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

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CAROZZA PROPERTY : Case No. A-10051
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A hearing in the above-entitled matter was held on
April 14, 2021, at the Prince George's County Office of
Zoning, County Administration Building, Room 2174, Upper
Marlboro, Maryland 20772 before:

Maurene McNeil
Hearing Examiner

A P P E A R A N C E S

On Behalf of the Applicant:

Arthur Horne, Esq.

On Behalf of People's Zoning:

Stan Brown

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P R O C E E D I N G S

1
2 MADAM EXAMINER: Okay. And that means we're
3 ready. Good morning, everyone. I'm Maurene --

4 MS. BAH: Wait, give me a second, Maurene. Suzy
5 is not on.

6 UNIDENTIFIED FEMALE SPEAKER: I'm ready, Betty.

7 MADAM EXAMINER: Good morning, everyone. I'm
8 Maurene McNeil. I'll be the Hearing Examiner today, and
9 before we start, I have to remind you of the rules for our
10 virtual hearing. So, give me a second. Okay. We're here
11 today on Application A-10051. It's a remand on a request to
12 rezone approximately 60 acres close to Pennsylvania Avenue
13 and Woodyard Road from the RR zone to the MXT zone. The
14 applicants are Maria Volpe and Sandra Carey, and the subject
15 property is referred to as the Carozza Property.

16 Now everyone must have signed up as a person of
17 record no later than two days before the hearing. If you
18 have not done so, or if you're mailing or email have changed
19 since you last became a person of record, please send a chat
20 now and provide your address and email.

21 Pursuant to District Council rules of procedure,
22 all materials must have been received at least five business
23 days before today's hearing. If you have not viewed the
24 documents that we put online, send a chat and we will
25 provide the site where you can find them. All persons of

1 record connecting through a computer tablet or smart phone
2 have joined using the link provided by the Office of the
3 ZHE. If for any reason you, if disconnected, you can use
4 that same link to come back on.

5 We ask all participants if they come in by phone
6 to mute your phones when not speaking. We also ask all of
7 you here online to mute yourselves when not speaking because
8 this is being recorded. There will be transcripts later.

9 And, finally, if this hearing is continued, you
10 will receive a different link for our next hearing. Thank
11 you all. And I now ask council to identify themselves for
12 the record.

13 MR. HORNE: Good morning, Madam Examiner. Mr.
14 Pete Pazarri (phonetic sp.), counsel for the record, Arthur
15 Horne with the law firm of Shipley and Horne.

16 MR. BROWN: Good morning. Stan Brown, People's
17 Zoning Counsel.

18 MADAM EXAMINER: Okay. Before we begin, Mr.
19 Horne, I do want you to know that I, I want you all to know
20 that I got a letter from Mr. Estep but, Mr. Jim Estep, that
21 used to be on our council, but our rules are that you need
22 to be present at the hearing before you can present exhibits
23 because people have the right to cross-examine you. So, for
24 that reason, I did not admit, I did not put the record, the
25 letter in the record; but maybe Mr. Estep will join us, but

1 I don't see him yet.

2 MR. HORNE: Okay.

3 MADAM EXAMINER: And, Mr. Brown, this is unusual.
4 If you don't mind because, well, let me stop. Ms., Ms.
5 Chris, I don't want to say your name, is it Hough or Hough?

6 MS. HOUGH: The name is Hough. It's pronounced
7 like rough, R-O-U-G-H, or B-O-U-G-H, Hough.

8 MADAM EXAMINER: Ms. Hough, you are opposed to
9 this request?

10 MS. HOUGH: That's correct. Uh-huh.

11 MADAM EXAMINER: Is anybody else online opposed to
12 the request?

13 (No affirmative response.)

14 MADAM EXAMINER: Okay. Ms. Hough, anyone opposing
15 a person's record has a right to question any of the
16 witnesses. If you decide you want to question, send a chat
17 letting us know; and then at the appropriate time, you will
18 also have the right to testify on your own behalf unless you
19 don't want to. So, let us know that you want to testify as
20 well in the chat.

21 One last thing. If you don't want to stay
22 throughout this hearing, I don't know how long it will be,
23 if you just want to make a statement to me, we can go out of
24 order and you can go first. So, I don't know if you want to
25 wait awhile and hear applicants, witnesses, or if you want

1 to go first. You do?

2 MS. HOUGH: I think I'd rather hear, yes, uh-huh.

3 MADAM EXAMINER: Okay. Okay.

4 MS. HOUGH: Thank you.

5 MADAM EXAMINER: So, Mr. Brown, I was wondering if
6 you could just briefly explain to Ms. Hough and anyone else
7 that might be listening why we're here today on this remand?

8 MR. BROWN: Sure. One quick question first to Mr.
9 Horne. Mr. Horne, refresh my memory, at the District
10 Council, we conducted the entire hearing even though you
11 conceded that a remand was appropriate on amended issues
12 identified by the Examiner, isn't that correct?

13 MR. HORNE: No, sir. We, we, we sent a letter and
14 originally filed exceptions; and then when we got to the
15 hearing, we agreed that we will accept the Hearing
16 Examiner's recommendation, and we did not go forward with
17 the hearing.

18 MR. BROWN: All right. I wasn't sure whether we
19 did or not. All right. Yes, Madam Examiner, and this,
20 people are not, are aware, normally when a case is remanded
21 from the District Council to the Examiner, the law requires
22 that the issues before the Examiner on remand are limited to
23 the issue identified in the remand order. In this case, it
24 would be related to the TCP. However, since we did not
25 conduct a hearing at all before the District Council when

1 the case came up, and it was remanded before any orientation
2 by the staff, before any argument by the Applicant, and at
3 that time there was no opposition, Madam Examiner, I think
4 it's okay for us to allow persons in opposition to make
5 argument on any issue in the case that they deem appropriate
6 because the Council has never heard any of the argument
7 concerning the case.

8 Had we conducted the hearing before the District
9 Council, we would have been limited to that issue. So,
10 there's no problem with the opposition raising issues
11 without seeing it in their various correspondence.

12 MADAM EXAMINER: Okay. Thank you.

13 Okay, Mr. Horne, you may begin.

14 MR. HORNE: Thank you. Thank you very much and
15 let me start before I say, see, I agree with Mr. Brown. We
16 have no objections to Ms. Hough or anybody else having any
17 opinions with reference to this case. Again, for the
18 record, Arthur Horne, the Law Offices of Shipley and Horne.
19 Actually, Shipley is the lead attorney in the matter and he
20 sends his apologies. He's a little under the weather and
21 was not able to come and handle it here today, so I get the
22 honor of being here representing the case with Ms. Volpe
23 and, and Sandra Carey, the trustee, the owners.

24 And Madam Examiner indicated this is a request for
25 rezoning from the RR zone to the MXT zone, and though we, I

1 want to introduce my team here, I have with us Mr. Jeff
2 Ludwig of the Michael Company who was previously accepted as
3 an expert in commercial real estate development in this
4 particular case; Mr. Michael Lenhart for Lenhart
5 Consultants, who is an expert in transportation engineering,
6 previously accepted as an expert in this case; Mr. Ryan
7 McAlister from Dewberry, who is an expert landscape
8 architect who was previously accepted as an expert in this
9 case; Mr. Jacob McCarthy from Bayside who is here, who is an
10 expert, previously accepted as an expert in wetland ecology;
11 and Mr. Francis SilberHoltz, from the law offices of Shipley
12 and Horne, previously accepted as an expert land planner.

13 Madam Examiner and Mr. Brown, we stand on the
14 previous testimonies, the findings of facts and conclusions
15 of law both as argued in the previous hearing and as
16 demonstrated with reference to the Zoning Hearing Examiner's
17 recommendation that went forward in this particular case.
18 There's, you know, as you indicated, there's a transcript
19 and everything associated with the previous hearing. We, we
20 adopt that as part of the record as well, and stand by the
21 experts that are here to perhaps answer any further
22 questions that may be set forth by any person in opposition;
23 but we don't necessarily plan on calling any of them today
24 to add to that testimony because we feel as if their
25 testimony stands.

1 While the items we want to address in this remand
2 is from the previous recommendation from the Zoning Hearing
3 Examiner's, actually her decision on page 20 when she
4 actually recommended a remand and indicated that the
5 applicants must submit to the Office of Zoning Hearing
6 Examiner and approved in our plan, which covers the entirety
7 of the subject property that verifies the green
8 infrastructure and resource conservation plans and
9 accurately depict the regulated environmental features on
10 the site; and Applicants may not grade or develop on the
11 property before submittal of the NRI plan.

12 As a result of that decision by the Zoning Hearing
13 Examiner, the Applicants did meet with the Maryland National
14 Capital Park and Planning Commission, and engaged in the NRI
15 plan which I believe is Exhibit No. 7 currently in this
16 list. It does, we would purport, exactly what --

17 MADAM EXAMINER: Mr. Horne --

18 MR. HORNE: Yes?

19 MADAM EXAMINER: -- I don't mean to stop you, but
20 we need to verify that because I had that it was Exhibit 9.
21 Can, Ms. Bah, can you let us know which exhibit it is? It's
22 the, it looks like a set of plans.

23 MS. BAH: Sure. I just need access to share the
24 screen.

25 MADAM EXAMINER: When she's saying that, she's not

1 talking to me, in case you all were wondering. We'd be
2 doomed if I had to give us access.

3 MS. BAH: I have it now. I'm going to pull it up
4 for you. It's just loading. There we go.

5 MS. HOUGH: Excuse me, were you, was someone
6 speaking to me at that moment, a few minutes, minutes ago?

7 MADAM EXAMINER: Oh, no, Ms. Hough. That is one
8 of the staff members, Ms. Bah, loading an exhibit.

9 MS. HOUGH: Oh, okay. Thank you.

10 MADAM EXAMINER: Is it 7?

11 MS. BAH: Okay.

12 MADAM EXAMINER: Oh, you're in, you might be in
13 the original --

14 MS. BAH: No, I'm in the, the new one.

15 MADAM EXAMINER: Okay. So, what is 9? Well, I'll
16 fix my --

17 MS. BAH: 9 is --

18 MADAM EXAMINER: Oh, the bubble --

19 MR. HORNE: Bubble plan.

20 MADAM EXAMINER: -- the plan is -- all right, Mr.
21 Horne, you're correct. I apologize.

22 MR. HORNE: Now with that, I'll just say, Madam
23 Examiner, that Exhibit 7 is the approved NRI. Exhibit 8, if
24 she has the exhibit up there still, is the Army Corps of
25 Engineers jurisdictional determination, which is requested

1 and received; and then Item 9, which she just showed us,
2 was, is the conceptual bubble plan of what we indicated is a
3 possibility at that site. So, what I just want to do here
4 today is I want to recall Ryan McAlister from Dewberry and
5 ask him a few questions with reference to those exhibits.

6 MADAM EXAMINER: Okay. Mr. McAlister?

7 MR. MCALISTER: Yes. Good morning, Madam Hearing
8 Examiner.

9 MADAM EXAMINER: Good morning. Do you swear or
10 affirm under the penalties of perjury that the testimony you
11 shall give will be the truth and nothing but the truth?

12 MR. MCALISTER: Yes, ma'am, I do.

13 MADAM EXAMINER: And it will be very helpful, and
14 I'm sure you all were going to do that, if you would just
15 walk through all of that exhibit slowly, as though it
16 appeared to be Greek to some of us.

17 MR. HORNE: Yes. So, Mr. McAlister, can you state
18 your name and business address for the record please?

19 MR. MCALISTER: Yes. My name is Ryan McAlister.
20 I am a senior project manager and landscape architect with
21 Dewberry, Dewberry Engineers, located at 4601 Forbes
22 Boulevard, Suite 300, in Lanham, Maryland.

23 MR. HORNE: And did there come a time where you
24 were engaged by the Maria Volpe and Sandra Carey Trust to be
25 an employee or I should say an assistant in the rezoning

1 request from RR to MXT on this property?

2 MR. MCALISTER: Yes, we were, yes, authorized by
3 them to act on their behalf in this case.

4 MR. HORNE: And did you participate and testify in
5 the hearing previously before the Zoning Hearing Examiner on
6 A-10051, the Carozza Property, with a decision issued on
7 January of 2021?

8 MR. MCALISTER: Yes.

9 MR. HORNE: January 15th? Thank you. And, I'm
10 sorry, 2020, January 15, 2020.

11 MR. MCALISTER: Yes.

12 MR. HORNE: And, Mr. McAlister, as a result of the
13 Hearing Examiner's decision, did you engage with Park and
14 Planning to, to move forward with the NRI Plan, National
15 Resource Inventory Plan?

16 MR. MCALISTER: Yes.

17 MR. HORNE: Is Exhibit 7, which is on the screen
18 now, that plan?

19 MR. MCALISTER: Yes.

20 MR. HORNE: Can you, as the Hearing Examiner
21 indicated, slowly go through the process and tell everybody
22 what an NRI plan is and what this particular plan
23 demonstrates in this particular case?

24 MR. MCALISTER: Yes. So, the Natural Resource
25 Inventory Plan is a plan that's required by the Maryland

1 National Capital Park and Planning Commission. It's the
2 first plan in the order of approvals to obtain essentially
3 an existing conditions plan for review and approval by
4 MNCPPC. This plan is prepared in accordance with the
5 Environmental Technical Manual by MNCPPC. It includes an
6 analysis of elements from soils, the property boundary and
7 parcels that are included within the ownership. It includes
8 streams, wetlands, steep slopes, flood plains, a forest
9 stand delineation, a wetland delineation plan and a stream
10 analysis. So, we started the initial path of the
11 preparation of this plan with a field investigation, which
12 is the forest stand delineation, which was completed by our
13 forestry consultant, John Markovich, with JPM Forestry
14 Consultants, and then we have Bay Environmental did, did the
15 field work for investigating the streams and the wetlands
16 located on the property.

17 We then surveyed the streams and wetland features
18 that were found in, in the property. The forest and
19 delineation is a report that was prepared and a wetland
20 stream report was prepared; and the elements that were
21 identified in the field were mapped and located and provided
22 on the plan you see in front of you.

23 The rest of the information that's included here,
24 as I mentioned, was soils analysis, deep slopes. So, we
25 reviewed that plan and then submitted all of the

1 documentation to MNCPPC; and through a series of some
2 comments and information that was provided to them, as you
3 can see, this plan was approved. So, it is in conformance
4 with the regulations of Park and Planning.

5 In addition to that, we also had the U.S. Army
6 Corps of Engineers review the site for the stream and
7 wetlands determinations since they're the regulatory agency;
8 and they confirmed the information that was found in the
9 field by Bay Environmental, which is shown on this plan here
10 today.

11 MR. HORNE: And, Mr. McAlister, that confirmation
12 that you are referencing, would that be Exhibit 8 of this
13 particular case?

14 MR. MCALISTER: Yes.

15 MR. HORNE: And the NRI process, is that a process
16 that's usually undertaken at a later stage rather than in a
17 rezoning application?

18 MR. MCALISTER: Typically, it's required as part
19 of the next step in the process which would be a conceptual
20 site plan, or a comprehensive design plan, based on the zone
21 that is requested with this site.

22 MR. HORNE: Okay. And this request was undertaken
23 with reference to a disagreement between Park and Planning
24 Staff and the Applicant's team with reference to the green
25 infrastructure and resources conservation plan, is that

1 correct?

2 MR. MCALISTER: Yes, it was provided to confirm
3 the site features that were found onsite which were more
4 accurate than information that was previously known
5 according to the plans that were cited in our previous
6 testimony.

7 MR. HORNE: And is it your opinion that the NRI
8 that was verified by Park and Planning is Exhibit 8,
9 accurately depicts your testimony and information, or for
10 the Applicant, or the Park and Planning Staff Report in this
11 particular case?

12 MR. MCALISTER: Yeah, the information that is
13 presented today on this plan is more accurate than what we
14 previously had, and shows the exact location and elements of
15 the streams and all the features that have been included on
16 this plan.

17 MR. HORNE: And do you recall the green
18 infrastructure and resource conversation plan that was
19 submitted by Park and Planning?

20 MR. MCALISTER: Yes, I do.

21 MR. HORNE: And, and is it your testimony that
22 that plan inaccurately depicted the regulation features on
23 the site?

24 MR. MCALISTER: It, it, it does not depict the
25 features that we found onsite. That plan includes much more

1 areas that were potential for these features; but, again,
2 our information that we found in the field and our field
3 investigations determined a much different series of
4 elements. So, the streams and wetlands that are on this
5 plan, again, will be more accurate, and would not be a
6 representation of what the green infrastructure plan
7 provided, or, or assumed what would be out there on site.

8 MR. HORNE: And as a landscape architect, with
9 this determination of the NRI at Exhibit 7, would you have
10 an opinion as to whether the development that was
11 conceptually proposed and the exhibit Number 9 is a
12 possibility on the subject site if it was resolved?

13 MR. BROWN: I'd have to object to that. Mr.
14 McAlister has not been qualified as an expert in anything at
15 this moment, but he can give an opinion.

16 MADAM EXAMINER: He was accepted at the prior
17 hearing that's incorporated, but I was going to ask you if
18 you would state again what expertise you are offering him
19 for, Mr. Horne? So, so sustained, Mr. Brown.

20 MR. HORNE: Okay. So, in my introduction of the
21 individuals here, they all, five of them were previously
22 accepted specifically as experts in this particular case and
23 we would ask him --

24 MADAM EXAMINER: I don't understand what, just, if
25 you would just mention it at the start and I can -- I mean

1 for all we know they lost everything between the last
2 hearing and this one, so let's just say what his, what his
3 expertise --

4 MR. HORNE: Okay.

5 MADAM EXAMINER: -- is in, we accept him.

6 MR. HORNE: So, he, he is, he's a landscape
7 architect that sets forth, or, well, Mr. McAlister, what
8 does a landscape architect do?

9 MR. MCALISTER: Yes, sir. And, Madam Hearing
10 Examiner, I appreciate that. I am a licensed landscape
11 architect in the state of Maryland. I was previously
12 qualified with this, this office as part of the Zoning
13 Hearing Examiner's Office as a landscape architect.
14 Landscape architects are tasked in charge based on the
15 definition with the state of Maryland.

16 In the review and design of land planning elements
17 in the location of design elements, roads, land uses, which
18 could be everything from single-family residential to
19 institutional, commercial, retail land uses, the placement
20 of those elements within land. It also includes the design
21 and analysis of existing land features, as well as proposed
22 elements which includes roads, land uses as we're talking
23 about today. It also includes the tree conservation plans
24 and environment management plans. So, the Maryland National
25 Capital Park and Planning Commission typically requires

1 planting plans or landscape plans, tree conversation plans,
2 and we also work on environmental management plans; so, that
3 could include anything from wetland mitigation plans to the
4 forest enhancement and stream remediation plans. So, we're
5 involved in a number of different design solutions to solve
6 land development problems, concerns, questions or issues.

7 MADAM EXAMINER: Mr. Brown, do you have further
8 void dire?

9 MR. BROWN: No, my memory has come back. I have
10 no objection.

11 MADAM EXAMINER: Okay. You'll be accepted as an
12 expert in the area of landscape architecture.

13 MR. MCALISTER: Thank you.

14 MR. HORNE: Thank you. And, Mr. McAlister, if you
15 were presented with this NRI, Exhibit No. 7, and the bubble
16 plan, the conceptual plan, Exhibit -- is it your expert
17 opinion that if this property were to rezone to MXT, that
18 development could occur on this site consistent with the NRI
19 that's been approved by the National Capital Park and
20 Planning Commission?

21 MR. MCALISTER: Yes. So, we could design a plan
22 that would be based on the, by what I granted was submitted
23 with those uses. Certainly, our design would be subject to
24 regulatory approvals and allowable regulatory impacts
25 approved by the agencies. Those impacts for development

1 purposes could be anything from tree and planting, to
2 environmental, to zoning regulations; and so, we would
3 certainly be able to design this site and, and prepare a
4 plan in accordance with those regulations. We do not see, I
5 do not see significant constraints to the developability of
6 this site based on the bubble diagram that we prepared.

7 MR. HORNE: Okay. Thank you very much, Mr.
8 McAlister. That's all I have for him, Madam Hearing
9 Examiner.

10 MADAM EXAMINER: Mr. McAlister, there are several
11 notes on the first page, the cover sheet for that NRI, and I
12 just want to clarify some of them for the record. First of
13 all, on note 9, I think, it says site is located within a
14 stronghold watershed as defined by Maryland Department of
15 Natural Resources. What is the stronghold watershed, if you
16 know?

17 MR. MCALISTER: There's a number of different
18 definitions for watersheds within Prince George's County.
19 Stronghold watersheds, also there are Tier 2 watersheds. It
20 just defines regulatory requirements for different
21 thresholds that would come and be evaluated later in the
22 process for development cases. Typically, these relate to
23 stormwater controls and origin sediment control. The goals
24 of these types of regulations is to limit everything from
25 origin sediment to nitrogen and phosphorous types of levels

1 when development occurs; and so, these designations are
2 provided in order to, I guess, control run-off, stormwater
3 run-off in development cases.

4 In this case, stronghold similar to Tier 2, the
5 regulations that are put forth by the state of Maryland and
6 the Emergent Sediment Control Agency, which would be in this
7 case the Soil Conservation District is where it would be
8 evaluated at. We don't see this as a limiting factor. In
9 terms of the restrictions, the, this will be evaluated again
10 by the, the County Soil Conversation District; and the, the
11 regulatory buffers that are shown here based on the NRI are
12 also consistent with buffers that would be evaluated during
13 the, those future plan phases. I don't have the specific
14 definition for stronghold watersheds in front of me; but
15 that is typically what we see when we evaluate those in the
16 next phases.

17 MADAM EXAMINER: Okay. Thank you. In note 10,
18 and I don't know if, maybe I can make it bigger on the
19 screen. I actually have it, your plan taped to my window,
20 but I can't get up and walk over there. So, that was a
21 crazy idea. But note 10, I think, contemplates some type of
22 further response from someone and I wondered did you get it
23 yet? Do you see note 10?

24 MR. MCALISTER: Yeah. So, that's fine. The
25 Maryland Department of Natural Resources is part of this

1 plan preparation. We do go and reach out to the Maryland
2 Department of Natural Resources. And this is in regards to
3 sensitive species use protection areas. So, a good example
4 of this is if they were a bald eagle nesting habitats that
5 may have been found in the area, or located within this site
6 that requires further review; and so, this, this note
7 indicates that the Maryland Department of Natural Resources
8 has not found, you know, additional sensitive species,
9 habitat.

10 I have not been in receipt of that letter from the
11 Maryland Department of Environment. That typically takes
12 quite some time, but we can certainly get a copy of that and
13 forward that to your office when it becomes available.
14 There's, there's nothing currently that we see as indicative
15 of any endangered species or protection measures for this
16 property.

17 MADAM EXAMINER: Okay. And then you note that, I
18 mean you agree that you might have to do a Phase 1
19 archeology report if any type of historic resource or
20 matters of interest on the property, that you may have to do
21 a noise study? That's note 19. You all agree that those
22 might be done in the future?

23 MR. MCALISTER: Yes, ma'am. The cultural
24 archeological studies, again, we haven't found any
25 indication at this level of review. Those are further

1 reviewed in the, in the next phase, so we'll certainly keep
2 that in mind and, and certainly Phase 1 through Phase 3,
3 whatever studies that may be required will certainly have to
4 be investigated.

5 The noise study, we certainly understand because
6 it's directly adjacent to Pennsylvania Avenue, Maryland 4,
7 which will need to be evaluated; but typically, those are
8 not evaluated until a development proposal is prepared with
9 a site plan. We recognize that we are at least in close
10 proximity to Maryland 4, which may require a noise
11 investigation; and, again, we have not found any evidence at
12 this point of any cultural resources out on the property;
13 but we will evaluate that in the future and in a more, more
14 detailed manner, yes.

