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PRINCE GEORGE'S COUNTY OFFICE OF ZONING HEARINGS

- - - - -x
In Re: :
RF East West Hyattsville, LLC : SF-4846
- - - - -x

Zoning Hearing
Hearing Examiner, MAURENE MCNEIL
Upper Marlboro, Maryland
August 3, 2022

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Hearing before MAURENE MCNEIL, HEARING

EXAMINER:

Pursuant to Notice, before Fatima Bah,
Notary Public in and for the State of Maryland

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A P P E A R A N C E S

ON BEHALF OF PRINCE GEORGE'S COUNTY OFFICE OF
ZONING HEARINGS:

MAUREEN MCNEIL, Hearing Examiner

ON BEHALF OF THE APPLICANT:

MATTHEW TEDESCO, ESQ.

McNAMEE HOSEA

6411 Ivy Lane, Suite 200

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1 P R O C E E D I N G S

2 HEARING EXAMINER: Okay. Good morning
3 everyone. I'm Maurene McNeil, I'll be the hearing
4 examiner today. it's August 3, 2022. We're here
5 on special exception 4846. It's a request to
6 build a gas station and an accompanying accessory
7 food or beverage store.

8 I'm going to do a little explaining on
9 the procedure right after we introduce the
10 attorneys because I've got a lot of emails and I'm
11 not sure if all of you have done one of our
12 hearings before. So if Counsel would identify
13 himself for the record?

14 MR. TEDESCO: Good morning, Madam
15 Examiner. For the record, Matthew Tedesco on
16 behalf of the Applicant.

17 HEARING EXAMINER: Okay. And usually we
18 also have Stan Brown, People Zoning Council, but
19 he explained that he had a conflict and he will
20 try to get in at some point.

21 Again, before we started, Mr. Tedesco
22 will do a brief opening S, I guess, to give you

1 all some idea of what's being requested.

2 If you're here in opposition to this
3 request, you have a right to question witnesses,
4 but this is a quasi-judicial hearing, meaning it's
5 not quite like a hearing before the Council or the
6 Planning Board, if you're talking about
7 legislation. We have to sort of follow rules of
8 evidence so the Applicant will go first, put on
9 their witness. If I have any questions I will ask
10 my questions, and then, if anyone in opposition
11 wants to ask a question -- and remember, it's a
12 question, it's not a time for you to talk about
13 what you want to say about the case.

14 Then, make sure you put in chat, if you
15 can, you all know the chat function. Put in chat
16 that I have questions of this witness, and
17 someone's going to be monitoring chat and let me
18 know, and then we will call you in order for your
19 questions.

20 The other thing is, although rules of
21 evidence are relaxed in this hearing I don't have
22 to hear duplicative evidence. I have to hear

1 relevant evidence, something pertaining to the
2 case. And I also ask that you be respectful of
3 each other's time so don't become argumentative or
4 anything, just ask the questions.

5 After the Applicant's case, then anyone
6 who opposes will be able to go forward. Having
7 said that, I also know that a few individuals had
8 contacted me prior to this hearing and let me know
9 that they need to speak early because they have
10 other things they must get to today. If those
11 individuals need to speak before the Applicant,
12 could you put it in chat now and if you can wait a
13 little while, which would be ideal, because it's
14 great to hear a little bit about what they're
15 planning, it helps you with your questions, or
16 your testimony. So if you can wait a little
17 while, but go into chat when it's really time for
18 us to interrupt the order and allow you to
19 testify.

20 I think that's about everything, except
21 this is being recorded again and there's going to
22 be a transcript, and folks can appeal to the

1 district council, and then to the Court. And for
2 that reason, let's not speak over each other.
3 Let's keep our mics off unless were speaking. If
4 for any reason your Internet goes out, you can
5 come back in on the same link.

6 And I think I covered everything, but if
7 not we'll be here to answer questions along the
8 way, as well.

9 And I see you, Mr. Clayton, so will
10 still let Mr. Tedesco start then.

11 Okay. I think that's it. Mr. Tedesco.

12 MR. TEDESCO: Thank you, Madam Examiner.
13 We have no objection if some of the citizens,
14 either for or against, because I think we have
15 both in this case, proceeding now if they want to
16 make their statements and then have the ability to
17 stick around or drop off at their convenience.

18 And understanding your instructions we
19 are ready and prepared to proceed, but if there
20 are any citizens that wish to state their
21 positions for the record and then drop off, we're
22 okay with going out of sequence to accommodate

1 that. But I'll -- excuse me, I'll defer to you
2 and your instructions if needed.

3 HEARING EXAMINER: Okay. The only thing
4 I would add to that, just before the citizens let
5 me know is that if you go now, this is it. You
6 don't get to stay on and say more later. So you
7 know, we have one bite at all of this. so anyone
8 that wants to go now -- ma'am, I don't see
9 everybody's name, so I do see someone that just
10 clicked on. Yes.

11 MS. NELMS: I'll go.

12 HEARING EXAMINER: If you'd just --
13 pardon me?

14 MS. NELMS: My name is Donna Nelms, at
15 1805 East West Highway, one house over from where
16 Royal Farm is planning to be built. So my
17 concern, I've been here --

18 HEARING EXAMINER: Wait, wait a second.
19 Ms. Nelms. If you could spell your name for the
20 record and then I'll have to swear you in.

21 MS. NELMS: N as in Nancy, E-L, M as in
22 Mary, S as in Sam.

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11

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

5 MS. NELMS: Yes.

6 HEARING EXAMINER: Okay. And repeat
7 your address again for us?

8 MS. NELMS: 1805 East West Highway.

9 HEARING EXAMINER: And --

10 MS. NELMS: I'm one house over.

11 HEARING EXAMINER: East West Highway
12 where?

13 MS. NELMS: Hyattsville, Maryland.

14 HEARING EXAMINER: Thank you, ma'am.
15 Go. Tell me what you want to tell me.

16 MS. NELMS: So I've been in the
17 neighborhood for over 20 years. So my concern is
18 mainly the traffic. Without Royal Farm coming we
19 already have disaster in this area of traffic
20 accidents. I've been subpoenaed for August the
21 8th to testify about an accident right here in
22 front of where you want to build Royal Farm.

1 Once, twice a week it's a major accident
2 where people are turning off of East West Highway
3 trying to go in or coming out. Also, we have the
4 bicycle rack where I see families renting those
5 bicycles. That will be a major concern.

6 But I'm really also concerned about the
7 insensitivity of whoever put that sign in the
8 playground back there. I'm an educator for
9 Prince George's County Schools. And if you want
10 to remove the playground, at least you could be
11 sensitive to children. To put a big old sign out
12 there and say, goodbye playground, is so
13 insensitive to children and parents.

14 And we always talk about there's a
15 children's crisis with all the stuff going on in
16 the city, the county, the state. We don't have a
17 children crisis. We have an adult crisis. And
18 this is part of it; more concerned about money and
19 politics than we do about our children. So before
20 this moves forward and I pray that it will not be
21 built here because we're already dealing with
22 enough accidents. And then, we live on this

1 little service road where we see everyday cars
2 jumping off of East West Highway and flying down
3 the service road. Neighbors cars have been hit.
4 I've been getting in my car, I have a young
5 daughter now driving, and it's so scary to step
6 out to get in your car with all the traffic going
7 on.

8 My last concern is people hanging out,
9 panhandlers hanging out there all night. You
10 know, that's a concern for me coming in and my
11 young adult daughter. So I hope you all will
12 reconsider. And I've done some homework for you
13 to try to reconsider. It's a K-Mart, a huge K-
14 Mart off of Sargent Road. Why don't you consider
15 building over there. This is not off of a major
16 highway.

17 Thank you.

18 HEARING EXAMINER: Thank you, Ms. Nelms.

19 Mr. Tedesco, do you have questions? I
20 just had one question about -- Ms. Nelms, good
21 morning. You referenced a sign on the playground.
22 I'm not sure what you're referring to. Do you

1 have any photos or information on the sign you're
2 regarding g-- regarding the playground?

3 MS. NELMS: Yes, my next door neighbor,
4 Alvarez is on. He has the picture and I think he
5 can pull it up. And Al, if you don't I'll look
6 through my phone, Al.

7 MR. TEDESCO: One other question, and I
8 can ask Mr. Alvarez too. Do you know who placed
9 that sign on the park's property?

10 MS. NELMS: We don't know. Maybe Mr. Al
11 can tell you because he and his wife walk through
12 the park every day and while he was walking he saw
13 it, so Al can speak more on that side.

14 MR. TEDESCO: Okay. No other questions.

15 HEARING EXAMINER: Okay. Thank you very
16 much, Ms. Nelms.

17 Does anyone else need to speak right
18 now?

19 MR. WATLING: If possible, I would like
20 to speak. This is Chris Watling.

21 HEARING EXAMINER: Chris Wattle (sic).

22 MR. WATLING: Watling. W-A-T-L-I-N-G.

1 HEARING EXAMINER: Okay. Sorry, Mr.
2 Watling, can you come on camera?

3 MR. WATLING: I'm trying to activate it
4 right now.

5 Okay. I think I have the setting
6 correct now. Okay. Can you see me? Okay.

7 HEARING EXAMINER: Yes. Mr. Watling do
8 you swear or affirm under the penalties of perjury
9 that the testimony you shall give will be the
10 truth and nothing but the truth?

11 MR. WATLING: Yes, I do.

12 HEARING EXAMINER: State your name and
13 address and then say what you want about the
14 application.

15 MR. WATLING: Okay. Thank you. My name
16 is Chris Watling, and my address is 7303 16th
17 Avenue, Tacoma Park, Maryland. My family and I
18 have lived in Carol Highlands, which is the
19 neighborhood just northwest of the proposed Royal
20 Farms location for 21 years. We use Sligo Creek
21 Trail several times per week. And I mainly wanted
22 to speak about my to concerns. I'm opposed to the

1 development of Royal Farms at that location and I
2 wanted to speak on two items that I find
3 concerning. One is pedestrian bicyclist safety
4 for users of the Sligo Creek Trail. And the other
5 is the destruction of the playground and the
6 detrimental effects on Park Lawn Park. And I'll
7 try to keep this brief.

8 The plans as described in the MNCPPC
9 staff report from May 22 and the also the PG
10 County Planning Department presentation from April
11 22 will make Sligo Creek Trail even more dangerous
12 for pedestrians and bicyclists that it presently
13 is. As most of us know Sligo Creek Trail runs
14 behind the proposed site of Royal Farms. It
15 receives heavy use from recreation and commuter
16 bikers, and ebikers, pedestrians and also
17 students, (inaudible 12:05) goers and families
18 going to and from Cesar Chavez Elementary school,
19 which is only a few hundred feet southeast of the
20 proposed location.

21 The plans for Royal Farms show an exit
22 in the southbound direction of Riggs Road,

1 immediately before a bus stop, and immediately
2 before the Riggs Road pedestrian crosswalk for the
3 Sligo Creek Trail.

4 The proposed Riggs Road entry and exit
5 for Royal Farms is approximately the same location
6 as the exiting one for that old Rite-Aid. The bus
7 stop is about 50 feet south of that entry/exit.
8 The Sligo Creek Trail pedestrian crosswalk is
9 another 40 feet south of there. Traffic volume is
10 already extremely heavy on Riggs Road at East West
11 Highway.

12 The existing crosswalk is treacherous.
13 A pedestrian or biker must rely on three lanes of
14 southbound traffic to hopefully stop at flashing
15 yellow lights, and wait on a small concrete island
16 then cross three northbound lanes whenever the
17 oncoming traffic allows. Imagine if you were
18 trying to cross Riggs Road just south of the Royal
19 Farms egress and a bus stops at the bus stop in
20 the right lane. Vehicles leaving Royal Farms and
21 vehicles heading south on Riggs Road will swerve
22 to the left to avoid the bus, directly into the

1 path of the Sligo Creek Trail crosswalk. Enabling
2 Royal Farms to build a gas station and convenience
3 store at this location will dramatically compound
4 the pedestrian and bicyclist safety issues at
5 Sligo Creek Trail. You should not -- I would hope
6 that would not be allowed.

7 If I have time, I would like to quickly
8 speak about the destruction of the playground.

9 HEARING EXAMINER: Okay.

10 MR. WATLING: As noted in the special
11 exception, a gas station cannot be built within
12 300 feet of a playground. The solution apparently
13 supported by MNCPPC and the County allows for the
14 destruction and removal of the existing
15 playground, per Item 5 on page 7 of the MNCPPC
16 staff report, the playground will be removed and
17 Royal Farms will provide the equivalent of the
18 cost of the playground in park improvements.

19 The improvements that Royal Farms
20 indicate they are going to make to the park land
21 are vague and minimal. From my take, it seems
22 like they're going to raze the playground, add a

1 couple of parking spaces, plant a few bushes, and
2 create to quote/unquote multipurpose fields. The
3 fields the reference on the diagram are too small
4 four regulation soccer league games, per FIFA.
5 And additionally, there's a large theme in pad in
6 the bigger of the two recreational fields
7 identified that is not referenced on the plans.

8 The concrete pad is approximately 25' x
9 30' and has a metal access hatch. This is an
10 access hatch of the WSSC sanitary sewer lines, and
11 that means this pad cannot be moved to accommodate
12 a recreational field.

13 To add further insult, MNCP -- MNCPC
14 recommends a black vinyl-clad chain-link fence in
15 between Royal Farms and the park land. These
16 types of fences -- well, one already exists there
17 between the old Rite-Aid and the playground and
18 they're extremely ugly.

19 For these reasons, and the reasons that
20 will be explained by my fellow community members
21 during this hearing, the approval of the Royal
22 Farms project at this location must move forward.

1 Thank you all for your time.

2 HEARING EXAMINER: Thank you. Mr.
3 Tedesco, any questions?

4 MR. TEDESCO: I have no questions.

5 HEARING EXAMINER: Okay. And somebody
6 is coming on camera, but are you -- do you want to
7 go now, sir? I don't know who you are. Maybe
8 he's just on camera. It's Ms. Antova?

9 MS. ANTOVA: Hi. Good morning. I think
10 Carlos (inaudible) will go first. Carlos
11 Manjarrez?

12 HEARING EXAMINER: Okay. Is Mr.
13 Manjarrez?

14 MR. MANJARREZ: Good morning, Madam
15 Examiner.

16 HEARING EXAMINER: Good morning. State
17 your -- do you swear or affirm under the penalties
18 of perjury that the testimony you shall give will
19 be the truth, and nothing but the truth?

20 MR. MANJARREZ: I do.

21 HEARING EXAMINER: Okay. State your
22 name and address for the record.

1 MR. MANJARREZ: My name is Carlos,
2 C-A-R-L-O-S, last name, M-A-N-J-A-R-R-E-Z. I
3 reside at 7340 16th Avenue, Tacoma Park, Maryland
4 20912. And I'm in the Carol Highlands
5 neighborhood, which is just northwest of the site.
6 Or north of the site.

7 HEARING EXAMINER: Okay. What would you
8 like to tell me about the application?

9 MR. MANJARREZ: Thank you. First, thank
10 you for the opportunity to speak today. Again, my
11 name is Carlos Manjarrez, I'm an 18 year resident
12 of the Carol Highlands neighborhood, and a member
13 of the Carol Highlands Neighborhood Association.
14 I'm here to address application SC-46 -- I'm
15 sorry, 4846 submitted by Royal Farms East West
16 Highway, LLC.

17 Today, I'll speak primarily about the
18 need, or lack thereof for yet another gas station
19 in the area that Royal Farms has targeted for
20 development. Many of us know that gas stations
21 are difficult businesses to run. The profit
22 margins on gasoline are low, gas station retailers

1 typically only receive a fraction of the price
2 listed on the sign, and after factoring overhead,
3 labor, utilities, insurance, credit card
4 transaction fees, the profit margin has winnowed
5 down to about five or seven cents on the gallon.

6 Of course, there's a lot of variance to
7 there, but one of the main factors that drives
8 profit, but one of the main factors that drives
9 profit margins is having a high concentration of
10 gas stations in a given market. The low margins
11 coupled with the volatility of the market means
12 that people come in and out of the gas station
13 retail business. But overall, there are more
14 people exiting than entering.

15 According to MarketWatch, a magazine of
16 the national petroleum news service, there are
17 about 115,000 gas stations in the U.S. today. But
18 that figure has dropped dramatically over the last
19 decades, down from 195,000 in 1995, and the drop
20 is expected to continue while consumers demand
21 more efficient vehicles and there's a growth in
22 the number of electronic vehicles on the road.

1 Now lots of different --

2 HEARING EXAMINER: Mr. Manjarrez, one
3 second.

4 MR. MANJARREZ: Yeah.

5 HEARING EXAMINER: You have not asked to
6 be recognized as an expert in market for gas
7 stations so am I assuming you just did some
8 research and you're reading from an article? And
9 if so, could you submit the article into this
10 record?

11 MR. MANJARREZ: Yes, I can submit the
12 references. My background, I have a PhD in local
13 economic development, and I teach urban planning
14 at the University of Maryland, College Park.

15 HEARING EXAMINER: Okay. But are you
16 asking that I recognize you as an expert in these
17 fields?

18 MR. MANJARREZ: No. I -- I can, but I
19 will bring --

20 HEARING EXAMINER: I mean, it's up to
21 you.

22 MR. MANJARREZ: Sure. Yes.

1 HEARING EXAMINER: Well then, but we
2 would need though, I would need resumes and Mr.
3 Tedesco would have an opportunity to voir dire
4 you.

5 MR. MANJARREZ: Sure. So --

6 HEARING EXAMINER: But, I mean, you have
7 a right to just continue to testify. I'm
8 listening to you, I just will give the weight of
9 an expert because, you know this is your
10 knowledge.

11 MR. MANJARREZ: I understand.

12 HEARING EXAMINER: So which is it? You
13 want to continue now or?

14 MR. MANJARREZ: Continue now, please.

15 HEARING EXAMINER: Okay. Go ahead.

16 MR. MANJARREZ: Thank you. There are
17 lots of different markers of gas station
18 volatility in our community alone. Gas stations
19 are bought and sold regularly, and sometimes
20 they're not sold at all. And the buildings that
21 go vacant, or they find another use. As of this
22 morning I checked Loopnet and there are nine gas

1 stations that are for sale in Prince Georges
2 County. One 12-pump gas station in Hyattsville is
3 offered for as little as \$140,000, which is a
4 fraction of the current housing price value in the
5 area.

6 What happens when gas stations aren't
7 sold? Unfortunately, in our community the
8 landscape is littered with the carcasses of old
9 gas stations. As a matter of a fact, there's a
10 defunct gas station immediately north of the site
11 that's proposed by Royal Farms, which is now being
12 used as a car stereo and window tinting business.

13 If you were to travel east on Ager Road,
14 about a mile from the site there are three defunct
15 gas stations. One is an eyesore that's not been
16 redeveloped for 18 years, the 18 years that I've
17 lived in the area and is sandwiched in between the
18 West Hyattsville Plaza station and the new Kaiser
19 Permanente West Hyattsville Medical Center.

20 The other two defunct gas stations are
21 in the northeast and southeast corners of Ager and
22 Hamilton. Today they are both small used-car

1 dealers, the type that load their parking lots to
2 the brim with old vehicles and have prices on the
3 windshield.

4 I'm not here to besmirch the merchants
5 and that have moved into these old gas stations.
6 Everybody is trying to make a buck and that's
7 fine. My point is that there aren't many good
8 uses for these old gas stations. More
9 disconcerting than that is the fact that we don't
10 know what, if anything, has been done with the old
11 tanks that lie beneath these old sites, or the
12 piping systems that are used to connect to them.

13 What does all of this mean for the Royal
14 Farms development? Allowing the development to
15 move forward has economic consequences in an
16 already saturated market. I would like to turn
17 attention to an exhibit that I have submitted for
18 the record. I've labeled that exhibit, Exhibit 1,
19 site map of gas stations within 1-1/2 miles of the
20 proposed site. This exhibit is a map of --

21 HEARING EXAMINER: Okay. Wait one
22 second.

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1 MR. MANJARREZ: Sorry.

2 HEARING EXAMINER: Ms. Poteet, do we
3 have that exhibit as well? And have we given it a
4 number?

5 MS. POTEET: And the name of the exhibit
6 was? I'm sorry.

7 MR. MANJARREZ: Site map of Gas --

8 HEARING EXAMINER: You can -- yeah, you
9 should answer, sir. Go ahead.

10 MR. MANJARREZ: Okay. Site map of gas
11 stations within 1/2 mile of the Royal Farms site.

12 MS. POTEET: I think so. Let me just
13 check to verify.

14 MR. MANJARREZ: Thank you.

15 HEARING EXAMINER: Okay. I believe it
16 was sent by email.

17 MS. POTEET: Uh-huh.

18 MR. MANJARREZ: That's correct.

19 HEARING EXAMINER: Maybe on Monday.

20 MR. MANJARREZ: I can resend it --

21 MS. POTEET: Yes, it's 83.

22 HEARING EXAMINER: Okay. Are you able

1 to pull it up for us, Ms. Poteet?

2 MR. MANJARREZ: Are you asking me, Madam
3 Examiner?

4 HEARING EXAMINER: No, Ms. Poteet. If
5 not then we'll --

6 MS. POTEET: Give me a second, please.

7 HEARING EXAMINER: Okay. And it will be
8 Exhibit 83. Give us a second.

9 Oh, Mr. Tedesco, you saw the exhibit?

10 MR. TEDESCO: Yes. It was provided
11 yesterday.

12 HEARING EXAMINER: Okay.

13 MR. MANJARREZ: Madam Examiner, I can
14 proceed without the use of the visual if that's
15 helpful for the hearing.

16 HEARING EXAMINER: Okay. Well, okay, if
17 you just want to testify and we'll see it soon.

18 MS. POTEET: It's --

19 HEARING EXAMINER: Oh.

20 MS. POTEET: It's up. I mean, I have it
21 Maurene if you'd like for me to show it?

22 HEARING EXAMINER: Yes, please show it

1 and then you can testify with it up, Mr.

2 Manjarrez.

3 MR. MANJARREZ: Okay. I'm sorry, I
4 don't see it on my screen. Okay.

5 HEARING EXAMINER: Can you make it a
6 little larger and then just let us know when you
7 want to go to the next page, sir.

8 MR. MANJARREZ: Sure. This is a two-
9 page exhibit, basically representing the same
10 information in two different ways. The first page
11 is simply a list of gas stations that are within
12 that 1-1/2 mile radius and the corresponding
13 address for each of the gas stations. Now, these
14 are all active gas stations, unlike the defunct
15 gas stations I referred to earlier.

16 If you turn to the next page, you can
17 see just a visual representation of all of these
18 same gas stations and they're -- they're simply
19 color coded by different companies showing -- to
20 make it a little bit easier to see the differences
21 of the different stations. I've identified the
22 proposed site right in the middle of this mix of

1 over 20 gas stations, basically to emphasize that
2 what we're doing here today, what we're talking
3 about today is not a neutral market decision.

4 Folding in another gas station does not
5 mean that all boats will rise in terms of the gas
6 station profits. We've got, you know, what's
7 likely to happen is it means that the slim profits
8 that existing stations have to manage now will be
9 further reduced when a shiny new gas station
10 enters into their market.

11 For independent owners, many of whom own
12 only one gas station, and this is from the
13 National Association of Convenience and Fuel
14 retailers, this is -- this could be devastating.
15 We're not -- unfortunately we're not seeing the
16 forest for the trees with this development. The
17 community does not need another gas station. The
18 long list of gas station owners do not need
19 another gas station to compete with.

20 And for those who can't compete, and are
21 unable to sell their old gas station in a flooded
22 market, we as residents have to have to bear the

1 burden of living with another defunct property
2 with potentially hazardous materials underground.
3 If we allow this development to move forward
4 (inaudible) that we do not really care what
5 happens to the current merchants and vendors in
6 our area.

7 We do not care about the potential
8 environmental degradation and the loss of
9 productive space. And we are okay rubber stamping
10 another potentially environmentally hazardous
11 business in our community.

12 There's just one last thing I would like
13 to add, and it has to do with health hazards of
14 clustering gas stations the way we have in this
15 area. In a recent paper published in 2021 in the
16 Journal of Environmental Science and Engineering,
17 researches from the Mailman School of Public
18 Health, at Columbia University, found that
19 clusters of gas stations have increased cancer
20 risks compared to single station because of the
21 cumulative emissions from the individual gas
22 stations.

1 Their study used an air quality
2 simulation model to identify benzyne levels
3 released to the atmosphere from single stations
4 and clusters of gas stations and estimated a
5 lifetime cancer risk to residents of the Albany,
6 New York area, where they conducted their study.
7 Again, this is in the Journal of Environmental
8 Health Science and Engineering, Volume 19, Number
9 1. It's from 2021.

10 For all of these reasons --

11 HEARING EXAMINER: Do you have a copy of
12 it, sir?

13 MR. MANJARREZ: I can send in a copy,
14 yes.

15 HEARING EXAMINER: Of the article?

16 MR. MANJARREZ: Yes.

17 HEARING EXAMINER: Okay. We'll leave
18 the record open for your article.

19 MR. MANJARREZ: Thank you very much.
20 For all those --

21 MR. TEDESCO: Madam Examiner, I would --
22 maybe it's premature but we need to have a date

1 definitive for these additional items.

2 HEARING EXAMINER: Oh, yes. Yeah. You
3 think you'd be able to do it within two weeks?

4 MR. MANJARREZ: I can do it within 48
5 hours.

6 MR. TEDESCO: I would request days, not
7 weeks, Madam Examiner.

8 HEARING EXAMINER: I hear you, but he
9 said he can do it in 48 hours. So he will be way
10 before the two weeks. Go ahead. Okay. So you
11 will send us a copy.

12 MR. MANJARREZ: Yes, ma'am.

13 HEARING EXAMINER: Thank you.

14 MR. MANJARREZ: In closing, for all of
15 these reasons I urge the committee to deny the
16 special exception request by Royal Farms.
17 Allowing this development to move forward will
18 cause irreparable harm to the community and will
19 send a very bad message about the way in which
20 Prince George's feels about existing businesses
21 and the type of businesses it would like to
22 attract in the future. Thank you very much for

1 the consideration of this testimony. That
2 concludes my testimony.

3 HEARING EXAMINER: Thank you. Ms.
4 Poteet, you can close Exhibit 83, unless Mr.
5 Tedesco, do you have any cross?

6 MR. TEDESCO: I do.

7 HEARING EXAMINER: And do you need
8 Exhibit 83?

9 MR. TEDESCO: She can leave it up if
10 it's all right, Your Honor.

11 HEARING EXAMINER: Okay.

12 MR. TEDESCO: I just have a few
13 questions.

14 HEARING EXAMINER: Okay. Go ahead.

15 MR. TEDESCO: I want to thank Mr.
16 Manjarrez for his testimony and certainly, Mr.
17 Manjarrez, please understand my role in this
18 hearing as the attorney for the Applicant, I just
19 need to preserve the record and ask questions
20 appropriately that are responsive to your
21 testimony and in no way mean to challenge or
22 anything like that with respect to your testimony,

1 but you rely predominantly on some reports and
2 studies for which we haven't seen a copy of,
3 correct?

4 MR. MANJARREZ: That's correct.

5 MR. TEDESCO: You have not independently
6 done any type of air quality or any type of
7 assessment nor could you since it's beyond your
8 scope of any type of experience regarding any
9 clustering of gas stations in this area? In this
10 particular area; is that correct?

11 MR. MANJARREZ: I've not done air
12 quality tests, I did compile the list of gas
13 stations that are clustered.

14 MR. TEDESCO: And your gas stations
15 include gas stations that are outside of the
16 jurisdiction of Prince George's County; is that
17 correct?

18 MR. MANJARREZ: That's correct.

19 MR. TEDESCO: And just one clarifying
20 question; in your exhibit you have the address of
21 3599 East West Highway listed twice, both in items
22 and 8. Are you implying that there's two gas
stations at the same address?

1 MR. MANJARREZ: I am not. That is
2 likely a mis -- an error on my part.

3 MR. TEDESCO: Okay. So this exhibit
4 you've submitted has gas stations outside of
5 Prince George's County and an error in it; is that
6 correct?

7 MR. MANJARREZ: It has gas stations
8 within a 1-1/2 mile radius of the proposed site,
9 some of which, a very few of which, are outside of
10 Prince George's County and --

11 MR. TEDESCO: And --

12 MR. MANJARREZ: -- you've identified
13 one --

14 MR. TEDESCO: Okay. Thank you. I think
15 you answered the question. I appreciate that.
16 With respect to the MarketWatch report that you
17 cited do you know how many of those stores that
18 you cited 100,000 or more are independently owned
19 or corporately owned?

20 MR. MANJARREZ: According to the same
21 site that I mentioned, about 51 percent are
22 independently owned.

1 MR. TEDESCO: And how many of the stores
2 that you testified to regarding that report that
3 have closed were independently or corporately
4 owned?

5 MR. MANJARREZ: I do not have an answer
6 to that question.

7 MR. TEDESCO: Okay. I think those are
8 all the questions I have, Madam Examiner. Thank
9 you.

10 HEARING EXAMINER: Thank you. Thank
11 you, sir.

12 MR. MANJARREZ: Thank you again for
13 allowing the testimony.

14 HEARING EXAMINER: Sure. So Ms. Antova,
15 do you still want to go now?

16 MS. ANTOVA: Yes, that would be great.
17 I appreciate it. Let me just turn my camera on.
18 Hi. Good morning everyone.

19 HEARING EXAMINER: Good morning. If you
20 wait one second, I need that exhibit to be taken
21 down because I can't see anybody.

22 MS. ANTOVA: Okay. Sure.

1 MR. TEDESCO: I think Ms. Poteet just
2 needs to stop sharing.

3 MS. POTEET: Here, got it.

4 HEARING EXAMINER: Thank you. Ms.
5 Antova, do you swear or affirm under the penalties
6 of perjury that the testimony you shall give will
7 be the truth, and nothing but the truth?

8 MS. ANTOVA: I do.

9 HEARING EXAMINER: Okay. State your
10 name and address for the record.

11 MS. ANTOVA: My name is Mila Antova, M-
12 I-L-A, last name Antova, A-N-T-O-V-A. And I live
13 at 7504 16th Avenue, Tacoma Park, Maryland 20912.

14 HEARING EXAMINER: Okay. What do you
15 want to tell me about the request?

16 MS. ANTOVA: Thank you so much for the
17 opportunity to voice my concerns about the
18 proposed Royal Farms food and beverage store and
19 gas station. My name is Mila Antova and I'm a
20 registered landscape architect in Maryland and the
21 District of Columbia.

22 I am here today on behalf of my children

1 and all the children in the neighborhood who
2 cannot speak up for themselves yet. As noted in
3 the memorandum issued --

4 MR. TEDESCO: Madam Examiner, I
5 apologize. I have to object to her ability to
6 testify on behalf of children in the neighborhood.
7 I'm sorry.

8 HEARING EXAMINER: You'll be sustained
9 but I took that to meant that she has concerns for
10 children only, not that she's speaking on behalf
11 of them. But you're correct. You're sustained.

12 Go ahead, Ms. Antova. You understood
13 that it's -- unless you're an attorney with some
14 actual children that are your clients -- so you're
15 speaking generically about concerns that may
16 address children, correct?

17 MS. ANTOVA: Correct. Yes. Thank you
18 for clarifying that.

19 HEARING EXAMINER: Okay. Go ahead.

20 MS. ANTOVA: As noted in the memorandum
21 issued in December -- on December 1, 2021, the
22 proposed food or beverage store is permitted in

1 the UCSC zone. However, the gas station is
2 permitted subject to the approval of special
3 exception. The special exception may be approved
4 if the proposed development is in conformance with
5 all the applicable requirements and tabulation of
6 the subtitle.

7 Some of those stood out to me. In
8 particular, number 4, the proposed use will not
9 adversely affect the health, safety, or welfare of
10 residents or workers in the area. And number 5,
11 the proposed use will not be detrimental to the
12 use of development of adjacent properties or the
13 general neighborhood.

14 Is this really what our neighborhood
15 needs? Another gas station? As Carlos pointed
16 out we're already flooded with gas stations in the
17 area. Is this how we move forward to achieve the
18 Prince George's 2025 region for context sensitive,
19 interior development? How it promote a
20 neighborhood walkability and connectivity by
21 adding another gas station? Is this reasonably
22 convenient or useful for our neighborhood?

1 Is this how we cut our carbon footprint
2 and now we address Prince George's County climate
3 action plan? According to the United Nations
4 climate change refers to long-term shifts in
5 temperatures and weather patterns. These shifts
6 may be natural but since 1800s human activities
7 have been the main driver of climate change,
8 primarily due to burning of fossils, like coal,
9 oil, and gas which produce heat trapping gasses.

10 One of the direct impacts of the intense
11 storms we have been witnessing in recent years is
12 flooding. And there's several different types of
13 flooding, including, but not limited to, river
14 flooding which occurs when the river capacity's
15 overwhelmed and its waters overflow into the
16 surrounding banks.

17 Groundwater flooding occurs when the
18 ground becomes saturated with water and stops
19 surface water rises to the surface or
20 infrastructures. I personally have not seen any
21 data on the groundwater for this project. Flash
22 flooding occurs when excessive amounts of water

1 cause rising water in a short period of time due
2 to one or more of the following; an overwhelmed
3 sewer system, (inaudible) drains, rapid snow melt,
4 dam or (inaudible) failure or a sudden release of
5 water.

6 The proposed gas station is very close
7 to Sligo Creek as we all know. And portions of
8 the southeast corner of the property are within
9 the 100 year flood plain. In fact, the proposed
10 underground gas tanks are very close to the 100
11 year flood plain and a small portion of the
12 underground stormwater facility is located within
13 the flood plain. The average 100 year flood plain
14 is projected to increase 45 percent by the year
15 2100 while the average damages from flooding are
16 predicted to increase by 750 million according
17 EPA.

18 Underground storage tanks surrounded by
19 flood water or saturated soil are subject to bion
20 (ph.) forces that could push the tanks upward and
21 release product in the environment. In addition,
22 floodwater can erode the soil and backfill

1 material or scour the soil that surrounds the
2 underground system, which could potentially lead
3 to release of product in the environment as well.

4 Only a month ago, on July 2, 2022 severe
5 thunderstorms in the area brought up seven inches
6 of rain in just a few hours. A stream on the
7 northwest branch of the Anacostia river shot up
8 six feet in one hour near Hyattsville and the
9 stream near (indiscernible) 39:21 caused a rise of
10 7.2 feet in 50 minutes. The East West Highway was
11 closed as a result and Sligo Creek overflowed.

12 7.2 feet in 50 minutes, just think about
13 it. Do you want to take on the risk and
14 liability? Do you want and have the financial
15 resources to deal with the environmental
16 implications when this happens? Is this how we
17 protect and promote the health, safety, morals,
18 comfort, convenience and welfare of the present
19 and future inhabitants of the County? Is this how
20 we promote the conservation, creation and
21 expansion of communities to be developed with
22 adequate public facilities?

1 Do you have the consciousness to look in
2 our eyes and tell us that this is safe? Is it
3 safe for our children?

4 Thank you very much for your time and I
5 fully hope you take this testimony in
6 consideration.

7 HEARING EXAMINER: Thank you.

8 MS. ANTOVA: I'm happy to answer any
9 questions.

10 HEARING EXAMINER: Okay. Mr. Tedesco,
11 do you have any questions?

12 MR. TEDESCO: Yes. Ms. Antova, thank
13 you for your testimony. Are you a licensed
14 professional engineer?

15 MS. ANTOVA: I'm a licensed landscape
16 architect.

17 MR. TEDESCO: So you have an LA, not a
18 PE?

19 MS. ANTOVA: That is correct.

20 MR. TEDESCO: And so your testimony that
21 you just provided was not as an expert in the area
22 of civil engineering; is that correct?

