

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

3
4
5 SUFFRAGE POINT
6 Detailed Site Plan, DSP-21001

7
8 T R A N S C R I P T
9 O F
10 P R O C E E D I N G S

11
12 COUNTY ADMINISTRATION BUILDING

13 Upper Marlboro, Maryland

14
15 February 2, 2023

16 VOLUME 1 of 1

17
18
19 BEFORE:

20 PETER A. SHAPIRO, Chair

21 DOROTHY F. BAILEY, Vice Chair

22 A. SHUANISE WASHINGTON, Commissioner

23 WILLIAM M. DOERNER, Commissioner

24
25
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OTHERS PRESENT:

JILL KOSACK, Staff

NORMAN RIVERA, Attorney for Applicant

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P R O C E E D I N G S

1
2 MR. CHAIR: It is 12:16. We are back from a brief
3 break and we have one final item before us, folks, for this
4 February 2nd Planning Board. We have Item 10 on our regular
5 agenda. This is Detailed Site Plan DSP-21001, Suffrage
6 Point. This was continued from January 12, 2023 Planning
7 Board meeting.

8 I want to be clear about what's before us. This
9 is a limited scope discussion. So, we had, there was some
10 concerns expressed in the community around violations, MDE,
11 Maryland Department of Environment, DPIE, for out of an
12 abundance of transparency we wanted to make sure that we had
13 a limited scope public hearing on these issues. Arguably,
14 since these issues are, are related to not pre-development
15 but are related to the development; and actually the
16 adjacent development, even if it's the same developer,
17 there's not a lot of ways in which this is relevant to the
18 DSP before us; but we all felt that given all the concerns
19 that were expressed that we would and, again, for
20 transparency, we would provide the opportunity for these
21 issues to be aired and that's the purpose of this limited
22 scope public hearing.

23 I'm going to be quite tight. Our counsel is going
24 to assist to make sure that what is before us is what's
25 appropriately before us. So, there may be, we'll see how it

1 goes, but there may be a number of times where either myself
2 or counsel will step in and remind folks who are speaking
3 that since this is a limited scope public hearing, there's
4 only a few issues that are before us. Again, issues related
5 to the violations, MDE, DPIE noted violations related to the
6 development or what's before us and nothing else, okay?

7 That's for folks in the public. And,
8 Commissioners, I want to remind you all, and I'm reminding
9 myself as well, that we do not want to stray too far afield.
10 We don't want to stray far afield from those issues at all
11 because that is all that's before us.

12 So, we have, the Staff presentation will be by
13 Jill Kosack. Mr. Rivera represents the Applicant. We'll
14 follow the normal process for a hearing. So, we'll hear
15 from Staff; we'll hear from the Applicant; we will hear from
16 folks in the public who want to speak; we'll give the
17 Applicant final opportunity, we'll ask questions all along,
18 but we'll give the Applicant the final opportunity for
19 rebuttal and then close; and then we will close the hearing
20 and we will deliberate as appropriate. And that will be our
21 process.

22 Mr. Smith, you have your hand raised. Do you have
23 a question about the process?

24 MR. SMITH: I do. I, I, I, I'm trying, last night
25 I realized that the language that Staff had provided to the,

1 to the, to Hyattsville's exhibits did not work; and I tried
2 multiple ways to get that link to work, so unless there's a
3 working link, I don't have access to those exhibits to see
4 how they had been organized.

5 But, second, it looks like there's been
6 significant new material added to the record by the
7 Applicant and by Staff; and I think under the Zoning
8 Ordinance, when new material is added to the record by the
9 Applicant or the Staff, after the publication of the
10 Technical Staff Report, frankly, I didn't know there would
11 be a revised Technical Staff Report allowed at this point;
12 that if a party asked for a continuance, the Planning Board
13 automatically grants a continuance of seven days. I think
14 that would be appropriate.

15 I saw these materials only now and the date on the
16 403-page document posted to the Planning Board's website,
17 much of which is ours, but some of which is the Applicant's
18 and the Staff's new material, it has a time stamp of about
19 6:58 p.m. last night. We've, clearly, have had no
20 opportunity to review those materials and develop comments
21 on them. So, it would seem appropriate it continue for a
22 week; and if you choose not to do that, I just want it to be
23 placed on the record that this is a significant concern
24 given the concerns we've raised in the past about inaccurate
25 statements on the Planning Board website regarding the

1 availability of related documents. So, if you're interested
2 in building a full evidentiary record giving us a fair shot
3 and providing you with informed comments, it would seem
4 appropriate to give us a chance to review those materials
5 and develop those comments.

6 So, that said, I want to commend Mr. Hunt's team
7 for the work they did in trying to accommodate these
8 electronic submissions, including the materials we submitted
9 by drop box. It goes more, more smoothly from our end; but
10 also, I think that they, they did a commendable job. These
11 are brand new materials that we haven't seen before and
12 haven't had a chance to, to develop comments on; and there's
13 a structural bias on how the hearings are, are conducted
14 anyway because we don't have the, the opportunity to
15 question or cross the Applicant's attorney who is often
16 their primary spokesperson; and we don't have a chance to
17 rebut their testimony; or in other proceedings that I've
18 been to by, before the courts or District Council, each
19 party gets a, each side gets a chance to present and each
20 side gets a chance to rebut. This is the only body we've
21 come before that doesn't offer opponents a chance to rebut.
22 So --

23 MR. CHAIR: Mr. Smith, I'm going to, I'm going to
24 stop. This is, I hear your concerns.

25 MR. SMITH: I'm sorry, I, I'm done.

1 MR. CHAIR: As it is relevant to this hearing.

2 MR. SMITH: That's my concern and I think it would
3 be appropriate to continue to give, give folks a chance to
4 review these materials and, and provide you an informed
5 comment.

6 MR. CHAIR: Thank you. Commissioners, unless
7 there's strong objection from you all, I would rule that we
8 won't be continuing with this case. The, the, the, most of
9 the materials, arguably, aren't even relevant to the DSP;
10 but out of an abundance of caution, we wanted to keep their
11 record open; have this limited scope on the hearing just to
12 air some of these concerns. So, Commissioner Washington,
13 Commissioner Doerner, Vice Chair Bailey, unless you have
14 strong objections to it, I'm not going to, I'm, I'm not
15 going to continue this; and we're going to hear what we're
16 going to hear today.

17 COMMISSIONER WASHINGTON: I concur, Mr. Chairman;
18 and if I'm not mistaken, I believe we indicated that the
19 record would be open, at which point we last continued the
20 case. I could be mistaken, but I believe that to be the
21 case.

22 MR. CHAIR: And we've, we've actually received a
23 whole lot of new material since then.

24 COMMISSIONER WASHINGTON: Right.

25 MR. CHAIR: So --

1 MADAM VICE CHAIR: Yeah.

2 MR. CHAIR: -- back to the point. And Mr. Smith
3 is saying that not all of it got in and I hear that; but
4 that's not going to be a reason to continue this case
5 because, arguably, most of what we're going to be hearing
6 isn't even quite relevant to the DSP; but out of full
7 transparency, we're going to allow this process to continue.

8 So, Commissioners, and only Commissioners, any
9 other concerns around that?

10 (No affirmative response.)

11 MR. CHAIR: Okay. All right. So, we will
12 continue as planned and I'm going to turn it over to Ms.
13 Kosack for the Staff Report.

14 MS. KOSACK: Yes, good afternoon, Mr. Chair,
15 members of the Planning Board. Can you hear me?

16 MR. CHAIR: We can, indeed.

17 MS. KOSACK: Great. Thank you. For the record I
18 am Jill Kosack with the Urban Design Section, Item 10 for
19 DSP-21001 for Suffrage Point, again, which seeks to develop
20 41 single-family attached dwelling units on the lower parcel
21 of the project formerly known as Magruder Pointe.

22 Again, as you summarized, the hearing was
23 continued to this date on a limited basis relative to storm
24 water management. Since the January 12th hearing, Staff has
25 contacted the Prince George's County Department of

1 Permitting, Inspections and Enforcement, DPIE; Permits
2 Review Section Staff; and the Maryland Department of the
3 Environment, MDE, regarding their records relative to the
4 permitting, inspections and enforcement issues on the
5 property; and the documents provided in the additional back-
6 up were material that was provided by DPIE and MDE, as well
7 as a brief, 2-page memo summarizing the issues that were in
8 these documents. The Technical Staff Report that was
9 published online is not revised at all from the prior
10 hearing.

11 So, as discussed in Staff's memo dated January
12 31st, the DPIE records provided start with a raise permit
13 for the WSSC building on the property that was issued in
14 March of 2018; and there's also a floodplain waiver approval
15 in there, a proposed floodplain delineation approval, a
16 stormwater management concept approval from 2019 and a site
17 development fine-grading permit being issued in 2021.

18 Additional files in the back-up are inspection
19 reports from DPIE starting in April of 2021 that show, that
20 do show multiple violations and stop work orders on the
21 property, as well as some with past inspection reports. And
22 the most recent inspection report that was done just
23 yesterday and sent to Staff yesterday, so it's not in the
24 additional back-up material, DPIE, with MDE present, did
25 meet on the property and inspect it yesterday, and noted

1 that the site and sediment controls were in compliance with
2 requirements, and the site inspection was passed yesterday.
3 Again, that document is not in the back-up since it was
4 received yesterday.

5 MDE, in the information provided from MDE, it was
6 stated that there was a general permit for discharge of
7 stormwater associated with construction activity for the
8 property that the property received in 2021; and according
9 to MDE staff, a significant permit pending is the non-title
10 wetland and waterway construction permit for work on the
11 lower parcel. It is, again, that permit is pending at the
12 moment. Per their staff, this permit is likely to be issued
13 when MDE receives documentation that local planning and
14 zoning requirements such as this DSP have been satisfied.

15 In addition, Werrlein Properties notified MDE of
16 their intent to perform emergency storm drain construction
17 across the lower parcel; and MDE determined not to object to
18 that work being done prior to the issuance of the Non-title
19 Wetland and Waterway Authorization Report. I believe the
20 Applicant will provide more information about this emergency
21 stormwater construction. They have documents about that.

22 Additionally, MDE provided multiple records or
23 site inspections with photos from June of 2021 until
24 December of 2022. These indicate various permitting and
25 compliance issues relative to construction activity, and

1 erosion and sediment control devices. Again, though, as of
2 yesterday, the, with the site inspection, the devices were
3 found to be in compliance.

4 Ultimately, though, the Planning Board is not the
5 permitting or inspecting authority for these issues. The
6 violations and enforcement relative to stormwater
7 management, erosion and sediment control, and permits are
8 controlled by DPIE, MDE and other state and federal agencies
9 as appropriate. The majority of the compliance issues shown
10 in the submitted documentation have had to do with
11 permitting and construction activities such as fill removal,
12 stabilization and removal of debris on the property. These
13 issues are not shown on, nor governed by the Detailed Site
14 Plan which is an ultimate plan of construction on the
15 property; and, therefore, are not governed by the Planning
16 Board. Therefore, Staff does not find the additional
17 documentation of stormwater management permitting,
18 enforcement and violations relative to the findings
19 necessary for approval of the DSP. Therefore, based on
20 evaluation and analysis, the Urban Design Staff recommends,
21 again, that the Planning Board adopt the findings of the
22 Staff Report and approve DSP-21001 for Suffrage Point,
23 including the five amendments to DDO standards subject to
24 the one condition with multiple subparts found on pages 22
25 through 23 of the Staff Report.

1 The Applicant has submitted revised conditions
2 this Tuesday that are in the additional back-up; and Staff
3 is in agreement with those additional conditions and, and
4 one additional finding as well. Staff is in agreement with
5 those as recently submitted and this would conclude Staff's
6 presentation. Thank you.

7 MR. CHAIR: Thank you, Ms. Kosack. I appreciate
8 the Staff Report. Commissioners, any questions for Staff?

9 (No affirmative response.)

10 MR. CHAIR: Okay. We'll turn to the Applicant,
11 Mr. Rivera, Ms. Guerra, I'll remind you, as I will
12 everybody, that this is a limited scope public hearing
13 continued on the DSP and the only issues that we are
14 discussing at all are related to stormwater management and
15 the MDE and DPIE inspections violations; and so, if I can
16 ask you to keep your testimony to that view and/or anyone
17 else on the Applicant's team; and, Mr. Rivera, the floor is
18 yours.