15 MADAM EXAMINER: And you may not be the witness,
16 but that reminded me, you all are also in the military
17 installation overlay zone. Do you recall if you have any
18 setbacks required because of noise, or height, or anything,
19 as a result of being adjacent or near Andrews?

20 MR. MCALISTER: Yes, ma'am. We do have an area,
21 we are just within one of the areas on the, it would be on,
22 if you're looking at the NRI plan that we're showing on the
23 screen here, to the east it is based on the heights and the
24 runway surfaces at the end. We certainly will evaluate
25 those when a development proposal is put forward. We

1 understand what those requirements are today. There's three
2 different areas within that plan, which those areas are
3 shown on this plan. We also had shown the, the Joint Base
4 Andrews designations on the original zoning plan, but we
5 also reference on there the height restrictions; but, again,
6 because it's based on the height of buildings, in the next
7 phase of development we certainly will take that into
8 account; and the reason why is because, you know, what
9 topography, it's going to be based on single points where
10 elements are proposed. So, at, at this time, yes, we
11 acknowledge that we do that some restrictions. We'll
12 certainly be taking those into account and looking at those
13 in further detail once the plan is, a more detailed plan is
14 prepared.

15 MADAM EXAMINER: Okay. Then my last one was that
16 somewhere on there, there notes that there are 751 feet of a
17 regulated stream. Is that the (indiscernible 0:32:00.8)
18 stream I learned about last time and can you speak to that,
19 or should it be somebody else?

20 MR. MCALISTER: No, I can speak with that, ma'am.
21 So, right now with what we're showing, these are the
22 regulated streams. This is the single intermittent stream
23 which is located on the property. It's going to be more
24 towards the eastern side, kind of, I would say probably at
25 least two-thirds of the way down to the east from the

1 property. We do show that --

2 MADAM EXAMINER: So, can I stop you right there
3 for one second? Would it be in, you know how you divided it
4 into sheets? Can you tell me is that sheet seven or --

5 MR. MCALISTER: It's, it's, yeah, it's currently
6 shown on sheet two, three, and four. There's a tiny bit on
7 four.

8 MADAM EXAMINER: Oh, two, three and four?

9 MR. MCALISTER: Yeah, the majority of it is shown
10 on sheet two and three on the right, right-hand sides of the
11 sheet.

12 MADAM EXAMINER: And that's to the east? Okay.

13 MR. MCALISTER: It, it would be on the east side
14 of that, those plans sheets, yes.

15 MADAM EXAMINER: Okay. Okay. Go ahead, two,
16 three and four?

17 MR. MCALISTER: Yeah.

18 MADAM EXAMINER: Okay. I'm sorry. Go ahead.

19 MR. MCALISTER: That's okay. That, the regulated
20 stream is the intermittent stream. The rest of the drainage
21 ditches are ephemeral, and so they are non-regulated by the
22 Park and Planning Commission; and so, the 751 is that
23 intermittent stream that traverses through the property
24 along the western side from the north to just, just short of
25 the southern boundary of the property.

1 MADAM EXAMINER: Thank you very much. Mr. Brown,
2 do you have any cross?

3 MR. BROWN: Just one or two.

4 Mr. McAlister, what was the date of the county-
5 wide green infrastructure plan?

6 MR. MCALISTER: The, oh, the county-wide green
7 infrastructure plan? Yeah, so we, we evaluated this site
8 based on the 2005 green infrastructure plan, and then the
9 Prince George's County resource conservation plan, which is
10 2017; and then we went back and looked at further technical
11 analysis from July 2016 of the County resource conservation
12 plan. So, the, the county-wide green infrastructure plan
13 was 2005, and then that was revised in 2017 to the County
14 resource conservation plan, which included a number of other
15 sections within that document, but it also included the
16 green infrastructure plan. So, we evaluated both, 2005 and
17 2017.

18 MR. BROWN: And so, for the record, your NRI plan
19 is dated when?

20 MR. MCALISTER: The date of approval from the Park
21 and Planning Commission when we submitted and got their
22 approval, they signed the actual NRI plan March 9th of 2021;
23 and that's indicated on sheet one of the NRI plan in the
24 lower right-hand corner by the reviewer, which is Chuck
25 Snyder.

1 MR. BROWN: And they did not issue any textual
2 comment on the plan, they just approved it, correct?

3 MR. MCALISTER: Yes, sir.

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

6 Mr. Horne, also, would you just give an
7 orientation to Ms. Hough and any other person in opposition
8 on the plan so that they just have a general understanding
9 of what you're asking for. They weren't at the regular
10 hearing. Just very briefly.

11 MR. HORNE: Okay. Thank you. Madam Examiner, I
12 do want to make sure because, again, one of the things that,
13 you know, we talked about here is the exhibit numbers; but
14 there was from the previous hearing the exhibits that,
15 including the resumes and everything for people that went up
16 to 44; and when, you know, so, obviously, with the 10
17 exhibits to date so far, there are, you know, there really
18 needs to be a differentiation of them since the numbers will
19 be duplicated to say, you know, Exhibit 1 from 4, you know,
20 14 hearing date --

21 MADAM EXAMINER: Mr. Horne --

22 MR. HORNE: -- I think --

23 MADAM EXAMINER: Mr. Horne, we would, we would be
24 adopting and incorporating the prior record. It has its own
25 set of exhibits and adding this record, the remand case,

1 which would have its own set; and if you, well, you don't
2 worry about this, in my decision I would differentiate
3 between the two.

4 MR. HORNE: Okay. I just want to make sure --

5 MADAM EXAMINER: If that --

6 MR. HORNE: -- so I wanted to say to Ms. Hough,
7 because I know it sounds like we're starting in the middle,
8 but really this application here is to ask that the property
9 which is, you know, it's been described, as you know well,
10 as parcels 32, 35, 92, the corner at libre 13557 at 4007,
11 730, which is the 60 acres located which has about 4,290
12 feet along and across Marlboro Pike; and to the south, 4,300
13 feet along Pennsylvania Avenue to the north; and about 250
14 feet of frontage along Woodyard Road to the east. And the
15 request, and as Ms. Hough knows because we actually have
16 meetings, a meeting with the community, is to rezone the
17 property from RR to MXT. And what we are doing, these
18 gentlemen that are part of the team are the individuals who
19 testified that the request is consistent with what's the
20 requirements off of Prince George's County. We've had, you
21 know, experts who are familiar with the transportation
22 corridor in the area; that's familiar with the environmental
23 settings on the property, in the area; with individuals who
24 are experts in the area of wetland determinations.

25 You've met Mr. Lugwik before. He was a commercial

1 broker and he testified as to the possibilities of the
2 development at the site. As we indicated previously, that
3 what we are trying to do is to demonstrate that if this
4 property is zoned at MXT, not necessarily that these uses
5 that are being proposed would be the one that ultimately is
6 built; but we have to get a certain stage before we can then
7 apply for a conceptual site plan, a preliminary plan, a
8 subdivision and a detailed site plan; and as we indicated
9 through the entire process, the, you know, the citizens and
10 stuff will be, you know, able to comment and be a part of
11 the application process.

12 As an Applicant, as the Carozza family, as the
13 Applicant in this matter, we have the burden of proof to
14 show that the information that we are providing is
15 consistent with what the zone is that we're requesting; and
16 that it is not injurious to the health, safety and welfare
17 of the community area. And that's what these individuals
18 testified to, you know, and, and what we believe we have to
19 -- we have criteria within the zoning ordinance that we have
20 to meet, and we have a land planner who is an expert in that
21 area and he evaluates the criteria and make a determination
22 or recommendation of whether those criteria have been met.

23 Maryland National Park and Planning Commission, as
24 you know, provided a Staff Report where they recommended
25 against the rezoning of this property; and the reason that

1 we're going into detail about it is because it is our, on
2 behalf of the Applicant, it's our position that the premise
3 that the Park and Planning Staff used was incorrect and that
4 their information for the basis of their denial was
5 incorrect; and so, therefore, we had these experts evaluate
6 their information. After the last hearing, the Hearing
7 Examiner, a recommendation that basically says check, you
8 know, go back out in the field and check and see if, in
9 fact, what Park and Planning has recommended is accurate;
10 and the testimony that you've heard this morning from Mr.
11 McAlister is his testimony that, in fact, we believe
12 confirms the fact that their information that they provided
13 in making the recommendation of denial was not correct.

14 That's what we're trying to prove here this
15 morning and I'm not sure, Mr. Brown, if I've given a summary
16 sufficient to --

17 MR. BROWN: I just wanted everybody to be on the
18 same page since several persons were not here at the
19 proceeding. Thank you.

20 MR. HORNE: Okay. Look, Ms., you're, you're on
21 mute, Ms. Examiner, if you're speaking. I'm not -- I can
22 see your mouth moving, but --

23 MADAM EXAMINER: Thank you. Since you called your
24 first witness, we now have Mr. Askins and Mr. Chapman with
25 us, and I just wanted to inform the two of you that if you

1 are opposed to the request, you should enter into the chat
2 when you want to cross-examine any witnesses; and you should
3 stay muted unless you're speaking because this is being
4 recorded and it gets a little problematic when too many of
5 us have our mikes on at the same time. But since you're
6 just coming, Ms. Hough, do you have any questions of this
7 witness?

8 MS. HOUGH: No, I do not. Uhn-huh.

9 MADAM EXAMINER: Okay.

10 MS. HOUGH: Thank you very much.

11 MADAM EXAMINER: Mr. Askins or Mr. Chapman, I
12 don't know if you heard much from the witness, but do you
13 have any questions of this witness? It was Mr. McAlister.

14 Mr. Askins, we can't hear you, but your mike is
15 on.

16 UNIDENTIFIED FEMALE SPEAKER: Right. We, we can't
17 hear you. I do know that he was having some difficulties
18 getting on because that was the interruption that when I put
19 my camera on, and he's been able to get on, but apparently
20 his, his sound isn't working.

21 MADAM EXAMINER: Okay. While he's working on that
22 --

23 MR. CHAPMAN: No.

24 MADAM EXAMINER: -- maybe he would be able to put
25 any questions in chat. Wait a minute, is that you?

1 MR. CHAPMAN: Yeah, that's me. I am just --

2 MADAM EXAMINER: I'm asking for Mr. Chapman.

3 MR. CHAPMAN: It's Mr. Chapman.

4 MADAM EXAMINER: Okay. Did you have questions of
5 Mr. McAlister?

6 MR. CHAPMAN: Yes, just one question. The expert
7 witnesses that are in supporting this recommendation, they
8 all, did they do this for free? Were they paid? They're
9 paid, correct?

10 MADAM EXAMINER: Is that the question? Mr.
11 McAlister, were you paid?

12 MR. HORNE: You're on mute, Ryan.

13 MR. MCALISTER: I've never been asked that
14 question before, but we were contracted through the owners
15 of the property.

16 MR. CHAPMAN: Right. So, would you expect
17 somebody that's contracted to go against the people that are
18 contracting them?

19 MR. MCALISTER: What I can tell you, Mr. Chapman,
20 is, is that as a licensed professional, I'm here to present
21 data that's required by the County code in order to obtain
22 the approval of this plan. Certainly, if there was
23 something that was indicative of an issue or constraint, but
24 in terms of my testimony, I think I provided accurate data
25 as shown on this natural resource inventory plan. I hope

1 that answers your question. My license is similar to a, a
2 doctor or an attorney; and so, I'm ethically bound to, to
3 provide you accurate information here.

4 MR. CHAPMAN: Okay. Good. It does answer my
5 question, and I respect you, and I'm not trying to impugn
6 upon your, your honesty; but at the same time, if the
7 County, which was supposed to be able to get a rebuttal, if
8 they hire somebody, I mean if somebody who works for the
9 County disputes any of the evidence that you present, then
10 what happens?

11 MR. MCALISTER: The process in place is that we
12 work with the Maryland National Capital Park and Planning
13 Commission and the agencies that review and approve this
14 natural resource inventory plan, which is the Environmental
15 Planning Section. If there were comments, changes or
16 issues, they would not have approved this plan. During the
17 preparation, any comments or issues that they raised would
18 have been addressed on this plan and we would have resolved
19 those with the reviewer.

20 Additionally, outside of the Maryland National
21 Capital Park and Planning Commission, we worked with the
22 U.S. Army Corps of Engineers. Again, any issues that may
23 have been raised, or would have been raised during that
24 process, either would have been indicated on this document
25 since this is the approved document, or in their findings;

1 and so, that's why we submitted both these documents in the
2 record which is the Natural Resource Inventory Plan, as well
3 as the approved jurisdictional determination by the Corps of
4 Engineers. I'd be happy to answer any other questions with
5 those if you have any questions; but in terms of where we're
6 at today in the, in the approvals we have is that
7 jurisdictional determination and this approved NRI plan.

8 MR. CHAPMAN: And that was done in March, you
9 said, of 2021? So, they had to, they had a chance to review
10 everything you're putting forth now, correct?

11 MR. MCALISTER: Yes, sir. They've reviewed it
12 all. We started the preparation and I've worked with those
13 agencies to obtain their approval, yes. So, it, it is a
14 very recent approval which they've issued within the past 60
15 days; and, and these sites typically don't change within 60
16 days, these kind of features and elements wouldn't change.
17 It would take many, many years of, more than five years for
18 anything on the site to change.

19 MR. CHAPMAN: Okay. So, initially, the, the, the
20 County surveyors, they did an aerial view, right? Did they
21 have anybody walk through like you all, like you did?

22 MR. MCALISTER: Yeah, if I can respond? The, we
23 outlined, I outlined and submitted a memo on our last
24 hearing of where the information was found from the Park and
25 Planning Commission based on their green infrastructure plan

1 and resource conversation plan. We'll be happy to provide
2 you a copy of that memo, but just to cite a couple of pieces
3 from it that we found in the plan and what the, what the,
4 what the plan stated. So, I'm looking at my memo. Let me
5 cite this for you here and hopefully this answers your
6 question.

7 MADAM EXAMINER: Mr. McAlister, do you remember
8 what exhibit number that was in the prior case? Or, Ms.
9 Bah, is it possible to pull up an exhibit list from the
10 prior case? I don't know. It may take a while, but I don't
11 know if it can be done, but that would be helpful.

12 MS. BAH: We could try. Yeah, I can try. Hold on
13 one second.

14 MADAM EXAMINER: Thank you. Thank you.

15 MS. BAH: You're welcome.

16 MADAM EXAMINER: Go ahead, Mr. McAlister, and
17 we'll try to get the exhibit afterward.

18 MR. MCALISTER: Yeah. So, anyways, what we pulled
19 was the plan itself, I was referencing, this is the 2017
20 plan on page 29. It cites that while some of the evaluation
21 area site features are regulated by the County and/or the
22 state, their exact position on the ground cannot be
23 determined because many of these layers, especially the
24 layers generated by the state, are conceptual in nature.
25 This results in the need to treat the network map as a

1 conceptual guide to decision-making.

2 And, and then they reaffirm this, and this is in
3 the plan by the County, on page 30, paragraph 2 of the 2017
4 plan. It says that during the land development and process,
5 the regulated and the evaluation areas received different
6 levels of consideration. The regulated areas are considered
7 conceptual until their features and their buffers are mapped
8 in greater detail on approved Natural Resource Inventory
9 Plan; and then, so there's no indication that site, I'm
10 sorry, that Staff from the Maryland National Capital Park
11 and Planning Commission when they prepared the green
12 infrastructure plan, made site visits because they would
13 have had to evaluate every site within the County. They did
14 this through aerial mapping at a very high level; and so,
15 what they're saying here in the plan, though, is that it's a
16 very conceptual, broad-based analysis, and that the actual
17 features aren't determined on the ground until a natural
18 resource inventory is completed; and that's where it cites
19 specific information which we're presenting to you today
20 with this plan is evaluated to show the, the regulatory
21 constraints, as well as the mapping of those features.

22 So, the plan doesn't speak to specifically Staff
23 made a site visit during the process and approval of this
24 Natural Resource Inventory Plan. If Staff from the Maryland
25 National Capital Park and Planning Commission made a site

1 visit, they would have let us know, but there's no
2 indication on this site that they did make a visit. They
3 may have without our knowing, but that's why in terms of the
4 preparation of this data and what we're presenting here
5 today, this plan has been approved by them that shows what's
6 been investigated in the field and mapped on the plan, and
7 is consistent with their approval.

8 MS. CHAPMAN: All right. Thank you.

9 MS. HOUGH: I have a question just for
10 clarification. I believe I heard someone say that the
11 latest NRI that was done by the County was done in 2017, but
12 was signed on March the 9th of this year. Is that correct,
13 it was signed off as final with the actual contract of --

14 MADAM EXAMINER: Ms. Hough, sorry, that's Ms.
15 Hough for the record; and Mr. McAlister, if you can explain,
16 answer the question?

17 MR. MCALISTER: The 2017 is a county-wide plan
18 that was prepared by, by the County. It is not a Natural
19 Resource Inventory Plan. It's a county-wide mapping
20 analysis of features throughout the County to create a green
21 network. The Natural Resource Inventory Plan, which is the
22 plan we're presenting today, was approved in March of this
23 year, 2021; but the 2017 plan is what Staff undertook to map
24 all the features in the County to start establishing and
25 seeing an analysis of corridors and a number of elements

1 that are described in the plan.

2 So, one is, one is a policy plan for guidance?

3 The other one is a mapping which is the NRI plan, is a
4 mapping of physical features and site-specific to this site.

5 MS. HOUGH: Thank you.

6 MADAM EXAMINER: Okay, Mr. Horne, your next
7 witness?

8 MR. HORNE: Okay, Madam Examiner, I, I, again, as
9 I indicated before, we are here to stand on the testimony
10 previously in that the only outstanding issue from the
11 previous determination was the, pursuant to your decision,
12 was the issue of the National Resource Inventory, which we
13 indicated. I have all of my experts here, that what, all
14 they would do is regurgitate what they said previously. So,
15 I'm going to just rest and say that we, we believe that
16 we've met the criteria for the recommendation of the
17 property to be rezoned to the MXT zone.

18 I know we have citizens here now that we didn't
19 have before and, you know, as I said, we actually spoke with
20 them previously and absolutely understand and respect their
21 positions with reference to their feelings about the
22 particular application. And if they have specific concerns,
23 I do have experts here that can go back and talk about the
24 particular areas that they may have questions on; but, or at
25 the risk of being long-winded and going through everything

1 again because a hearing has already been held, we think
2 we've met that criteria and stand on that determination with
3 the exhibits from both this case and previous case,
4 transcripts from the previous case, and your decision of
5 January 15th, 2020. So, having said that, you know, again,
6 with the, with the citizens here, we would be glad to
7 respond to any questions they have; but with reference to
8 our burden, we feel like we've met the burden with all the
9 previous testimony and, and that actually added to it today
10 with what you specifically request upon remand.

11 MADAM EXAMINER: Okay. Ms. Hough, you were here
12 first. Would you like to testify?

13 MS. HOUGH: Yes. I, I would like to put our
14 objections, the objections of the Marwood Community
15 Association into the record.

16 MADAM EXAMINER: Okay. Hold on one second. Do
17 you swear or affirm under the penalties of perjury that the
18 testimony you shall give will be the truth and nothing but
19 the truth?

20 MS. HOUGH: Yes, I do.

21 MADAM EXAMINER: Okay. And remind me, I
22 apologize, Mr. Hough, you, you submitted that in writing,
23 correct, but we didn't make it a part of the record yet?

24 MS. HOUGH: That's correct. Uh-huh.

25 MADAM EXAMINER: Okay. So, I must have it

1 somewhere and we will make it an exhibit once -- this is the
2 old one. One second. We were trying to decide which
3 exhibit from the old file was Mr. McAlister's memo that --
4 it may have been one of the last exhibits.

5 MR. MCALISTER: Madam Hearing Examiner, I believe
6 so. It was submitted after the hearing, so it should be --
7 there you go. I think 43A?

8 MADAM EXAMINER: Okay. B, it looks like your B?
9 Okay.

10 MR. MCALISTER: Yes.

11 MADAM EXAMINER: Thank you, Ms. Bah.

12 MS. BAH: No problem.

13 MADAM EXAMINER: Okay. We're going to have to
14 mark Ms. Hough's letter as an exhibit in this case. I guess
15 it would be Exhibit 11, as soon as we find it because it's
16 still in an email; but, Ms. Hough, go ahead and testify.

17 MS. HOUGH: Okay. So, we have some objections to
18 Case 10051 coming from the Marwood Community Association.
19 The rezoning of approximately 60.02 acres spanning from 9702
20 to 10200 Marlboro Pike, Upper Marlboro, Maryland, which is
21 identified as Case A-10051, from rural residential zoned
22 land to the MXT mixed use transportation oriented zoned
23 land, and the proposed construction of a gas station and
24 other retail entities near the corner of Woodyard Road and
25 Marlboro Pike would have numerous adverse effects on our

1 residents and the safety, qualify of life that we currently
2 experience in our community.

3 This proposed rezoning and the associated proposed
4 construction projects include the approval for the potential
5 construction of a retail strip mall, gas station, two
6 restaurants, two hotels and a church accommodating 285 seats
7 be built on this particular site. This location is
8 immediately across the street from the only entrance to the
9 Marwood development. Marwood is a senior, age 55-plus,
10 single-family housing development with 151 single-family
11 homes.

12 In the past, a similar rezoning request for this
13 property was denied by the MNCPPC Technical Staff on 10/17,
14 2019. According to County records, the request was appealed
15 by the Applicant on September 21, 2020, and during this
16 pandemic period, the request for rezoning has progressed
17 without the knowledge of the Marwood homeowners. The
18 elderly Marwood residents strenuously anticipate that the
19 commercial development of this property would have numerous
20 adverse effects on our residents and the safety and quality
21 of life that we currently experience in our tranquil
22 community.

23 The possibility of a gas station, retail strip
24 mall, restaurants, two hotels, a large church and so forth
25 coming into the community in close proximity to our homes

1 and the associated significant increase of vehicular and
2 pedestrian traffic, and potential crime, these elements
3 would bring to our doorstep would certainly negatively
4 impact the safety sense of our residents, as well as
5 negatively impact the personal real estate property values
6 of the property homes of the private homes in our senior
7 development. It would significantly depreciate the safety
8 and desirability of our well-kept and relatively crime-free
9 community.

10 The Marwood Community Association wants to go on
11 record as vehemently opposing the rezoning development
12 project referred to as the Carozza Property and identified
13 as Case A-10051. And following our specific facts or points
14 that we would like to bring to the attention of the Planning
15 Department and the Zoning Examiner, that is current traffic
16 congestion on Marlboro Pike during morning and evening rush
17 hours negatively impacts our residents' ability to enter and
18 exit our home development safely and expeditiously. Often
19 our residents are stalled at the intersection of North
20 Marwood Boulevard and Marlboro Pike by the volume of cars
21 that are backed up waiting to pass through the traffic
22 signal located a half a mile away at the intersection of
23 Marlboro Pike and Woodyard Road.

24 Because of this traffic back-up, visibility of
25 oncoming traffic in the opposite direction is severely

1 hampered and presents a real danger to our residents
2 attempting to exit the development. Also, this traffic
3 back-up further hampers the, hampers the ability of
4 residents to exit the community headed in the direction of
5 the traffic signal because they must depend on the courtesy
6 of drivers already in line to allow them to enter the
7 backed-up traffic that is waiting to go through the same
8 traffic signal, as well as the difficulty and danger
9 associated with crossing across that line of traffic to go
10 in the opposite direction.

11 Rezoning of property in Case A-10051 to MXT would
12 significantly amplify the above-noted traffic problems and
13 endanger the vehicular and pedestrian safety of our
14 residents by increasing the amount and duration of traffic
15 congestion in our community. The community plan traffic
16 redirection of portions of Marlboro Pike going through
17 Belmont Cross development will not address and/or rectify
18 these traffic concerns.