1 MS. ANTOVA: Not civil engineering.

2 Again, I'm a registered landscape architect.

3 MR. TEDESCO: Okay. And do landscape
4 architects design stormwater (inaudible)?

5 MS. ANTOVA: Yes, we assist in the
6 designing of stormwater. Collaborate with civil
7 engineers. They --

8 MR. TEDESCO: (inaudible).

9 MS. ANTOVA: Based on my knowledge,
10 stormwater management facilities should be signed
11 by a licensed landscape architect, the planting
12 for stormwater facilities.

13 MR. TEDESCO: The plantings associated
14 with micro bio retentions. But do you get
15 involved in the design of stormwater management
16 facilities, the underground systems and/or the
17 flood plain and/or the cross sections and mapping
18 of those as an LA?

19 MS. ANTOVA: Again, we collaborate with
20 civil engineers. It's a broad area that requires
21 a lot of knowledge.

22 MR. TEDESCO: And how much --

1 MS. ANTOVA: It's a collaboration
2 process.

3 MR. TEDESCO: Okay. Thank you. I think
4 you've answered the question. How much stormwater
5 management facilities exist on the property
6 currently?

7 MS. ANTOVA: There are two, the one
8 underground stormwater facility on -- in the
9 southeast corner --

10 MR. TEDESCO: No, no. That's --

11 MS. ANTOVA: And (inaudible).

12 MR. TEDESCO: How many currently exist?

13 MS. ANTOVA: Oh, currently, there's
14 none.

15 MR. TEDESCO: There's no stormwater
16 management facilities currently on the property,
17 correct?

18 MS. ANTOVA: That is correct, yes.

19 MR. TEDESCO: How much -- and how much
20 landscaping exists within the four corners of the
21 property?

22 MS. ANTOVA: I think close to zero.

1 MR. TEDESCO: So the site from your
2 knowledge is 100 percent impervious?

3 MS. ANTOVA: I cannot recall the corner
4 between the existing (indiscernible) 42:25 and the
5 neighboring property to the -- yeah, I think there
6 might be some lawn maybe, I'm not sure. Actually,
7 let me pull up the plans.

8 No, according to the diagram there are
9 no plants, no vegetation, nor any stormwater
10 facilities.

11 MR. TEDESCO: So as of --

12 MS. ANTOVA: There is a wall, a
13 retaining wall and there is some existing
14 beautiful sycamore tree which I believe the
15 proposal is to remove the retaining wall; is that
16 correct?

17 MR. TEDESCO: I'm not in the business of
18 answering questions. But I believe the tree
19 you're referencing is not on the subject property,
20 if you're looking at the site plan. I think your
21 answer was correct with respect to the -- that the
22 property is 100 percent impervious.

1 As an LA, where are you currently
2 employed?

3 MS. ANTOVA: I work for Moody Graham.
4 I'm a principal at Moody Graham landscape
5 architecture firm in D.C.

6 MR. TEDESCO: And you would admit, or
7 agree -- you would agree with me that the
8 inclusion of underground and micro bio
9 retention -- underground facilities and micro bio
10 retention facilities will improve stormwater
11 runoff on this site that currently has no existing
12 stormwater, correct? You would agree with that?

13 MS. ANTOVA: I would agree that it would
14 meet the Prince George's requirement for
15 stormwater.

16 MR. TEDESCO: Right. And --

17 MS. ANTOVA: And --

18 MR. TEDESCO: -- you would also agree
19 with me that comparatively to a site that is 100
20 percent impervious and has no existing stormwater
21 management that the inclusion of modern stormwater
22 management practices that you just testified to

1 meet the Prince George's County requirements would
2 be an improvement, correct?

3 MS. ANTOVA: It would be an improvement,
4 that is correct.

5 MR. TEDESCO: Thank you. I have no more
6 question.

7 MS. ANTOVA: However they trench drain

8 MR. TEDESCO: Thank you.

9 MS. ANTOVA: You're welcome.

10 MR. TEDESCO: Thank you.

11 HEARING EXAMINER: Okay. Ms. Antova --
12 okay she's not --

13 MS. ANTOVA: Sorry.

14 HEARING EXAMINER: Did you have any
15 further direct based on the cross examination? I
16 wanted to allow you to finish your sentence.

17 MS. ANTOVA: I -- I'm not sure if this
18 is allowed. I just wanted to clarify; it sounds
19 like the proposed retaining wall is to be removed.
20 I did not see a cross-section between the stream
21 and the proposed project. So it's not clear the
22 removal of the retaining wall if I read the plans

1 correctly, would mean that the existing sycamore
2 tree, which is outside of the property line would
3 be affected. And it's a large tree and there are
4 several other trees. So I'm not sure if I'm
5 allowed to ask questions in that --

6 HEARING EXAMINER: And do you have to
7 leave? You're not allowed to ask questions now.
8 But -- we -- I heard the testimony so your concern
9 about a retaining wall because if it's removed it
10 may affect a sycamore tree that's offsite?

11 MS. ANTOVA: Yes.

12 HEARING EXAMINER: Okay.

13 MS. ANTOVA: And the flow would be -- I
14 mean right now this wall is -- I didn't really
15 measure it but it's at least seven feet, I would
16 say, if not more. It changes because the grade
17 changes on the Sligo Creek side.

18 HEARING EXAMINER: Okay. Thank you.

19 Okay. Let's just admit the Examiner's
20 not techy. So you all don't see me, I'm just now
21 realizing. And then this thing popped up asking
22 me to share. So I'm going to try to share but if

1 I blow up everything then we're going to have to
2 sign back in.

3 Okay. Here we go. Anything happening?

4 All right. Okay. Thank you, ma'am.

5 Are we ready to start with Mr. Tedesco?

6 MR. TEDESCO: I think there was one

7 more --

8 HEARING EXAMINER: One more.

9 MR. TEDESCO: -- witness, one more

10 citizen, Ms. Agnes Brown.

11 HEARING EXAMINER: Ms. Brown?

12 UNIDENTIFIED SPEAKER: Where are you at
13 on the case, yet? We're going to (inaudible) here
14 for the camera.

15 MS. BROWN: Okay.

16 UNIDENTIFIED SPEAKER: Did you see it?

17 MS. BROWN: I'm Agnes Brown.

18 HEARING EXAMINER: Hi, Ms. Brown, do you
19 swear or affirm under the penalties of perjury
20 that the testimony you shall give will be the
21 truth and nothing but the truth?

22 MS. BROWN: Yes.

1 HEARING EXAMINER: Okay. Tell me your
2 name and address, and then whatever you want to
3 talk about.

4 MS. BROWN: Okay.

5 HEARING EXAMINER: Pertaining to this
6 application.

7 MS. BROWN: Okay. My name is Agnes
8 Brown, and I reside at 1007 Higgins Way,
9 Hyattsville, Maryland 20782. And it's within a
10 complex called Evermay Village. And I reside
11 about a mile from this location that you're
12 proposing a Royal Farms. And I have listened to
13 everybody's testimony but also on the flip side, I
14 have been here for 27 years and I have been
15 president of my homeowner's association for 25
16 years. And we have 71 units and since living
17 here we have not had too many establishments in
18 our community where we could sit down, relax.

19 Now, I did get an opportunity to go look
20 at a couple of the Royal Farms and you know, I
21 like the seating, the atmosphere. I like having
22 the variety of foods, like, health foods. All

1 different types of foods. It's like a one-stop
2 store and so I do -- I would like to see some type
3 of establishment of that kind in our neighborhood.

4 Right now, we tend to always go to
5 Montgomery County to spend our money, or D.C.
6 because I'm right on the line of D.C., right on
7 the line of Tacoma Park, which is Montgomery
8 County. So I am truly in favor of us having an
9 establishment here. I do understand that there's
10 a lot of traffic, but that space has been sitting
11 there empty with maybe only one -- it started with
12 it being pretty full and watched it become empty.

13 And so just for the people in my
14 community and as a resident of this area I am for
15 having an establishment down on East West Highway.

16 HEARING EXAMINER: Okay. Mr. Tedesco,
17 do you have any questions?

18 MR. TEDESCO: No questions, Madam
19 Examiner.

20 HEARING EXAMINER: Okay. Thank you, Ms.
21 Brown.

22 MR. TEDESCO: Madam Examiner --

1 MS. BROWN: Also, may I be excused? In
2 about an hour I have another meeting.

3 HEARING EXAMINER: You may leave
4 whenever you like, but we -- you've already
5 testified so at this point --

6 MS. BROWN: Okay. Thank you.

7 MR. TEDESCO: Thank you, Ms. Brown.

8 Madam Examiner, Mr. Wilpers is put a
9 question in chat regarding how long my testimony
10 is. As you know, I will not be testifying but we
11 do have five witnesses that will be testifying.
12 He needs to leave at 11:00 or 11:15. It will
13 absolutely extend beyond that so I would, again,
14 defer to allow Mr. Wilpers to provide his
15 testimony so that he can accommodate the rest of
16 his schedule and I think at that point we'll be
17 ready to proceed.

18 HEARING EXAMINER: Mr. Clayton says he
19 has to leave as well.

20 MR. TEDESCO: Oh, and I see Mr. Clayton
21 made the same comment. So I'm happy to continue
22 to defer to --

1 HEARING EXAMINER: Where is Mr. Wilbers
2 (sic)?

3 MR. TEDESCO: Wilpers.

4 HEARING EXAMINER: I don't see him, but
5 Mr. Wilpers would you like to testify?

6 MR. WILPERS: Yes.

7 HEARING EXAMINER: Can you come on
8 camera?

9 MR. WILPERS: How's that?

10 HEARING EXAMINER: That is great. Do
11 you swear or affirm under the penalties of perjury
12 that the testimony you shall give will be the
13 truth and nothing but the truth?

14 MR. WILPERS: I do.

15 HEARING EXAMINER: Okay. Just state
16 your name and address and then tell me what you
17 want to about this application.

18 MR. WILPERS: Right-o. Michael Wilpers
19 is my name. 907 Maplewood Avenue, Tacoma Park,
20 Maryland 20912. Actually I'm in Silver Spring,
21 but the post office insists on calling it Tacoma
22 Park.

1 HEARING EXAMINER: Okay. What would you
2 like to tell me?

3 MR. WILPERS: All right. My
4 presentation's about 15 minutes. I am the past
5 president -- a past president and currently chair
6 of the Natural History Committee of the Friends of
7 Sligo Creek. I'm testifying on behalf of the
8 board of directors. I hope that's okay, Mr.
9 Tedesco, to say that.

10 MR. TEDESCO: Well, if Mr. Brown were
11 here --

12 HEARING EXAMINER: No wait one second,
13 sir. Do you have something from the board of
14 directors indicating that they have voted to allow
15 you to speak on their behalf?

16 MR. WILPERS: I can provide that.

17 HEARING EXAMINER: Well, you need to
18 provide it before the testimony though.

19 MR. WILPERS: I see. Let me just -- let
20 me just present as the chair of natural history
21 and as past president.

22 HEARING EXAMINER: Okay. And then we're

1 going to leave the record open if you can get some
2 type of document saying the testimony you gave
3 today that they would adopt it.

4 MR. WILPERS: Great.

5 HEARING EXAMINER: And Mr. Tedesco would
6 probably argue with me if I give you more than a
7 week. Do you think you can do it in a week?

8 MR. WILPERS: Yes. It's all been
9 reviewed by them, but they -- I don't have a
10 written -- but I will certainly get.

11 MR. TEDESCO: I'm just going to note --
12 Madam Examiner, forgive me, but I'm just going to
13 note my objection for that, just for the record.
14 I think Mr. Wilpers, given the current status,
15 should only be permitted to testify in his
16 individual capacity and not on behalf of any
17 agencies or entities, notwithstanding your ability
18 to supplement the record after the fact.

19 I won't have a chance to question him on
20 those documents and there's no authenticity with
21 respect to indicating his testimony here today is
22 consistent with what they've authorized him to

1 testify to after the fact. It seems loaded so I
2 will just note my objection for the record.

3 HEARING EXAMINER: Okay. And I wasn't
4 clear. Today he's testifying on his own behalf.
5 All I was allowing is because this is streamed and
6 they'd have the opportunity to see his testimony,
7 if they wanted to submit something that clearly
8 stated that they agreed with that testimony. And
9 they can't add any more testimony. I won't allow
10 it. It has to be that limited.

11 And if you want to do it, Mr. Wilpers,
12 your testimony alone is sufficient, but.

13 MR. WILPERS: Okay. Well, I am the
14 chair of natural history that can be verified by
15 looking at our website.

16 HEARING EXAMINER: Okay.

17 MR. WILPERS: Friends of Sligo Creek dot
18 org.

19 HEARING EXAMINER: Okay. Go ahead, sir.

20 MR. WILPERS: We greatly appreciate this
21 opportunity to weigh in on the Royal Farms
22 proposal, adjacent to Sligo Creek and Parklawn

1 Park. We are opposed to the proposal and believe
2 that a better match for this site should be
3 sought. I will address four dangers posed to the
4 creek and other habitats in Parklawn Park with
5 regards to stormwater, riparian forest buffer, air
6 pollution, and fish habitat.

7 I earned my bachelor's degree in
8 molecular biology at the University of Wisconsin,
9 Madison and then served as a staff science writer
10 at the university and later for the International
11 Medical News Group. I was the technical editor at
12 the Wisconsin Department of Natural Resources for
13 implementing of the Clean Air Act. In 2010 I
14 received my certificate in natural history field
15 studies from the Audubon Naturalist Society.

16 I have served on the board of FOSC from
17 2008 to 2010 and as president from 2010 to 2013.
18 The Friends of Sligo Creek was founded in 2002 and
19 currently has more than 1,800 members. Our
20 mission is the protection, improvement and
21 appreciation of the ecological health of Sligo
22 Creek and its surrounding watershed. We fulfill

1 our mission through trash cleanups, non-native
2 invasive plant removals, stormwater management,
3 water quality testing, natural history programs
4 and advocacy.

5 Our committee chairs have received
6 awards from Montgomery County for their work in
7 non-native invasive plants, and stormwater. For
8 our 10th anniversary, Montgomery Parks recognized
9 FOSC for, "Untiring dedication to conservation and
10 stewardship of the natural resources in Sligo
11 Creek Park." In Prince George's County, FOSC
12 initiated a joint project with Pepco in 2008 to
13 maintain the power line corridor adjacent to Sligo
14 Creek as a 17 acre wildlife pollinatory meadow,
15 which also supports several bird species that are
16 in decline state wide.

17 The winding trail through the meadow is
18 frequently enjoyed by neighbors, and especially
19 their dogs. The meadow project has been certified
20 every other year by the Wildlife Habitat Council,
21 a national organization. In recent years we have
22 collaborated on this valuable project with the

1 Carol Highlands Neighborhood Association in
2 Chillum.

3 Sligo Creek begins its eight-mile
4 journey in Kemp Mill and transverses Sligo
5 Creek -- sorry, transverses Silver Spring, Tacoma
6 Park and Chillum before merging with the northwest
7 branch of the Anacostia near Chillum Community
8 Park. Along the way Sligo Creek passes directly
9 behind the proposed site for Royal Farms. In
10 fact, the creek's precious waters flow just 100
11 feet from the south border of the property.

12 The Royal Farms projects threatens to
13 adversely impact the creek and surrounding
14 wildlife habitats and the opportunity for park
15 users to enjoy its birds, butterflies, foxes, fish
16 and cottontail rabbits.

17 Our first area of concern is stormwater,
18 a serious challenge in all areas like ours where
19 so much of the land surface is covered by
20 impervious surface. Since roads, roofs, parking
21 lots and sidewalks can't absorb rainwater it
22 rushes at high speed and high temperature across

1 polluted surfaces into our creeks where it
2 deposits chemicals and sediments and gouges out
3 the streambanks all to the detriment of wildlife.

4 The current proposal does add two
5 stormwater installations, but their ability to
6 handle high impact storms doesn't seem to be
7 described in the available documents. Also
8 missing are the crucial cross-section views the
9 would allow us to see where the outfall pipes for
10 each stormwater feature would send overflow water
11 in high rain events.

12 The building's expansive roof should
13 certainly be designed as a green roof either for
14 solar energy collection or vegetation.

15 Lastly, a sensible development of this
16 site should greatly reduce, rather than maintain
17 the existing vast expanse of uninterrupted
18 pavement and rooftop. The Royal Farms plan does
19 add a narrow perimeter of trees but no vegetation
20 to the interior of the parking area, something
21 that is required by some jurisdictions. A good
22 parking lot ordinance mandates landscape islands

1 including -- each of which should include one
2 shade tree and Royal Farms should follow suit.

3 In sum, to provide modern stormwater
4 management the county should seek a developer who
5 brings much more green infrastructure to the site
6 also that the creek habitat is protected as much
7 as possible.

8 A second and related reason we oppose
9 the proposal is the very narrow area behind the
10 site for trees and shrubs to act as a buffer
11 against rainwater runoff with all its pollution
12 and sediments. The Chesapeake Bay program in its
13 guide on riparian buffers, that is streamside
14 woodlands, notes that the more degraded a
15 watershed is the more it consists of roads and
16 buildings, the more important the riparian buffer
17 becomes for absorbing stormwater runoff, chemical
18 pollutants and sediment.

19 The guide points out that wider buffers
20 are recommended for urbanized areas compared to
21 rural ones because of the greater need to absorb
22 harmful inputs that can enter our streams and

1 destabilize the stream beds. Currently, the
2 narrow strip of parkland between the site and the
3 creek is landscaped mostly with turf grass and a
4 few shade trees. The guide reports that a dense
5 growth of trees and shrubs is 15 times more
6 effective than turf grass at absorbing stormwater
7 pollutants and sediments.

8 The single ring of trees that Royal Farm
9 produces at the south edge of the site is a start,
10 but will hardly compensate for the shortage of
11 woody vegetation overall. The proposed, "20 foot
12 landscaped buffer yard," is not described in the
13 proposal and so it's impossible for us to
14 evaluate. In compensation for removing the
15 playground in Parkland Park Royal Farms has,
16 "Proffered to make improvements," to the entire
17 park. If the Applicant's proposal is approved
18 these commitments should be made explicit and
19 dramatically expanded.

20 They should guaranteed that the full
21 width of the area between Royal Farms and the
22 creek is planted with a true buffer of trees and

1 shrubs to the maximum degree that the paved trail
2 will allow. The County should also require a
3 widening of the entire forest buffer along the
4 creek from Riggs to East West Highway even though
5 it will mean a slight narrowing of the playing
6 field which is already smaller than a regulation
7 soccer field.

8 The plan for an "auxiliary playing
9 field," behind the residential properties should
10 instead be forested to increase an additional
11 buffer against runoff from East West Highway while
12 also providing privacy for the adjacent
13 homeowners.

14 A third serious issue was air pollution
15 for both humans and wildlife. The gas station's
16 proximity to the creek and the heavily used
17 hiker/biker trail will mean greatly elevated
18 exposures to invisible toxic fumes released in the
19 ordinary course of gas station operations. These
20 gases include benzyne, a known carcinogen.
21 In addition to its spread as a gas,
22 benzyne is also deposited by snow and rain on

1 soil, plants and creek water providing another
2 avenue by which wildlife can be subjected to its
3 toxic effects which have been demonstrated so far
4 on insects and mammals.

5 For these reasons many jurisdiction
6 including Prince George's County impose a minimum
7 distance of 300 feet between gas stations and
8 natural areas or gathering places, though
9 jurisdictions differ on their list of such places.
10 The County's code pertains only to, "a school,
11 outdoor playground, library or hospital." The
12 Royal Farms proposal avoids this requirement by
13 offering to destroy the outdoor playground in
14 Parklawn.

15 Fortunately, for Royal Farms, but
16 definitely so for residents and wildlife, the
17 County's prohibition does not apply to parks,
18 which many jurisdictions do include. The
19 ordinance allows gas stations near its parks even
20 when they include outdoor play areas such as lawn-
21 like grassy fields which are promoted on the
22 County websites.

1 The distance from the proposed gas
2 station to the nearest open grassy area is the
3 southwest corner of the site is only about 285
4 feet. The paved trail also traversed by children
5 is less than 100 feet from the gas pumps. The
6 Parklawn recreation building is slightly further
7 at 340 feet, which is hardly reassuring for those
8 who rent the space for events.

9 Making matters worse a 200 -- sorry, a
10 2018 study conducted by the Columbia University
11 School of Public Health throws serious doubt on
12 the effectiveness of the 300 foot requirement so
13 commonly used. The study shows the toxic vapors
14 released from gas stations are, "10 times higher
15 than estimates used in current set-back
16 regulations that determine how close schools,
17 playgrounds, and parks can be situated."

18 The study shows that the 300 foot
19 distance is really inadequate to protect people
20 from benzyne. If a Royal Farms gas station is
21 allowed here it would not be unreasonable for
22 parks to feel obligated to install signage along

1 the paved trail and next to play areas warning
2 high benzyne zone.

3 Sadly, such signs would be
4 unintelligible to wildlife who would suffer the
5 consequences. In Montgomery County the code
6 requires new gas stations that sell high
7 quantities of gas to be located at least 500 feet
8 from any, "dwelling unit, public or private
9 school, park, playground, daycare center, any
10 outdoor area, specific institutional or recreation
11 and entertainment use, or any wetland, stream,
12 river or flood plain."

13 Since public amenities in Parklawn as
14 well as Sligo Creek itself are closer than 300
15 feet, what's shown to be inadequate, the gas
16 station should be disqualified for approval.
17 Residents of Prince George's County and the
18 wildlife in its parks deserve as much protection
19 from airborne carcinogens as Montgomery County
20 provides. We believe this is a question of
21 environmental justice.

22 A fourth and final reason to oppose this

1 development on environmental grounds is so that
2 the County doesn't interfere with its own
3 ambitious project to enable migratory fish to
4 return to their historic spawning grounds. This
5 project in which the County is investing more than
6 \$17 million will be carried out by the Army Corp
7 of Engineers in cooperation with the Park Planning
8 and Development Division, and the County
9 Department of the Environment pursuant to the
10 Anacostia River Watershed Restoration Plan, a
11 multi-agency endeavor.

12 By removing blockages to fish, this
13 exciting project will reopen four miles of streams
14 to migratory river herring and alewife who travel
15 from the Atlantic ocean up small streams in the
16 mid-Atlantic to spawn every spring.

17 In Chillum the Corp will remove fish
18 blockages from more than 2,000 feet of lower Sligo
19 from its southern end up to Balfour Drive. That
20 is about halfway to Riggs Road. With these
21 barriers gone our migratory fish should once again
22 be able to utilize the full extent of their

1 traditional spawning grounds in Sligo which reach
2 the western edge of the coastal plain at Carol
3 Highlands.

4 Working against this tremendous effort,
5 the Royal Farms proposal risks creating a
6 bottleneck in the creek by worsening an already
7 poor habitat through polluted stormwater and
8 overly narrow enforce buffer and pollution from
9 benzene and other toxic gases. The migratory
10 fish may find themselves in trouble when they
11 encounter these degraded conditions, discouraging
12 them from reaching the upper extent of their
13 spawning grounds.

14 The barrier removal in Sligo is ranked
15 among the top five priorities of all such projects
16 by the Metropolitan Washington Council of
17 governments. The county is currently slated to
18 cover half of the \$34 million dollar cost for
19 removing all the fish barriers in the Anacostia
20 watershed. It would be fiscally irresponsible and
21 environmentally tragic if a new gas station along
22 Sligo is allowed to undermine this ambitious

1 effort to return migratory fish to their home
2 spawning grounds in Sligo Creek.

3 In sum, the proposed development by
4 Royal Farms is a very poor for this site in terms
5 of the inevitable environ teal damage caused by
6 its proximity to Sligo Creek and Parklawn Park.
7 And of the four reasons I've mentioned are
8 environmental justice concerns and should be
9 enough to disqualify the Royal Farms proposal.

10 To reduce stormwater impacts to the
11 creek the County should seek a developer who will
12 dramatically decrease the 100 percent impervious
13 surface through tree islands and a green roof. To
14 prevent toxic benzyne fumes from affecting people
15 and wildlife the County should eliminate a gas
16 station as an option for any proposal. And to
17 avoid undercutting the County's important
18 investment in enhancing fish habitat the County
19 should look for a developer who will advance,
20 rather than retreat from the goals of a healthier
21 Anacostia watershed for people and wildlife alike.

22 I'm happy to provide sources for the

1 information in my testimony, which are listed,
2 actually at the bottom of the written copy I just
3 submitted. Thanks again for the opportunity to
4 comment on this proposal.

5 HEARING EXAMINER: Thank you. If you
6 would like us to see the sources, please submit
7 them within the next week. Okay? If you can.

8 MR. WILPERS: They are already
9 submitted. At the bottom of the written
10 testimony.

11 HEARING EXAMINER: I thought just the
12 cite was there. Did you give me the source, if
13 you had copies?

14 MR. WILPERS: Oh, you mean, you --
15 they're -- they're weblinks to articles, papers --

16 HEARING EXAMINER: Okay.

17 MR. WILPERS: Is that enough or should I
18 submit the backup as, you know, documents rather
19 than links? Because links can break of course.

20 HEARING EXAMINER: I can't be your
21 attorney.

22 MR. WILPERS: Okay.

1 HEARING EXAMINER: So -- and I wouldn't
2 want you to submit more than what you testified
3 to. So --

4 MR. WILPERS: I see.

5 HEARING EXAMINER: I leave it up to you
6 for now. If you get a chance you might want to
7 email People's Zoning Council who's not here. His
8 name is Stan Brown. I think he's in the emails
9 that you're a part of. If not you can ask us for
10 the email and he may be able to give you more
11 information. Okay? but it's up to you what you
12 submit. But again, it should be tied to what you
13 testified about, not additional.

14 Mr. Tedesco, do you have any questions
15 of this witness?

16 MR. TEDESCO: Just a couple. Thank you,
17 Mr. Wilpers, for your testimony.

18 You would agree that the property's not
19 in the Chesapeake Bay critical area; is that
20 correct?

21 MR. WILPERS: I'm not familiar with that
22 designation, no.

1 MR. TEDESCO: Okay. You testified to
2 with respect to landscaping. Did you review the
3 Prince George's County landscape manual and
4 determine whether you believed the site's in
5 conformance or not in conformance with landscape
6 manual requirements?

7 MR. WILPERS: No, but I'd be happy to.

8 MR. TEDESCO: Your indulgence, Madam
9 Examiner.

10 HEARING EXAMINER: Sure.

11 MR. TEDESCO: You also referenced the
12 benzyne and health study, I think you said from
13 2018, do you know from that study the stations
14 that were studied, the particulars of those
15 stations if they were old stations, new stations?
16 Which stations at all were studied?

17 MR. WILPERS: (inaudible)

18 MR. TEDESCO: Or are you just providing
19 the conclusions of the study without knowing --

20 MR. WILPERS: Yes, I'm providing the
21 conclusions. I believe a similar study was
22 referenced earlier by the urban planner. A

1 similar study from three years later and from what
2 he said it sounded to me like they were using the
3 same data because it was from two cities. I think
4 he mentioned Albany and another. They used two
5 cities but I have only access to the conclusions.

6 MR. TEDESCO: Yeah. So you really don't
7 know? You're assuming?

8 MR. WILPERS: I'm assuming that there is
9 a -- that the results that they found are
10 applicable to the situation that we're talking
11 about here.

12 MR. TEDESCO: Okay. No further
13 questions.

14 HEARING EXAMINER: Okay. Thank you.
15 And someone else wanted to go. Mr.
16 Clayton.

17 MR. CLAYTON: Yes.

18 HEARING EXAMINER: Thank you, Mr.
19 Wilpers.

20 Okay, Mr. Clayton, do you swear or
21 affirm under the penalties of perjury that the
22 testimony you shall give will be the truth and an

1 nothing but the truth?

2 MR. CLAYTON: Yes.

3 HEARING EXAMINER: Okay. State your
4 name and address for the record and then tell me
5 what you want to tell me about this request.

6 MR. CLAYTON: Hi. My name is Jason
7 Clayton, I live at 714 15th Avenue in Tacoma Park,
8 Maryland.

9 HEARING EXAMINER: We lost him.

10 MR. TEDESCO: I'm sorry, Mr. Clayton can
11 you repeat that. Yeah, somebody logged off and
12 yeah, I missed it, the address.

13 MR. CLAYTON: 7314 15th Avenue, Tacoma
14 Park, Maryland.

15 HEARING EXAMINER: Okay. And what would
16 you like to tell me about the request?

17 MR. CLAYTON: Yeah, so I am speaking out
18 against the request here. I'm -- I've been a
19 resident of Carol Highlands for about 35 years and
20 I currently serve as the president of the
21 neighborhood association and I'm here to speak
22 today as a resident of Carol Highlands and my

1 concerns about the Royal Farms application.

2 And my concerns revolve around
3 environmental exposures due to their -- the
4 proximity of the site close to Sligo Creek, the
5 playground and the nearby homes. The proposed
6 site appears to be within 175 feet of the creek,
7 potentially less than 100 feet of those nearby
8 homes. I believe we heard from another resident,
9 and of course the playground that we've heard
10 referenced.

11 The -- my concern is around the
12 underground fuel tanks, the concentration of
13 vapors and the water run off exposure that -- to
14 the creek. And the wildlife in and around it.
15 I've heard through testimony today and have been
16 told prior to this that the playground is planned
17 to be removed with no plans to replace it.

18 I've -- I live in the area, I bike on
19 Sligo Creek fairly often with my daughter and
20 we've stopped at this playground a couple of times
21 to play. And so given the environmental concerns
22 I -- me personally, I would not want to live close

1 to a gas station. And we heard from at least one
2 resident and I don't know if they share those same
3 concerns.

4 You know given the proposed removal of
5 the playground I don't know if they have been
6 offered to have their homes demolished or removed.
7 I don't know how that works. I'm not testifying
8 today as an expert in this case. Again, I just --
9 I really struggle to understand why we're going to
10 put a -- why the discussion is about putting a
11 fuel tanks this close to a waterway.

12 So the district we live in in Prince
13 George's County is District 47B and I've been
14 noticing that there have been a lack of really,
15 kind of concentrated economic development that we
16 see in other areas around our district. And I
17 think we had another resident mention that a lot
18 of us really end up leaving this area to go to
19 find places where we want to shop.

20 And you know, the other areas, the type
21 of development that we see there are going to be
22 sort of a more concentrated commercial type of

1 district that's going to be multi-use occupancy.
2 The type that we see on Route 1 in Hyattsville.
3 The type that we see on East West Highway around
4 Prince George's Plaza and the type that we see
5 around Tacoma Park in Montgomery County.

6 And a lot of the development that I've
7 been seeing around the district so far just
8 appears to be sort of single story structures with
9 a big open lot. And that does not seem to be
10 something that we deserve. The, you know, we have
11 a wild walk coming in also in the district and I
12 really don't understand how these types of
13 establishment really contributes to the
14 professional salary base.

15 And in our region where we are, we have
16 the purple line coming through. And I just don't
17 understand how this fits in with any kind of
18 proposed sector plan that's going to really
19 improve the economic base of our community.

20 One of the things that we're also seeing
21 in our district is a food desert. I'm not a
22 dietician or what have you, but again, if my

1 family wants -- if we want to go someplace and sit
2 down for a nice meal, we're not doing it in this
3 district. We're again, going through areas around
4 Prince George's Plaza. We're going to Route 1
5 Hyattsville. We're going to downtown Tacoma Park,
6 or downtown Silver Spring where you see actual
7 beneficial commercial development.

8 And I don't think that Royal Farms
9 really contributes to that. You know, we really
10 don't need another fried chicken joint in the area
11 that brings along a potential environmental hazard
12 to our nearby water ways. So I humbly request
13 that the zoning of this type of development be
14 denied and reconsidered in favor of the type of
15 development that our community deserves.

16 Thank you again for the opportunity to
17 speak.

18 HEARING EXAMINER: You're welcome. Mr.
19 Tedesco, do you have any cross?

20 MR. TEDESCO: No, I thank Mr. Clayton.

21 HEARING EXAMINER: Thank you, sir.

22 Okay. Are we ready to call your first

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1 witness?

2 UNIDENTIFIED SPEAKER: Madam Examiner,
3 Jeff Cronin and Paul Rowe would like to go next.

4 HEARING EXAMINER: Okay. Mr. Cronin do
5 you swear or affirm under the penalty -- you're
6 mute, Mr. Cronin.

7 MR. CRONIN: I do.

8 HEARING EXAMINER: I didn't finish.
9 Wait a minute.

10 MR. CRONIN: Oh, my fault.

11 HEARING EXAMINER: Do you swear or
12 affirm under the penalties of perjury that the
13 testimony you shall give will be the truth and
14 nothing but the truth?

15 MR. CRONIN: I do.

16 HEARING EXAMINER: Okay. State your
17 name and address and tell me what you would like
18 to tell me about this request.

19 MR. CRONIN: My name is Jeff Cronin. I
20 live at 7217 15th Avenue in Carol Highlands.

21 HEARING EXAMINER: Okay. And that's --
22 I mean, for the full address, that's Tacoma Park.

1 Okay.

2 MR. CRONIN: That's Tacoma Park. To be
3 clear, its unincorporated Prince George's County
4 and not the municipality of Tacoma Park.

5 HEARING EXAMINER: Okay. All right.
6 What would you like to tell me about the request?

7 MR. CRONIN: My family and I have lived
8 in Carol Highlands for 20 years and I would
9 describe myself as a heavy user of Sligo Creek
10 trail, both on foot and on bike, including the
11 stretch of water front Parkland at issue today.
12 And I should have started by thanking you for the
13 opportunity to speak in opposition to this.

14 And I'd like to thank Mr. Tedesco and
15 his colleagues for the courtesies they've extended
16 to us. And I want to be clear, Madam Examiner,
17 that I'm speaking today as a lay witness and not
18 any kind of expert.

19 I was very sorry to learn that plans for
20 this gas station are so far advanced and wish that
21 the Carol Highlands Neighborhood Association had
22 been formally notified much earlier. And I'm

1 concerned that the families that use the park and
2 playground haven't had adequate notice to
3 participate to day.

4 I learned about this development by
5 chance. In June, many members of the planning
6 staff very generously came to Carol Highlands to
7 walk the neighborhood with us and explore better
8 pedestrian and bike access to the purple line
9 stations and to the nearby commercial areas. We
10 are very grateful for the planning staff's work on
11 this study and look forward to its
12 recommendations.

13 I'm sorry to say that this otherwise
14 great day was darkened by this news of a car
15 centric project in the neighborhood we're trying
16 to make more walkable. As several of my neighbors
17 have testified Carol Highlands is ringed with gas
18 stations, convenience stores and fast food. This
19 particular intersection is all of the above.

20 And I was also very surprised to learn
21 that the southeast portion of this particular
22 corner, near the pumps, is within the 100 year

1 FEMA flood plain. I want to thank Mr. DiMarco,
2 the civil engineer for his candor on this issue
3 with us during our meeting. As another of my
4 neighbors has testified, just a month ago, on July
5 2nd thunderstorms brought historic flooding to
6 Sligo Creek. After water levels rose 7 feet in
7 one hour the intersection of Riggs Road and East
8 West highway had to be closed. Further down at
9 New Hampshire Avenue, a stranded motorist had to
10 be rescued from a vehicle.

11 Having these pumps and petroleum tanks
12 in the flood plain should have stopped this
13 project in its tracks at the planning staff level.
14 And I'm -- and I'm advised that it would have
15 stopped it in Montgomery County. I'm further
16 advised that one cannot build a gas station within
17 300 feet of a playground. That sensible
18 requirement seems to me to be intended to protect
19 children, who use playgrounds from gas stations
20 and not to protect gas stations from inconvenient
21 playgrounds and children.

