 demarcation 151:19 demographics 34:21 demonstrate 7:5, 11:21, 12:4, 42:16, 84:16, 176:11, 176:20 demonstrates 11:12 denial 6:22 dense 166:2</p>	<p>densities 120:3 density 7:8, 27:7, 31:22, 46:20, 116:18, 118:12, 119:8, 119:11, 120:6, 130:22, 166:1, 170:16 denying 63:8 department 10:15, 59:5, 61:4, 61:11 dependencies 102:22 depot 42:12 depression 70:18, 83:9, 133:10 depressions 67:12, 78:19, 80:10, 84:20, 85:2, 88:12, 133:8 depth 10:1, 20:13, 46:19, 114:2, 115:1, 115:6, 116:17, 117:19, 118:15 deputy 6:20 derived 103:7 describe 16:1, 25:12, 26:13, 60:5, 66:3, 66:8, 94:2, 95:20, 111:10, 137:1, 145:22, 146:13, 152:21 described 83:9, 84:20, 122:17, 146:1, 160:4</p>	<p>describing 17:18, 106:9, 112:20 description 160:4 desert 37:6, 37:8, 48:4 design 104:5, 104:19, 105:4, 105:6, 105:10, 116:14, 130:6 designated 23:16, 23:18, 24:19, 24:20, 33:7, 40:21, 42:14, 45:20, 71:17, 87:1, 106:8, 107:8 designating 46:5 designation 97:11, 104:10 designed 39:20, 68:9, 71:13, 165:18, 168:10, 168:17, 168:22 destination 44:18, 45:1, 176:2 detached 99:21, 120:6 detail 43:18, 106:5, 113:12, 124:17 detailed 111:20 determination 100:13, 102:14, 107:11, 110:8 determinations 59:4, 102:15, 103:8, 110:13, 113:18 determine 60:16, 76:8,</p>
--	---	---	---

Transcript of Hearing
Conducted on January 15, 2020

<p>113:12 determined 71:4, 109:20, 125:10 detract 174:19 detracts 174:22 detriment 119:3, 125:8 develop 26:6, 28:22, 31:11, 47:4, 47:5, 62:19, 119:14, 131:7, 133:4, 134:9, 134:21, 162:8 developable 121:19, 130:17, 131:20 developed 26:7, 31:1, 31:21, 33:14, 33:20, 46:11, 48:8, 102:20, 104:8, 104:15, 113:11, 119:10, 129:15, 130:13, 133:18, 150:15, 178:7 developer 24:22, 32:21, 43:18, 181:15 developers 34:20 developing 15:15, 28:10, 104:7, 119:17, 177:17 development 7:1, 7:14, 7:20, 8:21, 9:5, 9:9, 9:10, 9:20, 14:22, 15:13, 16:20, 17:3, 19:6, 19:14, 22:19, 22:22, 24:1, 26:9,</p>	<p>26:10, 28:9, 28:13, 40:12, 47:12, 68:12, 68:13, 71:5, 71:15, 71:16, 101:4, 102:2, 104:14, 104:20, 104:22, 105:1, 105:17, 113:14, 113:20, 115:8, 115:18, 115:21, 117:3, 117:14, 118:11, 118:13, 118:17, 120:1, 121:20, 122:16, 123:7, 127:22, 137:4, 138:19, 139:13, 139:17, 139:22, 142:17, 142:18, 150:2, 162:14, 162:16, 162:18, 163:7, 164:19, 165:4, 166:17, 167:2, 167:6, 167:14, 167:15, 167:22, 168:18, 170:17, 171:19, 174:22, 176:7 developments 118:6, 142:16 develops 150:4 diagonally 150:3, 168:12 difference 43:13, 45:7, 102:12, 103:4, 129:8, 151:21 different 12:18, 17:17, 33:6, 35:22, 37:1, 42:10, 57:5, 80:19, 102:7, 118:10, 129:4, 158:12, 177:18, 178:12, 178:13, 180:15</p>	<p>differently 17:11 difficult 60:4, 167:11 digital 70:16, 78:4, 79:4, 103:2 dilemma 149:15 dimension 106:20 diminish 133:4 diminished 132:4 dinner 180:15 dire 60:14 direct 10:4 direction 95:9, 125:21, 131:19 directly 38:14, 45:17, 102:17, 102:21 dirt 35:15, 36:5 disagree 71:22, 72:1, 142:6 disagreed 156:12 disapprovals 157:22 discuss 143:21 discussed 143:12, 160:19, 163:1, 165:8 discusses 169:5 discussion 160:19, 161:4 discussions 160:18, 172:1 dishes 74:18</p>	<p>distance 50:11 distribution 32:14 district 146:21, 152:18 districts 170:21, 171:8 disturbance 99:11, 99:15 disturbed 74:7, 79:2 ditch 103:15, 133:9, 133:13 ditches 86:7, 99:6, 100:15, 108:9 document 76:17, 156:11, 158:8, 158:11, 158:12, 170:2 documents 78:2, 88:19, 90:19, 93:17, 133:2 doing 12:9, 57:8, 58:17, 100:19, 105:21, 132:4, 133:21, 134:8, 176:19 dominated 78:20 done 36:7, 63:2, 96:22, 99:12, 100:18, 106:14, 116:21, 133:20 donuts 34:8, 181:2, 181:19, 181:20 door 54:14 doors 128:5 dorchester 58:22</p>
---	--	--	--

Transcript of Hearing
 Conducted on January 15, 2020

<p>double 128:6, 159:12 doughnut 172:16, 172:17 dower 33:18, 55:10, 55:12, 149:7, 149:8, 150:8, 150:9, 168:15, 168:16, 169:13 down 15:6, 24:6, 34:1, 35:10, 36:2, 52:15, 53:4, 53:5, 53:18, 58:6, 74:14, 78:22, 80:17, 95:12, 97:22, 117:5, 143:7, 150:8, 150:13, 165:13, 176:4, 178:8, 179:10, 179:17 download 183:6 dozen 30:18 dozens 11:3, 11:4 dr 35:18 drafted 107:16 drain 131:22 drainage 80:11, 86:7, 99:3, 99:6, 100:14, 103:15, 108:9, 108:10, 133:9 drained 80:18, 83:6 draining 80:16 dramatic 177:2 draw 44:18</p>	<p>drive 2:5, 34:1, 39:16, 56:10, 118:1, 149:5, 149:8 drives 46:3 driveways 97:13 drop 58:16 dry 99:3, 99:6 drycleaner 34:9 dsp 163:6 dual 57:19, 146:4 dubarry 9:17, 65:2, 78:3, 81:21, 93:5, 109:2 duberry 120:17, 121:3 due 67:8, 67:13 dui 54:9 dunkin 34:8, 181:2, 181:19, 181:20 duplicate 160:13 during 15:2, 58:17, 66:19, 67:4, 72:17, 99:12, 99:14 dutch 181:9 dwelling 107:3 dwight 138:3 dying 6:12</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>each 40:7, 40:9,</p>	<p>40:10, 44:17, 45:11, 121:6, 131:15, 131:18 eagle 62:22 earlier 18:17, 43:12, 127:4, 127:10, 131:12, 176:16, 182:13 early 18:17, 19:14, 20:3, 68:4, 77:19, 110:14 earthen 72:19 easier 81:19 east 29:7, 51:19, 52:6, 95:4, 97:18, 106:21, 110:7, 113:7, 115:3, 125:3, 143:3, 143:17, 144:1, 149:11, 150:3 eastern 98:1, 142:20 eat 54:13 eclair 172:18 ecologist 57:4, 63:14, 63:17, 63:22, 64:2 ecology 64:16 economic 164:17, 174:22 economize 159:22 economy 53:2, 53:3 edgewater 56:10 educate 35:7</p>	<p>education 10:10, 18:3, 60:22 educational 14:21, 57:15 effect 125:7, 177:19 effective 141:16, 141:19, 162:3, 162:17, 167:19 efficient 155:14, 167:7, 168:9 eight 27:4, 69:21, 70:4 either 38:5, 63:7, 64:4, 85:9, 121:11, 130:22, 153:3, 158:13 elevation 70:16, 70:17, 78:4, 78:13, 78:15, 79:4, 103:3 elevations 128:8 else 53:5, 60:6, 170:22, 171:1, 176:17, 178:22 email 183:12 embellished 154:16 emphasis 17:19 employed 57:7, 145:9, 186:9 employees 54:4, 156:1 employment 57:7 encompass 32:1</p>
---	--	---	---

Transcript of Hearing
Conducted on January 15, 2020

<p>encumber 22:22</p> <p>end 7:20, 38:16, 142:19, 144:19, 146:7, 155:12, 158:3, 179:9, 179:12, 179:20</p> <p>ended 6:12</p> <p>ends 6:13, 132:8, 179:11, 180:18</p> <p>engineer 11:3, 50:21, 60:18, 60:19, 60:21, 113:17, 127:22, 145:4, 164:7</p> <p>engineering 57:12, 60:22, 72:9</p> <p>engineering's 100:6</p> <p>engineers 10:15, 28:21, 59:5, 61:3, 61:12, 63:4, 68:8, 93:5</p> <p>enhance 164:17</p> <p>enjoy 54:13</p> <p>enough 25:22</p> <p>ensure 140:10</p> <p>entire 88:20, 133:21, 133:22, 153:2</p> <p>entirety 84:3, 169:4</p> <p>entitled 22:17</p> <p>entitlement 19:14, 137:18, 137:19, 138:1</p> <p>entrance 97:16</p>	<p>environment 10:15, 59:6, 61:5, 61:11, 71:12, 130:21</p> <p>environmental 10:1, 10:2, 10:10, 10:12, 10:13, 10:20, 57:3, 57:13, 57:21, 58:8, 58:19, 59:3, 59:13, 59:18, 59:21, 60:2, 60:18, 60:19, 61:6, 61:8, 61:12, 61:19, 61:20, 62:1, 62:5, 62:7, 63:13, 63:17, 63:22, 66:13, 67:2, 68:19, 70:21, 71:1, 71:3, 71:21, 76:4, 76:9, 77:6, 77:21, 78:17, 79:5, 80:8, 86:20, 88:13, 89:11, 95:22, 96:2, 96:7, 96:9, 100:14, 104:17, 104:18, 105:2, 105:12, 105:19, 106:6, 106:10, 107:8, 132:2, 133:14, 160:18</p> <p>environmental's 100:6</p> <p>environmentally 101:21, 106:11</p> <p>ephemeral 67:4, 78:18, 80:10, 83:9, 83:13, 83:17, 83:19, 83:20, 84:20, 85:2, 86:7, 100:15, 133:7, 133:10,</p>	<p>133:13</p> <p>equate 131:13</p> <p>equestrian 53:6</p> <p>equipment 72:22, 74:17</p> <p>er 100:17</p> <p>erosion 68:3</p> <p>especially 28:14</p> <p>esq 3:3, 3:4, 3:9</p> <p>essay 38:13</p> <p>essence 33:5, 184:5</p> <p>essential 156:16</p> <p>essentially 19:15, 105:7, 121:8, 127:10, 148:1, 162:22, 184:13</p> <p>establish 108:12</p> <p>estate 15:1, 15:9, 15:19, 16:3, 16:20, 17:2, 17:6, 18:13, 18:20, 19:6, 19:13, 30:16, 45:4</p> <p>estimated 116:19</p> <p>et 175:3</p> <p>euclidean 151:16</p> <p>evaluate 61:1, 109:6, 121:2</p> <p>evaluated 58:8, 96:9, 101:13, 128:1</p>	<p>evaluating 46:14, 62:11, 65:21, 66:22, 100:20</p> <p>evaluation 61:18, 69:13, 71:18, 75:10, 84:9, 84:14, 85:3, 87:2, 87:10, 106:7, 106:10</p> <p>evaluations 61:13, 107:12</p> <p>even 45:8, 89:18, 99:3, 110:5, 131:11, 142:11, 148:1, 152:5, 164:7, 169:21, 175:4, 184:2</p> <p>event 58:18, 67:5</p> <p>ever 16:14, 57:14, 60:6, 63:12</p> <p>every 37:1, 41:22, 46:15, 47:6, 53:8, 58:20, 79:3, 165:13, 167:8, 169:17</p> <p>everybody 54:7, 56:5, 176:17, 180:9</p> <p>everyone 5:3, 114:21, 176:12</p> <p>everything 13:3, 33:10, 63:1, 67:3, 74:10, 159:17</p> <p>evidence 7:13, 11:6, 67:1, 67:8, 67:9, 72:18, 96:17, 96:22, 97:3, 98:13, 98:16, 99:1</p>
--	---	--	---

Transcript of Hearing
Conducted on January 15, 2020

<p>evidenced 100:4, 106:19, 108:15, 109:15 evolution 77:14 evolved 43:20 exactly 60:16, 62:6, 68:5, 124:2, 177:6, 177:10, 179:5 examination 71:6 examinations 68:10 examine 170:2 examined 96:4, 109:12 examiner's 7:22 example 176:15, 178:8, 180:3 excavated 72:21, 74:10, 74:15 exceeds 125:17 excel 112:7 excellent 18:2 except 98:18 exception 5:5, 172:11 exceptions 148:2 excited 38:10 exclusive 168:3 excuse 24:3, 27:15, 29:17, 102:6 exempt 70:10</p>	<p>exhausted 172:20 exhibit 4:11, 14:13, 14:15, 14:17, 22:4, 22:16, 26:12, 26:20, 40:14, 40:17, 41:1, 41:2, 41:3, 41:4, 41:11, 45:16, 45:20, 56:21, 59:9, 65:1, 65:5, 65:7, 69:5, 73:1, 73:9, 76:15, 78:6, 78:10, 90:16, 92:4, 94:8, 95:18, 97:7, 106:20, 107:18, 109:16, 110:21, 111:19, 111:20, 112:17, 112:18, 114:6, 114:7, 114:11, 115:2, 120:14, 124:18, 126:8, 128:21, 137:6, 141:13, 145:17, 148:10, 148:12, 152:14, 154:18, 154:20, 157:13, 158:13, 158:17, 159:18, 170:12, 182:12 exhibits 7:4, 12:8, 12:9, 12:12, 20:16, 93:17, 94:4, 158:12 exist 18:15, 67:1, 74:18, 78:16, 144:20 existence 49:10 existing 7:19, 95:16,</p>	<p>95:21, 97:1, 99:3, 113:18, 120:21, 121:1, 121:14, 121:17, 121:21, 128:1, 140:7, 142:18, 173:8 exists 45:16, 95:13, 95:14, 144:21 exit 50:10 exiting 50:10 expand 150:6 expanded 151:3, 151:5, 159:11 expands 152:2 expected 79:2, 112:10, 153:8, 153:11 expeditiously 183:18 expense 46:9 expensive 47:4, 118:3 experience 8:21, 9:8, 10:11, 14:21, 19:2, 37:8, 62:10, 114:19, 116:9, 175:4, 176:5, 177:13, 177:17 experienced 117:21 expert 9:8, 9:12, 9:17, 10:17, 11:19, 16:19, 17:2, 17:5, 18:14, 18:17, 19:5, 46:10, 59:12, 59:17,</p>	<p>62:4, 64:15, 92:13, 92:16, 136:13, 136:18, 175:6 expertise 59:20 explain 5:21 explained 155:20, 160:22, 168:21 explaining 150:21, 161:5 explanation 160:7 explicit 183:16 export 18:22 extend 148:18 extended 54:17 extended-stay 53:15 extending 111:8, 116:12, 149:9, 165:10 extends 145:5, 149:3, 165:9, 168:15 extensions 122:1 extensive 101:21, 163:4 extent 156:7, 161:10 exterior 128:9 extra 107:22, 145:13 eyeballing 48:20 eyes 66:5</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>faa 125:18</p>
---	---	---	--