19 Additional commercial development is not desired
20 or needed in our community. Residents of Marwood have more
21 than adequate access to gasoline stations, retail outlets
22 and restaurants down on Route 301, which is approximately 2
23 1/2 to 3 miles from our development on Osborne Road. We
24 have access to commercial establishments in Clinton, which
25 is about 4 miles from our development; in Forestville, which

1 is about 2 miles; and at Ritchie Station in Capitol Heights,
2 which is approximately 5 miles from our development.

3 Currently, there's, there is immediate access to a
4 convenient store, a hotel, a liquor store located right here
5 on Marlboro Pike about a half mile from our development
6 entrance. The hotel is a Sleep Inn, I believe, and not a
7 Red Roof Inn as I saw in some of the paperwork; and, but
8 it's rarely, from what I can tell in just driving by and
9 looking over, I don't see a full lot at any point in time;
10 so, I'm going to assume that they have less than a third
11 occupancy rate on a daily basis because there really is no
12 demand for hotel facilities in this particular area.

13 I know mention has been made of people coming to
14 Andrews to visit. Andrews has on-base housing, as well as
15 their four hotels on the route, on Allentown Road, which
16 runs right beside the base, one of which is a brand new
17 hotel that I think was recently constructed.

18 For the influx of commercial customers into our
19 community would bring associated crimes and more problems of
20 more traffic congestion. We would have car and cooking
21 pollution, loitering, increased litter, and potential
22 increases in crime. An increase in the visibility of our
23 senior community would significantly heighten the likelihood
24 of unsavory individuals wanting to take advantage of older
25 residents who are more vulnerable and not as capable of

1 protecting themselves and their property. The residents of
2 the Marwood community move here because of the rural, not
3 commercial, and tranquil setting.

4 Presently, there are plans which was Case DSP-
5 20008, to build a Royal Farms gas station and convenience
6 store at the same intersection of Marlboro Pike and Woodyard
7 Road. That particular location also has plans for further
8 commercial development which will make, will, which will
9 also invade our community with traffic, safety, noise and
10 pollution and loitering problems.

11 There are currently plans to develop a significant
12 shopping and restaurant center mall on Pennsylvania Avenue.
13 This is known as Westphalia Town Center, which is located
14 less than one mile from our development. That town center
15 will have large retail outlets, as well as smaller retail
16 outlets very similar to the type that have been discussed
17 about being put on the Carozza Property.

18 The creation of commercial entities on the site
19 will not serve the needs of the P.G. County community which
20 are currently being met; but would, instead, serve the needs
21 of people who are not residents of the County; people who
22 are traveling down Pennsylvania Avenue headed toward
23 Chesapeake, North Beach, Shadyside, Dunkirk and Prince
24 Frederick. Such development would adversely affect our P.G.
25 property values, our safety, our comfort and the convenience

1 that we experience for the sake of, and/or for the
2 convenience of non-tax paying, out of County individuals who
3 certainly don't pay P.G. property taxes.

4 We feel that there will be a significant increase
5 in air pollution due to increased traffic from Marwood
6 Senior Community residents who may have, due to their age,
7 disabilities such as COPD, asthma, and other breathing or,
8 or other breathing problems. Now a previous request by the
9 same owners was denied in the recent past due to
10 environmental factors which included features on the
11 property referred to as Case A-10051. There have been no
12 adjustments or noticeable changes to the cited property
13 since the previous rezoning denial was reached. At that
14 time, it was determined that the reclassification of that
15 property would violate the County guidelines. Marwood
16 residents hope that additional pressure by the owners,
17 either political or monetary, will not influence the
18 rezoning decision at this time.

19 And, and, and, finally, as this was this concern,
20 the owners of the cited property, the requestors of the
21 rezoning initiative, it is our understanding that there are
22 wealthy residents of a highly valued residential community
23 in the District of Columbia. They are not tax paying
24 residents of the state of Maryland or the County at Prince
25 George's. They currently reside in a home that is valued at

1 over \$4 million. There are no intrusive commercial
2 establishments in their immediate, tranquil and expensive
3 community in D.C. The residents of Marwood, along with many
4 other P.G. County residents, resent the invasion of
5 undesirable commercial establishments initiated by non-
6 resident individuals who seek to make monetary profits at
7 the expense of tax-paying P.G. County residents.
8 Individuals such as the owners of this property should seek
9 money-making ventures in their own communities and at the
10 expense of the quality of their own living conditions.

11 In addition to that, we have gone through, and we
12 had to do all this quite quickly without really having much
13 knowledge and/or background in any of this; this was my
14 first personal involvement in anything having to do, do with
15 rezoning; but we have an additional list of objections from
16 the Marwood community. Ms. McNeil, I believe you do have
17 that as an exhibit? You're muted.

18 MADAM EXAMINER: Yeah, wait one second. I think
19 that you sent a letter on your own behalf, which was a Word
20 document. We're going to mark that as Exhibit 11. I
21 forwarded it just now to Mr. Horne and Mr. Brown, and if you
22 all have no objections, that will be Exhibit 11. And then
23 there's a PDF, which we would call Exhibit 12, is that what
24 you're speaking to, that authorizes you to speak on behalf
25 of the Association?

1 MS. HOUGH: No, that's not what I'm referring to.
2 I'm referring to a Word document that is titled, I don't
3 know if that's the exact file name, but it's an official --

4 MADAM EXAMINER: Additional objections?

5 MS. HOUGH: Right. Additional objections.

6 MADAM EXAMINER: That's Exhibit 11, but Exhibit
7 12, okay, I got it. So, Exhibit 11, excuse me a second,
8 Exhibit 11, gentlemen, for the record, is what she's getting
9 ready to speak to which was additional concerns from
10 Marwood. Exhibit 12 authorizes Ms. Hough to speak on their
11 behalf. Do you all need a second to look at it?

12 And, Ms. Hough, everything you said thus far you
13 didn't send to me in writing. That was just your testimony?

14 MS. HOUGH: No, I sent you, I sent it to you in
15 writing, but it was early on. I believe it was, it was an
16 email around February the 7th.

17 MADAM EXAMINER: Okay. And you want that to be
18 part of the record as well?

19 MS. HOUGH: Please. That's what I just --

20 MADAM EXAMINER: That will be Exhibit 13 as soon
21 as I find it.

22 MS. HOUGH: Okay. Let me see if I can --

23 MADAM EXAMINER: I didn't get rid of it. I'll
24 find it. Gentleman, what do you all think about 11 and 12?

25 MR. BROWN: Yeah, I had previously reviewed it. I

1 don't have any objection to it. I don't think it's
2 necessary for Ms. Hough to go through it. She's putting,
3 put the written text into the record and I think that's
4 sufficient.

5 MADAM EXAMINER: Ms. Hough, you don't have to read
6 the whole thing. You can look at it and highlight anything
7 you want to add now.

8 MS. HOUGH: Okay.

9 MADAM EXAMINER: Mr. Horne, I assume you have no
10 objection?

11 MR. HORNE: Okay. So, let me just make sure what
12 Ms. Hough read, testified to was Exhibit 11.

13 MADAM EXAMINER: No, no, what she testified to was
14 sent earlier. That's going to be Exhibit 13 as soon as I
15 find it. Exhibit 11, I sent you, it says it's a Word
16 document and its additional comments from the Marwood
17 Association.

18 MR. HORNE: I have that, yes.

19 MADAM EXAMINER: It's Exhibit 12, it's authorizing
20 her to speak on behalf of the Association.

21 MR. HORNE: Okay and I, I, I, I don't have any
22 objection; I just agree with the People's Zoning Council,
23 it's, it's really the comments from the Staff that is
24 already part of the record.

25 MADAM EXAMINER: Okay. So, Ms. Hough, if you

1 would just briefly tell us what, what you wanted to say
2 about Exhibit 11?

3 MS. HOUGH: Okay. Basically, we, we did go
4 through the document that I believe was, the file of it was
5 81 -- I don't have the exact file, 8178, or 8118, or
6 something like that; but it is, it's an excerpt from their
7 Staff Report; and, basically, what we did was we went
8 through and pulled out those points that we felt were
9 relevant and it turned out to keep things within context so
10 that anyone reading it would understand that we just
11 highlighted those particular areas of that report that we
12 wanted to emphasize. So, then one of the first points was
13 that they said that it does not meet the requirements of the
14 zoning ordinance because of the 2013 approved master plan
15 did not recommend mixed land uses for the subject property
16 similar to those recommended in the MXT use, Mixed Use
17 Transportation Zone.

18 Community Planning Division found that pursuant to
19 their particular policy, I believe, that the application was
20 substantially impaired. The integrity of the 2014 Plan
21 Prince George's 2035 approved general plan, and the 2013
22 approved sub-regent 6 master plan for the following reason;
23 and the one that we really want to highlight is that the
24 site is not within a regional transit district or local
25 center.

1 Plan 2035 designates the subject property as an
2 established community. Revision for established communities
3 is contact sensitive infill and road to medium density
4 development. The other MXT Zone permits densities that are
5 far greater than in existing development; and, and there
6 does, and, therefore, does not support the vision that's put
7 forth in the established community's regulation.

8 I'm noting that this rezoning would significantly
9 exceed the density that's recommended for residential land
10 use, low land use. Once again, they said that it was in the
11 established communities and we want to point out what we
12 feel are really relevant statements in the policies that are
13 listed there. We have copies, in particular, the areas that
14 are highlighted. I wanted to bring that to everyone's
15 attention.

16 Down under environment, we wanted to make sure
17 that that was adhered to protect, preserve and restore the
18 identified green infrastructure network in areas of local
19 significance within sub-region 6 in order to protect
20 critical resources and to guide development in mitigation
21 activities. And it talks about the protected primary
22 corridors, that some of the rivers and streams that are in
23 the area.

24 There was a statement that was made, and before I
25 forget about it, it was about some of the natural resources;

1 and there was a mention of bald eagles and, honestly, I, I
2 have seen bald eagles in this immediate area on several
3 occasions and, quite frankly, I was quite surprised to see
4 it; but I go out twice a day with my dog and I've seen bald
5 eagles flying above my home over in the direction of the
6 property and down through our development. They seem to
7 circle back and go back into that wooded area. So, that,
8 that was just something I didn't want to forget to mention
9 once I heard that statement.

10 As you can see, I mean I've gone through, we have
11 gone through and highlighted those things that we feel are
12 relevant, particularly to this proposed rezoning; and we
13 feel that the plans and the guidance that the County has
14 provided, and their, their results in this, in this report
15 definitely indicate that it shouldn't be rezoned to
16 commercial mixed use. I won't take the time to read the
17 whole thing because, as you all have mentioned, you have it
18 there in front of you and I'm sure you've seen portions of
19 this before.

20 Are there any questions about any part of it or,
21 well, or how we found that to be applicable to this
22 particular situation?

23 MADAM EXAMINER: You're taking over my role. Wait
24 one second.

25 MS. HOUGH: I'm sorry.

1 MADAM EXAMINER: Mr. Horne, do you have any
2 questions?

3 MR. HORNE: No, well, here's the thing, Madam
4 Examiner. I don't, I don't have any specific questions. I
5 do, with, I mean if it would be helpful and in response to
6 Ms. Hough, because, again, we don't want to cross-examine
7 them because we understand and respect what they've done,
8 and we appreciate this information they provided; but I do
9 have my experts, for instance, who can testify what, what's
10 the, why the traffic is sufficient. We have the land
11 planner who can talk about how this, that despite what Staff
12 said in their report, that our information is more accurate
13 than what they stated in their recommendations. So, I can
14 have them briefly address what she said.

15 I do, although it hasn't been listed as Exhibit 13
16 yet, I do want to state that, you know, again, her testimony
17 talks about, talks about the Staff Report as if the property
18 was rezoned before. This is all part of the same case and
19 thank you.

20 MADAM EXAMINER: I was going to clarify that, Ms.
21 Hough --

22 MR. HORNE: Okay.

23 MADAM EXAMINER: -- for the record. The Staff and
24 the Park and Planning had an opportunity to review
25 everything and issue their recommendation. The Staff issued

1 a mere recommendation, and the Planning Board adopted their
2 recommendation. Then I had an opportunity to review
3 everything and issue a recommendation. I issued a
4 recommendation, this is sort of hybrid, I, I approved, but I
5 had a question as to the streams onsite, and so it was
6 remanded to get more evidence on that.

7 And then the Council has the final decision, and
8 so now as persons of record, all of you can appeal my
9 decision, as can Mr. Horne, and it will be heard by the
10 Council at some point. So, at this point, there's only been
11 recommendations. No one has made a final decision on the
12 rezoning of this property.

13 MS. HOUGH: Thank you. I understand that. I, I'm
14 sorry if I misstated it so that you thought that I thought
15 it had already been rezoned, but I understand that it was
16 just a request and, and that during the review -- you're in
17 a review process right now.

18 MADAM EXAMINER: Right. So, Mr. Horne, if you
19 don't have any direct questions, I don't tell you how to do
20 your case, but maybe you want to hear from everybody --

21 MR. HORNE: Sure, absolutely. Go for it.

22 MADAM EXAMINER: -- if you want to do a rebuttal,
23 that's up to you.

24 MR. HORNE: Then we can go back. Yes, ma'am.

25 MADAM EXAMINER: Okay.

1 MS. HOUGH: Can I, can I --

2 MADAM EXAMINER: Go ahead, Ms. Hough.

3 MS. HOUGH: And I did have some additional
4 comments on some of the traffic information that was
5 provided. Would this be the appropriate time to, to mention
6 that?

7 MADAM EXAMINER: Sure.

8 MS. HOUGH: Okay. We were briefly and quickly
9 going through some of the information that had been compiled
10 for this case and we do have some very significant
11 questions, I guess, about how the traffic studies were
12 conducted. The traffic studies were conducted at
13 intersections that are as far away as 3 miles such as
14 Woodyard Road in Rosaryville Road, volumes from right turns,
15 left turns, thru traffic and U-turns are provided as well as
16 the counts of cars going through that intersection at
17 different points in time in the morning and in the evening
18 rush hours. I think for the most part they start off at 15-
19 minute increments and at some point, there's an overlap in,
20 in the way that the traffic study was conducted.

21 To me, it does not present a real picture of the,
22 of the traffic situation that exists right here in this
23 immediate area; right here near Marlboro Pike, Woodyard Road
24 and Dower House Road, even though those intersections were
25 included with those counts. There is no count to locate,

1 and the amount of traffic or volume that passes by the front
2 of our development at the intersection of North Marwood
3 Boulevard and Marlboro Pike.

4 North Marwood Boulevard is not mentioned at all in
5 that traffic study, and yet that's the intersection that we
6 have to use to come and go from our homes, and it's always
7 blocked, at least prior to the pandemic. It was blocked
8 every evening, every workday, evening, for about at least
9 7/10 of a mile. You know, it came from the corner down
10 there at Woodyard and Marlboro, up past the entrance to our
11 development, and back down the curve. You could see cars
12 lined up waiting to go through that intersection at Woodyard
13 and Marlboro Pike. And that's almost the entire length of
14 this property because the Carozza Property is about 8/10 of
15 a mile there on Marlboro Pike. Those, it causes significant
16 problems.

17 Additionally, the entrance of Belmont Crest and
18 Marlboro Pike, well, actually it's Old Marlboro Pike and Old
19 Marlboro Pike because they're going to rename it from
20 whatever it was; but I, I did see that chart in there, but I
21 really have problems with the way the methodology that was
22 used to conduct this study. It, to me, doesn't make sense.
23 It's kind of illogical. It gives you totals going across
24 several intersections at a given period of time, like let's
25 say 6:30 to 6:45 a.m. It gives you totals going across two

1 and three intersections rather than giving you totals which
2 would represent the actual volume through that intersection
3 during the rush hour period. So, I did want to kind of make
4 that comment.

5 The other thing that I wanted to mention as far as
6 traffic was concerned was the proposed three entrances to
7 the property should it be rezoned. They would just amplify
8 any traffic congestions and, and safety problems that we
9 would have of what traffic there on Marlboro Pike. So, I
10 guess that pretty much sums it up. I do have some --

11 MADAM EXAMINER: Thank you.

12 MS. HOUGH: -- excerpts from the hearing that was
13 conducted on January the 15, 2020, but I have not sent those
14 in in any way; so, I guess they can't be included at this
15 point as exhibits.

16 MADAM EXAMINER: You, if you want to wrap up by
17 just telling us what it is in the prior hearing you would
18 like to be considered? You don't have to read the whole
19 thing, like if you had a page from the transcript, or if it
20 was a transcript, or generically just what your concerns
21 were from the prior hearing, that now would be a good time
22 to tell me.

23 MS. HOUGH: Okay. On page 11 of that transcript,
24 about the second or, no, the third sentence says the
25 evidence will show that Park and Planning Staff agrees with

1 Mr. Lenhart's study that rezoning the property to MXT will
2 not be a substantial impact to the impact of intersections
3 in the area, and that's one of the points I just made about
4 they are not really, some of the intersections that are
5 studied aren't relevant to this particular property.
6 They're three miles away. And though they may indicate some
7 of the traffic, but not all of the traffic heading in this
8 direction, I just don't see the, how relevant they are.

9 MADAM EXAMINER: Okay.

10 MS. HOUGH: There were certain pages that I did
11 print out and last night around 1:30 I kind of gave up and
12 said I can't do any more. The pages that I did pull out
13 were, and I didn't highlight them last night, but I can give
14 you the page numbers, and then later on I can show you the
15 highlighted areas that were of concern on there. So, from
16 the transcript of the hearing on the 15th, 2020, January
17 15th of 2020, I pulled up page 11, page 34, page 39, page
18 40, 42, 45, 46, 48, 51, 53, 54, 67, 6-7, 70, almost done,
19 and 79.

20 MADAM EXAMINER: And you're saying all of these
21 pages are important --

22 MS. HOUGH: My statement --

23 MADAM EXAMINER: -- because --

24 MS. HOUGH: Yes, they had statements that we, we
25 disagree with, we were taking issue with, or have, you know,

1 real, real concerns about.

2 MADAM EXAMINER: And you want to submit later
3 highlighted portions of these pages showing what your
4 concerns are?

5 MS. HOUGH: Yes, I, yes.

6 MADAM EXAMINER: So, usually the record is left
7 open for something, so that's one thing for sure that we can
8 leave it open for.

9 MS. HOUGH: Thank you do much. Okay.

10 MADAM EXAMINER: Mr. Brown, any questions?

11 MR. BROWN: No questions.

12 MADAM EXAMINER: Okay. Thank you, ma'am. Mr.
13 Askins, are you ready?

14 MR. ASKINS: Yes, surprisingly, after a very
15 frantic morning fighting with my computer. So, I'm sure we
16 all live there sometimes.

17 Just for continuity, I'm going to just note that I
18 really reflected and am in agreement with what Ms. Hough is
19 saying about traffic.

20 MADAM EXAMINER: Okay, but before you do that,
21 just give me your name for the record so I can swear you in.

22 MR. ASKINS: You get you. Okay. My name is
23 Charles Askins.

24 MADAM EXAMINER: Okay. Mr. Askins, do you swear
25 or affirm under the penalties of perjury that the testimony

1 you shall give will be the truth and nothing but the truth?

2 MR. ASKINS: Yes, I do.

3 MADAM EXAMINER: Okay. Give me your address and
4 then your testimony. Thank you.

5 MR. ASKINS: 10103 Marlboro Pike, Upper Marlboro,
6 Maryland 20772.

7 MADAM EXAMINER: Okay. You can go ahead and
8 testify.

9 MR. ASKINS: Okay. I'm going to have a statement
10 and then I'm going to have a presentation. Am I calling you
11 Chair, is that your title?

12 MADAM EXAMINER: I could be Ms. McNeil, or Madam
13 Zoning Hearing Examiner, just not, hey, you. Okay.

14 MR. ASKINS: Ms. McNeil, I just want to say, first
15 of all, thank you for helping me getting the documents that
16 I have had such difficulty with over the last few days.
17 What a relief to get them. I got them in and I've been able
18 to start studying them as about a day or so ago. So, that
19 will reflect my frantic nature of this presentation. My
20 apologies in advance.

21 I want to establish whether I will, in fact, be
22 able to share a screen of my presentation today?

23 MADAM EXAMINER: Ms. Bah, would we have to make
24 him a presenter? They all left me. No.

25 MS. BAH: He is now a presenter.

1 MADAM EXAMINER: He is now a presenter? You know
2 what? I apologize. Yeah, I'm on. I apologize all. I
3 need, I promise, a 3-minute break, not even that long; and
4 maybe that will give you a chance to set it up, pull it up
5 on the screen, Mr. Askins, okay?

6 MR. ASKINS: Thank you.

7 MADAM EXAMINER: So, I'll be right back.

8 MR. ASKINS: Okay. I'm ready to do this. It
9 looks like -- is there someone out there that I'm speaking
10 with, or just looking at a computer screen?

11 MR. HORNE: We're here.

12 MR. ASKINS: Okay. I was thinking there might
13 have been a technical staff person who is the person who
14 made the screen pop up and I was addressing them. Are they
15 there?

16 MS. BAH: Yes, I'm here.

17 MR. ASKINS: Fabulous. Okay. I see that you have
18 in front of me a pop-up screen that says you have been made
19 presenter and I know on the basic screen that everyone is
20 using down with microphone, camera, screen and leave, there
21 is a screen button option. Is that all I need to use, or do
22 I need to click on something in the pop-up screen that you
23 made appear?

24 MS. BAH: No, you just need to click on where it
25 says screen and then you can pull up your document.

1 MR. ASKINS: Okay. Do you, do I have your
2 permission to close the screen that popped up that says you
3 have been made presenter? May I close that?

4 MS. BAH: What else does it, what other options
5 does it have there?

6 MR. ASKINS: It says, at the bottom right, it says
7 share, which is blue; and cancel, which is white.

8 MS. BAH: Okay. So, press share.

9 MR. ASKINS: Okay.

10 MS. BAH: And now you can upload whatever you --
11 okay, there you go.

12 MR. ASKINS: Okay.

13 MS. BAH: There you go.

14 MR. ASKINS: All right. Let's see if I can -- it
15 really changed my computer screen. I'm trying to find my --
16 there's, okay, I think I'm oriented now. My apologies,
17 folks. I was already to go. I've even run through this on
18 Zoom, so I'm sorry to have to learn this in real time.
19 Okay. I'm going to start with a statement today, which is
20 not going to be projected.

21 I'm alarmed by the requested rezoning. I --

22 MR. BROWN: Hold on, Mr. Askins, because the
23 Hearing Examiner is not back.

24 MADAM EXAMINER: I'm back.

25 MR. ASKINS: Okay. Good call. Thank you, Mr.

1 Brown.

2 MADAM EXAMINER: Okay, Mr. Askins, you can
3 continue.

4 MR. ASKINS: Okay. I think I'm ready to share a
5 screen, but I'm going to start with a statement. I'm
6 alarmed by the requested rezoning. I only became aware of
7 these intentions when alerted by a neighbor. I know that
8 there have been some attempted signage, but it wasn't
9 apparent for a long time.

10 Finally, I've gotten that, I only got the public
11 information, now been about maybe a little over 24 hours
12 since I've been able to get to the material that I'm going
13 to respond to today. I have lots of concerns, but I don't
14 want to keep you here. I haven't been able to work up a
15 detailed response to many things. I'm going to focus on one
16 area only today.

17 In general, the concerns I have, really they, they
18 echo what the County Staff's evaluation said when they
19 recommended for denial of the application. The denial would
20 protect the local residents and, of course, it would be
21 protect Maryland's longer term interests.

22 I asked all the hearing officials to recognize
23 that the Applicant has long practice and industrial
24 resources to make arguments like this for rezoning and
25 maximizing their profits. On the other hand, I and probably

1 the other affected residents who live in the vicinity of
2 this change, we have relatively limited resources of time
3 and expertise, and we're still trying to save our living
4 space and living conditions here as best we can manage. We
5 cannot possibly appear as professional and as polished as
6 the professionals who are making the application.

