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Transcript of Hearing

Date: February 8, 2023

Case: ZMA 2022-001 Land Development Investors, LLC

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ZMA 2022-001, LAND DEVELOPMENT INVESTORS, LLC

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P R O C E E D I N G S

RECORDING: This conference will now be recorded.

MS. MCNEIL: Good morning everybody. I'm Maurene McNeil and I'll be your hearing examiner today. And it is February 8, 2023. We're here on zoning map application 2022-001 and it's a request to rezone approximately 12.43 acres located at 10301 and 10303 Greenbelt Road from the RR zone, which is residential rural to the RMS 48 zone, which is residential multi-family.

Is anyone here in opposition to this request?

MR. FOREMAN: No, Madam Examiner. For the record, Nate Foreman but everyone here is in support.

MS. MCNEIL: Thank you, Nate. And, so, would counsel ident- -- introduce themselves for the record?

MR. FOREMAN: Yes, please -- yes, thank you. My name is Nate Foreman and I'm attorney with O'Malley, Miles, Nysten and Gilmore and I'm here on behalf of the applicant in support of zoning map amendment 2022-001.

MR. BROWN: Stan Brown, people's zoning counsel.

1 MS. MCNEIL: Thank you, gentlemen. And I'm
2 getting ready to turn it over to Nate, but I would
3 remind everyone that this is being recorded and
4 streamed, so if you're not speaking please keep your
5 mics off and please keep your cameras on when you are
6 speaking. Thank you all and Nate you can give us an
7 opening statement or take it away.

8 MR. FOREMAN: Thank you, Madam Examiner. Just
9 real quick, if no one is speaking would you prefer
10 everyone to have their cameras off also to save
11 bandwidth or what is -- what is your preference?

12 MS. MCNEIL: I don't care. I think we're --
13 I've never had a problem with them being on but either
14 way is fine with me.

15 MR. FOREMAN: Okay. Perfect. Thank you.

16 So to begin again, good morning everyone. I'm
17 Nate Foreman here on behalf of the applicant, Land
18 Development Investors II, LLC.

19 Mr. Hayes, could you please mute your
20 microphone?

21 MR. HAYES: Uh --

22 MR. FOREMAN: Oh.

1 MR. HAYES: Is it -- can you hear me?

2 MR. FOREMAN: Yes. All right. Thank you. So --

3 MR. HAYES: Okay.

4 MR. FOREMAN: -- as I mentioned -- oh --

5 MR. HAYES: Can you hear me now?

6 MR. FOREMAN: We can hear you. Can you hear
7 us?

8 MR. HAYES: Yes.

9 MR. FOREMAN: I will -- Mr. Hayes is also with
10 us this morning in support of the application. So Mr.
11 Hayes, would you mind muting yourself for now?

12 MR. HAYES: Okay.

13 MR. FOREMAN: Thank you.

14 So yes, I'm here on behalf of the applicant,
15 Land Development Investors II LLC, which is looking to
16 rezone property that is owned by the Maryann Davis
17 Trust and Doreen and Robert Kramer. I plan on calling
18 two witnesses to testify in support of the application
19 this morning. But if I could, I would like to briefly
20 add some context regarding ownership of the property.

21 The 12.3 --

22 MS. MCNEIL: Mr. Foreman, I apologize, will

1 you also in the beginning talk about the four exhibits
2 that we were not able to put out in the binder last
3 week?

4 MR. FOREMAN: Okay.

5 MS. MCNEIL: Thank you.

6 MR. FOREMAN: Yes, I will certainly in- --
7 include that. In fact, I have that as part -- part of
8 my opening remarks to sort of close with whatever
9 additional stuff I'm saying. Thank you.

10 So yes, the 12.4 -- -3 acres of land is
11 comprised of parcels 420, 421 and 4- -- 422 and a
12 portion of lot 1 have been owned by the same family for
13 around a hundred years or so. And at the time of this
14 application, the entire property is owned by two
15 entities that are all part of the same family.

16 One owner, the Maryann Davis Trust owns the
17 portion shown as parcel 420 and a portion of parcel --
18 of lot 1, which is about 10 and a half acres or about -
19 - maybe probably about 10 acres. Doreen and Robert
20 Kramer own parcel 421 and have an undivided one-half
21 tenant in common interest in parcel 422. And their
22 ownership amounts to approximately two acres.

1 Maryann Davis, of whom the trust is named,
2 after -- passed away in 2018. There are two trustees:
3 April, legal name Diana O'Neil, and Doreen Kramer, the
4 daughters of Maryann Davis. That's Doreen Kramer not
5 only owns two acres outright but she's also the trustee
6 for the 10 acres owned by the Maryann Davis trust. This
7 is why you may have seen Doreen's name on two separate
8 applications.

9 April and Doreen are present this morning, but
10 on behalf of the family you will be hearing from
11 April's husband, Mr. Dan O'Neil, who has volunteered to
12 testify on behalf of the family. After Mr. O'Neil
13 concludes his testimony, I will be calling Mr. Ferguson
14 to testify regarding the merits of this zoning
15 application.

16 But before I do call Mr. Dan O'Neil to
17 testify, I want to comment on the other undivided one
18 half tenant in common interest of -- that I had
19 mentioned for parcel 422. The other party with the
20 undivided one-half tenant in common interest is Cottage
21 City Mennonite Church. Mr. Gregory Hayes is here this
22 morning on behalf of the church and has registered to

1 testify in support of this application.

2 Because the church has an undivided one-half
3 tenant in common interest in the parcel 422, and we
4 have included parcel 422 in this application, we
5 recently submitted an application signed by them, a
6 disclosure statement, a state ethics affidavit and a
7 certificate of good standing on behalf of the Mennonite
8 -- Cottage City Mennonite Church. These were submitted
9 late in the process and I would request that these
10 documents be included in the record.

11 If this --

12 MS. MCNEIL: If I may, if you don't know the
13 exhibit numbers, Miss Potete [sic] could you tell us
14 the exhibit numbers for these four documents that we
15 received recently?

16 MS. POTETE: 25 through 28.

17 MS. MCNEIL: Which -- like which is 25,
18 etcetera?

19 MS. POTETE: Excuse me?

20 MS. MCNEIL: Which one is 25?

21 MS. POTETE: 25 is the map of the property.

22 MS. MCNEIL: Okay.

1 MS. POTETE: Also 20- -- I mean 422
2 information.

3 MS. MCNEIL: Okay.

4 MS. POTETE: 26, good standing certificate
5 Cottage City Mennonite Church. 27 is the application
6 of the co-owners, Cottage City Mennonite Church, Inc.
7 28 is ethics business entity affidavit for Cottage City
8 Mennonite Church.

9 MS. MCNEIL: Thank you so much.

10 MR. FOREMAN: Thank you, Betty. And I will
11 also add that the application, which is Exhibit 27,
12 also has the disclosure statement on page 3.

13 MS. MCNEIL: Yes.

14 MR. FOREMAN: Okay. So just -- yeah, that way
15 we can make sure that everything's submitted that we
16 need to show them as the owners.

17 With those opening remarks out of the way and
18 if there's no questions, I would call my first witness,
19 Mr. Dan O'Neil.

20 MR. BROWN: One [inaudible] --

21 MS. MCNEIL: Mr. O'Neil -- I'm sorry.

22 MR. BROWN: One very quick question, Mr.

1 Foreman. You indicated that Dan O'Neil is speaking on
2 behalf of Doreen Kramer. Is that correct, did I
3 understand?

4 MR. FOREMAN: Correct. And -- and April, his
5 wife.

6 MR. BROWN: And April --

7 MR. FOREMAN: And Dan --

8 MR. BROWN: His -- his wife is who again?

9 MR. FOREMAN: Dan's wife is April O'Neil [sic]
10 -- April O'Neil who is one of the trustees.

11 MR. BROWN: Oh, so she's one of the trustees.
12 And Mr. O'Neil himself is not a title owner nor of any
13 relationship as a trustee himself; is that correct?

14 MR. FOREMAN: That is correct.

15 MR. BROWN: Why is he testifying?

16 MR. FOREMAN: Because he is -- his wife,
17 April, and his sister-in-law Doreen have asked him to
18 testify on their behalf in -- in support of the family
19 and the trust. And Mr. -- Miss Doreen Kramer and Bob --
20 sorry -- Miss April O'Neil and Doreen Kramer are also
21 on the line and they can verify and support that fact
22 too.

1 MR. BROWN: Well, we don't typically allow a
2 layperson to testify on behalf of someone else. He's
3 not a lawyer, is he?

4 MR. FOREMAN: No. But -- but really the -- the
5 point of Mr. O'Neil's testimony is to talk about the
6 family history and the history of the property. Not --
7 and that would be within his personal knowledge having
8 been part of the family for 47 years, I believe.

9 MR. BROWN: All right. I'll -- I'll listen to
10 his testimony, Madam Examiner, but we would need April
11 O'Neil and Doreen Kramer to ratify any statements made
12 of where he has no personal knowledge because it's
13 improper for him to testify on their behalf but I will
14 try to be [inaudible] objection.

15 MS. MCNEIL: Okay. I would agree with that Mr.
16 Foreman. And when the two ladies realize how easy our
17 proceedings are, I'm sure they won't mind coming on
18 camera and just saying they ratify the testimony
19 provided by Mr. O'Neil. So you can start with Mr.
20 O'Neil if you like.

21 MR. FOREMAN: Okay. So thank you. Just so I'm
22 -- I'm clear and Mr. Brown and Madam Examiner, after

1 Mr. O'Neil has finished his testimony, I will just ask
2 Miss O'Neil and Miss Kramer to come on camera, identify
3 themselves and state whether they ratify and -- and
4 agree with Mr. O'Neil's testimony; is that correct?

5 MR. BROWN: That is --

6 MS. MCNEIL: Yes.

7 MR. BROWN: -- correct.

8 MR. FOREMAN: Okay. Thank you.

9 Mr. O'Neil, can you please state your name --
10 well, your name and address for the record?

11 MR. O'NEIL: Thank you, Nate. Good morning,
12 everybody. My name is Dan O'Neil -- Daniel O'Neil. 3508
13 Morelock Lane in Bowie, Maryland 20715.

14 MR. FOREMAN: All right. Thank you. Are you
15 familiar with Maryann Davis Trust, the owner of most of
16 the property that is the subject of this application?

17 MR. O'NEIL: Yes. Just for the record, I
18 wanted to clarify one issue. It's not the Maryann Davis
19 Trust. It's the Maryann Davies Trust, D-a-v-i-e-s. I'm
20 very --

21 MR. FOREMAN: [inaudible] --

22 MR. O'NEIL: -- I am very familiar with it.

1 Maryann Davies was my mother-in-law. She's mother to my
2 wife, Diana O'Neil and my sister-in-law Doreen Kramer
3 both which are trustees to the trust and as well as
4 their two brothers, my brothers-in-law, Lawrence and
5 Michael Davies.

6 MR. FOREMAN: And is -- so with both Diana
7 O'Neil and April O'Neil --

8 MS. MCNEIL: Excuse me, excuse me. I am so
9 sorry, you all. It's been a while since the hearing.

10 Mr. O'Neil, do you swear or affirm under the
11 penalties of perjury that the testimony you shall give
12 and have given is the truth and nothing but the truth?

13 MR. O'NEIL: Yes, ma'am, I do.

14 MS. MCNEIL: Thank you.

15 Thank you, Mr. Ferguson.

16 MR. FOREMAN: And -- and thank you for --

17 MS. MCNEIL: You reminded me, thank you.

18 MR. FOREMAN: Thank you, Madam Examiner.

19 And, so, Mr. O'Neil, could you explain maybe
20 the discrepancy between your wife sometimes going as
21 Diana and then sometimes it's April, just for the
22 record?

1 MR. O'NEIL: Yes. He legal is Diana. And her
2 mother nicknamed her April shortly after birth.

3 MR. FOREMAN: Okay.

4 MR. O'NEIL: [inaudible] almost an April's
5 Fools.

6 MR. FOREMAN: All right. So when we -- where
7 we refer to April O'Neil, it's just Diana O'Neil who --

8 MR. O'NEIL: That is correct.

9 MR. FOREMAN: -- which is her legal name.
10 Okay.

11 MR. O'NEIL: I will -- I will try to -- to
12 keep my testimony to her legal name, Diana, with one
13 "n."

14 MR. FOREMAN: Okay. Thank you. And this
15 comment -- this question's kind of been brought up
16 already but are you authorized to speak on behalf of
17 the trust?

18 MR. O'NEIL: Yes. I fully understand Mr.
19 Brown's question and concern. I am authorized both by
20 Diana and Doreen as trustees to speak for them and I'm
21 also authorized by Doreen's husband, Robert Kramer, to
22 speak for him since the Kramers own that separate two-

1 acre parcel that's included in this project. All are
2 sitting next to me if you wish to confirm.

3 MR. FOREMAN: Okay. Thank you. And so, how
4 come you are the person that is testifying on behalf of
5 the trust?

6 MR. O'NEIL: It's simple, my wife and my
7 sister-in-law are cam- -- camera shy.

8 MR. FOREMAN: But you have enough personal
9 experience with the property that you can also testify
10 on behalf of your own personal knowledge?