Transcript of Hearing
Conducted on January 15, 2020

<p>face 171:5 facilitate 142:1, 162:16, 164:19, 165:4, 165:18 facilities 142:8 facility 28:16, 28:19, 32:10, 32:14, 126:6, 155:21 fact 23:6, 27:9, 44:3, 76:9, 86:9, 122:3, 140:12, 141:10 factory 38:8, 180:13 fail 11:15 fair 168:3 fairly 68:7, 72:14, 87:11 fairmount 56:10 fall 61:14, 69:13, 80:17, 84:8, 111:21, 127:6 fallow 77:18 falls 72:10, 75:9, 84:13, 110:1 familiar 19:22, 21:15, 21:16, 22:18, 42:20, 59:2, 68:16, 69:1, 69:3, 93:14, 113:22, 123:11, 137:9, 139:4, 139:11, 145:18, 153:13 family 6:5, 6:8, 6:13,</p>	<p>19:12, 23:5, 23:17, 24:20, 24:21, 31:1, 31:18, 32:22, 115:18, 167:14, 168:11 fantastic 54:19 far 77:7, 115:17, 125:17, 129:15, 129:16, 131:9, 147:15, 148:18, 166:11, 179:12 fargo 25:3 farm 51:16, 51:17, 173:7, 177:21 farmed 77:15 farming 96:19, 96:20, 96:21, 99:20 farms 27:14, 28:7, 28:12, 41:9, 41:12, 47:13, 172:13, 180:21, 181:16 fast 179:22, 180:3 father 19:16, 57:11 father's 10:11, 64:7 fatima 2:14 fatimah 90:7 faulty 7:9 favorite 37:15 feasible 47:6 feature 78:17, 79:5,</p>	<p>80:8, 90:1 featured 79:3 features 10:2, 10:22, 58:8, 59:4, 61:14, 67:3, 70:21, 71:1, 71:4, 76:4, 76:9, 77:6, 77:9, 77:21, 80:16, 86:6, 89:11, 89:15, 95:11, 95:17, 95:22, 96:2, 96:9, 101:21, 102:14, 103:15, 104:17, 104:18, 104:22, 105:2, 105:9, 105:11, 105:13, 105:14, 105:20, 106:6, 106:10, 106:11, 117:2, 118:7, 118:15, 118:22, 120:22, 124:4, 125:2, 130:13, 130:21, 131:1, 132:9, 132:15, 132:22 federal 16:16, 32:7 feel 46:10, 47:11, 71:5, 160:1 feet 20:14, 40:2, 40:10, 40:11, 40:12, 46:20, 46:22, 95:7, 95:8, 106:17, 106:19, 107:1, 107:2, 110:3, 110:10, 112:13, 114:3, 115:2, 115:4, 122:9, 122:12, 131:18, 175:15</p>	<p>felt 16:21, 38:10, 47:3 fence 55:14 ferry 53:14 few 12:7, 46:2, 66:21, 67:12, 148:2, 148:4 field 17:2, 19:5, 59:12, 59:17, 60:4, 61:13, 70:18, 78:18, 79:6, 83:11, 102:15, 103:4, 133:18 figure 116:21, 181:13 file 94:14 filed 109:4, 182:13 fill 181:14 finally 11:17, 130:10 financeable 175:16, 175:19 financial 186:10 financially 47:6 financing 139:21 find 67:1, 68:11, 72:6, 82:10, 101:12, 107:9, 167:11, 175:6, 175:8, 175:10 findings 10:22, 13:5, 61:13, 139:3 finds 41:19</p>
---	--	---	---

Transcript of Hearing
 Conducted on January 15, 2020

<p>fine 13:14, 17:21 first 8:22, 13:15, 21:22, 30:22, 31:15, 31:16, 37:12, 37:13, 39:3, 65:21, 76:20, 77:2, 97:8, 155:3, 161:1, 176:11, 179:21 fish 180:11 five 13:7, 46:15, 47:7, 97:13, 135:7, 135:11, 135:12 flat 97:20 flex 104:16 flexibility 104:13, 105:1, 118:13, 119:21, 129:9, 129:16, 130:8 flexible 104:5, 104:19, 105:4, 105:6, 105:10 flight 109:20, 111:15 floodplain 72:7, 72:9, 72:10, 102:1, 108:19 flow 108:10 flowing 66:18 flows 67:9 fly 171:5 flyover 124:12, 124:13</p>	<p>focus 32:2 folks 35:7, 36:16, 37:2, 39:15, 48:17, 54:4, 55:1, 55:8 follow 105:17, 130:18, 149:11 followed 10:11 following 152:20 follows 155:3 food 37:5, 55:19 foot 10:1, 32:14, 40:8, 44:1, 46:16, 46:21, 113:9, 114:21, 115:1, 116:17, 117:18, 118:15, 181:1, 181:5 footage 40:9, 115:10 footsteps 10:12 forbes 93:6 force 96:16, 106:12, 106:15, 155:22 foregoing 186:4 foreseeable 153:8, 153:12 forest 74:12, 77:19, 78:20, 106:16, 106:18, 107:3, 111:7 forget 90:10 forgive 90:8</p>	<p>form 65:1 format 110:18 formed 57:12 formerly 24:19, 32:3 forming 153:5 forms 28:21 formula 111:4 fort 53:10 forth 59:4, 72:4, 140:22, 152:16, 154:8 forward 36:4, 129:21, 160:1 found 71:2, 78:4, 95:22, 96:12, 96:15, 96:17, 98:3, 98:4, 98:8, 98:13, 98:21, 99:1, 103:18, 107:6, 120:1, 140:12, 156:6, 161:9, 170:3 four 20:9, 33:12, 46:15, 57:9, 80:19, 104:1, 141:12 frame 183:19 franchise 42:22 francis 4:8, 11:17, 143:16, 145:8 frederick 59:1</p>	<p>free 53:18 freeway 7:17, 7:18, 8:2, 49:5, 112:4, 114:1, 116:5, 153:19 freeways 117:15, 171:9 front 9:14, 78:8, 109:7, 126:5, 130:5 frontage 20:9, 146:4, 146:7 fronting 97:11 fronts 95:5, 146:3, 146:8 full 54:1, 56:7, 95:8, 145:7, 169:14 fully 55:7 fun 58:6 functional 87:5, 156:4, 156:10, 161:13 further 52:14, 105:13, 108:12, 113:8, 113:11, 152:3, 160:19, 169:15, 182:8 future 27:8, 28:15, 28:20, 96:7, 100:21, 113:20, 115:8, 127:22, 134:6, 148:4, 153:8, 153:12, 155:6, 162:16, 184:8</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>galilee 23:21</p>
---	---	--	---

Transcript of Hearing
 Conducted on January 15, 2020

<p>garden 42:19, 54:16, 180:2 gardens 34:14, 42:22, 43:14, 44:20 gas 40:8, 44:13, 48:3, 178:3, 178:5, 178:10, 178:11, 178:19, 178:20, 179:2, 179:6, 179:9 gate 53:14, 54:3, 55:6, 55:8, 150:10 gave 158:15 general 7:2, 104:9, 122:11, 155:2, 156:3, 156:9, 157:4, 160:12, 160:16, 161:7, 161:12, 165:5, 165:6, 165:8, 165:11, 165:14, 167:20, 167:21, 170:15, 171:6 generalized 103:21 generally 58:13, 65:13, 78:15, 95:15, 151:15, 151:17, 153:22, 154:2, 175:22 generate 54:22, 116:20, 164:21 generated 11:12, 35:5, 112:11, 125:19, 139:13, 140:18 gentleman 81:21 geographic 57:18, 70:15</p>	<p>george 61:5, 69:11 george's 1:1, 2:3, 3:8, 6:6, 10:16, 15:1, 32:15, 35:7, 55:16, 58:21, 59:6, 78:5, 87:3, 96:5, 116:10, 136:9, 147:5, 166:12, 167:9, 168:7, 170:18 georges 66:15, 70:10, 70:12 georgians 37:15, 38:12 german 17:19 getting 179:20, 181:20, 184:6 gis 79:13, 104:2 give 14:4, 43:17, 56:14, 82:15, 93:2, 136:3, 144:10, 158:3, 160:7, 160:16, 180:9, 183:8 given 7:16, 102:4, 182:14 glass 25:17 glasses 114:14 global 15:5, 15:8 global's 15:13 go 18:1, 35:1, 37:1, 37:16, 41:10, 42:2, 43:1, 44:19,</p>	<p>47:7, 48:2, 49:17, 49:19, 50:18, 53:4, 53:18, 54:6, 54:12, 55:18, 61:1, 64:4, 65:11, 68:22, 70:13, 79:21, 95:20, 117:5, 121:6, 132:2, 132:20, 134:10, 146:10, 157:10, 159:7, 159:10, 159:15, 160:17, 164:11, 174:1, 174:18, 175:8, 175:9, 175:11, 175:19, 177:13, 177:15, 179:6, 179:13, 181:21 goal 142:2, 168:4, 168:5 goals 7:2 goes 52:4, 66:10, 77:10, 77:11, 97:15, 106:7, 106:19, 127:21, 149:4, 149:8, 161:5, 176:16, 177:14, 178:7 going 6:13, 9:13, 13:3, 16:9, 22:6, 32:7, 32:17, 32:18, 33:12, 36:14, 36:18, 37:2, 39:15, 39:17, 42:2, 44:20, 44:21, 46:3, 47:3, 51:8, 53:8, 54:18, 58:2, 65:11, 70:20, 77:9, 84:4, 87:16,</p>	<p>88:9, 89:7, 89:10, 90:11, 92:7, 108:12, 118:20, 129:18, 139:22, 140:1, 143:9, 158:3, 159:7, 160:1, 163:5, 165:12, 173:7, 174:14, 177:8, 177:10, 178:12, 179:14, 179:20, 180:16, 181:21, 184:9 gone 19:15 good 5:2, 6:1, 13:21, 14:1, 64:9, 68:22, 107:22, 144:16, 174:7, 181:21, 183:7 gotta 50:13 government 10:16, 53:22, 59:7, 62:13 governor 2:5 gradient 78:14 graduate 18:4, 58:4 graduated 57:20 grass 96:18 gray 74:12 great 25:18, 36:7, 52:11 greater 110:10, 112:3, 115:16, 115:22, 116:4, 120:2, 150:5 green 69:2, 69:10,</p>
--	---	--	---

Transcript of Hearing
Conducted on January 15, 2020

<p>71:14, 75:2, 75:3, 75:7, 75:17, 82:3, 82:5, 83:22, 84:6, 84:17, 85:13, 86:3, 87:8, 87:9, 88:11, 90:22, 101:14, 101:18, 101:19, 102:11, 102:19, 103:1, 103:13, 103:19, 103:20, 103:22, 105:3, 133:3, 133:17, 182:16, 182:17 grid 95:10, 98:10 grocery 42:12, 45:6, 45:8, 45:9, 175:22, 176:1 ground 33:9 groundwater 67:10 groundwaters 86:8 group 31:10, 35:14 grow 77:20 growing 66:20 guess 15:16, 16:9, 18:17, 70:9, 89:6, 133:19, 142:14, 148:22 guideline 168:2</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>habitat 106:18 habitats 106:13, 107:7 half 35:14, 57:10</p>	<p>hall 34:2 handbook 61:3 handle 140:18 handled 19:12 happened 6:8, 136:8 happening 33:16, 68:3 happens 44:16, 158:15, 175:13, 179:21 happy 6:2, 95:20 harbor 54:3, 55:7, 150:10 hard 18:15, 119:16, 120:20 harder 177:4 harvest 20:3 hats 8:21 haul 108:7 hay 96:17 hazard 145:4 hazards 126:2 head 35:13 heading 71:11, 113:8 headwaters 69:15 health 11:13, 117:20, 119:4, 125:8, 155:4 hear 101:6, 175:6</p>	<p>heard 17:9, 153:12, 153:13 heated 38:9 height 109:22, 110:3, 110:9, 125:3, 125:14, 125:15, 125:17, 127:1 heights 110:15 held 2:2 help 27:2, 32:1, 36:22, 168:5 helped 111:2 helping 24:1, 27:5 helps 28:18 henson 23:20 here 5:5, 5:12, 5:16, 5:21, 6:2, 6:11, 6:16, 8:12, 9:14, 12:8, 18:18, 23:9, 24:6, 24:12, 25:9, 25:13, 25:15, 27:16, 31:5, 32:15, 35:1, 38:16, 39:9, 41:6, 41:9, 49:8, 49:10, 74:19, 82:8, 84:15, 87:8, 97:9, 97:15, 97:19, 99:8, 104:21, 107:1, 110:4, 112:15, 126:3, 148:18, 151:2, 157:2, 163:9, 165:10,</p>	<p>166:15, 168:14, 170:13, 174:17, 174:21, 183:9, 183:13, 184:7 hereby 186:3 heretofore 55:1 high 31:22, 58:5, 117:22, 119:7, 119:12, 125:16, 155:12, 155:19, 161:19, 167:12, 169:16, 170:16, 179:19 high-quality 35:22 high-rise 25:8 high-security 53:20 high-volume 155:12 higher 114:2, 116:5, 118:12, 120:3, 120:5, 153:7, 161:3, 179:1, 179:20 highly 79:2 highway 26:8, 138:12, 178:6 hills 38:9, 38:11 hillside 108:7 hilton 54:16 hired 18:12 historic 74:17, 96:13 historically 68:6, 72:17 history 9:5, 77:9,</p>
---	---	--	---

Transcript of Hearing
Conducted on January 15, 2020

<p>162:4, 171:22 hits 180:8 hold 21:1, 89:8, 184:10 holding 147:11 holdings 19:13 holds 176:19 hole 39:8, 172:16, 181:14 holes 181:15 home 36:14, 36:19, 37:4, 39:15, 42:12, 48:17, 175:2 homebuilder 35:19 homes 36:9, 46:2, 46:6 honestly 61:9 honor 57:19 hope 5:6, 26:21, 90:6, 92:6, 143:2 hopefully 157:2 hoping 158:18 horizontal 98:10 horn 145:10, 158:2, 158:21 horne 3:3, 3:5, 5:10, 5:15, 5:16, 5:20, 5:22, 8:4,</p>	<p>8:9, 8:11, 8:15, 8:17, 12:15, 12:19, 13:2, 13:7, 13:17, 14:15, 20:18, 20:20, 21:1, 21:5, 21:8, 21:11, 21:13, 21:20, 22:7, 22:11, 22:14, 26:18, 27:17, 27:21, 30:7, 30:14, 40:16, 50:8, 56:19, 58:2, 65:5, 69:20, 70:1, 73:6, 73:9, 73:20, 74:2, 75:6, 82:20, 83:1, 85:18, 88:6, 88:15, 89:1, 89:8, 90:12, 90:15, 90:16, 90:22, 91:3, 91:6, 91:12, 91:16, 91:21, 92:1, 92:3, 92:5, 92:8, 92:15, 94:15, 94:21, 111:2, 114:9, 120:10, 124:1, 126:2, 126:10, 126:13, 126:19, 127:2, 135:10, 143:13, 143:18, 144:1, 148:15, 158:6, 158:19, 158:22, 163:16, 164:6, 173:15, 173:19, 174:5, 182:6, 182:9, 182:17, 183:18, 184:1, 184:14, 184:18, 184:21, 185:4 horton 35:18</p>	<p>hotel 28:15, 39:13, 40:6, 40:10, 44:15, 52:14, 52:21, 53:11, 53:20, 53:21, 54:6, 54:12, 54:21, 122:10, 155:21 hotels 52:22, 54:20, 55:18 hours 43:4 house 33:18, 52:9, 55:11, 55:12, 97:19, 97:21, 97:22, 108:14, 117:21, 149:7, 149:8, 150:8, 150:9, 168:15, 168:16, 169:13, 173:18, 173:19 houses 33:8, 97:4, 97:13, 99:22, 131:7, 132:1, 167:17 housing 45:22, 129:19, 170:16 however 72:8 humans 53:21 hundred 36:6 hung 152:13 hurry 37:3, 183:22 hydrology 58:17</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>idea 55:13, 75:18</p>	<p>ideal 36:13, 41:20, 54:3 identical 84:19 identification 120:8 identifies 124:18 identify 5:13 identity 162:13 ignore 152:6 ii 113:16 illustrated 77:1, 115:2 illustrates 75:8, 88:8, 103:21, 104:1, 107:19, 126:16 illustration 75:11, 75:13, 86:10 illustrations 22:18, 84:12 immediate 72:11, 149:14, 172:3 immediately 67:5, 67:15, 148:17, 150:2, 150:8, 150:14, 169:11, 172:5, 172:7, 172:10, 172:12 impact 11:9, 15:15, 109:13, 111:7, 116:11, 116:14, 126:19, 126:22, 138:9, 138:13, 162:7, 165:17, 167:12, 176:3, 177:21, 180:14 impacted 71:21, 124:16,</p>
--	---	---	---

Transcript of Hearing
Conducted on January 15, 2020

<p>125:14 impacts 155:11, 161:17, 161:20, 161:21, 169:15 impair 7:1, 156:9, 161:12 impaired 105:22 impairment 12:2 impede 68:11 implement 156:3 implementation 124:6 implied 174:19 import 66:9 important 55:5, 108:16, 115:5, 180:18 impossibility 86:16 impressed 36:8 improve 117:3, 119:13, 132:1 improved 97:21, 98:20, 98:21, 118:5 improvements 33:18, 95:16, 96:12, 97:1, 99:2, 108:3, 119:7, 155:16, 169:10 inches 80:20 incidental 28:20 include 23:4, 25:3, 69:15, 73:10,</p>	<p>103:12 included 90:2, 103:12, 103:13 includes 89:13 including 6:7, 9:21, 15:6, 20:2, 97:1 income 34:22 inconsistencies 107:14 inconsistent 171:12 incorrect 7:6, 7:9, 12:5, 70:7 increase 11:14 increased 128:4, 130:22, 165:22 increment 139:21 indeed 39:7 indicate 77:21 indicated 18:11, 28:17, 48:15 indicates 139:7, 170:16 indicative 77:8 individual 9:11 individuals 9:2 industrial 168:14 industry 9:5 infamous 22:8 inferred 171:4</p>	<p>influence 149:1, 152:6 influenced 165:11 information 7:9, 10:6, 57:18, 69:14, 70:15, 70:22, 76:2, 82:4, 100:11, 101:17, 102:19, 103:7, 103:11, 107:10, 107:13, 107:15, 110:20, 110:21, 133:1, 133:16, 134:2, 151:2, 183:1, 183:13, 186:7 infrastructure 69:2, 69:10, 71:14, 75:2, 75:7, 75:17, 82:3, 82:5, 84:1, 84:7, 84:17, 85:13, 88:11, 91:1, 97:1, 97:2, 101:14, 101:19, 101:20, 102:11, 102:20, 103:1, 103:2, 103:14, 103:19, 103:20, 103:22, 105:3, 118:4, 119:7, 119:8, 119:11, 119:21, 120:3, 121:19, 121:22, 129:15, 133:3, 133:17, 167:1, 182:16, 182:17 inglewood 176:6 inhabitants 155:6 inherent 166:17 initial 40:4, 108:7</p>	<p>initials 80:2 injurious 11:13 inn 53:2 inns 54:15 input 134:14 inserted 20:21 inset 111:20 inside 178:8 inspections 103:4, 133:18 installation 109:9, 111:14, 123:1, 125:9, 144:15 instance 176:2 instinct 35:20 institution 169:20 institutional 118:19, 119:2, 128:12, 162:11, 163:3, 164:20 insulation 128:6 intensive 124:11 interchange 7:18, 26:8, 33:15, 139:19, 140:1, 140:2, 140:7, 140:9, 153:4, 153:15, 155:12, 161:2, 166:22, 169:10, 169:14 interchanges 163:14 interest 41:21, 186:10</p>
--	---	--	---