19 MR. RIVERA: Thank you, Mr. Chair. Good afternoon
20 now. Members of the Board, Staff, guests, for the record,
21 Norman Rivera here representing the Applicant in this case,
22 Werrlein Properties. First of all, we appreciate the
23 Board's indulgence in granting the 3-week continuance which,
24 in effect, addresses the 1-week continuance issue that Mr.
25 Smith brought up. The only new information we submitted

1 were revised conditions which were discussed at length at
2 the last hearing in order to clarify those and put them in
3 the right order numerically, et cetera.

4 The other issue is related to MDE and what the
5 issues are related to enforcement, as well as DPIE, the two
6 overarching agencies that Ms. Kosack mentioned, and I'm glad
7 the Staff has dialogued with them extensively as we have.
8 All that culminated with our discussions over the last few
9 weeks and yesterday, February 1st, there was an onsite visit
10 that MDE and DPIE attended which, essentially, gives us a
11 clean bill of health and it allows us, it gives us the, was
12 assurances, here it is. I'll just read it in the record
13 because it's very short and sweet.

14 "A meeting was held with Deandre at DPIE, Matt,
15 Carl, Werrlein Properties and John, MDE, to inspect the site
16 for compliance. They found site and sediment controls were
17 in compliance," and in caps, "INSPECTION PASSED. The
18 recommendation was continue to maintain the site and
19 settlement controls at all times per the approved plans,
20 details and specifications."

21 In our proffered conditions, members of the Board,
22 we submitted four, which would be renumbered 5A through D if
23 the Board approves this, which address the proper
24 (indiscernible) that will further buttress what I just
25 stated and what the, the regulatory agencies are asking us

1 to do in terms of maintaining the controls, permits, et
2 cetera.

3 If I could, because Ms. Kosack already stated that
4 we agree with all the other conditions that were discussed
5 prior, and those include, well, I've added, Mr. Chair, you
6 had suggested three conditions. One was would you be, be
7 okay with Planning Director level of the HBC signage? Yes.
8 Two, will we provide notice of the floodplain? Yes,
9 pursuant to Section 32206(h) that your principal counsel,
10 Mr. Warner, elaborated on. So, that does require notice and
11 we're happy to provide additional notice in our sales and
12 contract documents.

13 And then, thirdly, what was the third, I just
14 forgot the third one; but all those conditions were --

15 MR. CHAIR: All right, Mr. Rivera, if you want to
16 take a second and find the third one?

17 MR. RIVERA: Yeah. I just had that. Where did it
18 go? Notice, oh, the lighting in the alley. That we agreed
19 that we should have lighting in the alley, though I added a
20 new condition to the back-up that would require that prior
21 Detailed Site Plan certification, the details for the alley
22 lighting. So, we're not getting into specs at this point in
23 time. That is a prior to certification issue. So, whatever
24 the specs are, this is what the specs are, that goes to the
25 DSP cert which is then followed when the DSP is approved,

1 record plat and building permits, et cetera. So, those
2 three conditions the Chairman elucidated, we concur.

3 And then with regard to Parcel B2, stormwater
4 management area, the HOA parcel, again, we agreed during the
5 hearing last that they're each aware, the other body will be
6 the maintenance, maintenance organization responsible. As
7 the Chair enunciated, you can't make the city do it; you
8 can't make the HOA do it; but we can do it. We're going to
9 do an MOU with the city as we progress and we will dedicate
10 the E2 for public use, and along with that an MOU. That MOU
11 will be between the city and the Applicant because the
12 Commission is not involved between negotiations between two
13 private parties; and Ms. Kosack and I agree on that point
14 and we hope the Board does

15 So, with respect to the two points with respect to
16 what the limited focus is, we were asked to explain what is
17 the stormwater management sediment erosion control plan
18 movement for what it is today and moving forward. So, I
19 have two presenters today, Rachel Leitzinger from Dewberry,
20 a land planner; as well as Scott Taylor from GTA, or Geo
21 Tech, who will go through the engineering aspects, the more
22 technical aspects of what we're going to show you today.

23 So, we have a brief presentation on that. I'd
24 like Ms. Leitzinger to go through hers. You could ask
25 questions there, obviously, and the Scott can go through his

1 brief presentation, and that will basically allow me to sum
2 up; but obviously, we have other speakers after that.

3 Thank you, Mr. Chair. And with that, Rachel can
4 show her screen, right? Oh, you have the, you, that's
5 right, you have the presentation. I'm sorry. Thank you,
6 Ms. Kosack.

7 MR. CHAIR: Thank you, Mr. Rivera. What do we
8 need to put up?

9 MR. RIVERA: We submitted the presentation that
10 Dewberry made, which reflects all the existing permits and
11 all the plans that were approved and/or pending for the site
12 which is one of the things that we are unable to provide
13 that at the hearing.

14 MR. CHAIR: We just -- Mr. Rivera, we're just
15 having a technical issue about trying to figure out which
16 one is which step. Just not sure which one to pull up.

17 COMMISSIONER WASHINGTON: It's AE5, Applicant
18 Exhibit No. 5.

19 MR. RIVERA: Thank you, Ms. Washington.

20 COMMISSIONER WASHINGTON: Sure.

21 MR. CHAIR: AE5, Applicant Exhibit No. 5. It's a
22 big file. It will take a second.

23 MR. RIVERA: No problem. I'm going to mute my
24 mike while hers loads up, too. Okay.

25 MR. CHAIR: Am I the only one or is anyone else

1 starting at Ms. Will's cat?

2 MADAM VICE CHAIR: What was that?

3 MR. CHAIR: I was just wondering if anyone else is
4 starting at Ms. Will's cat?

5 MADAM VICE CHAIR: Yeah. I just realized it was a
6 cat. I just kept seeing the hand go up and down. It's, and
7 then I saw the cat.

8 COMMISSIONER WASHINGTON: I'm glad it's not just --

9 MADAM VICE CHAIR: To draw too much attention to
10 her.

11 MS. LEITZINGER: Okay. Good morning, Chairman,
12 members of the Board. For the record, my name is Rachel
13 Leitzinger with Dewberry, the engineer for the Applicant.

14 So, if you go to page one, two, three, four, six
15 of this PDF?

16 MR. CHAIR: All right. Ms. Leitzinger, let Staff
17 catch up with you. Give us one sec.

18 MS. LEITZINGER: Uh-huh. There you go. So, this
19 just shows, you know, the drainage area going to the site to
20 illustrate that at the discharge point at the southern end
21 of the subject property, you can see there is a much larger
22 area draining to it, not just the subject property. This
23 property makes up only about a third of the total drainage
24 area leading to that point. So, I just wanted to make note
25 of that, that there is a much larger drainage area that's

1 coming to this outfall point.

2 The next pages shows a page from the approved
3 Sediment Control Plan. So, this site does have an approved
4 Sediment Control Plan that was approved by Prince George's
5 County SCD; and the, the sediment control measures --

6 MR. CHAIR: And you --

7 MS. LEITZINGER: -- shown on this -- sorry, what?

8 MR. CHAIR: I just want to make sure that we're,
9 we're letting the slides catch up with us, but keep going.
10 It's up now.

11 MS. LEITZINGER: Yep. So, the sediment control
12 measures shown on this plan are installed; and as you can
13 see, there's, there's a trap in the southwestern portion of
14 the site and earth dyke along the western property line; and
15 there has been the storm drain installed as shown along the
16 southern property line to create the new storm drain
17 outfall.

18 The existing pipe that you can see dash that runs
19 through the center of the site, that is undersized for the
20 drainage area that's flowing to it; and I think that is one
21 of the causes of some of the flooding that has been
22 experienced along Gallatin Place earlier this year.

23 So, if you go to the next slide, you will see that
24 we are proposing to upsize and replace the existing storm
25 drain; and so, that will help alleviate any flooding issues

1 that have occurred in the past. So, the storm drain will be
2 rerouted around Gallatin Place through the site down to the
3 outfall at the southern end of the property. This
4 construction -- so, the emergency authorization that was
5 granted by MDE was for the installation of this storm drain
6 to assist with flooding issues. The storm drain was, they
7 started to install it; they had to stop due to there's an
8 existing gas line that runs through the middle of the site
9 and we're working with the gas company to get that relocated
10 so that the storm drain can continue to be installed because
11 the, there is a conflict with the invert of the proposed
12 storm drain and the gas line. So, as soon as the gas line
13 gets rerouted, which will be hopefully within the next two
14 months, then we can continue to install the rest of the
15 storm drain as shown on the site, on this plan here.

16 If you go to the next slide, another contributing
17 factor to the flooding that occurred previously, back in
18 August, DPIE asked the Applicant to install inlet protection
19 on the two inlets shown there on Gallatin Place; and those
20 were not on the approved Sediment Control Plan but they, you
21 know, the, as you can see it, blocks the inlet. It's
22 supposed to, you know, the water is supposed to filter
23 through the stone; but in a large rain event, that would
24 contribute to flooding in the street, as well, as you can
25 see, you know, it would take the water longer to go down

1 the, the inlet.

2 So, DPIE realized that, you know, yeah, these
3 aren't really helping situations; so, they have since been
4 removed. And if you go to the next slide?

5 So, this picture is the same, same location, those
6 same inlets there on Gallatin. This was taken last
7 Wednesday on January 25th during a large rain event. If you
8 recall, it rained like all day last Wednesday. So, you can
9 see the inlets are clear and there is no flooding taking
10 place.

11 If you go to the next slide, the remainder of
12 these photos were taken last Monday, January 23rd. I
13 visited the site. So, the previous day, Sunday the 22nd,
14 had rained most of the day. Monday, it had rained most of
15 the morning. I was there, I think, around 4 o'clock in the
16 afternoon. So, these are just some pictures to show the
17 sediment controls in place and that they were functioning.
18 So, this is along the northern end of the site and you can
19 see that there's two rows of super silt fence to protect the
20 street from any runoff from the site; and they're installed
21 and they are functioning. You can go to the next slide.

22 So, this is along the southern property line at
23 the southern end of the site. You can see they installed an
24 additional berm that had not been on the plan but they
25 installed it. So, it helps prevent any water from leaving

1 the site and there's also super silt fence installed; and
2 that's the storm drain that runs, the upsize storm drain
3 that runs along the southern edge of the property. Next
4 slide.

5 This is a view of the storm drain outfall into the
6 stream and you can see the outfall looks pretty, if you zoom
7 out a little, the outfall is pretty clean.

8 MR. CHAIR: Yeah, we, Staff can't, can't
9 accommodate that, but keep going.

10 MS. LEITZINGER: There's, there's more pictures,
11 so if you go to the, the next one, next one is a -- let me
12 zoom out.

13 MR. CHAIR: We can't see them. I think part of
14 the problem is it's a 400-page slide deck, so it's, it's
15 bogging us down over here.

16 MS. LEITZINGER: Okay.

17 MR. CHAIR: Keep going.

18 MS. LEITZINGER: Okay. So, yes, so this is a,
19 like a panoramic view. So, you can see the trap here to the
20 right and you can see the water in the trap is dirty, as it
21 should be, because, you know, it's taking the water from the
22 site and cleaning it; and then it drains out into the stream
23 which you could see on the left which, you know, the water
24 was not dirty in the stream.

25 And then the next slide, yes, these are just more

1 pictures of the trap; and you can see the, the rip rap
2 that's shown is the outfall; and the stone is quite clean,
3 so that is a good sign that the trap is functioning and
4 there is not dirty water being discharged from the trap into
5 the stream.

6 There should be a couple more photos of the trap
7 outfall. Again, that's the outfall. The stream is down to
8 the left off the page and I think there's one more photo.
9 So, that shows the outfall and the stream there in the
10 distance. So, this just was to serve to show that the, the
11 sediment control measures are installed per the approved
12 plan and are functioning as intended.

13 And that is all I have for my presentation. Are
14 there any questions?

15 COMMISSIONER DOERNER: So, let me ask, how much of
16 the water that's captured in there has been attributed to
17 recent storms and what's been kind of like the rainfall
18 recently compared to like historical amounts, again, that
19 just a couple weeks that we, we've sort of postponed the
20 case for?

21 MS. LEITZINGER: I'm sorry, can you repeat that?
22 There was some background noise.

23 COMMISSIONER DOERNER: Yes. I want to know the,
24 the water that you're showing in the slides there that's
25 been kind of captured and treated, how, where does that come

1 from? So, is that, is that everything over the past month;
2 has it been over the past couple months; and sort of what is
3 the rainfall that we've received recently, what does seem
4 like in a historical sense? Is it, is it not much; is it a
5 lot; just to kind of place this in context with how it's
6 going to, I guess I can see it's there; but it's not clear
7 to me that this has been working for a long time. So, I
8 don't know if it would work into the future. Is that, and
9 that's been a real problem with this site; and, and I, I'm
10 not convinced yet on, on it actually working if we get any
11 substantial rainfall.