11 MR. O'NEIL: Yes, I've been in -- in -- I've
12 been part of the family for 47 years now. Married for
13 the last 43 to my wife, Diana. Every year's a -- I'm
14 going to learn a great deal about the family as well as
15 the history of the property that we're discussing.

16 MR. FOREMAN: Okay. Thank you. If I can bring
17 up Exhibit 21 and slide 9 of 11, please.

18 THE REPORTER: I'm sorry, you said 21?

19 MR. FOREMAN: Yes. Exhibit 21. It's a multi-
20 page exhibit, so if you could -- and that is slide 1,
21 if you could go to slide 9, please. Perfect. Thank you.
22 Is there any way we can maybe maximize the screen or --

1 to kind of get a better view of the property? Okay. Is
2 -- thank you. I -- I think I'll -- that looks good. Can
3 everybody see the slide that we're sharing -- showing?

4 MR. BROWN: No, I cannot. I -- I can see it
5 from another computer.

6 MS. MCNEIL: You can't see it all or --

7 MR. BROWN: I can't see it all on my computer
8 but I have another computer next to me and I can see
9 it.

10 MR. FOREMAN: Okay. Mr. O'Neil, looking at the
11 -- this exhibit, which is a bird's eye view of the
12 property, would you -- can you please describe the
13 property

14 MR. O'NEIL: Okay. Everything within the blue
15 lines is basically the -- the property that we're
16 talking about. The main nine, nine and a half acres, is
17 -- is -- okay. The main nine and a half or so acres to
18 the left, the big piece, is the Maryann Davies trust
19 property.

20 The property in the square box to the bottom
21 of the screen, along with the strip that goes all the
22 way out to Greenbelt Road belongs to Robert and Doreen

1 Kramer. The property inside the cut out between the two
2 properties is privately owned by someone else as is the
3 other house to the left, which faces Greenbelt Road.

4 MR. FOREMAN: Just -- just to clarify that,
5 those last comments, you mentioned that the portion on
6 the left is the portion owned by Maryann Davies trust
7 but that there is a portion cut out of that and it
8 looks like there is a house on that; correct?

9 MR. O'NEIL: Yes. That used to be family
10 property at one time, it's owned by my sister-in-law
11 [inaudible] -- my wife's uncle, Douglas. He built a
12 house and then he sold it and moved to Florida.

13 MR. FOREMAN: Okay. Do you know how long ago
14 that was?

15 MR. O'NEIL: That would have been late '70s,
16 early '80s.

17 MR. FOREMAN: Okay.

18 MR. O'NEIL: That's when he moved. He built
19 the house in the '60s.

20 MR. FOREMAN: Okay. But he -- but it -- it was
21 sold out from the family in about the '70s or '80s is
22 what you're saying?

1 MR. O'NEIL: That is correct.

2 MR. FOREMAN: Okay. Thank you.

3 MR. O'NEIL: The other piece of property was
4 never part of the family.

5 MR. FOREMAN: That's the one that is in front
6 of the portion owned by Robert and Doreen Kramer that
7 has frontage on Greenbelt Road; right?

8 MR. O'NEIL: That is correct. The lines are a
9 little bit off because their house is actually down
10 lower but yeah basically the design. That's -- that's
11 their -- that's the house, that's the property.

12 [talking in background, inaudible]

13 MR. FOREMAN: Okay. Thank you. Could you
14 briefly describe that long strip that is all the way on
15 the right of the property?

16 MR. O'NEIL: Sure. That's -- that's a right of
17 way that is partially owned by the Kramers and
18 partially by the Cottage City Mennonite Church.

19 MR. FOREMAN: And so that is the -- the parcel
20 that's 422 that has the basically undivided half
21 interest shared between Robert and Doreen Kramer and
22 the Cottage City Mennonite Church; correct?

1 MR. O'NEIL: I don't know what 422 is but,
2 yes, you are correct.

3 MR. FOREMAN: It's that -- that long strip.

4 MR. O'NEIL: That's correct.

5 MR. FOREMAN: Okay. There are two houses on
6 the subject property. Can you please explain who lives
7 in those two houses?

8 MR. O'NEIL: Yes. The house -- you can't
9 really see it on this picture, but the house to the --
10 I guess where the green dot is, is owned by the trust.
11 It was the house that my wife's grandparents lived in
12 and then her mother lived in and currently it's being
13 used by niece Maryann Kramer. And the house on the
14 right belongs to the Kramers.

15 MR. FOREMAN: All right. And how long was your
16 mother-in-law living -- or when did she pass away or
17 sorry --

18 MS. MCNEIL: I'm sorry, Nate. Nate, I'm sorry.
19 I couldn't hear who -- the other house is owned by
20 whom?

21 MR. O'NEIL: The Kramers.

22 MR. FOREMAN: And -- and I guess it's -- was

1 Maryann Davies living in that house on the left or what
2 has happened to it?

3 MR. O'NEIL: Oh, yes, when her -- when her --
4 her parents died, when her mom died, the house was, you
5 know, the interior was renovated and she moved into it
6 and then she lived there until she died in 2018.

7 MR. FOREMAN: Okay. So she passed away in --
8 in 2018?

9 MR. O'NEIL: That is correct.

10 MR. FOREMAN: Okay. Thank you. And, so, you
11 had mentioned that the other house is owned by Robert
12 and Doreen Kramer.

13 MR. O'NEIL: That is correct.

14 MR. FOREMAN: Can you -- I know it's hard to --
15 -- to point but can you kind of direct the zoning
16 hearing examiner to where it is on this map?

17 MR. O'NEIL: If you look to the two boxes on
18 the right, the box at the top closest to Greenbelt Road
19 and you'll see a house down at the bottom of that box,
20 the one with a white square that's actually their
21 camper sitting there, that line should actually be
22 closer to Greenbelt Road but that's the house I'm

1 explain -- I'm describing.

2 MR. FOREMAN: Okay. And -- and Robert and --
3 and Doreen Kramer currently live there.

4 MR. O'NEIL: They do.

5 MR. FOREMAN: Okay. And so how much of the
6 total property is owned by the trust and how much is
7 owned by Robert and Doreen Kramer?

8 MR. O'NEIL: I believe it's about nine and a
9 half acres that's owned by the trust. And if you
10 include the -- the strip that's partially owned by the
11 Kramers and the Mennonite Church they own approximately
12 2.83 acres.

13 MR. FOREMAN: Okay. Thank you very much. Now
14 that we kind of have an understanding of the property
15 itself, are you familiar with this rezoning
16 application? Sorry -- I'm sorry. Do you have personal
17 knowledge of the property's history now that we're
18 familiar with it?

19 MR. O'NEIL: I do.

20 MR. FOREMAN: Could you please describe the
21 history of this property?

22 MR. O'NEIL: This property's been in my wife's

1 family for about a hundred years. Six generations
2 [inaudible] lived on it or currently live on the
3 property, the youngest being six years old. Her great
4 grandparents immigrated to this country around 1900 and
5 settled on property in Glendale. Sometime between 1918
6 and 1924 the government decided they wanted the
7 farmland that the family had settled on so the property
8 was condemned and they were given a stipend for their
9 land.

10 The property that they were removed from is
11 now referred to as got it's [inaudible] center. In 1924
12 the family moved across the street to the property that
13 we're discussing now. This property included most of
14 the land between what we're looking at on the screen
15 and [inaudible] Road. Over the years, the Kaylors [??],
16 which is the name of -- of my wife's great grandparents
17 split up their property amongst their children.

18 In 1930 approximately 30 acres was -- were
19 gifted to my wife's grandparents, George and
20 [inaudible] Ruth as a wedding gift. Approximately half
21 of this piece of property remains in the family and
22 that's what we're discussing today. As we discussed,

1 there are two homes on the property. Sometime in the
2 early '80s, the government once again took a large
3 portion of the property in order to -- in order to
4 widen Greenbelt Road.

5 Thomas and [inaudible] Kaylor my wife's great
6 grandparents, the original family owners are currently
7 buried in St. George's chapel, which is literally a
8 block away from the property.

9 MR. FOREMAN: All right. Thank you for the --
10 the history of the property. It's certainly the
11 family's been in this area for a long time and so it's
12 not even just that this area but they had previously
13 been on property that was owned by [inaudible] that is
14 now currently occupied by [inaudible] so they have a --
15 deep ties to the area.

16 Can you please describe the properties that
17 are around the property, to the best of your knowledge?

18 MR. O'NEIL: Yes, there are churches on either
19 side of the property currently. Eastgate Shopping
20 Center is just adjacent -- adjacent to the Mennonite
21 Church, which is on the far right of the document
22 that's on the screen right now. Townhouses are behind

1 the property to the south, apartments to the west,
2 offices across the street, huge new townhouse
3 development I believe is about -- they're approved for
4 about 500 townhomes and -- and single family homes.

5 Across the street is a [inaudible] grocery
6 store there, got tons and tons of traffic and it's also
7 my understanding that a Popeye's Chicken has been
8 approved to be built in front of the [inaudible] store.

9 MR. FOREMAN: You had mentioned townhouses to
10 the south of the property. Are they abutting the
11 property line themselves or is anything between them?

12 MR. O'NEIL: No, there's a piece of wooded
13 property between our property and the townhouses that's
14 owned by the Mennonite Church.

15 MR. FOREMAN: Okay. And -- and the -- to the --
16 -- your knowledge, are there any other environmental
17 features on that property to the south?

18 MR. O'NEIL: There is a stream that goes
19 through, Folly Branch.

20 MR. FOREMAN: Okay. Folly Branch goes through
21 that property --

22 MR. O'NEIL: That's the --

1 MR. FOREMAN: -- that's --

2 MR. O'NEIL: -- it's right at the edge of --
3 between our property. More -- more on the property
4 owned by the church but it's back there.

5 MR. FOREMAN: Okay. Thank you very much. To --
6 to the best of your knowledge, has the subject property
7 been the subject of a proposed rezoning prior to this
8 application?

9 MR. O'NEIL: We have never made an application
10 for rezoning.

11 MR. FOREMAN: Okay. You've never had any
12 rezoning applications previously. What is the basis for
13 this current application? What situation has changed
14 when previously no one had wanted or sought to rezone
15 the property?

16 MR. O'NEIL: Well, for most of the history of
17 this property, the families were content to keep it as
18 it existed. Rezoning is costly and we simply couldn't
19 afford it. And when I say we, I'm talking about the
20 family in general, much less afford the increase in
21 taxes that the new zoning would bring. We didn't see
22 the advantage of paying more taxes if my mother-in-law

1 and others were just going to stay living there.

2 As to what changed, April's mother died in
3 2018, leaving the property to my wife and her siblings
4 in the form of a trust. If the property were to be
5 sold, it would be -- need to be distributed amongst all
6 four siblings. Although we'd love to keep the property
7 as is, none of us four -- none of the four par- --
8 siblings can afford to buy the others out.

9 Each sibling could use the money now generated
10 for the sale of the property to live on and secure the
11 four siblings currently of solely dependent on Social
12 Security for income. Health issues and medical expenses
13 are getting expensive. Two out of the four siblings are
14 cancer survivors and one spouse of one of the siblings
15 is currently undergoing cancer treatments and that's
16 very costly.

17 Finally, I want to just point that we're just
18 a family. We're not a big corporation. We're just
19 trying to sell what's left to us so we can carry out
20 the rest of our lives. All four siblings in -- are in
21 their 60s, upper 60s or lower 70s, so none of us have
22 lengthy lives to look forward to. So far we are four

1 years into this project and the trust directs it -- us
2 to distribute the assets of my mother-in-law and this
3 is the best way that we could find to honor her
4 request.

5 MR. FOREMAN: Thank you very much for your --
6 your testimony this morning, Mr. O'Neil. Those are all
7 the questions I have for you. I guess we could --

8 Would Madam Examiner, would you like to swear
9 in Miss April or Diana O'Neil and Doreen Kramer for
10 them to ratify the testimony given by Mr. O'Neil?

11 MS. MCNEIL: Did you have any questions, Stan?
12 I guess we can swear them so that you know you accept
13 his testimony and then ask your questions.

14 MR. BROWN: Yes, if they could just --

15 MS. MCNEIL: Okay.

16 MR. BROWN: -- ratify [inaudible] that would
17 be fine.

18 MS. MCNEIL: Okay. Miss -- was it Diana
19 O'Neil? Where's Diana.

20 MS. O'NEIL: Yes.

21 MS. MCNEIL: Do you swear or affirm -- is your
22 -- is her mic on?

1 MR. FOREMAN: No, it looks like --

2 MS. O'NEIL: I can hear you.

3 MS. MCNEIL: Can she -- can she turn her mic
4 on? Thank you. Miss O'Neil do you swear --

5 MS. O'NEIL: Wait a minute.

6 MS. MCNEIL: Okay. [inaudible]. I think I can
7 hear you. Do you swear or affirm [technical
8 difficulty]. Maybe everybody else needs to turn theirs
9 off, Stan and Nate.

10 MS. O'NEIL: Well, we'll come over there.

11 MS. MCNEIL: Oh. Okay. Okay. Okay. Miss
12 O'Neil, do you swear or affirm under the penalties of
13 perjury that the testimony you shall give will be the
14 truth and nothing but the truth?