Transcript of Hearing
Conducted on January 15, 2020

<p>interested 6:4, 39:6, 42:17 interestingly 17:15, 27:9 interface 168:17 interior 80:16, 106:12, 106:15, 106:18, 107:3, 128:8 internet 38:17 interrupting 29:18 intersect 149:12 intersection 6:21, 11:15, 36:20, 36:21, 49:8, 142:12, 143:6, 152:7, 153:3, 153:4, 153:6, 161:2, 173:9 intersections 11:10, 28:14, 138:18, 139:1, 141:10, 151:18, 178:9 introduce 94:6 introduced 22:4, 41:2, 94:5 introduction 119:1 inventories 100:7 inventory 96:8, 134:5 investigation 101:11 investment 155:14, 167:1 involved 31:6, 31:14, 33:3</p>	<p>irregular 98:9 island 55:14 isolated 96:18, 98:6, 99:8 issue 152:13, 169:8, 169:19, 184:11 issues 177:17, 185:1 issuing 62:16, 63:7 italian 180:1, 180:12 item 29:3, 31:10, 32:9 items 154:9, 160:18 iterations 31:13 itself 44:18, 95:12, 98:19 iversen 6:7, 6:10</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>jacob 4:5, 10:8, 10:9, 56:9 january 1:11, 5:3, 65:2, 78:2, 93:21, 96:4 jay 173:20 jeff 8:5, 8:18, 8:22, 13:19, 119:15 jeffery 4:4 jeffrey 14:9 jeopardy 124:1</p>	<p>job 1:20, 35:6, 36:7, 54:9, 64:10 jobs 164:22 john 110:16 joint 109:18, 109:21, 111:13, 111:16, 117:10, 125:6, 126:6, 150:9, 161:22, 168:16 jr 43:22 judgment 59:22 judgments 59:13 judicial 16:17 july 158:5 jump 150:13 june 63:17, 138:10 jurisdiction 61:15 justification 111:1, 148:10, 151:4, 154:3, 157:3, 158:4, 169:22, 170:9</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>keep 29:18, 90:11, 108:12, 184:4 keeping 155:2, 165:21, 166:19 keeps 51:3 kelly 70:12 key 175:21, 180:4</p>	<p>kickoff 176:1 kill 38:3 kind 28:20, 39:14, 41:22, 42:13, 46:20, 46:22, 47:7, 47:22, 52:19, 55:1, 60:3, 60:7, 64:8, 64:10, 68:9, 95:9, 97:20, 118:22, 121:7, 176:13, 177:7, 177:8, 180:18 king 42:2, 43:22 kitchenette 53:16 kitty 29:13, 41:8, 51:7 knew 134:9, 163:20 know 10:8, 17:14, 30:5, 31:12, 32:1, 38:16, 42:11, 44:6, 52:13, 53:6, 54:17, 79:8, 80:4, 89:12, 105:17, 123:9, 124:15, 132:18, 135:15, 139:15, 141:11, 141:12, 143:2, 143:15, 143:19, 146:19, 147:15, 158:17, 159:3, 163:13, 163:17, 175:1, 176:15, 178:17, 179:5, 180:1, 180:12, 182:3, 182:5, 183:19, 184:12</p>
--	---	--	--

Transcript of Hearing
 Conducted on January 15, 2020

<p>knowledge 86:11</p> <p>known 5:8, 32:3, 32:4</p> <p>knows 17:13, 176:12, 176:18, 182:2</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>lac 150:4</p> <p>lacking 33:20</p> <p>lacks 36:11</p> <p>lake 35:3</p> <p>land 10:3, 11:17, 11:19, 71:15, 92:14, 102:2, 114:5, 117:2, 118:5, 120:4, 148:4, 152:19, 166:16, 167:7, 167:8, 167:9, 171:18, 171:21</p> <p>landforms 117:6, 130:4</p> <p>landmark 52:12</p> <p>landscape 9:16, 67:14, 92:10, 92:15, 92:16, 93:9, 98:5, 100:8, 100:9, 116:9, 145:4</p> <p>landscaping 163:5</p> <p>lane 49:9, 49:14, 50:4, 50:16, 50:17, 145:10</p> <p>lanham 14:11, 93:6</p> <p>large 94:15, 115:21,</p>	<p>118:4, 149:10, 167:16, 175:20</p> <p>larger 28:3, 73:4, 114:15</p> <p>largest 15:8, 35:19</p> <p>largo 34:15, 37:10, 37:16, 145:11</p> <p>last 27:2, 30:18, 31:3, 35:10, 46:14, 52:22, 75:22, 79:16, 85:12, 124:17, 134:15, 135:8, 178:7, 182:2</p> <p>lat 181:3</p> <p>late 68:4, 77:18</p> <p>later 23:21, 71:4</p> <p>latte 181:22</p> <p>laude 57:20</p> <p>law 3:5, 5:16, 66:15, 151:14</p> <p>laws 61:4, 66:11</p> <p>layer 79:12</p> <p>layout 116:14</p> <p>leading 99:4</p> <p>leaf 67:8</p> <p>learn 133:11</p> <p>lease 38:21</p> <p>leasing 8:20, 9:9, 9:10</p> <p>least 6:19, 13:7,</p>	<p>90:9, 106:16, 106:17, 152:19, 153:5, 173:5</p> <p>leave 30:13, 158:14, 163:19</p> <p>ledo's 44:7</p> <p>left 49:18, 49:19, 58:2, 70:13, 77:18, 132:7, 135:16, 182:10</p> <p>left-hand 109:16</p> <p>lemmings 176:14</p> <p>lengthy 111:4</p> <p>lenhart 4:7, 11:2, 51:1, 135:22, 136:1, 136:5, 136:10, 136:12, 137:5, 137:8, 137:12, 137:15, 137:19, 138:5, 138:8, 139:6, 139:10, 139:14, 139:18, 140:15, 140:19, 141:3, 141:7, 141:14, 142:6, 143:2, 143:8, 143:14, 144:4, 144:7, 153:14, 164:6, 169:7</p> <p>lenhart's 11:8, 11:11</p> <p>less 91:3, 106:17, 110:5, 117:16, 120:3, 129:15, 129:16, 130:11, 131:9, 184:10</p> <p>lessen 128:7</p> <p>let's 21:2, 30:20,</p>	<p>73:2, 108:5, 129:20, 157:12, 181:14</p> <p>letter 10:21, 65:1, 65:6, 65:18, 65:19, 66:9, 66:10, 78:1, 78:2, 83:8, 84:21, 86:4</p> <p>level 60:6, 102:12, 103:7, 123:2, 124:15, 128:6, 129:4</p> <p>levels 111:8, 113:19, 117:16, 123:6, 128:9, 138:22</p> <p>library 34:3</p> <p>license 60:21</p> <p>licensed 15:3, 16:4, 16:7, 16:8, 16:12, 100:8, 100:9</p> <p>lidar 70:16, 78:4</p> <p>life 133:12</p> <p>light 49:13, 50:16</p> <p>lighter 87:9</p> <p>likelihood 34:22</p> <p>likely 117:11</p> <p>likewise 32:7, 45:12</p> <p>limit 31:4, 112:5, 113:7, 113:9, 125:6</p> <p>limited 9:22, 47:4,</p>
---	--	--	--

Transcript of Hearing
Conducted on January 15, 2020

<p>53:15, 54:17, 63:10, 99:7, 110:3 line 43:4, 47:18, 47:22, 79:3, 112:20, 113:1, 113:5, 115:7, 118:16, 129:19, 181:9 linear 20:8, 74:17, 125:21 lines 78:16, 80:7, 80:9, 113:5, 151:19 linking 183:12 lipsey 15:6 listed 110:22, 111:1 listeners 172:21 listening 59:19 literally 33:17, 47:3 litter 67:8 little 17:19, 34:7, 34:10, 38:8, 38:10, 43:18, 51:16, 51:17, 52:19, 53:9, 53:10, 53:16, 60:4, 63:1, 65:12, 66:11, 67:12, 74:9, 106:1, 113:8, 150:7, 151:1, 159:22, 169:1, 178:1, 183:15 live 179:4 lives 19:9, 19:10</p>	<p>living 28:16, 46:1, 172:11 local 34:10, 103:7, 170:19, 170:21 locate 38:16 located 6:21, 97:5, 104:15, 121:1, 121:15, 153:2, 166:21, 170:18 locating 141:20 location 6:12, 7:10, 7:17, 142:15, 153:13, 155:11, 155:22, 161:18, 162:9, 166:18, 166:19, 167:12 locations 104:5 logging 72:19 logic 130:18 logical 151:19 long 16:6, 19:18, 38:22, 46:22, 95:8, 181:12 long-term 31:1 look 34:20, 47:7, 48:20, 69:9, 72:10, 77:4, 80:10, 84:9, 121:3, 163:20 looked 15:14, 46:13, 58:20, 70:4, 79:14, 124:14, 148:7 looking 48:18, 51:4,</p>	<p>54:5, 74:3, 79:9, 103:11, 107:20, 114:13, 119:18, 127:16, 131:18, 149:2, 150:20, 151:6, 172:15, 181:10 looks 35:16, 76:21, 77:15, 84:15, 84:18, 127:5, 128:13, 141:10 lose 54:8, 54:10 loss 114:1 lost 25:1 lot 6:6, 6:8, 10:1, 17:17, 18:18, 27:7, 28:6, 31:5, 31:7, 31:13, 33:4, 45:10, 46:19, 52:18, 52:22, 54:22, 55:8, 55:15, 70:8, 70:14, 74:17, 98:4, 98:20, 106:4, 107:10, 115:1, 115:6, 116:17, 117:17, 117:18, 118:15, 127:5, 132:11, 177:5, 184:6, 184:10 lots 35:10, 35:14, 35:20, 36:4, 38:20, 46:16, 46:20, 46:22, 115:10, 116:20, 116:22, 117:8, 131:14, 131:22, 167:16 lotsford 44:1</p>	<p>love 54:20, 133:7 lovely 17:17 low 7:7, 27:7, 119:8, 119:11 lowe 119:15 lower 78:15, 98:1, 120:6 ludwick 155:20, 163:16, 168:21, 173:4, 174:12 ludwig 134:20 lug 17:18 lunch 55:18, 179:15, 180:17 lunches 180:17 luther 43:22</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>ma'am 24:6, 26:3, 50:2, 50:9, 51:18, 82:12, 83:18, 85:17, 102:8, 125:15, 128:14, 135:3, 150:19 madam 6:15, 23:8, 28:6, 30:19, 31:15, 37:11, 37:22, 38:3, 38:4, 38:6, 73:14, 182:22 madame 12:7 made 33:19, 35:17,</p>
--	---	--	---

Transcript of Hearing
Conducted on January 15, 2020

<p>67:19, 95:2, 101:7, 110:8, 148:20, 152:7 maintain 32:12, 184:2 maintained 116:17 maintenance 32:10 major 6:21, 7:18, 8:2, 26:8, 36:20, 47:13, 149:10, 151:19, 153:3, 153:10, 161:2, 166:21, 167:1, 171:9, 178:6 majority 69:12, 75:9, 84:8, 84:13 make 15:15, 23:11, 38:21, 49:11, 49:19, 50:18, 73:2, 91:9, 97:21, 103:8, 107:11, 110:13, 110:14, 111:3, 113:18, 117:3, 118:5, 121:4, 130:19, 132:19, 158:14, 175:16, 175:19 makes 31:20, 50:19, 98:11, 175:7 making 35:17, 59:12, 105:22 mall 6:7, 6:10, 6:12 man 43:4 man-made 67:16, 88:12 managed 15:9</p>	<p>management 69:17, 108:17 manager 31:16 manipulated 72:17 manual 61:6, 66:14, 96:7, 133:15 many 19:16, 23:1, 34:21, 40:1, 53:7, 58:11, 95:11, 116:22, 148:5, 168:6 map 5:6, 23:17, 24:21, 73:11, 74:1, 103:20, 111:12, 126:5, 126:12, 126:16, 128:13, 128:22, 141:1, 147:20, 147:22, 152:15 maple 79:2 mapping 70:14, 102:13, 134:2 margin 180:19 maria 1:4, 5:7 marilyn 146:9 mark 21:22, 94:12, 120:7 marked 14:13, 20:17, 21:19, 22:16, 59:9, 76:14 market 35:8, 39:4, 39:6, 39:7, 39:8, 42:4, 47:2, 176:12, 176:13, 176:21,</p>	<p>181:17 marketed 39:3 marketing 46:10 marketplace 34:14, 42:18, 43:22, 44:15 markets 176:10 marlboro 2:7 marlborough 20:10, 24:7, 24:10, 28:7, 28:12, 31:9, 37:7, 45:15, 45:17, 46:3, 46:5, 49:18, 50:8, 51:2, 51:8, 52:2, 52:3, 52:5, 52:16, 95:6, 95:12, 97:14, 97:16, 106:22, 108:9, 132:8, 142:12, 143:4, 143:8, 146:6, 150:14, 162:21, 168:19 marriott 54:16 martin 43:22 maruene 1:10, 2:1, 5:3 marwood 45:21 maryland 2:15, 10:15, 14:11, 15:4, 16:4, 16:7, 17:3, 18:4, 18:5, 56:11, 58:21, 59:5, 61:4, 61:11, 93:6, 111:8, 136:8, 139:18,</p>	<p>145:11, 146:5, 146:20, 153:16, 153:17, 170:19 master 7:3, 7:11, 12:2, 31:21, 86:22, 87:5, 112:4, 116:3, 117:14, 120:1, 126:12, 142:3, 147:20, 147:22, 153:6, 153:18, 156:4, 156:9, 156:10, 160:13, 160:17, 161:8, 161:13, 167:19 match 86:3 material 74:15, 77:17 materialize 33:6 materials 88:2, 91:10, 98:14 math 132:5 matrix 182:3 matter 12:6, 151:14 maximize 167:2 maximizing 166:16 maximum 107:1, 116:18 maybe 27:4, 40:11, 53:16, 73:5, 80:1, 90:8, 110:5, 132:12, 151:1, 173:4, 179:15, 180:10 mcalister 82:1, 82:13 mccalester 4:6, 115:14,</p>
--	---	--	---

Transcript of Hearing
Conducted on January 15, 2020

<p>115:20, 116:2, 116:16, 120:17, 122:14, 122:19, 123:4, 123:8, 123:12, 123:14, 123:16, 123:18, 123:21, 124:3, 124:7, 124:17, 125:15, 126:4, 126:11, 126:15, 126:21, 127:11, 127:19, 128:14, 128:16, 128:21, 129:3, 129:7, 130:1, 130:15, 130:18, 131:5, 131:9, 131:13, 132:21, 133:9, 133:13, 134:13, 134:17, 134:19, 134:22 mccalister 9:16, 9:19, 78:3, 82:11, 82:17, 85:18, 85:22, 90:11, 91:9, 93:4, 93:5, 93:10, 93:12, 93:16, 93:21, 94:3, 94:7, 94:10, 94:21, 95:1, 96:3, 97:8, 100:3, 100:19, 101:3, 101:10, 101:15, 102:8, 102:10, 104:12, 105:3, 105:10, 106:4, 107:18, 108:1, 109:2, 109:5, 109:10, 109:15, 111:11, 112:18, 113:1, 113:13, 114:4, 114:16, 114:20, 115:1, 146:2, 155:15, 169:19, 170:4</p>	<p>mccalister's 10:4, 87:17 mccallister 82:6, 82:9, 82:12, 87:22, 88:4 mccormick 149:8 mcdonald's 42:1, 42:3, 176:16, 176:18 md 2:7 mean 5:5, 25:12, 35:11, 37:7, 52:19, 55:7, 60:16, 68:18, 70:19, 73:18, 75:12, 89:11, 89:17, 131:3, 132:14, 142:3, 142:7, 150:6, 152:6, 180:13 means 115:10 meant 174:13 measure 68:7 medical 181:1, 181:5, 181:7, 181:11, 181:15, 181:18 medicated 128:8, 128:9 medication 118:14 medium 166:1, 170:16 meet 115:9, 156:16, 171:7, 171:16 meeting 56:5 meets 11:22, 156:18, 161:3, 161:7</p>	<p>melwood 148:17, 149:4 member 24:12, 24:16 memory 174:18 mentioned 6:15, 41:5, 43:12, 44:3, 178:1 mentioning 178:20 mercantile 145:10 mere 86:9 merely 18:14 met 60:6, 152:20 metro 167:22, 168:1, 168:6 mic 23:12, 23:14 michael 4:7, 11:2, 30:20, 153:14, 169:7 microphone 26:18, 94:22 middle 45:19, 112:21 midpoint 97:17 might 13:8, 34:14, 73:16, 182:14 mike 135:16, 135:22, 164:6 mile 20:11 miles 48:3, 178:22 military 109:9, 111:13, 116:11, 122:22,</p>	<p>125:18, 145:3, 169:20 million 180:6, 180:7 millwood 48:1 milt 10:8, 57:11 mind 26:15 minimal 122:1 minimum 131:16 minor 66:21 minute 51:6, 90:10, 146:15 minutes 90:9, 135:8, 135:11, 135:13 mio 109:9, 144:20, 145:1 mios 109:13 mioz 109:17, 113:3, 113:5 miscellaneous 57:21 mistake 152:10 misunderstood 25:22 mitigate 117:15, 127:7, 127:17, 128:3, 129:4, 130:2, 130:3, 130:9 mitigated 118:22, 129:10, 129:13, 129:14 mitigation 113:19, 117:11, 128:2, 128:17, 129:17</p>
--	---	---	---