12 MS. LEITZINGER: The trap has been installed since
13 a year and a half about, since construction started. So,
14 you know, it's been collecting water this whole time. The
15 trap is designed to, you know, store the water up to a
16 certain elevation; and then it would get released through
17 the outfall. So, the traps are designed to keep the water
18 in them for, you know, a, a long period of time until it
19 gets to a, a certain elevation. The rainfall events over
20 the last few weeks, I am, I, I am not sure how many inches
21 of rain they were in relation to if they were, you know,
22 unusual or not.

23 COMMISSIONER DOERNER: If, if you just sort of
24 humor me in this, this is going to sound like an aggressive
25 question to some extent, but I don't mean it to be

1 aggressive. Why hasn't this worked in the fall? If you've
2 had this installed for the past year and a half, the fall
3 was, in the summer of last year, it was just terrible. You
4 guys did a terrible job at, at actually having this work.
5 So, I'm just kind of trying to figure out like why was that?
6 Was it because of historically high rainfall? Was it
7 because just multiple things failed that like you guys had
8 gone in and fixed that shouldn't fail in the past like, or
9 what, what's the answer to that because if this had been in
10 here for a year and a half and it goes, if your system was
11 working functionally, properly, we shouldn't be seeing the
12 street flooding and all these other issues; and, and rocks
13 and just different things kind of getting collected in
14 public right-of-ways. So, I'm trying to figure out like
15 what happened that, that didn't go right before; and, and
16 why should we think it's going to be any different kind of
17 going forward? Is that, you haven't shown me that. I,
18 that, that's where I, I'm just not seeing anything.

19 MS. LEITZINGER: So, Scott Taylor is with us and
20 he will speak more to previous events because he, he is with
21 GTA. He is onsite doing the inspections. I am not. So, he
22 can speak more to that. I do know that there was other
23 utility work last summer in the area; so, as I showed at the
24 beginning, there is a larger drainage area that goes to this
25 outflow, not just our site. So, some of the, you know, if

1 there was dirty water being discharged, it could have been
2 coming from other sites that flow through the storm drain
3 system to this outflow point. And there was some additional
4 work done in the area not related to, to this site per se
5 that could have contributed to that last summer.

6 COMMISSIONER DOERNER: Okay. I'll wait for him
7 then to kind of elaborate more. Thank you.

8 MS. LEITZINGER: All right.

9 MR. CHAIR: Thank you, Ms. Leitzinger. Mr.
10 Rivera, you had somebody else? Mr. Rivera?

11 MR. RIVERA: Yeah, for the record, Norman Rivera.
12 Our next presenter is Mr. -- excuse me?

13 MR. CHAIR: You froze for a second, Mr. Rivera.

14 MR. RIVERA: Yeah. Our next presenter is Mr.
15 Scott Taylor of GTA, our geotechnical engineer. As Rachel
16 said, he's the onsite inspector for the Applicant, and well-
17 versed on the issues regarding that question from
18 Commissioner Doerner and the other technical questions.
19 He's going to do a brief presentation, if you don't mind;
20 and then we'll go to that very specific question,
21 Commissioner. Thank you. He'll take my eat.

22 MR. CHAIR: Thank you. And after the Applicant
23 has presented, we'll provide the opportunity for cross from
24 other parties.

25 MR. TAYLOR: Good afternoon, Mr. Chairman and

1 Board members. My name is Scott Taylor. I'm with Geo-
2 Technology Associates. As Norman said, we are the
3 geotechnical engineers of record on the project. We are
4 also doing third-party construction observation and testing,
5 and third-party NPDES observations.

6 So, we've been looking at sediment controls on the
7 site. We started in July of 2021. We visit the site weekly
8 and post-storm. Typically, anything over a half-inch in
9 considered a storm.

10 So, we have visited the site four to six times a
11 month for a little, a year and a half. I can tell you that
12 the sediment controls are installed on the site in
13 accordance with the plans. I also can tell you that there
14 has been requests from DPIE to install additional sediment
15 and erosion controls and the Applicant has complied with
16 those; and in one instance, DPIE has requested they remove
17 additional controls; and, again, our, our, the Applicant has
18 complied with that.

19 I can tell you that the, the non-compliances that
20 we have observed and that have been observed by DPIE have
21 been predominantly related to maintenance issues. The
22 sediment and erosion controls were in place, but they needed
23 to be repaired and maintained. I would like to say that
24 this is also typical for any construction site; but we do
25 oftentimes see more issues with this on infill sites and

1 sites in developed areas; and, in fact, some of the issues
2 can come from the general public or others using the roads
3 or other facilities around the, the site. I, I can tell you
4 that there, there are no current violations from either MDE
5 or DPIE; and that there are no non-compliances currently
6 that I'm aware of after having reviewed MDE and DPIE's
7 reports and, of course, our own reports.

8 So, oh, and the question earlier about why there
9 are times when there may have been a significant amount of
10 turbid water leaving the site, I can, and I know the
11 question specifically said something about last summer, we
12 actually documented both a utility installation and a WSSC
13 water leak that happened off of our site in that drainage
14 area, that larger drainage area; and, and we have photos of
15 them from, the WSSC leak was actually washing soil down
16 Gallatin and, and the full length of Gallatin on our
17 property. There was a significant amount of water, a
18 significant amount of soil.

19 The most significant turbidity that we saw
20 actually happened the first week of July and those events
21 both happened in June of 2022. So, we, we know that the,
22 there was a significant amount of turbid water that first
23 week of July; but we, we do not believe that it was
24 significantly contributed to from the site that we're
25 talking about. It was from the larger drainage area.

1 Also, there was a question about the amount. All
2 I can tell you, there have been several rainfalls that have
3 been on the order of a half-inch just in this last month. I
4 don't think that we have had an extraordinary amount of rain
5 in the recent, recent past; but we have been seeing typical
6 rain events and rainstorms recently.

7 MR. CHAIR: All right. Does that complete your
8 presentation?

9 MR. TAYLOR: Yes, sir; but we will continue
10 services as well. We're under contract to continue to do
11 this.

12 MR. CHAIR: Thank you very much. Mr. Rivera,
13 anything else from you, from the Applicant?

14 MR. RIVERA: (Indiscernible) I think Scott was the
15 last, was the guy --

16 MR. CHAIR: Yes.

17 MR. RIVERA: -- (indiscernible).

18 MR. CHAIR: Mr. Rivera, if you could send the
19 gentleman back, Commissioner Doerner has a question?

20 COMMISSIONER DOERNER: Mr. (indiscernible) again.

21 MR. TAYLOR: Yes, sir.

22 COMMISSIONER DOERNER: So, the, the WSSC water
23 leak, was that caused by you guys doing construction; or was
24 that just a leak that was done, that happened somewhere
25 else?

1 MR. TAYLOR: It was not on this property or on the
2 northern property. It happened upstream of both sites and,
3 again, we, we, we saw a significant amount of water and
4 clods of soil that were washed down the hill.

5 COMMISSIONER DOERNER: Again, that was in June,
6 you said, or July?

7 MR. TAYLOR: June of 2022 and July of 2022 was
8 when we saw the, the most turbine water.

9 COMMISSIONER DOERNER: And when was that resolved
10 or fixed, with you guys fixing your sediment control
11 systems?

12 MR. TAYLOR: Again, I was not suggesting that it
13 was our sediment control systems; it was WSSC's water main
14 leak or a contractor working outside of our area. It just
15 happened to be in the same drainage area. If you look at
16 the plan that Rachel had shared, you know, the area of the
17 site is only about a third of the drainage area that's
18 serviced by the storm drain.

19 COMMISSIONER DOERNER: Again, I wasn't suggesting
20 that it was your, your controls that caused the leak or that
21 exacerbated it, necessarily; but, but I'm just curious
22 because I, I seem to remember in like August and September
23 of last year that there were, there's major floodings on the
24 street down there and they would shut down completely --

25 MR. TAYLOR: And in the last --

1 COMMISSIONER DOERNER: -- and I'm wondering why.
2 If it wasn't the leak, then what was it then?

3 MR. TAYLOR: You are correct that we did see more
4 flooding in, in August and September of last year. August
5 of last year is when DPIE asked for the additional sediment
6 controls on the inlets that are in Gallatin Street, so not
7 specifically part of our site, and not a designed sediment
8 erosion control; it was requested by DPIE. And DPIE has
9 since asked for those controls to be removed.

10 COMMISSIONER DOERNER: Have you guys removed them
11 or when were they removed?

12 MR. TAYLOR: They, they are removed there.

13 COMMISSIONER DOERNER: And when did that happen
14 because I'm just trying to piece together a timeline and
15 just figuring out like the, the bad flooding events. It is,
16 is it something that's due to your system; or is it
17 something that's like outside factors and you're having
18 trouble kind of piecing that together?

19 MR. TAYLOR: Well, as Rachel had said, there is
20 what we believe to be undersized storm drain pipe already in
21 place that we would like to replace with larger pipe, but we
22 have not yet been able to. And those sediment controls were
23 placed in August of last year and they were removed in the
24 last week or two. So, just, just in, in January of this
25 year those sediment controls were removed.

1 COMMISSIONER DOERNER: Okay. Why is it taking so
2 long to replace the, the, the two, I mean, or the, the pipe
3 that would be just too small underneath there?

4 MR. TAYLOR: There is an existing gas line that is
5 in the way. They, they are, the inverts are, are going to
6 collide. It is a gas main that is active, so they cannot
7 install the pipe. They also had previously not been able to
8 work in the floodplain. Those pipes are planned in the
9 floodplain. MDE has given them an emergency authorization
10 to install that storm drain and we are hopeful that in the
11 next month the gas line is abandoned.

12 COMMISSIONER DOERNER: Okay, meaning they're going
13 to shut it off and not use it anymore, or what does that
14 mean?

15 MR. TAYLOR: It will be relocated.

16 COMMISSIONER DOERNER: Okay. All right. Thank
17 you.

18 MR. TAYLOR: Yes.

19 MR. CHAIR: Thank you, Commissioner. Mr. Rivera,
20 any other questions from the Applicant, or any other
21 comments from the Applicant?

22 MR. RIVERA: At this time, Mr. Chair, members of
23 the Board, I think we've covered those issues and I'll let
24 the proceeding keep going. Thank you.

25 MR. CHAIR: Thank you. Mr. Smith, I'm going to

1 allow you to cross-examine the witnesses for the Applicant.
2 Please keep it focused on issues (indiscernible).

3 MR. SMITH: All right. Well, I'll, I'll, I'll
4 keep it as very focused on, on their comments, Mr. Chair.
5 Thank you. Miss -- and I, I want to, I want to, also want
6 to ask Ms. Kosack questions because I didn't have a, I had
7 to take a phone call and didn't have a chance to, to ask the
8 cross then.

9 Ms. Kosack referred to Werrlein having a grading
10 permit issued in 2021 and getting a stormwater permit in
11 2021. Did Werrlein have these permits prior to tearing up
12 the upper parcel in 2019 and prior to commencing work in
13 2021 on both parcels?

14 MR. CHAIR: That's not relevant to this case, Mr.
15 Smith.

16 MR. SMITH: Well, I, I think it is because what's
17 happening is, is --

18 MR. CHAIR: Mr. Smith, it's not relevant to this
19 case.

20 MR. SMITH: All right. All right.

21 MR. CHAIR: It's not relevant.

22 MR. SMITH: Incredibly enough, they can make
23 statements to reassure the Planning Board, but we can't, we
24 can't ask questions about that statement? Okay. I'll move
25 along.

1 Ms. Leitzinger, you referred to the trap in the
2 southwest corner of the lower parcel and the stormwater
3 conduit that was extended along the southern border of the
4 lower parcel. Both of those installations are in the
5 floodplain. Did your client have floodplain and wetland
6 authorization from the state before commencing that work?

7 MR. CHAIR: Ms. Kosack, you, so, no, you don't
8 know?

9 MR. SMITH: This is for Ms. Leitzinger. Ms.
10 Leitzinger made that statement. Did your client have the
11 required state, federal floodplain wetland authorization
12 before doing that work in --

13 MS. LEITZINGER: I, that, I am not aware of the
14 answer to that question. I do not know if they had
15 authorization at that time or not.