15 MS. O'NEIL: I do, yes.

16 MS. MCNEIL: Were you able to hear the
17 testimony that your husband provided?

18 MS. O'NEIL: Yes. We're -- we're sitting by --

19 MS. MCNEIL: And do --

20 MS. O'NEIL: -- him.

21 MS. MCNEIL: -- do you agree with that
22 testimony?

1 MS. O'NEIL: Yes, I do.

2 MS. MCNEIL: And -- okay, is there anything
3 else you think you need to add to it about the history?

4 MS. O'NEIL: No, I don't think so.

5 MS. MCNEIL: Okay. Thank you.

6 Nate or Stan, do you have questions of this
7 witness?

8 MR. FOREMAN: No question.

9 MR. BROWN: No question.

10 MS. MCNEIL: And I apologize, sister of --
11 it's Kramer, Miss --

12 MS. KRAMER: Yes.

13 MS. MCNEIL: -- is it Doreen Kramer? Is that
14 right? Okay. Do you swear or affirm under the penalties
15 of perjury that the testimony you shall give will be
16 the truth and nothing but the truth?

17 MS. KRAMER: I do.

18 MS. MCNEIL: And did you hear -- hear your
19 brother-in-law's testimony concerning the property and
20 the history of it?

21 MS. KRAMER: Yes.

22 MS. MCNEIL: And do you agree with that

1 testimony?

2 MS. KRAMER: I do.

3 MS. MCNEIL: And is there anything further
4 you'd like to tell us about the history or ownership of
5 the property?

6 MS. KRAMER: No.

7 MS. MCNEIL: Okay. Gentlemen, do you --
8 counsel, do you all have any questions of this witness?

9 MR. BROWN: No questions.

10 MR. FOREMAN: No questions, Madam Examiner.

11 MS. MCNEIL: See that was easy ladies. Thank
12 you so much.

13 FEMALE: Thank you so much.

14 MR. O'NEIL: Thank you [inaudible].

15 MS. MCNEIL: So I believe Mr. Brown may have
16 questions of Mr. O'Neil.

17 MR. BROWN: Yes. Mr. O'Neil if you put back up
18 that -- the diagram or photograph aerial view of the
19 property you had a moment ago. Mr. O'Neil my question
20 is, concerning the panhandle strip on the right-hand
21 side of the property that I'm going to assume is the
22 east side of the property, you indicated that strip is

1 owned by the Mennonite Church and by your family
2 members.

3 Do we have anything in the record that
4 concerns that title ownership or is that merely an
5 easement that is allowed by the Mennonite -- Mennonite
6 Church and your family members?

7 MR. O'NEIL: The -- the -- [inaudible] the
8 record, I'd -- I'd have to look. But the deed says
9 something about right away in pur- -- purity or --
10 maybe that's word, maybe I'm using the --

11 MR. BROWN: In --

12 MR. O'NEIL: -- wrong word.

13 MR. BROWN: -- in perpetuity.

14 MR. O'NEIL: Okay.

15 MR. BROWN: Mr. Foreman, we need to have in
16 the record, I don't know if it's in there, I didn't see
17 it but if that is a right of way in perpetuity, it is
18 not a title ownership by the Mennonite Church and the
19 family members. So at some point, we need you to put in
20 the file who actually owned that panhandle strip --

21 [talking in background, inaudible]

22 MR. BROWN: -- so that can be determined.

1 MR. FOREMAN: Okay. Yes, Mr. Brown, I -- I
2 believe they do have -- they -- the deed does call it
3 an undivided half tenant in common interest. And I
4 think the -- the idea of it was to be, not necessarily,
5 right of way, but an access easement -- to not this
6 area but we'll give you the language and -- and I
7 understand what you're asking.

8 We'll get you the deed of explanation. But it
9 is my understanding from having looked at it that they
10 do have deed simple ownership of it divided equally
11 between the two -- the two entities. But I'll send it
12 to you and --

13 MR. BROWN: Yeah. We -- we need that in the
14 record because, of course, all owners of the subject
15 property must be signatories to this application so we
16 need to confirm that, in fact, owned by certain
17 entities. All right?

18 MR. FOREMAN: Understood.

19 MR. BROWN: No other questions.

20 MS. MCNEIL: And I just had one question.
21 Looking at the blue outline and this probably because
22 of my vision issues, but is -- is -- the Kramers' house

1 is not part of the application is it or maybe the rear
2 of it is? Is it part -- the blue line seems to leave it
3 out.

4 MR. O'NEIL: Yes, it is. The blue lines are in
5 -- in --

6 FEMALE: In the wrong places.

7 MR. O'NEIL: -- the wrong places.

8 MS. MCNEIL: Oh, okay. So Nate, on your
9 Exhibit 25, you're saying that the home would be all on
10 -- on parcel 421?

11 MR. FOREMAN: I be- -- I believe that is
12 correct. There is, I believe, a -- a boundary survey in
13 the record which also -- the Exhibit 18 -- let me
14 double check, see if that has the house location on it.
15 Yes. If you look at Exhibit 8 -- 18, which is the
16 boundary survey, it does show the exact locations of
17 the structures.

18 MS. MCNEIL: Okay.

19 MR. FOREMAN: You can -- you can see that the
20 -- the Kramers' house is below the red property line if
21 you zoom in.

22 MS. MCNEIL: Okay. Okay, thank you.

1 MR. FOREMAN: My pleasure. Thank you.

2 MS. MCNEIL: So thank you Mr. O'Neil, I don't
3 believe anyone has any other questions.

4 MR. FOREMAN: Thank you for your testimony
5 this morning, Mr. O'Neil.

6 I would now like to call my second witness,
7 Mr. Mark Ferguson.

8 [talking in background, inaudible]

9 MS. MCNEIL: Where is Mark? Aww, thank you
10 Mark. Good morning, Mr. Ferguson. Do you swear or
11 affirm under the penalties of perjury that the
12 testimony you shall give will be the truth and nothing
13 but the truth?

14 MR. FERGUSON: I do.

15 MR. FOREMAN: Please state your name and
16 address for the record.

17 MR. FERGUSON: Good morning, Mr. Foreman. My
18 name is Mark Ferguson. My business address is 5407
19 Water Street, Suite 206 in historic downtown Upper
20 Marlboro, Maryland.

21 MR. FOREMAN: Thank you, Mark. And I guess
22 good morning to you. I just jumped right in without

1 even any pleasantries.

2 Miss -- Madam Examiner, I would -- I can --
3 [technical difficulty] proffer Mark Ferguson as an
4 expert in land planning. I can have him qualified if
5 you'd like or if you would like to accept the proffer -
6 - the proffer. You're muted -- Mi- -- Madam Examiner.

7 MS. MCNEIL: Mr. Ferguson has appeared in
8 countless hearings before this examiner and has been
9 accepted as an expert in the area of land use planning.

10 Mr. Ferguson, have you been rejected as a
11 expert in that area since I last saw you?

12 MR. FERGUSON: No, ma'am.

13 MS. MCNEIL: Okay. Um, Mr. Brown, do you have
14 anything further you need to --

15 MR. BROWN: You know Mr. Ferguson, I doubt
16 your word that you haven't been rejected. We're going
17 to let you go.

18 MR. FERGUSON: My rejections -- my rejections
19 are plenty but all non-professional, Mr. Brown.

20 MS. MCNEIL: Then you'll be accepted as an
21 expert in the area of land use planning.

22 MR. FERGUSON: Thank you, Madam Examiner. And

1 thank you Mr. Zoning Counsel.

2 MR. FOREMAN: Thank you. So Mr. Ferguson, are
3 you familiar with the subject property that -- for this
4 application?

5 MR. FERGUSON: Yes, I am.

6 MR. FOREMAN: Did you prepare a land planning
7 analysis for this evidentiary hearing?

8 MR. FERGUSON: I did and I believe that's
9 Exhibit 24 in the record.

10 MR. FOREMAN: Do you adopt the contents of
11 this report as your testimony?

12 MR. FERGUSON: I -- I do and I will certainly
13 supplement that as a -- as the question goes on.

14 MR. FOREMAN: Okay. And thank you, Mr.
15 Ferguson. Yeah, and I -- I would like to ask you a few
16 questions just to kind of highlight portions of your
17 testimony for the record.

18 You heard this testimony this morning from Mr.
19 O'Neil regarding this site. Is there any information
20 that you would like to add regarding [technical
21 difficulty]?

22 MR. FERGUSON: In -- in -- if I would, maybe

1 like to expand a little bit. The only clarification I
2 would offer, Mr. O'Neil's very comprehensive, I would
3 point out that the stream behind the property is not in
4 fact the main stem of Folly Branch, it is a major
5 tributary. It has quite a large drainage area and there
6 is a substantial area of -- of flood plain and non-
7 title wetlands associated with it but the main stem of
8 Folly Branch is to the -- to the east on the -- on the
9 east side of the Eastgate Center.

10 What I would ask is if Miss Potete [ph] could
11 bring up page 86 of the binder and that's, I believe,
12 part of the backup to the technical staff report, which
13 is Exhibit Number 20. Thank you. And that -- that
14 really is, I think, the best exhibit to illustrate the
15 -- the description of the land uses and -- and
16 reflecting -- reflected in the zoning. You can see
17 certainly the -- the property is surrounded by higher
18 intensity uses, namely multi-family dwellings, which
19 are both in the RMF20 and in the CGO zone and in what
20 is now the RMF12 zone but formerly was the MXT zone, so
21 that was certainly one of the casualties that has been
22 talked about at such great length recently concerning

1 the county wide map amendment.

2 There are -- there are additionally attached
3 single family dwellings in the RSFA zone to the south.
4 And what this exhibit illustrates is that there is in
5 fact a -- a donut of intense land uses and zoning that
6 surround the subject property leaving a hole in the
7 middle of -- of -- of RR zoning.

8 Mr. O'Neil described that the -- the -- the
9 college -- or the Cottage City Mennonite Church, which
10 now, I believe, is the -- the Capital Christian
11 Fellowship as they -- as they present themselves, owns
12 the subject property -- owns the property adjacent to
13 the subject in the RR zone both to the east and to the
14 south.

15 There is another church as yet unoccupied.
16 They've apparently been having county and construction
17 and permitting and -- and -- and perhaps other issues
18 for approximately 15 years immediately to the west of
19 the property. I don't know what their -- what their
20 name is but they're -- it is a church. It hasn't yet
21 been occupied.

22 To the -- to the west of that are two single

1 family houses but those are corporately owned. To the
2 west of that is a vacant parcel in the RR zone which is
3 owned by a church. There are two enclaved properties
4 that -- that the subject surrounds, those two enclaved
5 -- front on -- on Greenbelt Road, one of which was
6 previously the subject of special exception 4337. I've
7 actually not been able to find out anything about what
8 that special exception was for.

9 The second enclave to the east is actually
10 owned by a client of mine that is currently in the last
11 stages of permitting and that is to be used as a comm-
12 -- commercially -- as a hair salon.

13 MR. FOREMAN: Is there anything else about
14 that -- that -- not just the hair salon but have they
15 had any other requested uses for that property?

16 MR. FERGUSON: I'm sorry, for which property?

17 MR. FOREMAN: The -- the one -- the other
18 client that you're doing the -- the detailed site plan
19 -- that you did the detailed site plan for and now
20 going to permitting. The --

21 MR. FERGUSON: The -- enclave propertu. So --
22 so technically we didn't -- we weren't the engineer for

1 the detailed site plan. We've -- we've taken over that
2 job from an engineer that is -- that is transitioning
3 out of business.

4 In the past that had attempted to have been
5 developed as a church and I believe a Moose Lodge. So
6 you know, the -- the -- the use of this property, this
7 -- the enclave property that is said is not intended to
8 be residential for -- for some time.

9 MR. FOREMAN: And please correct me if I'm
10 wrong but wasn't one of the uses permitted an eating or
11 drinking establishment and they were trying to have a
12 liquor license with it also?

13 MR. FERGUSON: I'm actually not aware of that.

14 MR. FOREMAN: Okay.

15 MR. FERGUSON: So that -- it could be, I'm
16 just -- I'm not aware of it.

17 MR. FOREMAN: Cur- -- currently they're just
18 trying to -- the permitting is for a hair salon.

19 MR. FERGUSON: For a beauty shop.

20 MR. FOREMAN: Beauty shop.

21 MR. FERGUSON: The use that is permitted in
22 the ordinance.

1 MR. FOREMAN: Okay. Thank you, Mark. I think
2 you kind of have touched on this but just so for the
3 record, and for the purpose of this application, could
4 you describe the boundaries of this neighborhood?

5 MR. FERGUSON: Yeah. The neighborhood that --
6 that I have defined is on the north Greenbelt Road.
7 Greenbelt Road is a divided arterial roadway. It does
8 form a substantial barrier from a land use perspective.

9 It is worth noting that the use is on the
10 north side of Greenbelt Road are all high intensity
11 uses and in fact it's planned as -- by the 2006 east
12 Greenbelt -- I'm sorry, east Glendale -- the east
13 Glendale area sector plan as a mixed use area. But I --
14 I think the -- the presence of Greenbelt Road is a
15 substantial -- is a substantial barrier.

16 My definition of the eastern edge of the
17 neighborhood is the -- the Penn line railroad tracks
18 just to the east of Land [inaudible] Road. The southern
19 edge of the neighborhood is the line of Palomar Drive
20 and Forbes Boulevard as it curves to the south which is
21 to say the boundary between the single family portion
22 of the Wood Stream development and the attached

1 dwelling or townhouse portion of the Wood Stream
2 development to the north and then the western edge of
3 the development I identify as Good Luck Road.