22 Also, if this project moves forward we

1 would lose a charming pupuseira, reviewed as the
2 best Salvadorian restaurant in the region, and
3 instead get more of the same old burgers and fries
4 that we have too much of. We would trade exercise
5 equipment for children and culinary diversity in
6 exchange for fast food, fossil fuels, and finally,
7 cigarettes. I say finally, though I might have
8 said firstly, because Royal Farms has helpfully
9 testified that tobacco counts for 36 percent of
10 its in store revenue.

11 Trading a playground for a gas station
12 that sells fast food and cigarettes, which is what
13 is being proposed, is not a fair trade for this
14 community. We haven't had a seat at the table and
15 most families who use the playground won't know of
16 its fate until the bulldozer actually arrives.

17 I'm a strong supporter of the zoning
18 rewrite and its' vision for a more urbanized and
19 walkable -- and safely walkable county and the
20 County's recently adopted a climate action plan,
21 and its' goals to cut carbon emissions in half by
22 2030. That's why I'm really mystified by the

1 planning staff's acquiescence here since this
2 project undercuts both of those bold visions.

3 I urge the examiner not to grant the
4 special exception for Royal Farms and I thank all
5 the parties for listening. Thank you.

6 HEARING EXAMINER: Thank you. Mr.
7 Tedesco?

8 MR. TEDESCO: I have no questions.

9 HEARING EXAMINER: Okay. Thank you,
10 sir.

11 And there as one other?

12 Ms. McNeil, this is Donna Nelms.
13 Alvarez Powell is my next door neighbor, his
14 computer wouldn't work so he came over to my house
15 and he would like to speak.

16 HEARING EXAMINER: Did he register as a
17 person of record?

18 MR. ALVAREZ: Yes.

19 HEARING EXAMINER: Okay. Well, wait a
20 minute. I see Mr. Rowe as well. Was he next?

21 MR. ROWE: I belie I was.

22 HEARING EXAMINER: Hold on a second, Mr.

1 Powell.

2 Mr. Rowe?

3 MR. ROWE: Yes, can you see me?

4 HEARING EXAMINER: Would you like to
5 testify? Okay.

6 MR. ROWE: Yes, I would.

7 HEARING EXAMINER: Okay. Do you swear
8 or affirm under the penalties of perjury that the
9 testimony you shall give will be the truth and
10 nothing but the truth?

11 MR. ROWE: Yes, I do.

12 HEARING EXAMINER: Okay. State your
13 name and address then you may testify.

14 MR. ROWE: Yes, my name is Paul Rowe and
15 I reside at 7305 15th Place and that's the Carol
16 Highlands community in Prince George's County.

17 HEARING EXAMINER: Okay. Go ahead.

18 MR. ROWE: As I stated, my name is Paul
19 Rowe and I've been a resident there in Carol
20 Highlands for 21 years and I'm old enough to know
21 the County's history as a dumping ground for pawn
22 shops, liquor stores, fast food establishments,

1 and yes, gas stations. Although I'm not
2 necessarily opposed to Royal Farms, I am opposed
3 to its use of a 16 pump gas station for the
4 following three reasons.

5 The first is it's incompatible with the
6 needs of the County and our community. Our
7 community is not considered a gas station desert.
8 To the contrary, there are 14 gas stations within
9 one mile of Carol Highlands, including the Exxon
10 gas station across the street from the subject
11 property. Therefore, I simply submit we are not
12 in need of another gas station.

13 And the second reason is it's contrary,
14 the use is contrary to prevailing national and
15 local public policy. The prevailing federal and
16 local policy is to reduce greenhouse gasses or
17 what they refer to as GHGs. The cause of GHGs is
18 excessive use and reliance on fossil fuels such as
19 petroleum.

20 The introduction of a 16-pump gas
21 station at the congested intersection of East West
22 Highway and Riggs Road contributes to that and is

1 contrary to recent actions by the Prince George's
2 County Council and the County Executive to reduce
3 fossil fuel consumption. Evidence the recent July
4 12th the County Council adopted climate action
5 plan which is in the Council resolution 32.

6 And on June 15th it approved National
7 Capital Region Transportation Planning Board's
8 visualize 2045 plan update. Both plans include
9 resolutions to reduce climate pollution from cars
10 and trucks, 50 percent by the year 2030. It
11 identified specific strategies to achieve that
12 goal. Those strategies include, among others
13 transitioning to electric cars, trucks, and busses
14 and creating an electric vehicle or EV charging
15 infrastructure network.

16 I daresay it would be ironic if not
17 embarrassing for a special exception use to be
18 approved which contravenes the climate and
19 transpiration policy of the County Council and the
20 executive. And that brings me to the last reason
21 of my opposition, the use is non-complaint with
22 the County's own zoning regulations, and if

1 approved undermines the purpose of those
2 regulations.

3 As I understand it, the pending
4 application for the special exception of a gas
5 station is subject to Section 27-358 of the new
6 zoning ordinance as amended. But it's clearly
7 non-compliant with three of its requirements. A-2
8 of that section -- there are two requirements.
9 The nearest gas pump on the subject property shall
10 be located at least 300 feet from any lot on which
11 among other uses an outdoor playground or a
12 structure used as a residence is located.

13 Well, the nearest gas pump in the
14 application is less than 200 feet away -- 250 feet
15 away from 1807 East West Highway, which is a
16 single family residence. Moreover, it is
17 acknowledged by the planning staff and the
18 Applicant, the nearest gas pump is only 40 feet
19 away from the outdoor playground behind the site,
20 which is a feature of the surrounding 15 acre
21 Parklawn Park, including its highly utilized
22 walking and bike trail. That said, what is most

1 alarming and egregious about this application is
2 the proposed removal of the playground by the
3 County enabling the Applicant to avoid this
4 requirement.

5 And then the third requirement --

6 HEARING EXAMINER: Mr. Rowe. Mr. Rowe?

7 MR. ROWE: Yes?

8 HEARING EXAMINER: If I may, just for
9 that one point. It appears in the record that it
10 an agreement with the Maryland National Park and
11 Planning Commission, so I just want to make that
12 clear, that that's not exactly the same as the
13 County itself.. All right. I just want to put
14 that out there.

15 MR. ROWE: Are they not --

16 HEARING EXAMINER: But go ahead though.

17 MR. ROWE: The County is (inaudible)
18 County?

19 HEARING EXAMINER: It's a bi-county
20 agency.

21 MR. ROWE: What's that, ma'am? I see.

22 Okay.

1 HEARING EXAMINER: But I Your point, is
2 your point. I just want to clarify that it's
3 exactly Prince George's County, It's the Maryland
4 National Park and planning commission.

5 MR. ROWE: I see.

6 HEARING EXAMINER: Okay. Go ahead.

7 MR. ROWE: I see. And then, the third
8 requirement is in A-12 of that section which
9 states, any special exception or detailed site
10 plan application filed prior to January 1, 2022
11 and approved, shall not be subject to this
12 provision shall be deemed a conforming use. Well,
13 the planning staff report concludes that the
14 application is in accordance with this requirement
15 and therefore, not subject to the amended section.

16 However, while the Application was filed
17 prior to January 1, it has not been approved. It
18 wasn't approved by January 1, it was not approved
19 prior to the new zoning ordinance, effective April
20 1, and it has not been approved today. Therefore,
21 unless otherwise permitted it should be subject to
22 this amended Section 27-358.

1 In closing, and alternative and possible
2 win/win solution for Royal Farms, the community
3 and the County is if 100 percent of this filling
4 stations are electric vehicle or EV charging
5 stations, thereby, becoming an integral part of
6 the transformative County and regional EV charging
7 station network. Only then, can the use be
8 considered compatible with the needs of the
9 community consistent with public policy and
10 conform with the County and zoning regulations.

11 That concludes my remarks and I thank
12 you for the opportunity.

13 HEARING EXAMINER: Okay. Will you be
14 sticking around, or do you have to leave?

15 MR. ROWE: I'll stick around.

16 HEARING EXAMINER: Okay. The only
17 reason I bring that up, and then, Mrs. Nelms, your
18 next, that's your neighbor can speak. I just want
19 you to know that it's a been the interpretation of
20 this office that that section, the 27-358
21 pertaining to electric charging stations is not
22 applicable if the Application were filed prior to

1 June -- January 1, 2022. And that the and
2 approved just means -- I mean it's almost like
3 surplus. And if later approved. Clearly, if it
4 wasn't approved it wouldn't matter.

5 And we have that interpretation based on
6 the history of the bill. Did you get a chance to
7 look at that history? I believe it's CB-48 2021.
8 CB-48 and it's also because it almost wouldn't
9 make sense because even if it were approved on
10 December 31st which wouldn't happen because
11 there's nobody around to approve it on New Year's
12 Eve, it would take a while -- I mean even if it
13 were filed by that date there's no way it could
14 have been approved for months.

15 So it would make the bill -- we always
16 use the words, like, it doesn't allow you to
17 reasonably interpret all of the bills to come up
18 with an interpretation that had to be approved
19 prior to January 1st.

20 Now, you have a right to disagree with
21 that interpretation. I just wanted to make sure
22 you were aware of it, and I didn't know if you

1 were leaving, so.

2 MR. ROWE: Well, I appreciate that.

3 HEARING EXAMINER: -- where to look on
4 this screen, you've moved on me. --

5 MR. ROWE: But no, I appreciate that.

6 HEARING EXAMINER: But I just wanted you
7 to know that interpretation. But you can make
8 your arguments. But in fairness I wanted to put
9 that on the record.

10 MR. ROWE: Yes, and I just wanted to put
11 that on the record as well. I do realize that if
12 it was permitted otherwise, it's permitted it.
13 But there are standing regulations which, I guess
14 the Applicant decided not to follow and wanted to
15 follow the old ordinance.

16 HEARING EXAMINER: Uh-huh, that's
17 another thing that was allowed with the zoning
18 rewrite. A period of time that people could
19 comply with the old ordinance.

20 Okay. Ms. Nelms, can you put your
21 neighbor on?

22 MR. POWELL: Yes. I'm there, right?

1 HEARING EXAMINER: State your name for
2 the record..

3 MR. POWELL: Alvarez Powell.

4 HEARING EXAMINER: Alvarez Powell. Mr.
5 Powell, do you swear or affirm under the penalties
6 of perjury that the testimony shall give will be
7 the truth and nothing but the truth?

8 MR. POWELL: Yes.

9 HEARING EXAMINER: Okay. So state your
10 name and address again for the record, and then
11 you may testify.

12 MR. POWELL: My name is Alvarez Powell,
13 1803 E. West Highway Hyattsville, Maryland 20783.

14 HEARING EXAMINER: Okay. What do you
15 want to tell me about this request?

16 MR. POWELL: Well, first of all, I'm
17 opposed to the gas station. We have enough gas
18 stations in the neighborhood. And some other
19 stuff. I've been living in this neighborhood
20 since '74. My kids playing in the park in the
21 back. My grandkids, my great grandkids and all of
22 a sudden with the last-minute notice they're

1 taking the park out.

2 In the congestion of traffic, that's
3 another thing. Traffic is already bad enough in
4 this crossing here at 212 and 14. And it's
5 getting ridiculous. If we get a gas station there
6 what's going to happen is people passing by -- we
7 live on an access road right beside where this
8 Royal Farms is supposed to be going up.

9 And the access road is only, like one
10 way. So people are going to be making U-turns,
11 coming down the access road, and if we're coming
12 in from work or whatever, and somebody's coming
13 down the wrong way we have to back up to let them
14 through. I mean, the congestion here is already
15 bad enough and it's been this way for years.

16 And some of the other people was
17 speaking about the run off, the water, I live
18 adjacent to the park and the rec center, it's
19 right in the back of my house. And we've been --
20 we've had some really nasty runoffs, like floods
21 and stuff like that. And you know, I'm concerned
22 about the contamination to our drinking water and

1 stuff like that. Even the sewer -- it was so bad
2 last year we had -- it actually lifted the sewer
3 lid up out of the ground and was like a fountain.

4 And we had run off, like all, kind of
5 nasty. There was there a smell back there a good,
6 like, a month and a half. And East West Highway
7 was closed down for a while. I mean, it was just
8 a mess. But anyway, the service station, we have
9 enough service stations in the neighborhood,
10 within a mile from here. There's probably at
11 least 10, 12 service stations within the
12 jurisdiction. And we don't really need another
13 one.

14 And my wife, she is asthmatic. And we
15 like to spend a lot of time in the backyard. And
16 we was within probably 100, 200 feet from the
17 proposed site. And you know, I don't want her
18 inhaling gas fumes are having health issues from
19 gas runoff.

20 And pretty much, that concludes my
21 report. But I'm just supposed to the gas station.

22 HEARING EXAMINER: Okay. Thank you.

1 Mr. Tedesco, any cross?

2 MR. TEDESCO: I just have one question.

3 Mr. Alvarez, thank you for your testimony. Are
4 you on public well and septic, do you know, or are
5 you on -- I mean excuse me. A private well and
6 septic? Or are you on a public sewer and water?
7 Do you have a water bill?

8 MR. POWELL: Yes.

9 MR. TEDESCO: Okay. Thank you. No
10 further questions.

11 MR. POWELL: Okay.

12 HEARING EXAMINER: Thank you.

13 MR. POWELL: All right. Thank you.

14 HEARING EXAMINER: Mr. Tedesco, who is
15 your first witness?

16 I didn't hear you, I'm sorry.

17 MR. TEDESCO: I said I'm encountering --
18 Madam Examiner, if I may, just do a quick
19 introduction, opening?

20 HEARING EXAMINER: Okay. Then can I --
21 if I may, I'm going to take a five minute break.

22 MR. TEDESCO: Yeah I was --

1 HEARING EXAMINER: Everybody can stay on
2 but I think we may need a break right now.

3 MR. TEDESCO: That's fine. A good spot
4 to take a break. Thank you.

5 HEARING EXAMINER: Okay.

6 (Off the record.)

7 (On the record.)

8 HEARING EXAMINER: Mr. Tedesco, if
9 you're ready for your opening?

10 MR. TEDESCO: I am, Madam Examiner, if
11 you're ready.

12 HEARING EXAMINER: I'm ready.

13 MR. TEDESCO: All right. Thank you.
14 Almost good afternoon, but good morning. Again,
15 for the record, Matthew Tedesco. First and
16 foremost, I would like to thank all of the
17 citizens that testified earlier this morning, some
18 of whom are electing to stay on and we appreciate
19 that.

20 Hopefully, in addition to the
21 significant outreach that we've done to and
22 include the Carol Highlands, many of which the

1 citizens you heard from today or citizens of, we
2 met with and -- with additional testimony here
3 today I am hopeful and optimistic that while we
4 may not change their positions with respect to not
5 wanting to see the site developed, we are hopeful
6 that the additional information from further
7 testimony will address and/or satisfy maybe, not
8 sufficiently, but at least satisfy some of the
9 issues that have been raised.

10 We heard a lot of conclusory comments,
11 conjecture, unsubstantiated opinions with respect
12 to the impacts of this site, which have been fully
13 reviewed by Maryland National Capital Park and
14 Planning Commission, including all of its
15 technical reviewers including environmental
16 planning, transportation planning, community
17 planning, Department of Parks and Recreation,
18 subdivision, zoning, urban design, et cetera. And
19 all of them recommended support and approval of
20 this application.

21 As you know by now, the subject of this
22 application is the property located at the

1 southwest quadrant of East West Highway and Ridge
2 Road. The property address is 1821 East West
3 Highway, in Hyattsville Maryland. The property is
4 known as parcel A. It's referenced on the plat --
5 recorded in plat book WWW 17 at page 79. It's
6 approximately 1.9 acres and the -- I think it's
7 germane to some of the testimony you heard in some
8 of the clarifying comments that you made, Madam
9 Examiner, in reference particularly to CB-4820221
10 and its 1 this application was accepted on
11 November 18, 2021 and its lack of applicability in
12 this case.

13 This application was accepted on
14 November 18, 2021. The staff report was published
15 May 24th of 2022 and it was only Planning Board
16 agenda as a consent item on June 9th. One other
17 just point of clarification, there's a lot to
18 unwind and I'll get to the testimony very quickly.
19 And I'll address a lot of this in rebuttal.

20 But a comment was made with respect to
21 electing to use the old zoning ordinance. This
22 application was accepted on November 18, 2021.

1 The new zoning ordinance and subdivision
2 regulations and/or CMA did not go into effect
3 until April 1st. We did not elect under the 27
4 1900 provisions to utilize the old zoning
5 ordinance. We were lawfully and legally able to
6 continue to use the new zoning -- excuse me, the
7 prior zoning ordinance under Section 27 1703, this
8 was not an election case. This was a continuation
9 of a case that was accepted prior to the
10 effectuation date of the applicability of the new
11 zoning ordinance.

12 So I did want to clarify that.

13 HEARING EXAMINER: You're absolutely
14 correct. I'm sorry if I misspoke on that.

15 MR. TEDESCO: Never the -- wasn't
16 implying that you had or not. I just wanted to
17 make sure the record was clear because I think
18 there was testimony to that effect.

19 This application proposes the razing of
20 the existing structure which was built in mid
21 1950s. The existing structure is over 16,000
22 square feet, it's almost approximately 17,000

1 square feet. We intend -- and it's 100 percent
2 impervious as you've already heard testimony on
3 that.

4 The proposed application is for a
5 special exception to, again, raise that structure,
6 redevelop the entire site, remove impervious area
7 and construct a 4,655 square foot food and
8 beverage store.

9 Madam Examiner, I do want to note that
10 in the statement of justification that's Exhibit
11 23 in your record, there's a reference to the size
12 of the store being larger than 4,655 square feet.
13 The reason for that is after the site -- SDRC,
14 Subdivision Development Review Committee, meeting
15 in December the site plan was revised to address a
16 number of comments raised by technical staff.

17 In so addressing those comments the size
18 of the store from what was originally applied for
19 and articulated in the statement of justification,
20 was reduced even to a smaller size. So if you are
21 referring or looking at Exhibit 23, and preparing
22 your decision I did just want to note the

1 discrepancy between the square footage referenced
2 in the statement of justification comparatively to
3 what's on the reference in the technical staff
4 report at Exhibit 62, or the special exception
5 site plan which is -- your indulgence. Exhibit
6 26.

7 As you will hear the site will be
8 improved additionally with a food and beverage
9 store a combination with a gas station that will
10 include eight multiproduct dispensers. You heard
11 testimony to the reference of 16 pumps, that's a
12 little misleading. It's actually 8 multiproduct
13 dispensers, 16 fueling positions, but not 16
14 pumps. Each pump has two fueling positions. So I
15 did want to correct the record, it is only 8
16 pumps, not 16 pumps.

17 It will be improved -- and you will hear
18 testimony today with landscaping that meets or
19 exceeds the landscape manual requirements of
20 Prince George's County. It will provide
21 stormwater management facilities to create
22 quality -- to treat quality and quantity control

1 including a 100 year storm, for which there are no
2 current stormwater systems in place on the
3 property today, and it's 100 percent impervious.

4 The property is currently in the CGO
5 zone as the applicable CMA went into effect on
6 April 1st. However, as I mentioned, pursuant to
7 27-1703, the site is being reviewed against the
8 CSC zone and the prior zoning ordinance.

9 We intend to call five witnesses, fact
10 and expert witnesses and at the conclusion of
11 their testimony and the conclusion of any
12 rebuttal, we're very confident as the technical
13 staff has already determined, that between the
14 oral testimony you'll hear today and the written
15 testimony as well as all the exhibits in your
16 record, there is substantial evidence in support
17 of a required findings to recommend approval of
18 this application pursuant to Section 27-317,
19 27-355, and 27-358.

20 And for those reasons and the reasons
21 you'll hear we believe the special exception as
22 recommended by technical staff and by the Planning

1 Board should be approved.

2 With that Madam Examiner, we'll call Mr.
3 Tom Ruszin as our first witness.

4 HEARING EXAMINER: Okay. Mr. Ruszin, do
5 you swear --

6 Mr. RUSZIN: Hello.

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

11 MR. RUSZIN: I do.

12 MR. TEDESCO: Can you please state your
13 name and address for the record?

14 MR. RUSZIN: Tom Ruszin, R-U-S-Z-I-N,
15 3611 Roland Avenue, Baltimore, Maryland 21211.

16 MR. TEDESCO: And where do you work
17 currently?

18 MR. RUSZIN: I work for Royal Farms as
19 the fuel and environmental leader.

20 MR. TEDESCO: And what are your
21 responsibilities as a fuel and environmental
22 leader?

1 MR. RUSZIN: I oversee compliance with
2 state and federal regulations for all states that
3 we operate in. I handle the maintenance of all of
4 the fueling equipment. I'm also a member of the
5 development team, so I study the properties that
6 we put under contract from an environmental
7 standpoint, and then helped to design the fuel
8 system and play a role in the contractors who
9 build the fuel systems. I also take care of all
10 of the regulatory paperwork associated with that.

11 MR. TEDESCO: Are you -- strike that.
12 Does Royal Farms on the subject property
13 currently?

14 MR. RUSZIN: No sir, this will be a
15 leased location for us.

16 MR. TEDESCO: And what are the general
17 terms of the lease?

18 MR. RUSZIN: It will be a 20 year an
19 initial term for the lease and then there are
20 four, five year renewal options.

21 MR. TEDESCO: And have you been
22 authorized to testify on behalf of the Applicant,

1 which is RF East West Hyattsville, LLC?

2 MR. RUSZIN: I have.

3 MR. TEDESCO: And Madam Examiner, we had
4 pre-marked Exhibit 77 which is a limited power of
5 attorney authorizing Mr. Ruszin to testify on
6 behalf of that entity, as Exhibit 77 if I didn't
7 mention that.

8 I presume that's -- you're muted Madam
9 Examiner.

10 HEARING EXAMINER: Yeah. I meant to ask
11 that of you. I mean, I trust you have no
12 objection to the -- at least the 82 exhibits, and
13 I believe you showed no objection to Mr.
14 Manjarrez's Exhibit 83?

15 MR. TEDESCO: I certainly have no
16 objection to the 82 exhibits and I did not have
17 any objection to Mr. Manjarrez's -- I'm
18 pronouncing that incorrectly. I apologize.
19 Exhibit 83, I did provide cross-examination of
20 that so I have no objection to it.

21 HEARING EXAMINER: Okay. Thank you.

22 MR. TEDESCO: Well, let me say this. I

1 would object to the fact that it includes stores
2 outside of Prince George's County. But on that
3 limited --

4 HEARING EXAMINER: Okay. And you got
5 him to clarify that as well on the record.

6 MR. TEDESCO: Yes. So. But again, for
7 the record I'd note the objection on that basis
8 which has been testified to.

9 HEARING EXAMINER: Okay. And I guess
10 I'll rule on it when I hear -- am I going to hear
11 from your needs analysis witness?

12 MR. TEDESCO: Yes, you will.

13 HEARING EXAMINER: I didn't memorize all
14 of his station so I'm not sure if they're included
15 in his trading area or not. Okay. Thank you.

16 MR. TEDESCO: Yeah. It is the
17 Applicant's -- so in reference to these questions,
18 Madam Examiner, in referencing to the Applicant
19 I'm referring to RF East West Hyattsville, LLC,
20 for the record.

21 Is the Applicant registered to do
22 business in the State of Maryland and in good

1 standing, as far as you know?

2 MR. RUSZIN: Yes.

3 MR. TEDESCO: And Madam Examiner, we did
4 have Exhibit 69 pre-marked and has been accepted
5 into the record, which is the certificate of good
6 standing for that entity.

7 Mr. Ruszin, were you involved in the
8 decision to acquire or lease the -- and redevelop
9 the subject property with a new food and beverage
10 store in combination of a gas station?

11 MR. RUSZIN: So although our director of
12 real estate, Jeff Bainbridge was directly
13 involved in the original decision to develop this
14 new asset I am aware of the basis and the criteria
15 for which we use to site new locations, and I
16 believe it will be a great addition to the
17 community, which we intend to serve.

18 MR. TEDESCO: Can you explain why this
19 site was chosen and to be redeveloped with a new
20 food and beverage store and combination gas
21 station as a Royal Farms?

22 MR. RUSZIN: Yes. As I mentioned

1 earlier, I'm a member of the development team so I
2 work closely with Jeff Bainbridge, along with our
3 director of construction and architects.

4 I'm familiar with the criteria that we
5 use. For instance, the trade area that we operate
6 in, you know, is going to be integral to this
7 location. The demographics of the area, a lot of
8 rooftops looks quite well with our food service
9 offering. There's commercial zoning designation
10 for this property. Commuter route on Maryland
11 Route 450 and Riggs Road, you know, meets our car
12 count criteria.

13 The size of the property --

14 MR. TEDESCO: Mr. Ruszin, I'm sorry.
15 I'm sorry to interrupt, but I believe you said
16 Maryland 450, I believe you meant Maryland 410?
17 Forgive me.

18 MR. RUSZIN: Oh, I'm sorry. My
19 apologies.

20 MR. TEDESCO: Yeah.

21 MR. RUSZIN: So again, and the size of
22 the property fits our use nicely. It's also

1 located at an intersection with -- that is
2 signalized and we do believe that it is, you know,
3 the highest and best use for the property and
4 you'll see that it's supported by our needs
5 analysis.

6 MR. TEDESCO: Did you personally attend
7 any community meetings or outreach with respect to
8 this application?

9 MR. RUSZIN: Unfortunately I was unable
10 to attend any of the community outreach meetings,
11 but we did have six meetings that I can outline
12 all of those meetings for you. Our first meeting
13 was on April 15, 2022, and that was with President
14 of the -- President, Ms. Minnie Alexander of the
15 Chillun Ray Citizens Association. Our consultants
16 briefed her about the project.

17 And then, on April 20, 2022, our
18 consultants briefed President, Ms. Amber Waller of
19 the Eighth Precinct Civic Association about the
20 project, with approximately 14 people in
21 attendance.

22 On May 12, 2022, there was a virtual

1 with the Chillum Ray Civic Association with
2 approximately 14 people in attendance. On May 16,
3 2022, there was a virtual meeting with the Eighth
4 Precinct Civic Association with more than 30
5 people in attendance. On June 13, 2022, a second
6 virtual meeting with the Eighth Precinct Civic
7 Association with approximately 15 people in
8 attendance was held.

9 And then, finally on July 21, 2022, a
10 virtual meeting with the Carol Highlands
11 Neighborhood was held and there was approximately
12 eight people in that meeting.

13 MR. TEDESCO: Following the July 21,
14 2022 meeting with Carol Highlands for which a
15 number of citizens testified this morning -- for
16 residents of, did you assist in preparing any
17 written responses to any inquiries from that
18 meeting?

19 MR. RUSZIN: I did.

20 MR. TEDESCO: And where those responses
21 provided to members of the Carol Highlands, as far
22 as you know?

1 MR. RUSZIN: That is my understanding.

2 MR. TEDESCO: In response to any of
3 these community meetings in the Applicant's
4 consultants and community members visit any
5 existing Royal Farms stores in the county?

6 MR. RUSZIN: Yes, after those meetings
7 we posted a tour of some Royal Farms in the
8 community. So on June 29, 2022, our consultants
9 at GS Proctor & Associates took a number of
10 interested citizens, about 10 people total, from
11 the Chillum Ray Civic Association and the Eighth
12 Precinct Civic Association to visit a couple of
13 existing stores in the county the purpose of the
14 visits was to provide these community leaders with
15 more information about the operation, maintenance,
16 aesthetics of the stores.

17 I felt that, you know, from what I heard
18 the visit was very successful. The community
19 leaders really appreciated these efforts and the
20 additional information regarding the proposed
21 store in their community. We heard from one
22 member earlier that felt that it was very

1 positive.

2 MR. TEDESCO: And if this application is
3 approved and a Royal Farms is ultimately built,
4 and how many people will it employ, approximately?

5 MR. RUSZIN: Our goal, to meet the needs
6 of the community, would be to staff the store with
7 30 to 40 full and part-time employees. It was
8 mentioned earlier about, you know, Royal Farms not
9 being, I guess a good professional job. Our
10 opening wage in Prince George's County is \$14 an
11 hour. And we highly promote from within so there
12 is upward trajectory from associates to go to be a
13 customer service leader, an assistant store
14 leader,. And you know they are salaried employees
15 that perform very well.

16 MR. TEDESCO: What other benefits with
17 us or bring to the local community?

18 MR. RUSZIN: First and foremost, the
19 building there is, as we covered, it's very dated,
20 and underutilized. There's virtually no
21 stormwater management, it's fully impervious so we
22 would be putting in, and this will be covered by

1 other people's testimony, but we would be putting
2 in up to date stormwater management facilities.
3 There's no landscaping there currently, so we will
4 be meeting the Counties general landscaping. So,
5 I mean, we will be bringing a modern design, it's
6 going to be a much more aesthetically appealing
7 corner. We'll also be providing a gateway signage
8 for the northern gateway imaging program.

9 We've also worked very closely for more
10 than two years with the MNCPPC and Department of
11 Parks and Recs on making improvements to the
12 Parklawn Park and have agreed to a recreational
13 facilities agreement to provide significant
14 upgrades to that park.

15 MR. TEDESCO: Madam Examiner, we'll have
16 Mr. DiMarco testify more to it, but I did want to
17 reference for the record Exhibit 80, which is the
18 Parklawn Park concept plan approved or supported,
19 I should say. Strike approved, supported by the
20 Department of Parks and Recreation, as well as the
21 term letter between the Department of Parks and
22 Recreation and the Applicant which is Exhibit 67.

1 Did -- Mr. Ruszin, did Royal Farms hire
2 a third-party to conduct a separate market
3 analysis to determine whether the gas use in this
4 market area is necessary and whether the food and
5 beverage store is reasonably convenient?

6 MR. RUSZIN: Yes. We hired Valbridge
7 Property Advisors, Mr. Ed Steere, who's an expert
8 in market analysis and who will testify to this.
9 You know, it's also worth mentioning that we're
10 going to be bringing, you know, our world-famous
11 fried chicken and food service offerings to this
12 community, and along with commuters passing by
13 this location. It's going to increase the tax
14 base for motor fuel tax and sales tax along with
15 real estate property tax. And this will be a
16 location that's open 24/7 so very convenient for
17 anyone at any time of the day stopping and -- and
18 use our amenities.

19 MR. TEDESCO: And have you reviewed the
20 statement of justification, Exhibit 23 in this
21 case?

22 MR. RUSZIN: I have.

1 MR. TEDESCO: And with the clarification
2 that I made with respect to the size of the
3 proposed building, do you incorporate and adopt as
4 your further testimony that statement of
5 justification?

6 MR. RUSZIN: Yes.

7 MR. TEDESCO: Are you familiar with the
8 technical staff report prepared by Maryland
9 National Capital Park and Planning in this case?

10 MR. RUSZIN: Yes.

11 MR. TEDESCO: And do you agree with the
12 findings of the technical staff report?

13 MR. RUSZIN: In general, yes. But there
14 is one point of contention in which there was a
15 seek to reduce the proposed parking. Generally,
16 we like to provide about 50 spaces for our
17 operation and that is for a couple of reasons.

18 We're a very kind of peaky use. We get
19 rushes. We get periods of rushes and then periods
20 of downtime. So during those periods of rushes
21 which typically come in the morning for coffee
22 when people are on their way to work, in the

1 afternoon when people are on their lunch break and
2 then in the evenings when they're heading home to
3 pick up dinner.

4 We need to have adequate parking
5 facilities to, you know, let those people maneuver
6 the site and park and then walk into our store.
7 There appears to have been some requirements that
8 they only -- they recommended the 15 spaces to
9 only address our convenience and not so much our
10 food service, so we disagree with that.

11 Another hot topic has been electric
12 vehicle charging. We have a few different
13 partners that we work with and it seems to be a
14 very important part of this proposal. And as EV
15 charging grows we would like to have more parking
16 spaces available to expand and install EV
17 chargers. Most of the partners that we work with
18 will require four to eight spaces dedicated to EV
19 charging, so if we don't have adequate spaces, you
20 know around the perimeter the site to put those
21 amenities in, then we would not be able to offer
22 those.

1 So I mean, you also have people who come
2 to fill up at the gas pumps and we want them to be
3 able to pull through and park in a parking space
4 and not leave their cars there and create lines for
5 filling at the gas pumps and jockeying which is,
6 you know, an unsafe thing. We want people to be
7 able to pull in and -- pull into our site and pull
8 right into the -- into the fueling position
9 without having to kind of jockey around the
10 dispenser islands.

11 That about covers the topic.

12 MR. TEDESCO: And Madam Examiner, if I
13 may, in particular to -- not to testify, but to
14 clarify one of the points made by the witness,
15 finding number 7 on page 12 of the technical staff
16 report discusses the requirements from the minimum
17 parking and staff omits the required parking for
18 the square footage of the food and beverage store.
19 And therefore, drastically decreased what they
20 believed to be the required parking for this use,
21 which is wholly inconsistent with every food and
22 beverage store parking calculation requirement in

1 the County which includes the square footage of
2 the food and beverage store. Mr. DiMarco will
3 testify further to that.

4 So we object, for the record, to the
5 language -- to condition 1D, which asks the use
6 that the food -- or the gas station parking ratio
7 and the eating or drinking establishment ratio and
8 it omits the actual use of the property which is a
9 food or beverage store in combination with a gas
10 station. But Mr. DiMarco will testify more to
11 that.

12 As a --

13 HEARING EXAMINER: Okay. And --

14 MR. TEDESCO: Go ahead.

15 HEARING EXAMINER: And just to put a pin
16 in it for you, I don't prefer that it be a eating
17 or drinking establishment so I hope you have a
18 witness to try to convince me otherwise, if you
19 all want it to be that. I think food or beverage
20 has a right to have parking.

21 MR. TEDESCO: No, we will leave it as --

22 we belie the use is a food or beverage store in

1 combination with a gas station.

2 HEARING EXAMINER: Okay. Thank you.

3 MR. TEDESCO: Yeah, we agree.

4 And as a courtesy to Mr. Rowe who put a
5 question in the chat, and he's asking or
6 clarification, I think to my opening comment,
7 which was the number of MPDs versus fueling
8 positions. M. Ruszin, could you please provide
9 how many actually pumps are proposed with this
10 application?

11 MR. RUSZIN: We will have eight
12 multiproduct dispensers, which people often refer
13 to as pumps. Each one of those multi-product
14 dispensers has two sides and has nozzles to fuel
15 on. So even though there will be eight multi-
16 produce dispensers or pumps, there will be 16
17 positions in which a car can pull in and get their
18 fuel from.

19 MR. TEDESCO: So just to clarify again,
20 because I did think Mr. Rowe testified to the fact
21 that there would 16 pumps, and perhaps he meant
22 fueling positions. There will only be 8 pumps, 16

1 fueling potions, correct?

2 And that may be semantics. Madam
3 Examiner, I apologize but I don't want there to be
4 the notion of 16 actual pumps at this location.
5 There is a difference between a pump and a fueling
6 position.

7 HEARING EXAMINER: Well, while you're on
8 that, Mr. Ruszin, and it's because this is my site
9 plan and I can't see anything on there, will there
10 be four and four or how many will be on the site
11 when you pull in?

12 MR. RUSZIN: Yeah, Madam Examiner, if we
13 could have Betty or somebody pull up Exhibit 75?
14 I think that would help you.

15 HEARING EXAMINER: Yes, it would.

16 UNIDENTIFIED SPEAKER: Fatima, could you
17 pull up the exhibits?

18 MR. RUSZIN: If I may, while the
19 exhibit's coming up, I can answer Mr. Rowe's
20 question specifically that at full capacity we
21 would able to fill 16 automobiles. If every
22 single fueling position was occupied.

1 MR. TEDESCO: The question, please
2 answer my question, which was at full capacity how
3 many automobiles will the gas station facility be
4 able to simultaneously fuel at one time?