Transcript of Hearing
 Conducted on January 15, 2020

<p>mix 120:4, 141:21, 155:9, 161:16, 164:20, 165:5, 165:22 mixed 142:21 mixed-use 7:14, 142:16, 162:18, 170:17 model 78:4, 78:13, 79:5, 103:6, 112:7, 113:3 models 70:17, 103:3 moderately 166:2 modern 90:10 modified 21:13 moiz 127:7, 127:18 molly 1:22, 186:3 mom 24:17 moment 18:11, 82:10 moments 107:19 money 39:17 montessori 23:20 montgomery 58:22 month 65:14 months 54:11 morals 155:5 more 7:15, 43:3, 44:14, 45:3, 47:11, 67:13,</p>	<p>72:9, 80:10, 95:19, 101:17, 102:15, 103:11, 106:5, 107:13, 113:12, 113:15, 118:13, 119:20, 129:9, 134:3, 149:13, 159:12, 169:1, 174:13, 174:15, 179:19, 182:14, 183:15, 184:7 morning 5:2, 6:1, 13:21, 14:1 most 12:12, 24:18, 28:13, 34:19, 34:20, 42:21, 54:20, 67:11, 67:14, 70:11, 77:10, 127:16, 171:10 mostly 12:8, 42:11, 61:10, 99:9 motel 53:3, 53:9, 53:10 mother 24:12 move 85:8, 118:13 moved 67:8, 128:12, 128:13 movement 49:20, 50:20 moves 113:13 moving 32:17, 35:15, 36:4, 51:4, 97:3, 106:21, 108:6, 110:7, 181:12 mpa 9:17</p>	<p>mrp 122:5 mst 6:17, 6:20, 7:15, 11:8, 11:21, 12:1, 27:6, 30:11, 115:13, 141:2, 142:10, 142:18, 143:1, 143:14, 143:17, 143:20, 150:1, 152:17, 154:8, 155:7, 156:8, 160:11, 160:20, 161:9, 161:11, 163:10, 164:4, 164:18, 165:22, 166:20, 167:22, 169:3, 172:13, 184:3, 184:4 much 9:3, 24:16, 42:18, 56:5, 58:6, 72:15, 89:5, 90:18, 91:8, 131:7, 179:19, 182:2, 185:3, 185:4 muffle 17:16 multi-story 181:10 multistory 46:1 must 39:4, 39:5, 70:10 must've 8:14 mx 156:6, 161:13 mxd 122:4 myself 60:20, 175:5</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>nai 15:5, 15:8,</p>	<p>15:12 name 14:7, 14:9, 56:7, 56:9, 81:22, 93:3, 93:4, 145:7 nation's 35:18 national 41:18, 181:7, 181:11 natural 61:14, 62:21, 70:19, 96:8, 98:22, 100:7, 107:9, 134:4 nature 42:10, 67:13, 103:21, 149:22, 167:14, 175:14 near 52:8, 116:11, 173:7, 173:9, 178:2, 184:7 nearby 7:19, 160:7, 163:11 necessary 48:9 necessitate 119:13 need 14:18, 16:1, 39:9, 43:3, 60:16, 73:4, 91:6, 128:7, 142:2, 146:10, 150:11, 175:18 needed 47:14 needs 34:17, 48:9, 113:10, 113:14, 152:21, 154:7 negate 117:6 negative 155:10, 161:20,</p>
---	---	---	---

Transcript of Hearing
Conducted on January 15, 2020

<p>161:21, 177:21 neighborhood 33:21, 33:22, 34:11, 34:16, 39:14, 40:8, 40:21, 41:20, 45:5, 48:18, 55:20, 148:9, 148:12, 148:14, 148:16, 148:19, 148:22, 149:3, 149:13, 149:17, 149:19, 149:21, 150:18, 151:10, 151:11, 151:15, 152:1, 152:5, 155:17, 157:4, 160:4, 160:5, 160:6, 175:17 neighborhoods 151:20 neighboring 162:20 neither 186:8 nesting 106:12 network 15:9, 71:14, 140:11, 140:17, 168:8 never 47:6, 59:14, 106:2, 147:16, 179:6 never-ending 43:7 new 6:2, 28:18, 28:19, 32:14, 35:16, 38:18, 46:4, 46:5, 46:7, 57:12, 71:15, 73:6 next 8:1, 52:17, 54:14, 75:22, 83:1, 85:11,</p>	<p>90:11, 101:3, 142:22, 180:21, 181:16 nice 35:12, 39:12, 39:13, 56:5, 180:10, 180:11, 180:12 niche 60:3 nine 32:20 nio 124:6 nma 8:19 nobody 167:17 noise 9:22, 91:13, 91:15, 111:12, 111:17, 111:21, 112:1, 112:4, 112:7, 112:11, 113:2, 113:3, 113:5, 113:16, 113:17, 113:19, 116:12, 117:9, 117:11, 117:22, 118:16, 118:18, 119:1, 122:6, 123:6, 125:3, 125:14, 125:19, 126:6, 126:18, 126:22, 127:5, 127:6, 127:8, 127:9, 127:12, 127:22, 128:1, 128:3, 128:8, 128:9, 128:17, 128:18, 129:4, 129:22, 162:1 noise& 125:16 nonregulated 133:15 nonresidential 141:21</p>	<p>normal 53:21 normally 39:16, 72:10, 96:20, 98:8 north 20:9, 42:7, 45:21, 52:4, 52:7, 53:9, 80:18, 83:6, 86:8, 97:3, 113:6, 125:2, 144:3, 144:4, 146:4, 170:19, 172:7 northern 121:10, 142:20, 148:21, 149:6 northwest 144:4 notary 2:15 note 115:6, 126:2, 181:4 notes 103:19 nothing 14:4, 53:5, 56:14, 82:16, 122:15, 136:4, 144:11, 178:22, 181:19 notice 2:14, 88:18 nowadays 54:6 nowhere 170:21, 171:1 nri 100:21, 100:22 number 8:3, 8:7, 22:16, 23:16, 26:12, 29:3, 30:6, 30:7, 36:18, 36:19, 36:20, 38:11,</p>	<p>40:15, 40:21, 45:20, 56:20, 73:1, 81:6, 81:11, 81:19, 89:14, 94:8, 95:17, 96:5, 96:11, 112:8, 114:7, 120:14, 121:2, 130:3, 130:7, 133:22, 141:12, 148:11, 152:14, 156:19, 157:13, 163:14, 174:17, 174:20, 182:12, 182:15 numbered 80:1, 81:21 numbers 35:21, 81:7, 81:16, 85:9, 85:10, 158:13, 163:21, 170:7 numerous 11:20, 20:2, 65:9 nut 17:18 nvr 36:4</p> <hr/> <p style="text-align: center;">o</p> <hr/> <p>oak 78:21, 99:9, 99:10 oath 87:18 object 135:19 objection 12:13, 12:15, 19:1, 64:15, 64:18 objections 92:22 obsolete 32:12 obtained 138:16</p>
---	--	--	--

Transcript of Hearing
Conducted on January 15, 2020

<p>obviously 72:20, 72:21, 74:11, 176:18</p> <p>occasions 11:20, 20:2</p> <p>occupation 57:1, 57:2</p> <p>occurs 26:10</p> <p>october 7:22, 8:4</p> <p>octogenarian 70:11</p> <p>oden 2:5</p> <p>off-site 86:8</p> <p>offer 17:1, 180:22, 181:16</p> <p>offered 10:17</p> <p>offering 17:5</p> <p>offers 130:7</p> <p>office 1:2, 2:3, 25:9, 25:17, 38:9, 42:12, 48:2, 122:11, 162:10, 181:2, 181:5, 181:7, 181:10</p> <p>offices 3:5, 5:16, 15:10, 44:8, 48:1, 160:15</p> <p>official 88:18</p> <p>oh 8:13, 22:10, 25:14, 26:20, 28:1, 41:4, 51:6, 56:6, 73:7, 81:18, 86:1, 135:10, 136:16, 173:13, 173:22, 174:19,</p>	<p>179:6</p> <p>old 9:3, 20:9, 24:10, 24:16, 27:7, 32:10, 42:1, 45:15, 50:7, 50:8, 51:2, 52:2, 52:3, 52:5, 52:15, 53:14, 64:7, 72:19, 146:6, 150:13, 162:21, 168:19, 181:9</p> <p>older 46:2</p> <p>olive 42:19, 180:2</p> <p>on-site 102:15</p> <p>once 107:4, 176:12, 180:7</p> <p>one 12:18, 20:21, 21:3, 24:3, 28:11, 33:12, 33:15, 35:14, 36:18, 38:5, 38:12, 39:10, 40:21, 41:18, 42:2, 42:21, 45:22, 46:2, 46:21, 47:10, 48:2, 48:14, 49:7, 49:10, 49:16, 50:9, 50:17, 53:2, 54:7, 54:8, 54:9, 54:10, 54:15, 60:2, 64:4, 73:3, 73:4, 73:6, 73:12, 73:17, 82:11, 94:9, 94:15, 101:2, 102:6, 114:9, 114:15, 125:11,</p>	<p>127:4, 131:15, 132:10, 134:15, 135:8, 141:22, 143:11, 143:16, 145:13, 149:2, 149:18, 151:16, 152:14, 152:19, 152:22, 153:9, 156:16, 156:20, 161:1, 168:4, 168:5, 171:7, 174:13, 174:15, 175:7, 175:15, 175:20, 176:11, 177:10, 178:7, 178:19, 178:21, 179:20, 181:14, 182:14</p> <p>one's 173:15</p> <p>ones 86:3, 163:15</p> <p>online 177:4, 177:12, 183:4</p> <p>only 8:12, 38:19, 38:20, 39:20, 54:1, 67:4, 77:7, 108:18, 108:19, 117:16, 125:13, 128:21, 130:17, 131:20, 132:7, 135:15, 136:7, 150:1, 152:18, 156:20, 167:22, 168:3, 168:10, 168:17, 175:18</p> <p>open 12:19, 30:13, 35:16, 118:8, 118:20, 129:11, 129:14, 158:14, 163:19, 182:11</p> <p>opening 4:3</p> <p>operate 140:11</p>	<p>operations 54:1, 180:19</p> <p>opinion 70:8, 140:16, 140:20, 151:8, 151:9, 171:19</p> <p>opinions 122:2</p> <p>opportunities 162:14, 162:16</p> <p>opportunity 34:1, 134:10, 162:11</p> <p>opposed 142:18</p> <p>opposite 113:4, 143:5</p> <p>opposition 5:12</p> <p>optimum 141:16, 141:19</p> <p>option 121:8</p> <p>options 121:2, 121:5, 121:6, 121:7</p> <p>order 106:14, 118:5, 120:4, 159:4, 184:2</p> <p>ordinance 140:22, 153:22, 154:10, 155:3, 156:5, 161:9</p> <p>organizations 15:6</p> <p>originally 26:5, 27:10</p> <p>osborn 51:21</p> <p>osborne 51:3</p> <p>other 15:5, 15:17, 16:11, 16:16, 33:4, 41:22, 42:3, 44:17, 45:11, 54:22,</p>
--	--	--	---

Transcript of Hearing
Conducted on January 15, 2020

<p>57:21, 66:21, 68:8, 78:21, 89:2, 96:2, 99:19, 107:9, 116:3, 117:2, 117:13, 118:11, 119:20, 119:22, 121:17, 125:2, 125:11, 136:7, 142:9, 142:10, 142:16, 143:20, 147:13, 166:5, 170:20, 171:8, 174:9, 174:22, 175:8, 175:13, 176:17, 177:22</p> <p>others 12:8, 136:11</p> <p>otherwise 186:10</p> <p>out 9:3, 24:19, 24:22, 35:9, 35:11, 41:2, 43:1, 46:21, 49:16, 54:5, 54:12, 55:18, 58:5, 58:15, 61:1, 63:11, 65:15, 65:20, 66:22, 67:2, 74:6, 79:7, 82:2, 97:12, 98:17, 98:18, 108:8, 116:21, 117:21, 120:22, 151:13, 152:2, 157:2, 175:2, 177:14, 177:15, 181:12, 181:13, 182:18, 184:12</p> <p>outcome 186:11</p> <p>outfalls 131:22</p> <p>outgrown 32:16</p> <p>outlined 133:16</p>	<p>outside 53:12, 53:13, 54:2, 72:11</p> <p>over 6:1, 6:14, 8:20, 9:2, 9:7, 10:18, 13:17, 16:21, 20:10, 23:9, 24:2, 25:10, 30:18, 34:12, 36:8, 36:9, 46:14, 52:22, 58:20, 62:20, 65:12, 146:3, 152:4, 165:12, 178:7</p> <p>overall 107:5</p> <p>overland 67:9</p> <p>overlay 109:17, 111:14, 123:1, 169:20</p> <p>overlooking 97:12</p> <p>own 6:8, 32:8, 181:8</p> <p>owned 6:14, 23:4, 23:17, 24:19, 24:21, 26:22, 143:9, 143:14, 144:20</p> <p>owners 31:18, 32:5</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>pa 145:10</p> <p>pad 28:11, 38:20, 39:12, 40:6, 40:7, 42:15, 44:14, 97:21, 97:22</p> <p>pads 39:13</p>	<p>page 4:2, 28:5, 69:5, 69:19, 69:20, 70:3, 70:20, 71:11, 75:1, 75:22, 77:2, 78:9, 79:17, 79:19, 81:19, 83:8, 83:10, 83:12, 84:5, 84:15, 85:9, 85:12, 86:20, 101:8, 101:19, 103:19, 104:4, 126:13, 126:15, 141:8, 154:15, 154:22, 164:13, 170:11, 174:15, 174:20</p> <p>pages 1:21, 79:22, 81:12, 81:13, 83:2, 83:10, 85:11, 88:16, 88:17</p> <p>paint 105:12</p> <p>pane 128:6, 128:7</p> <p>paragraph 69:9, 75:22, 79:16, 84:5, 86:20, 104:1, 142:20</p> <p>parallel 113:1, 115:5, 121:12, 127:10</p> <p>parallels 112:21</p> <p>paramount 105:18</p> <p>parcel 32:20, 95:3, 97:10</p> <p>parcels 95:3, 115:10</p> <p>pardon 52:10, 159:8</p>	<p>park 6:17, 6:21, 7:5, 10:5, 11:7, 12:3, 12:4, 27:10, 33:1, 48:2, 110:11, 110:19, 111:16, 112:6, 138:14, 149:5, 176:6</p> <p>park-and-ride 142:8</p> <p>parked 46:17</p> <p>parking 27:8, 30:3, 130:5</p> <p>parkland 33:2</p> <p>parkside 35:9</p> <p>parkway 14:10, 36:3</p> <p>part 22:13, 26:2, 27:13, 28:16, 32:20, 32:21, 35:6, 36:14, 39:20, 55:13, 65:7, 98:1, 103:5, 113:2, 121:3, 128:12, 128:13, 137:17, 137:22, 138:11, 140:13, 146:20, 147:4, 153:9, 153:10, 163:6, 163:17, 163:22, 165:11, 171:2, 177:16</p> <p>partial 95:13</p> <p>partially 32:12</p> <p>participated 122:3</p> <p>particular 23:17, 44:22, 84:19, 178:20</p>
---	--	---	--