16 MR. SMITH: Ms. Kosack, Mr. Rivera, Mr. Taylor,
17 did Werrlein have the required authorization before, before
18 excavating the floodplain and filling in the floodplain?

19 MR. CHAIR: Mr. Smith, you can cross folks who
20 have spoken. They either --

21 MR. SMITH: Well, they were all, they were all --

22 MR. CHAIR: -- said --

23 MR. SMITH: They've all spoken. I'm asking a
24 question relevant to their testimony and I'm --

25 MR. CHAIR: Mr. Smith, Mr. Smith, you can cross

1 Ms. Leitzinger, you can cross Mr. Scott.

2 MR. SMITH: Oh, I'm sorry. I, I --

3 MR. CHAIR: The Staff as well.

4 MR. SMITH: Excuse me?

5 MR. CHAIR: And Staff as well, and you can direct
6 specific questions to them. They either will or won't know
7 the answer; and if the answer is no --

8 MR. SMITH: Okay.

9 MR. CHAIR: -- if they don't know, they don't
10 know.

11 MR. SMITH: All right. So, Mr. Rivera, Ms.
12 Leitzinger and, I'm sorry, is it Mr. Scott or Mr. Taylor,
13 are you --

14 MR. CHAIR: Mr. Taylor.

15 MR. RIVERA: Mr. Taylor.

16 MR. SMITH: -- Mr. Taylor, did, did Werrlein have
17 the required authorization, the state or federal
18 authorization before excavating in the floodplain and
19 filling in the floodplain?

20 MR. TAYLOR: My work does not involve the
21 floodplain. I am not aware.

22 MR. SMITH: Okay. And, and your firm came on in
23 July of 2021. Was that before or after Werrlein had been
24 working on the site?

25 MR. TAYLOR: We had started just before that with

1 construction observation and testing. So, I believe that
2 after work had started.

3 MS. SMITH: Okay. Mr. Taylor and Ms. Leitzinger,
4 you both referred to two, two events that you allege, at
5 least, or implied were responsible for the sediment
6 discharges that had been, have been documented on Gallatin.
7 Sustainable Hyattsville and volunteers, including Julie
8 Wolf, who is going to testify later; and Shanna Fricklas, if
9 she's available from her workplace, testify later; we have
10 put hundreds of photos and videos in the record showing
11 sediment sloughing off of the site onto Gallatin into the
12 storm system, into the Trumbule Trail tributary, into the
13 non-tidal wetland and in the Northwest Branch. Are you
14 implying that those two isolated events in 2022 are the, are
15 the cause; or are you saying Werrlein had no, no culpability
16 in those discharges? Now understand, this is going back to
17 2020, we presented 707s to the Planning Board in June of
18 2020.

19 MR. TAYLOR: I only spoke about the July, summer
20 specifically was, was the question, one of the questions.
21 In that instance, I, I don't believe that they contributed
22 significantly. I'm not saying that they have never had a
23 discharge.

24 MR. SMITH: Ms. Leitzinger, you, in those two
25 instances, you said this property is only one-third of the

1 catching area or drainage area. Are you asserting that
2 Werrlein is not responsible for the discharges that we
3 documented?

4 MS. LEITZINGER: No, I cannot speak to discharges
5 that occurred previously. I, I do not know. I was not on
6 the site; so, I cannot speak to what happened. I was just
7 saying I know of two instances last year where there were --

8 MR. SMITH: Where somebody else may have been
9 responsible?

10 MS. LEITZINGER: Right.

11 MR. SMITH: Okay. May have been responsible?
12 Thank you.

13 MS. KOSACK: Yeah, I think we're going a little
14 bit outside of the timeframe and of the scope of this
15 particular project, this DSP.

16 MR. SMITH: I'm sorry, what? I'm sorry.
17 Actually, this, this project, we've documented discharges
18 since Werrlein began work on the upper parcel in July of
19 2019; and since they recommenced work on both parcels in May
20 of this year without the required permits, and without the
21 required stormwater management controls; and so, and, and
22 both of these witnesses have identified --

23 MS. KOSACK: And, Mr. --

24 MR. SMITH: -- a few isolated events --

25 MS. KOSACK: -- respectfully --

1 MR. SMITH: -- that may even have --

2 MS. KOSACK: -- that is an enforcement issue.

3 MR. CHAIR: Hold it while Ms. Kosack is speaking.

4 MR. SMITH: Okay.

5 MS. KOSACK: And not the Planning Board --

6 MR. SMITH: So, getting --

7 MS. KOSACK: -- in its review of this DSP.

8 MR. SMITH: All right. So, so, thank you. So,
9 getting back to questions, one of the issues that's been
10 raised here by Commissioner Doerner and attempted to be
11 addressed by the Werrlein team is this flooding on Gallatin;
12 and there's this, their, their answer has implied that
13 somehow there was just a, during this relatively short
14 period and it was because of the, the stormwater inlet
15 protections that DPIE asked Werrlein to install, so I had a
16 couple questions. One is, what, what issue was DPIE trying
17 to address when they asked you -- did they tell you what
18 issues they were, they were trying to address when they
19 asked Werrlein to install these inlet protections in August?

20 MR. TAYLOR: They did not.

21 MR. SMITH: Okay. Ms. Leitzinger?

22 MR. TAYLOR: No, they did not.

23 MR. SMITH: The related question, the other
24 question has to do with flooding because there's this much
25 larger picture here that Commissioner Doerner has been

1 getting to and do you have any evidence, anybody on the
2 Werrlein team or Ms. Kosack, any evidence that prior to
3 Werrlein commencing work on this site that Gallatin flooded
4 in this area with this frequency with sediment-laden
5 stormwater, any evidence at all?

6 MR. CHAIR: I, I'm --

7 MR. SMITH: Is the answer no --

8 MR. CHAIR: -- assuming not --

9 MR. SMITH: Is the answer no? Okay.

10 MR. TAYLOR: I am not aware of what happened.

11 MR. SMITH: Okay. When did Werrlein first install
12 super silt fencing?

13 MR. CHAIR: Mr. Smith, Mr. Smith, you're, you're
14 coming pretty perilously close to testimony here. I
15 understand what you're getting at, but you're, if you're
16 asking the question, the answer is they do not have the
17 answer to your question.

18 MR. SMITH: I don't know how this is testimony.
19 I'm, I'm addressing statements that have been made by
20 Werrlein's representatives; and it's a shame that the Board
21 does not allow cross of Applicant's attorneys because Mr.
22 Rivera has made a number of these statements and he should
23 have to answer these questions as well because he's offered,
24 he's offered these statements as somehow as evidence that
25 Werrlein has behaved legally and responsibly, and not

1 committed violations; and which has been a big part of the
2 subject of testimony at the previous hearing and was
3 supposed to be part --

4 MR. CHAIR: Which --

5 MR. SMITH: -- of the hearing today.

6 MR. CHAIR: Which I might say is, is the more I'm
7 hearing this limited scope public hearing, the more I'm
8 realizing that I'm struggling to find how any of this is
9 relevant to the DSP. I understand that you have --

10 MR. SMITH: Well, we'll get to it in our
11 testimony.

12 MR. CHAIR: -- questions about the developer.

13 MR. SMITH: We'll get to it in our --

14 MR. CHAIR: I understand you have questions about
15 the developer, but, but, again, so I'm going to allow
16 continued cross-examination, but I want to get to the point
17 and I want us to move through this because we have a DSP
18 before us. We are not the permitting agency. We are not
19 the permitting agency. So, is there any other cross for the
20 Applicant's team or Ms. Kosack?

21 MR. SMITH: Yeah, I do have a question for Ms.
22 Kosack. Are you, are you asserting that the floodplain
23 waiver letter from DPIE in September of, from September 2018
24 is sufficient to satisfy the requirement that Werrlein, that
25 the Applicant provide evidence that it has all the required

1 floodplain authorizations at this stage, all of the required
2 floodplain authorizations at this stage?

3 MS. COLEMAN: Mr. Smith, Ms. Kosack. Our Staff is
4 not the issuing of that permit. Staff is not the permitting
5 agency. So --

6 MR. SMITH: Sorry, who, who, I'm sorry, who is
7 speaking?

8 MS. COLEMAN: This is Delisa Coleman, senior
9 counsel, for the record.

10 MR. SMITH: Okay.

11 MS. COLEMAN: That is the permitting agency.

12 MR. SMITH: Well, Ms. Coleman, except for the fact
13 that in the Technical Staff Report, though I understand Ms.
14 Kosack was the primary author of, there's a statement that
15 the floodplain waiver letter satisfies that condition. It's
16 an explicit statement in the TSR. And so, I'm asking --

17 MR. CHAIR: So, then --

18 MR. SMITH: -- and I'm, I'm asking --

19 MR. CHAIR: It sounds like this is asked and
20 answered.

21 MR. SMITH: No, it hasn't. The question is --

22 MR. CHAIR: It's in the report.

23 MR. SMITH: -- the question, I think the question

24 --

25 MR. CHAIR: Ms. Kosack, are you --

1 MR. SMITH: -- are they asserting --

2 MR. CHAIR: Ms. Kosack, do you disagree what says,
3 what's, what's in your report?

4 MS. KOSACK: No. No.

5 MR. CHAIR: Okay.

6 MR. SMITH: So, I'm sorry, Ms. Coleman, was
7 saying, was basically saying that she believed that the
8 floodplain waiver letter completely satisfied that
9 requirement?

10 MR. CHAIR: Well, that's in the Staff Report, as
11 you said.

12 MR. SMITH: Right. And I'm asking -- okay, all
13 right. All right. Thank you.

14 MR. CHAIR: All right. If there's no more cross,
15 we have heard from the Applicant, the Applicant's team. I
16 will turn to folks who have signed up to speak, mostly folks
17 who signed up to speak in opposition. I think everyone who
18 signed up has. I just want to clarify, go through the list
19 to make sure because I have multiple lists here. I'm going
20 to start with the City of Hyattsville, Mr. Chandler. Ms.
21 Simmons, are you both going to speak?

22 MR. CHANDLER: Mr. Chairman, I am likely going to
23 speak. Ms. Simmons was signed up in case we had to respond
24 to the Applicant's most recent exhibit. I suspect we are,
25 that that won't be necessary. So --

1 MR. CHAIR: Okay.

2 MR. CHANDLER: -- it will probably be limited to
3 just my testimony.

4 MR. CHAIR: Thank you, Mr. Chandler. So, let me
5 just keep going through the list just to make sure who is
6 here, who is not here. We have, I see you, Ms. Wolf. I
7 assume you're going to want to speak?

8 (No affirmative response.)

9 MR. CHAIR: Irene Marsh, is Irene Marsh here?

10 (No affirmative response.)

11 MR. CHAIR: We have, hold on, we have Kate
12 Calloway? Ms. Calloway?

13 (No affirmative response.)

14 MR. CHAIR: David Rease?

15 (No affirmative response.)

16 MR. CHAIR: Jorge Aguilar Barrantes.

17 (No affirmative response.)

18 MR. CHAIR: Shanna Fricklas?

19 MS. FRICKLAS: Present.

20 MR. CHAIR: Okay. Thank you. Hold on. Andrew
21 Tsui?

22 (No affirmative response.)

23 MR. CHAIR: All right. Am I missing anybody who
24 believes they are eligible to speak at this hearing? If
25 not, then we will hear from City of Hyattsville; then we'll

1 hear from Ms. Wolf; and then we'll hear from Ms., I want to
2 pronounce your name, right, we'll hear from Ms. Fricklas;
3 and, of course, Mr. Smith; and those are the folks who will
4 be speaking.

5 I'm going to have the City of Hyattsville go first
6 unless that is your preference not to, Mr. Chandler; but
7 I'll give you the opportunity to go first.

8 MR. CHANDLER: I would be more than happy to.

9 MR. CHAIR: Okay. And then after that, Mr. Smith,
10 Ms. Wolf, Ms. Fricklas, do you have any preference about
11 what order you're going to go in?

12 MS. FRICKLAS: I think that order sounds great.

13 MR. SMITH: I actually --

14 MS. WOLF: So --

15 MR. SMITH: -- maybe I should, well, I, I, I'm
16 probably not going to need to do clean-up or, or go first
17 on, on the (indiscernible), either one is fine.