5 HEARING EXAMINER OFFICER: What's the
6 exhibit number again?

7 MR. TEDESCO: Fatima, if you could pull
8 up Exhibit 75, please?

9 HEARING EXAMINER OFFICER: Okay.

10 MR. TEDESCO: Mr. Ruszin, can you see
11 what's on the screen as Exhibit 75?

12 MR. RUSZIN: I can. And unfortunately,
13 I don't believe that --

14 MR. TEDESCO: All right. Hang on, hang
15 on. Madam Examiner, can you see it?

16 HEARING EXAMINER: Yes.

17 MR. TEDESCO: Okay. Go ahead, Tom.

18 MR. RUSZIN: I say, unfortunately I
19 don't think you'll be able to see my cursor, but
20 you'll see to the right of our store a canopy
21 drawn and there is four rectangles in that. And
22 then within those four rectangles you'll see two

1 smaller squares. Each one of those squares is a
2 multi-product dispenser. So there will be four
3 along the front, four along the rear, and on each
4 side of those you can have two automobiles. And
5 on each side you can have one automobile, so there
6 will be two per dispenser.

7 MR. TEDESCO: And what you're describing
8 as far as the gas pumps those are in the north
9 east corner of the property, closest to the
10 intersection; is that correct?

11 MR. RUSZIN: Correct.

12 MR. TEDESCO: And the store is in the
13 southwest?

14 MR. RUSZIN: Yes, and our proposed
15 underground storage tanks are immediately south of
16 those dispenser islands.

17 MR. TEDESCO: Okay. Those are all the
18 questions I have Madam Examiner.

19 HEARING EXAMINER: Thank you. Does
20 anyone have questions of Mr. Ruszin? If so --

21 Caller 03, could you identify yourself
22 for the record?

1 Is that one of your witnesses, Matt?

2 MR. TEDESCO: I don't think so. I see
3 all mine on the screen.

4 HEARING EXAMINER: Okay. I'll get back
5 to you. I guess there are no questions.

6 MR. TEDESCO: All right, we would call
7 Mr. Joe Caloggero as our next witness.

8 MR. CALOGERRO: Good morning.

9 HEARING EXAMINER: Hi, Mr. Caloggero.
10 It's still morning. Good morning. Do you swear
11 or affirm under the penalties of perjury that the
12 testimony you shall give will be the truth and
13 nothing but the truth?

14 MR. CALOGERRO: I do.

15 HEARING EXAMINER: Thank you.

16 MR. TEDESCO: Good morning, Joe, could
17 you please state your name and address? Spell
18 your last name and your address for the record?

19 MR. CALOGERRO: Sure. Joseph Caloggero,
20 C-A-L-O-G-G-E-R-O. President with The Traffic
21 Group, our address is 9900 Franklin Square Drive,
22 Suite H, Baltimore, 21236.

1 MR. TEDESCO: And have you previously
2 been qualified as an expert in the field of
3 traffic engineering before the hearing examiner?

4 MR. CALOGGERO: Yes, I have.

5 MR. TEDESCO: And Madam Examiner, Mr.
6 Caloggero's CV is Exhibit 71 and we would ask that
7 he be accepted as an expert in that field.

8 HEARING EXAMINER: You will be accepted
9 as an expert in the field of traffic engineering.

10 MR. TEDESCO: Mr. Caloggero, are you
11 familiar with the application which is the subject
12 of this hearing today?

13 MR. CALOGGERO: Yes, I am.

14 MR. TEDESCO: And were you employed by
15 the Applicant to perform certain services
16 associated with the subject property?

17 MR. CALOGGERO: Yes, I was.

18 MR. TEDESCO: Did you make a personal
19 inspection of the property?

20 MR. CALOGGERO: Yes, I did.

21 MR. TEDESCO: And are you familiar with
22 the transportation network surrounding the

1 property?

2 HEARING EXAMINER REPORTER: Yes, I am.

3 MR. TEDESCO: Are you familiar with the
4 Applicant's site development plans?

5 MR. CALOGGERO: Yes, I am.

6 MR. TEDESCO: And could you just,
7 generally, summarize the transportation network
8 including new road classifications and traffic
9 volumes?

10 MR. CALOGGERO: Sure. The site is
11 located in the southwest quadrant of Maryland 410
12 which is East West Highway, and Maryland 212 which
13 is Riggs Road. Riggs Road is a six lane divided
14 highway, while East West Highway is a four-lane
15 divided highway. And the traffic volumes in this
16 area average daily traffic that I was able to pull
17 from the State Highway website in 2019, was 27,000
18 trips per say along East West Highway, Maryland
19 410 and around 30,000 trips per day, or average
20 daily traffic along Maryland 212.

21 MR. TEDESCO: And is a traffic impact
22 analysis required for this special exception?

1 MR. CALOGGERO: No, it was not.

2 MR. TEDESCO: Although a traffic impact
3 analysis or test study -- although a traffic
4 impact analysis/study was not required for this
5 application, did the technical staff request any
6 information related to traffic?

7 MR. CALOGGERO: Yes. We prepared a trip
8 generation analysis and comparison of the existing
9 site.

10 MR. TEDESCO: And Madam Examiner,
11 that's, for reference, Exhibit 41 in your record.

12 Could you please summarize the findings
13 of your analysis?

14 MR. CALOGGERO: Yeah, absolutely. So we
15 did a trip generation analysis for the proposed
16 use. And we determined that the -- there's trips.
17 There's new trips to the site. And then there's
18 pass-by trips. So when you take out the -- when
19 you have total trips you remove the pass-by trips
20 from the site so then there's new trips. So
21 overall new trips to the site are calculated to be
22 102 morning, peak hour trips. That's one hour,

1 typically between 7:00 and 9:00 a.m. and then 88
2 evening peak hour trips which is typically one
3 hour between 4:00 and 6:00 p.m.

4 And what we did was we looked at the
5 current uses of the site, and we determined that
6 those trips were 114 morning peak hour trips and
7 113 evening peak hour trips. And all these trips
8 are based on the -- for existing and proposed, all
9 the trips were based (inaudible) Institute of
10 Transportation engineers, ITE Trip Generation
11 Manual. The latest edition which is the 11th.
12 And based on the analyses it has been shown that
13 the net new trips for the propose use would be
14 less than the new trips for the existing use.

15 MR. TEDESCO: And will development in
16 your expert opinion of the subject property --
17 well, strike that.

18 You're familiar with the site plan
19 that's submitted in this application?

20 MR. CALOGGERO: Yes, I am.

21 MR. TEDESCO: How many existing
22 currently, existing access points are there on

1 East West Highway?

2 MR. CALOGGERO: On East West Highway
3 there's two.

4 MR. TEDESCO: And with this proposal how
5 many access points will there be on East West
6 Highway?

7 MR. CALOGGERO: One. We're removing the
8 access point closest to the traffic signalized
9 intersection and maintaining one access to the
10 west of the intersection on the (inaudible).

11 MR. TEDESCO: Will that -- that -- so
12 with the removal of one access point, the one
13 closest to the intersection, do you have an
14 opinion on whether that will improve safety or
15 not?

16 MR. CALOGGERO: Oh yeah, that will
17 definitely improve safety.

18 MR. TEDESCO: And do you know whether
19 the access point to the west that is retained is
20 going to be improved upon?

21 MR. CALOGGERO: Yes. It will be
22 improved upon. And it's also designed so that is

1 a right in, right out as well.

2 MR. TEDESCO: When you say right in,
3 right out, could you explain that a little bit
4 more?

5 MR. CALOGGERO: sure. So traffic
6 traveling down on Loop 410, again East West
7 Highway, they'll be able to access the site
8 turning inbound, and then, when they leave the
9 site they will have to turn right to go out to go
10 outbound.

11 MR. TEDESCO: And is that what currently
12 exists today?

13 MR. CALOGGERO: That is my
14 understanding, yes.

15 MR. TEDESCO: Your understanding is that
16 currently there is a right in, right out, or if a
17 full movement, I'm sorry?

18 MR. CALOGGERO: We didn't do a traffic
19 count there and can traffic make a different type
20 of maneuver to get in to the site,, I'm sure they
21 could. There's nothing obstructing a maneuver of
22 such.

1 MR. TEDESCO: But with the improvement,
2 or would that -- with any movement -- strike that.

3 Cars traveling west can currently access
4 the site by making a left turn into the site,
5 correct?

6 MR. CALOGGERO: Yes.

7 MR. TEDESCO: With the right in, right
8 out improvement to that access, will that movement
9 be able to be made? A left turn into the site
10 from westbound East West Highway?

11 MR. CALOGGERO: Well with a right in --

12 HEARING EXAMINER: Mr. Tedesco, would
13 you like would you like to pull up -- I'm sorry.
14 Would you like to pull up the site plan again?

15 MR. TEDESCO: Yeah, we --

16 HEARING EXAMINER: Let me rephrase. I
17 would like you to pull up the site plan again.

18 MR. TEDESCO: Yeah, thank you. That's
19 why doing these virtually being a little
20 challenging. Yeah, if we could pull up -- let's
21 see if Exhibit 75 -- that should show it possibly.
22 I don't know if it does. Hang on. Let me see if

1 we have it.

2 No, actually the plan doesn't show it.

3 That's okay. We don't need to pull out the
4 exhibit. Let me ask the question this way, Mr.
5 Caloggero. With a right in, right out movement
6 only, does that allow lefts in?

7 MR. CALOGGERO: It should not, no.
8 Today there is a painted median in that location.
9 You know, again, it does not physically obstruct
10 any movements. But we will need an access permit
11 from the Maryland State Highway Administration and
12 further improvements that may be required by the
13 State Highway Administration to physically
14 restrict

15 MR. TEDESCO: This movement. And if the
16 State Highway Administration determines that that
17 further restrictions, of any vehicular movement to
18 ensure health, safety, and welfare is required,
19 with the Applicant be required to make those as
20 part of its permit?

21 MR. CALOGGERO: Absolutely.

22 MR. TEDESCO: From the perspective of

1 traffic engineering and planning, will the
2 granting of this application be consistent with
3 the standards required in the ordinance for the
4 use in question in your opinion?

5 MR. CALOGGERO: Yes.

6 MR. TEDESCO: And forgive me Mr.
7 Caloggero, your testimony with respect to the trip
8 analysis, trip allocation, do you know if Park and
9 Planning, Transportation Planning staff reviewed
10 your memo?

11 MR. CALOGGERO: It is my understanding
12 that they did and it was approved.

13 MR. TEDESCO: And Madam Examiner, for
14 your reference, Exhibit 51 is the Transportation
15 Planning section's referral in response to not
16 only Mr. Caloggero's memo but also the pedestrian
17 adequacy of the site.

18 From the perspective of traffic
19 engineering and planning will the approval of the
20 application cause any adverse effect upon adjacent
21 properties or the surrounding neighborhood?

22 MR. CALOGGERO: No, it will not.

1 MR. TEDESCO: Why not?

2 MR. CALOGGERO: Well, again, as we have
3 discussed the traffic affect study was not
4 required since the trips are -- the projected
5 trips are going to be less than what would be on
6 the site so it would have a lesser impact. And
7 staff has approved and accepted that condition.

8 MR. TEDESCO: And would the approval of
9 this application in your opinion detrimentally
10 affect the health and safety of the pedestrians
11 and motorists in the area?

12 MR. CALOGGERO: No, it would not.

13 MR. TEDESCO: And why not?

14 MR. CALOGGERO: Well, for -- you know,
15 regarding pedestrian circulation facilities, the
16 sidewalk is displayed around the entirety of the
17 building as well as the subject property frontage
18 along East West Highway and Rigg Road. we have
19 parking shown along the north, east and south
20 frontages of the site. We have -- there's parking
21 provided directly adjacent to the proposed
22 building. And I believe that would cover all of

1 those conditions for health and --

2 MR. TEDESCO: And would you also agree
3 that the State Highway Administration is the
4 permitting agency would not issue a -- would be
5 required to issue permits for access in this case?

6 MR. CALOGGERO: Yes, that's required to
7 issue access for both access points. One on East
8 West Highway and the one on Riggs Road.

9 MR. TEDESCO: Those are all the
10 questions I have for Mr. Caloggero, Madam
11 Examiner.

12 HEARING EXAMINER: Mr. Caloggero, I
13 don't know if you heard prior testimony from some
14 opposed, but I wanted to ask you, if the access
15 that's remaining is close to the bus stop, where
16 they discussed earlier? Or is that the one you
17 all are getting rid of? Or which access point is
18 that?

19 MR. CALOGGERO: No, it's -- there
20 were -- somebody brought up the access on
21 southbound Maryland 212 Riggs Road. So it looks
22 like the access point is just -- the -- I'm sorry.

1 The bus is between the crossing and our proposed
2 access. The bus stop.

3 MR. TEDESCO: And Madam Examiner if I
4 may, Mr. DiMarco is -- will testify. We actually
5 have an exhibit showing that access being slightly
6 relocated further away from the existing bus
7 shelter and I think that would be helpful in
8 answering that question if we could just possibly
9 put a pin in it until Mr. DiMarco testifies.

10 HEARING EXAMINER: That's perfect. And
11 maybe this is for him as well. Can you discuss
12 the access road that Mr. Powell, I think, uses to
13 get to his home and he's saying that people may
14 come out the wrong way and -- is that for Mr.
15 DiMarco as well?

16 MR. TEDESCO: Unless Mr. Caloggero has a
17 response to it regarding the access road along
18 East West Highway 410, Joe?

19 MR. CALOGGERO: In other words is that
20 the road to the west of our site with all the
21 frontage?

22 MR. TEDESCO: Yes.

1 MR. CALOGGERO: No, it should not have
2 any impact whatsoever. They're still going to
3 access what -- across from 17th Avenue. So it's
4 not going to change how they access their
5 residential units, in my opinion.

6 HEARING EXAMINER: Okay. So is it one
7 way now? Is that what he's -- is it one way or is
8 it a two-way private? I mean, it's got access.

9 MR. CALOGGERO: I'll check.

10 MR. TEDESCO: It's not private. It's in
11 the -- it's within the ultimate right-of-way and
12 that would be part of the analysis with the State
13 Highway Administration, Madam Examiner on the
14 access permit.

15 HEARING EXAMINER: Okay.

16 MR. CALOGGERO: There's no signs which
17 says it's one way.

18 HEARING EXAMINER: Okay. Thank you.

19 MR. CALOGGERO: It has to be a two-way
20 road, there's no signs.

21 HEARING EXAMINER: Okay. Is there
22 anyone that has questions of Mr. Caloggero? Ms.

1 Alverez?

2 MR. POWELL: Yeah.

3 HEARING EXAMINER: Mr. Alverez, I'm
4 sorry. Can you come on camera?

5 MR. POWELL: Okay. Let me click here.
6 Yes.

7 HEARING EXAMINER: Okay.

8 MR. POWELL: So it is a one-way. Two
9 cars can't come down the access road. The access
10 road is one way out, and we have difficulty
11 already getting on East West Highway so that's a
12 big problem already. With all them cars coming
13 into a service station right there, it's really
14 going to be messed up.

15 MR. TEDESCO: So again, and you know,
16 I'll -- let me is there a question in there?

17 MR. POWELL: Yes. No, I'm saying they
18 need to make some kind of arrangement with the
19 traffic if they going to do this, you know,
20 because the access road is -- there's 11 houses on
21 the access road and this is called off-street
22 parking. It's south of East West Highway.

1 MR. TEDESCO: And Madam Examiner, I
2 don't know how you want to handle this because I
3 don't hear a question in there, but if I'm allowed
4 to respond I'm happy to respond.

5 MR. POWELL: Yes. Go ahead.

6 MR. TEDESCO: You're muted, Madam
7 Examiner.

8 HEARING EXAMINER: I guess he's asking
9 did you take into consideration the fact that
10 there are 11 homes in this access driveway and
11 it's possible impact if it's used by your
12 customers. So maybe it's not going to be used by
13 your customers or --

14 MR. TEDESCO: That's why I'd like to
15 have a chance to respond. I think Mr. Caloggero
16 testified to a right in, right out. And so as a
17 right in, right out the only access movement
18 exiting the site is a right out on East West
19 Highway, not a left onto the access road,
20 contradicting the one-way service road in the
21 public right of way.

22 So yeah, we believe -- I don't want to

1 get in an argument, but we believe that the
2 improvements to the circulation and the access
3 points by removing one and restricting movements
4 to right in, right out, will actually improve upon
5 the existing circumstances that occur today with
6 an open section that create the conflicts that Mr.
7 Alvarez is testifying to.

8 HEARING EXAMINER: Okay.

9 MS. NELMS: I would like to make a
10 comment regarding --

11 HEARING EXAMINER: You cannot make
12 comments. I'm so sorry. Mr. Alvarez --

13 MS. NELMS: A question. Can I ask a
14 question?

15 HEARING EXAMINER: If you would wait a
16 minute. Can you come on -- can you wait one
17 second, please? When we finish with Mr. Powell.
18 You don't have Powell down there. I don't mean to
19 be calling you Mr. Alvarez.

20 MR. POWELL: Oh, we're neighbors so we
21 okay.

22 HEARING EXAMINER: Okay. So Ms. Nelms?

1 MS. NELMS: Yes.

2 HEARING EXAMINER: Please wait one
3 second, please.

4 MS. NELMS: Okay.

5 HEARING EXAMINER: So Mr. Powell, thank
6 you. We're finished with your question?

7 MR. POWELL: Yeah, but I want to make
8 one statement.

9 HEARING EXAMINER: No statements. No,
10 no, no statements. You can only ask questions
11 now.

12 MR. POWELL: Oh, okay.

13 HEARING EXAMINER: You can wait.
14 There's going to be another witness talking about
15 the site plan as well, so you might be able to ask
16 that person a question.

17 MR. POWELL: Oh, okay.

18 HEARING EXAMINER: Do you have any
19 questions of Mr. Caloggero?

20 MR. POWELL: Yes. So are they making
21 any improvements to the access road for the
22 entrance that's coming out from Royal Farms?

1 HEARING EXAMINER: Mr. Caloggero, do you
2 know?

3 MR. CALOGGERO: To where?

4 MR. TEDESCO: I believe that's been
5 asked and answered, Madam Examiner.

6 MR. POWELL: No, coming out from Royal
7 Farms. The people from the access road, the
8 residents, when we leave out the only way would be
9 a left out onto East West Highway. And so you
10 have traffic coming in from --

11 MR. TEDESCO: We're not touching your
12 access at all to East West Highway.

13 MR. POWELL: Yeah, but I was just
14 talking about how that was going to affect us, you
15 know, getting on the East West Highway with all
16 the traffic.

17 MR. TEDESCO: Well, we didn't -- we
18 weren't required to (inaudible) create studies for
19 your access point nor 17th Avenue at that
20 location.

21 MR. POWELL: Yeah, because when people
22 come out they're making a left --

1 HEARING EXAMINER: Uh-huh. Wait a
2 minute, that doesn't sound like a question. Okay.

3 MR. POWELL: All right.

4 HEARING EXAMINER: Okay. So he
5 answered.

6 MR. POWELL: Okay. All right, I'll let
7 my neighbor take over.

8 HEARING EXAMINER: Ms. Nelms, would you
9 like to ask a question?

10 MS. NELMS: Yes, I want to just clarify,
11 Mr. Joes' question. He said that there's two
12 exits off of East West Highway, which is correct,
13 but they will be closing down the one near the
14 stop light and if I heard him correctly, he said
15 that will improve the traffic. But my question is
16 have you or anyone been out here to observe the
17 number of accidents that occur from the exit
18 closest to our homes. That's my question. Has
19 anyone conducted a study regarding the number of
20 accidents that occur from that exit that's closest
21 to our homes going -- or leaving and going left
22 down East West Highway? That's the majority of

1 the accidents.

2 MR. CALOGGERO: We weren't required to
3 do an accident analysis as part of our study. But
4 we're also modifying that access to a right in,
5 right out, so people turning -- so we won't have
6 people leaving the site and turning left, which
7 should prevent accidents.

8 MS. NELMS: I'm sorry, you were -- it
9 cut off some. What -- can you state that again,
10 please?

11 MR. CALOGGERO: Sure. We are modifying
12 that access to a right in, right out so there will
13 be no left turns entering or leaving that portion
14 of the site which should remove the accident
15 condition that you just stated which involves left
16 turning traffic.

17 MS. NELMS: Okay. I have one other
18 question regarding the crossing right there. Has
19 any study been done regarding the number of
20 pedestrians going across East West Highway?

21 MR. CALOGGERO: No, there has not.

22 MS. NELMS: Thank you.

1 HEARING EXAMINER: Thank you. Mr. --
2 Ms. Kuehn, did I say it right?

3 MS. KUEHN: Uh-huh. Yes. Good
4 afternoon. I guess it is afternoon now. Good
5 afternoon Ms. --

6 HEARING EXAMINER: Good afternoon.

7 MS. KUEHN: -- Madam Examiner and the
8 rest of the attendees. I have a quick question
9 for Mr. Caloggero. I'm not an expert, but I was
10 just curious are you -- I want to more understand
11 how can it be that the projected trips will be
12 less than the current trips if there is a new
13 development that has a 4,000 square feet
14 establishment? It just doesn't logically -- I
15 can't wrap my mind around it.

16 MR. CALOGGERO: I mean, the -- those are
17 the numbers in accordance with national standards
18 for this development. When you're looking at this
19 development versus the existing development,
20 again, our analysis was submitted and approved by
21 MNCPPC and the Transportation Planning Section.

22 You're on mute and I'm sorry --

1 MS. KUEHN: Yeah, okay. I was just
2 curious how that can be. You explained it just
3 like (inaudible) make sense to me.

4 MR. CALOGGERO: Yeah.

5 HEARING EXAMINER: So the current, if I
6 may ask one more based on that Mr. Caloggero, the
7 current uses would be all of those uses that were
8 approved in that 1950 subdivision. You're saying
9 if all of them were there?

10 MR. CALOGGERO: Correct.

11 HEARING EXAMINER: Right. And so now,
12 it's going to be less uses and they have
13 different --

14 MR. CALOGGERO: Right.

15 HEARING EXAMINER: -- amounts in the --
16 tell them briefly what that study is you used, the
17 ITE?

18 MR. CALOGGERO: So the Institute of
19 Transportation Engineers Trip Generation Manual is
20 a national manual. It's the 11th edition that
21 means it's been reprinted and with more data, more
22 information so on and so forth, for, you know, 11

1 times.

2 The most recent one was today. and this
3 looks at numerous studies and numerous analyses of
4 all the different uses from residential to
5 commercial to industrial. And it comes up with
6 average trips and projected trips for morning,
7 evening, daily and it's our national guideline
8 that traffic engineers use to generate trips.

9 Now, if I may, I'll just continue just a
10 little bit more for this site. The pass by trips,
11 which is trips on the road today turning into and
12 out of the site, it's assumed that 76 percent are
13 already passing by the site today. So when you
14 look at a situation where there's, you know,
15 there's 60,000 trips per day passing by this site,
16 you're going to have trips that are going to and
17 from work, to and from home. They're just going
18 to turn right in and right out.

19 They're not really going to be new
20 trips, so in my opinion 25 percent new trips is
21 quite high. Especially for an intersection of
22 this magnitude. You know, but overall it's still

1 going to be less than what was proposed. Or what
2 was there (inaudible).

3 Ms. KUEHN: I was just curious because
4 the argument was always that on the current site,
5 it's underdeveloped and there's barely any
6 enterprises in the site so that's where I was
7 coming from.

8 MR. CALOGGERO: Thank you.

9 HEARING EXAMINER: Thank you.

10 MS. KUEHN: Thank you very much.

11 HEARING EXAMINER: Thank you. Mr.
12 Watling, you have a question?

13 MR. WATLING: Yes, I do, for Mr.
14 Caloggero. You had said that you did an onsite
15 visit or onsite traffic inspection, what time and
16 day was that?

17 MR. CALOGGERO: Well, we --

18 MR. WATLING: (Crosstalk).

19 MR. CALOGGERO: We drove to the site to,
20 you know, just a general traffic observation. Did
21 I sit there and watch peak hour operations for
22 numerous times? No, I did not. But did I visit

1 the site? Did I look at the access points, yes I
2 did. We're required to do a traffic analysis for
3 the intersection or off site.

4 MR. WATLING: Did you look at the use of
5 the Sligo Creek Trail crosswalk on Riggs?

6 MR. CALOGGERO: No, we did not.

7 MR. WATLING: And when you were there
8 was it during a school day?

9 MR. CALOGGERO: It was -- I was there
10 probably sometime in May. And did I --

11 MR. WATLING: Did --

12 MR. CALOGGERO: I drove through the
13 site. I observed the site, but I didn't take
14 observations of traffic moving in and out. I
15 wasn't there for that. I was there to do an
16 onsite inspection of what -- of the site itself
17 and looking at the access points.

18 MR. WATLING: And do any of the traffic
19 that you reference take into account the various
20 school schedules? Because you mentioned peak
21 times and being between 7:00 and 9:00 a.m., you
22 had something like 114 trips per hour. And was

1 that leaving, what you would expect to be leaving
2 the Royal Farms?

3 MR. CALOGGERO: One trip is either
4 entering or exiting, so it's in and out. So we
5 are showing our trips as 68 trips coming in, 46
6 trips coming out.

7 MR. WATLING: And you don't know if
8 they're coming out on East West Highway or Riggs?

9 MR. CALOGGERO: Oh no, they're coming
10 out both.

11 MR. WATLING: So what is the estimated
12 number of cars coming out of the Riggs entry/exit?

13 MR. CALOGGERO: We didn't do a trip
14 distribution study to project which trips would be
15 entering or exiting the site. That was not
16 required. We just did a trip generation to
17 determine if the trips would be more or less.

18 MR. WATLING: Okay. Was any
19 consideration given to cars coming? Because if
20 there was no development there, cars would just,
21 like heading south on Riggs, they would just be
22 driving south. But if they are coming from a

1 stop, like they're waiting to get out of Royal
2 Farms onto Riggs they're going from 0 miles an
3 hour to trying to get into traffic. And if
4 they --

5 MR. CALOGGERO: They wouldn't do that.

6 MR. WATLING: If they see a bus or if
7 they see pedestrians, how is traffic flow being
8 considered for aht situation, or crossing guards?
9 Because there is (inaudible) crossing right there.

10 MR. CALOGGERO: Well, for one, you know,
11 today there's an access point there already. So
12 traffic coming in and out will have to make that
13 maneuver today. So this isn't a new maneuver.
14 And there's two other things. Traffic, you know,
15 with traffic and vehiculars, they see and
16 hopefully they're mostly familiar with this area
17 because most of the people using this facility
18 will more than likely be traveling through this
19 intersection on a daily basis anyway. They're
20 going to know there's crossings at that location
21 and it's up to the A, the motorist to ensure that
22 it is safe to exit the property or enter the

1 property and watch for a pedestrian as well as
2 pedestrians to ensure that they have a safe
3 crossing.

4 MR. WATLING: But because of the nature
5 of that business there is going to be more flow
6 coming out during peak hours, morning rush hour,
7 evening rush hour.

8 MR. CALOGGERO: They still have to
9 take --

10 MR. WATLING: Afternoon rush hour,
11 morning school after school, than there are now.

12 MR. CALOGGERO: They still have to
13 follow the rules of the road. You know there's
14 (inaudible) and they're going to have to watch for
15 pedestrians. Now, it doesn't mean because there's
16 more cars and there's more pedestrians that it's
17 an unsafe crossing because it's -- you can see the
18 pedestrian scan see the vehicles and the vehicles
19 leaving can see the pedestrians.

20 I mean, I know -- well, we may have to
21 agree to disagree but that's my opinion.

22 MR. WATLING: Okay. And last question.

1 Would you like to join me to try to cross that
2 intersection now and imagine increased traffic?

3 MR. TEDESCO: Objection.

4 HEARING EXAMINER: Sustained.

5 MR. WATLING: Thank you for your time.

6 HEARING EXAMINER: Thank you Mr.

7 Watling.

8 MR. WATLING: Thank you all.

9 HEARING EXAMINER: All right. I think
10 we're finished with the callers.

11 MR. TEDESCO: I have one redirect if I
12 may.

13 HEARING EXAMINER: Wait, wait, one
14 second, I'm just making sure. Okay. Your
15 redirect?

16 MR. TEDESCO: Mr. Caloggero, do you
17 know, in order to pull an access permit from the
18 State Highway Administration whether an traffic
19 impact analysis is required or not?

20 MR. CALOGERO: The State Highway
21 Administration typically follows the local
22 jurisdiction. If the local jurisdiction does not

1 require a traffic study then one will not be
2 required.

3 MR. TEDESCO: If State Highway
4 Administration determines they're potentially is
5 an unsafe condition here, could they require a
6 traffic impact analysis?

7 MR. CALOGGERO: They may. They may.
8 But typically they follow the local jurisdiction.
9 Now, if we're talking about safety, they may not
10 need a traffic analysis to determine any safety
11 improvements to go along with the access.

12 MR. TEDESCO: But it's the State Highway
13 Administration's authority with respect to these
14 access and these pedestrian crossings within its
15 right-of-way, correct?

16 MR. CALOGGERO: Correct.

17 MR. TEDESCO: I have no more questions,
18 Madam Examiner.

19 HEARING EXAMINER: Okay. who's your
20 next witness?

21 MR. TEDESCO: I actually -- and please
22 forgive me, Madam Examiner, but I need to recall

1 Mr. Ruszin.

2 MR. CALOGGERO: And may I be dismissed?

3 HEARING EXAMINER: You want to leave us?

4 You've got to go?

5 MR. CALOGGERO: I have to --

6 MR. TEDESCO: He had --

7 MR. CALOGGERO: I have been listening.

8 HEARING EXAMINER: I'm fine, Mr.

9 Caloggero.

10 MR. TEDESCO: Yeah, thank you, Joe.

11 MR. CALOGGERO: Thank you.

12 MR. TEDESCO: I neglected to ask a --

13 HEARING EXAMINER: Mr. Ruszin?

14 MR. RUSZIN: Yea.

15 HEARING EXAMINER: Where is Mr. Ruszin.

16 There he is. You're still under oath.

17 MR. TEDESCO: Mr. Ruszin, were you
18 present during the first two hours of this
19 proceeding and hearing the testimony from a number
20 of citizens with respect to vapors -- vapor
21 caption, benzyne and the underground tanks?

22 MR. RUSZIN: Yes, I've heard all

1 testimony today.

2 MR. TEDESCO: And have you had an
3 opportunity to prepare and submit into the
4 record -- well, strike that.

5 Could you explain to Madam Examiner the
6 vapor recovery system associated with this use?

7 MR. RUSZIN: Yes. As I mentioned
8 earlier I'm the fuel environmental leader for
9 Royal Farms so I'm involved in designing fuel
10 systems, compliance with state and federal
11 regulations and also procuring the equipment that
12 we install for our fuel systems. Part of which --

13 MR. TEDESCO: (inaudible) to interrupt.

14 I'm sorry, Fatima, could you pull up
15 Exhibit 82, please?

16 Go ahead, Tom while that's being done.

17 MR. RUSZIN: Part of the requirements to
18 install fuel systems in the State of Maryland is
19 to apply for a general permit to construct a vapor
20 recovery system which we do for all of our new
21 installations as is required by law.

22 We -- when fuel is delivered to

1 underground storage tanks, as the fuel goes into
2 the --

3 MR. TEDESCO: 82, thank you. Go ahead,
4 Tom.

5 MR. RUSZIN: As fuel goes into the fill
6 pipe to fill the tanks up vapors are displaced as
7 the liquid rises in the tank. Those vapors are
8 captured by what's called stage 1, vapor recovery
9 on the fuel carrier's truck. So there's another
10 hose attached to another fitting on that tank that
11 collects the vapors that are displaced and places
12 them back into the fuel carrier's tanks.

13 We use a system by OPW, they're a
14 manufacturer of fueling equipment, below-ground
15 fueling equipment, that is listed under the
16 California Clean Air Resources Board as -- which
17 is called stage 1 EVR, enhanced vapor recovery.
18 So it is 97 percent effective in recovering all
19 vapors, minimum 97 percent, excuse me, in
20 recovering all vapors from that fueling. So that
21 is standard on all of our fueling equipment.

22 We're also required to perform annual

1 tests, vapor recovery tests on our fuel systems,
2 one of which is called a pressure to K test where
3 we actually pressurize our fuel system to make
4 sure that it is vapor tight even during -- even
5 not during deliveries to ensure that we're not
6 emitting (inaudible) into the environment.

7 While people are fueling their cars
8 there are devices on any automobile that was
9 manufactured after 2001 that has onboard refueling
10 vapor recovery so it captures the vapors that go
11 onto -- that would potentially come out of a
12 nozzle during refueling of an automobile.

13 Formerly, gas stations had what's called
14 stage 2 vapor recovery and that was a device that
15 was on the dispenser, multiproduct dispenser that
16 recovered the vapors. However, the environmental
17 protection agency has determined that this onboard
18 refueling vapor recovery device that is
19 automobiles has reached what they determine to be
20 widespread use. So stage 2 vapor recovery is no
21 longer required to be part of the petroleum
22 installation because everyone's cars are doing

1 that function.

2 MR. TEDESCO: You heard testimony with
3 respect to benzyne and other types of vapor
4 associated with gas stations. As the
5 environmental leader for Royal Farms overseeing
6 all the sites in Royal Farm's inventory, do you
7 believe that the system that's imposed or
8 constructed by Royal Farms will have any effect
9 with respect to the vapor or the benzyne
10 displacement?

11 MR. RUSZIN: No, we will comply with all
12 clean air standards at both federal and state
13 level as well as all testing to ensure that our
14 vapor recovery is adequate and not emitting fumes
15 into the environment.

16 MR. TEDESCO: And what permits are
17 required, associated with that system?

18 MR. RUSZIN: Just the -- it's a permit
19 with the Maryland Department of the Environment's
20 Air and Radiation Management. It's a general
21 permit to construct a vapor recovery system.

22 MR. TEDESCO: You --

1 MR. RUSZIN: I will also mention, it's
2 just worth noting that all of our petroleum
3 contractors are certified, in OPW's enhanced vapor
4 recovery installation. We also hire a third-party
5 environmental consultant to oversee A, the tank
6 installations, and then B, perform a pre-bury
7 inspection of all the fittings and pipings prior
8 to backfilling and pouring concrete.

9 MR. TEDESCO: And finally, Mr. Ruszin,
10 Exhibit 81, which is a letter from you regarding
11 the underground storage tanks and the USTs and its
12 operation. Could you just briefly for the
13 Examiner explain what Exhibit 81 is and the
14 purpose of preparing such a document?

15 MR. RUSZIN: It's really just outlining
16 how we approach fueling. You know, we go a little
17 bit above and beyond the minimum standard for
18 federal and Maryland state regulations. So there
19 is also a diagram attached to that it outlines our
20 policies and procedures. Also outlines some
21 internal things, like right now, the fuel
22 compliance box is being shown, how we track our

1 compliance with the regulations so if an inspector
2 were to come by and how we present this
3 information. There is also a diagram attached to
4 that. It shows just a typical fueling system, all
5 the components and how they all interact.

6 MR. TEDESCO: There was also testimony
7 from the citizens regarding underground storage
8 tanks and floodplain leaking into the groundwater
9 and/or Sligo Creek? Do you have any thoughts or
10 response to that -- to those statements with
11 respect to the design and how your tanks, the
12 underground tanks are designed?

13 MR. RUSZIN: Yes, absolutely. It's my
14 understanding that our civil engineer will address
15 the location of our tanks in the floodplain. But
16 as far as the design of our tank systems go, we
17 buy tanks and we buy tanks from Containment
18 Solutions with 30 year warranties that we put dead
19 men and associated anchor straps on Our systems.
20 Of course, they are backfilled with pea gravel and
21 covered by concrete. These systems are designed
22 for a fully submerged environment, should one

1 exist.