4 These boundaries are in fact the northern,
5 eastern and western boundaries of living area four in
6 the -- in the master plan's discussion. They extended
7 living area four some -- some ways to the south but I
8 believe the -- the distance and the barriers limit the
9 neighborhood to that which I've described now.

10 MR. FOREMAN: Thank you very much. I want to
11 just ask you a formal question about Greenbelt Road.
12 You -- you had mentioned that you do believe that it's
13 the northern boundary for the neighborhood but that
14 given the uses on the other side of Greenbelt Road and
15 the -- the [inaudible], the commercial, the office and
16 the most of the attached single family, do you think
17 that would play any role in the land planning analysis
18 for this property?

19 MR. FERGUSON: It's -- it's certainly part of
20 the neighborhood context and I think the pictures that
21 are on the screen really illustrate the fact that that
22 the subject property and -- and the church occupied

1 par- -- parcels that surround it really do form the
2 whole in a -- in a fairly intensely used [inaudible] of
3 surrounding uses.

4 MR. FOREMAN: Okay. Thank you very much. And
5 the neighborhood that you have just described, does
6 that match the neighborhood description in park and
7 planning staff report?

8 MR. FERGUSON: As Madam Examiner will no doubt
9 chuckle, with my -- my neighborhoods are often at
10 variance with the staff's. The curious part about this
11 application is that the staff actually never defined a
12 neighborhood for the purpose of their analysis. They
13 simply in the staff report describe the surrounding
14 uses which -- which is accurate enough but I don't
15 think tells all of the story that needs to be told in
16 analyzing the zoning application.

17 MR. FOREMAN: Okay.

18 MS. MCNEIL: Mr. -- Mr. Foreman, if I may ask
19 a quick question here, so you still only use Greenbelt
20 Road but you want to consider the things on the other
21 side? That'd be --

22 MR. FERGUSON: I think that they -- I think

1 that they inform the application. Greenbelt Road is a
2 barrier but certainly you can see across Greenbelt Road
3 and the traffic going to those uses is -- is relevant
4 to the -- to the occupancy of this site. And, you know,
5 further I think it is -- it is germane to -- to just
6 the -- the picture of the hole in the donut.

7 Would this be a hole in the donut if -- if,
8 you know, Greenbelt Road was the edge of a cliff, it
9 still would be. But I -- I do think it's -- it is at
10 least a part of the context, one that I do put less
11 weight on than those properties which are more directly
12 connected but are none the less part of the context. So
13 that's -- that's a little bit -- Madam Examiner, I
14 understand a bit of having my cake and eating it too
15 kind of an answer.

16 MS. MCNEIL: Yeah. So you -- there's no other
17 street beyond the -- how did you all say? I'm always
18 confused because Lytle or Lytle [pronounced
19 differently]. I don't know how you say that store.

20 MR. FERGUSON: Thank you Madam --

21 MS. MCNEIL: [inaudible] --

22 MR. FERGUSON: -- Examiner I -- I share you --

1 I share your confusion.

2 MS. MCNEIL: But there's no street or any
3 other delineation beyond the things you want us to take
4 note of.

5 MR. FERGUSON: I -- I -- I habitually will
6 mention on the -- the far side of ar- -- arterial
7 roads, the properties that front on that arterial road
8 and I believe there's some back up in -- in case law
9 which Mr. Foreman may be able to speak to -- to that
10 extent so I -- I don't -- I don't feel it's -- it's --
11 it's necessary to go any further than the properties
12 which front on Greenbelt Road and those are the ones
13 that I do describe in my report in more detail.

14 MS. MCNEIL: Okay. I think why I'm confused
15 though is the -- the neighborhood you list just says
16 Greenbelt Road to the north.

17 MR. FERGUSON: Correct.

18 MS. MCNEIL: So you're saying Greenbelt Road
19 and the properties that are front on it to the north?

20 MR. FERGUSON: Yeah. And that -- that is --
21 that is a -- a -- a convention I certainly use
22 regularly and -- and as I say, I think Mr. Foreman may

1 be able to confirm is -- is also a practice in -- in
2 land use jurisprudence in Maryland.

3 MS. MCNEIL: I got you. And then my next
4 question is, I should have asked earlier, but which
5 exhibit is on the screen? I've been --

6 MR. FERGUSON: This --

7 MS. MCNEIL: -- over here curiously trying to
8 find it, so I should just ask you.

9 MR. FERGUSON: Ma'am, it's -- it's slide four
10 of Exhibit 20.

11 MS. MCNEIL: Of the back-up. It's the
12 PowerPoint.

13 MR. FERGUSON: It is the backup of the --

14 MS. MCNEIL: Okay.

15 MR. FERGUSON: -- staff report --

16 MS. MCNEIL: Thank you.

17 MR. FERGUSON: -- it is all part of Exhibit
18 20. Correct.

19 MS. MCNEIL: Thank you.

20 MR. FERGUSON: So not -- not Exhibit 21. I
21 believe --

22 MS. MCNEIL: Yeah, we just say -- we called

1 the whole thing 20 but when I cite to it I always
2 backup page since they started adding backup instead of
3 numbering them all.

4 MR. FERGUSON: Yeah, I -- I -- I refer to this
5 as Exhibit 20 simply because that's what Adobe tells me
6 when I put that -- that on the screen. I -- flipping
7 around I can see it. It is the backup and yes, you are
8 correct, it probably is 21.

9 MS. MCNEIL: Thank you so much.

10 MR. FERGUSON: No, thank you, Madam Examiner.

11 MS. MCNEIL: I'm sorry Mr. Foreman.

12 MR. FOREMAN: No, no -- no problem.

13 Mr. Ferguson, the county wide map amendment,
14 CMA, took affect on April 1st, 2022, which was meant to
15 implement the planning goals of the county wide general
16 plan paran- -- plan Prince George's 2035.

17 Do you consider that plan to be the most
18 recently approved sectional map amendment that would
19 impact the property?

20 MR. FERGUSON: That's a -- that's a
21 deceptively complicated question, Mr. Foreman.
22 Certainly there is a -- there is a set of findings in,

1 you know, 273601E, right, which requires for the
2 approval of a zoning map amendment that there was a
3 mistake in the current sectional map amendment or
4 failing that a mistake in the original zoning.

5 So what -- what is the county wide map
6 amendment? Is it a sectional map amendment or not? I --
7 I -- I -- I honestly don't know.

8 Madam Examiner, you have to make findings of
9 law. I don't envy your task in this matter because
10 those findings may be playing hide and seek. When you
11 look at the definition in the current ordinance of
12 sectional map amendment it says a comprehensive
13 rezoning of one or more properties pursuant to and in-
14 -- and intended to implement the recommendations of an
15 area master plan or a sector plan, well, that's not
16 what the county wide map amendment was.

17 However, when you look at CR-136-2021, which
18 was the resolution adopting the CMA, it's titled the
19 county wide sectional map amendment. So I'm not sure
20 that that's helpful. Planning staff in their staff
21 report kind of go both sides. They recognize this as
22 the most recent rezoning on page 6 and I believe at the

1 top of page 4 it's unclear whether they call that the
2 sectional map amendment or not.

3 So when I make my findings of mistake, which
4 are related to the -- the voice [??] standard of were
5 there facts or trends or projects that were considered
6 that -- that had they been considered might have lead
7 the district counsel to make a different decision, if
8 the CMA is the applicable sectional map amendment, then
9 there was no consideration of any facts or trends.

10 It was very explicitly a -- supposed to be a
11 like for like exercise without consideration of
12 anything other than what the zoning was or if you were
13 unfortunate enough to be in the MXT zone, what the
14 matrix was or if you were in certain other areas where
15 you maybe got the TAC or the NAC zone or something like
16 that. But otherwise no specific considerations and
17 planning staff was -- was insistent throughout the
18 whole process that that's not what this was intended to
19 be.

20 So I think there's probably just a de facto
21 mistake for every property in the county if the CMA is
22 in fact the most recent sectional map amendment. That's

1 a legal conclusion, not a -- a planner's conclusion
2 but, you know, clearly to me the exercise did not
3 consider any facts about individual properties or
4 neighborhoods that you get in a conventional sectional
5 map amendment.

6 So at least if the CMA is [technical
7 difficulty] then, you know, with there -- to me there
8 were self-evidentiary no facts or projects or trends
9 that were considered in that action and therefore that
10 would be a mistake.

11 Now, in my land use planning report, in my
12 land planning report, I presumed that the 2010 SMA was
13 the one that was operative and make the analysis from
14 that -- from that standpoint so that we're not resting,
15 you know, the case on -- on, you know, an argument
16 which, you know, at least isn't clear to me for
17 whatever that's worth.

18 The only other thing that I will add, and this
19 is, you know, anecdotal observation and not -- not an
20 opinion, but I'd certainly heard in the course of many
21 recent public hearings on the part of the district
22 counsel as well as private conversations that suggest

1 if you have a proposed project bring in a rezoning.
2 Bring in a rezoning. Bring in a rezoning. I'm hearing
3 that over and over again.

4 I don't know that the counsel is necessarily
5 aware of the -- of the burden of proof that has to be
6 made in a case. I think Madam Examiner you and Mr.
7 People Zoning Counsel in the work you do in preparing
8 your recommendations do make the job easy for them.

9 So whether or not they'll be -- they'll be
10 given a easy mistake to -- to be able to implement
11 projects that they want to implement through rezoning,
12 I can't say. So that's -- that's -- that's -- as I say
13 that's simply a comment and an observation, not an
14 opinion.

15 MR. FOREMAN: Okay. Well, thank you Mr. -- Mr.
16 Ferguson for that kind of in-depth analysis of the --
17 the zon- -- excuse me, the CMA. Just for my own
18 purposes and clarification, is -- is your opinion that
19 should the CMA be considered the operative or
20 applicable sectional map amendment that there was a
21 mistake made because there's no findings of facts or
22 any conclusions made regarding the rezoning of this

1 property?

2 MR. FERGUSON: Correct. Or any other property
3 in the county for that matter. The other -- the other
4 possibility that occurs to me, by the way, with regard
5 to the CMA, is that it could, in fact, be a whole new
6 original zoning.

7 So notwith- -- so notwithstanding the fact
8 that it was intended to be a like for like and there
9 was some basis in previous zoning, it was so
10 comprehensive that it could in fact serve as an
11 original zoning. I don't know. These are all findings
12 of law that Madam Examiner I believe has to make or
13 could choose to make or could choose to go into or not.
14 I'm glad on this case I don't have her job.

15 MR. FOREMAN: Are you saying in other cases
16 you would like her job? And that's a rhetorical
17 questions.

18 MR. FERGUSON: I'm -- I'm -- I'm quite happy
19 doing what I do. Thank you.

20 MR. FOREMAN: And we're happy having you as
21 the land planning expert.

22 In the event that the CMA is not found to be

1 the operative or applicable SMA, what other plan would
2 be the operative master plan and sectional map
3 amendment?

4 MR. FERGUSON: So in that -- in that -- in
5 that case it would be the -- the March 2010 sectional
6 map amendment for the Glendale Seabrook land and
7 vicinity area.

8 MR. FOREMAN: And what zone did that master
9 plan and SMA recommend for this property?

10 MR. FERGUSON: The master plan recommended the
11 low residential land use for the area that is zoned RR
12 and previously [inaudible]. And retained the -- and
13 retained the previous RR zoning.

14 MR. FOREMAN: Okay. Was there any discussion
15 of this property, let alone the -- what zone would be
16 appropriate as part of the master plan SMA?

17 MR. FERGUSON: None -- none whatsoever.

18 MR. FOREMAN: Okay. And then based on your
19 review of the subject application, as well as the
20 testimony and exhibits that have been put forward into
21 the record for this case, in your opinion, did the
22 district counsel fail to take into account then

1 existing facts that resulted in them erroneously
2 retaining the subject property in the RR zone through
3 approval of the 2010 SMA?

4 MR. FERGUSON: I believe they did. You had
5 outlined two mistakes in the statement of justification
6 that you prepared and I do agree with them, I'll --
7 I'll expand a little bit on -- on at least the first
8 one. And I think there's a third mistake that's -- that
9 amplifies and further illustrates the first mistake,
10 which is essentially that the -- the sectional map
11 amendment did not consider any of the information that
12 was discussed in the master plan in any of its -- its
13 land use recommendations, which were curiously very,
14 very few.

15 And instead, you know, you got -- you -- there
16 is a vision statement at the very beginning of the
17 plan, which I believe is the root of -- the root of the
18 mistake and that vision is maintain the current density
19 as residential neighborhoods. So that to me, says
20 regardless of any facts, trends, projects, etcetera,
21 etcetera, we're not going there, we're just leaving
22 that alone.

1 And that's really borne out in this master
2 plan by the fact that the land use recommendations,
3 which normally are the greater part or at least the --
4 the -- the preponderance part, the largest individual
5 part of a master plan or sector plan are 15 pages at
6 the very, very end of the plan. Of those 15 pages, 12
7 of them are exclusively related to the Vista Gardens
8 marketplace area at the intersection of Annapolis Road
9 and Martin Luther King Boulevard and the Seabrook metro
10 area, which is a designated general plan center.