Transcript of Hearing
 Conducted on January 15, 2020

<p>particularly 137:13, 169:9 parties 186:9 passersby 155:17 past 15:8, 36:22, 48:6, 92:18, 95:16, 137:17, 137:19, 137:22 pasture 96:18 pattern 98:9, 103:22, 148:5 patterns 95:10, 109:20, 111:15 pearl 54:2, 55:7, 150:10 pecosins 107:7 penalties 14:3, 82:14, 136:2, 144:10 pennsylvania 8:2, 10:2, 26:1, 29:11, 30:21, 31:8, 42:7, 46:18, 48:19, 48:22, 49:4, 49:21, 50:10, 86:10, 86:12, 95:5, 95:13, 97:12, 98:7, 98:15, 99:12, 99:16, 108:4, 108:8, 108:11, 112:1, 112:3, 112:14, 113:3, 113:5, 115:3, 115:5, 117:11, 117:18, 121:13, 121:14, 123:6, 127:9, 128:19, 139:16,</p>	<p>146:5, 148:20, 153:16, 153:17, 162:18, 165:9, 165:16, 169:12, 169:14 people 8:17, 13:8, 34:21, 35:4, 35:22, 43:1, 44:19, 55:3, 55:19, 55:22, 70:11, 124:11, 181:19 people's 3:10, 5:18 pepco 32:10, 149:10 percent 106:18, 110:5, 132:6, 132:7, 180:16, 180:18 percentage 132:6 perhaps 114:14 perjury 14:3, 82:14, 136:2, 144:10 permit 63:8 permits 62:17, 63:3 perpendicular 113:4, 127:14 person 31:15 personal 32:9, 37:22, 71:6, 72:20 personally 76:21 perspective 149:3, 150:12 pertain 15:18, 137:10, 171:20 petitioner 3:2</p>	<p>pg 10:7, 66:11, 70:8, 72:16, 76:2, 76:3, 76:5, 76:22, 77:6, 78:5, 78:16, 79:4, 79:9, 79:13, 91:3, 102:18, 102:19, 107:20, 133:1 ph 32:22 phase 101:4, 113:15, 113:16, 128:2, 154:7 phenomenon 41:18 phone 2:8, 44:8 photo 103:17 photograph 75:17 photographs 65:8, 65:10, 66:1, 71:7, 77:8, 81:2, 83:11, 83:13, 98:2, 99:20, 104:2 photos 102:21 phrase 171:1 physical 86:15 pick 37:4 picked 149:17 picking 35:13 picks 149:7 pictures 65:13, 66:5,</p>	<p>66:9, 81:17 piece 167:8 piggyback 127:3 pike 20:10, 28:7, 28:13, 31:9, 45:15, 45:17, 46:3, 46:5, 49:19, 50:8, 51:2, 51:8, 52:2, 52:3, 52:5, 52:16, 95:6, 95:13, 97:14, 97:16, 106:22, 108:9, 132:8, 142:12, 143:4, 143:8, 146:6, 150:14, 162:21, 168:19 pine 98:6 pits 74:13 place 30:17, 43:5, 50:4, 121:22, 131:22, 132:1, 133:19, 152:18, 153:8, 180:10, 180:11, 180:12 placed 103:16, 147:9, 153:11 places 26:9 plane 124:21, 125:21 planes 125:16, 125:19 planned 45:13, 114:1, 165:8 planner 11:19, 61:8, 110:16, 171:18 planning 6:18, 6:22,</p>
---	--	---	---

Transcript of Hearing
Conducted on January 15, 2020

<p>7:6, 10:5, 11:7, 12:3, 24:2, 27:13, 29:21, 30:4, 33:1, 57:18, 92:14, 110:11, 110:20, 111:16, 112:6, 113:2, 138:15, 155:8, 160:15, 161:15 planning's 12:5 plans 24:2, 93:17, 95:17, 107:10, 109:4, 109:6, 116:10, 127:22, 133:2, 145:12 planted 96:19, 98:4, 99:14 plants 7:19, 32:13 playground 118:21 plaza 32:4 please 5:21, 14:7, 14:20, 56:8, 82:8, 93:2, 145:7 pleasure 174:4 plotted 114:2 pma 69:18, 108:17, 108:18, 108:22 point 24:19, 28:19, 32:2, 40:17, 41:2, 47:16, 74:6, 79:14, 125:21, 134:21, 151:13, 158:16 pointed 175:1</p>	<p>pointing 75:12, 112:16 points 49:15 police 32:4, 32:7 policies 71:16 policy 7:2 pop 34:16 popular 68:7 populated 112:12 portion 23:6, 25:5, 66:16, 74:14, 108:6, 110:2 portions 9:10, 182:16 position 67:14, 75:8, 136:15, 142:13 positive 15:15, 15:16, 155:10, 161:17 post 37:13, 38:18, 99:16 potential 118:17, 126:7, 126:17, 142:7, 166:17, 167:2 potentially 117:17 power 32:13, 34:13, 35:3, 42:8, 42:10, 42:13, 43:14, 43:16, 44:2, 45:6, 45:7, 168:22, 175:3, 175:13, 175:21 practicable 116:22</p>	<p>practical 117:8, 162:2, 167:7 practices 113:19, 117:4 pre 110:12 pre-leasing 175:15 pre-pennsylvania 99:17 precipitation 67:6 preliminary 143:10 premise 7:7 preparation 96:8, 109:12, 122:3 preparatory 62:16 prepare 65:1, 93:16, 101:2, 109:3, 111:3, 137:3, 137:16, 137:21, 138:6, 138:8 prepared 10:21, 78:2, 78:3, 94:5, 100:8, 100:21, 109:5, 109:6, 111:2, 120:17, 134:5, 140:3, 140:6 prerequisite 6:19 present 155:6 presented 121:5, 172:1 presenting 101:17, 134:3, 149:16 preservation 71:12 president 8:19</p>	<p>presidential 31:19, 46:16 pretty 79:1 prevent 68:3 previous 96:12, 96:17, 96:19, 99:10, 108:13, 146:2, 183:14 previously 9:18, 23:4, 25:6, 58:7, 59:10, 96:21, 97:22, 98:20, 102:3, 161:18 price 179:9 prices 36:6, 179:1 primary 69:17, 108:17 prince 1:1, 2:3, 3:8, 6:6, 10:16, 15:1, 32:15, 35:6, 37:14, 38:12, 55:16, 58:21, 59:6, 61:5, 66:15, 69:11, 70:10, 70:12, 78:5, 87:3, 96:5, 136:8, 147:4, 166:12, 167:9, 168:7, 170:18 principal 151:20 print 157:16, 159:18, 183:8 printed 157:16, 183:2 printout 76:5 prints 116:10</p>
---	--	---	---

Transcript of Hearing
Conducted on January 15, 2020

<p>prior 59:14, 63:14, 137:9, 137:16, 137:21, 147:16, 149:18, 172:1</p> <p>pristine 98:22</p> <p>private 166:17</p> <p>probably 58:19, 60:2, 62:20, 74:19, 79:14, 79:15, 80:7, 110:4, 127:20, 143:16, 158:2, 159:12, 162:2, 166:4, 180:16, 184:6</p> <p>problem 24:11</p> <p>problems 119:16, 139:8, 180:21, 183:15</p> <p>proceedings 18:13, 186:5</p> <p>process 27:14, 28:9, 32:18, 32:19, 33:11, 44:10, 71:15, 102:3, 110:13, 113:14, 113:21, 134:14, 143:10, 163:7</p> <p>processes 19:14, 19:15</p> <p>production 180:5</p> <p>profession 56:22</p> <p>professional 14:21, 15:5, 59:10, 60:5, 63:21, 93:9, 114:19, 116:8</p> <p>proffered 11:6</p> <p>profit 180:19</p>	<p>profound 175:16</p> <p>program 15:6, 18:10, 79:13</p> <p>programs 53:7</p> <p>progressed 147:12</p> <p>prohibit 122:15</p> <p>prohibits 121:20</p> <p>project 31:16, 32:21, 33:10, 34:3, 34:7, 36:2, 36:3, 42:21, 44:11, 45:22, 113:13, 137:14, 137:17, 137:22, 140:18, 143:3, 175:19, 176:20</p> <p>projects 15:14, 16:21, 32:9, 33:6, 37:1, 125:11</p> <p>promise 182:2</p> <p>promote 141:15, 141:19, 155:4</p> <p>pronounce 5:7</p> <p>proper 162:6</p> <p>properties 6:6, 10:18, 26:6, 31:5, 33:4, 45:11, 45:14, 47:5, 58:8, 58:12, 58:20, 113:6, 115:8, 116:2, 142:10, 147:11, 147:13, 148:3, 148:6</p> <p>property's 155:11, 161:18</p>	<p>proposal 22:9</p> <p>proposals 115:9</p> <p>propose 59:16</p> <p>proposed 7:1, 7:14, 11:5, 22:16, 22:19, 22:22, 47:11, 68:14, 120:16, 122:8, 125:5, 139:13, 139:15, 139:17, 139:20, 140:8, 150:2, 164:16</p> <p>proposing 41:12, 44:11</p> <p>prospect 55:3</p> <p>protect 155:4</p> <p>protective 68:7</p> <p>prove 39:7, 176:9</p> <p>proved 39:2, 42:3</p> <p>proven 162:4</p> <p>proves 42:22</p> <p>provide 29:15, 30:15, 47:19, 155:17, 156:1, 160:6, 162:11, 162:17, 164:19, 165:2, 168:18, 183:17</p> <p>provided 40:2, 85:21, 100:11, 102:16, 124:22</p> <p>provides 47:22, 48:9, 117:19, 124:10, 150:15, 162:13, 162:19, 167:19,</p>	<p>169:1</p> <p>providing 55:17</p> <p>provisions 153:21</p> <p>proximity 46:18, 141:22, 142:16, 155:19, 156:18, 161:1, 161:22, 167:18</p> <p>pt 70:22</p> <p>public 2:15, 37:12, 37:13, 118:8, 118:20, 119:1, 125:8, 129:11, 134:13, 155:14, 155:15, 166:17, 166:22, 167:10</p> <p>public's 119:4</p> <p>publicly 79:12</p> <p>pull 49:2, 49:14</p> <p>pulled 86:4</p> <p>purchased 6:10</p> <p>purpose 63:10, 156:5, 159:7, 161:8, 165:22, 166:20</p> <p>purposes 7:2, 10:13, 98:5, 138:21, 150:17, 154:1, 154:2, 155:2, 169:3</p> <p>pursuant 2:14</p> <p>pushes 118:15</p> <p>pushing 36:5, 36:8, 36:9</p> <p>put 12:17, 32:20,</p>
---	---	--	---

Transcript of Hearing
Conducted on January 15, 2020

<p>68:4, 80:1, 145:14, 163:6, 167:15 putting 72:22, 88:20, 182:4</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>quadrant 143:5 qualifications 136:13 qualified 16:15, 18:14, 18:16, 59:11, 59:14, 60:17, 63:13, 92:9, 136:6, 136:7 qualifies 19:3 qualify 62:7 quality 43:1, 54:15, 54:17, 179:17 question 12:16, 91:14, 100:4, 123:22, 124:1, 124:8, 127:4, 132:14, 134:8, 144:14, 147:6, 147:7, 160:2, 173:4, 173:6 questions 13:10, 17:4, 18:3, 47:11, 48:12, 48:15, 74:22, 76:1, 82:19, 89:2, 91:20, 92:21, 95:19, 122:21, 141:5, 157:10, 172:22, 173:1, 174:5, 183:14, 183:16 quick 18:3, 132:5</p>	<p>quickly 35:10, 84:10 quite 12:7, 110:12, 176:4 quote 7:15, 7:20, 7:21, 131:17, 170:15</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>ra 27:6, 27:10 rail 142:7 rain 58:17, 67:5, 99:4, 99:5 raining 58:16 ramps 50:1, 140:2 range 162:14 rated 161:3 rather 38:18, 111:4 rationalize 167:11 razed 32:13 read 84:2, 106:2, 106:4, 165:2, 171:12 readily 76:22 reading 101:18, 126:13, 132:19 real 14:22, 15:9, 15:19, 16:3, 16:20, 17:2, 17:6, 18:13, 18:20, 19:6, 19:13, 30:16,</p>	<p>38:3, 45:4, 133:18, 176:22 realign 140:1 realistic 149:3. really 15:18, 25:17, 35:8, 35:11, 36:7, 36:10, 51:11, 55:2, 103:15, 105:7, 121:7, 131:19, 132:6, 148:3, 148:7, 158:2, 171:2, 173:14, 175:12, 175:20, 177:2, 177:15, 178:4, 185:1 realtor 15:3 reason 34:18, 44:21, 119:9, 144:2, 149:12, 149:20, 160:8 reasonably 153:7, 153:11 reasoning 147:17 reasons 72:3, 151:6, 168:4 rebuild 140:2 recall 38:14, 60:17 received 10:7, 151:3 recent 77:10 recess 43:6, 43:9, 135:21 recognize 76:17, 105:5 recognized 18:21</p>	<p>recommend 130:20 recommendations 7:12, 12:4, 121:8, 157:21 recommended 167:13 recommends 6:22 reconstructed 139:20 reconstruction 140:8 record 5:14, 5:15, 12:18, 14:8, 22:4, 22:14, 24:9, 26:12, 30:13, 41:2, 65:4, 80:5, 88:14, 88:21, 89:7, 89:10, 92:2, 93:11, 93:18, 99:19, 132:20, 145:15, 158:14, 158:18, 159:1, 174:1, 182:11, 186:4 recorded 90:7, 186:5 recording 185:5, 186:7 recordings 17:16 recreational 118:7 red 53:1, 78:21, 79:1, 99:9 redevelop 139:22 reduce 119:21, 141:20, 165:6, 165:15, 165:17 refer 65:16, 65:17, 76:11, 78:1,</p>
--	---	---	---

Transcript of Hearing
Conducted on January 15, 2020

<p>81:19, 170:13 reference 10:13, 12:10, 14:22, 41:3, 43:16, 70:6, 101:7, 102:17, 109:13, 137:13, 146:16, 158:12, 170:10 referenced 95:4 referring 14:17, 79:16, 80:6 refers 66:14, 66:15, 69:4, 167:21 refiled 12:7 refined 113:15 reforestation 98:5 regard 106:5 regarding 7:9, 106:6, 111:3 regards 18:7, 75:22, 86:19, 96:6, 123:2 regional 146:20, 168:1, 170:20 registered 9:16 regular 107:12, 108:21 regularly 66:19 regulated 10:22, 61:14, 66:12, 67:2, 67:3, 69:13, 69:15, 70:19, 70:21, 71:1, 71:3, 71:13,</p>	<p>71:17, 75:10, 76:3, 76:9, 77:5, 77:9, 77:21, 78:16, 79:5, 80:8, 84:16, 85:3, 86:6, 87:2, 87:9, 88:13, 89:11, 96:2, 100:5, 100:13, 101:12, 101:20, 102:2, 102:4, 104:16, 104:18, 104:22, 105:2, 105:12, 105:15, 105:19, 108:18, 108:20, 108:22, 130:12, 131:1, 131:2, 132:3, 132:9, 132:15, 132:22 regulation 84:14, 115:15 regulations 9:22, 10:1, 10:14, 59:3, 96:6, 100:12, 116:13, 118:19, 145:3 regulators 61:10 reinforced 98:11 relate 109:21, 160:4 related 84:8, 100:16, 105:9, 106:9, 111:7, 123:2, 186:8 relates 7:11, 87:20, 124:4, 171:7, 171:8 relating 160:20 relations 100:22</p>	<p>relationship 31:2, 55:5, 150:1, 150:5, 168:20 releasing 150:11 relevant 104:11, 104:12, 105:8 reliance 63:7 rely 70:15, 158:10, 163:15 remaining 35:19 remains 95:15, 120:18 rendering 84:19 renderings 25:16 rent 49:7 rep 50:3 repeat 133:6 repeated 157:15 report 12:18, 61:13, 69:7, 69:8, 75:2, 84:5, 100:4, 100:6, 101:9, 102:17, 107:16, 137:7, 137:22, 139:3, 139:5, 141:4, 141:8, 145:14, 148:2, 151:3, 154:4, 157:14, 157:15, 158:22, 159:2, 159:10, 159:11, 159:18, 169:5, 170:11, 170:12, 174:16, 184:13, 184:17,</p>	<p>184:18 report's 157:21 reports 60:8, 62:11, 62:22, 160:15 represent 19:7, 79:6 represented 19:11, 19:19, 32:5, 32:22, 37:9, 169:5, 170:8 representing 6:2 request 5:12, 6:15, 140:21, 141:1, 155:7, 157:9, 160:10 requested 68:13 require 117:15, 129:7, 129:13, 153:22 required 18:21, 117:12, 138:19, 163:5 requirement 6:19, 46:19, 115:6, 116:6, 116:18, 117:19, 122:5, 124:10, 171:6, 171:13 requirements 9:21, 11:21, 11:22, 117:9, 119:19, 122:6, 124:16, 126:5, 140:22, 154:8, 160:13 requires 112:2, 113:22, 129:16 rereading 159:16 research 10:5, 106:14</p>
--	--	--	--