18 MS. WOLF: I have some time constraints --

19 MR. CHAIR: It is a bit of a metaphor because of
20 this case, but thank you.

21 MS. WOLF: If I could go earlier, that would be
22 great. I have work constraints.

23 MR. CHAIR: Okay. So, after Mr. Chandler, Ms.
24 Wolf, I'll have you go; then Ms. Fricklas; and then Mr.
25 Smith. I'm going to give everybody three minutes to speak

1 on this matter. Again, this is a limited scope public
2 hearing, okay? Mr. Smith?

3 MR. SMITH: Yeah, Mr. Chair, as before, I would
4 like us to have at least the same amount of time as the
5 Applicant's team had; and I kept track of that and they had
6 about 20 minutes.

7 MR. CHAIR: I'll respect that request. I'm going
8 to take that 20 minutes and have that be a combined 20
9 minutes of all the folks who are in opposition. So, that
10 will be 20 minutes for accommodation of you, Ms. Wolf and
11 Ms. Fricklas, not Mr. Chandler. That's separate. And you
12 all can manage your time as you see fit with that 20
13 minutes.

14 Okay, Mr. Chandler, I'll turn it to you and in
15 deference to the, to your role, you can speak for the rest
16 of the day if you choose to.

17 MR. CHANDLER: Thank you, sir. Good afternoon,
18 members of the --

19 MR. CHAIR: Mr. Chandler, we're not hearing you
20 very well.

21 MR. CHANDLER: Oh. Hear me? I guess the --

22 MR. CHAIR: It's very weak. We hear you, but it's
23 very weak.

24 MR. CHANDLER: Okay. I'll, I'll try to speak
25 loudly, see if, if --

1 MR. CHAIR: That's better.

2 MR. CHANDLER: -- that, okay.

3 MR. CHAIR: Yeah, that's better.

4 MR. CHANDLER: All right. Good afternoon,
5 Chairman Shapiro, members of the Planning Board. For the
6 record, Jim Chandler. I'm here representing the Mayor and
7 Council of the City of Hyattsville. I am today, here today
8 to affirm the City's request for denial of the subject
9 location and speak to the City's concerns related to
10 stormwater and other environmental issues as it pertains to
11 the limited scope hearing.

12 I recognize that we do have some housekeeping on
13 this matter, so I will refer you to the City's comments.

14 MR. CHAIR: We're losing you again, Mr. Chandler.
15 We can't hear you, unfortunately.

16 MR. CHANDLER: Okay. If you give me 30 seconds,
17 I'll try to find a different spot.

18 MR. CHAIR: Okay. Thank you. Folks, we'll take
19 a, just a couple minute break.

20 MR. CHANDLER: My apologies. Is that any better?

21 COMMISSIONER WASHINGTON: Yes.

22 MR. CHAIR: Yes, we can hear you much better.

23 MR. CHANDLER: Okay. So, I recognize that we have
24 limited time to testify on this matter, so I'll refer the,
25 the Board to the City's correspondence in an attachment

1 exhibit that was submitted to the Board earlier this week.
2 As you're aware, the City of Hyattsville is not an
3 environmental regulatory agency; so, our community has had
4 to rely on corrective actions and enforcement for both
5 Maryland Department of Environments and Prince George's
6 County Department of Permitting, Inspection and Enforcement.

7 About its redevelopment of the former WSSC
8 Headquarters site, the Applicants, developer Werrlein
9 Properties, has consistently failed to adequately address
10 environmental issues, including but not limited to the
11 impermissible storage of sediment infill within the
12 floodplain; consistent stormwater run-off onto adjacent
13 properties; and the inadequacy of sediment controls.

14 Sheer quantity of incidences led the City of
15 Hyattsville to conclude that Werrlein Properties has
16 willfully ignored and intentionally circumvented applicable
17 state and county regulations. From June 2021 through August
18 2022, there have been a series of stormwater and sediment
19 control failures at the subject site. This includes, but
20 it's not limited to, the following: In June 2021, there was
21 an incident in which the City contacted DPIE regarding
22 sediment-laden water being discharged into a creek adjacent
23 to the Trumbule Trail. Staff confirmed that the origin of
24 the sediment-laden water was an active construction site
25 near Driscoll Park. Stormwater run-off is entering the

1 inlet structure on the project site discharged into a nearby
2 waterway.

3 In September 2021, the City was notified that
4 Werrlein Properties, without approval, had stored
5 construction sediment materials, uncontained or otherwise
6 unprotected from the weather, without approval. The City of
7 Hyattsville informed the Department of Environment that the
8 Applicant did not have a non-title wetlands permit required
9 to perform this specific work. At that time, MDE affirmed
10 that they were made aware of the work on the site via
11 complaint and that the work on the site was being performed
12 without the coverage under NPDES general permits for
13 stormwater associated with construction activities which is
14 a requirement for sites that have disturbed one acre or
15 more.

16 MDE recommended immediate suspension of the work
17 and stabilization of the site. Our records indicate MDE
18 stated the Applicant did not respond appropriately and that
19 Prince George's County would assist in enforcing the county
20 stop work order until the appropriate authorizations were
21 obtained by MDE.

22 A week later, the City observed the contractor
23 continuing to perform work with the use of additional
24 equipment brought to the site without the required permits.
25 City officials spoke with MDE officials who confirmed that

1 MDE had cited the owner for several violations, including
2 several pollution events, working without a permit, and
3 refusing to comply with MDE recommendations to cease all
4 unauthorized work and stabilize the site on three separate
5 occasions. MDE confirmed that the developer was in
6 violation for storage of large amounts of fill on the
7 floodplain and directed by MDE to remove the fill.

8 Most notably, and Commissioner Doerner, I think,
9 did a very good job detailing this all, I will only touch on
10 this, but from July 2nd of 2022 through August 11, 2022, the
11 City documented five separate stormwater events, each of
12 which created significant damage to environmentally
13 sensitive public lands, roadways, and the county's storm
14 drain system. These preventable events required personnel
15 from our City of Hyattsville Department of Public Works and
16 police department to perform road closures and detouring
17 with pedestrians and vehicular traffic.

18 We believe it's reasonable and appropriate for the
19 Planning Board to proceed with the following actions: Deny
20 the Detailed Site Plan application; second, request that any
21 future DSP application, the Planning Board require at a
22 minimum the Applicant's Sediment Control Plan, Site
23 Development Concept Plan and 100-year Flood Plain Study be
24 re-evaluated by DPIE to determine the adequacy and ensure
25 whether future stormwater events not contribute further to

1 deterioration of land and infrastructure adjacent to the
2 subject site.

3 I believe it's incumbent upon the Planning Board
4 to ensure that the development of the site, if approved
5 through either this land use application, or in the future
6 address stormwater quality and quantity that no way further
7 compromises adjacent properties.

8 I'm very appreciative for the extension in time
9 and look forward to your comments.

10 MR. CHAIR: Thank you, Mr. Chandler. I will now
11 turn to Ms. Julie Wolf. State your name and address for the
12 record, and you will have, well, you have collectively 20
13 minutes between you, Ms. Fricklas, Mr. Smith. We'll put 20
14 minutes on the clock and the time is yours.

15 MS. WOLF: Thank you. While I'm introducing
16 myself, could page 402 of the DSP-21001, additional
17 materials from February 4th, be pulled up, please? It takes
18 a lot of time to load, and so I can wait, but okay. So, my
19 name is Julie Wolf. I live directly to the left of the
20 photo that you were just looking at, so I overlook the site;
21 but I'm not going to be speaking about the things you've
22 already heard about today because, more importantly, in my
23 opinion, I'm trained as a soil scientist, particularly in
24 the field of climate change, and that's what I do research
25 in. And so, I'm here to speak today about some of those

1 aspects.

2 So, here in this --

3 MS. COLEMAN: Yeah, well --

4 MS. WOLF: Okay.

5 MS. COLEMAN: Delisa Coleman.

6 MR. CHAIR: Hold on. Ms. Wolf, hold on.

7 MS. COLEMAN: Counsel for the record. I just want
8 to state that I'll remind Ms. Wolf then, and all parties,
9 that we are limited in scope here to the violations, not to
10 overall environmental studies or things beyond the
11 violations that occurred.

12 MS. WOLF: Right. I understand that and I
13 understand that this may not -- I don't understand the, the
14 legal, the limit, those limitations; so, this may or may not
15 relate to potential violations in the planning process; and
16 I'll keep it brief. And if it's inadmissible, that is fine.

17 MR. CHAIR: Ms. Wolf --

18 MS. COLEMAN: And I apologize --

19 MR. CHAIR: -- that's all right. Ms. Wolf, and I
20 appreciate you being flexible with us, too. It's very
21 important that we keep testimony to what's pertinent to this
22 limited scope public hearing; so, as you proceed, either
23 myself --

24 MS. WOLF: Uh-huh.

25 MR. CHAIR: -- or Ms. Coleman may say that that is

1 not relevant to what we are doing; and then we'll ask you,
2 I'll ask you to move on.

3 MS. WOLF: I understand. Thank you.

4 MR. CHAIR: All right. Thank you.

5 MS. WOLF: So, you're looking at a map here that's
6 a broad map that I have downloaded, Flood Explorer Mapper,
7 from NOAA; and this is showing a very broad view of the area
8 and the black circle is showing the area. And if you could
9 then go to the previous page, page 401, is a closer-in view.
10 And so, I want to speak today that I believe this
11 development, regardless of what the developers say will
12 occur, that this development will jeopardize Driscoll Park,
13 especially the infrastructure directly adjacent to the lower
14 lot, and here's why.

15 MR. CHAIR: Ms. Wolf, I'm going to --

16 MS. WOLF: Their plan --

17 MR. CHAIR: -- I'm going to step in. Ms. Wolf,
18 I'm going to --

19 MS. WOLF: Yes?

20 MR. CHAIR: -- step in. I, I, I know it's not
21 what you want to hear, and I hear --

22 MS. WOLF: That's okay.

23 MR. CHAIR: -- absolutely your passion around this
24 issue; it's not relevant to this DSP or the limited scope
25 public hearing. It's just not.

1 MS. WOLF: Okay.

2 MR. CHAIR: You're talking about --

3 MS. WOLF: That's fine.

4 MR. CHAIR: -- just a broader environmental issue
5 that's a real issue, but not relevant to this.

6 MS. WOLF: Okay. Who then is it relevant to? Who
7 do I report these things to? Who do I report that if
8 allowed to continue, this development will damage the public
9 park; because it will.

10 MR. CHAIR: That would be, I assume that would be
11 DPIE.

12 MS. WOLF: Right. They are wonderful.

13 MR. CHAIR: Check with the staff there.

14 MS. WOLF: Right. In that case --

15 MR. CHAIR: It happens.

16 MS. WOLF: -- I will, I will get back to my actual
17 job and not take up any more of your time; but I do ask you
18 to -- I have submitted many, many photos regarding
19 violations. The City of Hyattsville has also supported
20 those. So, I believe that takes care of my time. There is
21 an additional --

22 MR. CHAIR: Thank you.

23 MS. WOLF: -- map on page 403 showing that all of
24 the park's infrastructure is directly next to the lower lot.
25 All right. Thank you.

1 MR. CHAIR: Okay.

2 MS. WOLF: And --

3 MR. CHAIR: Thank you, Ms. Wolf.

4 MS. WOLF: Uh-huh.

5 MR. CHAIR: The clock continues. I'll turn to Ms.
6 Fricklas. And if you can introduce yourself for the record
7 and, well, we'll follow the same process and keep you on
8 track.

9 MS. FRICKLAS: Absolutely. Yes, my name is Shanna
10 Fricklas. I reside at 5008 40th Place in Hyattsville, which
11 is four doors down from the disputed site. I already spoke
12 on the record, so I will not be redundant; but I purchased
13 my home in May 2021, and that was around the same time that
14 Werrlein began, began to tear into both parcels, even though
15 they did not even apply for a state and federal stormwater
16 floodplain wetland permit at the time.

17 From my conversations, it's still apparent that
18 Werrlein still has no Wetland Floodplain Permit. The map,
19 Floodplain Maps, don't account for climate change and MDE
20 had developed a GIS tool, or looks as to wetland would be
21 inundated if the flood levels are three feet or higher; and
22 it certainly falls within that area. Topo data used by FEMA
23 Maps may be at least 15 years old. Stormwater regs and
24 approval don't account for climate change. Stormwater plans
25 and approvals rely on NOAA precipitation data 20 years out

1 of date.