11 All of the rest of the planning area is
12 discussed essentially in the form of one table on page
13 200, which sets out eight principals for land use
14 decisions which it then ignored in retaining the zone
15 for the -- for the subject property.

16 So I think the root of that -- that specific -
17 - the mistake that's specific to this property in this
18 area is that there is an assumption that the subject
19 donut hole, if you will, is in fact a residential
20 neighborhood.

21 And when you listen to Mr. O'Neil's
22 description of the area, you listen to my specific

1 iteration of the uses, you see that in fact you have a
2 whole bunch of church used, church -- about to be used
3 church owned land. You have the subject, you have two
4 houses that are owned by a single corporation. And you
5 have the two enclave properties, one of which is
6 developing commercially.

7 So I don't know how you get residential
8 neighborhood out of that particularly when there is the
9 substantial barrier of the Folly Branch flood plain
10 stream valley that separates the subject in all of this
11 RR zoned donut hole from the higher density residential
12 uses that are in place to the -- to the south and to
13 the west.

14 So again and again you have things that, if
15 you look at this, if you look at the actual land use
16 pattern on the subject, you look at the actual
17 ownership pattern, you look at the physical
18 surroundings and you look at the -- at the land use
19 principals, which do include things like not just
20 preserve residential neighborhoods but encourage land
21 uses that provide sensitive trans- -- transitions
22 between commercial and employment centers and

1 residential areas.

2 And those commercial and employment areas
3 surround the subject property. And, so, having low
4 density residential be it the transitional use between
5 that boggles my planning mind.

6 MR. FOREMAN: The -- the planning principal of
7 that was [inaudible] by the master plan sectional map
8 amendment, if -- you -- you briefly just mentioned
9 them, but a further discussion of that is located in
10 your planning analysis; correct?

11 MR. FERGUSON: Correct, on pages 7 and 8. I go
12 through each of those principals. Some of them aren't
13 applicable because of, you know, what -- what the use
14 and the nature of the property is. But a number of them
15 are and retaining the RR zone in the light of the use
16 of the subject and its immediate surroundings, the use
17 of the -- the -- the larger surroundings, religious
18 stands those recommendations on -- on their heads.

19 Now, you can make a judgement to do that and
20 it's just bad judgment, that's not a mistake. The mis-
21 -- the root of the mistake goes back to the very
22 beginning, it said, regardless of these facts, we're

1 going to leave things -- we're not even going to look
2 at the facts. We're just going to leave things the way
3 they are.

4 MR. FOREMAN: And we're not going to even
5 consider the policies and -- that we put forward when -
6 - when rezoning properties.

7 MR. FERGUSON: Right. If --

8 MR. FOREMAN: If you would agree with that
9 statement.

10 MR. FERGUSON: I do.

11 MR. FOREMAN: Madam Examiner, I wasn't going
12 to have Mr. Ferguson go through each of the policies he
13 thought would be relevant because it's in the report,
14 but I -- I -- could ask him if you would like it for --
15 for the record.

16 MS. MCNEIL: I -- I don't. I was able to read
17 them. I did -- I did want to allow you the opportunity
18 to submit some legal argument in this case because Mr.
19 Ferguson on -- voiced these simply and he did a
20 wonderful job, it's not a legal expert and I'm -- I'm
21 wondering if you -- if your position is that they would
22 have had to say -- they would have had to look at these

1 policies and then still ignore them for it to be the
2 kind of mis- -- the kind of action that's not a
3 mistake.

4 MR. FERGUSON: That is -- that is what leads
5 me to the -- to the contents of my report, that
6 principal. So Mr. -- Mr. -- I certainly don't do my own
7 legal research, no matter how much I play a lawyer
8 sometimes in -- in -- in public hearings. Mr. --

9 MS. MCNEIL: I'm sure attorney grievance --

10 MR. FERGUSON: -- [inaudible] --

11 MS. MCNEIL: -- commission -- I'm sure
12 attorney grievance commission he's being facetious.
13 Okay. Go ahead, Mr. Ferguson.

14 MR. FERGUSON: Thank you, Madam Examiner.

15 No, I -- I -- I -- I do rely on -- on Mr.
16 Foreman for what is the standard. If this is the
17 standard what are the -- what are the planning facts
18 that -- that speak to that.

19 MR. FOREMAN: And -- and I would prefer not to
20 -- to give a time to set forth more of a legal argument
21 in writing to answer the question than perhaps misspeak
22 during this hearing, if that is appropriate.

1 MS. MCNEIL: That is what I was asking you to
2 do. Yeah. Okay. I don't -- the 40-acre donut hole too,
3 can I -- is it okay to ask about that right now since
4 he discussed it? Go ahead.

5 MR. FOREMAN: I still have more -- I still
6 have more testimony --

7 MS. MCNEIL: Okay. Okay.

8 MR. FOREMAN: -- more questions.

9 MS. MCNEIL: Go ahead.

10 MR. FOREMAN: It was suggested --

11 MS. MCNEIL: So I'm good -- I'm -- I'm good as
12 to these principals. You don't have to go further into
13 that part. Go ahead.

14 MR. FOREMAN: Okay. Thank -- thank you Madam
15 Examiner.

16 And -- and Mr. Ferguson were there -- in spite
17 of the policies and goals of the sector plan -- master
18 plan and sectional map amendment, are there any other
19 facts that would lead you to believe that the counsel
20 made a mistake in retaining this property in the RR
21 zone?

22 MR. FERGUSON: So two others generally. You

1 describe in your statement of -- of justification, the
2 -- the alignment of the C340 For- -- Forbes Boulevard
3 relocated. And I -- I agree with your -- your
4 discussion in there. I amplify that a little bit in --
5 in my report. I don't feel any need to go over that
6 again.

7 The other thing that I -- I do want to mention
8 that -- that really amplifies and echoes the testimony
9 under the -- the -- the policies and procedures is that
10 the general plan that was enforced at the time of this
11 sectional map amendment was the 2002 general plan,
12 which contained policies for intensifying land uses
13 along seven corridors in the county.

14 And that -- that general plan did include what
15 it called the University Boulevard corridor as one of
16 its seven. The introductory language to this sector
17 plan acknowledges that that is in fact the corridor. It
18 calls it in -- in the context of this plan the
19 Greenbelt Road corridor.

20 It also recognizes a portion of the sector
21 plan area is impacted by the Annapolis Road corridor
22 and that in fact is discussed. But the Greenbelt

1 corridor slash University Road -- University Boulevard
2 corridor doesn't receive a further mention other than
3 an illustration of traffic problems like it's hard to
4 cross the street in the transportation element in a
5 map.

6 In the entire discussion of land use, I -- and
7 I did a word search to -- to just confirm that I didn't
8 miss it when I was reading, Greenbelt Road corridor
9 does not appear in any discussion of land use policies.
10 So would this -- would this area be in fact a corridor
11 node? I would think it would given the intensity of
12 activity that -- that surrounds it, the mixed use area
13 that the east Glendale area created immediately to the
14 north but that wasn't even discussed, it wasn't
15 considered.

16 Again, this just amplifies the direction of
17 the plan's vision, which is whatever it is, leave it
18 alone except for this Vista Gardens and the -- the
19 Seabrook market area.

20 MR. FOREMAN: Okay. Thank you. And you have
21 further elaboration of all three of these mistake
22 arguments in your land plan analysis.

1 MR. FERGUSON: I do.

2 MR. FOREMAN: Okay. Thank you. As we know for
3 a piecemeal rezoning, there are two criteria that --
4 for including piecemeal rezoning there are two criteria
5 that you can rely upon for -- to justify the rezoning.
6 The one is the mistake argument, which you have
7 elaborated on. And the other is a change in the
8 neighborhood.

9 Do you believe that there's any facts in the
10 record that would support a rezoning based upon change
11 in the neighborhood since the 2010 sector plan and
12 zoning ma- -- sectional map amendment?

13 MR. FERGUSON: I do. I -- I -- I proffer one
14 which is essentially the passage of CV71-2016 which
15 amended the zoning ordinance to make a beauty shop
16 legal in -- or a permitted use in the -- in the RR zone
17 if it met five conditions which are laid out in
18 footnote 114 to the residential table of uses.

19 The proponent of that -- that text amendment
20 and we'll send a passing remembrance to Mr. Nagy [ph]
21 who -- who I believe was the -- the representative --
22 the late -- lamented Mr. Nagy who's the representative

1 of the -- the owner of the one salon studio parcel
2 which is the eastern most of the two enclaves in the
3 subject property and they -- they received approval of
4 detailed site plan DSP17012 and have got their park and
5 planning approvals on grading permit 17628-2019 and are
6 waiting only final HSA approval on the engineering to
7 receive that permit and building permit 23235-2022 so
8 that property can be developed commercially.

9 MR. FOREMAN: Okay. And -- and -- and you
10 think that this sufficient to show the change in the --
11 in the neighborhood?

12 MR. FERGUSON: That's -- that is my -- my
13 proffer, yes.

14 MR. FOREMAN: Okay. Thank you. So having, in
15 your opinion, shown that there is a justification by --
16 for both mistake and change to justify a piecemeal
17 rezoning, what zone do you believe in your opinion
18 would be the appro- -- appropriate remedy for this
19 mistake or this change in the neighborhood?

20 MR. FERGUSON: So the -- the -- the -- the
21 zone which has been requested is the RMF48 zone. Now,
22 that would permit on this property, notwithstanding

1 staff's contention it would be 550 zoning, staff
2 doesn't subtract the right of way of the C340 and it
3 doesn't subtract the hundred year flood plan of the
4 Folly Branch tributary. That will take the -- the net
5 track area to approximately nine and a half acres which
6 would yield an RMF48 density of approximately 450
7 units.

8 Now, I don't believe that the economics pre- -
9 - prevalent of -- for multi-family development today
10 would support density that high at the subject
11 property. What the applicant has proposed and it's in
12 the record in an exhibit, I'm not sure of what the
13 number is, but there is an illustrative plan in the
14 exhibit that proposes podium buildings, so surface
15 parking, sub- -- structured parking on the ground level
16 and then four stories of residential above. That is
17 RMF20 kind of development.

18 The thing that I will say is that we've spoken
19 about the -- the environmental features, namely the --
20 the -- the -- the flood plain at the Folly Branch
21 tributary. There are other peripheral non-title
22 wetlands which will substantially reduce the

1 developable but not necessarily the net area of the
2 subject track.

3 So the RMF48 zone provides for 60 percent lot
4 coverage instead of 40 percent lot coverage in the
5 RMF20 zone. I do believe that the additional lot
6 coverage will be most beneficial in developing -- being
7 able to develop the subject property at the densities
8 which you do find in -- in the surrounding land uses
9 that are characteristic in the neighborhood.

10 MR. FOREMAN: And -- and that's not including
11 additional, you know, parking areas, landscaping,
12 [inaudible] management to see what the actual
13 developable yield of the property would be.

14 MR. FERGUSON: Well, yeah, that -- that's a
15 separate issue of course. I do point out parking is in
16 fact one of the elements of lot coverage. So you do
17 limit with the lot coverage restriction the ordinance
18 does limit the amount of surface parking and area for
19 buildings that can -- that can occupy a piece of
20 property.

21 MR. FOREMAN: Okay. Thank you. So does this
22 rezoning application conform to the purposes of the

1 base residential zones specifically the RMF48 zone
2 which is the requested zone in this application?

3 MR. FERGUSON: It does. It conforms in my
4 opinion to the purposes of the ordinance generally,
5 those of based residential zones generally and that of
6 the RMF48 zone in particular. I go over those in my
7 report. The only thing that I will highlight of that is
8 -- is one of the purposes of the RMF48 zone, the third
9 purpose in fact, is to ensure that development is
10 compatible with surrounding lands.

11 And that is in fact one of the land use
12 principals in the sector plan. So there is actually a
13 lot of constants [??] in between the purposes of the
14 RMF48 zone, the principals in the sector plan and the
15 conditions of subject property.

16 MR. FOREMAN: And -- and that's the same
17 principal that the sector plan seemed to ignore when it
18 retained this property; correct?

19 MR. FERGUSON: One of several.

20 MR. FOREMAN: We've made -- thank you very
21 much. We had mentioned this previously but the staff
22 for the Maryland National Capital Park and Planning

1 Commission, they have prepared a staff report
2 recommending denial of this application. Have you read
3 the report?

4 MR. FERGUSON: I have.

5 MR. FOREMAN: Do you agree with staff's
6 recommendation of denial?

7 MR. FERGUSON: I -- I do not. I find staff's
8 analysis essentially in -- in the strict philosophical
9 sense begs the question. In other words, they assume,
10 oh, well, there -- the land use recommendation is low -
11 - residential low and that's what the zoning is
12 therefore it can't be a mistake.

13 And that -- that really steps around the
14 question of what should -- had the facts been
15 considered, what should the land use recommendation and
16 therefore the appropriate action in the sectional map
17 amendment have been.