2 So even if there were to be groundwater
3 levels that came up above the top of the tank
4 fittings it's designed to be liquid tight and also
5 designed not to float.

6 MR. TEDESCO: Are your tanks single wall
7 or double walled and what's the difference?

8 MR. RUSZIN: They are double walled
9 tanks as has been required to be installed in the
10 State of Maryland since 2009. Our tanks not only
11 being double walled, they also have a brine
12 solution which is in between the primary
13 containment of the tank and the secondary
14 containment of the tank that is monitored 24/7 by
15 an electronic sensor to make sure that if that
16 brine level gets either too high from something
17 getting into that space, or too low from a loss of
18 brine for some reason, an alarm is sent to a tank
19 monitor which sends an alarm to the store. They
20 have an alarm response guy posted right next to
21 that monitor that gives them instructions on what
22 to do for various types of alarms.

1 We also, review alarm reports every
2 morning in the fuel department to make sure
3 everything has been called in and has been
4 properly addressed. We also have a 24/7 facility
5 support center which if a store has an issue they
6 can call us, speak with a person and they would
7 know who to contact in the event of an emergency
8 should one arise.

9 MR. TEDESCO: If this special exception
10 is approved and the store is built and after it's
11 commenced with its useful life, if the store is no
12 longer going to be operated or is closed, what
13 will Royal Farms do with the underground tanks?

14 MR. RUSZIN: We would remove the tanks
15 and not only because that's the right thing to do
16 and it would -- we're also required by the State
17 of Maryland to do so within one year of placing
18 those tanks temporarily out of service.

19 MR. TEDESCO: And Madam Examiner, I'd
20 also note that Section 27-358 C of the County Code
21 requires the removal of any underground tanks upon
22 the abandonment of the use. So it's required by

1 zoning as well.

2 I think those are all the questions I
3 had.

4 MR. RUSZIN: It's also worth mentioning
5 that the removal of those tanks is all -- would
6 also require the oversight of an environmental
7 consultant, a licensed tank removal contractor and
8 an inspector from the Maryland Department of
9 Environment to be onsite during those activities.
10 And then, samples collected to make sure that the
11 soils and groundwater are clean and then with a
12 report documenting all those activities and
13 confirmatory samples sent into the State for
14 review.

15 MR. TEDESCO: Thank you, Mr. Ruszin. I
16 have no further questions.

17 HEARING EXAMINER: Thank you Mr. Ruszin.
18 Does anyone have cross examination for Mr. Ruszin?
19 We are not saying your name correctly. What is
20 it?

21 MR. RUSZIN: Ah, [Ru' sen].

22 HEARING EXAMINER: [Ru' sen] yes.

1 MR. RUSZIN: Yeah.

2 HEARING EXAMINER: Doesn't look like it.

3 Mr. Tedesco by --

4 MR. TEDESCO: We've got three more -

5 HEARING EXAMINER: Wait a minute. By
6 law I have to give these ladies a break. So would
7 you like a 20 minute break now and then we'll
8 knock the rest out or --

9 MR. TEDESCO: I think that sounds
10 reasonable, yes, ma'am.

11 HEARING EXAMINER: Okay . So everyone
12 here, I think you can just turn off your mic and
13 sound and we'll be back at -- let's make it 12:45.
14 We'll give them a 23 minute break.

15 (Off the record.)

16 (On the record.)

17 MR. DIMARCO: It's safe to say good
18 afternoon.

19 HEARING EXAMINER: Good afternoon, Mr.
20 DiMarco. Do you swear or affirm under the
21 penalties of perjury that the testimony you shall
22 give will be the truth, and nothing but the truth?

1 MR. DIMARCO: I do.

2 HEARING EXAMINER: Thank you.

3 MR. TEDESCO: Mr. DiMarco, could you
4 state your name, and address and employer spelling
5 your last name for the record?

6 MR. DIMARCO: Joseph DiMarco, spelled ,
7 D-I-M-A-R-C-O. I work as a civil engineer with
8 Bohler Engineering located at 16701 Melford
9 Boulevard in Bowie, Maryland 20715.

10 MR. TEDESCO: Are you a licensed
11 professional engineer?

12 MR. DIMARCO: Yes, I am.

13 MR. TEDESCO: Madam Examiner, Mr.
14 DiMarco's CV is marked as Exhibit 72. We would
15 ask that he be continued as -- accepted as an
16 expert in the field of civil engineering.

17 HEARING EXAMINER: Mr. DiMarco will be
18 accepted as an expert in the field of civil
19 engineering.

20 MR. TEDESCO: Thank you.

21 Mr. DiMarco, were you employed by the
22 Applicants to perform certain services associated

1 with this project?

2 MR. DIMARCO: Yes.

3 MR. TEDESCO: And are you familiar with
4 the special exception application that the subject
5 of this hearing today?

6 MR. DIMARCO: Yes, I am.

7 MR. TEDESCO: And did you or someone in
8 your firm prepare the special exception site plan
9 and landscape plan associated with this case?

10 MR. DIMARCO: Yes.

11 MR. TEDESCO: And did you or someone in
12 your firm under your supervision prepare the site
13 development concept plan in this case?

14 MR. DIMARCO: Yes.

15 MR. TEDESCO: Could you please describe
16 the subject -- well, strike that.

17 MR. TEDESCO: I think, Madam Examiner,
18 you're quite familiar with the subject property.
19 So we can omit some of these questions.

20 I'm picking up feedback. So I need
21 somebody to mute. Ms. Kuehn, thank you.

22 MR. TEDESCO: Mr. DiMarco, did you make

1 a field inspection of the subject property?

2 MR. DIMARCO: Yes, I did.

3 MR. TEDESCO: And you just described --
4 although there has been testimony already
5 provided, can you provide in your own words the
6 description and nature of the existing property
7 and the improvements?

8 MR. DIMARCO: Certainly. I will try not
9 to be to duplicate here. Yeah, the site exists
10 with an existing retail building. As we
11 mentioned, it's 100 percent impervious, largely
12 paved with parking or covered by said building.
13 The site does have three entrances. We noted two
14 exists off of East West Highway, one off of Riggs.
15 And so generally the site drains north to south.

16 MR. TEDESCO: And did you, in
17 referencing this special exception site plan,
18 Exhibit 26 as well as the landscape plan sheet,
19 Exhibit 35 and 36 --

20 MR. TEDESCO: If we can maybe have
21 Fatima pull up Exhibit 26, that would be helpful.

22 HEARING EXAMINER: While she is doing

1 that, what is the difference between 26 and 40 and
2 46? I mean, if you could just give me a little
3 detail more Mr. Tedesco near the end, so I know
4 like if it's revised. It looks like we have
5 several of the same things, but maybe they are all
6 slightly revised. Don't worry about it now. I'm
7 just saying if you'll make a note to do that for
8 me.

9 MR. TEDESCO: I can do it while it's
10 coming up. So 26 is the special exception site
11 plan, the full -- all the sheets.

12 HEARING EXAMINER: Okay.

13 MR. TEDESCO: 46 is the site development
14 concept plan, which is the stormwater management
15 plan which we will testify to. And then we
16 submitted -- your indulgence -- Exhibit 68, which
17 is a minor -- which are some modifications to the
18 site plan associated with the access point to
19 the -- on Riggs Road, which we will get into
20 testimony on.

21 But the difference between 26 and 46 is
22 one is the special exception site plan and 26 and

1 46 is the site development concept plan,
2 stormwater management plan approved by DPI.

3 HEARING EXAMINER: And then one more.
4 The landscape plan is on its own, but it's also
5 part of the special exception package. So is it
6 revised?

7 MR. TEDESCO: No.

8 HEARING EXAMINER: Or is it just easier
9 to look at? Number 35?

10 MR. TEDESCO: Yes. I think just in
11 preparing the record and the exhibit list, Exhibit
12 35 and 36 are duplicative to certain sheets in 26.

13 HEARING EXAMINER: Okay. And there is a
14 mistake in the exhibit list and in the binder I
15 meant to bring up. And that is Exhibit 62 is the
16 technical staff report with the backup. It's just
17 when I pulled it up the first time the was no
18 backup. So it's something weird when things are
19 digital. But the final one does have the backup.
20 So even though we say without, it has the backup?

21 MR. TEDESCO: Yeah.

22 HEARING EXAMINER: Okay.

1 MR. TEDESCO: I noted that my binder,
2 that it does have the backup.

3 HEARING EXAMINER: Okay. All right.

4 MR. TEDESCO: So looking at -- if we
5 could, go to the third sheet Fatima. So scroll
6 down to the -- so you are at sheet 1. So page 69
7 maybe. Thank you.

8 MR. TEDESCO: So this is -- Mr. DiMarco,
9 you see what's on the screen, which is exhibit --
10 a portion of -- sheet 3 of Exhibit 26. Can you
11 just orient the Examiner to what we are looking at
12 on Exhibit -- sheet 3, Exhibit 26?

13 MR. DIMARCO: Certainly. So what we are
14 seeing here is the proposed development layout for
15 the subject development, which is comprised of
16 closing of one access off of East West Highway as
17 noted, a proposal of maintaining the westernmost
18 access into the site from East West that would
19 provide access to the initial front drive to
20 service the building, which is located through the
21 gray, rectangular figure there to the left.

22 And as we've already seen in some of the

1 prior figures, over to the right of the site is a
2 proposed fuel canopy with eight MPD6 fueling
3 positions. And then surrounding the perimeter
4 site is parking and then areas of green space that
5 would accommodate landscaping.

6 MR. TEDESCO: Are you familiar with
7 Section 27-358 of the zoning ordinance?

8 MR. DIMARCO: Yes, I am.

9 MR. TEDESCO: And does the special
10 exception site plan and the associated documents
11 conform to the requirements of that section?

12 MR. DIMARCO: They do, yes.

13 MR. TEDESCO: You heard -- were you
14 present during the testimony earlier this morning?

15 MR. DIMARCO: Yes, I was.

16 MR. TEDESCO: And you heard testimony
17 referencing the playground associated with the
18 Parklawn Park?

19 MR. DIMARCO: Yes.

20 MR. TEDESCO: What is your understanding
21 of the ultimate disposition of that playground?

22 MR. DIMARCO: So as part of the

1 development procedure we did work extensively with
2 an MNTPPC Department of Parks and Recreation over
3 the last several years to develop a park
4 improvement plan for the Parklawn Park that would
5 remove that existing playground. That is also
6 constituted in the staff technical report with a
7 condition, condition 2A, that the existing
8 playground we need to be removed prior to any
9 issuance of the building permit.

10 MR. TEDESCO: Did you or anyone in your
11 office assist in preparing the Parklawn Park
12 concept plan?

13 MR. DIMARCO: Yes.

14 MR. TEDESCO: And under what -- under
15 whose direction did you prepare that plan?

16 MR. DIMARCO: That was prepared in
17 coordination with the Department of Parks and
18 Recreation.

19 MR. TEDESCO: So is it fair to say that
20 the Department of Parks and Recreation provided
21 input and comments and requests with respect to
22 improvements to the park?

1 MR. DIMARCO: Yes.

2 MR. TEDESCO: Madam Examiner, just for
3 your reference, that exhibit is Exhibit 80.

4 MR. TEDESCO: Now Mr. DiMarco, in
5 referencing Exhibit 68, if we could have --

6 MR. TEDESCO: Fatima, if you could, pull
7 up Exhibit 68. And we just need to have it
8 enlarged a little bit. Thank you.

9 MR. TEDESCO: So Mr. DiMarco, looking at
10 Exhibit 68, could you explain to the Examiner what
11 we are seeing here with respect to -- it looks
12 like additional redlines and green lines.

13 MR. DIMARCO: Yeah, absolutely. And
14 this does speak to some of the noted comments made
15 in prior testimony with relation to the Riggs Road
16 point of egress from the site. And that would be
17 a right-in, right-out entry on Riggs Road. What's
18 shown in red here is a slight realignment of that
19 entry, excuse me, egress point to slide it further
20 north towards the intersection away from the
21 Parklawn Park property.

22 And really that's achieving a better

1 alignment with the on-site drive that houses the
2 underground fuel tanks to allow vehicles to just
3 sort of simply move directly forward from that
4 drive out to Riggs and then make a right turn out
5 onto Riggs. A little bit of realignment of the
6 parking, but actually this would add an additional
7 parking island to the park parking lot itself. We
8 would maintain the same amount of parking.

9 And then the green lines are
10 depicting -- this is actually a finding and a
11 comment from technical staff report to add
12 additional sidewalks that would connect from both
13 East West Highway and from Riggs to the --
14 directly to the building, which would be the
15 sidewalk along the frontage of the building. So
16 that's what's depicted in green, to additional 5
17 foot wide minimum sidewalks from the roadways to
18 the building.

19 MR. TEDESCO: So is it fair to say that
20 this Exhibit 68 depicts improvements requested by
21 technical staff as well as improvements that
22 better at here or better meets, should say,

1 substantially meet Section 27 through 58-A5?

2 MR. DIMARCO: Yes, that's correct. I --

3 MR. TEDESCO: And will it not -

4 MR. DIMARCO: And note for the record as
5 well that the intersection -- this is from the
6 intersection to the entrance and moving it north
7 would still be in excess of 20 feet, which is a
8 federal requirement.

9 MR. TEDESCO: In furtherance of
10 relocating the access on into Riggs Road slightly
11 to the north and contemplation of the statute
12 requirement being 12 feet from the property line
13 and adding the sidewalk, does that also have an
14 ancillary benefit with respect to its location
15 next to the proposed bus shelter to the south on
16 the Parkland Park property?

17 MR. DIMARCO: Well one, it creates
18 additional separation. So yes, for the entry
19 point. And two, it does provide an additional
20 pedestrian pathway that would directly -- more
21 directly connect with that existing sidewalk out
22 along the park.

1 MR. TEDESCO: So not to jump around.
2 And I apologize. But you heard a lot of comments
3 with respect to the floodplain. Is that -- do you
4 recall those comments and testimony earlier today?

5 MR. DIMARCO: Yes, I do.

6 MR. TEDESCO: And if we could have
7 Exhibit 33 and 34 pulled up, please, Fatima.

8 MR. TEDESCO: While that's being done
9 Mr. DiMarco, can you tell us whether or not the
10 site has an approved stormwater concept approval?

11 MR. DIMARCO: Yes, it does. I can
12 provide the number if needed.

13 MR. TEDESCO: What is the approval
14 number?

15 MR. DIMARCO: So it's case number 1747-
16 2021-00.

17 MR. TEDESCO: And is that valid?

18 MR. DIMARCO: Yes.

19 MR. TEDESCO: Turning to your screen, if
20 we could have that enlarged slightly. Looking at
21 Exhibit 33, could you explain to the Examiner what
22 Exhibit 33 is?

1 MR. DIMARCO: I believe this is the
2 floodplain delineation, existing floodplain
3 delineation on the property that exists today.
4 Really I think just to concentrate attention to
5 the southeast corner of the site, there is a blue
6 line labeling down there that it sort of cuts to
7 that corner of the site. That area, sort of
8 below, just plain south below this line, is the
9 area that exists today of on-site floodplain.

10 MR. TEDESCO: And are there any current
11 stormwater management controls or any type of
12 devices or the improvements to the property within
13 that area or any part of the property that
14 mitigate or address quality or quantity control in
15 any rain events?

16 MR. DIMARCO: No.

17 MR. TEDESCO: I'm sorry?

18 MR. DIMARCO: No.

19 MR. TEDESCO: And could you -- Fatima,
20 could you go to the next page, Exhibit 33? Or
21 excuse me, 34?

22 MR. TEDESCO: Mr. DiMarco, what are we

1 looking at here?

2 MR. DIMARCO: So this is the proposed
3 development plan now overlaid to the site and
4 showing what the resulting limits of floodplain
5 will be. And you'll notice the area and purple on
6 the bottom there depicts a re-grading along the
7 southern portion of the site. It currently has a
8 retaining wall on the south boundary that would be
9 removed and graded into a hillside up to grade
10 with the rest of the site. That actually creates
11 capacity within the floodplain itself by sort of
12 taking that wedge and increasing the volume that
13 exists within the floodplain.

14 This impact that we have proposed here
15 for the site development, that has gone through a
16 process with Department of -- or DPI site road
17 division. And we've obtained a floodplain impact
18 waiver approval that would allow for the impaction
19 here.

20 MR. TEDESCO: So just to clarify, what
21 is shown in purple?

22 MR. DIMARCO: The area that is shown in

1 purple is the area that we would be excavating
2 within the floodplain creating additional capacity
3 in the floodplain. I guess to be clear, the green
4 area is sort of a continuation of the existing
5 area floodplain modified for any of the site
6 grading improvements. And one thing that I would
7 like to note is that the fueling components of the
8 site, the building, the pumps are located outside
9 of the floodplain area.

10 (Crosstalk)

11 MR. TEDESCO: Including the underground
12 tanks?

13 MR. DIMARCO: Correct.

14 MR. TEDESCO: So the testimony we heard
15 earlier about the tanks be within the floodplain,
16 that's not correct; is that right?

17 MR. DIMARCO: Correct.

18 MR. TEDESCO: And with respect to
19 impacts to the floodplain, with increased capacity
20 based upon the grading and removal of the
21 retaining wall, this application is actually
22 increasing capacity of the floodplain; is that

1 correct?

2 MR. DIMARCO: That's correct.

3 MR. TEDESCO: And this is the --

4 HEARING EXAMINER: Excuse me, one
5 second. I'm so sorry. Mr. DiMarco, if Ms. Bah
6 was able to give you the pointer, can you show
7 where the underground tanks are, so everybody can
8 see clearly that it's not within the purple, it's
9 in the green?

10 MR. DIMARCO: I would say unfortunately
11 they are not depicted in the current location
12 here. This was a prior plan that delineated a
13 slightly different layout. The tanks are actually
14 shown here behind the building, but they've been
15 shifted to -- and certainly I can point out the
16 general location on this layout.

17 HEARING EXAMINER: Okay, good. Show
18 where they -- show where they will be shifted to.

19 MR. DIMARCO: Sure. I would ask if I
20 can get control. And see my cursor here? No?

21 HEARING EXAMINER: Not yet.

22 MR. DIMARCO: I could just verbally

1 describe it. The canopy that's depicted there in
2 the center right of the site showing the eight
3 MPDs that we've sort of hit before, those fuel
4 tanks will be located just south of that. There
5 is an area of crosshatch zoned below that, but
6 that's not the tanks. That's the potential
7 stormwater management.

8 MR. TEDESCO: Can we pull up Exhibit 75,
9 please?

10 MR. DIMARCO: Thank you.

11 MR. TEDESCO: That shows it. And then
12 it also shows increased landscaped area behind the
13 building which we've actually further reduced
14 impervious areas since this impact was approved.

15 MR. DIMARCO: There we are. Okay.
16 Perfect.

17 MR. TEDESCO: Some Madam Examiner --

18 MR. DIMARCO: Yeah.

19 MR. TEDESCO: Mr. DiMarco, I'm sorry to
20 interrupt. But could you -- so behind the store
21 marked Royal Farms on this exhibit, there is a
22 grass area; is that correct?

1 MR. DIMARCO: Yes.

2 MR. TEDESCO: And it's landscaped
3 further beyond?

4 MR. DIMARCO: That's correct.

5 MR. TEDESCO: And on Exhibit 34, the
6 area was shown as being what?

7 MR. DIMARCO: 34 is the prior exhibit.
8 That area is being represented as a paved drive
9 aisle and a service drive behind the building.

10 (Crosstalk)

11 MR. DIMARCO: Yes. They removed and
12 replaced with a green area. And something I will
13 note that we can come back to, there is an area
14 there that's like an elongated rectangular space.
15 That is actually an additional third stormwater
16 management facility at the rear of the building.

17 MR. TEDESCO: And the underground tanks
18 that were previously shown on the floodplain
19 exhibit behind the building have been relocated to
20 where on this exhibit?

21 MR. DIMARCO: So that is the smaller
22 yellowish rectangle located to the right of the

1 building directly to the right.

2 MR. TEDESCO: Behind the gas pumps?

3 MR. DIMARCO: Yes, south of the gas
4 pumps.

5 MR. TEDESCO: South of the gas pumps on
6 the ground?

7 MR. DIMARCO: That's correct.

8 MR. TEDESCO: And that area where the
9 underground tanks are is outside of any
10 floodplain; is that correct?

11 MR. DIMARCO: That is outside the limits
12 of the limits of the delineated floodplain,
13 correct?

14 MR. TEDESCO: Madam Examiner --

15 HEARING EXAMINER: We don't have an
16 exhibit that shows that?

17 MR. TEDESCO: Well, we provided --

18 HEARING EXAMINER: Put together.

19 MR. TEDESCO: Well, we provided the
20 approved floodplain delineation approval which is
21 Exhibit 34. We can't really modify that. We can
22 provide an exhibit that overlays those

1 floodplain -- additional capacity areas with an
2 exhibit showing where the tanks are. We can do
3 that today or tomorrow.

4 HEARING EXAMINER: Yeah, that would
5 probably be great because it addresses an issue
6 that kept popping up.

7 MR. TEDESCO: Okay.

8 HEARING EXAMINER: If you show on
9 something like this exhibit where the floodplain
10 is.

11 MR. TEDESCO: Okay.

12 HEARING EXAMINER: Thank you.

13 MR. TEDESCO: Mr. DiMarco, do understand
14 what's requested?

15 MR. DIMARCO: I certainly do, yes.

16 MR. TEDESCO: Okay.

17 MR. TEDESCO: Madam Examiner, just your
18 indulgence. I just want to make a note.

19 HEARING EXAMINER: Me too.

20 MR. TEDESCO: And just for the record,
21 that floodplain approval as was reflected on
22 Exhibit 34, it had a red box at the bottom right.

1 What is that red box?

2 MR. DIMARCO: Without having in front --
3 I believe that was the approval stamp from the
4 reviewing agency.

5 MR. TEDESCO: Now you've heard testimony
6 with respect to stormwater management regarding
7 this impacts the Sligo Creek sliding in the area,
8 et cetera. You heard that testimony this morning?

9 MR. DIMARCO: Yes, I did.

10 MR. TEDESCO: And could you explain to
11 the Examiner, and list, please, all of the
12 existing stormwater management controls and
13 devices that currently exist on the property?

14 MR. DIMARCO: A very short list. There
15 are none out there currently.

16 MR. TEDESCO: So when it rains, what
17 happens with that rainwater today?

18 MR. DIMARCO: Generally, water rushes
19 from the northern portion of the site to the
20 southern portion of the site. There are -- there
21 is one inlet that captures water at the very
22 southern, southeastern portion of the site and

1 discharges water untreated directly downstream,
2 which then conveys to Sligo Creek. The western
3 portion of the site in large part has a retaining
4 wall bounding it. The water moves from the
5 northern portion of the site towards that
6 retaining wall.

7 MR. TEDESCO: And what 100 years storm
8 controls are there on site currently?

9 MR. DIMARCO: None.

10 MR. TEDESCO: So when we have 100 year
11 event which occurs, unfortunately, there are no
12 mechanisms in place for really quantity control to
13 handle that storm event, or quality control; is
14 that correct?

15 MR. DIMARCO: That is correct.

16 MR. TEDESCO: Now with the proposed
17 redevelopment that's the subject of this
18 application, what improvements will be made with
19 respect to stormwater?

20 MR. DIMARCO: So as approved as part of
21 the stormwater concept plan that was referenced in
22 my prior testimony, we will have three stormwater

1 management facilities. And I can list them. One,
2 a bio retention, above ground bio retention
3 facility along the majority of the western portion
4 of the site which will collect and treat water
5 from a quality standpoint.

6 Two, the additional mentioned micro bio
7 retention area at the rear of the building just
8 south of the proposed building that will act in a
9 similar fashion to capture water, filter, treat
10 it, from a quality standpoint.

11 And then three, there is a proposed
12 underground retention facility that houses a sand
13 filtration system that will both provide
14 qualitative and quantitative management of runoff
15 from the site. And I should -- I will note that
16 the quantitative management of the site will be
17 provided to control the hundred year storm.

18 MR. TEDESCO: Okay. So in your expert
19 opinion, is that improvement regarding stormwater
20 management and treatment quality and quantity?

21 MR. DIMARCO: Yes, a significant
22 improvement. And I did not mention that there is

1 a significant reduction on impervious surfaces as
2 well that contributes to the stormwater management
3 along the site.

4 MR. TEDESCO: Now turning to the
5 landscape, and we heard testimony with respect to
6 landscaping. How much landscaping currently
7 exists within the subject property?

8 MR. DIMARCO: Very little to potentially
9 none. I'm not even aware of any existing tree on
10 the site.

11 MR. TEDESCO: There was testimony or
12 questions with respect to the retaining wall and I
13 believe a sycamore tree on the adjacent property
14 to the south. Do you have any thoughts or
15 opinions with respect to the removal of the
16 retaining wall and/or the impacts of that tree?

17 MR. DIMARCO: So while I'm not an
18 environmental specialist or an arborist, our
19 improvements are limited to our site. And removal
20 of that retaining wall and grading that hillside
21 would be set such that our improvements would be
22 limited to no further than our southern property

1 line.

2 MR. TEDESCO: Are we removing any trees
3 as part of this development on site?

4 MR. DIMARCO: No.

5 MR. TEDESCO: The landscape plan I think
6 you testified to earlier, which is separated out
7 as Exhibits 35 and 36 in the record, was that
8 prepared by you or someone under your direct
9 supervision?

10 MR. DIMARCO: Yes, it was.

11 MR. TEDESCO: And that do you know if
12 that landscape plan meets or exceeds the landscape
13 manual requirements for this development?

14 MR. DIMARCO: Yes, it does.

15 MR. TEDESCO: Is the Applicant
16 requesting any alternative compliance or
17 deviations from the planting schedules required by
18 the landscape manual?

19 MR. DIMARCO: No.

20 HEARING EXAMINER: Mr. Tedesco, I'm so
21 sorry. But does it meet it or exceed it?

22 MR. DIMARCO: I would say --

1 HEARING EXAMINER: He said meets or
2 exceeds and you said yes.

3 MR. DIMARCO: We meet or exceed. And I
4 say that because there are some criteria that we
5 simply meet for adjacent buffers, frontage street
6 buffers, and some that we do slightly exceed. So
7 we both meet and exceed the criteria.

8 HEARING EXAMINER: And you -- do you
9 know off the top whether it's -- where do you
10 exceed it?

11 While he's looking, Mr. Tedesco, where
12 did you go?

13 MR. TEDESCO: I'm right here. I'm just
14 trying to answer your question because the
15 landscape schedules, Madam Examiner are on Exhibit
16 35.

17 HEARING EXAMINER: Exhibit 35, okay.
18 What I was going to ask you while he is doing
19 it -- and I will look again at Exhibit 35. I have
20 driven past this site a million times in my life
21 because I went to University of Maryland. But I
22 don't really see the roadway that Mr. Powell was

1 talking about. Is that it? Can you point that
2 out to me? And the 11 houses?

3 MR. TEDESCO: So it might be better to
4 go to -- forgive me, Madam Examiner.

5 HEARING EXAMINER: No, forgive me. Then
6 don't -- wait then. I don't want to stop your
7 direct. I mean, if you can show me later, that's
8 fine.

9 MR. TEDESCO: Can we have Mr. Ferguson
10 address that? Because he's --

11 HEARING EXAMINER: Yes.

12 MR. TEDESCO: He's not on deck, but he
13 is in the hole as we -- as our baseball
14 terminology goes. And he can testify to that and
15 then we can have --

16 HEARING EXAMINER: No more baseball.
17 All I know is put me in coach. And I only know
18 that because of Barney years ago.

19 MR. TEDESCO: Mr. Ferguson, can you just
20 make a mental note and then we will get you in a
21 witness or two?

22 MR. FERGUSON: Certainly.

1 MR. TEDESCO: Okay, thank you. Now I
2 lost my place on Exhibit 30.

3 HEARING EXAMINER: I'm sorry. You were
4 telling me it meets and exceeds landscape
5 requirements.

6 MR. DIMARCO: Yes. I could sort of go
7 around and just quickly note, we do exceed along
8 the frontage of East West Highway by just a
9 handful of plant units. We do exceed the amount
10 of interior landscape area that is requested by --
11 just short of a percentage on that criteria. We
12 do exceed the total amount of tree canopy coverage
13 requested on the site or required on the site,
14 excuse me. And then we do exceed in terms of
15 plant units as well, the buffer yard as well along
16 the western portion of the property as it abuts
17 the existing residential properties.

18 MR. TEDESCO: Thank you, Mr. DiMarco.

19 MR. TEDESCO: Madam Examiner, does that
20 answer the question?

21 HEARING EXAMINER: Yes, I was just going
22 to ask one last one about landscape. And that is

1 that earlier there was a -- there was some
2 testimony about having trees breaking -- within
3 the parking area. But as that required by the
4 landscape manual? Can it be done?

5 MR. DIMARCO: Yes.

6 MR. TEDESCO: Yes.

7 MR. DIMARCO: Yes, it is.

8 HEARING EXAMINER: No, I mean I think it
9 was like putting it between spaces. So you are
10 saying you do it already?

11 MR. DIMARCO: Yes.

12 HEARING EXAMINER: There was testimony,
13 I forget who, but there was in the should be more
14 trees within the parking areas.

15 MR. TEDESCO: Right. Can we go to
16 Exhibit 68? Because we actually added another
17 parking island.

18 HEARING EXAMINER REPORTER: Okay.

19 MR. TEDESCO: Some do you -- I can't
20 testify.

21 Mr. DiMarco, can you show the Examiner
22 where we have added an additional parking island

1 that will be landscaped along the southern
2 boundary?

3 MR. DIMARCO: Certainly. Yeah, the
4 outline and red along the south portion of the
5 property here depicts a -- two banks of potential
6 parking with the realignment. And then right in
7 the dead center that is sort of immediately south
8 of the tanks that we've noted there, there is a
9 sort of horseshoe that sort of juts up. That
10 would depict an additional parking island that
11 would be added to break up that long stretch of
12 parking. And that would be certainly an
13 additional green area within the site.

14 HEARING EXAMINER: Thank you.

15 MR. TEDESCO: How many parking islands
16 that would be landscaped are there?
17 Approximately?

18 MR. DIMARCO: 8 to 9 with this, my
19 thinking included.

20 MR. TEDESCO: As well as that
21 landscaping around the portion of the building?

22 MR. DIMARCO: Really there is no

1 landscaping immediately adjacent to three sides of
2 the building. There will be landscaping along the
3 rear of the building.

4 MR. TEDESCO: And interior plantings of
5 the corners? The north, east, and southeast
6 corners?

7 MR. DIMARCO: That's right.

8 MR. TEDESCO: And Madam Examiner, just
9 for your reference on this topic, Exhibit 35, it's
10 landscape schedule 4-3-2, interior plantings which
11 are being exceeded.

12 MR. TEDESCO: Mr. DiMarco, turning to --
13 you heard Mr. Rustin's testimony with respect to
14 the parking and technical staff by specifying the
15 number 7 and pages 12 and 13 of the staff report.
16 Did you hear that testimony?

17 MR. DIMARCO: Yes, I did.

18 MR. TEDESCO: And do you agree with
19 technical staff's analysis with respect to the
20 minimum required parking for this use?

21 MR. DIMARCO: No, I do not.

22 MR. TEDESCO: And what is the required

1 minimum parking based upon this use as a food and
2 beverage store in combination with a gas station?

3 MR. DIMARCO: So the computation for the
4 existing required parking as noted in the
5 technical staff report did not include a normal
6 parking generation group for commercial trade
7 under 27-568. With that, which is typical of
8 prior applications of a similar use in the county,
9 with that there would be a far greater required
10 parking count than was indicated in the technical
11 staff report.

12 MR. TEDESCO: I'm sorry to jump around.
13 So based upon -- strike that.

14 So based upon that, how many parking
15 spaces above the minimum are we -- is the
16 Applicant proposing?

17 MR. DIMARCO: We would be providing five
18 above minimum.

19 MR. TEDESCO: And sorry to jump back,
20 but regarding the stormwater management site
21 development concept plan approval, could you
22 explain to the Examiner based upon your design

1 that's been approved by DPI, how the site will
2 function as far as the capture? If you
3 understand -- do you understand my question?

4 MR. DIMARCO: Sure.

5 MR. TEDESCO: As far as capture. What
6 standard will the site function from a stormwater
7 capacity?

8 MR. DIMARCO: Sure.

9 MR. TEDESCO: Stormwater management
10 capacity?

11 MR. DIMARCO: Certainly. Yeah, this
12 plan would probably accurately depict it. Shown
13 on the left-hand side of the site here there is a
14 hashed out area that depicts that bio retention
15 swale as I mentioned. So that drive out to the
16 left would be captured through a couple of curb
17 breaks and drain down through the bio retention
18 swale for treatment. And that discharges directly
19 to the south of the property.

20 The remainder of the site then sort of
21 drains around the building to a series of inlets
22 that capture the majority of the parking and the

1 fuel canopy itself, and that drains to the
2 southern portion of the site where there is a
3 separate hatched out area. It depicts an
4 underground retention sand filter. And that would
5 also detain floodwaters to control the 100 year.

6 And then again right directly behind the
7 building in large part treating the building
8 itself is that additional micro bio retention sort
9 of elongated oval at the rear of the site there.
10 That would also then connect into the system that
11 drains to be detained for flood management.

12 MR. TEDESCO: So let me ask you a
13 different way. Thank you for that. And I
14 apologize for the confusion of the question. But
15 more specifically what I'm trying to get at, Mr.
16 DiMarco, what's the post management flow rate
17 standard.

18 MR. DIMARCO: So I did mention we are
19 controlling 100 year storm. But the way that that
20 is reviewed and the onus on the design is such
21 that we need to look at the site not as it exists
22 today, but as it once existed, being an

1 undeveloped site. So when we actually compute our
2 requirements for flood management, it's not based
3 on managing to the current discharge rate from
4 today, it's managing to the site as it exists as a
5 green meadow field.

6 MR. TEDESCO: So for somebody who is not
7 an engineer, notwithstanding the fact that this is
8 sites to be redeveloped with the Royal Farms with
9 additional pervious area being added, the flow
10 rates of any stormwater will be as if this was
11 undeveloped meadow? Did I hear that right?

12 MR. DIMARCO: Yes.

13 MR. TEDESCO: Again, in your expert
14 opinion, is that better or worse than the existing
15 condition?

16 MR. DIMARCO: That is better.

17 MR. TEDESCO: I have no further
18 questions. Madam Examiner, there is a question in
19 the comment that I will have Mr. DiMarco clarify.

20 HEARING EXAMINER: Thank you.

21 MR. TEDESCO: During your testimony
22 explaining the site plan, I thought I may have

1 heard you say it as well. So I just want to
2 clarify the record. You testified there was eight
3 multiproduct dispensers and how many fueling
4 positions?

5 MR. DIMARCO: 16 fueling positions.

6 MR. TEDESCO: Thank you.

7 MR. TEDESCO: That's all the questions I
8 have, Madam Examiner.

9 HEARING EXAMINER: Thank you. Does
10 anyone have questions of Mr. DiMarco?

11 MS. NELMS: I do. Donna Nelms. So my
12 question is, presently --

13 HEARING EXAMINER: Yeah. Can you come
14 on camera?

15 MS. NELMS: Oh, I'm sorry. All right.
16 So I'm outside now looking at this proposed
17 property right now. Will the retaining wall off
18 of East West Highway, the interest that you said
19 will remain, will that retaining wall and chain-
20 link fence remain there? Or will it be
21 demolished?

22 MR. DIMARCO: So I think you're asking

1 immediately up at the roadway, correct?

2 MS. NELMS: Yes.

3 MR. DIMARCO: Okay. So the retaining
4 wall up at the roadway is at grade, number one.
5 So there is no really change in grade for the
6 proposed development. Really at the southern
7 portion of that Western boundary, that is where
8 that portion of the retaining wall will need to be
9 removed is simply to bring the site to grade.