2 MS. COLEMAN: We're going beyond the violations
3 that we're meant to talk about in this scope. So, I
4 understand, I respect that, the broad issue; but this
5 hearing was limited in scope to just clarify these
6 violations on the property.

7 MS. FRICKLAS: Okay. Well, I have personally
8 documented, along with 15, at least, other people, some of
9 those violations and can attest to five right now, to seeing
10 them myself in the Trumbule Trail bog which abuts my
11 backyard where the water, after it rains, it has almost
12 reached the level of the raised walkway. The water is a
13 murky, brownish, red color. I have been unable to drive to
14 my house which, like I said, is four doors down, because of
15 the, you know, the flooding on that road that this would be
16 building on. You know, I just wanted to say that generally
17 to the level of deference that's given to a city and it's
18 clearly, you can see from the City's letter and the
19 testimony that you've already heard, you know, that have
20 been opposed by the City of Hyattsville at every single turn
21 since 2019; and I believe that Werrlein's consistent and
22 persistent violations should inherently prevent them from
23 being rewarded with additional opportunities to build in my
24 community; and that if you take into account their
25 deplorable track record and violations going back more than

1 3 1/2 years, I have little faith that whatever they're
2 saying about managing some way to safely build in the
3 floodplain will actually result as such; and once built,
4 there's no way to hold them accountable for the negative
5 impacts.

6 It is my home that will be flooded, whether or not
7 you believe that those million-dollar row houses will
8 actually be flooded because they're lifting it above the
9 floodplain. It affects the floodplain totally and my
10 backyard already, you know, can see the impacts. So, and I
11 don't need to reiterate for you the, all of the non-
12 compliance that DPIE has found Werrlein to be in, roughly,
13 you know, 15 times; issued five stop work orders and
14 compliance orders. All this is on the record. I'm going to
15 give the rest of my time over to Greg.

16 MR. CHAIR: Thank you, Ms. Fricklas, appreciate
17 it. Mr. Smith, the time is yours. You've got about 15
18 minutes on the clock. We're going to take the same approach
19 which is to keep you focused on what's before us and the
20 limited scope of the public hearing, and the time is yours.

21 MR. SMITH: Mr. Chair, before I get into the meat
22 of my testimony, please don't start the clock. I just, I
23 want a procedural question. I understand that you want to
24 keep the scope of this hearing narrowly focused on, quote,
25 "Clarifying," the violations issues. I'm not sure why

1 you're taking that approach, but I'm not, also don't think
2 the notice that was sent out that the Planning Board had
3 continued the, the matter did not inform the public that the
4 scope would be so narrow. Did it? I'm not aware that it
5 did.

6 MR. CHAIR: I don't know. I don't know, Mr.
7 Smith; but you can continue.

8 MR. SMITH: I think, I think, I think, too,
9 though, at the last hearing, Commissioners Doerner and
10 Washington raised significant concerns and asked significant
11 questions about which agencies had, had the authority over
12 floodplain approvals; what requirements were, were required,
13 were, were, were imposed for a limited --

14 MR. CHAIR: Mr. Smith, you're --

15 MR. SMITH: -- and none of, none, and so --

16 MR. CHAIR: -- you're here to speak about, in this
17 limited scope public hearing. The time is yours. You may
18 not like this process. This is what's before you. You've
19 got about 15 minutes on the clock to address the issues
20 related to the limited scope public hearing. Take it away,
21 please.

22 MR. SMITH: Okay. So, so, here's, here's some
23 relevant law. Section 27-103, the purposes of the Zoning
24 Ordinance, one, to protect and promote health, safety of not
25 only the present, but future inhabitants as, as well; six,

1 to promote the beneficial relationship between the uses of
2 land and buildings, and to protect landowners from adverse
3 impacts of adjoining development; seven, to protect the
4 county from fire and flood; thirteen, to protect against
5 undue noise, air and water pollution and to incur the
6 preservation of, encourage preservation of the stream
7 valley, steep slopes, land, et cetera, et cetera; fourteen,
8 to provide open space to protect scenic beauty and natural
9 features; and, fifteen, to protect and conserve natural
10 resources.

11 The evidence we've placed in the record
12 demonstrates that this project does not do that, especially
13 in light of the fact that these facilities, the plans and
14 the approvals, don't take climate change into account; and
15 especially given the fact that Werrlein has been a chronic
16 and insistent, and persistent violators since July of 2019;
17 and that it took and, frankly, I just talked to MDE,
18 Werrlein is not in compliance with, with, with the
19 requirements with respect to the floodplain. They simply
20 are not. They don't have the permit. They've got fill on
21 the floodplain, they excavated it; and they're, they remain
22 in non-compliance on that. So, so, that's part of the
23 framework; and I argue that this DSP does not meet those,
24 those requirements.

25 Relevant Condition 2(a) and Council approval of

1 CSP-18002 that the time of the Detailed Site Plan, the
2 Applicant was to provide evidence that impacted the
3 floodplain has been approved by the authority having
4 jurisdiction. DPIE's floodplain waiver is necessary, but
5 not sufficient. Necessary but not sufficient. And
6 Condition 1 in DPIE's waiver letter states this approval
7 does not relieve the Applicant of responsibility for
8 obtaining other, any other approvals, license or permits in
9 accordance with federal, state or local requirements as it
10 was not authorized commitment, commencement of the proposed
11 project.

12 Werrlein does not have the required state/federal
13 approval. They did not have it in 2020 when you approved
14 the first DSP; they don't have it now. This DSP should not
15 have been accepted for review and, and it should not be
16 approved here.

17 Now this is, and you can find this information on
18 MDE's website. In addition to local permits, in addition to
19 activities in the 100-year Nontitle Floodplain require state
20 waterway construction permits and activities within 25-feet
21 of, or in non-title elements, require wetland permits from
22 MDE. Werrlein does not have that.

23 Development is broadly under, and with respect to
24 information on MDE's website, this is all commonly
25 available, MDE's website, pages on the National Flood

1 Insurance Program, development is broadly defined as any
2 man-made change to the land, including grading, filling,
3 grading, et cetera. If state and federal permits are
4 required, development may not begin until all necessary
5 permits are issued. So, I hope that clarifies for you that
6 Werrlein has been chronically and consistently violating;
7 and as Mr. Chandler noted, MDE found that Werrlein continued
8 work after being advised to stop. I'm not sure how much
9 clearer it gets than that, that this is violating.

10 Now we have placed into the record hundreds of
11 photos and videos showing that Werrlein has repeatedly
12 discharged sediment; and I don't know how much assurance
13 anybody should take that 2 1/2 years into a rather, well,
14 more than a year and a half into having started work on the
15 lower parcel and tearing up the upper parcel for the second
16 time, Werrlein has gotten one clean bill of health from
17 DPIE. Typically, as Ms. Fricklas testified, Werrlein has,
18 has essentially failed on more than half of DPIE's
19 inspections; and prior, and has failed on every one of MDE's
20 inspections. Now MDE may have found them in compliance with
21 the stormwater controls requirements on the upper parcel, on
22 the 31st visit; but on all prior visits, 30 visits, MDE
23 found Werrlein in violation, or non-compliance.

24 I just want to dismantle some of the -- and we've
25 put into the record the fact that climate change is here.

1 We have put into the record exhibits that show that this,
2 this land is likely to be inundated by climate change in the
3 not too distant future; and you, you, you should not ignore
4 that evidence and those facts; and you cannot ignore them
5 and still make an informed finding that this project will,
6 that it will meet the purposes of the Zoning Ordinance, meet
7 the purposes of the Zoning Ordinance as DSP provisions, or
8 that the applicant will protect and restore the regulated
9 environmental features. They've already shown their
10 inclination with respect to that.

11 So, getting to, getting 4 1/2 years into the
12 review of this project, seeking reassurance and after, after
13 more than 2 1/2 years of woeful violations, this particular
14 Applicant is somehow going to get its act together; and
15 DPIE, which engaged in earnest really only after we engaged
16 MDE in May of 2021, that somehow everything is going to be
17 fine, we all hold hands and sing Kumbaya, is irresponsible.
18 You really should take into account the broader set of facts
19 that I don't think you can make an informed finding that
20 Werrlein has met the specific requirements. They have not
21 provided you with a detailed statement as to how the land
22 will be maintained. If the HOA retains ownership or grants
23 public access --

24 MS. COLEMAN: Again, Mr. Smith --

25 MR. CHAIR: (Indiscernible.)

1 MS. COLEMAN: -- try to limit it to the violations
2 which is part of this limited scope hearing.

3 MR. SMITH: I think we've placed abundant, hyper-
4 abundant, super-abundant evidence on the record that
5 Werrlein has been violating since at least July of 2019. We
6 started presenting that evidence to you, to this Planning
7 Board, in June, on June 11th of 2020. We held up
8 photographic evidence that Werrlein was dumping rivers of
9 sediment onto Gallatin Street, into the stormwater system;
10 and we have attempted to present that evidence in each stage
11 since. So, and I, and I, I do want to thank Commissioners
12 Doerner and Washington for expressing concern and asking
13 probative questions, relevant probative questions at the
14 last hearing; and, and Commissioner Doerner at this hearing.
15 I, I think it does the public and the Planning Board, and
16 then downstream, not intended really, the District Council
17 the disservice for you to limit this testimony so narrowly
18 today because you starved again relevant and thorny issues
19 that had been ignored for far too long in the last hearing;
20 and you're, you're, you're a quasi-judicial body who is
21 supposed to be assembling a full evidentiary record. And to
22 do that, it makes sense to, at this continued hearing, to
23 address these larger issues.

24 I, I, I don't think you can take any reassurance
25 in, in, in this latest report from DPIE and assurances from

1 Werrlein and its engineers when for, for, since July of
2 2019, they've been violating the law; and DPIE was not on
3 the scene. They didn't get on the scene. You, we, I've, we
4 presented into this record summaries of DPIE's inspection
5 reports. You can find this on DPIE's website. There's a
6 searchable database. There is no evidence that DPIE
7 inspected the site for stormwater compliance between July of
8 2019 and the fall of 2021; or, rather, the fall of 2020, a
9 single, one or two inspections there; and then later, June
10 9th of 2021. You will find no evidence that your partner
11 agency, the agency upon which you want to rely and assuring
12 yourself that somehow the, the permitting regime has, has
13 been followed; and DPIE has been doing its job; and Werrlein
14 has been following the law; you can't look at that evidence
15 that DPIE didn't inspect for that entire period, even though
16 they knew Werrlein had tore up, torn up the upper parcel,
17 and take any, any reasonable, credible reassurance from it.
18 And I can tell you, after that last hearing, a number of
19 folks in the community said they felt like for the first
20 time in four years legitimate concerns were being heard; and
21 so, and those concerns include some of these broader issues.

22 It has felt during this hearing, though, that
23 you're looking for reassurance from Staff, from Werrlein and
24 its engineers, and from this latest inspection by DPIE. It
25 should be concerning, though, that DPIE has failed Werrlein,

1 essentially, more than half the time it's visited, more than
2 60 inspections. MDE has failed them every time on one
3 aspect or another. The fact that it is likely that these
4 stormwater systems are under-designed because of climate
5 change and other factors; and that we will see future
6 violations. And I'll go back to that piece and the purposes
7 of the Zoning Ordinance which is to protect future
8 inhabitants, people who live downstream or next to the site.
9 Ms. Fricklas has told you that if or when these, these
10 facilities, these controls fail, and as climate change rocks
11 and rolls, as we all know it's doing, her property is one of
12 the properties that will suffer, is likely to suffer.

13 And Mr. Doerner, Commissioner Doerner, you've
14 testified about how much you, you enjoy and love the
15 Trumbule Trail wetland area. It truly is a precious
16 resource; and yet Werrlein has discharged sediment not only
17 into the tributaries, but onto city-owned parkland, and onto
18 county-owned parkland and into that wetland. That's a
19 violation of the law.

20 Tearing up a site as Werrlein did in July of '19,
21 and leaving it in a degraded condition likely to discharge,
22 as Werrlein did, no stabilization, massive stockpiles of
23 soil and demolition debris, it was likely to discharge and
24 it did, leaving a site in that condition is a violation of
25 the law; and yet they weren't inspected, they weren't

1 enforced upon and they weren't penalized. And one of the
2 primary rationales for allowing this project to go, go
3 forward and approving the CSP was because the, the WSSC
4 building, in some people's eyes, was an eyesore; and we
5 traded that for the eyesore that you have seen many, many
6 times, I'm sure, Commissioner Doerner, a landscape that
7 Werrlein had, had completed denuded of vegetation and left
8 it fully-exposed to the elements and likely to discharge.
9 And it's, you know, I, I, I've asked relevant questions of
10 the Applicant and their engineers, and they haven't been
11 able to answer those very simple questions; and yet they've
12 tried to apply that somehow these two other, these two
13 single events may have really kind of explained Werrlein
14 wasn't responsible for violating county, state and federal
15 law and damaging the environment, and inflicting their
16 pollution on the community.