18 MR. FOREMAN: Okay. Is there -- do you have
19 any other disagreements with staff or that's -- or that
20 sort of kind of the -- the main thrust of what you
21 believe they were incorrect when it came to their --

22 MR. FERGUSON: No, that's -- that's it of

1 substance. I mean, they -- they certainly took the
2 applicant to task for not trying to get the property
3 rezoned in the county wide map amendment, which made me
4 scratch my head but --

5 MR. FOREMAN: Understood. Thank you. And just
6 one final question for you this morning, Mr. Ferguson,
7 in your opinion, is this subject -- if the subject
8 application is approved, would it be detrimental to the
9 public health, safety and welfare of the residents for
10 Prince George's County?

11 MR. FERGUSON: I -- I do not believe that.
12 Again, particularly given the prop- -- subject
13 property's frontage, the character of its surrounding
14 uses, the buffers to the -- the residential
15 neighborhood to the -- to the south which even then is
16 -- is attached dwellings. No, this will not -- not in -
17 - in any way, particularly with all of the normal
18 protections that are inherent in the development
19 process be detrimental to the public's heal- -- saf- --
20 health, safety and welfare.

21 MR. FOREMAN: Okay. Thank you very much for
22 your -- your testimony Mr. Ferguson.

1 Madam Examiner those are all of the questions
2 I have for Mr. Ferguson.

3 MS. MCNEIL: Mr. Brown, do you have any
4 questions?

5 MR. BROWN: Yes. Two or three.

6 Good morning, Mr. Ferguson.

7 MR. FERGUSON: Morning, Mr. Brown. Always a
8 pleasure to see you.

9 MR. BROWN: Same here.

10 As you have outlined, this case is problematic
11 from the standpoint of where do we measure change or
12 mistake from. That is, the adoption of the county wide
13 map amendment or the 2010 adoption of what is not
14 argument, the SMA.

15 MR. FERGUSON: Correct.

16 MR. BROWN: For clarity, the property owners,
17 and when I say the property owners, I mean all of the
18 persons identified by Mr. O'Neil earlier, did any of
19 those property owners participate in the 2010 SMA?

20 MR. FERGUSON: I believe Mr. O'Neil even
21 testified that they did not.

22 MR. BROWN: Did any of those property owners

1 participate in the county wide map amendment process?

2 MR. FERGUSON: I -- I do not believe they --
3 they did and again I believe Mr. O'Neil testified to
4 that.

5 MR. BROWN: You had described or concluded the
6 staff did not identify a neighborhood. And so if the
7 staff did not identify a neighborhood by operation of
8 law, the technical staff report is erroneous, isn't it?

9 MR. FERGUSON: It -- I'd be happy to say yes.
10 It sounds like you're asking me to -- to make a legal
11 conclusion but --

12 MR. BROWN: I'm not -- I'm not trying to beat
13 up on them but [technical difficulty] requires an
14 identification of the neighborhood and what --

15 MR. FERGUSON: It does.

16 MR. BROWN: -- change occurred in that
17 neighborhood and whether or not the mistake grew out of
18 that neighborhood; correct?

19 MR. FERGUSON: I be- -- I believe that is
20 absolutely the case, yes sir.

21 MR. BROWN: So if you do not or fail to
22 identify the neighborhood how can you come to a

1 reasonable conclusion of whether or not change or
2 mistake has occurred? You cannot, can you?

3 MR. FERGUSON: I -- I absolutely agree with
4 that, sir.

5 MR. BROWN: So we're going to take for the
6 sake of discussion your neighborhood as the
7 neighborhood where we try to determine whether or not
8 change or mistake has occurred. Now, you identified
9 that there were two houses owned by corporations to
10 make an argument related to change, I believe; is that
11 correct?

12 MR. FERGUSON: Well, really mistake. And, so,
13 it was -- it was considering whether or not, you know,
14 the -- considering what the actual pattern of use and -
15 - and occupancy of the whole donut hole of which the
16 subject property is a substantial part, right. So is
17 this in fact a residential neighborhood that we need to
18 maintain the -- the density of? My contention is that
19 it's not.

20 Certainly those two houses to the west, plus
21 the two enclave pieces all taken together amount to
22 less than 10 percent of the RR zoned area. So --

1 MR. BROWN: And so, that's my question. You
2 seem to conclude that, because those houses are
3 corporately owned and we can all acknowledge in the
4 last 10 years hedge funds and what have you have been
5 buying up homes, but a mere title ownership of those
6 homes in a corporate status does not mean that they are
7 corporate uses.

8 So my question to you is --

9 MR. FERGUSON: Correct --

10 MR. BROWN: -- how are those two homes
11 utilized, as a corporate use or are they residential
12 use?

13 MR. FERGUSON: Yeah, it's -- there is -- there
14 is no evidence that they're used any way other than
15 residentially. My -- my contention is that, even if
16 that's so, I think the ownership could be instructive
17 but regardless even if it isn't, those two, plus the
18 two enclave properties, one of which is being developed
19 commercially, together constitute less than 10 percent
20 of the -- of the donut hole.

21 And, so, don't really -- aren't really
22 indicative of the character of the -- of the use and

1 whether or not its -- its -- its -- its density needs
2 to be preserved.

3 MR. BROWN: All right. So looking at your
4 discussion on whether or not the county wide map
5 amendment is an SMA compared to the 2010 SMA to
6 determine whether or not change or mistake has occurred
7 since either one of those two events, I want to make
8 sure I understand your and the applicant's argument.

9 Let's assume for the sake of discussion the
10 2022 county wide map amendment is an SMA. Your argument
11 then is, and correct me if I'm wrong, there is no --
12 first let's say, there is no change at all since April
13 1 of 2022 in this neighborhood you've identified, would
14 you not agree?

15 MR. FERGUSON: I would agree with that.

16 MR. BROWN: All right. So there's no change
17 argument if the SMA is 2022.

18 With regards to mistake, your argument is the
19 2022 county wide map amendment is a mistake because the
20 county counsel or the district counsel did not go
21 through the typical analysis of an SMA in the county
22 wide map amendment; correct?

1 MR. FERGUSON: Correct.

2 MR. BROWN: All right.

3 MR. FERGUSON: They considered no -- they
4 considered no facts other than what was the zoning
5 before.

6 MR. BROWN: Right. When you say they
7 considered no facts, they considered no facts
8 concerning this specific property is your contention.

9 MR. FERGUSON: So my contention is, actually
10 with the entirety of the county.

11 MR. BROWN: I -- I agree with you there but --

12 MR. FERGUSON: Yeah.

13 MR. BROWN: -- at the late stage they didn't -
14 -

15 MR. FERGUSON: And certainly -- certainly
16 concerning this property, absolutely.

17 MR. BROWN: All right. So do you have a
18 twofold argument with regards to a mistake that if the
19 2022 is an SMA there was a mistake because they did no
20 analysis and if the 2010 SMA is the operative rezoning,
21 they did no analysis in 2010 either with regards to a
22 mistake?

1 MR. FERGUSON: Correct.

2 MR. BROWN: All right.

3 MR. FERGUSON: That's in a nutshell. Thank
4 you, Mr. Brown. You said it much more concisely and
5 eloquently than I did in a much longer time.

6 MR. BROWN: Well, we -- we hope that counsel
7 will understand that, what we just described.

8 But you -- you made the argument a moment ago
9 concerning this salon that was approved as a detailed
10 site plan. To make the argument that that also is
11 evidence of change in the neighborhood since 2010 SMA;
12 correct?

13 MR. FERGUSON: Since 2010, correct, because
14 the -- the -- the operative change, I think, really was
15 the passage of CB72, I forget, of 2016.

16 MR. BROWN: And that did what?

17 MR. FERGUSON: That made the -- the use of a
18 beauty shop permissible in the RR zone by right subject
19 to five conditions which do fit the subject property --
20 I'm sorry, the enclave within the subject property,
21 specifically it's below a certain maximum acreage. It
22 fronts on an arterial roadway. I can refer to my report

1 for the other three which I can't recall off the top of
2 my head.

3 MR. FOREMAN: If -- if I may interject just
4 real quick. We'd be more than happy to submit a copy of
5 that counsel bill for the records in -- in -- in
6 support of not only Mr. Ferguson's testifying but also
7 what other uses may have been allowed by that bill.

8 MR. BROWN: Oh, no, that's fine. I think Mr.
9 Ferguson has done an adequate job of answering that
10 question because my concern was --

11 MS. MCNEIL: We take official notice of laws
12 anyway so you wouldn't have to do it. I'm sorry, Stan.

13 MR. FOREMAN: Okay.

14 MR. BROWN: Yeah, we'll take administrative
15 notice of it. But I was just concerned not knowing that
16 there was an actual bill passed to allow that salon as
17 permitted by write up while he was making the argument,
18 the approval of a detailed site plan is evidence of
19 change which it is not.

20 MR. FERGUSON: Which it is correct.

21 MR. BROWN: So --

22 MR. FERGUSON: Correct.

1 MR. BROWN: -- well, since he's telling me
2 that there was a bill that allowed it of as of right
3 and that's a different argument which would be
4 consistent with what he testified to.

5 MS. MCNEIL: Yeah. Can I interrupt you right
6 there because it's -- it's part of yours. So it's
7 evidence of change to allow a use as permitted in the
8 zone? That's what you're saying.

9 MR. FERGUSON: It -- that -- that is certainly
10 a part of it and I -- I guess I -- I amplify that
11 evidence with the evidence of the progress of the -- of
12 the -- of the actual construction. So certainly by the
13 time this -- your recommendation reaches the district
14 counsel, there will be dirt moving.

15 MS. MCNEIL: Yeah, maybe.

16 MR. FERGUSON: No, we have -- we have -- we
17 have SHA and the tender mercies of SHA in -- in
18 [inaudible] to rely on so perhaps I should not use the
19 word certainly, but.

20 MS. MCNEIL: Okay. I'm sorry, Stan, go ahead.

21 MR. BROWN: That's fine.

22 But also Mr. Ferguson I looked at the staff

1 report first page and it says that this application was
2 accepted on September 23rd, 2022. I'm just curious, it
3 seems to be fruitive that it was accepted in September
4 of last year, the detailed site plan of course for the
5 salon is in process.

6 This case, when was it actually filed, was it
7 prior to the adoption of the county wide map amendment?

8 MR. FERGUSON: I'm sorry, which -- which --
9 the -- the subject CMA or the --

10 MR. BROWN: This case, this rezoning case,
11 when was that filed?

12 MR. FOREMAN: When was it accepted by the park
13 -- park and planning?

14 MR. BROWN: Well, I just noted that it was
15 accepted on September 23rd, 2022. When was the case
16 filed with park and planning? Was that prior to the
17 adoption of the county wide map amendment?

18 MR. FOREMAN: What I can say is that we did
19 have our preapplication conference prior to the
20 adoption of the county wide map amendment because the
21 preapplication conference was on 3/11/2022 because as
22 you know, park and planning was getting -- gearing up

1 to have these mandatory preapplication conferences for
2 development properties and because we knew we would not
3 be able to get this application accepted prior to it,
4 we had to go under the purview of the new zoning
5 ordinance was going to take effect.

6 I don't know exactly when the first
7 application was submitted because, as you know, the
8 [inaudible] application conference is not a submittal,
9 it is just what you have to do before you can even
10 submit the application.

11 MR. FERGUSON: But you did get the first
12 number.

13 MR. BROWN: That's fine.

14 Mr. Ferguson, has the applicant prepared any
15 draft lot plan that would show under the IMF zone the
16 layout of lots as it relates to this proposed master
17 plan roadway?

18 MR. FERGUSON: There is in the record an
19 illustrative plan which is how about -- nope, Mr.
20 Foreman, help me here. I am --

21 MR. FOREMAN: [inaudible] --

22 MR. FERGUSON: -- [inaudible] by. I see --

1 here it is. It is page 33 of the binder. That is right
2 after the preapplication neighborhood meeting sign-in
3 sheet so --

4 MS. MCNEIL: Is this part of Exhibit 10,
5 Tameya [ph]? Thank you.

6 MR. FERGUSON: Yes.

7 MS. MCNEIL: It's good to know what exhibit
8 we're looking at..

9 MR. FERGUSON: Yes.

10 MR. FOREMAN: This is material we had to
11 provide at the neighborhood meeting.

12 MS. MCNEIL: Okay. So Exhibit 10. Okay.

13 MR. FERGUSON: And it is from that exhibit or
14 an exhibit substantially like that that I base my
15 testimony on the appropriateness of the RMF48 zone is
16 that --

17 MR. BROWN: I do not see the roadway that
18 allegedly dissects the property, the proposed roadway.

19 MR. FERGUSON: It is illustrated as dashed. I
20 do not believe that this is illustrative plan proposes
21 to construct it.

22 MR. BROWN: All right. Well, then that's my

1 concern. You made the argument and Mr. Foreman made the
2 argument in his opening that part of the mistake was
3 the counsel neglected to take into consideration the
4 proposed, what I'm going to call it, the master plan
5 right of way and I know this particular rendering is
6 not set in stone but then you don't even consider that
7 roadway as part of this plot plan so how can that be a
8 mistake if you don't even utilize it?

9 MR. FERGUSON: Oh, I -- I -- I do believe that
10 it is a -- a mistake, Mr. Brown, not to be a -- not
11 have pointy fingers but I believe that's a mistake on
12 the part of the applicant contention here.

13 MR. BROWN: All right. So that exhibit we're
14 looking at clearly is erroneous because the road is not
15 there, it's not depicted.