7 I also want to restate, the application is not
8 being made by a constituent. The opposition is not being
9 made by a nearby resident. The opposition to these motions
10 is coming from constituents and nearby residents. I think
11 that should have considerable weight in considering what is
12 more important.

13 The applicant says that rezoning is here to meet
14 community needs and I apologize, I cannot cite the page
15 where I saw that. I believe it was in the transcript
16 document which was Part 2 of the ZHE Report. That's a
17 guess, and if you like, Madam Chair, I would be glad to try
18 to find the point where I'm reading that quote that the
19 Applicant says that these rezoning would meet community
20 needs. They state that, but we live here. We are the
21 constituents. We are the people, in fact, that, we do not
22 perceive these needs. They're not seen as needs by us. In
23 fact, we would be harmed by the changes that are proposed.

24 And to wrap it up, this rezoning would basically
25 monetize local harm inflicted on the residents in order to

1 increase their profit of person who are not affected by the
2 changes that are proposed.

3 So, now I'm going to narrow my remarks down and do
4 a presentation that really only focuses on environmental
5 considerations and I really, again, want to thank the County
6 Staff for what they've done as input. So, I'm going to now
7 try to share a picture for you of my presentation if I can
8 just get it to show up. Application, screen, hopefully it's
9 going to be one -- there we go. Okay. Share -- all righty
10 then. Can everyone see that?

11 All right. I'm going to move this, go to the
12 middle thing off to the side so that I can see, which I
13 can't quite do. All right.

14 So, everyone is familiar with this. This is an
15 aerial view, everybody has seen this many, many times. In
16 summary, there's a proposal to change to mixed use
17 orientation, mixed transportation use. They're proposing to
18 put 180 dwellings of one sort or another, two hotels, strip
19 mall, two restaurants, office space, gas station, church.
20 All this would be excess for Marlboro Pike.

21 So, from this view, let me change the view to
22 another, oops, view that will be familiar if I can get my
23 computer to go forward. Where is my computer, go forward
24 that way? Okay. One more time. One more time. Oh boy,
25 next page. I'm trying to find my next page button here. I

1 had to borrow someone's computer this morning because the
2 computer I was using didn't do anything -- well, does
3 anybody, well, all right, let's see what can I do? Enter?
4 Can I click?

5 Okay. There, okay, okay, what's happened is this
6 thing has frozen up here, so I'm going to try to go up and -
7 - okay, good, it's moving now. All right. So, sorry, I
8 think we're running. That's the subject area and this is
9 the next view. Everyone is familiar with elevation. This
10 is from the (indiscernible) information that has already
11 been spoken of by the Applicant, subject area. This is the
12 Marwood community for orientation further.

13 Is it going to respond? There we go. So, I'm
14 zooming in a little bit. As we've heard several times,
15 Maryland has a green infrastructure plan and laws that
16 entail, that are entailed by that plan. Development can be
17 impeded by the presence of existing streams, and the
18 Applicant claims that there are no substantial streams
19 present. All water channels are ditches and all of those
20 are consequent to various status of construction of Route 4
21 over the years, or the decades.

22 I'm waiting for my screen to change. There we go.
23 So, we're going to zoom in and look at this area a little
24 bit. Let me note that the features of this land are not as
25 was stated, or at least I read in the transcript. The

1 contours of this land are not just defined and affected by
2 the construction of Route 4. These geographical features
3 actually predate Route 4, and you can see the continuity of
4 some of these features that go across Route 4. Route 4
5 interrupted and, and it was laid on top of it. So, that's
6 one thing.

7 Another point is any development in here, there
8 are one, two plateaus within the development area that
9 wouldn't need massive infill. These areas here, here, here,
10 here, here, here, here, are drop-offs for the order of 10 to
11 15 feet just from the immediate roadway level. So, anything
12 in these areas would be drastically affected by the tonnage,
13 the acres of 10-foot deep or so of infill required to make
14 this road front usable to any kind of construction be it
15 rural, residential, or commercial, the MXT zoning.

16 Now I went out there after seeing that there was
17 this assertion that there were not streams on the property
18 and I walked around, I took a camera with me. I went from
19 this location here and went across Route 4 and followed the
20 culvert that continues at, just to show that this is the all
21 continued road, stream bed here, and it picks up and drops
22 off on the other side and goes into the thing which I think
23 is called Back Branch, which is, by the way, I believe, a
24 protected or, what do they call it, a, a regulated natural
25 feature. This stream bed --

1 MADAM EXAMINER: Mr. Askins --

2 MR. ASKINS: Yes, ma'am?

3 MADAM EXAMINER: Mr. Askins, can I stop you a
4 second?

5 MR. ASKINS: Yes.

6 MADAM EXAMINER: Mr. Brown, I need some of your
7 help with this exhibit. I don't want my records to show all
8 of this here, here and here.

9 MR. BROWN: Yeah, I mean it's going to be kind of
10 difficult. Mr. Askins, if you could, basically so that the
11 transcript is intelligible, you have to indicate when you're
12 referring to a site on a map by saying the northeast
13 quadrant, southeast quadrant, southwest quadrant, what have
14 you, as opposed to right here, right there, X, Y, Z, so that
15 later persons reviewing the transcript, specifically the
16 Council, understand what you're referring to. So, if you
17 can do that, that would be helpful.

18 MR. ASKINS: Thank you for your advice. I will
19 try to do that. If I drift off, please --

20 MADAM EXAMINER: And, Mr. Askins, the other thing
21 is, I was searching, I don't believe that I can find this
22 exhibit. So, will you be able to email this to us because
23 we need to make it --

24 MR. ASKINS: I will.

25 MADAM EXAMINER: -- part of the record as well.

1 MR. ASKINS: Yes, ma'am. Do you need it before I
2 continue, or after?

3 MADAM EXAMINER: It would be great if you could --
4 do you think you can do it now, like we pause like 10
5 seconds, or it will mess you up?

6 MR. ASKINS: Yes.

7 MADAM EXAMINER: You can do it after, don't worry.

8 MR. ASKINS: I can, if I can do it after, I'm, I'm
9 a little concerned about the technology of this thing
10 working. I may crash everything if I try it now. If I can
11 do it afterwards, I'll be glad.

12 MADAM EXAMINER: Okay. And it will be marked as
13 Exhibit 14 whenever we get it. I think that's the next
14 exhibit number, am I correct?

15 MR. BROWN: Yes, ma'am.

16 MS. RAWLINGS: Is that the same PowerPoint that he
17 sent earlier, Maurene?

18 MADAM EXAMINER: I couldn't find it. So, is it,
19 Mr. Askins?

20 MR. ASKINS: I can answer that.

21 MADAM EXAMINER: I couldn't find it, Ms. Rawlings.
22 If you can find it and make it in this record, it should be
23 Exhibit 14.

24 MS. RAWLINGS: Because I have Exhibit 12 as his
25 PowerPoint.

1 MR. ASKINS: I can answer that.

2 MADAM EXAMINER: Oh.

3 MS. RAWLINGS: Remember?

4 MR. ASKINS: I can, I can answer that.

5 MADAM EXAMINER: Okay, Mr. Askins.

6 MR. ASKINS: You were sent an exhibit earlier in
7 the week, or wherever time, or some days ago. I learned
8 more information from the data file that I was only able to
9 open two days ago and --

10 MADAM EXAMINER: Okay.

11 MR. ASKINS: -- there is new, additional
12 information. I have, if you will, a replacement to the
13 PowerPoint that I sent you. So --

14 MADAM EXAMINER: That's fine because I, I think we
15 can keep this one, Ms. Rawlings, because I don't think we
16 ever put 12 officially in the record.

17 MS. RAWLINGS: Right, we didn't.

18 MADAM EXAMINER: And now 12 has another number.
19 We can discuss offline, but we have, we received 11, 12 and
20 13 from Ms. Hough.

21 MS. RAWLINGS: Okay.

22 MADAM EXAMINER: If you'll mark this as soon as
23 the email is in as Exhibit 14, and I will go through 11, 12
24 and 13 with you later. Sorry, you all --

25 MS. RAWLINGS: Okay.

1 MADAM EXAMINER: -- for, this is the --

2 MS. RAWLINGS: Thanks.

3 MADAM EXAMINER: -- virtual world, so forgive us.

4 MS. RAWLINGS: Okay. Thank you.

5 MADAM EXAMINER: You're welcome. Okay, Mr.

6 Askins, continue.

7 MR. ASKINS: Indeed, the virtual world and amateur
8 participants.

9 MADAM EXAMINER: That's all of us; well, me, too,
10 at least.

11 MR. ASKINS: I like your professionalism. Yes,
12 this is Exhibit 14 we're going to -- very well. And, Mr.
13 Brown, I will try to narrate more accurately. So, if one
14 looks at the last three dashed lines that are accompanied by
15 question marks on the map, those are my speculations as to
16 where the culverts may be or as to where the original stream
17 course may have proceeded before the intervening and overlay
18 construction of Westphalia and Route 4.

19 Nonetheless, this is an area in this part of the
20 map which is above the yellow word, Marwood, the blue lines
21 and tributaries as indicating a stream system that I was
22 able to find casually walking through the area, and I'll
23 continue to narrate that with the next slides if, if the
24 slide will work with me. Here we go.

25 So, this following slide is looking at the

1 property and there are red circles with alphabetical capital
2 letters by them. That indicates locations where I took
3 photographs. You will not be burdened with all of these;
4 however, I will concentrate on photographs in the areas that
5 are labeled as Photographs C, D, G, F and H on this screen.
6 We will proceed to those now.

7 Again, the location is indicated on the left-hand
8 part, which is the elevations map. There's a yellow circle
9 showing the image that is projected on the right-hand side
10 of the screen. It is evident in that right-hand view that
11 there is extensive water surface features. There are a
12 number of tributaries crisscrossing the area. The entire
13 area is a wide, flooded basin. It is boggy. It is muddy.
14 Lots of tree species growing in there. There is flowing
15 surface water in this area. This is down very close to
16 Route 4 and the camera is pointed in a direction away from
17 the roadway into the woods looking in the direction towards
18 Marlboro Pike.

19 Okay. If it will let me go to the next slide?
20 There it goes. I now moved to a location that is
21 approximately halfway between Route 4 and Marlboro Pike.
22 The stream that is still evident, the, the erosion of the
23 stream that itself is not as pronounced in this area because
24 the flow is more something that proceeds under the debris of
25 the leaf litter and twigs that are fallen to the ground.

1 Again, a very wide, very boggy area strewn about.

2 And before I forget, the, the, the viewer will be
3 able to look into the photograph and occasionally there will
4 be evidence of flags in the background. There's a little
5 white one on the previous slide. There are (indiscernible).
6 I am assuming these were probably put up by the Applicant's
7 surveyor or natural features investigator. I left those
8 undisturbed; but just to note, these are areas where someone
9 has surveyed and is, therefore cognizant of the features
10 that I am presenting today.

11 The next one is just another area. The stream bed
12 is more defined here. It is a steward stream bed. It is
13 lower than the surrounding terrain by force of erosion that
14 occurs over time. There is removal of debris and leaves by
15 the flowing water. Tree roots are interposed and the stream
16 erodes through those periodically. Obviously, a, a quite
17 visibly established stream bed. Again, the ground is
18 extensive, wide. We're almost to Marlboro Pike in the
19 location. We still have a good bit of flow in this area.
20 The ground is boggy.

21 Just a little further on, still going, well-
22 established stream bed. No question that this is not just a
23 puddle and, I guess, the last in these series, this is
24 getting close to the end of where the stream bed is defined
25 by persistent and recurring surface flow. Note how close we

1 are on the left-hand side, the yellow circle, to Marlboro
2 Pike. These locations were determined with a cellphone
3 which had the GPS function turned on and, therefore, was
4 able to record the GPS coordinates; and I was able to
5 confirm that by watching something like Google Maps and
6 looking at the indication of the GPS moving indicator as I
7 walked about the property. So, these are relatively well,
8 accurately located photographs for the record.

9 Okay. That's pretty much of a summary. So, what
10 I found were obvious channels. They extend over 700 feet
11 because the distance between the two roadways here are close
12 to 780, 790 feet, I believe. Moving water is fed from
13 groundwater. There are multiple tributaries. There are
14 multiple streams like this. I'm sorry, I'm having problems
15 with the stuff, yeah, there are multiple streams in the
16 area; and they pretty clearly pre-exist Route 4. This is
17 not trenching done by some earth-moving machinery; but
18 whatever, where the origin was, these features are here.

19 Okay. I'm going to move to the next slide if my
20 computer allows me. So, this is what spurred me to go out
21 and do some more looking. I found this in the Applicant's
22 package of data down at the very bottom. I'm showing the
23 pages where it appeared.

24 I'm on my presentation page number something.
25 Does anyone, anybody, I can't see it. Everything is

1 obscured on my computer right now. I'm not sure what page
2 I'm on, but the title of it is Applicant's Evaluation,
3 quote, "No regulated streams," unquote. And under the
4 cursory stream evaluation, the evaluator, I think I may have
5 seen in the meeting today, Jacob McCarthy, I'll establish
6 this later so maybe he can answer questions, like directly
7 later. Also, I write that he stated, there were no
8 regulated streams within the 60-acre study area. He said
9 that everything here were ephemeral ditches, et cetera, et
10 cetera.

11 So, let me go into his statement and, and my
12 understanding of what's here, and let everyone else make the
13 judgment for themselves as to which is more accurate. In
14 the narrative provided by the Applicant, there was mention
15 of, I believe this figure, even though I couldn't follow
16 from the transcript what figure or exhibit was being
17 referred to, by flipping through the materials I think this
18 is the figure that they are referring to. It talks about
19 the Lidar surface map and it talks about from pgatlas.com
20 and I'm on the slide now titled, "Streams indicated by
21 pgatlas.com," and this is lifted from the application, from
22 the Applicant's presentation.

23 The pgatlas.com information has indicated streams.
24 I believe these were not added in by the Applicant, but are,
25 in fact, generated by the software; and so, there are

1 regions where there is a stream indicated; there are regions
2 where there are no streams indicated. The Applicant
3 provided photographs in specific evaluations at locations
4 indicated by the yellow dots online. I simply transferred
5 from his own graphic the locations of where those photos
6 were.

7 I want to point out that there was investigation
8 where the GIS application indicated stream beds in several
9 cases. There were photographs where the GIS application did
10 not indicate a stream bed. There were no photographs in
11 this region, however, and I think that's important -- I'm
12 sorry, my computer is jumping -- this entire area was not
13 addressed, and so I think the Applicant stream evaluation is
14 not accurate. It is certainly not complete, and that's
15 where I'm going to focus and that's where you just add the
16 little photo to our, that I showed you several slides back.
17 So, let's go through that piece-wise a little bit.

18 Again, using the Lidar information, I'm on the
19 slide called surface elevations near water course, I have
20 picked several elevation numbers from the application that
21 allows you to read these surface elevations and labeled them
22 there. Two hundred and eleven feet is marked 219 feet,
23 224.5 feet. And I have a photograph on the right-hand
24 slide, side of the slide pointing to the elevation labeled
25 224.5 feet.

1 I also have on here a note that there was an
2 abandoned well on the property that I walked to. One can
3 actually look down into that well; one can see water, and
4 with a tape measure the water level in that well was
5 established to be 23 feet below the rim. So, with the Lidar
6 information giving us 253.8 feet, and the water level 23
7 feet below that, I know what the water table is at that
8 point in space on this map.

9 I also investigated in the area which is labeled
10 224-foot elevation to the right of the well. So, I'm going
11 to do a little detail here now at the location labeled 224.5
12 feet elevation. That is about 300 feet about width of the
13 well area. The photograph shows this is one of the places,
14 I'm sorry, the photograph shows this is one of the places
15 that has the established stream bed with flowing water.

16 Okay. So, let's look at that. I want to note, is
17 this stream fed by groundwater? How do you find that out?
18 I don't know what is official and required by law, but this
19 is what I did and I think this establishes it pretty well.

20 Going from the stream bed uphill to an area that
21 is on the surface dry and firm, I dug a small pit with a
22 shovel and I can replace those bits of dirt if that's of
23 concern to anyone. I dug a small pit low enough until I
24 could see seepage starting to enter the pool, and waited for
25 a stagnant pool to form. By definition, that means that is

1 the ground water level at that point and I'm highlighting
2 the area over the word pit where you can see that is the pit
3 dug and the stagnant level of water formed. There was the
4 measuring with a level. I was able to establish the
5 difference in the height of the water in the pit relative to
6 the water in the stream and the stream bed. Eleven feet
7 away, the ground water is higher than the stream, and the
8 stream bed by at least three inches at his one measurement.
9 This stream is being fed from the ground, from groundwater
10 sources; and I found this in more than one location on this
11 map. If you go back, the one label, 224 feet from the
12 previous slide, I found similar results there in a couple of
13 locations around. So, this was not an exhaustive study, but
14 it was simply, let me see what I think is real out there.

15 Now to expand a little bit, if you also include
16 the information from the well, you can see that with
17 combining my surface measurements using a level, and using
18 Lidar elevation points, you can tell that there is a dash
19 line extended from the level in the well water surface over
20 to the stream bed area, and on the right inset there's an
21 area indicating that the level of water in the well is 6
22 feet higher than the level of the water in the stream.

23 Again, the water in the well is this groundwater
24 level in that area, unless the casement is impermeable. At
25 any rate, rain falling into the soil wouldn't change the

1 depth, but for seconds until things came back to equilibrium
2 with the groundwater. So, we have a stream here that was at
3 about 11 feet, the groundwater was higher. At 300 feet, the
4 groundwater was significantly higher. This stream is fed by
5 groundwater.

6 Now when I get to some definitions, I
7 (indiscernible) around and found some literature. This one
8 seems authoritative. It was a collaborative study out of
9 the University of Maryland and Purdue University,
10 specifically looking at streams in the Chesapeake area, and
11 they look at these definitions: Perineal, intermittent and
12 ephemeral streams. This relevant to us because we have to
13 go by the code of Maryland, the legal statements here, and
14 if you will bear with me? Oh, I see some things were
15 dropped from my slide, some yellow highlighting is missing.

16 Nonetheless, what is regulated are perineal and
17 intermittent streams. What is not regulated is an ephemeral
18 stream. I'm hoping on your slide you can see that the
19 definition that is provided of an ephemeral stream includes
20 the statement that an ephemeral stream, oh boy, that's
21 really in my way right now on my screen. It is a case where
22 the lack of water table is always below the stream bed.
23 That is why the Applicant talks about this stream he
24 insisted is not fed by groundwater and that is the
25 definition of ephemeral stream is the local water table

1 always, literally always lower than the stream itself. You
2 just say that there is water in a stream bed that is
3 flowing, it is below the local ground table, groundwater
4 table.

5 Okay. I'm going to go to the next slide. So,
6 this is a wrap-up here. The Applicant said no regulated
7 streams, all are ephemeral ditches. There is no groundwater
8 connection. I don't think that's consistent that what I've,
9 with what I've presented to you today. I ask that when the
10 County moves towards final rulings, that the evaluations of
11 the facts of the site be performed by someone who is not
12 affiliated, or paid, or a long-term friend, if you will, of
13 the Applicant. This needs to be done by independent,
14 disinterested third parties.

15 Okay. Now in case anybody is concerned, I'll look
16 at rain water. I'm sure the first point to come up will be
17 isn't it, didn't you measure it after a rainstorm or some
18 such thing. Well, this is the local rainfall history at
19 this location. There we go. Okay. So, on the bottom line
20 of the graph, and this slide is titled, local rainfall
21 history, past 380 days. Lower right-hand corner, the XX, it
22 says zero. That means the day that the measurement was done
23 and the numbers go left going negative. Those are dated
24 previous. I'm sorry, go ahead.

25 MR. BROWN: I'm trying to give you some leeway

1 here --

2 MR. ASKINS: Yes, sir.

3 MR. BROWN: -- of the documents that you are
4 referencing, like University of Maryland study in the prior
5 exhibit, and now this rainfall history exhibit. I have no
6 idea where these documents come from. I'm not going to
7 object to the University of Maryland study where you cited
8 COMAR; however, this particular document containing
9 rainfall, where does this document come from?

10 MR. ASKINS: Okay. If you look at the bottom
11 right-hand corner, this is a, this is a weather station at
12 Suitland. It is Suitland station 2.1 southeast. Its code
13 number is Maryland-PG-43, and I don't have it written here.
14 I can give you the web link that gives you that. I will
15 make a note of that. If you want me to stop right now, I
16 can stop the meeting and find that link for you; or I can
17 respond afterwards.

18 MR. BROWN: No, I don't --

19 MADAM EXAMINER: I don't see what you just said
20 either. I don't know, those days before measurements. Do
21 you all?

22 MR. ASKINS: I have, I have the answer, Madam
23 Chair. I'm looking at my slide and I noticed that the green
24 line that indicates what is shared, the part that I have for
25 summaries and the share has cut off that part of it. I'm

1 trying to -- it's in the file. It's in the file, but it's
2 not being shared. If you look at the scale where it says
3 minus 50 and 0, right under that, just outside of the share
4 screen, I have on my slide the attribution. I also had on
5 the previous slide, I'll look, let me see if that was also -
6 - yeah, exactly. On the slide where we're looking at
7 definition of streams, again, it's on my document, but the
8 share software clipped it. The green box around my screen
9 clipped it off. If, when you look at the document that I
10 will forward to you, it will be on that slide and I will
11 stop now to ask if anyone wants me to do something different
12 immediately.

13 MR. BROWN: Let me ask you this, Mr. Askins. We
14 have not qualified you as an expert in anything.

15 MR. ASKINS: Sure.

16 MR. BROWN: What is your educational background?

17 MR. ASKINS: Okay. I have been a research
18 physicist at the Naval Research Laboratory in Washington,
19 D.C., S.E. You probably know where the location is, just
20 north of Blue Plains. I've been a staff research scientist
21 there for 35 years. I retired a few years ago from that.
22 So, I'm, you know, many publications, patents and so forth.
23 I am not an environmental engineer. I am a scientist who
24 can do things; but I am not asking to be considered an
25 expert. I am trying to set an alarm here, basically, to say

1 here's information that someone who is acceptable to all
2 parties be used to investigate and confirm.

3 MR. BROWN: All right. So, you don't want to be
4 qualified as an expert. You cannot rely on other documents
5 offered by other persons related to the scientific
6 literature of streams and topography, (indiscernible)
7 streams, underground water, what have you. You may testify
8 with regards to lay observations such as you went out into
9 the field, although in the future let me remind you, you're
10 technically trespassing. You must get the Applicant's
11 permission to go on and dig a hole, okay? In the future,
12 remember that.

13 MR. ASKINS: All right. May I, may I know who is
14 speaking to me? I can't see.

15 MR. BROWN: Stan Brown.

16 MR. ASKINS: Thank you, Mr. Brown.

17 MR. BROWN: But these additional documents are
18 really beyond the scope of what you can testify to because
19 Mr. Horne, the Examiner and myself cannot cross-examine
20 these documents. We don't know who authored them; we don't
21 know the reliability of these documents; and so, anything
22 you talk about related to these documents is basically
23 hearsay.

24 So, if you could try to just speak from your
25 personal observations concerning the property without going

1 into technicalities concerning documents authored by other
2 persons or an entity?

3 MR. ASKINS: Will do. What about the Lidar
4 information, since this is the same information that the
5 Applicant is using?

6 MR. BROWN: Lidar is okay because you were
7 basically commenting on their document, which is already in
8 the record.

9 MR. ASKINS: I will advise you that the Lidar
10 information I got, I downloaded.

11 MR. BROWN: But it was consistent with the Lidar
12 that they consented, wasn't it?

13 MR. ASKINS: It was identical to it.

14 MR. BROWN: Yeah. So, I have no objection to
15 that.

16 MR. ASKINS: Because their procedure for the
17 County, you have to be aware of this information that I am
18 presenting today?