Transcript of Hearing
Conducted on January 15, 2020

<p>resell 25:2</p> <p>residence 54:15</p> <p>residential 7:7, 27:7, 46:6, 46:11, 115:19, 118:6, 118:12, 141:21, 147:10, 162:10, 162:20, 164:20, 165:20, 166:1, 166:5, 168:11, 168:18</p> <p>residents 117:20, 164:22</p> <p>resource 62:21, 69:11, 70:19, 71:19, 87:4, 87:20, 88:8, 96:8, 100:7, 107:10, 134:4, 167:8, 167:9, 182:20</p> <p>respect 139:8</p> <p>respond 154:10, 154:12, 155:10, 161:17, 169:6</p> <p>responded 169:7</p> <p>response 12:21, 165:1, 165:3, 169:2</p> <p>responses 157:16, 157:21, 159:10, 159:13, 159:19</p> <p>responsible 28:10</p> <p>rest 35:19, 110:7</p> <p>restaurant 34:10, 37:6, 37:8, 38:20, 39:12, 40:7, 40:10, 44:14,</p>	<p>48:4, 52:16, 155:21, 176:6, 178:2, 179:13, 180:2, 180:7</p> <p>restaurateur 38:15</p> <p>restaurateurs 34:19</p> <p>restaurants 34:15, 37:10, 37:15, 38:22, 39:4, 42:17, 43:1, 44:5, 44:6, 48:3, 52:19, 54:14, 55:17, 176:8, 179:13, 179:16, 179:17, 179:21, 180:1, 180:4</p> <p>restaurateur 34:10</p> <p>restoration 71:13</p> <p>restraints 123:1</p> <p>restricted 151:22</p> <p>restriction 115:7</p> <p>restrictions 127:1</p> <p>result 11:16</p> <p>resulting 7:14</p> <p>resume 14:12, 15:20, 59:10, 92:1</p> <p>resumes 12:8, 93:11</p> <p>retail 34:13, 40:22, 44:17, 45:13, 48:18, 48:21, 122:9, 162:10, 166:1, 175:7, 177:1</p> <p>retailers 48:15, 177:5</p>	<p>retailing 49:11</p> <p>return 166:22</p> <p>revenue 164:21, 180:17</p> <p>review 71:15, 108:2, 110:18, 139:1, 163:7, 163:8, 163:10</p> <p>reviewed 9:20, 10:18, 87:22, 96:3, 139:2</p> <p>reviewing 100:9</p> <p>revised 138:10</p> <p>revision 138:11</p> <p>rewrite 182:4, 184:1</p> <p>rezone 6:20, 27:5, 160:10, 184:3</p> <p>rezoned 30:9, 32:18, 142:18, 147:14, 163:22</p> <p>rezoning 1:8, 8:1, 11:5, 11:8, 11:12, 12:1, 94:10, 101:4, 106:20, 109:7, 109:12, 109:17, 110:22, 111:19, 112:15, 112:18, 124:18, 126:9, 133:1, 138:21, 153:22, 162:15, 164:18, 165:3, 184:7</p> <p>richie's 180:2</p> <p>ridership 168:5</p> <p>ridgeline 97:9, 108:13</p>	<p>right 8:1, 8:7, 8:8, 17:14, 17:22, 19:20, 21:8, 24:6, 26:4, 28:2, 29:8, 29:19, 35:9, 35:15, 36:2, 38:6, 41:5, 41:7, 41:9, 41:10, 44:12, 44:19, 49:3, 49:4, 49:6, 49:8, 49:9, 49:11, 49:13, 49:17, 49:20, 49:21, 50:4, 50:14, 50:15, 50:16, 50:18, 51:2, 51:7, 52:11, 53:12, 53:13, 54:14, 55:6, 55:12, 55:13, 58:5, 60:10, 75:13, 75:20, 77:4, 78:12, 83:15, 84:4, 84:18, 85:6, 86:19, 88:6, 88:22, 91:4, 97:9, 102:7, 106:22, 114:22, 120:18, 123:7, 124:2, 124:7, 127:2, 127:15, 127:19, 131:4, 131:6, 135:4, 142:11, 142:19, 142:22, 144:7, 150:13, 166:6, 170:6, 173:15, 173:20, 174:17, 178:16, 179:18, 180:10, 182:7</p> <p>right-of-way 112:10, 115:3, 115:4, 121:11,</p>
--	--	---	---

Transcript of Hearing
Conducted on January 15, 2020

<p>149:10, 149:11 ritchie 42:19, 44:20 road 24:10, 28:6, 29:8, 32:8, 33:18, 34:2, 43:17, 44:1, 46:4, 48:6, 48:20, 50:11, 51:13, 51:20, 51:21, 52:5, 52:6, 53:13, 53:14, 95:6, 108:7, 116:7, 131:21, 143:4, 146:8, 148:17, 149:5, 149:7, 149:8, 149:9, 150:3, 150:8, 150:9, 152:2, 153:17, 153:20, 168:15, 169:12, 176:4 roads 74:13, 117:1, 117:6, 118:2, 119:12 roadway 67:15, 74:16, 114:1, 115:21, 120:5, 140:17, 151:19, 155:13, 155:19, 161:3 roadways 112:3, 115:16, 116:3, 116:4, 120:2 robust 36:11 roll 23:9 roof 53:1 rooftops 34:21 room 2:6, 28:11,</p>	<p>53:20 rooms 122:11 ross 38:19 roughly 95:7, 116:20 route 20:9, 47:17, 52:6, 52:7, 67:15, 67:20, 72:18, 72:22, 74:20, 77:15, 80:7, 80:11, 80:14, 80:15, 83:6, 111:9, 112:22, 113:2, 116:13, 139:16, 139:18, 146:5, 146:9, 150:13, 152:1, 153:16 rows 37:9 royal 27:14, 28:7, 28:12, 28:21, 41:9, 41:12, 47:13, 173:7, 177:21, 180:21, 181:16 rr 6:17, 8:1, 46:15, 47:5, 115:13, 116:15, 116:16, 116:18, 119:6, 130:14, 146:17, 146:18, 147:9, 147:18, 148:6, 160:11, 162:4, 171:20, 182:5, 182:6 rt 172:10 rtc 18:18 rule 36:18, 36:19, 36:20, 104:7,</p>	<p>115:20 ruled 151:18, 152:4 rules 59:3, 100:22 run 86:10, 113:4, 113:6, 121:11, 157:19 running 97:16, 100:2, 127:8, 127:10, 127:13 runs 67:4, 115:3 runway 125:22, 145:5 runways 125:1 rural 27:6, 46:16, 172:13 russ 21:1 russell 3:4, 5:17 ryan 4:6, 9:16, 20:16, 78:3, 82:11, 93:4, 144:14, 163:1</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>sadly 25:1 safe 117:7 safely 140:17 safety 11:13, 117:19, 117:20, 119:1, 119:4, 124:19, 125:1, 125:6, 125:8, 125:10, 126:21, 155:4 said 43:13, 53:12,</p>	<p>69:22, 70:1, 70:4, 80:9, 88:10, 88:17, 127:9, 131:12, 147:19, 159:10, 165:16, 176:5, 186:5 sale 38:20 salon 34:9, 44:7 same 27:19, 57:4, 64:1, 75:21, 101:15, 124:4, 141:14, 159:4, 163:15, 176:19 sanctuary 122:12 sandra 1:5, 5:8 sanitary 120:19, 120:21, 121:15 satisfy 140:21 saucers 53:17 saulsberry 57:17 save 65:12 saw 26:6, 66:4, 67:6, 73:5, 73:8, 98:5, 98:16 say 17:9, 17:12, 44:3, 50:5, 50:22, 52:8, 58:2, 64:21, 70:9, 70:10, 70:12, 73:19, 76:10, 81:6, 105:21, 108:5, 110:4, 121:10, 135:10, 142:20,</p>
---	---	---	--

Transcript of Hearing
Conducted on January 15, 2020

<p>162:3, 184:11 saying 63:21, 70:5, 83:16, 85:2, 85:4, 105:7, 105:8, 130:20, 134:12, 141:18, 142:2, 142:14, 142:22, 158:8 says 71:16, 76:2, 77:11, 105:17, 105:18, 141:19, 152:18, 170:13, 171:6, 174:21 scale 53:3, 175:20 scenarios 140:12 scheduled 169:9 schematic 116:21 school 15:7, 18:8, 23:20, 57:17, 58:5, 117:1 scope 138:16 scoping 138:14, 138:19 scouring 67:7 screen 78:7 season 66:20 seats 122:13 second 9:7, 21:1, 24:4, 79:16, 81:11, 89:8, 96:14, 97:10, 102:7, 153:9, 154:6, 156:3, 161:4 section 36:2, 41:9,</p>	<p>61:4, 71:2, 111:3, 113:22, 152:16, 155:3, 156:6, 165:1, 166:15, 169:2 sectional 126:12, 147:20, 147:22 sections 35:16 sector 4:11, 21:9, 23:3, 170:14 security 54:8, 54:10 see 19:1, 21:2, 34:14, 35:20, 42:1, 47:8, 58:16, 60:11, 74:9, 75:17, 77:5, 77:20, 84:12, 91:17, 97:20, 98:17, 98:18, 112:15, 118:1, 118:2, 136:7, 143:19, 148:22, 149:1, 168:13, 178:9, 180:20, 181:20 seeing 33:6, 33:13 seek 62:7 seem 65:7, 70:5, 142:17, 151:6, 169:21 seems 68:6, 149:18 seen 25:16, 76:21, 77:7, 83:15, 83:22, 84:2, 87:5, 87:13, 87:18, 87:19, 94:13, 96:21, 125:11</p>	<p>select 148:3 selective 20:3 sell 178:5 selling 19:16, 31:14 send 183:11 senior 8:18, 45:21 sense 31:20, 75:11, 162:13 sensitive 54:7, 106:11 sent 90:7 sentence 106:1 separate 111:22, 130:6 separated 158:16, 159:3 september 57:13 series 65:8, 65:22, 68:1, 80:19 serve 122:1, 128:17, 142:9 served 15:12, 121:21 serves 44:18 service 32:12, 33:20, 37:13, 45:5, 47:19, 49:17, 53:15, 54:17, 110:8, 122:7, 138:22, 156:1 service-oriented 45:3 serviceable 121:4</p>	<p>services 10:20, 18:22, 34:19, 35:4, 36:12, 47:22, 55:17, 150:12, 150:15, 183:1 servicing 180:15 set 59:4, 64:10, 72:4, 140:22, 152:16, 154:8 setback 122:5, 129:21, 129:22 several 15:12, 49:15 severely 133:3 sewer 120:14, 120:18, 120:19, 120:20, 120:21, 121:1, 121:9, 121:15, 121:17, 122:6, 155:16 sha 112:12 shall 105:17, 136:3, 144:10, 152:18 shallow 67:11, 120:21 share 23:9 sheet 12:17, 148:14 shield 118:22 shopper 175:5 shoppers 44:4, 175:9, 175:10, 175:11 shopping 44:22, 45:6, 45:8, 122:10, 177:13, 177:16</p>
--	--	---	---

Transcript of Hearing
 Conducted on January 15, 2020

<p>short 38:22, 50:11, 135:17 should 15:17, 21:22, 38:16, 97:17, 126:2, 150:22, 151:7, 167:10, 167:22 shouldn't 89:18 show 7:13, 11:7, 20:17, 21:21, 26:11, 78:9, 81:2, 83:3, 84:13, 86:3, 88:9, 97:6, 99:20, 114:5, 114:20, 148:17, 174:16 showed 165:9 showing 22:15, 76:14, 111:20, 120:13 shown 25:8, 95:18, 108:4, 112:1, 126:8, 132:22 shows 41:12, 45:21, 72:15, 77:13, 78:6, 87:8, 121:18 siberholz 4:8, 11:17, 11:18, 12:3, 144:9, 144:12, 145:6, 145:8, 145:18, 145:21, 146:1, 146:13, 146:18, 146:22, 147:3, 147:9, 147:18, 148:13, 148:16, 150:16, 150:19, 151:1, 151:12, 153:1,</p>	<p>154:5, 154:12, 154:15, 154:19, 154:22, 156:14, 156:17, 156:22, 157:5, 157:7, 157:18, 158:7, 158:9, 158:21, 159:6, 159:9, 159:20, 160:3, 163:12, 164:12, 164:14, 164:16, 166:7, 166:10, 166:14, 167:5, 170:1, 170:4, 170:7, 171:3, 171:10, 171:14, 171:17, 171:22, 172:5, 172:9, 172:14, 172:18, 174:2, 174:3 siberholz's 12:20, 151:21, 158:11 side 20:9, 20:10, 29:7, 29:10, 29:12, 36:15, 36:19, 42:7, 43:16, 45:15, 45:16, 47:17, 48:16, 51:5, 51:19, 51:21, 52:2, 52:4, 52:6, 52:7, 108:2, 111:8, 121:10, 121:17, 143:3, 143:4, 152:1, 152:2, 162:20, 166:8, 181:9 sided 110:21 sides 41:16, 61:1, 98:17 sidewalks 165:17, 166:9, 166:11</p>	<p>sign 181:21 signal 49:19 signalized 28:13, 36:21, 49:8, 143:5 signature-b7fzp 186:13 signed 9:2, 158:4 significance 107:9 significant 67:7, 79:1 silver 145:8, 152:13 similar 44:11, 46:12, 48:8 simply 10:6, 21:2, 78:18 since 16:8, 57:14, 58:3, 70:12, 74:19, 82:4, 125:16, 162:5 single 47:21, 115:17, 165:13, 167:13, 168:10 single-family 36:9, 46:6, 97:4, 99:21, 108:14, 116:15, 120:5 sir 16:18, 19:11, 20:1, 20:7, 20:12, 20:15, 21:12, 21:14, 21:17, 22:20, 23:6, 29:3, 29:9, 30:19, 39:22, 40:20, 41:14, 42:9, 43:21, 47:15,</p>	<p>48:11, 49:1, 51:22, 61:21, 62:2, 62:15, 63:15, 82:6, 86:14, 93:10, 93:16, 100:19, 101:10, 122:19, 122:20, 123:4, 123:8, 145:21, 147:6, 147:18, 151:12, 154:5, 156:22, 157:5, 157:7, 157:18, 171:14, 172:9, 172:14 sit 179:17 site 7:8, 7:10, 9:5, 9:11, 9:20, 9:21, 10:2, 10:3, 10:4, 10:21, 11:1, 19:22, 20:1, 23:7, 25:9, 25:13, 27:12, 28:12, 28:15, 30:2, 39:20, 40:3, 40:5, 40:6, 40:8, 40:9, 41:19, 42:6, 45:1, 45:2, 58:9, 64:22, 65:8, 65:20, 66:22, 69:13, 71:2, 72:15, 72:16, 72:20, 75:9, 77:16, 80:12, 84:8, 84:13, 91:16, 95:9, 95:11, 95:12, 95:15, 96:1, 96:4, 96:10, 96:12, 97:3, 97:17, 98:3, 98:8, 99:4, 100:3, 101:13,</p>
--	---	--	---

Transcript of Hearing
Conducted on January 15, 2020

<p>103:9, 105:9, 106:5, 106:13, 106:21, 107:5, 108:6, 109:3, 109:6, 117:2, 117:3, 127:16, 127:20, 132:2, 133:4, 134:12, 134:21, 137:11, 138:20, 160:11, 162:19, 168:9, 177:18, 181:4, 183:12 sites 10:12, 38:21, 40:7, 42:15, 43:19, 44:14, 98:21, 102:3, 104:14 situation 117:8 six 86:22, 132:15 size 67:13, 102:11, 159:12 skiff 53:21 slated 112:5 slightly 146:3 slips 95:12 slopes 62:12, 69:17, 72:13, 74:8, 80:12, 80:21, 89:14, 89:20, 89:22, 102:1, 103:12, 103:13, 107:17, 108:16, 108:18, 108:22, 117:5 small 39:13, 44:5, 107:4, 127:19, 175:18, 177:22</p>	<p>smaller 45:10, 73:3 smoke 39:1 snapper 22:6, 22:8, 22:17, 23:7 so-called 172:12 societies 57:19 soft 112:9, 112:13 soils 57:20, 86:7, 96:10 sold 23:18, 23:19, 23:21, 24:22, 26:22, 31:5, 31:7, 31:10, 32:6, 35:14, 52:22, 53:11, 55:2, 57:11, 64:9 solicited 86:21 some 15:17, 19:13, 28:19, 37:5, 37:8, 39:17, 43:3, 44:4, 44:8, 48:1, 53:17, 54:3, 55:19, 57:20, 72:14, 77:18, 79:13, 95:14, 95:16, 95:17, 96:13, 96:15, 97:15, 117:5, 119:6, 120:22, 124:13, 132:5, 134:11, 144:2, 158:15, 177:2, 184:14 somebody 91:12, 91:13 something 38:4, 54:12,</p>	<p>73:8, 109:8, 123:17, 129:6, 144:13, 164:8, 172:17 sometimes 17:17 somewhat 37:7 somewhere 20:14, 176:17 sorry 5:6, 23:15, 24:17, 25:14, 25:22, 26:20, 29:19, 60:9, 70:3, 70:13, 73:18, 73:21, 76:19, 79:20, 81:15, 81:21, 147:6, 164:11, 170:14, 173:14, 174:20, 179:6 sort 68:6, 89:17, 147:11, 149:6, 160:13, 168:2, 174:18, 174:21 sought 63:12 sound 8:7, 111:7, 113:17, 117:15, 117:16, 118:2, 125:20, 128:7, 162:22, 163:4 sounded 64:8 soundstage 37:10 source 102:22 south 20:10, 29:10, 29:12, 45:14, 45:16, 47:17, 48:5, 48:7, 51:20, 52:1, 52:5, 53:10,</p>	<p>111:8, 112:22, 113:2, 113:6, 125:2, 143:4, 146:6, 149:9, 152:1, 162:20, 168:12, 168:19, 172:10 southeast 172:12 southeastern 108:6 southwest 168:13 space 32:16, 118:9, 118:20, 122:11, 124:21, 129:11 spaces 118:14, 129:14 spacing 98:10 speak 9:4, 9:9, 38:7 speaker 23:13, 138:2, 183:5 speaking 91:14, 175:22 special 5:5, 172:11 species 78:22, 107:4 specific 7:10, 40:18, 154:7, 157:8 specifically 75:8 specimen 99:7 spent 18:18 spin 26:18, 94:21 spoke 110:15, 119:16 spot 97:20 sprawl 165:6, 165:15</p>
--	--	--	---