16 MR. FERGUSON: Yeah, it is -- it is depicted,
17 it's just not -- not proposed to be constructed and
18 I've -- I've mentioned to the -- to the applicant that
19 I don't believe that will be a likely outcome.

20 MR. BROWN: All right. So Mr. Foreman, we need
21 to have in this file an accurate diagram or rendering
22 that illustrates the proposed roadway whether it's

1 going to be constructed or not 40 years from now we
2 don't know but it's in the plan, it should be shown as
3 such. Or it would buttress your argument of a mistake
4 and you don't even have it, that's an argument that I
5 would discount.

6 MR. FOREMAN: Okay. Thank you, Mr. Brown. I
7 would ask that we hold the record open so we can submit
8 that exhibit.

9 One thing that I will kind of add on to, yes,
10 would you show the existing road right of way location.
11 But I think when we were going through this process and
12 having meetings with some neighborhood, we did
13 contemplate possibly moving the roadway one way or
14 maybe even vacating it when we got forward, we wanted
15 to show the neighborhood kind of if we were trying to
16 maximize everything we can do on this site, what would
17 the neighborhood look like.

18 Because as you know, when -- when it comes to
19 meeting with the neighborhood -- neighbors, they want
20 to see what the image looks like and if we had shown
21 the roadway and very limited what we could do, I don't
22 -- and we maybe had thought about moving the roadway or

1 getting rid of it all together.

2 We didn't want to be shown as being
3 disingenuous in what we had initially shown when it
4 came to, you know, arguably the most important
5 application which is the zoning map event. But I -- but
6 I understand your point.

7 MR. BROWN: Yeah, I understand but the roadway
8 will go to the issue of density which is my question to
9 Mr. Ferguson.

10 Mr. Ferguson, you said, and I believe someone
11 else testified that there is a townhouse development
12 south of this project --

13 MR. FERGUSON: Correct.

14 MR. BROWN: -- and looking at one of the
15 exhibits that was shown earlier that townhouse
16 development looked relatively dense.

17 Is the density for the zone you are requesting
18 RMF similar to the density of the project townhouse
19 that is south of this particular property?

20 MR. FERGUSON: No, it's higher. It is higher.

21 MR. BROWN: Which one is higher?

22 MR. FERGUSON: The subject.

1 MR. BROWN: The subject project. What are the
2 comparative densities?

3 MR. FERGUSON: So the -- the theoretical
4 density of the RMF48 is 48 dwelling units, 48 multi-
5 family dwelling units per acre. It permits higher
6 densities of other land uses as well but certainly the
7 applicant's in- -- intent is to develop it as in -- in
8 the building types illustrated.

9 The -- the subject property -- or the property
10 to the south of the subject beyond the -- beyond the
11 intervening church property historically was zoned RT,
12 so my presumption is that that would be -- would have
13 been developed at -- at -- the historical eight units
14 per acre that would have been the density at the time
15 of its -- of its development.

16 MR. BROWN: I see. And the subject property
17 has no access to the east, the west or the south to
18 adjoining properties, it only has access to Greenbelt
19 Road; is that correct?

20 MR. FERGUSON: That is correct.

21 MR. BROWN: So I guess my last question is, is
22 the applicant making a choice here with regards to

1 change or mistake being present based upon the 2010 SMA
2 and ignoring the 2022 county wide map amendment in its
3 argument all together?

4 MR. FERGUSON: So I -- I cannot speak -- I
5 presume the question is to me. I can't speak for the
6 applicant on the argument. This is simply my
7 observation of the -- of the situation and I think that
8 neither Mr. Foreman nor I thought that the matter was
9 sufficiently clear to rely on the use of the CMA as the
10 most recent SMA for the -- the purposes of evaluating
11 change or mistake.

12 So I think, presenting the belt and suspenders
13 argument was the -- was the most prudent thing to do.

14 MR. BROWN: Thank you. I have no other
15 questions.

16 MS. MCNEIL: Mr. Ferguson.

17 MR. FERGUSON: Good morning, Madam Examiner
18 again.

19 MS. MCNEIL: Good morning. So it's true that
20 the staff didn't get to consider at least one of your
21 mistake arguments or your change argument.

22 MR. FERGUSON: That is correct.

1 MS. MCNEIL: And even the other two mistake
2 arguments have been expanded, right?

3 MR. FERGUSON: The first one. I didn't really
4 do much expansion of the -- of the -- the
5 transportation alignment.

6 MS. MCNEIL: Okay.

7 MR. FERGUSON: I agreed with [inaudible] --

8 MS. MCNEIL: [inaudible] --

9 MR. FERGUSON: -- didn't really expand on it
10 sub- -- substantively.

11 MS. MCNEIL: Okay. And -- and I wanted a
12 little more help with that donut hole.

13 MR. FERGUSON: Yes, ma'am.

14 MS. MCNEIL: I can't see the whole 40 acres so
15 tell me again, because you mentioned it but on page 5
16 of your report but --

17 MR. FERGUSON: All right. So if we go --

18 MS. MCNEIL: Fifty acres, go ahead.

19 MR. FERGUSON: If -- yes, if we go to Exhibit
20 20 and then really page 86 up on the --

21 MS. MCNEIL: And while they're doing that, I
22 want to clarify for the record that the -- the

1 PowerPoint did get its own exhibit, so it's 21.

2 MR. FERGUSON: I -- I apologize. You already
3 made that point and I promptly forgot it.

4 MS. MCNEIL: So is that the one you want, 21?

5 MR. FERGUSON: Yes -- yes, ma'am, Exhibit 21
6 and then I think it's the fourth page of Exhibit 21
7 which is page 86 in the binder.

8 And that's the top -- the top of the pages
9 that are there. So the 50 acres that I refer to in my
10 report is the RR zoned area of which the subject is
11 only a part.

12 MS. MCNEIL: Okay.

13 MR. FERGUSON: And that -- that to me is the
14 whole hole, the w-h-o-l-e h-o-l-e --

15 MS. MCNEIL: You're saying --

16 MR. FERGUSON: -- which --

17 MS. MCNEIL: -- only four of those acres are
18 used residentially?

19 MR. FERGUSON: Correct. And so you can see the
20 two enclaves within the subject -- within the subject -
21 - the front on Greenbelt Road and then skip one
22 property to the -- to the west --

1 MS. MCNEIL: Wait, wait, wait. One second. And
2 the enclaves are the area that are not part of the
3 subject property.

4 MR. FERGUSON: Correct.

5 MS. MCNEIL: Okay.

6 MR. FERGUSON: Correct. And then --

7 MS. MCNEIL: Okay.

8 MR. FERGUSON: -- the one property to the west
9 there are two slender lots -- two slender parcels
10 stacked one on top of the other in that image.

11 MS. MCNEIL: Mm-hmm.

12 MR. FERGUSON: Those are the other -- those
13 are the other two which appear to be residentially used
14 but are owned corporately.

15 MS. MCNEIL: And the beauty --

16 MR. FERGUSON: The left --

17 MS. MCNEIL: -- salon is one of the
18 corporately owned properties?

19 MR. FERGUSON: No. The beauty salon is one of
20 the enclaves. It's the one on the right.

21 MS. MCNEIL: Okay. So when you --

22 MR. FERGUSON: And then --

1 MS. MCNEIL: -- right closer to the applicant
2 church.

3 MR. FERGUSON: Closer to -- correct. Closer to
4 the applicant church.

5 MS. MCNEIL: Okay.

6 MR. FERGUSON: And -- and the other enclave,
7 the smaller of the two is the one that was the subject
8 of -- of SC4337 about which I can provide no more
9 information.

10 MS. MCNEIL: Okay. And -- oh, man the other --

11 MR. FERGUSON: There's --

12 MS. MCNEIL: -- one --

13 MR. FERGUSON: -- there's no evidence that
14 that special exception was put into -- put into use. It
15 -- it appears to simply be used residentially.

16 MS. MCNEIL: Okay. I got that [inaudible]. One
17 more -- I have papers everywhere. Get one more
18 [inaudible] you gave me the 50 acres. Say [inaudible] -
19 - oh, I know what it was.

20 So the technical staff ultimately recommended
21 this approval but some of the sections had no problem
22 but they might have mentioned conditions. I don't know

1 if you can answer this but does staff -- does the
2 applicant accept their conditions?

3 MR. FERGUSON: There were conditions in the
4 back-up, correct --

5 MS. MCNEIL: Mm-hmm.

6 MR. FERGUSON: -- and I believe the one that I
7 recall was -- show the extent and the limits of the
8 C340.

9 MS. MCNEIL: Mm-hmm.

10 MR. FERGUSON: And I believe that is shown at
11 least on some of the exhibits if there is a -- a -- a -
12 - a plan to address Mr. Brown's concerns that would
13 presumably address that condition as well.

14 MS. MCNEIL: Okay.

15 MR. FERGUSON: The conditions or the
16 recommendations of the historic preservation commission
17 related and they recommended approval for what that's
18 worth but they recommended future -- they were
19 concerning future archeologically investigations which
20 are now the standard operating procedures for
21 developing parcels and --

22 MS. MCNEIL: So are they talking about the

1 houses on your site or the -- the enclave?

2 MR. FERGUSON: No, our site.

3 MS. MCNEIL: Okay. And both of them are still
4 there. Okay. We [inaudible]. I think that was it on
5 those conditions. There could have been one more
6 though. [inaudible]. You know you would have to do the
7 natural resources and that sort of thing.

8 MR. FERGUSON: That's correct.

9 MS. MCNEIL: What about -- no [inaudible].
10 Okay. I think that's it then. Thank you.

11 MR. FERGUSON: Thank you very much Madam
12 Examiner.

13 MR. FOREMAN: May I ask a question or two in
14 rebuttal, Madam Examiner?

15 MS. MCNEIL: In rebuttal? Okay. Go ahead.

16 MR. FOREMAN: Mr. Ferguson you had mentioned,
17 you know, about the corporate ownership of the single
18 family detached homes and you talked about how they
19 could be used residentially but they do have a kind of
20 different character to them.

21 Would you mind kind of elaborating on that for
22 what the corporate ownership might mean versus being a

1 private owner or --

2 MR. FERGUSON: Well, I -- I -- I -- I mean I
3 think Mr. Brown's, you know, questioning got to the --
4 got to the -- the root of that matter. They do appear
5 to be used residentially. It is possible, as Mr. Brown
6 suggested that they were, you know, simply bought as --
7 as income properties.

8 I think the condition of those houses
9 physically means they won't be getting much income but
10 -- but they could alternatively been acquired for, you
11 know, future -- future redevelopment or perhaps even
12 future -- another -- another church.

13 Certainly there is a strong demand for church
14 sites in the county and -- and properties like this
15 with, you know, a lot of exposure on a -- on a high
16 classification roadway are -- are desirable --

17 MR. FOREMAN: Okay.

18 MR. FERGUSON: -- and -- yeah, and -- and that
19 promptly removes even -- even more property off of the
20 tax rules.

21 MR. FOREMAN: Thank you. That -- that's the
22 only question I had Madam Examiner.

1 MS. MCNEIL: Okay. But I'm going to be
2 people's zoning counsel for a second and -- and state --
3 - they need to know hearsay is allowed.

4 We don't really know what those corporations
5 want to do with that property; correct?

6 MR. FERGUSON: Absolutely correct, Madam
7 Examiner. We do not.

8 MS. MCNEIL: Thank you.

9 MR. FERGUSON: Thank you.

10 MS. MCNEIL: So we're -- any other witnesses?

11 MR. FOREMAN: So those are the only two
12 witnesses that I have questions for. I do know that Mr.
13 Gregory Hayes is on the line as representative of the
14 church. He's not a witness to the case but he did want
15 to speak on behalf of the church.

16 MS. MCNEIL: Okay, Mr. Hayes, if you turn your
17 mic on. Do you swear --

18 MR. HAYES: Yes.

19 MS. MCNEIL: -- or affirm under the penalties
20 of perjury that the testimony you shall give will be
21 the truth and nothing but the truth?

22 MR. HAYES: I do.

1 MS. MCNEIL: Okay. State your name and address
2 for the record and then let me know what you like to
3 talk about in reference --

4 MR. HAYES: Okay.

5 MS. MCNEIL: -- to this application today.

6 MR. HAYES: My name is Gregory Hayes. My home
7 address is 11805 Blanding Court, Bowie, Maryland. I
8 live a mile and a half from this church. I'm currently
9 at the church and I have the -- the church listed as my
10 business address. I'm retired, I'm a volunteer so I
11 spend a lot of time here.

12 What I wanted to do is just shortly voice my
13 support for the rezoning. As you stated, I heard
14 earlier, we don't know exactly what type of facility is
15 going to go on but based on our interaction with Miss
16 Barbara Kahn, Mr. Foreman, Mr. Atar [ph] and a civil
17 engineer, it sounds like this is one of the better
18 options that we could live next door to.

19 And basically, the owners and the
20 representatives around the church we -- we think this
21 would be a positive move for the church. And in full
22 disclosure, we have a nursery that we wanted to have

1 associated or next to the church and it is going
2 through the rezoning process. Again, to have additional
3 congregants would be a better situation than having a
4 say another liquor store, another retail outlet,
5 another gas station. This would be one of the better
6 options for us.