19 MR. BROWN: Well, yes. Unfortunately, you were
20 not online when Mr. McAlister, the landscape architect,
21 testified about the natural resource inventory, which they
22 recently prepared, which goes into detail of the natural
23 features on the property, including all types of ephemeral
24 streams and you've used a lot of different terms, channels,
25 gravel, all the moving water streams and what have you,

1 those are not terms of art; but because you list his
2 testimony telling the things that you were referring to on
3 the last 10 minutes are somewhat inaccurate. And so, he
4 also testified that the Park and Planning Commission Staff
5 reviewed his NRI study and actually Staff had approved it.
6 So, your comment that someone objected (indiscernible)
7 through you this information that has, in fact, been done.
8 And so, I'm not suggesting that you stop your testimony, you
9 can continue; but you have to restrain from these technical
10 documents that you're referencing.

11 MR. ASKINS: Okay. Is my reference to COMAR
12 valid?

13 MR. BROWN: You may reference COMAR, but because
14 you are not an attorney, therefore, not a legal expert, you
15 cannot interpret COMAR; but it is fine for you to say, hey,
16 here's COMAR Section 24 such and such; COMAR 26 concerning
17 these definitions. It speaks for itself. It is what it is;
18 and so, you can go on from there.

19 MR. ASKINS: Okay. I will leave it with restating
20 that on the slide it talks about temporary strains, the, the
21 diagram and my two citations from COMAR, that those are,
22 they should be viewed by whoever was reviewing my testimony
23 today in light of the images and measurements of water level
24 that I made.

25 MADAM EXAMINER: Okay. You may continue, Mr.

1 Askins.

2 MR. ASKINS: Very good. So, I have data that I
3 can't speak about. These last two slides are, if you will, I
4 don't know if they're opinions, they are taken from commonly
5 available information such as Google Maps, if that's
6 admissible. Is that admissible?

7 MR. BROWN: Generally, not, but we're going to go
8 ahead and let you talk about it. Go ahead.

9 MR. ASKINS: This is an image called construction
10 coverage nine years ago, a simple screenshot from Google
11 Maps showing the subject property in the surrounding area
12 and the change that has occurred since that time. As shown
13 in the next slide, if my computer will concede? Okay. What
14 we have here is a screenshot of the same area taken from
15 Google Maps in 2021 showing changes in the surroundings, the
16 edits, construction, the subject area outlined in yellow.
17 To the right of the subject area is a red, and just below
18 and to the right a purplish region which is taken and
19 transcribed by myself from County documents, the pgatlas
20 information. It indicates there's development in those
21 adjacent areas and then from published information from the
22 Applicant, or affiliates, or other companies who are
23 building the Westphalia complex. That is the hash regions
24 that I have drawn in roughly above and they are roughly
25 commensurate with my last slide, which is just, again,

1 publicly available imagery from the Westphalia Center
2 developer showing the level of construction and conceptual
3 features that are likely to be introduced.

4 But I would like to close my comments of my
5 presentation on this slide. The County has a green
6 infrastructure plan. That plan includes things like hubs
7 and carters of green space I will not go into because I'm
8 not permitted to talk what a hub and a green space and a
9 carter is. The County and the Applicant are aware of those
10 definitions.

11 What has been the actual change in the area, we
12 are ending up with a spiderweb of green and almost no hubs.
13 The islands of green are increasingly important at this
14 point in the County's forward motion through time. I would
15 say I'll offer the opinion that this little island of green
16 in the context of the County's region getting slowed paved
17 and developed, perhaps parkland would be a better use.

18 And my last slide, you've already seen, is just
19 this. Think of having a green island that would protect the
20 residents from this mass development. It also is a little
21 bit of respite from all of the surrounding development that
22 is on course already before this rezoning proposal is ruled
23 upon. Tax-based growth should improve quality of life of
24 the jurisdiction that is paying those taxes. When you
25 degrade spaces, irreversible costs are incurred that cannot

1 be compensated for by the tax money that was raised in this
2 rezoning in that development. And with that, I close my
3 presentation. Thank you.

4 MADAM EXAMINER: Thank you, Mr. Askins. Any
5 questions of Mr. Askins?

6 MR. HORNE: Madam Examiner, no. I want to have
7 our expert come back up there. I appreciate Mr. Askins, the
8 background. I concur with Mr. Brown with reference to the
9 relevancy of his testimony.

10 MADAM EXAMINER: Okay. Mr. Askins, why don't we
11 go onto the next witness we have, if Mr. Chapman is going to
12 speak? Will you email it to us now?

13 MR. ASKINS: I will.

14 MADAM EXAMINER: Okay. Thank you. Mr. Chapman,
15 would you like to testify?

16 MR. CHAPMAN: I would first, I would like to find
17 out who Mr. Brown, Stan Brown or Ron?

18 MS. BAH: Stan Brown.

19 MR. CHAPMAN: Stan Brown, who he represents. Does
20 he represent the people or does he represent the developers?

21 MADAM EXAMINER: I'll let him speak to it, but
22 it's, the name is a slight misnomer because he's an
23 independent person that makes sure that our record stays as
24 pure as possible, but go ahead, Mr. Brown.

25 MR. BROWN: Yeah. Good afternoon, Mr. Chapman.

1 MR. CHAPMAN: Good afternoon.

2 MR. BROWN: As the People's Zoning Counsel, I am
3 an attorney. I do not represent the Applicant, nor do I
4 represent the people. My role is to make sure that any
5 evidence that comes into the record, that the Examiner shows
6 me or Mr. Horne shows me is evidence that is accurate and,
7 therefore, it must be based on certain legal standards.

8 So, on occasion, I will object to information that
9 the Applicant attempts to put into the record. On occasion,
10 I will object to information that (indiscernible) put into
11 the record. And on occasion, I will put into the record
12 evidence that either party (indiscernible) put in without
13 thinking no. And so, I'm not opposed to Mr. Askins, but I
14 have to protect the record, and so I have to cut him off and
15 time to time I get the same thing, you know, with Mr.
16 McAlister on the (indiscernible).

17 MR. CHAPMAN: Okay. All right. Thank you. You
18 asked me did I want to speak. Well, if I speak on the
19 particulars and I'll be, be, might be done, but I thought
20 that this was a meeting where also you could express how you
21 feel as a resident in the area and how we feel about this
22 project going forward; but it's, you know, if it's just to
23 present factual evidence as opposed to how the community
24 feels as a whole, then I really, you know, all that factual
25 evidence already been presented. I can say that in a 4-mile

1 radius it's --

2 MADAM EXAMINER: Okay. Wait, wait for a minute,
3 Mr. Chapman. Let me swear you in. Do you swear or --

4 MR. CHAPMAN: Okay.

5 MADAM EXAMINER:

6 MR. CHAPMAN: -- affirm under the penalties of
7 perjury that the testimony you shall give will be the truth
8 and nothing but the truth?

9 MR. ASKINS: Yes, I do. Thank you.

10 MADAM EXAMINER: You're able, give me your address
11 and then you're able to testify of what you want me to hear
12 about your feelings on this application. You don't have to
13 bring forward science, just what you wanted to say about the
14 Applicant, all right?

15 MR. CHAPMAN: Okay. My address is 9804 Stonewood
16 Court, Upper Marlboro 20772. Okay. So, what I wanted to
17 say is, is that there's two different types of flight.
18 There's white flight and there's black flight. Black flight
19 is, white flight is out of fear; black flight is for
20 aspirations. The people that live close to this area, their
21 homes cost anywhere from the upper 2009, let's say the upper
22 200 thousands to over a million dollars, all right; but
23 nobody, nobody asked us how we feel about this project going
24 forward whatsoever. We supposedly have a seat at the table,
25 but all we have a seat really to do is listen. We don't

1 have a seat for input because whatever we say will be
2 disregarded.

3 The fact that they want to build a 265-seat
4 church, people that go to church normally go to the church
5 they was baptized in, married in, their parents was buried
6 in. Nobody from around here is going to be attending.
7 They're going, give up the church they're going into now.
8 They'll go to that church, okay?

9 I grew up in New York City. I was born in, in New
10 York City, New York Hospital, New York. I grew up on, in
11 the area that the papers described as ground zero for drug
12 dealing in the United States. My mother was a social
13 worker. My father taught people how to drive the trains for
14 the subway. They made six figures back in the '70s. So, we
15 were not poor, okay? But in the area I grew up in, there
16 was nothing but violence, nothing but violence.

17 The first time I saw somebody murdered, I was 8
18 1/2 years old, playing basketball and the person was shot
19 not 20 feet from me. The first time I got stabbed, I was
20 11, okay? When I was 16, I was a boy, my parents made me
21 take ballet lessons, be a Cub Scout, a Boy Scout. A friend
22 of mine has this throat cut. I tried to save him. He died
23 going to the ambulance.

24 But what I'm saying is we're here because we tried
25 to have something. We're trying to have something. I grew

1 up in an area with nothing but gunfire, nothing but gunfire
2 everywhere I went. I was honest in college, but I didn't, I
3 didn't apply for a deferment because I didn't think it was
4 fair because when I went to sign up for the draft, they
5 said, you're going to college? You don't have to be
6 drafted. I said, no, it's not fair, so I went. All right.
7 I went and I got a medal. I'm one of the few enlisted men I
8 know that got a letter from Richard Nixon, a personal letter
9 of commendation asking me to become an officer and stay in
10 the military.

11 Okay. My grandchildren where I live, my house is
12 valued at \$450,000 in 2007. In 2008, it was only valued at
13 \$260,000 because the market dropped. Okay. Now it's
14 getting back up in the 400s. My kids, my grandkids, my
15 children, my son works for the Department of the Army, okay?
16 He was in the Air Force; he was in Afghanistan. He was a
17 captain in the Air Force. My daughter is a F-16 flight
18 candidate. She's the crew chief. My grandchildren, we sit
19 on the porch. We see each other, we see turkeys go across
20 the yard; we see deer; we see all kinds of stuff, okay?

21 To build that stuff over there for what? My
22 house, I can't even cut the grass in the front of my yard
23 because it's a Maryland reforestation area. Everybody here
24 was striving for a better life, okay? All this is doing is
25 doing the same thing that COVID-19 exposed. This is rich

1 white people that don't live around here that's deciding
2 what's best for us. It's all it is. It's just rich white
3 people telling us what we, what we need, what's best for us,
4 have no consideration whatsoever how we feel. If Prince
5 George's County need more tax dollars, get it from my house
6 that's going up in value. Get it from my house that's going
7 up in value. The (indiscernible), they supposedly been here
8 50 years in Prince George's County and, and they built all
9 these fabulous things. It's the people that came here and
10 made it valuable. Of course, without the man, there's
11 nothing, okay? These are people, the people that live in
12 our neighborhood, they come from the south. My father was a
13 sharecropper. People here are from Mississippi, Detroit,
14 Chicago, Baltimore, all trying to have a better life and now
15 they're just trying to snatch it. That's how I feel about
16 the business.

17 It's going to be up to the City Council and the
18 one thing about politics is when the politics, when
19 politicians and developers do something, it's illegal; but
20 when politicians dealing for their constituency, it's quid
21 pro quo. They don't support us. We're not going to support
22 them, that's all. That's all I have to say. Thank you. I
23 appreciate it.

24 MADAM EXAMINER: Thank you, sir. Any cross?

25 MR. HORNE: No cross.

1 MR. BROWN: No questions, thank you, sir.

2 MR. CHAPMAN: Thank you.

3 MADAM EXAMINER: Mr. Horne, do you have any
4 redirect witnesses and how many? We can't hear you.

5 MR. HORNE: Okay. There we go. I, for whatever
6 reason, I also froze. Can you hear me now?

7 MADAM EXAMINER: Yes.

8 MR. HORNE: Great. Judge, briefly, I'd like to
9 call Mike Lenhart, who is going to address Ms. Hough's
10 traffic issue. So, it's just to make sure that, you know,
11 it's back on the record.

12 MADAM EXAMINER: Hello, Mr. Lenhart. Do you swear
13 or affirm under the penalties of perjury that the testimony
14 you shall give will be the truth and nothing but the truth?

15 MR. LENHART: I do.

16 MR. HORNE: State your name and business address
17 for the record please?

18 MR. LENHART: Yes, Michael Lenhart with Lenhart
19 Traffic Consulting, 645 Baltimore Annapolis Boulevard, Suite
20 214, Severna Park, Maryland 21146.

21 MR. HORNE: And have you been previously accepted
22 as an expert in traffic engineering, consulting in Prince
23 George's County?

24 MR. LENHART: Yes, I have.

25 MR. HORNE: Okay. Has it been over 25 times?

1 MR. LENHART: Yes, probably, yeah.

2 MR. HORNE: And have you been engaged in doing a
3 traffic study with reference to the rezoning request on this
4 property here?

5 MR. LENHART: Yes, I have.

6 MR. HORNE: Did you testify at the previous
7 hearing in front of the Hearing Examiner with reference to
8 your study?

9 MR. LENHART: I did.

10 MR. HORNE: Were you listening earlier that day
11 when Ms. Hough was talking about some of the concerns that
12 the, that they had with reference to the transportation
13 study?

14 MR. LENHART: Yes, I was.

15 MADAM EXAMINER: Can you wait a second? Are we
16 going to -- Mr. Brown, if you don't, do you have any voir
17 dire?

18 MR. BROWN: No, Mr. Lenhart has been accepted many
19 times as an expert. I have no objection.

20 MADAM EXAMINER: Okay. You'll be accepted as an
21 expert in the area of transportation planning. Go ahead,
22 Mr. Horne.

23 MR. HORNE: Thank you. Mr. Lenhart, I was just
24 saying about Mrs. Hough's testimony earlier today. Were you
25 able to hear what she was saying?

1 MR. LENHART: Yes, I did.

2 MR. HORNE: And can you address some of the
3 statements that she made earlier today?

4 MR. LENHART: Yes, I'd be happy to. So, I, I, I,
5 what I heard, what I believe I heard in her testimony was
6 that she indicated that the Staff Report indicated that
7 there would be unacceptable traffic conditions or
8 unacceptable congestion in the area; and I would like to, as
9 a reference, point to the Technical Staff Report under the
10 transportation discussion, transportation staff made some of
11 the following statements, and I'm going to read one. One
12 quote is that Staff has completed a full evaluation of the
13 transportation facilities serving the proposed and adjacent
14 developments. The application is supported by a traffic
15 impact analysis provided by the Applicant and referred to
16 Maryland State Highway, Prince George's County Department of
17 Public Works, and Prince George's County Department of
18 Permitting, Inspections and Enforcement; and then they say
19 that all agencies concurred with the traffic study findings.

20 In the, the discussion and, the discussion of the
21 transportation facilities staff states that the proposed
22 rezoning and proposed uses would not bring about a
23 substantial impact on the existing transportation facilities
24 in the area of the subject site in the near term. It goes
25 on then to be summarized in the conclusions of the Technical

1 Staff Report on page 20 that the application meets the
2 requirements of Section 27-213(a)(3) for transportation
3 adequacy based on the development proposal put forward; and
4 then just for the record, I would reiterate that 27-
5 213(a)(3) states, the requirement is that the Council shall
6 find that transportation facilities that are existing, under
7 construction or for which 100 percent construction funds are
8 allocated within the adopted CIB or the state CTP, or will
9 be funded by a specific facility's financing, implementation
10 program, will be adequate to carry anticipated traffic for
11 the proposed development. So, the, the Technical Staff
12 Report made a finding that transportation facilities will be
13 adequate to carry the anticipated traffic for this
14 development.

15 MR. HORNE: And was that consistent with -- was
16 that consistent with your testimony that you had heard, had
17 earlier?

18 MR. LENHART: That is consistent. That's what
19 traffic impact study found; the transportation facilities
20 will be adequate. The, the TSR found, or acknowledged that
21 all agencies agreed with that study and made a conclusory
22 statement that, to that effect.

23 Ms. Hough had a couple of questions about the
24 study area and the scope of the traffic study. We did, as
25 we always do with development proposals, we conducted a

1 scoping agreement with Staff, Transportation Planning Staff,
2 prior to conducting the traffic study. They provided
3 feedback and an approved scope of work which is what our
4 study is based upon. It does include some intersections
5 that are very close to the site, and some that are far away
6 from the site; but it's based upon the guidelines, Park and
7 Planning guidelines, and the approved scoping agreement.

8 The traffic counts were conducted in accordance
9 with the guidelines, and we do those in 15-minute intervals
10 for 3-hour periods in the morning and the evening peak hour;
11 and, again, all intersections were found to be adequate to
12 carry traffic that would be generated by this proposal.

13 Ms. Hough indicated we did not study the, the
14 intersection of Marwood Boulevard onto Marlboro Pike. That
15 was not deemed by Staff to be a critical intersection.
16 However, I have done some just back of the envelope analysis
17 while we were in the hearing here this morning and based
18 upon our traffic counts that we have at Maryland 223 and
19 Marlboro Road, we can flow the traffic down Marlboro Pike
20 to, toward the intersection of Marwood Boulevard. And I can
21 also, and have done some trip generation, rough trip
22 generation assessments of that age-restricted community and
23 based upon Park and Planning Guidelines, and trip generation
24 rates, the intersection of Marwood Boulevard at Marlboro
25 Pike would pass the Park and Planning Guidelines. They have

1 tests for unsignalized intersections. It's a 3-step test.
2 If it passes any one of those steps, it's deemed adequate;
3 and, while, again, while we did not test it the first, the
4 first step is a, it's using a highway capacity software.
5 It's a program that you populate with volumes and different
6 variables, and that gives you a delay factor. We did not do
7 that and I haven't done that this morning because it's a bit
8 more detailed; but the second and third step, the second
9 step deals with the volumes on the self-controlled approach,
10 and if the volumes are less than 100 vehicles per hour, it's
11 deemed to be adequate. No further analysis is needed. It
12 would pass that test.

13 If it did not pass that test, we would go to the
14 next step, which is a critical lane volume analysis; and
15 based upon the traffic volumes that we have in our study and
16 flowing those down to this intersection, it would easily
17 pass that third test, so, or third step of the test. So, I,
18 I can say with a great degree of confidence that that
19 intersection would pass the Park and Planning unsignalized
20 intersection test if --

21 MADAM EXAMINER: Mr. Lenhart --

22 MR. LENHART: Yes?

23 MADAM EXAMINER: -- if I may, when you said it was
24 pass, I think it's the second test of a hundred vehicles,
25 how close? Is it at 99? I mean do you --

1 MR. LENHART: No, it's, it's about -- it would
2 probably be about 50, roughly.

3 MADAM EXAMINER: Thank you.

4 MR. LENHART: It's not close. But that's --

5 MADAM EXAMINER: I'm sorry, Mr. Horne.

6 MR. HORNE: Okay.

7 MADAM EXAMINER: Go ahead.

8 MR. HORNE: No, I was going to say, that was done
9 as a result of Mrs. Hough's, that analysis that you just did
10 here, though not required by the Staff, was done as a result
11 of Ms. Hough's questions that she brought, presented here
12 this morning?

13 MR. LENHART: Right. Yes.

14 MR. HORNE: Thank you very much. That's all I
15 have with reference to Mr. Lenhart. Oh, I'm sorry, Mr.
16 Lenhart, one other thing. There are some, there is some
17 current construction in the area going on. Do you know
18 about that, can you let us know what's going on?

19 MR. LENHART: Yes, so the interchange at Route 4
20 and 223, Woodyard Road, is currently under construction.
21 That was, it's under construction by the Westphalia Town
22 Center developer who designed and permitted that were State
23 Highway Administration in the spring of 2020. Since that
24 time, the construction has begun. It's a \$16 million
25 interchange or reconstruction project. It's a substantial

1 improvement to that interchange. It's currently under
2 construction and as of this morning, we, we have visited the
3 site and have photographs, and the, we are aware from this
4 project, from some other discussions with neighboring
5 communities, that the maintenance of traffic that's
6 underway, particularly at the southbound Route 4 offramp at
7 Route 223, that used to be a free right turn movement that
8 would come off of that ramp from Route 4 onto southbound
9 Woodyard Road. That free right turn has been closed as the
10 maintenance of traffic for construction of the improvements
11 at that intersection. The closure of that free right turn
12 has caused some delays while that's being constructed, but
13 when that is complete, there's going to be improvements to
14 that off-ramp, including a traffic signal at that off-ramp
15 at Route 223, Woodyard Road, and that intersection will
16 operate adequately based on the guidelines; but today,
17 probably is experiencing some delays, particularly in the
18 evening peak hour, for the maintenance of traffic, but that
19 will be resolved when the construction is completed.

20 MADAM EXAMINER: But you're saying if I'm headed
21 to Upper Marlboro on Pennsylvania Avenue, Route 4, and I
22 make a right to get onto Woodyard, which is 223, is there
23 going to be --

24 MR. LENHART: Yes.

25 MADAM EXAMINER: -- a light there?

1 MR. LENHART: There will be a traffic signal
2 there, yes. That intersection is going to be widened and
3 improved as part of this overall interchange project.

4 MADAM EXAMINER: And right now, when you talk
5 about maintenance of traffic, you mean there's a stop sign?

6 MR. LENHART: There's a stop sign.

7 MADAM EXAMINER: I'm only asking because I drive
8 that way and if the stop sign is gone, I want to avoid that
9 intersection, so --

10 MR. LENHART: Yeah, well --

11 MADAM EXAMINER: -- the stop sign --

12 MR. LENHART: -- if, if you recall, it used to be
13 when you would take that ramp, it would be a free right turn
14 and you'd just merge right onto southbound Woodyard Road.
15 You can no longer merge with that free right turn. It
16 brings you -- there's a concrete --

17 MADAM EXAMINER: Uh-huh.

18 MR. LENHART: -- barrier that protects the work
19 zone and that concrete barrier brings you up to the stop
20 sign. So, everybody has to come up to that stop sign today
21 and make a stop, and then turn right in. It, it is causing
22 some delays during construction, yeah.

23 MADAM EXAMINER: One question before I allow
24 cross-examination, and that is if you can briefly mention,
25 what developments were in the background when they were,

1 when you were reviewing the intersections for this request?
2 It might help to know what you considered, what other
3 development in the area you considered as part of your
4 traffic study? In particular, I mean I know you considered
5 Marwood, but I hear about a Wawa and the townhouses, what
6 have been, what did you consider?

7 MR. LENHART: Sure. So, I'm looking at our, our
8 report right now. We included the, the Westphalia Town
9 Center, phase 1 of the Westphalia Town Center, which is a
10 significant portion of that project across Route 4; more
11 property, which is also located in the Westphalia Town
12 Center; Norborn (phonetic sp.) property, which, which was,
13 that's, that's the project that is where Marlboro Pike
14 relocated, has been moved south on Woodyard Road. It's a
15 townhome subdivision. It's on the west side of Woodyard
16 Road, south of Marlboro Pike, and it's mostly had some
17 single-family homes to the, to the back of the project, to
18 the west side of the project, and townhomes fronting
19 Woodyard Road. Those townhomes were not completed and we
20 included those in our background; and then there's some
21 additional projects up in, off in Westphalia Town Center,
22 I'm sorry. So, it's three overall projects up in the
23 Westphalia Town Center, the Norborn property, and one thing
24 that has been approved since our study was completed was the
25 Royal Farms Preliminary Plan of subdivision across the

1 street, which is, when I say across the street --

2 MADAM EXAMINER: Sorry, Royal Farms, I called it
3 Wawa. Sorry. Go ahead.

4 MR. LENHART: It's on the east side of Woodyard
5 Road at Marlboro Pike, and that does now have an approved
6 preliminary plan, approved after we prepared our study, that
7 wouldn't have a significant impact on our findings; and I
8 would point out that if this rezoning request is approved,
9 we will have to go through a CSP and a preliminary plan of
10 subdivision, and we will be required to do an update of the
11 traffic study and, and adequacy tests at the time of
12 preliminary plan. So, it will be revisited at that time.