10 MR. TEDESCO: So if I may, Ms. Nelms,
11 Mr. DiMarco, Ms. Nelms is specifically asking
12 about the -- it appears that the retaining wall
13 runs along the western property line as long as
14 well as the southern property line. And so I
15 believe if I may, Ms. Nelms, is asking whether any
16 portion of the retaining wall on the western
17 property line that's adjacent to the single-family
18 homes, not adjacent to the park, but adjacent to
19 the single-family homes, will be removed or
20 modified in any way.

21 MR. DIMARCO: That portion of the wall
22 does not need to be removed. That is at grade.

1 MS. NELMS: So just for clarification,
2 can you tell me the distance from your property,
3 the property line of the house next door right
4 here? What's the distance between the proposed
5 area and my neighbor's yard?

6 MR. DIMARCO: I'm not certain I have
7 that information right in front of me here. That
8 retaining wall is located directly on the property
9 line but between the residential property owner
10 and Royal Farms.

11 MR. TEDESCO: Ms. Nelms, if I may Madam
12 Examiner, Mr. Ferguson who is our land planner is
13 on the line. I'm sure he will be happy to provide
14 that measurement for his testimony. He's got time
15 to estimate that based on either the site plan or
16 PG Atlas. So I will make sure to ask Mr. Ferguson
17 that question, Ms. Nelms.

18 MS. NELMS: Okay. I have one more
19 question. When you enter off of East West
20 Highway, will you be extending or expanding that
21 entrance?

22 MR. DIMARCO: The entrance --

1 MR. TEDESCO: Hang on, Joe. Madam
2 Examiner, I'm not sure that that was part of Mr.
3 DiMarco's direct. But if Mr. DiMarco has the
4 answer, I would object for the record, but you'll
5 probably overrule me.

6 HEARING EXAMINER: I hear your
7 objection. I can only overrule because I think he
8 did discuss that there are three entrances and it
9 is going down to two. If he can't answer, then he
10 can't answer.

11 MR. TEDESCO: Very well.

12 MR. DIMARCO: The --

13 MS. NELMS: And my last --

14 HEARING EXAMINER: Go ahead.

15 MR. DIMARCO: Sorry. Go ahead, ma'am.

16 HEARING EXAMINER: You asked him is that
17 entrance on East West was going to change.

18 MS. NELMS: Right. Ms. McNeil, I didn't
19 hear your -- them answer your question regarding
20 the service road that Mr. Powell and I spoke of
21 earlier.

22 HEARING EXAMINER: Right. They're going

1 to have another witness. They answered by saying
2 Mr. Ferguson is going to talk about that. He is
3 coming up next or soon.

4 MS. NELMS: Okay. Thank you.

5 HEARING EXAMINER: Ms. Nelms?

6 MS. NELMS: Yes.

7 HEARING EXAMINER: Do you want your
8 answer about the entrance from East West highway?

9 MS. NELMS: Yes. I just wanted to know
10 if it will be expanded or not.

11 MR. DIMARCO: Simply I was going to
12 offer that that entrance will be adjusted somewhat
13 just simply to provide a 35 foot wide entrance
14 along that frontage. Whether or not that's
15 expansion or not, I would have to provide that in
16 a separate answer. But 35 foot wide.

17 MS. NELMS: All right, thank you. That
18 was my last comment until we talk about this
19 service road.

20 HEARING EXAMINER: Okay. Thank you.
21 Anyone else have -- Mr. Rowe, you have questions?

22 MR. ROWE: Yes, I do for Mr. DiMarco.

1 HEARING EXAMINER: Okay.

2 MR. ROWE: You had a site plan there I
3 think which showed the property line of the
4 subject property. I think it was in red. But the
5 question I wanted to ask is, you are responsible,
6 your firm is responsible for the layout of the
7 site plan; is that correct?

8 MR. DIMARCO: That's correct.

9 MR. ROWE: Okay. So you are familiar
10 with the distance, for example, between the
11 pumping -- not the pumping station, but the
12 fueling outlet at the southernmost property line
13 of the property? Are you familiar with that?

14 MR. DIMARCO: Not offhand, but it is
15 shown on our plan, yeah.

16 MR. ROWE: Okay. Can you confirm for
17 the record the distance between that pumping
18 outlet of -- fueling outlet to the southernmost
19 property line?

20 MR. DIMARCO: If you can indulge me for
21 one moment I can certainly provide that to you.

22 From the extent of the canopy, I will

1 say, which actually is a little bit -- it's 97-½
2 feet from the canopy to the southern property
3 line. The fueling pump itself would be a slightly
4 greater distance than that as it set in the
5 canopy, a handful of feet, but I don't have that
6 dimension immediately on hand.

7 MR. ROWE: Okay. And you said you were
8 familiar with the special exception provision 27-
9 358; is that correct?

10 MR. DIMARCO: That's correct.

11 MR. ROWE: In your testimony you said
12 you're familiar with it.

13 MR. DIMARCO: Yes, that's correct.

14 MR. ROWE: Okay. So that outlet, that
15 fueling outlet is less than 300 feet from the
16 property line; is that correct?

17 MR. DIMARCO: The fueling outlet is, as
18 I mentioned, thereabouts 100 feet. I asked, what
19 provision are you specifically referring me to
20 hear?

21 MR. ROWE: I believe it's A2.

22 Did you hear me?

1 MR. DIMARCO: Correct. Correct, yes.
2 So yes, it is less than 300 feet from the
3 property.

4 MR. ROWE: Okay. And so you know that
5 there is a playground on the park property, right?

6 MR. DIMARCO: Yes.

7 MR. ROWE: Okay. So but for the removal
8 of that playground, this gas station use would be
9 nonconforming and not permitted; is that correct?

10 MR. DIMARCO: That is correct.

11 MR. ROWE: Okay. And right now there is
12 a playground in there; is that correct?

13 MR. DIMARCO: That is correct.

14 MR. ROWE: So right now it is a
15 nonconforming use; is that correct?

16 MR. DIMARCO: Pursuant to the
17 condition --

18 MR. TEDESCO: Hold on. Hold on. I
19 would object to the question.

20 MR. ROWE: And why is that?

21 HEARING EXAMINER: Mr. Rowe, I'm going
22 to sustain. It's not a nonconforming use under

1 our law. It's not a permitted use unless it's 300
2 feet away and there's a variance.

3 MR. ROWE: Okay. My -- well, let me
4 rephrase the question. So right now, would you
5 consider it a permitted use?

6 MR. TEDESCO: Objection.

7 HEARING EXAMINER: Okay.

8 MR. ROWE: And why is that?

9 HEARING EXAMINER: Yeah, give me --
10 explain the objection.

11 MR. TEDESCO: Well, I don't think it's
12 up to Mr. DiMarco to apply whether it's permitted
13 not. That's your decision.

14 HEARING EXAMINER: Well, that's true.
15 That's true. That is a legal question to ask. So
16 Mr. Rowe, it's okay. You will make your point.
17 You can close and you can argue what you're
18 saying, but he is definitely not a legal expert.
19 Although, he did say it satisfies 27-358.

20 MR. ROWE: Well, I don't have --

21 HEARING EXAMINER: You could ask; do you
22 believe it satisfies 27-358 as always there is a

1 playground there?

2 MR. ROWE: Right let me -- do you
3 believe it satisfies --

4 HEARING EXAMINER: Mr. DiMarco?

5 MR. ROWE: 27-358? Right. There you
6 go. Since there is a playground there now, do you
7 think it satisfies 27-358?

8 MR. DIMARCO: No, pursuant to the
9 Planning Board recommendation condition to remove
10 the playground, it would be compliant.

11 MR. ROWE: Right. Okay. That said, let
12 me ask you about another measurement. From the
13 westernmost property line to the closest fueling
14 station, do you know the distance between those
15 two?

16 MR. TEDESCO: I'm going to note an
17 objection for the record just because I think Mr.
18 DiMarco can provide it, but what Mr. Rowe is
19 getting at is not the legal standard. So I want
20 to note that for the record. Although I think
21 it's appropriate for Mr. DiMarco to provide an
22 answer to the question, it's not dispositive of

1 the compliance of 27-358. I think Madam Examiner,
2 ought to clarify that legal interpretation.

3 MR. ROWE: I'm just asking the question,
4 that's all.

5 MR. TEDESCO: I understand.

6 HEARING EXAMINER: You might be a little
7 premature.

8 MR. TEDESCO: I think the record --

9 HEARING EXAMINER: Hold onto your
10 objection. Go ahead, Mr. Rowe.

11 MR. ROWE: No, I'm asking a question. I
12 mean, he indicated that he is responsible for the
13 layout of the site plan. And so he should be
14 knowledgeable about distances reflected in that
15 plan. So all I'm asking is can he, for the
16 record, indicate the distance between the Western
17 property line of the subject property and the
18 closest pumping outlet. That's all.

19 MR. DIMARCO: That distance is 180 feet,
20 plus or minus.

21 MR. ROWE: Okay. Thank you, very much.

22 HEARING EXAMINER: Thank you. Anyone

1 else?

2 MR. TEDESCO: I have redirect.

3 HEARING EXAMINER: Okay. What -- your
4 redirect.

5 MR. TEDESCO: Mr. DiMarco, you were
6 asked by Mr. Rowe with respect to compliance of
7 27-358, is it your understanding that the
8 recommendation of approval was conditional?

9 MR. DIMARCO: Yes.

10 MR. TEDESCO: And in order for the
11 Examiner to recommend approval in this case, that
12 condition would have to be carried forward?

13 MR. DIMARCO: Yes.

14 MR. TEDESCO: And are you --

15 HEARING EXAMINER: The Examiner objects.
16 The Examiner doesn't make a recommendation. You
17 mean staff.

18 MR. TEDESCO: Well, recommendation
19 unless 30 days --

20 HEARING EXAMINER: No. You know well
21 the Examiner makes a decision that can be
22 appealed, correct?

1 MR. TEDESCO: Would -- yes. Would
2 the --

3 HEARING EXAMINER: Okay, thank you.

4 MR. TEDESCO: Yeah. Duly noted. In
5 that case, would the Examiner's decision have to
6 conditionally approve this use to comply with
7 conformance?

8 MR. DIMARCO: Yes.

9 MR. TEDESCO: And are you aware, or you
10 have personal knowledge with respect to the
11 Maryland National Park's and Park and Planning's
12 intentions with respect to that playground?

13 MR. DIMARCO: Yes.

14 MR. TEDESCO: And what are those?

15 MR. DIMARCO: Pursuant to the term
16 letter that I think was referenced earlier, the
17 removal of that playground.

18 MR. TEDESCO: No further the questions,
19 Madam Examiner.

20 We would call Mr. Ed Steere.

21 Thank you, Mr. DiMarco.

22 HEARING EXAMINER: Thank you, Mr.

1 DiMarco.

2 Here is Mr. Steere. Okay. Good
3 afternoon, Mr. Steere.

4 Do you swear or affirm under the
5 penalties of perjury that the testimony you give
6 shall be the truth and nothing but the truth?

7 MR. STEERE: I do.

8 MR. TEDESCO: Mr. Steere, could you
9 state your name and spell your last name and your
10 address for the record?

11 MR. STEERE: My name is Edward Steere.
12 It's spelled S, as in Sam, T as in Tom, E-E-R-E.
13 I am Valbridge Property Advisers at 1110 Dovedale
14 Court, Merricksville, Maryland 21104.

15 MR. TEDESCO: And Mr. Steere, you've
16 been previously accepted and qualified as an
17 expert in the field of market analysis before the
18 Hearing Examiners, is that correct?

19 MR. STEERE: I have, yes.

20 MR. TEDESCO: Madam Examiner, his CV is
21 Exhibit 70. And we would ask that he continue to
22 be accepted as an expert in the field of market

1 analysis.

2 HEARING EXAMINER: He will be accepted
3 as an expert in the field of market analysis. And
4 when you will get a chance, tell me, is Exhibit 79
5 the final one? Or do I still need both needs
6 analysis? Thanks.

7 MR. TEDESCO: Exhibit 79, Madam
8 Examiner. Mr. Steere, where are you employed?

9 MR. STEERE: Valbridge Property
10 Advisers.

11 MR. TEDESCO: And what is your title?

12 MR. STEERE: I'm a senior managing
13 director in charge of planning and marketing
14 analysis.

15 MR. TEDESCO: And what are your
16 responsibilities?

17 MR. STEERE: So I do market studies,
18 feasibility studies, economic impact analysis,
19 planning and zoning work.

20 MR. TEDESCO: And are you familiar with
21 the application subject of this hearing today?

22 MR. STEERE: Yes, I am.

1 MR. TEDESCO: And where you employed by
2 the Applicant to perform certain services
3 associated with the property and the development
4 of the property?

5 MR. STEERE: Yes, I was.

6 MR. TEDESCO: And are you familiar with
7 the character of the surrounding area?

8 MR. STEERE: Yes.

9 MR. TEDESCO: And did you make a
10 personal inspection of the subject property and
11 the surrounding area?

12 MR. STEERE: I did, yes.

13 MR. TEDESCO: And getting to Madam
14 Examiner's point of clarification a moment ago,
15 did you prepare a written analysis and report
16 which is Exhibit 27, (inaudible) 2020?

17 MR. STEERE: Yes I did, yes.

18 MR. TEDESCO: And was this analysis and
19 report recently updated?

20 MR. STEERE: Yes, it was.

21 MR. TEDESCO: Madam Examiner, the recent
22 updated analysis is Exhibit 79. And Mr. Steere,

1 would Exhibit 79 supersede Exhibit 27?

2 MR. STEERE: Yes, in its entirety.

3 MR. TEDESCO: And why did you update the
4 market analysis report?

5 MR. STEERE: So it was two years old.
6 And an abundance of caution and dealing with the
7 changes in the community, I had to go back and
8 revisit all the gas stations in the area, and
9 convenience stores. Sometimes things open and
10 close, demographics may change a bit. That's why.

11 MR. TEDESCO: And did you conduct an
12 investigation into the convenience for these uses
13 in the trade area?

14 MR. STEERE: I did, yes.

15 MR. TEDESCO: And are the trade areas or
16 gas and convenience the same?

17 MR. STEERE: They are not the same, no.

18 MR. TEDESCO: Why are the trade areas
19 difference between the gas trade area in the
20 convenience store trade area?

21 MR. STEERE: So there is a statistical
22 data mostly produced by National Association of

1 Convenience Stores, NASC, that shows where
2 consumers will travel 10 minutes out of their way
3 to get the cheapest gas, yet they will also -- but
4 they don't have that destination in mind when they
5 do convenience store shopping. So they were just
6 going to get a Slurpee, for example, or the
7 equivalent of a Slurpee, they're going to go to
8 the nearest convenience store. So the convenience
9 store market area or trade area is generally much
10 smaller than what people would travel for
11 gasoline.

12 MR. TEDESCO: Can you provide the
13 demographics of that trade area?

14 MR. STEERE: I can. So the gasoline
15 trade area demographics are on -- wait a minute.
16 I'm looking at the wrong page.

17 MR. TEDESCO: 16 and 17?

18 MR. STEERE: Something? All right. I
19 maybe passed it. All right. So there is a trade
20 area map on page 17 that shows that the area that
21 I looked at for the gasoline trade, in some cases
22 we would go with the drivetime analysis. In

1 others it makes more sense to look at composite
2 communities and how they travel and routes of
3 commuting and paths and things like that.

4 So basically in that area that's
5 depicted on the map, we have approximately 13,900
6 households. And it's a pretty built-up area and
7 grown. So there is not much growth in there at
8 all, 53 households per year on average. The
9 median household income is about \$66,000. There
10 is about three people per household. And the
11 average home value is \$350,000. I'm rounding here
12 because these numbers change daily.

13 About 38 percent homeownership rates.
14 So there's a lot of rentals in this community.
15 And there's about 1.6 vehicles per household.

16 More than two thirds of people drive to
17 work. And about two thirds also commute more than
18 30 minutes to work. So there's a lot of
19 individual driving, not carpooling. So what it
20 basically came down to was an aggregate income of
21 \$919 million in this community.

22 MR. TEDESCO: And what is the take away

1 is that from a supply perspective? Excuse me,
2 from a demand perspective?

3 MR. STEERE: So basically we estimated
4 based on census and (indiscernible) labor
5 statistics data that -- using 2021 and an average
6 gasoline cost of \$3.01 per gallon in the Eastern
7 region here, it varies by community, we know that,
8 that people are buying about 720 gallons of gas
9 per year in this community. So we compute that
10 out to about 10 million gallons of demand.

11 MR. TEDESCO: And regarding the supply,
12 how many other gas stations are in the trade area
13 that you identified?

14 MR. STEERE: So I identified 18 gas
15 stations in the trade area that I've identified.
16 And one of those was closed. In one of those
17 actually is across the street from our trade area,
18 which technically would not be in the trade area.

19 MR. TEDESCO: And does your trade area
20 include properties outside of Prince Georges
21 County?

22 MR. STEERE: No, it does not.

1 MR. TEDESCO: And why is it not
2 appropriate to include properties outside of the
3 jurisdiction for which the application is in?

4 MR. STEERE: So Prince Georges County
5 has set a hard and fast rule that we can only test
6 the area and the facilities that are within the
7 county boundaries serving the county community.

8 MR. TEDESCO: Do you have any opinions
9 or thoughts with respect to the existing gas
10 stations within the trade area as far as where
11 they -- how are they analyzed in what was the
12 conclusions you reached?

13 MR. STEERE: So we went to every gas
14 station and counted fuel -- MPDs, multiproduct
15 dispensers, fueling positions, the type of
16 facilities they have, whether they are service
17 stations which have service bays, what size store,
18 if they have a store. There is different
19 qualities of those stores based on size. What
20 many of us would probably recognize as a kiosk.
21 They say we would have six or eight MPDs and in
22 the middle there is a small hut of a store let's

1 say where there is a cashier, that might take cash
2 through the window. We call that a kiosk.

3 A larger store would be something in a
4 limited range where -- and is based on thousands
5 of square feet. So the Royal Farms that we are
6 talking about here is what's called a hyper-
7 convenience store, which is between 4000 and 5000
8 square feet. And the 7-Eleven, for example, the
9 old-fashioned, traditional 7-Eleven, and none of
10 the ones around here have gas, but the -- those
11 old-fashioned stores are roughly 2000 square feet.
12 And so that's called a limited or traditional
13 convenience store.

14 And so we judged every one of them. We
15 evaluated every one of those stores. We looked at
16 whether they had service bays and how many service
17 bays, how many pumps, how many -- you know, what
18 sort of accommodations there were for consumers.

19 MR. TEDESCO: And so what was the net
20 take away of the existing stores within the trade
21 area related to gas?

22 MR. STEERE: First and most important is

1 there are no stores that are comparable to the
2 Royal Farm store in this trade area. There is no
3 hyper-convenience stores. There is no stores that
4 offered the scale of convenience goods and gas.

5 The other take away, which is important
6 and I put in my report on page 25, is the years
7 that the stores were built and the average was
8 1966. So most of these facilities are pretty old.
9 The community is old, and we get that. But what
10 comes with older gas stations, as one of the
11 children reported this morning, is they are on
12 small sites. And those small sites don't have the
13 accommodations to bring in people, park them, and
14 go into the convenience store and use gas. So
15 they are limited in their ability to meet the
16 current consumer demands.

17 MR. TEDESCO: Going back to the demand,
18 you mentioned the residential demand. But are
19 there other demands that you analyzed?

20 MR. STEERE: Yes. So I looked at how
21 many people work in that trade area. And I talk
22 about commercial -- the commercial demand is minor

1 because it's mostly trucks. And some of them have
2 accounts in certain places or they have their own
3 on-site fueling. And then there is the pass
4 through. But the workforce is the biggest piece.

5 And on page 22 I estimate the demand for
6 each of those. So we had 10 million gallons for
7 residential, about a half a million gallons for
8 commercial, eight tenths of a million gallons or
9 860,000 gallons for pass-through, which is the
10 commuters for example that pass through this area
11 going down Riggs Road, for example. And then 6.4
12 million gallons for the workforce in this general
13 market area.

14 And that total was 17.8 million gallons.
15 That is an estimation that's probably
16 conservative. There is probably more demand than
17 that, but it's very difficult to separate the
18 overlap between the residential and say, the
19 workforce, people who work in the same community
20 they live in, which is a plus. But we do know
21 that most people in this community commute out of
22 this community to go to work.

1 MR. TEDESCO: Were you present during
2 the testimony of Mr. Manjarrez?

3 MR. STEERE: I was, yes.

4 MR. TEDESCO: And have you reviewed the
5 exhibit that he submitted into the record?
6 Exhibit 83?

7 MR. STEERE: I did, yes.

8 MR. TEDESCO: Which again, Madam
9 Examiner, we note our objection to its inclusion.
10 However, understanding you will give it the weight
11 that it deserves.

12 Do you have any response or opinions
13 with respect to either Mr. Manjarrez's testimony
14 and/or that exhibit in particular?

15 MR. STEERE: So as you pointed out and
16 objected at the time, his exhibit included several
17 gas stations that were outside of Prince Georges
18 County. He had one in Montgomery -- or three in
19 Montgomery County and one in Washington DC that we
20 can't factor in. And they were actually outside
21 of the market I would apply to this anyway. A
22 couple of other ones, the ones that were outside

1 of our trade area.

2 So it's not that I didn't recognize
3 those gas stations are out there, but they weren't
4 in our trade area. They weren't part of our study
5 area.

6 MR. TEDESCO: Why were they not?

7 MR. STEERE: The -- it's difficult to
8 answer that question. So in order to get quality
9 data on demographics and demand, we use census
10 based data sources. And some of these tracts, if
11 I were to expand the trade area to the next census
12 tract, for example, it would go so far away from
13 where people would travel or be part of this
14 community that would need this station that it
15 didn't make sense.

16 I know of course the stations on New
17 Hampshire Avenue are in Montgomery County and I
18 can't include those. So it's -- there has got --
19 there is a point we've got to draw the line to get
20 quality data and that line is there. The -- like
21 I say, we could have done a 10 minute drive time
22 analysis, for example, but that wouldn't make

1 sense in an urban community such as this because
2 10 minutes is different at any time of the day in
3 driving around this side of Prince Georges County.

4 MR. TEDESCO: And in your expert
5 opinion -- and you do these analysis all over the
6 region; is that correct?

7 MR. STEERE: Say that again?

8 MR. TEDESCO: You do these types of
9 analyses all over the mid-Atlantic and the region;
10 is that correct?

11 MR. STEERE: That's correct, yes.

12 MR. TEDESCO: And do you agree with the,
13 I guess presume the trade area that Mr. Manjarrez
14 used with respect to a 1.5 mile radius?

15 MR. STEERE: No. No.

16 MR. TEDESCO: Why not?

17 MR. STEERE: Because 1.5 miles really
18 isn't a factor in anybody's studies. Like I say,
19 if anything, you would use a drivetime analysis or
20 the vendor may use vehicle volume, pass by volume
21 trips on the roads in front of their store, their
22 store site. Those are more common.

1 The other that Mr. Ruszin had mentioned
2 is looking at the number of rooftops in the area,
3 looking at it have a customer base in the area.
4 So that's why I run numbers on the population, the
5 demographics of a community to see if there is a
6 demand there. And what we end up with, and what
7 was important to show on both my map and -- I
8 can't pronounce the gentleman's name -- map that
9 was turned in before, is that the Royal Farms site
10 is in the middle of the community. And almost all
11 the other gas stations except for the Exxon across
12 the street are on the perimeter.

13 And those gas stations on the perimeter
14 are serving other markets. So gas stations on New
15 Hampshire Avenue and University Boulevard are
16 really serving markets that are north of them or
17 west of them. And this Royal Farms will be a --
18 would be more dedicated to the actual community
19 than those stations out there will.

20 MR. TEDESCO: So based upon that, I
21 think you are hitting it. In your expert opinion,
22 based upon industry standards, is there public

1 convenience for the proposed gas station at this
2 location?

3 MR. STEERE: I think that this
4 particular location is actually an excellent
5 location for a proposed gas station. We have a
6 median break in both roads -- or a median -- not a
7 median break. We have a median in both roads in
8 front of the station and the Exxon station across
9 the street. So they will actually complement each
10 other as far as gas production from morning and
11 evening pass by traffic.

12 And it's in the center of the community.
13 You have a great pedestrian network on the road
14 and on the trail behind it. And you have bus
15 stops on both sides of the site. So the
16 convenience and -- of commuters feel to stop here
17 and use this convenience store is something that
18 doesn't exist today.

19 MR. TEDESCO: And Madam Examiner, we're
20 going to turn to the convenience requirement with
21 respect to the food and beverage store. And I
22 know on prior occasions you and I have had this

1 discussion. I just want to note it for the
2 record. And I know People's Zoning Counsel has
3 made this comment as well. Food and beverage
4 store is a permitted use in the CSZ zone or CGO
5 zone.

6 The requirements you comply with 27-355
7 as a special exception use I think is incorrect.
8 I don't believe that the use is applicable to the
9 required findings of Section 27-355. However,
10 given the (inaudible) Park and Planning's analysis
11 of these uses in combination with each other, we
12 have provided not only our justification, but
13 also in additional testimony and exhibits,
14 evidence in support of substantial support of that
15 finding being made.

16 But I do believe, for the record, that
17 the use is permitted without a special exception,
18 notwithstanding the fact that it's in combination
19 with a gas station.

20 So with that being said, Mr. Steere, did
21 you create a trade area with respect to the food
22 and beverage store on a convenience?

1 MR. STEERE: I did. I did. That map is
2 on, I believe, page 32. Yes, page 32.

3 MR. TEDESCO: And what is the trade area
4 demand for the convenience store, in your opinion?

5 MR. STEERE: So in that trade area we
6 had approximately 300 -- I'm sorry. We had 16,562
7 people. So what we do is we look at a per capita,
8 a national figure per capita how many each trades
9 or how many convenience stores there are or how
10 many per capita. Let me turn that all around.

11 How many convenience stores per capita across the
12 country and it's roughly 2246 people per store in
13 the -- in just a convenience store. But it's
14 about 2850 per convenience store with gasoline.

15 And there is a convenience store up the
16 street from this. So like I had mentioned before,
17 there is no other convenience store of the scale
18 of Royal Farms in this community. There's only
19 two other stores in this community that I've
20 identified. And that's the very small Exxon
21 property across the street and then a 7-Eleven,
22 which is just down East Coast Highway behind that

1 that is a standalone 7-Eleven that doesn't offer
2 gasoline.

3 And as I said, the Exxon is a service
4 station with four service space and a small
5 convenience store. It's not anything to the scale
6 of having fresh foods and things like that.

7 MR. TEDESCO: In this trade area, how
8 did you determine the public need and necessity
9 being convenient, useful, appropriate for the
10 neighborhood?

11 MR. STEERE: So as I pointed out before,
12 the store, convenient and expedient. It is easy
13 access. There is plenty of parking, which is
14 important for any consumer, and especially when
15 folks realize that most of the other convenience
16 stores they go to in this Riggs Road corridor,
17 I'll just say, or New Hampshire Avenue corridor
18 are difficult to get in and out of. And they have
19 gas pumps that are even more difficult to get in
20 and out of and park.

21 So this site has seating for people to
22 eat. It has enough parking. It has accessibility

1 to the highway and to pedestrians and it the bus
2 stops. So that was the greatest benefit or
3 convenience and need for the store in the
4 community. There is nothing of its type in the
5 community today.

6 MR. TEDESCO: Based upon --

7 MR. STEERE: Now, another factor that I
8 think is very important that we didn't really
9 discuss that I have to discuss, and that is that
10 it's been a growing trend that has now exceeded 50
11 percent of people who get gas will go inside the
12 store and buy something. And so there is a
13 consumer preference to go into a convenience store
14 when they're getting gas.

15 And it's not for cigarettes. It's for
16 other things. It's for foods. And that's an
17 important factor here that the other convenience
18 stores don't offer, especially the standalone ones
19 that offer gasoline. So it would be two stops.

20 And what this does for the
21 community is it allows people stop once rather
22 than pulling in and out of other locations. They

1 get to work faster. They have less traffic in
2 impact. And they get all of their needs met on
3 site.

4 MR. TEDESCO: Ms. Ensminger in the chat
5 would like you to clarify -- you testified about
6 the 7-Elevens up the street that do not have gas.
7 Could you clarify which 7-Eleven you are referring
8 to that does not have gas?

9 MR. STEERE: So the 7-Eleven at the --
10 at the Y at Ager Road and East West Highway.

11 MR. TEDESCO: So that's one you are
12 referring to that doesn't have gas?

13 MR. STEERE: That's correct.

14 MR. TEDESCO: Now you testified about
15 the co-location of these uses. And based upon the
16 demographics, vehicle trips, and other gas
17 stations and community stores, is it your opinion
18 that the proposed use will be convenient,
19 appropriate, useful, to the neighborhood?

20 MR. STEERE: It is my opinion it would
21 be convenient and useful.

22 MR. TEDESCO: One final question. And

1 forgive me for not asking this when you were
2 referring to the prior Exhibit 83, opponent's
3 exhibit that was introduced, Exhibit 83. Is that
4 exhibit, in your opinion, based on industry
5 standards and how market studies are done for
6 these types of uses? Is that exhibit reliable or
7 dispositive regarding the trade area for gas?

8 MR. STEERE: No. No. There was no
9 particular standard or methodology depicted here.
10 And I believe that he missed a couple of gas
11 stations that were right next once he had
12 identified.

13 MR. TEDESCO: And in your opinion --

14 MR. STEERE: If I could, to answer the
15 Hearing Examiner's question from earlier this
16 morning, the stations on my list, all but four of
17 them are on his list. And the four that aren't
18 are ones that he missed.

19 MR. TEDESCO: In your opinion, does Mr.
20 Manjarrez's testimony and/or exhibits, is a
21 reliable or dispositive regarding whether or not
22 the proposed use is convenient, useful, suitable,

1 or conducive to the neighborhood?

2 MR. STEERE: That exhibit didn't
3 establish that directly. His testimony in my
4 opinion didn't establish that directly. But
5 indirectly he pointed out that all the stations
6 were around the perimeter of this market area, in
7 his market area, with the exception of the Exxon.
8 And at this site is in the center, which makes it
9 actually a better location.

10 MR. TEDESCO: To serve the convenient
11 needs?

12 MR. STEERE: To serve the community
13 within their own community, correct?

14 MR. TEDESCO: The more questions, Madam
15 Examiner.

16 HEARING EXAMINER: Mr. Rowe, do you have
17 questions of the witness?

18 MR. ROWE: Yeah, I do. I just want to
19 make sure I heard him correctly. You are familiar
20 with the Exxon station across the street from the
21 subject property?

22 MR. STEERE: Okay, yeah.

1 MR. ROWE: And you indicated that it's
2 not in what you term the gas station trade area?

3 MR. STEERE: No, I said it is.

4 MR. ROWE: Oh, you said it is?

5 MR. STEERE: That's the exception.
6 That's the one that's in the center with every --
7 with this site. All the others are around the
8 perimeter and this one is in the center. So with
9 the exception of this Exxon, the list that's on
10 the perimeter. So this Exxon is definitely part
11 of the trade area.

12 MR. ROWE: Do you know how many fueling
13 outlets are in that Exxon station?

14 MR. STEERE: Say that again.

15 MR. ROWE: Do you know how many fueling
16 outlets are in that Exxon station?

17 MR. STEERE: How many dispensers? Yes.
18 The Exxon has three multiproduct dispensers and
19 two diesel positions at it. So it has the ability
20 to fuel six vehicles.

21 MR. ROWE: Right. And are you familiar
22 with the -- all the gas stations in your trade

1 area? How many of those has 16 fueling outlets?

2 MR. STEERE: None of them do.

3 MR. ROWE: And typically, those fueling
4 stations that you do have on your gas station
5 trade area map, typically how many fueling outlets
6 do they have?

7 MR. STEERE: I don't have the average in
8 front of me. But I'm looking at -- is going to be
9 somewhere between six and eight. So probably
10 about an average of seven positions.

11 MR. ROWE: Okay. Just wanted to put
12 that on the record. Thank you.

13 MR. TEDESCO: Redirect?

14 HEARING EXAMINER: Hang on. I was just
15 double checking if there were others.

16 Ms. Nelms, to have questions of the
17 witness? You are on mute. You are on mute.

18 MS. NELMS: Mr. Steere repeated over and
19 over again what's convenient in our neighborhood.
20 Did you conduct any type of survey in this
21 neighborhood to see what the neighbors believe is
22 convenient?

1 MR. STEERE: No, I did not.

2 MS. NELMS: Thank you.

3 HEARING EXAMINER: Thank you. Ms.

4 Ensminger? Sorry if I messed it up.

5 MS. ENSMINGER: No, that's okay. Mr.
6 Steere, the purple line is scheduled to open --
7 begin operations in 2026. And this site falls
8 within 1 mile, which is what's considered walkable
9 from the purple line. How did that factor into
10 your market analysis?

11 MR. STEERE: I didn't factor the purple
12 line into this analysis.

13 HEARING EXAMINER: Thank you. Okay, Mr.
14 Klesko. Oh, wait a minute.

15 Ms. Kuehn?

16 MS. KUEHN: Yeah. Yeah, I do have a
17 question also in follow up with Ms. Nelms. Did
18 you do a survey about the need or the desire for
19 healthy foods in this area?

20 MR. STEERE: I'm sorry. I couldn't
21 understand you. A survey of what?

22 MS. KUEHN: Of the desire for healthy

1 food or for different kind of food in this area?

2 MR. STEERE: Of. No, we don't survey
3 the food type unless -- if I was doing a study for
4 Kentucky Fried Chicken, for example, we would look
5 and see if there were competing chicken complexes.
6 But we weren't hired to do that study. That's not
7 what we do for gas stations.

8 MS. KUEHN: So the quality of food
9 doesn't factor in in any of these analysis?

10 MR. STEERE: The context of food wasn't
11 included, no.

12 MS. KUEHN: Okay. Okay, thank you. I
13 appreciate it.

14 HEARING EXAMINER: One question from me.
15 Mr. Steere, if your report talks about the fresh
16 food offered by the Applicant, you just -- you
17 don't know that the other people may not --
18 whether the other people have fresh food?

19 MR. STEERE: So I'm using the -- no, I
20 don't -- I didn't go into every story and survey
21 whether they were offering fresh foods. But I'm
22 going to tell you that in my experience over many

1 decades here on this, is if they have a fresh food
2 outlet in their store there would be a big sign
3 for subs or deli or pizza or something like that
4 on the outside of the store, which I didn't see.
5 And also that the smaller stores generally don't
6 have the staffing and the space for that kind of
7 service.

8 So unless it jumped out at me, I
9 wouldn't have put it there. But it didn't jump
10 out at me on any of these other facilities. They
11 were all too small for this.

12 HEARING EXAMINER: Okay, thank you. Mr.
13 Tedesco.

14 MR. TEDESCO: Thank you, Madam Examiner.
15 Just very briefly, following on Mr. Rowe's -- if
16 it's -- Mr. Rowe -- forgive me if I'm
17 mispronouncing it. As regarding the other
18 facilities within the trade area having less than
19 16 fueling positions, what -- and you indicated
20 that none of them have 16 fueling positions; is
21 that correct?

22 MR. STEERE: That's correct.

1 MR. TEDESCO: And that the average was
2 about six or seven fueling positions?

3 MR. STEERE: That's correct.

4 MR. TEDESCO: In your opinion, does that
5 not support the need for reasonable convenience in
6 the trade area for gas with respect to the demand
7 and the supply analysis that you did?

8 MR. TEDESCO: Correct. So what we find
9 is that having less fueling positions limits the
10 volume of fuel that the stations can adequately
11 supply because of the difficulty of getting in and
12 out and the difficulty of meeting that traffic
13 let's say, that has to come through it. That
14 increases the convenience of this site by having
15 so many fueling positions, you know, that people
16 will not be waiting here.