7 I would like to also say, I'm with -- or I've
8 attended the Prince George's County single family
9 dwelling at large committee. I've also attended the
10 community forum for Prince George's County community
11 development. I've attended the Maryland at-large policy
12 for comm- -- committee town hall meeting dealing with
13 housing. And again based on the needs of housing for
14 Maryland in general, this is another good option.

15 I -- I don't have any other comments. I -- I
16 can entertain questions if you want.

17 MS. MCNEIL: Mr. Brown, do you have any
18 questions?

19 MR. BROWN: Yes. Good morning, Mr. Hayes.

20 MR. HAYES: Good morning.

21 MR. BROWN: You indicated that you live
22 approximately a mile from the subject property;

1 correct?

2 MR. HAYES: Correct.

3 MR. BROWN: Are you an officer of the church?

4 MR. HAYES: Yes. I'm on the -- the executive
5 board. Most churches would call it trustee board. I'm
6 not the president, I'm the -- I'm the human resources
7 person on the board. I am authorized to speak for the
8 board and did get permission from the board, from the
9 bishop, the associate bishop to speak.

10 MR. BROWN: I -- I may not of -- or I may have
11 missed that in the file. Is there a letter in the file
12 from the church giving you authority to speak on their
13 behalf?

14 I didn't see it Mr. Foreman.

15 MR. FOREMAN: We did not have a le- -- a
16 letter but Mr. Hayes did list it as -- on a disclosure
17 forms as one of the officers.

18 MR. BROWN: All right. I'm not questioning his
19 title, I'm questioning his authority to speak on their
20 behalf.

21 Mr. Hayes, if you could, before the record
22 closes in this case, get a letter from the board of the

1 church that basically testifies they've reviewed this
2 application and given you authority to speak on their
3 behalf today?

4 MR. HAYES: Yes, I can do that. How soon do
5 you need that?

6 MR. BROWN: The examiner can tell you a
7 minute.

8 MR. HAYES: Okay.

9 MR. BROWN: Let me ask you, I noticed on the
10 plats for this property the church and if it's the same
11 one, it's described as the Mennonite Church which
12 allegedly owns the panhandle stem and there was
13 reference to a new name for that church.

14 What is the formal name of the church today?

15 MR. HAYES: Capital Christian Fellowship.

16 MR. BROWN: All right. So is the Capital
17 Christian Fellowship the successor to title of the Men-
18 -- Mennonite Church properties?

19 MR. HAYES: On all legal documents it's still
20 listed as Cottage -- Cottage City Mennonite Church.

21 MR. BROWN: So I mean, clarify for me. Have
22 you guys purchased the property or not? Or are you just

1 a tenant on the property?

2 MR. HAYES: We own the property.

3 MR. BROWN: Mr. Foreman, we need in the file a
4 copy of a deed that demonstrates -- what is the name of
5 the church today again Mr. Hayes?

6 MR. HAYES: Capital Christian Fellowship.

7 MR. BROWN: -- that Capital Christian
8 Fellowship is the owner of the properties previously
9 identified in this case as owned -- being owned by the
10 Mennonite Church, those entities I'm going to assume
11 are not one in the same.

12 And, so, all of your plans that you've shown
13 here today that show the Mennonite Church as being the
14 owner and an application that you have executed by the
15 Mennonite Church agreeing to this application should be
16 changed if in fact this new entity described by Mr.
17 Hayes is the actual title owner of the properties
18 identified as being in the name of the Mennonite
19 Church.

20 Do you understand what I'm saying?

21 MR. FOREMAN: Yes. Understand completely.

22 MR. BROWN: All right. So if in fact you give

1 us that document and it shows this new entity is the
2 owner, then we can dispense with that potential issue
3 concerning the Mennonite Church.

4 I have no other questions. Thank you, Mr.
5 Hayes.

6 MR. HAYES: Thank you for the opportunity to
7 speak. Any other questions?

8 MR. FOREMAN: None for me. Thank you for
9 speaking this morning.

10 MR. HAYES: Thank --

11 MS. MCNEIL: Thanks, Mr. Hayes. So that'll be
12 a new Exhibit 27 and 28 as well if -- if it's required,
13 correct? Because [inaudible] Cottage City.

14 MR. FOREMAN: Well I think we would maybe ask,
15 yeah, that they replace the existing 27 and 28 and
16 actually probably 26 with the --

17 MS. MCNEIL: Okay.

18 MR. FOREMAN: -- Capital Christian Fellowship.

19 MS. MCNEIL: Okay. Now, I've saved this to the
20 very end for you. I have a concern that staff didn't
21 see the other arguments and I would like to send this
22 planning statement to them and give them a short period

1 of time to add additional comments if they like. And I
2 like to do that because I don't like to have remands if
3 we don't have to but I'll listen to your argument if
4 you think I -- if you disagree.

5 MR. FOREMAN: No, I -- I -- if you want -- if
6 that's how you would like to proceed and feel more
7 comfortable with making your decision, I think we will
8 agree or allow that to happen.

9 MS. MCNEIL: Okay. And then part two of that
10 is, I think I should set a date for them and I think I
11 should be -- have this hearing but only you would have
12 to appear because you could have comments based on
13 their comments. So --

14 MR. FOREMAN: I see.

15 MS. MCNEIL: -- I could wait -- I could wait
16 and do another date or if you all want to pause for a
17 minute, I could give you the other date now and tell
18 them if they have any comments to let us know and --
19 okay?

20 MR. FOREMAN: I'm sorry --

21 MS. MCNEIL: And tell everyone else here, I
22 mean I wouldn't be taking any more testimony on that --

1 on any issue other than if they have something to say
2 about the change argument or the additional mistake
3 argument.

4 MR. FOREMAN: Well, I may ask if Mr. Ferguson
5 would be able to testify --

6 MS. MCNEIL: Oh, yeah. Oh, yes, he can come
7 back. I was just warning -- not warning, letting
8 everybody else know that they're always free to come
9 but they don't have to worry about testifying, although
10 maybe I should get the two sisters to come back and say
11 something. Look, I'm looking at -- no, I won't do that
12 ladies.

13 So can we have like a three-minute recess so I
14 can see what dates are available and make sure that you
15 and Mr. Brown and your witness would be available too?

16 MR. FOREMAN: Yes. No problem.

17 MS. MCNEIL: Thank you, I'll be right back.

18 RECORDING: This conference is no longer being
19 recorded.

20 MR. FERGUSON: Nate, I'm wide open. I keep my
21 Wednesdays free with the possible exception of the end
22 of March I may be up in Maine attending the birth of a

1 grandchild.

2 MR. FOREMAN: Mazel tov. Jack is going to have
3 a sibling?

4 MR. FERGUSON: Jack will have a brother.

5 MR. FOREMAN: Congratulations. Some days are
6 better than others but we'll see what date she comes
7 back with for me.

8 MR. FERGUSON: So I believe by the way, Nate,
9 now that we're off the record, I think Capital City
10 Christian Fellowship and Cottage City Mennonite Church,
11 I think Mr. Hayes indicated that they actually are the
12 same entity, one may be just a branding or a tra- --
13 you know, trading as -- churches don't trade as, right,
14 but --

15 MR. FOREMAN: Mr. Hayes --

16 MR. FERGUSON: Hi, is that right?

17 MR. HAYES: Yeah, we are the same entity. And
18 I'm going to guess they didn't -- well, I don't know. I
19 don't know if they went to the title to get it changed
20 but Cottage City Mennonite Church, you know, I could
21 tell you the history, it originated in D.C. and when we
22 left the college out near Laurel, we changed our name

1 when we got this building.

2 MR. FERGUSON: Did you -- did you
3 reincorporate or did you just change the name?

4 MR. HAYES: And my understanding we
5 reincorporated.

6 MR. FERGUSON: Yeah. So that'll be there in
7 the -- Nate, that'll be there in the -- the filings.

8 MR. FOREMAN: Okay. But then we would still --
9 I guess --

10 RECORDING: This conference will now be
11 recorded.

12 MR. FERGUSON: We got to --

13 MS. MCNEIL: We're back. I think I would like
14 to just mail it out -- send it out to them today and
15 come back on the 22nd. And if for some reason they
16 can't do that we'll worry about that then.

17 MR. FOREMAN: Um --

18 MS. MCNEIL: Okay, because some of our March
19 dates aren't available and I -- I don't want to hold
20 this out too much further. Does that work for you all?

21 MR. FOREMAN: Yeah at 9:30?

22 MS. MCNEIL: Yes.

1 MR. FOREMAN: Yeah, assuming that that's the
2 only issue we need to discuss, then yes, I'll -- I'm
3 available.

4 MS. MCNEIL: That's the only issue I need to
5 discuss. This was your case, so you -- you're -- you're
6 finished, right?

7 MR. FOREMAN: Yes.

8 MS. MCNEIL: Okay. So I thank --

9 MR. FOREMAN: I -- I --

10 MS. MCNEIL: -- you all for being here -- I'm
11 sorry, go ahead.

12 MR. FOREMAN: I -- I do want to maybe clarify
13 a few things real quick just before we -- we do leave.

14 We were just having a conversation while you
15 were gone with Mr. Hayes and it does seem that the
16 Capital Christian Fellowship is a successor interest
17 from the Cottage City Mennonite Church, but we will
18 still need to get the filings from, you know, the
19 Department of Assessment and Taxation to show that
20 they're the same entity.

21 Would -- because I -- I mean, they're -- the
22 Mennonite Church is still in good standing and I think

1 if they had been fully been a subsumed by the Capital
2 Christin Fellowship they'd probably been out of
3 standing but I will provide the document and we can
4 discuss whether a whole new application, a whole new --
5 say that affidavits are necessary or if they're just a
6 successor in interest then that'd be sufficient. You --

7 MS. MCNEIL: Also you should make sure -- I
8 just -- I just hold those ethics affidavits on behalf
9 of the clerk and I know they're real sensitive about
10 making sure the proper parties -- so you might want to
11 talk to them no matter what to see if you still need
12 Capital Christian to do an affidavit.

13 MR. FOREMAN: Okay.

14 MS. MCNEIL: Because otherwise they'll send it
15 back and we have to stop -- you know, they can't have
16 the affidavit if it's not valid. Okay. So we -- we left
17 the record open for that information and also with some
18 information -- I believe -- yeah, the illustration with
19 the proposed right of way going through --

20 MR. FOREMAN: Mm-hmm.

21 MS. MCNEIL: -- and I don't know if you'll
22 have those in two weeks but if you want to submit them

1 then because I know you wanted to close it or you'll
2 have a little longer now. And I think that is it.

3 MS. POTETE: Documents for Mr. Hayes
4 [inaudible] speak.

5 MS. MCNEIL: No, wait. We just discussed
6 those. Yeah.

7 MS. POTETE: Okay.

8 MS. MCNEIL: I'm sorry, I was talking about
9 the others in addition to the one for Mr. Hayes and the
10 church. Thank you, though.

11 MR. FOREMAN: Mr. Brown has asked for a deed
12 for parcel 422, so that --

13 MS. MCNEIL: Right. The -- the easement.

14 MR. FOREMAN: Oh -- oh, whether the
15 [inaudible] --

16 MS. MCNEIL: [inaudible] --

17 MR. FOREMAN: Yeah. And -- and Madam Examiner
18 you had also asked for additional legal analysis about
19 the mis- -- mistake argument and whether it -- having
20 policies [inaudible] in a master plan, a sector plan
21 and failing to follow them cost due to mistake. Is --
22 is that correct?

1 MS. MCNEIL: Yes.

2 MR. FOREMAN: Okay.

3 MS. MCNEIL: Do you want to throw in anything
4 on the CMA versus the SMA you can as well. So I thank
5 you all for being here. We're going to continue this
6 matter until February 22nd at 9:30 a.m. just to -- if
7 those documents are ready, we'll ad- -- admit them into
8 the record and also to see if the park and planning
9 technical staff has any comment on the additional
10 arguments as to why this application should be granted.

11 MR. FOREMAN: Okay.

12 MS. MCNEIL: Change or mistake.

13 MR. FOREMAN: And -- and one final thing. I
14 know you took administrative notice of it but just for
15 the record and clarification, I would also like to
16 submit a copy of CV71 2016 which was for the beauty
17 salon on the adjoining property.

18 MS. MCNEIL: Sure. No problem. And -- and I'll
19 look this up myself but if Mr. Ferguson had already
20 done it, you're still under oath. Is he still here?

21 MR. FERGUSON: I am, Madam Examiner.

22 MS. MCNEIL: Do you know, I'm pretty sure it

1 wasn't, but do you know if that language is carried
2 over in the recent supplement to the zoning ordinance?

3 MR. FERGUSON: I do not believe that it is.

4 MS. MCNEIL: I -- yeah, probably not. Okay.

5 Thank you all and I'll see you on the 22nd.

6 MR. FERGUSON: Thank you.

7 RECORDING: This conference is no longer being
8 recorded.

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CERTIFICATE OF TRANSCRIBER

I, Chris Naaden, a transcriber, hereby declare under penalty of perjury that to the best of my ability from the audio recordings 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, the above 108 pages contain a full, true and correct transcription of the tape-recording that I received regarding the event listed on the caption on page 1.

I further declare that I have no interest in the event of the action.



February 15, 2023

Chris Naaden

(481263, ZMA 2022-001 Land Development Investors, LLC,
hearing, 2-8-23)

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