13 MADAM EXAMINER: Any more, Mr. Horne?

14 MR. HORNE: No more for Mr. Lenhart.

15 MADAM EXAMINER: Does anyone have questions of Mr.
16 Lenhart? Ms. Hough?

17 MS. HOUGH: I, I, I think there may have been some
18 misunderstanding. I, I was quoting information out of the
19 Staff Report, I think the report of the 8187 file. Also, I
20 was looking at information that was from the Transportation
21 Planning Section. It's part of the County-wide Planning
22 Division. On page 26 to page 29, it states that there are
23 conclusions based on the preceding findings that the
24 Transportation Planning Section concludes that the proposed
25 rezoning of the subject property would result in additional

1 traffic being generated on the site.

2 On pages 31 to 32 of that same document, it says
3 prior to the Applicant possibly obtaining the rezoning
4 permit, that all existing and proposed driveways along
5 Marlboro Pike would need to be re-evaluated. Some of them
6 will need to be either aligned with the existing
7 intersections or to be separated by a distance justified by
8 operational assessment in roadway design best practices.
9 There's, it's noted that at this point in time the Maryland
10 Department of Transportation SHA is not moving forward with
11 a Maryland Route 4/Maryland 223 interchange improvement
12 project. So, that project, I mean a proposed project there
13 has not been approved and funded at this point in time, but
14 yet you're going to have all this increased traffic and
15 everything based on the Westphalia Town Center alone being
16 developed, not to mention the additional traffic that may
17 come visit any retail outlets that would be on this Carozza
18 Property. And that, let's see if I had anything else on
19 that.

20 MADAM EXAMINER: Ms. Hough, wait, while you're
21 looking, let him address -- Mr. Lenhart, do you have any,
22 that was a question, so --

23 MR. LENHART: Yes. So, the, the first comment
24 that Ms. Hough said was, I don't, I missed the pages she
25 referred to, but she said that Transportation Planning Staff

1 said that this application will increase traffic, and I
2 believe she, she kind of stopped at that statement, and
3 that's correct.

4 MS. HOUGH: But (indiscernible), yes.

5 MR. LENHART: Pardon?

6 MS. HOUGH: Pages, it was on pages 26 to 29 --

7 MR. LENHART: Uh-huh.

8 MS. HOUGH: -- the conclusions, well, preceding
9 findings, not conclusions.

10 MR. LENHART: So, that's correct. This
11 application, any development on this property would increase
12 traffic. The required finding for rezoning to MXT is 27-
13 213) (a) (3), and that finding, that required finding is that
14 transportation facilities will be adequate to carry the
15 anticipated traffic. And Transportation Planning Staff did
16 agree in the Staff Report that traffic, that transportation
17 facilities will be adequate. So, while, yes, it will
18 generate some traffic, the facilities will be adequate to
19 carry that anticipated traffic.

20 The second comment that you made, I missed, but
21 we'll come back to that. I mean I, I missed writing it
22 down. The third comment that you said, someplace in that
23 report you quoted some pages where Staff said that the
24 intersection, or the interchange of Maryland 4/223 was not
25 yet programmed for improvements and --

1 MS. HOUGH: It hasn't been funded. It hasn't been
2 funded.

3 MR. LENHART: Okay. And that has changed, as I
4 mentioned a few moments ago, the Westphalia Town Center
5 developer posted a bond of \$16 million with State Highway
6 Administration. They have approved plans and they have a
7 permit, and that work is now under construction. So, the
8 work that you see out there today is the interchange
9 improvement that was referred to in that Staff Report. At
10 the time, I guess, they didn't realize the status of it.

11 MS. HOUGH: All right. Thank you.

12 MR. LENHART: Sure.

13 MADAM EXAMINER: Mr. Askins, did you have some
14 questions?

15 MR. ASKINS: If I may?

16 MADAM EXAMINER: Uh-huh.

17 MR. ASKINS: Okay, regarding traffic here. You
18 said that it is predicted to be adequate. I think I used
19 the term of art that the traffic levels anticipated would be
20 adequately handled by the road. My understanding, and I
21 can't cite it, there was an assertion by the Applicant that
22 the traffic volume in the area has declined in the past 10
23 years. When we are looking out on the road in the
24 afternoons, not during COVID, but we look at the street,
25 cars are sitting there idling and throwing their cigarette

1 butts and McDonald's wrappers out on my lawn as they sit
2 there and smoke their cigars and cigarettes, sitting there
3 backed up. Now to me that is more traffic than it was 10
4 years ago, and maybe I'm blind, but that's my impression.
5 Is that considered adequate?

6 MR. LENHART: So, what you're referring to is
7 typically in our traffic impact studies, we will include a
8 10-year historical analysis of the average daily traffic
9 volumes along routes in the area. We use that to help
10 assess what the regional growth in traffic volumes is. We
11 use the Maryland State Highway Administration's average
12 daily traffic volume maps, which every year they release a
13 new map for the prior year at the time the report was
14 prepared, the date that we had available, the most recent
15 data was 2017.

16 So, we looked at the year 2007 up through 2017.
17 The traffic and state has information on Maryland 223 north
18 and south of Marlboro Pike, and so we used that data over
19 that 10-year period and that showed that over the course of
20 that 10 years was an average annual decrease in traffic of
21 negative .36 to negative .66. So, less, less than a percent
22 --

23 MADAM EXAMINER: Less than one percent.

24 MR. LENHART: -- actual decrease in traffic. And
25 so, and that's not uncommon. That happens every once in a

1 while. Some, usually it's very slightly positive or very
2 slightly negative, and it can change any year given, you
3 know, what the, what the new year's updated numbers are; and
4 so, in the report we used a half a percent positive growth
5 rate for purposes of this analysis, for a 6-year study
6 period, which is what the guidelines require and, again, we
7 applied a positive growth rate, although historical volumes
8 indicate it's at that snapshot in time it was slightly
9 negative.

10 MR. ASKINS: Okay. Thank you for that response.
11 My question is about the back-up of traffic and I'm talking
12 about bordering the property that's proposed for rezoning
13 that will have most of its frontage on Marlboro Pike, which
14 is the area I'm interested in, and I have one following
15 question.

16 MR. LENHART: Uh-huh. So, the one thing that
17 has, or one thing that has changed during COVID is that
18 there was a construction project that, an improvement
19 project that occurred at the intersection of Maryland 223
20 and Marlboro Pike, at the signalized intersection. That
21 intersection was shown in prior studies to be failing and
22 typically the Norborn Property, when that was reviewed and
23 approved, that intersection was projected to be failing and
24 they had a condition of approval to make some improvements
25 at that intersection. Those were permitted with State

1 Highway Administration and have been completed; and I think
2 most, if not all of that work occurred during COVID. So,
3 pre-COVID, you know, you were seeing back-ups and congestion
4 because that intersection was projected with failures. The
5 improvements were, were identified and ordered to resolve
6 the failures, and hopefully what you'll see when life
7 returns to normal is that those improvements have resolved
8 the issues at the intersection; it's improved the capacity,
9 and allows the queueing to either clear quicker or not back-
10 up as bad as it used to.

11 MR. ASKINS: We can always be hopeful, I suppose.
12 The traffic that goes to that intersection, a portion goes
13 south on Woodyard Road, having a very long turn lane would
14 help somewhat; but the light back-up was not turning south
15 on 223. It was to cross on what is called South Osborne
16 Road and it was also to go onto Route 4 because a lot of
17 traffic comes through there, thanks to all the development
18 that we already have close to Dower House Road, is cut
19 through. It is not local traffic. It is people coming off
20 of Route 4 and trying to get around the back-up on Route 4
21 that's already present. And so, my concern is it doesn't
22 matter what you do at that intersection, there is a light
23 there. It pauses people coming in and out. We already have
24 so much traffic, we have overflow back-up. Having a larger
25 turn lane to go south on 223 doesn't help that.

1 MR. LENHART: But, you know, all, all I can
2 offer, I understand your comments, you know, the report and
3 the analysis contained in the report was reviewed by all
4 agencies as indicated by the, the Technical Staff Report,
5 and all agencies concurred with the analyses and the report
6 findings. You know, a level of service D, the way traffic
7 impact studies are reviewed, is intersections get graded A
8 through F. E and F are considered failing. A through D is
9 considered acceptable. Just because an intersection is a D
10 doesn't mean that there aren't some delays and queues that
11 occur; and so, you know, I'm sure that's what you're
12 experiencing, but again, all agencies concurred with the
13 findings.

14 MS. HOUGH: Okay. May I ask the question then, am
15 I hearing you correctly in stating that the traffic studies
16 --

17 MADAM EXAMINER: Ms. Hough, Ms. Hough, one second
18 please. We have to go in order. Is Mr. Askins finished?

19 MS. HOUGH: I'm sorry.

20 MR. ASKINS: I would like to, I would like to do
21 further, I can pause for Ms. Hough if she prefers. I'm fine
22 with that.

23 MADAM EXAMINER: Okay. Just so you all know, you
24 normally get one shot at questions, so I'll let Ms. Hough
25 come back for this one last one and then you'll finish, and

1 then Mr. Chapman, if you have any, you can go. Go ahead,
2 Ms. Hough.

3 MS. HOUGH: I just wanted to make sure that I
4 understood you correctly in stating that the traffic
5 analysis that has been provided and approved related to this
6 project as an analysis that's somewhere between three to
7 four years old was conducted in 2017 and that's the date of
8 this being provided in this report rather than more current
9 data reflecting the traffic volumes that exist in the
10 community on this particular street, Marlboro Pike, and
11 these intersections of Dower House and Woodyard Road pre-
12 pandemic 2020 and/or 2019? So, it's not reflecting those
13 volumes, is that correct? Am I right in that?

14 MR. LENHART: Well, you are right that the date of
15 this study was, you know, at the time of the original
16 application. The study is still valid because it's part of
17 the application that's ongoing, and the study included
18 significant amount of background development and growth from
19 that background development, on top of the traffic volumes
20 at that time. I would, you know, I've been doing this for
21 almost 30 years and based on our history in this area, I
22 would say that the traffic volumes that were conducted in
23 this report in 2019, March of 2019, are pretty reflective of
24 about as conservative as we could get in terms of high
25 traffic volumes. That was, you know, a year before the

1 pandemic and what we found is the traffic volumes now are,
2 obviously, lower because travel patterns have changed; you
3 know, there's work remote and schools are hybrid; and so,
4 you know, there's a lot of discussion about the new normal
5 going forward and how long it might take for traffic to
6 recover, if it ever does recover quite the way it was
7 before. And so, I think that what we have in our study is
8 still conservative, still valid, and should stand just fine
9 for the project.

10 MS. HOUGH: I just want that, wanted that
11 clarification that the data in the study reflected the
12 situation in 2017, not currently?

13 MR. LENHART: That's correct.

14 MS. HOUGH: Or, you know, not, not even pre-
15 pandemic status.

16 MR. LENHART: We, sure.

17 MADAM EXAMINER: Go ahead, Mr. Askins.

18 MR. ASKINS: Okay. As we open up a new community
19 to the north, Westphalia has been called the new, what
20 Columbia, Maryland, next door to us, that traffic is going
21 to be added. As people continue to cut through the
22 intersection, that will get worse. If you guys get your
23 rezoning, that makes it even worse. We have already failed
24 the traffic load. I'm assuming that we're going to come
25 back with a typical Band-Aid, which is to make an interstate

1 highway past my front door, i.e., lane widening, because
2 that's what you do; when the traffic gets bigger, you add
3 lanes. Where does the land come from when you have to widen
4 the road? I've lived here a long time. Are they going to
5 take my yard or are they going to take a little bit off of
6 the Carozza's to add a lane?

7 MS. HOUGH: It's the Carozza Property.

8 MR. LENHART: So, I would, I would offer that
9 Marlboro Pike is identified in the County Master Plan of
10 Transportation as a collector roadway. It's not currently
11 built that way. It's, from the new subdivision, the Norborn
12 subdivision that was recently constructed, where Marlboro
13 Pike cuts down through that new subdivision and comes out to
14 the south of the traffic signal, that roadway is a collector
15 road that's built to a collector standard. That is what the
16 rest of Marlboro Pike all the way out to Dower House Road
17 is, is in the Master Plan identified as a collector road.
18 It's 80-feet of right-of-way with about 46 feet of paving
19 curb to curb, two lanes each direction. And so, regardless
20 of this property, or what happens on this property, that
21 road is identified as 80 feet of right-of-way with 46 feet
22 of paving. So, typically, that gets constructed. As
23 properties develop, they will dedicate half of their right,
24 you know, the right-of-way on their frontage and they'll
25 have a section along their frontage.

1 The Norborn Property dedicated the entire right-
2 of-way and built the entire road because it went through the
3 middle of their property. And so, and I would like to
4 clarify that the traffic study was 2019, not 2017. Traffic
5 counts were conducted in 2019. So, I just wanted to clarify
6 that for the record.

7 MR. ASKINS: So, the -- do I still have, can I
8 still speak? So, it --

9 MADAM EXAMINER: Yes, you have further questions?
10 Go ahead.

11 MR. ASKINS: Just to finish. So, the problem we
12 have right now is only limited to people doing cut through
13 off of Route 4 onto the Dower House exit ramp and continuing
14 through down to go on South Osborne Road, some to South
15 Woodyard Road, others just getting back onto Route 4 again.
16 You call this a connector. It's not supposed to be an
17 artery, and I'm referring to Marlboro Pike. Since you guys
18 propose to make even more traffic than just rural
19 residential development, it seems like what we need to do is
20 reduce the traffic load on Marlboro Pike. We are already
21 failing. Is there some, some, my point is that we should be
22 lowering the traffic. We're already failing. If you want
23 to put in speed bumps there, that would lower our current
24 problem and then we should stay with rural residential so
25 that we won't blood it back and undue the fixes that we're

1 doing.

2 It seems to me as the County Staff had said, this
3 is inappropriate for this location. We're choking on
4 traffic coming through already. Rural residential seems the
5 right answer to here, to do this. By adding that much more
6 commercial traffic here, we just continue to sit in our
7 driveways without being able to get in and out, and that's a
8 minor problem here; but the traffic is, I, I, I can't
9 believe the projection saying that everything is fine.

10 Okay. A little steam blown off there and I can
11 close. Thank you, sir.

12 MR. LENHART: Sure.

13 MADAM EXAMINER: Thank you, Mr. Askins. Mr.
14 Chapman, do you have any questions?

15 (No affirmative response.)

16 MADAM EXAMINER: No?

17 MR. BROWN: Mr. Chapman, I noticed you put a
18 number of comments in the chat. I just wanted to let you
19 know that the chat comments are not part of the record.
20 That's not being transcribed.

21 MR. CHAPMAN: Okay.

22 MR. BROWN: Make any comments or questions for Mr.
23 Lenhart, the time to do it would be now.

24 MR. CHAPMAN: All right. Thank you.

25 MADAM EXAMINER: So, now would you like to say

1 any, ask a question since --

2 MR. CHAPMAN: No, I don't, I don't have anything
3 to say.

4 MR. ASKINS: As usual, I'm trouble, yes, please.

5 MADAM EXAMINER: Okay.

6 MR. ASKINS: Ms. Chairman, Ms. McNeil, you had
7 asked, you had corresponded with me that if I needed to have
8 further presentation opportunity, I should say so at the
9 meeting. Is this the time to request that formally?

10 MADAM EXAMINER: Yes. Well, you've already,
11 you've already testified, so you're saying -- what are you
12 asking now? Go ahead.

13 MR. LENHART: What I'm speaking of is I had the
14 last two days to put together a response to a topic. I have
15 not had time to read the material other than that. I am not
16 familiar with the other things. I've seen some things that
17 I'm concerned about. I would like to respond to those also.
18 I am not prepared. I haven't had time to be prepared.

19 MADAM EXAMINER: Okay. What I was going to
20 suggest when we close as well, is I can leave the record
21 open to allow you all to what we call submit a closing
22 argument, and in that argument I would, I would ask that you
23 give it to Mr. Brown first because I need to make sure you
24 stick to what's in the record, okay? So, you can go through
25 --

1 MR. ASKINS: All right.

2 MADAM EXAMINER: -- that whole record and point
3 out pages and your views on it, but it shouldn't be anything
4 that's not in the record. If that would satisfy you, we can
5 do it in that manner; or else we have to have another short
6 hearing.

7 MR. ASKINS: I think that's probably what I'm
8 talking about is another short hearing because I have not
9 been able to study the material enough to respond
10 substantially, or to, to get my head around what has been
11 asserted. I think I've found erroneous assertions from the
12 Applicant in the area that I had time for. There are other
13 areas.

14 MADAM EXAMINER: Mr. Horne?

15 MR. HORNE: Absolutely I will object. First of
16 all, this application was filed back in 2019. We have some
17 timing requirements already that I want to talk to you
18 about. We appreciate Mr. Askins, you know, research ability
19 and his information but, you know, all the parties were
20 notified right from the beginning; and if he didn't receive
21 notification, then, you know, sorry, but it's because he
22 didn't meet the qualifications, the criteria for the
23 notifications to be send out. And, you know, the sign has
24 been posted, the sign has been posted, but we have evidence
25 for the first hearing and the second hearing; and, you know,

1 I recognize that he didn't get the information to lay, and I
2 apologize to him for that, I feel bad about that; but
3 delaying the application here that's already almost two
4 years old would just be unacceptable to us.

5 MR. ASKINS: I've been on, I have been a person of
6 record, I thought, continually since the time that Belmont
7 Crest was being contested and built. I was surprised I
8 didn't get the notification.

9 MS. HOUGH: And if I may add to that, I will say
10 that timing has been a real problem for, for us, too. We
11 didn't find out about this until the day after a hearing in
12 late January; and since that time, we tried to start around,
13 find out what we could, learn about the procedures, learn
14 about the, the previous activities here, do a lot of
15 research, do a lot of reading, happenstance upon documents
16 that are posted in various locations on websites for the
17 County and the Maryland National Planning Commission. It's
18 been hit or miss, snatch here, snatch there, try to get
19 information together to even be able to speak on this.

20 I'm not a zoning person. I have no experience in
21 zoning, so I didn't know where to even look to get the
22 information that's out there and I'm not sure at this point
23 that I have seen or have access to all of the information.
24 I'm trying to synthesize all of this information in, in real
25 quickly and understand all of this information in a, in real

1 quickly and understand all the legal terms and all the
2 legal, let's say natural environmental definitions, and
3 traffic studies and everything. It's been a cursory review
4 and we have not had adequate notice because no one in the
5 area has seen any signs or knew anything about this except
6 for a sign that was posted inside of a commercial
7 establishment that referenced this case with the wrong case
8 number, and included the Royal Farms, which is on another
9 lot of land. So, it was completely inaccurate. The only
10 posting that anyone in the area had seen, had seen prior to
11 the posting for this hearing on April the 14th. There were
12 no other signs.

13 So, we weren't notified and given adequate
14 opportunity to respond and to come up with our, our
15 objections and recommendations, and even, you know, do any
16 research. It's all been hit or miss and, and it's really
17 been a challenge for the last month or so trying to
18 understand what's out there, what's necessary, what the
19 process is, what information is available, what kind of
20 conclusions have been drawn, what the arguments are, it's
21 been a chore; and we haven't been able to research this
22 whole thing thoroughly and exhaustively.

23 I would really be behind having another hearing
24 after having been given adequate time to perform those tasks
25 in the proper fashion.

1 MR. HORNE: Madam Examiner, we have the affidavits
2 that are required for filing as part of the record. We have
3 the sign posting and posts for both hearings. Even if Ms.
4 Hough didn't hear about it until after the hearing on
5 January 15, 2020, we're now at April 14, 2021. So, I mean,
6 again, I understand COVID had made things extremely out of
7 the ordinary. There's no question about that; but, again,
8 the, you know, because of the nature of the request and the
9 timing, any delay would be a penalty to the Applicant in
10 this situation.

11 Now, again, we respect and appreciate the
12 community's input and what we said to them before, we'll
13 work with them. I can't tell you about the, you know, the
14 Royal Farms because that, that wasn't my case; but it's in
15 the area and I don't know -- they posted a sign out there
16 but, you know, certainly the, the Applicant's team who
17 posted the sign, we weren't involved in that case, or we
18 certainly wouldn't have posted the wrong number up there.
19 We've got the right sign number and the right thing, so I
20 can't answer to that, but --

21 MS. HOUGH: No, that's not what, that's not what I
22 was saying. I was saying, I was saying the only sign, and I
23 was referring to a January 2021 hearing, supposedly that was
24 held. There's been a lot of confusion about dates, and
25 hearings, and all that. The first time we heard about it

1 was when a Verizon technician mentioned that were we aware
2 of the fact that they were rezoning it, and they showed us a
3 picture of a sign that as posted down here in one of our
4 local convenience stores. It had a picture of the sign for
5 DSP-20008, but it made reference to the Carozza Property and
6 the Royal Farms. So, I'm saying there was a mixture of, of
7 cases and circumstances, and that was posted inside a
8 commercial establishment, nothing on the road, and that
9 supposedly represented a meeting that was held in late
10 January, either the 25th or the 21st, I can't even figure
11 out which date it was; but I think it was a council meeting.
12 I'm not sure.

13 MR. HORNE: No, that was for Royal Farms.

14 MS. HOUGH: Okay. All right. Well --

15 MR. HORNE: But, in any event --

16 MS. HOUGH: There was other confusion about it.

17 The first time we saw any signs for anything related to the
18 specific property up here, Carozza, was when it was posted
19 on March 13, I believe, for this hearing on April the 14th;
20 and those signs were there in front of our development and
21 in front of Belmont Crest, but that's awfully late. That
22 was within the last 30 days and we have not had time to
23 thoroughly review the documentation that's out there, and to
24 write up, and to come up with our, our, our presentation in
25 a very form and thorough way, rather; in a very thorough

1 way. It's been hit or miss.

2 MADAM EXAMINER: I understand your all's concerns,
3 but you're almost in the place of looking at that old file,
4 pointing things out and arguing why you believe it's
5 incorrect; and I believe you can do that with a closing
6 document, which is I'm willing to keep the record open for
7 that. I'm willing to give as late as -- the Applicant is
8 not going to like this -- but as late as Friday, April 30th,
9 close of business, because some, because you all, I'll leave
10 the record open that long for you to submit any type of
11 legal argument you have based on the remainder of that old
12 record that you haven't had enough time to review.

13 MS. HOUGH: Okay. All right. Thank you very
14 much. I would also like to make a comment based on Mr.
15 Horne's statement, and that is that he didn't think it would
16 be fair to delay this to be fair to the Applicant to delay
17 the decision when, in fact, you're talking about affecting
18 the lives and the homes of over a thousand individuals that
19 live in my community; live in the senior apartment building
20 down the street; that live on Marlboro Pike itself; that
21 live in Belcrest, in the development called Belcrest,
22 Belmont Crest, rather. I mean you're talking hundreds and
23 hundreds of people whose lives are going to be drastically
24 affected by the commercialization of this area up here and,
25 and, you know, and you're saying basically it wouldn't be

1 fair to a multi-millionaire living in downtown D.C., or not
2 downtown D.C., but in one of the upscale neighborhoods in
3 the District.