17 Just because there are 16 fueling
18 positions doesn't mean there are 16 cars there all
19 the time, as we all know. So it's a matter -- and
20 same with the parking. As Mr. Ruszin pointed out,
21 they want that extra parking, they need that extra
22 parking because there is turnover. There is a

1 flushing of cars through the fuel pumps and to the
2 parking. So every space isn't filled. You're not
3 going to see 50 cars in 50 parking spaces. You're
4 going to see cars coming and going. They've got
5 to get into an empty spot while someone else is
6 emptying another spot. Same thing at the fuel
7 pumps. And it's difficult to do on a small site
8 that has a compressed set of pumps.

9 I will say for example, there is six
10 multiproduct dispenses that the Valero up on
11 University Boulevard, but four of those pumps are
12 back to back. So you can only pump on one side of
13 them. So it's deceiving. There may be 6 pumps,
14 but there is still only six positions. Or eight
15 positions, I'm sorry.

16 MR. TEDESCO: Thank you. No more
17 questions.

18 HEARING EXAMINER: If you don't mind,
19 Mr. Tedesco, Ms. Kuehn would like to go now. Oh,
20 Mr. Rowe, you have another question based on
21 redirect?

22 MR. ROWE: Yeah, I've got a -- yeah,

1 I've got a follow-up to Mr. Steere. You
2 indicated -- and I don't want to put words in your
3 mouth, but I think you said that the existing
4 conditions puts a limit on the use of gas or the
5 ability to access gas; is that correct? Am I
6 mischaracterizing what you said? I just want to
7 make sure I understood what you said.

8 MR. STEERE: I'm saying generally, some
9 sites are tightly compressed and that is self-
10 limiting to the volume of traffic that can pass
11 through the side to get fuel.

12 MR. ROWE: So by increasing the number
13 of fueling outlets you are able to increase the
14 number of traffic through the site

15 MR. STEERE: At this site I am saying
16 that it will be far more convenient than some of
17 the sites. I wouldn't say --

18 MR. ROWE: You're not answering my
19 question. You're not answering my question.

20 MR. STEERE: (inaudible) increasing the
21 number of fueling outlets or dispensers at another
22 site will necessarily increase throughput because

1 the size may not be able to accommodate it.

2 MR. ROWE: But this site will?

3 MR. STEERE: This site will.

4 MR. ROWE: Yeah, so in effect, you are
5 increasing the amount of traffic through that
6 subject property and you are actually -- and
7 again, I don't want to put words in your mouth,
8 but you are increasing consumption. Are you
9 increasing consumption of -- on gasoline?

10 MR. STEERE: No. So by my study, I'm
11 not increasing consumption of any gasoline. I am
12 saying we are accommodating consumption of unmet
13 demand for gasoline in the community.

14 MR. ROWE: Well, if there is an unmet
15 demand --

16 MR. STEERE: They're going somewhere
17 else they are going to get gas. And that's just a
18 fact of life. And so it's just a different site.

19 MR. ROWE: Right, but it's a site in
20 this community?

21 MR. STEERE: Correct.

22 MR. ROWE: Okay. So you are increasing

1 the gas consumption in this community?

2 MR. STEERE: No. You don't understand.
3 The gas consumption that I computed is based on
4 this community. So this community is going
5 elsewhere to get gas today. This is providing an
6 opportunity to get gas right down the street from
7 your house rather than going out onto New
8 Hampshire Avenue or University Boulevard to get
9 gas.

10 MR. ROWE: So you are increasing gas
11 consumption at this particular site?

12 MR. TEDESCO: I'm going to have to
13 object. It's been asked and answered I think
14 three times. Mr. Steere has --

15 MR. ROWE: He's not answered the
16 question. He used terms like convenient.

17 MR. TEDESCO: Mr. Rowe, with all due
18 respect, you're not satisfied with the answer
19 but --

20 HEARING EXAMINER: Okay, wait. Wait,
21 gentlemen, please. Mr. Rowe, there is a test, a
22 legal test that he is meeting with his testimony.

1 Need and necessary are defined in case law and by
2 prior decisions of the examiner and the Council as
3 reasonably convenient to folks. That's why he
4 keeps using that type of word. And so he has
5 answered you.

6 I mean, he is increasingly it clearly
7 versus there being no gas station. That's the way
8 you are looking at. But he is saying that he has
9 measured the number of folks in the area, the
10 number of traffic, et cetera, and he knows of
11 those people need gas, but they are not getting it
12 from what's there now. So if you have one more
13 question to clarify that --

14 Mr. ROWE: And I understand he's
15 answered --

16 HEARING EXAMINER: -- but we can't -- I
17 mean, he can't come up with the answer that you
18 want.

19 Go ahead. One more time you want to ask
20 him, but --

21 MR. ROWE: No, no, no. I understand
22 fully what he is -- what he is doing. All I'm

1 trying to do is get him to admit the obvious.

2 That's all. I'll leave it at that.

3 HEARING EXAMINER: Since there is no gas
4 station there, if he builds one there will be --
5 you will be increasing sales. You agree with
6 that, Mr. Steere?

7 MR. STEERE: Yes, clearly there is no
8 gas station today. So it would be a difference,
9 yes.

10 HEARING EXAMINER: Mr. Tedesco, if
11 you're finished, I guess Mr. Rowe is finished.

12 Ms. Kuehn would like to do her direct,
13 if you don't mind, because she has to leave.

14 MR. TEDESCO: I've no objection.

15 HEARING EXAMINER: Okay. Ms. Kuehn,
16 where are you?

17 MS. KUEHN: I'm here. No, but I'm --
18 okay.

19 HEARING EXAMINER: Okay. Put your
20 camera on.

21 MS. KUEHN: Yes. Yes, it's coming.

22 HEARING EXAMINER: Okay. Do you swear

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

4 MS. KUEHN: I swear.

5 HEARING EXAMINER: Okay. State your
6 name and address and as they would want to say
7 about the request.

8 MS. KUEHN: Okay, thank you. My name is
9 Doris Kuehn; D-O-R-I-S, K-U-E-H-N. And I live on
10 7310 15th -- am I too fast? 15th Avenue in Tacoma
11 Park 20912. I'm part of the Carol Highlands
12 neighborhood. So should I start?

13 HEARING EXAMINER: Okay, wait a minute.
14 Okay. Tell me what you want to say about this
15 request.

16 MS. KUHN: Okay. So first of all, good
17 afternoon, Madam Examiner and persons in
18 attendance of this meeting. My name is Doris
19 Kuehn, as I just stated, and I also live in the
20 Carol Highlands neighborhood. Thank you for
21 giving me the opportunity to speak today in
22 opposition for the special exception for Royal

1 Farms in our community.

2 I come before you as a consumer and a
3 registered dietitian. So I would be remiss if I
4 didn't mention -- open my statement with a quote
5 from the dietary guidelines for Americans, 2020 to
6 2025. The dietary guidelines for Americans -- for
7 Americans discourages not nutrient dense choices
8 such as foods that are breaded and fried in oil.
9 Royal Farms uses deceptive, in my opinion,
10 deceptive advertising when referring to is
11 pressure cooked chicken. In reality, it is
12 pressure fried and breaded.

13 Before I walked through the doors of
14 Royal Farms I was intrigued to explore what the
15 fresh kitchen in the Royal Farms signage would
16 result to and was quickly disheartened to see
17 artificial Day-Glo colors of -- Day-Glo colors or
18 the cross opposite, namely, bland looking dinners
19 advertised as fried chicken, hot western fries,
20 (inaudible) beige matched by beige, accented by
21 beige and instead of rainbow colors of fresh
22 fruits and vegetables.

1 The only vegetarian item on the menu
2 that I could find was a vegetarian wrap with some
3 of the ingredients usually used more in form of
4 garnishes than vegetable wrap fillings such as
5 pickles, banana peppers, or onions. But before
6 hitting the ordering button I was prompted to add
7 extra cheese, but not only more in Royal Farms
8 fashion to make it actually -- to make the order
9 actually a combo by adding a small fry consisting
10 of a fried tender chicken sandwich, a small
11 portion of fries, and a fountain drink. This has
12 me believe that vegetarian is a misnomer in the
13 Royal Farms' language just like fresh or pressure
14 cooked.

15 Disappointed as I am about the large
16 variety of unhealthy foods on offer, the bigger
17 disappointment lies with the Planning Board that
18 claims that the presence of Royal Farms would
19 align with the food, beverage, and gas needs of
20 the community. There is no shortage of gas
21 stations, as we just learned, and fast food
22 options in this immediate area. There is Wendy's,

1 Taco Bells, KFCs, Arby's, IHOPs, Burger Kings,
2 just to mention a few.

3 That the County is happy to fill its
4 coffers with commercial property taxes as well as
5 sales taxes from food and gas at the expense of
6 healthy, nonredundant options for the community,
7 itself seems very shortsighted to me.
8 Conveniently left out of the arguments in favor of
9 Royal Farms by the Planning Board are the impacts
10 on the community resulting from diets high in
11 fried foods, creamy sauces, accompanied by sugary
12 drinks and other non-nutrient dense foods.

13 Or does the planning trust that a
14 midsize active man eating, for example for lunch,
15 a chicken tender meal, five pieces with fries, on
16 his breaded (indiscernible) a dinner roll with
17 ranch sauce, creamy (indiscernible) on coleslaw as
18 a side a large Coke and strawberry cheesecake as
19 dessert would then go -- this man, this active man
20 who just consumed those calories on a 13 mile hike
21 to walk off the 1410 extra calories he just
22 consumed? It is more likely that this man will

1 just carry these calories as an extra quarter to a
2 half pound weight resulting in a higher risk of
3 heart failure and/or type II diabetes with each
4 such Royal Farms meal. The County will see its
5 coffers quickly depleted when caring for this
6 overweight, obese persons or diseased persons in
7 its county health facilities which are financed in
8 part by tax dollars or tax revenues.

9 One cannot -- or you cannot blame these
10 community members for not knowing better. Royal
11 Farms doesn't provide many learning opportunities
12 for a healthy lifestyle as aisle upon aisle of
13 junk food is nearly all they sell. I also want to
14 point out that the products sold at Royal Farms
15 are not economical either. Quote/unquote,
16 convenience stores are notorious for prices that
17 are higher than grocery stores. So in fact from
18 the presence of such a place could be considered
19 predatory on the lower income population who have
20 few enough healthy options.
21 Of similar concern are the four entrance
22 doors which are completely covered, back and

1 front, with cigarette advertisements which might
2 lead one to think that smoking is good for
3 (inaudible). If Royal Farms and the Planning
4 Board believes that such an establishment fits the
5 needs of the community, then they do not have an
6 understanding of our community. Our desires are
7 for greater longevity, for healthier living, which
8 besides healthy nutrition includes an active
9 lifestyle in the form of walking and biking and
10 other activities.

11 Thank you for listening to my testimony.
12 And I would be happy to entertain any questions.

13 HEARING EXAMINER: Thank you. Mr.
14 Tedesco, do you have any questions?

15 MR. TEDESCO: I have no questions.

16 HEARING EXAMINER: Thank you, Ms. Kuehn.

17 MS. KUEHN: Thank you. I appreciate
18 that.

19 HEARING EXAMINER: I do have -- I have
20 one question. And that is --

21 MS. KUEHN: Oh, sure.

22 HEARING EXAMINER: And I'm sorry. I'm

1 sorry if you told me earlier. But what your line
2 of work? Are you in healthcare or you just --

3 MS. KUEHN: Yeah, yeah, yeah. I'm a
4 registered dietitian. I worked for the Department
5 of Health in Washington DC.

6 HEARING EXAMINER: Okay. Well, thank
7 you.

8 MS. KUEHN: You're welcome. Thank you.

9 HEARING EXAMINER: So Mr. Tedesco, you
10 have any other witnesses? You're on mute.

11 MR. TEDESCO: First time today you
12 caught me on mute. I just want to make sure that
13 there are no other citizens that want to testify
14 before we call our last witness. I think everyone
15 has spoken, but --

16 HEARING EXAMINER: I think everybody
17 did.

18 MR. TEDESCO: Okay. Well, we would call
19 Mr. Mark Ferguson.

20 HEARING EXAMINER: Good afternoon, Mr.
21 Ferguson.

22 MR. FERGUSON: Good afternoon, Madam

1 Examiner.

2 HEARING EXAMINER: Oh, Ms. Ensminger,
3 but she wants to testify after. So, okay.

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

7 MR. FERGUSON: I do.

8 HEARING EXAMINER: Okay.

9 MR. TEDESCO: Mr. Ferguson, could you
10 state your name and address and spell your last
11 name for the record, please?

12 MR. FERGUSON: I can. Let me say,
13 something is feeding back. I'm getting other
14 people's -- yeah, Ms. McNeil, maybe that will
15 help. I think tech service is the only other one
16 I see unmuted.

17 My name is Mark Ferguson. Last name;
18 F-E-R-G-U-S-O-N. My address is new Madam
19 Examiner; 5407 Water Street, Suite 206, back in
20 historic downtown Upper Marlboro.

21 MR. TEDESCO: Mr. Ferguson, you
22 previously testified and being qualified as an

1 expert land planner before this hearing examiner;
2 is that correct?

3 MR. FERGUSON: That is correct.

4 MR. TEDESCO: Madam Examiner, Mr.
5 Ferguson CV's Exhibit 73. And we would ask that
6 he be accepted as an expert land planner.

7 HEARING EXAMINER: He will be accepted
8 as an expert in the area of land-use planning.

9 MR. TEDESCO: Are you familiar, Mr.
10 Ferguson, with the special exception application
11 subject to this application? Subject to this
12 hearing today?

13 MR. FERGUSON: Yes, I am.

14 MR. TEDESCO: Thank you. Could you
15 describe the -- strike that. I think Madam
16 Examiner is quite familiar with what we are here
17 to discuss. Forgive me. Did you make a personal
18 inspection of the subject property and the
19 surrounding area?

20 MR. FERGUSON: I did.

21 MR. TEDESCO: And did you prepare a land
22 planning report for this application?

1 MR. FERGUSON: Yes, I did.

2 MR. TEDESCO: And in addition to the
3 testimony that you will provide here today, do you
4 further incorporate and adopt the testimony that
5 report?

6 MR. FERGUSON: Yes, I do.

7 MR. TEDESCO: And Madam Examiner, that
8 report is Exhibit 76 in the record.

9 And you heard testimony from Mr.
10 DiMarco. Do you agree with his description of the
11 existing conditions and adjacent land uses? Or do
12 you just want to add anything to that description?

13 MR. FERGUSON: The only thing our
14 mansion in the following Mr. DiMarco's testimony,
15 as well as everybody else's, but in following Mr.
16 DiMarco's testimony very closely, only note that
17 the special exception site plan that's in the
18 record actually has dimensions from the western
19 property line to the western edge of the canopy.
20 And those do add up to 242.3 feet. So I don't
21 know when in the pressure of Mr. DiMarco's
22 testimony if he missed some of his own dimensions,

1 but that was the number that I did come up with.

2 MR. TEDESCO: And that's reflected on
3 the site plan?

4 MR. FERGUSON: The 180 that he reported.

5 MR. TEDESCO: I'm sorry. I spoke over
6 you. And that's reflected on the special
7 exception site plan? That the mention that Mr.
8 Rowe was cross-examining Mr. DiMarco on?

9 MR. FERGUSON: That's correct.

10 MR. TEDESCO: And that dimension --

11 MR. FERGUSON: Well, the addition -- beg
12 your pardon. The addition of the strings. There
13 is no one single dimension. You have to add the
14 41 feet from the property line to the edge of the
15 curb and then the 24 foot of the travel lane and
16 the 6.7 feet to the building and the width of the
17 building and so on so forth until you get to the
18 canopy.

19 MR. TEDESCO: And what was that
20 dimension?

21 MR. FERGUSON: 242.3 feet.

22 MR. TEDESCO: You also heard testimony

1 and questions with respect to the service road?

2 MR. FERGUSON: I did.

3 MR. TEDESCO: Could you -- and I think
4 in particular that was asked by Ms. Nelms. Did
5 you have a chance to look at that?

6 MR. FERGUSON: Well, the service road in
7 question is essentially a separated lane from the
8 main travel lanes of the East West Highway. It
9 extends from the Pepco right-of-way that crosses
10 East West Highway at the end of 11 houses that lie
11 to the West of the proposed gas station site on
12 the south side of East West Highway.

13 It is one way from west to east. The
14 western entrance is at the extension of 15th
15 Avenue. I'm sorry. I believe in the area and I
16 can of it quite keep track which street is Avenue,
17 Place, or Street. But I believe 15th Avenue. And
18 then extends to its exit just the very
19 northwestern corner of the site. So really the
20 service lane, either you can turn directly right
21 from the end of the service lane into the site or
22 you can turn left into the travel lanes of East

1 West Highway or even to make a -- effectively a U-
2 turn onto westbound University because the median
3 in the center of East West Highway ends right
4 opposite the end of that roadway.

5 Now I do want to point out, people have
6 asked about the improvements to the travel lane.
7 Excuse me the improvements of the entrance. One
8 of the things that the proposed plan does that
9 hasn't been really talked about is it relocates
10 the entrance further to the east in order to
11 accommodate the landscape buffer, which is being
12 proposed where none currently exists. So right
13 now the paving goes right up to the property line.

14 In the new plan there will be 41 feet
15 actually of landscaped area in between the
16 property line, that retaining wall that was in the
17 background of Ms. Nelms shot when she came, on to
18 the edge of the proposed paving. And so that
19 means that the entrance location will be shifted
20 to the east approximately 25 -- approximately 25
21 feet.

22 That will bring the entrance, both --

1 that will both bring the entrance behind the
2 median in the center of the street and it will
3 provide a little bit more area for people to get
4 in and -- or actually to be precise, to get out
5 from the service road because it's one way. There
6 shouldn't be any getting in, notwithstanding what
7 people do seem to do from time to time.

8 HEARING EXAMINER: So excuse me one
9 second. I've got to jump in when he takes a
10 breath. I'm sorry, Mr. Ferguson.

11 MR. FERGUSON: Yeah. I'm sorry, Madam
12 Examiner.

13 HEARING EXAMINER: No, no, no. This is
14 helpful. Ms. Bah, can you pull up Exhibit 62,
15 which is the technical staff report? And then
16 there seems to be an aerial. And I just want to
17 know if this is depicting the homes in the service
18 road. So the aerial is not numbered. It's
19 numbered slide 6 of 16. So if you can pull up
20 Exhibit 62, and don't go too far in.

21 MR. FERGUSON: And I see that on my
22 paper copy in front of me.

1 HEARING EXAMINER: Okay. So --

2 MR. FERGUSON: So I can wait or I can
3 go.

4 HEARING EXAMINER: Well, I don't know.
5 Ms. Bah, are you there?

6 MS. BALL: I'm here. Just give me one
7 second to pull it up, please.

8 HEARING EXAMINER: All right. You
9 just -- okay, thanks. Okay. If you scroll maybe
10 like 15 pages down, it's called slide 6 of 16.
11 It's after the first 15 pages of the report.

12 MR. FERGUSON: So I'm going to say it's
13 probably going to be page 21. Try page 21.

14 HEARING EXAMINER: How come you get
15 that?

16 MR. FERGUSON: There it is.

17 HEARING EXAMINER: Is that it?

18 MR. FERGUSON: That was it.

19 HEARING EXAMINER: Okay. It's an
20 aerial, Ms. Bah, that picture.

21 MR. FERGUSON: There you go.

22 HEARING EXAMINER: Okay.

1 MR. FERGUSON: Why don't up. Right
2 on -- no. That's -- go up from there. No, the
3 other way.

4 HEARING EXAMINER: The next one. Oh,
5 back the other way? Okay.

6 MR. FERGUSON: Keep going. Keep going.
7 About three more. There you go.

8 HEARING EXAMINER: Is it that one?

9 MR. FERGUSON: Yeah.

10 HEARING EXAMINER: Is there a way to
11 make it bigger?

12 Yes, that photo. So is the street right
13 there behind the houses?

14 MR. FERGUSON: Or in front of them. So
15 in between those houses and East West Highway.
16 And if you see, it's really in the shade of the
17 trees.

18 HEARING EXAMINER: Oh, okay.

19 MR. FERGUSON: But you see the green
20 strip in front of the houses? That's a green
21 strip in between the main lanes of East West
22 Highway and this service road. In the service

1 where does provide parking for those houses as
2 well as access to their fronts.

3 HEARING EXAMINER: So what is that
4 behind their property? Is that access to the site
5 as well?

6 MR. FERGUSON: The road behind their
7 property is access to the community center
8 building.

9 HEARING EXAMINER: Oh, okay.

10 MR. FERGUSON: Which is -- you see there
11 is a small parking area just behind the two houses
12 that are nearest to the subject property? And
13 that's the parking area. And then there is a
14 small white square right behind that.

15 HEARING EXAMINER: That's the
16 community -- oh, okay. So would people be able to
17 use that to leave your site as well?

18 MR. FERGUSON: No, ma'am.

19 HEARING EXAMINER: No, okay.

20 MR. FERGUSON: There is the -- there is
21 a retaining wall in between the subject property
22 as well as fences that prohibit traffic back and

1 forth in between the subject and that community
2 center area.

3 HEARING EXAMINER: Okay. And so that
4 access road, it's almost impossible to see on
5 this. But I get where it is.

6 MR. FERGUSON: Yeah.

7 HEARING EXAMINER: Oh, wait a minute. I
8 made it bigger.

9 MR. FERGUSON: In the shade of those
10 trees in the front yards. And you can see, Madam
11 Examiner, to the left of those houses where the
12 green space of the park proceeds from New
13 Hampshire Avenue South, you see the black line.
14 That is representative of the edge of the right-
15 of-way. And so the service road really goes right
16 up to the edge of that, the extension of that
17 black line.

18 HEARING EXAMINER: Okay. Thank you.
19 Thank you, Ms. Bah. Okay. I'm so sorry you all.
20 Continue with your questions.

21 MR. TEDESCO: Thank you, Madam Examiner.
22 I just want to make sure we hit those points that

1 were raised earlier. So I think we got the
2 service road, which is the right-of-way of East
3 West Highway. Mr. Ferguson testified to the new
4 entrance and then the distance to the single-
5 family detached lots to the west. So I think that
6 covers the thing that I wanted Mr. Ferguson to
7 clarify from some of the prior cross-examination
8 questions.

9 Getting back to Mr. Ferguson's immediate
10 direct examination. Are you familiar with the
11 development history of the subject property?

12 MR. FERGUSON: I am.

13 MR. TEDESCO: And what's -- what is
14 that?

15 MR. FERGUSON: Well, the property was
16 originally constructed as a Safeway, a grocery
17 store. And then over the years it has evolved.
18 It has been vacant. I live not too terribly far
19 from the subject property in the city of
20 Hyattsville to the east. And I've been coming by
21 this property actually since I used to live just
22 off Riggs Road to the north up near University and

1 Riggs and worked there as well back in the day.

2 So the site has had a -- its use as been
3 intermittent over that time. The most recent
4 (inaudible) was a Rite-Aid.

5 MR. TEDESCO: Sorry, Mr. Ferguson.

6 Okay, thank you, Ms. Nelms. Go ahead.

7 MR. FERGUSON: Yeah, the most recent
8 major tenant was a Rite-Aid drugstore which has
9 been closed for a couple of years.

10 MR. TEDESCO: And do you have an opinion
11 with regards to the neighborhood and the zoning
12 neighborhood associated with this application?

13 MR. FERGUSON: I do. And as Madam
14 Examiner would not be shocked to find out, it is
15 different from staff's. Staff really limited the
16 to zoning neighborhood to the subject property and
17 the 11 houses to the west. So their limit was
18 Riggs Road, East West highway, and Sligo Creek
19 really, 15th Avenue and Sligo Creek. So a very,
20 very small neighborhood. Certainly the
21 development and the use of this property will have
22 an impact on the use and development of a much

1 larger area than that.

2 So I extended the -- I extended the
3 neighborhood up to the Pepco right-of-way to the
4 north and west, Drexel Avenue into Lewisdale, as
5 far east as Northwest Branch, which may be -- I'm
6 sorry -- yeah, Northwest Branch, which may be a
7 little large. And then south, really Ray Road and
8 Sligo Creek itself to the east. So that's -- it's
9 a larger neighborhood, roughly half-mile in each
10 direction, sometimes a little bit less, sometimes
11 a little bit more.

12 I would note that my neighborhood does
13 not actually include Carol Highlands. Many of the
14 people who were testifying earlier live in -- that
15 neighborhood is much more closely associated with,
16 for instance, the Tacoma/Langley crossroads sector
17 plan of 2009 which was done in anticipation of the
18 arrival of the purple line. The limit of that
19 sector plan, the southern limit was first
20 contrived -- which is a little bit further the
21 north, but pretty close to the northern limit of
22 my neighborhood as well.

1 MR. TEDESCO: And speaking of master --

2 HEARING EXAMINER: I just don't know --

3 I'm sorry Mr. Tedesco.

4 MR. TEDESCO: That's okay.

5 HEARING EXAMINER: I just don't to

6 picture your neighborhood though.

7 MR. FERGUSON: It's

8 HEARING EXAMINER: It's more Northwest,

9 Southwest, East, and North.

10 MR. FERGUSON: Your Applicant has --

11 MR. TEDESCO: Sorry, hang on. So Madam

12 Examiner, I would -- we provided -- well, let me

13 assist. Mr. Ferguson, did the Applicant provide a

14 neighborhood boundary in its justification

15 statement?

16 MR. FERGUSON: Yes, he did. Yes, he

17 did. And that would be on the second page of the

18 statement of justification, or page 2 of 38 in the

19 backup.

20 MR. TEDESCO: So Madam Examiner in

21 the -- and do you agree with that boundary as the

22 zoning neighborhood?

1 MR. FERGUSON: Yes, very specifically I
2 do.

3 MR. TEDESCO: So Madam Examiner, if you
4 refer to page 2 of the statement of justification,
5 which again, is Exhibit 23, I believe, there is a
6 graphic of the neighborhood boundary, if that
7 helps.

8 HEARING EXAMINER: Yeah, at least that
9 gives me a better idea of the shape. Thanks.

10 MR. TEDESCO: Mr. Ferguson, you touched
11 on the Carol Highlands neighborhood not being
12 within your zoning neighborhood, primarily based
13 upon the limits of the existing planning documents
14 in this area; is that correct?

15 MR. FERGUSON: Well, my neighborhood
16 determination is actually independent. I look at
17 distance. I look at interconnections. You know,
18 what is the orientation of each neighborhood.
19 What are the barriers in between. So the Pepco
20 right-of-way is a substantial barrier. The
21 streets in Carol Highlands are oriented
22 principally to New Hampshire Avenue. I use that

1 neighborhood as a cut through, actually take that
2 off the record, Madam Examiner, for many years.
3 And then to a degree, East to Riggs Road.

4 But in my opinion it is oriented much
5 more to the north than to the south. So things
6 like that all go into my evaluation of where a
7 neighborhood boundary is. Not just a planning --
8 planning documents boundaries.

9 MR. TEDESCO: Regarding the planning
10 document for this property, what is the applicable
11 planning document?

12 MR. FERGUSON: This is actually the 1999
13 Langley Park, College Park, Greenbelt master plan.

14 MR. TEDESCO: And what is a land-use
15 recommendation for the property in that planning
16 document?

17 MR. FERGUSON: Retail, commercial land-
18 use.

19 MR. TEDESCO: And what is the associated
20 sectional map amendment with that master plan?

21 MR. FERGUSON: The sectional map
22 amendment was -- it's bound into the same. It was

1 done six months later in May, 1990. It was a
2 sectional map amended for planning areas 65, 66,
3 and 67.

4 MR. TEDESCO: And which planning area is
5 this property in?

6 MR. FERGUSON: 65, I believe. It is 65.

7 MR. TEDESCO: And what did the SMA zone
8 the property to? From and to?

9 MR. FERGUSON: The SMA actually updated
10 the prior C1 zone, which is an obsolete -- or
11 actually now I guess doubly obsolete zone from the
12 prior C1 commercial designation to the then new
13 CSC zone. So no transfer in use is permitted or
14 character views, just to make it compatible with
15 the then current zoning ordinance.

16 MR. TEDESCO: And what was the master
17 plan or sectional map amendment, if you know? If
18 you don't, that's very prior to the 1989 and 1990
19 master plan SMA.

20 MR. FERGUSON: I believe that was one
21 from perhaps 1970. No, this one was probably
22 Tacoma, Langley Park 1963.

1 MR. TEDESCO: So is it fair to say that
2 this property has been zoned commercially for 60
3 years?

4 MR. FERGUSON: Yeah, absolutely.

5 MR. TEDESCO: Based upon your
6 familiarity with the application and your land
7 planning report, the testimony that you've heard
8 today, do you believe that this application
9 complies with the recommendations of the sector
10 plan?

11 MR. FERGUSON: Yes, I do, very much.
12 And the -- or the master plan in this case didn't
13 have specific recommendations, but it did
14 recognize that there were scattered commercial
15 areas including the commercial node of the -- at
16 this intersection, and recommended improvements
17 that were similar to those that it recommended for
18 the Route 1 corridor in College Park. And
19 recommendations for those included things like,
20 hey, provide some stormwater management, provide
21 some landscaping, provide buffering. All of those
22 things, this application does.

1 So even though we are 25 years, 35 years
2 down the road, we are implementing those massive
3 plan recommendations with this proposal.

4 MR. TEDESCO: And did you form an
5 opinion with respect to the compliance with
6 section 27-317 of the zoning ordinance?

7 MR. FERGUSON: I did. I believe that
8 this property is in compliance. So there were
9 seven -- is a sevenfold test in 27-317. The first
10 of those tests is, do you comply with the
11 purposes, are you in harmony with the purposes of
12 the zoning ordinance. I do believe that the case.
13 And I go through each one of those purposes in my
14 report, not only the purposes for the ordinance
15 generally, but the purposes for commercial zones
16 generally and for the CSC zone in particular. And
17 certainly all of the applicable provisions, this
18 is in harmony with.

19 MR. TEDESCO: And did you have a chance
20 to analyze and form an opinion with respect to
21 compliance with section 27-358?

22 MR. FERGUSON: I did.

1 MR. TEDESCO: And what is your
2 conclusions? Or what are your conclusions?
3 Excuse me.

4 MR. FERGUSON: Well, I think this is the
5 only one that required a little bit more
6 discussion. The provisions of 27-358-A5 had some
7 particular technical requirements regarding the
8 location of driveways. And I believe it was those
9 findings that were part of the prompt for Mr.
10 DiMarco to prepare Exhibit 68, which was the site
11 plan marked up with the red line and indicating
12 the new parking location and exit configuration as
13 well as the sidewalks.

14 With -- if the site plan is amended to
15 conform to Exhibit 68, then certainly I find that
16 this application would meet all of the
17 requirements of 27-358 without having to go into
18 some of the possibilities that I described in my
19 report on page 16.

20 MR. TEDESCO: In order to form that
21 opinion, do you have any opinion or thoughts with
22 respect to the playground that you heard testimony

1 about today?

2 MR. FERGUSON: Well, I agree with -- I
3 agree with Mr. DiMarco. Certainly it would need
4 to be conditioned on the relocation or removal of
5 that playground.

6 MR. TEDESCO: And with respect to
7 Section 27-355 again, which for the record I've
8 noted the Applicant's position on. Nevertheless,
9 did you do an analysis or form an opinion with
10 respect to the required findings under 27-355 for
11 the (inaudible) report?

12 MR. FERGUSON: I did. The principal
13 requirements of those were addressed by Mr. Steere
14 with his report and with his testimony. There is
15 a requirement that is specific to industrial zones
16 that is not applicable here. And there was a
17 requirement addressing the sale of alcoholic
18 beverages, which are not proposed. So certainly
19 pursuant to principally Mr. Steere's testimony, I
20 find that the provisions of 27-355, to the extent
21 that they are applicable, would be met.

22 MR. TEDESCO: In your expert opinion as

1 a land planner, do you believe the approval of
2 this special exception will have any adverse
3 effects on the health, safety, or general welfare
4 of the area?

5 MR. FERGUSON: I think it's important
6 actually to state, perhaps more for the benefit of
7 the other people in attendance at the hearing and
8 not so much the examiners, is and whether there is
9 no adverse effect associated with the use. Every
10 use, whether it's a single family residence,
11 agriculture, a store, has a combination of
12 effects, some of which are beneficial and some of
13 which are not. The standard is, will it have any
14 undue effects at this location that would make it
15 inappropriate here.

16 The presumption for special exception
17 uses is that they are valid unless there is
18 something site-specific that would make it
19 inappropriate at this particular location. And I
20 don't believe that there is. Certainly there are
21 very, very material factors. Converting the site
22 from a site that has no stormwater management to a

1 site that's fully managed. Converting a site that
2 has no stormwater manage -- sorry, no landscaping
3 to fully a site that is pulling compliance with
4 modern standards is a material change and more
5 beneficial at a developed site that it would be
6 were this a greenfield site.

7 I think further, the safety improvements
8 associated with the elimination of one of the
9 entrances, and very specifically, the entrance
10 that's closest to the intersection will have a
11 material impact on vehicle and traffic safety. So
12 all of those things suggest that the impacts of
13 this development at this site will be less than at
14 a comparable site in the CSZ zone in town.

15 MR. TEDESCO: No further questions,
16 Madam Examiner.

17 HEARING EXAMINER: Just before Ms.
18 Nelms, now that I'm looking at the aerial map
19 better, if you can recall what the landscape plan
20 looks like and the site plan --

21 MR. FERGUSON: I do.

22 HEARING EXAMINER: Are there any trees

1 covering between the site and those homes? Those
2 11 homes?

3 MR. FERGUSON: Oh, yes ma'am, a
4 substantial number of them. And Mr. DiMarco
5 actually testified --

6 MR. TEDESCO: I'm sorry, Mr. Ferguson.
7 Just for point of clarification, Madam Examiner,
8 are you asking in existing condition or proposed?

9 HEARING EXAMINER: Oh, not existing. I
10 mean, if this were approved, would there be --

11 MR. FERGUSON: If this were approved --

12 HEARING EXAMINER: How tall are those
13 trees? I know I can look it up. I'm just asking
14 now on the record because of the people may
15 wonder.

16 MR. FERGUSON: Well, Madam Examiner, the
17 landscape manual provides a D buffer yard is a
18 requirement. That's the highest level of buffer
19 yard for anything that is not in historic use. So
20 the number of trees is dependent on the length of
21 the property line. I believe it's 160 plant
22 units, which would translate into 16 shade trees.

1 But you could use two ornamental trees for every
2 shade tree or 10 shrubs for every shade tree for
3 every hundred feet of property frontage. And I
4 believe there is close to 200 feet. So that will
5 give you an idea of the number of trees.

6 And then Mr. DiMarco actually testified
7 that they would be exceeding the number of
8 planting requirements in the proposal.

9 HEARING EXAMINER: Okay. And one other
10 question. Did I hear you correctly that if the
11 site plan is amended as suggested in Exhibit 68,
12 most of your concerns in paragraph 5 on pages --
13 bottom of 15 to the top of 16 go away?

14 MR. FERGUSON: Yeah. All of my concerns
15 on that would go away.

16 HEARING EXAMINER: Okay. And Ms. Nelms,
17 just before you ask a question, I just want you to
18 know, the virtual world makes everything so weird.
19 You're walking around out there, but I'm not
20 looking at -- I can't look at anything based on
21 what you are doing because it won't reflect in the
22 record. So I just don't want you to think that

1 it's like additional evidence because you're
2 walking on site. I apologize for that. So you
3 can be out there, but it's not part of the record.