17 They don't have the required floodplain
18 authorization. They can't demonstrate, so, they can't
19 demonstrate conformity with the CSP. You don't want to hear
20 it, but I, with the floodplain delineation issue is relevant
21 because it gets to the density issue. They can't, I don't
22 think they can prove conformity with the, the, the new
23 density allowance --

24 MS. COLEMAN: Again, we're --

25 MR. SMITH: I'm, I, one thing I --

1 MS. COLEMAN: -- are --

2 MR. SMITH: -- I'm just putting it on the record.
3 You can't, based on the evidence in the record, find that
4 they will protect and restore the regulated features to the
5 maximum extent; you can't find, I think, based on the
6 evidence in the record, and the lack of evidence from their
7 side, that they will not harm the environment or the
8 communities; or, and comply with the purposes of the Zoning
9 Ordinance or the other relevant (indiscernible). So, I'm
10 going, I think I'm going to leave it at that. We have done,
11 we have worked to put a lot of evidence on the record; and
12 I'll just remind you that the Zoning Ordinance, 17142 of the
13 Zoning Ordinance places the burden of proof --

14 MR. CHAIR: Give us one second, Mr. Smith.

15 MR. SMITH: Yeah, this is --

16 MR. CHAIR: Don't worry about it. Hold on one
17 sec. I'm not, I'm not, you're not losing your time. Okay.
18 You can continue.

19 MR. SMITH: I think based on the evidence of
20 record, you, you cannot find that this project, this DSP,
21 meets the, the purposes of the Zoning Ordinance or the
22 purposes, goals and requirements of other relevant laws,
23 including the Clean Water Act, the Code of Maryland
24 Regulations, the county's own water management coordinates.
25 You, just based on the evidence in the record, you, you

1 cannot make an incredible and informed decision on this.
2 You may -- yeah, that's my opinion; I hope you share it. I
3 hope that you're concerned about the fact, the fact that we
4 were even able to put so much evidence on the record that
5 Werrlein has been, has been willfully violating for several
6 years, even up until recently and still; and that these
7 Stormwater Management Plans and approvals don't take into
8 account climate change or changes in the local land use;
9 and, therefore, should not be relied on.

10 You have a higher responsibility, I think, I
11 should guess; and I hope you take that on to ensure that
12 these approvals, these projects do meet those higher
13 requirements in the law; and that these projects do not
14 imperil the public welfare whether it's the condition of our
15 parks; our, our, our aquatic resources; or our communities.
16 I think, I think I'm down to one and zero seconds. Thank
17 you very much for your time.

18 MR. CHAIR: Thank you, Mr. Smith. We have
19 somebody else who had signed up to speak who has now shown
20 up. I want to give her an opportunity as well. Irene
21 Marsh, are on the line? Ms. Marsh?

22 MS. MARSH: On the phone, I'm on the phone. Okay.
23 Yeah. Yeah. For some reason --

24 MR. CHAIR: I believe that's more than adequate.
25 Ms. Marsh, you have three minutes. If you could identify

1 yourself, state your name and address for the record, and
2 the floor is yours. You have three minutes.

3 MS. MARSH: My name is Irene Marsh. I'm at 4912
4 40th Place and I want to definitely corroborate all the
5 evidence that was presented by the previous speakers. I did
6 not have the chance to make a video, but that flooding on
7 Gallatin Street affects my ability to get to my home; and I
8 have seen it over and over. It was not coming from
9 anybody's pipes; it was coming off of -- we have an awful
10 echo here.

11 MR. CHAIR: I think, I think, Ms. Marsh, I think
12 the speaker is on on your phone, on your computer, rather;
13 and if you'd turn the speaking off on your computer, you
14 won't hear the echo.

15 MS. MARSH: Oh, oh, I'm sorry. Let me see.

16 MR. CHAIR: No problem because you're on the
17 phone, right?

18 MS. MARSH: Yes, I am now, yeah, that, it --

19 MR. CHAIR: So, turn off your computer speaker and
20 the echo will go away.

21 MS. MARSH: Okay. Let me, computer speaker --

22 MR. CHAIR: You sound better already.

23 MS. MARSH: Okay. I have -- no, I'm not, it's
24 not, it's not gone. I'm sorry, this, oh wait, here it is.
25 Okay. Okay. Let me see if I can do that. No, I can't get

1 the speaker, I can't do it. I can't do it.

2 MR. CHAIR: Well, we'll live with the echo.

3 MS. MARSH: I wanted to say that --

4 MR. CHAIR: Keep going, Ms. Marsh.

5 MS. MARSH: Okay. I have had to make detours to
6 get to my home. I saw mud, silt and water coming off of
7 the, the construction site, not down the street, off of the
8 street itself, mud, water, debris all over the place. At
9 times, the water was so deep, the street was impassable; and
10 I'm very concerned about the, the, the lack of enforcement
11 of the rules and that it's continuing for years and years.
12 It really raises into question the whole permitting process.

13 So, I hope that this will be dealt with and we
14 need, we really need to think about this. We are having
15 climate change; the street will be impassable. I am just
16 two blocks from the site and I have seen the damage. Thank
17 you.

18 MR. CHAIR: Thank you, Ms. Marsh. Appreciate you
19 taking the time. I don't believe there's -- do we have
20 anyone else signed up to speak? Ms. Coleman, yes?

21 MS. COLEMAN: Mr. Chair, for the record, Delisa
22 Coleman, senior counsel. I did want to clarify something,
23 or address something that Mr. Smith said in particular, and
24 that is with regard to the notice of the limited scope
25 hearing. And at the last hearing, which was held on January

1 12th, you specifically said that it was going to be a
2 limited scope hearing to address or to find out more
3 information regarding the violations that were put on
4 against the property. So, and that is the only notice that
5 was required as it was a continuance. So, I wanted to just
6 clarify that for the record so that it's clear for everyone.

7 MR. CHAIR: Thank you, Ms. Coleman, I'm glad you
8 did that. So, with that, there's nobody else who signed up
9 to speak on this; so, I'm going to turn it back to the
10 Applicant for any rebuttal and close; and remind you that
11 this is a, as Ms. Coleman said, limited scope public
12 hearing; so, your rebuttal and close is related to,
13 regardless of what other people have brought up that isn't
14 related to this, your rebuttal and close is related to the
15 issues related to stormwater management and the violations,
16 alleged violations. Mr. Rivera, the floor is yours for
17 rebuttal and close.

18 MR. RIVERA: Thank you, Mr. Chair, members of the
19 Board. I want to thank your counsel, yourselves, as well as
20 Ms. Kosack. All three parties have indicated what the scope
21 is and I'm planning on staying within that, obviously.

22 I think it's pertinent to read this for the
23 record, what the findings are for a Detailed Site Plan.
24 Obviously, the Technical Staff Report has been issued for
25 approval; and in the findings, the last two or three are

1 always, what are the findings for approval and if the
2 application met those. Finding 15 on page 21 of the report
3 says, "Based on the foregoing," which is all the other
4 previous findings in the Staff Report, "And as required by
5 Section 27285(b) (1) of the prior Zoning Ordinance, this DSP
6 will, if approved with conditions, represent a reasonable
7 alternative for satisfying the Site Design Guidelines
8 without requiring unreasonable costs and without detracting
9 substantially from the utility of the proposed development
10 or its intended use."

11 So, when you read the law, in conjunction with
12 what the relevant evidence is that is contained within the
13 report, and that we believe we put on, I believe that the
14 Board can find for approval this DSP which, in the long run,
15 is what we all need because the DSP is another precondition
16 of further permits. So, the floodplain waiver had several
17 conditions, but those are predicated upon this step and
18 other steps to get to those steps which are the solution,
19 not the problem.

20 So, I just want to make that clear. I understand
21 you all, though, that, that, lastly, whatever evidence that
22 Mr. Smith and others put on that was related to violations,
23 it was all good knowledge for us and the Board, and we
24 wanted to make sure that we said all that; but it is not
25 really relevant to 27285(b) (1).

1 We did proffer Condition 5(a) through (d) which
2 are the four things that my client will do in the future to
3 ensure compliance with any permitting requirement, code, et
4 cetera. So, I think with those safeguards, our testimony,
5 the experts that we have, that I, I would stand on that and
6 ask for your approval of this Site Plan. Thank you very
7 much.

8 MR. CHAIR: Thank you, Mr. Rivera. That's the,
9 your rebuttal and close. This hearing is closed. We're up
10 for a deliberation. Commissioners, any discussion around
11 what we've heard? Ms. Coleman, do you want to check on the
12 process for this?

13 MS. COLEMAN: I, thank, thank you. I just wanted
14 to refocus the, the Board to just mention that the
15 stormwater violation issues are an enforcement issue arising
16 out of construction. The Board's evaluation is one of
17 development which is when the plan, as designed, is approved
18 and conditioned, will the project, upon completion, satisfy
19 the requirements of the DSP? So, I would advise the Board
20 to just look at the DSP. The Board does not handle
21 enforcement issues during construction. That's something
22 for DPIE; and in this subject application, MDE; and any
23 enforcement issues are really irrelevant to the evaluation
24 of this DSP.

25 MR. CHAIR: Thank you, Ms. Coleman. And I would

1 say, as we, as we considered, as we deliberate, that what
2 we're deliberating on is not just the stormwater piece for
3 which, again, to Ms. Coleman's point, the more I listen to
4 this process, the more I realize this was less relevant to
5 the DSP. I'm, dare I say I'm glad we went through this
6 process for full transparency; but I'm not sure that it
7 moved me a whole lot one way or the other since it isn't
8 relevant to the DSP. And what's before us as we deliberate
9 is all the information that we've had from the previous
10 hearings as well that help us decide how we want to act on
11 this.

12 So, under, we are on deliberation for the DSP,
13 not the stormwater management piece, even though that's a
14 small piece of it based on what we've heard. So, under
15 deliberation. All I would say is I have not heard anything
16 today that leads me to believe that this is something that
17 should be opposed. I hear the concerns in the community
18 around this. Much of the concerns of the community are
19 actually, feel to me like extensions of opposition to this
20 intensification, this development on the site. I believe
21 that they, the Applicant has met the requirements, and I
22 will be voting in support of this. I don't see a reason not
23 to. I think it's a quality development and it's
24 appropriately zoned, and I'll leave it at that.

25 So, Commissioners, where are you?

1 COMMISSIONER WASHINGTON: Yeah, I'm in a similar
2 place, Mr. Chairman; but I, but I would like to offer, I
3 believe Mr. Smith, or at least someone comment; and I did
4 express concerns during the last hearing; and so, this
5 limited scope conversation, I'll call it, quasi-hearing, was
6 actually helpful; and, and, you know, the additional
7 information that the Staff provided and encouraged and, and
8 Ms. Coleman, thank you so very much for your very last
9 statement because as I was rounding it all out, you know,
10 you're right because I don't think that we as a body,
11 notwithstanding how we may be feeling about what's going on
12 in that community, establish a precedent contrary to what
13 our role is as the Planning Board, and that is to be focused
14 on development. You know, there are issues with other
15 agencies; you know, we may consider having a sister-to-
16 sister -- whatever that might look like, but that should not
17 in any way lend itself towards our ability to make a
18 decision from a development standpoint. So, those are just
19 my -- and I want to thank, I, I would like to thank the, the
20 citizens and, and everyone for their testimony; and not only
21 the citizens, but the Applicant. I mean this, this is
22 probably a record-setting case; and boy, if it's not record-
23 setting in terms of paper sheets, it's really close to the
24 top; and so, there was a lot of information uncovered,
25 relevant or not, as part of the process. So, I'll just stop

1 right there and allow my colleagues an opportunity, Mr.
2 Chairman.