4 MR. HORNE: Ms. Hough, do you live in, you live in
5 Marwood, right, I mean the senior housing --

6 MS. HOUGH: That's correct.

7 MR. HORNE: -- the senior housing project?

8 MS. HOUGH: Yes, that's correct.

9 MR. HORNE: Okay. I, I, you know I guess I have
10 to tell you because, you know, and this is, sorry, ma'am,
11 it's not in the record. Just for practicing 30 years, I can
12 tell you that we represent your application and people are
13 all --

14 MS. HOUGH: I understand that.

15 MR. HORNE: -- and people opposed you for coming
16 there. We had to fight to get your development to occur
17 there. So, just like --

18 MADAM EXAMINER: Okay. Okay. Wait, wait, wait.

19 MR. HORNE: You're on mute.

20 MS. HOUGH: You're muted.

21 MR. ASKINS: You're muted. You're muted, Ms.
22 McNeil.

23 MR. HORNE: You're muted.

24 MR. ASKINS: You're muted, Ms. McNeil. Ms.
25 McNeil, you are muted.

1 MADAM EXAMINER: Sort of good you didn't hear me.

2 I was saying, okay, that's enough, Mr. Horne. Ms. --

3 MR. HORNE: All right.

4 MADAM EXAMINER: -- Mr. Askins, do you --

5 MR. HORNE: I got you.

6 MADAM EXAMINER: -- did you have something else
7 you wanted to say about the continuance, I mean the timing
8 to 4:30 to submit something?

9 MR. ASKINS: I would.

10 MADAM EXAMINER: (Indiscernible.)

11 MR. ASKINS: I would.

12 MADAM EXAMINER: Okay.

13 MR. ASKINS: Okay. I'm looking at a professional
14 staff here already before me on my screen of lots and lots
15 of professionals who I think are affiliated with the
16 Applicant, with the exception of Stan Brown. We are, we are
17 looking at the possibility of trying to respond to this
18 Applicant. We are not professionals. We would probably
19 need to engage people who are professional. What is the
20 window for that? How do we do that? How do we respond?
21 How do we get people to respond to them who qualify to make
22 representations?

23 I was told that some of my information could not
24 be admitted. There must be people who could provide
25 information that can be admitted. When can we do that?

1 MADAM EXAMINER: In fairness, when would you do
2 it? How much time would it take to do that? I can't hold
3 up a hearing indefinitely for you all to be able to do it;
4 and you had a, I think you did a great job explaining why
5 you're opposed to this request.

6 MR. ASKINS: That is the part that I could deal
7 with in the short term and that I could do some research on;
8 that I could do a feet on the ground. When you're talking
9 about other issues in this that, I'll just say, first of
10 all, I haven't read everything. This is the first piece
11 that I hit that I could do something about. I would, I've
12 been looking -- I'm not saying I'm going to do this -- I'm
13 saying there are professionals in the world who are
14 qualified to do the things that will be admitted. I, now
15 you're asking me how much time do I need? I've never done
16 this before. Do you have someone who can tell me how long
17 it would take?

18 MADAM EXAMINER: Do I, Mr. Horne?

19 MR. HORNE: Well, I mean, I, I can't, I can't, I
20 mean, you know, again, you have, you know, whatever time it
21 takes for them to look at a Staff Report and, and, and
22 determine what experts they may need to hire to address it,
23 you know? I can't, I don't know how long that could take.
24 It could take two weeks, two months, I don't know.

25 MR. ASKINS: Nor do I.

1 MS. HOUGH: Right. I mean it's possible, am I on
2 yet? It's possible that we might want to have a traffic
3 expert look at the results that have been presented and,
4 and, and, and give us their own interpretation or
5 conclusions that they come up with. I mean, you know, we
6 just haven't had time to do anything formally and
7 substantially on this case since we first heard about it.

8 MADAM EXAMINER: Well, let me tell you, you also
9 have the time it takes between a decision being rendered and
10 the County Council hearing.

11 MS. HOUGH: Okay. Usually how long is that, two
12 to three weeks, or --

13 MADAM EXAMINER: Oh, no.

14 MS. HOUGH: How long?

15 MADAM EXAMINER: At least 30 days after my
16 decision, and then a little longer than that, correct, Stan?
17 They don't immediately put it on the agenda, so --

18 MS. HOUGH: Okay.

19 MR. ASKINS: Okay. This information --

20 MADAM EXAMINER: Anyway, 60?

21 MR. ASKINS: That may be the information I needed
22 then. So, you're saying today you're talking about closing
23 this hearing, okay. If that were the case and we had no
24 further action in that time, what is this other opportunity
25 of which you speak?

1 MADAM EXAMINER: I'm saying that, you know how
2 you, how Ms. Hough presented something where she took
3 portions of the record and explained how she disagreed or
4 agreed with it? I don't mind you all submitting a closing
5 argument where you cite to areas in the record that support
6 your position, or how you disagreed with their position.
7 You can do that and then I will issue a decision sometime
8 after that, and then you all have a right to file
9 exceptions. They call it that because I'm not making the
10 final decision. File exceptions to the District Council.
11 They're going to make the final decision. And after that,
12 if you are agreed, which you probably are since you live
13 nearby, you have a right to take it to court as well. So,
14 there's, there's more time, but if -- that's about the best
15 I can do at this time because, again, I, he's correct. I, I
16 issued a decision in this case in January of 2020, just
17 before COVID. Affidavits were filed and signs were posted.
18 I don't, I cannot understand why you all didn't see the
19 signs, but if you saw the signs this time around, they were
20 about in the same place. So, I can't explain that.

21 And, Ms. Hough, I just want you to know, we never
22 post within buildings, like within a store. I don't know
23 who did that.

24 MS. HOUGH: Yeah, I --

25 MADAM EXAMINER: I can't explain it. So --

1 MS. HOUGH: What I think happened is I think the
2 store owner took a picture of the sign down there for Royal,
3 the Royal Farms development, and then put that picture on a
4 poster and confused the Carozza Property information with
5 that picture.

6 MADAM EXAMINER: Okay. That makes me feel better.
7 Thank you.

8 MS. HOUGH: Yeah, that's what I'm pretty sure
9 happened because I, I did, someone did tell me you never
10 post within commercial establishments; and it, the picture
11 of it is on my phone, and when I looked at it closer, the
12 picture of the sign that they posted, I could see that there
13 was like commercial stuff in the background of the picture.

14 MADAM EXAMINER: Uh-huh.

15 MS. HOUGH: And also, that they had taken a
16 picture of the sign and then had added some verbiage about
17 the Carozza Property, so that's probably what happened.

18 MADAM EXAMINER: Yes, Mr. Askins?

19 MR. ASKINS: I've been holding up my hand, is that
20 the right way to do this? My concern is that if I go after
21 the District, I'm sorry, if I go after the ZHE's ruling,
22 then any, any findings that we have that are professionally
23 supported would then be in opposition not just to the
24 Applicant, but to the Zoning Hearing Examiner's conclusion.
25 It puts us in a, in a further disadvantage. We're further

1 down the line where your ruling and recommendation is
2 closed. And so, what I'm --

3 MADAM EXAMINER: Uh-huh.

4 MR. ASKINS: -- trying to do is come before you
5 who are closer to the material in making the decision. Your
6 recommendation is the primary information, I believe, that
7 the District Council would consider; and so, if we are past
8 that point, you know, the District Council says their
9 greatest authority is the ZHE. I need the ZHE to consider
10 our perspective.

11 MADAM EXAMINER: They also ask for the Planning
12 Board and Staff, and unlike some cases, the Planning Board
13 and Staff have already agreed with you that it should be
14 denied.

15 MS. HOUGH: Right. Exactly.

16 MR. ASKINS: Well, okay. Let's say a little more
17 about it. If they say it should be denied, then what I
18 would like to be able to do is to have someone who is
19 independent of the Applicant to follow on with their
20 assertions.

21 MADAM EXAMINER: And that's something you can
22 make, and raise in any argument to the Council, but there's
23 nothing in the law right now that requires that; and they
24 submitted their documents to the Agency, the Park and
25 Planning, and the State Agency, and the Army Corps of

1 Engineers. So, what you're requesting is something you need
2 to ask of the Council.

3 MR. BROWN: And, Mr. Askins, just so that we are
4 clear on what we're trying to give you information on, the
5 process is we are conducting an evidentiary hearing now
6 before the Examiner, and so the time to put on experts on
7 your behalf would have been now. You cannot bring on
8 experts after the Examiner renders her decision and then
9 argue those expert points before this Council. So, I think
10 you seem to understand that, but I want to make sure you
11 understand the time to do that is now.

12 It's late in the game, but I think the appropriate
13 thing for you to do, and Ms. Hough, and Mr. Chapman, is to
14 go with the recommendation of two weeks from now will be the
15 deadline for you to submit additional documentation, whether
16 that includes additional experts who have reviewed the
17 Applicant's submission, and put that in a memorandum or a
18 letter to the Examiner that these are your itemized, point-
19 by-point reputations of the Applicant's case. Then you at
20 least have it in the record and can argue it before the
21 District Council if you disagree with the Examiner's
22 decision, all right?

23 MR. HORNE: The only thing that I can say, Mr.,
24 Mr. Brown, if I, if, is that, if, you know, if it's
25 something beyond today, I won't have a chance to cross-

1 examine, you know, if you talk about they add some
2 additional information.

3 MR. BROWN: Well, that's true, Mr. Horne, but you
4 can't have it both ways. Either you're going to have to
5 allow the opposition to submit letters with additional
6 evidence between now and April 30th, or you're going to have
7 to be willing to have a second hearing so you can then
8 cross-examine the evidence that they put in by April 30th.
9 So, it has to be one or the other.

10 MR. HORNE: But, but why should, why should our
11 application have to be delayed?

12 MR. BROWN: I understand that. Well, like you
13 said, I, there's difficulty here. While the case has been
14 pending for some time and there's tension. I understand
15 that. But Mr. Askins, and Ms. Hough, and Mr. Chapman, I
16 think the fairest way for both yourselves, as well as the
17 Applicant, is to try to submit your additional documentation
18 before April 30th. Mr. Horne would not have an opportunity
19 to refute it, he is correct, or cross-examine it; but then
20 at the same time his case is not being delayed. So, both
21 sides would be given something.

22 MADAM EXAMINER: And I could give him, I could
23 give him until Wednesday the following week to put in
24 anything --

25 MR. BROWN: In opposition?

1 MADAM EXAMINER: -- you want to raise on their
2 argument.

3 MR. ASKINS: Who are you speaking to, Ms. McNeil?

4 MADAM EXAMINER: I'm speaking to Mr. Horne. He's
5 worried that you'll say something that would have caused him
6 to say more, and so, I mean we generally do a, we can allow
7 him to --

8 MR. BROWN: Rebut.

9 MADAM EXAMINER: -- cross what you submit.

10 MR. HORNE: I, I, basically, what Mr. Askins has
11 stated, you know, we have Mr. McAlister and Mr. McCarthy
12 here.

13 MADAM EXAMINER: I, I thought you, by the way, we
14 started this earlier. I didn't know if you had another
15 redirect witness. We, we started this discussion earlier.
16 Were you finished with your redirect?

17 MR. HORNE: No, I, no, no, I, really, I wanted to
18 -- only because I wanted to address what Ms. Hough and then
19 Mr. Askins said, and --

20 MADAM EXAMINER: At some point I have to give
21 everybody lunch. Do you think I should do my 30 minutes now
22 or you think you'll be finished by 1:00?

23 MR. HORNE: Well, we, we've already lost one of my
24 witnesses, so, because of time; but I think, I think Mr. --
25 the only thing we would have would be Mr. McAlister and then

1 Mr. McCarthy just briefly addressing Mr. Askins' statement.
2 Mr. SilberHoltz, who could tie it all together, I can do
3 that in the closing, in the writing, and wouldn't delay --

4 MADAM EXAMINER: Okay. Mr. Askins and Ms. Hough,
5 we'll get back to what we're going to do at the close of the
6 hearing. I did cut him off. He was doing redirect and you
7 might have some questions of these witnesses as well. So,
8 who is your next witness?

9 MR. HORNE: Let me just call Mr. McAlister back up
10 to the stand really quickly before, and I'm sure --

11 MADAM EXAMINER: Mr. McAlister, you're still under
12 oath.

13 MR. HORNE: Okay.

14 MR. MCALISTER: Yes, Madam Hearing Examiner.

15 MR. HORNE: Mr. McAlister, and then I'm going to
16 have Mr. McCarthy follow. You heard, you were here this
17 morning and heard the testimony of Mr. Askins with reference
18 to his going onto the site and making some assertions
19 concerning the type of condition that the property is in.
20 Can you address some of his statements and why you think
21 that his statements were incorrect?

22 MR. MCALISTER: Yes. So, I want to give kind of
23 the broad perspective. Mr. Askins, you had missed the
24 presentation earlier about our process and the way that the
25 Natural Resource Inventory was prepared. Much of that

1 information in which you have been questioned about or
2 concerns about has been provided for on the Natural Resource
3 Inventory, as well as a wetland delineation plan was
4 prepared and approved by the Maryland National Capital Park
5 and Planning Commission, along with that is a stream and
6 wetland report that was prepared and approved by the
7 Maryland National Capital Park and Planning Commission.
8 Additionally, we did have the U.S. Army Corps of Engineers,
9 we had submitted a request for a jurisdictional
10 determination which was approved. It's an approved
11 jurisdictional determination for the property.

12 And so, the assertions that you made and concerns
13 about the definition of ephemeral streams and intermittent
14 streams goes back to the definition of what is regulated by
15 Park and Planning in Prince George's County, as well as
16 regulated streams by the Corps of Engineers, and the
17 Maryland Department of Environment. And so, the plan that
18 we have approved by Park and Planning that's been provided
19 for in the record here illustrates what has been determined
20 as those regulated streams as intermittent streams, and that
21 is supported through the reports, as well as the onsite
22 approval by the Corps of Engineers.

23 And so, you referenced some information in our
24 previous testimony, both myself or Jacob McCarthy with Bay
25 Environmental, and so I just want to clarify some questions

1 that you raised. And one of those was, our original
2 testimony was based on our initial review of the property;
3 and so, at that time, a Natural Resource Inventory had not
4 been prepared or conducted, and a detailed investigation and
5 report that was submitted as part of the Natural Resource
6 Inventory had not been prepared at the time during our
7 previous hearing and information and testimony that you are
8 citing.

9 And so, as this hearing has been presented, those
10 documents, the NRI, the Wetland and Stream Report, a
11 delineation plan, the Corps of Engineers jurisdictional
12 determination, as well as the forest stand delineation. All
13 of that information, plans, documents, reports have been
14 reviewed and approved by the regulatory agencies, the U.S.
15 Army Corps of Engineers and the Maryland National Capital
16 Park and Planning Commission.

17 And so, while our testimony did cite some
18 information from previous, what I want you to understand
19 today is the information we have is much more detailed, much
20 more accurate and in compliance with the approvals issued by
21 the reviewing and approving agencies.

22 And so, I will let -- I'll defer the rest of my
23 time, if you're okay with that, Ms. McNeil, to Jacob
24 McCarthy with Bay Environmental. Bay Environmental is our
25 environmental consultant. Jacob also provided the previous

1 testimony which you cited, Mr. Askins, and I'll let him go
2 through his analysis of his onsite determination, provide
3 any additional feedback on the more detailed information
4 cited in the Wetland Stream Report. His office, and he
5 specifically conducted the site investigation, as well as
6 what's responsible for the review and approval with the
7 Corps of Engineers, and can share some of the detailed
8 information regarding the definitions of regulatory streams,
9 as well as what was determined to be intermittent and a
10 ephemeral of what's shown on this Natural Resource
11 Inventory.

12 So, Ms. McNeil, if you're --

13 MADAM EXAMINER: Okay. I'll call Mr. McCarthy.
14 You stay, if you can stay, and then anyone has questions of
15 both of you, I'll allow that later. So, Mr. McCarthy, do
16 you swear or affirm under the penalties of perjury that the
17 testimony you shall give will be the truth and nothing but
18 the truth?

19 MR. MCCARTHY: I do.

20 MR. HORNE: State your name and business record
21 for the, state your name and business address for the record
22 please.

23 MR. MCCARTHY: Jacob McCarthy with Bay
24 Environmental. Our business address is 2661 Riva Road,
25 Building 800, Suite A, in Annapolis, Maryland 21401.

1 MR. HORNE: Mr. McCarthy, were you previously
2 accepted as an expert by the Hearing Examiner as an expert
3 in wetland ecology in this case?

4 MR. MCCARTHY: Yes, sir.

5 MR. HORNE: And did you testify at the previous
6 hearing associated with this?

7 MR. MCCARTHY: Yes.

8 MR. HORNE: And --

9 MADAM EXAMINER: Mr. Brown, do you have any voir
10 dire?

11 MR. BROWN: No, no voir dire.

12 MADAM EXAMINER: Okay. Then Mr. McCarthy will be
13 accepted as an expert in the area of wetland ecology.

14 MR. HORNE: Mr. McCarthy, have you been present
15 virtually at this hearing this morning that we're conducting
16 now?

17 MR. MCCARTHY: Yes, in its entirety.

18 MR. HORNE: Okay. And did you have an opportunity
19 to hear Mr. Askins and see Mr. Askins' presentation with
20 reference to his view of the site?

21 MR. MCCARTHY: I did.

22 MR. HORNE: And do you have an opinion as to
23 whether his statements are consistent or inconsistent with
24 your findings and determinations that were made from your
25 site visit?

1 MR. MCCARTHY: There's, there's certain aspects of
2 his presentation that are confirmed in my wetland
3 delineation. The document he quotes where I say that there
4 are no related resources on site was from a cursory
5 environmental, just a stream evaluation that was performed.
6 The actual field date, I believe, was December 27, 2019, and
7 the document itself was prepared in January of 2020. At
8 that time, when I was out on site, it didn't appear as
9 though there were any regulated stream channels onsite of
10 the westernmost area where he provided the photographs.
11 When I went out and did the natural wetland delineation and
12 took the Army Corps of Engineers out there to confirm, yes,
13 that is a regulated stream. It's an intermittent stream.
14 However, I still have some issues with calling it an
15 intermittent stream, but it was confirmed by the Army Corps
16 of Engineers. To be a regulated stream, it has to have
17 certain criteria besides having the groundwater connection.
18 It has to have a defined bed and banks, particulate sorting,
19 that sort of thing, and a few other criteria; and just based
20 on the photographs he provided, you could see the, the white
21 flagging in the background on the perimeter of where the
22 regulated resources were. Those were flags that I
23 personally hung up. So, anything within those flags was a
24 regulated resource and it does show up on the Natural
25 Resource Inventory. It doesn't, it is not referenced in my

1 cursory and screen letter, which was the document that you
2 were quoting earlier; and so, if, if I could have Ms. Bah
3 pull up the Natural Resource Inventory, I don't believe Mr.
4 Askins was present when Mr. McAlister was going through the
5 Natural Resource Inventory earlier this morning. So, I
6 think a lot of --

7 MADAM EXAMINER: I'm sorry. Ms. Bah, could you
8 pull up the, I think it's Exhibit 7?

9 MR. HORNE: 7, yes.

10 MR. MCCARTHY: Yes, and if you could just go to
11 sheet two please? So, it would be sheet 30. Yeah, page 30.
12 If you could zoom in the lower right-hand corner of the map?
13 And scroll down just a little bit please. I think you need
14 to go to, back to page 30. Okay. If, can you scroll to the
15 left? That's, that's the correct page. Keep going. Okay.
16 Right there and just scroll a little bit to the north.
17 Where, where the wetland feature is, the two -- keep going
18 to the right please. Okay. A little bit further to the
19 right, just a little bit. Good. And just a little bit to
20 the south. If you could -- yes, perfect, perfect.

21 Okay. If, if you can see on this plan, if you
22 zoom in a little bit, it is labeled intermittent stream.
23 That's the solid line with three dots that goes through the
24 middle of the WL, that's the wetlands line, and connects,
25 and keeps going to the south, or to the north towards Route

1 4. So, there is a, an intermittent stream that is now
2 currently mapped onsite. This is the Natural Resource
3 Inventory Plan that was based off of a thorough site visit
4 where I performed a wetland delineation in accordance with
5 the criteria set forth in the Corp of Engineers delineation
6 handbook, and also utilizing the Atlantic and Gulf Coastal
7 Plain supplement, regional supplement.

8 So, I, the, the document that you were referencing
9 where I, where I stated that there were no regulated
10 resources on site. It was just based on a cursory stream
11 evaluation where I walked the site in late December of 2019
12 when we didn't really have any, hardly any waterfall or
13 precipitation; and then based on the delineation, there is a
14 regulated stream. So, you are correct in that particular
15 area; however, those other two channels that you marked as
16 streams, those were not considered regulated resources by
17 either the County or the Army Corps of Engineers. We had
18 the Corps of Engineers out on site. They confirmed that
19 these areas were not regulated as streams; they're regulated
20 as non-title wetlands that are isolated; but they are not
21 stream channels based on the definition of a regulated
22 stream channel by the County.

23 MR. HORNE: And I think, I'm not sure if it's you
24 or Mr. McAlister with, give a definition for the, the
25 different types of inferior, what is it called --

1 MR. MCCARTHY: There's, there's ephemeral streams,
2 which are basically drainage conveyance that direct surface
3 runoff. They're only flowing when there's a rain event or
4 shortly thereafter. There is no real groundwater
5 connection. It is a channel that has, that, that only runs
6 when, when there's been a precipitation event or shortly
7 thereafter, depending on the drainage area.

8 Based on the P.G. County definition that's in the
9 subtitle 24 of the subdivisions, and they classify a
10 regulated stream as -- let me pull it up real quick --
11 streams that have water flowing year-round during the
12 typical year and streams that have water flowing during
13 certain times of the year when groundwater provides for
14 stream flow, water flow can be identified by a defined
15 channel and movement of leaf litter and debris by the
16 movement of water during dry periods. Some regulated
17 streams may not have flowing water.

18 The definition includes perineal and intermittent
19 streams. Streams that only have water flowing during or for
20 a short time duration thereafter, precipitation events in a
21 typical year are ephemeral streams and are not regulated.
22 The use of the term stream in this section or other section
23 of County code shall refer to a regulated stream unless the
24 provisions of that section define a stream otherwise.

25 So, with the, with the stream that was located

1 during the NRI, that one did fit that criteria of an
2 intermittent stream that has a groundwater connection and
3 flows partially during the year; but the other channels that
4 Mr. Askins had referenced on his PowerPoint, we looked at
5 those as well. They did not meet the groundwater criteria
6 or the definition of a regulated stream per County, and
7 state, and Federal definitions.

8 MR. HORNE: In your review of an Army Corps'
9 review, that would be a requirement if the property was
10 developed whether it was RR zone, MXT zone, or any other
11 zone, is that correct?

12 MR. MCCARTHY: It, yeah, it's independent of the
13 zoning. These are regulated features that are defined in
14 the Army Corps of Engineers wetlands, their delineation
15 manual that was, that's been the standard since, I believe,
16 1987; and there's also a regional supplement for the
17 Atlantic and Gulf coastal plain which P.G. County, Prince
18 George's County falls in the boundary of. That is, I
19 believe, the last update to that was 2016, but based on the
20 criteria at both the County, state and Federal level, the
21 one stream channel that was identified on site also had
22 surrounding, non-title wetlands associated with it as the
23 stream channel, like Mr. Askins was saying earlier, as, as
24 the channel itself broadens out and becomes more braided,
25 then there is a peripheral wetland complex that devolves,

1 that forms in the basin of where the topography flattens out
2 and then continues to the north towards Route 4; but all the
3 other areas besides that one which Mr. Askins had the
4 photographs of that were in that report, or in that
5 PowerPoint presentation that he provided earlier, all the
6 other features that he said were indicated could be streams
7 were not streams based on a thorough site evaluation and
8 confirmation with the Army Corps of Engineers; so, there are
9 isolated, non-title wetlands in a few areas that are also
10 shown included on the Natural Resource Inventory, but as far
11 as stream channels go, there is, there is only the one and
12 that is the one that Mr. Askins had the photographs of in
13 his presentation earlier.