4 MR. TEDESCO: Ms. Nelms looks --

5 HEARING EXAMINER: I never thought about
6 this before.

7 MR. TEDESCO: Ms. Nelms looks frozen,
8 Madam Examiner. I don't know if she walked out of
9 the range of her wireless or what.

10 HEARING EXAMINER: I think she's gone.
11 She was there though. Yeah, you're right. It
12 looks like she is totally gone.

13 MS. NELMS: I'm here.

14 MR. TEDESCO: There we go.

15 HEARING EXAMINER: Oh, you're back?
16 Okay.

17 MS. NELMS: Yes.

18 HEARING EXAMINER: Okay. So what are
19 your questions of Mr. Ferguson? And you -- I do
20 want you on camera. I just wanted you to know
21 that it's not necessary to walk around the site
22 because I can't consider that.

1 MR. TEDESCO: I think -- Ms. Nelms, we
2 can't hear you. You are -- you probably need to
3 get closer to your Wi-Fi.

4 MS. NELMS: Okay. So Mr. Ferguson, did
5 I hear you correctly say that you have moved out
6 of this neighborhood?

7 MR. FERGUSON: Many years ago I lived in
8 the Marylander condominiums just north of
9 University and Riggs. I've lived in the city of
10 Hyattsville for 33 years.

11 MS. NELMS: So would it be fair to say
12 that you do not -- or you don't observe what's
13 happening in this neighborhood on a day-to-day
14 basis? Is that correct?

15 MR. FERGUSON: I don't go by there every
16 day anymore. I certainly used to. But no, I'm
17 there from time to time, certainly going back and
18 forth to Silver Spring, I come right by the front
19 of your house. But no, not every day.

20 MS. NELMS: Okay. So my reason for
21 asking you that question, is the neighborhood, as
22 you know, has changed drastically, right?

1 MR. FERGUSON: Not physically, Ms.
2 Nelms. Really, it's physical form has not changed
3 in 40 years. Since I -- it has really not changed
4 since I was a student at the University of
5 Maryland. The uses may have changed. So the
6 Rite-Aid has come and gone. The Safeway obviously
7 has come and gone at the subject property. The
8 gas station across the street, not the Exxon, but
9 the one that is now a repair facility is no longer
10 there.

11 But Lewisdale was always fully
12 developed. Carol Highlands and the neighborhood
13 to the south was always fully developed. The
14 Chillum Ray Road area has been fully developed.
15 So there is some new things. Cesar Chavez
16 Elementary school is, compared to my experience
17 with the neighborhood, new. But by and large,
18 they're very, very few changes physically in the
19 neighborhood.

20 MS. NELMS: So -- well, I was really
21 referring to the traffic. Mr. Ferguson, are you
22 aware that a couple of years ago, East West

1 Highway and Riggs Road was named one of the worst
2 intersections in Prince Georges County due to the
3 number of -- are you aware that?

4 MR. FERGUSON: Yeah. And the worst is
5 one of the street at University and Riggs Road.
6 Yeah, I am. I am aware of that, very much so.

7 MS. NELMS: So it will be fair to state
8 that the increase in traffic would cause danger?
9 You said it was safe. You didn't object to Mr.
10 Matthew Tedesco, his comment when he said, is
11 there any --

12 MR. TEDESCO: We are losing Ms. Nelms
13 again. Or are we losing me? Everybody is
14 present? No? There you go, Ms. --

15 MR. FERGUSON: No, I have you.

16 MR. TEDESCO: Okay. Ms. McNeil, you're
17 muted.

18 HEARING EXAMINER: I can hear you, but
19 not Ms. Nelms.

20 MR. TEDESCO: Yeah, Ms. Nelms is stuck.
21 How would you like me to -- I can certainly
22 address the first part of her question, but I

1 don't know if she was finished. And Ms. McNeil is
2 frozen for me.

3 HEARING EXAMINER: I am?

4 MR. TEDESCO: Oh, there you go again.

5 (Crosstalk)

6 MR. TEDESCO: She is frozen. Ms.

7 McNeil, how would you like me to -- would you like
8 me to wait for --

9 HEARING EXAMINER: Ms. Nelms is back.

10 Well, we can't see. I think you did answer the
11 question. You said yes, you are aware that.

12 Okay. Well, she was -- no, I think she was
13 asking --

14 (Crosstalk)

15 HEARING EXAMINER: Let Ms. Nelms ask
16 your -- go ahead, Ms. Nelms. What was your
17 question for him about the street?

18 MS. NELMS: Well, the -- I was having
19 computer problems. So I wasn't -- I'm not sure
20 why I was. But I will go on to my other question
21 that Mr. Ferguson stated that they would be
22 extending the entrance here close on -- to East

1 West Highway, not down by the light, but close to
2 here by the property line. And you said extending
3 it would be safer because -- is that correct?

4 MR. FERGUSON: I think it will allow for
5 easier turning movements and less complex. My
6 observation coming out of that service drive when
7 I made the site visit is that it felt, in the
8 current condition, a little bit tight. Right?
9 Like you come out of that drive and you don't --
10 it doesn't feel like there's a lot of room to get
11 out onto East West Highway, particularly if there
12 is activity right there. By creating another 25
13 feet, that will, in my opinion, improve the
14 situation.

15 MS. NELMS: Well currently, living on
16 this service road every day, where you are talking
17 about extending the driveway really serves as a
18 buffer for cars because when we get -- before we
19 pull out on East West Highway, we had that little
20 buffer area to stop before going on to East West
21 Highway.

22 MR. FERGUSON: Yeah.

1 MS. NELMS: If that driveway is
2 extended, we will no longer --

3 MR. FERGUSON: You will have --

4 MS. NELMS: Have a buffer or safety.

5 (Crosstalk)

6 MR. FERGUSON: You will have more of a
7 buffer, ma'am, Ms. Nelms. In my opinion you have
8 more of a buffer.

9 MS. NELMS: You have more of a buffer
10 because the driveway will be extended. But I'm
11 talking about if you extend that driveway --

12 (Crosstalk)

13 MS. NELMS: No, let me finish. You cut
14 out the buffer. The buffer is no longer there.
15 Right now I'm in my door looking at it. Cars
16 going down. They can stop and it's safe right
17 there. But if you extend the driveway, there will
18 be no buffer. We will meet head on with cars
19 coming out of Royal Farm.

20 MR. FERGUSON: So Ms. Nelms, I don't
21 think that's what I said about extending the
22 driveway. I think I said extending the service

1 line. And the driveway will be shifted over to
2 the east. So the driveway won't be any longer.
3 The driveway, there will actually be less
4 driveway. There will be more of a buffer. There
5 will be more of a separation to give you guys room
6 to deal with East West traffic.

7 MS. NELMS: So there is a little more
8 space past the property line when you come out on
9 the service road?

10 MR. FERGUSON: Right. Whether you widen
11 its, extend it, whatever you do, if you widen that
12 driveway to come out of Royal Farm --

13 MR. FERGUSON: No, that will be the same
14 width.

15 MS. NELMS: So you are not -- what are
16 you doing? Can I ask, what are you doing?

17 MR. FERGUSON: Pushing it further.
18 Pushing it further to the east away from your
19 house.

20 MS. NELMS: So that means you will be
21 breaking up the sidewalk and cutting down those
22 trees right there?

1 MR. FERGUSON: No, ma'am. No. There
2 will be --

3 (Crosstalk)

4 MS. NELMS: It's all there. It's either
5 the house is on my --

6 MR. FERGUSON: Extending the sidewalks
7 so the sidewalk is still continuous.

8 MS. NELMS: Okay.

9 MR. FERGUSON: And there are no trees in
10 the right of way. There are trees on your
11 property and the trees and on the property line.
12 And those won't be affected.

13 MS. NELMS: There are bushes, landscape
14 as you enter --

15 MR. FERGUSON: Not in the area that will
16 be affected.

17 MS. NELMS: Should I walk back out there
18 and show you?

19 MR. FERGUSON: No, ma'am, I can look --

20 (Crosstalk)

21 MS. NELMS: There are plenty of bushes.

22 I just walked out there. Plus I see the guy

1 cutting the grass there every week and trimming
2 the trees. So I know --

3 MR. FERGUSON: I understand. None of
4 the bushes at the side of your house would be
5 affected.

6 MS. NELMS: I'm not saying --

7 (Crosstalk)

8 MR. FERGUSON: The area that's being
9 extended is in between the curb and the sidewalk.
10 There is no bushes or trees.

11 HEARING EXAMINER: Wait a minute. Is
12 there a site -- is there an exhibit that shows
13 this --

14 MR. TEDESCO: Page 2 of this special
15 exceptions plan. It's the existing condition
16 plan. And I don't want to testify for Ms. Nelms,
17 but I'm curious -- and I know this is cross, but
18 does she believe that we are -- by the word
19 extending that we are extending the curves out
20 towards the right-of-way blocking the service
21 road? Is that -- because that's not the case. So
22 I'm wondering if there is confusion on --

1 (Crosstalk)

2 HEARING EXAMINER: Well, why don't you
3 ask him what does he mean by extending?

4 MR. TEDESCO: Well, that's what I was
5 going to do in redirect. But this is becoming
6 more of a discussion.

7 HEARING EXAMINER: Right. Mr. Ferguson,
8 I will ask you. What are you meaning by
9 extending?

10 MR. FERGUSON: Yes, ma'am. So if you
11 look at 2 of 8 of the special exceptions I plan.
12 And I've forgotten, candidly, what exhibit number
13 that is.

14 HEARING EXAMINER: I didn't write it
15 down here. It is --

16 MR. TEDESCO: Exhibit 26.

17 HEARING EXAMINER: Yes. So Ms. Bah, can
18 we see Exhibit 26, page 2?

19 MR. FERGUSON: So let's zoom in on the
20 very top left corner of that sheet that we see
21 right now. Zoom in a little tighter, Fatima, a
22 little tighter. Okay.

1 So you see the words in the very top
2 left? Concrete curb and gutter under the words
3 proposed saw cut? That concrete gutter is the
4 edge of the service road. And that service road
5 extends into the entrance, which is basically
6 where you see the light gray words, great and let.
7 And then he turn right from the service road into
8 the property, or from East West Highway across the
9 service road into the property.

10 And you can see that there is a sidewalk
11 to the right of that which extends. It sort of
12 looks like a -- I don't know -- a T or something
13 like that. It extends out from the red property
14 line up to where it says DEP curb or depressed
15 curb. So if you remember those things, now go to
16 the next page. One page down.

17 HEARING EXAMINER: Okay, Ms. Nelms,
18 you've got to mute right now. Okay. And Mark, do
19 you want to be the organizers he can use the
20 cursor?

21 MR. FERGUSON: I would be happy to,
22 sure. I think Ms. Bah has got it. If you can,

1 just zoom that in a little tight like we had the
2 other one to the top left corner. Okay. So now
3 you can see that great inlet is no longer in the
4 center of the entrance, but it's all the way on
5 the left. And you can see that sort of T-shaped
6 sidewalk which was well to the right of the
7 entrance is now on the -- to the right side of it
8 but within the entrance.

9 But the location of the curb, but you
10 can see that sort of pours online right below the
11 words, (inaudible) saw cut, actually the -- line
12 has disappeared. But that's in the same location.
13 So the extension of the service road is now
14 further to the east as the whole entrance has been
15 pushed. And is about 25 feet for the to the east.
16 So there is more of a buffer in between Ms.
17 Nelms's house and the entrance. There is less
18 opportunity for conflict between traffic coming in
19 off of the main lanes of the express highway
20 coming into the site, and by those standards it is
21 safer than the existing condition, in my opinion.

22 MS. NELMS: So Mr. Ferguson, with all of

1 your analysis and homework to come up with your
2 conclusion --

3 MR. FERGUSON: Yes, ma'am.

4 MS. NELMS: How many hours or days did
5 you spend out here observing this area?

6 MR. FERGUSON: Specifically associated
7 with preparing this report today and excluding all
8 of my previous experience with the neighborhood do
9 you mean?

10 MS. NELMS: Yes.

11 MR. FERGUSON: Perhaps an hour and a
12 half to two hours going through the whole
13 neighborhood. Not just that this property, but
14 really the whole of the area that I defined as a
15 neighborhood in my earlier testimony.

16 MS. NELMS: So you spent an hour and a
17 half. I've lived here 21 years. So I don't think
18 it's adequate, your hour and a half out here, to
19 determine that it's -- it would be a good idea and
20 safe. I will say this and I'm finished, Ms.
21 McNeil. Until someone conducts a -- some kind of
22 accident report on East West Highway and Riggs

1 Road, this should be denied.

2 I live it every day. The number of
3 accidents every day --

4 HEARING EXAMINER: All right, ma'am.

5 (Crosstalk)

6 HEARING EXAMINER: You gave that
7 testimony. You gave your testimony already.
8 Remember? And now we are just asking questions.

9 MS. NELMS: Thank you.

10 HEARING EXAMINER: I heard -- I hear
11 you. Okay. Thank you. Mr. Tedesco, you can take
12 your direct exam back.

13 MR. TEDESCO: I was concluded. I don't
14 have any redirect. I think the redirect was asked
15 by you with respect to --

16 HEARING EXAMINER: Oh, okay.

17 MR. TEDESCO: The actual increase of
18 the, quote/unquote buffer an area for those
19 motorists to utilize the service road to get on
20 the East West Highway from the sounds would be
21 improved.

22 HEARING EXAMINER: Okay.

1 MR. TEDESCO: I don't have any for the
2 redirect.

3 HEARING EXAMINER: Okay. Then I guess
4 we can go to Ms. Ensminger. I killed her name.
5 I'm sorry. And Ms. Bah, you can close the
6 exhibit. You don't need this exhibit, do you
7 ma'am? Okay. You're muted.

8 MS. ENSMINGER: No, ma'am, I don't need
9 the exhibit.

10 HEARING EXAMINER: So you swear or
11 affirm the penalties of perjury that the testimony
12 you shall give will be the truth, and nothing but
13 the truth?

14 MS. ENSMINGER: I do.

15 HEARING EXAMINER: So state your name
16 and address for the record.

17 MS. ENSMINGER: My name is Lisa
18 Ensminger. I live at 7213 16th Avenue, Tacoma
19 Park, Maryland, 20912, in the unincorporated
20 portion of Tacoma Park in Prince Georges County.

21 HEARING EXAMINER: Okay. And what you
22 want to tell me about this request.

1 MS. ENSMINGER: Sure. So I'm a resident
2 of the Carol Highlands neighborhood. I currently
3 serve as a secretary of the Carol Highlands
4 neighborhood Association. I'm also the mother of
5 a young son. I live three quarters of a mile by
6 foot to -- from the proposed site.

7 The proposed development does not serve
8 the needs of the community and hinders the
9 County's ability to meet its goals for reducing
10 obesity and heart related illnesses. Prince
11 Georges County has the highest obesity rate in the
12 State of Maryland with 71 percent of adults
13 classified as overweight or obese and 40 percent
14 of children considered at risk for obesity
15 compared to just 29 percent of Marylanders overall
16 considered obese.

17 The Prince Georges County Health
18 Department's own tracking system for obesity and
19 obesity related incidences shows that the County
20 is failing to meet its targets for reducing
21 obesity. At the same time, fast food restaurant
22 density has been increasing at an alarming rate

1 since 2007 while grocery store density in the same
2 area has declined. There are currently .85 fast
3 food establishments per 1000 people, yet only .18
4 grocery stores for 1000 people in Prince Georges
5 County.

6 With that in mind, it is extremely
7 shortsighted to support the development of a
8 business that discourages exercise and promotes
9 unhealthy eating. Royal Farms is primarily a fast
10 food convenience food operation seeking to expand
11 in an area that already has a glut of such
12 establishments. We need better choices in this
13 part of the County.

14 The site chosen for this fast food and
15 community food operation fall squarely within an
16 area that the County has identified as a healthy
17 food priority area. According to the County, a
18 healthy food priority area in Prince George's
19 County is an area with a ratio of healthy to
20 unhealthy food, with the median household income
21 is below \$67,583, which is the Maryland self-
22 sufficiency standard for a family of four, and

1 over 5.2 percent of households have the vehicle
2 available.

3 Adding insult to injury is the fact that
4 in order for this development to proceed, a
5 playground which promotes exercise and movement by
6 children and adults alike, must be eliminated and
7 will not be replaced on either the existing site
8 or any site nearby. (Inaudible) the playground to
9 allow the construction of a gas station and fast
10 food convenience store directly contradicts the
11 goals established in the County's healthy people
12 plan.

13 The construction and operation of a gas
14 station convenience store is not necessary to the
15 public and the surrounding area as stated by -- as
16 testified to already, there are many similar
17 establishments already operating in the immediate
18 vicinity. The construction of a gas station on
19 the side also restricts the use of the surrounding
20 land for the duration of the existence of the gas
21 station in that the playground must be eliminated,
22 it cannot be rebuilt or revitalized in the

1 existing space simply due to the existence of a
2 gas station nearby.

3 The community wants healthy, sustainable
4 food choices that meet the needs of a variety of
5 constituents consisting of a establishments that
6 prioritize lean proteins, fresh vegetables,
7 nutrient dense grains, prepared and served by
8 workers trained about how to safely navigate food
9 allergies, intolerances, and celiac disease.

10 Nearby localities such as Riverdale and
11 College Park have attracted similar establishments
12 already, such establishments such as (inaudible)
13 Organics, Burton's (inaudible) and we want more of
14 this kind of development in our community. We
15 want beautiful community spaces that our families
16 can use for gathering, recreation, and play. We
17 do not want yet another gas station and fast food
18 take-out establishment that further entrenches us
19 in a food swamp.

20 Therefore, for the reasons stated above,
21 I urge the committee to deny this special
22 exception request by Royal Farms. Allowing this

1 development to move forward would cause
2 irreparable harm to the community and will send a
3 very bad message about the importance of defeating
4 the obesity epidemic in the County. Thank you
5 very much.

6 HEARING EXAMINER: Thank you. Mr.
7 Tedesco, do you have any questions?

8 MR. TEDESCO: I do not, no.

9 HEARING EXAMINER: Ms. Ensminger do you
10 want to submit your testimony into the record?

11 MS. ENSMINGER: Yes, ma'am.

12 HEARING EXAMINER: Okay. All you have
13 to do is email it to us. You know how to reach us
14 by email, right?

15 MS. ENSMINGER: Yes, ma'am. I'll do
16 that today.

17 HEARING EXAMINER: And it'll be
18 included.

19 Okay. Mr. Tedesco.

20 MR. TEDESCO: So just a point of order.
21 I understand all the citizens are completed so we
22 should go into closing and conclude?

1 HEARING EXAMINER: Yes.

2 MR. TEDESCO: Very well. Your
3 indulgence. There's a lot to cover but I'll try
4 to be brief about it, Madam Examiner. It's been a
5 long day and I appreciate your time and attention
6 to this case.

7 With respect to some of the -- with
8 respect to a lot of the testimony, if not all of
9 the testimony that you heard today from the
10 citizens, we certainly understand and appreciate
11 their involvement in this case. We did meet with
12 many of the citizens you heard from today on July
13 21st. We've supplemented that with additional
14 information. And will continue to work with the
15 citizens as needed or as desired moving forward
16 with this application. And hopefully the future
17 development of the site.

18 That being said, and with all due
19 respect the conclusory comments and testimony that
20 was heard with respect to environmental impacts,
21 let me address those first. You heard testimony
22 in reference to that. I would turn your attention

1 to Exhibit 50 which is the referral from the
2 environmental planning section, page 2, natural
3 resource inventory, existing conditions. The site
4 has an approved natural resource inventory
5 equivalency letter according to PG Atlas the site
6 is fully developed and is not associated with any
7 regulated or environmental features, such as
8 streams, wetlands or associated buffers.

9 However, according to the approved flood
10 plain study FPS 202107 approved by the Department
11 of Permitting inspections and enforcement the
12 southeastern corner of the site is within the
13 existing 100 year flood plan. This area of flood
14 plain is within the primary management area of the
15 stream located to the south, which DFI has already
16 reviewed analyzed and approved and you heard
17 expert testimony from Mr. DiMarco with respect to
18 actually increasing the capacity of the flood
19 plain as a result of this development.

20 Further according to PG Atlas the site
21 is fully developed. According to the sensitive
22 species project review area, SSPRA, received from

1 the Maryland Department of Natural Resources and
2 Natural Heritage program, DNR, NHP, there are no
3 rare threatened, or endangered RTA species found
4 to occur on or near this property. The site is in
5 the middle of the -- the site is in the middle
6 Potomac Watershed which flows to the Anacostia.

7 With respect to soils, page 4, no unsafe
8 soils containing marble clays have been identified
9 on or within the immediate vicinity of the subject
10 property. Unsafe soils containing Christiana
11 complexes are mapped only on a small portions of
12 the western property boundary and however since
13 the underlying soils are mapped as urban land and
14 have been previously developed for more than 60
15 years they are not considered a significant issue
16 for the development of the site.

17 Stormwater management. An improved
18 stormwater concept plan 1747 2021 from DPI is
19 submitted with this application. You heard expert
20 testimony from Mr. DiMarco with respect to the
21 improvements associated with stormwater quality
22 and quantity control as a result of this

1 development.

2 With the utmost respect to the citizens
3 who testified, their ire for this use has to deal
4 with the use, being a gas station. What comes
5 with that, however, is all the improves and
6 safeguards that you heard testimony about and
7 given for reasons why it shouldn't be approved,
8 flooding, stormwaters, water quality, water
9 quantity, all those things will actually be
10 mitigated and addressed and improved upon with
11 this development.

12 With respect to the playground. Exhibit
13 49, DPR staff has analyzed the playground facility
14 and determined that the existing playground is not
15 heavily used, perhaps due to its poor location and
16 that other facilities or replacement amenities
17 would better serve the park and its patrons. The
18 existing playground is in fact toward the end of
19 its useful life and will be slated for replacement
20 or removal in the near term. That's regardless of
21 this application.

22 Now, the Applicant has entered into an

1 agreement with Park and Planning and the
2 Department of Parks to improve upon this park
3 facility for which no current plan is in place to
4 make improvements to Parklawn Park. This
5 development, in conjunction with the partnership
6 with Park and Planning will actually make
7 improvements that would otherwise not occur and
8 this playground facility which under -- pursuant
9 to the Department of Parks and Recreations own
10 internal analysis and determination has lived its
11 useful life and is slated for removal,
12 notwithstanding.

13 Regarding the health, safety, and
14 general welfare, you heard testimony with respect
15 to healthy food options and impacts to the general
16 health, safety and welfare. While I know that
17 healthy food options is important, it's not a
18 determining factor dispositive with respect to
19 meeting the required findings for a special
20 exception.

21 The fact of the matter remains is that
22 this property is currently vacant -- predominantly

1 vacant with a Papa Johns. The Royal Farms,
2 notwithstanding its food choices also includes
3 healthy food options. Everyone has free will and
4 can select to choose the food options for them.
5 There are options within every Royal Farms and
6 this one won't be excluded regarding healthy food
7 options. Whether that be fresh made foods and/or
8 packaged salads, milk, other types of dietary
9 improvements, but nevertheless, that's not really
10 dispositive of whether this application should be
11 approved or not. But it is important to note that
12 Royal Farms provides options for its customers.

13 As Mr. Ferguson indicated to Madam
14 Examiner, I know Madam Examiner knows this the
15 test is not whether there's an adverse effect.
16 Judge Harrell in the Loyola case 406, Md. 54
17 clarified the Schultz v. Pritts test for special
18 exemptions in which he said the local legislature
19 when it determines to adopt or amend it protects
20 zoning ordinance with regard to designating uses
21 as allowed only by special exemption ion various
22 zones considers in a generic sense that certain

1 adverse effects potentially associated with or
2 inherent to these uses are likely to occur.

3 The language in the Schultz v. Pritts
4 test is backwards looking reference to the
5 legislature presumptive finding in the first
6 instance made when the particular use was made a
7 special exception use in the zoning ordinance.

8 In other words, its implied. It's
9 inherent that these uses -- that a gas station use
10 will have adverse effects, as Mr. Ferguson
11 testified to. But simply because there is going
12 to be an adverse effect that's implied associated
13 with the use is not grounds to deny the
14 application. It is not part of the required
15 analysis to be made in the review process for each
16 special exception application, it is a point of
17 reference explanation only.

18 We've never contended the Applicant has
19 never contended that any development, whether it's
20 a special exception or not won't have any adverse
21 effects. And the standard is not whether and the
22 burden that we have to prove today is not whether

1 there is any adverse effects or not. The test is
2 whether the adverse effects that are -- that may
3 be created are inherently more or worse than those
4 that are implied. And although you've heard
5 testimony and conclusory comments from the
6 citizens indicating that they will be, you
7 actually don't have any actual reliable evidence
8 that supports that.

9 The substantial evidence in the record
10 based upon all the analysis from technical staff
11 as well as the expert witnesses that you've heard
12 from today, the substantial evidence weighs
13 towards the fact that there are no adverse impacts
14 beyond those that are inherent or implied by this
15 use. In fact, the evidence that you heard today
16 very strongly weighs favorably to the fact that
17 this development will actually improve upon
18 existing conditions both from a stormwater
19 management capacity, transportation capacity,
20 pedestrian capacity by providing the improvements
21 that are proposed and depicted on the exhibits and
22 the site plans.

1 In conclusion, Madam Examiner, again, I
2 thank you for your time and attention in this
3 case, it's been a long day. I appreciate the
4 citizens testimony.

5 Oh, strike that. Sorry. One other
6 thing. I'm sorry need this use, Madam Examiner.
7 With respect to the testimony you heard regarding
8 we don't -- the citizens indicating they don't --
9 they don't need this use in this area, I do want
10 to just highlight the fact that the legal
11 standard, as you know, is not an absolute need.
12 In Newman v. Mayor and City Council, a Baltimore
13 case, clearly identified that necessary or
14 reasonable need is convenient, useful and
15 appropriate which is the standard, the legal test
16 that the Count has adopted, but this Hearing
17 Examiner as well as the District Council. The
18 standard and the test exists to balance the public
19 purpose of against the regulatory agency simply
20 saying no to allocations for certain uses without
21 a test, which would infringe upon property rights
22 and create -- create a test that does not mean

1 absolute necessity, but only reasonable
2 convenience. So although these residents may not
3 find it reasonably convenient, the expert
4 testimony and the data supports the fact that
5 there is a supply -- excuse me that there is a
6 reduced supply and excessive demand for the gas.
7 And that given the co-location of these uses
8 creates reasonable convenience for a one stop shop
9 which is been determined to be adequate to meet
10 that standard, notwithstanding, again, my standing
11 objection with respect to the findings in 27-355.

12 And then, finally, and that's been
13 presented in this record just I would agree with
14 the legal interpretation with respect to CB 48-
15 2021, as I mentioned in my opening. So for those
16 reasons and for the -- and in reliance upon the
17 evidence that the been presented in this record,
18 all 82 exhibits, as well as the expert testimony,
19 and the testimony you heard today from the
20 Applicant's witnesses, we would respectfully
21 request that you approve this special exception as
22 it meets all of the required findings, subject to

1 a condition that the playground be removed.

2 We would also ask that you delete
3 condition 1-D, as in David given the fact that
4 Finding 7 of the staff report incorrectly utilizes
5 the minimum parking requirement for a food and
6 beverage store and ignores the fact that this
7 is -- excuse me.

8 It includes an eating and drinking
9 establishment and ignores the fact that this is a
10 food or beverage store in combination with a gas
11 station.

12 So with that Madam Examiner, we would
13 submit and respectfully request the approval of
14 Special Exception SE-0446. Thank you.

15 HEARING EXAMINER: Now, did you have a
16 cite --

17 MR. TEDESCO: And I owe you one --

18 HEARING EXAMINER: I'm sorry. Did you
19 have a cite for your case? I couldn't hear all of
20 wish you were saying. The City Council of
21 Baltimore is all I heard.

22 MR. TEDESCO: Oh sure. So the Loyola

1 case is 406 Md. 54. And the Newman case which is
2 cited in previous decisions.

3 HEARING EXAMINER: I know Newman.

4 MR. TEDESCO: Yeah, Newman is 351 Md.
5 92, and Loyola is 406 Md. 54. And that's a Judge
6 Arnold case.

7 HEARING EXAMINER: Thank you.

8 Is there anyone in opposition that would
9 like to make a brief closing?

10 MR. TEDESCO: I thought I got the last
11 word.

12 HEARING EXAMINER: Well.

13 MR. TEDESCO: That's why I asked.

14 HEARING EXAMINER: Okay. We're leaving
15 the record open -- let me state that I believe,
16 and anybody correct me from staff, I believe Mr.
17 Manjarrez already gave us his exhibit. It was a
18 Journal article on the cancer risk of benzyne. So
19 I guess that will be in the record as Exhibit 84,
20 maybe. Is that the next number, Ms. Poteet?

21 MS. POTEET. Yes.

22 HEARING EXAMINER: Okay. and so we're

1 leaving it open for now Matt, you can finesse
2 this, but we want an exhibit showing where the
3 underground storage tanks are in comparison to the
4 flood plain. If you can doctor an exhibit that's
5 what we need.

6 MR. TEDESCO: We'll do the --

7 HEARING EXAMINER: Mr. Rowe, I see you.
8 Give me one second while I'm doing this part. And
9 then, Mr. Wilpers may have a letter from the
10 Friends of Sligo Creek that notes that it adopted
11 his testimony as their own. And I know you are
12 opposed to that, but I was giving him that
13 opportunity. And it's not new testimony, that's
14 all the exhibits should say.

15 And finally Ms. Ensminger, I don't know
16 why I'm having a hard time, your written testimony
17 can be submitted. So if all of these items could
18 come in no later than -- today is Wednesday, let's
19 say Friday of next week which would be --

20 MS. POTEET: Were we holding something
21 open for a request from DiMarco?

22 MR. TEDESCO: We have that and she

1 mentioned it, Betty.

2 HEARING EXAMINER: Yeah.

3 MS. POTEET: Oh, okay. I just --

4 HEARING EXAMINER: So I think that's it
5 if nobody --

6 MR. TEDESCO: By Friday the 12th, Madam
7 Examiner?

8 HEARING EXAMINER: Yes, Friday the 12th.

9 Okay. Mr. Rowe did you want to do a
10 closing? Oh, sorry. One second.

11 Who is that?

12 MS. KUEHN: I have a quick -- Doris.

13 And I have a quick question in regard to
14 testimonies and are we submitting all of our
15 testimonies?

16 HEARING EXAMINER: Your written
17 testimony?

18 MS. KUEHN: Uh-huh.

19 HEARING EXAMINER: That's okay too, by
20 next Friday.

21 MS. KUEHN, back to the slide 2 is the
22 one who made a testimony --

1 HEARING EXAMINER: Yeah, anyone here
2 that wants to submit, but listen, it has to be the
3 testimony I heard. Okay. I assumed you typed it,
4 if you want to submit it, please do. And Mr.
5 Tedesco will getting a copy as well and he would
6 have the opportunity to object and I'd have to
7 strike anything extra so please limit it what you
8 said already.

9 MS. KUEHN: Sure, thank you.

10 HEARING EXAMINER: Okay. Mr. Rowe.

11 MR. ROWE: Yeah, a quick question for
12 you. I would think and I think the consensus is
13 that a material part of this whole decision for
14 yours is the playground and a party that's missing
15 from this hearing is the Department of Parks and
16 Recreation. And so my question is do they play a
17 part in this hearing for us to question them, or
18 to understand, you know, their decision making
19 process ? Certainly there's a pending agreement
20 that we understand exists between the Parks
21 Department and the property owner, or I should say
22 Royal Farms. But again, that's not available to

1 us. And so the question is is there an
2 opportunity for us to get access to this
3 information or have testimony on the part of the
4 Department of Parks and Recreation?

5 HEARING EXAMINER: As to that
6 playground, that's like a private agreement
7 between them and this Applicant. And that's why I
8 reminded you it wasn't the County per se. You
9 have a right to contact the Planning board chair
10 and the Planning Board department to find out more
11 about it, but as far as my record goes, I only
12 need to know is there going to be a playground
13 there or not because if there is then we would
14 have needed variance I can't approve it. If
15 there is no playground then that's one section of
16 all the laws that at least we can check and say
17 that's met. So I understand your question but I
18 it's really not a question for me. But you as a
19 citizen have a right to contact whomever and see
20 what you can find out. But it doesn't really play
21 a role in this case.

22 MR. TEDESCO: Well, I would like the

1 record to reflect that I did share Mr. Paul Son's
2 name and information to Mr. Cronin as a member of
3 the community. So. As I know -- as I've been
4 told, I believe somebody from the community --
5 from Carol Highlands has already reached out and
6 spoken to Mr. Son. But in response to Mr. Rowe's
7 comment, Exhibit 50 is the Department of Parks and
8 Recreation's referral in this case and that's the
9 best evidence.

10 MR. ROWE: No, I understand that and
11 again I'm not wanting to challenge you, Ms. McNeil
12 about Maryland National Park and Planning being
13 separate from the County. You know, they're an
14 instrumentality of the County.

15 HEARING EXAMINER: Of the State.

16 MR. ROWE: And so to the extent --

17 HEARING EXAMINER: I hear you. I hear
18 you. I --

19 MR. ROWE: Their board is, as I
20 understand it is selected by the County Executive.
21 And so -- but again, all we're trying to do is
22 better understand this whole issue behind the

1 playground. Because again, but for the removal of
2 the playground this would not be permitted. And
3 the playground has not consulted -- I should say
4 the Department of Parks and Recreation has not
5 consulted with the community. And so it appears
6 that there is a unilateral decision being made
7 here to accommodate the property owner. That's
8 the perception.

9 HEARING EXAMINER: Well, I guess all I'm
10 trying to say is that in May?

11 MR. TEDESCO: I'm sorry. I'm sorry, but
12 I've got to preserve the record. I would object
13 to that whole time. Unilateral. The commission
14 is a bicounty agency. It owns and operates its
15 parks services. It makes decisions all the time.
16 Their position on the playground is provided in
17 writing in Exhibit 50 which I summarized -- or
18 read in my closing comments that it's lived its
19 useful life and its slated for removal. And I
20 would also object to the notion that this would
21 have to be denied. That's technically (inaudible)
22 outside the need to request a variance which has

1 not been requested since the Parks Department the
2 removal of the playground.

3 So while I understand the issue, there's
4 really nothing more for this record or for this
5 examiner, in my opinion, to rule on in that
6 capacity. It's conditionally recommended for
7 approval and the Parks Department has rendered its
8 written position on the playground.

9 MR. ROWE: Again, absent community
10 input.

11 HEARING EXAMINER: And all that I was
12 going to add is sort of similar lot Mr. Tedesco is
13 that it's not something for me to be considering
14 in this case. It's like if it were on your
15 property.

16 If you had a playground on your property
17 and they can to you and asked to remove it, I
18 can't consider that either. All I'm looking at is
19 there going to be a playground there? I'm not
20 saying that you can't talk to Park and Planning.
21 Of course you can or anybody else. It's just not
22 part of my record; do you understand?

1 All right. I really do appreciate
2 everyone here today for coming out to this hearing
3 and I know it was different for many of you and so
4 I appreciate the patience you had with our process
5 and what's going to happen now is the record will
6 close next Friday when we receive any written
7 testimony from those who want to submit their
8 testimony, and the item from Mr. Tedesco, and the
9 item from Mr. Wilper.

10 And a decision will coming shortly
11 thereafter and then you have the right to appeal
12 that decision to the district council if you're
13 not happy with it. All persons of record, which
14 is all of you.

15 So I thank you for today. I thank staff
16 for today and I hope you all -- well, it's not the
17 weekend yet but it's -- have a great rest of your
18 week. No further questions for the record, the
19 hearing is closed at this time.

20 MR. TEDESCO: Thank you Madam Examiner.

21 (The proceedings concluded.)

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I, Molly Bugher, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.



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