Transcript of Hearing
Conducted on January 15, 2020

<p>spreadsheet 112:7 spring 149:5 square 40:1, 40:9, 46:16, 115:10, 122:9, 122:12 squirrels 98:19 staff 6:18, 7:6, 11:7, 12:4, 12:18, 12:21, 69:4, 69:7, 69:8, 71:19, 75:2, 76:2, 79:9, 80:7, 84:5, 84:7, 86:22, 89:17, 89:18, 100:4, 101:8, 101:9, 101:16, 102:5, 102:16, 102:17, 103:9, 106:5, 107:15, 107:19, 110:11, 110:20, 130:11, 130:20, 138:15, 139:2, 140:14, 141:3, 141:8, 145:14, 148:1, 151:3, 151:5, 151:18, 154:4, 157:14, 157:15, 157:21, 158:15, 158:22, 159:2, 159:10, 159:11, 159:18, 160:9, 160:12, 160:15, 161:5, 167:21, 169:6, 169:20, 170:11, 170:12, 171:15, 174:15, 174:17, 184:13, 184:16, 184:18 staff's 10:6, 12:5,</p>	<p>13:5, 75:8, 139:5, 148:19, 151:22 staffs 150:18, 160:5 stage 71:4 stan 3:9, 5:18 stand 43:4, 123:13 standard 117:4, 130:11, 156:3, 165:1, 165:2, 166:15, 167:3 standards 104:6, 104:19, 105:4, 105:6, 128:4 standpoint 49:11, 119:18 stands 98:6, 151:4 star 80:1 start 5:22, 13:10, 30:20, 33:12, 160:21 starting 31:6, 77:19, 108:5, 110:1, 113:6 starts 131:19 state 2:15, 14:7, 14:20, 16:4, 16:7, 16:11, 16:13, 16:16, 24:9, 56:7, 63:4, 103:6, 134:2, 138:12, 145:6, 180:11 stated 6:18, 161:18 statement 71:6, 71:22,</p>	<p>72:2, 111:1, 148:10, 151:4, 154:3, 157:3, 158:4, 160:9, 167:21, 169:22, 170:8, 170:13, 171:4 statements 4:3 states 16:19 stating 167:20 station 40:8, 42:20, 44:13, 44:20, 98:11, 153:10, 178:10, 178:11, 178:19, 179:6, 180:2 stationed 54:11 stations 168:6, 178:3, 178:21, 179:3, 179:9 status 140:4, 164:17 stay 53:13, 53:14, 53:22, 54:1, 54:18, 55:19 staying 54:11 stays 182:5, 182:6 steam 35:13 steep 62:11, 69:16, 72:13, 72:14, 74:8, 89:14, 102:1, 103:12, 103:13, 108:15, 108:18, 108:22, 117:5 steeper 78:14</p>	<p>still 37:19, 51:5, 92:5, 116:17, 129:3, 130:8, 131:1, 136:10, 144:21, 151:4, 177:13, 182:13, 182:18, 184:5 stimulated 176:7 stop 37:4, 38:2, 39:16, 50:19, 153:10 stops 166:14, 181:19 store 42:12, 44:8, 44:22, 177:14, 177:15, 178:5 stores 34:15, 45:9, 45:10, 177:3, 177:6, 177:15, 178:4 storm 117:1, 119:12, 131:21 story 25:8, 25:17, 38:22 straight 49:18, 95:9 strange 172:15 stream 66:13, 66:17, 68:18, 69:16, 78:17, 86:5, 86:6, 86:12, 86:16, 90:1, 102:5, 108:21, 131:16 streams 67:2, 69:15, 86:16, 89:14, 96:1, 100:1, 100:5, 100:14,</p>
--	--	---	--

Transcript of Hearing
Conducted on January 15, 2020

<p>101:22, 108:20, 131:15, 132:15, 133:7, 133:20 street 44:12, 45:17, 47:14, 52:15, 153:7, 166:6, 176:16 streets 153:5 strengthens 162:12 strike 173:22 stripe 172:17 strong 42:15, 64:15, 181:17 structure 75:4, 130:5, 162:12 students 115:18 studied 9:20, 113:10 studies 62:21, 113:16, 116:21, 137:3 study 11:8, 11:11, 100:17, 120:18, 121:3, 122:4, 122:5, 138:7, 138:9, 138:13, 138:17, 138:22, 140:3, 140:4, 140:6, 141:9 stuff 86:4 sub 164:1 subdivision 46:6, 46:7, 66:16, 115:15, 116:13 subject 7:17, 9:6,</p>	<p>9:11, 10:21, 11:22, 23:15, 25:14, 29:13, 30:18, 31:8, 36:13, 45:18, 46:10, 85:15, 93:15, 111:9, 116:6, 118:18, 126:19, 126:22, 137:11, 140:21, 142:15, 145:19, 146:16, 147:16, 148:9, 155:8, 155:11, 155:16, 156:8, 160:11, 161:1, 161:11, 161:14, 162:15, 162:19, 165:3, 165:21, 169:11, 170:20, 172:21 submit 28:22, 128:2, 136:12 submitted 39:11, 60:8, 62:20, 82:4, 99:19, 134:5, 139:1, 164:8 submitting 62:11 subregion 7:11, 86:22, 126:11, 147:21, 147:22, 148:5, 164:2 subsection 66:14, 66:16 subsequent 153:21 substantial 7:15, 11:9 substantially 7:1, 105:22, 156:9, 161:12 subtitle 89:12 successful 26:10, 27:5,</p>	<p>35:1, 42:18, 42:21, 53:7 successfully 43:20 succinctly 152:21 sudden 180:8 suggest 105:4 suggested 149:19 suggests 104:4, 151:18 suit 32:22 suitability 10:3 suite 93:6, 145:10 summarize 25:5, 167:3 summary 29:16, 30:16, 167:5 sundries 55:21 superregional 41:19 supply 74:15 support 71:7, 151:7, 168:5 supporting 78:1, 186:7 sure 14:19, 23:11, 24:18, 26:14, 41:4, 42:20, 52:17, 52:20, 74:9, 80:3, 81:4, 90:6, 91:9, 105:22, 110:14, 111:3, 130:19, 158:16, 177:6, 177:9, 179:17</p>	<p>surface 109:19, 110:2, 111:5, 112:9 surprised 184:5 surroundings 150:5 surrounds 146:14 survey 95:10, 109:3 surveys 63:1 susie 90:9 sustainable 7:16, 162:12 swear 13:8, 14:2, 56:13, 82:14, 136:2, 144:9 sweetgum 79:1, 99:10 sworn 92:12, 93:2, 136:16, 136:17 sybiotic 149:22, 168:20 system 9:13, 184:15 systems 57:18, 70:15</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>t 161:13 table 104:4, 104:13, 104:14 tablecloth 179:18 take 34:17, 69:9, 77:5, 81:11, 88:18, 117:1, 124:21, 152:5 taken 30:17, 35:10,</p>
---	--	---	--

Transcript of Hearing
Conducted on January 15, 2020

<p>65:13, 66:1, 71:7, 108:8, 133:19, 135:21 takes 33:10, 44:9, 49:7 taking 16:20, 19:13, 28:9, 66:5, 125:19, 125:22, 127:16, 135:12 talk 15:17, 38:14, 51:1, 71:12, 90:8, 96:14, 180:4 talked 74:7 talking 6:5, 6:11, 40:18, 43:15, 75:19, 123:20, 143:17, 179:5, 179:16 target 42:13 tax 36:10, 39:17, 54:21, 139:20, 164:21 taxes 54:21, 54:22 team 8:4 tear 104:15 technical 61:6, 66:13, 96:7, 133:14, 139:5, 170:11, 170:12 technician 10:10, 57:3, 60:2, 61:20, 62:1, 62:8, 63:13, 63:17, 63:22 tell 22:6, 37:22,</p>	<p>38:15, 57:15, 68:5, 77:5, 91:12, 97:14, 106:2, 148:11, 182:11 tend 175:9 tendency 178:18, 179:1, 179:10 term 50:6, 60:18, 142:17 terminology 57:5, 63:21 terms 74:7 terrible 173:8 test 130:11, 152:10, 153:15, 161:3, 161:7 testified 101:7 testify 9:19, 11:18, 120:15 testifying 18:19 testimony 4:4, 4:5, 4:6, 4:7, 4:8, 7:5, 10:4, 12:10, 13:2, 14:4, 39:19, 56:13, 66:4, 82:15, 95:20, 122:18, 136:3, 144:10, 144:18, 153:14, 163:1, 169:4, 172:2 tests 152:22 thank 12:22, 13:19, 56:1, 56:3, 56:4, 64:20,</p>	<p>74:21, 81:14, 89:2, 89:3, 89:4, 90:4, 91:8, 91:22, 94:20, 107:22, 122:20, 133:12, 135:4, 135:6, 135:18, 144:7, 144:8, 144:17, 145:15, 154:19, 164:10, 174:1, 174:3, 182:1, 185:3, 185:4 themselves 5:13, 54:13, 83:12 thereby 119:3 therefore 65:7 thereon 139:13 thing 47:8, 57:4, 68:9, 75:21, 94:19, 125:13, 131:20, 174:13, 175:13, 182:2, 182:14 things 17:17, 33:15, 37:4, 39:10, 39:15, 44:10, 55:1, 55:21, 55:22, 96:11, 130:3, 133:5, 133:6, 133:11, 142:9, 152:6, 158:16, 177:12 think 13:7, 15:22, 19:2, 36:12, 38:15, 39:10, 41:15, 53:11, 54:18, 55:1, 59:20, 60:3, 63:11, 64:3, 69:5, 73:4,</p>	<p>73:11, 73:16, 80:19, 80:20, 81:17, 88:9, 89:17, 89:19, 95:18, 98:11, 107:13, 120:11, 123:10, 125:20, 130:18, 138:2, 141:14, 142:4, 148:14, 150:22, 159:1, 159:17, 159:21, 164:6, 164:7, 171:3, 174:14, 175:10, 175:13, 176:3, 176:22, 177:11, 177:20, 178:6, 180:1, 180:13, 182:9, 182:13, 184:9 thinking 114:14, 175:5 third 40:13, 84:5, 127:20, 154:6 thought 64:8, 69:22, 70:4, 73:5, 73:7, 80:7, 82:7, 89:19, 130:16, 173:7 three 27:2, 33:11, 36:20, 36:21, 44:14, 52:22, 54:11, 58:15, 64:22, 88:14, 95:2, 99:5, 104:6, 121:5 threshold 180:8 through 7:4, 10:10, 15:5, 19:13, 19:15, 31:13, 32:19, 33:11, 39:18, 44:10, 46:4, 51:9,</p>
--	---	---	--

Transcript of Hearing
Conducted on January 15, 2020

<p>66:10, 66:18, 71:14, 77:4, 84:9, 95:20, 99:8, 101:18, 106:21, 110:17, 112:21, 113:6, 113:14, 114:14, 121:6, 130:3, 134:1, 134:13, 136:11, 139:20, 140:9, 143:9, 157:20, 159:7, 159:10, 159:14, 159:15, 165:18, 179:20 throughout 53:21, 58:18, 74:18, 118:1 throw 163:9 tickled 173:5 tier 104:9 tiers 104:7 tif 139:21, 140:5, 140:9 tight 150:4 tighter 160:5 timber 20:3 time 18:19, 26:21, 28:19, 34:2, 39:1, 54:2, 65:12, 65:21, 77:5, 77:18, 95:15, 99:14, 103:10, 107:16, 127:21, 134:19, 140:3, 147:12, 159:22, 174:15, 177:4, 181:12, 183:19, 184:5</p>	<p>times 58:11, 58:15, 64:22, 131:19, 178:13 title 59:20, 61:19, 64:10 to- 182:16 today 5:4, 5:21, 6:16, 7:4, 7:13, 8:5, 8:17, 8:22, 25:15, 63:14, 75:4, 82:5, 88:3, 88:5, 101:17, 109:7, 134:3, 134:9, 136:20, 172:1, 177:6, 177:9, 185:1 today's 93:17, 185:1 together 26:7, 31:21, 179:9 toiletries 55:21 told 122:22, 123:5 tomorrow 177:7, 185:2 took 57:20, 65:9 top 97:9, 148:14 topographic 146:10 topography 96:11, 98:3, 103:3, 103:16 total 40:12, 132:12 totally 141:9, 171:11 touch 51:10 toward 80:6, 80:14</p>	<p>towards 46:3, 80:15, 168:15 town 25:4, 25:5, 25:6, 25:10, 27:9, 31:12, 31:17, 34:12, 35:12, 70:12, 121:16, 149:1, 149:4, 168:21, 168:22, 170:19, 172:8, 176:3, 177:1 townhomes 46:8 townhouse 36:2, 168:11 townhouses 36:6, 44:13, 118:11, 122:10, 163:3 towns 36:8 track 57:19 tracks 74:17 tract 153:2 tracts 35:6, 36:1 traditional 177:3 traffic 11:3, 11:4, 11:12, 11:15, 36:17, 49:19, 50:16, 50:20, 51:1, 136:13, 137:3, 137:6, 137:17, 137:22, 138:7, 138:9, 138:13, 138:17, 139:8, 139:12, 140:3, 140:18, 150:11, 161:20, 165:12, 169:16,</p>	<p>175:2, 178:12 trails 72:19, 74:10, 74:12 training 19:2 transcribed 1:22, 186:6 transcriber 186:1 transcript 186:4 transit 141:17, 141:20, 141:22, 142:1, 142:3, 142:7, 142:8, 142:9, 153:10, 168:1, 170:21, 171:8 transition 120:4, 162:17, 165:15 transportation 136:19, 138:15, 140:21, 153:18, 166:11, 166:12, 169:6, 169:8 travel 48:5 tree 53:9, 77:19 trees 98:4, 99:7 tried 146:7 tries 38:3 trip 112:12, 137:14 triple 128:6 trips 112:8, 138:20 true 175:4, 176:19, 186:4 trust 6:3, 6:8, 6:13,</p>
---	--	---	---

Transcript of Hearing
 Conducted on January 15, 2020

<p>9:1, 9:4, 19:8, 19:19 trustee 1:4, 1:5, 5:7, 5:8, 18:19 trustees 13:14, 16:22, 19:7 truth 14:4, 14:5, 56:14, 56:15, 82:15, 82:16, 136:3, 136:4, 144:11 try 17:19, 65:12, 82:11, 89:7, 89:10, 159:22, 181:13 trying 15:15, 31:11, 51:3, 60:10, 136:10, 175:21 tucker 178:1 tucker's 52:16, 179:13, 180:14 turban 32:10 turbines 32:13 turn 5:22, 13:17, 23:13, 23:14, 49:9, 49:14, 49:18, 50:4, 50:13, 50:16, 50:18, 114:6 turned 114:9 turning 26:15, 35:11, 49:20, 50:20 turns 49:12 twice 31:14</p>	<p>two 8:21, 27:3, 33:11, 36:19, 40:6, 41:15, 44:14, 45:11, 45:20, 47:11, 48:14, 64:22, 90:9, 97:1, 99:7, 111:11, 135:15, 141:10, 152:20, 153:5, 156:21, 160:22, 171:7, 174:17 type 41:22, 47:19, 53:2, 115:20, 118:6, 118:12, 134:11, 142:9, 175:7, 176:21 typed 149:19 types 10:3, 117:13, 118:2, 118:7, 118:10, 118:11, 118:12, 119:20, 119:22, 124:4, 175:7 typical 81:4, 98:20, 117:13, 160:15 typically 26:9, 36:16, 98:17, 113:16, 128:3, 130:6, 133:20</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>ultimate 151:9 ultimately 25:19, 45:13, 139:2 under 14:3, 20:4, 28:8, 32:21, 33:17, 57:10, 61:15, 64:7,</p>	<p>71:11, 80:17, 82:14, 83:5, 87:18, 100:7, 102:2, 121:2, 121:13, 131:7, 136:2, 144:9, 175:8 undergoing 177:2 underground 97:2 underneath 86:12, 97:10 understand 17:20, 19:9, 123:19, 130:19, 158:20, 159:17 understood 140:5 undoubtedly 165:14 unidentified 23:13, 138:2, 183:5 union 32:7, 34:5, 34:6 unique 32:11, 106:13, 107:7 united 16:19 university 15:4, 18:4, 18:5, 57:22 unless 96:21, 157:9 until 63:18, 94:18 untouched 99:1 updated 103:11, 104:3, 134:18 upgraded 50:4, 55:7 upgrades 169:13</p>	<p>upland 78:22 uplands 78:19 upper 2:7, 24:7, 37:7 urban 31:22 usable 118:6, 132:10 use 27:8, 28:15, 39:21, 40:2, 40:6, 43:2, 48:16, 59:18, 94:4, 105:11, 112:6, 114:5, 114:14, 116:7, 119:3, 132:3, 141:16, 141:19, 141:20, 142:1, 142:11, 142:21, 144:15, 148:4, 149:22, 150:15, 155:14, 155:20, 160:10, 162:6, 164:17, 167:7, 167:19, 168:10, 171:21 user 41:22 users 37:1, 175:18 uses 119:2, 119:20, 120:4, 120:16, 122:8, 122:16, 124:11, 128:12, 129:8, 129:9, 129:16, 130:6, 138:20, 141:21, 142:10, 155:9, 161:16, 162:7, 162:11, 162:20, 164:21, 165:5, 166:2, 169:1, 177:22 using 72:21, 103:9,</p>
---	--	---	---