3 MR. CHAIR: Thank you. Thank you, Commissioner
4 Washington.

5 MADAM VICE CHAIR: And, Ms. Washington, I would
6 add that, Mr. Chairman, that it is a record-setting, not
7 almost, but it definitely is. I've been around quite a
8 while and I can attest to the fact that it is. I really
9 want to, to thank Mr. Chairman and, and Ms. Coleman, and all
10 who attended today. This was interesting to try to
11 delineate between what's relevant and what's not relevant.
12 Even though we've been around for a while, some of us, but
13 sometimes we, we get it a little confused from the testimony
14 because the emotions get involved; but I think it's
15 important to stick to what are we really, really, what we
16 really have to look at today; and I think that in the final
17 analysis, our Staff did a really good job on helping me to
18 understand and keep focus on what the real issues are. So,
19 thank you very much for that.

20 MR. CHAIR: Thank you, Madam Vice Chair.
21 Commissioner Doerner?

22 COMMISSIONER DOERNER: Yes, I'll, I'll chime in.
23 I'm probably going to be a bit more lengthy than Vice Chair
24 Bailey.

25 MADAM VICE CHAIR: You usually are.

1 COMMISSIONER DOERNER: I usually am.

2 COMMISSIONER WASHINGTON: We'll mute ourselves
3 now, though.

4 MR. CHAIR: Commissioner Doerner, you have three
5 minutes. Continue.

6 COMMISSIONER DOERNER: I guess I'm, I'm not as
7 higher-ranking as Mr. Chandler, I suppose, to get in the --
8 so, yeah, and something you haven't seen, Mr. Chair, is that
9 what we used to do, or at least what used to happen when I
10 first got on the Board, was that we would actually have
11 these binders that would be all the cases for the whole day;
12 and then sometimes some people would walk out with these
13 like plastic containers so they could like (indiscernible).
14 I don't know if we could even like fill up one of those with
15 just the cases for this one. So, very thankful that
16 everything is digital because I, I went digital early on
17 and, and to me, that's just a lifesaver, especially in cases
18 like this when I'm sorting through a plethora of, of
19 evidence from both sides. It, it, it's a bit annoying at
20 times to get like 400 or a thousand pages of back-up; but it
21 helps, though, to get a lot of the back-up if it's relevant
22 and if it, if it just helps you think through the issues;
23 and, and in this case, I don't think all of us are going to
24 fall on the same side in the vote and that, that's fine
25 because I'm not going to vote in favor for this site.

1 I do think that the development itself is, is
2 beautiful. I've seen the homes up there. I have a neighbor
3 who moved over there, decided they didn't want to be our
4 neighbor, wanted to go to the new homes; and, and I've seen
5 the site and, and I, I really like a lot of the aspects of
6 what Mr. Rivera and his client have put together for the
7 buildings themselves; but, ultimately, there's, I'm just
8 still stuck on the contact sensitivity, or lack thereof in
9 my view for this site; and, and sort of what I'll, I'll just
10 call, to me, that informed layer sort of like, quote,
11 unquote, "Commons sense red flags."

12 I heard Ms. Coleman, I heard others kind of
13 reminding us that the Planning Board isn't, isn't a
14 permitting authority; but we are entrusted to ensure the
15 health, safety and general welfare of the community. That's
16 got a hundred years of case law behind it for land use, and
17 that goes through all of our approvals. And, and, sure, we
18 can't do enforcement aspects, but just because no other
19 agencies will step up and enforce what their authorities are
20 supposed to be doesn't mean that our hands are tied in
21 every, every way; that we can't actually ensure proper
22 communities are, are developed. And, and I'm not saying
23 that this development is not proper. In other context, I'd
24 have no opposition to it if it was in a different place.
25 It's more of the place and how it's being developed, or how

1 it hasn't been developed in certain ways that where I'm
2 getting stuck. And it's not even building in the 100-year
3 Floodplain that necessarily gets me, keeps me up at night
4 because land reclamation is, is fine in some context if it's
5 done well. I just haven't seen a lot of that here.

6 The health and safety, in my mind, are, are
7 paramount to the approval process at every stage, whether
8 it's preliminary, Conceptual Site Planning, like we were
9 hearing earlier; or a Detailed Site Plan that proposes
10 infill development of homes in a former flood zone. It is,
11 though, the constant violations by the Applicant; and, and
12 sort of the lack of an extended history of being in
13 compliance that gets me uncomfortable to, for them to be
14 able to develop in, in this kind of area, and, and to know
15 whether or not if they can't control stormwater run-off
16 right now, how are they going to actually be able to do
17 something that's just completely new to this area in terms
18 of, of infilling in a flood zone and actually being able to
19 get that right.

20 I'm not thrilled by the violation that happened
21 prior to last summer and, and I know Mr. Smith and others
22 have put in plenty of documentation about it; but when you
23 come in and, and, and Mr. Rivera has the experts who, who do
24 make developments over the summer to address issues,
25 sometimes that's fine. And, and once you actually fix the

1 things, it doesn't matter what the history is, necessarily,
2 if you fix it correctly; but I haven't been convinced that,
3 that it necessarily was only the, the WSSC break and, and
4 other things that had happened; and there were other
5 instances after that fact that there continued to be
6 stormwater run-off and issues there. And it's almost like
7 I, I, I sort of turn back to a but for kind of a, of a
8 comparison and say, if it wasn't the developer coming into
9 this area, would we still have the same kind of drainage;
10 and it doesn't seem like that's the case. Even in some of
11 the testimony the City of Hyattsville put out, the, there's
12 somebody, I think, from DPIE who said that he or she had
13 never seen something like this in terms of the flooding for
14 the last seven years.

15 And, and if it was just run-off, it's fine; it, we
16 can, we can think about ways of dealing with that; but when
17 it requires multiple citations to the police department and
18 getting the police out there to shut down streets, it's not
19 like one of the experts said, oh, sometimes people will
20 actually do this or them, them going down the street to see
21 what actually caused this. That's not the case. And, and
22 when we have police having to shut down streets from
23 vehicular and pedestrian traffic, there's a bigger problem
24 that, at bay; and it's not just an enforcement thing at that
25 point.

1 There's something concerning about here that we
2 just need to figure out; and I think, unfortunately for, to,
3 to get my vote, I think this is too soon. I wouldn't say
4 that I would necessarily vote against this case if this were
5 a couple months later because I, I think that if there was a
6 demonstrated history of compliance and that it could sustain
7 the waters, and they've done a good job, awesome. Like if
8 they figured out like the, the way to do this kind of
9 development, I think it's spectacular to think about can we
10 reclaim things out of floodplains and actually make it
11 livable infill kind of development; but it, that's just
12 hasn't quite happened here yet.

13 And, and with the City of Hyattsville continuing
14 to remain in strong opposition to this particular project,
15 but not necessarily to development or even infill
16 development because I had some infill developments happen a
17 few blocks away from me, that, that raises some concerns;
18 and, and that really makes me step back and think about it.
19 And, and I, I've been on the City of Hyattsville's side. I
20 don't necessarily unwind with all the City Council members
21 all the time, but they were, they, I think in this case,
22 they, they have articulated in their letter and through Mr.
23 Chandler issues that, that are concerning, particularly
24 around the health and safety aspects. I mean we can't be
25 just hiding behind this veil of, oh, it's an enforcement

1 issue when the flooding is shutting down completely roadways
2 and other issues, and there's a number of instances that are
3 still concerning, and I didn't hear today from any of the,
4 the experts that they really know whether or not what they
5 did actually had an effect that will protect things going
6 forward; and that's just, that's concerning for me.

7 Reclaiming land that isn't necessarily new, this
8 happens in Florida and South Carolina, and other places, if
9 you look towards land use; but it's also been really
10 controversial. The sand in those kind of beach
11 renourishment cases that have gone up to Supreme Courts and,
12 and have had all sorts of trouble with, with climate change
13 because the sand and the refilling of, of those areas, or
14 the reclaiming of those lands hasn't worked, even though
15 they had really good engineers on their sides when they
16 started to do that. So, to me, I think we need to be very
17 careful that if we've already got flags that some of this
18 stuff just isn't working, maybe we need to step back and
19 think about whether or not this is the wrong site for this
20 kind of a development, not necessarily the wrong development
21 just in general because I don't think that's, that's
22 particularly the case. It's just when you take all the
23 buildings and how it's being developed, and how it hasn't
24 really worked well on this particular site, I don't think
25 we're going to be creating a habitable environment that

1 we're going to be proud of a couple years from now; and it
2 doesn't necessarily mean that we can't take a few months and
3 see how this is going to work out. And if it works out,
4 fine, that's great, we can go forward; but if we, we rush
5 through it right now, we're going to be looking at a
6 development that's going to be more permanent and a lot
7 harder to kind of fix later on, if it's even fixable at all.

8 So, to me, I think we're just, we're just sort of,
9 sort of in a tough spot with, with some of the issues. I'm
10 not necessarily in as much of a rush; I don't think we
11 should be; and I think it would be wise to, to present some
12 of the things that the City has, has mentioned in terms of
13 having the Sediment Control Plan re-evaluated, along with
14 the 100-year Floodplain. It would have also been really
15 helpful to have gotten somebody actually on the phone today
16 from DPIE or from MDE, preferably both, so we could have
17 heard them instead of like hearing what their, their reports
18 have said and, and, and kind of thinking whether or not
19 these are major issues or not.

20 So, for, for all those reasons and, potentially,
21 too many reasons, there, if Vice Chair Bailey would chime
22 in, for all of those, those reasons, I just, I can't support
23 this plan as it is. It wouldn't, it doesn't necessarily
24 mean that if, if it were to get voted down, that I would
25 vote against it in a few months from now if they, they have

1 demonstrated that they can actually do this and do it really
2 well, I wouldn't be opposed to it because I think everything
3 else looks great; but in terms of like being able to build
4 it up and, and raise the, the ground up, and then build the
5 buildings in a way that's going to be safe and not
6 jeopardize the health, and safety, and welfare of the
7 community, I just can't say that, that I'm, I'm going to get
8 on that side.

9 I just don't think this is context-sensitive in
10 the context of knowing we're trying to claim something from
11 a flood year, or a 100-year floodplain and that, to me, just
12 raises all sorts of, hey, you got to be a little bit more
13 careful than normal and I, I haven't seen that. I haven't
14 seen that happen today, so I'm not going to vote in favor to
15 approve this; but if it does go forward, I, I hope that it,
16 we don't want to count any of these issues and that, that
17 everything is fixed and it's great because everything else
18 looks really nice on this claim; I'm just not convinced that
19 the execution is necessarily working so far and that gives
20 me extreme pause on this; and, and I think we don't have to
21 lie behind it and say, it's, it's an enforcement issue
22 because health, and safety, and welfare, those are, those
23 are in our bailiwick; and, and that's what standing behind
24 today in saying no.

25 MR. CHAIR: Thank you, Commissioner Doerner. I

1 appreciate you taking the time. I appreciate your passion
2 about this. If there's no further discussion on this, I
3 would look for a motion.

4 COMMISSIONER WASHINGTON: Mr. Chairman, I move
5 that we adopt the findings of Staff to include the
6 additional finding as outlined in Applicant Exhibit No. 4
7 and approve the amendments to Development District Overlay
8 Zone Standards 1 through 5, as detailed on Staff's report;
9 and approve DSP-21001 subject to the conditions as outlined
10 in Staff's report and as further amended by Applicant
11 Exhibit No. 4.

12 MADAM VICE CHAIR: Second.

13 MR. CHAIR: We have a motion and a second. Any
14 discussion on the motion?

15 COMMISSIONER WASHINGTON: I, I would just say to
16 the Applicant that Commissioner Doerner lives close by, so
17 if you hadn't heard it today during the last case, please
18 know he will be, I'm sure, a watchful neighbor eye.

19 MR. CHAIR: Yes, there, is the, the, assuming we
20 support this, there's no doubt that there's going to be lots
21 of watchful eyes on this, including Commissioner Doerner.
22 So, do the right thing, folks. So, any further discussion
23 on the motion?

24 (No affirmative response.)

25 MR. CHAIR: Seeing none, I'll call the role.

1 Commissioner Washington?

2 COMMISSIONER WASHINGTON: Vote aye.

3 MR. CHAIR: Vice Chair Bailey?

4 MADAM VICE CHAIR: Vote aye.

5 MR. CHAIR: Commissioner Doerner?

6 COMMISSIONER DOERNER: No, opposed.

7 MR. CHAIR: I vote aye. The ayes have it 3-1.

8 (Whereupon, the proceedings were concluded.)

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SUFFRAGE POINT

Detailed Site Plan, DSP-21001

By:  Date: March 20, 2023

Tracy Hahn, Transcriber