14 MR. HORNE: Thank you very much. That's, that's
15 all I have for him, Madam Examiner, for both of them.

16 MADAM EXAMINER: Any questions of either witness?

17 MR. ASKINS: Yes, please.

18 MADAM EXAMINER: Okay.

19 MR. ASKINS: Okay. This is Mr. Askins. May I
20 speak?

21 MR. MCCARTHY: Yes.

22 MR. ASKINS: Okay. Thank you for that. I'm glad
23 to see that we're in agreement. The NRI came out. If this
24 was available for my perusal, I was not, and still not am
25 not aware of it. One, is that something that is available

1 to the public?

2 MR. MCCARTHY: I believe it is an exhibit that is
3 available. I am not entirely sure, to be honest.

4 MR. MCALISTER: Yeah, to answer your question, Mr.
5 Askins, yes. Copies are available at the Park and Planning
6 Commission. I think they're in Environmental Planning
7 Section. I'm happy to get you a copy as well as it's
8 available in the case record through the Zoning Hearing
9 Examiner's Office; and so, there are multiple ways to obtain
10 a copy.

11 MR. ASKINS: Can you provide that connection to
12 that information perhaps to Ms. --

13 MADAM EXAMINER: Mr. Askins, you didn't see it
14 online? It's the second binder. One of them said the
15 remand binder, and this was in a smaller binder, like 30
16 something pages, Exhibit 7.

17 MR. ASKINS: Okay. I, I guess we may be able to
18 do this offline. I don't know of any binders. The way I've
19 been able to find these files is a website that listed eight
20 documents and then, later, when one of those documents did
21 not work, you gave me a new link. Are either of those two -
22 -

23 MADAM EXAMINER: I'll get you a link. We'll get
24 you a link.

25 MR. ASKINS: Okay. Very good. Thank you. So,

1 are you saying then for the record that the NRI was
2 available publicly?

3 MADAM EXAMINER: In this case. I mean I have to,
4 I showed everything that I've looked at.

5 MR. ASKINS: Okay.

6 MADAM EXAMINER: I didn't, but you can also get it
7 from Staff, but can he get it from -- I'm going to give it
8 to Mr. Askins, but in the future, you're saying if you have
9 a case number, you can contact Park and Planning and get a -
10 - okay.

11 MR. MCALISTER: Yeah. All Natural Resource
12 Inventories follow with the land, and so if one has been
13 prepared, you can check on the County public records, online
14 mapping, which is the ppatlas.com website. But you can make
15 that request on any property to the Environmental Planning
16 Section which is a part of Park and Planning.

17 So, this was approved. It's been a document
18 that's been available through their department. This was
19 approved on March 9th of this year. So, it's, it's been
20 readily available, yes.

21 MR. ASKINS: Okay. Thank you. That's something
22 that I was not aware of and I've had very little time to
23 locate in this time. So, very good.

24 So, after this stream bed is considered regulated,
25 it has implications for what use can be made. The narrative

1 that I understood from the transcript, what's it called,
2 record part 2 of an earlier meeting, planned all this stuff
3 and then we heard that there was to be such and such
4 development on three different portions of this. Has this
5 NRI finding altered your plans and, if so, what are the new
6 plans?

7 MR. MCCARTHY: So, we did some submit a bubble
8 diagram of potential land uses as part of this plan. We do
9 not see this stream as a significant constraint to making
10 this property not developable at all. There are allowable
11 impacts, and regulations, and constraints based on the Corps
12 of Engineers and Park and Planning. We have not designed a
13 layout at this time, but certainly going forward, that would
14 be the next step in the process; and so, we would have to
15 abide by those regulations going forward.

16 So, there are regulations in regards to allowable
17 impacts to the stream, as well as constraints to the
18 buffers; and so, we would have to take those into account
19 going forward.

20 MR. ASKINS: Okay. I just, I was concerned that
21 my understanding of learning all this in the last two weeks
22 is that regulated streams have impact for the surroundings,
23 which probably has to do with the ability of you to put in
24 substantial fill in the area, even if it's not on top of the
25 wetland itself, but concern about sedimentation from new

1 construction into these areas. So, I hope I can see what
2 the proposal shows in terms of fill. And if you are, if you
3 are stating a case that you will be able to develop at a
4 certain amount of property with this blocked out as public,
5 as a neighbor of this, I would like to be able to see that.
6 And from what I understand, you're saying all of that is
7 captured in the NRI, is that correct?

8 MR. MCCARTHY: No, that's incorrect. The Natural
9 Resource Inventory Plan is not any proposed development. It
10 is simply an existing condition plan to show features
11 required by the Park and Planning Commission on this plan;
12 and so, this is used as a base plan, an existing conditions
13 plan for purposes of future development plans. And so, at
14 this time, we haven't prepared the Detailed Site Plan or
15 even a Preliminary Plan, or Conceptual Site Plan for this
16 property; and so, there is not any information in regards to
17 impacts or allowable impacts, or proposed impacts for that
18 matter to the stream itself, or any other areas onsite; but
19 what I can tell you is because this is only one intermittent
20 stream, it does not pose a significant constraint to
21 allowing this property to be developed under the zone. So,
22 if we refocus back to the, this case, which is for rezoning,
23 the plan shows that there is not a significant constraint to
24 development or development being proposed on this site. The
25 zoning that's being requested would allow for it; and if and

1 when we come forward in the future with a proposed
2 development plan, that stream would not propose such a
3 significant constraint that it would cause the property to
4 be undevelopable at all; and so, there are provisions in the
5 ordinance to allow for development on this site which we
6 would have follow and, certainly, as we move forward in the
7 process, that could be completed; but at this time, we do
8 not see the single intermittent stream as a significant
9 constraint for the development on this site.

10 MR. ASKINS: Okay. Ms. McNeil, I would like to
11 say that I am, I am pretty satisfied that my finding was, in
12 fact, recognized. That's the first one that I was able to
13 find. It seems to be substantial and borne out by the
14 response. I would like to reserve the opportunity to look
15 through the rest of the material for more time as you had
16 offered earlier. I will accept that offer.

17 MADAM EXAMINER: Okay. Okay. Anyone else have
18 questions of these two witnesses?

19 MR. ASKINS: Can you restate --

20 MADAM EXAMINER: Yes, Ms. Hough?

21 MR. ASKINS: Yeah.

22 MS. HOUGH: I just wanted to get a little
23 clarification because it's hard to tell. I believe you
24 started out indicating that this portion of the property
25 that has the stream is in the lower southwest corner of the

1 Carozza Property? No? Where is it located?

2 MR. MCALISTER: No, it's, it's in the northwest
3 corner abutting Route 4.

4 MS. HOUGH: Northwest?

5 MR. MCALISTER: Yeah, it's in the very, not the
6 very, very northwest, but it's in the northwest portion and
7 Mr. Askins said illustrated previously, the length of the
8 stream --

9 MS. HOUGH: Okay.

10 MR. MCALISTER: -- is about 750 feet total.

11 MS. HOUGH: Okay. So, not near the office
12 complex, right?

13 MR. MCALISTER: I believe so.

14 MS. HOUGH: Right. Okay. Thank you. Okay. And
15 one other question just for my own information. I, it's,
16 it's my understanding that once a property is zoned mixed
17 use, MXT, that there are really no constraints on the type
18 of commercialization that can be put on that property. I
19 mean there can be some initial plans for particular types of
20 development, but you can, in fact, do anything that
21 qualifies as commercial or mixed use because it's been zoned
22 for that? Is my understanding correct?

23 MADAM EXAMINER: Can anyone make a proffer because
24 I'm not sure this is the witness.

25 MR. HORNE: Yeah, I'll, I'll, I'll say, this is

1 Arthur Horne, and so you may have heard earlier that there
2 are restrictions associated with property because, talk
3 about the environmental, there's a setback from Pennsylvania
4 Avenue of 300 feet; there's a height limitation because of
5 the airport. So, there are restrictions.

6 Now with reference to the County Zoning Ordinance
7 has a table of uses for every development that can exist in
8 a certain zone. So, on paper, in the MXT zone, you can have
9 the designated uses that are listed in there, either
10 permitted by right or special exception; or same thing with
11 the residential. So, the rule on residential zone, which is
12 in now, you know, as we mentioned before the meeting, there
13 are a number of commercial activities that can go there,
14 including CB-1 2021, where the Council just allowed data
15 centers to be located in the RR zone. So, so, the answer to
16 your question is, yes, on paper; but there's a process you
17 need to go through with the Conceptual Site Plan,
18 Preliminary Plan and a Detailed Site Plan; and as Mr.
19 Lenhart, who is our traffic person, tells you, all the uses
20 aren't the same. If the use would generate traffic more
21 than what can be had, then that particular use can't go
22 there, even though on paper it's allowed in that zone.

23 MS. HOUGH: I hear you. Okay.

24 MR. HORNE: So --

25 MADAM EXAMINER: Okay, Mr. Horne, if this were

1 approved and you go through all of those steps, the site
2 plans and subdivision, would these persons of record be
3 included? Would you still have to give all of them notice?

4 MR. HORNE: Absolutely. The way the law is now is
5 anybody who has been a party of record previously on an
6 application, I believe Mr. Brown can correct me, I think it
7 goes back to when Sam Dean was Chair, have to be notified of
8 any development on there. So, they will all be notified of
9 any development that goes forward.

10 And, and, again, you know, with Mr. Askins, I just
11 want to say what he was asking, we're, we're only asking for
12 the property to be rezoned. I mean all the specifics and
13 details, it is the Applicant's burden to be able to show
14 that if it's rezoned, it can be developed. We would be
15 doing the same thing if we came and say we, we want to have
16 the, to build houses in here in the RR. I mean it's the,
17 it's the same thing. This is just really the preliminary
18 process of making that determination. It, but we don't have
19 an absolute right to have that zoning which is why we're
20 going through this hearing; but if the process that has been
21 described with the transportation and the environmental and
22 all, that's the same thing for this existing zone as it
23 would be for our request to have the property rezoned. So,
24 I don't know, Ms. Hough, if that answers your question.

25 MS. HOUGH: In, in a way it does. I mean what I

1 was getting at was basically because it proposed to have two
2 hotels and two large restaurants sites on this property, it
3 could, in fact, be increased to four or five hotels, or
4 seven restaurant sites.

5 MR. HORNE: Well, well, like we indicated in our
6 meeting with the community, the thing you do at a rezoning
7 application is what we do here, is, is that we try to get
8 the uses that would be two things: One, would generate the
9 most traffic so that we know what's at the, at the outset,
10 what is the, the most that can occur on that site; and then
11 we also look at it, at, at, compare it to what's in the
12 surrounding community. So, again, we didn't come in and
13 say, what, you know, this MXT, we can do all commercial and
14 a little bit of residential. We looked at what was going on
15 Marlboro Pike and the bubble plan, Exhibit 9, it was, it's
16 just a sample of what can happen. Again, we, as we said,
17 you know, you have a case where Royal Farms just got
18 approved by this, so that may mean that even though a gas
19 station would be permitted in the MXT zone, you'll never
20 have a gas station there, although we used it because of the
21 numbers situation being able to characterize it. It just,
22 it's an example, it's a bubble plan, it's a scheme that says
23 here's something that could happen if the property is
24 rezoned to this area. So, it is by no means, you know,
25 definitive that you'll have one, or any hotels; it all

1 depends on the number of factors, including environmental,
2 including setback, including, you know, market. You know,
3 we have, Mr. Lugwik is no longer with us but, you know, at
4 the meeting he was saying there's a determination of what
5 uses and stuff we want to locate at these sites. So, again,
6 we certainly understand and Mr., you know, James, I'm sorry,
7 James, I, your name is not short anymore, but that we
8 understand your concern, we do, on behalf of the Applicant
9 about the neighborhood and the community; but this, you
10 know, application and stuff would have a long way to go
11 through the process and you all would be a part of this
12 process all the way through; and --

13 MADAM EXAMINER: Exhibit 9 is there now if there's
14 anything you wanted to say about the bubble plan, or that
15 Ms. Hough wanted to see it.

16 MR. HORNE: Yeah. And so, the bubble plan shows
17 that the, you know, the commercial part would be right at
18 the end where Marlboro Pike, and Woodyard Road, and
19 Pennsylvania meet, what you expect to have heavy traffic.
20 As you move down Marlboro Pike, right across from the senior
21 facility would be the residential, residential to
22 residential; and if you go further, then the light blue
23 would be what we call the institutional use. I mean, you
24 know, I know James said, you know, he didn't think of
25 anybody would attend the church that didn't go there, but

1 institutional uses are not necessarily limited to churches,
2 but that is the type of use that, you know, is a possibility
3 at that site depending on transportation and other, other
4 factors. I mean in this County, you've seen the churches
5 have, you know, churches everywhere, and so, in any event,
6 that's, that was, the bubble plan just shows you there's a
7 concern of how you would lay it out and how it would be
8 compatible with the surrounding communities across from
9 Marlboro Pike, keeping in mind that you also are with, your
10 backs are to Pennsylvania Avenue. There's noise-related
11 issues that have to be addressed, all those things that will
12 limit our ability to do certain things. So, again, this is
13 simply a rezoning application, you know?

14 Again, I'm not saying you have to agree with it.
15 You have your right not to agree with it. That's fine. But
16 this is simply the rezoning application and this is, it's a
17 long way to go. In our opinion, based on what you see out
18 there, there's an 8-lane highway, freeway, Pennsylvania
19 Avenue; on the other side, you mention Westphalia Road.
20 What's happening in the development in this area, that this
21 property that's been sitting in RR for over 60 years is more
22 appropriately zoned with a mixed use category that would
23 allow for some development of the property.

24 MS. HOUGH: You don't think that development, this
25 is a commercial area, would be in direct competition to some

1 of the development that's going to take place over at the
2 Westphalia Town Center, and with the traffic?

3 MR. HORNE: Well, ma'am, well, you know, it's kind
4 of funny because we do have an expert on, and, and Francis
5 SilberHoltz who could talk about it, but I'll tell you this.
6 The, the Westphalia Town Center has its own sector plan;
7 and, and this property right here is in subregion 6, a
8 different planning; and Mr. Lugwik, if he was still on, he
9 would tell you that, you know, as far as the market and
10 stuff is concerned for different people and different uses,
11 I mean being across the street from --

12 MADAM EXAMINER: It looks like he's still on if
13 you want a witness.

14 MR. HORNE: No, but he, he, he texted me and he's
15 in another meeting, so --

16 MADAM EXAMINER: Okay.

17 MR. HORNE: Yeah, he's, he's going to try to get
18 back.

19 MADAM EXAMINER: I'm going to have to swear to you
20 in a minute, but --

21 MR. HORNE: It's an 8-lane highway and it, and
22 it's across, it's a completely different region and so, no,
23 there would not be any competition between the two because
24 people going south on Pennsylvania Avenue, once they go past
25 the Dower House Road intersection and stuff, they're not

1 going to be able to get over to, to the Westphalia until
2 they go further down to the Woodyard; but, again --

3 MS. HOUGH: You don't think that if they developed
4 that town center, when they do, they won't include some kind
5 of traffic direction, left turn signals, or lanes to get
6 into this major shopping center? Repeat what
7 (indiscernible) before?

8 MR. HORNE: Not off of Pennsylvania Avenue, but
9 certainly --

10 MS. HOUGH: I suspect that they would, they would
11 include access from, in both directions?

12 MR. HORNE: Oh, for sure. I think, I think what
13 Mr. Lenhart testified to earlier, that, that --

14 MR. BROWN: Let me interrupt one moment.

15 MR. HORNE: Okay.

16 MR. BROWN: Mr. Horne, I appreciate everything
17 you're trying to do to enlighten the opposition, but you're
18 not a witness and, as you know, an attorney can't testify.

19 MR. HORNE: That's true, sir.

20 MR. BROWN: Do you have any more witnesses so we
21 can conclude what we're doing today?

22 MR. HORNE: Yes, sir. I just, I just want -- this
23 will take three minutes. If Mr. SilberHoltz is on, I'm just
24 going to ask him one really, question or so. I think he's
25 with us.

1 MR. SILBERHOLTZ: There we go.

2 MR. HORNE: All right. He's going to, she's going
3 to swear. You're on, you're on mute.

4 MADAM EXAMINER: Good afternoon, Mr. SilberHoltz.
5 Do you swear or affirm under the penalties of perjury that
6 the testimony you shall give will be the truth and nothing
7 but the truth?

8 MR. SILBERHOLTZ: I so do swear.

9 MADAM EXAMINER: Thank you.

10 MR. HORNE: Can you state your name and business
11 address for the record please?

12 MR. SILBERHOLTZ: My name is Francis Metro
13 SilberHoltz. I am employed by, I work with Mr. Horne at the
14 Law Office of Shipley and Horne at 1101 Mercantile Lane,
15 Suite 400, Largo, Maryland.

16 MR. HORNE: Have you been accepted as an expert
17 land planner previously before the Zoning Hearing Examiner?

18 MR. SILBERHOLTZ: Yes, I have, sir.

19 MR. HORNE: And did you testify in this case
20 previously regarding your expertise with reference to the
21 rezoning of this subject property?

22 MR. SILBERHOLTZ: I did, extensively.

23 MR. HORNE: And are you, have you been present
24 virtually through the entire hearing here this morning, or
25 this afternoon?

1 MR. SILBERHOLTZ: Yes, sir, I certainly have.

2 MR. HORNE: And have you, you've heard all the
3 testimony both from the three individuals in opposition, as
4 well as the rebuttal testimony of the Applicant's team?

5 MR. SILBERHOLTZ: Yes, I have. That statement is
6 correct.

7 MR. HORNE: And is, do you have an opinion as to
8 whether your original opinion about the fact that his
9 property can be rezoned to MXT, as to whether any of the
10 testimony or information provided here changes your opinion
11 about your previous recommendation?

12 MR. SILBERHOLTZ: No, I, I do not. I do not feel
13 that it has changed my opinion at all, and my prior
14 testimony countered the arguments presented in the Staff's
15 Report, and I stand by the, my prior testimony, as well as
16 the written documentation related to this case.

17 MR. HORNE: And, and that written documentation
18 that you're referencing, it is a point-by-point analysis of
19 why you believe that the Applicant has met the criteria for
20 rezoning of this property, is that correct?

21 MR. SILBERHOLTZ: That's correct.

22 MR. HORNE: Okay. Thank you very much, Madam
23 Examiner, Mr. Brown. That's all I have.

24 MR. BROWN: No questions.

25 MADAM EXAMINER: Anybody? Okay. No questions for

1 Mr. SilberHoltz? Mr. Askins, go ahead.

2 MR. ASKINS: Okay. I, I see where we are is
3 essentially where these development things always go, the
4 philosophy is a developer wants to develop; and residents
5 want to be represented; and the question is whether the
6 developer must be bound to, to maximize their profits; to
7 ring as much as possible out; and to use remaining County
8 land for their objectives.

9 The opposition to that is less easily supported,
10 but it is no less important; and that is that opposition to
11 this continued build-out and deaffrication from the state
12 status, the state of being that one has had for a long time,
13 is in the interest of the residents. It is not in the
14 interest of the developers.

15 The only thing that a resident has standing
16 between him and development is zoning. The question is,
17 will the County respect the residents' desire for how the
18 County looks; or will they respect the pressure from
19 development? This is nothing new to say. I'm just showing
20 you we don't want it, the developer wants it, that's the
21 call. Thank you.

22 MADAM EXAMINER: Okay. Mr. Horne, do you have any
23 other witnesses?

24 MR. HORNE: That, that will be it, Madam Examiner.

25 MADAM EXAMINER: Okay. Then I'm prepared to hold

1 this record open until April 30th for, it was opposed to
2 submit any closing, legal argument; and I would ask that
3 you, well, if you give it to me, I'll make sure that Mr.
4 Horne and Mr. Brown get it as well. And then, Mr. Horne, I
5 am prepared to give you as late as the following Wednesday
6 to submit any further comments based on their comments only
7 that you may want to submit.

8 MR. HORNE: Thank you.

9 MR. CHAPMAN: May I ask you one question before we
10 go?

11 MADAM EXAMINER: It's Mr. Chapman.

12 MR. CHAPMAN: Yes. Just one question.

13 MADAM EXAMINER: Okay.

14 MR. CHAPMAN: Does the, the, the feelings of the
15 residents, does it have any legal standing whatsoever, the
16 feeling, you know, like the majority, if the residents that
17 live, actually live in the area, do, is that any legal
18 standing --

19 MADAM EXAMINER: Uh-huh.

20 MR. CHAPMAN: -- at all to affect the way the
21 developer, you know, whether it's passed, the zoning is
22 passed or not, is that a legal, there's no legal standing,
23 is it?

24 MADAM EXAMINER: Generally, zoning is not based on
25 the number of people that want it or don't want it.

1 MR. CHAPMAN: Right.

2 MADAM EXAMINER: I can't really give you any more
3 than that because I'm in the middle here --

4 MR. CHAPMAN: Right.

5 MADAM EXAMINER: -- and I'm calling the balls and
6 strikes, but I love to tell Mr. Brown, I think you can
7 contact Mr. Brown after this and he can give you a little
8 more --

9 MR. CHAPMAN: Right. Right.

10 MADAM EXAMINER: -- enlightenment on this topic.

11 MR. CHAPMAN: And let me ask you this. No, I
12 appreciate it, I appreciate it. You actually answered the
13 question, you know, because we --

14 MADAM EXAMINER: Well, there's criteria. What I
15 was trying to say is there's criteria that has to be met.

16 MR. CHAPMAN: Okay.

17 MADAM EXAMINER: I can't help you or Mr. Horne,
18 but Mr. Brown may be able to give you a little --

19 MR. CHAPMAN; Okay. I appreciate it. Thank you.

20 MADAM EXAMINER: Right, Mr. Brown? He's -- I know
21 you're there.

22 MR. BROWN: I put my email and my telephone number
23 in the chat, and then all of those persons who have a
24 question can give me a call. I've spoken to Ms. Hall on
25 several occasions and Mr. Chapman, you can do the same.

1 MADAM EXAMINER: Did you speak to Ms. Hough, too?

2 MR. BROWN: Yes, several times.

3 MADAM EXAMINER: Okay. All right. Then I thank
4 you all for being here and the record will close after I get
5 those documents. Thank you very much.

6 MR. CHAPMAN: Thank you. Thank you.

7 MR. ASKINS: Thank you.

8 MADAM EXAMINER: Mr. Askins --

9 MR. ASKINS: Yes, ma'am?

10 MADAM EXAMINER: -- we're trying to get a link for
11 you. It's sort of big, so we're going to figure out how,
12 but we will get that record to you.

13 MR. ASKINS: You have been most helpful.

14 MADAM EXAMINER: Thank you. Thank you.

15 MR. BROWN: Thank you.

16 MS. HOUGH: And would you also send that to me, as
17 well?

18 MADAM EXAMINER: Yes, Ms. Hough.

19 MS. HOUGH: I had a problem getting the same
20 document.

21 MADAM EXAMINER: Do you want it Mr. Chapman?

22 MR. CHAPMAN: Yes, thank you, I'd like to read it.

23 MADAM EXAMINER: Okay. I'll sent it to all three
24 of you. Thank you all so much.

25 MS. HOUGH: Thank you so much.

1 MR. CHAPMAN: Thank you.

2 MS. HOUGH: I really appreciate it.

3 MADAM EXAMINER: Oh, I got to wait for the -- the
4 hearing is over.

5 MS. HOUGH: Thank you.

6 MR. ASKINS: Goodbye.

7 (Whereupon, the hearing was concluded.)

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DEPOSITION SERVICES, INC., hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings before the Prince George's County Office of the Zoning Hearing Examiner in the matter of:

CAROZZA PROPERTY
Case No. A-10051

By:

A handwritten signature in cursive script, reading "Tracy Hahn", is written over a horizontal line.

Tracy Hahn, Transcriber