Transcript of Hearing
Conducted on January 15, 2020

<p>142:17 usually 17:12, 17:16, 33:11 utility 122:1 utilize 103:6, 134:1 utilized 118:21, 167:10 utilizes 103:2 uva 15:7</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>valley 23:20 valuable 167:7 value 166:16, 178:18 variable 20:13 variations 121:5 variety 175:12 various 42:15, 58:20, 89:14 verbatim 157:15 version 28:3, 79:9 versus 43:16, 102:16, 125:21 vertical 33:13 vibrant 36:11 vibration 113:17 vice 8:18 vicinity 72:11, 139:17,</p>	<p>153:2, 155:20, 166:21 village 143:3 virginia 16:13, 25:1, 98:6 visible 97:2 vision 25:8, 25:18, 33:5 visit 10:4, 83:11, 99:5 visited 9:19, 10:20, 19:21, 58:12, 64:21, 93:19, 93:21 visiting 169:16 vista 34:14, 43:13, 43:14, 43:19, 43:21, 44:1, 44:19, 45:1 vital 156:1 voir 60:13 volpe 1:4, 5:7, 19:9 volume 117:22, 161:19, 169:16, 180:5 vote 37:15, 38:12 voted 37:17 voteforrestauran- ts 37:14</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>wait 49:12, 51:6, 68:17, 90:9</p>	<p>waiting 81:20, 90:15, 92:5 waitresses 43:3 walk 117:21, 159:14 walked 20:1, 95:8, 100:3, 108:1 walking 20:2, 129:11, 142:1 wall 129:6, 129:7, 130:4 walls 117:15, 118:3, 163:2 walton 35:13 want 13:3, 20:16, 24:8, 36:16, 36:17, 43:6, 43:9, 54:8, 54:12, 54:13, 55:4, 60:13, 60:17, 63:11, 65:17, 80:2, 88:13, 104:21, 114:20, 130:19, 132:19, 135:8, 135:11, 135:19, 146:13, 152:12, 157:10, 159:13, 167:17, 175:5, 175:12, 177:7, 177:16, 179:10, 181:1, 181:5 wanted 25:11, 52:14, 82:21, 110:14, 134:9, 135:13, 136:19 wants 176:17, 180:9 washing 37:12</p>	<p>washington 19:10, 32:4, 146:20 watch 68:21 water 66:18, 106:12, 117:1, 117:2, 119:12, 122:6, 155:16 wawa 44:13 way 6:4, 17:11, 48:6, 80:13, 97:21, 126:20, 132:10, 136:10, 140:9, 159:21, 175:2 ways 99:3, 104:21, 130:7, 176:4 we'll 76:13, 184:22 we're 9:13, 90:15, 92:5, 123:19, 174:6, 178:20 we've 12:7, 59:9, 106:4, 106:14, 153:1 wearing 8:21 website 37:13, 38:19, 72:16, 102:18, 107:20 wednesday 1:11 week 65:14 weekend 53:8 welfare 11:14, 117:20, 119:4, 125:9, 155:5</p>
--	--	---	--

Transcript of Hearing
Conducted on January 15, 2020

<p>wells 25:2, 97:2, 97:3, 173:15</p> <p>went 42:1, 47:2, 57:17, 101:15, 134:1, 179:6</p> <p>weren't 148:6</p> <p>west 43:13, 43:14, 45:2, 95:4, 108:6, 113:7, 113:9, 115:4, 125:4, 132:10, 149:7, 150:6, 150:7, 150:9, 152:2, 172:3, 172:5, 178:2, 181:9</p> <p>western 110:2</p> <p>westphalia 4:11, 6:9, 21:7, 21:9, 22:17, 24:2, 25:4, 25:6, 25:18, 27:9, 29:2, 31:12, 31:17, 31:18, 32:5, 32:8, 33:5, 34:12, 35:12, 35:20, 42:8, 45:13, 80:18, 83:6, 121:15, 139:21, 144:1, 144:3, 149:1, 149:4, 168:20, 168:21, 170:14, 170:19, 172:8, 175:1, 176:3, 177:1</p> <p>wetland 57:3, 60:1, 61:2, 61:17, 62:21, 63:14, 63:16, 63:22, 64:1, 64:16</p>	<p>wetlands 62:12, 89:13, 96:1, 101:22</p> <p>whatever 49:17, 149:17, 178:1</p> <p>whenever 17:18</p> <p>whereas 45:1, 175:16</p> <p>whether 76:8, 79:8, 115:9, 124:15, 151:10</p> <p>white 74:11, 78:21, 99:9, 179:17</p> <p>whole 32:2, 33:19, 72:16, 74:13, 106:2, 175:19, 181:6</p> <p>wide 46:22, 95:7, 106:17</p> <p>wife 177:14</p> <p>wildlife 98:16</p> <p>willing 62:6</p> <p>windows 128:5, 128:7</p> <p>winnie 70:12</p> <p>winning 179:12</p> <p>wise 180:5</p> <p>within 7:11, 69:13, 75:9, 84:8, 84:13, 104:7, 108:18, 109:22, 110:2, 111:21, 121:11, 124:13, 124:22, 125:6, 125:10, 127:6,</p>	<p>129:2, 129:19, 129:21, 153:2, 153:11, 170:18</p> <p>without 50:19, 88:20, 96:22, 119:3, 120:19, 140:10, 159:16, 172:16</p> <p>witness 13:16, 83:1, 112:16, 119:15</p> <p>witnesses 135:16, 174:10</p> <p>wonder 142:4</p> <p>wonderful 53:7</p> <p>wood 28:6, 29:8, 36:3, 46:3, 48:5, 48:19, 50:1, 50:6, 50:11, 50:13, 51:3, 51:20, 52:4, 52:6, 132:8, 139:19, 143:3, 146:8, 149:9, 150:3, 152:2, 153:16, 153:19, 169:12</p> <p>woodlands 95:14, 96:1, 96:10</p> <p>woodyard 95:6</p> <p>worcester 58:22</p> <p>word 48:16</p> <p>words 160:14</p> <p>work 37:2, 48:17, 59:18, 60:4, 123:10, 136:10</p> <p>worked 31:2, 32:8, 57:9, 63:16,</p>	<p>103:20, 110:11, 110:16</p> <p>working 27:2, 28:21, 33:16, 35:6, 58:18</p> <p>world 15:10</p> <p>worst 17:18</p> <p>wouldn't 26:15, 130:13, 135:19, 151:9</p> <p>wouten 110:16</p> <p>write 38:13, 94:18, 150:17, 150:22</p> <p>writeup 83:11</p> <p>written 90:18, 104:9</p> <p>wrong 149:18</p> <p>wrote 157:2</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>yard 28:6, 29:8, 36:3, 46:3, 48:6, 48:19, 50:1, 50:6, 50:11, 50:13, 51:3, 51:20, 52:5, 52:6, 132:8, 139:19, 143:4, 146:8, 149:9, 150:3, 152:2, 153:17, 153:19, 169:12</p> <p>yeah 8:15, 20:21, 21:5, 22:7, 22:15, 27:18, 27:22, 30:3, 30:11, 58:4, 64:3, 65:19,</p>
---	--	--	---

Transcript of Hearing
Conducted on January 15, 2020

<p>73:21, 75:15, 81:1, 82:2, 82:9, 83:1, 85:16, 85:19, 87:16, 90:5, 90:12, 91:5, 91:16, 91:21, 92:3, 92:19, 94:3, 94:7, 94:10, 96:3, 97:8, 107:18, 109:10, 113:1, 114:13, 120:12, 120:17, 123:14, 123:15, 123:18, 124:17, 131:13, 134:22, 167:4, 173:19, 182:15, 183:11, 183:21, 184:21</p> <p>year 6:2, 24:15, 35:10, 39:3, 72:6, 101:22, 104:2, 108:19, 180:6, 180:7</p> <p>years 6:14, 8:20, 9:3, 9:8, 15:12, 16:9, 19:12, 19:17, 19:20, 23:19, 24:16, 27:1, 27:2, 27:4, 30:18, 30:20, 30:22, 31:3, 33:12, 33:17, 37:11, 46:14, 46:15, 47:7, 52:22, 55:15, 57:10, 149:15, 152:4, 171:21, 178:7</p> <p>yesterday 9:14, 58:16</p> <p>yourself 60:19, 61:7, 61:22</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>zat 38:4</p>	<p>zone 6:16, 7:15, 11:16, 11:21, 46:15, 46:17, 68:12, 109:9, 109:13, 110:10, 111:14, 115:13, 116:12, 116:15, 116:16, 116:18, 116:20, 119:6, 122:4, 123:1, 124:6, 141:2, 144:15, 144:20, 144:22, 145:1, 145:2, 145:4, 147:1, 147:7, 147:10, 152:11, 152:17, 152:19, 154:1, 154:8, 156:8, 160:20, 161:11, 161:14, 162:6, 166:18, 166:20, 168:14, 169:3, 171:20</p> <p>zoned 27:10, 30:11, 32:18, 47:5, 142:10, 143:1, 146:17, 148:6, 162:4, 172:13</p> <p>zones 27:7, 27:8, 109:18, 110:1, 115:14, 124:12, 124:14, 124:19, 124:20, 125:1, 125:10, 126:7, 126:16, 126:17, 126:21, 126:22, 142:21</p> <p>zoning 1:2, 1:10, 2:4, 3:10, 5:6, 5:19, 7:21, 11:22, 29:15, 30:15, 66:15, 92:9, 140:22, 141:1, 149:16, 151:16,</p>	<p>154:10, 155:2, 156:5, 161:9, 171:13, 184:1, 184:4</p> <hr/> <p style="text-align: center;">\$</p> <hr/> <p>\$3 180:6</p> <p>\$5 180:7</p> <hr/> <p style="text-align: center;">.</p> <hr/> <p>.3644 2:8</p> <hr/> <p style="text-align: center;">0</p> <hr/> <p>000109 1:6</p> <p>0044 8:4, 8:13</p> <p>01 68:22</p> <p>05 68:22</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>10 20:11, 23:19, 25:8, 27:4, 71:17, 126:5, 126:16, 130:17, 154:9, 157:9, 174:15, 178:22</p> <p>10.74 87:1</p> <p>100 8:11, 10:18, 36:22, 58:20, 72:6, 95:8, 101:22, 107:2, 108:19, 117:7, 131:14</p> <p>100,000 40:10</p> <p>1000 40:11</p> <p>10044 7:22, 8:17</p>	<p>10051 1:5, 5:6</p> <p>10100 14:10</p> <p>11 170:11</p> <p>110 33:1, 44:13</p> <p>1101 145:10</p> <p>118 71:2, 76:4</p> <p>12 23:19, 31:4, 73:9, 73:15, 73:18, 73:19, 73:22, 76:15, 77:6, 83:12, 148:15</p> <p>12,500 38:13</p> <p>120 131:14</p> <p>121 113:22</p> <p>13 71:11, 83:12, 86:20, 101:8, 149:15</p> <p>136 4:7</p> <p>14 4:4, 136:7</p> <p>144 4:8</p> <p>14741 2:5</p> <p>15 1:11, 5:3, 25:8, 25:17, 27:1, 83:2, 132:7, 132:12, 135:13, 141:8, 154:2, 157:6</p> <p>15,000 181:1, 181:5</p> <p>150 110:3, 110:10,</p>
--	--	---	--

Transcript of Hearing
Conducted on January 15, 2020

<p>131:18 16 83:12, 170:12, 174:20 160 116:20 17 83:12, 103:19 18 33:17, 38:22, 48:3, 69:5, 69:19, 70:1, 70:2, 132:12 180 122:10 18007 90:16, 90:17, 91:2 186 1:21 19 83:2, 138:10, 164:14, 164:15 1938 77:10, 77:13, 99:18, 108:15 1961 146:22, 147:2, 147:4, 147:19, 162:5 1965 73:12, 73:13, 74:1, 99:15, 108:5 1977 15:3, 16:8 1993 147:20</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>2-1 40:6, 40:7 2.17 116:19 20 37:11, 37:18, 40:5, 66:1, 83:2, 138:10</p>	<p>200 53:20 2000 20:4, 102:20, 104:2 2002 165:7 2005 103:10 2006 24:22 2009 25:2 2010 134:16 2013 25:3, 147:22 2014 63:18, 170:15, 171:2 2017 1:6, 69:12, 87:3, 112:12 2018 7:22, 8:4, 57:13, 77:10 2019 138:10, 138:11, 158:5 202 178:21 2020 1:11, 5:3, 65:2, 93:22 2035 165:8, 170:15 20706 93:7 20772 2:7 21 83:12 21,000 54:3 21.6 40:22, 48:19 21037 56:11</p>	<p>213 152:16, 156:7, 156:16 2173 2:6 22 4:11, 14:15, 14:16, 14:18, 66:1, 83:12 220 122:11 223 139:18, 142:12, 146:9, 153:17 23 92:4, 92:5 24 56:21, 66:16, 83:13, 102:4, 113:22, 147:3 240 145:11 25 19:12, 19:20, 31:3, 46:14, 71:2, 76:4, 83:3, 89:12, 102:7, 180:18 25,000 38:12, 46:16 250 122:13 250,000 40:12 26 30:20, 30:22, 83:13 260,000 40:12 27 12:17, 12:19, 65:20, 66:14, 102:4, 138:11, 145:17, 152:16, 154:18, 154:19, 154:20, 156:7, 156:16, 157:13 27.213 161:10, 171:6</p>	<p>27.542 154:9, 169:2 27102 155:3 28 65:5, 154:15, 154:22 283628 1:20 29 120:11, 120:12, 120:14</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>30 53:4, 73:17, 77:15, 80:20, 91:14 30,000 40:8, 40:11, 122:9 300 10:1, 35:10, 46:20, 46:22, 93:6, 114:2, 114:21, 115:1, 115:2, 115:4, 116:17, 117:18, 118:15 301 53:5, 178:17 301.952 2:8 31 40:16, 40:17, 114:9, 114:10, 114:12, 115:2 32 26:13, 26:21, 27:16, 41:2, 95:3, 97:10 325,000 32:14 34 21:3, 21:5 35 95:3, 104:4 350 15:10, 116:13</p>
--	--	--	---

Transcript of Hearing
Conducted on January 15, 2020

<p>360 125:20 37 12:12, 23:21, 107:21 38 20:18, 20:19, 21:6, 77:12 39 4:11, 22:2, 22:3, 22:4, 22:16, 26:5</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>40 8:20, 9:7, 73:5, 73:18, 95:8 400 36:8 400,000 44:1 404 56:10, 61:4 41 94:16, 94:17, 97:7, 106:20, 109:16, 111:20, 112:18, 124:18, 126:8, 128:21 42 80:20, 114:16 43 16:9 45 128:8 4601 93:5 47 71:18, 87:2 48 68:22 484 147:5 491 112:13</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>50 23:19, 62:20,</p>	<p>106:16, 178:7 500,000 175:14 529 106:21 530 106:19 550 95:7 56 4:5, 71:20 57 159:18</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>60 6:14, 6:17, 15:10, 19:17, 20:6, 68:4, 77:18, 95:2, 122:7, 126:15, 132:12, 146:3, 171:21 60,000 122:12 60.02 160:11 600 20:14, 36:9, 106:17 61,000 165:12 63.1 71:2, 76:4 65 111:7, 111:18, 112:5, 112:10, 113:7, 117:16, 126:18, 127:21, 128:10 6f 126:11</p> <hr/> <p style="text-align: center;">7</p> <hr/> <p>70 68:5, 77:19, 111:18, 113:9, 127:21, 180:16</p>	<p>710 107:1 725 178:17 75 46:21, 131:17, 132:6, 180:16</p> <hr/> <p style="text-align: center;">8</p> <hr/> <p>8 70:21 80 9:2, 23:2 800 20:14 83 4:6</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>90 18:18 91 24:15, 168:5, 168:7 92 95:3 9440 181:9</p>
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